

1998

# Micheal L. Hall and Dana T. Hall v. Nacm Intermountain, Inc., and Aquarius Kitchen & Bath, Inc. : Brief of Respondent

Utah Court of Appeals

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BRIEF

DOCKET NO. 980177

IN THE SUPREME COURT OF THE STATE OF UTAH

Red 2

MICHAEL L. HALL and  
DANA T. HALL,

Plaintiffs, Cross-claim  
Plaintiffs and Appellants,

v.

NACM INTERMOUNTAIN, INC.,  
a Utah corporation, and AQUARIUS  
KITCHEN & BATH, INC.,  
a Nevada corporation,

Defendants and Appellees.

No. 980177  
950501393

Argument Priority 15

AQUARIUS KITCHEN & BATH,  
INC., a Nevada corporation,

Third-Party Plaintiff,

Subject to Assignment to  
the Court of Appeals

v.

WASHINGTON COUNTY,

Third-Party Defendant and  
Cross-claim Defendant.

BRIEF OF RESPONDENT NACM INTERMOUNTAIN, INC.

APPEAL FROM ORDERS OF THE FIFTH JUDICIAL DISTRICT  
COURT OF WASHINGTON COUNTY, STATE OF UTAH  
HONORABLE G. RAND BEACHAM

FILE

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CLERK SUPREME COURT  
UTAH

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**IN THE SUPREME COURT OF THE STATE OF UTAH**

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MICHAEL L. HALL and :  
DANA T. HALL, :

Plaintiffs, Cross-claim :  
Plaintiffs and Appellants, :

v. :

NACM INTERMOUNTAIN, INC., :  
a Utah corporation, and AQUARIUS :  
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**BRIEF OF RESPONDENT NACM INTERMOUNTAIN, INC.**

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**APPEAL FROM ORDERS OF THE FIFTH JUDICIAL DISTRICT  
COURT OF WASHINGTON COUNTY, STATE OF UTAH  
HONORABLE G. RAND BEACHAM**

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- A. ANSWER OF NACM [R95-98].
- B. NACM'S NOTICE OF DISCLAIMER AND QUIT CLAIM DEED [R126-129]
- C. ORDER OF DISMISSAL AS TO NACM [R205-208]
- D. LETTER FROM MR. LEE TO MR. ATKIN DATED SEPTEMBER 12, 1996
- E. LETTER FROM MR. LEE TO MR. ATKIN DATED JUNE 20, 1997
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## **I. JURISDICTION**

The Supreme Court of Utah has jurisdiction pursuant to U.C.A. § 78-2-2 and may assign this case to the Utah Court of Appeals.

## **II. STATEMENT OF ISSUES AND STANDARD OF REVIEW**

As applies to Appellee NACM Intermountain, Inc. (hereinafter referred to as "NACM") the only applicable issues raised by appellants Michael L. Hall and Dana T. Hall (hereinafter collectively referred to as "Halls") are:

A. Was it proper for the Court to dismiss NACM noting that NACM claims no interest in the subject property rather than grant Halls' request for summary judgment quieting title in Halls.

This is a question of law and no deference is accorded the trial court's resolution of the issue. K & T, Inc. v. Koroulis, 888 P.2d 623 at 626-627 (Ut. 1994).

B. Did the Court properly award the sanction of attorneys' fees and costs to NACM as a result of the Halls' counsel's ("Mr. Atkin") failure to notify NACM's counsel ("Mr. Lee") that Mr. Atkin had changed a hearing date.

Sanctions are typically reviewed pursuant to a three-tier standard. Taylor v. Hansen, 958 P.2d 923, 930 (Utah App. 1998), citing Barnard v. Sutliff, 846 P.2d 1229, 1233-35 (Ut. 1992) . The trial court's findings are reviewed under the clearly erroneous

standard. Taylor, Id. The trial court's conclusion is reviewed under the correction of error standard. Taylor, Id. Lastly, the type and amount of award is reviewed under the abuse of discretion standard. Taylor, Id. The trial court is also accorded appellate deference. Griffith v. Griffith, 959 P.2d 1015, 1021-1022 (Utah App. 1998).

C. Lastly, this appeal as it relates to NACM is without merit and sanctions are again an appropriate remedy.

There is no standard of review applicable at this level because if granted, it would be at this Court's discretion pursuant to Rule 33 of the Utah Rules of Appellate Procedure.

### **III. STATEMENT OF THE CASE.**

#### **A. Nature of the case, proceedings and disposition.**

Some background as to how NACM became involved is helpful to understanding NACM's position.

NACM is a Utah non-profit corporation organized to assist its members with credit practices, education related thereto and assistance with collection of delinquent accounts. Appellee Aquarius Kitchen & Bath, Inc. (hereinafter referred to as "Aquarius"), as a member of NACM, contacted NACM to obtain help in collecting a debt due from Michael Hill. Mr. Hill was the owner of real property that is now the subject of this litigation. NACM contacted an attorney in Washington County, Utah to determine whether that

attorney would handle the collection effort for Aquarius. The attorney accepted the matter, but mistakenly sued out the case designating NACM as Plaintiff. No answer was filed in that action and default judgment was promptly entered in favor of NACM. Upon realizing the mistake, NACM and Aquarius agreed to assign the judgment from NACM to Aquarius, which was done.

NACM's next involvement was and is as a party to this litigation after being served September 21, 1995. [R16-18]. NACM, through counsel, informed Halls' counsel that it claimed no interest in the subject property and offered to give a quit claim deed to Halls. The Halls refused this offer, demanded a release of judgment and attorneys' fees but did extend an open extension of time to respond. Halls' counsel was informed that NACM did not own the judgment because it had previously been assigned to Aquarius and, therefore, could not grant a release. Several conversations were held with Halls' counsel with no result and finally on or about January 5, 1996, NACM filed an Answer in which it specifically denied any claim or interest in the subject property. [R95-98].

In the meantime, Halls and Aquarius had been active in the litigation. NACM had not thus far been an active participant, but early in April 1996, NACM received an Order dated April 2, 1996 issued by Judge Beacham instructing "counsel for all parties . . . [to] appear before the Court . . . April 25, 1996 at 1:30 p.m." [123-125]. The Order specifically stated telephone appearances would not be allowed and no request for

continuance would be entertained. [R123-125]. Mr. Atkin contacted the Court a few days prior to the hearing and was granted a continuance of the hearing<sup>1</sup> but failed to notify Mr. Lee. [Brief of Appellant at p.6].

NACM was ultimately dismissed from the suit [R205-208] and was awarded sanctions in the form of attorneys' fees and costs for attending the April 25, 1996 hearing. [R160-162].

B. Statement of Facts Relevant to Dismissal of NACM From the Litigation and Denial of Halls' Motion for Summary Judgment.

1. NACM, in its Answer to Halls' Complaint denied any claim to the subject property. [R95-98]. A copy of NACM's Answer is attached hereto as Addendum "A."

2. On or about April 12, 1996, NACM filed a Notice of Disclaimer and provided the Court with a quit claim deed dated October 11, 1995 granting Halls all and so much of the interest as NACM may have in the subject real property. [R126-129]. A copy of said Notice and Quit Claim Deed are attached hereto as Addendum "B."

3. On or about May 10, 1996, NACM filed its Motion and Memorandum requesting that it be dismissed. [R138-145].

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<sup>1</sup> I'm not sure why Mr. Atkins waited to request the continuance when he had a five-week trial scheduled to begin the same week as the hearing. [See R151].

4. On or about May 28, 1996, Halls filed their Motion and Memorandum requesting judgment against NACM and quieting title Halls but finally acknowledging they were not entitled to costs or attorneys' fees from NACM. [R170-174].

5. On or about July 5, 1996, the Court entered its Order dismissing NACM from the litigation, denying Halls' Motion for Summary Judgment and specifically declaring that NACM "has and claims no interest in lot 24, Unit 3 of Dixie Deer Estates, located in Washington County, Utah . . . ." [R205-208]. A copy of said Order is attached as Addendum "C."

C. Statement of Facts Relevant to Sanctions Imposed Against Blake Atkin.

1. On or about April 4, 1996, Mr. Lee received the Court's Order directing counsel to appear in court in person on April 25, 1996. [R123-125].

2. A few days prior to the hearing date, Mr. Atkin and counsel for Aquarius contacted the Judge and asked to continue the hearing. Mr. Lee was not included in the telephone call. [Brief of Appellant at page 6].

3. Judge Beacham specifically directed Mr. Atkin, who practices in Salt Lake City, to contact Mr. Lee, who also practices in Salt Lake City, and advise Mr. Lee the hearing had been continued. [R133 (Minute Entry); Brief of Appellant at page 6].

4. Mr. Atkin failed to notify Mr. Lee. [Brief of Appellant at page 6].

5. Mr. Lee contacted the court clerk in St. George on the afternoon April 24, 1996 and was advised the conference was still scheduled and that he should plan to attend in person. [R135-136 and 156; Brief of Appellant at page 6].

6. Mr. Lee traveled to St. George on April 25, 1996 to attend the hearing. [R135-136 and 156; Brief of Appellant at page 6].

7. Mr. Atkin filed his objection to the proposed Order and it was received by the Court on May 15, 1996. [R146-150; Brief of Appellant at page 7].

8. The Court granted sanctions but did not enter the Order until after it received Mr. Atkin's objection, i.e., on May 16, 1996. [R160-162].

9. Mr. Atkin admitted in his Affidavit supporting his objection to the sanctions that he failed to notify Mr. Lee of the continuance of the April 25, 1996 hearing. [R151-152].

10. The Court supported its May 16, 1996 Order granting sanctions by entering Findings of Fact and Conclusions of Law. [R154-159] See Addendum C of Appellant's Brief.

D. State Of Facts Relevant To Sanctions Requested On Appeal.

1. The facts cited above are also relevant to the sanctions requested on appeal.

#### **IV. SUMMARY OF ARGUMENTS**

NACM claims no interest in the subject property. The Court below has officially stated that NACM has no claim or interest and that should end the question regarding quieting of title as far as it relates to NACM.

As to the issue of sanctions, Mr. Atkin made a mistake that was costly to NACM. Mr. Atkin admits he made the mistake. The Court appropriately saw fit to have Mr. Atkin pay the costs incurred by NACM as a result of Mr. Atkin's mistake.

The continuation of litigation and appeals with regard to NACM are without merit. NACM should be granted a recovery of its costs and attorneys' fees incurred as a result of the continued litigation and this appeal.

#### **V. ARGUMENT**

A. The Halls Have Nothing To Gain By This Appeal As To NACM Because NACM Claims No Interest In The Property.

NACM is completely nonplussed by Halls' appeal stating that NACM's Motion to dismiss should have been denied and their Motion for Summary Judgment granted. The net result is essentially the same. NACM never claimed any interest in the subject property. Statement of Facts at ¶ III.B. 1 and 2. The Halls were advised in September 1995 that NACM claimed no interest and they could have taken a quit claim deed to the

property as offered by NACM at that time. Any claim, cloud, or even appearance of cloud, that may have arisen in favor of NACM was removed by the Court's Order dated July 12, 1996. Statement of Facts at ¶ III.B.5. The Court specifically decreed NACM had no interest in the property. Statement of Facts ¶ III.B.5.

It is believed the Halls refused a quit claim deed because it was offered without any payment of monies to defray Halls' costs or attorneys' fees. Utah Code Ann. § 78-40-3, however, specifically states a plaintiff is not entitled to costs from a Defendant who denies an interest in property that is the subject of a quiet title action. Halls finally acknowledged this in their Motion for Summary Judgment as to NACM. Statement of Facts at ¶ III.B.4.

The Halls have already received everything NACM can give with regard to the property. The lack of claim or interest has been clearly established. Any question remaining as to whom title should be given is between Halls and Aquarius. The likely purpose for an appeal such as this is to attempt to force NACM to pay cash to buy its way out. UCA § 78-40-3 clearly states Halls are not entitled to such payment. Halls' appeal is without merit, is brought in bad faith and NACM should be awarded costs and attorneys' fees incurred in responding.

B. Mr. Atkin Made A Mistake That Was Costly To NACM And Was Properly Ordered To Make Payment.

The Court sua sponte scheduled a hearing directing counsel to appeal. Statement of Facts at ¶ III.C.1. Mr. Atkin, without Mr. Lee's involvement, prevailed upon the Court to continue the hearing. Statement of Facts at ¶ III.C.2. Because Mr. Lee was not a party to the telephone conversation in which the continuance was granted, Mr. Atkin was directed by the Court to notify Mr. Lee. Statement of Facts at ¶ III.C.3. Mr. Atkin failed to provide the notice (Statement of Facts at ¶¶ III.C. 4. and 9). Mr. Lee appeared as earlier directed (Statement of Facts at ¶¶ 5. and 6.) and sanctions were granted against Mr. Atkin. Statement of Facts at ¶ III.C.8.

Mr. Atkin makes much ado about there being no hearing prior to sanctions being entered. Mr. Atkin further makes much ado about the Order being made before his filing of Memorandum. Nevertheless, Mr. Atkin notes that he objected to the proposed Order. Statement of Facts at ¶ III.C. 4. and 9. And in his objection he admits that he failed to notify Mr. Lee of the continuance as the Court had directed. Statement of Facts at ¶ III.C.4. and 9. The Order was not signed until after the Court reviewed his objections, however. Statement of Facts at ¶ III.C.8. I am not sure what a hearing would have added to those facts beyond another trip to St. George.

Further, Mr. Atkin next asserts there was no legal basis stated. It is true there was no statement in the findings or the Order that said "the legal basis for this order is . . . ." Nevertheless, the legal basis for the Order is: (a) the trial court has broad latitude with its inherent powers to manage the proceedings and to preserve the integrity of the trial process, State v. Parsons, 781 P.2d 1275, 1282 (Utah 1989); and (b) the Court gave Mr. Atkin a specific direction which Mr. Atkin failed to perform.

Mr. Atkin, having admitted he failed to notify Mr. Lee as directed by the Court, in essence, indicates Mr. Lee likely had to travel from Salt Lake to St. George for the hearing. Mr. Atkin asserts that the price tag would have been cheaper if Mr. Lee had flown rather than driven. Appellant's Brief at page 26. This argument ignores the \$386 price for a plane ticket at the time and the price of a rental car or taxi in St. George to get from the airport to the Court. It also ignores travel to and from the airport in Salt Lake, parking, time waiting for planes and waiting in line for tickets, travel between the Court and the airport in St. George, etc.. The argument also fails to deal with flight times.<sup>2</sup> Lastly, the argument completely ignores the number or type of cases which any given attorney might have to work on during the day and whether it is physically possible to cart around that much paper.

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<sup>2</sup> I did in fact check into flying at the time and found that the flight times would require me to be out of Salt Lake for over twelve hours, leaving just after 9:00 a.m. and arriving back in Salt Lake at almost 10:00 p.m.

The simple answer is flying versus driving was examined by Mr. Lee prior to the hearing and driving was determined to be cheaper and quicker. Mr. Atkin may have been assessed more money as sanctions if Mr. Lee had flown to St. George for the hearing.

But this Court should not have to review those types of particulars. This Court's inquiry pursuant to Taylor v. Hansen, 958 P.2d 923, 930, and Barnard v. Sutliff, 846 P.2d 1229, 1233-35 is three fold. (1) Were the Court's findings of fact clearly erroneous; (2) under the correction of error standard, did the Court come to the right ultimate conclusion; and (3) were the type and amount of sanctions imposed against Mr. Atkin an abuse of the Court's discretion. First, the Court need not make findings where there is no dispute of fact. Taylor v. Estate of Taylor, 770 P.2d 163, 168-169 (Utah App. 1989). Nevertheless, the Court found that Mr. Atkin failed to notify Mr. Lee of the continuance of the hearing. Mr. Atkin admits having failed to notify Mr. Lee, so there is no dispute as to this fact or the result that Mr. Lee had to unnecessarily travel to St. George. (There being no dispute as to the facts, there is no need of findings. Estate of Taylor, Id.) Even so, the Court entered Findings of Fact and Conclusions of Law. Statement of Facts at ¶ III.C.10. The Court concluded that as a result, Mr. Lee was forced to travel to St. George from Salt Lake, thus being unable to perform his normal duties for in excess of eight hours. Statement of Facts at ¶ III.C.10. Mr. Atkin would disagree only with the time period for which Mr. Lee was unable to perform his duties. Brief of Appellant at page 26. But it

can hardly be said the Court erred in concluding an attorney forced to travel from Salt Lake to St. George and back might lose eight hours of working time and incur travel costs. The time lost and costs incurred were the result of Mr. Atkin's failure to make a phone call. That time and expense should be assessed to Mr. Atkin. This the Court did and that does not appear to be an abuse of any kind.<sup>3</sup> It should also be noted with regard to awards of attorneys' fees that the judge who presided over the proceeding and has firsthand familiarity with the situation is owed appellate deference. Griffith v. Griffith, 959 P.2d 1015, 1021-1022 (Utah App. 1998).

Mr. Atkin states his request for changing the date of the hearing was made a few days before the hearing. He states he was busy. But obtaining a continuance a few days before the hearing also gave him a few days to make the call. Surely, during "a few days" he could have found two minutes to at least leave a message to save Mr. Lee a lost day. The type and amount of sanctions imposed are reasonable.

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<sup>3</sup> Nevertheless, Mr. Atkin's continued complaining about being sanctioned has cost Mr. Lee more lost time than the original lost day and ultimately it would have been cheaper for NACM if Judge Beacham had not offered to impose sanctions.

C. There Is No Merit In This Appeal As It Regards NACM And Sanctions Are The Appropriate Remedy.

The appeal as to whether Halls' Motion for Summary Judgment should have been granted rather than NACM's Motion to Dismiss is without merit. The ultimate outcome is the same: NACM has no interest or claim in the subject property. Nevertheless, Halls have continued, without reason, to litigate the issue. [R205-208; See Addendum C].

Rule 33 of the Utah Rules of Appellate Procedure authorizes this Court to award attorneys' fees in situations where the appeal is found to be frivolous. What can be more frivolous than filing an appeal when you have obtained everything from a party the law allows but you obtained it pursuant to the other party's Motion instead of your own.

This is Mr. Atkins' second attempt to appeal the sanctions imposed. [R187-188, 790-792] (in addition to his various requests below). There is no dispute as to whether he failed to notify Mr. Lee of the change in scheduling. Statement of Facts at ¶ III.C.4. and 9. His dispute as to the amount of sanctions imposed is frivolous at best. I will not repeat the statements of ¶ IV.B. above but again Rule 33, Id. authorizes assessment of attorneys' fees. He has probably cost himself more by his continual whining than if he had just paid up and let it go. But he has definitely cost NACM more by the continual whining and appeals. Even more offensive is that NACM initially solicited an offer to settle for less or to take payments. The offers were refused. (See copies of letters from Mr. Lee to Mr.

Atkin dated September 12, 1996; June 20, 1997 and July 2, 1997 and attached hereto as Addendum "D," "E" and "F" respectively. Also see letter dated July 7, 1997 from Mr. Atkins to Mr. Lee attached hereto as Addendum "G."

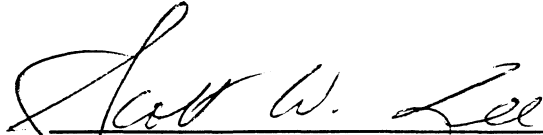
It is appropriate for sanctions in the form of costs and attorneys' fees to be awarded in favor of NACM and against Halls' and/or Mr. Atkins for all costs and time reasonably incurred since the date NACM was dismissed from this matter or at a minimum for the time and cost of responding to this appeal.

## **VI. CONCLUSION**

NACM claims no interest in the subject property. Any remaining questions regarding title lie among the other parties as they attempt to quiet title. NACM has been dismissed from the litigation and should continue to be left out. Next, Mr. Hall was properly ordered to pay costs and attorneys' fees incurred by NACM as a result of Mr. Atkins' failure to notify Mr. Lee. The continuation of litigation as to NACM and the appeal are wholly without merit as regards NACM. NACM should be allowed to recover from Mr. Atkins and/or Halls the costs and attorneys' fees resulting therefrom.

DATED this 29 day of October, 1998.

RANDLE, DEAMER, ZARR, McCONKIE  
& LEE, P.C.

  
\_\_\_\_\_  
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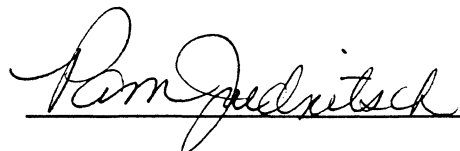
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing BRIEF OF  
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postage prepaid, to the following:

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Tab A

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---

IN THE FIFTH JUDICIAL DISTRICT COURT FOR  
WASHINGTON COUNTY, STATE OF UTAH

---

MICHAEL L. HALL and DANA T. HALL,	:	ANSWER
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NACM INTERMOUNTAIN, INC., a Utah corporation and AQUARIUS KITCHEN & BATH, INC., a Nevada corporation,	:	Civil No. 950501393
	:	
Defendants.	:	Judge Beacham

---

COMES NOW Defendant NACM Intermountain, Inc. ("NACM"), by and through its attorneys, and files this Answer to Plaintiffs' Complaint.

**FIRST DEFENSE**

Plaintiffs' Complaint fails to state a cause of action against NACM upon which relief may be granted.

## **SECOND DEFENSE**

Responding to the specific averments of Plaintiffs' Complaint, NACM admits or denies as follows:

1. Admits that it is a Utah corporation in good standing and admits that the two judgments identified were obtained in NACM's name against a Michael Hall who is reputed to be a former owner of the real property that is the subject of this lawsuit. NACM denies that it claims any interest in the real property that is the subject of this lawsuit. NACM has no knowledge as to when any tax liens were filed against said property and cannot respond to the averment as to whether said judgments are subsequent to any tax lien and, therefore, denies same.

2. NACM lacks sufficient information to admit or deny the averments of paragraph 2 of Plaintiff's Complaint and, therefore, denies same.

3. NACM lacks sufficient information to admit or deny the averments of paragraph 3 of Plaintiff's Complaint and, therefore, denies same.

4. Denies.

5. Defendant NACM admits that Exhibit B attached to Plaintiffs' Complaint is a copy of a letter sent to Lewis P. Reece but affirmatively asserts that Mr. Reece was not then authorized to act as its counsel and denies each and every other averment of paragraph 5 of Plaintiffs' Complaint.

6. Defendant NACM was not privy to the conversations referred to in paragraph 6 of Plaintiffs' Complaint and lacks information to admit or deny said averments and, therefore, denies same.

7. Denies.

8. Denies.

9. Denies.

10. Denies each and every other averment of Plaintiffs' Complaint not otherwise specifically admitted herein.

#### **THIRD DEFENSE**

Defendant NACM has repeatedly offered to provide Plaintiffs with a quit claim deed releasing any interest NACM may have in the subject property although none is claimed.

#### **FOURTH DEFENSE**

Defendant NACM has repeatedly offered to provide Plaintiffs with a release disclaiming any interest in the subject property insofar as it relates to the August 6, 1993 judgment for \$1,233, but Plaintiffs, prior to the filing of the instant action, were made aware that the judgment dated October 18, 1993 for \$33,903.31 had been assigned to Defendant Aquarius Kitchen & Bath, Inc., who at all times was the real party in interest in the action resulting in said judgment and whose name said action should have been brought.

#### **FIFTH DEFENSE**

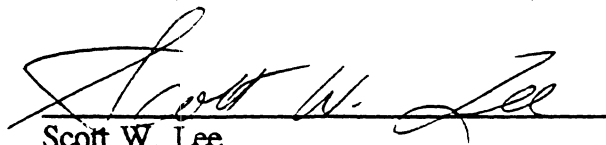
It is the belief of Defendant NACM that the instant action was filed because of Plaintiffs' inability to provide a prospective purchaser with clear title to the subject property.

Further, it is understood the subject property was purchased by Plaintiffs at a tax sale and the subsequent sale by Plaintiffs was proposed within the prior owner's statutory six month redemption period. It is standard practice of title companies not to issue a title policy without exceptions until the six month redemption period expires and this is the sole cause of Plaintiffs' inability to deliver clear title.

WHEREFORE, Defendant NACM prays that Plaintiffs' Complaint be dismissed with prejudice as to Defendant NACM and that Plaintiffs take nothing thereby.

DATED this 5 day of January, 1996.

RANDLE, DEAMER, ZARR & LEE, P.C.

  
Scott W. Lee  
Attorneys for Defendant NACM  
Intermountain

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ANSWER, this 5 day of January, 1996, postage prepaid, to the following:

Blake S. Atkin  
ATKIN & LILJA  
Attorneys for Plaintiffs  
136 South Main Street, Suite 810  
Salt Lake City, UT 84101



8swl\714

**Tab B**

SCOTT W. LEE - NO. 4750  
RANDLE, DEAMER, ZARR & LEE, P.C.  
Attorneys for Defendant NACM Intermountain  
139 East South Temple, Suite 330  
Salt Lake City, UT 84111-1169  
Telephone: (801) 531-0441  
Fax: (801) 531-0444

---

**IN THE FIFTH JUDICIAL DISTRICT COURT FOR  
WASHINGTON COUNTY, STATE OF UTAH**

---

MICHAEL L. HALL and DANA T. HALL,	:	NOTICE OF DISCLAIMER
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NACM INTERMOUNTAIN, INC., a Utah corporation and AQUARIUS KITCHEN & BATH, INC., a Nevada corporation,	:	
	:	Civil No. 950501393
Defendants.	:	Judge G. Rand Beacham

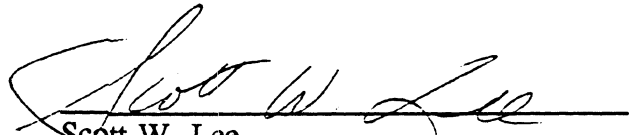
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On or about September 19, 1995, Plaintiffs filed the instant action to quiet title in themselves to certain property located in Washington County, State of Utah. Defendant NACM Intermountain ("NACM") has repeatedly advised Plaintiffs that it claims no interest in the subject property and offered to provide to Plaintiffs a quit claim deed granting to Plaintiffs so much interest as Defendant NACM may have. To date, Plaintiffs have not accepted such offers.

NACM Intermountain, a Utah corporation, by and through its attorneys of record, hereby disclaims any interest in the real property of Michael L. Hall and Dana T. Hall that is the subject of this action and more completely described as Lot 24, Unit 3, Dixie Deer Estates in Washington County, State of Utah. Furthermore, NACM delivers to the Court herewith an original quit claim deed dated October 11, 1995, granting to Plaintiffs all and so much interest as NACM may have in said real property.

DATED this 12 day of April, 1996.

RANDLE, DEAMER, ZARR & LEE, P.C.

A handwritten signature in cursive script, appearing to read "Scott W. Lee", written over a horizontal line.

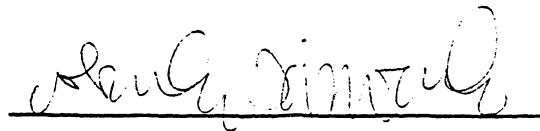
Scott W. Lee  
Attorneys for Defendant NACM  
Intermountain

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF  
DISCLAIMER, this 12 day of April, 1996, postage prepaid, to the following:

Blake S. Atkin  
ATKIN & LILJA  
Attorneys for Plaintiffs  
136 South Main Street, Suite 810  
Salt Lake City, UT 84101

Lewis P. Reece  
SNOW & JENSEN  
Attorneys for Defendant Aquarius Kitchen & Bath  
150 North 200 East, Suite 203  
P.O. Box 2747  
St. George, UT 84771-2747

  
\_\_\_\_\_

9swl\864

Recorded at Request of \_\_\_\_\_  
at \_\_\_\_\_ M. Fee Paid \$ \_\_\_\_\_  
by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref.: \_\_\_\_\_  
Mail tax notice to \_\_\_\_\_ Address \_\_\_\_\_

# QUIT-CLAIM DEED

of Salt Lake City, County of Salt Lake, State of Utah, hereby  
QUIT-CLAIM S to NACM INTERMOUNTAIN, a Utah Corporation, grantor  
MICHAEL L. HALL AND DANA T. HALL,

of Washington County, State of Utah, grantees  
Ten and 00/100 -----DOLLARS,  
for the sum of

the following described tract of land in Washington County,  
State of Utah:

Lot 24, Unit 3, Dixie Deer Estates

WITNESS the hand of said grantor, this 11th day of  
October, A. D. one thousand nine hundred and ninety five

Signed in the presence of

NACM INTERMOUNTAIN

By

Its

STATE OF UTAH,

County of Salt Lake

ss.

On the 11th day of  
housand nine hundred and ninety five

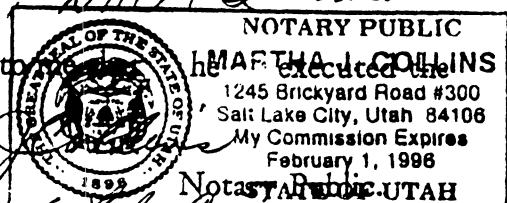
October  
personally appeared before me

A. D. one

Dean Wanggaard, Vice President NACM Intermountain  
he signer of the foregoing instrument, who duly acknowledge to me  
ame.

My commission expires Feb. 1 1996

Address



Tab C

IN THE FIFTH JUDICIAL DISTRICT COURT  
FOR WASHINGTON COUNTY, STATE OF UTAH

---

MICHAEL L. HALL and DANA T. HALL,	)	
	)	
Plaintiffs,	)	
vs.	)	ORDER OF DISMISSAL
NACM INTERMOUNTAIN, INC., a Utah	)	
corporation, and AQUARIUS KITCHEN &	)	
BATH, INC., a Nevada corporation,	)	
	)	
Defendants.	)	Civil No. 950501393 CV

---

This matter came before the Court upon the Motion to Dismiss filed by defendant NACM Intermountain, Inc., on May 13, 1996, the Motion and supporting documents having been served upon plaintiff by mail on May 10, 1996. Plaintiffs' Complaint in this action alleges that NACM claims an interest in certain real property also claimed by plaintiffs, and prays for damages against NACM and its co-defendant, as well as a decree that plaintiffs have quiet title to the real property. In its Answer to the Complaint, and in its Motion to Dismiss, NACM denies claiming any interest in the real property and asserts that it has offered plaintiffs a Quit Claim Deed of any interest in the property. The record is unclear as to plaintiffs' reasons, if any, for continuing litigation against NACM and failing to accept a Quit Claim Deed.

NACM's Motion to Dismiss was submitted to the Court by its Notice to Submit for Decision filed May 23, 1996, after plaintiffs had entirely failed to respond to the Motion served upon them within applicable time limits. That Notice to Submit was made in full compliance with the requirements of Rule 4-501 of the Code of Judicial Administration.

By contrast, plaintiffs then filed a Motion for Summary Judgment on May 31, 1996, which may have been intended as some form of response to NACM's Motion to Dismiss. Plaintiffs' Motion for Summary Judgment meets virtually none of the requirements of C.J.A. Rule 4-501 or of Rule 56 of the Utah Rules of Civil Procedure, and was filed and served much too late to constitute any legitimate response to NACM's Motion to Dismiss.


Plaintiffs allege that NACM claims an interest in the property and NACM denies making any claim. It appears from NACM's Memorandum that the interest, if any, of NACM in the subject real property results from judgments in favor of NACM and against the former owner of the property. Judgments may constitute liens against real property, but judgments are not "claims" against in the traditional sense of that word. Nevertheless, judgments may create interests in real property which may be addressed in a quiet title action. Plaintiffs failed to identify the quiet title statute, Utah Code Ann. § 78-40-1 et seq., as the basis for their claims, however, leaving NACM to speculate that that statute may be the basis for plaintiffs' claims.

Without belaboring the parties' failure to focus upon and articulate the ultimate issue, it is abundantly clear that NACM has disclaimed any interest in the subject real property and has diligently attempted to avoid the aggravation and expense of this litigation, and that plaintiffs

have diligently refused to accept NACM's disclaimer and have continued to attempt to litigate the case with NACM. If plaintiffs had submitted a properly framed and supported Motion for Summary Judgment, the granting of that Motion could have been the appropriate procedure for having the Court declare that NACM has no interest in the subject property. Plaintiffs' Motion for Summary Judgment, however, is completely inadequate. On the other hand, NACM's Motion to Dismiss is properly framed and supported, and plaintiffs failed to make any meaningful response to the Motion.

Consequently, the Court hereby grants NACM's Motion to Dismiss, declares that NACM Intermountain, Inc., a Utah corporation, has and claims no interest in Lot 24, Unit 3 of Dixie Deer Estates, located in Washington County, Utah, and hereby dismisses plaintiffs' Complaint as against NACM Intermountain, Inc. with prejudice and on the merits.

DATED this 12th day of July, 1996.

  
G. RAND BEACHAM  
Fifth District Court Judge

Certificate of Mailing or Hand Delivery

I hereby certify that on this 15<sup>th</sup> day of July, 1996, I provided true and correct copies of the foregoing ORDER to each of the attorneys named below by placing a copy in such attorney's file at the Washington County Hall of Justice and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

Blake S. Atkin, Esq.  
Atkin & Lilja  
136 South Main, Suite 810  
Salt Lake City, UT 84101

Lewis P. Reece, Esq.  
Snow & Jensen  
134 North 200 East, Third Floor  
Salt Lake City, UT 84101

Scott W. Lee, Esq.  
Randle, Deamer, Zarr & Lee  
139 East South Temple, Suite 330  
Salt Lake City, UT 84111

Carolyn Smithman

Tab D

LAW OFFICES OF  
RANDLE, DEAMER, ZARR, ROMRELL & LEE  
A PROFESSIONAL CORPORATION  
139 EAST SOUTH TEMPLE  
SUITE 330  
SALT LAKE CITY, UTAH 84111

TELEPHONE  
(801) 531-0441  
FAX  
(801) 531-0444

September 12, 1996

Mr. Blake S. Atkin  
ATKIN & LILJA  
136 South Main, Suite 810  
Salt Lake City, UT 84101

Re: *Hall v. NACM*  
*No. 960357*

Dear Blake:

I received notice from the Supreme Court yesterday indicating your brief is due October 21, 1996. I must confess I have not looked at the file for some time. My recollection, however, is that you were contesting the award of fees and costs primarily on two grounds:

1. Failure to identify a legal basis, and
2. The Court's right to impose sanctions.

With regard to legal basis, there was some question because the docket did not show that the Findings of Fact had been entered. I now have copies of the docket and the pleadings that show the Findings and the Order were both signed and then entered. I believe the Findings adequately set forth the legal basis. And even if they don't, the likely result is that I am ordered to submit appropriate Findings. As to the Court's authority, I believe Justice Zimmerman once wrote a decision where he referred to "fences and pastures." He said the courts are like pastures and the lower judges are free to roam those pastures. So long as the judges do not go beyond the fences around those pastures, the Supreme Court will uphold the lower court's decision. This case appears to me to be a real uphill battle to get the court overturned.

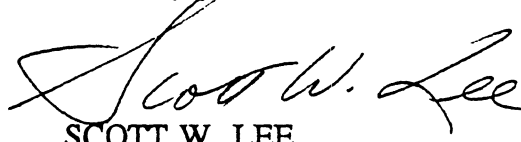
It is not my intention to draw out this case or turn it into more than it is. My client had to pay me for the time I spent attending the hearing. Upon receipt of payment from you, I must reimburse my client. I am willing to accept monthly payments.

Mr. Blake S. Atkin  
September 12, 1996

Page 2

There is one other issue. I do not see that you have posted the required \$300 cost bond. If you have posted the bond, please provide me with a copy of the receipt. If you have not posted the bond, I am contemplating a motion to dismiss.

Sincerely yours,

A handwritten signature in dark ink, reading "Scott W. Lee". The signature is fluid and cursive, with the first name "Scott" and last name "Lee" being more prominent than the middle initial "W".

SCOTT W. LEE  
Attorney At Law

SWL:pj  
cc: NACM  
12swl\1152

Tab E

LAW OFFICES OF  
RANDLE, DEAMER, ZARR, ROMRELL & LEE  
A PROFESSIONAL CORPORATION  
139 EAST SOUTH TEMPLE  
SUITE 330  
SALT LAKE CITY, UTAH 84111

TELEPHONE  
(801) 531-0441  
FAX  
(801) 531-0444

June 20, 1997

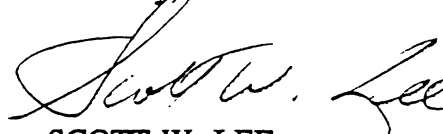
Mr. Blake S. Atkin  
136 South Main Street, Suite 810  
Salt Lake City, UT 84101

Re: *Hall v. NACM, et al.*  
Civil No. 95-5-1393

Dear Mr. Atkin:

I just received the Order from the Supreme Court denying your latest petition. I must admit the attempts to delay payment have become offensive. We offered to negotiate at first, but each attempt to delay payment only serves to make my client more convinced that you should make payment. I am currently contemplating a motion seeking additional sanctions for the further time incurred and/or a bar complaint to the Ethics Committee. I really don't want to deal with this situation in either forum. Please just forward payment for the amount set forth in the May 16, 1996 award. If a lump sum payment is a problem, my client will accept three or four equal monthly payments beginning July 1, 1997.

Sincerely,



SCOTT W. LEE  
Attorney At Law

SWL:cp  
3cpaw/1335

Tab F

LAW OFFICES OF  
RANDLE, DEAMER, ZARR, ROMRELL & LEE  
A PROFESSIONAL CORPORATION  
139 EAST SOUTH TEMPLE  
SUITE 330  
SALT LAKE CITY, UTAH 84111

TELEPHONE  
(801) 531-0441  
FAX  
(801) 531-0444

July 2, 1997

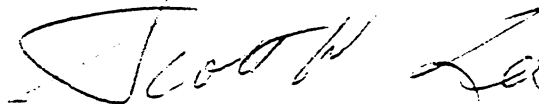
Mr. Blake S. Atkin  
ATKIN & LILJA, P.C.  
136 South Main, Suite 810  
Salt Lake City, UT 84101

Re: *Hall v. NACM, et al.*  
Civil No. 950501393

Dear Mr. Atkin:

Thank you for providing your check. That resolves any involvement NACM has with the matter. Please remove my name and NACM's from the mailing matrix.

Sincerely,



SCOTT W. LEE  
Attorney At Law

SWL:cp  
cc: Lewis Reece  
David Nuffer

3cpaw1361

Tab G

LAW OFFICES  
**ATKIN & LILJA**  
KEARNS BUILDING  
136 SOUTH MAIN STREET, SUITE 810  
SALT LAKE CITY, UTAH 84101  
TELEPHONE (801) 533-0300  
FACSIMILE (801) 533-0380

BLAKE S. ATKIN

July 7, 1997

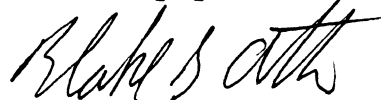
Scott W. Lee  
RANDLE, DEAMER, ZARR & LEE  
139 E. So. Temple #330  
Salt Lake City, Utah 84111

Re: Hall v. NACM and Aquarius Kitchen & Bath

Dear Scott:

You mistakenly assume that the NACM involvement with this matter is finished. Please be advised that my client intends to appeal the dismissal of NACM and I intend to appeal the sanction order.

Sincerely yours,



Blake S. Atkin

BSA:ct

ltrsclee.707