

2009

Check City, Inc. v. L and T Enterprises : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CHECK CITY,
Plaintiff/Counterclaim
Defendant/Appellee,

v.

L&T ENTERPRISES, a Utah Corporation,
Defendant.

Court of Appeals No.: 20090685

District Court No.: 060403068

BRIEF OF APPELLEE CHECK CITY

Appeal from a judgment and order after a bench trial at the Fourth Judicial District Court,
Utah County, the Honorable Fred D. Howard Presiding

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LIST OF ALL PARTIES

All of the parties are listed on the cover of this brief.

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JURISDICTION OF THE COURT

This appeal arises from Check City's negligence lawsuit against L&T Enterprises (hereinafter "L&T"). R. 1-8. On April 29, 2008 the district court issued its ruling granting Check City's motion for summary judgment on L&T's counterclaims. R. 334-29. After a bench trial, the district court concluded that as a result of L&T's failure to exercise ordinary care as required by Utah Code Ann. § 70A-3-406 (1993) (hereinafter "3-406") Check City was damaged in the amount of \$9,388.44. R. 501. L&T timely filed a notice of appeal on August 3, 2009. R. 503-05. This court has appellate jurisdiction over the district court's final decision pursuant to Utah Code Ann. § 78A-4-103(2)(j) (2009).

ISSUES PRESENTED

I. DUTY

Defendant never disputed TJS's actions constituted a forgery until they brought this appeal. Defendants now challenge the trial court's factual finding that TJS presented six checks (hereinafter "Checks") through forgery.

A. Standard of review: The appellant must show material findings are clearly erroneous by marshaling all evidence supporting the findings, then showing this evidence is legally insufficient to support the findings when viewed in a light most favorable to the trial court's findings. *State v. Pena*, 869 P.2d 932, 935-36 (Utah 1994) (clearly erroneous standard of review of factual findings); and *Ong Int'l (U.S.A.) v. 11th Ave. Corp.*, 850 P.2d 447, 457 (Utah 1993) (marshalling requirement).

B. Preservation of Issue: L&T is required to cite to the record showing preservation of each issue raised on appeal. Utah R. App. P. 24(a)(5). On this appeal, L&T argues for the first time that there was no alteration or forgery giving rise to a claim under Utah Code Ann. § 70A-3-406(1-2) (1993). L&T's App. Brief at p. 17.

II. COMPARATIVE NEGLIGENCE

The issue is whether the trial court was correct in its comparison of L&T's negligence to Check City's negligence under 3-406.

A. Standard of Review: The appellant must show material findings are "clearly erroneous by marshaling all evidence supporting the findings, then showing this

evidence is legally insufficient to support the findings when viewed in a light most favorable to the trial court's findings." *State v. Pena*, 869 P.2d 932, 935-36 (Utah 1994) (clearly erroneous standard of review); and *Ong Int'l (U.S.A.) v. 11th Ave. Corp.*, 850 P.2d 447, 457 (Utah 1993) (marshalling requirement).

B. Preservation of Issue: L&T preserved this issue for appeal through motions, the course of trial, and closing arguments.

III. CHECK CITY'S MOTION FOR SUMMARY JUDGMENT ON L&T'S COUNTERCLAIM—INJURY/DAMAGES

L&T filed a counterclaim against Check City claiming negligence. The trial court determined that L&T did not provide any "record evidence of damages." Did L&T provide any record evidence of damages?

A. Standard of Review: A district court's decision to dismiss claims on grounds that there was no record evidence of damages constitutes a legal determination that this Court reviews for correctness, without deference to the district court's decision. *Hall v. State Dep't of Corrs.*, 2001 UT 34, ¶ 11, 24 P.3d 958.

B. Preservation of Issue: Although L&T claimed it was damaged, L&T did not preserve this issue for appeal because it did not present record evidence of damages or attempt to explain how it was damaged to the trial court.

STATEMENT OF THE CASE

Although Check City disputes some of the factual allegations in L&T's statement of the case, for purposes of simplicity Check City will forgo briefing their statement of the case pursuant to Utah R. App. P. 24(b)(1).

STATEMENT OF FACTS

L&T is a construction company. Trial Transcript (hereinafter "Tr.") 46. L&T hired TJS Mechanical, Inc., (hereinafter "TJS"), a plumbing subcontractor, to perform plumbing services on several projects. Tr. 48.

L&T paid TJS through one-party checks and two-party checks. Tr. 49-50. L&T could view their returned checks no more than 30 days from when they are cashed. Tr. 120-22.

TJS was a plumbing company that performed plumbing services for L&T. Tr. 48. TJS was owned and managed by Jana and Alex "Trent" Mortensen. R. 431, & Tr. 102. TJS's material supplier was Familian Pipe. Tr. 33.

Check City provides check cashing services. L&T's App. Brief p. 10. Between 2002 and 2003 Check City cashed approximately 60 checks for TJS totaling close to \$170,000. Tr. 107 & Trial Exhibit "6." TJS and its representatives had been trusted customers of Check City for years prior to the Checks in question. R. 267.

At some point L&T began delaying payments to TJS. Tr. 103-04. L&T's late payments to TJS created problems for TJS. Tr. 105.

On or about December 11, 2003 L&T wrote two two-party checks to TJS and Familian Pipe. R. 052-53. On December 23, 2003, TJS cashed checks numbered 051167 for \$265.62 and 051168 for \$265.62 at Check City (hereinafter the “December 23rd Checks”) *Id.* “Both of the December 23rd checks were signed two times. *Id.* The December 23rd Checks were signed by TJS Mechanical and Jana Mortensen. *Id.* Thus, both of the December 23rd checks contained two signatures, but were not signed by Familian Pipe. *Id.* Check City deposited the December 23rd checks and originally received funds from L&T’s bank for those checks. R. 0166.

On December 31, 2003 L&T drafted check number 051459 which totaled \$4,207.70 to TJS and Familian Pipe. R. 050. On January 23rd, 2004 TJS cashed the \$4,207.70 check at Check City. R. 50.

L&T required their subcontractors and suppliers sign lien releases after receiving payment from L&T. R.059.

On January 8, 2004 L&T learned that TJS was altering lien releases. R. 059, & Trial Exhibit “1.”

L&T could have viewed the signatures on the December 23rd Checks on or about January 23rd, 2004 which was 30 days from when they were cashed. R. Tr. 120-22.

On February 5, 2004 L&T’s Accounts Payable Manager, Angela Walker, noted that there was “something wrong with TJS. Trial Exhibit “1.”

On February 13, 2004 L&T drafted check number 051747 which totaled \$2,098.68 to TJS and Familian Pipe. R. 051.

On February 19, 2004 L&T's Angela Walker noted that she was "concerned" about TJS because TJS was desperate for their funds. Trial Exhibit "1."

On February 19, 2004 L&T wrote check number 51765 for \$7,477.84 and check number 51766 for \$4,992.66 to TJS and Familian Pipe. R. 48-49.

TJS cashed the check number 51765 for \$7,477.84 at Check City on or about February 20, 2004. *Id.* That check also did not have Familian Pipe's signature. *Id.*

On or about February 28, 2004 TJS cashed check number 051747 for \$2,098.68 and check number 51766 for \$4,992.66 at Check City. R. 49, & 51. Again, the checks cashed on or about February 28th contained the signature of both TJS and Jana Mortensen, but not that of Familian Pipe. *Id.*

L&T was in direct communication with Familian and could have inquired about whether they were being paid. Tr. 91.

L&T took steps to remedy "fraud/forgery" on or about April 30, 2004. R. 058, & Trial Exhibit "1." On that date, L&T filled out affidavits of "fraud/forgery" and delivered them to their bank, Zion's. R. 35-41. L&T ultimately received a refund from Check City's bank, Key Bank. Tr. 065. Thus, Check City paid cash for the Checks and has received nothing in return. Tr. 065.

After careful thought, the trial court ultimately determined that Check City shouldered the majority of fault for the December 23rd Checks. Tr. 143. However,

the trial court concluded that L&T was 51% at fault for the checks that were cashed after L&T had notice of the risk of non-payment by TJS (total award of \$9,388.44 plus interest). Tr. 144, R. 496, & R. 500-502.

SUMMARY OF ARGUMENT

Throughout the course of litigation, and the trial, L&T termed TJS as the “forger.” L&T now claims for the first time that there was no forgery giving rise a duty as defined by 3-406. L&T itself recognized that TJS was presenting the Checks through forgery. In addition, because L&T did not raise this issue with the trial court, L&T did not preserve this issue for appeal.

Although Check City has never denied some responsibility, L&T ignored several red flags with TJS which put L&T in the better position to discover the forgeries. In addition, if L&T would have exercised ordinary care they would have discovered the forgeries much earlier and prevented Check City’s loss.

In regard to L&T’s counterclaims, L&T could not have been injured by Check City. L&T can not dispute that although it wrote the Checks, its bank ultimately did not honor the checks. For that reason, L&T could not explain how it was damaged by Check City nor can L&T present record evidence of its damage.

ARGUMENT

I. DUTY

A. L&T did not preserve the issue of duty under 3-406.

Although L&T argued there was no duty under Utah Code Ann. § 70A-3-403 and Utah Code Ann. § 70A-4-406 throughout litigation and the course of the trial, they never argued that there was not a forgery which would trigger 3-406. The crux of L&T's argument on appeal is that there was no Forgery giving rise to a claim under 3-406. L&T's App. Brief p. 12.

The following is a short explanation of why each of the pages in the record cited by L&T as locations where L&T allegedly preserved the issue mentioned above are not adequate references. Check City has also included two pages from the record which show that Check City clearly intended to use 3-406 to explain L&T's duty.

- (R. 102) This page in the record references L&T's motion for summary judgment. There is no mention in the motion of 3-406 or the new argument that there was not an alteration or forgery.
- (R. 148) This page in the record references the first page of L&T's memorandum in support of its motion for summary judgment. The memorandum that followed made no reference to 3-406 or the new argument that there was not an alteration or forgery.

- (R. 170) This page references Check City's response to L&T's motion for summary judgment. Check City referenced 3-406. L&T never replied with arguments that 3-406 didn't apply or with their new argument that there was no alteration or forgery.
- (R. 379) This page references Check City's trial brief. Check City referenced 3-406 as the basis for their negligence argument. This brief was mailed to L&T's counsel prior to trial. Thus, arguments about why L&T believed 3-406 didn't apply should have been presented at trial.
- (R. 489) This page references a page from L&T's motion in limine. In the motion, L&T argued that they did not owe Check City a duty. However, L&T made no argument that there was no alteration or forgery. L&T discussed 3-406 but argued that it didn't apply for reasons other than that its new argument that there was no alteration or forgery. The arguments made in L&T's motion in limine are different issues than L&T has brought on appeal.
- (R. 529) L&T did not argue at trial that 3-406 didn't apply.
- (Tr. 32) L&T's counsel argued that 3-403 doesn't apply. "The only issue I think we may need to create a record on relates to the claim that Check City is making under 3-403." Tr. 32. L&T's counsel never referenced 3-406. In fact L&T's counsel stipulated that there were "no disputed issues of fact about the

duty issue.” *Id.* Throughout the course of the trial L&T’s counsel never argued that 3-406 didn’t apply.

- (Tr. 132-33) During this section of the trial L&T’s counsel argued that some sections of the uniform commercial code barred Check City’s claims. However, L&T did not argue that 3-406 did not apply.
- (Tr. 140) During this section of the trial L&T’s counsel argued that 4-406 shouldn’t apply. L&T did not argue that 3-406 did not apply.
- (Tr. 143) This page in the transcript reflects the Judge Howard’s ruling that there was a duty under 3-406.

Under Rule 24(a)(9) of the Utah Rules of Appellate Procedure, an appellant must provide an argument containing the contentions and reasons with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations...to the record. Utah R. App. P. 24(a)(9) (2010). When the appellant fails to comply with this rule the court should decline to address the issue because the reviewing court is entitled to have the issues clearly defined. *Burns v. Summerhays*, 927 P.2d 197, 199 (Utah Ct. App. 1996).

To preserve an issue for appeal a party must first raise the issue before the trial court. *Hart v. Salt Lake County Comm’n*, 945 P.2d 125, 129 (Utah Ct. App. 1997). A matter is sufficiently raised if (a) it is submitted to the trial court, and (b) the court is afforded an opportunity to rule on the issue. *Id.* An issue must be “specifically

raised such that the issue is sufficiently raised to a “level of consciousness before the trial court.” *Id.*

Here, L&T has not cited one page in the record in which they preserved their new argument for appeal. The trial court was not afforded an opportunity to rule on the issue and in fact was led to the conclusion that there was a forgery or alteration by L&T. L&T’s new argument that there was no forgery was therefore not raised to a level of consciousness before the trial court. As such, this Court should dismiss L&T’s appeal because of L&T’s failure to preserve the issue of a duty under 3-406.

B. L&T did not properly marshal all of the evidence for the Court on the issue of whether there was a forgery under 3-406.

L&T did not inform this Court of numerous facts that led the trial court to determine that there was a forgery or alteration under 3-406.

To challenge the sufficiency of the evidence supporting the trial court’s determination, appellant “must marshal the evidence supporting the verdict and then demonstrate that even viewing the evidence in the light most favorable to the verdict, the evidence is insufficient to support it.” *Ong Int’l (U.S.A.) v. 11th Ave. Corp.*, 850 P.2d 447, 457 (Utah 1993).

Some of the facts L&T neglected to inform this Court of are: (1) that each of the checks were required to have two signatures and in fact had two signatures, (2) that L&T termed TJS as the “forger” and these checks as “forgeries,” and (3) that there were numerous indications that TJS was likely presenting checks as though they

had the required endorsements. R. 48-53 (reverse side of checks with two signatures); Tr. 135-136, 146 & R. 35-41 (where L&T termed TJS as the forger, and filled out affidavits of “forgery” with their bank); & Trial Exhibit “1” (where L&T continued to write two-party checks to TJS knowing that TJS was altering lien releases, knowing that TJS desperate for cash, knowing that something was “wrong” with TJS, & being “concerned” with TJS).

Here, L&T made no attempt to marshal the evidence in support of the trial court’s finding of an alteration or forgery. All L&T has done is argue selected evidence favorable to its position. This failure alone is grounds to reject their new argument that there was no alteration or forgery.

C. Throughout the course of litigation L&T termed TJS’s actions as forgery.

As mentioned above, L&T termed TJS as the “forger” and these checks as “forgeries.” Tr. 135-136, 146 & R. 35-41 (where L&T termed TJS as the forger, and filled out affidavits of “forgery” with their bank).

- The “forger” [TJS] filed bankruptcy. Tr. 135;
- You look to the party who took the check from the “forger.” Tr. 135-36;
- L&T in fact filled out an affidavits attesting to TJS “Forgery.” R. 35-41.

Although L&T argued there was no duty under the UCC, when questioned by the trial court about what “facts” L&T disputes about Check City’s negligence claim, L&T said there were none. Tr. 32. L&T went on to say that “[t]he only issue that I

think we may need to create a record on relates to the claim that Check City is making under [3-403]...” *Id.*

In addition, had L&T made this argument at any time during the district court case, Check City would have presented additional evidence of the signatures being forgeries. L&T failed to point out that although Familian’s signature did not appear on the checks as the second required signature, there were two signatures on the back of all of the checks. R. 48-53 (reverse side of checks with two signatures). These two signatures, along with TJS’s long check cashing history at Check City, led Check City to believe TJS had the required endorsements on the Checks. When TJS then presented the Checks to Check City through fraud, Check City cashed the checks in good faith believing that all of the required endorsements were on the Checks, even though the signatures on the checks turned out not to be Familian’s signatures.

Check City acknowledges that there are numerous authorities which hold that a check which is missing a signature does not contain a forgery or alteration under U.C.C. § 3-406. However, “forgery” is defined as “a false ...document made to look genuine by someone with the intent to deceive.” Balck’s Law Dictionary 661 (7th ed. 1999). In light of defendant’s failure to argue that there was no forgery, the fact that there were two signatures on the back of all of the Checks, and the defendant’s affirmative statement that the only factual issues related to 4-403, the trial court was certainly at liberty to determine that the second signature on the Checks was presented as that of Familian’s or of Familian’s agent by TJS. The trial court was therefore

justified in finding there was an alteration or forgery, i.e., TJS presented a document made to look genuine with the intent to deceive.

D. Although 3-406 does not create a cause of action for Check City, it appropriately explains the duty L&T owed Check City—Reasonable Care.

Select Express, cited by L&T for the proposition that a drafter cannot owe a duty of care to a check casher like Check City, stands for a much different proposition. The relevant rule from *Select Express* is that the court should look to the relationship between the drawer and the party that takes the check to determine if there is a duty. *Select Express, LLC v. Am. Trade Binidery, Inc.*, 178 Md. App. 607, 614 (Md. Ct. Spec. App. 2008), & L&T's App. Brief p.19. Thus, the *Select Express* court recognized that there may be a duty if the relationship is different than the relationship at issue in the *Select Express* case. *Id.*

When a failure to exercise due care creates the risk of economic loss only, an intimate nexus between the parties is a predicate to the imposition of tort liability—duty. *Id.* The court in *Select Express* recognized that the "nexus requirement may not be as close as the word 'intimate' would suggest" and in determining whether it exists, the focus is on the **defendant's knowledge**. *Id.* at 615.

“Section 3-406 rejects decisions holding that the maker of a note owes no duty of care to the holder...By issuing the instrument and ‘setting it afloat upon a sea of strangers’ the maker or drawer voluntarily enters into a relation with the later

holders which justifies imposition of a duty of care.” Utah Code Ann. § 70A-3-406 cmt. 1 (1993).

Here, L&T had knowledge of the risk of non-payment to TJS. The trial court concluded that “evidence suggests that L&T had **notice** of a risk of nonpayment to Familian, by which they could have escrowed the money, or taken other remedial steps.” Tr. 144. It is implicit in the trial court’s ruling that the court believed L&T had enough “knowledge” to have prevented Check City’s loss. The trial court therefore concluded that L&T owed Check City a duty. The court defined L&T’s duty under 3-406 as one of ordinary care. R. 501.

II. COMPARATIVE NEGLIGENCE

The trial court was correct in concluding that L&T’s comparative negligence was greater than that of Check City and that L&T’s negligence was a cause of Check City’s loss.

L&T is correct that Check City never denied that it had some responsibility for the loss. However, Check City never concluded that its own partial negligence should preclude it from collecting from L&T.

In regard to the trial court’s decision that L&T was 51% at fault and that L&T caused Check City’s loss, the Court should review that determination under the clearly erroneous standard of review. *State v. Pena*, 869 P.2d 932, 935-36 (Utah 1994), *see also Harline v. Baker*, 912 P.2d 433 (Utah 1996) (stating issue of proximate cause is generally a fact question).

For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination. *State v. Pena*, at p.935-36.

In regard to the trial court's decision about who was in the best position to prevent the harm, it is implicit in the trial court's ruling that L&T was in the best position to prevent the harm, not Check City. R. 501-02.

The facts support the trial court's decision about who was at fault. L&T continued writing two-party checks to TJS even though they were concerned about TJS and knew something was wrong with them. Trial Exhibit "1." L&T continued writing checks to TJS even though L&T knew TJS was forging lien releases. Trial Exhibit "1."

Check City on the other hand had no reason to worry about TJS. TJS's agents had cashed approximately \$170,000 in checks at Check City without problem. L&T's App. Brief p. 10. The Checks in question all had two signatures. R. 48-53. Thus, Check City acted almost as carefully as any bank or check cashier in their position would have acted in that situation.

Nevertheless, L&T continues to point to authorities, which are distinguishable from the present factual situation, which are examples of instances when courts denied claims like Check City's because a check was missing a signature. What L&T fails to point out is L&T's extensive knowledge of their plumber's misdeeds and

financial woes. The trial Court held that “evidence suggests that L&T had notice of a risk of nonpayment to Familian, by which they could have escrowed the money, or taken other remedial steps.” Tr. 144. Therefore, the trial court was correct in concluding that L&T’s fault caused Check City’s loss.

III. TRIAL COURT’S DECISION ON CHECK CITY’S MOTION FOR SUMMARY JUDGMENT

A. L&T did not preserve the issue of whether Check City caused damage to L&T

"To preserve a substantive issue for appeal, a party must first raise the issue before the trial court." *Hart v. Salt Lake County Comm'n*, 945 P.2d 125, 129 (Utah Ct. App. 1997). "A matter is sufficiently raised if it is submitted to the trial court, and the court is afforded an opportunity to rule on the issue." *Id.* Thus, an issue must be "raised in a timely fashion," must be "specifically raised such that the issue is sufficiently raised to a 'level of consciousness' before the trial court," and must be supported by evidence or relevant legal authority. *Id.* at 130.

“The mere mention of an issue in the pleadings . . . is insufficient to raise an issue at trial and thus insufficient to preserve the issue for appeal. *LeBaron & Assocs., Inc., v. Rebel Enters., Inc.*, 823 P.2d 479, 482-83 (Utah Ct. App. 1991).

In Check City’s second motion for summary judgment, it argued that Check City could not have caused any injury to L&T. R-272-274. Check City explained in

detail how Check City could not have caused harm to L&T. *Id.* L&T Responded to that argument by claiming that it had to pay \$39,900.34 their supplier directly; which was allegedly their damage. R. 323-25. However, L&T offered no explanation about how Check City's cashing of the checks could have **caused** L&T to pay one more cent than they were obligated to pay their supplier. *Id.* Check City's arguments necessitated a response with an explanation about how Check City's cashing of the Checks caused damage or injury to L&T. The lower court found that L&T did not explain how Plaintiff's payment of money to TJS increased L&T's payments to their supplier, i.e. caused L&T's alleged damage. R. 331. Thus, L&T did not raise the issue of how Check City's alleged negligence caused L&T to be damaged to a level of consciousness.

In *Hart* the Court generally ruled that the appellant did not sufficiently preserve an issue for appeal where even though the appellant objected to a jury instruction for lack of evidence, their "reasons" for their objections were not the same at the trial court as it was at the appellate level. *Hart*, 945 P.2d 125, 131. Here, L&T offered no reason or explanation for their objection to Check City's argument about how Check City caused L&T's alleged injury. Therefore, the trial court's decision granting Check City's motion for summary judgment on L&T's counterclaim for negligence should be affirmed.

B. The trial court was correct in granting Check City's Motion for summary judgment because L&T did not allege facts of Damage sufficient to defeat Check City's motion for summary judgment.

“When a motion for summary judgment is made and supported as provided in this rule [56], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, **must set forth specific facts** showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”

Utah R. Civ. P. 56(e).

Check City offered no factual statement regarding L&T's alleged payment of \$39,900.34 to its supplier Familian. R. 274-76. The entirety of L&T's statement of facts in its response to Check City's motion for summary judgment was “L&T paid TJS only for its ‘labor’ through separate and distinct checks, copies of which are attached hereto as Exhibit ‘A’”. R. 295. Thus, there was no specific fact set forth about the payment of \$39,900.34 or any other fact about L&T's alleged damage.

L&T claimed however that it paid their supplier, Familian, “\$39,900.34 as a result of [Check City] cashing the checks.” R.273. As mentioned above, L&T offered no explanation about how the payment of that money was caused by Check City. L&T also did not corroborate that statement by a verified statement of fact.

The trial court held that “[d]efendant has not supported its assertion with record evidence.” R.0331. The court went on to state that “[n]either has [L&T] explained how [Check City's] payment of money to TJS increased [L&T's] payments

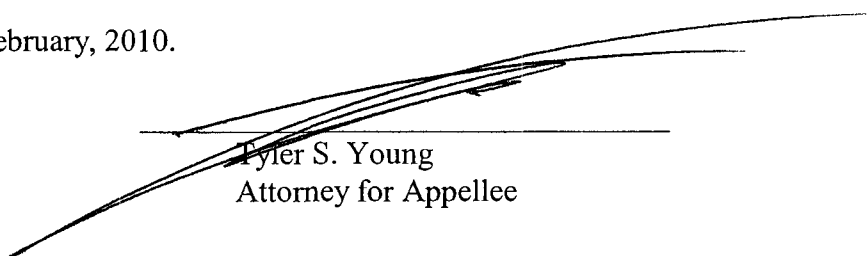
to Familian...” R. 331. Thus, L&T did not even allege evidence of damage and their appeal to reinstate their counterclaim could be denied on this fact alone.

Check City cashed the Checks and the Checks were returned. Tr. 63-64. Check City therefore received nothing from L&T or L&T’s bank. Tr. 63-64. Check City could not have caused damage to L&T if L&T’s bank did not honor the checks. Thus, the only loss was to Check City. Check City requests that the Court affirm the trial court’s granting of Check City’s motion for summary judgment on L&T’s counterclaims.

CONCLUSION

For the foregoing reasons, the Court should affirm the trial court’s decisions.

Dated this 16th day of February, 2010.


Tyler S. Young
Attorney for Appellee

CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing, Brief of Appellee Check City, and an electronic copy of the brief on a computer disc were mailed U.S. Mail, postage paid, to the following this 16th day of February, 2010:

Steven F. Allred
LAW OFFICES OF STEVEN ALLRED
584 South State Street
Orem, UT 84058
(801) 431-0718

Jim F. Lumberg
1524 East 715 South
Mapleton, Utah 84664
(801) 376-6164

A handwritten signature in black ink, appearing to be "Jim F. Lumberg", written over a horizontal line.

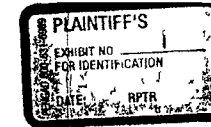
ADDENDUM

L&T's Timeline of Events for TJS Mechanical, Trial Exhibit "1".....Addendum 1-3

Six Checks at Issue, Trial Exhibit "2".....Addendum 4-9

Utah Code Ann. § 70A-3-406(1-2) (1993).....Addendum 10

Sheet1



A		B
1	TIME LINE OF EVENTS FOR TJS MECHANICAL	
2		
3	DATE	EVENT
4	NOV 22 1999	CUT FIRST CHECK TO TJS MECHANICAL
5	AUG 20TH 2002	FIRST JOINT CHECK CUT TO TJS MECHANICAL AND MOUNTIANLANDS PLUMBING
6	MARCH 31 2003	FIRST JOINT CHECK CUT TO TJS MECHANICAL AND LAWSON YEATES/ PLUMBERS SUPPLY (WHO LATER CHANGED THEIR N
7	NOV 14 2003	TJS & L&T ENTER A CONTRACT FOR BLACKHORSE RUN PLUMBING CONTRACT AMOUNT \$140,675 00
8	DEC 8 2003	RECEIVED INVOICE FOR KENT OLSEN'S FINAL INVOICE IT WAS \$1500 MORE THAN THE CONTRACT
9	JAN 6 2004	RECEIVED INVOICE FOR LOT #237 SADDLEBROOK FOR \$850 00
10	JAN 6 2004	RECEIVED INVOICE FOR #203 SADDLEBROOK FOR \$210 00 (SCOTT THINKS THIS IS A DUPLICATE OR A BACKCHARGE)
11	JAN 6 2004	RECEIVED A CHANGE ORDER INVOICE FOR KENT OLSEN'S THAT WERE MORE THAN WHAT WAS AGREED TO TOM & TRENT
12	JAN 7 2004	RECEIVED A CONDITIONAL LIEN WAIVER THROUGH 12-10-03 (TOLD TJS THAT NEEDED A CONDITIONAL FINAL SINCE JOB W
13	JAN 8 2004	RECEIVED ANOTHER LIEN RELEASE FROM TJS FOR OLSEN JOB WHICH HAD SAME DATE BUT MORE MONEY AND IT LOOKEI
14		TOLD TJS THAT THEY NEEDED TO GET A CORRECT LIEN RELEASE FOR OLSEN OR I WAS GOING TO HOLD THEIR CHECKS U
15	FEB 5 2004	RECEIVED INVOICE FOR DENNIS RESIDENCE FROM TJS MECHANICAL
16		THE FIRST INDICATION TO ME THAT THERE WAS SOMETHING WRONG DID NOT GET TOO ALARMED BECAUSE LIEN RELEA
17	FEB 19 2004	RECEIVED FROM TJS LIEN RELEASE FOR OLSEN JOB FOR 3541 83 THAT WAS LESS THAN THE AMOUNTS FROM 2 MONTHS /
18		I WAS CONCERNED BECAUSE TJS HAD TOLD ME THEY WERE IN DESPERATE NEED FOR THEIR CHECKS AND I KNEW THAT
19	FEB 20TH 2004	CUT CHECK #51768 TO TJS MECHANICAL FOR \$6 956 56 CLEARED ZIONS BANK ON 2/24/2004 (SAMPLE CHECK CONFIRMING
20	MARCH 8 2004	RECEIVED FROM TJS (5) INVOICES FOR WILLOWS CLUBHOUSE/SADDLEBROOK #235 & #226 & #237 & 236
21	MARCH 17 2004	RECEIVED FROM TJS LIEN RELEASE FROM FERGUSON SENT TO TJS DIRECTLY FOR ALL JOBS HE WAS CURRENTLY WORKI
22	MARCH 17 2004	THE LIEN RELEASES LOOKED LIKE THEY HAD BEEN CHANGED CALLED MARIANNE TO GET A COPY FAXED DIRECTLY TO MY
23	MARCH 18 2004	NEW COPIES FROM FNW (MARIANNE) CONFIRMED THAT THE ORIGINAL PRELIENS WERE MANIPULATED AND SOME WERE M
24	MARCH 18 2004	RECEIVED LIEN RELEASE FOR LOT 165 SADDLEBROOK FOR \$1148 25 TJS NEVER GAVE ME THIS COPY
25	MARCH 18 2004	RECEIVED LIEN RELEASE FOR OLSEN RESIDENCE FOR \$5541 83 TJS GAVE ME ONE WHICH HE CHANGED THE 5 TO 3
26	MARCH 18 2004	RECEIVED LIEN RELEASE FOR DENNIS RESIDENCE FOR \$1850 15 TJS GAVE ME ONE THAT WAS FOR THE SAME AMOUNT.

Exhibit "A"

27	MARCH 18 2004	RECEIVED LIEN RELEASE FROM FNW FOR PG CONDOS BLDG 6 FOR \$1,153 08 TJS NEVER GAVE ME THIS COPY
28	MARCH 18 2004	RECEIVED LIEN RELEASE FROM FNW FOR PG CONDOS BLDG 3 FOR \$9,477 84 TJS GAVE ME ONE THAT WAS FOR \$1,477 84
29	MARCH 18 2004	RECEIVED LIEN RELEASE FROM FNW FOR PG CONDOS BLDG 4 FOR \$23 181 29 TJS GAVE ME ONE THAT WAS FOR \$3,181 29
30	MARCH 18 2004	RECEIVED LIEN RELEASE FROM FNW FOR PG CONDOS BLDG 5 FOR \$10,419 74 TJS GAVE ME ONE THAT WAS FOR THE SAM
31	MARCH 23 2004	FNW FAXED OVER LIST OF JOBS AND AMOUNTS OWNING ON EACH JOB
32	MARCH 31 2004	PURCHASE ORDER WRITTEN BY L&T TO TJS FOR EXTRAS AT DENNIS RESIDENCE
33	MARCH 31 2004	TJS & L&T ENTERED INTO A CONTRACT FOR DENNIS' RESIDENCE FOR \$13,640 00
34	APRIL 1ST 2004	SENT LETTER TO FNW REQUESTING ALL L&T JOBS ON TJS MECHANICAL'S ACCOUNT BE CLOSED PROOF OF DELIVERY TIC
35	APRIL 1ST 2004	FNW PRINTS A COMPLETE INVOICE INQUIRY REPORT FOR TJS MECHANICAL
36	APRIL 5TH 2004	STARTED A SPREADSHEET TO FIGURE OUT HOW MUCH THAT TJS OWED ON OUR PROJECTS (SEE TJS PRE-LIEN)
37	APRIL 7TH 2004	STARTED ANOTHER SPREADSHEET FOR LEW TO FIGURE WHAT OUR LOSSES WERE (SEE TJS PRE-LIEN 2)
38	APRIL 9TH 2004	SENT A LIST OF CHECKS TO MARIANNE TO VERIFY THAT SHE HAD RECEIVED THESE JOINT CHECKS
39	APRIL 9TH 2004	RECEIVED A LIST OF CHECKS THAT MARIANNE WANTED TO SEE CANCELED CHECKS
40	APRIL 9TH 2004	SENT FAX TO ZIONS BANK REQUESTING CANCELLED CHECKS THAT WERE IN QUESTION
41	APRIL 12 2004	RESEARCHING ALL OF TJS MECHANICALS CHECKS
42	APRIL 16 2004	RECEIVED DRAFT FROM STEVEN ALLRED TO ZIONS BANK FOR IMPROPER DEBIT TO L&T'S ACCOUNT
43	APRIL 20 2004	RESEARCHING ALL OF TJS MECHANICALS CHECKS & PRINTING REPORTS ON JOBS (SEE ZIONS BANKS JOINT CHECKS)
44	APRIL 20 2004	RESEARCHING ALL OF TJS MECHANICALS CHECKS & PRINTING REPORTS ON JOBS (SEE FARWEST BANKS JOINT CHECKS)
45	APRIL 22 2004	SENT POSSIBLE CHECKS TO FARWEST BANK NOTIFYING THEM OF POSSIBLE FRAUDULENT CHECKS (SEE BAD CHECKS)
46	APRIL 22 2004	SENT JERRY GUYMON AT ZIONS BANK A LIST OF CHECKS THAT DID NOT HAVE 2ND SIGNATURES
47	APRIL 28 2004	SENT NOTICE OF LIEN WAIVERS TO FARWEST BANK
48	APRIL 29 2004	SENT BRIAN SNELSON A COPY OF THE CHECKS FOR TOWN CENTER AND THE AFFIDAVIT DECLARING FORGERY
49	APRIL 30TH 2004	CREATED A SPREADSHEET OF ALL THE OUTSTANDING INVOICES FOR TJS MECHANICAL FROM FNW (SEE FNW INVOICES)
50	APRIL 30TH 2004	SENT MARIANNE 16 CANCELLED CHECKS THAT WERE IN QUESTION TOTALING \$39 748 72 AND DATES RANGES FROM 03-31
51	APRIL 30TH 2004	FILLED OUT FORGERY CHECKLIST AND AFFIDAVIT OF FRAUD/FORGERY AND SENT TO ZIONS BANK
52	MAY 3RD 2004	CREATED A SPREADSHEET OF ALL THE OUTSTANDING INVOICES IN JOB DETAIL FOR TJS MECHANICAL FROM FNW (SEE FN
53	MAY 6TH 2004	CREATED A OUTLINE OF MEETING WITH FNW (SEE FNW MTG 5-6-04)
54	MAY 6TH 2004	MET WITH FNW TO FIGURE OUT THEIR ACCOUNT
55	MAY 7TH 2004	RECONCILIATION OF DENNIS RESIDENCE TRYING TO FIGURE OUT OUR BALANCE TO COMPLETE (SEE DENNIS RECONCILE)
56	MAY 7TH 2004	CREATED A SPREADSHEET FOR TOWN CENTER AND DENNIS LOSS ON JOB (SEE INDIVIDUAL JOBS)

57	MAY 11 2004	ZIONS BANK SENT LETTER TO KEY BANK REQUESTING CHECKS BE CUT FOR THE AMOUNTS OF THE FORGERY CHECKS
58	JUNE 3 2004	KEY BANK CUT CHECKS TO ZIONS FIRST NATIONAL BANK FOR THE EXACT AMOUNTS OF THE CHECKS
59	JULY 2 2004	L&T RECEIVED THE COPY OF THE LETTER TO KEY BANK AND A COPY OF ALL THE CHECKS THAT WERE CUT TO ZIONS FOR
60	JULY 6 2004	TJS MECHANICAL AND JANA LEE MORTENSEN FILED THEIR PETITION FOR RELIEF UNDER CHAPTER 7 OF THE US BANKRUPTCY
61	JULY 7TH 2004	RECEIVED IN MAIL (5) NOTICES OF DISHONORED CHECKS FROM CHECK CITY LETTER DATED 07-28-2004
62	JULY 7TH 2004	SENT STEVEN ALLRED A FAX OF THE NOTICE FROM CHECK CITY
63	JULY 7TH 2004	PREPARED CONDITIONAL FINAL RELEASE
64	JULY 7TH 2004	PRINTED COMPUTER EASE PRINTOUT OF WHAT INVOICES WERE STILL HOLDING FOR TJS MECHANICAL
65	JULY 8TH 2004	LETTER TO CHECK CITY FROM STEVEN ALLRED REGARDING NOTICES SENT TO L&T BY CHECK CITY ON 07-07-04
66	JULY 20 2004	BACKCHARGE TO TJS MECHANICAL FOR PLATINUM PLUMBING TO FIX AND FINISH DENNIS RESIDENCE (\$4320)
67	JULY 22TH 2004	SENT FNW A LIEN RELEASE FOR TOWN CENTER
68	JULY 26,2004	RECEIVED SIGNED CONDITIONAL FINAL LIEN RELEASE FROM FERGUSON FOR TOWN CENTER IN THE AMOUNT OF 39,900.34
69	JULY 26 2004	RECEIVED FAX FROM VICKIE REQUESTING THE CHECK FOR THEIR FISCAL YEAR END
70	JULY 30 2004	PAID FERGUSON 39900 34 CHECK #52823 DATED 7-30-04
71	AUGUST 2 2004	FERGUSON CASHED THEIR JOINT CHECK W/ OUT TJS' SIGNATURE
72	SEPT 21 2004	RECEIVED LETTER FROM KENNETH A RUSHTON BANKRUPTCY LAWYER FOR TJS MECHANICAL
73	OCT 1 2004	SENT LETTER TO STEVEN ALLRED ABOUT TJS MECHANICAL BANKRUPTCY
74	OCT 7 2004	SENT STEVEN ALLRED THE 2 LIEN RELEASED THAT WERE MANIPULATED
75	OCT 8 2004	ADVERSARY PROCEEDING - COMPLAINT OBJECTING TO DISCHARGE OF DEBTORS
76	OCT 8 2004	FILED WITH US BANKRUPTCY COURT THE ADVERSARY L&T VS MORTENSEN PD \$150.00
77	OCT 12 2004	MORE RESEARCH WITH WHAT WE PAID TJS MECHANICAL (SEE INVOICES PAID)
78	OCT 28 & 30 2004	CRAIG'S TIME TO FIX TRENDS PROBLEMS ON THE JOB SITE 2.5 HRS AND 1.5 SHOULD HAVE BACK CHARGED TO TRENT
79	NOV 12 2004	CREATED A SPREADSHEET ON THE LOSS FOR TOWN CENTER (SEE TOWNCENTER RECONCILIATION)
80	NOV 15 2004	EVALUATION THE LOSS ON TOWN CENTER AND RECONCILE THE ACCOUNT
81	FEB 3 2005	HAD TO CLEAR UP TJS MECHANICAL'S ACCOUNT WROTE UP BACKCHARGES TO CLEAR OUT ACCOUNTS PAYABLES
82	AUGUST 15 OR 16	CALL FROM CHECK CITY INQUIRING WHY WE HAVE NOT PAID THEM.
83	AUGUST 16 2005	CORRESPONDENCE VIA EMAIL BETWEEN STEVEN ALLRED AND ANGELA WALKER REGARDING CHECK CITY CALL
84	AUGUST 16 2005	LETTER DRAFTED FOR A SECOND TIME BY STEVEN ALLRED REGARDING NOTICES OF DISHONORED CHECKS
85	AUGUST 17 2005	SENT FAX TO ROSIE AT CHECK CITY LETTER OF STEVEN ALLRED'S REPLY

<http://mail.google.com/mail/?attid=0.1&dim=y&view=att&th=10a906f31175169>

12/02/2004 13:55 FAX 518436227
May. 4. 2004 2:31PM

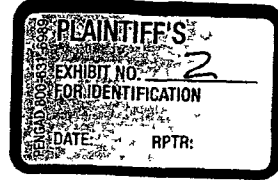
KEY BANK
L & T CONSTRUCTION

No. U/88 P. 3/1



LOT 215
Saddlebrook

ZIONS BANK
31-97240



051168

51168

DO NOT REDEPOSIT
COLLECTION ITEM ONLY

DATE AMOUNT

THE SUM OF TWO HUNDRED SIXTY FIVE DOLLARS AND 62 CENTS

12/11/2003

*****265.62

PAY
TO THE
ORDER
OF

TMS MECHANICAL INC and FAMILIAN NORTHWEST, INC.
1213 SOUTH 1340 EAST
SPANISH FORK, UT 84660

L & T CONSTRUCTION

Angel Walker

051168 12130000547 041 04031 211 0000026562

12/11/2003 12:21 FAX 1 801 535 1120

12/11/2003 12:21 FAX 1 801 535 1120
ZIONS BANK B.L.C. IT
801-974-8998

PAY TO THE ORDER OF
KEYBANK NATIONAL ASSOCIATION
12400107
FOR DEPOSIT ONLY
TOSH, INC. STORE #890
448881001585
12/11/2003
KEYBANK N.A. 626
SEATTLE WA 98108

DEC 24 03

KEYBANK
CU

0027 10542

KeyBank is a member of the FDIC. KeyBank is not a bank. KeyBank is a service mark of KeyBank National Association. KeyBank is not a bank. KeyBank is a service mark of KeyBank National Association. KeyBank is not a bank. KeyBank is a service mark of KeyBank National Association.

Anna West
Anna West

ZIONS
BANK

In consideration of your paying this photostat in lieu of the original check we agree to hold you, the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee of subsequent endorsers provided payment be stopped on the original of this check.

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

Jason

24/30 May 4. 2004 2:30PM 26 4799 L & I CONSTRUCTION No. 0789 P. 2/7



LOT 226
Saddlebrook

ZIONS BANK
31-21240
41

051167

51167

DO NOT REDEPOSIT
COLLECTION ITEM ONLY

DATE

AMOUNT

THE SUM OF TWO HUNDRED SIXTY FIVE DOLLARS AND 62 CENTS
12/11/2003

*****265.62

PAY
TO THE
ORDER
OF

TJS MECHANICAL INC and FAMILIAN NORTHWEST, INC.
1213 SOUTH 1340 EAST
SPANISH FORK, UT 84660

L & I CONSTRUCTION

Angel Walker

⑈051167⑈ ⑈264000054⑈ 04⑈ 0403⑈ 2⑈

⑈0000026562⑈

ret'd for 2nd signature

12/24/03
ZIONS BANK S.L.C. UT
801-974-8800

125000574
KEYBANK N.A. 626 888
SEATTLE, WA 12240003

DEC 24 03

KEY BANK
UT

PAY TO THE ORDER OF
KEYBANK NATIONAL ASSOCIATION
⑈124000737⑈
TJS MECHANICAL INC
SPANISH FORK UT 84660

THIS CHECK IS VOID UNLESS IT IS SIGNED BY THE PERSON WHOSE NAME IS ON THE CHECK OR BY A PERSON WHOSE NAME IS ON THE BACK OF THE CHECK.

TJS Mechanical

In consideration of your paying this photostat in lieu of the original check we agree to hold you the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee of subsequent endorsers provided payment be stopped on the original of this check.

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

David
ZIONS BANK

12/02/04 12:24 FAX 1 801 535 1120

KEY EQUIPMENT FINANCE

021

12/02/2004 14:01 FAX 518438227

KEY BANK

No. U/89

005/005



01-01240
41

051766

DO NOT REDEPOSIT
COLLECTION ITEM ONLY

51766

DATE AMOUNT

THE SUM OF FOUR THOUSAND NINE HUNDRED NINETY TWO DOLLARS AND 65 CENTS

02/19/2004

4999974,992.68

PAY
TO THE
ORDER
OF

T.S MECHANICAL INC and FAMILIAN NORTHWEST, INC.
1113 SOUTH 1340 EAST
SPANISH FORK, UT 84660

L & T CONSTRUCTION

⑈051766⑈ ⑆124000054⑆ 041 0401 2⑈

⑈0000499268⑈

101 - 1000-1001-1000-1000-1000

⑈124999954⑈ 83/01/84
ZIONS BANK S.L.C. UT
801-974-8884

⑈125000574⑈
KEYBANK N.A. 681 685
SEATTLE, WA 9812804

04483000010 766042700

1103 - 1 - 1

FOR DEPOSIT ONLY
TOSH, INC. STORE #80
449681001665

PAY TO THE ORDER OF
KEY BANK

Endorsement: In case you receive this check, you must be the active project manager at the time of the payment of this check. If you are not the active project manager at the time of the payment of this check, you must have the active project manager at the time of the payment of this check. If you are not the active project manager at the time of the payment of this check, you must have the active project manager at the time of the payment of this check.

Handwritten signature: James Northwest
1103 Main Street

In consideration of your paying this photostat in lieu of the original check we agree to hold you, the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee or subsequent endorsers provided payment is stopped on the original of this check.

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

Handwritten signature: Jordan ZIONS BANK

Handwritten signature: TOWN CENTER

12/02/04 12:23 FAX 1 801 535 1120

KEY EQUIPMENT FINANCE

016

005/005

12/02/2004 14:00 FAX 518436227
May 4, 2004 1:31 PM

KEY BANK

No. U/89

051765



ZIONS BANK

31-31290
61

DO NOT REDEPOSIT
COLLECTION IT

51765

THIS SUM OF SEVEN THOUSAND FOUR HUNDRED SEVENTY SEVEN DOLLARS AND 84 CENTS
02/19/2004

*****7,477.84

L & T CONSTRUCTION

PAY
TO THE
ORDER
OF

TJS MECHANICAL INC and FAMILIAN NORTHWEST, INC.
1219 SOUTH 1340 EAST
SPANISH FORK, UT 84860

⑆051765⑆ ⑆124000054⑆ 041 04031 2⑆

⑆0000747784⑆

24650454 02/22/04
ZIONS BANK S.L.C. UT
801-973-6000

1250005744
RECEIVED P.A. 5307 253
SEATTLE WA 98104

PAY TO THE ORDER OF
ZIONS BANK
1240007074
FOR DEPOSIT ONLY
TOSH, INC. STORE #80
11-446681001555

The payee of this check is authorized to endorse this check for deposit only. If the check is cashed at a bank other than the bank named in the check, the bank may be liable for the amount of the check. If the check is cashed at a bank other than the bank named in the check, the bank may be liable for the amount of the check. If the check is cashed at a bank other than the bank named in the check, the bank may be liable for the amount of the check.

TJS Mechanical Inc

In consideration of your paying this photostat in lieu of the original check we agree to hold you, the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee of subsequent endorsers provided payment be stopped on the original of this check

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

ZIONS BANK

TOWNS
GENERER

Johnson

12/02/04 12 26 FAX 1 801 535 1120

KEY EQUIPMENT FINANCE

031

12/02/2004 14.04 FAX 518438227

KEY BANK

NU-0103

005/005



ZION'S BANK

51-51240
AT

051747

DO NOT REDEPOSIT
COLLECTION ITEM ONLY

51747

DATE

AMOUNT

THE SUM OF TWO THOUSAND NINETY EIGHT DOLLARS AND 68 CENTS
02/13/2004

*****2,098.68

PAY
TO THE
ORDER
OF

TJS MECHANICAL INC and FAMILIAN NORTHWEST INC
1213 SOUTH 1340 EAST
SPRINKLE FORK, UT 84660

L & T CONSTRUCTION

051747 12124000054 041 04031 21

0000 209868

12124000054

0000 209868

0972855136 02/21/2004 5461 19:32

FOR DEPOSIT ONLY
TOSH, INC. STORE #80
449681001565

PAY TO THE ORDER OF

KEYBANK

124000737

Handwritten signature: TJS Mechanical

0972855136 POSITION
MONTROSE
2745 800-441-1111
881 974-6809

1250005744
KEYBANK N.A. 602 975
SEATTLE, WA 98122004

0440400476

ZIONS
BANK

In consideration of your paying this photostat in lieu of the original check we agree to hold you the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee of subsequent endorser provided payment be stopped on the original of this check

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

Handwritten signature: Dennis

Handwritten signature: Jackson

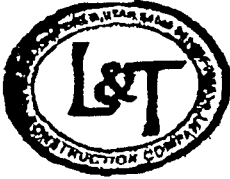
04:34 May 4, 2004

2:31 PM 228 4788

L & T CONSTRUCTION

No. 0789

P. 4/7



TOWN CENTER
PHASE 2

ZIONS BANK

01-51240

051459

DO NOT REDEPOSIT
COLLECTION ITEM ONLY

51459

DATE

AMOUNT

THE SUM OF FOUR THOUSAND TWO HUNDRED SEVEN DOLLARS AND 70 CENTS

12/31/2003

*****4,207.70

L & T CONSTRUCTION

PAY
TO THE
ORDER
OF

TJS MECHANICAL INC and FAMILIAN NORTHWEST INC
1213 SOUTH 1340 EAST
SPANISH FORK, UT 84660

⑈051459⑈ ⑆24000054⑆ 04 0403 2⑈

⑈0000420770⑈

JUN 25 2004

KEY BANK

0009 92572

⑆12400054⑆ 01/26/04
ZIONS BANK S.L.C. UT
801-974-8896

⑆125000574⑆
KEY BANK N.A. 2500 908
SEATTLE, WA 981220004

044000332 76000495

Unauthorized use or alteration of this check is prohibited. For deposit only. TJS MECHANICAL INC. STORE #80. 440681001585

Handwritten signature and notes: TJS MECHANICAL INC. STORE #80. FOR DEPOSIT ONLY. 124000737

In consideration of your paying this photostat in lieu of the original check we agree to hold you, the drawee bank, harmless from any loss you may suffer due to the absence of the actual endorsement of the payee of subsequent endorsers provided payment be stopped on the original of this check.

ZIONS FIRST NATIONAL BANK
SALT LAKE CITY

Handwritten signature: Jordan

ZIONS BANK
TOWN CENTER
PHASE 2

Utah Code Ann. § 70A-3-406

TITLE 70A. UNIFORM COMMERCIAL CODE
CHAPTER 3. NEGOTIABLE INSTRUMENTS
PART 4. LIABILITY OF PARTIES

Utah Code Ann. § 70A-3-406 (2009)

§ 70A-3-406. Negligence contributing to forged signature or alteration of instrument

(1) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(2) Under Subsection (1), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(3) Under Subsection (1), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under Subsection (2), the burden of proving failure to exercise ordinary care is on the person precluded.