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SARAH MOSS MOSKOWITZ,
by her Agent and Attorney-
in-fact, GLORIA FLEISCHER,

Plaintiff,

v.

MICHAEL H. MOSS,

Defendant.

NO. 94 L 676

96680077

SATISFACTION
RELEASE OF JUDGMENT

DEPT-01 RECORDING \$29.50
T46666 TRAN 8339 09/05/96 13:15:00
18095 : SA *-96-680077
COOK COUNTY RECORDER

GLORIA FLEISCHER, as agent and attorney in fact for SARAH MOSS MOSKOWITZ, the (strike two) 18095 : SA *-96-680077
JUDGMENT CREDITOR, ASSIGNED OR DEEDS, LOCAL REPRESENTATIVE having received full satisfaction and
payment, releases the Judgment entered against MICHAEL MOSS
on June 2, 1995, for \$ 201,035.63

Dated August 26, 1996

NOTICE

If a Memorandum of Judgment has been recorded in this case,
a certified copy of this release shall be filed by the
person receiving the release in the office of the Recorder
of Deeds in which Judgment has been recorded

APPROVED:
Eugene Holland
Attorney of record
ORDER

This matter coming on to be heard on the Court's own motion; the Court having been presented with a signed Release or Satisfaction
in full of a judgment previously entered by the Court in the above entitled matter; the Court having jurisdiction in the above
entitled matter:
IT IS HEREBY ORDERED that the judgment heretofore entered by the Court in the above entitled matter is hereby vacated and held for
naught.
IT IS FURTHER ORDERED that the above entitled matter be and the same is hereby dismissed.

Date _____ ENTER _____ JUDGE _____ No. _____

Name Eugene K. Hollander
Attorney for MARK H. MARKS AND KAPLAN, LTD.
Address 120 North LaSalle Street
City Chicago, Illinois 60602-2401
Telephone (312) 332-5200
Atty No. 90513

For the protection of the owner, this release shall be
filed with the Recorder of Deeds or the Registrar of Title
in whose office the lien was filed.

F	29.50	A
P		5
T	29.50	V
I	70	

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not competent at the time of the execution of the power of attorney.

3. The next issue involves the classification of the document which has been called by plaintiff a promissory note and by defendant a guarantee (plaintiffs' complaint Exhibit 2). Defendant claims that despite the wording of the document, it was intended by the parties to be a guarantee by defendant of plaintiff's investment and that it lacked the necessary consideration for a promissory note.

4. The evidence is relatively uncontested concerning the events leading up to the May 13, 1986 meeting between plaintiff and defendant. Defendant wanted plaintiff to invest \$100,000 in a limited partnership in which defendant was involved. At the time of the execution of the document, the plaintiff was an elderly widow with limited experience in matters concerning investments. Defendant was the nephew of the plaintiff, was approximately 49 years of age, and had a degree in law and was a certified public accountant. Plaintiff agreed to invest in the limited partnership, but wanted further security concerning her investment and therefore insisted on and received the May 13, 1986 document. (Complaint Exhibit 2)

5. It is not necessary for the Court to go beyond the four corners of Exhibit 2 in order to construe the document. The document is clear from its face concerning its terms, reciting the consideration, the amount, the interest rate, and the method for demand. Defendant's argument that there is no consideration for

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the note is without merit. The note recites that the consideration received by defendant is plaintiff investing \$100,000 in a limited partnership. Defendant had an interest in an entity that was a general partner and therefore the defendant had an interest in the limited partnership and benefited from the partnership being fully funded. If defendant had wanted the document to be merely a guarantee, he could have inserted the necessary language into the document. Demand was properly made by plaintiff's representative upon defendant pursuant to the terms of the note.

6. Plaintiff contends that defendant had a fiduciary duty to the plaintiff and was guilty of breaching that duty and also of fraud. Plaintiff requests the court to award punitive damages against defendant for this alleged breach.

7. The law is well settled concerning the factors that the court should consider in determining whether or not a fiduciary relationship exists. In this case, as in many cases, the evidence on these factors is closely balanced. However, given the fact that Sarah Moskowitz consulted at least two other family members concerning this investment and required that defendant personally issue a promissory note in relation to the investment, leads the court to conclude that plaintiff has failed to establish the existence of a fiduciary relationship in this case.

8. Plaintiff has failed to prove that defendant fraudulently induced plaintiff to enter into this transaction. Initially, the investment paid the interest as the parties had anticipated. Also, the partnership is still functioning with substantial assets.

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WHEREFORE IT IS HEREBY ordered that:

- a) Judgment is entered in favor of plaintiff and against defendant in the amount of \$100,000 plus 12% simple interest from the date of the last interest payment to the date of the judgment;
- b) The request for punitive damages it is denied;
- c) Defendant's counter-claim for reformation of the agreement is denied.

ENTER:


PETER M. TROBE,
Associate Judge

Dated at Waukegan, Illinois
this ____ day of June, 1995.

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