

2000

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

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS, STATE OF UTAH

HOWARD F. HATCH,

Plaintiff/Appellant,

vs.

DWANE J. SYKES, et al.,

Defendants/Appellees.

APPELLATE BRIEF OF
APPELLEES DWANE J. SYKES,
ET AL.

Appellate Case No. ~~2000254-CA~~

20000250-CA

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UTAH COURT OF APPEALS
BRIEF

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STATUTES

Utah R. Evid. 403

STATEMENT OF JURISDICTION

UCA § 78-2a-3(2)(j) confers jurisdiction on this Court to decide this appeal.

ISSUES PRESENTED FOR REVIEW

Appellees will rely upon the table of contents provided by Appellant in its appellate brief and address the three topics delineated in “bold” type and designated as subsections “A,” “B,” and “C” under the “Statement of Issue and Standards of Review” section of Appellant’s brief. Appellees assume that three subsections designated “A,” “B,” and “C” are those central issues on appeal. The three subsections are: “Sykes Allowed to Slander Hatch and make Himself a Hero,” “Inappropriate Jury Instruction #19,” and “Wrongful Summary Judgment Granted Christiansen.” [See Appellant’s Brief, pp. 3-5].

1. **The trial court did not abuse its discretion in allowing Appellee Dwane J. Sykes to make certain statements as a pro se Defendant in the action.**

Standard of Review: Rule 403 of the Utah Rules of Evidence provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The determination by a trial court to admit or exclude evidence under Rule 403 of the Utah Rules of evidence is reviewed under an abuse of discretion standard and will not be overturned unless it is “beyond the limits of reasonability.” *State v. 633 East 640 North*, 942 P.2d 925, 930 (Utah 1997) (quoting *State v. Hamilton*, 827 P.2d 232, 239-40 (Utah 1992)).

2. **The trial court did not abuse its discretion in allowing Jury Instruction #19 to be submitted to the jury.**

Standard of Review: “[T]he propriety of a jury instruction presents a question of law” which is reviewed for “correctness.” *State v. Fisher*, 972 P.2d 90, 99 (Utah Ct.App.1998) (citations omitted).

3. **The trial court did not err in granting William Christiansen’s motion to dismiss. Even if error was committed, William Christiansen’s dismissal was appropriate and did not affect the outcome of the case.**

Standard of Review: The propriety of a dismissal based on Utah R. Civ. P. 12(b)(6) is a question of law and reviewed under a correctness standard. *See Stokes v. Van Wagoner*, 987 P.2d 602, 602 (Utah 1999). Furthermore, “Jurisdictional questions are ... reviewed for correctness.” *State v. Finlayson*, 2004 UT 10, ¶ 5, 84 P.3d 1193.

STATEMENT OF THE CASE

On February, 22, 2000, the trial court issued Findings of Fact Conclusions of Law and Judgment in Civ. # 950400719. The case was tried before a jury in an eight day trial from October 18 through October 22, 1999 and from October 25 through October 27, 1999. In response to the Special Verdict Form, the jury found in favor of Appellee/Defendant Dwane Sykes (hereinafter, “Appellee Sykes”) exonerating him of all charges of fraudulent transfer, and improper influence. [See Findings of Fact, Conclusions of Law and Judgment, attached hereto as Addendum “1”]. Appellant Hatch

seeks review of five issues:

1. “The lax way in which the judge conducted the trial, allowing a tremendous amount of irrelevant and immaterial testimony to come before the jury.”
2. “Allowing a jury instruction [#19] to be included entitled ‘Equity,’ which suggested that Hatch had come before the jury with ‘unclean hands.’”
3. The trial court granting of Defendant William Christiansen’s Motion to Dismiss before he was served.
4. The award of attorney’s fees to Defendant William Christiansen on his Motion to Dismiss.
5. Rule 11 Sanctions granted against Appellant Hatch on motion by Defendant William Christiansen. [See Appellant’s Brief, pp. 40-41].

STATEMENT OF FACTS

The litigation underlying the present appeal is long and tortuous and involves multiple lawsuits. For brevity’s sake, Appellees will reiterate only the main historical facts relevant to this appeal:

1. Appellant Hatch and Appellee Sykes entered into an option agreement in June 1974 whereby Appellant Hatch would sell his home and property located at 1511 South Carterville Road in Orem, Utah.
2. After Appellee Sykes obtained title to the aforementioned property, a legal dispute arose between the two men.

3. Several lawsuits were filed in the Fourth District Court of Utah County (Civ.# 57,125, Civ. # 57,127 and Civ. # 63,695), which suits were later consolidated into one suit (Civ. # 8120457127).
4. On February 6, 1995, Appellant Hatch obtained a judgment against Appellee Sykes for \$509,942.03, which amount was reduced by the court to \$141,693.52 on a motion for reconsideration.
5. On appeal, this Court remanded the case to the trial court, resulting in a final judgment of \$260,000.00.
6. A further aspect of this earlier litigation is important as it relates to William Christiansen.
7. William Christiansen was named a defendant in the earlier suits that were later consolidated into Civ. # 8120457127.
8. Even before consolidation of the three suits had occurred, trial court Judge Mower had dismissed William Christiansen as a party. [See April 17, 1991 Order, attached hereto as Addendum “2”].
9. In fact, Judge Mower granted William Christiansen attorney’s fees in that same April 17, 1991 Order because the plaintiffs (including Appellant Hatch) failed to notify the parties and the court of the filing and dismissal of their bankruptcy.
10. After the three older lawsuits were consolidated into one suit (Civ. #

8120457127), Judge Mower was *again* compelled to issue an Order against Appellant Hatch because Mr. Hatch had attempted to sell William Christiansen's property by sheriff's sale *even though the court had previously dismissed William Christiansen* from the underlying litigation. [See July 5, 1995 Order, attached hereto as Addendum "3"].

11. In the July 5, 1995 Order, Judge Mower explained that the sheriff's sale was "not supported by the requisite order" from any court of "competent jurisdiction" and that any claim against William Christiansen was "barred by the doctrine of 'res judicata.'" [See July 5, 1995 Order, pp. 1-2].

12. The trial court, again, granted William Christiansen attorney's fees because Appellant Hatch had made a "frivolous" attempt to attach Mr. Christiansen's property. [See July 5, 1995 Order, pp. 1-2].

13. Unfortunately, the problems involving William Christiansen, were not laid to rest.

14. On November 30, 1995, Appellant Hatch filed a subsequent suit (Civ.# 950400719, which forms the basis of this appeal) to enforce the \$260,000.00 judgment he had obtained against Appellee Sykes in the earlier consolidated suit.

15. The November 30, 1995 Complaint charged Appellee Sykes with the fraudulent transfer of certain assets and real property in order to avoid paying the earlier

judgment obtained by Appellant Hatch. Appellant also charged Appellee Sykes with exercising improper influence over trusts, trustees, and trust assets. [See Complaint, attached hereto as Addendum “4”].

16. When Appellant first filed his Complaint in the aforementioned suit on November 30, 1995, William Christiansen was *not* named a defendant in the action.
17. Presumably, Appellant Hatch did not name William Christiansen in the November 30, 1995 because he knew better than to involve Mr. Christiansen after the trial court, in previous litigation involving the same transactions, had upheld Mr. Christiansen’s dismissal and had penalized Appellant Hatch for trying to attach Mr. Christiansen’s property after the dismissal.
18. Surprisingly, when Appellant Hatch filed an *Amended Complaint* on August 27, 1996, Mr. Christiansen was, once again, named as a defendant. [See Amended Complaint, attached hereto as Addendum “5”].
19. William Christiansen’s attorney filed a Motion to Dismiss and supporting memorandum. [See Motion to Dismiss Claims Against William Christiansen and Memorandum in Support, attached hereto as Addendum “6”].
20. In the Motion to Dismiss, Mr. Christiansen, through counsel, again asserts *res judicata* and statute of limitations as bases for dismissal.
21. Mr. Christiansen also requested attorney’s fees and sanctions to be assessed

against Appellant Hatch in the Motion to Dismiss.

22. In response, Appellant Hatch answered that Mr. Christiansen had not yet been served, and therefore, the trial court had no jurisdiction to hear Mr.

Christiansen's Motion to Dismiss. [*See* Plaintiff's Response Reply to Christiansen Motion to Dismiss Claim and Counterclaim; and Plaintiff's Motion for Dismissal and/or Removal Christiansen as a Named Party

Defendant, pp. 1, 5, attached hereto as Addendum "7"].

23. It is highly significant that Appellant Hatch's motion also includes a "Motion for Dismissal and/or Removal [sic] Christiansen as a Named Party Defendant."

24. In Appellant Hatch's response, he notes that "Plaintiff [Appellant Hatch] has no problem with the idea that Christiansen should not be served in this matter and that if necessary, his name may be removed from the heading of the amended complaint." [*See* Plaintiff's Response Reply, p. 4].

25. In his response, Appellant Hatch also "moves this court for an order removing the name of William Christiansen from the heading of the case, and if necessary because of the voluntary answer filed by Christiansen, that the matter be dismissed as to him." [*See* Plaintiff's Response Reply, p. 5].

26. Trial court Judge Eyre ultimately ordered that all claims against William

Christiansen be dismissed and awarded attorney's fees to Mr. Christiansen.

The trial court also reserved the right to award Rule 11 sanctions until the time

that Mr. Christiansen's counterclaim was heard. [See Order for Dismissal of Claims Against William Christiansen, attached hereto as Addendum "8"].

27. After a jury trial on October 20-21, 1999, the jury awarded Mr. Christiansen \$1,000.00 in compensatory damages for Appellant Hatch's abuse of civil process. [See August 7, 1999 Judgment and Order, attached hereto as Addendum "9"].

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in allowing Appellee Sykes to make certain statements and introduce two documents during the course of litigation. On the contrary, the trial court exercised proper and direct control over the proceedings and instructed the jury appropriately as to the law and the testimony offered during trial. Appellee Sykes represented himself in the matter. The trial court set clear parameters for Sykes. Appellant's attorney failed to object to many of Appellee Sykes' statements. Furthermore, any statements by Sykes that were admitted over Appellant's objections were harmless and did not prejudice the jury.

Jury instruction #19 was appropriate given the charges made by Appellant against Appellee Sykes. The trial court deemed the case to involve issues of equity and therefore allowed jury instruction #19 to be included. Even if jury instruction #19 was not entirely appropo to the case, the balance of the jury instructions and the reception of evidence and management of the trial by the trial court as well as closing arguments evidence that the

parties received a fair trial and that the jury was not prejudiced by the sole “offending” instruction.

By filing his Motion to Dismiss, Defendant William Christiansen acceded to the jurisdiction of the trial court even though he was not served with the Amended Complaint. Even if this Court determines that the trial court erred procedurally in granting the Motion to Dismiss, Appellant subsequently, and of his own accord, motioned the trial court to dismiss William Christiansen after receiving the Mr. Christiansen’s Motion to Dismiss. Defendant William Christiansen was dismissed and all parties agreed to the dismissal. The only questions remaining, if any, are whether the trial court should have granted attorney’s fees to Mr. Christiansen on his Motion to Dismiss and whether subsequent sanctions were appropriate.

ARGUMENT

1. The trial court did not abuse its discretion in allowing Appellee Sykes to make certain statements as a pro se Defendant in the action.

The determination by a trial court to admit or exclude evidence under Rule 403 of the Utah Rules of evidence is reviewed under an abuse of discretion standard and will not be overturned unless it is “beyond the limits of reasonability.” *State v. 633 East 640 North*, 942 P.2d 925, 930 (Utah 1997) (quoting *State v. Hamilton*, 827 P.2d 232, 239-40 (Utah 1992)).

“A trial court’s rulings with regard to the admissibility of evidence are generally

accorded substantial deference: “[t]rial courts have wide latitude in making determinations of relevance, probativeness, and prejudice.” *Diversified Holdings, L.C. v. Turner*, 63 P.3d 686 (Utah 2002) (quoting *State v. 633 East 640 North*, 942 P.2d 925, 929 (Utah 1997)).

Appellant’s first issue on appeal concerns statements made by Appellee Dwane Sykes (who appeared *pro se*) during the course of trial. In his appellate brief, Appellant relies primarily upon emotion-laden and generalized terms in arguing that the trial court abused its discretion in allowing Appellee Sykes to make certain statements during trial.

Appellant argues that, among other things, Appellee Dwane Sykes was allowed to: “slander [Mr.] Hatch and make himself a hero,” “make manifold irrelevant statements of fact which was a great waste of the court’s time and created confusion for the jury,” “make numerous comments of a derogatory nature about [Mr. Hatch],” “go on endlessly bragging about himself to bias the jury in his favor,” “make prejudicial, inflammatory, or slanderous statements,” and to “make wild, untrue gratuitous accusations.” [See Appellant’s Brief, pp. 8-12].

This sort of vague generalizing, however, does not prove that the trial court abused its discretion. Appellant does provide a few specific examples of statements made by Appellee Sykes during the trial that he deems prejudicial. Many of those statements, as Appellant acknowledges, were made during Appellee Sykes opening statement. [See Appellant’s Brief, p. 10].

While it is true that Appellant's counsel interposed several objections during Appellee Sykes' opening statement, a review of Sykes' opening remarks and their corresponding objections (as specifically cited by Appellant in its brief at p. 10) proves that the trial court handled the objections appropriately, and that no prejudice resulted:

1. MR. SYKES: "To show that it [sic] intended fraud, he [Mr. Hatch] has to show according to—he has to show that I made the conveyance without receiving reasonable equivalent value, and that at the time I became insolvent as a result of the transfers." MR. AMOTT: "I will place an objection on the record. This is a misstatement of the law. It is incomplete, and inaccurate, and confusing to the jury." THE COURT: "Let me advise the jury. I am going to be advising you as to what the law is. I will be instructing you as to what the law is, and I think what this attorney says isn't law. What Mr. Sykes says as his own attorney is not evidence either. I think he will be sworn. He will be asked questions and he will be testifying. At that time you can consider it as evidence . . . So, again, to the extent you hear any statements of what the law is, it is inconsistent with what I instruct you. My instructions will be the law and you are to follow my instructions, okay?" [See October 18, 1999 Transcript of Proceedings, 6:11 through 7:8 (bate stamped 2469)].¹
2. MR. AMOTT: "Do we have testimony here, or are we giving an opening statement?" THE COURT: "Tell me, is this going to be evidence that you are going to present?" MR. SYKES: "This is what the evidence will show." THE COURT: "All right. Go ahead." MR. SYKES: "The reasons for the lawsuit, the evidence will show, is. . . ." [See October 18, 1999 Transcript of Proceedings, 13:15-22 (bate stamped 2469)].
3. MR. AMOTT: "If he is going to testify again now—and also again, I am just worrying about our time frame." THE COURT: "This should just be a very brief outline of what you're going to present. If they are going to hear it in evidence, you can argue at the close of trial." MR. SYKES: So we determined

¹ The bate stamp number is provided because several of the transcripts are from proceedings that occurred on the same day. Page number and line number (where necessary for reference) shall be separated by a colon (i.e. 6:11 through 7:8 indicates that the information is taken from page 6 at line 11 and continuing through page 7 at line 8).

that the thing to do would be to donate the house into the trust, also.” [See October 18, 1999 Transcript of Proceedings, 14:16-22 (bate stamped 2469)].

4. MR. AMOTT: “I am going to object, your Honor. There has been again—he is not only testifying not under oath, he is testifying about irrelevant things that are not going to be in the trial.” THE COURT: “How does this relate to the matter that is before this Court and this jury.” (Thereafter, the trial court, Mr. Amott and Mr. Sykes discuss the relevance of the issue of title to a certain parcel of property). THE COURT: “Yes. Just try to outline what you think the evidence will show. Don’t go into all of the details of all of the evidence now, or we won’t ever get through. But do tell us that he had a piece of property and just what you think the evidence will show, just briefly.” [See October 18, 1999 Transcript of Proceedings, 16:11 through 18:16 (bate stamped 2469)].

Although a recitation of the foregoing testimony is laborious, such an exercise *clearly* shows that the trial court acted appropriately in instructing the jury when Appellant’s counsel objected to certain statements made by Appellee Sykes. Moreover, the trial court properly restricted Sykes when he began speaking too freely about irrelevant subject matter during his opening arguments. Because Appellee Sykes represented himself *pro se*, it is understandable that some objections would be made and that the trial court would have to provide some guidance during trial. The record proves that the trial court did not abuse its discretion when handling certain objections made by Appellant. On the contrary, the trial court instructed both the jury and Appellee Sykes as to the requirements of the law, and advised Sykes to avoid belaboring irrelevant points.

Appellant also takes issue with certain statements made by Appellee Sykes about his own health, and with negative statements made by Appellee Sykes against Appellant. [See Appellant’s Brief, p. 10]. Appellant does not inform this Court, however, that none

of these particular statements were objected to. Nor does Appellant clarify the fact that these statements were made during opening arguments.

Appellant lists another set of “inflammable and false statements” made by Appellee Sykes during Sykes’ direct examination by Mr. Amott. [See Appellant’s Brief, p. 10-11].

However, a review of the trial transcript shows that Mr. Amott did not object to *any* of these alleged “inflammable and false statements” at the time they were made.

In *Groberg v. Housing Opportunities, Inc.*, 68 P.3d 1015, 1019 (Utah App. 2003), this Court advised:

“Utah courts require specific objections in order ‘to bring all claimed errors to the trial court’s attention to give the court an opportunity to correct the errors if appropriate.’” *State v. Brown*, 856 P.2d 358, 361 (Utah Ct.App.1993) (quoting *VanDyke v. Mountain Coin Mach. Distrib., Inc.*, 758 P.2d 962, 964 (Utah Ct.App.1988)). “This specificity requirement arises out of the trial court’s need to assess allegations by isolating relevant facts and considering them in the context of the specific legal doctrine placed at issue.” *Id.* “The ‘mere mention’ of an issue without introducing supporting evidence or relevant legal authority does not preserve that issue for appeal.” *Id.* (quoting *LeBaron & Assoc. v. Rebel Enters.*, 823 P.2d 479, 483 (Utah Ct.App.1991)). “[F]or an issue to be sufficiently raised, even if indirectly, it must at least be raised to a level of consciousness such that the trial judge can consider it.” *Id.* (quotations and citations omitted).

Because Mr. Amott *did not object* to the allegedly offensive statements, Appellant cannot now assert that the trial court abused its discretion in permitting the statements to stand at trial. Appellant did not preserve its right to have this Court review the statements in question, and did not allow the trial court to rule on the relevancy of the statements in the first instance. It is worth noting that Appellant acknowledges that “Hatch’s attorney

failed on many occasions to [object] out of fear of offending the trial court and in the interests of time.” [See Appellant’s Brief, p. 9].

Finally, Appellant argues that the trial court abused its discretion in allowing the “Orem City” letter and “Explorers Club of New York City” article to be included as exhibits at trial. [See Appellant’s Brief, p. 12 and 14].

During testimony, Appellee Sykes referred to a letter dated February 11, 1981 from Orem City to Appellant Hatch in relation to the “Ragozzine” property. Appellant’s attorney, Mr. Amott, objected to inclusion of the letter and any testimony related thereto as “irrelevant.” [See October 25, 1999 Transcript of Proceedings, 5:18 through 6:24 (bate stamped 2473)]. The trial court then explained to Sykes that his testimony must be focused on “relevant information, evidence, testimony” concerning the trusts at issue in the litigation. [See October 25, 1999 Transcript of Proceedings, 7:7-15 (bate stamped 2473)].

Thereafter, the trial court allowed both Mr. Ludlow (who represented the Sykes Trust) and Mr. Amott to voir dire Appellee Sykes. During the course of the voir dire, Sykes explained why the parcel in issue was included in a particular trust. At the conclusion of the voir dire, the trial court ruled that the Orem City letter was relevant to the charges raised in the case (i.e. fraudulent conveyance) and allowed the letter to be included. [See October 25, 1999 Transcript of Proceedings, 8:2 through 13:10 (bate stamped 2473)]. Because the Orem City letter served as a partial explanation for why

Sykes transferred the “Ragozzine” property into the trust, the letter was relevant to Sykes’ defense as to the charge of fraudulent conveyance. The trial court ruled correctly in admitting the letter.

As to the “Explorers Club of New York City” article, Mr. Amott objected to its inclusion on the basis of relevance. The trial court ruled that although page 1 of the article was hearsay, page 2 was relevant as to the establishment of an insurance policy by Appellee Sykes, and as an explanation for why Sykes set up trusts. [See October 25, 1999 Transcript of Proceedings, 40:19 through 44:8 (bate stamped 2473)]. Again, these facts were relevant to Appellee Sykes’ defense as to why he established certain trusts.

Most importantly, Appellant offers no cognizable argument on appeal *against* the inclusion of either the Orem City letter or the “Explorers Club of New York City” article as evidence during trial. The trial court did not abuse its discretion in allowing these to documents to be introduced for evidentiary purposes.

Even if this Court were to conclude that the trial court abused its discretion in permitting certain statements to be made during trial, or that the letter and article should not have been introduced on evidentiary grounds, Appellant must still establish that the error affected the outcome of the case. “If the error was harmless, that is, if the error was sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the case, then a reversal is not in order.” *Price v. Armour*, 949 P.2d 1251, 1255 (Utah 1997) (citing *State v. Robertson*, 932 P.2d 1219, 1227 (Utah 1997)).

Appellant cannot prove that any alleged errors affected the outcome of the case.

Therefore, Appellant's qualms over "fairness" of the trial remain unproven.

2. The trial court did not err in allowing Jury Instruction #19 to be submitted to the jury.

"A trial court's ruling concerning a jury instruction is reviewed for correctness. A new trial will not be granted unless any error of the trial court was prejudicial, meaning that it misadvised or misled the jury on the law." *Butler v. Naylor*, 987 P.2d 41, 43 (Utah 1999) (citations omitted).

In *Davidson v. Prince*, 813 P.2d 1225 (Utah App. 1991), this Court considered whether a jury instruction on the tax consequences of a damage award was sufficiently prejudicial so as to affect the outcome of the damage award. This Court specifically considered the context in which the objectionable jury instruction was presented by referencing the other jury instructions given at the same time. *Id.* at 1230. After consideration, this Court determined that the objectionable jury instruction did not affect the outcome of the damages awarded. *Id.*

In *Cheves v. Williams*, 993 P.2d 191 (Utah 1999), the Utah Supreme Court provided clear guidelines for appellate courts who are asked to review the propriety of a jury instruction:

In reviewing a jury instruction, we consider the challenged instruction in context. "As we have repeatedly held, if the jury instructions as a whole fairly instruct the jury on the applicable law, reversible error does not arise merely because one jury instruction, standing alone, is not as accurate as it might have

been.” *Jensen v. Intermountain Power Agency*, 977 P.2d 474, 478 (Utah 1999) (quoting *Bott v. DeLand*, 922 P.2d 732, 741 (Utah 1996)) (other citations omitted).

Furthermore, an error in jury instructions may be harmless where the error is “sufficiently inconsequential so that no reasonable likelihood exists that the error affected the outcome of the proceedings.” *C.T. v. Johnson*, 977 P.2d 479, 484 (Utah 1999) (quoting *Jones v. Cyprus Plateau Min. Corp.*, 944 P.2d 357, 360 (Utah 1997)); *see also C.T.*, 977 P.2d at 484 (stating that we review “all of the jury instructions, the evidence, and closing arguments” to determine whether “it is highly probable that the jury considered each of the relevant ... factors during their deliberations even though not specifically instructed to do so”). Finally, we will not reverse for errors in jury instructions if the complaining party “fail[s] to demonstrate how the court’s refusal to adopt their proposed jury instructions prejudiced them.” *Walker Drug Co. v. La Sal Oil Co.*, 972 P.2d 1238, 1249 (Utah 1998).

The trial court in this case included twenty-eight jury instructions. [See Appellant’s brief, Addendum “B” for a copy of the jury instructions]. Appellant Hatch objects to the inclusion of a single jury instruction (#19) concerning equity. Jury instruction #19 indicates: “A remedy of equity, and one who invokes it must have clean hands in having done equity himself.”

On October 26, 1999, the trial judge, the attorneys, and Appellee Sykes discussed the equity/clean hands jury instruction #19. Sykes requested the inclusion of the equity/unclean hands instruction. The trial judge indicated that he would consider whether or not to include the instruction and notify the parties in the morning. [See October 26, 1999 Transcript of Proceedings, pp.3-4 (bate-stamped 002752)].

On October 27, 1999, the trial court reiterated that Plaintiff’s (Appellant’s)

counsel, Mr. Amott, had objected to the inclusion of the equity instruction, but that the court had decided to include the instruction despite the objection. [See October 26, 1999 Transcript of Proceedings, 3:17-20 (bate stamped 002753)]. Later in the proceeding, Plaintiff's counsel explained that he objected to jury instruction #19 because the instruction improperly focused the jury on the alleged behavior of Mr. Hatch, while the real issue at trial concerned only a judgment that Mr. Hatch was attempting to collect. [See October 26, 1999 Transcript of Proceedings, 22:13 through 23:10 (bate stamped 002753)].

Appellant recites the foregoing facts in its appellate brief. However, Appellant does *not* mention that the trial court provided an explanation for its decision to allow jury instruction #19 to be included. After Mr. Hatch's attorney objected to the inclusion of jury instruction #19, the trial court explained:

Okay. I asked the question—I said, gee, is this a case of equity? And probably the closest, it does sound in terms of rescission, rescission of trust agreements.

...

And rescission of the conveyances to the trust and the use by the trust of the property. Rescission is an equitable claim and the case does sound in equity. That's a very well understood and known axiom in the law. It means he who does equity—he who seeks equity, must do equity and have clean hands.

I felt that counsel did a good job of arguing the points, as did Appellee Sykes. It will always be a relevant thing for a trier of fact to consider in any claim for equitable relief. So I gave it. It was requested and I gave it. [See October 26, 1999 Transcript of Proceedings, 24:3-18 (bate stamped 002753)].

Appellant's claims in the "Amended Complaint," filed on August 27, 1996 focus on allegations that Appellee Sykes fraudulently transferred certain assets in order to avoid paying an earlier judgment and that Appellee Sykes exercised improper influence over the trustees, the trusts, and the assets of the trusts in an attempt to defraud creditors. Appellant Hatch's primary request for relief was to have certain transfers set aside on the basis of fraud. [See Amended Complaint, pp. 8-9].

The jury returned a verdict in favor of Defendants/Appelles on all contested issues. In response to the Special Verdict Form, the jury found that Appellee Sykes did not fraudulently transfer any of his interest in the various properties with actual intent to hinder, delay, or defraud creditors. Furthermore, the jury found that Appellee Sykes did not exercise improper influence over the trusts, trustees, or trust assets with actual intent to hinder, delay or defraud lawful creditors. [See Findings of Fact, Conclusions of Law and Judgment].

There is no indication anywhere that the jury gave any undue consideration to jury instruction #19, or that that jury instruction affected their decision to exonerate Sykes. Appellant cannot muster any credible evidence from the record which suggests otherwise. Appellant relies upon an argument that is logically flawed: namely, that *because* the jury returned to him an unfavorable verdict, jury instruction #19 must have been the cause of the unfavorable verdict. This argument is simply not supported by the underlying record.

When this Court considers "all of the jury instructions, the evidence, and closing

arguments,” in conjunction with the offending jury instruction #19, it is apparent that the jury’s finding in favor of Appellee Sykes was based upon the jury’s belief that Sykes did not engage in any acts of fraudulent transfer, with actual intent to hinder, delay, or defraud creditors, and that Appellee Sykes did not exercise improper influence over the trusts, trustees or trust assets. [See Findings of Fact, Conclusions of Law and Judgment, pp.1-2].

Jury instruction #2 clearly instructs the jury on Plaintiff’s/Appellant’s claims and the legal bases for the claims. Furthermore, jury instruction #4 warns the jury that their decision must be “based on the facts and the law, without regard to sympathy, passion, or prejudice.” Jury instruction #7 directs the jury to disregard anything that the trial judge may have said or done that might make the jury think that the judge believed one witness over the other. Jury instruction #8 instructs the jury how to weigh the credibility of the witnesses.

Together, these jury instructions correctly focus the deliberation process of the jury, and “level the playing field” for all parties.

The jury instructions “as a whole fairly instruct the jury on the applicable law” in this case. Furthermore, “reversible error does not arise merely because one jury instruction, standing alone, is not as accurate as it might have been.” Even if this Court finds that jury instruction #19 was somewhat overreaching or even inappropriate, the evidence, the closing arguments, and the inclusion of the other balanced jury instructions all militate against a finding that the trial court abused its discretion in adding jury

instruction #19.

Finally, Appellant has not offered a modicum of proof that jury instruction #19 affected the outcome of the proceedings. Therefore, this Court should find that the trial court did not abuse its discretion by including jury instruction #19 and that, at any rate, the outcome of the proceedings was unaffected by its inclusion.

3. The trial court did not err in granting William Christiansen's motion to dismiss; however, even if error was committed, William Christiansen's dismissal was appropriate and did not affect the outcome of the case.

The propriety of a dismissal based on Utah R. Civ. P. 12(b)(6) is a question of law and reviewed under a correctness standard. *See Stokes v. Van Wagoner*, 987 P.2d 602, 602 (Utah 1999). Furthermore, "Jurisdictional questions are ... reviewed for correctness." *State v. Finlayson*, 2004 UT 10, ¶ 5, 84 P.3d 1193.

Appellant is correct in noting that Utah R. Civ. P. 4 requires service of a summons in conformity with that rule in order for a court to obtain jurisdiction over a party. [*See Appellant's Brief*, p. 28].

However, it is undisputed in this case that, although never served with a summons, William Christiansen filed a motion to dismiss and counterclaim (for attorney's fees and sanctions) with the trial court on November 21, 1996. By so doing, William Christiansen submitted himself to the jurisdiction of the trial court even though he was never properly served under the requirements of Utah R. Civ. P. 4.

There appears to be no case law directly on point in Utah that addresses the

question of whether a court obtains jurisdiction over a defendant if that defendant is never served with process in compliance with Utah R. Civ. P. 4, but the named defendant, nonetheless, files a motion to dismiss in response to the complaint.

By analogy to the doctrine of “special appearances,” however, it is reasonable to argue that a court may obtain jurisdiction over a defendant that has not been served with a summons by virtue of the defendant filing a motion to dismiss in response to the complaint.

It is a widely established legal principle that a party who wishes to challenge the jurisdiction of a court may do so by entering a “special appearance.” Generally, a party challenging jurisdiction must specifically argue against jurisdiction by making special appearance but may not argue any other element or issue in the case. Such a limitation is necessary so as to avoid conferring actual jurisdiction on the court before which the argument is made. *See generally, Barlow v. Capo*, 821 P.2d 465 (Utah App. 1991); *Guenther v. Guenther*, 749 P.2d 628 (Utah 1988); *Housley v. Anaconda Co.*, 427 P.2d 390 (Utah 1967); *Silver City Mercantile Co. v. District Court of Utah County*, 195 P. 194 (Utah 1920).

If a party who enters a special appearance in order to contest jurisdiction is confined to arguing *only* the issue of jurisdiction in order to avoid conferring jurisdiction on the court hearing the matter, then surely a defendant who files a motion to dismiss in response to a complaint has acceded to the jurisdiction of the court, *even if the defendant*

was never properly served with a summons pursuant to Utah R. Civ. P. 4.

In the instant case, William Christiansen was obviously aware that he had been named as a defendant in Appellant Hatch's Amended Complaint. In response, Mr. Christiansen motioned the court for his own dismissal, which motion was granted. Such a response demonstrated his willingness to grant the trial court the necessary jurisdiction to decide the question. It would be an entirely different matter if William Christiansen had not made any response to the complaint and proper service had never occurred. As it stands, however, William Christiansen agreed to submit himself to the jurisdiction of the trial court so that the trial court could determine whether or not he was a properly named party.

As noted in the "Statement of Facts" section of this brief, Appellant had already attempted to involve William Christiansen in earlier litigation even after the court had dismissed William Christiansen. On appeal, Appellant Hatch decries the fact that he was compelled to pay Mr. Christiansen's attorney's fees and a \$1,000.00 sanction fine.

Nevertheless, given Appellant's lack of caution in naming Mr. Christiansen as a party, *and an apparent willingness to contravene earlier court orders*, the award of attorney's fees and \$1,000.00 fine to Christiansen is entirely justified given the prior disposition of the court in earlier cases involving the same parties and issues.

Even if this Court finds that the trial court did not have jurisdiction to entertain Mr. Christiansen's Motion to Dismiss and that the award of attorney's fees and sanction fines

were inappropriate, the fact remains that Appellant conceded that William Christiansen should not have been named as a defendant in the Amended Complaint. As explained in the “Statement of Facts” section of this brief, Appellant’s response to Mr. Christiansen’s Motion to Dismiss was partially denominated “Motion for Dismissal and/or Removal Christiansen as a Named Party Defendant” and in the body of that response, Appellant made motion upon the trial court to dismiss Mr. Christiansen or allow his name to be removed from the pleadings. [See “Statement of Facts”, ¶¶ 22-25, *supra*].

Whatever might be said on the issue of jurisdiction, all parties agreed that the dismissal of William Christiansen from the case was appropriate. In fact, Appellant does not allege on appeal that the case suffered a defect because Mr. Christiansen was dismissed. Appellant’s argument is merely that the trial court’s dismissal was not procedurally appropriate because Mr. Christiansen had not been served.

This Court should find, under the “correctness” standard that the trial court did obtain jurisdiction over William Christiansen at the time he filed a motion to dismiss even though he was never served with a summons in compliance with Utah R. Civ. P. 4. Moreover, this Court should sustain the award of attorney’s fees and sanctions against Appellant Hatch and in favor of Mr. Christiansen. Finally, even if this Court finds that the trial court lacked proper jurisdiction over William Christiansen and that, accordingly, the attorney’s fees award sanction fines were inappropriate, this Court should affirm the actual dismissal of William Christiansen from the case inasmuch as Appellant motioned

the trial court for the dismissal.

CONCLUSION AND REQUEST FOR RELIEF

Appellant has not met the legal standard for establishing “abuse of discretion” in this case. The trial court, in dealing with a *pro se* defendant acted in accordance with the rules of evidence. The trial court instructed the jury to receive only certain aspects of Appellee Sykes testimony, and properly considered objections raised by Appellant’s attorney. Additionally, Appellant’s attorney failed to object to many of the statements offered by Appellee Sykes.

Jury instruction #19 was appropriate given the underlying claims and defenses of the parties. Even if this Court finds jury instruction #19 to be inappropriate, this Court should find that the trial court did not err in submitting the instruction because the remaining jury instructions, evidence, and closing arguments provided a “level playing field” for the parties and that inclusion of jury instruction #19 did not prejudice the jury or alter the outcome of the case.

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The trial court properly obtained jurisdiction over William Christiansen because he filed a motion to dismiss with the trial court. The attorney's fees and sanctions were appropriate given the actions of the Appellant *vis-à-vis* Mr. Christiansen in previous lawsuits. Mr. Christiansen's dismissal was appropriate and agreed to by Appellant.

Respectfully submitted this 18 day of January, 2005.



JUSTIN R. ELSWICK,
ASCIONE, HEIDEMAN & MCKAY, L.L.C.
Attorney for Appellees

ADDENDA

1. Findings of Fact, Conclusions of Law, and Judgment
2. April 17, 1991 Order
3. July 5, 1995 Order
4. Complaint
5. Amended Complaint
6. Motion to Dismiss Claims Against William Christiansen and Memorandum in Support
7. Plaintiff's Response Reply to Christiansen Motion to Dismiss Claim and Counterclaim; and Plaintiff's Motion for Dismissal and/or Removal Christiansen as a Named Party Defendant
8. Order for Dismissal of Claims Against William Christiansen
9. August 7, 1999 Judgment and Order

ADDENDUM 1

B. Kent Ludlow, USB No. 2010
P.O. Box 95827
South Jordan, Utah 84095
Telephone: (801) 254-1096

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
2/22/00 TK Deputy

Attorney For The Trusts and Trustee

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

Howard H. Hatch,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
Plaintiff,	)	JUDGMENT
)	
vs.	)	Civil No. 950400719
)	
Dwane Sykes, et. al.,	)	Judge Guy R. Burningham
)	
Defendants.)	

This case was tried before a jury in an eight day trial from October 18 through October 22, 1999 and October 25 through October 27, 1999. Plaintiff was represented by Ralph C. Amott, Defendant Trusts and Trustees were represented by B. Kent Ludlow, and Dwane Sykes represented himself. The jury having been duly instructed and polled at the request of Plaintiff, found in favor of Defendants on all contested issues of fact and more particularly found the following in response to the Special Verdict Form:

1. Defendant Sykes did not transfer his interest in the 3.25 acres of Carterville property by himself or others acting under his control, to a trust, and/or others, with actual intent to hinder, delay, or defraud creditors.

2. Defendant Sykes did not transfer his interest in the Pleasant Grove properties by himself or by others acting under his control, to a trust, and/or others, with actual intent to hinder, defraud, or delay

creditors.

3. Defendant Sykes did not transfer his interest in the Raggozine property, the family home, by himself or by others acting under his control, to a trust, and/or others, with actual intent to hinder, delay, or defraud creditors.

4. Defendant Sykes did not exercise such control over the transfers of the Pierroti rental home, by others so as to be a fraudulent conveyance done with actual intent to hinder, delay or defraud creditors.

5. Defendant Sykes did not exercise such improper influence or control over the trusts, trustees, and trust assets transferred to and in the trust with actual intent to hinder, delay, or defraud lawful creditors of Mr. Sykes, making these transfers not fraudulent conveyances.

CONCLUSIONS OF LAW

The jury having found in favor of Defendants on all contested issues of fact including those specifically set forth on the Special Verdict Form, the Court concludes as follows:

1. The 3.25 acres of Carterville Road property which is more particularly described as follows:

Beginning at a point on the east side of the Carterville Road, which point is North 520.03 feet and East 1381.56 feet from the West quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 3° 05' East along fence and Carterville Road 151.25 feet; thence North 74° 46½' East 130.92 feet to the center line of an existing road; thence North 64° 03' East 54.05 feet; thence South 85° 12' East 48.11 feet; thence South 36° 26' East 92.31 feet; thence leaving the center line of the existing road; thence South 90.80 feet; thence East 160.00 feet; thence North 96.92 feet; thence East 157.74 feet; thence South 16° 38' East 58.14 feet; thence South 6° 56' West 70.89 feet; thence South 24° 42' East 148.45 feet; thence

North 82° 53' West 195.33 feet along a fence; thence South 6° 16' West 41.96 feet along a fence; thence North 82° 42' West 305.94 feet along a fence; thence North 88° 03' West 33.77 feet along a fence to J. Theron Smith property; thence North 2° 12' East 90.00 feet along fence and said property line; thence North 85° 18' West along a fence and property line 142.00 feet to beginning and to the Carterville Road.

was not Fraudulently Conveyed by Dwane Sykes under any applicable laws of the State of Utah and is not subject to any claims of Plaintiff and may not be attached, executed upon or otherwise interfered with in any manner by Plaintiff.

2. The Raggozine property which is more particularly described as follows:

Commencing at a point North 620.0 feet and East 1667.4 feet from the West quarter corner of Section 25, T6S, R2E, SLB&M; thence North 76 feet; thence East 160 feet; thence South 136 feet; thence West 160 feet; thence North 60 feet to the point of beginning.

was not Fraudulently Conveyed by Dwane Sykes under any applicable laws of the State of Utah and is not subject to any claims of Plaintiff and may not be attached, executed upon or otherwise interfered with in any manner by Plaintiff.

3. The Pleasant Grove properties which are more particularly described as follows:

Parcel 1:

Commencing 8.47 feet East of the Northwest corner of Lot 3, Block 36, Plat "A", Pleasant Grove City Survey; thence East 195.78 feet; thence South 200 feet; thence West 200.38 feet; thence South 1° 19' West 12.4 feet; thence North 89° 25' West 153.05 feet; thence North 0° 10' West 212.41 feet; thence South 89° 22' East 88.5 feet; thence South 1° 19' West 100 feet; thence South 89° 22' East 70 feet; thence North 100 feet to the point of beginning.

Parcel 2:

Commencing 149.16 feet West of the Northeast corner of

Lot 4, Block 36, Plat "A", Pleasant Grove city Survey of Building Lots; thence West 43.34 feet; thence South 130.0 feet; thence East 43.34 feet; thence North 130.0 feet to place of beginning.

were not Fraudulently Conveyed by Dwane Sykes under any applicable laws of the State of Utah and are not subject to any claims of Plaintiff and may not be attached, executed upon or otherwise interfered with in any manner by Plaintiff.

4. The Pierroti property which is more particularly described as follows:

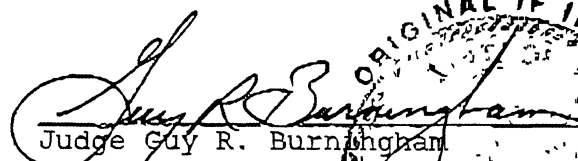
Beginning at a point on the corner on the East edge of Carterville Road and on the South edge of Hope Lane, which point is North 884.66 feet and East 1,403.79 feet, more or less, from the West quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South $84^{\circ} 10\frac{1}{2}'$ East 100 feet along a hedge and fence on the South side of Hope Lane; thence South $3^{\circ} 05'$ West 70 feet; thence North $84^{\circ} 10\frac{1}{2}'$ West 100 feet to the East edge of Carterville Road; thence North $3^{\circ} 05'$ East 70 feet along the East side of Carterville Road to the point of beginning.

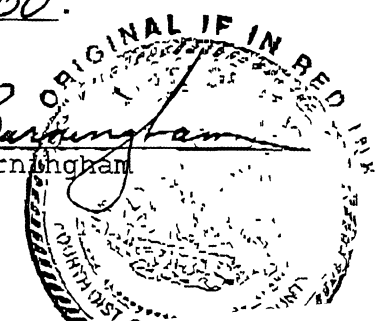
was not Fraudulently Conveyed by Dwane Sykes under any applicable laws of the State of Utah and is not subject to any claims of Plaintiff and may not be attached, executed upon or otherwise interfered with in any manner by Plaintiff.

JUDGMENT

Plaintiff's Complaint including, but not limited to all amendments thereto, and all claims made therein against any of the Defendants are hereby dismissed with prejudice.

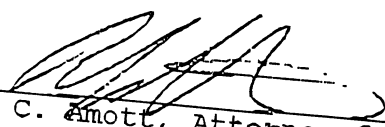
Dated this 22 day of FEB, 2000.


 Judge Guy R. Burningham

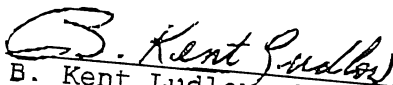


Approved as to Form:

Date: Feb. 9 - 00


Ralph C. Amott, Attorney for
Plaintiff

Date: 2/7/00


B. Kent Ludlow, Attorney for
Defendant Trusts and Trustees

Date: _____

Dwane Sykes, Pro Se

Approved as to Form:

Date: _____

Ralph C. Amott, Attorney for
Plaintiff

Date: _____

B. Kent Ludlow, Attorney for
Defendant Trusts and Trustees

Date: Feb: 9, 2000

Dwane Sykes
Dwane Sykes, Pro Se

ADDENDUM 2

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

- - - - -

HOWARD F. HATCH, MARJORIE S.)	
HATCH AND UNIVERSITY AVENUE)	
DEVELOPMENT ASSOCIATES, A	:	
Limited Partnership,	:	ORDER (long title,
	)	below)
Plaintiffs,	)	CIVIL NO. 63,695
	:	
-vs-	:	Hon. David L. Mower
)	
ZIONS FIRST NATIONAL BANK,)	
DWANE J. SYKES, VIRGINIA	:	
FLYNN and WILLIAM	:	
CHRISTIANSEN, d/b/a ARAPIAN)	
VALLEY LIVESTOCK CO.,)	
	:	
Defendants.	:	
)	

DWANE J. SYKES,)	
	)	CIVIL NO. 57,125
Plaintiff,	:	
	:	
-vs-)	
ANTHONY RAGOZZINE and)	
RUTH RAGOZZINE,	:	
	:	
Defendants.)	

DENNIS J. SYKES, DWANE J. SYKES,)	
ET AL.,)	
	:	CIVIL NO. 57,127
Plaintiffs,	:	
)	
-vs-)	
	:	
HOWARD F. HATCH, ET AL.,	:	
)	
Defendants.)	

- - - - -

Hatch et al. v. Zions et al., Case number 63,695, 57,127 and 57,125,
Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees, Page -2-

ORDER ON MR. CHRISTIANSEN'S MOTIONS
(1) TO DISMISS AND (2) FOR ATTORNEY'S FEES

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 and purchaser at that sale.

Plaintiffs' claims were 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 plaintiffs' claims - they said that the bank and Mr. Christiansen and other defendants conspired together to schedule and to conduct an illegal sale.

In any event, however, plaintiffs have now settled their claims against Zions Bank. In the process of settling, the plaintiffs signed a stipulation in which the following language appears:

Hatch et al. v. Zions et al., Case number 63,695, 57,127 and 57,125,
Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees, Page -3-

Plaintiffs ... stipulate ... that the trustee's sale ... was a bona fide, arm's length, non-collusive, valid and binding ... sale. Plaintiffs ... abandon ... all claims ... which ... challenge ... the validity ... of ... the title of the purchaser.

Admittedly, plaintiffs' stipulations were subject to certain conditions. But, so far as I know, all the conditions have been met.

Plaintiffs have no further cause of action against Mr. Christiansen. His motion to dismiss is granted.

ANALYSIS IN RE MOTION FOR ATTORNEY'S FEES

Mr. Christiansen has asked for an award of attorney's fees. He limits his request to the time period when bankruptcy case number 89B-05176 was filed and open. This case was filed in the United States Bankruptcy Court for the District of Utah by the plaintiffs as the petitioners.

Mr. Christiansen's request is based on the claim that plaintiffs should have notified the parties and the Court of (1) the filing and (2) the dismissal of the bankruptcy matter. Both events occurred during the pendency of these proceedings.

Plaintiffs gave no notice.

Plaintiffs' response to the motion is that no notice was required because a petitioner before the United States Bankruptcy Court can elect to trigger the automatic stay or not.

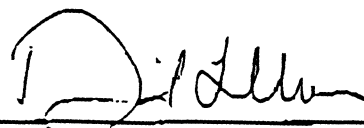
This response is a ~~misstatement~~ of 11 USC 362, which

Hatch et al. v. Zions et al., Case number 63,695, 57,127 and 57,125,
 Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees, Page -4-

contains words of mandate (e.g., "shall"). The filing of a petition triggers the automatic stay and automatically transfers all the petitioner's non-exempt property to the trustee.

Defendant's motion for attorney's fees is granted, subject to this condition: defendant must provide proof of the amount claimed within 30 days. A sworn affidavit will be allowed as proof, subject, of course, to objection.

Dated: 4/17/19⁹¹


 David L. Mower

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Order on Mr. Christiansen's motions (1) to dismiss and (2) for attorney's fees was served by U. S Mail, on the 17th day of April, 1991, on the following:

Spencer F. Hatch, 19221 Sherborne Lane,
 Huntington Beach, Ca. 92646

Howard F. Hatch, 843 South 1150 East, Pleasant
 Grove (84062)

Sam Primavera, 37 East 400 North, Provo, Utah
 (84601)

Dwane Sykes, 1511 South Carterville Road, Orem,
 Utah (84058)

Ruth Ragozzine, General Delivery, Hurricane, Utah
 (84737)

CERTIFICATE OF MAILING

I certify that a true and accurate copy of the motion to dismiss claims against William Christiansen and the order for dismissal of claims against William Christiansen were sent first class postage prepaid on 21 day of November 19 96 to:

Ralph C. Amott
60 E. 100 S. Ste 102
Provo, UT 84606


Clark R. Nielsen
Henriod and Nielsen
1160 Eagle Gate Tower
60 E. South Temple
Salt Lake City, UT 84111-1004

Gordon Duval
Duval, Hansen, Witt and Morley, LLC
110 South Main Street
Pleasant Grove, UT 84062

Dwane Sykes
1511 S. Carterville Rd.
Orem, UT 84057

Max Ferre
1973 E. 2400 N.
Layton, UT 84004

R. Kent Ludlow
Nielsen and Senior
P.O. Box 11808
Salt Lake City, UT 84147

Signed 

ADDENDUM 3

Sam Primavera (5413)
Attorney for Plaintiff
3707 N Canyon Rd. Ste 1A
Provo, UT 84604
Telephone: (801) 226-0993

IN THE FOURTH DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

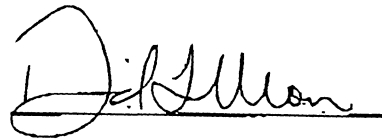
<p>Dwane Sykes et al</p> <p>Plaintiffs,</p> <p>v.</p> <p>Howard Hatch</p> <p>Defendant.</p>	<p>ORDER</p> <p>Civil No. 810457127</p> <p>HONORABLE JUDGE MOWER</p> <p>Date: 5 July 1995</p>
---	---

Being fully advised on the matter by a hearing on June 30 1995 and by arguments and testimony received, the court makes the following ruling:

- 1) The action of selling the Mr. William C. Christiansen's property by sheriff's sale is not supported by the requisite order from this or any other court of competent jurisdiction.
- 2) Any reopening of the question of whether Mr. William Christiansen was a "strawman" of Mr. Sykes under the facts of this case 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.

- 3) The sheriff's sale of Mr. William C. Christiansen's 3 acres of real property located next to the property at 1511 S. Carterville road is quashed.
- 4) Mr. Hatch is also ordered not to attempt the attachment or sale of any property, the title to which is in the name of William C. Christiansen.
- 5) Attorney's fees are granted under Rule 11 to Mr. Christiansen in the amount of \$350.00; inasmuch as the attempt to attach Mr. Christiansen's property was frivolous, obviously prohibited by "res judicata" and proper procedure was not followed since Mr. Christiansen was not properly served nor made a party to this suit thereby wasting the time of counsel and this court.

 7 AUG 1995
Judge Mower

PREPARED BY: Sam Primavera
746 E. 3800 N.
Provo, UT 84604
(801) 226-0993

ADDENDUM 4

Howard F. Hatch
843 South 1150 East
Pleasant Grove, UT 84062
(801)785-4818 / 785-8000

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
Nov 30 12 47 PM '95
↙

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

HOWARD F. HATCH,

Plaintiff,

:

v.

COMPLAINT

:

DWANE J. SYKES, DENNIS L. SYKES,
BENOY & ANGELA TAMANG, Trustees
of the so-called "Irrevocable
Trust Agreement", aka "THE DWANE SYKES
AND PATRICIA SYKES CHILDREN'S TRUST
AND/OR THE DWANE AND PATRICIA SYKES
TRUST", JOHNNY M. IVERSON & MAX S. FERRE.

:

CASE NO. 950400719

:

JUDGE _____

:

Defendants.

The Plaintiff, Howard F. Hatch, complains of the Defendants under the Fraudulent Conveyance Act, Utah Code Section 25-6-1 et seq., as follows:

GENERAL ALLEGATIONS

1. Plaintiff resides in Pleasant Grove, Utah, and acts complained of in the main took place within Utah County, Utah.

2. Defendants Dwane J. Sykes and the Tamangs live in Orem, Utah County, Utah.

3. Defendant Dennis L. Sykes is a resident of the State of Alaska.

4. The real property transferred to the alleged trust or other Defendants for the purpose of defrauding creditors is located in Utah County, Utah.

5. Defendant Johnny M. Iverson is a resident of Utah County, living in Highland, Utah.

6. Defendant Max S. Ferre is a resident of the State of Utah, living in Layton, Davis County, Utah.

7. The original acts of Defendant Dwane J. Sykes which led to the claims of Plaintiff creditor giving rise to the subsequent judgment, and hence this action, have all been committed within the jurisdiction of this State and for the more part within the confines of this County.

SPECIFIC ALLEGATIONS

8. On or about the 6th of June, 1974, Plaintiff entered into an option agreement with Defendant Dwane Sykes for the purchase of certain land in Utah County subject of this present action which then belonged to the Plaintiff.

9. Said option was taken in the name of Defendant Dennis Sykes, ostensibly for tax purposes, but it would now appear for the purpose of avoiding creditors.

10. On or about the 13th of November, 1974, said option was converted into a Uniform Real Estate Contract between the parties.

11. On or about the 30th of November, 1974, Dennis Sykes assigned said contract to Dwane J. Sykes.

12. On or about May 26, 1975, a deed was issued to Dennis Sykes by Plaintiff in consumation of the preceeding option and contract, but which title soon thereafter passed to Dwane Sykes by Warranty Deed dated July 28, 1975.

13. On or about June 7, 1978, title to said property was quit-claimed to Dennis L. Sykes for the purpose of avoiding creditors.

14. At or about the same time, Dwane Sykes conveyed his interest in other property which he had acquired from Mr. and Mrs. Anthony Raggozine and others to Dennis Sykes for a similar purpose. See Exhibit "A" attached hereto for a particular description of said properties.

15. Dwane Sykes, during the intervening years, has had recorded bogus encumbrances against the subject real properties for the purpose of creating the illusion that these were encumbered. His purpose in doing so would appear to have been to defraud potential creditors, including the Plaintiff, so they would not seek to execute against them. We base this allegation on the fact that prospects of an action which might result in a judgment against Mr. Sykes have been very real since problems began between the parties in the late 1970's. See copy of Judgment entered in the consolidated cases, Civ. No. 57,127 and 63,695 in this jurisdiction which is attached as Exhibit "B".

16. These charges were brought by the present Plaintiff as early as 1981, and amplified in a follow-on action in 1983, which resulted in the money judgment just referred to. Other parties have been pursuing Dwane Sykes legally during these same several years.

17. On or about the 31st of December, 1987, Defendant Dennis Sykes, in what would appear to be a sworn affidavit, asserted a "contract interest" in certain real property on behalf of Defendant Dwane Sykes, which real property is more fully described in Exhibit "C", attached hereto and made a part of this action thereby, to wit:

a 3 1/4 acre parcel of land located on Carterville Road in Orem, Utah, and ostensibly held in the name of one William Christiansen, but which would appear, in fact, to be property belonging to and used by Defendant Dwane Sykes. Plaintiff alleges that said document entitled "Application for Assessment and Taxation of Agricultural Land" is a forgery, was illegally notarized (since by one having a direct interest therein, Patricia Sykes) but also an attempt to defraud either Utah County or the Plaintiff.

18. In the meantime, other real property was placed in the name of Defendant Johnny Iverson for the same purpose, i.e., defrauding Plaintiff and/or other potential creditors, but later transferred to a J. Glade Dursteller. See legal descriptions in attached Exhibit "D".

19. Demand was made by Defendant James Sauers in a letter March 9, 1994, to said Iverson that he convey his interest in one of thoses two pieces of real property to him, Sauers, as the "trustee" of an alleged trust so that a sale of said property might be consumated. See Exhibit "E" attached.

20. That on or about the 3rd of June, 1994, Dwane Sykes mysteriously produced for recording a Warranty Deed allegedly executed by Johnny M. Iverson describing two parcels of real property subject of this action, to wit: Lot 29, Plat "A" in Lynnwood Park Subd., Orem, Utah, and a parcel of land and house located at about 1475 South Carterville Road, Orem, Utah County, Utah, as described in Exhibit "D". We allege that this instrument, if not a total forgery, was illegally notarized, and therefore void.

21. Heretofore, Johnny Iverson had refused to convey title to the Lynnwood Park property until certain obligation due him were addressed. This property, along with unrecorded title to a house and lot at approx. 1475 South Carterville, Orem, Utah, as described on Exhibit "D", we allege, was being held all along by Mr. Iverson for the sole purpose of defeating creditors of Dwane Sykes.

22. As per the deed referred to in Paragraph 20, title was ostensibly passed to Mr. Dusteller, and from him to Defendant Sauers by Deed recorded in the Utah County Records as Entry No. 46745, Book 3460, Page 177, a copy of which document is attached as Exhibit "F". We allege this to be a fraudulent conveyance and should be set aside.

23. That on or about July 15, 1987, Dwane Sykes conveyed by Quit Claim Deed nine separate tracts of land located in Utah County to Defendant Max S. Ferre without consideration and for the exclusive purpose of defrauding creditors. A copy of said deed is attached as Exhibit "G".

24. On or about the 5th of February, 1984, Dwane J. Sykes conveyed by Warranty Deed title to a parcel of land in Utah County, containing approximately 23 acres, belonging to Defendant Dwane J. Sykes, without adequate consideration and for the sole and exclusive purpose of defrauding creditors. See Exhibit "H" attached.

25. On or about the 8th of February, a jury rendered its verdict granting a money judgment against the Defendant Dwane J. Sykes and others in excess of \$500,000, to wit: Howard F. Hatch, Plaintiff, vs. Dennis L. Sykes, Dwane J. Sykes, Patricia Sykes

Civil No. 810457127, in the Fourth Judicial District Court, State of Utah. See attached copy of Judgment, Exhibit "B".

26. On or about the 13th day of February, 1995, just 5 days after jury verdict was rendered against Dennis L. Sykes, Dwane J. Sykes and Patricia Sykes, a quit claim deed was executed by Dennis in favor of the Tamangs, conveying title to four separate pieces of real property in Utah County. We allege that these properties were previously held in Dennis Sykes' name for the benefit of Dwane Sykes, and that the so-called trust(s) to whom conveyance has been made are a sham and were set up for the benefit of Dwane Sykes, have been controlled by him contrary to law and are intended for the primary purpose of defrauding creditors and therefore should be set aside. (See two page document attached as Exhibit "A" entitled "Quit-Claim Deed").

27. Since that time, Plaintiff has been attempting to execute on properties belonging to the debtor Dwane J. Sykes without success due to his effective efforts in conveying or having conveyed the subject properties to others without consideration, or lacking in adequate consideration, for the purpose of defrauding Plaintiff or other creditors.

PRAYER FOR RELIEF

1. The Plaintiff therefore prays that this court will declare all of the conveyances of the subject properties as described in the Exhibits attached hereto and made a part of this complaint are null and void and will ascertain the true owner of the 3 1/4 acre parcel being held in the name of William Chad

portion, if not all, belongs to Defendant Dwane Sykes and is susceptible to execution.

2. We would also ask that this court examine the various encumbrances and/or notices of interest which may appear of record to encumber said real properties, and to judge them to be void and of no effect, setting them aside and placing all of the subject properties under a constructive trust pursuant to execution thereon for the purpose of satisfying the judgment obtained against Defendant Dwane J. Sykes.

3. We further ask this court to grant us any reasonable attorney fees expended in this action, together with all allowable court costs.

Respectfully submitted this 30th day of November, 1995.


Howard F. Hatch, pro se

EXHIBIT "A"

Recorded at the request of Benoy & Angela Tamang
 Return to: P.O. Box 436, Provo, UT 84603-0436.

QUIT-CLAIM DEED

Whereas Dennis L. Sykes, aka Dennis Lynn Sykes has held property in his personal name, as nominee and as Trustee for an Irrevocable Trust dated June 1, 1978 as set forth in the two (2) Schedules "A" attached hereto and by this reference incorporated herein; and

Whereas, Dennis L. Sykes ceased to serve as Trustee of the said Trust; and

Whereas, Benoy and Angela Tamang have been appointed as Trustees of said Trust and agreed to serve as Trustees of said Trust and are the currently serving Trustees of said Trust; and

Whereas, Dennis L. Sykes intends to convey any title he may have as the former Trustee of said Trust in real property located in Utah County to the currently serving Trustees of said Trust;

NOW THEREFORE:

Dennis L. Sykes, aka Dennis Lynn Sykes, Grantor, hereby QUIT-CLAIMS to Benoy and Angela Tamang, Trustees, of 1035 East 1630 South, Orem, Utah 84058, or their successors in interest as Trustees, Grantees, for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tracts of land in Utah County, State of Utah:

Parcel 1:

Beginning at a point on the east side of the Carterville Road, which point is North 520.03 feet and East 1381.56 feet from the West quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 3° 05' East along fence and Carterville Road 151.25 feet; thence North 74° 46' East 130.92 feet to the center line of an existing road; thence North 64° 03' East 54.05 feet; thence South 85° 12' East 48.11 feet; thence South 36° 26' East 92.31 feet; thence leaving the center line of the existing road; thence South 90.80 feet; thence East 160.00 feet; thence North 96.92 feet; thence East 157.74 feet; thence South 16° 38' East 58.14 feet; thence South 6° 56' West 70.89 feet; thence South 24° 42' East 148.45 feet; thence North 82° 53' West 195.33 feet along a fence; thence South 6° 16' West 41.96 feet along a fence; thence North 82° 42' West 305.94 feet along a fence; thence North 88° 03' West 33.77 feet along a fence to J. Theron Smith property; thence North 2° 12' East 90.00 feet along fence and said property line; thence North 85° 18' West along a fence and property line 142.00 feet to beginning and to the Carterville Road.

ENT 94,11 P 34,21 P 242
 RANDALL A. COVINGTON
 UTAH COUNTY RECORDER
 1994 FEB 10 4:17 PM 17.00 B1 MB
 RECORDED FOR

0013 Benoy Tamang

ENT 9421 BK 3621 Pg 263

Together with all easements, accessses, rights of way and rights in and to said property.

Parcel 2:

Commencing 8.47 feet East of the Northwest corner of Lot 3, Block 36, Plat "A", Pleasant Grove City Survey; thence East 195.78 feet; thence South 200 feet; thence West 200.38 feet; thence South 1° 19' West 12.4 feet; thence North 89° 25' West 153.05 feet; thence North 0° 10' West 212.41 feet; thence South 89° 22' East 88.5 feet; thence South 1° 19' West 100 feet; thence South 89° 22' East 70 feet; thence North 100 feet to the point of beginning.

Parcel 3:

Commencing 149.16 feet West of the Northeast corner of Lot 4, Block 36, Plat "A", Pleasant Grove city Survey of Building Lots; thence West 43.34 feet; thence South 130.0 feet; thence East 43.34 feet; thence North 130.0 feet to place of beginning.

Parcel 4:

Commencing at a point North 620.0 feet and East 1667.4 feet from the West quarter corner of Section 25, T6S, R2E, S1B&M; thence North 76 feet; thence East 160 feet; thence South 136 feet; thence West 160 feet; thence North 60 feet to the point of beginning.

Witness the hand of said Grantor this 13 day of

Feb, 1995.

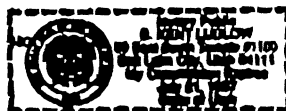
Dennis L. Sykes
Dennis L. Sykes

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 13th day of FEBRUARY, 1995, personally appeared before me Dennis L. Sykes, the signer of the foregoing Quit-Claim Deed, who duly acknowledged before me that he executed the same.

My Commission Expiration Date
and Address are:

B. Kent Ladd
Notary Public



EXHIBIT;
"B"

Howard F. Hatch, pro se
 843 South 1150 East
 Pleasant Grove, UT 84062
 Ph: (801) 785-4818/785-8000

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

DENNIS L. SYKES, DWANE J. SYKES	)	JUDGMENT
AND PATRICIA SYKES,)	
Plaintiffs,	)	CIVIL NO. 810457127
VS.)	
	)	JUDGE DAVID L. MOWER
HOWARD F. HATCH,)	
Defendant and Counterclaimant)	

This action came on trial before the Court and a jury on February 6, 1995, Honorable David L. Mower, presiding, for the sole purpose of determining the extent of damages, the issue of liability having been granted in favor of the Defendant/counterclaimant, Howard F. Hatch, by default previously entered as against all three of the Plaintiffs, Dennis L. Sykes, Dwane J. Sykes and Patricia Sykes. The matter of damages having been duly assessed and the jury having duly rendered its verdict.

It is Ordered and Adjudged: that the defendant/counterclaimant, Howard F. Hatch, recover of the plaintiffs, Dennis L. Sykes, Dwane J. Sykes and Patricia Sykes, the sum of ~~\$510,836.00~~ ^{\$509,942.03} *on* with interest thereon after ~~judgment~~ ^{FEBRUARY 8, 1995} *on* at the rate of 9.22 percent per annum as provided by law, ~~and his costs of action including attorneys fees.~~ *on*

Such amounts in judgment as determined by the jury are broken down as follows:

FOR THE CONVERSION OF WATER STOCK: \$6,000 plus interest at the legal rate from the time of conversion September 2, 1975, until ~~judgment~~ ^{FEBRUARY 8, 1995} *on* and thereafter until paid. Said liability to be distributed equally between the three plaintiffs.

FOR TRESPASS: \$30,000 ~~plus interest at the legal rate from the~~
~~time of judgment until paid,~~ said liability to be distributed equally
between plaintiffs Dwane J. Sykes and Patricia Sykes.

FOR SLANDER OF TITLE CAUSING THE LOSS OF REAL PROPERTY: \$105,000
plus interest at the legal rate from the time of loss May 4, 1983,
~~February 8, 1985 Du~~
~~until judgment and thereafter until paid.~~ Said liability to be dis-
tributed equally between the three plaintiffs.

FOR INTERFERENCE IN AN ADVANTAGEOUS BUSINESS RELATIONSHIP:
\$10,000 ~~plus interest at the legal rate from the time of judgment~~
~~until paid.~~ Said liability to be distributed equally between the
three plaintiffs.

AS PUNITIVE DAMAGES: \$225,000 ~~plus interest at the legal rate~~
~~from the time of judgment until paid.~~ Said liability to be dis-
tributed equally between the three plaintiffs.

AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED
IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN
COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS SHALL BE
ESTABLISHED BY AFFIDAVIT.

~~All parties to this action have appeared pro se. The judgment Du~~
~~debtors' address is as follows: 1511 South Carterville Road, Orem, Du~~
~~Utah 84058. The alternate address of judgment debtor, Dennis L. Du~~
~~Sykes, is 1315 Cordova Street, Apt. #201, Anchorage, Alaska. Du~~

ENTERED by the court this 5 day of ^{April} March, 1995.

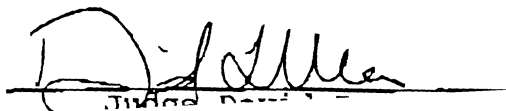

Clerk of Court

EXHIBIT
11C 11

Page 1 of 2

APPLICATION FOR ASSESSMENT AND TAXATION OF AGRICULTURAL LAND

1989 FARMLAND ASSESSMENT ACT

As Provided Under Utah Code Ann. §§59-5-86 through §59-5-105 (1953, as amended)

TO BE TYPED OR PRINTED IN INK

529 54 6972

Owner(s): Dennis L. Sykes Social Security No. _____Mailing Address: P. O. Box 436 - Provo, UT 84603-0436

Lessee (if applicable) _____ Social Security No. _____

Application is hereby made for assessment and taxation of the following legally described agricultural land.

Date of Application 12-31-87ENT-46818 PR 2480 PG 285
NINA R REID UTAH COUNTY RECORDER DEP AT
1987 DEC 31 4:36 PM FEE 10.00
RECORDED FOR DENNIS SYKESCounty Utah Property Serial No(s) _____

Complete Legal Description(s) (Attach additional pages if necessary.)

Property Serial Number: 101006:0003:142Tax District No: 90Old Utah County Number: E-375-19-AAcres: 0.50Owner Name: SYKES, DENNIS LCOM N 620 FT & E 1667.4 FT FR W 1/4 COR SEC 25, T 6 S, R 2 E, SLM; N 76 FT; E 16
0 FT; S 135 FT; W 160 FT; N 60 FT TO BEGAREA .50 OF AN AC.Total number of acres included in this application, 6.72 6.88

I CERTIFY THAT:

1. The agricultural land covered by this application constitutes no less than the contiguous acres exclusive of the homestead and other non-agricultural acreage (See Utah Code Ann. §59-5-87 (2) for waiver.);
2. The above described eligible land is currently devoted to agricultural use and has been so devoted for two successive years immediately preceding the tax year for which valuation under this act is requested.
3. The gross sales (tax reportable income) of agricultural products produced thereon have averaged at least \$1,000 per year for the two year period immediately preceding the tax year in issue. State income tax records will be used to verify income.
4. I am fully aware of the five year roll-back provision which becomes effective upon a change in the use of all or part of the above described eligible land. I understand the provision of the roll-back tax which requires notice to the county assessor of any change in use of the land to other than agriculture, and that a 100 percent penalty of the computed roll-back tax due will be imposed on failure to notify the assessor within 90 days after change in land use.

Dennis L. Sykes

Corporate Name

Owner(s)

For Official Use Only

Notary Public
DENNIS L. SYKES
Applicant appeared before me
and executed this document on the 31 day of
Dec 1987
[Signature]
Notary Public
Residing at Provo, UT
My commission expires 8-5-88

The herein application is: For 1988☒ Approved (subject to review)☐ DeniedDate, December 31, 1987By [Signature]
County Assessor

County Recorder Fee _____

Entry No _____

Filed _____ At _____ M

Book _____ Page _____

Recorder _____

By _____ Deputy

FORM TC-882 REV 6/86

REFER QUESTIONS TO COUNTY ASSESSOR

0009

ENT46818 BX 2480 PG 286

GREENBELT APPLICATION

PAGE 2 OF 2

Property Serial Number: 19:006:0004:142
 Old Utah County Number: E-575-19-B
 Owner Name: SYKES, DENNIS L

Year: 1981...
 Tax District #: 90
 Acres: 2.52

COM ON E SIDE OF CARTERVILLE ROAD N 520.03 FT & E 1381.56 FT FR W 1/4 COR SEC 25, T6S, R2E, SLM; N 3 05' E ALONG FENCE & CARTERVILLE ROAD 151.25 FT; N 74 46 1/2' E 130.92 FT TO CEN LINE OF A ROAD; N 64 03' E 54.05 FT; S 85 12' E 48.11 FT; S 36 24' E 92.31 FT; LEAVING CEN LINE OF ROAD; S 90.80 FT; E 160 FT; N 96.92 FT; E 51.74 FT; S 243 FT; N 82 53'W 27.33 FT ALONG A FENCE; S 6 16'W 41.96 FT ALONG A FENCE; N 82 42'W 305.94 FT ALONG FENCE; N 88 03'W 33.77 FT ALONG A FENCE TO J. THERON SMITH PROP; N 2 12'E 90 FT ALONG FENCE AND SD PROP LINE; N 85 18'W ALONG A FENCE & PROP LINE 142 FT TO BEG & TO CARTERVILLE ROAD. AREA 2.52 ACRES.

Property Serial Number: 19:006:0002:242
 Old Utah County Number: E-575-19
 Owner Name: CHRISTIANSEN, WILLIAM (DENNIS SYKES, CONTRACT BUYER)

Tax District #: 90
 Acres: 1.97

COM AT A PT OF E SIDE OF CARTERVILLE ROAD N 671.06 FT & 1389.7 FT FR W 1/4 COR SEC 25, T6S, R2E, SLM; N 3 05' E ALONG FENCE & CARTERVILLE ROAD 221.28 FT; S 84 10 1/2' E 323.18 FT ALONG FENCE; N 41 57' E 61.04 FT; N 37 55'E 166.14 FT; N 52 18'E 10 FT; S 373 FT; W 51.74 FT; N 39.08 FT; W 160 FT; S 45.2 FT; N 36 26'W 92.31 FT; N 85 12'W 48.11 FT; S 64 03'W 54.05 FT; S 74 46'30"W 130.92 FT TO BEG. AREA 2.13 ACRES. LESS .16 ACRE.

Property Serial Number: 19:006:0017:142
 Old Utah County Number: EE-828-3
 Owner Name: SYKES, DENNIS L

Tax District #: 30
 Acres: 0.69

COM N 656.92 FT & 1897.12 FT FR W 1/4 COR SEC 25, T6S, R2E, SLM; N 90 E 106 FT; S 16 38'E 58.14 FT; S 6 56'W 70.89 FT; S 24 42'E 148.45 FT; N 82 53'W 168 FT; N 243 FT TO BEG. AREA .69 ACRE

Property Serial Number: 19:006:0018:242
 Old Utah County Number: EE-828-4
 Owner Name: CHRISTIANSEN, WILLIAM (DENNIS SYKES, CONTRACT BUYER)

Tax District #: 30
 Acres: 1.04

COM N 1041.6 FT & E 1873.93 FT FR W 1/4 COR SEC 25, T6S, R2E, SLM; N 52 18'E 27.64 FT; N 74 13'E 26.42 FT; N 83 51'E 59.36 FT; S 7 29'E 194.82 FT; S 13 01'W 83.42 FT; S 1 53'W 129.41 FT; S 16 38'E 9.43 FT; W 106 FT; N 373 FT TO BEG. AREA 1.04 ACRES

Property Serial Number: 19:006:0020:242
 Old Utah County Number: E-575-19-C
 Owner Name: UNIVERSITY AVE DEV ASSOC (DENNIS SYKES CONTRACT BUYER)

Tax District #: 90
 Acres: 0.16

COM N 884.66 FT & E 1403.79 FT FR W 1/4 COR, SEC 25, T6S, R2E, SLM; S 84-10'30"E 100 FT; S 3-05'W 70 FT; N 84-10'30"W 100 FT; N 3-05'E 70 FT TO BEG. AREA .16 AC RE.

EXHIB.
"D"

WARRANTY DEED

JOHNNY M. IVERSON

grantor of P. O. Box 436, Provo, Utah 84603
CONVEY and WARRANT to

State of Utah, hereby

J. GLADE DUTZELLER

ENT 46744 BK 3460 PG 176
NINA B REID UTAH CO RECORDER BY MB
1994 JUN 3 4:54 PM FEE 10.00
RECORDED FOR JAMES W SAUERgrantee of P. O. Box 436, Provo Utah 84603-0436
for the sum of \$10.00 & other good and valuable consideration, received in hand,
the following described tracts of land in Utah

County, State of Utah:

SCHEDULE "A"

Situated in Utah County, State of Utah

1. Beginning at a point on the corner on the East edge of Carterville Road and on the South edge of Hope Lane, which point is North 88.00 feet and East 1,403.79 feet, more or less, from the West quarter corner of Section 26, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 84 deg. 10 1/2' East 100 feet along a hedge and fence on the South side of Hope Lane; thence South 3 deg. 05' West 10 feet; thence North 84 deg. 10 1/2' West 100 feet to the East edge of Carterville Road; thence North 3 deg. 06' East 70 feet along the East side of Carterville Road to the point of beginning.

and

2. LOT 29, PLAT "A", LYNNWOOD PARK SUBDIVISION, OREM, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH

WITNESS, the hand of said grantor, this 12th day of December A. D. 1992

Signed in the presence of

JOHNNY M. IVERSON

STATE OF UTAH
County of UTAHOn the 12th day of December
A. D. 1992 personally appeared before me

JOHNNY M. IVERSON

RECORDING DATA

Entry No.

Fee \$

RECORDED ☐ INDEXED ☐
 PLATTED ☐ ABSTRACTED ☐
 COMPARED ☐ DELIVERED ☐

the signer of the within instrument, who duly
acknowledged to me that he executed the same.Commission expires
Residing inNotary Public
12-11-94

EXHIBIT
"E"

March 9, 1994
Box 436 Provo, UT 84601

Johnny M. Iverson
7096 W 10400 N
American Fork, UT 84004

Dear Mr. Iverson:

As you know, as the former trustee for the Sykes children, title to the house at 949 E 1120 S, Orem, Utah, is still held in your name as nominee for the trust. As you are also aware, this house has sold and the closing is set for 1:00 p.m. Thursday, March 10, 1994, at Access Title Co., 1455 So. State St., Orem, UT., by Wayne Tanner, President.

This is a formal request that you attend that closing so as to sign the deed to the trust property and relevant closing papers. Thank you.

Sincerely,


Jim Sauers, Successor Trustee

cc: David H. Shawcroft, Pl. Grove, UT

*P.S. Sign attached Quit - Claim Deed
this date.*

EXHIBIT "F"

WARRANTY DEED

J. GLADE DURSTELLER

Grantor of P.O. Box 436, Provo, Utah, County of Utah
CONVEY and WARRANT to JAMES W. SAUERS

, State of Utah, hereby

ENT 46745 BK 3460 PG 177
NINA B REID UTAH CO RECORDER BY MB
1994 JUN 3 4:54 PM FEE 13.00
RECORDED FOR JAMES W SAUERS

grantee of P.O. Box 436, Provo, Utah, Utah County,
for the sum of Ten dollars (\$10.00) and other good and valuable consideration, received in hand,
the following described tract of land in Utah (Orem City) 84603-0436
County, State of Utah:

See Schedule "A" attached and incorporated herein by reference. (over)

WITNESS, the hand of said grantor, this 4th day of May A. D. 19 94

Signed in the presence of

J. GLADE DURSTELLER

STATE OF ~~UTAH~~ NEVADA

County of WASHOE

On the 4th day of May
A. D. 19 94 personally appeared before me

J. GLADE DURSTELLER

RECORDING DATA

Entry No.

Fee \$

RECORDED ☐ INDEXED ☐
PLATTED ☐ ABSTRACTED ☐
COMPARED ☐ DELIVERED ☐

the signed of the within instrument, who duly
acknowledged to me that he executed the same.

Commission expires July 1, 1997
Notary Public

ENT46745 BK 3460 PG 178

SCHEDULE "A"

situated in Utah county, ~~State of Utah~~:

- #1. Beginning at a point on the corner on the East edge of Carterville Road and on the South edge of Hope Lane, which point is North 884.00 feet and East 1,403.79 feet, more or less, from the West quarter corner of Section 26, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence South 84 deg. 10 1/2 ' East 100 feet along a hedge and fence on the South side of Hope Lane; thence South 3 deg. 05' West 70 feet; thence North 84 deg. 10 1/2 ' West 100 feet to the East edge of Carterville Road; thence North 3 deg. 05' East 70 feet along the East side of Carterville Road to the point of beginning.

and

- #2. LOT 29, PLAT "A", LYNNWOOD PARK SUBDIVISION, OREM, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE RECORDER, UTAH COUNTY, UTAH

EXHIBIT "G"

✓

QUIT CLAIM DEED

PATRICIA SYKES and DWANE J. SYKES
1511 So. Cartersville Rd.
Orem, Utah 84053

Grantors of Orem, County of Utah, State of Utah, hereby
QUIT CLAIM to

MAX S. FERRE
P.O. Box 463
Provo, Utah 84603-0463

ENT 5102 BK 3079 PG 11
NINA B. REID UTAH CO RECORDER BY MB
1993 JAN 28 4:10 PM FEE 12.00
RECORDED FOR MAX S FERRE

grantee of
for the sum of ten dollars and other good and valuable consideration, in hand paid,
the following described tract of land in Utah County, State of Utah:

See nine (9) tracts described in Schedule "A" on the reverse side hereof.

WITNESS the hand of said grantors, this 15th day of July, A. D. 19 87

Signed in the presence of

Patricia Sykes
PATRICIA SYKES

Dwane J. Sykes
DWANE J. SYKES

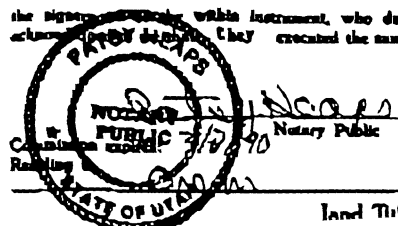
STATE OF UTAH
County of UTAH

On the 15th day of July
A. D. 19 87 personally appeared before me

Patricia Sykes and Dwane J. Sykes

RECORDING DATA

the signers of this instrument, who duly
acknowledged they executed the same.



Land Title Co.

EXHIBIT "F"

17599

WARRANTY DEED

DWANE J. SYKES & PATRICIA SYKES

Grantors, of 1511 So. Carterville Rd. Orem, Utah

hereby CONVEY AND WARRANT to
MAX S. FERRE

Grantee, of 4338 W 2650 N, Plain City, Utah 84404

for the sum of \$10.00 and other good and valuable consideration DOLLARS
the following described tract of land in Utah County,
State of Utah, to-wit:

That portion of the South one-half of the South one-half of the Northwest quarter of Section 26, Township Eight South, Range One East, Salt Lake Base and Meridian, lying West of that North-South fenceline situated along the toe of the east embankment of the Strawberry Highline Canal Road, and including said canal and canal road and property West thereof, being 23 acres, more or less.

Including therewith a right-of-way easement for ingress and egress over and upon the Strawberry Highline Canal Road throughout Sections 23, 26, and 35 T. 8 S., R 1 E. and throughout Sections 2, 11, 14, and 23 T 9 S, R 1 E, SLB&M, and the connecting roads thereto.

Subject to all easements, rights, reseverations and restrictions of record.

WITNESS THE HANDS of said Grantors, this 5th day of February, A. D. 1984.

Signed in the presence of

Dwane J. Sykes

Patricia Sykes

STATE OF UTAH,
County of Utah ss.

On the 5th day of February, A. D. 1984, personally appeared before me, a Notary Public in and for the State of Utah,
Dwane J. Sykes and Patricia Sykes
the signers of the above instrument, who duly acknowledged to me that they executed the same.

My commission expires 1/1/85 Residing at

NOTARY PUBLIC
JUN 29 1984
17599
2226 N. 511

ADDENDUM 5

RALPH C. AMOTT (#68)
Attorney for Plaintiff
60 East 100 South, Suite 102
Provo, Utah 84606
(801) 377-6575

IN THE FOURTH DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

oooOooo

HOWARD F. HATCH,

Plaintiff,

vs.

DWANE J. SYKES, DENNIS L.
SYKES, BENOY & ANGELA
TAMANG, Trustees of the so-
called "Irrevocable Trust
Agreement", aka "THE DWAYNE
SYKES AND PATRICIA SYKES
CHILDRENS' TRUST AND/OR THE
DWAYNE AND PATRICIA SYKES TRUST,
JOHNNY M. IVERSON, MAX FERRE,
J. Glade Dursteller, James
Sauers, Patricia Sykes, William
Christiansen,

Defendants.
Counterclaimant.

oooOooo

AMENDED
COMPLAINT

CIVIL No. 950400719 CV

COMES NOW Plaintiff, by and through his attorney Ralph C. Amott, and allege against Defendants by way of Amended Complaint as granted by the Court as follows:

JURISDICTIONAL ALLEGATIONS

1. That Plaintiff is a resident of Utah County, State of Utah, and the acts complained of herein and the alleged fraudulently conveyed real property described herein are located in

Utah County, State of Utah.

2. That this action is brought for violation of the provisions of the Fraudulent Conveyance Act, UCA 25-6-1 et seq., by Defendant Dwane J. Sykes to avoid his lawful creditors and their lawful claims, and with the complicity of the named defendants.

3. That Defendants Dwane J. Sykes, Benoy and Angela Tamang, and Johnny M. Iverson are residents of Utah County.

4. That Defendant Dennis Sykes is a resident of the State of Alaska.

5. That Defendant Max Ferre is a resident of Davis County, State of Utah.

6. That Defendants Patricia Sykes, J. Glade Dursteller, and James Sauer and William Christiansen are believed to be residents of Utah County, State of Utah.

FACTUAL BACKGROUND ALLEGATIONS

7. That Plaintiff has had legal dispute with Defendant Dwane J. Sykes since shortly after he first entered into an option agreement with Defendant Dwane Sykes in June of 1974 to sell Plaintiff's home and property located at 1511 South Carterville Road, in Orem, Utah.

8. That after Defendant Dwane Sykes received title to said property in 1975 there arose serious legal disputes between Plaintiff and Defendant Dwane Sykes wherein Plaintiff felt Sykes was making wrongful claims on property he did not own and wrongfully encumbering property not in his name and other wrongful acts. That these disputes led directly to the filing of lawsuits

in the Fourth District Court of Utah County, (#57,127 and #63,695, later consolidated in 1982), between these parties, Civ.#810457127, in which Plaintiff made claim against Defendant Dwane Sykes, his wife Patricia, and his brother Dennis for a large sum.

9. That in the midst of these disputes and with full knowledge of potential liabilities Defendant Dwane Sykes quit-claimed his interest in the Carterville property to his brother Dennis Sykes, and on information and belief Plaintiff alleges that said transfer was done for the purpose of avoiding and defrauding potential creditors, and without sufficient consideration. (See Ex. A-1, for copy of said deed).

10. That in 1975 Defendant Dwane Sykes obtained other property in his name in Utah County from Mr. and Mrs. Anthony Raggozine. (See Ex. A2 deed attached). That on information and belief this property was also transferred to Defendant Dwane Sykes' brother Dennis at the same time period as the Carterville property described above and when the legal disputes with Plaintiff were heating up, and done for the purpose of avoiding and defrauding potential creditors and without sufficient consideration.

11. That Plaintiff, on information and belief, alleges that Defendant Dwane Sykes, during the intervening years, has had recorded bogus encumbrances against the subject real properties for the purpose of creating the illusion that these were encumbered, and in an attempt to avoid potential creditors, and to discourage execution against these properties. That these properties, and others over which Defendant Dwane Sykes has control have been

transferred to various people and alleged "Trusts" and assorted trustees including Defendants Iverson and Ferre' and others such as J. Glade Dursteller and James Sauers, and of which Defendants' Tamang are the latest and most recent alleged "Trustees", all with the same intent to avoid and defraud creditors. That on information and belief said Trust or Trusts are shams with the primary purpose being the avoidance of creditors.

12. That these bogus and fraudulent encumbrances/documents include, but are not limited to, an apparent sworn affidavit dated 31 December, 1987 in which Defendant Dennis Sykes, asserted a "contract interest" in certain real property on behalf of Defendant Dwane Sykes, which real property is more fully described in Exhibit "C", attached hereto and made a part of this action thereby, to wit: a 3-1/4 acre parcel of land located on Carterville Road in Orem, Utah, (referred to as the north 1/2) and ostensibly held in the name of one William Christiansen, but which would appear, in fact, to be property belonging to and used by Defendant Dwane Sykes, and which on information and belief of Plaintiff, was bought for Defendant Dwane Sykes by Christiansen with Sykes money. Plaintiff alleges on information and belief that said document titled "Application for Assessment and Taxation of Agricultural Land" is a forgery, was illegally notarized by one having a direct interest therein, Patricia Sykes, and also an attempt to improperly cloud title to this property and thereby avoid and defraud creditors.

13. That this "Application for Assessment and Taxation of

Agricultural Land", referred to in paragraph 12 previously, reveals the pattern of fraudulent behavior of Defendant Dwane Sykes. He claims an interest in the property sufficient to ask for a governmental break in taxation on one hand; then on the other hand he claims the property is out of his name and not available for creditors to attach.

14. That other alleged fraudulent conveyances include the following and besides those set forth above:

a. That on or about June 3, 1994, Defendant Dwane Sykes produced for recording a Warranty Deed (See Ex. "D" attached and incorporated by reference herein) allegedly executed by Johnny M. Iverson describing two parcels of real prperty subject of this action, to wit: Lot 29, Plat "A" in Lynnwood Park Subd., Orem, Utah, and a parcel of land and house located at about 1475 South Carterville Road, Orem, Utah County, Utah, as described in exhibit "D". Heretofore, it is alleged by Plaintiff on information and belief, Defendant Iverson had refused to convey title to the Lynnwood Park property until certain obligations due him were addressed. It is alleged on information and belief that this conveyance is a fraudulent document with a superimposed (or pasted in) legal description and not actually signed by Defendant Iverson for the purpose intended. It appears the document is even notarized by Defendnat Dwane Sykes which would be improper as well. This document therefore is another in a chain of fraudulent conveyances hiding property from creditors and that Defendant Iverson, and then subsequent transferees, were simply holding these

properties for the benefit of Defendant Dwane Sykes. That they were transferred without adequate consideration to insiders with intent to defraud creditors.

That the chain of fraudulent conveyances continued through Iverson to Durstellar to Sauers, (See Ex. "F" attached hereto and incorporated by reference herein).

b. That on or about July 15, 1987 Defendant Dwane Sykes conveyed by Quit-claim deed nine separate tracts of land located in Utah County to Defendant Max S. Ferre without adequate consideration and for the primary purpose of defrauding creditors. (See Ex. "G" attached hereto and incorporated by reference herein.) That on information and belief Defendant Ferre was holding these properties for and on behalf and for the benefit of Defendant Dwane Sykes personally.

c. That on or about the 5th of February, 1984, Defendant Dwane Sykes conveyed by Warranty Deed to Defendant Max S. Ferre title to a parcel of land in Utah County containing approximately 23 acres, belonging to Defendant Dwane Sykes, without adequate consideration and for the sole or primary purpose of avoiding and defrauding creditors. (See Ex. "H" attached hereto and incorporated by reference herein). That defendant Ferre, and all other defendant transferees herein were relatives or insiders as to the financial condition of Defendant Dwane Sykes and were aware that creditors had lawful claims against Defendant Dwane Sykes that he could not or would not pay, or potential liability for the same.

d. That on or about the 13th day of February, 1995, just a

few days after a large jury-awarded verdict was granted against Defendant Dwane Sykes, Dennis Sykes, and others, as set forth in paragraph 13 following, a quit-claim deed was executed by Dennis Sykes in favor of Defendant's Tamang as alleged Trustees on an unspecified trust, conveying title to four separate pieces of real property in Utah County. On information and belief, Plaintiff alleges that these properties were previously held in Dennis Sykes' name for the benefit of Defendant Dwane Sykes, and that the so-called trust(s) to whom conveyance was made are a sham and were set up for the benefit of Defendant Dwane Sykes, have been controlled by him and are intended for the primary purpose of avoiding and defrauding creditors and were without adequate consideration, and therefore should be set aside. (See Ex. "A3" attached hereto and incorporated by reference herein.)

e. On information and belief there were other fraudulent conveyances, some yet to be identified, intended to bury and hide assets of Defendant Dwane Sykes and these include, but are not limited to, transfers to certain individuals named Pack, believed to be insider relatives, and transfers to an entity called Frontier International Land Corporation believed to be a front for Defendant Dwane Sykes.

15. That Plaintiff obtained a large money judgment in the suit above referenced, #810457127, against Defendant Dwane Sykes and others on February 6, 1995, in the amount of 509,942.03. (Said judgment was later reduced to \$141,693.52, by the Court after motion for reconsideration). Original judgment attached as Ex. "B"

and amended judgment as Ex. "B1", and incorporated by reference herein.

CAUSE OF ACTION

16. Plaintiff realleges all prior allegations as if the same had been fully set forth herein.

17. That the transfers set forth herein are fraudulent and should be set aside for the benefit of Plaintiff creditor in that Defendant Dwane Sykes, and those acting for him and with him, made said transfers with actual intent to hinder, delay, or defraud Plaintiff and other creditors, and/or without receiving a reasonably equivalent value in exchange for the transfer or obligation.

18. That at the time of these transfers Defendant Dwane Sykes and those acting for him and with him, intended to, or knew he and they were reasonably likely to, incur, or reasonably should have known or believed, debts beyond Defendant Dwane Sykes ability to pay when due.

19. That there are sufficient badges of fraudulent conveyance in these transactions to justify this court holding that the conveyances were fraudulent and should be declared void and set aside and made subject to the lawful execution of Plaintiff creditor. These badges of fraudulent conveyances include:

a. The conveyances alleged were made to relatives or other insiders.

b. Defendant Dwane Sykes retained possession or control

of the property transferred after the transfer.

c. That efforts were made to conceal the transfers through use of "levels" of transferees.

d. That before the transfers had been made the debtor/Defendant Dwane Sykes had been sued or threatened with suit, or reasonably could expect a suit would be forthcoming.

e. The overall transfers and property conveyed amount to substantially all of the Defendant Dwane Sykes assets.

f. That Defendant Dwane Sykes was insolvent or became insolvent shortly after the transfers were made.

20. That Plaintiff, by virtue of all the foregoing is entitled to an avoidance of the transfers as described or referred to herein or in any way relating to the properties set forth herein, to the extent necessary to satisfy Plaintiff's claim of judgment against Defendant Dwane Sykes as set forth herein.

Also, to an attachment or other provisional remedy against the asset transferred or other property of the respective transferee thereto in accordance with applicable rules of civil procedure, including the right to levy and execute on the same.

Also, for the issuance of an injunction against further disposition by the debtor/Defendant Dwane Sykes or a transferee, or both, of the asset transferred or of other property.

And also, for the appointment of a receiver to take charge of the asset or assets transferred or of other property of the respective transferee involved.

21. That the former wife of Defendant Dwane Sykes was involved in some of the transactions described above, but on information and belief Plaintiff alleges that through her divorce settlement of January, 1996, she has given up claim of interest in any of the properties described herein, or in the alternative that her interest therein if any should be subordinated to the claim of Plaintiff herein.

22. That Plaintiff is entitled to an award of costs and fees incurred herein as may be found reasonable and appropriate by the Court.

WHEREFORE, Plaintiff prays for relief as follows:

1. For an Order of avoidance of the transfers as described or referred to herein or in any way relating to the properties set forth herein, to the extent necessary to satisfy Plaintiff's claim of judgment against Defendant Dwane Sykes as set forth herein, which judgment balance is at least \$135,000.00 plus accrued interest, (the original judgment was much larger but reduced later by the court, which reduction is presently on appeal and may ultimately therefore, be much larger.)

2. For an Order of attachment or other provisional remedy against the asset transferred or other property of the respective transferee thereto in accordance with applicable rules of civil procedure, including the right to levy and execute on the same.

3. For an Order of injunction against further disposition by

the debotr/Defendant Dwane Sykes or a transferee, or both, of the asset transferred or of other property.

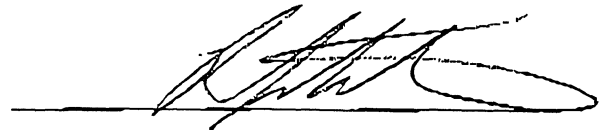
4. For an Order of appointment of a receiver to take charge of the asset or assetts transferred or of other property of the respective transferee involved.

5. For an Order declaring Patricia Sykes to have no interest in the claimed fraudulently conveyed properties superior to the claim of Plaintiff herein.

6. For judgment against Defendant Dwane Sykes for costs incurred herein and reasonable attorney fees where applicable and also against any other defendants wrongfully found to be contesting the claims of Plaintiff herein. As to Defendants Dennis Sykes and Patricia Sykes, this Plaintiff seeks no monetary damages or judgment due to settlement reached with these parties after entry of judgment in the case # 810457127 as set forth above. Said defendants have been named for declaratory purposes only to ascertain rights as to the alleged fraudulently conveyed properties and to establish where necessary the chain of wrongful conveyances.

7. For such other and further relief as the court may find just and appropriate in the premises.

DATED this 27 day of August, 1996.

A handwritten signature in dark ink, appearing to read 'R. Amott', is written over a horizontal line.

Ralph C. Amott, Atty. for
Plaintiff Hatch

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing

Amended Complaint by Plaintiff was mailed, postage prepaid, this
27 day of August, 1996, to the following:

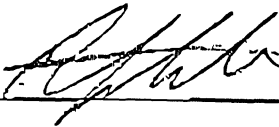
Clark R. Nielsen
HENRIOD & NIELSEN
1160 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111-1004
Attorney for Dennis L. Sykes

Dwane Sykes
1511 So. Carterville Rd.
Orem, UT 84057

Gordon Duval
Duval, Hansen Witt & Morley, L.L.C.
110 South Main Street
Pleasant Grove, Utah 84062
Attorney for Johnny Iverson

R. Kent Ludlow
NIELSEN & SENIOR
P.O. Box 11808
Salt Lake City, UT 84147
Attorney for Tamangs

Max Ferre
1973 East 2400 North
Layton, Utah 84004



ADDENDUM 6

Sam Primavera (5413)
Attorney for William Christiansen
746 E. 3800 N.
Provo, UT 84604
Telephone: (801) 226-0993

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY
NOV 21 12 02 PM '96
A

**IN THE FOURTH DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH**

HOWARD F. HATCH Plaintiff v. DWANE J. SYKES, DENNIS L. SYKES, WILLIAM CHRISTIANSEN, ET. AL. Defendants.	MOTION TO DISMISS CLAIMS AGAINST WILLIAM CHRISTIANSEN AND MEMORANDUM IN SUPPORT Civil No. 950 400 719 CV Honorable Don J. Eyre Date: 21 November 1996
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Defendant William Christiansen through his attorney Sam Primavera files this motion to dismiss claims against William Christiansen. Pursuant to U.R.C.P. 12(b)(6) William Christiansen asks the court to dismiss all claims against him inasmuch as such claims are barred by the doctrine of Res judicata.

FACTS

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 “strawman 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 this 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) Now Mr. Hatch has filed another claim using the identical facts of the previous two cases.

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

ARGUMENT

Under U.R.C.P. Rule 13(a)

“A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against an opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim”


All claims that Mr. Hatch had were decided in the prior adjudication or are precluded under these rules or under the common law doctrine of res judicata. The prior case was the exact same facts as the facts of the instant complaint. The complaint is also the same. Mr. Hatch is claiming that Mr. Sykes is a “strawman purchaser”. He is claiming that the property was actually purchased by Mr. Christiansen for and in behalf of Mr. Christiansen. This is exactly the same claim and exactly the same set as facts as have been dealt with twice before

by Judge Mower. At some point this dispute needs to be put to rest. Mr. Hatch is simply harassing Mr. Christiansen and trying to reverse a decision that he has already lost.

Under U.C.U Sec. 78-12-6 No action founded upon title to real estate shall be valid if the owner of the real estate has held the property for 7 or more years. The events in this action are over 15 years old. There is no longer any valid action that may be commenced based upon those actions.

CONCLUSION

The old saw that the third time is the charm does not apply in matters of repetitive litigation. The issue presented to the court has already been adjudicated twice. In both cases attorney's fees were awarded for the misdeeds of Mr. Hatch. Not only does this waste Mr. Christiansen's time, energy and money, it is wasting the time of the court and perverting the judicial process. Law suits may be fun and a sort of hobby for Mr. Hatch. But, they are not fun for Mr. Christiansen. Mr. Christiansen asks for an order dismissing all claims against him as res judicata and precluded by the statute of limitations and for an award of attorney's fees to be established by affidavit.



Sam Primavera

ADDENDUM 7

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

Nov 25 12 06 PM '96
A

RALPH C. AMOTT (#68)
Attorney for Plaintiff
60 East 100 South, Suite 102
Provo, Utah 84606
(801) 377-6575

IN THE FOURTH DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

ooo0ooo

HOWARD F. HATCH,

Plaintiff,

vs.

DWANE J. SYKES, DENNIS L.
SYKES, BENOY & ANGELA
TAMANG, Trustees of the so-
called "Irrevocable Trust
Agreement", aka "THE DWAYNE
SYKES AND PATRICIA SYKES
CHILDRENS' TRUST AND/OR THE
DWAYNE AND PATRICIA SYKES TRUST,
JOHNNY M. IVERSON, MAX FERRE,
J. Glade Dursteller, James
Sauers, Patricia Sykes, William
Christiansen,

Defendants.

Counterclaimant.

ooo0ooo

PLAINTIFF'S RESPONSE
REPLY TO CHRISTIANSEN
MOTION TO DISMISS AND
COUNTERCLAIM; AND
PLAINITFF'S MOTION FOR
DISMISSAL AND/OR REMOVAL
CHRISTIANSEN AS A NAMED
PARTY DEFENDANT

CIVIL No.: 950400719CV

COMES NOW Plaintiff, by and through his attorney Ralph C. Amott, and responds and replies to the motion to dismiss and counterclaim filed by William Christiansen herein. Plaintiff objects to the claims made by Christiansen and to the request for damages which is unfounded and inequitable. Christiansen's request is premature in that he has not been served in this matter

in any fashion. Plaintiff specifically responds as follows:

1. It is true that Plaintiff and Defendant Dwane Sykes have been engaged in ongoing litigation for many years, both usually acting Pro Se. Plaintiff finally obtained a large judgment against Defendant Dwane Sykes in February of 1995. The present case was instituted by Plaintiff, again pro se, alleging valid claims of fraudulent conveyance by Mr. Sykes that have made it nearly impossible for creditors to rightfully pursue lawful collection remedies against Mr. Sykes.

2. The original complaint filed by Plaintiff listed several parties as co-defendants who were thought to be involved in the chain of title of some of these allegedly fraudulently conveyed properties. Mr. Christansen herein was not one of the originally listed defendants. Mr. Hatch also filed a request for the right to amend his complaint shortly after he filed it in 1995.

At this point Mr. Hatch was unexpectedly called on a mission for the LDS Church with his wife to Germany. They left in April of 1996 and shortly before his leaving he contacted my office for representation help and left a number of documents with me. In August of this year, one of the Defendants filed a motion with the court asking that Plaintiff amend his complaint per his pro se motion of many months earlier. As counsel for Plaintiff, Mr. Amott had not requested that an amended complaint be filed at that time and in fact objected to the request that Plaintiff be forced to amend his complaint right at that time inasmuch as Mr. Amott was still attempting to sift through the voluminous documents in this

matter and determine the relevant issues. An effort complicated by Plaintiff Hatch's being in Germany. Mr. Amott's request for additional time before an amended complaint was filed was denied by the court and he was instructed to file an amended complaint within 20 days.

3. Pursuant to this request, an amended complaint was prepared. Communication with Plaintiff Hatch has and continues to be difficult because of his being in Germany. In preparing the amended complaint, counsel Amott for Plaintiff reviewed all documents presently in his possession to determine how best to flesh out the applicable issues. Three potential defendants were identified from that review of documents and added as defendants, namely Dursteller, Sauer and Christiansen. In order to meet the court's deadline for the amended complaint and still preserve my client's rights as to other possible defendants these names were added to the amended complaint as parties having dealings with property of Mr. Sykes that were at issue here. At the time of preparing the amended complaint, Counsel Amott had not seen or been informed by anyone of the prior rulings in other cases regarding Mr. Christiansen and Mr. Hatch and was unaware of them till copies were received with Christiansen's Motion to Dismiss.

4. Of key importance here is the fact that though a few more defendants were named to preserve the right to have them involved if necessary at a later date, none of the three additional parties, including Mr. Christiansen herein, was served with the amended complaint nor was any attempt made to serve him. Counsel Amott

wished to further investigate the complexities of this case so that matters such as have been raised by Mr. Christiansen as to prior orders or rulings could be fully examined. It is unfortunate in the extreme in that regard that Counsel for Mr. Christiansen did not see fit to privately inform counsel for Plaintiff of these earlier rulings. A simple call or letter would have resolved the matter completely. Instead he chose to file motions and counterclaims without Mr. Christiansen even being served in an attempt to paint an unduly harsh and unfair picture and apparently in the hopes of reaping some huge damage windfall. At the very least it appears as an attempt to chill Plaintiff's rights or ability to proceed in the case in chief which is suspect inasmuch as on information and belief it is believed by Plaintiff that Counsel Primavera for Mr. Christiansen has in the past represented Mr. Dwane Sykes who is the primary target of this lawsuit, and that he is very familiar with Mr. Sykes and his situation.

5. Based on the documents supplied by Mr. Christiansen with his motion, Plaintiff has no problem with the idea that Christiansen should not be served in this matter and that if necessary his name may be removed from the heading of the amended complaint. If he is needed as a witness, the prior rulings supplied by Christiansen would not seem to prevent that possibility. Inasmuch as Christiansen was and is not served, a motion to dismiss and counterclaim and answer seem premature and unnecessary and not the proper avenue to follow if what is wanted is to have his name removed from the heading of the case. Again,

Plaintiff will stipulate to that removal.

6. As to Christainsen's counterclaim, its effect is questionable inasmuch as he is unserved, but to protect Plaintiff's interests herein, Plaintiff hereby denies all allegations of Christiansen's counterclaim, including but not limited to the specific allegations of abuse of process, harrassment, invasion of privacy and Rule 11 violations.

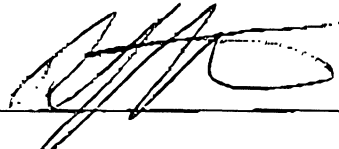
7. The law is clear that until a party is served with process this court has no jurisdiction over Mr. Christiansen. Therefore no relief even remotely adverse to Mr. Christiansen could be sought by Plaintiff, or any plaintiff, till he was served. Therefore all the claims of Christiansen of abuse of process, harassment, malicious prsecutions, etc., would seem to be manufactured claims based on what has gone on so far.

8. Plaintiff herein, in his own right, moves this court for an order removing the name of William Christiansen from the heading of the case, and if necessary because of the voluntary answer filed by Christiansen, that the matter be dismissed as to him.

Based on the foregoing, Plaintiff requests that the claims set forth in Christiansen's counterclaim be denied as unfounded and premature and grant Plaintiff's stipulated agreement herein to remove Mr. Christiansen as a party defendant (unserved) based on the documents from an earlier case provided with their pleadings. Plaintiff also requests that no damages or fees be awarded in this matter inasmuch as any error committed was inadvertant and without actual knowledge of the particulars set forth by Christiansen in

his pleadings and have been blown out of proportion when a much less costly route could have been pursued to resolve this misunderstanding.

DATED this 24 day of November, 1996.

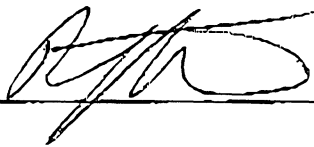


Ralph C. Amott, Atty. for
Plaintiff Hatch

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Plaintiff's Verified Response and Reply to Christiansen's Motion to dismiss and Counterclaim, and Motion for removal and/or Dismissal of William Christiansen as a Named Party Defendant, was mailed, postage prepaid, this 25 day of November, 1996, to the following:

Sam Primavera, Attorney for Christiansen, 746 East 3800 North,
Provo, UT 84604.



ADDENDUM 8

Sam Primavera (5413)
Attorney for William Christiansen
746 E. 3800 N.
Provo, UT 84604
Telephone: (801) 226-0993

FILED
Fourth Judicial District Court
of Utah County, State of Utah
December 2, 1996
CARMA B. SMITH, Clerk
A Deputy

**IN THE FOURTH DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH**

HOWARD F. HATCH

Plaintiff

v.

DWANE J. SYKES, DENNIS L. SYKES,
WILLIAM CHRISTIANSEN,
ET. AL.

Defendants.

**ORDER FOR DISMISSAL OF
CLAIMS AGAINST WILLIAM
CHRISTIANSEN**

Civil No. 950 400 719 CV

Honorable Don J. Eyre

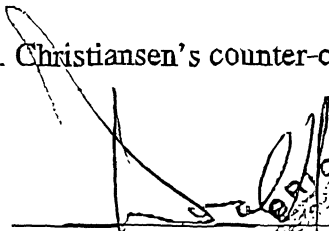
The Court having reviewed the applicable documents and considered all arguments presented, makes the following judgement and order:

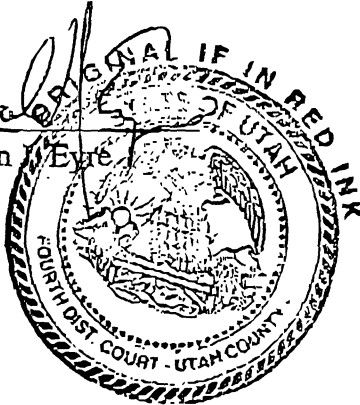
- 1) The claims made by Mr. Hatch in the instant case against William Christiansen are barred by the doctrine of res judicata and by the applicable statute of limitation.
- 2) The actions by Mr. Hatch in prosecuting this claim, yet a third time, were frivolous and constitute harassment of William Christiansen.

3) Any and all claims against William Christiansen in this case and related to the instant set of facts are dismissed with prejudice and Mr. Hatch is ordered not to again bring such a case against Mr. Christiansen under penalty of a finding of contempt.

4) Attorney's fees and all costs incurred are awarded to Mr. Christiansen in an amount to be established by affidavit of Mr. Primavera.

5) The Court reserves the right to award Rule 11 sanctions until judgement is rendered on Mr. Christiansen's counter-claim.


Judge Don J. Eyre



12-2-96
Date

ADDENDUM 9

Sam Primavera (5413)
Attorney for William Christiansen
746 E. 3800 N.
Provo, UT 84604
Telephone: (801) 861-4551

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
9-7-99 Deputy

4:27 PM '99
JUDGMENT

**IN THE FOURTH DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH**

HOWARD F. HATCH

Plaintiff

v.

DWANE J. SYKES, DENNIS L. SYKES,
WILLIAM CHRISTIANSEN,
ET. AL.

Defendants.

JUDGMENT AND ORDER

Civil No. 950 400 719 CV

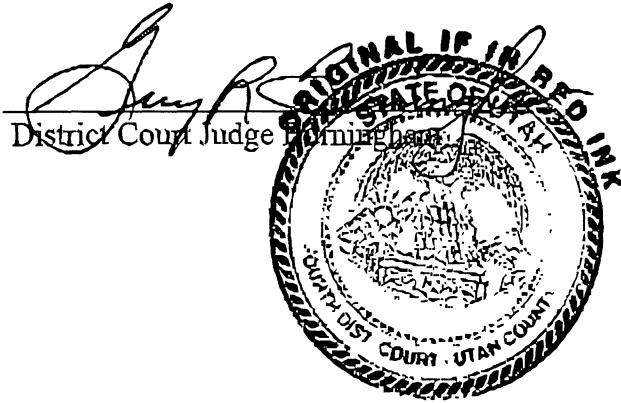
Burningham

Judge Eyre has previous ruled in a motion for summary judgment in this case that Howard Hatch had committed an abuse of civil process but had reserved the award of damages for trial. The case came on for trial before a jury on the 20th and 21st of October 1999. The jury found that Mr. Christiansen had been damaged by Mr. Hatch and awarded Mr. Christiansen \$1,000 in compensatory damages. Therefore:

- 1) It is ordered that Mr. Hatch pay to Mr. Christiansen \$1,000 (one thousand dollars) in compensatory damages.
- 2) Statutory interest will accrue beginning on the date that this judgment and order is

signed.

3) This award shall be augmented by any and all costs of collection, including but not limited to attorney's fees.



Date 9-7-99

CERTIFICATE OF MAILING

I certify that a true and accurate copy of the judgment and order was sent first class postage prepaid on 30 day of Aug 19 99 to:

Ralph C. Amott
60 E. 100 S. Ste 102
Provo, UT 84606

Fourth District Court
125 N. 100 W.
Provo, UT 84601

Signed

A handwritten signature in black ink, appearing to be "John A. [unclear]", written over a horizontal line.

CERTIFICATE OF SERVICE

On the 18 day of January, 2005 I caused to be delivered via the following method two copies of the foregoing to the following:

Spencer F. Hatch
1433 Lakeview Dr., #100
Bountiful, Utah 84010

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Hand-Delivered
<input type="checkbox"/>	Federal Express

Nicole M. Whitehead