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YVONNE LORAINNE CARRILLO TAYLOR,
PATRICIA ANN CARRILLO DAVIS, and
ALEXANDER JAMES CARRILLO, v. LYDIA
INEZ CARRILLO EPLEY, JOHN REISSER, and
ADMIRAL HOMELOAN, a California
corporation dba ADMIRAL MORTGAGE
COMPANY; OCWEN FEDERAL BANK FSB, a
federal savings bank, : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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

Plaintiffs and Appellants,

vs.

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

Defendants and Appellees.

Trial Ct. No. 950400478
Appellate Ct No. 20010196-CA
Argument Priority: 15

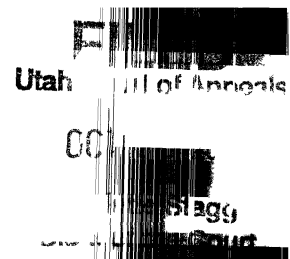
BRIEF OF APPELLANTS

An appeal from the decision rendered by Judge Anthony W. Schofield, Fourth
District Court, State of Utah.

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<u>Determinative constitutional provisions, statutes, ordinances and rules:</u>	None
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JURISDICTIONAL STATEMENT

The Supreme Court had jurisdiction in this matter pursuant to Section 78-2-2(3)(j), Utah Code Annotated, 1953 as amended and Rule 3(a), Utah Rules of Appellate Procedure. This matter was then poured over to the Court of Appeals by the Supreme Court.

STATEMENT OF ISSUES

I.

A. Whether the District Court erred in awarding summary judgment in favor of Ocwen Federal Bank and Admiral Home Loan and against plaintiffs; did any action taken by plaintiffs preclude them from pursuing their claims against Ocwen Federal Bank and Admiral Home Loan due to the doctrine of election of remedies; did any action taken by plaintiffs change the forged deed from void to valid; could any action taken by plaintiffs change the forged deed from void to valid.

As to each issue presented above, this is an appeal from the award of summary judgment and from subsequent refusals of the trial court to alter, amend or clarify the terms of the Order granting that summary judgment; upon review of a grant of a motion for summary judgment, the appellate court applies the same standard as that applied by the trial court. Durham v. Margetts, 571 P.2d 1332 (Ut. 1977); the appellate court views the facts in a light most favorable to the losing party below, and in determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party

below; the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Ut. 1989).

B. What effect did the foreclosure of the trust deed by Ocwen Federal have upon the title to the real property and upon the interests of appellants in said real property; was the deed of conveyance of Clarence Carrillo, admittedly forged by Lydia Epley void; did Lydia Epley even have any interest in the real property that she could pledge and upon which Ocwen Federal Bank could foreclose; what was the extent of the interest, if any, that Lydia Epley had in the real property;

As to each issue presented above, this is an appeal from the award of summary judgment and from subsequent refusals of the trial court to alter, amend or clarify the terms of the Order granting that summary judgment; upon review of a grant of a motion for summary judgment, the appellate court applies the same standard as that applied by the trial court. Durham v. Margetts, 571 P.2d 1332 (Ut. 1977); the appellate court views the facts in a light most favorable to the losing party below, and in determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below; the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Ut. 1989).

C. Did the trial court err in forfeiting the interests of plaintiffs in the real property.

As to this issue, this is an appeal from the award of summary judgment and from subsequent refusals of the trial court to alter, amend or clarify the terms of the Order granting that summary judgment; upon review of a grant of a motion for summary judgment, the appellate court applies the same standard as that applied by the trial court. Durham v. Margetts, 571 P.2d 1332 (Ut. 1977); the appellate court views the facts in a light most favorable to the losing party below, and in determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below; the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Ut. 1989).

D. Was the execution sale conducted by the Utah County Sheriff invalid.

As to the issue presented above, this is an appeal from the award of summary judgment and from subsequent refusals of the trial court to alter, amend or clarify the terms of the Order granting that summary judgment; upon review of a grant of a motion for summary judgment, the appellate court applies the same standard as that applied by the trial court. Durham v. Margetts, 571 P.2d 1332 (Ut. 1977); the appellate court views the facts in a light most favorable to the losing party below, and in determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below; the appellate court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Ut. 1989).

STATEMENT OF THE CASE

In July of 1995, two sisters and a brother, Yvonne Loraine Carrillo Taylor, Patricia Ann Carrillo Davis and Alexander James Carrillo (appellants) brought suit in the Fourth Judicial District Court of Utah seeking declaratory relief regarding real property owned by their father, Clarence Carrillo, at his death, and particularly regarding the effect that a deed of trust placed against that real property by their sister Lydia Epley would have against their expectations of an interest in that real property. The brother and sisters sought declaratory relief finding said deed of trust null and void and having the same removed as a cloud on title. The plaintiffs contended that their sister Lydia Epley and Lydia's friend John Reisser had acted fraudulently in obtaining a loan secured by the trust deed that Lydia Epley had placed against the real property owned by their father at the time of his death and that John Reisser received the proceeds of that loan. Plaintiffs also named as a defendant in that suit Admiral Home Loan, believing at the time that it was the owner of said trust deed—Admiral Home Loan did not refute that assumption and filed an Answer claiming to be the owner; at a later date it was determined that Ocwen Federal Bank FSB, as assignee of Admiral Home Loan, was the true owner of the trust deed, and Ocwen Federal Bank was joined as a defendant. Because the defendants Lydia Epley and John Reisser failed to respond to written discovery propounded to them by plaintiffs—including Requests for Admissions—the Answers of Lydia Epley and John Reisser were stricken and judgment was entered against them on or about July 1, 1996 as

a sanction for their failure to respond to discovery requests and for failure to comply with an Order of the court compelling responses to those discovery requests. The claims of the plaintiffs against Lydia Epley sounded in fraud and was not based upon loss of the real property. At the time said judgment was entered, neither plaintiffs nor Lydia Epley had any interest in the real property..

On or about March 6, 1998, Patricia Ann Carrillo Davis (Mertin) filed in the Fourth Judicial District Court a Petition for Order Determining Heirs regarding her deceased father Clarence Carrillo; said petition was filed under case number 983400124ES; a Determination of Heirs was entered in said case on March 30, 1998; said determination held that because the spouse of Clarence Carrillo had predeceased him, the only heirs of Clarence Carrillo were his four children [the three plaintiffs/appellants herein and the defendant/appellee Lydia Epley] and further held that the estate of Clarence Carrillo, including his interest in the subject real property owned by him at the time of his death, passed by operation of law in equal shares to his issue by representation, which issue were Lydia Epley, Patricia Davis, Yvonne Taylor and Alexander Carrillo. Prior to that time said individuals did not have an interest in the real property except that of an expectancy as heirs, and except the interest, if any, that Lydia Epley attempted to convey to herself by means of her father's deed that she had forged after his death.

Defendant Ocwen Federal filed a Motion for Summary Judgment on or about March 18, 1997 seeking judgment against Lydia Epley, seeking judgment that the Deed of Trust executed by Lydia Epley was a valid and enforceable first lien against the real property, seeking judgment that neither plaintiffs nor the defendants other than Ocwen Federal had any right, title or interest in and to the real property, seeking to judicially foreclosure the trust deed and seeking to foreclose any and all interest of plaintiffs in and to the real property following foreclosure.

Plaintiffs filed their own Motion for Summary Judgment in opposition to that filed by Ocwen Federal seeking an Order denying the attempts of Ocwen Federal to foreclose the trust deed, seeking declaratory relief that the actions of Lydia Epley in attempting to encumber the real property were null and void, seeking declaratory relief that the signature of Clarence Carrillo on the Quit-Claim Deed purportedly conveying his interest in real property to himself as trustee and to the successor trustees of his trust had been forged by Lydia Epley and that the deed was null and void, for declaratory relief that Lydia Epley was an interloper on title and had no property interest to pledge by way of a deed of trust to Admiral Home Loan or Ocwen Federal and declaring the deed of trust that she had given to Admiral Home Loan, which was subsequently assigned to Ocwen Federal, to be of no force and effect as a lien, trust deed, security agreement or encumbrance against the real property, and further removing the same as a cloud on title,

and seeking an Order that Admiral Home Loan and Ocwen Federal did not have the status of a *bona fide purchaser*.

Following the deposition of Lydia Epley in which she admitted to having forged the signature of her deceased father to a deed purportedly conveying his interest in the real property he owned to himself as trustee of a trust and to the successor trustees of said trust, defendant Admiral Home Loan filed amended pleadings, and on or about May 8, 1998, filed another Motion for Summary Judgment; Ocwen Federal apparently joined in said additional Motion for Summary Judgment as Ralph Marsh, the attorney for Admiral Home Loan, contended to also represent Ocwen Federal Bank, who was represented by Daniel Anderson. In this subsequent Motion for Summary Judgment, Admiral Home Loan advanced the claim that by taking a judgment against Lydia Epley, the plaintiffs had elected their remedies preventing them from seeking to have the trust deed removed from title.

Following oral argument held August 27, 1998 regarding said Motions for Summary Judgment, the Fourth District Court granted Summary Judgment in favor of Admiral Home Loan and Ocwen Federal and against the plaintiffs. Said Order granting summary judgment was dated December 15, 1998. In said Order, Judge Donald J. Eyre, Fourth District Court Judge issued a judgment, decree of foreclosure and order of sale, directing the sale of the real property.

On December 24, 1998, plaintiffs filed three motions; those motions sought the following: i. an Order clarifying the Order of December 15, 1998, or rather an Order determining the percentage of interest in the real property that the foreclosure of Ocwen Federal Bank affects; ii. an Order altering or amending the Order of December 15, 1998; iii. an Order certifying the Order of December 15, 1998 for immediate appeal if the foregoing Motions were not granted, and an Order staying execution of the Order and staying foreclosure by Ocwen Federal pending appeal.

These Motions were not ruled on by the Court prior to the time set for the foreclosure sale, which took place on February 10, 1999.

Plaintiffs subsequently filed a Motion on August 10, 1999 seeking an Order to Set Aside the Execution Sale which occurred on February 10, 1999, under claims that the Utah County Sheriff, in preparing for and in conducting the Execution Sale, did not properly follow the requirements established by Rule 69, Utah Rules of Civil Procedure governing executions, and under the claims that the Order improperly included within it language foreclosing “All right, title, claim and interests of the above named plaintiffs...[appellants herein]” as well as the right, title, claim and interests of Lydia Epley—the only person to have signed the trust deed which Ocwen Federal Bank was foreclosing. The motion alternatively sought to extend the redemption period regarding the foreclosure sale.

The foregoing four Motions were denied by the Fourth District Court following oral argument by means of a Minute Entry dated December 13, 2000; this ruling was reduced to an Order dated January 16, 2001 and plaintiffs Yvonne Lorraine Carrillo Taylor, Patricia Ann Carrillo Davis and Alexander James Carrillo filed their Notice of Appeal on February 15, 2001. No cross-appeals were filed by any other parties.

RELEVANT FACTS

1. Clarence G. Carrillo died in Provo, Utah on the 23rd day of May, 1994.

Plaintiffs Patricia Mertin (formerly Davis), Yvonne Lorainne Carrillo Taylor and Alexander James Carrillo, along with defendant Lydia Inez Carrillo Epley, are the only children of Clarence G. Carrillo. Clarence G. Carrillo had no wife at the time of his death. Plaintiffs Patricia Mertin (formerly Davis), Yvonne Lorainne Carrillo Taylor and Alexander James Carrillo, along with defendant Lydia Inez Carrillo Epley, are the only heirs of Clarence G. Carrillo. [Affidavit of Patricia Carrillo Mertin (hereinafter "Mertin Affidavit") ¶ 2; Trial Court Clerk Index #496];

2. At the time of his death, Clarence G. Carrillo owned real property consisting of a private residence and land located at 42 South 700 West, Provo, Utah County, State of Utah, more particularly described as follows:

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.

[Mertin Affidavit ¶ 3, Trial Court Clerk Index #496];

3. On or about August 17, 1993, Clarence G. Carrillo may have executed a Trust Agreement similar or identical to the document attached to plaintiffs' complaint marked

as Exhibit "A" as an estate planning tool. The intent of Clarence G. Carrillo in executing said document as expressed therein was to effectively transfer all the asset of his estate into his name as Trustee of the trust, so that at his passing his children and heirs, Yvonne Lorainne Carrillo Taylor, Patricia Ann Carrillo Mertin, Alexander James Carrillo and Lydia Inez Carrillo Epley could act jointly as successor trustees of the trust, as set forth in Article II of said Exhibit "A", in handling the affairs of the trust estate and in distributing the assets of the trust to the intended recipients. It was the intention of Clarence G. Carrillo, as expressed in Article VI of said Exhibit "A", that the trust estate "...shall be divided into equal shares and distributed to the children of Clarence G. Carrillo who are named as follows:

Lydia Inez Carrillo Epley--Daughter

Patricia Ann Carrillo Davis--Daughter

Alexander James Carrillo--Son

Yvonne Lorainne Carrillo Taylor--Daughter

On many occasions before his death, Clarence G. Carrillo stated to all of his children that he wanted them to share equally in all the assets of his estate, including the real property.

[Mertin Affidavit ¶ 4, Trial Court Clerk Index #496];

4. Although Clarence G. Carrillo had the Trust Agreement that is Exhibit "A" to plaintiffs' complaint prepared, Clarence G. Carrillo never in fact signed any Trust Agreement. Clarence G. Carrillo died intestate, without a validly executed Trust

Agreement, and without a will. Further, his estate has never been probated. [Mertin Affidavit ¶ 5, Trial Court Clerk Index #496];

5. Admiral Home Loan has made the following statement in its “Responses to Plaintiff’s First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents to Defendant Admiral Home Loan” dated March 20, 1995:

INTERROGATORY NO. 22 [propounded by plaintiffs]: State all facts and identify all documents upon which you base the allegations of the Fourth Defense of your Answer.

RESPONSE: The trust agreement attached to plaintiffs’ complaint has not been executed.

REQUEST FOR PRODUCTION OF DOCUMENTS [propounded by plaintiffs]: Produce all documents identified or requested to be identified in the foregoing Requests for Admissions and Interrogatories, included but not limited to the signed and notarized original of the Trust Agreement of Clarence G. Carrillo...

RESPONSE: No documents have been identified by this defendant other than the unsigned trust agreement attached to plaintiffs’ complaint of which plaintiffs already have a copy. This defendant has no signed and notarized copy of that trust agreement.

Said responses have never been updated.

6. A Quit Claim Deed has been recorded with the Utah County Recorder, bearing Entry Number 45214, Book 3455, Page 864, purporting to be a deed wherein Clarence G. Carrillo, individually, conveyed to himself and to the successor trustees of The Clarence G. Carrillo Trust, the real property described above. The signature of Clarence G. Carrillo that appears on said Quit Claim Deed is a forgery, placed there by Lydia Inez Carrillo Epley, who then got Leasa Day, who is her friend, to notarize said forged signature. Based upon their familiarity with their father's signature, the plaintiffs believe that the signature that appears on said Quit Claim Deed is a forgery. [Mertin Affidavit ¶ 6, Exhibit "B" thereto, Trial Court Clerk Index #496];

7. There is no recorded deed on the chain of title to the real property described above conveying said real property to Lydia Epley, other than a deed or deeds wherein Lydia Epley, as an interloper on the chain of title, conveyed said real property to herself. The chain of title to the above described real property is as follows:

a. Quit Claim Deed [forged] from Clarence G. Carrillo to Clarence C. Carrillo, Trustee, and to the successor trustees of THE CLARENCE G. CARRILLO TRUST;

b. Quit-Claim Deed dated May 11, 1995 from "Lydia Inez Carrillo Epley, Successor Trustee of the Clarence G. Carrillo Trust..." grantor, to "LYDIA INEZ CARRILLO EPLEY", grantee;

c. Quit-Claim Deed dated June 2, 1995 from “LYDIA INEZ CARRILLO EPLEY” grantor, to “LYDIA I. EPLEY, an unmarried woman”, grantee;

d. Deed of Trust dated JUNE 1, 1995, from “LYDIA I. EPLEY, AN UNMARRIED WOMAN” as trustor to “RALPH J. MARSH, ATTORNEY AT LAW” as trustee, with ADMIRAL HOME LOAN DBA ADMIRAL MORTGAGE COMPANY, A CALIFORNIA CORPORATION” as beneficiary;

e. Lis Pendens dated September 19, 1995, concerning this action, recorded with the Utah County Recorder on September 26, 1995 and bearing entry number 64095, book 3775, page 701;

f. Corporation Assignment of Deed of Trust recorded November 9, 1995. There are no other documents on the chain of title to the above described property that relate to this matter. [Mertin Affidavit ¶ 7 and Exhibits attached thereto, Trial Court Clerk Index #496]; [Affidavit of Donald K. Hyland submitted by Ocwen Federal Bank ¶ 4, Trial Court Clerk Index #442];

8. The signature and notary seal of one Leasa Day purportedly appears on the Quit Claim Deed contended by plaintiffs to be forged. In correspondence from said Leasa Day, she makes the following statements:

...Lydia Epley was a co-worker with whom I was placed in a supervisory position. Lydia did present many documents for me to sign over the years which were work related. After obtaining a copy of the Quit Claim Deed, it

does appear that the signature may be mine, but I did not knowingly sign nor notarize this document. Lydia's father [Clarence G. Carrillo] never appeared before me for any reason.

My suspicion is that my signature may have been copied and applied to the notary line on this document. Lydia had access to my seal and my signature stamp as they were kept in my desk.

I feel that I am as much a victim as your clients. Lydia somehow either copied or caused this forgery to be placed upon the Quit Claim Deed unbeknownst to me.

[Mertin Affidavit ¶ 8 and Exhibit attached thereto, Trial Court Clerk Index #496];

9. Plaintiffs retained the services of George J. Throckmorton, a Forensic Document Examiner of the Independent Forensic Laboratories, in order to prove that the signature that appears on the Quit Claim Deed that is Exhibit "B" to the Mertin Affidavit is a forgery. [Mertin Affidavit ¶ 9, Trial Court Clerk Index #496];

10. Defendant Lydia Inez Carrillo Epley has kept the proceeds from the loan that she obtained from Admiral Home Loan, and has not shared any of those proceeds with the plaintiffs herein. [Mertin Affidavit ¶ 12, Trial Court Clerk Index #496].

11. Plaintiffs expert witness George J. Throckmorton took the...documents [containing the signatures of Clarence Carrillo] and performed an examination to determine what identifiable characteristics were present in the Quit-Claim Deed [Quit-

Claim Deed from Clarence G. Carrillo to Clarence G. Carrillo, Trustee and the Successor Trustees of The Clarence G. Carrillo Trust] attached hereto as Exhibit “A” and in the documents attached hereto as Exhibits “B.” These characteristics were compared with each other to see if similarities or differences existed. A comprehensive examination and evaluation of the writing resulted in the following professional opinion:

- a. The signed name “Clarence G. Carrillo” found on the Quit-Claim Deed attached hereto as Exhibit “A” is different than the signatures that appear on the documents attached hereto as Exhibits “B.” Said signature on the Quit-Claim Deed attached hereto as Exhibit “A” appears to be a “simulated-forgery” written by someone who has access to or is familiar with the known writing style of Clarence G. Carrillo, but George J. Throckmorton could not identify the author. There is a high degree of scientific probability the signature that appears on the Quit-Claim Deed attached hereto as Exhibit “A” is not that of Clarence G. Carrillo, but is a “simulated forgery.” A “simulated forgery” is when someone attempts to imitate the writing style of another person;

[Affidavit of George J. Throckmorton, ¶13a., Trial Court Clerk Index #643].

12. “[t]here is some evidence to indicate that Lydia Epley may have written the Clarence G. Carrillo signature that appears on the Quit-Claim Deed...” but that “...further

hand-writing examples of Lydia Epley...would be needed in order to render a positive opinion..." of whether she forged said signature.

[Affidavit of George J. Throckmorton, ¶13b., Trial Court Clerk Index #643]

13. Only in instances where George J. Throckmorton is able to identify the person who created the simulated forgery is he able to state with absolute certainty or beyond a reasonable doubt as required in criminal cases that a signature is a simulated forgery. However, chances of actually identifying the author in simulated forgery cases are extremely rare.

[Affidavit of George J. Throckmorton, ¶14., Trial Court Clerk Index #643].

14. Lydia Epley admitted to fabricating the Quit-Claim Deed after the death of her father, forging his signature thereto, forging the signature of a co-worker who was a Notary Public, and stealing that co-worker's notary seal and applying it to the forged deed. [Deposition of Lydia Epley, page 124, line 10 through page 125 line 12].

SUMMARY OF ARGUMENTS

- I. THE TRIAL COURT ACTED ERRONEOUSLY, ABUSED ITS DISCRETION, OR EXCEEDED ITS AUTHORITY IN DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN AWARDING SUMMARY JUDGMENT FOR DEFENDANTS OCWEN FEDERAL BANK AND ADMIRAL HOME LOAN.**
- a. Plaintiffs took no action that would preclude them from pursuing their claims against Ocwen Federal Bank and Admiral Home Loan due to the doctrine of election of remedies;**
 - b. Plaintiffs took no action that would entitle the trial court to change the forged deed from void to valid; could any action taken by plaintiffs change the forged deed from void to valid;**
 - c. Plaintiffs took no action that would entitle the trial court to forfeit their interests in the real property to their sister Lydia Epley and in turn to Admiral Home Loan and/or Ocwen Federal Bank through the deed of trust signed by Lydia Epley;**
 - d. The actions of the trial court endorses and rewards the fraudulent conduct of Lydia Epley in committing forgery and punishes her brother and sisters in order to benefit the defendants Admiral Home Loan and Ocwen Federal Bank.**

II. THE FORECLOSURE OF THE TRUST DEED BY OCWEN FEDERAL HAD NO EFFECT UPON THE INTERESTS OF APPELLANTS IN SAID REAL PROPERTY.

- a. The deed of conveyance of Clarence Carrillo, whose signature thereon was forged by Lydia Epley after the death of Clarence Carrillo, was void;**
- b. Lydia Epley had no interest in the real property at the time that she placed a deed of trust against the property in favor of Admiral Home Loan, and subsequently assigned to Ocwen Federal Bank, and had no interest in the real property upon which Ocwen Federal Bank could foreclose;**
- c. The only interest that Lydia Epley ever enjoyed in the real property was a $\frac{1}{4}$ interest that she received in 1998 as a result of the Petition for Order Determining Heirs.**

III. THE TRIAL COURT ACTED ERRONEOUSLY, ABUSED ITS DISCRETION, OR EXCEEDED ITS AUTHORITY IN FORFEITING THE INTEREST OF PLAINTIFFS IN THE REAL PROPERTY.

IV. THE EXECUTION SALE CONDUCTED BY THE UTAH COUNTY SHERIFF WAS INVALID.

I.

ARGUMENT

I. THE TRIAL COURT ACTED ERRONEOUSLY, ABUSED ITS DISCRETION, OR EXCEEDED ITS AUTHORITY IN DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN AWARDING SUMMARY JUDGMENT FOR DEFENDANTS OCWEN FEDERAL BANK AND ADMIRAL HOME LOAN.

- a. Plaintiffs took no action that would preclude them from pursuing their claims against Ocwen Federal Bank and Admiral Home Loan due to the doctrine of election of remedies.**

The defendants Admiral Home Loan and Ocwen Federal Bank argued before the trial court that because the plaintiffs Yvonne Lorainne Carrillo Taylor, Patricia Ann Carrillo Davis and Alexander James Carrillo obtained a judgment against the defendant Lydia Epley, that they had elected their remedies and were barred from pursuing their claims for declaratory relief regarding the deed forged by Lydia Epley and regarding the trust deed that she in turn provided to Admiral Home Loan. This is not a correct application of the doctrine of election of remedies. 25 Am.Jur.2d, Election of Remedies, §1, defines election of remedies as follows:

An election of remedies has been defined as the act of choosing between two or more different and coexisting modes of procedure and relief allowed

by law on the same state of facts. The phrase is also used in a more restrictive sense to denote the doctrine that the adoption, by an unequivocal act, of one of two or more inconsistent remedial rights has the effect of precluding a resort to the others. The doctrine is not a rule of substantive law but rather is a technical rule of procedure or judicial administration.***Its rationale is that courts will not permit suitors solemnly to affirm that a given state of facts exists from which they are entitled to a particular relief and afterward affirm or assume that a contrary state of facts exists, from which they are entitled to inconsistent relief...[Emphasis added; citations omitted].

The key to understanding the doctrine of election of remedies and its application is that a party may not pursue inconsistent remedies based upon the same set of facts. The example that is often given is that a party suffering a breach of a contract may not both sue to rescind the contract and also sue for damages due to the breach of the contract—the two positions taken or the two remedies pursued by the party are inconsistent with each other. See for example, Dugan v. Jones, 615 P.2d 1239, 1247 (Ut. 1980), which states that a judgment for rescission of a contract bars a claim for damages for breach of the contract or *vice versa* since one remedy affirms the contract and the other disaffirms it.

Such is not the case at hand. Appellants did not pursue inconsistent remedies below nor did they take contrary positions on the facts as they believed them to be. Plaintiffs sued Lydia Epley based upon a her fraudulent conduct. They obtained a judgment as a sanction against Lydia Epley based upon her failure to respond to discovery requests and upon her failure to respond to an Order of the court regarding discovery. .[Trial Court Index #55, #70, #92, #97, #101, #105 and #110]. The judgment—sounding in fraud—was for \$55,000.00, for \$4,852.05 accrued interest, for \$527.78 in accrued costs, for \$5,700.00 in attorney fees, and for \$15,000.00 in punitive damages, totaling \$81,079.83. To date, plaintiff have been attempting to collect said judgment, but have not collected enough to pay for the interest, costs and attorney fees incurred, let alone any of the principal or the punitive damages. Obtaining a judgment as a sanction on a claim sounding in the tortuous conduct of Lydia Epley and attempting to collect such judgment should not preclude nor limit plaintiffs from seeking declaratory relief that the fraudulent conduct of Lydia Epley in forging her father's name to a deed rendered that deed void *ab initio*.

Plaintiffs' pursuit of judgment against Lydia Epley does not preclude, and is not inconsistent with, plaintiffs' claims against Admiral Home and Ocwen Federal that the Trust Deed that Lydia Epley placed against the real property—against real property in which Lydia Epley had no interest other than that of an heir at the time the Trust Deed was given—was an ineffective attempt to encumber the real property. Foreclosure of the

same should also therefore be ineffective in affecting the interests of plaintiffs in the real property.

Application of the doctrine of election of remedies is not favored by the courts and it should not have been applied to the case below in depriving plaintiffs of an award of summary judgment to the effect that Lydia Epley had no interest in the real property at the time that she signed the deed of trust in favor of Admiral Home Loan, and that foreclosure of the same had no effect upon the interests of the plaintiffs in the real property.

The doctrine of election of remedies is both widely recognized and widely criticized by the courts. Commonly, criticism has come in the form of statements that the rule is a harsh one, that it is disfavored in equity, that it should not be lightly enforced, and that it should not be unduly extended, or, alternatively, that it must be strictly confined within its reason and spirit. It is stated that the doctrine is now largely obsolete in that modern procedural rules appear to have the effect of decreasing its applicability and scope. Indeed, it has been said that after the adoption of the Federal Rules of Civil Procedure, the doctrine of election of remedies is no longer applicable in federal cases. 25 Am.Jur.2d, Election of Remedies §3.
[Citations omitted; emphasis added].

It is important to remember that the Utah Rules of Civil Procedure are taken from and patterned after the Federal Rules of Civil Procedure.

The three elements that must be clearly evident before the doctrine of election of remedies becomes operative are: 1. The existence of two or more remedies; 2. the inconsistency between the remedies; and 3. a choice of one of them. 25 Am.Jur.2d, Election of Remedies §8. Only where the remedies are inconsistent with each other or repugnant to each other may the doctrine be applied. As stated above, plaintiffs' judgment against Lydia Epley as a sanction and based upon her fraud is not inconsistent and is not repugnant to the claims made against defendants Admiral Home Loan and Ocwen Federal seeking to have the Trust Deed declared ineffective against their interests in the real property; both claims are based upon the same fraudulent conduct of Lydia Epley.

It has been said that the so-called 'inconsistency of remedies' is not in reality an inconsistency between the remedies themselves, but must be taken to mean that a certain state of facts relied on as the basis of a certain remedy is inconsistent with, and repugnant to, another certain state of facts relied on as the basis of another remedy. For one proceeding to be a bar to another for inconsistency, the remedies must proceed from opposite and irreconcilable claims of right and must be so inconsistent that a party could not logically assume to follow one without renouncing the other. Two

modes of redress are inconsistent if the assertion of one involves the negation or repudiation of the other. 25 Am.Jur.2d, Election of Remedies §11. [Citations omitted].

Nor did plaintiffs seek or obtain a double recovery. Plaintiffs obtained a judgment against Lydia Epley as a sanction for her failure to respond to discovery requests and for her failure to respond to an Order of Court regarding those discovery requests; plaintiffs claims against her sounded in fraud; regardless of whether plaintiffs obtain the relief they seek against defendants Admiral and Ocwen regarding the cloud on title to the real property, the amount of the judgment plaintiffs have obtained against Lydia Epley will not be abated. The remedies sought by plaintiffs were not inconsistent, but rather were concurrent, or cumulative, and consistent. “Where the remedies are not inconsistent, but are alternative and concurrent, there is no bar until satisfaction has been obtained, unless the plaintiff has gained an advantage or the defendant has suffered a disadvantage. Because satisfaction is the bar, in some cases parties have been allowed to take judgment independently on more than one remedy on the same set of facts.” 25 Am Jur.2d Election of Remedies §12 [Citations omitted; emphasis added]. In the case of Sloss-Sheffield Steel & I. Co. v. Wilkes, 231 Ala. 511, 165 So. 764, 109 ALR 385, it was held that a mortgagee could maintain an action against a third person for damage to the mortgaged realty which impaired his security concurrently with an action for a personal judgment against the debtor or a suit to foreclose the mortgage. However, when he once collects

his debt by any one of those proceedings or by a voluntary payment of it, all the remedies not used in so doing are terminated. It is highly unlikely that plaintiffs will ever collect the judgment they have against Lydia Epley; they have tried for over five years and have yet to collect the interest that is accruing on that judgment. As stated above, the mere fact that plaintiffs are seeking and pursuing cumulative and consistent remedies against the defendants is not a bar under the doctrine of election of remedies.

The doctrine of election of remedies does not apply where the available remedies are concurrent, or cumulative, and consistent. Where the remedies are not inconsistent, but are alternative and concurrent, there is no bar until satisfaction has been obtained...Distinct and independent grounds of action arising from the same transaction and which may be concurrently or consecutively pursued to satisfaction are not subject to the doctrine of election of remedies...[Citations omitted; portions omitted; emphasis added]. 25 Am.Jur.2d Election of Remedies §§ 12 and 13.

The case relied upon by the trial court in granting summary judgment in favor of Admiral Home Loan and Ocwen Federal Bank is easily distinguishable and not controlling. In Brigham City Sand & Gravel, et al. v. Machinery Center, Inc., 613 P.2d 510 (Ut. 1980), prior to trial the Jensens settled with plaintiff and paid plaintiff the \$2,500.00 damages that plaintiff was seeking for conversion of machinery. Because plaintiff had satisfied its claim in full, the remainder of the action against Machinery

Center, Inc. was dismissed. It was the satisfaction in full of the claim against the Jensens that resulted in the dismissal of the remaining claims against Machinery Center, Inc. In the case at hand, it is important to remember that plaintiffs are not seeking a monetary judgment against the defendant Admiral Home Loan and Ocwen Federal, but rather are seeking declaratory relief. Further, plaintiffs have not obtained a recovery of their damages or a satisfaction of their judgment from Lydia Epley, and likely never will. Further, the judgment obtained against Lydia Epley was obtained as a sanction for her failure to comply with discovery requests; the plaintiffs claims against her were for her fraudulent conduct, and were not based upon loss of any property interest. Indeed, at the time the judgment against Lydia Epley was entered, plaintiffs owned no interest in the real property. Finally, in Brigham City that plaintiffs were seeking compensation for loss of their personal property; at stake in this case are interests in real property, and real property, being unique, cannot be compensated for by damages. Hence, Brigham City is easily distinguishable and not controlling. Rather, that portion of American Jurisprudence cited above, which states that it is the satisfaction of the judgment that acts as a bar, would be more applicable to the case at hand, if at all.

b. Plaintiffs took no action that would entitle the trial court to change the forged deed from void to valid nor could any action taken by plaintiffs change the forged deed from void to valid.

There is no doubt that the Quit Claim Deed from Clarence G. Carrillo to Clarence G. Carrillo, Trustee, and the successor trustees of The Clarence G. Carrillo Trust was forged by Lydia Epley and is **void**. In her deposition, Lydia Epley admitted to fabricating this deed after the death of her father, forging his signature thereto, forging the signature of a co-worker who was a Notary Public, and stealing that co-worker's notary seal and applying it to the forged deed.

"A forged deed, in the sense defined above, is absolutely void and wholly ineffectual to pass title, even to a subsequent innocent purchaser from the grantee under such forged deed. The recording of such a deed gives it no effect as a conveyance of title, and a court of equity will intervene to order the cancellation of such an instrument..." 23 Am.Jur.2d Deeds § 190 [Citations omitted]. Further, "A forged deed is absolutely void and wholly ineffectual to pass title, even to a subsequent innocent purchaser from the grantee under such a forged deed. One holding under a forged deed may not claim protection against the title of the grantor in such a deed, on the ground that he is a bona fide purchaser..." 77 Am.Jur.2d Vendor and Purchaser §628.

Prior to the time that the deposition of Lydia Epley was taken plaintiffs retained the services of George J. Throckmorton, a Forensic Document Examiner, to examine the signature that appeared on the deed that they suspected had been forged by Lydia Epley, and to render an opinion concerning the same; he concluded that the signature was not that of Clarence Carrillo. Additionally, plaintiffs obtained a letter from Leasa Day, the notary public whose signature and seal purportedly appeared on said document. Leasa Day stated in said letter that “I did not knowingly sign nor notarize this document. Lydia’s father [Clarence G. Carrillo] never appeared before me for any reason” and further that “My suspicion is that my signature may have been copied and applied to the notary line on this document. Lydia had access to my seal and my signature stamp as they were kept in my desk.

“I feel that I am as much a victim as your clients. Lydia somehow either copied or caused this forgery to be placed upon the Quit Claim Deed unbeknownst to me.”

There is no question and there can be no dispute based upon the record below that the Quit Claim Deed was forged by Lydia Epley and as such is void. As it is void (as opposed to being merely “voidable”), nothing that the plaintiffs did or did not do could affect the nature of that deed. Even if collected their judgment against Lydia Epley in full, and even if the conduct of plaintiffs was somehow so egregious to warrant some sort of forfeiture of their interests, this conduct would not render the forged void deed into a valid deed. There is no theory known to plaintiffs which would justify the decision

rendered by the trial court judge that their interests were somehow forfeited to their sister Lydia Epley, thereby allowing the foreclosure by Ocwen Federal of the trust deed given by Lydia Epley to foreclose not only her interest, but also the interests of plaintiffs in the title to the real property.

The evidence provided in support and in opposition of the various motions seeking summary judgment showed the following conveyances on the chain of title:

a. Quit Claim Deed from Clarence G. Carrillo to Clarence G. Carrillo, Trustee, and to the successor trustees of The Clarence G. Carrillo Trust. [In her deposition Lydia Epley admitted that she fabricated this deed after the death of her father, that she forged his name thereto, and that she stole a co-worker's notary seal and forged her co-worker's signature and applied her co-worker's notary seal to this deed].

[Nowhere in this deed is Lydia Epley, or anyone else, identified by name as being a successor trustee of The Clarence G. Carrillo Trust];

b. Quit Claim Deed from Lydia Epley, as Successor Trustee of The Clarence G. Carrillo Trust to Lydia Epley, individually;

c. Quit Claim Deed from Lydia Epley to Lydia Epley, an unmarried woman;

d. Trust Deed from Lydia Epley in favor of Admiral Home Loan.

Based upon even a cursory review of the above chain of title, the immediate question arises: Where did Lydia Epley obtain title to the property? It would have had to

have been between step a. and step b. above, because nowhere is she identified by name as being a successor trustee of the trust that might entitle her to pledge as security the real property; that is, how was Lydia Epley invested with title that would allow her to perform the acts set forth in steps b., c. and d. above. The answer is straightforward: She never has obtained title or any interest that would allow such actions. In simple terms, Lydia Epley was an interloper on the chain of title, and as such had no right to convey or pledge any interest in said title, because she possessed no such interest.

§ 57-3-2(1), Utah Code Annotated, states in part as follows:

Record imparts notice

1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, each original document or certified copy of a document complying with Section 57-4a-3, whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4, and each financing statement complying with Section 70A-9-402, whether or not acknowledged shall, from the time of filing with the appropriate county recorder, impart notice to all persons of their contents.

One who deals with real property is charged with notice of what is shown by the records of the county recorder of the county in which the real property is situated. Crompton v. Jensen, 78 Utah 55, 1 P.2d 242 (1931). Conversely, one who deals with real property is also charged with what is not shown by the records of the county recorder and is charged

with knowledge of defects in their chain of title as reflected by the records of the county.

Applying that to the situation at hand, Admiral Home Loan and Ocwen Federal Bank were charged with knowledge of the following facts:

a. There was a Quit Claim Deed recorded from Clarence G. Carrillo to Clarence G. Carrillo, Trustee and to successor trustees of The Clarence G. Carrillo Trust. This Quit Claim Deed did not identify by name who the successor trustees were;

b. There may or may not be a Trust Agreement in existence relating to The Clarence G. Carrillo Trust. In response to Requests for Production of Documents propounded by plaintiffs against Admiral Home Loan, Admiral Home Loan stated that “This defendant has no signed and notarized copy of that trust agreement.”

c. There is no recorded deed from Clarence G. Carrillo conveying any interest in the real property to Lydia Epley.

Furthermore, when dealing with the real property in question, Admiral Home Loan and Ocwen Federal Bank (and all persons) were reasonably put on inquiry as to at least the following questions:

a. Who, if anyone, was entitled to act as Trustee for The Clarence G. Carrillo Trust;

b. Who, if anyone, is/are the successor trustee(s) of The Clarence G. Carrillo Trust;

c. Is/was Lydia Epley ever named as a successor trustee of The Clarence G. Carrillo Trust, and if so, where is she so named;

d. If Lydia Epley were ever named as a successor trustee of The Clarence G. Carrillo Trust, what were her powers and what were her limitations under The Clarence G. Carrillo Trust, and if so, where are those powers and limitations set forth.

Ocwen Federal Bank never attempted to address these issues in seeking summary judgment, claiming that they were not relevant, or that Ocwen Federal Bank was a *bona fide purchaser* who had no notice of any of the claims of plaintiffs. Ocwen Federal Bank argued that because the Trust Agreement attached to plaintiffs' complaint was not recorded and because the plaintiffs had not recorded any instrument giving constructive notice that they claimed some right, title or interest in the property, that Ocwen Federal Bank had no notice, actual or constructive, of any adverse claims to the title by plaintiffs. Plaintiffs contended that this was not so, and that Ocwen Federal had their argument backwards. [Plaintiffs did record a *Lis Pendens* at the time that they filed their complaint; however, the filing of the complaint and the recording of the *Lis Pendens* occurred several months after the promissory note and trust deed were assigned by Admiral Home Loan to Ocwen Federal Bank].

By means of § 57-3-2(1), Ocwen Federal Bank was charged with knowledge of the contents of the Quit Claim Deed from Clarence G. Carrillo to Clarence G. Carrillo, Trustee, and to the successor trustees of The Clarence G. Carrillo Trust. Ocwen Federal

Bank was charged with knowledge that said Quit Claim Deed did not identify by name who the successor trustees were. Further, Ocwen Federal Bank was charged with knowledge that there was no deed on the chain of title conveying any interest in the real property from Clarence G. Carrillo to Lydia Epley. Hence, Ocwen Federal Bank was charged with knowledge that Lydia Epley was an interloper on title and that she had no interest in title to pledge to Ocwen Federal Bank by way of a Trust Deed. This knowledge imposed upon Ocwen Federal and Admiral Home Loan a duty to investigate further.

Ocwen Federal Bank may argue that pursuant to the provisions of § 57-3-2(4), Utah Code Annotated, they were not charged with knowledge of the claims of plaintiffs in the real property by means of the recording of the Quit Claim Deed from Clarence G. Carrillo to Clarence G. Carrillo, Trustee, and to the successor trustees of The Clarence G. Carrillo Trust, because said deed failed to name the beneficiaries and failed to state the terms of the trust. Indeed, while not citing directly to § 57-3-2(4), this seems to be precisely the argument made by Ocwen Federal Bank. § 57-3-2(4), Utah Code Annotated, states as follows:

The fact that a recorded document recites only a nominal consideration, names the grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the terms of the trust does not charge any

third person with notice of any interest of the grantor or of the interest of any other person not named in the document.

However, this argument is ill-fated, because, as stated above, Ocwen Federal Bank had matters backwards, and should have been arguing just the opposite side of this coin when it claimed (as it ultimately must claim¹) that Lydia Epley was somehow authorized as successor trustee of The Clarence G. Carrillo Trust to convey the property to herself as an individual. The deed in question identifies by class only the “successor Trustees” but does not state who those people were; this placed upon Admiral Home Loan and Ocwen Federal Bank a duty to investigate and determine who might act as successor trustees; Ocwen Federal did not do this. Under Ocwen Federal’s version of matters, anyone could have stated that they were a successor trustee of the Clarence Carrillo Trust and acted to convey away from any intended beneficiaries all rights in the real property. With the large and growing numbers of real property parcels presently held in the name of “Trustees and Successor Trustees”, a strong public policy exists that the actions of Lydia Epley not be ratified. The law should not be construed to so easily allow an unscrupulous person from stepping forward and claiming to be a successor trustee, and based upon that unsupported claim alone, be allowed to convey away property rights and interests. Yet

¹ Ocwen Federal Bank had not explicitly made this argument. As pointed out above, Ocwen Federal Bank simply ignored the issue.

there was no other applicable theory upon which Ocwen Federal Bank could claim that Lydia Epley obtained title to the real property².

The attempted conveyance by Lydia Epley, as successor trustee of The Clarence G. Carrillo Trust, to Lydia Epley, was void because it also violated the Statute of Frauds. Indeed, all of the attempts by Lydia Epley to convey the property to herself were void because they violated the Statute of Frauds.

§ 25-5-1, Utah Code Annotated, relating to an estate of interest in real property, states as follows:

Estate or interest in real property. No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing. [Emphasis added].

Applying the Statute of Frauds to the situation before the court, there is no way that Lydia Epley could have obtained an estate or interest in the real property of Clarence G.

² §§ 57-9-1, the Marketable Record Title Act, is not applicable, as such requires that a person have “an unbroken chain of title of record to any interest in land for forty years or more.”

Carrillo, or trust or power over the real property of Clarence G. Carrillo, other than by a “deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized in writing.” Plaintiffs demonstrated that there was no such deed from Clarence G. Carrillo to Lydia Epley. Ocwen Federal Bank has also demonstrated the same through their own evidence as to chain of title given in the Affidavit of Donald K. Hyland. Therefore, the court can only conclude that the attempts by Lydia Epley, either as an individual or as a successor trustee to The Clarence G. Carrillo Trust to convey an interest to herself in the real property of Clarence G. Carrillo were null and void. Therefore, Lydia Epley owned no interest which she could pledge by way of Trust Deed to Admiral Home Loan or to Ocwen Federal Bank. Therefore, Ocwen Federal Bank should not have been allowed to foreclose the Trust Deed that it owned and the same should have been removed as a cloud on title to the real property.

Nor is the argument that Ocwen Federal Bank or Admiral Home Loan claims to be a *bona fide purchaser* of the Trust Deed from Lydia Epley to the benefit of Admiral Home Loan compelling. Whether the Ocwen Federal Bank and/or Admiral Home Loan were or were not *bona fide purchasers* is not relevant because whether they were or were not does not change the nature of a deed that is **void**. Because of the void deed in the chain of title, no one that takes under that void deed can make any claim to title, even if they would otherwise be *bona fide purchasers*. The status of a purchaser cannot change

the status of a deed that is void into a deed that is valid; to allow such would be to change the meaning of the word “void” into “voidable.” As cited above, a forged deed is “void” [not “voidable”] and it is wholly ineffective to give title, even to an innocent purchaser. 23 Am.Jur.2d Deeds § 190. This simple statement is the singular most compelling reason why title insurance exists.

Even so, plaintiffs contend that neither Ocwen Federal Bank nor Admiral Home Loan were *bona fide purchasers*. In support of its Motion for Summary Judgment, Ocwen Federal Bank cited below the case of Blodgett v. Martsch, 590 P.2d 298, 303 (Ut. 1978) as authority for the proposition that “a *bona fide purchaser* is one who, in good faith, gives value without notice of any claims or defects in title.” Ocwen Federal Bank did not correctly paraphrase the language set forth in Blodgett describing a *bona fide purchaser*; that language, at page 303, states: “A bona fide purchaser is one who takes without actual or constructive knowledge of facts sufficient to put him on notice of the complainant’s equity.” [Emphasis added]. Ocwen Federal Bank failed to inform the court that “constructive knowledge” as well as “notice” can defeat a subsequent purchaser’s claim to status as a *bona fide purchaser*. Constructive knowledge is that knowledge that is imparted by the matters recorded with the Utah County Recorder, and conversely, by what was not recorded with the Utah County Recorder. As set forth above, all those dealing with real property are charged with knowledge of the status the record and are charged with constructive knowledge of the defects in that chain of title.

Ocwen Federal Bank itself provided proof to the court, in the Affidavit of Donald K. Hyland, of defects in the chain of title of which it has constructive knowledge (set forth above). As such, it defeated its own claim to *bona fide purchaser* status. Plaintiffs contend that any time title is conveyed to “Successor Trustees of the XYZ Trust”, bona fide status is defeated unless the purchaser satisfies the question by investigation and resort to the written and signed Trust Agreement that the person purporting to act indeed the authorized “successor trustee” of the trust and is acting pursuant to authority granted in the trust; this would place a minor inconvenience upon title companies, but would negate the opportunity for fraud by someone not authorized to act as a successor trustee.

c. Plaintiffs took no action that would entitle the trial court to forfeit their interests in the real property to their sister Lydia Epley and in turn to Admiral Home Loan and/or Ocwen Federal Bank through the deed of trust signed by Lydia Epley.

As argued above, no action by the defendants Ocwen Federal Bank and/or Admiral Home Loan—regardless of how commendable—nor the fact that Ocwen Federal Bank and/or Admiral Home Loan were or were not *bona fide purchasers*, could change the status of the deed forged by Lydia Epley from a void deed to a valid deed; so too, the corollary of that argument is that no action taken by the plaintiffs below—regardless of how laudable or how egregious—could change that forged deed from void to valid. Yet the ruling of the trial court has reached that result, in ruling that Ocwen Federal could

foreclose the trust deed and that in so doing it would not only foreclose any interest that Lydia Epley would have in the real property, but would also foreclose any interest the plaintiffs had in the real property. This the trial court did without resort to legal theory, other than to hold that the actions of plaintiffs in pursuing Lydia Epley was an election of remedy inconsistent with the remedy of seeking declaratory relief against the defendants Ocwen Federal and Admiral Home Loan. In that regard the trial court did change a void deed forged by Lydia Epley into a valid deed sufficient to convey to Lydia Epley all title in and to the real property, in order that Ocwen Federal could foreclose against sufficient interest to satisfy the amounts owing on their promissory note. This was not merely an edict of forfeiture, which is abhorred under the law (see Commercial Inv. Corp. v. Siggard, 936 P.2d 1105, 1109 and included citations (Utah App. 1997)) **even when the parties to a contract willingly include a provision that provides for the possibility of forfeiture**, but was also an act that resulted in a forged deed changing from void to valid. The trial court did not have the authority to do this and this ruling was clearly erroneous and invalid.

d. The actions of the trial court endorses and rewards the fraudulent conduct of Lydia Epley in committing forgery and punishes her brother and sisters in order to benefit the defendants Admiral Home Loan and Ocwen Federal Bank.

As stated above, there is no dispute that Lydia Epley acted fraudulently and that she forged the signature of her deceased father to a Quit Claim Deed whereby she hoped to gain financially; her brother and sisters did nothing more than pursue a claim based upon such fraudulent conduct, obtained a judgment against Lydia Epley as a sanction on a claim sounding in fraud, that they will likely never collect, and in doing so, because of an erroneous application by the trial court of a highly disfavored and perhaps defunct doctrine of election of remedies, were prohibited by the trial court from obtaining a ruling that the forged deed was void and invalid in passing any title to the property to Lydia Epley and thereby were prohibited from obtaining a ruling that the Deed of Trust in the real property that Lydia Epley pledged to Admiral Home Loan, which was subsequently assigned to Ocwen Federal Bank, was ineffective in pledging any interest—especially any interest owned by plaintiffs—to Admiral Home Loan and to Ocwen Federal Bank and upon which they could foreclose. The end result of these rulings is that the trial court has condoned or rewarded Lydia Epley for the fraud that she committed and has punished the plaintiffs by allowing Ocwen Federal Bank to foreclose its trust deed as if no forgery had

ever occurred. This is in unjust result that should not be allowed by the appellate court to stand.

II. THE FORECLOSURE OF THE TRUST DEED BY OCWEN FEDERAL HAD NO EFFECT UPON THE INTERESTS OF APPELLANTS IN SAID REAL PROPERTY.

- a. The deed of conveyance of Clarence Carrillo, whose signature thereon was forged by Lydia Epley after the death of Clarence Carrillo, was void;**

The deed that Lydia Epley forged is a void and nothing has occurred to change that condition. The trial court did not rule that the deed was valid. Indeed, trial court made no ruling regarding that deed at all and ignored altogether the un-refuted evidence that the deed was forged by Lydia Epley. Further, the defendants Ocwen Federal Bank and Admiral Home Loan attempted to stay completely away from that issue as well, concentrating instead on the argument that election of remedies barred plaintiffs from pursuing their claims against Admiral Home Loan and Ocwen Federal Bank.

As the Quit-Claim Deed from “Clarence G. Carrillo to Clarence G. Carrillo, Trustee and the Successor Trustees of The Clarence G. Carrillo Trust” was forged and is void, neither Admiral Home Loan, nor Ocwen Federal Bank, nor any subsequent purchaser from them, acquired any interest in the real property as a result of that deed. As established above, a forged deed is void *ab initio*, and the grantee thereof, and subsequent

purchasers, even *bona fide purchasers*, acquire no interest in the real property through said void deed. In Rasmussen v. Rasmussen, 583 P.2d 50 (Ut. 1978), Chief Justice Ellett stated: “The recording of a forged deed gives no notice to the world or to anybody within it of the contents thereof. Such a deed is void and even a bona-fide purchaser from the person who altered it takes nothing by it.” [Citations omitted]. “A deed void ab initio [where it is proved the questioned deed was not the deed of the grantor as is the case where a deed is forged] carries no title on which a bona fide purchaser may rely, whereas a deed voidable in equity may be the basis of good title in the hands of a bona fide purchaser who gave value prior to the time the deed was avoided by the grantor.”

Bennion Insurance Company v. 1st OK Corporation, 571 P.2d 1339 (Ut. 1977).

[Citations omitted].

Because that void deed was ineffective in passing any title or interest to Lydia Epley, Lydia Epley had no interest in the real property to pledge by way of trust deed to Admiral Home Loan and Ocwen Federal Bank. Because she had no interest in the real property to pledge, the foreclosure of the trust deed given by Lydia Epley was ineffective to affect the interest of plaintiffs in the real property.

b. Lydia Epley had no interest in the real property at the time that she placed a deed of trust against the property in favor of Admiral Home Loan, and subsequently assigned to Ocwen Federal Bank and had no interest in the real property upon which Ocwen Federal Bank could foreclose;

The plaintiffs moved the trial court for an Order determining the percentage of interest in the real property that the foreclosure of Ocwen Federal would affect. Plaintiffs contended that the most that could be affected by said foreclosure was an undivided one-fourth interest in the real property, because of the simple fact that $\frac{1}{4}$ was the extent of the interest in the real property that Lydia Epley—the only person who signed the Trust Deed to Admiral, which was assigned to Ocwen—ever owned. This is an issue which arose when the trial Court signed the Order dated December 15, 1998 denying plaintiffs' Motion to have the Trust Deed in favor of Ocwen removed from title.

There can be no dispute that at the time that Lydia Epley first signed the Trust Deed in favor of Admiral, she owned no interest in the real property. Her only claim to title was by virtue of a deed of Clarence Carrillo, which she admitted to having forged, conveying title to the property from Clarence Carrillo to The Clarence Carrillo Family Trust, and then by virtue of a series of deed whereby she, as ostensible Successor Trustee of this Trust, conveyed the property to herself individually. There is no dispute that the

Clarence Carrillo Family Trust was never formed; no signed Trust Agreement has ever been located or admitted into evidence. In other words, Lydia Epley's claim to title was based on a series of conveyances whereby she, as an interloper in the chain of title, conveyed title to herself. The effect of these conveyance was nil; a forged deed is void absolute and does not convey title. Hence, Lydia Epley had no title to pledge to Admiral Home by way of a Trust Deed. There can be no dispute on this point.

Admiral Home Loan and Ocwen Federal Bank apparently agreed with this point. Evidence of this agreement can be found in their Amended Answer, whereby they assert that the plaintiffs lacked standing to seek to have the Trust Deed removed from title. Their claim was the logical extension of the very argument plaintiffs were making: Lydia Epley had no title to the real property, and could not pledge any interest in the real property. The corollary of this argument—which was adopted by Ocwen Federal Bank and Admiral Home Loan in their Amended Answer—was that the plaintiffs had no title to the real property, and therefore had no standing to sue to affect title to the real property. It is important to reiterate that plaintiffs had no interest in title at the time that they sued their sister Lydia Epley and obtained a judgment against her as a sanction; therefore, it is also erroneous to assert that the judgment that they obtained against Lydia Epley should somehow act as a replacement for the value of their interests in the real property [none] and should therefore somehow act as a bar to pursuit of their remedies against Ocwen Federal Bank and Admiral Home Loan under the doctrine of election of remedies.

- c. The only interest that Lydia Epley ever enjoyed in the real property was a ¼ interest that she received in 1998 as a result of the Petition for Order Determining Heirs.**

In response to this issue of lack standing to sue to affect title, and to remove it as an issue, plaintiffs petitioned the Fourth Judicial District Court, under the probate division, under case number 983400124ES, for an Order Determining Heirs. In said Order, by operation of law, and pursuant to the provisions of Sections 75-2-101, and 75-2-103(1)(a), and because the decedent (Clarence G. Carrillo) did not have a surviving spouse at the time of his death, it was ruled by the probate Court that by operation of law, each of the four children of Clarence Carrillo, including Lydia Epley, were entitled to a one-fourth interest in the real property. Those section of the Utah Code follow.

75-2-101. Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

75-2-102. (1) The part of the intestate estate not passing to the surviving spouse under Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows: (a) To the issue of the decedent by representation.

Said ruling, and the subsequent recording of said Order, was the first time that Lydia Epley enjoyed any interest in the real property. By virtue of the provisions of Section 57-

1-20, Utah Code Annotated, set forth below, the greatest percentage of interest in the real property that Ocwen Federal Bank or Admiral Home Loan can claim that their Trust Deed affected, is the one-fourth interest acquired by Lydia Epley by virtue of the above-referenced Order Determining Heirs:

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or his successors in interest, **subsequent to the execution of the trust deed**, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed in like manner as if acquired before execution of the trust deed. [Emphasis added].

Further, there is the issue of whether the Judgment that Plaintiffs obtained against Lydia Epley attaches to her interest ahead of the relation back of the interest Lydia Epley later obtained as described above. Plaintiffs obtained a judgment against Lydia Epley in 1996, which judgment was obtained after the time that Lydia Epley executed her Trust Deed and before the time that Lydia Epley obtained any interest in the real property. Plaintiffs contend that their judgment attached to her interest in the real property immediately, and ahead of the “relation back” of her interest to the benefit of the trustee as additional (indeed as the only) security under the trust deed under the foregoing section

of the Utah Code. This issue appears to be a matter of first impression, and counsel for plaintiffs can find no ruling interpreting the above section or its workings.

III. THE TRIAL COURT ACTED ERRONEOUSLY, ABUSED ITS DISCRETION, OR EXCEEDED ITS AUTHORITY IN FORFEITING THE INTEREST OF PLAINTIFFS IN THE REAL PROPERTY.

The trial court, in its ruling that the foreclosure of the trust deed by Ocwen Federal was to foreclose not only the interest of the defendant Lydia Epley (the one who had signed the trust deed), but also any interest, right and title of the plaintiffs in the real property, acted erroneously and exceeded its authority. There was absolutely no basis in fact, law or in equity for this forfeiture.

There was no finding by the court of any egregious conduct by the plaintiffs; plaintiffs had been sued by no one; no relief of forfeiture was sought against plaintiffs by anyone.

The only reason that plaintiffs can see as to why the trial court forfeited their interests was through a tortured mis-application of the doctrine of election of remedies. It appears that the trial court reasoned that because plaintiffs obtained a judgment against Lydia Epley, that they could not pursue their remedies for declaratory judgment against the other defendants Ocwen Federal Bank and Admiral Home Loan. This logic is easy to follow, even though plaintiffs contend that it was an improper ruling in itself. However, the trial court went one step further, and it is this step that is absolutely baffling to the

plaintiffs. The court also ruled that **somehow** plaintiffs would also forfeit their interests in the real property and **further** their $\frac{3}{4}$ interests in the real property would be foreclosed by the trust deed that was signed only by Lydia Epley, who never at any time owned more than a $\frac{1}{4}$ interest in the real property. Again, there is no justification for this result in fact, law or in equity.

Assuming, *arguendo*, that something the plaintiffs did prevented them from seeking the remedies they sought against Ocwen Federal Bank and Admiral Home Loan. The result of this is that the plaintiffs would still own a $\frac{3}{4}$ interest in the real property, that Lydia Epley would own no more than a $\frac{1}{4}$ interest the real property, and that the foreclosure of the trust deed given by Lydia Epley would affect no more than her interest in the property. However, the trial court could not allow this to result to stand, and erroneously and without basis in effect ordered that the $\frac{3}{4}$ interest of the plaintiffs in the property somehow flowed to the benefit of Lydia Epley, and combined with her $\frac{1}{4}$ interest so that the effect of the foreclosure of the trust deed executed by Lydia Epley would clear off from title all interest of the children of Clarence Carrillo. This result is clearly erroneous, is not an abuse of discretion but rather exceeds the authority of the Fourth District Court. The District Court judge deprived the plaintiffs of their property without due process.

IV. THE EXECUTION SALE CONDUCTED BY THE UTAH COUNTY SHERIFF WAS INVALID.

The Execution Sale on the real property involved in this lawsuit, which sale occurred on February 10, 1999, should be set aside and declared void for failure of the Utah County Sheriff to comply with the strict requirements of Rule 69, **Execution**, Utah Rules of Civil Procedure. That rule requires, in part, that along with service of the Writ of Execution, certain notices be served upon the judgment debtor.³ That requirement is contained in Rule 69(g), which requires:

At the time the writ of execution is issued, the clerk shall attach to the writ a notice of execution and exemptions and right to a hearing and two copies of an application by which the judgment debtor may request a hearing.

³ The plaintiffs herein are not “judgment debtors” in that Ocwen Federal nor Admiral Home Loan have never sued them for any relief or on any claim; Ocwen Federal and Admiral Home Loan have only sought to foreclose judicially their trust deed; yet the trial court ruled somehow that the interests of the plaintiffs in the property were to be foreclosed through the foreclosure sale of a trust deed given by Lydia Epley, one of the defendants. Plaintiffs are therefore in the odd position of claiming rights afforded to judgment debtors even though they have not been sued for any relief.

Upon service of the writ, the sheriff or constable shall serve upon the judgment debtor, in the same manner as service of a summons in a civil action, or cause to be transmitted by both regular and certified mail, return receipt requested, to the judgment debtor's last known address as provided by the creditor, (I) the notice of execution and exemptions and right to a hearing, and (ii) the application by which the judgment debtor may request a hearing. *** [Portions omitted].

In this matter, the sheriff failed to comply with the above requirement in relation to the plaintiffs. The sheriff did not serve the plaintiffs Yvonne Taylor, Patricia Davis or Alex Carrillo with the documents or in the manner required by the above-stated rule. As the sheriff did not comply at all with this provision of the rule, the Foreclosure Sale is invalid and must be set aside or ruled to be invalid. Similar to the case of Taubert v. Robert, 747 P.2d 1046 (Ut. 1987), where the Supreme Court ruled an execution sale invalid due to the failure of the sheriff to comply with the provisions of Rule 69(d), where the sale occurred after the return date of the writ, so too should this court rule that the sale was invalid due to the failure of the sheriff to service the "judgment debtors" as required by Rule 69(g). If the court is inclined to rule that the plaintiffs are not "judgment debtors" as contemplated by Rule 69(g), then it should require the district court to amend the sale and its prior Orders and Judgment to the effect that no interest of the plaintiffs were or could be affected by the sale, but rather that only the interest of Lydia Epley, whatever that interest may be, was affected by the sale. The Notice of Sale by the sheriff

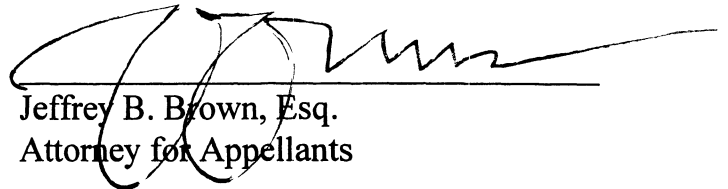
indicated that “All right, title, claim and interests of the **above named Plaintiffs & Defendant, Lydia Inez Carrillo Epley**” would be sold. [Emphasis added]. Because the sheriff’s sale deals with foreclosure, like forfeiture, which is not favored under the law, the clear requirements of the sale as set forth in Rule 69(f) should be strictly complied before any sale can be upheld.

CONCLUSION

Plaintiffs were not seeking inconsistent remedies against the defendants; hence, Admiral Home Loan and Ocwen Federal Bank were not entitled to an award of Summary Judgment against plaintiffs under the doctrine of election of remedies. Further, whether plaintiffs pursue and receive judgment and satisfaction of that judgment against Lydia Epley or not should have no effect upon the right of plaintiffs to pursue the defendants Admiral Home Loan and Ocwen Federal Bank for judicial declaration that the Trust Deed executed by Lydia Epley, on real property that she did not own, is ineffective and should be removed as a cloud on title. The court should rule that the judgment that the plaintiffs had against Lydia Epley attached immediately to the $\frac{1}{4}$ interest in the real property that Lydia Epley received as a result of the Petition for Order Determining Heirs, that said attachment occurred prior to any relation back of that interest to the time of the trust deed that Lydia Epley provided, and that the foreclosure of that trust deed affected no interest in the real property. Further, the appellate court should rule that because the Utah County Sheriff failed to comply with the provisions of Rule 69(g) regarding Execution, that the

foreclosure sale that occurred was null and void and is set aside. At the very least, the appellate court should rule that the appellants each enjoy a $\frac{1}{4}$ interest in the real title and that foreclosure of the trust deed pledged by Lydia Epley did not affect their interests in that real property but rather foreclosed only the $\frac{1}{4}$ interest in the real property that Lydia Epley enjoyed.

DATED this 29 day of October, 2001.



Jeffrey B. Brown, Esq.
Attorney for Appellants

CERTIFICATE OF SERVICE

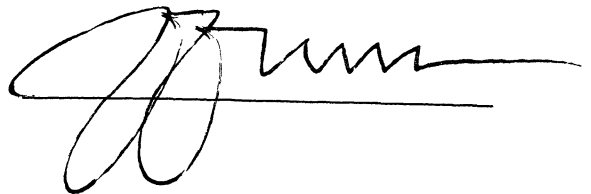
I hereby certify that on the 29th day of October, 2001 I caused to be mailed, first class postage prepaid, two true and correct copies of the foregoing to:

Ralph J. Marsh, Esq.
BACKMAN, CLARK & MARSH
Attorneys for Appellee Admiral Home Loan
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101

Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
Attorney for Appellee Ocwen Federal Bank FSB
215 South State Street, Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151

Lydia Epley (Personal and Confidential)
Pro Se
C/o Brown-Strauss Steel
1050 West Center Street
Lindon, Utah 84042

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

A handwritten signature in black ink, appearing to be 'John Reisser' or 'John Risser', written over a horizontal line.

ADDENDUM

AppealBriefTaylor(Carrillo)vsAdmiralHomeLoanOcwenFederalOctober2001

Daniel W. Anderson, A0080
Sara E. Bouley, A7818
FABIAN & CLENDENIN,
A Professional Corporation
Twelfth Floor
215 South State Street
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900

Attorneys for Ocwen Federal Bank FSB

IN THE FOURTH DISTRICT COURT, 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.

ORDER

Case No. 950400478 CV

Judge Anthony W. Schofield

A hearing was held before the above-entitled Court on December 13, 2000, at

9:15 a.m. at the request of defendant Ocwen Federal Bank FSB ("Ocwen"), which hearing was

attended by Jeffrey B. Brown, counsel for plaintiffs, Daniel W. Anderson, counsel for defendant Ocwen, and Ralph J. Marsh, counsel for defendant Admiral Mortgage Company. The purpose of the hearing was to consider several motions previously filed by plaintiffs, including the following:

1. The Motions of plaintiffs filed on or about December 24, 1998, which included a motion for an order clarifying the summary judgment awarded in favor of Ocwen on December 14, 1998, and an order altering or amending said summary judgment;
2. The motion of plaintiffs dated August 10, 1999, to set aside the sheriff's sale of the subject property held on February 10, 1999; and
3. The motion of plaintiffs dated August 10, 1999, to enlarge the redemption period, pertaining to the foreclosure of the property.

The Court having considered the pleadings on file, the arguments of counsel and being fully informed and having issued a written Ruling herein dated December 13, 2000,

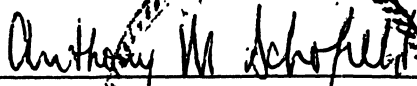
NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. All motions of plaintiffs herein filed after entry of the Judgment, Decree of Foreclosure and Order of Sale entered December 14, 1998 are denied.
2. The sheriff's sale of the subject property held on February 10, 1999, was a valid and enforceable sale, ~~which extinguished all right, title and interest of plaintiffs and defendant Epley in and to the subject property.~~ *AMS*

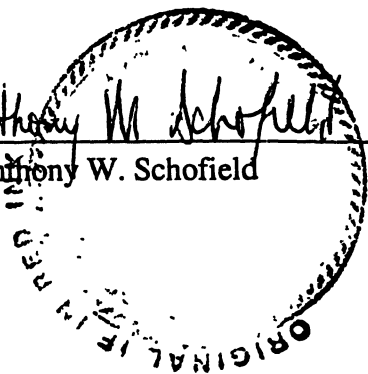
3. The redemption period pertaining to the sheriff's sale of the subject property expired on August 10, 1999, six (6) months after the sheriff's sale of the subject property.

DATED this 16 day of January, 2001.

BY THE COURT:

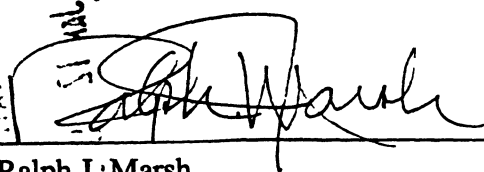


Judge Anthony W. Schofield



APPROVED AS TO FORM:

Jeffrey B. Brown
Attorney for Plaintiffs



Ralph J. Marsh
Backman, Clark & Marsh
Attorneys for Defendant Admiral Home Loan

**RALPH J. MARSH, ESQ. A2092
BACKMAN, CLARK & MARSH
Attorneys for Admiral Home Loan
and Ocwen Federal Bank FSB
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101
Telephone: 531-8300**

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY**

STATE OF UTAH

**YVONNE LORAINNE CARRILLO
TAYLOR, PATRICIA ANN CARRILLO
DAVIS and ALEXANDER JAMES
CARRILLO,**

Plaintiffs,

vs.

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

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

Case No. 950400478 CV

(Judge Donald J. Eyre)

**The Motions for Summary Judgment filed by plaintiffs and by defendants
ADMIRAL HOME LOAN and OCWEN FEDERAL BANK FSB came on for hearing
before the Court on August 27, 1998, Jeffrey B. Brown appearing for plaintiffs and Ralph
J. Marsh and Daniel W. Anderson appearing jointly for Ocwen Federal Bank and Admiral**

Home Loan, and the Court having received and reviewed the motions, affidavits and memoranda in support and in opposition thereto and having heard the arguments of the parties, and having determined that there is no genuine issue as to any material fact, including the following facts:

1. Plaintiffs have sought relief in this case in the form of damages against defendant Lydia Epley for having fraudulently encumbered the property subject to this action in the amount of \$55,000.00 and also for a declaration that the trust deed in favor of defendants Admiral and Ocwen is null and void.

2. Judgment was entered in favor of plaintiffs and against defendant Lydia Epley in the amount of \$81,079.83, which included \$55,000.00, an amount directly related to the amount of the loan made by defendant Admiral to Lydia Epley--which loan was secured by the property which is the subject of this action. The close relationship of the loan amount and the damages sustained by plaintiff is illustrated by the Affidavit of Yvonne Lorainne Carrillo In Support of Damages and Punitive Damages Against Defendants Lydia Inez Carrillo Epley and John Reisser, ¶12, filed April 25, 1996.

3. Plaintiffs have collected portions of that judgment by garnishment of the wages of defendant Lydia Epley in the amount of at least \$5,383.39 and possibly \$20,000, with continuing garnishments, and have required defendant Lydia Epley to convey her 25% interest in the property subject to this action to them, the value of which is in dispute, but neither the amounts collected by plaintiffs nor the value of the property received is necessary to a ruling based upon the Doctrine of Election of Remedies.

4. Plaintiffs are now seeking to invalidate the trust deed on the property in favor of defendants Admiral and Ocwen, which is a remedy based on the same set of facts as the judgment already obtained and which is inconsistent with the remedy upon which that judgment was based and would constitute a double recovery.

Based upon the foregoing undisputed facts, defendants Admiral and Ocwen are entitled to judgment as a matter of law dismissing plaintiffs' claims with prejudice.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Motions for Summary Judgment filed herein by defendants Ocwen Federal Bank, FSB, and Admiral Home Loan are hereby granted, based upon the doctrine of election of remedies.

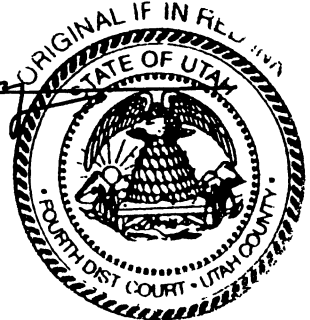
2. Plaintiffs' claims against defendants Ocwen Federal Savings, FSB, and Admiral Home Loan are dismissed with prejudice.

3. A judgment for the amount owing under the Note held by Ocwen Federal Bank, FSB, including reasonable attorney's fees and costs, may be entered and an Order and Decree of Foreclosure entered providing for the sale of the subject property.

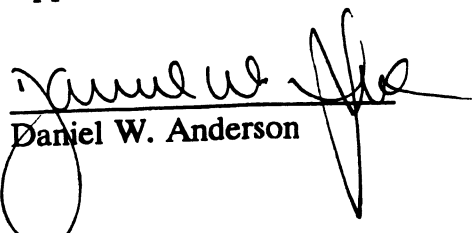
DATED this 15 day of ~~November~~, 1998.


DONALD J. EYRE, Judge

COPY



Approved as to form:


Daniel W. Anderson


Jeffrey B. Brown

CERTIFICATE OF MAILING

On the 18th day of November, 1998, I mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, postage prepaid, to the following:

JEFFREY B. BROWN
Attorney at Law
4685 South Highland Drive, Suite 175
Salt Lake City, Utah 84117

DANIEL W. ANDERSON
Fabian & Clendenin
215 South State Street, Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151



98 DEC 24 PM 2:44

Jeffrey B. Brown (0457)
Attorney for Plaintiffs
4685 South Highland Drive Suite 175
Salt Lake City, Utah 84117
Telephone: 801 273-1411

**FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601**

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

MOTIONS OF PLAINTIFFS

Plaintiffs,

vs.

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

Defendants.

Case No. 950400478CV
Judge Donald J. Eyre

COME NOW the plaintiffs, by and through counsel, and hereby move this court as follows:

1. For an Order clarifying its "Order Granting Defendants' Motions for Summary Judgment" of December 15, 1998, or rather for an Order determining the

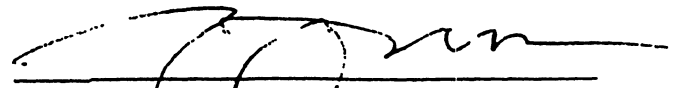
percentage of interest in the real property that the foreclosure of Ocwen Federal Bank affects, as further set forth in the Memorandum filed herewith in support;

2. For an Order altering or amending is Order of December 15, 1998 as further set forth in the Memorandum filed herewith in support;

3. If the foregoing Motions are not granted, then for an Order certifying the Order of December 15, 1998 for immediate appeal, and for an Order staying execution of the Order and of the foreclosure by Ocwen Federal on the real property pending appeal.

4. For such further relief as may be appropriate.

DATED this 24th day of December, 1998.



Jeffrey B. Brown, Esq.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December, 1998, I caused to be hand-delivered a true and correct copy of the foregoing to:

Ralph J. Marsh, Esq.
BACKMAN, CLARK & MARSH
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101

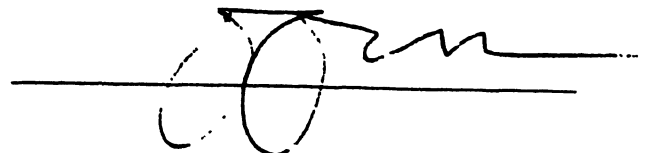
Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
215 South State Street, Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151

and on said day caused a true and correct copy of the foregoing to be mailed, first class postage prepaid, to:

Lydia Epley (Personal and Confidential)
C/o Brown-Strauss Steel
1050 West Center Street
Lindon, Utah 84042

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

and on said date sent a copy of the same by facsimile number 801 429-1033 to the Clerk of the Court.

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

Jeffrey B. Brown (0457)
Attorney for Appellants
4685 South Highland Drive Suite 175
Salt Lake City, Utah 84117
Telephone: 801 273-1411

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601**

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

NOTICE OF APPEAL

Appellants,

vs.

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

Appellees.

Case No. 950400478 CV
Judge Anthony W. Schofield

COME NOW the appellants Yvonne Loraine Carrillo Taylor, Patricia Ann Carrillo Davis, and Alexander James Carrillo, by and through counsel, pursuant to the provisions of Rule 3(a), Utah Rules of Appellate Procedure, and hereby file this Notice of Appeal, appealing from the final Order or Judgment in the above-entitled matter, which

Order is dated January 16, 2001. This appeal is taken from the Fourth Judicial District Court in and for Utah County, State of Utah, and is taken to the Utah Court of Appeals.

DATED this 15th day of February, 2001.



Jeffrey B. Brown, Esq.
Attorney for Appellants

CERTIFICATE OF SERVICE

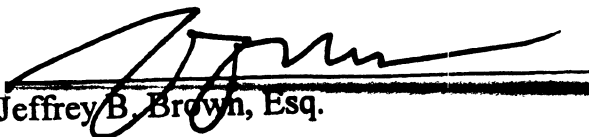
I hereby certify that on the 15th day of February, 2001, I caused to be mailed, first class postage prepaid, a true and correct copy of the foregoing Notice of Appeal, to the following:

Ralph J. Marsh, Esq.
BACKMAN, CLARK & MARSH
Attorneys for Appellee Admiral Home Loan
800 McIntyre Building
68 South Main Street
Salt Lake City, Utah 84101

Daniel W. Anderson, Esq.
FABIAN & CLENDENIN
Attorneys for Appellee Ocwen Federal Bank FSB
215 South State Street, Twelfth Floor
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Salt Lake City, Utah 84151

Lydia Epley (Personal and Confidential)
Pro Se
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Lindon, Utah 84042

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


Jeffrey B. Brown, Esq.