

1996

# Action Collection Services, Inc. v. Van Adams : Unknown

Utah Court of Appeals

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David W. Scofield; Parsons, Davies, Kinghorn & Peters; Attorneys for Petitioner.

Unknown.

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**FILED**

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UTAH

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The Utah Supreme Court  
332 State Capitol Building  
Salt Lake City, Utah 84114

September 12, 1996

Re: Action Collection Service, Inc., an Idaho Corporation, Plaintiff/Appellee/Respondent  
v. Van Adams, Defendant/Appellant/Petitioner, Court of Appeals Case No. 950386-CA

Dear Honorable Justices of the Utah Supreme Court:

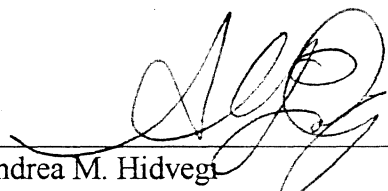
I represent the Respondent in the above-captioned matter which was recently presented to this Honorable Court for consideration of a *Petition for Writ of Certiorari* by the Defendant/Appellant/Petitioner. It is my opinion that the briefs filed with the Appellate Court, and that the record itself, speak clearly to the issues. The decision of the Appellate Court regarding this matter was both concise and consistent with the Respondent's understanding of the law and thus accurately reflects the Respondent's position. Further, it is the Respondent's feeling that the *Petition for Writ of Certiorari* is a frivolous misuse of this Honorable Court's valuable time, and therefore any extensive responsive brief would be inappropriate. For this reason, the Respondent prays that this Honorable Court will accept this letter in lieu of a brief.

This matter began as a simple action taken by a collection agency to collect a debt owed its assignor. Before trial, a Satisfaction of Judgment was erroneously filed by the Respondent. The issue at hand is simply a dispute as to the propriety of the Trial Court having remedied this clerical error by setting the Satisfaction of Judgment aside. Since the Satisfaction stated that no money had been paid toward the Judgment, and since no Judgment existed at the time, the Trial Court acted within its discretion, and under the guise of a Rule 60(b) Motion filed by the Respondent, to correct the error. The Trial Court deemed the Satisfaction, which the parties had taken as having had the effect of dismissing the claim, as void and proceeded with trial. This resolution was reasonable and was well within the discretion of the Trial Court. Argument as to this issue by the Petitioner has been unnecessarily complicated to cloud the actual course of events. Taken for what it was, a discretionary action to remedy a clerical error, the Trial Court committed no error.

The Petitioner further seeks review for reasons relative to discovery and evidence presented at trial. It is the Respondent's opinion that not only were no errors committed, as the Brief of Appellee states, but that the Petitioner is essentially seeking a second review of the evidence simply because he feels it was not adequately considered by the Trial Court. As to these issues, the Appellate Court's opinion that the claims are wholly without merit is correct. Any analysis of these claims would be a waste of this Honorable Court's time. The Respondent thus prays that this Court refer to the Brief of Appellee for argument.

Having addressed all issues raised on appeal by the Petitioner, the Respondent hereby submits this letter in lieu of a brief. The Respondent prays that this Court not grant *certiorari*, and therefore leave undisturbed the Memorandum Decision of the Utah Court of Appeals.

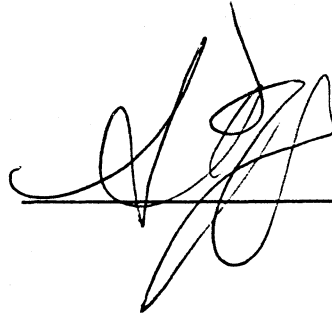
RESPECTFULLY SUBMITTED this 12 day of September, 1996.

  
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Andrea M. Hidvegi  
Attorney for Plaintiff/Appellee

MAILING CERTIFICATE

I certify that on the 12 day of September, 1996, I  
mailed a true and correct copy to the foregoing  
Plaintiff/Appellee's Response to Defendant/Appellant's Petition for  
Writ of Certiorari postage prepaid to:

DAVID W SCHOFIELD  
ATTORNEY FOR DEFENDANT/APPELLANT  
185 SOUTH STATE STREET, STE #700  
SALT LAKE CITY, UT 84111



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