

2001

# Lincoln Financial Corp. dba Chevy Chase Apartments v. Dorothy S. Ferrier : Brief of Respondent

Utah Supreme Court

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## Recommended Citation

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

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LINCOLN FINANCIAL CORPORATION,  
d/b/a CHEVY CHASE APARTMENTS,

Plaintiff and  
Respondent,

vs.

DOROTHY S. Ferrier,

Defendant,  
Cross Claimant,  
and Appellant.

Case No. 14296

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BRIEF OF RESPONDENT

Appeal from the Judgment of the Second  
Judicial District Court of Weber County  
Honorable Calvin Gould, Judge

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FILED

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Clerk, Supreme Court, Utah

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## STATE OF UTAH

Case No. 14296

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3. The counterclaim on file includes matters in the same count which are independent of the issue of unlawful detainer, or a defense thereto (R. 9-12, inc.).

The Respondent, to save space and repetition, will abbreviate the following throughout this brief, namely: Record as "R. \_\_\_\_"; inclusive as "inc."; Appellant's Brief as "App. Br."; Utah Code Annotated, 1953, as amended, as "U.C.A."; Utah Rules of Civil Procedure as "U.R.C.P."; and Title 78, Chapter 36, U.C.A., 1953, entitled Forcible Entry and Detainer, as "Unlawful Detainer."

#### DISPOSITION IN LOWER COURT

The lower court, the Honorable Calvin Gould, District Judge, presiding, granted Respondent's motion for summary judgment on its complaint, and the court ordered that Appellant's answer and counterclaim be stricken as a sham pursuant to Rule 11, Utah Rules of Civil Procedure. Findings of fact, conclusions of law, and a judgment were made and entered accordingly (R. 26-30, inc.).

#### RELIEF SOUGHT ON APPEAL

The lower court's findings of fact, conclusions of law, and judgment should not be disturbed.

#### STATEMENT OF FACTS

The Respondent controverts the Appellant's statement of facts in the following particulars:

1. The Appellant's statement of facts is argumentative and recites matters not in evidence, not relevant to this appeal, and not helpful to

resolution of the issues on this appeal.

2. The pleadings on file speak for themselves (R. 1-5, inc., and 8-12, inc.).

A concise statement of facts is reflected by the record. The Respondent was the landlord, and Appellant was the tenant, of apartment #22 in an apartment house complex known as Chevy Chase in Weber County, Utah, as is more fully set out in the complaint and in Exhibit "A" attached to the complaint on file (R. 1-3, inc.). On June 10, 1975, Respondent issued a notice directed to Appellant terminating her tenancy at the end of June, 1975, (R. 5), and said notice was personally served on Appellant by the Weber County Sheriff's Office on June 10, 1975, (R. 4). Appellant failed to vacate said premises on or before July 1, 1975, and this action was commenced by a complaint filed on July 25, 1975, (R. 1), and process was served on Appellant by the Weber County Sheriff's Office on July 31, 1975, (R. 6-7, inc.). On August 21, 1975, a default judgment was entered (R. 14), and on the same day an answer and counterclaim was filed with a copy mailed to Respondent's counsel (R. 8-12, inc.). The certificate of mailing shows August 20, 1975, but, in any event, the answer was not received until August 22, 1975, (R. 39). The answer and counterclaim on file is signed by the Appellant, but is not signed by an attorney (R. 12).

On August 25, 1975, some four days after the answer was filed, Appellant caused a tender of rent for two months to be filed and mailed (R. 15-16).

On September 2, 1975, Respondent prepared and served a consent to set



aside the default judgment, and motions for summary judgment and dismissal (R. 18-19). Appellant objected to Respondent's motions (R. 20-22, inc.). The Respondent's motions were argued to the lower court on September 10, 1975, (R. 25), and following the oral and written decision (R. 24) of the lower court, findings of fact, conclusions of law and judgment were entered on September 29, 1975, (R. 26-30, inc.).

The Appellant formally tendered possession of the premises to Respondent in open court on September 30, 1975, although she may have vacated the same the prior weekend which would be on or about September 6, 1975, (R. 44 and 47-48).

The record recited above is not in dispute. It should be noted that the lower court struck Appellant's answer and counterclaim as a sham pursuant to Rule 11, U.R.C.P., so that there was nothing before that court which would permit it to pass on the merits of Appellant's claims. The Appellant's statement of facts assumes that the merits of her claims were before the lower court, and are now before this Court. It is not clear how the merits of the issues raised by the answer and counterclaim could be before either court if the answer and counterclaim was properly stricken.

#### PRELIMINARY STATEMENT TO POINTS OF ARGUMENT

The Respondent will answer Appellant's points in the order raised, but Respondent deems it necessary for an orderly exposition of its position to give this Court an overview of the complex and important issues raised by this appeal. The Appellant has attempted to narrow the battlefield by her four points of argument, but the ultimate significant issues herein are as follows:

1. The rights of a landlord to select and regulate his tenants, to rely upon his written leases, and to rely upon the written statute and case law for guidance in the control and eviction of tenants;
2. The relationship and function of the unlawful detainer statutes in evictions where there is a written lease; and
3. The power of this Court to adopt and enforce rules of procedure which are controlling on the conduct of attorneys and litigants.

The law of landlord and tenant has passed through a convulsion with the pendulum swinging from protection of property rights to protection of personal rights. The tenants are now demanding rights verging on total ownership of the properties rented by them including, but not limited to, rights to designate management, make rules and regulations, withhold rents, demand improvements, and so on, without concomitant duties to preserve and protect the premises and the peace. Conversely, the landlords are so beset with legal actions on every conceivable theory that they are becoming afraid to own or manage rental properties. The upshot is that private capital is fleeing, government capital has become necessary, and rental premises are ever diminishing and depreciating to the consternation of every major city in the United States.

The unlawful detainer statutes were enacted in Utah prior to the turn of the century for the following salutary reasons: (a) To avoid breaches of the peace; (b) To provide a quick and inexpensive procedure for eviction in lieu of ejectment; (c) To provide protection to the tenant against either forcible or surreptitious evictions without due process

of law. King v. Firm, 3 U. 2d 419, 285 P. 2d 1114, 1118; 52A C.J.S., Landlord and Tenant, Sec. 752, et seq. The Respondent respectfully suggests that the unlawful detainer statutes are in no way a derogation of written leases, except where the statutes and the lease are in direct conflict, e. g., the right of forcible entry, and that Section 78-36-3, U.C.A., makes specific reference therein to written leases. Somehow, Appellant assumes and argues that an unlawful detainer action extinguishes the written lease and terms thereof. Respondent believes that the unlawful detainer statutes merely gave the landlord an alternative possessory remedy in return for landlord's loss of right of entry commonly provided for at common law and in written leases. Statutes providing summary proceedings for recovery of possession by the landlord do not establish a new cause of action, but merely create an additional and cumulative remedy. 52A C.J.S., Landlord and Tenant, Sec. 753 & 758. This position is further bolstered by Voyles v. Straka, 77 Utah 171, 175, 292 Pac. 913 (1930), wherein this Court held that the right to recover rents is separate from the right to recover possession, and that the two rights are not merged by the unlawful detainer statutes.

The Appellant acknowledges the better practice might be to separate the lease claims from the unlawful detainer claims in separate counts, but objection was not made thereto, both claims were based on a twenty day summons (rather than a three day), and it has always been the policy of the law to avoid multiplicity of actions.

The remaining significant public policy issue in this case involves the control of members of the bar by the courts in the judicial process.

The wave of the future may very well be the extensive use of paralegals by attorneys, for which see attached exhibits from recent periodicals. Paralegals are not subject to discipline nor control by the courts or bar associations. They are unidentified and anonymous, hiding behind the cloak of a licensed lawyer, yet wielding great power and authority when not totally supervised. An exconvict client of this writer suggests that the best lawyers in the country are in the penitentiaries, and the thought is intriguing as to what these paralegals could do if the bar associations and courts abdicate their authority.

#### POINT I

##### THE TRIAL COURT PROPERLY AWARDED RESPONDENT REASONABLE ATTORNEY'S FEES.

The landlord-tenant relationship between Respondent and Appellant was based upon a written agreement which contained therein, paragraph 9, a provision for attorney's fees (R. 3). The complaint on file specifically refers to, and incorporates, said lease as a part of said complaint (R. 1-3, inc.). The action was commenced on a twenty day summons (R. 6), so that summary "unlawful detainer" proceedings are not inconsistent with an action on the lease.

This Court has held that reasonable attorney's fees may be awarded to the prevailing party when provided for by statute or contract. Blake v. Blake, 17 U.2d 369, 372, 412 P.2d 454; Pacific Coast Title v. Hartford Acc. & Ind. Co., 7 U.2d 377, 325 P.2d 906.

These proceedings were necessary because of Appellant's refusal to

vacate. Tender of rent after unlawful detainer arose is irrelevant, and acceptance of such rent by Respondent would have waived the unlawful detainer. 52A C.J.S., Landlord and Tenant, Sec. 724.

An argument can be made, as it was in Milliner v. Farmer, 24 U.2d 326, 471 P.2d 151, that a written lease is extinguished by commencement of unlawful detainer proceedings. This Court skirted the issue in the Milliner case by noting a stipulation in said case. The fact is, however, that an unlawful detainer proceeding is a cumulative remedy only, 52A C.J.S., Landlord and Tenant, Sec. 753 and 758, and Voyles v. Straka, supra, and that many issues involved in a lease cannot be resolved in an unlawful detainer proceeding. If this Court holds that a written lease and all provisions therein are extinguished by unlawful detainer proceedings, then, and in such event, an oral month to month tenancy is superior to a written lease, summary proceedings are not available to a landlord on a written lease without waiver of the lease, and the landlord will be deprived of one of the few protections he has, namely, of evicting a tenant efficiently and inexpensively without waiving such issues as damages to the premises and other breaches of the lease agreement which often can only be determined after eviction.

The Respondent respectfully suggests that much of the existing confusion concerning the applicability of the unlawful detainer law to written leases arises out of this Court's extension of the use of unlawful detainer to vendor-vendee transactions. Appellant has made a bold effort to perpetuate this confusion by citing Forrester v. Cook, 77 Utah 137, 292

Pac. 206, and Leone V. Zuniga, 84 Utah 417, 34 P.2d 699, both of which initially involved real estate contracts. The real estate contracts were forfeited, extinguished in theory, and the vendee was converted to a tenant at will, following which unlawful detainer proceedings were commenced. In other words, the vendor elected an option to extinguish the real estate contract, leaving only an oral landlord-tenant relationship in existence for the court to pass on in unlawful detainer proceedings. An action for unlawful detainer presupposes existence of the relation of landlord and tenant, Holladay Coal Co. v. Kirker, 20 Utah 192, 57 Pac. 882, and is not available for use in the vendor-vendee relationship. A written lease presupposes a landlord-tenant relationship and does not require any conversion to another relationship.

Incidentally, the Court will note that Appellant alleges and prays for attorneys fees in her counterclaim (R. 10-11) without either contract or statute to support the same. The writer would hope that one day this Court will explicitly rule on the propriety of such allegation and prayer, and whether such attorneys fees may be awarded as a part of damages where exemplary damages are claimed.

It is respectfully submitted that the Respondent did not waive its written lease by commencement of unlawful detainer proceedings, and that Respondent is entitled to the benefits of said lease cumulatively, and not in lieu of the unlawful detainer statutes.

## POINT II

### THE TRIAL COURT DID NOT ARBITRARILY AWARD RESPONDENT TREBLE DAMAGES

The Appellant states her Point II in a manner that Respondent cannot disagree with. Of course, "triple damage should not be arbitrarily awarded." The issue is whether treble damages were arbitrarily awarded. And the arbitrariness of such award depends upon whether Appellant continued in unlawful detainer, and not whether she tendered rent.

The case of Forrester v. Cook, 77 Utah 137, 292 Pac. 206, so often cited by Appellant, on page 156 of Utah Reports quotes with approval from Eccles v. U. P. Coal Co., 15 Utah 14, 20, 48 Pac. 148, that "The Statute ... makes it mandatory upon the court to render judgment for three times the damages assessed" after a finding of damages. And the Forrester case, supra, also holds that rents and profits, or rental value, during the unlawful detention of the premises are included in damages, as damages and not rent. After the unlawful detainer arose, the tender of rent became irrelevant, because the wrong is in the detainer and not in failure to pay rent.

Both the lease agreement, paragraph 9, (R. 3) and Section 78-36-3(2), U.C.A., provide that the tenant may be directed to vacate upon fifteen days notice. The Respondent had the right to direct the Appellant to vacate for any legal reason, or for no reason at all. Callister v. Spencer, 113 Utah 497, 196 P.2d 714; Edwards v. Habib, 397 F.2d 687; App. Br. 18. The Respondent caused a notice to vacate to be served on the Appellant by the Weber County Sheriff's Office on June 10, 1975, some twenty days before the end of the month (R. 3-4). The Appellant was in unlawful detainer

of the subject premises on July 1, 1975, when she failed and refused to vacate by that day.

This Court is respectfully directed to the additional care and patience extended to Appellant by Respondent in this case, namely: (a) legal proceedings were not commenced until July 25, 1975, (R. 1); (b) Appellant was not served with process until July 31, 1975, (R. 7); (c) the summons provided for a full twenty days in which to answer the complaint (R. 6), as contrasted with the three day minimum provided for in Section 78-36-8, U.C.A, 1953; and (d) the Respondent refused to take any steps to enter Appellant's premises until the formal tender thereof in open court, in the absence of a prior tender by delivery of the keys, (R. 64).

According to Appellant counsel's representations, Appellant vacated at the earliest, Saturday, September 6, 1975, and formal tender was made September 10, 1975, in open court, (App. Br. 9, R. 47). The Court will note from the briefs that the offices of counsel for the respective parties are separated by a short distance, yet the answer and counterclaim were filed on the day of default, and mailed without any tender indications made at that time of either possession or rent.

The Appellant makes reference in her statement of facts that "The premises were owned by an absentee financial corporation under a resident manager ..." (App. Br. 3). This statement is no more relevant than is the fact that Appellant was a public welfare recipient (R. 45), but the point is that Respondent would certainly have preferred the recovery of its premises without the enormous expenses and worry incurred herein, rather than a paper



judgment of dubious value.

The Appellant arbitrarily elected to remain on real estate owned by another, after having been directed in accordance with law to vacate, and so it is difficult for Respondent to understand how it can be claimed that the trial court "arbitrarily" penalized the Appellant. It is customary for persons to be penalized when they unlawfully possess and use property belonging to others. Appellant remained on Respondent's premises for approximately two months and ten days after she was directed to vacate.

Incidentally, Respondent feels obliged to respond to Appellant's statements made on page 9 of her brief, wherein Appellant refers to comments made by this writer relative to return of the keys (R. 64). The Respondent respectfully points out its "no win" position in this case when the Appellant argues that a formal tender of the premises was not necessary by delivery of the keys, and yet it is obvious from the Appellant's answer and counter-claim on file (R. 8-12, inc.) that if Respondent had taken any steps to take possession without a formal tender, then its liability for forcible entry would have been enhanced, and its defense to this appeal diminished. It is a favorite game of tenants in recent times to leave a few items behind to "set the landlord up" for a forcible entry lawsuit promoted by a legal services or civil rights organization. Further, whatever was discussed between Appellant and her counsel is irrelevant to this writer and Respondent, since Respondent had instructions not to converse with Appellant, and professional ethics require this writer, as counsel, to receive communications from the other counsel. Counsel for Appellant does not contend that he

personally made a tender of the premises to this writer prior to the day of argument to the trial court.

Respondent respectfully submits that the trial court did not arbitrarily award treble damages to Respondent, but that such damages were well within his discretion, if not mandatorily required of him.

### POINT III

#### THE TRIAL COURT PROPERLY FOUND THE APPELLANT'S ANSWER AND COUNTERCLAIM TO BE A SHAM PLEADING

Rule 11, Utah Rules of Civil Procedure, reads as follows:

Every pleading of a party represented by an attorney shall be signed in his individual name by at least one attorney who is duly licensed to practice in the state of Utah. The address of the attorney and that of the party shall be stated. Every party who is not represented by an attorney shall sign his pleadings and state his address. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by an affidavit. The signature of any attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule it may be stricken as sham and false and the action may proceed as though the pleading had not been filed. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Rule 11 is mandatory, clear and unequivocal.

The Federal Courts have said that the purpose of Rule 11, F.R.C.P., is to hold the attorney of record who signs the pleading to strict accountability, and to keep out of the pleadings false facts and issues which the signing attorney knows to be false. See, American Auto Assn. v. Rothman, (D.C.N.Y., 1952) 104 F. Supp. 655; Freeman v. Kirby, (D.C.N.Y., 1961) 27 F.R.D. 395. According to Freeman v. Kirby, supra, the duty on the attorney is an

affirmative duty to certify to the pleadings.

This writer confesses that times are changing, lawyers are more bold and less disciplined, and the public is more intelligent and litigious. Bar associations are promoting specialization, efficiency, and the use of paralegals. Courts are encouraging laymen to represent themselves, and the time may be approaching when lawyers are truly an unnecessary evil in our society. This case poses some of the problems squarely for this Court to speak on.

Counsel for Appellant refused to state into the record who prepared the answer and counterclaim on file and the trial judge indicated he did not feel that he had the authority to force such statement in the record (R. 50-51). The exact scenario reads as follows:

MR. BRANN: Your Honor, I want answered first who prepared the answer and counterclaim.

MR. VLAHOS: None of your business.

MR. BRANN: I want this in the record, your Honor.

MR. VLAHOS: It is none of your business.

THE COURT: He is not willing to tell you.

MR. VLAHOS: I am prepared to subscribe my name to all pleadings.

MR. BRANN: Well, as I indicated, your Honor, I believe that an issue in this case is the matter of paralegal people who are not admitted to the bar practicing law before the bar.

THE COURT: Well, and that may be something that you would want to produce evidence on, but I don't know I can compel him to say who prepared the pleadings.

Respondent respectfully suggests that it is a fair inference from the

record the Appellant's counsel did not prepare the answer and counterclaim, and that his failure to sign the same was not the result of neglect or inadvertance. The fact is that the answer and counterclaim does not contain a signature line for counsel, nor the address of Appellant (R. 12). This is not the only experience this writer has had with pleadings not signed by Appellant's counsel.

Respondent does believe that this Court has authority to ask Appellant's counsel: (a) who prepared the answer and counterclaim; (b) did you read it before it was filed; and (c) was the lack of an attorney's signature line and signature the result of neglect or inadvertance.

The fact is that Appellant's counsel has an admirable and efficient legal business involving knowledgeable paralegals who free counsel for court appearances. Among these paralegals is an individual trained in the law, but not licensed to practice in the State of Utah, who has jousted with the Utah State Bar right up to the U. S. Supreme Court for admittance. See, Sam A. Herscovitz v. Board of Commissioners of the Utah State Bar, 407 U. S. 924, 32 L.Ed. 2d 811, 92 S. Ct. 2457. Some paralegal pleadings are practically identifiable by the repetitious allegations of wilful misconduct and enormous prayers for general damages, exemplary damages, and attorney's fees.

Assuming, for purposes of argument, that such paralegals are smarter, more able, and more knowledgeable than members of the Bar, the fact remains that there are no controls unless the Bar, and the judiciary, take control. A great social and professional issue is involved here that must be carefully

analyzed and circumscribed with proper consideration given the changing times. If there are not any rules governing paralegals, then all lawyers should be so notified in order that they can remain competitive.

After the foregoing commentary, the Respondent directs its attention to the arguments made by Appellant. First, the fact that Appellant signed her pleading does not rectify the mandatory requirement that counsel must sign the pleading where Appellant is represented by counsel. The thrust of Appellant's argument is that she is now, and was, represented by counsel, and certainly the pleading was prepared in a law office. The requirement of Rule 11, U.R.C.P., cannot be circumvented as a matter of course by the litigant signing or the attorney certifying to the pleading after the fact.

Respondent concedes that Appellant is entitled to represent herself in judicial proceedings, but there is not any pretense that she is doing so in this case.

The case cited by Appellant, namely, West Mountain Lime and Stone Co. v. Danley, 38 Utah 218, 111 Pac. 647, was decided in 1910. The Utah Rules of Civil Procedure were adopted in 1949 and became effective in 1950. Presumably, this Court was mindful of the West Mountain Lime case, *supra*, when it adopted Rule 11, U.R.C.P., and, in any case, the salutary rule in that case could possibly apply again if inadvertance or neglect were the reasons for such omission of counsel's signature with subsequent ratification.

Finally, in reference to the case of West Mountain Lime, *supra*, the Respondent respectfully suggests: (a) The defect was timely objected to in this case by motion; (b) The issue of "retaliatory eviction" was

moot by the time of argument to the trial court, since Appellant had vacated the premises; (c) The answer and counterclaim was dismissed as a "sham," but not with prejudice; (d) The Appellant did not submit any meritorious reason to the trial court, nor does she submit any such reason to this Court, for the omission of counsel's signature; and (e) A separate tort claim is not properly joined in unlawful detainer proceedings.

Appellant's counsel argued to the trial court, in substance, and now argues in his brief on appeal, that he has an absolute right to ignore Rule 11, U.R.C.P., at the preparation and filing stages of pleadings, and that the defect is cured by an offer to cure the defect at the court appearance stage. But this position ignores the authority of the judiciary, and the right of the adverse party to be assured that a pleading is certified to by an attorney as having been read by him and that "there is good ground to support it, and that it is not interposed for delay."

Respondent respectfully submits that the trial court acted within its discretion as delineated by Rule 11, U.R.C.P., and that the trial court would have been remiss in its duty had it not stricken the Appellant's pleading herein.

#### POINT IV

APPELLANT'S POINT IV IS WHOLLY IRRELEVANT TO ANY  
ISSUES THAT SHE MIGHT MAINTAIN IN THIS APPEAL.

It is difficult to frame a responsive headnote to Appellant's rhetorical Point IV because even Respondent must concede that there are circumstances under which "retaliatory eviction" may be a defense to unlawful detainer.

The fact is that such defense is irrelevant in this appeal proceeding because:

1. The issue of eviction became settled and moot prior to the lower court order herein when Appellant voluntarily vacated the premises in question, and the premises were tendered back to Respondent during argument before the lower court and prior to its order herein appealed from; and

2. The Appellant's counterclaim was dismissed as a "sham" pursuant to Rule 11, U.R.C.P., and Not because it failed to state a claim or defense.

This Court has always conformed to the basic rule that a judicial tribunal may consider and determine only an existing controversy, and not a moot question or abstract proposition. University of Utah v. Industrial Commission, 64 Utah 273, 276, 229 Pac. 1103; 1 C.J.S., Actions, Sec. 17.

The Respondent dislikes being drawn into useless argument over an irrelevant and collateral issue, but Respondent is also reluctant to appear to avoid the thirteen pages (15 to 28) of argument made by Appellant, which constitutes almost half of her brief. Also, Respondent frankly wants an authoritative statement from this Court concerning "retaliatory eviction," and the circumstances under which it might apply. Therefore, the Respondent respectfully summarizes the conclusions to be derived from said 13 pages of Appellant's brief, namely:

1. That "retaliatory eviction" may constitute a defense to an action for unlawful detainer in cases where law or public policy encourages

tenants to speak or act, namely, reporting violations of law to public authorities involving housing, health, safety, workmen's compensation and civil rights codes.

2. That some states have enacted legislation pertaining to "retaliatory evictions."

3. That Appellant claims a constitutional right to commandeer the Respondent's apartment house complex, designate the management thereof, and determine the rules and regulations under which Appellant is willing to live while residing on Respondent's property.

An extensive discussion and analysis of the concept of retaliatory eviction with cases cited is found in 3 Utah Law Review, Fall, 1973, at pages 503 et seq. The case of Aluli v. Trusdell, 508 P.2d 1217, Hawaii 1973, is criticized in said article as a "backward step," but the fact is that even Hawaii, in the vanguard of tenants rights, found it must give the landlord some rights.

The Respondent again respectfully directs the Court's attention to the following undisputed facts contained in the record and the Appellant's brief, namely, that Respondent's property is a "non-slum apartment complex" (App. Br., 15), that Appellant made no complaints to public authorities concerning conditions adverse to health, welfare, or safety on the premises (R. 8-12, inc.), that Appellant was a "month to month" tenant under a written lease (R. 3), and that Respondent followed the law announced by the Utah legislature and this Court in its effort to regain possession of the premises with liberal periods of time given Appellant between the time



the notice to quit was served and this action was commenced. The Appellant was served with a notice to quit on June 10, 1975, this action was filed on July 25, 1975, defendant was served with process July 31, 1975, and the answer was not filed until August 21, 1975. The Appellant, according to her counsel's version, quit the premises on or about September 6, 1975, (R. 47), and the premises were not formally tendered to Respondent until argument on September 10, 1975, (R. 47 & 48).

The Utah legislature has not seen fit to adopt a proposed model landlord-tenant code, although it is reported that such code was vigorously debated and thereupon rejected in the last special session of the legislature. Respondent does not argue the fact that the legislature has the authority to enact landlord-tenant laws, but that is a different matter from asking this Court to legislate.

The thrust of Appellant's argument in this case is that the Appellant has an absolute and constitutionally guaranteed right to free speech which is a defense to eviction in all cases. Appellant, in effect, contends that Respondent, as a private citizen and property owner, may be compelled to submit to verbal abuse and thereby forfeit its right to select its tenants and manage its properties. Appellant has not cited in thirteen pages of its brief, insofar as Respondent can determine, one case which holds that the bare right of free speech is a defense to eviction. Every case cited by Appellant appears to involve a public policy issue such as race relations, or making of complaints to public

authorities concerning a breach of the landlord's duties imposed by law. The Appellant notes that the apartment house complex in this case is not a slum property (App. Br. 15), and Appellant makes no mention in her pleadings or brief of complaints made to any public authority. The Appellant claims as a defense the bare right to organize a tenant's union, to instruct Respondent as to who it can employ to manage the premises, and to determine what rules and regulations are appropriate to the convenience of Appellant.

Respondent respectfully directs the Court's attention to the growth of multiple unit dwellings where many people of different ages and inclinations must live together and remain civilized. The landlords are regularly sued nowadays for failure to control their tenants and tenants' pets, for failure to repair, for failure not to get consent before repairing, for failure to evict, for failure to regulate and provide rules, in this case for evicting, and so on ad nauseam.


The Respondent respectfully submits that the issue of retaliatory eviction is moot in this case, and, in any event, that Appellant has failed to present a fact situation where the defense of retaliatory eviction might be available to her in this case.

#### CONCLUSION

The findings and judgment of the lower court should be affirmed. The allegations of Respondent's complaint, and the lower court's findings thereon, are uncontroverted in every respect. The answer and counter-

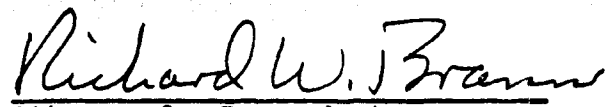
claim filed by Appellant did not comply with the express requirements of Rule 11, U.R.C.P., and the lower court's judgment thereon is in compliance with said Rule.

Respectfully submitted,

  
Attorney for Respondent  
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Ogden, Utah 84401

CERTIFICATE OF MAILING

I hereby certify that I mailed two copies of Respondent's brief, postage prepaid, this 2<sup>nd</sup> day of December, 1975, to Appellant's attorney, Pete N. Vlahos, Esq., 2447 Kiesel Avenue, Ogden, Utah, 84401.

  
Attorney for Respondent  
Richard W. Brann  
406 Kiesel Building  
Ogden, Utah 84401

# More Services Are Performed by Paralegals; Attorneys Have Mixed Feeling About Trend

By PHILIP REYZIN

Staff Reporter of THE WALL STREET JOURNAL

Pat Hausberg, Jo Ann Tackovich and Mayda Estremera are doing legal work without a license, but they aren't breaking the law.

The three work, respectively, at a big Wall Street law firm, the legal department of Goodyear Tire & Rubber Co. in Akron, and at a neighborhood law center in Brooklyn.

They are paralegals, a new and rapidly spreading breed of law practitioners who have never been to law school, but who have had legal training. They are showing up in increasing numbers in law firms, corporations and government offices around the U.S. If the system works, they should be an important factor in holding down legal costs and bringing legal services to many who currently can't afford them.

Most attorneys are behind the idea of using paralegals, in theory, anyway. But in practice many find themselves taking an ambivalent stance: They are increasingly unsure whether to embrace the paralegals as drones who will relieve them of tedium or to shun them as trespassers on hallowed legal ground and a threat to the system of jurisprudence.

"We call them paralethals," says one disdainful New York lawyer who feels that serious mistakes could result from reliance on legal help without proper legal training.

The mixed emotions show up in the position of the American Bar Association, which says it supports the use of paralegals but wants a hand in their training and licensing. On the surface, that may seem helpful, but William Fry, executive director of the National Paralegal Institute in Washington, says, "The bar association sees paralegals as a hell of a threat."

## A Competing Profession?

"They feel that if they don't control it, through regulation of the training and licensing, it will run away from them," and paralegals will emerge as a competing profession, says Mr. Fry, head of the institute, which trains paralegals under federal grants for public service positions.

Part of the problem is that the influx of paralegals is coming at the same time that a growing number of law graduates going into practice is becoming a problem. Some lawyers see paralegals' making that situation worse:

"It's like a steamroller," says Leonard Rivkind, past president of the Miami Beach Bar Association and a member of the Florida bar's committee on the unauthorized practice of law. "These paralegals are taking away jobs," he says. "If someone wants to practice law, let him go to law school, get a license and practice."

Many paralegals, however, say they have no interest in spending the time or money it would take to go to law school, but they still want to do legal work. "I like my job, and I don't see any reason to go to law school," says Miss Hausberg, who once planned to

poor clients at the Brooklyn law center, also has no plans for law school: "I can do just about anything I want to now," she says. "I just don't get paid as much as a lawyer." Paralegals start at \$10,000 to \$11,000 at law firms in New York, and may work up to \$16,000; fledgling lawyers, by contrast, start at \$18,000 to \$20,000.

And Mrs. Tackovich, who processes "a literal mountain of paperwork" relating to tire failure claims and other product liability cases at Goodyear, adds that being a paralegal is already a step up from her old work as legal secretary. "You can set your own priorities, and you're not so much under the minute-by-minute supervision of an attorney," she says. "The title holds more status, too. You're treated as a professional, with more consideration."

## "A Growing Field"

Whatever the reasons for joining it, "This is a tremendously growing field," says Albert Greenstone, president of the National Center for Paralegal Training in New York. "Six or seven years ago nobody was using people specifically designated as legal assistants. Now, 98% of the firms with 50 or more lawyers use them, and about half the firms with 25 to 50 lawyers have legal assistants."

Estimates are that there are more than 70,000 paralegals at work, with 20,000 scattered through local, state and federal government offices and most of the rest with law firms or companies. The number of schools offering training has also soared. There are 161 programs in paralegal training being offered now, up from two in 1970 and zero in 1968, according to Blackstone Associates, a Washington research and consulting concern.

John Stein, Blackstone vice president, says not only are there more paralegals, but lawyers are delegating far more work to them. "The bar is finally waking up to the fact that lawyers have been doing a lot of work they really had no business doing. They are finding that the whole process of delegating some work leads to better representation for the client."

There are, of course, some jobs paralegals can't do, such as argue cases in court, give legal advice to a client for a fee, or do tasks such as taking depositions which courts have ruled must be done by a lawyer.

But that still leaves plenty for the paralegals. Miss Hausberg, the Wall Street paralegal, says she has "had my hand in a little bit of everything" during three years at two large law firms. She drafts the final version of corporate minutes from notes assembled by company officials and has recently prepared research documents on tax shelters and on licensing of broker-dealers in various states.

Connie Capistrant, a paralegal at a Washington law firm, indexes documents, digests depositions and works on an information retrieval system to be used in a machine-variant of 60 frames related to the

it hadn't been done at all before paralegals were hired," she says.

## Working in the Public Sector

Probably the closest paralegals come to acting as practicing attorneys is in the public sector, involved in work similar to that of Miss Estremera in Brooklyn. She spends most of her time representing welfare clients at hearings to protest rulings on their benefits. The hearings aren't held in a courtroom before a judge, so a non-lawyer can advise a client. Unlike many paralegals, Miss Estremera had no formal paralegal schooling; she picked up her expertise during a stint as a VISTA volunteer.

Most others get on-the-job training in law firms or take courses at schools that offer from four months to two years of classes at fees of up to \$2,200. At this point, they do not have to be licensed after leaving school, but with the growth in the trade and the interest of bar associations, it appears certain that attempts to require some sort of qualifying will also grow.

In theory, there should be an immediate benefit to clients in the form of lower costs resulting from use of paralegals, according to Kenneth Pringle, Minot, N.D., attorney who heads the ABA committee on legal assistants, the association's formal name for paralegals. He says lower charges will be automatic since lawyers are supposed to bill their clients at a lower rate for work done by paralegals.

But the greatest public benefit from lower legal costs will be that more citizens will be able to afford legal help, says Mr. Fry of the National Paralegal Institute. "It's estimated that there are 140 million citizens in this country who have legal problems but can't afford to pay \$25 to \$50 or more an hour for an attorney," he says. "Paralegals have the potential to handle a majority of these problems, at a price people could afford to pay."

Another fertile area for future use of paralegals is in pre-paid legal plans, also known as "legal insurance." Some large labor unions are experimenting with it now, providing members legal protection for a fixed fee, much like medical insurance. Paralegals are "absolutely essential if legal insurance is ever to come through on a wide scale," at an affordable cost, says Xenia Krinitzky, president of the New York City Paralegal Association.

Looking further ahead, Miss Capistrant, who is president of the Capital Area Paralegal Association, sees major gains resulting from paralegals setting up shop on their own, rather than working for lawyers: "I think that maybe five or 10 years from now, people with a year or two of training will be able to take an exam, get a license, and do a will for \$50, or a divorce for \$100. It's coming."

# Law School Grads Find Jobs Few

WASHINGTON (AP) — Job prospects for law school graduates, already tight, are expected to remain bleak for at least the next 10 years with the number of graduates expected to outpace the number of job openings, the Labor Department reported Saturday.

A study in the current issue of the department's Occupational Outlook Quarterly says that more than 20,000 job openings a year are foreseen for lawyers through 1985.

Although not all graduates enter practice, the study said supply will continue to outpace demand with the number of graduates rising from 28,300 this year to an estimated 33,600 in 1985.

According to the study: "Today's tight job market could resolve itself, some optimists say, by forcing tomorrow's law students to have different expectations — fewer of them seeking an actual job as a lawyer.

"A law degree could come to be valued primarily as certification of high accomplishment in the liberal arts. But, for the immediate future at least, many new law graduates will be disappointed and forced to change their career plans.

"The economy, consequently, is required to live with a wasteful process and forego the full use of valuable, specialized skills."

The study noted that the number of people practicing law has increased by more than 100,000 since the early 1960s, reaching a total of about 342,000 in 1974. During the same period, the number of law school graduates increased about threefold.

Law school admission policies apparently were a major factor in the oversupply, the study said, explaining that while many colleges offer prelaw pro-

grams, undergraduate training in almost any field is accepted by law schools as proper preparation for admittance.

Because of this, in recent years, many undergraduates chose to enter law school as the job market in the physical and

biological sciences tightened.

Also, law has become popular for social reasons, with the degree now viewed as "an important key to full participation in constructive legal, political and economic changes," the study said.

## PARALEGALS

**L**egal assistants: Who needs them? The real question is: Who couldn't use one? The legal assistant, under the supervision of a lawyer, is able to give direct assistance in handling all matters, from preparing and interpreting legal documents to analyzing and handling procedural problems that involve independent decisions.

In the law office, the duties of paralegals, as they are sometimes called, are limited only by the practice of the employer-attorney. Paralegals assume many of the routine administrative and time-consuming duties formerly borne by the attorney.

At the same time, they are more accessible than the attorney, and can spend time interviewing the clients, and giving them more personal attention. This gives the attorney more time for productive legal work, and keeps the clients satisfied.

It's not just within the law offices that paralegals are serving a need. In our courts, paralegals can be found in many positions, among them law librarian, court administrator, and chief deputy. Their duties are varied, but they all help to expedite necessary procedures handled every day in court.

So, if you're finding that you're having trouble answering all of your calls, completing all your research, and drafting all of your procedures, perhaps what you need is a legal assistant. The legal assistant's services can be had at a reasonable price, and he or she offers invaluable assistance in all areas.

In any of the given fields, the paralegal can develop and modify procedures, detail procedures for practicing in certain fields of law, research, compile, and use information from the law library, and keep everyone up-to-date on the current cases in the office.

The list of things paralegals can do is endless. They serve a distinct need. And operating within established ethical guidelines, they are bringing initiative, knowledge, training, and dedication to their jobs.

Mary Ellen Buehring, PLS, CPS, is Public Relations Chairman of the National Association of Legal Assistants, Inc.

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