

2000

# Housing Authority of the County of Salt Lake v. John Thomas Snyder : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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HOUSING AUTHORITY OF THE  
COUNTY OF SALT LAKE,

Plaintiff/Appellee

vs.

JOHN THOMAS SNYDER,

Defendant/Appellant.

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Case No. 20000591

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REPLY BRIEF OF APPELLANT

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AN APPEAL FROM JUDGMENT ENTERED BY THE THIRD JUDICIAL  
DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, MURRAY  
DEPARTMENT, The Hon. Michael K. Burton, Judge Presiding  
(Trial Court Case No. 00-201-0956)

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ORAL ARGUMENT REQUESTED

**FILED**

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UTAH

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	:	<b>BRIEF OF APPELLANT</b>
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DEFENDANT/APPELLANT, JOHN TOM SNYDER by and through counsel,  
submits this **REPLY BRIEF** in further support of his appeal.

**REPLY RE: ISSUES PRESENTED FOR REVIEW**

Salt Lake County Housing Authority (hereinafter "Housing Authority") has not filed an appeal. The Housing Authority's gratuitous recitation of its "issues presented for review" in Mr. Snyder's appeal is not helpful. The opening brief filed by appellant, John Thomas Snyder, sets forth the issues presented for review and now before this Court.

### **SUMMARY OF REPLY ARGUMENT**

Mr. Snyder preserved each issue presented on appeal. The various matters presented were disposed of by necessary implication by the judgment. Each issue on appeal was presented to and considered by the trial court. Even if the issues had not been formally preserved for appeal, the issues are of such significance that the rulings and actions of the trial court were "plain error" such that they may be considered on appeal.

Mr. Snyder presented "good cause" to continue trial. The trial court was erroneously informed the case was ready for trial. Mr. Snyder was not prepared for a trial. Mr. Snyder was not granted time to engage in discovery and prepare a defense.

The trial court erred by allowing an expedited hearing. Prior to 1981, actions for unlawful detainer were granted expedited trial dates by the rules of practice in the Utah trial courts. After 1981, the unlawful detainer statutes does not provide for an expedited trial absent utilization of the possession bond provision.

Mr. Snyder properly marshaled the evidence with regard to the insufficient facts presented at trial. Those facts, in their entirety, do not support a "beyond a reasonable doubt" criminal conviction for assault. Mr. Snyder made no attempt to do injury. Similarly, Mr. Snyder made no threat to do bodily injury. All of the facts presented at trial and now marshaled for this Court do

not establish a threat, accompanied by a show of immediate force or violence, to do bodily injury.

The validity of the lease provisions was presented to the trial court and is properly before this court. The lease provision the Housing Authority chose to include is unreasonable. Mr. Snyder's lease provision prohibits "all illegal or criminal activity on or near the premises" (R. 7-8). The provision justifies eviction without a due process administrative proceeding for minor offenses. The federal regulations do not allow such a broad prohibition. The lease provision is too broad and thus unreasonable.

The unlawful detainer statute provides an extremely harsh remedy. There must be strict compliance throughout the entire eviction process. The notice of eviction served upon Mr. Snyder recites alleged criminal behavior against an employee. The notice of eviction refers to a lease provision prohibiting misconduct toward a tenant. At no time did Mr. Snyder engaged in alleged mis-conduct toward a tenant. The eviction notice is therefore defective, and Mr. Snyder's eviction was not justified.

Mr. Snyder was entitled to an administrative hearing to challenge his eviction as per the terms and conditions of his lease with the County Housing Authority. This issue was raised before the trial court. Even if it were not raised below, it is properly before this Court. Failure to allow administrative



review is jurisdictional. Jurisdictional defects may be raised and considered at any time.

The Housing Authority may exclude certain matters from the administrative grievance procedure based upon a due process determination from HUD. The exclusion from the administrative grievance procedure is strictly linked to the judicial procedure subject to HUD's due process determination. In Utah, HUD's due process determination of the judicial eviction procedure does not apply where the plaintiff obtains possession by filing a possession bond. Utah's forcible detainer statute authorizes an expedited hearing only when the plaintiff files a possession bond and the defendant requests an expedited hearing. HUD's due process determination in Utah, thus, does not apply to any expedited eviction procedures. Therefore, in Utah there are no exclusions from the administrative grievance procedure in any expedited evictions involving federally subsidized housing. Mr. Snyder should have been allowed to avail himself of the administrative grievance procedure.

#### **REPLY ARGUMENT**

##### **I. JOHN THOMAS SNYDER PRESERVED EACH ISSUE PRESENTED ON APPEAL.**

The Housing Authority argues that various issues on appeal were not preserved in the trial court such that this Court is now precluded from reviewing them. Mr. Snyder reaffirms and reasserts that, as set forth in his opening brief, each issue on

appeal was presented to and properly preserved before the trial court.

The Housing Authority contends that certain motions made by Mr. Snyder were never ruled upon by the trial court and that notices to submit were never submitted.<sup>1</sup> The various matters presented and motions made prior to and at the beginning of the trial for a continuance, etc. were disposed of by necessary implication by the judgment.

The Housing Authority notes, for instance, that Defendant's Motion for Summary Judgment (R. 233) was never submitted to the trial court for decision. Therefore, the Housing Authority argues the issues therein are not properly before this Court on appeal. Mr. Snyder's Motion for Summary Judgment (R. 233) was never submitted for ruling because of the expedited trial and its final judgment. The briefing allowed under the Code of Judicial Administration had not been completed by the time of trial. Utah Rules of Judicial Administration, Rule 4-501.

Mr. Snyder sets forth in his opening brief when and where during the proceedings below the various issues raised on appeal were presented to and considered by the trial court. Brief of

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<sup>1</sup> Notices to submit (Rule 4-501, Ut. Code of Jud. Admin.) were not filed because a trial was held and a judgment was entered even before the time has expired for plaintiff to respond to the motions and defendant reply. For instance, on May 1, 2000, Mr. Snyder filed a Motion for Summary Judgment (R. 229); the trial was held on May 8, 2000.

Appellant, p. 2. Each issue on appeal was presented to and considered by the trial court.<sup>2</sup>

Mr. Snyder filed an Objection to the Findings of Fact and Conclusions of Law and the Judgement entered (R. 259). The issues now on appeal were heard and considered by the trial court in ruling on Mr. Snyder's Objection to Findings of Fact and Conclusions of Law and to Judgment. Because the trial court had the first opportunity to rule on the issues presented, they have been preserved for appeal. See State v. Johnson, 821 P.2d 1150 (Utah 1991).

Even if the issues had not been formally preserved for appeal before the trial court, the issues are of such significance that the rulings and actions of the trial court were "plain error" such that they may still be considered in this appeal. Under a plain error analysis, an error must have occurred, that error should have been apparent to the trial court and the error must have caused harm. Classic Cabinets, Inc. v. All American Life Ins. Co., 1999 Ut. App. 88, ¶ 17, 978 P.2d 465 (Ut. App. 1999) (citing Larsen v. Johnson, 958 P.2d 953, 956 (Ut. App. 1998)). All three (3) elements necessary for a plain error review are present in this action.

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<sup>2</sup> While the trial court may not have issued formal written orders ruling on every issue raised by defendant, the trial court ruled on them. If nothing else, those rulings are implicit in the trial court holding a trial and rendering a judgment over the clear objections of Mr. Snyder.

## **II. JOHN THOMAS SNYDER PRESENTED "GOOD CAUSE" TO CONTINUE TRIAL**

Snyder's written and oral motions for continuance set forth "good cause" for continuing the trial which had been improvidently set. Simply put, Snyder was not prepared for a trial. Snyder was not granted sufficient time to engage in discovery.<sup>3</sup>

## **III. THE TRIAL COURT ERRED BY ALLOWING AN EXPEDITED HEARING.**

Prior to 1981 and the enactment of the possession bond provision (Ut. Code Ann. §78-36-8.5 (1953 as amended)), actions for unlawful detainer were routinely granted expedited trial dates by the rules of practice in the Utah trial courts. That priority became unnecessary with the enactment of the possession bond provisions which set a process by which a landlord could quickly secure possession and a tenant could be heard.

The Housing Authority's citations to general rules allowing a trial court to manage its own calendar are not useful. Ut. Code Ann. §78-36-8.5 (1953 as amended) governs the exclusive process to quickly present the issue of immediate possession to a trial court. Absent utilization of the possession bond provision, the unlawful detainer statutes does not provide for an

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<sup>3</sup> The Housing Authority's counsel falsely represented otherwise to the trial court (R. 29). Similarly the Housing Authority's counsel falsely represented to the trial court that meaningful settlement discussions had occurred (R. 29-30). No such discussions occurred.

expedited trial in a case such as this. Similarly, plaintiff's citation to cases which pre-date the 1981 enactment of the bond statute are not helpful.

Unquestionably, the memo from the Administrative Office of the Court and Brent Johnson (R. 164-166) is not controlling authority. However, Mr. Snyder suggests that the official position of the Administrative Office of the Court and Brent Johnson's interpretation of the statute are entitled to more than a little weight as persuasive authority.

The Housing Authority claims some ability of a landlord "to move an unlawful detainer matter forward on an expedited basis" independent of the possession bond provision. Brief of Appellee, p. 15. However, the Housing Authority cites no authority for that claim. Furthermore, the Housing Authority cites no authority for its claim that posting of a possession bond "provides for an even more expedited basis for having a tenant removed." Brief of Appellee, p. 15. The Housing Authority cites no authority for the claim that the pre-1981, pre-possession bond expedited consideration of unlawful detainer actions continued after the enactment of the possession bond provision. The Memo from the Administrative Office of the Courts clearly weighs against the Housing Authority's self serving interpretation.

That treble damages may accrue against a tenant found to be in unlawful detainer is of no moment when discussing and

attempt, with unlawful force or violence, to do bodily injury to another; [or] a threat, accompanied by a show of immediate force or violence, to do bodily injury to another." Ut. Code Ann. § 76-5-102 (1953 as amended)). Mr. Snyder made no attempt to do injury. Similarly, Mr. Snyder made no threat to do bodily injury. All of the facts presented at trial and now marshaled for this Court do not establish a threat, accompanied by a show of immediate force or violence, to do bodily injury. The mutual unpleasantness that occurred, even punctuated with yelling and foul language<sup>4</sup>, is not an assault.

**V. THE VALIDITY OF THE LEASE PROVISIONS WAS PRESENTED TO THE TRIAL COURT AND IS PROPERLY BEFORE THIS COURT.**

The validity of the lease provisions was presented to the trial court and is properly before this Court on appeal. Defendant's Motion to Dismiss, ¶ 2 (R. 25); Defendant's Motion for Summary Judgment, *passim* (R. 233-248); and, at trial (Transcript, pp. 94:23 - 95:1-9; 103:25 - 104:2).

The Housing Authority argues that it must be able to "include additional terms and conditions in their leases which

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<sup>4</sup> The trial court orally found "[Snyder] started pointing his finger and coming around the desk . . . He was loud, he was upset, he was angry, his choice of words was intimidating." Transcript at 101:2-17. The trial court did not find that Mr. Snyder made a specific threat of physical harm instead the court felt that Mr. Snyder's getting close to Ms. Rico, his tone of voice and language were intimidating and threatening. *Id.* at 103:11-24.

considering a landlord's right to seek immediate possession with a surety bond. The risk is for the tenant to assume if he/she wishes to challenge eviction. That such onerous punitive damages may accrue might justify and warrant a tenant seeking expedited consideration. However, that fact does not account for the trial court's granting an expedited trial at the insistence of the landlord absent a possession bond as occurred herein.

**IV. JOHN THOMAS SNYDER PROPERLY MARSHALED THE EVIDENCE WITH REGARD TO THE INSUFFICIENT FACTS PRESENTED AT TRIAL.**

As required by this Court, Snyder has marshaled the evidence with regard to the insufficient facts presented at trial to support his "criminal conviction" for assault. Brief of Appellant, pp. 19-21. In addition, the Housing Authority has recited in its brief the portions of the record that allegedly support that "guilty verdict." Brief of Appellee, ¶¶ 6-8, pp. 8-9. All of those facts, in their entirety, do not support a "beyond a reasonable doubt" criminal conviction for assault.

The trial court erroneously and improperly found criminal conduct on the part of Snyder. The evidence presented at trial did not support a finding by a preponderance of evidence much less *beyond a reasonable doubt* of criminal conduct by Snyder.

The evidence is insufficient to support a finding of criminal conduct after marshaling all facts to support the trial court's finding. The crime allegedly committed was assault ("an

are reasonable." Brief of Appellee, p. 23-24. However, the provision the Housing Authority chose to include is unreasonable. Mr. Snyder's lease provision prohibits "**all** illegal or criminal activity on or **near the premises**" (emphasis added) (R. 7-8). A literal reading would justify the eviction of a tenant without a due process administrative grievance proceeding for minor offenses. Transcript, p. 103:20-24.

The interpretive federal regulations do not allow such a broad prohibition with regard to criminal activity or its location. The intent of the lease and relevant regulations is not to allow eviction for minor infractions; rather, the intent is that only certain criminal activity may be prohibited. The lease provision is too broad and thus unreasonable. It is contrary to HUD's requirements as set out in 24 CFR § 966.4(f)(12)(i). As a result, the provision is void and invalid. The provision, therefore, should be read as follows:

I. Resident and household members, guests and visitors will act in a manner so as not to disturb any neighbors peaceful enjoyment of his/her accommodations ~~and refrain from all illegal or Criminal activity on or near the Premises.~~ Such illegal activity includes, but is not limited to, the use or sale of drugs by the Resident, household members, guests or visitors.

Exhibit "B" attached to Complaint (R. 13) ("strike through" added for emphasis).

Neither the lease nor the eviction notice provide for termination of the lease based upon "criminal activity that



threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by . . . **employees of the PHA.**"

24 CFR § 966.4(f)(12)(i)(A) (emphasis added) (a copy of the relevant federal regulations is attached to Brief of Appellant as Attachment "D").

The Housing Authority does not explain the omission of said provision in its lease with Mr. Snyder and eviction notice served upon him. As outlined in the Brief of Appellant, a comparison of 24 CFR § 966.4(f) (*Tenant's obligations*) and 24 CFR § 966.4(l) (*Termination of tenancy and eviction*) is demonstrative. The former provides that a tenant shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents **or employees of the PHA**, or

(B) Any drug-related criminal activity on or near such premises.

24 CFR § 966.4(f)(12)(i) (emphasis added).

In contrast, 24 CFR § 966.4(l) (*Termination of tenancy and eviction*) allows termination of tenancy only for

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents.

(B) Any drug-related criminal activity on or near such premises.

24 CFR § 966.4(l)(2)(ii). Absent in the second CFR provision is termination for threatening **employees of the PHA**. Mr. Snyder's lease incorporated the second provision. Based upon the

allegations of the complaint and the eviction notice, even if defendant had engaged in criminal conduct it was not directed toward other tenants.

Finally, the unlawful detainer statute provides an extremely harsh remedy. As a result, there must be strict compliance throughout the entire eviction process. See generally Sovereign v. Meadows, 595 P.2d 852 (Utah 1979); Cache County v. Beus, 978 P.2d 1043 (Ut. App. 1999). Herein, the notice of eviction recites alleged criminal behavior against an employee. However, the notice of eviction refers to a lease provision prohibiting mis-conduct toward a tenant. At no time did Mr. Snyder engaged in alleged mis-conduct toward a tenant. "Strict compliance" invalidates the eviction notice itself (the notice of eviction describes mis-conduct against Ms. Rico, the apartment manager (an employee), yet the lease provision cited does not prohibit mis-conduct toward an employee). Therefore, the eviction notice was defective, and Mr. Snyder's eviction was not justified on the grounds asserted by the County Housing Authority.

**VI. THE TRIAL COURT LACKED JURISDICTION BECAUSE JOHN THOMAS SNYDER WAS ENTITLED TO AN ADMINISTRATIVE HEARING. FAILURE TO ALLOW ADMINISTRATIVE REVIEW IS JURISDICTIONAL.**

Mr. Snyder was entitled to an administrative hearing to challenge his eviction as per the terms and conditions of his lease with the County Housing Authority. This issue was raised before the trial court. However, even if it were not raised

there, it is properly before this Court. Jurisdictional defects may be raised and considered at any time. State ex rel. R.N.J., 908 P.2d 345, 350 (Ut. App. 1995) (jurisdictional issues may be raised for the first time on appeal); Hom v. Utah Dept of Public Safety, 962 P.2d 95, \_\_\_\_ (Ut. App. 1998) (appellate court lacked jurisdiction if appellant failed to exhaust administrative remedies even if issue not raised at trial).

The Housing Authority's failure to afford Mr. Snyder a review through the administrative grievance process, deprived the trial court of jurisdiction to hear this matter. The Housing Authority contends that once it alleges that a tenant has engaged in prohibited criminal conduct<sup>5</sup>, the issue is closed and the tenant is not allowed access to the administrative grievance process. *Someone other than the County Housing Authority* must determine that criminal conduct has occurred thereby precluding access to the grievance process. Furthermore, such a determination must be made *before* access to the grievance process is denied and a suit is filed.

In its Appellate Brief, back pedaling, the Housing Authority now argues that the "trial court, not the Housing Authority, made

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<sup>5</sup> The Housing Authority asserts, "Snyder's assault on Ms. Rico, an employee of the Housing Authority, certainly constitutes 'good cause' for eviction." Brief of Appellee, p. 28. Under the lease, for a "good cause" eviction, Mr. Snyder would be allowed to avail himself of the grievance process and an administrative hearing!

the determination that Snyder engaged in the requisite criminal activity." Brief of Appellee, p. 29. The defect in this argument is that absent the Housing Authority's initial determination that the tenant is not entitled to an administrative grievance process, no lawsuit would have been filed and the trial court would not have had the opportunity to make the determination of criminal conduct.

The Housing Authority asserts that Mr. Snyder was not entitled to a grievance hearing. They cite 24 C.F.R. § 966.50 in support of its assertion. That provision is contingent on a due process determination from HUD; one such determination was issued to November 8, 1991 regarding Utah's eviction statutes (a copy is attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment (see Appellee's Addendum)).

The Code of Federal Regulations provides

If HUD has issued a due process determination, a PHA [Public Housing Authority] may exclude from the PHA administrative grievance procedure . . . any grievance concerning a termination of tenancy or eviction that involves:

- (A) any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or
  - (B) any drug related criminal activity on or near such premises.
- (iv) If HUD has issued the due process determination, the PHA may evict the occupants . . . through the judicial eviction procedures *which are the subject of the determination*. In this case, the PHA is

not required to provide an opportunity for a hearing under the PHA's administrative grievance procedure.

24 C.F.R. § 966.50 (1999) (emphasis added).

The exclusion from the administrative grievance procedure is, therefore, strictly linked to the judicial procedure that is the subject of the due process determination. In Utah, HUD's due process determination of the judicial eviction procedure "does not apply where plaintiff obtains possession by filing a possession bond pursuant to Utah Code Ann. § 78-36-8." HUD Utah Due Process Determination, November 8, 1991, p. 2, n.1 (attached to Plaintiff's Memo in Opposition to Defendant's Motion for Summary Judgment(see Appellee's Addendum)). Under Utah law, the Forcible Detainer statute authorizes an expedited hearing only when the plaintiff files a possession bond and the defendant requests an expedited hearing under Utah Code Ann. § 78-36-8.5 (1953 as amended). By implication, HUD's due process determination does not apply to any expedited eviction procedures. As a result, Mr. Snyder should have been able to avail himself of the administrative grievance procedure prior to eviction.

#### **CONCLUSION AND RELIEF SOUGHT**

Wherefore, this Court should determine that 1) the trial court erred in granting County Housing Authority an expedited

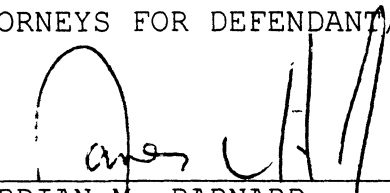
trial absent the posting of a possession bond; 2) Mr. Snyder did not engage in criminal activity in violation of the lease agreement and was not in unlawful detainer of the premises; 3) County Housing Authority was not justified in terminating Mr. Snyder's Lease, 4) the Judgment against Mr. Snyder is invalid; and, 5) that Mr. Snyder's lease be reinstated.

In the alternative, this Court should determine that the trial court lacked jurisdiction and that Mr. Snyder is entitled to avail himself of the administrative grievance procedure prior to termination of his lease.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of MARCH 2001.

UTAH LEGAL CLINIC  
ATTORNEYS FOR DEFENDANT/APPELLANT

by

  
\_\_\_\_\_  
BRIAN M. BARNARD  
JAMES L. HARRIS, Jr.

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing **REPLY BRIEF OF APPELLANT** to:

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