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Attorney I.D. 04493

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

94420515

BEVERLY PANKOW,

Plaintiff,

v.

DIANE M. MOUZAKIOTIS, TALMAN HOME
FEDERAL SAVING & LOAN ASSOCIATION
AND UNKNOWN OWNERS,

Defendants.

No. 89 CH 1120

DEPT-01 RECORDING \$61.50
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48857 & DW *-74-420515
COOK COUNTY RECORDER

On April 7, 1994, judgment was entered in this Court in favor of the Plaintiff Beverly Pankow and against Defendant Diane Mouzakiotis whose address is 2259 Seaver Lane, Hoffman Estates in the amount of \$47,756.01.

Legal description:

Lot 114 the Links at Poplar Creek Unit No. 2, a subdivision of part of the West 1/2 Southeast 1/4 Section 7-41-10.

P.I.N.: 07-07-404-044

Address of property: 2259 Seaver Lane, Hoffman Estates, Illinois.

This instrument was prepared by:

Edward J. Whalen
HEDBERG, TOBIN, FLAHERTY & WHALEN
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Chicago, IL 60602
(312) 726-0236

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

BEVERLY PANKOW,

Plaintiff,

No. 89 CH 01120

DIANE M. MOUZAKIOTIS, TALMAN
HOME FEDERAL SAVING & LOAN
ASSOCIATION and UNKNOWN OWNERS,

DIANE M. MOUZAKIOTIS,

Counter-Plaintiff,

BEVERLY PANKOW,

Counter-Defendant.

ORDER

This cause coming to be heard on trial of the plaintiff's Amended Complaint and the defendant's Answer and Amended Counter-Claim. The Court having heard the testimony of witnesses, weighed the credibility of the witnesses and of the evidence, heard arguments of counsel and being fully advised in the premises:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In 1987, the defendant-counterplaintiff, Diane Mouzakiotis, brought an action for Breach of Contract and Accounting in case number 87 CH 3174 in the Circuit Court of Cook County, Illinois, against the plaintiff-counter-

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defendant here, Beverly Pankow, and Alithia Inc., CETC a division of Alithia Inc., et al. An agreed order entered on April 2, 1987 included a temporary restraining order, an order dissolving Alithia Inc. and CETC, and the parties were ordered to wind-up the corporate business. The matter was not heard on the merits and a Default for Want of Prosecution Order was entered on March 24, 1988.

Beverly Pankow (Pankow) originally commenced this action for partition in response to a separate action for foreclosure on property owned by the Cornerstone Partnership. Subsequently, the property was sold and \$13,723.00 is presently being held subject to order of court. The partition action in Count I of the complaint is therefore not in issue. Pankow has amended her complaint and added Count II for contribution as co-guarantor of a corporate debt.

Count I of the defendant Diane Mouzakiotis (Mouzakiotis) counter-claim seeks a Partnership Accounting of the Cornerstone Partnership. Mouzakiotis subsequently amended the counter-claim and added Count II for Accounting regarding CETC a division of Alithia Inc. and Count III for Fraud and Misappropriation of Funds from CETC.

Pankow and Mouzakiotis were the directors and were equal and the only shareholders in Alithia Inc., a corporation. Alithia was commonly called by the name of its division CETC (Computer Entry Technology Corporation). (11/19/92, p. 29).

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Mouzakiotis was the President and Treasurer of CETC. Pankow was the Vice President and Secretary. (11/19/92, p. 29) (PX 1 and 14)² Mouzakiotis was authorized to write checks and on several occasions wrote checks on the CETC account. (11/19/92, p. 58)

Pankow kept the checkbook and wrote most of the checks. Mouzakiotis collected the accounts receivable and made the bank deposits for CETC. (11/20/92, p. 22)

Mouzakiotis and Pankow met jointly several times a year with Frank Pavlic, the accountant for CETC, to discuss the financial condition of the corporation. (7/1/93, pp. 6-7)

Until approximately 1985 CETC operated profitably without the necessity of borrowing from banks. (11/20/92, p. 25)

Until 1985, Pankow and Mouzakiotis would loan money to CETC for purposes of providing operating capital (4/14/93, pp. 72 and 104). However, no notes were ever given to either Pankow or Mouzakiotis to evidence the corporate borrowings. Nevertheless, the financial statements and tax returns prepared by Frank Pavlica did mention loans due to shareholders. (7/1/93, pp. 20-21)

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References to Exhibits are Plaintiff-counterdefendant's exhibits (PX); Defendant-counterplaintiff's Exhibits as (DX).

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Pankow and Mouzakiotis agreed that the loans due to shareholders would be repaid as corporate funds became available. (7/1/93, p. 20)

Pankow and Mouzakiotis were each paid an equal salary through a payroll service. This is the only amount that would appear as income on their W-2 forms. (7/1/93, p. 21)

The checks payable to the shareholders as a repayment for loans were picked up as income by the shareholders on their personal income tax returns. (7/1/93, p. 21)

On or about August 3, 1985, Pankow and Mouzakiotis went to Suburban Bank of Hoffman Schaumburg (SBHS) to apply for a line of credit and met with Jerry Levoy, an officer of SBHS. (11/20/92, p. 27) SBHS agreed to extend a line of credit to CETC by requiring Pankow and Mouzakiotis to guarantee the loan. (11/20/92, p. 35)

Pankow and Mouzakiotis signed a guarantee of CETC's indebtedness to SBHS. (PX 3) (11/20/92, p. 35) The terms and condition of the guarantee were explained to Pankow and Mouzakiotis by Jerry Levoy. (11/20/92, p. 35)

As a further condition of extending the line of credit, SBHS required that Pankow pledge a certificate of deposit in the amount of \$90,000.00 as collateral for the loans to CETC. (11/20/92 p. 28) (PX 2) In addition to a line of credit, SBHS authorized a check loan for CETC (PX 81) whereby SBHS would automatically cover overdrafts in the CETC checking account. (11/20/92, p. 28)

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The initial limit on the check loan was \$5,000.00 and was later increased to \$25,000.00. (11/20/92, p. 29) Pankow's certificate of deposit was also pledged as collateral for the CETC check loan. (11/20/92, p. 30)

SBHS extended a \$35,000 line of credit to CETC evidenced by a promissory note 381-22393 dated August 8, 1985, signed by Pankow and Mouzakiotis. (PX 15) CETC Received \$34,500 from this loan in several installments (11/20/92, pp. 32-34) which were deposited directly into CETC's checking account. (PX 16A and B and 80A) Note 91-22383 was renewed by SBHS by note 91-22607 dated February 4, 1986. (11/20/92, p. 37)

On February 11, 1986, pursuant to CETC's credit line, SBHS made another loan to CETC in the amount of \$13,500 (PX 18), note 81-22608, signed by Pankow and Mouzakiotis. (11/20/92, p. 37) The loan proceeds of \$13,500 were deposited into CETC's account. (PX 18A) (11/20/92, p. 39)

On or about March 6, 1987, due to extensive damage to office computers and equipment, Pankow had the locks to the office changed. Mouzakiotis considered this a lockout to preclude her from performing her duties as president and treasurer.

Although Pankow changed the locks on the CETC premises, Mouzakiotis had access to the building and to CETC's premises both of which were not locked during business hours. (11/20/92, p. 9) Nevertheless, Mouzakiotis claims she was locked out by Pankow.

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In March 1987 after the locks were changed, Mouzakiotis, without Pankow's consent, took for her own use a total of \$14,418.02 from CETC in the form of checks and accounts receivable. (PX-10) (11/19/82, pp. 60-63) Mouzakiotis also took an automobile owned by the corporation and used it for a trade-in to purchase her personal car.

When Pankow discovered that Mouzakiotis had taken the money and accounts receivable from CETC she opened a new checking account for CETC at SBHS.

Pankow disobeyed an agreed order of dissolution and temporary restraining order entered on April 2, 1987 to not touch any of CETC's assets. Pankow later that day nevertheless took 300 diskette's of CETC's business records to her home, copied them, and thereafter converted CETC's customer and accounts receivable records to her own use and for the benefit of her newly formed company, Accurate Data. In fact, Pankow's Accurate Data, Inc. was in business the next day serving CETC's customers.

On June 9, 1987, Pankow on advice of her attorney, sold at a public sale certain equipment of CETC. (PX 6) Mouzakiotis attended the sale of the CETC equipment. (11/19/92, p. 76) CETC received \$3,614 from the sale of the CETC equipment. Included in this amount was \$1,385.05 received from Pankow's friend and subsequently her husband, Richard Ward, who purchased

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certain CETC equipment. (4/14/93, p. 134) All of the money was deposited into CETC's checking account. (PX 5A and B; PX 69)

Some other equipment owned by CETC was used by Accurate Data without reimbursing CETC. (4/14/93, p. 117) (4/16/93, p. 18)

During the period of March 1987 to April 1987, Pankow received two payroll checks from CETC each in the amount of \$536.28. No other checks were written to Pankow during this time. (DX 4) (2/74).

After April 1987, the only checks which were written on CETC's account were checks for taxes (PX 85) and these checks were signed by both Pankow and Mouzakiotis. (7/1/93, p. 82)

After the April 2, 1987 order of dissolution, Pankow testified that she collected the accounts receivable owed to CETC and deposited the funds into CETC's account. (11/20/92, pp. 56-59, 4/14/93, p. 115) The bank records of CETC indicate that from March 1987 to September 1987 in excess of \$71,000 was deposited into CETC's checking account. (PX 69) SBHS subsequently applied the funds in CETC's account against the balance of CETC's outstanding loans and closed the account in September, 1987. (11/20/92, p. 57) CETC still owed SBHS \$44,156.40. (PX 24) (11/20/92, p. 43) In June 1988, the loans from SBHS to Accurate Data which included the CETC loan of \$44,156.40 were paid when the bank invaded Pankow's \$90,000.00 certificate of deposit. (PX 26, 27) (11/20/92, pp. 41-43)

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Frank Pavlica, the accountant, testified for Pankow. His testimony is summarized in PX 74 where he lists various financial adjustments to be assessed against Mouzakiotis. All of the following proposed assessments suffer for lack of proof:

1. There was no showing of a tax benefit actually received by Mouzakiotis. No documentary evidence was submitted that such actually occurred. Therefore, the claim for \$20,354.57 is disallowed. Pavlica theorized that she could have taken losses on her tax returns. (See Appendix 2, Pavlica cross-examination, July 1, 1993 pages 43-44).

2. Pankow testified that Exhibit 55, the \$9,608.75 payroll, was paid by Accurate Data, Inc., her second company and introduced a dateless, illegible check stub as "evidence" of payment. She further testified that the payroll should be credited to her despite being incurred on April 17, 1987, for a period of CETC operation after Mouzakiotis claims she had been "locked-out". CETC's business had terminated on April 2, 1987. (See Appendix 3, Pankow cross-examination pages 36-38, June 30, 1993 and Pankow's Exhibit 55).

Pavlica included it as paid by Accurate Data strictly on the basis of Pankow's testimony (Appendix 3, Pavlica cross-examination July 1, 1993, pages 46 and 47) despite having all the corporate banking records available to him. Since, the supporting document was undated, the payroll could have been for any period.

3. On April 19, 1987, Pankow borrowed \$13,500. (11/20/92, p. 39). The loan was evidenced by note 81-22664 and signed by Pankow only. (PX 19) Pankow testified she deposited the \$13,500 into CETC's account at various times. (PX 69 and 74) (11/20/92, p. 40; 7/1/93, p. 52) (6/30/93, p. 50) Pankow's testimony that the \$13,500 was deposited into CETC's account in Exhibit 19 was never conclusively demonstrated to have been made. Said note was, on its face, a personal obligation of Pankow. Pavlica assumed that it was used for CETC purposes because large sums of money were deposited in its account. However, he was unable to identify when, if ever, the money was actually deposited nor did he produce any document showing that such deposit occurred. (Appendix 4, Pavlica cross-examination, July 1, 1993,

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pages 49-52).

Pankow admits that (a) she alone signed the note (b) Mouzakiotis was not present (c) that, unlike the other notes, it bore only Pankow's name, address, social security number and telephone number and not those of CETC and (d) that there is no documentary evidence, such as submitted for the prior two notes, that the \$13,500 went into CETC's account.

4. The calculation by Pavlica of \$4,552.49 in interest incurred by Accurate Data and Pankow is pure speculation as there are no detailed calculations anywhere in Exhibit 74 or elsewhere in any exhibit or testimony that would controvert the bankers having already included the interest as being part of the \$44,157.00 demanded by the bank. Again, proof in documentary form is absent. Instead, only a calculation by Mr. Pavlica of what he assumed was presented. (Appendix 5, Pavlica cross-examination July 1, 1993).

5. The claim of \$1,200 to haul away damaged machines is unsupported by any documentation. In question are three computers which Mouzakiotis insists remained on the premises.

In her testimony on November 10, 1992, Pankow, on direct examination, denied using any CETC key punch machines in her new corporation, Accurate Data, formed after she changed the locks in March, 1987. (Appendix 6 Pankow direct examination November 20, 1992 pages 21). On January 22, 1992, on cross-examination, Pankow again testified that no CETC machines were ever used by Accurate Data (Appendix 6, Pankow cross-examination, January 22, 1993, pages 12-14). But, on April 14, 1993, Elizabeth Janke, a former employee testified to the contrary - that the same old machinery was at the Accurate Data as she used at CETC a month earlier. (Appendix 6, Elizabeth Janke direct examination April 14, 1993, pages 91-94). Later on the same day, Pankow went back on the stand and testified that she really meant that she hadn't used the old machinery as old machinery but as repaired after repossession and thus new! No documentation such as repair invoice, repossession notices, haul-away charges or repurchase bills of sale have been introduced into evidence by Pankow.

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6. The amount of the claim for \$2,895.00 of car equity retained by Mouzakiotis was based on "blue book" valuations. Pavlica testified that he got the figure for Pankow from the work papers of Wally Plan, another CPA and that he got them from the "blue book"; that the valuations were only good for tax purposes; and that the actual amount of real value might be different. There was no proof of actual value.

7. The sum of \$6,695.85 charged Mouzakiotis on Pavlica's schedule D as payments by Pankow for Mouzakiotis' bathroom are unproved by virtue of no corroborating bill or other documentary evidence. Pankow admitted that her own house was repaired by the same contractor (Countryside) who she paid on the same date. No invoice for repairs from Countryside was submitted. (Appendix 8, Pankow cross-examination June 30, 1993, pages 25-28, PX 78 and Countryside checks 2654 and 2653.)

8. The Carpenter Computer payment by Accurate Data of \$1,100.00 charged in Pavlica's summary (Exhibit 29) is not supported by any bill or invoice to or from CETC. Janke testified that Pankow was planning on selling some of the machines to Carpenter Computer so she could buy them back for a dollar at a later date (Appendix 9, Pavlica cross-examination, July 1, 1993, page 47, Janke direct examination, April 14, 1993, page 96).

The court finds that Pankow failed to prove by a preponderance of the evidence the aforesaid eight claims.

Mouzakiotis testified that Pavlica's account does not include a \$10,000.00 credit to Mouzakiotis for her C.D. loaned or contributed to CETC for which there is no documentation but there was corroborating testimony from both principals to this suit. (Appendix 10, Pankow's cross-examination, January 22, 1993, page 42; Pavlica cross-examination, July 1, 1993, pages 40-43.) Mouzakiotis also testified that from time to time she loaned approximately \$40,000 to CETC. (PX 1 and 2) (4/14/93, p. 49)

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However, Mouzakiotis also testified that CETC and not Pankow owed her the money. (4/14/93, p. 49)

In any event as indicated by PX 90 and the testimony of Frank Pavlica, Mouzakiotis was repaid for all of the loans which she made to the corporation. (PX 90) (PX 74)

Mouzakiotis testified that from time to time, she made personal loans of \$21,965.56 to Pankow. (DX 3 and 3A) Mouzakiotis testified that at no time did Pankow agree nor did Mouzakiotis expect Pankow to repay these loans. (4/14/93, pp. 21-22) Mouzakiotis further testified she loaned the money directly to Pankow with the oral agreement by Pankow that Mouzakiotis would be paid back by CETC. (Transcript 4/14/93, pp. 14, 21-22)

Mouzakiotis testified as to the value of CETC to prove Mouzakiotis' damages. Mouzakiotis testified that in May, 1987, a month after the agreed order of CETC's dissolution was entered that Pankow offered her \$35,000.00 for the business.

Pankow testified that her \$35,000.00 offer to purchase CETC from Mouzakiotis in May, 1987, was not based on the value of the business but in her opinion it was cheaper to make an offer than starting a new corporation. Pankow started Accurate Data Inc on April 3, 1987. Pankow testified that Mouzakiotis refused her offer.

The court finds that neither Pankow nor Mouzakiotis were totally credible in their testimony.

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A. CONCLUSIONS OF LAW AS TO THE CORPORATE DEBT

Pankow's Count II for contribution is based on Mouzakiotis' co-guarantee on the bank loan to CETC for which Pankow pledged her \$90,000.00 C.D. Since the bank invaded Pankow's \$90,000.00 C.D. to satisfy CETC's debt of \$44,156.40, Mouzakiotis as co-guarantor is liable to Pankow for contribution of one-half or \$22,078.20. State Bank of East Moline v. Cirrivello, 74 Ill. 2d 426 (1978).

Mouzakiotis' counterclaim Counts II and III are for an accounting of CETC, a Division of Alithia, Inc., and for Fraud and Misappropriation of Funds from CETC.

The accounting at trial revealed that Mouzakiotis and Pankow both made loans to CETC that were not recorded on the books of CETC. When CETC repaid the loans, Mouzakiotis and Pankow reported the payments as income on their income tax returns. The personal loans of Mouzakiotis and Pankow were all repaid by CETC. Mouzakiotis further testified that CETC owes her for the personal loans she made to Pankow. However, it is inconceivable, based on the evidence in this case, that CETC could be liable for personal loans made by Mouzakiotis to Pankow.

Conversion has been defined as an unauthorized assumption or exercise of the right of ownership over personal chattels belonging to another to the alteration of their condition or the exclusion of the owner's rights. It involves

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the exercise of dominion over property inconsistent with the rights of the owner. Dickson v. Rieblin, 30 Ill. App.3d 965 (1975). The court finds that Mouzakiotis' actions in taking \$14,418.02 and a used automobile from CETC for her own use and personal benefit constitute conversions of corporate property.

The court further finds that Pankow's actions in copying CETC's customer lists, accounts receivable and the business records of CETC from 300 diskettes for her own use and to benefit her company Accurate Data in violation of the court's injunction order entered on April 2, 1987 and the immediate servicing of CETC's customers also constitutes conversion of corporate property. Scheduling Corp. of America v. Massello, 119 Ill. App.3d 355 (1983).

Pankow and Mouzakiotis both testified that in May, 1987, Pankow offered Mouzakiotis \$35,000.00 for CETC's business but that Mouzakiotis refused. The court finds that Pankow's offer of \$35,000.00 alone is insufficient evidence to prove either the value of CETC as a business or the value of CETC's customer and business records which were converted by Pankow on April 3, 1987.

B. CONCLUSIONS OF LAW AS TO LOANS BY DIANE MOUZAKIOTIS

Mouzakiotis claims that the loans she made to CETC and to Pankow personally should be setoff against the \$44,156.40 balance on the jointly guaranteed bank loan to CETC paid by Pankow. However, the fact that CETC may owe Mouzakiotis money cannot be used as a setoff against the amounts which Mouzakiotis

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owes Pankow individually. A corporate debt cannot be used as a setoff against a personal debt. O'Connell v. Pharmaco, 164 Ill. App.3d 68 (1977).

Mouzakiotis further claims that her individual loans to Pankow should be setoff against the \$44,156.40 paid by the plaintiff-counterdefendant.

As evidence of the personal loans to Pankow, Mouzakiotis submitted her Group Exhibit 3 and 3A which are a group of checks payable to Pankow. Even assuming that the claim for personal loans is relevant, all of the checks on which Mouzakiotis bases her "loan" claim were written prior to June 29, 1981 and are barred by the statute of limitations. The last check on which Mouzakiotis bases her claim was written was June 19, 1981.

The ten year statute of limitations allows recovery on a written instrument or "other evidence of indebtedness". However, the courts have strictly interpreted the meaning of "other evidence of indebtedness" to mean that all of the essential terms must be in writing and must be ascertained from the written instrument itself. Brown v. Goodman, 147 Ill. App. 3d 935 (1986). If parol evidence is required to establish the essential elements then the five-year limitation of §13-205 applies.

Here the only documents are the checks written by Mouzakiotis to Pankow. There is nothing on the face of the checks which indicates a loan or a promise to pay made by

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Pankow. The evidence of the loans can only be supplied from Parol evidence supplied by Mouzakiotis. Because the documents fail to demonstrate a promise to pay on their face, the five-year statute of limitations applies. Toth v. Mansell, 207 Ill. App.3d 665 (1991).

However, §12-207, allows a time-barred counter-claim to be asserted. Section 13-207 provides:

"Set-off or counterclaim.

A defendant may plead a set-off or counter claim barred by the statute of limitation, while held and owned by him, to any action, the cause of which was owned by the plaintiff or person under whom he claims, before such set-off or counter claim was to be barred***."

Yet, §13-207 is not applicable here. In order for Section 13-207 to apply, the counter claim must not have been barred at the time Pankow's claim first accrued. Kuh v. Williams, 13 Ill. App.3d 588 (1973). Carnahan v. McKinley, 80 Ill. App. 2d 318 (1967). Here Pankow's cause of action as co-guarantor accrued in June, 1988 when the bank invaded the C.D. and recovered \$44,156.40 for the loans made to CETC.

On the other hand, Mouzakiotis' claim for personal loans became barred at the latest on June 19, 1987, which was two years prior to the time that Pankow's claim for contribution arose. Therefore, Mouzakiotis cannot assert the counter-claim for the personal loans under §13-207.

Finally, Mouzakiotis testified that she did not expect Pankow to repay her. She testified that she and Pankow agreed that Mouzakiotis would only be repaid by CETC.

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In conclusion, Mouzakiotis is not entitled to a set-off either for her loans to CETC or for her personal loans to Pankow.

C. CONCLUSIONS OF LAW AS TO THE CORNERSTONE PARTNERSHIP

Pankow and Mouzakiotis were the general partners in a partnership called Cornerstone which owned several parcels of real estate. At various times, Cornerstone owned three parcels of real estate i.e., (1) vacant land in Arizona; (2) 3944 Port, Hanover Park, Illinois; and (3) 1569 Cornell, Hoffman Estates, Illinois.

Until March 1988, Mouzakiotis kept all of the books and records of Cornerstone. (4/16/93, p. 23) (Counterclaim ¶9) In March 1988, Mouzakiotis unilaterally decided to stop keeping Cornerstone's books and delivered the partnership checkbook to Pankow. (4/19/93, p. 23) Mouzakiotis was never excluded from participation in the partnership business. (6/30/93, p. 46)

Mouzakiotis never accounted to Pankow for monies received and disbursed on behalf of Cornerstone during the years she kept the books and records of Cornerstone. (6/30/93, p. 46)

During the time that Pankow kept the Cornerstone checkbook, she paid on behalf of Cornerstone \$17,798.61 for obligations of the partnership. (4/16/93, pp. 29-37) (PK 77)

All rents collected during the time she had possession of the checkbook were deposited by Pankow into the Cornerstone checking account. (6/30/93, pp. 42-43)

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During the time Pankow maintained the Cornerstone checkbook, the Port and Cornell properties were sold and the net proceeds of the sale were \$19,139.14. (PX 77) The Arizona property was sold in 1986, and the net proceeds of \$22,853.22 were deposited by Pankow and Mouzakiotis into the CETC checking account to reduce the then outstanding check loan. (11/20/92, pp. 52-54)

The proceeds from the sale of Cornell in the approximate amount of \$13,000 are being held in an escrow account at the Harris Bank (PX 37A)

Based on the testimony and evidence (PX 39-46) the court adopts Pankow's Cornerstone Summary (PX 77) showing the amounts to be reimbursed to Pankow for the payments made by her from her own funds to preserve and protect the Cornerstone partnership assets prior to their sale:

CORNERSTONE SUMMARY

Escrow Cornell Sale	\$13,278.00	(Ex. 36 & 37)	
Port Sale	<u>5,861.14</u>	(Ex. 38)	
	\$19,139.14		\$19,139.14

Beverly Paid

1. Cornell

Mtg.	\$ 1,790.38	(Ex. 39 A&B)	
Mtg.	1,079.31	(Ex. 40 A&B)	
Mtg.	550.00	(Ex. 41)	
Carpet	812.00	(Ex. 42 A&B)	
Advertising	<u>471.84</u>	(Ex. 46)	
	\$ 4,703.53		\$ 4,703.53

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2. Arizona

Deposit	\$ 1,000.00	(Ex. 43)	
Earnest Money	6,049.70	(Ex. 44)	
Mortgage	1,154.04	(Ex. 44)	
	<u>\$ 8,203.04</u>		\$ 8,203.04

3. Port

Earnest Money	\$ 4,891.84	(Ex. 47)	<u>\$ 4,891.84</u>
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TOTAL PAID			<u><u>\$17,798.61</u></u>
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Receipts

Cornell Sale	\$13,278.00
Port Sale	<u>5,861.00</u>
	\$19,139.00

Beverly Owed	<u>\$17,798.61</u>
	\$ 1,340.39

Mouzakiotis 50%	\$ 670.19
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The court finds that the amount of the reimbursement of expenses due to Pankow is \$17,798.61. The balance of partnership assets available for distribution is \$1,340.39 plus accrued interest on the \$13,278.00 being held in escrow. The \$1,340.39 plus the amount of the accrued interest is to be divided 50% to Pankow and 50% to Mouzakiotis as equal partners.

D. CONCLUSIONS OF LAW - SUMMARY

In conclusion, as to Pankow's claim for contribution on the co-guarantee of the corporate debt, Mouzakiotis owes one-half of \$44,156.40 to Pankow or \$22,078.20.

As to the accounting of CETC, Mouzakiotis converted \$14,418.02 and owes Pankow one-half or \$7,209.01.

Count III of the counterclaim is moot as both parties

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converted CETC's assets and are in pari delicto.

From the Cornerstone Partnership Accounting, Pankow is owed a reimbursement of advances made by her in the amount of \$17,798.61. The net profit on the sale of the Cornell and Port properties is \$1,340.39. Pankow and Mouzakiotis are both entitled to one-half or \$670.19 plus one-half of the interest that has accrued on the amount in escrow.

ORDER

IT IS HEREBY ORDERED that Count I of the Amended Complaint for Partition is moot and is hereby dismissed as the property was sold and \$13,278.00 plus accrued interest is being held in escrow.

IT IS FURTHER ORDERED that defendant Talman Home Federal Savings and Loan Association is dismissed.

IT IS FURTHER ORDERED that judgment is entered on Count II of the Amended Complaint for contribution in favor of the plaintiff counter-defendant, Beverly Pankow, and against the defendant counter-plaintiff, Diane M. Mouzakiotis, in the amount of \$22,078.20.

IT IS FURTHER ORDERED that judgment is entered on Count I of the amended counterclaim for an Accounting of the Cornerstone Partnership in favor of Beverly Pankow for \$18,468.80 plus one-half of the accrued interest on the \$13,278.00 being held in escrow. Also, judgment is entered in favor of Diane Mouzakiotis for \$670.19 plus one-half of

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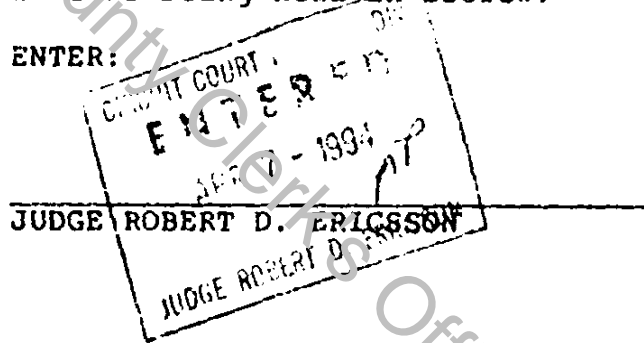
the accrued interest on the \$13,278.00 being held in escrow.

IT IS FURTHER ORDERED that judgment is entered in favor of Beverly Pankow and against Diane Mouzakiotis on Count II of the amended counterclaim for an accounting of CETC in the amount of \$7,209.01.

IT IS FURTHER ORDERED that Count III of the Amended Counterclaim for Fraud and Misappropriation of Funds of CETC a division of Alithia, Inc. is dismissed.

IT IS FURTHER ORDERED that a status hearing is set for April 22, 1994 at 9:30 a.m. for a report on the amount of interest that has accrued on the \$13,278.00 held in escrow and for the disbursement of the total funds being held in escrow.

ENTER:



RECORDED AND INDEXED

APR 17 1994

CLERK OF COURT
COURT HOUSE
100 N. 1ST ST.
MILWAUKEE, WI 53233

9440016

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Property of Cook County Clerk's Office

I HEREBY CERTIFY THE ABOVE TO BE CORRECT.

DATE MAY 09 1994



CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILL.
THIS ORDER IS THE COMMAND OF THE CIRCUIT
COURT AND VIOLATION THEREOF IS SUBJECT TO THE
PENALTY OF THE LAW.