

1996

Kay Gneiting, Kerry Rick Hubble; and Wilderness Building Systems, Inc. v. Dennis Vance : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Kent L. Christiansen; Christiansen and Sonntag; Attorneys for Third-Party Plaintiffs/Appellants.
Jeffrey C. Swinton; Stoker and Swinton; Attorney for Third-Party Defendant/Appellee.

Recommended Citation

Brief of Appellant, *Gneiting v. Vance*, No. 960285 (Utah Court of Appeals, 1996).
https://digitalcommons.law.byu.edu/byu_ca2/227

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU
50

IN THE UTAH COURT OF APPEALS .A10

DOCKET NO. 960285 CA

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC.,

Third-Party Plaintiffs
and Appellants,

vs.

DENNIS VANCE,

Third-Party Defendant
and Appellee.

Case No. 960285-CA

BRIEF OF APPELLANTS

APPEAL FROM A JUDGMENT IN THE THIRD JUDICIAL
DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE HOMER F. WILKINSON, PRESIDING
ARGUMENT PRIORITY CLASSIFICATION 15

KENT L. CHRISTIANSEN (#4207)
CHRISTIANSEN & SONNTAG
345 IBM Plaza
420 East South Temple
Salt Lake City, Utah 84111
(801) 359-3762
ATTORNEY FOR THIRD-PARTY
PLAINTIFFS/APPELLEES

JEFFREY C. SWINTON (#3178)
STOKER & SWINTON
311 South State Street, #400
Salt Lake City, Utah 84111
(801) 532-3555
ATTORNEY FOR THIRD-PARTY
DEFENDANT/APPELLEE

KAY GNEITING; KERRY RICK)
HUBBLE; and WILDERNESS)
BUILDING SYSTEMS, INC.,)

Third-Party Defendant)
and Appellee.)

JEFFREY C. SWINTON (#3178)
STOKER & SWINTON
311 South State Street, #400
Salt Lake City, Utah 84111
(801) 532-3555
ATTORNEY FOR THIRD-PARTY
DEFENDANT/APPELLEE

TABLE OF CONTENTS

<u>Section</u>	<u>Page No.</u>
Table of Authorities	iii
Statement of Jurisdiction	iv
Determinative Statutes	iv
Statement of Material Facts	1
Summary of Argument	3
Argument	4
 I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THIRD-PARTY DEFENDANT’S MOTION FOR CLAIM OF EXEMPTION	 4
 II. ALLOWING THIRD-PARTY DEFENDANT VANCE TO PROFIT FROM HIS FRAUDULENT ACTS VIA A CLAIM OF EXEMPTION FLIES IN THE FACE OF FAIRNESS, EQUITY AND JUSTICE	 11
Conclusion and Relief Sought	15
Certificate of Mailing	15

TABLE OF CONTENTS
(Continued)

Addendum

- Exhibit A: Amended Findings of Fact and Conclusions of Law
- Exhibit B: Amended Judgment
- Exhibit C: Amended Order
- Exhibit D: Stipulated Settlement, Satisfaction and Release of All Claims
- Exhibit E: Minute Entry
- Exhibit F: Order Dated July 10, 1995
- Exhibit G: Judgment dated October 24, 1995

TABLE OF AUTHORITIES

Cases Cited

Page No.

<u>Funk v. Utah State Tax Com'n</u> , 839 P.2d 818 (Utah 1992)	8,9
<u>Kokoszka v. Belford</u> , 417 U.S. 642, 651, 94 S.Ct. 2431, 2436, 41 L.Ed. 2d 374 (1974)	9
<u>Russell M. Miller Company v. Givan</u> , 325 P.2d 908 (Utah 1958)	9
<u>Scharf v. BMG Corp.</u> , 700 P.2d 1068, 1070 (Utah 1985)	4
<u>Schindler v. Schindler</u> , 776 P.2d 84, 88 (Ut. Ct. App. 1989)	4

Statutes Cited

Utah Rules of Civil Procedure 69	5,6
Utah Rules of Civil Procedure 64D	8,9

Other Authorities Cited

Am. Jur. 2d, <i>Stipulations</i> § 73, at 543-44	10
--	----

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Section 78-2(a)-3, Utah Code Ann. 1953 as amended.

DETERMINATIVE STATUTES

The determinative law related to this appeal focuses primarily upon the following statutes and caselaw:

Rule 64D of the Utah Rules of Civil Procedure;

Rule 69(e) of the Utah Rules of Civil Procedure;

Rule 69(g) of the Utah Rules of Civil Procedure;

Rule 69(h) of the Utah Rules of Civil Procedure.

STATEMENT OF MATERIAL FACTS

1. On or about April 30, 1993, the trial court granted judgment in favor of the original Plaintiffs in this action, Leon and Arlene Robinson, and against Appellants herein, Kerry Rick Hubble, and Wilderness Building Systems, Inc.

2. On or about October 20, 1994, the trial court originally entered judgment in favor of Appellants, Kerry Rick Hubble and Wilderness Building Systems, Inc. on their Crossclaim against Appellee and Third-party Defendant, Dennis Vance. On March 13, 1995, that judgment was amended to reflect the total amount of the judgment to be \$86,688.58 together with interest at 9.22% per annum. *A copy of the Amended Findings of Fact and Conclusions of Law is attached hereto as Exhibit "A". A copy of the Amended Judgment is attached hereto as Exhibit "B".*

3. On or about February 17, 1995, the trial court issued a Writ of Garnishment in favor of Appellants naming the original Plaintiffs Leon and Arlene Robinson as garnishees, and Appellee and Third-party Defendant Dennis Vance as judgment debtor. The garnishment was based on a purported "fee sharing" agreement that Vance had with the Robinsons.

4. The February 17, 1995 Writ of Garnishment was never served.

5. On or about March 13, 1995, the trial court also signed an Order pursuant to Rule 69 of the Utah Rules of Civil Procedure, providing for an offset in favor of Appellants, Hubble and Wilderness, and against any recovery Vance might be entitled to from the Robinsons. *A copy of the Amended Order is attached hereto as Exhibit "C".*

6. The March 13, 1995 Order pursuant to Rule 69 was also never served upon any individual or entity for the purpose of attachment or garnishment.

7. Appellee, Dennis Vance, has taken the position that he had a contract with Leon and Arlene Robinson wherein he was to receive 40% of all amounts recovered by the Robinsons against the Hubble and Wilderness Defendants. Vance previously testified under oath during his deposition and at trial that such an agreement did not exist.

8. On March 16, 1995, Plaintiffs Leon and Arlene Robinson and Appellants herein, Kerry Rick Hubble and Wilderness Building Systems, Inc. settled all disputes and claims between themselves. The judgment obtained by Appellants against Appellee and Third-party Defendant Dennis Vance was unaffected by that settlement. *A copy of the Stipulated Settlement, Satisfaction and Release of All Claims is attached hereto as Exhibit "D".*

9. Subsequent thereto, Appellee Vance filed a Claim of Exemption related to the Robinson settlement. Appellants and the Robinsons responded to the claim of exemption. The Request for Hearing was filed on April 6, 1995.

10. Without taking any evidence, and without affording any of the parties an opportunity for hearing, the trial court initiated a conference call on June 19, 1995 and announced that an exemption would be granted. No record was made of the conference call, but a minute entry of the call was placed in the file. *A copy of the Minute Entry is attached as Exhibit "E" hereto.*

11. Counsel for Appellee prepared an Order to that effect which was entered on July 10, 1995. The Order did not address the confidentiality of the Robinson/Wilderness Building Systems, Inc./Hubble Settlement Agreement and did not establish any dollar amount to which Appellee was entitled. *A copy of the July 10, 1995 Order is attached hereto as Exhibit "F".*

12. The Order did not resolve the issues, rather encouraged the parties to attempt to

determine, agree and divide among themselves the amounts to be paid to or retained by each, Robinsons, Vance and Hubble."

13. The parties were unable to reach such an agreement. Appellants objected to the *carte blanche* violation of the Robinson/Hubble/Wilderness confidentiality agreement, the calculation of the exemption, and the amount of the attorney's fees figure submitted as a deduction against the exemption calculation. Appellants objected to the allowance of any exemption.

14. At the request of Vance's counsel, the trial court conducted an in-chambers conference with counsel only on October 12, 1995. During that conference, the trial court required the disclosure of the confidential terms of the settlement agreements, imposed a further order of confidentiality, and entered final judgment on Dennis Vance's claim for an exemption related to the settlement between the Robinsons and the Hubble and Wilderness Defendants. The court's directive took the form of a Judgment on Claim of Dennis Vance prepared by Vance's counsel and entered on October 24, 1995. *A copy of the Judgment is attached hereto as Exhibit "G".*

15. On October 27, 1995, Appellants filed their Notice of Appeal specifically stating that the appeal was from the entirety of the October 24, 1995 Judgment.

SUMMARY OF ARGUMENT

The issues presented on appeal in this case are (a) whether Dennis Vance was entitled to an exemption against the settlement agreement reached by and between Plaintiffs, Leon and Arlene Robinson, and Defendants, Kerry Rick Hubble and Wilderness Building Systems, Inc.; (b) whether the court's order for the disclosure to Vance of the confidential settlement agreement

between Plaintiffs and Defendants was proper; and (c) whether the trial court appropriately entered judgment against Third-Party Plaintiffs and in favor of Third-Party Defendant, Dennis Vance, for the \$12,751.08 judgment amount.

Standard of Review. The Appellate Court accords conclusions of law no particular deference, but reviews them for correctness. Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985).

To successfully attack the lower court's findings on factual issues, an appellant must demonstrate that when viewed "in the light most favorable to the findings, the evidence is insufficient to support the findings . . . or that its findings are otherwise clearly erroneous." Schindler v. Schindler, 776 P.2d 84, 88 (Ut. Ct. App. 1989).

ARGUMENT

I.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING THIRD-PARTY DEFENDANT'S MOTION FOR CLAIM OF EXEMPTION

A. No Writ of Garnishment or Order Pursuant to Rule 69 Has Ever Been Served Upon the Robinsons for Garnishment or Attachment Purposes.

Any right to the exemption claimed by Appellee could not exist for the Writ of Garnishment or the Rule 69 Order was served. Appellants have never served nor caused to be served the Writ of Garnishment or the Rule 69 Order upon the Robinsons for garnishment or attachment purposes. Rule 69(g) of the Utah Rules of Civil Procedure provides that at the time a Writ of Execution or Garnishment is served, a notice of execution and exemptions and a right

to a hearing and two copies of an application for hearing must be served upon the judgment debtor by the garnishee. Because there has been no writ or garnishment order served upon the garnishee, there is no requirement that notice be provided to the judgment debtor and any claim for exemption would also be premature.

Rule 69 of the Utah Rules of Civil Procedure specifically sets forth the mandatory procedure concerning execution and notice of exemptions. The relevant portions of Rule 69 are as follows:

. . . .

(e) **When writ to be returned.** The writ of execution shall be served at any time within sixty days after its receipt by the officer. It shall then be returned to the court from which it issued, and when it is returned the clerk must attach it to the record.

. . . .

(g) **Notice to judgment debtor of sale and of exempt property and right to a hearing.** At the time the writ of execution is issued, the clerk shall attach to the writ a notice of execution and exemptions and right to a hearing and two copies of an application by which the judgment debtor may request a hearing.

Upon service of the writ, the sheriff or constable shall serve upon the judgment debtor, in the same manner as service of a summons in a civil action, or cause to be transmitted by both regular and certified mail, returned receipt requested, to the judgment debtor's last known address as provided by the judgment creditor, (i) the notice of execution and exemptions and right to a hearing, and (ii) the application by which the judgment debtor may request a hearing.

. . . .

(h) **Request for hearing.**

(1) **Time for request.** The judgment debtor or any other person who owns or claims an interest in the property subject to execution may request a hearing to claim any exemption to the execution, or to challenge the issuance of the writ. Such request must be filed or served upon the judgment creditor or the

attorney for the judgment creditor within ten (10) days of the service upon the judgment debtor of the materials required to be served by paragraph (g) upon the judgment debtor. The request for a hearing, which shall be provided to the judgment debtor shall be in a form to enable the judgment debtor to specify the grounds upon which the judgment debtor challenges the issuance of the writ or claims the property executed upon to be exempt, in whole or in part.

(2) If a request for hearing is filed. If a request for hearing is filed by or on behalf of the judgment debtor, the court shall set the matter for hearing within ten (10) days from the filing of the request and serve notice of that hearing upon all parties by first class mail. If the court determines at the hearing that the writ was issued improperly, or that any property seized is exempt from or is not subject to execution, the court shall immediately issue an order to the officer releasing such property or portion thereof from the writ of execution. If the court finds that the property or a portion thereof is subject to execution and not exempt, it shall issue an order directing the officer to proceed with the sale of the non-exempt property subject to execution.

No writ nor Rule 69 order was ever served upon the Robinsons as judgment creditor for purposes of garnishment, attachment, or execution. Vance was never served with a notice of execution, a notice of exemption, nor was he ever provided information concerning the required hearing. Rule 69 requires that any such writ or order, together with the required notices, be served upon the judgment debtor in the same manner as a summons is served in a civil action. Within ten (10) days after service, the judgment debtor must file and serve his request for hearing. Once the request for hearing is filed, the court is required to set the matter for hearing within ten (10) days from the filing of the request and serve notice of that hearing upon all parties by first class mail. (Rule 69(h)(2) U.R.C.P.). No hearing was ever conducted on Vance's claim for exemption and Appellants were never afforded the opportunity to present evidence and/or testimony concerning the existence or nonexistence of Vance's claimed

entitlement to a percentage of the Robinson recovery, the nature of the confidential stipulation for settlement between the Robinsons and Wilderness Building Systems, Inc./Hubble, the attorney's fee issue, or the determination of whether any such recovery could be classified as "earnings". The procedural safeguards set forth in Rule 69 were accordingly short circuited and the Appellants have been prejudiced thereby.

B. Vance's Claim That He is Entitled to Monies Due Under a Fee Percentage Agreement with the Robinsons is Inconsistent with His Prior Testimony.

Despite Appellants' belief throughout the litigation that Vance was in collusion with the Robinsons in some form of percentage sharing agreement, Appellee, Dennis Vance, has heretofore claimed that there was no agreement between himself and the Robinsons related to this case. During his deposition of April 13, 1992, he was asked the following:

Q: Did you expect that you were going to receive some money as a result of the Robinson episode?

A: No.

April 13, 1992 Deposition, page 23, lines 13-15.

Q: Did you offer to help the Robinsons at that time?

A: The first thing I did was explain to them, no charge, no cost, no obligation. It was just a matter of conscience. And I explained it as fully as I could. They asked me to please explain this same situation to their attorney.

April 13, 1992 Deposition, page 28, lines 18-24.

Q: Okay. Just so that I'm clear, you have absolutely no financial arrangement with the Robinsons relative to this case?

A: No.

April 13, 1992 Deposition, page 33, lines 24-25; page 34, lines 1-2.

During the June 1, 1994 trial of this matter, Dennis Vance also testified unequivocally that there was no agreement between he and the Robinsons relative to this case. His allegation now is that indeed such an agreement existed, but that it was a "verbal" agreement wherein he was to receive a 40% commission on any recovery made by the Robinsons against the Appellants.

C. Even if Vance Had an Agreement to Share in the Robinson's Recovery, as a Matter of Law He is Not Entitled to Claim an Exemption Against Those Funds.

Appellee asserted at the trial court level, after judgment was entered against him, that he was entitled to a claim of exemption relative to any garnishment that levied against funds purportedly due him from the Robinsons, claiming that such funds are "disposable earnings." The Utah Supreme Court was called upon to decide a similar issue in the 1992 case of Funk v. Utah State Tax Com'n, 839 P.2d 818 (Utah 1992). Therein the appellant claimed an exemption under Rule 64D(d)(viii) and 15 U.S.C. Sec. 1673(a), asserting that his "disposable earnings" were wholly exempt or partially exempt from garnishment. The Utah Supreme Court pointed out that the provisions of both the Consumer Credit Protection Act ("CCPA") at 15 U.S.C. § 1673(a) and Rule 64D of the Utah Rules of Civil Procedure, which are almost identical, limit the amount of an individual's earnings subject to garnishment to a percentage of disposable earnings. 15 U.S.C. Sec. 1673(a); Utah R. Civ. P. 64D(d)(viii). Each defines "earnings" as compensation paid for personal services, "whether denominated as wages, salary, commission, bonus, or otherwise." Sec. 1672(a); Rule 64D(d)(viii). "Disposable earnings" are in turn defined as the earnings of an individual remaining after the deduction of amounts required by law to be withheld. Sec. 1672(a); Rule 64D(d)(viii).

In determining that the claim of exemption was not appropriate, the Utah Supreme Court in Funk, supra, distinguished the claimant's claim from "wages, salary, bonus, commission, or otherwise" based upon the variability and availability of such from year to year and the expectation of receiving such compensation as only developing after the preparation of a tax return earlier in the year. The Utah Supreme Court determined that allowing the entire garnishment without any exemption "would not place the type of hardship on a debtor that Rule 64D and the CCPA seek to avoid." Funk v. Utah State Tax Com'n, supra, 839 P.2d at 821. There is a distinct difference between a claim from "wages, salary, bonus, commission, or otherwise" and the one time sharing of a "percentage recovery" based upon the variability and availability of such from year to year and the expectation of receiving such compensation as only developing after the occurrence of some event. Funk v. Utah State Tax Com'n, supra, 839 P.2d at 821. *See also* Kokoszka v. Belford, 417 U.S. 642, 651, 94 S.Ct. 2431, 2436, 41 L.Ed.2d 374 (1974). The allowance of the entire garnishment without any exemption "would not place the type of hardship on a debtor that Rule 64D and the CCPA seek to avoid." Funk v. Utah State Tax Com'n, supra, 839 P.2d at 821.

By the same token, Appellee's claim that he had an entitlement to a "40% commission" on the Robinson judgment is within the very same class of claims that the Utah Supreme Court excluded from the garnishment exemption rule. Appellee's claim is clearly not wages, salary, or regular commission earned on a week-to-week, month-to-month, or even year-to-year basis. Indeed the alleged agreement for payment of such didn't even require Appellee to perform any cognizable service. At best, Appellee's agreement was an improper attempt to share an attorney's fee based on a percentage fee agreement.

Appellee has heretofore argued that the 1958 case of Russell M. Miller Company v. Givan, 325 P.2d 908 (Utah 1958), is controlling on this issue in the State of Utah. That case, however, is distinguishable on the basis that the issue there focused on whether the calculation of the exemption was based upon the "earnings from personal services" before taking into account his capital expenditures required to generate those earnings, or if the exemption must be calculated solely on his net income after taking into account for all of his expenses. The 1992 Funk v. Utah State Tax Com'n, *supra*, case deals more specifically with the issue of determining what actually constitutes "earnings" as it relates to a claim of exemption.

D. Vance Had No Right to Invade the Confidential Nature of the Compromise and Stipulation for Settlement Reached Between the Robinsons and Wilderness Building Systems, Inc./Hubble.

The Robinsons and Wilderness Building Systems, Inc./Hubble negotiated a settlement of their dispute and for the satisfaction of the judgment previously entered in favor of the Robinsons. Vance was not a party to that settlement agreement. The agreement did not affect any claim or right that Vance may have had against the Robinsons, nor did it alter any claim or right that Wilderness Building Systems, Inc. and Hubble had against Vance. No writ of execution had ever been served upon the Robinsons. The stipulation for settlement clearly bound the parties thereto, the Robinsons, Wilderness Building Systems, Inc., and Kerry Rick Hubble. It also, however, bound the trial court. Stipulations in civil actions are binding upon the parties to the stipulation, the trial court, and appellate courts. Am. Jur. 2d, *Stipulations* § 73, at 543-44. Appellants should have been afforded the opportunity at hearing to present evidence supporting the grounds and reasons for maintaining the confidential nature of the settlement

agreement.

II.

ALLOWING THIRD-PARTY DEFENDANT VANCE TO PROFIT FROM HIS FRAUDULENT ACTS VIA A CLAIM OF EXEMPTION FLIES IN THE FACE OF FAIRNESS, EQUITY AND JUSTICE

The various actions before the trial court in this matter resulted in (a) a judgment being entered against Wilderness Building Systems, Inc. and Kerry Rick Hubble ("*original Defendants and Appellants herein*") and in favor of Leon and Arlene Robinson ("*original Plaintiffs*"); and, (b) a judgment being entered on the related cross-claim against Dennis Vance ("*third-party defendant and Appellee herein*") in favor of Wilderness Building Systems, Inc. and Kerry Rick Hubble ("*third-party plaintiffs and Appellants herein*"). The judgement against Third-party Defendant Vance was originally entered on October 20, 1994 and subsequently amended by the Court on March 13, 1995. In essence, the amended judgement against Vance was a mirror of the judgement entered by the Court against the Appellants Wilderness Building Systems, Inc./Kerry Rick Hubble and in favor of the "*original Plaintiffs*", Leon and Arlene Robinson, together with additional amounts for Vance's wrongful conversion of the Appellant's property. The trial court specifically found in its Findings of Fact and Conclusions of Law that:

. . . .

16. Third-Party Defendant, Dennis Vance, concocted, engaged in, and orchestrated a scheme to defraud the Robinsons, Hubble, Gneiting, and Wilderness Building Systems, knowingly, willfully, maliciously, and with reckless disregard for their rights.

. . . .

29. Third-Party Defendant, Dennis Vance, has steadfastly refused to acknowledge any wrongdoing in this case, despite the fact that the fraud he perpetrated upon all of the parties in this case is manifest. The fact that Dennis Vance has shown no remorse, regret, or repentance of any kind whatsoever, leads to the conclusion that there is a great likelihood that he will engage in similar conduct in the future.

30. Third-Party Defendant, Dennis Vance, engaged in a conspiracy to defraud the Robinsons, Hubble, Gneiting, and Wilderness Building Systems, Inc., to the substantial detriment to each of those parties.

31. An award of compensatory damages in the amount of \$24,780.56, together with prejudgment interest in the amount of \$16,583.97, and postjudgment interest at the rate of 12% per annum from April 21, 1993, should be awarded in favor of Kerry Rick Hubble and Wilderness Building Systems, Inc.

32. In addition, it is appropriate that Kerry Rick Hubble and Wilderness Building Systems, Inc., be awarded damages against Dennis Blaine Vance in the amount of \$816.00, which amount represents monies wrongfully obtained by Vance.

33. Kerry Rick Hubble and Wilderness Building Systems, Inc., should also be awarded damages against Dennis Blaine Vance in the amount of \$9,800.00 for the wrongful conversion of customer files and accounts to his own use.

34. An award of punitive damages in the amount of \$24,780.56 should be awarded in favor of Kerry Rick Hubble and Wilderness Building Systems, Inc. in order to punish Third-Party Defendant, Dennis Blaine Vance, and deter him from engaging in like conduct in the future.

See Amended Findings of Fact and Conclusions of Law entered March 13, 1995 attached hereto as Exhibit "A".

The trial court also entered an Order which provided that "based upon the judgements rendered by the court against Defendants Wilderness Building Systems, Inc. and Kerry Rick Hubble and in favor of the Plaintiffs Leon and Arlene Robinson; and based upon the judgments rendered by the court against Third-party Defendant, Dennis Vance, and in favor of Third-Party Plaintiffs, Kerry Rick Hubble and Wilderness Building Systems, Inc.; it is ordered that any and all sums due and owing by Plaintiffs Leon and Arlene Robinson to said Third-party Defendant, Dennis Blaine Vance are attached and shall be applied towards the satisfaction of Third-party Plaintiff's judgments against Third-party Defendant." *See Order entered October 20, 1994 and Amended Order entered March 13, 1995 attached hereto as Exhibit "C".*

On March 16, 1995, Plaintiffs Leon and Arlene Robinson entered into a confidential

Stipulated Settlement, Satisfaction, and Release of All Claims, absolving the judgements against Defendants Wilderness Building Systems, Inc. and Kerry Rick Hubble and in favor of the Plaintiffs Leon and Arlene Robinson. *See Stipulated Settlement, Satisfaction, and Release of All Claims entered March 16, 1995 attached hereto as Exhibit "D"*.

On April 6, 1995, Appellee Vance filed a Request for Hearing on a "wage claim exemption" stemming from what he characterized as an entitlement for an exemption relating to "earnings" he was supposedly owed by the Robinsons as a result of a "verbal agreement" he had with the Robinsons to collect 40% of any sums he was able to help them recover from Wilderness Building Systems, Inc. and Kerry Rick Hubble. Effectively, this would allow Vance to benefit from the fraud and wrongdoing that the trial court had already found was concocted and orchestrated by Vance against the other parties. Throughout the litigation, Vance maintained that there was no such agreement between himself and the Robinsons. *See Argument above at Section I. B.* Appellants and the Robinsons responded to the claim of exemption. Without taking any evidence, and without affording any of the parties an opportunity for hearing as required by Rule 69 U.R.C.P., the trial court initiated a conference call on June 19, 1995 and announced that an exemption would be granted.

Counsel for Appellee prepared an Order to that effect which was entered on July 10, 1995. The Order did not address the confidentiality of the Robinson/Wilderness Building Systems, Inc./Hubble Settlement Agreement and did not establish any dollar amount to which Appellee was entitled. The Order further did not resolve the disputed issues between the parties, rather encouraged the parties to "attempt to determine, agree and divide among themselves the amounts to be paid to or retained by each, Robinsons, Vance and Hubble." *See July 10, 1995*

Order attached hereto as Exhibit "F".

The parties were obviously unable to reach such an agreement. Appellants objected to the *carte blanche* violation of the Robinson/Hubble/Wilderness confidentiality agreement, the calculation of the exemption, and the amount of the attorney's fees figure submitted as a deduction against the exemption calculation. Appellants objected to the allowance of any exemption.

At the request of Vance's counsel, the trial court conducted an in-chambers conference with counsel only on October 12, 1995. During that conference, the trial court required the disclosure of the confidential terms of the settlement agreements, imposed a further order of confidentiality, and entered final judgment on Dennis Vance's claim for an exemption related to the settlement between the Robinsons and the Hubble and Wilderness Defendants. T h e court's directive took the form of a Judgment on Claim of Dennis Vance prepared by Vance's counsel and entered on October 24, 1995. *See Judgment of October 24, 1995 attached hereto as Exhibit "G".*

There is a very strong policy consideration against the allowance of Appellee's exemption claim. The trial court on numerous occasions identified Appellee as the perpetrator and orchestrator of a scheme to defraud all of the parties in this case. Indeed, the trial court granted compensatory judgment and punitive damages to Appellants and against Appellee for his fraudulent acts. To allow him to escape the economic consequence of his wrongful acts, and indeed compensate him therefore, goes against every tenet of fairness and justice.

CONCLUSION AND RELIEF SOUGHT

Based upon the foregoing authorities and argument, Appellants respectfully request that the granting of Appellee's claim of exemption be reversed and remanded to the trial court for further hearing.

Respectfully submitted this ____ day of May, 1996.

CHRISTIANSEN & SONNTAG

Kent L. Christiansen
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I delivered a true and correct copy of the foregoing Brief of Appellants by depositing a copy thereof in the U.S. Mails, postage prepaid, this ____ day of May, 1996, and properly addressed as follows:

Jeffrey C. Swinton
STOKER & SWINTON
311 South State Street, #400
Salt Lake City, Utah 84111

EXHIBIT "A"

KENT L. CHRISTIANSEN of
CHRISTIANSEN & SONNTAG
345 IBM Plaza
420 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 359-3762

RECEIVED
1/18/95

Attorneys for Hubble and Wilderness Building Systems

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LEON W. ROBINSON and
ARLENE ROBINSON,

Plaintiffs,

vs.

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC.,
a Utah corporation,

Defendants,

**AMENDED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Civil No. 920902754

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Third Party Plaintiffs,

vs.

DENNIS VANCE,

Third Party Defendant.

Judge Homer F. Wilkinson

This matter came on regularly before the Court for trial on June 1, 1994, the Honorable Homer F. Wilkinson, Third District Court Judge, presiding. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Defendants, Kerry Rick Hubble and Wilderness Building Systems, Inc. Scott Mitchell of the law firm of Lehman, Mitchell & Waldo, appeared on behalf of the Plaintiffs, Leon and Arlene Robinson. Dennis Blaine Vance appeared pro se at the trial. The parties having adduced evidence by way of testimony and documentary exhibits, and having argued the matter to the Court, and the Court having reviewed the file, exhibits, and memoranda submitted by the parties, the Court being fully advised in the premises, and good cause appearing therefore, the Court initially entered its original Findings of Fact and Conclusions of Law on October 20, 1994.

Thereafter, on January 13, 1995, the matter again came before the court for hearing on various motions of the parties, including Third-Party Plaintiff's Countermotion for Compensatory Damages against Third-Party Defendant Dennis Vance. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Defendants and Third-Party Plaintiffs, Wilderness Building Systems, Inc. and Kerry Rick Hubble. Scott B. Mitchell appeared on behalf of the Plaintiffs, Leon W. and Arlene Robinson. Michael G. Barker appeared on behalf of Third-Party Defendant, Dennis Vance. The parties having submitted legal Memoranda, and having filed various motions and other documents in support of their respective positions, the Court having reviewed the testimony and documentary exhibits presented to the Court, and the parties having argued the matter to the Court, the Court having considered the arguments of the parties, and now being fully advised in the premises enters the following:

AMENDED FINDINGS OF FACT

1. On February 22, 1988, an Amended Judgment was entered in favor of Plaintiffs, Leon W. Robinson and Arlene Robinson, and against Kerry Rick Hubble in the Third Judicial District Court, Case No. C87-3023. The total principal amount of the judgment was \$27,280.56.

2. Subsequent thereto, Third-Party Defendant, Dennis Blaine Vance, contacted Wilderness Building Systems, Inc. and offered his services as a "paralegal" and collection agent.

3. Vance was hired as an independent contractor by Wilderness Building Systems to collect various delinquent accounts.

4. Vance thereafter learned that Leon W. and Arlene Robinson had a judgment against Kerry Rick Hubble in the amount of \$27,280.56 which appeared as a judgment lien against Lot J-63 in Summit Park Subdivision.

5. Vance was interested in acquiring Lot J-63 and explored the possibility of purchasing it.

6. Vance offered his services to Wilderness Building Systems, indicating that he could clear the encumbrances and liens which appeared of record against Lot J-63.

7. Vance initially arranged a meeting with a prospective buyer for Lot J-63 at the law offices of Gerald Conder.

8. Due to the fact that Mr. Conder had previously done work for Kerry Rick Hubble, he indicated that he believed there was a conflict of interest and declined to proceed further.

9. On or about January 27, 1992, Third-Party Defendant, Dennis Blaine Vance,

contacted attorney James T. Dunn and requested him to file a Complaint for Reformation of a mortgage between Hubble and Gneiting in the Third Judicial District Court in and for Summit County, State of Utah; Civil No. 92-11322. The Complaint purportedly identified Kay Gneiting as the Plaintiff and the Defendants were identified as Kerry Rick Hubble, Leon and Arlene Robinson, and a person claiming an equitable lien on the subject Summit County property, an individual by the name of Jim Quinn.

10. Defendants, Kerry Rick Hubble, Kay Gneiting and Wilderness Building Systems, were not advised concerning Third-Party Defendant Dennis Blaine Vance's actions relative to the foreclosure complaint, nor did any of them meet with Attorney Dunn to pursue the foreclosure action.

11. The foreclosure action alleged that a "Mortgage" filed of record in the Summit County Recorder's Office on November 3, 1987, identifying Gneiting as mortgagor and Hubble as mortgagee, was prepared in error.

12. In the First Cause of Action of the Foreclosure Action, the Complaint asserted a claim for reformation alleging the existence of a mortgage, and further alleging that:

Neither [Gneiting] nor [Hubble] were represented by counsel or a title company and the mortgage is prepared incorrectly. Kerry R. Hubble should show as the mortgagor and the person obligated to make payment and Kay Gneiting should show as the mortgagee to whom money is owed.

13. In the Second Cause of Action in the Foreclosure Action, the Complaint asserted a claim for "Mortgage Foreclosure", alleging the existence of the Mortgage, that Gneiting should be the Mortgagee and Hubble the Mortgagor, and that:

The Defendant Hubble has failed to make payment of the \$37,000.00, together with interest at the pre-judgment rate of 10% per annum, and there is now due and owing ... the sum of \$53,421.92.

14. In the Third Cause of Action in the Foreclosure Action, the Complaint asserted a claim for "Quiet Title", alleging that:

All of the right title and interest of [Gneiting] to the [Summit County Property] is superior to the claim of all other parties Defendant [including the Robinsons]...

15. After filing the Foreclosure Action, the attorney retained by Dennis Vance contacted the Robinsons, falsely represented to them that Gneiting's interest in the property was superior to theirs, and offered to pay the Robinsons \$2,500.00 to release their judgment lien against the Summit County Property. In reliance upon that representation, the Robinsons, in fact, released their judgment lien.

16. Third-Party Defendant, Dennis Vance, concocted, engaged in, and orchestrated a scheme to defraud the Robinsons, Hubble, Gneiting, and Wilderness Building Systems, knowingly, willfully, maliciously, and with reckless disregard for their rights.

17. Third-Party Defendant, Dennis Vance's conduct has had a devastating affect upon the lives of the Robinsons, Kerry Rick Hubble, and Kay Gneiting, and has significantly harmed Wilderness Building Systems, Inc.

18. As a consequence of Third-Party Defendant, Dennis Vance's actions, the Robinsons were forced to file a Petition for Relief in the Bankruptcy Court; Kerry Rick Hubble, Kay Gneiting and Wilderness Building Systems, have had judgment rendered against them and in favor of the Robinsons, including punitive damages.

19. Vance inappropriately charged Wilderness Building Systems, Inc. \$816.00 for his alleged services, for which he was paid \$816.00 by Wilderness Building Systems, Inc.

20. In or about May, 1992, Vance had a significant falling out with Wilderness Building Systems and threatened to "get back at them."

21. Vance contacted the Robinsons and advised them that Wilderness had undertaken a scheme to defraud them of their judgment lien against Lot J-63.

22. He agreed to provide them information about the scheme in exchange for a percentage of the money they might stand to collect from Wilderness Building Systems and Hubble.

23. Vance also made terroristic threats against Wilderness Building Systems employees, and was subsequently convicted of "making terroristic threats" in a separate criminal action.

24. Vance also failed to pay James T. Dunn for his services rendered in connection with Lot J-63.

25. James T. Dunn filed a lawsuit and obtained a judgment against Dennis Vance for those legal fees. Vance is the only individual or entity against whom collection of those fees were sought.

26. Vance also took and converted to his own use customer files and accounts belonging to Wilderness Building Systems, Inc., having a value of \$9,800.00.

Despite repeated demands by Wilderness Building Systems, Inc., for the return of said files, Vance refused to provide the files and accounts he had wrongfully removed.

27. Prior to the June 1, 1994 trial of this matter, on May 18, 1994, Dennis Vance contacted Kevin Gneiting by telephone and attempted to persuade Gneiting to change his testimony concerning this case in exchange a promise that Gneiting would bear no liability in the outcome of the Robinsons' claim against him. Gneiting refused to change his testimony.

28. Third-Party Defendant, Dennis Blaine Vance's relative wealth is substantially in

excess of that of the Robinsons, Kay Gneiting and Kerry Rick Hubble.

29. Third-Party Defendant, Dennis Vance, has steadfastly refused to acknowledge any wrongdoing in this case, despite the fact that the fraud he perpetrated upon all of the parties in this case is manifest. The fact that Dennis Vance has shown no remorse, regret, or repentance of any kind whatsoever, leads to the conclusion that there is a great likelihood that he will engage in similar conduct in the future.

30. Third-Party Defendant, Dennis Vance, engaged in a conspiracy to defraud the Robinsons, Hubble, Gneiting, and Wilderness Building Systems, Inc., to the substantial detriment to each of those parties.

31. An award of compensatory damages in the amount of \$24,780.56, together with prejudgment interest in the amount of \$16,583.97, and postjudgment interest at the rate of 12% per annum from April 21, 1993, should be awarded in favor of Kerry Rick Hubble and Wilderness Building Systems, Inc.

32. In addition, it is appropriate that Kerry Rick Hubble and Wilderness Building Systems, Inc., be awarded damages against Dennis Blaine Vance in the amount of \$816.00, which amount represents monies wrongfully obtained by Vance.

33. Kerry Rick Hubble and Wilderness Building Systems, Inc., should also be awarded damages against Dennis Blaine Vance in the amount of \$9,800.00 for the wrongful conversion of customer files and accounts to his own use.

34. An award of punitive damages in the amount of \$24,780.56 should be awarded in favor of Kerry Rick Hubble and Wilderness Building Systems, Inc. in order to punish Third-Party Defendant, Dennis Blaine Vance, and deter him from engaging in like conduct in the

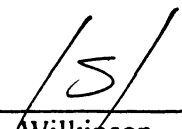
future.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes that Kerry Rick Hubble and Wilderness Building Systems, Inc. should be awarded compensatory damages in the amount of \$24,780.56, together with prejudgment interest in the amount of \$16,583.97, and postjudgment interest at the rate of 12% per annum from April 21, 1993, until paid; for damages relating to monies wrongfully received by Vance in the amount of \$816.00; damages in the amount of \$9,800.00 on the conversion claim; and punitive damages in the amount of \$24,780.56 in order to punish Dennis Blaine Vance, and deter him from engaging in similar conduct in the future.

DATED this 13 day of ^{March}~~January~~, 1995.

BY THE COURT:



Homer F. Wilkinson
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Amended Findings of Fact and Conclusions of Law by placing a true and correct copy thereof in the U.S. Mails, postage prepaid, this 23 day of January, 1995, and properly addressed as follows:

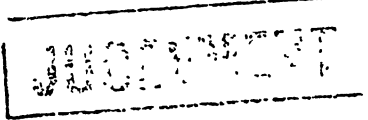
Scott B. Mitchell
Attorney at Law
Suite 620
8 East 300 South
Salt Lake City, Utah 84111

Michael G. Barker
Attorney at Law
56 E. Broadway, Suite 600
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Michelle Childs", is written over a horizontal line.

EXHIBIT "B"

KENT L. CHRISTIANSEN of
CHRISTIANSEN & SONNTAG
345 IBM Plaza
420 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 359-3762



THIRD DISTRICT COURT
Third District

MAR 13 1995

By D. Garner
Deputy Clerk

Attorneys for Hubble and Wilderness Building Systems

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LEON W. ROBINSON and
ARLENE ROBINSON,

Plaintiffs,

vs.

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC.,
a Utah corporation,

Defendants,

AMENDED JUDGMENT

2195658

Civil No. 920902754

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Third Party Plaintiffs,

vs.

DENNIS VANCE,

Third Party Defendant.

Judge Homer F. Wilkinson

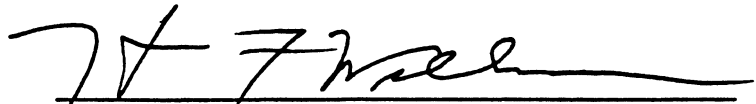
This matter came on regularly before the Court for a non-jury trial on the Third-Party Complaint filed by Kerry Rick Hubble and Wilderness Building Systems, against Third-Party Defendant, Dennis Vance, on June 1, 1994, the Honorable Homer F. Wilkinson, Third District Court Judge, presiding. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Defendants, Kerry Rick Hubble and Wilderness Building Systems, Inc. Scott Mitchell of the law firm of Lehman, Mitchell & Waldo, appeared on behalf of the Plaintiffs, Leon and Arlene Robinson. Dennis Blaine Vance appeared pro se at the trial. The parties having adduced evidence by way of testimony and documentary exhibits, and having argued the matter to the Court, and the Court having reviewed the file, exhibits, and memoranda submitted by the parties, the Court being fully advised in the premises, and good cause appearing therefore, the Court initially entered Judgment on October 20, 1994.

Thereafter, on January 13, 1995, the matter again came before the court for hearing on various motions of the parties, including Third-Party Plaintiff's Countermotion for Compensatory Damages against Third-Party Defendant Dennis Vance. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Defendants and Third-Party Plaintiffs, Wilderness Building Systems, Inc. and Kerry Rick Hubble. Scott B. Mitchell appeared on behalf of the Plaintiffs, Leon W. and Arlene Robinson. Michael G. Barker appeared on behalf of Third-Party Defendant, Dennis Vance. The parties having submitted legal Memoranda, and having filed various motions and other documents in support of their respective positions, the Court having reviewed the testimony and documentary exhibits presented to the Court, and the parties having argued the matter to the Court, the Court having considered the arguments of the parties, having entered its Amended Findings of Fact and Conclusions of Law, and now being fully advised in the premises and good cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that judgment upon the merits be entered in favor of the Third-Party Plaintiffs Kerry Rick Hubble and Wilderness Building Systems, Inc., and against Third-Party Defendant, Dennis Vance, for compensatory damages in the amount of \$24,780.56, together with prejudgment interest in the amount of \$16,583.97, and postjudgment interest at the rate of 12% per annum from April 21, 1993, until paid; for damages relating to monies wrongfully received by Vance in the amount of \$816.00; for damages in the amount of \$9,800.00 on the conversion claim; and punitive damages in the amount of \$24,780.56; together with interest on each of the above amounts as allowed by Utah Code Annotated § 15-1-4.

DATED this 13 day of ^{March} ~~January~~, 1995.

BY THE COURT:



Homer F. Wilkinson
District Court Judge



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Amended Judgment by placing a true and correct copy thereof in the U.S. Mails, postage prepaid, this 13 day of January, 1995, and properly addressed as follows:

Scott B. Mitchell
Attorney at Law
Suite 620
8 East 300 South
Salt Lake City, Utah 84111

Michael G. Barker
Attorney at Law
56 E. Broadway, Suite 600
Salt Lake City, Utah 84111



EXHIBIT "C"

KENT L. CHRISTIANSEN of
CHRISTIANSEN & SONNTAG
345 IBM Plaza
420 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 359-3762

FILED DISTRICT COURT
Third Judicial District

MAR 13 1995

By D. Kane SALT LAKE COUNTY
Deputy Clerk

Attorneys for Hubble and Wilderness Building Systems

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LEON W. ROBINSON and
ARLENE ROBINSON,

Plaintiffs,

vs.

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC.,
a Utah corporation,

Defendants,

AMENDED
ORDER PURSUANT
TO RULE 69 OF THE
UTAH RULES OF CIVIL
PROCEDURE

Civil No. 920902754

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Third Party Plaintiffs,

vs.

DENNIS VANCE,

Third Party Defendant.

Judge Homer F. Wilkinson


This matter previously came before the Court for a hearing on the Third-Party Plaintiffs' Motion for an Order of Execution Against Payment Proceeds Pursuant to U.R.C.P. Rule 69(o), the Honorable Homer F. Wilkinson, Third District Court Judge, presiding. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Third-Party Plaintiffs, Kerry Rick Hubble and Wilderness Building Systems, Inc. Scott Mitchell of the law firm of Lehman, Mitchell & Waldo, appeared on behalf of the Plaintiffs, Leon and Arlene Robinson (hereinafter "Robinsons"). Dennis Vance, Third-Party Defendant, appeared pro se. The Court granted Plaintiff's motion pursuant to Rule 69(o) and entered its Order on October 20, 1994. On January 13, 1995, a hearing was held which resulted in the Court's ruling from the bench that an Amended Findings of Fact and Conclusions of Law and an Amended Judgment be entered against Third-Party Defendant Dennis Vance and in favor of Third-Party Plaintiffs Wilderness Building Systems, Inc. and Kerry Rick Hubble. The Amended Findings of Fact and Conclusions of Law and the Amended Judgment were entered by the Court on March ____, 1995. The Court being fully advised in the premises, and good cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that pursuant to Rule 69(o) of the Utah Rules of Civil Procedure, and based upon the judgments previously rendered in this action by the above court against Defendants Wilderness Building Systems, Inc. and Kerry Rick Hubble and in favor of the Plaintiffs Leon and Arlene Robinson; and based upon the judgments rendered by the court against Third-Party Defendant, Dennis Vance, and in favor of Third-Party Plaintiffs, Kerry Rick Hubble and Wilderness Building Systems, Inc.; it is ordered that any and all sums due and owing by Plaintiffs Leon and Arlene Robinson to said Third-Party Defendant,

Dennis Blaine Vance are attached and shall be applied towards the satisfaction of Third-Party Plaintiff's judgments against Third-Party Defendant.

Dated this 13 day of March, 1995.

BY THE COURT:



Homer F. Wilkinson
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered a true and correct copy of the foregoing Amended Order Pursuant to Rule 69 of the Utah Rules of Civil Procedure on this 10th day of March, 1995, and properly addressed to the following:

Scott B. Mitchell
LEHMAN, MITCHELL & WALDO
An Association of Sole Proprietorships
Suite 620
8 East 300 South
Salt Lake City, Utah 84111

Michael G. Barker
56 East Broadway
Suite 600
Salt Lake City, Utah 84111

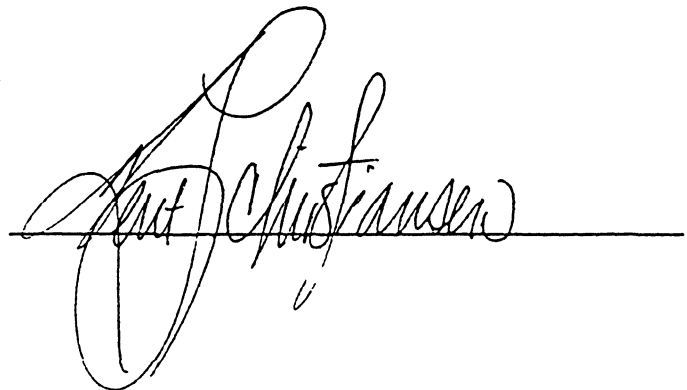


EXHIBIT "D"

COMES NOW, the Plaintiffs, Leon W. and Arlene Robinson, by and through their attorney, Scott B. Mitchell, and the Defendants, Wilderness Building Systems, Inc. and Kerry Rick Hubble, by and through their attorney, Kent L. Christiansen, desire to commit to writing the settlement stipulation reached between the parties in full satisfaction and compromise of all claims between Plaintiffs, Leon W. and Arlene Robinson, and Defendants, Wilderness Building Systems, Inc. and Kerry Rick Hubble, related to this lawsuit. As complete settlement and satisfaction of this action, these parties stipulate and agree as follows:

1. Defendants, Wilderness Building Systems, Inc. and Kerry Rick Hubble, have paid to the Plaintiffs a sum, agreed upon between said Plaintiffs and said Defendants, but which sum shall remain confidential pursuant to the terms of this agreement, as a full and complete satisfaction of any and all of Plaintiffs' claims which are the subject matter of this lawsuit.

2. Plaintiffs agree that in exchange for the payment of said sum referenced in paragraph 1 above, they will immediately file with the court a full and complete Satisfaction of said Judgments, and forever release and discharge any and all claims they have against said Defendants.

3. In addition, the parties have agreed that all terms and conditions of this settlement shall be treated as confidential information and shall not be furnished, shown or disclosed to any person without written consent of the parties hereto. In the event any person or party having possession, custody or control of any confidential information is the subject of a subpoena or demand for any such information from a third-party, the person or party having possession shall immediately notify counsel for the party originally producing the confidential information of such subpoena or demand, and shall not furnish any such information to the third-party responsible

for the subpoena or demand until counsel has had a reasonable opportunity to move to quash or modify the subpoena or demand.

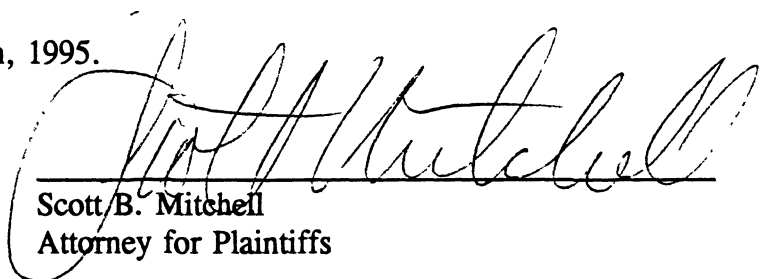
4. Any party in this action may apply for such other and further orders concerning the subject of this stipulation as may be necessary or appropriate to carry out its purpose.

5. Nothing contained in this stipulation shall waive any claim by either party that the confidential documents or information should not be considered confidential.

6. The provisions of this stipulation shall, absent prior written consent of the parties hereto, continue to be binding after the conclusion of this action, and this Court shall retain jurisdiction for the purpose of ensuring compliance with this stipulation and granting such other and further relief as may be necessary.

7. Nothing herein shall be deemed to waive any privilege recognized by law.

Dated this 15th day of March, 1995.



Scott B. Mitchell
Attorney for Plaintiffs

Dated this 16th day of March, 1995.

CHRISTIANSEN & SONNTAG



Kent L. Christiansen
Attorney for Defendants

EXHIBIT "E"

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

ROBINSON, LEON W	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920902754 CV
	:	DATE 06/19/95
VS	:	HONORABLE HOMER F WILKINSON
	:	COURT REPORTER
GNEITING, KAY	:	COURT CLERK DAG
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY.
D. ATTY.

TELEPHONE CONFERENCE WITH THE COURT, JEFF SWINTON, KENT
CHRISTIANSEN AND SCOTT MITCHELL

MOTION FOR CLAIM EXEMPTION OF DENNIS VANCE IS GRANTED.
COSTS AND ATTORNEY FEES MUST COME OFF ON HIS PORTION AND THE
ATTORNEY'S ARE TO WORK OUT THE MONEY AMOUNT.

EXHIBIT

A

EXHIBIT "F"

FILED DISTRICT COURT
Third Judicial District

.1111 1 0 1995

SALT LAKE COUNTY

By _____
Deputy Clerk

Jeffrey C. Swinton #3178
STOKER & SWINTON
Attorneys for Third Party
Defendant Dennis Vance
311 South State Street, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 359-4000

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

LEON W. ROBINSON and
ARLENE ROBINSON,

Plaintiffs,

vs.

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC.
a Utah corporation,

Defendants.

ORDER ON CLAIM OF EXEMPTION
OF DENNIS VANCE

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Third Party Plaintiffs,

vs.

DENNIS VANCE,

Third Party Defendant.

Civil No. 920902754

Judge Homer F. Wilkinson

This matter was presented by Memoranda filed by Jeffrey C. Swinton of the law firm of Stoker & Swinton, on behalf of the movant, Third Party Defendant, Dennis Vance ("Vance"), with responsive Memoranda filed by Kent L. Christiansen of the law firm of Christiansen & Sonntag on behalf of Third Party Plaintiffs, Kerry Rick Hubble and Wilderness Building Systems, Inc. ("Hubble"),

and by Scott Mitchell on behalf of Plaintiffs, Leon and Arlene Robinson ("Robinsons").

The Court, in a conference call in which all three counsel participated on June 19, 1995, announced its decision. The Court having read all Memoranda and being fully advised in the premises, and good cause appearing therefor, it is hereby:

ORDERED, ADJUDGED AND DECREED, that,

1. The commission to which Dennis Vance is entitled under his agreement with the Robinsons is "earnings from personal services" within the meaning of Rule 64D(d)(vii), URCP;

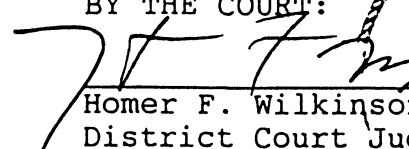
2. This Court requires the deduction of all amounts owed to Robinsons by Vance for their attorneys' fees and costs under their agreement with Vance to be deducted before arriving at the amount of Vance's "disposable earnings" within the meaning of Rule 64D(d)(vii), URCP;

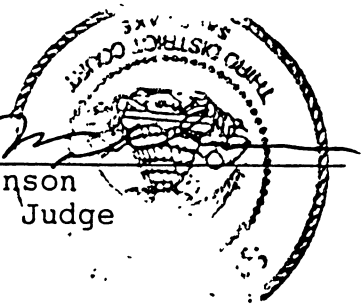
3. The maximum amount of Vance's aggregate disposable earnings available for attachment or garnishment by Hubble is "twenty-five per centum" of his "disposable earnings" calculated in accordance with this Order under Rule 64D(d)(viii)(A), URCP; and,

4. The parties shall attempt to determine, agree and divide among themselves the amounts to be paid to or retained by each, Robinsons, Vance, and Hubble.

Dated this 18 day of July, 1995.

BY THE COURT:


Homer F. Wilkinson
District Court Judge



CERTIFICATE OF SERVICE

The undersigned hereby verifies that on the 19th day of June, 1995, a true and correct copy of the foregoing Order was mailed by first-class mail, postage pre-paid, to the following:

Kent L. Christiansen
Christiansen & Sonntag
420 E. South Temple, #345
Salt Lake City, Utah 84111

Scott B. Mitchell
Judge Building, Suite 620
8 East 300 South
Salt Lake City, Utah 84111

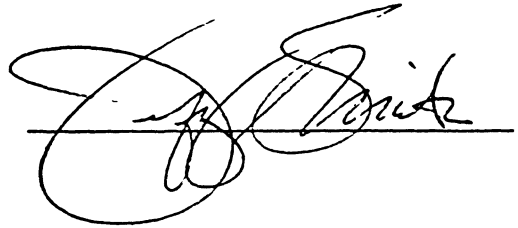
A handwritten signature in black ink, appearing to read "S. B. Mitchell", is written over a horizontal line.

EXHIBIT "G"

KENT L. CHRISTIANSEN of
CHRISTIANSEN & SONNTAG
345 IBM Plaza
420 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 359-3762

FILED DISTRICT COURT
Third Judicial District

OCT 20 1994

JUDGMENT

By D. Carner
Deputy Clerk

Attorneys for Hubble and Wilderness Building Systems

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LEON W. ROBINSON and
ARLENE ROBINSON,

Plaintiffs,

vs.

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Defendants,

KAY GNEITING; KERRY RICK
HUBBLE; and WILDERNESS
BUILDING SYSTEMS, INC., a
Utah corporation,

Third Party Plaintiffs,

vs.

DENNIS VANCE,

Third Party Defendant.

JUDGMENT

2195658
10-24-94-8:06am

Civil No. 920902754

Judge Homer F. Wilkinson


00420

This matter came on regularly before the Court for a non-jury trial on the Third-Party Complaint filed by Kerry Rick Hubble and Wilderness Building Systems, against Third-Party Defendant, Dennis Vance, on June 1, 1994, the Honorable Homer F. Wilkinson, Third District Court Judge, presiding; and was again before the court for a hearing on Third-Party Plaintiffs' Motion for Clarification of Judgment Against Third-Party Defendant Dennis Vance on September 23, 1994. Kent L. Christiansen of the law firm of Christiansen & Sonntag, appeared on behalf of the Third-Party Plaintiffs, Kerry Rick Hubble and Wilderness Building Systems, Inc. Scott Mitchell of the law firm of Lehman, Mitchell & Waldo, appeared on behalf of the Plaintiffs, Leon and Arlene Robinson (hereinafter "Robinsons"). Dennis Vance, Third-Party Defendant, appeared pro se. The parties having adduced evidence by way of testimony and documentary exhibits, and having argued the matter to the Court, and the Court having reviewed the file, exhibits, and memoranda submitted by the parties, the Court having entered its Findings of Fact and Conclusions of Law, the Court being fully advised in the premises, and good cause appearing therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED that judgment upon the merits be entered in favor of the Third-Party Plaintiffs Kerry Rick Hubble and Wilderness Building Systems, Inc., and against Third-Party Defendant, Dennis Vance, in the amount of \$24,780.56, together with interest thereon as allowed by Utah Code Annotated § 15-1-4.

DATED this 2^o day of October, 1994.

BY THE COURT:



Homer F. Wilkinson
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Judgment by placing a true and correct copy thereof in the U.S. Mails, postage prepaid, this 6 day of October, 1994, and properly addressed as follows:

Scott B. Mitchell
LEHMAN, MITCHELL & WALDO
An Association of Sole Proprietorships
Kearns Building, Suite 721
136 South Main Street
Salt Lake City, Utah 84101

Dennis Vance
7702 West 13090 South
Herriman, Utah 84065

Brenda Riddle