

2000

# Linda Munford v. Mariusz Bienkowski : Brief of Petitioner

Utah Court of Appeals

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J. Kent Holland; Anderson & Holland; Attorney for Respondent.

Linda Munford; Pro Se.

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## Recommended Citation

Legal Brief, *Munford v. Bienkowski*, No. 20000660 (Utah Court of Appeals, 2000).

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**UTAH COURT OF APPEALS**

LINDA MUNFORD,	)	
	)	
Plaintiff/Appellant	)	Trial Court No. 990906380
	)	
vs.	)	Utah Court of Appeals No. 20000660-CA
	)	
MARIUSZ BIENKOWSKI,	)	Priority No 15
	)	
Defendant/Appellee	)	

---

**BRIEF OF PETITIONER**

---

J. KENT HOLLAND, #1520  
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Attorney for Defendant  
623 East First South  
P.O. Box 11643  
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Linda Munford  
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Salt Lake City, Utah 84117

Utah  
Appeals  
600  
The Stagg  
of the Court

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**UTAH COURT OF APPEALS**

LINDA MUNFORD,	)	
	)	
Plaintiff/Appellant	)	Trial Court No. 990906380
	)	
vs.	)	Utah Court of Appeals No. 20000660-CA
	)	
MARIUSZ BIENKOWSKI,	)	Priority No. 15
	)	
Defendant/Appellee	)	

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**BRIEF OF PETITIONER**

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## **TABLE OF AUTHORITIES**

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#### **STATEMENT OF JURISDICTION**

The Utah Supreme Court has jurisdiction over the instant appeal pursuant to Utah Code Ann. 78-2-2 (3) (a) (1996).

## STATEMENT OF ISSUES / STANDARDS OF REVIEW

1. The Stipulation was signed under significant Duress and the order thereon should be set aside by the court.

Utah law is clear that a party may invalidate a contract where there is a showing that a party committed a harmful act which put another party in fear such as to compel him to act against his will. Heglar Ranch, Inc, vs. Stillman, 619 P.2d 1390 (Utah 1980) . That ruling is derived from an earlier Utah case that offers the rule that “any wrongful act or threat which actually puts the victim in such fear as to compel him to act against his will constitutes duress” which will invalidate a contract. Fox vs. Piercey, 227 P.2d 763 (Utah 1951).

The Fox case, supra, designates three parameters for the consideration of the invalidation of a contract which include:

- (1) that the other contracting party committed a wrongful act;
- (2) which put the initial party in fear;
- (3) such as to compel him to act against his will.
- (4) such as to compel him to act against his will.

Other Pacific Coast jurisdictions help to embellish upon the application of the former stated common law rule accepted and applied in Utah.

Regarding the state of mind of the victim of duress it is stated in Wiesen vs. Short, 604 P.2d 1191 (Colo 1979), “to establish duress as a ground for avoidance of a contract...it must clearly appear that force or threats employed actually subjugated the mind and will of the person against whom they were directed, and were thus the sole and efficient cause of action which he took”. It could not be any more clear than

plaintiff gave completely beyond what may have reasonably been expected because she was totally subjected to the will of the defendant which was the sole cause of her action.

The threat of duress against plaintiff herein was that she had to give up everything, her judgment, her claim for return of a vehicle, her payment for a debt of defendant, her personal property, nearly everything she had to obtain the agreement to dismiss the Protective Order. Further, it was the only reasonable alternative.

The party being compelled to assent against his will must be faced with it as the only reasonable alternative for the doctrine of duress to remedy. Frank Culver Elec., Inc. vs. Jorgenson, 664 P.2d 226, (Ariz. 1983).

Courts will not enforce a bargain where one party has unconscionably taken advantage of the distress of the other. Inman vs. Clyde Hall Drilling Co., 369 P 2d 498, (Alaska 1962), 4 A.L.R. 3d 430. It is reasonable to assume a person in jail is in distress. Plaintiff also faced the necessity of obtaining freedom to care for her daughter who was seriously ill.

With regard to the wrongful act requirement of the remedy of the doctrine of duress offers, an act or threat constitutes duress if it is wrongful and places party entering into transaction in such fear as to preclude the exercise by him of free will and Judgment. Dunbar vs. Dunbar, 429 P.2d 949, (Ariz. 1967). The requirement of a wrongful act may be met if it is wrongful in the moral sense. Totem Marine Tug & Barge, Inc. vs. Alyseka Pipeline Service Co., 584 P.2d 15, (Alaska 1978) 9 A.L.R. 4<sup>th</sup> 928.

For Plaintiff to be required to give all that she was required to give to obtain her freedom was a moral wrong by the defendant. He knew her plight and obtained extreme advantage over her for it. The consideration he paid by dismissing the Protective Order was minute and totally inadequate in comparison to what he required of plaintiff for his act requiring no cost whatsoever.

### **DETERMINATIVE AUTHORITY**

The Constitutional provisions, statutes, ordinances, rules, and regulations, whose Interpretation is determinative in the instant appeal, are set out verbatim, with the Appropriate citation in the body and arguments of the instant brief.



## **STATEMENT OF THE CASE**

1. Plaintiff filed this matter for the pursuit of return of vehicle owned by plaintiff, namely a 1992 Lexus SC400 vehicle.

2. Subsequent to the filing of complaint and answer in the above matter circumstances completely changed causing that this plaintiff gave over title and interest in and to the subject vehicle pursuant to Stipulation on file herein. Said Stipulation also designated the transfer of other personal property and rights to be given to the defendant as set forth hereafter.

3. The Stipulation agreed that plaintiff's judgment against defendant in small claims court, Civil No., 994004279SC, allowing recovery of rents and other damages to plaintiff in the amount of \$5,071.00 with interest be completely dismissed with prejudice in favor of defendant. (See plaintiff's exhibit "A" attached hereto Plaintiff's Affidavit).

4. A previously disputed matter of debts between the parties, potentially a litigation matter for small claims regarding the amount of \$1,400.00 was Stipulated in favor of defendant and plaintiff agreed to pay the amount to defendant by March 31, 2000.

5. The Stipulation allows that the plaintiff without further consideration shall turn over the defendant personal property owned and in the possession of plaintiff. much of the personal property enumerated was owned or received by plaintiff as a gift and was the personal property of defendant.

6. The circumstances that caused plaintiff no alternative to commit to such a Stipulation was that plaintiff was sentenced to a short jail term of a few months for involvement in a criminal matter pending before the above entitled court. Defendant was

allowed to be free from imposition of the subject criminal sentence of the court except there existed a Protective Order obtained by defendant that required dismissal before plaintiff could be freed from the jail sentence.

7. At the same time the jail sentence was imposed plaintiff's daughter was seriously ill and with no one to care for her except the plaintiff herein.

8. Therefore two compelling reasons existed for plaintiff to secure the dismissal of defendant's Protective Order against plaintiff at any cost. There was no alternative.

9. After the Stipulation and Order of this Court was entered defendant dismissed the Protective Order pursuant to the agreement. (See plaintiff's Exhibit B attached hereto to Plaintiff's Affidavit).

10. Release of the plaintiff from jail was effective thereafter. (see Exhibit "C" attached hereto to Plaintiff's Affidavit).

11. The plaintiff first approached defendant about a dismissal of his Protective Order after she had been incarcerated. Plaintiff explained to defendant that she could obtain release if his Protective Order was dismissed. Plaintiff also explained the reasons why she needed release. Plaintiff was desperate to provide help to her daughter besides the fact that she could be freed from incarceration if the Protective Order was dismissed.

12. The defendant found this as his opportunity to resolve all pending matters of personal property disputes that had arisen between the parties while they were co-habiting. The defendant had lost the small claims matter and was bound to lose the matter filed herein after the ownership of the subject vehicle.

13. The plaintiff had supported defendant for a lengthy period of time and did not owe the \$1,400.00 debt plaintiff agreed to pay for the defendant.

14. The defendant further demanded nearly all of the personal property owned by plaintiff which defendant had absolutely no right or title to whatsoever to finally agree to dismiss his Protective Order.

15. The plaintiff had no choice but to agree even though the bargain the defendant struck was morally wrong.

16. The above-entitled matter came before the court on June 20,2000, the Plaintiff was represented by her counsel Rex B. Bushman and Defendant Mariusz Bienkowski was represented by, his counsel J. Kent Holland. After hearing and good Cause showing regard the matter it is hereby ordered that the Motion was Denied on June 29, 2000.

## **STATEMENT OF FACTS**

1. Plaintiff filed this matter for the pursuit of return of vehicle owned by plaintiff, namely, a 1992 Lexus SC400 vehicle.

2. Subsequent to the filing of the complaint and answer in the above matter circumstances completely changed causing that this plaintiff gave over title and interest in and to the subject vehicle pursuant to Stipulation on file herein. Said Stipulation also designated the transfer of other personal property and rights to be given to the defendant has set forth hereafter.

3. The Stipulation agreed that plaintiff's judgment against defendant in small claims court, Civil No. 994004279SC, allowing recovery of rents and other damages to plaintiff in the amount of \$5071.00 with interest be completely dismissed with prejudice in favor of defendant. (See plaintiff's exhibit "A" attached hereto to Plaintiff's Affidavit).

4. A previously disputed matter of debts between the parties, potentially a litigation matter for small claims regarding the amount of \$1,400.00, was Stipulated in favor of defendant and plaintiff agreed to pay the amount to defendant by March 31, 2000. If payment is not made the Stipulation allows for judgment in that amount to be entered against plaintiff. (See Stipulation on file herein).

5. The Stipulation allows that plaintiff without further consideration shall turn over to the defendant personal property owned or in possession of plaintiff. Much of the personal property enumerated was owned or received by plaintiff as a Gift, or payment on funds owned and was never the personal property of defendant. (See Stipulation on file herein).

6. Attorney fees to enforce the Stipulation were allowed to defendant.

7. The circumstances that caused plaintiff no alternative to commit such a Stipulation were that plaintiff was sentenced to a short jail term of three months for involvement in a criminal matter pending before the above entitled Court. Defendant was allowed to be free from imposition of the subject criminal sentence of the court except that there existed a Protective Order obtained by defendant that required dismissal before plaintiff could be freed from the jail sentence.

8. At the same time the jail sentence was imposed plaintiff's daughter was seriously ill and with no one to care for except the plaintiff herein.

9. Therefore two compelling reasons existed for plaintiff to secure the Dismissal of defendant's Protective Order against plaintiff at any cost. There was no Alternative.

10. After the Stipulation and Order of this Court was entered defendant dismissed the Protective Order pursuant to the agreement. (See plaintiff's Exhibit "B" attached hereto to Plaintiff's Affidavit).

11. Release of the plaintiff from jail was effective thereafter. (See Exhibit "C" attached hereto to Plaintiff's Affidavit).

12. The plaintiff first approached defendant about a dismissal of his Protective Order after she had been incarcerated. Plaintiff explained to the defendant that she could obtain release if both Protective Orders were dismissed, (his and hers) Plaintiff also explained the reasons why she needed released aside from the fact that she did not enjoy being incarcerated. Plaintiff was desperate to provide help to her daughter besides the fact that she could be freed from incarceration if the Protective Order was dismissed.

13. The defendant found this as his opportunity to resolve all pending matters of personal property disputes that had arisen between the parties while they were co-habiting. The defendant had lost the small claims matter and was bound to lose the matter filed herein over the ownership of the subject vehicle.

14. The plaintiff had supported defendant for a lengthy period of time and did not owe the \$1,400.00 debt plaintiff agreed to pay for defendant.

15. The defendant further demanded nearly all of the personal property owned by plaintiff which defendant had absolutely no right or title to whatsoever to finally agree to dismiss his Protective Order.

16. The plaintiff had no choice but to agree even though the bargain the Defendant struck was morally wrong.

17. Given that plaintiff has no further desire to communicate in any way with Defendant there is no possibility of a further Protective Order against her and the jail Term is now over with no further threat of plaintiff's incarceration. (See Plaintiff's Affidavit attached hereto for all facts stated herebefore).

## **ARGUMENT**

### **I. THE STIPULATION WAS SIGNED UNDER SIGNIFICANT DURESS AND THE ORDER THEREON SHOULD BE SET ASIDE BY THE COURT.**

Utah law is clear that a party may invalidate a contract where there is a showing that a party committed a harmful act which put another party in fear such as to compel him to act against his will. *Heglar Ranch, Inc. vs. Stillman*, 619 P.2d

1390 (Utah 1980). That ruling is derived from an earlier Utah case that offers the rule that “any wrongful act or threat which actually puts the victim in such fear as to compel him to act against his will constitutes duress” which will invalidate a contract. *Fox vs. Pericey*, 227 P. 2d 763 (Utah 1951).

The Fox case, *supra*, designates three parameters for the consideration of the invalidation of a contract which include:

- (1) That the other contracting party committed a wrongful act:
- (2) which put the initial party in fear;
- (3) such as to compel him to act against his will.

other Pacific Coast jurisdictions help to embellish upon the application of the former stated common law rule accepted and applied in Utah. Regarding the state of mind of the victim of duress it is stated in *Wiesen vs. Short*, 604 P. 2d 1191 (Colo 1979), “to establish duress as a ground for avoidance of a contract.... It must clearly appear that force or threats employed actually subjugated the mind and will of the person against whom they directed, and were thus the sole and efficient cause of action which he took”. It could not be any more clear than plaintiff gave completely beyond what may have reasonably been expected because she was totally subjected

to the will of the defendant which was the sole cause of her action.

The threat of duress against plaintiff herein was that she had to give up everything, her judgment, her claim for return of a vehicle, her payment of a debt of defendant, her personal property, nearly everything she had to obtain the agreement to dismiss the Protective Order. Further, it was the only reasonable alternative.

The party being compelled to assent against his will must be faced with it as the only reasonable alternative for the doctrine of duress to remedy. Frank Culver Elec., Inc. vs. Jorgenson, 664 P.2d 226, (Ariz. 1983) courts will not enforce a bargain where one party was unconscionably taken advantage of the distress of the other. Inman vs. Clyde Hall Drilling Co., 369 P.2d 498, (Alaska 1962), 4 A.L.R. 3d 430. It is reasonable to assume a person in jail is in distress. Plaintiff also faced the necessity of obtaining freedom to care for her daughter who was seriously ill.

With regard to the wrongful act requirement of the remedy the doctrine of duress offers, an act or threat constitutes duress if it is wrongful and places party entering into transactions in such fear as to preclude the exercise by him of free will and judgment. Dunbar vs. Dunbar, 429 P.2d 949, (Ariz. 1967) The requirement of a wrongful act may be met if it is wrongful in the moral sense. Totem Marine Tug & Barge, Inc. Vs. Alyseka Pipeline Service Co., 584 P.2d 15, (Alaska 1978) 9 A.L.R. 4<sup>th</sup> 928.

For plaintiff to be required to give all that she required to give to obtain her freedom was a moral wrong by the defendant. He knew her plight and obtained extreme advantage over her for it. The consideration he paid by dismissing the Protective Order



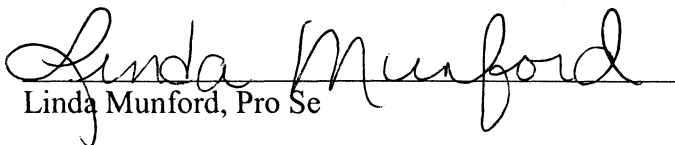
was minute and totally inadequate in comparison to what he required of plaintiff for his act requiring no cost whatsoever.

## CONCLUSION

Based on the foregoing, Petitioner respectfully asks that this Court reverse the court of Appeals Decision, and remand the case for the entry of orders or proceedings consistent with this Court's instructions set forth in it's Opinion.

Plaintiff has met all conditions under Utah law of Fox vs. Piercey, 227 P 2d 763 (Utah 1951) to be relieved of the subject stipulation and order herein by way the the doctrine of duress. The doctrine of duress allows avoidance of the stipulation entered into between the parties and the setting aside of the court order entered thereon.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2000.

  
Linda Munford, Pro Se

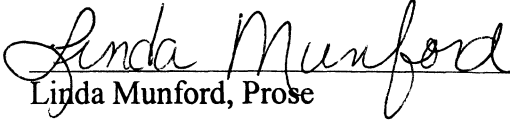
**CERTIFICATE OF SERVICE**

I hereby certify that I mailed two copies of the foregoing Brief

To the following counsel, postage prepaid and by U.S. Mail, this 18<sup>th</sup>

Of December, 2000:

Bradley J. Schofield  
Anderson & Holland  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643

  
Linda Munford, Prose

Rex B. Bushman, Esq. #0521  
RÉX B. BUSHMAN, P.C.  
Attorney for Plaintiff  
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Salt Lake City, Utah 84111  
Telephone: (801) 533-8020  
Facsimile: (801) 533-8877

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LINDA MUNFORD, :  
Plaintiff, : PLAINTIFF'S AFFIDAVIT  
vs. :  
MARIUSZ BIENKOWSKI, : Civil No. 990906380  
Defendant. : Judge Glenn K. Iwasaki

---

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

I, Linda Munford, hereby depose and state under oath as follows:

1. I am plaintiff in the above entitled litigation matter for the pursuit of return of vehicle owned by plaintiff, namely, a 1992 Lexus SC400 vehicle.

2. Subsequent to the filing of complaint and answer in the above matter circumstances completely changed causing that this plaintiff gave over title and interest in and to the subject vehicle pursuant to Stipulation on file herein. Said Stipulation also designated the transfer of other personal property and rights to be given to the defendant as set forth

hereafter.

3. The Stipulation agreed that plaintiff's judgment against defendant in small claims court, Civil No. 994004279SC, allowing recovery of rents and other damages to plaintiff in the amount of \$5,071.00 with interest be completely dismissed with prejudice in favor of defendant. (See plaintiff's Exhibit "A" attached hereto).

4. A previously disputed matter of debts between the parties, potentially a litigation matter for small claims regarding the amount of \$1,400.00, was stipulated in favor of defendant and plaintiff agreed to pay the amount to defendant by March 31, 2000. If payment is not made the Stipulation allows for judgment in that amount to be entered against plaintiff. (See Stipulation on file herein).

5. The Stipulation allows that plaintiff without further consideration shall turn over the defendant the following personal property owned or in possession of plaintiff:

Sanyo 25" TV; Sanyo stereo; Emerson boom box; mattress and bed frame; Pantex camera; thirty CD's; fifty music tapes; microphone; white night stand and lamp; iron; microwave; alarm clock; brown plates, dishes and cups; Polish passport; tire rims for Lexus; headlights for Lexus; two pillows; white blanket; pictures of defendant's mother; father and other relatives; day planner; bowling ball with shoes and carrier; Masters Degree Certificate for Zdziŝtaw Bienkowski; brown shoes; black shoes; sandals; snow shoes; cowboy boots; light green suit; two pair of pants with jacket; black pants; green jeans; light brown jeans; blue jeans; three ties; dark green coat; two red and blue jackets; leather jacket with hat; belts; black shirt; three white shirts; polish t-shirt with eagle; four Adidas t-shirts; two Nike t-shirts; Chaps t-shirt; Olympic t-shirt; four three button t-shirts; and Awa stereo.

Much of the personal property enumerated was owned or

received by plaintiff as a gift and was never the personal property of defendant. (See Stipulation on file herein).

6. Attorney fees to enforce the Stipulation were allowed to defendant.

7. The circumstances that caused plaintiff no alternative to commit to such a Stipulation were that plaintiff was sentenced to a short jail term of several months for involvement in a criminal matter pending before the above entitled Court. Plaintiff was allowed to be free from imposition of the subject criminal sentence of the court except that there existed a Protective Order obtained by defendant that required dismissal before plaintiff could be freed from the jail sentence and on probation only.

8. At the same time the jail sentence was imposed plaintiff's daughter was seriously ill and with no one to care for her except the plaintiff herein.

9. Therefore two significant reasons existed for plaintiff to secure the dismissal of defendant's Protective Order against plaintiff.

10. After the Stipulation and Order of this Court was entered defendant dismissed the Protective Order pursuant to the agreement. (See plaintiff's Exhibit "B" attached hereto).

11. Release of the plaintiff from jail was effective thereafter. (See Exhibit "C" attached hereto)

12. The plaintiff first approached defendant about a dismissal of his Protective Order after she had been incarcerated. Plaintiff explained to defendant that she could

Stipulation and Order herein may be set aside and plaintiff be restored to her rights.

DATED this \_\_\_\_\_ day of April, 2000.

\_\_\_\_\_  
Linda Munford

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of April, 2000.

\_\_\_\_\_  
NOTARY PUBLIC

FILED DISTRICT COURT  
Third Judicial District

FEB 07 2000

Linda Munford, Pro Se  
5242 Cobblecreek Road, #11-B  
Salt Lake City, Utah 84117  
Phone: 424-3526/560-6580

By Palmer  
SALT LAKE COUNTY  
Deputy Clerk

IN THE SMALL CLAIMS COURT IN AND FOR  
SALT LAKE COUNTY JUSTICE COURT  
COUNTY OF SALT LAKE, STATE OF UTAH

LINDA MUNFORD,  
Plaintiff,

v.

MARIUSZ BIENKOWSKI,  
Defendant.

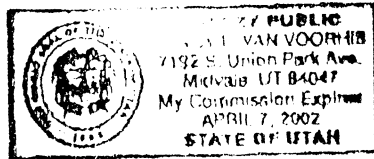
MOTION AND ORDER TO  
DISMISS SMALL CLAIMS

Case No. 994004279SG  
Judge: Peggy Acomb

990912275 - NEWRING

COMES NOW, plaintiff and moves the above-entitled court  
to dismiss this action and the motion for supplement proceedings  
with prejudice.

DATED this 28<sup>th</sup> day of January, 2000.



Linda Munford  
LINDA MUNFORD  
Plaintiff

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of January, 2000.

J. Van Voorhis  
NOTARY PUBLIC  
Residing in:

My Commission Expires:

Exhibit "A"



FILED DISTRICT COURT  
Third Judicial District

JAN 1 2000

SALT LAKE COUNTY

Mariusz Bienkowski, Pro Se  
P.O. Box 712425  
Salt Lake City, Utah 84171-2425

By \_\_\_\_\_  
Deputy Clerk

FILED DISTRICT COURT  
Third Judicial District

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JAN 1 2000

SALT LAKE COUNTY

MARIUSZ BIENKOWSKI,

Plaintiff,

v.

LINDA MUNFORD,

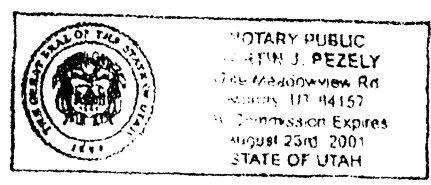
Defendant.

MOTION AND ORDER TO  
DISMISS PROTECTIVE ORDER

Case No. 994905991CA  
Judge: Homer F. Wilkinson

COMES NOW, plaintiff and moves the above-entitled court  
to dismiss the protective order that has been entered in this  
matter.

DATED this 28 day of January, 2000.



Mariusz Bienkowski  
MARIUSZ BIENKOWSKI  
Plaintiff

SUBSCRIBED AND SWORN to before me this 28 day of January, 2000.

[Signature]  
NOTARY PUBLIC  
Residing in: Murray, Utah

My Commission Expires: 08/23/2001

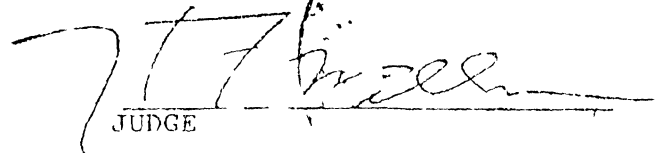
Exhibit "B"

O R D E R

BASED upon the motion filed by plaintiff, a copy of which is on file herein, and other good and sufficient cause having been shown, it is hereby ordered and decreed that this action be dismissed.

DATED this 31 day of Jan, 2000.

BY THE COURT:

  
JUDGE

NAME LAST, FIRST MCKEAN		DATE BOOKED 01/05/00		TIME 1049	INMATE NUMBER 99-110220		BOOKING NUMBER 0000421		29	
		ARREST DATE 01/05/00	TIME 1000	ARREST LOCATION 450 S 300 E						
		ARRESTING OFFICER COWAN, CASIDI		OFFICER ID YBYJ	AGENCY SL CO SHERIF		NO PRIOR BOOK 2			
		CHARGES		FILE NO 527507	SID NO 515310		ATTN NO 108321			
JURY IN CHARGE OR COMMITMENT		DOCUMENT NO 99-1102201		BAIL OR SENTENCE 120 DAYS		JUDGE T LINDBERG				
BOOKED BY HANSON, DAV		SEARCHED BY COWAN, CASI		SHIFT SERGEANT POFF, VICKI		RECORDS CHECKED BY A541		NCI NEG		OTHER NFG
CASH 100.00		PRINTS & PICTURE Y		LAST PHOTO DATE 01/05/00						
PROPERTY HELD BY SL CO SHERIF		PROPERTY HELD IN EVIDENCE		CAR IMPOUND LOCATION						
SEX MALE	RACE WHITE	AGE 32	POB DENUT	HEIGHT 504	WEIGHT 115	HAIR BRN	EYES BRN	BOO. SEC. NO 528-68-1450	DRIVERS LIC NO 7A-7911 VALID UT	
SCARS/TATTOOS/MARKS		LOCATION CENTER		CENTER		ABDOM		SURGERY SLAR		RIGHT HAND
										EYE GLASSES Y
OCCUPATION SECRETARY		HOME ADDRESS 5247 S COBBLE CREEK RD		ZIP SLC, UT	CITY/STATE		HOME PHONE NO 424-3526			
EMERGENCY NOTIFY (NAME ADDRESS) RACHEL MUNFORD		1688 E WINWARD DR		RELATION DAUGHTER	SLC, UT		EMERG PHONE NO 278-4419			
EMPLOYED BY (NAME ADDRESS) GREENSTREET		610 TROLLY SQUARE		GOVT EMP NO	SLC, UT		WORK PHONE NO 532-4100			
ARRESTEE'S CONDITION	INTOX NO	SICK NO	WOUND NO	MED NO	EXPLAIN SEE MEDICAL SCREENING REPORT					
	REMARKS									MASON, RONAL
RELEASE INFORMATION	DATE 02/02/00	RELEASED BY Officer Martins		REASON FOR RELEASE Ankle Monitor Program						
	TIME 1700	APPROVED BY								



obligations; and

WHEREAS, plaintiff has in her possession or in her control miscellaneous personal items that belong to the defendant; and

WHEREAS, each party has issued a protective order against the other party; and

WHEREAS, the parties wish to resolve all the above issues and have agreed to a settlement that each is willing to enter into with the intent of settling said issues.

WHEREAS, the parties hereto each warrant and represent to the other that they fully understand all of the terms, covenants, conditions and obligations incumbent upon each of them by virtue of this agreement to be performed or contemplated by each of them hereunder, and each believes the same to be fair, just and reasonable.

NOW THEREFORE, in consideration of the premises and of the covenants contained herein, the parties hereto mutually agree as follows:

1. That both parties have received a copy of the settlement agreement, have reviewed the contents and understand said contents.

2. That plaintiff shall dismiss with prejudice the above-entitled action and by said dismissal agrees that defendant

shall have all the right, title and interest involving a 1992 Lexus SC400 vehicle, vehicle identification number/serial number JT8U2 4N0009924, without any claim by plaintiff.

3. That plaintiff shall immediately dismiss with prejudice the small claims court action she has filed under civil no. 994004279SC.

4. That plaintiff shall pay defendant the sum of \$1,400.00 to be used by defendant towards payment of the credit card obligations incurred by the parties. Said sum shall be paid not later than March 31, 2000. If plaintiff shall fail to pay said sum by March 31, 2000 then a judgement shall enter against plaintiff for \$1,400.00 in favor of the defendant.

5. That plaintiff shall return to defendant not later than February 15, 2000 the following personal items:

Sanyo 25" tv; Sanyo stereo; Emerson boom box; mattress and bed frame; Pantex camera; thirty CD's; fifty music tapes; microphone; white night stand and lamp; iron; microwave; alarm clock; brown plates, dishes and cups; Polish passport; tire rims for Lexus; headlights for Lexus; two pillows; white blanket; pictures of my client's mother, father and other relatives; day planner; bowling ball with shoes and carrier; Masters Degree Certificate for Zdzistaw Bienkowski; brown shoes; black shoes; sandals; snow shoes; cowboy boots; light green suit; two pair of pants with jacket; black pants; green jeans; light brown jeans; blue jeans; three ties; dark green coat; two red and blue jackets; leather jacket with hat; belts; black shirt; three white shirts; polish t-shirt with eagle; four Adidas t-shirts; two Nike t-shirts; Chaps t-shirt; Olympic t-shirt; four three button t-shirts; and Awa stereo.

6. That each party shall take the necessary steps to try to dismiss the protective order each has against the other.

7. That plaintiff shall not have any contact whether personal via telephone or any other means with defendant, his family located here in the United States or any member of his family in Poland.

8. That defendant shall not have any contact whether personal via telephone or any other means with plaintiff or her family.

9. That each party shall assume and pay their own attorney fees and court costs incurred in this action.

10. That if any party to this agreement shall incur any costs resulting from enforcement of this agreement or any of the provisions of this agreement, the defaulting party shall be liable to the prevailing party for such costs. Costs, as used, herein, shall include costs of enforcement, interpretation, or collection, including, without limitation, reasonable attorney's fees, court costs, collection charges, travel and other related or similar expenses.

11. This\ agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns.

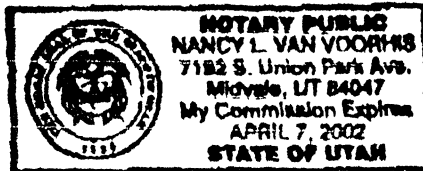
12. That the foregoing constitutes the entire agreement

of the parties.

DATED this \_\_\_\_\_ day of January, 2000.

Linda Munford  
LYNDA MUNFORD  
Plaintiff

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of January, 2000.

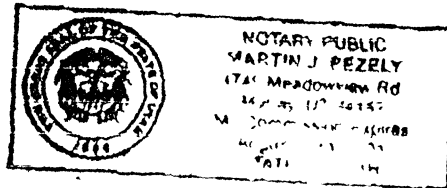


Nancy Van Voorhis  
NOTARY PUBLIC  
Residing in:

My Commission Expires:

\*\*\*\*\*

DATED this 28 day of January, 2000.



Mariusz Bienkowski  
MARIUSZ BIENKOWSKI  
Defendant

SUBSCRIBED AND SWORN to before me this 28 day of January, 2000

Martin J. Pezely  
NOTARY PUBLIC  
Residing in: Murray, Utah

My Commission Expires: 08/23/2001



MARTIN J PEZELY  
Attorney for Defendant  
7700 South Maple Street  
Midvale, Utah 84047  
Phone: 255-1261

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

-----  
LINDA MUNFORD,

Plaintiff

v.

MARIUSZ BIENKOWSKI,

Defendant

:

:

:

:

:

:

ORDER

Civil No. 990906380

Judge: Glenn K. Iwasaki

-----  
Based upon the stipulation of the parties, a copy of which  
is on file herein, and other good and sufficient cause having  
been shown,

IT IS HEREBY ORDERED AND DECREED:

1. That the stipulation of the parties is approved and the  
above entitled matter is dismissed with prejudice. *The terms of the  
stipulation are incorporated as part of this order.*

DATED this 31st day of January 2000.

BY THE COURT:

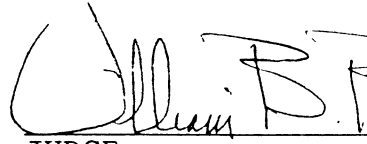
15/ Judge Iwasaki  
JUDGE

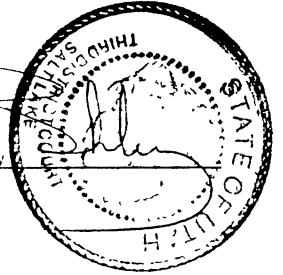
O R D E R

BASED upon the motion filed by plaintiff, a copy of which is on file herein, and other good and sufficient cause having been shown, it is hereby ordered and decreed that this action be dismissed.

DATED this 31 day of January, 2000.

BY THE COURT:

  
JUDGE



FILED DISTRICT COURT  
Third Judicial District

JAN 1 2000

SALT LAKE COUNTY

By \_\_\_\_\_  
Deputy Clerk

Mariusz Bienkowski, Pro Se  
P.O. Box 712425  
Salt Lake City, Utah 84171-2425

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JAN 1 2000

MARIUSZ BIENKOWSKI,

Plaintiff,

v.

LINDA MUNFORD,

Defendant.

MOTION AND ORDER TO  
DISMISS PROTECTIVE ORDER

Case No. 994905991CA  
Judge: Homer F. Wilkinson

COMES NOW, plaintiff and moves the above-entitled court  
to dismiss the protective order that has been entered in this  
matter.

DATED this 28 day of January, 2000.



NOTARY PUBLIC  
TIM J. PEZELEY  
17200 Overview Rd  
Murray, UT 84157  
Commission Expires  
August 23rd 2001  
STATE OF UTAH

Mariusz Bienkowski  
MARIUSZ BIENKOWSKI  
Plaintiff

SUBSCRIBED AND SWORN to before me this 28 day of January, 2000.

[Signature]  
NOTARY PUBLIC  
Residing in: Murray, Utah

My Commission Expires: 08/23/2001

**FILED DISTRICT COURT**  
**Third Judicial District**

**JAN 31 2000**

**SALT LAKE COUNTY**

By

**Deputy Clerk**

Linda Munford, Pro Se  
5242 Cobblecreek Road, #11-H  
Salt Lake City, Utah 84117  
Phone: 424-3526/560-6580

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LINDA MUNFORD,

Plaintiff,

v.

MARIUSZ BIENKOWSKI,

Defendant.

• • • • •

MOTION AND ORDER TO  
DISMISS PROTECTIVE ORDER

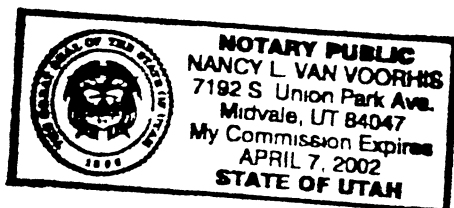
Case No. 994906198CA  
Judge: William Bohling


COMES NOW, plaintiff and moves the above-entitled court to dismiss the protective order that has been entered in this matter.

DATED this 28<sup>th</sup> day of January, 2000.

Linda Munford  
LINDA MUNFORD  
Plaintiff

SUBSCRIBED AND SWORN to before me this 28 day of January, 2000.



e this 28<sup>th</sup> day of January, 2000.  
  
 \_\_\_\_\_  
 NOTARY PUBLIC  
 Residing in:

My Commission Expires:

Bradley J. Schofield, #1520  
Anderson & Holland  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643  
Telephone: (801) 363-9345

---

IN THE THIRD DISTRICT COURT,  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LINDA MUNFORD,	)	
	)	REPLY TO MOTION TO SET
	)	ASIDE STIPULATION AND ORDER
Plaintiff,	)	
	)	
vs	)	
	)	Civil No. 990906380
MARIUSZ BIENKOWSKI,	)	
	)	Judge Glen K. Iwasaki
Defendant	)	
	)	

---

COMES NOW Defendant by and through his attorney, Bradley J. Schofield, and hereby submits the following Reply to Plaintiff's Motion to Set Aside Stipulation and Order as follows

FACTS

- 1 That Plaintiff was represented by Randy S. Ludlow, Esq., in the above-entitled action
2. That Plaintiff fired said counsel before trial date.
- 3 That Plaintiff contacted Defendant's counsel, Martin Pezely (Pezely), stating that she wanted a Settlement Agreement between the parties.

4. That Plaintiff stated to Pezely that she needed Defendant to dismiss his protective order against her in order for her to be released from Oxbow jail, where she was being held on an unrelated matter

5. That Plaintiff told Pezely what provisions she would agree to in said Settlement Agreement

6. That after advising his client, Pezely drafted said Settlement Agreement according to Plaintiff's instructions

7. That Plaintiff and Defendant entered into a Settlement Agreement on or about January 28, 2000. A copy of said Settlement Agreement is attached and marked Exhibit "A".

8. That both parties signed said Settlement Agreement in front of a Notary Public

9. That paragraph 6 of said Settlement Agreement states that both Plaintiff and Defendant would try to get the protective order against the other dismissed

10. That the criminal matter in which Defendant was serving time in jail was unrelated to any and all matters pertaining to Plaintiff and Defendant. A copy of Plaintiff's record for Case No. 991102201 is attached and marked Exhibit "B".

**ARGUMENT**  
**THERE WAS NO DURESS IN THE EXECUTION OF SAID SETTLEMENT**  
**AGREEMENT**

***1. The Parties Agreed To Mutually Dismiss Protective Orders Filed Against Both Parties***

Plaintiff states that she "had to give up everything", in order to get Defendant to agree to dismiss a protective order against her. However, Plaintiff was the party who requested the dismissal of the protective orders. Further, both parties had protective

orders against the other and it was agreed that they would mutually dismiss said protective orders in paragraph 6 of said Settlement Agreement. See Exhibit "A"

Mutually agreeing to dismiss protective orders which were in place against both parties certainly does not appear to be putting one of the parties under duress. In fact, Defendant did not want the protective order against Plaintiff dismissed, but in the interest of settling several matters between the parties he agreed to said provision.

As shown by the records of Plaintiff's said criminal matter, there is no mention of getting said protective order dismissed in order for Plaintiff to be released from jail. See Exhibit "B"

Plaintiff alleges that she could not be released from jail without said protective order being dismissed, yet proffers no evidence that dismissal of said protective order by Defendant was a pre-requisite to her release from jail. Even if Defendant knew that Plaintiff could be released upon his dismissal of said protective order, Plaintiff received consideration equal to that of Defendant in that both parties were required to dismiss their respective protective orders against the other.

Plaintiff has not satisfied her burden of proof showing that the dismissal of said protective order enabled her to be released from incarceration. Additionally, even had the dismissal of said protective order been a pre requisite to Plaintiff being released from jail, Plaintiff received the exact consideration as did Defendant.

## ***II. Plaintiff Approached Defendant For a Settlement Agreement***

Plaintiff was the party who approached Defendant in order to draft a Settlement Agreement. See Affidavit of Martin J. Pezely. Additionally, Plaintiff contacted Pezely and indicated the provisions she wanted in said Settlement Agreement. Pezely prepared

and presented a draft of said Settlement Agreement to Plaintiff for her approval while she was serving time at Oxbow jail on an unrelated matter. Plaintiff reviewed said Settlement Agreement for several hours and executed the document without any complaints or concerns to Pezely concerning said Settlement Agreement

Certainly, a person who approaches another in the interest of settling litigation is not put under duress to sign the very agreement they requested

### ***III. Plaintiff has not shown Any Duress In Execution Of Settlement Agreement***

Plaintiff has not offered any proof that said Settlement was executed under duress. In order to invalidate an agreement the party bringing the action must show the following three factors, 1) that the other contracting party committed a wrongful act, 2) which put the initial party in fear, 3) such as to compel him to act against his will Fox v Piercey, 227 P 2d 763 (Utah 1951)

Defendant did not commit any wrongful acts. Plaintiff and Defendant entered into a Settlement Agreement of their own free will. Plaintiff was advised to seek legal counsel when discussing the possibility of a Settlement Agreement in order to resolve matters concerning the parties. See the Affidavit of Martin J. Pezely. Both parties gave and received consideration for said Settlement Agreement. Finally, Plaintiff has offered no proof that there was any wrongdoing on the part of Defendant.

Plaintiff was not put in fear by Defendant. Simply because Plaintiff could be released from jail only if she had said protective order dismissed does not show that Plaintiff was in fear. Again, Plaintiff has shown no proof that Defendant forced her to stipulate to all of the facts contained in the Settlement Agreement in order to agree to dismiss said protective order.



Lastly, Plaintiff was not compelled to act against her will. From the face of the Settlement Agreement there is no sign that Plaintiff signed said document against her will. Plaintiff has not offered any proof that said Settlement Agreement was against her will, thus Plaintiff failed to satisfy her burden of proof

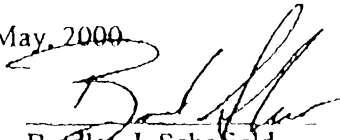
### CONCLUSION

Plaintiff and Defendant entered into a Settlement Agreement and both parties signed the document in front of a notary. The Settlement Agreement was to resolve issues between the parties so that they could both move on with their lives. Plaintiff has failed to prove any of the allegations set forth in her Motion and Memorandum to Set Aside

### Stipulation and Order

WHEREFORE, Plaintiff's Motion should be dismissed

DATED this 2<sup>nd</sup> day of May, 2000

  
Bradley J. Schofield  
Attorney for Defendant

Rex B. Bushman, Esq. #0521  
REX B. BUSHMAN, P.C.  
Attorney for Plaintiff  
115 E. Social Hall Avenue  
Salt Lake City, Utah 84111  
Telephone: (801) 533-8020  
Facsimile: (801) 533-8877

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LINDA MUNFORD,	:
Plaintiff,	: REPLY MEMORANDUM
vs.	:
MARIUSZ BIENKOWSKI,	: Civil No. 990906380
Defendant.	: Judge Glen K. Iwasaki

---

COMES NOW the above named plaintiff, Linda Munford, by and through counsel of record, Rex B. Bushman, and hereby replies to defendant's Reply (Response) To Motion To Set Aside Stipulation And Order, stating as follows:

REPLY FACTS

1. In reply to the statement of defendant's former counsel and to complete the scenario of events of the settlement as plaintiff recalls, she hereby adds the following to the facts stated in her initial affidavit included with plaintiff's Memorandum In Support of Motion To Set Aside Stipulation And Order.

2. Plaintiff was incarcerated on January 5th, 2000, and on January 7th, she applied for release on the ankle monitor

system which would allow release from the Oxbow jail and that she could go back to work.

3. Sgt. Cogburn informed her that with a pending restraining order she could not be released on the ankle monitor system pursuant to the offender eligibility criteria under Procedure: Section Criteria, Section A.2.c. (See Exhibit "A" attached to plaintiff's reply affidavit attached hereto). She was informed she met all other criteria.

4. Plaintiff called her friend Teresa, and asked her to contact the defendant and ask him for a mutual dismissal of protective orders.

5. The defendant responded that he would not drop the protective order unless plaintiff gave him ownership of her car, dismiss a \$5,000.00 judgment against him and give him most of the belongings in her home. The estimated requirement was that plaintiff pay about \$20,000.00 for defendant to drop his protective order.

6. Defendant then told his attorney plaintiff wanted to give him everything for dropping the protective order and had Mr. Pezely draw up the stipulation. Defendant informed Mr. Pezely what to put in the agreement.

7. Mr. Pezely didn't even know plaintiff was incarcerated when he drew up the papers but found out when plaintiff called after waiting for three weeks for the agreement to be prepared. Until then, Mr. Pezely thought plaintiff had just agreed to give defendant everything.

8. Mr. Pezely was surprised plaintiff was doing this to get released from jail. He wasn't sure plaintiff needed to drop the protective order to get released. He just thought plaintiff decided to give defendant everything for her own reasons.

9. Not only was plaintiff awaiting hoped for release from the suffering of incarceration but her daughter was having serious health problems as indicated by her doctor's letter, (see Exhibit "B" attached to plaintiff's reply affidavit, attached hereto), and plaintiff was needed to give her care where no one else was available.

10. Further evidence the release of the protective order was required before plaintiff could leave jail is plaintiff's son's affidavit attached to plaintiff's reply affidavit, attached hereto as Exhibit "C" about his conversation with Sgt. Cogburn. A friend's statement is also attached hereto as Exhibit "D" regarding her conversation with Sgt. Cogburn.

11. Plaintiff had the stipulation documents for about five minutes. A notary stood by, plaintiff signed and the notary took the papers. Mr. Pezely may not have come to pick them up until later but they were not in plaintiff's possession for several hours.

12. When plaintiff finally spoke to Mr. Pezely she told him she wasn't happy about giving up everything required but she needed to care for her daughter.

See Reply Affidavit of Linda Munford, attached hereto for facts and Exhibits designated herebefore.

ARGUMENT

I. THE PROTECTIVE ORDER HAD TO BE DISMISSED BEFORE PLAINTIFF COULD LEAVE JAIL.

Defendant has argued in response to plaintiff's Memorandum supporting Motion To Set Aside Stipulation And Order, that no proof has been shown that plaintiff could not be released from jail without withdrawal or dismissal of the defendant's protective order.

Plaintiff submits in this Reply Memorandum including her Reply Affidavit, evidence that proves she could not be released without the dismissal of the defendant's protective order. Included in the evidence submitted herewith is plaintiff's sworn statement, the actual rule received from Sgt. Cogburn which shows the requirements for release from the Oxbow jail including Section A.2.c. stating specifically the requirement "no protective orders". Also included herewith are the sworn statements of plaintiff's son and friend who both talked to Sgt. Cogburn and confirmed that plaintiff could not be released from jail while the protective order was in effect.

Thus the argument that the plaintiff did not need dismissal of the protective order to obtain he release must fail and the plaintiff's argument that she was under duress and fear that she would not otherwise be released is applicable and subject to the doctrine of Fox vs. Piercey, 227 P.2d 763 (Utah 1951). The defendant (1) committed a wrongful act by requiring

approximately \$20,000.00 for the trade of dismissing his protective order; (2) plaintiff was in fear of not being able to obtain her release otherwise; and (3) she was required to act against her will.

As a person in jail plaintiff was in distress. Plaintiff has not elaborated on the suffering of an individual in jail because the suffering of being incarcerated is assumable as punishment at an exquisite level. Courts will not enforce a bargain where one party has unconscionably taken advantage of the distress of the other. Inman vs. Clyde Hall Drilling Co., 369 P.2d 498 (Alaska 1962).

II. PLAINTIFF HAD TO OBTAIN RELEASE FROM JAIL TO TAKE CARE OF HER DAUGHTER WHO WAS SERIOUSLY ILL.

Defendant has acquiesced to plaintiff's argument that she needed to obtain release from jail to take care of her daughter who was seriously ill and plaintiff the only available person to care for the daughter. Plaintiff further submits herein her daughter's doctor's letter evidencing the daughter's serious health condition diagnosed on the day after plaintiff was incarcerated. Defendant has failed to respond to plaintiff's argument on that issue and therefor allows that plaintiff was under duress and fear that required her to act against her will to obtain release for the sake of her daughter's health.

Given plaintiff's status as incarcerated and that her daughter needed her care for a serious illness, plaintiff had no reasonable alternative but to agree to defendant's demands. The doctrine of duress shall remedy such an occurrence where

A

plaintiff was compelled to act as she did with no reasonable alternative. Frank Culver Elec., Inc. vs. Jorgenson, 664 P.2d 226 (Ariz. 1983).

III. PLAINTIFF ONLY REQUESTED DISMISSAL OF PROTECTIVE ORDERS, DEFENDANT WRONGFULLY REQUIRED MORE.

Plaintiff only requested of defendant the mutual dismissal of protective orders. It was the defendant who required further settlement of approximately \$20,000.00 from plaintiff to defendant for the mutual dismissal of protective orders.

Plaintiff denies offering the terms of settlement to defendant's attorney. Further, plaintiff denies having been requested by defendant's attorney to seek the advice of counsel. Instead plaintiff was advised to fire her attorney, which she did. Otherwise Pezely couldn't prepare the stipulation.

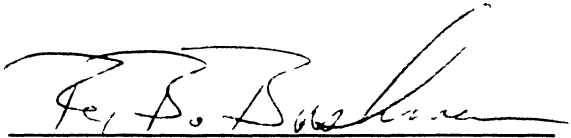
The requirement of a wrongful act may be met if it is wrongful in the moral sense. Totem Marine Tug & Barge, Inc. vs. Alyeska Pipeline Service Co., 584 P.2d 15, (Alaska 1978) 9 A.L.R. 4th 928. The requirement of a trade of \$20,000.00 to obtain the mutual release of protective orders is immoral even if plaintiff wasn't incarcerated or needing to care for a daughter in ill health.

CONCLUSION

Plaintiff has met all conditions under Utah law of Fox vs. Piercey to be relieved of the subject stipulation and order herein by way of the doctrine of duress.

DATED this 12<sup>th</sup> day of May, 2000.

REX B. BUSHMAN, P.C.

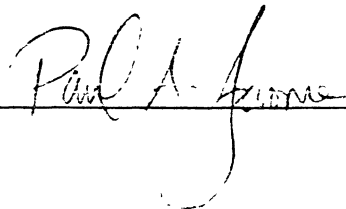
By:   
Rex B. Bushman



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing REPLY MEMORANDUM with accompanying REPLY AFFIDAVIT OF LINDA MUNFORD to the following counsel, postage prepaid and by U.S. Mail, this 12<sup>th</sup> day of May, 2000:

Bradley J. Schofield  
Anderson & Holland  
623 East First South  
P.O. Box 11643  
Salt Lake City, UT 84147-0643

  
\_\_\_\_\_

Rex B. Bushman, Esq. #0521  
REX B. BUSHMAN, P.C.  
Attorney for Plaintiff  
115 E. Social Hall Avenue  
Salt Lake City, Utah 84111  
Telephone: (801) 533-8020  
Facsimile: (801) 533-8877

---

IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LINDA MUNFORD, :  
Plaintiff, : REPLY AFFIDAVIT OF LINDA  
vs. : MUNFORD  
MARIUSZ BIENKOWSKI, : Civil No. 990906380  
Defendant. : Judge Glen K. Iwasaki

---

STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss.

I, Linda Munford, hereby depose and state under oath as follows:

1. In response to the statement of defendant's former counsel and to complete the scenario of events of the settlement as I recall I would like to add the following to my former affidavit.

2. I was incarcerated on January 5th, 2000 and on January 7th I applied for release on the ankle monitor system which would allow release from the Oxbow jail and allow me to go to work.

3. Sgt. Cogburn informed me that with a pending restraining order I could not be released on the ankle monitor system pursuant to the offender eligibility criteria under Procedure: Section Criteria Section A.2.c. (See Exhibit "A" included herewith.) I was informed I met all other criteria.

4. I called my friend Teresa, and asked her to contact the defendant and ask him to drop his protective order.

5. The defendant responded that he would not drop the protective order unless I gave him ownership of my car, dismissed a \$5,000.00 judgment against him and gave him most of the belongings in my house. The estimate requirement was about \$20,000.00 for dropping the protective order.

6. Defendant then told his attorney I wanted to give him everything for dropping the restraining order and had Mr. Pezely draw up the stipulation. Defendant informed Mr. Pezely what to put in the agreement.

7. Mr. Pezely didn't even know I was incarcerated when he drew up the papers but found out when I called after waiting for three weeks for the agreement to be prepared. Until then, Mr. Pezely thought I had just agreed to give defendant everything.

8. Mr. Pezely was surprised I was doing this to get released from jail. He wasn't sure I needed to drop the protective order to get released. He just thought I had decided to give defendant everything.

9. Not only was I awaiting hoped for release from the suffering of incarceration but my daughter was having serious

health problems as indicated by her doctor's letter, (See Exhibit "B" attached hereto), and I was needed to give her care where no one else was available.

10. For further evidence the release of protective order was required before I could leave jail is my son's affidavit attached hereto as Exhibit "C" about his conversation with Sgt. Cogburn. A friend's statement is also attached hereto as Exhibit "D" regarding her conversation with Sgt. Cogburn.

11. I was requested to fire my attorney, which I did.

12. I had the stipulation documents for about five minutes. A notary stood by, I signed and she took the papers. Mr. Pezely may not have come to pick them up until later but they were not in my possession for several hours.

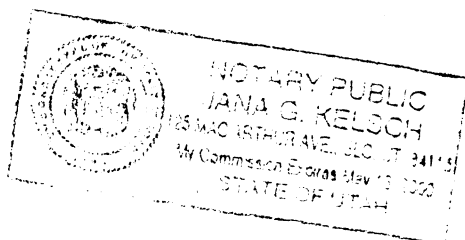
13. When I finally spoke to Mr. Pezely I told him I wasn't happy about giving up everything required but I needed to care for my daughter.

DATED this 12<sup>th</sup> day of May, 2000.

Linda Munford  
Linda Munford

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of May, 2000.

Jana G. Kelsch  
NOTARY PUBLIC



## ELECTRONIC SURVEILLANCE

### GENERAL PROVISIONS



#### Purpose of Chapter

The purpose of this chapter is to provide the Department's policy, procedure and requirements governing the use of Operations of the Electronic Monitoring program.

#### Definitions:

**Alarm:** Electronic signal emitted when the transmitter leaves the reception area of the receiver during a period of designated confinement

#### Electronic Monitoring:

- 1 Places an electronic transmitter on the body of the offender,
- 2 Sending a signal to a receiver installed in the offender's home, and
- 3 Logs the offenders movement in and out of the range of the receiver

**Host Computer:** The main computer system through which the functions of the Electronic Monitoring Program are processed.

### OFFENDER ELIGIBILITY CRITERIA

#### Policy

The Salt Lake County Sheriffs Office Electronic Monitoring program is to monitor the location and movements of offenders living outside of confinement, who have been deemed by the Electronic Monitoring Officer eligible to participate in the program

#### Rational

Electronic Monitoring provides increased supervisory control of offenders living outside of confinement and provides additional protection to the community not otherwise available through traditional supervision methods

#### Procedure: Section Criteria

A In order for an offender to be eligible for electronic monitoring, the offender shall

- 1 Live in Salt Lake County, and/or adjoining counties
- 2 Be designated as low risk and does not fall into any of the following criteria
  - a aggravated or violent felony offense,
  - b domestic violence one year, if committed in the Present of Children never
  - c no protective orders, ex parte orders
  - d no escapes past 1 years 5 years if they run while on this program,
  - e no convictions burglary of a dwelling,
  - f no crimes against children,
  - g no felony sex crimes,
  - h no transients,
  - i no juveniles,
  - j no holds for other agencies, CM will be considered and WA will not be considered

- k. no active gang members; NCIC hits or listed with Metro Gangs as active.
  - l. no Federal holds of **ANY** type.
- 3. Must have a private phone line in his/her home or have one installed and shall bear the cost of installation and the monthly fees and any other special fees required.
- 4. Must have permanent residence during the length of the Electronic Monitoring program.
- B. Any exceptions to the above criteria shall be approved by the monitoring officer prior to an offender being accepted into the program.

## **REFERENCE PROCEDURE**

### **Policy**

Is it the policy of the Department that:

- A. Offenders shall meet the criteria outlined in this chapter for acceptance into the program and all references shall be evaluated by the Electronic Monitoring Officer, and
- B. The Electronic Monitoring Supervisor may approve the acceptance of any offender into the program who does not meet the established criteria.

### **Rationale**

Because resources are limited for this program due to high cost of equipment, stringent selection criteria must be used.

### **Procedure: Reference Procedure**

References will be taken from the Sheriff's Electronic Monitoring Application that is filled out by the offender, or a referral given to us by the applicant's references

- A. Offenders will give a minimum of three references, of which two must be positive for the offender, and  
  
a reference from a member of the residence where the offender will be staying who must be at least 18 years old
- B. If the reference is not the owner of the residence, the residence owner must be contacted, and agree to remove all current phone features from the phone line that will be connected to the monitor

## **INSTALLATION**

### **Policy**

It is the policy of the Department that the offender shall bear the cost of any phone installation or monthly fees as well as the replacement cost for any Department equipment which may be lost, stolen or damaged while the offender is in the program.

### **Rationale**



*Salt  
Lake  
Women's  
Center, P.C.*

May 10, 2000

Re Rachael Munford

To Whom it May Concern,

Rachael is patient who was diagnosed with a positive H Pylori on January 3, 2000

Michael I Twede, M D

OBSTETRICS GYNECOLOGY INFERTILITY MICRO & LASER SURGERY

*Dale A Sundwall, M D FACOG Michael L Twede, M D FACOG*

10011 South Centennial Parkway Suite 350 Sandy Utah 84070 Phone 801 561 3922

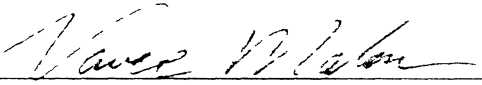
# AFFADAVIT

May 11, 2000

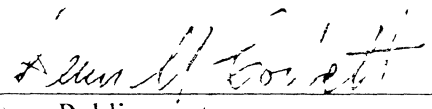
On January 5<sup>th</sup>, 2000, my mother was incarcerated at the Oxbow Facility. On January 7<sup>th</sup>, she applied for the electronic monitoring program and was denied because of a protective order that was in force between her and Mariusz Bienkowski.

I met with Sgt. Cogburn at Oxbow and he informed me that my mother, Linda Munford, could not be released until the protective order from Mariusz was dropped.

DATED this 11 day of May, 2000.

  
Vance Malan

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of May, 2000.

  
Notary Public

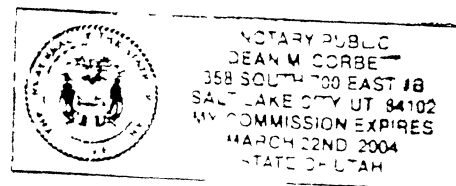


Exhibit "C"



# AFFADAVIT

May 11, 2000

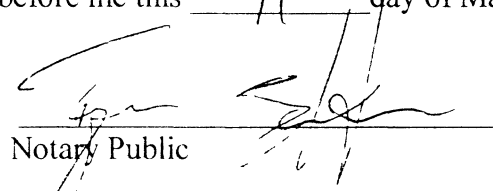
On January 5<sup>th</sup>, 2000, my mother, Linda Munford was incarcerated at the Oxbow Facility. On January 7<sup>th</sup>, she applied for the electronic monitoring program and was denied because of a protective order that was in force between her and Mariusz Bienkowski.

I called and spoke with Sgt. Cogburn at Oxbow and he told me that my mother could be released if the protective order was dropped.

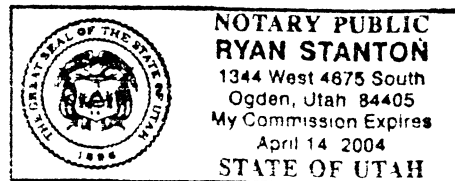
DATED this 11<sup>th</sup> day of May, 2000

  
Rachael Munford

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of May, 2000.

  
Notary Public

*Sgt Lake*



Rex B. Bushman, Esq. #0521  
REX B. BUSHMAN, P.C.  
Attorney for Plaintiff  
115 E. Social Hall Avenue  
Salt Lake City, Utah 84111  
Telephone: (801) 533-8020  
Facsimile: (801) 533-8877

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

Linda Munford,	:
Plaintiff,	: NOTICE TO SUBMIT FOR DECISION
vs.	:
MARIUSZ BIENKOWSKI,	: Civil No. 990906380
Defendant.	: Judge Glen K. Iwasaki

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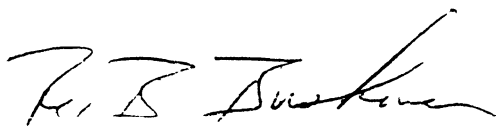
COMES NOW the above named plaintiff, Linda Munford, by and through counsel of record, Rex B. Bushman, and hereby submits for decision, Plaintiff's MOTION TO SET ASIDE STIPULATION AND ORDER filed with the above Court with Plaintiff's MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE STIPULATION AND ORDER on or about April 19, 2000. Defendant responded with a REPLY TO MOTION TO SET ASIDE STIPULATION AND ORDER submitted on or about May 2, 2000. On May 12, 2000, plaintiff filed a REPLY MEMORANDUM. The matter is now ready for the adjudication of the above Court.

This Notice to Submit For Decision is brought pursuant to Rule 4-501 Code of Judicial Administration, Utah Code

Annotated.

DATED this 12<sup>th</sup> day of May, 2000.

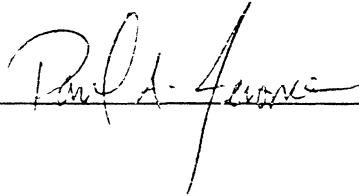
REX B. BUSHMAN, P.C.

By:   
Rex B. Bushman

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE TO SUBMIT FOR DECISION to the following counsel, postage prepaid and by U.S. Mail, this 12<sup>th</sup> day of May, 2000:

Bradley J. Schofield  
Anderson & Holland  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643

  
\_\_\_\_\_

*J. Kent Holland, #1520*  
**ANDERSON & HOLLAND**  
*Attorney for Plaintiff*  
*623 East First South*  
*P.O. Box 11643*  
*Salt Lake City, Utah 84147-0643*  
*Telephone: (801) 363-9345*

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

LINDA MUNFORD	)	
	)	
	)	ORDER TO DENY MOTION TO
Plaintiff,	)	SET ASIDE STIPULATION AND
vs.	)	ORDER
	)	
MARIUSZ BIENKOWSKI,	)	Civil No . 990906380
	)	
Defendant.	)	Judge Glenn K. Iwasaki
	)	


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The above-entitled matter came before the court on June 20, 2000, the Plaintiff was represented by, her counsel Rex B Bushman and Defendant Mariusz Bienkowski was represented by, his counsel J Kent Holland After hearing oral argument and good cause showing regarding the matter it is hereby ordered

THAT THE MOTION IS HEREBY DENIED

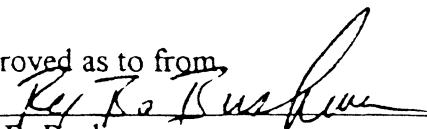
DATED this 29 day of JUNE, 2000

BY THE COURT



HONERABLE GLENN K IWASAKI

Approved as to from

  
Rex B Bushman

Attorney for Plaintiff

CERTIFICATE OF MAILING

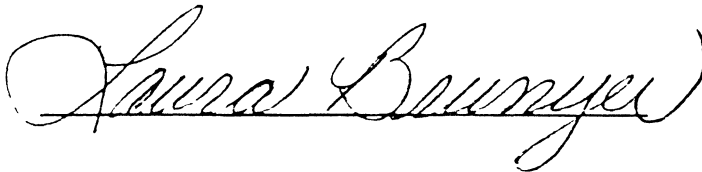
I HEREBY CERTIFY that I mailed a true and correct copy of Defendant's Order to deny Motion to set aside stipulation and Order, in the United States mail, postage prepaid, this \_\_\_\_ day of June, 2000. Addressed to:

Rex B. Bushman Esq.

Attorney for Plaintiff

115 E. Social Hall Avenue

Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Laura Brunyer", written over a horizontal line.

Rex B. Bushman, Esq. #0521  
REX B. BUSHMAN, P.C.  
Attorney for Plaintiff, Appellant  
115 E. Social Hall Avenue  
Salt Lake City, Utah 84111  
Telephone: (801) 533-8020  
Facsimile: (801) 533-8877

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IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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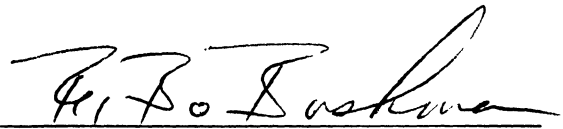
LINDA MUNFORD, :  
Plaintiff, Appellant, : NOTICE OF APPEAL  
vs. :  
MARIUSZ BIENKOWSKI, : Civil No. 990906380  
Defendant, Appellee. : Judge Glenn K. Iwasaki

---

COMES NOW the above named plaintiff, appellant, Linda Munford, by and through counsel of record, and hereby appeals the Order To Deny Motion To Set Aside Stipulation And Order previously authorized by the above Court on June 29, 2000, a copy of which is attached hereto. The appellee is the above named defendant Mariusz Bienkowski. This appeal is taken from the Third Judicial District Court to the Utah Appellate Court. This appeal is brought pursuant to Rule 3 Utah Rules of Appellate Procedure from a final Order of the Third Judicial District Court.

DATED this 27<sup>th</sup> day of July, 2000.

REX B. BUSHMAN, P.C.

By:   
Rex B. Bushman

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the following counsel, postage prepaid and by U.S. Mail, this 26 day of July, 2000:

J. Kent Holland  
Anderson & Holland  
623 East First South  
P.O. Box 11643  
Salt Lake City, Utah 84147-0643

Carly A. Bushman



## **ADDENDUM**

- A: Exhibit “A” – Elibility Criteria (attached to Reply Memorandum**
- B: Exhibit “B” - Letter from Doctor (attached to Reply Memorandum**
- C: Exhibit “C” – Son’s discussion with Sgt. Cogburn (attached to Reply Memorandum)**
- D: Exhibit “D” – Daughter’s conversation with Sgt. Cogburn (attached To Reply Memordandum)**

- A: “Stipulation” allowing for Judgment in amount of \$1,400.00 (attached to Settlement Agreement)**
- B: “Stipulation” allowing return of property (attached to Settlement Agreement)**
- C: “Stipulation” Dismissing Protective Orders (attached to Settlement Agreement)**
- D. Defendant’s Reply to Motion to Set Aside Stipulation & Order**
- E. Reply Memorandum – Plaintiff**
- F. Notice to Submit for Decision**
- G. Order to Deny Motion to Set Aside Stipulation & Order**
- I. Notice of Appeal**