

IN THE CHANCERY COURT FOR SEVIER COUNTY, TENNESSEE

MARY ANN LEDWELL MARLOW,  
by and through her conservator,  
SHANNON MARLOW,

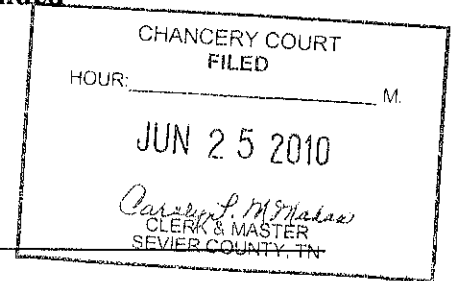
Plaintiff,

v.

No. 07-03-092  
Jury Demanded

MICHAEL S. SHIPWASH d/b/a  
THE LAW OFFICES OF MICHAEL S.  
SHIPWASH, et al

Defendants.



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DEFENDANT SIDNEY JAMES MOTOR LODGE, INC.'S  
MEMORANDUM OF LAW AND ARGUMENT  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGEMENT

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Comes now the Defendant Sidney James Motor Lodge, Inc., by and through counsel, and submits this Memorandum of Law and Argument in Support of Its Motion for Summary Judgment.

***UNDISPUTED FACTS***

Sidney James Motor Lodge, Inc., ("Sidney James") is a Tennessee Corporation which operates a motel known as the Sidney James Motel at 610 Historic Nature Trail, Gatlinburg, Tennessee. *Affidavit of Sidney R. James at ¶ 2.* In June, 2005, the Ledwell Motel property located across the street at 615 Historic Nature Trail, Gatlinburg, Tennessee (the "Property") was owned by Mary Ann Ledwell Marlow. *Complaint at ¶ 18; Affidavit of Sidney R. Maples at ¶ 3.*

The Property was encumbered with a Deed of Trust of record in Book 1935, Page 702 in the Register's Office for Sevier County, Tennessee in favor of Citizens National Bank in the amount of

\$720,000.00. *Affidavit of Sidney R. Maples at ¶ 4; Exhibit 2 to Affidavit.* Said Deed of Trust secured the repayment of a Promissory Note dated March 17, 2005 from Mary Ann Marlow Ledwell in the amount of \$720,000. The Promissory Note was due and payable on September 17, 2005. *Affidavit of Sidney R. Maples at ¶ 5; Exhibit 3 to Affidavit.* Interest on the March 17, 2004 Note accrued at the rate of 7.00% or \$4,330.00 per month, and was paid from loan proceeds in the amount of \$75,000.00 withheld by CNB Bank. *Affidavit of Sidney R. Maples at ¶ 6; Exhibit 4 to Affidavit.*

The Property was also subject to a Lease of Motel dated April 1, 1984 to Harmon & Johnson, Inc ( the "Lease"). *R. Sykes Dep at p. 10; Exhibit 2; Affidavit of Sidney R. Maples at ¶ 7; Exhibit 5 to Affidavit.* Under the Lease and the agreed Order entered by the Chancery Court for Sevier County, Tennessee in the case styled *Mary Marlow v. Harmon & Johnson, Inc.*, Docket No. 88-12-519, the Lessee under the Lease is obligated to pay Mary Ann Marlow Ledwell \$35,000.00 per year in rental payments. *Affidavit of Sidney R. Maples at ¶ 8; Exhibit 6 to Affidavit.* Said Lease payments were insufficient to service the debt on the Property. *Affidavit of Sidney R. Maples at ¶ 9.* The Order also gives the Lessee a right of first refusal on any sale of the Motel by Ms. Ledwell.

In June 2005, Sidney James purchased the Lease from Harmon & Johnson, Inc. for \$450,000.00. *R. Sykes Dep at p. 10; Exhibit 2; Affidavit of Sidney R. Maples at ¶ 10.* At the time of the purchase there were nine years remaining on the lease term. *Affidavit of Sidney R. Maples at ¶ 11.* Tennessee State Bank loaned \$450,000.00 to Sidney James for the purchase of the Lease. *R. Sykes Dep at p. 11; Affidavit of Sidney James at ¶ 12.* Tennessee State Bank secured the loan with a Leasehold Deed of Trust dated June 16, 2005, recorded in Book 2296, Page 704 in the Register's Office for Sevier County, Tennessee. *Affidavit of Sidney R. Maples at ¶ 13.*

After Sidney James purchased the Lease and began operating the motel, Attorney Michael S. Shipwash (“Shipwash”) sent Maples a letter dated July 29, 2005 stating, “I have been retained by Ms. Ledwell to represent her in all actions relative to the Ledwell Motel”. *Affidavit of Sidney R. Maples at ¶ 15*. This letter also requested on behalf of Ms. Ledwell certain reports and information concerning the Motel. On or about September 28, 2005, Maples was contacted by telephone by Fred Shell, an employee of Michael Shipwash, who offered to sell the fee simple interest in the Property for the amount of \$1 million, pursuant to the right of first refusal. *Affidavit of Sidney R. Maples at ¶ 16*. After some negotiations between Maples and Shipwash, the parties agreed on a purchase Price of \$900,000.00. *Maples Interrogatory Responses Nos. 3-4; Affidavit of Sidney R. Maples at ¶ 18*. Shipwash provided Maples with an Authority to Negotiate and Sell the Ledwell Motel signed by Mary Ann Ledwell which purportedly gave Shipwash authority to sell the Ledwell Motel. *Exhibit C to Complaint; Affidavit of Sidney R. Maples at ¶ 19*.

Maples never spoke with Mary Ann Marlow Ledwell, and he never met her. *Affidavit of Sidney R. Maples at ¶ 20*. Maples had no knowledge concerning Ms. Ledwell’s mental or physical condition, but he had no reason to suspect she was not competent to enter into a transaction with him. *Affidavit of Sidney R. Maples at ¶ 21*. Maples is the only agent of Sidney James who had any discussions or dealings with Shipwash concerning the purchase of the motel fee. *Affidavit of Sidney R. Maples at ¶ 18*.

Shipwash sent a letter to Maples dated October 5, 2005 confirming that Ms. Ledwell had accepted the offer of \$900,000.00 for the purchase of the fee interest in the Ledwell Motel. The letter further states that “Mary Ann Ledwell gave this Law Office the Power to negotiate, bargain and sell the Ledwell Motel”. *Affidavit of Sidney R. Maples at ¶ 22 , Exhibit E to Complaint*. By letter dated October 14, 2005,

Sidney James confirmed the acceptance of the offer to purchase the fee interest in the property for \$900,000.00. *Affidavit of Sidney R. Maples at ¶ 23 ; Exhibit F to Complaint.*

The total purchase price for the leasehold and the fee was \$1,350,000.00. *Affidavit of Sidney R. Maples at 24.* Maples considered the total purchase price of \$1,350,000.00 to be a little high considering the condition and location of the property, and the appraised value of the property. *Affidavit of Sidney R. Maples at ¶ 25.*

The purchase was closed on October 26, 2005 in the offices of Sykes & Wynn, PLLC. *R. Sykes Dep at p. 10; Affidavit of Sidney R. Maples at ¶ 26.* Attorney Randy Sykes, who has been practicing real estate law in Sevier County for over 40 years, testified in his deposition at Page 19, lines 4-6 that nothing about the transaction caused him concern or suspicion.

Tennessee State Bank provided the financing for the purchase. Sidney James signed a promissory Note for \$1,345,000.00, which amount included the purchase price for the Leasehold and the purchase price for the fee. *R. Sykes Dep at p. 13-14; Affidavit of Sidney R. Maples at 27; Exhibit 15 to Affidavit.* The loan in the amount of \$1,345,000.00 is secured by a new Deed of Trust recorded in Book 2375, Page 629 in the Register's Office for Sevier County, Tennessee. *R. Sykes Dep at p. 10; Affidavit of Sidney R. Maples at ¶ 28; Exhibit 16 to Affidavit.* Sidney James had to give the Bank as collateral for the loan the Property and two other pieces of commercial real estate owned by Sidney James. *Affidavit of Sidney R. Maples at ¶ 28.*

As part of the transaction, Tennessee State Bank received \$440,419.68 to pay off the loan for the purchase of the Lease, and Tennessee State Bank released the prior Deed of Trust in the amount of \$450,000.00. *R. Sykes Dep Exh. 3-6; Affidavit of Sidney R. Maples at Affidavit of Sidney R. Maples*

at ¶ 29. As part of the transaction, Sidney James paid \$10,753.20 in closing costs. *Affidavit of Sidney R. Maples at 30.* \$543,850.14 of Ms. Ledwell's loan proceeds were disbursed to pay off the existing loan to Citizens National Bank. *Affidavit of Sidney R. Maples at ¶31.* (Ms. Ledwell had paid the Bank \$183,000.00 in August, 2005 from the sale of property. *Affidavit of Sidney R. Maples at ¶ 32.*) The remaining funds were disbursed to Ms. Ledwell.

At the time of the transaction, the county tax records showed that the Property had an appraised value of \$1,429,000.00, which is only slightly higher than the total amount paid by Sidney James. *Affidavit of Sidney R. Maples at ¶33.* To justify its loan of \$1,345,000.00 for the purchase of the Property by Sidney James, the Bank obtained an appraisal from Elwood R. Soehn, Jr., who opined that the fair market value of the Property was \$1,500,000.00. *E. Soehn Dep., Ex 3.* To justify its loan to Mary Ann Marlowe Ledwell the year before, CNB also obtained an appraisal on the Property from Thomas C. Graves of Smoky Mountain Real Estate dated March 15, 2004. Mr. Graves opined that the fair market value of the unencumbered fee simple interest would be \$1,479,000, and the fair market value of the Property encumbered with the Lease would be only \$650,000.00. *T. Graves Depo at Page 50; Exhibit 3 to Depo.*

Since acquiring the Property, Sidney James has spent \$57,628.75 in improvements to the Property. *Affidavit of Sidney R. Maples at ¶ 34.* Maples had no knowledge of the fee agreement between Ms. Ledwell and Shipwash. *Affidavit of Sidney R. Maples at ¶ 35.* Maples also had no knowledge concerning the relationship between Ms. Ledwell and David Guardino. *Affidavit of Sidney R. Maples at ¶35.*

The Plaintiff alleges that Mary Ann Marlowe Ledwell was incompetent at the time of the sale of the

Property to Sidney James. The issue of incompetence will not be addressed here since the issue is already subject to two motions for summary judgment, one filed by the Plaintiff and one filed by Tennessee State Bank and Randy Sykes, Trustee. In addition, Sidney James is entitled to summary judgment in its favor regardless of how the issue of incompetence is determined by the Court.

***LAW AND ARGUMENT***

***I. THERE IS NO EVIDENCE TO SUPPORT THE ASSERTION THAT SIDNEY JAMES KNEW OR SHOULD HAVE KNOWN OF THE ALLEGED INCOMPETENCE OF MARY ANN MARLOWE LEDWELL. SO THE CAUSES OF ACTION OF BREACH OF FIDUCIARY DUTY AND CONSTRUCTIVE TRUST SHOULD BE DISMISSED***

The Plaintiff has alleged no wrongdoing on behalf Tennessee State Bank or Randy Sykes, Trustee. Plaintiff's only allegation against Sidney James is that Sidney James knew or should have known of Mary Ann Marlowe Ledwell's alleged incompetence. The Plaintiff argues that Sidney James therefore owed a fiduciary duty to Mary Ann Marlowe Ledwell not to take advantage of her in this transaction. Based on this allegation, the Plaintiff requests that a constructive trust be imposed on all property and monies involved in the purchase and sale of the motel, that the purchase and sale be rescinded, and the Deed to Sidney James be canceled. Plaintiff has cited no facts to support her allegations, however.

**Sidney James is entitled to summary judgment on this issue because there are no facts to support Plaintiff's allegation that Sidney James knew or should have known that Mary Ann Marlowe Ledwell was incompetent to sell the Property.**

The undisputed facts show that as of October 26, 2005, Mary Ann Marlow Ledwell had not been declared incompetent and did not have a conservator or guardian ad litem supervising her affairs. Maples,

the agent of Sidney James, never spoke with Mary Ann Marlow Ledwell, and never met with her. *Affidavit of Sidney R. Maples at ¶ 20.* He therefore had no knowledge concerning Ms. Ledwell's mental or physical condition. *Affidavit of Sidney R. Maples at ¶ 21.* He had no reason to suspect she was not competent to enter into a transaction with him. *Affidavit of Sidney R. Maples at ¶ 21.*

Maples is the only agent of Sidney James who had any discussions or dealings with Shipwash concerning the purchase of the motel fee. *Affidavit of Sidney R. Maples at ¶ 18.* Attorney Michael S. Shipwash ("Shipwash") represented to Maples by letter dated July 29, 2005, that he had been retained by Ms. Ledwell to represent her in all actions relative to the Ledwell Motel. *Affidavit of Sidney R. Maples at ¶ 15.* In that letter Attorney Shipwash requests on behalf of Ms. Ledwell certain reports and other financial information concerning the motel, which he would naturally do if he was representing her concerning the motel. Attorney Shipwash again represents by letter dated October 5, 2005 that he has been given the power to negotiate, bargain and sell the Ledwell Motel. *Affidavit of Sidney R. Maples at ¶ 22 ; Exhibit E to Complaint.*

As a practical matter, there is little difference in negotiating to purchase property with the seller's attorney and the more common practice of negotiating the purchase of property with the seller's realtor. There was thus nothing about the negotiations to raise a purchaser's concern or suspicion. In addition, it appeared that Ms. Ledwell needed to sell the motel because her note came due on September 17, 2005, and the lease payments were not sufficient to service the debt.

There were no circumstances surrounding the closing of the transaction that caused suspicion. Randy Sykes, the closing attorney, testified in his deposition at page 18, lines 22-25, and page 19, lines 1-6, that there was nothing outside the ordinary involved in this closing. He further testified that there was

nothing about the transaction that caused him concern. Although Ms. Ledwell did not come to the closing, Mr. Sykes testified that it was common for one party not to come to closing and for the documents to be signed outside his office. Deposition of R. Sykes at Page 13, lines 13-18.

In addition, the total purchase price of \$1,350,000.00 which Sidney James paid for all of the outstanding interests in the Property was in line with the three appraisals available at that time. The tax appraisal was \$1,429,000.00, which is only \$79,000.00 more than the total amount paid by Sidney James. *Affidavit of Sidney R. Maples at ¶33*. Tennessee State Bank obtained an appraisal from Elwood R. Soehn, Jr., who opined that the fair market value of the Property was only \$1,500,000.00. *E. Soehn Dep., Ex 3*. The year before, CNB also obtained an appraisal on the Property from Thomas C. Graves of Smoky Mountain Real Estate. He opined that the fair market value of the unencumbered fee simple interest would be \$1,479,000, but the fair market value of the Property encumbered with the Lease would be only \$650,000.00. *T. Graves Depo at Page 50; Exhibit 3 to Depo*. In other words, Sidney James paid \$250,000.00 more for the leased fee than Graves believed the leased fee was worth. Thus there existed no substantial difference between the purchase price and the fair market value of the Property which would have put anyone on notice that the Seller was allegedly incompetent.

At the closing, the HUD-1 Closing Statement signed by the parties showed that over \$543,000.00 did in fact go to CNB to payoff the loan owed by Ms. Ledwell. The remaining funds were disbursed to Ms. Ledwell. There was thus no evidence available to Maples or Randy Sykes to indicate that Ms. Ledwell was not receiving full benefit of the transaction. Mr. Maples had no knowledge concerning the fee arrangement between Ms. Ledwell and Shipwash, and he had no knowledge concerning her relationship with David Guardino. *Affidavit of Sidney R. Maples at ¶ 35*.



As demonstrated above, there is no evidence showing that Sidney James knew anything about the mental or physical condition of Ms. Ledwell. There is also no evidence that supports the allegation that he should have known there was something suspicious about the transaction. Therefore, the causes of action of breach of fiduciary duty and constructive trust raised by the Plaintiff should be dismissed.

**II. PLAINTIFF IS NOT ENTITLED TO RESCIND  
THE SALE AND PURCHASE OF THE MOTEL**

The Plaintiff is not entitled to rescind the sale and purchase of the motel. Rescission is not an appropriate remedy in this case for the reasons explicated below.

**A. RESCISSION IS NOT A MATTER OF RIGHT BUT RESTS WITHIN  
THE SOUND DISCRETION OF THE COURT AND IS TO BE AWARDED SPARINGLY**

A “rescission” amounts to the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination. It is the annulling, abrogation of the contract and the placing of the parties to it in status quo. *Black’s Law Dictionary*, page 1174 (5<sup>th</sup> ed. 1979).

The equitable remedy of rescission is not enforceable as a matter of right, but is a matter resting within the sound discretion of the trial court and the court should exercise the discretion sparingly. *McMillan v. American Sub. Corp.*, 188 S.W. 615 (Tenn. 1916); *Early v. Street*, 241 S.W.2d 531, 556 (Tenn. 1951); *Vakil v. Idnani*, 748 S.W.2d 196, 199-200 (Tenn Ct. App. 1987). The power of a court of equity to decree the rescission of an executed contract and order its surrender for cancellation is one of the most delicate powers it is ever called upon to exercise. *McMillan v. American Sub. Corp.*, 188 S.W. 615 (Tenn. 1916) Upon a complaint for rescission, a court of equity demands a strong case to authorize its interposition. *Baker v. Shy*, 56 Tenn. 85 (1871). Nothing can induce a court of equity to exercise its

extraordinary jurisdiction to decree the rescission of contracts except conscience, good faith and reasonable diligence. *Bowman v. Home Medicine Co.*, 7 Tenn. Civ. App. 265 (1917).

Rescission of a contract is not looked upon lightly. It is available only under the most demanding circumstances and depends upon the individual facts and circumstances of each case. *Early v. Street*, 241 S.W.2d 531 (Tenn. 1951); *Lamons v. Chamberlain*, 909 S.W.2d 795, at 801 (Tenn Ct. App. 1993) While a plaintiff must prove the elements of one of the grounds justifying rescission in order to be eligible for that remedy, such proof does not require the trial court to automatically grant it. *Bowman v. Seymour*, 1999 WL 106891 at 2 (Tenn. Ct. App. Nov. 24, 1999); *Stonecipher v. Estate of M. E. Gray*, 2001 WL 468673 at 4 (Tenn. Ct. App. May 4, 2001). The proof to set aside an instrument must be clear, cogent and convincing. *Meyers v. Meyers*, 891 S.W.2d 216 (Tenn. Ct. App. 1994). Only the court can actually order the equitable relief of rescission, even if the plaintiff is entitled to a jury trial on the fact questions. *Rezba v. Randolph*, 2001 WL 434872 at 3 (Tenn. Ct App. April 30, 2001).

***B. UNDER THE DOCTRINE OF RESCISSION  
THE PARTIES MUST BE RETURNED TO THE STATUS QUO***

The object of rescission is to return the parties to status quo. *Rose v. City of Covington*, 634 S.W.2d 268 (Tenn. 1982). Rescission is designed to place both parties in the same position as they were in when the contract was contemplated. *Lindsey-Davis Company v. Siskin*, 210 Tenn. 339, 342-43, 358 S.W.2d 331, 333 (1962); *Lloyd v. Turner*, 602 S.W.2d 503, 510 (Tenn. Ct. App. 1080); *Lamons v. Chamberlain*, 909 S.W.2d 795, at 801 (Tenn Ct. App. 1993).

On a complaint for rescission the plaintiff must tender whatever consideration she may have received, if any, and offer to do whatever is necessary to place the defendant in status quo. *Hill v.*

*Harriman*, 32 S.W. 202, 204 (Tenn. 1895); *Gibson's Suits in Chancery*, page 28-12, Section 28.08 (8<sup>th</sup> ed. 2004). For example, on a rescission of a sale of real estate it is the settled practice in this State to require the vendor, as incident to the relief granted him, to restore the purchase money he has received; and the amount paid upon the purchase will be held a lien upon the land.. *Wright v. Dufield*, 61 Tenn. 218 (1872); *Smith v. Evans*, 24 Tenn. 70 (1844). "The principle is none the less applicable where the transactions sought to be avoided are those of infants, lunatics, or married women—persons under disability." *Aiken v. Suttle*, 72 Tenn. 103, 120 (1879); *see also*, *Wright v. Dufield*, 61 Tenn. 218 (1872); *and Smith v. Evans*, 24 Tenn. 70 (1844). The vendor is bound, upon an immutable principle of natural justice, to refund the purchase money before being entitled to demand back the property sold. *Wright v. Dufield*, 61 Tenn. 218 (1872). The mere effort to avoid the contract without restoring the purchase money is itself a fraud, which will not be permitted. *Id.*

In addition to the purchase price, the vendor must also pay interest on the purchase price together with the value of any improvements. *Smith v. Evans*, 24 Tenn. 70 (1844); *Aiken v. Suttle*, 72 Tenn. 103, at 120 (1879); *Isaacs v. Bokor*, 566 S.W.2d 532, at 540 (Tenn. 1968). "Is it, of course, well established in this state that when a deed to real property is rescinded, the grantee is entitled to recover the purchase price or other consideration paid for the deed. Under certain circumstances he may also recover the value of any improvements to the property and may have a lien fixed thereon to secure same." *Estate of Minton v. Markham*, 625 S.W.2d 260, at 262 (Tenn. App. 1981).

In the case of a sale of property, a vendor seeking rescission must show that she is capable of returning the purchase price, plus interest and the value of improvements made. *Hawkins. v. Byrn*, 261 S.W. 980 (Tenn. 1924).

**C. IF THE PARTIES CANNOT BE RETURNED TO THE STATUS QUO  
THERE IS NO GROUND FOR RESCISSION**

“If the parties cannot be put back in status quo or equity cannot be done due to the passage of time, etc., then clearly there is no ground for a rescission [sic]”, *Leake v. Gray, Shillingslaw & Co.*, 226 S.W.2d 298, 305 (Tenn. 1950). “It is a fundamental rule in equity a contract will not be rescinded if the parties cannot be placed in status quo”, *Lindsey-Davis v. Siskins*, 358 S.W.2d 331, 333 (Tenn. 1962). “If the parties cannot be put in status quo, or if, due to the passage of time or other reasons, equity cannot be done, there is no ground for recession.” *Lamons v. Chamberlain*, 909 S.W.2d 795, at 801 (Tenn Ct. App. 1993).

In *Lamons v. Chamberlain*, 909 S.W.2d 795 (Tenn Ct. App. 1993), the court determined that rescission of a contract to purchase a video store was not appropriate because making a return to the status quo was impossible where the purchaser had operated the business for two years, received revenues from the business and reinvested those funds into the business since the purchase. Likewise, in *Noble v. Pease*, 2005 WL 1707969 (Tenn. Ct. App. Jan. 19, 2005), the court declined to order rescission of the purchase and sale of a copy machine business “due to the passage of time and the difficulty of unwinding the transaction.” *Id.* at page 5.

In *Hawkins. v. Byrn*, 261 S.W. 980 (Tenn. 1924) the party seeking rescission could not return the equipment he purchased as he no longer had possession of it. The Supreme Court therefore held that he was not entitled to rescind the contract for the purchase of the equipment. *Id.* Likewise, in *Lamborn & Co. v. Green & Green*, 262 S.W. 467 (Tenn. 1924), the Supreme Court held that the defendants could

not rescind a contract for the purchase of sugar since the defendants had already used a good portion of the sugar in its manufacturing process as “[t]hey are not in a position to return the consideration of the contract sought to be vacated”. *Id.* at 470.

***D. IN THIS CASE IT IS PERHAPS IMPOSSIBLE AND CERTAINLY  
INEQUITABLE FOR THE COURT TO ORDER RESCISSION***

In the instant case, the Plaintiff is in no position to restore the status quo. In order to restore the status quo, the Plaintiff, with the help of the Court, would have to accomplish the following: (1) return to Sidney James the purchase price of \$900,000.00 plus interest of \$272,065.86 through June 30, 2010; (2) return to Sidney James closing costs of \$10,753.00 plus interest on the closing costs of \$3,143.00; (3) reimburse to Sidney James the sum of \$ 57,628.75 it has expended for improvements to the Property; (4) reinstate the leasehold interest in the Property to Sidney James (the leasehold would not expire until March 31, 2014); (5) rescind the Promissory Note from Sidney James to Tennessee State Bank in the amount of \$1,345,000.00; (6) cancel the Deed of Trust in favor of the Bank in the amount of \$1,345,000.00; (7) force Tennessee State Bank to make a new loan in the amount \$440,419.68 to Sidney James with the same terms as the previous note in order to finance the leasehold, (8) force Sidney James and Tennessee State Bank to enter into a new Deed of Trust in the amount of \$440,419.68, with the same collateral as existed previously; and (9) force Sidney James to pay back rent to the Plaintiff beginning in October, 2005. By these actions the Court would deprive the Buyer of its bargain and make new contracts for the parties, even though the Bank and the Buyer are not guilty of any wrongdoing. Such actions by the Court would not do equity, but inequity.

Further, the Guardian Ad Litem has reported that Ms. Ledwell’s only income now is approximately

\$2,500.00 per month from Social Security and her teacher's retirement combined. She has lost all of real property to foreclosure, and she has no other assets. (Exhibit B to Complaint, at Page9). It is therefore highly unlikely that the Plaintiff can pay any of the amounts necessary to restore the status quo unless the Property is sold. Of Course, the marketing and sale of the Property would interfere with the operation of the motel as a going concern. Sidney James and Tennessee State Bank also would have to finance the motel and bear the risk of loss until the motel is sold. The result of the sale in the current economy is totally speculative at best. There is no certainty that the motel will sell, encumbered as it is with an existing leasehold estate, and there is no certainty concerning the sales price or the time of sale.

Consequently, restoring the status quo in this case will be extremely difficult, if not impossible.

**Sidney James is therefore entitled to summary judgment on the issue of rescission since the remedy is difficult, if not impossible to accomplish.**

### ***III. IF AN ADEQUATE REMEDY AT LAW EXISTS RESCISSION IS INAPPROPRIATE***

If an adequate remedy at law exists, such as an award of damages, rescission will not be granted. *Chastain v. Billings*, 570 S.W.2d 866 (Tenn. Ct. App. 1978); *Lamons v. Chamberlain*, 909 S.W.2d 795 (Tenn Ct. App. 1993).

Finally, the Plaintiff has an adequate remedy at law. The crux of Plaintiff's complaint has always been that the motel was worth more than the purchase price paid by Sidney James. Further, it will only be possible to restore the status quo through the sale of the motel. All the Plaintiff will ultimately receive through rescission is perhaps money. Therefore, the one remedy that will restore the Plaintiff to the position she was in before the transaction is money damages. Since neither the Bank nor the Trustee nor Sidney James is

guilty of any wrongdoing in this transaction, the Plaintiff is not entitled to money damages against these defendants. In fact Plaintiff has not requested money damages against these defendants. If the Plaintiff prevails on its claims against Defendant Shipwash, however, the Plaintiff can obtain a judgment against Defendant Shipwash for the entire amount of her monetary loss. (If she is not successful against Shipwash, then she will not be successful against the other Defendants.)

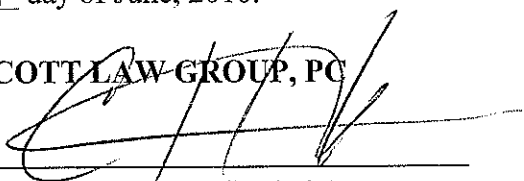
Since money damages against Shipwash are a complete remedy at law for the Plaintiff, she is not entitled to rescission.

### **CONCLUSION**

There are no facts to support Plaintiff's allegation that Sidney James knew or should have known of Plaintiff's alleged incompetence. There are no facts to support the allegation that Sidney James should have been suspicious about the transaction. Sidney James is therefore entitled to summary judgment on the causes of action based on breach of fiduciary duty and constructive trust. Further, Plaintiff is not entitled to rescind the sale and purchase of the Motel since a complete remedy exists at law in the form of money damages and restoration of the status quo is impossible and inequitable.

Respectfully submitted, this 25<sup>th</sup> day of June, 2010.

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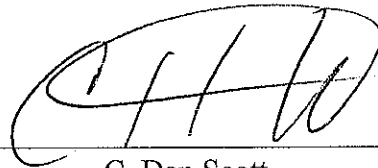
**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copy of the **Defendant Sidney James Motor Lodge, Inc.'s Memorandum of Law and Argument in Support of Its Motion for Summary Judgement** has been hand-delivered and sent by regular first class mail, postage prepaid, on this the 25<sup>th</sup> day of June, 2010.

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C. Dan Scott