

17722

Vol. 790 Page 14280

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR KLAMATH COUNTY

GARTER ENTERPRISES, INC.,
an Oregon corporation,

Plaintiff,

Case No. 87-313-CV

vs.

W.C. CASTLE,

Defendant.

AMENDED JUDGMENT

The above-captioned action came on for trial on October 25, 1988, before the Honorable Donald A.W. Piper, sitting without a jury, pursuant to stipulation of the parties. Plaintiff appeared by and through its officers and by and through Melvin D. Ferguson and H.F. Smith, its attorneys. Defendant appeared in person and by and through Mary Wagner, of his attorneys.

The parties stipulated that the case be bifurcated for trial and that plaintiff's first and second claims for relief and defendant's defenses and counterclaims to plaintiff's first and second claims for relief were to be submitted to the Court for determination at that time.

After opening statements, plaintiff offered testimony and evidence and rested; defendant offered testimony and evidence and, on October 26, 1988, rested; plaintiff offered rebuttal and defendant surrebuttal and, on the said 26th day of October, 1988, both parties rested. Counsel presented arguments and the matter was taken under advisement by the Court.

At the close of defendant's case, defendant moved for

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Shepard & Wagner
127 East 11th
Eugene, OR 97401
(503) 485-3822

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1 leave to amend his counterclaims to include the officers of
2 plaintiff-corporation as additional parties and to withdraw his
3 first counterclaim for fraudulent misrepresentation.

4 Under date of December 16, 1988, the Court made and filed
5 its Findings of Fact and Conclusions of Law, copies of which
6 were served on counsel for each of the parties.

7 Under date of December 27, 1988, defendant filed herein
8 objections to the Court's findings of Fact and Conclusions of
9 Law. The Court did not hear or determine defendant's objections
10 and more than 30 days having passed since the filing thereof,
11 the same are deemed to be denied.

12 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS
13 FOLLOWS:

14 1.

15 Plaintiff shall have, and hereby is granted, judgment
16 against defendant for the sum of \$21,747.34, with interest
17 thereon at the rate of 9% per annum from June 1, 1987, until
18 paid.

19 2.

20 Plaintiff shall have, and hereby is granted, judgment
21 against defendant for the sum of \$5,200.00, with interest
22 thereon at the rate of 9% per annum from June 1, 1987, until
23 paid.

24 3.

25 Defendant is ordered and directed to execute and deliver
26 to the Court Administrator his promissory note in the amount of
27 \$127,386.32 in the following form:

"127,386.32 Klamath Falls, Oregon October 1, 1986

"I (or if more than one maker) we, jointly and severally, promise to pay to the order of GARTER ENTERPRISES, INC., an Oregon corporation, at Klamath Falls, Oregon, ONE HUNDRED TWENTY-SEVEN THOUSAND THREE HUNDRED EIGHTY-SIX and 32/100 DOLLARS, with interest thereon at the rate of 9 percent per annum from date hereof until paid, payable in semi-annual installments of not less than \$11,339.90 in any one payment; interest shall be paid semi-annually and is included in the minimum payments above required; the first payment to be made on the 1st day of April, 1987, and a like payment on the 1st day of each Oct. & Apr. thereafter, until the whole sum, principal and interest has been paid; if any of said installments is not so paid, all principal and interest to be come immediately due and collectible at the option of the holder of this note. If this note is placed in the hands of an attorney for collection, I/we promise and agree to pay holder's reasonable attorney's fees and collection costs, even though no suit or action is filed hereon; however, if a suit or an action is filed, the amount of such reasonable attorney's fees shall be fixed by the court or courts in which the suit or action, including any appeal therein, is tried, heard or decided.

"THIS NOTE IS SECURED BY A
TRUST DEED OF EVEN DATE.

W.C. Castle"

4.

Defendant is ordered and directed to execute, in a form which will permit the same to be recorded in mortgage records of Klamath County, Oregon, a trust deed in the sum set forth and covering the real property described in Exhibit A attached hereto and by this reference made a part of this judgment.

5.

In the event defendant shall fail to execute and deliver said note and trust deed as set forth above, this judgment shall stand and operate instead of said documents.

6.

Defendant's motion to amend his answer and counterclaims to add Arden H. Million, Ferne E. Million and Quin D. Million as cross-defendants is denied.

7.

Defendant's motion to withdraw his first counterclaim for fraudulent misrepresentation is granted.

8.

Plaintiff is granted judgment against defendant on defendant's third counterclaim for rescission.

9.

Plaintiff's second claim for relief is offset by defendant's second counterclaim for trespass.

10.

That certain stipulated judgment order entered in Case No. 85-604-CV in the Circuit Court of the State of Oregon for Klamath County, under date of January 12, 1987, is incorporated in the foregoing judgment and the order setting aside the partial summary judgment in Case No. 85-604-CV is confirmed.

11.

Upon entry of this judgment the Court Administrator is directed to deliver to defendant's counsel Mary Wagner the warranty deed heretofore tendered in to court by plaintiff.

/ / /

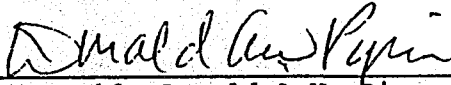
/ / /

/ / /

/ / /

Plaintiff is granted judgment against defendant for its costs and disbursements herein taxed at \$_____.

DATED this 25th day of April, 1989, nunc pro tunc April 4, 1989.


Honorable Donald A.W. Piper
Circuit Court Judge

TRUST DEED

THIS TRUST DEED, made this 1st day of October, 1986, between
W. C. CASTLE

as Grantor, ASPEN TITLE & ESCROW, INC.,
GARTER ENTERPRISES, INC., an Oregon corporation,
 as Beneficiary.

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property
 in Klamath County, Oregon, described on Exhibit A attached hereto,

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise
 now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connec-
 tion with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the
 sum of ONE HUNDRED TWENTY-SEVEN THOUSAND THREE HUNDRED EIGHTY-SIX AND 32/100
Dollars, with interest thereon according to the terms of a promissory
 note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereon, if
 not sooner paid, to be due and payable October 1, 1994.

The date of maturity of the debt secured by this instrument in the date, stated above, on which the final installment of said note
 becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be
 sold, conveyed, assigned or alienated by the grantor without first having obtained the written consent or approval of the beneficiary,
 then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or
 herein, shall become immediately due and payable.

The above described real property is not currently used for agricultural, timber or grazing purposes.

To protect the security of this trust deed, grantor agrees:
 1. To protect, preserve and maintain said property in good condition
 and repair; not to remove or demolish any building or improvement thereon;
 not to commit or permit any waste of said property.

2. To complete or restore promptly and in good and workmanlike
 manner any building or improvement which may be constructed, damaged or
 destroyed thereon, and pay when due all costs incurred therefor.

3. To comply with all laws, ordinances, regulations, covenants, condi-
 tions and restrictions affecting said property; if the beneficiary so requests, to
 join in executing such financing statements pursuant to the Uniform Commercial
 Code as the beneficiary may require and to pay for filing same in the
 proper public office or offices, as well as the cost of all lien searches made
 by filing officers or searching agencies as may be deemed desirable by the
 beneficiary.

4. To provide and continuously maintain insurance on the buildings
 now or hereafter erected on the premises against loss or damage by fire
 and such other hazards as the beneficiary may from time to time require, in
 an amount not less than \$ 100,000, written in
 an amount acceptable to the beneficiary, with loss payable to the latter; all
 companies acceptable to the beneficiary as soon as insured;
 policies of insurance shall be delivered to the beneficiary and to
 if the grantor shall fail for any reason to procure any such insurance and to
 deliver said policies to the beneficiary at least fifteen days prior to the expira-
 tion of any policy of insurance now or hereafter in force, the amount
 the beneficiary may procure the same at grantor's expense. The amount
 collected under any fire or other insurance policy may be applied by benefi-
 ciary upon any indebtedness secured hereby and in such order as beneficiary
 may determine, or at option of beneficiary the entire amount so collected, or
 may part thereof, may be released to grantor. Such application or release shall
 not cure or waive any default or notice of default hereunder or invalidate any
 act done pursuant to such notice.

5. To keep said premises free from construction liens and to pay all
 taxes, assessments and other charges that may be levied or assessed upon or
 against said property before any part of such taxes, assessments and other
 charges becomes past due or delinquent and promptly deliver receipts therefor
 to beneficiary; should the grantor fail to make payment of any taxes, assess-
 ments, insurance premiums, fees or other charges payable by grantor, either
 by direct payment or by providing beneficiary with funds with which to
 make such payment, beneficiary may, at its option, make payment thereof,
 and the amount so paid, with interest at the rate set forth in the note secured
 hereby, together with the obligations secured in paragraphs 6 and 7 of this
 trust deed, shall be added to and become a part of the debt secured by this
 trust deed, without a deed of any rights arising from breach of any of the
 covenants hereon and for such payments, with interest as aforesaid, the prop-
 erty herebefore described, as well as the grantor, shall be bound to the
 same extent that they are bound for the payment of the obligation herein
 described, and all such payments shall be immediately due and payable with-
 out notice, and the unpaid amount thereof shall, at the option of the beneficiary,
 render all sums secured by this trust deed immediately due and payable and
 constitute a breach of this trust deed.

6. To pay all costs, fees and expenses of this trust including the cost
 of title search as well as the other costs and expenses of the trustee incurred
 in connection with or in enforcing this obligation and trustee's and attorney's
 fees actually incurred.

7. To appear in and defend any action or proceeding purporting to
 affect the security, rights or powers of beneficiary or trustee; and in any suit,
 action or proceeding in which the beneficiary or trustee may appear, including
 action or proceeding for the foreclosure of this deed, to pay all costs and expenses, in-
 cluding evidence of title and the beneficiary's or trustee's attorney's fees; the
 amount of attorney's fees mentioned in this paragraph 7 in all cases shall be
 paid by the trust and in the event of an appeal from any judgment or
 order of the trial court and in the event of an appeal from any judgment or
 order of the trial court, grantor further agrees to pay such sum as the ap-
 peals court shall adjudge reasonable as the beneficiary's or trustee's attor-
 ney's fees on such appeal.

8. It is mutually agreed that:
 a. In the event that any portion or all of said property shall be taken
 under the right of eminent domain or condemnation, beneficiary shall have the
 right, if it so elects, to require that all or any portion of the amount required
 as compensation for such taking, which are in excess of the amount required
 to pay all reasonable costs, expenses and attorney's fees actually paid or
 incurred by grantor in such proceedings, shall be paid to beneficiary and
 applied by it first upon any reasonable costs and expenses and attorney's fees,
 both in the trial and upon any appeals, necessarily paid or incurred by benefi-
 ciary in such proceedings, and the balance applied upon the indebtedness
 secured hereby; and grantor agrees, at its own expense, to take such actions
 and execute such instruments as shall be necessary in obtaining such com-
 pensation, promptly upon beneficiary's request.

9. At any time and from time to time upon written request of benefi-
 ciary, payment of its fees and expenses, for cancellation, without affecting
 the liability of any person for the payment of the indebtedness, trustee may

(a) consent to the making of any map or plat of said property; (b) join in
 granting any easement or creating any restriction thereon; (c) join in any
 subdivision or other agreement affecting this deed or any part of the property. The
 deed; (d) reconvey, without warranty, all or any part of the property. The
 grantor in any reconveyance may be described as the "person or persons
 legally entitled thereto" and the recitals therein of any matters or facts shall
 be conclusive proof of the truthfulness thereof. Trustee's fees for any of the
 services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may, at any
 time without notice, either in person, by agent or by a receiver to be ap-
 pointed by a court, and without regard to the adequacy of any security, not
 the indebtedness hereby secured, enter upon and take possession of said prop-
 erty or any part thereof, in its own name and otherwise collect the rents,
 issues and profits, including those past due and unpaid, and apply the same,
 less costs and expenses of operation and collection, including reasonable attor-
 ney's fees upon any indebtedness secured hereby, and in such order as benefi-
 ciary may determine.

11. The entering upon and taking possession of said property, the
 collection of such rents, issues and profits, or the payment of the debt and other
 insurance policies or compensation or awards for any taking or damage of the
 property, and the application or release thereof as aforesaid, shall not cure or
 waive any default or notice of default hereunder or invalidate any act done
 pursuant to such notice.
 12. Upon default by grantor in payment of any indebtedness secured
 hereby or in his performance of any agreement hereunder, the beneficiary may
 declare all sums secured hereby immediately due and payable. In such a
 case the beneficiary at his election may proceed to foreclose this trust deed by
 in equity as a mortgage or direct the trustee to foreclose this trust deed by
 advertisement and sale. In the latter event the beneficiary at the trustee's
 election and cause to be recorded his written notice of default and his election
 to sell the said described real property to satisfy the obligation secured
 hereby whereupon the trustee shall file the time and place of sale, give notice
 thereof as then required by law and proceed to foreclose this trust deed in
 the manner provided in ORS 86.715 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and
 sale, and at any time prior to 5 days before the date the trustee conducts the
 sale, the grantor or any other person so privileged by ORS 86.753, may cure
 the default or defaults. If the default consists of a failure to pay, when due,
 the sums secured by the trust deed, the default may be cured by paying the
 same amount due at the time of the cure other than such portion as would
 then be due had no default occurred. Any other default that is capable of
 being cured may be cured by tendering the performance required under the
 obligation or trust deed. In any case, in addition to curing the default or
 defaults, the person effecting the cure shall pay to the beneficiary all costs
 and expenses actually incurred in enforcing the obligation of the trust deed
 together with trustee's and attorney's fees not exceeding the amounts provided
 by law.

14. Otherwise, the sale shall be held on the date and at the time and
 place designated in the notice of sale or the time to which said sale may
 be postponed as provided by law. The trustee may sell said property either
 in one parcel or in separate parcels and shall sell the parcel or parcels at
 the highest bidder for cash, payable at the time of sale. Trustee
 shall deliver to the purchaser its deed in form as required by law conveying
 the property so sold, but without any covenant or warranty, express or im-
 plied, as to recitals in the deed of any matters of fact shall be conclusive proof
 of the truthfulness thereof. Any person, excluding the trustee, but including
 the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee
 shall apply the proceeds of sale to payment of (1) the expenses of sale, in-
 cluding the compensation of the trustee and a reasonable charge by trustee,
 attorney, (2) the obligation secured by the trust deed, (3) to all persons
 having recorded liens subsequent to the interest of the trustee in the trust
 having then interests may appear in the order of their priority and (4) the
 surplus, if any, to the grantor or to his successor in interest entitled to such
 surplus.

16. Beneficiary may from time to time appoint a successor or succes-
 sors to any trustee named herein or to any successor trustee appointed here-
 under. Upon such appointment, and without conveyance to the successor
 trustee, the latter shall be vested with all title, powers and duties conferred
 upon any trustee herein named or appointed hereunder. Such such appointment
 and substitution shall be made by written instrument executed by beneficiary,
 which, when recorded in the mortgage records of the county or counties in
 which the property is situated, shall be conclusive proof of proper appointment
 of the successor trustee.

17. Trustee accepts this trust when this deed, duly executed and
 acknowledged is made a public record as provided by law. Trustee is not
 obligated to notify any party hereto of pending sale under any other deed of
 trust or of any action or proceeding in which grantor, beneficiary or trustee
 shall be a party unless such action or proceeding is brought by trustee.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company
 or savings and loan association authorized to do business under the laws of Oregon, a title insurance company authorized to insure title to real
 property of this state, its subdivisions, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 895.535 to 895.535.

The grantor covenants and agrees to and with the beneficiary and those coming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto

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and that he will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are:
(a) for the personal, family or household use of the beneficiary;
(b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgees, of the contract secured hereby, whether or not named as a beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand the day and year first above written.

* IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; If warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose use Standard-Form No. 1319, or equivalent. If compliance with the Act is not required, disregard this notice.

[If the signer of the above is a corporation, use the form of acknowledgment opposite.]

STATE OF OREGON,

County of KLAMATH

This instrument was acknowledged before me on
19 by W. C.
CASTLE.

Notary Public for Oregon

(SEAL)

My commission expires:

STATE OF OREGON,

County of

This instrument was acknowledged before me on
19 by
as
of

Notary Public for Oregon

My commission expires:

(SEAL)

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO:

Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance and documents to

DATED:

19

Beneficiary

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

TRUST DEED

(FORM 11a, 601)

LITKENS WHEEL LAW FIRM, CO., PORTLAND, ORE.

Grantor

SPACE RESERVED
FOR
RECORDER'S USE

Beneficiary

AFTER RECORDING RETURN TO

STATE OF OREGON,

County of

I certify that the within instrument
was received for record on the day
of 19
at clock M., and recorded
in book/roll/volume No. on
page or as fee/file/instru-
ment/microfilm/reception No.
Record of Mortgages of said County.

Witness my hand and seal of
County affixed.

NAME

TITLE

By Deputy

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That portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20, Township 38 S., R. 9 E.W.M., described as follows: Beginning at a point 1280 feet East and 1080 feet North of the section corner common to Sections 19, 20, 29, and 30 Township 38 S., R. 9 E.W.M., and running thence North 261.7 feet; thence West 271 feet; thence South 261.7 feet; thence East 271 feet to the place of beginning, being all of vacated Blocks 3 and 4, HIGHWAY ADDITION to the City of Klamath Falls, Oregon, and portions of street adjacent thereto.

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EXHIBIT "A" TO TRUST DEED

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STATE OF OREGON)
County of Klamath)

I, LYN G. HARDY Clerk of the Circuit Court of the County of Klamath and the State of Oregon do hereby certify that the foregoing copy has been by me compared with the original, and that it is a transcript therefrom, and of the whole of such original as the same appears on file or of record in my office and in my care and custody.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 18 day of July A.D. 1990
LYN G. HARDY, Clerk of Court

By [Signature]

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 18 day of July A.D., 1990 at 1:57 o'clock P M., and duly recorded in Vol. M90 of Co Lien Docket on Page 14288.

FEE 43.00

Evelyn Biehn

By Bernetha A. Hutsch County Clerk

Return
Mel Ferguson
325 Main

CIRCUIT COURT OF "A" JUDICIAL DISTRICT