

2015

Tangren Family Trust Sharon Fiscus, Trustee v Rodney Tangren : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

TANGREN FAMILY TRUST
SHARON FISCUS, Trustee,

Plaintiff/Appellee,

v.

RODNEY TANGREN,

Defendant/Appellant.

Appeals Case No. 20140938

OPENING BRIEF OF APPELLANT

ON DIRECT APPEAL FROM THE DENIAL OF A RULE 60(b) POST-
JUDGMENT MOTION IN THE SEVENTH JUDICIAL COURT IN
AND FOR SAN JUAN COUNTY, STATE OF UTAH, THE
HONORABLE LYLE R. ANDERSON, PRESIDING.

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ORAL ARGUMENTS/ PUBLISHED OPINION REQUESTED

FILED
UTAH APPELLATE COURTS

APR 06 2015

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IN THE UTAH COURT OF APPEALS

TANGREN FAMILY TRUST
SHARON FISCUS, Trustee,

Plaintiff/Appellee,

v.

RODNEY TANGREN,

Defendant/Appellant.

Appeals Case No. 20140938

JURISDICTION

This appeal is taken from the *Order Denying Motion to Set Aside Judgment*, filed September 15, 2014, by the Honorable Lyle R. Anderson of the Seventh District Court, San Juan County, State of Utah, which denied the UTAH R. CIV. P. 60(b) post-judgment motion filed by Appellant Rodney Tangren (hereinafter “**Tangren**”). This Court has jurisdiction pursuant to UTAH CODE ANN. § 78A-4-103(2)(j).

STATEMENT OF THE ISSUES & STANDARDS OF REVIEW

ISSUE I: *Did the trial court have the subject matter jurisdiction when the State of Nevada had entered an order pertaining to similar issues as raised by the Plaintiffs?*

STANDARD OF REVIEW: “Whether a trial court has subject matter jurisdiction presents a question of law which we review under a correction of error standard, giving no particular deference to the trial court’s determination.” *Reller v. Reller*, 2012 UT App 323, ¶ 7, 291 P.3d 813 *citing Case v. Case*, 2004 UT App 423, ¶5, 103 P.3d 171.

PRESERVATION: This issue is not required to be preserved. “Challenges to subject matter jurisdiction may be raised at any time, even for the first time on appeal.”

Sonntag v. Ward, 2011 UT App. 122, ¶2, 253 P.3d 1120 *citing Brown v. Division of Water Rights*, 2010 UT 14, ¶ 13, 228 P.3d 747.

ISSUE II: *Did the trial court abuse its discretion in denying Defendant's Motion to Set Aside the Default Judgment and Writ of Restitution pursuant to UTAH R. CIV. P. 60(b) by determining a) the service of the 10-day Summons was not prejudicial to Tangren, b) default judgment was properly obtained by Plaintiff and properly entered by the trial court, and; c) the temporary restraining order was properly issued?*

STANDARD OF APPELLATE REVIEW (UT. R. APP. P. 9(c)(7)(B)): “[A] trial court has broad discretion in deciding whether to set aside a default judgment.” *Arbogast Family Trust ex rel. Arbogast v. River Crossings, LLC*, 2008 UT App 277, ¶ 7, 191 P.3d 39 *citing Lund v. Brown*, 2000 UT 75, ¶ 9, 11 P.3d 277. However, “the court’s discretion is not unlimited.” *Id. citing Lund* (stating that district courts have broad discretion in ruling on motions for relief from judgment); *see also State v. 736 N. Colo. St.*, 2004 UT App 232, ¶ 7, 95 P.3d 1211 (“A denial of a motion to vacate a [default] judgment under rule 60(b) is ordinarily reversed only on abuse of discretion.” (internal quotation marks omitted)), *aff’d sub nom. State v. All Real Property at 736 N. Colo. St.*, 2005 UT 90, 127 P.3d 693. “[T]he interpretation of a rule of procedure is a question of law that we review for correctness.” *Arbogast Family Trust ex rel. Arbogast v. River Crossings, LLC*, 2008 UT App 277, ¶ 7, 191 P.3d 39 *citing Brown v. Glover*, 2000 UT 89, ¶ 15, 16 P.3d 540.

PRESERVATION: This issue is not required to be preserved, as it turns on the trial court’s conclusions of law. However, these issues were preserved in Tangren’s Motion to Set Aside and at oral arguments in post-judgment proceedings.

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

I. U.S. CONST. ART. IV § 1

- II. UTAH R. CIV. P. 4
- III. UTAH R. CIV. P. 5
- IV. UTAH R. CIV. P. 55
- V. UTAH R. CIV. P. 60(b)
- VI. UTAH R. CIV. P. 65A

STATEMENT OF THE CASE

1. On February 24, 1994, Tangren entered into a 99 year lease with his father, Richard Tangren, the Trustee for the Tangren Family Trust (hereinafter, the “**Trust**”) for the subject property at issue below (hereinafter, the “**Lease**”). The Lease is attached hereto as Addendum “A” and incorporated herein by this reference.

2. The Lease requires Tangren to maintain insurance on the subject property but is silent with respect to any particulars regarding insurance, including any required amount or types of policies. *See*, Addendum “A” at ¶¶5, 7. Tangren agreed to be responsible for yearly estimated annual real property taxes and insurance costs, which were to be paid in twelve (12) monthly payments each year with the monthly rent. *Id* at ¶5. The Trust agreed to pay the real property taxes and insurance from Tangren’s monthly payment. *Id.* at ¶7.

3. In 2002, Plaintiff initiated a judicial action against Tangren, which requested the forfeiture of the subject property in favor of Plaintiff and the same trial court herein determined the Lease was invalid; however, Tangren ultimately appealed and prevailed in the Court of Appeals and in the Utah Supreme Court. *See, Tangren Family Trust ex rel. Tangren v. Tangren*, 2006 UT App. 515, 154 P.3d 180 *affirmed by Tangren Family Trust v. Tangren*, 2008 UT 20, 182 P.3d 326. That case concluded in 2008.

4. Legal proceedings were also initiated involving these same parties in the State of Nevada regarding the Trust. On August 22, 2012, the Clark County District Court

ordered Tangren to secure a \$1 million liability insurance policy upon the subject property, to provide Plaintiff with evidence of the same, and to bear all expenses associated with securing the policy. This order is attached hereto as Addendum “B” and is more particularly defined as the “**Nevada Order**”.

5. On March 1, 2012, Plaintiff initiated an eviction action against Tangren in the Seventh District Court, San Juan County, Utah, in order to evict Tangren from the property herein; however, this action was dismissed pursuant to the parties’ agreement to dismiss it as part of the Nevada case. The docket of this case, District Court Case No. 120700005, is attached hereto as Addendum “C” and is incorporated herein by this reference. *See also*, the Nevada Order, Addendum “B”.

6. This case was initiated on April 23, 2013, by Plaintiff filing the *Complaint*, which requested an injunction against Tangren and for an order of restitution based upon the Lease¹. R010. The Complaint is attached hereto as Addendum “D” and incorporated herein by this reference. Plaintiff averred the Lease required Tangren to pay insurance and alleged Tangren had failed to make other insurance and tax payments required by the Lease. R004-R010. Plaintiff specifically alleged Tangren was having a fly-in (which includes skydiving and airplane activity) that would put the property at risk for liability. *Id.* However, Plaintiff attached did not attach the Lease or other default notices to the Complaint and simply alleged the breach. *See, id.*

¹ This action was filed by Plaintiff as a contract case. However, Plaintiff alleged the breach of the Lease by Tangren. Plaintiff alleged Tangren had failed to obtain the correct amount of insurance required by the Lease protect Plaintiff, the property, and Tangren. *See*, Complaint at p. 2.

7. On April 30, 2013, Tangren was served with a 10 Day Summons and Complaint. R014; R013. The 10-Day Summons is attached hereto as Addendum "E" and incorporated herein by this reference. The Summons instructed Tangren to file an Answer within 10 days of the service of the Summons upon him, that a copy of the Complaint was attached to the Summons, and that a copy of the Complaint was on file with the court. R013. This Return of Service² states Tangren was served with the Summons and Complaint. R014.

8. The Complaint and 10-Day Summons do not have case numbers and appear identical to the captions of the 2002 case and the 2012 case Plaintiff previously filed in Seventh District Court, San Juan County, State of Utah. Thus, the three (3) court cases Plaintiff has filed against Tangren in Seventh District, San Juan County, Utah, appear nearly indistinguishable in appearance because the same parties are involved, in the same court, and before the same judge.

9. On May 6, 2013, the matter convened for hearing on Plaintiffs' request for temporary orders, wherein Tangren maintained he complied with the Nevada Order. R015. Counsel for Plaintiff also indicated to the trial court that the Nevada case was only to handle the Trust and there was no pending case in Nevada. *Id.*

10. On May 7, 2013, Plaintiff filed the proposed order from the temporary orders hearing, which was signed by the trial court on May 8, 2013. R017. The proposed order does not contain a certificate of mailing and was not served upon Tangren in any fashion after the

² All of the Returns of Service in this case are attached hereto as Addendum "F" and incorporated herein by this reference.

hearing – thereby meaning Tangren had no opportunity to object to the proposed language of the temporary order. *Id.*

11. The Temporary Order indicates the trial court reviewed the Nevada Order and ordered Tangren not to have the fly-in on the property until \$2,000,000 in liability insurance was obtained. *Id.* There is no certificate of service contained in the Temporary Order. *Id.* There is an address line on the bottom of the last page that indicates the Temporary Order would be served upon Tangren; however, Review of each return of service in this case does not show that Tangren was ever served with the Temporary Order. *Id.*; *see*, Addendum “F”. The Temporary Order is attached hereto as Addendum “G” and incorporated herein by this reference.

12. In July of 2013, Plaintiffs began to pursue default against Tangren. This is evidenced by the court docket in this matter, which is attached hereto as Addendum “H” and incorporated herein by this reference (the docket was also attached to the Motion to Set Aside, which was filed later in the case).

13. On July 3, 2013, Plaintiffs filed a proposed³ order of judgment and writ of restitution, which do not contain certificates of mailing. *See*, Addendum “H” at p. 3. The clerk’s note on July 3, 2013, states, “[n]o default certificate has been submitted or entered on this case. The summons was not filed with the return of service.” *Id.*

14. On July 10, 2013, Plaintiff filed another Return of Service, which again indicated the Summons and Complaint were served on Tangren. R018-R019. This Return

³ The proposed orders filed by Plaintiffs on July 3, 10, and September 3, 2013, are attached hereto as Addendum “I” and incorporated herein by this reference. None of the proposed orders contain certificates of mailing.

indicated the same date of service of the Summons and Complaint as April 30. *Id.* Plaintiff re-filed the Return of Service and the Summons on Return with the notation of the deputy in the upper right hand of the document per the direction of the clerk of the court to obtain the Default Certificate. *See, id.*

15. Also on July 10, 2013, Plaintiffs filed the proposed default certificate and writ of restitution. *See*, Addendum “H” at p. 3. On July 22, 2013, the docket indicates the clerk noted, “[t]he Writ of Restitution refers to a Judgment, but no judgment has been signed and no judgment has been submitted.” *Id.*

16. On September 3, 2013, the proposed judgment was filed by Plaintiffs. *Id.*

17. On September 5, 2013, the *Order of Judgment* (the “**Default Judgment**”) and *Writ of Restitution* “**Writ of Restitution**”) were entered, R021 & R023, and the matter was set for hearing to determine damages. R024.

18. On October 14, 2013, Plaintiff moved for an order to show cause against Tangren. R026-R029. The basis of the order to show cause was that Tangren had failed to provide Plaintiff with a copy of the insurance policy and had permitted skydiving on the property, which was not covered by the policy. *See, id.*

19. On October 22, 2013, Plaintiff filed a Return of Service, which lists service of the following documents upon Tangren: “Order to Show Cause”, “Notice of Hearing for to Determine Rent and Insurance” [sic], “Notice of Judgement” [sic], and “Affidavit of Craig Halls”. R030. No Notice of Judgment was filed by Plaintiff in this matter. *See, id.*

20. On November 4, 2013, the matter convened for hearing, wherein Tangren was advised by the trial court that the Default Judgment had entered against him. R031. Tangren was also assessed for Plaintiff's attorney fees at this hearing. *Id.*

21. Until November 27, 2013, Tangren acted *pro se* in this case. R001-035. Prior thereto, Tangren appeared at hearings held in this case, but was unaware of the entry of the Certificate of Default, Order of Judgment, and Writ of Restitution, all of which entered without notice to Tangren. *See, id.*

22. Prior to Tangren obtaining counsel, none of the pleadings filed by Plaintiff included certificates of mailing, except for the Certificates of Service filed by Plaintiff on November 25, 2013. *Id.*; R034.

23. Accordingly, Tangren obtained counsel and filed *Motion to Set Aside Default Judgment and Writ of Restitution* ("**Motion to Set Aside**"), which was based upon UTAH R. CIV. P. 60(b) and argued excusable neglect justified setting aside the default. R042. Tangren argued the 10-Day Summons was fatally defective, Plaintiff violated notice provisions of Rule 5 and in her obtaining default, and that default itself was improperly obtained pursuant to procedure. *Id.* Tangren also argued he had a meritorious defense to the Complaint since he had complied with the Nevada Order, that the interests of justice and fair play had been violated, the Complaint's allegations were legally insufficient because it was really seeking to enforce the Nevada Order, and the injunction was improperly obtained. *Id.* Thus, Tangren argued the cumulative effect of the proceedings prohibited him from realizing the exact nature of the proceedings against him and therefore prejudiced him. *Id.*

24. On December 20, 2013, Plaintiff filed *Reply Response in Opposition to Motion to Set Aside Order of Judgment and Writ of Restitution*, which argued the 10-Day Summons was valid and that it was unnecessary to give notice to Tangren based on his failure to answer. R062.

25. On January 24, 2014, Tangren replied to Plaintiff's response. R157.

26. Oral argument was held on February 24, 2014 (R0161); however, the matter was continued for additional evidence on March 11, 2014. *See*, Transcript of March 11, 2014, hearing, *post*.

27. After hearing, trial court ordered additional briefing on the limited issue of the 10-Day Summons issued by Plaintiff in this matter.

28. On April 29, 2014, Plaintiff filed its brief on this subject on April 28, 2014 (R0193); however, Plaintiff had mailed the brief to Tangren's attorney well before filing it and Tangren's Response to Plaintiff's Brief was actually filed before Plaintiff's Brief on April 28, 2014. R0182.

29. On May 27, 2014, the matter was submitted for decision and the trial court entered its *Ruling* on August 13, 2014, which is attached hereto as Addendum "J" and incorporated herein by this reference. R207.

30. The trial court determined it did not credit Tangren's testimony regarding service or that he was confused by the multiple proceedings. *Id.* The trial court determined Tangren was properly served with the summons and complaint and determined the only ground for setting aside default it considered seriously was the service of a 10-day Summons rather than a 20-day Summons. *Id.* The trial court determined that, while erroneous, the 10-

day Summons did not prejudice or affect Tangren. *Id.* Thus, the Motion to Set Aside was denied and the Order was entered. *Id.*

31. On September 15, 2014, the trial court entered its formal order, *Order Denying Motion to Set Aside Judgment* (hereinafter, the “**Judgment**”). R211. The Judgment is attached hereto as Addendum “K”.

32. Tangren has timely appealed. R241.

STATEMENT OF THE FACTS

A. May 6, 2013, Hearing.

On May 6, 2013, this matter convened for hearing on Plaintiff’s request for injunctive relief. 5/6/2013 Tr. at p. 3. Plaintiff proffered that the Lease in this case indices the Trustee determines the estimate of the taxes and insurance for each year and Tangren would make that part of his monthly payment on the property. *Id.* at pp. 4-5. Plaintiff argued Tangren was holding a fly-in on the subject property and, when Plaintiff obtained an insurance quote to cover the property for this activity, Tangren refused to pay it because the amount was “outrageous”. *Id.* at p. 7. Plaintiff alleged Tangren had been making payments for the insurance on the lodge, which the Trust obtained and Tangren made part of his monthly payment. *Id.* at p. 8. However, historically, no liability insurance had been purchased by the Trust. *Id.* at p. 9.

Tangren indicated to the trial court that he would be representing himself because the case was “pretty cut and dry” and “self evident”. *Id.* at p. 10. Tangren argued that, in 2011, Plaintiff determined there needed to be a million dollar policy on the property and \$250,000 on the lodge, which Tangren agreed with. *Id.* at pp. 10-11. Tangren paid these insurance

amounts for a year and a half. *Id.* at p. 11. Then Plaintiff determined there needed to be more than these policy limits and indicated the policy needed to be for \$2 million and then \$3 million, which Tangren disagreed with. *Id.*

Tangren indicated to the trial court, which was undisputed, that he filed a case in Nevada to challenge Sharon Fiscus as the Trustee due to the disagreement they were having regarding the insurance policies on the property. *Id.* Tangren represented that the fly-in, including the sky-diving and airplanes, was discussed with the Nevada court, which ruled that a \$1 million policy was sufficient. *Id.* Tangren stated this matter should be resolved in Nevada and submitted the Nevada Order to the trial court, which it reviewed. *Id.* at p. 12. Plaintiff argued the Nevada case had been concluded but did not resolve the issue. *Id.* However, Tangren indicated more things needed to be brought up with the Nevada court. *Id.* at p. 13. Plaintiff stated the Nevada Order allowed Tangren to purchase his own insurance for the lodge. *Id.* Tangren indicated the Nevada Order allowed him to combine his personal insurance with what was needed on the property and secured \$250,000 on the lodge and a million in liability for the property. *Id.*

It was clarified that the case involving the Trust was filed in Nevada because it was created there by the parties' mother, who also died in Nevada. *Id.* at pp. 14-15. The Plaintiff stated it was not relying upon the Nevada Order to determine what insurance should be required on the property, as Plaintiff wanted the runway and specific activities covered on the property. *Id.* at p. 17. Plaintiff argued it did not dispute the Nevada Order, which Plaintiff represented only covered the lodge, and further stated, "[w]e don't think the Nevada court should exercise jurisdiction over what kind of insurance should be placed on

the airstrip.” *Id.* at p. 18, ln. 14-16. Plaintiff argued the amount ordered by the Nevada court did not include the fly-in or other activities occurring on the property. *Id.* at p. 19.

The trial court stated, “[s]ee, I think the Nevada court has no business whatsoever dealing with the contract, the lease agreement between the Trust and Rodney Tangren.” *Id.* at p. 20, ln. 14-16. Tangren responded that, “[t]he reason they did that is because that is still in the Trust, that lease is, and that’s why it is in Nevada. I also have the insurance.” *Id.* at p. 20, ln. 17-19.

The trial court stated the Lease should be determined in Utah and that if Nevada wanted to tell the Trustee what to do or not do, the Nevada court would need to be trustee or remove Plaintiff as trustee. *Id.* at pp. 20-21. The trial court determined the Lease deals with a parcel of Utah property and the Nevada court had no business enforcing lease agreements dealing in Utah property. *Id.* at p. 21. Based on Tangren’s representation that the property is worth \$2 million, the trial court ordered that Tangren obtain this in coverage or Tangren could not have the fly-in. *Id.* at p. 29. Plaintiff was ordered to prepare the order. *Id.*

B. November 4, 2013, Hearing.

This matter was called for hearing to determine the issue of damages and attorney fees as a result of the breach of the Lease. 11/4/2013 Tr. at p. 3. Testimony was taken and exhibits were received by the trial court. Ms. Fiscus testified regarding the issues she and Tangren had regarding the insurance and the policies on the property. *Id.* at pp. 5-8. She further testified regarding default notices pertaining to rent and the amounts Tangren owed under the Lease. *Id.* at p. 7. Ms. Fiscus summarily testified that Tangren had failed to abide by the Temporary order and had not been able to determine the exact terms of the coverage

of the policy Tangren had obtained on the property. *Id.* at pp. 8-9. Ms. Fiscus also testified she had not received a copy of the policy pursuant to the Temporary Order. *Id.* at p. 10.

Later in the hearing, Ms. Fiscus admitted she had received the copy of the \$2,000,000.00 policy in the past week or week and a half. *Id.* at p. 40. Ms. Fiscus testified she had her attorney request the copy of the policy from Tangren; however, Tangren was under the impression it was sent. *Id.* at p. 42. Ms. Fiscus wanted to receive a copy of the complete copy of the policy, which the trial court said she could have. *Id.* at p. 43.

Tangren also testified at this hearing. Tangren testified he had complied with everything he had been ordered to do. *Id.* at pp. 27-28. Tangren brought up problems with the ranch to Ms. Fiscus and her attorney was aware of them because he had written correspondence regarding it in the Nevada case. *Id.* at p. 28.

Plaintiff requested that Tangren be found in contempt of the trial court's temporary order because Tangren had admitted he conducted activities on the property and put the ranch in jeopardy of liability without having the appropriate insurance. *Id.* at p. 44. Plaintiff also argued Tangren had not supplied a copy of the insurance policy, which was requested repeatedly by Plaintiff throughout the proceedings. *Id.*

Tangren disagreed he was in contempt because he had had done everything that was required, which was to get insurance in the correct amount. *Id.* at p. 45. Tangren argued the skydiving event was doubly covered by his insurance and by Sky Dive Moab. *Id.* Tangren argued he had the \$2,000,000.00 policy since day one and there was no way he would jeopardize what he had over frivolous things. *Id.* Tangren had no objection to Ms. Fiscus having a full copy of the policy and had informed his insurance company of this fact. *Id.*

The trial court determined Tangren had not paid the amounts as requested by Plaintiffs in this matter and further assess Tangren attorney fees. *Id.* at p. 46. After reviewing the Temporary Order, the trial court determined it clearly stated Tangren was not only to obtain the insurance but to provide copies of it to Plaintiff. *Id.* at pp. 47-48. The trial court stated, “[i]t’s not the responsibility of the trustee or her attorney to keep nagging him to get it; but his responsibility to get it to them, which he didn’t do.” *Id.* at p. 48, ln. 2-4. The trial court determined this was an intentional act by Tangren and found Tangren to be in contempt of court. *Id.* at pp. 48-49. The following exchange then took place:

The Court: ...You do realize, Mr. Tangren, that I’ve already signed a default judgment with respect to possession of the land?

Mr. Tangren: I didn’t – this is the first I’ve heard about this, Your Honor.

Mr. Halls: I’ve sent you about three copies in the –

Mr. Tangren: Where have you – I have not –

Mr. Halls: -- I’ve served you with it.

Mr. Tangren: I have not got anything on my email. If you did, did you not serve them through the sheriff like you did everything else?

Mr. Halls: Twice.

Mr. Tangren: Well, where is it?

The Court: All right, you can go.

Id. at p. 49, ln. 3-16. Whereupon, the hearing was concluded. *Id.* at p. 49.

C. February 24, 2014, Hearing.

This hearing was held for oral arguments upon the Motion to Set Aside. 2/24/2014 Tr. at p. 3. Counsel herein argued the Motion to Set Aside in its entirety. When the issue of the 10-day Summons was mentioned by counsel, the trial court stated, “[o]bviously this isn’t the classic ten day summons that the debt collection companies use. This was a shortened period of time which is common in eviction cases.” *Id.* at p. 6, ln. 7-10. Counsel noted the first return of service does not indicate Tangren was served with the Temporary Restraining

Order. *Id.* Counsel made the trial court aware of the prior litigation between the parties and that the Summons in this case did not contain a case number. *Id.* at p. 7.

Counsel argued the reason Tangren did not file an answer after the May 6, 2013, hearing was because from Tangren's point of view, nothing had happened. *Id.* at pp. 7-8. Tangren was unaware from May 6, 2013, to October 16, 2013, during which time he received no further paperwork in the matter and he was working on compliance with the trial court's oral order from the May 6, 2013, hearing. *Id.* at pp. 7-8. Plaintiff filed a proposed order from the May 6 hearing but there was no certificate of mailing indicating it had been sent to Tangren, which prevented Tangren from objecting to the content of the order. *Id.* at p. 8. Additionally, the proposed order was filed on May 7 and signed by the trial court on May 8. *Id.* Thus, even if Plaintiff mailed the proposed order to Tangren, there was not enough time for Tangren to object before it was entered by the trial court. *Id.*

Counsel argued there were no certificates of mailing in this case until October 16, 2013. *Id.* at p. 9. When Plaintiff began to seek default judgment and no documents concerning this was delivered to Tangren. *Id.* at pp. 9-10. The clerk filed the Certificate of Default on July 10 but had initially refused to do so; however, Plaintiff remedied the clerk's concern in order for her to do so. *Id.* The trial court stated that there is really no requirement that a party be informed the opposing party is seeking default if the party has not filed an answer after being served with a summons and complaint. *Id.* at p. 11.

Counsel argued that Tangren did appear and participate in the proceedings. *Id.* Counsel then explained to the trial court which documents should have been served/mailed to Tangren as set forth by the Motion to Set Aside. *Id.* at pp. 12-14. Counsel argued it was

inconsistent for Tangren to ignore this case when he had faithfully prosecuted his interests earlier in the other litigation cases involving the parties. *Id.* at p. 18. Tangren requested that, based upon fundamental fairness, the judgment should be set aside and the case heard on its merits. *Id.* at pp. 18-19.

Based on the arguments of the parties, the trial court stated that its decision would turn on whether the Summons and Complaint were served on Tangren on April 30, 2013. *Id.* at p. 44. The trial court stated that, as far as it could tell, the rules did not require the filing of anything except the certificate of default. *Id.*

The trial court indicated there were only two (2) grounds upon which it could set aside the judgment in this case, which were: 1) Tangren was never served with the complaint, or; 2) Tangren was served with the complaint but was excusably negligent. *Id.* The trial court stated it would be very difficult for it to determine excusable neglect if Tangren was served with the complaint because it was possible Tangren was confused, acting as a pro se litigant. *Id.* at pp. 45-46. However, the trial court stated that, parties who elect to forego hired counsel suffer the penalty of confusion that results from not understanding the pleadings and failing to seek legal advice. *Id.* at p. 46. Thus, the trial court believed its decision was going to turn on whether or not it believed Tangren was served with the complaint on April 30. *Id.* The trial court stated as follows:

It's very likely if I determine that he was served with the complaint, that I will determine that his neglect is not excusable. And if I find that he was not served with the complaint, I will without difficulty at all set aside the judgment. So I think I need to make that factual determination before I proceed.

Id. at p. 46, ln. 19-24. Thus, the matter was set for hearing in order to take the testimony of witnesses. *See, id.* at pp. 47-49.

D. March 11, 2014, Hearing.

This matter convened for hearing on March 11, 2014, to take evidence regarding the legitimacy of the service upon Tangren on April 30, 2013. 3/11/2014 Tr. at p. 4. Deputy Shawn Chapman testified he properly served Tangren with the Summons and Complaint, which the trial court placed credibility upon in its final determination. *Id.* at pp. 5-18.

Tangren denied he had been served with the Complaint. *Id.* at pp. 40-44. However, the trial court ultimately determined in its written ruling that it did not find Tangren to be credible. This determination is not attacked herein.

Counsel for Tangren argued in closing that the returns of service and certificates of mailing on the pleadings in this case were suspect because the returns fail to list all of the documents Deputy Chapman testified he served and the certificates are not included in the pleadings at all until October of 2013. *Id.* at pp. 56-57. During this argument, the trial court stated, “[i]f you’re going to spend your time on this, you’re wasting it.” *Id.* at p. 57, ln. 15-16. Counsel argued that the fact Plaintiff was not following proper procedure explained a lot of the confusion in this case. *Id.* After further explaining Tangren’s position on this issue, the trial court stated, “[r]ight. Times up. Most of your arguments, Ms. White, are red herrings.” *Id.* at p. 58. The trial court stated it was fully convinced the summons and complaint were served upon Tangren; however, there was an issue its attention had been drawn to in the Motion to Set Aside, which was regarding the issuance of the 10-Day Summons. *Id.* at p. 59.

The trial court then asked Plaintiff's counsel why a 10-Day Summons was issued in this matter. *Id.* Plaintiff's counsel stated it had requested a shortened period of time for a hearing due to the fly-in on the ranch. *Id.* However, the trial court stated that, while it understood the need for an expedited hearing, it did not explain the summons stating Tangren had 10 days to file an answer to the complaint. *Id.* The trial court further stated it had looked in its electronic file in vain for any indication to what lead to the issuance of the 10-Day Summons. *Id.* at p. 60. Further discussion between Plaintiff's counsel and the trial court determined that the Summons did not fulfill the requirements of an unlawful detainer. *Id.* at pp. 61-62. The trial court noted that, while Tangren raised the issue in the Motion to Set Aside, Plaintiff did not address this issue in its response. *Id.* at pp. 62-63. The trial court indicated there was a possibility that grounds for a three (3) day summons were met in this case but instead a 10-day Summons was issued. *Id.* Further, there was a case from 1975 that the trial court was aware of that had determined the defectiveness of a 20 day Summons when a 30 day summons was required. *Id.* at p. 62.

The parties agreed additional briefing on this issue would be warranted, although counsel for Tangren had attempted to argue it at the previous hearing but had been cut off by the trial court. *Id.* at pp. 64, 66. The trial court thereupon set a briefing schedule for this issue. *Id.* at p. 71.

SUMMARY OF THE ARGUMENT

On May 6, 2013, the trial court was presented with the fact that litigation regarding the issue of insurance had been undertaken in Nevada. The trial court immediately disagreed the Nevada court had any jurisdiction in this matter and rejected the Nevada Order as

having any authority. However, this impacted the trial court's jurisdiction over this matter and the trial court did not have jurisdiction over the subject matter in this case.

Additionally, the trial court abused its discretion by denying the Motion to Set Aside, as the Motion to Set addressed several errors committed during the proceedings. However, the trial court overlooked issues with service of process, the mailing of standard pleadings to Tangren from the Plaintiff, the failure of Plaintiff to follow several rules of procedure, and whether a temporary restraining order and default judgment were correctly entered and pleaded for by Plaintiffs. Based upon the cumulative errors in this case, the denial of the Motion to Set Aside should be reversed.

ARGUMENT

I. SUBJECT MATTER JURISDICTION PROPERLY LIES IN THE STATE OF NEVADA IN THIS CASE.

"Subject matter jurisdiction ... is the authority of the court to decide the case." *Johnson v. Johnson*, 2010 UT 28, ¶ 8, 234 P.3d 1100 *citing Chen v. Stewart*, 2004 UT 82, ¶ 38, 100 P.3d 1177. "Challenges to subject matter jurisdiction may be raised at any time, even for the first time on appeal." *Sonntag v. Ward*, 2011 UT App. 122, ¶2, 253 P.3d 1120 *citing Brown v. Division of Water Rights*, 2010 UT 14, ¶ 13, 228 P.3d 747.

It is fundamental that the courts of each state shall give full faith and credit to valid judgments rendered in a sister state. [U.S.CONST., ART. IV, sec. 1; *Van Kleeck Creamery, Inc. v. Western Frozen Products Co.*, 24 Utah 2d 63, 465 P.2d 544 (1970)]. However, this does not preclude the court of the forum state from examining into the question of jurisdiction of the foreign state when that question is properly raised. [*Id.*; *Simms v. Hobbs*, Okl., 411 P.2d 503 (1966); *Day v. Wiswall*, 11 Ariz.App. 306, 464 P.2d 626 (1970); *Tucker v. Vista Financial Corp., Colo.*, 560 P.2d 453 (1977); *National Equipment Rental, Ltd. v. Taylor*, 225 Kan. 58, 587 P.2d 870 (1978)]. This is so because due process of law requires the acquisition of jurisdiction as a prerequisite to the validity of any judgment. A further rule applicable to such matters is that if the same issue as to the

jurisdiction of the foreign court was raised and adjudicated therein, then the determination of that issue becomes *res judicata*, and is entitled to full faith and credit, the same as any other issue that has been so determined.[47 Am.Jur.2d, *Judgments*, sec. 1260.]

Fullenwider Co. v. Patterson, 611 P.2d 387, 389 (Utah 1980).

In this matter, the issue of jurisdiction was addressed on May 6, 2013, in the temporary orders hearing. *See*, 5/6/2013 Tr. Tangren represented the trial court that he had challenged Ms. Fiscus as Trustee of the Trust in Nevada due to their disagreement regarding the payment insurance policies on the property. *Id.* at p. 11. Tangren stated this matter should be resolved in Nevada and submitted there. *Id.* at p. 12. Contrarily, Plaintiff argued the Nevada case was concluded but it had not resolved the issue of insurance. *Id.* Plaintiff argued that the Nevada court should not have jurisdiction over the kind of insurance on the property and the trial court determined the Nevada court had no business to deal with the Lease between Tangren and the Trust. *Id.* at p. 20. Further, the trial court erroneously stated the Nevada court would have to remove Ms. Fiscus as Trustee if it wanted to tell the Trustee what to do or what not to do. *Id.* at pp. 20-21. Thus, the trial court reviewed the Nevada Order, concluded it had jurisdiction, and ordered Tangren to obtain \$2 million in liability insurance on the property. *Id.* at p. 29.

Tangren did not raise the issue of subject matter jurisdiction below. However, this challenge is appropriately brought in this appeal because subject matter jurisdiction goes to the authority of a court to decide a case, *Johnson* at ¶ 8, and may be raised at any time. *Sonntag* at ¶ 2. Thus, even on appeal, this challenge is appropriately made herein.

The trial court determined the Nevada court had no jurisdiction to make orders regarding Utah property and the Lease; however, the Nevada court was well within its

jurisdiction to make orders regarding the Trust. *See, Fullenwider* at 389. It appears the trial court determined the Nevada court had no jurisdiction without properly determining the law on the issue. Tangren pursued relief in Nevada due to his disagreement with the Trust and the insurance policies it was seeking to place and obtained an order giving the Trustee instructions, which is within the jurisdiction of the Nevada court in a probate matter. Thus, the issue of res judicata is necessarily raised as well as the trial court's refusal to acknowledge the full faith and credit of the Nevada Order. *See, Fullenwider*.

Accordingly, Tangren challenges the trial court's subject matter jurisdiction in that 1) the Nevada Order was entitled to full faith and credit as a foreign order and 2) the issue of insurance was subject to issue preclusion.

A. The Nevada Order Was Entitled to Full Faith And Credit.

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. CONST. ART. IV § 1. The Utah Supreme Court has held, "...a foreign judgment that is both valid and final cannot be collaterally attacked even if grounded on errors of law or fact." *Matter of Estate of Jones*, 858 P.2d 983, 985 (Utah, 1993) *citing Data Management Sys., Inc. v. EPD Corp.*, 709 P.2d 377, 379 (Utah 1985) (per curiam) (additional citations omitted).

"To be 'valid,' for purposes of full faith and credit, a judgment must have been rendered by a court with competent jurisdiction and in compliance with the constitutional requirements of due process." *Jones* at 985 *citing Data Management*, 709 P.2d at 379.

“The second requirement for full faith and credit is that the judgment be final according to the laws of the state of rendition.” *Jones* at 986 citing *People of State of N.Y. ex rel. Halvey v. Halvey*, 330 U.S. 610, 614, 67 S.Ct. 903, 906, 91 L.Ed. 1133 (1947); *Thorley v. Superior Court*, 78 Cal.App.3d 900, 144 Cal.Rptr. 557, 561 (1978) (quoting *Restatement (Second) of Conflicts of Laws*, § 107 (1971)).

In Nevada, there are several appealable orders that exist in probate proceedings. “...an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of entry of an order...instructing or appointing a trustee.” NRS 155.190.

The trial court in this case determined at the out-set that it had jurisdiction over this matter because the subject property is located in Utah and the Nevada court had “no business” over the Lease between Tangren and the Trust. Thus, the question is whether the Nevada Order was entitled to full faith and credit pursuant to U.S. CONST. ART. IV § 1. To appropriately determine its jurisdiction, the trial court was required to determine whether the Nevada Order was valid and final. *Jones* at 985.

The Nevada Order was valid because it was rendered by a court with competent jurisdiction. *Jones* at 985. It was undisputed by the parties on May 6, 2013, that they had participated in the Nevada proceedings and it is assumed they did so willingly. *See, id*; 5/6/2013 Tr. at p. 11.

Further, it was represented by the Plaintiff that the Nevada case had concluded. 5/6/2013 Tr. at p. 12. While it was disputed whether the Nevada court received evidence

regarding the fly-in and Plaintiff argued the issue of insurance was not resolved, the trial court did not pursue this point any further. *See, id.* Based on Plaintiff's own representation, the matter in Nevada had concluded. Additionally, pursuant to Nevada law, an order in a probate matter that instructs the Trustee is an appealable order. NRS 155.190. The trial court reviewed the Nevada Order on May 6, 2013, and the Trustee is instructed therein by the Nevada court. *See*, Addendum "B". Thus, the Nevada Order was presumably a final order at the time of the May 6, 2013, hearing. As such, the Nevada Order was entitled to full force and credit and the trial court herein had no jurisdiction to enter orders regarding the insurance when the Nevada case had jurisdiction over this issue and had ruled upon it.

B. Collateral Estoppel Prevents The Issue of Insurance To Be Relitigated In This Case After It Was Fully Litigated In Nevada.

The doctrine of res judicata embraces two distinct branches: claim preclusion and issue preclusion. *Macris & Associates, Inc. v. Neways, Inc.*, 2000 UT 93, ¶ 19, 16 P.3d 1214 (2000) citing *Swainston v. Intermountain Health Care*, 766 P.2d 1059, 1061 (Utah 1988). *Macris* continued as follows:

The basic difference between the two branches of res judicata is simply put: while "claim preclusion applies to whole claims, whether litigated or not," and prevents parties from relitigating the same claim in a second suit, 18 James Wm. Moore, *Moore's Federal Practice* § 131.13[1] (Matthew Bender, 3d ed.2000) (emphasis added), issue preclusion, or collateral estoppel, arises from a different cause of action and prevents parties or their privies from relitigating "particular issues that have been contested and resolved."

Id. at ¶ 34. The following test is applied to determine whether the doctrine of issue preclusion is applicable:

First, the issue challenged must be identical in the previous action and in the case at hand. Second, the issue must have been decided in a final judgment on the merits in the previous action. Third, the issue must have been

competently, fully, and fairly litigated in the previous action. Fourth, the party against whom collateral estoppel is invoked in the current action must have been either a party or privy to a party in the previous action.

Id. at ¶ 37 citing *Jones, Waldo, Holbrook & McDonough v. Dawson*, 923 P.2d 1366, 1370 (Utah 1996); see also *Swainston*, 766 P.2d at 1061. Additionally, “[a]ll four elements must be present for issue preclusion to apply.” *Id.* citing *Jones, Waldo, Holbrook & McDonough*, 923 P.2d at 1370.

“In order for res judicata to apply, both suits must involve the same parties or their privies and also the same cause of action; and this precludes the relitigation of all issues that could have been litigated as well as those that were in fact litigated in the prior action.” *Estate of Covington By and Through Covington v. Josephson*, 888 P.2d 675, 677 (1994) citing *Schaer v. State ex rel. UDOT*, 657 P.2d 1337, 1340 (Utah 1983) quoting *Searle Bros. v. Searle*, 588 P.2d 689, 690 (Utah 1978). *Covington* continued as follows:

Collateral estoppel, or issue preclusion, prevents the relitigation of issues that have once been litigated even though the claims for relief may be different. *Penrod v. Nu Creation Creme, Inc.*, 669 P.2d 873, 875 (Utah 1983). Thus, whereas res judicata prevents a relitigation of identical causes of action or demands, collateral estoppel disallows a relitigation of issues. *Schaer*, 657 P.2d at 1340.

Id.

In the instant case, the trial court was well aware the Nevada court had entered an order regarding the payment of insurance on the subject property in this case. However, the trial court erred by proceeding in this case because Plaintiffs’ claims were precluded by collateral estoppel.

As noted *supra*, it would be res judicata for any issue that had been determined in another action in a sister state that was entitled to full faith and credit. See, *Fullenwider* at 389. The Nevada Order clearly determined the issue of insurance and gave other instructions to

the Trustee regarding the subject property. *See*, Addendum “B”. The parties even agreed to dismiss an earlier Utah action filed by Plaintiff against Tangren in the Nevada Order, which clearly signifies their agreement to be bound by Nevada’s jurisdiction over them to abide by its orders.

After the conclusion of the Nevada case, as indicated by Plaintiff at hearing on May 6, 2013, Plaintiff pursued the issue of insurance herein that had been already contested and resolved by the parties in the Nevada case. *Macris* at ¶ 34. However, instead of pursuing the concerns of the Trust in the Nevada case, Plaintiff pursued a different cause of action (eviction and breach of contract) in Utah. *Id.*

The issue of the obtaining and payment of insurance is identical to the Nevada case, which was pursued by Tangren to remove Ms. Fiscus as Trustee due to his disagreement with her regarding the insurance. *Id.* at ¶ 37. The Nevada Order resulted in orders for Tangren to obtain insurance on the subject property, which Plaintiff alleged in this case that Tangren did not have at all. Further, as argued *supra*, the issue was decided in a final order and a hearing was held thereon, as shown by the plain language of the Nevada Order. *See, id.* The Nevada Order was also the result of competent, full, and fair litigation and there is nothing in the record to show the contrary. *Id.* Lastly, both parties herein were parties to the Nevada case. *Id.* Accordingly, each prong of the issue preclusion test has been met and it therefore should have been applied herein. *Id.*

Further, inasmuch as *res judicata* applies herein, Plaintiffs’ claims herein properly belong in the Nevada case, as they could have been litigated therein. *See, Covington* at 677. Plaintiff should have been prevented from relief simply because she masked her claims as

issues to be relitigated in Utah. *Id.* Accordingly, the trial court erred by determining it had jurisdiction when the Nevada court had fully litigated the issues presented by Plaintiff.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE MOTION TO SET ASIDE PURSUANT TO UTAH R. CIV. P. 60(b).

“On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from the final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect...or (6) any other reason justifying relief from the operation of the judgment.” UTAH R. CIV. P. 60(b). The motion shall be made within a reasonable time and for the reason cited herein, not more than 3 months after the judgment, order, or proceeding was entered or taken. *Id.* Additionally, the requesting party must show he has a meritorious defense. *See, Black's Title, Inc. v. Utah State Ins. Dep't*, 1999 UT App 330, ¶6, 991 P.2d 607.

When presented with a Rule 60(b) motion on the basis of excusable neglect, a trial court has broad discretion in deciding whether to set aside a judgment:

This discretion stems from the equitable nature of the excusable neglect determination itself. By their nature, equitable inquiries are designed to be flexible, taking into account all relevant factors in light of the particular circumstances...the question is always whether the particular relief sought is justified under principles of fundamental fairness in light of the particular facts.

Jones v. Layton/Okland, 2009 UT 39, ¶17, 214 P.3d 859 *citing* *Reisbeck v. HCA Health Servs. of Utah, Inc.*, 2000 UT 48, P 15, 2 P.3d 447. “Excusable neglect requires some evidence in order to justify relief.” *Id.* at ¶ 20. Excusable neglect is defined as the exercise of due diligence by a reasonably prudent person under similar circumstances. *White Cap Constr. Supply, Inc. v. Star Mt. Constr., Inc.*, 2012 UT App 70, ¶5, 277 P.3d 649 (additional citations omitted).

In this case, excusable neglect existed throughout the case and is therefore argued herein in the chronological order of events, for the Court's convenience. When viewed as one large whole, the cumulative excusable neglect and prejudice developed throughout the case. As such, these arguments are presented below.

A. Tangren Was Prejudiced By The Service Of The 10-Day Summons, Which Was Compounded By Plaintiffs' Failures To Abide By The Rules of Procedure That Occurred Cumulatively Throughout This Case And Affected The Outcome.

Rule 3(a) of the UTAH RULES OF PROCEDURE states in pertinent part, "[a] civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4." Rule 12(a) requires a 20 day summons to be served upon a civil defendant. In unlawful detainer cases, a court may issue a summons containing anywhere from 3-20 days to file an answer, depending upon the nature of the unlawful detainer. *See*, UTAH CODE ANN. §78B-6-801, *et seq*, setting forth the Forcible Entry and Detainer code.

In the case of *Parkside Salt Lake Corp. v. Insure-Rite, Inc.*, the court held, "[t]he unlawful detainer statute is a summary proceeding and in derogation of the common law. It provides a severe remedy, and [the Utah Supreme Court] has previously held that it must be strictly complied with before the cause of action may be maintained." *Ibid.*, 2001 UT App 347, ¶18, 37 P.3d 1202 *citing Sovereign v. Meadows*, 595 P.2d 852, 853-54 (Utah 1979) (holding that where notice "did not give lessee the alternative of paying the delinquent rent or surrendering the premises" the notice was "insufficient 'to place [the lessee] in unlawful detainer'" (citation omitted)).

In the case of *Martin v. Nelson*, the defendant was served with process by a California peace officer who falsified the facts in the return of service. *Ibid.*, 533 P.2d 897 (Utah 1975)⁴. Additionally, the summons that was served upon the defendant required an answer in 20 days instead of 30 days for an out of state resident. *Id.* The Utah Supreme Court held, “[s]ervice of process here was defective, not only because of the false return but because it required answer in 20 days instead of 30 days. Such service is jurisdictional.” *Id.*

The failure of the Plaintiff to serve Tangren with the correct summons created an unclear proceeding in this matter. It was unclear to the trial court and never fully explained by the Plaintiff why Tangren was served with a 10 day summons. *See*, Addenda “E”, “I”. A shortened time in which to answer a complaint, likely due to the unlawful detainer claim in the Complaint herein, is a severe remedy and must be strictly complied with before the cause of action may be maintained. *Parkside* at ¶18. Accordingly, as determined by the trial court, Plaintiff was required to serve Tangren with a 20 day summons; however, strict compliance with issuing the correct summons based on the relevant caselaw of *Parkside* and *Martin* was required in this matter.

Martin is similar to this case due to the cumulative circumstances of this case. The incorrect summons in this case failed to invoke the trial court’s jurisdiction; however, inasmuch as the trial court determined Tangren was not prejudiced by the incorrect summons, Tangren argues herein he was in fact prejudiced due Plaintiffs’ non-compliance with the RULES OF PROCEDURE and was prejudiced as a result. Plaintiffs’ non-compliance complicated the proceedings, robbed Tangren of notice, and muddied the waters in order

⁴ *Martin* is attached hereto as Addendum “L” and incorporated herein by this reference for the Court’s convenience.

for a *pro se* litigant to determine what exactly was happening. Accordingly, the prejudice prong of this argument is examined *post*.

1. Plaintiff Failed To Comply With UTAH R. CIV. P. 5 And Did Not Serve Pleadings Upon Tangren Throughout The Case, Thus Robbing Him Of Notice Of The Proceedings.

A party filing a pleading after service of the summons and complaint is required to serve upon the opposing party a copy of the pleadings filed with the court by electronic filing, mail, email, fax, etc. *See*, UT. R. CIV. P. 5. Further, “[e]very pleading, order or paper required by this rule to be served shall include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served.” UT. R. CIV. P. 5 (f). A party preparing an order of the court must “...serve upon the other parties a proposed order in conformity with the court’s decision.” UT. R. CIV. P. 7(f)(2).

In this case, the trial court did not directly rule on this argument from the Motion to Set Aside. However, the trial court noted most of Tangren’s arguments were “red herrings” and the trial court focused its attention on whether the Summons and Complaint were properly served. 3/11/2014 Tr. at p. 58, 59. However, the fact that none of the pleadings for approximately the first five (5) months of this case contained certificates of mailing contributed to the confusion in this case.

Tangren and the Plaintiff have been involved in other litigation in Utah and in Nevada. Litigation in Utah had resulted in appellate decisions, which were cited *supra*. Further, Plaintiff had pursued an eviction case against Tangren in 2012, which Plaintiff agreed to dismiss as part of the Nevada Order. *See*, Addenda “B” & “C”. Accordingly, when Plaintiff was served with the incorrect summons and Complaint in April of 2013, which did

not contain case numbers, Tangren incorrectly believed this was a continuation of proceedings continued with the prior actions. *See*, Addenda “D” & “E”. This is particularly true when it is considered that these three (3) actions involve the Plaintiff suing Tangren in the same county in Utah and before the same judge. Thus, the caption of all of the pleadings of these court cases are similar in appearance and contributed to Tangren’s belief Plaintiff was pursuing further proceedings in an earlier case.

This incorrect belief was further supported when, after the temporary orders hearing on May 6, 2013, he did not receive the proposed temporary order filed by Plaintiff – which was prior to the time in which he had to answer the Complaint and which he was undoubtedly entitled to object to – or the signed Temporary Order. The Temporary Order indicates it would be served upon Tangren; however, a review of the returns of service and certificates of mailing herein do not show it was ever served on Tangren. *See*, Addendum “F”. However, the Temporary Order was Plaintiffs’ basis to pursue an order to show cause against Tangren after Plaintiff obtained default judgment against Tangren.

Plaintiff did properly abide by Rule 5 in any pleading in this case before Tangren obtained counsel. The following documents should have been mailed to or served upon Defendant pursuant to Rules 4 and 5:

- Affidavit filed on April 23, 2013; R003.
- The proposed order resulting from the temporary orders hearing. Plaintiff filed the proposed Temporary Orders on May 7, 2013; the trial entered the Temporary Orders on May 8, 2013. R017; *see also*, Addendum “H” at p. 3; Addendum “I”.
- Proposed Judgment filed July 3, 2013; Addendum “H” at p. 3; Addendum “I”.
- Proposed Writ of Restitution filed July 3, 2013; Addendum “H” at p. 3; Addendum “I”.

- Proposed Certificate of Default filed July 10, 2013; Addendum “H” at p. 3; Addendum “I”.
- Proposed Writ of Restitution filed July 10, 2013; Addendum “H” at p. 3; Addendum “I”.
- Motion for Order to Show Cause; the Return of Service filed October 22 does not list this was served upon Tangren. R030; *see also*, Addendum “F”.

As a result, Tangren was deprived of the opportunity to respond or object to Plaintiff’s pleadings. While it may be argued Tangren failed to answer and therefore was not entitled to service, which is addressed *post*, the failure to provide Tangren with the time to object to the proposed Temporary Order and the fact the signed Temporary Order was never served upon Tangren lead to a snowball effect that supported Tangren’s belief that the hearing on May 6, 2013, had concluded the matter.

While a pro se litigant is held to the same procedural rules and the law, a pro se defendant’s “lack of technical knowledge of law and procedure...should be accorded every consideration that may be reasonably be indulged.” *Orem City v. Bovo*, 2003 UT App 286, ¶12, 76 P.3d 1170 *citing Nelson v. Jacobsen*, 669 P.2d 1207, 1213 (Utah 1983) *quoting Heathman v. Hatch*, 13 Utah 2d 266, 372 P.2d 990, 991 (1996). Tangren’s lack of technical knowledge and procedure was not accorded every consideration that may be reasonably indulged when the default judgment was entered, particularly when a full review of the Returns of Service and the pleadings would have indicated Tangren had received limited notice of the proceedings. Tangren has opposed Plaintiff in every proceeding in which they are parties and has prevailed on appeal against Plaintiff. Accordingly, Tangren was prejudiced throughout this case and it resulted in default being entered against him, which he was unaware of until the November 4, 2013, hearing.

B. Default Judgment Was Improperly Granted Against Tangren.

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter the default of that party.” UT. R. CIV. P. 55 (a). “Upon request of the plaintiff the clerk shall enter judgment for the amount claimed and costs against the defendant if...the default of the defendant is for failure to appear[.]” UT. R. CIV. P. 55 (b)(1).

In this case, default judgment was improperly granted against Tangren contrary to Rule 55. Tangren did not fail to “otherwise defend” or appear in this case. Accordingly, the clerk should not have entered the default certificate herein as argued further below.

1. Tangren Otherwise Defended In This Case.

“‘[A]ll that must be shown for the entry of a default is that the defendant has failed to answer the complaint in a timely fashion.’” *Roth v. Joseph*, 2010 UT App 332, ¶15, 244 P.3d 391 citing *Skanchy v. Calcados Ortope SA*, 952 P.2d 1071, 1076 (Utah 1998). However, whether a party has “otherwise defended” is a matter of first impression in Utah under the particular circumstances of this case.

The Federal Rule is similar to the Utah Rule respecting default judgments, which states, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” FED. R. CIV. P. 55(a). In analyzing default under the Federal Rule, the First Circuit Court of Appeals held, [a]lthough appearance in an action typically involves some presentation or submission to the court—a feature missing here—we have held that a defaulting party ‘has appeared’ for Rule 55 purposes if it has ‘indicated to the moving party a

clear purpose to defend the suit.” *Key Bank of Maine v. Tablecloth Textile Co. Corp.*, 74 F.3d 349, 353 (1st Cir. 1996) *citing* *Muniz v. Vidal*, 739 F.2d 699, 700 (1st Cir.1984) *quoting* *H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C.Cir.1970). “But because judgments by default are disfavored, ‘a court usually will try to find that there has been an appearance by defendant.” *Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc.*, 840 F.2d 685, 689 (9th Cir. 1988) *citing* 10 C. Wright, A. Miller & M. Kane, *Federal Practice & Procedure* § 2683, at 433 (2d ed. 1983).

In the matter of *H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, the court found there had been an appearance when the parties exchanged letters and had a series of meetings and neither party had any doubt the suit would be contested if they did not reach a settlement. *Ibid.*, 432 F.2d 689 (D.C.Cir.1970). In the matter of *Wilson v. Moore & Assocs., Inc.*, it was determined an appearance had not been made because the letter that was exchanged was partially responsive to the complaint but there were no settlement negotiations. *Ibid.*, 564 F.2d 366 (9th Cir.1977). In *Direct Mail*, cited *supra*, it was determined the defendant’s actions did not demonstrate “a clear purpose to defend the suit” because the settlement negotiations were conducted prior to and on the day the summons was served. *Ibid.* at 689. Thereafter, there was no contact between the parties. *Id.*

In this case, Plaintiff obtained default against Tangren on September 5, 2013. R021 & R023. Tangren argued in the Motion to Set Aside that default was improperly granted because he personally appeared in this case; however, the trial court did not fully address this issue in its denial of the Motion to Set Aside.

Plaintiff appeared and defended himself at hearing on May 6, 2013. R015. The transcript from this hearing shows Tangren intended to represent himself because the case was “pretty cut and dry” and “self evident”. 5/6/2013 Tr. at p. 10. Tangren argued that, in 2011, Plaintiff determined there needed to be a million dollar policy on the property and \$250,000 on the lodge, which Tangren agreed with. *Id.* at pp. 10-11. Tangren paid these insurance amounts for a year and a half. *Id.* at p. 11. Then Plaintiff determined there needed to be more than these policy limits and indicated the policy needed to be for \$2 million and then \$3 million, which Tangren disagreed with. *Id.* Tangren indicated to the trial court, which was undisputed, that he filed a case in Nevada to challenge Sharon Fiscus as the Trustee due to the disagreement they were having regarding the insurance policies on the property. *Id.*

Tangren represented to the trial court that the fly-in, including the sky-diving and airplanes, was discussed with the Nevada court, which ruled that \$1 million policy was sufficient. *Id.* Tangren indicated more things needed to be brought up with the Nevada court. *Id.* at p. 13. Based on Tangren’s representation that the property is worth \$2 million, the trial court ordered that Tangren obtain this in coverage or Tangren could not have the fly-in. *Id.* at p. 29. Further, as argued *supra*, the fact that Tangren was never served or had the opportunity to object to the Temporary Order robbed Tangren of the ability to object to the form and content of the Temporary Order, which was never served upon him, and then was used as the basis of an order to show cause against him. This is particularly true when it is considered that the content of the Temporary Order differs than the oral ruling of the trial court.

Generally, all that is needed for entry of a default is that a defendant has failed to answer the complaint in a timely fashion. *Roth* at ¶15. However, the question of whether Tangren “otherwise defended” in this case does not appear to have been addressed by an appellate court. Thus, Tangren has presented federal authority on the subject for this Court’s consideration.

While an appearance typically involves some presentation or submission to the trial court, Tangren appeared in this case and indicated to both the trial court and Plaintiff a clear purpose to defend the suit. *Key Bank* at 353. Further, since judgments by default are generally disfavored, courts generally will attempt to determine whether there has been an appearance by the defendant. *Direct Mail* at 689.

In this case, Tangren did not file an answer prior to the entry of default. However, Tangren did otherwise appear and defended himself against Plaintiffs’ claims in the temporary orders hearing, which was prior to the expiration of time in which to answer the Complaint. Tangren’s position at the temporary orders hearing evidenced his intent to the trial court and to the Plaintiff that he had a clear purpose to defend himself, particularly since Tangren indicated other things regarding Ms. Fiscus as Trustee needed to be addressed in the Nevada court. Accordingly, Tangren otherwise defended himself in this case and default judgment was improperly granted against him.

2. The Trial Court Erred By Entering Default Against Tangren Because Plaintiffs’ Well-Pled Facts Did Not Show Plaintiffs Were Entitled To Judgment As A Matter Of Law.

“Although ‘a defendant’s failure to appear warrants an entry of default,’ it ‘does not automatically entitle a plaintiff to a default judgment.’” *Wisan v. City of Hildale*, 2014 UT 20,

¶17, 330 P.3d 76 *citing Pennington v. Allstate Ins. Co.*, 973 P.2d 932, 940 (Utah 1998). “A trial court asked to render a judgment by default must first conclude that the uncontroverted allegations of an applicant's petition are, on their face, legally sufficient to establish a valid claim against the defaulting party.” *Stevens v. Collard*, 837 P.2d 593, 595 (Utah Ct. App. 1992) *citing Rajneesh Found. Int'l v. McGreer*, 303 Or. 139, 142, 734 P.2d 871, 873 (1987) (according to great weight of authority, default itself constitutes only admission that allegations are factually true, not that they are legally sufficient to state a claim for relief), *rev'd on other grounds*, 303 Or. 371, 737 P.2d 593 (1987). In other words, “[e]ven though a defendant fails to appear, a plaintiff is entitled to default judgment ‘only if the well-pled facts show that the plaintiff is entitled to judgment as a matter of law.’” *Pennington v. Allstate Ins. Co.*, 973 P.2d 932, 940 (Utah 1998) *citing Skanchy v. Calcados Ortope*, 952 P.2d 1071, 1076 (Utah 1998).

“An original claim, counterclaim, cross-claim or third-party claim shall contain a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief.” UT. R. CIV. P. 8(a). “A court may enter judgment on the pleadings when the moving party is entitled to judgment on the face of the pleadings themselves.” *Mountain America Credit Union v. McClellan*, 854 P.2d 590, 591 (Utah App., 1993) *citing* UTAH R.CIV.P. 12(c). “It must appear to a certainty that the [non-moving party] would not be entitled to relief under any state of facts which could be proved in support of its claim before a judgment on the pleading may be granted.” *Securities Credit Corp. v. Willey*, 265 P.2d 422, 424 (Utah, 1953) *citing Michel v. Meier*, D.C., 8 F.R.D. 464.

In this case, Tangren failed to file an answer to the Complaint. However, this does not automatically entitle Plaintiffs to the Default Judgment. *Wisn* at ¶17. The trial court, was

required to first conclude the uncontroverted allegations of the Plaintiffs' Complaint were, on their face, legally sufficient to establish a valid claim against Tangren. *Stevens* at 595.

Plaintiff was only entitled to the Default Judgment herein only if Plaintiffs' well-pled facts showed it was entitled to judgment as a matter of law. *Pennington* at 940. Accordingly, Plaintiffs' claims were required to contain statements showing Plaintiffs were entitled to relief and the appropriate demands for judgment for the specified relief. UT. R. CIV. P. 8(a). The Complaint in this matter requested injunctive relief on the basis of the lack of insurance on the property and Tangren had refused to pay the insurance as required by the Lease. R010. The Complaint alleges the Lease is attached to the Complaint; however, the Lease is not attached to the Complaint, as evidenced by the record, nor was it filed separately. *See, id.* The Complaint also alleges the breach of the Lease by Tangren for failure to pay the insurance as required by the Lease and that Tangren had failed to cure prior notices of breach of the Lease. *Id.* The Complaint again alleges these notices and letters are attached to the Complaint; however, these exhibits were not attached to the Complaint, as evidenced by the record, nor were they filed as separate documents. *See, id.*

Plaintiffs were not entitled to judgment on the face of the Complaint itself. *Mountain America* at 591. Tangren appeared on May 6, 2013, argued against Plaintiffs' claims and even argued that this case should be heard in Nevada, which presents a valid defense to Plaintiffs' claims. Accordingly, it was not certain that Tangren would not be entitled to relief under any state of facts that could be proved in support of his claim before a judgment on the pleadings may be granted. *Securities Credit* at 424. Hence, the trial court erred by entering

default against Tangren because Plaintiffs' facts did not show Plaintiffs were entitled to judgment as a matter of law.

3. Tangren Has A Meritorious Defense To Plaintiffs' Claims.

"Judgments by default are not favored by the courts nor are they in the interest of justice and fair play." *Heathman v. Fabian & Clendenin*, 377 P.2d 189, 190 (Utah, 1962) *citing* *Locke v. Peterson*, 285 P.2d 1111 (Utah, 1955); *Ney v. Harrison*, 299 P.2d 1114 (Utah, 1956). "The courts, in the interest of justice and fair play, favor, where possible, a full and complete opportunity for a hearing on the merits of every case." *Id.* "In the absence of prejudice, it is appropriate to pursue that policy which favors resolution of disputes on the merits rather than technicalities." *Meyers v. Interwest Corp.*, 632 P.2d 879, 882 (Utah, 1981). "A defense is sufficiently meritorious to have a default judgment set aside if it is entitled to be tried." *Erickson v. Schenkers Int'l Forwarders, Inc.*, 882 P.2d 1147, 1149 (Utah 1994).

While this argument was denied by the trial court in its denial of the Motion to Set Aside, when viewed as one large whole herein, the default judgment should have been set aside because it was not in the interest of justice or fair play. *Heathman* at 190. The Default Judgment in this case denied Tangren a complete opportunity for a hearing on the merits in this case. *Id.* Plaintiff is not entitled to a judgment in its favor simply because of a technicality. *Meyers* at 882. Further, Tangren's defense is that the trial court lacked subject matter jurisdiction, Plaintiffs' claims regarding the insurance and rent were precluded by collateral estoppel, and he had in fact complied with the Nevada Order to obtain insurance on the property or that he did obtain the appropriate insurance during the pendency of the case. These defenses are sufficiently meritorious and are entitled to be tried. *Erickson* at 1149.

These defenses were presented to the trial court on May 6, 2013. Thus, default judgment was improperly granted herein.

C. The Preliminary Injunction Did Not Comply With Rule 65(A) And Was Wrongfully Issued.

“Every temporary restraining order...shall define the injury and state why it is irreparable.” UT. R. CIV. P. 65A(b)(2). “Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” UT. R. CIV. P. 65A(d).

Rule 65(A)(e) states as follows:

A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

“To prevail on a motion for preliminary injunction, a plaintiff must establish both its standing and the requirements of the preliminary injunction.” *Southern Utah Wilderness Alliance v. Thompson*, 811 F.Supp 635, 640 (D. Utah, 1993).

A temporary restraining order that failed to define the injury and state why it was irreparable, containing instead mere conclusory statements, and that failed to list the reasons

for extending the order, was improperly granted. *Birch Creek Irrigation v. Prothero*, 858 P.2d 990, 994-995 (Utah, 1993). In the case of *System Concepts, Inc. v. Dixon*, the Utah Supreme Court determined that a trial court had not addressed the standards of Rule 65A in its findings and therefore erred as a matter of law. *Ibid.*, 669 P.2d 421, 429 (Utah, 1983).

In this case, Plaintiffs did not file an actual motion for injunctive relief but instead includes this request in the Complaint. R010. The Complaint alleges Plaintiffs had no other adequate remedy at law or otherwise due to the threatened harm of the fly-in and alleges irreparable harm. *See*, Complaint at p. 4, ¶¶16-17. The Plaintiffs also filed an Affidavit from Ms. Fiscus to support the request. R003. The trial court issued an order on the same date as the filing of the Complaint, which ordered Tangren to appear for hearing for temporary orders to determine whether Tangren should be enjoined from allowing the fly-in, whether Tangren should be ordered to obtain liability insurance for the property, and setting a date for hearing to consider an order of restitution. R012.

After hearing on May 6, 2013, Plaintiffs prepared a proposed temporary order, which was filed with the trial court on May 7, 2013, and which was signed by the trial court on May 8, 2013. R017. There is no certificate of mailing for the Temporary Order but it does indicate that it would be served upon Tangren. However, as discussed *supra*, there is no evidence in the record that the Temporary Order was ever served on Tangren. The Temporary Order found Tangren did not have liability insurance for the fly-in, that the value of the policy he was ordered to obtain was \$2 million, and ordered Tangren to obtain the insurance or he could not have the fly-in as scheduled. R017.

The Temporary Order in this case does not define the injury to Plaintiff and why it is irreparable. UT. R. CIV. P. 65A(b)(2). The Temporary Order does not set forth the reasons for its issuance, is non-specific in terms, and fails to describe, in reasonable detail, the act or acts sought to be restrained. UT. R. CIV. P. 65A(d).

As the applicant for the temporary restraining order, Plaintiffs were required to establish the requirements of a temporary restraining order. *Southern Utah Wilderness* at 640. Plaintiffs were required to demonstrate 1) irreparable harm, 2) the threatened injury to Plaintiffs outweighed any damage to Tangren, 3) the order would not be adverse to the public interest, and; 4) there is a substantial likelihood Plaintiffs would prevail on the merits of the underlying claims or the Plaintiffs had presented serious issues on the merits that would be the subject of further litigation. *See*, Rule 65A(e). Plaintiffs failed to establish how the harm was irreparable, the threatened injury to Plaintiffs outweighed any damage to Tangren, failed to address the effect upon the public interest, and failed to allege there was a substantial likelihood Plaintiffs would prevail on the merits of its underlying claims against Tangren. *Id.*

None of the elements required by Rule 65A(e) were addressed by the Temporary Order and it constitutes wrongfully issued injunction. *Birch Creek* at 994-995. The Temporary Order in this case contains conclusory statements and fails to list the reasons for the enjoinder. *Id.* The Temporary Order does not address the standards pursuant to Rule 65A and therefore, the trial court erred as a matter of law. *System Concepts* at 429.

These foregoing procedural deficiencies in this case prohibited Tangren from fully realizing the exact nature of the pending proceedings against him. Additionally, based upon

the requirements of Rule 65A, the Temporary Order was improperly entered. Therefore, when viewed as one large whole, the circumstances of this case warranted setting aside the default judgment and Writ of Restitution based upon excusable neglect or as a reason justifying relief from said orders pursuant to Rule 60(b)(1) and (6). Accordingly, the trial court abused its discretion in this matter and the Judgment in this case should be reversed.

D. The Trial Court Erred By Denying The Motion To Set Aside.

Based upon the foregoing arguments, the trial court failed to further justice by relieving Tangren of the default judgment and Writ of Restitution in this case. UTAH R. CIV. P. 60(b). This case amounts to excusable neglect based upon the insufficient summons, Plaintiffs' failure to abide by Rule 5, the manner in which default was entered, and the entry of the wrongful injunction. Further, the Motion to Set Aside was filed within a reasonable time of the entry of the default judgment. *Id.*

The circumstances of this matter arise to an abuse of discretion on the part of the trial court, when it denied the Motion to Set Aside and declined to exercise the equitable nature of excusable neglect. *Jones* at ¶ 17. The trial court failed to take into account all relevant factors in light of the facts of this case, particularly since setting aside the default judgment is justified under the principles of fundamental fairness herein. *Id.*


Tangren has established excusable neglect and presented evidence to justify the relief. *Jones* at ¶ 20. Under the circumstances of this case as described above, Tangren exercised due diligence by a reasonably prudent person under similar circumstances. *White Cap* at ¶ 5. Tangren exercised diligence upon realizing default had entered in November of 2013. Tangren's actions in this case were sufficiently diligent and responsible, in light of the

attendant circumstances herein, which justifies excusing him from the full consequences of his neglect. *Jones* at ¶ 20. Thus, the trial court abused its discretion in the denial of the Motion to Set Aside and reversal is warranted.

CONCLUSION

WHEREFORE, based upon the foregoing, Appellant Rodney Tangren respectfully requests the reversal of the denial of the Motion to Set Aside, direct further proceedings, and any other such relief this Court determines to be necessary and appropriate.

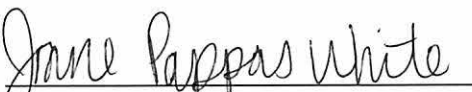
DATED this 6th day of April, 2015.


JOANE PAPPAS WHITE
Attorney for Rodney Tangren

CERTIFICATE OF COMPLIANCE WITH UTAH R. APP. P. 24(f)(1)(C)

Counsel hereby certifies the *Opening Brief of Appellant* complies with the type-volume limitation: 13,219 words are contained herein, in compliance with UTAH R. APP. P. (f)(1)(A) and was determined by the word processing system used to prepare *Opening Brief of Appellant*.

DATED this 6th day of April, 2015.


JOANE PAPPAS WHITE
Attorney for Rodney Tangren

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy, postage pre-paid, of the foregoing *Opening Brief of Appellant*, with attachments, on this 6th day of April, 2015, to the following:

Craig C. Halls
Attorney for Plaintiff/Appellee
403 South Main Street
Blanding, Utah 84511

A handwritten signature in cursive script, reading "Karwin Shaffer", is written over a horizontal line.

Addendum “A” – The Lease

Addendum “B” – The Nevada Court Ruling

Addendum “C” – Docket of 2012 Case,
#120700005

Addendum “D” – Complaint

Addendum “E” – Summons

Addendum “F” – All Returns of Service Filed by Plaintiff

Addendum “G” – Temporary Restraining Order

Addendum “H” – District Court Docket of This Case

Addendum “I” – Proposed Orders Filed by Plaintiffs in Obtaining Default

Addendum “J” – Ruling

Addendum “K” – Final Order

Addendum “L” *Martin v. Nelson* (Unpublished
Case)

E 064128 B 797 P 0005
Date 19-JUL-2001 13:46pm 014
Fee 32.00 Check
LOUISE C JONES, Recorder
Filed By LCJ
For RODNEY TANGREN
SAN JUAN COUNTY CORPORATION

LEASE AGREEMENT

32.00
Lease Agreement ("Lease" or "Agreement") made on Feb. 24
1994, by and between Richard Tangren, Trustee of
Tangren Family Trust (hereinafter called "Lessor")
and Rodney Tangren, husband and
wife (hereinafter called "Lessee").

W I T N E S S E T H :

That for and in consideration of the sum of One Hundred
DOLLARS (\$100.00), the receipt and sufficiency of which is
acknowledged, Lessor and Lessee hereby agree that Lessor shall
lease to Lessee, and Lessee shall lease from Lessor the real
property described hereinbelow, upon and subject to the terms,
conditions and covenants set forth herein.

1. The Property: Lessor hereby leases to Lessee and
Lessee hereby leases from Lessor, the real property including all
improvements thereon (hereinafter collectively called the
"Property") located in San Juan County, Utah, which property is
more fully described on Exhibit A and incorporated herein by
reference.

Lessee hereby agrees to and shall accept the Property AS IS
AND WHERE IS, WITHOUT ANY WARRANTIES OF ANY KIND OR NATURE
WHATSOEVER. Except as otherwise expressly provided herein,
Lessee shall be required to pay the expenses of every kind and
nature whatsoever associated with maintaining the Property,

Rodney Tangren
P.O. Box 42211

including, without limitation, all repairs, maintenance and the like of every kind and nature whatsoever with respect to the Property, heat, light, power, water, sewage, telephone and any and all other public service and utility costs used in or on said property during the term of this Lease or any renewal thereof, and all other expenses which may be incurred by Lessee, from the time of possession or the commencement date, whichever is earlier. It is the intention of this paragraph to provide that Lessor shall have no responsibility or obligation for expenses with respect to the care or maintenance of the Property regardless of the nature of the expense, or the fact that the condition resulting in the expense may have preceded the Lessee's possession or the commencement date, whichever is earlier, unless otherwise specifically provided herein.

2. Compliance with Laws and Regulation: Lessee shall comply fully with all laws, regulations, rules and orders of any government or governmental agency that may apply to this Lease, to its performance and to the possession, occupancy and use of the Property.

3. Duration of Lease: The term of this Lease shall commence on March 1, 1997, or upon delivery of possession, whichever occurs first, and unless it comes to an end sooner by operation of the provisions contained herein or by operation of law, shall continue for a term which shall terminate on the occurrence of a default by Lessee or on Feb 28, 2090.

4. Possession: Lessor and Lessee acknowledge that Lessee is currently in possession of the Property and shall continue in possession hereafter pursuant to this Agreement.

5. Rental: Lessee shall pay to Lessor a monthly rent of _____ (\$ 150.00) due and payable on the 1st day of each calendar month (the "Due Date") beginning with the March rental payment. In addition each month on the same date Lessee shall pay one-twelfth (1/12) of the estimated annual taxes and insurance for the then current calendar year. For example in 1991 the estimated annual insurance cost is \$ 600.00 and the estimated cost for real property taxes is \$ 950.00. During calendar year 1992 each monthly payment to Lessor will include an amount equal to the sum of one-twelfth (1/12) of each of these estimated annual costs, or in 1992 the sum of \$ 125.00 monthly. Thus in 1992 each monthly payment made to Lessor shall be \$ 275.00 being the sum of the monthly rent and one-twelfth (1/12) of each of the estimated annual costs.

All payments shall be made to Lessor at 3114 E Charleston
Las Vegas, Nev. or where subsequently directed.

6. Payment Increases: Ten days prior to January 1, of each calendar year or as soon thereafter as the estimated annual costs for taxes and insurance can be ascertained, Lessor shall provide to Lessee the calculated sum to be paid monthly for said costs in addition to the \$ _____ per month rental payment. Upon notice Lessee shall increase or decrease the total monthly

payment beginning with the first payment due subsequent to the notice. If Lessor fails to provide such notice then the monthly payment shall continue in the amount paid in the previous calendar year until such notice is provided. Any special taxes or assessment which become due during the term hereof shall be paid by Lessee upon demand by Lessor.

7. Taxes, Insurance, to be Paid: Lessor shall be responsible for paying out of the monthly estimated sum received from Lessee pursuant to paragraph 5 all real property tax assessed against the Property during the term of the Lease and the insurance.

8. Utilities: Lessee shall be responsible for and shall pay directly to the suppliers all charges for electricity, sewage, gas and all other utilities and services used on or in connection with the Property during the term of this Lease and during any period of occupancy of the Property before or after such term.

9. Events of Default: In any one or more of the following cases, or in any one or more of the cases that elsewhere in this Lease may be made subject to this provision, Lessor shall have just cause to do so and may declare Lessee in default if Lessee:

- (a) neglects to timely perform any of its payments or other obligations under this Lease;
- (b) whether voluntarily or involuntarily, becomes unable to meet its financial obligations as they mature;

- (c) becomes insolvent; or
- (d) vacates the property and leaves it vacant for a period in excess of thirty days without prior approval from Lessor.

10. Termination of Lease Upon Default: In the event of a default as described in Section 9 above, Lessor may elect to terminate this Lease upon ten (10) days notice to Lessee and to demand and to receive the immediate surrender of the Property as well as the immediate payment of all amounts then due from Lessee to Lessor by law and under this Lease, without prejudice to all such other rights and remedies as may exist by law under this Lease, but reserving to Lessee the benefits of Section 11 below in a case where they apply.

11. Lessee's Cure of Default: Without prejudice to the provisions of this Lease regarding rights and remedies and the resolution of claims, controversies, demands or disputes and without limiting the concurrent availability of all such provisions to Lessor, if Lessor seeks to terminate this Lease upon a default in the payment of rent, taxes or other sum payable under this Lease or upon any other default which Lessee reasonably and promptly can correct, Lessor shall give Lessee ten (10) days notice to correct such default, and such notice shall not take effect at the end of such ten (10) days if Lessee corrects the default in the interim.

12. Assignment by Lessee: This Lease is personal to Lessee, and Lessee does — have the right to assign or transfer this Lease.

13. Assignment by Lessor: This Lease or the payments due Lessor hereunder may be assigned. Lessor has the right to set up a collection account and Lessee upon notice agrees to make all subsequent payments to such collection account as directed.

14. Governing Law: The law applicable to the performance of this Lease shall be the law of the State of Utah.

15. Notice of Lease: Lessee may record this Lease, or upon the request of Lessee, Lessor shall prepare and execute a Notice of Lease which Lessee may record at its expense. Lessee shall deliver a copy of any such recorded Notice of Lease to Lessor.

16. No Other Assurances: Lessee makes this Lease in reliance upon its provisions, including any amendments, supplements and extensions, and not in reliance upon any alleged assurances, representations and warranties made by Lessor, or Lessor's agents, servants or employees.

17. Entire Agreement: This Lease contains the entire understanding between the parties with respect to its subject-matter, the Property and all aspects of the relationship between Lessee and Lessor.

18. Amendments in Writing: No alleged modification, termination or waiver of this Lease shall be binding unless it is set out in writing and signed by the parties hereto.

19. Notices: Where this Lease requires notice to be given, except where it expressly provides to the contrary, all such notices shall be in writing and (except for those that are delivered by hand) shall be deemed given when mailed by registered or certified mail, postage prepaid, or when sent by telegram or cable, addressed to the party or Guarantor entitled to receive the notice at his or its address as provided for such purpose in this Lease or at such other address as the party or Guarantor to receive the notice last may have designated for such purpose by notice given to the other party.

20. Addresses for Notices: The addresses for notices and payments are:

LESSOR:

3114 E Charleston Blvd
Las Vegas, Nev. 89104

LESSEE:

3223 E Charleston Blvd
Las Vegas, Nev. 89104

21. Attorney Fees: In the event it becomes necessary for any party to employ an attorney to enforce the terms of this Agreement or protect his rights, the prevailing party shall be entitled to reasonable attorney fees and court costs incurred thereby.

22. Brokers: Each party represents to the other that it has not utilized the services of any real estate broker in connection herewith. ~~In the event any claims or demands arise as~~

a result of the making of this Lease, each party hereto covenants and agrees to indemnify the other against any claims or demands with respect to the making of this Lease allegedly resulting from arrangements or contracts made by the indemnifying party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSEE:

Ral Tang

LESSOR:

By Richard Tang

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 24th day of FEB, 1994,
personally appeared before me, a Notary Public, Rodney S. TANEREN,
who acknowledged to me that he executed the
foregoing Lease Agreement.

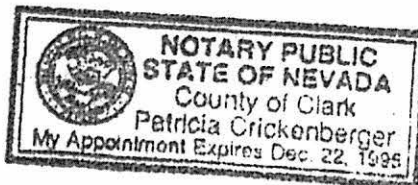
NOTARY PUBLIC

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 24th day of FEB, 1994,
personally appeared before me, a Notary Public, RICHARD TANEREN,
who acknowledged to me that she executed the
foregoing Lease Agreement.

NOTARY PUBLIC

8



Addendum “B” – The Nevada Court Ruling


CLERK OF THE COURT

1 **STIP**
2 ELYSE M. TYRELL, ESQ.
3 Nevada Bar No: 5531
4 TRENT, TYRELL & ASSOCIATES
5 11920 Southern Highlands
6 Parkway, Suite 200
7 Las Vegas, Nevada 89141
8 Phone: (702) 382-2210
9 Fax: (702) 382-9242
10 elyse@probatelawlv.com
11 Attorney for RODNEY TANGREN

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of) CASE NO. P-11-071373
10 THE EXEMPTION TRUST OF THE) DEPT: H
11 TANGREN FAMILY TRUST Dated April)
12 1, 1985)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
An Intervivos Trust

13 **ORDER FROM COURT**

14 **Date of Hearing: 08/03/12**
15 **Time of Hearing: 9:30 a.m.**

16 This matter having come on for hearing on the 3rd day of
17 August, 2012, based upon the Petition Removal of Successor Trustee,
18 filed by RODNEY TANGREN, which was originally on this court's
19 calendar for June 29, 2012. During the June 29th hearing, this
20 court granted SHARON TANGREN FISCUS, a continuance until August 3,
21 2012, in an effort to afford her an opportunity to respond to the
22 Petition for Removal of Successor Trustee; SHARON TANGREN FISCUS
23 having filed an Objection to the Petition for Removal of Successor
24 Trustee; RODNEY TANGREN having filed a response to that objection;
25 at the August 3, 2012, the court having noted the presence of ELYSE
26 M. TYRELL, ESQ., and her client, RODNEY TANGREN, as well as the
27 presence of PHILIP VAN ALSTYNE, ESQ., and his client, SHARON

1 TANGREN FISCUS; the parties having discussed the issues raised in
2 the petition, objection and response; the parties having reached
3 an agreement; the court having heard the statements of counsel and
4 good cause appear therefor;

5 NOW, THEREFORE, IT IS HEREBY ORDERED that this matter is
6 hereby continued until Friday, February 8, 2013, at 9:30 a.m.; and
7 it is

8 FURTHER ORDERED that RODNEY TANGREN and SHARON TANGREN FISCUS
9 are hereby directed to drop the pending litigation in the State of
10 Utah; and it is

11 FURTHER ORDERED that RODNEY TANGREN shall make arrangements to
12 immediately secure a \$1,000,000.00 liability insurance policy on
13 the Trust property and shall provide SHARON TANGREN FISCUS with
14 evidence of the same; and it is

15 FURTHER ORDERED that RODNEY TANGREN shall bear the expense
16 associated with the liability insurance policy and shall make
17 certain that the premiums are kept current; and it is

18 FURTHER ORDERED that RODNEY TANGREN and SHARON TANGREN FISCUS,
19 by and through ELYSE M. TYRELL, ESQ., shall discuss the clean up of
20 the hazardous waste on the Utah property and shall discuss the
21 Trust's responsibility associated the cost of the clean up; and it
22 is

23 FURTHER ORDERED that SHARON TANGREN FISCUS shall not increase
24 the rent on the Utah property without giving RODNEY TANGREN
25 sufficient notice, through ELYSE M. TYRELL, ESQ.; and it is

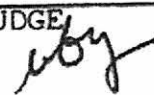
26 FURTHER ORDERED that, should there need to be an increase
27 in the rent, SHARON TANGREN FISCUS shall provide RODNEY TANGREN
28

1 with documentation and evidence as to why the increase is
2 necessary.

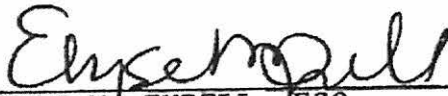
3 DATED and DONE this 15th day of August, 2012.

4 

5 DISTRICT COURT JUDGE

6 

7 TRENT, TYRELL & ASSOCIATES

8 

9 ELYSE M. TYRELL, ESQ.
10 11920 Southern Highlands
11 Parkway, Suite 201
12 Las Vegas, NV 89141

Addendum "C" – Docket of 2012 Case,
#120700005

7TH DISTRICT COURT- MONTICELLO
SAN JUAN COUNTY, STATE OF UTAH

TANGREN FAMILY TRUST vs. RODNEY TANGREN

CASE NUMBER 120700005 Eviction

CURRENT ASSIGNED JUDGE
LYLE R ANDERSON

PARTIES

Plaintiff - TANGREN FAMILY TRUST
Represented by: CRAIG C HALLS

Defendant - RODNEY TANGREN
Represented by: CHRISTOPHER G MCANANY

Trustee - SHARON FISCUS
Represented by: CRAIG C HALLS

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	360.00
	Amount Paid:	360.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT 10K-MORE

Amount Due:	360.00
Amount Paid:	360.00
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

PROCEEDINGS

03-01-12 Case filed
03-01-12 Judge LYLE R ANDERSON assigned.
03-01-12 Filed: COMPLAINT
03-01-12 Fee Account created Total Due: 360.00
03-01-12 COMPLAINT 10K-MORE Payment Received: 360.00
 Note: Code Description: COMPLAINT 10K-MORE
03-12-12 Filed: ANSWER ANSWER
 RODNEY TANGREN

03-14-12 Filed return: SUMMONS

Party Served: TANGREN, RODNEY

Service Type: Personal

Service Date: March 08, 2012

08-23-12 Filed: MOTION FOR DISMISSAL

Filed by: HALLS, CRAIG C

08-23-12 Filed order: ORDER OF DISMISSAL

Judge LYLE R ANDERSON

Signed August 23, 2012

08-23-12 Case Disposition is Dismsd w/o prejudice

Disposition Judge is LYLE R ANDERSON

Addendum “D” – Complaint

CRAIG C. HALLS #1317
Attorney for Plaintiff
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

THE TANGREN FAMILIY TRUST,
SHARON FISCUS, TRUSTEE
Petitioner,

COMPLAINT FOR INJUNCTION
AND ORDER OF RESTITUTION.

vs.

RODNEY TANGREN,
Respondent.

Civil No.
Judge Lyle R. Anderson

COMES NOW, THE TANGREN FAMILIY TRUST and for cause of action alleges as follows:

1. Plaintiff is in at all times mentioned is a trust formed in the State of Nevada with ownership of property in San Juan County State of Utah.
2. Defendant at all times mentioned was a resident of the County of San Juan, State of Utah. Jurisdiction is appropriate in San Juan County, State of Utah because the Defendant lives in San Juan County, State of Utah and the activities, which are requested to be restrained, are occurring in San Juan County, State of Utah.
- 3.

Background Facts:

4. Richard Tangren, Trustee of the Tangren Family Trust entered into a lease agreement on February 24th 1994 for the 99 year lease of properties in San Juan County (Exhibit A) more particularly described as:

Parcel 1: All that certain lot, piece and parcel of land lying situate and being in San Juan County and known as the NE 1/4 NE 1/4, section 12, T27S, R20E, SLBM, containing 40 acres, more or less.
27S 20E 12 000

Parcel 2: All that certain lot, piece and parcel of land lying situate and being in San Juan County and being described as follows: E 1/2 of the SE 1/4 SE 1/4, SE 1/4 NE 1/4 SE 1/4, Section 1, T27S, R20E, SLBM. Lots 11 and 12, Section 6; Lot 2, Section 7; T27S R21E, SLBM, Township 37 South, Range 19 East, SLBM, Section 16: San Juan County.
27S 20E 01 7200
27S 21E 06 6000
27 S21E 07 3000
5. As part of the lease agreement, Respondent, Rodney Tangren, agreed to pay all taxes and insurance which may be needed to protect the property, the lessee and the owner. (See Paragraph 5 and 7 of the lease attached as Exhibit A).
6. On several occasions in 2011 and 2012 the Petitioner obtained and attempted to obtain liability insurance on the premisses and notified Respondent of the cost of the coverage.
7. On several occasions from 2009 to the present Respondent has hosted or allowed others to have a "Fly In" at the Cave Man Ranch. The "Fly In" involved several aircraft flying into the Ranch for a weekend of airplane games, shooting, and socializing.
8. Some of the participants paid or donated money to the Petitioner or paid camping fees for the activity. Respondent has asserted he receives no compensation for

the activity.

9. On May 24 -27, 2013 another activity is planned for the ranch which involves aircraft landing on the dirt field at the ranch. The organizer has stated in social media that the number of "visitors" expected is approximately 200.

INJUNCTIVE RELIEF

10. The activity (aircraft takeoff and landing) exposes the owner to liability if someone were to become hurt or an accident were to occur.
11. The owner is to be protected, at least in part, pursuant to the lease agreement by the obtention of insurance. The responsibility for the payment of the insurance is to Respondent. The determination of what insurance is required is left to Petitioner.
12. Petitioner has notified that the activities planned are objectionable and should not be conducted without the protection of insurance and has requested Respondent to pay for such coverage and respondent has refused.
13. There is no liability insurance in place presently which insures the contemplated activity and an activity involving numerous aircraft utilizing the dirt airstrip at Cave Man Ranch is scheduled for May 24-27.
14. To the best of Petitioners knowledge, Respondent is not employed and does not own sufficient property or assets to cover liability if the activities he is allowing on the property should result in injury to a participant or guest.
15. Respondents course of conduct in refusing to obtain appropriate insurance and

upon insisting on conducting activities which are dangerous subject the owner to extreme liability and are knowing, and willfully in violation of the lease, and without legitimate purpose.

16. Plaintiff has no adequate remedy at law or otherwise, for the harm or damage threatened to be done, by Respondent. Respondent has no ability to "self insure" the potential harm. While many of the issues may be compensated by financial award, Respondent is unable to respond in a financial way to the risk, or to assume the risk. The Respondent's refusal to pay the premium for the activities he is conducting or allowing has no legitimate purpose and is exposing Petitioner to a harm for which there is no adequate remedy.
17. Plaintiff will suffer irreparable harm, damage and injury, unless the acts and conduct of defendant described above are enjoined. Respondent does not have the financial ability to resolve Petitioner's complaints short of obtaining insurance or discontinuing the activity.

BREACH OF LEASE

18. Insurance to protect the owner is provided for in the lease agreement and Petitioner has notified Respondent that he must obtain appropriate insurance for the "Fly In" activity but Respondent has refused.
19. Petitioner has notified Respondent of arrears in the payment of fire insurance for 2011 and Respondent has failed to pay the amount of \$592.66. Respondent has failed to pay an amount in arrears for 2012 in the amount of \$397.10. Respondent

has been notified and requests have been made for the payment of \$989.76 which have remained uncomplied with.

20. Respondent is responsible for the payment of insurance premiums pursuant to the lease. (Paragraphs 5 and 7).
21. Petitioner is given the authority to obtain appropriate insurance on the properties and for liability at the expense of Respondent. (Paragraph 7) Petitioner has notified Respondent of the need and increase in insurance obligation and Respondent has refused to pay for the additional amounts in breach of the lease agreement.

PRIOR BREACH OF LEASE

22. In 2011 Petitioner notified Respondent of various breaches of the lease agreement. A copy of the notice(s) is provided as exhibit B and C. The violations remained uncomplied with and Respondent is in default of the lease agreement in accordance with the prior notice.
23. Respondent was notified of insurance premiums that were not paid and also of an increase in the payment to reflect the insurance by letters dated November 5, 2011 (Exhibit D) and December 7, 2011 (Exhibit E).
24. On January 10th, 2012 Defendant was notified that he was in default in the amount of \$534.75, which constituted the payment for the insurance for September, October, November, December and January. Copy of the January 10th, 2012 letter is attached hereto as Exhibit F.

25. On February 3rd 2012 Defendant was sent a Notice of Termination and Forfeiture of Lease and Demand for Delivery of Possession. The notice was sent to Rodney Tangren Caveman Ranch, P.O. Box 1705, Moab, Utah 84532, which is an address that had previously been agreed by Rodney Tangren as being the appropriate address for service of Notices. Mr. Tangren has been given in excess of ten (10) days in which to cure the default in the payment of the insurance owed on the property in the amount of \$534.75 and failed to do so. (Exhibit G)
26. Plaintiff has notified Defendant, pursuant to paragraph 6 of the Lease Agreement, of the increase of insurance and taxes. Defendant is liable, pursuant to paragraph 6 for the payment of "any special taxes or assessments which become due during the term hereof shall be paid by Lessee upon demand by Lessor"
27. Defendant has failed, pursuant to paragraph 9 to timely perform his obligation to pay taxes and insurance in addition to the lease payments.
28. Defendant has been notified, pursuant to paragraph 10 of the Lease Agreement, of his failure to make the payments or to cure, as provided in paragraph 10, and has failed to cure pursuant to the ten (10) day grace period allowed under paragraph 11.
29. Under the terms of the Lease Agreement, Plaintiff has the right to recover possession of the property for Defendants failure to timely pay the rent, taxes and insurance, or to cure the default pursuant to the four (4) notices attached.

WHEREFORE, Plaintiff prays a restraining order issued as follows:

1. Enjoining the Respondent from allowing or engaging in the "Fly In" activity scheduled for the 24-27 of May, 2013.
2. Enjoining Respondent from engaging in any future activity which exposed the owner to liability until the appropriate insurance is obtained.
3. Allowing the Petitioner to obtain appropriate insurance but requiring Respondent to pay the cost of the insurance in accordance with the lease.
4. For plaintiffs cost and expenses incurred in this action.
5. Ruling that the lease agreement is in default in accordance with the original notice of default or alternatively that the agreement is in breach for the current failure to obtain, or pay for the current insurance and obtain appropriate insurance.
6. That the Court enter a Writ of Restitution, ordering the Defendant to be removed from the property and allowing Petitioners to re-enter and take possession of the property.
7. For such other and further relief as the court may deem proper and just in the circumstances.

Dated this 19 Day of April 2013.


SHARON FISCUS



Addendum "E" – Summons

The Order of Court is stated below:

Dated: April 23, 2013

04:26:11 PM

/s/ Lyle R. Anderson

District Court Judge



CRAIG C. HALLS
Attorney for Petitioner
333 South Main Street
Blanding, Utah 84511
Telephone: 678-3333
Bar Counsel No. 1317

Served the SUMMONS
Upon RODNEY TANGREN
the 30 day of APR 20 13
at 1959 CAVE MAN WAY
Grand County, Utah
Sheriff, Grand County, Utah
By [Signature]
Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

THE TANGREN FAMILY TRUST, 10 DAY SUMMONS
SHARON FISCUS, TRUSTEE
Petitioners,

vs.

RODNEY TANGREN, Civil No.
Judge Lyle R. Anderson
Respondents.

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to file an answer to the attached Complaint in writing with the Clerk of the above-entitled Court at, 296 S Main Monticello, Utah 84535, and to serve upon, or mail to Craig C. Halls, Plaintiff's attorney, 333 South Main Street, Blanding, Utah 84511, a copy of said answer, within 10 days after service of this summons upon you.

If you fail so to do, judgment by default will be taken against you for the relief demanded in said complaint, which has been filed with the Clerk of said court and a copy of which is hereto annexed and herewith served upon you.

Serve Upon:
Rodney Tangren
Caveman Ranch
1959 Caveman Way
Moab, UT 84532

SERVICE COPY

Addendum "F" – All Returns of Service Filed by
Plaintiff



RETURN OF SERVICE GRAND COUNTY SHERIFF'S OFFICE

STATE OF UTAH)
)S.S.
COUNTY OF GRAND)
for San Juan

I hereby make return of service and certify that:

1. I am duly qualified and acting Peace Officer or am a person over the age of 21 years and am not a part to the action.

2. I served Rodney Tangren ☒ Defendant ☐ Plaintiff ☐ Respondent

☐ Witness ☐ Third Party ☐ Other _____

3. **Type of Process:**

- ☐ Summons and Complaint / Verified Petition ☐ Ex-Parte Protective Order and Verified Petition
☐ Motion & Supplemental Order ☐ Protective Order ☐ Bench Warrant ☐ Small Claims
☐ Temporary Protective Order/Request for Temporary Protective Order ☒ Order to Show Cause
☐ Bench Warrant ☒ Notice of Hearing for 1st Delinquent Court + Insurance
☐ Notice of Incoming Withholding ☐ Declaration of _____ ☐ Subpoena
☐ Notice of Hearing on Motion for Temporary Orders ☐ Motion for Temporary Orders

Other Notice of Judgement - Affidavit of Craig Hall's

4. I served said process by:

Delivering a copy to said individual personally at: 25 South 100 East
MONROE UT 84532

Leaving a copy with: _____ a suitable person over the age of 14 and resides with the Defendant at his/her normal place of abode at _____

Serving a Company or Corporation: _____

by leaving a copy with _____ location _____

5. Date Received: 10-16 201 3 Date Served: 10-16 201 3 Time Served 15:50

6. Upon serving said process, I endorsed the date and place of service and my name on said copy and showed the original to the person served.

7. Case Number: _____ Service Fee: _____

I certify that the foregoing is true and correct and that this certificate is executed on the 16 day of

October Year 203.

☒ Deputy Sheriff ☐ Sheriff
☐ Police Officer ☐ Office Administration

Subscribed and sworn before me this _____ day of _____ Year _____

Notary Seal

personally appeared, _____ proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal.



RETURN OF SERVICE GRAND COUNTY SHERIFF'S OFFICE

STATE OF UTAH)
)S.S.
COUNTY OF GRAND)

I hereby make return of service and certify that:

1. I am duly qualified and acting Peace Officer or am a person over the age of 21 years and am not a part to the action.

2. I served RODNEY TANGREN ☐ Defendant ☐ Plaintiff ☒ Respondent
☐ Witness ☐ Third Party ☐ Other _____

3. Type of Process:

- ☒ Summons and Complaint ☐ Ex-Parte Protective Order and Verified Petition
☐ Motion & Supplemental Order ☐ Protective Order ☐ Bench Warrant ☐ Small Claims
☐ Order to Show Cause ☐ Bench Warrant ☐ Notice of Hearing for _____
☐ Notice of Incoming Withholding ☐ Declaration of _____ ☐ Subpoena
☐ Notice of Hearing on Motion for Temporary Orders ☐ Motion for Temporary Orders
Other _____

4. I served said process by:

Delivering a copy to said individual personally at: 1959 CAUEMAN WAY
MOAB, UT 84532

Leaving a copy with: _____ a suitable person over the age of 14 and resides with the Defendant at his/her normal place of abode at _____

Serving a Company or Corporation: _____

by leaving a copy with _____ location _____

5. Date Received: 4-30 2013 Date Served: 4-30 2013 Time Served 1254

6. Upon serving said process, I endorsed the date and place of service and my name on said copy and showed the original to the person served.

7. Case Number: _____ Service Fee: _____

I certify that the foregoing is true and correct and that this certificate is executed on the 30 day of APRIL Year 2013

[Signature]
☒ Deputy Sheriff ☐ Sheriff
☐ Police Officer ☐ Office Administration

Subscribed and sworn before me this _____ day of _____ Year _____

Notary Seal

personally appeared, _____ proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same. Witness my hand and official seal.

Notary Public

Addendum "G" – Temporary Restraining Order

The Order of Court is stated below:

Dated: May 08, 2013
03:22:36 PM

/s/ Lyle R. Anderson
District Court Judge



CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Petitioners

DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY

THE TANGREN FAMILY TRUST,
SHARON FISCUS, TRUSTEE
Petitioner(s)

vs.

RODNEY TANGREN
Respondent(s)

ORDER ON TEMPORARY ORDERS

Case Number 130700012
Judge Name Lyle R. Anderson

This matter came on for hearing on the 6th day of May, 2013. The Tangren Family Trust was present and represented by Sharon Fiscus, Trustee and Craig Halls attorney for the Trust and the Trustee. Rodney Tangren was present and represented himself. The Court having heard testimony and proffer of the parties with regard with the situation on insurance, and having reviewed the lease, and an Order of the Nevada Court, finds that:

1. Rodney Tangren does not have liability insurance for the use of the air strip, flying activities, skydiving activities or for charter or flights into Caveman Ranch.

2. The Court finds that Rodney Tangren may have homeowners insurance on the Lodge and that insurance does not protect all liability for all activities.

3. The Court finds that the value of the Ranch, as expressed by Rodney Tangren,

is \$2,000,000.

4. The Court finds that it is reasonable to order Rodney Tangren to cease and desist himself or through any other party from any fly-in activity, especially that scheduled for the Caveman Ranch on May 24th through 27th and from any further use of the airstrip, the use of the Caveman Ranch as a destination, or drop zone for skydiving activities and for other charter or activities involving guests until liability insurance is obtained.

WHEREFORE: The Court does hereby order that Rodney Tangren is enjoined from organizing or allowing the use of the airstrip at Caveman Ranch, or the landing of aircraft, and from any other airstrip activities, from skydiving activities or from any other use of the airstrip by any other carrier or aircraft company until he has obtained and provided the Trustee with proof of liability insurance covering the entire property in an amount at least equal to \$2,000,000.

This order means that Mr. Tangren shall not make arrangements himself or allow any other party to make arrangements for the use of the premises for the above described activities.

Serve upon:
Rodney Tangren
Caveman Ranch
1959 Caveman Way
Moab, UT 84532

Addendum "H" – District Court Docket of This
Case

7TH DISTRICT COURT- MONTICELLO
SAN JUAN COUNTY, STATE OF UTAH

APPEALED: CASE #20140938

THE TANGREN FAMILY TRUST vs. RODNEY TANGREN
CASE NUMBER 130700012 Contracts

CURRENT ASSIGNED JUDGE

LYLE R ANDERSON

PARTIES

Plaintiff - THE TANGREN FAMILY TRUST
Represented by: CRAIG C HALLS
Plaintiff - SHARON FISCUS
Represented by: CRAIG C HALLS
Defendant - RODNEY TANGREN
Represented by: JOANE P WHITE

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	596.86
	Amount Paid:	596.86
	Credit:	0.00
	Balance:	0.00
BAIL/CASH BONDS	Posted:	300.00
	Forfeited:	0.00
	Refunded:	0.00
	Balance:	300.00
REVENUE DETAIL - TYPE: COMPLAINT - NO AMT S		
	Amount Due:	360.00
	Amount Paid:	360.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: AUDIO TAPE COPY		
	Amount Due:	10.00
	Amount Paid:	10.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: POSTAGE-COPIES		
	Amount Due:	1.86
	Amount Paid:	1.86
	Amount Credit:	0.00

Balance: 0.00
REVENUE DETAIL - TYPE: APPEAL
Amount Due: 225.00
Amount Paid: 225.00
Amount Credit: 0.00
Balance: 0.00
BAIL/CASH BOND DETAIL - TYPE: CASH BOND: Appeals
Posted By: JOANE P WHITE
Posted: 300.00
Forfeited: 0.00
Refunded: 0.00
Balance: 300.00

PROCEEDINGS

04-23-13 Filed: Complaint
04-23-13 Filed: Affidavit
04-23-13 Filed: Other Proposed :Order (Proposed)
04-23-13 Case filed
04-23-13 Fee Account created Total Due: 360.00
04-23-13 COMPLAINT - NO AMT S Payment Received: 360.00
04-23-13 Judge LYLE R ANDERSON assigned.
04-23-13 Filed: Other Proposed :Summons - To Issue (Proposed)
04-23-13 Filed order: Order
Judge LYLE R ANDERSON
Signed April 23, 2013
04-23-13 Issued: Summons - To Issue
Judge LYLE R ANDERSON
04-23-13 TEMPORARY ORDERS scheduled on May 06, 2013 at 09:30 AM with
Judge ANDERSON.
05-02-13 Filed return: Return of Service
Party Served: RODNEY TANGREN
Service Type: Personal
Service Date: April 30, 2013
05-06-13 Minute Entry - Minutes for TEMPORARY ORDERS HEARING
Judge: LYLE R ANDERSON
Clerk: jennifer
PRESENT
Plaintiff(s): SHARON FISCUS
Defendant(s): RODNEY TANGREN

Plaintiff's Attorney(s): CRAIG C HALLS

Audio

Tape Count: 10:03-10:36

HEARING

This matter is before the court for Temporary Orders.

Mr. Halls proffers.

Mr. Tangren proffers.

The court inquires as to whether this matter will be resolved in the Nevada Courts or in the Utah Courts.

Mr. Halls states the case in Nevada was only to handle the Trust. There is no case pending in Nevada at this time.

The court determines the insurance coverage is not adequate for what the Nevada court was requiring. The issues regarding the lease on the property should be determined by the Utah Courts and not the Nevada Courts.

Mr. Tangren is to carry \$2 million in coverage for the property.

Mr. Halls to prepare the order.

05-07-13 Filed: Other Proposed :Order (Proposed) Temporary Orders

05-08-13 Filed order: Order Temporary Orders

Judge LYLE R ANDERSON

Signed May 08, 2013

07-03-13 Filed: Other Proposed :Order (Proposed) of Judgment

07-03-13 Filed: Other Proposed :Writ of Restitution (Proposed)

07-03-13 Filed: Return of Electronic Notification

07-03-13 Filed: Other - Declined to Sign Writ of Restitution (Proposed)

07-03-13 Note: Judgement has not been entered

07-03-13 Filed: Other - Declined to Sign Order (Proposed) of Judgment

07-03-13 Note: No default certificate has been submitted or entered on

Printed: 04/06/15 08:13:05

Page 3

this case. The summons was not filed with the return of service.

07-03-13 Filed: Return of Electronic Notification

07-03-13 Filed: Return of Electronic Notification

07-10-13 Filed return: Summons on Return

Party Served: RODNEY TANGREN

Service Type: Personal

Service Date: April 30, 2013

07-10-13 Filed return: Return of Service upon RODNEY TANGREN for

Party Served: RODNEY TANGREN

Service Type: Personal

Service Date: April 30, 2013

07-10-13 Filed: Other Proposed :Default Certificate (Proposed)

07-10-13 Filed: Default Certificate

07-10-13 Filed: Return of Electronic Notification

07-10-13 Filed: Other Proposed :Writ of Restitution (Proposed)

07-10-13 Filed: Return of Electronic Notification

07-22-13 Filed: Other - Declined to Sign Writ of Restitution (Proposed)

07-22-13 Note: The Writ of Restitution refers to a Judgment, but no judgment has been signed and no judgment has been submitted.

07-22-13 Filed: Return of Electronic Notification

09-03-13 Filed: Order (Proposed) of Judgment

09-03-13 Filed: Return of Electronic Notification

09-05-13 Case Disposition is Judgment

Disposition Judge is LYLE R ANDERSON

09-05-13 Filed order: Order of Judgment

Judge LYLE R ANDERSON

Signed September 05, 2013

09-05-13 Filed: Return of Electronic Notification

09-05-13 DETERMINE DAMAGES scheduled on October 07, 2013 at 01:00 PM with Judge ANDERSON.

09-05-13 Note: DETERMINE DAMAGES calendar modified.

09-12-13 Filed: Writ of Restitution (Proposed)

09-12-13 Filed: Return of Electronic Notification

09-16-13 Issued: Writ of Restitution

Judge LYLE R ANDERSON

09-16-13 Filed: Return of Electronic Notification

10-02-13 Filed: Notice of Hearing

10-02-13 Filed: Return of Electronic Notification

10-02-13 DETERMINE DAMAGES scheduled on November 04, 2013 at 09:30 AM
with Judge ANDERSON.

10-14-13 Filed: Motion Order to Show Cause

Filed by: THE TANGREN FAMILY TRUST,

10-14-13 Filed: Affidavit of Craig C. Halls

10-14-13 Filed: Order (Proposed) to Show Cause

10-14-13 Filed: Return of Electronic Notification

10-15-13 Filed order: Order to Show Cause

Judge LYLE R ANDERSON

Signed October 15, 2013

10-15-13 Filed: Return of Electronic Notification

10-22-13 Filed return: Return of Service

Party Served: RODNEY TANGREN

Service Type: Personal

Service Date: October 16, 2013

10-22-13 Filed: Return of Electronic Notification

11-04-13 Minute Entry - Minutes for DETERMINE DAMAGES & OSC

Judge: LYLE R ANDERSON

Clerk: pamelaab

PRESENT

Plaintiff(s): SHARON FISCUS

Defendant(s): RODNEY TANGREN

Plaintiff's Attorney(s): CRAIG C HALLS

Audio

Tape Count: 10:38

HEARING

Sharon Fiscus is sworn and examined by Mr. Halls. Plaintiff's exhibit #1 Affidavit; Plaintiff exhibit #2 General Liability Policy and Exhibit #3 Lease Agreement - offered and received.

Mr. Rodney Tangren is sworn and examined by Mr. Halls. Mr. Tangren testifies on his behalf.

Keith McBeth is sworn and examined by Mr. Tangren. Mr. Halls

cross examines. Mr. Tangren redirects.

Defendant Exhibit #4 Certificate of Insurance offered and received.

Ms. Fiscus retakes the stand. She is examined and cross examined.

Mr. Halls gives his closing argument. He asks for his damages and that Mr. Tangren be found in contempt. Mr. Tangren gives his argument.

Court finds that Mr. Tangren owes the trust \$989.76 and the attorneys fees. Court finds him in contempt of court. Mr. Halls asks for a find of \$1000. Court will not impose a penalty.

11-04-13 Filed: Exhibit List

11-12-13 Notice - Final Exhibit List

11-25-13 Filed: Certificate of Service

11-25-13 Filed: Order (Proposed) on Order to Show Cause

11-25-13 Filed: Judgment (Proposed)

11-25-13 Filed: Return of Electronic Notification

11-25-13 Filed: Revised Certificate of Service (I put the wrong date on the last one)

11-25-13 Filed: Return of Electronic Notification

11-26-13 Filed: TRANSCRIPT for Hearing of 11-04-2013

11-27-13 Filed: Appearance of Counsel Appearance of Counsel

11-27-13 Filed: Return of Electronic Notification

12-02-13 Filed judgment: Judgment

Judge LYLE R ANDERSON

Signed December 02, 2013

12-02-13 Judgment #1 Entered \$ 6063.51

Creditor: THE TANGREN FAMILY TRUST

Debtor: RODNEY TANGREN

4,618.75 AttorneyFees

360.00 FilingFees

95.00 ProcServFee

989.76 Principal

6,063.51 Judgment Grand Total

12-02-13 Filed order: Order on Order to Show Cause

Judge LYLE R ANDERSON

Signed December 02, 2013

12-02-13 Filed: Return of Electronic Notification
12-02-13 Filed: Return of Electronic Notification
12-02-13 Filed: TRANSCRIPT for Hearing of 11-04-2013
12-03-13 Filed: Motion to Set Aside Order of Judgment and Writ of
Restitution
Filed by: TANGREN, RODNEY
12-03-13 Filed: Return of Electronic Notification
12-03-13 Filed: Memorandum in Support of Motion to Set Aside Order of
Judgment and Writ of Restitution
12-03-13 Filed: Return of Electronic Notification
12-03-13 Filed: Affidavit/Declaration Affidavit of Rodney Tangren
12-03-13 Filed: Affidavit/Declaration Affidavit of Hunter Tangren
12-03-13 Filed: Return of Electronic Notification
12-03-13 Filed: Return of Electronic Notification
12-03-13 Filed: Exhibit List Exhibits
12-03-13 Filed: Return of Electronic Notification
12-20-13 Filed: Reply Response in Opposition to Motion to Set Aside
Order of Judgment and Writ of Restitution
12-20-13 Filed: Exhibit List Exhibit A
12-20-13 Filed: Exhibit List Exhibit B
12-20-13 Filed: Exhibit List Exhibit C
12-20-13 Filed: Exhibit List Exhibit D
12-20-13 Filed: Exhibit List Exhibit E
12-20-13 Filed: Exhibit List Exhibit F
12-20-13 Filed: Exhibit List Exhibit G
12-20-13 Filed: Exhibit List Exhibit H
12-20-13 Filed: Return of Electronic Notification
01-13-14 Filed: Reply to Plaintiffs Response in Opposition to Defendants
Motion to Set Aside Order of Judgment and Writ of Restitution
01-13-14 Filed: Return of Electronic Notification
02-06-14 Filed: Request for Hearing
02-06-14 Filed: Return of Electronic Notification
02-07-14 ORAL ARGUMENT ON MOTION scheduled on February 24, 2014 at 03:00
PM with Judge ANDERSON.
02-07-14 Notice - NOTICE for Case 130700012 ID 15748041
ORAL ARGUMENT ON MOTION is scheduled.
Date: 02/24/2014
Time: 03:00 p.m.

Before Judge: LYLE R ANDERSON

02-07-14 Filed: Notice for Case 130700012 ID 15748041

02-24-14 FURTHER HEARING ON MOTION scheduled on March 11, 2014 at 02:00 PM with Judge ANDERSON.

02-24-14 Minute Entry - Minutes for ORAL ARGUMENT

Judge: LYLE R ANDERSON

Clerk: pamelaab

PRESENT

Plaintiff(s): SHARON FISCUS

Defendant(s): RODNEY TANGREN

Plaintiff's Attorney(s): CRAIG C HALLS

Defendant's Attorney(s): JOANE P WHITE

Audio

Tape Count: 3:03

HEARING

Ms. White gives her arguments to the court. Mr. Halls gives his argument. Ms. White responds with further argument.

Court gives it's findings. Court would like to hear in person from witnesses for the parties before a decision is made.

Matter is continued for further hearing to March 11, 2014 at 2:00 pm.

Mr. Halls inquires about the Writ of Restitution that has been served. Mr. Tangren would like to go back to the property to get some more of his clothes. Court would like for him to wait until the next hearing takes place.

FURTHER HEARING ON MOTION is scheduled.

Date: 03/11/2014

Time: 02:00 p.m.

Before Judge: LYLE R ANDERSON

03-11-14 Received: March 11, 2014

Container: 10 day Summons (Pltf) Location: locked drawer

03-11-14 Received: March 11, 2014

Printed: 04/06/15 08:13:06

Page 8

Container: Return of Service (Pltf) Location: locked drawer

03-11-14 Received: March 11, 2014

Container: Return of Service by Art Hines (Def) Location:
locked drawer

03-11-14 Received: March 11, 2014

Container: Service copy of Summons and Order (Def) Location:
locked drawer

03-11-14 Minute Entry - Minutes for FURTHER HEARING ON MOTION

Judge: LYLE R ANDERSON

Clerk: conniea

PRESENT

Defendant(s): RODNEY TANGREN

Plaintiff's Attorney(s): CRAIG C HALLS

Defendant's Attorney(s): JOANE P WHITE

Audio

Tape Count: 2:04:00

HEARING

COUNT: 2:04:00

This matter is before the court to take evidence regarding service on a motion to set aside judgment.

2:04:51 Mr. Halls asks that witnesses be excluded and court grants the same. Shawn Chapman is called, sworn and examined by Mr. Halls.

Exhibit 1 (Return of Service), Exhibit 2 (10 day Summons) and Exhibit 3 (Complaint packet that was served) are offered and received.

2:15:04 Ms. White cross-examines. Exhibit 4 (Service copy of Summons and copy of Order) is offered and received. Exhibit 5 (Return of Service by Art Hines) is offered and received.

2:25:58 Mr. Halls redirects. Ms. White recross-examines.

2:27:26 Rodney Tangren is called, sworn and examined by Mr. Halls.

Exhibit 6 (transcript of 11/4/13) is offered. Ms. White objects. Page 11 is only considered as evidence (received).

Exhibit 7 (certified copy of Nevada transcript) is offered and received.

2:43:27 Ms. White cross-examines and also conducts direct examination.

2:57:49 Mr. Halls doesn't have any other witnesses.

2:58:08 Hunter Shelby Tangren is called, sworn and examined by Ms. White.

3:02:54 Mr. Halls cross-examines. The parties have no more evidence to present.

3:05:43 Mr. Halls gives his summary followed by Ms. White.

3:14:20 The court finds that the summons and complaint were served on Rodney Tangren by Shawn Chapman. The court questions Mr. Halls about issuing only a 10 days summons to answer the complaint. Mr. Halls was expecting Mr.

Tangren to have to answer in a shortened period of time. Mr. Halls considers this to be similar to an unlawful detainer action. The court has questions about the authority of Mr. Halls to give 10 days time to Mr.

Tangren to answer the complaint without getting permission from the court. The court will consider memoranda filed by the parties and will take this matter under advisement.

3:36:11 Mr. Halls asks for Exhibit 3 to be returned to him and Ms. White objects. The court does not return the exhibit.

3:37:00 Mr. Halls has 28 days to file his memorandum and Ms. White has 14 days to respond.

End time 3:37:56

03-12-14 Received: March 12, 2014

Container: Complaint packet that was served Location:

Printed: 04/06/15 08:13:06

Page 10

03-12-14 Received: March 12, 2014
Container: Transcript of 11/4/13 - only page 11 Location:
03-12-14 Received: March 12, 2014
Container: Certified copy of Nevada transcript Location:
03-12-14 Filed: Exhibit List
03-12-14 Notice - Final Exhibit List
03-28-14 Fee Account created Total Due: 10.00
03-28-14 Fee Account created Total Due: 1.86
03-28-14 AUDIO TAPE COPY Payment Received: 10.00
Note: POSTAGE-COPIES
03-28-14 POSTAGE-COPIES Payment Received: 1.86
04-02-14 Filed: Request for CD
04-28-14 Filed: Reply Response in Opposition to Plaintiffs Brief on
10-Day Summons
04-28-14 Filed: Return of Electronic Notification
04-29-14 Filed: Brief on 10-day Summons
04-29-14 Filed: Return of Electronic Notification
05-02-14 Filed: Reply to Response in Opposition to Plaintiffs Brief on
10-Day Summons
05-02-14 Filed: Return of Electronic Notification
05-27-14 Filed: Notice to Submit for Decision
05-27-14 Filed: Return of Electronic Notification
08-13-14 Filed order: Ruling on Motion to Set Aside Default
Judge LYLE R ANDERSON
Signed August 13, 2014
08-20-14 Filed: Order (Proposed) Denying Motion to Set Aside Judgment
08-20-14 Filed: Return of Electronic Notification
08-20-14 Filed: Other - Unsigned Order (Proposed) Denying Motion to Set
Aside Judgment
08-20-14 Note: No proof of service to defendant. L Page 435-259-1350
08-20-14 Filed: Return of Electronic Notification
08-28-14 Filed: Notice of Proposed Order Denying Motion to Set Aside
Judgment
08-28-14 Filed: Return of Electronic Notification
09-10-14 Filed: Order (Proposed) Denying Motion to Set Aside Judgment
09-10-14 Filed: Return of Electronic Notification
09-11-14 Filed: Request/Notice to Submit
09-11-14 Filed: Return of Electronic Notification
09-15-14 Filed order: Order Denying Motion to Set Aside Judgment
Printed: 04/06/15 08:13:07 Page 11

Judge LYLE R ANDERSON

Signed September 15, 2014

09-15-14 Filed: Return of Electronic Notification

10-09-14 Filed: Motion for Attorney Fees

Filed by: FISCUS, SHARON

10-09-14 Filed: Affidavit of Attorney Fees and Costs by Craig C. Halls

10-09-14 Filed: Return of Electronic Notification

10-14-14 Filed: Notice of Appeal - Civil Notice of Appeal

10-14-14 Fee Account created Total Due: 225.00

10-14-14 APPEAL Payment Received: 225.00

10-14-14 Filed: Return of Electronic Notification

10-15-14 Note: Called attorney regarding cost bond. They will be sending it today.

10-15-14 Note: Notice of Appeal emailed to the Supreme Court.

10-16-14 Bond Account created Total Due: 300.00

10-16-14 Bond Posted Payment Received: 300.00

Note: Mail Payment;

10-17-14 Filed: Response in Opposition to Motion for Attorneys Fees

10-17-14 Filed: Return of Electronic Notification

10-22-14 Note: Appealed: Case #20140938

11-20-14 Filed: TRANSCRIPT for Hearing of 02-24-2014

11-20-14 Filed: TRANSCRIPT for Hearing of 03-11-2014

11-24-14 Note: Transcripts Received and are in Vault

12-02-14 Filed: Notice of Record Index Transmitted to Utah State Appeals with Certified Mail Receipt

12-08-14 Filed return: Return

Party Served: UTAH COURT OF APPEALS

Service Type: Mail

Service Date: December 04, 2014

02-04-15 Filed: TRANSCRIPT for Hearing of 05-06-2013

02-17-15 Filed: Order from Utah Court of Appeals granting motion to supplement the record

02-25-15 Filed: Return Receipt for Certified Mail

03-12-15 Filed: Order (Proposed) To Continue

03-12-15 Filed: Return of Electronic Notification

03-12-15 Filed: Other - Unsigned Order (Proposed) To Continue

03-12-15 Note: This order is filed in a Monticello case 130700012 instead of in Carbon County. Jana

03-12-15 Filed: Return of Electronic Notification

Printed: 04/06/15 08:13:07

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CASE NUMBER 130700012 Contracts

Addendum "I" – Proposed Orders Filed by
Plaintiffs in Obtaining Default

CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

ORDER OF JUDGMENT

Case Number 130700012
Judge Lyle R. Anderson

The Default of the Defendant in this matter having been entered by the Court upon Defendants default, the Court hereby finds the Defendant was in Default under the terms of the Lease dated February 22, 1994 and that the Plaintiffs gave appropriate notice to the Defendant to cure said default which the Defendants have not done and so thereby they are entitled to an Writ of Restitution restoring them to the possession of the properties. Additionally this matter is set for a hearing to determine damages. Said hearing to be held on the ____ day of _____, 2013.

CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Family Trust.
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

WRIT OF RESTITUTION

Case Number 130700012
Judge Lyle R. Anderson

TO THE SHERIFF OF SAN JUAN COUNTY:

The Court having entered the Order of Judgment in this case allowing a Writ of Restitution, pursuant to the Default of the Defendant. The Plaintiff, the Tangren Family Trust and Sharon Fiscus Trustee has recovered a Judgment against the Defendant, Rodney Tangren of Caveman Ranch, Box 1705, Moab, Utah in an eviction action in the Seventh Judicial District Court in and for San Juan County, State of Utah dated ____ day of _____, 2013.

The Court hereby orders restitution of the following described property to wit:

Parcel 1: All that certain lot, piece and parcel of land lying situate and being in San Juan County and known as the NE 1/4 NE 1/4, section 12, T27S, R20E, SLBM, containing 40 acres, more or less.
27S 20E 12 000

Parcel 2: All that certain lot, piece and parcel of land lying situate and being in San Juan County and being described as follows: E ½ of the SE 1/4 SE 1/4, SE 1/4 NE 1/4 SE 1/4, Section 1, T27S, R20E, SLBM. Lots 11 and 12, Section 6; Lot 2, Section 7; T27S R21E, SLBM, Township 37 South, Range 19 East, SLBM, Section 16: San Juan County.

27S 20E 01 7200

27S 21E 06 6000

27 S21E 07 3000

You are hereby commanded to immediately remove the Defendant, Rodney Tangren, from the said premises and to restore the Plaintiffs, the Tangren Family Trust and Sharon Fiscus Trustee, to the possession of the property. You are further commanded to remove from said premises all personal property not the property of the Plaintiff, and to store and dispose the same according to Law and to make due return of this Writ within 10 days.

CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

**CERTIFICATE OF DEFAULT
JUDGMENT**

Case Number 130700012
Judge Lyle R. Anderson

DEFAULT

In this action, Rodney Tangren, having been regularly served with summons and complaint, and having failed to answer, and the time allowed by law for response having expired, the default of said Defendant is hereby entered according to law.

CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Family Trust.
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

WRIT OF RESTITUTION

Case Number 130700012
Judge Lyle R. Anderson

TO THE SHERIFF OF SAN JUAN COUNTY:

The Court having entered the Order of Judgment in this case allowing a Writ of Restitution, pursuant to the Default of the Defendant. The Plaintiff, the Tangren Family Trust and Sharon Fiscus Trustee has recovered a Judgment against the Defendant, Rodney Tangren of Caveman Ranch, Box 1705, Moab, Utah in an eviction action in the Seventh Judicial District Court in and for San Juan County, State of Utah dated ____ day of _____, 2013.

The Court hereby orders restitution of the following described property to wit:

Parcel 1: All that certain lot, piece and parcel of land lying situate and being in San Juan County and known as the NE 1/4 NE 1/4, section 12, T27S, R20E, SLBM, containing 40 acres, more or less.
27S 20E 12 000

Parcel 2: All that certain lot, piece and parcel of land lying situate and being in San Juan County and being described as follows: E ½ of the SE 1/4 SE 1/4, SE 1/4 NE 1/4 SE 1/4, Section 1, T27S, R20E, SLBM. Lots 11 and 12, Section 6; Lot 2, Section 7; T27S R21E, SLBM, Township 37 South, Range 19 East, SLBM, Section 16: San Juan County.

27S 20E 01 7200

27S 21E 06 6000

27 S21E 07 3000

You are hereby commanded to immediately remove the Defendant, Rodney Tangren, from the said premises and to restore the Plaintiffs, the Tangren Family Trust and Sharon Fiscus Trustee, to the possession of the property. You are further commanded to remove from said premises all personal property not the property of the Plaintiff, and to store and dispose the same according to Law and to make due return of this Writ within 10 days.

CRAIG C. HALLS #1317
333 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
Facsimile: (435)678-3330
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

ORDER OF JUDGMENT

Case Number 130700012
Judge Lyle R. Anderson

The Default of the Defendant in this matter having been entered by the Court upon Defendants default, the Court hereby finds the Defendant was in Default under the terms of the Lease dated February 22, 1994 and that the Plaintiffs gave appropriate notice to the Defendant to cure said default which the Defendants have not done and so thereby they are entitled to an Writ of Restitution restoring them to the possession of the properties. Additionally this matter is set for a hearing to determine damages. Said hearing to be held on the ____ day of _____, 2013.

Addendum “J” – Ruling

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

TANGREN FAMILY TRUST, SHARON
FISCUS Trustee,
Plaintiff,

vs.

RODNEY TANGREN,
Defendant,

RULING ON MOTION TO SET
ASIDE DEFAULT

Case No. 130700012

This court has previously informed the parties that it does not credit the testimony of defendant Rodney Tangren that 1) he was not actually served with the summons and complaint, and 2) he was so confused by multiple proceedings before this court that he did not understand the need to answer the complaint. From the evidence presented, it is clear to this court that defendant was properly served with the summons and complaint and that the reason he did not answer the complaint is that he did not read the summons.

Even for parties who elect to represent themselves, some effort must be required by the court. Defendant exerted virtually no effort to understand what the court required of him. Instead, he attempted to bluff his way through the proceedings, having made a deliberate decision not to seek advice of counsel because he was sure of the rightness of his position. The court also believes he

intended to save on his own expenses by representing himself while at the same time increasing the costs of his represented opponent by resisting strenuously her every effort. Unfortunately, defendant's strenuous efforts failed to include actually reading the summons and complaint. The court does not treat all parties equally if it allows a self represented party to declare a "kings X" after his solo efforts have ended in disaster.

The only ground for setting aside the default which the court considers seriously is the truly odd choice of plaintiff's counsel to serve defendant with a 10 day summons. Counsel still has not explained his decision to issue a summons allowing only ten days for the filing of an answer. Rule 3(a)(2), U.R.C.P., does provide for the issuance of a ten day summons. However, "ten days" refers to the time after service in which plaintiff can file the complaint, not the time for defendant to answer.

Rule 12(a), U.R.C.P., requires that an answer be filed within either 20 or 30 days after service of the summons and complaint depending on whether the service is accomplished inside or outside Utah. Because service was accomplished in Utah, 20 days would be required here in the absence of a contrary provision. The court invited counsel for plaintiff to explain in his memorandum what statutory provision justified allowing only ten days. Counsel has

provided none. The court is accordingly compelled to determine that the summons served on defendant incorrectly stated that defendant had only ten days to answer the complaint.

The key question presented here is whether such a glaring defect in the language of the summons justifies a determination that service itself was ineffective. The facts are clear. Defendant was served on April 30, 2013. The default certificate was signed on July 10, 2013. Notwithstanding the language of the summons, defendant was not required to answer in ten days. Rather, he had a full 80 days in which he could have filed an answer before the default was entered.

The parties have cited no case where a summons erroneously allowed ten days instead of 20 days. However, there are several cases involving a summons purporting to allow only 20 days when the law actually allowed 30 days. In Martin v. Nelson, 533 P.2d 897 (Utah 1975), the Utah Supreme Court held that service of a 20 day summons when a 30 day summons was required rendered service fatally defective, and the default judgment was vacated. It is worth noting that, in Martin, the serving officer made a false statement in his return of service. In Meyers v. Interwest Corp., 632 P.2d 879 (Utah 1981), however, the Utah Supreme Court approved amendment of the summons from 20 days to 30 days rather than dismissal. In

Kenny v. Rich, 186 P.3d 989, 2008 UT App. 209, the Utah Court of Appeals extended the rationale of Meyers to validate a 20 day summons when a 30 days summons should have been served, given that the trial court had allowed the full 30 days.

There is no question that, in this case, defendant was not affected or prejudiced by the summons using ten days when 20 days were required. The reason defendant did not answer the complaint is that he was so confident of his unadvised opinions that he failed to even consider that an answer would be required. A cursory reading of the summons with a minimum of attention would have sufficed, but this defendant declined to do.

This court interprets Meyers and Kenny to be as applicable to a case where a summons erroneously reads "ten" where it should read "20" as it is to a case where a summons reads "20" instead of "30". Accordingly, given that the defect did not deceive or confuse or prejudice defendant, and that defendant ended up with 80 days in which to answer, the court concludes that the defect in the summons does not warrant setting aside the default.

In considering the equities of defendant's motion the court has taken into account that defendant has a 99 year lease at \$150 per month for a parcel of truly unique property in Utah's canyon country. The court also recalls from previous litigation that

defendant has made substantial improvements to the property. The court accepts that this property may be worth as much as defendant claims, namely millions of dollars.

On the other hand, defendant has had possession of the property for almost 20 years and had substantial opportunity to garner the fruits of that possession. Earlier litigation about this property could not have left defendant in doubt about his status as a tenant rather than an owner. As far as this court knows, no party has ever raised a question about the sufficiency of the consideration paid by defendant for possession of the property, but in evaluating the equities of this case, the court cannot help but notice that a rental of \$150 per month would capitalize to a value of about \$15-30 thousand. In other words, most tenants would expect to pay \$150 per month on an annual lease for a property worth \$15 to 30 thousand. Yet, defendant managed to secure a 99 year lease for a fixed rent of \$150 per month on unique property with value supposedly in the millions of dollars. The best that could be said about this situation is that defendant, with such favorable lease terms, should have been exceedingly careful not to breach any provision of the lease.

Finally, the court notes from the earlier proceeding involving this property that defendant is a beneficiary of the trust of which

plaintiff is trustee. Therefore, termination of the lease does not deprive defendant of every benefit of the property. It does mean that he will have to share those benefits with the other beneficiaries of the trust.

Defendant's motion is denied. Counsel for plaintiff should submit a formal order pursuant to Rule 7, U.R.C.P.

DATED this 13th day of August, 2014.



3le R. Anderson
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 130700012 by the method and on the date specified.

EMAIL: CRAIG C HALLS

EMAIL: JOANE P WHITE

Date: 08/13/2014

/s/ CONNIE ADAMS

Deputy Court Clerk

Addendum “K” – Final Order

The Order of Court is stated below:

Dated: September 15, 2014
08:33:17 PM

/s/ Lyle R. Anderson
District Court Judge



CRAIG C. HALLS #1317
403 South Main Street
Blanding, Utah 84511
Telephone: (435)678-3333
craigchalls@yahoo.com
Attorney for Plaintiff

**DISTRICT COURT OF THE STATE OF UTAH
SEVENTH JUDICIAL DISTRICT
SAN JUAN COUNTY**

TANGREN FAMILY TRUST
SHARON FISCUS Trustee of the Tangren
Plaintiff(s)

vs.

RODNEY TANGREN
Defendant(s)

**ORDER DENYING MOTION TO SET
ASIDE JUDGMENT**

Case Number 130700012
Judge: Lyle R. Anderson

The matter came on for hearing on Defendant's Motion to Set Aside Order of Judgment and Writ of Restitution on the 7th day of February, 2014 and was reheard on the 24th day of February, 2014. The Court now being fully advised in the premises does hereby make the following Findings of Fact:

1. The Court does not credit the testimony of Rodney Tangren that he was not actually served with a Summons and Complaint and that he was confused by multiple proceedings before this Court and did not understand the need to answer the Complaint.

2. The Court finds that with the evidence presented, that Defendant was properly served with a Summons and Complaint and that the reason he did not answer the Complaint was that he did not read the Summons.

3. The Court finds that Mr. Tangren exerted virtually no effort to understand what was required of him with regard to the Summons.

4. The Court finds that instead of acting upon the Summons he attempted to bluff his way through the proceedings.

5. The Court finds that Mr. Tangren made a deliberate decision not to seek advice of counsel because he was sure of the rightness of his position.

6. The Court finds that Mr. Tangren intended to save on his own expenses by representing himself at the same time intending to increase the costs of his opponent by resisting strenuously her every effort.

7. The Court finds that the only grounds for setting aside the default in this case that the Court considered seriously is the odd choice of Plaintiff's counsel to serve Defendant with a ten (10) day Summons.

8. The Court finds that the Plaintiff was invited to indicate to the Court any statutory authority for filing a ten (10) day Summons. Plaintiff has provided none.

9. The Court finds that the Summons incorrectly stated that the Defendant had only ten (10) days to answer the Complaint.

10. The Court finds that the issue then before the Court is the determination of whether that service is in itself ineffective.

11. The Court finds that the Defendant was served on April 30, 2013, and the Default Certificate was signed on July 10, 2013.

12. The Court finds that notwithstanding the language the Defendant was not required to answer in that ten (10) day period, but rather he had a full eighty (80) days in which he could have filed an answer before the default was entered.

13. The Court finds that there is case authority in Utah to allow a party to approve a summons where a shorter period of time was stated in the summons, but a greater period was allowed.

14. The Court finds that the Defendant in this case was not effected or prejudiced by the Summons using ten (10) days when twenty (20) days were required.

15. The Court finds that the defect in the Summons where it read ten (10) days when it should have read twenty (20) days did not deceive, confuse or prejudice the Defendant and that the Defendant had up to eighty (80) days in which to answer.

THEREFORE The Court concludes that the defect in the Summons does not warrant setting aside the default. The Motion to Set Aside the Default and the Writ of Restitution is hereby denied. The Judgment entered on the 2nd day of December, 2013 in the amount of Six Thousand Sixty Three Dollars and Fifty One Cents (\$6,063.51) is in full force. A Writ of Restitution is valid and effectual for the possession of the property by the Plaintiffs.

_____End of Document_____

Addendum “L” *Martin v. Nelson* (Unpublished
Case)



Leona M. Nelson MARTIN, Plaintiff and Respondent, v. George L. NELSON, Jr.,
Defendant and Appellant

No. 13805

Supreme Court of Utah

533 P.2d 897; 1975 Utah LEXIS 669

April 4, 1975

COUNSEL: [*1] Leon A. Halgren, Ryberg, McCoy & Halgren, Salt Lake City, for defendant and appellant.

Gayle Dean Hunt, Mikel M. Boley, Salt Lake City, for plaintiff and respondent.

JUDGES: HENRIOD, Chief Justice, wrote the opinion. ELLETT, CROCKETT, TUCKETT and MAUGHAN, JJ., concur.

OPINION BY: HENRIOD

OPINION

HENRIOD, Chief Justice:

Appeal from a judgment entered on a complaint based on accrued amounts allegedly due in a divorce action. Reversed with costs to defendant.

Mr. N, a California resident, was served with process by a California peace officer, who, under oath in a return of service of summons, wittingly or unwittingly falsified

the facts by stating therein that he endorsed the date and place of address, together with signing his name on the Summons, as is required by *Rule 4(j), Utah Rules of Civil Procedure*. The paper involved shows, without controversy, that such statement was untrue.

Service of process here was defective, not only because of the false return but because it required answer in 20 days instead of 30 days. ¹ Such service is jurisdictional. ² Defendant, as was his right, appeared specially and raised the point.

1 Title 78-27-25 et seq., Utah Code Annotated 1953.

2 *Rule 4(j), Utah Rules of Civil Procedure*.

[*2] The case is remanded with instruction to vacate the judgment and let the parties take it from there.

ELLETT, CROCKETT, TUCKETT and MAUGHAN, JJ., concur.