

1996

Mary C. Fogarty v. Lynn E. Elliott, Jean H. Elliott,
Terra Domus, Corp., Lynn Edward Elliott, A.I.A.,
P.C. : Brief of Appellant

Utah Court of Appeals

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J. Bryan Jackson, P.C.; attorney for appellants.

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Brief of Appellant, *Mary C. Fogarty v. Lynn E. Elliott, Jean H. Elliott, Terra Domus, Corp., Lynn Edward Elliott, A.I.A., P.C.*, No. 960122 (Utah Court of Appeals, 1996).

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

DOCKET NO. 960122-CA

MARY C. FOGARTY,

Plaintiff/Respondent,

vs.

LYNN E. ELLIOTT and JEAN H.
ELLIOTT, Individually, and
TERRA DOMUS, CORP., and LYNN
EDWARD ELLIOTT, A.I.A., P.C.,

Defendants/Appellants.

BRIEF OF APPELLANTS

Case No. 960122-CA

Priority 16

BRIEF OF APPELLANTS

Appeal from the Fifth District Court's denial of Appellants
60(b) motion to set aside said Court's order of summary judgment in
Iron County, State of Utah, the Honorable J. PHILIP EVES,
Presiding.

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FILED

Utah Court of Appeals

DEC 2 - 1996

Marilyn M. Branch
Clerk of the Court

MARY C. FOGARTY,
Plaintiff/Respondent,

vs.

LYNN E. ELLIOTT and JEAN H.
ELLIOTT, Individually, and
TERRA DOMUS, CORP., and LYNN
EDWARD ELLIOTT, A.I.A., P.C.,

Defendants/Appellants.

BRIEF OF APPELLANTS

Case No. 960122-CA

Priority 16

Appeal from the Fifth District Court's denial of Appellants 60(b) motion to set aside said Court's order of summary judgment in Iron County, State of Utah, the Honorable J. PHILIP EVES, Presiding.

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TABLE OF AUTHORITIES

CASES AND AUTHORITIES

State v. Ramirez, 817 P.2d 774 (Utah 1991).

State v. Rhodes, 818 P.2d 1048 (Utah Ct. App. 1991).

Larsen v. Collina, 684 P.2d 52 (1984).

Ehlers & Ehlers Architects v. Carbon County, 805 P.2d 789 (Utah Ct. App. 1991).

Brandt V. Springville Banking Co., 10 Utah 2d 350, 353 P.2d 460 (1960).

Workman v. Nagle Construction, Inc., 802 P.2d 749 (Utah Ct. App. 1990).

Dixon v. Dixon, 121 Utah 259, 240 P.2d 1211 (1952).

Corbett v. Fitzgerald, 709 P.2d 384 (Utah 1985).

STATUTES AND RULES

Utah Code Annotated Section 78-2a-3(2)(k), (1953, as amended).

Utah Rules of Appellant Procedure Rule 3.

Utah Rules of Civil Procedures Rule 60(b).

Utah Code Annotated Section 78-22a-1 et. seq., (1953, as amended).

Utah Rules of Civil Procedure Rule 58A(d).

Utah Rules of Civil Procedure Rule 56(c).

Utah Code Annotated Section 78-12-22, (1953, as amended).

Utah Code Annotated Section 25-6-8, (1953, as amended).

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Defendants/Appellants.

BRIEF OF APPELLANTS

Case No. 960122-CA

Priority 16

JURISDICTION OF THE COURT

The jurisdiction of the Court is established by Section 78-2a-3(2)(k), Utah Code Annotated, 1953, as amended, and Rule 3, Utah Rules of Appellant Procedure.

NATURE OF THE PROCEEDINGS

This appeal is from the trial court's denial of Appellants' Motion to Set Aside Summary Judgment pursuant to Rule 60(b) where said motion to set aside was filed within ninety (90) days after Appellants received Notice of Entry of Summary Judgment and where Appellants had received no notice of Respondent's intention to submit summary judgment for decision.

ISSUES FOR REVIEW AND STANDARD OF REVIEW

A.

WHETHER OR NOT THE TRIAL COURT ERRED IN DENYING APPELLANTS'
MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(b), UTAH
RULES OF CIVIL PROCEDURE WHERE THE DEFENDANT HAD
MOVED TO SET ASIDE JUDGMENT WITHIN NINETY (90) DAYS
OF NOTICE OF ENTRY OF JUDGMENT.

B.

WHETHER OR NOT THE TRIAL COURT ERRED IN GRANTING SUMMARY
JUDGMENT IN FAVOR OF RESPONDENT, RENEWING AN ELEVEN
(11) YEAR OLD FOREIGN JUDGMENT FROM THE STATE OF
NEW YORK, WHERE RESPONDENT WAS NOT ENTITLED
TO JUDGMENT AS A MATTER OF LAW.

The Standard of Review is believed to be one of correctness as it applies to questions of law and the clearly erroneous standard as it applies to questions of fact. See State v. Ramirez, 817 P.2d 774 (Utah 1991) and State v. Rhodes, 818 P.2d 1048 (Utah Ct. App. 1991). The trial court has discretion in determining whether a movant has shown "mistake, inadvertence, surprise or excusable neglect," and only when there has been an abuse of discretion shall the same be set aside, Larsen v. Collina, 684 P.2d 52 (1984). Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, Ehlers & Ehlers Architects v. Carbon County, 805 P.2d 789 (Utah Ct. App. 1991). Because a summary judgment prevents the litigants from fully presenting their case, courts are, and should be, reluctant to invoke this remedy, Brandt v. Springville Banking Co., 10 Utah 2d 350, 353 P.2d 460 (1960).

DETERMINATIVE STATUTES AND RULES

The determinative rule is believed to be Rules 60(b), Utah Rules of Civil Procedures.

NATURE OF THE CASE, PROCEEDINGS AND DISPOSITION AT TRIAL

The pending matter involves a civil action filed by Respondent to renew a judgment in the amount of EIGHTY-NINE THOUSAND FIVE HUNDRED EIGHTEEN DOLLARS (\$89,518.00) entered on or about the 14th day of October, 1982, in the Supreme Court of Oneida County, State of New York, against the Appellant, LYNN E. ELLIOTT. The New York judgment was filed as a foreign judgment in the Fifth District Court on or about the 19th day of October, 1989, and was never fully satisfied. A complaint was filed to renew the judgment naming additional parties and including additional causes of action on or about the 1st day October, 1993, eleven (11) years after the judgment had been granted in New York. The Defendants/Appellants submitted a pro se answer on or about the 5th day of November, 1993. On or about the 3rd day of January, 1995, the matter came on for scheduling and on January 9, 1995, the Court ordered the matter dismissed without prejudice for lack of prosecution on behalf of counsel. On the 26th day of January, 1995, Plaintiff/Respondent moved to set aside the dismissal and to reschedule to the next available date.

On February 14, 1995, Plaintiff/Respondent moved for summary judgment and submitted supporting memorandum and affidavits, although at the time submitted the matter had been dismissed. On or about February 21, 1995, the Court set aside the dismissal and

rescheduled the matter for scheduling conference. The matter was set aside pursuant to Rule 60(b), Utah Rules of Civil Procedure. Appellants requested leave to file an amended answer to Plaintiff's complaint and was given until March 23, 1995. The Appellants filed their formal answer on or about March 21, 1995.

The District Court granted summary judgment in favor of Plaintiff on or about April 20, 1995, however, notice thereof was not made until June 16, 1995. The Appellants moved for relief of judgment on or about the 14th day of September, 1995 and submitted supporting memorandum. The Appellants motion for relief was argued on or about November 6, 1995. On the 29th day of November, 1995, the Fifth District Court entered its order denying said motion for relief from judgment. The notice of appeal was entered on or about the 28th day of December, 1995.

STATEMENT OF FACTS

1. On or about the 14th day October, 1982, judgment was granted in favor of Respondent and against the Defendant, LYNN E. ELLIOTT, in the amount of EIGHTY-NINE THOUSAND FIVE HUNDRED EIGHTEEN DOLLARS (\$89,518.00) in the Supreme Court of Onieda County, State of New York.

2. This judgment was filed with the Fifth Judicial District Court of Washington County, State of Utah, pursuant to the provisions of the Utah Foreign Judgment Act, Utah Code Annotated Section 78-22a-1 et. seq. (1953, as amended).

3. On or about the 1st day of October, 1993, an action was commenced in the Fifth Judicial District Court of Iron County,

State of Utah, Civil No. 85-0481, attempting to renew the judgment and including as Defendants, the wife of LYNN E. ELLIOTT, and a corporation to which LYNN E. ELLIOTT was an officer, TERRA DOMUS, CO., a New York Corporation.

4. On or about the 5th day of November, 1993, the Appellants responded pro se.

5. No further action was taken until on or about the 3rd day of January, 1995, when the matter was called on for scheduling and on the 9th day of January, 1995, there being no parties appearing, the Court dismissed the matter without prejudice for lack of prosecution on behalf of counsel.

6. On or about the 26th day of January, 1995, the Respondent moved to set aside the dismissal and to reschedule at the next available date and on the 14th day of February, 1995, while the matter was dismissed, the Respondent moved for summary judgment and submitted supporting memorandum and affidavits.

7. On or about the 21st day of February, 1995, the Court set aside the dismissal and rescheduled the matter for scheduling conference, the same being set aside pursuant to Rule 60(b), Utah Rules of Civil Procedure.

8. At the same time, Appellant, now represented by counsel for the first time, requested leave to amend their answer and filed an amended answer to the complaint on or about the 21st day of March, 1995.

9. On or about the 20th day of April, 1995, and without counsel for Appellants having received proper notice, the District

Court granted summary judgment in favor of Respondent. Notice of the Court's order granting summary judgment was not given until June 16, 1995.

10. The Appellants moved for relief of the judgment on or about the 14th day of September, 1995 and submitted supporting memorandum therewith.

11. The matter was argued on or about November 6, 1995. The Court entered its order denying Appellants' motion for relief of judgment on or about the 29th day of November, 1995.

SUMMARY OF ARGUMENTS

A.

THE TRIAL COURT ERRED IN DENYING DEFENDANTS' MOTION FOR RELIEF FROM SUMMARY JUDGMENT UNDER RULE 60(b), UTAH RULES OF CIVIL PROCEDURE, FINDING THAT THE MOTION WAS NOT TIMELY.

B.

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF, RENEWING AN ELEVEN (11) YEAR OLD FOREIGN JUDGMENT FROM THE STATE OF NEW YORK, WHERE THE RESPONDENT WAS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

ARGUMENTS

A.

THE TRIAL COURT ERRED IN DENYING DEFENDANTS' MOTION FOR RELIEF FROM SUMMARY JUDGMENT UNDER RULE 60(b), UTAH RULES OF CIVIL PROCEDURE, FINDING THAT THE MOTION WAS NOT TIMELY.

Rule 60(b), Utah Rules of Civil Procedure, provides that in the furtherance of justice the trial court may relieve a party of final judgment where there is a mistake, inadvertence, surprise or excusable neglect where the judgment is void. In the instant case, the Respondent was attempting to renew an eleven (11) year old judgment that arose out of the State of New York. Through the

confusion of having the case dismissed and then rescheduled, it was never made clear when and if Appellant needed to respond to Respondent's motion for summary judgment which had been filed with the Court during the short interim when the case had been dismissed. The Appellants were never given notice to have the motion for summary judgment submitted for decision. The Appellants received notice that summary judgment had been granted by the Court on or about June 16, 1995, although said summary judgment had been signed by the Court on or about the 20th day of April, 1995. The Appellants moved to set aside judgment under Rule 60(b) on or about the 14th day of September, 1995. The Appellants contend that their motion was timely and further that they are entitled to a reasonable time in which to move to set aside judgment where they did not have knowledge of said judgment which was due in part to the lack of Respondent providing notice in a timely manner as provided by Rule 58A(d), Utah Rules of Civil Procedure. See Workman v. Nagle Construction, Inc., 802 P.2d 749 (Utah Ct. App. 1990). See also Dixon v. Dixon, 121 Utah 259, 240 P.2d 1211 (1952) (where a motion was made in a reasonable time but more than three (3) months after entry of judgment to set aside the formal order signed and entered upon the erroneous assumption that it conformed to the direction of the Court).

B.

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF, RENEWING AN ELEVEN (11) YEAR OLD FOREIGN JUDGMENT FROM THE STATE OF NEW YORK, WHERE THE RESPONDENT WAS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Rule 56(c), Utah Rules of Civil Procedure, allows for summary judgment only when the moving party is entitled to judgment as a matter of law. Utah Code Annotated Section 78-12-22 (1953, as amended), placed an eight (8) year statute of limitations on the enforcement of any judgment or decree of any court of the United State or of any state or territory within the United State. Judgment in the above case was entered on or about October 14, 1982 in the State of New York. The Plaintiff filed an abstract of foreign judgment in the Fifth Judicial District Court of Washington County in October of 1989. While the filing of the abstract of foreign judgment was within the eight year statute of limitations, such filing does not in and of itself extend the statute of limitations and in fact a foreign judgment filed under the Foreign Judgment Act has the same affect and is subject to the same procedures and defenses. The Appellants contend that relief should have been granted from the judgment where Plaintiff was not entitled to summary judgment as a matter of law.

Moreover, the Appellants contend that where compliance was impossible or where such compliance would adversely affect the interest of others not a party to the action that relief should have been granted from summary judgment. Corbett v. Fitzgerald, 709 P.2d 384 (Utah 1985), the Utah Supreme Court held that impossibility of compliance with a court order, such as an order

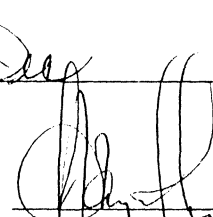
that Defendant return property he has already sold is an appropriate basis for amendment of the order.

In the instant case, the circumstances are similar. That is, the Court has ordered that the Defendant, LYNN E. ELLIOTT, transfer of property to his wife, JEAN H. ELLIOTT, at 3366 Hidden Hills Drive, Cedar City, Utah, is declared void. It further states that Respondent should be permitted to attach real property transferred by LYNN E. ELLIOTT to JEAN H. ELLIOTT, pursuant to Utah Code Annotated Section 25-6-8 (1953, as amended). However, no such transfer occurred. While LYNN E. ELLIOTT is the signatory under an agreement for the sale of land, he is not the purchaser of the property. In other words, paragraph 2 of the Court's order for summary judgment cannot be complied with because no such transfer has ever happened.

CONCLUSION

Respectfully, based upon the foregoing, the Defendants/Appellants, assert that the matter be reversed, that relief from the court's summary judgment be granted and the matter remanded for trial.

DATED this 2nd day of Dec, 1986.



J. BRYAN JACKSON
Attorney for
Defendants/Appellants

ADDENDUM

Exhibit "A" - Order denying Defendants' Motion for Relief from Judgment.

Exhibit "B" - Notice of Entry of Order granting Summary Judgment.

Exhibit "C" - Order granting Summary Judgment.

Exhibit "D" - Notice of Appeal.

Exhibit "E" - Notice of Transcript Order.

EXHIBIT A
COPY

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Attorneys for Plaintiff
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St. George, Utah 84770
Telephone: (801) 628-1627
Facsimile: (801) 628-5225

IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH

MARY C. FOGARTY,)	
)	
Plaintiff,	)	ORDER DENYING DEFENDANTS'
	)	MOTION FOR RELIEF FROM
vs.	)	JUDGMENT
)	
LYNN E. ELLIOTT and JEAN H.)	
ELLIOTT, individually and)	
TERRA DOMUS, CORP., and LYNN	)	Civil No. 930500329
EDWARD ELLIOTT, A.I.A., P.C.)	
	)	Judge J. Philip Eves
Defendants.)	

This matter came before the Court on Monday, November 6, 1995, for hearing on Defendants' Motion for Relief from Judgment. Plaintiff was represented by her counsel of record, Michael R. Shaw of Jones, Waldo, Holbrook & McDonough. Defendants were represented by their counsel of record, J. Bryan Jackson.

The Court had previously reviewed the memoranda, and familiarized itself with the file. Arguments were presented by respective counsel for the parties. The Court, having considered all of the issues and being fully advised in the premises, makes the following FINDINGS OF FACT:

1. Defendants' Motion for Relief from Judgment under Rule 60 (b) was filed


2. The Court finds that Defendants' arguments on the merits are erroneous and contrary to law and that no good faith argument exists for a meritorious defense on the merits.

Based on the foregoing, the Court HEREBY ORDERS:

That Defendants' Motion for Relief from Judgment is hereby denied.

DATED this ^{29th} day of November, 1995.

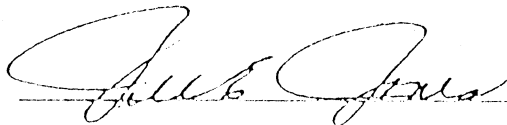
BY THE COURT:


J. PHILIP EVES
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of November, 1995, I personally caused a true and correct copy of the foregoing **ORDER DENYING DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT**, to be mailed in the U.S. Mail, postage prepaid, to the following:

J. Bryan Jackson
157 East Center
Cedar City, Utah 84720



Michael R. Shaw (USB #5142)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
249 East Tabernacle, Suite 200
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COPY

**IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH**


MARY C. FOGARTY,)	
)	
Plaintiff,	)	NOTICE OF ENTRY OF
	)	ORDER GRANTING
vs.	)	SUMMARY JUDGMENT
)	
LYNN E. ELLIOTT and JEAN H.)	
ELLIOTT, individually and)	
TERRA DOMUS, CORP., and LYNN	)	Civil No. 930500329
EDWARD ELLIOTT, A.I.A., P.C.)	
	)	Judge J. Philip Eves
Defendants.)	

**TO THE DEFENDANTS: LYNN E. ELLIOTT, JEAN H. ELLIOTT, individually, and
TERRA DOMUS, CORP., and LYNN EDWARD ELLIOTT, A.I.A., P.C.**

Please take notice that Summary Judgment was rendered against you in the
above-entitled Court on April 20, 1995. A copy of said Order Granting Summary
Judgment is attached hereto and herewith served upon you.

DATED this 14th day of June, 1995.

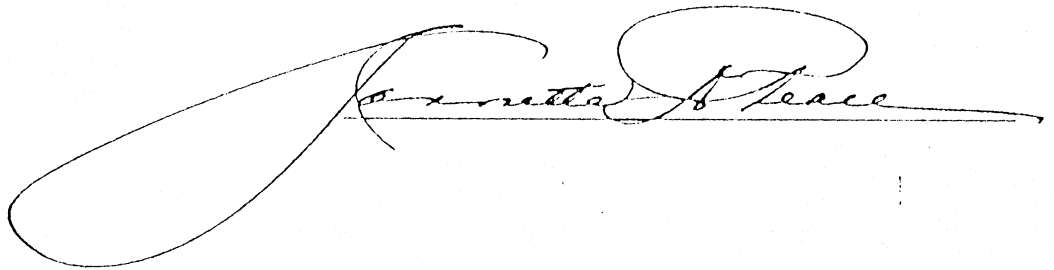
JONES, WALDO, HOLBROOK & McDONOUGH

By 
Michael R. Shaw
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that on the 15th day of June, 1995, I caused to be mailed a true and correct copy of the above and foregoing Notice of Entry of Order Granting Summary Judgment and a copy of the Order Granting Summary Judgment to Defendants as follows:

J. Bryan Jackson
Attorney At Law
111 North Main
P. O. Box 519
Cedar City, Utah 84720

A large, stylized handwritten signature in black ink, which appears to read "J. Bryan Jackson". The signature is written over a horizontal line.

Michael R. Shaw (USB #5142)
 JONES, WALDO, HOLBROOK & McDONOUGH
 Attorneys for Plaintiff
 249 East Tabernacle, Suite 200
 St. George, Utah 84770
 Telephone: (801) 628-1627
 Facsimile: (801) 628-5225

COPY

**IN THE FIFTH JUDICIAL DISTRICT COURT FOR
IRON COUNTY, STATE OF UTAH**

MARY C. FOGARTY,)	
)	
Plaintiff,	)	ORDER GRANTING
	)	SUMMARY JUDGMENT
vs.)	
)	
LYNN E. ELLIOTT and JEAN H.)	
ELLIOTT, individually and)	
TERRA DOMUS, CORP., and LYNN	)	Civil No. 930500329
EDWARD ELLIOTT, A.I.A., P.C.)	
	)	Judge J. Philip Eves
Defendants.)	

Plaintiff filed her Motion for Summary Judgment of February 14, 1995. Pursuant to the Court's directions at a telephonic hearing on February 21, 1995, Defendant's response to Plaintiff's Motion for Summary Judgment was due on March 23, 1995. Defendants, having failed to respond to Plaintiff's Motion for Summary Judgment, and the Plaintiff having properly submitted the matter for decision, pursuant to Rule 4-501(d), Utah Code of Judicial Administration, the Court hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Defendant Lynn E. Elliott is an individual residing in Iron County, State of Utah.

2. The Plaintiff was granted Judgment in the amount of \$89,518.00 on October 14, 1982, in the Supreme Court of Oneida County, State of New York, against Defendant Lynn E. Elliott.

3. The New York Judgment was filed with the clerk of the Fifth Judicial District Court on October 19, 1989, pursuant to the provisions of the Utah Foreign Judgment Act, Utah Code § 78-22a-1, et seq., 1992.

4. The New York Judgment remains unsatisfied.

5. Lynn E. Elliott and his wife Jean H. Elliott entered into an Earnest Money Sales Agreement to purchase property in Iron County, State of Utah, with both Lynn E. Elliott and Jean H. Elliott signing the Agreement, and becoming obligated thereunder.

6. Defendant Lynn E. Elliott caused title in the aforementioned property to be vested solely in the name of his wife, Defendant Jean H. Elliott, and caused her to become the sole obliger under the Trust Deed Note used to finance the purchase of the subject property.

7. Defendant Lynn E. Elliott, entered into a Stock Purchase Agreement wherein he purchased a professional corporation known as John S. Rowley, A.I.A., P.C.

8. The name of the corporation John S. Rowley, A.I.A., P.C. was later changed to Lynn Edward Elliott, A.I.A., P.C.

9. Lynn E. Elliott, A.I.A., P.C., has ignored corporate formalities.

10. Defendant Lynn E. Elliott is the controlling shareholder of Lynn Edward Elliott A.I.A., P.C., and is a director, officer and controlling principal in Lynn

Edward Elliott, A.I.A., P.C.

11. Defendant Lynn E. Elliott has failed to separate personal and corporate assets in the aforementioned corporation. Defendant has commingled personal and corporate funds by causing corporate assets to satisfy the personal debt of Defendant Lynn E. Elliott arising out of the purchase of the corporation from John S. Rowley.

12. Defendant Lynn E. Elliott has acquired an aircraft type Beech #035, Serial No. D-3492. Lynn E. Elliott has transferred this aircraft to his corporation, Lynn E. Elliott, A.I.A., P.C., in order to prevent the Plaintiff and/or other personal creditors from attaching the aircraft.

Based on the foregoing Findings of Fact, the Court hereby enters the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Judgment in this case should be renewed for a period of eight (8) years, in the principal balance of \$89,518.60, together with interest from October 14, 1982, until paid in full.

2. Defendant Lynn E. Elliott's transfer of property to his wife, Defendant Jean H. Elliott, at 3366 Hidden Hills Drive, Cedar City, Utah, should be voided. The transfer voided, Plaintiff should be permitted to attach the real property transferred by Defendant Lynn E. Elliott to Defendant Jean H. Elliott, pursuant to Utah Code Ann. §25-6-8.

3. Plaintiff should be allowed attach the assets of, and otherwise satisfy her Judgment against Defendant Lynn E. Elliott, with the assets of Lynn E. Elliott, A.I.A., P.C.

4. The Beech craft airplane No. 035, Serial No. D-3492, currently registered in the name of Lynn E. Elliott, A.I.A., P.C., should be treated as an asset of Lynn E. Elliott, individually, and Plaintiff should be allowed to satisfy her debt against Lynn E. Elliott, by attaching said aircraft, pursuant to Utah Code Ann. §25-6-8.

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. The Judgment in this case is renewed for a period of eight (8) years, in the principal balance of \$89,518.60, together with interest thereon at the legal post-judgment rate, from October 14, 1982, until paid in full.

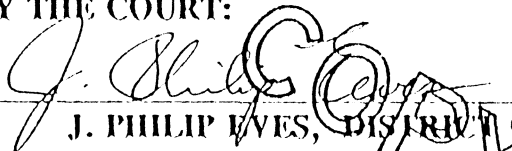
2. Defendant Lynn E. Elliott's transfer of property to his wife, Defendant Jean H. Elliott, at 3366 Hidden Hills Drive, Cedar City, Utah, is hereby declared void. Plaintiff shall be permitted to attach the real property transferred by Defendant Lynn E. Elliott to Defendant Jean H. Elliott, pursuant to Utah Code Ann. §25-6-8.

3. Plaintiff is entitled to attach the assets of, and otherwise satisfy her Judgment against Defendant Lynn E. Elliott, with the assets of Lynn E. Elliott, A.I.A., P.C.

4. The Beech Craft airplane No. 035, Serial No. D-3492, currently registered in the name of Lynn E. Elliott, A.I.A., P.C., is declared to be an asset of Lynn E. Elliott, individually, and Plaintiff is allowed to satisfy her debt against Lynn E. Elliott, by attaching said aircraft, pursuant to Utah Code Ann. §25-6-8.

DATED this 20th day of April, 1995.

BY THE COURT:


J. PHILIP EVES, DISTRICT COURT JUDGE

COPY

EXHIBIT D

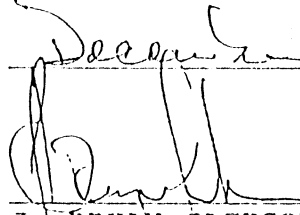
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IN THE SUPREME COURT OF THE STATE OF UTAH
APPEAL FROM THE FIFTH DISTRICT COURT OF IRON COUNTY
SUBJECT TO ASSIGNMENT TO THE COURT OF APPEALS

MARY C. FOGARTY,)
Plaintiff/Respondent : NOTICE OF APPEAL
vs. :
LYNN E. ELLIOTT and JEAN H.) Civil No. 930500329
ELLIOTT, Individually and) Judge J. Philip Eves
TARA DOMUS CORP., and LYNN E. :
ELLIOTT, A.I.A., P.C.,)
Defendants/Appellants)

COMES NOW the Defendants/Appellants, LYNN E. ELLIOTT and JEAN H. ELLIOTT, individually and TARA DOMUS CORP., and LYNN E. ELLIOTT, A.I.A., P.C., by and through their counsel, J. BRYAN JACKSON, and gives Notice of Appeal to the Utah Supreme Court, from the Order Denying Defendants' Motion for Relief from Judgment entered on or about the 29th day of November, 1995.

DATED this 28th day of December, 1995.


J. BRYAN JACKSON
Attorney for Defendants/Appellants

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, NOTICE OF APPEAL, postage pre-paid thereon, this 28th day of December, 1995, to the following:

MICHAEL SHAW
JONES, WALDO, HOLBROOK & McDONOUGH
249 East Tabernacle #200
St. George, Utah 84770

PAUL McMULLIN
Court Reporter
220 North 200 East
St. George, Utah 84770

FIFTH DISTRICT COURT
40 North 100 East
Cedar City, Utah 84720 (original)

UTAH SUPREME COURT
332 State Capital Bldg.
Salt Lake City, Utah 84114

Mindi Peterson
Secretary

COPY

EXHIBIT E

J. BRYAN JACKSON, P.C.
J. BRYAN JACKSON, USB #4488
Attorney for Defendants/Appellants
P.O. Box 519
157 East Center Street
Cedar City, Utah 84720
(801) 586-8450

IN THE SUPREME COURT OF THE STATE OF UTAH
APPEAL FROM THE FIFTH DISTRICT COURT OF IRON COUNTY
SUBJECT TO ASSIGNMENT TO THE COURT OF APPEALS

MARY C. FOGARTY,)
Plaintiff/Respondent,) NOTICE OF TRANSCRIPT
vs.) ORDER
LYNN E. ELLIOTT and JEAN H.) Civil No. 930500329
ELLIOTT, Individually and) Judge J. Philip Eves
TARA DOMUS CORP., and LYNN E.)
ELLIOTT, A.I.A., P.C.,)
Defendants/Appellants.)

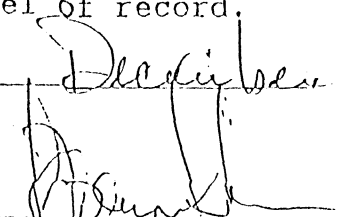
COMES NOW the Defendants/Appellants, LYNN E. ELLIOTT and JEAN H. ELLIOTT, Individually and TARA DOMUS CORP., and LYNN E. ELLIOTT, A.I.A., P.C., by and through his attorney, J. BRYAN JACKSON, and hereby give Notice of Transcript Order within the time periods permitted. In compliance with Rule 11 a transcript has been ordered by serving a copy of the Notice of Appeal and this Notice of Transcript Order upon the court reporter. The transcript which

is being ordered by this Notice of Transcript Order are the transcript of hearing held on November 6, 1995.

Pursuant to the requirements of 78-56-8 for compensation to the court reporter, Appellant hereby certifies that such compensation will be made immediately upon notification of amounts due and owing.

Appellant has further served copies of this Notice upon the Court Reporter, Clerk of the Trial Court, Clerk of the Appellant Court and all parties or counsel of record.

DATED this 22nd day of December, 1995.


J. BRYAN JACKSON
Attorney for Defendant/Appellants

Date Notice of Appeal Received: 1-5-96

Date of Satisfactory arrangements for payment: 1-5-96


Date of estimate completion: 1-20-96

Estimated number of pages: 25 PAGES

Number of copies ordered: ONE

Served copies of this completed Notice upon the Clerk of the Trial Court, Clerk of the Appellate Court and all parties or counsel of record.

DATED this 5th day of January, 1996.


COURT REPORTER

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, NOTICE OF TRANSCRIPT ORDER, postage pre-paid thereon, this 28th day of December, 1995, to the following:

MICHAEL SHAW
JONES, WALDO, HOLBROOK & McDONOUGH
249 E. Tabernacle #200
St. George, Utah 84770

PAUL McMULLIN
Court Reporter
220 North 200 East
St. George, Utah 84770

FIFTH DISTRICT COURT (original)
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Cedar City, Utah 84720

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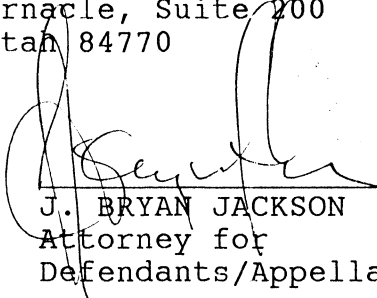
Mindi Peterson
Secretary

mep/elliott.nto

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, BRIEF OF APPELLANT, postage fully pre-paid thereon, this 2nd day of December, 1994, to the following:

MICHAEL R. SHAW
JONES, WALDO, HOLBROOK & McDONOUGH
149 East Tabernacle, Suite 200
St. George, Utah 84770



J. BRYAN JACKSON
Attorney for
Defendants/Appellants