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Cristobal Serrato and Elida Serrato v. Utah Transit Authority and Lance K. Sargent : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

CRISTOBAL SERRATO and ELIDA SERRATO,	:	
Appellants/Cross-Appellees	:	Case No. 990951-CA
vs.	:	
	:	Priority No. 15
UTAH TRANSIT AUTHORITY and LANCE K. SARGENT	:	
Appellees/Cross-Appellants	:	

COMBINED REPLY BRIEF AND BRIEF OF CROSS-APPELLEES

APPEAL FROM THE SUMMARY JUDGMENT AND ORDER OF DISMISSAL OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, JUDGE STEPHEN L. HENROID

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JURISDICTION OF THE UTAH COURT OF APPEALS ON THE CROSS-APPEAL

Inasmuch as the Utah Supreme Court has transferred the case, this Court has original jurisdiction over this cross-appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j) (1996).

CONTROLLING STATUTES, ORDINANCES AND RULES

The following court rule is of central importance to the cross-appeal is set out verbatim herein:

Rule 4(e) of the Utah Rules of Appellate Procedure:

Extension of time to appeal. The trial court, upon a showing of excusable nelgect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) of this rule. A motion filed before expiration of the prescribed time may be ex parte unless the tiral court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court. No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

STATEMENT OF THE CASE ON CROSS-APPEAL

I. Nature of the Case

This case involves a personal injury dispute arising out of an automobile accident in which the Serratos' verhicle collided with a negligently operated Utah Transit Authority (hereinafter "UTA") bus. The Serratos subsequently filed a complaint in the Third District Court in and for Salt Lake County. The propriety of the notices of claim filed with the UTA were challenged, and the Serratos' claims were dismissed. The Trial Court later granted the Serratos additional time to file their Notice of Appeal--which ruling is the subject of this cross-appeal.

II. Course of Proceedings

After the Serratos commenced their litigation in the Third District Court, the UTA and the Serratos filed cross-motions for summary judgment. Following a hearing, the Trial Court granted the UTA's motion for summary judgment, concluding that the Serratos' failure to properly file the notice of claim with the UTA's Board of Directors barred the Serratos' court claims.

The Trial Court entered the Summary Judgment and Order of Dismissal on August 26, 1999. Subsequently, on October 1, 1999, the Serratos filed a motion to extend the time to appeal in accordance with Rule 4(e) of the Utah Rules of Appellate Procedures. The motion was opposed by the UTA. Following full briefing by the parties, and the filing of affidavits, the Trial Court granted the Serratos' Rule 4(e)

motion by minute entry dated October 27, 1999, and entered a formal order extending the time to appeal on November 8, 1999.

The Serratos filed their Notice of Appeal on November 2, 1999, and the UTA filed a notice of cross-appeal on November 15, 1999.

III. Statement of Facts Relevant to Cross-Appeal

On or about August 2, 1999, the Court held a hearing on plaintiffs' and defendant's Motion and Cross-motion for Summary Judgment. (R. 316) On or about August 11, 1999, the Serratos' counsel received a proposed Summary Judgment and Order of Dismissal prepared by the UTA. (R. 251, 260) The Serratos' counsel had no objection to the form of the proposed Order.

The Serratos' counsel first learned that their Motion for Summary Judgment was denied and the UTA's Motion for Summary Judgment was granted on August 19, 1999, following a telephone call to the Court Clerk. (R. 255) Plaintiffs' counsel was informed at that time that the Order had not yet been signed and was not yet entered. The Serratos' counsel began to make preparations to file a Notice of Appeal immediately. (R. 259)

On August 23, 1999, the Serratos' counsel received a copy of a cover letter prepared by the UTA's counsel addressed to the trial court stating that they were forwarding "a proposed form of Summary Judgment and Order of Dismissal, for [the

Court's] review and signature." (R. 264) The UTA requested that the trial court sign the Order and enter it with the Court Clerk.

On or about September 1, 1999, the Serratos' counsel received a "Notice of Entry of Summary Judgment and Order of Dismissal" prepared and served by the UTA's counsel. (R. 253, 290) This document, dated August 31, 1999, stated that the Order was signed by this Court on August 26, 1999. (R. 252) The notice made no mention of when the Order was actually entered.

The Serratos' counsel never received any notice from the Court Clerk or any other party that a judgment was entered. (R. 255)

The Serratos' counsel, however, misread the notice and believed that August 31, 1999, was the date that judgment was entered. (R. 290) Plaintiffs' counsel accordingly calendared September 30, 1999, as the final date when a Notice of Appeal could be filed. (R. 290)

On or about September 2, 1999, Serratos' counsel prepared a draft Notice of Appeal which he intended to file. This Notice of Appeal was not filed on September 2, 1999 as appellate co-counsel was out of town. (R. 290)

The Serratos' counsel was fully prepared to file the Notice of Appeal on September 30, 1999, until a phone call to the Court Clerk informed the Serratos' counsel that judgment was entered on August 20, 1999 and not August 31, 1999. (R.

290-91) As it turns out, the clerk's communication was also erroneous. The Order was in fact entered on August 26th.

The Serratos' Notice of Appeal should have been filed on Monday, September 27, 1999. The Serratos filed a motion to extend the time for filing a notice of appeal the very next day, October 1, 1999. (R. 254)

SUMMARY OF ARGUMENT ON CROSS-APPEAL

The Trial Court has broad discretion in determining whether to grant a Rule 4(e) motion to extend the time to appeal, and an appellate court will not reverse the Trial Court's determination unless the lower court's decision was beyond the limits of reasonability. The Trial Court in this case properly found excusable neglect on the part of the Serratos' counsel after considering the factors articulated in the Utah Supreme Court decision in West v. Grand County, 942 P.2d 347 (Utah 1997). Those factors include 1) potential prejudice to opposing party; 2) the length of the delay and its potential impact on judicial proceedings; 4) the reason for delay (including whether or not it was within the control of the moving party); 5) whether the moving party acted in good faith. Moreover, the UTA's reliance on Prowswood, Inc. v. Mountain Fuel Supp. Co, 676 P.2d 952 (Utah 1984) is outdated and misplaced. The Trial Court did not abuse its discretion in granting the Serratos' Rule 4(e) motion in this case.

ARGUMENT ON CROSS-APPEAL

I. The Trial Court Has Broad Discretion With Regard to Rule 4(e) Motions.

Rule 4(e) of the Utah Rules of Appellate Procedure provides in part that "[t]he trial court, upon a showing of excusable nelgect or good cause, may extend the time for filing a notice of appeal." Trial courts have "broad discretion in granting or denying" Rule 4(e) motions to extend the time to appeal. West v. Grand County, 942 P.2d 337, 340 (Utah 1997). This is because questions related to whether "any given set of facts constitutes 'excusable neglect' [or good cause] under appellate rule 4(e) is highly fact dependent," and no rule adequately addressing all potential situations and relevant factors can be spelled out by appellate courts. Id. at 339-40.

Accordingly, the Trial Court's decision granting the Serratos additional time to file their notice of appeal will be reversed only if the Trial Court abused its discretion. See id.; Prowswood, Inc. v. Mountain Fuel Supp. Co, 676 P.2d 952, 959 (Utah 1984). Moreover, this Court has previously asserted that it "will only conclude the trial court abused its discretion if the ruling was 'beyond the limits of reasonability.'" Tolman v. Winchester Hills Water Co., 912 P.2d 457, 462 (Utah App. 1996).

II. The Trial Court Properly Granted the Serratos' Rule 4(e) Motion.

A. The Prowswood case and other cases cited by the UTA are not controlling.

Certainly, in light of the factors enumerated in the West case, the Trial Court's decision to grant the Serratos' Rule 4(e) motion was well within the "limits of

reasonability." On the other hand, the UTA would have this Court dramatically reduce the "broad discretion" enjoyed by Utah's trial courts in addressing Rule 4(e) motions. Wholly ignoring the most recent Utah Supreme Court declarations concerning Appellate Rule 4(e), the UTA relies upon Prowswood and federal cases to limit the granting of extensions in such cases to only the most unique and extraordinary circumstances. This is not the rule in Utah.

Indeed, the UTA's extensive reliance upon the controversial Prowswood case is misplaced for several reasons. For one, the three-to-two majority opinion in Prowswood was based upon a prior rule. See Prowswood, 676 P.2d at 959. Since the Prowswood decision, Rule 4(e) has been implemented, adding "good cause" to "excusable neglect" as an alternative basis for granting an extension of time to file a notice of appeal. See Utah R. App. P. 4(e). Certainly the addition of "good cause" had the effect of softening or ameliorating Prowswood's seemingly draconian effect. The Utah Supreme Court recently declared that '[t]he plain meaning of Utah's rule 4(e) is that 'good cause' is not limited and is an appropriate ground for granting a rule 4(e) extension after the initial thirty-day period." Murphy v. Crosland, 915 P.2d 491, 494 (Utah 1996) (declining to follow the majority rule in federal courts).

More importantly, the Prowswood ruling has been at least implicitly modified by the Utah Supreme Court's recent decision in the West case. 942 P.2d 337. In fact, the

Prowswood decision was not relied upon, nor even cited, by the Supreme Court in West.

In determining whether a party has shown "excusable neglect" for failure to timely file a Notice of Appeal, the Court should make a broad equitable inquiry, balancing the interests of the parties with policies involved. The questions of whether attorney neglect is excusable is an equitable one, and such a determination should take into account all relevant circumstances surrounding the party's neglect. West v. Grand County, 942 P.2d 337, 340 (Utah, 1997) (citing Pioneer Inv. Servs. Co. v. Brunswick Assoc., 507 U.S. 380 (1993)).

B. The West case outlines the relevant factors for a trial court to consider with regard to Rule 4(e) motions.

In 1997, the Utah Supreme Court articulated the factors to be considered: 1) potential prejudice to opposing party; 2) the length of the delay and its potential impact on judicial proceedings; 4) the reason for delay (including whether or not it was within the control of the moving party); 5) whether the moving party acted in good faith. West, 942 P.2d at 340-41. While these factors are not dispositive in determining whether or not there was excusable neglect, they are helpful in determining the equities and whether or not a finding of excusable neglect is warranted. Id. at 340-341. This is the most recent articulatin of the "excusable neglect" standard and is the law on this subject in the state of Utah.

It is interesting to note the factors that were not articulated: The Utah Supreme Court did not list "experience of counsel" as a factor to be considered. Nor did it list knowledge of the court's intention to grant a motion for summary judgment as a factor. Nor was notice of a minute entry a factor to be considered. In fact, notice regarding the Court's ruling is not at all relevant in evaluating the equities at stake here. These are the arguments the UTA has manufactured to attack the Trial Court's decision. According to the Utah Supreme Court, however, these are not relevant facts to be considered in an analysis to determine whether there has been excusable neglect.

In addition, the West Court did not state that the factual circumstances had to be "unique" or "extraordinary" as the UTA has suggested. Case law construing the "unique or extraordinary" test was cited in the earlier case of Prowswood. However, neither Prowswood nor any of the federal cases cited by the UTA on appeal are even cited and relied upon in the more recent case of West. The Utah Supreme Court did not discuss or adopt this harsh standard despite the fact that the West case involved the precise issue presented here: failure to timely file a Notice of Appeal due to attorney's excusable neglect in correctly discerning the date of entry of judgment.

The Court in West was not willing to foreclose the possibility of a finding of excusable neglect concerning facts much more egregious than those presented here. In West, plaintiff's counsel did not learn of the entry of judgment and failed to check periodically with the court clerk as to the status of the judgment resulting in a delay of

nearly two months before a Rule 4(e) motion was filed. West, 942 P.2d at 338-39. Even so, the Supreme Court reversed the trial court's denial of that motion and remanded the case. Id. at 341.

In this case there was no such lack of diligence on the part of the Serratos' counsel. Instead, counsel relied on an erroneous interpretation of the "Notice of Entry of Summary Judgment and Order of Dismissal." When a call was made to the court clerk on September 30, 1999, counsel learned for the first time that judgment had not been entered on August 31, 1999, and was informed that judgment had been entered on August 20, 1999 (which was, ironically, also incorrect information).

Application of the relevant factors from the West case to the facts in this case certainly supports the trial court's ruling granting the Serratos' Rule 4(e) motion. The actual delay was short. Judgment was entered by the clerk on August 26, 1999, and the Serratos' Notice of Appeal was due on Monday, September 27, 1999. The Serratos' counsel miscalendared the deadline for September 30, 1999, and only realized his mistake on the same day. Therefore, only four days elapsed between the actual deadline for filing the Notice of Appeal and the filing of the Rule 4(e) motion.

In addition, UTA failed to articulate to the Trial Court or this Court any potential prejudice it may have suffered because of the delay. The passage of these four days did not cause defendant any prejudice.

Certainly, the delay is so short it will have no impact on judicial proceedings. In the West case, the Court found that it was possible for there to be excusable neglect even in the case of a two-month delay.

The reason for the delay is clearly a mistake on the part of Serratos' counsel in misreading the "Notice of Entry of Summary Judgment and Order of Dismissal" and believing that the operative date was August 31, 1999, rather than August 26, 1999. Even so, the language of the Notice states that the order was signed on August 26, 1999, but the document does not state that the order was entered by the clerk on August 26, 1999. It was resonable for the Serratos' counsel and his staff to believe that the order was not entered the same day it was signed. See Washington Federal Sav. and Loan Ass'n. v. Transamerica Premier Ins. Co. 865 P.2d 1004 (Idaho App. 1993) (holding that "excusable neglect" requires an inquiry into whether the conduct alleged was excusable because a reasonably prudent person might have done the same thing under the same circumstances). It was also reasonable to believe that the Order was entered on the day of the Notice of Entry of Judgment was signed. Soon after receipt of the Notice, the entire file was sent to another attorney's office and Serratos' counsel did not have the opportunity to double check and correct his calendaring error. Unfortunately, the Serratos' counsel relied on the initial misinterpretation of the date judgment was entered and had no reason or to believe that the date calendared was erroneous. In any event, the concept of neglect is not limited to the situations beyond

the control of a party. In re Springfield Contracting Corp. Bkrtcy., 156 B.R. 761 (E.D. Virginia, 1993).

The final factor relevant to this analysis is whether the Serratos' counsel acted in good faith. There are no facts asserted by any party that suggest the Serratos' counsel did not act in good faith. The neglect by the Serratos' counsel surely did not give the Serratos any unfair advantage, nor was there any other incentive for delaying the filing of the Notice of Appeal. The Serratos and their counsel always had the intent to, and were otherwise prepared to, timely file the Notice of Appeal, but they were waiting to confer with appellate counsel to ensure that the Notice was properly worded. The Serratos' counsel honestly believed that the date judgment was entered was August 31, 1999. This mistake by counsel does not suggest or imply any bad faith.

Several factually similar cases support a finding of excusable neglect or good cause in this case. See, e.g., United States v. Brown, 133 F.3d 993 (7th Cir. 1998) (wherein counsel filed the notice of appeal one day late under the mistaken belief that weekends and holidays tolled the applicable time period); Blissett v. Casey, 969 F. Supp. 118 (S.D.N.Y. 1997) (wherein attorney miscalculated date for filing and service, but delay was only ten days); Natural Father v. Tolbert, 170 F.R.D. 107 (S.D.N.Y. 1997); United States v. Gibson, 832 F. Supp. 324 (U.S. Kan. 1993).

After analysis of this factual scenario under the guidelines dictated by the Utah Supreme Court, it is overwhelmingly evident that there has been excusable neglect in

this case. In addition, or in the alternative, the facts demonstrate "good cause" for allowing the time to be extended. See Otteson v. State, 945 P.2d 170, 172 (Utah App. 1997) (indicating that an appellate court "may affirm trial court decisions on any proper grounds").

The Trial Court agreed with the Serratos and granted an extension of time to file the Notice of Appeal. The Trial Court's decision was well within the scope of its discretion, and was by no means "beyond the limits of reasonability."

CONCLUSION ON CROSS-APPEAL

On the basis of the foregoing arguments and analysis, this Court should affirm the Trial Court's decision granting the Serratos additional time to file their Notice of Appeal.

ARGUMENT OF REPLY BRIEF

I. Utah Appellate Courts Have Made Exceptions to the General Rule of Strict Compliance with Regard to Notice of Claim Filings.

Not surprisingly, the UTA asserts that any notice of claim not actually served on the UTA's Board of Directors is inadequate and fails to strictly comply with section 63-30-13 of the Utah Code, as that statute existed at the time the notice was presented in this case. While the Serratos admit that they did not actually serve the notice of claim upon the UTA's Board of Directors, they strongly assert that serving the notice of

claim on the UTA's Risk Manager and Claims Administrator satisfied the statutory requirements for filing a notice of claim with a political subdivision of the State.

The UTA would have this Court conclude that absent "strict compliance" with the notice of claim provisions of the Governmental Immunity Act, a Plaintiff's claims must be barred. Nevertheless, exceptions to this rule have been made and justified by Utah's appellate courts. Indeed, the UTA glosses over the principles established in the Larson and Bischel cases, suggesting that those cases have little or no precedential value. See Larson v.Park City Mun.Corp., 955 P.2d 343 (Utah 1998); Bischel v. Merritt, 907 P.2d 275 (Utah App. 1995). Both of those cases validated a notice of claim filed upon someone other than the "governing body" of the respective political subdivisions involved. While both of those prior cases turned upon unique factual scenarios, this case also involves a unique set of facts that justify the Serratos' determination of how to serve a notice of claim upon the UTA.

Moreover, the UTA repeatedly cites cases for the proposition that "actual notice" does not satisfy the requirement that a notice of claim be filed. The Serratos do not dispute this proposition. Nevertheless, a notice of claim was filed in this case, albeit not with the actual UTA Board of Directors. The Serratos have never relied upon an "actual notice" argument to justify their actions; accordingly, the UTA's strong reliance upon such cases is misplaced.

II. The Notice of Claim Statutes Do Not Identify the Board of Directors as the Governing Body of the UTA, Nor Do They Identify How to Serve the Board.

While the UTA presumptively concludes that "it is not difficult to identify and serve a notice of claim on the UTA's governing body," see Appellee's Brief at 14, the Serratos vehemently disagree. The Utah Supreme Court would seem to agree, having previously expressed concern that, "[u]nfortunately, the term 'governing body' is not defined within the Act itself," and expressing further concerns that none of the statutes stated how or in what manner a notice of claim should be filed with the governing body in that case. Larson, 955 P.2d at 345. See also Bischel, 907 P.2d at 278 (wherein the Court of Appeals was similarly concerned that "the statute is generally silent about how notice should be filed with the governing body").

In fact nowhere is the term "governing body" statutorily defined with respect to the UTA. And while it may be obvious to the UTA and its legal counsel that the Board of Directors is that governing body, it is not necessarily common public knowledge that the UTA even has a Board of Directors, let alone how to serve a notice of claim properly upon the Board of Directors. In light of this, the UTA's express assertion that sections 63-30-11 and -13, as enacted at the time, are "plain and unambiguous" is disingenuous at best.

Fortunately, Utah's legislature has somewhat alleviated the previously prevailing confusion by amending the notice of claim statutes so that the Act now states that a

notice of claim "shall be directed and delivered to . . . the president or secretary of the board, when the claim is against a special district." Utah Code Ann. § 63-30-11(3)(b) (as amended in 1998). Unfortunately, the Act was not so clear when the Serratos filed their notice of claim in this case.

III. The Bellonio Case Has Little Application to the Facts of this Case.

Moreover, the UTA's attempt to establish the Bellonio case as "the controlling case with respect to the Serratos' claims" is a bit puzzling. The facts and legal arguments in that case only loosely and incompletely approximate the situation occuring with the Serratos. See Bellonio v. Salt Lake City Corp., 911 P.2d 1294 (Utah App. 1996). The claimant in Bellonio made no reasonable attempt to determine how to serve Salt Lake City--the political subdivision involved in that case. Instead, the claimant attempted simply to serve a number of individuals who may have had some connection with the Salt Lake City airport. See id. at 1295-96. In addition, the claimant argued "that constructive notice to the governmental entity, coupled with substantial compliance with respect to the form of the notice, is sufficient." Id. at 1296 (emphasis added). These are not the Serratos' arguments.[1]

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[1] In fact, the continued vitality of the strict Bellonio ruling must be questioned in light of the Supreme Court's more recent ruling in the Larson case, where the Court validated filing a notice of claim upon someone other than the actual governing body while relying upon Rule 4 of the Utah Rules of Civil Procedure rather than upon any statute. See 955 P.2d at 345-46.

IV. The Principles Established in Larson and Bischel Apply to the Serratos.

The Serratos instead argue that, in light of the statutes' general silence concerning who is the UTA's governing body or how and in what manner to serve that governing body, the Serratos' notice of claim filed with both the UTA's Risk Manager and Claims Administrator satisfied the requirements of the statutory scheme inasmuch as the purposes underlying the notice of claim requirement have been met and additional factors unique to this case would appear to justify the Serratos' decision of whom to serve with the notice.

These are precisely the same arguments that persuaded the Larson court and Bischel court to validate actual service upon someone other than the actual governing body of a political subdivision. Even so, the UTA has attempted to distinguish these two cases from the Serratos' situation. Of course, in light of the factual underpinnings unique to each of these cases, pointing out differences is not difficult. On the other hand, the principles established in Larson and Bischel do apply to the Serratos' case, especially when viewing all facts and inferences in the Serratos' favor, as is generally required of an appellate court when reviewing a grant of summary judgment. See Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827, 831 (Utah App. 1989).

Certainly, Larson and Bischel suggest the type of unique factual situations that would lead a court to validate a seemingly misfiled notice of claim, but not the only

situations. In any event, the Serratos' situation involves factual elements similar to both cases!

As was the case in Larson, the Serratos filed their notice with individuals who do enjoy a significant relationship with the UTA's Board of Directors, not from actual physical contact with the Board, but in light of the substantial responsibilities delegated by the Board to the UTA's Office of Risk Management for investigating, negotiating and handling claims against the UTA. Admittedly, the UTA's Risk Manager and Claims Administrator do not have a statutorily based relationship with the Board as does a city recorder with a city council, cf. Larson, 955 P.2d at 346; nevertheless, this relationship within the UTA is much more closely associated with the actual claims process than any relationship between city recorder and city council. In light of the facts favoring the Serratos, Mr. Cain and Mr. Pitcher could be deemed agents of the Board with respect to the claims process.

In addition, the facts favoring the Serratos indicate that someone in the UTA office who apparently purported to have knowledge of the notice of claims process directed one of Serratos' attorneys by telephone to file the notice with Mr. Cain. Similarly, in Bischel, the claimant's attorney was instructed by a Salt Lake County employee to serve the individual actually served in that case. See 907 P.2d at 278-79. The Bischel court considered this factor extremely relevant, while commenting the

"public deserves more consistent, more credible treatment from its servants." Id. at 279.

This factor should not be lightly disregarded as the UTA would have the Court do. Certainly, the UTA should not be allowed to profit from its employees disseminating misinformation concerning who is authorized to receive a notice of claim. It is anticipated that an amicus brief will be filed in this matter by Teresa Greene, whose attorney in another Third District Court case against the UTA (civil no. 990910753) claims to have been verbally instructed by Mr. David Pitcher to deliver the notice of claim to him, Pitcher. The attorney, having done so, was informed more than one month later by Pitcher, but just a few days after the one-year time period had elapsed, that the notice of claim was improperly filed and Ms. Greene's claims were barred.

Accordingly, when viewing the facts and inferences in favor of the Serratos, those facts and inferences support the validation of their efforts to properly file a notice of claim with the UTA. Just as occurred in the Larson and Bischel cases, this Court should rule that the Serratos' Notice of Claim was properly filed with the UTA, through agents of the Board of Directors.

V. Because the Serratos Timely Filed a Notice of Claim and Timely Filed Their Complaint, Utah's Savings Statute Should Apply to Allow Refiling.

While the UTA cites a multitude of cases to dispute the Serratos' analysis of section 78-12-40 of the Utah Code, none of those cases are dispositive of the issue involved and are cited for the dicta they contain. The one-year period may operate as a statute of limitations to bar claims when the notice of claim is not timely served. However, a notice of claim was served within one year after the claim arose by the Serratos in this case. If that notice is somehow procedurally defective, section 78-12-40 should operate to allow the Serratos to refile the notice of claim and to refile their lawsuit, both of which were done in timely fashion pursuant to the applicable statutes.

Thus, the arguments made in the Serratos' initial brief are valid.

CONCLUSION

On the basis of the arguments and analysis contained in the Brief of Appellant and this Reply Brief, the Serratos respectfully request that the Court of Appeals reverse the Trial Court's order granting summary judgment in favor of the UTA and Mr. Sargent and denying the Serratos' motion for summary judgment. In addition, the Serratos request that the Summary Judgment and Order of Dismissal be vacated and that the case be remanded to the Trial Court for further proceedings. In the alternative,

the Serratos request that this Court rule that they be allowed to refile the notice of claim with the UTA and refile the Complaint in accordance with Utah's savings statute.

DATED this 27th day of July, 2000.

BERTCH & BIRCH

G. ERIC NIELSON
MELINDA DAVIS NOKES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July, 2000, I caused to be mailed by U.S. mail, postage prepaid, two true and correct copies of the foregoing **COMBINED REPLY BRIEF AND BRIEF OF CROSS-APPELLEES** to the following:

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