

2008

# Gordon Crofts v. Saint George City : Brief of Appellee

Utah Court of Appeals

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Steve B. Wall; Wall & Wall; Attorneys for Plaintiff/Appellant.

Shawn M. Guzman; St. George City Attorney; Paula J. Houston; Deputy City Attorney; Attorney for Defendant/Appellee; Jesse C. Trentadue; Noah M. Hoagland; Suitter Axland; Attorney for Defendant/Appellee.

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IN THE UTAH COURT OF APPEALS

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GORDON CROFTS,

Plaintiff/Appellant,

v.

SAINT GEORGE CITY,  
a municipal City,

Defendant/Appellee.

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**APPELLEE'S BRIEF**

Case No. 20080512 CA

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APPEAL FROM THE FIFTH DISTRICT COURT IN AND  
FOR WASHINGTON COUNTY, STATE OF UTAH  
JUDGE JAMES L. SHUMATE  
CASE NO. 070501133

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Steven B. Wall (3679)  
WALL & WALL  
2168 East Ft. Union Blvd.  
Salt Lake City, Utah 84121

*Attorneys for  
Plaintiff/Appellant*

Shawn M. Guzman (7392)  
ST. GEORGE CITY  
ATTORNEY  
Paula J. Houston (5239)  
DEPUTY CITY  
ATTORNEY  
175 East 200 North  
St. George, Utah 84770  
*Attorney for  
Defendant/Appellee*

Jesse C. Trentadue (4961)  
Noah M. Hoagland (11400)  
SUITTER AXLAND  
8 East Broadway, Suite 200  
Salt Lake City, Utah 84111  
*Attorneys for  
Defendant/Appellee*

GORDON CROFTS,

**V.**

Defendant/Appellee.

Case No. 20080512 CA

Steven B. Wall (3679)  
WALL & WALL  
2168 East Ft. Union Blvd.  
Salt Lake City, Utah 84121

Shawn M. Guzman (7392)  
ST. GEORGE CITY  
ATTORNEY  
Paula J. Houston (5239)  
DEPUTY CITY  
ATTORNEY  
175 East 200 North  
St. George, Utah 84770  
*Attorney for*  
*Defendant/Appellee*

Jesse C. Trentadue (4961)  
Noah M. Hoagland (11400)  
SUITTER AXLAND  
8 East Broadway, Suite 200  
Salt Lake City, Utah 84111  
*Attorneys for*  
*Defendant/Appellee*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF THE ISSUE .....	1
STANDARD OF REVIEW .....	1
DETERMINATIVE LAW .....	2
STATEMENT OF THE CASE .....	2
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	3
<b>I. UTAH’S APPELLATE COURTS HAVE TIGHTLY CONSTRUED THE UTAH GOVERNMENTAL IMMUNITY ACT’S NOTICE REQUIREMENTS TO REQUIRE STRICT COMPLIANCE .....</b>	<b>4</b>
A. Utah Courts Strictly Construe the UGIA’s Notice of Claim Requirements .....	4
B. The Cases Cited by Plaintiff Lend Little Support to His Arguments that This Court Should Adopt a Standard of Substantial Compliance .....	7
C. A Substantial Compliance Standard for the UGIA Does Not Advance Justice and Equity .....	10
D. The Doctrines of Vertical and Horizontal Stare Decisis Require this Court to Affirm the District Court .....	11
E. A Substantial Compliance Standard for the UGIA Will Prejudice St. George. ....	12

CONCLUSION .....	13
CERTIFICATE OF SERVICE .....	14
ADDENDUM .....	15

## **TABLE OF AUTHORITIES**

### **UTAH CASES:**

<i>Aaron &amp; Morey Bonds &amp; Bail v. Third Dist. Court</i> , 2007 UT 24, 156 P.3d 801 .....	12
<i>Goebel v. Salt Lake City Southern Railroad Co.</i> , 2004 UT 80, 104 P.3d 1185 .....	6, 11
<i>Great W. Cas. Co. v. Utah Dep. of Trans.</i> , 2001 UT App 54, 21 P.3d 240 .....	7, 8
<i>Hall v. Utah State Dep't of Corr.</i> , 2001 UT 34, 24 P.3d 958 .....	1
<i>Moreno v. Board of Educ.</i> , 926 P.2d 886 (Utah 1996) .....	7, 8
<i>Petersen v. Bd. of Educ.</i> , 855 P.2d 241 (Utah 1993) .....	1
<i>State v. Menzies</i> , 889 P.2d 393 (Utah 1994) .....	11, 12
<i>Suazo v. Salt Lake City Corp.</i> , 2007 UT App 282, 168 P.3d 340 .....	1, 6, 12
<i>Wheeler v. McPherson</i> , 2002 UT 16, 40 P.3d 632 .....	1, 4, 5, 6, 10, 11, 12, 13

### **CASES FROM OTHER JURISDICTIONS:**

<i>Hocharian v. Superior Court</i> , 28 Cal. 3d 714 (Cal. 1981) .....	10
<i>Lesko v. Superior Court</i> , 127 Cal. App. 3d 476 (Cal. App. 1 <sup>st</sup> Dist. 1982) .....	7, 9, 10

### **STATUTES:**

Utah Code Ann. § 63-30d-401 .....	2
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Utah Code Ann. § 63-30d-402 .....	1, 2, 4
Utah Code Ann. § 63G-7-401 .....	9
Utah Code Ann. § 63G-7-402 .....	2, 4
Utah Code Ann. § 78A-4-103 .....	1

### **JURISDICTIONAL STATEMENT**

This Court has jurisdiction pursuant to Utah Code section 78A-4-103.

### **STATEMENT OF THE ISSUE**

1. Did the trial court properly dismiss Plaintiff’s case for lack of subject matter jurisdiction when Plaintiff failed to comply with the notice requirements of the Utah Governmental Immunity Act, Utah Code section 63-30d-402, which requires a claimant to file a notice of claim against a governmental entity within one year after claim arises?

### **STANDARD OF REVIEW**

“[A] district court's dismissal of a case based on governmental immunity is a determination of law that [Utah appellate courts] afford no deference. . . . [and] review such conclusions for correctness.” *Wheeler v. McPherson*, 2002 UT 16, ¶ 9, 40 P.3d 632. *See also Hall v. Utah State Dep’t of Corr.*, 2001 UT 34, ¶ 11, 24 P.3d 958; *Petersen v. Bd. of Educ.*, 855 P.2d 241, 242 (Utah 1993). Further, “[w]hether a trial court has subject matter jurisdiction presents a question of law which [Utah appellate courts] review under a correction of error standard, giving no particular deference to the trial court's

determination.” *Suazo v. Salt Lake City Corp.*, 2007 UT App 282, ¶ 5, 168 P.3d 340 (internal quotation marks omitted).

### **DETERMINATIVE LAW**

“A claim against a governmental entity, or against an employee for an act or omission occurring during the performance of the employee’s duties, within the scope of employment, or under color of authority, is barred unless notice of claim is filed with the person and according to the requirements of Section 63-30d-401 within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental.” Utah Code Ann. § 63-30d-402 (renumbered at 63G-7-402).

### **STATEMENT OF THE CASE**

On May 21, 2007, Plaintiff/Appellant Gordon Crofts (“Plaintiff”) filed a *Complaint* against Defendant/Appellee Saint George City (“St. George”), alleging personal injuries as a result of a slip and fall at a swimming pool owned by St. George. R. at 1-5. St. George answered the *Complaint*, R. at 12-17, and then filed a *Motion to Dismiss*, which argued that the district court lacked subject matter jurisdiction because Plaintiff’s notice of claim, as required by the Utah Governmental Immunity Act, was untimely, R. 21-25. In his *Memorandum in Opposition to the Motion to Dismiss*, Plaintiff did not dispute that the notice of claim was untimely filed. R. at 33-40.

In an *Order of Dismissal* dated May 19, 2008, the district court granted St. George's *Motion* and dismissed Plaintiff's *Complaint* for lack of subject matter jurisdiction. R. at 71-73 (Addendum #1). Plaintiff then filed a *Notice of Appeal*. R. at 75-76.

### **SUMMARY OF THE ARGUMENT**

This court should affirm the district court for several reasons. It is undisputed that Plaintiff's notice of claim was untimely filed. Well-settled precedent requires Utah courts to strictly construe the Utah Governmental Immunity Act's ("UGIA") notice requirements and the cases cited by Plaintiff do not, and cannot, contradict this precedent. Further, the Utah Supreme Court has determined that a "substantial compliance" standard for the UGIA would not advance justice and equity and would prejudice governmental entities, such as St. George. In addition, this Court is bound by the doctrines of vertical and horizontal stare decisis to affirm the district court.

### **ARGUMENT**

Plaintiff argues that this Court should reevaluate and change the well-settled jurisprudence involving the UGIA's notice requirements. Utah courts, however, have repeatedly required strict compliance when filing a notice of claim under the UGIA, and the cases cited by Plaintiff do not contravene this precedent. Further, a substantial compliance standard for the UGIA does not advance justice and equity, and such a



standard would prejudice St. George. The doctrines of vertical and horizontal stare decisis also require this Court to affirm the district court's dismissal of Plaintiff's complaint for lack of subject matter jurisdiction.

**I. UTAH'S APPELLATE COURTS HAVE TIGHTLY CONSTRUED THE UTAH GOVERNMENTAL IMMUNITY ACT'S NOTICE REQUIREMENTS TO REQUIRE STRICT COMPLIANCE.**

It is undisputed that Plaintiff filed his notice of claim over one year after the date of his alleged injury. R. at 33-40, 71-73 (Addendum #1); *App Br. at 3*. Plaintiff urges this Court to reverse the district court on the grounds that "Utah law has allowed for something less than strict compliance where the resulting dismissal is not reflective of the purpose of the UGIA," *App Br. at 5*, and because "[t]he UGIA does not require Mr. Crofts to do anything more than he did, i.e. take all necessary steps to effect on time delivery of the Notice of Claim," *App. Br. at 9*. Neither of these arguments have merit under well-settled Utah law.

**A. Utah Courts Strictly Construe the UGIA's Notice of Claim Requirements.**

A claim against a government entity or employee "is barred unless notice of claim is filed . . . within one year after the claim arises regardless of whether or not the function giving rise to the claim is characterized as governmental." Utah Code Ann. § 63-30d-402 (renumbered at 63G-7-402). The Utah Supreme Court has interpreted this statute strictly and held that "the [UGIA] demands strict compliance with its requirements to allow suit

against governmental entities. The notice of claim provision, particularly, neither contemplates nor allows for anything less.” *Wheeler v. McPherson*, 2002 UT 16, ¶ 13, 40 P.3d 632. Significantly, Utah courts have repeatedly refused to adopt a substantial compliance standard, as requested by Plaintiff. *See id.* (declining the “invitation to adopt a ‘substantial compliance’ interpretation of the [UGIA]”). Further, Utah courts “have repeatedly denied recourse to parties that have even slightly diverged from the exactness required by the [UGIA].” *Id.* ¶ 11.

In *Wheeler*, the plaintiffs attempted to file a notice of claim involving a car accident with a Kane County employee. The plaintiffs sent the notice of claim to the three Kane County commissioners and to Kane County’s insurance carrier. *Id.* ¶¶ 2-3. In subsequent litigation, Kane County filed a motion to dismiss the plaintiffs’ complaint for lack of subject matter jurisdiction. Kane County argued that plaintiffs’ notice of claim was insufficient because it was served on the county commissioners and not the county clerk, as required by the applicable statute. *Id.* ¶ 5. The district court granted the motion. *Id.* ¶ 7. The Utah Supreme Court affirmed and noted that “We have consistently and uniformly held that suit may not be brought against the state or its subdivisions unless the requirements of the [UGIA] are strictly followed. Indeed, this standard of strict compliance derives naturally from both basic principles of sovereign immunity and from the text of the [UGIA] itself.” *Id.* ¶ 11 (internal quotation marks omitted).

The Supreme Court reached a similar result in *Goebel v. Salt Lake City Southern Railroad Co.*, 2004 UT 80, 104 P.3d 1185. There, the plaintiff alleged injuries from a bicycle accident and brought suit against several parties, including the Salt Lake City Corporation. *Id.* ¶ 4. The district court granted summary judgment in favor the City because the Plaintiff improperly filed the notice of claim with the Mayor and the Salt Lake City Council. *Id.* ¶ 37. Again, the Supreme Court affirmed because the UGIA, applied retroactively, required the notice of claim to be filed with the Salt Lake City recorder. *Id.* ¶ 40. In reaching its decision, the Supreme Court reiterated that “the [UGIA] demands strict compliance with its requirements to allow suit against governmental entities. The notice of claim provision, particularly, neither contemplates nor allows for anything less.” *Id.* ¶ 37 (quoting *Wheeler v. McPherson*, 2002 UT 16, ¶ 13, 40 P.3d 632).

This Court has also strictly construed the UGIA’s notice of claim requirements. In *Suazo v. Salt Lake City Corp.*, 2007 UT App 282, 168 P.3d 340, the plaintiff attempted to file a notice of claim after he was injured while hiking on land allegedly owned by Salt Lake City. *Id.* ¶ 2. The district court denied the City’s motion to dismiss, and the City brought an interlocutory appeal.” *Id.* ¶ 4. In reversing the district court, this Court noted that “[p]roper notice under the [UGIA] is a jurisdictional prerequisite to any action against a governmental entity in the district court,” and that “[t]he Utah Supreme Court

has been very explicit in its pronouncements that a plaintiff must strictly comply with the [UGIA's] requirements in order to bring suit against a governmental entity.” *Id.* ¶ 6 (internal quotation marks omitted). This court therefore reversed the district court and instructed the district court to dismiss the case on remand. *Id.* ¶ 13.

**B. The Cases Cited by Plaintiff Lend Little Support to His Arguments that This Court Should Adopt a Standard of Substantial Compliance.**

Plaintiff claims that *Moreno v. Board of Education*, 926 P.2d 886 (Utah 1996), *Great West Casualty Co. v. Utah Department of Transportation*, 2001 UT App 54, 21 P.3d 240, and *Lesko v. Superior Court*, 127 Cal. App. 3d 476 (Cal. App. 1<sup>st</sup> Dist. 1982), support the notion that substantial compliance with the UGIA is all that was required of him. *App Br.* at 5-6. In fact, these cases are all factually distinguishable and do not otherwise undermine the well-settled requirement that the UGIA's notice requirements be strictly construed.

Plaintiff argues that *Moreno* demonstrates that Utah courts allow “something less than strict compliance where dismissal is not reflective of the purpose of the UGIA.” *App Br.* at 5. In *Moreno*, however, the “notice . . . was timely filed, set out the facts and the nature of the claim, and stated the damages incurred by the claimant.” *Moreno*, 926 P.2d at 892 (Howe, J., concurring and writing for majority in separate opinion). The only deficiency in the notice of claim in *Moreno* was that it named the decedent's guardians,

and not his heirs, as the beneficiaries of the claimed damages. *Id.* The Supreme Court allowed the heirs to proceed despite not being specifically named in the notice of claim. *Moreno*, therefore, is distinguishable from the present case because there the notice of claim was timely filed. Further, *Moreno* does not discuss a substantial compliance standard for the UGIA or otherwise mention an intent to depart from the well-settled requirement that the UGIA be strictly construed.

Next, Plaintiff claims that *Great West Casualty*, which interpreted *Moreno*, also supports a reversal of the district court's ruling based on his alleged "substantial compliance" with the UGIA. *App Br. at 7-9*. Although *Great West Casualty* discussed *Moreno's* loosening of the UGIA's strict compliance standard, 2001 UT App 54, ¶ 15, *Great West Casualty* also reiterated that "[i]n general, even in situations where a governmental agency may be given actual notice of a party's claim, the party must still file a notice of claim in full compliance with the [UGIA] in order to pursue its claim," *Id.* ¶ 9. Further, *Great West Casualty* limited *Moreno's* application by clarifying that a third party entitled to the claim may "piggyback" on the filing party's claim only if the filing party had standing to bring the law suit. *Id.* ¶ 15. Importantly, the loosening of standards discussed in *Moreno* and *Great West Casualty* applies only if the notice of claim is properly filed in the first place. Here, Plaintiff's notice of claim was untimely so the foregoing analysis is inapplicable. Utah law therefore requires that this Court affirm the

district court's dismissal of Plaintiff's claims.

Plaintiff also avers that *Lesko v. Superior Court*, 127 Cal. App. 3d 476, supports a loosening of the UGLA' requirements. *Lesko*, however, is distinguishable because it dealt with a plaintiff's failure to serve the defendant within three years of filing a complaint, as required by California law. *Id.* at 480. Further, *Lesko* did not involve a claim against a governmental entity. Plaintiff relies on *Lesko*'s discussion of exceptions to California's statute requiring dismissal if the defendant is not served within three years after the filing of the complaint. *See id.* at 483. However, in *Lesko* the plaintiff's actions did not fall within those exceptions because the plaintiff could not show that "despite *reasonable diligence* on the part of plaintiff, service could not be effected upon the defendant within the statutory three-year period." *Id.* at 483-84 (emphasis in original). In fact, the plaintiff could have served the defendant during that three year period, but merely failed to do so. *Id.* at 485.

Nevertheless, even under the framework of the "reasonable diligence" exception discussed in *Lesko*, Plaintiff's conduct falls short of substantial compliance. First, Plaintiff did not use reasonable diligence because he could have mailed or hand-delivered the notice of claim. *See* Utah Code Ann. § 63G-7-401 (governing service requirements for notice of claim). He was not required to use a constable. Second, the *Lesko* exception requires a balancing of "the harm to the plaintiff if the motion [to dismiss] is granted

against the prejudice to the defendant if he is forced to defend the suit.” *Lesko*, 127 Cal. App. 3d at 484 (quoting *Hocharian v. Superior Court*, 28 Cal. 3d 714, 724 (Cal. 1981)). Utah courts, however, have already weighed in on the prejudice a substantial compliance standard would place on governmental entities. “Indeed allowing substantial compliance may severely overburden our already overcrowded courts, disadvantage governmental entities, and confuse potential plaintiffs and defendants alike as to what the [UGIA] requires.” *Wheeler*, 2002 UT 16, ¶ 12, n.3. Thus, even under the reasonable diligence standard discussed in *Lesko*, Plaintiff is not entitled to a reversal.

**C. A Substantial Compliance Standard for the UGIA Does Not Advance Justice and Equity.**

Next, Plaintiff argues that a “narrow exception” to the UGIA “will maintain strict compliance and allow for justice.” *App. Br. at 11*. The Utah Supreme Court has already rejected this argument as applied to the notice requirements of the UGIA. “There is no guarantee that allowing substantial compliance with the [UGIA] will advance ‘justice’ at all. Indeed allowing substantial compliance may severely overburden our already overcrowded courts, disadvantage governmental entities, and confuse potential plaintiffs and defendants alike as to what the [UGIA] requires.” *Wheeler*, 2002 UT 16, ¶ 12, n.3. Further, “given that the [UGIA] explains on whom notice of claim should be served, it is really those parties who fail to follow the express provisions of the statute correctly that prevent justice, not the strict compliance rule.” *Id.* Thus, Plaintiff’s argument that a

substantial compliance standard will promote justice has no merit.

Plaintiff also asserts that equity requires this Court to reverse the district court on the grounds that St. George was not prejudiced because it had prior knowledge of Plaintiff's claim. *App. Br. at 8*. However, Utah courts "have repeatedly stated [that] actual notice of a claim by a governmental entity does not absolve a party of its duty to strictly comply with the [UGIA]. *Wheeler*, 2002 UT 16, ¶ 16. Indeed, "compliance with the [UGIA] is the determining issue, not actual notice." *Id.* (internal quotation marks omitted). Plaintiff's argument that this Court should reverse because St. George had knowledge of his claim therefore has no merit.

**D. The Doctrines of Vertical and Horizontal Stare Decisis Require this Court to Affirm the District Court.**

Utah courts are guided by two forms of stare decisis. Under vertical stare decisis, "lower courts are obliged to follow the holding of a higher court, as well as any 'judicial dicta' that may be announced by the higher court." *State v. Menzies*, 889 P.2d 393, 399, n.3 (Utah 1994). Horizontal stare decisis, on the other hand, "requires that a court of appeals follow its own prior decisions," unless the prior decision is "clearly erroneous or conditions have changed so as to render the prior decision inapplicable." *Id.* (internal quotation marks omitted). As discussed above, both the Utah Supreme Court and this Court have strictly construed the UGIA's notice requirements. *See Goebel v. Salt Lake City Southern Railroad Co.*, 2004 UT 80; *Wheeler v. McPherson*, 2002 UT 16; and



*Suazo v. Salt Lake City Corp.*, 2007 UT App 282. Consequently, vertical stare decisis requires this Court to again apply a strict compliance standard to the UGIA.

In any event, Plaintiff has not shown that this Court's prior decisions are "clearly erroneous" or that "conditions have changed so as to render the prior decision inapplicable." *State v. Menzies*, 889 P.2d at 399, n.3. This requires Plaintiff to satisfy a "substantial burden of persuasion" in order to overturn the precedent requiring strict compliance with the UGIA. *Wheeler*, 2002 UT 16, ¶ 12, n.3. Based on the arguments above, Plaintiff falls short of his burden of substantial persuasion and this Court should therefore affirm the district court.

**E. A Substantial Compliance Standard for the UGIA Will Prejudice St. George.**

The UGIA places conditions on potential litigants that must be met in order to sue governmental entities. Recognizing the importance of compliance with the conditions, courts have consistently tightly construed the UGIA. *See Wheeler*, 2002 UT 16, ¶ 11 (requiring strict compliance with governmental immunity statutes because the statutory provisions are conditions the government has placed on suits against itself). More generally, courts require "strict compliance . . . when failure to adhere to the statute will affect a substantive right of one of the parties and possibly prejudice that party." *Aaron & Morey Bonds & Bail v. Third Dist. Court of Utah*, 2007 UT 24, ¶ 8, 156 P.3d 801. Here, "allowing substantial compliance may severely overburden our already overcrowded

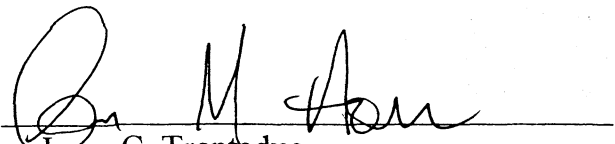
courts, disadvantage governmental entities, and confuse potential plaintiffs and defendants alike as to what the [UGIA] requires.” *Wheeler*, 2002 UT 16, ¶ 12, n.3. St. George and other governmental entities will therefore be prejudiced if this Court applies a substantial compliance standard to the UGIA.

### CONCLUSION

It is undisputed that Plaintiff failed to comply with the UGIA’s notice requirements by filing his notice of claim within one year of the alleged injury. Utah appellate courts have consistently required strict compliance with the UGIA’s notice requirements. The district court properly applied this precedent, and this Court should do the same. Further, a substantial compliance standard for the UGIA does not advance justice and equity, and such a standard would prejudice St. George and other governmental entities. This Court is also bound by doctrines of vertical and horizontal stare decisis. Consequently, St. George respectfully requests this Court to AFFIRM the district court’s dismissal of Plaintiff’s complaint for lack of subject matter jurisdiction.

DATED this 26<sup>th</sup> day of November, 2008.

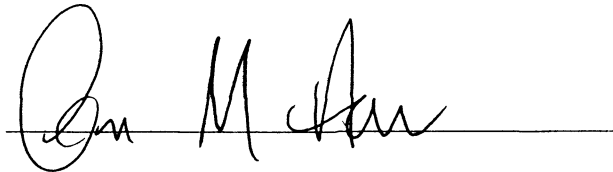
SUITTER AXLAND, PLLC

By:   
Jesse C. Trentadue  
Noah M. Hoagland  
*Attorneys for Defendant St. George City*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of November, 2008, I caused a true and correct copy of the foregoing **APPELLEE'S BRIEF** to be served via, first class United States mail, postage prepaid, upon the following:

Steven B. Wall  
WALL & WALL  
2168 East Fort Union Boulevard  
Salt Lake City, Utah 84121

A handwritten signature in black ink, appearing to read "Steven B. Wall", is written over a horizontal line.

*T:\7000\7487\4\CROFTS APPELLEE BRIEF vpd*

## **ADDENDUM**

1. ORDER OF DISMISSAL, dated May 19, 2008.

**FILED**

**MAY 19 2008**

**FIFTH DISTRICT COURT  
WASHINGTON COUNTY**

*K*

Jesse C. Trentadue (#4961)  
Michael W. Homer (#1535)  
**SUITTER AXLAND, PLLC**  
8 East Broadway, Suite 200  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7300  
Facsimile: (801) 532-7355

Shawn M Guzman (#7392)  
**ST. GEORGE CITY ATTORNEY**  
175 East 200 North  
St. George, Utah 84770  
Telephone: (435) 634-5000  
Facsimile: (435) 674-4260

*Attorneys for Defendant St. George City, Utah*

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**FIFTH JUDICIAL DISTRICT COURT**

**IN AND FOR WASHINGTON COUNTY, STATE OF UTAH**

---

GORDON CROFTS.

Plaintiff,

v.

ST. GEORGE CITY, a municipal  
corporation,

Defendant.

**ORDER OF DISMISSAL**

Case No. 07050 <sup>1133</sup>~~1122~~

Judge James L. Shumate

Defendant St. George City's *Motion to Dismiss* came on for a regularly scheduled hearing before this Court on April 22, 2008. Plaintiff, Gordon Crofts, appeared personally and through his counsel of record Steven V. Wall of Wall & Wall, A.P.C. Defendant St. George City appeared by way of its representative, St. George City Attorney Shawn M. Guzman, and its counsel of record, Jesse C. Trentadue of Suitter Axland, PLLC.

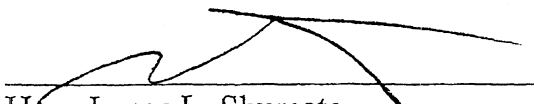
This case arises out of a slip and fall involving Mr. Crofts that occurred at the Sand Hollow Swimming Complex on March 26, 2005. That facility is owned and/or operated by St. George City, Utah. By law, *Utah Code Ann.* §§ 63-30d-401 and 402, Plaintiff was required to file a *Notice of Claim* with the St. George City Recorder within one year of his accident. It is undisputed that Mr. Crofts *Notice of Claim* was not filed with the City Recorder until March 28, 2006, which was more than one year post accident.

Based upon the untimely filing of *Notice of Claim* by Plaintiff Gordon Crofts, it is hereby ORDERED, ADJUDGED AND DECREED that the *Complaint* in this matter be and the same is hereby dismissed for lack of subject-matter jurisdiction;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties shall bear their respective costs and attorney's fees.

DATED this 15 day of May 2008.

BY THE COURT:

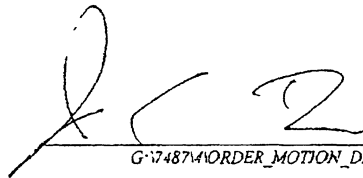


Hon. James L. Shumate

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5<sup>th</sup> day of May, 2008, I caused a true and correct copy of the foregoing **ORDER** to be served via, first class United States mail, postage prepaid, upon the following:

Steven B. Wall  
WALL & WALL  
2168 East Fort Union Boulevard  
Salt Lake City, Utah 84121

  
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