

ORIGINAL FILED
JUN 16 1994
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United States Bankruptcy Court
Eastern District of California

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154474

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
(Sacramento Division)

In re
Case No. 93-25103-B-11
DANIEL H. RUSSELL, aka DAN
RUSSELL, dba RUSSELL RANCHES,
Debtor.

In re
Case No. 93-27892-B-11
ROBERTA A. RUSSELL, aka
ROBERTA HICKS, aka ROBERTA A.
HICKS, aka ROBERTA ALAMEDA
HICKS,
Debtor.
Date: June 7, 1994
Time: 9:30 a.m.
Dept: B

ORDER AUTHORIZING SALE OF REAL PROPERTY
FREE AND CLEAR OF LIENS AND OTHER INTERESTS
[COTTONWOOD RANCH]

The Motion of Daniel H. Russell and Roberta A. Russell, the
debtors and debtors-in-possession in the above-captioned cases
(the "Debtors") for an order Authorizing Sale of Real Property
Free and clear of Liens and other Interests to Thomas L.
Belastegui (the "Motion"), came on for hearing on its continued
date of June 14, 1994, before the Honorable Jane Dickson McKeag,
United States Bankruptcy Judge. W. Austin Cooper, Esq. and Phillip

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

1 J. Rhodes of Cooper & Smith appeared on behalf of the Debtor.
2 Patricia Tsubokawa Reeves, Esq. appeared on behalf of Montfort
3 Finance Company, Inc. Other appearances were made as noted on the
4 record. Having considered the Motion and all other pleadings filed
5 in support of and in opposition to the Motion, and the oral
6 arguments of the parties, and good cause appearing,

7 **IT IS HEREBY ORDERED as follows:**

8 1. The sale of the real property owned by the Debtors

9 located in Eureka County, Nevada, commonly known as the Cottonwood
10 Ranch (the "Property"), the legal description of which is attached
11 as Schedule "A" to that certain Amended Preliminary Title Report
12 No. 94210869 dated as of May 18, 1994, at 7:30 a.m. issued by

13 Frontier Title of Elko, Nevada, a copy of which is attached as
14 EXHIBIT "A" (the "Amended Preliminary Title Report") and
15 incorporated by reference herein, to Thomas L. Belastegui (the

16 "Purchaser") for the sum of \$360,000 is authorized in accordance

17 with the terms and conditions set forth in that certain Agreement
18 of Purchase and Sale, a copy of which is attached to the Motion as

19 Exhibit "2" (the "Agreement"), as conditioned or modified by the
20 terms of this order.

21 2. Upon close of escrow, the Property shall become and

22 hereby is deemed to be sold free and clear of all liens,

23 encumbrances and other interests against the Property pursuant to

24 11 U.S.C. §363(f) except items 1 through 11 of the Amended

25 Preliminary Title Report. The liens, encumbrances or other

26 interests shall be paid through escrow or removed from the

27 Property as follows:

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1 All delinquent and current property taxes due and
2 payable, represented by items 2 and 3 of the Amended
3 Preliminary Title Report shall be paid directly from
4 escrow pursuant to paragraph 3 of this order, *infra*;
5 The liens, encumbrances or other interests represented
6 by items 12, 13, 14, 15, 16, 17, and 18 of the Amended
7 Preliminary Title Report shall attach to the net
8 proceeds of the sale of the Property pursuant to
9 paragraphs 5 and 7 of this order, *infra*:
10 The proceeds of the sale of the Property are authorized
11 and directed to be disbursed by Frontier Title of Elko, Nevada
12 ("Frontier") in the following order:

a. To pay the required closing costs and other escrow costs
10 in accordance with the terms of the Agreement;
11 To pay all delinquent and current property taxes due and
12 payable represented by items 2 and 3 of the Amended
13 Preliminary Title Report;

c. To pay real estate broker commissions of the seller of
13 7%, or \$24,150, jointly to Jim Valentine and Lisa Wetzel
14 of Coldwell Banker Ittido, Inc. and John Gourtley of
15 United National/Claridge and Associates;

d. To pay directly to Montfort Finance Company, Inc.
16 ("Montfort") the remaining proceeds of the sale towards
17 the balance of the Montfort/Sanwa claim secured by item
18 12 of the Amended Preliminary Title Report.

4. Montfort shall apply the full amount of the net purchase
18 price, including the face amount of the note by the Purchaser to
19 Montfort, to the balance of its allowed claim secured by the deed
20 of trust on the Property represented by item 12 of the Amended
21 Preliminary Title Report.

5. Any valid liens against the Property, which have not
23 been released, paid or expressly allowed to remain as a lien
24 against the Property after sale, shall attach to the funds in
25 their order of priority without prejudice to any claims or
26 defenses which may be asserted by any party in interest.

1 The Debtors are authorized and directed to execute and
2 deliver, or join in the execution and delivery of any and all
3 documentation necessary to consummate the sale of the Property and
4 the transfer of the grazing permits in accordance with all
5 applicable laws, regulations and agreements governing the permits,
6 as set forth in the Agreement, and the Debtors are further
7 authorized to perform any other act that is necessary for the
8 consummation of this sale.

9 7. This Order shall in no way alter, perfect or otherwise
10 modify the validity, enforceability or priority of any lien or
11 encumbrance other than to substitute the net proceeds received
12 from the sale for the Property pursuant to the authority conferred
13 by this order.

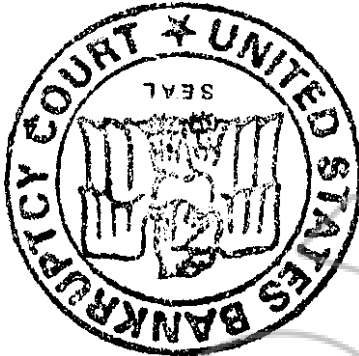
14 8. This order is made without prejudice to any party-in-
15 interest's rights to assert a claim against the fund described in
16 paragraph 7, supra, or to challenge in any way the amount,
17 enforceability, validity, priority or extent of any lien,
18 encumbrance or other claim asserted by a claimant to said fund.
19 9. The Court hereby retains jurisdiction for the purpose of
20 expeditiously determining any action or proceeding in law or
21 equity arising out of this Order or the Agreement or otherwise
22 arising out of the sale.

Dated:

JUN 16 1994

JANE DICKSON MCKEAG

JANE DICKSON MCKEAG
U.S. Bankruptcy Judge



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This is to certify that this is a true and
correct copy of the original thereof on file
in the office of the Clerk, U.S. Bankruptcy
Court.
By Richard G. Helzel
Richard G. Helzel
U.S. Bankruptcy Court
Deputy Clerk

PROPERTY ADDRESS:



ESCROW OFFICE

FRONTIER TITLE COMPANY
445 Fifth Street
PO Box 228
Elko, Nevada 89801

STEWART TITLE

d/b/a Frontier Title Company
445 Fifth Street Elko, Nevada 89801 (702-738-5181)

AMENDED

PRELIMINARY REPORT

When replying please contact
Escrow Officer: PAM AGUIRRE

Our Order No. 94210869
Your Reference:
RUSSELL/BEAUSTEIGUI

This Preliminary Report on Title is delivered and accepted upon the understanding that you have no personal knowledge or information of any defect, objection, lien, or encumbrance affecting said premises other than those shown on succeeding pages hereof, and your failure to disclose any such personal knowledge or information shall render this Preliminary Report on Title and any policy issued based thereon, null and void as to such defect, objection, lien or encumbrance.

Nothing herein contained shall be construed as a guarantee against the consequences of the exercise and enforcement or attempted enforcement of governmental "police power" over the property described herein.

This report (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. It is desired that liability be assumed prior to the issuance of a policy of title insurance, a binder or commitment should be requested.

Dated as of: May 18, 1994 at 7:30 a.m.

Kelly Watson
KELLY WATSON, Title Officer

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A FEE

Title to said estate or interest is vested in:
DANIEL H. RUSSELL

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LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada County of EUREKA,, described as follows:

TOWNSHIP 19 NORTH, RANGE 54 EAST, M.D.B.M.

Section 2: SW1/4SW1/4;
Section 3: S1/2SE1/4; SE1/4SW1/4;

TOWNSHIP 20 NORTH, RANGE 54 EAST, M.D.B.M.

Section 3: Lot 5 (SW1/4NW1/4);
Section 4: S1/2NE1/4;
Section 5: W1/2SW1/4;
Section 9: S1/2NE1/4; SE1/4NW1/4; NE1/4SW1/4;
Section 10: SE1/4NW1/4; Lot 2 (SW1/4NW1/4);
Section 15: W1/2SW1/4;
Section 16: E1/2SE1/4;
Section 17: S1/2SE1/4; SE1/4SW1/4;
Section 20: NW1/4NE1/4; NE1/4NW1/4;
Section 21: S1/2NE1/4; N1/2NW1/4; SE1/4NW1/4; N1/2SE1/4; SE1/4SE1/4;
Section 22: S1/2NE1/4; NW1/4NW1/4; SE1/4NW1/4;
Section 23: SW1/4NE1/4;
Section 24: NW1/4SW1/4;
Section 25: NW1/4NE1/4; N1/2NW1/4; N1/2SW1/4; SE1/4SW1/4;
Section 26: S1/2NE1/4; N1/2SE1/4; N1/2SW1/4;
Section 27: SW1/4NE1/4; NW1/4NW1/4; SE1/4NW1/4; NE1/4SE1/4;
Section 28: NE1/4NE1/4; S1/2NW1/4; NW1/4SE1/4; SE1/4SE1/4;
Section 29: SE1/4SE1/4;
Section 34: SW1/4NE1/4; NW1/4NW1/4; SE1/4NW1/4;
TOWNSHIP 21 NORTH, RANGE 54 EAST, M.D.B.M.

Section 23: N1/2SE1/4; N1/2SW1/4;
Section 34: S1/2SE1/4;
Section 35: N1/2SE1/4; S1/2SW1/4;

EXCEPTING FROM PARCELS 1, 2 AND 3, AN UNDIVIDED FIFTY PERCENT (50%) INTEREST IN AND TO ALL GAS, OIL AND MINERAL RIGHTS LYING IN AND UNDER SAID LAND, AS RESERVED BY MARIA TERESA LABARRRY, ET AL, IN DEED RECORDED JANUARY 5, 1973, IN BOOK 44, PAGE 222, OFFICIAL RECORDS, EUREKA COUNTY, NEVADA.

FURTHER EXCEPTING FROM SECTION 23, TOWNSHIP 21 NORTH, RANGE 54 EAST, M.D.B.M., ALL GAS, OIL AND MINERAL RIGHTS LYING IN AND UNDER SAID LAND AS RESERVED BY BILL HARRIS AND ROSALYN HARRIS, IN DEED RECORDED MARCH 22, 1976, IN BOOK 54, PAGE 208, OFFICIAL RECORDS, EUREKA COUNTY, NEVADA.

SCHEDULE A

CITY PRELIMINARY REPORT
(7/80)

STEWART TITLE
Guaranty Company

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions in a Policy of Title Insurance are as follows:

1. THE FACT THAT RECORD ACCESS TO AND FROM A REGULARLY DEDICATED ROAD IS NOT REFLECTED IN THE PUBLIC RECORDS OF BURKEA COUNTY, NEVADA.

2. Delinquent taxes for the fiscal year 1992 - 1993, plus penalties and costs,

Amount due : \$280.91
Assessor Parcel No. : 7-350-03

3. Taxes for the fiscal year July 1, 1993 to June 30, 1994, including any secured personal property taxes and any special or district assessments collected therewith, and any other assessments levied by City or County authorities, a lien now due and payable,

Total amount : \$252.64
1st installment : \$139.78 PAID
2nd installment : \$ 37.62 PAID
3rd installment : \$ 37.62
4th installment : \$ 37.62
Assessor Parcel No. : 7-350-03

4. The fact that said land was approved for agricultural use assessment for taxation purposes by the Burkea County Assessor and lien for any deferred taxes which may be levied against said land by reason of a change in use of said land for purposes other than agricultural, as evidenced by document Recorded : October 8, 1991 : In Book 226 Page 467, as Document No. 138009 : Official Records of Burkea County, Nevada.

5. Rights incidental to the ownership and development of the mineral interests excepted from the land described herein.

6. Reservations and exceptions contained in various patents from the United States of America, recorded in the Office of the County Recorder of Burkea County, Nevada.

Said reservation and exception recites as follows:

"... subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by authority of the United States."

Affects the following described land:

TOWNSHIP 19 NORTH, RANGE 54 EAST, M.D.B.4M.

Section 2: SW1/4SW1/4;
Section 3: SE1/2SE1/4; SE1/4SW1/4;

Continued on next page

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SCHEDULE B
CITY PRELIMINARY REPORT

STEWART TITLE - GUARANTY COMPANY

TOWNSHIP 20 NORTH, RANGE 54 EAST, M.D.B.4M.

Section 3: Lot 5;
Section 4: S1/2NE1/4;
Section 10: S1/2NW1/4;

TOWNSHIP 21 NORTH, RANGE 54 EAST, M.D.B.4M.

Section 23: N1/2SE1/4; N1/2SW1/4;
Section 35: N1/2SE1/4;

7. Reservations and exceptions contained in various patents from the United States of America, recorded in the Office of the County Recorder of Eureka County, Nevada.

Said reservation and exception recites as follows:

"... subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States."

Affects the following described land:

TOWNSHIP 20 NORTH, RANGE 54 EAST, M.D.B.4M.

Section 9: S1/2NE1/4; S1/4NW1/4; NE1/4SW1/4;
Section 15: W1/2SW1/4;
Section 16: E1/2SE1/4;
Section 28: SW1/4SW1/4; NE1/4SW1/4;
Section 29: SE1/4SE1/4;

TOWNSHIP 21 NORTH, RANGE 54 EAST, M.D.B.4M.

Section 34: S1/2SE1/4;
Section 35: S1/2SW1/4;

8. Reservations and exceptions contained in various patents from the State of Nevada, recorded in the Office of the County Recorder of Eureka County, Nevada.

Said reservation and exception recites as follows:

"... provided that all mines of gold, silver, copper, lead, cinnabar and other valuable minerals which may exist in said tract, except gas, coal, oil and oil shale (Chap. 172 Stats. 1921); and also the right of way for ditches, tunnels and telephone and transmission lines constructed by authority of the United States are hereby expressly reserved."

Affects the following described land:

TOWNSHIP 20 NORTH, RANGE 54 EAST, M.D.B.M.

Section 17: S1/2SE1/4; S1/4SW1/4;
 Section 20: NW1/4NE1/4; NE1/4NW1/4;
 Section 21: S1/2NE1/4; N1/2NW1/4; S1/4NW1/4; S1/4SE1/4;
 Section 22: S1/2NE1/4; NW1/4NW1/4; S1/4 NW1/4;
 Section 23: SW1/4NE1/4;
 Section 24: NW1/4SW1/4;
 Section 25: NW1/4NE1/4; N1/2SW1/4; S1/4SW1/4;
 Section 26: S1/2NE1/4; N1/2SE1/2;
 Section 27: SW1/4NE1/4; NW1/4NW1/4; S1/4NW1/4; NE1/4SE1/4;
 Section 28: NE1/4NE1/4; S1/4SE1/4;
 Section 34: SW1/4NE1/4; S1/4NW1/4; NW1/4NW1/4;

9. Reservations and exceptions contained in Patent from the State of Nevada,
 Recorded
 August 18, 1943
 in Book 22, Page 386,
 Deed Records, Eureka County, Nevada.
 Affects
 W1/2SW1/4 of Section 5, Township 20 North,
 Range 54 East, M.D.B.M.

Said reservation and exception recites as follows:

"... provided that all mines of gold, silver, copper, lead, cinnabar and other valuable minerals which may exist in said tract are hereby expressly reserved."

10. An easement for electric transmission and/or distribution line or system, and incidental purposes, as granted to MT. WHEATLER POWER, INC., by instrument,
 Recorded
 September 24, 1971
 in Book 40, Page 372,
 Official Records, Eureka County, Nevada.
 Affects
 Sections 5, 9, 15, 16 and 17, Township 20 North,
 Range 54 East, M.D.B.M.

11. The effect of an agreement for electric service dated February 26, 1982, by and between MT. WHEATLER POWER, INC., and LOTHER FLORENZI, as consumer, recorded March 25, 1982, in Book 101, Pages 552 through 555, File No. 84023, Official Records, Eureka County, Nevada, which among other provisions, provides that a
 Continued on next page

lien shall attach to said land upon the consumer being in default thereunder.
 Affects
 : 11/2 of Section 20, Township 20 North, Range 54 East,
 : M.D.B.M.

12. A Deed of Trust to secure an indebtedness in the original amount stated herein, and/or other obligations secured thereby,
 Dated August 23, 1989
 Amount : \$18,992,342.04
 Trustor : DANIEL H. RUSSELL and ROBERTA A. RUSSELL,
 : Husband and Wife
 : FIRST AMERICAN TITLE COMPANY OF NEVADA, a
 : Nevada corporation
 : SANKWA BANK CALIFORNIA, a California corporation
 : in Book 202, Page 540, as Document No. 129611,
 : Official Records of Eureka County, Nevada.

Beneficiary
 Recorded
 : September 19, 1989
 : in Book 202, Page 540, as Document No. 129611,
 : Official Records of Eureka County, Nevada.

An Agreement to modify the terms and provisions of said Deed of Trust as therein provided, executed by SANKWA BANK CALIFORNIA, and DANIEL H. RUSSELL and ROBERTA A. RUSSELL was recorded May 18, 1990, in Book 210, Page 245, as File No. 132351, Official Records, Eureka County, Nevada.

A First Amendment to Agreement to modify the terms and provisions of said Deed of Trust as therein provided, executed by SANKWA BANK CALIFORNIA, successor in interest to LLOYDS BANK CALIFORNIA and DANIEL H. RUSSELL and ROBERTA A. RUSSELL was recorded October 5, 1990, in Book 215, Page 1, File No. 133846, Official Records, Eureka County, Nevada.

A Second Amendment to Agreement to modify the terms and provisions of said Deed of Trust as therein provided executed by SANKWA BANK CALIFORNIA, successor in interest to LLOYDS BANK CALIFORNIA, and DANIEL H. RUSSELL and ROBERTA A. RUSSELL was recorded July 19, 1991, in Book 224, Page 165, File No. 137340, Official Records, Eureka County, Nevada.

An instrument which substitutes the Trustee in and to said Deed of Trust,
 Dated
 Recorded
 : November 25, 1992
 : December 16, 1992
 : in Book 243, Page 33, as Document No. 143412,
 : Official Records of Eureka County, Nevada.
 : T.D. SERVICE COMPANY

Continued on next page

Notice of Default under the terms and conditions of the above referenced Deed of Trust by the alleged owner and holder of the Note secured by said Deed of Trust,
 Dated : November 25, 1992
 Alleged owner : SANNA BANK CALIFORNIA, successor in interest to LLOYD BANK CALIFORNIA by T.D. SERVICE COMPANY, : It's Attorney-in-Fact
 Recorded : December 16, 1992
 : In Book 243, Page 34, as Document No. 143413,
 : Official Records of Eureka County, Nevada.

The beneficial interest under said Deed of Trust was assigned by Instrument,
 Dated : November 12, 1993
 Recorded : December 2, 1993
 : In Book 256, Page 537, as Document No. 147841,
 : Official Records of Eureka County, Nevada.
 Assignee : MONROE FINANCE COMPANY, INC., a Colorado : corporation

The holder of this note/indebtedness should be contacted for all pertinent information.

13. A Deed of Trust to secure an indebtedness in the original amount stated herein, and/or other obligations secured thereby,
 Dated : March 30, 1992
 Amount : \$1,766,589.29
 Trustor : DANIEL H. RUSSELL
 Trustees : FIRST AMERICAN TITLE COMPANY OF NEVADA, a Nevada : corporation
 Beneficiary : ANGELO K. TZAKOPOULOS, an individual, WILLIAM : C. CUMMINGS, an individual, JD RANCH, a California : General Partnership and RUSSELL RANCH, a California : Limited Partnership
 Recorded : April 27, 1992
 : In Book 234, Page 152, as Document No. 140735,
 : Official Records of White Pine County, Nevada.

Includes other land

An instrument which substitutes the Trustee in and to said Deed of Trust,
 Dated : April 5, 1993
 Recorded : April 8, 1993
 : In Book 246, Page 481, as Document No. 145151,
 : Official Records of Eureka County, Nevada.

New Trustee : W. T. SERVICE CORPORATION

Notice of Default under the terms and conditions of the above

Continued on next page

A Deed of Trust to secure an indebtedness in the original amount stated herein, and/or other obligations secured thereby,
 Dated May 15, 1992
 Amount \$22,841,405.32
 Trustor DANIEL H. RUSSELL and ROBERTA A. RUSSELL,
 : Husband and wife
 : COM COUNTY TITLE CO., a Nevada corporation
 : MONFORT FINANCE COMPANY INC.
 : May 28, 1992
 : In Book 234, Page 512, as Document No. 140887,
 : Official Records of Eureka County, Nevada.
 Includes other Land

A judgment for the amount stated herein plus accruing costs and any other amounts due thereunder, issued in the Superior Court of the State of Arizona, in and for the County of Maricopa, Case No. : CV91-25791
Against : DANIEL H. ROBERTL
In Favor of : TEXOMA CATTLE FEEDERS
Amount Stated : \$5,204.90
Recorded : June 1, 1992

16. An Abstract of Judgement for \$1,989,109.48 and any other amounts due thereunder, against DANIEL H. RUSSELL, ROBERTA A. RUSSELL, DANIEL H. RUSSELL, d/ba RUSSELL RANCHES and RUSSELL, GAIL PHILIPS and DIANE RUSSELL, in favor of LINDA J. CALLETT, GAIL PHILIPS and DIANE RUSSELL, recorded February 19, 1993, in Book 245, Page 241, File No. 144565, Official Records, Eureka County, Nevada.

Continued on next page

SCHEDULE "B" CONTINUED:

Order No. 94210869

DANIEL H. RUSSELL aka DAN RUSSELL dba RUSSELL RANCHES.

18. The community property interest, if any, of the spouse of the
vestee herein.

COPY

BOOK 273 PAGE 448
OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
Mount Justice Co.
94 AUG -1 PM 4:25

EUREKA COUNTY NEVADA
M.N. REBALANCE, RECORDER
FILE NO.
FEES \$1900

154474

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