

2006

# Ashton v. Learnframe : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

<p>KIRT ASHTON, CLAIR BENNETT, BRADLEY MITCHELL; TODD NIELSEN BRIAN PRATT and PAUL RADVIN Plaintiffs/Appellees</p> <p>v.</p> <p>LEARNFRAME, INC., MICHAEL MEMMOTT, SR., RALPH MASON, GARY TOBIAN and LEE PRICE Defendants/Appellees</p>	<p>Lower Court Civil No. 02041427</p> <p>Appeal from order of the Utah 3d District Court, the Honorable Royal I Hansen, Senior Judge</p> <p><b>Utah Supreme Court # 20060943</b></p>
<p>AMERICAN PENSION SERVICES, INC. a Utah corporation Garnishee-Appellant</p>	<p><b>INITIAL BRIEF OF APPELLANT</b></p>

Dated: May 21, 2007

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**III. Jurisdiction of Appellate Court**

**1. STATEMENT OF THE ISSUES.**

**A. The district court has no jurisdiction due to the running of the applicable statute of limitations.**

1) Statutes and Rules:

The ruling by the Court violates the applicable statute of limitations. The transfer by Learnframe to appellant of a secured interest in an account receivable took place in October of 2001 (Plaintiff’s Findings of Fact, page 4, no. 11). Ownership of the property in question was taken in lieu of execution in January 2003. No motion, lawsuit or other action has been filed against appellant at any time attempting to set aside the alleged fraudulent conveyance pursuant to Title 25, Chapter 6 of the Utah Code and the provisions of Utah Code Ann. §25-6-10 bar setting aside the security interest granted to appellant.

2) Standard of Review:

“The applicability of a statute of limitations and the applicability of the discovery rule are questions of law, which we review for correctness.” *Russell Packard Dev., Inc. v. Carson*, 2005 UT 14, ¶18, 108 P.3d 741 (quotations and other citations omitted)” *Moore v. Smith*; 2007; P.3d \_\_\_\_; 2007 UT App 101.

**B. The district court deprived appellant of its due process rights by failing to provide sufficient time and opportunity for discovery and motion practice.**

1) Statutes and Rules:

"For purposes of due process, the parties must receive notice reasonably calculated, under all the circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." *Copper State Thrift & Loan v. Bruno*, 735 P.2d 387 (Utah Ct. App. 1987), *see also Macris & Assocs. v. Neways, Inc.*, 2000 UT 93, ¶44, 16 P.3d 1214;

2) Standard of Review:

“Whether Utah County's condemnation action should be dismissed based on the Agreement is an issue of law, so we review the district court's decision for correctness. . . . The issue of whether Spring Canyon received due process is also an issue of law, so we grant no deference to the district court's decision. *Utah County v. Ivie*, 2006 UT 33, 35 (2006). *See also, Vigil v. Div. of Child & Family Servs.*, 2005 UT App 43, ¶ 7, 107 P.3d 716 (2005).

**C. The district court deprived appellant of its due process rights by placing the burden of proof on American Pension Services.**

1) Standard of Review:

“Whether Utah County's condemnation action should be dismissed based on the Agreement is an issue of law, so we review the district court's decision for correctness. . . . The issue of whether Spring Canyon received due process is also an issue of law, so we grant no deference to the district court's decision. *Utah County v. Ivie*, 2006 UT 33, 35 (2006) *See also*, *Vigil v. Div. of Child & Family Servs.*, 2005 UT App 43, ¶ 7, 107 P.3d 716 (2005).

**D. The district court erred by making findings contrary to the evidence.**

1) Standard of Review:

Clearly erroneous standard: Utah Rule of Civil Procedure 52(a). *See also*, *Mardanlou v. Ghaffarian*, 2006 P.3d 904, FN1; 2006 UT App 165 (Utah App. 2006).

**IV. Determinative constitutional provisions, statutes, ordinances, and rules**

Utah Constitution, Article I, Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Utah Code Annotated § 25-6-10:

25-6-10. Claim for relief -- Time limits.

A claim for relief or cause of action regarding a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:



(1) under Subsection 25-6-5 (1)(a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Subsection 25-6-5 (1)(b) or 25-6-6 (1), within four years after the transfer was made or the obligation was incurred; or

(3) under Subsection 25-6-6 (2), within one year after the transfer was made or the obligation was incurred.

Utah Code Annotated § 25-6-5. Fraudulent transfer -- Claim arising before or after transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent 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) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) To determine "actual intent" under Subsection (1) (a), consideration may be given, among other factors, to whether:

- (a) the transfer or obligation was to an insider;
- (b) the debtor retained possession or control of the property transferred after the transfer;
- (c) the transfer or obligation was disclosed or concealed;
- (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) the transfer was of substantially all the debtor's assets;
- (f) the debtor absconded;
- (g) the debtor removed or concealed assets;
- (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Utah Code Annotated § 25-6-6. Fraudulent transfer -- Claim arising before transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

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

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

#### Utah Code Annotated § 25-6-9. Good faith transfer.

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

## **V. Statement of the case**

### **1. Nature of the case;**

The underlying litigation was initiated by plaintiffs to collect unpaid wages from defendant LearnFrame in which litigation appellant was not a party. After a judgment was entered against LearnFrame for the unpaid wages, the lower court allowed an execution to occur on appellant's property which appellant had

obtained from LearnFrame in partial satisfaction of a debt owed appellant preceding the filing of plaintiff's litigation.

## **2. Course of proceedings;**

The underlying case between plaintiffs/appellees here and Learnframe was decided by a default judgment. Apparently there was some briefing that went on in that matter. Appellee was not a party to any of that portion of the case.

In plaintiffs' efforts to collect on the judgment, appellant was served only with post-judgment execution documents. Appellant resisted the trial court's attempt to dispossess appellant of the property, however, the lower court, without discovery or the ordinary pretrial processes and without a trial, conducted a perfunctory evidentiary hearing in which it negated the property rights of Appellant and allowed an execution against the property which has been Appellants for years before this proceeding by plaintiffs.

Although Appellant attempted, in spite of the absence of normal procedures of due process, to meet the lower court's demand for a showing on why the execution should not occur, the lower court set aside all of Appellant's rights and dispossessed Appellant of its property.

### **3. Disposition at trial court or agency.**

The lower court entered plaintiff's proposed findings of fact and conclusions of law, and further entered a writ of execution allowing sale of Appellant APS's property. This appeal followed. A motion to stay enforcement of the decision was filed and a property bond is presently being negotiated between the parties.

## **VI. Relevant facts with citation to the record.**

1. In October 2001, appellant APS loaned approximately \$1,500,000 to Learnframe. APS received from Learnframe and filed with the Utah Division of Corporations and Commercial Code a UCC-1 financing statement which perfected a security interest by APS in a certain receivable from Learn University in the amount of \$1,500,000. [FoF, §11, B-529].

2. On November 11, 2002, the IRS gave notice to Learnframe of a federal tax lien in the total amount of \$1,767,040.68. [FoF, §13, B-529].

3. For 2002, Learnframe reported to the IRS a \$6,882,037 net loss, reporting that the total book value of its accounts receivable, inventory, buildings, equipment, intangibles and other assets was \$3,376,316. [FoF, §14, B-529].

4. Plaintiffs Kirt Ashton, Clair Bennett, Bradley Mitchell, Todd Nielsen, Brian Pratt, and Paul Radvin are former employees of Learnframe. In December 2002, plaintiffs brought this action against Learnframe for unpaid wages and benefits from the period July 2000 to January 2002. American Pension Services, Inc. ("APS") was not a party to that action. [Complaint, Bates pg (B)-001-006].

5. Subsequent to the filing of the IRS lien, on January 8, 2003, to resolve APS's claims, Learnframe entered into an agreement with APS (the "APS Agreement") in which Learnframe agreed to transfer "all of its rights[,] title and interest in all of its personal property to APS." A list of transferred assets was attached to the APS Agreement, but the APS Agreement also specified that "[t]his shall also include but not be limited to all of Learnframe['s] rights in software it has developed as well as all names, copyrights, patents, and contract rights." [FoF, §15, B-529].

6. The APS Agreement permits Learnframe to purchase back from APS for one dollar all of the property transferred to APS after repayment of Learnframe's debt and expires within three years. [FoF, §16, B-529].

7. On March 25, 2003, plaintiffs obtained a default Judgment against Learnframe [Default Judgment, B-076] and Learnframe has failed to satisfy the Judgment [Findings of Fact (FoF) B-527].

8. On July 27, 2005, the court signed a Writ of Execution directing the Sheriff to "collect the aforesaid Judgment, together with the costs of this execution, and levy on and sell enough of Learnframe's personal property to satisfy the same. . . ." [Writ of Execution, B-335].

9. On July 29, 2005, a Salt Lake County Constable served the Writ of Execution and Notice of Constable's Sale on Learnframe, scheduling the sale for August 18, 2005. [Order Overruling Learnframe's Objections to Writ of Execution and Sheriffs Sale at 2. Record p. 375.]

10. Learnframe served an opposition to the Writ of Execution on August 15, 2005, and requested a hearing on September 15, 2005. [Order Overruling

Learnframe's Objections to Writ of Execution and Sheriffs Sale at 2. Record p. 375.]

11. The Court scheduled a hearing on October 27, 2005, on Learnframe's objections to the Writ of Execution. [Record p. 356.] Learnframe failed to appear at the hearing. Later that day, plaintiffs served Learnframe with an Order overruling Learnframe's objections to the writ of execution and sale. [Record 358.] Learnframe failed to object to the proposed Order, which the Court proceeded to enter on January 13, 2006. [Record p. 374.]

12. A new Constable's Sale was scheduled for February 7, 2006. [Record p. 378.]

13. APS learned of the attempt of plaintiffs/appellees to sell APS's property because APS received a copy of the notice of the proposed February 7 constable sale and filed a timely objection to the Constable's Sale. [Record p. 378-379.]

14. The trial court held oral argument on the objections on February 7, 2006 which was continued to June 30, 2006. [FoF B-528].

15. Appellant requested a trial and full discovery on this matter, but that request was denied by the lower court.<sup>1</sup>

16. Subsequently, the court entered findings of fact and conclusions of law as written by plaintiff's attorney, over the objections of APS.

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<sup>1</sup> Tr. P. 64, ln. 17; p. 147, ln. 23.



## **VII. Summary of the argument.**

The lower court erred in three areas: (A) It ignored the statute of limitations bar to plaintiff's fraudulent conveyance claim, including depriving APS of a fair opportunity to develop and present that defense; (B) It failed to require plaintiff to establish its position by clear and convincing evidence; and (C) It made findings based upon argument of counsel, rather than evidence.

That Learnframe transferred all of its assets to APS is uncontroverted. The only basis on which plaintiffs can get access to those assets is if the transfer is set aside as a fraudulent conveyance. The Utah Uniform Fraudulent Transfer Act contains an integral statute of limitations. The longest of those limitations is four years from the date of the transfer. Neither of the two situations which activate that limitation period exists here, and therefore the shorter period applies. The other limitation period is one year. That expired, at the latest, January 8, 2004. Their sole claim to APS's assets, is therefore barred.

It was apparent that both plaintiffs' attorney and the lower court were relying upon things that happened in the case before APS was even aware of the case. In persuading the court to accept plaintiffs' argument, plaintiffs' counsel invoked briefs that had been filed before APS was even notified of the action. Plaintiffs' counsel represented to the court that the lower court made a determination of fraudulent conveyance before APS was even in the case, and APS was not given an opportunity to be aware of that finding, to read that finding, nor to do discovery and meet the allegations. APS was, therefore, denied due process.

The proper standard for an assertion of fraudulent conveyance, according to plaintiffs' own case, is "clear and convincing evidence." Plaintiffs presented no testimony. Plaintiffs presented a few documents, none of which directly address

any material issues. Plaintiffs merely argued that certain inferences should be drawn. The court ruled exclusively on plaintiffs' inferences and ignored both the lack of direct evidence and all evidence that contradicted those inferences.

## VIII. Detail of the argument.

### 1. The district court has no jurisdiction due to the running of the applicable statute of limitations.

That Learnframe transferred all of its assets to APS is uncontroverted. The only basis on which plaintiffs can get access to those assets is if the transfer is set aside as a fraudulent conveyance. The Utah Uniform Fraudulent Transfer Act contains an integral statute of limitations. The longest of those limitations is four years from the date of the transfer. Neither of the two situations which activate that limitation period exists here. The other limitation possible is one year. That expired, at the latest, January 8, 2004. Their sole claim to APS's assets, is therefore barred.

A fraudulent transfer occurs when a transfer of assets is made by a debtor for the purpose of shielding those assets from the debtor's creditors.<sup>2</sup> *Butler v. Wilkinson*, 740 P.2d 1244 (Utah 1987).

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<sup>2</sup> The case states, "The law has long held that transfers of property designed to place a debtor's assets beyond the reach of the debtor's creditors are void as to the creditors. See, e.g., 13 Elizabeth 1 (1570) Ch. 5; *Twyne's Case*, 3 Coke 80a, 76

The transfer of assets from Learnframe to American Pension Services was a transfer to a pre-existing creditor of Learnframe. That transfer therefore could not, by definition, have the effect of shielding assets from creditors, since the transfer was TO a creditor to satisfy a pre-existing obligation, and therefore cannot be a fraudulent transfer.

A writ of execution is the proper vehicle for executing on property in the possession of the judgment debtor. *See* Utah R. Civ. P. 64E(a) ("A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment."). It is not, however, a carte blanche to convert the property of persons other than the judgment debtor.

Utah Code Annotated § 25-6-8(1)(a) provides that creditors may maintain an “action” to avoid a transfer that is within the definitions and limits of the law contained in Chapter 6 of Title 25. Utah Rule of Civil Procedure 2 states, “There shall be one form of action to be known as ‘civil action.’”

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Eng. Rep. 809 (1601); *Clements v. Moore*, 73 U.S. (6 Wall.) 299, 312, 18 L.Ed. 786 (1867); *Smith v. Holland*, 298 Ky. 598, 603-604, 183 S.W.2d 647, 649 (Ky. Ct.App.1944); *Rainier National Bank v. McCracken*, 26 Wash.App. 498, 505-506, 615 P.2d 469, 474 (1980). Utah's Fraudulent Conveyance Act, § 25-1-1, et seq.,

Plaintiff's herein have prosecuted a civil action that resulted in a default judgment against Learnframe, but have not commenced a civil action against American Pension Services.

Utah Code Annotated § 25-6-10 provides that if a fraudulent conveyance act claim is brought under §§ 25-6-(1)(a), 25-6-(1)(b), or 25-6-6(1), then the statute of limitations is four (4) years from the time the transfer was made or the obligation was incurred. If the claim is made under § 25-6-6(2), then the limitation period is one (1) year from the date of transfer or the time the obligation was incurred.

The transfer by Learnframe to appellant of a secured interest in an account receivable took place in October of 2001 (Plaintiff's Findings of Fact, page 4, no. 11). Since the plaintiffs' case was filed in December of 2002, it is obvious that any obligation that could have been sued upon for damages in that complaint arose before that date. Therefore, any action under UCA § 25-6-6(2) was barred on or before December 2003. Ownership of the property in question was taken in lieu of execution in January 2003.

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establishes several different grounds for setting aside a debtor's transfer of property as a fraudulent Conveyance." (Footnotes omitted.)

No motion, lawsuit or other action has been filed against appellant at any time attempting to set aside the alleged fraudulent conveyance pursuant to Title 25, Chapter 6 of the Utah Code. Plaintiffs did not attempt to use the fraudulent conveyance act to take APS's property until APS finally received notice of the proposed constable's sale set in February of 2006, at least two years, and probably more than three years too late.

A fraudulent conveyance claim under UCA § 25-6-6(2) is one which asserts that:

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

That is precisely what plaintiff's case was, and it is precisely the findings upon which the lower court based its decision.

Each of the other three possible bases for fraudulent conveyance claims are not present in this matter.

UCA § 25-6-5(1)(a) has the following elements:<sup>3</sup> Actual intent to hinder, delay, or defraud a creditor of the debtor. The question of parties' intent is not only a question of fact, it is a question of fact reserved to the jury when a jury is present. *See, e.g., Johnson v. Morton Thiokol Inc.*, 818 P.2d 997, 1001 (Utah 1991). There was no factual finding of any such intention in this case.

UCA § 25-6-5(1)(b) has the following elements:<sup>4</sup>

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<sup>3</sup> (1) A transfer made or obligation incurred by a debtor is fraudulent 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;

<sup>4</sup> (1) A transfer made or obligation incurred by a debtor is fraudulent 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:

...

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; **and** the debtor:

- Transfer was made without receiving reasonably equivalent value AND either;
- The debtor is doing business for which the remaining assets were unreasonably small, or
- The debtor is incurring debts for which the remaining assets are unreasonably small.

To have a claim under this branch of the Fraudulent Transfer Act, one must prove either the first and second, or the first and third. As with intent, reasonableness is a question of fact. *See, e.g., Terry v. Zions Cooperative Mercantile Institution*, 605 P.2d 314 (Utah 1979). No such findings of fact were made.

The gravamen of this claim is that a debtor makes a transfer that either removes assets or increases debt before doing something risky. That was definitely

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(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

not the case here. Learnframe was already in debt and made the transfer solely to obtain a forbearance of collection which, had it occurred, would have eliminated Learnframe as a company entirely.<sup>5</sup> The debt was not new and the business was not new.

Therefore, there was no claim under this portion of the statute.

UCA § 25-6-6(1) has the following elements:<sup>6</sup>

- The obligation to the complaining creditor must have arisen before the transfer was made, AND

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<sup>5</sup> Tr. P. 120, lns. 1-18.

<sup>6</sup> 25-6-6. Fraudulent transfer -- Claim arising before transfer.

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and



- The transfer must be made without getting reasonably equivalent value,  
AND
- The debtor must be insolvent at the time the transfer is made.

If all three elements are not present, such a claim does not exist. In this matter, there is no factual finding regarding reasonable equivalence and there is no fact finding about when the obligation to plaintiffs arose.

Therefore, a claim under this portion of the statute does not exist here.

The ruling by the Court therefore violates the applicable statute of limitations.

The district court also deprived appellant of its due process rights by failing to provide sufficient time and opportunity for discovery and motion practice.

It was apparent that both plaintiffs' attorney and the lower court were relying upon things that happened in the case before APS was even aware of the case.<sup>7</sup>

Plaintiffs' attorney, in his argument, referenced briefs that were allegedly on file.<sup>8</sup> In persuading the court to accept plaintiffs' argument, plaintiffs' counsel

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

<sup>7</sup> Hearing 6/30/07 Tr. p. 152, ll. 10-25

<sup>8</sup> Tr. P. 152, lns. 17-20.

invoked briefs that had been filed before APS was even notified of the action. Plaintiffs' counsel represented to the lower court, at the first hearing in which APS was involved in February 2006, that the lower court had already made a determination of some, or all, of the issues related to APS, before APS was even in the case.<sup>9</sup>

Obviously, APS was not afforded due process when their rights were decided before they were even aware of the proceeding.

In addition, once APS was brought into the proceeding, they were given no discovery, no briefing (except post-hearing drafting of findings and conclusions),

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<sup>9</sup> Plaintiff's attorney stated in the February, 2006 hearing:

And let me emphasize that a fraudulent transfer in an execution proceeding can be found. There's no requirement that a new lawsuit be filed. §25-6-8 of the fraudulent transferred [stet] statute permits defining of a fraudulent transfer in an execution proceeding once a judgment's been entered. . . . There's a case of Jensen v. Ames, [Eames] . . . where this exact same thing happened. A lawsuit was litigated after judgment. There was a fraudulent transfer that occurred with respect to a garnishee, and the court found, **exactly as the Court's found in this case**, that a judgment creditor may litigate the question of a fraudulent conveyance in a garnishment proceeding, a creditor's bill in equity, or in an execution proceeding. And that's exactly what we've done. So it was proper for the Court to go ahead and do that. (Emphasis added.)

and no substantive opportunity to fully develop the issues being asserted against them and to respond appropriately. APS was, therefore, denied due process.

*Copper State Thrift & Loan v. Bruno*, 735 P.2d 387 (Utah Ct. App. 1987) states, "For purposes of due process, the parties must receive notice reasonably calculated, under all the circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." At the June 30, 2006 hearing, this issue was raised by APS counsel, specifically with respect to getting discovery and a plenary review of the matter, as opposed to the summary review that was afforded.<sup>10</sup>

*Macris & Assocs. v. Neways, Inc.*, 2000 UT 93, ¶44, 16 P.3d 1214 deals with, *inter alia*, issues of *res judicata* and collateral estoppel. One of the sub-issues discussed therein is that of what constitutes a "full and fair" opportunity to be heard. The Supreme Court stated:

¶ 44 In reference to the third element outlined above, we must determine whether "the issue in the first case [was] competently, fully, and fairly litigated." See *Swainston*, 766 P.2d at 1061 (citations omitted). *Macris* argues that the issue of contract damages accruing after August 31, 1992, was not "competently, fully and fairly litigated" because *Neways's* fraudulent takeover of *Images's* business prevented *Macris* from litigating such damages. **However, the record clearly establishes that *Macris* was aware of *Images's* transfer of its assets to *Neways* almost a year before *Macris* filed its last pleading in *Macris I* and two and one-half years before the trial.**

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So that resolves this ownership issue of APS. We have met all the requirements of the fraudulent transfer statute. T, pg 27, ln 16

<sup>10</sup> Hearing 6/30/07 Tr. p. 148, ll. 17-25; p. 147, lns. 19-25

During this two- and one-half-year period, **Macris enjoyed ample opportunity to conduct unimpeded discovery and to fully develop its claim for damages by examining Neways's financial records.** Had Macris conducted discovery concerning future damages, it surely could have included that evidence in the figures presented to the trial court. Thus, it seems fair to state that Macris had a full and fair opportunity to litigate the issue of damages accruing after August 31, 1992, in the prior adjudication.

In Macris, the court held that a full and fair opportunity to be heard because it had had both time, and access to discovery procedures. In this matter, the plaintiffs obtained their judgment in March of 2003, but gave no notice to APS until February 2006, almost three years later. When APS was belatedly notified, apparently some or all of APS's rights had already been decided.

The procedure in this case was exactly the opposite of what is required for due process.

**2. The district court deprived appellant of its due process rights by placing the burden of proof on American Pension Services.**

The proper standard for an assertion of fraudulent conveyance, according to plaintiffs' own case, is "clear and convincing evidence." At the hearing on June 30, 2006, plaintiffs cited, for the first time that APS is aware of, *Jensen v. Eames*; 30 Utah 2d 423, 519 P.2d 236 (Utah 1974). Plaintiffs cited the case as controlling authority that a plenary proceeding was sufficient for due process. That is incorrect, but the case does contain a helpful statement of law:

A judgment creditor may litigate the question of a fraudulent conveyance in a garnishment proceeding, in a creditor's bill in equity, or in an execution proceeding, **provided that once contested the burden is upon the one alleging the fraudulent conveyance to prove by clear and convincing evidence that the transfer was in fact fraudulent.** (Emphasis added.)

Clearly, the matter was contested. Therefore, the court was required to apply the “clear and convincing evidence” standard to this case. That was not done.

Model Utah Jury Instructions (2d) 118 defines “clear and convincing evidence” as follows:

118 Clear and convincing evidence.

Some facts in this case must be proved by a higher level of proof called “clear and convincing evidence.” When I tell you that a party must prove something by clear and convincing evidence, I mean that the party must persuade you, by the evidence presented in court, to the point **that there remains no serious or substantial doubt as to the truth of the fact.**

Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt.

... (Emphasis added.)

Plaintiffs presented no testimony. Plaintiffs presented a few documents, none of which directly address any material issues. Plaintiffs merely argued that certain inferences should be drawn.

The two witnesses called, Mssrs. Memmott and DeYoung, both testified that the transfer was made to obtain the forbearance of APS in collecting a debt that Learnframe legitimately owed and that they could not pay.<sup>11</sup> Both witnesses also testified that had APS not granted the forbearance, that Learnframe would have ceased to exist.<sup>12</sup> Both testified that the transfer was a good faith, arm’s length

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<sup>11</sup> Tr. P. 82, lns. 20-25.; p. 83, ln. 1. Curtis DeYoung Tr. P. 123, lns. 5-20.

business transaction.<sup>13</sup> Therefore, all the elements for Utah Code Annotated § 25-6-9(1) were proven. The lower court completely ignored that evidence and that defense.

The court had evidence, and the stipulation of Plaintiffs, that Learnframe was heavily encumbered at the time the transfer to APS was made.<sup>14</sup> Specifically, the court was told by both sides that a tax lien of over \$2 Million was on file. Plaintiffs also acknowledged that there was at least one other perfected secured creditor as to the property of Learnframe. There was evidence that the value of that other secured<sup>15</sup> interest was \$900,000 to Lycos alone. An additional secured interest of MPI was proven, but the amount is unstated. The court had evidence that the “book value” for tax purposes of \$3.376 Million was not an accurate reflection of the value of the company at the time in question.<sup>16</sup> Nevertheless, the court found that the value of all of Learnframe was \$3.376 Million. The lower court appeared to

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<sup>12</sup> Tr. P. 128, lns. 13-16.

<sup>13</sup> DeYoung - Tr. P. 120, ln. 25; p. 129, lns. 13-17; p. 130, lns. 3-6. Memmott - Tr. P. 109, lns. 4-8.

<sup>14</sup> Tr. P. 98, lns. 1-5; p. 99, lns. 21-25; p. 109, lns. 1-10. Exhibit 3 (Learnframe). Shows \$900,000 judgment by Lycos.

<sup>15</sup> Tr. P. 51, ln. 24; p. 53, ln. 21.

merely ignore all of the evidence (and all the points of law) that were not favorable to plaintiffs.

Had the court considered the evidence, Utah Code Annotated § 25-6-9(2) and (3) would have prevented the ruling below. Those two provisions limit a judgment creditor to the value of what was transferred. There was simply insufficient evidence (due to the lack of discovery and due process) to allow such a conclusion to be made. The value could have been \$3.3 Million less the \$2.2 Million tax lien, less the other secured creditor, or any one of several possibilities. No findings on this were made, nor could they have been. Therefore, there was no clear and convincing evidence that would allow the lower court to rule in plaintiffs' favor.

Similarly, Utah Code Annotated § 25-6-9(4) provides that APS is entitled to a lien for the value of whatever it gave in exchange for the transfer. No finding on this was made, and no such lien was allowed.

There was testimony that, had Learnframe executed on its perfected security interest, that would also have killed Learnframe.<sup>17</sup> Therefore, the testimony necessary to exempt the transaction, under Utah Code Annotated § 25-6-9(5)(b), from fraudulent conveyance status under half of § 25-6-5, and all of § 25-6-6, was before the lower court, but not taken into account.

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<sup>16</sup> Tr. P. 88, ln. 19; p. 92, ln. 13 (shows \$309,299); p. 106, lns. 23-25 through pl. 107, lns. 1-16.

<sup>17</sup> Tr. P. 120, lns. 1-18; p. 82, lns. 20-23.

Last, but certainly not least, Utah Code Annotated § 25-6-9(6)(c) provides, “(6) A transfer is not voidable under Subsection 25-6-6(2): (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. The unanimous testimony in the case was that the transfer and forbearance (new consideration) was made in a good-faith effort to rehabilitate Learnframe.<sup>18</sup> That is further evidenced by the fact that Learnframe could get all of the property back merely by paying off the pre-existent debt, plus a nominal consideration, within three years.<sup>19</sup>

The court ruled exclusively on plaintiffs’ inferences and ignored both the lack of direct evidence and all evidence that contradicted those inferences.

**3. The district court erred by making findings contrary to the evidence and refusing to make findings supported by the evidence.**

Utah Rule of Civil Procedure 52(a) requires that all judgments must be supported by evidence.

In this matter the only piece of evidence introduced by plaintiffs was a 2002 tax return.<sup>20</sup> That was introduced through Mr. Memmot who did not sign the tax

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<sup>18</sup> Tr. P. 116, lns. 2-4; p. 120, lns. 6-25, p. 121, ln. 1.

<sup>19</sup> Tr. P. 109, lns. 21-22.



return and did not know what the figures therein represented.<sup>21</sup> The sole purpose of that exhibit was to show a book value for tax purposes of Learnframe's assets, at least one of which was goodwill.

Plaintiff's called no witnesses. When invited to do so, plaintiff's counsel replied, "There's no need for me to call any of my clients. Their case has already been established and we have a judgment." T. pg 58, ln 16

Plaintiffs then argued and extrapolated from that one exhibit into the long list of findings and conclusions that the lower court made against APS.

In fact, as is shown elsewhere in this brief, there was not sufficient evidence for the court to apply the Uniform Fraudulent Conveyance Act, even if such had not been barred by the statute of limitations. Because APS had no way to know what facts and arguments it would be faced with at the hearing (due to the lack of discovery, and other procedural aspects of due process), it had to extemporize. In spite of those handicaps, every point, and every argument asserted by plaintiffs was addressed and contested. Both documentary and testimonial evidence was adduced for the main points.

All of APS's efforts were omitted, but not rejected, in the lower court's decision.

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<sup>20</sup> Exhibit 14..

Plaintiffs had the burden of proof. They did not prove anything except that an accounting record had a big number for value of the company as of the end of 2002.

The standard of proof was that there could be no significant doubt. Plaintiffs did not even bother to address all of the prima facie elements of their claims, and produced no refuting evidence to all of the points that APS addressed.

The judgment below is therefore unsupported by the facts, and must be reversed.

## **IX. Conclusion and Relief Sought.**

The decision below is not in accordance with the applicable law and must be reversed.

The decision below purports to take away APS's property rights and was arrived at only by denying APS due process. It must, therefore, be reversed.

The decision below is not supported by evidence and must be reversed.

APS requests that the decision below be reversed, and that costs and fees associated with this appeal be awarded to APS.

DATED: May 21, 2007.



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Timothy Miguel Willardson

**X. Addendum**

- 1. Reproduction of opinion, memorandum decision, findings of fact, conclusions of law, orders, or jury instructions;**

**COPY**

THIRD DISTRICT  
SEP - 1 2006  
WEST JORDAN DEPT.

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
WEST JORDAN DEPARTMENT

---

KIRT ASHTON, et al.,

**ORDER**

Plaintiffs,

Case No. 020414271

vs.

LEARNFRAME, INC., et al.,

JUDGE ROYAL I. HANSEN

Defendants.

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Along with the entry of the Findings of Fact and Conclusions of Law the Court hereby ORDERS the Plaintiffs to submit a Writ of Execution that complies with the requirements of Utah Rules of Civil Procedure 64E within ten days.

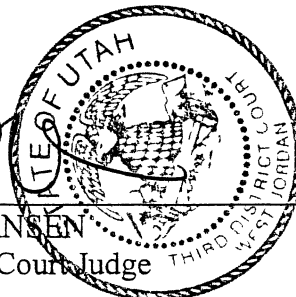
Dated this 30 day of August, 2006.

By the Court:



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ROYAL I. HANSEN  
Third District Court Judge



Case No: 020414271  
Date: Sep 01, 2006

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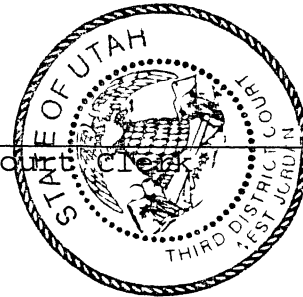
CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 020414271 by the method and on the date specified.

METHOD	NAME
Mail	HOLLIS S HUNT ATTORNEY DEF 392 E 12300 S STE A DRAPER, UT 84020
Mail	DENVER C SNUFFER ATTORNEY DEF 10885 S STATE ST SANDY UT 84070
Mail	TIMOTHY M WILLARDSON ATTORNEY DEF 3165 S 300 W SALT LAKE CITY UT 84115

Dated this 5 day of Sept, 2006.

Deputy Court Clerk



# COPY

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THIRD JUDICIAL DISTRICT COURT  
SEP - 1 2008  
WEST JORDAN, UTAH

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

KIRT ASHTON, CLAIR BENNETT,  
BRADLEY MITCHELL, TODD NIELSEN,  
BRIAN PRATT, and PAUL RADVIN,

Plaintiffs,

vs.

LEARNFRAME, INC., MICHAEL  
MEMMOTT, SR., RALPH MASON, GARY  
TOBIAN, and LEE PRICE,

Defendants.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No. 020414271

Judge Royal **I.** Hansen

This matter came before the Honorable Royal J. Hansen for oral argument and evidentiary hearing on October 27, 2005, February 27, 2006, and June 30, 2006, pursuant to objections made by defendant Learnframe, Inc. (“Learnframe”), and by two nonparties, American Pension Services, Inc. (“APS”), and Steve Patrick (“Patrick”), to the Writ of Execution issued by the Court on July 27, 2005, and the Constable’s Sale scheduled pursuant to the Writ of Execution. Erik A. Olson appeared for plaintiffs. Denver Snuffer appeared for Learnframe. Timothy Miguel Willardson appeared for APS. Hollis S. Hunt appeared for Patrick. Based on the evidence and arguments of counsel and good cause appearing, the Court hereby enters its findings of fact and conclusions of law.

## **FINDINGS OF FACT**

### **Procedural Background**

1. Plaintiffs Kirt Ashton, Clair Bennett, Bradley Mitchell, Todd Nielsen, Brian Pratt, and Paul Radvin are former employees of Learnframe. In December 2002, plaintiffs brought this action against Learnframe for unpaid wages and benefits, and received a Judgment against Learnframe on March 25, 2003. Learnframe has failed to satisfy the Judgment.

2. On July 27, 2005, plaintiffs applied for, and the Court issued, a Writ of Execution against all personal property in the possession of Learnframe. [Writ of Execution.]

3. On July 29, 2005, a Salt Lake County Constable served the Writ of Execution and Notice of Constable’s Sale on Learnframe, scheduling the sale for August 18, 2005. [Order Overruling Learnframe’s Objections to Writ of Execution and Sheriff’s Sale at 2.]

4. Learnframe served an opposition to the Writ of Execution on August 15, 2005, and requested a hearing on September 15, 2005. [Order Overruling Learnframe's Objections to Writ of Execution and Sheriff's Sale at 2.]

5. The Court scheduled a hearing on October 27, 2005, on Learnframe's objections to the Writ of Execution. Learnframe failed to appear at the hearing. Later that day, plaintiffs served Learnframe with an Order overruling Learnframe's objections to the writ of execution and sale. Learnframe failed to object to the proposed Order, which the Court proceeded to enter on January 13, 2006.

6. A new Constable's Sale was scheduled for February 7, 2006.

7. APS, Patrick, and Learnframe filed objections to the Constable's Sale.

8. Plaintiffs, Learnframe, APS, and Patrick appeared at oral argument on February 27, 2006. After oral argument, the Court scheduled an evidentiary hearing on June 30, 2006, and directed plaintiffs to serve notice of the evidentiary hearing on Learnframe, APS, and Patrick, as well as the Internal Revenue Service ("IRS") and any perfected secured creditor of Learnframe. [Order Regarding Evidentiary Hearing on Objections to Writ of Execution and Sheriff's Sale.]

9. Plaintiffs served notice of the evidentiary hearing on Learnframe, APS, Patrick, and the IRS. They also served notice on MPI Corp., an alleged perfected secured creditor of Learnframe. [Certificate of Service of Order Regarding Evidentiary Hearing on Objections to Writ of Execution and Sheriff's Sale.]



10. At the evidentiary hearing on June 30, 2006, only plaintiffs, Learnframe, APS, and Patrick appeared. Neither the IRS nor MPI Corp. appeared, and neither filed an objection to the Writ of Execution.

### **APS's Default in Payments to Creditors**

11. In or about October 2001, APS loaned approximately \$1,500,000 to Learnframe. APS received from Learnframe and filed with the Utah Division of Corporations and Commercial Code (the "Division") a UCC-1 financing statement that perfected a security interest in a certain receivable from Learn University in the amount of \$1,500,000. [Def. Ex. 8.]

12. Not long thereafter, APS stopped paying its creditors as bills became due. Among others, Learnframe failed to make payments to APS, plaintiffs, and the IRS.

13. On or about November 11, 2002, the IRS gave notice to Learnframe of a federal tax lien in the total amount of \$1,767,040.68. [Def. Ex. 4.]

14. Learnframe reported to the IRS a \$6,882,037 net loss for the tax year ending December 31, 2002. Learnframe also reported on its tax return that the total value of its accounts receivable, inventory, buildings, equipment, intangibles, and other assets was \$3,376,316. [Pl. Ex. 14.]

### **The APS Agreement**

15. On or about January 8, 2003, Learnframe entered into an agreement with APS (the "APS Agreement") under which Learnframe agreed to transfer "all of its rights[,] title and interest in all of its personal property to APS." A list of transferred assets was attached to the APS Agreement, but the APS Agreement also specified that "[t]his shall also include but not be

limited to all of Learnframe[’s] rights in software it has developed as well as all names, copyrights, patents, and contract rights.” [Pl. Ex. 6.]

16. The APS Agreement permitted Learnframe to purchase back from APS for one dollar all of the property transferred to APS after repayment of Learnframe’s debt. This option to repurchase its property expired three years after the date of the APS Agreement, on January 8, 2006. [Pl. Ex. 6.]

17. Learnframe maintained the right under the APS Agreement to continue to use the property it transferred to APS only under three express conditions: that Learnframe (1) pay all property taxes; (2) pay all insurance premiums; and (3) maintain all equipment in good working order. From the outset, Learnframe failed to satisfy these conditions. [Pl. Ex. 6; Curtis DeYoung; Michael Memmott.]

18. APS had the right under the APS Agreement to take immediate possession of the assets transferred to APS in the event that Learnframe became insolvent. [Pl. Ex. 6.]

19. Notwithstanding the provisions of the APS Agreement, APS has failed to take possession from Learnframe of the property transferred under the APS Agreement. [Michael Memmott.]

#### **Findings Regarding the Value of Learnframe’s Assets**

20. The Court finds, based on Learnframe’s own admission in its 2002 tax returns, that the value of Learnframe’s assets as of December 31, 2002, eight days before the signing of the APS Agreement, was approximately \$3,376,316. [Pl. Ex. 14.]

21. Learnframe has failed to present any credible evidence to refute the year-end-2002 valuation of its property that it admittedly reported to the IRS.

22. For two primary reasons, Defendant's Exhibit 12—a February 20, 2006, tax assessment from the Salt Lake County Assessor—does not establish the value of Learnframe's property as of the end of 2002:

a. First, this document is effective as of January 1, 2006, exactly three years and a day after the effective date of the valuation set forth on Learnframe's tax returns.

[Def. Ex. 12.]

b. Second, Learnframe's President, Michael Memmott, was unable to lay foundation for any of the figures set forth on the document. He did not know what "SHRT LIFE, "EQP SHRTL," or other abbreviations meant. He admitted that he had no knowledge of whether the document included Learnframe's intellectual property, copyrights, and computer software. Lee Price, Learnframe's CFO, is the only one, according to Mr. Memmott, who would have this knowledge.

**Additional Findings Regarding Elements of Fraudulent Transfer**

23. Through the APS Agreement, APS obtained title to all of Learnframe's personal property, including equipment, accounts receivable, inventory, copyrights, software, intellectual property. [Michael Memmott.]

24. Learnframe entered into the APS Agreement because Learnframe was not paying the debt that Learnframe owed to APS. [Michael Memmott.]

25. At the time it entered into the APS Agreement, Learnframe was not paying its debts as they became due. The sum of Learnframe's debts far exceeded the value of its assets. Learnframe was undergoing severe financial difficulties at the time, having been sued or threatened with suit by many creditors. [Michael Memmott.]

26. Through the APS Agreement, Learnframe retained possession and control of the property transferred, and continued to do so even when it breached conditions of the APS Agreement. [Michael Memmott.]

27. Learnframe never circulated the APS Agreement to its other creditors. The APS Agreement was not filed with the Division or otherwise reported on a UCC-1 filed with the Division. The APS Agreement was not supplied to the IRS. [Michael Memmott.]

28. Curtis DeYoung, APS's principal, indicated that the APS Agreement was intended to assist Learnframe in "pretending to be in business" so that APS could obtain venture capital financing. [Curtis DeYoung.]

#### **Additional Findings Regarding Creditors**

29. Patrick is an unperfected, unsecured creditor of Learnframe. While Patrick has a judgment against Learnframe, Patrick has never levied on the judgment.

30. Learnframe failed to present evidence of any perfected, secured creditor other than the IRS, which failed to appear at the hearing, and APS, which has a perfected, secured interest in the \$1,500,000 Learn University receivable only.

## **CONCLUSIONS OF LAW**

### **Issuance of the Writ of Execution**

1. Plaintiffs' application for a Writ of Execution satisfied the requirements of Rule 64E. [Order Overruling Learnframe's Objections to Writ of Execution and Sheriff's Sale at 2.]

2. By failing to make a timely request for hearing in accordance with Rule 64E, failing to appear at the hearing on October 27, 2005, and failing to submit a timely objection in accordance with Rule 7 to the Court's January 13, 2006, Order during the two-and-a-half-month period before the Court entered it, Learnframe has waived any objections to the Writ of Execution and the Constable's Sale. [Order Overruling Learnframe's Objections to Writ of Execution and Sheriff's Sale at 2.]

3. Moreover, even considering Learnframe's objections to the Writ of Execution on the merits, Learnframe has still failed to present sufficient evidence to support its objection to the Writ of Execution. Patrick and APS have also failed to present a sufficient evidentiary basis for objecting to the Writ of Execution.

### **Unsecured Creditors, Including Patrick, Have No Valid Objection**

4. Based on Patrick's status as an unsecured, unperfected judgment creditor, Patrick has no priority interest in Learnframe's property.

5. No other unsecured creditors have objected to the Writ of Execution, but even if they had objected, such objections would be overruled because there is no evidence of any unsecured creditor who levied against Learnframe's property prior to plaintiffs.

### **The APS Agreement Effected a Fraudulent Transfer**

6. A writ of execution is the proper vehicle for executing on property in the possession of the judgment debtor. See Utah R. Civ. P. 64E(a) (“A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment.”).

7. A judgment creditor is permitted to execute on assets fraudulently transferred without bringing an action under the Uniform Fraudulent Transfer Act, Utah Code Ann. § 25-6-1 to -14 (the “Act”). See Utah Code Ann § 25-6-8 (“If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset [fraudulently] transferred or its proceeds.”); see also Jensen v. Eames, 30 Utah 2d 423, 519 P.2d 236, 239 (1974) (“A judgment creditor may litigate the question of a fraudulent conveyance in a garnishment proceeding, in a creditor’s bill in equity, or in an execution proceeding, provided that once contested the burden is upon the one alleging the fraudulent conveyance to prove by clear and convincing evidence that the transfer was in fact fraudulent.”).

8. In the instant case, Learnframe and APS’s attempt to transfer ownership of Learnframe’s assets was a fraudulent transfer under either Section 25-6-5 or Section 25-6-6 of the Act.

### **Fraudulent Transfer Under Section 25-6-6**

9. Section 25-6-6 governs claims of creditors that arise before the fraudulent transfer. This section applies to the instant case because plaintiffs’ claims against Learnframe arose in or before December 2002 when this action was brought against Learnframe.

10. Under Section 25-6-6, a creditor must show:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer; and (b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

Utah Code Ann. § 25-6-6. Here, both of these elements are satisfied.

The Transfer Was Not for Reasonably Equivalent Value

11. First, the value of consideration received by Learnframe was not even remotely equivalent to the value of its property. The only documentary evidence in the record of the value of Learnframe's property at or about the time of the APS Agreement is the admission by *Learnframe in its tax returns to the IRS that its property was worth \$3,376,316. [Pl. Ex. 14.]*

12. Even if the Court were to ignore Learnframe's admission in its tax returns of the value of its assets, the Court is still persuaded that there was great value in Learnframe's assets at the time of the APS Agreement. This conclusion is supported by the testimony of Mr. DeYoung, who indicated that by his estimation, the value of Learnframe's assets at the time of the APS Agreement was \$900,000 for the equipment and other tangible property, plus whatever Learnframe's intellectual property was worth. Mr. DeYoung conceded that Learnframe had "great potential" because its software, even today, is one of the better software packages in its industry.

13. Notwithstanding the great value that APS received through the APS Agreement, Learnframe only received a forbearance from APS that APS would foreclose on the single Learnframe asset in which APS had received a security interest—an uncollected (and still uncollected today) receivable from Learn University. At that time, APS had no security interest

in any other Learnframe asset, and would be able to do nothing more than bring suit against Learnframe, seek a judgment like the dozens of other creditors of Learnframe, and attempt to collect on that judgment as plaintiffs have done. Moreover, APS and Learnframe's own argument to this Court is that a judgment creditor would not be able to execute on Learnframe's assets anyway due to the IRS's levy.

14. Under these circumstances, the Court is persuaded that the only reason that Learnframe would have transferred ownership of its assets to APS when APS had no perfected security interest in Learnframe's assets as a whole (but only a single uncollected receivable) was because Learnframe wanted to make a preferential transfer to APS that would shield Learnframe's assets from other creditors, including plaintiffs.

15. Even taking into account Mr. DeYoung's assessment of the value of Learnframe's assets, such a valuation would greatly exceed the value of APS's forbearance from suing Learnframe and attempting—with all of Learnframe's other creditors—to collect on any judgment it may have received from Learnframe.

#### Learnframe Was Insolvent or Became Insolvent

16. Second, the evidence shows that Learnframe was insolvent, or at minimum became insolvent as a result of the APS Agreement.

17. Under Utah Code Ann. § 25-6-3(1), “[a] debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.” Moreover, under subsection (2), “[a] debtor who is generally not paying his debts as they become due is presumed to be insolvent.” Utah Code Ann. § 25-6-3(2).



18. Here, Learnframe does not deny that it was insolvent at the time it entered into the APS Agreement. Learnframe concedes that it was not paying its debts as they became due; that the sum of its debts far exceeded the value of its assets; and that it was undergoing severe financial difficulties at the time, having been sued or threatened with suit by many creditors. [Michael Memmott.]

19. In sum, based on evidence before the Court, the Court concludes that the APS Agreement effected a fraudulent transfer under Utah Code Ann. § 25-6-6.

**Fraudulent Transfer Under Section 25-6-5**

20. Alternatively, plaintiffs have also established that a fraudulent transfer occurred under Section 25-6-5, which governs claims of creditors that arise before or after the fraudulent transfer. This statute is satisfied simply by a showing that a transfer is made “with actual intent to hinder, delay, or defraud any creditor of the debtor.” *Id.* § 25-6-5(1).

21. Based on the foregoing analysis of Section 25-6-6, this requirement is satisfied because the Court concludes that the only credible reason for the APS Agreement was to shield Learnframe’s assets from creditors, preferentially favoring APS. This conclusion is supported by a consideration of the various factors that are probative of actual intent, under Section 25-6-5(2), including whether:

- (1) “the debtor retained possession or control of the property transferred after the transfer”;
- (2) “the transfer or obligation was disclosed or concealed”;
- (3) “before the transfer was made . . . , the debtor had been sued or threatened with suit”;
- (4) “the transfer was of substantially all the debtor’s assets”;

(5) “the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred”; and

(6) “the debtor was insolvent or became insolvent shortly after the transfer was made.”

Utah Code Ann. § 25-6-6(2).

22. Each of these factors is implicated here. Learnframe remained in possession and control of the property after the transfer. APS has never bothered to remove the assets from Learnframe’s possession, as the APS Agreement permits, even though Learnframe has defaulted under the Agreement by not paying taxes, maintaining insurance, and remaining solvent. APS and Learnframe failed to disclose the transfer to creditors, including the IRS, which had already levied. Learnframe had been sued or threatened with suit before the transfer. The transfer was of all of Learnframe’s assets. Finally, as detailed above in the analysis of Section 25-6-6, Learnframe was insolvent or became insolvent shortly after the transfer was made. In sum, based on a consideration of these various factors, the Court concludes that the APS Agreement effected a fraudulent transfer under Utah Code Ann. § 25-6-5.

23. Under either Section 25-6-6 or 25-6-5, plaintiffs are not precluded from executing on the property in Learnframe’s possession that was allegedly transferred. Utah Code Ann. § 25-6-8(2).

**Execution May Proceed Subject to the IRS’s Priority Interest**

24. The IRS’s priority interest in Learnframe’s property does not preclude plaintiffs from proceeding to an execution sale.

25. Under the Utah UCC, junior secured creditors may sell collateral subject to senior liens. See Utah Code Ann. § 70A-9a-617 (providing that “[a] secured party’s disposition of collateral after default transfers to a transferee for value all of the debtor’s rights in the collateral” and “discharges any subordinate security interest or other subordinate lien,” but that the transferee takes the collateral subject to “any other security interest or other lien”).

26. The same is true in the context of real property, where a junior lien holder’s foreclosure may proceed subject to the senior lien, even though the foreclosure is insufficient to eliminate the senior lien against the property.

27. Nothing in Rule 64E prohibits execution on encumbered property. See Utah R. Civ. P. 64E (“A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment or order requiring the delivery of property or the payment of money.”).

28. The Court is unaware of any authority that would prevent execution under these circumstances.

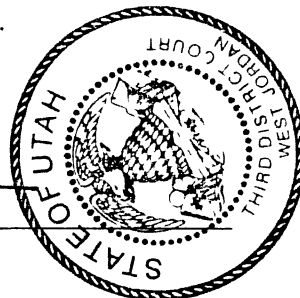
29. Plaintiffs are entitled to proceed with the execution. However, plaintiffs shall give notice of the IRS’s tax levy to any person who purchases Learnframe’s property at the execution sale because the IRS’s interest shall remain attached to the property after the sale.

DATED this 28 day of August, 2006.

BY THE COURT



Royal J. Hansen  
Third District Judge



**2. Reproduction of parts of the record of central importance such as contracts or other documents;**

RECEIVED

L.C.L

OCT 15 2001

Utah Div. Of Corp. & Comm. Code

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER (optional)  
**Curtis L. DeYoung 801-571-0667**

B SEND ACKNOWLEDGMENT TO: (Name and Address)

American Pension Services  
 11027 South State Street  
 Sandy, UT 84070

10-15-01A11:26 REVD

10/15/2001  
 Receipt Number: 433318  
 Amount Paid \$10.00

17106020019  
 THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME  
 -- Learnframc --

OR 1b INDIVIDUAL'S LAST NAME

1c MAILING ADDRESS  
 12637 South 265 West

CITY: Draper STATE: UT POSTAL CODE: 84020 COUNTRY: US

1d TAX ID # BSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any  
 Corporation Delaware 87-0502322  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR 2b INDIVIDUAL'S LAST NAME  
 Memmott

2c MAILING ADDRESS  
 12637 South 265 West

CITY: Draper STATE: UT POSTAL CODE: 84020 COUNTRY: US

2d TAX ID # BSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  
 Individual Utah  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
 American Pension Services

OR 3b INDIVIDUAL'S LAST NAME

3c MAILING ADDRESS  
 11027 South State Street

CITY: Sandy STATE: UT POSTAL CODE: 84070 COUNTRY: US

4. This FINANCING STATEMENT covers the following collateral

Receivable from Learn University 429 W. Ohio Street #200  
 Chicago, IL 60610, Dated 3-14-01. In the amount of \$1,500,000.00  
 Receivable from Trifus.

5 ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6 THIS FINANCING STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum  (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA



Because Learnframe, Inc. (Learnframe) a Delaware Corporation, located at 12637 South 265 West Draper, Utah has been unable to repay its debt to American Pension Services (APS), located at 11027 South State Street Sandy, Utah, the parties agree as follows:

Learnframe hereby transfers all of its rights title and interest in all of its personal property to APS. See attached list of personal property. This shall also include but not be limited to all of Learnframe rights in software it has developed as well as all names, copyrights, patents, and contract rights. Learnframe shall have the right for three years from this date to purchase back from APS all personal property transferred in this agreement once the total debt with interest is repaid for One Dollar.

Learnframe will be allowed to continue to use the equipment for the above referenced three-year period under the following conditions:

1. Learnframe will be responsible to pay all personal property taxes (for this purpose Learnframe will be allowed to carry the equipment on its books).
2. Learnframe will be responsible to pay all personal property insurance and to name APS as a coinsured party.
2. Learnframe will maintain all equipment to assure that it is in good working order.

APS shall have the right to inspect its personal property during normal business hours by giving Learnframe a one-hour notice.

If Learnframe files for Bankruptcy, becomes insolvent, or the control of the company changes, meaning the existing CEO is replaced, then in that event APS shall have the right to take immediate possession of all its Personal Property.

Wear and tear due to use in the normal course of business is acknowledged and approved.

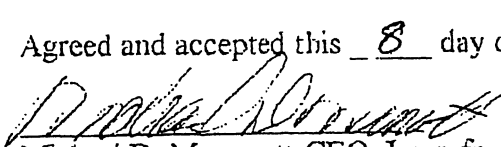
There is an existing IRS Lien that may take president to the APS ownership position.

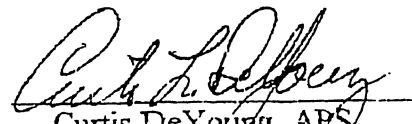
Learnframe will notify APS at least annually of any substantial change in the personal property due to missing, discarded, or inoperable property.

If APS sells any or all of the Personal Property due to a default by Learnframe, the balance owing to APS will be reduced by the amount of money received from the sale.

The laws of the State of Utah shall govern this agreement.

Agreed and accepted this 8 day of January 2003

  
Michael D. Memmott CEO, Learnframe

  
Curtis DeYoung APS

UCC Drawer ID 517669 Oct 15 2001







Description	State	Class	PP Class	Lifa	Acq Date	Mfg SN	Vendor	Invoice #	Cost
Mahogany Bookshelf	UT	FF	010	5	4/17/00	N/A	Desk Inc	121938	\$ 1
Mahogany Bookshelf	UT	FF	010	5	4/17/00	N/A	Desk Inc	121938	\$ 1
Mahogany Bookshelf	UT	FF	010	5	4/17/00	N/A	Desk Inc	121938	\$ 1
Mahogany Bookshelf	UT	FF	010	5	4/17/00	N/A	Desk Inc	121938	\$ 1
Mahogany Bookshelf	UT	FF	010	5	4/17/00	N/A	Desk Inc	121938	\$ 1
Trade Show Booth	UT	FF	010	5	4/19/00	N/A	Darse	63142/63169	\$ 64,4
Mahogany desk	UT	FF	010	5	4/24/00	N/A	Rosi	14055	\$ 4
Mahogany desk	UT	FF	010	5	4/24/00	N/A	Rosi	14055	\$ 4
Furniture for new entry, conference tables, etc	UT	FF	010	5	5/15/00		Contract Furniture Gallery	00358	\$ 6,7
Mahogany desk	UT	FF	010	5	5/22/00	N/A	Corporate Office	11340	\$ 1
Standard Desk Top	UT	CC	010	3	5/30/00	N/A	Totally Awesome	1165	\$ 2,3
Compaq Storage Rack	UT	FF	010	3	5/30/00	N/A	Banta Corp	ckr053000	\$ 1
Mahogany desk	UT	FF	010	5	5/30/00	N/A	Corporate Office	11320	\$ 6
Mahogany desk	UT	FF	010	5	5/30/00	N/A	Corporate Office	11342	\$ 3
Compaq Storage Rack	UT	FF	010	3	5/30/00	N/A	Banta Corp	ckr053000	\$ (5
Sound Wall (Draper)	UT	LH	010	5	6/5/00		Greenwood Const.	2309	\$ 1,5
HON106846-NN-30x66 Mahogany desk	UT	FF	010	5	6/12/00		Corporate Office	11402	\$ 3
Back Wall-trade show booth	UT	FF	010	5	6/13/00		Darse	63359	\$ 1,4
82" High Divider Panels (4)	UT	FF	010	5	6/13/00		Corporate Office	11426	\$ 1,3
Tables and Trees	UT	FF	010	5	6/15/00		RC Wiley -Paymentech	bd081500	\$ 8
Panel to wall mount kit (2)	UT	FF	010	5	6/15/00		Corporate Office	11429	\$ 8
Panel to wall mount kit (2)	UT	FF	010	5	6/15/00		Corporate	Credk	\$ (3
OCU Services/Trade show booth	UT	FF	010	3	6/19/00		Darse	63189	\$ 2,8
Learnframe sign for 10x10 Booth	UT	FF	010	5	6/20/00		Darse	ckr062000	\$ 4
Mahogany Bookcase	UT	FF	010	5	6/20/00		Desks Inc.	122496	\$ 2
30x66 Mahogany Desk	UT	FF	010	5	6/20/00		Desks Inc.	122496	\$ 2
30"66 Mahogany Desk	UT	FF	010	5	6/21/00		Corporate Office	11494	\$ 3
30"66 Mahogany Desk	UT	FF	010	5	6/21/00		Corporate Office	11494	\$ 3
30"66 Mahogany Desk	UT	FF	010	5	6/23/00		Corporate Office	11450	\$ 3
30"66 Mahogany Desk	UT	FF	010	5	6/23/00		Corporate Office	11450	\$ 3
Picture for Large Conference Room/H-417294	UT	FF	010	3	7/2/00		American Express	bd070200	\$ 1,3
Mahogany Desk (3672	UT	FF	010	5	7/7/00		Desks Inc.	S7902	\$ 5
TR200B 3672 Mahogany Desk/Articulating Keyboard	UT	FF	010	5	7/19/00		Desks Inc.	122710	\$ 5
30x60 Mahogany Desk	UT	FF	010	5	7/25/00		Desks Inc.	122759	\$ 4
30"66 Mahogany desk	UT	FF	010	5	7/31/00		Corporate	11600	\$ 3
Task chair	UT	FF	010	5	7/31/00		Corporate	11600	\$ 2
Canopy of conference/Trade show booth	UT	FF	010	5	8/2/00		Darse Exhibits	BD080200A/63219	\$ 1,5
Podium for Trade show booth	UT	FF	010	5	8/2/00		Darse Exhibits	BD080200A	\$ 2,8
Cubicles (50% deposit)	UT	FF	010	5	8/4/00		Corporate	CKr080400	\$ 45,0
30"66 Mahogany Desk	UT	FF	010	5	8/10/00		Corporate	11619	\$ 3
Task Chair	UT	FF	010	5	8/10/00		Corporate	11619	\$ 2
Trade Show Booth	UT	FF	010	5	8/18/00		Darse Exhibits	63252-A	\$ 9,2
30x66 Mahogany Desk	UT	FF	010	5	8/19/00		Corporate	11657	\$ 31
30x66 Mahogany Desk w/return	UT	FF	010	5	8/25/00		Corporate	11671	\$ 51
Trade Show Booth	UT	FF	010	5	8/28/00		Darse Exhibits	63415	\$ 3,41
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 2
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 2
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 2
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 2
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 21
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 21
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 21
Task Chair	UT	FF	010	5	8/30/00		Corporate	11656	\$ 21





Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
Winbook XL2 laptop computer 400/31	UT	CC	150	3	7/31/99	10609645	Winbook	Reed exp073199	\$ 2,1
Pentium II 400 mhz	UT	CC	150	3	8/5/99	N/A	Totally Awesome Computers	Totallyckr080399	\$ 1,1
Pentium II 400 mhz	UT	CC	150	3	8/5/99	N/A	Totally Awesome Computers	Totallyckr080400	\$ 1,1
Winbook XI AMD K6-200	UT	CC	150	3	8/9/99	10807606	Winbook	GM exp081599	\$ 1,1
Winbook XL K62398	UT	CC	150	3	8/10/99	10807850	Winbook	Keoughexp081599	\$ 1,5
Winbook XL K62399	UT	CC	150	3	8/10/99	10807865	Winbook	Keoughexp081600	\$ 1,5
Winbook XL K62400	UT	CC	150	3	8/10/99	10807870	Winbook	Keoughexp081601	\$ 1,5
Pentium III 450 mhz	UT	CC	150	3	8/23/99	N/A	Totally Awesome Computers	ckr082399	\$ 2,0
Pentium II 450Mhz	UT	CC	150	3	8/24/99	N/A	Totally Awesome Computers	ckr082699	\$ 2,0
Winbook XL2	UT	CC	150	3	8/24/99	N/A	Totally Awesome Computers	ckr082699	\$ 2,0
Dual 500 Pent III 18 GB HD	UT	CC	150	3	9/8/99	N/A	Ebc Computer	Chr 090899	\$ 2,7
Dual 500 Pent III 18 GB HD	UT	CC	150	3	9/8/99	N/A	Ebc Computer	ckr090899	\$ 3,0
Winbook x12	UT	CC	150	3	9/9/99	10738539	Winbook	Reed exp083199	\$ 2,6
Winbook x12	UT	CC	150	3	9/9/99	10738393	Winbook	Reed exp083199	\$ 2,6
Intel Celeron 366 64mb Ram	UT	CC	150	3	9/10/99	N/A	Totally Awesome Computers	ckr090799	\$ 1,4
Mother board for server	UT	CC	150	3	9/14/99	N/A	Ebc Computer	Baxter exp091599	\$ 8
PIII 459 mhz	UT	CC	150	3	9/22/99	N/A	Ebc Computer	ckr092299	\$ 2,2
PIII 459 mhz	UT	CC	150	3	9/22/99	N/A	Ebc Computer	ckr092299	\$ 2,2
Dual PIII 450 w/19" monitor	UT	CC	150	3	9/30/99	N/A	Totally Awesome Computers	ckr092899	\$ 2,5
Pentium III 450 Desktop Computer	UT	CC	150	3	10/5/99	N/A	Totally Awesome Computers	ckr100199	\$ 2,5
HP LaserJet 1100 Printer	UT	DD	150	5	10/7/99	XUSGP007030	Office Max	Baxter exp101599	\$ 4
HP LaserJet 1100 Printer	UT	DD	150	5	10/7/99	N/A	Office Max	Baxter exp101599	\$ 4
Printer, HP 40	UT	DD	150	5	10/7/99	N/A	Office Depot	Hal exp101599	\$ 1,5
Pentium III 450 Desktop Computer	UT	CC	150	3	10/18/99	N/A	Totally Awesome Computers	ckr101599	\$ 1,7
Pentium III 450 Desktop Computer	UT	CC	150	3	10/18/99	N/A	Totally Awesome Computers	ckr100199	\$ 2,5
Pentium III 450 Desktop Computer	UT	CC	150	3	10/18/99	N/A	Totally Awesome Computers	ckr100199	\$ 2,5
Pentium 466 Laptop Computer Lost in New York	UT	CC	150	3	10/18/99	N/A	Elite Systems T	ckr100899	\$ 1,3,2
400 mhz 32 mb Desktop Computer	UT	CC	150	3	10/27/99	N/A	Totally Awesome Computers	ckr102699	\$ 1,1
400 mhz 32 mb Desktop Computer	UT	CC	150	3	10/27/99	N/A	Totally Awesome Computers	ckr102699	\$ 1,1
MKS SI	UT	CC	150	3	10/29/99	N/A	MKS	ckr102999	\$ 20,9
Desktop Computer, PIII, 450 mb	UT	CC	150	3	11/1/99	N/A	Totally Awesome Computers	ckr110199	\$ 2,4
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
PIII 256 mb Desktop computer	UT	CC	150	3	11/22/99	N/A	Totally Awesome Computers	ckr112299	\$ 2,6
Winbook XL2 laptop computer	UT	CC	150	3	11/22/99	11038217	Winbook	1337637	\$ 2,1
PIII 350 computer	UT	CC	150	3	11/30/99	n/a	Totally Awesome Computers	ckr113099	\$ 9
PIII 350 computer	UT	CC	150	3	11/30/99	n/a	Totally Awesome Computers	ckr113099	\$ 9
Desktop computer, PIII 256 mb	UT	CC	150	3	12/14/99	n/a	Totally Awesome Computers	ckr121599	\$ 2,6
Desktop computer, Celeron 500 64 mb	UT	CC	150	3	12/21/99	n/a	Totally Awesome Computers	ckr122199	\$ 1,4
Compaq PIII Desktop Computer	UT	CC	150	3	12/22/99	D850CNH1K099	One Net	100247	\$ 13,1
500 MHz Pent III 128 MB 17" Monitor	UT	CC	150	3	1/4/00	N/A	Totally Awesome	7r	\$ 1,7
Dual p III 500 13.5 GB HD 256 MB Ram	UT	CC	150	3	1/12/00	N/A	Totally Awesome	70001	\$ 2,7
Winbook XL2	UT	CC	150	3	1/14/00	1073998	Winbook (Paymentech)	bd011400	\$ 1,2
Dual 550 MHz Pent III 256 MB Ram 19" Monitor	UT	CC	150	3	1/31/00	N/A	Totally Awesome	p07-0004	\$ 2,8
Dual 550 Mhz Pent III 256 MB Ram 19" monitor	UT	CC	150	3	1/31/00	N/A	Totally Awesome	p07-0004	\$ 2,6
Sever Hardware (QA Learnframe)	UT	CC	150	3	2/1/00	N/A	One Net	100630	\$ 8,51
Compaq 221 Single Shannel Arrau	UT	CC	150	3	2/1/00	N/A	One Net	100685	\$ 91
Dual 550 Mhz Pent III 256 MB Ram 19" monitor	UT	CC	150	3	2/4/00	N/A	Totally Awesome	p07-0008	\$ 2,7
256 Mb 32 mb Video 19" Monitor	UT	CC	150	3	2/4/00	N/A	Totally Awesome	07-0005	\$ 2,6
550 MHz pIII 19" Monitor	UT	CC	150	3	2/4/00	N/A	Totally Awesome	p07-0005	\$ 2,6
Winbook X12	UT	CC	150	3	2/15/00	1139781	Winbook (Paymentech)	bd021500	\$ 2,8

Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
Winbook X12	UT	CC	150	3	2/15/00	H139828	Winbook (Paymantech)	bd021500	\$ 2.1
SG 3.0 Enklt	UT	CC	150	3	2/15/00	N/A	Power Quest (Paymantech)	bd021500	\$ 1
Winbook X1.3	UT	CC	150	3	2/15/00	N/A	Winbook	ap021500	\$ 3.1
HP Laser Jet Printer	UT	DD	150	5	2/24/00	USBB220488	Printelligent	75909	\$ 1.4
HP Laser Jet Printer	UT	DD	150	5	2/24/00	USBC 084318	Printelligent	75909	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
600 Mhz P III 15" Monitor	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
Dual P III 500 13.5 GB HD 256 MB Ram	UT	CC	150	3	2/25/00	N/A	Totally Awesome	p007-009	\$ 1.4
Mac Computer	UT	CC	150	3	2/25/00	N/A	MicroWarehouse (Baxter)	ap022500	\$ 2.6
HP Printer / Toner / Cable	UT	DD	150	5	2/29/00	MY88DE18H	MicroWarehouse (Baxter)	ap022500	\$ 3
450 Mhz P III 64 MB 17 Monitor	UT	CC	150	3	3/1/00	N/A	Borden/Staples	ap022500	\$ 1.1
450 Mhz P III 64 MB 17 Monitor	UT	CC	150	3	3/1/00	N/A	Totally Awesome	bd030400	\$ 1.7
P III 450 64 MB 20.5 GB HD	UT	CC	150	3	3/1/00	N/A	Totally Awesome	bd030400	\$ 1.7
450 Mhz P III 64 MB 17 Monitor	UT	CC	150	3	3/3/00	N/A	Totally Awesome	p07-0013	\$ 1.8
600 Mhz P III 256mb 17"	UT	CC	150	3	3/3/00	N/A	Totally Awesome	p07-0012	\$ 1.7
600 Mhz P III 256mb 17"	UT	CC	150	3	3/3/00	N/A	Totally Awesome	p07-0015	\$ 2.6
600 Mhz P III 256mb 17"	UT	CC	150	3	3/3/00	N/A	Totally Awesome	p07-0015	\$ 2.6
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0015	\$ 2.6
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0015	\$ 2.6
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0016	\$ 2.0
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0016	\$ 2.0
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0016	\$ 2.0
Dual Processor test Machine	UT	CC	150	3	3/7/00	N/A	Totally Awesome	p07-0016	\$ 2.0
600 Mhz P III 15" Monitor	UT	CC	150	3	3/23/00	N/A	Totally Awesome	p07-0016	\$ 2.6
Computer Repair	UT	CC	150	3	3/31/00	N/A	CompUSA (G Young)	p07-0017	\$ 5
P III 600 128 MB 20.5 GB	UT	CC	150	3	3/31/00	N/A	Totally Awesome	ap032300	\$ 1.8
C.E. Hand Device	UT	CC	150	3	3/31/00	N/A	Linor/Mobile Phant	ap033100	\$ 2.3
P III 600 128 MB 20.5 GB	UT	CC	150	3	3/31/00	N/A	Totally Awesome	bd033100	\$ 1.7
P III 600 256 MB 20.5 GB	UT	CC	150	3	3/31/00	N/A	Totally Awesome	bd033100	\$ 1.7
P III 600 256 MB 20.5 GB	UT	CC	150	3	3/31/00	N/A	Totally Awesome	bd033100	\$ 1.7
Winbook X12	UT	CC	150	3	4/1/00	N/A	Totally Awesome	p07-0021	\$ 2.8
Winbook X12	UT	CC	150	3	4/1/00	N/A	Totally Awesome	p07-0029	\$ 2.6
Winbook X12	UT	CC	150	3	4/1/00	J0210225	Winbook (Paymantech)	bd031500	\$ 1.7
Winbook X12	UT	CC	150	3	4/1/00	J0210215	Winbook (Paymantech)	bd031500	\$ 1.7
Windows CE Handheld	UT	CC	150	3	4/1/00	J0210258	Winbook (Paymantech)	bd031500	\$ 1.7
Printer	UT	DD	150	5	4/1/00	J0224625	Winbook (Paymantech)	ap033100	\$ 1.7
Mac Computer	UT	CC	150	3	4/1/00	JP1B017361	TechData (Paymantech)	bd031500	\$ 6.6
Mac Computer	UT	CC	150	3	4/1/00	N/A	Tech Data (Paymantech)	bd031500	\$ 2.41
Mac Computer	UT	CC	150	3	4/1/00	0023LAHNZ	Med Mac (Paymantech)	bd041400	\$ 2.61
GD Pro	UT	CC	150	3	4/15/00	N/A	Advance	20836	\$ 10.6
P III 600 128 MB 20.5 GB	UT	CC	150	3	4/17/00	N/A	Totally Awesome	bd040700	\$ 2.5
600 Mhz P III 256mb 17"	UT	CC	150	3	4/17/00	N/A	Totally Awesome	0022	\$ 1.71
600 Mhz P III 256mb 17"	UT	CC	150	3	4/17/00	N/A	Totally Awesome	0022	\$ 1.71
Winbook X1.3	UT	CC	150	3	4/14/00	J0323372	Totally Awesome	bd041400	\$ 2.81
Winbook X1.3	UT	CC	150	3	4/14/00	J0323372	Winbook (Paymantech)	bd041400	\$ 2.81
Flash 4	UT	CC	150	3	4/14/00	N/A	Winbook (Paymantech)	bd041400	\$ 2.81
Dual Developer Com	UT	CC	150	3	4/14/00	N/A	Macromedia (Paymantech)	bd041400	\$ 6
Developer Test Computer	UT	CC	150	3	4/24/00	N/A	Totally Awesome	7-0025	\$ 1.00
Computer equipment	UT	CC	150	3	4/24/00	N/A	Totally Awesome	7-0025	\$ 1.00
	UT	CC	150	3	5/14/00	N/A	Totally Awesome	bd050100b	\$ 1.56





Description	State	Class	PP Class	Life	Acq Date	Mfg SN	Vendor	Invoice #	Cost
Standard Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302512-1 /	\$ 1,4
Standard Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302512-1 /	\$ 1,4
Standard Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302512-1 /	\$ 1,4
Standard Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302512-1 /	\$ 1,4
Developer Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302510-4	\$ 2,1
Developer Workstation - Hewitt Rand	UT	CC	150	3	9/19/00		HEWITT R	302510-4	\$ 2,1
Fujitsu E-6556	UT	CC	150	3	9/22/00	R0701397	HEWITT R	291808-1 /	\$ 3,2
Fujitsu E-6556	UT	CC	150	3	9/22/00	R0701398	HEWITT R	293721-1	\$ 3,2
Fujitsu E-6556	UT	CC	150	3	9/22/00	R0701849	HEWITT R	291365-1	\$ 3,2
Fujitsu E-6556	UT	CC	150	3	9/22/00	R0701400	HEWITT R	293721-4	\$ 3,2
Fujitsu 6556	UT	CC	150	3	9/22/00	R0701855	HEWITT R	282481-1 /	\$ 3,2
Fujitsu Laptop Model E-6570	UT	CC	150	3	8/25/00	R0701454	HEWITT R	303024-1 /	\$ 4,8
Developer Workstation	UT	CC	150	3	10/4/00	7059831 / 646068	Hewitt Rand	308130-1	\$ 2,1
Developer Workstation	UT	CC	150	3	10/4/00	7059830 / 646067	Hewitt Rand	306130-1	\$ 2,1
Developer Workstation	UT	CC	150	3	10/4/00	7059829 / 646066	Hewitt Rand	306130-1	\$ 2,1
Developer Workstation	UT	CC	150	3	10/4/00	7059831 / 646068	Hewitt Rand	309567-1	\$ 2,1
Developer Workstation	UT	CC	150	3	10/4/00	7059830 / 646067	Hewitt Rand	309567-1	\$ 2,1
Developer Workstation	UT	CC	150	3	10/4/00	7059829 / 646066	Hewitt Rand	309567-1	\$ 2,1
Winbook Laptop S1	UT	CC	150	3	10/5/00	N10601878	Winbook		\$
Fujitsu E-6556 Laptop w/accessories	UT	CC	150	3	10/9/00	R0701418	Global Computers-Paymentech	bd100900	\$ 3,2
Fujitsu E-6556 Laptop w/accessories	UT	CC	150	3	10/9/00	R0B02759	Global Computers-Paymentech	bd100900	\$ 3,2
Fujitsu E-6570 Laptop w/accessories	UT	CC	150	3	10/31/00	R0900996	Global Computers-Paymentech		\$ 3,3
Fujitsu E-6570 Laptop w/accessories	UT	CC	150	3	10/31/00	R0901000	Global Computers-Paymentech		\$ 3,3
Fujitsu E-6570 Laptop w/accessories	UT	CC	150	3	10/31/00	R0900999	Global Computers-Paymentech		\$ 3,3
Borland Delphi 5 Enterprise	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 2,3
Borland Delphi 5 Enterprise	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 2,3
Borland Jbuilder Professional V4.0	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 8
Borland Jbuilder Professional V4.0	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 8
Borland Delphi 5 Professional	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 5
Borland Delphi 5 Professional	UT	CC	150	3	10/31/00		Buy.com-Paymentech		\$ 5
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Developer Workstation	UT	CC	150	3	11/2/00		Hewitt Rand	313335-1	\$ 2,1
Compaq 128 MB SDRAM	UT	CC	150	3	11/8/00		IFSC	32-31442-11	\$ 31
Compaq 256 MB 133 MHZ SDRAM	UT	CC	150	3	11/8/00		IFSC	32-31442-11	\$ 81
Compaq 256 MB 133 MHZ SDRAM	UT	CC	150	3	11/8/00		IFSC	32-31442-11	\$ 81
Rockmount Monitor	UT	CC	150	3	11/8/00		IFSC	32-31442-11	\$ 2,8
Rockmount Monitor	UT	CC	150	3	11/9/00		IFSC	32-31442-11	\$ 31
Sun E250R	UT	CC	150	3	11/10/00	038H4D2B	Advanced Systems Group	25977	\$ 12,61
Sun E250R-Peripherals	UT	CC	150	3	11/10/00	038H4D2B	Advanced Systems Group	26059	\$ 1,81
Fujitsu Laptop 5670	UT	CC	150	3	11/22/00		Global Computers	11212	\$ 2,91
Fujitsu Laptop 5670	UT	CC	150	3	11/22/00		Global Computers	11212	\$ 2,91
Fujitsu Laptop 5670	UT	CC	150	3	11/22/00	R0908406	Global Computers	11213	\$ 2,71
Fujitsu Laptop 5670	UT	CC	150	3	11/22/00		Global Computers -Paymentech	111000	\$ 2,61
Fujitsu Laptop 5670	UT	CC	150	3	11/22/00		Global Computers -Paymentech	111000	\$ 2,61
Delphi 5 Enterprise	UT	CC	150	3	11/24/00		Computers 4 Sure-Paymentech	112400	\$ 2,21
(10) Workstation UPS	UT	CC	150	3	12/5/00		PSP Products	35937	\$ 1,11
Laptop and accessories	UT	CC	150	3	12/6/00	R0908422	Global Computers	gc11230	\$ 2,71
Laptop and accessories	UT	CC	150	3	12/8/00	R0908427	Global Computers	gc11230	\$ 2,71
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5



Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5
Delphi 5 Professional	UT	CC	150	3	12/11/00		Computers 4 Sure-Paymentech	bd121100	\$ 5
PIII 600 128 MB 20.5 GB	UT	CC	150		12/31/00		Totally Awesome	bd121100	\$ 1,7
PIII 600 128 MB 20.5 GB	UT	CC	150		12/31/00		Totally Awesome	IS126	\$ 1,7
									\$ 791,5
Webboard for windows/MSDE ISQL Server	UT	CC	150	3	1/22/01		Paymentech - O'Reilly	bd012201	\$ 1,9
Tape Back-up	UT	CC	150	3	2/28/01	0147519480	En Point Technologies	exp022801	\$ 2,4
Tape Back-up	UT	CC	150	3	3/31/01		En Point Technologies	exp033101	\$ 6
Compaq JAL70, PIII	UT	CC	150	3	4/15/01	5413fpq6086	Brother International Corp	Blissman-041501	\$ 2,3
Intraware equipment	UT	CC	150	3	6/30/01		intraware		\$ 149,1
Intraware equipment	UT	CC	150	3	6/30/01		intraware		\$ 2,0
Gateway 700 mhz DVD	UT	CC	150	3	6/30/01		Frontline Services	lap01	\$ 6
Gateway 600 mhz ram swap	UT	CC	150	3	6/30/01		Frontline Services	lap01	\$ 5
Dell 600 mhz DVD	UT	CC	150	3	6/30/01		Frontline Services	lap01	\$ 6
IPAQ Color Pocket PC	UT	CC	150	3	7/18/01	4G13DW36E305	Mobile Planet	Linton/exp071501D	\$ 5
L400, 700 MHz, PIII Laptop	UT	CC	150	3	7/19/01		Dell	Lackey/exp063001A	\$ 2,6
Compaq ProLiant DL360/for ISL	UT		150		7/19/01		Unita Business Systems	57331/ckr072301	\$ 16,3
Dell Lexmark Optra E312L	UT	CC	150	0	7/24/01	3062902	Dell	N/A	\$
Compaq equipment	UT	CC	150	3	11/1/01		Compaq		\$ 52,1
Laptop		CC	150	3	5/31/01	N13JCSAL332Y	Office Depot	Penwell exp053101	\$ 1,8
Compaq Armada M700 PIII750	UT	CC	150	3	4/15/01	3J13FK68E84D	Compaq	Nicoll-exp041501	\$ 3,6
Laptop C600, 1GHz, Pentium III	UT	CC	150	3	7/31/01	50828NA09299	Dell	Burnett/exp073101	\$ 3,7
									\$ 241,5
Copier	UT	DD	153	5	12/11/98	ZTF15448	Office Max	N/A	\$ 9
Xerox Copier	UT	CC	153	3	7/14/99	5334DTASF/OU2-052434	Xerox	(erox ckr11642	\$ 2,7
									\$ 3,7
3 user license for PVCS Tracker	UT	CC	155	3	1/5/95	LIC-GEN-0994	Omicron	N/A	\$ 1,2
Gold Mine 4.0 Standard 10-users	UT	CC	155	3	12/16/98	D0010-12151993-FYSIYY	Outsource Solutions	915	\$ 5,4
MKS Source Integrity 2, 5-user lic	UT	CC	155	3	3/19/99	N/A	Buy.com	Brown exp033099	\$ 3,9
Robohelp	UT	CC	155	3	3/24/99	N/A	Blue Skt Software	Brown exp033099	\$ 6
MKS Source Integrity 5-user lic	UT	CC	155	3	3/24/99	N/A	MKS	Brown exp033099	\$ 1,4
Framemaker 5.5 Software	UT	CC	155	3	4/15/99	N/A	Buy.com	Brown exp041599	\$ 71
ODBC Express Software	UT	CC	155	3	7/15/99	N/A	Korbitec	Brown exp083199	\$ 7
Software for phone system	UT	DD	155	5	9/13/99	N/A	ikon	Inv0001943	\$ 3,8
Tru Call Acct Software	UT	DD	155	5	9/30/99	N/A	ikon	Inv0002061	\$ 2,8
RAM and Harddrive for Assel # 488	UT	CC	155	3	10/31/99	n/a	Totally Awesome Computers	Baxter exp103199	\$ 3,4
50 user Netware license	UT	CC	155	3	11/29/99	n/a	Tech Data	ckr113099r	\$ 8,8
GD Pro NT	UT	CC	155	3	12/13/99		Advanced Software Tech	0020664	\$ 6,3
Backup software	UT	DD	155	5	12/17/99		Dell Computers	309527745	\$ 4
Asta Unlimited Lic (electronic license)	UT	CC	155	3	1/14/00	N/A	Asta (Paymentech)	bd011400	\$ 4,0
Novel Netware 5.0 Lic (5 User)	UT	CC	155	3	1/28/00	N/A	OneNet	100643	\$ 1,1
PV20 Connect Lic	UT	CC	155	3	1/31/00	N/A	ComputerProp	87724, 87725	\$ 5,6
Pix Software/ Memory upgrade	UT	CC	155	3	2/1/00	N/A	ikon	Inv0003056	\$ 5,7

id #	Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
5	Web Server For Arrowhead	UT	CC	155	3	2/1/00	N/A	OneNet	100658	\$ 14,4
6	On-Line UPS	UT	CC	155	3	2/29/00	N/A	PSP	30776	\$ 7
5	Software (MS Office)	UT	CC	155	3	3/8/00	N/A	Personal Touch	ckc030800	\$ 11,9
3	Seagate Software (Crystal Reports)	UT	CC	155	3	3/9/00	N/A	OneNet	101390	\$ 9
7	Crystal Reports	UT	CC	155	3	4/1/00	N/A	TechData (Paymentech)	bd031500	\$ 8
0	Development Software Embarcadero	UT	CC	155	3	4/11/00	N/A	Embarcadero	cust009844	\$ 3,4
4	25 user Novell 5.0 Add	UT	CC	155	3	4/21/00	N/A	Ikon	Inv0006557	\$ 2,7
2	project 2000	UT	CC	155	3	5/15/00	N/A	Amazon.com (Paymentech)	bd051500	\$ 1,7
5	Software	UT	CC	155	3	5/18/00	N/A	One Net	102818	\$ 3,7
16	(2) Netware 5.0 Additive License	UT	CC	155	3	6/7/00	400250228	Microtel	32-29226-11	\$ 2,7
17	(2) Netware 5.0 Additive License	UT	CC	155	3	6/7/00	400250229	Microtel	32-29226-11	\$ 2,7
17	Application Manager Media Kit	UT	CC	155	3	6/12/00	UPC #65868501315	Compu-Dyne	211664	\$ 18,1
5	Windows NT Server 4.0 w/NT Option	UT	CC	155	3	6/15/00		Paymentech	bd061500	\$ 7
6	2 Microsoft Windows 2000	UT	CC	155	3	6/15/00		Paymentech	bd061500	\$ 1,7
8	J Test for Windows NT	UT	CC	155	3	6/16/00		Parasoft	ps-0111984	\$ 3,7
17	(7) SQL Server Open License	UT	CC	155	3	6/20/00		Microtel	32-473846-00	\$ 5,1
18	(2) SQL Server per proc licenses	UT	CC	155	3	6/20/00		Microtel	32-473846-00	\$ 5,4
19	(50) SQL CAL (user licenses)	UT	CC	155	3	6/20/00		Microtel	32-473846-00	\$ 6,3
8	3121-09395 Rational Loadtest Base License	UT	CC	155	3	7/6/00		Rational	8123130	\$ 13,6
5	MSDN Universal Subscription -Provantage	UT	CC	155	3	7/13/00		Provantia	1104941	\$ 1,9
1	InstallShield Professional 2000 Upgrade	UT	CC	155	3	7/14/00		InstallShield/Paymentech	BD071400	\$ 5
2	(7) MS Source Safe V6.0 Win Comp Single	UT	CC	155	3	7/14/00		PC Wonders -Paymentech	BD071400	\$ 1,5
3	2-Oracle Developer Licenses	UT	CC	155	3	7/18/00		Oracle	1322301	\$ 6,8
1	MSDN Universal Subscription-Provantage	UT	CC	155	3	7/27/00		Provantia	1110192	\$ 2,3
2	MSDN Universal Subscription-Provantage	UT	CC	155	3	7/27/00		Provantia	1110192	\$ 2,3
1	MSDN Universal Subscription-Provantage	UT	CC	155	3	7/27/00		Provantia	1110192	\$ 2,3
1	MSDN Universal Subscription-Provantage	UT	CC	155	3	7/27/00		Provantia	1110192	\$ 2,3
i	3-User Oracle Standard Edition License	UT	CC	155	3	7/27/00		Oracle	1325373	\$ 5
1	Video Cards	UT	CC	155	3	8/4/00		Merit	292713-1	\$ 4
1	J Test License for Windows NT	UT	CC	155	3	8/10/00		Parasoft	PS-12385	\$ 3,7
1	J Test License for Windows NT	UT	CC	155	3	8/10/00		Parasoft	PS-12385	\$ 3,7
i	2-User Oracle Standard Edition License	UT	CC	155	3	8/11/00		Oracle	1330457	\$ 3
.	128 MB Ram	UT	CC	155	3	8/14/00		Merit	295628-1	\$ 3
1	V-Test for Windows NT	UT	CC	155	3	9/5/00		PARASOFT	ps-012564 /	\$ 3,7
5	15-Oracle Database Standard Edition Licenses	UT	CC	155	3	9/5/00		ORACLE C	1339635 / #1005	\$ 2,54
5	(20) Powerware 3115 Workstation UPS	UT	CC	155	3	9/6/00		PSP	34144 /	\$ 2,01
1	5-Oracle Database Standard Edition w/2 cd pks	UT	CC	155	3	9/8/00		ORACLE C	1341725 /	\$ 94
3	(3) Rational Visual Test	UT	CC	155	3	9/15/00		Rational - PAYMENTECH	bd091500br /	\$ 2,21
3	(150) WinZip Std Edition License	UT	CC	155	3	10/1/00	N/A	WinZip - Paymentech	bd093000	\$ 1,11
3	3120-09396 Rational Visual Test	UT	CC	155	3	10/2/00		Rational	8133091	\$ 4,46
3	3120-09398 Rational Visual Test	UT	CC	155	3	9/12/01		Rational	8133091	\$ 4,46
1	(8) License Library for Microsoft	UT	CC	155	3	10/3/00		Dell Computer	438857813	\$ 11,21
i	Microsoft License Library	UT	CC	155	3	10/3/00		Dell Computer	436274773	\$ 21,06
	(MSDN Universal Subscription-Provantage)	UT	CC	155	3	10/4/00		Deposit-Upchurch rebate-#Microsoft	JE #10-102	\$ (28
1	(2) Netware5-25 User License	UT	CC	155	3	10/6/00		IFSC	32-13897-11	\$ 5,30
1	(1) NT-FL GDPPro Win-NT Floating Network License	UT	CC	155	3	10/8/00		Advanced Software Tech	0021043rr	\$ 13,69
	Ram Software	UT	CC	155	3	10/9/00	N/A	Ram Software -Paymentech	bd100900	\$ (57
1	2 user concurrent ER/Studio - Upgrading ER/Studio License	UT	CC	155	3	10/9/00		Embarcadero Technologies	Cust014541	\$ 17,00
	3 user business work license	UT	CC	155	3	10/9/00		Morris & Dredge - Paymentech	bd100900	\$ 84
1	(56) Upgrade Product Windows 2000 Pro	UT	CC	155	3	10/9/00		Provantia	1135245	\$ 9,33
i	(25) MSDN Universal Subscription	UT	CC	155	3	10/17/00		Dell Computer	446124398	\$ 32,73
	MSDN Universal Subscription	UT	CC	155	3	10/26/00		Provantia	1144686	\$ 2,24
.	(3) Microsoft Visual Source Upgrade	UT	CC	155	3	10/31/00		Buy.com-Paymentech		\$ 73



Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
External CD player for laptop computer	UT	CC	158	3	4/27/99		CDW Computer Centers	Linton exp103199	\$ 7
Network Equip For T1	UT	CC	158	3	6/3/99	none	TechData	BankOne ckr030399	\$ 3,3
AX-720 Autoloader Diskette Duplicator	UT	CC	158	3	7/19/99	ATC60010	Axlomatic	Reed exp073199	\$ 3,1
Alarm System	UT	DD	158	5	7/29/99	N/A	Peak Alarm	so2229/so2229-bal/so2229-999r	\$ 16,2
Phone System	UT	DD	158	5	7/31/99	N/A	Ikon	ckr070299/inv0001015	\$ 73,6
Catalyst Switch 2924xl	UT	CC	158	3	8/5/99	3882A085	TechData	BankOneckr080599	\$ 1,8
Wiring of phone system	UT	DD	158	5	8/12/99	N/A	Corbin	ckr081299/ckr070299/ckr070899	\$ 14,6
Electrical work for Asset No. 568	UT	FF	158	5	8/31/99	N/A	Key Electric	48101	\$ 5
Conference Room Phone	UT	DD	158	5	8/9/99		Hello Direct	American Express bd100199	\$ 2
Conference Room Phone	UT	DD	158	5	9/9/99		Hello Direct	American Express bd100199	\$ 4
Conference Room Phone	UT	DD	158	5	9/9/99	12240328	Hello Direct	American Express bd100199	\$ 9
Phone Wiring for Asset No. 568	UT	FF	158	5	9/9/99	N/A	Corbin	bd090999	\$ 7
Conference Room Phone	UT	DD	158	5	9/9/99	Reverse Rebate 12-31-99	Hello Direct	American Express bd100199	\$ 1
Cable Kit for server room	UT	CC	158	3	9/14/99	N/A	Egghead order	Baxter exp091599	\$ 4
Switch, 24 port	UT	DD	158	5	10/12/99		Ikon	invs2147	\$ 3,8
Phones (12)	UT	DD	158	5	10/22/99	n/a	Ikon	invs5325	\$ 4,4
Cisco router	UT	CC	158	3	10/26/99		Ikon	2343	\$ 12,7
Alarm System addition (see # 591)	UT	DD	158	5	11/15/99	n/a	Peak Alarm	s02229-lucb	\$ 3
Switch	UT	DD	158	5	11/17/99	n/a	Ikon	inv0002739	\$ 1,6
UPS for server room	UT	CC	158	3	11/17/99	BR401W0633	PSP Products	Young exp113099	\$ 7
Cisco switch, 12 port	UT	CC	158	3	11/19/99		One Net	w125349	\$ 1,1
Cisco switch	UT	CC	158	3	11/19/99		One Net	w125347	\$ 1,7
Internal Backup Hardware for Network	UT	CC	158	3	12/3/99	n/a	Dell Computers	304568462r	\$ 4
Internal Backup System	UT	CC	158	3	12/6/99	n/a	Dell Computers	34568454	\$ 1,9
Back up system	UT	DD	158	5	12/8/99		Buy.com	Brown exp121599	\$ 1,6
PV20 connect	UT	CC	158	3	12/8/99	n/a	ComputerPrep	inv00083876	\$ 2,8
Back up tapes	UT	DD	158	5	12/10/99		ProSource Sales	First USA bcl21589	\$ 2,3
Web Board 4.0	UT	CC	158	3	1/14/00	N/A	O'Reilly (Paymentech)	bd011400	\$ 1,2
Cisco Switches	UT	CC	158	3	1/14/00	N/A	OneNet	100458	\$ 1,7
2- Cisco Switches	UT	CC	158	3	1/31/00	N/A	OneNet	100693	\$ 3,5
Uninterruptible Power Source	UT	FF	158	5	2/1/00	N/A	PSP	29986	\$ 2,8
Uninterruptible Power Source	UT	FF	158	5	2/1/00	N/A	PSP	29986	\$ 2,8
8- Port KVM (Internal)	UT	CC	158	3	2/9/00	N/A	One Net	100792	\$ 5
Harris Clear Com phones (12)	UT	CC	158	3	2/17/00	N/A	Ikon	invs0010678	\$ 5,0
Tape Back-up	UT	CC	158	3	2/23/00	N/A	Ikon	invs0010944	\$ 7
2) 24 port Cisco routers	UT	CC	158	3	3/3/00	N/A	One Net	101273	\$ 3,5
Harris HDLU2 Card	UT	CC	158	3	3/7/00	N/A	Ikon	invs0011443	\$ 2,5
Sony 8 cassette backup Seagate	UT	CC	158	3	3/7/00	N/A	OneNet	101325	\$ 3,0
Electrical work on build out	UT	FF	158	5	3/15/00	N/A	Victor Corbin	bd031500	\$ 9,9
Rack mounts power Tap	UT	CC	158	3	3/30/00	N/A	PSP	31405	\$ 2,9
2- cal2924 Switches (Cisco)	UT	CC	158	3	4/1/00	N/A	Ikon	inv0006362	\$ 3,0
Powerware 9125 Flexduct 10	UT	CC	158	3	4/1/00	N/A	PSP	31245	\$ 3,4
Digital Camera	UT	DD	158	5	4/14/00	N/A	Buy.com (Paymentech)	bd041400	\$ 58
LAN Wire System (Cable)	UT	FF	158	5	4/14/00	N/A	Rosi	12822-0	\$ 32
LAN Wire System (Cable)	UT	FF	158	5	4/14/00	N/A	Rosi	12822-0	\$ 32
Poweredge 2450	UT	CC	158	3	4/26/00	4ID92	Dell	365655679	\$ 9,8
8) Harris phones	UT	CC	158	3	4/30/00	N/A	Ikon	invs0013433	\$ 2,5
Alarm System for Addition	UT	DD	158	5	5/10/00	N/A	peak Alarm	so2229	\$ 10,6
Cisco Ptx Firewall 520	UT	CC	158	3	6/7/00	S18034938	IFSC	32-29228-11	\$ 18,18
Cisco Ptx 520 Chassis and Software Prep	UT	CC	158	3	6/7/00	S18035525	IFSC	32-292270-11	\$ 4,11
Cisco Catalyst 3500 Switch	UT	CC	158	3	6/7/00	000142CD79CO	Microtel	32-29231-11	\$ 2,32
Cisco Catalyst 3500 Switch	UT	CC	158	3	6/7/00	0001964D4ACO	Microtel	32-29231-11	\$ 2,32
Cisco 2620 Router	UT	CC	158	3	6/8/00	JAB042189M5	Microtel	32-30181-11	\$ 3,90

Description	State	Class	PP Class	Life	Acq Date	Mfg S/N	Vendor	Invoice #	Cost
Cisco 3600 Router	UT	CC	158	3	6/9/00	S19661771/JAB034286DB	Microtel	32-31085-11	\$ 1
Cisco Pbx Four-Port 10/100	UT	CC	158	3	6/9/00		IFSC	32-29228-21	\$ 1
Cisco 1750 Router	UT	CC	158	3	6/12/00	SJAB042250L6/PMAGGOARA	Microtel	32-32765-21	\$ 1.7
Cisco 1750 Router	UT	CC	158	3	6/12/00	SJAB042250L6	Microtel	32-32765-21	\$ 1.7
Cisco 3524 Switch	UT	CC	158	3	6/13/00	0024B40DD80	Microtel	32-33908-11	\$ 2.5
Rockmount Merit Server with 150 meg storage	UT	CC	158	3	6/15/00	639005	Merit	282057-1	\$ 4.1
Cisco 2900XL 24 Port Switch	UT	CC	158	3	8/15/00		CDW -Paymentech	bd061500	\$ 1.2
Cisco 2824 Catalyst Switch	UT	CC	158	3	6/20/00		IFSC	32-32760-12	\$ 1.2
Cisco 2924 Catalyst Switch	UT	CC	158	3	6/20/00	SFAB0424U1C6	IFSC	32-32765-12	\$ 1.2
Harris HDLU2 Card	UT	CC	158	3	6/28/00		Ikon	lnvs0015181	\$ 2.5
Polycom speaker phone w/satellite mics	UT	CC	158	3	7/12/00		Hello Direct	R5329200	\$ 1.5
Dell Power Vault 700N, 300 GB of storage	UT	CC	158	3	7/14/00		Dell-Paymentech	BD071400	\$ 21.7
Dell Power Vault 720N, Network Access Server	UT	CC	158	3	7/14/00		Dell-Paymentech	BD071400	\$ 32.7
COK-4201-01 Orbit CD Duplicator	UT	CC	158	3	7/21/00	CD 06578	Champion	25103	\$ 2.1
3.1 KVA 120/120/Rack w/batteries (UPS)	UT	CC	158	3	7/25/00		PSP	33474	\$ 3.2
100 UPS Power Barles 3, 300 VA	UT	CC	158	3	7/31/00		PSP	33589	\$ 9.1
Rackmount UPS-Line Card (L5-30P)	UT	CC	158	3	8/14/00	HS291-003	PSP	33817-	\$ 2.8
200 Sony 4mm Cartridges-CDW	UT	CC	158	3	8/15/00		CDW Computer Centers -Paymentech	BD081500	\$ 3.7
40 Clear com 24 button phones	UT	CC	158	3	8/21/00		Ikon	16989	\$ 7.8
3 HPU12 Circuit Board for Harris Phone Switch	UT	CC	158	3	8/21/00		Ikon	16992	\$ 7.8
Microsoft SQL Server Internal Connector	UT	CC	158	3	8/24/00		IFSC	32-86038-11	\$ 5.3
Dell Power APP Web 100	UT	CC	158	3	8/28/00	US044HYK4811008E5610/YC4LP	Consonus	13324	\$ 3.5
Dell Power APP Web 100	UT	CC	158	3	8/29/00	US044HYR4811008G7446/YC60L	Consonus	13324	\$ 3.5
15-Harris Clear Com 12 Button Phones	UT	CC	158	3	8/31/00		Ikon	17402	\$ 6.3
PW9125 UPS	UT	CC	158	3	8/31/00	PW9125-2000	PSP	34088	\$ 2.5
Cisco 24 Port Switch	UT	CC	158	3	8/6/00	00027E6583000	IFSC	32-84972-11 /	\$ 2.3
Installation of Alarm System	UT	CC	158	3	9/14/00		PEAK ALA	s02228-831 /	\$ 3.9
Telephone Headset Adapters	UT	CC	158	3	8/15/00		Graybar - PAYMENTECH	bd091500br /	\$ 1.9
(10) Powerware 300VA UPS - PW3115-300	UT	CC	158	3	9/22/00		PSP	34543	\$ 9
(15) Harris Clear 12 Button Phones	UT	CC	158	3	8/25/00		Ikon	lnvs0018185 /	\$ 6.3
Casio - E115 Pocket PC	UT	CC	158	3	9/30/00		LINTON J	exp09300 /	\$ 6
Installation of Alarm System	UT	CC	158	3	10/1/00		Peak Alarm	s02228-4535	\$ 2.6
Cisco 2924 XL Switch	UT	CC	158	3	10/1/00	FAA0327F0PZ	CDW - Paymentech	bd093000	\$ 1.9
Cisco 2924 XL Switch	UT	CC	158	3	10/1/00	FAA0327F0PZ	CDW - Paymentech	bd093000	\$ 1.9
Cisco 2924 XL Switch	UT	CC	158	3	10/1/00	FAA0327F0PZ	CDW - Paymentech	bd093000	\$ 1.9
Cisco 2924 XL Switch	UT	CC	158	3	10/1/00	FAA0327F0PZ	CDW - Paymentech	bd093000	\$ 1.9
Dell Powerapp Webb 100	UT	CC	158	3	10/2/00	US044HYR4811008N2117	Consonus	13463	\$ 3.6
Dell Powerapp Webb 100	UT	CC	158	3	10/2/00	US044HYR4811008M1236	Consonus	13463	\$ 3.6
Dell Powerapp Webb 100	UT	CC	158	3	10/2/00	US044HYR4811008MN2149	Consonus	13463	\$ 3.6
Cisco 2912 12 Port Switch	UT	CC	158	3	10/3/00	SFAB0437M34R	IFSC	32-98856-11r	\$ 1.2
10 Rack mountable power dist unit	UT	CC	158	3	10/5/00	55/Connected	IFSC	32-10125-31	\$ 4.1
(14) Network Surgearrest Rackmountaccs	UT	CC	158	3	10/5/00	See Invoice	IFSC	32-13424-21	\$ 2.5
(14) Network Surgearrest Rackmountaccs	UT	CC	158	3	10/5/00	See Invoice	IFSC	32-194184-11	\$ (1.47)
(14) Network Surgearrest Rackmountaccs	UT	CC	158	3	10/5/00	See Invoice	IFSC	32-19647-11	\$ (7.3)
(14) Network Surgearrest Rackmountaccs	UT	CC	158	3	10/5/00	See Invoice	IFSC	32-19647-11	\$ (1.89)
(10) Harris Clear Com 12 Button Phones	UT	CC	158	3	10/11/00		Ikon	lnvs0018739	\$ 3.83
(10) Power 3115 Work Station UPS	UT	CC	158	3	11/1/00		PSP	35010	\$ 1.16
Upgrade from 100 to 250 users-phone system	UT	CC	158	5	11/21/00		Ikon	002064	\$ 1.28
T-1 Card for Harris Switch & Tech Labor	UT	CC	158	5	11/21/00		Ikon	0020461	\$ 4.20
24 Port Switch-Cisco 2924XL	UT	CC	158	3	12/1/00	FAB0444T102	IFSC	32-40397-21	\$ 1.78
24 Port Switch-Cisco 2924XL	UT	CC	158	3	12/1/00	FAB0444NDJU	IFSC	32-40397-21	\$ 1.78
Clearcom 12 Button Phone	UT	CC	158	5	12/21/00		Ikon	21872	\$ 7.61
(2) Harris HDLU2 Card	UT	CC	158	5	12/21/00		Ikon	21872	\$ 4.58



### **3. Reproduction of determinative constitutional provisions, statutes, or rules.**

25-6-10. Claim for relief -- Time limits.

A claim for relief or cause of action regarding a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Subsection 25-6-5 (1)(a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Subsection 25-6-5 (1)(b) or 25-6-6 (1), within four years after the transfer was made or the obligation was incurred; or

(3) under Subsection 25-6-6 (2), within one year after the transfer was made or the obligation was incurred.

25-6-5. Fraudulent transfer -- Claim arising before or after transfer.

**(1) A transfer made or obligation incurred by a debtor is fraudulent 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) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:**

**(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or**

**(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.**

(2) To determine "actual intent" under Subsection (1) (a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably

equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

25-6-6. Fraudulent transfer -- Claim arising before transfer.

**(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:**

**(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and**

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

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

#### **25-6-4. Value -- Transfer.**

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

**(2) Under Subsection 25-6-5 (1) (b) and Section 25-6-6, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.**

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.



**25-6-9. Good faith transfer.**

**(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.**

**(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:**

**(a) the first transferee of the asset or the person for whose benefit the transfer was made; or**

**(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.**

**(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.**

**(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:**

**(a) a lien on or a right to retain any interest in the asset transferred;**

**(b) enforcement of any obligation incurred; or**

**(c) a reduction in the amount of the liability on the judgment.**

**(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:**

**(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or**

**(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions.**

**(6) A transfer is not voidable under Subsection 25-6-6(2):**

**(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;**

**(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or**

**(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.**

CERTIFICATE OF MAILING

I hereby certify that I served a true and correct copy of the foregoing **INITIAL BRIEF OF APPELLANT** upon the following by the means indicated to the addresses indicated:

Jeffrey M. Jones

Erik A. Olsen

DURHAM, JONES & PINEGAR

111 East Broadway, Suite 900

Salt Lake City, Utah 84111

Sent via:

Mail

Facsimile

Hand-delivery

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Hollis S. Hunt

392 East 12300 South, Suite A

Draper, Utah 84020

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Denver Snuffer

NELSON SNUFFER DAHLE &  
POULSEN

10885 South State Street

Sandy, UT 84070

Sent via:

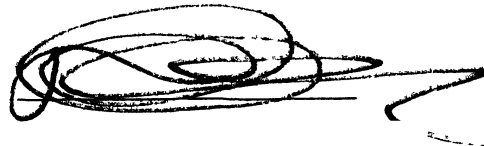
Mail

Facsimile

Hand-delivery

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Dated: 5/21/07

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. Jones", written over a horizontal line.