

1986

Mountain States Telephone and Telegraph Company v. Terry J. Stephenson and Jill M. Payne : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

UTA

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DOCKET NO.

860268

IN THE SUPREME COURT OF THE STATE OF UTAH

MOUNTAIN STATES TELEPHONE :
AND TELEGRAPH COMPANY,

Plaintiff and Respondent :

v. : Case No. 860268

TERRY J. STEPHENSON, :
Defendant, and Category No. 14b

JILL M. PAYNE, :
Defendant and Appellant :

BRIEF OF RESPONDENT

Appeal from the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Scott Daniels, District Judge, presiding.

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JURISDICTION AND NATURE OF PROCEEDINGS BELOW

Jurisdiction for this appeal is conferred by Article VIII, Section 3 of the Constitution of the State of Utah, Rule 3(a) of the Rules of the Utah Supreme Court, and by Section 78-2-2(3)(i), Utah Code Annotated 1953, as amended. This is a civil action for the collection of money on dishonored checks under Utah Code Ann. § 7-15-1.

STATEMENT OF THE ISSUES

1. Is Appellant personally liable for the amount of a dishonored check under Utah Code Ann. § 7-15-1, where Appellant signed the check on a corporate bank account for payment of services rendered by Respondent to the corporation, where Appellant was not an officer or principal of the corporation, but only an employee acting under the direction of an officer, and where Appellant had no interest in the funds, profits or assets of the corporation and believed there were or would be funds available to pay the check upon presentment?

2. Does Utah Code Ann. § 7-15-1, as applied to the facts of this case, violate Appellant's substantive due process rights under the United States or Utah Constitutions?

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions

U.S. Constitution, Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of laws.

Utah Constitution, Amendment I, Section 7

No person shall be deprived of life, liberty or property, without due process of law.

Statutes

Utah Code Ann. § 7-15-1(1) (1981)

Any person who makes, draws, signs or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership, or corporation any money, merchandise, property, or other thing of value or paying for any service, wages, salary or rent, which check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account with the depository upon which the check, draft, order, or other instrument has been made or drawn, does not exist, has been closed, or does not have sufficient funds or sufficient credit with such depository for payment of the check, draft, or other instrument in full, shall be liable to the holder thereof.

Utah Code Ann. § 70A-3-403(2)

An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Disposition

Respondent and plaintiff The Mountain States Telephone and Telegraph Company (hereinafter "Mountain Bell") brought this action under Utah Code Ann. § 7-15-1 to collect several dishonored checks signed by defendants Terry J. Stephenson and Jill M. Payne, which were issued on a corporate bank account to pay for telephone service rendered to Namco Corporation. Default judgment was entered against defendant Stephenson, who has not appealed. Appellant Jill M. Payne (hereinafter "Payne") filed a pro se answer which did not deny the allegations of the complaint, but rather alleged that she was acting merely as a secretary in issuing the checks. Mountain Bell moved for judgment on the pleadings,

which the court granted after a hearing at which Payne appeared, filed an affidavit, and argued. After entry of judgment against Payne, James F. Housley, Esq. entered an appearance for her and filed alternative motions for relief from the order, amendment of the judgment, new trial, judgment n.o.v., and for findings of fact and conclusions of law. The court denied all motions, and this appeal followed.

Statement of Facts

Mountain Bell accepts Payne's statement of the facts, but would add that Payne never denied the essential allegations of Mountain Bell's complaint against her.¹ Thus it is uncontroverted that she signed and issued the checks in question, that the checks were drawn on First Security Bank of Utah for payment of telephone services provided by Mountain Bell to Namco Corporation, that the checks were dishonored upon presentment, and that Mountain Bell complied with the notice requirements of Utah Code Ann. § 7-15-2.²

¹The complaint and Payne's pro se answer and affidavits are set forth in Addenda A and B.

²This provision requires written notice in a prescribed form, and states that it "shall be conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such signer at his address as it appears on the check, draft, order or other instrument or at his last known address." Although Payne filed an affidavit after judgment was entered in which she denied receipt of any notice (R. 41, paragraph 10), she never denied that the notice was sent as Mountain Bell alleged.

(R. 3-6). Even after Payne's attorney entered his appearance, no effort was made to deny these facts.

Payne's defense rests solely on the facts that she was not a corporate officer or principal, but only an employee acting under the direction of an officer, that she believed there were or would be funds available to cover the checks, and that she had no personal interest in the corporation or its funds. (R. 8, 24-25, 39-42).

SUMMARY OF THE ARGUMENT

1. As Appellant, Payne has the burden of persuading this Court that the trial court committed reversible error. Since there are no disputed issues of material fact, the only issue to be decided is whether, as a matter of law, Payne is liable under Utah Code Ann. § 7-15-1, where she signed the dishonored corporate checks merely as an employee acting under the direction of a corporate officer.

2. Payne is personally liable under Utah Code Ann. § 7-15-1, which imposes liability on a person who signs a check "whether as corporate agent or otherwise." The statute was amended in 1979 to remove a requirement that the signer act "wilfully, with intent to defraud." Thus, Payne's state of mind and her lack of personal interest in the corporation are not defenses to a claim under the statute.

3. Section 7-15-1, Utah Code Ann., is not inconsistent with the Commercial Code provision dealing with the liability of an authorized agent who signs an instrument, Utah Code

Ann. § 70A-3-403. Section 70A-3-403 sets forth several conditions under which an agent may be personally obligated on an instrument. Section 7-15-1 does not abrogate any of those conditions, but simply provides for personal liability under additional conditions. In any event, Section 7-15-1 takes precedence as a later enactment.

4. Section 7-15-1, as applied to Payne, does not violate her substantive due process rights, because it is rationally related to a legitimate state interest of promoting commerce by reducing the incidence of worthless checks, and by giving creditors an additional, expeditious means of recovering payment for goods and services furnished.

ARGUMENT

POINT I

PAYNE HAS THE BURDEN OF SHOWING THAT THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING MOUNTAIN BELL'S MOTION FOR JUDGMENT ON THE PLEADINGS.

It is axiomatic that an appellant has the burden of showing error by the trial court. This is true whether there was a plenary trial on the merits, or whether the case was decided as a matter of law, as in a directed verdict, summary judgment, or judgment on the pleadings. See Polyglycoat Corp. v. Holcomb, 591 P.2d 449, 450-51 (Utah 1979) (appeal from directed verdict); First Security Bank of Utah, N.A. v. Wright, 521 P.2d 563, 567 (Utah 1974) (appeal from summary

judgment). The presumption here must be that the trial court's ruling is correct unless Payne can show that she raised a genuine issue of material fact or that Mountain Bell is not entitled to judgment as a matter of law. See Lindbeck v. Bendziunas, 84 N.M. 21, 498 P.2d 1364, 1370 (1972).

The brief record makes abundantly clear that Payne did not dispute nor even raise any issue of fact, much less an issue of material fact. Thus, the sole legal question before this Court is whether Utah Code Ann. § 7-15-1 applies to a person who is not a corporate officer or principal, who signs a check on the corporate account merely as an employee of the corporation, at the direction of an officer, who has no interest in the assets of the corporation, and who has no knowledge that the check will not be honored upon presentment.

POINT II

A. PAYNE IS LIABLE UNDER UTAH CODE ANN. § 7-15-1 AS A MATTER OF LAW.

Section 7-15-1(1), Utah Code Ann. (1981),³ states as follows (the portion pertinent to this case being underlined):

³The statute has since been amended, Laws of Utah 1986, Ch. 29, although the amendment does not alter its substance. A complete history of the statute from its initial enactment in 1969, including amendments in 1977, 1979, 1981, and 1986, appears in Addenda C, D, E, F and G, respectively.

(1) Any person who makes, draws, signs or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any service, wages, salary or rent, which check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account with the depository upon which the check, draft, order, or other instrument has been made or drawn, does not exist, has been closed or does not have sufficient funds or sufficient credit with such depository for payment of the check, draft, or other instrument in full, shall be liable to the holder thereof.

This statute is clear and unambiguous; hence, it is not subject to interpretation. As stated in Salt Lake Union Stockyards v. State Tax Commission, 93 Utah 166, 71 P.2d 538, 540 (1937):

"When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."

Id. at 540 (quoting 25 R.C.L. 962). Accord, West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982); Gord v. Salt Lake City, 20 Utah 2d 138, 434 P.2d 449, 451 (1967). In West Jordan v. Morrison, this Court stated:

We must assume that each term in the statute was used advisedly by the Legislature and that each should be interpreted and applied according to its usually accepted meaning. Where the ordinary meaning of the terms results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction to the express purpose of the statute, it is not the duty of this Court to assess the wisdom of the statutory scheme.

656 P.2d at 446.

As shown by the statutory language in Section 7-15-1, it

does not matter whether the person issuing the check signs in a representative or a personal capacity; liability is imposed on one who signs a dishonored check "whether as corporate agent or otherwise."⁴ Payne argues that this phrase should be interpreted to mean that only a corporation could be held liable on a dishonored corporate check. Such an interpretation is inconsistent with the plain meaning of the words used by the Legislature. To achieve the result desired by Payne, the Legislature would have to have used the words "by" or "through," not "as," and could not have used the words "or otherwise" (e.g. "... whether by a corporate agent or principal...."). Thus, the fact that Payne was merely a corporate employee is no defense. The statute is simply incapable of a contrary interpretation.

Similarly, the state of mind of the person signing the check is irrelevant. The statute imposes liability on an entirely objective standard. Thus, it does not matter whether Payne knew or believed there were sufficient funds in the account or whether she intended to defraud the payee, Mountain Bell.

The legislative history of the statute supports this conclusion. As originally enacted, the statute required proof of an intent to defraud before liability attached. It

⁴The quoted language was first inserted in the 1977 amendment, which was apparently enacted for that express purpose. Laws of Utah 1977, Ch. 15 (a copy of which appears in Addendum D).

stated in pertinent part: "Any person who wilfully, with intent to defraud makes...any check..." Laws of Utah 1969, ch. 240, section 1(1) (emphasis added) (Addendum C). The original statute created a rebuttable presumption of intent to defraud (by showing insufficient funds at the time the check was signed). See Laws of Utah 1969, ch. 240, section 2 (Addendum C). Nevertheless, because of the difficulties in proving intent to defraud and perhaps as a reaction to Howell's, Inc. v. Nelson, 565 P.2d 1147 (Utah 1977) (which held the statute inapplicable to checks written to pay on a past due account, because of the fraud element), the statute was amended in 1979 to omit the reference to intent to defraud. Laws of Utah 1979, ch. 92.⁵

Based on that history, it is clear that the Legislature fully intended to establish a completely objective standard for fixing liability for dishonored checks. The policy behind such a rule is a salutary one of preventing passage of worthless checks, and of placing the risk of a check being worthless on the signer, who is in a better position to know, ascertain, or control whether it will be honored, rather than on the payee, who has no way of knowing for sure, short of processing the check for payment. It also greatly simplifies

⁵A copy of the 1979 amendment appears in Addendum E. Payne incorrectly implies in her brief that the 1981 version was the first instance where the intent element was omitted. In fact, the 1981 version makes no substantive changes, but is primarily a recodification of the 1979 version with minor stylistic changes. See Addendum F.

and expedites the collection process, since most cases under the statute can be resolved without a trial. Furthermore, it avoids the quagmire of trying to determine whether in any given fact situation the signer is a "mere employee," or a principal, or something in between.

Payne cited Utah Code Ann. § 68-3-2 for the principle that Utah statutes are to be construed liberally "with a view to effect the objects of the statutes and to promote justice." Id. That principle supports, rather than weakens, Mountain Bell's argument. The only conceivable object the Legislature could have had in mind, by inserting the phrase "whether as corporate agent or otherwise" into the statute in 1977, and by eliminating the intent element in 1979, was to create strict liability for a person who signs a check to pay for goods, services, rent or wages.

B. SECTION 7-15-1 IS NOT INCONSISTENT WITH SECTION 70A-3-403, AND EVEN IF IT WERE, IT WOULD TAKE PRECEDENCE AS A LATER ENACTMENT.

Section 3-403 of the Uniform Commercial Code, dealing with an agent's liability on instruments, was enacted in Utah in 1965, and has never been altered. Utah Code Ann. § 70A-3-403 (1965). Section 7-15-1, on the other hand, was first enacted in 1969, and has undergone four amendments since then. As between the two statutes, the Legislature's more recent attention has been focused exclusively on Section 7-15-1.

Payne notes correctly that statutes should be construed to be consistent if possible. Under that principle, Section 7-15-1 is merely an extension of, and does not contradict, Section 70A-3-403. Section 70A-3-403(2) specifies several conditions under which an authorized agent who signs an instrument is personally obligated.⁶ Section 7-15-1 does not abrogate any of those provisions; rather, it imposes liability not only under those conditions, but under additional circumstances as well. A person who is liable on a dishonored check under Section 70A-3-403 will most likely also be liable under Section 7-15-1.

Payne would read Section 70A-3-403 as limiting the circumstances under which an agent may be liable on an instrument; in essence, she argues that the word "if" means "only if." However, neither the statutory language nor logic justifies such a construction. Section 70A-3-403 extends liability; it does not limit it.

⁶"An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity."

Payne also argues that subsection (3) of Section 70A-3-403 establishes that an agent is not liable if both the person represented and the representative capacity of the signer appear on the instrument. Appellant's Brief at 16. The section says no such thing; it simply provides that "... the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity." Id. In any event, the subsection does not apply to the facts of this case because Payne has never alleged that the checks in question fit its pattern.

Payne's arguments that Section 7-15-1 is harsh, penal and unjust when applied to a mere corporate employee could be applied equally to Section 70A-3-403, under which a simple failure of a signing agent to indicate her representative capacity may result in personal liability. See, e.g., cases collected in Annot., 97 A.L.R. 3d 798 § 5(a) (1980). See also, Utah Valley Bank v. Tanner, 636 P.2d 1060, 1062 (Utah 1981); Sterling Press v. Pettit, 580 P.2d 599, 600 (Utah 1978). It is inconsistent for Payne to embrace Section 70A-3-403 as reasonable while attacking Section 7-15-1 as harsh and unjust.

Even if there were a conflict between the statutes, the well-settled rule of construction granting precedence to a later-enacted statute would apply here. See, e.g., City of Alamogordo v. Walker Motor Co., Inc., 616 P.2d 403, 405 (N.M.

1980); State v. Shondel, 22 Utah 2d 343, 453 P.2d 146, 147 (1969); Thiokol Chemical Corp. v. Peterson, 15 Utah 2d 355, 393 P.2d 391, 395 (1964). Thus, to the extent of any irreconcilable inconsistency between Section 7-15-1 and Section 70A-3-403, Section 7-15-1 must be held to have impliedly repealed Section 70A-3-403.

POINT III

AS APPLIED TO THE FACTS OF THIS CASE, SECTION 7-15-1 DOES NOT INFRINGE PAYNE'S SUBSTANTIVE DUE PROCESS RIGHTS

The essence of Payne's substantive due process argument is that Section 7-15-1 is arbitrary and capricious as applied to her because it makes her liable for the debt of another "without fault on her part" (Appellant's Brief at 19), and because the statute bears no rational relation to any legitimate governmental interest. Mountain Bell contends that the statute is rationally designed to promote and protect commerce, and therefore bears a rational relationship to a legitimate governmental interest; hence it is not arbitrary or capricious under substantive due process analysis.

Payne argues that the statute, which was reenacted in 1981 as part of the Financial Institutions Act, bears no relation to the supervision and regulation of financial institutions (Appellant's Brief at 20-21). She assumes incorrectly that the "strict liability" elements of the statute (insertion of the phrase "whether as corporate agent or otherwise" and elimination of the intent to defraud

requirement) first came into being as part of the 1981 Act. The legislative history, however, establishes conclusively that those actions took place in 1977 and 1979 by specific legislation. (See Addenda D, E and F). The 1981 recodification of Section 7-15-1 simply perpetuates existing law. Thus there is no basis for arguing that the legislative purpose in enacting Section 7-15-1 was to facilitate supervision and regulation of financial institutions.

The critical question on the issue of the constitutionality of Section 7-15-1 is whether it bears a rational relationship to a legitimate governmental interest.⁷ The most obvious purpose of Section 7-15-1 is to give merchants and providers of service a means of receiving payment for the goods and services they furnish. Reducing

⁷ In her argument on economic substantive due process, Payne cited cases which either have been overturned or which address a constitutional issue other than economic substantive due process. Nebbia v. New York, 291 U.S. 502 (1934), Appellant's Brief at 20, adhered to the "substantial means-ends" relationship established in Lochner v. New York, 198 U.S. 45 (1905). The Lochner line of cases was substantively overruled in Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 425 (1952).

Payne also cites Bountiful City v. DeLuca, 77 Utah 107, 292 P.2d 194 (1930), Appellant's Brief at 19, 21, yet this case involved the "takings clause" (prohibiting the taking of private property for public use without just compensation) rather than the due process clause.

By citing inappropriate cases, Payne has suggested a standard of review which is more stringent than the current "mere rationality" test presently used in economic substantive due process challenges. Since 1937, the U.S. Supreme Court has stricken no state statute on grounds that it violated economic substantive due process. By adhering to the level of review advocated by Payne, this Court would return to the type of judicial activism seen prior to 1930.

uncollectible debt avoids the necessity of raising prices to cover that debt. The lower prices and continuation of merchants' businesses are beneficial to the state economy. If Payne's position were the law, it would be an easy matter for a corporation to arrange for a "mere employee" to sign worthless checks, then cause the corporation to default and dissipate its assets, leaving the creditor with no remedy. The State has a real and legitimate interest in avoiding that result and in protecting the State's economy. See Baker v. Matheson, 607 P.2d 233, 242-43 (Utah 1979). Section 7-15-1 is a rational means of accomplishing that goal. The question is not whether the method chosen to achieve a state interest is the wisest or least harmful. The constitutional standard is met if the chosen means bear any rational relationship to a legitimate state interest. See Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952).

Significantly, Payne concedes that protection of commerce is a legitimate state interest and that there is a rational relationship between Section 7-15-1 and that interest. Appellant's Brief at 21. However, Payne argues that "[t]here is no indication that the legislation sought to promote that interest by the enactment of Section 7-15-1 in its present form." Appellant's Brief at 21-22. That argument fails to recognize that it is not incumbent upon the Legislature, when enacting a law, to spell out in detail the interests it wishes to promote and how the statute is

rationally related to those interests. It is sufficient if the court can discern any rational basis for the statute. See Williamson v. Lee Optical Company, 348 U.S. 483, 487-88 (1955).

In Lee Optical, the Supreme Court summarized the development of the doctrine of substantive due process by stating: "The day is gone when this Court uses the Due Process Clause . . . to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident or out of harmony with a particular school of thought." Id. at 488. In essence, it is not the duty of a court to sit as a super legislature to weigh the wisdom of legislation. Ferguson v. Skrupa, 372 U.S. 726, 729-32 (1963); Bastian v. King, 661 P.2d 953, 956 (Utah 1983). Thus, if Payne believes that Section 7-15-1 is unwise, harsh, or unjust, her remedy lies with the Legislature, not with the courts. The due process clause does not invalidate a statute merely because it is thought to be inequitable, harsh or unjust in a particular case. See Wickard v. Filburn, 317 U.S. 111, 129-30 (1942).

Payne argues that the State's interest in promoting commerce by discouraging the issuance of worthless checks is already served by the bad check provisions of the Criminal Code, Utah Code Ann. § 76-6-505. Appellant's Brief at 22. It would be nearly impossible to enumerate all the instances in which both civil and criminal liability can be imposed for

the same conduct. It is sufficient to note that when Section 7-15-1 was originally enacted as Chapter 240 of Laws of Utah 1969, it appeared immediately following Chapter 239, which established criminal liability for issuing bad checks. There can be no doubt that the Legislature intended to create concurrent civil and criminal liability for issuing bad checks.

In summary, it is the challenger's burden to show a due process violation. Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1975). Payne has failed to sustain her burden of showing that Section 7-15-1 is not rationally related to a legitimate state interest. Thus, her constitutional challenge must be rejected.

CONCLUSION

The legislative history and unambiguous language of Section 7-15-1 establish that judgment was properly entered against Payne, because she signed the checks "as corporate agent or otherwise." Neither her lack of interest in the corporation's assets, nor her status as a "mere employee," nor her belief that the checks would be paid, nor her lack of intent to defraud, constitute defenses. The statute passes constitutional muster because it is rationally related to the legitimate state interest of promoting commerce. Therefore, the judgment should be affirmed.


RESPECTFULLY SUBMITTED this 13th day of November, 1987.

THE MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY

By 
Floyd A. Jensen, Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1987, I caused to be mailed four true and correct copies of the foregoing Respondent's Brief, by first-class mail, postage prepaid, to the Appellant's attorney, James F. Housley, Esq., at 2001 S. State Street #S3700, Salt Lake City, Utah 84190-1200.



ADDENDUM A

COMPLAINT

105.66
7/29/82

FILMED

FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

SEP 22 10 56 AM '82

IN STEEL
BY *[Signature]*

FLOYD A. JENSEN, Attorney
THE MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY
250 Bell Plaza, Suite 1610
P. O. Box 30960
Salt Lake City, Utah 84125
Telephone: (801) 237-6409

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

THE MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY, : COMPLAINT
Plaintiff, :
v. : Civil No. **032-- 7638**
TERRY J. STEPHENSON and JILL M. :
PAYNE, :
Defendants. :

Plaintiff complains of defendants and for cause of action
alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a corporation duly authorized to do
business in the state of Utah.

2. Defendants Terry J. Stephenson and Jill M. Payne
are residents of Salt Lake County, Utah.

COUNT I

3. On or about June 28, 1982, defendant Terry J.
Stephenson drew, signed and issued a check payable to plaintiff
in the amount of \$3,981.62, drawn on the Heritage Bank & Trust
for payment of past telephone services provided by plaintiff
to NAMCO Corporation.

4. Upon receipt of said check, plaintiff placed it for
collection through normal banking channels. Thereafter
plaintiff was notified by the aforementioned bank that the
check was being dishonored and returned to plaintiff.

5. Pursuant to the provisions of Section 7-15-2, Utah
Code Ann. (Supp. 1981), plaintiff notified defendant of the

JG368

nonpayment of the check by way of certified mail, return receipt requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

6. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

COUNT II

7. On or about March 17, 1982, defendant Terry J. Stephenson drew, signed and issued a check payable to plaintiff in the amount of \$2,384.17, drawn on First Security State Bank for payment of past telephone services provided by plaintiff to NAMCO Corporation.

8. Upon receipt of said check, plaintiff placed it for collection through normal banking channels. Thereafter plaintiff was notified by the aforementioned bank that the check was being dishonored and returned to plaintiff.

9. Pursuant to the provisions of Section 7-15-2, Utah Code Ann. (Supp. 1981), plaintiff notified defendant of the nonpayment of the check by way of certified mail, return receipt requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

10. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

COUNT III

11. On or about March 23, 1982, defendant Terry J.

Stephenson drew, signed and issued a check payable to plaintiff in the amount of \$1,117.00, drawn on the First Security State Bank for payment of past telephone services by plaintiff to NAMCO Corporation.

12. Upon receipt of said check, plaintiff placed it for collection through normal banking channels. Thereafter plaintiff was notified by the aforementioned bank that the check was being dishonored and returned to plaintiff.

13. Pursuant to the provisions of Section 7-15-2, Utah Code Ann. (Supp. 181), plaintiff notified defendant of the nonpayment of the check by way of certified mail, return receipt requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

14. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

COUNT IV

15. On or about January 29, 1982, defendant Jill M. Payne drew, signed and issued a check payable to plaintiff in the amount of \$582.30 drawn on the First Security Bank of Utah for payment of past telephone services provided by plaintiff to NAMCO Corporation.

16. Upon receipt of said check, plaintiff placed it for collection through normal banking channels. Thereafter plaintiff was notified by the aforementioned bank that the check was being dishonored and returned to plaintiff.

17. Pursuant to the provisions of Section 7-15-2, Utah Code Ann. (Supp. 1981), plaintiff notified defendant of the nonpayment of the check by way of certified mail, return receipt

requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

18. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

COUNT V

19. On or about February 2, 1982, defendant Jill M. Payne drew, signed and issued a check payable to plaintiff in the amount of \$900.00 drawn on the First Security Bank of Utah for payment of past telephone services provided by plaintiff to NAMCO Corporation.

20. Upon receipt of said check, plaintiff placed it for collection through normal banking channels. Thereafter plaintiff was notified by the aforementioned bank that the check was being dishonored and returned to plaintiff.

21. Pursuant to the provisions of Section 7-15-2, Utah Code Ann. (Supp. 1981), plaintiff notified defendant of the nonpayment of the check by way of certified mail, return receipt requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

22. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

COUNT VI

23. On or about February 3, 1982, defendant Jill M. Payne drew, signed and issued a check payable to plaintiff in the amount of \$1,378.21 drawn on the First Security Bank of Utah for

payment of past telephone services provided by plaintiff to NAMCO Corporation.

24. Upon receipt of said check, plaintiff placed it for collection through normal banking channels. Thereafter plaintiff was notified by the aforementioned bank that the check was being dishonored and returned to plaintiff.

25. Pursuant to the provisions of Section 7-15-2, Utah Code Ann. (Supp. 1981), plaintiff notified defendant of the nonpayment of the check by way of certified mail, return receipt requested. Defendant failed to respond to said notice within the seven (7) days provided by statute.

26. Defendant, by drawing, signing and issuing said check and by failing to respond to plaintiff's notice within the time permitted by law, is in violation of Title VII, Chapter 15, Utah Code Ann. (1953 as amended) and plaintiff is entitled to recover the amount of said check as provided for therein, plus reasonable attorney's fees and costs of court.

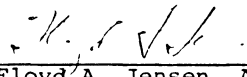
WHEREFORE, plaintiff prays for judgment against defendants Terry J. Stephenson and Jill M. Payne as follows:

1. In the amount of \$3,981.62, plus a reasonable attorney's fee, against defendant Terry J. Stephenson pursuant to Count I.
2. In the amount of \$2,384.17, plus a reasonable attorney's fee, against defendant Terry J. Stephenson pursuant to Count II.
3. In the amount of \$1,117.00, plus a reasonable attorney's fee, against defendant Terry J. Stephenson pursuant to Count III.
4. In the amount of \$582.30, plus a reasonable attorney's fee, against defendant Jill M. Payne pursuant to Count IV.
5. In the amount of \$900.00, plus a reasonable attorney's fee, against defendant Jill M. Payne pursuant to Count V.
6. In the amount of \$1,378.21, plus a reasonable attorney's fee, against defendant Jill M. Payne pursuant to Count VI.
7. For interest and costs incurred in bringing this action.

8. For such other and further relief as the Court deems just and appropriate.

DATED this 17 day of September, 1982.

THE MOUNTAIN STATES TELEPHONE
AND TELEGRAPH COMPANY

By 
Floyd A. Jensen, Attorney

Plaintiff's Address:
250 Bell Plaza, Suite 1610
P. O. Box 30960
Salt Lake City, Utah 84125
Telephone: (801) 237-6409

ADDENDUM B

ANSWER AND AFFIDAVITS

TELEGRAPH & TELEPHONE COMPANY
FILED IN CLERK'S OFFICE
OCT 17 3 22 PM '32
Terry J. Stephenson
C 82-7638
Kathleen Coy
DEPUTY CLERK
FILMED

October 11, 1932

Hloyd A. Jensen, Atty
250 Bell Plaza - 16th Floor
P.O. Box 30900
Salt Lake City, Utah 84125

Mr. Jensen:

This letter is in regard to a summons received by me on
October 11, 1932 from you as attorney for The Mountain
States Telephone & Telegraph Company.

During my time of employment at MTCO Corporation I functioned
under the direction and supervision of Terry J. Stephenson
as his personal secretary. Within the responsibilities of my
position I functioned as a subordinate who under the
direction of Terry J. Stephenson was to meet the financial
obligations incurred by the Corporation. At the time the
checks were issued and mailed there were either funds to cover
the checks in the account or promise of money wires by Terry J.
Stephenson that were to be received from California the following
day.

At all times, Terry J. Stephenson was made aware of the financial
status, but at times I was instructed to mail checks with the
promise of monies to be received within 24 hours.

I would like to make it understood that I functioned as a
subordinate, who followed the direction of corporate supervision
in performing tasks which are generally considered inherent to
a secretary's role.

Jill M. Payne
2591 Farthingale Ln.
Salt Lake City, Utah 84119

cc:

County Clerk
Salt Lake Third Judicial Court
240 East 4th South
Salt Lake City, Utah 84111

000008

FILED IN CLERK'S OFFICE

FEB 21 3 09 PM '86

H DJA HIA DEY CLERK
1340 DIST COURT

Re: Complaint Mountain States Telephone & Telegraph Company vs. ~~Stephenson~~ **CLERY**
Stephenson and Jill M. Payne
Civil # C82-7638
1 87-7138

C-82-7638

Count I

Denied I have no knowledge of this check

Count II

Denied I have no knowledge of this check

Count III

Denied I have no knowledge of this check

Count IV

Denied I deny this count on the basis of:

- A. I was an employee of Namco Corporation
- B. I was a secretary functioning under the direction and supervision of Terry J. Stephenson

Count V

Denied I deny this count on the basis of:

- A. I was an employee of Namco Corporation
- B. I was a secretary functioning under the direction and supervision of Terry J. Stephenson

Count VI

Denied I deny this count on the basis of:

- A. I was an employee of Namco Corporation
- B. I was a secretary functioning under the direction and supervision of Terry J. Stephenson

Wherefore defendant Jill M. Payne asks for dismissal of counts IV through VI against said defendant.

Defendant Jill M. Payne functioned only as a secretary during her time of employment at Namco Corporation. She had no Corporate interest and was following corporate direction on the issuance of said checks.

Dated this day of February 1986.

CC:

County Clerk
Salt Lake Third Judicial Court
240 East 4th South
Salt Lake City, Utah 84111

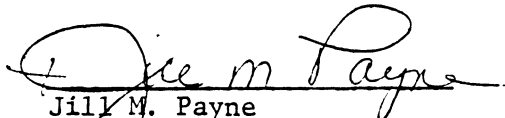
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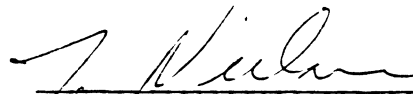
Re: Complaint - Mountain States Telephone & Telegraph
Company vs Terry J. Stephenson and Jill M. Payne
Civil # C82-7638

During my time of employment at Namco Corporation, I functioned under the direction of Terry J. Stephenson as his personal secretary. One of my duties was accounts payable clerk where under the direction of Mr. Stephenson I issued checks to meet the financial obligations encumbered by the Corporation. I functioned only as a subordinate who followed direction of corporate supervision in performing tasks which are generally considered inherent to a secretary's role. At all times when checks were issued and mailed, there were either funds to cover the checks in the account or promise, by Terry J. Stephenson, of money wires to be received from California the following day. As a secretary for the Corporation, I should not be held accountable or liable for any financial obligations of Namco Corporation.

I hereby certify and swear that the above statements are true.


Jill M. Payne

Subscribed and sworn to before me this 19 day of
February, 1986.



Notary Public
Residing at:
Salt Lake County

Commission Expires
11-20-88

CC:
County Clerk
Salt Lake Third Judicial Court
240 East 4th South
Salt Lake City, Utah 84111

0025

FILMED

JAMES F. HOUSLEY (Bar #1545)
Pro Bono Attorney for Defendant, Payne
Volunteer Lawyers Project
Utah State Legal Services
231 East 300 South, 3rd Floor
Salt Lake City, Utah 84111
Telephone: 363-7900

Linda Simpson

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

MOUNTAIN STATES TELEPHONE	:	AFFIDAVIT OF DEFENDANT,
AND	:	JILL M. PAYNE
TELEGRAPH COMPANY,	:	
Plaintiff,	:	
v.	:	
TERRY J. STEPHENSON and	:	Civil No. C82-7638
JILL M. PAYNE,	:	Scott Daniels, Judge
Defendants.	:	

STATE OF UTAH)
 : ss
County of Salt Lake)

Jill M. Payne, being first duly sworn, deposes
and says:

1. That her true full name is Jill Maxine Nelson
Payne and that she is the defendant named as Jill M. Payne
in the pleadings in the above case;
2. That her date of birth is February 10, 1953;
3. That she has no formal training except:
 - a. High school through the eleventh grade at
West High School;

Page 2

b. High school degree from South High night school in 1971;

c. Graduated from Real Estate School at Trade Tech in 19*3;

4. That she has no other training except through work experience as follows:

a. Homemaker, and mother, 1970 - present;

b. Trader's secretary for Dean Witter, 1976-77;

c. Employee at Orkin Pest Control, 6 mos. in 1978;

d. Secretary Jordon Meat Company, 1978-81;

e. Secretary/bookkeeper, NAMCO Corporation, 1981-82;

f. Real Estate salesperson Wardley Real Estate Company, 1983-present;

5. That she was divorced and has been working to support her two children since 1978;

6. That her employment with NAMCO Corporation was as a secretary/bookkeeper and as such she typed correspondence and other papers for said corporation, assisted the officers in keeping the books and at their direction prepared and signed checks drawn upon the Corporation accounts in payment of the corporate obligations;

7. That in her capacity as bookkeeper she was generally knowledgeable concerning the status of said corporation's checking accounts but that other employees, including the officers, issued checks against said accounts

6746

Page 3

without her knowledge.

8. That she was careful not to issue checks except under circumstances where she had information that there were funds in said accounts to cover said checks, but that from time to time other employees and officers issued checks against said account without her knowledge which resulted in the failure of some of said checks to clear the bank;

9. That the services provided by plaintiff for which checks were written by the undersigned were provided to NAMCO Corporation and that the undersigned received no benefit therefrom, either directly or indirectly and that the undersigned has never had any ownership interest in said Corporation or its assets including the funds in the accounts upon which said checks were written;

10. That to her knowledge she never received, directly or indirectly, any notices pursuant to §§7-15-2, Utah Code Annotated 1953, as amended;

11. That upon receipt of Summons in the above case she attempted to obtain legal counsel to represent her, but due to her stringent financial condition was unable to do so;

12. That she has absolutely no legal training, at least in the area outside of that acquired by a graduate of a Real Estate Salesman's School and does not have any

1074

training or knowledge in the area of Civil Procedure or Statutes dealing with checks;

13. That when she was unable to employ legal counsel to represent her, she attempted to represent herself as best she could be filing and serving the papers and appearing at all hearings which she did;

14. That she has no understanding of the significance, substantive or procedural, of the papers she has received or the proceedings she attended;

15. That she honestly believes that she has sufficient legal and equitable defenses to the claims asserted against her herein.


Dated this 7 day of May, 1986.


Jill M. Payne

Subscribed and sworn to before me this 7 day
of May, 1986.

My Commission Expires:

2-14-88


Notary Public, Residing at:
Salt Lake County

ADDENDUM C

LAWS OF UTAH 1969, CHAPTER 240

CHAPTER 240

H. B. No. 11

(Passed January 30, 1969. In effect May 13, 1969)

CHECKS AGAINST NONEXISTENT ACCOUNTS

An Act Relating to Checks, Drafts or Orders Issued Against Nonexistent Account or Insufficient Funds; Providing for Civil Liability to the Holder and for Damages in Actions Based on This Liability; and Providing for Presumptions Regarding Willfulness and Intent and for Notice.

Be it enacted by the Legislature of the State of Utah:

Section 1. Checks returned by bank—Civil liability—Interest, costs and attorney's fees.

(1) Any person who willfully, with intent to defraud makes, draws or issues any check, draft or order upon any bank, banking association or other depository for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any services, wages, salary or rent, which check, draft or order is not honored upon presentment because the maker, drawer or issuer does not have the account with the depository upon which the check, draft or order has been made or drawn, or does not have sufficient funds in such account or sufficient credit with such depository for payment of the check, draft or order in full, shall be liable to the holder of the check, draft or order in a civil action as provided in this section.

(2) In such civil action the person making, drawing or issuing the check, draft or order shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

Section 2. What constitutes intent to defraud.

In any such civil action any of the following shall be prima facie evidence that the person making, drawing or issuing the check, draft or order did so willfully with an intention to defraud:

(1) Proof that at the time of issuance, the maker, drawer or issuer did not have the account with the depository upon which the check, draft or order was made or drawn or did not have sufficient funds in his account or credit with the depository for payment in full of the check, draft or order, and that he failed within ten days after receiving notice of nonpayment or dishonor to pay the check, draft or order; or

(2) Proof that when presentment was made within a reasonable time, the maker, drawer or issuer did not have the account with the depository upon which the check, draft or order was drawn or made or did not have sufficient funds in such account or credit with such depository for payment in full of the check, draft or order, and that he failed within ten days after receiving notice of nonpayment or dishonor to pay the check, draft or order.

Section 3. Definition of notice—Manner of giving.

"Notice" as used in this act means notice given to the maker, drawer or issuer of the check, draft or order, either in person or in writing. Such notice in writing shall be conclusively presumed to have been given when properly deposited in the United States Mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such maker, drawer or issuer at his address as it appears on the check, draft or order or at his last known address.

Approved February 10, 1969.

ADDENDUM D

LAWS OF UTAH 1977, CHAPTER 15

CHAPTER 15

S. B. No. 41

(Passed March 8, 1977. In effect May 10, 1977)

FRAUDULENT CHECK ISSUANCE

AN ACT AMENDING SECTION 7-15-1, 7-15-2, 7-15-3, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 240, LAWS OF UTAH 1969; RELATING TO ISSUANCE OF FRAUDULENT CHECKS; PROVIDING FOR LIABILITY OF BUSINESS ENTITY AS WELL AS INDIVIDUAL FOR ISSUING A FRAUDULENT CHECK.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 7-15-1, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, is amended to read:

7-15-1. Drawing, issuing or signing against nonexistent account or insufficient funds—Civil liability—Damages.

(1) Any person who willfully, with intent to defraud makes, draws, signs or issues any check, draft or order upon any bank, banking association or other depository, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any services, wages, salary or rent, which check, draft or order is not honored upon presentment because the ~~[maker, drawer or issuer does not have the]~~ account with the depository upon which the check, draft or order has been made or drawn, does not exist, has been closed or does not have sufficient funds ~~[in such account]~~ or sufficient credit with such depository for payment of the check, draft or order in full, shall be liable to the holder of the check, draft or order in a civil action as provided in this section.

(2) In such civil action the person making, drawing, signing or issuing the check, draft or order shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

Section 2. Section amended.

Section 7-15-2, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, is amended to read:

7-15-2. Civil action—Evidence of intent.

In ~~[any such]~~ a civil action any of the following shall be prima facie evidence that the person making, drawing, signing or issuing the check, draft or order did so willfully with an intention to defraud:

(1) Proof that at the time of issuance, the ~~[maker, drawer or issuer did not have the]~~ account with the depository upon which the check, draft or order was made or drawn, did not exist, has been closed or did not have sufficient funds ~~[in his account]~~ or credit with the depository for payment in full of the check, draft or order, and that he failed within ten days after receiving notice of nonpayment or dishonor to pay the check, draft or order;
or

(2) Proof that when presentment was made within a reasonable time, the ~~[maker, drawer or issuer did not have the]~~ account with the depository upon which the check, draft or order was drawn or made, did not exist, has been closed or did not have sufficient funds ~~[in such account]~~ or credit with such depository for payment in full of the check, draft or order, and that he failed within ten days after receiving notice of nonpayment or dishonor to pay the check, draft or order.

Section 3. Section amended.

Section 7-15-3, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, is amended to read:

7-15-3. Notice of nonpayment or dishonor—When presumed.

“Notice” ~~[as used in this act]~~ means notice given to the ~~[maker, drawer or issuer of]~~ person making, drawing or issuing the check, draft or order, either in person or in writing. Such notice in writing shall be conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such ~~[maker, drawer or issuer]~~ signer at his address as it appears on the check, draft or order or at his last-known address.

Approved March 19, 1977.

ADDENDUM E

LAWS OF UTAH 1979, CHAPTER 92

FRAUDULENT CHECKS

CHAPTER 92

S. B. No. 103

(Passed March 1, 1979. In effect May 8, 1979)

RETURNED CHECKS

AN ACT AMENDING SECTIONS 7-15-1 AND 7-15-3, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 240, LAWS OF UTAH 1969, AS AMENDED BY CHAPTER 15, LAWS OF UTAH 1977, AND REPEALING SECTION 7-15-2, UTAH CODE ANNOTATED 1953, AS ENACTED BY CHAPTER 240, LAWS OF UTAH 1969, AS AMENDED BY CHAPTER 15, LAWS OF UTAH 1977; RELATING TO RETURNED CHECKS; REMOVING THE PROVISIONS RELATING TO INTENT TO DEFRAUD; ALLOWING IMPOSITION OF SERVICE CHARGES FOR DISHONORED CHECKS; REQUIRING WRITTEN NOTICE BEFORE FILING CIVIL ACTION; PROVIDING FOR MINIMUM ATTORNEY'S FEES AND COURT COSTS IN CIVIL ACTIONS; AND PROVIDING A WRITTEN NOTIFICATION FORMAT.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section amended.

Section 7-15-1, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, as amended by Chapter 15, Laws of Utah 1977, is amended to read:

7-15-1. Drawing or issuing against closed or nonexistent account or insufficient funds—Notice of intent to file civil action—Civil liability—Damages.

(1) Any person who [~~willfully, with intent to defraud~~] makes, draws, signs or issues any check, draft or order upon any bank, banking association or other depository, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any services, wages, salary or rent, which check, draft or order is not honored upon presentment [~~because~~] and is marked "refer to maker" or the account with the depository upon which the check, draft or order has been made or drawn, does not exist, has been closed or does not have sufficient funds or sufficient credit with such depository for payment of the check, draft or order in full, shall be liable to the holder of the check, draft or order [~~in a civil action as provided in this section~~].

(2) The holder of a check, draft, or order which has been dishonored may give written or verbal notice thereof to the person making, drawing, signing, or issuing the check, draft, or order and may impose a service charge not to exceed \$5 in addition to any contractual agreement between the parties. Prior to filing an action based upon this section, the holder of a dishonored check, draft, or order shall give the person making, drawing, signing, or issuing the dishonored check, draft, or order written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus a service charge if imposed, for the dishonored check, draft or order.

~~(2)~~ (3) In [~~such~~] a civil action the person making, drawing, signing or issuing the check, draft or order shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

Section 2. Section amended.

Section 7-15-3, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, as amended by Chapter 15, Laws of Utah 1977, is amended to read:

7-15-3. Notice of nonpayment or dishonor—When presumed—Form and contents.

(1) "Notice" means notice given to the person making, drawing or issuing the check, draft or order, either in person or in writing. Such notice in writing shall be conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such signer at his address as it appears on the check, draft or order or at his last-known address.

(2) Written notice as applied in subsection 7-15-1(2) shall take the following form:

Date _____

To _____

You are hereby notified that check(s) described below issued by you has been returned to us unpaid.

Check dated _____

Check number _____

Originating bank _____

Amount _____

Reason for dishonor (marked on check) _____

The foregoing check together with a service charge of \$5 must be paid to the undersigned within seven days from the date of this notice in accordance with Section 7-15-1, Utah Code Annotated 1953, or appropriate civil legal action may be filed against you for the amount due and owing together with service charges, interest, court costs, and attorney fees as provided by law.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated 1953: Any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check. The foregoing civil action does not preclude the right to prosecute under the criminal code of the State of Utah.

(Signed) _____

Name of Holder _____

Address of Holder _____

Telephone Number _____

Section 3. Repealer.

Section 7-15-2, Utah Code Annotated 1953, as enacted by Chapter 240, Laws of Utah 1969, as amended by Chapter 15, Laws of Utah 1977, is repealed.

Approved March 14, 1979.

ADDENDUM F

LAWS OF UTAH 1981, CHAPTER 16, SECTION 13

Section 13. Chapter enacted.

Chapter 15 of Title 7, Utah Code Annotated 1953, is enacted to read:

7-15-1. Civil liability of issuer—Notice.

(1) Any person who makes, draws, signs or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership or corporation any money, merchandise, property or other thing of value or paying for any service, wages, salary or rent, which check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account with the depository upon which the check, draft, order, or other instrument has been made or drawn, does not exist, has been closed or does not have sufficient funds or sufficient credit with such depository for payment of the check, draft, or other instrument in full, shall be liable to the holder thereof.

(2) The holder of the check, draft, order, or other instrument which has been dishonored may give written or verbal notice thereof to the person making, drawing, signing, or issuing the check, draft, order, or other instrument and may impose a service charge not to exceed \$5 in addition to any contractual agreement between the parties. Prior to filing an action based upon this section, the holder of a dishonored check, draft, order, or other instrument shall give the person making, drawing, signing, or issuing the dishonored check, draft, order, or other instrument written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus a service charge is imposed for the dishonored check, draft, order, or other instrument.

(3) In a civil action the person making, drawing, signing or issuing the check, draft, order, or other instrument shall be liable to the holder of it for the amount thereon, for interest and all costs of collection, including all court costs and reasonable attorney's fees.

7-15-2. Notice form.

(1) "Notice" means notice given to the person making, drawing, or issuing the check, draft, order, or other instrument either in person or in writing. Such notice, in writing, shall be conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such signer at his address as it appears on the check, draft, order, or other instrument or at his last-known address.

(2) Written notice as applied in subsection 7-15-1 (2) shall take the following form:

Date:

To:

You are hereby notified that check(s) described below issued by you has been returned to us unpaid.

Instrument date:

Instrument number:

Originating institution:

Amount:

Reason for dishonor (marked on instrument):

The foregoing instrument together with a service charge of \$5 must be paid to the undersigned within seven days from the date of this notice in accordance with section 7-15-1, Utah Code Annotated 1953, or appropriate civil legal action may be filed against you for the amount due and owing together with service charges, interest, court costs, and attorney's fees as provided by law.

In addition, the criminal code provides in section 76-6-505, Utah Code Annotated 1953: Any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check. The foregoing civil action does not preclude the right to prosecute under the criminal code of the State of Utah.

(Signed)

Name of Holder:

Address of Holder:

Telephone Number:

ADDENDUM G

LAWS OF UTAH 1986, CHAPTER 29

CHAPTER 29

S. B. No. 49

Passed February 20, 1986

Effective April 28, 1986

BAD CHECK SERVICE CHARGE INCREASE

By Richard J. Carling

AN ACT RELATING TO FINANCIAL INSTITUTIONS; INCREASING THE AMOUNT OF SERVICE CHARGE WHICH MAY BE IMPOSED BY THE HOLDER OF A FRAUDULENT CHECK, DRAFT, ORDER, OR OTHER INSTRUMENT; AND MAKING CERTAIN EDITORIAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

7-15-1, AS ENACTED BY CHAPTER 16, LAWS OF UTAH 1981

7-15-2, AS ENACTED BY CHAPTER 16, LAWS OF UTAH 1981

Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 7-15-1, Utah Code Annotated 1953, as enacted by Chapter 16, Laws of Utah 1981, is amended to read:

7-15-1. Civil liability of issuer - Notice.

(1) Any person who makes, draws, signs, or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership, or corporation any money, merchandise, property, or other thing of value or paying for any service, wages, salary, or rent, ~~which~~ shall be liable to the holder of the check, draft, order, or other instrument if the check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account with the depository upon which the check, draft, order, or other instrument has been made or drawn[,] does not exist, has been closed, or does not have sufficient funds or sufficient credit with ~~such~~ the depository for payment of the check, draft, or other instrument in full[, ~~shall be liable to the holder thereof~~].

(2) The holder of the check, draft, order, or other instrument which has been dishonored may give written or verbal notice ~~thereof~~ of dishonor to the person making, drawing, signing, or issuing the check, draft, order, or other instrument and may impose a service charge not to exceed ~~[\$5]~~ \$10 in addition to any contractual agreement between the parties. Prior to filing an action based upon this section, the holder of a dishonored check, draft, order, or other instrument shall give the person making, drawing, signing, or issuing the dishonored check, draft, order, or other instrument written notice of intent to file civil action, allowing the person seven days from the date on which the notice was mailed to tender payment in full, plus ~~a~~ the service charge ~~[is]~~ imposed for the dishonored check, draft, order, or other instrument.

(3) In a civil action the person making, drawing, signing, or issuing the check, draft, order, or other instrument shall be liable to the holder of it for the amount ~~[thereon]~~ of the check, draft, order, or other instrument, for interest, and for all costs of collection, including all court costs and reasonable attorney's fees.

Section 2. Section Amended.

Section 7-15-2, Utah Code Annotated 1953, as enacted by Chapter 16, Laws of Utah 1981, is amended to read:

7-15-2. Notice form.

(1) "Notice" means notice given to the person making, drawing, or issuing the check, draft, order, or other instrument either in person or in writing.

Such notice, in writing, shall be conclusively presumed to have been given when properly deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to such signer at his address as it appears on the check, draft, order, or other instrument or at his last known address.

(2) Written notice as applied in Subsection 7-15-1 (2) shall take the following form:

Date: _____

To: _____

You are hereby notified that check(s) described below issued by you has been returned to us unpaid:

Instrument date: _____

Instrument number: _____

Originating institution: _____

Amount: _____

Reason for dishonor
(marked on instrument): _____

The foregoing instrument together with a service charge of ~~[\$5]~~ \$10 must be paid to the undersigned within seven days from the date of this notice in accordance with Section 7-15-1, Utah Code Annotated 1953, or appropriate civil legal action may be filed against you for the amount due and owing together with service charges, interest, court costs, and attorney's fees as provided by law.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated 1953: Any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check. The foregoing civil action does not preclude the right to prosecute under the criminal code of the state of Utah.

(Signed) _____

Name of Holder: _____

Address of Holder: _____

Telephone Number: _____

Approved March 12, 1986