

1990

Lon S. Nield v. David R. Bateman : Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS
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IN THE UTAH COURT OF APPEALS

LON S. NIELD, et al.,)	
)	
Plaintiffs,)	
)	No. 900187-CA
vs.)	
)	
DAVID R. BATEMAN in his)	Priority No. 16
capacity as Sheriff of)	
Utah County, Utah; et al.,)	
)	
Defendants.)	

BRIEF OF RESPONDENTS

APPEAL FROM FINAL JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, BEFORE THE HONORABLE BOYD L. PARK

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JURISDICTION OF THE APPELLATE COURT

Respondents brought this action to enjoin appellants' attempt to foreclose on respondents' homes to satisfy purported judgment liens. Partial summary judgment was entered by the trial court in favor of respondents and certified pursuant to Rule 54(b) of the Utah Rules of Civil Procedure as being a final judgment on October 25, 1989. [R. 626-28.] On December 22, 1989, the trial court extended the time for appeal. [R. 639.] On January 2, 1990, appellants initiated this appeal before this Court. [R. 645.] The appeal was transferred to the Supreme Court, pursuant to Rule 4C of the Rules of the Utah Court of Appeals [R. 650], and thereafter reassigned to this Court.

ISSUES PRESENTED FOR REVIEW

Appellants' brief suggests that the following issues are raised on appeal:

1. Do appellants possess valid judgments giving rise to judgment liens? This question appears to be an issue of law, reviewable by this Court without substantial deference to the trial court's findings.

2. Do appellants possess final judgments giving rise to judgment liens and allowing appellants to execute on those judgments? This is an issue of law in which the trial court's conclusions are not granted special deference.

3. Was evidence submitted by respondents properly considered by the trial court in granting respondents' summary judgment motion? The trial court's consideration of evidence was within the discretion of the court and is, thus, reviewable under a standard of abuse of discretion.

DETERMINATIVE AUTHORITY

This case should be governed by the court's opinion in Demetropoulos v. Vreeken, 754 P.2d 960 (Utah Ct. App.), cert. denied, 765).2d 1278 (1988), and by Rule 54(b) of the Utah Rules of Civil Procedure, which provides:

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

STATEMENT OF THE CASE

Appellants B. J. Rone ("Rone"), Ronald A. Bieber ("Bieber"), and James A. Gregg ("Gregg") were defrauded of investments that they apparently made with Fred and Kurt Vreeken. [Appellants' Brief at 4-5.] Rone, Gregg and Bieber have sought to satisfy default judgments in their favor based on that fraud by foreclosing on the homes of respondents Lon S. and Patricia L. Nield (the "Nields") and V. Mark and Nancy Peterson (the "Petersons"). Appellants base their attempted foreclosure on the theory that some entity controlled by the Vreekens once owned the Nield and Peterson homes, and the homes are, therefore, subject to appellants' judgment liens. It is uncontested that the Nields and Petersons had no involvement in appellants' dealings with the Vreekens, and that the Nields' and Petersons' only connection with this dispute is the fact that the Nields and Petersons purchased homes which appellants now believe were once owned by an entity related to the Vreekens. The Nields and Petersons brought this action to enjoin appellants' foreclosure.

In 1983, Rone, Gregg and Bieber initiated actions in the Fourth Judicial District Court of Utah County, State of Utah, against Fred and Kurt Vreeken and a number of entities alleged to be fictitious names or sole proprietorships of the Vreekens. In July 1983, in the action entitled B.J. Rone v. Kurt Vreeken, et

al., a default judgment was entered in favor of Rone and against Money Factors Syndicate; First Federal Finance, A.G.; Aires Plus Serv., S.A.; International Investment Conference; and Option Writers Syndicate (hereinafter the "Rone Judgment"). [R. 256-57 (attached hereto).] No judgment has been entered in this action as to the remaining defendants, including Kurt and Fred Vreeken.

In August, 1983, in the action titled Ronald A. Bieber, d/b/a RAB Ranch v. Kurt Vreeken, et al., a default judgment was entered in favor of Bieber against the same entities (hereinafter the "Bieber Judgment"). [R. 273-74 (attached hereto).] In addition, default judgment was entered against Chris and Keith Vreeken, even though neither of these individuals was named as a defendant in the action. [R. 276-77.] No judgment has been entered in that action against the remaining defendants, including Kurt and Fred Vreeken.

Also in August 1983, in the action entitled James A. Gregg v. Kurt Vreeken, et al., a default judgment was entered in favor of Gregg against the same entities (hereinafter the "Gregg Judgment"). [R. 295-96 (attached hereto).] Again, default judgment was entered against Chris and Keith Vreeken, although neither individual had been named as a defendant, and no judgment has been entered as to the remaining defendants, including Kurt and Fred Vreeken. [R. 298-99.]

In summary, each of these cases is in the same posture. In each, judgment has been entered against some, but not all of the defendants. In two of the cases, the Gregg and Bieber actions, judgment has been entered against individuals who are not parties to the action. Each of the cases is still pending, and no action appears to have been taken in any of the cases since the entry of the default judgments.

At the same time that he initiated his action against the Vreekens, Rone attempted to intervene in a suit brought against the Vreekens by Kathy and Dale Demetropoulos, who were also defrauded investors. Rone's intervention in the Demetropoulos lawsuit initiated a dispute as to which of the investors was entitled to levy on bank accounts of the Vreekens. Demetropoulos v. Vreeken, 754 P.2d 960, 963 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (1988). On May 1, 1984, Judge Ballif of the Fourth District ruled that Rone had not properly effected service of process on the defendants in Rone's action. Thus, Rone's prejudgment writ of attachment against the Vreekens' bank accounts as well as his default judgment was fatally defective. [R. 259-64.] Judge Ballif's ruling was affirmed by this Court in May 1988 in Demetropoulos v. Vreeken, 754 P.2d 960.

On September 15, 1987, three years after Judge Ballif had held Rone's default judgment to be invalid, Rone, Bieber and Gregg

caused the clerk of the Fourth Judicial District Court of Utah County, Utah, to issue executions under the Rone, Bieber and Gregg Judgments against, among other things, the homes of the Nields and the Petersons. [R. 353-58.] Neither the Nields nor the Petersons had been named as parties to the lawsuits initiated against the Vreekens by Rone, Gregg and Bieber. The Nields and Petersons are not named as judgment debtors in the Rone, Gregg and Bieber Judgments. Utah County records do not reflect that the Vreekens have ever held an interest in the Nield and Peterson property, nor do Utah County records show that any of the parties named in the Rone, Gregg and Bieber lawsuits have ever held an interest in the Nield and Peterson properties.¹ [R. 317-22.] Until the Utah

¹ At the initiation of Rone's lawsuit, Rone's attorney submitted an affidavit to the court in support of Rone's petition for a prejudgment writ of attachment. In this affidavit, Mr. McCune attested that his examination of Utah County records revealed that none of the individuals or entities named as defendants in Rone's action owned any real property in Utah County. [R. 432-37.]

The Nields purchased their home in January 1984 from a corporation called Red Deer Investments, SA. [R. 314.] Red Deer Investments, SA had acquired the property in September 1982 from an entity call Red Deer Investments. [R. 312-13.] The Petersons purchased their home in March 1986 from D & M Coal Company. [R. 346.] D & M Coal Company had acquired the property through foreclosure of a trust deed. Red Deer Investments, SA was trustor under that trust deed. [R. 342-44.] Red Deer Investments, SA had acquired the property in September 1982 from an entity called Red Deer Investments. [R. 331.] Appellants contend that Red Deer Investments was controlled by the Vreekens.

County Sheriff posted notices of a Sheriff's sale on the doors to their homes, the Nields and Petersons had no knowledge of the Vreekens' business dealings or the Rone, Gregg and Bieber Judgments. [R. 325-27; 349-51.]

When Rone, Gregg and Bieber attempted to execute on the Nield and Peterson homes, the Nields and Petersons initiated this action and secured a preliminary injunction, restraining appellants and the Utah County Sheriff, David Bateman, from foreclosing on the Nield and Peterson homes. [R. 65-68.] The Nields and Petersons also brought claims against appellants for slander of title and abuse of process. One year later, appellants answered this complaint, counterclaimed seeking to have their judgments declared valid, and brought a third-party complaint against Associated Title Company, D & M Coal Company, Briant Safford, Stormy Peterson, Wendy Wilson, and Diane C. Green. [R. 600-609.] The third-party defendants, with the exception of D & M Coal Company, are officers and employees of Associated Title Company. The third-party complaint charges the third-party defendants with having done title work for the Vreekens or entities related to the Vreekens from 1979 on and with having failed to disclose the Vreekens' "questionable business methods" to individuals such as the Nields and Petersons. [R. 606-08.]

In October 1988, the Nields and Petersons moved for partial summary judgment on the ground that the Rone, Gregg and Bieber Judgments were not final and valid judgments and did not give rise to judgment liens against the Nield and Peterson homes. The trial court granted the summary judgment motion in August, 1989. This appeal ensued.

SUMMARY OF ARGUMENT

Appellants devote much of their brief to arguing that (1) Kurt and Fred Vreeken defrauded a number of investors, including appellants, in an elaborate securities scheme [Appellants' Brief at 3-5, 11-15, 29-30]; (2) the Vreekens conducted their fraud under a number of false identities [Id. at 9B-15]; and (3) defrauded investors should be allowed to reach assets of the Vreekens that are held under such false identities in order to satisfy their claims. [Id. 15-19, 27-31.] These arguments require little response. Appellants do not have judgments against the Vreekens, and the trial court in this case was not called on to decide the merits of appellants' claims against the Vreekens. None of the courts in the Rone, Gregg or Bieber actions have determined that any of the defendants in these actions are alter egos of the Vreekens. The Nields and Petersons are unrelated to any of

appellants' dealings with the Vreekens. Indeed, it is uncontested that appellants have no claims against the Nields and Petersons.

The substantive merits of appellants' claims against the Vreekens are not at issue in this appeal. Instead, the issue before this Court is whether appellants have followed the necessary procedural steps to transform their claims into valid and final judgments. In this brief, the Nields and Petersons will address issues relating to the validity and finality of the Rone, Gregg and Bieber Judgments -- questions which were decided by the trial court -- instead of responding to appellants' claims regarding the Vreekens' conduct.

In order to execute on a judgment, one must have a valid judgment. The Rone, Gregg and Bieber Judgments are not valid. In Demetropoulos v. Vreeken, 754 P.2d 960 (Utah Ct. App.), cert. denied, 765 P.2d 1278 (1988), this Court expressly held that the Rone Judgment was invalid because Rone failed to properly serve process. The fact that Rone now demands that the Nields and Petersons, innocent third parties, satisfy a judgment that this Court has held to be invalid is an outrage. The Gregg and Bieber Judgments are invalid for precisely the same reason as the Rone Judgment is invalid. The undisputed evidence shows that the complaints in the Gregg and Bieber lawsuits were served on

individuals who were not authorized to receive service of process on behalf of any of the defendants.

Even if it is assumed that the Rone, Gregg and Bieber Judgments are valid, these default judgments are not final judgments. In each case, judgment has been entered as to less than all of the defendants in that action. None of the Rone, Gregg or Bieber Judgments have been certified, under Rule 54(b), as a final judgment. Because those judgments are not final judgments, they are subject to revision at any time prior to the entry of a final judgment and they do not give rise to judgment liens. Thus, Rone, Gregg and Bieber do not hold judgment liens against the Nield and Peterson homes and are not entitled to proceed with their foreclosure actions.

In their appeal, Rone, Gregg and Bieber object to evidence submitted by the Nields and Petersons in support of the summary judgment motion. Specifically, appellants object to the affidavits of Patricia Nield, Mark Peterson and Diane Green. These objections are frivolous. Moreover, each of the affidavits goes to the question of whether the Nields and Petersons were good faith purchasers who took title to their homes without notice of any lien in favor of appellants. Because the trial court concluded that appellants had no liens, the court did not find it necessary to decide whether such liens would attach to the Nield and Peterson

homes. Thus, it is not necessary for this Court to determine whether the affidavits are admissible in order to resolve this appeal. Appellants also object that certified copies of portions of the record in the Rone, Gregg and Bieber actions were improperly before the court and that the trial court should instead have taken judicial notice of these documents. The objection is ill-founded and is, in any event, an objection only to the manner of presentation of that evidence and not an objection to either the admissibility or substance of that evidence.

Finally, the attempt by Rone, Gregg and Bieber to foreclose on the Nield and Peterson homes is an abuse of judicial process. Continuation of that effort in this appeal perpetuates an unwarranted cloud on the Nield and Peterson titles to their homes and constitutes a frivolous appeal under Rule 33 of the Utah Rules of Appellate Procedure. Pursuant to Rule 33, this Court should award the Nields and Petersons just damages including double costs and reasonable attorneys fees.

ARGUMENT

I. RONE, GREGG AND BIEBER DO NOT HAVE VALID JUDGMENTS.

Rone's complaint against the Vreekens identifies a number of business entities as assumed names or sole proprietorships of

Kurt and Fred Vreeken, who were named defendants in the complaint. Demetropoulos v. Vreeken, 754 P.2d at 964 n.10.² Although Rone identified these entities as assumed names or sole proprietorships of Kurt or Fred Vreeken, service of process on these entities was made on Keith Vreeken and default judgment was taken against those entities when they failed to respond to the service of process. Demetropoulos v. Vreeken, 754 P.2d at 963-64.

In 1984, Judge Ballif of the Fourth Judicial District ruled that Keith Vreeken was not a proper agent for service of process. That decision was appealed, and in May 1988, this Court ruled that:

In this case, the Court properly concluded that the default judgment obtained by appellant in the action he filed was invalid for lack of jurisdiction due to the insufficiency of service of process on the defendants in that action.

Demetropoulos v. Vreeken, 754 P.2d at 964. In so holding, this Court noted that Keith Vreeken was not a defendant in Rone's action. The business entities named in the complaint were identified as assumed names or sole proprietorships of Kurt and

² At the initiation of Rone's action, Rone's counsel, George McCune, also submitted his own affidavit to the court, attesting that he had investigated the entities named in the complaint and determined that Fred and Kurt Vreeken were "principal instigators and operators of the majority if not all" of the businesses named in the complaint. [R. 432-37.]

Fred Vreeken, who were named defendants in the complaint. Demetropoulos v. Vreeken, 754 P.2d at 964 n. 10. Thus, the Court found that, "[n]o proof exists in the record other than the constable's guess that Keith Vreeken was the agent of or had any managerial control for the business entities." Demetropoulos v. Vreeken, 754 P.2d at 964.

No authority could be more squarely on point than this Court's prior decision that the Rone judgment was invalid for lack of personal jurisdiction. Six years after Judge Ballif first held the Rone judgment to be invalid and two years after this Court affirmed that the judgment was invalid, Rone again has come before this Court demanding the right to enforce that judgment against innocent third parties.

In response, Rone argues that the decision in Demetropoulos v. Vreeken is not res judicata as to the validity of his judgment because this appeal involves different parties. [Appellants' Brief at 21-22.] That is, Rone believes that this Court's prior decision determines the validity of his judgment only as regards the Demetropoulos', and Rone remains free to pursue that judgment against the rest of the world.³ Rone is wrong, and

³ The prospect that Rone intends to continue efforts to collect his judgment in the future in actions against parties such as the Nields and Petersons is made quite clear: "[the Demetropoulos decision] pertained to the priority over alleged liens between B.J. Rone and Demetropoulos. It did not invalidate

directly misstates this Court's holding in Mel Trimble Real Estate v. Monte Vista Ranch, 758 P.2d 451 (Utah Ct. App.), cert. denied, 769 P.2d 819 (1988). Any party may raise this Court's decision in Demetropoulos v. Vreeken to collaterally estop Rone from relitigating the issue of the validity of his judgment. Mel Trimble Real Estate v. Monte Vista Ranch, 758 P.2d at 454-74.

Rone alternately argues that the discovery of new evidence undercuts -- and, therefore, apparently allows Rone to disregard -- this Court's finding in Demetropoulos v. Vreeken.⁴ Rone, of course, has already had his opportunity to litigate these issues and his new claims are barred by res judicata, the principle that there ought to be some finality to litigation. In any event, Rone's claims should have been brought before the court in his own action or before this Court in his prior appeal. Assertion of those claims at this point is not proper.

the judgment as against all others nor did it preclude a readjudication of the same question" [Appellants Brief at 22.] The Nields and Petersons urge this Court to save other parties from the experience of the Nields and Petersons in this litigation by ruling in the clearest terms possible that Rone has no judgment that can be enforced against anyone.

⁴ Rone's evidence amounts to the claim that Keith Vreeken was somehow "all mixed up in this." [Appellants' Brief at 24.] Rone does not show that Keith Vreeken was an authorized agent for service of process on the entities at issue in Demetropoulos v. Vreeken.

The Gregg and Bieber Judgments are both defective on their face and subject to the same defect of failure of service of process as the Rone judgment. First, the Gregg and Bieber judgments purport to enter default judgment against Chris and Keith Vreeken, individuals who were not even named as defendants in the complaints.⁵ [R. 276 and 298.] A judgment cannot be entered against one who is not a named party. Hiltsley v. Ryder, 738 P.2d 1024, 1025 (Utah 1987); R.M.S. Corp. v. Baldwin, 576 P.2d 881, 883 (Utah 1978).

Second, the defects in service of process which led this Court to invalidate the Rone Judgment also infect the Gregg and Bieber Judgments. Gregg and Bieber named the same entities as defendants as did Rone's complaint: Money Factors Syndicate, First Federal Finance, AG Aires Plus Serv, S.A., International Investment Conference, and Option Writers Syndicate. These entities are identified as assumed names or sole proprietorships of Kurt and Fred Vreeken. Gregg and Bieber did not effect service of process on these entities by serving either Kurt or Fred Vreeken. Instead,

⁵ Gregg and Bieber apparently believe that Chris and Keith Vreeken were made parties to their suits under the category of "John Doe" defendants. [Appellants' Brief at 30-31.] Although "John Doe" defendants were named in the Gregg and Bieber actions, no effort appears to have been made in those cases to join Chris and Keith Vreeken as named parties who had been identified as previously unknown defendants.

Gregg and Bieber attempted service of process on these entities by serving one Chris Vreeken. [R. 1653-56, 1658-59, 1709-10, 1712-15.] Finally, the same constable served process in the Rone action and in the Gregg and Bieber actions. In hearings in the Rone action, before Judge Ballif, this constable testified that he served process on both Chris Vreeken and Keith Vreeken in these suits and that he decided that Chris Vreeken was authorized to receive that process on behalf of the entities named in the Gregg and Bieber complaints on exactly the same basis that he decided Keith Vreeken was authorized to receive process in the Rone lawsuit. In each case, the constable determined that Keith and Chris Vreeken were agents for those entities based on his guess that Keith and Chris Vreeken were somehow connected with Fred Vreeken's business. [Transcript of Hearing, 2/23/84, at 20-44, R. 1201-25 esp. at 36, R. 1217].

This Court has already determined that Keith Vreeken was not a proper agent for service of process on these entities and that Rone's Judgment against these entities was, therefore, invalid. The same undisputed facts and testimony establishes that Chris Vreeken was not a proper agent for service of process on these entities. Insofar as service of process is concerned, the facts with respect to Chris Vreeken are the same as those with respect to Keith Vreeken. The Court's holding in Demetropoulos v.

Vreeken, therefore, establishes that the Gregg and Bieber judgments are invalid because service was not properly made on the defendants against whom default judgment was taken.

Under this Court's holding in Demetropoulos v. Vreeken, Rone, Gregg and Bieber do not possess valid judgments. Because Rone, Gregg and Bieber do not have valid judgments, no judgment lien has ever arisen against the Nield and Peterson homes and Rone, Gregg and Bieber are not entitled to foreclose judgment liens against those homes.

II. THE RONE, GREGG AND BIEBER JUDGMENTS
ARE NOT FINAL JUDGMENTS.

Each of the Rone, Gregg and Bieber Judgments is a default judgment against some, but not all, of the parties named as defendants in those actions. Because no judgment has ever been taken against the remaining defendants in those actions, the actions are still pending. None of the Rone, Gregg or Bieber Judgments were certified by the trial court, pursuant to Rule 54(b) as being a "final judgment." Because the Rone, Gregg and Bieber Judgments are not final judgments, they do not give rise to judgment liens.

Utah Code Ann. Section 78-22-1 provides that a "judgment lien" shall arise against all property owned by the debtor in the county in which the judgment is entered on docketing of the

judgment. Utah Code Ann. Section 78-22-1 does not define what sort of judgment allows for the creation of this judgment lien. Rule 54 of the Utah Rules of Civil Procedure, however, identifies the sort of judgments that are final and, therefore, appealable. Rule 54(a) of the Utah Rules of Civil Procedure provides that, "[j]udgment' as used in these rules includes a decree and any order from which an appeal lies." Under Rule 54(b), a judgment is not final unless it adjudicates all claims against all parties. A judgment with respect to less than all claims or against less than all of the parties can be made final only if certified by the trial court pursuant to Rule 54(b). Construing the requirements of Rule 54(b), the Utah Supreme Court has noted that:

In the absence of such a determination [i.e., that a judgment in a multiple party case is a final judgment] and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Kennedy v. New Era Indus., Inc., 600 P.2d 534, 536-37 (Utah 1979) (emphasis added).

Because the Rone, Gregg and Bieber Judgments did not terminate the action, were not appealable rulings, and remain subject to revision by the Court, none of those judgments qualifies as a final judgment, and none of those judgments gave rise to a judgment lien. In their brief to this Court, Rone, Gregg and Bieber respond in some detail to this analysis. [See Appellants' Brief at pp. 31-37.] Although appellants' argument is not always clear, it appears that they advance three reasons for claiming that Rule 54(b) does not prevent their attempts to execute on the Rone, Gregg and Bieber Judgments. First, appellants argue that no Utah case squarely holds that the absence of a Rule 54(b) certification prevents a judgment as to less than all parties or less than all claims from being final for purposes of execution. Second, appellants argue that cases in other jurisdictions that appear to so hold, are distinguishable. Third, appellants contend that Utah statute and public policy argue against such a position.

Appellants are correct in noting that the Utah Supreme Court has not directly held that a judgment as to less than all parties or all claims is not final for purposes of execution, unless certified pursuant to Rule 54(b). However, that fact does not exhaust the guidance given by the Utah Supreme Court in the application of Rule 54(b). In recent years, the Supreme Court has had repeated occasion to construe the requirements of Rule 54(b)

in the context of when orders are appealable. In these decisions, the Supreme Court has noted that because few Utah cases deal with Rule 54(b), Utah Courts should follow federal decisions construing the identical provisions of the Federal Rule 54(b):

Rule 54(b) of the Utah R. Civ. P. is "modeled after and is identical in all material respects with [Rule 54(b) of the Fed. R. Civ. P.]." . . . Therefore, we rely heavily upon decisions under the federal rule to explain the operation and underlying rationale of our Rule 54(b).

Olson v. Salt Lake City School Dist., 724 P.2d 960, 965 (Utah 1986). See Pate v. Marathon Steel Co., 692 P.2d 765, 767 (Utah 1984). Thus, while the Utah Supreme Court may not have expressly ruled on whether Rule 54(b) governs the finality of a judgment for purposes of execution, the Utah Supreme Court has indicated that this Court should look to federal decisions on that question as a source of guidance.

Federal courts have consistently held that a party may not execute on a judgment as to less than all claims or all parties unless that judgment has been certified as final pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. For example, the Court of Appeals for the District of Columbia Circuit has noted that a party receiving a judgment in its favor as to fewer than all of the claims or parties:

[H]as no judgment upon which an execution may issue prior to adjudication of the

case in its entirety. [Rule 54(b)'s] requirement of explication in the two respects mentioned is not a technicality in the interest of form; rather, it serves primarily the important function of denoting unmistakably that a final order has been entered so that the losing party may either file a timely appeal or pay the judgment. We think the role Rule 54(b) plays with reference to the finality of the judgment for purposes of appeal has implications as regards its finality for purposes of execution as well.

Redding & Co. v. Russwine Constr. Corp., 417 F.2d 721, 727 (D.C. Cir. 1969). Similarly, a federal district court has held that:

A judgment entered in a multiple party and/or multiple claims case prior to the disposition of the entire case is not enforceable unless the requirements of Rule 54(b) are followed.

Gauthier v. Crosby Marine Serv., Inc., 590 F. Supp. 171, 176 (E.D. La. 1984)(cites omitted). Finally, the Seventh Circuit Court of Appeals has held that:

A partial adjudication of an action absent a Rule 54(b) certification remains interlocutory and "is subject to revision at any time before the entry of judgment adjudicating all the claims." . . . Fed. R. Civ. P. 54(b). An important effect of a 54(b) certification is that the entry of judgment permits prompt execution.

Bank of Lincolnwood v. Fed. Leasing, Inc., 622 F.2d 944, 951 (7th Cir. 1980)(conversely, "the process of collecting upon an adjudi-

cated claim can only commence after a final judgment has been entered." 622 F.2d at 950 n.7.)

The same rule appears also to be uniformly followed by state courts as well. For example, the Arizona Court of Appeals in Arizona Farmers Prod. Credit Assoc. v. Stewart Title & Trust of Tucson, 24 Ariz. App. 5, 535 P.2d 33 (1975), concluded that a default judgment which disposed of only two of three counts in the plaintiff's complaint did not allow for the creation of a judgment lien because:

Although these statutes provide for the creation and enforcement of judgment liens, neither defines the term judgment. Indeed, each presupposes the existence of a valid judgment. Rule 54(a), Rules of Civil Procedure, 16 A.R.S., however, does define the term. It provides that judgment as used in the Rules "includes a decree and an order from which an appeal lies."

* * * *

In the instant case, the "judgment" which the appellant recorded and sought to enforce was not a judgment within the meaning of Rule 54(a).

Arizona Farmers Prod. Credit Assoc. v. Stewart Title & Trust of Tucson, 535 P.2d at 35.

Appellants attempt to distinguish the Arizona Farmers Prod. Credit Assoc. case from the present litigation by pointing out that Arizona Farmers Prod. Credit Assoc. involved an order that

settled less than all of the claims, while the present litigation involves an order that resolves claims against less than all parties. [Appellants' Brief at 31.] This is a distinction without a difference. The provisions of Rule 54(b) apply identically to orders that settle less than all claims and orders that resolve claims against less than all parties. Neither is final unless certified as such by the court.

More recently, the Kansas Court of Appeals held in City of Salina v. Star B, Inc., 11 Kan. App. 2d 639, 731 P.2d 1290 (1987), that:

Entry of a final judgment as to less than all the claims or for less than all the parties in an action involving multiple claims or parties is not effective unless the court makes "an express determination that there is no just reason for delay" and "an express direction for the entry of judgment" as required by K.S.A. 60-254(b) If the court grants judgment on less than all the claims or for less than all the parties in an action, that does not certify the judgment as required in K.S.A. 60-254(b) and 60-258, it has not made an entry of judgment required by 60-2202(a), and no judgment lien attaches to the property of the adversely affected party or parties.

City of Salina v. Star B, Inc., 731 P.2d at 1294, aff'd, 739 P.2d 933 (Kan. 1987).

Again, Rone, Gregg and Bieber attempt to distinguish this Kansas case, "because Kansas' legislature has mandated a specific

procedure and steps which must be taken to get a judgment lien to attach and has spelled out special requirements different than our Utah legislature.” [Appellants’ Brief at 32.] Appellants identify none of the alleged special requirements adopted by the Kansas legislature, nor do they specify the manner in which any such alleged differences render this case distinguishable. Analysis of the relevant Kansas statutes, which are set forth in the City of Salina decision at pages 1293-94, demonstrates that there are no relevant distinctions between the requirements under Kansas law and Utah law on these issues. The judgment lien statutes of neither state appear to identify the sort of judgments that give rise to a judgment lien. The definition of what judgments are final for purposes of appeal or execution under either Kansas or Utah law is set forth in Rule 54(b), and Kansas’ Rule 54(b), Codified as K.S.A. 60-254(b), is the same as Utah’s Rule 54(b).

Finally, Rone, Gregg and Bieber argue that public policy mandates that the requirements of Rule 54(b) should not restrict the rights of judgment creditors to execute on judgments. The sense of appellants’ public policy argument is not entirely clear. However, appellants appear, in summary, to claim that public policy favors swift execution upon judgments and Rule 54(b) constitutes an unwarranted and overly technical restriction upon such swift execution. [See e.g. Appellants’ Brief at 33-35.]

While it is true that the law should favor making injured parties whole through the swift resolution of disputes, appellants simply ignore the competing public policies that must be reconciled to achieve this goal. For example, a plaintiff's swift recovery of his losses cannot be accomplished by completely ignoring the requirements of due process and adherence to fair and orderly procedures. Appellants' public policy argument is wrong for at least three reasons.

First, the requirement that disputes must be fully resolved before there can be recovery on a judgment, except where a partial judgment is properly certified as final under Rule 54(b), encourages parties to bring litigation to a close and assures that the ultimate judgment will fairly reflect the actual liability of all parties. The experience in the Rone, Gregg and Bieber lawsuits readily illustrates the problems with the procedure advocated by appellants. The Rone, Gregg and Bieber actions have been pending now for seven years with no indication that those cases will ever be brought to final judgment. Those cases have been the source of two appeals before this Court in litigation against innocent third parties, without a final, appealable order having ever been entered in any of these cases.

Although Rone, Gregg and Bieber claim that the entities named in their default judgments are alter egos of Kurt and Fred

Vreeken, they have never pursued final judgments in their actions to test that theory. In this appeal, Rone, Gregg and Bieber appear to simply assume that they already have judgments against Kurt and Fred Vreeken, because appellants have judgments against the Vreekens' alleged alter egos:

If all those named as defendants are found to be one and the same as far as liability and identity go, then all of the defendants have in fact been adjudicated and a judgment rendered against them.

[Appellants' Brief at 20.] Indeed, appellants appear to have acted on this belief in attempting to execute on their judgments. Appellants have assumed that all of the entities named in their judgments, the Vreekens, and any entities that appellants believe are associated with the Vreekens are fair game for execution. For example, the Nield and Peterson homes have never been owned by any entity named in the Rone, Gregg or Bieber Judgments. Instead, appellants argue that the homes were once owned by an entity controlled by the Vreekens. Thus, even though no court has determined that the Vreekens are liable to appellants or that any entity that owned the Nield or Peterson homes is an alter ego of the Vreekens, appellants have acted -- to the substantial detriments of the Nields and Petersons -- as if those were fully adjudicated facts.

In sum, the Rone, Gregg and Bieber lawsuits are a procedural mess that have generated repeated collateral actions against third-parties. Although Rone, Gregg and Bieber act as if their claims had been fully litigated, no final judgment appears likely in those cases after seven years. Certainly, much of this failure of the litigation system might have been avoided if Rone, Gregg and Bieber had followed the finality of judgment rules set forth in Rule 54.

Second, appellants' argument that partial judgments should be subject to execution as soon as they are entered would significantly prejudice the rights of defendants. That is, Rone, Gregg and Bieber would require defendants to satisfy judgments without being able to immediately appeal those judgments because they were not final under Rule 54. For example, the court in Redding & Co. v. Russwine Constr. Co., 417 F.2d 721 (D.C. Ct. App. 1969), faced just such a situation where the trial court entered a judgment against less than all of the defendants, directed that plaintiff could execute on the judgment, but declined to certify the judgment as final under Rule 54(b). The Circuit Court for the District of Columbia concluded the trial court had placed the defendant in an intolerable dilemma, stayed execution on the judgment, and remanded the case for the trial court to determine whether the judgment was not final and, therefore, not subject to

execution or the judgment was final under the criteria of Rule 54(b) and, therefore, subject to execution and appeal. Redding & Co. v. Russwine Constr. Corp., 417 F.2d at 727.

The example of the Rone, Gregg and Bieber cases pointedly illustrates the unfairness of the position they argue. Rone, Gregg and Bieber argue that they have had judgments subject to execution for over seven years. Yet no final, appealable judgment has been entered in any of those cases. Indeed, an appealable judgment may never issue in those cases. The prospect that a plaintiff could recover his alleged injuries by executing on a partial judgment and deny the defendant an appeal by simply not proceeding to judgment on the plaintiff's remaining claims or against the remaining parties is fundamentally offensive. Article I, Section 11 of the Utah Constitution provides that:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel any civil cause to which he is a party.

The procedures advocated by appellants might enhance the ability of plaintiffs to recover judgments swiftly. Those procedures

would, however, also close the doors of the appellate courts to defendants and, thereby, violate Utah's Constitution.

Finally, appellants overlook the fact that Rule 54(b) provides an efficient, clear resolution to the public policy concerns which they raise. Where a prevailing party needs to recover on a judgment that has been entered as to less than all claims or parties, Rule 54(b) provides the court a method of allowing recovery on a judgment that would otherwise not be final. For example, the Seventh Circuit Court of Appeals in Bank of Lincolnwood v. Fed. Leasing, Inc., 622 F.2d 944 (7th Cir. 1980) noted that, "an important effect of a 54(b) certification is that the entry of judgment permits prompt execution." Indeed, in Bank of Lincolnwood, it was the plaintiff's need to immediately execute on a judgment against less than all parties that prompted the plaintiff's request for a Rule 54(b) certification, rather than any desire to immediately appeal that judgment.

In summary, both state and federal authorities appear to uniformly hold that a judgment as to less than all claims or all parties is not a final judgment subject to execution, absent certification of that judgment as final under Rule 54(b). The Utah Supreme Court has directed that courts should "rely heavily" upon these federal decisions in construing the requirements of Utah's Rule 54(b). Thus, none of the Rone, Gregg and Bieber judgments are

final judgments because those judgments were entered as to less than all the parties to the litigation and none have been certified as final pursuant to Rule 54(b). Because the judgments are not final, they do not permit appellants' attempted executions, nor do they give rise to judgment liens.

III. APPELLANTS' OBJECTIONS TO THE NIELDS' AND PETERSONS' EVIDENCE ARE FRIVOLOUS.

In their motion for summary judgment, the Nields and Petersons argued that even if Rone, Gregg and Bieber had valid, final judgments, those judgments did not attach to the Nield and Peterson homes because the Nields and Petersons were good faith purchasers for value, who acquired the homes without notice of any claim of Rone, Gregg and Bieber. In support of that argument, Patricia Nield and Mark Peterson submitted affidavits attesting that they did not know or have any dealings with the Vreekens, did not know that the Vreekens or any of the entities named as defendants in the Rone, Gregg and Bieber actions held any interest in the Nield or Peterson homes, and that they were unaware of any claims by Rone, Gregg and Bieber to those homes. [R. 324-27 and 348-51.] In addition, Diane C. Green, an employee of Associated Title Company, submitted an affidavit attesting to the fact that she had examined Utah County records with respect to the Nield and Peterson homes and had found no record showing that any of the

individuals or entities named as defendants in the Rone, Gregg and Bieber action had ever held any interest in the Nield and Peterson homes. [R. 317-22]. Because the trial court concluded that Rone, Gregg and Bieber did not have final, valid judgments, the court did not reach the question of whether any such judgments would have attached to the Nield and Peterson homes.

On appeal, Rone, Gregg and Bieber object that the affidavits set forth conclusory statements because, "they merely state [that the affiants] did not know." [Appellant's Brief at 38.] Rone's, Gregg's and Bieber's objections to the affidavits are, first, irrelevant to the issues of this appeal. Because the trial court did not resolve the question of whether the Nield and Peterson homes would be subject to a lien in appellants' favor if appellants held valid, final judgments, resolution of the admissibility of the affidavits is unnecessary to this appeal.

In any event, Rone's, Gregg's and Bieber's objections are not well founded. The point of the Patricia Nield and Mark Peterson affidavits is that the Nields and Petersons did not know anything about the Vreekens or appellants' claims against the Vreekens. The adequacy of their personal knowledge of their own state of mind is apparent from the face of the affidavits. Likewise, the Green affidavit sets forth an appropriate foundation for her testimony. In her affidavit, Green attests as to her

qualifications to examine title to real property, to the fact that she examined title to the Nield and Peterson homes in the Utah County records, and as to the results of her examination. In sum, Rone's, Gregg's and Bieber's objections to this evidence are frivolous.

Rone, Gregg and Bieber next object to the fact that the Nields and Petersons submitted certified copies of portions of the record in the Rone, Gregg and Bieber lawsuits. These documents included, for example, certified copies of the default judgments and complaints in those actions. Appellants do not object to the admissibility or the substance of this evidence. Instead, they object that it was inappropriate for the Nields and Petersons to provide the court with certified copies of these documents. Instead, the court should simply have been asked to take judicial notice of those pleadings. [Appellants' Brief at 38.]

The point of appellants' argument is frivolous in the fullest sense, since it raises an issue of no significance to the resolution of the lawsuit. In addition, appellants position is wrong. The Utah Supreme Court has several times held that when the court is asked to consider the record in a prior lawsuit, the files of the other case should be placed in evidence before the court. State in Interest of Hales, 538 P.2d 1034 (Utah 1975). See Carter v. Carter, 563 P.2d 177, 178 (Utah 1977). As the Utah Supreme

Court noted, providing the court and opposing counsel with copies of materials from the other litigation for which judicial notice is sought allows both the court and the opposing party to know precisely what in the record is being relied on. Again, appellants' objections to Nields' and Petersons' evidence are frivolous.

IV. APPELLANTS' APPEAL IS FRIVOLOUS

Rule 33 of the Utah Rules of Appellate Procedure provides that:

Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney's fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

The rule further defines a "frivolous appeal" as being "one that is not grounded in fact, not warranted by existing law, or not based on a good-faith argument to extend, modify, or reverse existing law." See O'Brien v. Rush, 744 P.2d 306, 310 (Utah Ct. App. 1987) ("we define a 'frivolous appeal' as one having no reasonable legal or factual basis as defined in Rule 40(a)."). The totality of appellants' argument falls clearly under the scope of Rule 33. See Eames v. Eames, 735 P.2d 395, 398 (Utah Ct. App.

1987). However, the Nields and Petersons will cite only three respects in which this appeal is frivolous and unwarranted.

The first and most egregious instance of unwarranted conduct is Rone's attempt to execute on his alleged "judgment" and continuation of that attempt before this court. Rone's judgment was clearly and directly declared invalid by this court nearly two years ago. Without ever revealing to the Nields and Petersons that first the district court and then this Court had declared his judgment to be invalid, Rone attempted to enforce that judgment against the Nields and Petersons.

In complete disregard of this court's prior decision, Rone demands the right to relitigate the very issues already conclusively decided by this court. The fact that this court's prior decision in Demetropoulos v. Vreeken should have resolved any question regarding the validity of Rone's judgment could not be clearer and Rone offers no defense to his complete disregard of that decision. Moreover, the consequences of Rone's disregard of this Court's prior ruling have been visited upon completely innocent parties. The Nields and Petersons submit that Rone's conduct is so egregious, and the suffering imposed on these innocent parties so unwarranted as to merit the severest penalties under Rule 33.

The second respect in which this appeal violates the standards of Rule 33 is the pursuit of this appeal by Gregg and Bieber in light of this Court's decision in Demetropoulos v. Vreeken. Rone, Gregg and Bieber are, of course, represented by the same counsel, so it must be concluded that Gregg and Bieber were aware that the Rone judgment had been held to be invalid by this Court. Exactly the same defects in service of process exist in all three cases. In the face of the clear invalidity of all three "judgments," Gregg's and Bieber's infliction of this appeal upon wholly innocent parties is unwarranted. The sole difference between the conduct of Rone and that of Gregg and Bieber lies in the fact that Rone's conduct in this action was expressly forbidden of the terms of this Court's decision in Demetropoulos v. Vreeken. To reach the same determination with respect to Gregg and Bieber required only the simplest analysis of that decision.

Finally, Rone, Gregg and Bieber present no reasonable argument that their judgments are final for purposes for execution. Instead, they ignore the uniform law to the contrary. Appellants have compounded their failure to follow Rule 54 by treating their non-final judgments against some of the defendants in their lawsuits as equivalent to judgments against all of the defendants in those actions or as judgments against entities not even named as parties to those suits, on the theory that the defaulting and

non-defaulting defendants are alter egos of one another and a judgment against one is, therefore, a judgment against all. [Appellants' Brief at 20.] Relying on this theory, which has never been supported by any judgment of the court in any of the relevant lawsuits, appellants have indiscriminately proceeded to attempt executions on property that was never owned by any of the defendants in the Rone, Gregg and Bieber Judgments. Indeed, in 1983, at the start of the Rone lawsuit, appellants' counsel certified to the court that he had examined the public records of Utah County, and determined that none of the defendants owned any real property in Utah County. [R. 432-37.] Appellants' reckless disregard for procedural requirements and the rights and interests of innocent third parties and continuation of such conduct into this appeal mandates the imposition of sanctions under Rule 33.

CONCLUSION

Rone, Gregg and Bieber devote a great deal of their brief to arguing the ways in which Kurt and Fred Vreeken have injured appellants and to detailing some of the alleged fictitious entities used by the Vreekens to commit such frauds. These arguments are, for the most part, irrelevant to the issue of whether appellants are entitled to satisfy their claims against the Vreekens at the expense of the Nields and Petersons. Whether the Vreekens have defrauded appellants is largely irrelevant because appellants have

never bothered to secure judgments against the Vreekenes. Certainly the Nields and Peterson have never injured appellants nor participated in any scheme of the Vreekenes to injure appellants. Appellants, thus, largely neglect the issues that this Court must decide: whether appellants possess valid judgments and whether such judgments are final for purposes of execution.

The determination as to the validity of the Rone judgment could not be simpler. In Demetropoulos v. Vreeken this Court squarely held the Rone judgment to be invalid. The invalidity of the Gregg and Bieber judgments is equally clear. The Rone judgment was invalid because Rone did not effect service of process on an authorized agent for the entities against which default was subsequently entered. The same evidence establishes that Gregg and Bieber, likewise, enter default judgment against entities as to which Gregg and Bieber have not effected proper service of process. Under Demetropoulos v. Vreeken, all three of the Rone, Gregg and Bieber judgments are invalid and will not, therefore, support any execution against the homes of the Nields and Petersons.

Even if it is assumed that the Rone, Gregg and Bieber judgments are valid, those judgments are not final for purposes of execution. In construing the provisions of Rule 54(b) of the Utah Rules of Civil Procedure, the Supreme Court has directed courts of this state to "rely heavily upon decisions under the federal rule

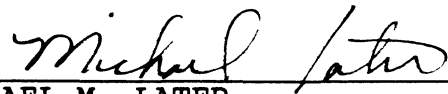
to explain the operation and underlying rationale of our Rule 54(b).” Olson v. Salt Lake City School Dist., 724 P.2d at 965 n. 5. Federal cases uniformly hold that a judgment as to less than all claims or parties is not final for purposes of execution, unless made final by a certification under Rule 54(b). Because the Rone, Gregg and Bieber judgments involve less than all the parties to each respective lawsuit and because no certification under Rule 54(b) has ever been issued for any of those judgments, the judgments are not final, do not give rise to judgment liens, and do not allow Rone, Gregg and Bieber to execute upon the Nield and Peterson homes.

Finally, Rone’s, Gregg’s and Bieber’s pursuit of this appeal warrants the imposition of sanctions under Rule 33 of the Utah Rules of Appellate Procedure. Most clearly, Rone’s continued assertion of the validity of his judgment in direct disregard of this Court’s prior holding in Demetropoulos v. Vreeken must be the most egregious violation of Rule 33 that can be imagined. Gregg’s and Bieber’s pursuit of their appeals in light of the fact that their judgments are invalid for precisely the same reason as Rone’s is conduct nearly as egregious. Finally, Rone’s, Gregg’s and Bieber’s continued pursuit of judgments that are not final under Rule 54(b) of the Utah Rules of Civil Procedure is unwarranted. The trial court’s summary judgment should be affirmed and sanctions

awarded to the Nields and Petersons under Rule 33 of the Utah Rule of Appellate Procedure.

DATED this 7th day of June, 1990.

KIMBALL, PARR, CROCKETT & WADDOUPS

A handwritten signature in cursive script, appearing to read "Michael Later", is written over a horizontal line.

MICHAEL M. LATER

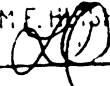
Attorneys for Respondents Lon S.
Nield, Patricia L. Nield, V. Mark
Peterson and Nancy L. Peterson

ADDENDUM

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McCUNE & McCUNE
Attorneys for Plaintiff
96 East 100 South
P.O. Box 746
Provo, Utah 84603-0746
Telephone (801) 373-0307

FILE
FOR JUDICIAL SALE
OF UTAH COUNTY, UTAH

1983 JUL 26 PM 12:03

WILLIAM E. HARRIS, CLERK
DEPUTY 

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH

-----oOo-----

B.J. RONE)	Civil No. 63,522
)	
Plaintiff,)	DEFAULT JUDGMENT AGAINST SOME
)	OF THE DEFENDANTS, ie.,
vs.)	MONEY FACTORS SYNDICATE, AG;
)	FIRST FEDERAL FINANCE, AG;
KURT VREEKEN, et al,)	AIRES + SERV, SA;
)	INTERNATIONAL INVESTMENT CONFERENCE;
Defendants.)	AND OPTION WRITERS SYNDICATE

In this action the defendants Money Factors Syndicate; First Federal Finance, AG; Aires + Serv, SA; International Investment Conference; and Option Writers Syndicate having been regularly served with summons and having failed to answer or otherwise plead to the complaint within the time allowed by law, and the default of said defendants having been entered according to law,

Now therefore, upon motion of George M. McCune, of McCune & McCune, attorneys for plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to-wit:

1. Plaintiff is granted judgment against defendants Money Factors Syndicate, a business entity; First Federal Finance, AG, a business entity; Aires + Serv, SA, a business entity; International Investment Conference, a business entity; and Option Writers Syndicate, a business entity, jointly and severally, in the amount of \$10,050.00 principal investment paid in violation of the Utah Uniform Securities Act (Title 61, Chapter 1, Utah Code Annotated 1953, as amended); \$506.63 interest at 8% per annum from December 8, 1982, through July 26, 1983; \$3,000.00 attorney fees pursuant to Section 61-1-22, UCA 1953, as amended, and \$206.75 costs of court herein, for a total judgment in the sum of \$13,763.38, with interest at the legal rate of interest at 12% per annum from date of judgment until paid.

2. The cause of action against other Defendants herein remains open.

DATED this 26th day of July, 1983.

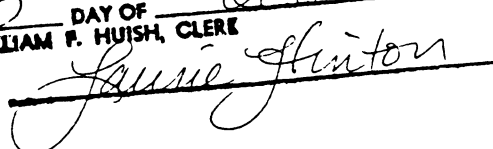
BY THE COURT


District Judge

STATE OF UTAH) ss
COUNTY OF UTAH)
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT
OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE
ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF
AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH
CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS

3 DAY OF October, 1983
WILLIAM F. HUISE, CLERK


Laurie Hinton DEPUTY

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

1983 AUG 25 AM 11:20

WILLIAM F. HUISE, CLERK

DEPUTY
[Signature]

George M. McCune
McCUNE & McCUNE
Attorneys for Plaintiff
96 East 100 South
P.O. Box 746
Provo, Utah 84603-0746
Telephone (801) 373-0307

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH

-----oOo-----

RONALD A. BIEBER, dba R A B RANCH)
an individual; R A B RANCH, a)
business entity,)

Plaintiff,)

vs.)

KURT VREEKEN, et al,)

Defendants.)

Civil No. 64,055

DEFAULT JUDGMENT AGAINST SOME
OF THE DEFENDANTS, ie.,
CHRIS VREEKEN; KEITH VREEKEN;
MONEY FACTORS SYNDICATE
FIRST FEDERAL FINANCE, AG;
INTERNATIONAL INVESTMENT CONFERENCE;
AND OPTION WRITERS SYNDICATE

In this action the defendants Chris Vreeken; Keith Vreeken; Money Factors Syndicate; First Federal Finance, AG; Aires + Serv, SA; International Investment Conference; and Option Writers Syndicate having been regularly served with summons and having failed to answer or otherwise plead to the complaint within the time allowed by law, and the default of said defendants having been entered according to law,

Now therefore, upon motion of George M. McCune, of McCune & McCune, attorneys for plaintiff,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to-wit:

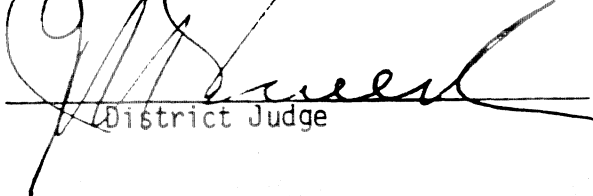
1. Plaintiff is granted judgment against defendants Chris Vreeken; Keith Vreeken; Money Factors Syndicate, a business entity; First Federal Finance, AG, a business entity; Aires + Serv, SA, a business entity; International Investment Conference, a business entity; and Option Writers Syndicate, a business entity, jointly and severally in the amount of \$44,365.44 principal investment paid in violation of the Utah Uniform Securities Act (Title 61, Chapter 1, Utah Code Annotated 1953, as amended); \$2,314.30 interest at 8% per annum from October 1, 1982, through July 26, 1983; \$1,000.00 attorney fees pursuant to Section 61-1-22, UCA 1953, as

amended, and \$60.25 costs of court herein, for a total judgment in the sum of \$47,739.99, with interest thereon at the legal rate of interest of 12% per annum from date of judgment until paid.

2. The cause of action against other defendants herein remains open.

DATED this 25th day of August 1983.

BY THE COURT


District Judge

STATE OF UTAH } ss
COUNTY OF UTAH }

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS

3 DAY OF October 1988
WILLIAM F. HUISH, CLERK


DEPUTY

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

1983 AUG 25 AM 11:19

WILLIAM F. HUISSH. CLERK
DEPUTY

George M. McCune
McCUNE & McCUNE
Attorneys for Plaintiff
96 East 100 South
P.O. Box 746
Provo, Utah 84603-0746
Telephone (801) 373-0307

IN THE DISCTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

-----oOo-----

JAMES A. GREGG,

Plaintiff,

vs.

KURT VREEKEN, et al,

Defendants.

Civil No. 63,923

DEFAULT JUDGMENT AGAINST SOME
OF THE DEFENDANTS, ie.,
CHRIS VREEKEN, KEITH VREEKEN;
MONEY FACTORS SYNDICATE;
FIRST FEDERAL FINANCE, AG;
AIRES + SERV, SA;
INTERNATIONAL INVESTMENT CONFERENCE;
AND OPTION WRITERS SYNDICATE

In this action the defendants Chris Vreeken; Keith Vreeken; Money Factors Syndicate; First Federal Finance, AG; Aires + Serv, SA; International Investment Conference; and Option Writers Syndicate having been regularly served with summons and having failed to answer or otherwise plead to the complanit within the time allowed by law, and the default of said defendants having been entered according to law,

Now therefore, upon motion of George M. McCune, of McCune & McCune, attorneys for plaintiff,

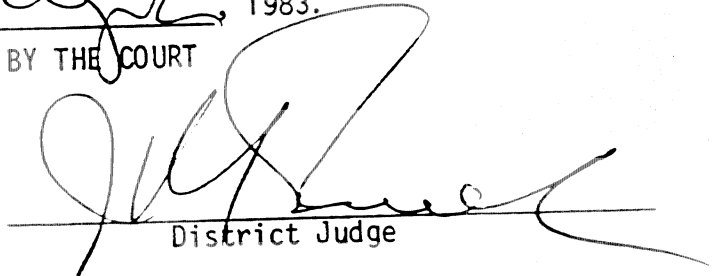
IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows, to-wit:

1. Plaintiff is granted judgment against defendants Chris Vreeken; Keith Vreeken; Money Factors Syndicate, a business entity; First Federal Finance, AG, a business entity; Aires + Serv, SA, a business entity; International Investment Conference, a business entity; and Option Writers Syndicate, a business entity, jointly and severally, in the amount of \$30,000.00 principal investment paid in violation of the Utah Uniform Securities Act (Title 61, Chapter 1, Utah Code Annotated 1953, as amended); \$1525.48 interest at 8%

per annum from December 6, 1982, through July 26, 1983; \$1,000.00 attorney fees pursuant to Section 61-1-22, UCA 1953, as amended, and \$51.25 costs of court herein, for a total judgment in the sum of \$32,576.73, with interest thereon at the legal rate of interest of 12% per annum from date of judgment until paid.

2. The cause of action against other Defendants herein remains open.
DATED this 25th day of April, 1983.

BY THE COURT


District Judge

STATE OF UTAH } ss
COUNTY OF UTAH }

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS

3 DAY OF October, 1988
WILLIAM F. HUISSH, CLERK

by Laurie Hunter DEPUTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of June, 1990, a true and correct copy of the foregoing Brief of Respondents was served by mailing a copy thereof by United States Mail, postage prepaid addressed as follows:

George M. McCune, Esq.
5243 Carpell Avenue
P. O. Box 18044
Salt Lake City, Utah 84118
Attorney for Appellants

Guy R. Burningham, Esq.
Deputy County Attorney
75 East 100 South
Provo, Utah 84601
Attorney for Defendant David R. Bateman,
in his capacity of Sheriff of Utah
County, State of Utah

A. Dennis Norton, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Respondents

Karen Johnson