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# Howard Hatch v. Dwane J. Sykes : Brief of Appellee

Utah Court of Appeals

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Dwane J. Sykes; pro se; Spencer F. Hatch; Attorney for Appellant.

Sam Primavera.

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

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HOWARD HATCH

Plaintiff and Appellant

Plaintiffs,

v.

DWANE J. SYKES et al.

Defendants Appellees and Cross -Appellants,

Defendants.

UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 20000250-CA

Case No. 20000250-CA

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BRIEF OF APPELLEE CHRISTIANSEN

*Sam Primavera (5413)*  
*Attorney for William Christiansen*  
*4842 Murdoch Peak Circle*  
*Riverton, UT 84054*  
*Telephone: (801) 687-1455*

Dwane J Sykes pro se  
1511 S. Carterville Road  
Orem, UT 84097

Spencer F Hatch  
1433 Lakeview Drive Ste 100  
Bountiful, UT 84010

FILED  
UTAH APPELLATE COURTS

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*Sam Primavera (5413)*  
*Attorney for William Christiansen*  
*4842 Murdoch Peak Circle*  
*Riverton, UT 84054*  
*Telephone: (801) 687-1455*

Dwane J Sykes pro se  
1511 S. Carterville Road  
Orem, UT 84097

Spencer F Hatch  
1433 Lakeview Drive Ste 100  
Bountiful, UT 84010

## **TABLE OF CONTENTS**

Table of authorities	1
A statement of the issues	2
Constitutional provisions, statutes, ordinances, rules, and regulations	2
Statement of the case	2
Summary of argument	5
Argument	5
Jurisdiction	5
Timing of the decision	6
Rule 11 sanctions	6
Award for malicious prosecution	7
Request for attorney's fees and costs	7
Conclusion	8

## **TABLE OF AUTHORITIES**

### **A STATEMENT OF THE ISSUES**

- 1) Did the trial court err in granting a summary judgment to Mr. Christiansen where Mr. Christiansen had not yet been served with a summons but had answered counterclaimed and presented a motion to dismiss and a motion for summary judgment?
- 2) Did the trial Court err in granting a motion to dismiss 11 days after the service of such motion on the plaintiff where the plaintiff had also responded with a memorandum in opposition within that time period?

3) Did the trial Court err in not scheduling a hearing on the motion to dismiss?

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND  
REGULATIONS**

None presented.

**STATEMENT OF THE CASE**

- 1) Over 15 years ago multiple claims (cases 57,125 63,695 & 57,127) were initiated in which inter alia a claim was brought against William Christiansen by Howard Hatch alleging that Mr. Christiansen had purchased property at trustee's sale in collusion with Zions bank and other defendants including Dwane Sykes.
- 2) Howard Hatch alleged in that complaint that Mr. Christiansen was the "straw man purchaser" of property which Mr. Christiansen was actually purchasing for and in behalf of Mr. Dwane Sykes.
- 3) The case dragged on for years.
- 4) On April 17 1991 Judge Mower signed an order disposing of the case as it pertains to Mr. Christiansen.
- 5) Judge Mower's April 17 1991 order states "Defendant Christiansen has asked the Court to dismiss any claims against him and to award him some attorney's fees. The court intends to grant the requests. First I will analyze the situation in light of the motion to dismiss.

ANALYSIS IN\_RE\_MOTION TO DISMISS One of the claims in case number 63,695 was for damages against Zions Bank arising out of a trustee's sale conducted many years ago. Mr. Christiansen was the successful bidder at that sale. Plaintiff's claim was that the sale, where their property had been sold, had been improperly announced or scheduled and improperly

conducted. "Improperly" may be too weak a word to describe plaintiff's claims - they said that the bank and Mr. Christiansen and other defendants conspired together to schedule and to conduct an illegal sale

6) The sale described in Judge Mowers order is exactly the same sale as the transaction referred to in paragraph 12 of Mr. Hatch's amended complaint in the instant case.

7) The April 17 1991 dismissal by Judge Mower was upheld by the Utah Court of Appeals.

8) Shortly before 5 July 1995 Mr. Hatch again initiated an action against Mr. Christiansen in which Mr. Hatch attempted to sell Mr. Christiansen's property at sheriff's sale claiming it was Mr. Sykes' property.

9) Judge Mower again heard the case and ruled on 7 August 1995 that the sale of Mr. Christiansen property was not supported by the requisite order of the court.

10) Judge Mower also ruled that "Any reopening of the question of whether Mr. William Christiansen was the "strawman" of Mr. Sykes under the facts of this case [identical to the instant facts] is barred by the doctrine of "res judicata", inasmuch as this issue was dealt with in a prior order which was subsequently upheld on appeal."

11) Judge Mower in the same order granted an award of attorney's fees due to the "frivolous" and improper procedures followed by Mr. Hatch.

12) Both of the awards of attorney's fees had to be collected by attachment from Mr. Hatch. Neither was paid voluntarily.

13) Mr. Hatch in the instant case filed another claim using the identical facts of the previous two cases.

14) The events complained of occurred more than 10 years ago.

- 15) A motion to dismiss was filed by Mr. Christiansen along with an answer and a counterclaim for malicious prosecution.
- 16) A memorandum in opposition to the motion was filed by Mr. Hatch's attorney.
- 17) Judge Eyre granted the motion and awarded attorney's fees and threatened a contempt of court citation if another such case were filed against Mr. Christiansen.
- 18) A motion for partial summary judgment was filed by Mr. Christiansen on the issue of liability for malicious prosecution. Mr. Hatch responded and Mr. Christiansen filed his reply.
- 19) Judge Eyre ruled in favor of Mr. Christiansen with damages to be awarded in a jury trial.
- 20) A jury trial was held in which the Court ruled that no punitive damages would be allowed and that the only compensatory damages that could be awarded would be for the 11 days in which the case was pending before the Judge dismissed the charges against Mr. Christiansen
- 21) The jury awarded \$1,000 in compensatory damages.

### **SUMMARY OF ARGUMENT**

The Court had jurisdiction to dismiss the claims of Mr. Christiansen and consider his motion for summary judgment after he answered, counterclaimed, presented a motion to dismiss and a motion for summary judgment.

The timing of the decision was appropriate in that Mr. Hatch was given the opportunity to respond and did and the court was not obligated to grant a hearing on the matter.

No Rule 11 sanctions were granted so no Rule 11 requirements need be fulfilled.

The award for malicious prosecution seems to be uncontested.

Attorneys fees are requested for yet another frivolous action.

## **ARGUMENT**

### **JURISDICTION**

Mr. Hatch makes the argument that the court was without jurisdiction of Mr. Christiansen, since he had not been served, when it dismissed the claims against Mr. Christiansen and that this constitutes reversible error. This contention is without merit.

Mr. Christiansen voluntarily submitted himself to the jurisdiction of the Court when he answered and counterclaimed against Mr. Hatch. At that point no further service was necessary. Further it is necessary to have jurisdiction over a party only to grant an order against them. In order to dismiss a party from a case, no service of process is required.. The obviously example is the dismissal of a party from a case after it is settled but before service is perfected. Such an action does not violate the Utah Rules of Civil Procedure nor does it violate due process. In the instant case the case the only sanctions that were granted were against Mr. Hatch over whom, jurisdiction is not questioned. Finally Mr. Hatch does not have standing to submit that jurisdiction is improper inasmuch as he is not the party against whom jurisdiction was ostensibly exercised.



## **TIMING OF THE DECISION**

Mr. Hatch also complains that the Court reached a decision too quickly and did not schedule an oral argument. While this is the first action in which I have ever heard a party complain about the Court acting too quickly, the argument also does not contend that Mr. Hatch did not have an opportunity to oppose the motion.. His contention is that since the District Court Judge did not refer to any of plaintiff's arguments, the Judge did not give all reasonable inferences to the plaintiff. The Judge in his ruling has no affirmative duty to refer to the arguments of either party when rendering his decision. A decisions can be as curt as "motion denied". If the standard of review is "clearly erroneous" as Mr. Hatch indicates then the ruling will easily stand inasmuch as it is supported by clear evidence of multiple instances of litigation against Mr. Christiansen over the exact piece of land and the identical issues. The record also indicates that the Judge had an opportunity to consider Mr. Hatch's memorandum in opposition and rejected its arguments. Mr. Hatch cites Utah Rules of Judicial Administration 4-501 (repealed) in support of the notion that a hearing needed to be scheduled. I am unaware of any provision of Rule 4-501 that guarantees the right to a hearing on a given motion. Likewise if a motion is ripe for decisions the provisions of Rule 4-501 do not prevent decision to issue regardless of whether the full 15 days from the start of a motion to the end of the allowable period have elapsed.

## **RULE 11 SANCTIONS**

In regards to Mr. Hatch's quotation of Rule 11 and the requirements thereof, the court in paragraph 5 of its order of dismissal of claims against William Christiansen states:

**5) The Court reserved the right to award Rule 11 sanctions until judgment is**

**rendered on Mr. Christiansen's counter-claim.**

Therefore the court did not award attorney's fees under Rule 11 but specifically reserved that issue for determination after the determination of the malicious prosecution counter claim. So the argument about the requirements of Rule 11 does not apply.

### **AWARD FOR MALICIOUS PROSECUTION**

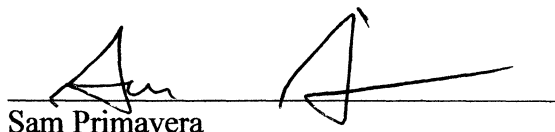
There does not appear to be any argument about the decision of the court relative to the malicious prosecution or the award of damages by the jury. All of the arguments appear to center around the original dismissal by the Court of Mr. Christiansen as a defendant in the case. Therefore the award of damages by the jury and the decision of Judge Eyre relative to the malicious prosecution counter claim is not at issue.

### **REQUEST FOR ATTORNEY'S FEES AND COSTS**

Mr. Hatch is once again dragging Mr. Christiansen through the Court system in an abusive fashion. The arguments contrary to the award made by the court are incredibly lacking in merit. Mr. Christiansen asks this court to consider an award of attorney's fees and costs to Mr. Christiansen for yet another unwarranted intrusion upon his privacy, particularly in view of the amount currently in controversy. The amount of attorney's fees involved on either side in just this appeal will far outweigh the award to Mr. Christiansen. This appeal is frivolous and a waste of attorney and judicial resources. Such attorney's fees to be proven by affidavit.

## CONCLUSION

The jurisdiction argument does not fly. Mr. Hatch does not have standing to assert it, jurisdiction was accepted by Mr. Christiansen and no jurisdiction is required to dismiss a party. Mr. Hatch was not deprived of procedural due process because the court did not quote from or reference his opposition to the motion. The Court received and read both sides of the argument and determined that no hearing was required on so obvious a motion. Rule 11 sanctions were never invoked. The finding of and award for malicious prosecution was not challenged in argument and should therefore be summarily affirmed. Mr. Christiansen should not have to pay attorney's fees for yet another frivolous action by Mr. Hatch. An award of attorney's fees and costs should be made to Mr. Christiansen. The appeal should be denied and the judgments appealed from affirmed.



Sam Primavera

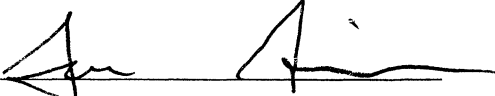
# CERTIFICATE OF MAILING

I certify that a true and accurate copy of the brief of appellee, memorandum in opposition to the motion for summary judgment and the notice to submit for decision on the motion for enlargement of time to file brief were sent first class postage prepaid on 9/30/2004 to:

Spencer F. Hatch  
1433 Lakeview Drive Ste 100  
Bountiful, UT 84010

Utah Court of Appeals  
450 S. State  
P.O. Box 140230  
Salt Lake City, UT 84114

Dwane Sykes  
1511 S. Carterville Road  
Orem, UT 84097

Signed \_\_\_\_\_