

2001

Hunter v. Sunrise Title Company : Brief of Appellant

Utah Supreme Court

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Clark B. Allred; McKeachnie, Allread, McClellan & Trotter, P.C.; Attorneys for Defendant/Appellee.
Daniel S. Sam; Attorney for Plaintiff/Appellant.

Recommended Citation

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IN THE UTAH SUPREME COURT

BRIAN HUNTER)	
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	Appeal No. 20010960-SC
SUNRISE TITLE COMPANY,)	
	)	Priority No. 15
Defendant/Appellee.)	

BRIEF OF APPELLANT

**APPEAL FROM THE ORDER OF THE EIGHTH
JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
HON. A. LYNN PAYNE PRESIDING, DATED OCTOBER 25, 2001**

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Attorney for Plaintiff/Appellant

PARTIES TO THIS ACTION

Pursuant to Utah R. App. P. 24(a)(1), the parties to this action are listed as follows:

Brian Hunter, Plaintiff/Appellant

Sunrise Title Company, Defendant/Appellee

Sharlene Bensen, Defendant (not a party to this appeal)

RS West Real Estate, Defendant (not a party to this appeal)

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April 16, 2003



Clerk of the Court
UTAH SUPREME COURT
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

FILED
UTAH SUPREME COURT

APR 17 2003

PAT BARTHOLOMEW
CLERK OF THE COURT

Re: Hunter v. Sunrise, Supreme Court No. 20010960-SC
Citation of Supplemental Authorities under Utah R. App. P. 24(i).

Dear Clerk of the Court:

Pursuant to Rule 24(i) of the Utah Rules of Appellate Procedure, I am submitting this letter, along with nine copies hereof, to supplement the authorities of the Brief of Appellant.

Supplemental authority: *Eastmond v. Earl*, 912 P.2d 994 (Utah App. 1996)

This authority should be inserted under the Statement of Issues, page 1 of the Brief of Appellant, and under the Argument, page 6 of the Brief of Appellant (immediately following the quoted material from case of *Barber v. Emporium Partnership*, 800 P.2d 795 (Utah 1990)).

The *Eastmond* case recently came to the attention of Appellant's counsel, and is pertinent and significant to this appeal because, as with this case, the issue there was whether a co-defendant could be served more than 120 days following the filing of the case where another co-defendant was served within 120 days.

In the *Eastmond* case, one defendant (the "First Defendant") was served on August 13, 1987, within 120 days of the filing of the complaint. The First Defendant thereafter filed bankruptcy. On February 9, 1992, the other defendant (the "Second Defendant") was served with the summons and complaint. The trial court in *Eastmond* granted summary judgment in favor of the Second Defendant in part because he was not served within 120 days of the filing of the complaint. The Court of Appeals reversed the trial court in part because, under Rule 4(b) of the Utah Rules of Civil Procedure, where one defendant is served within 120 days of the filing of the complaint, a co-defendant may be served at any time "prior to trial."

Based on the above, the Appellant respectfully requests that the *Eastmond* case be supplemented to the Appellant's brief.

Sincerely

Daniel S. Sam

Attorney for Plaintiff/Appellant

DSS/he

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the Order of the Eighth Judicial District Court, Hon. A. Lynn Payne, dated October 25, 2001, pursuant to Utah Code Ann. § 78-2-2(3)(j); to wit, appeal from a District Court decision dismissing action on motion to dismiss.

STATEMENT OF ISSUES, STANDARD OF APPELLATE REVIEW, SUPPORTING AUTHORITY, AND CITATIONS TO THE RECORD

I DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S MOTION TO DISMISS UNDER AUTHORITY OF Utah R. Civ. P. 4(b)?

Whether the trial court erred in granting the motion to dismiss is a question of law which is reviewed for correctness giving no deference to the decision of the trial court. *Krouse v. Bower*, 20 P.3d 895 (Utah 2001); *Valley Asphalt, Inc. v. Eldon J. Stubbs Construction, Inc.*, 714 P.2d 1142 (Utah 1986); *Barber v. Emporium Partnership*, 800 P.2d 795, 798 (Utah 1990).

The above issue was preserved in the trial court for appeal because it forms the basis upon which the final order was entered. See Order (T. at 327).

DETERMINATIVE PROVISIONS OF LAW

The interpretation of Utah R. Civ. P. 4(b) is believed to be determinative of this appeal or of central importance to the appeal. Utah R. Civ. P. 4(b) reads as follows:

Time of service. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period time for good cause shown. If the summons and complaint are not timely served, the action shall be

dismissed, without prejudice on application of any party or upon the court's own initiative. In any action brought against two or more defendants on which service has been obtained upon one of them within the 120 days or such longer period as may be allowed by the court, the other or others may be served or appear at any time prior to trial.

There are no other constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is believed to be determinative of this appeal or of central importance to the appeal.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an action which was originally brought by the Plaintiff to recover damages against Defendant Sunrise and two other defendants where Defendant Sunrise was the closing agent (title company) in a real estate transaction handled in July and August 1995, and the other two defendants were real estate sales agents in the same transaction. Plaintiff owned an equitable (unrecorded) interest in the real estate involved in the transaction. The transaction purported to convey title from the record title owner to Morgan Glines, who was an officer and shareholder of Defendant Sunrise. Plaintiff obtained an order in the case of *Hunter v. Glines*, in the Eighth District Court of Duchesne County, Roosevelt Department, State of Utah, case no. 950000136, filed May 18, 1998 (See this order enclosed herein in the Addendum), effectively nullifying the transaction and vesting title in the real estate in the name of Plaintiff (the Judgment referenced therein, dated November 20, 1997, is also enclosed


CERTIFICATE OF MAILING

I, Heather T. Eskelson, do hereby certify that I mailed first class, postage prepaid, two true and correct copies of the foregoing letter on this 16 day of April, 2003, to:

Clark B. Allred
McKEACHNIE, ALLRED,
MCCLELLAN & TROTTER
121 West Main Street
Vernal, Utah 84078

Attorneys for Defendant/Appellee

V Hunter.suppauth.wpd


Heather T. Eskelson, Secretary

in the Addendum). Plaintiff then filed this action in July 1998 against Defendant Sunrise and the other two defendants for damages alleging breach of fiduciary duty, slander of title, fraud, and/or negligence in the manner in which the sale transaction was conducted by the Defendant Sunrise and the other two defendants.

II. COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW

The Plaintiff filed his Complaint in this matter against the Defendant Sunrise, Sharlene Bensen ("Bensen") and RS West Real Estate ("West") on July 14, 1998, requesting damages against the defendants arising from the real estate sales transaction held on July 26, 1995. (T. at 3-10). After having been served with Summonses, Bensen answered the Complaint on October 29, 1998 (T. at 20) and West answered the Complaint on October 27, 1998 (T. at 11). On June 16, 2000, following a hearing on West's and Bensen's Motions for Summary Judgment (see Court minutes, T. at 238 and T. at 268), the Plaintiff, Bensen and West entered a Stipulation and Motion for Order of Dismissal (T. at 285), dismissing the action against Bensen and West, but specifically reserving the issues as to Defendant Sunrise. On June 26, 2000, the Order, pursuant to the Stipulation and Motion, was entered (T. at 292). This order specifically reserved the Complaint against Defendant Sunrise and did not constitute a final judgment as to West and Bensen under Utah R. Civ. P. 54(b). On May 17, 2001, Plaintiff filed an Amended Complaint (T. at 308). The Amended Complaint and Summons was served on Defendant Sunrise on May 18, 2001 (T. at 329). On June 7, 2001, Sunrise filed a Motion to Dismiss (T. at 279) and a memorandum in support thereof (T. at 281) based on the fact that

Sunrise was not served within 120 days of the filing of the original Complaint. Plaintiff filed a memorandum in opposition to the motion to dismiss on June 13, 2001 (T. at 288) and Sunrise filed a reply memorandum in support on June 26, 2001 (T. at 294). The Court initially denied the motion to dismiss by Ruling dated September 17, 2001 (T. at 320). However, following a Motion to Reconsider, filed by Sunrise on September 19, 2001 (T. at 322), the court, on October 2, 2001, reversed its prior ruling, and entered a Ruling granting the Motion to Dismiss (T. at 325). The Order on the October 2, 2001, Ruling, constitutes a final judgment for purposes of appeal, was entered on October 25, 2001 (T. at 327). The Notice of Appeal in this matter was filed on Monday, November 26, 2001 (T. at 342). The Stipulation and Motion for Order of Dismissal, filed on June 13, 2000, (T. at 285), the Order of Dismissal, filed June 26, 2000, (T. at 292), the Ruling dated October 2, 2001, (T. at 325), and the Order of Dismissal dated October 25, 2001, (T. at 327) are also enclosed in the Addendum to this Brief.

STATEMENT OF MATERIAL FACTS

1. The material facts on this appeal for the most part are procedural in nature and are primarily set forth in the Course of Proceedings and Disposition Below section above supplemented by the following relevant facts.
2. Defendants Bensen and West both answered the original complaint within 120 days of the filing of the original complaint (T. at 11, 20, and 328).
3. The Court only granted a partial summary judgment in favor of West and Bensen.

(T. at 268) Certain counts of the Complaint were still outstanding at the time the Plaintiff, West and Bensen entered into the stipulation (T. at 268 and 285).

4. The Order of Dismissal regarding the claims against West and Bensen, filed June 26, 2000, (T. at 292), specifically reserved the complaint against Defendant Sunrise and does not contain an express determination and direction under Utah R. Civ. P. 54(b).

SUMMARY OF ARGUMENT

Two of the defendants in this action were served and generally appeared within 120 days of the filing of the original complaint. The case was still pending as to all of the Defendants on May 18, 2001, the date on which the Defendant Sunrise was served with the summons. Therefore, the Defendant Sunrise was timely served within the meaning of Utah R. Civ. P. 4(b).

ARGUMENT

I DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S MOTION TO DISMISS UNDER AUTHORITY OF Utah R. Civ. P. 4(b)?

A. The Order Erroneously Applies Utah R. Civ. P. 4(b).

The Order (T. at 327-330) erroneously applies Utah R. Civ. P. 4(b) in dismissing the Complaint as to Defendant Sunrise. The last sentence of this Rule states as follows:

In any action brought against two or more defendants on which service has been obtained upon one of them within the 120 days or such longer period as may be allowed by the court, the other or others may be served or appear at any time prior to trial.

In the case of *Barber v. Emporium Partnership*, 800 P.2d 795 (Utah 1990), the Utah Supreme Court dealt with this issue. In *Barber*, the Plaintiffs sued the Defendants, a limited

partnership, and general partners, for renewal of a judgment in March 1987. The Plaintiffs served two of the general partners with summonses, but served them in their individual capacities and not in their representative capacities as general partners. A third general partner was not served. The trial court renewed the judgment against the partnership and against the three general partners on a partial summary judgment. In its ruling on appeal, the Utah Supreme Court stated:

Appellants challenge the renewal of the judgment because Don White, one of the general partners, was not served. It is true that the judgment against White cannot be renewed without proper service on him. Failure to serve White, however, has no effect on the renewal of the judgment against the two general partners who were served. We therefore vacate the renewal of the judgment against White and against the partnership. **We note, however, that service upon these parties can still be attempted.** Utah Rule of Civil Procedure 4(b) provides, "In any action brought against two or more defendants on which service has been obtained upon one of them within [the proper time period], the other or others may be served or appear at any time prior to trial. **Because the other defendants were properly served and the trial court only granted a partial summary judgment, the Barbers can still try to serve White and the partnership at any time prior to final disposition of the case.**

Barber, 800 P.2d at 797-798. (Citations omitted, emphasis added).

In the case at hand, the Defendant Sunrise was one of three defendants named in the original complaint filed in July 1998. The other two defendants, West and Bensen, were properly and timely served within 120 days of the filing of the complaint. In June 2000, following a ruling partially granting and partially denying motion for summary judgment filed by Defendants West and Bensen, the Court entered a ruling based on a stipulated settlement

among the Plaintiff, West and Bensen, dismissing the matter against those defendants but leaving the matter open as to Defendant Sunrise. On May 18, 2001, Defendant Sunrise Title was served with a summons and the amended complaint.

B. The Court is Bound by the Plain and Unambiguous Language of Utah R. Civ. P. 4(b).

According to the plain and unambiguous language of the last sentence of Rule 4(b) and according to the *Barber* case, Defendant Sunrise has been properly served. The Court's order dismissing plaintiff's case goes beyond the plain and unambiguous language of Rule 4(b) by adding unwritten exceptions and qualifications which cannot be gleaned by any reasonable reading of the rule. It is clear that the appellate courts of this state follow and are bound by the plain and unambiguous language of the Rules of Civil Procedure. See, *Prowswood, Inc. v. Mountain Fuel Supply Co.*, 676 P.2d 952, 955 (Utah 1984); *Dipoma v. McPhie*, 29 P.3d 1225, 426 Utah Adv. Rep. 17, 18 (Utah 2001) (stating, "[T]his court has consistently looked to the plain language of the applicable rule when construing it, thereby declining to read additional language into the rule."); and *Valley Asphalt, Inc. v. Eldon J. Stubbs Construction, Inc.*, 714 P.2d 1142, 1143 (Utah 1986). In the *Valley Asphalt* case, referring to Rule 4(b), the court stated, "[I]f the requirements of timely issuance and service are met as to one defendant, the rule clearly allows other defendants, whether named in the original complaint or brought in by amendment, to be served any time before trial." *Id.* Based upon the cases cited, Rule 54(b), and the plain and unambiguous language of Rule 4(b), it is clear that the Court's Order in this case goes beyond the plain and unambiguous language of Rule 4(b). Plaintiff is entitled to rely on the

plain language of the Rules of Civil Procedure. If the Plaintiff cannot rely on the plain language of the rules because the courts have such broad discretion to interpret the rules as they please, then it would be impossible to expect the Plaintiff and the public in general to have notice of the requirements of the rules. Therefore, to the extent that the court dismissed this case on interpretations and reasoning that goes beyond the plain language of Rule 4(b), the Court has erred in granting the motion to dismiss.

C. The Order is Based on Erroneous Assumptions.

The Court in the Order (T. at 327-330) makes several erroneous assumptions which are the basis for the dismissal of Plaintiff's case.

First, in the Order at paragraph 6 (T. at 229), the court states that, "Rule 4(b) only allows service later than the 120 days upon a co-defendant when there are issues involving the co-defendants which are pending before the court." The Court further states in paragraph 6 of the Order that, "In this case all co-defendants had been dismissed on June 22, 2000." This language, as a statement of the court's interpretation of Rule 4(b), is based on the erroneous premises that as of June 26, 2000, there were no triable issues before the Court and that the June 26, 2000, order acted as a final judgment as to Bensen and West for purposes of Rule 54(b).

In this case, there were issues pending involving a co-defendant on the date Sunrise was served. Utah R. Civ. P. 54(b) makes it clear that the June 26, 2000, Order had not become a final judgment, as defined by Rule 54(a), for purposes of appeal. Utah R. Civ. P. 54(b) states in pertinent part as follows:

Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, and./or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. **In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.**

(Emphasis added)

Thus, based on Rule 54(b), it is clear that the case was still open and pending as to all of the parties on May 18, 2001, the date the Defendant Sunrise was served. Therefore, the Court's reasoning for dismissing the case by the October 25, 2001, Order (T. at 327) is flawed.

Second, at paragraph 5 of the Order (T. at 328), the Court suggests that the Amended Complaint (T. at 308) states different causes of action than the original Complaint (T. at 3). In fact, the first cause of action of the Amended Complaint (fiduciary duty) is the same as the second cause of action of the original Complaint and the third cause of action of the Amended Complaint (fraud) is the same as the fourth cause of action of the original Complaint. Thus, the October 25, 2001, Order is further flawed to the extent that the Court's reasoning for dismissal of is supported by paragraph 5 of the Order.

D. The Plain Language of Utah R. Civ. P. 4(b) is Consistent with Utah R. Civ. P. 71B(b).

Finally, Utah R. Civ. P. 71B(b) provides as follows:

Proceedings after judgment against parties not originally served.
When a judgment has been recovered against one or more, but not all, of several persons jointly indebted upon an obligation, the plaintiff may require any person not originally served with the summons to appear and show cause why he should not be bound by the judgment in the same manner as though he had been originally served with process.

Rule 71B(b), like Rule 4(b), does not provide any basis for inferring that are unwritten requirements, like that of requiring that issues should still be pending before the court at the time the unserved defendants are finally served, like the Court in this case required. In fact, it is consistent with Rule 4(b), and in fact it is in direct opposition to the Order (T. at 327) of the Court in this case by clearly authorizing the plaintiff to serve an unserved defendant even if there is a final judgment obtained against co-defendants who have been served. In essence, even if there are no triable issues before the Court against a co-defendant, the plaintiff may still bring an unserved defendant before the Court to answer to the judgment. In light of Rule 71B(b), it is even more likely that one would rely upon the plain language of Rule 4(b) and do what the Plaintiff did in this case, believing that Rule 4(b) authorized later obtaining service of process upon an unserved defendant.

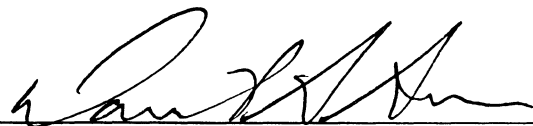
Based on the Order (T. at 327), it is clear that the Court's intention was to dismiss on the basis that there was no triable issue pending against a party that was served within the 120 day period. This basis for dismissal is not only unsupported by any law but goes against the plain

language of Rule 4(b), against Rule 54(b), against Rule 71B(b), and is contrary to the language of the Utah Supreme Court in the *Barber* case. If the Court's Order were allowed to stand, it will create a situation where a reasonable person could be fooled by the plain language of Rule 4(b). There is certainly no notice to the public that Rule 4(b) can be interpreted in a manner other than its plain and unambiguous language which is supported by Rule 71B(b).

CONCLUSION

Based on the case law presented herein and the plain and unambiguous language of Rule 4(b), the District Court clearly erred in granting Defendant's Motion to Dismiss. The Plaintiff is entitled to rely upon, and the Courts are bound to follow the plain language of the Rules of Civil Procedure. The Court's interpretation of Rule 4(b) is contrary to the plain language of that rule and is based upon erroneous assumptions. Therefore, the Order granting dismissal is erroneous. Therefore, the Plaintiff respectfully requests that the District Court's Order of Dismissal, dated October 25, 2001, be reversed

Respectfully submitted this 10 day of May, 2002.

A handwritten signature in black ink, appearing to read "Daniel S. Sam", is written over a horizontal line.

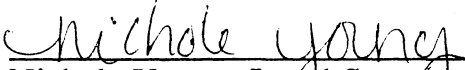
DANIEL S. SAM

Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Nichole Young, do hereby certify that on May 10, 2002, I mailed first class, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLANT to:

Clark B Allred
McKeachnie, Allred, McClellan & Trotter, P.C.
121 West Main Street
Vernal, Utah 84078



Nichole Young, Legal Secretary

z Dunn.app.wpd

ADDENDUM

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

MAY 18 1998

JOANNE MCKEE, CLERK
BY _____ DEPUTY

DANIEL S. SAM, #5865
Attorney for Plaintiff
Brian Hunter
319 West 100 South, Suite A
Vernal, Utah 84078
Telephone (435) 789-1301

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

BRIAN HUNTER and JANET HUNTER,)
husband and wife,)
)
Plaintiffs,)

vs.)

MARY ROWSELL, a single woman,)
and C. MORGAN GLINES and)
VELLA R. GLINES, husband and)
wife,)
)
Defendants.)

ORDER DECLARING SATISFAC-
TION OF JUDGMENT AND
VESTING TITLE

Civil No. 950 000 136

On the 6th day of February, 1998, the Plaintiff Brian Hunter, through his attorney, Daniel S. Sam, presented to the Court his Notice of Satisfaction of Judgment. The Court notes that on November 20, 1997, it entered its Judgment in this matter and that under paragraph 3 of the Judgment, Plaintiff was required to release Glines of the Zions Bank obligation within sixty (60) days of the Judgment and that if he did so the real property at issue in this matter would vest in the name of Plaintiffs. The Court also notes that in an Order dated January 14, 1998, it extended

Plaintiff's time to obtain the release to January 30, 1998, and in an Order dated January 28, 1998, it again extended the time to February 3, 1998. The Court also notes that the Plaintiff, Janet Hunter, died after the commencement of this matter, but prior to the trial. The Court, having reviewed Plaintiff's Notice and its attached exhibits finds that said Notice presents satisfactory evidence for the Court to conclude that the Plaintiff, Brian Hunter, did obtain a release of Defendants, Glines, from the Zions Bank obligation within the time required by the Court and that the real property in question should now vest in the name of Plaintiff, Brian Hunter. In light of the presumption of Section 57-1-5(1)(a), Utah Code Annotated, 1953 as amended, the Court also concludes that since this matter was filed and prosecuted by the Plaintiffs, Brian and Janet Hunter, as husband and wife, the property should have vested in Joint Tenancy if Janet Hunter would have now been living.

NOW, THEREFORE, upon full consideration of the issue, the Court being fully advised in the premises, hereby Orders that:

1. The requirement imposed upon Plaintiff, Brian Hunter, by the Court in paragraphs 2.d. and 3. of its Judgment dated November 20, 1998, to obtain a release of Defendants, C. Morgan Glines and Vella R. Glines, from the Zions Bank obligation is hereby declared to be fully satisfied.

2. The real property in question, located in Duchesne

County, State of Utah, and described as follows, does hereby vest as of February 3, 1998, in fee simple absolute, in the name of Plaintiff, Brian Hunter:

TOWNSHIP 1 NORTH, RANGE 1 WEST, UINTAH SPECIAL BASE & MERIDIAN

Section 19: Beginning at a point 63 feet South and 382 feet West of the Northeast Corner of the Northeast Quarter of the Southeast Quarter; thence North 63 feet; thence West 200 feet; thence South 300 feet; thence Northeasterly 308 feet, more or less, to the point of beginning.

A non-exclusive easement to use a right-of-way as granted by C. Morgan Glines and Vella R. Glines, husband and wife, to James W. Hoopes, et., al., by Agreement recorded November 12, 1980, as Entry No. 211609 in Book A-77 page 857, records of Duchesne County, Utah; which right-of-way is described as follows:

TOWNSHIP 1 NORTH, RANGE 1 WEST, UINTAH SPECIAL BASE & MERIDIAN

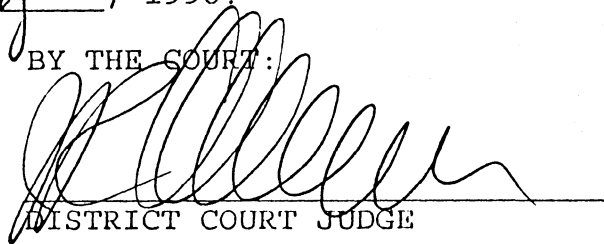
Section 19: Beginning 330 feet North of the East Quarter Corner thence Southwest to a point 382 feet West and 30 feet North of said East Quarter Corner; thence West 938 feet; thence South 30 feet; thence East 938 feet; thence Northeast to a point 30 feet South of the point of beginning; thence North 30 feet to the point of beginning.

TOGETHER with all improvements and appurtenances thereunto belonging.

SUBJECT to all existing easements and rights-of-way.
EXCEPTING THEREFROM all oil, gas, and mineral rights.

DATED this 15 day of May, 1998.

BY THE COURT:



DISTRICT COURT JUDGE

APPROVED AS TO FORM:


Gayle F. McKeachnie

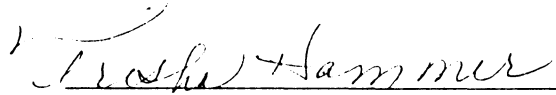
NOTICE

The below referenced parties will PLEASE TAKE NOTICE that, pursuant to Rule 4-504 of the Utah Code of Judicial Administration, the undersigned will submit the foregoing Order Declaring Satisfaction of Judgment and Vesting Title to the Judge of the Eighth Judicial District Court for signature upon the expiration of five (5) days from the date of this Notice, plus three (3) days for mailing, unless a written objection is filed with the Court prior to that time. Please govern yourself accordingly.

CERTIFICATE OF SERVICE

I, Trisha Hamner, do hereby certify that on the 16 day of February, 1998, a true and correct copy of the foregoing Order Declaring Satisfaction of Judgment and Vesting Title, was mailed,

postage fully prepaid, faxed, or hand delivered to the following:
Gayle F. McKeachnie, Clark B. Allred, Clark McClellan, McKEACHNIE,
ALLRED & McCLELLAN, P.C., 855 East 200 North (112-10), Roosevelt,
Utah 84066 and Gayle F. McKeachnie/Clark B. Allred, Clark
McClellan, McKEACHNIE, ALLRED & McCLELLAN, P.C., 121 West Main,
Vernal, Utah 84078.



Trisha Hamner, Secretary

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NOV 24 1997

FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

NOV 20 1997

BY JOANNE MCNEE CLERK
DEPUTY

GAYLE F. McKEACHNIE - 2200
CLARK A. McCLELLAN - 6113
McKEACHNIE & ALLRED, P.C.
Attorneys for Defendants, Glines
855 East 200 North (112-10)
Roosevelt, Utah 84066
Telephone: (801) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
COUNTY OF DUCHESNE, ROOSEVELT DEPARTMENT

BRIAN HUNTER AND JANET HUNTER,)	
husband and wife,)	
)	
Plaintiffs,)	
)	
vs.	)	JUDGMENT
)	
)	
MARY ROWSELL, a single woman, and,)	
C. MORGAN GLINES AND VELLA R.	)	Civil No. 950000136
GLINES, husband and wife,)	
)	
Defendants,	)	Judge John R. Anderson

The Court having entered its Findings of Fact and Conclusions of Law hereby ORDERS, ADJUDGES and DECREES AS FOLLOWS:

1. The Claim of Defendants C. Morgan Glines and Vella R. Glines for unlawful detainer is dismissed.

2. The warranty deed for the property in question from the estate of Ladd C. Richman to Mary Rowsell is hereby reformed to a mortgage upon the following terms:

a. The date of the mortgage is February 15, 1995.

b. The mortgage secures a loan made by Mary Rowsell to Brian and Janet Hunter.

c. The amount of the loan secured by the mortgage is \$15,000.00, the amount that Mary Rowsell borrowed from Zions First National Bank.

d. The obligation secured by the mortgage is to be paid by Hunter by obtaining the release of C. Morgan and Vella Glines from the obligation the Glines' undertook to Zions Bank, the proceeds of which were used to pay off the loan Mary Rowsell made to pay off the Richman obligation, and to provide money to Rowsell for other purposes.

3. The release of Glines by Hunter must be made within sixty (60) days of the signing of this judgment. If such action is taken within sixty (60) days, title to the property in question shall vest in the name of Brian and Janet Hunter.

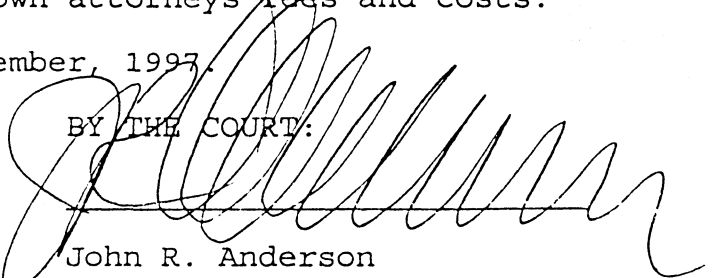
4. If Glines are not released from their Zions Bank obligation within sixty (60) days of the date of this judgment, Hunter will default in his obligation under the mortgage and shall have no further claim to the property.

5. Hunter is awarded damages against Mary Rowsell in the amount of \$1,260.00 for loss of income and \$12,230.00 for attorneys fees.

6. Except as indicated in paragraph 5 above, the parties shall be responsible for their own attorneys fees and costs.

DATED this 20th day of November, 1997.

BY THE COURT:


John R. Anderson

MARK J. WILLIAMS #3494
PLANT, WALLACE, CHRISTENSEN & KANELL, P.C.
Attorneys for Defendant
R S West Real Estate
136 East South Temple, Suite 1700
Salt Lake City, UT 84111
Telephone: (801) 363-7611


FILED
JUL 13 2009
BY _____

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

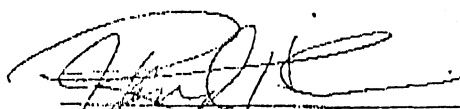
BRIAN HUNTER,)	
	)	STIPULATION AND MOTION FOR
Plaintiff,	)	ORDER OF DISMISSAL
)	
v.)	
)	
SHARLENE BENSEN; R S WEST REAL)	
ESTATE, a Utah real estate agency;)	
SUNRISE TITLE COMPANY, a Utah title	)	Civil No. 980000102CV
insurance agency,	)	Judge: A. Lynn Payne
)	
Defendants.)	
)	
)	
)	

Plaintiff Brian Hunter, by and through his attorney, Daniel S. Sami, and defendant, Sharlene Bensen, by and through her attorney, Rand Hirschi, and defendant, R S West Real Estate, a Utah corporation, by and through its attorney, Mark J. Williams, hereby stipulate and move the court to enter an order in this matter dismissing plaintiff's complaint against these defendants only, with prejudice and upon the merits, said action having been fully compromised and settled against these defendants only, and ordering the parties to bear its own costs. The plaintiff does not intend to dismiss, and hereby reserves its complaint against the remaining defendant, Sunrise Title Company.


DATED this 9 day of June, 2000.


Daniel S. Sam
Attorney for Plaintiff


DATED this 24th day of May, 2000.


J. Rand Hirschi
Attorney for Defendant Sharlene Bensen

DATED this 12th day of June, 2000.


Mark J. Williams
Attorney for Defendant RS West Real Estate

MARK J. WILLIAMS #3494
PLANT, WALLACE, CHRISTENSEN & KANELL, P.C.
Attorneys for Defendant
R S West Real Estate
136 East South Temple, Suite 1700
Salt Lake City, UT 84111
Telephone: (801) 363-7611

FILED
DISTRICT COURT
DUCHESS COUNTY, UTAH
JUN 25 2000
JENNIFER L. CLARK, CLERK
BY:  DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

ROOSEVELT DEPARTMENT, STATE OF UTAH


BRIAN HUNTER,)	
	)	ORDER OF DISMISSAL
Plaintiff,)	
)	
v.)	
)	
SHARLENE BENSEN; R S WEST REAL)	
ESTATE, a Utah real estate agency;	)	Civil No. 980000102CV
SUNRISE TITLE COMPANY, a Utah title	)	Judge: A. Lynn Payne
insurance agency,)	
)	
Defendants.)	
)	
)	

Upon reading the Stipulation and Motion for Order of Dismissal, and good cause appearing therefor,

IT IS HEREBY ORDERED that the plaintiff's complaint be and the same is hereby dismissed with prejudice and upon the merits against defendants, Sharlene Bensen and RS West Real Estate only, with prejudice and upon the merits, and that each party shall bear its own costs.

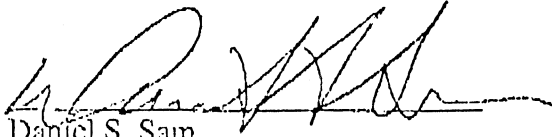
DATED this 22 day of June, 2000.

BY THE COURT:

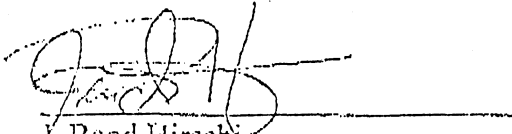


District Judge

APPROVED AS TO FORM:



Daniel S. Sam
Attorney for Plaintiff



J. Rand Hirschi
Attorney for Defendant Bensen

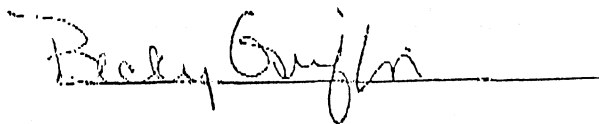
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via United States

Mail, first class, postage prepaid on the 21st day of June, 2000, as follows:

Daniel S. Sam
319 West 100 South, Suite A
Vernal, UT 84078

Mike Homer
Rand Hirschi
Sutler Axland
175 South West Temple, Seventh Floor
Salt Lake City, UT 84101



FILED
DISTRICT COURT
DUCHESNE COUNTY, UTAH

OCT - 2 2001

JOANNE MCKEE, CLERK
BY file DEPUTY

In The Eighth Judicial District Court Of Duchesne County
State of Utah

BRIAN HUNTER,

Plaintiff,

v.

SUNRISE TITLE COMPANY, a Utah
Corporation,

Defendant.

RULING

CASE NO.980000102

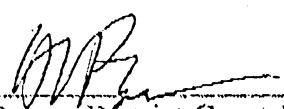
On Sept. 13, 2001, the Court entered it's Ruling on the Defendant's (Sunrise Title Company) Motion to Dismiss. In it's Ruling the Court noted that the Defendant had not replied to the response of Brian Hunter. The Defendant has now filed a Motion to Reconsider based upon the fact that the Defendant had filed a reply which the Court had not reviewed.

It is obvious that the reply was timely filed and should have been considered by the Court. Therefore, the Motion to Reconsider is granted. In it's reply the Defendant points to the fact that all issues relating to the Co-Defendants, (Benson and R.S. West) were fully resolved prior to service upon Sunrise. Defendant points out that the language of Rule 4(b) only provides for service on Sunrise beyond 120 days if Sunrise is served prior to trial. The Defendant's point is well taken. All issues involving the Co-Defendants (Benson and R. S. West) had been fully resolved prior to service on Sunrise.

Rule 4(b) only allows for service upon a co-defendant beyond 120 days when there are issues involving co-defendants which are pending before the Court. Therefore, the Court will

set aside it's Sept. 13, 2001 Ruling and grant the Motion to Dismiss.

DATED this 2 day of Oct., 2001.


A. Lynn Payne, District Court Judge

Mailing Certificate

I do hereby certify that I mailed, postage prepaid, or hand delivered, on the 3rd day of Oct., 2001, a true and correct copy of the foregoing Ruling to:

Daniel S. Sam
319 West 100 South, Suite A
Vernal, UT 84078

Clark B. Allred
72 North 300 East (123-14)
Roosevelt, UT 84078

840666

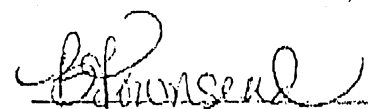

Deputy Court Clerk

EXHIBIT A

FILED
DISTRICT COURT
DUCHESE COUNTY, UTAH

OCT 23 2001

JORNIEN M. REE, CLERK
BY: FLS DEPUTY

GAYLE F McKEACHNIE - 2200
CLARK A. MCCLELLAN - 6113
McKEACHNIE, ALLRED, MCCLELLAN & TROTTER, P.C.
Attorneys for Defendant, Sunrise Title Company
121 West Main Street
Vernal, Utah 84078
Telephone: (435) 789-4908

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT DEPARTMENT

BRIAN HUNTER,	)	ORDER
)	
Plaintiff,)	
)	
vs.)	
	)	Civil No. 980000102
SUNRISE TITLE COMPANY,)	
	)	Judge: A. Lynn Payne
Defendant)	

The above captioned matter came before the Court for ruling on Defendant, Sunrise Title Company's Motion to Reconsider Motion to Dismiss on Basis that Reply Memorandum had been Filed and Request for Oral Argument. The Court previously ruled on the Defendant's Motion to Dismiss and noted that no Reply Memorandum supporting the Motion to Dismiss had been filed. The Court after further review of the file determined that a Reply Memorandum in Support of the Motion to Dismiss had been timely filed and that it contained argument and information important to the Court's consideration of the Motion to Dismiss. The Court therefore

granted the Motion to Reconsider, reviewed the pleadings and the memoranda filed in support of and in opposition to the Motion to Dismiss and the Court entered its Ruling on October 2, 2001.

Based thereon the Court finds and orders as follows:

1. Plaintiff filed this action on July 14, 1998 naming as Defendants, Sharlene Benson, R.S. West Real Estate and Sunrise Title Company.

2. Defendants Sharlene Benson and R.S. West Real Estate were served shortly after the complaint was filed. Both Defendants filed answers, discovery was undertaken and Motions for Summary Judgement were filed. Defendant Sunrise Title Company was not served with the Summons or Complaint.

3. The Court dismissed part of the claims against Defendants, Sharlene Benson and R.S. West Real Estate and then the parties stipulated to the dismissal of the other claims.

4. On June 22, 2000 all claims against Sharlene Benson and R.S. West Real Estate were dismissed. Defendant Sunrise Title Company had not been served with the Summons and Complaint.

5. On May 17, 2001, five days short of 11 months later, the Plaintiff filed an amended complaint, without leave of court, which stated different causes of action than in the original complaint. That amended complaint with the summons were served

on Defendant, Sunrise Title Company on May 18, 2001.

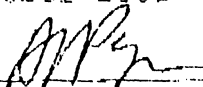
6. Defendant Sunrise Title Company responded by filing a Motion to Dismiss based on Rule 4 of the Utah Rules of Civil Procedure and the time of service.

The Court hereby grants the Defendant's Motion to Dismiss. Rule 4(b) of the Utah Rules of Civil Procedure requires that the summons and complaint be served within 120 days or upon a co-defendant prior to trial. Rule 4(b) only allows service later than the 120 days upon a co-defendant when there are issues involving the co-defendants which are pending before the court. In this case all co-defendants had been dismissed on June 22, 2000. Defendant, Sunrise Title Company was not served with the amended complaint until May 18, 2001.

Since Defendant, Sunrise Title Company was not served within 120 days after filing of the complaint and was not served until 11 months after all other co-defendants were dismissed the Court hereby ORDERS THAT:

Defendant, Sunrise Title Company is dismissed with out prejudice.

Dated this 25 day October 2001



A. Lynn Payne
District Judge