

1998

# Mary M. Tuck v. The Beehive House, a Utah Limited Partnership, and S. Chad Godfrey, an individual : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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MARY M. TUCK,

Plaintiff/Appellee,

vs.

Appeal No. 980118-CA  
(Civil No. 950908242CN)

THE BEEHIVE HOUSE, a Utah  
Limited Partnership, and S. CHAD  
GODFREY, an individual,

(Argument Priority: 15)

Defendants/Appellants.

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BRIEF OF APPELLEE

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On Appeal from the Third Judicial District Court of Salt Lake County  
Judge Anne M. Stirba

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**UTAH COURT OF APPEALS  
BRIEF**

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**FILED**

Utah Court of Appeals

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Julia D'Alesandro  
Clerk of the Court

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## INTRODUCTION

Appellant S. Chad Godfrey has appealed from an order of the trial court striking his pleadings and entering judgment as a result of defendant Godfrey's repeated failure to present himself for deposition, and to produce relevant documents in this action, despite the entry of a prior order compelling discovery. Defendant Godfrey was first requested to produce documents and appear for deposition in August of 1996. When defendant Godfrey failed either to appear or produce the documents (due, it was thereafter learned, to the fact that he was incarcerated in a federal prison facility out of state, a fact that he had concealed both from opposing counsel and from the court), the trial court ordered defendant Godfrey to pay attorneys' fees and thereafter to present himself for deposition. Plaintiff thereupon rescheduled defendant Godfrey's deposition on a date agreed to by counsel, and again coupled the notice of deposition with a request for production of documents. When the day of the deposition came, no documents were forthcoming; it emerged that no meaningful effort had even been made to locate the requested documents until the day before the deposition, and -- while it was acknowledged that the documents were available -- they were again not produced.

The lower court's consequent order was plainly within its discretion given a court's inherent need to manage pre-trial discovery in a pending case. The court was faced with a defendant who had disregarded two valid and timely discovery requests, despite a court order compelling discovery. The leveling of sanctions against defendant Godfrey under the circumstances was completely justified; certainly, it did not even begin to rise to the level of an abuse of discretion.

### STATEMENT OF JURISDICTION

Appellee disagrees with appellant's statement of jurisdiction, and states that this Court has jurisdiction of this appeal pursuant to Utah Code Ann. § 28-2a-3(2)(j). As noted in Appellant's Brief, this Court has already asserted and acknowledged jurisdiction of the lower court's order as a final judgment pursuant to Rule 54, Utah Rules of Civil Procedure.

### ISSUES PRESENTED FOR REVIEW

Appellant's "Issues Presented for Review" is essentially a summation of his argument.

The sole issue presented for review in this matter is whether the trial court acted within its discretion in striking the pleadings of defendant S. Chad Godfrey for twice disregarding valid discovery requests, despite the entry of a prior order compelling discovery.

The standard of review is abuse of discretion:

Because trial courts must deal firsthand with the parties and the discovery process, they are given broad discretion regarding the imposition of discovery sanctions.

Utah Dept. of Transportation v. Osguthorpe, 892 P.2d 4 (Utah 1995) (quoting Darrington v. Wade, 812 P.2d 452, 457 (Ut. Ct. App. 1991)). See also Amoco Mutual Insurance Company v. Schettler, 768 P.2d 950 (Ut. App. 1989).

### DETERMINATIVE PROVISIONS

Appellee agrees with appellant's statement of the determinative provisions of law herein.

## STATEMENT OF CASE

### A. Proceedings Before the Lower Court.

This is a proceeding to recover, on behalf of the Estate of Mary M. Tuck, deceased, the sum of \$381,700.00, together with accrued interest, representing funds loaned to defendants S. Chad Godfrey and The Beehive House over the course of several years prior to her death.

Plaintiff (then Mary Tuck, still living) noticed the deposition of Godfrey for August 19, 1996; incident thereto, Godfrey was requested to produce numerous banking and other financial records to establish what had been done with the funds received from plaintiff. When Godfrey failed both to appear at deposition and to produce the requested documents, plaintiff sought and obtained an order compelling Godfrey to respond to plaintiff's discovery, and to pay attorneys' fees as a sanction. By Order dated April 21, 1997 (by which time the Estate of Mary Tuck had been substituted as party plaintiff), the court granted plaintiff's motion, ordered Godfrey to pay \$495 in costs and attorneys' fees, and directed Godfrey to present himself for deposition at a time and place agreeable to counsel.

Plaintiff rescheduled the deposition of Godfrey (together with that of Beehive House representative B. Ralph Godfrey) for July 11, 1997, again requesting an attendant production of documents. When defendants again failed to produce the requested documents on or prior to the day of deposition, plaintiff again moved the court for an order granting sanctions for failure to make discovery. The matter was heard before the court on Thursday, September 4, 1997 at 9:00 a.m. The court reviewed plaintiff's motion in full, including (1) the submissions and affidavits from plaintiff and defendants,



and (2) admissions and representations of counsel during oral argument. At the conclusion of argument, the court directed that the pleadings of Godfrey be stricken and judgment entered against him and that the motion for sanctions against defendant Beehive House was granted in part and taken under advisement in part. The lower court's order was entered as a final judgment against Godfrey on November 18, 1997.

Following Godfrey's appeal of the court's order, this Court issued a *sua sponte* Motion for Summary Disposition on the question of the finality of the lower court's order on August 31, 1998, however, the Court withdrew its motion and set the appeal for a briefing.

B. Statement of Facts.

1. Defendant Beehive House, at all times relevant to this action, owned and operated Beehive House at Pheasant Hollow, a retirement living center in Salt Lake County. Verified Complaint (R. 1) at ¶ 5; Answer and Counterclaim (R. 71) at ¶ 5.

2. Defendant S. Chad Godfrey was an employee and building administrator for Beehive House at all times relevant prior to October 1995, and again at present. Affidavit of B. Ralph Godfrey, dated October 29, 1996 (R. 181), at ¶ 6.

3. Plaintiff Mary M. Tuck was, for a period prior to her death in October of 1996, a resident at the Beehive House. Verified Complaint (R. 1) at ¶ 6; Answer and Counterclaim (R. 71) at ¶ 6.

4. Between December 17, 1993 and October 9, 1995, Mary Tuck wrote checks to S. Chad Godfrey and/or The Beehive House totalling \$381,700.00. Verified Complaint (R. 1) at ¶ 7-8 and Exhibits 1-8; Answer and Counterclaim (R. 71) at ¶ 7-8.

5. Plaintiff marked each of the checks either "loan" or "investment". Verified Complaint (R. 1) at Exhibits 1-8.

6. All but two of the checks were deposited directly into the Beehive House's bank account. Verified Complaint (R. 1) at Exhibits 3-8 and 10-11.

7. Defendants have never repaid the funds advanced by Mary Tuck, despite demands that they do so. Verified Complaint (R. 1) at ¶ 10.

8. On or about November 15, 1995, defendant S. Chad Godfrey signed a handwritten note agreeing to repay the majority of the money delivered by Mary M. Tuck to The Beehive House, but has failed to do so. Verified Complaint (R. 1) at Exhibit 9.

9. Defendants have since taken the position that the \$381,700.00 delivered to them by plaintiff constituted a "gift"; alternatively, that the plaintiff entered into an agreement under which she "forgave" the debt represented thereby. Answer and Counterclaim (R. 71) at ¶¶ 7-8 and Seventh Affirmative Defense.

10. On August 7, 1996, plaintiff noticed the deposition of S. Chad Godfrey for August 19, 1996. Affidavit of Vincent C. Rampton, submitted August 28, 1996 (R. 111), at ¶ 3.

11. Incident thereto and in accordance with Rule 30(b)(5)(34), Utah Rules of Civil Procedure, Godfrey was requested to produce numerous banking and financial records reflecting the disposition of plaintiff's funds. Notice of Deposition of August 7, 1996 (R. 86), Addendum 1 hereto.

12. A few days prior to the date set for deposition, plaintiff's counsel was informed by defendants' counsel that Godfrey would not be appearing for deposition as scheduled. Rampton Affidavit (R. 111) at paragraph 5.

13. It was represented to plaintiff's counsel that Godfrey refused to present himself for deposition before the latter part of September, 1996, and was not then in the State of Utah. Rampton Affidavit (R. 111) at paragraph 6.

14. Plaintiff's counsel responded that he would be willing to travel to Mr. Godfrey's location to take his deposition. Rampton Affidavit (R. 111) at paragraph 7.

15. Defendants' counsel responded that Mr. Godfrey refused to reveal his location. Rampton Affidavit (R. 111) at paragraph 8.

16. Plaintiff's counsel did not reach any agreement with opposing counsel to change the date of the deposition nor did Godfrey file a motion for protective order prior to the date of his deposition. R. 111; R. 151.

17. Godfrey failed to appear at the deposition as scheduled. Rampton Affidavit (R. 111) at ¶ 4.

18. Plaintiff thereupon filed a Motion for Sanctions for Failure to Appear for Deposition (R. 95); thereafter, defendants filed a Motion for Protective Order, in which they acknowledged that defendants' counsel (who at the time

represented both The Beehive House and S. Chad Godfrey) had been instructed not to reveal Mr. Godfrey's whereabouts for deposition. Memorandum in Opposition to Plaintiff's Motion for Sanctions and Motion for Protective Order (R. 115) at Page 3.

19. Mary Tuck passed away October 8, 1996, while her first Motion for Sanctions was still pending (R. 178); By subsequent order of this court, the Estate of Mary M. Tuck was substituted as the party plaintiff herein (R. 194).

20. Plaintiff's Motion for Sanctions and defendant's Motion for Protective Order, were scheduled for hearing on January 23, 1997 at 8:30 a.m.; it was thereafter continued to March 28, 1997 at 9:00 a.m. (R. 206).

21. Neither defendants nor their counsel disclosed to the court, prior to or at the hearing of plaintiff's first Motion for Sanctions, that defendant S. Chad Godfrey had, in fact, been in a federal prison facility at the time his deposition was scheduled. See deposition of Brigham Ralph Godfrey dated July 11, 1997 (R. 243), Addendum 2 hereto, at Pages 19-21.

22. At the conclusion of oral arguments on the parties' respective discovery motions, the court granted plaintiff's motion for sanctions as to defendant S. Chad Godfrey, directed him to pay fees, and thereafter to present himself for deposition (R. 217). In her ruling from the bench, Judge Stirba informed counsel as follows:

I am very concerned about Mr. Godfrey's conduct in this case based on the information I have at this juncture...I want him to get

the message. His conduct is woefully inadequate and completely unacceptable.

R. 546 at p. 7.

23. Upon defendants' payment of sanctions as per the court's order (which occurred on May 1, 1997), plaintiff's counsel again requested deposition dates for both Ralph Godfrey on behalf of defendant Beehive House, and defendant S. Chad Godfrey (R. 228).

24. Owing to the fact that plaintiff still had not seen the documents requested in August of 1996, and therefore sought to combine the notice of deposition with a request for production of documents as per Rule 30(b)(5), Utah Rules of Civil Procedure, defendants' counsel requested that depositions be scheduled at least thirty (30) days in advance (R. 228).

25. In compliance with this request, plaintiff sent out a Notice of Deposition dated June 3, 1997, scheduling the deposition of Ralph Godfrey for July 10, 1997 at 10:00 a.m., and the deposition of S. Chad Godfrey for July 11, 1997 at 10:00 a.m. A copy of the second Notice of Deposition (R. 221) is attached hereto as Addendum 3.

26. Neither plaintiff nor its counsel heard any response to the Notice of Deposition until July 7, 1997, when plaintiff's counsel received a telephone call from counsel for defendant Beehive House, inquiring whether both depositions could not be completed on July 10, 1997 (R. 228).

27. Plaintiff's counsel responded that a completion of both depositions in one day might be possible, depending on the volume of documents produced in response to the Notice of Deposition (R. 228).

28. On the morning of July 10, 1997, counsel again conferred by telephone. On this occasion, plaintiff's counsel (who had encountered a scheduling problem due to an unexpected emergency in an unrelated matter) suggested that documents be produced on July 10, 1997 and reviewed by plaintiff's counsel on that day; that the depositions of Ralph Godfrey and S. Chad Godfrey be thereafter rescheduled to take place sequentially on July 11, 1997 (R. 228).

29. After conferring with their clients, defendants' counsel concurred that document production would occur on July 10, 1997, and that the depositions would thereafter take place on July 11, 1997 commencing at 9:00 a.m. (R. 228).

30. Defendants failed to produce any documents whatever on July 10, 1997 (R. 228).

31. Defendants' counsel and Ralph Godfrey appeared for deposition at 9:00 a.m. on July 11, 1997 (R. 243 and Addendum 2 hereto). At that time, defendants produced a single manilla folder containing a few cancelled checks, and miscellaneous other documents responsive to certain portions of paragraphs 3 and 6 of plaintiff's Notice of Deposition (Addendum 3) (R. 228).

32. B. Ralph Godfrey acknowledged that no banking records had been produced in response to paragraph 1 or 2 of the Notice of Deposition

(Addendum 3). Godfrey deposition (R. 243 and Addendum 2 hereto) at page 11-12.

33. Mr. Godfrey confirmed that the records in question were still in existence and maintained by The Beehive House, and had not been destroyed. Godfrey Deposition (R. 243 and Addendum 2 hereto) at page 12.

34. Upon further questioning, Mr. Godfrey acknowledged that, while the Notice of Deposition was dated June 3, 1997, defendants' search for the responsive records had not begun in earnest until the day prior to the deposition, July 10, 1997:

"We've had this, been asking about and yesterday we really went for it, more or less, and had everybody try to go help us find these things so we could get done."

Godfrey Deposition (R. 243 and Addendum 2 hereto) at page 12.

35. On or about July 30, 1997, defendants filed the affidavit of DeeAnn B. Schaugaard, account manager for Beehive Health, Inc., a company affiliated with defendant Beehive House (R. 326).

36. Ms. Schaugaard's affidavit recited, in considerable detail, the records which she maintained on defendants' behalf, and which were subject to plaintiff's deposition notices and document requests dating back to August of 1996. The affidavit likewise made it clear that, just as represented by Mr. B. Ralph Godfrey in his deposition, no attempt was made to locate the documents until very shortly prior to the deposition date, at which time it was discovered that the boxes had disappeared (R. 326).

37. Appellee's second motion for sanctions was called on for hearing on September 4, 1997 (R. 389). At the conclusion of hearing, the trial court issued a verbal bench ruling in which, based upon the submissions, affidavits and representations of counsel, she found the following:

(a) That when plaintiff first noticed the deposition of Godfrey and requested document production incident thereto, in August of 1996, Godfrey obstructed discovery in that (i) the documents were not made available when requested, even though they were accessible to Godfrey, and (ii) Godfrey concealed his whereabouts from opposing counsel and the court;

(b) That, even having already been subjected to an order compelling discovery and sanctions, Godfrey failed to respond timely and appropriately to plaintiff's second deposition notice and request for production of documents;

(c) That even after the filing of plaintiff's second motion for sanctions, Godfrey failed to take appropriate measures to secure the requested documents -- admittedly in defendants' possession and under their control at one time -- from any other source; and

(d) That, under the circumstances, it was appropriate to strike Godfrey's pleadings and enter judgment against him by default. See Bench Ruling (R. 548, Appellant's Brief at Addendum C) at pp. 33-34.



## ARGUMENT

### POINT I

GODFREY HAS NO BASIS FOR CHALLENGING THE FINDINGS OR CONCLUSIONS OF THE TRIAL COURT, IN THAT HE HAS FAILED TO MARSHALL EVIDENCE AS REQUIRED BY LAW.

It has long been established under Utah law that, where the ruling of a trial court is based upon factual determinations, a party appealing that determination must marshal evidence in support of a lower court's findings prior to seeking reversal thereof:

To successfully challenge a trial court's factual findings, "[a]n appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of evidence,' thus making them 'clearly erroneous.'"

Jacobs v. Hafen, 875 P.2d 559, 561 (Utah App. 1994) (quoting In Re Estate of Bartel, 776 P.2d 885, 886 (Utah 1989); see also Estate of Walker, 743 P.2d 191 (Utah 1987)). If the appellant fails to marshal the evidences required, the appellate court must assume that the record below supports the findings of the trial court, and the lower court's findings cannot be disturbed. Jacobs, 875 P.2d 559; Pasker Gould Ames & Weber v. Morris, 887 P.2d 872 (Utah App. 1994); Alta Industries, Ltd. v. Hurst, 846 P.2d 1282 (Utah 1993). The appellant having made no effort whatever to marshal the evidence in support of a lower court's findings in this matter, those findings must stand undisturbed on appeal. Sanders v. Sharp, 806 P.2d 198 (Utah 1991).

## POINT II

### THE LOWER COURT DID NOT ERR IN SANCTIONING GODFREY FOR FAILURE TO PRODUCE FINANCIAL RECORDS RELATING TO THE OPERATIONS OF THE BEEHIVE HOUSE.

Godfrey first attempts to avoid the consequences of his inaction by arguing that, since the requested records were those of The Beehive House, the court abused its discretion in sanctioning him for failure to produce them. Godfrey relies in this regard on the case of Cochran Consulting, Inc. v. Uwaterc USA, Inc., 102 F.3d 1224 (Fed. Cir. 1996). The argument is both belated and inadequate, and the cited case inapposite.

To begin with, Godfrey nowhere suggested, either in the face of plaintiff's initial motion to compel discovery on his failure to respond to the August 1996 deposition notice and document request, or prior to the filing of plaintiff's second motion for sanctions on July 14, 1997, that he could not produce the requested documents because they were not in his possession or under his control. This failure alone defeats his belated argument that the documents were in the possession of The Beehive House and not his possession--

The failure to act described in the subdivision (Rule 37(d), Utah Rules of Civil Procedure) may not be excused on the ground that the discovery sought is objectionable, unless the party failing to act has applied for a protective order as provided by Rule 26(c).

Rule 37(d), Utah Rules of Civil Procedure. If the documents requested incident to Godfrey's deposition (both in 1996 and again in 1997, after the court's first order compelling discovery and granting sanctions) were beyond Godfrey's ability to produce, he had ample opportunity to object to the request on this basis. But he made no such objection, at the time the requests were made, within thirty days thereafter (as required

by the Utah Rules of Civil Procedure), or even in the face of plaintiff's motions for sanctions. Neither did he at any time seek a protective order on the basis that he had no access to the requested documents. Thus, it is both too late and completely disingenuous to assert at this point that he had no access to the requested documents.

Beyond Godfrey's failure to preserve his claim as provided by law, it is plain from the record that his argument on access to the requested records is completely specious. The lower court had before it the deposition of Beehive House representative B. Ralph Godfrey, who clearly testified to the following:

(a) That Mr. B. Ralph Godfrey, "owner" of The Beehive House, is father to Chad Godfrey (Deposition of B. Ralph Godfrey, R. 243 and Addendum 2 hereto, at p. 8);

(b) That until the intensive search for the documents began on July 10, 1997, the day before the scheduled deposition, the documents were believed to be in The Beehive House's off-site storage location in a residence at 5900 South occupied by Godfrey's family (Deposition of B. Ralph Godfrey, R. 243 and Addendum 2 hereto, at p. 13); and

(c) That in attempting to locate the records, The Beehive House's representative consulted with Mr. Godfrey (Deposition of B. Ralph Godfrey, R. 243 and Addendum 2 hereto, at p. 14).

In addition, the affidavit of DeeAnn B. Schaugaard (R. 326) established that in June of 1997, she was contacted by Godfrey, who directed her to locate the requested documents and furnish them to him, and that upon her inability to locate the documents on her own, she was assisted in her search on the day before the deposition by B. Ralph

Godfrey, Chad Godfrey and others. Affidavit of DeeAnn B. Schaugaard (R. 326) at ¶ 5-6, 10-12.

In short, it is clear from the evidence of record that the documents requested have been maintained since prior to August of 1996 (the date of plaintiff's first document request) by The Beehive House, a business owned and operated by the Godfrey family in which Godfrey was involved; that his failure to produce the requested records was due not to his inability to obtain access to them, but -- at best -- from his assumption that they were in storage at a readily accessible location under the control of his family members (an assumption not meaningfully tested until the day before the deposition). These circumstances more than justified the trial court in concluding that Godfrey had obstructed the completion of discovery through lack of any meaningful attention to the production of documents incident to his own deposition (as to which he registered no prior objection), and through then foisting responsibility for production off onto co-defendant Beehive House, the business controlled by his family members.

Cochran Consulting, Inc. v. Uwatec USA, Inc., 102 F.3d 1224 (Fed. Cir. 1996) (cited at p. 14 of Godfrey's brief), presents a fact situation far removed from that before the lower court in this action. In Cochran, the holder of the patent for a scuba indicator device sued alleged patent infringers. Incident to pre-trial discovery, the patent owner obtained a court order requiring the alleged patent infringers to produce a printed copy of a computer programming code utilized in manufacturing the accused device. The alleged infringers were unable to produce the requested documentation in that it was protected under Swiss law. They even went to the length of filing legal action in Switzerland to obtain the requested information, which action was unsuccessful. Under these

circumstances, the federal circuit properly concluded that the infringers could not be sanctioned for their inability to produce the requested documentation.

The contrast between the facts in Cochran and those before the lower court in this action is self-evident. The lower court found, based upon substantial and reliable evidence, that Godfrey simply neglected his obligation to make discovery until the last moment, at which time defendants were unable to locate the requested documents which (apparently) they had themselves mislaid -- resulting in plaintiff's inability to conduct meaningful discovery.

### POINT III

#### THE LOWER COURT DID NOT ABUSE ITS DISCRETION IN FINDING GODFREY'S LACK OF COOPERATION IN RESPONDING TO DISCOVERY SANCTIONABLE BY STRIKING THE PLEADINGS AND ENTERING JUDGMENT.

Point II of Godfrey's Brief is little more than an attempt to re-characterize in more favorable light the facts underlying his failure to produce requested documents on two separate occasions. Appellee respectfully refers the Court to the record before the lower court in this regard. As noted, more than enough neglect, disregard and belated action was apparent from the record to justify the court's conclusion that Godfrey made no meaningful attempt to respond to plaintiff's discovery requests, and that what little attempt he did make was "too little and too late".

Godfrey properly observes that the imposition of sanctions for failure to make discovery requires a showing of "willfulness, bad faith or fault" (citing Utah Dept. of Transportation v. Osguthorpe, 892 P.2d 4 (Utah 1995)). In finding willfulness, bad faith or fault, however, the court need only find intentional failure as opposed to involuntary

noncompliance -- no wrongful intent need be shown. Amoco Mutual Insurance Company v. Shettler, 768 P.2d 950 (Utah App. 1989); M.E.N. Company v. Control Fluidics, Inc., 834 F.2d 869 (10th Cir. 1987). The lower court's leveling of sanctions against Godfrey was clearly based on findings that: (1) he had deliberately disregarded plaintiff's discovery requests, despite the prior imposition of an order compelling discovery, until the last moment; (2) he had then entrusted compliance to others, and taken no active role himself until the day prior to his deposition; and (3) the records which had admittedly been maintained by his family-owned company had mysteriously vanished. Such findings clearly justify the lower court's ruling and certainly preclude a finding that the trial court's sanctioning was an abuse of its discretion.

Neither may Godfrey avoid the consequences of his own action by citing the factual dissimilarity of other cases. He recites at length the facts in Utah Dept. of Transportation v. Osguthorpe, and briefly refers to the fact situations in other cases. Each discovery situation, however, is bound to turn on its own facts. It is for this reason that the trial court, being the closest to the situation and in the best position to adjudicate the merits thereof, is given such broad discretion in the imposition of sanctions. See Darrington v. Wade, 812 P.2d 452 (Utah App. 1991).

#### POINT IV

#### THE LOWER COURT'S ORDER WAS NOT PROCEDURALLY FLAWED.

In his final point, Godfrey attempts to argue that there were procedural flaws in the lower court's ruling. None of his various arguments is of merit.

Godfrey argues, first, that the sanction of striking pleadings and entering judgment by default was inappropriate because there had been no prior order to produce documents, but only to pay sanctions and appear for deposition. This argument is flawed for two reasons.

First, Rule 37(d), of the Utah Rules of Civil Procedure (under which plaintiff moved in this matter See R. 225), permits the imposition of sanctions -- *including the striking of pleadings and the entry of judgment by default* -- where a party fails to respond to a document request; *no prior order compelling discovery is necessary*.

Second, the lower court had previously entered an order granting sanctions for failure to comply with a notice of deposition which was clearly, and on its face, coupled with a request for production of documents pursuant to Rules 30(b)(5) and 34, of the Utah Rules of Civil Procedure (R. 86 and Addendum 1 hereto). Godfrey is attempting, apparently, to quibble with the wording of the prior order, which compelled him to pay attorneys' fees as a sanction, and thereafter present himself for deposition, yet made no express mention of documents or imposed any deadline for their production. Nevertheless, the second notice of deposition (again coupled with a request for production of documents) *did* state a date and time certain for production of the requested documents, and gave ample time under the rules for compliance.

Godfrey next attempts to reach back to the court's first order sanctioning him for noncompliance with discovery, and quarrel with the propriety of *its* entry, observing that the deposition in question had been canceled by plaintiff's counsel before the established date. While of questionable relevance, this assertion is readily answered.

Plaintiff's counsel canceled the deposition upon being notified by Mr. Godfrey's counsel that he would not appear for deposition. Affidavit of Vincent C. Rampton (R. 111) at ¶ 5-6.

Godfrey next argues that the *first* notice of deposition (his disregard of which resulted in his first sanction order from the court) provided him less than thirty days to respond to the accompanying document request. While again of questionable relevance to the order being appealed from, this observation is likewise easily answered. Godfrey made no objection whatever to the notice on the basis of insufficient time to respond, either prior to or following the date set for his deposition. Indeed, his only response to the request (other than to have his counsel notify plaintiff's counsel that he would not be appearing) was to file a belated Motion for Protective Order after the date set for the deposition -- *which nowhere raises any objection to the length of time permitted for response to the document request* (R. 115). Both Rule 30 and Rule 37 of the Utah Rules of Civil Procedure make it clear that a party may not disregard a discovery request, and afterward raise legal insufficiencies and objections when no protective order has been sought.

Finally, Godfrey seems to argue that the first order imposing sanctions on him for failure to comply with the August 1996 notice of deposition was somehow flawed in that it resulted from plaintiff's counsel renegeing on an implied agreement to postpone the deposition until September of 1996. This version of the facts, first urged to the trial court incident to Godfrey's September 6, 1996 Motion for Protective Order, was flatly contradicted by submissions through plaintiff's counsel (see R. 111; 151). The evidence



clearly established that no agreement had been or could be reached to postpone the deposition of Godfrey without an understanding that, upon his failure to appear for such deposition, default judgment could be entered against all named defendants in the action. When defendants refused to agree to this proposition, a motion for sanctions was pursued. See R. 151.

### CONCLUSION

It has been admitted in the pleadings in this action, from the very outset, that defendants S. Chad Godfrey and The Beehive House received over \$380,000.00 from plaintiff Mary M. Tuck before her death; that the transfers were in the form of personal checks bearing the legends "loan" or "real estate investment"; that they made two attempts to pay back a portion of that money (which failed due to the dishonoring of the tendered checks); that they have made no attempt to pay back any portion of the balance. Plaintiff thereupon undertook to conduct discovery to find out what had happened to the money. His first attempt to obtain documents in deposition testimony from Godfrey was met with the announcement that Godfrey was "out of state" (later learned to be in a federal penitentiary facility, a fact concealed from both plaintiff and the court) and would not be appearing, with or without documents. When negotiations for rescheduling of the deposition failed, and a motion for sanctions was brought, the court ordered Godfrey to pay attorneys' fees and thereafter respond to discovery. When his deposition was re-noticed for July of 1997 (again with attendant production of documents), the day of the deposition arrived, but the documents did not.

Plaintiff thereafter discovered that Mr. Godfrey has disregarded the discovery request until shortly before the deposition; that he had then asked representatives of

Beehive House to locate the documents for him; that the documents (which had admittedly been maintained and kept by The Beehive House, Mr. Godfrey's family owned business) had mysteriously disappeared, and could not be produced. Plaintiff's follow-up motion for sanctions was deferred for several weeks despite plaintiff's request for expedited hearing. Even with the additional time, however, Godfrey did not produce any documents, and made no attempt to obtain them from any other source.

When all of the foregoing facts were laid before the trial court on September 4, 1997, the trial judge had plainly and understandably had enough of Godfrey's conduct. The resulting order striking Godfrey's pleadings and entering default judgment against him is defensible under any legal standard and certainly does not rise to the level of an "abuse of discretion".

Based on the foregoing, it is submitted that lower court's order on Plaintiff's Motion for Sanctions for Failure to Make Discovery should be affirmed.

DATED this 15<sup>th</sup> day of November, 1998.

JONES, WALDO, HOLBROOK & McDONOUGH

By 


Vincent C. Rampton  
Attorneys for Plaintiffs/Appellee

# CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of November, 1998, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLEE to the following:

Dennis K. Poole  
Andrea Nuffer Godfrey  
DENNIS K. POOLE & ASSOCIATES  
4543 South 700 East #200  
Salt Lake City, UT 84107

Kim R. Wilson  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place #1100  
Salt Lake City, UT 84145

---

Tab 1

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ST

Ronny L. Cutshall (USB #0793)  
Vincent C. Rampton (USB #2684)  
JONES, WALDO, HOLBROOK & McDONOUGH  
Post Office Box 45444  
Salt Lake City, Utah 84145-0444  
Telephone: (801) 521-3200

*Attorneys for Plaintiff*

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

---

MARY M. TUCK,

Plaintiff,

vs.

THE BEEHIVE HOUSE, a Utah Limited  
Partnership, and S. CHAD GODFREY, an  
individual,

Defendants.

:  
:  
: NOTICE OF DEPOSITION  
:  
:  
:

: Case No. 950908242CN

: Judge Anne M. Stirba  
:  
:

TO THE DEFENDANTS, S. CHAD GODFREY AND THE BEEHIVE HOUSE, AND  
THEIR COUNSEL:

Notice is hereby given that the deposition of S. Chad Godfrey in the above-entitled action will be taken before a certified shorthand reporter at the offices of Jones, Waldo, Holbrook & McDonough, 1500 First Interstate Plaza, 170 South Main, Salt Lake City, Utah, on Monday, August 19, 1996 commencing at 10:00 a.m.

Pursuant to Rule 30(b)(5) and 34, Utah Rules of Civil Procedure, defendant Godfrey is requested to bring with him the following documents to his deposition:

1. All bank statements or other records of deposit indicating what disposition The Beehive House or S. Chad Godfrey made of funds paid by plaintiff Mary M. Tuck through tender of the checks attached to the complaint herein as exhibits 1-8 and 10-11.
2. Any and all cancelled checks, check registers, ledgers, accounting records, or other documents of any nature or description reflecting the disposition which S. Chad Godfrey or The Beehive House made of any of the funds transferred by means of the checks attached to plaintiff's complaint herein as exhibits 1-8 and 10-11.
3. Any and all contracts, letters of intent, memoranda of understanding or other written agreements (or written memoranda of verbal agreements) between plaintiff and The Beehive House and/or S. Chad Godfrey.
4. Any copies of the Policies and Procedures of The Beehive House bearing plaintiff's signature.

5. Copies of any and all notices to pay or quit, notices of delinquency, or other written communication whether between S. Chad Godfrey and/or The Beehive House, and plaintiff, in connection with plaintiff's alleged failure to pay rent as set out at paragraph 6 of your counterclaim herein.

6. Copies of any billings, accountings, or itemizations, or other documents of whatever nature setting out the services and tasks performed on plaintiff's behalf by S. Chad Godfrey and/or The Beehive House, as set out at paragraph 9 of the counterclaim.

DATED this 7<sup>th</sup> day of August, 1996.

JONES, WALDO, HOLBROOK &  
McDONOUGH

By 

Vincent C. Rampton

CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of August, 1996, I caused to be hand delivered a true and correct copy of the foregoing NOTICE OF DEPOSITION, to the following:

Brad W. Merrill  
PARRY, MURRAY & WARD  
1270 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111



---



Tab 2

COPY



Tempest  
Reporting, Inc.

Post Office Box 3474  
Salt Lake City, Utah 84110

(801) 521-5222  
(801) 521-5244 fax

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

-0-

MARY M. TUCK,

Plaintiff,

-v-

THE BEEHIVE HOUSE, a Utah  
Limited Partnership, and  
S. CHAD GODFREY, an  
individual,

Defendants.

:  
:  
: Case No. 950908242CN  
(Judge Anne M. Stirba)

:  
: Deposition of:  
: BRIGHAM RALPH GODFREY

-0-

Place:

JONES, WALDO,  
HOLBROOK & MCDONOUGH  
170 South Main Street, #1500  
Salt Lake City, Utah 84101

Date:

July 11, 1997  
9:10 a.m.

Reporter:

Vickie W. Larsen, CSR/RPR

-0-



A P P E A R A N C E S

For the Plaintiff, Mary M. Tuck:

Mr. Vincent C. Rampton  
JONES, WALDO, HOLBROOK & MCDONOUGH  
170 South Main Street, #1500  
Salt Lake City, Utah 84101  
(801) 521-3200

For the Defendant, The Beehive House:

Mr. Brad W. Merrill  
PARRY, MURRAY, WARD & LAWRENCE  
1270 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
(801) 521-3434

For the Defendant, S. Chad Godfrey:

Mr. Kim R. Wilson  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, #1100  
Salt Lake City, Utah 84111  
(801) 521-9000

Also Present:

Ms. Tammy Richards

- oOo -

I N D E X

Witness

Page

BRIGHAM RALPH GODFREY

Examination by Mr. Rampton	5
Examination by Mr. Merrill	22
Re-examination by Mr. Rampton	30

- oOo -

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page</u>
19	Notice of Deposition	10

- oOo -

1 July 11, 1997

9:10 a.m.

2 P R O C E E D I N G S

3  
4 BRIGHAM RALPH GODFREY,

5 called as a witness, having been duly sworn,  
6 was examined and testified as follows:

7  
8 MR. RAMPTON: Would you state your full  
9 name for the record, please.

10 THE WITNESS: It's Brigham Ralph Godfrey.

11 MR. RAMPTON: What's your current  
12 address?

13 THE WITNESS: I live in two different  
14 areas. I live in River Heights by Logan, and I live  
15 at 5900 South Holiday.

16 MR. RAMPTON: Is either one of those your  
17 primary residents?

18 THE WITNESS: My primary residence is 701  
19 Mountain View Drive; River Heights, Utah.

20 MR. RAMPTON: Have you ever had your  
21 deposition taken before, sir?

22 THE WITNESS: No.

23 MR. RAMPTON: Okay. Let me explain a  
24 little bit what's going to happen, although I'm sure  
25 your counsel talked to you about this.

1 I introduced myself to you before I went  
2 on the record. I'm Vince Rampton, counsel for the  
3 estate of Mary Tuck in this matter.

4 The purpose of the deposition today is to  
5 gain information relevant to the lawsuit that has  
6 been filed against The Beehive House and against  
7 Chad Godfrey.

8 I'm going to be asking you questions.  
9 You need to answer me audibly and out loud, because  
10 the court reporter can't take down nods or shakes of  
11 the head the way we usually talk, so you need to  
12 answer out loud.

13 When I finish asking my questions,  
14 opposing counsel will have the opportunity to ask  
15 you questions if they want to. When everyone's  
16 through asking questions, we'll be done.

17

18 EXAMINATION

19 BY MR. RAMPTON:

20 Q. You are familiar with the limited  
21 liability partnership by the name of The Beehive  
22 House, aren't you?

23 A. Yes.

24 Q. Are you a partner in The Beehive House?

25 A. I am the owner.

1 Q. Okay. By the way, am I saying it right,  
2 is it just called The Beehive House?

3 A. It's Beehive Health, Inc.

4 Q. Beehive Health, Inc.?

5 A. Yes.

6 Q. Is it a corporation?

7 A. Yes.

8 Q. When did it become a corporation?

9 A. Within the past three months. It's been  
10 lately. I don't know exactly.

11 Q. Before the creation of The Beehive House  
12 Corporation or Beehive -- is it Beehive Health?

13 A. Beehive Health.

14 Q. Before the formation of Beehive Health,  
15 Inc. was there a partnership known as The Beehive  
16 House?

17 A. Yes.

18 Q. Were you a partner in that?

19 A. I was the owner of it.

20 Q. Were there any other partners or owners?

21 A. Just me. We have shareholders.

22 Q. All right. Before the formation of  
23 Beehive Health, Inc. which you said was about three  
24 months ago, was Beehive House a corporation?

25 A. It was a family corporation, yes.



1 Q. Who set it up for you?

2 A. We as a family.

3 Q. Did you hire a lawyer to help you with  
4 it?

5 A. A lawyer was involved, yes.

6 Q. Who was that?

7 A. It's been two or three, I'm not right  
8 sure so I better not answer.

9 Q. They put some papers together for you,  
10 did they?

11 A. Yes.

12 Q. Regardless of what kind of an entity it  
13 was then, who besides yourself was involved in its  
14 formation -- that's a terrible question.

15 Who besides yourself had an interest in  
16 the company?

17 A. We as a family.

18 Q. Who is "we as a family," who besides you?

19 A. My wife.

20 Q. Could you --

21 A. My children and -- pardon?

22 Q. Could you give me your wife's name,  
23 please.

24 A. Ruth.

25 Q. Ruth Godfrey?

1 A. Yes.

2 Q. Which children?

3 A. We have four children, Kirk, Chad, Lex  
4 and Leilani.

5 Q. Leilani?

6 A. Leilani. Just like Hawaii. L-e-i-n-i-l-  
7 -- I'm not saying.

8 Q. L-e-i-l-a-n-i, I think.

9 And each one of them had an interest in  
10 the company?

11 A. Yes, they were all four what we were  
12 trying to do.

13 Q. Did they have an ownership right in the  
14 company as far as you know?

15 A. Let's see, I need that rephrased.

16 Q. Could you read the question back.

17 A. I own the company, and as a family we all  
18 take part in what we're trying to do. Does that --  
19 is that what you're trying to get at?

20 Q. I guess I'm trying to get you to talk  
21 like a lawyer, and that's not fair.

22 When you say you own the company --

23 A. I am not a lawyer, period.

24 Q. Good for you.

25 MR. MERRILL: Amen.

1 Q. BY MR. RAMPTON: When you say you own the  
2 company, what do you mean by that?

3 A. I sign for the documents. I'm the  
4 director. I know what's -- what they're doing as a  
5 family. When we all meet, the board of directors  
6 and things like that, I take part of that and see  
7 that it's done right.

8 Q. Do you know who else is on the board of  
9 directors besides yourself?

10 A. There's Pam, my wife -- let's see, I'm  
11 not right sure on the directors or not, but I know  
12 Chad's children, but I don't think they are part of  
13 the directors.

14 Q. Is there paperwork that you know of that  
15 sets out the organization of the company -- we've  
16 got two companies here, I got to keep that in mind.

17 There was The Beehive House which existed  
18 back before three months ago, and Beehive Health  
19 which you formed three months ago, right?

20 A. Approximately, yes.

21 Q. I'm not much interested in the Beehive  
22 Health, it's too new and we don't have a claim  
23 against it. I'm talking now about the old company.

24 A. All right.

25 Q. Beehive House. Are there papers

1 somewhere that set out who the participants are?

2 A. Yes, there is a book.

3 MR. RAMPTON: We'd like that produced,  
4 please.

5 MR. MERRILL: That's fine. We don't have  
6 it here today.

7 THE WITNESS: It will tell you.

8 MR. RAMPTON: Let's mark this. For the  
9 record, counsel, we've already taken Mary Tuck's  
10 deposition in this matter, and we had 18 exhibits.  
11 So I'm going to start at 19, if that's all right.

12 (Exhibit 19 was marked for identification.)

13 Q. BY MR. RAMPTON: I'll show you now what's  
14 been marked as Exhibit 19 to your deposition, which  
15 is a Notice of Deposition under which you appeared  
16 today.

17 Have you seen that before?

18 A. Yes.

19 Q. When did you first see it?

20 A. It's this one right here, isn't it?  
21 Similar to the one that was mailed to me.

22 Q. And when was that, when did you first see  
23 that, approximately?

24 A. Let's see, it's been I'd say about nine  
25 days ago, if that's the same. I haven't read it

1 over close enough.

2 Q. Exhibit 19 there if you'll see is dated  
3 June 3rd. But your testimony is you didn't see it  
4 until ten days ago?

5 A. That's when I got it in the mail.

6 Q. If you turn to the second page of that,  
7 please. The last two paragraphs of that page are  
8 numbered and constitute document requests for this  
9 deposition. Can you read the one there -- you don't  
10 need to read it to me -- can you see where I'm  
11 looking at Paragraph Number 1 there that begins "All  
12 bank statements"?

13 A. Yes.

14 Q. "All bank statements or other  
15 records of deposit indicating what  
16 disposition The Beehive House or S.  
17 Chad Godfrey made of funds paid by  
18 plaintiff Mary M. Tuck through  
19 tender of the checks attached to the  
20 complaint herein as exhibits 1-8 and  
21 10-11."

22 You see where I'm reading that?

23 A. Yes.

24 Q. Before we went on the record here your  
25 counsel -- not your counsel, Chad Godfrey's counsel

Godfrey (Examination by Mr. Rampton)

1 -- explained to me that you have not produced any  
2 deposition -- or any cancelled checks in your  
3 deposition today in response to that; is that  
4 correct?

5 MR. MERRILL: You need to answer audibly  
6 so he can hear you.

7 A. We don't have any here, if that's what  
8 you mean. We have them.

9 Q. BY MR. RAMPTON: But you have not brought  
10 them here with you today?

11 A. That's right.

12 Q. They're not where you can go get them,  
13 apparently?

14 A. That is correct.

15 Q. Are they maintained?

16 A. They are maintained.

17 Q. But you have not produced them?

18 A. We have not produced them because we  
19 don't know just where they are.

20 Q. Your counsel suggests -- or Mr. Chad  
21 Godfrey's counsel suggested off the record that  
22 you've conducted searches in various places,  
23 including a storage facility maintained by Chad  
24 Godfrey; is that correct?

25 MR. WILSON: Excuse --

1           A.     It wasn't by Chad Godfrey, no.

2           MR. WILSON:   Excuse me.

3           MR. RAMPTON:   Did I blow it?

4           MR. WILSON:   Well, The Beehive House, and  
5 I'm only repeating what was -- I was told, but The  
6 Beehive House maintains records at a storage off  
7 site.

8           Q.     BY MR. RAMPTON:   Where is The Beehive  
9 House's off site storage?

10          A.     There is some at Creek Road and some at  
11 the residence of 5900 South.

12          Q.     Who lives at 5900 South?

13          A.     I do and Chad's family.

14          Q.     Who is primarily responsible for the  
15 storage and maintenance of those records on behalf  
16 of The Beehive House?

17          A.     There's three or four involved at the  
18 time, and I don't know who took care of them or --

19          Q.     Who were the three or four involved?

20          A.     Different ones that was in charge.

21          Q.     Who are they?

22          A.     At the time it was Deane and Pam, and I  
23 think Mary Woodland had something to do with them,  
24 because they was all downstairs in The Beehive House  
25 and where they went -- when they done some things,

1 remodeling everything, they went here, they went  
2 there and --

3 Q. Did Chad Godfrey have any responsibility  
4 for their transport or storage?

5 A. He did not.

6 Q. Have you consulted with Mr. Chad Godfrey  
7 in connection with this Exhibit 19 and complying  
8 with it?

9 A. Yes, he's been consulted.

10 Q. Did you ask him to find the records for  
11 you?

12 A. We tried to do that yesterday and before  
13 and we have not found them.

14 Q. But did you ask him to do so?

15 A. Yes.

16 Q. That would presuppose that you thought he  
17 might know where they were; is that correct?

18 A. Well, by him asking others. He didn't  
19 know where they were, but he was informing others to  
20 try to help us find the records.

21 Q. Let's go down to Paragraph 2 there where  
22 it says:

23 "Any and all cancelled checks,  
24 check registers, ledgers, accounting  
25 records, or other documents of any



1 nature or description reflecting the  
2 disposition which S. Chad Godfrey or  
3 The Beehive House made of any of the  
4 funds transferred by means of the  
5 checks attached to plaintiff's  
6 complaint herein as exhibits 1-8 and  
7 10-11."

8 See where I'm reading that?

9 A. Yes.

10 Q. Have you produced any records or do you  
11 have that here with you responsive to that?

12 A. No, we don't.

13 Q. But you still are -- The Beehive House is  
14 still in possession of records responsive to that  
15 but you haven't brought them today; is that correct?

16 A. That is correct.

17 Q. Let's go to Paragraph Number 3.

18 "Any and all contracts, letters of  
19 intent, memoranda of understanding  
20 or other written agreements (or  
21 written memoranda of verbal  
22 agreements) between plaintiff and  
23 The Beehive House and/or S. Chad  
24 Godfrey."

25 Do you see where I'm reading?

1           A.     Yes.

2           Q.     That's a little legalese.  Do you  
3 understand what it asks for?

4           A.     Now, which is -- what do you mean, I  
5 should have brought all these things?

6           Q.     Yes.

7           A.     Is that what you're getting at?

8           Q.     Did you bring anything that was  
9 responsive to that Paragraph 3?

10          A.     No.  We don't have any.  We're still  
11 looking.  That's what it pertains to.

12                 MR. WILSON:  I don't want to disturb your  
13 record, but we've provided a file folder of  
14 materials that contains matters responsive to that.  
15 Those are primarily provided by Mr. Godfrey as a  
16 file --

17                 MR. MERRILL:  Mr. Chad Godfrey.

18                 MR. WILSON:  -- file that he maintained.

19                 MR. RAMPTON:  Well, counsel, this is the  
20 time set, after many months, for production of these  
21 documents.  I want the record to reflect that  
22 yesterday, which is the date that was set for Ralph  
23 Godfrey's deposition, I did suggest that we postpone  
24 that until today with the understanding that all  
25 responsive records would be produced and I'd have a

1 chance to go over them, address them today.  
2 Apparently they weren't here yesterday and  
3 apparently they're not here today.

4 The primary purpose of this deposition  
5 was to examine what disposition was made of about  
6 three hundred eighty plus thousand dollars to be  
7 transferred by Mary Tuck to The Beehive House or to  
8 Chad Godfrey, find out what was done with the  
9 money.

10 The records aren't here. The notice has  
11 been outstanding for more than thirty days, required  
12 by the rule, and so I think that's where we are.

13 I'm not going to sit here and make you  
14 wait for me to decide what to do. There's really  
15 not much place I can go right now without those  
16 records. It's not going to make much sense to  
17 proceed. I'm going to suggest we continue these  
18 depositions. I was trying to formulate a  
19 stipulation to get us around all these, but  
20 everything I come up with I know darn well you guys  
21 aren't going to agree with.

22 MR. MERRILL: Try us. I would suggest,  
23 Vince, that you -- if you've got other questions for  
24 Mr. Ralph Godfrey regarding his affidavit or other  
25 facts outside of the banking records. I believe

1 that what Mr. Wilson's trying to put on the record  
2 earlier was the only documents that we have not  
3 produced today that have not been located despite  
4 efforts to find them are the banking records and the  
5 ones that dealt with Paragraphs Number 1 and Number  
6 2 of the subpoena duces tecum. I believe that for  
7 Paragraphs 3, 4, 5 and 6, either those documents do  
8 not exist, they've never been created or they've  
9 been produced in this packet of stuff.

10 Is that close to accurate?

11 MR. WILSON: Let me just say that the  
12 packet contains writing materials which are  
13 responsive to three and to six. Six is a very broad  
14 request and there are a variety of materials in this  
15 folder that I've given you that I think are  
16 generally responsive to that.

17 MR. MERRILL: Yeah. With regard to  
18 Paragraph 4, there is no signed copy of policies and  
19 procedures of The Beehive House. I believe you have  
20 a unsigned one or one that's a typical Beehive House  
21 policies and procedures that have been produced to  
22 you previously.

23 In response to Number 5, there have been  
24 no notices to pay or quit or similar eviction-type  
25 unlawful detainer-type documents ever produced. So

Godfrey (Examination by Mr. Rampton)

1 there are no documents responsive to either of those  
2 requests. So it's up to you. My suggestion would  
3 be we've got him here, let's go through.

4 MR. RAMPTON: Counsel, I have to  
5 disagree. I know we've got him here, but what we  
6 don't have here are the records that we have to go  
7 through. At the very best he's going to have to  
8 come back. He's going to have to come back. We've  
9 put this off months ago. But I'm going to ask a  
10 couple follow ups, but I think that's about all I  
11 can accomplish today.

12 Q. Is Mr. Chad Godfrey presently in Salt  
13 Lake City?

14 A. Yes.

15 MR. WILSON: Yes.

16 Q. BY MR. RAMPTON: He was out of the state  
17 for a while, wasn't he?

18 A. That's right.

19 Q. Where did he go?

20 A. Chad was in the federal camp at Colorado.

21 Q. For what charge?

22 A. You'll have to ask my son that.

23 Q. I'm asking you, sir.

24 MR. MERRILL: If you know, Ralph.

25 A. That I don't know. I don't know all the

1 particulars.

2 Q. BY MR. RAMPTON: For how long was he in  
3 the federal camp?

4 A. Let's see. Let me just look. It was  
5 from -- it was October of '95 to January of '97.

6 Q. You say you don't know all the  
7 particulars concerning his custody in the federal  
8 camp, what particulars do you know?

9 A. Really I don't know how to word it, so I  
10 better not say, because I'm no lawyer to wiggle  
11 words that will help or defend my son.

12 Q. Do you know what he was charged with?

13 A. He was charged with something that he  
14 didn't do, I'll say that.

15 Q. But he was convicted of it?

16 A. He was convicted.

17 Q. What was he convicted of?

18 A. You better ask my son that. He'll tell  
19 you.

20 Q. Can you tell me?

21 A. I can't tell you.

22 Q. Do you know?

23 A. I don't know all the particulars, no.

24 Q. Do you know what he was convicted of?

25 MR. MERRILL: If you know, Ralph,

1 answer --

2 MR. RAMPTON: Please don't prompt the  
3 witness.

4 A. He was in real estate and he got involved  
5 with something like that. Now as far as I know  
6 there was some banks with that, and that's as far as  
7 I know. So that is the end of the story.

8 Q. BY MR. RAMPTON: Was the conviction here  
9 locally?

10 A. You'll have to talk to my son.

11 Q. Do you know if the conviction was locally  
12 here in Utah?

13 A. I'd say no.

14 Q. Did you attend the trial?

15 A. No.

16 MR. RAMPTON: Let's go off the record for  
17 a minute.

18 (There was a discussion held off the record.)

19 (There was a short break taken.)

20 MR. RAMPTON: Let's go back on the  
21 record, if we may.

22 I've now had the opportunity to review  
23 the file that's been produced in connection with the  
24 deposition notice today and verified for myself what  
25 it does and does not contain. We would like copies

Godfrey (Examination by Mr. Rampton)

1 of everything that's in here, if that's acceptable.  
2 Send me the bill of course, and on your honor take  
3 care of it.

4 MR. WILSON: I'll talk to you off the  
5 record about arrangements.

6 MR. RAMPTON: Beyond that I am going to  
7 continue this deposition, and continue the  
8 deposition of Ralph -- I'm sorry, Ralph, I've got  
9 you messed up with Chad -- of Chad Godfrey, because  
10 I do want to take that deposition all at one bite  
11 for tactical reasons. And so we'll continue it  
12 until a later time.

13 MR. MERRILL: Are we going to continue  
14 both of them?

15 MR. RAMPTON: Yes.

16 MR. MERRILL: Okay.

17 MR. RAMPTON: Okay. Can we be off the  
18 record?

19 MR. WILSON: Sure.

20 (There was a discussion held off the record.)

21 MR. MERRILL: Back on the record.

22

23 EXAMINATION

24 BY MR. MERRILL:

25 Q. Now, Ralph, you know me, I'm Brad Merrill



Godfrey (Examination by Mr. Merrill)

1 and I represent your company that owns The Beehive  
2 House --

3 A. Yes.

4 Q. -- is that right?

5 A. Right.

6 Q. And Mr. Rampton went through parts of  
7 your Notice of Deposition which requests that  
8 certain documents be produced today. Do you  
9 remember that?

10 A. I do.

11 Q. I want just to go through some of those  
12 again with you and make certain that we're  
13 absolutely clear what efforts were taken by you and  
14 your Beehive House staff to obtain these records,  
15 okay?

16 A. Okay.

17 Q. The first request for documents asks  
18 for:

19 "All bank statements or other  
20 records of deposits indicating what  
21 disposition The Beehive House or S.  
22 Chad Godfrey made of funds paid by  
23 plaintiff Mary Tuck through tender  
24 of the checks attached to the  
25 complaint herein."

Godfrey (Examination by Mr. Merrill)

1           Have you seen those checks, copies of  
2 those checks that were attached to Ms. Tuck's  
3 complaint?

4           A.    No, I haven't seen them.

5           Q.    You've seen the copies of the checks that  
6 Mary wrote to Chad Godfrey.

7           A.    Do you mean when did I see them, you mean  
8 lately or what?

9           Q.    At any time.

10          A.    I've seen copies lately.

11          Q.    Okay.

12          A.    Copies but not the check, but I seen  
13 something in that book a while ago.

14          Q.    Is it your understanding that what has  
15 been asked of you and The Beehive House and Chad are  
16 Beehive House bank records?

17          A.    Yes.

18          Q.    That's your understanding, during the  
19 time period that Mary Tuck wrote those checks to  
20 Chad?

21          A.    Yes.

22          Q.    Okay. Can you tell me to the best of  
23 your recollection how The Beehive House maintains or  
24 stores their banking records.

25          A.    It's done through those qualified to do

1 it. They help store it. That's all I can say. I'm  
2 not involved with all this, but I try to do that.

3 Q. And what various places of banking  
4 records for The Beehive House has been stored over  
5 the last four or five years?

6 A. Right at the Beehive House until they  
7 rearranged things, and then they moved them from  
8 here to there to try to get a better location,  
9 closer location for them.

10 Q. What are the other places other than The  
11 Beehive House?

12 A. Creek Road and some of them wound up by  
13 Chad's children down in the house.

14 Q. Other than The Beehive House, the Creek  
15 Road storage facility that we've talked about, and  
16 the home of 5900 South --

17 A. Yes.

18 Q. -- Holiday Boulevard?

19 A. Put it that way, where Chad lives.

20 Q. Is there any other place that you're  
21 aware of --

22 A. No.

23 Q. -- where those records would be?

24 A. No.

25 Q. And have you or Chad or either yourselves

1 or somebody else who works for The Beehive House  
2 looked at all three of those locations for those  
3 records?

4 A. We have, yes.

5 Q. How extensively did you look through  
6 those records?

7 A. Went through them all what we had.

8 Q. And were you unable to locate --

9 A. We're unable to locate what we were  
10 looking for.

11 Q. Okay. Do you believe that those records  
12 exist somewhere?

13 A. They did, and I still think they can be  
14 found, yes.

15 Q. But as far as you know are they anywhere  
16 where you understood all the banking records were  
17 kept?

18 A. Yes.

19 Q. I think you misunderstood the question.

20 A. Well, I misunderstood the question then,  
21 there's no need to laugh.

22 MR. RAMPTON: Not laughing at you, sir,  
23 I'm laughing at the question.

24 A. I make a goof, I make a goof.

25 MR. RAMPTON: I'm sorry.

1 MR. MERRILL: It's all right, he wasn't  
2 laughing at you, Ralph.

3 Q. You've looked everywhere --

4 A. Yes, I looked everywhere.

5 Q. -- where you believe the records are.

6 The other points of the Notice of  
7 Deposition that asks for you to produce documents  
8 includes contracts or letters or memoranda -- I'm  
9 trying to interpret some of the legalese for you --  
10 between Mary Tuck and The Beehive House or Mary Tuck  
11 and Chad Godfrey.

12 As far as you know the documents that  
13 were produced today, was that -- did that include  
14 all of those type of documents that you're aware of?

15 A. No.

16 Q. What other documents?

17 A. Well, what we're looking for, the bank  
18 statements and other things pertaining to this here.

19 Q. But other than the bank statements, any  
20 communication or correspondence between The Beehive  
21 House or Chad and Mary Tuck, has that been produced?

22 A. Well, there might have been some in that  
23 other envelope. This here over here. I'm not right  
24 positive.

25 Q. Okay. Were you responsible for gathering

1 any of that information?

2 A. I helped, yes. I helped gather looking  
3 for this other information, yes. I've been helping.

4 Q. Looking for the bank records?

5 A. That's right. All these books,  
6 everything.

7 Q. Okay. The Number 4 asks for policies and  
8 procedures of The Beehive House. And there's a  
9 document you're aware of that's entitled Policies  
10 and Procedures of the Beehive House; isn't that  
11 right?

12 A. That's right.

13 Q. And they're asking for one that's bearing  
14 Mary Tuck's signature. As far as you know does such  
15 a document exist?

16 A. No. Mary Tuck did not sign nothing. She  
17 would not sign nothing in regards to that. She did  
18 not pay for her rent.

19 Q. And Number 5. Paragraph Number 5 asks  
20 for copies of any notices for her to pay rent or  
21 notices for her to leave The Beehive House or other  
22 documents of that sort.

23 Were any documents of that sort ever  
24 given to Mary Tuck or created?

25 A. Not to my knowledge, no. I mean, we

1 didn't do anything like that. We liked Mary, and  
2 that was about it.

3 Q. Number 6 asks for any documents that  
4 would set forth some of the services that either you  
5 or The Beehive House or Chad performed for Mary and  
6 any documents ever created that itemized the  
7 services that you or The Beehive House performed for  
8 Mary Tuck.

9 A. Let's see, I'm trying to read this and  
10 listen to you at the same time.

11 Q. A hard task.

12 A. Copies of billing -- restate that again,  
13 please.

14 Q. Number 6, I'm going to paraphrase it, is  
15 asking for any documents -- and don't read it, just  
16 listen to me -- any documents that itemize or  
17 demonstrate services that either you or Chad or The  
18 Beehive House performed for Mary Tuck, taking her on  
19 errands or other things of that sort. Were there  
20 any documents, to your knowledge, that have ever  
21 been created that did that?

22 A. I'll say no, there was no documents. But  
23 we done a lot of services for Mary Tuck. We took  
24 her several places. I have and Chad took her all  
25 over and was real good to her and many things.

1 Q. Okay. Other than the banking records,  
2 the records that -- the banking records of The  
3 Beehive House and Chad relative to Mary Tuck, have  
4 you located all the documents regarding Mary Tuck  
5 that you're aware of?

6 A. I'd say no because we haven't found all  
7 of them.

8 Q. What haven't you found?

9 A. The thing that we're still looking for,  
10 the checks and other pertain to the things that ask  
11 for in this here procedure.

12 Q. Okay.

13 A. We haven't found them.

14 MR. MERRILL: Okay. All right. You want  
15 to add anything, Kim?

16 MR. RAMPTON: Just one follow-up  
17 question.

18 THE WITNESS: Yes.

19

20 RE-EXAMINATION

21 BY MR. RAMPTON:

22 Q. When did you start looking for them?

23 A. When we first got this. We done most of  
24 it in the last few days to get prepared for coming  
25 down here.



1           Q.     So you basically started looking the last  
2 few days?

3           A.     Well, few days could be 15 days.

4           Q.     Has it been 15 days?

5           A.     We've had this been asking about it and  
6 yesterday we really went for it, more or less, and  
7 had everybody try to go help us find these things so  
8 we could get done.

9           MR. RAMPTON:   That's all I have.

10          MR. MERRILL:   Okay.

11          (The deposition was continued at 10:15 a.m.)

12                       \*                       \*                       \*

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Deponent's Certificate

I, BRIGHAM RALPH GODFREY, deponent  
herein, do hereby certify and declare the within and  
foregoing transcription to be my deposition in said  
action taken on July 11, 1997; that I have read,  
corrected, and do hereby affix my signature to said  
deposition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
1997.

\_\_\_\_\_  
Deponent

STATE OF UTAH        )  
                          ) ss.  
                          )

SUBSCRIBED AND SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public residing in  
\_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

FILED  
COURT  
JAN 11 1964

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

**Judge Anne M. Stirba**

TO THE DEFENDANTS, S. CHAD GODFREY AND THE BEEHIVE HOUSE, AND  
THEIR COUNSEL:

Notice is hereby given that the depositions of Ralph Godfrey and S. Chad Godfrey in the above-entitled action will be taken before a certified shorthand reporter at the offices of Jones, Waldo, Holbrook & McDonough, 1500 First Interstate Plaza, 170 South Main, Salt Lake City, Utah, on the dates and at the times indicated below:

1. Ralph Godfrey - Thursday, July 10, 1997 at 10:00 a.m.
2. S. Chad Godfrey - Friday, July 11, 1997 at 10:00 a.m.

Pursuant to Rule 30(b)(5) and 34, Utah Rules of Civil Procedure, deponents are requested to bring with them the following documents to their depositions, to the extent such documents are in their possession or under their control or otherwise accessible to them:

1. All bank statements or other records of deposit indicating what disposition The Beehive House or S. Chad Godfrey made of funds paid by plaintiff Mary M. Tuck through tender of the checks attached to the complaint herein as exhibits 1-8 and 10-11.
2. Any and all cancelled checks, check registers, ledgers, accounting records, or other documents of any nature or description reflecting the disposition which S. Chad Godfrey or The Beehive House made of any of the funds transferred by means of the checks attached to plaintiff's complaint herein as exhibits 1-8 and 10-11.

3. Any and all contracts, letters of intent, memoranda of understanding or other written agreements (or written memoranda of verbal agreements) between plaintiff and The Beehive House and/or S. Chad Godfrey.

4. Any copies of the Policies and Procedures of The Beehive House bearing plaintiff's signature.

5. Copies of any and all notices to pay or quit, notices of delinquency, or other written communication whether between S. Chad Godfrey and/or The Beehive House, and plaintiff, in connection with plaintiff's alleged failure to pay rent as set out at paragraph 6 of your counterclaim herein.

6. Copies of any billings, accountings, or itemizations, or other documents of whatever nature setting out the services and tasks performed on plaintiff's behalf by S. Chad Godfrey and/or The Beehive House, as set out at paragraph 9 of the counterclaim.

DATED this 34 day of June, 1997.

JONES, WALDO, HOLBROOK &  
McDONOUGH

By

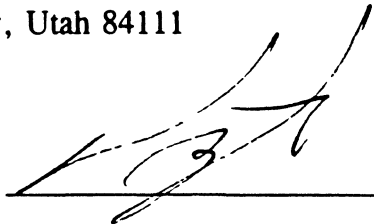
  
\_\_\_\_\_  
Vincent C. Rampton

CERTIFICATE OF SERVICE

I hereby certify that on the 35 day of June, 1997, I caused to be hand delivered a true and correct copy of the foregoing NOTICE OF DEPOSITION, to the following:

Brad W. Merrill  
PARRY, MURRAY & WARD  
1270 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111

Kim R. Wilson  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place #1100  
Salt Lake City, Utah 84111



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Tab 3

FILED  
JUN 10 1964  
FBI - NEW YORK

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

Judge Anne M. Stirba



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DATED this 3~~4~~ day of June, 1997.

JONES, WALDO, HOLBROOK &  
McDONOUGH

By 

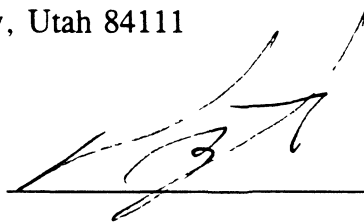
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