

1979

# Empire Corporation v. Empire Credit, Inc : Appendix

Utah Supreme Court

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## Recommended Citation

Legal Brief, *Empire Corp. v. Empire Credit*, No. 16237 (Utah Supreme Court, 1979).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

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No. 16237

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EMPIRE CORPORATION,

Plaintiff and Respondent,

vs.

EMPIRE CREDIT, INC.,

Defendant,

ED T. OLSEN and MARLENE SINE,

Defendants and Appellants.

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APPENDIX

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Appeal from a Judgment of the District Court  
Salt Lake County  
Honorable G. Hal Taylor, Judge

---

RONALD C. BARKER  
2870 South State Street  
Attorney for Respondent  
Salt Lake City, Utah 84115

BRYCE E. ROE  
340 East Fourth South  
Attorney for Appellants  
Salt Lake City, Utah 84111

OCT 19 1976

Ronald C. Barker  
Attorney at Law  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

W. Sterling Evans, Clerk  
By W. Sterling Evans  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----  
EMPIRE CORPORATION, a Utah  
corporation,  
Plaintiff,  
vs  
EMPIRE CREDIT, INC., ED T.  
OLSEN and MARLENE SINE,  
Defendant,  
-----oo0oo-----  
; ; ; ; ; ;  
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW  
Civil No. 207,332

Plaintiffs' motion to strike defendants' answer and for default judgment in the above-entitled matter came on regularly for hearing at the hour of 2:00 p.m. on the 6th day of October, 1976, before the Honorable Marcellus K. Snow, District Judge. Plaintiff was represented by Ronald C. Barker and defendants were represented by Jay D. Edmonds. Oral arguments were presented by respective Counsel, the Court having taken the motion under advisement, having fully considered the file in this matter and good cause appearing therefor, being fully advised in the premises, the Court now makes the following Findings of Fact:

FINDINGS OF FACT

1. Plaintiff is a corporation organized and existing under the Laws of the State of Utah.
2. Defendant Empire Credit, Inc. is a corporation organized under the Laws of the State of Utah, whose corporate charter was suspended in March, 1971, for non-payment of franchise taxes, and which corporate charter was dissolved in 1974.
3. Empire Credit, Inc. was and is the alter ego of the defendants Ed T. Olsen and Marlene Sine, formerly known as Marlene Thomas, who were at all times material herein the officers, directors and sole stockholders of said corporate defendant.

4. The defendants Ed T. Olsen and Marline Sine, formerly known as Marline Thomas, cause or permitted the corporate charter of the corporate defendant to be suspended and dissolved and have withdrawn the assets of said corporation for their own personal use and benefit without proper authority to do so under the Laws of the State of Utah, and in derogation of the rights of the creditors of said corporate defendant, including the plaintiff. The individual defendants have thereby become the trustees of the assets of the corporate defendant for the benefit of its creditors, including the plaintiff.

5. On or about the 6th day of September, 1966, the defendant Empire Credit, Inc., for a valuable consideration, executed and delivered to Valley Bank and Trust Company its promissory note for \$50,000.00 payable in monthly installments of \$500.00 each month each commencing October 10, 1966, with the entire balance being due on September 10, 1967, which note provided for interest at the rate of 7% per annum, a copy of which note is attached to plaintiff's complaint as exhibit "A".

6. Prior to the commencement of this action Valley Bank and Trust Company sold, assigned and negotiated to plaintiff all of its right, title and interest in and to said promissory note, exhibit "A" to plaintiff's complaint.

7. Said defendant made payment of the first installment of \$500.00 due on said promissory note and thereafter defaulted and paid no further payments on said note, leaving an unpaid balance owed thereon of \$49,791.67 plus accrued interest. Accrued interest on said promissory note, exhibit "A" to plaintiff's complaint, is the sum of \$34,968.61 from and after the date of said first payment and to and including October 18, 1976, for a total of principal and interest due of \$84,760.28.

8. Under the terms of said note the holder thereof is entitled to recover a reasonable attorney's fee in the event of default; that by reason of the default of the defendants plaintiff is entitled to recover a reasonable attorney's fee; counsel for plaintiff was sworn and testified concerning attorney fees, and based thereon and based upon a review by the Court of the file in this matter the Court finds that the sum of \$8,000.00

is a reasonable sum to be allowed as attorney fees in this matter.

9. On November 9, 1972, plaintiff submitted interrogatories to defendant, answers to which were due December 9, 1972, (plus an additional three days for mailing time).

10. Defendants failed to answer those interrogatories within the time allowed, and in January, 1974, plaintiff filed a motion for sanctions for failure to comply with discovery.

11. On January 17, 1975, Judge Stewart Hanson, Jr. granted plaintiff's motion for sanctions, which order was reduced to a written order about January 27, 1975, and which order allowed defendants an additional 20 days within which to answer interrogatories and to produce documents, and ordered that default judgment be entered upon failure to comply with the order.

12. Defendants failed to comply with that order within the 20 days allowed and on April 18, 1975, plaintiff filed a motion for judgment or other sanctions for failure to comply with that order.

13. On April 29, 1975, by minute entry, Judge Stewart Hanson Jr. ordered that defendants comply with discovery on or before 5:00 p.m. on April 30, 1975, and that judgment would be entered in favor of plaintiff and against defendants if defendants failed to comply by that time. That order was reduced to a written order.

14. On April 30, 1975, partial answers to interrogatories were filed and some documents were produced by the defendants Ed T. Olsen and Marlene Sine. No answers have ever been filed by the defendant Empire Credit, Inc..

15. On May 28, 1975, plaintiff filed another motion for sanctions for failure to comply with order of January 17, 1975, (paragraph #11 above) and with the order of April 29, 1975, (paragraph #13 above), which motion specified the deficiencies in the partial answers to interrogatories filed by defendants Sine and Olsen (paragraph #14 above).

16. On May 28, 1975, plaintiff submitted additional discovery (interrogatories) to defendants.

17. On June 6, 1975, by minute entry, Judge Maurice Harding granted plaintiff's motion for judgment (paragraph #15 above) for failure to comply with discovery. This order was not reduced to a written judgment.

Defendant's counsel did not appear.

18. June 16, 1975, defendants filed a motion to extend the time to respond to discovery to June 30, 1975.

19. On July 3, 1975, plaintiff again filed a motion for judgment or sanctions for failure to comply with orders concerning discovery and for failure to comply with discovery submitted May 28, 1975, (paragraph #6 above).

20. On July 21, 1975, by minute entry Judge Bryant H. Croft again granted judgment against defendants for failure to comply with discovery. (motion mentioned in paragraph #19 above). Defendant's attorney again failed to appear.

21. August 11, 1975, defendants filed a motion to vacate the judgment.

22. September 9, 1975, the Honorable Marcellus K. Snow by minute entry granted defendants' motion to vacate the judgment, awarded \$50.00 attorney fees, and allowed defendants an additional 15 days within which to answer said discovery.

23. April 19, 1976, plaintiff filed motion to strike minute entry (paragraph #22 above), since that minute order had not been reduced to writing and defendants had failed to comply with the minute order by answering the discovery.

24. Motion mentioned in paragraph #23 came on for hearing before Judge Stewart M. Hanson, Sr., however Judge Hanson declined to hear that motion since counsel for defendants at that hearing presented a copy of an order which he had obtained from Judge Marcellus K. Snow reducing to writing the minute entry of September 9, 1975, (paragraph #22 above), which written order allowed defendants an additional 15 days within which to respond to said discovery. That order also failed to include the judgment for \$50.00 attorney fees ordered by Judge Snow (paragraph #22 above).

25. About September 18, 1976, plaintiff filed this motion to strike the answer of defendants and for default judgment, citing the matters mentioned in paragraphs #9 through 24 above in support of that motion.

26. No counter-affidavits were filed by defendants in opposition to plaintiff's motion to strike, no objections to the discovery submitted

by plaintiff were filed by defendants, and no further application for additional time to respond was filed herein defendants prior to said hearing.

27. Defendants Olsen and Sine have failed to respond to the interrogatories submitted about May 28, 1975, (paragraph #16 above), and to comply with the order of September 9, 1975, which ordered the filing of answers to said interrogatories and ordered the defendants to supply the additional information requested in plaintiff's motion of May 28, 1975, (paragraph #15 above) as supplemental responses to interrogatories submitted November 9, 1972, (paragraph #9 above). Defendant Empire Credit, Inc. has not responded to any of the discovery submitted by plaintiff (mentioned above).

28. Defendants have failed to comply with the letter and the spirit of the Utah Rules of Civil Procedure concerning discovery submitted by plaintiff and have failed to comply with the various orders of the Court mentioned above concerning discovery submitted by plaintiff to defendants.

From the foregoing Findings of Fact the Court now makes the following Conclusions of Law:

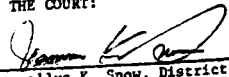
CONCLUSIONS OF LAW

29. That the answer of the defendants, and of each of them should be struck and the default of the defendants should be entered as provided by the Utah Rules of Civil Procedure, including but not limited to the provisions of Rule 37(b) (1) (c), URCP, for failure to comply with discovery submitted by plaintiff and for failure to obey the various orders of the Court compelling defendants to comply with and to respond to said discovery.


30. That judgment by default should be entered in favor of plaintiff and against defendants, jointly and severally, for \$84,760.28, together with costs incurred herein of \$28.50, for a total judgment of \$84,788.78, which judgment should bear interest at the rate of 8% per annum from date of entry of said judgment until paid.

Dated this ~~10~~ 1 day of October, 1976.

BY THE COURT:

  
Marcellus K. Snow, District Judge

ATTEST  
W. STERLING EVANS  
CLERK

BY:   
Deputy Clerk

# JUDGEMENT

FILED IN CLERK'S OFFICE  
Salt Lake County, Utah

OCT 19 1976

W. Sterling Evans, Clerk 3rd Dist. Court  
By W. Sterling Evans  
Deputy Clerk

Ronald C. Barker  
Attorney at Law  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

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

EMPIRE CORPORATION, a Utah  
corporation,

Plaintiff,

vs

EMPIRE CREDIT, INC., ED. T.  
OLSEN and MARLENE SINE,

Defendant,

BA. 140 NO. 702  
10-21-76 - 9:06 A.M.  
ms

JUDGMENT

Civil No. 207,332

Plaintiff's motion to strike defendants' answer and for

default judgment in the above-entitled matter came on regularly for hearing at the hour of 2:00 p.m. on the 6th day of October, 1976, before the Honorable Marcellus K. Snow, District Judge. Plaintiff was represented by Ronald C. Barker and defendants were represented by Jay D. Edmonds. Oral arguments were presented by respective Counsel, the Court having taken the motion under advisement, having fully considered the file and proceedings in this matter, being fully advised in the premises and good cause appearing therefor, and having made its Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the answer filed by the defendants is hereby struck from the record, the default of the defendants is hereby entered, and judgment is hereby awarded in favor of plaintiff and against defendants, jointly and severally, for \$84,760.28 together with costs incurred herein of \$28.50, for a total judgment of \$84,788.78, which judgment will bear interest at the rate of 8% per annum until paid.

Dated this 10 day of October, 1976.

BY THE COURT:

W. Sterling Evans  
District Judge

ATTEST  
W. STERLING EVANS  
CLERK



OCT 20 1976

W. Sterling Evans, Clerk 3rd Dist. Court  
*[Signature]*  
Deputy Clerk

JAY D. EDMONDS  
Attorney for Defendants  
Ten Exchange Place, Suite 309  
Salt Lake City, Utah 84111  
Telephone: 531-6686

IN THE DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

EMPIRE CORPORATION, a	:	
Utah Corporation,	:	
	:	
Plaintiff,	:	<u>MOTION AND ORDER</u>
	:	
- vs -	:	Civil No. 207332
	:	
EMPIRE CREDIT, INC.,	:	
ED T. OLSEN and	:	
MARLENE SINE,	:	
	:	
Defendants.	:	

---

MOTION

Defendants herewith move the Court to stay execution of the judgment by default granted by the order made herein on or about October 15, 1976 until after the hearing on said defendants' Motion to Set Aside said default judgment which is set for October 29, 1976. This motion is made ex parte and for the reason that immediate execution upon said judgment will work injustice and irreparable harm, as is set forth specifically in the aforesaid motion.

DATED this 19th day of October, 1976.

*[Signature]*  
Jay D. Edmonds  
Attorney for Defendants

ORDER

Based upon the foregoing Motion and for good cause appearing, it is hereby ORDERED that execution upon the judgment by default granted by Order on or about October 15, 1976 be and is hereby stayed pending the outcome of Defendants' Motion to Set Aside said default judgment.

BY THE COURT:

OCT 20 1976  
*[Signature]*  
Third District Judge

ATTEST

W. STERLING EVANS  
CLERK

BY *[Signature]*

Deputy Clerk

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CERTIFICATE

I hereby certify that I mailed a copy of the foregoing  
to Ronald C. Barker, Attorney for Plaintiff, 2870 South State Street,  
Salt Lake City, Utah 84115, postage prepaid, this 19 day of  
October, 1976.



Jay D. Edmonds

FILED  
COURT CLERK  
3 12 PM '76  
COURT CLERK

Ronald C. Barker  
Attorney for plaintiff  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

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

---ooOoc---

EMPIRE CORPORATION, :  
a Utah corporation, :  
Plaintiff, : ORDER  
vs :  
EMPIRE CREDIT, INC., ED T. : Civil No. 207,332  
OLSEN and MARLENE SINE, :  
Defendants. :

---ooOoc---

Defendants' motion to vacate the judgment heretofore entered in the above-entitled matter on or about the 24th day of November, 1976, came on regularly for hearing before the Honorable Marcellus K. Snow, District Judge, with Ronald C. Barker appearing as attorney for plaintiff and with Joseph H. Bottum appearing as attorney for defendants. Oral arguments were presented. The Court having taken the matter under advisement now makes the following:

ORDER

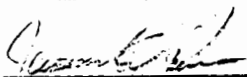
1. That the judgment entered herein on or about the 19th day of October, 1976, shall be vacated and set aside at such time as it appears on the record that defendants have paid the sum of \$1,000.00 attorney fees to plaintiffs for the use and benefit of their attorney, and at such time as defendants have fully answered interrogatories and requests for admissions submitted by plaintiff, and have produced the documents required to be produced under the terms of plaintiff's request for production of documents, and have fully complied with the terms of prior orders entered in this matter requiring the defendants to answer interrogatories and/or requests for admissions and to produce documents.

2. In the event that defendants fail to fully comply with the conditions imposed under the terms of paragraph #1 above within 30 days after entry of this order, then defendants' motion to vacate and set aside the judgment entered herein on or about the 24th day of November, 1976, is hereby denied.


DEC 30 1976

Dated this \_\_\_ day of \_\_\_\_\_, 197\_\_.

BY THE COURT:



District Judge

3  
BY   
Library Clerk

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JAY D. EDMONDS  
Attorney for Defendants  
10 Exchange Place, Suite #309  
Salt Lake City, Utah 84111  
Telephone: 531-6686

FILED  
1971 JUN 17  
CLERK OF DISTRICT COURT  
SALT LAKE COUNTY, UTAH  
*H. Williams*

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

EMPIRE CORPORATION,  
A Utah Corporation,  
  
Plaintiff,  
  
vs.  
  
EMPIRE CREDIT, INC.,  
et al.,  
  
Defendants.

AMENDED ANSWER

Civil No. 207,332

Defendants herein herewith answer Plaintiff's Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

1. With respect to Paragraph 1 of the Complaint, Defendant admits that Empire Corporation is an existing Utah Corporation and that Empire Credit, Inc. was suspended on March 14, 1971 for nonpayment of franchise taxes; the individual Defendants admit that they were officers and directors of Empire Credit, Inc., and deny that they were trustees of the assets of Empire Credit, Inc.

2. With respect to Paragraph 2 of the Complaint, Defendants admit the allegations set forth therein.

3. With respect to Paragraph 3 of the Complaint, Defendants admit that Empire Credit, Inc. made the first installment payments. Defendants deny each and every other allegation set forth in said Paragraph.

4. With respect to Paragraph 4 of the Complaint, Defendants admit that the note in question provides for attorney's fees in the event of collection, and specifically deny that the sum of \$8,000.00 is a reasonable attorney's fee.

5. Defendants specifically deny each and every allegation set forth in Paragraph 5 of Plaintiff's Complaint.

6. Defendants admit and deny the allegations incorporated by reference in Paragraph 6 of the Complaint as set forth hereinabove.

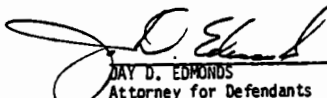
7. Defendants specifically deny each and every allegation set forth in Paragraph 7 of the Complaint.

8. Defendants admit and deny the allegations incorporated by reference in Paragraph 8 of the Complaint as set forth hereinabove.

9. Defendants specifically deny each and every allegation set forth in Paragraph 9 of the Complaint.

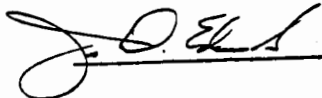
WHEREFORE, Defendants pray that the Complaint be dismissed, that they be awarded their costs herein, and for such further relief as the Court may deem proper.

DATED this 26 day of January, 1977.

  
\_\_\_\_\_  
JAY D. EDMONDS  
Attorney for Defendants

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing to Ronald C. Barker at 2870 South State Street, Salt Lake City, Utah 84115, this 27 day of January, 1977, postage prepaid.

  
\_\_\_\_\_

DEC 9 - 1977

W. Sterling Evans, Clerk of the Dist. Court  
By *[Signature]*  
Deputy Clerk

Ronald C. Barker  
Attorney at Law  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

EMPIRE CORPORATION,

Plaintiff,

vs

EMPIRE CREDIT, INC., et al.,

Defendants,

ORDER

Civil No. 207332

-----oo0oo-----

Plaintiff's motion to strike stay order and to confirm judgment came on regularly for hearing at the hour of 2:00 p.m. on the 22nd day of June, 1977, before the Honorable Dean S. Conder, District Judge. Plaintiff appeared by and through its attorney, Ronald C. Barker. Defendants appeared by and through their attorney, Jay D. Edmonds. Oral argument was presented by respective counsel, the Court having reviewed the file in this matter and being fully advised in the premises, it is hereby

ORDERED, as follows:

1. That defendants shall furnish to plaintiff for inspection and copying the income tax returns for the years 1972, 1973, 1974, 1975 and 1976 filed with Internal Revenue Service and the Utah State Tax Commission by each of the defendants. To the extent that defendants do not have copies of said tax returns in their possession or available to them they are ordered to forthwith apply for and to obtain copies thereof from the governmental agency with whom said tax returns were filed. Defendants are ordered to make those tax returns available to counsel for plaintiff within 30 days.


2. That defendants shall ~~fully, completely, truthfully and accurately~~ answer interrogatory #10 of the interrogatories dated May 27, 1975, within 20 days. Plaintiff's motion to compel answers to interrogatories #2, 8, 9 and 12 is denied.

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3. Plaintiff's motion to strike the stay of enforcement of the judgment entered herein, which stay order is dated about October 20, 1977, is denied at this time upon condition that defendants fully comply with all of the terms of this order. In the event that defendants fail to fully comply with the terms of said order plaintiff's motion to strike stay order and to confirm judgment is granted.

Dated this 9 day of December, 1977.

BY THE COURT:

  
\_\_\_\_\_  
District Judge

ATTEST  
W. STERLING EVANS  
CLERK

BY   
\_\_\_\_\_  
Deputy Clerk



Ronald C. Barker  
Attorney for plaintiff  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone: 486-9636

NOTICE OF HEARING  
BY Ronald C. Barker  
DEPUTY CLERK

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

---ooOoo---

EMPIRE CORPORATION, )  
Plaintiff, )  
vs. ) NOTICE OF HEARING  
EMPIRE CREDIT, INC., et al., ) MOTION FOR ORDER DIRECTING  
Defendants. ) CLERK TO ISSUE EXECUTION  
Civil No. 207332

---ooOoo---

Comes now the plaintiff and moves the Court for an order directing the clerk of the above-entitled Court to issue execution and other process in aid of enforcement and collection of the judgment entered in the above entitled matter. In support of this motion plaintiff alleges as follows:

1. On or about the 19th day of October, 1976, judgment was entered herein for \$84,788.78, which judgment was duly supported by Findings of Fact and Conclusions of Law. The suit was on a promissory note. The judgment was entered at a hearing wherein defendants were represented by counsel who presented arguments in opposition to the entry of the judgment. This judgment was the last of a series of judgments entered and vacated by reason of defendants' refusal to comply with discovery, to obey lawful orders of the Court, for failure to appear for hearings and to obey sanctions imposed by the Court. The judgment was also entered by reason of the failure of defendant to file an answer. See Findings of Fact #9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, and the

summary of events contained in the Motion to Strike Answer and for Default Judgment dated Septmeber 18, 1976, filed herein.

2. Thereafter new counsel appeared on behalf of defendants and obtained an ex-party order which was entered about October 20, 1976, staying execution on that judgment "pending the outcome of Defendants' Motion to Set Aside Said Default Judgment." No undertaking for the security of plaintiff was ordered or posted as required by Rule 62(a), URCP, and such undertaking was not waived as required by Rule 62 (j), URCP. No appeal has been taken from the Order of Judge Snow.

3. Thereafter about January 13, 1977, said new counsel for defendants filed a motion to vacate the judgment under Rule 60(b)(7), URCP, (any other reasons justifying relief from the operation of the judgment), claiming that defendants' counsel was "grossly negligent" and that such neglect justified relief from the judgment.

4. After the hearing Judge Snow entered an order about December 30, 1976, which provided that under certain circumstances that judgment might be vacated at a future time, but did not order the judgment to be vacated at that time. That order stated, among other things:

"1. That the judgment entered herein on or about the 19th day of October, 1976, shall be vacated and set aside at such time as it appears on the record that defendants have . . . fully answered interrogatories and requests for admissions submitted by plaintiff, . . . and have fully complied with the terms of prior orders entered in this matter requiring the defendants to answer interrogatories and/or requests for admissions and to produce documents." (Emphasis added).

5. No order has ever in fact been entered vacating or setting that judgment aside and the judgment still stands of record.

6. About June 1, 1977, plaintiff filed a motion to strike Judge Snow's order staying enforcement of the judgment (see paragraph #2 above).

7. That motion was heard by Judge Conder about June 22, 1977. Judge Conder ordered defendants to produce certain income tax returns within 30 days. Those tax returns were not made available within said period. Defendants filed a pleading dated July 20, 1977, wherein they stated that the tax returns would be made available for inspection July 27, 1977, at 11:00 a.m., however they were not infact made available at that time. See also letter of November 9, 1977, exhibit "I" attached hereto, wherein counsel for defendants indicates that they will thereafter produce the tax returns (which they eventually did do).

8. Judge Conder also ordered that the defendants "fully, completely, truthfully and accurately answer interrogatory #10 of the interrogatories dated May 27, 1975, within 20 days." Under date of July 21, 1977, the defendants Marlene Sine and Ed Olsen filed sworn answers to said interrogatory #10 stating that the information furnished in that answer disclosed all interests in real property that the defendant then "have or have had . . . during the discovery period."

9. Further investigation by plaintiff disclosed that the defendants had not "fully, completely, truthfully, or accurately" answered that interrogaory (#10 of the May 27, 1975, interrogatories) as had been ordered by Judge Conder. Under date of May 8, 1978, plaintiff caused requests for admissions and interrogatories to be submitted to defendants requiring them to admit that they owned interests in approximately 8 parcels of real property which had not been disclosed by their answers to said interrogatory #10. Attached to said requests for admissions as exhibits were title reports showing the ownership and/or financial interest of the

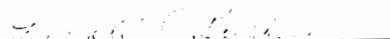
defendants in and to various parcels of real property in Salt Lake and Summit Counties. Defendants did not deny those requests for admissions within the time required under Rule 36, URCP, or at all, and accordingly said requests for admissions are deemed admitted as provided by said Rule 36, URCP.

10. Judge Conder conditionally denied plaintiff's Motion to Strike the Order of Judge Snow Staying Enforcement of the Judgment (see paragraph #2 above), and ordered that in the event that defendants failed to fully comply with the terms of the order that plaintiff's Motion to Strike the Stay Order and to Confirm the Judgment was granted. His order reads in part as follows:

"3. plaintiff's motion to strike the Stay of Enforcement of the Judgment entered herein, which stay order is dated about October 20, 1977, is denied at this time upon condition that defendants fully comply with all of the terms of this order. In the event that defendants fail to fully comply with the terms of said order plaintiff's Motion to Strike Stay Order and to Confirm Judgment is granted."

11. Under the terms of Judge Conder's order and in view of the admissions by defendants that they owned interests in approximately 8 parcels of real property which were not disclosed in their answer to said interrogatory #10 (dated May 27, 1975), the stay order has been vacated, the judgment as been confirmed, and the Clerk should be directed to issue execution and other process in aid of enforcement and collection of that judgment.

Dated the 15<sup>th</sup> day of July, 1978.

  
\_\_\_\_\_  
Ronald C. Barker, Attorney for  
plaintiff, Empire Corporation

NOTICE OF HEARING

Notice is hereby given that the above-entitled matter will be called up for hearing on the 5th day of September, 1978 at 10:00 a.m. or as soon thereafter as counsel may be heard before the above-mentioned Court on the Law and Motion Calendar. Govern yourselves accordingly.

CERTIFICATE OF MAILING

I hereby certify that I caused a copy of the foregoing to be mailed, postage prepaid, to Joseph Bottum, 427 - 27th Street, Ogden, Utah 84403, and to Jay D. Edmonds, #10 Exchange Place #309, Salt Lake City, Utah 84111, to the 5th day of September 1978.

Ronald C. Barker  
Ronald C. Barker

SEP 13 4 31 PM '78

Ronald C. Barker  
Attorney for plaintiff  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone 486-9636

W. EDMONDS, CLERK  
BY: *W. Edmonds*  
DEPUTY CLERK

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

---ooOoo---

EMPIRE CORPORATION, )  
Plaintiff, )  
vs. ) ORDER  
EMPIRE CREDIT, INC., et al., ) Civil No. 207332  
Defendants. )

---ooOoo---

Plaintiff's motion for an order directing the Clerk of the above-entitled Court to issue execution and other process in aid of enforcement and collection of the judgment entered in the above-entitled matter came on regularly for hearing at the hour of 10:00 a.m. on the 12th day of September, 1978, before the Honorable G. Hal Taylor, District Judge. The hearing on this matter was continued from September 5, 1978, in order to permit the defendants to obtain new counsel, and on condition that defendants pay \$100.00 attorney fees to counsel for plaintiff. Plaintiff was represented by Ronald C. Barker. Mr. Jay D. Edmonds appeared as counsel for the defendants. Mr. Edmonds advised the Court that his services had been terminated by the defendants and that he had filed a motion for permission to withdraw as counsel for defendants, which motion was scheduled for hearing at a later time. Counsel for plaintiff waived time for hearing of that motion and consented that it be heard at this time. The Court thereupon consented to the withdrawal of Mr. Edmonds as counsel for the defendants. The Court having considered the file in this matter, it appearing to the Court that defendants have failed to comply with the conditions imposed by the Honorable Marcellus K. Snow in his order of about December 30, 1976, for the vacating and setting aside of the judgment entered in favor of plaintiff and against defendants herein about October 19, 1976; that the defendants further failed to comply with the

conditions imposed by the Honorable Dean E. Conder pursuant to the hearing held about June 22, 1977, for the vacating of that judgment; and that under the terms of the orders of both Judge Snow and Judge Conder defendants' motions to vacate said judgment were denied. The Court being fully advised in the premises and good cause appearing therefor, it is hereby

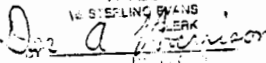
ORDERED, that plaintiff's motion for an order directing the clerk of the above-entitled Court to issue execution and other process in aid of enforcement and collection of the judgment entered in the above-entitled matter is hereby GRANTED, and it is further

ORDERED, that the order of Judge Snow dated about October 20, 1976, staying execution on that judgment pending outcome of defendants' motion to set aside the judgment is hereby terminated, vacated and set aside, and plaintiff is now authorized to enforce that judgment in the same manner as if said order had not been entered. The Court hereby ratifies and reaffirms the judgment entered in this matter about October 19, 1976, and finds that said judgment has not been vacated or set aside by any of the prior orders of the Court in this matter..

Dated the 13<sup>th</sup> day of September, 1978.

BY THE COURT:

  
District Judge

ATTEST  
IN WASHINGTON  
BY  


DEC 1 4 25 PM '78

W. STERLING EVANS, CLERK  
3RD JUD. DIST.

BY *W. Sessions*

CLARK W. SESSIONS  
WATKISS & CAMPBELL  
Attorneys for Defendants  
310 South Main, 12th Floor  
Salt Lake City, Utah 84101  
Telephone: 363-3300

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

EMPIRE CORPORATION,	:	
	:	
Plaintiff,	:	MOTION TO SET ASIDE AND
	:	VACATE ORDER AND JUDGMENT
-vs-	:	
	:	
EMPIRE CREDIT, INC., ED T. OLSEN and MARLENE SINE,	:	Civil No. 207332
	:	
Defendants.	:	

COME NOW the Defendants, by and through their attorney, Clark W. Sessions, and respectfully move the above-entitled Court for an order setting aside and vacating the order of the above-entitled Court dated the 13th day of September, 1978, and filed the same date and the judgment of the above-entitled Court entered on or about October 19, 1976 and the execution issued pursuant thereto by the Clerk of the above-entitled Court dated the 16th day of November, 1978, all pursuant to Rule 60(b) of the Utah Rules of Civil Procedure, as amended. This motion is made on the following grounds and for the following reasons:

1. The order of the above-entitled Court dated September 13, 1978 in part granted Defendants' prior counsel permission to withdraw, but neither the plaintiff nor the plaintiff's counsel complied with the applicable provisions of Rule 2.5 of the Rules of Practice in the District Court of the State of Utah in connection therewith which requires that when an attorney withdraws from a case "the party to an action for whom such attorney was acting, must before any further proceedings are had against him, be required by the adverse party, by written notice to appoint another attorney or

RECEIVED IN DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, UTAH 12/13/78



to appear in person." Neither the Plaintiff nor Plaintiff's counsel complied with the further requirements of Rule 10 of the Rules of Practice in the District Court of the Third Judicial District of the State of Utah which provides that "when an attorney withdraws as counsel of record, written notice of the withdrawal must be served upon the client of the withdrawing attorney and upon all other parties, and a Certificate of Service must be forthwith filed with the Court . . . . When an attorney . . . ceases to act as an attorney, a party to an action for whom such attorney was acting must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or to appear in person."

Notwithstanding the foregoing requirements, Plaintiff and Plaintiff's counsel proceeded to issue an execution and a Praecipe, true and correct copies of the same is attached hereto as Exhibit "A" and by this reference incorporated herein and made a part hereof.


2. That the Defendants have heretofore provided such information, answers, documents and data as has been requested of them by their counsel as more fully set forth in the Affidavit of Marlene Sine attached to as Exhibit "B" and by this reference incorporated herein and made a part hereof.

3. Upon the files and records herein which show that the sole basis for the judgment heretofore entered was the failure to provide timely information requested in discovery and this Court has not had the opportunity to consider the merits of the claims of the respective parties.

4. In the interest of justice and upon the memorandum in support hereof to be filed prior to the hearing hereon.

DATED this 30th day of November, 1978.

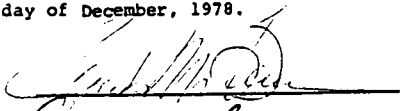
WATKISS & CAMPBELL

By   
CLARK W. SESSIONS

Attorneys for Defendants  
EMPIRE CREDIT, INC., ED T.  
OLSEN and MARLENE SINE

Certificate of Service

This is to certify that the above and foregoing Motion to Set Aside and Vacate Order and Judgment was served upon the Plaintiff herein by hand delivery of a true and correct copy thereof to the office of Ronald C. Barker, attorney at law, at 2870 South State Street, Salt Lake City, Utah 84115, and by mailing a copy thereof, first class postage prepaid thereon, to Plaintiff's attorney, Ronald C. Barker at 2870 South State Street, Salt Lake City, Utah, 84115, this 1st day of December, 1978.

  
Bruce R. Smith

SA.

Jan 9 4 07 PM '79

W. STERLING EVANS, CLERK  
PRO. DIST. COURT  
BY *Dee A. Harrison*  
DEPUTY CLERK

Ronald C. Barker  
Attorney for plaintiff  
2870 South State Street  
Salt Lake City, Utah 84115  
Telephone 486-9636

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

---oo0oo---

EMPIRE CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
EMPIRE CREDIT, INC., ED T.	)	Civil No. 207,332
OLSEN and MARLENE SINE,	)	
	)	
Defendants.	)	

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Defendants' motions to set aside and vacate order and judgment and for stay of execution came on regularly for hearing at the hour of 2:00 p.m. on the 11th day of December, 1978, before the Honorable G. Hal Taylor, District Judge, with Ronald C. Barker appearing as counsel for plaintiff and with Clark W. Sessions appearing as counsel for defendants. The Court having considered the memorandum filed by counsel for defendants in support of their motion, the affidavits filed in support thereof and the file in this matter, being fully advised in the premises, and good cause appearing therefor, it is hereby

ORDERED, ADJUDGED and DECREED that defendants motions to set aside and vacate order and judgment for for stay of execution and hereby denied.

Dated the 8th day of January, 1979.

BY THE COURT:

*G. Hal Taylor*  
District Judge

Approved as to form:

*Clark W. Sessions*  
Clark W. Sessions, attorney for defendants

ATTEST  
W. STERLING EVANS,  
CLERK  
BY *Dee A. Harrison*  
DEPUTY CLERK