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CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**In re:**  
**JERRY L. ICENHOWER dba  
Seaview Properties, and DONNA L.  
ICENHOWER,**  
**Debtors.**  
**KISMET ACQUISITION, LLC, a  
Delaware limited liability company,  
Successor-in-Interest to Gerald H.  
Davis, Chapter 7 Trustee,**  
**Plaintiff,**  
**v.**  
**JERRY L. ICENHOWER, an  
individual; et al.**  
**Defendants.**

**Case No. 03-11155-A7  
Adv. No. 06-90369-A7  
Adv. No. 04-90392-A7**

**CONSOLIDATED JUDGMENT**

The consolidated trials of adversary proceedings 04-90392 and 06-90369 were heard from April 21 to April 25, 2008 before the Honorable Louise DeCarl Adler. Janet D. Gertz and Ali M.M. Mojdehi appeared on behalf of plaintiff, Kismet Acquisition, LLC, successor-in-interest to Gerald H. Davis, the Chapter 7 Trustee ("Plaintiff"), and Stephen B. Morris and Mark C. Hinkley appeared on behalf of defendants Alejandro Diaz Barba and Martha Margarita Barba De La Torre (aka

1 Martha Barba Diaz) (the “Diaz Defendants). No appearances were made on behalf  
2 of defendants Howell & Gardner Investors, Inc. (“H&G”), and Jerry and Donna  
3 Icenhower (“Debtors”) (hereinafter the Diaz Defendants, H&G and Debtors are  
4 collectively the “Defendants”).

5 Witnesses were sworn in and examined, documentary evidence was introduced  
6 on behalf of the parties and the case was argued by counsel for both the Plaintiff and  
7 the Diaz Defendants. Having carefully considered the testimony of the witnesses and  
8 arguments of counsel and the Court having made findings of fact and conclusions of  
9 law on the record in open court and the Court having entered separate Findings of  
10 Fact and Conclusions of Law concurrently herewith, and other good cause:

11 IT IS HEREBY ORDERED that:

12 1. Judgment is entered in favor of Plaintiff and against the Defendants on the  
13 complaint in adversary proceeding 06-90369. It is hereby adjudged and decreed  
14 that --

15 (a) H&G is the alter ego of the Debtors *nunc pro tunc* to the petition  
16 date;

17 (b) The assets of H&G are hereby substantively consolidated with the  
18 assets of the bankruptcy estate *nunc pro tunc* to petition date;

19 (c) the real property called the Villa Vista Hermosa, located in the  
20 Village of Chamela in the Municipality of La Huerta, State of Jalisco,  
21 Mexico (the “Villa Property”) is property of the bankruptcy estate  
22 pursuant to 11 U.S.C. § 541(a) *nunc pro tunc* to the petition date;

23 (d) The Debtors’ unauthorized postpetition transfer of the Villa Property  
24 to H&G is avoided pursuant to 11 U.S.C. 549(a);

25 (e) Plaintiff is entitled to recover and preserve pursuant to 11 U.S.C.  
26 § 550(a)(1) and § 551 the Villa Property from the Diaz Defendants as  
27 the initial transferees of the avoided postpetition transfer. Within thirty  
28 days of entry of this judgment, Defendants are hereby ordered and

1 directed to take all actions necessary to execute and deliver any and all  
2 documents needed to undo the avoided transfer, and to take all actions  
3 necessary to cause the property to be reconveyed to a *fideicomiso* trust  
4 naming Plaintiff as the sole beneficiary for the benefit of the bankruptcy  
5 estate; or

6 (f) alternatively, at Plaintiff's sole option made upon proper noticed  
7 motion, the Court reserves jurisdiction to enter a monetary judgment in  
8 favor of Kismet, and against Defendants, in an amount necessary to  
9 make the estate whole at the time of judgment.

10 2. Alternatively, even if the Villa Property is not property of the bankruptcy  
11 estate *nunc pro tunc* to the petition date, judgment is entered in favor of Plaintiff and  
12 against the Defendants on the remaining claims in the amended complaint in  
13 adversary proceeding 04-90392. It is hereby adjudged and decreed that –

14 (a) the Debtors' transfer of the Villa Property to H&G is avoided as a  
15 fraudulent transfer under 11 U.S.C. § 544(b), pursuant to Cal. Civ.  
16 Code §§ 3439.04(a)(1) and (a)(2) and § 3439.07;

17 (b) Plaintiff is entitled to recover and preserve pursuant to 11 U.S.C.  
18 §§ 550(a)(1) and (a)(2) and § 551 the avoided fraudulent transfer from  
19 H&G as the initial transferee of the avoided fraudulent transfer, and  
20 from the Diaz Defendants as the "immediate or mediate" transferees of  
21 the initial transferee. Within thirty days of entry of this judgment,  
22 Defendants are hereby ordered and directed to execute and deliver any  
23 and all documents needed to undo the avoided transfer, and to take all  
24 actions necessary to cause the property to be reconveyed to a  
25 *fideicomiso* trust naming Plaintiff as the sole beneficiary for the benefit  
26 of the bankruptcy estate; or

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(c) alternatively, at Plaintiff's sole option made upon proper noticed motion, the Court retains jurisdiction to enter a monetary judgment in favor of Kismet, and against Defendants, in an amount necessary to make the estate whole at the time of judgment.

3. The Court reserves for future determination made upon proper motion the issues of an award of fees and expenses, and it reserves jurisdiction to issue any and all orders necessary to carry out and enforce this judgment.

Dated: 2 June 08

  
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LOUISE DE CARL ADLER, Judge