

2003

Glade Leon Parduhn v. Natalie Buchi, Allison Buchi, Annabelle Buchi, Lance Buchi and Jessica Buchi (the "Buchi Children") and Joanne Buchi :
Brief of Appellee

Utah Supreme Court

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Martin S. Tanner; Howe and Tanner; Dunn and Dunn; Susan B. Dunn; Tim Dalton Dunn; Attorneys for Appellee.

Fishburn and Associates; P. Bryan Fishburn; Nanci Bockelie; Attorneys for Appellant.

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BRIEF OF THE APPELLEES (THE BUCHI CHILDREN)

Case No. 2003-0551-SC

Argument Priority 15

Third District Civil No. 03-050-0159-MI

Martin S. Tanner, 4419
HOWE & TANNER
 c/o American Pension Services
 11027 South State Street
 Sandy, UT 84070
 Telephone: (801) 557-0019
 Facsimile: (801) 571-4226
 E-mail mtanner47@msn.com

Defendants/Counterclaimants and Appellees
**Allison Buchi, Natalie Buchi, Annabelle Buchi,
 Lance Buchi and Jessica Buchi** (“Buchi Children”)

Susan B. Dunn, 3784
Tim Dalton Dunn, 0936
DUNN & DUNN
Midtown Plaza, Suite 460
230 South 500 East
Salt Lake City, UT 84102
Telephone: (801) 521-6666
Fax: (801) 521-9998
Attorneys for Defendant/Appellee **Joanne Buchi**

ALONE
THE COURT

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[illegible]

Susan B. Dunn, 3784
Tim Dalton Dunn, 0936
DUNN & DUNN
Midtown Plaza, Suite 460
230 South 500 East
Salt Lake City, UT 84102
Telephone: (801) 521-6666
Fax: (801) 521-9998
Attorneys for Defendant/App

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PARTIES

1. Plaintiff/Counterdefendant/Appellant: Glade Leon Parduhn
(Partner of Brad Buchi, deceased)
2. Proposed Intervenor/Appellant: University Texaco Partnership
3. Defendants/Counterclaimants/Appellees: Natalie Buchi, Allison Buchi, Annabelle Buchi, Lance Buchi and Jessica Buchi
(Children of Brad Buchi, deceased)
4. Defendants/Counterclaimants/Appellees: Joanne Buchi
(Widow of Brad Buchi, deceased)

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ISSUES FOR REVIEW

1. Whether the trial court correctly concluded that University Texaco Partnership was not the owner of the insurance policy?
2. Whether the trial court ordered distribution of the insurance proceeds in an equitable manner?

STATUTES & RULES

1. Utah Insurance Code:

Utah Code Ann. Section 31A-22-413(1)(b). [N]o life insurance policy . . . may restrict the right of a policyholder . . . if the designation of beneficiary is not explicitly irrevocable, to *change the beneficiary*. . . . Subsection 75-6-201(1)(c) applies to *designations by . . . separate writing*.
(Emphasis added) , 13, 15, 16

2. Utah Uniform Probate Code:

Utah Code Ann., Section 75-6-201. Provisions for payment or transfer at death. (1) Any of the following provisions in . . . any . . . written instrument effective as a contract . . . are considered *nontestamentary*, and this code does *not* invalidate the instrument or any provision:

(a) that *money* . . . controlled, or owned by a decedent *shall be paid after his death to a person designated* by the decedent in . . . a *separate writing* . . . ;

.

(c) that any property which is the subject of the instrument *shall pass* to a person *designated* by the decedent in either the instrument or a *separate writing*

.

Editorial Board Comment: The sole purpose of this section is to eliminate the testamentary characterization from the arrangements falling within the terms of the section. It *does not invalidate other arrangements by negative implication*. (Emphasis added). 16

STATEMENT OF THE CASE

This is a dispute over who should be awarded \$300,000 in life insurance proceeds paid on the death of Brad Buchi.

In its September 6, 2002 decision, this court determined that, “Parduhn lacked an insurable interest under Section 31A-21-104(1)(b), and may “not knowingly procure . . . an interest in the proceeds of [the] insurance policy.” (*Parduhn v. Buchi*, et al., 2002 UT 93, p. 6, para. 16). In its September 6, 2002 decision, this court also determined that University Texaco partnership was “dissolved . . . prior to [Parduhn’s partner] Buchi’s death” (*Parduhn v. Buchi*, et al., 2002 UT 93, p. 3, para. 8).

In its September 6, 2002 decision, this court remanded for remanded for one limited purpose, “for the trial court to equitably distribute the insurance proceeds pursuant to Utah Code Ann. Section 31A-21-104(5).” (*Parduhn v. Buchi*, et al., 2002 UT 93, p. 7, para. 17).

After motions by Parduhn and a motion to intervene were filed by University Texaco partnership, the trial court held a hearing and issued a May 13, 2003 *Ruling and Order* denying the motion to intervene, resolving the other motions filed by Parduhn and doing as this court directed, equitably distributing the insurance proceeds.

The trial court determined that the insurance should equitably be distributed to Buchi’s widow and children, and equitably, Parduhn was entitled to the policy on his life and the assets of University Texaco partnership. (May 13, 2003 *Ruling and Order*). The trial court made this determination because the record demonstrated that University Texaco did not own the insurance policy the proceeds of which could therefore not legally be awarded to University Texaco. The salient facts as to

ownership were as follows:

1. Although the premiums were paid from a University Texaco checking account, that account was used to pay the personal obligations of Parduhn and Buchi, such as their truck payments, house payments and various other personal obligations.
2. The owner listed on the policy itself was not University Texaco, but Parduhn, who lacks an insurable interest.
3. The purpose listed on the policy for the policy was the buy/sell agreement.
4. Buchi's former wife Lissa Buchi's uncontroverted testimony at trial was that the policy was purchased to benefit Buchi's wife and children at her instigation and suggestion.
5. The insurance policy was never listed at any time as an asset of University Texaco Partnership, either in the documents of sale to Blackett Oil, on its balance sheet, for tax purposes or in any other manner.

The trial court determined that Parduhn should be awarded all the assets of University Texaco and the additional insurance policy on his life, just as specified by the partners in their partnership agreement. This was fair and equitable.

However, apparently wanting both the partnership and the insurance proceeds, Parduhn and University Texaco partnership filed this second appeal on many more issues than the sole purpose for which the case was remanded, namely, equitable distribution of the insurance proceeds.

MATERIAL FACTS

1. Glade Parduhn and Brad Buchi (deceased) entered into a written partnership agreement dated May 23, 1979. **Addendum to Appellant's Brief, Tab 11,p4; R.1620, pp. 20-21.**

2. The Agreement had a "key Man" life insurance provision. **Addendum to Appellant's Brief, Tab 9,p4.**

3. "Key Man" life insurance is defined as follows: "Type of **insurance coverage purchased** by companies to protect them on the death or disability of a valued employee or by **partnership to provide for funds with which to buy out the interest of such partner on his death or disability.**" (Black's Law Dictionary, 5th Ed., p. 781) (Emphasis added).

4. The "Key Man" provision of the partnership agreement provides as follows:

[I]n the event of the death of either of the partners, Brad K. Buchi or Glade Parduhn, . . . ***the partnership will end***, and all obligations to the deceased's survivors financially will be released by paying off the deceased persons [sic] survivors. Both partners are insured for **\$20,000** and ***all of which will go to the deceased persons wife or survivors.*** When the survivors receive their **\$20,000**, ***they release the other partner*** of any obligation in the business. ***The surviving partner will own the business*** and may do with the business as he see's [sic] fit. (Emphasis added).

5. As their business grew, Parduhn and Brad Buchi decided to increase their life insurance. On January 25, 1984, they amended the partnership agreement to provide for \$100,000 coverage on each. The ***intent*** of Mr. Buchi and Mr. Parduhn that the deceased partner's wife and children would be entitled to the entire proceeds of the policy was reinforced when they wrote a small memorandum that states, "In the event of a death of either partner the remaining partner ***shall pay*** \$100,000 to the survivors of the deceased ***with the proceeds of the \$100,000 insurance policy which***

each own on each other. Addendum to Appellant's Brief, Tab 12.

6. The business of Brad Buchi and Parduhn continued to grow. In 1989, Brad Buchi's wife Lisa Buchi thought the partnership needed more insurance so that if anything happened to her husband, the Buchi family would be taken care of. **R.1620, p.102.**

7. As a result, the life insurance coverage was increased to \$300,000 on the life of Brad Buchi and \$250,000 on the life of Parduhn. This was done at the by the prompting of Buchi's then wife Lissa Buchi, who in uncontroverted testimony stated she wanted more insurance coverage for her family if something should happen to her husband, she called the insurance agent and set up the meeting where the policy was purchased. **R.1620, p.102-106.**

8. The intent was that Brad Buchi's wife and five children would receive \$300,000 if he were to pass away, and that Parduhn's wife Nedra would receive \$250,000 if he were to pass away. **R.1620, p.102-106.**

9. This purpose was reinforced by the language in the insurance policy application wherein Glade Parduhn indicated the "**purpose of the insurance and nature of Owner's insurable interest**" was to fund the "**Buy sell/partner[ship]**" agreement. **Addendum to Appellant's Brief, Tab 13, "Application" pg.2, line 31f.**

10. Although the premiums were paid out of the partnership checking account, the partners routinely paid personal debts out of that same account, such as house payments, car payments and other personal obligations. **R.1620, p.47.**

11. A few days prior to August 8, 1997, Brad Buchi died. **R.1620, p.57.**

12. At the time of his death, Mr. Buchi and Mr. Parduhn had already entered into an

agreement to sell the assets of their partnership. The sale closed July 14, 1997. **R.1620, p.32.**

13. It was proffered and uncontroverted in the remand hearing before Judge Lubeck that the insurance policy was never listed in the sale of assets to Blackett Oil as an included or excluded asset, and never listed as an asset of the partnership at any time on its balance sheet, for tax purposes or in any other manner. **Addendum to Appellant' s Brief, Tab 7, "May 14, 2003 Ruling and Order" pgs.10-11.**

14. The trial court determined that Parduhn should be awarded all the assets of University Texaco and the additional insurance policy on his life, just as specified by the partners in their partnership agreement. This was fair and equitable. **Addendum to Appellant's Brief, Tab 7, "May 14, 2003 Ruling and Order" pgs.10-11.**

However, apparently wanting both the partnership and the insurance proceeds, Parduhn and University Texaco partnership filed this second appeal on many more issues than the sole purpose for which the case was remanded, namely, equitable distribution of the insurance proceeds.

SUMMARY OF ARGUMENT

1. The trial court's distribution of insurance proceeds was equitable, as directed by this court, was well reasoned, and supported by law and the facts.
2. Neither Parduhn nor University Texaco had an insurable interest in the life of Brad Buchi at the time of his death and thus neither may legally obtain the insurance proceeds.
3. Without an insurable interest in the life of Brad Buchi at the time of his death, and lacking an equitable basis for disposition to it, University Texaco's motion to intervene was properly denied.
4. Since this court remanded for one purpose only, equitable distribution of the insurance proceeds by the trial court, all other purported grounds for appeal are irrelevant and should not be considered.
5. Parduhn and University Texaco have failed to marshal all evidence which supported the trial court's decision and then show that evidence was insufficient to support the trial court's decision.

ARGUMENT

A trial court's findings should not be disturbed on appeal where an appellant does not demonstrate they are legally insufficient and does not cite to the record of the trial court to demonstrate error. Burns v. Summerhays, 927 P.2d 197, 198 (Utah 1989). An appellant must properly cite to the record, not fail to provide it or obfuscate it. *See, generally*, Commercial Union Associates v. Clayton, 863 P.2d 29 (Utah App. 1993).

I. THE TRIAL COURT'S DISTRIBUTION OF INSURANCE PROCEEDS WAS EQUITABLE, AS DIRECTED BY THIS COURT, WAS WELL REASONED, AND SUPPORTED BY LAW AND THE FACTS.

This court remanded for **one** limited purpose, "for the trial court to equitably distribute the insurance proceeds pursuant to Utah Code Ann. Section 31A-21-104(5)." (Parduhn v. Buchi, et al., 2002 UT 93, p. 7, para. 17). The trial court in a meticulous and well thought-out opinion did precisely that.

First, the trial court determined that University Texaco was not the owner of the insurance policy for many reasons: Although the premiums were paid from a University Texaco checking account, that account was used to pay the personal obligations of Parduhn and Buchi, such as their truck payments, house payments and various other personal obligations. The owner listed on the policy itself was not University Texaco, but Parduhn, who lacks an insurable interest. The purpose listed on the policy for the policy was the buy/sell agreement. Buchi's former wife Lissa Buchi's uncontroverted testimony at trial was that the policy was purchased to benefit Buchi's wife and children at her instigation and suggestion. The insurance policy was never listed at any time as an asset of University Texaco Partnership, either in the documents of sale to Blackett Oil, on its balance

sheet, for tax purposes or in any other manner. These facts all militate against ownership of the policy by the partnership. The decision by the trial court that the policy was not owned by University Texaco partnership was supported by the facts, not clearly erroneous and should be given great deference.

After that determination, the court carefully considered whether Buchi's widow and children, the closest possible relatives, had a greater equitable interest in the proceeds than Parduhn, merely a former business partner, and University Texaco, a dissolved partnership which had sold substantially all its assets. The trial court concluded for many reasons, including the most obvious one, that Brad Buchi's widow and children lost more when he died due to their closer relationship as spouse and children, that they had a far more equitable interest in the proceeds. (*See generally, Judge Lubeck's May 14, 2003 Ruling and Order* pp. 7-11, Section II, **Addendum to Appellants's Brief, Tab 7**).

Judge Lubeck carefully considered the law and facts in making his decision, which must not be disturbed. "This court will disturb the findings of fact in equity cases only where the evidence clearly preponderates against them." *Baker v. Patted*, 684 P.2d 632, 634 (Utah 1984). Because of the trial court's "advantaged position" this court gives "considerable deference to [the trial court's] findings and judgment." (*Id.*; *see also, Christensen v. Abbott*, 671 P.2d 121, 123 (Utah 1983); *Dang v. Cox Corp.*, 655 P.2d 658, 660 (Utah 1982).

Here, the trial court found ample evidence which preponderated in favor of distributing the insurance proceeds to the widow and children on an equitable basis, just as this court directed in its September 6, 2002 remand opinion. Hence, summary disposition of the appeal is appropriate under Rule 10, Utah Rules of Appellate Procedure.

II. NEITHER PARDUHN NOR UNIVERSITY TEXACO HAD AN INSURABLE INTEREST IN THE LIFE OF BRAD BUCHI AT THE TIME OF HIS DEATH AND THUS NEITHER MAY LEGALLY OBTAIN THE INSURANCE PROCEEDS.

The decision of this court which ended the first appeal in this action determined that, “Parduhn lacked an insurable interest under Section 31A-21-104(1)(b), and may “not knowingly procure . . . an interest in the proceeds of [the] insurance policy.” (*Parduhn v. Buchi*, et al., 2002 UT 93, p. 6, para. 16). Since he is unable to knowingly procure the proceeds (as this court has determined) Parduhn apparently hopes to knowingly procure them indirectly through the intervention of the now defunct partnership which this court determined was “dissolved . . . prior to [his partner] Buchi’s death” (*Parduhn v. Buchi*, et al., 2002 UT 93, p. 3, para. 8). Parduhn cannot obtain the insurance proceeds indirectly through University Texaco partner[ship] when he is statutorily and by this court’s decision prohibited from doing so directly.

Further, and perhaps even more importantly, if Parduhn had no insurable interest in Buchi’s life after the partnership had been dissolved, the partnership itself after dissolution, no longer had an insurable interest in Buchi’s life at the time of his death. Section 31A-21-104, Utah Code Ann. thus prevents both Parduhn and University Texaco partnership from obtaining the insurance proceeds.

III. WITHOUT AN INSURABLE INTEREST IN THE LIFE OF BRAD BUCHI AT THE TIME OF HIS DEATH, AND LACKING AN EQUITABLE BASIS FOR DISPOSITION TO IT, UNIVERSITY TEXACO’S MOTION TO INTERVENE WAS PROPERTY DENIED.

Without an insurable interest in the life at Brad Buchi’s life at the time Buchi died, and without any other equitable basis superior to that of the Buchi Children and widow, University Texaco’s motion to intervene was properly denied. A trial court’s determination regarding joinder of parties should not be disturbed absent a clear abuse of discretion, State By and Through Utah State Dept.

of Social Services v. Psychic, 924 P.2d 882, 887 (Utah 1996), especially where, as here, a party's cause of action is statutorily prohibited. Summary disposition is appropriate because Section 31A-21-104, Utah Code Ann., prohibits both Parduhn and University Texaco from obtaining an interest in the insurance proceeds, as they had no insurable interest when Mr. Buchi died.

IV. SINCE THIS COURT REMANDED FOR ONE PURPOSE ONLY, EQUITABLE DISTRIBUTION OF THE INSURANCE PROCEEDS BY THE TRIAL COURT, ALL OTHER PURPORTED GROUNDS FOR APPEAL ARE IRRELEVANT AND SHOULD NOT BE CONSIDERED.

Parduhn's appeal goes way beyond whether the trial court equitably distributed the proceeds, which was the only issue for which this case was remanded. If the trial court had granted the relief now sought by Parduhn, it would have acted beyond the limited and sole scope of the remand proceedings, to equitably distribute the proceeds.

In another case on appeal for the second time, this court determined the trial court had acted beyond the limited scope of authority granted to it on remand, which was for the sole purpose of determining attorneys' fees. *Cabrera v. Cottrell*, 694 P.2d 622, 624 (Utah 1985). Parduhn's purported grounds for appeal to the extent they seek review of more than the limited question of whether the trial court equitably distributed the insurance proceeds, are irrelevant and should not be considered. However, because they have been raised, the Buchi Children respond to the issues raised by Parduhn and University Texaco as follows:

Parduhn's claims it was error for the trial court to not have granted his October 2001 summary judgment motion. This claim can only succeed if there were no disputed material facts and only one legal conclusion could be drawn from those undisputed facts. **Rule 56(c), Utah Rules of Civil Procedure.**

There was a sworn statement from Brad Buchi's widow that the insurance policy in question

was intended for Brad Buchi's family, not for Parduhn. **R.521, paragraphs 12-13.** This alone is enough to thwart Parduhn's summary judgment motion. **Webster v. Sill**, 675 P.2d 1170 (Utah 1983) Also, the trial court properly determined that it was contested "whether the partnership was dissolved by the sale of the two service stations to Blackett Oil or the death of Brad Buchi" **R.1107.**

The court determined that "even it is assumed the partners were in the process of dissolution, there are disputed issues regarding whether the partnership agreement and its buy-sell provision remained in full force and effect. Accordingly, Plaintiff's Motion for Summary Judgment is denied." **R.1108.** The court ruled correctly. In **Jackson v. Dabney**, this court determined that even if the facts set forth in the motion for summary judgment were not contested, as they were here, summary judgment is still inappropriate if reasonable minds could differ on the legal conclusions to be drawn from those facts. **645 P.2d 613, 614-15 (Utah 1982).** Stated another way, summary judgment is properly granted only when no genuine dispute exists as to material facts, *only* one legal inference or conclusion can be drawn from those undisputed material facts, and the moving party is entitled to judgment as a matter of law. **Prichard v. State**, 788 P.2d 1178, 1184 (Ariz. 1990) (*en banc*).

Parduhn argued that sale of the gas stations amount to a dissolution, but now argues to the contrary due to his lack of an insurable interest.

V. PARDUHN AND UNIVERSITY TEXACO HAVE FAILED TO MARSHAL ALL EVIDENCE WHICH SUPPORTED THE TRIAL COURTS DECISION AND THEN SHOW THAT EVIDENCE WAS INSUFFICIENT TO SUPPORT THE TRIAL COURT'S DECISION.

When challenging a trial court's decision, the appellant must marshal all the evidence supporting the trial court's findings of fact and then show that evidence to be legally insufficient to support its conclusions of law. **See, e.g., Breinholt v. Breinholt**, 905 P.2d 877 (Utah App. 1995).

Parduhn and University Texaco have failed to marshal all the evidence supporting the trial court's findings of fact and failed to show that evidence is legally insufficient to support the trial court's conclusions of law and decision.

No evidence was presented at trial that Brad Buchi and Parduhn intended that if Buchi died, Parduhn would be entitled to the insurance proceeds. **R.1455.**

If Parduhn, in addition to the partnership assets were entitled to the proceeds of the policy on Brad Buchi's life, Parduhn would receive a double recovery in the form of both the insurance proceeds and Brad Buchi's half of the partnership. There is no factual evidence or basis for a legal conclusion Parduhn should retain his interest in the partnership and also obtain the insurance proceeds on Brad Buchi's death.

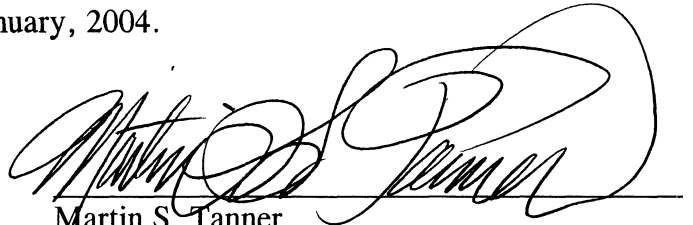
Parduhn fails to meet his burden marshal all evidence supporting the trial courts decision, then show such evidence is legally insufficient to support that decision.

CONCLUSION

Parduhn's and University Texaco's appeal should not succeed for five primary reasons. First, the trial court's distribution of insurance proceeds was equitable, as directed by this court, was well reasoned, and supported by law and the facts. Second, neither Parduhn nor University Texaco had an insurable interest in the life of Brad Buchi at the time of his death and thus neither may legally obtain the insurance proceeds. Third, without an insurable interest in the life of Brad Buchi at the time of his death, and lacking an equitable basis for disposition to it, University Texaco's motion to intervene was property denied. Fourth, since this court remanded for one purpose only, equitable distribution of the insurance proceeds by the trial court, all other purported grounds for appeal are

irrelevant and should not be considered. Fifth, Parduhn and University Texaco have failed to marshal all evidence which supported the trial courts decision and then show that evidence was insufficient to support the trial court's decision.

DATED this 26th day of January, 2004.

A handwritten signature in black ink, appearing to read "Martin S. Tanner", written over a horizontal line.

Martin S. Tanner

HOWE & TANNER

Attorneys for Allison Buchi, Natalie Buchi,
Annabelle Buchi, Lance Buchi & Jessica Buchi

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CERTIFICATE OF HAND-DELIVERY

I certify that I hand-delivered a true and correct copy of the foregoing **BRIEF OF THE APPELLEES (THE BUCHI CHILDREN)**, on the 26th day of January, 2004, to the following:

P. Bryan Fishburn, Esq.
FISHBURN & ASSOCIATES, P.C.
4505 South Wasatch Blvd., Suite 215
Salt Lake City, UT 84124
Telephone: (801) 277-3515
Fax: (801) 277-0333

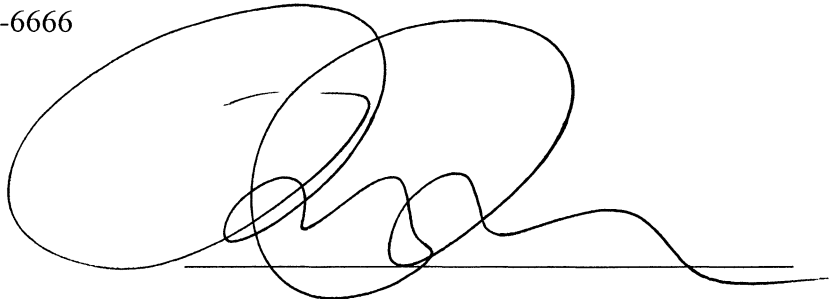
Attorneys for Appellant/Plaintiff and
Counter-defendant Glade Leon Parduhn

Nanci Snow Bockelie, Esq.
BOCKELIE LAW OFFICE, L.C.
261 East 300 South, Suite 300
Salt Lake City, UT 84111
Telephone: (801) 536-5200
Fax: (801) 532-1597

Attorneys for Proposed Intervenor
and Appellant University Texaco

Susan Black Dunn, Esq.
Tim Dalton Dunn, Esq.
DUNN & DUNN, P.C.
460 Midtown Plaza
230 South 500 East
Salt Lake City, UT 84102
Telephone: (801) 521-6666
Fax: (801) 521-9998

Attorneys for Appellee/ Defendant and
Counter-claimant Joanne Buchi

A large, stylized handwritten signature in black ink, likely belonging to Tim Dalton Dunn, is written over a horizontal line. The signature is highly cursive and loops around itself.