

1996

Jeanne Coleman Jackson v. William H. Adams : Brief of Appellee

Utah Court of Appeals

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Appellees.

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IN THE UTAH COURT OF APPEALS

JEANNE COLEMAN JACKSON	:	UTAH COURT OF APPEALS
	:	BRIEF
Plaintiff/Appellee,	:	UTAH
	:	DOC
vs.	:	K F U
	:	50
WILLIAM H. ADAMS,	:	A 0
	:	DOCKET NO. <u>960223 - CA</u>
Defendant-Third Party	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	
	:	Case No. 960223 - CA
ELESE ADAMS,	:	
	:	Priority 15
Third-Party Defendant/	:	
Appellees.	:	

BRIEF OF APPELLEES

APPEAL FROM A FINAL JUDGMENT ENTERED BY
THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT
SALT LAKE COUNTY, STATE OF UTAH
HONORABLE STEPHEN L. HENRIOD, PRESIDING

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Third-Party Defendant/Appellees

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

JEANNE COLEMAN JACKSON	:	
Plaintiff/Appellee,	:	
vs.	:	
WILLIAM H. ADAMS,	:	
Defendant-Third Party	:	
Plaintiff/Appellant,	:	
vs.	:	
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Third-Party Defendant/	:	Priority 15
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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Utah Code Annotated, §78-2a-3 (1995).

ISSUES PRESENTED FOR REVIEW

I. Whether the court correctly awarded attorney fees to plaintiff Jeanne Jackson and third-party defendant Elese Adams pursuant to Utah Code Annotated § 78-27-56.

Standard of Review: A trial court's determination that an action or defense to an action was not brought or asserted in good faith is reviewed under a clearly erroneous standard. A trial court's determination that an action or defense to an action was without merit is reviewed under a correction of error standard. Jeschke v. Willis, 811 P.2d 202 (Utah App. 1991).

II. Whether Jeanne Jackson and Elese Adams are entitled to an award of attorney fees and costs incurred in this appeal. Rule 33 of the Utah Rules of Appellate Procedure states that the court shall award single or double costs and/or reasonable attorney fees where the appeal is frivolous.

DETERMINATIVE STATUTES

Utah Code Annotated, §78-27-56 states in pertinent part:

(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith....

STATEMENT OF THE CASE

A. Nature of the Case

Plaintiff, Jeanne Coleman Jackson ("Mrs. Jackson"), and Third-Party Defendant, Elese Adams, are mother and daughter. Defendant and Third-Party Plaintiff, William H. Adams, is Mrs. Jackson's former son-in-law and Elese Adams' former husband. Mr. Adams is an attorney. He has practiced law in the State of Utah since 1972. In 1979, Mrs. Jackson received \$10,000 from the sole insurance policy on her husband's life. She gave William Adams the \$10,000 -- at his suggestion -- to invest on her behalf in municipal bonds.

From time to time, Mrs. Jackson made inquiries about her investment through her daughter Elese. Elese Adams had no reason to be concerned about her mother's investment because when she asked William Adams about its status he indicated that everything was fine. In 1985, William Adams divorced Elese Adams and Mrs. Jackson had no further direct contact with Williams Adams. However, on occasion, Mrs. Jackson would request that Elese inquire of Mr. Adams about the investment, and Elese Adams did so. Based upon William Adams' responses to her inquiries neither Mrs. Jackson nor Elese Adams had any concern about the investment.

During a telephone conversation between Elese Adams and William Adams in December, 1993, William Adams informed Elese Adams for the first time that Mrs. Jackson's investment no longer existed. William Adams had converted the \$10,000 to his own use.

Mrs. Jackson, through Elese Adams, requested the return of her \$10,000. William Adams refused to repay the money.

B. Course of Proceedings

On October 6, 1994, Mrs. Jackson filed a Verified Complaint against William Adams (R. 1-7). The Verified Complaint alleged four causes of action: conversion, fraud, mistake and unjust enrichment. On November 7, 1994, William Adams filed an Answer. (R. 11-16) He filed an Amended Answer on November 28, 1994. (R. 20-25)

On April 5, 1995, William Adams filed a Motion for Leave to File Second Amended Answer and a Third-Party Complaint against Elese Adams. (R. 97-100) Mrs. Jackson did not oppose the Defendant's Motion and it was subsequently granted. (R.115)¹ (R.101) William Adams' Third-Party Complaint alleged that Elese Adams should indemnify or contribute to any judgment entered against William Adams on the theory that William and Elese Adams were married during the time the money was received and converted. On July 13, 1995, Elese Adams answered the Third-Party Complaint. (R. 116-119)².

¹Mr. Adams' Second Amended Answer is incorrectly captioned "Third Amended Answer."

²The Verified Complaint, Third Amended Answer, Third-Party Complaint and Answer to Third-Party Complaint are contained in the appendix to this brief.

C. Disposition in the Court Below.

On January 26, 1996, a trial was held before Judge Stephen L. Henriod. After hearing the testimony of the parties and upon reviewing the evidence introduced at trial, the court awarded judgment to Mrs. Jackson in the amount of \$29,502.75. (R. 255) The judgment included an award of attorney fees to Mrs. Jackson and Else Adams in the amount of \$10,802.75. (R. 251) On March 4, 1996, the court entered detailed Amended Findings of Fact and Conclusions of Law.³ (R. 240-254) On April 3, 1996 William Adams filed his Notice of Appeal. (R. 259-60)

D. Statement of Facts

1. Mrs. Jackson's husband died in November, 1978, and she received the \$10,000 proceeds from his sole life insurance policy. (Trial Tr. p. 33)⁴

2. At a family dinner in November, 1978, Mrs. Jackson discussed privately what to do with the insurance proceeds with her son-in-law, William Adams. William Adams, a lawyer practicing law in Salt Lake City with the firm Fabian & Clendenin, was trusted by Mrs. Jackson "like a son." (Trial Tr. pp. 34, 114-115)

3. William Adams stated that utility bonds had a 10% return and might be a worthwhile investment. He suggested Utah Power &

³The Amended Findings of Fact and Conclusions of Law are contained in the addendum to this brief.

⁴Cited portions of the trial transcript are contained in the addendum to this brief.

Light bonds ("UP&L bonds"). Mrs. Jackson accepted William Adams' advice. (Trial Tr. p. 116)

4. In January, 1979, Mrs. Jackson had a \$10,000 cashier's check issued from her bank and asked her daughter, Elese Adams, to give the check to William Adams to purchase municipal bonds on her behalf. The check was payable to Mr. Adams only. (Trial Tr. pp. 35-36)

5. In 1979, William Adams paid Mrs. Jackson \$500 "interest" on her investment. In 1980, Mr. Adams paid Mrs. Jackson \$1,000 "interest" on her investment. Mrs. Jackson kept a handwritten record of the payments on the back of her cashier's check receipt. (Trial Tr. pp. 37-38)

6. In 1981, Mrs. Jackson asked Elese Adams to request of Mr. Adams that the interest be added to principal. Mrs. Jackson never received any further interest payments from Mr. Adams. (Trial Tr. pp. 37-38)

7. In 1985, William Adams and Elese Adams divorced after eighteen years of marriage. Mrs. Jackson did not make inquiries about her investment at that time because she believed it was invested in UP&L bonds. (Trial Tr. pp. 39, 50)

8. In December, 1993 Elese Adams called William Adams at his law firm to inquire about Mrs. Jackson's investment. He told her the money was gone. Elese Adams was shocked. She shared the information with her mother. This was the first time Mrs. Jackson

learned that her money was no longer invested in UP&L stock.
(Trial Tr. pp. 78-79)

9. William Adams told Elese Adams during the December, 1993 telephone conversation that the money had been used to repay him for Mr. Jackson's funeral in 1978. (Trial Tr. p. 79)

10. William Adams testified at trial (or admitted in his Third Amended Answer) as follows:

- a. He is a lawyer licensed to practice law in Utah since 1972. (Trial Tr. p. 114)
- b. He knew Mrs. Jackson had received \$10,000 from an insurance policy on her husband's life. (Second Amended Answer, ¶1, (R. 20)).
- c. He recalled the 1978 conversation with Mrs. Jackson about investing the money in municipal bonds. (Trial. Tr. p. 115)
- d. He accepted the \$10,000 cashier's check from Mrs. Jackson in 1979. (Trial Tr. p. 115)
- e. He paid Mrs. Jackson interest in 1979 and 1980 in the amount of \$500 and \$1,000 respectively. (Trial. Tr. p. 118)
- f. He did not believe the money was a loan or a gift from Mrs. Jackson to either him or his former wife, Elese Adams. (Trial Tr. pp. 116, 118)

- g. He deducted the interest he paid Mrs. Jackson on his 1980 tax return. (Trial Tr. p. 118)
- h. He deposited the \$10,000 in a joint bank account used primarily by him and purchased three municipal power bonds in his own name. Two of the bonds were issued by UP&L and one was issued by Montana Power. (Trial Tr. pp. 117-119)
- i. Between 1980 and 1983, he sold the three bonds at separate times because he needed the money to remodel his house. (Trial Tr. pp. 119-120, 125)
- j. After Mr. Adams obtained Mrs. Jackson's \$10,000 he treated the money as a loan, despite the fact that he never had any understanding with Mrs. Jackson that he could do so. (Trial. Tr. pp. 117-118)
- k. In 1985, Mr. Adams filed for bankruptcy but did not list Mrs. Jackson as a creditor. Nor did he schedule the \$10,000 as a debt due and owing to Mrs. Jackson. (Trial Tr. p. 120)
- l. Mr. Adams has never repaid Mrs. Jackson her money. (Trial Tr. p. 120)

SUMMARY OF ARGUMENTS

The trial court correctly held that attorney fees should be awarded to Jeanne Jackson and Elese Adams on the grounds that a number of William Adams' defenses and the entire Third-Party

Complaint were without merit and not filed in good faith. At minimum Mr. Adams defenses to Mrs. Jackson's conversion cause of action, his statute of limitation and laches affirmative defenses and his Third-Party Complaint against Elese Adams were frivolous and in bad faith. Additionally, Mr. Adams has failed to marshal the extensive evidence supportive of the trial court's findings and conclusions. Attorney fees incurred in defending this appeal should be awarded to Mrs. Jackson and Elese Adams because Mr. Adams' appeal is non-meritorious

ARGUMENT

I.

**THE TRIAL COURT CORRECTLY HELD THAT ATTORNEY
FEES SHOULD BE AWARDED TO JEANNE JACKSON AND ELEASE
ADAMS ON THE GROUNDS THAT A NUMBER OF WILLIAM
ADAMS' DEFENSES AND HIS ENTIRE THIRD-PARTY COMPLAINT
WERE WITHOUT MERIT AND NOT FILED IN GOOD FAITH**

Utah Code Annotated § 78-27-56 requires the trial court to award reasonable attorney fees to the prevailing party in a civil case if the court determines that the action or defense to the action was without merit and not asserted in good faith. An award of attorney fees in such an instance is not discretionary, but mandated by statute. The Utah Court of Appeals defined the terms "without merit" and "bad faith" in Jeschke v. Willis, 811 P.2d 202 (Utah App. 1991):

To prove that a claim is 'without merit' under the statute, the party asserting an award of the attorney fees must first demonstrate that

the claim is 'frivolous' or 'of little weight or importance having no basis in law or in fact' (Citations omitted) The 'without merit' determination is a question of law, and therefore we review it for correctness. [citation omitted] Second, the party must prove that the suit was lacking in good faith. The lack of good faith turns on subjective intent, and for purposes of the statute, it is synonymous with a finding of 'bad faith'. (Citations omitted) A finding of bad faith is a question of fact and is reviewed by this court under the court's 'clearly erroneous' standard. (Citations omitted)

Id. at 203-204.

Factual findings are clearly erroneous if they are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination. Wessel v. Erickson Landscaping Co., 711 P.2d 250, 252 (Utah 1985). The clearly erroneous standard, which is the applicable standard of review here is highly deferential to the trial court's decisions because the witnesses and parties appear before the trial court and the evidence is presented there. State v. Pena, 869 P.2d 932, 936 (Utah, 1994).

This litigation arose because William Adams refused to return funds which he had received as a fiduciary from his elderly mother-in-law and subsequently converted to his own personal use. The primary defenses in Mr. Adams' Third Amended Answer were that the applicable statutes of limitation or the equitable doctrine of laches barred Mrs. Jackson's claims because Mrs. Jackson or her "agent" Elese Adams knew or should have known that the investment

no longer existed. (R. 101-106) Mr. Adams' Third-Party Complaint similarly alleged that Elese Adams was Mrs. Jackson's agent and that she should indemnify or contribute to any judgment rendered against Mr. Adams because she benefitted from Mrs. Jackson's money. (R. 109-114)

The trial court concluded in its Amended Findings of Fact and Conclusions of Law that William Adams' defenses and Third-Party Complaint were without merit and not filed in good faith. (R.251) What follows is a representative sampling of Mr. Adams most egregious claims and defenses.

A. Mr. Adams' defenses to Mrs. Jackson's conversion cause of action were without merit and in bad faith.

Jeanne Jackson's first cause of action in her Verified Complaint was for conversion. (R-3) Conversion is an act of willful interference with chattel, done without lawful justification by which the person entitled thereto is deprived of the chattel's use and possession. Phillips v. Utah State Credit Union, 811 P.2d 174 (Utah 1991). Although conversion results only from intentional conduct, it does not require conscious wrongdoing but only intent to exercise dominion or control over goods inconsistent with the owner's's rights. Id. at 179.

Mr. Adams denied all of Mrs. Jackson's conversion allegations. (R. 103) However, the evidence at trial shows that William Adams took the \$10,000 Jeanne Jackson received from her husband's life insurance policy. He invested it in utility company bonds held in

his own name. He liquidated the bonds and deposited the money into an account over which he exercised dominion and control. He never repaid the \$10,000 to Jeanne Jackson.

B. Mr. Adams' statute of limitation and laches affirmative defenses were without merit and in bad faith.

Mr. Adams' primary affirmative defenses to the conversion cause of action were that it was barred by the applicable statute of limitation or by the equitable doctrine of laches. Ample evidence supports the conclusion that Mr. Adams' statute of limitations and laches defenses were frivolous and in bad faith. Most importantly, the court found William Adams' conduct was intentionally misleading and that he intended to conceal facts concerning his use of Jeanne Jackson's \$10,000. (R.246) Applicable limitation periods are tolled until the discovery of facts forming the basis for the cause of action where a plaintiff does not become aware of the cause of action because of the defendant's concealment or misleading conduct. Warren v. Provo City Corp., 838 P.2d 1125, 1129 (Utah 1992).

With regard to his laches defense, William Adams claims:

At the time of trial, the plaintiff was approximately 89 years old. (Tr. 33) She had lapses of memory regarding when her daughter got divorced in 1985 (Tr. 46), no recollection regarding how the funds were physically transferred to Mr. Adams in 1979, (Tr. 43) and claimed to borrow money from her previously deceased father in 1989 to purchase a condominium (Tr. 46). These infirmities are perfectly understandable and are not intended to indict Ms. Jackson. However, it is the

perfect example when too much time transpires causing prejudice and an inability to obtain evidence material to the issues at hand. Hence, the doctrine of laches provides a plausible defense for lost memories and evidence lost by time.

(William Adams Brief, p. 18)

Mr. Adams ignores the trial court's specific finding that he "was not a credible witness and mostly could not recall specific facts that he should have been able to recall." (R. 250) The court also stated during the trial that Mrs. Jackson's memory regarding relevant events was better than Mr. Adams. (Trial Tr. p. 158) Given the trial court's views about Mr. Adams' credibility and poor memory, it is not surprising it rejected his laches defense.

C. Mr. Adams' Third-Party Complaint against Elese Adams was without merit and in bad faith.

With regard to Mr. Adams' Third-Party Complaint, the trial court found that the Decree of Divorce between William Adams and Elese Adams was controlling and therefor pursuant to the terms of the Decree, any premarital debt was attributed to and the responsibility of William Adams. The court also found that Elese Adams did not receive any benefit from Mrs. Jackson's \$10,000. (Trial Tr. pp. 171, 173; R. 252) The trial court's determination that the Decree of Divorce was controlling and that Elese Adams did not receive any benefit rendered the Third-Party Complaint's claim for indemnification/contribution without merit.

With regard to Mr. Adams' allegation that Elese Adams was Jeanne Jackson's agent, the trial court specifically found:

There was no knowledge on the part of Elese Adams that ought to be imputed to Jeanne Jackson. The elements of consent and control and understanding simply were not reflected in any way in the evidence. No factual or legal basis exists to substitute Elese Adams for Jeanne Jackson with respect to notice, knowledge and everything that entails. Jeanne Jackson did not know that William Adams purchased the bonds or stocks in his name or that he liquidated them, or that the money was spent until at least December, 1993. (R. 249) (emphasis supplied)

The foregoing findings make clear that the trial court properly rejected William Adams' attempt to manufacture an agency role for Elese Adams.

D. Mr. Adams has failed to marshal the extensive evidence supportive of the trial court's findings and conclusions.

William Adams' failure to marshal the evidence could explain his continued failure to recognize that his defenses were without merit and in bad faith. It is well-settled that to successfully challenge the correctness of a trial court's findings of fact, an appellant must first marshal all the evidence supporting the findings and then demonstrate that the evidence is insufficient to support the findings, even viewing them in the light most favorable to the trial court. Alta Industries, Ltd. v. Hurst, 846 P.2d 1282, 1286 (Utah 1993).

William Adams' brief does not contain a single citation to the trial transcript supportive of the trial court's Amended Findings

of Fact and Conclusions of Law. Instead, Mr. Adams essentially reargues the claims and defenses rejected by the trial court. As stated in Hodges v. Gibson Products Co., 811 P.2d 151, (Utah 1991) "[i]t is not the duty of an appellate court in a civil case to canvass the record on its own to determine the sufficiency of the evidence." Id. at 156.

Mr. Adams' brief claims that "the factual record is void of evidence that would establish any one of the elements of bad faith. Mr. Adams is not cited for taking unconscionable advantage of others." (William Adams' Brief, p. 16) Contrast this assertion with the trial court's findings and conclusions that:

1. "Mr. Adams' conduct was intentionally misleading and he concealed relevant facts from Jeanne Jackson and Elese Adams." (R. 246, 250)

2. "Mr. Adams was not a credible witness at trial and mostly could not recall specific facts that he should have been able to recall." (R. 250)

3. "Mr. Adams breached his fiduciary duties to Jeanne Jackson." (R. 251)

4. "Mr. Adams converted Jeanne Jackson's \$10,000. (R. 251)

E. The mere fact that Mrs. Jackson's fraud claim was dismissed does not vitiate Mr. Adams other bad faith and frivolous claims and defenses.

Mr. Adams asserts that since Mrs. Jackson's fraud claim was dismissed, he is not liable to pay attorney fees. Again, Mr.

Adams' legal arguments fall short. Utah Code Ann. §78-27-56 does not give Mr. Adams an "out" simply because he prevailed on one of plaintiff's four causes of action. Mr. Adams' defenses to the remainder of Jeanne Jackson's Verified Complaint and his entire Third-Party complaint were frivolous and in bad faith. Consequently, he is liable for attorney fees and costs. Regardless of the fraud claim's ultimate resolution, the 89 year old Mrs. Jackson had to endure a trial because of Mr. Adams' ready willingness to assert bad faith, frivolous defenses to her other causes of action.

F. Jeanne Jackson and Else Adams did not waive their claims for fees.

Mr. Adams claims that "plaintiff is precluded recovery for fees due to the fact the claim was not raised in the four corners of the pleadings." (Appellant's Brief. p. 13) Mr. Adams' argument further evidences his willingness to assert bad faith, frivolous claims. Mrs. Jackson's Verified Complaint in this case specifically requests an award of attorney fees and costs. (R.6)

Else Adams' Answer to Mr. Adams' Third-Party Complaint does not include a specific request for attorney fees. However, Mr. Adams cites no authority to support the proposition that such a request is necessary under Utah Code Annotated § 78-27-56. The plain language of Utah Code Annotated § 78-27-56 contains no such requirement. In any event, Mrs. Jackson and Else Adams both

specifically requested attorney fees and costs pursuant to Utah Code Annotated §78-27-56 in their joint Trial Brief. (R.180)

II.

MRS. JACKSON AND ELEASE ADAMS ARE ENTITLED TO AN AWARD OF FEES ON APPEAL

Rule 33 of the Utah Rules of Appellate Procedure states that if the Appellate Court determines that an appeal is frivolous then the court shall award "just damages which may include single or double costs and/or reasonable attorney fees." The Court of Appeals found in the Utah Dept.'t of Social Services v. Adams, 806 P.2d 1193, 1197 (Utah App. 1991) that an appeal brought from an action properly determined to be in bad faith is necessarily frivolous under this Rule.

The trial court properly found that the defense to the litigation was without merit and in bad faith. The weight of the evidence supports the trial court's findings. Therefore, fees were properly awarded at the trial and should also be awarded on appeal.

The appeal, like the defense, is necessarily frivolous and fees and costs should be awarded pursuant to Rule 33 of the Utah Rules of Appellate Procedure.

CONCLUSION

This court is respectfully requested to affirm the award of attorney fees granted to Mrs. Jackson and Elease Adams by the trial

court and remand the issue of an award of attorney fees and costs incurred on appeal to the trial court.

DATED this 12 day of November, 1996.

KIPP AND CHRISTIAN, P.C.

A handwritten signature in black ink, appearing to read "Michael Skolnick", is written over a horizontal line.

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Jeanne Jackson and Third-
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, this 12 day of November, 1996, a true and correct copy of the foregoing Brief of Appellees, to the following:

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Manuel Stohrck

ADDENDUM

VERIFIED COMPLAINT

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IN THE THIRD CIRCUIT COURT
SALT LAKE DEPARTMENT, STATE OF UTAH

JEANNE COLEMAN JACKSON,	:	
	:	VERIFIED COMPLAINT
Plaintiff,	:	
vs.	:	
	:	Civil No. _____
WILLIAM H. ADAMS,	:	
	:	Judge _____
Defendant.	:	

Plaintiff complains of the Defendant as follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiff is an individual currently residing in Davis County, Utah.
2. Defendant is an individual currently residing in Salt Lake County, Utah.
3. Defendant was the Plaintiff's son-in-law until 1985.
4. Upon the death of Plaintiff's husband on November 2, 1978, Plaintiff received life insurance policy proceeds in the amount of \$10,000.

5. In January, 1979, Defendant offered to invest the insurance proceeds on behalf of the Plaintiff.

6. In January, 1979, Plaintiff presented Defendant with \$10,000 in the form of a cashier's check for the purpose of investing the funds. (Exhibit "A")

7. Defendant accepted the money from the Plaintiff and indicated he had invested in UP&L stock.

8. In approximately 1979 and 1980, Defendant made two payments to the Plaintiff, the first in 1979 in the amount of \$500 and the second in 1980 in the amount of \$1,000.

9. Defendant represented to the Plaintiff that the checks were dividend payments.

10. Plaintiff has not received any further payments from the Defendant.

11. Defendant represented to the Plaintiff that dividends received after the two payments in 1979 and 1980 were reinvested.

12. Else Adams, on behalf of the Plaintiff, requested the return of her \$10,000 in 1993, and Defendant has failed and refused to return the \$10,000 to the Plaintiff.

13. Defendant admitted to the Plaintiff's daughter, Else Adams, that there was no UP&L stock and stated that the \$10,000 was gone.

14. In December, 1993, Plaintiff learned for the first time that Defendant had not invested the \$10,000 in UP&L stock or any other investment on her behalf.

FIRST CAUSE OF ACTION

CONVERSION

15. Plaintiff incorporates and realleges paragraphs 1 through 14 by reference.

16. Plaintiff, as a beneficiary of a life insurance policy, received \$10,000 upon her husband's death in 1978.

17. Defendant offered to assist the Plaintiff, who was his mother-in-law, with investing the \$10,000 in her behalf.

18. Defendant accepted the money in the form of a cashier's check, but never invested the \$10,000 in behalf of the Plaintiff.

19. Defendant maintains the \$10,000 in his possession.

20. Plaintiff has requested the return of the \$10,000, but Defendant has failed and refused to return the money.

21. As a result, Defendant has converted the \$10,000 for his own use and benefit.

SECOND CAUSE OF ACTION

FRAUD

22. Plaintiff incorporates and realleges paragraphs 1 through 21 by reference.

23. On or about January, 1979, the Defendant represented to the Plaintiff that he would invest the \$10,000 she had received as insurance proceeds in the UP&L stock.

24. Such representation made by the Defendant is now, and was when made, false and the Defendant knew it to be false at the time he made the representation.

25. Defendant made such representations to the Plaintiff intending that Plaintiff would transfer the \$10,000 to his control and possession.

26. On January, 1979, in reliance on Defendant's representations, Plaintiff transferred the \$10,000 to the Defendant to invest in her behalf.

27. Plaintiff was not aware at the time, and the instances set forth above, of the falsity of the representation made by the Defendant and reasonably believed the Defendant's representations to be true.

28. As a result of the foregoing acts, Defendant has defrauded the Plaintiff of the \$10,000.

THIRD CAUSE OF ACTION

MISTAKE

29. Plaintiff incorporates and realleges paragraphs 1 through 28 by reference.

30. Plaintiff understood that upon transferring the \$10,000 to the Defendant that she was surrendering control of the \$10,000 to Defendant.

31. Plaintiff had no intention of giving the \$10,000 to the Defendant, but acted under the mistaken belief that Defendant would invest the \$10,000 in UP&L stock in her behalf.

32. Plaintiff would not have transferred the \$10,000 to Defendant, but for her mistake.

FOURTH CAUSE OF ACTION

UNJUST ENRICHMENT

33. Plaintiff incorporates and realleges paragraphs 1 through 32 by reference.

34. On or about January 12, 1979, Plaintiff transferred \$10,000 to the Defendant for the purpose of investing in UP&L stock.

35. Defendant accepted the \$10,000 and received a benefit therefrom.

36. Defendant did not invest the \$10,000 for Plaintiff, but converted it to his own use.

37. Defendant has not rendered or purchased any goods or services for the Plaintiff that would justify his retention of the \$10,000.

38. Plaintiff has requested the funds from the Defendant, but Defendant has refused to return any portion thereof.

39. As a result, Defendant has been unjustly enriched in the amount of \$10,000.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. For a judgment in the amount of \$10,000, together with prejudgment interest from January, 1979;

2. For general damages in an amount to be proven at trial;

3. For attorney's fees;

4. For costs incurred herein; and

5. For such other and further relief as the Court may deem appropriate.

DATED this 6 day of October, 1994.


KIPP AND CHRISTIAN, P.C.



MICHAEL F. SKOLNICK
SANDRA L. STEINVOORT

STATE OF UTAH)
 :ss.
County of Salt Lake)

Jeanne Coleman Jackson
JEANNE COLEMAN JACKSON

 **ARTHUR F. BROWNELL**
NOTARY PUBLIC • STATE of UTAH
230 SOUTH MAIN
BOUNTIFUL, UT. 84010
COMM. EXP. 7-31-97

Arthur F. Brownell
NOTARY PUBLIC

THIRD AMENDED ANSWER

L. G. CUTLER, #789
Attorney for Defendant
560 East 200 South, Suite 220
Salt Lake City, Utah 84102
Telephone: (801) 355-1896

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

JEANNE COLEMAN JACKSON	:	THIRD AMENDED
	:	ANSWER
Plaintiff,	:	
	:	
vs.	:	
	:	
WILLIAM H. ADAMS,	:	Civil No. 941960428
	:	
Defendant.	:	Judge Sandra N. Peuler

Defendant William H. Adams, by and through his counsel of record L. G. Cutler, hereby answers and responds to plaintiff's complaint as follows:

1. Defendant admits the allegations contained in paragraphs 1, 2, 3, and 4 of Plaintiff's complaint.

2. In responding to paragraph 5 of plaintiff's complaint, defendant admits that in approximately January, 1979, he and plaintiff's daughter received insurance proceeds from the plaintiff as alleged in paragraph 5 of plaintiff's complaint. Defendant further admits said funds were used toward the purchase of a Utah Power and Light Bond. Defendant denies each and every remaining allegation contained in paragraph 5 of plaintiff's complaint.

3. In responding to paragraph 6 of plaintiff's complaint, defendant admits he and plaintiff's daughter received \$10,000.00

from the plaintiff in approximately January, 1979, as alleged in paragraph 6 of plaintiff's complaint and said funds were used to purchase a Utah Power and Light Bond. The defendant denies each and every remaining allegation contained in paragraph 6 of plaintiff's complaint.

4. In responding to paragraph 7 of plaintiff's complaint, the defendant admits he and plaintiff's daughter received the above described funds and said funds purchased a Utah Power and Light Bond. Defendant denies each and every remaining allegation contained in paragraph 7 of plaintiff's complaint.

5. In responding to paragraph 8 of plaintiff's complaint, defendant admits he and plaintiff's daughter made two payments to defendant in 1979 and 1980 in the approximate amounts alleged in paragraph 8 of plaintiff's complaint. Defendant denies each and every remaining allegation contained in paragraph 8 of plaintiff's complaint.

6. Defendant admits the allegations contained in paragraphs 9 and 10 of plaintiff's complaint.

7. Defendant denies each and every allegation contained in paragraph 11 of plaintiff's complaint.

8. In responding to paragraph 12 of plaintiff's complaint, defendant is without sufficient information or knowledge as to the motives, intent or legal authority of Elese Adams as alleged in paragraph 12 of plaintiff's complaint. Defendant admits he has not paid \$10,000.00 to plaintiff since 1979. Defendant denies each and

every remaining allegation contained in paragraph 12 of plaintiff's complaint.

9. In responding to paragraph 13 of plaintiff's complaint, plaintiff's daughter knew or should have known the Utah Power and Light Bond ceased to exist no later than the date of the defendant's and the plaintiff's daughter's divorce in 1985. The plaintiff's daughter further knew or should have known prior to 1985 that the proceeds of said funds went to her and her children's benefit. The defendant denies each and every remaining allegation contained in paragraph 13 of plaintiff's complaint.

10. The defendant denies each and every allegation contained in paragraph 14 of plaintiff's complaint. The defendant affirmatively alleges that plaintiff knew or should have known she did not receive any payments from defendant or from plaintiff's daughter after 1980, and plaintiff knew of the defendant's and plaintiff's daughter's divorce in 1985, and plaintiff knew of the defendant's Chapter 7 bankruptcy in 1985.

11. The defendant incorporates and realleges his prior admissions and denials stated above and further denies each and every remaining allegation contained in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of plaintiff's complaint.

12. The defendant denies each and every remaining allegation contained in plaintiff's complaint not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the applicable statute of limitations for fraud which is three (3) years and/or the plaintiff, or her agent, knew or should have known of her alleged cause of action against the defendant prior to the expiration of the applicable statute and waived the cause of action.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the applicable statute of limitations for conversion which is one (1) year and/or the plaintiff and/or her agent, knew or should have known of her alleged cause of action against the defendant prior to the expiration of the applicable statute.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the equitable Doctrine of Laches in that the plaintiff, and/or her agent, knew or should of known of her alleged causes of action against the defendant on or before the 1985. The defendant is further prejudiced by plaintiff's delay in bringing this action.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff failed to join an indispensable party, namely her daughter, Else Adams, who receive the benefit from any transfer or mistaken transfer from plaintiff or who was unjustly enriched, if

any, from the plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred by the defendant's discharge in bankruptcy in 1985. The plaintiff and/or her agent authorized to oversee the status of the funds in dispute, knew or should have know of the defendant's bankruptcy and the plaintiff has failed to obtain relief from the United States Bankruptcy Court's Order Staying all attempts and proceedings against the defendant herein to recover alleged amounts owed to possible creditors.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff and/or her agent, consented to the use of the funds transferred from plaintiff to her agent and defendant and/or otherwise waived or is estopped from asserting any claim against the defendant for the use of the funds in dispute.

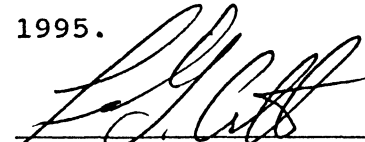
WHEREFORE, the defendant prays for the following relief:

1. That this matter be dismissed and she take nothing by this action;

2. That the plaintiff be required to pay defendant's reasonable attorney's fees incurred in defending this action and incurred in enforcing the terms the United States Bankruptcy Order discharging the defendant from the obligation asserted by plaintiff herein;

3. For such further relief as the Court deems proper and just.


DATED this 5th day of April, 1995.



L. G. CUTLER
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Third Amended Answer by first class mail, postage prepaid, on this 6th day of April, 1995 to Sandra L. Steinvort and Michael F. Skolnick, Attorney's for Plaintiff, at Kipp and Christian, P.C., City Centre I, #330, 175 East 400 South, Salt Lake City, Utah 84111.



THIRD PARTY COMPLAINT

L. G. CUTLER, #789
Attorney for Defendant
560 East 200 South, Suite 220
Salt Lake City, Utah 84102
Telephone: (801) 355-1896

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

JEANNE COLEMAN JACKSON	:	
Plaintiff,	:	THIRD PARTY COMPLAINT
vs.	:	
WILLIAM H. ADAMS,	:	
Defendant and	:	
Third Party Plaintiff	:	
vs.	:	Civil No. 941960428
ELESE ADAMS,	:	
Third Party Defendant	:	Judge Sandra N. Peuler

Defendant and Third Party Plaintiff, William H. Adams, by and through his counsel of record L. G. Cutler, hereby complains and alleges as a cause of action against Elese Adams, the Third Party Defendant, as follows:

JURISDICTION AND PARTIES

1. The plaintiff, Jeanne Jackson, is a resident of the State of Utah and currently resides in Davis County.

2. The defendant/third party plaintiff, William H. Adams, is a resident of the State of Utah and currently resides in Salt Lake County.

3. The third party defendant, Elese Adams, is a resident of

the State of Utah and currently resides in Salt Lake County.

4. William H. Adams and Elese Adams were previously married and resided together in Salt Lake County, State of Utah, until their divorce in 1985. The third party plaintiff and third party defendant were divorced in Salt Lake County, State of Utah, on May 14, 1985, the same becoming final 60 days thereafter. (Adams v. Adams, Civil No. D-85-1082).

5. Jeanne Jackson and Elese Adams are mother and daughter.

STATEMENT OF FACTS

6. On approximately November 8, 1994, the defendant/third party plaintiff was served a complaint by the plaintiff, Jeanne Jackson, alleging in 1979, she transferred \$10,000.00 to the William H. Adams.

7. Said funds were ultimately deposited to a personal joint bank account held in the names of Elese Adams and William H. Adams from which both the third party plaintiff and third party defendant had complete access and use of said funds.

8. Elese Adams, the third party defendant, had full access to all the documents and funds in joint bank accounts owned by William H. Adams and Elese Adams between 1979 and 1985, inclusive.

9. That between 1979 and 1985, Elese Adams, benefitted from the use and enjoyment of the funds deposited and/or commingled in the joint bank accounts owned by William H. Adams and Elese Adams.

10. That between 1979 and 1985, the third party defendant knew or should of known, of the existence of various securities

owned by herself, individually, and by William H. Adams.

11. That between 1979 and 1985, the third party defendant ceased making any payments to the plaintiff, Jeanne Jackson.

12. The plaintiff alleges in her original complaint that Elese Adams, acting "on behalf of the plaintiff", requested return of the \$10,000.00 from William H. Adams.

13. At all times referred to in the plaintiff's original action, Elese Adams was acting with the actual and apparent authority of the plaintiff, Jeanne Jackson, regarding the status and oversight of the funds transferred by plaintiff to Elese Adams and William H. Adams.

14. The plaintiff alleges various representations were made to her by the third party defendant, Elese Adams, who purports to have received these representations from the William H. Adams.

15. That at all times referred to in plaintiff's complaint after 1979, every representation made to Jeanne Jackson regarding information involving the status of the funds allegedly transferred in 1979 was made by the third party defendant, Elese Adams.

16. All representations referred to in plaintiff's complaint that were made to the plaintiff after 1985 were made by the third party defendant, Elese Adams.

17. At all times referred to in the plaintiff's original action, plaintiff Jeanne Jackson relied exclusively upon the acts and representations of her daughter Elese Adams, the third party defendant herein.

18. Subsequent to the divorce proceedings between William H. Adams and Elese Adams, William H. Adams was required to file for protection in the United States Bankruptcy Court pursuant to Title 11, Chapter 7, United States Code. The third party defendant, Elese Adams was listed as a creditor and had both legal and actual notice of the bankruptcy proceedings.

19. On approximately February 6, 1995, the deposition of Jeanne Jackson was taken by plaintiff's counsel. In pertinent part, the plaintiff states that she has not personally spoken to the William H. Adams since the parties divorce in 1985 and all information she received regarding the status of the original \$10,000.00 was obtained from her daughter, Elese Adams, the third party defendant herein.

FIRST CAUSE OF ACTION

INDEMNIFICATION AND/OR CONTRIBUTION

20. The third party plaintiff incorporates and realleges paragraphs 1 through 19 by reference.

21. The third party defendant was married to the third party plaintiff during the period from 1978 through May, 1985, inclusive.

22. To the extent the plaintiff is successful in her claim against William H. Adams for unjust enrichment, the third party defendant herein equally benefitted from the funds transferred and the same was divided between William H. Adams and Elese Adams pursuant to the terms of the parties' stipulated settlement of all marital assets and debts in 1985.

23. In approximately November, 1984, in contemplation of the parties' divorce, the third party defendant, through her attorney of record in the parties' divorce, knowingly attempted to divide various securities between herself and William H. Adams. These securities are the same securities referenced in the original complaint by Jeanne Jackson against William H. Adams.

24. To the extent plaintiff Jeanne Jackson, is successful in her claims for conversion against William H. Adams, the third party plaintiff is entitled to indemnification and/or contribution from Elese Adams, the third party defendant.

25. To the extent the plaintiff is successful in her claims that she was mistaken in transferring the funds to William H. Adams and Elese Adams, the third party plaintiff is entitled to indemnification and/or contribution from Elese Adams, the third party defendant.

26. To the extent the plaintiff is successful in her claims for fraud against William H. Adams, the third party defendant, Elese Adams is liable to the third party plaintiff, William H. Adams, for any and all sums sought by and/or awarded to Jeanne Jackson to be more specifically determined at the time of trial.

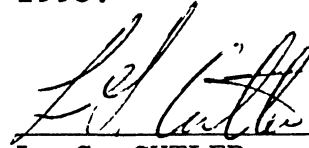
WHEREFORE, third party plaintiff prays for the following relief,

1. For a judgment against the third party defendant for any and all sums sought by or awarded to Jeanne Jackson in an amount specifically determined at the time of trial.

2. For an award of attorneys fees and costs incurred in bringing this action.

3. For such further relief the court deems proper and just.

DATED this 5th day of April, 1995.

A handwritten signature in cursive script, appearing to read "L. G. Cutler", is written over a horizontal line.

L. G. CUTLER
Attorney for Defendant and
Third Party Plaintiff

ANSWER TO THIRD-PARTY COMPLAINT

MICHAEL F. SKOLNICK - 4671
SANDRA L. STEINVOORT - 5352
KIPP AND CHRISTIAN, P.C.
Attorneys for Plaintiff
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175 East 400 South
Salt Lake City, Utah 84111-2314
Telephone (801) 521-3773

IN THE THIRD CIRCUIT COURT
SALT LAKE DEPARTMENT, STATE OF UTAH

JEANNE COLEMAN JACKSON,)	ANSWER TO
)	THIRD-PARTY COMPLAINT
Plaintiff,)	
v.)	
WILLIAM H. ADAMS,)	Civil No. 940012270CV
)	Judge Stephen L. Henriod
Defendant and.)	
Third-Party)	
Plaintiff,)	
v.)	
ELESE ADAMS,)	
)	
Third-Party)	
Defendant.)	

Third-Party Defendant, Elese Adams, by and through counsel,
answers Defendant William H. Adams' Third-Party Complaint as
follows:

FIRST DEFENSE

Defendant and Third-Party Plaintiff fails to state a claim
upon which relief may be granted.

SECOND DEFENSE

The following responses correspond numerically to the allegations of the Complaint:

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit that Complaint was served on or about November 8, 1994. The Complaint speaks for itself and all remaining allegations in this paragraph are denied.
7. Third-Party Defendant has insufficient knowledge to admit or deny the allegations contained in this paragraph.
8. Deny.
9. Third-Party Defendant has insufficient knowledge to admit or deny the allegations contained in this paragraph.
10. Admit.
11. Third-Party Defendant has insufficient knowledge to admit or deny the allegations contained in this paragraph.
12. The Complaint speaks for itself and all remaining allegations in this paragraph are denied.
13. Deny.

14. The Complaint speaks for itself and all remaining allegations in this paragraph are denied.

15. Admit.

16. Third-Party Defendant has insufficient knowledge to admit or deny the allegations contained in this paragraph.

17. Admit.

18. Third-Party Defendant admits that subsequent to the divorce, William Adams filed for bankruptcy protection. Third-Party Defendant admits that she was listed as a creditor and received actual notice of the bankruptcy proceedings but denies the remainder of the allegations contained in this paragraph.

19. Admit.

20. In answering paragraph 20 of the Third-Party Plaintiff's Complaint, Third-Party Defendant adopts and incorporates her answers to the preceding paragraphs as fully set forth herein.

21. Admit.

22. Deny.

23. Deny.

24. Deny.

25. Deny.

26. Deny.

THIRD DEFENSE

Third-Party Plaintiff is barred from any recovery from Third-Party Defendant by the equitable doctrine of unclean hands.

DATED this 13th day of July, 1995.

KIPP AND CHRISTIAN, P.C.

Sandra L. Steinvoort

MICHAEL F. SKOLNICK
SANDRA L. STEINVOORT
Attorneys for Plaintiff and
Third-Party Defendant

CERTIFICATE OF MAILING

On this 13th day of July, 1995, I deposited in the United States Mail, postage prepaid, a true and correct copy of the foregoing Answer to Third-Party Complaint to

L. G. Cutler
Attorney for Defendant
560 East 200 South, Suite 220
Salt Lake City, Utah 84102

Candace Clarke

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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SANDRA L. STEINVOORT #5352
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Salt Lake City, Utah 84111-2314
Telephone (801) 521-3773

IN THE THIRD CIRCUIT COURT
SALT LAKE DEPARTMENT, STATE OF UTAH

JEANNE COLEMAN JACKSON,	:	AMENDED FINDINGS
	:	OF FACT AND CONCLUSIONS
Plaintiff,	:	OF LAW
vs.	:	
	:	Case No. 940012270CV
WILLIAM H. ADAMS,	:	
	:	Judge Stephen L. Henriod
Defendant	:	
vs.	:	
ELESE ADAMS,	:	
	:	
Third-Party Defendant.	:	

This case was tried to the court on January 26, 1996. Plaintiff and third-party defendant were represented by Michael F. Skolnick of Kipp and Christian, P.C. Defendant was represented by L. G. Cutler. Having received and considered the evidence and the respective

trial briefs submitted by the parties, the court hereby enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Ms. Jeanne Jackson is the mother of Ms. Elese Adams. Jeanne Jackson was a resident of Lehi, Utah between 1978 and 1989. Ms. Jackson became a resident of Bountiful, Utah from 1989 to the present. Jeanne Jackson is 89 years old.

2. William Adams and Elese Adams were married in 1967. At all times mentioned herein, both resided in Salt Lake County, Utah. Mr. Adams is an attorney with a specialized tax practice. He has been licensed to practice in Utah since 1972.

3. In approximately November, 1978, Jeanne Jackson's husband, Clell Jackson, passed away. He had life insurance on his life and \$10,000.00 life insurance proceeds were paid to Jeanne Jackson.

4. Jeanne Jackson talked to William Adams about investing the \$10,000.00 life insurance proceeds shortly after receiving it. William Adams told Jeanne Jackson that she could invest in utility bonds such as Utah Power and Light that would produce about 10% interest. Mr. Adams also told Jeanne Jackson he would invest the \$10,000.00 for her.

5. At the time, in addition to being her son-in-law, William Adams was a member of the law firm of Fabian and Clendenin. Jeanne Jackson had a very high opinion of William Adams with respect to his character and his legal capacities. She trusted him completely and that trust was reasonable under the circumstances.

6. In approximately January, 1979, Jeanne Jackson transferred the \$10,000.00 to William Adams via cashier's check.

7. William Adams understood at the time he received Jeanne Jackson's \$10,000.00 that it was not a loan and was not a gift. Nevertheless, after receiving the money William Adams treated Jeanne Jackson's \$10,000.00 as a loan.

8. Nobody talked to Elese Adams about the \$10,000.00 being invested for Jeanne Jackson by William Adams prior to the transfer of money. Jeanne Jackson never loaned her daughter Elese Adams any money.

9. Mr. Adams deposited the \$10,000.00 shortly after receipt in an account jointly owned by he and Elese Adams at Continental Bank. For all practical purposes the Continental Bank account was his account and Elese Adams did not know that the deposit had been made in that account. Elese Adams never had control over Jeanne Jackson's \$10,000.00.

10. William Adams paid Jeanne Jackson \$500.00 in 1979 as an "interest" payment. In 1980, William Adams paid \$1,000.00 to Jeanne Jackson by mail. The "memo" on the \$1,000.00 check stated "interest".

11. No other funds were transferred between William Adams and Jeanne Jackson after 1981.

12. Approximately six to twelve months after the transfer of funds from Jeanne Jackson to William Adams, Jeanne Jackson informed Elese Adams of the transfer. Jeanne

Jackson also made her first request of Elese Adams to contact William Adams and ask about the status of the funds. Elese Adams complied with the request.

13. In either 1980 or 1981, Jeanne Jackson requested Elese Adams to contact William Adams and advise Mr. Adams to add the interest to the principal of the \$10,000.00 originally transferred to Mr. Adams.

14. Elese Adams complied with Jeanne Jackson's request and asked William Adams to have all interest from the \$10,000.00 reinvested.

15. Between 1981 and 1985, Jeanne Jackson made approximately an annual request of Elese Adams to contact William Adams regarding the status of the \$10,000.00.

16. Elese Adams has a general recollection that between 1981 and 1985 upon each request for information from William Adams, he stated there was no change in the status of the funds transferred to him from Jeanne Jackson. Elese Adams does not have a specific recollection of any exact words or language used by William Adams between 1981 and 1985.

17. William Adams does not have a recollection regarding any conversations with Elese Adams between 1981 and 1985 regarding the funds in question.

18. Jeanne Jackson recalls that between 1981 and 1985, after each request she made to Elese Adams, Elese Adams would subsequently advise her of the status of the funds.

19. On every occasion between 1981 and 1985 when Elese Adams inquired about the status of Jeanne Jackson's \$10,000 investment, Elese Adams believed that William Adams

communicated there was no problem and that the investment was doing fine. Elese Adams would subsequently pass those communications along to Jeanne Jackson.

20. Due to the mother-daughter relationship between Jeanne Jackson and Elese Adams, Ms. Adams sometimes acted as an intermediary between Jeanne Jackson and Mr. Adams with regard to the \$10,000.00 investment. Elese Adams sometimes made inquiries at Jeanne Jackson's request and sometimes acted voluntarily. There was never any actual or implied consent by Elese Adams to act as an agent on Jeanne Jackson's behalf.

21. Jeanne Jackson has not had any direct conversation with William Adams regarding the \$10,000.00 since the initial transfer of funds from her to him in early 1979.

22. Mr. Adams purchased three (3) utility bonds with Jeanne Jackson's \$10,000.00 in approximately 1979. These bonds were issued in Mr. Adams name and held by him until sold at his direction between 1980 and 1983. William Adams never informed Jeanne Jackson or Elese Adams that the investment was made in his name.

23. William Adams used Jeanne Jackson's \$10,000.00 to purchase two Utah Power & Light bonds and one Montana Power bond. Purchase of the foregoing bonds is inconsistent with William Adams' Answer. The bonds were kept at William Adams' office at the law firm of Fabian and Clendenin.

24. Elese Adams had nothing to do with the purchase, storage or sale of the three bonds. William Adams sold the bonds between 1980 and 1983 because he needed money. William Adams deposited the proceeds from sale of the bonds into the Continental Bank account.

William Adams did not inform Jeanne Jackson or Elese Adams about his liquidation of the bonds.

25. There was insufficient evidence to show what happened to Jeanne Jackson's \$10,000.00 after William Adams liquidated the bonds he had purchased with the \$10,000.00, except that proceeds of the bonds went back into the joint account at Continental Bank used by William Adams.

26. Elese Adams had an individual stock account with Dain Bosworth during 1980. At some point in time she or Mr. Adams purchased Montana Power stock in her name with money she received from an inheritance.

27. In 1980, Elese Adams' Montana Power utility stock was sold. Elese Adams does not have a specific recollection where the proceeds were spent. The Montana Power stock was wholly separate from any investment purchased by William Adams with Jeanne Jackson's money.

28. The sale of certain securities was listed on William Adams and Elese Adams' joint tax returns for capital gains and losses. This included sale of the three bonds purchased with Jeanne Jackson's \$10,000. William Adams prepared the tax returns and accompanying schedules. Elese Adams signed all joint tax returns from 1979 through 1984.

29. Despite signing the joint tax returns, Elese Adams didn't understand or read them. While not the way she should have handled the tax returns, her conduct was entirely normal and expectable under these circumstances. William Adams was an experienced tax

attorney at Fabian and Clendenin and it was reasonable for Elese Adams to assume he would correctly and honestly prepare their joint tax returns. No evidence was presented that the tax returns were prepared incorrectly or dishonestly, other than as indicated in paragraph 32 below.

30. In any event, Elese Adams signing of the tax returns was not the kind of circumstance that should have put Ms. Jackson on notice that there was any problem with her investment or that she needed to be constantly inquiring of William Adams regarding the status of her money. She undoubtedly knew that Utah Power & Light was in business every time she turned her lights on. She knew that the \$10,000 she had given to William Adams to invest for her was not a loan with a specific due date and she had requested that the funds be reinvested. Consequently she did not have any reason to be concerned about the absence of ongoing payments.

31. The interest paid to Jeanne Jackson by William Adams in 1980 was listed as an interest deduction on the parties' joint tax return for the same year.

32. Both of the foregoing entries on the Adams' 1980 tax returns were completely inconsistent with the duty that William Adams undertook when he accepted Jeanne Jackson's money to invest for her.

33. William Adams' conduct was intentionally misleading, and William Adams intentionally concealed the facts concerning his use of Jeanne Jackson's \$10,000 from Jeanne Jackson.

34. Between 1979 and 1985 Jeanne Jackson was living on social security and had fairly limited resources. Elese and William Adams had much better financial resources and lived better.

35. William Adams and Elese Adams began contemplating the termination of their marriage in November, 1984. They separated in February, 1985 and became divorced in May, 1985.

36. Elese Adams was represented by Mr. Arnold Richer throughout all phases of the divorce litigation. Mr. Richer was Elese Adams' designated agent for that purpose.

37. It was reasonable for Elese Adams and Jeanne Jackson to believe that Jeanne Jackson's \$10,000.00 was Jeanne Jackson's separate asset and was not part of Elese Adams' divorce. Neither Elese Adams nor Jeanne Jackson had any reason to be concerned about Jeanne Jackson's investment because of the divorce.

38. William Adams filed a Chapter 7 bankruptcy in 1985 and subsequently received a discharge. William Adams failed to name Jeanne Jackson as a creditor and didn't schedule Jeanne Jackson's \$10,000 as an obligation on his bankruptcy schedules.

39. Elese Adams discussed with William Adams both personally and through her attorney his anticipated Chapter Seven bankruptcy filing prior to the parties' settlement agreement regarding the divorce. Neither Elese Adams nor Jeanne Jackson had any reason to be concerned about Jeanne Jackson's investment because of the bankruptcy.

40. The 1985 Divorce Decree entered in William Adams' divorce from Elese Adams provides that William Adams shall assume and hold Elese Adams harmless from any and all debts incurred by the parties prior to March 1, 1985 not otherwise mentioned therein. Jeanne Jackson's \$10,000.00 was not addressed in any form in the Divorce Decree.

41. Jeanne Jackson does not have a specific recollection of when she became aware of her daughter's divorce from William Adams. Her best estimate is 1985.

42. After 1985, Jeanne Jackson never spoke directly to William Adams, except for two to three coincidental meetings. Upon those meetings nothing was discussed regarding money or the \$10,000.00 in issue.

43. After 1985, Jeanne Jackson never attempted to speak directly to William Adams regarding her \$10,000.00. After 1985, Jeanne Jackson made one or two requests of Elese Adams to contact William Adams regarding the status of the funds.

44. Within two years after Elese and William Adams' divorce, Elese and William Adams had dinner at a restaurant named "The Stuffed Noodle." At that dinner, Elese Adams inquired about getting the bonds back.

45. Elese Adams does not specifically recall what verbal response William Adams made to her in regard to her question concerning her mother's investment. Elese Adams does recall Mr. Adams exploded in anger and left. Elese Adams does not recall the specific language but it was a statement regarding the investment. His statement also included some expletives prior to jumping up and leaving the restaurant.

46. It was reasonable and likely for Elese Adams to assume that William Adams' response to her inquiry about the investment occurred because he was insulted and found her inquiry demeaning of his competence or integrity. The same holds generally true for all of the less than cordial or less than informative discussions that may have occurred between Ms. Adams and Mr. Adams between 1985 and December 1993.

47. William Adams never communicated his use of the funds to Jeanne Jackson. Jeanne Jackson only learned indirectly that her \$10,000.00 was gone after a December 1993 telephone conversation between William Adams and Elese Adams.

48. The conduct of Jeanne Jackson and Elese Adams was entirely consistent with their understanding that William Adams had invested Jeanne Jackson's \$10,000.00 for Jeanne Jackson in Jeanne Jackson's name and that the investment was made in Utah Power & Light bonds or stocks.

49. There was no knowledge on the part of Elese Adams that ought to be imputed to Jeanne Jackson. The elements of consent and control and understanding simply were not reflected in any way in the evidence. No factual or legal basis exists to substitute Elese Adams for Jeanne Jackson with respect to notice, knowledge and everything that entails. Jeanne Jackson did not know that William Adams purchased the bonds or stocks in his name or that he liquidated them, or that the money was spent until at least December, 1993.

50. Jeanne Jackson and Elese Adams were very credible witnesses. William Adams was not a credible witness and mostly could not recall specific facts that he should have been able to recall.

51. Exceptional circumstances exist in support of the statute of limitations "discovery rule", including the trust that Jeanne Jackson reasonably reposed in William Adams, which he undoubtedly understood, the family relationship between Jeanne Jackson and William Adams, Jeanne Jackson's age, William Adams's license to practice law and his sophistication in the areas of tax and financial matters and Jeanne Jackson's lack of sophistication in business matters.

52. William Adams did not intend to deceive Jeanne Jackson at the time he received the \$10,000.00.

53. William Adams had serious financial reversals beyond his control that put him in a position of needing the money that belonged to Jeanne Jackson. William Adams was not able to repay or otherwise do what should have been done with respect to the \$10,000.00 and that was the basis for his concealment of the facts.

54. William Adams did not plead the statute of frauds as an affirmative defense and accordingly that defense was not considered by the court.

55. On the conversion cause of action, Jeanne Jackson's damages are \$10,000.00 plus 6% prejudgment interest from the date her money was transferred (January 31, 1979), less

the \$1,500.00 actually paid to her by William Adams, plus her attorney fees, costs and expenses.

56. Damages on the mistake cause of action are \$10,000.00 plus 6% prejudgment interest from the date the funds were delivered (January 31, 1979), less the \$1,500.00 paid, plus attorney fees, costs and expenses.

57. Attorney fees should also be awarded to Jeanne Jackson and Elese Adams on the grounds that William Adams' defenses and Third-Party Complaint were without merit and not filed in good faith.

58. 6% prejudgment interest on the principal investment of \$10,000.00, less the \$1,500.00 in payments, is \$8,700.00.

59. Jeanne Jackson and Elese Adams have incurred necessary and appropriate attorney fees, costs and expenses in the amount of \$10,802.75 through January 30, 1996. Those attorney fees, costs and expenses should be awarded to Jeanne Jackson and Elese Adams as part of the judgment in this case.

CONCLUSIONS OF LAW

1. William Adams did not commit fraud, either constructive or actual.
2. William Adams converted Jeanne Jackson's \$10,000.
3. William Adams had a fiduciary relationship with Jeanne Jackson.
4. William Adams breached his fiduciary duties to Jeanne Jackson. It was William Adams' duty to handle Jeanne Jackson's \$10,000 with the highest degree of integrity

and care and to keep Jeanne Jackson informed about her \$10,000 investment. William Adams breached those duties.

5. William Adams is further liable to Jeanne Jackson on the basis of mistake. Jeanne Jackson and William Adams failed to have a meeting of the minds. Jeanne Jackson did not consent to use of the funds as Mr. Adams used them, and her mistake resulted from Mr. Adams' conduct.

6. Jeanne Jackson did not have any reasonable basis to believe that her \$10,000 investment was at risk until at least December, 1993.

7. Under all of the circumstances Jeanne Jackson's conduct was sufficient to qualify for the discovery rule with respect to all of her causes of action against William Adams.

8. The statutes of limitation for Jeanne Jackson's various causes of action were tolled until at least December, 1993.

9. There was no agency or fiduciary relationship between Jeanne Jackson and Elese Adams.

10. William Adams' bankruptcy doesn't discharge this claim.

11. William Adams' Third-Party Complaint against Elese Jackson is without merit and accordingly is dismissed with prejudice. Elese Adams did not appreciate any benefit from Jeanne Jackson's \$10,000.00. The third-party complaint is further barred by the terms of William and Elese Adams' Divorce Decree.

12. Jeanne Jackson is entitled to recover her \$10,000.00 from William Adams.


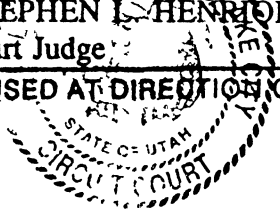
13. Jeanne Jackson is entitled to prejudgment interest at the statutory rate in effect as of January 31, 1979 (6%) less the \$1,500.00 in interest payments previously paid by William Adams. Consequently, Jeanne Jackson is awarded prejudgment interest in the amount of \$8,700.00

14. Jeanne Jackson and Elese Adams are awarded their attorney fees, costs and expenses in the amount of \$10,802.75.

15. The total judgment awarded against William Adams is \$29,502.75, together with such additional attorney fees, costs and expenses as may be incurred in collecting the judgment.

DATED this 4 day of ^{March}~~February~~, 1996.

BY THE COURT:


JUDGE STEPHEN L. HENROD
Circuit Court Judge
STAMP USED AT DIRECTION OF JUDGE


CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered, this 10th day of February, 1996, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, to the following:

L. G. Cutler
560 East 200 South
Suite 220
Salt Lake City, Utah 84102

Nancy Thomas

EXCERPTS FROM TRIAL TRANSCRIPT

1 A. I live in Bountiful.

2 Q. Do you have children?

3 A. Two.

4 Q. Who are they?

5 A. Two girls.

6 Q. Who are those girls?

7 A. One daughter Elsee that lives in Holladay

8 and one daughter in Wisconsin.

9 Q. And what's her name?

10 A. Her name is Marilyn.

11 Q. Thank you. Jeanne, what's your birth

12 date?

13 A. My birthday is 1906, September 10th.

14 Q. Were you married to Clel Jackson?

15 A. Yes.

16 Q. When did he pass away?

17 A. He passed away November 2nd, 1978.

18 Q. Did you have some money to support

19 yourself after Mr. Jackson passed away?

20 A. Yes. Money that I had saved of my own.

21 Q. Okay. Did your husband have any

22 investments when he passed away?

23 A. Yes. He had an insurance.

24 Q. Was that all he had?

25 A. Yes.

1 Q. How much was that insurance policy?
2 A. That insurance policy was \$10,000.
3 Q. And after he died you got the money from
4 that?
5 A. Yes, I did.
6 Q. Okay. After you got the money you talked
7 to Bill Adams?
8 A. Indirectly, yes.
9 Q. And he was your son-in-law at the time?
10 A. That's right.
11 Q. Okay. How did you feel about Bill Adams
12 at the time you talked to him about your money?
13 A. Number one. He's a nice fellow.
14 Q. Did you trust him?
15 A. Pardon?
16 Q. Did you trust him?
17 A. Yes. I trusted him just like I would my
18 own son.
19 Q. Did you trust him completely? Did you
20 trust him completely?
21 A. Yes. I never questioned him. He told
22 me he would invest this for me and, when I asked.
23 Q. Okay. Do you remember where you were
24 when you had that conversation with him?
25 A. Yes. In my home.

1 Q. Was anyone else there?
2 A. Oh, there was other people in the house
3 but not where Bill and I were.
4 Q. No one else was talking to you in that
5 conversation?
6 A. No, no. Bill and I were alone.
7 Q. All right. What happened next with the
8 money after you had that conversation?
9 A. After the, Bill told me he would invest it
10 for me I sent him the check.
11 Q. Okay. And was that a \$10,000 check?
12 A. That's it.
13 Q. And it was a cashier's check that you got
14 from the Bank of American Fork?
15 A. That's right.
16 Q. Can you just identify what that
17 PLAINTIFF'S EXHIBIT #2 is that I just handed to
18 you?
19 A. Yes.
20 Q. Can you say what that is to the, tell the
21 Judge what that is?
22 A. Yes, this is a cashier's check.
23 THE COURT: Thank you.
24 MR. SKOLNICK: Is that a receipt for the
25 \$10,000 check?

1 A. For \$10,000 to Bill Adams.

2 Q. Okay.

3 THE COURT: That's marked EXHIBIT #2,
4 Counsel?

5 MR. SKOLNICK: Yes. And the Court has a
6 copy of that.

7 When's the next time you talked to Bill
8 about the \$10,000 after you gave him that money?

9 A. Please say that again.

10 Q. Sure. After you gave Bill that \$10,000
11 when's the next time you talked to him directly
12 about the money?

13 A. Oh, I, I don't know exactly.

14 Q. Okay. Did you ever understand that that
15 money would be a loan to Bill?

16 A. Heavens no.

17 Q. Did you ever understand that that money
18 would be a loan to Elese?

19 MR. CUTLER: Your Honor--

20 A. No.

21 MR. CUTLER: At this time I would object.

22 THE WITNESS: No.

23 MR. CUTLER: Leading. It suggests the
24 answer.

25 THE WITNESS: It was--

1 **THE COURT:** Overruled.

2 **THE WITNESS:** It was given as an
3 investment for me, for me, for myself.

4 **MR. SKOLNICK:** Okay. Was it given as a
5 gift to them?

6 **THE WITNESS:** No.

7 Q. All right. Did you talk to Else before
8 you gave that check to Bill Adams?

9 A. No.

10 Q. Did you ever get any income from that
11 investment, any payments on it?

12 A. Yes, I got two.

13 Q. Could you turn over the check to the back
14 side? Or excuse me the receipt to the back side?

15 A. Yes. On the back I have written "Gave
16 Bill this amount to invest for me" and then signed
17 my name. And then down below I put "interest paid
18 in '79", he sent me \$500. In '80 he sent me
19 \$1,000. In '81 and '82 "none" is what I have
20 written on it.

21 Q. Are all those notes on the back of the
22 receipt in your handwriting, Jeanne?

23 A. Yes.

24 Q. Did you get anymore income payments after
25 that \$1,000 in 1980?

1 A. No, no.

2 Q. Okay. Why was that?

3 A. I can't tell you exactly in 19-- The
4 \$1,000 was in 1980.

5 Q. Did you ever talk to Elese about what you
6 wanted done with the income from that investment
7 after 1980?

8 A. I'm not clear. I can't tell you.

9 Q. Okay. Let me restate the question and
10 hopefully make it a little clearer. Did you ever
11 talk to Elese about having income from that
12 investment reinvested?

13 A. Yes, yes.

14 Q. Okay.

15 A. I asked her if she would ask, just have
16 the-- Instead of me sending the, Bill sending me
17 the interest if he would just have it invested to
18 the principle.

19 Q. Did you ask Elese to ask Bill that?

20 A. I asked Elese to ask that. I never got to
21 see Bill because I seldom got in to Salt Lake. So
22 I messaged it with Elese.

23 Q. Did you understand Elese had done that for
24 you?

25 A. Yes.

1 Q. What did you do to follow your investment
2 after you gave that \$10,000 to Bill?
3 A. What did I do with it?
4 Q. Did you do anything to follow your
5 investment, to keep track of it,--
6 A. Oh.
7 Q. -- to check on it?
8 A. Well I, I imagine I did.
9 Q. What would, what do you think you did?
10 A. Well, I every so often asked Elese to
11 please ask Bill how it was coming.
12 Q. All right. And did you ever--
13 A. And he did. She, she came back and told
14 me it was doing okay and told me where he had
15 invested it.
16 Q. Did you ever have any cause for concern
17 about your investment before December, 1993?
18 A. No, none whatever.
19 Q. Did you do anything to follow UP&L over
20 the years? Pay attention to news about them?
21 A. I don't know.
22 Q. All right.
23 A. Can't tell you that.
24 Q. Have you talked to William Adams since his
25 divorce from Elese?

1 A. No.

2 Q. And you haven't paid him any money since
3 the initial \$10,000?

4 A. That's right.

5 Q. When you asked your daughter to ask Bill
6 about the money, about how many times did you do
7 that before the parties were divorced, if you know?

8 A. I don't remember the exact times but not
9 very often.

10 Q. And by not very often, can you give me a
11 number?

12 A. Well, Utah Power & Light was a good
13 company and Bill was a good fellow. Put the two
14 together.

15 Q. So when you say not very often can you
16 give me an estimate by a number?

17 A. Oh, maybe two or three times a year.

18 Q. And after the, and after Bill quit showing
19 up for dinner, how often did you ask?

20 A. I don't believe it made any difference.

21 Q. What do you mean by that, Ma'am?

22 A. That I did it the same time, same way as I
23 did before.

24 Q. Do you recall a time when you and I and
25 Mr. Skolnick had some questions and answers in

1 of--

2 A. No.

3 Q. -- to that letter?

4 A. No, not that I was aware of.

5 Q. Okay. Is the next time the topic came up
6 the December, 1993 phone conversation you've
7 already mentioned?

8 A. No. I wrote him a letter.

9 Q. You wrote who a letter?

10 A. Bill. I wrote Bill a letter by myself
11 that requested information about it, know who the
12 stock broker was to get the certificate back.

13 Q. All right. Did you have any response to
14 that letter?

15 A. I did not. And then--

16 Q. Okay. Does that bring us to the December
17 conversation?

18 A. Then it brings us to me calling Bill on
19 the phone.

20 Q. Okay. And tell us what occurred during
21 that conversation.

22 A. I called him and asked him if he'd gotten
23 the letter and if he'd get me my mom's stock
24 certificate. And he said it is gone or it doesn't
25 exist anymore. I don't even remember the exact

1 words but he said it, it was gone.

2 Q. And what was your reaction to that?

3 A. Disbelief.

4 Q. Why?

5 A. Because that certainly isn't what I had
6 expected. Why would it be gone?

7 Q. Did you talk to him about it further?

8 A. Yes. I asked him where, where it had
9 gone. I mean, what had happened to it.

10 Q. What did he tell you?

11 A. And he said that he had used it to pay
12 back what my sister and I owed him for my father's
13 funeral. And I said that, that wouldn't be
14 because the funeral was only \$2,000 or so --

15 Q. And how did he respond to that?

16 A. -- and it made no sense. Then I think I
17 was reminded in the deposition that he said it was
18 in the house. And that didn't make any sense
19 either.

20 We ended up kind of hanging up hurriedly.

21 Q. Did you after that telephone conversation
22 check on the cost of your late father's funeral?

23 A. I did. I wrote a letter to the mortuary
24 and asked them what the cost was. And they sent me
25 back a letter and I think the check, or a copy of

1 house? That would have required some additional
2 kind of information. The money in the house
3 doesn't--

4 I'm, I'm sure if he would have said that I
5 would have said something else because it wouldn't
6 have made any sense.

7 Q. Nothing further.

8 THE COURT: Okay. Thank you. You can
9 step down.

10 MR. SKOLNICK: Plaintiff calls William
11 Adams.

12 WHEREUPON,

13 WILLIAM H. ADAMS

14 having been duly placed under oath by the clerk of
15 the court and sworn to testify truthfully in this
16 matter, upon examination testified as follows:

17 DIRECT EXAMINATION BY MR. SKOLNICK.

18 MR. SKOLNICK: Mr. Adams, could you
19 please state your full name for the record?

20 A. William H. Adams.

21 Q. You're a lawyer?

22 A. Yes.

23 Q. You're licensed to practice in Utah?

24 A. Yes.

25 Q. Since 1972?

PENNY C. ABBOTT, CSR

1 A. Yes.

2 Q. Until January, 1995 you were a shareholder
3 at Fabian & Clendenin?

4 A. Until December of 1994.

5 Q. Thank you. You're now practicing in the
6 firm Cerruti & Adams?

7 A. Yes.

8 Q. You married Elese Adams in 1967?

9 A. Yes.

10 Q. Your mother-in-law was Jeanne Jackson?

11 A. Yes.

12 Q. You're aware that upon Clel Jackson's
13 death in November, 1978, Jeanne Jackson received
14 \$10,000 in life insurance proceeds?

15 A. No.

16 Q. Do you recall answering Plaintiff's
17 Verified Complaint in this case, Mr. Adams?

18 A. Yes, I recall.

19 Q. All right. I'll just represent to you
20 that you admitted that in your Third Amended
21 Answer, paragraph one.

22 Sometime during November, 1978 Jeanne
23 Jackson told you she had some money she was
24 thinking about investing. Correct?

25 A. Yes.

PENNY C. ABBOTT, CSR

1 Q. And you said something to the effect that
2 she could invest in utility bonds such as Utah
3 Power & Light that would produce about 10%
4 interest?

5 A. Yes.

6 Q. You received Jeanne Jackson's \$10,000
7 sometime in early 1979?

8 A. I think so.

9 Q. You never received any other \$10,000
10 amount from Jeanne Jackson. Correct?

11 A. Correct.

12 Q. You never received anything close to that
13 amount. Correct?

14 A. Correct.

15 *Q. 1979 your income was significantly greater
16 than Jeanne Jackson's; wasn't it?

17 A. I don't know.

18 Q. She lived on social security and a small
19 pension; didn't she?

20 A. I don't know.

21 Q. When you got the money you didn't consider
22 that the \$10,000 was a gift to you; did you?

23 A. No.

24 Q. You didn't consider it was a gift to you
25 and Elese; did you?

1 A. No.

2 Q. Or to Elese separately?

3 A. No.

4 Q. You put the \$10,000 into a joint checking
5 account at Continental Bank?

6 A. Yes.

7 Q. You primarily used that account; didn't
8 you?

9 A. I wrote most of the checks on that
10 account.

11 Q. And Elese Adams had another separate
12 account?

13 A. Correct.

14 Q. May have been joint but it was her primary
15 account at First Security Bank. Correct?

16 A. She had another account that she wrote
17 most of the checks on.

18 Q. All right. You believed after you got
19 the money that you were obligated to pay Jeanne
20 Jackson 10% return on her \$10,000?

21 A. Yes.

22 Q. And after you got the money you treated it
23 as a loan. Correct?

24 A. Yes.

25 Q. You never had any understanding with

1 Jeanne Jackson about treating the money as a loan;
2 did you?

3 A. No.

4 Q. Did you pay Jeanne some money in 1979 and
5 1980?

6 A. Yes.

7 Q. And you considered those payments to be
8 interest payments. Right?

9 A. Yes.

10 Q. \$500 bucks in 1979. \$1,000 in 1980?

11 A. I think that's correct.

12 Q. You took an interest deduction on your tax
13 return for money paid to Jeanne for interest.
14 Correct?

15 A. Yes.

16 Q. You stopped paying her interest in 1980 or
17 1981. Right?

18 A. I don't know the, I don't know of any
19 payments after the payment in 1980.

20 Q. All right. You never talked with Elese
21 about Jeanne Jackson's \$10,000 from the time that
22 you received it until after your divorce from her.
23 That's your story; is it not?

24 A. I don't have any recollection of any
25 specific conversations concerning it. We may have

1 talked about it. I just don't have a recollection
2 of any specific conversations.

3 Q. You used the \$10,000 to buy three
4 municipal power bonds. Two of the bonds issued by
5 UP&L and one by Montana Power. Correct?

6 A. Yes.

7 Q. You received the three bonds and you
8 maintained them in your office, your law office at
9 Fabian & Clendenin?

10 A. I think so.

11 Q. Elese had nothing to do with buying the
12 bonds; did she?

13 A. No.

14 Q. Storing the bonds?

15 A. No.

16 Q. Eventually selling the bonds?

17 A. No.

18 Q. The three, the three bonds were purchased
19 in your name. Correct?

20 A. Yes.

21 Q. And you received interest from the bonds
22 and you deposited that into your Continental Bank
23 account. Correct?

24 A. I assume that's where it was deposited.

25 Q. You sold the three bonds at separate times

1 between 1980 and 1983?

2 A. Yes.

3 Q. The same bonds that you purchased with
4 Jeanne's money?

5 A. Yes.

6 Q. You sold them because you needed the
7 money?

8 A. Yes.

9 Q. You were divorced in 1985 from Else
10 Adams?

11 A. Yes.

12 Q. You filed for bankruptcy protection right
13 around that time?

14 A. Yes.

15 Q. You didn't list Jeanne Jackson as a
16 creditor; did you.

17 A. No.

18 Q. You didn't schedule the \$10,000 debt; did
19 you.

20 A. No.

21 Q. You've never repaid Jeanne the \$10,000.

22 A. That's correct.

23 Q. That's all I have, Your Honor.

24 THE COURT: Okay. Mr. Cutler, you can
25 cross-examine or you can start your direct

1 sale of those bonds.

2 Q. When you sold those bonds, where did the
3 funds go?

4 A. Into the joint bank account.

5 Q. And you sold those between 1980 and 1983?

6 A. I believe so.

7 Q. Were there any, any expenses that were
8 going on in your, your and Elese's household
9 between '80 and '83?

10 A. The major expense was remodeling the
11 house, living expenses.

12 Q. And when did you move into the house
13 approximately?

14 A. I believe it was in 1980.

15 Q. And what remodeling did you do to the
16 home?

17 A. Put in new windows, put in a new bathroom,
18 stone floor, painted, landscaping, new fencing.

19 Q. Was there a series-- Was this all one
20 remodel or was there two separate remodels in your
21 mind?

22 A. It took place over a period of time.

23 Q. And what were the approximate expenses for
24 those remodeled items?

25 MR. SKOLNICK: Your Honor, before he

1 that the funds be reinvested. So it makes sense
2 that there wasn't any concern about payments.

3 I find that the Defendant had serious
4 financial reversals beyond his control and that put
5 him in a position of needing the money that
6 belonged to the Plaintiff.

7 I find that he was not able to repay or
8 otherwise do what should have been done with
9 respect to that money and that's the basis for
10 concealing the loss.

11 I find that the bankruptcy doesn't
12 discharge this claim.

13 I find no merit to the Third-Party
14 Complaint.

15 I find no benefit to the Plaintiff in the
16 transaction.

17 I also find insufficient evidence to show
18 where those funds went after the bonds or stocks
19 were sold except that they went back into the joint
20 account.

21 I believe-- I find that the Plaintiff
22 had reasonable basis to believe that she was first
23 at risk in 1993 and that it was Defendant's duty to
24 keep her informed and he's the one who breached his
25 duty. The Defendant obviously wants to substitute

1 Find for the Plaintiff on the mistake
2 issue. Find the damages on that as \$10,000 plus
3 10% from the date the funds were delivered, less
4 the \$1,500 paid. I also find attorney fees should
5 be awarded to the Plaintiff on the grounds that the
6 defense was frivolous.

7 And I find for the Third-Party Defendant
8 on the Third-Party Complaint having received no
9 benefit and barred by the decree.

10 How much time do you need to put an
11 affidavit together for attorney fees,
12 Mr. Skolnick?

13 MR. SKOLNICK: I believe we could have it
14 to you Monday, Your Honor.

15 THE COURT: Okay. Let's, let's say
16 Tuesday in case we have another blizzard. And
17 let's give Mr. Cutler until the following Monday to
18 object.

19 I would like these Findings to be
20 reflected, Mr. Skolnick, and Conclusions together
21 with all others necessary to support this ruling
22 and the causes of action, all Findings that are
23 consistent with the ruling and the evidence.

24 Any questions?

25 MR. SKOLNICK: No, Your Honor.