

2009

Golden Meadows Properties, LLC v. Michael Strand and Cari Allen : Brief of Appellee

Utah Court of Appeals

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Michael Strand, Cari Allen; pro se.

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**IN THE COURT OF APPEALS OF THE
STATE OF UTAH**

**GOLDEN MEADOWS PROPERTIES, L.C.,
AKA GOLDEN MEADOWS PROPERTIES,
L.L.C.,**

Plaintiff and Appellee,

vs.

MICHAEL W. STRAND AND CARI ALLEN,

Defendants and Appellants.

Case No. 20090867-CA

BRIEF OF APPELLEE

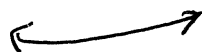
**APPEAL FROM ORDERS CONCERNING MATTERS
HEARD SEPTEMBER 1, 2009, IN THE SECOND
JUDICIAL DISTRICT COURT, DAVIS COUNTY,
UTAH, THE HONORABLE THOMAS L. KAY
PRESIDING**

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Appellants (Pro Se)



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UTAH APPELLATE COURTS
OCT 01 2010

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STATEMENT OF JURISDICTION

The Court has jurisdiction of this appeal pursuant to Utah Code Ann. § 78A-4-103.

STATEMENT OF THE CASE

On August 30, 2007, Golden Meadows Properties, L.C. (“GMP”) sued Michael W. Strand (“Strand”) and Cari Allen (“Allen”) for unlawful detainer of a residence in Bountiful (the “Property”). Defendants remained in possession and filed a Counterclaim seeking to quiet title to the Property in Strand and claiming money damages. After discovery, Judge Glen R. Dawson granted GMP’s Motion for Summary Judgment and issued an Order of Restitution, R2230-31, pursuant to which Strand and Allen were removed from the Property. The court entered an Amended Summary Judgment on July 15, 2008, R2702-15. Thereafter, Strand and Allen filed a Rule 59 motion. R2526. When the court denied that motion, Strand and Allen appealed from the Amended Summary Judgment on September 29, 2008. That appeal was designated as Case No. 20080838, in which this Court issued its Memorandum Decision on September 23, 2010, affirming the Judgment below.

A few weeks later, Strand and Allen attacked the trial court’s decision by attacking the trial judge. On October 14, 2008, they filed a Motion for Disqualification Pursuant to Utah R. Civ. P. 63 (“Motion to Disqualify”). R3013. At the same time they filed a Rule 60(b) Motion for Relief from Judgment, (the “60(b) Motion”), R3026, which relied entirely upon the Motion to Disqualify in seeking to set aside the Amended Summary

Judgment. The Motion to Disqualify was referred to Judge Thomas L. Kay, who issued a Ruling on Defendants' Motion to Disqualify on October 31, 2008. R3161.

In the meantime, following Judge Kay's ruling on the Motion to Disqualify, Judge Dawson scheduled a November 24, 2008 hearing on the 60(b) Motion. Judge Dawson denied the 60(b) Motion, explaining that "it is clear to me in light of the ruling on the Rule 63 motion that the 60(b) motion lacks merit and must be denied." This ruling, with others, was embodied in an Order Concerning Matters Heard on November 24, 2008, which was entered December 12, 2008. R3917. Defendants appealed from the denial of their 60(b) Motion and their Motion to Quash or Stay Execution. R3959. That appeal was designated as Case No. 20090012, in which this Court issued its Memorandum Decision on September 23, 2010, affirming the orders from which the appeal was taken.

The present appeal is taken from an Order for Sanctions Pursuant to Rule 11 and Judgment ("Rule 11 Judgment") entered October 5, 2009 (Addendum 1). One week after service of the Motion to Disqualify, on October 21, 2008, GMP served a Motion for Sanctions Pursuant to Rule 11 (the "Rule 11 Motion"), identifying 19 factual contentions made without evidentiary support in the Motion to Disqualify, the 60(b) Motion, a supporting Memorandum and an Affidavit of Strand and seeking sanctions of \$6,100 against Strand, Allen and their attorney, Judson Pitts. After they failed to withdraw or correct any of the 19 statements within the time permitted by Rule 11, GMP filed the Rule 11 Motion and served a memorandum in support thereof on November 18, 2008. Mr. Pitts paid \$2,500 to settle the Rule 11 Motion as to himself only and later withdrew as counsel.

After an extensive period of time for briefing, oral argument on the Rule 11 Motion was heard by Judge Kay on September 1, 2009. After the Rule 11 Judgment was entered, Strand and Allen commenced the present appeal.

STATEMENT OF FACTS

1. Strand made no attempt to disqualify Judge Dawson until after the case had been decided on the merits and his Rule 59 motion had been denied in spite of the fact that Strand claims that he has “always recalled most of the events described” in the Affidavit of Michael Strand in Support of his Motion to Disqualify Under Utah R. Civ. P. 63 and in Support of Rule 60(b) Motion (the “Strand Affidavit”), R2973.

2. The Strand Affidavit purports to describe events involving the course of proceedings in the trial court, Internal Revenue Service (“IRS”) collection measures against BI Associates Partnership, MLK Investments, Classic Mining Corp., M&L Investments and Strand personally, Strand’s criminal convictions, a hearing before “IRS Administrative Judge” Swift and Strand’s lay opinion regarding “long-term memory . . . deficits” resulting from a fall at home (§42), which he offered as a “reason [he] could not remember all of these facts without help from documents” (*id.*). R2963-3012.

3. Although the Strand Affidavit attaches multiple documents and refers to others, **the only document** that evidences any connection whatsoever between Strand and Judge Dawson during his fourteen years of service with the United States Department of Justice is a brief agreement Judge Dawson signed on behalf of the IRS in 1989 that dealt with tax affairs of BI Associates Partnership. R2975-76.

4. Virtually all other statements in the Strand Affidavit that attempt to connect Judge Dawson to Strand's dealings with the IRS have serious evidentiary defects that render them inadmissible, as the following brief summary demonstrates following each relevant reference to a paragraph in the Strand Affidavit:

¶9—"Judge Dawson also took issue with my ownership of the furniture from my house" There is not one scrap of evidence that ownership of furniture was ever made an issue in this case or that Judge Dawson "took issue" with respect to such ownership.¹

¶12—"Judge Dawson did not disclose that before he was appointed as a . . . Judge, he was the U.S. prosecuting attorney *against me* in an IRS action regarding tax liens and levys [sic] *against the very house and furniture that was the subject of the eviction action.*" This statement assumes facts not in evidence, lacks foundation and is supported by no documentary evidence whatsoever that could have enabled Strand to "reconstruct" his memory.²

¶12—"Judge Dawson . . . had entered into an agreement between me and Nueman [sic] Petty consistent with my claims concerning my confidential relationship with Neuman Petty." This statement lacked foundation and had no documentary support. It was pure fiction.³

¹ Strand was sanctioned under Rule 11 for making this statement (Addendum 1 and 2).

² Strand was sanctioned under Rule 11 for making this statement in slightly different words in his memorandum accompanying the Strand Affidavit. *Id.*

³ Strand was sanctioned under Rule 11 for making this statement. *Id.*

¶16—"I immediately recalled confrontations with Judge Dawson (then a prosecutor for the U.S. attorney's office) over the exact same property and issues that are the subject of this action." There is no foundation to show personal knowledge of Strand regarding any "confrontation," such as dates, places or what was said.⁴

¶21—"Stewart Walz and Glen R. Dawson . . . were assigned to the case." There is no foundation to show personal knowledge of Strand. This paragraph claims the IRS filed an action against Strand, but no pleading or paper was offered to show that Judge Dawson had any connection with whatever action was filed by the IRS.

¶25—"Both Mr. Caine and I contacted Mr. Dawson We asked that the IRS give me prior notice in the future should they deem it necessary to search any other buildings, offices or my residence for information and conduct further seizures. Mr. Dawson agreed, and drafted and signed a written agreement to that effect dated February 14, 1989. [See Exhibit A]." There is no foundation to show that Strand had any knowledge of Attorney Caine's conversations, nor is there adequate foundation to show personal knowledge of anything in this paragraph. Moreover, Strand's description of the "agreement" is inconsistent with the exhibit to which he refers, which says nothing whatsoever about his residence (but refers only to personal property in the Boston Building).

⁴ Strand was sanctioned under Rule 11 for making this statement in slightly different words in his memorandum accompanying the Strand Affidavit. *Id.*

¶26—"Ms. Hutchinson stated to all present that the raid was authorized by Mr. Dawson." This is inadmissible hearsay.

¶27—"I . . . spoke to Mr. Dawson, and we argued heatedly Mr. Dawson told me the agreement was not binding." Since Strand claims he was represented by Attorney Caine, it is unlikely that Judge Dawson would have spoken to him at all. In any event, there is not sufficient foundation as to what was actually said to make this statement admissible.

¶30—"Mr. Dawson refused to accept Petty's affidavit and the lease" There is no adequate foundation as to what was actually said or when or where it was said to make this statement admissible.

¶31—"Attached hereto . . . is a true and correct copy of the Application for Certificate of Subordination of Federal Tax Lien prepared by Mr. Dawson for my signature." There is no foundation for Strand's statement, and Judge Dawson responded that he did not prepare that document. R3053.

¶¶32-40—This colorful account of a hearing in which Strand claims that Judge Swift expelled Judge Dawson from the courtroom demonstrates Strand's utter lack of reliability. In fact, Judge Dawson never appeared before Judge Swift. R3053.

¶43—" [T]he positions taken by Mr. Dawson in 1989 regarding my relationship with Neuman Petty, the lease and my ownership of the house and furniture are inconsistent with the positions taken by him in this proceeding." There is no clear or admissible

statement of what positions “Mr. Dawson” took in 1989 or how Strand has personal knowledge thereof. This action had nothing whatsoever to do with furniture.⁵

5. In his Response to Rule 63(b)(3)(B) Request (“Judge Dawson’s Response”), Judge Dawson stated, “I do not recall any prior involvement, litigation, conversation or confrontation with Mr. Strand, nor was I aware of any such involvement at the time this case was assigned to me.” R3053

6. In Judge Dawson’s Response, he further stated, “I don’t have any memory of being involved in any prosecution of Mr. Strand, something I believe I would remember.” *Id.*

7. Judge Dawson also stated, “Although I do not remember everyone I worked with over that extended period of time [1980 until 1994], I do remember many of the people I worked with on significant matters, and I have no memory of litigation involving Mr. Strand.” *Id.*

8. Judge Dawson further stated, “While the signature on exhibit A attached to Mr. Strand’s affidavit appears to be my signature, I have no memory of this matter or of any conversations with John Caine or Mr. Strand about this matter, which dates back to 1989.” *Id.*

9. Judge Dawson stated, “I certainly have no memory of any prior involvement with the lease or house involved in the current eviction action or of involvement regarding any of the furniture in the house.” *Id.*

⁵ Strand was sanctioned under Rule 11 for making this statement. *Id.*

10. Judge Dawson also stated, “Further, I have no independent knowledge of any of the other exhibits attached to Mr. Strand’s affidavit. I did not prepare exhibit E to the affidavit as suggested in paragraph 31, nor do I have any knowledge of the matters alleged in paragraphs 29 through 31 of Mr. Strand’s affidavit” *Id.*

11. Judge Dawson said, “I have no prior knowledge of any relationship between Michael Strand and Newman Petty.” *Id.*

12. Judge Dawson added, “I have never made an appearance in front of Judge Swift, I was not involved in the hearing Mr. Strand is referring to [in paragraphs 32 through 41 of his affidavit], and I was never expelled from Judge Swift’s courtroom.” *Id.*

13. Judge Dawson emphasized, “I was never involved in the criminal prosecution of Mr. Strand in Wyoming.” *Id.*

14. Judge Dawson added, “I do not have any personal bias, prejudice or animus against any of the participants in the current litigation, nor have I from the outset. I do not have a personal bias involving any issue in this case, nor have I from the outset. I have no personal knowledge of disputed evidentiary facts concerning the current proceeding, nor have I from the outset.” *Id.*

15. Judge Dawson’s Response also stated, “I have not served as a lawyer in the matter in controversy, practiced law with a lawyer who had served in the matter, or been a material witness concerning the matter.” *Id.*

OBJECTIONS TO “FACTS” STATED IN APPELLANTS’ BRIEF

GMP objects to countless statements of “fact” contained in the Brief of Strand and Allen (hereinafter “Brief”) because they are untrue, not in evidence, mischaracterized, incomplete, misleading, constitute recitation of arguments, allegations, or claims, are derived from unverified or other sources not admitted or admissible in evidence, or do not distinguish between facts or statements admitted in evidence and those which were stricken by the trial court. The appellate court will not consider evidence not made part of the record on appeal. *Lovendahl v. Jordan School Dist.*, 63 P.3d 705, 2002 UT 130, ¶51:

See Robinson v. Tripco Inv., Inc., 2000 UT App 200, ¶2 n. 1, 21 P.3d 219 (granting motion to strike portions of appellate brief referring to deposition testimony not made part of record on appeal).

In short, the “facts” stated by Strand and Allen are highly unreliable. However, because the amount in controversy in this appeal is only \$3,600, GMP will not expend the time or occupy the many pages required to demonstrate the falsity of their statements by references to the record apart from what is contained in GMP’s foregoing Statement of Facts and any other corrections or clarifications that may be noted elsewhere in this Brief.

SUMMARY OF ARGUMENTS

There was no error in the trial court's determination that Strand and Allen made nineteen factual statements without evidentiary support and failed to withdraw or correct them after having been served with the Rule 11 Motion. The Rule 11 Judgment clearly states what conduct of Strand and Allen violated Rule 11 and stated the basis for the sanction. Strand and Allen fail to show any error or abuse of discretion with respect to the award of attorney fees.

ARGUMENT

I. Strand and Allen Made the Nineteen Designated Factual Statements Without Evidentiary Support.

Utah R. Civ. P. 63(b)(1)(A) requires that a motion to disqualify be "supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of interest." GMP specifically challenged nineteen enumerated statements in Strand's affidavit and supporting memorandum as being false. R3037-47. Of those nineteen factual contentions identified by GMP, twelve of them⁶ purported to describe the procedural history of this case. The facts concerning such matters were readily available from the Court's own files, which Strand and Allen should have carefully checked to verify the accuracy of their statements. Judge Kay, the reviewing judge, was under no obligation to accept Strand's affidavit as proof of procedural matters, particularly when his affidavit was a primary focus of the Rule 11 Motion. Under Strand's view, a completely false and scurrilous

⁶ These are numbered 1-3, 5, 8, 10-13, 15-16 and 18 in GMP's Memorandum in Opposition to Motion to Disqualify ("Opposition to Motion to Disqualify"), R3036-3052.

affidavit would automatically be immunized from Rule 11 sanctions on the theory that it provides its own evidentiary support.

Six of the numbered factual contentions presented by Strand and Allen in support of the Motion to Disqualify attempted to describe legal services performed by Judge Dawson nineteen years earlier, his knowledge gained through such work, and his state of mind toward Strand. They are numbered 4, 6, 7, 9, 17 and 19 in the Opposition to Motion to Disqualify, R3036-3052. The first two of these contentions said that Judge Dawson took legal action on behalf of the IRS against the house that has been the subject of this eviction case (the “Property”). This statement lacked any objectively reliable support. Had the IRS pursued seizure of the Property in 1989, as it did Strand’s furniture, Nupetco Associates, the record owner at the time, would have learned of it. Although Nupetco paid over \$25,000 to purchase Strand’s furniture from the IRS, it paid nothing to the IRS with respect to the Property. If the IRS believed that Strand was the true owner of the Property, as well as the furniture, it stands to reason that it would have seized the Property. There was simply no credible evidence: (1) that the IRS ever took any action against the Property or (2) that Judge Dawson had anything to do with such action, if any was taken.

Factual contentions 4 and 6 also said that Judge Dawson proceeded against Strand’s furniture and that his furniture has been an issue in this case. The latter point is plainly refuted by a review of the Court’s file, as the pleadings and entire record make

clear that no issue was raised concerning the furniture, nor did the Court decide anything with respect to the furniture.

Factual contentions 6 and 7 asserted a confidential relationship between Strand and Petty and that Judge Dawson was aware of such relationship. Again, both parts were false. There was simply no evidence of such a relationship, and Strand's own testimony proved there was not. See Notice of Submission of Additional Deposition Testimony of Michael W. Strand, R2187-94. Indeed, it is inherently absurd to suggest that Judge Dawson was firmly convinced in 1989 that there was a confidential relationship and was so biased by that conviction that he ruled in 2008 that there was no such relationship.

Factual contention 9 lacked credible evidentiary support. First and foremost, the Opposition to Motion to Disqualify (at 5-7, R3040-42) identified nine distinct facts which collectively demonstrated with objective information from the record that there was no bias or prejudice against Strand in this case. Those facts show that the Court acted with patience, fairness and even deference to him and Allen. There was simply no evidence to support Strand's accusations of "pre-existing bias."

Second, there was no "identical subject matter" as between this case and anything the IRS did in 1989, nor was there any competent evidence that Judge Dawson was involved with what the IRS did then, remembered it or was biased as a result thereof.

Factual contention 17 could not have resulted from a reasonable investigation because it is wholly false. Not only was there no confidential relationship, as discussed above, but Mr. Petty did not enter into an agreement with Judge Dawson at any time, and

no documentary evidence of that assertion has been forthcoming. Factual contention 19 has the same defects. There was no competent evidence that Judge Dawson took any position in 1989 regarding the Property or the furniture. Even if he had, no evidence has been presented that would show either that he had any recollection of such matters or that he had any bias as a result of his alleged involvement in the 1989 IRS matters.⁷

Factual contention 14 asserted that Wayne Petty represented Strand in litigation with Citizens Bank. It would have been a simple matter to obtain and review the actual pleadings and papers in the Citizens Bank litigation. Those papers make clear that Strand was represented by Dan Jackson in the Citizens Bank litigation. GMP refers the Court to Addendum 10 of its Brief of Appellee in Case No. 20090012-CA, which contains a certified copy of the docket from The Citizens Bank case and the first page of each of 22 documents filed in the case. Review of the docket and accompanying documents reveal that the case commenced on March 15, 1985, with Michael Strand as the sole plaintiff and that he was represented throughout the case by Daniel W. Jackson. On October 1, 1985, Nupetco Associates, represented by Wayne G. Petty, joined in a Second Amended Complaint. Thereafter, each document filed by Daniel W. Jackson reflected his representation of Michael Strand, and each document filed by Wayne G. Petty reflected that he represented only Nupetco Associates.

⁷ It is highly noteworthy that Strand has failed to produce the slightest scrap of documentary evidence showing that Judge Dawson had any involvement in any of Strand's dealings with the IRS other than the BI Associates agreement, which has no linkage whatever to the facts of this case.

In ruling on the Motion to Disqualify, Judge Kay found that Strand and Allen had offered only “speculation, conjecture” and had failed to demonstrate bias or prejudice. This Court having affirmed Judge Kay’s decision on the Motion to Disqualify, his ruling on that point is now law of the case. Moreover, this Court’s Memorandum Decision, 2010 Utah App 258, agrees that “[t]he record establishes only that [Attorney Dawson] signed an agreement concerning office furniture and fixtures belonging to one of Strand’s companies.” ¶7, Memorandum Decision.

By the time of the September 1, 2009, hearing on the Rule 11 Motion, Strand and Allen had been afforded ten months since the Motion was served to demonstrate the existence of evidentiary support for their allegations regarding bias, prejudice and conflict, yet they failed to produce any. The same is true of their current Brief. Although turgid, tedious and non-compliant with applicable rules (such as including pages upon pages of single-spaced text), it contains no evidentiary support for the nineteen offending statements. Judge Kay appropriately sanctioned them “for violating Rule 11 by having presented the nineteen factual contentions without evidentiary support that are detailed in the Rule 11 Motion and having failed to withdraw them within twenty-one days after the Rule 11 Motion was served on them.” Addendum 2.

There were compelling reasons to discount or disregard entirely the assertions made in the Strand Affidavit regarding Judge Dawson’s involvement in IRS proceedings in 1989. First, they were almost entirely undocumented. Second, they suffered from a wholesale lack of admissibility, as discussed in paragraph 4 of the above Statement of

Facts. Third, Strand admitted his own lack of reliable memory when he stated that he suffered from “long-term memory . . . deficits” resulting from a fall at home, R2972, ¶42, which he offered as a “reason [he] could not remember all of these facts without help from documents.” He further claimed that he was “forced to re-construct [his] memory through documents, many of which Judge Dawson denied me access in this case.” R2973, ¶43. This explanation was offered to excuse Strand’s failure to seek disqualification at the beginning of the case. However, it effectively impeached Strand’s entire Affidavit. In the Affidavit, he also claimed that he had “always recalled most of the events described above.” R2973, ¶43. If Strand was forced to reconstruct his memory from documents, it defies reason that he could have reconstructed his memory from documents regarding Judge Dawson’s involvement in IRS matters in 1989 when there are virtually no such documents. It also defies reason that Strand could have reconstructed his memory from documents to which he was denied access. Strand has obviously constructed memories out of whole cloth to serve his purpose of seeking to disqualify Judge Dawson after the case had been decided on the merits.

Strand asserted that Judge Dawson was biased and prejudiced against him. That claim appears to have been based on Judge Dawson’s alleged knowledge arising from his position in 1989 as an Assistant United States Attorney. Strand asserts, but never explains or establishes, that the issues, property, or participants were the same. Indeed, review of the Strand Affidavit shows that the matter involved BI Associates Partnership, which was represented by Attorney John Caine. See Exh. A to Strand Affidavit, R2975. The IRS

case involved furniture in Suite 404 of the Boston Building, which the IRS seized in February 1989 at the offices of BI Associates and Mingo Oil. R2969, ¶22 and Ex. B, R2978. Several months later, in April 1989, furniture was seized at Strand's residence, but no documentation is provided regarding any involvement of Judge Dawson. This case does not involve furniture, but ownership and possession of real property only. See Complaint, R1-4. Strand failed to show Judge Dawson had knowledge in 1989 of "disputed evidentiary facts concerning the proceeding." Moreover, Judge Dawson's Response makes clear that he had "no knowledge of disputed evidentiary facts concerning the current proceeding." R3054.

II. The Rule 11 Judgment Contained Explicit Findings of Fact.

As expressly stated in the Rule 11 Judgment, Strand and Allen were sanctioned "for violating Rule 11 by having presented the nineteen factual contentions without evidentiary support that are detailed in the Rule 11 Motion and having failed to withdraw them within twenty-one days after the Rule 11 Motion was served on them." (Addendum 2). Those factual contentions were quoted verbatim in separately numbered paragraphs in the Rule 11 Motion (Addendum 1). Judge Kay was not obligated to repeat those factual contentions in the judgment. The Transcript of the hearing, as well as the Rule 11 Judgment itself, make it unmistakably clear what statements resulted in sanctions being imposed, why those statements violated Rule 11 and the basis for the sanctions awarded. There is ample detail to permit adequate appellate review of Judge Kay's decision.

III. The Attorney Fee Award Was Not an Abuse of Discretion.

Strand and Allen complain about the \$3,600 attorney fees sanction awarded against them in the Rule 11 Judgment. Their grievance seems to be that the affidavit detailing attorney fees did not segregate the fees devoted to factual matters from those devoted to legal contentions not warranted by law. The Rule 11 Motion devoted ten pages to addressing the offending factual contentions, which required detailed review and discussion of many documents in the record, and only four pages to a discussion of legal contentions, citing only two cases. When Mr. Pitts paid \$2,500 to settle his liability, he more than paid for the time devoted to his faulty legal contentions. All of the \$3,600 awarded against Strand and Allen was required to address their fact statements. Moreover, the \$6,100 fee award requested covered only the time required to prepare the Rule 11 Motion and supporting Memorandum and Affidavit regarding attorney fees. It did not include any of the time spent after November 2008, even though the Rule 11 Motion was not argued until September of the following year. Counsel was required to prepare a reply memorandum, prepare for and present oral argument and prepare the Rule 11 Judgment. No fees for such work were included in the judgment. Strand and Allen have completely failed to sustain their burden of demonstrating any abuse of discretion in the rather modest fee award entered against them, particularly in view of the following:

1. Defendants presumably knew that their Motion to Disqualify would be referred to another judge unfamiliar with the procedural history of this case. They obviously attempted to improve their chances of success by grossly misrepresenting to

that judge what had occurred in the course of the action.

2. The Motion to Disqualify was a highly dishonest, morally corrupt and despicable attack on the integrity of a judge, designed to bring disrespect to him and to the judicial system. When a litigant incurs legal fees in shining a light on such outrageous conduct and obtaining sanctions for it, he does the community and the judiciary a valuable service. Hypertechnical incursions into the resulting modest award of attorney fees would only discourage attorneys from performing that important service in the future and thereby hold wide the door to more egregious behavior by dishonest litigants such as Strand and Allen.

3. At no time during the 21-day safe harbor period or thereafter did Strand and Allen withdraw a single one of their unfounded statements of facts, demonstrating a brazen disregard for Rule 11 even when their misdeeds were specifically called to their attention.

4. Sanctions against Strand and Allen were fully appropriate, amply justified and richly deserved.

CONCLUSION AND RELIEF SOUGHT


In light of the foregoing, the Court should:

1. Affirm the Order for Sanctions Pursuant to Rule 11 and Judgment in all respects, and

2. Award GMP its attorney fees incurred in this appeal pursuant to Utah Code § 78-36-10 (2007), Utah R. Civ. P. 11 and Utah R. App. P. 33, this appeal being frivolous.

DATED this 1st day of October, 2010

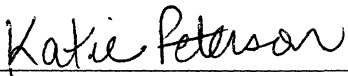
PRINCE, YEATES & GELDZAHLER
A Professional Corporation

By: 
James C. Swindler
Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2010 I served two copies of the foregoing by mail to the following address:

Michael W. Strand
Cari Allen
P.O. Box 1304
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**ADDENDUM TO
BRIEF OF APPELLEE**

1. Motion for Sanctions Pursuant to Rule 11 dated October 21, 2008
2. Order for Sanctions Pursuant to Rule 11 and Judgment dated October 5, 2009

ADDENDUM 1

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IN THE SECOND JUDICIAL DISTRICT COURT FOR DAVIS COUNTY
STATE OF UTAH

**GOLDEN MEADOWS PROPERTIES, L.C., AKA
GOLDEN MEADOWS PROPERTIES, L.L.C.,**

Plaintiff,

vs.

MICHAEL W. STRAND AND CARI ALLEN,

Defendants.

**MOTION FOR SANCTIONS PURSUANT TO
RULE 11**

Case No. 070700488

Judge Glen R. Dawson

Plaintiff moves the Court pursuant to Ut.R.Civ.P. 11(c)(1)(A) to sanction Defendants and their counsel as appropriate to deter them from further repetition of presenting false claims and statements to the Court such as those identified hereinafter. Such sanctions may, and should, include a monetary sanction as well as an order requiring Defendants and their counsel to cease and desist from making further false statements and bad faith arguments and filing frivolous motions.

A. Offending Documents Filed with the Court on October 14, 2008:

1. Rule 60(b) Motion for Relief from Judgment (the “60(b) Motion”);
2. Defendant’s Memorandum in Support Rule 60(b) Motion (the “Memorandum”);
3. Affidavit of Michael Strand in Support of his Motion to Disqualify Under Utah R. Civ. P. 63 and in Support of Rule 60(b) Motion (the “Strand Affidavit”); and
4. Motion for Disqualification Pursuant to Utah R. Civ. P. 63 (the “Motion to Disqualify”).

B. Factual Contentions Made without Evidentiary Support:

1. “Judge Dawson compelled Cari Allen a pro-se litigant to represent Mr. Strand at Court Hearings” 60(b) Motion at 2; Motion to Disqualify at 2.

Fact: Cari Allen was not compelled to do anything in this case except to comply with Plaintiff’s discovery requests. Strand spoke for himself at the October 24, 2007 scheduling conference. Legal counsel argued for both Defendants at the key hearings on motions to strike affidavits and motion for summary judgment, as well as all hearings subsequent thereto.

2. “Judge Dawson . . . denied all of the Defendants discovery requests and requests to alter and amend the scheduling order” *Id.*; Memorandum at 2.

Fact: Plaintiff answered numerous interrogatories from Defendants and produced multiple boxes of documents requested by Defendants. The Court denied motions to compel filed by Defendants, which sought, among other improper things, to compel Plaintiff to produce documents

of third parties, but did not deny discovery requests. The Court granted Defendants additional time to respond to the Motion for Summary Judgment

3 “Judge Dawson struck all of the Defendants affidavits in opposition to the Motion for Summary Judgment ” 60(b) Motion at 2, Motion to Disqualify at 2

Fact: The Court accepted portions of the Drage, Aiono, Williams, Ziska and Slattery affidavits See Order Concerning Motions to Strike Affidavits Defendants’ counsel consented to the striking of the Clark Affidavit

4. “Judge Dawson represented the Internal Revenue Service in an ongoing collection action against the very house and furniture that was the subject of this eviction action and represented the IRS with regard to the same property ” Memorandum at 2

Fact: There is no evidence whatsoever that the IRS took action against the real property (the “Property”) that is the subject of this action There was no issue raised in this action regarding ownership, control, possession or value of the furniture

5. “The Court did not allow the pro se defendant’s affidavits to be submitted ” Memorandum at 2

Fact: The affidavits of Defendants were submitted in that they were filed and the Court reviewed their affidavits (except those filed too late to come to the Court’s attention) and made specific rulings with respect to them

6 “Judge Dawson gained knowledge, through his involvement with Mr Strand’s IRS case, of Mr Strand’s house and furniture, the lease, and of Mr Strand’s business and personal and confidential relationship with Mr Neuman Petty” Memorandum at 3

Fact: There is no evidence supporting this statement as to the house or any confidential relationship. The IRS enforcement procedures had nothing to do with the Property. There was no confidential relationship between Strand and Neuman Petty. The furniture is irrelevant because it was never a subject of this case (apart from a brief discussion after the merits of the case had been decided regarding Defendants' claim that they needed to move their furniture).

7. "Mr. Dawson . . . was fully aware of the confidential relationship between Mr. Strand and Mr. Petty and of Mr. Strand's true ownership of the Property" Memorandum at 4.

Fact: There was no confidential relationship between Strand and Neuman Petty. Mr. Strand was not the "true owner" of the Property at any time after Nupetco Associates acquired it a trustee's sale in September 1985.

Comment: The extreme bad faith of this assertion is borne out by Strand's own admission contained in Exhibit B attached to the Strand Affidavit (first page, last paragraph), in which he said to the IRS, "They removed permanent fixtures of **the residence which I do not own.**" (Emphasis added).

8. "[R]ulings in these proceedings . . . were often contrary to rules, statutes and precedent" Memorandum at 5.

Fact: There is no factual basis for this statement. Neither the rulings nor the rules, statutes and precedent are even identified by Defendants.

9. " . . . [T]he pre-existing bias of this judge from his role as a former prosecutor involved in a creditor dispute regarding the identical subject matter was discovered." Memorandum at 5.

Fact: There is not one shred of evidence that Judge Dawson even remembers his work for the IRS nineteen years ago relating to Strand, and there is no evidence or reason to believe that any bias exists on the part of the Court against Strand. Judge Dawson's work as an Assistant United States Attorney is, by itself, too remote to support a claim of bias. Defendants simply assume that, because they did not prevail in this litigation, it must have been the result of bias against them. In reality, the Court liberally gave Defendants the benefit of significant opportunity to conduct discovery, remain in the Property pending a decision on the merits, and present their arguments to the best of their ability. Even after ruling against them on the merits, the Court helped arrange a liberal period of time in which Defendants were allowed to move out, during which time they were not assessed treble damages.

a. Utah Code Ann. § 78-36-9.5 (now § 78B-6-810) required trial to begin within 60 days after service of the Complaint. The Complaint was served on August 31, 2007. Had the Court strictly enforced the statute, trial would have begun October 30, 2007. Instead, the Court allowed the parties until December 21, 2007, in which to conduct discovery, with a series of dates set thereafter for filing of motions, submission of a pretrial order, exchange of exhibits and a final pretrial conference, all of which had to occur before a trial date would be set. Although this case was exempt by statute from the initial disclosure requirements of Rule 26, Ut.R.Civ.P., the Court ordered disclosure of witnesses, both lay and expert, to be done in November 2007. In short, if the Court were biased against Defendants, it could have simply held them to the statutory timetable and tried the case on October 30 without any discovery having been conducted by Defendants, who made no discovery requests at all until November 30.

b. The Court was extremely liberal in Defendants' favor with respect to the counter bond it required of them. Utah Code Ann. § 78-36-8.5 (now § 78B-6-808) required the counter bond posted by Defendants to cover costs of suit, attorney fees and actual damages to Plaintiff from Defendants' withholding of possession. At that point the evidence before the Court was that the rental value of the Property was \$3,000 per month. The Court allowed Defendants to remain in possession for six months with only two months' bonding for damages and no bonding at all for attorney fees.

c. When the Court conducted a scheduling conference on October 24, 2007, it inquired of the parties as to how much time they felt was needed to complete discovery, file motions and complete other pretrial procedures. Defendants made no objection to any of the dates proposed by Plaintiff and did not ask the Court to allow them a longer period for discovery or any other matters. The Court also made clear at that time that it expected the parties to comply with the deadlines being set.

d. After Plaintiff timely filed its Motion for Summary Judgment, Defendants pursued the ill-advised course of neglecting to respond to it in a timely manner and instead requested a stay of proceedings until their unmeritorious motions to compel discovery were decided. Even though their time to respond had expired, at the February 13, 2008, hearing on the motions to compel, the Court granted Defendants additional time to respond to the Motion for Summary Judgment and even continued the final pretrial conference and hearing on motions as a result.

e. Defendants failed to cooperate in the preparation of a final pretrial order prior to the time when it initially came due. The Court was patient with them and set a new deadline for the filing of that order and admonished Defendants to cooperate.

f. Defendants failed to file or serve any trial exhibits despite the clear deadline set by the Court for them to do so. The Court did not take any action against Defendants for their clear disregard of the Scheduling Order.

g. The Court allowed Defendants' counsel at the hearings on motions to strike and on the Motion for Summary Judgment to speak as long as he wished and to address any and all issues he wanted to address. Even though Defendants' counsel was ill-prepared, having newly entered the case, and did not have copies of numerous affidavits that were the subject of the hearing, the Court patiently allowed him time to read each affidavit (using a copy supplied by Plaintiff's counsel) and then to present his arguments concerning it.

h. The Court demonstrated great patience with Defendants and their counsel at many other stages of this case, allowing ample time to file their memoranda, correct procedural errors, and make whatever arguments they wished to make. The Court construed Defendants' Counterclaim liberally in their favor to determine whether there was any plausible theory upon which Defendants could prevail on the merits.

i. The Motion for Summary Judgment was correctly decided on the merits. Despite having filed a Rule 59 motion and a Rule 60(b) motion, Defendants have never identified any issue of fact that would have precluded summary judgment or any ruling of law that they contend was erroneous.

No bias against Defendants can be perceived from any decision or statement by the Court or from any other aspect of this case.

10. “[O]vert demonstrated repeated hostility.” Memorandum at 7.

Fact: There is no evidence supporting this assertion. See immediately preceding discussion under item 9.

11. “. . . Judge Dawson evicted me from my home of 32 years without giving me the opportunity to:

- a. participate at hearings,
- b. conduct discovery,
- c. challenge Golden Meadows standing,
- d. file necessary motions,
- e. take depositions,
- f. correct pro-se affidavits submitted in improper form,
- g. amend my counterclaim or,
- h. file a countermotion for summary judgment.

Strand Affidavit ¶3.

Fact: Strand did in fact participate at hearings, speaking personally to the Court on October 24, 2007, and allowing Cari Allen to argue in his behalf on February 13, 2008. At all other hearings, he was represented by his counsel, who spoke on behalf of Strand. Strand did conduct discovery, serving interrogatories, requests for admission and requests for document production containing scores of individual requests. He chose to wait until the last possible day to serve his discovery

requests, leaving himself no time to conduct depositions after document production. Strand did challenge Plaintiff's standing on several occasions, but his challenge was completely devoid of merit in view of Plaintiff's record ownership of the Property for nearly four years, including its ownership throughout the pendency of this action. Strand had the opportunity to file motions and did so, including his own motion for summary judgment, which was filed well after the January 15, 2008, deadline set by the Court for the filing of motions. Strand never served a notice of taking deposition and was in no way precluded by the Court from doing so. He did not make a motion to amend his Counterclaim. Although his counsel made an oral request to file supplemental or modified affidavits, Defendants never made any proffer to disclose to the Court the substance of what any modified affidavit might say or how modification would affect the fundamental question of whether there was any genuine issue of material fact for trial.

Comment: Defendants seem oblivious to the fact that the Court owes fairness to the Plaintiff as well and had a statutory duty to resolve this case on an expedited basis. It would be fundamentally unfair, after Plaintiff waited many months for a decision while holding a seriously inadequate bond, to require Plaintiff to wait many more months while Defendants try again, starting virtually from scratch, to frame their pleadings, conduct discovery, rewrite their affidavits and oppose the Motion for Summary Judgment. Defendants have never shown the Court any evidence or legal argument that could make the slightest difference in the outcome of this case, even if they were given a second chance to litigate it.

12. "Judge Dawson . . . did make factual findings on pre 1995 ownership interests Strand Affidavit ¶5.

Fact: There were no findings of fact made in this case. It was decided on summary judgment, there being no genuine issue of material fact. See Amended Summary Judgment.

13. “[N]ewly discovered evidence, the Citizen’s Bank Litigation pleadings, affidavits and memorandum . . . were not allowed by the Court to be filed on the record . . .” Strand Affidavit ¶8.

Fact: Defendants apparently refer to their counsel’s improper attempt to circumvent the rules governing motion practice on their Rule 59 motion by submitting hundreds of pages to the Court’s chambers dubbed as “Courtesy Copies” even though they were not courtesy copies and were submitted many months after the filing of the Rule 59 motion and without any procedural basis for doing so. Defendants failed then and are unable now to provide any explanation of how those materials would have altered the Court’s analysis of the Motion for Summary Judgment.

14. “Wayne Petty . . . represented both myself and Nupetco in this [Citizens Bank] litigation.” Strand Affidavit ¶8.

Fact: Wayne Petty never represented Strand in any litigation with Citizens Bank. Strand was represented by Daniel Jackson in that litigation, as shown by the papers he submitted.

15. “Wayne Petty . . . was present at the hearing and in a position to authenticate the documents.” Strand Affidavit ¶8.

Fact: The September 3, 2008, hearing on the Rule 59 motion was conducted telephonically and was not an evidentiary hearing. It was impossible to swear a witness and present documents to him for authentication in that context. Any documents relied on by Strand in support of the Rule 59 motion should have been filed at the time the motion was filed in May—not months later after the briefing on the motion had been completed.

16. “Judge Dawson also took issue with my ownership of the furniture from my house” Strand Affidavit ¶9.

Fact: There is no basis whatsoever for this statement, and clearly none is provided by the exhibits to the Strand Affidavit. Plaintiff at no time raised any issue in this case regarding ownership of the furniture, nor did the Court ever express an opinion on that matter.

17. “Judge Dawson . . . had entered into an agreement between me and Nueman [sic] Petty consistent with my claims concerning my confidential relationship with Neuman Petty.” Strand Affidavit ¶12.

Fact: There is no basis whatsoever for this statement.

18. “Judge Dawson’s blatantly negative bias towards me” Strand Affidavit ¶17.

Fact: There is no basis whatsoever for this statement, which is no more than highly irresponsible argument. See prior discussion on items 9, 10 and 11.

19. “[T]he positions taken by Mr. Dawson in 1989 regarding . . . my ownership of the house and the furniture are inconsistent with the positions taken by him in this proceeding.” Strand Affidavit ¶43.

Fact: There is no evidence that Judge Dawson, as an attorney for the IRS 19 years ago, took any position at all regarding Strand’s “ownership of the house.” At that time Strand claimed the house did not belong to him. See Exhibit B attached to the Strand Affidavit (first page, last paragraph), in which he said to the IRS, “They removed permanent fixtures of **the residence which I do not own.**” (Emphasis added). In this action, the Court ruled that the Property does not belong to Strand, consistent with all of the admissible evidence, including Strand’s own statements in the

record that he did not own it. The only inconsistency is Strand's complete reversal of his story between 1989 and 2007.

C. Claims and Legal Contentions Not Warranted by Law.

The following claims and legal contentions of Defendants are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law:

Motion to Disqualify.

Defendants claim that the Strand Affidavit shows that a "conflict of interest existed at the outset of the matter." The fact that Judge Dawson represented the IRS nineteen years ago in a matter that appears to have touched briefly on Strand's furniture that was kept in the Property at that time does not demonstrate a conflict of interest. This action did not raise any issue regarding the furniture or its ownership. Judge Dawson was appointed to the bench in 1994. Since he has not been employed by the United States Attorney's office for the past fourteen years, it is wholly implausible that he could have a conflict of interest at this late date.

A party seeking to disqualify a judge must meet a high standard, as the following statements by the Court of Appeals demonstrates:

Thus, to support a claim of bias based on a judge's presiding over prior proceedings, "it [must] appear[] that, apart from [the judge's] analysis of the issues of fact or law [in those prior proceedings], he had such a bias in favor of one party or prejudice against the other that he could not fairly and impartially determine the issues," *Poulsen v. Frear*, 946 P.2d 738, 742 (Utah Ct. App. 1997) (quoting *Orderville Irrig. Co. v. [**13] Glendale Irrig. Co.*, 17 Utah 2d 282, 288, 409 P.2d 616, 621 (1965)); that is, the affidavit must allege facts indicating that "[the] judge's behavior toward a party during [those prior] proceedings [was] extreme" and reflected a "deep-seated antagonism" toward the party requesting recusal. *Id.*

State ex rel. M.L. v. State, 965 P.2d 551, 556 (Utah App. 1998).

Defendants claim bias and prejudice but fail to produce any evidence of bias or prejudice demonstrated against them by Judge Dawson. As the foregoing discussion of facts reveals, Defendants were given ample opportunity to assert their claims, conduct discovery and oppose the Motion for Summary Judgment. They fail to cite a single decision by the Court that was improper or erroneous or that constituted an abuse of discretion.

The Motion to Disqualify seeks, without any precedent or authority, to nullify the entire proceedings in this case and to allow Defendants to start over again from scratch. Defendants have no authority showing that such relief can be granted, even if there were adequate grounds for disqualification.

A motion to disqualify must be timely made. Rule 63(b)(1)(B), Ut.R.Civ.P., requires that the motion be made within twenty days after the last to occur of the assignment of the case to the judge, the appearance of the party or “the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.” The Strand Affidavit states that Strand discovered files on September 17, 2008,¹ that revealed to (or, more accurately, reminded) Strand that Judge Dawson had signed an agreement on behalf of the IRS nineteen years previously. Strand Affidavit at 5-6. More than twenty days passed from that date until the filing of the Motion to Disqualify, rendering it untimely as a matter of law.

¹ The sworn statement of Defendants’ counsel in his Utah R. Civ. P. 63 Affidavit/Certificate of Counsel of Good-faith Filing establishes the date as not later than September 10, 2008.

However, Defendants should have moved to disqualify long before that time. Strand admits that he “vaguely recalled Judge Dawson from someplace” and was apparently concerned enough about it to have mentioned his concern to twelve individuals, many of whom are or have been lawyers (Dan Jackson, Richard Leedy, Howard Johnson, Nathan Drage and Sidney Baucom). Strand Affidavit at 5. In short, from the beginning of this case Strand had knowledge of all facts upon which he relies in making the Motion to Disqualify, but he forgot one of them—the name of the attorney representing the IRS in 1989. His lay opinion that it was a blow to the head that “impaired” his memory of these events has no credibility whatsoever. His testimony is that upon seeing Judge Dawson’s signature, he “immediately recalled confrontations with Judge Dawson (then a prosecutor . . .).” Strand Affidavit at 6. Obviously, Strand simply forgot, as is the common lot of humankind. Forgetting is no excuse for failing to investigate when concerns are present.

Strand’s failure to find earlier the box of documents that he found on September 10 or 17, 2008, is itself probably inexcusable. The following discovery requests were included in Plaintiff’s First Request for Production of Documents served on Defendants on September 21, 2007:

16. All documents concerning any judgment entered against you in any civil matter from January 1, 1975, through the Compliance Date or concerning any attempt by a judgment creditor to collect on a judgment against you from January 1, 1975, through the Compliance Date

. . . .

18. All documents concerning your conviction of any crime.

In addition, in *Strand vs. Petty, et al.*, pending in the Third District Court as Case No. 070915796, Defendants’ First Request for Production of Documents served on June 19, 2008, included the following requests:

27. All documents concerning any indebtedness owed by You to any person or entity as of April 1990.

. . . .

39. All documents concerning any notices, demands or correspondence between any of You and the Internal Revenue Service or the Utah State Tax Commission.

If Strand had diligently attempted to comply with his obligation to produce documents, he should have searched for and found the box almost a year earlier, and certainly several months earlier. The box contained evidence concerning Strand's criminal conviction, evidence of a creditor's attempt to collect from Strand, demands or correspondence with the IRS and documents concerning his indebtedness as of a date within one year of the 1989 collection activities by the IRS. Although the IRS may not have been a judgment creditor, it was documents of the same nature as the IRS collection activities that Strand should have searched out and produced, leading him long ago to the facts upon which he now relies.

Rule 60(b) Motion. This motion is premised entirely on the assumption that "newly discovered evidence" as used in Rule 60(b) can be evidence having nothing to do with the merits of the case. Defendants have no authority for that erroneous proposition. Indeed, the authorities they cite indicate precisely the opposite. In *Ervin v. Lowe's Cos.*, 2005 UT App 463, ¶16, the Court of Appeals rejected an appeal from the denial of a Rule 60(b) motion, agreeing with the trial court's reasoning:

The district court ruled that the newly discovered evidence was irrelevant and did not alter its summary judgment ruling. We agree.

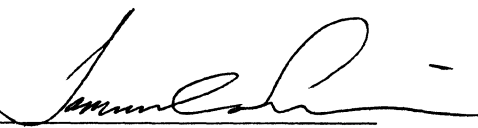
Id. The court went on to discuss and analyze the evidence and determined that it could not have had any impact on the trial court's decision regarding the merits of the case. Here, Defendants offer no

newly discovered evidence pertinent to the merits of the case, but only a recently remembered fact that they think supports disqualification.

Furthermore, since the Rule 60(b) Motion depends entirely on the Motion to Disqualify, it fails for lack of any legal or factual basis. The principal reasons why the Motion to Disqualify lacks such basis are set forth above.

DATED this 21st day of October, 2008

PRINCE, YEATES & GELDZAHLER

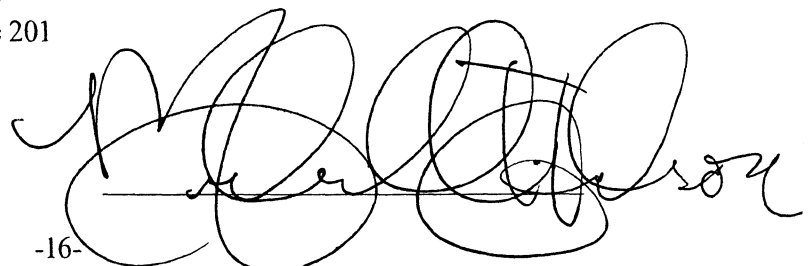
By 
James C. Swindler

CERTIFICATE OF SERVICE

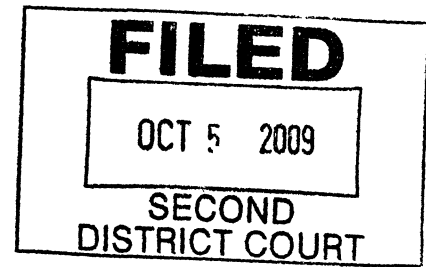
The undersigned hereby certifies that copies of the foregoing were served on the following on October 21, 2008, by hand-delivery to the following:

Sidney G. Baucom
Andrew H. Stone
Mark D. Tolman
Jones Waldo Holbrook & McDonough PC
170 South Main Street, Suite 1500
Salt Lake City, UT 84101

Judson T. Pitts
The Rose & Pitts Law Office
45 W. Sego Lily Drive, Suite 201
Sandy, UT 84070



ADDENDUM 2



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175 E. 400 S., Suite 900
Salt Lake City, UT 84111
Telephone (801) 524-1000
E-mail: jcs@princeyeates.com

Wayne G. Petty (No. 2596)
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175 East 400 South
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E-mail: wayne@moylelawfirm.com

Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT FOR DAVIS COUNTY
STATE OF UTAH

**GOLDEN MEADOWS PROPERTIES, L.C., AKA
GOLDEN MEADOWS PROPERTIES, L.L.C.,**

Plaintiff,

vs.

MICHAEL W. STRAND AND CARI ALLEN,

Defendants.

**ORDER FOR SANCTIONS PURSUANT TO
RULE 11
AND
JUDGMENT**

Case No. 070700488

Judge Glen R. Dawson

The Court conducted a hearing on Plaintiff's Motion for Sanctions Pursuant to Rule 11 (the "Rule 11 Motion") on September 1, 2009, with James C. Swindler appearing for Plaintiff and Defendants appearing in person. Based on the papers filed in connection with the Rule 11 Motion, the arguments made at the hearing and for reasons stated by the Court in the course of the hearing,

IT IS HEREBY ORDERED THAT:

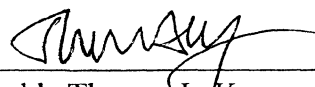
1. The Rule 11 Motion is granted, and Defendants Michael W. Strand and Cari Allen are sanctioned for violating Rule 11 by having presented the nineteen factual contentions without evidentiary support that are detailed in the Rule 11 Motion and having failed to withdraw them within twenty-one days after the Rule 11 Motion was served on them.

2. A monetary sanction should be imposed on Defendants in the amount of \$3,600, which is computed based on the \$6,100 of attorney fees requested in the Rule 11 Motion and documented by the Affidavit of James C. Swindler Concerning Attorney Fees for Purposes of Rule 11 Motion, less credit for \$2,500 paid by Attorney Judson Pitts to settle the issues raised by the Rule 11 Motion as against himself only. The Court finds that such attorney fees were reasonable in amount and were actually incurred as a result of Defendants' filing of the offending documents identified in the Rule 11 Motion and in preparing, supporting and presenting the Rule 11 Motion.

3. Judgment is hereby entered against Michael W. Strand and Cari Allen in the amount of \$3,600, which amount shall bear interest from the date hereof at the rate of 2.40% per annum.

DATED this 5th day of September, 2009

BY THE COURT:



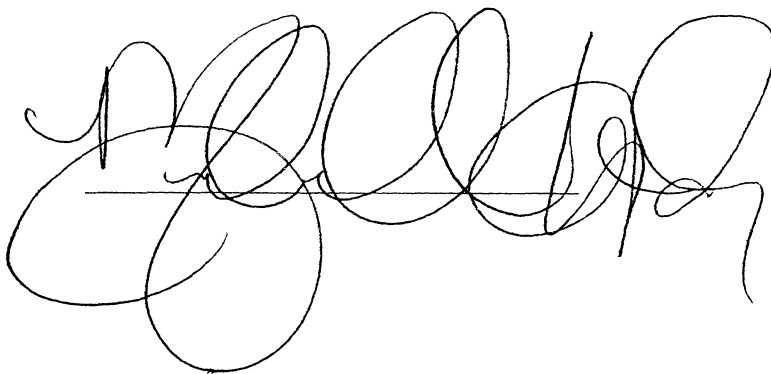
Honorable Thomas L. Kay
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on the following by mail on September 2, 2009:

Sidney G. Baucom
Andrew H. Stone
Mark D. Tolman
Jones Waldo Holbrook & McDonough PC
170 South Main Street, Suite 1500
Salt Lake City, UT 84101

Michael W. Strand
Cari Allen
P.O. Box 1304
Centerville, UT 84010

A handwritten signature in black ink, appearing to read "Michael W. Strand", written over a horizontal line.