

2000

# Mark Anglin v. Contracting Fabrication Machining, Inc., aka CFM, Inc. : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

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

Mark Anglin; pro se.

Michael A. Jensen; attorney for appellant.

---

## Recommended Citation

Brief of Appellant, *Anglin v. Contracting Fabrication*, No. 20000208.00 (Utah Supreme Court, 2000).  
[https://digitalcommons.law.byu.edu/byu\\_sc2/436](https://digitalcommons.law.byu.edu/byu_sc2/436)

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 Supreme Court 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**IN THE UTAH SUPREME COURT**

---

**MARK ANGLIN,**

Appellee/Plaintiff,

v.

**CONTRACTING FABRICATION  
MACHINING, INC., aka CFM, INC.,**

Defendant,

and

**CUSTOM STEEL FABRICATION, INC.,**

Appellant/Intervener.

---

**CASE NO. 20000208-SC**

Priority No. 15

---

**BRIEF OF APPELLANT**

---

Appeal from that part of final order which denied attorney's fees

---

Mark Anglin  
PO Box 3657  
Aspen, Colorado 81612  
Pro Se Appellee/Plaintiff

Michael A. Jensen (#7231)  
Attorney at Law  
136 South Main Street, Suite 300  
Salt Lake City, Utah 84101  
(801) 519-9040; Fax: 519-9264  
Attorney for Appellant/Intervener

**FILED**  
JUN 28 2000  
CLERK SUPREME COURT  
UTAH

**IN THE UTAH SUPREME COURT**

---

**MARK ANGLIN,**

Appellee/Plaintiff,

v.

**CONTRACTING FABRICATION  
MACHINING, INC., aka CFM, INC.,**

Defendant,

and

**CUSTOM STEEL FABRICATION, INC.,**

Appellant/Intervener.

---

**CASE NO. 20000208-SC**

Priority No. 15

---

**BRIEF OF APPELLANT**

---

Appeal from that part of final order which denied attorney's fees

---

Mark Anglin  
PO Box 3657  
Aspen, Colorado 81612  
Pro Se Appellee/Plaintiff

Michael A. Jensen (#7231)  
Attorney at Law  
136 South Main Street, Suite 300  
Salt Lake City, Utah 84101  
(801) 519-9040; Fax: 519-9264  
Attorney for Appellant/Intervener

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
JURISDICTION OF THE COURT .....	1
ISSUES PRESENTED FOR REVIEW, STANDARD OF REVIEW, AND PRESERVATION OF ISSUE .....	1
STATUTORY PROVISIONS .....	2
STATEMENT OF THE CASE .....	2
STATEMENT OF RELEVANT FACTS .....	4
SUMMARY OF ARGUMENT .....	7
ARGUMENT .....	9
I. <u>Custom Steel, as an intervener, was a “party” because it was the only active party other than the Plaintiff, Mr. Anglin.</u> .....	9
II. <u>Custom Steel, as an intervener, prevailed in defeating Mr. Anglin’s claims and the relief he sought.</u> .....	11
CONCLUSION .....	14
CERTIFICATE OF SERVICE .....	15
ADDENDUM INDEX .....	16
Addendum 1 COMPLAINT with Exhibits .....	A-1
Addendum 2 FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	A-2
Addendum 3 CUSTOM STEEL’S REQUEST FOR HEARING (Garnishment Proceeding) with Global Settlement Agreement .....	A-3
Addendum 4 E-MAIL MESSAGE from Mr. Blevins to Mr. Anglin .....	A-4
Addendum 5 ORDER ON DISSOLVING GARNISHMENT .....	A-5
Addendum 6 FINAL ORDER AND JUDGMENT .....	A-6

## TABLE OF AUTHORITIES

### CASES

<i>Rushton v. Salt Lake County</i> , 1999 UT 36, ¶1, 977 P.2d 1201 . . . . .	2
<i>4447 Associates v. First Security Financial</i> , 1999 UT 7, ¶20, 973 P.2d 992 . . . . .	1
<i>Checketts v. Collings</i> , 78 Utah 93, 1 P.2d 950, 953 (Utah 1931) . . . . .	13
<i>E.C.A. Env'tl. Management Servs., Inc. v. Toenyas</i> , 679 P.2d 213, 218 (1984) . . . . .	13
<i>In Re Ellison v. Ellison</i> , 94-4211 1995 U.S. App. Lexis 22117 (D.C. Utah 1995) . . . .	13
<i>Highland Constr. Co. v. Stevenson</i> , 636 P.2d 1034, 1038 (Utah 1981) . . . . .	13
<i>Moreno v. Bd. of Education of Jordan School Dist.</i> , 926 P.2d 886, 889 (Utah 1996) . .	9
<i>Moss Constr. Co. v. Wulffsohn</i> , 116 Cal. App. 2d 203, 253 P.2d 483, 485 (1953) . . . .	13
<i>Mountain States Broadcasting Co. v. Neale</i> , 776 P.2d 643 (Utah Ct. App. 1989) . .	12, 13
<i>Ocean West Contractors, Inc. v. Halec Constr. Co.</i> , 600 P.2d 1102, 1105 (1979) . . . .	13
<i>Szoboszlay v. Glessner</i> , 233 Kan. 475, 664 P.2d 1327, 1333-35 (1983) . . . . .	13
<i>Taylor ex rel. C.T. v. Johnson</i> , 1999 Utah 35, ¶6, 977 P.2d 479 (Utah 1999) . . . . .	2
<i>Trollope v. Koerner</i> , 21 Ariz. App. 43, 515 P.2d 340, 344 (1973) . . . . .	13
<i>Wardley Corp. v. Welsh</i> , 962 P.2d 86, 92 (Utah Ct. App. 1998) . . . . .	1

### STATUTES

§ 78-27-56.5, <i>U.C.A.</i> . . . . .	1, 2, 4, 7-10, 13-15
---------------------------------------	----------------------

### OTHER AUTHORITIES

59 Am Jur 2d PARTIES at §170 . . . . .	12
--	----

## **JURISDICTION OF THE COURT**

Jurisdiction is conferred upon this Court by virtue of § 78-2-2(3)(j), *U.C.A.*

## **ISSUES PRESENTED FOR REVIEW, STANDARD OF REVIEW, AND PRESERVATION OF ISSUE**

The central issue for Custom Steel is whether the trial court's denial of attorney's fees was proper. Whether such fees are recoverable is a question of law, which is reviewed for correctness. *See 4447 Associates v. First Security Financial*, 1999 UT 7, ¶20, 973 P.2d 992 (*quoting Wardley Corp. v. Welsh*, 962 P.2d 86, 92 (Utah Ct. App. 1998)). However, the trial court expressly articulated two sub-issues as its justification for denying attorney fees; Custom Steel presents these two issues for this Court's review.

1. **Issue:** Whether the trial court erred in concluding that Custom Steel, the Intervener, is not a "party" as that term is used by § 78-27-56.5, *U.C.A.*

**Standard of Review:** The trial court's interpretation of a statute is a question of law and is reviewed for correctness. *See Rushton v. Salt Lake County*, 1999 UT 36, ¶1, 977 P.2d 1201; *Taylor ex rel. C.T. v. Johnson*, 1999 UT 35, ¶6, 977 P.2d 479.

**Preservation of Issue:** This issue was preserved when the Appellant timely filed its Notice of Appeal in the trial court.

2. **Issue:** Whether the trial court erred in concluding that Custom Steel, the Intervener, did not “prevail” as required by § 78-27-56.5, *U.C.A.*

**Standard of Review:** The trial court’s interpretation of a statute is a question of law and is reviewed for correctness *See Rushton v. Salt Lake County*, 1999 UT 36, ¶1, 977 P.2d 1201; *Taylor ex rel. C.T. v. Johnson*, 1999 UT 35, ¶6, 977 P.2d 479.

**Preservation of Issue:** This issue was preserved when the Appellant timely filed its Notice of Appeal in the trial court.

## **STATUTORY PROVISIONS**

**§ 78-27-56.5, *U.C.A.* Attorney's fees - Reciprocal rights to recover attorney's fees.**

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

History: C. 1953, 78-27-56.5, enacted by L. 1986, ch. 79, § 1.

## **STATEMENT OF THE CASE**

This is a collection and garnishment case. However, it is somewhat complicated because the Defendant, Contracting Fabrication Machining, Inc. aka CFM (“CFM”) was dissolved and ceased all operations in 1996. CFM left no assets. As a consequence, the

Plaintiff sought to garnish certain settlement funds (“Funds”) that were being held by a third-party, Steven C. Blevins, and which funds were contractually to be delivered by Mr. Blevins to the attorney for the Appellant/Intervener, Custom Steel. Mr. Blevins, however, intentionally delayed delivering those Funds to Custom Steel or its attorney. The Plaintiff’s Complaint acknowledges that CFM had no assets, and the only objective in the Complaint was to garnish the Funds held by Mr. Blevins. Concurrent with filing his Complaint, the Plaintiff, Mr. Anglin, obtained a prejudgment writ of garnishment. To secure the garnishment, Mr. Blevins provided on behalf of Mr. Anglin the required deposit of \$13,300 with the trial court.

The Intervener Custom Steel properly and timely intervened in the trial court proceedings to protect its claim for the Funds being garnished. Custom Steel prevailed in having the garnishment order dissolved and Mr. Anglin’s action dismissed with prejudice. Mr. Anglin brought his action based on a promissory note that provided for attorney’s fees, and he sought such attorney’s fees in his Complaint. Relying on § 78-27-56.5, *U.C.A.*, and after prevailing in dissolving the garnishment order and having the case dismissed with prejudice, Custom Steel requested reciprocal attorney’s fees at the conclusion of the proceedings in the trial court. The trial court ruled that Custom Steel, as an intervener, is not a “party” eligible for attorney’s fees under § 78-27-56.5, *U.C.A.*, and that Custom Steel did not “prevail” as intended by § 78-27-56.5, *U.C.A.*



## STATEMENT OF RELEVANT FACTS

On or about September 7, 1993, CFM allegedly executed a Promissory Note in favor of Mr. Anglin. *See Complaint*; (R. 4-6); Addendum 1. Mr. Anglin alleges that CFM defaulted in the terms of the Note. *See id.* at 2; (R. 2); Addendum 1. Mr. Anglin states that the records of the Utah Department of Commerce reflect that CFM was voluntarily dissolved on January 2, 1996; he also referenced and attached to his Complaint a “Notice of Dissolution to All CFM Creditors.” *See id.* ; *Complaint* at Exhibit C (R. 9); Findings of Fact and Conclusions of Law; (R. 181); Addendum 1 at 2; Addendum 2 at 2. At the time he filed his Complaint, Mr. Anglin believed that CFM had “no assets within the State of Utah, excepting the funds being held by a third person, Mr. Steven Blevins.” *See Complaint*; (R. 9); Addendum 1 at 2.

In his Complaint, Mr. Anglin raised one cause of action and requested only the following relief:

6. The Plaintiff requests a Prejudgment Writ of Garnishment directed to Steve Blevins, Garnishee, who has possession of a fund being held for the Defendant [CFM].
7. The Plaintiff requests judgment on its First Cause of Action for any and all amounts remaining unpaid under the terms of the Promissory Note, and for interest therein, including costs and attorney’s fees; and for other relief deemed just and proper.

WHEREFORE, the Plaintiff requests Judgment against the Defendant as prayed, and for costs and attorney’s fees.

*Complaint* (R. 2-3); Addendum 1 at 2-3.

Mr. Anglin relied on a provision in the Promissory Note that allowed him to recover “all costs of collection, court costs and reasonable attorneys fees . . .” *See id.* at Exhibit A; (R. 4); Addendum 1 at 4.

In a prior action filed in the Third District Court, Case No. 960903449, Custom Steel brought claims against Steven Blevins (“Blevins Action”). *See Request for Hearing.* (R. 120-28); Addendum 3. In a related action to the Blevins Action, a Receiver was appointed for dissolved CFM in Case No. 960902152, a case in which Custom Steel was named as a defendant (“Receiver Action”). *See id.* at 1-2; Addendum 3. Eventually, both the Blevins Action and the Receiver Action were consolidated and the parties entered into a Global Settlement Agreement (“Agreement”). *See id.*

The Agreement and the Receiver’s recommendations provided that a certain receivable, originally belonging to CFM, be transferred to Mr. Blevins. *See id.* The Agreement further provided that Mr. Blevins “disburse . . . 33.3% [of the receivable] within 10 days of receipt thereof” by paying by check to Custom Steel’s counsel’s trust account. *See id.* Mr. Blevins received the receivable but he failed to deliver 1/3 of it to counsel for Custom Steel. Rather, Mr. Blevins sent an e-mail message to Mr. Anglin six days prior to his receipt of the receivable and encouraged Mr. Anglin to use the courts to obtain the portion of the receivable from Mr. Blevins that was to be turned over to counsel for Custom Steel. *See Blevins E-Mail*; (R. 174); Addendum 4.

In that e-mail message, Mr. Blevins clearly stated that he had already contacted an attorney to help Mr. Anglin and that he, Mr. Blevins, would “be glad to do whatever

footwork is necessary in your behalf.” *See id.* Mr. Blevins also offered “to pay ½ of the legal fees if unsuccessful.” *See id.* Mr. Blevins expressed the urgency to act:

“I expect to get a check any day and then I have to disburse it within 10 days, so you need to hurry. I’m going through the documents even as I write this. You need to call him [the attorney] tomorrow if possible. He said he could get started Monday. Steve.”

*Id.*

After Custom Steel intervened and after hearing, the trial court entered an order to dissolve the garnishment. *See Order on Dissolving Garnishment*; (R. 149-50); Addendum 5. The Order Dissolving the Garnishment also ordered Mr. Blevins to pay to counsel for Custom Steel the funds being garnished. *See id.* Subsequent to the garnishment being dissolved, Custom Steel moved for the trial court to dismiss Mr. Anglin’s Complaint with prejudice, to enter findings of fact and conclusions of law, and to award attorney’s fees to Custom Steel. (R. 153-54).

The trial court granted Custom Steel’s motion to dismiss with prejudice and its motion to enter findings of fact and conclusions of law. *See Final Order and Judgment*; (R. 184-85); Addendum 6. However, the trial court denied Custom Steel’s request for attorney’s fees. *See id.* In doing so the trial court ruled that Custom Steel, the Intervener, is not a party that is eligible for attorney’s fees as provided by § 78-27-56.5, *U.C.A.*, and that Custom Steel did not prevail as required by the same statute. *See id.*

## SUMMARY OF ARGUMENT

Mr. Anglin's Complaint sought a garnishment of Funds held by his friend, Mr. Blevins. To sustain that claim, Mr. Anglin relied on a Promissory Note which provides for the recover to Mr. Anglin of attorney's fees. Based on the Promissory Note and its provision for the recovery of attorney's fees, § 78-27-56.5, *U.C.A.*, is implicated.

Custom Steel was the only party to step forward to defeat Mr. Anglin's attempt to garnish funds belonging to Custom Steel. The only other party was Mr. Anglin, although he never set foot in Utah during the entire proceedings in the trial court. As an intervener, Custom Steel must be deemed a party in the action and also for the purpose of applying the reciprocal attorney's fees statute, § 78-27-56.5, *U.C.A.*

Custom Steel also prevailed on every issue. It sought and prevailed in obtaining an order dissolving the garnishment of the Funds sought by Mr. Anglin. It sought and prevailed in obtaining a dismissal with prejudice of all claims brought by Mr. Anglin. Mr. Anglin failed to prevail on any issue. Accordingly, Custom Steel should be deemed the prevailing party when applying the reciprocal attorney's fees statute, § 78-27-56.5, *U.C.A.*

Custom Steel, therefore, should be entitled to recover its attorney's fees just as Mr. Anglin had sought his attorney's fees and just as the underlying Promissory Note provides.

## ARGUMENT

Although § 78-27-56.5, *U.C.A.*, does not define the term “party,” the statute provides for an award of attorney’s fees to a “party that prevails” “based upon any promissory note” “when the provisions of the promissory note” “allow at least one party to recover attorney’s fees.” The statute in full is:

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

§ 78-27-56.5, *U.C.A.*

In interpreting § 78-27-56.5, this Court should be guided by the principle that a statute is generally construed according to its plain language. *See Moreno v. Bd. of Education of Jordan School Dist.*, 926 P.2d 886, 889 (Utah 1996) (“each term in the statute was used advisedly, thus the statutory words are read literally, unless such a reading is unreasonably confused or inoperable”). In *Moreno*, this Court further stated that “words and phrases are to be construed according to the context and the approved usage of the language.” *See id.* Further, “one of the cardinal principles of statutory construction is that the courts will look to the reason, spirit, and sense of the legislation, as indicated by the entire context and subject matter of the statute dealing with the subject.” *See id.*

§ 78-27-56.5 is clearly designed to provide a reciprocal arrangement for the recovery of attorney's fees. That is, the statute is intended by its plain language to bring equity and fairness to contracts and written agreements by giving to all parties the same right to recover attorney's fees, regardless of whether the writing states that only one particular party may recover such fees. Thus, when one party drafts an agreement and makes a provision for the drafting party to recover attorney's fees, the other party or parties should likewise have the same opportunity. This statute equalizes the right to recover attorney's fees for all parties to the agreement.

To qualify under the reciprocal attorney's fees statute, one must only be a party and must prevail. In the instant case, the Promissory Note on which Mr. Anglin based his complaint and on which he relied to obtain a prejudgment writ of garnishment contains express language regarding Mr. Anglin's right to recover attorney's fees. Therefore, Custom Steel, if a party and if it prevailed, should also be entitled to recover its attorney's fees. The trial court denied attorney's fees because it concluded that Custom Steel was not a "party" under § 78-27-56.5, *U.C.A.* and had not prevailed for the purposes of § 78-27-56.5, *U.C.A.* Thus, those two issues are addressed below.

**I. Custom Steel, as an intervener, was a "party" because it was the only active party other than the Plaintiff, Mr. Anglin.**

In the proceedings below, there were only two named parties: Mr. Anglin as the Plaintiff and CFM as the Defendant. However, CFM was dissolved, had no assets, no employees, no operations, and no representation. *See Complaint*; (R. 4-6); Addendum I.

In effect, CFM would not and could not present any defense against Mr. Anglin's Complaint. In bringing his Complaint, Mr. Anglin recognized and acknowledged that CFM was dissolved and had no assets. *See id.* For all practical purposes, CFM is and was what is commonly referred to as judgment proof.

Mr. Anglin obviously knew that CFM could not mount a defense, since CFM had no assets to pay for legal fees nor anyone to hire an attorney to represent CFM. Moreover, CFM had no incentive to defend against Mr. Anglin's claims; CFM had nothing to lose and nothing to gain. Mr. Anglin brought his Complaint for the express purpose of garnishing that part of the receivable which Mr. Blevins held and was soon to be turned over to counsel for Custom Steel, *i.e.*, the Funds. *See id.* The Funds were part of a Global Settlement Agreement ("Agreement") between Custom Steel, its related parties, and Mr. Blevins. (R. 126); Addendum 3. Mr. Blevins knew that he was to turnover those Funds to Custom Steel's attorney within ten days after receipt. *See E-Mail*; Addendum 4.

However, Mr. Blevins encouraged Mr. Anglin to bring the instant action to garnish the Funds soon to be in the possession of Mr. Blevins. In response, Mr. Anglin filed his Complaint and immediately obtained a prejudgment writ of garnishment. (R. 12-14).

Given the foregoing facts, it is clear that Mr. Anglin's lawsuit was commenced solely for the purpose of obtaining the Funds held by Mr. Blevins. In effect, Mr. Anglin used the Promissory Note as the contractual basis for garnishing the Funds. Further, Mr. Anglin sought in his Complaint attorney's fees, costs, and interest as follows:

6. The Plaintiff requests a Prejudgment Writ of Garnishment directed to Steve Blevins, Garnishee, who has possession of a fund being held for the Defendant [CFM].
7. The Plaintiff requests judgment on its First Cause of Action for any and all amounts remaining unpaid under the terms of the Promissory Note, and for interest therein, including costs and attorney's fees; and for other relief deemed just and proper.

WHEREFORE, the Plaintiff requests Judgment against the Defendant as prayed, and for costs and attorney's fees.

*Complaint (R. 2-3); Addendum 1 at 2-3.*

Custom Steel timely and properly intervened to protect its interest in the Funds being held by Mr. Blevins. *See* Addendum 3. The Court allowed and acknowledged the presence of Custom Steel as an intervener and granted Custom Steel's objections to the garnishment. *See Order on Dissolving Garnishment; (R. 149-52); Addendum 5.* Other than Mr. Anglin and Custom Steel, no other parties participated in the trial court. Custom Steel vigorously defended against the garnishment efforts of Mr. Anglin. Accordingly, Custom Steel should be considered a party. *See 59 Am Jur 2d PARTIES at §170* (by the very definition of intervention the intervener is a party to the action and is as much a party to the action as the original parties).

**II. Custom Steel, as an intervener, prevailed in defeating Mr. Anglin's claims and the relief he sought.**

In *Mountain States Broadcasting Co. v. Neale*, 776 P.2d 643, 648 (Utah Ct. App. 1989), the Utah Court of Appeals analyzed the issue of "prevailing party" for the purpose of awarding attorney's fees. That Court stated:



Typically, determining the "prevailing party" for purposes of awarding fees and costs is quite simple. Plaintiff sues defendant for money damages; if plaintiff is awarded a judgment, plaintiff has prevailed, and if defendant successfully defends and avoids an adverse judgment, defendant has prevailed. . . . *See also Checketts v. Collings*, 78 Utah 93, 1 P.2d 950, 953 (Utah 1931) ("There can be but one prevailing party in an action at law to recover a money judgment.").

. . . .  
We hold that in the present circumstances the party in whose favor the "net" judgment is entered must be considered the "prevailing party" and is entitled to an award of its fees. *See, e.g., Ocean West Contractors, Inc. v. Halec Constr. Co.*, 123 Ariz. 470, 600 P.2d 1102, 1105 (1979); *Trollope v. Koerner*, 21 Ariz. App. 43, 515 P.2d 340, 344 (1973); *Moss Constr. Co. v. Wulffsohn*, 116 Cal. App. 2d 203, 253 P.2d 483, 485 (1953); *Szoboszlay v. Glessner*, 233 Kan. 475, 664 P.2d 1327, 1333-35 (1983); *E.C.A. Envtl. Management Servs., Inc. v. Toenyas*, 208 Mont. 336, 679 P.2d 213, 218 (1984). . .

*Mountain States Broadcasting*, 776 P.2d at 648 (some citations omitted).

The Tenth Circuit reviewed "prevailing party" as it relates to § 78-27-56.5, U.C.A. *See In Re Ellison v. Ellison*, 94-4211 1995 U.S. App. Lexis 22117 (D.C. Utah 1995)(unpublished). In *Ellison*, Ellison contended that because First Security recovered substantially less than its total claim, that he was the prevailing party." *See id.* In analyzing the issue of who was the prevailing party, the Tenth Circuit cited *Highland Constr. Co. v. Stevenson*, 636 P.2d 1034, 1038 (Utah 1981)("a party in whose favor an affirmative judgment is rendered, whether or not the judgment is for less than initially sought in the complaint, is the 'prevailing party'").

There is no doubt that Custom Steel prevailed in this action. Mr. Anglin's claims were dismissed with prejudice. Mr. Angling's writ of garnishment was dissolved and the Funds he sought from Mr. Blevins were turned over to counsel for Custom Steel. Custom

Steel prevailed at every hearing and on every issue in the trial court, except when it requested attorney's fees under the reciprocal attorney's fee statute at issue in this appeal.

The trial court may have thought that Custom Steel prevailed on the garnishment issue and in dismissing Mr. Anglin's claims but that it did not prevail on defeating Mr. Anglin's claim that the defendant CFM was not in default. However, that issue was not the issue litigated by Mr. Anglin.<sup>1</sup> Rather, the only issue litigated by Mr. Anglin was the garnishment matter. That was the only subject matter of this action in the trial court. Moreover, Mr. Anglin's Complaint clearly stated that the only relief sought was the garnishment and the Funds held by Mr. Blevins. *See Complaint* (R. 2-3); Addendum 1.

Mr. Anglin did not prevail on any issue. Custom Steel prevailed on every issue. It should be clear and obvious that Custom Steel was the "prevailing party." Since the Promissory Note on which Mr. Anglin was able to obtain a prejudgment writ of garnishment and which allowed Mr. Anglin to recover attorney's fees, the Promissory Note fits well within § 78-27-56.5, *U.C.A.* Custom Steel defeated Mr. Anglin's attempt to garnish the Funds held by Mr. Blevins while Mr. Anglin was attempting to enforce the terms of the Note. Accordingly, Custom Steel prevailed against Mr. Anglin's enforcement of the Note. If Mr. Anglin had been successful in obtaining the Funds, he would have sought his attorney's fees, even though he may not have been able to collect

---

<sup>1</sup> Mr. Anglin never appeared in the trial court proceedings and was at all times represented by an attorney. Mr. Anglin's attorney withdrew on the day he received Custom Steel's Notice of Appeal. Thereafter, Mr. Anglin has apparently been *pro se*, although no communication has been received from him since this appeal began.

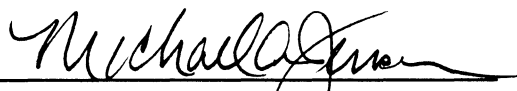
them from CFM, a dissolved corporation with no assets and no operations. Likewise, Custom Steel should be allowed to recover its attorney's fees in defeating Mr. Anglin's attempts to take the Funds which rightfully belonged in total or in part to Custom Steel.

## CONCLUSION

Custom Steel prevailed on every issue. It was the only party participating in the proceedings except for Mr. Anglin. Custom Steel is surely a party. Without Custom Steel, there would have been no defense against Mr. Anglin's attempt to garnish the Funds held by Mr. Blevins. Custom Steel presented the only defense. Moreover, Custom Steel was the only prevailing party and should be considered so under § 78-27-56.5 since the underlying writing on which Mr. Anglin commenced this action allowed Mr. Anglin to recover his attorney's fees.

Custom Steel requests this Court to reverse the trial court and remand for a determination of attorney's fees. Custom Steel also requests its attorney's fees in bringing this appeal.

DATED this 28<sup>th</sup> day of June 2000.

  
Michael A. Jensen (7231)  
Counsel for Intervener Custom Steel

**CERTIFICATE OF SERVICE**

**UTAH SUPREME COURT**

**CASE NO. 20000208-SC**

**MARK ANGLIN,**

**Appellee/Plaintiff,**

**v.**

**CONTRACTING FABRICATION MACHINING, INC., aka CFM, INC.,**

**Defendant,**

**and**

**CUSTOM STEEL FABRICATION, INC.,**

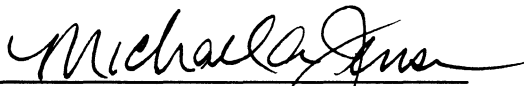
**Appellant/Intervener.**

---

I, Michael A. Jensen, counsel for the Intervener in the above action, hereby certify that on this day I served the foregoing **APPELLANT'S BRIEF** by personally mailing a copy thereof to:

Mark Anglin  
PO Box 3657  
Aspen, Colorado 81612

DATED this 28<sup>th</sup> day of June 2000.

  
\_\_\_\_\_  
MICHAEL A. JENSEN, Esq.

## **ADDENDUM INDEX**

<b>Addendum 1</b>	<b>COMPLAINT with Exhibits</b>
<b>Addendum 2</b>	<b>FINDINGS OF FACT AND CONCLUSIONS OF LAW</b>
<b>Addendum 3</b>	<b>CUSTOM STEEL’S REQUEST FOR HEARING (Garnishment Proceeding) with Global Settlement Agreement</b>
<b>Addendum 4</b>	<b>E-MAIL MESSAGE from Mr. Blevins to Mr. Anglin</b>
<b>Addendum 5</b>	<b>ORDER ON DISSOLVING GARNISHMENT</b>
<b>Addendum 6</b>	<b>FINAL ORDER AND JUDGMENT</b>

Tab 1

Joseph J. Huggins #3809  
Attorney for Plaintiff  
243 East 400 South  
Metro Place, Suite #200  
Salt Lake City, Utah 84111  
(801) 532-3020 (Telephone)  
(801) 531-7928 (Facsimile)

---

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

---

MARK ANGLIN,

Plaintiff,

vs.

C O M P L A I N T

CONTRACTING FABRICATION  
MACHINING, INC.,  
aka CFM, INC.,

Defendant.

Civil No. 990911095  
Judge

*Bohling*

---

Plaintiff, through counsel, complains against the Defendant,  
and alleges as follows:

JURISDICTION AND PARTIES

1. The Plaintiff is an individual, currently resident of the State of Colorado, but at all times herein, doing business in the state of Utah. The Defendant is now a dissolved Utah Corporation, at all times herein having its principal place of business in Salt Lake County, Utah. The business dealings between the parties took place in Salt Lake County, Utah.

FIRST CAUSE OF ACTION

2. On September 7, 1993, Plaintiff loaned the Defendant \$10,000.00 in return for the Defendant's "Promissory Note and Security Agreement", attached hereto as Exhibit A.

00001

3. The Defendant has defaulted in the terms of the Promissory Note, and has made no payment since 9-19-94, when it paid the Plaintiff the sum of \$400.00, drawn no its Bank One, Trolley Square Branch account. The said payment was returned to Plaintiff for "INSUFFICIENT FUNDS", and the payment has never cleared. See Exhibit B attached hereto.

4. According to the Records of the Utah State Department of Commerce, the Defendant corporation was voluntarily dissolved on January 2, 1996, and is no longer doing business in the state of Utah. The Department of Commerce shows the existing registered agent as Randall Isaacson, 8 East Broadway, #735, Salt Lake City, Utah, 84111, but there is no Randall Isaacson at this address. Mr. Isaacson was the President of the Defendant corporation, and he also personally guaranteed the obligation to the Plaintiff. However, Mr. Isaacson has filed for Chapter 7 Bankruptcy, and moved from the State of Utah.

5. It is believe that Defendant has no assets within the State of Utah, excepting the funds being held by a third person, Mr. Steve Blevins, for the benefit of the Defendant. See attached Exhibit C, Notice of Dissolution.

#### PREJUDGMENT WRIT OF GARNISHMENT

6. The Plaintiff requests a Prejudgment Writ of Garnishment directed to Steve Blevins, Garnishee, who has possession of a fund being held for the Defendant.

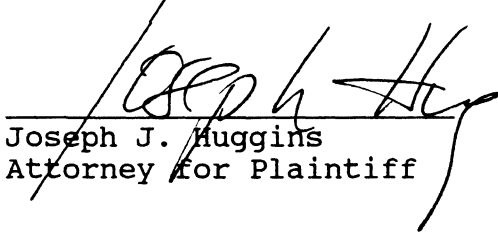
7. The Plaintiff requests judgment on its First Cause of Action for any and all amounts remaining unpaid under the terms of



the Promissory Note, and for interest therein, including costs and attorney's fees; and for other relief deemed just and proper.

WHEREFORE, the Plaintiff requests Judgment against the Defendant as prayed, and for costs and attorney's fees.

Dated this 30 day of Nov., 1999

  
\_\_\_\_\_  
Joseph J. Huggins  
Attorney for Plaintiff

*Promissory Note and Security Agreement*

FOR VALUE RECEIVED, the undersigned BORROWER(S), jointly and severally, promise to pay to the order of MARK ANGLIN ("LENDER"), payee, or its order, at its office at 3235 AMARILLO, SIMI VALLEY, CA, or such other place as the holder may designate, the sum of \$ 10,000 (consisting of the elements shown below) payable in successive monthly installments as provided in the Schedule of Installment Payments appearing below, the first payment to become due on , and subsequent payments to become due on the same day of each month thereafter until the full amount of this note is paid, with interest at the highest rate lawful after maturity, together with all costs of collection, court costs and reasonable attorneys fees, and without relief from valuation and appraisal laws. The PERCENTAGE RATE is 4%, monthly.

If any installment is not paid within Five (5) days after the same shall become due, a late charge of Five Percent (5%) of each such installment shall be payable to the holder at that time.

Upon the happening of any of the following events, the holder may, at its option, forthwith accelerate the maturity, and the entire unpaid balance hereof shall thereupon immediately become due and payable without demand or notice, and the holder shall have the rights and remedies of a secured party under the Utah U.C.C., namely: (a) failure to pay any installment hereunder when due; (b) failure of performance of any obligation of the undersigned to the holder; (c) death or dissolution of the undersigned; (d) if the undersigned or any endorser, accommodation party, guarantor or surety of this note shall become insolvent, make a general assignment for the benefit of creditors, or if any proceeding of any nature under the Federal Bankruptcy Act, as amended, or under any state insolvency law, be commenced by or against any of them, or a receiver be appointed for or a writ or order of attachment or garnishment be issued or made against any of the property, assets or income of any of them; (e) if the holder hereof shall deem himself insecure.

The undersigned and all endorsers, accommodation parties, guarantors and sureties hereof, jointly and severally waive presentment for payment, notice of dishonor and demand, notice of non-payment, notice of protest and protest of this note, and all other notices and demands required by law, and consent to any and all extensions of time or modifications that may be granted with respect to the payment or other provisions of this note, and to the release of any collateral or other security, or any part thereof, and agree that additional makers, endorsers, accommodation parties, guarantors or sureties may become parties hereto without notice to them and without affecting their liability hereunder and further agree that it shall not be necessary for the holder to resort to legal remedies against any of them before proceeding against any other of them, and that no release of one or more of the makers,

endorsers, accommodation parties, guarantors or sureties, whether by operation of law or by any act of the holder of this note, shall release any other maker, accommodation party, endorser, guarantor or surety.

This note evidences a loan by the payer to the undersigned for the purchase by the undersigned of the Property, as described on attached Exhibit "A", and the undersigned does hereby grant to the payee, its successors and assigns, and any holder of this note, a purchase money security interest in said Property, together with all additions and accretions thereto, and all products and proceeds thereof, and, in addition, a security interest in all equipment, inventory, accounts, accounts receivable, and all other personal property belonging to the BORROWER(S), now owned or hereafter acquired, together with all products and proceeds thereof, as security for the payment of this note. The security interest

00004

Upon the sale of any item described on attached Exhibit "A", the proceeds of such sale shall be paid to the holder of this note and applied against the installments to be paid hereunder in reverse order beginning with the last installment. BORROWER(S) hereby grant(s) to LENDER the exclusive right to collect from the purchaser of any such item sold the purchase price thereof. To the extent LENDER allows BORROWER(S) to collect such sums directly, however, BORROWER(S) shall acquire no title to such sums, but shall hold them as LENDER's trustee.

This note may be one of a series of notes from the undersigned to the payee. Upon default of any note in this series, the remaining notes shall, at the option of the holder and without demand or notice to the undersigned, become immediately due and payable.

The loan evidenced by this note is made in the State of Utah. This note shall be governed and construed under the laws of the State of Utah. Any action for enforcement or interpretation hereof must be brought, if at all, in the courts of Salt Lake County, Utah.

SCHEDULE OF PAYMENTS

INTEREST on PRINCIPAL of \$10,000 is due in 60 days.

INTEREST and balance of PRINCIPAL is due in 120 days.

MADE AND EXECUTED this 7 day of SEPTEMBER, 1993.

EXHIBIT "A", SECURITY ~~DUCK~~ ENVIRONMENTAL SVS. ....

REFERENCE ~~MASK~~ A. ....

BORROWER(S).

*Randy Isaacson*  
(Print Name and Address)

*Randy Isaacson, Pres*  
(Authorized Signature)

.....  
(Print Name and Address)

.....  
(Authorized Signature)

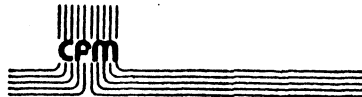
SCHEDULE OF PAYMENTS

INTEREST ON PRINCIPAL \$10,000  
INTEREST AND PRINCIPAL OF FINANCING  
DATE AND EXPIRATION DATE 7 SEPTEMBER 1993

EXHIBIT "A" SET "B" DUCK ENVIRONMENTAL SYS  
REMARKS MARK A

ENGINEER(S):

Randy Isaacson  
Randy Isaacson, Pres.



CONTRACTING FABRICATION MACHINING, Inc.

2630 South 3270 West 974-0057 Salt Lake City, UT 84119  
580

No 27961

INSUFFICIENT FUNDS  
Bank One, Utah, NA  
Trolley Square Office  
515 South 700 East  
Salt Lake City, Utah 84102  
97-154/1240

PAY

THE SUM 400.00 INSUFFICIENT FUNDS

DATE

AMOUNT

TO  
THE  
ORDER  
OF

Mark Anglin

INSUFFICIENT FUNDS

9/19/94

\$ 400.00

⑈002796⑈ ⑆124001545⑆ 913273788⑈ ⑆0000040000⑈

SP1000 CARBONLESS I C SECURITY PRINTERS, INC.

⑈002796⑈ ⑆124001545⑆ 913273788⑈

⑆0000040000⑈

100000

3

80000

DANNY QUINTANA & ASSOCIATES, P.C.

Attorneys at Law  
Judge Building, Suite 735  
8 East Broadway  
Salt Lake City, Utah 84111

DANNY QUINTANA  
DAVID W GEARY

(801) 363-7726  
Fax (801) 521-4625

Notice of Dissolution to All CFM Creditors

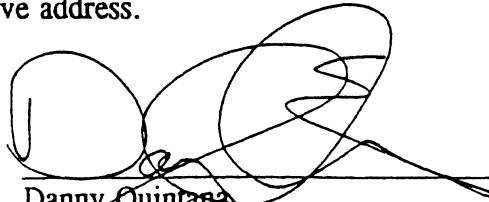
To Whom It May Concern:

*A+ R*

Please be advised that Contracting Fabrication Machining, Inc. is no longer in business and has been formally dissolved. The date of Dissolution is December 30, 1995. If you have a outstanding claim against the company please send your notice to:

Danny Quintana  
Danny Quintana & Associates, P.C.  
8 East Broadway, Suite 735  
Salt Lake City, Utah 84111

Please include in your notice of claim the amount owed, the date the obligation was incurred and a copy of any written agreement. Unless your claim is sooner barred by any State Statute limiting actions, you have 120 days from the receipt of this Notice of Dissolution to file a claim. Any claim received after 120 days will not be honored. If you have any questions or need more information please call Danny Quintana at (801) 363-7726 or send written correspondence to the above address.



Danny Quintana  
Registered Agent for CFM, Inc.

*2030S. 3270W.*

Tab 2




**MICHAEL A. JENSEN (7231)**  
**Attorney at Law**  
Kearns Building, Suite 300  
136 South Main Street  
Salt Lake City, Utah 84101-3656  
(801) 519-9040; Fax: 519-9264

Filed & Served 12/24/99

**FILED DISTRICT COURT**  
**Third Judicial District**

**JAN 31 2000**

**SALT LAKE COUNTY**

By  Deputy Clerk

**Counsel for Intervener**

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

450 South State Street  
PO Box 1860, Salt Lake City, Utah 84111-1860  
Third District Clerk: 238-7480; In-Court Clerk: 238-7507/7027 (Melba/Brandi) W42

**MARK ANGLIN,**

Plaintiff,

v.

**CONTRACTING FABRICATION  
MACHINING, INC. aka CFM, INC.,**

Defendant.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Case No. 990911095

Judge William B. Bohling

The Court, having reviewed memoranda submitted by the parties on objections to the writ of garnishment and after hearing on December 6, 1999, at which the Plaintiff was represented by his counsel of record, Joseph J. Huggins, and the Defendant was represented by its counsel of record, Michael A. Jensen, the Court enters the following:

**FINDINGS OF FACT**

1. The Plaintiff commenced this action based on a collection claim on a promissory note dated September 7, 1993, and executed by Randy Isaacson.

00180

2. At the time the Plaintiff filed this action, his claim was unsecured as evidenced by the Plaintiff's affidavit.

3. The Defendant, Contracting Fabrication Machining, Inc. ("CFM"), was dissolved in January 1996, and has no known assets.

4. CFM possessed at one time two accounts receivable, one of which was paid into the Court. The second account receivable was from Clean Gas, and this Court entered an order which transferred the Clean Gas Receivable to Steven C. Blevins and his wife as recommended by the Receiver for CFM.

5. The account receivable which was paid into the Court was also transferred to Steven C. Blevins and his wife, after certain expenses were deducted for the Receiver and his attorney.

6. The net effect of these transfers is to remove such accounts receivable from the possession and/or control of CFM and to transfer all control and possession of them to Mr. and Mrs. Blevins.

7. CFM was not a plaintiff in any action in this court involving claims for the Clean Gas Receivable, nor has CFM made any claims against Mr. or Mrs. Blevins, in this Court or in any court, which seeks damages or monetary payment from the Blevinses.

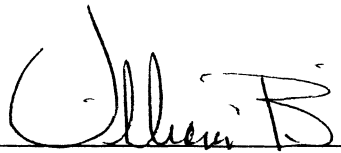
#### **CONCLUSIONS OF LAW**

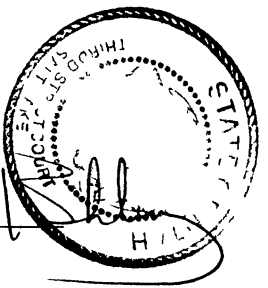
1. The Plaintiff's claims procedurally must be prosecuted in the Receivership Action in order to provide equal treatment to all unsecured creditors as required by law.

2. The Plaintiff failed to timely move the Court to reopen the Receivership Action and has therefore lost that opportunity to have his claim considered by the Receiver for CFM.

3. Since the Clean Gas Receivable was transferred in its entirety to Mr. and Mrs. Blevins, any funds collected by the Blevinses from that Clean Gas Receivable is void of any CFM ownership or interests in such collected funds. In effect, any interest which CFM may have had in the Clean Gas Receivable was terminated when the Receivable was transferred to the Blevinses.

DATED this 31 day of January 2000.

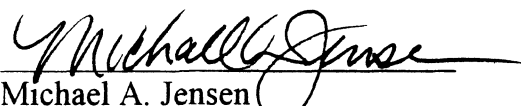
  
Judge William B. Bohling  
Third District Court Judge



Approved as to form:

\_\_\_\_\_  
Joseph J. Huggins  
Attorney for the Plaintiff

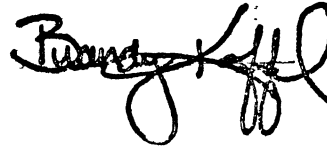
DATED this 24<sup>th</sup> day of December 1999.

  
Michael A. Jensen  
Attorney for Intervener

Tab 3

**MICHAEL A. JENSEN (7231)**  
**Attorney at Law**  
Kearns Building, Suite 300  
136 South Main Street  
Salt Lake City, Utah 84101-3656  
(801) 519-9040; Fax: 519-9264

Filed & Served 11/29/99



**Counsel for Intervener**

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

450 South State Street  
PO Box 1860, Salt Lake City, Utah 84111-1860  
Third District Clerk: 238-7480; In-Court Clerk: 238-7507/7027 (Melba/Brandi) W42

**MARK ANGLIN,**

Plaintiff,

v.

**CONTRACTING FABRICATION  
MACHINING, INC. aka CFM, INC.,**

Defendant.

**REQUEST FOR HEARING  
(Garnishment Proceeding)**

Case No. 990911095

Judge William B. Bohling

Custom Steel Fabrication, Inc. ("Custom") hereby makes a timely request for hearing, pursuant to Rule 64D(h), *Utah R. Civ. P.*, to challenge the writ of garnishment served on garnishee Steven C. Blevins. This request is based on the following reasons:

1. The Answers to Interrogatories furnished by Mr. Blevins are inaccurate because the funds ("Funds") being held by Mr. Blevins are not and never were intended for CFM, the Defendant herein, nor for the benefit of CFM. In effect, CFM has no legal or equitable title to such Funds.

2. The Funds belong to the plaintiffs in a related action, Case No. 960903449 ("Blevins Action"), a case brought against Mr. Blevins, and which case was settled as

part of a Global Settlement Agreement (“Agreement”), copy is attached hereto as Exhibit A. The plaintiffs in that case include Custom, the requester herein.

3. The Agreement expressly intends that

In consideration of settlement and dismissal of the [Blevins Action] and as inducement to Drabner and the Receiver to wind up the affairs of CFM in accordance with the terms of this global settlement, the Blevins shall perform and/or pay, and the Isaacsons<sup>1</sup> shall perform and/or pay, as follows:

.....

The Blevins shall disburse the . . . 33.3% within 10 days of receipt thereof by paying by check to the Isaacsons’ counsel’s trust account.

*See Agreement at 3 ¶ 3.2, Exhibit A.*

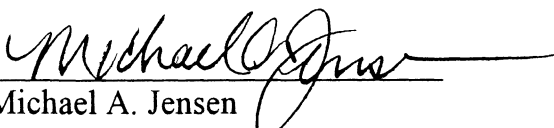
4. Custom was one of three plaintiffs in the Blevins Action and is, along with the other two plaintiffs, entitled to 100% of the Funds being garnished. CFM was not a party to the Blevins Action nor to another related action, Case No. 960902152 (“Receiver Action”), a case which was the subject of a lengthy Receivership proceeding that was concluded in July 1999 as part of the Agreement. CFM made no claims against any party and was not entitled to any proceeds from the settlement. On the other hand, Custom made claims to the Receiver against CFM’s estate, but such claims were never paid except through the Agreement which settled both the Receiver Action and the Blevins Action.

---

<sup>1</sup> The term “Isaacsons” was used to refer to all parties except for the Blevins and Drabner, the plaintiff in the Receiver Action. The parties included in the grouping Isaacsons, are Custom, Heidi Bishop, Jason Bishop, Wendy Garamendi, Mark Garamendi, Randy Isaacson, Linda Isaacson, and CFM

Accordingly, Custom requests a hearing on the writ of garnishment, objects entirely to the writ of garnishment, and requests that the garnishment be terminated so that the Funds being held by Mr. Blevins may be paid as directed by the terms of the Agreement.

DATED this 29<sup>th</sup> day of November 1999.

  
Michael A. Jensen  
Attorney for Custom Steel

## *Global Settlement Agreement*

Steven Blevins ("SBlevins") and Debra Kay Blevins ("DBlevins") (together the "Blevins") Robert D. Drabner ("Drabner"), Paul Beard ("Beard" or the "Receiver"), and Custom Steel Fabrication, Inc. ("CSFI"), Contracting Fabrication Machining, Inc., a Utah corporation ("CFM"), Randy Isaacson ("RIsaacson"), Linda I. Isaacson ("LIsaacson"), Heidi Bishop ("HBishop"), Jason Bishop ("JBishop"), Wendy Garamendi ("WGaramendi"), and Mark Garamendi ("MGaramendi") (together the "Isaacsons"), in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby stipulate and agree as hereinafter set forth.

### **1.0 The Recitals.**

1.1 CFM and RIsaacson previously borrowed approximately \$60,000 from the Blevins, secured by CFM's non-real-property assets and certain realty owned by LIsaacson, and guaranteed by RIsaacson (the "Debt").

1.2 LIsaacson filed suit in Box Elder County, Brigham City Department, District Court in Case No. 950000074-PR to enjoin the foreclosure sale of her real property (the "Brigham City Proceeding"). The Blevins counterclaimed and brought a third party complaint against CFM and RIsaacson therein, seeking judgment on the Debt. The Blevins obtained summary judgment against CFM and RIsaacson on the Debt, and LIsaacson's restraining order was lifted, whereupon the Blevins foreclosed upon LIsaacson's real property. The Blevins docketed that summary judgment in Davis County, Farmington Department, District Court, as Case No. 956703286-AJ (the "Davis Collection"), and in Salt Lake County, Salt Lake Department, District Court, as Case No. 956926130-AJ (the "Salt Lake Collection"). The Blevins also had the summary judgment in the Brigham City Proceeding docketed in New York.

1.3 RIsaacson and Drabner had previously been the shareholders of CFM, and had executed articles of dissolution and an agreement of dissolution for CFM.

1.4 RIsaacson and LIsaacson filed, at various times, Chapter 13 cases in United States Bankruptcy Court. Those cases were all converted to Chapter 7 and ordered administered jointly by trustee Stephen Rupp (the "Trustee") under Case No. 96B-20981 (the "Bankruptcy Case"). In the Bankruptcy Case, the Isaacsons claimed that assets of CFM had passed to RIsaacson and thus were part of RIsaacson's and LIsaacson's bankruptcy estate.

1.5 The Blevins in the Salt Lake Collection and in New York had garnishments issued against several of CFM's accounts receivable and had a writ of execution issued against and had seized by the constable CFM's tangible personalty. The Isaacsons have claimed that some of the items seized by the constable pursuant to the execution were assets of CSFI.

1.6 CSFI, HBishop and MGaramendi filed suit against SBlevins and others in Salt Lake County, Salt Lake Department, District Court, as Case No. 960903449-CV, alleging interference with contract, trespass, and assault, among other claims (the "CSFI Proceeding").



1.7 Drabner filed suit against RIsaacson, CFM, and others seeking appointment of a receiver for CFM, among other relief, in Salt Lake County, Salt Lake Department, District Court, as Case No. 960902152-CV (the "Receivership Proceeding"). Beard was duly appointed as Receiver in the Receivership Proceeding, and a restraining order issued.

1.8 All parties, save the Isaacsons, maintain that all assets held by the Receiver or subject to the restraining order issued in the Receivership Proceeding and/or held or claimed by CSFI are the assets of CFM. The Isaacsons maintain that all or part of those assets are the separate property of CSFI.

1.9 The Parties hereto have reached a settlement of all claims by, between, and among them, and desire hereby to reduce that settlement to writing.

## 2.0 The Receivership Proceeding.

The Parties hereto have agreed that the Receiver shall issue a final report and give notice thereof to parties-in-interest as required by the Court and by applicable law. Drabner, the Isaacsons, and the Blevins have agreed not to object to winding up CFM's affairs via this final report, subject to the provisions of this Agreement. In general, the Agreement calls for certain assets to be disbursed either to the Blevins or CFM and/or CSFI, for the Receiver and his counsel to be discharged and the affairs of CFM wound up, and all lawsuits to be dismissed and claims to be forever waived, all as set forth hereafter. A true and correct copy of the Receiver's Final Report is attached as Exhibit "A".

## 3.0 The Settlement.

3.1 The Personalty in Storage. Certain tangible personal property, belonging either to CFM or CSFI, but in which the Blevins claim a primed, properly perfected security interest, were seized pursuant to the execution referred to above. Most of this property remains in storage with A-1 Moving & Storage (the "Tangible Personalty"). The remainder of this property, constituting several boxes of documents and records and miscellaneous items, were removed by the Receiver and his Counsel and are in the possession of the Receiver (the "Records"). The Records and the Tangible Personalty shall be abandoned to CFM and/or CSFI, since the cost of administration may exceed the costs of seizure and storage, making them of negligible value to the Receiver, and the Blevins hold a primed security interest therein. The Isaacsons, however, shall be solely responsible for all costs of seizure, removal, storage, and retrieval of such personalty, and agree, jointly and severally, that they shall defend and hold harmless the Blevins and their counsel, the Receiver and his counsel, and Drabner and his counsel, from any and all claims by the constable and storage company in connection with the said personalty, except as follows:

3.1.a. The Blevins shall contribute the greater of \$2,000 and 20% of the costs to satisfy the constable and A-1 Moving and Storage; \$2,000 shall be disbursed to the constable and/or A-1 Moving and Storage upon the later of execution hereof by all the parties hereto and approval by the Court of the Receiver's Final Report.

3.1.b. The Blevins, the Receiver and his counsel, Drabner and his counsel, make no warranty as to title to the Personality.

**3.2 Consideration for Dismissal of CSFI Proceeding, Etc.** In consideration of settlement and dismissal of the CSFI Proceeding and as inducement to Drabner and the Receiver to wind up the affairs of CFM in accordance with the terms of this global settlement, the Blevins shall perform and/or pay, and the Isaacsons shall perform and/or pay, as follows:

3.2.a. The Blevins shall pay to the Isaacsons by delivery of a check to the Isaacsons' counsel's trust account the difference between \$2,000 and 20% (referred to in § 3.1.a., above) within 10 days of receipt of the constable's and/or A-1 Moving and Storage's invoice and proof of payment.

3.2.b. The Blevins shall pay to the Isaacsons 33.3% of the net proceeds of the Clean Gas Receivable. The net proceeds shall be net of all attorney's fees and costs incurred (whether by the Blevins or the Receiver) in pursuing and preserving this receivable, which the Blevins agree to pursue with all due diligence. The Isaacsons delegate to the Blevins and their counsel full authority to settle the claim upon the Clean Gas Receivable upon such terms as they, in their best business judgment, determine to be fair and reasonable, and hereby agree to defend and hold harmless the Blevins against any claims, counterclaims, competing claims or offsets by Clean Gas and/or any other person. The Blevins shall disburse the Isaacsons' 33.3% within 10 days of receipt thereof by paying by check to the Isaacsons' counsel's trust account.

3.2.c. LIsaacson shall direct her counsel in the Brigham City Proceeding, who hold in their trust account the cash proceeds of the cash bond posted by her, to pay forthwith to the Trustee (and not pending approval by the Bankruptcy Court) all net proceeds of the cash bond pursuant to their agreement with the Trustee. A form of demand, which LIsaacson shall execute and deliver to her counsel upon approval by the Court of the Receiver's Final Report, is attached as Exhibit "B".


**3.3 Other Assets.** The Receiver shall convey to the Blevins the net proceeds of the funds presently on deposit with the Court in the Receivership Proceeding, as well as that account receivable of CFM owed by Clean Gas (the "Clean Gas Receivable"), and any and all claims to assets of the Isaacsons' Bankruptcy Estate. The net proceeds shall be net of all reasonable attorney's fees and costs incurred.

**3.4 Waiver of Claims/Full Satisfaction.**

3.4.a. The Isaacsons, their heirs, agents and assigns, hereby accept the consideration they are to receive hereunder in full satisfaction of all claims, and further withdraw (to the extent they have any), and forever waive, any and all claims, whenever incurred against RIsaacson's and LIsaacson's bankruptcy estate(s), Drabner (his heirs, agents and assigns), the Receiver (his heirs, agents and assigns), the assets of CFM and/or

CSFI identified in §§ 3.1 – 3.3, above, and the Blevins, their heirs, agents and assigns, except as specifically set forth in this Agreement.

3.4.b. The Blevins, their heirs, agents and assigns, hereby accept the consideration they are to receive hereunder in full satisfaction of all claims, and further withdraw (to the extent they have any), and forever waive, any and all claims, whenever incurred, against the Isaacsons, Drabner and the Receiver, their heirs, agents, and assigns, except as specifically set forth in this Agreement.

3.4.c. Drabner, his heirs, agents and assigns, hereby withdraws (to the extent he has any), and forever waives, any and all claims, whenever incurred, against the Isaacsons, the Receiver and the Blevins, their heirs, agents, and assigns, except as specifically set forth in this Agreement, and further consents to entry of orders approving the Receiver's Final Report and approving this Agreement, conditioned upon the approval by the Court of the Receiver's Final Report. 

3.4.d. The Receiver, his heirs, agents and assigns, hereby withdraws (to the extent he has any), and forever waives, any and all claims, whenever incurred, against the Isaacsons, Drabner and the Blevins, their heirs, agents, and assigns, except as specifically set forth in this Agreement, and further consents to entry of orders approving the Receiver's Final Report and approving this Agreement, conditioned upon the approval by the Court of the Receiver's Final Report.

#### 4.0 Dismissal of the CSFI Proceeding.

Upon approval of the Receiver's Final Report by the Court, the Isaacsons shall execute and/or cause to be executed on their behalf, a dismissal with prejudice of the CSFI Proceeding, pursuant to the Stipulated Order of Dismissal, a true and correct copy of which is attached as Exhibit "C".

#### 5.0 Miscellaneous.

5.1. Utah law shall apply in any construction and/or interpretation of the terms of this Agreement, and the Courts of Salt Lake County, Utah, shall have exclusive jurisdiction over any proceeding arising herefrom.

5.2. In the event of any breach hereof, the non-breaching and/or prevailing party shall be entitled to recover his attorney's fees and costs, with or without the commencement of a court proceeding, before or after trial, and/or in the event of any appeal.

5.3. The headings hereof are for convenience only, and shall not be relied upon for interpretation of any provision hereof.

5.4. The covenants and conditions hereof shall inure to the benefit of the heirs and assigns of the parties hereto.

5.5. In the event a party is determined by a Court of competent jurisdiction to be entitled to injunctive relief, the requirement that the party post bond is hereby waived.

5.6. No waiver of performance in one instance shall be construed to be a waiver of all future such performances.

5.7. In the event any provision hereof is determined to be unenforceable for any reason, the remaining provisions shall remain enforceable.

5.8. This is the Parties' entire agreement. No prior representations or statements have any force or effect, but are merged herein. No modification of any term hereof shall be enforceable unless made in writing, signed by all Parties hereto, and supported by adequate consideration.

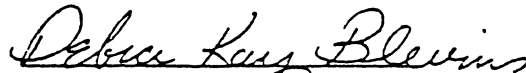
5.9. This Agreement shall be effective upon the later of execution by all the parties hereto, and approval as to form by their several counsel, and approval by the Court of the Receiver's Final Report.

5.10. This Agreement shall be effective if executed, at the parties' convenience, with duplicate and/or facsimile copy signature pages.

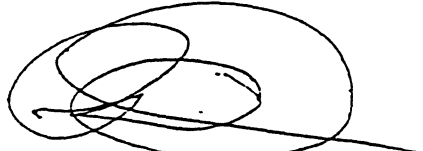
DATED February \_\_\_\_, 1999.

THE BLEVINS:

  
Steven Blevins

  
Debra Kay Blevins

APPROVED AS TO FORM:

  
Ronald L. Dunn, Esq.  
Attorney for Blevins

Tab 4

CFM debt

mailbox /C%7C/NETSCAPE/mail/Sen 8061448 5A7F@sisna.com&numbe

**Subject:** CFM debt

**Date:** Thu, 14 Oct 1999 11:35:04 -0600

**From:** Steve Blevins <blevins@sisna.com>

**To:** rojo\_mark@hotmail.com

Mark, this may turn out to be very good news and wish I had thought of it earlier. CFM has some money coming to them through my hands from our settlement. It looks like about \$6000+. I called an attorney today who went against CFM for another creditor. He said he would be willing to handle the case, and he is one of the most competent business lawyers I saw operate. His name is Chris Schmutz, 801-364 0256 265 E 100 S SLC, UT. He said it would cost about \$400-500 for the first round of documents to get seize the money and get judgments. Probably another \$500 to finish. I believe I have most of the documents here he would need, and I will be glad to do whatever footwork is necessary in your behalf.

I would be willing to pay 1/2 of the legal fees if unsuccessful. I expect to get a check any day and then I have to disburse it within 10 days, so you need to hurry. I'm going through the documents even as I write this. You need to call him tomorrow if possible, he said he could get started Monday. Steve

Tab 5

**Attorney at Law**  
Kearns Building, Suite 300  
136 South Main Street  
Salt Lake City, Utah 84101-3656  
(801) 519-9040; Fax: 519-9264

SALT LAKE COUNTY

### Counsel for Defendant

450 South State Street  
PO Box 1860, Salt Lake City, Utah 84111-1860  
Third District Clerk: 238-7480; In-Court Clerk: 238-7507/7027 (Melba/Becki) W42

Judge William B. Bohling

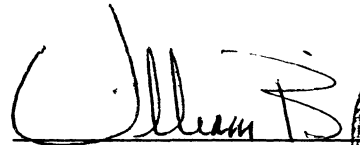
IT IS HEREBY ORDERED that the garnishment in this action be dissolved and that Mr. Blevins pay the funds garnished in this action to Michael A. Jensen, Attorney Client Trust Account, as required by the Global Settlement Agreement, and that Mr. Blevins make such payment to Mr. Jensen no later than December 17, 1999, provided that the

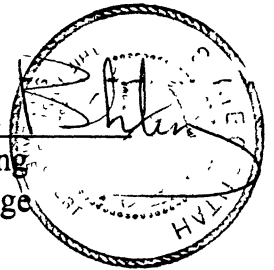


Plaintiff has not filed by such date a motion with this Court to reopen the Receivership Action, Case No. 960902152.

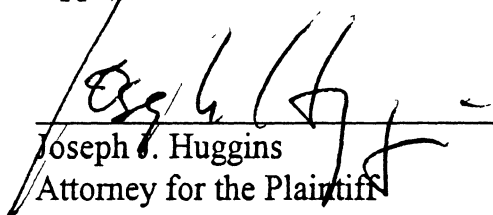
IT IS FURTHER ORDERED that upon receipt by Mr. Jensen of the garnished funds held by Mr. Blevins, the Plaintiff may obtain from the Clerk of the Court the amount of his undertaking previously deposited with the Court in obtaining the writ of garnishment.

DATED this 16 day of December 1999.

  
Judge William B. Bohling  
Third District Court Judge



Approved as to form:

  
Joseph L. Huggins  
Attorney for the Plaintiff

Tab 6

**MICHAEL A. JENSEN (7231)**  
Attorney at Law  
Kearns Building, Suite 300  
136 South Main Street  
Salt Lake City, Utah 84101-3656  
(801) 519-9040; Fax: 519-9264

**FILED DISTRICT COURT**  
Third Judicial District

FEB 09 2000

By                       
SALT LAKE COUNTY  
Deputy Clerk

**Counsel for Intervener**

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

450 South State Street  
PO Box 1860, Salt Lake City, Utah 84111-1860  
Third District Clerk: 238-7480; In-Court Clerk: 238-7507/7027 (Melba/Brandi) W42

**MARK ANGLIN,**

Plaintiff,

v.

**CONTRACTING FABRICATION  
MACHINING, INC. aka CFM, INC.,**

Defendant.

**FINAL ORDER AND JUDGMENT**

Case No. 990911095

Judge William B. Bohling

The Court, having reviewed the motions by Custom Steel Fabrication, Inc. , the Intervener, and having reviewed the memoranda submitted by the Plaintiff and the Intervener, and after oral argument by the parties at hearing on January 31, 2000, wherein the Plaintiff was represented by his counsel of record, Joseph J. Huggins, and the Intervener was represented by its counsel of record, Michael A. Jensen, the Court grants the motion to dismiss with prejudice, grants the motion for findings of fact and conclusions of law as submitted by the Intervener, and denies the motion for attorney's fees and enters the following conclusions of law and final order and judgment:

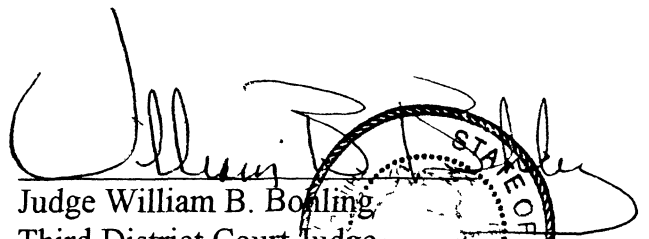
## CONCLUSIONS OF LAW

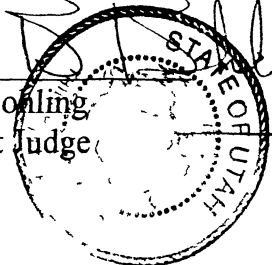
1. The Intervener is not a "party" that is eligible for attorney's fees as provided by § 78-27-56.5, Utah Code Ann.
2. Although the Intervener was successful in defeating the Plaintiff's request for garnishment of funds held by a third-party, Steven C. Blevins, and although those funds were turned over to the Intervener's counsel of record by order of this Court, such success is not equivalent to prevailing as required by § 78-27-56.5, Utah Code Ann.

### **THEREFORE, IT IS ORDERED AND ADJUDGED that**

1. This action be and is dismissed with prejudice;
2. The Findings of Fact and Conclusions of Law submitted by the Intervener be entered in addition to the above Conclusions of Law; and
3. No attorney's be awarded to any party or to the Intervener.

DATED this 9 day of February 2000.

  
Judge William B. Bowling  
Third District Court Judge



Approved as to form:

\_\_\_\_\_  
Joseph J. Huggins  
Attorney for the Plaintiff