

2007

# Maxine B. Nickel Trust, Palatial Living Mobile Home Park v. Craig Carlsen, D. Craig Carlsen, David Craig Carlsen : Reply Brief

Utah Court of Appeals

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David, Craig, Carlsen.

Robert W. Thompson; Snow, Christensen & Martineau.

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## Recommended Citation

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**IN THE UTAH COURT OF APPEALS**

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THE MAXINE B. NICKEL TRUST, dba  
PALATIAL LIVING MOBILE HOME  
PARK,

Plaintiff-Appellee,

-VS-

CRAIG CARLSEN, also known as  
D. CRAIG CARLSEN, also known as  
DAVID CRAIG CARLSEN,

Defendant-Appellant .

Case No. 20070621-CA

District Court Case No. 040100970

---

**REPLY BRIEF OF APPELLANT**

---

**AN APPEAL FROM A JUDGMENT OF THE FIRST JUDICIAL DISTRICT  
COURT, HONORABLE JUDGE BEN HADFIELD, PRESIDING**

---

DAVID CRAIG CARLSEN  
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Defendant-Appellant in Pro Se

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Salt Lake City, Utah 84145

Attorney for Plaintiff-Appellee

**FILED  
UTAH APPELLATE COURTS  
JAN - 3 2008**

**IN THE UTAH COURT OF APPEALS**

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THE MAXINE B. NICKEL TRUST, dba  
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Defendant-Appellant .

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**REPLY BRIEF OF APPELLANT**

---

**STATEMENT OF FACTS**

1. Judge Hadfield did previously rule in a Memorandum Decision entered on the 15<sup>th</sup> day of December, 2004 on the same exact Summary Judgment issues raised by Palatial Living in their Motion and Memorandum for Summary Judgment. Judge Hadfield in the December 15, 2004 Memorandum Decisions ruled as follows: *"Because these matters outside the pleadings were submitted, the motion will properly be converted into to one of summary judgment, pursuant to UtahR. Civ. Pro. 12(c). There are several disputed issues of material facts surrounding Carlsen's Counterclaim, Counts I, II, and*

*III, including whether approval for residency was interfered with, whether the facts are in accordance with the mobile home residency act, whether Carlsen was unreasonably kept from selling his mobile home, and whether the facts alleged support Carlsen's conversion argument. Defendant's Motion for Judgment of the Pleadings is denied.*

2. Judge Hadfield thereafter rendered a Memorandum Decision on March 6, 2007 in favor of Palatial Living against Carlsen on the same disputed material facts, pleadings and exhibits. Judge Hadfield in his second decision did not consider any affidavit filed by Palatial Living's and did not consider Carlsen's deposition or Palatial Living's discovery.

### **DETERMINATIVE LAWS**

The determinative laws in this case have been cited by Carlsen in the Brief of Appellant.

### **SUMMARY OF ARGUMENT**

Judge Hadfield did previously render a decision of all Summary Judgment issues raised by Palatial Living in their Motion and Memorandum for Summary Judgment and held that the were disputed facts that precluded Summary Judgment.

### **ARGUMENT**

#### **JUDGE HADFIELD DID PREVIOUSLY RULE ON THE SAME**

#### **SUMMARY JUDGMENT ISSUES.**

The pertinent part of the Memorandum Decision entered by the trial court on the 15<sup>th</sup> day of December, 2004 states as follows:

### **Defendant's Motion for Judgment on the Pleadings**

*Defendant moves for judgment on the pleadings pursuant to UtahR. Civ. Pro. 12 on counts I, II, and III of his counterclaim and third-party complaint. In his memorandum in support, Carlsen incorporates exhibits and case law into his arguments. In its Reply, Palatial Living incorporates an affidavit. Because these matters outside the pleadings were submitted, the motion will properly be converted into one of summary judgment, pursuant to UtahR. Civ. Pro. 12(c). There are several disputed issues of material fact surrounding Carlsen's Counterclaim, Counts I, II, and III, including whether approval for residency was interfered with, whether the facts are in accordance with the mobile home residency act, whether Carlsen was unreasonably kept from selling his mobile home, and whether the facts alleged support Carlsen's conversion argument. Defendant's Motion for Judgment on Pleadings is denied.*

The Utah Supreme Court in the case of **Thurston v. Box Elder County**, 892 P.2d 1034 (Utah 1995) stated: The "law of the case" is a legal doctrine under which a decision made on an issue during one stage of a case is binding in successive stages of the same litigation. **Plumb v. State**, 809 P.2d 734, 739 (Utah 1990).

The trial court in this case had previously rendered a decision against Carlsen on the basis that there was a genuine issue of material fact that precluded summary judgment. The trial court thereafter rendered a decision in favor of Palatial Living granting Summary Judgment on the basis of the same identical facts and issues that the

court had previously rendered a decision against Carlsen. The only distinction between the two decisions rendered by the trial court in its two Memorandum Decisions is the party who sought summary judgment.

The trial court's Memorandum Decision granting summary judgment in favor of Palatial Living was not supported by any new facts or by way of any new evidence or affidavits. The trial court's Memorandum Decision granting Palatial Living, summary judgment on Carlsen's Counterclaim was rendered after the court considered the only new evidence which was the letter of January 30, 2001, Exhibit "V" that was more favorable to the claims made by Carlsen's in his counterclaim than to Palatial Living.

The trial court in this case ruled that there was a genuine issue of material fact that precluded summary judgment in this case as to Count I, II, and III of the counterclaim in its Memorandum Decision entered on the 15<sup>th</sup> day of December, 2004. The trial court was precluded under the law of the case doctrine from entering Summary Judgment in favor of Palatial Living without any new evidence and based upon the same pleadings and exhibits that it had previously rendered a decision.

### **CONCLUSION**

The trial court erred in granting Summary Judgment to Palatial Living because of its previous ruling that there was a genuine issue of material fact which precluded summary judgment as to Count I, II, and III of Carlsen's Counterclaim. The trial court's order granting summary judgment in favor of Palatial Living should be reversed and this



case should be remanded to the trial court for further proceedings consistent with this court's decision.

DATED this 3<sup>rd</sup> day of January, 2008.

  
DAVID CRAIG CARLSEN

**CERTIFICATE OF SERVICE**

I certify that I mailed two true and correct copies of the REPLY BRIEF OF APPELLANT, postage prepaid and by First Class mail, to the following listed below on this 3<sup>rd</sup> day of January, 2008:

ROBERT W. THOMPSON  
MURRAY WARHANK  
SNOW, CHRISTENSEN & MARTINEAU  
P.O. Box 45000  
Salt Lake City, Utah 84145

  
DAVID CRAIG CARLSEN

## **ADDENDUM**

FIRST JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF  
 CACHE COUNTY, STATE OF UTAH

THE MAXINE B. NICKEL TRUST, dba  
 PALATIAL LIVING MOBILE HOME  
 PARK,

Plaintiffs,,

vs.

CRAIG CARLSON, also known as D. CRAIG  
 CARLSEN, also known as DAVID CRAIG  
 CARLSEN,

Defendants and Third-Party  
 Plaintiffs.

J.S. OLSEN; BILL (Last name unknown);  
 TAWNIA FRANCKOWIAK, Individually,  
 and in her capacity as Manager of Palatial  
 Living; LYLE COOPER; MILES P. JENSEN;  
 OLSON & HOGGAN, a Professional  
 Corporation; and JOHN and JANE DOES, 1  
 through XX,

Third-Party Defendants.

MEMORANDUM DECISION

Case No. 040100970

JUDGE BEN H. HADFIELD

This matter is before the Court on several motions. An issue concerning the disqualification of the Honorable Thomas L. Willmore was resolved by his voluntary recusal. The matter is now assigned to Ben H. Hadfield, District Court Judge. Judge Larry E. Jones issued a Memorandum Decision on November 24, 2004, denying Defendant's Motion to Disqualify Judge Hadfield. Having reviewed the various motions and memoranda, the Court now issues this *Memorandum Decision*.

This case started as a simple unlawful detainer action. Plaintiff asked that Defendant's mobile home be removed from the pad it occupies pursuant to the Utah Unlawful Detainer Statute, *Utah Code Ann.* § 78-36-1 et. Seq. and the Utah Mobile Home Park Residency Act, *Utah Code Ann.* § 57-16-1 et. seq.. This matter has grown in complexity due to a counterclaim and third party complaint

ENTERED  
 12/13/04

filed by Defendant, and numerous other motions and other filings made by both sides. Defendant alleges claims against his neighbors and the manager of Plaintiff, Palatial Living Mobile Home Park ("Palatial Living"), including nuisance, conversion of his property (Count III and Count XII [by Attorney Miles Jensen]), assault (Count VII), violation of his First Amendment rights of speech and association, unauthorized dominion and control over his property (water, garden hose, heat tape, swamp cooler, and satellite dish), fraud-trickery-deceit (Count IV), illegal repairs required (Count I; II), breach of implied warranty of habitability depriving Defendant of the use and quiet enjoyment of his property (Count V), injunction demand against Olsen (Count VI), negligent securing of debris in high winds (Count VIII), bad faith complaint for eviction (Count IX), declaratory judgment and injunction (Count X), and finally, fraudulent nondisclosure by Lyle Cooper (Count XI).

**Motion for Expedited Hearing Regarding Eviction and to Bifurcate Trial**

Palatial Living's motion was supported by memorandum. Carlsen responded in the same manner. Palatial Living inadvertently submitted its motion before Carlsen's responsive memorandum was filed. Palatial Living voluntarily withdrew its *Notice to Submit*. Palatial Living then filed a reply memorandum in support its motion. Carlsen objects to Palatial Living's reply, stating that it waived the ability to reply after it submitted its motion in error. Carlsen's objection is noted.<sup>1</sup> However, the Court will not strike Palatial Living's reply memorandum. Contrary to Carlsen's assertions, the withdrawal of Palatial Living's *Notice to Submit* was not a motion necessitating either a memorandum in support, or judicial action to resolve. *UtahR. Civ. Pro. 7* does not bar submission of a reply memorandum after a notice to submit has been withdrawn.

Palatial Living asks that its eviction action be tried separately from the contract, tort, and equity claims raised by Carlsen. Palatial Living makes its motion pursuant to *UtahR. Civ. Pro. 42*. Carlsen objects to bifurcation. He states that it would be unfair and prejudicial to his case to separate the issues.

---

<sup>1</sup>Carlsen filed a Notice to Submit for his objection. For clarity and judicial economy, the Court will not deal with Carlsen's objection separately.

He also states that his claims against alleged third-party defendants are not separable from the eviction action.

All of Carlsen's claims arise from his residence in the Palatial Living Mobile Home Park. However, that does not mean that the eviction action may not be bifurcated from the remainder of the claims. In the interest of justice and fairness and for reasons as set forth hereafter, the Court orders that the eviction complaint made by Palatial Living be tried separately from the numerous issues raised by Carlsen in his "Counterclaim, and Third-party Complaint."

**Defendant's Motion for Judgment on the Pleadings**

Defendant moves for judgment on the pleadings pursuant to Utah R. Civ. Pro. 12 on counts I, II, and III of his counterclaim and third-party complaint. In his memorandum in support, Carlsen incorporates exhibits and case law into his arguments. In its reply, Palatial Living incorporates an affidavit. Because these matters outside the pleadings were submitted, the motion will properly be converted into one for summary judgment, pursuant to *Utah R. Civ. Pro. 12(c)*. There are several disputed issues of material fact surrounding Carlsen's Counterclaim, Counts I, II, and III, including whether approval for residency was interfered with, whether the facts are in accordance with the mobile home residency act, whether Carlsen was unreasonably kept from selling his mobile home, and whether the facts alleged support Carlsen's conversion argument. *Defendant's Motion for Judgment on Pleadings* is denied.

**Motion to Disqualify Miles P. Jensen and the Law Firm of Olsen and Hoggan, P.C.**

Carlsen moves to disqualify Attorney Miles Jensen, Esq.. The basis of Carlsen's motion is that he intends to call Attorney Jensen as a witness in this matter. Carlsen cites *Utah R. Prof. Con. 3.7* for the proposition that Attorney Jensen should be disqualified in this case. Carlsen further states that he intends to amend his third-party complaint to include the Law Firm of Olsen and Hoggan, P.C..

*Utah R. Prof. Con. 3.7* deals with conflicts between attorneys and their clients, not opposing counsel. It is inappropriate for Carlsen to raise these

issues at this point in the litigation. Carlsen's *Motion to Disqualify Miles P. Jensen and the Law Firm of Olsen and Hoggan, P.C.* is denied at this time.

Plaintiff's Reply to Defendant's Objection to Partial Withdrawal of Jury Demand.

Carlsen made a jury demand. There was battle back and forth between Palatial Living and Carlsen, with Palatial Living first arguing that Carlsen made his jury demand beyond permissible time limits. Palatial Living made a partial withdrawal of its opposition, stating that Carlsen's jury demand was timely, but that Carlsen is not automatically entitled to a jury on any and all claims that might be brought. Palatial Living states that it would not object to a bifurcated eviction hearing being heard by a jury. Because Carlsen made a timely demand for a jury, he will be afforded such as the progression of this law suit continues, and state law provides.

A digression was argued back and forth in the jury demand motions concerning Carlsen's assertion that Tawnya Franckowiak is now a party to the suit, that she has waived personal service, and default should enter against her after twenty days, if she does not answer the third party complaint. All this because she simply filed an affidavit in her capacity as a manager of Palatial Living. Tawnya has not become a party to this suit, as argued by Carlsen, neither has she waived service by filing an affidavit in this case.

Motion to Dismiss Defendant's Third Party Complaint.

Involuntary dismissal of actions are governed by *Utah R. Civ. Pro. 41(b)*, which provides, "Involuntary dismissal; effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of any action or of any claim against him." Palatial Living cites this rule in support of its motion to dismiss Carlsen's third-party complaint, citing URCP 41(c). Palatial Living argues that Carlsen has not complied with the rules of civil procedure in his third-party complaint.

In order to properly assert a third-party complaint, *Utah R. Civ. Pro. 14* must be complied with. That rule provides.

(a) At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part

of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than ten days after he serves his original answer. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. UtahR. Civ. Pro. 14.

As was stated by Palatial Living in its *Memorandum in Support of Motion to Dismiss Defendant's Third-party Complaint*, "None of Defendant's [Carlsen] claims in the attempted Third-Party Complaints are for claims against a person who is liable, or who may be liable, to the Defendant for Plaintiff's complaint for eviction. None of his alleged claims are for secondary liability, indemnification, or any similar actions." The Court adopts this reasoning and therefore grants Plaintiff's motion to dismiss. Defendant may pursue these claims in separate actions.

**Defendant's Motion to Amend Third-party Complaint to Join Additional Parties.**

Carlsen has made two motions to amend his third party complaint. The two will be treated here together. Given the reasoning put forth in disposing of *Plaintiff's Motion to Dismiss Defendant's Third Party Complaint*, the addition of additional parties through a third-party complaint would be futile. Therefore, Carlsen's motions to amend his third party complaint is denied.

**Motion to Stay Discovery Pending Ruling on Motions to Dismiss, Strike, Etc.**

This issue is moot because of the Court's granting of the motion to dismiss Carlsen's third-party complaint.

**Motion to Strike June Olsen's Motion.**

Carlsen's motion is denied based upon the Court's ruling on Olsen's *Motion to Dismiss the Third Party Complaint*.

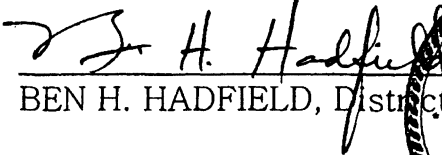
**Defendant's Motion to Stay Pending Review**

The Court has read the Motion and Memorandum of Defendant, seeking a stay of all proceedings pending appellate review of his requested interlocutory appeal of Judge Jones' November 24, 2004, Order Denying Defendant's Motion to Disqualify Judge. The requested stay is within the sound discretion of this court. Upon considering the issues, including the delays which have thus far occurred in this case, the motion is denied.

Expedited Status Hearing

In order to move this matter forward, and protect the rights of all concerned parties, a status hearing will be held on January 10, 2005, at 2:00 p.m.

Dated this 15 day of December, 2004.

  
BEN H. HADFIELD, District Judge





Brannick & Larsen  
cc. Cooper, town & country mobile  
**FILE COPY**

**OLSON & HOGGAN, P.C.**

ATTORNEYS AT LAW

**BRENT HOGGAN**  
MILES P. JENSEN  
BRUCE L. JORGENSEN  
JAMES C. JENKINS  
MARLIN J. GRANT  
ROBERT B. FUNK  
KEVIN J. FIFE  
JEFF B. ADAIR  
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CHARLES P. OLSON (1916-1975)

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January 30, 2001

N. Brannick and Emily Larsen  
481 West 640 North  
Logan, UT 84321

N. Brannick and Emily Larsen  
P.O. Box 146  
Joseph City, AZ 86032

*Re: Palatial Living Mobile Home Space at 481 West 640 North, Logan, Utah  
Our File No. N-4300.04B*

Dear Mr. and Mrs. Larsen:

We are now advised that you have sold or attempted to sell your home to Lyle Cooper of 487 East 180 South, Smithfield, Utah 84335. Please be advised of the following with respect to your Lease Agreement and the Rules and Regulations of the Park:

1. Paragraph 7 of the Lease specifically prohibits assignment or subletting of the property.
2. Paragraph 11 of the Lease has specific terms and conditions required prior to sale of a mobile home in order for the mobile home to remain in the Park. That has not occurred.
3. Pursuant to paragraph 11.b of the Lease, the Park has made the determination that the mobile home is not in sufficiently good condition to remain in the Park and is in disrepair and rundown condition and must be moved. The items which are unacceptable are the siding on the home, the skirting and the east side porch.
4. We have also received information that this mobile home has been advertised on a "rent to own" basis and have enclosed a copy of the classified ad from the Herald Journal dated January 16, 2001. Rent to own is not accepted in Palatial Living Mobile Home Park.
5. The Utah Code § 57-16-5(4) states, "The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase."

N. Brannick and Emily Larsen  
January 30, 2001  
Page 2

6. We now have information and belief that the home has been sold to Lyle Cooper, who has made no application and who has not received any preapproval to retain the mobile home in the Park.

7. I have enclosed a copy of a summary of information regarding the sale of any mobile homes in Palatial Living for your reference. I would also call your attention to Section IV, paragraphs 2 and 3 of the Rules and Regulations, which also govern assignment, renting and sale of mobile homes.

8. A copy of the Lease Agreement and Rules and Regulations signed by you is enclosed for each of your references.

We wanted to write you informally to see if this can be handled on an informal basis and to advise you of the situation with the mobile home. We will await response for seven (7) days from the date of this letter, to have or make arrangements to have the mobile home removed immediately; and if we have not heard a response, then we will give you a formal notice and proceed accordingly. We trust that such action will not be needed, and that you will voluntarily move the home.

Sincerely,

OLSON & HOGGAN, P.C.



Miles P. Jensen

MPJ/sgj  
j:\mpj\l\tr\blarsen.1

Enclosures

cc: Lyle Cooper  
487 East 180 South  
Smithfield, UT 84335

Town & Country Realty  
1450 East 1140 North  
Logan, UT 84341



Utah State Tax Commission  
Motor Vehicle Division  
210 N. 1950 W.  
Salt Lake City, Utah 84134

# UTAH CERTIFICATE OF TITLE

MFG HOUSING  
DATE ISSUED 05/25/99  
LICENSE 741873UX  
11049918508

TITLE NO.  
88880490

741873UX  
COOPER LYLE  
487 E 180 S  
SMITHFIELD UT 84335

PREVIOUS JURISDICTION BRAND

VIN-51873U/X  
YEAR-74 MAKE-HACI MODEL-518  
BODY TYPE-DW

NAME AND ADDRESS OF VEHICLE OWNER(S)

UTAH BRAND

LARSEN W BRANNICK & EMILY B  
481 W 640 N  
LOGAN UT 84321

LIEN - HOLDER

COOPER LYLE  
487 E 180 S  
SMITHFIELD UT 84335

REQUEST FOR LIEN CHANGE

Title is subject to change. Contact the Utah Motor Vehicle Division  
Complete this section. Send the title and required fee to the Utah  
Motor Vehicle Division.

Please check one box.

☐ Please issue a title free of liens. ☐ Please issue a title showing the following as the NEW LIEN-HOLDER

LIEN RELEASE - Signature of lien-holder (releasing interest)

New lien holder name

Address

Title of signer

Date

City

State

ZIP Code

CONTROL NO. (not title no.)

OPERATOR NO.

Vehicle owner's signature requesting lien change

Date

A 6135562

CXC

ANY ALTERATION OR ERASURE VOIDS THIS TITLE

#8

# **PALATIAL LIVING MOBILE HOME SUBDIVISION**

December 16, 2000

Mr. and Mrs. Brannick Larsen  
481 West 640 North  
Logan, UT 84321

Dear Mr. and Mrs. Larsen:

You are hereby notified that you are in arrears in payment of lot rent as indicated below. As provided in our lease agreement with you, lot rent is due and payable on the **first** day of every month. A grace period is given until the 5<sup>th</sup>, after which an initial late fee of \$15 is incurred with an additional \$1 per day thereafter until payment is received in full. Payment will not be accepted without late fees included. Please pay promptly. Your cooperation in this matter will be appreciated.

Lot Rent Due (December 2000)	\$190.00
Late Fee Accumulated Through December 16 (continuing to accrue until paid)	25.00
<b>TOTAL DUE</b>	<b>\$215.00</b>

Palatial Living Management

## OLSON &amp; HOGGAN, P.C.

ATTORNEYS AT LAW

L. BRENT HOGGAN  
MILES P. JENSEN  
BRUCE L. JORGENSEN  
JAMES C. JENKINS  
MARLIN L. GRANT  
ROBERT B. FLUNK  
KEVIN J. PIPE  
JEFF B. ADAIR  
—  
CHARLES F. OLSON (1916-1979)

June 13, 2001

VIA FACSIMILE (435) 753-2091

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[www.olson-hoggan.com](http://www.olson-hoggan.com)

Stephen Jewell  
Attorney at Law  
15 South Main, Suite #301  
Logan, UT 84321

*Re: Palatial Living / Lyle Cooper  
Our File No. N-4300.04B*

Dear Steve:

This will confirm our agreement and understanding reached by telephone on Tuesday, June 12, 2001 in the above-captioned matter. As a condition to acceptance of the new owner and permitting him to move into the park, he has agreed as follows:

1. To execute a lease and acknowledge receipt of a copy of the rules and regulations of the park.
2. To reskirt the entire mobile home. Acceptable colors are white, off-white, etc. as stated in the lease and/or rules or as approved by Management.
3. To repaint the entire mobile home.
4. To remove chicken wire that is exposed in connection with the vines.
5. To repair, reenforce, and repaint the entire porch, to replace the carpeting with new indoor/outdoor carpet, and to do so that it is aesthetically pleasing and also so that it is aesthetically satisfactory to the park and meets applicable building codes.
6. To repair dents and separating seams in siding.
7. To weed the flower gardens.

These items must be completed on or before August 12, 2001.

Stephen Jewell  
June 13, 2001  
Page 2

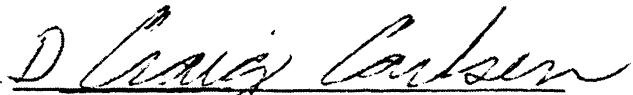
I would appreciate your having Mr. Cooper and the new owner execute a copy of this letter and forward a copy to me, along with your signature. A signed fax copy is acceptable. After this letter is signed and returned to us the new owner should contact the Park Manager directly to clarify references, sign the Lease and Rules. If you have any questions in this matter, please contact me, or if I am unavailable, our paralegal Michelle Hewitt. Thank you.

Sincerely yours,

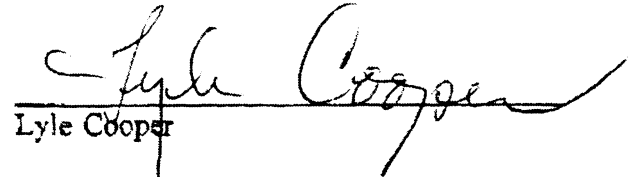
OLSON & HOGGAN, P.C.



Miles P. Jensen



D. Craig Carlson



Lyle Cooper

---

Steve Jewell  
Attorney at Law

MPJ/pjs  
mpj/trs/jewell.7

OLSON & HOGGAN, P.C.

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June 13, 2001

VIA FACSIMILE (435) 753-2091

Stephen Jewell  
Attorney at Law  
15 South Main, Suite #301  
Logan, UT 84321

Re: *Palatial Living / Lyle Cooper*  
*Our File No. N-4300.04B*


Dear Steve:

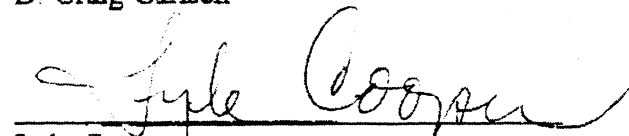
There is one item I neglected to mention in my last letter and that is that the mobile home will probably need to be resided when it is subsequently sold and that this has been disclosed to the Buyer and is accepted. Please sign below and return along with the other letter.

Sincerely yours,

OLSON & HOGGAN, P.C.

  
Miles P. Jensen

  
D. Craig Carlsen

  
Lyle Cooper

Steve Jewell, Attorney at Law

**ADDENDUM/COUNTER OFFER  
TO EARNEST MONEY SALES AGREEMENT**

This ADDENDUM/COUNTER OFFER constitutes: ☒ a COUNTER OFFER ☐ an ADDENDUM to that EARNEST MONEY

SALES AGREEMENT (THE AGREEMENT) dated the 6 day of June 2001, between \_\_\_\_\_

Craig Carlson as buyer(s), and Lyle Cooper as seller(s),  
covering real property described as follows:

481 W. 6th N,  
Logan, Utah

The following terms are hereby incorporated as part of THE AGREEMENT:

East side- Paint - Buyer to paint,  
skirting so, side- Replaced - see below  
Porch Painted - Restructure Supports  
by Seller

Seller to weed, flower beds,  
Seller to replace north west corner sea,  
Seller to weed flower beds

Buyer willing to paint porch & east siding,  
Seller to supply paint, good quality,  
Buyer to replace skirting up to  
\$300.00, seller to pay difference.

All other terms of THE AGREEMENT shall remain the same. ( ) Seller ( ) Buyer shall have until 5:00 (A.M. ☒ P.M.)

June 6, 01, to accept the terms specified above. Unless so accepted this Addendum shall lapse.

Date June 6, 01  
Time 12:10 (A.M. ☒ P.M.)

Signature of ( ) Seller ☒ Buyer

Craig Carlson

**ACCEPTANCE/COUNTER OFFER/REJECTION**

Check One

☒ I hereby ACCEPT the foregoing on the terms specified above.

( ) I hereby ACCEPT the foregoing SUBJECT TO the exceptions shown on the attached Addendum.

Lyle Cooper

Signature

Signature

06/06/01

Date

12:05 pm

Time

( ) I hereby reject the foregoing \_\_\_\_\_ (Initials)

**DOCUMENT RECEIPT**

( ) I acknowledge receipt of a final copy of the foregoing bearing all signatures.

Craig Carlson

Signature of Buyer(s)

Date

Lyle Cooper

Signature of Seller(s)

Date

( ) I personally caused a final copy of the foregoing bearing appropriate signatures to be mailed on \_\_\_\_\_

19\_\_\_\_, by Certified Mail and return receipt attached hereto to the ( ) Seller ( ) Buyer.

Sent by \_\_\_\_\_

This form has been approved by the Utah Real Estate Commission.

K. h. h. I 1



## Palatial Living Mobile Home Subdivision

August 6, 2001

Mr. Craig Carlsen  
481 West 640 North  
Logan, UT 84321

Dear Mr. Carlsen:

I am writing to remind you of the repairs to your home that must be completed on or before August 12, 2001. So there is no misunderstanding as to what those repairs are, they are as follows:

1. Reskirt the entire mobile home. Acceptable colors are white, off white, beige, sand, or light gray. Other colors must be approved by the Palatial Living Manager.
2. Repaint the entire mobile home. Acceptable colors are white, off white, beige, sand, or light gray. Other colors must be approved by the Palatial Living Manager.
3. Repair, re-enforce, and repaint the entire east side porch.
4. Repair dents and separating seams in the siding.
5. Remove the chicken wire in connection with the creeping vines around the mobile home.
6. Weed all flower gardens and landscaped areas.

All of the above must be completed on or before August 12, 2001, without exception. We appreciate your cooperation in these matters.

Sincerely,



Tawnya Franckowiak, Manager  
Palatial Living Mobile Home Subdivision

OLSON & HOGGAN, P.C.

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August 9, 2001

Craig Carlsen  
481 West 640 North  
Logan, UT 84321

*Re: Palatial Living / Brannick Larsen  
Our File No. N-4300.15*

Dear Mr. Carlsen:

We received a request today to give you an extension to have the repairs and other items that were agreed to be completed by August 12, 2001 completed. The weeding of the flower and garden areas must be completed on or before August 12, 2001. If this is completed by August 12th, then Palatial Living will extend the due date for the other items to September 1, 2001. If the flower and garden areas are not completely and thoroughly weeded and cleaned by August 12, 2001, then no extension will be given. In addition, the old tire "planter" must be removed by the 12th. It may be best to simply put grass into the flower/garden areas for ease of maintenance. If you have any questions please advise.

Sincerely yours,

OLSON & HOGGAN, P.C.



Miles P. Jensen

MPJ/pjs  
cc: Stephen Jewell

[mpj/ltr/ccarlsen.3](mailto:mpj/ltr/ccarlsen.3)

FILE COPY  
✓ to SJ CCF  
4-21-04 SP

Miles P. Jensen (#1686)  
OLSON & HOGGAN, P.C.  
Attorneys for Plaintiff  
88 West Center  
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Logan, Utah 84323-0525  
Telephone: (435) 752-1551

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

THE MAXINE B. NICKEL TRUST, dba  
PALATIAL LIVING MOBILE HOME  
PARK,

Plaintiff,

vs.

CRAIG CARLSON, also known as  
D. CRAIG CARLSEN, also known as  
DAVID CRAIG CARLSEN,

Defendant.

STIPULATION FOR JUDGMENT

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Plaintiff, by and through its Attorneys, Olson & Hoggan, P.C., Miles P. Jensen, and the  
Defendant, by and through his Attorney, Stephen W. Jewell, hereby stipulate and agree as follows:

1. Defendant has received a copy of Plaintiff's Complaint for Eviction in the above-captioned matter; waives service of process; accepts service of process; enters his appearance through his counsel; and consents to the entry by Plaintiff of a Default Judgment on the terms and conditions in this Stipulation.

2. In the event that the Defendant conveys the mobile home located at 481 West 640 North in Logan, Utah to the lienholder, Lyle Cooper, on or before April 30, 2004, and provides

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evidence of the same to the Plaintiff, and provided the Defendant individually removes all of his personal possessions and no longer resides on the premises in any manner whatsoever on or before April 30, 2004, then Plaintiff shall not file the Complaint for Eviction; this Stipulation will be of full force and effect; and this matter will be terminated and resolved as between the parties.

3. In the event that the Defendant fails either to convey title as provided in paragraph 2 and to vacate the premises as provided in paragraph 2, on or before the times indicated, time being of the essence, then Plaintiff may forthwith file the Complaint for Eviction, may file this Stipulation and upon providing an Affidavit with the Stipulation verifying that the conditions required to paragraph 2 have not been met, shall forthwith be entitled to entry of a Default against the Defendant and a Default Judgment against the Defendant for the relief prayed for in Plaintiff's Complaint including but not limited to a Judgment and Order for Writ of Eviction and for issuance of a Writ of Eviction, in order for Plaintiff to obtain physical possession of the premises.

DATED this 21 day of April, 2004.

OLSON & HOGGAN, P.C.

  
Miles P. Jensen  
Attorneys for Plaintiff

DATED this \_\_\_\_\_ day of April, 2004.

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Stephen W. Jewell  
Attorneys for Defendant

J:\MPJ\Pleadings\Palatial Living\carlson stip for judgment.wpd  
N-4300.25