

1990

Lynda C. Baldwin v. Willard D. Wood, Tonya
Glazier Wood, Max D. Burton Sr., Emily A. Burton,
Max D. Burton Jr., N.D. "Pete" Hayward, and Keith
L. Buckner : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paul H. Richins; Pro Se.

David H. Schwobe; Perkins, Schwobe, and McLachlan; Attorney for Appellants.

Recommended Citation

Reply Brief, *Baldwin v. Wood*, No. 900339.00 (Utah Supreme Court, 1990).
https://digitalcommons.law.byu.edu/byu_sc1/3128

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

PERKINS, SCHWOBE & McLACHLAN
David H. Schwobe (#2893)
Attorney for Defendants/Appellants Burton
343 South 400 East
Salt Lake City, Utah 84111
Telephone (801) 521-0177

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LYNDA C. BALDWIN, :

Plaintiff/Appellee, :

vs. :

Case No. 900339

WILLARD D. WOOD; TONYA GLAZIER :

WOOD; MAX D. BURTON SR.; EMILY :

Priority No. 16

A. BURTON; MAX D. BURTON, JR.; :

N.D. "PETE" HAYWARD, Sheriff :

of Salt Lake County, Utah; and :

KEITH L. BUCKNER, Deputy Sher- :

iff of Salt Lake County, Utah :

Defendants/Appellants. :

* * * * *

REPLY BRIEF OF APPELLANTS

Appeal from the Judgment of the Third Judicial District
Court of Salt Lake County, the Honorable Leonard H. Russon

APR 3 1992

Paul H. Richins, Pro Se
Substitute Appellee
68 South Main, 8th Floor
Salt Lake City, Utah 84101
Telephone: (801) 531-9510

David H. Schwobe
PERKINS, SCHWOBE & McLACHLAN
Attorney for Appellants Burton
343 South 400 East
Salt Lake City, Utah 84101
Telephone: (801) 521-0177

PERKINS, SCHWOBE & McLACHLAN
David H. Schwobe (#2893)
Attorney for Defendants/Appellants Burton
343 South 400 East
Salt Lake City, Utah 84111
Telephone (801) 521-0177

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LYNDA C. BALDWIN,

:

Plaintiff/Appellee,

:

vs.

:

Case No. 900339

WILLARD D. WOOD; TONYA GLAZIER
WOOD; MAX D. BURTON SR.; EMILY
A. BURTON; MAX D. BURTON, JR.;
N.D. "PETE" HAYWARD, Sheriff
of Salt Lake County, Utah; and
KEITH L. BUCKNER, Deputy Sher-
iff of Salt Lake County, Utah

:

Priority No. 16

:

:

:

:

:

Defendants/Appellants.

:

* * * * *

REPLY BRIEF OF APPELLANTS

Appeal from the Judgment of the Third Judicial District
Court of Salt Lake County, the Honorable Leonard H. Russon

Paul H. Richins, Pro Se
Substitute Appellee
68 South Main, 8th Floor
Salt Lake City, Utah 84101
Telephone: (801) 531-9510

David H. Schwobe
PERKINS, SCHWOBE & McLACHLAN
Attorney for Appellants Burton
343 South 400 East
Salt Lake City, Utah 84101
Telephone: (801) 521-0177

TABLE OF CONTENTS

	<u>Page</u>
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF FACTS	1
ARGUMENT	
POINT I	2
POINT II	6
POINT III	8
POINT IV	11
POINT V	14
POINT VI	16
CONCLUSION	17
MAILING CERTIFICATE	18

AUTHORITIES AND CASES CITED

	<u>Page</u>
<u>Butler v. Wilkinson,</u> 740 P.2d 1244 (Utah 1987)	4, 5
<u>Cardon v. Harper,</u> 151 P.2d 99, 102 (Utah 1944)	4
<u>Jensen v. Eames,</u> 519 P.2d 236 (Utah 1974)	4
<u>Meyer v. General American Corporations,</u> 569 P.2d 1094, 1098 (Utah 1977)	4
<u>W.P. Noble Mercantile Co. v. Mt. Pleasant Equitable Co-op Inst,</u> 42 P. 869 (Utah 1894)	4

STATUTES

Utah Code Ann. 25-1-8.....	3
Utah Code Ann. 25-1-15 (2).....	3, 13
Utah Code Ann. 78-22-1.....	3, 6, 8
Utah Code Ann. 78-27-56.....	12
11 U.S.C. Section 506 (d).....	15
11 U.S.C. Section 524.....	15

PERKINS, SCHWOBE & McLACHLAN
David H. Schwobe (#2893)
Attorney for Defendants/Appellants Burton
343 South 400 East
Salt Lake City, Utah 84111
Telephone (801) 521-0177

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

LYNDA C. BALDWIN,	:	
Plaintiff/Appellee,	:	
vs.	:	REPLY BRIEF OF APPELLANTS
WILLARD D. WOOD; TONYA GLAZIER	:	
WOOD; MAX D. BURTON SR.; EMILY	:	
A. BURTON; MAX D. BURTON, JR.;	:	
N.D. "PETE" HAYWARD, Sheriff	:	Case No. 900339
of Salt Lake County, Utah; and	:	
KEITH L. BUCKNER, Deputy Sher-	:	Priority No. 16
iff of Salt Lake County, Utah	:	
Defendants/Appellants.	:	

* * * * *

ISSUES PRESENTED FOR REVIEW

Within his Brief, dated February 11, 1992 the Substitute Appellee, Paul H. Richins ("Richins"), has indicated no objection to the "Statement of the Issues Presented for Review," which appears upon pages 1-3 of Appellants' ("Burtons") principal brief, dated November 26, 1991.

STATEMENT OF FACTS

Although Richins' Brief contains no objection to the "Statement of Facts," which appears on pages 5-16 of Burton's principal brief, Richins' Brief contains a separate "Statement of

the Case" and "Statement of Material Facts," which include numerous factual and legal assertions which Burtons dispute. Rather than burdening the Court with a point-by-point refutation of such assertions, many of which are clearly immaterial or conclusory in nature, Burtons hereby object to Richins' "Statement of the Case" and "Statement of Material Facts" in their entirety as not being authorized under URAP 24(b). Burtons reserve their objections to each specific factual allegation within Richins' Brief, and respectfully refer the Court to Burtons' principal Brief for the uncontested facts of this case.

ARGUMENT

POINT I

Burtons argue within Point I of their principal Brief that notwithstanding Willard Wood's purported conveyance of his interest within the Laura Kay property to his wife, Tonya Wood, by Special Warranty Deed, dated May 1, 1980, Willard Wood had an interest in the property at the time that Burtons' judgment lien attached, during June of 1981. Burtons maintain that, because the conveyance from Mr. Wood to Mrs. Wood was admittedly fraudulent,¹ said conveyance was void in toto, and Burtons were justified in disregarding such conveyance and in executing upon

¹Mr. Wood expressly stated in his Deposition that the purpose of his Deed to Mrs. Wood was to shield the property from Mr. Wood's creditors. Wood Depo., pages 18-22.

the interest of Mr. Wood, through his successors-in-interest, the Baldwins. Burtons further submit that UCA Section 25-1-15(2) of the Utah Fraudulent Conveyance Act expressly authorized Burtons to disregard the fraudulent conveyance and execute upon the property.

Richins' primary response on this point is to repeat over and over that Mr. Wood had no interest in the property at the time that Burton's judgment was docketed, and that Burtons' lien therefore did not attach to the property. Burtons agree with Richins' statement that "If the property was not owned by him [Mr. Wood] at the time, then no lien attached." Richins Brief, page 19. However, the issue in this case is whether Mr. Wood had an interest in the property at the time that Burtons' judgment was docketed, or subsequent thereto.²

²Subsequent to Mr. Wood's May 1, 1980 Deed to Mrs. Wood, Mr. Wood and Mrs. Wood executed the September 30, 1981 Warranty Deed on the Property to Lynda and Gregory Baldwin. In addition, prior to his conveyance to the Baldwins, Mr. Wood executed a Trust Deed to Valley Bank and Trust Company as security for a Twenty Thousand Dollars (\$20,000.00) loan. (Wood Depo., page 17 and Exhibit "5.") Therefore, even if the initial conveyance from Mr. Wood to Mrs. Wood was valid, it appears that the property was subsequently reconveyed to Mr. Wood by the time that Baldwins purchased the property. This conclusion is consistent with Mr. Wood's testimony that he believed that he had an interest in the property at the time he executed the Deed to Baldwins. (R. 071, 235.) Since a judgment lien attaches to after-acquired property of the debtor under UCA Section 78-22-1, Burtons' lien attached at the time of any such reconveyance.

Richins also argues that the fraudulent conveyance from Mr. Wood to Mrs. Wood was not void, but merely voidable, so that Burtons could not directly execute upon the property without first bringing an action to set aside the conveyance. Richins' Brief, pages 31-34. In so arguing, Richins ignores the express language of UCA Section 25-1-8, and of the four Utah cases which were discussed on pages 19-20 of Burtons' principal Brief.³ Instead, Richins relies upon several cases from other jurisdictions, which are simply not controlling upon Utah law.

Richins also attempts to draw support from Butler v. Wilkinson, 740 P.2d 1244 (Utah 1987). However, contrary to the assertion on page 39 of Richins' Brief, there is nothing within Butler which implies that a fraudulent conveyance is merely voidable. To the contrary, page 1262 of Butler repeatedly states that such conveyances are "void." The holding in Butler is that a creditor cannot disregard a fraudulent conveyance and execute upon fraudulently conveyed property which is in the hands of a third-party bona fide purchaser. Butler does not prohibit a creditor from disregarding a fraudulent conveyance and executing upon property in the hands of a third party who is not

³Jensen v. Eames, 519 P.2d 236 (Utah 1974); W.P. Noble Mercantile Co. v. Mt. Pleasant Equitable Co-op Inst., 42 P. 869 (Utah 1894); Meyer v. General American Corporations, 569 P.2d 1094, 1098 (Utah 1977); Cardon v. Harper, 151 P.2d 99, 102 (Utah 1944).

a bona fide purchaser. Although Butler may be relevant to Baldwin's claim that she is a bona fide purchaser (See Point III, *infra*), Butler does not require that a creditor bring an action to set aside a fraudulent conveyance whenever the property has been conveyed to a third party.

Burtons raised an important point within Point II of their principal Brief, which should have more properly been raised under Point I. That point is that the entire issue of fraudulent conveyance is immaterial to this action because, for whatever reason, Burtons' judgment lien appears in the public record as having attached to the property prior to Baldwin's purchase of the property. At the time of Burtons' execution, Burtons had no knowledge of, or way of knowing about, any prior fraudulent conveyance, nor did it appear that any fraudulent conveyance could have any effect upon Burtons' lien. At the time of Burtons' execution, the record did indicate the May 1, 1980 Deed from Mr. Wood to Mrs. Wood, but the record also reflected Mr. Wood's May 26, 1980 Trust Deed to Valley Bank and Mr. Wood's September 30, 1981 Deed to Baldwins, prior to which Burtons' lien had attached. Thus, it appears that the entire fraudulent conveyance issue is peripheral in this case, and that the case merely involves a straight-forward execution by Burtons and a subsequent attempt by Baldwins to set aside the execution based upon an error in the public records. One of the elements of

Baldwins' action to set aside Burtons' execution was to establish the validity of the May, 1980 Deed from Mr. Wood to Mrs. Wood. In defense to the merits of Baldwins' claim, Burtons properly asserted the invalidity of the Deed. Such defense did not constitute an affirmative defense inasmuch as it contested the merits of Baldwins' claim and did not seek to avoid the claim.

POINT II

Burtons argued on pages 22-30 of their principal Brief that the District Court erred in summarily concluding that any action by Burtons to set aside a fraudulent conveyance between the Woods was time-barred.

Burtons' primary point on this issue is that no action to set aside the fraudulent conveyance was necessary, inasmuch as Burtons merely sought to execute upon their judgment, for which the applicable statute of limitations is the eight-year period established by UCA Section 78-22-1. Burtons had no way of knowing that a fraudulent conveyance issue existed until Baldwins filed this action, alleging that Mr. Wood had divested himself of any interest in the property through the May 1, 1980 Deed. At the time of Burtons' execution, the record disclosed that Burtons' lien had attached to the Property, and that Mr. Wood had subsequently conveyed his interest to the Baldwins. Based upon that status, Burtons properly proceeded to execute upon their lien.

Even if Burtons were required to pursue their claim against the property within the time prescribed for attacking a fraudulent conveyance, an issue of fact exists as to when Burtons should have discovered the fraudulent conveyance.

Richins argues that Burtons should have discovered the fraud "(i) in May of 1980, when the Willard Wood Deed was recorded, (ii) in June 1991, when the judgment was entered in the Burton lawsuit; or (iii) in September 1981, when the Kofoed Trust Deed and Woods' Deed were recorded and Baldwins took open and notorious possession of the property." Richins Brief, page 28.

Regarding May of 1980, Burtons had no claim against Mr. Wood at that time, and no interest in the property.

Regarding June and September of 1981, Richins' Brief at page 29 describes the information which was available to Burtons on those dates:

"Reasonable diligence" in collecting a money judgment would require that at the time of or some time after acquiring the Judgment, Burtons would research the public record for any real property owned or recently transferred by Willard Wood, particularly his residence. Had they done so, Burtons would have discovered not one, but three deeds: (i) the Willard Wood Deed, recorded in May 1980, (ii) the Kofoed Trust Deed, recorded in September 1981, and (iii) the Woods' Deed, recorded in September 1981. Armed with such information, Burtons could have easily deposed Willard Wood to discover why he executed the two deeds in 1981 after he had conveyed his estate in 1980. If Burtons then believed the 1980 deed was fraudulent in light of the 1990 [sic] deeds, Burtons could have challenged it then, in 1981, or within three years thereafter. Therefore, the statute of limitations could begin to run no later than September 1981, when the Kofoed Trust Deed and Wood's Deed were recorded, and the Willard Wood Deed was clearly evident.

Burtons submit that the record as of June and September 1980 could not have placed them or any other reasonable creditor on notice of a fraudulent conveyance. It is true that the May 1980 Deed from Mr. Wood to Mrs. Wood would appear a little odd in conjunction with the subsequent conveyance from Mr. Wood to Baldwins, but Mr. Wood's execution of the Baldwin Deed, together with his use of the property as security to Valley Bank, and the record lien of the Burtons, would convince any reasonable creditor that its lien had properly attached, and could be executed upon within the time established by UCA Section 78-22-1. Burtons deny Richins' assertion that Burtons could have "easily deposed Willard Wood," or that the status of the property at that time was such that Burtons should have deemed it necessary to commence a lawsuit.

Regarding the Deed to Baldwins and Baldwins' "open and notorious possession" of the property, such events had no necessary or even likely effect upon Burtons' lien. Baldwins merely took their interest in the property subject to Burtons' lien.

POINT III

Within Point III of Burtons' principal Brief, pages 30-36, Burtons argued that the District Court erred in holding that Baldwins were bona fide purchasers ("BFP") of the property. The reasons that such holding was error are that: (1) The Burton judgment was of record, and imparted constructive notice of its

existence at the time Baldwins purchased the property; (2) substantial issues of fact exist with respect to Baldwins' BFP status; and (3) Baldwins lost their BFP status through the foreclosure of the Kofoed Trust Deed and Baldwins' subsequent repurchase of the property.

There are actually two potential BFP issues in this case. If the Court accepts Burtons' argument that this action involves a straight-forward execution by Burtons that did not require the setting aside of a fraudulent conveyance, then the only BFP claim available to Baldwins is that they took the property without notice of Burton's lien. This claim is untenable because Burtons' lien was of record and at least constructively known to Baldwins at the time of their purchase.

If the Court should determine that Burtons' execution required an action to set aside a fraudulent conveyance, the BFP question is whether Baldwins obtained the property without knowledge of the fraudulent transfer from Mr Wood to Mrs. Wood. Burtons submit that an issue of fact exists with respect to this point, considering that: (1) the Deed from Mr. Wood to Mrs. Wood was of record; (2) Mr. Wood signed both the Baldwins' Warranty Deed and the Kofoed's Trust Deed, notwithstanding he had no apparent interest in the property; (3) Mr. Wood had executed a Trust Deed upon the property to Valley Bank, as security for a loan which was paid off in conjunction with the sale to Baldwins; (4) Baldwins knew that Mr. Wood was experiencing financial

difficulties at the time of the sale (Baldwin Depo., page 5); (5) Mr. Wood testified that he executed the Warranty Deed to Baldwins because he regarded himself as having an interest in the property, notwithstanding his prior conveyance to Mrs. Wood (R. 071, R. 235); (6) the recital in the August 23, 1981 Earnest Money Agreement to the transfer of an unidentified lien and the discrepancies in the testimonies of Mr. Wood and Mr. Baldwin regarding such lien (Wood Depo., page 17; Baldwin Depo., page 9); (7) the fact that Baldwins' title agent, Western States Title Co., had actual knowledge of the Burtons' judgment; and (8) Mr. Wood executed the August 23, 1991 Earnest Money Agreement as a "Seller."

Burtons submit that these facts are sufficient to avoid summary judgment upon the BFP issue. Of course, neither Baldwins nor Woods expressly admit any fraudulent conduct, as is usually the case in actions alleging fraud. However, fraud must often be established through circumstantial evidence. In the present case, there is a substantial inference from the circumstances that Baldwins knew of the questionable validity of Mrs. Wood's purported exclusive ownership of the property.

Even if Baldwins were BFPs under the Warranty Deed from Woods, Baldwins subsequently lost such BFP status. The Baldwins' interest under the Wood Deed was foreclosed upon by Kofoed's successor-in-interest during May of 1987 (R. 270). A Trustee's Deed was subsequently issued in favor of the Kofoed's

successor-in-interest (R. 269-271). Said Trustee's Deed was subsequently assigned to Mr. Baldwin's employer, and was then assigned to Mrs. Baldwin in October of 1987 (R. 280, 281). The Baldwins provided no consideration for such assignment (Baldwin Depo., pages 28-30).

The interest which Baldwins received from Woods, allegedly as BFPs in September of 1981, was extinguished by the foreclosure of the Kofoed Trust Deed in June of 1987. When Lynda Baldwin regained the property in October of 1987, she clearly had knowledge of the alleged fraudulent transfer between the Woods, and cannot claim to have received such interest as a BFP.⁴

Richins' primary argument on the BFP issue is that Baldwins could not have had notice of Burtons' lien because Burtons had no valid lien. This is merely a boot-strapping of Richins' argument about Mr. Wood not having had an interest in the property. Richins noticeably ignores all of the factual circumstances from which fraud may be inferred in this case.

POINT IV

Burtons argued in Point IV of their principal Brief, pages 37-39, that assuming arguendo the District Court properly vacated Burtons' Sheriff Deed, it nevertheless erred in awarding Baldwin

⁴There is no evidence in the record as to whether Kofoeds received their interest in the property as BFPs under the September 30, 1981 Trust Deed, and the District Court made no finding on that issue. In any event, Kofoed's potential BFP status should be immaterial in relation to a subsequent purchaser who has actual knowledge of the alleged fraud.

her attorney's fees. The District Court did not state the legal basis for such award, but described the award as "damages."

Burtons' principal Brief argued that the possible theories under which the District Court may have awarded attorney's fees include: (a) wrongful execution; (b) slander of title; or (c) bad faith under UCA Section 78-27-56. Richins' Brief, at pages 43-52, accepts these theories as the potential bases for the District Court's award of Baldwin's attorney's fees. Richins also adds Utah Rules of Civil Procedure 11 as a potential basis.

Whatever the legal basis for the award, the sine qua non for an award of attorney's fees in this case is bad faith on the part of the Burtons. However, there is no evidence of bad faith by the Burtons in this case. Burtons merely executed upon their judgment lien, which was of record. In fact, if Burtons had not conducted the execution, their lien would have been foreclosed under the Kofoed Trust Deed.

On pages 45-46 of his Brief, Richins presents nineteen (19) factors which he construes as evidence of Burtons' bad faith. However, all of these factors, except one, merely constitute legal conclusions based upon Richins' theory of the case. The only fact cited by Richins, which was also mentioned by the District Court, was Burtons' alleged improper preparation of the execution documents.

Burtons' August 6, 1986 Writ of Execution was against the property of "Willard D. Wood." (Richins' Brief, Exhibit "D.")

All other execution documents were directed against the interest of the Baldwins as "successors-in-interest of Willard D. Wood."

As an initial matter, if Baldwins were not BFPs, then Mr. Wood's Deed to Baldwins, like his previous Deed to Mrs. Wood, was void and Burtons were entitled to execute upon Mr. Wood's interest in the property. The subsequent Execution and Praecipe merely clarified the status of Mr. Wood's interest in the property, i.e., having been nominally conveyed to Baldwins. The technical discrepancy between the Writ of Execution and the other documents was immaterial since Baldwins had no valid interest in the property.

More importantly, whether or not Baldwins were fraudulent transferees in this case, Burtons conduct was expressly authorized by Utah Rules of Civil Procedure 69(j), which states:

(j) Where property is claimed by third person.
If an officer shall proceed to levy any execution on any goods or chattels claimed by any person other than the defendant, or should he be requested by the judgment creditor so to do, such officer may require the judgment creditor to give an undertaking, with good and sufficient sureties, to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking is given, the officer may refuse to proceed against such property.

This provision apparently authorizes Burtons' actions in this case, as did U.C.A. Section 25-1-15(2). In any event, it cannot reasonably be said that Burtons acted in bad faith.

POINT V

Burttons argued within Point V of their principal Brief, pages 39-43, that even if the District Court properly awarded Baldwins attorney's fees, it erred in including within such award over Four Thousand Dollars (\$4,000.00) in "paralegal costs" on the grounds that (a) Utah law does not authorize recovery of paralegal expenses, and (b) even if such expenses are sometimes recoverable, they should not be allowed in the present case, where there is insufficient evidence of the attorney's control over the expenses claimed by the paralegal.

Mr. Richins' billing contains huge blocks of time designated merely as "research." Further, Mr. Richins has apparently billed for several items which have absolutely nothing to do with the present action. This case clearly illustrates the need for close attorney supervision over the conduct of paralegals, particularly with regard to billing practices.

Richins argues that there is no evidence that he acted outside the supervision of Baldwin's attorney. Richins' Brief at 57. However, such evidence appears within Richins' billing statement itself and particularly within its substantial deviation from the detailed manner in which Baldwins' attorney accounted for his time. Richins continues to act outside the scope of attorney supervision in the present action. While Richins' technical legal standing to defend this appeal results from his ownership of the money judgment against Appellants, his

defense of the appeal covers numerous legal issues directly relating to the Baldwins' real property rights. The determination of those issues could prejudice the Baldwins far beyond the loss of a Seven Thousand Eight Hundred Dollars (\$7,800.00) money judgment.

POINT VI

In Point VI of their principal Brief, Burtons responded to Richins' argument that Willard Wood's bankruptcy in December or 1983 had the effect of voiding Burtons' lien. Burtons cited 11 USC Section 506(d) and 524 and several cases which establish that a judgment creditor has the option of disregarding the bankruptcy and executing directly upon its lien.

Richins' only response to this is to say that Burtons' lien could not pass through the bankruptcy because Burtons never had a valid lien. Richins' Brief, pages 20-21. This is merely boots-strapping the question of the validity of Burtons' lien. Assuming that Burtons' did have a valid lien, Richins makes no argument that such lien could not have been executed upon outside of Mr. Wood's bankruptcy.

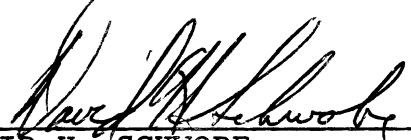
CONCLUSION

Based upon the foregoing facts, authorities and argument, Burtons pray that this Honorable Court reverse the decision of the District Court and Order that Burtons' Sheriff Deed be reinstated. In the alternative, should the Court determine that

genuine issues of material fact preclude the entry of summary judgment for either party at this time, Burtons request that this case be remanded to the District Court for action consistent with this Court's decision.

DATED this 3 day of April, 1992.

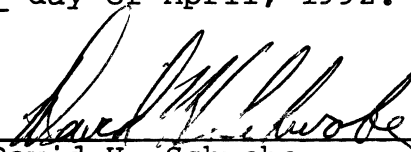
PERKINS, SCHWOBE & McLACHLAN



DAVID H. SCHWOBE
Attorney for Defendants Burton

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing REPLY BRIEF OF APPELLANTS was mailed, postage prepaid, to the office of Paul H. Richins, 68 South Main, 8th Floor, Salt Lake City, Utah 84101 this 3 day of April, 1992.



David H. Schwobe