

1988

John E. Arrington and Mary E. Arrington v. Robert Mitchell and Karen Iversen : Brief of Plaintiff - Appellant

Utah Court of Appeals

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Dennis Poole; Attorney for Defendant-Respondent Karen Iversen; Robert Mitchell; Ivell Construction; Defendant-Respondent without counsel on record.

Steve L. Godwin; Attorney for the Plaintiffs-Appellants.

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UTAH COURT
BRIEF

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DOCKET NO. 880033-CA

APR

IN THE UTAH COURT OF APPEALS

JOHN E. ARRINGTON and MARY F.
ARRINGTON,

Plaintiffs-Appellants,

-vs-

ROBERT MITCHELL and KAREN IVERSEN,

Defendants-Respondents.

CIVIL NO. 880033-CA

BRIEF OF THE PLAINTIFFS-APPELLANTS

APPEAL FROM A PARTIAL SUMMARY JUDGMENT ENTERED IN THE THIRD JUDICIAL

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

JUDGE SCOTT DANIELS.

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Respondent Karen Iversen

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Defendant-Respondent
Without Counsel on Record

ARGUMENT PRIORITY CLASSIFICATION (15)

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JURISDICTION

This is an appeal from an Order of Partial Summary Judgment from the Third Judicial District Court of Salt Lake County. Jurisdiction of this court is pursuant to Article 8 Section 9, Constitution of Utah, Section 78-2-2 (i), Utah Code Annotated (1953) and Rule 54(b) of the Utah Rules of Civil Procedure.

The case of Pate ~~-vs-~~ Marathon Steel Co., 692 P.2d 765 (1984) defines the circumstances when a judgment which is not final may be appealed, as provided in Rule 54(b). On page 767 the Utah Supreme Court states:

"First, there must be multiple claims of relief or multiples parties to the action. Second, the judgment appeal from must have been entered on an order that would be appealable but for the fact that other claims or parties remain in the action. Third, the trial court in its discretion must make a determination that there is no just reason for delay of the appeal."

In the above action there are multiple parties and multiple claims. The cause of action has arisen out of claims made prior to October 1, 1986 and claims made subsequent to October 1, 1986. The Partial Summary Judgment appealed would be appealable but for the fact that other claims occurred after October 1, 1986 and remain in the action. Finally on December 14, 1987 the Honorable Scott Daniels signed an order stating that there is no just reason for delay of the appeal of the Partial Summary Judgment because the vast majority of damages occurred before October 1, 1986. Therefore the Supreme Court of Utah obtained jurisdiction under the direction of Rule 54(b).

Following an appeal to the Supreme Court, the Supreme Court issued an order on January 15, 1988 directing the Court of Appeals to rule on the case.

STATEMENT SHOWING NATURE OF PROCEEDINGS

This appeal is from a Partial Summary Judgment in the Third Judicial District Court wherein Judge Daniels ordered that the Defendants-Respondents are granted "partial summary judgment, no cause of action, with respect to any and all claims of the Plaintiffs against the Defendants which arose prior to October 1, 1986, such claims being barred by the doctrine of res judicata as a result of entry of the Small Claims Judgment identified above". Plaintiffs-Appellants appeal from the Partial Summary Judgment under the theory that the Small Claims Court had no jurisdiction or authority to rule on any matters except the issue of lease payments that was pleaded by the Plaintiffs-Appellants in Small Claims Court.

STATEMENT OF THE ISSUES

Whether the District Court erred by granting a Partial Summary Judgment to Defendant-Respondents with respect to any and all claims of the Plaintiffs-Appellants against Defendants-Respondents which arose prior to October 1, 1986. The judgment was based on the doctrine of res judicata which Defendants-Respondents alleged occurred when the Small Claims Court entered a Judgment which included the following language:

"No Sept. obligation owed because of the Plaintiffs failure to take steps to reasonably mitigate damages. No further rent owing."

STATEMENT OF THE CASE

This is an appeal taken from the Partial Summary Judgment of the District Court that found that the Defendants-Respondents were entitled a judgment against Plaintiffs-Appellants and that all claims of the Plaintiffs-Appellants prior to October 1, 1986, were barred by the doctrine of res judicata as a result of an entry of judgment filed in the Small Claims Court. Plaintiffs-Appellants claim that the Small Claims Court exceeded its jurisdiction in making its ruling and therefore the doctrines of res judicata applies only to the lease payments for the months of July, August and part of September.

On February 11, 1980, Plaintiffs-Appellants and Defendants-Respondents entered into a lease whereby Defendants-Respondents leased from the Plaintiffs-Appellants property located at 11255 East Miller Avenue in Salt Lake County, State of Utah.

On September 10, 1986, Plaintiffs-Appellants filed a Small Claims Affidavit and Order (a copy of which is attached as Exhibit A in the Addendum) in which the Plaintiffs-Appellants claimed that the Defendants-Respondents were indebted to the Plaintiffs-Appellants in the sum of \$1,000 for unpaid lease payments for July (in the amount of \$492.10), August (in the amount of \$492.10) and \$15.80 towards the September payment. Defendants-Respondents did not file a Counterclaim.

On October 21, 1986, a hearing on the above matter was held and a Small Claims Judgment (a copy of which is attached as Exhibit B in the Addendum) against the Defendants-Respondents in favor of the Plaintiffs-Appellants was granted in the amount of \$984.25 principal plus court costs of \$30 for a total judgment of \$1,014.25. However, in addition to granting the judgment the judge also wrote "No Sept.

obligation owed because of Plaintiffs failure to take steps to reasonably mitigate damages. No further rent owing."

On December 18, 1986, Plaintiffs-Appellants filed a complaint in the Third Judicial District Court (a copy of which is attached hereto as Exhibit C in the Addendum). In the complaint the Plaintiffs-Appellants asked for the following:

1. For an amount of \$984.25 for loss of lease payments (this was in addition to the amount granted the Plaintiffs-Appellants in the Small Claims Court).

2. Judgment against the Defendants in the amount of \$834.60 for taxes, \$295.84 for sewer fee, and \$165 for insurance, which the lease required the Defendants-Respondents to pay.

3. An amount of \$22,923.89 plus costs to restore buildings plus an additional \$5,000 for landscaping so that the property could be restored in substantially the same condition it was prior to the Defendants-Respondents entering into the lease.

4. \$25,000 as compensation for mental and physical damages.

5. Attorneys fees and court costs.

Defendants-Respondents filed an Answer and Cross-Claim. Defendants-Respondents filed a Motion for Summary Judgment which was heard on October 25, 1987. The Motion alleged that the Small Claims Judgment resolved all issues concerning the lease prior to October 1, 1986. Judge Scott Daniels granted the Defendants-Respondents Partial Summary Judgment with respect to ending all claims of the Plaintiffs-Appellants which arose prior to October 1, 1986 (a copy of the Partial Summary Judgment is included as Exhibit D in the Addendum). Plaintiffs-Appellants appealed.

SUMMARY OF THE ARGUMENT

A Small Claims Court is a court created by statute. As a statutory court it only has power specifically granted to it by the act creating it. The jurisdiction of Small Claims Court is limited to the claims of money only in the amount of up to \$1,000. The Affidavit filed by the Plaintiffs-Appellants was filed correctly and the Small Claims Court had jurisdiction over whether rents were due for the months of July, August and part of September. However, the part of the order of the court stating that no September obligation was owed because of the failure to take steps to reasonably mitigate damages and that no further rent was owing under the lease was a decision that was beyond the jurisdiction of the Small Claims Court and therefore could not involk the doctrine of res judicata at the District Court level. Also the Small Claims Court has no jurisdiction to hear the above matters because the Defendants-Respondents did not file a Counterclaim in Small Claims Court.

The District Court erred in ruling that the doctrine of res judicata applied to all damages which occurred before October 1, 1986. Therefore the Partial Summary Judgment should be set aside and the court should be instructed to try the issues outlined in the complaint and Counterclaim.

DETAIL OF THE ARGUMENT

Small Claim Courts were statutorily created under Section 78-6-1 through 15 of Utah Code Annotated (1953). Section 78-6-1 states:

"(1) There is created in the circuit courts and justice's courts of this state, a department known as the "SMALL CLAIMS COURT," which has jurisdiction, but not exclusive, in cases:

a. for the recovery of money where the amount claimed does not exceed \$1,000 and where the defendant resides or the action of indebtedness ~~was~~ incurred within the jurisdiction of the court in which the action is to be maintained; or

b. involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed the jurisdiction of the court."

"The Small Claims Court Act (the Act) was established in the legislature to make it possible to dispose of certain actions in an informal manner from their inception to their end with the sole object of dispensing speedy justice between the parties. The small claims court is totally a creature of statute. Its jurisdiction is not exclusive and is limited to the recovery of money up to \$1,000." Faux -vs- Mickelsen at 725 Pacific 2nd 1372, p. 1374. (1986).

In the present case the Plaintiffs-Appellants properly filed their claim for relief in the Small Claims Court because their claim was for money ~~damages~~ and the amount sought was not in excess of \$1,000. Therefore the Small Claims Court obtained juristiction in the case. The Defendants-Respondents did not file a counterclaim. The Small Claims Court then ruled in favor of the Plaintiffs-Appellants in the amount of \$984 plus costs.

Had the Small Claims Court stopped at this point then no error would have been created. However, the court then added the following language to the Small Claim Judgment. "No Sept. obligation owed because of the Plaintiffs failure to take steps to reasonably mitigate damages. No further rent owing."

No transcripts are taken of Small Claims Court proceedings so there is no way to determine how the Small Claims Court reached such the decision cited above. It is the contention of Plaintiffs-Appellants that the Small Claims Court never had jurisdiction over the issues of mitigation of damages and what additional rents were incurred. In Mann -vs- Morrison cited at 144 P.2d 543 (1943), the Utah Supreme Court quotes from page 545, Justice Wolfe's language in the Atwood -vs- Cox case. "Many definitions of jurisdiction are given in 15 C.J. 723 SS 13. They all mean, fundamentally, the power or capacity given by the law to a court, tribunal, board, body, or officer to entertain, hear, and determine certain controversies. * * * It does not mean that the court must speak correctly by the law. What it says may be incorrect. * * * It takes a pleading to invoke the jurisdiction of the court, but, if the pleading shows that the cause or controversy relates to a subject-matter over which the court has jurisdiction, then the jurisdiction of the court is effective for the purpose of proceeding with the cause or controversy." In the same opinion at page 452 of the Utah report, at page 384 of 55 p.2d, it is said: "It would appear that excess of jurisdiction means a case in which the court has initially proceeded properly within its jurisdiction but steps out of the jurisdiction in the making of some order or in the doing of some judicial act."

Jurisdiction is then the power or capacity given by the law to the court to entertain, hear and determine certain controversy's. Because the Small Claims Court is totally a creature of statute, its jurisdiction is not exclusive but is limited to claims for money

only. Kapetanov -vs- Small Claims Court of Ogden, 659 P2d 1049 (1983).

When the Small Claims Court began considering issues such as the responsibility of Plaintiff to mitigate damages under the terms of the lease and further determined that no rent was owing under the lease for any claims prior to October 1, 1986 then it clearly exceeded its jurisdiction because it was deciding issues concerning Real Estate and deciding issues for monetary amounts in excess of \$1,000. Therefore the Small Claims Court had no jurisdiction over these matters.

The reason the Plaintiffs-Appellants limited their claim before the Small Claims Court to the failure to make lease payments for July and August and a portion of September was that that amount owed equalled \$1,000. This was the highest amount of money damages that the court could consider. Additional lease payments were owed but Plaintiffs-Appellants could not proceed with those claims in Small Claims Court without violating the jurisdiction of the court. If the Plaintiffs-Appellants didn't have jurisdiction to plead for additional damages, certainly the Small Claims Court could not involk jurisdiction over monetary amounts in excess of \$1,000.

The second reason that the Small Claims Court exceeded its jurisdiction was that the Defendants-Respondents did not file a Counterclaim before the Small Claims Court. Section 78-6-10 Utah Code Ann.(1953) outlines the Plaintiffs right of appeal in Small Claims Court. "The judgment of said court shall be conclusive upon the Plaintiff unless a counterclaim has been interposed". The case of Lieatke v. Schettler 649 P.2d 80 reviewed the constitutionally of

Section 78-6-10. The court ruled that the limitation of Plaintiff's right to appeal is not in violation of the guarantee in Article I, Section 24 of the Utah Constitution and therefore is enforceable. Defendants-Respondents failure to file a Counterclaim prevents them by statute from having any issue heard except the issue presented by the Plaintiff. In Faux -vs- Mikelson 725 P2d. 1372 (1986) the Utah Supreme Court ruled that a Counterclaim need not be filed by the Defendants in Small Claims Court, but could be filed in Circuit or District Court. They therefore concluded that the failure to file a Counterclaim at the Small Claims Court level and then filing a Counterclaim in a higher court was not prevented by the doctrine of res judicata. By not filing a Counterclaim in Small Claims Court, the Defendants-Respondents elected to have these issues heard by a higher court.

Defendants-Respondents failure to file a Counterclaim in Small Claims Court prevented the court from considering any issues except the money damages pleaded by the Plaintiffs-Appellants. Any claims made by the Defendants-Respondents would have to be tried in District Court when the Defendant-Respondents raised the issues by Counterclaim.

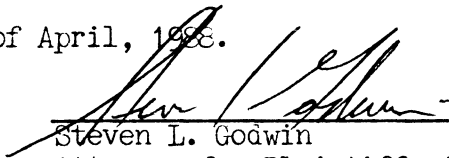
In Peterson -vs- Peterson cited at 645 P.2d 37 (1982), the Utah Supreme Court states on Pages 38 and 39 that "Res judicata applies to bar the relitigation of issues which were actually litigated or could have been litigated in the prior proceeding." After examining the conduct of the Small Claims Court, it is clear that the issues concerning the terms and conditions of the lease and other rents were not properly litigated and could not have been litigated in the Small

Claims Court without the court exceeding its jurisdiction. Therefore the District Court erred in ruling that the doctrine of res judicata prevented the Plaintiffs-Appellants from litigating issues which arose prior to October 1, 1986.

CONCLUSIONS

Plaintiffs-Appellants pray that the Partial Summary Judgment of the Third Judicial District Court be reversed and the District Court be ordered to hold a trial in which the Plaintiffs-Appellants and the Defendants-Respondents may litigate all the issues concerning the lease, including rents, and damages thereof except for the July, August and part of September rents that was properly litigated in the Small Claims Court.

DATED this 25th day of April, 1988.



Steven L. Godwin

Attorney for Plaintiffs-Appellants

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED THE FOREGOING BRIEF TO THE
FOLLOWING PARTIES THIS 25TH DAY OF APRIL, 1988.

1. Dennis Poole
4885 South 900 East, #306
Salt Lake City, Utah 84117
2. Robert Mitchell, Personally
Ivell Construction
4740 South 200 West
Murray, Utah 84107


Steven L. Godwin
Attorney for Plaintiffs-Appellants

ADDENDUM
CONSTITUTIONAL PROVISIONS AND STATUTES

Membership on state law library board, § 37-1-1
 Proceedings unaffected by vacancy, § 78-7-21.

Qualifications of justices, Utah Const., Art. VIII, Sec. 7
 Retirement, Utah Const., Art. VIII, Sec. 16, § 49-7a-1 et seq., §§ 78-7-29, 78-7-30.
 Salary, Utah Const., Art. VIII, Sec. 14.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts § 67, 68.
 C.J.S. — 21 C.J.S. Courts § 465; 48A C.J.S. Judges §§ 3, 7, 8, 21 to 25, 85.

Key Numbers. — Courts ⇐ 101, 248; Judges ⇐ 1, 7 to 12.

78-2-1.5. Repealed.

Repeals. — Section 78-2-1.5 (L. 1969, ch. 225, § 2), relating to salaries of Supreme Court justices, was repealed by Laws 1971, ch. 182, § 4.

78-2-1.6. Repealed.

Repeals. — Section 78-2-1.6 (L. 1979, ch. 134, § 1; 1981, ch. 156, § 1), relating to salaries of justices, was repealed by Laws 1981, ch. 267, § 2, effective July 1, 1982.

78-2-2. Supreme Court jurisdiction [Effective until January 1, 1988].

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in cases originating in:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the Board of State Lands;
 - (iv) the Board of Oil, Gas, and Mining; and
 - (v) the state engineer;

(f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(h) appeals from the district court involving a conviction of a first degree or capital felony; and

(i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:

- (a) first degree and capital felony convictions;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) general water adjudication;
- (f) taxation and revenue; and
- (g) those matters described in Subsections (3)(a) through (h).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

Supreme Court jurisdiction [Effective January 1, 1988].

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

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- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in cases originating in:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the Board of State Lands;
 - (iv) the Board of Oil, Gas, and Mining; and
 - (v) the state engineer;

(f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(h) appeals from the district court involving a conviction of a first degree or capital felony; and

(i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:

- (a) first degree and capital felony convictions;

78-6-12.5	Abstract of judgment for defendant — Form	Section 78-6-14	Fees
			Costs
78-6-13	Filing of abstract and docketing of judgment	78-6-15	

78-6-1. Creation — Jurisdiction — Counsel not necessary — Deferring multiple claims of one plaintiff.

(1) There is created in the circuit courts and justice's courts of this state, a department known as the "SMALL CLAIMS COURT," which has jurisdiction, but not exclusive, in cases:

(a) for the recovery of money where the amount claimed does not exceed \$1,000 and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed the jurisdiction of the court.

(2) Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees with or without counsel.

(3) If person or corporation files multiple claims in any one small claims court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims court matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-6-1; L. 1953, ch. 55, § 1; 1961, ch. 180, § 1; 1969, ch. 256, § 1; 1970, ch. 26, § 1; 1977, ch. 77, § 61; 1977, ch. 78, § 28; 1983, ch. 77, § 1; 1986, ch. 48, § 1; 1986, ch. 187, § 2.

Amendment Notes. — The 1983 amendment increased the amount from \$400 to \$600 in the first sentence, and added Subsection (2).

The 1986 amendment by Laws 1986, ch. 48 designated the former first sentence in the formerly undesignated first paragraph as Subsections (1) and (1)(a), designated the former second sentence in the formerly undesignated first paragraph as subsection (2), redesignated

former Subsection (2) as present Subsection (3), made a series of minor stylistic changes throughout Subsection (1), deleted "only" following "money" in Subsection (1)(a), and inserted Subsection (1)(b).

The 1986 amendment by Laws 1986, ch. 187 in Subsection (1) substituted "\$1,000" for "\$600" and made minor word changes throughout.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Cross-References. — Circuit courts, § 78-4-1 et seq

Justices' courts, § 78-5-1 et seq

NOTES TO DECISIONS

ANALYSIS

Action by corporation

—Necessity for attorney.

Jurisdiction

—Concurrent

—Fraud or misrepresentation

Action by corporation.

—Necessity for attorney.

Even though a corporation was a "person"

which could maintain an action in a small claims court, a corporation could not practice law and an officer or employee of a corporation could not properly institute an action in the

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts § 31.
C.J.S. — 21 C.J.S. Courts § 291.
Key Numbers. — Courts ⇨ 176, 181.

78-6-9. Judgment against defendant — Payment.

If the judgment or order be against the defendant, he shall pay the same forthwith or at such times and upon such terms and conditions as the justice or court shall prescribe.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-6-9.

COLLATERAL REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d Courts § 31.
C.J.S. — 21 C.J.S. Courts § 291.
Key Numbers. — Courts ⇨ 176, 181.

78-6-10. Conclusiveness of judgment — Jurisdiction for appeals.

(1) The judgment of the small claims department of the justices' and circuit court is conclusive upon the plaintiff unless a counterclaim has been interposed.

(2) If the matter is heard in the small claims department of the circuit court, the defendant may appeal the judgment of the circuit court to the Court of Appeals by filing a notice of appeal within five days of the entry of the judgment against him.

(3) If the matter is heard in the small claims department of the justices' court, the defendant may obtain a trial de novo in the circuit court by filing in the circuit court of the county a petition for trial de novo within five days of the entry of the judgment against him.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-6-10; 1986, ch. 47, § 76.

Amendment Notes. — The 1986 amendment rewrote this section.

Cross-References. — Appeal from circuit court to Court of Appeals, § 78-4-11.
Trial de novo, § 78-4-7.5.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

—Limitation upon plaintiff's right to appeal.

—Time for filing notice of appeal

Time for appeal.

—Commencement.

ABLE PLEASE MAKE CERTAIN TO
BOTH DEFENDANTS

Count House

Server

Kossiter

Circuit Court, State of Utah

SALT LAKE COUNTY, SANDY DEPARTMENT

John E. & Mary F. Arrington

TEL: 562-9211

Name 897th So Wild Willow Circle

Address: Sandy, Utah

City & State VS Zip: 84092

Name Robert W. Mitchell

Address: 809 E. Pecos Drive Sandy, Utah 84070
KAREN IVERSEN 337 SHAMROCK DRIVE MURRAY, UTAH
84107

STATE OF UTAH

County of Salt Lake

AFFIDAVIT

The affiant being first sworn, deposes and says:

(1) That defendant is indebted to plaintiff in the sum of \$ 1,000.00 which debt arose on or during
10:1 Aug 84 92.10 plus \$15.00 toward the Sept 1st payment.
19 86 as follows: Lease for property at 1255 E. Miller Ave. SLIC
6:1 Aug 1986; \$492.10 and \$15.00 toward the Sept 1st Payment.
plus court costs of \$

(2) That plaintiff has demanded payment of the above sum from defendant, who has refused to pay
he same, and no part thereof has been paid; and

(3) That defendant and plaintiff reside at the addresses shown in the above caption.

John E. Arrington

Affiant (Plaintiff)

Subscribed and sworn to before me on the date of 9-10, 1986

WELDON NICHOLS
Clerk of the Circuit Court

NOTICE
THIS AFFIDAVIT SHALL NOT BE SERVED MORE
THAN 20 DAYS NOR LESS THAN 5 DAYS FROM
THE DATE OF THIS ORDER.

By

Charles J. [Signature]
Deputy Clerk

ORDER

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT(S)
YOU ARE ORDERED to appear and answer the above claim on:

Date of trial 10-1-86

Place of trial: 440 East 8680 South, Sandy, Utah 84070.

Time of trial: 6 PM

and to have with you, then and there, all books, documents, records, papers, and witnesses needed to
establish your defense to plaintiff's claim.

You are further notified that if you do not appear as directed, judgment may be given against you
or the amount of plaintiff's claim as stated in the affidavit above.

Dated 9-10-86

WELDON NICHOLS
Clerk of the Circuit Court

By

Charles J. [Signature]
Deputy Clerk

Circuit Court, State of Utah
SALT LAKE COUNTY, SANDY DEPARTMENT

JOHN E. AND MARY F. ARRINGTON Plaintiff

SMALL CLAIMS

JUDGMENT

ROBERT W. MITCHELL Defendant

Case No. 860031055 SC

This matter came before the court for hearing on the affidavit of plaintiff, and the defendant has been served with the affidavit of plaintiff and order to defend, and return of service has been made. The following parties appeared at the hearing:

Plaintiff only. The defendant failed to appear at the time set, and the defendant's default has been entered.

Both plaintiff and defendant appeared and presented evidence.

\$ 981.25 Principal

\$ 30.00 Court costs, and

\$ 1014.25 TOTAL JUDGMENT

DATE OCTOBER 1 19 86

No Sept obligation owed because of the failure to take steps to reasonably mitigate damages. No further rent owing.

M. Kirk Eastman
JUDGE

Both Plaintiff and Defendant received copies of the Judgment at Hearing. _____
Clerk

THE DEFENDANT ONLY:

If the above judgment was granted in favor of the plaintiff, you now have a judgment against you in Circuit Court in the amount specified above. If you are dissatisfied with this judgment, you have only (5) DAYS from receipt of this notice to appeal the case to the District Court.

THE PLAINTIFF ONLY:

You should mail a copy of this judgment to the defendant IMMEDIATELY. The defendant has five days from receipt of the notice to appeal the case. You must complete the mailing certificate and file the original of this judgment with the court before you can proceed with any further court action.

I hereby certify that I mailed a copy of this judgment, postage prepaid, addressed to the above

defendant(s) at _____
Address & Zip Code _____
Dated _____

SIGNATURE

EXHIBIT A

Steven L. Godwin
 Attorney for Plaintiff
 4055 South 700 East, Suite 106
 Salt Lake City, Utah 84107
 Telephone: (801) 266-8395

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

JOHN E. ARRINGTON and MARY F.)	
ARRINGTON,)	C O M P L A I N T
)	
Plaintiffs,)	
)	
-vs-)	
)	
ROBERT W. MITCHELL and KAREN G.)	Civil No. <u>86-9482</u>
IVERSEN.)	
)	
Defendants.)	Judge <u>Daniels</u>

COMES NOW, the Plaintiffs John E. Arrington and Mary F. Arrington, through their attorney, Steven L. Godwin, and complains against the Defendants as follows:

1. The Plaintiffs are residents of Salt Lake County, State of Utah.
2. That the real estate of issue in this complaint, is located in the Salt Lake County, State of Utah.
3. On or about February 11, 1980, the Plaintiffs and Defendants entered into a lease (herein called lease), wherein the Plaintiffs leased the property located at 1255 East Miller Avenue, Salt Lake City, Utah to the Defendants. The leased property is hereinafter called property. The lease between the parties is attached hereto and incorporated herein as Exhibit A.
4. That on or about March 5, 1985 the Defendant's exercised the first ten year option as outlined in the lease (a copy of the exercise to the option is attached hereto as Exhibit B and incorporated herein).

5. On or about September 10, 1986 a small claims court complaint was filed by the Plaintiffs against the Defendants and on October 1, 1986, the small claims Circuit Court in Salt Lake County, State of Utah issued a judgment in favor of the Plaintiffs in the amount of \$1,014.25.

FIRST CAUSE OF ACTION

6. Plaintiff incorporates paragraphs 1 through 5 herein.

7. That pursuant to paragraph 16 of the lease, the Plaintiffs declared to the Defendants that the lease was terminated as of November 1, 1986 and on that day, the Plaintiff's re-entered the property and took possession thereto. Said termination was based on the following violations of the lease:

- a. failure to make lease payments in excess of four (4) months.
- b. laying waste to the property
- c. abandoning the premises
- d. failing to pay for the utilities and services
- e. failing to comply with the laws and ordinance of Salt Lake County concerning the maintenance of the property
- f. failing to maintain liability insurance on the property.

8. That the Defendants owe the Plaintiffs in addition to the judgment obtained in small claims court, monthly lease payments for September and October of 1986 in a total amount of \$984.25.

9. Paragraph 18 of the lease requires that the Defaulting party pay attorneys fees and court costs in order to enforce the lease agreement. Plaintiffs have been required to retain an attorney to collect the lease payments and to otherwise enforce the lease agreement. It is reasonable and proper that the Defendants be required to pay attorneys fees and court costs on this matter.

SECOND CAUSE OF ACTION

10. Plaintiffs incorporate paragraphs 1 through 9 herein.

11. The provisions of the lease require the Defendants to pay for taxes, utilities and insurance. The taxes that have accrued on the property but have not been paid by the Defendants during the period in which the lease was in full force and effect are \$834.60. Said taxes plus penalty and interest should be paid by the Defendants. The utility bills that have not been paid by the Defendants during the period in which the lease was in full force and effect is \$295.84. That amount plus interest is due and owing by the Defendants to the Plaintiffs. Fire Insurance in the amount of \$165.00 insuring the back house for the period of April 1986 to April 1987 was paid by the Plaintiffs. That amount plus interest is due and owing to the Plaintiffs.

THIRD CAUSE OF ACTION

12. Plaintiffs incorporate paragraph 1 through 11 herein.

13. The provision of the lease require the Defendants to maintain the improvements on the property in good condition. However, the defendants have wasted the property and allow the property to deteriorate and be destroyed

14. The Plaintiffs have contacted Wally Bolden who has informed them that it will cost \$22,893.89 plus \$30.00 for a bid to restore the property in the condition it was prior to the lease. Therefore, the amount of \$22,923.89 should be paid to the Plaintiffs by the Defendant to restore the property in the condition it was prior to the lease. It is estimated that an additional cost of \$5,000.00 will be required to restore the landscaping which was destroyed during the life of the lease. Said amount should be paid by the Defendants.

FOURTH CAUSE OF ACTION

15. Plaintiffs incorporate paragraphs 1 through 14 herein.

16. That it will take several months to repair the homes and relandscape the property into the conditions that they were prior to the lease. It is reasonable and fair that the Defendants pay to the Plaintiffs a monthly lease fee of \$492.10 plus taxes and other costs until the property is repaired to state of condition that it was prior to the lease.

FIFTH CAUSE OF ACTION

17. Plaintiffs incorporate paragraphs 1 through 16 herein.

18. That the Plaintiffs are a retired couple who depend upon the income of the lease to maintain themselves in a reasonable manner.

19. Because of their limited income, the Plaintiffs depended upon the lease income to maintain themselves in a reasonable fashion. The Defendants were aware of the importance of the lease payments to maintain the Plaintiff's livelihood and had an obligation of fairdealing and good faith performance under the contract.

20. Because of the wanten and willfull conduct of the Defendant and the failure to perform under the lease and the distruction of the premises, the Plaintiffs have suffered severe mental and emotional problems. Such problems have caused loss of weight, mental anguish and mental and physical health. Because of these losses, the Plaintiffs have suffered losses in the amount of \$25,000 which should be paid to them by the Defendants.

WHEREFORE, the Plaintiffs pray as follows:

1. For judgment against the Defendants in the amount of \$984.25 for loss of lease payments.

2. For judgment against the Defendants in the amounts of \$834.60 for taxes which the Defendants failed to pay, \$295.84 for sewer fees

which the Defendants failed to pay and \$165.00 for insurance which they failed to pay, plus interest and costs.

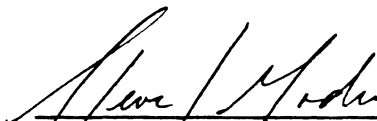
3. For the amount of \$22,923.89 plus costs and interest and \$5,000.00 for landscaping to restore the property in the condition it was prior to the lease.

4. For an amount of \$25,000 as compensation for mental and physical damage.

5. For attorneys fees and court costs.

6. For such other relief as the court may deem just and proper.

DATED this 18 day of December, 1986.



Steven L. Godwin
Attorney for Plaintiffs

7070 South
1850 E. SLC 84121

Sept 15, 1980

Ivell Construction Company
4302 So Mains Street Murray, Utah
84107 TEL: 262-7751

Lessors: John E. Arrington and
Mary F. Arrington Husband and wife.

Lessees: Robert W. Mitchell a Married Man
Karen G. Iversen a Married Woman

RE: Lease 1255 E. Miller Ave Salt Lake City, Utah Salt Lake
County., dated Feb 11, 1980....ADDENDUM TO SAID LEASE.

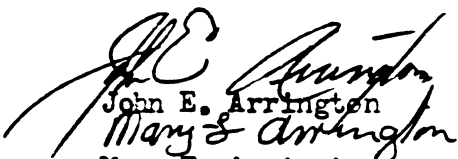
Following additional property is included on the Lease dated Feb 11, 1980:
Beginning at a point 246.62 feet South and South 88 degrees 36' West 518.12 feet from
the quarter corner of Section 28, Township 1 South, Range 1 East, Salt Lake Base
Meridian; and running thence South 88 degrees 30' West 46.45 feet to a point on a
100 foot radius curve to the left (center bears North 76 degrees 27'10" East);
Southeasterly along the arc of said curve 154.21 feet; thence North 148.13 feet
to point of BEGINNING.

Above legally described property is located West of the property on the original lease,
included in the original Lease with the following terms:

Above described property is included in the original Lease for the
five years without additional charge. However, the Lessees agree to pay the Taxes
on above property beginning Jan 1, 1980.

Also, the Lessees agree to increase the basic rent beginning March
1985 to \$475.00 and under no circumstances will the rent be lower than \$475.00
beginning March 1, 1985. All other conditions of the Lease dated Feb 11, 1980 will
apply to the above described property., re. e. i. e. Consumer Price Index increases

Lessors:


John E. Arrington
Mary F. Arrington

Lessees:


Robert W. Mitchell
Karen G. Iversen

FILED

9-22-87

Exh. 6, 4 D

DENNIS K. POOLE (2625)
POOLE, CANNON & SMITH
Attorneys for Defendant
Karen G. Iversen
4885 South 900 East, Suite 306
Salt Lake City, Utah 84117
Telephone (801) 263-3344

SEP 11 1987

By Karen Iversen
Filed

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

JOHN E. ARRINGTON and	:	
MARY F. ARRINGTON,	:	
	:	
Plaintiffs,	:	
	:	ORDER OF PARTIAL
vs.	:	SUMMARY JUDGMENT
	:	
ROBERT W. MITCHELL and	:	Civil No. 86-9482
KAREN G. IVERSEN,	:	
	:	Judge Daniels
Defendants.	:	
	:	


Defendants Iversen's and Mitchell's Motions For Summary Judgment having come on for hearing before the Honorable Scott Daniels on the 25th day of August, 1987, and the Plaintiffs being represented by their attorney Steven L. Godwin and the Defendant Karen G. Iversen being represented by her attorney Dennis K. Poole and the Defendant Robert W. Mitchell being represented by his attorney Loren E. Weiss and the Court having considered the pleadings of the parties and certified copies of a Small Claims Affidavit and Order

and a Small Claims Judgment entered October 1, 1986, in the Circuit Court, State of Utah, Salt Lake County, Sandy Department, Case Number 860031055 SC, and having heard the arguments of counsel and finding that there is no genuine issue of material fact as to the claims of the Plaintiffs which accrued prior to October 1, 1986, and for good cause appearing


ORDERS that the Defendants, and each of them are hereby granted partial summary judgment, no cause of action, with respect to any and all claims of the Plaintiffs against the Defendants which arose prior to October 1, 1986, such claims being barred by the doctrine of res judicata as a result of entry of the Small Claims Judgment identified above.

ORDER DATED this 11 day of ~~August~~^{Sept}, 1987

BY THE COURT:



THE HONORABLE SCOTT DANIELS
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk


Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of August, 1987,
I caused a true and correct copy of the foregoing Order of
Partial Summary Judgment to be mailed, postage prepaid to
the following:

Steven L. Godwin, Esq.
4055 South 700 East, Suite 106
Salt Lake City, Utah 84107

Loren E. Weiss, Esq.
Midtown Office Plaza, Suite 160
230 South 500 East
Salt Lake City, Utah 84102

A handwritten signature in dark ink, appearing to read "Loren E. Weiss", is written over a horizontal line. The signature is stylized with a large, looping initial "L" and a long, sweeping underline.

IVSN ORDER
PLEAD4