

2008

Marian C. Olson v. Bradley L. Olson : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARIAN C. OLSON,

Appellant,

vs.

BRADLEY L. OLSON,

Appellee

Appellate Case No: 20080666

**OPENING BRIEF OF APPELLANT
MARIAN C. OLSON**

**APPEAL FROM THE DECISION AND ORDER
OF THE FIRST JUDICIAL DISTRICT**

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ORAL ARGUMENT REQUESTED

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PARTIES TO THE PROCEEDINGS

Pursuant to Rule 24(a)(1) of the Utah Rules of Appellate Procedure, the following is a complete list of all parties to the proceedings below that are involved in this Appeal.

Marian C. Olson, Appellant
Bradley L. Olson, Appellee

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Ockey v. Lehmer 189 P.3d 51, 59-60 (Utah 2008)

Colman v. Colman, 743 P.2d 782 (UT. App. 1987)

Dockstader v. Walker, 29 Utah 2d 370, 510 P.2d 526, 528 (1973)

Messickv. PHD Trucking Service, Inc., 678 P.2d 791 (Utah 1984)

Salt Lake City Corp. v. James Constructors, Inc., 761 p.2d 42, 46 (Utah App. 1988)

First Security Bank of Utah v. Demir, 354 P.2d 97, 99 (Utah 1960)

Norman v. Murray First Thrift & Loan Co., 596 P.2d 1028, 1030 (Utah 1979)

Finlinson v. Finlinson, 874 P.2d 843 (Utah App. 1994)

Grover v. Garn, 464 p.2d 598, 602-03 (Utah 1970)

Jones v. Jones, 700 P.2d 1072 (Utah 1985)

Other Authorities

None

Rules

None

Treatises

None

Constitutional Provisions

None

JURISDICTIONAL STATEMENT

As provided by statute, the Court of Appeals has jurisdiction to review this matter pursuant to Utah Code Ann. §78-2a-3(2).

STATEMENT OF ISSUES ON APPEAL

Did the district court err in finding that the debt to Cache Valley Bank was a marital debt? Did the district court improperly ignore UCA § 30-2-5 and illegally make Marian Olson liable for a personal debt of Brad Olson? Did the district court err in finding that the debt to Capitol Building Supply was a marital debt? Did the district court err in finding the value of the Nibley home to be \$550,000? Did the district court err in allowing the corporate veil to be pierced? Did the district court err in awarding only \$1000 in monthly alimony? Did the district court err in not allowing alimony to commence immediately? Did the district court err in requiring the parties to sell the Nibley home? Did the district court err in not allowing Jack Peterson to testify in full? Did the district court make an inequitable division of property? Did the district court err in determining that Appellant would not be awarded her attorney's fees in relation to this case?

STANDARD OF REVIEW

The standard for review for this matter is that the appellate court should give no deference to the trial court's conclusions of law and review the legal conclusions reached by the trial court for correctness. See, Kenny v. Rich, 186 P.3d 989, 997 (Utah App.

2008) Findings of fact are set aside if they are found to be clearly erroneous by the appellate court. See, Ockey v. Lehmer 189 P.3d 51, 59-60 (Utah 2008).

**CONSTITUTIONAL PROVISIONS WHOSE
INTERPRETATION ARE DETERMINATIVE**

None.

STATUTES WHOSE INTERPRETATIONS ARE DETERMINATIVE

Utah Code Annotated § 30-2-5

- (1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other:
 - (a) contracted or incurred before marriage;
 - (b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9;
 - (c) contracted or incurred after divorce or an order for separate maintenance under this title, except the spouse is personally liable for that portion of the expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other similar necessities as provided in a court order under Section 30-3-5, 30-4-3, or 78B-12-212, or an administrative order under Section 62A-11-326; or
 - (d) ordered by the court to be paid by the other spouse under Section 30-3-5 or 30-4-3 and not in conflict with Section 15-4-6.5 or 15-4-6.7.
- (2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse, as described under Subsection (1).

Utah Code Annotated § 30-3-5(8)

- (a) The court shall consider at least the following factors in determining alimony:
 - (i) the financial condition and needs of the recipient spouse;
 - (ii) the recipient's earning capacity or ability to produce income;
 - (iii) the ability of the payor spouse to provide support;
 - (iv) the length of the marriage;

- (v) whether the recipient spouse has custody of minor children requiring support;
 - (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
 - (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.
- (b) The court may consider the fault of the parties in determining alimony.
- (c) As a general rule, the court should look to the standard of living existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.
- (d) The court may, under appropriate circumstance, attempt to equalize the parties' respective standards of living.
- (e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.
- (f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.
- (g) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

- (ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.
- (iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).
 - (A) The court may consider the subsequent spouse's financial ability to share living expenses.
 - (B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.
- (h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

STATEMENT OF THE CASE

The purpose of this appeal is to review the decision of the trial court in relation to its final decree of divorce in dividing property, debt, and assets of the parties. Appellant Marian Olson did not receive equitable treatment by the trial court in the final divorce decree. There are several errors made by the trial court which are set forth in more detail in the body of this Opening Brief, the cumulative effect thereof are an inequitable detriment to Marian Olson. The single most significant inequity was the trial court's decision to render Marian Olson liable for corporate debts for which she had no personal liability. Moreover, the court should not have ordered the house to be sold, but should have awarded the house to Marin Olson with a lien in favor of Brad Olson's interest, if

any. In addition, the alimony awarded to Marian Olson was wholly insufficient and should not have been conditioned upon the sale of the home. Also, the overall distribution of the parties' assets was inequitable. Finally, there were several other errors by the trial court which are enumerated in more detail below.

STATEMENT OF FACTS

1. Appellant Marian C. Olson and Appellee Bradley L. Olson were married in Smithfield, Utah on November 18, 1989. This is a second marriage for both Parties, and no issue were born to the Parties. R.667.

2. Although the Parties have been married for more than 18 years, the Parties have been living separately since December 2004. R.667.

3. Appellant Marian C. Olson resides in Nibley, Utah in the Parties' marital home located at 3818 South 250 East, Nibley, Utah. R.668.

4. The Appellee lives in Las Vegas, Nevada and works in the construction industry. R.667.

5. The Parties were shareholders in a corporation known as B&B Drywall, Inc. Appellant and Appellee were each 50% shareholders in that corporation. R.668.

6. The corporation has gone into receivership and is no longer active. See, Tr. page 11, lines 1-25.

7. Appellant had previously owned a home in Smithfield, Utah where the Parties had resided for the early part of their marriage. R.669.

8. In July 1998, Appellant Marian Olson sold that home and received more than \$108,000.00 in equity which was immediately used for the Nibley home. R.669.

9. Those funds were used to pay off the construction loan which had been obtained to build the Nibley home in 1998. R.669.

10. The Parties moved into the Nibley home and they owned it as joint tenants free and clear. See, Tr. page 12, line 6.

11. As president of the company and as the decision maker of day-to-day business affairs of B&B Drywall, Inc., Bradley Olson obtained various business loans from Cache Valley Bank for the benefit of B&B Drywall. The loans were made in 2004 and 2005 for \$250,000.00 and \$50,000.00 respectively. See, Tr. page 153, lines 8-16.

12. Cache Valley Bank did not require the Nibley home as collateral for the debts. Tr. page 458, lines 4-24.

13. The only collateral which Cache Valley Bank took for the debts were the assets of B&B Drywall, Inc. Tr. page 458, lines 4-24

14. Cache Valley Bank obtained a personal guaranty from Bradley Olson with regard to the above-referenced business debt but did not require or request a personal guaranty from Marian Olson. Tr. page 433, line 24 – page 434 line 5.

15. During their marriage, Marian Olson had generally refused to become a co-signer on business debt and had always refused to place her home up as collateral for business debt. Tr. 255, lines 3-14.

16. Marian Olson's intention in not allowing the home to be used as collateral and not personally guaranteeing business debts was to protect all of her interest in the Smithfield home and later all of her interest in the Nibley home. Tr. 255.

17. After the divorce was filed Bradley Olson allowed for any interest that he had in the Nibley home to go to Cache Valley Bank by way of a trust deed. Tr. page 459, lines 1-8.

18. Bradley Olson disposed of several assets prior to finalizing the divorce decree. See, Tr. page 216, line 22 – page 217 line 19.

19. Brad sent a general letter on August 4, 2005 (3 days after the divorce petition was filed) to business associates notifying them that he was shutting down B&B Drywall, Inc. See, Tr. page 129, lines 3-6; Petitioner's Exhibit Tab 31.

20. In the Decree of Divorce, the trial court did not award the marital home to either of the Parties but rather stated that the home should be sold to satisfy the debt to Cache Valley Bank. See, Decree of Divorce ¶2. R.688-89. The trial court did allow for the first \$108,000.00 arising out of the sale to be awarded to Marian Olson. See, Tr. page 711, lines 14-22.

21. The trial court determined the value of the home to be worth \$550,000.00. See, Tr. page 710, line 13 – page 711 line 13.

22. Brad obtained advice from Cache Valley Bank's attorney, George Daines. See, Tr. page 194, lines 11-19 and Tr. page 225, lines 13-19.

23. Cache Valley Bank admits that Marian Olson is not liable for the debt because she did not sign a personal guarantee. Tr. page 466, lines 6-9.

24. For convenience purposes Appellant Marian Olson is sometimes referenced herein simply as "Marian" and Appellee Bradley Olson is sometimes referenced herein as "Brad".

SUMMARY OF APPELLANT'S ARGUMENT

The trial court erred in finding that Marian Olson was liable to Cache Valley Bank for the debt of B&B Drywall, Inc. when she was not an obligor for that debt. The court's ruling which requires the parties to sell the Nibley house and pay the full Cache Valley Bank trust deed violates Utah Code Annotated § 30-2-5. The cumulative effect of the above was to illegally elevate the rights of Cache Valley Bank above the rights of Marian Olson. The court essentially allowed for the corporate veil to be pierced when it was not merited and without sufficient evidence. The trial court further erred in its rulings relating to alimony. Alimony should have been awarded to Marian in the amount of \$2,000.00 per month and should have been awarded retroactively. The court's ruling regarding alimony should have commenced immediately rather than being conditioned upon the sale of the house. The Capitol Building Supply debt was not a marital debt, but the LKL debt was marital debt because both parties had personally guaranteed it. The record does not support the court's finding as to the value of the home. Bradley Olson should not benefit from selling assets in violation of the court's order. Attorney's fees should have been awarded to Marian Olson. Appellant's witness, Jack Peterson, was not allowed to testify as to the full scope of his testimony. The trial court should not have

made any orders regarding the protective order in this case. Judge Willmore should have been removed as the judge presiding over this case.

ARGUMENT

I. THE COURT'S RULING WHICH REQUIRES THE PARTIES TO SELL THE NIBLEY HOUSE TO PAY THE CACHE VALLEY BANK DEBT VIOLATES UTAH CODE ANNOTATED § 30-2-5.

Utah Code Annotated § 30-2-5 provides as follows:

(1) Neither spouse is personally liable for the separate debts, obligations, or liabilities of the other: (a) contracted or incurred before marriage; (b) contracted or incurred during marriage, except family expenses as provided in Section 30-2-9; (c) ...; (d) ordered by the court to be paid by the other spouse under Section 30-3-5 or 30-4-3 and not in conflict with Section 15-4-6.5 or 15-4-6.7.

(2) The wages, earnings, property, rents, or other income of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse as described under Subsection (1).

The trial court's ruling with regard to Cache Valley Bank and the Nibley house directly violates the above referenced statute. Marian Olson was never personally obligated in any way, shape, or form on any loan to Cache Valley Bank, much less the amount of \$341,159.76. Marian Olson did not sign any loan documents in favor of Cache Valley Bank. Tr. page 466, lines 6-9. Cache Valley Bank knew when it extended the loans to B&B Drywall, Inc. that Marian Olson was not making herself personally liable and further knew that the house was not collateral for the debt. Id. Bradley Olson also knew this same information. The Nibley house was free and clear of any and all debt at the time that the divorce action was filed. As of the date of the divorce action, August 1,

2005, there was no debt, lien, or other obligation encumbering the Nibley house. Tr. page 12, line 6. The trial court found that the house was worth \$550,000.00 and yet despite that, Marian Olson is now coming out of the divorce with only \$108,000.00 and is under a stayed order to be evicted from the house which the parties previously owned free and clear.

Brad incurred more than \$300,000.00 in debt to Cache Valley Bank during the parties' marriage. He was a personal guarantor on the B&B Drywall, Inc. debt in the same amount. Tr. 466, lines 6-9. B&B obtained loans from Cache Valley Bank in 2003 for \$100,000.00, in 2004 for \$250,000.00, and 2005 for \$50,000.00. Brad personally guaranteed those loans. Tr. page 433, line 24 – page 434 line 5. Marian did not. Id. Therefore under Utah Code Annotated § 30-2-5, these were debts incurred by Brad Olson during the course of their marriage. These loans were incurred for business expenses of B&B Drywall. Tr. 425 line 22 – page 426, line 12. In other words, these loans were not for family expenses.

The effect of the court's ruling is to make Marian Olson personally liable for the separate debt of Bradley Olson to Cache Valley Bank. Such an outcome is in direct conflict with Utah Code Annotated § 30-2-5(2) which specifically states that the property of one spouse may not be reached by a creditor of the other spouse to satisfy a debt, obligation, or liability of the other spouse. Moreover, it is insufficient in and of itself to elevate the claims of Cache Valley Bank over the rights of the Parties to the divorce. Further, it only benefits Bradley Olson to use assets of the marital estate to pay for Bradley Olson's personal debt. Marian Olson specifically and intentionally, during the

course of the marriage, avoided signing personal guarantees of business debt and specifically and intentionally avoided allowing the house to be encumbered by business debt (except with LKL Associates). Tr. page 255, lines 3-14. There is no written document which was signed by Marian Olson establishing her alleged liability to Cache Valley Bank. Tr. page 434, lines 1-5.

In Finlinson v. Finlinson, 874 P.2d 843 (Utah App. 1994) the Utah Court of Appeals found that a similar ruling by a trial court in favor of a third party was inappropriate. The trial court had ordered the divorce parties to sign a quit claim deed of a lot which had been titled in the parties' names. The court ordered that the property should be awarded to a non-party to the action. In overturning that ruling, the appellate court stated, "Even so, absent some kind of intervention, a divorce action deals only with rights as between the parties to the marriage and does not operate to assert the rights of a third-party." Id. at 850. The Court of Appeals reversed the trial court's conclusion that the lot was not marital property and reversed the order regarding the quit claim deed. The Court of Appeals further ordered that the trial court should make an equitable division of the lot as a marital asset between the parties to the divorce action.

In this case, the trial court has abused its discretion by making an order that the Nibley home be sold to Cache Valley Bank. R.775. The trial court only has the authority to determine as between the parties to the divorce action who owns the property and to allocate the debts. The trial court has not made a direct finding that Marian Olson is responsible for the Cache Valley Bank debt. However, the effect of the court's order is to do that very thing. There are insufficient findings nor is there sufficient law to support

elevating the rights of Cache Valley Bank above those of Marian Olson. In fact, it is in direct contravention of law to allow Marian Olson to be liable for the Cache Valley Bank debt when Cache Valley Bank did not require her personal guaranty and when Cache Valley Bank did not require a security interest in the Nibley house. See, Utah Code Annotated § 30-2-5. Subsection (2) of § 30-2-5 is clear that the property of one spouse may not be reached by a creditor of the other spouse to satisfy a debt of the other spouse.

II. THE TRIAL COURT ERRED IN FINDING THAT MARIAN OLSON WAS LIABLE TO CACHE VALLEY BANK FOR THE DEBT OF B&B DRYWALL, INC. WHEN SHE DID NOT PERSONALLY GUARANTEE THE DEBT.

The court's ruling purportedly uses a theory of commingling to accomplish what the statute expressly disallows. This court should reverse that ruling. It is undisputed that Marian Olson did not sign a personal guaranty in favor of Cache Valley Bank, but that Bradley Olson did sign such a document. Tr. page 433, line 24 – page 434, line 5.

Appellee has argued and will likely continue to argue that the decision of the court in Colman v. Colman, 743 P.2d 782 (UT. App. 1987) allowed the trial court to pierce the corporate veil as persuasive authority supporting the result of this case. Indeed, the Colman case did allow for the corporate veil to be pierced and the husband's corporate assets to be distributed as part of the marital estate. However, that theory and finding in Colman is much different from what the trial court did in this matter. The trial court made Marian Olson liable for corporate debts when she had not personally guaranteed them! Apparently, the trial court was piercing the corporate veil to accomplish this result. The trial court did not mention veil piercing in its findings of fact and conclusions

of law. While the court did mention commingling, the court did not review the elements of veil-piercing and certainly has no precedent for doing so. In the Colman case the issue was whether or not the wife could pierce the corporate veil to reach assets that the husband claimed belonged to one of his companies and not to him. In Colman, the husband had been using a corporate veil as a shield to protect him from having to split assets. The Colman court pierced that corporate veil. In this case, the husband is attempting to use the corporate veil as a sword to obligate his former spouse for debts that she did not sign or incur. There is no precedent for using a corporate veil theory in this matter.

“Ordinarily a corporation is regarded as a separate and distinct legal entity from its stockholders.” Dockstader v. Walker, 29 Utah 2d 370, 510 P.2d 526, 528 (1973). Marian refused to personally guarantee the Cache Valley Bank loans. Tr. 255, lines 3-14. Brad could have decided not to get the loan when she refused the personal guarantee. Now Brad is trying to get the legal system to change that decision which he made.

To disregard the corporate entity under the equitable alter ego doctrine, two circumstances must be shown: (1) Such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, but the corporation is, instead, the alter ego of one or a few individuals; and (2) if observed, the corporate form would sanction a fraud, promote injustice, or result in an inequity. Norman v. Murray First Thrift & Loan Co., 596 P.2d 1028, 1030 (Utah 1979).

Bradley Olson had the burden of proving his theory that the corporate veil should be pierced. In an effort to meet his burden, Mr. Olson made assertions such as that

several personal items were purchased with B&B funds (Tr. 519, line 25 – page 520, lines 7) or that certain “trades” were made with subcontractors in connection with the construction of the Nibley home. Tr. 201, lines 8-23. Mr. Olson failed to admit any evidence other than his own self-serving statements. This is insufficient to support a finding of veil-piercing. The record is devoid of proof to justify the trial court’s ruling that the corporate entity should be disregarded. No evidence was admitted to establish the corporation’s neglect of statutory formalities nor was any evidence received to the effect that the observance of the corporate entity would “sanction a fraud, promote injustice, or produce an inequitable result.” Messickv. PHD Trucking Service, Inc., 678 P.2d 791 (Utah 1984). Therefore, no justification exists for piercing the veil between B&B Drywall, Inc. and its shareholders. Indeed, B&B Drywall, Inc. was the subject of a receivership. See, Tr. page 11, lines 1-25—if it had no separate corporate existence, there would be no need for such a veil piercing theory. “Courts must balance piercing and insulating policies and will only reluctantly and cautiously pierce the corporate veil.” Salt Lake City Corp. v. James Constructors, Inc., 761 p.2d 42, 46 (Utah App. 1988) see also Colman at 786.

Bradley Olson made no claims that Marian Olson defrauded Cache Valley Bank. Therefore, he cannot make her share in his liability as it relates to Cache Valley Bank. In an alter ego case by the Utah Supreme Court where it found that in the absence of any charge of fraud on the part of the owners, it was error to make the stockholders individually liable on contract with a corporation. See, Grover v. Garn, 464 p.2d 598, 602-03 (Utah 1970).

The trial court's ruling violates Marian Olson's rights and deprives her of property and significant equity which rightfully belong to her. This further appears to be a violation of Marian Olson's due process rights. The trial court is taking property which belongs to her and giving it to Cache Valley Bank and Bradley Olson.

Another interesting result of the Colman case is that the court of appeals determined that every element of the veil piercing theory had been tried and evidence had been admitted concerning the same. In this matter involving the Olsons, the only evidence admitted had to do with comingling of assets but the other elements of the veil piercing theory were not discussed.

In order to gain the result that Mr. Olson desires regarding the veil piercing theory against Mrs. Olson, he has to take inconsistent positions. In the receivership case, B&B Drywall had a large amount of debt. If his theory regarding veil piercing is true, then he is personally liable for all of those debts as well. On the contrary, he is only using his veil piercing theory when it is to his advantage which is that Marian Olson should become a co-obligor with him on the Cache Valley Bank debt. Veil piercing should not be used as a sword as between former spouses.

Because this is a case in equity, the standard of review is such that it allows this Court to conduct an independent examination of the facts in the record and to modify or make new findings based upon that record. First Security Bank of Utah v. Demir, 354 P.2d 97, 99 (Utah 1960).

The B&B shareholders and officers **did** hold corporate meetings, maintained a corporate book and therefore did observe corporate formalities. See, Tr. page 252, lines

2-21. B&B Drywall also filed a separate tax return prepared by an outside accountant. Tr. page 439-442.

No precedent found by Appellant supports the drastic order of the trial court forcing the Nibley home to be sold to pay off the Cache Valley Bank debt. The result which the trial court reached would turn divorce cases on their head by converting them into corporate veil piercing cases in favor of one creditor or another.

III. THE COMBINED EFFECT OF THE COURT'S RULINGS WAS TO ILLEGALLY ELEVATE THE RIGHTS OF CACHE VALLEY BANK AND BRADLEY OLSON ABOVE THOSE OF MARIAN OLSON.

The trial court is statutorily prohibited from violating Utah Code Annotated § 30-2-5. That statute declares that neither spouse is personally liable for the separate debts, obligations, or liabilities of the other, subject to specific provisions which are inapplicable in this situation. In other words, the statute governs this situation and the statute does not allow for the veil piercing result reached by the trial court. The trial court went way outside its bounds when it ordered the sale of the house and the proceeds to be paid to Cache Valley Bank. While the court did not expressly find that Marian Olson was liable for the debt of Cache Valley Bank, the result of the sale order was to make her responsible for half of that debt. The trial court does not have the authority to engage in such a ruling. The trial court would have to receive specific legislative authority to pierce the corporate veil in order to accomplish such. The court should be required to award the house to Marian Olson and award a lien for any interest of Brad Olson. The debt owing to Cache Valley Bank was clearly a business debt personally

guaranteed by Bradley Olson which arose well after the parties built the Nibley home. The events which supposedly happened with regard to the Nibley home, *i.e.* the allegations of alleged comingling do not even relate to Cache Valley Bank's existing debt. Cache Valley Bank was paid in full for the construction loan from many years ago. Tr. p. 247. The trial court made a huge leap from the alleged comingling many years ago to the current Cache Valley Bank debt.

IV. THE TRIAL COURT ERRED IN ITS RULINGS RELATING TO ALIMONY.

With regard to alimony, the trial court ruled that Brad Olson was to pay Marian Olson \$1,000.00 per month beginning 30 days from the date of closing from the sale of the Nibley home. R.694, ¶15. These rulings concerning alimony do not meet the standards of Utah Code Annotated § 30-3-5(8). (See pages 2-4 for full statutory text.)

A. ALIMONY SHOULD HAVE BEEN AWARDED TO MARIAN IN THE AMOUNT OF \$2000 PER MONTH.

The alimony awarded to Marian Olson was very inadequate given Bradley Olson's income of \$96,500.00 per year plus bonuses. See, Tr. page 119, lines 2-5. He acknowledged that he had received upwards of \$30,000.00 in bonuses for calendar year 2007 and that his income was \$96,500.00. See, Tr. page 119, lines 5-15. In light of Marian Olson's income of \$46,805.00 per year, (Brad's Trial Exhibit Tab #2) the alimony award is extremely deficient. Under that ruling Brad still has (without considering bonuses) over \$84,000.00 (\$96,000.00 - \$12,000.00) per year worth of

income, while Marian Olson only has \$58,805.00 (\$46,805.00 + \$12,000.00) per year. This is wholly inequitable and should be modified by the court of appeals or remanded. This is a disparity of over \$37,000.00 without taking the bonuses into account and given the fact that Brad contributes about twenty percent for retirement. Tr. 530, lines 21-23. The award of \$2,000.00 per month alimony would basically equalize the income statutes of the parties.

B. ALIMONY SHOULD HAVE BEEN AWARDED RETROACTIVELY.

Instead of ruling that the alimony would commence immediately, the court ruled that the alimony should commence 30 days after the closing of the sale of the Nibley home. R.694 ¶15. Because the Nibley home has not closed, no alimony has been paid to date. The alimony should have been awarded retroactively to the date that Brad Olson began his employment for Martin Harris Construction in Las Vegas which was 2006. Marian Olson has been struggling to live month to month since the divorce petition was filed on August 1, 2005 and Mr. Olson has had the benefit of a huge income at least since his employment at Martin Harris Construction in Las Vegas. He is even contributing twenty percent of his income to retirement. Tr. 489, lines 2-6 and Tr. 530, lines 21-23. The equitable approach to the alimony would be for Marian Olson to receive alimony effective as of the date that he obtained employment.

There is no legal justification for the court to condition the commencement of alimony based upon her acquiescing to the sale of the house. Clearly this is inequitable and had the effect of coercion towards Marian Olson into feeling that she should

acquiesce in the trial court's ruling just so that she could begin receiving the alimony due to her. The alimony award should have commenced immediately on the entry of the divorce decree and should have been effective as of the date of Brad's employment.

C. COURT'S ALIMONY AWARD WAS INEQUITABLE.

The trial court stated that it had applied Utah Code Annotated § 30-3-5 with regard to alimony. Tr. page 718 lines 11-15. However, the court did not take into consideration the parties' standard of living at the time of their separation, the husband's adultery, or Marian Olson's lack of marketable skills. Mr. Olson admitted to committing adultery which led to the parties' divorce. Tr. 126, lines 18-19. The court did not take this into consideration. Moreover, where a wife of advanced age has few marketable skills and where the husband is in an excellent position to provide adequate continuing support to the wife, the alimony should be increased. See, Jones v. Jones, 700 P.2d 1072 (Utah 1985).

The standard of living to which the parties had become accustomed at the time of the divorce was better than the court's \$1,000.00 alimony award. With Marian's income of approximately \$3,900.00 per month from Utah State University and the expenses of maintaining and keeping a home as well as for her personal expenses and expenses to gain an education to increase her marketability the alimony award should be at least \$2,000.00 per month.

V. THE DEBT TO CAPITOL BUILDING SUPPLY WAS NOT A MARITAL DEBT; BUT THE LKL DEBT WAS A MARITAL DEBT.

The division of the debt to LKL Associates and Capitol Building Supply is inequitable. The court ordered Marian Olson to assume the entire indebtedness to LKL Associates and Brad Olson to assume the entire debt to Capitol Building Supply. R.694 ¶ 16. This result is extremely inequitable. The findings of fact show that the Capitol Building Supply debt was \$61,774.00 and the LKL debt was \$40,965.00. R.674. Both of these debts were business debts which were also personally guaranteed. However, Marian Olson only personally guaranteed the LKL debt while Brad Olson personally guaranteed both of the debts. Tr. page 182, lines 1-4 and Tr. page 187, lines 17-19. Therefore, because both parties were responsible for the LKL debt, it is not unreasonable to conclude that the LKL debt was a joint debt to be shared between them. However, the debt to Capitol Building Supply cannot reasonably be concluded to be marital debt in that the Capitol Building Supply debt was incurred by the business and was personally guaranteed by Brad Olson only. The same arguments which are mentioned in sections I, II, and III of this brief apply to these debts as well. Veil-piercing cannot apply to violate Utah Code Annotated § 30-2-5. Ultimately, the court should have determined the Capitol Building Supply debt to be Brad's debt only in light of Utah Code Annotated § 30-2-5 and that the LKL debt should be shared between the two parties.

VI. THE RECORD DOES NOT SUPPORT THE COURT'S FINDING AS TO THE VALUE OF THE HOME.

The court determined the value of the Nibley home to be \$550,000.00. Tr. pages 710-11. The only independent evidence admitted at the trial was the appraisal performed

by Dustin Singleton showing that the fair market value of the property at approximately the time of filing of the divorce was \$480,000.00. See, Tr. page 37, lines 1 - 16, and Tr. p. 65, lines 20-25. The only additional evidence submitted was that there was a leak in the foundation which would require repair in the twenty-five to thirty-five thousand dollar range. See, Tr. page 25, lines 17-25. From this evidence the court then made a finding of fact that the home is worth \$550,000.00. R.670 ¶ 12. The fact that Mr. Singleton testified that during 2006 and 2007 there was general appreciation in real estate in Cache Valley of 5 – 10% annually, is not evidence as to the value of the subject home and the trial court's factual conclusion as to the value of the home is not supported. The most that the trial court could have awarded as the value of the home would be \$480,000.00 assuming the repairs were performed. However, the trial court went from \$480,000.00 to \$550,000.00 without an actual appraisal. Brad testified that he thought the house was worth at least \$550,000.00, but provided no information other than his own opinion. See, Tr. p. 215, lines 23-24. Thus, the record does not support this valuation.

The court had, during discovery, ordered Bradley Olson to pay half the cost of an appraisal in preparation for trial. Marian Olson paid her half to Dustin Singleton in September of 2007. Bradley Olson never made his half payment of the appraisal. Tr. page 43, line 5 – page 44, line 23. Therefore, Dustin Singleton never did do a new appraisal on the property. Bradley Olson should have been sanctioned by the court for his failure to participate in paying for the appraisal as he had been ordered to do so. Instead, the court not only ignored Brad's failure to pay half the appraisal price, the court rewarded Mr. Olson for his failure to participate in payment for the appraisal process by

allowing the home to be valued at an amount much higher than the appraised amount thus giving more apparent ability to pay off the debt of Cache Valley Bank.

Appellant had made an oral motion in limine at the beginning of the trial asking the court to exclude any evidence submitted by Bradley Olson concerning the value of the property. Tr. 18. The court should have imposed such a sanction or some other sanction against Bradley Olson for his failure to participate in the costs of that appraisal. Instead the trial court denied Marian's motion in limine. Tr. 304, lines 2-10.

VII. BRAD SHOULD NOT BENEFIT FROM SELLING ASSETS IN VIOLATION OF THE COURT ORDER.

Brad admitted to violating the court's order not to dispose of assets. Tr. page 216, line 22 – page 217, line 19. However, the court ignored this conduct and seemingly factored it into the final ruling. The court should not have turned a blind eye but should have sanctioned him for so doing.

VIII. THE DIVISION OF THE PARTIES' REMAINING ASSETS WAS INEQUITABLE.

It is anticipated that the Court of Appeals will agree with Appellant's position that the trial court erred in relation to Utah Code Annotated § 30-2-5. If so, then the case should likely be remanded for a re-allocation of the remaining marital assets. However, even apart from the house distribution, the trial court's ruling regarding division of the other assets of the estate is inequitable. For instance, the court initially gave some consideration to an appreciation or interest factor on Marian's \$108,000.00 pre-marital investment into the marital home. Tr. 711-12. But the court offset that amount by

allegations of disposal of tools in the Nibley shed, cash, and guns. Tr. 712. Marian gave an accounting of the cash and did not dispose of the tools from the Nibley shed. The court awarded Marian the timeshare and the tools inside the Nibley shed but did not affix a value to the tools in the shed. Tr. 712. On the other hand, the court awarded to Brad the tools in the Hyrum shed, the coin collection, and gave Brad first preference relating to the personal property.

The court should have awarded B&B Drywall, Inc. to Bradley Olson give the fact that he sent the August 4, 2005 letter terminating the company. Petitioner's Exhibit Tab 31. His actions caused the company to go out of business when it could have been saved by the parties as a going concern. With regard to the Hyrum storage unit, the value assessed by the court thereto was completely random and was not based upon any evidence. As to the coin collection, the court admitted an arbitrary value was given to them -- \$15,000.00. Tr. 713, lines 14-18. The coins which were awarded to Brad were worth \$50,000.00. R.284, lines 14-18.

In summary, the court's disposition of personal property was random and inequitable.

IX. THE COURT ERRED IN DISALLOWING EVIDENCE FROM JACK PETERSON.

The court erred in disallowing certain testimony from a fact witness, Mr. Jack Peterson. Mr. Peterson is a CPA but was not in attendance to give an opinion about the facts at hand. Tr. 417, lines 18-19. During the course of the parties' marriage, Jack Peterson had done an analysis of Mr. Olson's income in order to respond to Mr. Olson's

prior spouse relating to support issues of his prior marriage (prior to Marian Olson). Tr. 414. The purpose of the anticipated testimony from Mr. Peterson was to show a factual analysis of Brad Olson's earnings during the marriage. Tr. 414. The court took Brad's counsel's word that Mr. Peterson was an expert witness and not a factual witness. Tr. 415. Mr. Peterson was not giving testimony as to Brad's current income, rather Mr. Peterson would have testified as to Brad's actual income during the time that the parties were married in relation to a post-divorce proceeding with Brad's prior wife. Tr. 416. The court erred in considering Mr. Peterson an expert witness and omitting his testimony and should have allowed Mr. Peterson's testimony as a factual witness concerning the timeframe in question. Tr. 415, lines 1 – 17.

X. ATTORNEY FEES SHOULD HAVE BEEN AWARDED TO MARIAN OLSON.

Utah Code Annotated § 30-3-3(1) allows this court to award attorneys fees to a party. The claims made by Brad Olson are not based upon equitable arguments and were intended to the detriment of Marian Olson. He has not operated in good faith towards a resolution of this matter believing that the trial court would award him a better deal if he went to trial. His unreasonable approach to this has caused significant attorneys fees to accrue and this court should award Marian Olson's attorneys fees for having to defend against the unreasonable positions taken by Mr. Olson.

XI. THE PROTECTIVE ORDER ISSUE SHOULD NOT HAVE BEEN DISMISSED.

The court erred in combining a ruling from the protective order case with the divorce case and had no grounds to enter such an order. Tr. 709, lines 16-18. In a

separate case (054100378), the trial court had issued a protective order dated August 25, 2005 in light of potential retribution from Bradley Olson towards Marian Olson. Marian Olson had been threatened for her life on a previous occasion and Mr. Olson had been told not to own any guns in light of a previous commitment to a mental hospital. See, Marian's Trial Exhibit Tab 8. Marian Olson was continuing to live in fear for threats which had been made against her.

Despite this, the court in the divorce case took action to dismiss the protective order in the separate protective order case which was not before the court at the time of the divorce hearing. The point in time of the trial court's ruling on the divorce was a very emotional time for both parties and one of the key moments in which the protective order was still needed to maintain the peace between the parties. The fact that the court would dismiss the protective order unilaterally and without following the proper procedures was the cause of significant emotional distress to Marian Olson since the order was lifted.

XII. JUDGE WILLMORE SHOULD HAVE BEEN REMOVED FROM PRESIDING OVER THIS CASE.

After the trial of this case Judge Judkins recused himself from presiding over this case and Judge Thomas Willmore was assigned. However, Marian Olson became aware of certain facts regarding Judge Willmore which made her uncomfortable regarding his continued involvement in this case. Therefore, Marian Olson filed a motion for reassignment of the case from Judge Willmore to a new judge on or about October 29, 2008. The basis for the requested reassignment is that the local newspaper published in the Logan area printed a marriage announcement showing that the Honorable Thomas

Willmore recently presided at a marriage ceremony for a bride and groom who have close connections to this case. The groom in that ceremony was counsel for Cache Valley Bank, Jonathan Thomas. Tr. 667, line 2 and Tr. 421, lines 24-25. The bride in that ceremony is the daughter of counsel for Bradley Olson, Joseph Chambers. Jonathan Thomas has attended hearings in this case. Joseph Chambers has attended all of the hearings. This case deals with significant connections to Cache Valley Bank given the fact that Cache Valley Bank is a significant creditor of Bradley Olson who is attempting to collect from Marian Olson as well.

Judicial Canon 3.E(1) states that a “Judge shall enter a disqualification in a proceeding in which the judge’s impartiality might reasonably be questioned...” Based upon the newspaper article it is clear that there exists a personal relationship that Judge Willmore has with counsel for Cache Valley Bank and counsel for Bradley Olson. The court has stated and Appellant has no reason to believe otherwise that Judge Willmore has not received any remuneration from either of the parties or that he has not discussed the case with any of those parties. See, Appendix 4. While this is helpful, it does not lessen the personal relationship which clearly exists by virtue of a judge presiding at a marriage ceremony for parties closely connected to a case while the case is pending. The clear existence of a personal relationship, whether an influence is actually had on this case or not, whether intentional or unintentional, is a risk that Marian Olson should not have to take. The Judicial Canons require a judge to disqualify himself in a proceeding in which the judge’s impartiality might reasonably be questioned. Meaning no disrespect to Judge Willmore, Marian Olson reasonably questions his impartiality given his close

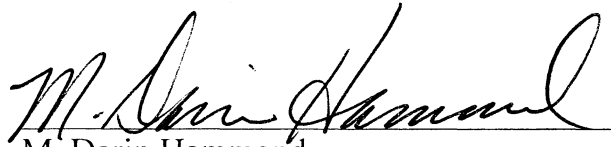
connection to two parties on the other side of a dispute from her. There are plenty of other judges including judges outside the first district who could easily handle this case and with whom there are no questions as to impartiality. The trial court erred in entering its memorandum decision and order dated January 30, 2009 and which is attached as Appendix 4 hereto.

CONCLUSION

The trial court erred in finding that Marian Olson was liable to Cache Valley Bank for the debt of B&B Drywall, Inc. when she was not an obligor for that debt. The court's ruling which requires the parties to sell the Nibley house and pay the full Cache Valley Bank trust deed violates Utah Code Annotated § 30-2-5. The cumulative effect of the above was to illegally elevate the rights of Cache Valley Bank above the rights of Marian Olson. The court essentially allowed for the corporate veil to be pierced when it was not merited and without sufficient evidence. The trial court further erred in its rulings relating to alimony. Alimony should have been awarded to Marian in the amount of \$2,000.00 per month and should have been awarded retroactively. The court's ruling regarding alimony should have commenced immediately rather than being conditioned upon the sale of the house. The Capitol Building Supply debt was not a marital debt, but the LKL debt was marital debt because both parties had personally guaranteed it. The record does not support the court's finding as to the value of the home. Bradley Olson should not benefit from selling assets in violation of the court's order. Attorney's fees should have been awarded to Marian Olson. Appellant's witness, Jack Peterson, was not

allowed to testify as to the full scope of his testimony. The trial court should not have made any orders regarding the protective order in this case. Judge Willmore should have been removed as the judge presiding over this case.

RESPECTFULLY SUBMITTED this 8th day of April, 2009.



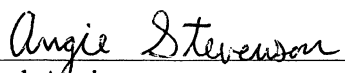
M. Darin Hammond

Attorneys for Appellant Marian Olson

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing **OPENING BRIEF OF APPELLANT** were mailed by first-class mail with postage fully prepaid this 8th day of April, 2009, to each of the following:

Joseph M. Chambers
HARRIS, PRESTON & CHAMBERS PC
31 Federal Avenue
Logan, UT 84321



Legal Assistant

APPENDIX

Joseph M. Chambers (0612)
HARRIS, PRESTON & CHAMBERS
Attorney for Respondent
31 Federal Avenue
Logan, Utah 84321
Telephone: (435) 752-3551
Facsimile: (435) 752-3556

RECEIVED JUL 18 2008

**IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH**

MARIAN C. OLSON,

Petitioner,

vs.

BRADLEY L. OLSON,

Respondent.

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DECREE OF DIVORCE

Civil No. 054100358
Judge Clint S. Judkins

This matter came for Trial on February 6 and 7, 2008, and Oral Argument on February 28, 2008, before the District Court, the Honorable Clint S. Judkins, District Judge presiding. The Petitioner was present and represented by her attorneys, Kenyon D. Dove and M. Darin Hammond, Smith Knowles, P.C., Ogden, Utah. The Respondent was present and represented by his attorney Joseph M. Chambers, Harris, Preston & Chambers, Logan, Utah. The parties submitted certain evidence, including testimony, proffers, exhibits, and proposed Findings of Fact and Conclusions of Law, and the Court having considered the evidence and arguments of counsel and having rendered its decision from the bench on Wednesday, April 16, 2008, and having previously entered its Findings of Fact and Conclusions of Law, the Court now enters the following Decree of Divorce:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Decree of Divorce. The Petitioner is hereby granted a decree of divorce from the Respondent, the same to become final upon signing of the same by the Court.
2. Nibley Home. Initially the Court ordered the Nibley home to be sold and the proceeds distributed as follows: First, costs of repair of the foundation in order to get the home into a saleable condition; Second, costs of sale including real estate commission, title insurance, and similar costs;

Third, the sum of \$108,000.00, to the Petitioner representing her premarital interest in the property; Fourth, the indebtedness due to Cache Valley Bank; and Fifth, the balance to be divided among the parties equally with a caveat that from the Petitioners' portion of the proceeds the balance of the judgment equalizing the parties interest as discussed below in the amount of \$1,083.00, to be taken from the Petitioners' interest unless she has otherwise obtained possession of the guns awarded to the Respondent and returned them to the Respondent, in which event the value of the guns will reduce the amount of \$1,083.00 accordingly. Prior to entry of this order the Respondent sought and was granted an order (Temporary Order) requiring the parties to accept an offer made by Cache Valley Bank. The Court confirms said Temporary Order in this Decree.

3. Timeshare. The Court awards the Worldmark Timeshare (formerly TrendWest Timeshare) to the Petitioner, subject to the Petitioner being responsible for any and all costs, expenses, or indebtedness thereon.

4. Coin Collection. The Respondent is awarded the coin collection including any and all supplies and ancillary equipment associated with the coin collection, presently in the Petitioners' possession. The Court intends the coin collection to include any and all supplies associated with coin collecting, new microscope for coins, coin paper, plastic, and box holders, paper coin holders, and stapler for holders, coin computer software, coin books and brochures, coin desk lamp/magnifying glass, paper money collection and collectibles, US Quarter & Stamp Collection and Binder, miscellaneous coins and collectibles left in factory safe.

5. Property in Possession of the Other Party. Any personal property awarded to the other party currently in one of the parties possession shall be delivered to their attorney with appropriate arrangements for delivery by the attorneys to the parties other attorney.

6. Equipment in Hyrum Storage Shed. The Respondent is awarded the equipment and other items currently in the Hyrum storage shed.

7. Equipment in Nibley and Cash in Safe. The Respondent is awarded the equipment and other goods in the Nibley shop, the money in the safe.

8. 2001 Expedition. The Petitioner is awarded the 2001 Expedition.

9. 1989 Ford Truck. The Respondent is awarded the 1989 Truck. The Court is cognizant that the same has been impounded and sold at impound in the State of Nevada.

10. Retirements. The Court orders that all the retirements of the parties, including, but not limited to: 1) the NorthTrack Investment Funds Account #0002319523 owned by the Petitioner Account; 2) the Petitioners' 401k-IRA with AGI-Valic Account # not provided; 3) the 401k through Utah State University/Utah Retirement Systems Account #W88915950, as well as 4) Petitioners' retirement annuity through the Utah Retirement Systems Account #W88915950; 5) the Respondents' 401k through his employment (MH 401k) Member ID #4058; 6) the IRA with Janus Funds Account #200606926-3 & 203504479; and, 7) the NorthTrack Investment Funds Account #6000204526 owned by the Respondent, shall be divided pursuant to the Woodward formula, the costs to prepare the various Qualified Domestic Relations Orders, and Domestic Relations Order, to be borne by the Respondent. In the event, the parties can stipulate as to offsets in which the parties can trade interests in each others 401k, IRA, or other retirement funds then this provision can be modified accordingly, upon filing the appropriate written stipulation with the Court.

11. Attorney Fees and Costs. Each party is to assume their own attorney fees with the provision that the Respondents attorney shall prepare the appropriate Qualified Domestic Relations Order necessary to divide the retirement plans.

12. Guns.

A. The Respondent is awarded the following guns:

i. 1917 Springfield 30-06 Army Rifle. Bolt Action, sling with Weaver 4x scope. First gun Brad ever owned has had for 44 years. Priceless sentimental value.

ii. 1948 JC Higgins 410 gauge Single Shot (not bolt action) shotgun. Was Brad's Fathers gun. Hand me down priceless sentimental value.

iii. 1946 JC Higgins 16 gauge Single Shot (not bolt action) shotgun. Was Brad's fathers gun. Hand me down priceless sentimental value.

iv. New (approx. 2000) Remington Model 7400 30-06 Semi Auto Rifle, with sling and Redfield 3x9 scope. Also with (2) carrying cases and (1) hard case for 4-wheeler. Brad's priceless sentimental value. Less than 200 rounds fired.

v. New (approx. 1992) AR-15 Assault Rifle. Never been shot. Fold away stock, with extra wood stock still in package. Brads priceless sentimental value.

vi. New (approx. 1988 prior to marriage) Ruger 10-22 Semi Auto Rifle, with 3 clips, sling. Brads priceless sentimental value.

vii. New (approx 1986 prior to marriage) Remington 12 gauge 2" Mag. Pump shot gun. Brads priceless sentimental value.

viii. Ruger 22 Magnum Super Six pistol with Leopold 2x7x scope, (2) holsters, and carrying case. Brads priceless sentimental value. Was given to Brad as a gift from father-in-law (when he was still alive) and children.

ix. Ruger Red Hawk 44 Cal Mag. Pistol with holster and gun case. Brads priceless sentimental value. Was given to Brad while father-in-law was still alive as a gift from Marian and children.

x. Smith & Wesson 45 Cal Model 25 pistol. Brads priceless sentimental value. Was given to Brad as a gift from father-in-laws collection from Marian and children.

xi. (4) new (2005) High Point 9 mm Pistols Model C-9. All 4 pistols brand new, never been shot.

xii. Ruger 357 cal revolver. Was purchased from father-in-laws' collection after death. (Never been shot)

xiii. Misc. Supplies: 2 soft case rifle holders, 2 nylon pistol holsters, 2 soft shot gun holders, 1 antique leather gun holder from father (priceless sentimental value), all cleaning supplies and complete cleaning kits for all guns.

ivx. (1) gun safe full of ammunition, approx. 10 bricks of 22 long rifle bullets, approx. (500) 22-mag cal bullets, approx. (200) 44 cal bullets, approx. (100_ 45 cal bullets, approx. 10 boxes total 12 gauge, 16 gauge, and 4-10 gauge shot gun shells.

B. The Petitioner is awarded the following guns:

i. Savage 12 gauge shot gun pump. Purchased from father-in-laws' collection after his death.

ii. Savage 12 gauge shot gun pump. Purchased from father-in-laws' collection after death.

iii. (2) each Derringer small 22 cal pistols (collectors items) purchased from father-in-laws' collection after death.

iv. Smith & Wesson 38 cal short barrel revolver. Purchased from father-in-laws' collection after death.

v. Smith & Wesson 357 cal revolver, short barrel. Purchased from father-in-laws' collection after death.

vi. Savage 30-06 rifle bolt action. To member of family from father-in-laws' collection after death.

vii. Remington 22 cal rifle single shot bolt action with sling (black plastic stock). To member of family from father-in-laws' collection after death.

viii. Remington 22 cal rifle single shot bolt action. To member of family from father-in-laws' collection after death.

ix. Remington 12 gauge pump shot gun. To member of family from father-in-laws' collection after death.

C. The Court is cognizant that the Petitioner has testified that she disposed of all the guns. However, in the event the Petitioner is able to re-obtain possession of Respondents' guns and deliver them to the Respondent in a condition acceptable to the Respondent, then the value of said guns may be offset against the monetary judgment awarded above. If the parties cannot agree

upon the value then the matter shall be submitted to the Court on a post trial motion submitted by either party and the Court shall determine the value.

13. Monetary Judgment. The Respondent is awarded a monetary judgment against the Petitioner in the sum of \$1,083.00, to be collected from the Petitioners' portion of the proceeds of the home sale subject to the provision set forth below.

14. Personal Property - Household Goods. With regards to the remainder of the parties personal properties, including household goods and supplies the Court orders them to be divided as follows:

The Respondent shall prepare two (2) lists of approximately equal value. After compiling the lists the Respondent shall forward the two (2) lists to Petitioners' attorney. Petitioners' attorney shall identify the list which the Petitioner desires. Those items the list chosen by the Petitioner shall be awarded to her, and the remainder of the items on the other list shall be awarded to the Respondent. Any property on the list not in the possession of the parties shall be immediately forwarded to the other parties. The Court expects the parties to cooperate fully in the exchange of the items. Each party is responsible for any costs or transportation from their currently location to the other party.

A. Property awarded to Petitioner: Petitioner is awarded the property on the attached list identified as Group B and the following personal property:

Misc. Jewelry, Rings, Necklaces
Oak Quilting Frames
Embroiderer Sewing Machine
All Quilting Supplies
(2) Antique Chest of Drawers
Chest Freezer (previous marriage)
Various Church Books
All Personal Clothing
Personal Pictures
Camping Gear, Tents

Wedding Ring
Serge Sewing Machine
Singer Sewing Machine
Oak Curio Hutch
Family Records/Book of Remembrance
Oak Round Table
Temple Clothing
Winter Coats, Hats, Boots
Mis. Ofc. Supplies, Books, Folders

B. Property awarded to Respondent: Respondent is awarded the property on the attached list identified as Group A and the following personal property:

Misc. Rings	Wedding Ring
Dutro Camp Stove	Large Eagle Winter Painting
Eagle Sculpture	Misc. Fishing Pictures
(2) Mexican Cloth Paintings w/Frames	Antique Typewriter
Mothers Hand Me Downs	Grandmothers Hand Me Downs
Family Records/Book of Remembrance	Various Church Books
Temple Clothing	All Personal Clothing
Winter Coats, Hats, Boots	Running Clothes/Shoes
Running Equip./Knee Braces	Personal Pictures
Pictures of Brad & Children/Grandchildren	Misc. Const. Books/Manuals
Computer Manuals	Woodworking Construction Books
Maps, Topo Maps, Fishing Maps	Rain Coats, Fishing Hats
Mountain Bike Books, Supplies	Personal Belongings in Gun Safes
Personal Papers in File Cabinets	

15. Alimony. The Court orders the Respondent to pay to the Petitioner as and for alimony the sum of \$1,000.00, per month beginning 30 days from the date of closing from the sale of the home in Nibley, Utah. Alimony shall continue for the period of eighteen (18) years beginning July 1, 2008. The Court orders that the Respondent shall be given credit for the payments, so long as the Petitioner is continuing to reside in the home. Alimony shall terminate as provided by statute upon the Petitioners' remarriage, cohabitation, or death, or the death of the Respondent.

16. Division of Debt-LKL and Capitol Building Supply Debt. The Petitioner is ordered to assume the indebtedness to LKL Associates, and the Respondent is ordered to assume the indebtedness to Capital Building Supply. Each party is ordered to hold the other harmless from any claim by the respective creditor against the other party.

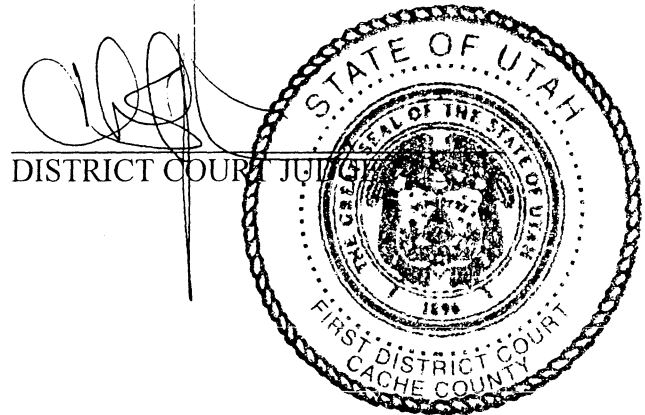
17. Notice to Creditors: Pursuant to Utah Code Ann. §§ 15-4-6.5, 30-2-5, and 30-3-5(1)(c) (1953 as amended), the parties are required to provide a copy of their final Decree of Divorce to all joint creditors for any outstanding obligations that are included in their Decree of Divorce.

Therefore *the party not obligated to pay a joint obligation* shall:

- a. Send a copy of the Decree of Divorce to each creditor he/she is not required to pay as soon as possible;
- b. Notify the joint creditor of the current address for each party;

c. Inform that joint creditor that each party is entitled to receive individual statements, notices and correspondence required by law or by the terms of the contract and also inform the creditor that no negative credit report or other exchange of credit history or repayment practices may be made regarding the joint obligation because of non-payment by the party required to pay the debt unless the creditor has first made a demand for payment on the party who is not required to pay the debt.

Dated this 7 day of July, 2008.



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing **Decree of Divorce**, postage prepaid, to Petitioner's attorney, Kenyon D. Dove, Smith Knowles, 4723 Harrison Blvd., Suite 200, Ogden, Utah 84403, dated this 11 day of July, 2008.

A large, stylized handwritten signature in black ink is written over a horizontal line.

Joseph M. Chambers (0612)
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**IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH**

MARIAN C. OLSON,

Petitioner,

vs.

BRADLEY L. OLSON,

Respondent.

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Civil No. 054100358
Judge Clint Judkins

This matter came for trial on February 6 and 7, 2008 and oral argument on February 28, 2008, before the District Court, the Honorable Clint S. Judkins, District Judge presiding. The Petitioner was present and represented by her attorneys, Kenyon D. Dove and M. Darin Hammond, Smith Knowles, P.C., Ogden, Utah. The Respondent was present and represented by his attorney Joseph M. Chambers, Harris, Preston & Chambers, P.C., Logan, Utah. Having considered the evidence and arguments of counsel and having rendered its decision from the bench on Wednesday, April 16, 2008, the Court now enters its formal Findings of Facts & Conclusions of Law:

Findings of Fact

1. Date of Marriage and Other Dates. The parties were married in Smithfield, Utah on November 18, 1989. No issue were born to the parties. This is a second marriage for both parties. Both parties are currently 54 years old and in good physical health. The parties have been married for 18+ years, but have been living separately since December 2004. The Petitioner resides in Nibley, Utah. The Respondent currently lives in Las Vegas, Nevada and moved there for purposes of obtaining employment in June 2006.

2. Employment at Time of Marriage. At the time of their marriage, the Petitioner (wife) had been employed at Utah State University ("USU") for approximately 18 months. She began her employment at USU on May 1, 1988. At the time the parties married, the Respondent (husband) owned and operated a drywall and acoustical business as a sole proprietor. Respondent (husband) had just purchased his partner, Brad Johnson's interest, in their drywall partnership business prior to the marriage.

3. Smithfield Home. At the time of the parties marriage, Wife owned a home in Smithfield, Utah which she and her prior husband had acquired 11 years earlier. After the marriage the parties lived in the Smithfield home for nine (9) years, during which time both parties contributed to the mortgage payments and maintenance of the home. Husband testified that he also contributed improvements to the Smithfield residence in the form of finishing basement rooms and other construction labor and materials, which he estimated, based on his construction experience, exclusive of his labor to be approximately \$6-8,000.00. Husband further testified that materials that were purchased for the improvements to the Smithfield home were run through and "expensed off" through the drywall business, B & B Drywall, Inc.

4. B & B Drywall Incorporation. After the parties were married, husband incorporated his drywall and acoustical business. Following incorporation, the husband and wife were equal (50%/50%) shareholders, were both directors, as well as officers of the corporation and each drew a salary from the corporation. Husband acted as the corporation's president and secretary, and the wife acted as the corporation's vice-president.

5. Husband's Experience in Construction. At the time of the trial, the Husband testified he had been in the drywall business for approximately 31 years.

6. Nibley Home. In November 1996, the parties acquired a building lot in Nibley, Utah. The lot was acquired in the parties' joint names. [*Petitioner's Ex. #1, tab 27*] The building lot was purchased for \$48,500.00 and was purchased with B & B Drywall, Inc., funds. During late 1997 and early 1998 the parties constructed a home on the lot in Nibley, Utah. The Nibley residence is

approximately 6,000 square feet and lies on the west bank of the Blacksmith Fork River in Nibley, Utah. The home is completely finished (sheet rocked and painted throughout) including the basement. The 6,000 square foot home was constructed partially with a \$125,000.00 construction loan from Cache Valley Bank, which the parties obtained in November 1997. [*Petitioner's Ex. #1, tab 3*] Husband testified that a significant amount of the building materials (lumber, drywall, wiring, etc.) used to build the home was purchased by B & B Drywall, Inc., and "expensed off" by the corporation; that labor from B & B employees, was used in the construction of the home; that trades (primarily labor) were made by B & B with other subcontractors (electrical, foundation, framing, etc.) which benefitted the parties personally, and which the parties never reimbursed B & B Drywall. Husband also testified that the \$125,000.00 construction loan was used primarily for the acquisition of building materials and that primarily B & B was traded labor with other subcontractors.

7. Nibley Shop. In addition to the Nibley home, the parties constructed a large shop adjacent to the home. Husband testified that the shop was built at a cost of approximately \$75,000.00. Husband testified that the materials and labor for the shop also came from B & B Drywall, Inc. The shop is entirely finished - sheet rocked and painted - and has balconies at both the east and west ends of the shop. After the shop was built it was used primarily to store B & B equipment and supplies as well as some of the parties' personal property, including the Husband's woodworking equipment which was also purchased with B & B funds.

8. Premarital Interest. In July 1998, Wife sold the Smithfield home where the parties jointly resided after their marriage and received proceeds from the sale of approximately \$118,000.00. Wife deposited the money from the sale of the Smithfield property into a joint checking account owned by the wife and the husband. Wife provided evidence that shortly after the deposit of the money, \$94,320.00 of the funds were utilized to pay off then balance of the Cache Valley Bank construction loan. The Court finds that \$108,000.00 of the approximate \$118,000.00 constitutes Wife's pre-marital property interest in the parties' Nibley home.

9. Appreciation of Premarital Interest. The Court finds that the Petitioner should also receive a credit for the increase in her pre-marital interest (\$108,000.00) in the Nibley property. Assuming a five (5%) percent annual increase over the past ten (10) years this would result in a credit of approximately \$54,000.00.

10. Equipment in Nobly Shop. The Court finds from a preponderance of the evidence that Petitioner had control over and cannot account for substantial property stored in the Nibley shop including the B & B equipment and other property as evidenced by the photographs taken by Terry Oliver, a loan officer for Cache Valley Bank, all the parties guns, as well as the money in the two (2) safes. Petitioner testified she has disposed of all of the guns, including Respondent's guns.

11. Offset of Premarital Interest. Because of the Petitioner's actions set forth in Paragraph 10 the Court finds that it is equitable to effect a wash or offset as to the \$54,000.00 credit, and instead awards all of the property in the Nibley shop, the money in the safe, and the guns (subject to further provisions below) to the Petitioner.

12. Value of Nibley Home. The Court finds the value of the home to be \$550,000.00. Testimony of the appraiser Dustin Singleton, who appraised the home as of November 30, 2005, valued the home at approxi-mately \$480,000.00 subject to certain repairs. Mr. Singleton further testified that during 2006 and 2007 there was general appreciation in real estate in Cache Valley of between 5%- 10% annually. The Court finds that would equate to approximately \$76,000.00, of additional value. However, given the current real estate market, the Court finds the value of the home to be \$550,000.00.

13. Equitable Division of Nibley Home. The Court finds it is equitable to order the home to be sold with the proceeds to be paid as follows:

First: Those expenses necessary to put the home in a saleable position, i.e., to repair the foundation leak which the Court anticipates would be no more than approximately \$25,000.00; the evidence of the cost of repairs was less than concrete and by requiring each party to participate in the repairs each party benefits by having the repairs effected in the most economic fashion.

Second: The costs of sale, i.e., real estate commissions, title insurance, which the Court anticipates would be approximately \$33,000.00;

Third: The sum of \$108,000.00, to the Petitioner representing her premarital interest as found previously by the Court;

Fourth: That sum necessary to pay the balance of the Cache Valley Bank ("CVB") such amount necessary to pay the balance of the CVB debt plus accruing interest and costs, approximately \$326,328.00; and

Fifth: The balance, if any, to be divided one-half (½) to the Petitioner and one-half (½) to the Respondent which the Court anticipates would be approximately \$30,000.00, each. This would leave the Petitioner with approximately \$138,000.00, and the Respondent with \$30,000.00, from the sale of the home.

14. Timeshare. In March 2001, the parties purchased a timeshare from Worldmark (formely Trendwest Resorts) for \$10,440.00. Husband testified that from the date of purchase until he left the marital residence in December, 2004 that B & B Drywall, Inc., paid the installment payments and quarterly dues on the timeshare. The purchase contract lists the parties and B & B Drywall, Inc., as the purchaser of the timeshare interest. [*Respondents Ex. #1, tab 8*] The Court finds that the Petitioner has had exclusive possession, control, benefit, and use of the same since their separation in December 2004. The Court finds the value of the timeshare to be \$6,500.00 and the Court awards it to the Petitioner as her sole and separate property, she also being solely responsible for any and all debt or maintenance on such.

15. Knowledge of Co-mingling of Business and Personal Accounts. Wife claimed that she was unaware that the family business (B & B Drywall, Inc.) had been used to pay for the construction of the home, the shop, home furnishings, personal woodworking tools, the timeshare, their personal living expenses and/or other non-business expenditures. However, she was an officer, director and shareholder of the company since its incorporation and she testified that as vice-president part of her job duties included balancing the bank statements. David Saunders, the B &

B Drywall, Inc., company accountant, testified that wife gave him instructions not to reconcile the bank statements because she had already done that. During the process of reconciling the bank statements she would have had an opportunity to see exactly what the company checks were being written for. Furthermore Wife also admitted during cross-examination that in her deposition she testified that she was aware that the company had purchased personal items such as a treadmill, golf clubs, and other items without claiming the items as income from the corporation. Husband testified that it was not uncommon for them to utilize the B & B checking account to purchase personal goods as well as to place personal items on the company credit card and then pay off the company credit card using a company check. According to husband's testimony, these items included the timeshare, materials for the Nibley home, home furnishings such as couches, personal woodworking equipment, a pool table, and other furnishings and fixtures. The Court finds that both the parties knew they were using B & B Drywall funds for their personal use and benefit.

16. Cache Valley Bank Loans. Greg Miller, President of Cache Valley Bank, testified that with respect to the \$250,000.00 loan to B & B Drywall that both parties participated in the initiation of the loan. The Court finds the total debt to Cache Valley Bank is approximately \$326,328.00, plus accruing interest. While the loan documents are only signed by Brad Olson in his capacity as President of B & B Drywall, Inc., and as a personal guarantor of the loan, the Court notes that all of the loan proceeds were either disbursed to suppliers directly or into the B&B checking accounts over which both parties had control, and the Court is persuaded that because of the way in which the parties handled the corporation financial affairs and personally benefitted from the corporation assets that all of the business debt should be treated as marital debt.

17. Co-mingling Found. The Court finds that the parties have co-mingled their personal and business financial affairs to a point that in order for this Court to make an equitable division of the marital property and debts, it is reasonable and equitable to treat all of the parties personal and business assets and business debts as marital debts and make an equitable division of the same.

18. Summary of Marital Property & Debts. The Court finds that the marital assets and debts consist of the following:

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<u>Assets:</u>	<u>Value</u>
Home	\$550,000.00
Less approximate cost to repair	(25,000.00)
Less R/E Comm. & Title	(33,000.00)
Less Premarital Interest	(108,000.00)
Less Cache Valley Bank debt	(326,328.00)
Net Value to be divided ½ to each	\$57,672.00

Personal Property per Lists:

Timeshare	6,500.00	
Equipment in Nibley shop	to Petitioner	as an offset
Equipment in Hyrum shed	21,000.00	
Personal property per list attached		
B & B Drywall, Inc., a Utah corp.	0.00	
Coin collection	15,000.00	
Cash in attic safe	to Petitioner	as an offset
cash in basement safe	to Petitioner	as an offset
2001 Ford Expedition	10,000.00	

Brad Olson's 401k/retirements

North Track Invest.	4192.00	Resp. Ex. 1 Tab. 10
Janus funds	63,202.00	Resp. Ex. 1 Tab 10
MB 401k	15,891.00	Resp. Ex. 1 Tab 10

Mariam's 401k/retirements

AGI Valic	53,768.00	Resp. Ex. 1 Tab 10
URS 401k	52,747.00	R Ex. 1 Tab 10 P Ex. 43
North Track Invest.	7,444.00	Pet. Ex. 42
USU/USR annuity	Value Not Determ.	Resp. Ex. 43

Debts:

Attorney fees	Each takes their own
Cache Valley Bank	(326,328.00)
LKL judgment	(40,985.00)
LWL (Capital Builders) judgment	(61,774.00)
Subtotal debt:	(429,087.00)

19. Woodward Division of Retirement Accounts. The Court finds it is equitable to divide the retirements pursuant to the Woodward Formula.

20. Vehicles. The Court determines the value of the 2001 Ford Expedition to be \$10,000.00 and awards it to the Petitioner. The Court determines the value of the 1989 Ford Truck, which was impounded and sold, to be \$500.00, and awards it to the Respondent.

21. Coin Collection. The Court determines the value of the coin collection, consisting of the items set forth below and all ancillary supplies and equipment to be \$15,000.00, and finds it equitable to award that to the Respondent, including all items currently in the Petitioners possession or control. The Court finds the Coin Collection consists of the following:

- Any and all supplies associated with coin collecting
- New microscope for coins
- Coin paper, plastic, and box holders
- Paper coin holders and stapler for holders
- Coin computer software
- Coin books and brochures
- Coin desk lamp / magnifying glass
- Paper money collection and collectables
- US Quarter & Stamp Collection and Binder
- Misc. coins and collectables left in Factory Safe

22. Equipment in Hyrum Storage Shed. The Court finds the value of the tools and equipment in the Hyrum storage shed to be \$21,000.00, and that it is equitable to award that to the Respondent subject to the lien of Cache Valley Bank, which should be satisfied by the proceeds from the sale of the home.

23. Marital Debts and Equitable Division Thereof. The Court finds the debts of the marriage consists of the following:

Cache Valley Bank	\$326,328.00
Capitol Building Supply	\$ 61,774.00
LKL Associates	\$ 40,965.00

The Court has already dealt with the Cache Valley Bank debt as provided above, to be satisfied out of the proceeds from the sale of the home. The Court finds it is equitable for the Respondent to assume the Capitol Building Supply debt and the Petitioner to assume the LKL

Associates debt, and that each party should be ordered to hold the other harmless from any claim by the respective creditor.

24. Remaining Personal Property and Household Goods. With regards to the remaining personal property, the Court finds it is equitable for the Respondent to make two (2) lists of approximate equal value and that the Petitioner shall then have her first choice of the two (2) lists.

25. Guns. The Court finds it equitable to award the guns as follows:

A. Petitioner: All guns on the Respondents' list submitted to the Court identifying the guns as Marian's guns or joint ownership, which consists of the following: [

i. Savage 12 gauge shot gun pump. Purchased from father-in-laws' collection after his death.

ii. Savage 12 gauge shot gun pump. Purchased from father-in-laws' collection after death.

iii. (2) each Derringer small 22 cal pistols (collectors items) purchased from father-in-laws' collection after death.

iv. Smith & Wesson 38 cal short barrel revolver. Purchased from father-in-laws' collection after death.

v. Smith & Wesson 357 cal revolver, short barrel. Purchased from father-in-laws' collection after death.

vi. Savage 30-06 rifle bolt action. To member of family from father-in-laws' collection after death.

vii. Remington 22 cal rifle single shot bolt action with sling (black plastic stock). To member of family from father-in-laws' collection after death.

viii. Remington 22 cal rifle single shot bolt action. To member of family from father-in-laws' collection after death.

ix. Remington 12 gauge pump shot gun. To member of family from father-in-laws' collection after death.

B. Respondent: All guns on the list identified as Brads guns which consists of the

following:

- i. 1917 Springfield 30-06 Army Rifle. Bolt Action, sling with Weaver 4x scope. First gun Brad ever owned has had for 44 years. Priceless sentimental value.
- ii. 1948 JC Higgins 410 gauge Single Shot (not bolt action) shotgun. Was Brad's Fathers gun. Hand me down priceless sentimental value.
- iii. 1946 JC Higgins 16 gauge Single Shot (not bolt action) shotgun. Was Brad's fathers gun. Hand me down priceless sentimental value.
- iv. New (approx. 2000) Remington Model 7400 30-06 Semi Auto Rifle, with sling and Redfield 3x9 scope. Also with (2) carrying cases and (1) hard case for 4-wheeler. Brad's priceless sentimental value. Less than 200 rounds fired.
- v. New (approx. 1992) AR-15 Assault Rifle. Never been shot. Fold away stock, with extra wood stock still in package. Brads priceless sentimental value.
- vi. New (approx. 1988 prior to marriage) Ruger 10-22 Semi Auto Rifle, with 3 clips, sling. Brads priceless sentimental value.
- vii. New (approx 1986 prior to marriage) Remington 12 gauge 2" Mag. Pump shot gun. Brads priceless sentimental value.
- viii. Ruger 22 Magnum Super Six pistol with Leopold 2x7x scope, (2) holsters, and carrying case. Brads priceless sentimental value. Was given to Brad as a gift from father-in-law (when he was still alive) and children.
- ix. Ruger Red Hawk 44 Cal Mag. Pistol with holster and gun case. Brads priceless sentimental value. Was given to Brad while father-in-law was still alive as a gift from Marian and children.
- x. Smith & Wesson 45 Cal Model 25 pistol. Brads priceless sentimental value. Was given to Brad as a gift from father-in-laws collection from Marian and children.
- xi. (4) new (2005) High Point 9 mm Pistols Model C-9. All 4 pistols brand new, never been shot.
- xii. Ruger 357 cal revolver. Was purchased from father-in-laws' collection after

death. (Never been shot)

xiii. Misc. Supplies: 2 soft case rifle holders, 2 nylon pistol holsters, 2 soft shot gun holders, 1 antique leather gun holder from father (priceless sentimental value), all cleaning supplies and complete cleaning kits for all guns.

ivx. (1) gun safe full of ammunition, approx. 10 bricks of 22 long rifle bullets, approx. (500) 22-mag cal bullets, approx. (200) 44 cal bullets, approx. (100_ 45 cal bullets, approx. 10 boxes total 12 gauge, 16 gauge, and 4-10 gauge shot gun shells.

Again the Court is taking into consideration that it is not awarding any increase in the premarital interest in the home, however, the Petitioner has testified that all of the guns have been disposed of (testimony which the Court did not find credible) and hence the Respondent's guns may not be capable of delivery to the Respondent..

26. Amount to Equalize Division of Assets and Debts. The Court finds that the Respondent has been given more debt to assume and in order to equalize the property and debt division it is equitable to award a judgment in favor of the Respondent against the Petitioner in the amount of \$5,275.00, to equalize the parties.

27. Adjustment for Accounts. However, despite the award outlined above, the Court finds that the Respondent has disposed of Cache Investment Club \$6,108.00, and Ameritrade \$2,277.00, (total \$8,385.00) one-half or \$4,192.00, of which the Petitioner should receive credit towards the \$5,275.00. ($\$5,275.00 - \$4,192.00 = \$1,083.00$). The net amount the Petitioner owes to Respondent is \$1,083.00, which shall be taken out of the proceeds from the sale of the home.

28. Award of Judgment Against Petitioner. However, if the Petitioner can reclaim any of the Respondent's guns she claims to have sold the value of those guns, if delivered to the Respondent in the same condition when she took control of the same shall be applied to the \$1,083.00, amount she owes to the Respondent. If the parties' cannot come to an agreement as to the value of the returned guns the parties' may ask the Court to assign a value to the returned guns.

29. Wife's income & employment: The Court finds from the evidence that the wife is 54 years old and in good physical and mental health. She is not a college graduate but is employed at

Utah State University in the HR-Personnel Office and is responsible for working with employee benefits. She has been employed at USU for over 19 years. During the marriage wife also took a salary from B & B Drywall, Inc., ranging between \$15,000.00 and \$18,000.00 per year. [*Respondent's Ex 1, tab 1*] Because B & B is insolvent, and no longer in business, the Court does not believe the imputation of income from this source, is proper. Wife has testified that her current supervisor has made a college degree a requirement of employment in her current position, however, the Court feels it is unlikely that after 19 years of steady, full-time employment at this state institution, that she is in jeopardy of losing her employment. She may need to transfer to another position but the reduction of her income is not likely. At present she earns \$47,610.00 annually (\$3,967.50 per month) [*Petitioner's Ex. #1, tab 41*] and she has testified she receives a cost of living increase annually in July of each year. The Court notes that Wife has had sufficient income to add to her 401k retirement monthly.

From the property settlement, Wife will receive approximately \$138,000.00, to put down on a new home and assuming a modest home of \$200,000.00, Wife would be required to finance \$60 - 70,000.00 of that amount. Wife did not put into evidence her 2005 or 2006 income tax returns and so the Court is not aware of whether the withholdings result in a refund, however her current Federal & State withholdings are \$379.33 and \$207.05 respectively, and \$298.76 for FICA for a total of \$885.14 in tax deductions or 22.31% (\$885.14/\$3,967.50). As of December 1, 2007 wife had 265 hours of accrued annual leave (33 days) and 367 hours of accrued sick leave (46 days). Wife's current monthly payroll deductions are \$991.00 per month leaving her a net monthly income of \$2,977.00.

30. Wife's budget and needs: Shortly after the divorce was filed in August of 2005, the parties appeared before Commissioner Garner for a hearing on temporary orders. Wife presented a budget at that time indicating her needs were \$3,095.00 per month (inclusive of food/household supplies of \$450.00 per month; \$500.00 per month in legal fees and \$200.00 for college courses). [*Respondent's Ex #1, tab 4*] At trial Wife submitted a budget totaling \$6,210.29 per month (inclusive of \$1,000.00 per month for legal fees and \$2,500.00 per month for a mortgage or lease

payment). The Court has considered that the Petitioner will receive approximately \$138,000.00 from the sale of the Nibley residence and if she reinvests that into a modest home in the \$200,000.00, range that her mortgage payment would be around \$600.00 - \$700.00. The Court is also aware that at some point she will need to replace her vehicle. The Court finds that the Wife needs would be approximately \$4,200.00, per month and that her net needs are approximately \$1,000.00, per month short.

31. Husband's income and employment: The Court finds from the evidence that the Husband is 54 years old and is not a college graduate. Husband is in good physical health, however, husband has experienced severe depression and twice in late 2004 voluntarily admitted himself to a health care facility for assistance due to the manifestations of his depression. At present Husband is under the care of a physician and takes antidepressants, which have allowed him to function more productively. (This Court is also aware of the depression and suicide incidents in the Husband's medical history as it was the primary reason this Court issued the protective order in late 2005.)

Husband has been involved in the construction and drywall business for 31 years. In August of 2005 the wife and husband stipulated to the appointment of a court appointed receiver with respect to B & B Drywall, Inc., where the husband had been employed since before the marriage. He had been drawing a salary of approximately \$36-37,000.00 annually until 2005 when the business failed. The Court notes that based on both parties testimony there were substantial personal expenses and other draws from the business and believes the parties' income from the business as reflected on the income tax return is not really indicative of either parties' historical earning potential prior to the business failure.

After the receiver was appointed (August 2005) Husband eventually found employment with Valley Drywall (a drywall business in Cache Valley) at \$15-16.00 per hour. In June 2006 Husband relocated to Las Vegas, Nevada to take a new job, at an annual salary \$65,000.00/year with M & H Building Specialties, as an assistant drywall estimator. Approximately three (3) months after he began working for M & H, his supervisor, the senior estimator, died and Husband was required to take on both his and his former supervisor's job responsibilities. In 2007 Husband worked 3,365

hours to meet the job demands of both his job and that of his former supervisor. Husband testified that his workload demands were unusually high due not only to the significant demand for building construction in the Las Vegas area but also because of his supervisor's untimely death. Because of his increased job responsibilities and the substantial overtime required by the Husband's employer, husband received a salary increase in 2007 to \$94,059.00 annual salary and a special discretionary bonus of \$46,416.00. Husband's current salary is \$1,850.00 per week or \$96,200.00 annually. He has the potential for additional bonuses; however these bonuses are totally discretionary with the owners of the company and such bonuses have historically been based on the company's overall performance, not individual performance.

Husband testified that he has asked his employer to hire another estimator as he cannot maintain the same level of stress that he did in 2007 or he would find other employment. At present the Husband is working hours closer to the normal 40 hour work week. The Court is persuaded that given Husband's medical condition as well as the general economic condition of the construction industry slow down nationwide, that it is unlikely that husband would maintain the same level of hours at work that he did in 2007 or the corresponding compensation.

In addition the Court notes that a B & B Drywall supplier, Capital Building Supply, has obtained a \$61,000.00 personal judgment against Husband and is currently garnishing husband's paycheck. Capital garnished approximately \$18,200.00 in 2007 and is entitled under Nevada law to take 25% of husband's disposable income. It is likely that the husband will continue to have another \$18,000.00-\$23,000.00 garnished in 2008.

For purposes of calculating a reasonable income based on a 40/50 hour work week, the Court will utilize the base salary of \$96,200.00, less the \$18,200.00 garnishment, and a reasonable allowance for state, federal and FICA taxes of 27 percent (\$25,974.00). The Court finds the Husband's 2008 disposable income is \$52,226.00 annually or \$4,352.00 per month. For purposes of setting alimony the Court finds the Husband's monthly available income of \$6,000.00, per month prior to any bonuses which bonuses the Court understands and finds is discretionary with the employer.

32. Husband's Budget and Needs: Husband submitted a monthly budget of \$7,991.00 per month (inclusive of \$1,514.00 per month garnishments). The Court finds that the cost of living and living expenses in general in the Las Vegas area are greater than similar living expenses in Logan, Utah. The Court accepts the Husband's budget as reasonable in the amount of \$6,800.00, per month.

33. Alimony Findings and Award. The Court finds that it is equitable to order alimony to be paid by Respondent/Husband to the Petitioner/Wife in the sum of \$1,000.00, per month, to be paid beginning 30 days after closing on the home and continue per the state statute for a period of no more than 18 years from the date of July 1, 2008, unless otherwise terminated by co-habitation, remarriage, or death of the Petitioner or the death of the Respondent. The Court has considered the alimony factors set forth in §30-3-5(8)(a) U.C.A., including the financial condition and needs of the recipient spouse; the recipient earning capacity; the ability of the payor spouse to provide support; the length of marriage; whether the recipient spouse directly contributed to any increase in the payor spouses skill; fault; the parties standard of living at separation. As to fault the Court finds the evidence is not sufficient to merit further consideration of that factor.

34. B & B Drywall Going Concern Value. The Court finds the parties Drywall and Acoustical business has no going concern value.

35. Petitioner's Exclusive Possession of Home. The Court finds that since December 2004, Wife has had the exclusive use of the home subject only to paying the real property taxes and insurance while the Husband has been excluded from the property.

36. Value of Equipment in Nibley Shop and Dominion over Equipment. Husband has claimed that Wife has also had the exclusive use of the household furnishings and the tools and equipment that were stored in the Nibley shop which both husband and Mark Davis valued at approximately \$96,000.00. These items were in the Nibley shop at the time he left the residence (and was later excluded from the residence by the Protective Order) and were stored in the shop built adjacent to the Nibley home.

37. Cache Valley Bank Inspection of Equipment. On August 3, 2005, Cache Valley Bank through its loan officer Terry Oliver traveled to the Nibley property with Husband and obtained entry

to the shop and took photographs of the equipment in the shop. Upon entry to the shop, Husband told Mr. Oliver that substantial amounts of B & B equipment had been removed from the shop. He immediately provided a list of said equipment to Cache Valley Bank, who had a secured lien (UCC-1) on all of the B&B Drywall, Inc. equipment. The Court notes that Mr. Oliver's entry to the shop occurred before the appointment of a receiver.

38. Ultimate Finding of Value of Equipment in Nibley Shop. Based on the testimony of Mark Davis, a former supervisor for B&B Drywall, Inc., who also had knowledge of what was in the shop on a regular basis, the Court finds that the Wife has had exclusive use and possession of the shop and the equipment since December of 2004. The Court declines to find a value of the equipment, but has instead treated it as an offset to allowing any increase to the Petitioners premarital interest in the Nibley home.

39. Evidence of Existence of Equipment. The Court finds that as to those items of equipment which were still in the shop on August 3, 2005, as evidenced by the photographs, wife has had exclusive use and possession of the same. Terry Oliver testified that the Bank has made demand on Wife for the equipment and the Bank has even filed a separate lawsuit to recover the equipment secured by its UCC lien, which case was also assigned to this Court for disposition

40. Money in Safes. Husband testified that when he left the residence in December 2004 the parties had \$28,000.00 in an safe located in the attic of the Nibley home and \$4,100.00 in a safe in the basement. Wife denied that these funds existed; however, during the hearing on temporary orders before Commissioner Garner, Wife acknowledged that she removed from the attic safe a sum of money, at least \$20,500.00, and was ordered by Commissioner Garner to account for the money. Wife's accounting [Respondent's Ex. #1, tab 16] listed \$5,000.00 as being used to pay off the Trendwest timeshare. This accounting, however, is inconsistent with Petitioner's Ex. #1, tab 45, which shows monthly and quarterly payments on the timeshare after the time period Wife claims to have used a portion of the \$20,500.00 to pay off the timeshare. In light of the Court's treatment of denying the Petitioner any increase in her premarital interest in the Nibley home, the Court believes it has disposed of all the parties' real and personal property.

41. Value of B & B Drywall, Inc., Stock. The B & B Drywall business has no value as it is in a receivership and the business is insolvent, and the Court finds the value of the stock is worthless.

42. Credibility of Petitioner. The Court finds the Petitioner's credibility was a concern to the Court, and in particular found her testimony to be less than credible with respect to disposition of the guns; the accounting for the money in the safe, and in particular the payoff of the Timeshare, as well as her claimed lack of any knowledge as to the business expenditures, which was inconsistent in light of the testimony that she reconciled the bank statements as part of her duties.

43. Attorney Fees. The Court finds it equitable for each party to bear their own costs and attorney fees subject to the following provisions. Because Respondent did not timely respond to Petitioner's discovery and Petitioner was required to submit a Motion to Compel, the Court finds it equitable for the Respondent to be ordered to prepare the Findings of Fact and Conclusions of Law, Decree of Divorce, and any Qualified Domestic Relations Orders necessary to divide the retirement accounts as an offset to fees incurred by the Petitioner for filing the Motion to Compel.

Conclusions of Law

1. The marriage between the parties should be terminated through entry of a Decree of Divorce on the grounds of irreconcilable differences. The Petitioner has argued that the assets and debts of the marriage should be determined at the date of separation (December 2004) or the date of filing the divorce (August 2005). The Court determines that it should determine the assets and debts as of the date of trial February 2008.

2. "[T]he primary purpose of a property division, in conjunction with an alimony award, is to achieve a fair, just, and equitable result between the parties." Riley v. Riley, 2006 UT App 214, ¶ 27, 138 P.3d 84. The primary goal of this Court in any divorce proceeding is to accomplish an equitable division of the assets and debts of the parties. Divorce by its very nature is an equitable proceeding.

3. "Ordinarily, a corporation is regarded as a separate and distinct legal entity from its stockholders. This is true whether the corporation has many stockholders or only one. Consequently,

the corporate veil which protects stockholders from individual liability will only be pierced reluctantly and cautiously." *Colman v. Colman*, 743 P.2d 782, 786 (Utah Ct. App. 1987) (quotations and citations omitted). To aid courts in deciding when to ignore the separate corporate existence, the Utah Supreme Court established a two-prong test in *Norman v. Murray First Thrift & Loan Co.*, 596 P.2d 1028 (Utah 1979): "[I]n order to disregard the corporate entity, there must be a concurrence of two circumstances: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow." *Schafir v. Harrigan*, 879 P.2d 1384, 1389 (Utah Ct. App. 1994) (alteration in original) (quoting *Norman*, 596 P.2d at 1030).

Certain factors which are deemed significant, although not conclusive, in determining whether this test has been met include: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds by the dominant stockholder; (5) nonfunctioning of other officers or directors; (6) absence of corporate records; (7) the use of the corporation as a facade for operations of the dominant stockholder or stockholders; and (8) the use of the corporate entity in promoting injustice or fraud. *Colman*, 743 P.2d at 786 (footnotes omitted).

4. Respondent has demonstrated the existence of the type of siphoning off of corporate funds by the dominant shareholders that the Court is satisfied there exists in this case the "unity of interest" and "ownership" required by *Norman*. Respondent has testified that B & B Drywall, Inc., (B&B) paid for the shareholders' personal expenses including improvements to the Smithfield home; B&B paid for the Nibley property on which their home and shop were later constructed; B&B paid for materials for the Nibley home and shop; B&B its employees to work on the Nibley home and shop for which the shareholders did not reimburse the corporation; B&B made trades with other subcontractors for labor as to the Nibley home and shop; B&B purchased and paid for the Trendwest timeshare through 2004; B& owned and paid insurance and taxes on the parties' personal vehicles which they drove (the Expedition and Ford truck); B&B paid for home furnishings; B&B paid for personal woodworking tools; and B&B even purchased personal goods and services on the company

credit cards which B & B Drywall later paid for.

5. In addressing the Colman factors set forth above, the Court is satisfied that: (1) at the time the divorce was filed the corporation was insolvent and by stipulation of the parties was placed into a court-supervised receivership and was undercapitalized; (2) based on the Petitioner's own testimony they discussed matters almost daily but failed to observe the corporate formalities of holding shareholders' or directors' meetings; (3) there was no evidence of the payment of dividends and in fact the B & B corporate tax returns and other corporate financial records placed into evidence disclose no dividends were paid; (4) the parties knowingly and willfully siphoned off corporate funds to their own personal benefit; (5) other than the parties there were no other functioning officers or directors; (6) no evidence either way was produced as to the absence or existence of corporate records and therefore finds this factor neutral; (7) the manner in which the parties used the corporation for their personal financial benefit as dominant shareholders would be a facade; and (8) use of the corporate entity or shell to obtain a financial benefit as to the assets but not the debt would promote an injustice.

6. Respondent has demonstrated that the strict observance of the corporation would lead to an inequitable result. For several years the parties have received substantial financial benefits from a corporation which they largely disregarded when it came to taking money from the corporation for their personal benefit; a corporation in which they are 50%/50% or equal shareholders and are the only officers and directors of the corporation; a corporation they dominated for their own personal benefit. There has been such a co-mingling of the corporate funds with the marital assets acquired by the parties that it would be inequitable to treat the assets of the parties as marital assets and try to divide them equitably while disregarding the debts of the corporation from which the parties directly received the financial benefit.

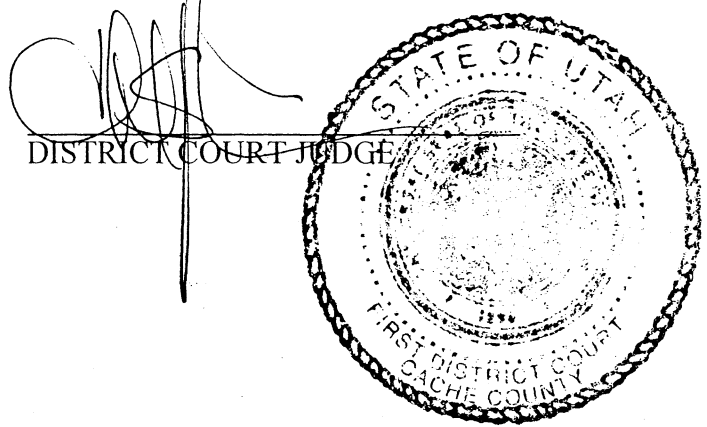
7. The division of the real and personal property and the parties' debt as set forth above accomplishes an equitable division of the marital property and debt.

8. Awarding the Petitioner alimony in the amount of \$1,000.00 per month beginning 30 days after the home is sold and continuing for a period of no more than eighteen (18) years from July 1, 2008 unless otherwise terminated by statute by the co-habitation, remarriage of the Petitioner or

the death of either the Petitioner Respondent is just and equitable.

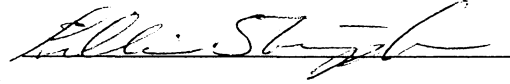
9. Additionally, each of the parties individually should assume any debt incurred by them individually after the divorce was filed in August of 2005.

Dated this 21 day of July, 2008.



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing **Findings of Fact and Conclusions of Law**, postage prepaid, to Petitioner's attorney, Kenyon Dove, Smith Knowles, 4723 Harrison Blvd., Suite 200, Ogden, Utah 84403, dated this 8 day of July, 2008.



F:\jmc\O\Olson, Brad\Divorce\findings of fact conclusions of law revised aft hearing 2008.06.30

State of Utah

TRUST DEED
With Power of Sale and Assignment of Rents

37008

THIS TRUST DEED, made this 3rd day of August 2005, between BRADLEY L. OLSON, as Trustor(s), whose address is
CACHE TITLE COMPANY, INC., a Utah Corporation as Trustee, and CACHE VALLEY BANK of
Logan, County, State of Utah, as BENEFICIARY; WITNESSETH: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN
TRUST, WITH POWER OF SALE, the following described property, situated in CACHE county, State of Utah:

Lot 10, BROOK FIELD MEADOWS AMENDED PLAT, as shown by the official plat filed October 29, 1996 as Filing No. 649755,
in the office of the Recorder of Cache County, Utah. (03-155-0010)

Ent 903767 Bk 1380 Pg 1445
Date 4-Nov-2005 4:31PM Fee \$18.00
Michael Gilead, Rec. - Filed By GC
Cache County, UT
For CACHE TITLE COMPANY

TOGETHER with all buildings, fixtures, and improvements thereon and all water rights, rights of way, easements, rents, issues,
profits, income, tenements, hereditaments, franchises, privileges and appurtenances thereto belonging, now or hereafter used or
enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and
conferred upon Beneficiary to collect and apply such rents, issues, and profits.

FOR THE PURPOSE OF SECURING (1) Payment of the indebtedness evidenced by a promissory note of even date herewith, in
the principal sum of \$300,000.00, made by Trustor, payable to the Beneficiary or order at the times, in the manner and with interest as
therein set forth, and with the final payment due, February 19, 2006 and any extensions and/or renewals or modifications thereof;
(2) the performance of each agreement of Trustor herein contained; (3) the payment of all sums which shall hereafter be advanced by
the Beneficiary to the Trustor by way of additional loan or loans, and to secure any and all indebtedness of any kind whatsoever from
the Trustor to the Beneficiary hereafter expended or advanced by Beneficiary under or pursuant to the terms hereof, together with
interest thereon as herein provided. PROVIDED, HOWEVER, that the making of such further loans, advances or expenditures shall
be optional with the Beneficiary and PROVIDED FURTHER that it is the express intention of the parties to this Trust Deed that it
shall stand as continuing security until all such further loans, advances and expenditures together with interest thereon, have been paid
in full.

A. TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep the buildings upon the above described real property continuously occupied and used; and not to permit the same to
become vacant, and keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or
restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to
comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or
permit any act thereupon said property in violation of law. To cultivate, irrigate, fertilize, fumigate, prune, and do all other acts which
from the character of said property may be reasonably necessary, the specific enumerations herein not excluding the general, and in the
event the above described property is used for agricultural purposes, the Trustor will use all manure produced by stock selection, seed
selection, crop rotation, weed control, fertilizing the soil, drainage, prevention of erosion and pasture maintenance in accordance with
good husbandry and the most approved methods of agricultural development. The Beneficiary may recover as damages for any breach
of this covenant the amount it would cost to put the property in the condition called for herein. Proof of impairment of security shall
be unnecessary in any suit or proceeding under this paragraph. If the loan secured hereby or any part thereof is being obtained for the
purpose of financing construction of improvements on said property, Trustor further agrees:

(a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and
specifications satisfactory to Beneficiary and

(b) To allow Beneficiary to inspect said property at all times during construction. Trustee, upon presentation to it of an affidavit
signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true
and conclusive all facts and statements therein, and to act thereon hereunder.

2. To keep the buildings and improvements now and/or hereafter upon the said premises unceasingly insured against loss by fire or other hazards in such amount and form as may be required by the Beneficiary in a Company or Companies selected by the Trustor subject disapproval by the Beneficiary, the insurance to be payable in case of loss to the Beneficiary as its interest may appear, all renewal policies to be delivered to the Beneficiary at least ten days prior to the expiration of the policy or policies renewed and in the event of the failure of the Trustor to so deliver a renewal policy, then the Beneficiary may renew or procure all required insurance upon said property and the Trustor agrees to pay all premiums therefor. All insurance policies covering any structure upon said premises, regardless of amount, shall be payable as aforesaid and delivered to the Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary who may make proof of loss. The amount collected under any fire and other insurance policy may be applied by the Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or, at option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or any act done pursuant to such notice.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees incurred by Beneficiary a reasonable sum incurred by Beneficiary or Trustee, or incurred or advanced by the Beneficiary and/or Trustee in connection with any such action or proceeding in which the Beneficiary and/or Trustee may be joined as a party defendant or receives notice of such action, proceeding or claim asserted in such action or proceeding or proposed action or proceeding. Trustor covenants that the Trustor has a valid and unencumbered title in fee simple to the property described herein and has the right to convey the same and warrants and will defend said title unto the Trustee and Beneficiary against the claims and demands of all person whomsoever.

5. To pay when all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees and expenses of this Trust.

Ent 903767 R 1380 Pg 1446

6. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights and powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including costs of evidence of title, employ counsel, and pay his reasonable fees.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of ten per cent (10%) per annum until paid, and the repayment thereof shall be secured hereby.

8. In addition to the payments due in accordance with the terms of the note secured hereby, the Trustor shall, at the option and demand of the Beneficiary, pay each year to the Beneficiary, in equal monthly installments, the estimated amount of the annual taxes, assessments insurance premiums, maintenance and other charges upon the property, such sums to be held in trust by the Beneficiary for the Trustor's use and benefit for the payment by the Beneficiary of any such items when due. The estimate shall be made by the Beneficiary. If the Beneficiary shall fail to make such estimate, the amount of the preceding annual taxes, assessments, insurance premiums, maintenance and other charges as the case may be, shall be deemed to be the estimate for that year. If, however, the payment made hereunder shall not be sufficient to pay such charges when the same shall be due, the Trustor shall pay the Beneficiary any amount necessary to make up the deficiency on or before the date when the same shall become due.

B. IT IS MUTUALLY AGREED THAT:

1. If the Trustor permits any deficiency in the amount of the aggregate monthly, or other periodic payments, provided for herein or in the note secured hereby, or any failure to pay any advancements or payments made by the Trustee and/or Beneficiary to protect and preserve the lien hereof or property described herein, such deficiency or failure shall constitute an event of default under this Deed of Trust and, if not cured within 15 days Trustor promises and agrees to pay a "late charge", and that any such "late charge" shall constitute an additional item secured by this Deed of Trust. PROVIDED HOWEVER, that Trustor shall not become liable to pay total interest and "late charge" in excess of the highest legal rate permissible by contract under the laws of the State of Utah.

2. The fixtures and equipment described herein and/or affixed to and used and enjoyed in connection with the real property herein or any part thereof constitute permanent fixtures thereof and that such fixtures and equipment will not be severed and removed from said real property without the written consent of the Beneficiary and written reconveyance thereof by the Trustee and shall be deemed part of the realty.

3. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

4. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance for cancellation and release), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien of charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be

5. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, and hereby constitutes and appoints Beneficiary attorney in fact during the continuance of this Trust, with or without taking possession of the property affected hereby to collect the rents, issues, and profits of said property, (reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues, and profits, as they become due and payable. Upon any such default.) Beneficiary may, at any time without notice, by agent or by receiver, to be appointed by court, Trustor hereby consenting to the appointment of Beneficiary as such receiver and without regard to any security for the indebtedness hereby secured, enter upon and take possession of said property, or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, or an assumption of liability under or a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

6. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7. The discontinuance or failure on the part of Beneficiary promptly to enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

8. In the event of the passage, after the date of this Trust Deed, of any law of the State of Utah, directing from the value of land for the purpose of taxation any lien thereon, or taxing such lien or the owner or holder of the same, or changing in any way the laws for the taxation of Trust Deeds or debts secured by Trust Deeds for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Trust Deed, the Beneficiary or the Assignee of this Trust Deed and of the debt which it secures, shall have the right to give 30 days written notice to the owner of said land requiring the payment of the debt secured hereby, and it is hereby agreed that if such notice be given, the said debt shall become due, payable and collectable at the expiration of the said 30 days.

9. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause sale of property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part of parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

Ent 903767 Ek 1380 Pg 1447

10. After the lapse of such time as may then be required by law following the recording of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine subject to any statutory right of Trustor to direct the order to which such property, if consisting of several known lots or parcels, shall be sold, at public auction to the highest bidder, the purchase price payable in lawful money of the United States, at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any sale, notice thereof shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of sale to payment of (1) the costs and expenses of executing the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest as herein provided from date of expenditure (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the county Clerk of the county in which the sale took place.

11. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and the Trustee agrees to pay Beneficiary or Trustee, whichever may be the Plaintiff in said foreclosure suit, the cost of said suit and a reasonable sum for attorney's fees, whether Beneficiary or Trustee shall have paid for procuring an abstract or other deed and also a reasonable fee for Trustee. All moneys herein agree to be paid shall be secured hereby.

12. In the event suit is instituted to effect foreclosure of this Trust Deed the Trustee and/or Beneficiary shall as a matter of right and without regard to the sufficiency of the security or of waste or danger of misapplication of any of the property of the Trustor, be entitled forthwith to have a receiver appointed of all the property described in this Trust Deed, and the Trustor hereby expressly consents to the appointment of a receiver by any court of competent jurisdiction and expressly stipulates and agrees that such receiver may remain in possession of the property until the final determination of such suit or proceedings. Trustor hereby expressly consents to the appointment of Beneficiary as such receiver.

13. Beneficiary may appoint a successor Trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of Trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee named herein or of any successor Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made as provided by law.

14. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

15. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

16. This Trust Deed shall be construed according to the laws of the State of Utah

17. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

18. The Trustor acknowledges that full disclosure has been made of the terms of the loan and the finance charge as required by Federal and State law and acknowledges receipt of a copy of such disclosure statements together with copies of the promissory note and trust deed.


Signed in the presence of:

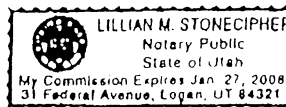

BRADLEY L. OLSON

Ent 903767 & 1380 Pg 1449

State of Utah)
County of Cache)

On the 22 day of August, 2005 personally appeared before me BRADLEY L. OLSON, the signers of the foregoing instrument who duly acknowledged to me that they executed the same.


Notary Public



My Commission Expires Jan 27, 08

Residing in Cache County

REQUEST FOR FULL RECONVEYANCE

TO TRUSTEE:

The undersigned is the holder of the note or notes secured by this Trust Deed. Said note or notes, together with all other indebtedness secured by this Trust Deed, have been paid in full. You are hereby directed to cancel said note or notes and this Trust Deed, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Trust Deed to the person or persons legally entitled thereto.

Date: _____

FIRST JUDICIAL DISTRICT COURT
COUNTY OF CACHE, STATE OF UTAH

MARIAN C. OLSON, Petitioner,	MEMORANDUM DECISION AND ORDER
vs.	Case No. 054100358
BRADLEY L. OLSON, Respondent.	Judge: Larry E. Jones

THE ABOVE MATTER is before the court pursuant to Petitioner Marian C. Olson's *Second Motion For Reassignment To A New Judge*. The case was originally assigned to Judge Clint S. Judkins of the First District Court, who heard and ruled on the matter at trial. After the trial, Petitioner sought to disqualify Judge Judkins under Rule 63 of the Utah Rules of Civil Procedure. Judge Judkins subsequently recused himself. On October 1, 2008, the case was transferred to Judge Thomas L. Willmore. On October 29, 2008, Petitioner filed the motion now before the court, seeking to disqualify Judge Willmore and transfer the case to a new judge. A notice to submit the matter for decision was filed on December 9, 2008. On January 7, 2009, Judge Willmore certified the motion for review to Judge Larry E. Jones. *See* Utah R. Civ. P. 63(b)(2). In preparation of its decision, the court has reviewed Petitioner's Motion and Memorandum in Support, Respondent Bradley L. Olson's Objection, Petitioner's Reply in Support, and the applicable case law and statutory provisions. Having considered the foregoing, the court issues this Memorandum Decision and Order.

In accordance with Rule 63(b) of the Utah Rules of Civil Procedure, "a party ... may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest." Utah R. Civ. P. 63(b)(1)(A). However, said motion shall only be granted if "the motion and affidavit are timely filed, filed in good faith and legally sufficient." Utah R. Civ. P. 63(b)(3)(A). Furthermore, the bias or prejudice set forth in the affidavit must "have some basis in fact and be grounded on more than mere conjecture and speculation." *Madsen v. Prudential*

Fed. Sav. & Loan, 767 P.2d 538, 544 n.5 (Utah 1988) (citation omitted). Finally, as set forth in *Treff v. Hinckley*, 2001 UT 50, ¶ 10, 26 P.3d 212, 215 (Utah 2001), an “allegation that is based on religious affiliation alone or that pertains to allegations of bias in unrelated contexts is not sufficient” to show bias, prejudice, or conflict of interest. *Id.*; *see also* Utah R. Civ. P. 63.

In her motion currently before the court, Petitioner claims to have discovered grounds requiring the disqualification of Judge Willmore. She argues that on Sunday, October 12, 2008, the local newspaper printed a marriage announcement which indicated that Judge Willmore had presided at a marriage ceremony held on September 20, 2008, for a bride and groom who have connections with this case. The groom is counsel for Cache County Bank, Jonathan Thomas, and the bride is the daughter of counsel for Respondent, Joe Chambers. Petitioner claims that Jonathan Thomas has attended hearings relating to this case and that Cache Valley Bank has a financial interest in the outcome of the case as a significant creditor of Respondent, who is also attempting to collect from Petitioner. Petitioner bases her claim of bias, prejudice, and conflict of interest on Judicial Canon 3.E(1), which states that a “judge shall enter a disqualification in a proceeding in which the judge’s impartiality might reasonably be questioned....” In sum, Petitioner argues that pursuant to Rule 63, sufficient bias, prejudice, or conflict of interest exists, given Judge Willmore’s apparent personal relationship with Respondent’s counsel and counsel for Cache Valley Bank, to mandate the disqualification of Judge Willmore as his “impartiality might reasonably be questioned.”

In response, Respondent argues that there is no basis for disqualification of Judge Willmore and that the affidavit and memorandum submitted by Petitioner contain only conjecture and baseless opinion. Respondent asserts that Respondent’s motion and supporting affidavit are factually and legally insufficient and do not set forth an adequate basis for recusal. Respondent also notes that Judge Willmore has stated on the record that he has not had any discussions with any of the parties or their attorneys relative to this case prior to or subsequent to Judge Judkins’ recusal from the case.

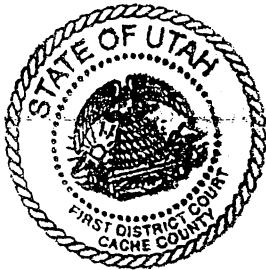
After carefully reviewing this matter, the court finds that while Petitioner’s motion and supporting affidavit were filed timely and accompanied with a certificate of good faith, they are unsupported by sufficient facts or evidence showing bias, prejudice, or a conflict of interest. The court finds that Petitioner has failed to show by affidavit or any other form of evidence that Judge Willmore did anything more than simply preside over the marriage ceremony. Petitioner has failed

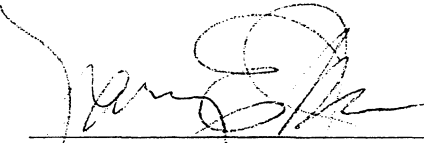
to present any evidence, beyond mere speculation (i.e., her unsupported opinion as to the nature of the relationship between Judge Willmore and those involved in the marriage ceremony and this case), that Judge Willmore engaged in any interaction with the parties or their counsel during the marriage ceremony that might reasonably question the judge's impartiality. Petitioner's cursory allegation of bias, prejudice, or conflict of interest pertains to a completely unrelated context—a marriage ceremony—and is an insufficient basis for disqualification. As set forth above, Judge Willmore has stated on the record that he has not had any discussions with any of the parties or their attorneys relative to this case prior to or subsequent to Judge Judkins' recusal from the case and Petitioner has not presented any evidence to rebut or reasonably question the judge's statement on the record.

Therefore, the court finds that Petitioner's affidavit is legally insufficient to support Judge Willmore's recusal and hereby denies Petitioner's *Second Motion For Reassignment To A New Judge*. This ruling constitutes the final order of the court on this issue. No further order is necessary to effectuate the court's decision.

Dated this 30th day of January, 2009.

BY THE COURT:





Larry E. Jones
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 054100358 by the method and on the date specified.

METHOD NAME

Mail	JOSEPH M CHAMBERS Attorney RES 31 FEDERAL AVE LOGAN, UT 84321
Mail	M. DARIN HAMMOND Attorney PET 4723 HARRISON BLVD STE 200 OGDEN UT 84403

Dated this 30 day of Jan., 2009.

A. B. Brien
Deputy Court Clerk

IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH

IN RE:

MARIAN C. OLSON

VS.

BRADLEY L. OLSON

TRIAL - VOLUME IV

) Appellate Case No.
20080666

) Trial Case No.
054100358

) Judge Clint S. Judkins

REPORTER'S TRANSCRIPT OF PREVIOUSLY-RECORDED
PROCEEDINGS

DATE RECORDED: April 16, 2008

DATE TRANSCRIBED: January 6, 2009

TRANSCRIBED BY: Kelly L. Wilburn, CSR, RPR



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P R O C E E D I N G S

THE COURT: Mr. Dove, they're telling me you were late.

MR. DOVE: I was. I guess I owe you bagels, sir. Your clerk bagels.

THE COURT: I was gonna say (Inaudible) days of trial (inaudible.)

All right, Counsel. This is the time set by the Court to rule after hearing the testimony in this matter. Is there anything else that should be said for either side that you'd like raised on the record before (inaudible.)

MR. CHAMBERS: I can't think of anything, your Honor.

MR. DOVE: No, your Honor.

MR. CHAMBERS: I can't think of anything, your Honor.

THE COURT: All right. I'm gonna work my way through this. In doing this let me indicate to both sides that it is somewhat frustrating after the testimony that I received (inaudible.)

I've said in the past that sometimes I feel like a computer; you put junk in, you get junk back out. This particular case, you didn't put junk in. It's just long and convoluted.

1 I sincerely appreciate the proposed findings
2 of fact and conclusions of law both of you were --
3 both sides worked hard at putting that together and it
4 greatly assisted the Court in going back through the
5 testimony.

6 I guess what I'm saying is this is a tough
7 case. There's a lot of different aspects to it. Both
8 of you -- both sides I think did an excellent job
9 presenting your facts and positions. And hopefully my
10 judgment here -- I'm sure it won't please either of
11 you. But I think it will be fair, and hopefully it
12 will be.

13 The Court will order that the decree to enter
14 and the divorce be granted to the parties (inaudible)
15 based irreconcilable differences.

16 The Court is further going to order that the
17 protective order that was previously issued be
18 dismissed (inaudible.)

19 The -- oh, and one other thing I should say
20 is that this basis, this decision and entry today may
21 be a basis for further negotiation between the
22 parties. In other words, when I get through with this
23 you may say, Well, that's fine and good, but you want
24 to swap this for that? Or whatever (inaudible.)

25 The Nibley house. The Court finds that

1 the -- in the Nibley house that the Petitioner
2 contributed to the construction of the same \$108,000
3 (inaudible.)

4 It is ordered that the home be sold. The
5 first (inaudible) to come out of the income of the
6 sale of the house will be the cost of putting the home
7 in a sellable condition. The Court finds it should be
8 approximately \$25,000.

9 Then the cost of the sale will come out. And
10 if that's listed on the real estate market I think
11 today (inaudible) percent for the (inaudible) about
12 \$33,000.

13 And both of you have submitted some figures
14 that you think that house is worth. I think the
15 testimony that was introduced here to the Court
16 indicates the house is worth about \$550,000. I'm
17 gonna tell you how I came up with the basis for that.

18 Dustin Singleton testified that he evaluated
19 the home. He inspected the house in 2005,
20 November 2005. He thought the value of the house was
21 480,000 at that time if the foundation leak was fixed.
22 (Inaudible) again 2007 he never really reappraised it.

23 He did testify, however, in 2006 and 2007
24 there has been a general growing increase in real
25 estate between 5 and 10 percent. The Court has

1 calculated that to approximately a 5 to 8 percent
2 increase, three years since 2005.

3 He gave that a 16 percent increase
4 (inaudible) year, that's a \$76,800 increase. Which
5 should put the house at about \$556,800. If it took
6 25,000 to fix the foundation, that still leaves about
7 \$521,800. Again, we're talking in generalities.

8 That was the testimony that was received
9 (inaudible.) The Court's not now aware that since the
10 case was first tried that there's been a decrease in
11 the real estate market (inaudible) here, it's nation
12 wide (inaudible.) So the Court anticipates that this,
13 this house is going to bring somewhere around 550,000.

14 Now, the Petitioner has 108,000 to come out
15 of that. That will leave about 384,000. And out of
16 that, Cache Valley Bank is to be satisfied, to the
17 tune of 326,000. Which leaves about \$58,000 left.

18 If you divide that between the two of them,
19 then that will be somewhere around \$30,000 that each
20 side will receive. And of course that will be added
21 to Petitioner's 108,000 (inaudible.) Now that, again,
22 is rough. The best I can see is (inaudible.)

23 Now, in addition, the Petitioner should
24 receive credit for the increase in the value of her
25 equity in the home. In other words, just about ten

1 years ago she put in 10,000 -- or \$108,000. If you
2 gave her 5 percent credit (inaudible) 5 percent
3 increase during that 10 years, it will come out about
4 \$54,000.

5 However, the Court finds that the -- from the
6 preponderance of the evidence that she disposed of
7 many tools from the Nibley shed, cash in several safes
8 in the house, and all of the guns of both parties,
9 including those owned by the Respondent prior to the
10 marriage.

11 Therefore, the Court finds a wash or offset
12 for those amounts. In other words, she receives no
13 money from the sale of the house for the 10 years
14 (inaudible.) However, she will receive all the tools
15 that were in the Nibley shed, and cash from several
16 safes.

17 In addition, the Court is going to grant her
18 the Trendwest time share. She shall receive sole
19 ownership of the Trendwest time share and shall be
20 solely responsible for any and all payments associated
21 with (inaudible.) I think the approximate value of
22 the time share is \$6,500.

23 The retirement accounts of the parties, which
24 include Northwest Investment approximately \$4,192, the
25 AGI 401(k) of about \$53,768, the URS 401(k) of about

1 \$52,747, a 401(k) Janus fund \$63,202, the 401(k) ME
2 fund is 15 thousand (inaudible.) All of those are to
3 be divided as per the Woodward formula.

4 Now, in doing that let me indicate that I
5 think this would be a good place for your (inaudible)
6 negotiate further to see (inaudible) each take
7 (inaudible) and offset the values.

8 The Petitioner shall receive the Expedition
9 vehicle, valued at \$10,000. The Respondent shall
10 receive the truck, whose value is \$500. I must say
11 that I'm somewhat (inaudible) I'm somewhat troubled by
12 that ruling. But the only testimony I have is that
13 the value of the truck is \$500 (inaudible.)

14 The Respondent shall receive the coin
15 collection, including the remaining portions that are
16 in the wife's possession. I set the value of that at
17 \$15,000. And I'll freely admit that's somewhat
18 arbitrary.

19 But when he received the bid that he
20 received -- and I don't have it here, but I think it
21 was \$10,000 (inaudible.) And his wife appraised it to
22 be about 18,000. So I (inaudible.)

23 The Respondent is to be awarded the tools and
24 equipment in the Hyrum storage shed, the value of
25 which is \$21,000. Now, the Court's fully aware that

1 Cache Valley Bank has a lien on those tools. But if
2 they're satisfied out of the sale of the house, then
3 that should remove that lien (inaudible.)

4 And I don't know, my notes did not disclose
5 whether there's a lien on the tools that were left in
6 the Nibley shed. But if there is, again, they should
7 be satisfied out of the sale of the proceeds of the
8 house. She should be free to dispose of those
9 (inaudible.)

10 He's to assume the debt to Capital Builders
11 and hold Petitioner harmless therefrom (inaudible.)
12 And (inaudible) assume this \$51,774 (inaudible.)

13 She is to assume the debt to LKL and hold the
14 Respondent harmless therefrom. And that (inaudible)
15 is about 41,000, I show \$40,955.

16 Now this -- the next ruling here again might
17 be a basis for (inaudible) negotiation. The, the
18 Respondent is to make -- in relation to personal
19 property he is to make two lists of equal value. And
20 she will then get the option to see which ones she
21 wants.

22 Now, pursuant to the request -- the Court's
23 request, Mr. Chambers submitted a list of guns. There
24 are no values (inaudible) those guns, but there is a
25 list. The Court will award to the Petitioner all the

1 guns on that list as Marian's guns.

2 The Court will award to the Respondent all
3 the guns on that list listed as Brad's personal guns.
4 The Court will award to Marian all the guns listed on
5 the list as joint ownership. And in doing that I take
6 into consideration that she did not receive any
7 increase in the equity that she received. That
8 \$108,000 that she received (inaudible.)

9 Now, the Court's aware that her testimony was
10 to the effect that all those guns had been disposed
11 of. I'll address that further in a minute. Now, this
12 gets a little bit complicated, but. All right.

13 He's been awarded \$500 in the truck, \$15,000
14 in coins, \$21,000 in tools, for a total of
15 (inaudible.)

16 She received the Expedition, which was valued
17 at \$10,000. And again, I'm not going to take into
18 account the tools, et cetera, the cash, because that's
19 a wash between the, the equity that she has.

20 She assumes a debt of \$41,000. He assumes a
21 debt of 61,775. So he has assumed \$20,775 more than
22 she does. That's why I say this gets a little
23 complicated. So she owes him \$5,275 to equalize that.

24 However, he received \$6,108 from Cash
25 Investment Club, \$2,277 from Ameritrade. So she gets

1 one-half of that, or \$4,192. When you subtract the
2 4,192 from the 5,275, that leaves a \$1,083 balance
3 that she owes to him to equalize.

4 Now, that \$1,085 she can pay to him out of
5 the proceeds from the sale of the house. However, if
6 she can reclaim any of the guns that she claims that
7 she sold (inaudible) the value of those guns will be
8 deducted from that \$1,085, plus any other amounts
9 which (inaudible.)

10 In other words, he may end up owing her out
11 of sale of the house for those guns. Now, you haven't
12 given me a value for the guns. But quite frankly I
13 can probably come up with (inaudible) if you can't
14 agree on it.

15 If she finds the guns (inaudible) and you
16 can't agree what that value is, from personal
17 knowledge I can probably give you (inaudible.)

18 Now, that gets us down to alimony. Her
19 income as reflected in paragraph 15 of Mr. Chambers'
20 proposed findings and conclusions will be accepted.
21 And that shows her disposable net income was \$2,977.

22 The Court finds her monthly expenses
23 submitted in Petitioner's Exhibit J is inflated by
24 approximately \$2,000. I find her needs to be about
25 \$4,200.

1 Now, arriving at that the Court took into
2 consideration the fact that she's going receive
3 somewhere around \$140,000 from the sale of the house.
4 That's her 108,000 plus the 30,000. So she's getting
5 about 140,000 from that.

6 And if she purchases a home -- and obviously
7 the home would not be the same as the home she is now
8 in. But if you take about a \$200,000 house and put
9 130,000, down she'd have to finance the rest. Her
10 costs are going to be somewhere around six, seven
11 hundred dollars to finance (inaudible) \$200,000 house.
12 Again, that's rough.

13 She also has not put in her requested amount,
14 that is her budget, anything for a future car. The
15 Court is aware that the Expedition is paid for, but
16 sooner or later that's (inaudible.) So I think her
17 needs are about \$1,000 (inaudible.)

18 His needs somewhere around \$6,800. The Court
19 will accept -- and I'm sorry, I didn't write down
20 (inaudible.) I think it's paragraph 16 of
21 Mr. Chambers' findings that relate to his income. As
22 modified herein, his needs are about \$6,800.

23 His disposable income is -- that is net
24 income, is about \$6,000. Plus the bonus that he
25 makes. The Court is fully aware that that bonus is

1 completely discretionary with his employer.

2 Nevertheless, it is a -- that's what he received last
3 year, and that's about all the Court can go on. So
4 the Court is going to award that he pay her alimony,
5 \$1,000 per month.

6 Now, her needs will not be as I've described
7 until the house is sold. So that alimony will not
8 commence until 30 days after the close on the home.
9 When that's sold, then he's to start paying her \$1,000
10 a month alimony.

11 And I should note in taking that into account
12 Section 30-3-5(8)(a) (inaudible) sets forth the
13 standard for alimony. The financial conditions, the
14 needs of the recipient spouse, the Court has
15 considered that.

16 The recipient's earning capacity (inaudible)
17 the Court has considered that. The ability of the
18 payor spouse to provide support. Also the length of
19 marriage. Children does not enter into it at this
20 time.

21 Whether the recipient spouse worked in a
22 business owned or operated by payor spouse. The Court
23 makes a comment on that. I'm going to adopt for these
24 rulings the findings and conclusions as submitted by
25 Mr. Chambers that there was a going-concern business,

1 but now there's no value to that business.

2 The other thing to consider whether the
3 recipient spouse (inaudible) contributed to any
4 increase in payor spouse's skill (inaudible)
5 education, or training while she contributed 18 years
6 (inaudible) that business.

7 And that's (inaudible) eighteen years
8 experience. And so the alimony will continue for that
9 18 year period of time.

10 The Court should also consider fault of the
11 parties. There's been testimony here as to apparently
12 what precipitated the divorce between the parties
13 (inaudible) the Respondent went to Reno and
14 (inaudible.)

15 However, I have not received sufficient
16 information by way of testimony, quite frankly, to
17 make a determination there. And I'm hesitant to
18 establish a precedent in this, because if you do that
19 then you open the door for why did he go to -- off the
20 deep end. (Inaudible) 18 years with her, did she
21 contribute to that.

22 I'm not going to go into that. So quite
23 frankly, I don't find that fault had anything to do
24 with it. (Inaudible) if the Court goes into that much
25 detail (inaudible) three or four days trial in cases

1 like this (inaudible) try and show one party did
2 (inaudible) the other party and it's the other party's
3 fault (inaudible.)

4 Now, the -- I will make a comment. Quite
5 frankly I was -- the credibility of the Petitioner is
6 in question. She made some statements under oath that
7 concerned me. One was concerning the guns. That they
8 had been sold. She couldn't remember to who or for
9 how much.

10 Also, there was conflicting testimony as to
11 originations of how she paid off that time share. And
12 I'll indicate that even though she received the time
13 share and there is a benefit there, (inaudible) have
14 to be taken into consideration I suppose (inaudible)
15 wash as that she received no benefit from the increase
16 in value (inaudible.)

17 In other words, the -- she gets the time
18 share, but there's (inaudible) attributed to
19 Respondent except for (inaudible.)

20 The Court will award that each party bear
21 their own attorney's fees and costs. However, the
22 Court is aware too that the Respondent did not respond
23 to certain discovery requests that were submitted, and
24 so additional costs were incurred by Petitioner's
25 attorney.

1 The Court will order, Mr. Chambers, you are
2 to prepare the findings and conclusions (inaudible) if
3 necessary to divide the investments as per the
4 Woodward formula. That should offset any (inaudible)
5 incurred there. Of course (inaudible) those to
6 Mr. Dove before submitting them to the Court.

7 Now, I'm sure the Court has not pleased
8 either of you totally. I hope I haven't offended
9 either of you totally. Are there any areas which I
10 have not ruled on?

11 MR. CHAMBERS: I can't think of any, your
12 Honor. But if something comes up, could Counsel and I
13 put a call in to the Court and clarify that?

14 THE COURT: Very well. Again, let me
15 encourage you that the findings of the Court might be
16 (inaudible) especially in complicated cases. For
17 example personal property, where I said make your list
18 and divide it up.

19 It very well may be that that gives you a
20 basis to say, Okay, let's further negotiate
21 (inaudible.) That and I think the investments ruling,
22 the retirement (inaudible) gives you a basis to
23 further negotiate.

24 And of course if you can agree on anything,
25 the Court will certainly (inaudible.) Very well.

1 MR. CHAMBERS: There is one additional item
2 that Mr. Olson just -- I apologize.

3 THE COURT: (Inaudible.)

4 MR. CHAMBERS: In relationship to the coins.
5 If we made arrangements with the sheriff deputy to go
6 out to the house could he pick those up today? Just
7 because there's been an issue with regards to the
8 personal property the longer it goes. And so while he
9 is in town.

10 THE COURT: You've obviously got to have some
11 further communication because she's got a (inaudible)
12 personal property (inaudible.) So I'll let the
13 attorneys work that out.

14 Now, I -- as of right now, though, that
15 protective order is no longer in place. I'll make
16 that a verbal order so he can go take care of that.
17 However let me caution you that, although that I
18 removed the old protective order, that if additional
19 problems arise the Court will grant a new order
20 (inaudible.)

21 MR. CHAMBERS: Just so the Court's aware,
22 I've advised Mr. Olson while he's here to get this
23 situation resolved to be with some other party 24/7
24 and then go back to Vegas, because I don't want a
25 problem.

1 THE COURT: That's good advice. The more
2 people involved in this (inaudible.) I think at this
3 point in time he should receive ownership of what he's
4 (inaudible.)

5 Anything else?

6 MR. CHAMBERS: Thank you.

7 MR. DOVE: I think that's it, your Honor.

8 THE COURT: The Court is in recess.

9 (End of recording.)

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C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing transcript was prepared by me, KELLY L. WILBURN, a Registered Professional Reporter and Notary Public in and for the State of Utah.

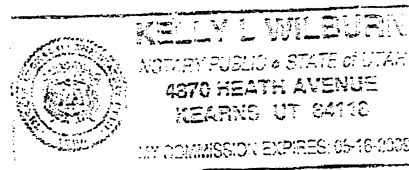
That the transcript was prepared from a previously-recorded proceeding at which I was not personally present; therefore, the quality of said recording may affect the quality of the transcript.

That said recording was then written in stenotype by me and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said recording so taken and transcribed to the best of my ability is set forth in the foregoing pages, numbered 707 through 723, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND AND OFFICIAL SEAL AT KEARNS, UTAH
THIS 6th DAY OF January, 2009.

Kelly L. Wilburn
Kelly L. Wilburn, CSR, RPR
My Commission Expires:
May 16, 2009



**Marshalling of the Evidence
Concerning the Trial Court's Findings as to Commingling and/or Veil
Piercing**

Brad Olson may argue that a marshalling exercise would be necessary to overcome the court's finding of fact concerning commingling which is found in the record at pages 671-72. Appellant does not agree that a marshalling exercise is necessary because Utah Code Ann 30-2-5 prohibits the court from entertaining the result achieved. Nonetheless, in an abundance of caution, Appellant Marian Olson hereby sets forth marshalling of evidence on that issue.

A. Evidence Tending to Support the Court's Findings of Fact

This subsection summarizes all evidence in the record which tends to support the trial court's findings of fact that commingling and/or veil piercing should occur as set forth in Finding of Fact #15 and #17. R. 671-72. This subsection sets forth all facts in the record which might be construed in a light favorable to Brad Olson on that issue. It appears that Brad Olson believed that because he allegedly traded out several aspects of the construction of the Nibley house back in year that such constituted unreported income to B&B Drywall, Inc. and that because it was put into the house, it benefitted the parties and not B&B Drywall to such an extent that the corporate veil should be pierced. The evidence showing Brad's assertions regarding the commingling theory is as follows:

1. Brad testified that he performed trades with certain subcontractors through B&B Drywall and not him personally. Tr. 201, lines 8-23.
2. Brad testified that he had records of what materials and subcontractors expenses went into the construction of the Nibley house. Tr. 200, line 23 – p. 201, line 7.
3. Brad testified that several personal items were purchased with B&B funds. Tr. 114, line 20 – 115, line 6 and Tr. 519 line 25 – 520, line 7.
4. Brad's woodworking tools were purchased with B&B funds. Tr. 227, lines 17-25.
5. Brad testified that B&B Drywall supplied labor to build the Nibley house. Tr. 200, line 25 and R. 202 lines 2 – 16.
6. The Trendwest timeshare was partially purchased with funds of the corporation. Tr. 497, lines 11-17.
7. Marian recalls that the home office furniture was likely purchased by B&B Drywall (Tr. 352 lines 6-11) and perhaps a few other items. Tr. 350, lines 6-24.
8. Marian testified that the construction of the home may have included one trade with one subcontractor. Tr. 333, lines 3-14.

B. Evidence Tending Not to Support the Court's Ruling

There is abundant evidence in the record which does not support the trial court's ruling on the commingling/veil piercing issue. This subsection shows all of that evidence.

1. B&B Drywall, Inc. was incorporated in about 1991. Tr. 107, lines 7-12.
2. B&B Drywall, Inc. had appointed officers and directors. Tr. 107, lines 7-12.
3. B&B Drywall, Inc. employed an outside accountant. Tr. 439.
4. A separate tax return for B&B Drywall, Inc. was prepared by a certified public accountant. Tr. 439-442.
5. B&B shareholders and officers held corporate meetings. Tr. P. 252, lines 2-21.
6. B&B shareholders and officers maintained a corporate book. Tr. 252, lines 2-21.
7. The Cache Valley Bank loans were obtained for business purposes. Tr. 425 line 22 – 426 line 12.
8. Cache Valley Bank essentially treated the corporation as a separate entity from its shareholders. Tr. 425 line 22 – 426 line 12.

9. B&B Drywall, Inc. averaged from 30-45 employees and had as many as 75 employees at one time. Tr. 198, lines 4-23.
10. Separate revenue and expense records were maintained by B&B Drywall, Inc. See Brad's Trial Exhibit Tab 6.
11. The alleged trades occurred approximately 7 years before the unpaid notes to Cache Valley Bank. (The parties moved into the Nibley home in October 1997. Tr. 199, lines 7-9 while the two Cache Valley Bank notes in question were obtained in 2004-2005. Tr. 153, lines 8-16.)
12. Marian did not sign the personal guarantee with Cache Valley Bank. Tr. 433-34.
13. The revenue of B&B Drywall, Inc. for the first half of 2005 was \$1,949,770.68. Brad's Trial Exhibit Tab 6.
14. Even Cache Valley Bank's representative testified that Marian Olson was not liable on the Cache Valley Bank notes. Tr. 466, lines 6-9.
15. No documents were submitted to support Brad's assertions about the trades which occurred about ten years before the trial. See the Exhibits in general.
16. Marian testified as to one trade only. Tr. 333, lines 3-14. She knew of no other trades as alleged by Brad.
17. The corporation existed for at least 14 years before going into receivership. Tr. 11, lines 1-25.

18. The Trendwest timeshare was purchased with a business purpose of employee bonuses in mind. Tr. 497, lines 11-17.
19. The Trendwest timeshare was actually purchased mostly with marital funds by Marian Olson after the divorce petition was filed. Tr. 270 and Tr. 357 lines 8-15.

C. An Analysis of All Evidence Shows That the Trial Court's Conclusions Regarding Commingling/Veil-Piercing Are in Error.

A thorough analysis of the evidence submitted by Brad Olson shows that it is insufficient to meet the standard elements necessary to show that the corporate veil of B&B Drywall, Inc. should be pierced. When all such evidence is balanced in light of the high standard concerning veil-piercing and the reluctance of court's to make such a conclusion, there simply is not enough evidence in the record to support the trial court's finding of fact numbers 15 and 17. Brad's testimony was way too general to be conclusive. "We did several jobs for contractors and did some trades." Tr. 201, lines 15-16. This assertion is merely a self-serving statement and does not serve to prove the extent of or the details of the alleged commingling. Actual documentary evidence or evidence from one of the companies that he allegedly traded perhaps would be probative—not just his own self-serving and conclusory allegation. Much more evidence should be required to pierce the corporate veil.

In light of the other evidence that B&B was a large multi-million dollar company which followed corporate formalities and generally treated the husband and wife as separate from the company, there simply was not enough evidence produced to meet Brad's burden of proof on this issue. The lack of independent documentation or other support for Brad's assertions is problematic for the veil-piercing theory. Brad did no more than demonstrate that on a few occasions over a 14 year period that the line between corporate and personal expenses may have been blurred, but he did not meet his burden of showing "such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist." Norman v. Murray, 596 P.2d at 1030. The fact that Brad's theory served such a selfish purpose on his part should cause skepticism as to his motives in making such conclusory allegations. Clearly B&B Drywall, Inc. had a separate existence which he failed to prove was legally ignored. In summary, Brad did not produce sufficient evidence to support a conclusion of veil-piercing.