

This Instrument Prepared By:
Eric T. Ray
Balch & Bingham LLP
Post Office Box 306
Birmingham, Alabama 35201-0306
Telephone (205) 251-8100
Facsimile (205) 226-8799

ASSIGNMENT OF JUDGMENT LIEN AND RIGHTS UNDER JUDGMENT

For good and valuable consideration in the amount of Five Hundred Seventy-Five Thousand and 00/100 Dollars (\$575,000), the receipt and sufficiency of which is hereby acknowledged, Pravin and Joshna Patel (together, the "Patels") do hereby assign and transfer to Fidelity National Title Insurance Company ("Fidelity") all of their rights, title, interests and claims against each of the defendants in the Lawsuit (as defined below) including, but not limited to, the judgment (the "Judgment") and Judgment lien, as established by (i) the Certificates of Judgment, and (ii) the Findings of Fact, Conclusions of Law and Final Judgment in favor of Pravin and Joshna Patel and against Suresh Dayal, Bhanu Dayal and RK Investments, LLC, entered in CV 05-2579 in the Circuit Court of Jefferson County, Alabama (the "Lawsuit"), and being duly recorded as Instruments 20070912000427490, 20070911000426730, 20070911000426740, and 20070911000426750 in the Office of the Judge of Probate of Shelby County, Alabama on September 12, 2007, and on September 10, 2007 in the Office of the Judge of Probate of Jefferson County, Alabama at Book LR200714, Pages 5941-5943, true and correct copies of which are attached hereto and incorporated by reference as **Exhibit "1"**.

To the extent that the Assignment above does not fully convey all of the rights, title and interest maintained by the Patels in the real property more particularly described as Lot 4B, according to the survey of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Records of Shelby County, Alabama (the "Property") by virtue of the Judgment or the Findings of Fact, Conclusions of Law and Final Judgment entered in the Lawsuit, the Patels

hereby assign, transfer, and convey to Fidelity any and all claims, rights, title and interest in the Lawsuit and the Property that the Patels have, or conceivably could have against the Property or any of the defendants in the Lawsuit, including, but not limited to, any constructive trust or equitable lien the Patels have or maintain on the Property. In executing this assignment, the Patels convey to Fidelity any and all rights of collection under the Judgment or from the Lawsuit from any or all of the Lawsuit defendants. Further, upon execution of this document, the Patels shall immediately withdraw their Motion for Writ of Seizure which is pending in the Lawsuit and jointly stipulate to the dismissal with prejudice of civil action number 08-902195 which is currently pending in the Circuit Court of Jefferson County, Alabama. .

In executing this document, the Patels warrant that (i) they have not previously assigned or in any way transferred or compromised their rights and/or interests, or any portion thereof, in the Judgment, (ii) that they have not received any payment, from any source, that would reduce the principal amount of the Judgment or the amount of the statutory interest and costs to which the Patels are entitled under the Judgment, and (iii), there are no setoffs, counterclaims, or defenses which would affect the amount or validity of the Judgment to the actual knowledge and belief of the Patels.

In the event the assignments to Fidelity by the Patels addressed herein are ever set aside, overturned, or in any manner determined not to have been performed in such a way as to assign to Fidelity all of the Patels rights, title, claims or interest in the Property, the Lawsuit or the Judgment, then upon said determination, the execution of this document shall serve as a full release of any and all interest the Patels maintained in the Property, the Judgment or the Lawsuit as of the date of execution of this document.

IN WITNESS WHEREOF, the Patels have caused these presents to be executed this
14th day of September, 2010.

Pravin L Patel
Pravin Patel

STATE OF Alabama)
COUNTY OF Jefferson)

I, Marvera O. Goymer the undersigned notary public in and for said county in said state, hereby certify that Pravin Patel, whose name is signed to the foregoing settlement agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the settlement agreement, he executed the same voluntarily on the day the same bears date.


Given under my hand and official seal of office this 14th day of September, 2010.

[NOTARIAL SEAL]

Marvera O. Goymer
Notary Public
Print Name: Marvera O. Goymer

My commission expires: 6-11-2014


Joshna Patel

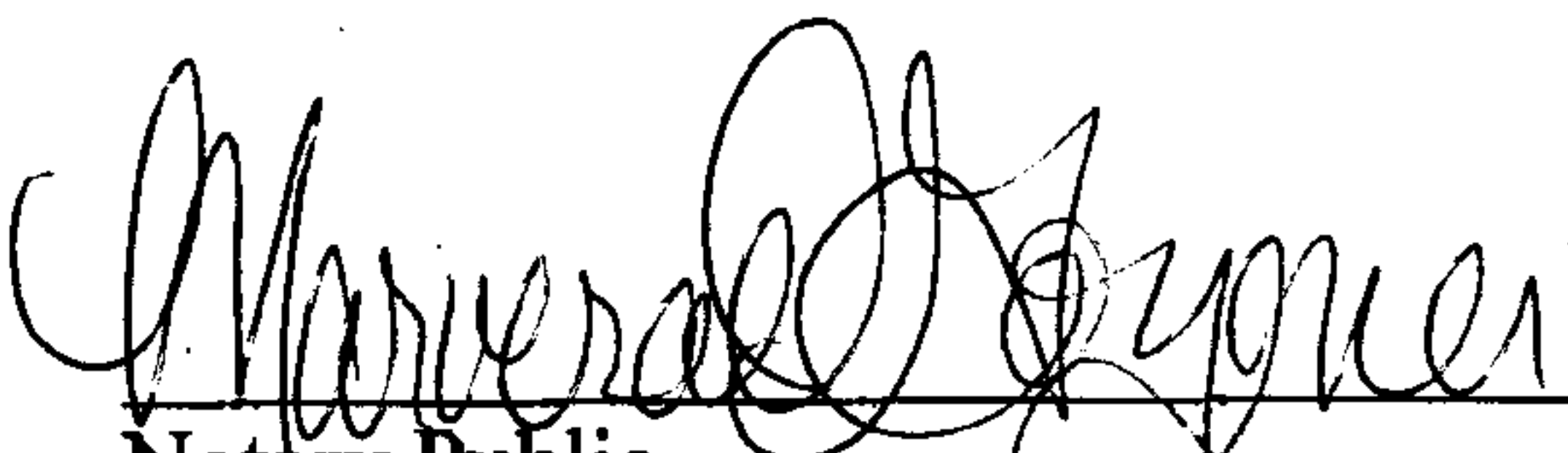

20100917000306040 4/25 \$92.00
Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

STATE OF Alabama)
COUNTY OF Jefferson)

I, Marvera O. Goymer the undersigned notary public in and for said county in said state, hereby certify that Joshna Patel, whose name is signed to the foregoing settlement agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the settlement agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal of office this 14th day of September, 2010.

[NOTARIAL SEAL]


Notary Public
Print Name: Marvera O. Goymer
My commission expires: 6-11-2014

Fidelity National Title Insurance Company

By: 

Its: PATRICIA KYSER

Asst Vice President

STATE OF FLORIDA)

COUNTY OF DUVAL)

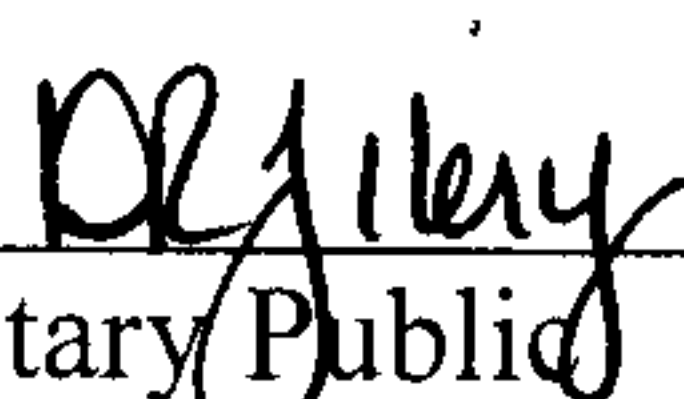


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Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

I, DORTHULA R. TILLERY, a notary public in and for said county and state, hereby certify that PATRICIA KYSER, whose name as ASST. VICE PRESIDENT of Fidelity National Title Insurance Company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she as such ASST. VICE PRESIDENT and with full authority executed the same voluntarily for and as the act of said company.

Given under my hand this the 14th day of September, 2010.

[NOTARIAL SEAL]


Notary Public
Print Name: DORTHULA R. TILLERY
My commission expires: 10/20/13





20100917000306040 6/25 \$92.00
Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

Exhibit “1”

AVSO312

ALABAMA JUDICIAL DATA CENTER
JEFFERSON COUNTY
CERTIFICATE OF JUDGEMENT

20070911000426730 1/1 \$11.00
Shelby Cnty Judge of Probate, AL
09/11/2007 04:02:54PM FILED/CERT

CV 2005 002579.00

J SCOTT VOWELL

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

PRAVIN PATEL ET AL VS SURESH DAYAL ET AL

DEFENDANT

R K INVESTMENTS, LLC
% RAJESH MASON DAYAL
1813 CRESTWOOD BOULEVARD
BIRMINGHAM, AL 35213-0000

PARTY'S ATTORNEY:

GAISER RONALD O JR
2100A SOUTHRIDGE PARKWAY
SUITE 386
BIRMINGHAM, AL 35209

I, ANNE-MARIE ADAMS, CLERK OF THE ABOVE NAMED COURT HEREBY
CERTIFY THAT ON 09/04/2007 PLAINTIFF, PATEL PRAVIN RECOVERED
OF DEFENDANT IN SAID COURT A JUDGEMENT WITHOUT WAIVER OF EXEMPTIONS FOR THE
SUM OF \$498,061.30 DOLLARS PLUS \$1,052.00 DOLLARS COURT COSTS, AND
THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS:
DONALDSON DAVID R

20100917000306040 7/25 \$92.00
Shelby Cnty Judge of Probate, AL

09/17/2010 01:52:25 PM FILED/CERT

GIVEN UNDER MY HAND THIS DATE 09/06/2007

Anne-Marie Adams
CLERK: ANNE-MARIE ADAMS
RM 400 JEFF CO COURTHOUSE
BIRMINGHAM AL 35203
(205) 325-5355

OPERATOR: DES
PREPARED: 09/06/2007

PLAINTIFF'S ATTORNEY:

DONALDSON DAVID R
DONALDSON & GUIN, LLC
505 NO. 20TH ST. #1000
BIRMINGHAM AL 35203

20070910001416180 1/1
Bk: LR200714 Pg: 5941
Jefferson County, Alabama
I certify this instrument filed on:
09/10/2007 03:01:41 PM LN
Judge of Probate- Alan L. King

20070910001416180 1/1
Bk: LR200714 Pg: 5941
Jefferson County, Alabama
09/10/2007 03:01:41 PM LN
Fee - \$4.50

Total of Fees and Taxes-\$4.50
LASHUNTA

AVSO312

ALABAMA JUDICIAL DATA CENTER
JEFFERSON COUNTY
CERTIFICATE OF JUDGEMENT

20070911000426740 1/1 \$11.00
Shelby Cnty Judge of Probate, AL
09/11/2007 04:02:55PM FILED/CERT

CV 2005 002579.00

J SCOTT VOWELL

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

PRAVIN PATEL ET AL VS SURESH DAYAL ET AL

DEFENDANT

DAYAL SURESH
3611 VICKSBURG DRIVE
& SHARPSBURG MANOR
BIRMINGHAM, AL 35210-0000

PARTY'S ATTORNEY:

BOCKMAN JOHN EDWIN
2601 7TH STREET
TUSCALOOSA, AL 35401

I, ANNE-MARIE ADAMS, CLERK OF THE ABOVE NAMED COURT HEREBY
CERTIFY THAT ON 09/04/2007 PLAINTIFF, PATEL PRAVIN RECOVERED
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THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS:
DONALDSON DAVID R



20070911000426740 1/1
Bk: LR200714 Pg:5942
Jefferson County, Alabama
I certify this instrument filed on:
09/10/2007 03:01:42 PM LN
Judge of Probate- Alan L. King

GIVEN UNDER MY HAND THIS DATE 09/06/2007

Anne-Marie Adams
CLERK: ANNE-MARIE ADAMS
RM 400 JEFF CO COURTHOUSE
BIRMINGHAM AL 35203
(205) 325-5355

OPERATOR: DES
PREPARED: 09/06/2007



20100917000306040 8/25 \$92.00
Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

PLAINTIFF'S ATTORNEY:

DONALDSON DAVID R
DONALDSON & GUIN, LLC
505 NO. 20TH ST. #1000
BIRMINGHAM AL 35203

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Bk: LR200714 Pg:5942
Jefferson County, Alabama
09/10/2007 03:01:42 PM LN
Fee - \$4.50

Total of Fees and Taxes-\$4.50
LASHUNTA

AVSO312

ALABAMA JUDICIAL DATA CENTER
JEFFERSON COUNTY
CERTIFICATE OF JUDGEMENT

20070911000426760 1/1 \$11.00
Shelby Cnty Judge of Probate, AL
09/11/2007 04:02:56PM FILED/CERT

CV 2005 002579.00

J SCOTT VOWELL

IN THE CIRCUIT COURT OF JEFFERSON COUNTY

PRAVIN PATEL ET AL VS SURESH DAYAL ET AL

DEFENDANT

DAYAL BHANDU
3611 VICKSBURG DRIVE
% SHARPSBURG MANOR
BIRMINGHAM ,AL 35210-0000

PARTY'S ATTORNEY:

BOCKMAN JOHN EDWIN
2601 7TH STREET
TUSCALOOSA ,AL 35401

I, ANNE-MARIE ADAMS , CLERK OF THE ABOVE NAMED COURT HEREBY
CERTIFY THAT ON 09/04/2007 PLAINTIFF, PATEL PRAVIN RECOVERED
OF DEFENDANT IN SAID COURT A JUDGEMENT WITHOUT WAIVER OF EXEMPTIONS FOR THE
SUM OF \$498,061.30 DOLLARS PLUS \$1,052.00 DOLLARS COURT COSTS, AND
THAT THE PLAINTIFF'S ATTORNEY(S) OF RECORD WAS:
DONALDSON DAVID R

20070910001416200 1/1
Bk: LR200714 Pg:5943
Jefferson County, Alabama
I certify this instrument filed on:
09/10/2007 03:01:43 PM LN
Judge of Probate- Alan L. King

GIVEN UNDER MY HAND THIS DATE 09/06/2007.

Anne-Marie Adams
CLERK: ANNE-MARIE ADAMS
RM 400 JEFF CO COURTHOUSE
BIRMINGHAM AL 35203
(205) 325-5355

OPERATOR: DES
PREPARED: 09/06/2007

20100917000306040 9/25 \$92.00
Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

PLAINTIFF'S ATTORNEY:

DONALDSON DAVID R
DONALDSON & GUIN, LLC
505 NO. 20TH ST. #1000
BIRMINGHAM AL 35203

20070910001416200 1/1
Bk: LR200714 Pg:5943
Jefferson County, Alabama
09/10/2007 03:01:43 PM LN
Fee - \$4.50
Total of Fees and Taxes-\$4.50
LASHUNTA

28070912000427490 1/17 \$50.00
Shelby Cnty Judge of Probate, AL
08/12/2007 10:43:10AM FILED/CERT

ENTERED AUG 27 2007

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
CIVIL DIVISION

RECEIVED IN OFFICE

AUG 24 2007

ANNE-MARIE ADAMS
Clerk

PRAVIN PATEL and
JOSHNA PATEL,

PLAINTIFFS,

v.

SURESH DAYAL, BHANU DAYAL
and R. K. INVESTMENTS, L.L.C.,

DEFENDANTS.

CIVIL ACTION NUMBER:

CV 05 - 2579 JSV

Filed In Open Court

This 24th day of Aug. 2007
J. Scott Vowell, Circuit Judge

By ngt

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
FINAL JUDGMENT

By agreement of the parties, the Court bifurcated the legal and equitable claims in this case and the legal issues were tried to a jury on May 14, 2007. By stipulation the jury was given special interrogatories asking two questions:

- (1) whether the Royal Inn Partnership existed; and
- (2) if said partnership existed, whether damages were owed by either of the partners.

The jury answered "yes" to both questions. Therefore the court set the remaining equitable issues for a bench trial on June 20, 2007.

Two of the original plaintiffs, Mahesh Dayal and Bharti Dayal, voluntarily dismissed their claims. The plaintiffs are Pravin and Joshna Patel. They dismissed their claims against the defendants, Krishna-Vision, L.L.C.; Letap (Airport) Corporation; and 20th Street Motel, Inc. Therefore the plaintiffs are Pravin and Joshua Patel and the defendants are Suresh Dayal, Bhanu Dayal and R.K. Investments, L.L.C.

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Shelby Cnty Judge of Probate, AL
09/17/2010 01:52:25 PM FILED/CERT

The plaintiffs' remaining claims are: Count Seven seeking an accounting for the Royal Inn partnership; Count Eight seeking damages for breach of fiduciary duty in connection with the Royal Inn partnership; Count Eleven seeking a constructive trust over real property referred to as the "Highway 280 Holiday Inn property;" and Count Thirteen seeking for relief under the Alabama Uniform Fraudulent Transfer Act, Ala. Code (1975) § 8-9A-1 *et seq.*

THE FACTS

Plaintiffs, Pravin and Joshna Patel, are husband and wife; the defendants, Suresh and Bhanu Dayal are also husband and wife, and Joshna Patel and Bhanu Dayal's are sisters; defendant Rajesh Dayal is the son of Suresh and Bhanu Dayal. To further complicate things, Suresh and Bhanu Dayal were formerly known as Suresh and Bhanu Patel but they have legally changed their names to Dayal. This order will mention other Patels, and as far as the court knows, they are unrelated to the plaintiffs.

Suresh and Bhanu Dayal came to the United States in 1982 and, shortly after their arrival, began purchasing hotels. Joshna and Pravin Patel came to the United States in 1995 and began investing in hotels with the Dayals. In 1996 the Patels invested with the Dayals in three Alabama properties, Bama Motel, the Executive Inn and the Royal Inn.

When the Patels arrived here they applied for permanent resident status but before it was granted, Suresh Dayal told the Patels that it would be inappropriate for the Patels' names to be on the documents evidencing ownership of the hotels. Accordingly, title to the hotels was taken either in the Dayals' names or in the name of entities owned by the Dayals. Although the Patels' names were not on the papers, the parties considered themselves to be partners in those businesses. The Patels acquiesced because they trusted their relatives and feared that if they failed to cooperate they would be deported. Suresh Dayal took advantage of them.



On October 1, 1996, the Dayals purchased all of the stock of 20th Street Motel, Inc., an entity which was the lessee of the Royal Inn on South 20th Street in Birmingham. There was a long-term lease that gave the lessee a right of first refusal in the event that the owner wished to sell the property. The purchase price of the stock was \$450,000: \$75,000 cash and a \$375,000 note payable to the sellers, Anil Patel, Kanu Patel and P.H. Patel.

On October 7, 1996, Pravin Patel paid Suresh Dayal \$50,000 pursuant to an oral agreement that the Patels would invest \$50,000 for the right to receive half of the Royal Inn's net profits. Pravin and Joshna Patel also agreed to live and work at the hotel for a salary of \$2,000 per month. The Royal Inn was not a desirable place for a family to live because the hotel's clientele included prostitutes, drug dealers, etc. Many of the rooms were in disrepair and the Patels worked 24 hours a day, seven days a week, under difficult circumstances to make the hotel profitable. Even Suresh Dayal admitted that he was satisfied with the Patels' job performance.

Suresh instructed Pravin to record all of the partnership's receipts and disbursements in ledgers that the parties referred to as the "Dome Books," so named because the covers of the spiral bound books had a picture of the dome of the United States Capitol. All of the monthly payments on the \$375,000 Note to Anil Patel and his partners were paid from the operations of the Royal Inn. The Dome Books reflect that profits of over \$600,000 were distributed to the parties between October, 1996 and March of 2003.

In April 1997, the Patels paid \$90,000 for a 15% interest in another hotel owned by the Dayals, the Airport Inn, but it was not profitable. The original complaint contained claims pertaining to the Airport Inn, but after the Airport Inn's mortgage was foreclosed on, the claims pertaining to the Airport Inn were dismissed.



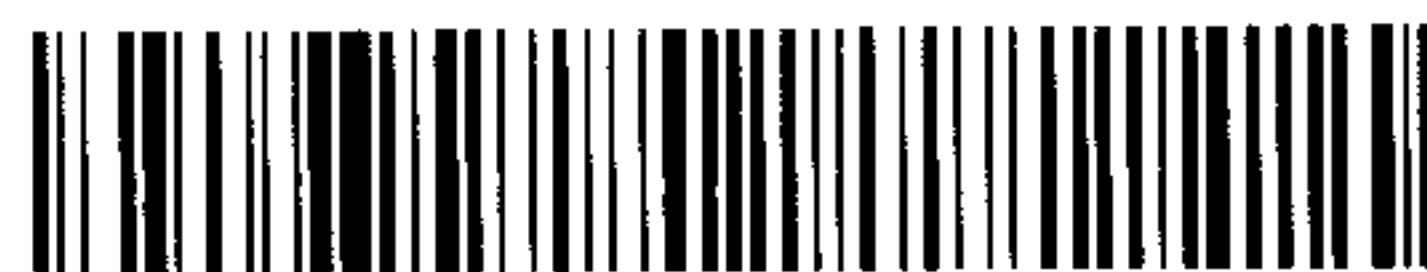
On January 5, 2000, the owners of the real estate upon which the Royal Inn was situated, sent a letter to Suresh Dayal offering to sell the property to him for \$500,000. Suresh again approached Anil Patel for a loan and Anil Patel and his partners agreed to borrow \$400,000 from CapitalSouth Bank, f/k/a Bank of Alabama, to be used for the purchase of the Royal Inn real estate.

Suresh did not have the \$100,000 needed for the down payment but Pravin Patel offered to lend him \$50,000; the Dayals contend that this was merely a loan and that the plaintiffs had no ownership interest in the land upon which the Royal Inn was located. The Patels argue that when the opportunity arose to purchase the property, they and the Dayals agreed to purchase the land and that their share of the down payment was one-half, or \$50,000.

On April 6, 2000, Anil Patel and his partners purchased the Royal Inn real estate for \$500,000 with the \$100,000 down payment and a \$400,000 note and mortgage payable to CapitalSouth Bank. Anil and his partners entered into a lease-purchase agreement with 20th Street Motel, Inc., granting the tenant the right to obtain legal title to the Royal Inn property by paying off the mortgage on the property and paying all costs associated with the land, such as repairs and property taxes.

In March of 2003 Pravin and Joshna Patel decided to purchase another hotel, the Super 8 Motel, and Suresh approved of their decision. They agreed that the Patels would continue overseeing the management of the Royal Inn after the Super 8 purchase. Suresh denies that he agreed and argues that the Royal Inn arrangement ended in March of 2003 when Joshna and Suresh purchased the Super 8.

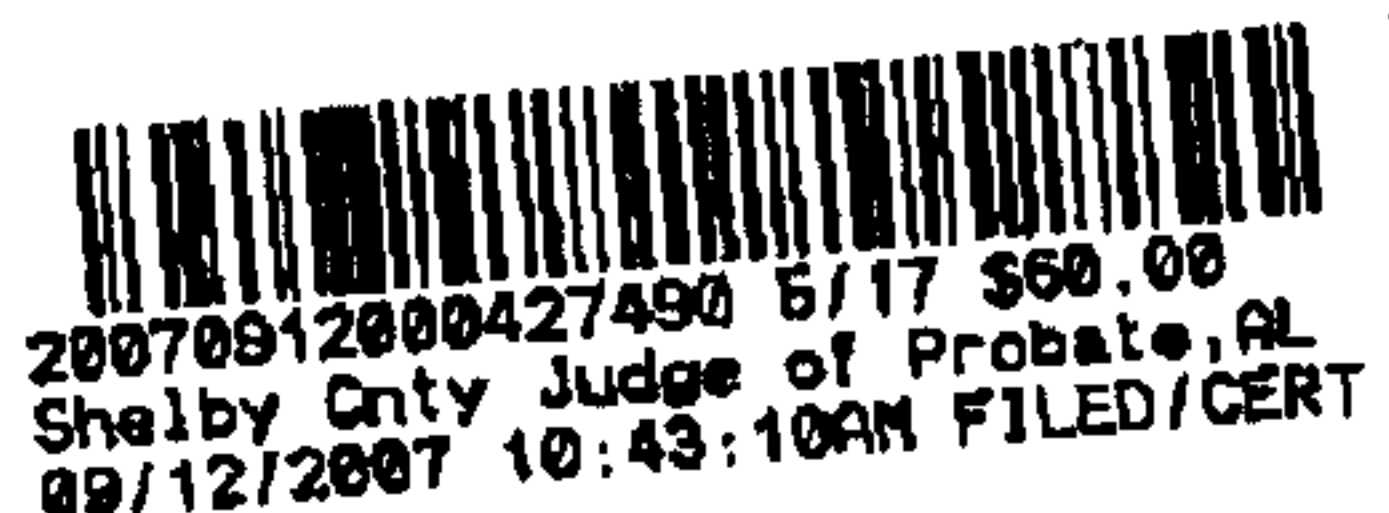
From March 2003 until December 2004, the Royal Inn was operated by a manager hired by Suresh and the Dayals received all of the profits from the operation of the hotel. The



plaintiffs' expert witness, Don Andra, projected cash distributions from profits during the period of \$158,817.72. The defendants' expert, Leigh Stinnett, did not take issue with Andra's methodology and agreed that it would be appropriate to estimate the partnership's profits for that period based on the prior years' profit and loss history. The plaintiffs introduced cancelled checks written by Suresh on the Royal Inn bank account for that period of time totaling \$195,060 and the plaintiffs contend that the checks were for the Dayals' personal benefit. The court accepts Andra's calculations of the profits during the period after the Patels' departure.

On April 20, 2004, S-B Management Company, Ltd., an entity owned by the Dayals and their two sons, purchased a parcel of undeveloped real estate on Highway 280, referred to as "the Highway 280 Holiday Inn property." S-B Management Company paid \$448,232 for the property, four hundred thousand dollars of which was borrowed from CapitalSouth Bank.

A month later, on May 25, 2004, Suresh entered into an agreement to sell the Royal Inn property to Sunny Bhagat and on December 12, 2004, Anil Patel and his partners conveyed the Royal Inn property to 20th Street Motel, Inc. for a stated consideration of ten dollars. On December 24, 2004, 20th Street Motel, Inc., sold the Royal Inn property to Sunny Bhagat's company, Host Inn, Inc., L.L.C., for \$1,100,000 cash. After paying the balances due to CapitalSouth and to Anil Patel and his partners, the net proceeds from the sale, \$617,439, were paid to CapitalSouth Bank pursuant to an escrow agreement between CapitalSouth and 20th Street Motel, Inc. That payment was part of a "Section 1031 Exchange" in which all of the net proceeds from the sale of the Royal Inn property were used to acquire and improve the Highway 280 Holiday Inn property. Some of the funds were used to pay off S-B Management Company's \$400,000 purchase money mortgage debt on the Highway 280 Holiday Inn property and the remaining funds were used for construction of the new Holiday Inn.



This action was commenced on May 2, 2005. The complaint named fictitious defendants described as "persons who received a portion of the proceeds of the sale of the Royal Inn at 821 20th Street South." The complaint demanded a judgment against the fictitious defendants "for any money received from the proceeds of the operation of the Royal Inn and the sale of the property." The complaint was served on the Dayals on May 5, 2005 and the answer was filed on June 1, 2005.

On June 10, 2005, Suresh and his son, Rajesh, signed Articles of Organization for R. K. Investments, L.L.C., a company formed for the purpose of owning and operating the Highway 280 Holiday Inn. The Articles of Organization state that Rajesh owned 81% of the LLC and that Suresh owned 19%. Suresh and Rajesh also signed an Operating Agreement requiring the members of R.K. Investments to make capital contributions in proportion to their ownership interests. That Operating Agreement also states that Rajesh's and Suresh's ownership interests would increase or decrease in proportion to their future capital contributions. There is no evidence that Rajesh contributed any money or services to R. K. Investments.

In about August of 2005, Suresh applied to CapitalSouth Bank for a construction loan for the Highway 280 Holiday Inn. Suresh represented to the bank his net worth was over \$4 million and Rajesh represented that his net worth was only \$80,000.00. The bank agreed to lend \$5,349,000 for construction. The loan commitment signed by Suresh states that the borrowers would invest \$1.4 million of equity into the project.

On October 17, 2005, S-B Management Company, Ltd. conveyed the Highway 280 Holiday Inn property to R.K. Investments, L.L.C. for a stated consideration of ten dollars.

When the Patels learned that the proceeds from the sale of the Royal Inn had been used to finance the acquisition and construction of the Highway 280 Holiday Inn, they filed a *lis pendens*



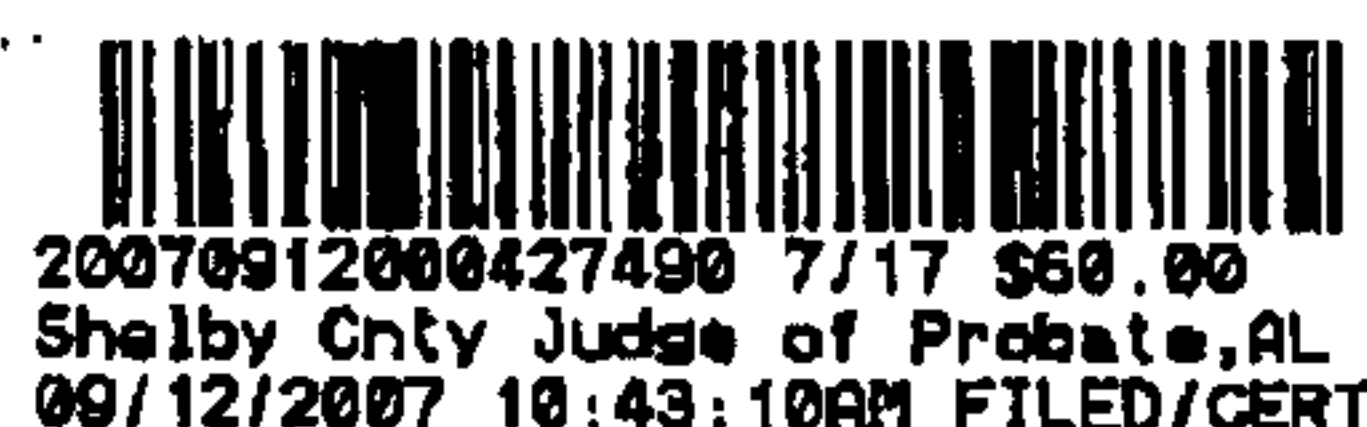
on July 28, 2006, asserting a lien on that property. On September 6, 2006 they amended the complaint in this case to substitute R.K. Investments, L.L.C., S-B Management Company, Ltd., and Rajesh Dayal for three of the fictitious defendants.

When construction began on the Highway 280 Holiday Inn, Suresh and Bhanu Dayal owned interests in several other hotels worth \$2.4 million. Suresh's financial information submitted to CapitalSouth showed a personal residence valued at \$1.6 million, cash of \$466,560, and cash invested in the Highway 280 Holiday Inn project of \$268,697. Suresh testified at trial that all funds have been exhausted during the construction of the Highway 280 Holiday Inn and that he no longer owns any of the other assets listed on his April 30, 2005 financial statement.

Regions Bank held mortgages on both the Airport Inn and on the Dayals' personal residence. Regions sold both notes to CS Assets, which is in the business of purchasing defaulted and distressed loans. On February 21, 2006 Suresh and Bhanu refinanced their house note by executing a new note and mortgage to CS Assets. CS Assets foreclosed on the Airport Inn mortgage in April of 2006 and then sold the property and the Note to MNP Holdings, LLC. The balance due on the Regions Airport Inn note is over \$800,000 and Suresh and Bhanu personally guaranteed that debt. Neither Suresh and Bhanu have made any payments on that debt.

In November of 2006, the Dayals' house note matured and on December 11, 2006, CS Assets sued them on the note. On December 31, 2006, the Dayals' house was totally destroyed by fire. The fire insurance carrier has not paid for the loss because it believes that the fire was the result of arson. The balance due on the note is in excess of \$925,000.

Suresh Dayal testified that he has sold all of his interests in the hotels that he had owned at the time this lawsuit was filed. Of the \$4 million of assets listed in the CapitalSouth loan



application, all that remains is the mortgaged lot on which the burned residence was located and the ownership interest in R.K. Investments. Suresh testified that he no longer has a personal bank account but he uses funds from various entities under his control to pay his living expenses.

During late 2006 or early 2007, several new investors were added to the membership of R.K. Investments. According to CapitalSouth's president, William Puckett, the new investors contributed approximately \$600,000 of additional capital to the Highway 280 Holiday Inn project and the total equity invested by the members of R.K. Investments is over \$2 million. The additional equity was required to finish the Highway 280 Holiday Inn construction project due to unexpected cost-overruns. As a result of the capital contributions of the new members, Suresh's interest in R.K. Investments was reduced to 5% and Rajesh's ownership was reduced to 50%.

THE LAW

The jury found that a partnership existed and that money is owed. Therefore, the Court must determine the amount owed and whether the Patels are entitled to a judgment against the Dayals and R. K. Investments and the form of the relief to which the prevailing party is entitled.

The Patels contend that the parties formed a partnership to own and operate the Royal Inn and that their partnership interest should include half of the Royal Inn profits from March 2003 through December 2004 and half of the net proceeds of the sale of the property. They seek a judgment against the Dayals and R.K. Investments under either a constructive trust or fraudulent transfer theory of an amount equal to their Royal Inn partnership interest.

The Dayals denied the existence of a partnership and argued that their obligations to the Patels ended in March of 2003. They say that even if the Royal Inn were a partnership, the land upon which the hotel was located was not a partnership asset.



Both sides offered expert testimony from C.P.A.'s. They agreed about the proper method of accounting for a partner's share upon dissolution and the winding up of a partnership. When all partnership property is sold, if there are additional funds available for distribution to the partners after payment of the debts, each partner is entitled to be paid an amount equal to his capital account. Any remaining funds are then divided *pro rata* according to each partner's partnership interest. This conclusion is consistent with Ala. Code (1975) §10-8A-807(b):

Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account.

Don Andra, the plaintiffs' CPA, testified that he took the Dome Books, bank statements, and other relevant documents and put the data from those documents into a computerized accounting program. Andra then prepared yearly Profit and Loss Statements for the partnership for each year from 1996 through March of 2003 and a balance sheet as of March 31, 2003. Andra projected profit and cash distributions from profit for April 1, 2003 through December 24, 2004 and calculated balances due the parties at closing. Andra then took the proceeds from the sale of the Royal Inn property and allocated the sale proceeds in excess of the capital account balances equally between the partners. Andra calculated the balance due to the Patels at closing as \$431,243. He added 6% interest through the date of trial and arrived at a total due of \$493,130.

The defendants' CPA expert witness, Leigh Stinnett, testified that she was not asked to calculate the partners' capital account and she had no opinions as to what amounts may be due to either party. She presented a calculation based on data extracted from the Dome Books that was

intended to support the Dayals' contention that Pravin Patel received more than his share of the profits during the time he operated the hotel. In considering all of the evidence the court finds that Suresh received half of the profits from the inception of the partnership in 1996 until Pravin's departure in 2003. Therefore, the plaintiffs are entitled to a judgment on the defendants' counterclaims.

The defendants also contend that the Royal Inn partnership was dissolved in March of 2003 and, therefore, the Patels are not entitled to profits after their departure. After dissolution, a partnership continues for the purpose of "winding up" its business. "Winding up" is defined as the "process of settling the accounts and liquidating the assets of a partnership or corporation, for the purpose of making distribution of net assets to shareholders or partners and dissolving the concern." *Horton v. Kimbrell*, 819 So.2d 601, 604 (Ala. 2001).

The Dayals owed a fiduciary duty to the Patels. Ala. Code (1975) §10-8A-103; *Harbison v. Strickland*, 900 So.2d 385, 389 (Ala. 2004). Dissolution of a partnership does not terminate a partner's fiduciary obligations to his partners. The partner who takes possession of partnership property during the winding up of the partnership acts as a trustee, who must exercise a duty of loyalty to the other partners in winding up the partnership business. Ala. Code § 10-8A-404(b). Moreover, the partner who handles the winding up is required "to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property." *Id.*

Accordingly, the Court finds that the Patels are entitled to a 50% share of the profits from the operation of the hotel from March 2003 until the partnership's assets were sold and distributed.

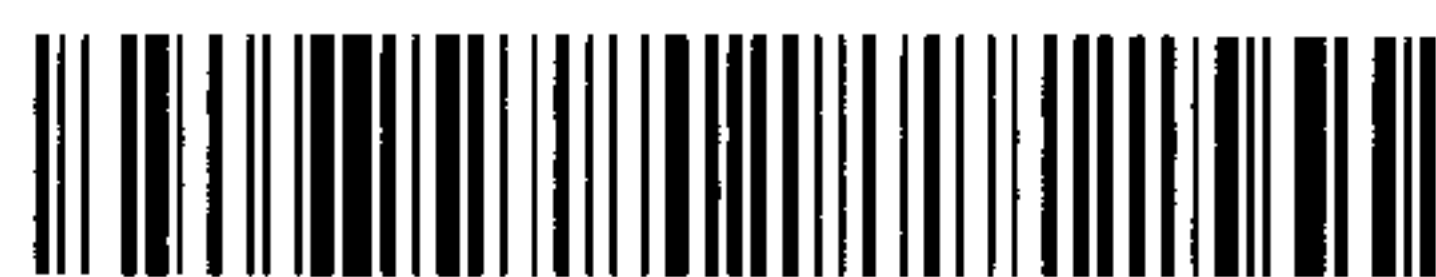
The Alabama Uniform Partnership Act provides that when property is purchased with partnership assets, the property is presumed to be owned by the partnership even if the property was not acquired in the name of the partnership. Ala. Code (1975) §10-8A-204(c). Property acquired with partnership funds belongs to the partnership, not to individual partners. Ala. Code (1975) §10-8A-203. The Patels have proven that the Royal Inn real estate was purchased with partnership funds. The Patels contributed half of the down payment and all of the monthly payments on both mortgages (the \$400,000 CapitalSouth note and the \$375,000 Anil Patel note) were paid from the operations of the Royal Inn. The plaintiffs have proven to the court's reasonable satisfaction that the Royal Inn real estate was purchased with partnership funds and the defendants have not successfully rebutted that evidence. Ala. Code (1975) §10-8A-203. Therefore, the Court finds that the Royal Inn real estate is a partnership asset.

The Court also finds, as an additional and independent ground supporting the plaintiffs' claims to the property, that the parties agreed for the Patels to own a one-half interest in the land. Suresh's claim that the \$50,000 payment in 2000 was a loan is not supported by any written documents or other evidence.

The Dayals argued that the agreement for the purchase of the land was barred by the Statute of Frauds, Ala. Code (1975) § 8-9-2(1) and (5):

In the following cases, every agreement is void unless such agreement or some note or memorandum thereof expressing the consideration is in writing and subscribed by the party to be charged therewith or some other person by him thereunto lawfully authorized in writing:

... (5) Every contract for the sale of lands ... or of any interest therein, except leases for a term not longer than one year, unless the purchase money, or a portion thereof is paid and the purchaser is put in possession of the land by the seller; ...



The applicability of the Statute of Frauds to the parties' oral agreement turns on the "part performance" exception to the Statute of Frauds. To come within this exception "the putative purchaser must be put in possession by the seller and must pay the purchase price or a portion thereof." *Merchants National Bank of Mobile v. Steiner*, 404 So.2d 14, 19 (Ala. 1981).

At the time Pravin agreed to pay \$50,000 in connection with the land transaction, Pravin and his family lived and worked on the property. Pravin's \$100,000 was used to purchase the Royal Inn business and real estate and he was put in possession of the property. Accordingly, the oral agreement between Suresh and Pravin related to the conveyance of the Royal Inn falls within the part performance exception of the Statute of Frauds and is valid and enforceable.

In summary, the Court finds: (1) that the parties divided the profits equally from October 1996 when they took possession of the Royal Inn property until March 2003 when the Patels vacated the property; (2) that the Patels are entitled to half the profits for the period from March 2003 until the property was sold in December of 2004; and (3) that the Patels are entitled to half of the net proceeds from the sale of the property. The amount owed to the Patels as of May 16, 2007, was \$493,130. Therefore, the Plaintiffs are entitled to that amount plus interest through the date of judgment.

Having determined the amount owed, the next question is the form or relief to which the Plaintiffs are entitled. The Patels seek to impose a lien on the Highway 280 Holiday Inn real estate based on two theories, (1) constructive trust and (2) fraudulent transfer.

Based on Suresh's testimony that all of his personal and business assets have been used for the construction of the Holiday Inn Express, this Court further finds that the Patels have has no adequate remedy at law and in order to avoid unjust enrichment, a constructive trust is due to be imposed. See *American Family Care*, 571 So.2d 1053, 1060-1061. Plaintiffs are legally



entitled to impose a constructive trust on all such sums as representing the proceeds of the amount owed to them in connection with the Royal Inn partnership.

The Patels also asserted claims under Alabama's Uniform Fraudulent Transfer Act (AUFTA). The purpose of the Act "is to prevent fraudulent transfers of property by a debtor who intends to defraud creditors by placing assets beyond their reach." *Thompson Properties v. Birmingham Hide & Tallow Company*, 839 So.2d 629, 632 (Ala. 2002). The AUFTA provides in pertinent part: "[a] transfer made by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made, if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor." Ala. Code (1975) § 8-9A-4(a). A transfer is defined as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance." Ala. Code (1975) § 8-9A-1(13). A creditor is defined at § 8-9A-1(4) as "a person who has a claim." A debtor is defined at § 8-9A-1(6) as "[a] person who is liable on a claim." In addition, a claim is defined as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, or unsecured, and specifically shall include the nonpayment of child support pursuant to a court order." Ala. Code (1975) § 8-9A-1(3).

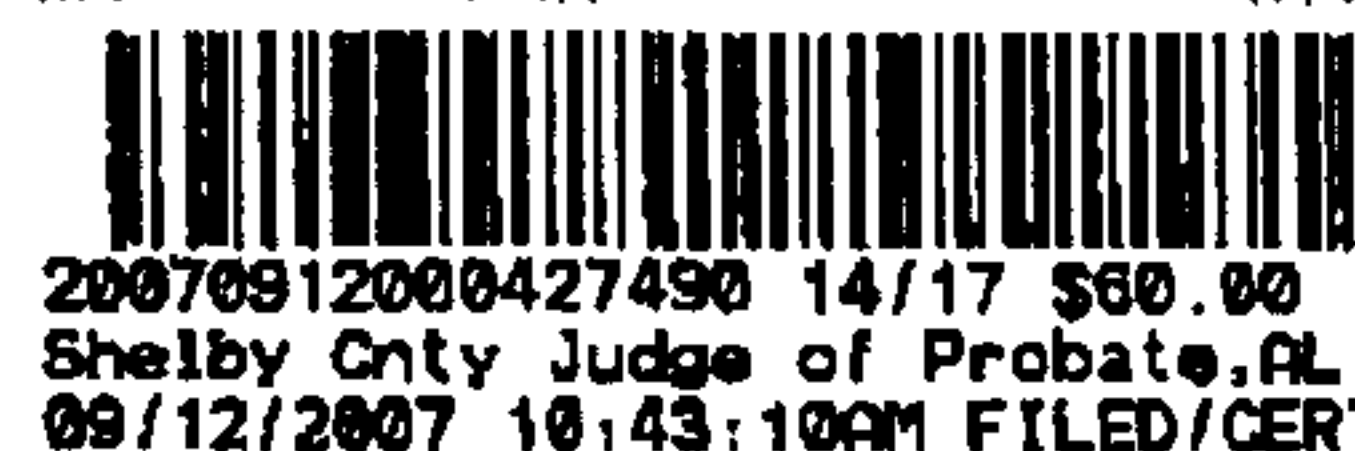
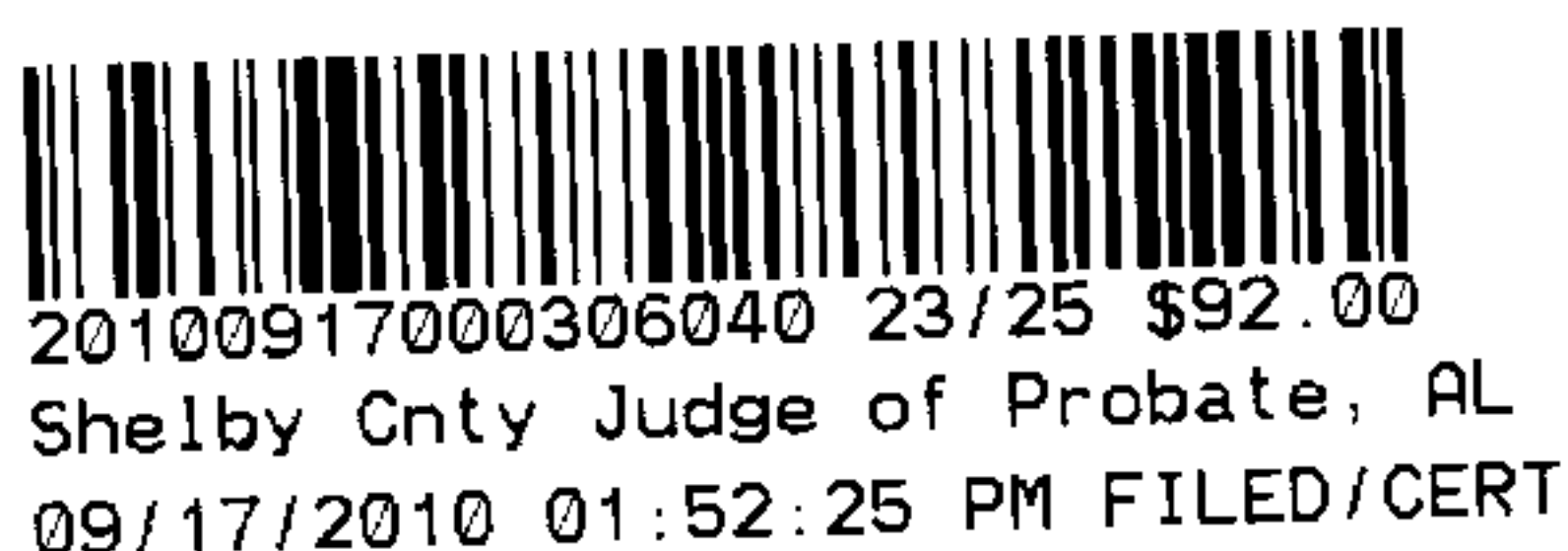
This Court finds that Patels became creditors of Suresh and Bhanu Dayal in 2003, prior to the transfer of the Royal Inn sale proceeds to the S-B Management Company, and R.K. Investments. R.K. Investments was not formed until after the defendants had already filed an answer to the original complaint in this case expressly asserting a claim against the proceeds from the sale of the Royal Inn.

The Royal Inn property sold in December of 2004 for \$1.1 million. The net proceeds were \$617,438.61. As previously determined, the Royal Inn hotel was owned by the Royal Inn partnership. Suresh Dayal caused the net proceeds from the sale of the Royal Inn property, \$617,438.61, to be placed in an escrow account with CapitalSouth Bank as part of a Section 1031 Exchange in which the funds were used to acquire the Highway 280 Holiday Inn land or in construction of the Holiday Inn located on that parcel. The Highway 280 Holiday Inn real estate is owned by R.K. Investments, L.L.C.

For, purposes of the AUFTA claim, this Court finds that the Royal Inn proceeds were transferred to an insider. This Court finds that a portion of the proceeds were transferred to S-B Management Company and balance went to R.K. Investments, two companies in which Suresh Dayal was an officer, director and person in control. This Court further finds Suresh Dayal retained possession and control of the Royal Inn proceeds after the transfer. As the person in control, he made the distribution decision with regard to the funds in the escrow account.

Suresh Dayal testified that as of April of 2003, he owned all or a percentage in eight companies, Krishna Vision, LLC, Letap Airport Corporation, 20th Street Motel, Inc., BJV, LLC, BRVK Airport Corporation, B&J Raja Hospitality, L.L.C. and Hari Group LLC. Suresh Dayal further testified that as of April of 2005, he had a net worth of approximately \$4 million.

As of the date of the trial, Suresh Dayal's only investments were a 5% interest in R.K. Investments, L.L.C. He has no employment, no present sources of income, no personal bank account, no life insurance and a burned residence. Based upon Suresh Dayal's testimony regarding his current financial status this Court finds that the transfer of the Royal Inn proceeds were substantially all of his assets.



This Court finds that Suresh and Bhanu Dayal did not pay their debts as they became due and are presumed to be insolvent. Their insolvency occurred shortly after the transfer of the Royal Inn proceeds was made. This Court further finds that the transfer was made during the time that substantial debt was incurred by Suresh Dayal.

This Court finds the transfer by Suresh and Bhanu Dayal of the Royal Inn net proceeds totaling \$617,438.61, to S-B Management Company and R.K. Investments was made with the actual intent to hinder, delay or defraud the plaintiffs. Suresh and Bhanu Dayal attempted to place their assets beyond the reach of plaintiffs and their creditors. Therefore, the Patels are entitled to a judgment against both the Dayals and R. K. Investments on their fraudulent conveyance claims.

FINAL JUDGMENT

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Judgment is hereby rendered in favor of plaintiffs, Pravin and Joshna Patel, against defendants, Suresh Dayal and Bhanu Dayal, on the claims asserted by plaintiffs for breach of fiduciary duty in the amount of \$498,061.30, plus court costs.
2. Judgment is also hereby rendered in favor of plaintiffs, Pravin and Joshna Patel, against defendants, Suresh Dayal, Bhanu Dayal, and R. K. Investments, L.L.C., on the claims asserted by plaintiffs for claims under the Alabama Uniform Fraudulent Transfer Act in the amount of \$498,061.30, plus court costs. These two judgments are non-cumulative.
3. Judgment is hereby rendered declaring that plaintiffs, Pravin Patel and Joshna Patel, are entitled to a constructive trust on the Highway 280 Holiday Inn Property located at 4B Resource Center Parkway, Birmingham, Alabama 35242. An equitable lien on the following

described real estate in the amount of \$498,061.30, plus interest at the rate of 12% from the date of this judgment, is hereby declared on the following parcel of real estate:

Lot 4-B, according to the survey of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Records of Shelby County, Alabama.

4. Judgment is hereby rendered in favor of plaintiffs, Pravin Patel and Joshna Patel, and against defendants, Suresh and Bhanu Dayal, on all counterclaims.

5. Costs are taxed against the defendants.


Done and ordered, this the 24th day of August, 2007.



J. SCOTT POWELL, PRESIDING JUDGE

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