

1990

Lon S. Nield, Patricia L. Nield, November Investors,
V. Mark Peterson and Nancy L. Peterson v. BJ Rone,
Ronald A. Bieber, Rab Ranch, James Gregg : Brief
of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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THE SUPREME COURT
STATE OF UTAH

DOCKET NO.

900187-CA

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LON S. NIELD; PATRICIA L.
NIELD; NOVEMBER INVESTORS, a
Utah limited partnership; and
V. MARK PETERSON and NANCY L.
PETERSON, as general partners
of and on behalf of November
Investors,

Plaintiffs and
Appellees,

vs.

B. J. RONE; RONALD A. BIEBER;
RAB RANCH, a business entity;
JAMES A. GREGG; and David R.
Bateman in his capacity as
Sheriff of Utah County, Utah,

Defendants and
Appellants.

No. 900061

[Category 14b]

90

B. J. RONE, JAMES A. GREGG,
and RONALD A. BIEBER,

Third Party
Plaintiffs,
and Appellants,

vs.

ASSOCIATED TITLE COMPANY, a
Utah corporation; BRIANT
STAFFORD, an individual; et al,

Third Party
Defendants.

BRIEF OF APPELLANTS

Appeal from a final judgment of the Fourth Judicial District
Court, Utah County, the Honorable Boyd L. Park presiding.

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| Third Party Defendants. | |

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TABLE OF AUTHORITIES

THE SUPREME COURT

STATE OF UTAH

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LON S. NIELD; PATRICIA L.
NIELD; NOVEMBER INVESTORS, a
Utah limited partnership; and
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STAFFORD, an individual; et al,

Third Party
Defendants.

No. 900061

[Category 14b]

STATEMENT SHOWING JURISDICTION

Jurisdiction is conferred upon this honorable court

herein by Rule 54(b) Utah Rules of Civil Procedure and Rule 4 R.
Utah S. Ct.

NATURE OF THE PROCEEDING

This appeal is from a final summary judgment of the court pursuant to Rule 54(b) Utah Rules of Civil Procedure in favor of Plaintiffs (Appellees) and adverse to Defendants.

ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

- 1) Is the question of true identity a genuine material fact precluding summary judgment?
- 2) How does true identity bear upon principles of service of process jurisdiction, judgment against all defendants, attachment of real property judicial liens, execution and sale, bona fide purchaser, and res judicata?
- 3) What is fair and complete adjudication of an issue requiring issue preclusion under the principle of res judicata?
- 4) What effect does new evidence have pertaining to the principle of res judicata?

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES RULES AND REGULATIONS WHOSE INTERPRETATION ARE DETERMINATIVE

The following statutes and rules whose interpretation are required in determining the issues presented are:

UCA 1953 Section 78-22-1(1)

UCA 1953 Section 25-1-15(2) before amendment

UCA 1953 Section 25-1-13 before amendment

UCA 1953 Section 25-6-9(1)

UCA 1953 Section 57-3-2, as amended

UCA 1953 Section 57-3-3, as amended

Rule 10, URCP
Rule 17d, URCP
Rule 54b, URCP
Rule 56, URCP
Rule 58A, URCP

Said statutes and rules are set forth verbatim in the appendix hereto.

STATEMENT OF THE CASE

CASE NATURE, COURSE AND LOWER COURT DISPOSITION

This is a case of TRUE IDENTITY. It involves the use of labels (identity camouflauge, fictitious names, pseudonymns, assumed names) in business and real estate title transactions and how true identity of the individuals using those business labels affects the application of other legal principles which impact the rights and responsibilities of other citizens who in one way or another came into contact with one or more of the labeled businesses.

The Vreeken Family composed of father Fred, mother Marilyn, and sons Kurt, Keith and Chris [Kris] [hereinafter called "**JUDGMENT DEBTORS**"] set up an articulate and elaborate white collar investment scheme penetrating all of the 50 United States and some foreign nations in the late 1970's and early 1980's. They first operated in California and then moved their base of operation to the obscure small rural town of Lehi, Utah in the last part of the 1970's. They adopted and used over 20 fictitious business names which they used to conduct various

factoring, commodity futures, options, supposed tax shelter limited partnerships and other investment schemes. New fictitious business names used by them are still being uncovered today. (See partial list recited on page 13.) They also purchased numerous parcels of real estate in Utah and elsewhere using some of their fictitious business names but never purchased any real property in their personal individual names.

The family sent out letters to their numerous investors in early 1983 indicating the board of directors of each particular investment entity had determined to liquidate and enclosed a token check of a very small part of each investor's invested funds. Some of these investors were lucky enough to quickly file suit and obtain judgments in Utah County, Utah in the names of some of these fictitious business names.

Rone, Bieber (who runs his own ranch in South Dakota called "RAB Ranch"), and Gregg [hereinafter called "**JUDGMENT CREDITORS**"] were three of those investors. Since their judgments in 1983, they have been trying to satisfy their respective judgments.

US Federal Tax Evasion cases were filed against Fred and Kurt Vreeken which eventually resulted in guilty verdicts on certain counts. USA v Fred & Kurt Vreeken, CR 84-48, Utah District. Fred and Kurt Vreeken served one year in federal prisons and halfway houses as conditions of probation and brought back over \$900,000.00 from overseas into the US and deposited said funds with the US Utah District Court to be used

partial restitution of investors and other creditors. The fund is still being held by a US Federal Court receiver pending distribution determination by the federal court. But the US Internal Revenue Service has levied upon said fund claiming first priority to all of them.

In an effort to recover part or all of the remaining balances of their judgments, the Judgment Creditors executed upon two parcels of property in Lehi, Utah County, Utah and three parcels of property in Alpine, Utah County, Utah in which the Vreeken Family had had fee title ownership through their fictitious business names at the time the Judgment Creditors obtained their separate judgments.

Property owners of two of the three parcels located in Alpine, Utah objected to the executions and filed this action as plaintiffs [hereinafter called "**OWNERS**"] in the Fourth Judicial Court, Utah County, honorable Boyd L. Park presiding, to enjoin the levy and sale of their respective parcels of property. The Sheriff of Utah County who levied upon the two parcels of Alpine property was named as the first defendant [hereinafter called "**SHERIFF**"] and the Judgment Creditors were named as further defendants.

After submission of affidavits and other evidence, the trial court granted the Owners summary judgment against the Sheriff and Judgment Creditors regarding the Owners' right to a permanent injunction precluding further execution by the Sheriff and Judgment Creditors on the Owners' two parcels of

property in Alpine, Utah.

STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED

In September 1987, Defendants Rone, Bieber dba RAB Ranch, and Gregg, as Judgment Creditors, executed upon 3 parcels of real property in Alpine, Utah County, Utah to satisfy 3 separate outstanding judgments claimed to attach as judgment liens upon said Alpine parcels. [R1811-1815] Defendant Bateman, as Utah County Sheriff, levied upon the Alpine parcels in his capacity as sheriff. [R1804-1810] The 3 judgments had been entered in Utah County in 1983 against numerous fictitious business names and Chris [Kris] and Keith Vreeken as individuals in 2 of the 3 separate cases (Judgment Debtors), namely:

MONEY FACTORS SYNDICATE, AG; FIRST FEDERAL FINANCE, AG; AIRES + SERV, SA; INTERNATIONAL INVESTMENT CONFERENCE; and OPTION WRITERS SYNDICATE on July 26, 1983 in favor of Judgment Creditor B. J. Rone [R1094]

CHRIS [KRIS] VREEKEN; KEITH VREEKEN; MONEY FACTORS SYNDICATE; FIRST FEDERAL FINANCE, AG; AIRES + SERV, SA; INTERNATIONAL INVESTMENT CONFERENCE; AND OPTION WRITERS SYNDICATE on August 25, 1983, 11:19 A.M., in favor of Judgment Creditor James A. Gregg [R1723]; and

CHRIS VREEKEN; KEITH VREEKEN; MONEY FACTORS SYNDICATE; FIRST FEDERAL FINANCE, AG; AIRES + SERV, SA; INTERNATIONAL INVESTMENT CONFERENCE; and OPTION WRITERS SYNDICATE on August 25, 1983, 11:20 A.M., in favor of Judgment Creditor Ronald A. Bieber and RAB Ranch [R1667]

Owners had acquired record title to 1 of the Alpine parcels in 1984 from a title holder labeled Red Deer Investments and Red Deer Investments, SA. [R314] Red Deer

Investments and Red Deer Investments, SA were two of the business names used by Judgment Debtors. [R490, 501-503] Another creditor of the Judgment Debtors, D. & M. Coal Company, also claimed rights to a 1984 recorded Trust Deed on one of the Alpine parcels, allegedly nonjudicially foreclosed its TD and D. & M.'s interest was purchased by some of the Owners in 1986. [R333, 342, 346] Because of their acquired record title pertaining to 2 of the Alpine parcels, Owners commenced this separate suit to enjoin the Judgment Creditors from selling their 2 of the three parcels of Alpine property. Owners alleged no liens of the Judgment Creditors attached to the 2 Alpine parcels due to 1) invalid judgments, 2) no final judgments, 3) no judgment debtors' interest in the Alpine properties, and 4) bona fide purchaser status of Owners. [R1]

Judgment Creditors produced Rule 56 evidence which creates a disputed fact regarding Judgment Debtors true identity showing that Judgment Debtors Fred Vreeken, Kurt Vreeken, Keith Vreeken, and Kris [Chris] Vreeken were using various pertinent and material business names as camouflauge, pseudonymous, fictitious, and assumed names with no separate legal identity status. [R470-569]

Judgment Creditors also showed that many of the fictitious business names listed in the judgment pleadings are tied to said Judgment Debtors. [R1094, 1723, 1667; First Federal Finance - R488,509-515; International Investment Conference - R535, 562; Aries + Serv, SA - R561] Judgment Creditors argued

that determination of true identity of judgment debtors in the 3 contested judgments must be determined in this case as a precedent finding of fact before the legal principles argued by Owners can be applied and that there are material facts left to be decided regarding true identity, alter ego, and dealing with officers and directors of de facto corporations when the injured parties have no knowledge the business they deal with claims to be a corporation. [R571-576]

Judgment Creditors also supplied Rule 56 evidence showing Kris [Chris] Vreeken--and not only Keith Vreeken--was served with process on behalf of judgment debtors in the separate Judgment Creditor Bieber and Judgment Creditor Greqq judgments [R1653-1656, 1658-1663, 1657-1662, 1709-1710, 1712-1715, 1718, 1711, 1719] and that Fred and Kurt Vreeken made general appearances through filing an answer in the Rone case. [R1078]

Owners moved for summary judgment and after oral argument, summary judgment was granted. The trial judge ruled there were questions regarding title to the property but no material facts left for decision. [R623] Owners asked for final judgment on certain issues pursuant to URCP Rule 54(b) without opposition from Judgment Creditors so that the important question of true identity could be quickly decided on appeal in this case. [R625, 626] Judgment Creditors dispute the judge's ruling and summary judgment, believing there are genuine material facts left to be decided and that Owners are

not entitled to judgment as a matter of law regarding a permanent injunction precluding levy and sale of their Alpine parcels by the Judgment Creditors.

SUMMARY OF ARGUMENTS

POINT 1: There is evidence in the record creating a genuine material fact that the Vreeken Family [Judgment Debtors] and their camouflauge labels (fictitious business names, pseudonymns, assumed names) are one and the same. This coexistent TRUE IDENTITY makes all of the assets of Judgment Debtors, whether held in fictitious names or otherwise, subject to Judgment Creditors' judgment liens.

POINT 2: The doctrine of TRUE IDENTITY is a precedent finding of fact required before the application of any other legal principles, states or rules of court. Interests in real property exist regardless of whether a certain name is listed in the judgment forming basis for the judgment lien if the fictitious business names and Vreeken Family are really one and the same. Recorded notices of federal tax liens and judgment liens create a genuine question of bona fide purchaser status. The genuine question of fact regarding full and fair hearing and newly discovered evidence is presented regarding the issue of service of process. Also, Kris Vreeken was served in the Bieber and Gregg cases of Judgment Creditors--not just Keith Vreeken.

POINT 3: Even if there were de facto separate legal entities set up using any of the Judgment Debtors' adopted fictitious business names, there are genuine questions of fact

remaining regarding fraudulent conveyance, alter ego and piercing of corporate veils, and failing to give proper notice to Judgment Creditors that they were in fact dealing with a corporation or corporations.

POINT 4: The Judgment Creditors' judgment liens attached to real property in counties in the State of Utah from the time they were docketed in each county regardless of whether **Rule 54b URCP** application for a declaration from the trial court that there was no reason for delay was requested or granted. Judgment liens are the minimum right Judgment Creditors must be granted--even more so than prejudgment writ applicants--when they have gone to the point in due process entitling them to a judgment on their claims.

POINT 5: The Owners presented defective affidavits containing only conclusory statements regarding lack of requisite knowledge to support their defense of bona fide purchaser status. Also, copies of court records the court may take judicial notice of were inappropriate submissions of evidence. Both the improper affidavits and the inappropriate copies of court records should be stricken from the case.

ARGUMENT

POINT 1: A PERSON IS RESPONSIBLE FOR HIS ACTIONS NO MATTER WHAT LABELS HE USES

The all encompassing and pervasive principle of TRUE IDENTITY governing this case and the legal principles and rules applicable to the parties has been precedent in Utah since 1925 when the Supreme Court of Utah in **State v. Tinnin**, 232 P 543, 545 (Utah 1925) adopted this universal rule:

There is no question in law, either as to a contract entered into by a person under an assumed or fictitious name being valid. THE LAW LOOKS TO THE IDENTITY OF THE INDIVIDUAL, AND WHEN THIS IS ESTABLISHED THE ACT IS BINDING UPON HIM AND OTHERS, IRRESPECTIVE OF THE NAME HE HAS ASSUMED.

This principle is well substantiated by case law throughout the United States. **See 57 AJ2d Names Section 62.**

Moreover, individuals who do business as sole proprietors under one or several names remain one person and, as such, are personally liable for all their obligations. **Thomas v Colvin**, 592 P2d 982 (Okla. App. 1979)

Most important in considering this case, naming a sole proprietor defendant under his trade name is the same as naming the defendant individually. **National Surety Co. v Oklahoma Presbyterian College for Girls**, 132 P 652 (Okla. 1912), reaffirmed in **Colvin**, supra and **Duval v Midwest Auto City, Inc.**,

435 F. Supp. 1381 (D. Neb. 1977) and **Southern Ins. Co. v Consumer Ins. Agency, Inc.**, 442 F. Supp 30 (E. D. La. 1977)

In **Duval**, supra, the court held:

The designation "dba" means "doing business as" but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations.

Some state courts have altered or improved the common law rule in **Tinnin**, supra, by certain provisions regarding personal identity through their civil procedure rules. Our Utah State has partially done this by providing in **Rule 17d, URCP**, that two or more persons associated in business - either as a joint-stock company, a partnership or other association, not incorporated - who transact business under "a common name", whether it comprises the names of the associated persons or not, may be sued by such "common name" and any judgment obtained against the defendant in such case "shall bind the joint property of all the associates" in the same manner as if all had been personally named defendants and had been sued upon their joint liability.

Some states have even specifically indicated suits may be brought even though true identity is not known. This honorable Supreme Court of Utah has so indicated in current **Rule 10a, URCP** by stating, "A party whose name is not known shall be designated by any name and the words 'whose true name is

unknown.'"

A great dramatist Shakespeare said it in laymen's language: A rose is a rose no matter what other name you call it.

It is material in this action whether or not the Vreeken Family or any of their members, ie., Fred, Marilyn, Kurt, Keith and/or Kris [Chris] Vreeken are in fact one and the same as the labels they adopted and used in the conduct of their businesses for if they were, under the principles of **Tinnin and Rule 17d, URCP** in Utah, no matter what they called themselves and no matter whether they mistakenly thought their business entity names were separate and distinct legal entities in the eyes of the law, they are the ultimate people liable and property held in any of the labels they used is subject to execution to satisfy any of the liabilities obtained by judgments in the name of any of the Vreeken Family's fictitious business names unless the property was purchased by a bona fide purchaser as said bona fide purchaser is defined by the law of the State of Utah.

Only a small part of the criminal trial transcript of Fred and Kurt Vreeken in US Utah District Court was introduced into evidence in support of Judgment Creditor's display of disputed genuine material facts. And that is all that was necessary because summary judgment is not a full hearing on the merits. In summary judgment, one need only one competent sworn statement under oath to dispute the averments on the other side of the controversy and create an issue of fact. **Hardy v**

Prudential Insurance Co., 763 P2d 761 (Utah 1988) But there certainly was sufficient evidence put into the record to show there are genuine material facts left to be decided.

Bank accounts were controlled by Kurt and Fred Vreeken. [R476-477] Fred, his wife Marilyn A., son Kurt and son Keith were on ARIES CONSULTING USA LTD. checking account signature cards for example. [R494-495, 497] Kurt concocted and created numerous names, many of them even personal names, fictions, people who did not even exist [R542-16 to 11 reverse side], which he used as pseudonyms for himself and to conduct business. [R515-556] He then would make all of the decisions regarding "business" transactions between these names [R553-554 as examples], pull out the appropriate rubber stamp which he kept in a drawer at his Lehi office, and plunk the stamp where signatures were needed. [R515-556, 480, 484, 536] They became known as his little squiggles. [R489] Indeed, his own signature is undecipherable unless you had personal knowledge of his signature.

Kurt was acting like a Captain Kirk maneuvering a giant monopoly game. However, he was using real money from real people. There was no arms length dealing whatsoever. He was most of the show. He even said in his own words, "This whole thing, like I said, was a fictional thing. It was an academic exercise. I wasn't working. I wasn't employed anywhere. I was just -- it was an academic exercise similar to what I'd done in school." [521-9]

Money used to buy the two parcels of property in Alpine, Utah in the name of RED DEER INVESTMENTS, which parcels Owners are trying to keep in this law suit, was taken from the FIRST FEDERAL FINANCE account at Deseret Bank in Lehi, Utah. [R552(back side)] FIRST FEDERAL FINANCE is one of the names against whom judgment was obtained by all 3 Judgment Creditors. [R1094, 1723, 1667] The connection is there and the liability of Owners property to satisfy the judgments of Judgment Debtors is there.

Some of the numerous fictitious names used by the Judgment Debtors were:

TESCHEN ENTERPRISES [R478]
SAAR AKKA ABESHR, LTD. [482-483]
E'TRANGER COMPAGNIE [R486-420
FIRST FEDERAL FINANCE [R488]
RAM-TECH [R490]
RED DEER INVESTMENTS [R490, 501-503]
ARIES CONSULTING USA LTD. [R494]
K. R. VREEKEN ENTERPRISES [R496]
ARIES CONSULTING CORP. [R504]
QUASAR INTERNATIONAL LTD. [R513- 519(back side)]
INTERNATIONAL LEGAL SERVICES, LTD [R520]
CHERKESSK ENTERPRISES [R522(back side)]
CM SYSTEMS [R524]
TESCHEN FINANCIAL INTERNATIONAL [R524]
AUDENTES FORTUNA JUVAT [R530]
KOVAN AMBERGETS [R531]
QUESSO RESEARCH INSTITUTE, LTD. [R531]
FOREIGN DIRECT INVESTMENT CONFERENCE [R535]
INTERNATIONAL INVESTMENT CONFERENCE [R535]
FIRST INTERNATIONAL BANK OF GIBRALTER [R534]
GYROSYSTEMS INTERNATIONAL [R536]
GODWIN-AUSTEN CO. LTD. [R536(back side)]
TECH STAR, LTD. [R537]

Some personal names concocted and used were:

SAMMY GNEI [R537]
ESKO TRUEHAND [R539]
RALLO NYBERG [R542]

THOMAS DEAVER [542]
RALPH PEEL [R542(reverse)]
KEVIN DALLY [R542(reverse)],

just to give a representative sample.

Kurt Vreeken borrowed money from and Marilyn Vreeken got money from SAAR AKKA ABESHR, LTD. [R483] Kurt Vreeken signed for E'TRANGER. [R486] FIRST FEDERAL FINANCE obtained all of its money through the Vreekens and that money was transferred back and forth. [R487, 508-515]

Kurt purchased a house [R501-503 in Alpine in the RED DEER INVESTMENTS name, Kurt purchased another home at 362 West 900 North, Lehi, Utah in the K. R. VREEKEN ENTERPRISES name. [R503] They also purchased a building lot at Silver Fork [R503], QUASAR INTERNATIONAL bought a \$12,500.00 Datsun for Marilyn A. Vreeken [R513-518], \$85,000.00 was used from the FIRST FEDERAL FINANCE bank account to pay off a home in Cove Point, Salt Lake County, Utah lived in by Fred Vreeken. [R513-523] An Audi 5000, Datsun King Cab and even a boat were also purchased from investor money and used by the Vreekens. [R515-516, 553]

Kurt made decisions to move money from one bank account to another [R526] and got a taxicab driver to sign documents when he visited the Turks and Caicos Islands. [R528]

IF all of the above evidence, which is only a small portion of the criminal proceedings against Kurt and Fred Vreeken, does not raise sufficient questions to place the question of true identity in the category of an undecided

genuine material fact, then our system of justice is gravely lacking.

The US Federal Court spent over \$80,000.00 in prosecuting their criminal charges against just 2 of the Vreeken Family. It was a complex task requiring the assimilation of records from many places, many banks, many depositors. It is a prime example of the meaning of the following statement:

The use of fictitious names is not to be encouraged since it lends itself too readily to fraud because of the concealment involved and is likely to be used against the public interest or against private interests, particularly those of creditors or other interested parties. **65 CJS Names Section 9(1), note 27.5 [Peak v State, 163 NE2d 584 (Indiana)]**

Our case is a classic example of white collar persons with some education and articulateness manipulating the use of identity through labels to mess up the legal system and defraud and improperly take and use money from others. The real culprits are the Vreekens. But the real problems it has generated are among those who have been effected by their actions. Their schemes have caused numerous problems including this one between people who put money into their schemes and people who bought property the Judgment Debtors had title to when they were using said money.

The Judgment Debtors truly were using labels as a tool of concealment.

POINT 2: TRUE IDENTITY DETERMINES HOW OTHER LEGAL PRINCIPLES, RULES AND STATUTES ARE APPLIED

For our system to truly promote justice, the effects of

true identity must implement at the time of the act creating liability or the time when judgment is rendered--not at a time subsequent. Owners would try and convince the court to adopt a policy precluding implementation of the time honored and sacred "true identity" doctrine until a judicial determination is made that in fact one person is truly also another or that many camouflage labels are really a certain group of people. They would have you adopt a rule allowing those who use fictitious names as tools of concealment and confusion to run fancy free and hog wild for days, months and even years (as in this case 7 years) before assets concealed (if still in existence) can be latched onto to satisfy a liability owed by the true perpetrator leaving those who were initially injured in the lurch.

They would also have you adopt a rule allowing third parties to do the same--run fancy free and without restraint up and down the freeway of exploitation taking assets out of order of priority and buying and selling property for a profit when that property really should be subject to a lien but because the record title holder label is not the same as the true owner, no lien can attach until a judicial determination recognizes the fact that the record title holder label and the true owner are one and the same.

To adopt such a rule is a mistake. It creates a ready tool for the deceiver. Those like the Judgment Debtors can run wild as the Vreekens did, create havoc and then leave those they have effected lurching in the rubble of their destructive

hurricane of abuse.

How should true identity effect the relationships of third parties and rights of priority between them?

When a man uses a label to transact business or purchase property, all labels he uses are at the first moment he adopts and uses them, truly him and him only. The legal relationship between that portion of him that is using a label for outward appearance identification should not be considered separate in any way from that portion of him that is using his correct name.

How does that effect legal relationships, rights and responsibilities, and the application of various legal principles in this case?

Interest in Real Property

Owners would argue that because the records of the recorder do not reflect any liens on the surface of the records attaching to their Alpine parcels in favor of the labels Judgment Creditors obtained judgments against, they are home scott free. They argue that in order for their property to be incumbered with any of the judgment liens of the Judgment Creditors, judgments needed to be obtained on paper in the name of Red Deer Investments or Red Deer Investments, SA. But that is not the just answer to a complex and all pervasive concept.

The concept and truth is: When someone is entitled to a judgment against a person, the interests of that person wherever situated and under whatever label designated are subject to the lien of that judgment. It may be long after the judgment is

entered before that true fact comes to light or before action is taken to assert rights against those interests, but the lien still has to be there. Otherwise, people like the Vreeken Family can get away with almost anything by merely labeling their business activities or the purchase of real property something other than their true legal name, and others can also take advantage of the situation and purchase property for an investment or whatever at the expense of those who were primarily injured.

What is the compensating and balancing legal principle protecting the rights of others in this situation?

It is the principle of bona fide purchaser. A person purchasing for value without knowledge (as that knowledge is defined by the law), is exempt from the sometimes harsh consequences of buying property with undisclosed liens on it. That is a doctrine which has evolved down through hundreds of years of human experience and which is even codified by our own Utah Legislature. If the person can prove bona fide purchaser status, they can keep the property free and clear of any lingering undisclosed liens on it.

But if the purchasers do not exercise that degree of duty required of them to check on facts which would tend to cause alarm to a reasonable man, they can lose their claim to bona fide purchaser status. In this case, Owners were put on notice through recorded documents pertaining to their Alpine parcels of lien problems. Numerous IRS Federal Tax Liens were filed listing Fred and Kurt Vreeken as doing business under numerous

fictitious business names. [R455-460] An additional notice was recorded of record identifying specifically FIRST FEDERAL FINANCE and RED DEER INVESTMENTS as two of the fictitious business names of Fred and Kurt Vreeken. [R451-452]

These above two notices of record were constructive notice to all persons "of their contents" according to our state recording statutes. 57-3-2(1) UCA 1953 For Owners to take further steps to purchase the Alpine parcels after having been warned by the above two notices, was purely at their own risk. **Johnson v Bell**, 666 P2d 308, 310 (Utah 1983), **McGarry v Thompson**, 201 P2d 898 (Utah 1948, **Pender v Dowse**, 265 P2d 644, 649 (Utah 1954), **Diversified Equities, Inc. v American Savings and Loan Association**, 739 P2d 1133 (Ut. Ct. App. 1987) The inclusion of these two notices in the evidence of Judgment Creditors presented in opposition to Owners motion for summary judgment created a noticable genuine material fact left for factual determination by a jury.

Rule 54b Inclusion of All Parties

Owners would also contend that since judgments were obtained on paper against only part of the defendants named in their complaints, the Judgment Creditors did not have any judgment liens and therefore their execution was improper. They contend **Rule 54b URCP** mandates special procedures such as in this case requiring the judge to determine there is no just reason for delay in entering judgment against only part of the defendants.

Even taking this argument at face value, the fact that the camouflaged labels used by the Vreekens to conduct business are in fact one and the same and are actually the alter ego or counterpart of the Vreekens defeats the argument. 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.

Rule 54 must be applied, just as every other legal doctrine, after a predetermination of true identity because applying the rule to only outward appearance is not getting at the heart. To create a fantasy that truth is really not what it is is to promulgate injustice. This is a prime example where rules and principles must be applied following a determination of true identity when a question of true identity is raised. If we were to say that even though the fictitious names under which judgment were obtained are really in fact the same as all of the Vreeken Family members but the point in time when a court says on paper that that is true is the point in time the benefits and responsibilities start to accrue, we are missing the boat.

THE TIME WHEN THE BENEFITS AND RESPONSIBILITIES MUST START TO FLOW IS THE POINT IN TIME WHEN THE FICTITIOUS NAMES WERE ADOPTED AND USED. No matter what we label ourselves, it should not change the responsibility No. 1 has to society and it also should not change HOW No. 1's ACTIONS UNDER HIS OWN NAME OR UNDER ANY LABELS HE CHOOSES TO STICK TO HIM IN THE FORM OF CAMOFLAGED IDENTITY. The one truth remains: He is

who he is no matter what he chooses to call himself and the rules of society should not be effected by his freedom to call himself by other names.

Service of Process

Owners would further hope the court would adopt the view there are no valid judgments because the constitutional due process requirement of notice (service of process or otherwise) has not been effected in any of Judgment Creditors' 3 separate cases. They argue that Keith and Kris [Chris] Vreeken were the individuals upon whom service of process in the 3 cases was made. They argue that such process was not effective under **Rule 4 URCP** pertaining to service of summons and complaints. They further argue that **res judicata** applies regarding defective service of process in all 3 cases.

Owners' contention is groundless for two different reasons:

A. First, once again if true identity determination shows Kurt, Fred, Marilyn, Keith and Kris [Chris] Vreeken to be one and the same as the fictitious business labels they conducted business under and held title to property under, then service upon Keith and Kris Vreeken was the same as service upon all of the fictitious names and other associates under **Rule 17d URCP**, *supra*.

B. In order for **res judicata** to take effect, two necessary elements are 1) the parties must be the same and 2) the issue must have been fully and fairly litigated before the

issue can be precluded in a subsequent proceeding. **Mel Trimble Real Estate v Monte Vista Ranch**, 758 P2d 451 (Utah Ct. App. 1988)

1. Owners try and argue that because in a previous proceeding involving Judgment Creditor B. J. Rone and another competing creditor of Vreeken in a contest over priority of liens to bank deposits, the Utah Court of Appeals sustained the trial court finding that service of process on Keith Vreeken in that proceeding was not sufficient to obtain jurisdiction over the person of the fictitious name defendants and therefore Rone had no valid judgment, the same must be held true in this proceeding involving not only B. J. Rone but also two different Judgment Creditors Ronald A. Bieber dba RAB Ranch and James E. Gregg. **Demetropoulos v Vreeken**, 754 P2d 960 [R266]

That proceeding did not involve the same parties to this action other than B. J. Rone. It pertained to the priority over alleged liens between B. J. Rone and Demetropoulos. It did not invalidate the judgment as against all others nor did it preclude a readjudication of the same question unless all elements allowing **res judicata** are present. The elements of same parties and the full and fair litigation of that issue are contested. If a full and fair litigation of the issue cannot be proven in this action, then that issue is not **res judicata** in this action.

First, even if it is held that a full and fair litigation occurred in the **Demetropoulos** case, the parties are different. Here the plaintiffs are completely different.

Second, and most important, even if collateral estoppel is applied in this action because of the **Demetropoulos** decision, it cannot effect anyone other than B. J. Rone's judgment against Judgment Debtors. This is so because in the **Demetroupoulos** dispute, B. J. Rone had only served Keith Vreeken was served process in the **Demetroupoulos** case BUT in the actions of Judgment Creditors Ronald A. Bieber and James E. Gregg another individual named Kris [Chris] Vreeken WAS ALSO SERVED both individually and as agent for numerous fictitious business names including FIRST FEDERAL FINANCE and there has not been one scrap of evidence presented by Owners in this proceeding on summary judgment to rebut the presumption that **Kris [Chris] Vreeken** was a proper party to receive service of process for the fictitious business names or for Keith, Fred, and Kurt Vreeken as doing business under those fictitious business names. The only grounds Owners rely upon for their contention that service was not effected and therefore jurisdiction was not obtained by all 3 Judgment Creditors is the **Demetroupoulos** decision.

Presumption of Validity of Service

The real law in the State of Utah says there is a presumption that the returns of service of summons, complaints and other pleadings are true until rebutted by clear and convincing evidence to the contrary. **Carnes v Carnes**, 668 P2d 555, 557 (Utah 1983) The returns of service on Kris [Chris] Vreeken showing service of the fictitious business names as well as individual service upon Kris himself [R1653-1656, 1658-1659,

1663; 1709-1710, 1712-1718] raise a genuine material fact in this action requiring a plenary hearing to determine validity of process and jurisdiction before judgment on that ground can be rendered in favor of Owners. Kris [Chris] Vreeken is a different person from Keith Vreeken. He is not Keith Vreeken. The trial court erred in overlooking this crucial point in ruling in favor of summary judgment against Judgment Creditors Bieber and Greqq not taking into account that Kris Vreeken is a different person upon whom process was served.

B. J. Rone's claim is the only claim which can be effected by the **Demetroupoulos** decision and that can only happen if the parties are the same and the matter was fully and fairly litigated. But it was not. New evidence is being uncovered as time goes on and the activities of the Vreekens (Judgment Debtors) become more known. Judgment Creditors presented evidence in opposition to summary judgment on the question of full and fair litigation and new evidence by showing a Trust Deed with Keith Vreeken's signature on behalf of Red Deer Investments with an acknowledgment by a notary public that he declared himself to be an officer of that business [R447-449] executed April 19, 1983, just 6 days before he was served with summons and complaint in the B. J. Rone action. [R1073] This family was all mixed up in this. There is no question about that, and to create the fiction that Keith Vreeken was not a running active member in these operations is a travesty on justice.

Judgment Creditors also noted that the original trial judge in the **Demetrouopoulos** dispute held in one of his findings that "none of the defendants in the instant case were, at any relevant time, business entities other than sole proprietorships of individual defendants operating under assumed names." [R738 (Civil No. 63505)]

Judgment Creditors also have in record the affidavit of Neal E. Colledge, a former INTERNATIONAL INVESTMENT CONFERENCE representative for the territory of Utah State, who testifies that not only Kris [Chris] but also Keith worked right along with Kurt and Fred Vreeken at their operation headquarters in Lehi, Utah producing a newsletter for investors, sending out correspondence and checks and using computers. [R596-597]

Judgment Creditors also have in record part of the criminal proceedings in US Federal Utah District Court indicating Keith Vreeken had his signature on the checking account of ARIES CONSULTING USA LTD. [R494-495, 497]

All of these items of evidence bring up questions of genuine material facts left to be decided.

Is new evidence to be looked at? Is justice to be pursued? The rule of law must be that it can, that it will be looked at and used to create solutions based upon truth as the truth unfolds. Even B. J. Rone is entitled to his time to prove Keith Vreeken was a proper individual to effect notice to Judgment Debtors in his case against them.

This honorable court said just in August 1988:

Courts cannot weigh disputed material facts in ruling on summary judgment motions . . .; it is of no moment that the evidence on one side may appear to be strong or even compelling . . .; it only takes one competent sworn statement under oath to dispute the averments on the other side of the controversy and create an issue of fact . . . [additional case citation omitted]. **Hardy v Prudential Insurance Co.**, 763 P2d 761 (Utah 1988)

And in addition to the above evidence in the record presented by Judgment Creditors, the factual question of true identity of all parties concerned cannot but outweigh any consideration for summary judgment. If all of the Vreeken Family are in fact the alter ego and vice versa of the fictitious business names they appropriated and used, what can justice say other than to declare service proper and complete to obtain jurisdiction in compliance with due process requirements of notice. Rather than reciting the same references to the record regarding the overenveloping question of true identity recited in Point 1 of this brief, reference is respectfully drawn to the same recitations of the record on pages 11-14 of this brief.

We should create better law and better governing principles. We should be getting better in devising a truly fair and balanced system in our courts. We should learn from the past--not live in it. This requires resoluteness and unwavering determination to do what's right for the panoramic view--not for a nearsighted short view of the moment or for expediency's sake. The panoramic view taking in all of society and its long range interaction with each other requires a doctrine recognizing

identity for what it is and disallowing an alteration of responsibility on the part of No. 1 or others affected by unilateral adoption of camoflaug labels by No. 1. Special privileges should not flow to anyone because of the unilateral adoption of camoqlauge labels by an individual, a group of individuals, or as in this case, by a circle of immediate family members.

POINT 3: EVEN LEGAL ENTITIES CAN BE PIERCED

Logical men for hundred of years have reasoned that fraud and deceit abroqate any benefits normally available to the perpetrators. This logic has been adopted by our own state. Even though a person is normally entitled to adopt and use assumed names, or form corporations or partnerships which the law normally recognizes with separate legal identity, if a person abuses these rights through fraud, he can lose the normal privileges of name use or separate legal identity and be subject to full liability for his acts and the acts of presumed corporations and partnerships. Our own court's address to this point regarding association (Rule 17d URCP) has already been cited on page 10 of this brief regarding **Rule 17d, URCP**.

There are other statutes and legal doctrines which address this point in the State of Utah. Four of them are this:

1. Assumed name useage.

At common law, persons may enjoy all legal privileges under assumed names unless assumed for the purpose to defraud others. And, individuals or partnerships may also use assumed or fictional names provided the

purpose for so doing is not a fraudulent design or for the intent to injure others. 57 AJ2d Names Sections 62, 9(1) & 64

2. Fraudulent Conveyances Act.

The Fraudulent Conveyances Act in our state has been enacted to protect against fraud. The provision of the old Fraudulent Conveyances Act in effect when the alleged improper executions were levied [Section 25-1-15(2) UCA 1953, as amended], provided:

May, as against any person, except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase... (2) disregard the conveyance, and attach, or levy execution upon, the property conveyed.

The 1988 changes to that act, although altering wording, still provides for the same action. The only insulation against fraudulent conveyance declaration is proof of bona fide purchaser status. 25-6-9 UCA 1953, as amended

3. Alter ego and piercing corporate veils.

To deal with unfairness when a person or persons unfairly use corporate forms to do business, the doctrine of alter ego and piercing corporate veils has evolved. This state, in continuing to sustain the doctrine of alter ego and corporate veil piercing, recently held such piercing is justified when: 1) there is such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and 2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable

result would follow. **Salt Lake City Corp. v. James Constructors, Inc.**, 761 P2d 42 (Utah Ct. App. September 7, 1988)

Owners claim that some of the fictitious business names adopted by the Judgment Debtors were corporations. Even if a de facto separate legal entity is mirrored on the outside, doctrines of law established to preserve fidelity in business relationships rather than fraud, justice rather than injustice and equity rather than inequity defeat these defenses.

Failure to observe corporate formalities (as is indicated in the testimony of Kurt Vreeken in the Federal Court transcript [R515-556] where he testifies he made all of the decisions, just pulled out his trusty squiggles from his drawer [R536] and stamped the pertinent rubber stamp on the signature line, many of which were not even real people [R537, 542]), set up this genuine factual question. Kurt testified he created Red Deer Investments himself. [R502, 549-550] Siphoning of corporate funds to buy homes, cars, building lots, and even boats for personal use [R501-503, 513-23, 553], non functioning of any officers or directors (Kurt and Fred seem to control as is seen by the testimony of Alvin Schow, Deseret Bank Officer) [R492-500], the use of the corporation as a facade for operations of the dominant stockholder or stockholders [R473-484, 492-504, 515-556], the use of the entity in promoting injustice or fraud (a factual question being set up once again by the Federal Court testimony of bank cards in Kurt and Fred Vreeken's names [R473-484, 492-500], rubber signature stamps pulled out to affix to

documents [R484, 535-536], decisions being made without board of director meetings [R518, 520, 525(reverse), 527, comingling funds as testified by special IRS agent Kent W. Davis [R505-514], setting up what were couched as funds back and forth purchase of the Alpine properties by Kurt Vreeken in the name of Red Deer Investment from funds in First Federal Finance bank accounts, getting a taxicab driver to sign documents he had never seen before when Kurt got off the plan in the Turks and Caicos Islands [R528] raises genuine material fact questions requiring a plenary hearing before a fact finding jury. Could there truly be a more classic indication of alter ego? See the good discussion on alter ego in our Utah case of **Colman v. Colman**, 743 P2d 782, 786-787 (Utah Ct. App, 1987).

4. Ignorance of Corporate Status.

Thirdly, if you don't know you are dealing with a supposed corporation, the directors and officers are personally liable. **RMS Corp. v. Baldwin**, 576 P2d 881, 882 (Utah 1978).

b) Judgments may be obtained against John & Jan Does. Our Rule 10a), URCP, provides in part, "A party whose name is not known shall be designated by any name and the words 'whose true name is unknown.'" In an action in rem unknown parties shall be designated as 'all unknown persons who claim any interest in the subject-matter of this action."

Consistent with this rule, the general rule in the United States is that a person may sue or be sued in any name he assumes (67A CJS Parties 114, pp. 936-937). And the, "law is

liberal in permitting the party to substitute the identified person for fictitious defendants while the case is pending in which event the person so identified is deemed to have been party from the beginning." **67A CJS Parties 115, n. 46, p. 939**

Accordingly, any contention by Owners that the judgments against Kris [Chris] and Keith Vreeken personally are invalid is erroneous.

POINT 4: OUR STATE LAW REQUIRES ONLY ENTRY OF A JUDGMENT

Collateral to the main issue of TRUE IDENTITY in this case is the mistaken assertion by Owners that judgment liens in Utah do not attach when the judgment is docketed and filed in the office of the clerk of the district court. Owners misquote and use cases which can be distinguished in trying to manipulate Utah statute to require something more than signing and entry of judgments before they attach as judgment liens.

A judgment is a judgment and can we trust what the legislature has stated in unequivocal and clear language?

Owners misuse **Kennedy v. New Era Industries, Inc.**, 600 P2d 534, 536-37 (Utah 1979) because that was a case determining what was necessary before the Supreme Court would entertain appeal--not when does a judgment lien attach. The **Arizona Farmers Prod. Assoc. v. Stewart Title & Trust of Tucson**, 535 P2d 33 (Az. Ct. of App. 1975) case also is distinguishable. That case involved a default judgment of 2 out of 3 claims--not judgments on all claims.

The **Salina v. Star B., Inc.**, 731 P2d 1290 (Ct. of App.

Kansas 1987) case also is not importable into Utah. That case was decided as it was **because** Kansas' legislature has mandated a specific procedure and steps which must be taken to get a judgment lien to attach and have spelled out special requirements different than our Utah legislature.

Our Utah Legislature has passed a specific law stating clearly that a judgment lien attaches, "From the time the judgment of the district court or circuit court is docketed."

78-22-1 UCA 1953, as amended

Our Utah Supreme Court has then interpreted this statute saying, "It is not the judgment itself but the docketing thereof which creates the lien." **Orton v. Adams**, 444 P2d 62 (Utah 1968) Also, the right to said lien is unconditional and is not subject to alternation by a court on equitable grounds. **Taylor Nath'l, Inc. v. Jensen Bros. Constr. Co.**, 641 P2d 150 (Utah 1982)

The legislature never intended for judgments to remain in limbo without attaching to real property unless pleadings other than a judgment were signed. It can only be the public policy of this state to honor satisfaction of judgments as soon as can be and not to deny a claimant his priorities due to failure to get a statement from the court that it is ok to have the judgment. The judgment of the court itself inherently indicates this fact. The Rule 54 cited by plaintiffs can only apply to application for appeal and to preserve collateral or cross claim rights of parties--not to deny judgment liens from accruing immediately after judgments are docketed.

Arizona Farmers and **Salina** are badly reasoned and illogical treatment of a broad and all pervasive privilege (and also involve their own statutes which are different than ours)--a privilege of all citizens to have their judgments attach to assets of judgment debtors at the moment judgments are rendered without further ado of the courts. That is exactly what our Utah legislature has mandated without equivocation for as long as **Section 78-22-1** has been on the statute books of Utah, which has been at least since 1943.

Here we see an attempt in **Arizona Farmers** and **Salina** to plug a hole rather than fix the dike. We see here a prime example of two different courts putting on blinders and saying, "Ah, I see where we'll get rid of this one. We'll just reason that the supreme court can alter the intent of the legislature and thus alter the intent of the people by construing our civil procedure rule to create a narrow corridor down which every judgment creditor must squeeze before his judgment lien attaches. Baloney!

If this kind of logic is adopted by this state, this is what it will do: Every Vreeken Family who desires to manipulate the system can readily do it by merely sticking on camouflauge labels. It will royally foul up the system as the Vreekens have done for the past 10 years. It will allow others to take advantage of the situation, move in and make speculations, buy and sell property, dispose of assets, while those who have been deprived of their assets have the burden of first discovering

who the real culprits are (which may take years), hope they can obtain a judgment lien before the IRS slaps one on without having to go to court to get one, and give up or spend thousands of dollars and years of time as the Judgment Creditors in this case have done to attempt to recover their losses or at least part of their losses.

Such a logic also creates quirks which should not be in the law. It says, "You can get a judgment, but you better be careful, because even though you get the court to grant you a judgment, unless you ask the judge (burden on you) to make a separate determination that there is no cause for delay in giving you a judgment, you can think you have a judgment that creates a judgment lien but you really do not, so now all the boys like the IRS who don't have to do hardly a thing to incumber property can run fancy free for all the time it takes you, and you can be left with nothing."

I don't care how hard Owners argue that **Rule 54b URCP** alters the statute on entry of judgments in Utah, it does not and this honorable court cannot take a procedural rule and apply it to alter substantive, clear, unambiguous codified statute mandated by the legislature as far back as 1943 and before.

Arizona Farmers and **Salina** have no merit to be considered by this court in determining when judgment liens attach in the State of Utah. And if this court has intimated through any past decisions that **Rule 54b URCP** has any influence on altering when judgments attach as liens on real property in

the State of Utah, those cases should be distinguished, clarified or completely overturned.

To rule otherwise deprives judgment creditors of some very precious rights and creates a situation where the burden is placed upon the injured party rather than where it belongs--on the court or injuring party--to gain priority to assets ahead of those entities who can automatically file a nonjudicial mortgage, nonjudicial mechanics lien, tax lien or the like in no time. Executions are allowed on judgment liens immediately following judgment unless the court orders otherwise. That is where the safeguard lies--not in declaring judgments not really a judgment (for lien purposes) if you don't ask and then even after you ask, you don't convince the trial court that "there is no reason for delay" [for execution].

So what if a judgment lien attaches. It should. Just as pre-judgment writs of attachment are allowed under the law to preserve and protect assets of the potential judgment debtor, so judgments--as the legislature has clearly expressed its intent, and thus the intent of the people--should attach as judgment liens at the moment "the judgment of the district court or circuit court is docketed and filed in the office of the clerk of the district court." **78-22-1 UCA 1953, as amended**

You say, "But if every judgment automatically becomes a judgment lien when there are still potential cross claims or counterclaims which could cause offsets, it could injure the judgment debtor." My counter to you is, "Who is the injured?

When a case gets heard on the merits and a court determines there is a right to a judgment, that is a situation where it is much more clearer the judgment creditor is entitled to a priority lien immediately to protect his best rights to satisfy that judgment than is a person who petitions for a prejudgment writ of attachment or garnishment where the merits have not been aired, notice has not yet been given, and affidavits of the plaintiff only have been seen by the court claiming irreparable harm and absconding debtor circumstances or the like."

At the least, a person entitled to a judgment is entitled to the real estate lien allowed by the legislature. If the court wants to restrict execution on that real estate judgment lien, let them, but the burden should be on the court to on its own motion so restrict immediate execution on a judgment lien or the judgment debtor should on its own motion and at his burden, move for and convince the court that it should be entitled to a stay on execution of that judgment or the judgment lien.

If this court does not hold that 78-22-1 UCA 1953 means exactly what it says in all instances, then judgment creditors entitled to judgments have an unfair burden which they have no business having--a burden the courts and judgment debtors should bear, and, most importantly, they are being denied irreparable lien priority to assets of the judgment debtor.

So what if there may be an offset eventually granted from a cross claim or counterclaim or the like in multiparty suits. If so, the amount of the lien will be reduced in the

amount of the offset or the lien lifted at the time of that determination, but at least--as with a pre-judgment lienholder--the judgment creditor is given the very minimum he deserves--a priority as soon as possible to assets to satisfy his judgment.

Let's look at this problem with all encompassing eyes--not with narrow expedient eyes. Look at the whole picture. Look at how this ruling impacts injured persons. Injured persons have enough burden on their shoulders as it is to assert their rights in a system with great economic inequities. Let's consider the abused and injured's rights. They are entitled to as a bare minimum, a lien to protect their priority rights to recover their losses as soon as possible, and in virtually all instances when a case has moved far along enough to warrant judgment in their favor, whether other parties are part of the litigation or not.

POINT 5: OWNERS' SUMMARY JUDGMENT EVIDENCE IS DEFECTIVE

Collateral to the main point of TRUE IDENTITY is the effectiveness of evidence presented by Owners in support of their summary judgment motion. The evidence in support of motions for summary judgment must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. **Salt Lake City Corp. v James Constructors, Inc.**, 761 P2d 42 (Utah Ct. App. 1988) Accordingly, affidavits must not be conclusory or mere characterizations. And if a party objects to the sufficiency of

them, the party must object to them or move to strike them.

Hobelman Motors, Inc. v Allred , 685 P2d 544, 546 (Utah 1984)

Well, Judgment Creditors did this by motion to strike part of Owners' exhibits and argument. [R438-440] The affidavits of a Diane C. Green [R316-322], Patricia L. Nield [R324-327], and V. Mark Peterson [R348-351] were all objected to as setting forth conclusory statements. They merely state they did not know. But they do not lay a foundation nor do they specify specific facts upon which the trier of fact can determine the facts. They are not proper evidence and should not have been considered by the trial court in rendering its decision on summary judgment.

Also objected to as being superfluous and not the best evidence were the copies of original records of the court. The best evidence and the proper way to get that evidence before the court when documents are already court documents not only at trial but also in proceedings on motions for summary judgment is to ask the court to take judicial notice of said pleadings or previously filed documents. **St. Louis Baptist Temple, Inc. v Federal Deposit Insurance Corp.**, 605 P2d 1169 (CA10, Colorado 1979) Accordingly, R256-309 should have been stricken by the trial court. Such a ruling is respectfully requested of the supreme court to clarify the law in this respect.

CONCLUSION

Please do not overlook the appellant's main issue in this case--that of TRUE IDENTITY and how it affects public and private interests. Judgment Creditors and all those similarly situated will be severely injured if the reality of the Vreeken Family scheme is not recognized for what it is--a classic example of white collar manipulation of identity.

These Judgment Debtors have created this havoc. They have swept through Utah and the United States and several foreign nations like a hurricane leaving great destruction as their aftermath. They have caused great confusion among society including the courts. But the fact can be proven in this case: The Vreeken Family and all of the camouflage labels they adopted and used in business transactions and in holding title to property are one and the same.

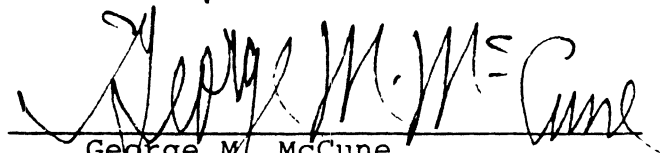
More than sufficient evidence has been presented to the trial court to set up issues of genuine material fact deserving of a full plenary trial before the jury on the merits for questions of identity are questions of fact for the jury. 65 CJS
Names 16

The effects of true identity must flow from the beginning. In other words, the Judgment Debtors win and the injured lose if the unilateral adoption of camouflage labels (fictitious business and personal names, pseudonyms, and assumed names) are allowed to in any way affect the relationships and rights of public and private individuals or

entities. Therefore, there can be no rule of law recognized by Utah other than that promulgated by **Tinnin**. The question of true identity when it is raised must be a precedent finding of fact before the application of any other legal principles, statutes or rules of court.

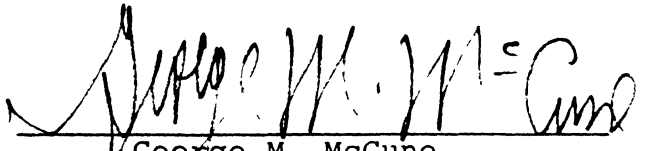
WHEREFORE Judgment Creditors (Appellants) pray for a reversal of the trial court's summary judgment directing a full trial on the merits.

DATED this 6th day of April, 1990.


George M. McCune
Attorney for Appellants
Rone, Bieber, RAB Ranch
and Gregg

CERTIFICATE OF SERVICE

I hereby certify that four (4) copies each of the foregoing Brief of Appellant were served upon each Appellee and other Interested Parties herein by placing four (4) copies each of said brief in a securely sealed envelope, and depositing the same in the United States mail, with first-class postage affixed, each addressed to Michael M. Later/Bruce A. Maak, KIMBALL PARR CROCKETT & WADDOUPS, Suite 1300, 185 South State, Box 11019, Salt Lake City, UT 84147; A. Dennis Norton, SNOW CHRISTENSEN & MARTINEAU, 10 Exchange Place, 11th Floor, Salt Lake City, UT 84111; and Guy R. Burningham, UTAH COUNTY ATTORNEY'S OFFICE, Utah County Courthouse, Provo, UT 84601 on this 9th day of April, 1990.


George M. McCune

APPENDIX

NOTES TO DECISIONS

ANALYSIS

Existence of agency
 Interpretation of statute
 Legal effect of written instrument

Existence of agency.

Where evidence in support of a particular agency is undisputed, the question of existence of agency is one of law for the court, but, where such agency is disputed, the question of the agency's existence is a mixed question of law and fact to be determined by the jury *McCormick v. Queen of Sheba Gold Mining & Milling Co.*, 23 Utah 71, 63 P. 820 (1900).

Interpretation of statute.

Meaning of the phrase "domestic or family

remedies" in a statute delineating acts constituting the practice of medicine was a matter for determination by the court, not the jury *State v. Yee Foo Lun*, 45 Utah 531, 147 P. 488 (1915).

Legal effect of written instrument.

The legal effect of a written instrument is for the determination of the court as a matter of law *Verdi v. Helper State Bank*, 57 Utah 502, 196 P. 225, 15 A.L.R. 641 (1921).

COLLATERAL REFERENCES

Am. Jur. 2d. — 75 Am. Jur. 2d Trial § 320.

C.J.S. — 88 C.J.S. Trial § 300.

Key Numbers. — Trial ⇌ 213.

CHAPTER 22

JUDGMENT

Section

78-22-1. Lien of judgment.

78-22-1.1. Judgment against party dying after verdict or decision

78-22-2 Judgment against sheriff — When

Section

conclusive against sureties on indemnity bond.

78-22-3 Judgment by confession authorized.

78-22-4 Mileage allowance for judgment debtor required to appear

78-22-1. Lien of judgment.

From the time the judgment of the district court or circuit court is docketed and filed in the office of the clerk of the district court of the county it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county in which the judgment is entered, owned by him at the time or by him thereafter acquired during the existence of said lien. A transcript of judgment rendered in a district court or circuit court of this state, in any county thereof, may be filed and docketed in the office of the clerk of the district court of any other county, and when so filed and docketed it shall have, for purposes of lien and enforcement, the same force and effect as a judgment entered in the district court in such county. The lien shall continue for eight years unless the judgment is previously satisfied or unless the enforcement of the judgment is stayed on appeal by the execution of a sufficient undertaking as provided by law, in which case the lien of the judgment ceases.

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this chapter as against creditors and purchasers shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors or purchasers.

History: R.S. 1898 & C.L. 1907, § 2475; C.L. 1917, § 5822; R.S. 1933 & C. 1943, 33-1-12.

25-1-13. Bona fide purchasers not affected. The provisions of this chapter shall not be construed to affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

History: R.S. 1898 & C.L. 1907, § 2476; C.L. 1917, § 5823; R.S. 1933 & C. 1943, 33-1-13.

Collateral References.

Fraudulent Conveyances ⇌ 192.

37 CJS Fraudulent Conveyances § 282.

37 AmJur 2d 801, Fraudulent Conveyances § 121.

Necessity of participation by the grantee or transferee in the fraud of the grantor or transferor in order to avoid a voluntary conveyance or transfer as against creditors, 17 ALR 728.

Presumption and burden of proof as regards good faith and consideration on part of purchaser or one taking encumbrance subsequent to unrecorded conveyance or encumbrance, 107 ALR 502.

Right of grantee, mortgagee or transferee in instrument fraudulent as to creditors to protection to extent of consideration paid by him, 79 ALR 132.

Right of grantee, or his privies, to maintain suit or proceeding for affirmative relief, where claim is made or anticipated that conveyance was made with intention on part of grantor, but without actual fraud by grantee, to defraud former's creditors, 128 ALR 1504.

Right of grantee or transferee to be reimbursed for expenditures in payment of taxes or encumbrances on property where conveyance or transfer is in fraud of creditors, 8 ALR 527.

Rights as between creditors of fraudulent grantor, where one or more of them, in payment of or as security for his debt, receives deed or mortgage from fraudulent grantee, 114 ALR 406.

25-1-14. Sales without change of possession. Every sale made by a seller of goods or chattels in his possession or under his control, and every assignment of goods and chattels, unless the same is accompanied by a delivery within a reasonable time, and is followed by an actual and continued change of the possession of the things sold or assigned, shall be conclusive evidence of fraud as against the creditors of the seller or assignor, or subsequent purchasers in good faith. The word "creditors" as used in this section shall be construed to include all persons who shall be creditors of the seller or assignor at any time while such goods and chattels shall remain in his possession or under his control.

History: R.S. 1898 & C.L. 1907, § 2473; R.S. 1933 & C. 1943, 33-1-14.

Compiler's Notes.

Analogous former statutes, Comp. Laws 1876, § 1016; 2 Comp. Laws 1888, § 2837.

Assignee of prior claims.

Under this section, where plaintiff, after filing of chattel mortgage, secured assignment of a claim against the mortgagor which

had accrued previous to the filing, plaintiff acquired all rights of such mortgagor therein, including right to invalidate mortgage. Volker Lbr. Co. v. Utah & Oregon Lbr. Co. (1915) 45 U 603, 148 P 365, Ann Cas 1917D, 1158.

Badges of fraud.

Transaction of sale, without delivery or change of possession of things sold, was fraudulent as against creditors of vendor, so

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as to authorize granting of attachment. *Charleston Co-op. v. A. W. Allen & Bros.* (1912) 40 U 575, 123 P 578, Ann Cas 1914D, 1092.

Many badges of fraud are set out in *Boccalero v. Bee* (1942) 102 U 12, 126 P 2d 1063.

Bona fide purchasers.

Conveyance of homestead by debtor to wife and by her to third person for cash, mortgage to her, and assumption of husband's debt to another, also secured by mortgage given by purchaser, who subsequently paid said assumed debt, where transactions were completed prior to any judgment against debtor husband, and purchaser from wife was unaware of this latter indebtedness, was not voidable as fraudulent. *State Bank of Beaver County v. Mortensen* (1925) 66 U 290, 241 P 1055.

Change of possession.

Sale of machinery by corporation to newly organized operational subsidiary in good faith cannot be voided on behalf of one who became creditor after transfer, on ground that there was no change of possession and transaction, therefore, was fraudulent. *Boston Acme Mines Development Co. v. Clawson* (1925) 66 U 103, 240 P 165.

"Creditor" defined.

The term "creditor" includes all persons who may have claims against mortgagor at any time while mortgaged goods and chattels remain in his possession. *Volker Lbr. Co. v. Utah & Oregon Lbr. Co.* (1915) 45 U 603, 148 P 365, Ann Cas 1917D, 1158.

Evidence.

Where a debtor in a cleaning business gave a bill of sale to plaintiff but kept and used

the equipment involved and received additional equipment from the plaintiff who retained title under a conditional sales contract, the plaintiff was not entitled to a summary judgment in an action involving the machinery since there was a disputed fact question as to notice to or knowledge of the sale by defendant who had loaned money secured by chattel mortgages on the machinery. *Martin Machinery v. Strevell-Paterson Finance Co.* (1958) 7 U 2d 316, 324 P 2d 776.

History of section.

It will be noted that this section was taken from Comp. Laws 1907, due to the fact that the last sentence was repealed by Comp. Laws 1917, and was restored in 1933. See *Hansen v. Daniels* (1928) 73 U 142, 272 P 941.

Pleadings.

Allegation in action to set aside conveyance that grantor remains in possession of land after its conveyance is an allegation of fact, and may or may not prove fraud. *Smith v. Edwards* (1932) 81 U 244, 17 P 2d 264.

Presumptions and burden of proof.

Rule that sale or assignment of chattels, unaccompanied by change of possession, is fraudulent per se as to execution creditors of, or subsequent purchasers from, seller or assignor does not necessarily apply to assignments for benefit of creditors, but long delay in taking possession is circumstance from which fraud may be prima facie inferred. *Snyder v. Murdock* (1899) 20 U 419, 59 P 91.

Collateral References.

Fraudulent Conveyances ⇌ 131 et seq.
37 CJS Fraudulent Conveyances § 187 et seq.

37 AmJur 2d 728 et seq., Fraudulent Conveyances § 38 et seq.

DECISIONS UNDER FORMER LAW

Change of possession.

Change of possession must be actual and not merely constructive or temporary. *Everett v. Brigham* (1896) 14 U 242, 47 P 75.

After delivery of possession, vendee may appoint vendor to hold property for him as his trustee or agent, or may make him his employee, but such appointment or employment must be in good faith, and may be regarded as suspicious circumstance and be considered by jury, with all of other evidence, in determining whether possession was taken

and held in good faith. *Everett v. Brigham* (1896) 14 U 242, 47 P 75.

There is no fixed rule, which will govern all cases, as to what is necessary to constitute such delivery and change of possession as are required by this section, but each case must be governed by its own particular facts and circumstances. *Blish v. McCornick* (1897) 15 U 188, 49 P 529.

Reasonable time for delivery.

Reasonable time should be allowed in which to make delivery. *White v. Pease* (1897) 15 U 170, 49 P 416.

25-1-15. Rights of creditors with matured claims. Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his

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claim has matured, may, as against any person, except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or mediately from such a purchaser:

- (1) have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim; or,
- (2) disregard the conveyance, and attach, or levy execution upon, the property conveyed.

A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

History: L. 1925, ch. 42, § 9; R.S. 1933 & C. 1943, 33-1-15.

Defenses.

Defendant in suit to set aside conveyance to his wife as fraudulent may interpose defense that property is exempt from execution, and does not exceed in value his maximum homestead, and upon submission of proof thereof by defendant, court will be required to make findings with respect thereto. *Cardon v. Harper* (1944) 106 U 560, 151 P 2d 99, 154 ALR 906, following *Williams v. Peterson* (1935) 86 U 526, 46 P 2d 674.

— evidence.

Evidence in action to set aside conveyance by grantor of property of fair value of \$3,250 for \$10 and other valuable consideration to daughters, held to show that conveyance was fraudulent as to creditors. *Zuniga v. Evans* (1935) 87 U 198, 48 P 2d 513, 101 ALR 532, distinguished in 102 U 12, 126 P 2d 1063.

Garnishment proceeding.

Fact that pleadings in garnishment proceedings revealed that indebtedness sued upon was that of individuals and that those individuals had no account with garnishee bank, the only account being with corporation owned by individuals, did not make cause of action one, under this section, to set aside conveyance, and thus argument that court had never obtained jurisdiction of corporate defendant or of res since no service of summons was made upon corporation could not be maintained; the pleading sufficiently averred a sham transaction between the individuals and the corporation so that they should be considered as identical for purpose of garnishment proceedings. *Stine v. Girola* (1959) 9 U 2d 22, 337 P 2d 62.

Transfer of stock could be set aside as a fraudulent conveyance on motion in garnishment proceeding, and it was not necessary to file a separate action to obtain such relief.

Jensen v. Eames (1974) 30 U 2d 423, 519 P 2d 236.

Presumptions and burden of proof.

Where grantees were in possession of premises pursuant to duly recorded deed and were paying taxes thereon, it was incumbent upon plaintiffs, in action to set aside conveyance, to allege and prove that grantees as such did certain acts which misled plaintiffs, or held themselves out in a way that misled plaintiffs and that plaintiffs had knowledge and relied thereon. *Smith v. Edwards* (1932) 81 U 244, 17 P 2d 264.

Burden of proof is not on plaintiff to show that property, alleged to have been fraudulently conveyed, is not exempt from execution. *Cardon v. Harper* (1944) 106 U 560, 151 P 2d 99, 154 ALR 906.

Setting aside mortgage.

A creditor with a matured claim may have a mortgage, a conveyance under 25-1-1, set aside under this section to the extent necessary to satisfy his claim, where such conveyance was made without fair consideration, defined in 25-1-3, and would render the person making it insolvent. *Ned J. Bowman Co. v. White* (1962) 13 U 2d 173, 369 P 2d 962.

Collateral References.

Fraudulent Conveyances ⇔ 226 et seq.

37 CJS Fraudulent Conveyances § 306 et seq.

37 AmJur 2d 827 et seq., Fraudulent Conveyances § 157 et seq.

Admissibility of declarations of grantor or transferor on issue as to whether conveyance or transfer was in fraud of creditors, 83 ALR 1446.

Admissibility of subsequent declarations of vendor on issue whether sale was in fraud of creditors, 64 ALR 797.

Assignability of executor's or administrator's right to attack conveyance or transfer

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(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

History: C. 1953, 25A-1-8, enacted by L. 1988, ch. 59, § 8; recompiled as C. 1953, 25-6-8.

Effective Dates. — Laws 1988, Chapter 59 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Compiler's Notes. — See the Compiler's Notes following § 25-6-1.

25-6-9. Good faith transfer.

(1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) the first transferee of the asset or the person for whose benefit the transfer was made; or

(b) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain any interest in the asset transferred;

(b) enforcement of any obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Chapter 9, Title 70A, the Uniform Commercial Code.

(6) A transfer is not voidable under Subsection 25-6-6(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

NOTES TO DECISIONS

ANALYSIS

Acknowledgment by mortgagee.
Disqualification of office taking acknowledgment.
Cited.

Acknowledgment by mortgagee.

An acknowledgment taken by mortgagee himself as a notary public is void, and renders mortgage unrecordable. Norton v. Fuller, 68 Utah 524, 251 P. 29 (1926).

Disqualification of office taking acknowledgment.

If acknowledgment is taken before officer disqualified to act, certificate is ineffectual. Crompton v. Jenson, 78 Utah 55, 1 P.2d 242 (1931).

Cited in General Glass Corp v Mast Constr. Co., 766 P.2d 429 (Utah Ct App. 1988).

COLLATERAL REFERENCES

Utah Law Review. — Recent Developments in Utah Law, 1986 Utah L. Rev. 95, 123.

Am. Jur. 2d. — 66 Am. Jur. 2d Records and Recording Laws § 77.

C.J.S. — 1A C.J.S. Acknowledgments § 8.

Key Numbers. — Acknowledgment ⇨ 1-4.

57-3-2. Record imparts notice — Change in interest rate — Validity of document — Notice of unnamed interests — Conveyance by grantee.

(1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, each original document or certified copy of a document complying with Section 57-4a-3, whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4, and each financing statement complying with Section 70A-9-402, whether or not acknowledged shall, from the time of filing with the appropriate county recorder, impart notice to all persons of their contents.

(2) If a recorded document was given as security, a change in the interest rate in accordance with the terms of an agreement pertaining to the underlying secured obligation does not affect the notice or alter the priority of the document provided under Subsection (1).

(3) This section does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document.

(4) The fact that a recorded document recites only a nominal consideration, names the grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the terms of the trust does not charge any third person with notice of any interest of the grantor or of the interest of any other person not named in the document.

(5) The grantee in a recorded document may convey the interest granted to him free and clear of all claims not disclosed in the document in which he appears as grantee or in any other document recorded in accordance with this title that sets forth the names of the beneficiaries, specifies the interest claimed, and describes the real property subject to the interest.

History: R.S. 1898 & C.L. 1907, § 2000; C.L. 1917, § 4900; R.S. 1933 & C. 1943, 78-3-2; L. 1977, ch. 272, § 54; 1985, ch. 159, § 7; 1988, ch. 155, § 14; 1989, ch. 88, § 8.

Amendment Notes. — The 1985 amend-

ment designated the existing language as Subsection (1) and divided the formerly undivided language into two sentences, in Subsection (1), deleted "the provisions of" before "Section 70A-9-402" in the first sentence and made

word "recorded." *Boyer v. Pahvant Mercantile & Inv. Co.*, 76 Utah 1, 287 P. 188 (1930).

Cited in *Billings v. Cinnamon Ridge, Ltd.*

(In re *Granada, Inc.*), 92 Bankr. 501 (Bankr. D. Utah 1988).

COLLATERAL REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d Records and Recording Laws § 98.

C.J.S. — 92 C.J.S. Vendor and Purchaser § 324.

A.L.R. — Recorded real property instrument

as charging third party with constructive notice of provisions of extrinsic instrument referred to therein, 89 A.L.R.3d 901.

Key Numbers. — Vendor and Purchaser 231(1).

57-3-3. Effect of failure to record.

Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:

- (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and
- (2) the subsequent purchaser's document is first duly recorded.

History: R.S. 1898 & C.L. 1907, § 2001; C.L. 1917, § 4901; R.S. 1933 & C. 1943, 78-3-3; L. 1988, ch. 155, § 15; 1989, ch. 88, § 9.

Amendment Notes. — The 1988 amendment, effective July 1, 1988, substituted "document" for "conveyance of real estate" in the

introductory paragraph; added Subsections (1) and (2), deleting comparable provisions from the introductory paragraph; and made minor stylistic changes.

The 1989 amendment, effective July 1, 1989, substituted "document" for "conveyance" in Subsection (2).

NOTES TO DECISIONS

ANALYSIS

Effect of failure to record.

Mortgage.

Obligation of grantor.

Priorities.

—Description of property insufficient.

—Prior unrecorded conveyance.

Cited.

Effect of failure to record.

Where, after mortgage was executed on certain tract of land, owner executed deed to grantee on property not included in mortgage, which deed was not recorded, decree in action to foreclose mortgage on tract of land, including part conveyed to grantee, was not binding on grantee who was not party to such action. *Federal Land Bank v. Pace*, 87 Utah 156, 48 P.2d 480, 102 A.L.R. 819 (1935).

A judgment lien is subordinate and inferior to a deed which predated it whether recorded after such judgment or whether not recorded at all. *Kartchner v. State Tax Comm'n*, 4 Utah 2d 382, 294 P.2d 790 (1956).

Mortgage.

This section applies to mortgage liens, mortgagee is purchaser, and law of priority of record applies to mortgages. *Federal Land*

Bank v. Pace, 87 Utah 156, 48 P.2d 480, 102 A.L.R. 819 (1935).

Obligation of grantor.

The grantor of property has no implied obligation to protect the grantee's rights by recording the grantee's interest in the property or by informing third parties of the existence of the interest. If the grantee fails to record, he assumes the risk of a subsequent grantee of the same land acquiring superior rights to his by recordation. *Horman v. Clark*, 744 P.2d 1014 (Utah Ct. App. 1987).

Priorities.

—Description of property insufficient.

Although defendant's deed was recorded first, failure of deed to adequately describe disputed portion of land resulted in omission of that portion from the deed, so that plaintiff's later-recorded deed, which included the disputed property, voided defendant's claim to the property. *Neeley v. Kelsch*, 600 P.2d 979 (Utah 1979).

—Prior unrecorded conveyance.

Innocent purchaser for value without notice of previous conveyance, who first records his conveyance, takes preference over prior unre-

Gen. v. Pomeroy, 93 Utah 426, 73 P.2d 1277, 114 A.L.R. 726 (1937).

Defendant's pleading of the statute of limitations generally without designating the sections of the statute or statutes upon which he relied was not in accordance with Subdivision (b) and therefore was an inadequate plea.

Wasatch Mines Co. v. Hopkinson, 24 Utah 2d 70, 465 P.2d 1007 (1970).

Cited in Battistone v. American Land & Dev. Co., 607 P.2d 837 (Utah 1980); Katzenberger v. State, 735 P.2d 405 (Utah Ct. App. 1987).

COLLATERAL REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d Associations and Clubs § 57; 19 Am. Jur. 2d Corporations §§ 2220, 2225; 22 Am. Jur. 2d Damages § 819 et seq.; 37 Am. Jur. 2d Fraud and Deceit §§ 424 to 427; 50 Am. Jur. 2d Libel and Slander §§ 403, 422 et seq.; 51 Am. Jur. 2d Limitation of Actions § 459; 59 Am. Jur. 2d Parties §§ 27, 34 to 40; 61A Am. Jur. 2d Pleading §§ 9 to 14, 40, 53 to 56, 86 to 88; 65 Am. Jur. 2d Quieting Title § 69.

C.J.S. — 7 C.J.S. Associations § 35; 19 C.J.S. Corporations §§ 1327, 1334; 25 C.J.S. Damages § 131; 53 C.J.S. Libel and Slander §§ 161 et seq., 171 et seq.; 54 C.J.S. Limitations of Actions § 269 et seq.; 67 C.J.S. Parties § 98; 71 C.J.S. Pleading §§ 8, 21, 22, 25, 27, 33, 76, 80, 86; 74 C.J.S. Quieting Title §§ 56, 63; 82 C.J.S. Statutes §§ 445, 446.

A.L.R. — Recovery of punitive damages in

action by purchasers of real property charging fraud or misrepresentation, 19 A.L.R.4th 801.

Reports of pleadings as within privilege for reports of judicial proceedings, 20 A.L.R.4th 576.

Amendment of pleading after limitation has run, so as to set up subsequent appointment as executor or administrator of plaintiff who professed to bring the action in that capacity without previous valid appointment, 27 A.L.R.4th 198.

Key Numbers. — Associations ⇨ 20(5); Corporations ⇨ 513(4), 514; Damages ⇨ 142; Libel and Slander ⇨ 77 et seq., 90 et seq.; Limitation of Actions ⇨ 183; Parties ⇨ 72 to 74; Pleading ⇨ 8(1), (9), (13), (14), (15), (16), (18), 14, 32, 39, 46, 59, 63; Quieting Title ⇨ 34(3); Statutes ⇨ 280.

Rule 10. Form of pleadings.

(a) **Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem unknown parties shall be designated as "all unknown persons who claim any interest in the subject-matter of this action."

(b) **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption by reference; exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading, or in any motion. An exhibit to a pleading is a part thereof for all purposes.

(d) **Paper used for pleadings; size and style.** All pleadings and other papers filed in any action, except printed documents or other similar exhibits, shall be typewritten on good, white, unglazed paper of letter size (8½" x 11"), with a margin at the top of each page of not less than 2 inches and a left hand

nonresident infant defendant shall have 20 days after his appointment in which to plead to the action.

(4) When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

(d) **Associates may be sued by common name.** When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may be sued by such common name; and any judgment obtained against the defendant in such case shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability.

(e) **Action against a nonresident doing business in this state.** When a nonresident person is associated in and conducts business within the state of Utah in one or more places in his own name or a common trade name, and said business is conducted under the supervision of a manager, superintendent, or agent, said person may be sued in his own name in any action arising out of the conduct of said business.

Compiler's Notes. — This rule is similar to Rule 17, F.R.C.P.

Cross-References. — Guardians, § 75-5-101 et seq.
Service of process, Rule 4.

NOTES TO DECISIONS

ANALYSIS

Associates.

- Joint venture.
- Partnership.
- Unincorporated association.

Infants.

- Action for injury of minor.
- Suit by mother.
- Control by court.
- Failure to comply.
- Relief from judgment.

Nonresident doing business in state.

- Not found.

Real party in interest.

- Assignee.
- Corporation.
- Assignment of assets to another corporation.

- Foreign corporation.

- Shareholder.

- Insurance company.

- Joint tort-feasors.

- Partner in joint venture.

- Purpose of rule.

- Wife.

Cited.

Associates.

—Joint venture.

Joint venturers may sue in the name of the

joint venture. *Cottonwood Mall Co. v. Sine*, 95 Utah Adv. Rep. 11 (1988).

—Partnership.

Subdivision (d) does not affirmatively allow a partnership to bring suit in its common name, but the absence of a provision specifically authorizing a lawsuit in the partnership name is not indicative of an intent to prohibit such a suit. *Gary Energy Corp. v. Metro Oil Prods.*, 114 F.R.D. 69 (D. Utah 1987).

—Unincorporated association.

Subdivision (d) does not authorize an unincorporated association to institute an action in its common name. *Disabled Am. Veterans v. Hendrixson*, 9 Utah 2d 152, 340 P.2d 416 (1959).

Infants.

—Action for injury of minor.

—Suit by mother.

Under this rule, mother as guardian ad litem for benefit of father could bring action for injuries to sixteen-year-old son where father, an immigrant, had a somewhat limited use of English and business matters were mainly handled by the mother; § 78-11-6 providing for suit by father was not exclusive remedy. *Skollingsberg v. Brookover*, 26 Utah 2d 45, 484 P.2d 1177 (1971).

limitations as provided in the Utah Rules of Evidence for a court sitting without a jury.

(d) **Proceedings.**

(1) **Meetings.** When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) **Witnesses.** The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) **Statement of accounts.** When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) **Report.**

(1) **Contents and filing.** The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) **In non-jury actions.** In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) **In jury actions.** In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues sub-

mitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) **Stipulation as to findings.** The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) **Draft report.** Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(f) **Objections to appointment of master.** A party may object to the appointment of any person as a master on the same grounds as a party may challenge for cause any prospective trial juror in the trial of a civil action. Such objections must be heard and disposed of by the court in the same manner as a motion.

(Amended, effective Jan. 1, 1987.)

PART VII.

JUDGMENT.

Rule 54. Judgments; costs.

(a) **Definition; form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(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.

(c) **Demand for judgment.**

(1) **Generally.** Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(2) **Judgment by default.** A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

(d) **Costs.**

(1) **To whom awarded.** Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed

as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(2) **How assessed.** The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court in which the judgment was rendered.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

(3), (4) [Deleted.]

(e) **Interest and costs to be included in the judgment.** The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the register of actions and in the judgment docket.

(Amended effective January 1, 1985).

Rule 55. Default.

(a) Default.

(1) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter his default.

(2) **Notice to party in default.** After the entry of the default of any party, as provided in Subdivision (a)(1) of this rule, it shall not be necessary to give such party in default any notice of action taken or to be taken or to serve any notice or paper otherwise required by these rules to be served on a party to the action or proceeding, except as provided in Rule 5(a), in Rule 58A(d) or in the event that it is necessary for the court to conduct a hearing with regard to the amount of damages of the nondefaulting party.

(b) **Judgment.** Judgment by default may be entered as follows:

(1) **By the clerk.** When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the defendant has been personally served otherwise than by publication or by personal service outside of this state, the clerk upon request of the plaintiff shall enter judgment for the amount due and costs against the defendant, if

he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) **By the court.** In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) **Setting aside default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) **Judgment against the state or officer or agency thereof.** No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

(Amended, effective Sept. 4, 1985.)

Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the

facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits made in bad faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Chapter 33 of Title 78, U.C.A. 1953, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58A. Entry.

(a) **Judgment upon the verdict of a jury.** Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be forthwith signed by the clerk and filed. If there is a special verdict or a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49, the court shall direct the appropriate judgment which shall be forthwith signed by the clerk and filed.

(b) **Judgment in other cases.** Except as provided in Subdivision (a) hereof and Subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.

(c) **When judgment entered; notation in register of actions and judgment docket.** A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a nota-

tion of the judgment in the register of actions and the judgment docket.

(d) **Notice of signing or entry of judgment.** The prevailing party shall promptly give notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court. However, the time for filing a notice of appeal is not affected by the notice requirement of this provision.

(e) **Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be rendered thereon.

(f) **Judgment by confession.** Whenever a judgment by confession is authorized by statute, the party seeking the same must file with the clerk of the court in which the judgment is to be entered a statement, verified by the defendant, to the following effect:

(1) If the judgment to be confessed is for money due or to become due, it shall concisely state the claim and that the sum confessed therefor is justly due or to become due;

(2) If the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the claim and that the sum confessed therefor does not exceed the same;

(3) It must authorize the entry of judgment for a specified sum.

The clerk shall thereupon endorse upon the statement, and enter in the judgment docket, a judgment of the court for the amount confessed, with costs of entry, if any.

(Amended, effective Sept. 4, 1985 and Jan. 1, 1987.)

Rule 58B. Satisfaction of judgment.

(a) **Satisfaction by owner or attorney.** A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors, by the owner thereof, or by the attorney of record of the judgment creditor where no assignment of the judgment has been filed and such attorney executes such satisfaction within eight years after the entry of the judgment, in the following manner: (1) by written instrument, duly acknowledged by such owner or attorney; or (2) by acknowledgment of such satisfaction signed by the owner or attorney and entered on the docket of the judgment in the county where first docketed, with the date affixed and witnessed by the clerk. Every satisfaction of a part of the judgment, or as to one or more of the judgment debtors, shall state the amount paid thereon or for the release of such debtors, naming them.

(b) **Satisfaction by order of court.** When a judgment shall have been fully paid and not satisfied of record, or when the satisfaction of judgment shall have been lost, the court in which such judgment was recovered may, upon motion and satisfactory proof, authorize the attorney of the judgment creditor to satisfy the same, or may enter an order declaring the same satisfied and direct satisfaction to be entered upon the docket.

(c) **Entry by clerk.** Upon receipt of a satisfaction of judgment, duly executed and acknowledged, the clerk shall file the same with the papers in the case, and enter it on the register of actions. He shall also enter a brief statement of the substance thereof, including the amount paid, on the margin of the judgment docket, with the date of filing of such satisfaction.

(d) **Effect of satisfaction.** When a judgment shall have been satisfied, in whole or in part, or as to any

NOTES TO DECISIONS

Cited in *Oil Shale Corp. v. Larson*, 20 Utah 2d 369, 438 P.2d 540 (1968)

COLLATERAL REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d Declaratory Judgments §§ 183, 186, 203 et seq

C.J.S. — 26 C.J.S. Declaratory Judgments §§ 17, 18, 104, 155

A.L.R. — Right to jury trial in action for

declaratory relief in state court, 33 A.L.R.4th 146

Key Numbers. — Declaratory Judgment — 41, 42, 251, 367

Rule 58A. Entry.

(a) **Judgment upon the verdict of a jury.** Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be forthwith signed by the clerk and filed. If there is a special verdict or a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49, the court shall direct the appropriate judgment which shall be forthwith signed by the clerk and filed.

(b) **Judgment in other cases.** Except as provided in Subdivision (a) hereof and Subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.

(c) **When judgment entered; notation in register of actions and judgment docket.** A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(d) **Notice of signing or entry of judgment.** The prevailing party shall promptly give notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court. However, the time for filing a notice of appeal is not affected by the notice requirement of this provision.

(e) **Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be rendered thereon.

(f) **Judgment by confession.** Whenever a judgment by confession is authorized by statute, the party seeking the same must file with the clerk of the court in which the judgment is to be entered a statement, verified by the defendant, to the following effect:

(1) If the judgment to be confessed is for money due or to become due, it shall concisely state the claim and that the sum confessed therefor is justly due or to become due;

(2) If the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the claim and that the sum confessed therefor does not exceed the same;

(3) It must authorize the entry of judgment for a specified sum.

The clerk shall thereupon endorse upon the statement, and enter in the judgment docket, a judgment of the court for the amount confessed, with costs of entry, if any.

(Amended, effective Sept. 4, 1985 and Jan. 1, 1987.)

FILED IN
4TH DISTRICT COURT
ST
UT

AUG - 31 '89

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

| | | |
|----------------------------|---|--------------------|
| LON S. NIELD, et al., | : | |
| Plaintiffs, | : | RULING |
| vs. | : | |
| DAVID R. BATEMAN in his | : | |
| capacity as Sheriff of | : | |
| Utah County, Utah; et al., | : | CV87-2319 |
| Defendants. | : | JUDGE BOYD L. PARK |

The above-entitled matter came on regularly before the Court on Plaintiffs', Lon S. Nield, Patricia L. Nield, November Investors, Mark Peterson, and Nancy L. Peterson's, Motion for Summary Judgment. The Court, having read the Motion, and Memorandum of Points and Authorities in Support of and in Opposition to the Motion, now makes the following findings and ruling:

FINDINGS


1. Plaintiffs, Lon S. Nield, Patricia L. Nield, November Investors, Mark Peterson, and Nancy L. Peterson Motioned the Court for Summary Judgment as against Defendants, B. J. Rone, Ronald A. Bieber, RAB Ranch, and James A. Gregg, on Counts I, II, III, and IV of Plaintiffs' Complaint and against Sheriff Bateman, solely as to Count II of the Complaint.

2. This Court having spent an inordinate amount of time reviewing and analyzing several cases of the Fourth District Court, to wit: Case No's. 63,505, 63,522, 63,923 and 64,055, as requested by Plaintiffs' counsel, and further having researched and evaluated numerous statutes, title reports, Affidavits, Court transcripts, Deeds, and cases cited in the parties respective Memorandums, finds that even though some factual questions still exist (particularly regarding chain of title), the Court does not believe these to be material issues of fact particularly in view of the Utah Court of Appeals affirmation of Judge Baliff's ruling in *Demetropoulos v. Vreeken*, 754 P.2d 960 (Utah 1988) Civil No. (CV86-2491), finding improper service of process.

RULING

1. Plaintiffs, Lon S. Nield, Patricia L. Nield, November Investors, Mark Peterson, and Nancy L. Peterson's, Motion for Summary Judgment is granted.

DATED this 21 day of August, 1989.


BOYD L. PARK, DISTRICT JUDGE

cc: Michael M. Later, Esq.
George M. McCune, Esq.
Guy R. Burningham, Esq.

4th Judicial District
Salt Lake County
Jan 2 1 12 PM '89
[Handwritten signatures]

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF UTAH COUNTY, STATE OF UTAH

| | | |
|----------------------------|---|----------------------|
| LON S. NIELD, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | JUDGMENT |
| vs. |) | |
| |) | |
| DAVID R. BATEMAN in his |) | |
| capacity as Sheriff of |) | Civil No. CV87-2319 |
| Utah County, Utah; et al., |) | (Judge Boyd L. Park) |
| |) | |
| Defendants. |) | |

Plaintiffs' motion for summary judgment came before the Court for hearing on Friday, January 13, 1989. Plaintiffs sought to have this Court declare that certain judgments held by defendants did not constitute liens against plaintiffs' homes and to enjoin defendants from attempting to foreclose upon plaintiffs' homes. The Court's ruling with respect to Counts I and II of plaintiffs' Complaint resolves all issues regarding the existence

of any lien in favor of the defendants against plaintiffs' homes, there exists no good reason for delay in entry of this ruling as a final judgment and, therefore, pursuant to Rule 54(b) of the Utah Rules of Civil Procedure, the Court hereby enters judgment as follows with respect to Counts I and II of plaintiffs' Complaint:

The default judgment in favor of B. J. Rone in the case of B. J. Rone v. Kurt Vreeken, et al., Civil No. 63,522, in the Fourth Judicial District Court of Utah County, State of Utah; the default judgment in favor of Ronald A. Bieber in the case of Ronald A. Bieber dba RAB Ranch v. Kurt Vreeken, et al., Civil No. 64,055, in the Fourth Judicial District Court of Utah County, State of Utah; and the default judgment in favor of James A. Gregg in the case of James A. Gregg v. Kurt Vreeken, et al, Civil No. 63,923, in the Fourth Judicial District Court of Utah County, State of Utah, are invalid due to defects in service of process and do not, in any event, constitute final judgment. The above-listed default judgments in favor of B.J. Rone, Ronald A. Bieber, and James A. Gregg do not constitute liens against the home of Lon S. and Patricia L. Nield including the following described parcel of real property in Utah County, Utah:

Lot 1, Plat A, Shadow Mountain Estates,
Utah County, Utah according to the official plat thereof in the office of the Utah County Recorder, less and excepting

the following tract: Commencing at the Southeast corner of Lot 12, Plat A, Shadow Mountain Estates Subdivision, Alpine; thence North 11°27'56" East 325.12 feet; thence South 9°34'18" West 323.13 feet; thence West 10.90 feet to the point of beginning.

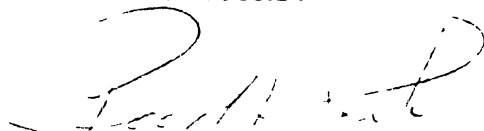
The above-listed default judgments in favor of B.J. Rone, Ronald A. Bieber, and James A. Gregg do not constitute liens against the home of Mark and Nancy L. Peterson, including the following described parcel of real property located in Utah County, Utah:

Lot 12, Plat A, Shadow Mountain Estates Subdivision, Alpine, Utah, according to the official plat thereof on file and of record in the Utah County Recorder's office.

Defendants are hereby permanently enjoined from conducting any sheriff's sale, foreclosure, or other form of execution against the Nield and Peterson homes pursuant to the above-referenced default judgments in favor of B.J. Rone, Ronald A. Bieber, and James A. Gregg.

DATED this 25 day of October, 1989.

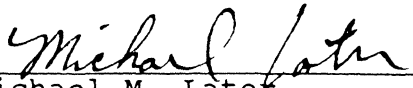
BY THE COURT:



BOYD L. PARK
District Judge

APPROVED AS TO FORM:

KIMBALL, PARR, CROCKETT & WADDOUPS



Michael M. Later
Attorneys for Plaintiffs

George L. McCune
Attorney for Defendant Rone,
Bieber, RAB Ranch and Gregg

Guy R. Burningham
Deputy County Attorney
Attorney for David R. Bateman