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MAR 28 0 03 AM 1984

RYAN A. MAGGINI
COUNTY CLERK

Notarized

Attorney for Plaintiff

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

10 BARBARA J. RUSSELL,
11 Plaintiff,

) Case No. 78978

12 vs.

) FINDINGS AND JUDGMENT

13 MICHAEL G. GALLOWAY,
14 et al.,

15 Defendants.

16
17 This matter came on regularly for hearing on March 26,
18 1984, in Department 3 of the above-entitled court, the Honorable
19 JOHN M. PHILLIPS, presiding. Plaintiff, BARBARA J. RUSSELL,
20 was present, represented by counsel, JOSEPH F. SULLIVAN. Defendant
21 MICHAEL G. GALLOWAY was present, represented by himself.

22 The Court, having heard testimony, received evidence
23 and upon hearing argument of counsel, makes the following findings:

24 1. That a fiduciary relationship existed between
25 Plaintiff and Defendant with regards to the refinancing trans-
26 actions involving 415 Chaparral Street, Salinas, California, in
27 1977, and is evidenced by the agreement - see Plaintiff's
28 Exhibit No. 1 , of October 20, 1977;

1 2. That Defendant breached this duty and misappropriat-
2 ed property held for the benefit of Plaintiff, in that Defendant
3 encumbered, on three occasions, after the agreement, to wit,
4 loans of \$12,000.00, \$6,300.00 and \$6,500.00, without prior
5 notice to or concurrence of Plaintiff;

6 3. That Defendant delivered no consideration to
7 Plaintiff for the purchase of the property as Defendant invested
8 none of his personal funds and, in fact, received some funds out
9 of the proceeds of the first mortgage to Bank of America;

10 4. That it was the intent of Defendant to assist
11 Plaintiff in the refinancing of the home as evidenced by his
12 Last Will and Testament dated May 15, 1981 - see Plaintiff's
13 Exhibit No. 5 - and to hold the property for the benefit of
14 Plaintiff;

15 5. That Plaintiff personally paid the monthly mortgage
16 payments due to the Bank of America as well as the taxes and
17 insurance from 1977 on;

18 6. That Plaintiff further made repairs regarding the
19 flooring and piping and always acted as though she were, in fact,
20 the owner of the property;

21 7. That Plaintiff did not contribute to the loss of
22 the property, but that the loss of the property occurred due to
23 the fact that Defendant was unable or unwilling to keep current
24 the second, third and fourth mortgages;

25 8. That the fair market value of the property was
26 \$67,488.03;

27 9. That the principal balance due to Bank of America,
28 the holder of the first deed of trust was \$16,702.73 as of the

1 date of foreclosure.

2 In light of the above findings, the Court hereby orders
3 that judgment be ordered as follows:

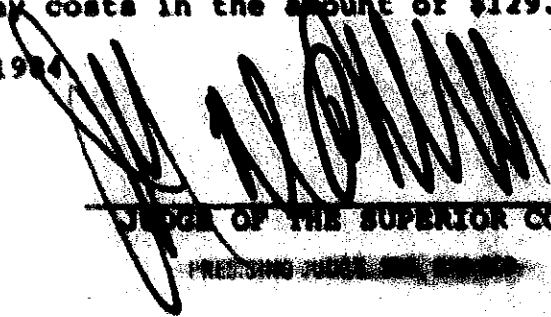
4 1. That Plaintiff is awarded the sum of \$67,488.03
5 as judgment;

6 2. That credit for the payment of the balance of
7 \$16,961.58 be given to Defendant;

8 3. That funds being held by the firm of Lavorato,
9 House and Linker in the amount of \$9,207.51, which represents
10 the excess funds from the foreclosure sale, be turned over to
11 Plaintiff and be credited against the balance of the judgment;
12 and

13 4. That Defendant pay costs in the amount of \$129.50.

14 DATED: March 27, 1984



JUDGE OF THE SUPERIOR COURT
PREVIOUS PAGE 100-1000

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