

1996

# Christiansen v. Christiansen : Reply Brief

Utah Court of Appeals

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 960598-CA

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IN THE UTAH COURT OF APPEALS

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SANDRA CHRISTIANSEN, )

Plaintiff-Appellant/Cross-Appellee )

vs. )

ROBERT DAVID CHRISTIANSEN, )

Defendant-Appellee/Cross Appellant, )

Case No. 960598-CA

Priority Number 15

---

**REPLY BRIEF OF APPELLANT/BRIEF OF CROSS-APPELLEE**

---

Appeal from the Judgment of the Fifth Judicial District Court in and for Iron County  
Judge J. Philip Eves

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Attorney for Appellee/Cross-Appellant

**FILED**  
Utah Court of Appeals

MAY 12 1997

Marilyn M. Branch  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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SANDRA CHRISTIANSEN,	)	
	)	
Plaintiff-Appellant/Cross-Appellee	)	Case No. 960598-CA
	)	
vs.	)	
	)	Priority Number 15
ROBERT DAVID CHRISTIANSEN,	)	
	)	
Defendant-Appellee/Cross Appellant,	)	

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**CONSTITUTIONAL PROVISIONS, STATUTES & RULES**

See Brief of Appellant previously submitted.

## **STATEMENT OF JURISDICTION**

The Court of Appeals has jurisdiction over this matter pursuant to § 78-2a-3(2)(h), Utah Code Ann. 1953 as amended.

## **CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES**

See Brief of Appellant previously submitted.

## **STATEMENT OF THE FACTS**

Plaintiff submits the following facts in addition to those previously submitted by both parties:

During the course of trial the Defendant identified four (4) separate financial statements that he signed for the purpose of obtaining financing. The dates and net worth of the Defendant as disclosed in those financial statements are as follows:

- 1.) 1/25/94 - \$190,795.00;
- 2.) 2/01/95 - \$87,164.00;
- 3.) 4/95 - \$120,000.00; and
- 4.) 5/12/95 - \$125,687.00.

(Tr. 255-63)(R.189)(Copies of the financial statements and cited pages from the transcript are included in Addendum "A").

Defendant's father testified in regard to the financial statements that "regardless of whatever perjury he might have committed in saying this statement, this does not indicate the

true financial condition of him at that time." (Tr. 534-46; quotation at 538)(copies of the cited pages are included in Addendum "B").

After the lower court issued its memorandum opinion, Defendant filed his Motion to Correct Clerical Mistakes, Oversights, and Omissions. Defendants motion was heard on January 16, 1996. In its ruling, the lower court stated that the evidence as to debt was "scanty" at best and the evidence presented by Defendant was not persuasive and it was impossible for the court to determine what the actual debt structure was. (Supp. Tr. 2-7)(copies of the Supplemental Transcript dated 1/16/96 are included in Addendum "C").

#### **SUMMARY OF ARGUMENT**

**POINT I:** Plaintiff has strictly adhered to the requirement that she marshal the evidence in support of the lower courts findings regarding the marital home. Yet, despite those facts, the lower courts findings were an abuse of discretion and clearly erroneous.

**POINT II:** The lower court did consider all appropriate factors in awarding attorneys fees and there was sufficient evidence to support the lower courts findings.

**POINT III:** There was sufficient evidence to support the lower courts findings as to allocation of debt between the parties and therefore, the lower court did not abuse its discretion.

**POINT IV:** The Defendant must prevail on appeal for this court to even consider an award of attorneys fees. Even if Defendant were to prevail on appeal, since he was not awarded attorneys fees from the lower court, he is not entitled to attorneys fees on appeal.

## ARGUMENT

### POINT I

#### PLAINTIFF ADEQUATELY MARSHALLED THE EVIDENCE

Defendant sets forth the proposition that Plaintiff failed to marshal the evidence. Apparently the Defendant misunderstands what marshalling the evidence means. Defendant seems to contend that Plaintiff should marshal facts in support of her position when in fact she must marshal the facts in the light most favorable to the courts decision. See Scharf v. BMG Corp., 700 P.2d 1068,1070 (Utah App. Ct. 1985).

Defendant has pointed to no evidence in support of the lower court's findings that Plaintiff failed to marshal. Instead, having fully marshalled the evidence, Plaintiff has adequately shown that the lower courts findings regarding the disposition of the marital home were clearly erroneous and therefore, an abuse of discretion.

### POINT II

#### THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURTS AWARD OF ATTORNEYS FEES TO PLAINTIFF

There was sufficient evidence to support the trial courts award of attorneys fees to Plaintiff.

Unlike Plaintiff, Defendant has failed to marshal the evidence in support of the lower court's findings regarding an award of attorneys fees to Plaintiff. See Scharf, supra.



In Muir v. Muir, 841 P.2d 736, 741 (Utah Ct. App. 1992) this court set forth the criteria for the lower courts to consider in awarding attorneys fees. Those criteria are:

- 1) The requested fees are reasonable;
- 2) The requesting party is in need of financial assistance; and
- 3) The other spouse has the ability to pay.

(citing Crouse v. Crouse, 817 P.2d 836, 840 (Utah Ct. App. 1991); Haumont v. Haumont, 793 P.2d 421,425 (Utah Ct. App. 1990); Riche v. Riche, 784 P.2d 465, 470, (Utah Ct. App. 1989).

In this case, the lower court made specific findings as to all three (3) factors. The following evidence inter alia, supports the lower courts findings:

- a.) Defendant did not contest the reasonableness of the fee;
- b.) Plaintiff was unable to meet her monthly living expenses from her salary;  
and
- c.) Defendant derives financial benefits from the partnership through unlimited draws and payments by the partnership for utilities, telephone, car payments, house payments, taxes and other bills.

(R.108-09)

The Defendant contends, in arguing against an award of attorneys fees to Plaintiff, that the lower court failed to consider evidence of Defendant's debt. The lower court clearly took into consideration the Defendant's alleged debt (R. 109).

Nevertheless, since the lower court made specific findings as it relates to the factors set forth in Muir v. Muir, it was not necessary for the lower court to consider additional evidence.

### **POINT III**

#### **THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURTS ALLOCATION OF DEBT OF THE PARTIES**

Once again, Defendant failed to properly marshal the evidence supporting the lower court's findings as to debt allocation. Instead, for the third time, Defendant urges this court to reallocate debt based upon evidence the lower court has already considered.

Section 30-3-5(1) of Utah Code provides that the lower court has the discretion to equitably allocate the debt of the parties. Implicit in this power, there must be marital debt to allocate. Utah Code Ann. §30-3-5(1)(1995).

After hearing the evidence presented at trial by Defendant and Defendant's father, the lower court determined that Defendant's evidence was not persuasive and it was impossible to determine what the actual debt structure was (Supp. Tr. 3). Further, the lower court found that the partnership could liquidate its debt in one year if it wanted to (Supp. Tr. 4). Therefore, the court determined the debt was illusory in nature.

There was sufficient evidence to support the lower court's findings that the debt was illusory and any additional evidence that Defendant now wishes this court to consider is

irrelevant and not within the standard of review<sup>1</sup>. Scharf, supra

**POINT IV**

**DEFENDANT IS NOT ENTITLED TO ATTORNEYS  
FEES ON APPEAL**

Defendant is not entitled to attorney fees on appeal. Based upon Schaumberg v. Schaumberg, 875 P.2d 598, 604 (Utah Ct. App. 1994), in order to obtain attorney fees on appeal, the receiving party must have been awarded attorneys fees at trial and must prevail or substantially prevail on appeal.

In the case at bar the lower court found that Plaintiff was entitled to attorney fees and the Defendant was not. (See Point II above). Furthermore, Plaintiff contends that Defendant will not prevail or even substantially prevail on appeal. Simply stated, Defendant is not entitled to attorney fees and costs on appeal.

**CONCLUSION**

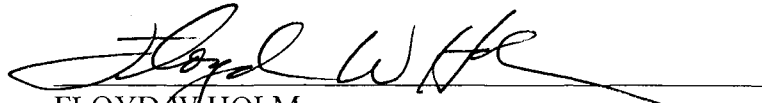
Based upon the above discussion this court should grant the relief requested in Plaintiff's opening brief and should affirm as to the issues raised on the cross-appeal.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of May, 1997.

***THE PARK FIRM, P.C.***

  
\_\_\_\_\_  
JAMES M. PARK

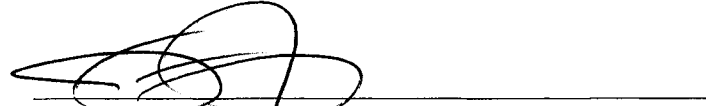
<sup>1</sup>Actually, the lower court determined that the evidence supplied by Defendant was too confusing to permit it to do anything but follow Plaintiff's contention that there was no debt to allocate.

  
FLOYD W. HOLM

Attorneys for Plaintiff-Appellant

MAILING CERTIFICATE

I here by certify that on the 12<sup>th</sup> day of May, 1997, two (2) true and correct copies of the foregoing BRIEF OF APPELLANT were mailed, first class, postage prepaid to Mr. Willard R. Bishop, Attorney At Law, P.O. Box 279, Cedar City, UT 84720.

  
JAMES M. PARK

**ADDENDUM "A"**

**FINANCIAL STATEMENT - AGRICULTURE AND LIVESTOCK**

Bank: Utah Independent Bank SSN or TIN Number 525-78-806  
 Name: David Christensen Occupation Farmer  
 Address 370 West 100 St. City, State, Zip Code Blower, Wt. 84713

CHECK AS APPLICABLE - Applicant is applying for this loan:  
 ALONE, without a co-signer or guaranty of a relative or other person(s) or entity.  
 WITH A PERSON OR PERSONS who will also be contractually liable.  
 Names of other Person(s) \_\_\_\_\_

Applicant is a:  Individual  Partnership  Corporation  Other \_\_\_\_\_

**FINANCIAL CONDITION AS OF** Jan 25, 19 94

ASSETS			LIABILITIES		
Cash	Cash On Hand and in This Bank	500	Notes Payable	SCHEDULE E	
	Cash in Other Bank			Notes Payable to This Bank (Due within 12 months)	
	Name: _____			Notes Payable to Other Banks (Due within 12 months)	
Accounts Receivable	SCHEDULE A		Accounts Payable	SCHEDULE E	
	Accounts Receivable (Due within 12 months)	31,720		Taxes Payable	Federal and State Taxes Unpaid Personal/Real Property
Notes & Contracts Receivable	SCHEDULE A		Real Estate	SCHEDULE B	
	Notes and Contracts Receivable (Due within 12 months)			Current Portion (Due within 12 months)	4,500
Stocks & Bonds	Marketable Securities (Attach list)	12,500	Mach. & Equipment	Current Portion (Due within 12 months)	
Cash Value Life Ins.				Notes Payable to Others	SCHEDULE E
Livestock	SCHEDULE C			Current Portion	34,150
Farm Products	SCHEDULE D		Other Current Liabilities	SCHEDULE E	
	Harvested for Sale	35,625			
Other Current Assets				TOTAL CURRENT LIABILITIES	
				Loans Secured by Investments	Stocks and Bonds Cash Value Life Insurance Other
TOTAL CURRENT ASSETS				Real Estate	SCHEDULE B
Real Estate	SCHEDULE B	247,000		Due after 12 months	136,100
Machinery & Equipment	SCHEDULE F		Machinery & Equipment	SCHEDULE F	
		50,000		Term Debt (Due after 12 months)	-
A/R Notes & Contracts Receivable	SCHEDULE A		Other Long-Term Debts	SCHEDULE E	
Due after 12 months				Notes and Accounts Payable (Due after 12 months)	53,000
Livestock	SCHEDULE C		Other Deferred Debt		
Not to be Sold During Year					
Farm Products	SCHEDULE D			TOTAL LIABILITIES	
	On Hand - Not for Sale				216,550
Investments				NET WORTH	
	In Growing Crop				190,795
Misc. Supplies				TOTAL	
	Fertilizer, Feed, Sprays, etc.				407,345
Household Goods & Personal Property		30,000	<b>ANNUAL INCOME &amp; EXPENSE</b>		
			GROSS INCOME FOR 19 _____		
Other Assets			INCOME		
			Crops \$ _____		
TOTAL ASSETS			Livestock _____		
AMOUNT			Other Farm Products _____		
CONTINGENT LIABILITIES			GROSS _____		
As Endorser on Notes/Contracts			LESS EXPENSES		
As Guarantor on Notes/Contracts					
For Taxes					
Other (Describe)					
TOTAL					
			NET PROFIT OR LOSS \$ _____		
<b>INSURANCE</b>					
LIFE INS - Name of Company	Beneficiary	Amount	On Trucks & Autos		
			On Machinery & Equipment		
			On Farm Products		
			On Livestock		
			On Merchandise		
			Fire Insurance on Building		

**PLAINTIFF'S EXHIBIT**

P-7

# 95450024

Type	Due From	Terms Date and Amount of Payment	Security (if any)	Balance
	K & W Dairy	Due 4/1/99		26,620
	Ed	Past due		1,000
	Alan Stubbs	" "		1,500
	Sweet Hay Co.	" "		2,500
TOTAL				\$31,720

**Schedule B – Real Estate** \* Indicate Whether (W) Wet or (D) Dry

Acres W/D	Location or Description	Date Acquired	Title in Name of	Market Value	Contracts and Mortgages			
					Payable To	Payment	Date Due	Balance
W	Home (Beaver City)	1980	David & Sandra	195,000	1st Security	Interest only		98,000
W	"	"	"	"	2nd Security	3800	8/1/99	3,800
W	Condo (Beaver Co.)	1989	David & Sandra	49,000	RTC	220	monthly	39,000
D	Beaver Shop	1980	David, Robert & Helen	8,000				-0-
TOTAL				\$297,000	TOTAL \$140,800			

**Schedule C – Livestock**

Units (Number)	Est. Sale Date	Livestock Description	Unit Price	Market Value
TOTAL \$				

**Schedule F – Machinery and Equipment**

Description (Year and Model)	Market Value	Balance
Truck Equipment	50,000	-0-
TOTALS \$50,000 \$-0-		

**Schedule D – Farm Products – On Hand for Sale**

Units	Est. Sale Date	Crop Description	Unit Price	Market Value
375	7/1/99	Alfalfa Hay	95	35,625
TOTAL \$35,625				

**Schedule D – Farm Products – On Hand Not for Sale**

Units	Crop Description	Unit Price	Market Value
TOTAL \$			

**Schedule E – Accounts, Notes, Contracts and Other Payables**

Payable To	Persons Liable	Security	Amount Due Within 12 Mos.	Amount Due After 12 Mos.	Balance
First Security Bank	David	Car	2500	-0-	2500
"	David & Kasey	Truck		3000	3000
Memphisville Feed	David & Robert	none	5000		5000
Johnson Tractor	"	"	1000		1000
Misc	"	"	500		500
U.S. Bank	David	"	5000		5000
First Security	David, Robert & Helen	Crops	8750		8750
U.S.B.	"	Real Estate	5000		5000
TOTAL			\$72,750	\$3,000	\$75,750

**Real Estate Leased or Rented**

From Whom	Acres	Name of Owner	Years	Terms of Lease			
				Cash/Share	Due Date	Paid	Annual Pmts.
TOTAL							

I (we) hereby affirm that the foregoing information contained in this financial statement is presented for the purpose of obtaining credit as of the date indicated and is true, complete and correct. I understand Bank is relying on this statement of my financial condition in making loan(s) to me. Bank is authorized to make any investigation of my credit either directly or through any agency employed by Bank for that purpose. Bank may disclose to any other interested parties the results of such investigation(s) and/or Bank's experience with this account. I agree to inform the Bank immediately of any matter which will cause any significant change in my financial condition. I understand that Bank will retain this financial statement whether or not credit is granted.

Signature David Stubbs Date 1/11/99 Signature \_\_\_\_\_

# FINANCIAL STATEMENT - AGRICULTURE AND LIVESTOCK

COPY

Bank: \_\_\_\_\_ SSN or TIN Number \_\_\_\_\_  
 Name: David Christensen Occupation: Farmer  
 Address: 290 West 110th, Beaver, VT. City, State, Zip Code \_\_\_\_\_

- CHECK AS APPLICABLE — Applicant is applying for this loan:  
 ALONE, without a co-signer or guaranty of a relative or other person(s) or entity.  
 WITH A PERSON OR PERSONS who will also be contractually liable.  
 Names of other Person(s) \_\_\_\_\_

Applicant is a:  Individual  Partnership  Corporation  Other

FINANCIAL CONDITION AS OF July 1, 1995

ASSETS			LIABILITIES		
Cash	Cash On Hand and In This Bank Cash in Other Bank Name: _____		Notes Payable	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE B</small>                      Notes Payable to This Bank                      (Due within 12 months)                 </div> <div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Notes Payable to Other Banks                      (Due within 12 months)                 </div>	70,003
Accounts Receivable	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE A</small>                      Accounts Receivable                      (Due within 12 months)                 </div>	8300	Accounts Payable	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Federal and State Taxes                      Unpaid Personal/Real Property                 </div>	
Notes & Contracts Receivable	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE A</small>                      Notes and Contracts Receivable                      (Due within 12 months)                 </div>		Real Estate	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE B</small>                      Current Portion                      (Due within 12 months)                 </div>	136,465
Stocks & Bonds	Marketable Securities (Attach list)		Mach. & Equipment	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Current Portion                      (Due within 12 months)                 </div>	
Cash Value Life Ins.			Notes Payable to Others	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Current Portion                 </div>	
Livestock	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE C</small>                      On Hand for Sale                 </div>		Other Current Liabilities	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small> </div>	
Farm Products	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE D</small>                      Harvested for Sale                 </div>	7500	<b>TOTAL CURRENT LIABILITIES</b>		
Other Current Assets	219 shares of common to B. U.S. Bank 8710		Loans Secured by Investments	Stocks and Bonds Cash Value Life Insurance Other	
<b>TOTAL CURRENT ASSETS</b>			Real Estate	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE B</small>                      Due after 12 months                 </div>	
Real Estate		237,000	Machinery & Equipment	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Term Debt                      (Due after 12 months)                 </div>	
Machinery & Equipment		32,112	Other Long-Term Debts	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE E</small>                      Notes and Accounts Payable                      (Due after 12 months)                 </div>	
A/R Notes & Contracts Receivable	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE A</small>                      Due after 12 months                 </div>		Other Deferred Debt		
Livestock	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE C</small>                      Not to be Sold During Year                 </div>		<b>TOTAL LIABILITIES</b>		
Farm Products	<div style="border: 1px solid black; padding: 2px;"> <small>SCHEDULE D</small>                      On Hand -- Not for Sale                 </div>		206,468		
Investments	In Growing Crop Other		<b>NET WORTH</b>		
Misc. Supplies	Fertilizer, Feed, Sprays, etc.		87,164		
Household Goods & Personal Property			<b>TOTAL</b>		
Other Assets			293,632		
<b>TOTAL ASSETS</b>			<b>ANNUAL INCOME &amp; EXPENSE</b>		
CONTINGENT LIABILITIES			GROSS INCOME FOR 19_____		
AMOUNT			INCOME		
As Endorser on Notes/Contracts			Crops	\$	
As Guarantor on Notes/Contracts			Livestock		
For Taxes			Other Farm Products		
Other (Describe)			<b>GROSS INCOME</b>		
<b>TOTAL</b>			\$		
			LESS EXPENSES		
			Growing Expense		
			Cash Rent		
			Interest Paid		
			Other Operating Expense		
			<b>NET PROFIT OR LOSS</b>		
<b>INSURANCE</b>					
LIFE INS. — Name of Company	Beneficiary	Amount	On Trucks & Autos		
			On Machinery & Equipment		
			On Farm Products		
			On Livestock		
			On Merchandise		
			Fire Insurance on Building		

PLAINTIFF'S  
EXHIBIT

P-8

#954500124

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All rights reserved. \*L411 00(0585)

TUMBLE 132,000 + (19,000) = 113,000



15%

Type	Due From	Terms: Date and Amount of Payment	Security (if any)	Balance
	M + M Savings	Open account (cont)	None	88.00
				TOTAL \$ 88.00

**Schedule B – Real Estate** \* Indicate Whether (W) Wet or (D) Dry

* Acres W/D	Location or Description	Date Acquired	Title in Name of	Market Value	Contracts and Mortgages			
					Payable To	Payment	Date Due	Balance
W	Home (Riverside, Ill)	1998	David & Sherrill	208,100	First Security	1200	19%	450
W	Condo (Eld Meadows)	1988	"	35,800	First Security	354.46	7/1/88	39,665
W	Beaver Shop	1984	Sherrill's Refit + 25%	1,100		-0-		0
				TOTAL \$237,000	TOTAL \$79,915			

**Schedule C – Livestock**

Units (Number)	Est. Sale Date	Livestock Description	Unit Price	Market Value
TOTAL \$				

**Schedule F – Machinery and Equipment**

Description (Year and Model)	Market Value	Balance
Pontiac Equip (25%)	12495	-0-
85 Ford Pickup	450	-0-
Camper	2600	-0-
Boat + Trailer	5600	-0-
Ford Ranger	2875	-0-
TOTALS \$ 32,122		\$ -0-

**Schedule D – Farm Products – On Hand for Sale**

5%

Units	Est. Sale Date	Crop Description	Unit Price	Market Value
75		Alfalfa Hay	100	7500
TOTAL \$ 7500				

**Schedule D – Farm Products – On Hand Not for Sale**

Units	Crop Description	Unit Price	Market Value
TOTAL \$			

**Schedule E – Accounts, Notes, Contracts and Other Payables**

Payable To	Persons Liable	Security	Amount Due Within 12 Mos.	Amount Due After 12 Mos.	Balance
Wash Independent Bank	Robert + David	Equipment	3500		3500
"	Robert, Helen + David	Real Estate	50,000		50,000
Mississippi Feed	Robert + David	none	1250		1250
First Security Bank	Robert, Helen + David	Crops	9750		9750
Wash Power	Robert + David	none	2748		2748
Business Credit Cards	Robert + David	none	1755		1755
TOTAL			\$ 70,003	\$	\$ 70,003

**Real Estate Leased or Rented**

From Whom	Acres	Name of Owner	Years	Terms of Lease			
				Cash/Share	Due Date	Paid	Annual Pmts
TOTAL				TOTAL			

I (we) hereby affirm that the foregoing information contained in this financial statement is presented for the purpose of obtaining credit as of the date indicated and is true, complete and correct. I understand Bank is relying on this statement of my financial condition in making loan(s) to me. Bank is authorized to make any investigation of my credit either directly or through any agency employed by Bank for that purpose. Bank may disclose to any other interested parties the results of such investigation(s) and/or Bank's experience with this account. I agree to inform the Bank immediately of any matter which will cause any significant change in my financial condition. I understand that Bank will retain this financial statement whether or not credit is granted.

Signature [Signature] Date 2/1/96 Signature \_\_\_\_\_

# FINANCIAL STATEMENT - AGRICULTURE AND LIVESTOCK

# COPY

Bank: State Bank of Southern Utah SSN or TIN Number \_\_\_\_\_  
 Name: David Christensen Occupation: Farmer  
 Address: 270 West 100 South City, State, Zip Code: Blaine, UT 84304

CHECK AS APPLICABLE - Applicant is applying for this loan:  
 ALONE, without a co-signer or guaranty of a relative or other person(s) or entity  
 WITH A PERSON OR PERSONS who will also be contractually liable.  
 Names of other Person(s): Robert C. Christensen

Applicant is a:  Individual  Partnership  Corporation  Other

FINANCIAL CONDITION AS OF April 14, 1995

ASSETS			LIABILITIES		
Cash	Cash On Hand and In This Bank		Notes Payable	SCHEDULE E	
	Cash in Other Bank			Notes Payable to This Bank (Due within 12 months)	
	Name: _____			Notes Payable to Other Banks (Due within 12 months)	250-
Accounts Receivable	SCHEDULE A	5,000	Accounts Payable	SCHEDULE E	
	Accounts Receivable (Due within 12 months)		Taxes Payable	Federal and State Taxes Unpaid Personal/Real Property	
Notes & Contracts Receivable	SCHEDULE A		Real Estate	SCHEDULE B	
Stocks & Bonds	Marketable Securities (Attach list)			Current Portion (Due within 12 months)	
Cash Value Life Ins.			Mach. & Equipment	Current Portion (Due within 12 months)	
Livestock	SCHEDULE C		Notes Payable to Others	SCHEDULE E	
Farm Products	SCHEDULE D			Current Portion	
Other Current Assets	<u>230 Shares U.S. Bank Stock</u>	18,700	Other Current Liabilities	SCHEDULE E	
					9,000
TOTAL CURRENT ASSETS			TOTAL CURRENT LIABILITIES		
Real Estate	SCHEDULE B	240,000	Loans Secured by Investments	Stocks and Bonds	
Machinery & Equipment	SCHEDULE F	32,123		Cash Value Life Insurance	
A/R Notes & Contracts Receivable	SCHEDULE A			Other	
Livestock	SCHEDULE C		Real Estate	SCHEDULE B	
Farm Products	SCHEDULE D			Due after 12 months	136,725
Investments	In Growing Crop	3750	Machinery & Equipment	SCHEDULE F	
Misc. Supplies	Fertilizer, Feed, Sprays, etc.			Term Debt (Due after 12 months)	
Household Goods & Personal Property		20,000	Other Long-Term Debts	SCHEDULE E	
Other Assets				Notes and Accounts Payable (Due after 12 months)	5,000
TOTAL ASSETS			TOTAL LIABILITIES		
319,573			158,325		
CONTINGENT LIABILITIES			NET WORTH		
AMOUNT			120,888		
As Endorser on Notes/Contracts			TOTAL		
As Guarantor on Notes/Contracts			419,463		
For Taxes			ANNUAL INCOME & EXPENSE		
Other (Describe)			GROSS INCOME FOR 19_____		
TOTAL			INCOME		
			Crops \$		
			Livestock		
			Other Farm Products		
			GROSS INCOME \$		
			LESS EXPENSES		
			Growing Expense		
			Cash Rent		
			Interest Paid		
			Other Operating Expense		
			NET PROFIT OR LOSS \$		
INSURANCE					
LIFE INS - Name of Company	Beneficiary	Amount	On Trucks & Autos		
			On Machinery & Equipment		
			On Farm Products		
			On Livestock		
			On Merchandise		
			Fire Insurance on Building		

**PLAINTIFF'S EXHIBIT**

P-9

#954500124

**Schedule A – Accounts, Notes, Contracts Receivable**

Type	Due From	Terms Date and Amount of Payment	Security (if any)	Balance
	Kelly Atkin			5000
TOTAL				\$ 5000

**Schedule B – Real Estate** \* Indicate Whether (W) Wet or (D) Dry

Acres W/D	Location or Description	Date Acquired	Title in Name of	Market Value	Contracts and Mortgages			
					Payable To	Payment	Date Due	Balance
W	Home (Bower rd)	1982	David + Sandra	200,000	First Security	Int rate		97,400
W	Condo (Cobb Meadows)	1988	"	32,000	RTC	354.46	Monthly	24,560
W	Bower Shop	1984	David + Helen + Robert	8,000	-0-			-0-
TOTAL				\$ 240,000	TOTAL \$ 136,460			

**Schedule C – Livestock**

Units (Number)	Est. Sale Date	Livestock Description	Unit Price	Market Value
TOTAL				\$

**Schedule F – Machinery and Equipment**

Description (Year and Model)	Market Value	Balance
Partnership Equip	12,498	-0-
'85 Ford Pickup	4,500	-0-
Camper	2,600	-0-
Boat + Trailer	5,660	-0-
Ford Ranger	6,875	-0-
TOTALS		\$ 32,123 \$ -0-

**Schedule D – Farm Products – On Hand for Sale**

Units	Est. Sale Date	Crop Description	Unit Price	Market Value
TOTAL				\$

**Schedule D – Farm Products – On Hand Not for Sale**

Units	Crop Description	Unit Price	Market Value
TOTAL			\$

**Schedule E – Accounts, Notes, Contracts and Other Payables**

Payable To	Persons Liable	Security	Amount Due Within 12 Mos.	Amount Due After 12 Mos.	Balance
Utah Independent Bank	Robert + David	Equipment	3,500		3,500
"	Robert, Helen + David	Real Estate	50,000		50,000
Minersville Feed	Robert + David	none	3,750		3,750
Utah Power	Robert + David	none	3,750		3,750
Business credit cards	Robert + David	none	1,500		1,500
TOTAL			\$ 62,500	\$	\$ 62,500

**Real Estate Leased or Rented**

From Whom	Acres	Name of Owner	Years	Terms of Lease			
				Cash/Share	Due Date	Paid	Annual Pmts
TOTAL							

I (we) hereby affirm that the foregoing information contained in this financial statement is presented for the purpose of obtaining credit as of the date indicated and is true, complete and correct. I understand Bank is relying on this statement of my financial condition in making loan(s) to me. Bank is authorized to make any investigation of my credit either directly or through any agency employed by Bank for that purpose. Bank may disclose to any other interested parties the results of such investigation(s) and/or Bank's experience with this account. I agree to inform the Bank immediately of any matter which will cause any significant change in my financial condition. I understand that Bank will retain this financial statement whether or not credit is granted.

*(Handwritten Signature)*



# FINANCIAL STATEMENT - AGRICULTURE AND LIVESTOCK

COPY

Bank: \_\_\_\_\_ SSN or TIN Number: \_\_\_\_\_  
 Name: David Christiansen Occupation: Farmer  
 Address: 290 West 100 St. City, State, Zip Code: Bever, Wt. 54771

CHECK AS APPLICABLE -- Applicant is applying for this loan:  
 ALONE, without a co-signer or guaranty of a relative or other person(s) or entity.  
 WITH A PERSON OR PERSONS who will also be contractually liable.  
 Names of other Person(s) \_\_\_\_\_

Applicant is a:  Individual  Partnership  Corporation  Other

**FINANCIAL CONDITION AS OF** May 12, 1995

ASSETS		LIABILITIES	
Cash	Cash On Hand and In This Bank	Notes Payable	SCHEDULE E
	Cash in Other Bank		Notes Payable to This Bank (Due within 12 months)
Name: _____		Accounts Payable	SCHEDULE E
			Notes Payable to Other Banks (Due within 12 months)
Accounts Receivable	SCHEDULE A	Taxes Payable	Federal and State Taxes
	Accounts Receivable (Due within 12 months)		Unpaid Personal/Real Property
Notes & Contracts Receivable	SCHEDULE A	Real Estate	SCHEDULE B
	Notes and Contracts Receivable (Due within 12 months)		Current Portion (Due within 12 months)
Stocks & Bonds	Marketable Securities (Attach list)	Mach. & Equipment	Current Portion (Due within 12 months)
			Notes Payable to Others
Cash Value Life Ins.	SCHEDULE C	Current Portion	
	On Hand for Sale	SCHEDULE D	Current Portion
Livestock	SCHEDULE D	Other Current Liabilities	SCHEDULE E
	Harvested for Sale		TOTAL CURRENT LIABILITIES
Farm Products	220 <del>220</del> Shares of <u>Common U.S. Bank</u> <u>stock</u> 7840	Loans Secured by Investments	Stocks and Bonds
			Cash Value Life Insurance
Other Current Assets		Real Estate	Other
			SCHEDULE B
TOTAL CURRENT ASSETS		Machinery & Equipment	SCHEDULE F
Real Estate	SCHEDULE B		Term Debt (Due after 12 months)
		237,000	Other Long-Term Debts
Machinery & Equipment	SCHEDULE F	Notes and Accounts Payable (Due after 12 months)	
		19,635	Other Deferred Debt
A/R Notes & Contracts Receivable	SCHEDULE A	TOTAL LIABILITIES 138,788	
	Due after 12 months		NET WORTH 125,687
Livestock	SCHEDULE C	TOTAL 264,473	
	Not to be Sold During Year		
Farm Products	SCHEDULE D	<b>ANNUAL INCOME &amp; EXPENSE</b>	
	On Hand -- Not for Sale	GROSS INCOME FOR 19_____	
Investments	In Growing Crop	INCOME	Crops \$ _____
	Other		Livestock _____
Misc. Supplies	Fertilizer, Feed, Sprays, etc.	Other Farm Products	_____
			GROSS INCOME \$ _____
Household Goods & Personal Property		LESS EXPENSES	Growing Expense (_____)
			Cash Rent (_____)
Other Assets		Interest Paid	(_____)
			Other Operating Expense (_____)
TOTAL ASSETS 264,473		NET PROFIT OR LOSS \$ _____	
CONTINGENT LIABILITIES AMOUNT			
As Endorser on Notes/Contracts			
As Guarantor on Notes/Contracts			
For Taxes			
Other (Describe)			
TOTAL			
<b>INSURANCE</b>			
LIFE INS. - Name of Company	Beneficiary	Amount	On Trucks & Autos
			On Machinery & Equipment
			On Farm Products
			On Livestock
			On Merchandise
			Fire Insurance on Building

PLAINTIFF'S  
 EXHIBIT  
 P-10  
 # 954500124

COPY

1 Q. -- correct?

2 Drawing your attention to Exhibit P-7, have you  
3 ever seen this document before? Have you seen that  
4 document before?

5 A. Yeah. I must have. I signed it.

6 Q. You signed it, didn't you? And under your  
7 name -- right above your name in small print, there's a  
8 small -- I'm going to read you the small print. Okay. It  
9 says "I/we hereby affirm that the foregoing information  
10 contained in this financial statement is presented for the  
11 purpose of obtaining credit as of the date indicated and is  
12 true, complete, and correct."

13 Is that correct? Is that what that says?

14 A. Yes, it does.

15 Q. And you signed that document --

16 A. I did.

17 Q. -- correct?

18 A. I did.

19 Q. So the information contained therein is true,  
20 complete, and correct, is that accurate?

21 A. I signed that to the best of my knowledge. I  
22 would assume that was true, complete, and correct.

23 Q. All right. And this document was prepared on or  
24 about January 25, 1994; is that correct?

25 A. That's what it says.

1 Q. And what were your total assets as of January  
2 25, 1994, on page one?

3 A. It says \$407,345.

4 Q. Okay. And what were your total liabilities as  
5 of January 25th, 1994?

6 A. It says \$216,550.

7 Q. Okay. And isn't it true, Mr. Christiansen, that  
8 the bulk of those liabilities that you have contained in  
9 page two relate to expenses of the partnership?

10 A. Ask that again, please.

11 Q. The expenses -- the liabilities that you have  
12 listed on page two -- accounts, notes, contracts, or other  
13 payables -- do you see where I'm looking?

14 A. Yeah.

15 Q. Those debts all deal with the partnership; isn't  
16 that correct?

17 A. Correct.

18 Q. Yet this financial statement is individual.

19 It's an individual financial statement for Utah  
20 Independent Bank signed by David Christiansen; isn't that  
21 correct?

22 A. Correct.

23 Q. And isn't it true, Mr. Christiansen, that in  
24 your interrogatories, specifically interrogatory number 16  
25 in the first set of interrogatories -- and that's page 16

1 as well -- well, it's page 17 -- you state that you have  
2 two personal obligations. And I'm sorry, it's page 16, the  
3 very top answer to interrogatory number 16.

4 A. Page 16?

5 Q. Yes, sir. Answer to interrogatory number 16 on  
6 page 16.

7 A. I don't have 16.

8 MR. BISHOP: He's looking at number two.

9 THE WITNESS: There's a second set.

10 Q. BY MR. PARK: I'm sorry. The full disclosure.

11 A. I don't have the first set. Okay.

12 Q. All right. And you stated -- when I asked you  
13 about your debt, you said, "In my personal capacity," you  
14 had two obligations; is that correct?

15 A. At the time.

16 Q. Yes. And -- and these were prepared by you on  
17 or about the 6th day of February, 1995; correct?

18 A. Yeah.

19 Q. All right. And you stated that you had two  
20 personal obligations, one being the condo, in the amount of  
21 \$39,000 -- and that condo is now gone; is that correct?

22 A. That's right.

23 Q. And the other debt being a debt in the amount of  
24 \$2,964.80; correct?

25 A. Correct.



1 Q. All right. And you did follow that up, though,  
2 by turning over to page 17 at the very top -- I'm -- "This  
3 does not include any obligations I might have in connection  
4 with partnership business operations"; isn't that correct?

5 A. That's what I said.

6 Q. Yet you never ever provided us any information  
7 of what you had in partnership obligations until you  
8 submitted your full disclosure financial declaration; isn't  
9 that correct?

10 A. I had only on the financial statements, I guess.

11 Q. But as far as your personal debt is concerned,  
12 you only had the condo, which is now gone, and then the  
13 \$2,964.80, right?

14 A. Yeah. That -- that was my son's truck. It  
15 wasn't really my obligation, I just signed for him to get  
16 the -- he was making the payments on it, yes.

17 Q. So you weren't even making the payments?

18 A. No. It was his deal.

19 Q. Drawing your attention to Plaintiff's Exhibit 8,  
20 Mr. Christiansen, is that a full disclosure financial  
21 declaration prepared by you on February 1st, 1995?

22 A. Yeah. I didn't prepare it, I signed it.

23 Q. You signed it, though?

24 A. Yes.

25 Q. And so you were signing a document that said

1 that the information contained therein was true and  
2 correct?

3 A. Yes.

4 Q. Who prepared it, your father?

5 A. Yeah.

6 Q. The divorce had been commenced prior to this  
7 date, isn't that true?

8 A. Yeah.

9 Q. Okay. And from January of 1994 to February 1st  
10 of 1995, you now claim that your total assets were  
11 \$293,632; is that correct?

12 A. Yeah.

13 Q. And that your liabilities were \$206,468;  
14 correct?

15 A. Uh-huh. Correct.

16 Q. And that's having a net worth of 87,164?

17 A. That's what it says.

18 Q. And then drawing your attention to Plaintiff's  
19 Exhibit P-9, that's yet another financial statement  
20 prepared by you; is that correct?

21 A. Yes.

22 Q. And that is signed by you; is that correct?

23 A. That's signed by me, yes.

24 Q. And that financial statement was prepared in  
25 April of '95, so some two months or less after the February

1 statement, right?

2 A. Yeah.

3 Q. And now your total assets have increased to  
4 \$319,000; is that correct?

5 A. That's correct.

6 Q. And your net worth has increased to \$120,000  
7 based -- according to that document?

8 A. According to this, yeah.

9 Q. So in the span of two months, your net worth has  
10 gone up \$30,000 -- plus \$30,000; is that correct?

11 A. Yeah.

12 Q. And your assets have increased by almost a like  
13 amount, approximately \$27,000; is that correct?

14 A. That is correct.

15 Q. Is that correct?

16 A. The liabilities?

17 Q. No, sir. The -- the total assets.

18 A. Assets?

19 Q. Your assets have gone up from the February  
20 statement to the April statement?

21 A. Yes.

22 Q. Okay. Let me ask you this. You submitted  
23 interrogatories to me where you told me that Christiansen  
24 Trucking made about 1.2 million from '91 to '94, and  
25 you've -- and you've given us information that you have no

1 money; that you have a negative income.

2 How in the world can your assets increase by  
3 \$30,000 and your net worth increase by \$30,000 in two  
4 months if you're not making any money?

5 A. Now, ask me that again, would you, please.

6 Q. How can your assets increase and your total net  
7 worth increase by approximately \$30,000 from February 1st  
8 of 1995 to April 14th of 1995 if you're involved in an  
9 organization that does nothing but lose money?

10 A. Well, inventories change. They go up and down.  
11 Amounts on loans change. They go up and down. There are a  
12 lot of these questions I can't answer.

13 Q. Why not?

14 A. I -- I don't have the knowledge.

15 Q. Your father does?

16 A. Yeah.

17 Q. But you signed these documents as being true and  
18 correct.

19 A. Well, that, I did.

20 Q. Okay. Isn't it fair to say, though, that if a  
21 person always shows a net worth on his financial  
22 statement -- in other words, if his assets exceed his  
23 liabilities -- that that person is not living on borrowed  
24 money? Isn't that a fair statement?

25 A. Yeah. Comparatively, yeah.

1 Q. Okay. So every one of your -- well, and let me  
2 draw your -- your attention to Plaintiff's Exhibit 10,  
3 which was prepared by you May 12th of 1995.

4 Do you recognize that document?

5 A. Well, I don't recognize it, but I signed it.

6 Q. Okay. And this once again shows -- all right.  
7 The April, 1995 financial statement showed total assets of  
8 \$319,000; is that correct?

9 A. Yeah.

10 Q. All right. And then you prepared another  
11 financial declaration or financial statement May 12th.

12 Less than a month of time had -- had gone by; is  
13 that correct?

14 A. That's correct.

15 Q. And in that document, you show now your total  
16 assets to be \$264,475; correct?

17 A. Correct.

18 Q. And your total liabilities to be \$138,788;  
19 correct?

20 A. Correct.

21 Q. So as recently as May of 1995, you were still  
22 stating that you had a net worth of \$125,687; is that  
23 correct?

24 A. That's what this says.

25 Q. Okay. And once again, based on these documents,

1 that doesn't appear that one is living on borrowed money  
2 when the assets exceed the liabilities.

3 Isn't that a fair statement?

4 A. Well, that's a fair statement.

5 MR. PARK: Okay. At this time, I would move for  
6 the admission of Plaintiff's Exhibits I believe --

7 THE COURT: 7, 8, 9, and 10?

8 MR. PARK: Yes, sir.

9 MR. BISHOP: Let's have them identified first.  
10 P-7 -- is that a financial statement?

11 MR. PARK: All four are financial statements.

12 THE WITNESS: A financial declaration of January  
13 of '94.

14 MR. BISHOP: That's P-7?

15 MR. PARK: That's right.

16 MR. BISHOP: So it's a -- can I see it?

17 Okay. So they're all financial statements?

18 MR. PARK: Every one of them.

19 MR. BISHOP: No objection.

20 THE COURT: All four?

21 MR. BISHOP: Yes.

22 THE COURT: All four, Mr. Bishop?

23 MR. BISHOP: Yes. No objection.

24 THE COURT: 7 through 10 are received.

25 Q. BY MR. PARK: All right. Mr. Christiansen, if

1 you would, please, put in front of you Defendant's  
2 Responses to Plaintiff's First Set of Interrogatories.  
3 It's probably the biggest package you've got up there. And  
4 I asked you in interrogatory number 12 -- and that's page  
5 10 -- to state any interest or ownership you had in any  
6 real property up to and including the present time.

7 Do you recall that question on interrogatory  
8 number 12?

9 A. Yeah.

10 Q. Okay. And then you answered that on page 13,  
11 and you indicated that you had ownership in three parcels  
12 of land; is that correct?

13 A. That's what it says.

14 Q. And the three parcels were the house in  
15 Beaver -- that's parcel number one; correct?

16 A. Correct.

17 Q. And then I believe the condominium -- oh, no.  
18 I'm sorry. The shop and land is parcel number two?

19 A. Correct.

20 Q. And then the condominium is parcel number  
21 three --

22 A. Correct.

23 Q. -- is that correct?

24 A. Yep.

25 Q. And the condo has been repossessed and sold at a

**ADDENDUM "B"**



1 statement there. And -- and they -- they don't have any  
2 reason to associate David with me. The examiners don't.

3 Q. Okay. Drawing your attention to Plaintiff's  
4 Exhibit 7, which is in front of you, that's a financial  
5 statement prepared by you, dated January 25th, 1994.

6 Do you have that in front of you?

7 A. I do, sir.

8 Q. Would you please turn to the second page.

9 THE COURT: Which exhibit do you have?

10 MR. PARK: It's Plaintiff's Exhibit 7, Your  
11 Honor.

12 THE WITNESS: I've got it.

13 THE COURT: Okay.

14 Q. BY MR. PARK: Would you please turn to the  
15 second page, Mr. Christiansen.

16 A. I have it.

17 Q. Go to the bottom of the page just above your  
18 son's signature.

19 Do you see that?

20 A. Oh, yeah.

21 Q. And it starts out "I," and then in parentheses  
22 "we." Would you read that.

23 A. "I (we) hereby confirm that the foregoing  
24 information contained in this financial statement is  
25 presented for the purpose of obtaining credit as of the

1 date indicated and is true, complete and correct."

2 Q. Okay. You can stop there, unless you want to  
3 read the rest.

4 A. Okay.

5 Q. Do you want to read the rest, or do you want to  
6 stop there?

7 A. I don't know.

8 Q. Okay. This document says that you affirm that  
9 this information is true, complete and correct; correct?

10 A. Yeah.

11 Q. And you submit that to financial institutions  
12 for them to believe that this information is true, accurate  
13 and correct, do you not?

14 A. And it is correct, give or take, you know,  
15 rounding off numbers and so forth.

16 Q. Okay. And this court should likewise believe  
17 that the information contained in these financial  
18 statements are true, complete, and correct, should it not?

19 A. Yes. And I believe they are to -- you know,  
20 give or take.

21 Q. Okay. And then let's look at -- at  
22 Plaintiff's Exhibit No. 7, where it talks about your son's  
23 total assets as of January 25, 1994.

24 It says his total assets are \$407,345; correct?

25 A. Okay.

1 Q. And you've got his total liabilities on the  
2 right-hand column to be \$216,550; is that correct?

3 A. Yes.

4 Q. All right. Would you please look at page two,  
5 Schedule B, Real Estate.

6 Do you see that column?

7 A. Okay.

8 Q. Okay. There is -- where it says "Contracts and  
9 Mortgages," it says "Home, David and Sandra. Market value  
10 195, First Security, interest only balance, \$98,000."

11 Is that what it says?

12 A. Yes.

13 Q. But this statement is prepared for David  
14 Christiansen only; correct?

15 A. Yes.

16 Q. And he's only obligated, based on your  
17 testimony, to pay 25 percent of that 98,000; isn't that  
18 correct?

19 MR. BISHOP: I'm going to object, Your Honor.  
20 This witness is not an attorney. He's not qualified to  
21 make a conclusion as to what the partnership law is as to  
22 total liability.

23 THE COURT: Overruled.

24 THE WITNESS: Your Honor, I need to make an  
25 explanation as to --

1 THE COURT: This is in response to Mr. Park's  
2 question?

3 THE WITNESS: Yes.

4 THE COURT: Okay. You may answer. Go ahead.

5 THE WITNESS: A financial statement -- okay.  
6 This is my concept, okay? And it may not be, you know,  
7 totally in compliance with the statement that's -- that we  
8 read (Inaudible).

9 I believe that a financial statement is made for  
10 a specific purpose. And this particular financial  
11 statement was prepared to obtain credit. The bank didn't  
12 care, really, about the accuracy.

13 You know, you're making a big deal about the  
14 statement at the bottom.

15 Q. BY MR. PARK: Yes, I am.

16 A. But this statement was prepared for the purpose  
17 of obtaining credit and --

18 THE COURT: So it was okay to misrepresent? Is  
19 that what you're saying?

20 THE WITNESS: Well, it's not necessarily a  
21 misrepresentation. Because on the item -- the home --  
22 \$98,000, yes, he is obligated to pay it, because he's a  
23 signer of it.

24 THE COURT: Okay. That's the answer.

25 THE WITNESS: And each and every signer is

1 obligated to pay it. The total of it. If -- if Sandy  
2 didn't pay it, then maybe David is going to pay it. If I'm  
3 a signer, if they don't pay it, I've got to pay it.

4 Q. BY MR. PARK: All right. The full disclosure  
5 financial declaration that you and your son and Mr. Bishop  
6 prepared said that David is obligated only to pay 25  
7 percent of the partnership debt; correct?

8 A. That's right.

9 Q. And this 98,000, based on your debts listed, is  
10 a partnership debt; correct?

11 A. Yes.

12 Q. Therefore, David would be responsible to pay 25  
13 percent of that 98,000 based upon your representations to  
14 this court; correct?

15 A. Yes.

16 Q. So that would modify or adjust this financial  
17 statement, would it not?

18 A. Yes. But like I say, this was prepared for a  
19 certain purpose, and it doesn't -- regardless of whatever  
20 perjury he might have committed in saying this statement,  
21 this does not indicate the true financial condition of him  
22 at that time. And -- and the people that it was submitted  
23 to -- they didn't give a darn. It was satisfactory for  
24 their purposes.

25 Q. You said that maybe David perjured himself. The

1 way you read that statement, it said "I (we)."

2 And although you didn't sign on it, you were the  
3 preparer of it, were you not?

4 A. Yes, I was.

5 Q. So it's okay to misrepresent information to a  
6 bank, but we can come in here today, and what you're saying  
7 today is the truth; correct?

8 A. There was no -- there was no intention to  
9 misrepresent the bank.

10 Q. So then that's accurate?

11 A. To -- to do it -- to do it for any particular  
12 gain.

13 Q. All right. Well, the document says what it  
14 says, Mr. Christiansen.

15 And my question to you -- and you've answered  
16 it -- is yes, he would have to pay 25 percent of that  
17 98,000; is that correct?

18 A. Ask me that again, please.

19 THE COURT: I believe his answer was he'd have  
20 to pay 25 percent of the 98,000 if all the other partners  
21 paid their share.

22 MR. PARK: Correct.

23 THE COURT: But he's obligated to pay the  
24 98,000.

25 MR. PARK: Correct.

1 THE WITNESS: Every signer is obligated to pay  
2 all of it.

3 Q. BY MR. PARK: Correct. And on page one of the  
4 plaintiff's full disclosure -- or your -- plaintiff's  
5 financial -- I'm sorry -- David Christiansen's financial  
6 statement -- can you see right --

7 A. Are we still looking at P-7?

8 Q. Yes, sir. The schedule -- it says "Other  
9 Deferred Debt."

10 Do you see that column? It's right next to  
11 "total liabilities," "net worth," "total." Do you see  
12 that?

13 A. Page one?

14 Q. Excuse me.

15 A. Page one, right?

16 Q. Yes, sir. It's right below Schedule B on the  
17 right-hand column.

18 THE COURT: Right here (Indicating). "Other  
19 Deferred Debt."

20 THE WITNESS: Okay.

21 Q. BY MR. PARK: See where it says "Other Deferred  
22 Debt"?

23 A. Yes.

24 Q. There is none, is there --

25 A. Right. Correct.

1 Q. -- at this point?

2 Drawing your attention to Plaintiff's Exhibit 8,  
3 this -- this financial statement was prepared after the  
4 divorce was filed; correct?

5 A. Yes.

6 Q. And there's a drastic change in David's --

7 A. Well -- excuse me. We're looking at 8, right?

8 Q. Yes. February 1, 1995.

9 A. I had the wrong one. Okay.

10 Q. And that was prepared after the divorce was  
11 filed; correct?

12 A. Yes.

13 Q. And that was prepared by you?

14 A. Yes.

15 Q. And there was a reduction in David's assets of  
16 approximately a hundred and nine thousand dollars, roughly;  
17 correct?

18 A. I --

19 Q. It's signed by David, right? Indicating that  
20 this information is --

21 A. And prepared by me.

22 Q. And prepared by you.

23 And, therefore, we should assume that this  
24 information is true, complete, and accurate; is that  
25 correct?



1 A. For rounding off figures, yes.

2 Q. All right. And you still give your son a net  
3 worth of \$87,164?

4 A. Yes.

5 Q. All right. What does it say in the deferred  
6 debt column? Nothing, doesn't it?

7 A. Nothing.

8 Q. All right. Then we go to P-9, the April 14th,  
9 1995 financial statement, I assume prepared by you?

10 A. Yes.

11 Q. Signed by your son David; correct?

12 A. Yes.

13 Q. And his assets have increased to 319,000;  
14 correct?

15 A. Yes.

16 Q. And his net worth has increased to \$120,000;  
17 correct?

18 A. Yes.

19 Q. Now, if a person always has a positive net  
20 worth, that means you look at your assets versus your  
21 liabilities, and then you see a net worth.

22 If that person has a positive net worth, that  
23 person is not living on borrowed money; isn't that correct?

24 A. No. That's not correct.

25 Q. That's not correct? If a person is living on

1 borrowed money, wouldn't his debts exceed his assets?

2 A. If a person -- okay. Ask me that again, and  
3 I'll contemplate it.

4 Q. If a person is living on borrowed money,  
5 wouldn't his debts exceed his assets?

6 A. Not necessarily.

7 Q. Okay. What does it say on "Other Deferred  
8 Debt"?

9 A. Nothing.

10 Q. Nothing. And then we get to the final full  
11 disclosure -- or the final financial statement that you  
12 prepared, and you testified that -- it's Plaintiff's  
13 Exhibit 10. And you testified that you prepared this  
14 document for the divorce action, right?

15 A. Yes.

16 Q. And his assets once again are reduced down to  
17 264,000; correct?

18 A. Yes.

19 Q. You still give him a positive net worth;  
20 correct?

21 A. Yes. His net worth went up.

22 Q. Yes. Right. By 2,000. But now you've --

23 A. By how much?

24 Q. About 2,000?

25 A. Oh, no.

1 Q. 5,000?

2 A. From 87 to 125.

3 Q. No, sir. Excuse me. We went through -- we're  
4 taking these in order. January, February. And then we  
5 went to P-9.

6 A. Oh, yeah. 2,000. 2,000.

7 Q. Which is April -- okay.

8 But now in -- in your preparing this document  
9 pending this divorce action, what does it say in "Other  
10 Deferred Debt"?

11 A. 20 -- 25 percent of the Christiansen Trucking  
12 debt.

13 Q. And/or \$99,725?

14 A. Yes.

15 Q. You never included it before.

16 Is this a debt that he just assumed --

17 A. No.

18 Q. -- between --

19 A. I have a good explanation for it.

20 Q. -- April and May?

21 He assumed a deferred debt of almost \$100,000 in  
22 one month?

23 A. I have a good explanation for it.

24 Q. Let's hear it, please.

25 A. As I -- as I stated before, that I prepared a

1 financial statements for -- for a particular purpose. The  
2 April 14th, 1995 -- or the P-9 -- was also prepared -- no.  
3 It wasn't prepared for the -- the divorce. This was  
4 prepared for State Bank of Southern Utah. But they were --  
5 they were prepared to obtain -- obtain credit and -- and  
6 not to -- not to defraud anybody. But when we got down to  
7 contemplating this action and being able to justify  
8 everything, then I thought, you know, I better make the  
9 effort to tell it like it is.

10 Q. All right.

11 A. State Bank -- State Bank of Southern Utah didn't  
12 care about this; Utah Independent Bank didn't care about  
13 this. But none of those statements actually make that --

14 Q. Tell the truth?

15 A. Make out of it what you want. None of them  
16 actually indicated the true picture of his financial  
17 condition.

18 Q. Okay. But this divorce, Mr. Christiansen, was  
19 filed back in July of '94, all right? These financial  
20 statements you prepared, Plaintiff's Exhibits 7, 8 -- or  
21 I'm sorry -- 8, 9, and 10 are all prepared after you knew  
22 this divorce was pending?

23 A. They were -- they were an extension of previous  
24 financial statements.

25 When I do a financial statement, I like to sit

1 down with the old one in -- in my hand -- the last  
2 year's -- and I -- I make modifications. I may change the  
3 asset values, you know, according to how I feel the values  
4 are worth at the times. You have to take the -- the  
5 liabilities as they are. The assets -- some of them are  
6 arbitrary, and some are not.

7 And when we get to this point, you know, I  
8 thought I better tell it like the story is. Because this  
9 purpose requires a very -- a very accurate -- and I can't  
10 come in in this -- for this particular purpose and defend  
11 these other statements as being accurate for this -- for  
12 this purpose. Like I say, you prepare a statement for a  
13 particular purpose.

14 Q. I --

15 A. I can defend --

16 Q. I think I've covered this area now.

17 A. -- what's on here. I can't defend those as  
18 being totally accurate.

19 Q. I think you've -- you've answered my questions  
20 as it relates to the financial statements.

21 You testified earlier about ownership  
22 percentages; is that correct, as it relates to Christiansen  
23 Trucking? Who owned what percentages? Has your wife  
24 basically always been a part of -- a part of the business?

25 A. No.

*ADDENDUM "C"*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF IRON, STATE OF UTAH

HON. J. PHILIP EVES, judge

SANDRA CHRISTIANSEN, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Civil No. 954500124  
 )  
 ROBERT DAVID CHRISTIANSEN, )  
 )  
 Defendant. ) (Tape-Recorded Proceedings)

REPORTER'S HEARING TRANSCRIPT  
Tuesday, January 16, 1996

APPEARANCES OF COUNSEL:

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1 PAROWAN, UTAH; TUESDAY, JANUARY 16, 1996

2 -oOo-

3  
4 THE COURT: The next matter is 95-124,  
5 Christiansen versus Christiansen.

6 This comes on on Mr. Bishop's Motion to Correct  
7 Clerical Mistakes, Oversights and Omissions, which is, in  
8 fact, a disguised motion to reargue the matter. There are  
9 no clerical mistakes.

10 MR. BISHOP: There aren't?

11 THE COURT: There are none. The motion --  
12 memorandum states the findings of the Court.

13 MR. BISHOP: Might I point out one I believe  
14 that is there?

15 THE COURT: Yes. Go right ahead.

16 MR. BISHOP: The Court had several chances at a  
17 paragraph talking about how we asserted that the -- the  
18 Christiansen Trucking was separate property. We did not so  
19 assert. We asserted it was marital property all along.

20 THE COURT: And I so found.

21 MR. BISHOP: Yeah. But I'm just pointing out  
22 that there appeared to be an error there where the Court  
23 said that we had asserted that it was separate property.

24 THE COURT: Well, I do not consider that an  
25 error, because it was my impression from the testimony



1 given that it was asserted that it was separate property.  
2 But in any case, I found as you now claim you have  
3 asserted, that it was, in fact, marital property.

4 MR. BISHOP: Sure. And I -- the next thing --  
5 I'm just trying to point out what we think these errors and  
6 omissions are, Your Honor.

7 THE COURT: I've read your memorandum, and I  
8 understand what you think they are.

9 MR. BISHOP: Okay. We -- we think that you  
10 calculated the value of the partnership without including  
11 the debt. Now, if we're wrong there --

12 THE COURT: You're wrong there.

13 MR. BISHOP: -- then tell us.

14 THE COURT: What I said is that I thought that  
15 the evidence that was presented as to debt -- debts and  
16 obligations of the party was not -- parties was not  
17 persuasive, and that it was impossible for me to determine  
18 what the debt structure was.

19 What I said was that there was over \$400,000  
20 worth of debt --

21 MR. BISHOP: Right.

22 THE COURT: -- but that the partnership  
23 generates from 250,000 to \$500,000 a year in income.

24 Under those circumstances, it seemed to me that  
25 the partnership was profitable, but I wasn't going to try

1 to assess from the scanty evidence given here that --  
2 exactly what the debt structure was. What I did was divide  
3 up the concrete assets of the partnership.

4 MR. BISHOP: Uh-huh.

5 THE COURT: It appears to me from the testimony  
6 presented, that the partnership could liquidate its debt in  
7 one year if it wanted to -- or most of them -- but it  
8 chooses to maintain a debt structure as a way of  
9 operating. It goes along from year to year operating on  
10 borrowed funds. But not because it has to, but because it  
11 chooses to. That's what I found.

12 MR. BISHOP: I see.

13 So the Court's prior statement that there are no  
14 errors or omissions in the memorandum opinion effectively  
15 disposes of my argument.

16 THE COURT: I would think so. I --

17 MR. BISHOP: All right.

18 THE COURT: Not that I won't explain what it  
19 is -- what it is I found if you have questions about that.  
20 But they were not errors and omissions. It wasn't because  
21 of my busy schedule. I put down in the memorandum opinion  
22 what I found.

23 MR. PARK: Well, and I covered you on that in my  
24 reply brief.

25 MR. BISHOP: Okay.

1 THE COURT: You did. And --

2 MR. BISHOP: All right.

3 THE COURT: Did you have -- did you have any  
4 other questions you wanted me to clarify on that?

5 MR. BISHOP: No. Having been (Inaudible) --

6 THE COURT: Let me just say --

7 MR. BISHOP: -- I have nothing further to say.

8 THE COURT: No. I -- I don't intend that that  
9 occur. There is -- in your statement, you indicated that  
10 it was a mistake that I had given more property to her than  
11 to him. And you included in that calculation the \$17,500,  
12 which was her half of the equity from their previous home  
13 that was put into the new home. He got the other half of  
14 that. So that wasn't anything in addition to what he got.

15 MR. BISHOP: That -- that may help explain it.

16 As I looked at it, the Court established -- it  
17 was agreed that the value of the home was \$185,000. And  
18 you gave her \$17,500 out of that situation. You gave her  
19 \$2,500, which you should have, for the sprinkler  
20 situation. You add those together, you get \$20,000. That  
21 brings us down to a hundred and sixty-five thousand  
22 dollars, which is why I understood you to say that the rest  
23 was his separate property.

24 THE COURT: No. One half of the \$35,000 is his  
25 as well. She gets one half of the 35,000; he gets one

1 half.

2 MR. BISHOP: Okay.

3 THE COURT: She gets her separate property; he  
4 gets the rest, because it's his separate property. And  
5 that's what I found, and that's what it says, as far as I  
6 read it.

7 MR. BISHOP: All right. Well, I -- I read it a  
8 little differently, Your Honor.

9 Okay. I don't have anything else to say.

10 THE COURT: All right.

11 MR. PARK: I do.

12 THE COURT: Yes?

13 MR. PARK: I made a request for additional  
14 attorney's fees or in the alternative that he prepare final  
15 documents, for having to come here and do this and read his  
16 stuff.

17 THE COURT: Read his stuff?

18 MR. PARK: Read his stuff.

19 MR. BISHOP: We oppose that, Your Honor.

20 THE COURT: Well, what would you propose I do,  
21 Mr. Bishop, with the request?

22 MR. BISHOP: Deny it and tell them to prepare  
23 the documents.

24 THE COURT: I'm going to -- I'll give you the  
25 choice, Mr. Bishop. I previously had already found that

1 she has far less ability to pay attorney's fees than does  
2 Mr. Christiansen. I can certainly see why Mr. Park would  
3 be requesting attorney's fees to head off future incidents  
4 of this type and the bleeding of his client, so to speak.  
5 I'm not suggesting that that was your motivation in filing  
6 this, but I can see why from his prospective he may believe  
7 that. If attorney's fees have been incurred, it may be  
8 that I should consider -- should entertain who is going to  
9 pay them.

10 Are you willing to prepare the final documents  
11 in avoidance of that?

12 MR. BISHOP: Sure. I'll prepare the final  
13 documents.

14 THE COURT: All right.

15 MR. PARK: I'll prepare the order.

16 THE COURT: Thank you.

17 MR. PARK: This order.

18 THE COURT: Thank you very much.

19 MR. PARK: Thank you.

20 (Whereupon, the proceedings were concluded.)  
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C E R T I F I C A T E

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STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

I, PAUL G. MCMULLIN, CSR, RPR, a Certified Shorthand Reporter and Notary Public duly qualified in and for the State of Utah, do hereby certify:

That the foregoing matter, to wit, **SANDRA CHRISTIANSEN VS. ROBERT DAVID CHRISTIANSEN, CIVIL NO. 954500124**, was tape-recorded at the time and place therein named and thereafter, to the best of my listening and understanding, reduced to computerized transcription.

I further testify that I am not interested in the event of the action.

WITNESS my hand and seal this 23rd day of October, 1996.

*Paul G. McMullin*  
\_\_\_\_\_  
PAUL G. MCMULLIN, CSR, RPR

RESIDING AT: St. George, Utah  
MY COMMISSION EXPIRES: 3-17-99

