

2008

Mark D. Bergman v. Debbie A. Burke, Dorene R. Basug, First American Title : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark D. Bergman; Appellant/Pro Se.

Mr. Michael E. Bostwick; M.E. Bostwick's Law Offices, P.C.; Attorneys for Appellee.

Recommended Citation

Reply Brief, *Mark D. Bergman v. Debbie A. Burke, Dorene R. Basug, First American Title*, No. 20080751 (Utah Court of Appeals, 2008).
https://digitalcommons.law.byu.edu/byu_ca3/1144

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH APPELLATE COURT

COPY

MARK D. BERGMAN
Plaintiff & Appellant

v

DEBBIE A. BURKE, DORENE R.
BASUG, and FIRST AMERICAN
TITLE Defendant(s) & Appellee(s)

REPLY BRIEF APPELLANT

DOCKET No. 20080751-CA

Michael E. Bostwick (7037)
6776 South 1300 East
Salt Lake City, UT. 84151
T: 801-676-8777
F: 801-352-9339
Atty. for the Defendant – Appellee
Debbie A. Burke

Mark D Bergman -- Pro Se
bergmanmd1@aol.com
545 East 1100 North
Ogden, Utah 84404
T: 801-782-8086
F: 801-782-0667
Plaintiff -- Appellant

IN THE UTAH APPELLATE COURT

MARK D. BERGMAN

Plaintiff & Appellant

v

DEBBIE A. BURKE, DORENE R.

BASUG, and FIRST AMERICAN

TITLE Defendant(s) & Appellee(s)

REPLY BRIEF APPELLANT

DOCKET No. 20080751-CA

Michael E. Bostwick (7037)
6776 South 1300 East
Salt Lake City, UT. 84151
T: 801-676-8777
F: 801-352-9339
Atty. for the Defendant – Appellee
Debbie A. Burke

Mark D Bergman -- Pro Se
bergmanmd1@aol.com
545 East 1100 North
Ogden, Utah 84404
T: 801-782-8086
F: 801-782-0667
Plaintiff -- Appellant

Appellant's/Plaintiff's 60(b) Reply Brief

Table of Contents

	Page
Procedural History.....	2
Argument.....	4

Table of Authorities

<u>12 Moore's Federal Practice</u> , ¶ 60.21[4][a], at 60-52 (3d ed. 2000).....	10
<u>Hazel-Atlas Glass Co. v. Hartford-Emprie Co.</u> , 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)	9
<u>In re Four Seasons Sec. Laws Litig.</u> , 502 F.2d 834, 842 (10th Cir. 1974).....	10
<u>Kendall Insurance v. R&R Group</u> , 2008 UT App 235	3
<u>Stonger v Sorrell</u> 776 NE.2d 353, 358 (Ind. 2002).....	10
<u>United States v. Buck</u> , 2002 10CIR 260, 281 F.3d 1336	9

Table of Controlling Rule and Statues

See Addendum

Utah R. Civ. P. Rule 60(b)	2,3,4
Utah Code Ann. § 78-2-223 (et. sec)	2

Procedural History

On or about April 3 2008, the plaintiff filed a motion, memorandum, and affidavit with the trial court, pursuant to Utah R. Civ. P. Rule 60(b), requesting relief from the Trial Court's judgment of January 16 2008, due to Defendant in concert with Counsel committing a fraud on the court.

On or about April 21 2008, the plaintiff filed a Request to Submit with the trial court. The defendant did not file a timely reply.

On or about July 1 2008, the plaintiff discovered that, on or about May 12 2008, counsel for the defense appeared to have visited the trial court and had ex-parte communication with the trial court. Subsequently, Plaintiff's motion 60(b) was improperly removed from under advisement and the Request to Submit was improperly stayed until there was a decision from the Supreme Court.

On or about August 4 2008, the trial court learned the plaintiff had filed a motion and memorandum requesting the trial court remove the improper stay (on the advise from the Weber County Prosecutor's Office), and the plaintiff had filed complaints concerning the trial court's violation of procedure with the Trial Court Administration, and The Utah Judicial Council.

On or about August 7 2008, (108 days after the Request to Submit was filed) the trial court, without regard to its violation of procedure, and failing to comply with the statutory requirements detailed within Utah Code § 78-2-223 (et. sec), assumed

jurisdiction, issued a false statement within its ruling and denied the Plaintiff's motion 60(b). Such false statement was, "The Court has learned, however." The trial court stated this knowing it was a false statement of material facts. See, Kendall Insurance v. R&R Group, 2008 UT App 235, this case shows the trial court knew the correct procedure only choose to ignore it (refer to page 26 – 27 Brief of the Appellant for full details).

Hence, Plaintiff's primary issues on appeal concerns the trial court abusing its discretion, violating procedure, and failure to comply with statutory requirements while handling and ruling on the Plaintiff's motion 60(b), and in large part the improper ex-parte that Defense Counsel (an Officer of the court) used to effect the judicial process in prejudicing the Plaintiff's action.

Argument

Within Defendant's reply brief, Defense Counsel has admitted being at Weber County Second District Courthouse and meeting with Judge Baldwin's clerk on May 12 2008, the same day the plaintiff's motion 60(b) was improperly removed from under advisement, and improperly stayed without any authority, orders, or notice to the plaintiff.

Furthermore, Defense Counsel admits that Judge Baldwin's clerk ("debbieg") stamps the court orders and she provide counsel with such orders, and that defense counsel paid her for the copies.

On Page 10, top of page, of Defendant's brief defendant states, "*Ms. Burke's counsel requested copies of those orders and was provided those copies by the clerk. Counsel paid for those copies as indicted on the court docket.*" (emphasis added)

EVIDENCE		
04-04-08	Tracking started for Motion. Review date Jun 03, 2008.	sharilyr
04-07-08	Tracking ended for Motion.	sharilyr
04-07-08	Tracking ended for Under advisement.	debbieg
04-07-08	Tracking ended for Under advisement.	debbieg
04-07-08	Filed: AFFIDAVIT OF IMPECUNIOSITY (MARK D BERGMAN)	sharilyr
04-07-08	Filed: NOTICE OF APPEAL	sharilyr
04-07-08	Note: CD RETURNED TO MARK BERGMAN. HE SET IT ON THE COUNTER AND REFUSED TO TAKE IT AND LEFT IT ON THE COUNTER.	sharilyr
04-08-08	Filed order: Memorandum Decision Judge PARLEY R BALDWIN Signed April 07, 2008	debbieg
04-08-08	Note: Certified copy of notice of appeal sent to the Supreme Court of Utah via interoffice mail.	azurev
04-08-08	Filed: Mailing Certificate	azurev
04-18-08	Note: ORDER ON PLAINTIFF'S NOTICE OF RELEASE OF COUNSEL AND REPRESENTING PRO SE AND MOTION TO ALTER OR AMEND A JUDGMENT RECEIVED	sharilyr
04-18-08	Note: ORDER ON PLAINTIFF'S MOTION REQUESTING THE COURT TO CLARIFY AND SEAL COURT DOCUMENTS AND BURK'S MOTION FOR ATTY FEES AND COSTS HOLD TIL 4-29-08	sharilyr
04-21-08	Filed: PLAINTIFF'S OBJECTION TO THE FORM AND CONTENT OF THE COURT ORDER SUBMITTED BY THE DEFENDANT-MOTION PURSUANT TO UJCRJA 4-402.04	sharilyr
04-21-08	Filed: PLAINTIFF'S OBJECTION TO THE FORM AND CONTENT OF THE COURT ORDER SUBMITTED BY THE DEFENDANT MTOION PURSUANT TO URCP 59 A 6	sharilyr
04-21-08	Filed: REQUEST TO SUBMIT FOR DECISION	sharilyr
04-21-08	Filed: CERTIFICATE THAT TRANSCRIPT IS NOT REQUIRED (COPY)	azurev
04-21-08	Filed: LETTER FROM MARK BERGMAN	azurev
04-21-08	Filed: Supreme Court of Utah Order	azurev
04-21-08	Filed: Supreme Court of Utah Letter	azurev
04-25-08	Filed: BURKE'S OBJECTION TO THE MOTION PRESENTING NEW CONCLUSIVE EVIDENCE RELATING TO THE DEFENDANT COMMITTING FRAUD UPON THE COURT	sharilyr
04-25-08	Fee Account created Total Due: 0.75	juanaq
04-25-08	COPY FEE Payment Received: 0.75	juanaq
	Note: 1.00 cash tendered. 0.25 change given.	
05-05-08	Note: FILE TO PRB WITH NTS	sharilyr
05-07-08	Filed: Utah Court of Appeals Letter	azurev
05-08-08	Tracking started for Under advisement. Review date Jul 04, 2008.	sharilyr
05-12-08	Filed order: Order on Plaintiff's Notice of Release of Counsel and Representing Pro Se and Motion to Alter or Amend a Judgment Judge PARLEY R BALDWIN Signed May 12, 2008	debbieg
05-12-08	Filed order: Order on Plaintiff's Motion Requesting the Court to Clarify and Seal Court Documents and Burke's Motion for Attorney's Fees and Costs	debbieg

CASE NUMBER 040902444 Lien/Mortgage Fcls

Judge PARLEY R BALDWIN

Signed May 12, 2008

05-12-08 Tracking ended for Under advisement. debbieg
05-12-08 Note: Request to submit for decision is stayed until there is a decision from the Supreme Court debbieg
05-12-08 Fee Account created Total Due: 2.00 bonniejs
05-12-08 COPY FEE Payment Received: 2.00 bonniejs
Note: 5.00 cash tendered. 3 change given.
05-13-08 Filed: NOTICE OF APPEAL juanaq
05-13-08 Fee Account created Total Due: 205.00 juanaq
05-13-08 APPEAL Payment Received: 205.00 juanaq
Note: Code Description: APPEAL
05-16-08 Note: Mailed certified copy of notice of appeal to the Utah Supreme Court via interoffice mail. azurev
05-16-08 Filed: Mailing Certificate azurev
05-22-08 Filed: Supreme Court of Utah Letter azurev
05-22-08 Filed: Supreme Court of Utah Order azurev
05-27-08 Note: Record sent to the Court of Appeals via interoffice mail. azurev
06-02-08 Filed: Request for Transcript angelinp
06-03-08 Note: Copy of Request for Transcript put in recorder's box. angelinp
06-10-08 Filed: Utah Court of Appeals Letter azurev
06-10-08 Note: File received back from the Utah Court of Appeals. azurev
06-18-08 Filed: Utah Court of Appeals Letter azurev
06-23-08 Note: Record (1 file) sent to the Court of Appeals via interoffice mail. azurev
06-26-08 Note: File received back from the Court of Appeals azurev
-26-08 Filed: Utah Court of Appeals Letter azurev
-27-08 Tracking - Exhibit, changed to Review date Nov 20, 2008. juanaq

Printed: 07/01/08 16:32:29

Page 17 (last)

Only, Judge Baldwin's clerk works on the forth floor, and the docket does not reflect that she logged the fee for the copies, clerk "bonniejs" logged the copies fee and "bonniejs" works on the first floor of the Weber County Courthouse. Moreover, "bonniejs" would not be able to provide copies on the same day as they were signed.

Upon inquiring of a judicial service representative (court clerk), the plaintiff has learned that every entry on the court docket contains a time log for when the entries were made. Thus, the plaintiff requested the time log for the four (4) entries of May 12 2008 listed below;

1. - 5/12/2008, at 3:34 PM, debbieg (Judge Baldwin's clerk) entered - Judge Baldwin signed one (1) court order,

2. - 5/12/2008, at 3:35 PM debbieg entered - Judge Baldwin signed another court order.

3. - 5/12/2008, at 3:51 PM debbieg entered - Request to submit for decision is stayed until there is a decision from the Supreme Court.

4. - 5/12/2008 at 3:59 PM bonniejs (first floor clerk) entered - Fee account created

Total due \$2.00

SEE; Exhibit "A" - This entire event took less than 30 minutes.

On Page 9 ¶ #1. defendant states, "*Ms. Burke's counsel did not receive the copies of the executed orders via U.S. mail. He received those orders from Judge Baldwin's clerk on May 12 2008.*" (emphasis added)

Page 9 – 10 ¶ #3, defendant states, “*Ms. Burke’s counsel went to the District Court in Weber County on May 12, 2008, in order to check on the status of the order that had been submitted for the trial court’s signature. Counsel arrived at the courthouse to learn that the order had already been signed by the court earlier that day.*” (emphasis added)

If that statement is true, then why is Judge Baldwin’s clerk stamping court orders and provided them to Ms. Burke’s counsel, instead of providing counsel with copies of signed orders?

On Page 9 ¶ 3, defendant states, “*Whether Judge Baldwin was on the bench on May 12, 2008, is of no consequence.*” (emphasis added)

The reason the plaintiff inquired if Judge Baldwin was on the bench on May 12 2008, was to verify if the Judge and or his court clerk (Debbie George) were busy with court proceedings, or were they in chambers or their respective workstations. This implies that because court was not in secession on May 12 2008, trial court personnel were available for Defense Counsel to seek out.

On page 7 ¶ 2, defendant states, “*Mr. Bergman never claims that he has first hand knowledge of the events he asserts took place at Weber County Courthouse on May 12, 2008.*” (emphasis added)

That statement proves exactly what the Plaintiff is asserting. Inasmuch as, why was the Plaintiff the only party without first hand knowledge of what transpired on

May 12 2008, at the Weber County Courthouse that relates to the Plaintiff's case?

Hence, the events transpired ex-parte.

At this point it does not matter what the Defendant now claims or disclaims, the Defendant is either guilty of being an accomplice to, aiding and abetting, and lastly, without any doubt, guilty of an accessory after the fact. All of which are crimes, and the Plaintiff should not be required to prove anything else, at this point.

“The Court rejected suggestions that a lack of diligence by the aggrieved party could justify denial of relief, finding that tampering with the administration of justice in the manner shown here involved more than an injury to a single litigant and that the court's power to preserve the integrity of the judicial process did not depend on the diligence of the litigants.”(Quoting from Hazel-Atlas Glass Co. v Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)).

The trial court, influenced or not has abused its discretion, violated the rules of procedure, and failed to comply with statutory requirements. Hence, the Plaintiff was denied a fair and impartial adjudication, and this court would be well with in its rights and power to void the trial court's finding of facts, conclusions of law, final order, in relation to the case at issue and remand the case for a new trial.

SEE: United States v. Buck, 2002 10CIR 260, 281 F.3d 1336, Appellants claim that the quiet title judgment should be set aside under Rule 60(b)(4) because the judgment is void. A judgment is void "only if the court which rendered it lacked

jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law." In re Four Seasons Sec. Laws Litig., 502 F.2d 834, 842 (10th Cir. 1974).

SEE: Stonger v Sorrell 776 NE.2d 353, 358 (Ind. 2002). Nevertheless, fraud may be found in the absence of an intent to defraud; indeed, fraud may be found even where representations are made with a good faith belief in their truth. Whether the deprivation of a party's rights by actions of the court are attributable to a willful intent to defraud or a reckless disregard of rules or statutory provisions, the court has the same duty to rectify the wrong. The mechanism for protecting an [sic] maintaining the decisional integrity of our judicial system is found in the statutes and rules which govern the procedures to be followed by parties, attorneys and judges. The purposeful or reckless disregard of those procedural safeguards which results in the deprivation of substantive rights constitutes an impermissible corruption of the court process.

12 Moore's Federal Practice, ¶ 60.21[4][a], at 60-52 (3d ed. 2000), provides:

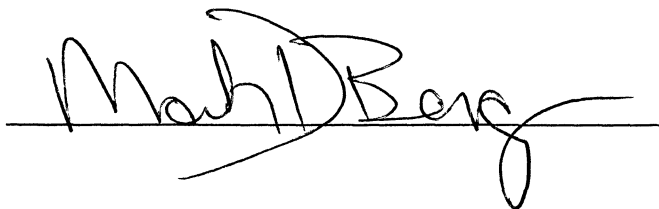
"Fraud on the court" is defined in terms of its effect on the judicial process, not in terms of the content of a particular misrepresentation or concealment. Fraud on the court must involve more than injury to a single litigant; it is limited to fraud that "seriously" affects the integrity of the normal process of adjudication. Fraud on the court is limited to fraud that does, or at least attempts to, "defile the court itself" or

that is perpetrated by officers of the court “so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases.” Id. (footnote references omitted)(emphasis in original).

The Defendant has failed to show this court good cause to believe why defense counsel was at the trial court on May 12 2008, and that counsel did not cause the detrimental out-come. Therefore, this court should find grounds to report such unprofessional conduct to the Utah State Bar and remand this case back to the district court.

To quote the late Robert F. Kennedy, “Every time we turn our heads the other way when we see the law flouted, when we tolerate what we know to be wrong, when we close our eyes and ears to corrupt because we are too busy or too frightened, when we fail to speak up and speak out, we strike a blow against freedom and decency and justice.”

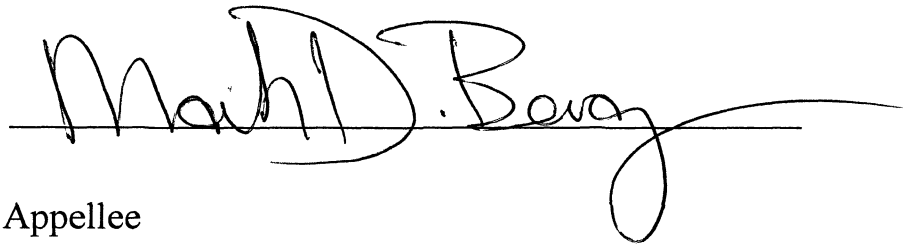
Respectively,

 Dated March 6, 2009

CERTIFICATE OF SERVICE

I CERTIFY THAT ON THE 6 DAY OF March, 2009 THE FOREGOING
REPLY BRIEF WAS SERVED ON THE DEFENDANT/ Appellee BY MAILING A
TRUE AND CORRECT COPY VIA FIRST-CLASS U.S. MAIL, POSTAGE
PREPAID TO THE FOLLOWING ADDRESS;

Respectfully,

A handwritten signature in black ink, appearing to read "Michael E. Bostwick", written over a horizontal line.

Atty. For the Defendant/ Appellee

Michael E. Bostwick (7037)

6776 South 1300 East

Salt Lake City, UT. 84151

Bergman v Burke

Case No. 20080751-CA

Exhibit

“A”

4 pages

Update/Delete Document				
Delete		Select		Exit
Entered	Classification	Document Type	Clerk	Title
2/9/2009 12:14 pm	PUBLIC	Regular	kalhyt	Attorney returned 2 civil files
11/17/2008 10:05 am	PUBLIC	Regular	lauries	Transcript of 12-15-05 oral arguments prepared by Carolyn Eri
10/21/2008 9:23 am	PUBLIC	Regular	juanaq	NOTICE TO THE TRIAL CLERK THE PLAINTIFF IS REQUEST
10/9/2008 1:27 pm	PUBLIC	Regular	azurev	Order
10/3/2008 3:50 pm	PUBLIC	Regular	azurev	Court of Appeals Letter
9/18/2008 9:25 am	PUBLIC	Regular	angelinp	Certificate that Transcript is Not Required
9/12/2008 3:11 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Order
9/12/2008 3:10 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Letter
9/4/2008 9:32 am	PUBLIC	Regular	azurev	Mailing Certificate
9/2/2008 3:54 pm	PUBLIC	Regular	bonniejs	Notice of Appeal
9/2/2008 10:49 am	PUBLIC	Regular	angelinp	Affidavit of Impecuniously
9/2/2008 10:48 am	PUBLIC	Regular	angelinp	(Copy) Certificate that Transcript is Not Required
8/7/2008 4:29 pm	PUBLIC	Order	debbieg	Ruling Denying Plaintiff's Rule 60 (b) Motion
8/1/2008 12:05 pm	PUBLIC	Regular	angelinp	Memorandum in Supporting Plaintiff's Motion to Remove Stay
8/1/2008 12:04 pm	PUBLIC	Motion	angelinp	Motion to Remove Stay on Judgment
6/26/2008 2:20 pm	PUBLIC	Regular	azurev	Utah Court of Appeals Letter
6/18/2008 4:16 pm	PUBLIC	Regular	azurev	Utah Court of Appeals Letter
6/10/2008 9:52 am	PUBLIC	Regular	azurev	Utah Court of Appeals Letter
6/2/2008 9:57 am	PUBLIC	Regular	angelinp	Request for Transcript
5/22/2008 3:48 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Order
5/22/2008 3:48 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Letter
5/16/2008 9:36 am	PUBLIC	Regular	azurev	Mailing Certificate
5/13/2008 1:36 pm	PUBLIC	Notice of Appeal	juanaq	NOTICE OF APPEAL
5/12/2008 3:35 pm	PUBLIC	Order	debbieg	Order on Plaintiff's Motion Requesting the Court to Clarify and
5/12/2008 3:34 pm	PUBLIC	Order	debbieg	Order on Plaintiff's Notice of Release of Counsel and Represe
5/7/2008 1:34 pm	PUBLIC	Regular	azurev	Utah Court of Appeals Letter
4/25/2008 8:08 am	PUBLIC	Regular	sharilyr	BURKE'S OBJECTION TO THE MOTION PRESENTING NEW
4/21/2008 3:53 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Letter
4/21/2008 3:53 pm	PUBLIC	Regular	azurev	Supreme Court of Utah Order
4/21/2008 2:27 pm	PUBLIC	Regular	azurev	LETTER FROM MARK BERGMAN
4/21/2008 2:27 pm	PUBLIC	Regular	azurev	CERTIFICATE THAT TRANSCRIPT IS NOT REQUIRED (COP
4/21/2008 12:37 pm	PUBLIC	Notice to Submit	sharilyr	REQUEST TO SUBMIT FOR DECISION
4/21/2008 12:35 pm	PUBLIC	Regular	sharilyr	PLAINTIFF'S OBJECTION TO THE FORM AND CONTENT OF

5/12/08 3:34 & 3:35 PM

Case history

Case 040902444 Lien/Mortgage Fcls

Last Name BERGMAN Judge PARLEY R BALDWIN

First Name MARK D Find Commissioner

Minutes	Judgment	Date	Summary Event
		2008-06-23	Note Record (1 file) sent to the Court of Appeals via interoffice mail

Documents Account History

Case History Notes

Ca Date 05/12/2008 Time 3 51 26 PM

Caller

Case History Note Request to submit for decision is stayed until there is a decision from the Supreme Court

Clear History Note

Delete History Note

Case Note

Delete Case Note

Spell Check Enter Exit

2008-05-12 Tracking ended -- Under advisement

2008-05-12 Filed Order on Plaintiff's Motion Reque

2008-05-12 Filed Order on Plaintiff's Notice of Re

2008-05-08 Tracking started -- Under advisement

2008-05-07 Filed Utah Court of Appeals Letter

3 03 PM

5/12/08 3:51 PM "Stayed"

"debbieg" 4th floor

Original

Enlarged

SECOND DISTRICT COURT - OGDEN
DUPLICATE RECEIPT 02/27/09 11:30
05/12/08 15:59 Clerk: bonniejs
Receipt Number: 20080920150
Payor: BOSTWICK, MICHAEL E

Received:
Cash \$ 2.00

Case 040902444 Lien/Mortgage Fols
Judge: BALDWIN, PARLEY R
Defendant: FIRST AMERICAN TITLE,
BERGMAN, MARK D VS FIRST
AMERICAN TITLE
COPY FEE \$ 2.00

Note: 5.00 cash tendered.
3 change given.

***** DUPLICATE RECEIPT *****

SECOND DISTRICT COURT - OGDEN
DUPLICATE RECEIPT 02/27/09 11:30
05/12/08 15:59 Clerk: bonniejs
Receipt Number: 20080920150
Payor: BOSTWICK, MICHAEL E

Received:
Cash \$ 2.00

Case 040902444 Lien/Mortgage Fols
Judge: BALDWIN, PARLEY R
Defendant: FIRST AMERICAN TITLE,
BERGMAN, MARK D VS FIRST
AMERICAN TITLE
COPY FEE \$ 2.00

Note: 5.00 cash tendered.
3 change given.

***** DUPLICATE RECEIPT *****

5/12/08 15:59 = 3:59 PM
Copies for Defense / 1st floor

Bergman v Burke

Case No. 20080751-CA

Addendum

78A-2-223. Decisions to be rendered within two months -- Procedures for decisions not rendered.

(1) A trial court judge shall decide all matters submitted for final determination within two months of submission, unless circumstances causing the delay are beyond the judge's personal control.

(2) The Judicial Council shall establish reporting procedures for all matters not decided within two months of final submission.

Renumbered and Amended by Chapter 3, 2008 General Session

Rule 60. Relief from judgment or order.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.