

1986

Joan Debry, and Robert J. Debry v. Occidental/
Nebraska Federal Savings Bank, and Kym C.
Meehand, dba, Resort Property Management and
Lodging : Reply Brief

Utah Supreme Court

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DOCKET NO. 21003

IN THE UTAH STATE SUPREME COURT

JOAN DEBRY, and
ROBERT J. DEBRY,

Appellants,

vs.

OCCIDENTAL/NEBRASKA FEDERAL
SAVINGS BANK, and KYM C. MEEHAN,
dba, RESORT PROPERTY MANAGEMENT
AND LODGING,

Respondents.

Case No. 21003

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
SUPPLEMENTAL STATEMENT OF FACTS.....	1
 <u>POINT I:</u>	
THE SETTLEMENT AGREEMENT IS AMBIGUOUS ON AT LEAST TWO GROUNDS. THEREFORE, THE TRIAL COURT SHOULD NOT HAVE RULED AS A MATTER OF LAW.....	2
A. <u>The "Described Above" Clause</u>	2
B. <u>Occidental's Theory</u>	3
 <u>POINT II:</u>	
BECAUSE AN AMBIGUITY EXISTED, ON THE FACE OF THE DOCUMENTS, THE TRIAL COURT SHOULD NOT HAVE RULED AS A MATTER OF LAW.....	3
 <u>POINT III:</u>	
THE GRANTING OF THE MOTION TO DISMISS WAS IMPROPER UNDER ANY AUTHORITY.....	4
 <u>POINT IV:</u>	
OCCIDENTAL'S PERSONAL ATTACKS DISGUISE THE TRUE ISSUES; MOREOVER, THEY ARE INCORRECT.....	5
A. <u>The 54(b) Language</u>	5
B. <u>Common Area as Personal Property</u>	6
C. <u>Legal Blackmail</u>	7
D. <u>Failure to Pick Up the Equipment Package...</u>	8
 <u>POINT IV:</u>	
OCCIDENTAL HAS OFFERED NO EXPLANATION FOR ITS OWN BAD FAITH.....	9

TABLE OF AUTHORITIES

CASES:

<u>Liquor Control Commission of Utah v. Athas,</u> 121 Utah 457, 243 P.2d 441 (Utah)	5
<u>University Club v. Invesco Holding,</u> 29 Utah 2d 1, 4 (1972)	4
<u>Winegar v. Smith Inv. Co.,</u> 590 P.2d 348 (Ut. 1979)	3

UTAH RULES OF CIVIL PROCEDURE,

Rule 41(b)	5
Rule 54(b)	5,9
Rule 62(h)	5

OTHER AUTHORITIES:

Nelson & Whitman, <u>Real Estate Finance</u> <u>and Development</u> , (1979) at 809-832	7
Osborne, Nelson & Whitman, <u>Real Estate</u> <u>Finance Law</u> , (1979) at 800-805	7

SUPPLEMENTAL STATEMENT OF FACTS

In order to avoid confusion, the following facts are emphasized:

1. The stipulation and order that Occidental relies on were from a separate proceeding in which Verden E. Bettilyon, counsel for Occidental, was himself a defendant. (R. at 61.)

2. The stipulation and order relied by Occidental were mailed to Occidental with a cover letter which indicated that the DeBrys did not intend to release "their equipment package," which was described as "silverware, mixmaster and other items." (R. at 54.)

3. After the stipulation and order were signed, Mr. Bettilyon wrote to DeBry and stated: "Please contact Mr. Polichette at the condominium to make arrangements to pick up your "equipment package." (R. at 55.)

4. At the hearing on Occidental's motion to dismiss, DeBry's counsel failed to appear. (R. at 51-53.) Nevertheless, Mr. Bettilyon proceeded with his motion and obtained a dismissal on the merits and a judgment for attorney fees. (R. at 37-41.)

5. Mr. Bettilyon did not disclose to the court that he personally had written a contemporaneous letter to DeBry that was in direct contradiction to the interpretation of the release he was urging. Nor did Mr. Bettilyon disqualify himself as a witness. (R. at 13-15 and 33.)

6. The "equipment package" was entirely separate and distinct from the "furniture package" supplied with the condominium. The "furniture package" was part of the purchase of the condominium and was part of the security collateral. It included such items as sofas, chairs, tables, beds, etc. (R. at 79-80.) The "equipment package" was personal property Mrs. DeBry purchased with personal funds, and was never part of the security for the mortgage loan. It included such items as cookware, kitchen appliances, knives, glassware, etc. (R. at 6-8 and R. 54.)

POINT I

THE SETTLEMENT AGREEMENT IS AMBIGUOUS ON AT
LEAST TWO GROUNDS. THEREFORE, THE TRIAL COURT
SHOULD NOT HAVE RULED AS A MATTER OF LAW

Occidental argues that there is no ambiguity in the transaction. Therefore, Occidental argues that the trial court was at liberty to rule as a matter of law. However, there are at least two areas of ambiguity.

A. The "Described Above" Clause.

The release did not waive every conceivable claim. Rather, the release applied to the "real and personal property and improvements described above." (R. 63 and Exhibit B. to Brief of Appellant.) (Emphasis added.)

Thus, the question is whether the "equipment package" was "described above." In fact, the only thing "described above" was the condominium itself. (R. 63 and

Exhibit B of appellants' opening brief.) Whether that was intended by the parties to include the "equipment package" is at best unclear and ambiguous.

B. Occidental's Theory.

Occidental argues that DeBry owns the "equipment package" but that he has bargained away any right to sue for possession:

Occidental Nebraska admitted that the equipment package was not part of the furniture described in the security agreement . . . even though the property may have belonged to DeBry, DeBry has bargained away his right to bring a lawsuit . . .

(Brief of Respondent at p.7.)

The idea of owning something--but being unable to sue for possession--is a contradiction in terms. Thus, Occidental's own interpretation of the relationship is inherently ambiguous.

In summary, the Release document is ambiguous on its face.

POINT II

BECAUSE AN AMBIGUITY EXISTED, ON THE FACE
OF THE DOCUMENTS, THE TRIAL COURT SHOULD
NOT HAVE RULED AS A MATTER OF LAW

The correct procedure is for the trial court to determine, as a matter of law, whether or not an ambiguity exists. Winegar v. Smith Inv. Co., 590 P.2d 348 (Ut. 1979). Here it appears that the trial court did not even consider

the question of an ambiguity.¹ (Exhibit G. to opening Brief of Appellants.)

This Court should hold that the release is ambiguous on its face, as a matter of law. The case should be remanded to receive parole evidence as to the intent of the parties. University Club v. Invesco Holding, 29 Utah 2d 1, 4 (1972).

POINT III

THE GRANTING OF THE MOTION TO DISMISS WAS IMPROPER UNDER ANY THEORY

As is shown in the preceding sections, since the subject contract was ambiguous, the court should not have ruled as a matter of law. However, even if it were unambiguous, the facts of the case, especially the contemporaneous letters of the parties, should have precluded an order of dismissal under the appropriate standard for such motions.

Motions to dismiss should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proven in support of his claim. Liquor Control Commission of Utah, 121 Utah 457, 243 P.2d 441 (Utah 1952). Moreover, Rule

¹Occidental claims that parole evidence cannot be used to alter or amend an order. It is sufficient to say that the Order, which Occidental refers to, was entered in a different case. Appellants make no attack of any kind on that Order.

41(b), Utah Rules of Civil Procedure, requires that unless an order for dismissal specifically states otherwise, it is on the merits. A review of the order in this case clearly shows it to be, therefore, on the merits.

POINT IV

OCCIDENTAL'S PERSONAL ATTACKS DISGUISE THE TRUE ISSUES; MOREOVER, THEY ARE INCORRECT

Much of Occidental's brief is an ad hominum attack on appellants and appellants' counsel. For example, Occidental uses the terms: "legal blackmail," "unconscionable," "reckless disregard for his responsibilities," "false affidavit," "unconscionable advantage," "attempt to intimidate," "unethical," etc. Such intemperate remarks are seldom productive. More importantly, they tend to draw the court's attention away from the merits of the case.

In order to be thorough, appellants will respond to those various arguments. However, this section is included primarily for interest and curiosity. The Court has no need to resolve these personal attacks because Section 1, above, is completely dispositive of the appeal.

A. The 54(b) Language.

Occidental has accused DeBry's counsel of misrepresenting the history of the Rule 54(b) certification. Occidental states that a transcript of the hearing was requested, but that no such transcript appeared in the

Record. From that fact Occident argued that DeBry's attorney lied about the events of that hearing. (See Occidental's brief at 17-21.)

In reality, the transcript was ordered but never prepared because the original appeal in this case was withdrawn. (See Record at 169.) Since Occidental has sought to attack counsel on this issue, Appellants have now included the transcript as part of the Record. (Addendum A, Record at 193-201.) As can be seen from this transcript, a discussion was held about whether this case should receive a Rule 54(b) certification. Thus appellants' statement in the opening brief was accurate.

MR. DAVIS: We certainly are not trying to do anything with regard to Occidental. We don't want to change your mind, your honor, on that judgment. It's just that we don't feel that we could file an appeal without having final judgment, and Rule 54(b) upon which Rule 62(h) relies, Rule 54(b) says that in order for a judgment to be final, it must be expressed determination by the court, an expressed judgment to that effect, and a determination.

(Addendum, Exhibit A at 7, Supplemental Record at 199.)

B. Common Area as Personal Property.

Occidental has referred to comments in the opening Brief of Appellants that an interest in common area is personal property as "careless disregard for an honest statement of facts." (Occidental's Brief at 15.)

Occidental goes on to say; "this statement is not befitting a lawyer. Minimum research, if not common knowledge, would indicate to him that the common areas are part of the real property." (Id.)

The fact is that minimal research indicates just the opposite. The "interest" in common areas of condominiums are occasionally held as personal property for a variety of reasons. See e.g. Nelson & Whitman, Real Estate Finance and Development, (1976) at 809-832 (discusses holding the interest in common area on a long term leasehold interest); Osborne, Nelson & Whitman, Real Estate Finance Law, (1979) at 800-805 (discusses holding interest in common area and condominium itself by owning stock in corporation - known as a "cooperative.")

C. Legal Blackmail.

Occidental alleges that DeBry has brought this case for "legal blackmail." (Record at 13.) Occidental states that DeBry has easy and inexpensive access to the courts and that DeBry was merely trying to "intimidate" Occidental.

In this case, the attorney handling the case (Davis) was not "lawyer/employee" as Occidental alleges, but an independent contractor being paid on an hourly basis. Mr. Davis had recently graduated from law school, and was continuing his studies in other subjects while doing "overflow" work for DeBry.

Mr. DeBry's wife had purchased a condominium in Park City. This was her own project she personally was paying for the condominium and for the personal property she put in it. (Record at 59-60.)

Mrs. DeBry had a good reason to reclaim her personal property. She had been told by Occidental that she could! When she got to the condominium and her property had disappeared, she had the right to seek recovery in a court of law. All she asks is a fair chance to state her case. Mrs. DeBry should not be denied her day in court because her husband happens to be a lawyer.

D. Failure to Pick Up the Equipment Package.

Occidental argues bad faith because:

Why should Occidental Nebraska have any knowledge or responsibility concerning this personal property? . . . If the property ever existed, why didn't DeBry remove it from the condo prior to delivery of the deed, as he agreed to do. (Brief of Respondent at p.13.)

Obviously that is a fact issue to be litigated by a jury--not an appellate court. However, there is an abundant showing that the claim was brought in good faith.

The evidence would have shown that when Mrs. DeBry relinquished the condo to Occidental's property manager, the equipment package was at least 90% intact. (R. at 2.)

Occidental also states that Mrs. DeBry delayed picking up the "equipment package." However, the evidence shows that Mrs. DeBry went at the agreed time and the property was gone. (R. at 56.)

POINT V

OCCIDENTAL HAS OFFERED NO EXPLANATION
FOR ITS OWN BAD FAITH

There was some confusion whether or not the trial court had issued a Rule 54(b) certification. In any case, the notice of appeal was withdrawn. (Exhibit J. to opening Brief of Appellants.) Occidental stipulated to that procedure. (Exhibit K. to opening Brief of Appellants.)

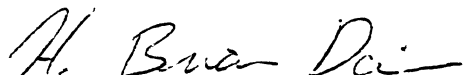
Thereafter Occidental moved to collect on the supersedeas bond. (Exhibit L. to opening Brief of Appellants.) The trial court agreed. (R. 160.)

However, the trial court has not awarded final judgment because there is no Rule 54(b) certification. Nor has this court entered any judgment. Under those circumstances the bond was simply moot. There was no good faith basis for Occidental to seek payment under the bond. That is especially true since Occidental stipulated to the procedure. (Exhibit K to Brief of Appellants.)

This issue was briefed in the opening Brief of Appellants. However, Respondent's brief was completely silent. Occidental had no good faith basis for the attempts to foreclose on the bond.

The conduct is a violation of Rule 11, U.R.C.P.

DATED this 19th day of December, 1986.


H. BRIAN DAVIS
Attorney for Appellants

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing APPELLANTS' REPLY BRIEF was mailed this 19th day of November, 1986, by depositing same in the U.S. Mail, postage prepaid, to the following:

Verden E. Bettilyon
WOODBURY, BETTILYON AND KESLER
Attorneys for Defendant Occidental/
Nebraska Federal Savings Bank
2677 East Parley's Way
Salt Lake City, Utah 84109

H. Brian Davis

COPY

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

-000-

JOAN AND ROBERT DE BRY, :
PLAINTIFFS, : REPORTER'S PARTIAL
VS. : TRANSCRIPT OF HEARING
OCCIDENTAL/NEBRASKA : CASE NO. C8384
FEDERAL SAVINGS BANK,
ET AL., :
DEFENDANTS. :
. :

-000-

BE IT REMEMBERED THAT ON THE 4TH DAY OF NOVEMBER,
1985, THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING IN
THE METROPOLITAN HALL OF JUSTICE, SALT LAKE CITY, UTAH,
SAID CAUSE BEING HEARD BEFORE THE HONORABLE J. DENNIS
FREDERICK.

APPEARANCES

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License #190

P R O C E E D I N G S

THE COURT: THIS IS THE TIME SET FOR THE
HEARING OF THE PLAINTIFF'S MOTION TO STAY JUDGMENT
IN THE MATTER OF JOAN AND ROBERT DE BRY VS.
OCCIDENTAL/NEBRASKA FEDERAL SAVINGS BANK, ET AL.,
CASE NO. 8384.

MR. DAVIS, I HAVE REVIEWED YOUR MOTION, AND
YOU MAY PROCEED.

MR. DAVIS: THANK YOU, YOUR HONOR. FIRST,
LET ME SPEAK TO THE MOTION FOR STAY OF JUDGMENT. WE
REALLY CAN'T APPEAL THIS CASE UNTIL THERE'S A FINAL
JUDGMENT, AND I THINK THAT THE CLAIM IS SO CLOSELY
CONNECTED AS BETWEEN OUR CLIENT AND THE DEFENDANT
MEEHAM WHO IS STILL IN THE CASE THAT WE REALLY SHOULD
HAVE A FINAL JUDGMENT AS TO THEM BEFORE WE APPEAL,
BEFORE WE HAVE THAT RIGHT.

DEFENDANT'S MEMORANDUM WAS NOT RECEIVED BY
OUR OFFICE. IN FACT, I DON'T THINK IT WAS EVEN SENT.
THERE'S NO CERTIFICATE OF MAILING SAYING THAT IT WAS
DONE SO NOR ANY HAND DELIVERY OR ANYTHING. WE
NOTICED THAT THERE WAS A MEMORANDUM FILED IN THE
FILE. THAT WAS BROUGHT HERE LAST FRIDAY, BUT THERE
IS NO NOTICE ON THE TRIAL CALENDAR FOR ATTORNEY'S
FEES, WHICH HE CLAIMS, FOR ONE THING. I DON'T THINK

1 HE CAN MAKE THAT CLAIM WITHOUT HAVING GIVEN US SOME
2 NOTICE BEFOREHAND.

3 THE COURT: ARE YOU TALKING ABOUT THE
4 DEFENDANT MEEHAM'S?

5 MR. DAVIS: NO, DEFENDANT MEEHAM HAS NOT
6 FILED ANY MOTION OR ANYTHING IN RESPONSE TO OUR
7 MOTION FOR STAY. MR. BETTILYON FILED A MEMORANDUM
8 WHICH I JUST BECAME AWARE OF THIS MORNING LAST FRIDAY
9 IN RESPONSE TO OUR MOTION TO STAY, AND PERHAPS, YOUR
10 HONOR, YOU DON'T HAVE THAT IN YOUR FILE. I DON'T
11 KNOW. IT WAS NOT FILED IN OUR OFFICE, AND IT WAS
12 JUST SOMETHING THAT HE BROUGHT UP HERE AND FILED WITH
13 THE COURT. DO YOU HAVE THAT, YOUR HONOR, IN THE FILE?

14 MR. LARSEN: EXCUSE ME, YOUR HONOR.
15 MR. BETTILYON DELIVERED TO OUR OFFICE A COPY OF A
16 MEMORANDUM FOR OPPOSITION TO THE MOTION TO STAY.

17 THE COURT: MAY I SEE THAT, MR. LARSEN?
18 YOU ARE HERE ON BEHALF OF THE DEFENDANT MEEHAM?

19 MR. LARSEN: YES.

20 THE COURT: AS I INDICATED FOR THE RECORD
21 EARLIER, THE COURT RECEIVED TELEPHONE COMMUNICATION
22 FROM MR. BETTILYON'S OFFICE, AND HE INDICATED THAT
23 HE WOULD NOT BE PRESENT TO ARGUE THIS MATTER, BUT
24 HE DID OBJECT TO THE MOTION FILED BY THE PLAINTIFF.

25 MR. DAVIS: THERE IS A MEMORANDUM THAT HE

1 FILED EVIDENTLY WITH THE COURT. WE HAD NO KNOWLEDGE
2 OF THAT UNTIL WE GOT HERE THIS MORNING, AND MAYBE I
3 DON'T EVEN NEED TO SPEAK TO THAT SINCE WE HAD NO
4 NOTICE OF IT.

5 THE COURT: NO, JUST ARGUE YOUR MOTION.

6 MR. DAVIS: WELL, THE REASON I'M TALKING
7 ABOUT IT IS THAT'S IN OPPOSITION TO OUR MOTION.

8 THE COURT: YES, IT IS.

9 MR. DAVIS: SO I THINK I DO NEED TO ADDRESS
10 WHAT HE MENTIONS IN THERE. AS FAR AS ARGUING OUR
11 MOTION, AS I SAID, WE NEED TO HAVE A FINAL JUDGMENT
12 SO THAT WE CAN APPEAL, BECAUSE WE DEFINITELY HAVE THE
13 INTENTION OF APPEALING THE DECISION IN THIS CASE, AND
14 THAT'S ALL I REALLY WANT TO SAY ABOUT THAT EXCEPT
15 THAT I DO WANT TO RESPOND TO THE MEMORANDUM
16 ESPECIALLY WITH REGARD TO ATTORNEY'S FEES AND SO
17 FORTH. WHERE WE HAD NO NOTICE OF THAT, I DON'T THINK
18 HE CAN ASK FOR THAT.

19 ALSO, I WILL SAY, YOUR HONOR, THAT THE
20 REAL PLAINTIFF IN THIS CASE, JOAN DE BRY, WHO BOUGHT
21 THE CONDOMINIUM IN QUESTION BROUGHT THIS ACTION IN
22 GOOD FAITH. SHE FEELS THAT SHE HAS RIGHTS IN THIS
23 CASE, AND WE ARE NOT DOING THIS TO TRY AND DELAY.
24 I DON'T THINK THERE'S ANY REAL HARM BEING DONE TO THE
25 DEFENDANT IN OUR ACTIONS IN THIS REGARD AND HIM

1 SAYING THAT HE CAN -- THAT HE ESPECIALLY TOOK TWO
2 HOURS TO BRING THE MEMORANDUM UP HERE. HE COULD HAVE
3 MAILED IT, IF HE HAD DONE IT TIMELY. THAT'S ALL I
4 REALLY HAVE TO SAY WITH THAT REGARD.

5 THE DEFENSE COUNSEL FROM THE OFFICE OF
6 CRAIG ADAMSON REPRESENTING THE DEFENDANT MEEHAM HAS
7 MENTIONED THAT PERHAPS WE CAN CHANGE THIS TO THE
8 SALT LAKE COUNTY AS OPPOSED TO ARGUING ANYTHING WITH
9 THEM. SO I WOULD MAKE THAT MOTION, THAT HE WOULD
10 LIKE TO DO THAT WITH REGARD TO ANYTHING DEALING WITH
11 HIS CLIENT. I DON'T HAVE ANYTHING FURTHER AT THIS
12 POINT, YOUR HONOR.

13 THE COURT: ALL RIGHT, MR. DAVIS.

14 MR. LARSEN?

15 MR. LARSEN: MY NAME IS MARK LARSEN. I AM
16 REPRESENTING KYM MEEHAM IN THIS CASE. WE HAVE
17 WITHDRAWN OUR MOTION TO DISMISS. AS FAR AS THE
18 MOTION FOR STAY IS CONCERNED, I'M NOT SURE WHETHER
19 IT WILL HAVE ANY IMPACT ON MY CLIENT. OCCIDENTAL/
20 NEBRASKA, AS I UNDERSTAND THEIR POSITION, IS THAT
21 UNDER RULE 62(H) WHICH REFERS TO RULE 54(B), THERE'S
22 NO REASON FOR STAYING THE PROCEEDING, FOR STAYING
23 THE EXECUTION OF JUDGMENT BECAUSE THE JUDGMENT IS
24 SIMPLY FOR ATTORNEY'S FEES AND A DISMISSAL OF THE
25 CLAIMS AGAINST OCCIDENTAL/NEBRASKA BASED UPON A

1 RELEASE WHICH ROBERT AND JOAN DE BRY ENTERED INTO
2 APPARENTLY IN CONJUNCTION WITH A TRUST DEED IN LIEU
3 OF FORECLOSURE -- I MEAN, A DEED IN LIEU OF
4 FORECLOSURE.

5 THE ONLY CONCERN THAT I HAVE ON THE MOTION
6 FOR STAY OF JUDGMENT IS THAT IT WILL BE OUR POSITION
7 IN THIS CASE THAT KYM MEEHAM AS AN AGENT OF
8 OCCIDENTAL/NEBRASKA WAS COVERED BY THE TERMS OF THE
9 RELEASE. I CERTAINLY DON'T WANT TO BE FORECLOSED
10 FROM ARGUING THAT POSITION, AND IT CERTAINLY DOESN'T
11 CONCERN ME AS TO WHETHER OCCIDENTAL/NEBRASKA
12 COLLECTS THEIR ATTORNEY'S FEES NOW OR LATER AGAINST
13 THE PLAINTIFFS IN THIS CASE.

14 WHAT I WOULD LIKE TO SUGGEST TO THE COURT
15 SO WE DON'T TAKE UP ANY MORE OF THE DISTRICT COURT'S
16 TIME ON THIS PARTICULAR MATTER, I BELIEVE UNDER THE
17 LOCAL RULES, THAT THIS COURT HAS THE AUTHORITY TO
18 TRANSFER THIS MATTER WHICH ONLY INVOLVES SOMETHING
19 SLIGHTLY IN EXCESS OF \$1,000, TO THE CIRCUIT COURT,
20 AND JUST FOR CONVENIENCE OF COUNSEL, I WOULD SUGGEST
21 THAT IT BE TRANSFERRED TO THE CIRCUIT COURT OF SALT
22 LAKE DIVISION OF THIS COUNTY.

23 THE COURT: ALL RIGHT, YOU HAVE NOT
24 SUBMITTED A MOTION, MR. LARSEN, IN SUPPORT OF YOUR
25 REQUEST TO HAVE IT TRANSFERRED?

1 MR. LARSEN: NO, I HAVEN'T. I THINK THE
2 COURT CAN DO THAT ON THE COURT'S OWN MOTION.

3 THE COURT: ANYTHING FURTHER, MR. DAVIS?

4 MR. DAVIS: YOUR HONOR, I WOULD LIKE TO
5 CLARIFY, MR. LARSEN HAS MENTIONED WHAT HIS POSITION
6 WOULD BE IN THIS CASE WITH REGARD TO DEFENDANT. I
7 DON'T BELIEVE WE ARE HERE ARGUING THAT. IF WE ARE
8 ARGUING, WE HAVE A RESPONSE TO THAT POSITION, BUT I
9 JUST WANT TO MAKE SURE WE ARE NOT TALKING ABOUT THAT
10 NOW.

11 MR. LARSEN: THE ONLY POINT THAT I'M
12 MAKING IS THAT I DON'T WANT TO BE FORECLOSED FROM
13 THAT POSITION IF THIS MOTION FOR STAY IS GRANTED.

14 MR. DAVIS: WE CERTAINLY ARE NOT TRYING
15 TO DO ANYTHING WITH REGARD TO OCCIDENTAL. WE DON'T
16 WANT TO CHANGE YOUR MIND, YOUR HONOR, ON THAT
17 JUDGMENT. IT'S JUST THAT WE DON'T FEEL THAT WE
18 COULD FILE AN APPEAL WITHOUT HAVING FINAL JUDGMENT,
19 AND RULE 54(B) UPON WHICH RULE 62(H) RELIES, RULE
20 54(B) SAYS THAT IN ORDER FOR A JUDGMENT TO BE FINAL,
21 IT MUST BE AN EXPRESSED DETERMINATION BY THE COURT,
22 AN EXPRESSED JUDGMENT TO THAT EFFECT, AND A
23 DETERMINATION. WELL, I CAN'T REMEMBER EXACTLY HOW
24 IT DESCRIBES IT, BUT IT NEEDS TO BE EXPRESSED SO
25 THAT THERE IS NO FURTHER REASON TO KEEP THAT PERSON

1 IN THIS CASE, AND I DON'T THINK THAT WAS DONE IN
2 THIS CASE, AND IT SEEMS TO ME THAT THEY ARE CLOSELY
3 ENOUGH RELATED THAT PERHAPS WE SHOULD GRANT OUR
4 MOTION FOR STAY UNTIL WE RESOLVE THE MATTER WITH
5 REGARD TO THE DEFENDANT, MEEHAM. I DON'T THINK
6 THERE'S REALLY ANY HARM DONE TO THE OTHER DEFENDANT.

7 THE COURT: ALL RIGHT, COUNSEL. I DON'T
8 QUITE FRANKLY SEE ANY CONNECTION BETWEEN A JUDGMENT
9 THAT I RENDERED ON BEHALF OF THE DEFENDANT OCCIDENTAL
10 AGAINST THE PLAINTIFFS FOR ATTORNEY'S FEES, AND THE
11 NEED BY THE PLAINTIFFS TO CONTINUE AFTER CO-DEFENDANT
12 MEEHAM. I THEREFORE DECLINE TO GRANT YOUR MOTION
13 TO STAY THE PROCEEDINGS INSOFAR AS THAT ISSUE IS
14 CONCERNED.

15 WITH REGARD TO THE REQUEST THAT HAS BEEN
16 MADE TO TRANSFER THIS MATTER TO THE CIRCUIT COURT,
17 I THINK THAT IS VERY APPROPRIATE, AND IT IS MY
18 ORDER THEREFORE THAT THIS CASE BE TRANSFERRED TO THE
19 CIRCUIT COURT IN SUMMIT COUNTY FOR ALL FURTHER
20 PROCEEDINGS.

21 I WILL ASK YOU, MR. LARSEN, TO PREPARE THE
22 APPROPRIATE ORDER OF TRANSFER AS WELL AS, WE WILL
23 NOTIFY THE CLERK TO HAVE MR. BETTILYON PREPARE THE
24 ORDER.

25 MR. LARSEN: YOUR HONOR, IS IT POSSIBLE TO

1 HAVE THE MATTER TRANSFERRED TO THE SALT LAKE
2 DIVISION?

3 THE COURT: I DON'T THINK SO.

4 MR. LARSEN: THANK YOU.

5 MR. DAVIS: YOUR HONOR, I HAD ONE QUESTION
6 WITH REGARD TO UNDER THAT ORDER IN THIS CASE FOR
7 ATTORNEY'S FEES, I BELIEVE THERE WAS NO MORE INVOLVED
8 IN IT?

9 THE COURT: IT WAS, BUT WHATEVER THE
10 EXTENT OF THAT ORDER, IT WAS NOT BEING STAYED.

11 MR. DAVIS: FINE. I WANTED THAT FOR THE
12 RECORD.

13 MR. LARSEN: DO YOU WANT ME TO INCLUDE YOUR
14 ORDER DENYING THE MOTION TO STAY?

15 THE COURT: IT PROBABLY WOULD BE MORE
16 CONVENIENT, MR. LARSEN, IF YOU WOULD DO THAT. I
17 WOULD APPRECIATE THAT.

18 (PROCEEDINGS CONCLUDED.)

19

20

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