

2001

Yvonne Lorraine Carrillo Taylor, Patricia Ann Carrillo Davis, and Alexander James Carrillo v. Lydia Inez Carrillo Epley, John Reisser, Admiral Home Loan, Admiral Mortgage Company, Ocwen Federal Bank FSB : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

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IN THE UTAH COURT OF APPEALS

YVONNE LORRAINE CARRILLO)
TAYLOR, PATRICIA ANN)
CARRILLO DAVIS and ALEXANDER)
JAMES CARRILLO,)

Plaintiffs and Appellants,)

v.)

LYDIA INEZ CARRILLO EPLEY;)
JOHN REISSER; ADMIRAL HOME)
LOAN, a California corporation, dba)
ADMIRAL MORTGAGE COMPANY;)
OCWEN FEDERAL BANK, FSB, a)
federal savings bank,)

Defendants and Appellees.)

Appellate Case No. 20010196-CA

Priority No. 15

Oral Argument Requested

**BRIEF OF APPELLEES ADMIRAL HOME LOAN dba ADMIRAL MORTGAGE
COMPANY AND OCWEN FEDERAL BANK, FSB**

Appeal from a Judgment of the Fourth Judicial District Court, Utah County,
Honorable Anthony W. Schofield, District Judge

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Pursuant to Rule 24(b) of the Utah Rules of Appellate Procedure, defendants-appellees Admiral Home Loan dba Admiral Mortgage Company and Ocwen Federal Bank, FSB hereby submit the following Brief in Response to Appellants' Opening Brief.

LIST OF PARTIES

The plaintiffs-appellants are Yvonne Lorraine Carrillo Taylor, Patricia Ann Carrillo Davis and Alexander James Carrillo (collectively "Appellants").

The defendants-appellees are Admiral Home Loan, a California Corporation, dba Admiral Mortgage Company ("Admiral") and Ocwen Federal Bank, FSB ("Ocwen") (collectively "Appellees").

Lydia Inez Carrillo Epley ("Epley") and John Reisser ("Reisser") are listed on the caption herein as defendants-appellees, but have filed no pleadings in this case and otherwise have had no active involvement in this case for approximately five years.

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code Ann. §§ 78-2-2(3)(j) and 78-2-2(4) (2001).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Pursuant to Rule 24(b)(1) of the Utah Rules of Appellate Procedure, Appellees Admiral and Ocwen submit their own statement of the issues on appeal. Appellees do not cite to the record showing how each issue was preserved on appeal, as this is Appellants' duty.

Issues

1. Whether Appellants' appeal should be dismissed for their failure to show how the issues raised in their appeal were preserved in the trial court?
2. Whether the trial court erred in awarding summary judgment in favor of Admiral and Ocwen based, in part, upon the election of remedies doctrine and issuing an order of sale and decree of foreclosure of the subject property on the ground that Appellants waived their right to contest the validity of the deed of trust executed by Epley by obtaining and collecting a judgment against Epley?
3. Whether the trial court erred in affirming the December 15, 1998 Order and ruling Appellants' claims for the return of the property were moot, when Appellants:
 - a. failed to post a supersedeas bond and or obtain a stay of execution of the December 15, 1998 Order;
 - b. allowed the sheriff's sale to take place as scheduled;

- c. made no attempt to redeem the subject property before the expiration of the six-month redemption period;
 - d. purposefully failed and refused to notice up their motions relating to the December 15, 1998 order and foreclosure sale and;
 - e. allowed the subject property to be sold to a bona fide purchaser?
4. Whether the sheriff's sale held pursuant to Rule 69 of the Utah Rules of Civil Procedure extinguished all rights and interests of Appellants in and to the subject property?
5. Whether Appellants' participation and acquiescence in Epley's forging of her deceased father's name to a quit-claim deed prevent Appellants from benefiting from such forgery?

Standard of Review

This is an appeal from a trial court order awarding summary judgment in Admiral and Ocwen's favor and denying summary judgment for Appellants. This is also an appeal from subsequent refusals of the trial court to alter, amend, or clarify the terms of the order awarding summary judgment in Admiral and Ocwen's favor and denying summary judgment for Appellants.

Upon review of a grant of a motion for summary judgment, the appellate court reviews the trial court's rulings for correctness, affording no deference to the trial court. *See In re Estate of West*, 948 P.2d 351, 353 (Utah 1997). The appellate court considers only whether the trial court correctly applied the law and correctly concluded that no

disputed issues of material fact existed. *See Sittner v. Schriever*, 2001 UT App 99, 418 Utah Adv. Rep. 15, ¶7; *Kessler v. Mortenson*, 2000 UT 95, 410 Utah Adv. Rep. 3, ¶5.

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

There are no determinative constitutional and statutory provisions applicable to this appeal.

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

On June 1, 1995, Admiral loaned \$55,000 to Defendant Epley secured by a first deed of trust against a Provo, Utah residence. Admiral then sold the note and deed of trust to Ocwen. Appellants are relatives of Epley and brought this litigation against Epley, her friend Reisser, and Admiral. In their Complaint, Appellants claimed title to the Provo, Utah property as heirs of their father's estate. Appellants further claimed Epley improperly granted the deed of trust to Admiral because she allegedly obtained title to the property by forging her deceased father's name to a prior quit-claim deed. Appellants now challenge the deed of trust's validity and enforceability.

Shortly after obtaining the loan, Epley defaulted for failure to make monthly payments and pay property taxes, and Admiral filed a crossclaim seeking judicial foreclosure of the deed of trust. Ocwen was substituted in as the holder of the note and beneficial interest under the deed of trust and brought a motion for summary judgment for the full amount owed under the note and for foreclosure of the deed of trust. Appellants objected to Ocwen's motion and filed a cross motion for summary judgment.

Before a ruling on the motions, Admiral and Ocwen learned through discovery that Appellants had obtained a default judgment against Epley for the loss of the property and had collected substantial sums of money from Epley on the judgment. Ocwen and Admiral also learned that Appellants had participated in and acquiesced to the very acts of forgery Appellants complained of. Based upon this new information, Admiral and Ocwen amended their Answer, Cross-Claim and Counterclaim and filed a second motion for summary judgment based upon the election of remedies doctrine. Determining the deed of trust executed by Epley to be a valid and enforceable first lien against the property, on December 15, 1998, the trial court granted Admiral and Ocwen's motion and entered a decree of foreclosure and order for sale of the property.

Shortly before the sheriff's sale, Appellants filed three motions with the trial court. Appellants specifically asked the trial court for an order clarifying the December 15, 1998 Order, altering or amending the December 15, 1998 Order, or in the alternative, certifying the December 15, 1998 Order for immediate appeal. Having the ability and wherewithal to notice up these motions, Appellants purposefully failed and refused to timely submit them for hearing before the sheriff's sale held on February 10, 1999.

On August 10, 1999, the date that the six-month statutory redemption period expired, Appellants filed a fourth motion, this time seeking to set aside the foreclosure sale, or in the alternative, to enlarge the redemption period. Appellants then waited until ten months after the sheriff's sale to notice up this motion and the three motions previously filed. Appellants later withdrew their request for hearing. Ocwen requested Appellants' motions be noticed up for ruling by the trial court. Although it was Ocwen's

position the motions had been rendered moot by the sheriff's sale and the expiration of the statutory redemption period, Ocwen requested the hearing to bring finality to the case. Appellants objected to the request for hearing on their own motions and a hearing was never scheduled.

Nearly a year later and twenty months after the sheriff's sale, Ocwen attempted for a second time to notice up Appellants' motions and a hearing was finally held on December 13, 2001. During the hearing the trial court unequivocally denied all of Appellants' motions, ruling that the sheriff's sale was valid and enforceable and that the redemption period had expired long ago. This ruling was incorporated into the trial court's order dated January 16, 2001. On February 15, 2001, Appellants filed their notice of appeal from the January 16, 2001 Order.

Statement of the Facts

1. On June 1, 1995, Admiral loaned \$55,000 to Epley. (R. at 434.)
2. The loan was evidenced by a promissory note dated June 1, 1995 executed by Epley in favor of Admiral (the "Note").

3. The Note was secured by a first deed of trust (the "Trust Deed") against certain real property and the improvements thereon located at approximately 42 South 700 West, Provo, Utah County, Utah, more particularly described as:

Commencing 150.14 feet South of the Northeast corner of Block 59, Plat "A", Provo City Survey of Building Lots; thence West 6 rods; thence South 3 rods, more or less to the South line of Lot 7, Block 59; thence East along said South line 6 rods to Southeast corner of said Lot 7; thence North 3 rods, more or less to beginning.

(the "Property"). (R. at 433-34.)

4. On June 5, 1995, only four days after the loan memorialized by the Note was made, Admiral sold the Note and Trust Deed to Ocwen. (R. at 266, 433.)

5. Ocwen purchased pools of loans from Admiral and other lenders and recorded the assignments after a block or group of loans had been purchased. Consistent with this practice the Note Allonge and Assignment of the Deed of Trust were recorded in the official records of Utah County on November 9, 1995. (R. at 433.)

6. Fidelity National Title Insurance Company insured the Trust Deed on June 8, 1995, as a valid and perfected first lien and encumbrance against the Property. (R. at 433.)

7. According to the official records of Utah County, at the time Epley executed the Note and Trust Deed against the Property, Epley was the record fee simple owner of the Property. (R. at 432, 440.)

8. Specifically, the chain of title to the Property at the time Epley executed the Note and Trust Deed against the Property reflected the following:

a. Recordation on May 31, 1994, of a Quit-Claim Deed dated August 17, 1993, naming Clarence G. Carrillo, as grantor, in favor of Clarence G. Carrillo, Trustee, and the Successor Trustees of the Clarence G. Carrillo Trust dated August 17, 1993, as grantees, (R. at 438.);

b. Recordation on May 11, 1995, of a Quit-Claim Deed dated May 11, 1995, naming Lydia Inez Carrillo Epley, Successor Trustee of The Clarence G. Carrillo Trust dated August 17, 1993, as grantor, in favor of Lydia Inez Carrillo Epley, as grantee, (R. at 437.); and

c. Recordation on June 8, 1995, of a Quit-Claim Deed dated June 2, 1995, naming Lydia Inez Carrillo Epley , as grantor, in favor of Lydia I. Epley, as grantee (R. at 431.)

(collectively the “Quit-Claim Deeds”).

9. At the time Ocwen acquired the Note and Trust Deed from Admiral, Admiral and Ocwen had no notice of any claim or dispute concerning Epley’s ownership of the Property or any issue concerning the validity or enforceability of the Trust Deed. (R. at 432.)

10. On July 27, 1995, approximately two months after the Note and Trust Deed were executed, Appellants Yvonne Loraine Carrillo Taylor, Patricia Ann Carrillo Davis, and Alexander James Carrillo brought this action against their sister Epley, her friend Reisser, and Admiral. Ocwen was later joined as a defendant. (R. at 1-15.)

11. In their Complaint, Appellants claimed title to the Property as heirs of their father’s estate. Appellants further claimed Epley improperly granted the Trust Deed to Admiral through forgery of her deceased father’s name to the Quit-Claim Deeds. (R. at 1-15.)

12. In conjunction with the lawsuit, approximately three months after the Note and Trust Deed were executed, on September 19, 1995, Appellants filed a lis pendens against the Property.

13. On May 28, 1996, default judgment was entered against Reisser and in favor of Appellants in an amount totaling \$60,029.55, which included \$55,000 principal,

\$4,852.05 accrued interest, and \$177.00 costs, amounts directly related to the Note and Trust Deed. (R. at 171-73.)

14. On July 3, 1996, default judgment was entered against Epley in favor of Appellants in an amount totaling \$81,079.83, which included \$55,000 principal, \$4,852.05 accrued interest, \$527.78 accrued costs, and \$5,700 attorneys' fees, amounts directly related to the Note and Trust Deed. This judgment also included \$15,000 for punitive damages. (R. at 187-95.)

15. Both default judgments, which were prepared by Appellants' counsel, treated the Trust Deed as voidable and awarded money damages to Appellants for the loss of the Property in amounts directly related to the amount evidenced by the Note and secured by the Trust Deed. Neither judgment declared the Trust Deed to be null, void or without force or effect. (R. at 171-73 and 187-95.)

16. Shortly after executing the Note, Epley defaulted by failing to make the payments owing thereunder on November 1, 1995, and on the first day of each month thereafter. Epley further defaulted on the Note by failing to pay the 1995 and 1996 taxes assessed against the Property. (R. at 432.)

17. As a result of Epley's defaults, Ocwen accelerated the indebtedness and declared the entire amount of the Note, including principal and accrued interest, to be due and payable. (R. at 431.)

18. Additionally, Ocwen filed a motion for summary judgment seeking judgment against Epley for the entire amount owing under the Note; judgment declaring the Deed of Trust executed by Epley to be a valid and enforceable first lien against the

Property; and judicial foreclosure of the Property barring Appellants and Epley from any right, title, interest, lien, or estate in and to the Property, or any part thereof. (R. at 388-408.)

19. Appellants objected to Ocwen's motion and filed a cross motion for summary judgment seeking to have the Trust Deed declared a forgery and to be null, void, and without force or effect. (R. at 443-47.)

20. Before a ruling on the motions, counsel for Ocwen took the deposition of Epley. During the deposition, Ocwen and Admiral learned that Appellants had collected substantial sums of money from Epley on the default judgment entered against her for loss of the Property. (R. at 697-703, 706-15; Epley Dep. at 43:24-44:19; 120:17-132:15; 147:20-148:16, which is attached hereto as an addendum.) Specifically, Ocwen and Admiral learned that:

a. Appellants had garnished the wages of Epley at the rate of \$208.00 per paycheck and had collected more than \$5,383.39 towards their judgment and possibly \$20,000 with continuing garnishments. In fact, garnishment papers total approximately half of the court pleadings filed in this matter with the trial court. (R. at 702, 708-09, 714; Epley Dep. at 147:20-148:16.)

b. Appellants and Epley had agreed that Appellant Alexander James Carrillo, who was living in the home on the Property, would pay \$125 per month as rental to each of the others, but Alexander James Carrillo had not paid such rental to Epley. As of August 1997, Epley was owed at least

\$3,250 in past rental and possibly more. (R. at 702, 710-11, 714; Epley Dep. at 43:24-44:19.)

c. Appellants had required Epley to convey to them by quit-claim deed her interest in the Property. Based upon an appraisal of the Property on May 25, 1995, and inflationary increases since then, Epley's interest in the Property was worth more than \$25,000. (R. at 702, 706, 714.)

21. During Epley's deposition Ocwen and Admiral further learned that Appellants participated in and acquiesced to Epley's forging of their deceased father's name to a quit-claim deed. (R. at 838, 1445, p. 4.); (Epley Dep. at 120:17-132:15.)

22. Based upon the new information learned in Epley's deposition, on March 30, 1998, Admiral and Ocwen amended their Answer, Cross-Claim and Counterclaim, and on May 8, 1998, filed a second motion for summary judgment based upon the election of remedies doctrine. (R. at 833-42 and 859-85.)

23. On September 29, 1998 and November 16, 1998 respectively, the trial court issued two Memorandum Decisions granting Admiral and Ocwen's Motions for Summary Judgment based upon the election of remedies doctrine and denying all other pending motions. (R. at 959-64 and 1016-19.)

24. These Memorandum Decisions were incorporated into two orders entered by the trial court. First, the Judgment, Decree of Foreclosure and Order of Sale entered by the trial court on December 14, 1998, that determined the Trust Deed executed by Epley was a valid and enforceable first lien against the Property and ordered a decree of foreclosure and sale of the Property (R. at 1033-38.) The trial court entered a second

order entitled Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment on December 15, 1998. (R. at 1039-42.)

25. A sheriff's sale of the Property was scheduled for February 10, 1999.

26. On December 24, 1998, in an apparent effort to stop the sheriff's sale, Appellants filed three motions with the trial court. (R. at 1043-45.) Appellants specifically asked the trial court:

- a. For an order clarifying its December 15, 1998 Order, or in the alternative, for an order determining the percentage interest of the Property affected by the foreclosure;
- b. For an order altering or amending its December 15, 1998 Order; and
- c. For an order certifying its December 15, 1998 Order for immediate appeal.

27. Appellants failed to notice up these motions so the trial court could rule on them before the sheriff's sale on February 10, 1999.

28. As regularly scheduled, the sheriff's sale took place on February 10, 1999, at which Ocwen purchased the Property for a credit bid of \$85,000. The sheriff's sale was also attended by Appellants who made no attempt to submit a bid on the Property.

29. On August 10, 1999, following the expiration of the six-month statutory redemption period, Appellants filed a Motion to Set Aside Foreclosure Sale, or Alternatively, to Enlarge the Redemption Period. (R. at 1136-42.)

30. On November 22, 1999, ten months after the sheriff's sale, Appellants finally filed a Request for Hearing on the above motion and the three motions filed by Appellants approximately a year earlier. (R. at 1223-25.)

31. Shortly thereafter, Appellants withdrew their Request for Hearing. (R. at 1229-31.)

32. On December 20, 1999, Ocwen filed a Request for Hearing asking the trial court to schedule Appellants' motions for hearing. This request was made to bring finality to the case even though Ocwen did not believe there were any pending motions that had not already been ruled on or rendered moot by the sheriff's sale. (R. at 1238-40.)

33. Appellants objected to Ocwen's Request for Hearing on Appellants' own motions. As a result, no hearing was scheduled. (R. at 1241-43.)

34. On October 31, 2000, nearly twenty months after the sheriff's sale, Ocwen tried again to bring finality to the case by filing a second Request for Ruling on all pending motions before the trial court. (R. at 1323-26.)

35. A hearing was held on December 13, 2000 from which the trial court issued a written Ruling denying all of Appellants' pending motions. (R. at 1355-58.) This Ruling was incorporated into the order entered on January 16, 2001 and a Minute Entry entered January 18, 2001. (R. at 1365-67 and 1370-72.)

36. In its Ruling and Order, the trial court specifically denied all of Appellants' motions, ruled that the sheriff's sale held on February 10, 1999 was valid and enforceable and held that the redemption period expired on August 10, 1999, six months after the sheriff's sale. (R. at 1365-67 and 1370-72.)

37. On February 15, 2001, Appellants filed a Notice of Appeal from the January 16, 2001 Order. (R. at 1382-84.)

SUMMARY OF ARGUMENT

This Court should dismiss Appellants' appeal for failure to show how the issues raised in their appeal were preserved in the trial court. In their opening brief, Appellants fail to include citation to the record showing how each issue was preserved or a statement indicating why Appellants seek review of issues not preserved in the trial court.

If this Court concludes Appellants sufficiently preserved the issues raised on appeal, the Court should nevertheless affirm the trial court's award of summary judgment granted in Admiral and Ocwen's favor and affirm the decree of foreclosure and order of sale of the Property.

Specifically, this Court should affirm the trial court's ruling that Appellants elected their remedy by treating the Trust Deed as voidable and obtaining and collecting a judgment against Epley for amounts directly related to the Trust Deed. Furthermore, the trial court correctly ruled that the post-judgment motions filed by Appellants, in which Appellants sought to have the summary judgment award overturned and the sheriff's sale set aside, are moot. Appellants purposefully failed and refused for nearly two years to notice up their motions for ruling by the trial court. As a result, the sheriff's sale took place as scheduled, the redemption period expired, and the Property was sold to a bona fide purchaser. Third, this Court should further affirm the trial court's ruling that the sheriff's sale was a valid and enforceable sale that extinguished all rights and interests of Appellants in and to the Property. Lastly, Appellants have unclean hands because they

participated and acquiesced in the very acts of forgery they complain of, specifically their sister, Defendant Epley's forgery of their deceased father's name to a trust agreement and quit-claim deed, and accordingly Appellants should not profit as a result of such acts.

ARGUMENT

I. APPELLANTS HAVE FAILED TO SHOW HOW THE ISSUES RAISED IN THEIR APPEAL WERE PRESERVED IN THE TRIAL COURT.

Pursuant to Rule 24(a)(5) of the Utah Rules of Appellate Procedure, Appellants are required to include in their opening brief "a statement of the issues presented for review." Utah R. App. P. 24(a)(5). Appellants are further required to include "citation to the record showing that the issue was preserved in the trial court" or a "statement of grounds for seeking review of an issue not preserved in the trial court." *Id.*

In their opening brief, Appellants list four issues presented for review on appeal. However, Appellants fail to include appropriate citation to the record showing how each issue was preserved in the trial court or a statement indicating why Appellants seek review of issues not preserved below. Furthermore, Appellants include no citation to the record throughout their entire opening brief, including no citation to the record for the statement of the facts and proceedings below as is required by Rule 24(a)(7) of the Utah Rules of Appellate Procedure. Utah R. App. P. 24(a)(7) ("All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.").

Accordingly, Admiral and Ocwen ask that Appellants' appeal be dismissed for failure to strictly comply with Rule 24 of the Utah Rules of Appellate Procedure.

II. APPELLANTS ARE BARRED FROM RECOVERING THE PROPERTY BY THE DOCTRINE OF ELECTION OF REMEDIES.

Appellants have elected their remedy in this matter by obtaining a final judgment on the merits against Epley and collecting on that judgment, and thus they are now precluded from recovering the Property. Under Utah law, the doctrine of election of remedies is

“a technical rule of procedure and its purpose is not to prevent recourse to any remedy, but to prevent double redress for a single wrong. Said doctrine presupposes a *choice* between inconsistent remedies, and knowledgeable selection of one thereof, free of fraud or imposition, and a resort to the chosen remedy evincing a purpose to forego all others.”

Palmer v. Hayes, 892 P.2d 1059, 1061-62 (Utah Ct. App. 1995) (quoting *Angelos v. First Interstate Bank*, 671 P.2d 772, 778 (Utah 1983) (quotation omitted))¹.

¹ As demonstrated by *Palmer*, Utah recognizes the doctrine of election of remedies notwithstanding Appellants’ suggestion to the contrary in their Brief. *See also Dugan v. Jones*, 615 P.2d 1239, 1247 (Utah 1980); *Brigham City Sand & Gravel v. Machinery Ctr., Inc.*, 613 P.2d 510, 512 (Utah 1980); *Mecham v. Benson*, 590 P.2d 304, 307-08 (Utah 1979). In addition, while Rule 8(e) of the Utah Rules of Civil Procedure allows a party to pursue inconsistent claims, it does not allow a party to have a double recovery for the same loss and so does not invalidate the doctrine of election of remedies. *See Brigham City Sand & Gravel*, 613 P.2d at 511.

A. The Remedies Appellants Seek are Inconsistent Because the Facts on which Each Remedy Relies are Inconsistent.

Appellants are barred from recovering the Property because that remedy presumes that title to the Property lies in them while their judgment for money damages presumes that Epley or her successors have title. The election of remedies doctrine

applies as a bar only where the two actions are inconsistent, generally based upon incompatible facts; the doctrine does not operate as an estoppel where the two or more remedies are given to redress the same wrong and are consistent. Where the remedies afforded are inconsistent, it is the election of one that bars the other; but where they are consistent, it is the satisfaction that operates as a bar.

Farmers & Merchants Bank v. Universal C.I.T. Credit Corp., 289 P.2d 1045, 1049 (Utah 1955) (citations omitted).

In *Hoskins v. Smith*, the plaintiff obtained a default judgment for \$2,500 against the defendant on the ground that the defendant had perpetrated a fraud upon him. 233 P. 279, 279-80 (Wash. 1925). Later, the plaintiff brought an action seeking to have the defendant's declaration of homestead declared null and void on the ground that the property claimed as the homestead was purchased with funds fraudulently acquired from the plaintiff. *Id.* at 279. The defendant contended that by bringing his action for general damages, the plaintiff had waived his right to impress a trust and had made an election as to his remedy. *Id.* at 280.

Agreeing with the defendant, the court stated that

we have followed the well-established rule that one who has the right to impress a trust may either bring an action for damages or an action to impress a trust; that the bringing of either is an election as to the remedy; and that, if the action be brought for damages and a general judgment obtained, no right exists thereunder to set aside a homestead.

(a) *Id.* (citations omitted). The court found that at the time the plaintiff

brought his suit for damages, he knew that a fraud had been committed upon him, that the property out of which he claimed he was defrauded had been transferred to an innocent purchaser, and therefore he had two remedies open to him — to impress a trust upon the proceeds of the property wherever found, or to bring an action for damages. Having chosen his action in law for damages, he may not now sue for equitable relief.

Id. Thus, the plaintiff was barred from pursuing the property. *Id.*; *see also Hussey v.*

Bryant, 49 A. 56, 56 (Me. 1901) (stating that plaintiff could waive alleged defects in condemnation proceeding and obtain just compensation for her land or could take advantage of irregularities in proceedings, regard land as still her property, and maintain trespass for any injury to her possession thereof, but she could not do both).

Similarly, in *Sannini v. Casscells*, a saleswoman purchased for herself property that was being actively sought by the plaintiffs as her broker's customers. 401 A.2d 927, 928 (Del. 1979). The plaintiffs obtained a judgment against the saleswoman imposing a constructive trust on the property and ordering her to reconvey it to the plaintiffs conditioned upon the plaintiffs tendering to her such portion of the purchase price and settlement costs that she had previously paid. *Id.* The plaintiffs did not remit payment to the saleswoman because the rental market for the property had deteriorated since their cause of action arose, which prevented them from obtaining financing to acquire title to the property. *Id.* The plaintiffs asserted that "because their inability to obtain financing meant that they were not left in *status quo ante*, they should be awarded damages as an alternative remedy." *Id.* at 930.

In rejecting the plaintiffs' claim, the court noted that when their cause of action arose, the plaintiffs

had the choice of proceeding in equity to impress a constructive trust on the property or at law for damages. The equitable remedy proceeds on the theory that title to the property lies in the plaintiffs and that the defendants simply hold the property as constructive trustees for the plaintiffs; the legal remedy for damages proceeds on the assumption that title to the property is in the defendants.

Id. at 931. The court concluded that “[b]ecause the two remedies are irreconcilably inconsistent, the choice of [the plaintiffs] to proceed in equity to impress a constructive trust constituted an election of remedies, and the pursuit of that choice to final judgment now precludes them from seeking damages.” *Id.* Moreover, the deterioration of the rental value of the property did not permit the plaintiffs to “turn this typical equity case into a law suit for damages.” *Id.* The court concluded by stating that “having elected to disaffirm the sale of the property to [the defendants] by pressing the equity remedy to the constructive trust end, [the plaintiffs] may not now seek to affirm the transaction by seeking money damages.” *Id.*

As in *Hoskins* and *Sannini*, Appellants had the choice of either proceeding in equity to have the Quit-Claim Deeds and Trust Deed declared null and void, or at law for money damages. Appellants chose to pursue their legal remedy for money damages, which proceeded on the assumption that the Quit-Claim Deeds had effectively conveyed title to Defendant Epley and that the Trust Deed was a valid lien on the Property. As the trial court recognized, the judgment against Defendant Epley was “directly related to the amount of the loan made by Admiral to Epley — which loan was secured by the property

which is the subject of this action.” (R. at 1040.) The \$81,079.83 judgment entered was expressly for \$55,000 principal (the amount of the Note and Trust Deed to Admiral), \$4,852.05 interest thereon calculated from June 1, 1995 (the date that the Note and Trust Deed were executed), and \$15,000 punitive damages plus attorney’s fees and costs. Because the judgment sought by Appellants compensated them for the loss of the Property in amounts closely tied to the Trust Deed, it is clear that Appellants assumed for purposes of said judgment that title to the Property was in Epley. As such, it is irreconcilably inconsistent for Appellants to now claim that title to the Property is in them. *See Dugan v. Jones*, 615 P.2d 1239, 1243 (Utah 1980) (“The Joneses by electing to seek damages, rather than rescission, have affirmed the underlying mortgage and note.”). They cannot elect to affirm the Quit-Claim Deeds and Trust Deed by seeking money damages for the Property’s loss and then seek to disaffirm the transfer and encumbrance of the Property by attacking the validity of the very same documents.

B. Final Judgment on Appellants’ Claim for Money Damages Bars Them from Seeking the Return of the Property.

On a related issue, since the remedies sought by Appellants are predicated on two inconsistent sets of facts involving title to the Property, satisfaction of the judgment is not what bars Appellants from pursuing an alternative remedy. As the Utah Supreme Court has recognized: “Where the remedies afforded are inconsistent, it is the election of one that bars the other; but where they are consistent, it is the satisfaction that operates as a bar.” *Farmers & Merchants*, 289 P.2d at 1049. At the latest, an election occurs when “a plaintiff has obtained a viable judgment on one of the claims.” *Saucier v. State Tax Assessor*, 745

A.2d 972, 975 (Me. 2000). In *Royal Resources, Inc. v. Gibraltar Financial Corp.*, the Utah Supreme Court tacitly recognized this principle when it stated: “It is noteworthy that, except for the stipulation², had plaintiff chosen to take judgment against Gibraltar, such may well have been viewed as an election of remedies, and if properly raised as a defense, it would have obviated the necessity of trial and this appeal.” 603 P.2d 793, 796 (Utah 1979).

Sloss-Sheffield Steel & Iron Co. v. Wilkes, 165 So. 764 (Ala. 1936), the case cited by Appellants to support their claim that they are not barred from seeking recovery of the Property until they have satisfied their money judgment, is inapposite.³ *Sloss-Sheffield* discusses the methods by which a mortgagee may protect its interest in mortgaged property that has been damaged by a third party. *Id.* at 767. As Appellants point out, the case holds that a mortgagee may maintain an action against the third party for damages, for a personal judgment against the debtor, or for foreclosure. *Id.* All of these remedies, however, are based upon the same, consistent set of facts. There is no dispute as to who has title to or a security interest in the property in *Sloss-Sheffield*. By contrast, in the instant matter Appellants cannot recover money damages without assuming that title to the Property is in Epley, a set of facts that is entirely inconsistent with Appellants’ current action to recover

² The parties in *Royal Resources* had entered into a stipulation whereby the plaintiff was permitted to take judgment against Gibraltar, and in the event of no recovery, to then proceed against two other defendants individually.

³ In addition, *Sloss-Sheffield* has been overruled by *Henderson v. Wade Sand & Gravel Co.*, 388 So. 2d 900 (Ala. 1980).

the Property, which assumes an entirely different set of facts centered on the notion that title is in Appellants.

Likewise, *Brigham City Sand & Gravel v. Machinery Center, Inc.*, 613 P.2d 510 (Utah 1980), does not support Appellants' position. In *Brigham City*, the plaintiffs claimed that their property, worth \$12,000, had been converted and sold by several defendants, the Jensens, to the defendant Machinery Center for \$8,500. *Id.* at 511. The plaintiffs sought both damages against the Jensens for the value of the converted property and return of the property from Machinery Center. *Id.* The plaintiffs settled their damage claim against the Jensens for \$2,500. *Id.* Afterward, Machinery Center moved to dismiss the claim for recovery of the property on the ground that the plaintiffs "had elected their remedy of accepting \$2,500 damages for the conversion of their property and, having thus been paid for it, they were precluded from also seeking its return." *Id.*

Contrary to Appellants' assertion that the plaintiffs' settlement payment of \$2,500 constituted full satisfaction of its claim that resulted in the dismissal of the alternative claims against Machinery Center for recovery of the property, the plaintiffs settled their claims for damages for only \$2,500 (20% of their total claim) and they reserved in that settlement their rights to recover the converted property from Machinery Center. The Utah Supreme Court held that the plaintiffs could not "recover *for* the value of [their] property (as plaintiffs did from the Jensens here) through whom defendant Machinery Center derived its title, and then recover the property from the latter." *Id.* at 512 (emphasis added). In other words, the plaintiffs did not recover the value of the property (\$12,000). They recovered only \$2,500 "*for*" the value of the property. Moreover, the reservation of rights did not prevent the

application of the doctrine of election of remedies. Having elected to accept \$2,500 for the value of the property, the plaintiffs were barred from recovering the property itself from the innocent purchaser of that property.

Thus, even *Brigham City Sand & Gravel* demonstrates that it is not the satisfaction of Appellants' damage claim that bars the alternative claim for recovery of the property. Rather, it is the election of the damage remedy (whether by settlement or by taking a judgment) that bars the alternative claim for recovery of the property. Satisfaction did not occur in *Brigham City Sand & Gravel* and it need not occur here in order for the doctrine of election of remedies to bar Appellants' claim for the recovery of the Property. The fact that a plaintiff is able to collect only a fraction of his judgment is not relevant in determining whether an election of remedies has been made. *See Royal Resources*, 603 P.2d at 796 (recognizing that had plaintiff elected to take judgment against corporation instead of individuals it probably would have been barred by doctrine of election of remedies from pursuing them despite fact that judgment against corporation "was of little or no value").

C. Appellants' Recovery of the Property would Constitute Double Recovery.

Appellants should not be allowed to recover the Property because the judgment and the Property represent compensation for the same loss suffered by Appellants. It is well settled under Utah law that one of the primary purposes of the doctrine of election of remedies is "'to prevent double redress for a single wrong.'" *Palmer v. Hayes*, 892 P.2d 1059, 1062 (Utah Ct. App. 1995) (quoting *Angelos v. First Interstate Bank*, 671 P.2d 772, 778 (Utah 1983)).

In *Brigham City Sand & Gravel*, the Utah Supreme Court explained that “the trial court correctly took the view that the matter of terminology should be disregarded and the transaction looked at for what it actually was: that what the plaintiffs were suing the Jensens for was conversion of their property; and that the settlement agreement stated” that the parties’ claims had been fully adjusted and compromised on the merits. 613 P.2d at 512. Noting that the doctrine of election of remedies is based upon principles of equity and justice, the court held that “[i]t would be plainly contrary to those principles to allow a party to recover for the value of his property (as plaintiffs did from the Jensens here) through whom defendant Machinery Center derived its title, and then recover the property from the latter.” *Id.* Thus, having elected to accept the \$2,500 from the Jensens, the plaintiffs were precluded from pursuing the property in the hands of the defendant Machinery Center. *Id.*

Similarly, Appellants admit that they have obtained a judgment against Epley “based upon her *fraud*.” (Appellants Br. at 5) (emphasis added.) They further admit that “regardless of whether plaintiffs obtain the relief they seek against Admiral and Ocwen regarding the cloud on the title to the Property, *the amount of the judgment plaintiffs have obtained against Lydia Epley will not be abated.*” (Appellants Br. at 6) (emphasis added.) That judgment includes \$55,000 for the amount of the Trust Deed against the Property to Admiral and Ocwen. If the Trust Deed is removed, the Property would no longer be subject to that \$55,000 lien and the \$55,000 included in the judgment, which would not be abated, would represent a recovery of the same \$55,000 twice. That is double recovery and constitutes inconsistent remedies. No statement by Appellants to the contrary can change those facts.

Moreover, Appellants, in collecting on their judgment, recovered approximately \$35,000 from Epley, their judgment debtor, prior to the judgment from which this appeal was taken. This included having obtained a conveyance of Epley's full 25% interest in the Property quit-claimed to Appellants at a hearing on an Order in Supplemental Proceedings under Rule 69(k) and (l) of the Utah Rules of Civil Procedure. That 25% interest is worth at least \$25,000. Appellants have been collecting on the judgment since its entry (garnishment papers constituting approximately one-half of the district court file) and their efforts may well result in full recovery. Thus, a nullification of the Trust Deed, giving Appellants full unencumbered ownership of the Property as well as damages, would clearly represent a double recovery, which necessitates the application of the doctrine of election of remedies.

III. THE ISSUES RAISED BY APPELLANTS ARE MOOT AND BARRED BY THE DOCTRINE OF LACHES.

The sheriff's sale held nearly three years ago and the expiration of the redemption period has rendered any issue with respect to the judgment entered by the trial court moot and barred by the doctrine of laches. The Property has been sold to a bona fide third party and cannot now be regained in order to provide the relief requested by Appellants in this appeal.

In *Franklin Financial v. New Empire Development Co.*, a situation similar to the case at hand, a seller of an apartment complex sought to foreclose on a contract of sale. 659 P.2d 1040, 1042 (Utah 1983). The trial court granted the seller summary judgment and ordered a decree of foreclosure and sale of the property. *Id.* The buyers filed notices of appeal but failed to file a supersedeas bond or obtain a stay of the judgment and, as a

result, the foreclosure sale took place as scheduled. *Id.* at 1043. On appeal, the sellers argued the appeal should be dismissed as moot because the foreclosure sale had already been carried out and the redemption period had expired. *Id.*

In ruling on the matter, the Utah Supreme Court held “[a]n appeal is moot if during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect.” *Id.* The court further held “if appellants were seeking on this appeal to prevent the foreclosure sale, and because of their failure to obtain a stay of execution, the sale were legally carried out during the pendency of the appeal and the time for redemption had run, the appeal would be moot.” *Id.*; *see also Osguthorpe v. Osguthorpe*, 872 P.2d 1057, 1058 (Utah Ct. App. 1994) (“A case is moot when the requested relief cannot affect the rights of the litigants.”); *Black v. Alpha Fin. Corp.*, 656 P.2d 409, 411 (Utah 1982) (same) (citations omitted).

Furthermore, in *Papanikolas Bros. Enters. v. Sugarhouse Shopping Ctr. Assocs.*, the Utah Supreme Court held a claim on appeal may be barred by the doctrine of laches if there is a lack of diligence on the part of the plaintiff which results in injury to the defendant. *See* 535 P.2d 1256, 1260 (Utah 1975). In applying the doctrine of laches to foreclosure sales, parties having an interest in the subject property “must redeem or assert any other available remedies within a reasonable time after the sale i.e., before the defense of laches becomes available to the purchaser.” David A. Thomas & James H. Backman, *Thomas and Backman on Utah Real Property Law* §14.03(c)(2)(iii)(A) (1999). *See also* 55 Am. Jur. 2d *Mortgages* § 911 (1996) (“[T]he right to redeem may be lost by

laches unless asserted within a reasonable time, and before the situation of the parties has changed, and the rights of others have intervened . . .”).

In the case at hand, the trial court granted summary judgment in Admiral and Ocwen’s favor on December 15, 1998, ruling the Trust Deed executed by Epley was a valid and enforceable first lien against the Property and ordering a decree of foreclosure and order of sale of the Property. Under Rule 4(a) of the Utah Rules of Appellate Procedure, Appellants had thirty days to appeal the trial court’s final order of summary judgment, but chose not to. Utah R. App. P. 4(a) (“[T]he notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.”).

Instead, on December 24, 1998, apparently in an effort to stop the sheriff’s sale, Appellants filed three motions with the trial court. Particularly, Appellants asked the trial court (1) to clarify its December 15, 1998 Order, (2) to alter, or amend the order, or (3) to certify the order for immediate appeal. Appellants made no attempt to protect the Property by posting a supersedeas bond or obtaining a stay of enforcement of the order, which is allowed pursuant to Rule 62(b) of the Utah Rules of Civil Procedure and Rule 8(a) of the Utah Rules of Appellate Procedure. *See* Utah R. Civ. P. 62(b) (“[T]he court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60”); Utah R. App. P. 8(a) (“A motion for [a stay of the judgment or for approval of a supersedeas bond] may be made to the appellate court.”).

After filing the motions and having the ability and wherewithal to notice up the motions, Appellants failed and refused to submit the motions to the trial court for ruling. As a result, the trial court could not hear and rule on the motions before the sheriff's sale, which took place as originally scheduled on February 10, 1999. At the sheriff's sale Ocwen purchased the Property and later resold it to a bona fide third party, who is entitled to retain the Property. *See* Utah R. Civ. P. 69(j)(6) ("If no redemption is made within six months after the sale, the purchaser or the purchaser's assignee is entitled to a conveyance.").

During the six-month statutory redemption period Appellants had ample opportunity to redeem the Property, as is allowed by Rule 69(j) of the Utah Rules of Civil Procedure, but elected not to. *See* Utah R. Civ. P. 69(j). Instead, on August 10, 1999, the last day of the redemption period, Appellants filed a fourth motion, this time seeking to set aside the sheriff's sale or alternatively to enlarge the redemption period. Appellants, however, made no attempt to expedite the noticing up of this motion, or the three motions previously filed, so the trial court could properly rule and decide the issues before the expiration of the redemption period.

Finally, ten months after the sheriff's sale and nearly a year after the December 15, 1998 decree of foreclosure and order of sale had been issued, Appellants noticed up their four outstanding motions. Shortly thereafter, Appellants withdrew the request. As a result, Ocwen then requested Appellants motions be submitted to the trial court for ruling. Although it was Ocwen's position that all of the motions had been rendered moot by the sheriff's sale and the expiration of the statutory redemption period, Ocwen

requested the hearing to bring finality to the case. Surprisingly, Appellants then objected to the noticing up of *their own motions* and a hearing was never set.

Nearly a year later and twenty months after the sheriff's sale, Ocwen attempted for a *second* time to notice up Appellants' motions and a hearing was finally held on December 13, 2000. During that hearing the trial court judge commented at length on the mootness of Appellants' motions.⁴ Shortly after the hearing the trial court issued its Ruling, in which the trial court denied all of Appellants' motions holding that such were invalid, ineffective, and moot.⁵

On this appeal, Appellants seek to have the Trust Deed invalidated and the Property returned to them. However, by not posting a supersedeas bond and obtaining a stay of the foreclosure order, by allowing the foreclosure sale to take place as scheduled,

⁴ Specifically, the trial court judge noted as follows:

THE JUDGE: Counsel, . . . I will tell you not to hold your, not to exercise too much hope, Mr. Brown, because it strikes me that if the sale has taken place and the redemption period run, and the property has now been transferred to a third party, at some point there's got to be finality . . . But don't hold your breath. All right?

(R. at 1445, p. 18-19.)

⁵ In its Ruling, the trial court specifically stated as follows:

Plaintiffs' appeal period has expired and its efforts to seek some relief from a foreclosure sale also is moot. The sale was held nearly two years ago and the redemption period expired way over a year ago. Plaintiffs' claims are moot.

(R. at 1357.)

by making no attempt to redeem the Property before expiration of the redemption period, by purposefully refusing and failing to notice up their motions for ruling for nearly two years and by allowing the Property to be sold to a bona fide third party, Appellants have failed to diligently take all steps necessary to preserve the return of the Property as a possible remedy on appeal. Even if the return of the Property were a possible remedy, doing so would work a manifest injustice to the bona fide third party who purchased the Property after the sheriff's sale held nearly three years ago. Accordingly, this Court cannot provide the relief requested by Appellants and must deny their claims as moot and barred by the doctrine of laches.

For convenience of the Court, Appellees submit the following table which sets forth in short form the dates and events that clearly demonstrate the mootness of Appellants' appeal:

Date	Event
December 14, 1998	Judgment, Decree of Foreclosure and Order of Sale entered by the trial court.
December 15, 1998	Order Granting Admiral and Ocwen's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment entered by the trial court.
December 24, 1998	Appellants file three motions seeking to clarify, alter, or amend the December 15, 1998 order.
February 10, 1999	Sheriff's sale.
August 10, 1999	Expiration of the six-month redemption period.
August 10, 1999	Appellants file fourth motion seeking to set aside the foreclosure sale or to enlarge the redemption period.
November 22, 1999	Appellants file Request for Hearing on their four motions.
December 8, 1999	Appellants withdraw their Request for Hearing.
December 20, 1999	Ocwen files Request for Hearing on Appellants' four motions.
December 21, 1999	Appellants object to Ocwen's Request for Hearing.
October 31, 2000	Ocwen files second Request for Hearing on Plaintiffs' four motions.
December 13, 2000	Hearing on Appellants' four motions.
December 13, 2000	Court Ruling denying Appellants' four motions.
January 16, 2001	Order denying Appellants' four motions.
February 15, 2001	Notice of Appeal filed.

IV. THE SHERIFF'S SALE EXTINGUISHED ALL RIGHT, TITLE, AND INTERESTS OF APPELLANTS IN THE PROPERTY.

A. Appellants Had Notice of the Sale.

1. Notice required by Rule 69 of the Utah Rules of Civil Procedure was properly given.

Utah Code Annotated provides that judicial foreclosure sales must follow the notice procedures outlined in Rule 69 of the Utah Rules of Civil Procedure. Utah Code Ann. § 78-37-1 (2001) (stating sheriff's sales to be conducted "according to the provisions of law relating to sales on execution."). *See also* David A. Thomas & James H. Backman, *supra*, § 14.03(c)(6)(ii)(A) (1999) (same).

Pursuant to Rule 69(i) written notice of the time and place of sale and a description of the property to be sold must be posted, for 21 days, on the property to be sold, at the place of sale, and at the trial courthouse where the property is located. *See* UTAH R. CIV. P. 69(i)(1)(C). Written notice must further be published three times for three consecutive weeks in a newspaper of general circulation in the county. *See id.*

Ocwen strictly complied with the notice requirements set forth above by causing the Utah County Sheriff to post written notice of the time and place of sale and a description of the Property (1) on the Property, (2) at the Utah County courthouse, and (3) in a Utah County paper of general circulation.

2. Appellants are not judgment debtors entitled to personal service.

Rule 69(i) further provides written notice must be personally served upon any and all judgment debtors. Appellants in this case are not judgment debtors, and therefore, are not entitled to personal service. As such, personal service was not made upon them.

In their brief, Appellants concede they are not judgment debtors, but nevertheless argue they are in a position similar to judgment debtors and thus are entitled to personal service under Rule 69. (Appellants Br. at 31.) In support of their position, Appellants cite to *Taubert v. Roberts*, a case in which the Utah Supreme Court declared an execution sale void for failure of the county sheriff to levy on the subject property prior to the writ of execution return date. 747 P.2d 1046, 1047 (Utah 1987). *Taubert*, however, is not controlling precedent, as the plaintiff in that case was in fact the judgment debtor whose property was being foreclosed against. In the case at hand, Appellants are not judgment debtors, but merely individuals who claimed an interest in the Property being foreclosed

against pursuant to an order entered by the trial court in a case in which Appellants were named as parties.

The provisions of Rule 69 are clear. If the rule drafters intended for personal service to be made upon certain individuals in addition to judgment debtors, the rule would have provided for such. Accordingly, Appellants have no grounds upon which to claim the sheriff's sale should be set aside because the required notice was given and Appellants are not judgment debtors entitled to personal service.

B. Appellants Attended the Sale.

Appellants are further not entitled to claim the sheriff's sale should be set aside because Appellants had notice of the sale and attended the sale. In *Concepts, Inc. v. First Security Realty Services, Inc.*, the Utah Supreme Court sets forth the reasons for the strict notice requirements in foreclosure sales. *See* 743 P.2d 1158, 1159 (Utah 1987).⁶

Specifically, the court stated as follows:

The purpose of strict notice requirements . . . is to inform persons with an interest in the property of the pending sale of that property, so that they may act to protect those interests. The objective of the notice is to prevent a sacrifice of the property. If that objective is attained, immaterial errors and mistakes will not affect the sufficiency of the notice or the sale made pursuant thereto. A party who seeks to have a trustee sale set aside for irregularity, want of notice, or fraud has the burden of proving his contention, it being presumed, in the absence of evidence to the contrary,

⁶ Although *Concepts, Inc. v. First Security Realty Services, Inc.*, 743 P.2d 1158 (Utah 1987) involves a nonjudicial foreclosure sale, the notice requirements (and the reasons for such notice requirements) for nonjudicial foreclosure sales and judicial foreclosure sales are similar.

that the sale was regular. Defects in the notice of foreclosure sale that will authorize the setting aside of the sale must be those that would have the effect of chilling the bidding and causing an inadequacy of price. The remedy of setting aside the sale will be applied only in cases which reach unjust extremes.

Id. at 1159 (citations omitted).

In the case at hand, a sheriff's sale of the Property was held on February 10, 1999. Counsel for Ocwen attended the sale and Ocwen purchased the Property for a credit bid of \$85,000. Appellants also attended the sale and made no attempt during the sale to submit a bid on the Property or otherwise protect their alleged interests in the Property. Accordingly, this Court should not now set aside the foreclosure sale based upon Appellants' frivolous claims they did not receive proper notice of the sale, as they clearly attended the sale and had ample opportunity to protect their interests.

C. The Foreclosure Order Clearly Included All Property Interests of Appellants.

The goal of foreclosure proceedings is to pass title to the purchaser in the subject property, free and clear of any encumbrances. *See* David A. Thomas & James H. Backman, *supra*, §14.03(c)(2)(iii)(A) (1999). To accomplish this all persons with interests in the subject property that may be affected by the foreclosure sale must be joined as necessary parties to the judicial proceeding. *Id.* Once all necessary parties have been joined to the foreclosure action and a valid and enforceable sheriff's sale has taken place, all right, title, and interest the necessary parties may have had in the subject property are extinguished. *Id.*

In the present case, Ocwen filed a Motion for Summary Judgment seeking judgment against Epley for the entire amount owing under the Note; judgment declaring the Deed of Trust executed by Epley to be a valid and enforceable first lien against the Property; and judicial foreclosure of the Property barring Appellants and Epley from any right, title, interest, lien, or estate in and to the Property, or any part thereof. Both Appellants and Epley were necessary parties properly joined to the foreclosure proceeding.

On December 15, 1998, the trial court granted Ocwen's motion and issued an order of sale and decree of foreclosure. As authorized by that order, on February 10, 1999, a valid and enforceable sheriff's sale was held at which Ocwen purchased the Property. Six months later the statutory redemption period expired, with Appellants and Epley making no attempt in the interim to redeem. As a result, all right, title and interest Appellants and Epley in the Property has been extinguished and Appellants have no standing in this appeal to claim a return of the Property.

D. The Sheriff's Sale is Not Barred by the Statute of Frauds.

The statute of frauds did not prevent Ocwen from foreclosing on the Property. Appellants allege that the quit-claim deed from Epley, as successor trustee, to Epley, individually, is void under the statute of frauds because defendant Epley lacked authority to convey any interest in the Property. Appellants, however, misunderstand Utah's statute of frauds. *Utah Code Ann. § 25-5-1* only requires that a deed conveying an interest in land be in writing and "be subscribed by the party granting the conveyance." *Commercial Union Assoc. v. Clayton*, 863 P.2d 29, 33 (Utah Ct. App. 1993). *See also*

Utah Code Ann. § 25-5-1 (2001). Therefore, the quit-claim deed from Epley, as successor trustee, to Epley, individually, meets the requirements of Utah Code Ann. § 25-5-1 because it is signed by the person granting the conveyance, Epley.

Moreover, Appellants' statute of fraud argument fails because Appellants have no standing to bring the argument. Under Utah law, only a party to a contract or a party in privity with a party to the contract can raise the statute of frauds defense. *See Garland v. Fleischmann*, 831 P.2d 107, 109 (Utah 1992). Appellants in this case were not a party to any of the deeds involving Epley nor are Appellants in privity with any of the parties named in those deeds. Therefore, Appellants' statute of frauds argument lacks merit and they lack standing to raise the argument.

V. APPELLANTS PARTICIPATED IN THE FORGERY AND CANNOT BENEFIT FROM IT.

Appellants have made much of their claim of forgery by Epley, an issue which the trial court did not reach because it was barred by the doctrine of election of remedies. To pursue their claim to invalidate the Trust Deed based on the alleged forgery in the chain of title would allow a double recovery. However, in their arguments with respect to that issue, Appellants have failed to mention that Appellants themselves participated in and agreed to the signing of their father's name on the Quit-Claim Deeds in order to avoid probate and possible tax consequences. (R. at 838, 1445, p. 4; Epley Dep. at 120:17-132:15.)

Appellants have also failed to mention that their father previously executed a deed identical to the deed forged by Epley, that the forged deed was signed for the sole purpose of replacing the previously signed deed that could not be located, and that Epley had

permission from her father to sign his name on various documents, including the deed.

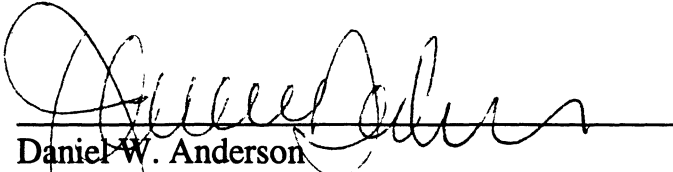
(Epley Dep. at 152:8-153:25.) Thus, the deed was signed with the father's permission and with the approval of Appellants for the benefit of the estate of their father from which they would all benefit. Under such circumstances, Appellants are not in a position to argue the deed is a forgery and invalid.

Had this issue not been barred by Appellants' election of remedies, the trial court would have then considered the issues of ratification, conspiracy, unclean hands, and whether Admiral and Ocwen held a valid equitable mortgage even if the express Trust Deed were voidable. Appellants witnessed the signing of the deed by their sister Epley, consented to it, and did nothing to put any other party who might deal with the Property on notice. A full year expired after the forgery before Epley signed the Trust Deed from which it is obvious there was no intent to defraud anybody at the time the father's name was placed on the deed. This fact alone constitutes a waiver by Appellants of any right to challenge the deed and their consent to the signing of the deed constitutes an estoppel.

CONCLUSION

For the foregoing reasons, this Court should dismiss Appellants' appeal for failure to demonstrate how the issues raised on appeal were preserved in the trial court. In the alternative, this Court should affirm the trial court's award of summary judgment in Admiral and Ocwen's favor and affirm the decree of foreclosure and order of sale of the Property.

DATED this 12th day of December, 2001.



Daniel W. Anderson

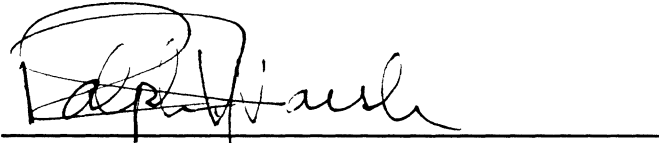
Sara E. Bouley

Jennifer E. Decker

FABIAN & CLENDENIN

A Professional Corporation

Attorneys for Appellee Ocwen Federal Bank, FSB



Ralph Marsh

BACKMAN, CLARK & MARSH

Attorneys for Appellee Admiral Home Loan

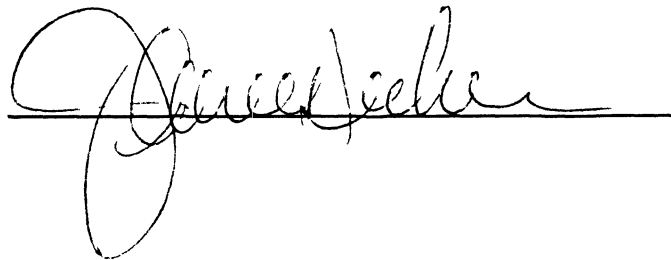
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2001, I caused to be mailed,
first class, postage prepaid, a true and correct copy of the foregoing BRIEF OF
APPELLEES ADMIRAL HOME LOAN dba ADMIRAL MORTGAGE COMPANY
AND OCWEN FEDERAL BANK, FSB to:

Jeffrey B. Brown
4685 South Highland Drive, Suite 175
Salt Lake City, Utah 84117
Attorneys for Appellants

John Reisser aka John Reisser
P.O. Box 222
Grace, Idaho 83241

Lydia I. Carrillo Epley
1050 West Center Street
Lindon, Utah 84042

A handwritten signature in black ink, appearing to read "John Reisser", is written over a horizontal line.

ADDENDUM

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

YVONNE LORRAINE CARRILLO
TAYLOR, PATRICIA ANN CARRILLO
DAVIS, and ALEXANDER JAMES
CARRILLO,

Plaintiffs,

vs.

LYDIA INEZ CARRILLO EPLEY; JOHN
REISSER; ADMIRAL HOME LOAN, a
California corporation, dba ADMIRAL
MORTGAGE COMPANY, OCWEN FEDERAL
BANK FSB, a federal savings bank,

Defendants.

Civil No. 950400478 CV
Judge Donald J. Eyre

DEPOSITION OF LYDIA INEZ CARRILLO EPLEY

May 29, 1997

Reported by

AMANDA RICHARDS, CSR
Utah CSR License 1070705

Kingsbury and Associates Certified Shorthand Reporters

1 Deposition of LYDIA INEZ CARRILLO EPLEY, taken on behalf
 2 of Plaintiffs, at 215 South State Street, Thirteenth
 3 Floor, Salt Lake City, Utah 84111, commencing at
 4 9:24 a.m. on Thursday, May 29, 1997, before
 5 AMANDA RICHARDS, Certified Shorthand Reporter and Notary
 6 Public in and for the State of Utah, pursuant to Notice.

7
 8 *****
 9

10 APPEARANCES OF COUNSEL:

11 For Plaintiffs: JEFFREY B. BROWN
 12 BY: JEFFREY B. BROWN
 13 Attorney at Law
 4685 South Highland Drive
 Suite 175
 Salt Lake City, Utah 84117

14 For Defendant BACKMAN, CLARK & MARSH
 15 ADMIRAL HOME LOAN: BY: RALPH J. MARSH
 16 Attorney at Law
 68 South Main Street
 Suite 800
 Salt Lake City, Utah 84101

18 For Defendant FABIAN & CLENDENIN
 19 OCWEN FEDERAL BANK: BY: DANIEL W. ANDERSON
 20 Attorney at Law
 215 South State Street
 Suite 1200
 Salt Lake City, Utah 84111

22 Also Present: Patricia Davis
 23 Alex Carrillo
 24
 25

2

1 (continued) EXHIBITS MARKED FOR IDENTIFICATION

2 8-G "Payment Letter To Borrower" 78
 3 8-H "Notice Of Assignment, Sale Or 78
 Transfer Of Servicing Rights"
 4 8-I "Occupancy And Financial Status 78
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 5 8-J "Guaranty Of First Lien Position" 78
 6 8-K "Borrower's Certification & 78
 Authorization"
 7 8-L "Mailing Address Verification Form" 78
 8 8-M "Thirty Day Notice" 78
 9 8-N "Warranty And Compliance Agreement" 78
 10 8-O "Request For Taxpayer Identification 78
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 11 8-P "Loan Servicing Disclosure Statement" 78
 12 8-Q "Equal Credit Opportunity Act" 78
 13 8-R "Hazard Insurance Authorization & 78
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 14 8-S "Mortgage Loan Disclosure Statement"; 78
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 15 8-T "Impound Authorization" 78
 16 8-U "Impound Account Agreement" 78
 17 8-V "Uniform Residential Loan 78
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 18 8-W "Borrower Instructions" 78
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 3 pages
 10 2 "Uniform Residential Loan Application"; 40
 11 4 pages
 12 3 "Note" dated June 1, 1995; 3 pages 45
 13 4 "Deed Of Trust"; 6 pages 46
 14 5 "Loan Policy Of Title Insurance"; 55
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 15 6 Correspondence dated January 11, 1996 60
 16 from Berkeley Federal to Lydia Epley
 17 7 "Trust Agreement"; 9 pages 100
 18 8-A Photocopy of a fax from CFC Mortgage 78
 to Lydia Epley dated 6-1-95; 5 pages
 19 8-B "Settlement Statement"; 2 pages 78
 20 8-C "Deed Of Trust" dated June 1, 1995; 78
 21 7 pages
 22 8-D "Note" dated June 1, 1995; 2 pages 78
 23 8-E "Federal Truth-In-Lending Disclosure 78
 Statement" dated June 1, 1995
 24 8-F "Itemization Of Amount Financed" 78
 25

1 (continued) EXHIBITS MARKED FOR IDENTIFICATION

2 8-AA "Escrow/Settlement Agent 78
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 3 8-BB "Payoff Schedule" 78
 4 8-CC "Fidelity National Title Insurance 78
 Company Schedule A"
 5 9 "Quit Claim Deed" dated 8-17-93 117
 6 10 Correspondence dated February 21, 1997, 132
 7 to Jeff Brown from Leasa Day
 8 11 "Quit-Claim Deed" dated 9-6-96 134
 9 12 "Quit Claim Deed" dated 10-24-96 140
 10 13 "Quit Claim Deed" dated 1-14-97 142
 11 14 "Rental Agreement"; 4 pages 145
 12 15 "Order And Judgment" 9 pages 147
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14 *****
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5

1 Q Do you know if those two debts were paid off
2 with loan proceeds?
3 A Yes.
4 Q Were both of them paid off?
5 A Yes.
6 Q What happened to the truck?
7 A It's wrecked.
8 Q Was it insured?
9 A No.
10 Q When was it wrecked?
11 A 1996.
12 Q Was it totaled?
13 A Yes.
14 Q Who was driving it?
15 A John Risser.
16 Q Was that in Wyoming?
17 A Yes, it was.
18 Q Did he reimburse you for the value of the
19 vehicle?
20 A No.
21 Q On the top of Page 3 of Exhibit 2 there's
22 reference to the Provo residence. Do you see that?
23 A Uh-huh, yes.
24 Q And there's reference to the amount of
25 mortgage liens against the property, and it says

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1 A Well, he was supposed to be paying 500 a
2 month, and that stopped. I mean that was the money that
3 was owed to me, had stopped in June.
4 Q Explain the money that was owed to you.
5 A Well, he -- we -- let's see. Pat and I and
6 Alex and Yvonne agreed that if someone lived there they
7 would pay \$100 each to each of us, or 125, and put a
8 hundred or 125 in the bank for maintenance on the house.
9 Q When was that agreement reached?
10 A After my dad died and he moved in.
11 Q And did Alex make those payments for a while?
12 A Yeah. They stopped on me in June. I don't
13 know what's happened since then.
14 Q June of when?
15 A '95.
16 Q And so, roughly, he paid you a hundred to 125
17 a month?
18 A Just for a month or two. I think two months.
19 I think July -- it was 'til July.
20 Q So you got a couple payments?
21 A Uh-huh.
22 Q Do you know if he's making those payments to
23 your sisters?
24 A I don't know.
25 Q Do you recall who your contact was at Admiral

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1 \$55,000. Do you see that?
2 A Yes.
3 Q Is that referring to the lien that was being
4 given to Admiral or was there an existing lien on the
5 home that had to be paid off?
6 A That house was paid 20 years ago.
7 Q Free and clear?
8 A Yes.
9 Q All right. And then the next column over, do
10 you see, it says "gross rental income." Do you see
11 that? It refers to \$800.
12 A Yes.
13 Q Was your father's home being rented?
14 A No.
15 Q Do you know how that amount was arrived at?
16 A The lady that gave me the loan asked me, she
17 said if I put in that it was rented that would show that
18 I had income to the property.
19 Q I see.
20 A And I mean it would be better for me to do it
21 that way.
22 Q So that wasn't based on any actual rental?
23 A No. Alex lived in the house.
24 Q And Alex wasn't paying any rent so far as you
25 know?

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1 when you went to the closing, who was there?
2 A The lady that gave me the loan at CFC
3 Mortgage, that's all I knew, and then there were a few
4 other men there when I signed the signature, and I don't
5 remember their names.
6 (Defendant OCWEN's Exhibit 3 marked
7 for identification.)
8 Q BY MR. ANDERSON: I'm handing you Exhibit 3
9 to your deposition, which is a note that bears the date
10 of June 1st, 1995. Have you seen that document before?
11 A Well, I guess I have. I signed it. It
12 doesn't look familiar, but there's a signature on there.
13 Q Is this a copy of the original, so far as you
14 know?
15 A Yes, I think so.
16 Q And it was signed by you on June 2nd?
17 A Uh-huh, yes.
18 Q At Guardian Title?
19 A Yes.
20 Q And do you know who prepared the document,
21 Lydia?
22 A I don't. I thought it was the lady that sold
23 -- that gave me the money; Stephanie. I thought her name
24 was Jannie or Jami, but I guess it's --
25 Q Under the terms of that note, as I understand

1 from your father individually into the trust, naming
2 himself as the trustee, and other successor trustees of
3 the Clarence G. Carrillo trust. It also appears to have
4 been notarized and bears the signature of Leasa Day.

5 Now, tell me how this document squares with
6 the testimony you've given.

7 A It looks like the same one to me as his
8 original.

9 Q Let me get at it this way: Have you ever
10 seen the original of this Exhibit 9 before?

11 A I've seen the original that he signed the day
12 I went to his house, yes. If this is it or not, I don't
13 know.

14 Q Okay. So I think maybe I misunderstood you
15 or you misunderstood me earlier, but on the day your
16 father called you at work and asked you to come to the
17 house --

18 A Yes.

19 Q -- there were documents that he signed?

20 A Yes.

21 Q And that included a living will, the trust
22 agreement, Exhibit 7. Did it also include the original
23 of this Exhibit 9?

24 A Yes. This was one of the papers.

25 Q So there was a deed that was included?

1 A Yes. I did with my dad.

2 Q Did you discuss it with him?

3 A No. I mean I read it to him. He didn't ask
4 me any questions. The only question he had was about the
5 truck not being in there, and that's because he bought
6 it, I think, before the time that this was drawn up.

7 Q What did you understand the purpose of the
8 trust agreement was?

9 A That he -- let's see. Just a second. That
10 before my dad died he wanted to have something set up for
11 his kids and grandkids to be distributed to them and so
12 that the State of Utah wouldn't take any of his
13 possessions or go into probate.

14 Q Now, there came a time when your father
15 passed away?

16 A Yes.

17 Q And after he was put to rest there was a
18 meeting you told me about in a phone conversation you and
19 I had a few weeks back. There was a meeting at your
20 father's house?

21 A In my father's house, the Provo residence.

22 Q That was a meeting attended by your sisters
23 and your brother as well as yourself; is that correct?

24 A And the grandkids also.

25 Q Give me a date if you can. Your father died,

1 A Yes.

2 Q And you witnessed him sign the original of
3 this Exhibit 9?

4 A Yes.

5 Q As well as the will and the trust agreement?

6 A Yes.

7 Q And you took the three of those documents,
8 and any others he might have signed, to work where Leasa
9 Day notarized them?

10 A Yes, I did.

11 Q And would that have been August 17th perhaps?

12 A Could have been. I don't know. I mean it
13 looks like it is, but I don't know. I don't remember the
14 dates. I can tell you the month maybe, and I'm sure it
15 was in August.

16 Q This is consistent with your testimony that
17 you thought it was summer of '93?

18 A Yes, because we ended up going to the family
19 reunion on August 6th, 7th and 8th. Somewhere around
20 there. It was my dad's birthday, and I do remember that.

21 Q Now, at the time that your father executed
22 Exhibit 7 -- let me direct your attention back to this.
23 This is the trust agreement -- did you review it?

24 A Did I read it over?

25 Q Yes.

1 was it May 23rd? May 24th?

2 A Uh-huh, it was.

3 Q How long after his passing did this meeting
4 occur?

5 A That weekend of -- Memorial weekend we buried
6 him. He died on May 23rd, we buried him that Friday, and
7 over that weekend we were talking about finding the
8 original will and going from there.

9 Q Was there some discussion about the trust
10 agreement at that time that you couldn't find the
11 original that had been signed?

12 A We couldn't find any paperwork that was
13 signed.

14 Q Did you go through the safe at that time in
15 the house?

16 A No, I didn't.

17 Q Did someone else, as far as you know?

18 A Yes.

19 Q Well, tell me about that meeting and what was
20 discussed.

21 A I think we were just sitting at the kitchen
22 table. We were talking about we needed to find those
23 papers so that my dad's property and his assets wouldn't
24 go into probate. And everybody looked for them
25 everywhere, and he had some hiding places. Looked in the

1 vehicles, the trailer out in the garage. I mean we tore
2 his house apart and could not find them.
3 Q And were spouses present at this meeting?
4 A Yes.
5 Q And was there some specific conversation
6 about not finding the original of Exhibit 7, the trust
7 agreement?
8 A Yes.
9 Q And that was a concern because that meant
10 there may have to be a probate?
11 A Yes.
12 Q May be tax consequences?
13 A Yes.
14 Q And all of that was discussed?
15 A Yes.
16 Q And so what did you do about it?
17 A Well, we looked in -- all of his kids looked
18 around for it, couldn't find it. At that time we had
19 already the unsigned copies that was sent to my dad's
20 house.
21 Q From Mr. Brown?
22 A Yes.
23 Q Documents in that envelope had arrived?
24 A Yes.
25 Q So what did you do?

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1 take everything"?
2 A Well, it was --
3 Q I don't want to put words in your mouth.
4 A It wasn't discussed as that. It was I told
5 them, "If I don't do what I've got to do, they're going
6 to take Dad's stuff".
7 Q Did you explain what it was you had to do?
8 A Yes. They knew what had to be done.
9 Q And so what did you do?
10 A So I signed my dad's name, forged my dad's
11 name, went back to work, forged Leasa's name, and went
12 from there.
13 Q So somewhere there is another version of
14 Exhibit 7 only the father's -- your father's name on that
15 version was signed by you?
16 A Yes.
17 Q Right?
18 And the notary on that version is also Leasa
19 Day's, but you wrote her name?
20 A Yes, I did.
21 Q So you forged the notary?
22 A Yes.
23 Q You forged your father's name?
24 A I did it all the time for Leasa on her other
25 documents. She was the investigator, I was the

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1 A We sat at the table.
2 Q Who's "we"?
3 A My brothers, all of our kids, all the spouses
4 that were there. And I made a decision to forge my dad's
5 name because I didn't want the State of Utah to take his
6 things.
7 Q Was anyone else part of that decision?
8 A Everybody was.
9 Q Tell me how.
10 A All the kids.
11 Q Tell me about the discussion leading up to
12 that.
13 A There was no discussion. It was I either do
14 what I got to do or they're going to take everything from
15 my dad, the State is, and my dad did not want that.
16 Q Did you discuss that with your --
17 A Yes.
18 Q -- sisters and brother?
19 A Yes.
20 Q Do you recall what they said? Did they agree
21 it ought to be forged?
22 A Well, nobody didn't disagree.
23 Q Did you say, "Here is a copy" or words to
24 that effect? "We have a copy of this. If somebody
25 doesn't sign Dad's name to this, the State's going to

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1 investigative technician. If she didn't have time to
2 sign it, to get them sent out, I had her stamp, stamped
3 it, and I signed her name.
4 Q That was common practice?
5 A In Recovery Services it was. All the
6 investigators and the investigative technicians did it
7 all the time.
8 Q And she knew you did that?
9 A No. She did not know.
10 Q She didn't know on occasion you used her --
11 A Yes. But not on this occasion she did not
12 know.
13 Q So let me go back to this meeting around the
14 kitchen table, you in front of -- was Alex there?
15 A Yes.
16 Q And your two sisters were there?
17 A Yes.
18 Q And they watched you sign your father's
19 name --
20 A Yes, they did.
21 Q -- to the trust agreement?
22 A To all the paperwork.
23 Q What other paperwork was there?
24 A There was another will -- there was a will,
25 and I'm sure this was -- the quit claim deed, and I

1 thought there were like four or five other papers because
2 I signed a couple three or four, five times.
3 Q Do you think -- turning your attention back
4 to Exhibit 9 which is the quit claim deed, my question is
5 did you sign another version of that document at the same
6 time? Was that included in the packet that came from
7 Mr. Brown?
8 A Yes, it was.
9 Q And at that time, did you sign the quit claim
10 deed as well?
11 A Yeah. This Exhibit 9?
12 Q Yes.
13 A Yes, I did.
14 Q Is this -- now you testified earlier --
15 strike that.
16 Earlier you testified that you observed that
17 your father signed the original of Exhibit 9?
18 A Yes.
19 Q My question then is: Is this a copy of the
20 original that your father signed or is this a copy of the
21 one that you forged your father's name to on that
22 Memorial Day weekend?
23 A I don't know. This looks like my dad's
24 signature, but it could be mine. I don't know. I mean I
25 did all my dad -- I've signed my dad's name to everything

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1 found?
2 A No.
3 Q Well, let me direct your attention to the
4 recording date on Exhibit 9 in the upper right hand
5 corner on the third line there's a recording date that
6 says 1994 May 31. Do you see that?
7 A Yes, I see.
8 Q So this exhibit, the original of this
9 Exhibit 9 was recorded after your father passed away?
10 A Right.
11 Q Do you recall recording the original of the
12 quit claim deed that you forged your father's name to
13 that Memorial Day weekend? Sometime after that you
14 recorded it?
15 A You know what, I -- I -- it could be. I
16 don't know. I remember taking Pat, and I had a bunch of
17 paperwork, down to the county clerk's; and I mean this
18 could have been one. Could have been.
19 Q The only way --
20 A I don't know. I mean I really don't. I
21 didn't even know it was stamped or anything. I really
22 don't know. I don't. I mean --
23 Q You never found the original that your father
24 signed?
25 A Of this (indicating)?

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1 even when he was alive, so I don't know if this is it or
2 not, but -- I couldn't tell you. I mean it looks like
3 his signature, but it also could be mine. I don't know.
4 Q Well, explain for me why you say you signed
5 your dad's name.
6 A Because I took care of a lot of his business
7 for him.
8 Q Not forging checks or doing something
9 dishonest but --
10 A Well, if that's considered dishonest, I guess
11 so because I did sign his money orders sometimes or
12 paperwork of his. He just said sign it.
13 Q But not for your own benefit. That's what
14 I'm asking.
15 A No. I did it for my dad with his permission.
16 Q That's what I was asking.
17 So you're not sure, Lydia, if this Exhibit 9
18 is the original copy of the original or the one that was
19 signed by you?
20 A I don't. I mean I know for sure that all the
21 other things in here is my writing, because I filled all
22 the spots in except his signature, but I don't know if
23 this is his signature or if it's my signature.
24 Q Was the original of the quit claim deed he
25 signed that day he called you from work, was that ever

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1 Q This (indicating).
2 A No.
3 Q So wouldn't that suggest this was the one
4 that was forged?
5 A Could be. I mean it looks --
6 Q Otherwise, someone had to find it after your
7 father died and record it May 31st of 1994.
8 A Right. I mean I don't know if the originals
9 were found or what. I don't know. I mean I couldn't
10 tell you. This could be the forge, this could be his
11 writing. I don't know.
12 I mean all I know is we took paperwork, took
13 it over there to the county clerk's, they stamped it,
14 whatever they did to it, and we were gone. I mean I
15 -- don't know. I couldn't --
16 Q Your brother knew that you had done this?
17 A Yes.
18 Q Your sisters knew that you had done this?
19 A Yes.
20 Q Did you ever tell Guardian Title Company that
21 you had done this?
22 A No.
23 Q Did you ever tell --
24 A I didn't tell anybody.
25 Q Did you ever tell Jami or Janni of CFC?

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1 A No.
 2 Q Did you ever tell Admiral?
 3 A No.
 4 Q Did you ever tell Berkeley?
 5 A No.
 6 Q Or OCWEN?
 7 A No.
 8 Q No one knew except you and your family?
 9 A Yes.
 10 Q Now, of the original of the trust agreement,
 11 Exhibit 7 that you forged your father's name to, what
 12 happened to that document? Do you still have the
 13 original in Wyoming?
 14 A Yes, I do.
 15 Q Were copies made for your brother and
 16 sisters?
 17 A Yes, they were.
 18 Q So they got copies of it?
 19 A Yes, they did.
 20 Q Did they get copies of the will as well?
 21 A They got copies of everything that I forged.
 22 Q You forged them, took them to your workplace
 23 where you had access to Leasa's notary seal or stamp;
 24 correct?
 25 A Yes, I did.

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1 forging these documents at your father's kitchen table in
 2 the home that you grew up in, did anyone around the table
 3 say, "Lydia, don't do this. This is wrong"?
 4 A No.
 5 Q No one tried to stop you?
 6 A No.
 7 Q You did it in plain view of everyone?
 8 A Yes, I did.
 9 Q And was there any discussion after you gave
 10 them their copies?
 11 A No.
 12 Q Did anyone say, "Don't record it"?
 13 A No. They didn't say to or not to record it.
 14 They didn't say anything. It was like it was already a
 15 done deal in our eyes.
 16 Q Have you discussed this with Leasa Day?
 17 A The forged ones?
 18 Q Yes.
 19 A No, I haven't.
 20 (Defendant OCWEN's Exhibit 10 marked
 21 for identification.)
 22 Q BY MR. ANDERSON: Let me hand you Exhibit 10,
 23 and ask you to review that for a moment.
 24 A (Witness complies.)
 25 Q Have you seen the original or copy of that

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1 Q And after you finished that, you made copies?
 2 A Yes, I did.
 3 Q And distributed those copies to your brother
 4 and sisters?
 5 A Yes.
 6 Q Did you ever send a signed set back to
 7 Mr. Brown?
 8 A No, I didn't.
 9 Q Other than that one phone conversation with
 10 Mr. Brown, did you ever talk to him about the trust
 11 agreement, the will or other documents?
 12 A No, I didn't.
 13 Q And have you ever spoken to anyone else about
 14 this except for your family members?
 15 A Yes. When they started taking me to court.
 16 I talked to a few lawyers about it when I started getting
 17 my --
 18 Q Wages garnished?
 19 A -- wages garnished, started serving me,
 20 coming to my work. Yes, I did.
 21 Q You consulted counsel on your behalf?
 22 A I went in like for a one free hour
 23 consultation to just find out, you know, what kind of
 24 trouble I would be in.
 25 Q At the time you were signing these documents,

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1 letter before?
 2 A No, I haven't.
 3 Q That's a letter bearing the signature,
 4 purportedly, of Leasa Day to Jeff Brown; right?
 5 A Looks like that's what it is.
 6 Q Dated February 21st of 1997.
 7 A Yes.
 8 Q Let me direct your attention to the second
 9 paragraph where she says, "It is not my practice to" --
 10 "is not my practice nor have I ever in the past notarized
 11 a document improperly".
 12 Is that accurate, as far as you know?
 13 A I don't think it is.
 14 Q Because of the several times in the ordinary
 15 course of business at the State of Utah you notarized or
 16 you did the notarization on her behalf, right?
 17 A Yes, I have. And it was more than several
 18 times.
 19 Q Okay. That's why you would dispute that
 20 first sentence?
 21 A Yes.
 22 Q "Lydia Epley was a coworker with whom I was
 23 placed in a supervisory position."
 24 Did you supervise her?
 25 A No.

1 A It's not his. I know it's not his.
 2 Q But you didn't sign his name to it?
 3 A I didn't.
 4 Q Do you know who did?
 5 A Someone, but I don't know. I had someone
 6 sign it, but I don't know who it was.
 7 Q You asked someone to sign Alex's name to it?
 8 A Or it could be mine. I don't know. I mean I
 9 could have signed it or I could have asked someone to
 10 sign it. I don't know.
 11 Q That was to facilitate the loan?
 12 A No, that wasn't. That was to add more income
 13 for me as -- I mean --
 14 Q To qualify for the loan?
 15 A Yes, exactly.
 16 Q Now, in this lawsuit there is a judgment that
 17 was obtained against you in favor of Yvonne, Pat, and
 18 Alex. You're aware of that?
 19 A Oh, yes, I am.
 20 Q And is it accurate to say that the entire
 21 amount of that judgment is over \$81,000?
 22 A That's what they have, but I guess there's --
 23 there's punitive and other damages. I don't know.
 24 Q I'm handing you --
 25 A I don't know what they want.

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1 day and there will be a garnishment on it.
 2 Q And how much is each garnishment?
 3 A Twenty-five percent of my earnings.
 4 Q So approximately how much per pay period?
 5 A Well, on a 40-hour pay period I think it's
 6 \$214 or \$208. In the summer I put in a lot of overtime,
 7 and I think -- two weeks ago Friday my last paycheck I
 8 had 39 hours of overtime, and I think they took 300 and
 9 something. I have the check stub.
 10 Q How much have they garnished to date since
 11 the judgment was entered?
 12 A A years' worth of wages. I couldn't tell you
 13 how much, but a years' worth of wages.
 14 Q Over \$5,000?
 15 A If that's what it adds up to, that's what it
 16 could be.
 17 Q Do you know where that money's going?
 18 A I thought it was going to pay the house
 19 payment.
 20 Q The --
 21 A The --
 22 Q The loan?
 23 A The Provo residence, yes.
 24 Q Thought it was going to Berkeley or OCWEN?
 25 A Yes, I did.

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1 (Defendant OCWEN's Exhibit 15 marked
 2 for identification.)
 3 Q BY MR. ANDERSON: I'm handing you Exhibit 15,
 4 which is an order and judgment entered in this case.
 5 A Yes. I have a copy.
 6 Q And according to that document, what is the
 7 amount of judgment?
 8 A The amount of the judgment is \$81,079.83.
 9 Q And when was it entered? What's the date it
 10 was signed by the judge?
 11 A I don't have a date on here. I don't have a
 12 judge's -- I don't have a judge's signature or date on
 13 here.
 14 Q Look at the last page.
 15 MR. MARSH: It's a blank copy.
 16 MR. ANDERSON: Oh, is it? Apparently that's
 17 unsigned.
 18 Q Have you seen a signed version?
 19 A No, I haven't.
 20 Q In connection with that judgment, your wages
 21 are presently being garnished by your brother and
 22 sisters?
 23 A Yes.
 24 Q And how often do they do that?
 25 A Every pay day, every Friday, tomorrow is pay

1 Q Or whoever held that loan?
 2 A Yes, I did.
 3 Q Did your brother or sisters ever tell you
 4 that?
 5 A I don't talk to them. I just assumed that.
 6 That's what I assumed they took the judgment for was to
 7 pay the house payments.
 8 Q Do you have any idea what the fair market
 9 value of the Provo residence is today?
 10 A No, I don't.
 11 Q You don't know if it's increased in value?
 12 A I don't.
 13 Q Has any probate been commenced in connection
 14 with the Provo property?
 15 A As far as I know, no, but I don't know. I
 16 mean I have not a clue what's going on with it.
 17 Q You're not being consulted if it is?
 18 A Exactly. Since I've signed the quit claim
 19 deed over to them, I'm -- the only thing that they're
 20 concerning me with anything is the garnishment.
 21 Everything else I don't know.
 22 Q And when you deeded the property back to them
 23 at the courthouse, there was no reduction of the judgment
 24 amount?
 25 A No, there wasn't.

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1 MR. ANDERSON: That's all I have for now.
2 THE WITNESS: Do you want these back?
3 MR. MARSH: I've got a few questions. I don't
4 know if you've got any.
5 MR. BROWN: No.
6 MR. ANDERSON: Hold on. Mr. Marsh is going to ask
7 some follow-up questions.

8
9 EXAMINATION
10 BY MR. MARSH:
11 Q Talking about that Exhibit 14, you've said
12 that Alex did not sign that but you think maybe somebody
13 else did?
14 A Oh, I know someone else did, because I called
15 Jannie and I told her that I -- you know, I couldn't find
16 him or get a hold of him to sign it, and that's when she
17 faxed me this paper right here (indicating) and said to
18 ask John or somebody else to sign it; so I did.
19 Q John Risser?
20 A Risser, yes.
21 Q This is Jami at CFC that asked you to find
22 John or somebody else to sign it?
23 A Yes.
24 Q And did you find somebody else to sign it?
25 A Either I found someone else to sign it or I

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1 sign it, would you understand John would sign his own
2 name as the tenant or he would forge Alex's name as the
3 tenant?
4 THE WITNESS: He would forge Alex's name to do it,
5 but John didn't do it. I know that for a fact. He
6 didn't want to have anything to do with it. Either I did
7 it or I had someone else sign it.
8 Q BY MR. MARSH: You mentioned, Lydia, that you
9 signed your dad's name to everything when he was still
10 alive, with his permission. I think those were your
11 words. I may be mistaken.
12 A No, I didn't. I mean like --
13 Q Did you sign lots of things for him with his
14 permission?
15 A Oh, yes, I did.
16 Q How many things; can you remember?
17 A 20, 30, 40, 50. Since I was 18.
18 Q Do you remember what some of those things
19 might have been?
20 A Money orders, his CFW updating, his CFW card,
21 his Eagles papers to get into the Eagles. Just stuff he
22 didn't want to deal with I did.
23 Q And you did that at his request?
24 A Yes, I did.
25 Q And that was kind of a regular thing in those

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1 signed it myself.
2 Q And that was at the request of Jami at CFC?
3 A Yes. I have the paperwork right here.
4 Q But she knew that you couldn't find Alex to
5 sign it?
6 A No, she didn't. No. We never talked about
7 it.
8 Q But I thought you just said that she -- that
9 you had told her you couldn't find Alex.
10 A Yes. And she asked me if I would either have
11 John or someone else sign it, and nothing was said after
12 that. There was a signed -- a signed paper on it. And
13 she didn't ask me, "Well, did you find your brother, did
14 you have someone else sign it". She didn't say anything.
15 Q But she did ask you to have John or somebody
16 else sign it for Alex?
17 A Yes.
18 Q And you did that?
19 A Yes, I did.
20 MR. ANDERSON: Just interject.
21 For Alex or for themselves as a potential
22 tenant?
23 THE WITNESS: For me to have the income of \$800 to
24 qualify for the loan.
25 MR. ANDERSON: I understand. If you got John to

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1 last years; was that correct?
2 A In the past from the time -- from 1973 to
3 1994, yes.
4 Q Okay. And did you feel like you had your
5 father's permission to sign things for him?
6 A I did have his permission to sign things for
7 him up until the day he died.
8 Q Did you have that in mind when you made the
9 decision to sign your father's name to the trust
10 agreement?
11 A Yes, I did.
12 Q Was it your intent when you signed that trust
13 agreement really to just make a record of a document that
14 you already knew had been signed by him?
15 A Yes, it was.
16 Q That was because the original couldn't be
17 found?
18 A Exactly.
19 Q So in doing that, you had no intent to cheat
20 anybody?
21 A At the time, no, I didn't. And then when I
22 found out how much trouble I was in because I owed so
23 many people and I was tired of getting my garnishments,
24 my wages garnished, I did it, but that was my only -- at
25 that time I thought that was my only way out.

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