

2009

Gordon Jones, an individual; and Richard Barney, an individual v. Allen Grazer : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

GORDON JONES, an individual; and
RICHARD BARNEY, an individual,

Plaintiffs/Appellees,

v.

ALLEN GRAZER, an individual,

Defendant/Appellant.

ALLEN F. GRAZER,

Counterclaim Plaintiff/Appellant,

v.

GORDON A. JONES; and RICHARD
BARNEY,

Counterclaim Defendants/Appellees.

BRIEF OF APPELLANT

Appellate Case No. 20090983

FILED
UTAH APPELLATE COURTS

APR 29 2010

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BARNEY,

Counterclaim Defendants/Appellees.

BRIEF OF APPELLANT

Appellate Case No. 20090983

GORDON JONES, an individual; and
RICHARD BARNEY, an individual;

Third Party Plaintiffs,

v.

R W DESIGN, INC., a Utah corporation;
ROBERT W. SPEIRS PLUMBING,
INC., a Utah corporation; SCOTT
SESSIONS, an individual; and
NU-TREND ELECTRIC COMPANY, a
Utah corporation,

Third Party Defendants.

ALLEN F. GRAZER,

Plaintiff/Appellant,

v.

GORDON A. JONES and LINDA G.

JONES, husband and wife and as Trustees, Gordon and Linda Jones Family Trust; CHERYL GUDMUNDSON, an individual; G. SCOTT JONES, an individual; JASON JONES; GS JONES CONSTRUCTION, INC., a Utah Corporation, J & J LIVESTOCK, L.L.C., a Utah limited liability company; RICHARD H. BARNEY and RENAE CARNON BARNEY, husband and wife; RENAE CARNON BARNEY, Trustee of the Renae Carnon Barney Trust; RENAE CARNON BARNEY FAMILY PARTNERSHIP; ROCHELLE C. BARNEY; RICHILYN WOODIN; THE LINDA G. JONES FAMILY PARTNERSHIP; and JOHN DOES 1-20,

Defendants/Appellees.

PARTIES TO THE PROCEEDING

Plaintiff/Appellant

Allen F. Grazer (“Grazer”)

Defendants/Appellees

Gordon A. Jones

Linda G. Jones

Gordon Jones Construction, L.C., a Utah limited liability company

Richard H. Barney (Estate)

Renae C. Barney, Personal Representative of Richard H. Barney Estate

Ludvig D. Olsen and Jackie M. Olsen, Trustees of the Ludvig D. Olsen and Jackie M. Olsen Trust (the “Olsen Trust”)

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Appellant, Allen F. Grazer (“Grazer and/or “Appellant”), pursuant to Rule 24 of the Utah Rules of Appellate Procedure respectfully submits this Brief on Appeal.

JURISDICTION

The Court of Appeals has jurisdiction of this case pursuant to the provisions of *Utah Code Ann.* §78A-4-103(j) as a case “transferred to the Court of Appeals from the Supreme Court.”

ISSUES PRESENTED FOR REVIEW

Did the trial court improperly grant the Partial Summary Judgment of the Olsen Trust and deny the Motion of Grazer for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions by ruling that in attempting to redeem the property at issue herein (the “Property”), the Olsen Trust “need only substantially comply with the procedures of Rule 69C(c) for their [sic] redemption attempts to succeed,” and further ordering that Grazer execute a Certificate of Redemption upon the payment to him of the redemption price of \$210.00 by the Olsen Trust?

STANDARD OF REVIEW

This case is an appeal from Judge Allphin's order granting partial summary judgment in favor of the Olsen Trust. The trial court's ruling is reviewed for correctness without according deference to its legal conclusions. *Progressive Cas. Ins. Co. v. Ewart*, 2007 UT 52. Since a summary judgment is granted as a matter of law rather than fact, an appellate court is free to reappraise a trial court's legal conclusions. *Barber v. Farmers Ins. Exch.*, 751 P. 2d 248 (Utah Ct. App. 1988).

GROUND FOR SEEKING REVIEW

In reviewing the rights of parties to redeem and the procedures with which the redeeming party must comply, the Utah Supreme Court has held that:

The right of redemption is a "substantive right to be exercised in strict accord with statutory terms." (Footnote omitted). Not only is the right of redemption substantive, but also we have stated that the procedures for redemption often confer substantive rights. Generally, therefore, when the procedure at issue affects the substantive rights of the parties, the procedure should be followed strictly in order not to interfere with these rights.

Huston v. Lewis, 818 P.2d 531, 535 (Utah 1991).

Grazer asserts that his substantive property title rights are affected by the trial court's grant of summary judgment in favor of the Olsen Trust

and the denial of Grazer's the Motion for Partial Summary Judgment in which the court ruled the redemption attempt of the Olsen Trust on July 8, 2008 was valid. This ruling prevents Grazer from obtaining a sheriff's deed to the Property and taking title to the Property. Grazer further asserts that the trial court erred by allowing the Olsen Trust to only "substantially comply" with the requirements of the redemption statute and rules governing redemption rather than requiring strict compliance with each requirement as listed in Rule 69C.

Finally, the trial court held that the Olsen Trust need only pay the amount of paid only the amount of \$210.00, the purchase price plus the premium provided under Rule 69C(e). However, in addition to the purchase price, "[I]n connection with the sale of the subject property, real property costs of sale in the total amount of \$2,178.02 were incurred and have been paid to the Davis County Sheriff's Office" by Grazer. (R. 6463). That amount was itemized in a Notice of Amounts Paid and Owed filed with the Salt Lake County Recorder on July 9, 2008 as Entry No. 2378599, in book 4570, at Page 1039-41 (the "Notice"), prior to the expiration of the redemption period on July 15, 2008 and should be included in the price to redeem required to be paid under Rule 69C. The

Notice further claimed \$2,700 for the “reasonable use and occupation” of the Property by Defendant Gordon A. Jones and/or those under his direction and control (collectively “Jones”) as allowed under *Utah R. Civ. P.*, Rule 69C(i). (R. 6463).

STATUTES AND RULES TO BE INTERPRETED

The process by which a property may be redeemed by is governed by *Utah Code Ann.* §78B-6-906 and set forth in *Utah R. Civ. P.* Rule 69C.

78B-6-906. Right of redemption -- Sales by parcels -- Of land and water stock.

(1) Sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in case of sales under executions generally.

(2) In all cases where the judgment directs the sale of land, together with shares of corporate stock evidencing title to a water right used, intended to be used, or suitable for use, on the land, the court shall equitably apportion the water stock to the land. If the court divides the land into individual parcels for sale, the water stock may also be divided and applied to each parcel. The land and water stock in each parcel shall be sold together, and for the purpose of the sale shall be regarded as real estate and subject to redemption as previously specified.

(3) In all sales of real estate under foreclosure the court may determine the parcels and the order in which the parcels of property shall be sold.

Rule 69C. Redemption of real property after sale.

(a) Right of redemption. Real property may be redeemed unless the estate is less than leasehold of a two-years' unexpired term, in which case the sale is absolute.

(b) Who may redeem. Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest. If the defendant redeems, the effect of the sale is terminated and the defendant is restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor having a right of redemption may redeem.

(c) How made. To redeem, the redemptioner shall pay the amount required to the purchaser and shall serve on the purchaser:

(c)(1) a certified copy of the judgment or lien under which the redemptioner claims the right to redeem;

(c)(2) an assignment, properly acknowledged if necessary to establish the claim; and

(c)(3) an affidavit showing the amount due on the judgment or lien.

(d) Time for redemption. The property may be redeemed within 180 days after the sale.

(e) Redemption price. The price to redeem is the sale price plus six percent. The price for a subsequent redemption is the redemption price plus three percent. If the purchaser or redemptioner files with the county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair or any lien other than the lien on which the redemption was based, the price to redeem includes such amounts plus six percent for an initial redemption or three percent for a subsequent redemption. Failure to file notice of the amounts with the county recorder waives the right to claim such amounts.

(f) Dispute regarding price. If there is a dispute about the redemption price, the redemptioner shall within 20 days of the redemption pay into court the amount necessary for redemption less the amount in dispute and file and serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection. The

petition is deemed denied. The court may permit discovery. The court shall conduct an evidentiary hearing and enter an order determining the redemption price. The redemptioner shall pay to the clerk any additional amount within seven days after the court's order.

(g) Certificate of redemption. The purchaser shall promptly execute and deliver to the redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption containing:

(g)(1) a detailed description of the real property;

(g)(2) the price paid;

(g)(3) a statement that all right, title, interest of the purchaser in the property is conveyed to the redemptioner; and

(g)(4) if known, whether the sale is subject to redemption.

The redemptioner or subsequent redemptioner shall file a duplicate of the certificate with the county recorder.

(h) Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the expiration of the time permitted for redemption.

(i) Rents and profits, request for accounting, extension of time for redemption.

(i)(1) Subject to a superior claim, the purchaser is entitled to the rents of the property or the value of the use and occupation of the property from the time of sale until redemption. Subject to a superior claim, a redemptioner is entitled to the rents of the property or the value of the use and occupation of the property from the time of redemption until a subsequent redemption. Rents and profits are a credit upon the redemption price.

(i)(2) Upon written request served on the purchaser before the time for redemption expires, the purchaser shall prepare and serve on the requester a written and verified account of rents and profits. The period for

redemption is extended to five days after the accounting is served. If the purchaser fails to serve the accounting within 30 days after the request, the redemptioner may, within 60 days after the request, bring an action to

compel an accounting. The period for redemption is extended to 15 days after the order of the court.

(j) Remedies.

(j)(1) For waste. A purchaser or redemptioner may file a motion requesting the court to restrain the commission of waste on the property. After the estate has become absolute, the purchaser or redemptioner may file an action to recover damages for waste.

(j)(2) Failure to obtain property.

(j)(2)(A) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because the judgment against the defendant is reversed or discharged may file a motion for judgment against the plaintiff for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest.

(j)(2)(B) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because of an irregularity in the sale or because the property is exempt may file a motion for judgment against the plaintiff or the defendant for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest. If the court enters judgment against the plaintiff, the court shall revive the plaintiff's judgment against defendant for the amount of the judgment against plaintiff.

(j)(2)(C) Interest on a judgment in favor of a purchaser or redemptioner is governed by Utah Code Section 15-1-4. Interest on a revived judgment in favor of the plaintiff against the defendant is at the rate of the original judgment. The effective date of a revived judgment in favor of plaintiff

against defendant is the date of the original judgment except as to an intervening purchaser in good faith.

(k) Contribution and reimbursement. A defendant may claim contribution or reimbursement from other defendants by filing a motion.

STATEMENT OF THE CASE

I. Nature of the Case

Grazer asserts that the Order of the trial court holding that Ludvig D. Olsen and Jackie M. Olsen, Trustees of the Ludvig D. Olsen and Jackie M. Olsen Trust (the “Olsen Trust”) “need only substantially comply with the procedures of Rule 69C(c) for their [sic] redemption attempts to succeed” was error and that the redemption attempts of the Olsen Trust were invalid. In light of that error, the ruling should be reversed, and this matter should be remanded with instructions to have a sheriff’s deed issued to Grazer.

II. Course of Proceedings

a. On January 17, 2007, the property at issue herein and which the Olson Trust attempted to redeem (the “Property”) was sold at sheriff’s sale pursuant to a Writ of Execution issued November 8, 2007. (Record on Appeal (“R.”) 6140 –46).

- b. Appellant/Grazer was the successful bidder for \$191.00. (R. 6440).
- c. Grazer paid an additional amount of \$2,178.02 in costs of sale allowed under Rule 69C. (R. 6463).
- d. On or about July 3, 2008 Gordon A. Jones, individually, in his capacity as sole proprietor of Gordon Jones Construction and in his capacity as a member of Gordon Jones Construction, L.C. and Linda G. Jones, Individually and in her capacity as a member of Gordon Jones Construction, L.C. assigned their right to redeem the Property to the Olsen Trust pursuant to an Assignment of Redemption Rights filed with the Court on July 11, 2008 (the “Assignment”). (R. 6269 – 6273).
- e. On or about July 7, 2008, Renae C. Barney as personal representative of the estate of Richard H. Barney, individually and in his capacity as a member of Gordon Jones Construction, L.C. assigned the rights of the Estate of Richard H. Barney to redeem the Property to the Olsen Trust pursuant to the terms of the Assignment (*Id.*).
- f. On July 8, 2008, the Olson Trust tendered the amount of \$210.00 as the redemption price. (R. 6837).
- g. The tender was rejected on July 8, 2008 by letter from

counsel for Grazer on the grounds that counsel was not authorized to accept service on Grazer's behalf, that the check was made payable to counsel rather than Grazer. Counsel indicated that Grazer lived in Colorado and that he would attempt to contact Grazer regarding the redemption attempt by the Olsen Trust and that he would reserve objections to the Olsen Trust's tender until the documents and check were properly served. (R. 6440-41).

h. On July 8, 2008, prior to the expiration of the redemption period, Grazer recorded the Notice showing amounts he claimed as paid and owed as required under Rule 69C (the "Notice"). (R. 6463).

i. Counsel for the Olson Trust "became aware of the Notice on or about July 15, 2008," prior to the expiration of the redemption period. (R.6303).

j. On July 14, the Olsen Trust was notified by counsel for Grazer that "you have failed to pay the amounts for liens asserted on behalf of Mr. Grazer pursuant to Rule 69C(e)." (R. 6431).

k. The redemption period expired on July 15, 2008. *Utah R. Civ P.*, Rule 69C(d).

l. On July 16, 2008, the Olson Trust filed a Request for

Accounting of Rents and Profits (“Request”) asking for a written and verified account of rents and profits with respect to the Property during the redemption period. (R. 6274-77).

m. On July 16, 2008, counsel for Grazer filed an Objection and Response to Request for Accounting of Rents and Profits (“Objection”) on the grounds that the Request was untimely, not properly served and an attempt to improperly extend the redemption period. (R. 6278-82).

n. On August 15, 2008, one month after the expiration of the redemption period, the Olsen Trust filed a Petition for Establishment of Redemption Price. (R. 6302-06)

o. In connection with the Petition, the Olsen Trust tendered to the Court a check in the amount of \$2,465.00, which it asserted, at that time, to be the correct redemption amount for the Property. (R. 6304).

p. Grazer filed a Motion to Strike the Petition for Establishment of Redemption Price on the grounds that the Petition had not been filed within the time limits of Rule 69C (within 20 days after the redemption), and was, therefore, untimely and invalid. (R.6316-19).

q. On December 12, 2008, the Court issued a ruling granting Grazer’s Motion to Strike the Petition for Establishment of Redemption

Price on the grounds that the Petition was untimely. The Court noted that the ruling did not preclude the Olson Trust from later moving that redemption had occurred on its prior attempts of July 8 and July 10, 2008. (R. 6438-53, 6451-52).

r. On December 31, 2008, Grazer filed a Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions (R. 6454 - 6466).

s. The Olsen Trust responded with a Cross Motion for Partial Summary Judgment dated February 9, 2009. (R. 6473 - 6509).

t. On May 5, 2009, the trial court heard Cross Motions for Summary Judgment, ruled that the Olsen Trust's redemption attempt was valid and that the Olsen Trust "need only substantially comply with the procedures of Rule 69C(c) for their [sic] redemption attempts to succeed." *Ruling on Motions Pending at May 5, 2008 Hearing* (the "Ruling"), p. 15. (R. 6941).

u. On August 28, 2009, the trial court,

v. entered an Order reflecting its Ruling stating,

On July 8, 2008, the Olsen Trust substantially complied with the redemption procedures of Rule 69C(c) of the Utah Rules of Civil Procedure when it provided Defendant's counsel, who was acting

on behalf of his client, with (a) a copy of the Assignment; (b) a check made payable to Plaintiff's counsel in the amount of \$210; and (c) a certificate of redemption.

[Proposed] Order on Cross Motions for Summary Judgment on Redemption ("Order") ¶ 3 (R. 6971-74,6972).

w. The Court ordered that Grazer be paid the sum of \$210 after the receipt of which Grazer "shall promptly execute and deliver to the Olsen Trust a certificate of redemption in accordance with Rule 69C(g) of the Utah Rules of Civil Procedure." (*Id.*).

x. In that same ruling, Grazer's Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions was denied. *Order. (Id.)*.

y. Appellant timely filed his Notice of Appeal on September 18, 2009. (R. 6975).

III. Disposition in Court Below

A Final Judgment from which this Appeal is taken was entered as an "Order on Cross Motions for Summary Judgment on Redemption" by the Honorable Michael G. Allphin dated August 28, 2009 (the "Order"). The Court ruled that the attempted redemption by the Olson Trust on July 8, 2008, substantially complied with the procedures of Rule 69C(c) and

was a valid redemption by the Olson Trust. The Court further ordered that the \$210.00 amount originally tendered by the Olson Trust was the proper redemption price to be paid to Grazer. The Order was certified by the Court as Final as to all claims involving the attempted redemption by The Olsen Trust. The Property had been sold at sheriff's sale on January 17, 2008 (the "Sheriff's Sale"). Grazer's Notice of Appeal was filed with the Clerk of the Second District Court of Davis County, Farmington District, State of Utah on September 16, 2009.

STATEMENT OF FACTS

1. Pursuant to a writ of execution dated November 8, 2007, the Davis County Sheriff sold all of Gordon A. Jones' ("Jones") and the estate of Richard H. Barney's ("Barney") interest in certain real property located in Davis County, Utah (the "Property"), to the highest bidder at a sheriff's sale on January 17, 2008. *Petition* [of the Olsen Trust] *for Establishment of Redemption Price* dated August 15, 2008 ¶1. (R. 6302).

2. Grazer was the highest bidder at the sheriff's sale and purchased the Property for \$191.00. *Id.* ¶ 2. (*Id.*). (R. 6303)

3. On or about July 7, 2008, Jones and Barney executed an Assignment of Redemption Rights ("Assignment") assigning their right to

redeem the Property (pursuant to Rule 69C of the Utah Rules of Civil Procedure) to the Olsen Trust. *Id.* ¶ 3. (R.6302-03).

4. By letter dated July 8, 2008, counsel for the Olsen Trust delivered a copy of the Assignment and tendered a check to Lincoln W. Hobbs, attorney for Grazer in the underlying action (“Hobbs”), for a redemption price the Olsen Trust alleged to be the amount of \$210.00 (which covered the \$191.00 purchase price of the property plus 6% annual interest accruing since the date of the sheriff’s sale). The letter also requested that Grazer execute and return an enclosed Certificate of Redemption pursuant to subsection (g) of Rule 69C. *Id.* ¶ 4. (R. 6303). *See also, Exhibit “B” to Response to Motion to Strike Petition for Establishment of Redemption Price* dated September 25, 2008. (R. 6387-88, 6390).

5. The July 8, 2008 letter did not include a certified copy of the judgment which the Olsen Trust claimed the right to redeem or an affidavit showing the amount due on the judgment or lien as required under Rule 69C(c) of the Utah Rules of Civil Procedure. (*Id.*)

6. On the same date, July 8, 2008, the check and the documents submitted were returned to counsel for the Olsen Trust on the grounds that

Hobbs had not been authorized to accept service or payment on behalf of Grazer. The letter returning the check and the documents also indicated “Also, I am rejecting the tender of the check payable to me, for the redemption of property owned by my client. That is clearly not appropriate and I [Hobbs] intend to insist upon strict compliance in your clients’ attempted transfer of the redemption rights.” *Exhibit “C” to Reply Memorandum in Support of Motion to Strike Petition for Establishment of Redemption Price* dated October 12, 2008. (R. 6429)

7. The July 8, 2008 letter from counsel for Grazer further stated, “[I] will reserve my objections to your tender until the documents and check are appropriately served.” (*Id.*).

8. On July 9, 2008, Grazer recorded a Notice of Amounts Paid and Owed (the “Notice”) with the Office of the Davis County Recorder in accordance with the provisions of Rule 69C(e). The Notice was recorded with the Office of the Davis County Recorder as Entry No. 2378599, in Book 4570 at Pages 1039-41.¹ *Notice, Exhibit “A” to Memorandum in*

¹ Rule 69C(e) provides that “Failure to file notice of the amounts with the county recorder waives the right to claim such amounts [for taxes, assessments, insurance, maintenance, repair or any other lien other than the lien on which the redemption was based].” Although Rule 69C does

Support of Defendant Grazer's Motion for Partial Summary Judgment

Regarding Invalidity of Attempted Redemptions. (R. 6463)

9. The Notice itemized expenses Grazer claimed as purchaser in connection with the sale of the Property:

1. In connection with the sale of the subject property, real property costs of sale in the total amount of \$2,178.02 were incurred and have been paid to the Davis County Sheriff's Office.

2. Upon information and belief, the property has been used since the date of the sale by the original judgment debtor Gordon A. Jones and/or those under his direction and/or control; the reasonable value of the use and occupation of the property during the ensuing five and one-half months since the date of the sale is \$2,750 calculated at the rate of \$500.00 per month for five and one-half months.

Notice. (Id.).

10. On July 10, 2008, the Olsen Trust attempted to redeem the property a second time. The Olsen Trust delivered to Grazer's counsel a

not specify a time deadline during which the notice for such amounts must be filed, reading the Rule, as a whole, would indicate that the purchaser has the same 180 days to file such notice as the redemptioner has to redeem the property. *Cf. Sentry Investigations, Inc., v. Davis*, 841 P.2d 732 (Utah 1992)(Terms of a statute should not be interpreted in a piecemeal fashion, but as a whole. "[A] fundamental principle of statutory construction is that a statute should be construed as a whole, and its terms should be construed to be harmonious with each other and the overall objective of the statute." (Citation omitted).

copy of the Assignment, a check payable to Grazer in the amount of \$210, and a Certificate of Redemption for execution. (R. 6441).

11. In making the July 10, 2008 redemption attempt, the Olsen Trust, again, did not serve a certified copy of the Judgment or an affidavit showing the amount due on the judgment or lien as required under Rule 69C(c) of the Utah Rules of Civil Procedure. (*See id.*).

12. By letter dated July 14, 2008, Grazer indicated that he would not execute the Certificate of Redemption and filed a complaint against Jones, Barney, and the Olsen Trust alleging, among other things, that the Assignment was a fraudulent transfer in violation of the Utah Uniform Fraudulent Transfer Act. *Petition [of the Olsen Trust] for Establishment of Redemption Price dated August 15, 2008* ¶ 5. (R. 6303)

13. On or about July 15, 2008, counsel for Jones and Olsen became aware that Grazer had recorded the Notice. *Id.* ¶ 6. (R. 6303)

14. On July 15, 2008, the 180 day redemption period allowed under Rule 69C of the Utah Rules of Civil Procedure expired.² *Utah R. Civ. P.*, Rule 69C(d).

² The year 2008 was a leap year, adding a day to be taken into consideration in the 180 day calculation.

15. On or about July 16, 2008, the Olson Trust filed a Request for Accounting of Rents and Profits (“Request”) asking Grazer for a written and verified account of rents and profits with respect to the Property during the redemption period. (R. 274-77).

16. On July 16, 2008, counsel for Grazer filed an Objection and Response to Request for Accounting of Rents and Profits (“Objection”) on the grounds that the Request was untimely, not properly served and an attempt to improperly extend the redemption period. *Objection and Response to Request for Accounting of Rents and Profits*. (R. 6278-82).

17. The Objection further indicated that there had been no rents or profits received from the Property since the date of the sheriff’s sale. (R. 6280).

18. On August 15, 2008, one month after the expiration of the redemption period, the Olsen Trust filed a Petition for Establishment of Redemption Price. In connection with the Petition, the Olsen Trust tendered to the Court a check in the amount of \$2,465.00, which it asserted, at that time, to be the correct redemption amount for the Property. (R. 6302-06).

19. On May 5, 2009, the trial court heard cross motions for summary judgment and ruled that the Olsen Trust's redemption attempt was valid and that the Olsen Trust "need only substantially comply with the procedures of Rule 69C(c) for their [sic] redemption attempts to succeed." *See Ruling on Motions Pending at May 5, 2008 Hearing* (the "Ruling") p. 15. (R. 6941)

20. On August 28, 2009, the trial court entered an order stating

On July 8, 2008, the Olsen Trust substantially complied with the redemption procedures of Rule 69C(c) of the Utah Rules of Civil Procedure when it provided Defendant's counsel, who was acting on behalf of his client, with (a) a copy of the Assignment; (b) a check made payable to Plaintiff's counsel in the amount of \$210; and (c) a certificate of redemption.

[Proposed] Order on Cross Motions for Summary Judgment on Redemption ("Order") ¶ 3. (R. 6972).

21. The Court ordered that Grazer be paid the sum of \$210 after the receipt of which Grazer "shall promptly execute and deliver to the Olsen Trust a certificate of redemption in accordance with Rule 69C(g) of the Utah Rules of Civil Procedure." (*Id.*).

22. In that same ruling, Grazer's Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions was denied.

Order. ¶ 1. (*Id.*).

23. Appellant timely filed his Notice of Appeal on September 18, 2009.

SUMMARY OF ARGUMENTS

The issue on appeal is whether the July 8, 2008 attempted redemption by the Olsen Trust was valid as the Trial Court ruled. The actions taken by the Olsen Trust subsequent to July 8, 2008, however, are illustrative of the fact that the Olsen Trust, in each of its attempts to redeem the property, did not timely comply with all of the necessary actions or provide all of the necessary documents required under Rule 69C. The July 8, 2008 redemption, accordingly, was invalid. The attempted redemption of the Property was deficient in the following particulars:

1. The initial amount of \$210.00 tendered by the Olson Trust on July 8, 2008, was not the entire amount paid or expended by Grazer nor did it include amounts for the “reasonable use and occupation” of the Property by Jones and was properly rejected by Grazer.

2. The tender on July 8, 2008 did not include a certified copy of

the judgment or an affidavit of the amounts due under the judgment.

3. The period for redemption expired on July 15, 2008. Despite having previously been informed by letter dated July 8, 2008 by counsel for Grazer that strict compliance with the redemption requirements would be insisted upon, the Olson Trust failed to take further action towards redemption of the Property prior to the expiration of the redemption period. It filed its “Request for Accounting and Profits” on July 16, 2008, one day after the expiration of the redemption period.

4. The next action of the Olson Trust was not taken until August 15, 2008, one month after the expiration of the redemption period when it filed a “Petition for Establishment of Redemption Price.” At that time the Olson Trust finally tendered the sum of \$2,465.00 to the Court, the amount it calculated to be the amount required to redeem the Property under Rule 69C. The action of filing the Petition and tendering an amount to the Court should have been taken prior to the expiration of the redemption period pursuant to Rule 69C(f) which governs a dispute over the redemption price. “If there is a dispute about the redemption price, the redemptioner shall within 20 days of the redemption pay into court the amount necessary for redemption less the amount in dispute and file and

serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection.” (Emphasis added). *Utah R. Civ. P.*, Rule 69C(f).

ARGUMENT

Under Utah law, if substantive rights are affected in a redemption of property, strict compliance with the redemption requirements is required. *Huston v Lewis*, 818 P.2d 531 (Utah 1991). Receiving the correct redemption price or a title to property through the issuance of a sheriff’s deed are substantive rights. *Id.* In *Huston*, Stateline Properties, Inc. (“Stateline”) had purchased property at a foreclosure sale.

Appellants, Lewis, notified Stateline to cease demolition on the property shortly after Stateline’s purchase of the property and notified Stateline 4 days prior to the expiration of the redemption period of their intent to redeem the property. On the date on which the redemption period would otherwise end, Lewis filed an *ex parte* motion to enlarge the period for redemption which was granted and a date was set for hearing on the amount to be paid for the redemption to be accomplished where the Court established a date by which funds were to be deposited with the Court.

Lewis was unable to the funds and the trial court ruled that the redemption rights had irrevocably lapsed.

The Supreme Court affirmed stating, “[I]t is clear that the right of a purchaser at a sheriff’s sale either to receive the proper redemption amount in accordance with rule 60(f) or to have the title perfected at the end of the six-month period is a substantive right. Accordingly, strict compliance with the six-month redemption period is normally required.” *Id.* at 535.³ The Court relied on a prior case, *Mollerup v. Storage Systems Internat’l*, 569 P.2d 1122, 1124 (Utah 1977) in which the Court held “redemption under rule 69(f)(3) requires strict compliance except where a court sitting in equity decides that the circumstances warrant an extension of the redemption period.”

The *Huston* Court stated that *Mollerup* made it clear the

[M]ere allegation of a dispute is generally not sufficient to justify an extension of the redemption period. ‘To determine otherwise would allow others similarly situated to simply appear *ex parte*, assert a dispute...or some other self serving matter and the effect would be to abridge the rights of a purchaser at sale.’”

Huston at 536.

³ The six month time period in Rule 69(f), *Utah R. Civ. P.*, was changed to 180 days in the present rule, Rule 69C(d), *Ut. R. Civ. P.*

The *Huston* Court also rejected a setoff claim of an amount by which waste had occurred on the subject property. The court stated, “By waiting until the last moment to raise their claim, the Lewises insured that if the court accepted their argument, Stateline would be prejudiced. Under Lewises’ theory, Stateline would have to accept the Lewises’ determination of the amount of the waste or the redemption period would have to be enlarged in order for the court to make the determination.” *Id.* at 537. The Court further observed that former Rule 69(f)(3) allowed a party to raise a dispute near the end of the redemption period “by paying ‘the amount necessary for redemption, less the amount in dispute, to the court...’ and filing ‘with the court a petition setting forth the item or items demanded to which he objects, together with the grounds for objection....’” *Id.* See also, *Springer v. Springer*, 853 P.2d 888, (Utah 1993) (Redemption under rule 69(f)(3) requires strict compliance.⁴ Husband did not timely tender tax reimbursement, amount tendered did not include interest, petition to object to amounts claimed was not filed until two and one-half months after the redemption period expired).

In this case, as in *Huston* and *Springer*, the Olsen Trust failed to strictly comply with the requirements of Rule 69C which requires the service on the purchaser of (1) a certified copy of the judgment which the redemptioner claims the right to redeem (*Utah R. Civ. P.* 69C(c)(1)); (2) an assignment of the redemption rights, if appropriate (*Utah R. Civ. P.* 69C(c)(2)); and (3) an affidavit showing the amount due on the judgment (*Utah R. Civ. P.* 69C(c)(3)). The Olsen Trust mailed a letter to the counsel who had acted for the purchaser in the underlying case, not the purchaser himself. Of the three documents required by the Rule, the letter contained only the assignment. Even when the documents were returned by counsel for the purchaser on the grounds that the purchaser needed to be served and stating clearly that strict compliance would be required, the subsequent service, by letter dated July 10, 2008, again contained only the assignment, not a certified copy of the judgment nor an affidavit showing the amount due on the judgment. (*See* R. 6441). Providing only 1 out of 3 required documents is not “substantial” compliance. In ruling that the provision of the Assignment was “substantial compliance” with Rule 69C,

⁴ Rule 69C(c)-(e) contain substantially the same provisions as former Rule 69(f)(2) and (3) which are cited and discussed *infra*.

subparagraphs 69C(c)(1) and (c)(3) were rendered ineffective and of no purpose. This is contrary to well established rules of statutory construction in the State of Utah.

“It is a cardinal rule of construction that significance and effect shall, if possible, be accorded to every section, clause, word or part of the act.” [Citation omitted].

The several provisions of the statute should be construed together in the light of the general purpose and object of the act and so as to give effect to the main intent and purpose of the legislature as therein expressed. [Citation omitted].

An interpretation which defeats any of the manifest purposes of the statute cannot be accepted. [Citation omitted].

Dunn v. Bryan, 77 Utah 604; 299 P. 253 (1931); *Cf. South Ridge Homeowners’ Association v. Brown*, 2010 UT App. 23 (February 4, 2010)(When interpreting the plain language [of a document] the court looks for a reading that harmonizes the provisions and avoids rendering any provision meaningless. A court is to consider each provision in relation to all of the others, with a view toward giving effect to all and ignoring none).

Further, even if the lack of two out of three of the documents required under Rule 69C(c) could be deemed to be “substantial compliance,” the July 10, 2008 letter tendered only \$210.00, the amount

of the purchase price plus 6% interest since the date of the sheriff's sale. It did not contain the amounts claimed by Grazer under Grazer's July 9, 2009 Notice for additional amounts. The Olsen Trust admits it became aware that additional amounts were demanded on July 15, 2008; however, no effort was made to pay those amounts into court as required under the rule. "If there is a dispute about the redemption price, the redemptioner shall within 20 days of the redemption pay into court the amount necessary for redemption less the amount in dispute and file and serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection. (Emphasis added.)" *Utah R. Civ. P.* Rule 69C(f).

Instead, the Olsen Trust's Petition to Establish Redemption Price was not filed until August 19, 2008, forty-two (42) days after the first rejected redemption attempt, thirty-five (35) days after the Olsen Trust admits it became aware of the amounts claimed to be due under Grazer's Notice and thirty-five (35) days after the expiration of the 180 day redemption period. It was not until August 19, 2008 that the Olsen Trust paid into the Court "the amount necessary for redemption less the amount in dispute." At that time, in pleadings filed with the Court, the Olsen

Trust acknowledged that the \$210.00 had been inadequate.

Since 1991, Utah case law has emphasized that substantive rights of a purchaser in the redemption process require strict compliance with the rules and that a sheriff's sale should be set aside only in exceptional circumstances. *See, Huston, Springer, supra*. This standard was approved in a recent State of Utah Court of Appeals case, *Pyper v. Bond*, 2009 UT App 331; 643 Utah Adv. Rep. 3, *cert.granted*, 225 P.3d 880 (Utah 2010). In *Pyper*, however, the court found that exceptional circumstances existed in that case.⁵ The sheriff's sale was set aside based upon the failure of plaintiff's former counsel to return telephone calls regarding the amount necessary to redeem property and the inadequacy of the price bid at the sheriff's sale. Although the time to redeem the property at issue was extended, given the exceptional facts of the particular case, the Court also noted:

Despite our conclusion, we are not unsympathetic to Respondents'

⁵ The *Pyper* Court also relied on the cases of *Young v. Schroeder*, 37, P. 252 (Supreme Court of the Territory of Utah, 1894) and *Pender v. Dowse*, 265 P.2d 644 (Utah 1954). However both of the cases involved circumstances the purchaser impeded the redemption process in ways the Court determined to be unfair. In *Young*, there were serious irregularities in the sale for which the parties who claimed title were responsible. In *Pender*, the debtor was deliberately misled by the purchaser.

argument that Utah law provides many other safeguards to protect judgment debtors and that because of such safeguards, courts should be reluctant to extend redemption periods. In particular, rule 69C(f) prevents creditors from obstructing the redemption process by refusing to participate therein. *See* Utah R. Civ. P. 69C(f) (addressing disputes over redemption price); *Granada, Inc. v. Tanner*, 712 P.2d 254, 256 (Utah 1985) (“The intent of [former] Rule 69(f)(3) is to allow a redemptioner to pay the funds into court so that the holder of the certificate of sale cannot clog the equity of redemption by refusing to cooperate in the redemption process.”). In light of rule 69C(f), we decline to recognize any duty on the part of a sheriff’s sale purchaser to affirmatively cooperate with an attempted redemption. Here, however, [Appellant’s] words and actions represented, at least implicitly, that they were going to participate in the redemption process. It is their failure to act in accordance with this representation that justifies the district court’s finding of unfairness warranting relief.

(Emphasis added). *Id.* at 15.

The *Pyper* case also brought a vigorous dissent which concluded that the case set an unwise precedent. The dissent observed that the two cases relied on by the majority

[I]nvolve some kind of affirmative actions or representations directly aimed at impeding redemption. “[A] purchaser at a sheriff’s sale is under no obligation to communicate with the judgment debtor at all—a point that the majority apparently concedes, (citation omitted).

Id. at 18.

The dissent, further, marked conduct similar to the actions or lack of action taken by the Olsen Trust in this case:

Pyper was both aware that there was some deadline for redeeming the property and was, apparently, represented by different legal counsel. Pyper could have easily obtained the necessary redemption information from the district court and could have paid the court in order to exercise his right of redemption, all without any assistance from Bond and Dorius. Indeed, he eventually, although belatedly, did just that.

(Emphasis added.). *Id.* at 20. It is also important to note that the Utah Supreme Court has granted *certiorari* in *Pyper*.

Similarly, here, the Olsen Trust could have paid the undisputed amount into Court as provided under the Rule prior to the expiration of the redemption period. There were no representations by Grazer or Grazer's counsel as to lead the Olsen Trust that anything less than strict compliance with the redemption procedures would be accepted. In fact, counsel for Grazer specifically informed counsel for the Olsen Trust, prior to the expiration of the 180 day period, that he "intended to insist upon strict compliance...." *See Exhibit "C" to Reply Memorandum in Support of Motion to Strike Petition for Establishment of Redemption Price* dated October 12, 2008. (R. 6429). The Olsen Trust chose not to follow the procedures set forth in the Rule 69C and did not pay the disputed amounts necessary to redeem into Court as required when it was apparent that there would be a dispute. Only belatedly was compliance with the provisions

of the Rule attempted.

Finally, both the trial court and the Olsen Trust relied on the cases of *United States v. Loosely*, 551 P.2d 506 (Utah 1976) and *Tech-Fluid Sys., Inc. v. Gavilan Operating, Inc.*, 787 P.2d 1328 (Utah Ct. App. 1990) for the proposition that substantial compliance will satisfy the requirements of the redemption procedure outlined in Rule 69C. That reliance is misplaced. The Rule governing redemption requirements in effect at the time *Loosely* was decided was *Utah R. Civ. P.* Rule 69(f).

Subparagraphs (f)(2) and (3) of Rule 69(f) provided:

(2) Redemption –How Made. At the time of redemption the person seeking the same may make payment of the amount required to the person from whom the property is being redeemed, or for him to the officer who made the sale or his successor in office. At the same time the redemptioner must produce to the officer or person from whom he seeks to redeem, and serve with his notice to the officer: (1) a certified copy of the docket of the judgment under which he claims the right to redeem, or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof certified by the recorder; (2) an assignment, properly acknowledged or proved where the same is necessary to establish his claim; (3) an affidavit by himself or his agent showing the amount then actually due on the lien.

(3) Time for Redemption, Amount to be Paid. The property may be redeemed from the purchaser within six months after the sale on paying the amount of his purchase with 6 percent thereon in addition, together with the amount of any assessment or taxes and any reasonable sum for fire insurance and necessary maintenance,

upkeep or repair of any improvements upon the property which the purchaser may have paid thereon after the purchase, with interest on such amounts, and, if the purchaser is also a creditor having a lien prior to that of the person seeking redemption, other than the judgment under which said purchase was made, the amount of such lien, with interest.

In the event there is a disagreement as to whether any sum demanded for redemption is reasonable or proper, the person seeking redemption may pay the amount necessary for redemption, less the amount in dispute, to the court out of which execution or order authorizing the sale was issued, and at the same time file with the court a petition setting forth the item or items demanded to which he objects, together with his grounds of objection; and thereupon the court shall enter an order fixing a time for hearing of such objections. A copy of the petition and order fixing time for hearing shall be served on the purchaser not less than two days before the day of hearing. Upon the hearing of the objections the court shall enter an order determining the amount required for redemption. In the event an additional amount to that theretofore paid to the clerk is required the person seeking redemption shall forthwith execute and deliver a proper certificate or redemption upon being paid the amount required by the court for redemption.

Utah R. Civ. P. Rule 69(f)(2) and (3) (1975). See also, SUMMARY OF UTAH REAL PROPERTY LAW, VOLUME I, §9.236 (J. Reuben Clark Law Sch., 1978.)

The *Loosely* Court indicated that the redemptioner had substantially complied with Rule 69(f)(2) and did not deal with the requirements of rule 69(f)(3). Further, in requiring the purchasers at the sheriff's sale to release the mortgage upon receipt of the tendered payment for

redemption, the Court relied on the facts that the correct redemption amount had been tendered prior to the expiration of the redemption period:

They [the purchasers] did not then, and do not now, question that the debtor redemptioner's rights had, in fact, been assigned to the defendant; nor that the defendant made the tender of the correct amount due for redemption one day before the redemption period expired. When so advised they did not then indicate any ground whatsoever for rejecting the tender. If they had done so, defendants would have had 24 hours to remedy any technical deficiency.

Loosley at 508.

The case of *Tech-Fluid Svcs.* was also decided under former Rule 69(f), with language similar to that in effect at the time of *Loosely*.

The *Tech-Fluid* decision, however, made a distinction between substantive rights under subparagraph f(3) of Rule 69 which required strict compliance and subparagraph (f)(2) of Rule 69 under which “substantial compliance is the proper test.” *Id.* at 1334. As in *Loosely*, the Court found that the redemptioner had “tendered the correct amount within the redemption period” and further found that “Tech-Fluid did not challenge the validity of the tender until several days after the tender and after the redemption period had run.” (Emphasis added). *Id.*

In this case, unlike in *Loosely* or *Tech-Fluid*, from outset,

commending with the time of the initial tender, counsel for Grazer indicated that strict compliance would be required, that the redemption price had not been appropriately served, that the redemption amount was not correct. Grounds were given for rejection of the tender – the amount tendered was not the correct redemption amount Grazer had the substantive right to receive. Failing to receive the correct redemption amounts due, Grazer's substantive right to receive title to the Property by sheriff's deed was not just affected; it was thwarted.

CONCLUSION


Grazer had a substantive right to either timely receive the property redemption amount in accordance with the procedure set forth in Rule 69C of the Utah Rules of Civil Procedure or to have his title perfected through the issuance of a sheriff's deed at the end of the redemption period when that period expired on July 15, 2008. The Olsen Trust did not tender the correct redemption amount, the correct documentation to the correct party when it made its first attempted redemption on July 8, 2008. Despite its "awareness" on July 9, 2008 that Grazer claimed additional amounts under the Notice properly recorded with the Davis County Recorder, the Olsen Trust still failed to tender the amounts or the

documents required under the Rule. Compliance with the provisions of the Rule was not made until 35 days after the expiration of the redemption period, 45 days after the initial attempted redemption. The redemption was not timely, the redemption attempts were invalid and strict compliance with the requirements of Rule 69C was not met. The trial court erred in granting the Olsen Trust's Motion for Summary Judgment, in ruling that the Olsen Trust need only "substantially comply" with the requirements of Rule 69C and ordering Grazer to execute a Certificate of Redemption upon the payment of \$210.00. Grazer's Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions should have been granted. Grazer asks this Court to reverse the Order of the trial court and remand the case to the trial court with directions to enter partial summary judgment in favor of Grazer with regard to the redemption and to require a sheriff's deed to issue vesting title to the Property in Grazer in accordance with his substantive rights.

[Date and signature on next page]

DATED this 29 day of April, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
JULIE LADLE
KATHY A.F. DAVIS
Attorneys for Allen F. Grazer

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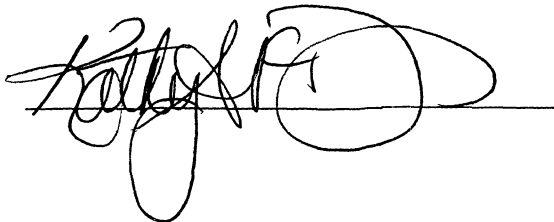
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IN THE UTAH COURT OF APPEALS

GORDON JONES, an individual; and
RICHARD BARNEY, an individual,

Plaintiffs/Appellees,

v.

ALLEN GRAZER, an individual,

Defendant/Appellant.

ALLEN F. GRAZER,

Counterclaim Plaintiff/Appellant,

v.

GORDON A. JONES; and RICHARD
BARNEY,

Counterclaim Defendants/Appellees.

ADDENDUM

Appellate Case No. 20090983

GORDON JONES, an individual; and
RICHARD BARNEY, an individual;

Third Party Plaintiffs,

v.

R W DESIGN, INC., a Utah corporation;
ROBERT W. SPEIRS PLUMBING,
INC., a Utah corporation; SCOTT
SESSIONS, an individual; and
NU-TREND ELECTRIC COMPANY, a
Utah corporation,

Third Party Defendants.

ALLEN F. GRAZER,

Plaintiff/Appellant,

v.

GORDON A. JONES and LINDA G. JONES, husband and wife and as Trustees, Gordon and Linda Jones Family Trust; CHERYL GUDMUNDSON, an individual; G. SCOTT JONES, an individual; JASON JONES; GS JONES CONSTRUCTION, INC., a Utah Corporation, J & J LIVESTOCK, L.L.C., a Utah limited liability company; RICHARD H. BARNEY and RENAE CARNON BARNEY, husband and wife; RENAE CARNON BARNEY, Trustee of the Renae Carnon Barney Trust; RENAE CARNON BARNEY FAMILY PARTNERSHIP; ROCHELLE C. BARNEY; RICHILYN WOODIN; THE LINDA G. JONES FAMILY PARTNERSHIP; and JOHN DOES 1-20,

Defendants/Appellees.

Appellant, Allen Grazer, submits the following Addendum in support of his Appellant's Brief.

TABLE OF CONTENTS

Addendum “A”

Ruling on Motions Pending at May 5, 2008 Hearing
Dated June 16, 2009 R. 6927-54

Addendum “B”

[Proposed] Order on Cross Motions for Summary Judgment
on Redemption
Entered August 28, 2009 R. 6971-74

DATED this 29 day of April, 2010.

HOBBS & OLSON, L.C.

A large, stylized handwritten signature in black ink, appearing to read 'Lincoln W. Hobbs', is written over a horizontal line.

LINCOLN W. HOBBS

MARGARET H. OLSON

JULIE LADLE

KATHY A.F. DAVIS

Attorneys for Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 29 day of April, 2010, I caused a true and correct copies of the foregoing to be mailed, first class, postage prepaid, to the following:

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Carvel R. Shaffer, Esq. David J. Shaffer, Esq. SHAFFER LAW OFFICE, P.C. Key Bank Building 562 South Main Bountiful, UT 84010 Co-Counsel for Gordon A. Jones, Richard H. Barney, Ranae Carnon Barney, the Ranae Carnon Barney Family Partnership, Linda G. Jones and the Linda G. Jones Family Partnership; Counsel for Jason Jones and Rochelle C. Barney	<input type="checkbox"/> Email Shaffer@qwest.net <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Fax 801-298-1576 <input type="checkbox"/> Fed Ex <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Personally Served Two (2) copies
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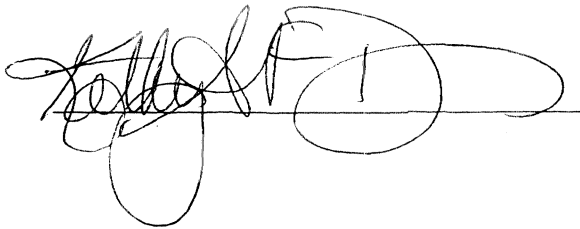
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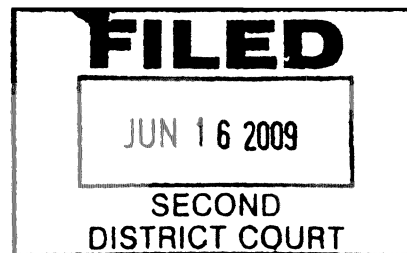
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A handwritten signature in black ink, appearing to read "Steven R. Bailey", written over a horizontal line.

ADDENDUM “A”



IN THE SECOND DISTRICT COURT, DAVIS COUNTY
STATE OF UTAH

GORDON JONES an individual; and
RICHARD BARNEY, an individual,

Plaintiffs,

vs.

ALLEN F. GRAZER, an individual,

Defendant.

ALLEN F. GRAZER,

Counterclaim Plaintiff,

vs.

GORDON A. JONES; and RICHARD
BARNEY,

Counterclaim Defendants.

GORDAN JONES, an individual; and
RICHARD BARNEY, an individual;

Third Party Plaintiffs,

vs.

R W DESIGN, INC., a Utah corporation;
ROBERTS W. SPEIRS PLUMBING, INC., a
Utah corporation; SCOTT SESSIONS, an
individual; and NU-TREND ELECTRIC
COMPANY, a Utah corporation,

Third Party Defendants.

**RULING ON MOTIONS PENDING AT
MAY 5, 2009 HEARING**

Case No. 020700570

Judge Michael G. Allphin

Ruling on Motions Pending at May 5, 2009 Hearing



VD29047707

pages: 28

020700570 GRAZER,ALLEN

ALLEN F. GRAZER,

Plaintiff,

vs.

GORDON A. JONES and LINDA G. JONES,
husband and wife and as Trustees, Gordon
and Linda Jones Family Trust; CHERYL
GUDMUNDSON, an individual; G. SCOTT
JONES, an individual; JASON JONES, an
individual; GS JONES CONSTRUCTION,
INC., a Utah corporation; J & J
LIVESTOCK, LLC, a Utah limited liability
company; RICHARD H. BARNEY and
RENAE CARNON BARNEY, husband and
wife; RENAE CARNON BARNEY, Trustee
of the Renae Carnon Barney Trust; RENAE
CARNON BARNEY FAMILY
PARTNERSHIP; ROCHELLE C. BARNEY;
RICHILYN WOODIN; THE LINDA G.
JONES FAMILY PARTNERSHIP; and
JOHN DOES 1-20,

Defendants.

This matter is before the Court on: (1) Allen Grazer's Motion for Equitable Lien and Order of Foreclosure (Idaho Tractor); (2) Defendant Grazer's Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions; (3) The Olsen Trust's Cross Motion for Partial Summary Judgment; (4) Grazer's Motion for Partial Summary Judgment Against GS Jones Construction, Inc.; and (5) Counterclaim Plaintiff's Motion for Entry of Garnishee Judgment Against the Shaffer Law Office or, in the Alternative, for Summary Judgment Setting Aside Fraudulent Transfers. The Court has reviewed the moving and responding papers, along

with supporting documentation. The Court also conducted a hearing on the motions on May 5, 2009. Having considered all of the arguments, being fully advised in the premises, and for the reasons set forth below, the Court rules as follow:

BACKGROUND

This matter arose between Plaintiffs Gordon Jones (herein, "Jones") and Richard Barney (herein, "Barney")¹ and Defendant Allen Grazer (herein, "Grazer") regarding the construction of a residential home that Grazer retained Jones and Barney to build. Each party filed claims against the other and a bench trial was held from April 26, 2005 through April 29, 2005. On June 17, 2005, the Court entered its Findings of Fact and Conclusions of Law pursuant to the bench trial. The Court ruled in favor of Grazer on each of the plaintiffs' causes of action and on Grazer's counterclaim. The Court subsequently entered judgment in favor of Grazer on July 11, 2005, in the amount of \$1,886,727.87. Since the entry of this judgment, the parties have filed numerous motions with the Court in a continuing dispute regarding Grazer's collection of his judgment award.

On October 5, 2005, and prior to the certification of the judgment as final, Grazer served a writ of garnishment on Jones' counsel, the Shaffer Law Office, requesting the identification of any property, including money, held by the Shaffer Law Office that Jones has an interest in. The Shaffer Law Office, through Daniel J. Shaffer, responded to the writ asserting that it held no such property. However, Jones had previously given the Shaffer Law Office approximately \$69,000 as a retainer to pay for its legal representation of Jones in this and related matters.

By written ruling dated April 13, 2006, the Court certified the judgment as final. Subsequently, Jones filed a bankruptcy action in the United States Bankruptcy Court for the

¹ Subsequent to the filing of this action Barney died. Barney's Estate is now party to this litigation.

District of Utah; Case No. 06-21277 JAB. On January 31, 2007, the Trustee of Jones' bankruptcy estate entered a settlement agreement with Grazer. Pursuant to this settlement agreement, the parties agreed to resolve and compromise any and all claims and disputes, which then existed between them. However, the settlement agreement specifically exempted Jones' property that was subject to Grazer's pending fraudulent transfer actions in Utah and Idaho.

One of the fraudulent transfers that Grazer alleged pertains to \$80,000 paid to GS Jones Construction, Inc. for work performed on a residential home owned by Mr. and Mrs. Harry Sayama (herein, the "Sayamas"). On March 1, 2005, Jones' company, Gordon Jones Construction, submitted a bid proposal to the Sayamas for renovations on their home. However, the Sayamas issued a check for \$80,000 to GS Jones Construction, Inc., a company formed by Jones and his son on June 2, 2005. Grazer alleges that this check was issued to GS Jones Construction, Inc., rather than Gordon Jones Construction in an attempt to fraudulently avoid Grazer's garnishing the payment. Jones counters this argument by asserting that GS Jones Construction, Inc. took over the Sayama project in July 2005 and performed the vast majority of work on the Sayama home, which entitles it to the \$80,000 payment.

Another fraudulent transfer that Grazer alleged of Jones pertains to a loan that Jones made to his son for the purchase of a tractor. On March 4, 2005, four (4) months prior to the Court entering judgment against Jones in this matter, Jones loaned his son \$51,000 to purchase a tractor. Grazer alleges that Jones' son never repaid this loan and that it was merely one of a series of fraudulent transfers of property by Jones to avoid Grazer's collection on his judgment. Jones rebuts Grazer's allegations indicating that the loan was not a fraudulent transfer and asserting that Grazer has presented no evidence to support his claim to the contrary.

Additionally, on January 17, 2008, pursuant to a writ of execution dated November 8, 2007, the Davis County Sheriff sold all of Jones' and the Barney's Estate's interest in certain real property located in Davis County, Utah (herein, the "Property"), to the highest bidder. At the sheriff's sale, the highest bidder was Grazer with a bid of \$191.00. On July 7, 2008, Jones and the Barney's Estate executed an Assignment of Redemption Rights (herein, the "Assignment"), purporting to assign their right to redeem the Property to Ludvig D. Olsen and Jackie M. Olsen, as trustees of the Ludvig D. Olsen and Jackie M. Olsen Trust (herein, the "Olsen Trust").

On July 8, 2008, and within the 180-day redemption period set forth in Rule 69C(d) of the Utah Rules of Civil Procedure, the Olsen Trust attempted to redeem the Property by delivering to Grazer's counsel: (1) a copy of the Assignment; (2) a check made payable to Grazer's counsel in the amount of \$210.00, purporting to cover the \$191.00 purchase price plus six percent (6%) annual interest accruing from the date of the sheriff's sale; and (3) a proposed certificate of redemption. The Olsen Trust requested that Grazer sign and acknowledge the proposed certificate of redemption and return the same to the Olsen Trust no later than July 11, 2008.

Subsequently, on July 8, 2008, Grazer's counsel returned the documents and check to the Olsen Trust thereby rejecting their tender. By letter of same date, Grazer's counsel informed the Olsen Trust that his reason for rejecting the tender was that he was not authorized to accept service of the redemption materials on Grazer's behalf, and because the check was made payable to himself, rather than Grazer.

On July 9, 2008, pursuant to Rule 69C(e) of the Utah Rules of Civil Procedure, Grazer had recorded a Notice of Amounts Paid and Owed with the Davis County Recorder's Office, in

which Grazer claimed that he had incurred and paid \$2,178.02 in conjunction with the sheriff's sale along with an additional \$2,750.00 in costs.

On July 10, 2008, the Olsen Trust attempted to redeem the Property for a second time. The Olsen Trust, after being informed that Grazer's counsel now had the authority to accept service of the redemption materials, delivered: (1) a copy of the Assignment; (2) a check made payable to Grazer in the amount of \$210.00; and (3) a proposed certificate of redemption.

By letter dated July 14, 2008, the day before the end of the 180-day redemption period, Grazer indicated to the Olsen Trust that he would not execute the proposed certificate of redemption thus rejecting the Olsen Trust's second attempted redemption. In this letter, Grazer asserted his belief that the Olsen Trust's Assignment was not a bona fide transfer for value and was thus a fraudulent transfer, that the attempted redemption failed to pay the amounts Grazer claimed owed in his Notice of Amounts Paid and Owed recorded July 9, 2008, and his belief that Jones and/or individuals under Jones' control and/or direction had used the Property since the sheriff's sale. The Olsen Trust's documents and check were subsequently returned.

Following the rejection of the Olsen Trust's second attempted redemption, on August 15, 2008, the Olsen Trust filed a Petition for Establishment of Redemption Price on the Property and submitted to the Court a check in the amount of \$2,465.00, purporting to encompass the entire undisputed and correct amount of the redemption price for the Property. By written ruling dated December 12, 2008, the Court found the Olsen Trust had failed to strictly comply with Rule 69C(f) of the Utah Rules of Civil Procedure pertaining to the 20-day deadline for filing a petition to determine a disputed redemption price. However, the Court did not reach the merits of the Olsen Trust's attempted redemptions of July 8, 2008 and July 10, 2008, but noted that the parties were free to raise the issue at a later date.

Subsequently, the parties completed briefing on the instant motions and requested a hearing on the same. On May 5, 2009, the Court held a hearing on the instant motions. At this hearing, the parties reasserted the arguments raised in their pleadings regarding each of the instant motions. At the close of the hearing, the parties submitted the motions for decision and the Court took the matters under advisement. Accordingly, the instant motions are ripe for determination.

ANALYSIS

I. Allen Grazer's Motion for Equitable Lien and Order of Foreclosure (Idaho Tractor).

On December 20, 2007, Grazer filed his motion for equitable lien and order of foreclosure (Idaho Tractor). In his accompanying supporting memorandum, Grazer argued that this transaction was not a loan, but rather was a fraudulent transfer made in an attempt to avoid collection on Grazer's judgment. In support of his argument, Grazer pointed to the timing of the loan being just four (4) months prior to the entry of judgment against Jones, the fact that Jones' son has not repaid the loan, and the fact that Jones had previously attempted to hide certain assets after entry of the judgment.

Jones filed his memorandum in opposition to Grazer's motion on January 14, 2008. In his opposing memorandum, Jones asserted that Grazer had not presented a sufficient factual basis to succeed on his motion. Specifically, Jones argued that the mere fact that the loan was made in the same year as the judgment does not indicate the loan was fraudulent. Further, Jones submitted that at the time of the loan he had over \$1,000,000 in assets and no need to fraudulently transfer his assets. Jones also argued that the Court lacked jurisdiction over the tractor and his son, as both reside in Idaho and the loan occurred in Idaho. Jones then asserted that an equitable lien against the tractor would deny his son due process.

On February 13, 2008, Grazer filed his reply memorandum in support of his motion. In his reply, Grazer argued that the court clearly had jurisdiction over money transferred by Jones, a resident of Utah, to his son. Grazer also noted that the Court has personal jurisdiction over Jones' son, as he made an appearance in this action when he filed an answer on February 6, 2006. Grazer then asserted that the fact Jones' son never repaid the loan is evidence of its fraudulent nature. Further, Grazer enumerated other instances of Jones' attempts to conceal his property from Grazer, such as Jones' attempt to hide his car at his neighbor's residence. Grazer then submitted that an equitable lien is appropriate under the circumstances.

Subsequently, at the May 5, 2009 hearing, the parties submitted this matter for decision.

First, as a preliminary matter on the issue of whether the Court may exercise personal jurisdiction over Jones' son, the Court's file contains an answer filed by Jones' son on February 6, 2006. Accordingly, the Court finds that Jones' son has made a general appearance in this litigation and has voluntarily submitted himself to the jurisdiction of the Court. *See Barlow v. Cappo*, 821 P.2d 465, 466-67 (Utah Ct. App. 1991) (“[A]n appearance by the defendant for any purpose except to object to personal jurisdiction constitutes a general appearance. In fact, by asking the court for any affirmative relief, a defendant thereby submits himself or herself to that court's jurisdiction.”). Thus, the Court has jurisdiction to rule on Grazer's motion for equitable lien and the Court rejects Jones' due process argument regarding the same.

Next, an equitable lien is a remedy available to courts to avoid injustice to, or unjust enrichment of, a party. *See Harline v. Danes*, 567 P.2d 1120 (Utah 1977). “Where property of one person can by a proceeding in equity be reached by another as security for a claim on the ground that otherwise the former would be unjustly enriched, an equitable lien arises.” *Id.* at 1121, fn. 1 (*quoting* Restatement of Restitution, §161). However, “[t]he mere fact that a person

benefits another is not of itself sufficient to require the other to make restitution therefor[.]” *Id.* at 1123 (quoting Restatement of Restitution §1, Comment c). Accordingly, in determining whether an equitable lien is appropriate, the Court must weigh the circumstances of the case and decide whether such a lien is necessary to avoid injustice or unjust enrichment.

In the instant matter, Grazer has not presented sufficient evidence and supporting documentation for the Court to grant his motion for an equitable lien against the Idaho tractor. As noted by Jones, the mere fact that a judgment was entered against Jones in the same year as the loan to his son does not substantiate a fraudulent transfer.² Further, the other instances of Jones’ attempts to conceal property that Grazer’s motion relies upon is but one factor in the Court’s analysis, and regardless are distinguishable from the Idaho tractor loan as they occurred after the Court entered judgment against Jones. The loan at issue here occurred four (4) months prior to the judgment. The fact that Jones may have attempted to hide his assets after the entry of judgment against him does not necessarily mean that Jones’ loan made prior to the judgment was fraudulent.

Additionally, while Grazer asserts that Jones’ son has not repaid the loan, Grazer failed to present competent evidence to support such an assertion. The only evidence that Grazer has presented is that the loan was undocumented and that in his deposition, Jones stated that he considered the transaction a “father-to-son loan”³ that would be paid back “whenever [his son]

² The finding of a fraudulent transfer is a highly fact sensitive issue that requires the Court to weigh several factors, which are enumerated in Utah Code Ann. §25-6-5(2). *See Wasatch Oil & Gas, LLC v. Reott*, 163 P.3d 713, 722 (Utah Ct. App. 2007) (“Importantly the existence of fraudulent intent is a factual question, which necessarily involves weighing the evidence presented and assessing the credibility of witnesses – tasks largely within the province of the fact-finder.”); *see also* Utah Code Ann. §25-6-5(2).

³ Depo. Gordon A. Jones, 157:13-16, 23, 158:5-7, 10-12 (June 8, 2006).

can get it paid off.”⁴ Finally, Grazer’s conclusory allegations that the money loaned to Jones’ son is subject to his garnishment are insufficient to establish the same.

Accordingly, the Court finds that Grazer has failed to present sufficient evidence as to the nature and circumstances of the loan to move the equities of the Court to grant an equitable lien against the Idaho tractor. The Court must therefore DENY Grazer’s motion for equitable lien and order of foreclosure (Idaho Tractor).

II. Defendant Grazer’s Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions.

On January 9, 2009, Grazer filed his motion for partial summary judgment regarding invalidity of attempted redemptions. In his accompanying supporting memorandum, Grazer argued that the Olsen Trust’s July 8, 2008 and July 10, 2008 attempted redemptions must fail. First, Grazer asserted that the July 8, 2008 attempted redemption fails because the materials and payment check were submitted and made payable to his counsel, rather than himself. Grazer contends that his counsel did not have authority to accept the Olsen Trust’s attempted redemption on his behalf until July 9, 2008. Next, Grazer argued that the Olsen Trust’s July 10, 2008 attempted redemption fails because the \$210.00 payment check was in the wrong amount. Grazer noted that, pursuant to Rule 69C(e) of the Utah Rules of Civil Procedure,⁵ a notice of additional costs was recorded with the Davis County Recorder’s Office on July 9, 2008, which increased the amount necessary to redeem the Property from \$210.00 to at least \$2,465.00. Thus, Grazer averred the Olsen Trust failed to properly and timely redeem the Property within the 180-

⁴ Depo. Gordon A. Jones, 149:10-13 (June 8, 2006).

⁵ Rule 69C(e) of the Utah Rules of Civil Procedure reads in relevant part, “If the purchaser or redemptioner files with the county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair or any lien other than the lien on which the redemption was based, the price to redeem includes such amounts plus six percent for an initial redemption or three percent for a subsequent redemption. Failure to file notice of the amounts with the country recorder waives the right to claim such amounts.” Utah R. Civ. P. 69C(e).

day redemption period as set forth in Rule 69C(d) of the Utah Rules of Civil Procedure and thus, the Court must find that each of the Olsen Trust's attempted redemptions failed.

On February 5, 2009, Barney's Estate filed a memorandum in opposition to Grazer's motion. In its opposing memorandum, Barney's Estate argued that a material issue of fact exists regarding whether Grazer will receive a windfall if the July 8, 2008 and July 10, 2008 attempted redemptions are defeated. Barney's Estate asserts that because the Court's December 12, 2008 ruling did not reach the merits of this argument, a material issue of fact must exist regarding Grazer's motion and therefore, the motion must be denied.⁶

On February 9, 2009, the Olsen Trust filed its memorandum in opposition to Grazer's motion. In its opposing memorandum, the Olsen Trust argued that its attempted redemptions at least substantially complied with Rule 69C of the Utah Rules of Civil procedure and that as a result, Grazer should not be allowed to deprive it of Jones' assigned redemption rights. Further, the Olsen Trust averred that Grazer's counsel had the authority to accept the July 8, 2008 tender of payment based upon his prior involvement and ability to accept documents filed in this action. The Olsen Trust asserted that because Grazer's counsel had authority to accept documents in this matter and Grazer had not yet recorded the notice of additional costs with the Davis County Recorder's Office, the redemption check for \$210.00 payable to Grazer's counsel sufficiently complied with the redemption requirements of Rule 69C.

⁶ On April 24, 2009, Grazer filed a motion to strike the memorandum in opposition filed by Barney's Estate. In the accompanying supporting memorandum, Grazer argued that the Estate lacks standing to object to Grazer's challenge to the attempted redemptions, as it does not seek an interest in the Property. Further, Grazer asserts that the opposing memorandum failed to set forth any disputed or undisputed facts, as required by Rule 7(c) of the Utah Rules of Civil Procedure, and should be disregarded in its entirety. No responsive pleading was filed with the Court; however, as the Olsen Trust's opposing memorandum raises the same argument as the Estate's opposition and the Court does not rely upon the Estate's opposition in reaching its determination, the Court finds that Grazer's motion to strike is futile and DENIES the same.

Additionally, the Olsen Trust argued that Grazer's counsel's failure to provide notice of the July 9, 2008 recording of additional costs relating to the redemption should estop Grazer from claiming that the \$210.00 payment check submitted in its July 10, 2008 redemption attempt was insufficient. The Olsen Trust submitted that Grazer's and his counsel's actions were made in bad faith and that the Court should not allow Grazer to receive an unwarranted windfall if the attempted redemptions fail, as the Olsen Trust noted that Grazer purchased the Property at the sheriff's sale for \$191.00 and the Property is worth over \$500,000.

On April 9, 2009, Grazer filed his reply memorandum in support of his motion. In his reply, Grazer asserted that the Court has already ruled that strict compliance with Rule 69C of the Utah Rules of Civil Procedure is required. Thus, Grazer submits that the Olsen Trust's attempted redemptions have no legal force or effect, as the July 8, 2008 attempt was tendered to the wrong party and the July 10, 2008 attempt did not include the full redemption amount. Further, Grazer noted that neither attempted redemption included a certified copy of the judgment/lien, or an affidavit showing the amount due on the judgment/lien, as required by Rule 69C(c) of the Utah Rules of Civil Procedure. Finally, Grazer asserted that the Olsen Trust has submitted no evidence supporting the allegations of impropriety directed at himself and his counsel. Accordingly, Grazer requested the Court find that each of the Olsen Trust's attempted redemptions failed to strictly comply with Rule 69C and order the sheriff to deliver to him a deed to the Property.

Subsequently, at the May 5, 2009 hearing, the parties submitted this matter for decision.

As a preliminary consideration, the parties do not dispute the material facts and circumstances of the Olsen Trust's attempted redemptions. The issues before the Court are issues of law regarding the interpretation of Rule 69C of the Utah Rules of Civil Procedure and

applying the undisputed facts to such interpretation. Accordingly, the Court may grant summary judgment on Grazer's motion if appropriate.⁷

The primary issue in Grazer's motion for partial summary judgment regarding invalidity of attempted redemptions is whether Rule 69C requires strict or substantial compliance. If strict compliance is required, then the Olsen Trust's attempted redemptions must fail as neither complied with the requirements of serving a certified copy of the judgment/lien and an affidavit showing the amount due on the judgment/lien. *See* Utah R. Civ. P. 69C(c). However, if substantial compliance is all that is required under Rule 69C(c), then the Olsen Trust has at least substantially complied with the Rule with its July 8, 2008 attempted redemption.

While Grazer asserts that the Court's December 12, 2008 ruling already decided the issue of whether strict or substantial compliance with Rule 69C is required, the Court's ruling was limited only to the requirements of Rule 69C(f) pertaining to the filing of a petition to establish a disputed redemption price. The Court's ruling did not address the issue of whether strict or substantial compliance is required under the procedures set forth in Rule 69C(c), which is at issue in Grazer's instant motion.⁸

The Olsen Trust places its reliance that substantial compliance is required under Rule 69C(c) on the Utah Supreme Court case *United States v. Loosley*, 551 P.2d 506 (Utah 1976). In *Loosley*, the Court was asked to determine if a party's failure to deliver the appropriate redemption documents was fatal to its attempts at redeeming certain real property. The *Loosley* Court discussed the purpose of a foreclosure proceeding being equitable in nature, to wit:

⁷ Summary judgment is appropriate if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(c).

⁸ Rule 69C(c) provides that a redemptioner shall pay the amount required to the purchaser and shall serve on the purchaser: (1) a certified copy of the judgment or lien under which the right to redeem exists; (2) an assignment, if necessary to establish the claim; and (3) an affidavit showing the amount due on the judgment or lien. *See* Utah R. Civ. P. 69C(c).

“[R]ules and statutes dealing with redemption are regarded as remedial in character and should be given liberal construction and application to permit a property owner who can pay his debts to do so, and thus make his creditor whole, and save his property.”

Id. at 508. Then, applying this liberal construction, the Court held, “if a debtor, acting in good faith, has substantially complied with the procedural requirements of the rule ... the law will not aid in depriving the mortgagor of his property for mere falling short of exact compliance with technicalities.” *Id.* (Emphasis added).

The *Loosley* holding was further discussed in the Utah Court of Appeals’ analysis in *Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.* 787 P.2d 1328 (Utah Ct. App. 1990). In *Tech-Fluid Services, Inc.*, the Court discussed when strict and substantial compliance standards should be used in the context of redemption rights, to wit:

“Not all redemption provisions are alike. Courts, in evaluating the necessity for strict compliance in these kinds of cases, focus upon the nature of the statutory requirements and the likelihood of prejudice. If failure to adhere to the requirements will affect a substantive right of one of the parties and possibly prejudice that party, then courts require strict compliance. On the other hand, if the requirements are merely procedural and will not prejudice one of the parties, substantial compliance is sufficient.”

Id. at 1333 (Emphasis added). The *Tech-Fluid Services, Inc.* Court then found that the time limit for redemption “clearly affects a substantive right of the purchaser” as “[a]ll right, title and interest in the property do not vest in the purchaser at a foreclosure sale until the redemption period has expired.” *Id.* However, the Court based its holding on the procedural requirements of redemption, just as in *Loosley*, noting that substantial compliance was all that is required under

the redemption provision that discusses how redemption is made, i.e. the current Rule 69C(c),⁹ which is precisely the subsection of the Rule at issue in the instant matter.

Accordingly, based upon the holdings and analysis of *Loosley* and *Tech-Fluid Services, Inc.*, the Court finds that the Olsen Trust need only substantially comply with the procedures of Rule 69C(c) for their redemption attempts to succeed.

In the July 8, 2008 redemption attempt the Olsen Trust provided Grazer's counsel with: (1) a copy of the Assignment; (2) a check made payable to Grazer's counsel in the amount of \$210.00, purporting to cover the \$191.00 purchase price plus six percent (6%) annual interest accruing from the date of the sheriff's sale; and (3) a certificate of redemption. While the Olsen Trust failed to provide Grazer with a certified copy of the judgment/lien and an affidavit regarding the amount due, the Court finds that the Olsen Trust nevertheless substantially complied with the procedural requirements of Rule 69C(c). In so ruling, the Court finds that Grazer's argument that his counsel did not have authority to accept the redemption attempt on July 8, 2008, is unpersuasive and without merit. As argued by the Olsen Trust, Grazer's counsel was involved from the beginning of this litigation and had the authority to accept documents filed therein throughout the proceedings. Further, the Olsen Trust's windfall argument adds support to the Court's finding. While the parties presented no evidence regarding the appraised value of the Property, its value is clearly greater than the \$191.00 paid at the sheriff's sale by Grazer. Accordingly, the Court must DENY Grazer's motion for partial summary judgment regarding invalidity of attempted redemptions.

⁹ See *Tech-Fluid Services, Inc.*, 787 P.2d at 1334 ("Based upon the authority discussed above, and in particular *Loosley*, we affirm that substantial compliance is the proper test under Rule 69(f)(2).").

III. The Olsen Trust's Cross Motion for Partial Summary Judgment.

The Olsen Trust's cross motion for partial summary judgment pertains to the same subject matter as Grazer's motion for partial summary judgment regarding invalidity of attempted redemptions and contains the same arguments, i.e. the Olsen Trust's July 8, 2008 and July 10, 2008 attempted redemptions.¹⁰ Accordingly, the Court's determination on Grazer's motion dictates the Court's ruling on the Olsen Trust's cross motion. Therefore, because the Court denies Grazer's motion due to the Olsen Trust's July 8, 2008 attempted redemption substantially complying with Rule 69C(c) of the Utah Rules of Civil Procedure, the Court must GRANT the Olsen Trust's cross motion for partial summary judgment.

IV. Grazer's Motion for Partial Summary Judgment Against GS Jones Construction, Inc.

On February 17, 2009, Grazer filed his motion for partial summary judgment against GS Jones Construction, Inc. In the accompanying supporting memorandum, Grazer argued that GS Jones Construction, Inc. received an \$80,000 payment for renovation work performed on the Sayamas' home that should have been subject to Grazer's garnishment of Gordon Jones Construction. Grazer asserted that Gordon Jones Construction provided the Sayamas a bid for the renovation work and performed the labor. Grazer submitted, however, that the Sayamas' payment was made to GS Jones Construction, Inc., rather than Gordon Jones Construction in a fraudulent attempt to avoid Grazer's garnishment of Gordon Jones Construction.

On April 14, 2009, Jones filed his memorandum in opposition to Grazer's motion. In his opposing memorandum, Jones acknowledged that Gordon Jones Construction provided the bid

¹⁰ Again, it is worth noting that the parties do not dispute the material facts pertinent to the Olsen Trust's attempted redemptions. The issues before the Court are issues of law regarding the interpretation of Rule 69C of the Utah Rules of Civil Procedure and applying the undisputed facts to such interpretation. Accordingly, the Court may grant summary judgment, pursuant to Rule 56(c) of the Utah Rules of Civil Procedure, on the Olsen Trust's cross motion. *See Utah R. Civ. P. 56(c).*

for the renovation of the Sayamas' residence, but asserted that GS Jones Construction, Inc. took over the project in July 2005 and performed the majority of the work on the home. Jones further asserted that it is uncertain how much work Gordon Jones Construction performed on the Sayamas' home and thus, a material issue of fact exists as to what portion of the \$80,000 payment Gordon Jones Construction is entitled and what amount, if any, is subject to Grazer's garnishment. Additionally, Jones filed a supporting affidavit of G. Scott Jones, which discussed and attached invoices from subcontractors and the costs associated with the Sayama project.¹¹ The affidavit also asserted that Grazer was paid \$18,000.0 from the Sayamas' payment to GS Jones Construction, Inc. pursuant to his garnishment.

On April 24, 2009, Grazer filed his reply memorandum in support of his motion. In his reply, Grazer asserted that Jones' opposing memorandum did not dispute the fact that Jones and his son actively diverted funds owed to Gordon Jones Construction into GS Jones Construction, Inc. Further, Grazer asserted that payments to third-party subcontractors who worked on the Sayama project are irrelevant to whether the transfer of funds was fraudulent. Accordingly, Grazer contends that there are no material issues of fact regarding his motion and requests the Court grant him summary judgment in the sum of \$80,000, plus interest.

Subsequently, at the May 5, 2009 hearing, the parties submitted this matter for decision.

¹¹ On April 24, 2009, Grazer filed a motion to strike the affidavit of G. Scott Jones. In his accompanying supporting memorandum, Grazer argued that the affidavit contains inadmissible hearsay and that the documentation attached to the affidavit is insufficient to support the assertion that GS Jones Construction, Inc. took over the Sayama project. Grazer requested the Court disregard the affidavit in its entirety. On May 4, 2009, Jones filed a memorandum in opposition to Grazer's motion to strike. In his opposing memorandum, Jones argued that the assertions within his affidavit are based upon personal knowledge and thus, not hearsay. Upon the Court's review of the affidavit, it appears that the assertions within are based upon G. Scott Jones' personal knowledge and are not hearsay statements; however, the attached supporting documentation does not sufficiently demonstrate that GS Jones Construction, Inc. took the Sayama project over or that Grazer was already paid \$18,000.00 from the project's proceeds. Accordingly, while the Court must DENY Grazer's motion to strike, the Court finds that the affidavit leaves several matters unclear. Specifically, the Court finds that material issues of fact exist regarding the sums Gordon Jones Construction was due from the Sayama project's proceeds, what portion of those sums is subject to Grazer's garnishment, and whether Grazer received \$18,000.00 from the project's proceeds.

Pursuant to the Utah Rules of Civil Procedure, summary judgment is appropriate only where “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(c).

Rule 64D of the Utah Rules of Civil Procedure governs the procedure for garnishments. *See* Utah R. Civ. P. 64D. With regard to what property may be garnished, the Rule provides:

“The maximum portion of disposable earning of an individual subject to seizure is the lesser of:

(a)(1) 50% of the defendant’s disposable earnings for a writ to enforce payment of a judgment for failure to support defendant children or 25% of the defendant’s disposable earnings for any other judgment; or

(a)(2) the amount by which the defendant’s disposable earning for a pay period exceeds the number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.”

Id. at 64D(a) (Emphasis added). The Utah Rules of Civil Procedure defines “earnings” as:

“[C]ompensation, however denominated, paid or payable to an individual for personal services, including periodic payment pursuant to a pension or retirement program. Earning accrue on the last day of the period in which they were earned.”

Id. at 64(a)(5). Further the Utah Rules of Civil Procedure define “disposable earnings” as:

“[T]hat part of earning for a pay period remaining after the deduction of all amounts required by law to be withheld.” *Id.* at 64(a)(4). Accordingly, and contrary to Grazer’s argument, a valid writ of garnishment does not enable a party to obtain 100% of the earnings of an individual that is subject to the garnishment. *See Id.* at 64D(a).

Here, it is uncertain what portion of the \$80,000 Sayama payment that Gordon Jones Construction is entitled, as Jones’ affidavit indicates that GS Jones Construction, Inc. took over at least a portion of the Sayama project and performed a considerable amount of work. At this time, it is unknown how much work Gordon Jones Construction performed at the Sayamas’

residence. Further, Jones' affidavit states that \$50,420.38 of the \$80,000 was used to pay subcontractors for their work on the Sayamas' renovation. Additionally, \$6,964.89 of the \$80,000 was used to pay providers of materials for the Sayamas' renovation. Contrary to Grazer's argument, the payment of the material providers and subcontractors does affect the amount that Grazer would receive by virtue of his garnishment under the Utah Rules of Civil Procedure's definition of "disposable earnings." *See* Utah R. Civ. P. 64(a)(4), 64D(a). Accordingly, the Court finds that because it is uncertain how much of the \$80,000 paid by the Sayamas is subject to Grazer's garnishment, a material issue of fact exists and summary judgment on Grazer's motion may not be granted.

Further, while Grazer alleges that the transfer of the \$80,000 was a fraudulent transfer under the Uniform Fraudulent Transfers Act, Utah Code Ann. §25-6-1 *et seq.*, Grazer's pleadings and allegations do not establish a *prima facie* case of fraudulent transfer. Pursuant to the Uniform Fraudulent Transfers Act:

"A transfer made or obligation incurred by a debtor is fraudulent as to a creditor ... if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor: (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due."

Utah Code Ann. §26-6-5(1). To determine "actual intent" under the Uniform Fraudulent Transfers Act, the Court may consider the following factors:

- (a) the transfer was to an insider;
- (b) the debtor retained possession or control of the property transferred after the transfer;
- (c) whether the transfer was disclosed or concealed;

- (d) before the transfer was made, the debtor had been sued or threatened with suit;
- (e) the transfer was of substantially all the debtor's assets;
- (f) the debtor absconded;
- (g) the debtor removed or concealed assets;
- (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred;
- (i) the debtor was insolvent or became insolvent shortly after the transfer was made;
- (j) the transfer occurred shortly before or after a substantial debt was incurred; AND
- (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

See Id. at 25-6-5(2). Thus, the Court's finding of an occurrence of a fraudulent transfer is highly fact sensitive. *See Wasatch Oil & Gas, LLC v. Reott*, 163 P.3d 713, 722 (Utah Ct. App. 2007) ("Importantly the existence of fraudulent intent is a factual question, which necessarily involves weighing the evidence presented and assessing the credibility of witnesses – tasks largely within the province of the fact-finder.").

Here, Grazer has argued that some of factors listed in Utah Code Ann. §25-6-5(2) are present in the transfer of the \$80,000 payment from the Sayamas. Specifically, Grazer has asserted that the transfer was to an insider, i.e. Jones' son and Jones' newly formed company, that Jones has retained possession and control of the transferred funds, and that the transfer was in anticipation of a judgment being entered in this litigation. However, the Court finds that these assertions alone, without discussion of the other factors listed within the statute and the opportunity to weigh and assess the credibility of witnesses and competent evidence presented, the Court cannot find that Jones transferred the Sayamas' payment with "actual intent" to hinder, delay, or defraud Grazer of his judgment.

Accordingly, the Court finds that summary judgment on Grazer's motion for partial summary judgment against GS Jones Construction, Inc. is inappropriate at this time. The Court

must therefore DENY Grazer's motion for partial summary judgment against GS Jones

Construction, Inc.

V. Counterclaim Plaintiff's Motion for Entry of Garnishee Judgment Against the Shaffer Law Office or, in the Alternative, for Summary Judgment Setting Aside Fraudulent Transfers.

On February 17, 2009, Grazer filed his motion for entry of garnishee judgment against the Shaffer Law Office or for summary judgment setting aside fraudulent transfers. In the accompanying supporting memorandum, Grazer argued that the Shaffer Law Office responded inaccurately to his writ of garnishment, served October 5, 2005, by failing to identify the retainer paid to it by Jones. Grazer asserted that the retainer is subject to garnishment and that Grazer is entitled to garnishee judgment against the Shaffer Law Office for the total amount it holds in its trust account for Jones, \$58,452.17 plus interest.

The Shaffer Law Office filed its memorandum in opposition to Grazer's motion on February 24, 2009. In its opposing memorandum, the Shaffer Law Office objected to Grazer's characterization of Jones' actions as fraudulent transfers, as the Court has not heard nor ruled upon the same. Next, the Shaffer Law Office argued that no final judgment existed on October 5, 2005, when Grazer served the writ of garnishment, and therefore, the writ was untimely. The Shaffer Law Office asserted that the Court did not enter a final judgment in this matter until its written ruling of April 13, 2006. Regardless, the Shaffer Law Office submitted that its response to the writ of garnishment was accurate, as Jones had no interest in the retainer paid to the law firm for its services. The Shaffer Law Office then argued that Grazer's motion is untimely under Rule 64D(h)(1) of the Utah Rules of Civil Procedure, which requires a reply to a response to a writ of garnishment and request for hearing to occur within ten (10) days of the response's service. The Shaffer Law Office noted that Grazer's motion was filed nearly two (2) years after

its response was served. Finally, the Shaffer Law Office argued that the settlement agreement regarding Jones' bankruptcy action discharged Grazer's judgment and, as a result, further proceedings in this matter to collect the judgment are prohibited.¹²

On March 10, 2009, Grazer filed his reply memorandum in support of his motion. In his reply, Grazer argued that the issue of when the judgment against Jones became final was disposed of in the Court's ruling of April 13, 2006. Grazer asserted that a valid judgment and valid garnishment existed at the time he served the writ of garnishment on the Shaffer Law Office. Next, Grazer asserted that the Shaffer Law Office's objections to the writ of garnishment are untimely, and that the Shaffer Law Office should have requested a hearing if it sought to challenge the writ and assert an interest in the property it held for Jones. Grazer posited that Rule 64D(j) of the Utah Rules of Civil Procedure allows for an entry of a garnishee judgment when a garnishee responds inaccurately to a writ of garnishment. Grazer submitted that the Shaffer Law Office should not be allowed to benefit from its inaccurate responses. Finally, Grazer argued that the settlement agreement of Jones' bankruptcy action specifically excluded Jones' property that was fraudulently transferred. Grazer then requested the Court enter a garnishee judgment against the Shaffer Law Office for the total amount held within its trust account for Jones, plus interest.

Subsequently, at the May 5, 2009 hearing, the parties submitted this matter for decision.

¹² The Shaffer Law Office filed a notice to submit for decision regarding Grazer's motion on March 6, 2009. On March 10, 2009, Grazer filed a motion for leave to file an untimely reply memorandum in support of his motion. In his accompanying supporting memorandum, Grazer argued that his reply memorandum was untimely due to the misleading nature of the title of the Shaffer Law Office's opposing memorandum. The Shaffer Law Office's memorandum in opposition to Grazer's motion for entry of garnishee judgment or for summary judgment to set aside fraudulent transfers was titled "Memorandum in Opposition to Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemptions." The Shaffer Law Office did not oppose Grazer's motion for leave to file an untimely reply memorandum. Upon review of Grazer's motion, the Court finds that the title of the Shaffer Law Office's opposing memorandum is misleading, as it refers to one of the other pending motions before the Court that Grazer had already responded to. Further, the Court finds that the parties will not be prejudiced by the Court allowing Grazer to file a reply memorandum. Accordingly, the Court GRANTS Grazer's motion for leave to file an untimely reply.

As a primary consideration, the issue of when the judgment against Jones became final was addressed and resolved in the Court's ruling of April 13, 2006. Within that ruling, the Court explicitly stated several times that Grazer's judgment became final on April 13, 2006. Thus, no final judgment existed at the time Grazer served the Shaffer Law Office with the writ of garnishment on October 5, 2005.

Rule 64D of the Utah Rules of Civil Procedure contemplates that a garnishment may occur either after a judgment is entered or prior to the entry of a judgment. *See* Utah R. Civ. P. 64D(a) ("A writ of garnishment is available after final judgment or after the claim has been filed and prior to judgment."). However, Rule 64D requires compliance with several factors for a pre-final judgment writ to be effective. *See Id.* at 64D(b). A pre-final judgment writ of garnishment requires all of the following:

- (1) that the defendant is indebted to the plaintiff;
- (2) that the action is upon a contract;
- (3) that payment of the claim has not been secured by a lien upon property in the State of Utah;
- (4) that the garnishee possess or controls property of the defendant; AND
- (5) that the plaintiff has attached the garnishee fee established by Utah Code Ann. §78-7-44, i.e. \$10 or \$25 depending on whether the garnishment is single or continuing.

See Id. at 64D(b).

Here, the parties do not dispute whether Grazer complied with the foregoing factors when he served the writ of garnishment on the Shaffer Law Office. However, it is also undisputed that Grazer knew of the retainer that Jones had paid to the Shaffer Law Office for its legal representation in this action and related matters prior to serving the writ. Grazer was informed of the retainer when he took Jones' deposition on September 14, 2005.

Rule 64D of the Utah Rules of Civil Procedure requires a plaintiff or defendant to file a reply to a garnishee's response and request a hearing if it challenges the accuracy of the garnishee's answers, to wit:

"The plaintiff or defendant may file and serve upon the garnishee a reply to the answers and request a hearing. ... The reply may ... challenge the accuracy of the answers[.]"

Utah R. Civ. P. 64D(h)(1)(B). Further, under the plain language of Rule 64D(h)(1), "[t]he reply shall be filed and served within 10 days after service of the answers or amended answers." *Id.* at 64D(h)(1). Accordingly, the Court finds that the Utah Rules of Civil Procedure required Grazer to have filed a challenge to the Shaffer Law Office's responses within ten (10) days after their service.

Here, Grazer's motion is clearly untimely under Rule 64D(h)(1), as Grazer filed the instant motion over two (2) years after the Shaffer Law Office served its responses. However, Grazer argues that the Shaffer Law Office had a duty to respond accurately to the writ of garnishment and should have requested a hearing if it asserted an interest in the retainer paid by Jones. This argument is supported by the Utah Court of Appeals case of *Rappleye v. Rappleye*, 99 P.3d 348 (Utah Ct. App. 2004). In *Rappleye*, the Court stated:

"In a garnishment proceeding, the garnishee is typically a neutral party to the garnishment proceedings... . However, sometimes a garnishee departs from a neutral position to assert its own claim to the property... . If a garnishee does assert ownership claims to the property, Utah Rule of Civil Procedure 64D establishes a process for resolving competing claims to the property made by the judgment creditor, judgment debtor, and garnishee."

Id. at 357-58 (Internal quotations and citations omitted). However, the Court's analysis in *Rappleye* interpreted an older version of Rule 64D, Rule 69(h)(1), which provided that any party could request a hearing regarding a claim or interest in judgment debtor's property subject to a garnishment, to wit:

“Under Utah Rule of Civil Procedure 69(h)(1), not only the judgment debtor, but ‘any other person who owns or claims an interest in the property subject to execution may request a hearing to claim any exemption to the execution, or to challenge the issuance of the writ.’”

Id. at 358, fn. 8 (quoting Utah R. Civ. P. 69(h)(1) (1994)). The current version of Rule 64D does not contain this language and specifically requires either the plaintiff or the defendant to file a reply to challenge the accuracy of the garnishee’s responses. *See* Utah R. Civ. P. 64D(h)(1). Indeed, it makes little sense to require the garnishee to file a reply and request for hearing in response to his or her own answers to a writ of garnishment.

Accordingly, the Court rejects Grazer’s contention that the Shaffer Law Office was required to request a hearing regarding the retainer it held, rather than himself, particularly in light of the fact that Grazer was clearly and undisputedly aware of the retainer. This is further supported by the Utah Supreme Court discussion of garnishment proceedings in *Upper Blue Bench Irrigation Dist. v. Continental Nat’l Bank & Trust Co.*, 72 P.2d 1048 (Utah 1937). In *Upper Blue Bench Irrigation Dist.*, the Utah Supreme Court stated in dicta:

“It appears equally as obvious that had the bank answered the writ that was served that it was in nowise indebted to the district no valid garnishee judgment could have been rendered against it, in the absence of further proceedings successfully traversing such answer.”

Id. at 1053. Further, in discussing the role of the garnishee in a garnishment proceeding the Utah Supreme Court stated:

“The garnishee is merely a stakeholder, having no liability to the garnishor until a valid judgment is entered against him. The right and power of the Court to enter a garnishee judgment, therefore, is predicated upon prior valid proceedings disclosing that the conditions are such that this remedy has been so proceeded with that the Court’s jurisdiction to consummate such proceedings with a judgment against the garnishee is invoked.”

Id. The Court therefore finds that Rule 64D of the Utah Rules of Civil Procedure required Grazer to file a reply and request for hearing within ten (10) days the Shaffer Law Office’s responses,

rather than requiring the Shaffer Law Office to request the hearing upon the filing of its responses to Grazer's writ of garnishment. Accordingly, the Court must DENY Grazer's motion for garnishee judgment against the Shaffer Law Office as it is untimely.¹³

Furthermore, even when viewing Grazer's motion as the alternative motion for summary judgment setting aside fraudulent transfers, the Court must still DENY Grazer's motion. As stated herein above, to succeed in a cause of action for fraudulent transfer under the Uniform Fraudulent Transfers Act, the Court must employ a highly fact sensitive analysis of several factors to determine whether Jones provided the retainer to the Shaffer Law Office with the "actual intent to hinder, delay, or defraud any creditor of the debtor[.]" Utah Code Ann. §25-6-5(1)(a).

Here, Grazer's pleadings are devoid of argument pertaining to the factors for finding "actual intent" as set forth in of Utah Code Ann. §25-6-5(2). Further, since the Court's analysis of a fraudulent transfer claim is highly fact sensitive, the Court finds that material issues of fact exist as to whether Jones' had an actual intent to hinder, delay, or defraud Grazer when he provided the disputed retainer to the Shaffer Law Office. The Court notes, however, that from the record before it and the evidence presented herein, Grazer will be hard pressed to make such a showing with regard to the retainer paid to the Shaffer Law Office. Accordingly, Court must DENY Grazer's motion for summary judgment setting aside fraudulent transfers.


¹³ Rule 64D also provides that "the court may deem the reply timely if filed before notice of sale of the property or before the property is delivered to the plaintiff." Utah R. Civ. P. 64D(h)(1). This provision of the Rule would allow the Court to consider Grazer's motion although it is untimely, as the Shaffer Law Office's trust account still contains funds from the retainer paid to it by Jones. However, because Jones' bankruptcy action discharged Grazer's judgment against Jones, the Court cannot consider Grazer's untimely motion to reopen his judgment against Jones through the garnishment of the Shaffer Law Office retainer. Accordingly, the only argument that would allow Grazer to succeed on his motion is that the retainer was a fraudulent transfer of Jones' property.

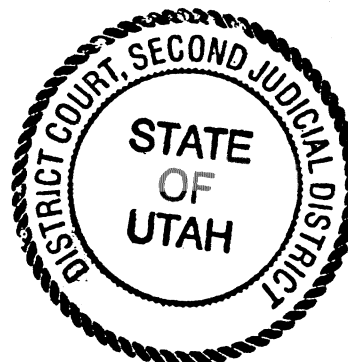
CONCLUSION

For the foregoing reasons, the Court: (1) DENIES Allen Grazer's Motion for Equitable Lien and Order of Foreclosure (Idaho Tractor); (2) DENIES Defendant Grazer's Motion for Partial Summary Judgment regarding Invalidity of Attempted Redemptions; (3) GRANTS The Olsen Trust's Cross Motion for Partial Summary Judgment; (4) DENIES Grazer's Motion for Partial Summary Judgment Against GS Jones Construction, Inc.; and (5) DENIES Counterclaim Plaintiff's Motion for Entry of Garnishee Judgment Against the Shaffer Law Office or, in the Alternative, for Summary Judgment Setting Aside Fraudulent Transfers.

The Court directs the Olsen Trust and Grazer to transfer the funds and execute the documents necessary to effectuate the July 8, 2008 attempted redemption consistent with this Ruling. The Court further directs Jones to prepare and submit an order that is consistent with and reflects this Ruling.

Date signed: 6-16-09


DISTRICT COURT JUDGE
MICHAEL G. ALLPHIN



MAILING CERTIFICATE

I certify that I sent a true and correct copy of the foregoing **RULING ON MOTIONS**

PENDING AT MAY 5, 2009 HEARING postage pre-paid, to the following on this

date: 6/16/09.

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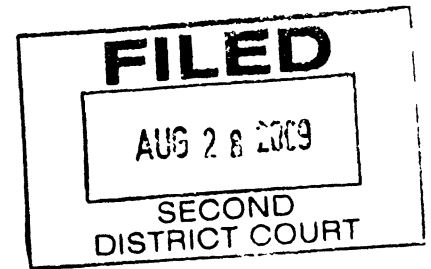
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ADDENDUM “B”



Prepared by:

Attorneys for Gordon Jones and his Redemption Right Assignee, Ludvig D. Olsen and Jackie M. Olsen, as trustees of the Ludvig D. Olsen and Jackie M. Olsen Trust

**IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, UTAH**

GORDON A. JONES, AN INDIVIDUAL, and
RICHARD H. BARNEY, AN INDIVIDUAL,

Plaintiffs and Counterclaim Defendants,

V.

ALLEN F. GRAZER, AN INDIVIDUAL,

Defendant and Counterclaim Plaintiff.

**[PROPOSED] ORDER ON CROSS
MOTIONS FOR SUMMARY JUDGMENT
ON REDEMPTION**

Civil No. 020700570

Judge Michael G. Allphin

Defendant Allen F. Grazer’s Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemption and the Olsen Trust’s Cross Motion for Partial Summary Judgment came before the Court for hearing on May 5, 2009. Lincoln W. Hobbs appeared on behalf of Allen F. Grazer (“Defendant”). Joseph M.R. Covey appeared on behalf of Ludvig D. Olsen and Jackie M. Olsen, as trustees of the Ludvig D. Olsen and Jackie M. Olsen Trust and as the assignee of Gordon Jones’ redemption rights (“Olsen Trust”). At the conclusion of the hearing,

the Court took the matter under advisement and on June 16, 2009 issued a Ruling on Motions Pending at May 5, 2009 Hearing (the "Ruling").

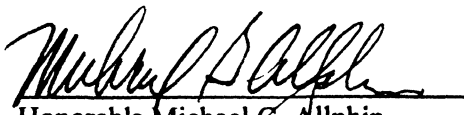
For the reasons stated in the Court's Ruling, the Court HEREBY ORDERS:

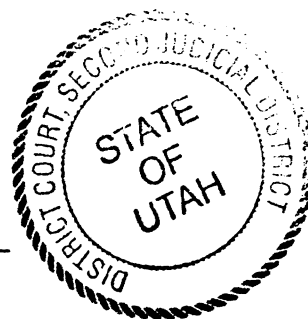
1. Defendant's Motion for Partial Summary Judgment Regarding Invalidity of Attempted Redemption is DENIED.
2. The Olsen Trust's Cross Motion for Partial Summary Judgment is GRANTED.
3. On July 8, 2008, the Olsen Trust substantially complied with the redemption procedures of Rule 69C(c) of the Utah Rules of Civil Procedure when it provided Defendant's counsel, who was acting on behalf of his client, with (a) a copy of the Assignment; (b) a check made payable to Plaintiff's counsel in the amount of \$210; and (c) a certificate of redemption.
4. Following receipt of the \$210, Defendant shall promptly execute and deliver to the Olsen Trust a certificate of redemption in accordance with Rule 69C(g) of the Utah Rules of Civil Procedure, containing, among other things, a detailed description of the real property and a statement that all right, title, and interest of the Defendant in the property is conveyed to the Olsen Trust.

5. The Olsen Trust shall promptly pay Defendant the redemption price of \$210.00 by delivering to Defendant's counsel, Lincoln W. Hobbs, a check for \$210.00 made payable to Defendant.
6. The Clerk of Court shall release to the Olsen Trust the \$2,465.00 that was deposited into the Court on or about August 15, 2008.
7. The Court has determined that there is no just reason for delaying the entry of this Order and hereby certifies this Order as a final judgment with respect to all of the claims involving the Olsens and the redemption, in accordance with Rule 54(b) of the Utah Rules of Civil Procedure.

IT IS SO ORDERED this 28th day of Aug, 2009.


BY THE COURT:


Honorable Michael G. Allphin
Second District Court Judge

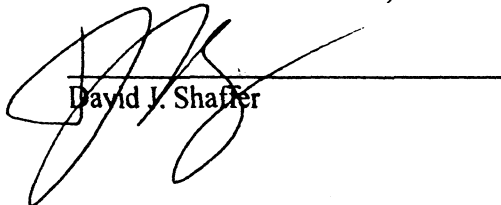


APPROVED AS TO FORM:

HOBBS & OLSON


Lincoln W. Hobbs

SHAFFER LAW OFFICE, P.C.


David J. Shaffer

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2009, a true and correct copy of the foregoing **[PROPOSED] ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT ON REDEMPTION** was served via United States first class mail, postage prepaid, to the following:

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