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FILED

ORANGE COUNTY SUPERIOR COURT

AUG 2 4 1994

ALAN SLATER Executive Officer/Clerk

B Burns
BY B. BURNS

1 Gregory S. Page (Bar No. 123207)
 2 DOSS, CAVETT & PAGE
 3 4695 MacArthur Court, Suite 590
 4 Newport Beach, CA 92660
 5 (714) 752-5370

6 Attorneys for Plaintiff/Cross-Defendant,
 7 TRANSAMERICA TITLE INSURANCE COMPANY

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF ORANGE

11 TRANSAMERICA TITLE INSURANCE
 12 COMPANY, a California
 13 corporation,

14 Plaintiff,

15 vs.

16 CHARLES EDWARD MONSCEIN,
 17 an individual; and ~~DOES 1-50,~~
 18 inclusive,

19 Defendants.

20 CHARLES EDWARD MONSCEIN, an
 21 individual,

22 Cross-Complainant,

23 vs.

24 TMC ESCROW COMPANY, a
 25 California corporation; MILDRED
 26 G. MCDANIEL, an individual;
 27 TRANSAMERICA TITLE INSURANCE
 28 COMPANY, a California
 corporation; and ~~DOES 1 to 100,~~
 inclusive,

Cross-Defendants.

) CASE NO. 681754
)
) JUDGE JAMES J. ALFANO
) DEPARTMENT 82
)
) [PROPOSED] JUDGMENT ON JURY
) VERDICTS AND MOTIONS FOR
) NONSUIT
)
) TRIAL DATE: June 6, 1994
) TIME: 1:30 p.m.
) DEPT: 82

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1 TMC ESCROW CORPORATION, a)
2 California corporation,)
3 Cross-Complainant,)
4 vs.)
5 WILLAMETTE VALLEY TITLE)
6 COMPANY, an Oregon corporation)
7 and ROES 1 through 50,)
8 inclusive,)
9 Cross-Defendants.)
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1 This action came on regularly for jury trial on June 6,
2 1994, in Department 82 of the above-entitled court, the Honorable
3 James J. Alfano, Judge presiding. Plaintiff/cross-defendant
4 TRANSAMERICA TITLE INSURANCE COMPANY ("TRANSAMERICA") appeared by
5 and through its attorney Gregory S. Page of Doss, Cavett & Page.
6 Defendant/cross-complainant CHARLES EDWARD MONSCEIN ("MONSCEIN")
7 appeared by and through his attorney Richard D. Salyer of the Law
8 Offices of Richard D. Salyer.

9 Cross-defendant/cross-complainant TMC ESCROW COMPANY ("TMC
10 ESCROW") appeared by and through its attorney John D. Wilson of
11 Davis and Davis. Cross-defendant MILDRED MCDANIEL ("MCDANIEL")
12 appeared by and through her attorney Bruce Schwartz of the Law
13 Offices Schwartz, Wisot & Rodov. Cross-defendant WILLAMETTE VALLEY
14 TITLE COMPANY ("WILLAMETTE") appeared by and through its attorney
15 Clifford Frieden of Rutan & Tucker.

16 A jury of twelve (12) persons was regularly impaneled and
17 sworn. Witnesses were sworn and testified, and evidence was
18 presented and admitted.

19 After presentation of plaintiff TRANSAMERICA'S case and the
20 defense and case of defendant/cross-complainant MONSCEIN, cross-
21 defendants TMC ESCROW and MCDANIEL brought a motion for nonsuit
22 pursuant to Code of Civil Procedure Section 581c(a) with regard to
23 the First Amended Cross-Complaint of MONSCEIN. Cross-defendant
24 TRANSAMERICA joined in said motion, which was granted by the Court
25 on June 27, 1994. On June 27, 1994, cross-defendant TRANSAMERICA
26 also brought its own motion for nonsuit with regard to the First
27 Amended Cross-Complaint of MONSCEIN, on separate legal grounds
28 pursuant to Code of Civil Procedure Section 581c(a), which was

1 granted by the Court.

2
3 Good cause for an order for judgment of nonsuit having been
4 shown in that the evidence presented by Cross-Complainant CHARLES
5 EDWARD MONSCHEIN failed to establish sufficient grounds to support
6 the causes of action reflected in his First Amended Cross-
7 Complaint, and having failed to establish a prima facie case for
8 breach of fiduciary duty, negligence, or breach of contract,

9 IT IS ORDERED, ADJUDGED, AND DECREED THAT cross-complainant
10 CHARLES EDWARD MONSCHEIN shall take nothing by his first amended
11 cross-complaint, and that judgment be entered in favor of cross-
12 defendants TMC ESCROW COMPANY, MILDRED MCDANIEL, AND TRANSAMERICA
13 TITLE INSURANCE COMPANY, and against cross-complainant CHARLES
14 EDWARD MONSCHEIN, pursuant to Code of Civil Procedure Section
15 581c(a).

16 After hearing the balance of the evidence and arguments of
17 counsel, the jury was instructed by the Court and the cause was
18 submitted to the jury with directions to return a verdict on
19 special issues. The jury deliberated and thereafter returned into
20 Court with its verdicts and special findings as follows:

21
22 SPECIAL VERDICT FORM

23 We, the jury in the above entitled case, find the
24 following special verdict on the issues submitted to us:

25 ON THE PLAINTIFF'S ACTION FOR CONVERSION:

26 Issue No. 1: Did Plaintiff TRANSAMERICA TITLE INSURANCE
27 COMPANY or Rendall Whittington own, possess or have the right to
28 possess the excess escrow proceeds at the time that the funds were
converted by Defendant CHARLES EDWARD MONSCHEIN?

1 Answer "yes" or "no"

2 Answer: yes

3 If you have answered Issue No. 1 "yes", then answer the
4 next issue. Otherwise, proceed to the Plaintiff's next claim for
5 Breach of Contract.

6 Issue No. 2: Did Defendant CHARLES EDWARD MONSCEIN
7 interfere with the Plaintiff's use of or ownership of the excess
8 escrow proceeds by converting said property to his own use?

9 Answer "yes" or "no"

10 Answer: yes

11 If you have answered Issue No. 2 "yes", then answer the
12 next issue. Otherwise, proceed to the Plaintiff's next claim for
13 Breach of Contract.

14 Issue No. 3: Was the interference of the Defendant with
15 the property substantial?

16 Answer "yes" or "no"

17 Answer: yes

18 If you have answered Issue No. 3 "yes", then answer the
19 next issue. Otherwise, proceed to the Plaintiff's next claim for
20 Breach of Contract.

21 Issue No. 4: Was the interference of the Defendant
22 intentional?

23 Answer "yes" or "no"

24 Answer: yes

25 If you have answered Issue No. 4 "yes", then answer the
26 next issue. Otherwise, proceed to the Plaintiff's next claim for
27 Breach of Contract.

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1 Issue No. 5: Did the conduct of the Defendant cause
2 damage to the Plaintiff?

3 Answer "yes" or "no"

4 Answer: yes

5 If you have answered Issue No. 5 "yes", then answer the
6 next issue. Otherwise, proceed to the Plaintiff's next claim for
7 Breach of Contract.

8 Issue No. 6: What, if any, is the total amount of
9 damages suffered by the Plaintiff?

10 Answer: \$ 30,205.52 (interest only- 7 per cent
11 compounded yearly starting January 1, 1991, to present- 3 1/2
12 years).

13 Issue No. 7: Did the Defendant act with malice,
14 oppression, or an intent to injure the Plaintiff at the time that
15 he converted the funds?

16 Answer "yes" or "no"

17 Answer: yes

18 ON THE PLAINTIFF'S ACTION FOR BREACH OF CONTRACT:

19 Issue No. 1: Was there an agreement between Rendell
20 Whittington and the Defendant?

21 Answer "yes" or "no"

22 Answer: yes

23 If you have answered Issue No. 1 "yes", then answer the
24 next issue. Otherwise, proceed to the Plaintiff's next claim for
25 Breach of the Covenant of Good Faith and Fair Dealing.

26 Issue No. 2: Did Rendell Whittington perform his
27 obligations under that agreement?

28 ////

1 Answer "yes" or "no"

2 Answer: yes

3 If you have answered Issue No. 2 "yes", then answer the
4 next issue. Otherwise, proceed to the Plaintiff's next claim for
5 Breach of the Covenant of Good Faith and Fair Dealing.

6 Issue No. 3: Did the Defendant breach the agreement?
7 Answer "yes" or "no"

8 Answer: yes

9 If you have answered Issue No. 3 "yes", then answer the
10 next issue. Otherwise, proceed to the Plaintiff's next claim for
11 Breach of the Covenant of Good Faith and Fair Dealing.

12 Issue No. 4: Did the breach of the agreement by the
13 Defendant cause damage to the Plaintiff?

14 Answer "yes" or "no"

15 Answer: yes

16 If you have answered Issue No. 4 "yes", then answer the
17 next issue. Otherwise, proceed to the Plaintiff's next claim for
18 Breach of the Covenant of Good Faith and Fair Dealing.

19 Issue No. 5: What, if any, is the total amount of
20 damages suffered by the Plaintiff?

21 Answer: \$ 112,740.84 (Bonds Due).

22 ON THE PLAINTIFF'S CLAIM FOR BREACH OF THE COVENANT OF
23 GOOD FAITH AND FAIR DEALING:

24 Issue No. 1: Was there an agreement between Rendell
25 Whittington and the Defendant?

26 Answer "yes" or "no"

27 Answer: yes

28 ////

1 If you have answered Issue No. 1 "yes", then answer the
2 next issue. Otherwise, proceed to the Plaintiff's next claim for
3 Breach of Warranty.

4 Issue No. 2: Did the Defendant breach the implied
5 promise of good faith and fair dealing in the agreement?
6

7 Answer "yes" or "no"

8 Answer: yes

9 If you have answered Issue No. 2 "yes", then answer the
10 next issue. Otherwise, proceed to the Plaintiff's next claim for
11 Breach of Warranty.

12 Issue No. 3: Did the breach of the agreement by the
13 Defendant cause damage to Rendell Whittington or the Plaintiff?

14 Answer "yes" or "no"

15 Answer: yes

16 If you have answered Issue No. 3 "yes", then answer the
17 next issue. Otherwise, proceed to the Plaintiff's next claim for
18 Breach of Warranty.

19 Issue No. 4: What, if any, is the total amount of
20 damages suffered by the Plaintiff?

21 Answer: \$ 0

22 ON THE PLAINTIFF'S CLAIM FOR BREACH OF WARRANTY:

23 Issue No. 1: Did the Defendant warrant the condition of
24 title to Rendell Whittington at the close of escrow?

25 Answer "yes" or "no"

26 Answer: yes

27 If you have answered Issue No. 1 "yes", then answer the
28 next issue. Otherwise, proceed to the Plaintiff's next claim for
Unjust Enrichment.

1 Issue No. 2: Did the Defendant breach the warranty to
2 Rendall Whittington?

3 Answer "yes" or "no"

4 Answer: yes

5 If you have answered Issue No. 2 "yes", then answer the
6 next issue. Otherwise, proceed to the Plaintiff's next claim for
7 Unjust Enrichment.

8 Issue No. 3: Did the breach of the warranty by the
9 Defendant cause damage to Rendell Whittington or the Plaintiff?

10 Answer "yes" or "no"

11 Answer: yes

12 If you have answered Issue No. 3 "yes", then answer the
13 next issue. Otherwise, proceed to the Plaintiff's next claim for
14 Unjust Enrichment.

15 Issue No. 4: What, if any, is the total amount of
16 damages suffered by the Plaintiff?

17 Answer: \$ 0

18 ON THE PLAINTIFF'S CLAIM FOR UNJUST ENRICHMENT:

19 Issue No. 1: Was the Defendant unjustly benefited by
20 receiving the excess escrow proceeds?

21 Answer "yes" or "no"

22 Answer: yes

23 If you have answered Issue No. 1 "yes", then answer the
24 next issue. Otherwise, proceed to the Plaintiff's next claim for
25 Money Had and Received.

26 Issue No. 2: Was Rendall Whittington damaged by the
27 Defendant's unjust receipt of the funds?

28 ////

1 Answer "yes" or "no"

2 Answer: yes

3 If you have answered Issue No. 2 "yes", then answer the
4 next issue. Otherwise, proceed to the Plaintiff's next claim for
5 Money Had and Received.

6 Issue No. 3: What, if any, is the total amount of
7 damages suffered by the Plaintiff?

8 Answer: \$ 16,336.13 (7 per cent interest on
9 \$112,740.84 for 2 years-1/89 to 1/91).

10 ON THE PLAINTIFF'S CLAIM FOR MONEY HAD AND RECEIVED:

11 Issue No. 1: Did the Defendant have and/or receive money
12 to which he was not legally entitled?

13 Answer "yes" or "no"

14 Answer: yes

15 If you have answered Issue No. 1 "yes", then answer the
16 next issue. Otherwise, proceed to the Defendant's defense of
17 Laches.

18 Issue No. 2: Were the funds received by the Defendant
19 for the use and benefit of the Plaintiff?

20 Answer "yes" or "no"

21 Answer: yes

22 If you have answered Issue No. 2 "yes", then answer the
23 next issue. Otherwise, proceed to the Defendant's defense of
24 Laches.

25 Issue No. 3: Was Rendall Whittington or the Plaintiff
26 damaged by the Defendant's receipt of the funds?

27 Answer "yes" or "no"

28 Answer: yes

1 If you have answered Issue No. 3 "yes", then answer the
2 next issue. Otherwise, proceed to the Defendant's defense of
3 Laches.

4 Issue No. 4: What, if any, is the total amount of
5 damages suffered by the Plaintiff?

6 Answer: \$ 0

7 ON THE DEFENDANT'S DEFENSE OF LACHES:

8 Issue No. 1: Did the Plaintiff delay in asserting its
9 claims in this action?

10 Answer "yes" or "no"

11 Answer: no

12 If you have answered Issue No. 1 "yes", then answer the
13 next issue. Otherwise, proceed to the Defendant's next defense of
14 Failure to Mitigate Damages.

15 Issue No. 2: Was the delay of the Plaintiff in asserting
16 its claims for some appreciable time period?

17 Answer "yes" or "no"

18 Answer: _____

19 If you have answered Issue No. 2 "yes", then answer the
20 next issue. Otherwise, proceed to the Defendant's next claim of
21 Failure to Mitigate Damages.

22 Issue No. 3: Would the Defendant be prejudiced by
23 permitting the Plaintiff to assert its claims at this time?

24 Answer "yes" or "no"

25 Answer: _____

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ON THE DEFENDANT'S DEFENSE OF FAILURE TO MITIGATE
DAMAGES:

Issue No. 1: Did the Plaintiff fail to take reasonable steps to mitigate its damages after it became aware of the Defendant's breach of contract, if any?

Answer "yes" or "no"

Answer: yes

If you have answered Issue No. 1 "yes", then answer the next issue. Otherwise, proceed to the Defendant's next claim of Setoff.

Issue No. 2: What is the total amount of the Plaintiff's damages which it could have avoided by making reasonable efforts or expenditures?

Answer: \$ 27,867.55 (7 per cent interest on \$112,740.84 from 4/89 to 6/94).

ON THE DEFENDANT'S DEFENSE OF SETOFF:

Issue No. 1: Is the Defendant entitled to any setoff?

Answer "yes" or "no"

Answer: no

Issue No. 2: What is the amount, if any, of the setoff?

Answer: \$ 0

DATED: 7-1-94

/s/ Francis Pierce
Foreman of the Jury

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SPECIAL VERDICT/FINDINGS

We, the jury in the above entitled action, find the following special verdict/findings on the questions submitted to us:

Question: Do you find by clear and convincing evidence that the defendant was guilty of or committed oppression in the conduct upon which you base your finding of liability for conversion?

Write the answer "yes" or "no" after the name of defendant.

Answer: Defendant MONSCHEIN- no.

Do you find by clear and convincing evidence that the defendant was guilty of or committed malice in the conduct upon which your finding liability for conversion?

Write the answer "yes" or "no" after the name of defendant.

Answer: Defendant MONSCHEIN- yes.

Do you find by clear and convincing evidence that the defendant was guilty of or committed fraud in the conduct upon which you base your finding of liability?

Write the answer "yes" or "no" after the name of defendant.

Answer: Defendant MONSCHEIN- yes.

DATED: 7/1/94

/s/ Francis Pierce
Foreperson

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SPECIAL VERDICT FORM - PUNITIVE DAMAGES

We, the jury in the above-entitled case, find the following special verdict on the issue of punitive damages submitted to us:

Issue No. 1: Should punitive damages be awarded against the defendant?

Answer "yes" or "no"

Answer: no

If you have answered Issue No. 1 "yes", then answer the next issue. Otherwise, sign and return this special verdict.

Issue No. 2: What is the total amount of punitive damages to be awarded against the defendant?

Answer: \$ _____

DATED: 7/1/94

/s/ Francis Pierce
Foreman of the Jury

Based on the first two special verdicts rendered by the jury, as set forth above, plaintiff TRANSAMERICA requested the Court to seek clarification from the jury concerning the damages intended to be awarded to plaintiff TRANSAMERICA with regard to Issue No. 6 pertaining to plaintiff's first cause of action for conversion. Defendant MONSCHEIN, and his attorney of record, refused to consent or stipulate to allow the Court to question the jury, while still empaneled, regarding the damages awarded to plaintiff TRANSAMERICA with regard to said Issue No. 6. However, in light of defendant MONSCHEIN'S objection to the request for the Court to seek clarification from the jury while still empaneled, the Court had the power and authority to interpret the special verdict relating

1 to said Issue No. 6 from its language when considered in connection
2 with the pleadings, evidence, and instructions in this action.

3 Reasonably interpreting the special verdict in light of the
4 pleadings, evidence, and instructions in this action, the Court
5 finds that, with respect to said Issue No. 6 and plaintiff
6 TRANSAMERICA'S first cause of action for conversion, plaintiff
7 TRANSAMERICA is entitled to judgment against defendant CHARLES
8 EDWARD MONSCHEIN on said first cause of action for conversion for
9 the principal sum of \$112,740.84, representing the "excess escrow
10 proceeds" described in Issues Nos. 1 and 2 of the special verdict
11 with regard to plaintiff's first cause of action for conversion, in
12 addition to interest on said sum in the amount of \$30,205.52, for
13 total damages under said cause of action in the amount of
14 \$142,946.36.

15 The Court further finds that plaintiff TRANSAMERICA is
16 entitled to judgment against defendant MONSCHEIN in the principal
17 sum of \$112,740.84 on plaintiff TRANSAMERICA'S second cause of
18 action for breach of written contract, which damages are
19 co-extensive with the principal damages awarded with respect to the
20 first cause of action for conversion.

21 The Court further finds that plaintiff TRANSAMERICA is
22 entitled to judgment against defendant MONSCHEIN in the amount of
23 \$16,336.13 on plaintiff TRANSAMERICA'S eighth cause of action for
24 unjust enrichment, which damages are not co-extensive with the
25 damages awarded with respect to the first cause of action for
26 conversion or the second cause of action for breach of written
27 contract.

28 The Court further finds that by virtue of the findings with

1 respect to defendant MONSCHEIN's affirmative defense of failure to
 2 mitigate damages, the total damages awarded to plaintiff
 3 TRANSAMERICA (as detailed above) are reduced by the sum of
 4 \$27,867.55.

5 The Court further finds that because plaintiff TRANSAMERICA
 6 has an adequate remedy at law, it is not entitled to judgment on
 7 its equitable causes of action for imposition of constructive
 8 trust, equitable lien, and implied/equitable indemnity.

9 NOW, THEREFORE, IT IS FURTHER ORDERED, ADJUDGED, AND DECREED
 10 that plaintiff/cross-defendant TRANSAMERICA TITLE INSURANCE COMPANY
 11 shall have and recover from defendant/cross-complainant CHARLES
 12 EDWARD MONSCHEIN, the combined sum of: \$131,414.94 (representing
 13 \$112,740.84 principal, plus \$30,205.52 in interest, plus \$16,336.13
 14 in interest, less \$27,867.55); costs of suit as allowed pursuant to
 15 the Code of Civil Procedure in the amount of ^{PI & ID} \$55,304.09 ^{PER ORDER 7/16/91}; and ^{7/22/91}
 16 interest thereon at the legal rate (presently 10% per annum) from
 17 the date of the entry of this Judgment until paid.

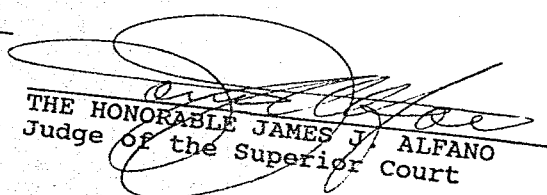
18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that cross-
 19 defendant TMC ESCROW COMPANY shall have and recover from cross-
 20 complainant CHARLES EDWARD MONSCHEIN costs of suit as allowed
 21 pursuant to the Code of Civil Procedure in the amount of
 22 \$139,580.96; and interest thereon at the legal rate (presently 10%
 23 per annum) from the date of the entry of this Judgment until paid.

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that cross-
 25 defendant MILDRED McDANIEL shall have and recover from cross-
 26 complainant CHARLES EDWARD MONSCHEIN costs of suit as allowed
 27 pursuant to the Code of Civil Procedure in the amount of
 28 \$_____; and interest thereon at the legal rate (presently

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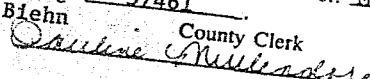
1 10% per annum) from the date of the entry of this Judgment until
2 paid.
3

4 DATED: AUG 24 1994
5

6 
7 THE HONORABLE JAMES J. ALFANO
8 Judge of the Superior Court

9 Return: Daniel E. Van Vactor
10 725 N.W. Broadway
11 Bend, Or. 97701
12

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Daniel E. Van Vactor
of Dec A.D., 19 94 at 11:17 o'clock A.M. and duly recorded in Vol. M94
of Co. Lien Docket on Page 37461
Evelyn Biehn
By  County Clerk

FEE \$90.00

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