

2007

Lui Enterprises v. Utah Labor Commission, Industrial Accidents Division : Brief of Appellee

Utah Court of Appeals

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Mark E. Medcalf; Richer & Overholt; Attorney for Labor Commission.

T. Laura Lui; Attorney for Lui Enterprises.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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LUI ENTERPRISES,	:	Appellate Court No. 20070149-CA
	:	
Appellant,	:	
	:	
vs.	:	
	:	
UTAH LABOR COMMISSION,	:	
INDUSTRIAL ACCIDENTS DIVISION,	:	
	:	
Appellee.	:	

----- oo0oo-----

BRIEF OF APPELLEE

APPEAL FROM A DEFAULT JUDGMENT RENDERED BY THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE TYRONE MEDLEY PRESIDING

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Attorney for Labor Commission

IN THE COURT OF APPEALS OF THE STATE OF UTAH

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INDUSTRIAL ACCIDENTS DIVISION,	:	
	:	
Appellee.	:	

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BRIEF OF APPELLEE

APPEAL FROM A DEFAULT JUDGMENT RENDERED BY THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE TYRONE MEDLEY PRESIDING

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Attorney for Labor Commission

IN THE COURT OF APPEALS OF THE STATE OF UTAH

----- oo0oo-----

LUI ENTERPRISES,

Appellant,

vs.

UTAH LABOR COMMISSION,
INDUSTRIAL ACCIDENTS DIVISION,

Appellee.

UTAH LABOR COMMISSION,
INDUSTRIAL ACCIDENTS DIVISION

Plaintiff,

SALOTE VUKI dba VUKI S & A TAKE
OUT CATERING,

Defendant,

LUI ENTERPRISES,

Garnishee/Defendant.

----- oo0oo-----

**APPEAL FROM A DEFAULT JUDGMENT RENDERED BY THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, HONORABLE TYRONE MEDLEY PRESIDING**

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JURISDICTION AND NATURE OF PROCEEDINGS

Appellee Utah Labor Commission agrees with the Appellants' Statement of Jurisdiction in the Supreme Court under Utah Code Annotated § 78-2-2(3)(j) and the pour over of this matter by the Supreme Court to the Court of Appeals pursuant to Utah Code Annotated § 78-2-2(4). This Appeal is from an Order of the Third Judicial District Court, the Honorable Tyrone Medley presiding, denying the Appellant's Motion to Set Aside a previously entered Garnishee Judgment as well as denying the Appellant's Motion for Disqualification of Counsel for Plaintiff/Appellee.

STATEMENT OF ISSUES PRESENTED ON APPEAL

Following entry of Judgment against Appellant Lui Enterprises, pursuant to a Garnishee Order to Show Cause, Appellant Lui Enterprises filed a Motion to Set Aside that Judgment on or about September 25, 2006. (ROA at p. 132, 133). The Motion was filed pursuant to Rule 60(b) Utah Rules of Civil Procedure. Evidentiary support for the Rule 60(b) Motion was in the form of an allegedly unsigned Garnishee Order and an Affidavit of Laura Lui filed contemporaneously therewith.

Concurrently, a Motion was filed for disqualification of counsel for Appellee Utah Labor Commission. The Motion to Set Aside was denied by Judge Medley. The Motion for Disqualification was rendered moot thereby and denied.

Did Judge Tyrone Medley commit reversible error in refusing to set aside the Garnishee Judgment against Appellant Lui Enterprises? In ruling on a Rule 60(b) Motion the trial court is afforded broad discretion and generally its ruling will not be disturbed absent

a showing of abuse of discretion. Birch v. Birch, 771 P.2d 1114 (Utah App. 1989). In the present case the Appellant's argument centers around the contention that the Appellant was not properly served with a signed Garnishee Order to Show Cause. This contention is made despite the fact that a signed and sworn Return of Service is on file with the Court. The Appellant's argument goes to personal jurisdiction. While the issue of personal jurisdiction may always be raised, the Return of Service is entitled to a presumption of correctness and the invalidity or absence of proper service of process must be shown by the Appellant by clear and convincing evidence. Carnes v. Carnes, 668 P.2d 555, 557 (Utah 1983).

DETERMINATIVE RULES AND STATUTES

Rule 60(b)(1) Utah Rules of Civil Procedure:

Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistakes, inadvertence, surprise, or excusable neglect;”

Rule 64D(j)(2) Utah Rules of Civil Procedure:

If the garnishee fails to comply with this Rule, the writ or an order of the court, the court may order the garnishee to appear and show cause why the garnishee should not be ordered to pay such amounts as are just, including the value of the property or the balance of the judgment, whichever is less, and reasonable costs and attorney's fees incurred by parties as a result of the garnishee's failure.

STATEMENT OF THE CASE

The present case initially involved the collection of a Labor Commission award against Salote Vuki, which collection activities were pursued through the Third District Court. In the course of those collection efforts a Writ of Garnishment was issued to

Appellant Lui Enterprises in an effort to attach any wages that this family business might owe to Salote Vuki. Eventually, a Garnishee Order to Show Cause was issued against Lui Enterprises concerning the above-referenced Writ of Wage Garnishment. A hearing on the Garnishee Order to Show Cause was held on July 19, 2006. Appellant Lui Enterprises did not appear, and a Garnishee Judgment was entered against Lui Enterprises. Subsequently on September 25, 2006, Appellant Lui Enterprises filed a Motion for Relief from the aforementioned Garnishee Judgment pursuant to Rule 60(b)(1) Utah Rules of Civil Procedure. The Motion to Set Aside Judgment was denied. The current appeal ensued. Simultaneously with the filing of the Motion to Set Aside Judgment the Appellant Lui Enterprises also filed a Motion for Disqualification of Labor Commission's counsel. That Motion was rendered moot by the ruling on the Motion to Set Aside and was therefore denied.

STATEMENT OF FACTS

1. On April 27, 2005 an Abstract of Award entered in the Utah Labor Commission was filed with the Third Judicial District Court. Said Award was against Salote Vuki dba Tiki S & A Takeout and Catering for the sum of \$4,360.51. (ROA at p. 1).¹
2. A Writ of Wage Garnishment was issued by the Third District Court naming Lui Enterprises as the Garnishee. This Writ was issued January 31, 2006. (ROA at p. 57).

¹ While the Utah Labor Commission is charged with duty of enforcing worker's compensation laws including fining employers for operating without worker's compensation insurance the Labor Commission lacks enforcement power for its orders. Therefore the Utah Code specifically § 34A-2-212 provides for abstracting of Labor Commission awards to the District Court which Court then acts as the enforcement tribunal.

3. The aforementioned Writ of Garnishment was served on Lui Enterprises through personal service on its president, Olisi Lui on February 1, 2006. (ROA at p. 53 and p. 58).

4. The Garnishee Order to Show Cause, relevant to the above-referenced Garnishment, was submitted to the Court in May of 2006. On June 9, 2006 a hearing on the Order to Show Cause was scheduled for July 19, 2006, and the Order was signed by Judge Tyrone Medley. (ROA at p. 332 - 335).

5. The Order to Show Cause was personally served on Olisi Lui on June 21, 2006. (ROA at p. 336).

6. Olisi Lui is the director, officer and incorporator of Lui Enterprises. (ROA at p. 181).

7. Lui Enterprises is a Utah corporation in good standing. (ROA at p. 180).

8. Appellant Lui Enterprises failed to appear at the hearing scheduled for July 19, 2006, and a Garnishee Judgment was entered against that entity for the full amount of the original Judgment against Salote Vuki in the sum of \$4,360.51, as well as an entitlement to attorney's fees and costs of court incurred by Appellee Labor Commission. (ROA at p. 100, 101).

9. On September 25, 2006 Lui Enterprises filed a Motion for Relief from the aforementioned Garnishee Judgment. (ROA at p. 132).

10. The Motion was supported by a Memorandum citing Rule 60(b)(1) Utah Rules of Civil Procedure and alleging the entry of judgment by mistake, inadvertence, surprise, or excusable neglect. (ROA at p. 138).

11. Evidentiary support for the Motion to Set Aside Judgment was in the form of one Exhibit attached to the movant's Memorandum and the Affidavit of Laura Lui, the wife of Olisi Lui, who is also the daughter of and former counsel for Salote Vuki. Appellant's Motion to Set Aside Judgment was heard by the Court on January 2, 2007. (ROA at p. 262).

12. At the hearing of January 2, 2007 Appellant Lui Enterprises contended that it had not been served with a signed Order to Show Cause. However, in support of that allegation the Appellant Lui Enterprises did not submit into evidence an unsigned Order to Show Cause but rather a copy of the Order to Show Cause from which the signature page had been removed. (ROA at p. 145 - 148).

13. Through the Affidavit of Laura Lui further testimony was introduced that during "the week prior to the hearing date [sometime around or after July 12, 2006] I reviewed the Third Judicial District Court calendar for July 19, 2006, to find out if a hearing was scheduled on the court calendar . . . after reviewing the calendar for July 19, 2006 as well as reviewing the calendar one day prior to and one day after July 19, 2006 I could not locate an order to show cause hearing on the court's calendar. . . . (ROA at p. 150).

14. A review of the Court docket in this case indicates that following service of the Order to Show Cause on June 21, 2006 the Return of Service was filed with the Court and on the Court's docket as of June 26, 2006, which docket reflected a hearing date of July 19, 2006. (See Appellee's Addendum at p. 5).

15. Laura Lui then went on to testify through her Affidavit that sometime after checking the docket, presumably after July 12, 2006, she contacted the court clerk's office and was informed that there was no hearing date scheduled. (ROA at p. 150).

16. The District Court file includes a sworn and signed Return of Service which includes the Judge's signature, schedules the hearing for July 19, 2006 and reflects personal service on Olisi Lui. (ROA at p. 332 - 336).

17. The District Court denied the Motion to Set Aside Judgment by Order dated January 26, 2007. (ROA at p. 262, 263).

18. The aforementioned Order also determined that a simultaneously filed Motion for Disqualification of Counsel for the Appellee Labor Commission was rendered moot and therefore denied. (ROA at p. 262, 263).

SUMMARY OF ARGUMENT

The Motion before the Court was pursuant to Rule 60(b) Utah Rules of Civil Procedure and asked the Court to set aside its prior Garnishee Judgment due to mistake or excusable neglect. The quality of evidence necessary under a 60(b) Motion is extremely high. Excusable neglect or mistake must be shown clearly. Further, a Court's refusal to set aside a prior Order is usually only reviewed for abuse of discretion. Judge Medley did not commit an abuse of discretion by his refusing to set aside the Garnishee Judgment entered against Appellant Lui Enterprises.

The essence of the Appellant's argument is that the Appellant was never served with a signed Order. However, the Court's file contains a signed and dated Return of Service on the Order, which is entitled to a presumption of correctness. When a movant under a Rule

60(b) Motion seeks to have a judgment set aside, based upon an argument of flawed service of process, where there is a sworn return of service on file, the burden of proof shifts to the moving party. The moving party must to prove by **clear and convincing** evidence that there was no appropriate service of process, that there was no notice and no opportunity to be heard. The Appellant did not submit to the Court an unsigned copy of the Order to Show Cause but rather a copy of the Order To Show Cause from which the signature page had been removed. However, the Order clearly shows the date and time of the hearing. The only other evidentiary material presented to the Court was through the Affidavit of Laura Lui who is the daughter of Defendant Salote Vuki. She is also the wife of Olisi Lui president of Lui Enterprises and the niece of Ana Vea. She was counsel in the initial case and is present counsel in this case. She is also the Lessor to the family business of its restaurant equipment and therefore a competing creditor.

Ms. Lui testified that she consulted the docket on or about July 12, 2006 and saw no hearing scheduled. Judge Medley could well have concluded that this testimony lacked credibility in light of the fact that the Return of Service was on the docket as of June 26, 2006. Her testimony that she consulted the docket immediately before and after the hearing and that there was no entry on the docket again lacks credibility. Ms. Lui's testimony that she personally contacted the clerk's office, presumably by phone, and was advised that there was no hearing scheduled again lacks credibility in light of the fact that the hearing was clearly scheduled. The fact that the Appellant submitted to the Court a copy of the Order to Show Cause from which the signature page had been removed cannot possibly meet the

threshold for a 60(b) Motion, since a litigant could purposefully or not remove a signature page from any document ever served on him.

Judge Medley reasonably concluded and probably correctly concluded that this evidence did not meet the evidentiary threshold and his refusal to set aside the Judgment was not reversible error.

ARGUMENT

POINT I

JUDGE MEDLEY DID NOT COMMIT REVERSIBLE ERROR IN CONCLUDING THAT APPELLANT LUI ENTERPRISE FAILED TO SHOW EXCUSABLE NEGLIGENCE

The Motion to Set Aside Judgment of Appellant Lui Enterprises was brought pursuant to Rule 60(b)(1) Utah Rules of Civil Procedure citing mistake, inadvertence or excusable neglect. Under this Rule a party seeking to have a judgment set aside must make a very substantial showing of justification for failure to timely respond and defend an action. This excuse must rise to the level of excusable neglect. The Board of Education of Granite School District v. Cox, 384 P.2d 806 (Utah 1963). In The Board of Education the defendant attempted to set aside a default judgment based upon the fact that he misunderstood the summons served upon him and believed it to be inadequate. This seems to be similar to the argument made by Lui Enterprises in the present case. In response to this argument, the Supreme Court of Utah in The Board of Education stated as follows:

The summons is self explanatory to anyone who can read and this excuse is so unrealistic that the trial judge was not compelled to accept it. Id. at 808.

In this case the Order to Show Cause served on Olisi Lui is clear and unambiguous. It commands him to appear in court on a date certain. It commanded him to appear in court on July 19, 2006. A copy of the Order, including the court date and time, was attached as Exhibit "A" to the Memorandum in Support of Appellant's Motion to Set Aside Judgment of Lui Enterprises. This entity's failure to appear is inexcusable neglect. In the case before this Court the Appellant does not deny being served and having actual notice, but only claims the signature page was missing from the Order. Again, the page of the Order with the date and time of the hearing is attached.

Further, Movant's obligation to show some "excusable" neglect is rather significant. The Utah Supreme Court has ruled that illness alone is not sufficient excuse to constitute excusable neglect. Warren v. Dixon Ranch Co., 260 P.2d 741 (Utah 1953). Similarly, the Supreme Court has ruled that inconvenience or press of personal or business affairs does not constitute excusable neglect. Valley Leasing v. Houghton, 661 P.2d 959 (Utah 1983). In this case the Appellant's excuse does not even rise to the level of illness or press of personal affairs. Olisi Lui's only excuse is that he apparently did not read the Order to Show Cause served upon him, even though his attorney/wife reviewed the docket a week prior to the scheduled hearing which act would have verified the scheduled hearing and provided actual notice and opportunity to be heard. While the Appellant Lui Enterprises may be guilty of neglect, there has been no showing of excusable neglect.

POINT II

IN THE PRESENT CASE IT IS THE BURDEN OF THE APPELLANT LUI ENTERPRISES TO SHOW A LACK OF APPROPRIATE SERVICE OF PROCESS BY CLEAR AND CONVINCING EVIDENCE

In the present case the Appellant alleges that it was not served with a signed copy of the Garnishee Order to Show Cause. This allegation is made despite the fact that a signed copy of the Order to Show Cause is of record with the Court. Under these circumstances the burden of proof shifts to the Appellant to show by clear and convincing evidence that there was no appropriate service of process and therefore no notice and opportunity to be heard.

Although a sheriff's return of service of process is presumptively correct and is prima face evidence of the facts stated therein, the invalidity or absence of service of process can be shown by clear and convincing evidence. Carnes v. Carnes, 668 P.2d 555, 557 (Utah 1983).

The same Rule applies to the Return of a constable.

We therefore decline to trivialize the importance of a "mere" constable's role in conducting service of process and, in effect, hold a constable to a different standard of proof regarding service of process than a sheriff. We accordingly hold a constable's return of service is entitled to the same deference as a sheriff's, and further hold that the constable's affidavit of service is prima face evidence of proper service of process and is deemed presumptively correct. . . . Because the constable here filed an affidavit of service with the trial court swearing under oath that he served C T Corp. with a summons and complaint directed to All American, and we presume the correctness of the constable's affidavit of service, the burden then shifts to All American to prove, by clear and convincing evidence that service was improper. Classic Cabinets, Inc. v. All American Life Ins. Co., 978 P.2d 465 (Utah App. 1999).

Thus, in the present case, the Appellant Lui Enterprises must meet a very high threshold and must do so by clear and convincing evidence.

In the Classic Cabinets the defendant and moving party, All American, denied having ever seen the summons and complaint which resulted in entry of a default judgment against that entity. All American had designated C T Corp. Systems as its registered agent. Both of these entities testified that the summons and complaint were never served on the registered agent and that the summons and complaint were never forwarded to the defendant All American. Consequently there was a denial of any notice and opportunity to be heard. The court found this self-serving testimony to be insufficient and denied the motion to set aside. That decision was sustained by the Utah Court of Appeals. The evidence in the present case does not rise to anywhere near the level of the evidence in the Classic Cabinets case, and, consequently, Judge Medley did not commit reversible error in concluding that this threshold and burden of proof was not met.

POINT III

THE MOTION TO SET ASIDE OF APPELLANT LUI ENTERPRISES LACKED ANY REASONABLE CREDIBLE EVIDENTIARY SUPPORT

The Motion to Set Aside of Appellant Lui Enterprises was initially supported by a copy of a Return of Service on the Garnishee Order to Show Cause. (ROA at p.146,148). The Appellant continually refers to it as an “unsigned” Order to Show Cause. However, a simple review of the document establishes that it is not an Order to Show Cause with an unsigned signature page. On the contrary, it is a copy of the Order to Show Cause with the constable’s service information noted on the front page but from which the signature page has been removed and which clearly donates the date and time of hearing.

Judge Medley concluded that this does not rise to the level of clear and convincing evidence of non-service or a viable basis for a finding of excusable neglect. On the contrary, if a defendant or other moving party can simply remove the signature page from a court order and use this as the basis of a claim of lack of notice and opportunity to be heard, then any order ever entered could be routinely set aside.

There is further evidence of the implausibility of the Appellant's position. The Appellant's Motion to Set Aside was also supported by the Affidavit of his wife/attorney Laura Lui. This Affidavit admits receipt of the Motion for Order to Show Cause. (ROA at p. 150 ¶ 2. Service was received on June 21, 2006.)

This Affidavit goes on to allege that one week prior to the scheduled hearing date of July 19, 2006, Laura Lui consulted the docket to determine whether a hearing was in fact scheduled. This consultation of the docket would have occurred sometime on or around July 12, 2006. (ROA at p. 150 ¶ 3). A copy of the docket is attached hereto as part of Appellee's Addendum. A review of that docket establishes that the Return of Service on the Garnishee Order to Show Cause was filed with the Court and recorded on the docket on June 26, 2006. This situation would have left Judge Medley, in reviewing Ms. Lui's testimony, with two options. These two options are both extremely prejudicial to the position of the Appellant. One possibility is that the docket was in actuality consulted in which case the Appellant unquestionably had notice and opportunity to be heard. The other alternative is that the docket was not in fact consulted which brings the entire testimony of Laura Lui into serious question.

Laura Lui goes on to testify that “I than (sic) contacted the court clerk’s office to inquire about the hearing date shown on the motion . . . I was informed that there was no hearing date that appears on the court’s calendar.” (ROA at p.150 ¶ 4). The possible interpretations of this testimony by Judge Medley are the same. If the call was in fact made, then the Appellant had actual notice and opportunity to be heard. In the alternative the call was not made in which case the credibility of the testimony is brought into question.

Finally, Laura Lui testifies that one day prior to the July 19th hearing and one day after the July 19th hearing she again consulted the court record. (ROA at p.150 ¶ 3). This testimony is highly suspect. If counsel for the Appellant consulted the court records one day prior to the hearing, then there there was actual notice and opportunity to be heard. If this investigation was not conducted, then the credibility of the testimony is highly questionable.

Judge Medley did not commit reversible error in concluding that this testimony did not rise to the level of clear and convincing evidence. The credibility is so questionable that the Appellant, by filing the Affidavit, likely hoisted itself on its own petard.

POINT IV

THE APPELLANT’S REMAINING ARGUMENTS ARE WITHOUT EVEN LOGICAL FOUNDATION

The Appellant goes on to contend that the docket entry of June 26, 2006, which is the Return of Service on the Garnishee Order to Show Cause proves that the hearing could not have been scheduled at the time the Appellant was served on June 21, 2006. This argument is preposterous. The Return of Service cannot be filed with the Court until it exists. It did not come into existence until after the Appellant was served on June 21, 2006. The Return

of Service could not have been filed with the Clerk of Court and docketed prior to the date service occurred.

The Appellant finally argues that Appellee's counsel should have been disqualified as a necessary witness. Appellee's counsel never filed an Affidavit in this case. Appellee's counsel was never sworn and placed on the stand to testify. The fact that during the hearing on the Garnishee Order to Show Cause Appellee's counsel argued Appellee's case does not rise to the level of testimony which would require disqualification. On the contrary the only person who has testified in this case is T. Laura Lui, counsel for the Appellant. Any suggestion that Appellee's counsel withdraw for simply having argued Appellee's case is without merit.

CONCLUSION

Judge Medley did not commit reversible error by denying the Appellant's Motion to Set Aside the Garnishee Judgment. A moving party's excuse for having failed to appear and participate in the proceedings must be substantial. Excuses such as illness, press of other business or misunderstanding documents, which were properly served, do not suffice. In this case the Appellant was served and had notice of the date and time of the hearing on the Order served. The Court has a signed Return of Service including a signature page on the Order. The testimony submitted on behalf of the Appellant is inherently contradictory and lacking in credibility. The lack of credibility is particularly important in this case in light of the fact that there is a signed Return of Service on file. This shifts the burden of proof to the Appellant to persuade Judge Medley by clear and convincing evidence that there was some impropriety in the service. Judge Medley appropriately and correctly concluded that the

Appellant failed to meet that burden of proof. The ruling of the Third District Court should therefore be sustained, and Appellant's appeal be denied.

DATED this 29 day of February, 2008.

RICHER & OVERHOLT, P.C.

By: 
Mark E. Medcalf
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of February, 2008 I caused a true and correct copy of the foregoing document to be placed in the U.S. mail, postage prepaid and addressed as follows:

T. Laura Lui
2733 Parleys Way #204
Salt Lake City, Utah 84109


Mark E. Medcalf
Attorney for Appellee

ADDENDUM

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

APPEALED: CASE #20070149

LABOR COMMISSION vs. SALOTE VUKI

CASE NUMBER 056909867 Abstract of Judgment

CURRENT ASSIGNED JUDGE
TYRONE E MEDLEY

PARTIES

Plaintiff - LABOR COMMISSION
Represented by: MARK E MEDCALF

Defendant - SALOTE VUKI
Represented by: T LAURA LUI

Garnishee Defendant - LUI ENTERPRISES
Represented by: FILIA H UIPI
Represented by: T LAURA LUI

Garnishee Defendant - WELLS FARGO BANK

Garnishee Defendant - US BANK

Doing Business As - TIKI & A TAKE OUT & CATERING
Represented by: T LAURA LUI

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	257.25
	Amount Paid:	257.25
	Credit:	0.00
	Balance:	0.00

BAIL/CASH BONDS	Posted:	400.00
	Forfeited:	0.00
	Refunded:	0.00
	Balance:	400.00

REVENUE DETAIL - TYPE: COPY FEE

	Amount Due:	0.75
	Amount Paid:	0.75
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

	Amount Due:	1.75
--	-------------	------

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Page 1

CASE NUMBER 056909867 Abstract of Judgment

Amount Paid:	1.75
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: APPEAL

Amount Due:	205.00
Amount Paid:	205.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: VIDEO TAPE COPY

Amount Due:	15.00
Amount Paid:	15.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

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Amount Paid:	10.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

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Amount Paid:	0.75
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.50
Amount Paid:	0.50
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	11.00
Amount Paid:	11.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	12.50
Amount Paid:	12.50
Amount Credit:	0.00
Balance:	0.00

BAIL/CASH BOND DETAIL - TYPE: CASH BOND: Civil, Mi

Posted By:	BOB REITZ CONSTABLE
Posted:	100.00

rinted: 02/28/08 13:26:50

Page 2

CASE NUMBER 056909867 Abstract of Judgment

Forfeited:	0.00
Refunded:	0.00
Balance:	100.00

BAIL/CASH BOND DETAIL - TYPE: CASH BOND: Appeals

Posted By: PHILL UIPI	
Posted:	300.00
Forfeited:	0.00
Refunded:	0.00
Balance:	300.00

CASE NOTE

Uninsured Employers Fund #04-9-2308129

PROCEEDINGS

04-27-05 Judgment #1 Entered

Creditor: LABOR COMMISSION

Debtor: SALOTE VUKI

4,360.51 Total Judgment

4,360.51 Judgment Grand Total

04-27-05 Filed: Judgment Information Statement @J

04-27-05 Case filed

04-27-05 Judge TYRONE E MEDLEY assigned.

04-27-05 Case Disposition is Judgment

Disposition Judge is TYRONE E MEDLEY

07-22-05 Issued: Supplemental Order

Clerk torij

Hearing Date: August 16, 2005

Time: 15:00

07-22-05 Note: **Reitz**

07-28-05 Filed return: Supp Order @V

Party Served: VUKI, SALOTE

Service Type: Personal

Service Date: July 23, 2005

08-01-05 SUPPLEMENTAL ORDER scheduled on August 16, 2005 at 03:00 PM in
Third Floor - W32.

08-15-05 Filed: Noticed of appearance of counsel @V

08-16-05 Minute Entry - Minutes for Supplemental Order

Judge: JUDGE COLLECTION

Clerk: floris

PRESENT

Other Parties: ROB HARROW FOR MARK MEDCALF

HEARING

Plaintiff's Attorney was present. Defendant failed to appear.

CASE NUMBER 056909867 Abstract of Judgment

Court orders a \$100 Bench Warrant may be issued.

08-16-05 Filed: Notice of Continuance (WITHOUT DATE) @V
 10-28-05 Filed: Notice of Rescheduling @V
 10-31-05 SUPPLEMENTAL ORDER scheduled on November 22, 2005 at 03:00 PM
 in Third Floor - W32.
 11-22-05 Minute Entry - Minutes for Supplemental Order
 Judge: JUDGE COLLECTION
 Clerk: floris
 PRESENT

Other Parties: ROB HARROW FOR MARK MEDCALF

HEARING

Plaintiff's Attorney was present. Defendant failed to appear.
 Court orders a \$100 Bench Warrant may be issued.

12-02-05 Filed: Motion to vacate judgment @V
 12-02-05 Filed: Memorandum of points and authorities to support
 defendant's motion to vacate judgment @V
 12-02-05 Filed: Notice of appear or appoint successor counsel @V
 12-09-05 Filed: Plaintiff's memorandum of points and authorities in
 opposition to defendant's motion to set aside judgment @V
 12-29-05 Filed: Notice to Submit @V
 01-04-06 Note: submitted NTS to Judge
 01-19-06 Fee Account created Total Due: 0.75
 01-19-06 COPY FEE Payment Received: 0.75
 01-24-06 Note: submitted order to Judge
 01-25-06 Filed order: Order Denying Deft's Motion to Set Aside Judgment
 @V

Judge TYRONE E MEDLEY
 Signed January 25, 2006

01-31-06 Filed: Application for writ of garnishment @V
 01-31-06 Issued: Writ of Garnishment to LUI Enterprises
 Judge TYRONE E MEDLEY
 04-25-06 Issued: Order to Show Cause
 Judge TYRONE E MEDLEY
 Hearing Date: May 23, 2006 Time: 08:30
 04-26-06 Filed return: Writ of Garnishment on Return @V
 Party Served: LUI ENTERPRISES,
 Service Type: Personal
 Service Date: February 01, 2006
 04-27-06 Filed: Answer of garnishee @V
 LUI ENTERPRISES
 April 20, 2006
 04-27-06 Filed: Opposition to plaintiff's motion for order to show case
 in re: contempt of court for failure to comply with writs of
 garnishment, attorney's fees, costs of court and other related

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CASE NUMBER 056909867 Abstract of Judgment

issues and order @V
04-27-06 Filed: Answer of garnishee @V
LUI ENTERPRISES

06-05-06 Filed: Request to submit @V
06-07-06 Filed: Notice to Submit
06-15-06 Issued: Motion Order to Show Cause in Re: Contempt of Court for
Failure to Comply with Writs of Garnishment attorney's Fees
costs of Court and Other Related Issues and Order
Judge TYRONE E MEDLEY
06-26-06 Filed return: Order to Show Cause on Return @V
Party Served: LUI ENTERPRISES,
Service Type: Personal
Service Date: June 21, 2006
06-26-06 ORDER TO SHOW CAUSE scheduled on July 19, 2006 at 08:45 AM in
Fourth Floor - W48 with Judge MEDLEY.
07-06-06 Filed: Opposition to plaintiff's motion for order to show cause
in re: contempt of court for failure to comply with writs of
garnishment, attorney's fees, costs of court and other related
issues and order @V
07-19-06 Minute Entry - Minutes for Order to Show Cause
Judge: TYRONE E MEDLEY
Clerk: tinaa
PRESENT

Plaintiff's Attorney(s): MARK E MEDCALF
Tape Number: 9.00-7.22

HEARING

This matter is before the Court for an Order to Show Cause.
Appearances as stated above.
Motion for Judgment is granted.
Mark Medcalf to prepare Judgment and submit to the Court with in 1
week.

07-25-06 Note: submittted order to Judge
07-26-06 Filed order: Order and Judgment
Judge TYRONE E MEDLEY
Signed July 26, 2006
07-27-06 Judgment #2 Entered
Creditor: LABOR COMMISSION
Debtor: LUI ENTERPRISES
4,360.51 Total Judgment
4,360.51 Judgment Grand Total
07-27-06 Filed judgment: Default - Judge
Judge TYRONE E MEDLEY
Signed July 26, 2006

08-09-06 Filed: Affidavit of attorney's fees & costs @V
 09-01-06 Filed: Application for writ of garnishment @V
 09-01-06 Issued: Writ of Garnishment to LUI Enterprises Inc dba Tiki
 Hawaiian BBQ

Judge TYRONE E MEDLEY

09-12-06 Fee Account created Total Due: 1.75
 09-12-06 COPY FEE Payment Received: 1.75
 09-18-06 Filed: Answer of garnishee @V

LUI ENTERPRISES

September 12, 2006

09-25-06 Filed: Docket entry @V
 09-25-06 Filed: Garnishee's Ex Parte Motion to Stay Execution of Default
 Judgment through Garnishment @V
 09-25-06 Filed: Memo in Support of Ex Parte Motion to Stay Execution of
 Judgment A @V
 09-25-06 Filed: Notice to Submit
 09-25-06 Note: submitted order to Judge
 09-25-06 Filed: Entry of Appearance of Counsel @V
 09-25-06 Filed: Garnishee Lui Enterprise's Motion for Relief from
 Judgment @V
 09-25-06 Filed: Memo in Support of Motion for Relief from Judgment @V
 09-25-06 Minute Entry - DOCKET ENTRY
 Judge: TYRONE E MEDLEY
 Garnishee's Request to Submit for Decision it's Ex Parte Motion to
 Stay Execution of Judgment through Garnishment is Ordered summarily
 stricken. The Court acknowledges it's discretion to stay execution
 of a judgment pending disposition of a Rule 60
 Motion for Relief from Judgment. However, Rule 62(b) does not
 authorize "Ex Parte Stays". Garnishee's Request to Submit filed on
 September 25, 2006 is premature and would deprive Plaintiff of any
 opportunity to appropriately respond. Garnishee's
 proposed Order Granting Ex Parte Motion to Stay Execution of
 Judgment is filed Unsigned.

Judge TYRONE E MEDLEY

09-25-06 Filed: FILED UNSIGNED - Order Granting Garnishee, Lui
 Enterprise's Ex Parte Motion to Stay Execution of Judgment @V
 09-27-06 Filed: 2nd application for writ of garnishment @V
 09-27-06 Issued: Writ of Garnishment to Wells Fargo Bank
 Judge TYRONE E MEDLEY
 10-03-06 Filed: Memorandum in opposition to garnishee/defendant's motion
 to set aside judgment @V
 10-06-06 Filed: Answer of garnishee @V
 WELLS FARGO BANK
 October 02, 2006

10-10-06 Filed: Garnishee Lui Enterprise's Motion to Disqualify Attorney for Utah Labor Commission, Industrial Accidents Division, Mark E. Mecalf and the firm of Richer & Overton, P.C. @V

10-10-06 Filed: Memo in Support of Motion to Disqualify Attorney for Utah Labor Commission, Industrial Accidents Division, Mark E. Mecalf and the firm of Richer & Overton, P.C. @V

11-02-06 Filed: Application for Writ of Execution - Lui Enterprises @V

11-02-06 Issued: Writ of Execution
Clerk lariah

11-02-06 Note: **Reitz Box**

11-07-06 Filed: Notice to Submit Decision Ex Parte Motion to Stay Execution of Judgment @V

11-07-06 Filed: Notice to Submit @V

11-09-06 Filed: Request for Hearing @V

11-14-06 Filed: Memo in Opposition to Garnishee/Defendant's Motion to Stay Execution through Garnishment @V

11-15-06 Filed: Reply to Memo in Opposition to Garnishee/Defendant's Motion for Relief from Judgment @V

11-15-06 Filed: Notice to Submit Garnishee's Motion to Set Aside Default Judgment @V

11-15-06 Note: submitted NTS to Judge (Motion to Disqualify and Motion to Stay)

11-29-06 Notice - NOTICE for Case 056909867 ID 6807303
ORAL ARGUMENT is scheduled.
Date: 12/15/2006
Time: 09:00 a.m.
Location: Fourth Floor - W48
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84114-1860
Before Judge: TYRONE E MEDLEY

Please take notice the following will be set for Oral Argument for 1 hour.

- 1) Garnishee Motion to Set Aside Default Judgment.
- 2) Motion to Disqualify attorney for Utah Labor Commission.
- 3) Ex Parte Motion to Stay Execution of Judgment.

11-29-06 ORAL ARGUMENT scheduled on December 15, 2006 at 09:00 AM in Fourth Floor - W48 with Judge MEDLEY.

12-11-06 ORAL ARGUMENT rescheduled on January 02, 2007 at 02:00 PM
Reason: Stipulation of counsel.

12-11-06 Note: Parties stipulated to Continuance. Mark Medcalfs office to send notice.

12-11-06 Filed: Motion to Continue hearing @V

12-14-06 Filed: Notice of Continuance @V

01-02-07 Minute Entry - Minutes for Law and Motion

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CASE NUMBER 056909867 Abstract of Judgment

Judge: TYRONE E MEDLEY

Clerk: tinaa
PRESENT

Plaintiff's Attorney(s): MARK E MEDCALF

Defendant's Attorney(s): FILIA H UIPI

Video

Tape Number: 2.03

HEARING

This matter is before the Court for Oral Argument. Appearances as stated above.

Garnishee Motion to Set Aside Default Judgment as to Salote Vuki is denied.

Motion to Disqualify attorney for Utah Labor Commission and Ex Parte Motion to Stay Execution of Judgment is now moot.

Mark Medcalf to prepare Order.

01-08-07 Filed: **UNSIGNED** Order Granting Garnishee Lui Enterprises Motion to Stay Execution of Judgment @V

01-08-07 Filed: ***UNSIGNED** Order Granting Garnishee Lui Enterprises Motion to Disqualify Attorney for Utah Labor Commission Mark E Medcalf and the Firm of Richer & Overholt PC @V

01-12-07 Filed: Garnishee LUI Enterprise's motion for reconsideration @V

01-12-07 Filed: Memorandum in support of garnishee LUI Enterprise's motion for reconsideration @V

01-26-07 Filed order: Order on the Motions of Lui Enterprises to Set Aside Judgment and Motion for Disqualifications of Counsel @V
Judge TYRONE E MEDLEY
Signed January 26, 2007

01-29-07 Filed: Plaintiff's Memo in Opposition to the Motion for Reconsideration of Garnishee/Defendant Lui Enterprises, Inc @V

02-08-07 Filed: Request to Submit for Decision Motion for Reconsideration @V

02-13-07 Fee Account created Total Due: 205.00

02-13-07 Filed: Notice of Appeal @V

02-13-07 APPEAL Payment Received: 205.00
Note: Code Description: APPEAL, 220.00 cash tendered.
15.00 change given.

02-13-07 Fee Account created Total Due: 15.00

02-13-07 Fee Account created Total Due: 10.00

02-13-07 VIDEO TAPE COPY Payment Received: 15.00

02-13-07 AUDIO TAPE COPY Payment Received: 10.00

02-14-07 Note: Cert/Copy of Notice of Appeal forwarded to Utah Supreme Court

02-21-07 Note: Appealed: Case #20070149

02-23-07 Filed: Request for Transcript @V

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CASE NUMBER 056909867 Abstract of Judgment

02-26-07 Note: Cert/Copy of Request for Transcript forwarded to Utah Supreme Court - 20070149-SC

02-27-07 Filed: Utah Court of Appeals letter to Counsel - Notice of Appeal has been filed - docketing statement is due March 6, 2007 - 20070149-CA

03-06-07 Fee Account created Total Due: 0.75

03-06-07 COPY FEE Payment Received: 0.75

04-02-07 Filed order: Minute Entry and Order Denying Lui Enterprises' Motion for Reconsideration is denied
 Judge TYRONE E MEDLEY
 Signed March 30, 2007

04-02-07 Filed: **UNSIGNED** Order Granting Garnishee/Deft LUE Enterprises' Motion for Reconsideration per Judge Medley @V

04-11-07 Filed: Application for Writ of Garnishment @V

04-11-07 Filed: Application of Writ of Garnishment @V

04-11-07 Issued: Writ of Garnishment (US BANK)
 Clerk teressah

04-11-07 Issued: Civil Bench Warrant \$100 - 5/8/07 3.00 pm
 Clerk teressah

04-11-07 Issued: Writ of Garnishment (WELLS FARGO BANK)
 Clerk teressah

04-12-07 Issued: Supplemental Order, May 8, 2007 @ 3pm
 Clerk benf

04-17-07 Filed: Amended affidavit of attorney's fees & costs @V

04-18-07 Filed return: Supp Order @V
 Party Served: Olisi Lui - Director
 Service Type: Personal
 Service Date: April 13, 2007

04-20-07 SUPPLEMENTAL ORDER scheduled on May 08, 2007 at 03:00 PM in Third Floor - W32.

04-23-07 Filed: Reply and Request for Hearing @V

04-24-07 Filed: Answer of garnishee @V
 US BANK
 435.39
 April 17, 2007

04-25-07 Filed return: \$100 Bench Warrant - \$100 bail paid @V
 Party Served: VUKI, SALOTE
 Service Type: Personal
 Service Date: April 22, 2007

04-26-07 Bond Account created Total Due: 100.00

04-26-07 Bond Posted Payment Received: 100.00

04-30-07 Filed: Answer of garnishee @V
 WELLS FARGO BANK
 April 20, 2007

05-04-07 Issued: Writ of Execution
 Clerk benf

05-04-07 Filed: Application for Writ of Execution @V

05-08-07 Minute Entry - Minutes for SO/\$100 BENCH WARRANT
 Judge: JUDGE COLLECTION

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CASE NUMBER 056909867 Abstract of Judgment

Clerk: larieh
 PRESENT

Defendant(s): OLISI LUI PRESIDENT FOR LUI ENTERPRISES
 SALOTE VUKI
 Plaintiff's Attorney(s): R HARROW FOR MARK MEDCALF
 Other Parties: T LAURA LUI

HEARING

Defendant(s) appeared, answered Attorney's questions, and was excused. Release \$100 bail to Defendant. Defendant will prepare order. Laura Lui informed she was present at the hearing as an interpreter and not as Attorney of Record.

05-14-07 Fee Account created Total Due: 0.50
 05-14-07 COPY FEE Payment Received: 0.50
 Note: 1.00 cash tendered. 0.50 change given.
 05-14-07 Bond Account created Total Due: 300.00
 05-14-07 Bond Posted Payment Received: 300.00
 05-24-07 Fee Account created Total Due: 11.00
 05-24-07 COPY FEE Payment Received: 11.00
 05-24-07 Fee Account created Total Due: 12.50
 05-24-07 COPY FEE Payment Received: 12.50
 05-24-07 Note: Defendants Motion to Release Bail and Order are filed unsigned per Judge Medley
 05-24-07 Filed: ***UNSIGNED**Defts Motion to Release Bail and Order
 06-07-07 Issued: Writ of Execution - (Salt Lake County) property at 1465 S State Street #10-11 SLC
 Clerk christip
 06-07-07 Filed: Application for Writ of Execution @V
 06-26-07 Filed: Notice to appear or appoint successor counsel @V
 06-27-07 Filed: Notice of withdrawal of counsel @V
 06-29-07 Filed: REcord Index
 06-29-07 Note: Cert/Copy of Record Index forwarded to Utah Court of Appeals-20070149-CA
 06-29-07 Filed: Utah Court of Appeals Order-Counsel to assist in recreation of record as needed for future supplemental record indexing.
 08-03-07 Filed: Request for Hearing
 08-03-07 Filed: Notice of Appearance of Counsel
 08-13-07 Notice - NOTICE for Case 056909867 ID 11192719
 OBJECTION TO EXECUTION is scheduled.
 Date: 09/04/2007
 Time: 08:15 a.m.
 Location: Fourth Floor - W48
 THIRD DISTRICT COURT
 450 SOUTH STATE

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CASE NUMBER 056909867 Abstract of Judgment

SLC, UT 84114-1860
 Before Judge: TYRONE E MEDLEY
 08-13-07 OBJECTION TO EXECUTION scheduled on September 04, 2007 at 08:15 AM in Fourth Floor - W48 with Judge MEDLEY.

09-05-07 Filed order: Minute Entry and Order RE: Request for Hearing on
Writ of Execution and Sale
Judge TYRONE E MEDLEY
Signed September 05, 2007
09-05-07 OBJECTION TO GARNISHMENT scheduled on October 02, 2007 at 10:00
AM in Fourth Floor - W48 with Judge MEDLEY.
09-05-07 OBJECTION TO GARNISHMENT scheduled on October 02, 2007 at 09:00
AM in Fourth Floor - W48 with Judge MEDLEY.
09-17-07 Minute Entry - Minutes for OBJECTION TO RECOMENDATION
Judge: TYRONE E MEDLEY
Clerk: tinaa
PRESENT

Plaintiff's Attorney(s): MARK E MEDCALF
Defendant's Attorney(s): T LAURA LUI
Video
Tape Number: 8.20

HEARING

This matter is before the Court for Objection to Execution.
Appearances as stated above.
The reserves ruling and will render decision by way of Telephone
Conference by noon on 9/5/07.

09-18-07 Filed: Defendant Salote Vuki's Notice of Service of Subpeona
Duces Tecum @V
10-01-07 Filed: Defendant Salote Vuki's Motion to Continue Oct 2, 2007
Hearing
Filed by: LUI, T LAURA
10-01-07 Filed: Notice of Hearing
10-01-07 Filed: Request to Submit
10-02-07 Minute Entry - Minutes for OBJECTION TO GARNISHMENT
Judge: TYRONE E MEDLEY
Clerk: stephang
No Parties Present

HEARING

This matter is before the court for Objection to Garnishment.
Based upon the failure of both parties to appear at the scheduled

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time this hearing is stricken.
10-05-07 Filed: Motion to Renew Reply and Request for Hearing
Filed by: LUI, T LAURA
10-05-07 Filed: Notice to Submit
10-25-07 Filed order: Order Granting Deft Salote Vuki's Motion to Renew

Reply and Request for Hearing Filed April 23 2007 and Setting
Hearing Date

Judge TYRONE E MEDLEY

Signed October 25, 2007

10-29-07 Notice - NOTICE for Case 056909867 ID 11268495

SCHEDULING CONFERENCE is scheduled.

Date: 11/27/2007

Time: 09:30 a.m.

Location: Fourth Floor - W48

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

Before Judge: TYRONE E MEDLEY

10-29-07 SCHEDULING CONFERENCE scheduled on November 27, 2007 at 09:30
AM in Fourth Floor - W48 with Judge MEDLEY.

11-15-07 Filed: Motion to supplement record @V

11-27-07 Minute Entry - Minutes for SCHEDULING CONF.

Judge: TYRONE E MEDLEY

Clerk: tinaa

PRESENT

Plaintiff's Attorney(s): MARK E MEDCALF

Defendant's Attorney(s): T LAURA LUI

HEARING

This matter is before the Court for a Scheduling Conference.

Appearances as stated above.

Laura Lui to file memorandum and submit it to the Court with 1
week. With in 10 days Laura Lui to submit a Scheduling Order.

OJBECTION TO GARNISHMENT is scheduled.

Date: 12/19/2007

Time: 09:00 a.m.

Location: Fourth Floor - W48

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84114-1860

Before Judge: TYRONE E MEDLEY

11-27-07 OJBECTION TO GARNISHMENT scheduled on December 19, 2007 at
09:00 AM in Fourth Floor - W48 with Judge MEDLEY.

11-30-07 Filed: Utah Court of Appeals - Order - This matter is
temporarily remanded to supplement the record with the "Return

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CASE NUMBER 056909867 Abstract of Judgment

of Service on the Order to Show Cause". It is further ordered
that the due date for Appelant's brief is stayed pending the
filing

11-30-07 Filed: Utah Court of Appeals - Order (cont.) - of the
supplemental record index in this court, at which time the
clerk shall re-establish the due date for Appelant's brief.

20070149-CA

12-04-07 Filed: Memorandum in Support of Request for Hearing Filed April
23, 2007 by Defendant Salote Vuki @V
12-11-07 Filed: Errata
12-19-07 Received: December 19, 2007
Container: 1-LARGE ENVELOPE Location: 1-LE
12-19-07 Minute Entry - Minutes for OBJECTION TO GARNISHMENT
Judge: TYRONE E MEDLEY
Clerk: tinaa
PRESENT

Plaintiff's Attorney(s): MARK E MEDCALF
Defendant's Attorney(s): T LAURA LUI
Video
Tape Number: 9.04-9.48

HEARING

This matter is before the Court for an Objection to Garnishment.
Appearances as stated above.

Objection is argued and submitted to the Court by respective
counsel. The Court takes this matter under advisement and will
render a decision by way of Minute Entry.

12-19-07 Filed: Defts Exhibit list

12-19-07 Filed: Defts Exhibit

01-29-08 Filed order: Minute Entry Decision Re: Defendant's Request for
Award of Attorney and Bank Fees is denied.

Judge TYRONE E MEDLEY

Signed January 29, 2008

02-06-08 Note: Record checked out to attorney Mark Medcalf
(801-561-4750): Files-3 manilla folders, Exhibits-1 large
envelope. Record due back March 6, 2008.