

1978

# Harold S. Sanders and Eleanor Sander v. Donn E. Cassity, Trustee, et al. : Brief of Respondent

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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HAROLD S. SANDERS and ELEANOR )  
SANDERS, )

Plaintiffs-Respondents, )

vs. )

Case No. 15515

DONN E. CASSITY, Trustee, )  
et al., )

Defendants-Appellants. )

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## BRIEF OF RESPONDENT

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APPEAL FROM JUDGMENT OF THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF SUMMIT COUNTY, STATE OF UTAH

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# FILED

FEB 14 1978

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Clerk, Supreme Court, Utah

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Defendants-Appellant. )

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BRIEF OF RESPONDENT

HAROLD S. SANDERS and ELEANOR SANDERS

---

INTRODUCTION

The parties will be referred to herein either by name or in their respective capacities before the Court--Harold S. Sanders and Eleanor Sanders, Respondents-Plaintiffs, Donn E. Cassity, Trustee, Appellant-Defendant.

NATURE OF CASE

Plaintiffs brought an action against Defendants, Donn E. Cassity, Trustee, and others seeking a declaration by the Court that the conveyance of a homestead interest in property transferred title thereto to Plaintiffs-Sanders free and clear of a judgment lien and that title thereto should be quieted in favor of the transferees of the judgment debtor.

### DISPOSITION IN LOWER COURT

Judge James S. Sawaya granted Plaintiffs, Harold S. Sanders and Eleanor Sanders a Judgment on the Pleadings upon their first cause of action, reasoning that the Plaintiffs, as the grantees of Leoda A. Dunham, had acquired her homestead interest in the real property that is the subject matter of this action, subject to a life estate in favor of Leoda S. Dunham, and free and clear of the judgment of Donn E. Cassity, Trustee. The Court further reasoned that since the interest conveyed by Dunham to Sanders involved her homestead, the interest acquired by the Sanders was free and clear of any claim or interest in Donn E. Cassity, Trustee, as provided by Section 28-1-2, Utah Code Annotated, 1953, as amended.

### RELIEF SOUGHT ON APPEAL

Plaintiffs seek affirmance of the ruling of the lower Court determining that the conveyance to the Plaintiffs-Sanders, being the homestead interest of Leoda S. Dunham, resulted in a transfer of the property free and clear of the judgment lien of Donn E. Cassity, Trustee.

### STATEMENT OF FACTS

Reference to Plaintiff's Amended Complaint, Defendant's Counter-Claim and Cross Complaint and Plaintiff's Reply to Counter-Claim and other portions of the record are hereinafter referred to as "T" followed by the page number in the transcript wherein the pertinent portion appears.

On or about the 17th day of May, 1971, Appellant-Defendant-Cassity, obtained a judgment against Leoda S. Dunham in the principal sum of \$11,549.43, together with costs of suit. (T-10-13, and 19-25)

On or about the 1st day of August, 1972, Appellant-Defendant-Cassity caused to be issued out of the office of the Clerk of Summit County, an execution, whereby and wherein the sheriff of Summit County was directed to levy and execute upon the property of Defendant Leoda Dunham. Thereafter, the sheriff of Summit County caused to be posted a Notice of Sale, whereby and wherein the property that is the subject matter of this action was noticed for sale on the 13th day of September, 1972 at the hour of 1:00 p.m. (T-11,12, 19 and 20) The sheriff's sale did not occur.

On or about the 10th day of September, 1972, Leoda S. Dunham filed a Declaration of Homestead asserting a claim and execution in the amount of \$4,600.00 for herself and her brother. Said declaration further contained her statement that the value of the real estate subject to the homestead declaration, which is the subject property in this matter, was \$3,600.00. Said declaration was recorded on the 11th day of September, 1972, in the office of the Summit County Recorder. (T-12,20 and 32)

Nothing was filed by Appellant-Defendant-Cassity or the sheriff of Summit County to indicate that the value placed upon the property by its owner, Leoda S. Dunham, was incorrect,

understated or excessive.

On or about the 29th day of November, 1972, Leoda S. Dunham, as grantor, conveyed by Quit-Claim Deed to Respondents-Plaintiffs-Sanders, the subject property, reserving in herself a life estate. Said deed of conveyance was thereafter recorded in the office of the Summit County Recorder. (T-60)

Respondents assumed the then existing outstanding mortgage on the property in favor of Kamas State Bank in the amount of \$1,991.20, which amount has been fully discharged by the Respondents-Plaintiffs. (T-42-47)

On or about the 11th day of November, 1976, Appellant-defendant-Cassity, caused to be issued out of the office of the Summit County Clerk, an execution, whereby and wherein the sheriff of Summit County was commanded to execute and levy upon the un-exempt personal and real property of Leoda S. Dunham in an amount sufficient to satisfy the judgment of May 17, 1971. (T-3,12,23,32)

A sheriff's sale was held on December 7, 1976. Appellant-Defendant bid the entire amount of his judgment for the interest of Leoda S. Dunham in and to the property that is the subject of this action. (T-12,24,33)

On or about the 25th day of April, 1977, Respondents-Plaintiffs-Sanders, filed suit against Appellant-Defendant and others seeking declaratory relief and a judgment quieting title in the Respondents. (T-1)

The Trial Court granted Respondents-Plaintiffs Judgment on the Pleadings on the first cause of action of their Amended Complaint. (T-64)

Appellant-Defendant-Cassity thereafter filed a Motion to Reconsider and to Amend Findings of Fact. The Motion was denied on October 17, 1977. (T-94)

## ARGUMENT

### POINT I

APPELLANT-DONN CASSITY'S JUDGMENT AGAINST LEODA S. DUNHAM WAS NOT SUPERIOR TO THE HOMESTEAD INTEREST OF LEODA S. DUNHAM AND THE CONVEYANCE OF HOMESTEAD PROPERTY FROM DUNHAM TO RESPONDENTS-SANDERS TRANSFERRED HER HOMESTEAD INTEREST FREE AND CLEAR FROM THE JUDGMENT LIEN OF CASSITY.

The judgment lien of Defendant-Donn E. Cassity did not attach to the homestead interest of Leoda S. Dunham.

Section 28-1-1, Utah Code Annotated, 1953, as amended provides, in part:

"A Homestead . . . shall be exempt from judgment lien and from execution or forced sale, except upon the following obligations: (1) taxes accruing and levied thereon; (2) judgments obtained by debts secured by lawful mortgage on the premises and on debts created for the purchase price thereof; and (3) judgments obtained by an appropriate party on debts created for failure to provide support or maintenance for dependent children." (Emphasis supplied)

Under the foregoing statute, the homestead declaration filed by Leoda S. Dunham on September 10, 1972, exempted the property that is the subject matter of this action from " . . . judgment lien and execution of forced sale . . . " (emphasis supplied). The only way in which the Defendant-Cassity's lien could be asserted as against the homestead of Leoda S. Dunham would be as one of the three exceptions found in Section 28-1-1, Utah Code Annotated, 1953, as amended. However, the judgment of Defendant-Cassity was not the result of taxes accruing and levied thereon. Nor was the judgment of Defendant-Cassity a judgment

obtained for debts secured by a lawful mortgage on the premises or a debt created for the purchase price of the property. Finally, the judgment of Cassity was not based upon debts created for failure to provide support or maintenance for dependent children. Since the judgment of Defendant-Cassity was not within the three statutory exceptions, the property to which the homestead declaration applied was not subject to the judgment lien of Defendant-Cassity.

Defendant-Appellant-Cassity in his brief asserts that a judgment docketed before a homestead is declared, created a judgment lien which is a valid lien under the provisions of U.C.A. 78-23-3, is not affected by a subsequent homestead declaration. He further cites the case of Mc Murdie v. Chugg, 107 P. 2nd 163 (Utah 1940) as supporting that position. A review of the statute and case cited, clearly demonstrates that Defendant-Appellant's reliance is unfounded. In Mc Murdie the judgment obtained in the lower Court was based upon notes representing the balance due on the purchase of land and water stock together with attorney's fees for bringing the action.

The judgment arose out of debts created for the purchase price of the property in question. In short, the judgment in Mc Murdie was within the second exception found in Section 28-1-1, Utah Code Annotated, 1953. In the instant case, the Defendant-Appellant's judgment did not meet any of the three exceptions found in the Homestead Act.

In Mc Murdie, the specific issue before the Court was whether or not the homestead statute was in conflict with the Utah Constitution because of the exceptions to the homestead exemption contained in the homestead statute enacted by the legislature. This Court, in that case, drew the same distinction that is applicable to this case and said at page 165:

"There is a great difference in protecting one's homestead to which he has acquired clear title from sale on execution for later incurred obligations and in providing that a buyer is not entitled to a homestead exemption until he has fully paid the purchase price for the homestead."

And, this Court, in the same case, citing Harris v. Larsen, 24 Utah 139, stated:

"We see no reason now for changing our ruling that a purchaser may not claim a homestead exemption to defeat the vendor's lien. To hold that he might do so would enable purchasers of land to deceive and defraud innocent sellers by relying on homestead rights as a defense to the payment of a just debt or obligation for the purchase of said land. 107 U. 2d at pages 165 and 166. (Emphasis supplied.)

Defendant-Appellant, Donn Cassity was not the seller of the property to Leoda Dunham. The judgment of Defendant-Cassity did not arise out of an obligation created for the purchase of the subject property. To the contrary, Defendant-Cassity's judgment is the result of twenty three years of unmerciful harassment of Leoda S. Dunham by Defendant-Donn Cassity, trustee and his predecessors, which harassment results from an

auto accident wherein a judgment was obtained against the husband of Leoda S. Dunham in the cases of Fred B. Garret and Bruce R. Sizemore vs. George R. Dunham, and the case of James L. Barker, Jr., Trustee vs. George R. Dunham and Leoda S. Dunham, Case No. 3085, Utah Supreme Court Case No. 9012, filed July 2, 1959 cited at 342 P. 2d 867, (1959) Donn E. Cassity, Trustee vs. Leoda S. Dunham, District Court of Summit County Case No. 3977.

This Court further cited the Utah cases of: Evans v. Jensen, 51 Utah 1, 168 P. 762 and Brown v. Cleverly, 96 Utah 120, 85 P. 2d 769 as demonstrating the kinds of exceptions from the homestead exemption that are recognized by the Utah Supreme Court. None of those exceptions are present in the instant case. In fact, a reasonable reading of the Mc Murdie case relied upon by Appellant, clearly demonstrates that this Court agrees with the position of Plaintiff-Respondents that the judgment lien of Donn E. Cassity was of no force and effect as against the homestead interest of Leoda S. Dunham because it did not fall within the statutory exceptions to the homestead exemption found in Section 28-1-1, Utah Code Annotated, 1953.

Appellant-Defendant-Cassity next cites the California case of Schuler-Knox Co. v. Smith, 144 P. 2d 47 (Calif. 1944) as supporting the assertion that a judgment lien will defeat a homestead interest. That case involved a California statute, not a Utah statute. That case involved the question of whether

or not an inferior court of limited jurisdiction had the jurisdiction to render the judgment there in question. Although there was a homestead declaration filed, it did not comply with the requirements of the California statute. Therefore, the effect of the homestead was never considered by the Court. As the California Court stated:

"Since a valid declaration of homestead was not recorded until after the abstract of the judgment in the Justice Court had been recorded and that the homestead was subsequently abandoned by the absolute transfer of title by deed of the spouses, we are of the opinion it is unnecessary to determine the effect of the claim of homestead right upon Plaintiff's title or right of possession under the execution sale." 144 P. 2d 47 at page 54. (Emphasis supplied.)

In the instant case, there is no defect in the homestead declaration of Leoda S. Dunham. There was in the Schuler-Knox case.

In the instant case there was no abandonment of the homestead of Leoda S. Dunham. In Schuler-Knox there was.

Not only is the case not in point, it is distinguishable on its facts from the case at bar.

Finally, Defendant-Appellant-Cassity, in his argument, completely ignores the effect of Section 28-1-10, Utah Code Annotated, 1953, which allows the filing of a declaration of homestead to be made " . . . before the time stated in the notice of sale on execution, or on other judicial sale, as the time of sale, or premises in which the homestead is claimed . . ." Thus it can be seen from reading the foregoing statute that a declarati

can be made before the "time of sale". To accept Defendant-Cassity's argument would require that the declaration be made prior to the time that the judgment becomes a lien. If that were the case, to be safe, a person would be required to file a declaration of homestead at the time he acquired an interest in property.

If he did not file such a declaration until a judgment was rendered against him, under Defendant's reasoning, it would mean that he could no longer assert such an exemption. If the legislature had intended such a result, they would have required a filing "prior to judgment" rather than before the time stated in the notice "as the time of sale".

For the foregoing reasons, it is respectfully submitted that the position asserted by Defendant-Appellant-Cassity is not only contrary to the statutes of the State of Utah relating to homesteads, but is contrary to the intrepreative decisions of this Honorable Court and is not supported by the authorities relied upon by said Defendant in his brief.

## POINT II

THE CONVEYANCE FROM LEODA DUNHAM TO PLAINTIFFS-RESPONDENTS-SANDERS WITH A RETAINED LIFE ESTATE WAS A CONVEYANCE WITHIN THE MEANING OF SECTION 28-1-2, UTAH CODE ANNOTATED 1953, AND OPERATED TO TRANSFER TITLE TO THE SANDERS FREE AND CLEAR OF DEFENDANT-APPELLANT-CASSITY'S JUDGMENT LIEN.

Section 28-1-2, Utah Code Annotated, 1953, provides as follows:

"When a homestead is conveyed by the owner thereof such conveyance shall not subject the premises to any lien or encumbrance to which it would not be subject in the hands of the owner; and the proceeds of the sale thereof, to the amount of the exemption existing at the time of sale, shall be exempt from execution or other process for one year after the receipt thereof by the person entitled to the exemption." (Emphasis supplied)

As indicated in Plaintiff-Respondents' first argument, the property of Leoda Dunham was not subject to the judgment lien of Defendant-Cassity because of the effect of Section 28-1-1, Utah Code Annotated, 1953. Since the conveyance by Dunham to Sanders was a conveyance of a protected homestead interest, the effect of Section 28-1-1 was to transfer the property to Plaintiffs-Sanders, free and clear of Defendant-Cassity's judgment lien. As indicated in the record, Leoda Dunham had no other interest to convey. The total interest she had in the property was subject to her homestead declaration. She owned an undivided one-half interest in the subject property with the Defendant-Cassity

owning the other undivided one-half interest as a result of the judgment earlier obtained against her deceased husband, George. That undivided one-half interest was valued at \$3600.00. Her homestead exemption was worth \$4600.00. When she conveyed to the Plaintiffs-Sanders approximately two months after the date of her declaration, she had no interest to convey other than her homestead property.

Defendant-Appellant-Cassity's assertion that the conveyance by Dunham to Sanders with a retained life estate operated to extend the judgment lien of Cassity to the property transferred to the Sanders is contrary to the homestead laws and contrary to the general principles of property law. As stated by this Court in In Re Mower's Estate, 73 P.2d 967 (Utah 1939), homestead laws should be liberally construed to make their application effective for the dependent and helpless ". . . to insure them shelter and support . . . ." The effect of Defendant's argument would require that a person who has preserved a homestead right must not convey that property right or any portion thereof at some later date because such a conveyance would change that right from a protected to a non-protected status.

Such an argument completely ignores the plain language, meaning and purpose of Section 28-1-2 because it would not extend the homestead protection to a grantee such as Plaintiffs-

Sanders. The purpose of the homestead exemption is for the protection of those in jeopardy of losing everything to a judgment debtor. Its basic intent cannot be to restrict the alienability of property, something abhorrent to American Law. If Leoda Dunham wished to convey all or a part of what she owned, that is her right, and the law cannot be heard to gainsay this type of conveyance. Therefore, the fact that she conveyed away her entire interest in and to the property, reserving therein only a life estate in herself, is not only consistent with the general policy concerning homestead exemptions, i.e. to preserve something for the judgment debtor, but also to protect that something against the judgment creditor and to allow the judgment debtor to transfer the same without the disability of the judgment being attached thereto. To hold otherwise would mean that a homestead exemption is valueless. This is not the intent of the Utah homestead statutes and is specifically sanctioned by Section 28-1-2, Utah Code Annotated, 1953.

Appellant-Defendant relies upon the California case of Arighi v. Rule & Sons, 107 P.2d 970 (Cal. 1940) as support for the proposition that the reservation of a life estate did not constitute the conveyance of the homestead property. However, in his memorandum, found at T-91-93, Defendant-Cassity has proposed that the act of conveyance by Dunham to Sanders

was an act which terminated her homestead. In the Arighi case the California Supreme Court was, in that case, construing the California statute describing what "abandonment of a homestead exemption" meant in California for purposes of enabling certain lien holders to reach the homestead property. Since Utah has no similar abandonment statute, the case is not in point. Further, that case deals with California statutes and is distinguishable on that basis alone. More importantly, Defendant-Cassity has failed to recognize the basis for the Court's decision in Arighi. California's policy is the same as Utah's, i.e. to protect the same class of people that the Utah statutes are designed to protect. Had the California Court in Arighi construed the grant in fee to the children of the judgment debtor as being an abandonment of the homestead, the judgment creditors could have levied upon the property and deprived the occupants of any interest in the property. In that case, as in the case at bar, the judgment creditor further argued that the conveyance to third persons by the judgment debtor was void as against the judgment creditor. However, that Court disregarded that contention and concluded that the only rights a judgment creditor would have as against the person receiving the conveyance of a homestead exemption would be for any proceeds in excess of the amount of the exemption.

It is therefore submitted that not only is the Arighi case distinguishable from the standpoint that it specifically dealt with the question of abandonment of a homestead under California law, but is also factually distinguishable. Further, that case is also contrary to the argument Defendant-Cassity makes in this case in that Arighi specifically points out that the homestead right is not an estate in land, but is a constitutional and statutory right. That right should be protected by this Court in the case at bar. Finally, this Court, in Stucki v. Ellis, 201 P.2d 486 (1949) has held that it is not necessary to specifically refer to the homestead interest at the time of conveyance. In the instant case, Leoda Dunham had no other interest to convey and the trial court correctly concluded that the conveyance in question was protected by Section 28-1-2, Utah Code Annotated, 1953, and should therefore be sustained.

### POINT III

THE TRIAL COURT CORRECTLY RULED THAT THE VALUE OF THE INTEREST CONVEYED TO PLAINTIFFS-RESPONDENTS-SANDERS WAS LESS THAN THE VALUE OF LEODA DUNHAM'S HOMESTEAD AND WAS BASED UPON THE UNDISPUTED EVIDENCE BEFORE THE COURT.

Both parties moved for summary judgment or in the alternative, for judgment on the pleadings. Both parties therefore asserted that there was no genuine material issue of fact in dispute. (T-38 & 49)

Appellant-Defendant-Cassity now asserts that there was a dispute as to the value of the property at the time of conveyance. Such an assertion is without merit. The homestead declaration filed by Leoda Dunham in September of 1972, only two months prior to the conveyance, stated the value of her undivided one-half interest to be \$3600.00. This declaration was before the trial court. There was no contrary evidence presented by Defendant-Cassity. The value of Leoda Dunham's property interest at the time of the conveyance was not questioned by either the Defendant-Cassity or the executing officer. They apparently agreed with her statement of value. Had they not agreed they could have proceeded under Section 28-1-16, Utah Code Annotated, 1953, which provides for appraisal in the event of dispute over the value of a homestead. They did not so proceed. Certainly the Sheriff of Summit County, being

the selling officer at such sales, would have great familiarity with property values and their selling price. The fact that he accepted the statement of Leoda Dunham concerning the value of the property further supports her appraisal of the value of the property at the time of the conveyance. This Court in a series of cases has held that an owner of realty is competent to give an opinion as to its value. In Provo Water User's Association v. Carlson, et al., 103 Utah 93 (1943), this Court stated:

"An owner of property is always entitled to testify as to its value in condemnation proceedings. An owner does not have to qualify as an expert, nor be engaged in buying or selling real estate."

Although the foregoing decision has been modified by this Court's decision in Utah State Road Commission v. Johnson, 580 P.2d 216 (1976), the general principle of the Provo Water User's Association is still the law. This position is also supported by Rule 56 of the Rules of Evidence adopted by the Utah Supreme Court effective July 1, 1971. See also State of Utah by and through its Road Commission v. Dillree, 478 P.2d 507 (1970). As is stated by Appellant-Defendant Cassity in his brief at page 19, the only evidence of value before the Court was the verified statement of Leoda Dunham. There was no opposing assertion of value. The question of value was not in dispute.

The verified statement of Dunham was made more than five years before the date of decision in the instant case. It was made before the instant lawsuit was ever considered. There was no reason for her to state anything other than the true value of her property. The Sheriff accepted her statement. So did the Defendant-Donn E. Cassity. He did nothing for five years. He could have insisted on an appraisal back in 1972 when the property was valued and when Cassity's execution and attempted levy was fresher. However, the Defendant-Cassity apparently preferred to do nothing, to sit back, to accept the value as filed with the Court, and await until sometime in the future when the appreciation due to inflation and increased property values might raise the value of the property beyond the homestead exemption and therefore, subject to execution for the excess. It is respectfully submitted that the trial court had sufficient competent evidence of value before it at the time of its decision. The value had been accepted by the Defendant-Cassity through his inaction or acquiescence. He should therefore be estopped after more than five years of doing nothing to assert a contrary position. See Pfister v. Cow Gulch, 189 F.2d 311 (10th Cir. 1952).

Appellant attempts to manufacture a dispute as to value by referring to the agreement of Plaintiffs-Respondents-

Sanders. (T-42 & 45) In his brief he attempts to guess the reasons for the purchase of the property by Plaintiffs-Sanders. He completely ignores the effect of a one-half undivided interest in the subject property by himself and the reduction in value that is represented by the prospects of a partition suit to divide the property. He completely ignores the effect on value that more than 23 years of protracted litigation may have had on the value of the property. He erroneously assumes that the Sanders would not have agreed to acquire the interest of Leoda Dunham if her interest in the property was worth only \$3600.00. The Sanders were familiar with the property. They had known Leoda Dunham for more than 20 years. They were familiar with the many years of unrelenting pursuit by the Defendant-Cassity and his predecessors in interest to acquire the entire property. They were aware of the fact that Leoda Dunham could no longer pay the mortgage on her property and was facing the prospects of losing the only thing she had left in the world, her home, and going on welfare. They therefore agreed to purchase her interest, relieve her of those burdens and hoped to secure for her a place to live in her old age without endless pursuit by Defendant-Cassity. Defendant-Appellant's reliance upon the agreement between Dunham and Sanders is therefore totally without merit.

Defendant-Appellant-Cassity in Points IV, V and VII of his brief makes certain technical arguments that are not material to the disposition of this case. Indeed, he cites no authority for his assertions. With regard to Appellant-Cassity's argument at Point V, this Court's attention is directed to the record and Point III of Respondents-Sanders brief and the argument therein contained.

#### CONCLUSION

Plaintiff-Respondents-Sanders respectfully submit that the decision of the Trial Court was correct in all respects. The matter was submitted by both parties on Motions indicating no dispute as to any material fact. The Trial Court was in a proper position to grant either Motion. The Trial Court had before it competent, undisputed evidence of the value of the subject property at the time of the homestead declaration and conveyance approximately two months later. The Trial Court correctly ruled that the conveyance by Leoda Dunham to Plaintiffs-Sanders was the conveyance of the homestead interest of Leoda Dunham. And, since the undisputed value of the property transferred was less than her homestead at the time of the conveyance, the property passed to Plaintiffs-Sanders free and clear of the judgment of Defendant-Appellant-Cassity.

The judgment of the Trial Court should be affirmed.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing Respondents' Brief, postage prepaid, to James B. Tadge, Defendant-Appellant's attorney, at 136 South Main, Suite 404, Kearns Building, Salt Lake City, Utah 84101 on the 14th day of February, 1978.

  
Bill Thomas Peters