

2008

John Nikols v. Goodman & Chesnoff, David Z. Chesnoff : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOHN NIKOLS

Plaintiff and Appellant,

v.

GOODMAN & CHESNOFF, a Nevada
Corporation, and DAVID Z.
CHESNOFF,

Defendants and Appellees.

Case No. 20080503-CA

APPELLANT'S REPLY BRIEF

APPEAL FROM A DECISION AND ORDER AUTHORIZING WRIT OF
ATTACHMENT AND DENYING MOTION FOR DISCHARGE OF WRIT OF
ATTACHMENT IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE
COUNTY, THE HONORABLE JOHN PAUL KENNEDY PRESIDING.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. GIVEN HIS DUTY OF CANDOR TO THE TRIBUNAL, MR. CHESNOFF’S STATEMENTS TO JUDGE CASSELL THAT JOHN NIKOLS WAS THE TRUE OWNER OF THE PROPERTIES SHOULD BE PRESUMED TRUE	1
II. EVIDENCE OF MICHAEL NIKOLS’ ALLEGED DRUG DEALINGS WAS INADMISSIBLE AND IRRELEVANT	3
III. THE ASSUMPTION THAT JOHN NIKOLS TITLED THE PROPERTIES IN HIS SON’S NAME TO AVOID HIS CREDITORS IS IRRELEVANT BECAUSE APPELLEE IS NOT HIS CREDITOR	5
IV. MR. NIKOLS WAS NOT REQUIRED TO MARSHAL THE EVIDENCE BECAUSE THE FINDINGS BELOW WERE TOO INADEQUATE TO AID THIS COURT IN ITS REVIEW	7
CONCLUSION	11
Addendum A Findings of Fact	
Addendum B Utah Rule of Professional Conduct 3.3	
Addendum C Utah Rule of Professional Conduct 5.5	
Addendum D Utah Rule of Professional Conduct 8.5	
Addendum E Utah Rule of Evidence 410	

TABLE OF AUTHORITIES

CASES

Page

<u>Anderson v. Doms</u> , 984 P.2d 392 (Utah Ct. App. 1999)	9, 10, 11
<u>Armed Forces Ins. Exchange v. Harrison</u> , 2003 UT 14	7
<u>Capital Assets Financial Services v. Lindsay</u> , 956 P.2d 1090 (Utah 1998).....	6
<u>Crimm v. Missouri Pacific R. Co.</u> , 750 F.2d 703 (8 th Cir. 1984).....	4
<u>Dennis v. State</u> , 2008 WL 2744237 (Fla. Dist. Ct. App.)	4
<u>Farr v. Henson</u> , 84 S.W.3d 871 (Ark. Ct. App. 2002)	4
<u>Lund v. Donihue</u> , 674 P.2d 107 (Utah 1983).....	6
<u>Martinez v. Media-Paymaster Plus</u> , 2007 UT 42	8
<u>Michelson v. United States</u> , 69 S. Ct. 213 (1948).....	3
<u>Rhodes v. State</u> , 634 S.W.2d 107 (Ark. 1982)	4
<u>State v. Dickinson</u> , 361 P.2d 412 (Utah 1961).....	3
<u>State v. Hansen</u> , 448 P.2d 720 (Utah 1968)	4
<u>State v. Lovegren</u> , 798 P.2d 767 (Utah Ct. App. 1990)	8
<u>United Park City Mines Co. v. Stitching Mayflower Mountain Fonds</u> , 2006 UT 35.....	8
<u>Woodward v. Fazzio</u> , 823 P.2d 474 (Utah Ct. App. 1991).....	7, 8,9
<u>Woodward v. Funderbunk</u> , 846 So. 2d 363 (Ala. Civ. App. 2002)	6, 7

STATUTES, RULES AND CONSTIUTIONAL PROVISIONS

Utah Rule of Professional Conduct 3.3	1
Utah Rule of Professional Conduct 5.5	1

Utah Rule of Professional Conduct 8.5	1
Utah Rule of Evidence 410	3
Utah Rule of Evidence 608	3

ARGUMENT

- I. GIVEN HIS DUTY OF CANDOR TO THE TRIBUNAL, MR. CHESNOFF'S STATEMENTS TO JUDGE CASSELL THAT JOHN NIKOLS WAS THE TRUE OWNER OF THE PROPERTIES SHOULD BE PRESUMED TRUE.

Appellee Chesnoff argues that he was precluded from introducing evidence that Michael Nikols actually paid for the Properties because Michael Nikols invoked his attorney-client privilege. Appellee's Brief p. 23. This Court should disregard Mr. Chesnoff's proposed evidence because he previously made an irreconcilable statement of fact to Judge Cassell in federal district court. Utah Rule of Professional Conduct 3.3(a)(1) states that "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Mr. Chesnoff, who was admitted to practice *pro hac vice* in Utah, was not relieved of this burden. A lawyer permitted to practice temporarily in Utah "is subject to the disciplinary authority of this jurisdiction." Utah Rule of Prof'l Conduct R. 5.5 cmt. 9; Utah Rule of Prof'l Conduct R. 8.5(a) ("A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.")

At the time he represented Michael Nikols, Mr. Chesnoff unambiguously told the federal district court that his investigation revealed evidence relevant to the Properties' federal lis pendens. On at least three separate occasions, Mr. Chesnoff stated that his evidence showed that John Nikols was the true owner of

the Properties. First, he stated that “none of these properties are in any way associated with any kind of criminal activity” and he made “that representation to you based on my investigation and the work we’ve done to prepare for the trial.” R. 421, Exhibit C: 16 (13-21) (Status Hearing, Sept. 29, 2005). Second, he represented that the “strongest part of the defense of this Indictment [was] to the forfeitures” because the Properties’ purchase was the result of “good old fashioned hard work.” R. 996, Exhibit 2: 23-24 (Detention Hearing, Oct. 6, 2005). Finally, in this case, at the evidentiary hearing where he sought to admit evidence of drug proceeds paying for the Properties, Mr. Chesnoff conceded that in his representation “he made certain” that “Michael’s drug money was not used to acquire the Murray properties” and affirmatively represented that John bought the property. R. 2953: 140-41.

This Court should grant Mr. Chesnoff the benefit of the doubt and assume that he did not make false statements of fact to the federal district court in Michael Nikols’ criminal proceedings. His duty of candor reflects that he was truthful when he stated that he possessed evidence that proved that John Nikols was the true owner and that no drug money was trafficked through the Properties. If, like he stated, John Nikols purchased the Properties, Mr. Chesnoff would have no contrary evidence to admit at the evidentiary hearing.

II. EVIDENCE OF MICHAEL NIKOLS' ALLEGED DRUG DEALINGS WAS INADMISSIBLE AND IRRELEVANT.

Appellee Chesnoff also argues that confidential attorney-client communications regarding Michael Nikols' alleged drug trafficking were admissible in certain contexts. Appellee's Brief p. 18. This Court should reject Mr. Chesnoff's argument because evidence of alleged drug dealing is inadmissible and irrelevant to his claims. Michael Nikols agreed to testify about the Properties' titles, payments, ownership, maintenance, and management. R. 2953: 118 (13-20). He only refused to discuss his pending drug charges. Based on this invocation, and choosing not to elicit other relevant evidence, Mr. Chesnoff argues that Michael Nikols was hiding drug proceeds in the Properties. Appellee's Brief p. 19-20.

Evidence Mr. Chesnoff claimed to have of Michael Nikols' alleged drug proceeds was inadmissible. Mr. Chesnoff attempts to persuade this Court that Michael Nikols is a "drug kingpin," ignoring the fact that he has not been convicted.¹ R. 2953: 155(10-20). An arrest without a conviction cannot be used to impeach the witness's integrity. Michelson v. United States, 69 S. Ct. 213, 222 (1948); State v. Dickinson, 361 P.2d 412 (Utah 1961). Furthermore, specific instances of conduct can be admitted only to attack the witness's character if the conduct is probative of *truthfulness* or *untruthfulness*. Utah R. Evid. 608(b)

¹ Michael Nikols' guilty plea in his criminal case was later withdrawn by Judge Cassell. Evidence of a guilty plea later withdrawn is not admissible against the defendant in any civil or criminal proceeding unless it is in a criminal proceeding for perjury or false statement. Utah R. Evid. 410.

(emphasis added). Conduct like fraud and deceit is distinct from drug crimes, which are not probative of truthfulness. Farr v. Henson, 84 S.W.3d 871 (Ark. Ct. App. 2002) (citing Rhodes v. State, 634 S.W.2d 107 (Ark. 1982)); Crimm v. Missouri Pacific R. Co., 750 F.2d 703 (8th Cir. 1984). See also Dennis v. State, 2008 WL 2744237, 1 (Fla. Dist. Ct. App.). Even if Michael Nikols had been convicted of drug dealing, impeaching evidence of a prior conviction is restricted to the fact of the conviction and is not admissible to show the details and events of the crime. State v. Hansen, 448 P.2d 720 (Utah 1968).

Furthermore, Mr. Chesnoff's argument that Michael Nikols' paid for the Properties with drug money is illogical. A drug dealer would not openly title real property in his name to conceal his illegal profits. In addition, Mr. Chesnoff argues that Michael Nikols was in a position to funnel money through Coachman's Restaurant because he helped his father manage it. However, the Restaurant is not attached to Mr. Chesnoff's judgment lien and there has been no evidence that Michael Nikols helped manage any of the four remaining Properties at issue.²

Mr. Chesnoff exhausts this issue by arguing that Michael Nikols' alleged drug dealing showed bias among the two men, motive to lie or misrepresent, or a scheme to transfer the properties back and forth. Appellee's Brief p. 19. However, no evidence exists that John Nikols was involved in the alleged drug scheme.

Furthermore, Mr. Chesnoff had ample opportunity to elicit this testimony from

² The four Properties are parking lots abutting John Nikols' Primary Property facing State Street, which he has owned for more than 30 years. R. 2953: 58-59; 89 (14-23). Combined, these five properties operate as a unit.

John Nikols. He could have inquired about John and Michael Nikols' father-son relationship, including which of them paid his retainer and their past business transactions. Perhaps most importantly, Mr. Chesnoff could have testified about conversations he had with John Nikols about the Properties, their title and the federal lis pendens. This evidence was admissible as it was conclusively established that there was no attorney-client privilege between John Nikols and Mr. Chesnoff. R.1957-64.

In sum, no legitimate purpose existed for inquiring into confidential communications between Michael Nikols and Mr. Chesnoff about alleged drug dealing. Mr. Chesnoff readily rejected his opportunity to elicit relevant testimony and used the confidential communications as a tool to prevent harmful testimony. It appears Mr. Chesnoff threatened to cross examine Michael Nikols about drug deals to brand him as a drug dealer and intimidate him from testifying about other relevant evidence.³

III. THE ASSUMPTION THAT JOHN NIKOLS TITLED THE PROPERTIES IN HIS SON'S NAME TO AVOID HIS CREDITORS IS IRRELEVANT BECAUSE APPELLEE IS NOT HIS CREDITOR.

Mr. Chesnoff argues that he can execute his judgment against the Properties because John Nikols titled them in his son's name with a fraudulent purpose. Mr.

³ Mr. Chesnoff's counsel told the Court: First, "I fully intend to question him about his credibility and his involvement with drugs." R. 2953: 117 (2-7); Second, "you will subject yourself to clear testimony that he dealt drugs and admitted to the same." R. 2953: 129 (8-11); and Third: "But the second prong of the resulting trust was an admitted long-time, head drug kingpin drug dealer, then that prejudices me to a great extent." R. 2953: 155 (10-20).

Chesnoff's argument is misplaced because he is not a creditor of John Nikols. R. 1957. It is undisputed that John Nikols' 1988 creditors could have attached the Properties to the extent of their debt.⁴ The court below clearly established in its Order of Summary Judgment that Mr. Chesnoff's sole debtor is Michael Nikols. R. 1957-64. In addition to being addressed and signed only by Michael Nikols, Mr. Chesnoff's retainer agreement and the affidavit he filed in this Complaint explicitly states that no real property operated as a surety.

Utah law is well settled that a judgment creditor "of a debtor holding bare legal title to property cannot attach the equitable interest in the property, as it is vested in another." Capital Assets Financial Services v. Lindsay, 956 P.2d 1090, 1095 (Utah 1998) (internal citations omitted); Lund v. Donihue, 674 P.2d 107, 109 (Utah 1983). Confusing this doctrine, Mr. Chesnoff continues to misapply the holding of Woodward v. Funderbunk, 846 So. 2d 363, 365 (Ala. Civ. App. 2002).

In Woodward, a father titled his land in his son's name to avoid the tax commission's judgment against him. Id. Later, a judgment was entered against his son, the bare title holder, whose creditor argued that he could use the property to execute his judgment because the titling sought to avoid the father's creditors. Id. While finding the titling was in fact fraudulent, the court held that the son's creditors could obtain no interest in the property since he held merely the bare

⁴ It is stipulated that John Nikols' creditors were not paid until after the titles were put in Michael Nikols' name in 1988. R. 2953:5 (6-13).

legal title. Id. at 369. Naturally, however, his father's creditors could have proceeded against the land since he was the equitable owner. Id.

Mr. Chesnoff, as Michael Nikols' creditor, can obtain no interest in the Properties, just as the son's creditors in Woodward could not. As Michael Nikols holds no interest in them, there is no interest for Mr. Chesnoff to obtain. John Nikols' 1988 creditors are the sole parties who could have obtained a judgment against the Properties.

IV. MR. NIKOLS WAS NOT REQUIRED TO MARSHAL THE EVIDENCE BECAUSE THE FINDINGS BELOW WERE TOO INADEQUATE TO AID THIS COURT IN ITS REVIEW.

Appellee Chesnoff urges this Court to allow him to execute his judgment on the Properties because John Nikols failed to marshal the evidence. Mr. Chesnoff fails to acknowledge that the factual findings below consisted of stipulated facts and legal conclusions, which precluded any meaningful attempt at marshaling. An appellant does not need to "marshal the evidence when the findings are so inadequate that they cannot be meaningfully challenged as factual determinations." Woodward v. Fazzio, 823 P.2d 474, 477 (Utah Ct. App. 1991). "The findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Armed Forces Ins. Exchange v. Harrison, 2003 UT 14, ¶ 28 (internal citations and quotations omitted); Fazzio at 477. Where "the findings are not of that caliber, appellant need not go through a futile marshaling exercise" because "meaningful review of a decision's evidentiary basis is virtually impossible."

Fazzio at 477 (citing State v. Lovegren, 798 P.2d 767, 771 (Utah Ct. App. 1990)).

Marshaling is a tool crafted to ease this Court's burden of weighing the facts on both sides. Martinez v. Media-Paymaster Plus, 2007 UT 42, ¶ 19 ("a tool pursuant to which the appellate courts impose on the parties an obligation to assist them in conducting a whole record review. It is not, itself, a rule of substantive law"). It would be impossible for John Nikols to "ferret out a fatal flaw" in the evidence and play "devil's advocate" because the adversary presented no evidence on its own behalf. Id. at ¶ 17; United Park City Mines Co. v. Stitching Mayflower Mountain Fonds, 2006 UT 35, ¶ 26. Instead, the lower court's inadequate findings have put this Court "in the awkward position of having to speculate about what the court actually determined the facts to be, without benefit of the guidance that proper factual findings are meant to provide." Fazzio, 823 P.2d at 478.

In this case, the court made six findings of fact: First, the evidentiary hearing was the time to present evidence opposing the writ of attachment; second and third, there was stipulated evidence that John Nikols had not paid liens against the property at the time it was titled in Michael Nikols' name in 1988; fourth, Mr. Chesnoff could not "fully" cross examine Michael Nikols because he refused to waive his Fifth Amendment right to remain silent; fifth, John and Michael Nikols desired Mr. Chesnoff not to testify; and sixth, the failure of Michael Nikols and Mr. Chesnoff to testify prejudiced Mr. Chesnoff.

Utah courts have found that findings are inadequate where they are unsupported by the record, do not support the conclusion, inaccurate, irrelevant,

lack subsidiary factual support, or are moral judgments or legal conclusions. See Anderson v. Doms, 984 P.2d 392, 396-97 (Utah Ct. App. 1999); Fazzio at 478. In this case, four of the trial court's factual findings were restatements of facts not in dispute. These four uncontroverted facts consist of the court's first, second, third, and fifth findings of fact, which were:

Finding No. 1

"The April 1, 2008, evidentiary hearing was the time a [sic] place for John Nikols to present evidence supporting his opposition to the Writ of Attachment and, specifically, to present evidence supporting his claim that a resulting trust in his favor existed." R. 2933.

Finding No. 2

"At the February 2008 hearing in this matter, John Nikols stated to the Court that he had paid all the judgments and liens against him as of April 13, 1988 when the first of the Murray Properties was purchased in the name of Michael Nikols." R. 2933

Finding No. 3

"The Stipulation of Facts presented to the Court on April 1, 2008, together with the testimony of John Nikols established that John Nikols' previous claim of having paid his liens and judgments were not accurate." R. 2934.

Finding No. 5

"John Nikols and his son both expressed their desire that David Chesnoff not testify regarding the issues before the Court, including issues of credibility of John and Michael Nikols." R. 2934.

None of these findings were at issue at the evidentiary hearing. First, all the parties understood the objective of the hearing. Next, the second and third findings simply restate a stipulation. Finally, the fifth finding of fact is equally undisputable: John and Michael Nikols did express their desire that Mr. Chesnoff

not reveal privileged communications about Michael Nikols' pending criminal charges.

The court's fourth and sixth findings are legal conclusions unsupported by any subsidiary facts. The court found that Mr. Chesnoff was prejudiced by other witnesses' invocations of privilege:

Finding No. 4

"Michael Nikols refused to waive his Fifth Amendment right to remain silent if he were called to be cross examined in this proceeding. Thus, Chesnoff would not be able fully to cross-examine Michael Nikols with regard to the claim of the existence of a resulting trust." R. 2934.

Finding No. 6

"Michael Nikols' refusal to testify and the opposition of Michael and John Nikols to the testimony of David Chesnoff were prejudicial to the ability of Chesnoff to be able to present his position in this matter in a full and complete manner." R. 2934.

It is a legal conclusion that Mr. Chesnoff was prejudiced by Michael Nikols' failure to testify and his own decision to not take the stand if he could not reveal confidential attorney-client information. Moreover, these legal conclusions are not supported by any subsidiary facts. The findings leave this Court to determine what the invocation prevented Mr. Chesnoff from asking, in what ways those omitted questions prejudiced Mr. Chesnoff, and what specific questions Mr. Chesnoff could have asked. The court also failed to note what facts Mr. Chesnoff was capable of producing with his own testimony. For example, in Anderson, the Utah Court of Appeals reviewed a case in which the trial court found that an appellant's delay in seeking a remedy, which ultimately led to the death of a witness, deprived the opposing party of specific evidence, adversely affecting its

case. Anderson v. Doms, 984 P.2d at 395. However, the Utah Court of Appeals found that because the trial court never stated what specific evidence the other side lacked, the finding was a conclusion unsupported by subsidiary facts. Id. at 396-97.

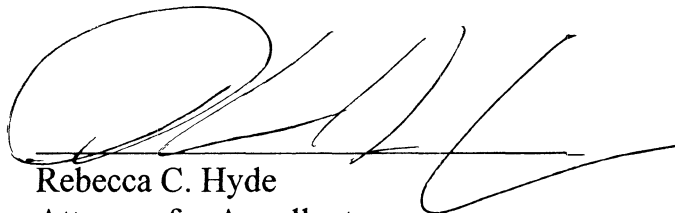
Like Anderson, the factual findings in this case did not state what evidence Mr. Chesnoff lacked and how that prejudiced his case. Most significantly, the court never provided facts it found relevant regarding the resulting trust. The findings should have included the role of purchase payments, mortgage payments, taxes, insurance, maintenance and the contiguous nature of the Properties.

CONCLUSION

Based on the aforementioned arguments, John Nikols urges this Court to find the trial court erred in allowing Michael Nikols' creditor, Mr. Chesnoff, to seize his Properties.

RESPECTFULLY submitted this 2nd day of December, 2008.

SKORDAS, CASTON & HYDE, LLC



Rebecca C. Hyde
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2008, I mailed a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by United States first class mail, postage pre-paid, to the following:

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Skordas, Caston & Hyde

Addendum A

Findings of Fact

3. The Stipulation of Facts presented to the Court on April 1, 2008, together with the testimony of John Nikols established that John Nikols' previous claim of having paid his liens and judgments was not accurate.
4. Michael Nikols refused to waive his Fifth Amendment right to remain silent if he were called to be cross-examined in this proceeding. Thus, Chesnoff would not be able fully to cross-examine Michael Nikols with regard to the claim of the existence of a resulting trust.
5. John Nikols and his son both expressed their desire that David Chesnoff not testify regarding the issues before the Court, including issues of credibility of John and Michael Nikols.
6. Michael Nikols' refusal to testify and the opposition of Michael and John Nikols to the testimony of David Chesnoff were prejudicial to the ability of Chesnoff to be able to present his position in this matter in a full and complete manner.

Therefore, the Court enters the following Conclusions of Law:

- A. John Nikols has not presented testimony from available and knowledgeable witnesses (Michael Nikols and David Chesnoff) to support his claim regarding the existence of a resulting trust in his favor regarding the Murray properties.
- B. The Court therefore presumes that the testimony of Michael Nikols and David Chesnoff, had it been presented, would have been adverse to the claims of John Nikols regarding the purported resulting trust.
- C. The credibility of John Nikols and Michael Nikols regarding the existence of a resulting trust is a fundamental issue in this proceeding. Chesnoff's inability to cross-examine Michael Nikols to assist in determining Michael Nikols' credibility as well as that of his father John Nikols was prejudicial to Chesnoff.
- D. The Court concludes that John Nikols failed to meet his burden of establishing that a resulting trust existed with respect to the Murray properties.
- E. The Murray properties were legally titled in the name of Michael Nikols at the time Chesnoff attached them in December 2005 and had been so titled since 1988
- F. Thus, Chesnoff may lawfully proceed with his writ of attachment.

At the hearing, David Chesnoff was present and was represented by local counsel Scott O. Mercer of Kesler & Rust. Rebecca C. Hyde of Skordas, Caston & Hyde represented John Nikols, who was present. Michael Nikols appeared *pro se* ¹

At the beginning of the hearing on April 1, 2008, the parties presented a Stipulation of Facts to the Court, wherein John Nikols admitted that approximately \$350,000 in judgments and liens had not been paid until 1991. John Nikols had previously represented to the Court that those judgments and liens had been paid as of April 1988.

After presenting the Stipulation of Facts, the parties agreed to proceed by proffer, allowing opposing counsel to cross-examine the witnesses for whom testimony was proffered.

Counsel for John Nikols proffered certain testimony of her client and his son Michael Nikols in support of John Nikols' claim for a purchase money resulting trust in the Murray properties. Counsel for Chesnoff then cross-examined John Nikols. When called to be cross-examined regarding his proffered testimony, however, Michael Nikols refused to testify, asserting his Fifth Amendment privilege. The Court informed Michael Nikols and counsel for John Nikols that Michael Nikols' proffered testimony would be stricken if he asserted his Fifth Amendment rights. Despite this, Michael Nikols asserted his right not to testify and thus, his testimony was stricken.

In addition, Chesnoff's counsel stated that if David Chesnoff testified at the hearing, his testimony may include matters that would be detrimental to Michael Nikols' position in the pending federal court criminal case. On that basis, Michael Nikols and counsel for John Nikols expressed their preference and desire that David Chesnoff not testify.

Based upon the foregoing, the Court enters the following findings of fact:

1. The April 1, 2008, evidentiary hearing was the time a place for John Nikols to present evidence supporting his opposition to the Writ of Attachment and, specifically, to present evidence supporting his claim that a resulting trust in his favor existed.
2. At the February 2008 hearing in this matter, John Nikols stated to the Court that he had paid all of the judgments and liens against him as of April 13, 1988, when the first of the Murray Properties was purchased in the name of Michael Nikols.

¹ Michael Nikols is currently represented in the on-going federal criminal proceeding by an attorney, other than Chesnoff. Said attorney, however, was not present at the hearing on April 1, 2008.

colloquy by then-Judge Paul Cassell, Michael Nikols was allowed to withdraw his plea. Hence, the criminal proceeding in federal court is still pending with a trial set for August 2008.

This Court previously granted summary judgment in favor of Goodman & Chesnoff. Now, Goodman & Chesnoff seek to enforce their judgment through a writ of attachment against four parcels of real estate.

John Nikols, Michael Nikols' father, filed a claim against Goodman & Chesnoff, asserting that he was the owner of the property in question, not his son, Michael Nikols. Therefore, John Nikols asked the Court to deny and discharge the writ of attachment against the real property.

At a hearing in February 2008, John Nikols conceded that the legal titles to the four parcels of real property were all in the name of his son Michael Nickols. Despite the status of the legal titles, however, John Nikols asserted that he was the beneficial owner of the property under a purchase money resulting trust in his favor. He asserted at that hearing that the reason the property was in his son's (Michael Nikols') name was to avoid problems at closing created by a number of judgments shown on the preliminary title report. At the February hearing, John Nikols stated to the Court that notwithstanding the title report, the judgments shown were all satisfied prior to the closing.

The Court scheduled a hearing on April 1, 2008, to give John Nikols and his counsel the time and opportunity to present evidence relating to his claim regarding the valid existence of a resulting trust.

At the hearing on April 1, 2008, the Court conducted an evidentiary hearing on the following matters:


1. Plaintiffs Goodman & Chesnoff and David Z. Chesnoff's ("Chesnoff") Motions for Order Authorizing Writ of Attachment.
2. Third-Party Plaintiff John Nikols' Motions for Order Discharging Writ of Attachment.
3. Determining the validity of John Nikols' claim of a purchase money resulting trust in his favor in the following adjacent Murray, Utah, real property parcels titled in the name of his son, Michael Nikols during the period from 1988 to 2006:

75 East Edison Avenue
71 East 4340 South
85 East Edison Avenue
72 East Fireclay Avenue

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

APR 29 2008

SALT LAKE COUNTY

By  Deputy Clerk

GOODMAN & CHESNOFF, a Nevada
Corporation, and **DAVID Z. CHESNOFF**,

Plaintiffs and Counterclaim
Defendants,

vs.

MICHAEL JOHN NIKOLS,

Defendant and Counterclaim
Plaintiff.

**DECISION AND ORDER
AUTHORIZING WRIT OF
ATTACHMENT AND DENYING
MOTION FOR DISCHARGE OF
WRIT OF ATTACHMENT**

Civil No. 050921826

Judge John Paul Kennedy

JOHN NIKOLS,

Plaintiff,

v.

GOODMAN & CHESNOFF, a Nevada
Corporation; and **DAVID Z. CHESNOFF**,

Defendants.

Introduction:

This is an action by Plaintiffs Goodman & Chesnoff to collect legal fees from their former client Michael John Nikols (herein, "Michael Nikols"). Pursuant to a written agreement, Goodman & Chesnoff were to serve as counsel for Michael Nikols in a federal drug case brought in the District of Utah wherein Michael Nikols was charged with acting as a "drug kingpin dealer."

Initially, Michael Nikols (with the advice and approval of his counsel) entered a guilty plea pursuant to a plea agreement. However, because of certain statements made during the plea

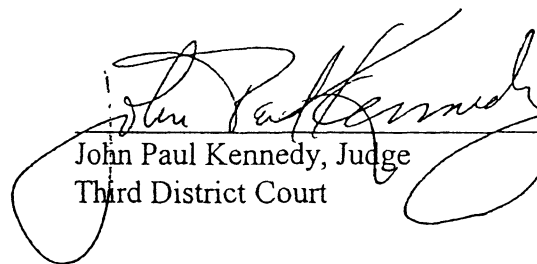
G. The Murray properties are now subject to execution of the judgment in this case.

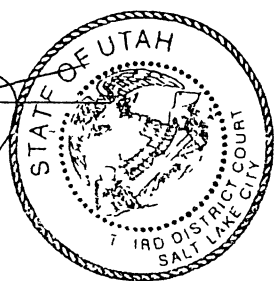
Therefore, it is hereby Ordered, Adjudged, and Decreed:

- I. The Chesnoff Motions for Order Authorizing Writ of Attachment are GRANTED.
- II. The Nikols Motions for Order Discharging Writ of Attachment are DENIED.
- III. The Murray properties are now subject to execution of the judgment in this case pursuant to the Writ of Attachment issued in this case.
- IV. This is the final order on this matter.

Dated: April 29, 2008

By the Court:


John Paul Kennedy, Judge
Third District Court

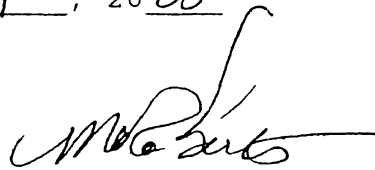


CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 050921826 by the method and on the date specified

METHOD	NAME
Mail	MICHAEL JOHN NIKOLS Defendant 1500 Cadet Rd Taft, CA 93268
Mail	REBECCA C HYDE Attorney DEF 341 S MAIN ST STE 303 SALT LAKE CITY UT 84111
Mail	SCOTT O MERCER Attorney PLA MCINTYRE BUILDING 2ND FLOOR 68 S MAIN ST SALT LAKE CITY UT 84101-1020
Mail	GREGORY G SKORDAS Attorney DEF 341 S MAIN ST STE 303 SALT LAKE CITY UT 84111

Dated this 29 day of April, 2008



Deputy Court Clerk

Addendum B

Utah Rule of Professional Conduct 3.3

West's Utah Code Annotated Currentness

State Court Rules

Utah Code of Judicial Administration

Part II. Supreme Court Rules of Professional Practice

Chapter 13. Rules of Professional Conduct (Refs & Annos)

Advocate

→RULE 3.3. CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(a)(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(a)(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(a)(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

CREDIT(S)

[Amended effective November 1, 2005.]

Addendum C

Utah Rule of Professional Conduct 5.5

C

West's Utah Code Annotated Currentness

State Court Rules

Utah Code of Judicial Administration

Part II. Supreme Court Rules of Professional Practice

Chapter 13. Rules of Professional Conduct (Refs & Annos)

Law Firms and Associations

RULE 5.5. UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(b)(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(b)(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(c)(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(c)(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(c)(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(c)(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction may provide legal services in this jurisdiction that:

(d)(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(d)(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

CREDIT(S)

[Repealed and reenacted effective November 1, 2005.]

C

West's Utah Code Annotated Currentness

State Court Rules

Utah Code of Judicial Administration

Part II. Supreme Court Rules of Professional Practice

Chapter 13. Rules of Professional Conduct (Refs & Annos)

Law Firms and Associations

RULE 5.5. UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW

COMMENT [9]

Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

Addendum D

Utah Rule of Professional Conduct 8.5

West's Utah Code Annotated Currentness

State Court Rules

Utah Code of Judicial Administration

Part II. Supreme Court Rules of Professional Practice

Chapter 13. Rules of Professional Conduct (Refs & Annos)

Maintaining the Integrity of the Profession

RULE 8.5. DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(b)(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(b)(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occur, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

CREDIT(S)

[Repealed and reenacted effective November 1, 2005.]

Addendum E

Utah Rule of Evidence 410

C

West's Utah Code Annotated Currentness

State Court Rules

Utah Rules of Evidence (Refs & Annos)

Article IV. Relevancy and Its Limits

**RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND
RELATED STATEMENTS**

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.