

2016

**Carole Marziale and James Marziale, Appellees/Respondents, v.
Spanish Fork City, Appellant/Petitioner.**

Utah Supreme Court

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IN THE UTAH SUPREME COURT

CAROLE MARZIALE and JAMES
MARZIALE,

Appellees/Respondents,

v.

SPANISH FORK CITY,

Appellant/Petitioner.

BRIEF OF APPELLANT

Supreme Court No. 20160696-SC

Court of Appeals No. 20140982-CA

On Certiorari to the Utah Court of Appeals

Fourth District, Provo Department
The Honorable Darold J. McDade
No. 130401364

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JURISDICTION

This Court has jurisdiction pursuant to Utah Code § 78A-3-102(3)(a).

REFERENCES TO PARTIES

Appellant/Petitioner is Spanish Fork City (the “City”). Appellees/Respondents are Carole Marziale and James Marziale (the “Marziales”).

CONTROLLING CONSTITUTIONAL PROVISIONS, STATUTES, OR RULES

The following provisions are important to a proper resolution of this appeal:

A. Utah Const., Art. VIII, Sec. 5

Article VIII, Section 5 of the Utah Constitution provides as follows:

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

B. Utah Code § 78A-5-102(1)

Section 78A-5-102(1) of the Utah Code provides as follows:

The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

C. Utah Code § 78A-2-301(1)(dd)

Section 78A-2-301(1)(dd) of the Utah Code provides as follows:

(dd) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.

D. Utah Code § 78-2-302(2)

Section 78-2-302(2) of the Utah Code provides as follows:

(2) As provided in this chapter, any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.

E. Utah R. Civ. P. 1

Rule 1 of the Utah Rules of Civil Procedure provides as follows:

Scope of Rules. These rules govern the procedure in the courts of the state of Utah in all actions of a civil nature, whether cognizable at law or in equity, and in all statutory proceedings, except as governed by other rules promulgated by this court or statutes enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action. These rules govern all actions brought after they take effect and all further proceedings in actions then pending. If, in the opinion of the court, applying a rule in an action pending when the rule takes effect would not be feasible or would be unjust, the former procedure applies.

F. Utah R. Civ. P. 3

Rule 3 of the Utah Rules of Civil Procedure provides as follows:

(a) **How commenced.** A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

G. Utah R. Civ. P. 5(e) (2013)

Rule 5(e) of the Utah Rules of Civil Procedure (2013) provides as follows:

(e) Filing with the court defined. A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge. The filing date shall be noted on the paper.

STATEMENT OF THE ISSUE

A. Issue and Presentation in Petition for Writ of Certiorari.

1. The issue presented in this appeal is whether the Court of Appeals erred in concluding that the Marziales' complaint was timely filed. *See* Petition for Writ of Certiorari filed by the City, pp. 1, 10-11; *See also*, Order granting Petition for Writ of Certiorari, entered November 8, 2016.

B. Standard of Review.

Review of the Court of Appeals' decision on certiorari is *de novo*. *State v. Levin*, 2006 UT 50, ¶ 15, 144 P.3d 1096. Further, "application of a statute of limitations to bar an action presents a question of law that we review for correctness." *Gillmor v. Summit County*, 2010 UT 69, ¶ 16, 246 P.3d 102.

STATEMENT OF THE CASE

A. Nature of the Case

Carole Marziale alleges that she was injured on July 11, 2011, when she stepped on a white PVC cap laying on the sidewalk at the Spanish Fork City Sports Complex and

fell. (R. 3-4.) James Marziale alleges a loss of consortium due to Carole Marziale's injuries. (R. 1.) The Marziales, through their attorney, filed a Notice of Claim required by Utah Code § 63G-7-401(2) with the Spanish Fork City Recorder on July 9, 2012. (R. 35.) The Notice of Claim was deemed denied 60 days thereafter, on September 7, 2012. (R. 34.) On August 2, 2013, the Marziales' complaint was submitted twice for filing, but was rejected both times. (R. 332C.) Thirty-nine days later, on September 10, 2013, the Marziales resubmitted their Complaint and it was accepted by the district court at that time. (R. 332C.) However, the complaint filed on September 10, 2013 was beyond the statutory one-year period within which it was required to be filed under the Utah Governmental Immunity Act ("GIA"). (R. 332C.) Because strict compliance with the notice and filing provisions of the GIA are jurisdictional, the trial court ruled that it lacked subject matter jurisdiction over the action and dismissed the case with prejudice. (R. 332B.) On July 29, 2016, the Court of Appeals ruled that the Marziales' complaint was filed on August 2, 2013, the date the complaint was rejected by the district court. The Marziales' complaint, according to the Court of Appeals, was filed within the statute of limitations because it was "received" by the electronic filing system on August 2, 2013 and because nothing in the Utah Rules of Civil Procedure "permits a court clerk to reject a filing for lack of payment [of a filing fee]." *Marziale v. Spanish Fork City*, 2016 UT App 166, ¶¶ 17-18, ____ P.3d _____. (citations omitted). The decision of the Court of Appeals is cited herein as "Opinion ¶ ____" and is attached as Addendum A.

B. Course of Pertinent Proceedings

1. On December 11, 2013, the City filed a Motion for Summary Judgment on the ground that subject matter jurisdiction cannot exist over the Marziales' action because they failed to file their complaint within one year of their notice of claim being denied as required by Utah Code § 63G-7-403(2)(b). (R. 22, 26.)

2. On January 7, 2014, the Marziales filed a Memorandum in Opposition to the City's Motion for Summary Judgment along with a Motion to Correct Record. (R. 37, 50.) The Motion to Correct Record requested that the trial court change the date on which the Marziales filed their complaint from September 10, 2013 to August 2, 2013. (R. 37, 39-40.) The Affidavit of Mark T. Flickinger, the Marziales' attorney, along with the Affidavit of Bobbi Convery, legal assistant to the Marziales' attorney, were filed in support of their Motion to Correct Record and in opposition to the Motion for Summary Judgment filed by the City. (R. 70, 89.)

3. On February 19, 2014, the City filed a Reply Memorandum in Support of its Motion for Summary Judgment and Memorandum in Opposition to Motion to Correct Record (R. 185) along with the Declaration of Tracy Walker (R. 170), the eFiling System Administrator employed by the Utah State Office of the Courts.

4. The Marziales filed their Reply Memorandum in Support of their Motion to Correct Record on March 21, 2014. (R. 222.)

5. On July 1, 2014, the district court, after hearing oral argument, granted the Motion for Summary Judgment filed by the City and denied the Motion to Correct Record filed by the Marziales. (R. 332C – 332B.)

6. After granting the Motion for Summary Judgment, the Marziales objected to the proposed order submitted by the City and requested that the district court reconsider its ruling. (R. 272.)

7. On September 23, 2014, the district court denied the Marziales' Motion to Reconsider and reinforced its ruling that the Marziales' complaint was untimely under the GIA by entering its Summary Judgment and Order stating such on September 24, 2014. (R. 332D-332B.) [Add. B].

8. The district court held that the Marziales' complaint "was not filed within the applicable statute of limitations set forth by Utah Code § 63G-7-403(2)(b)" and that even though the Marziales "submitted a Complaint for filing through the electronic filing system twice on August 2, 2013 [t]hese submitted Complaints were not accepted by electronic filing system, the clerk of court, or a judge as required by Rule 5(e) of the Utah Rules of Civil Procedure and therefore were not filed with the Court." (R. 332C.)

9. The Summary Judgment and Order entered on September 24, 2014 further stated:

Because the Court finds as a matter of law that the [Marziales'] Complaint was not filed within the applicable statute of limitations, there is no basis for the [Marziales'] Motion to Correct Record. Finally, rather than strike the Affidavit of Mark T. Flickinger, Affidavit of Bobbi Convery, or the Declaration of Tracy Walker, the Court considered them and all of the evidentiary objections thereto. However, the Court finds no admissible evidence from the affidavits or declaration that creates an issue of fact that would preclude the legal conclusion that the filing of the [Marziales'] legal action is untimely.

(R. 332C-332B.) [Add. B].

10. On October 15, 2014, the Marziales filed a Notice of Appeal of the “Order Granting Defendant Spanish Fork City’s Motion for Summary Judgment” entered on September 24, 2014. (R. 334.)

11. The Court of Appeals reversed, concluding that the Marziales filed their complaint on August 2, 2013 and within the applicable statute of limitations. Opinion, ¶ 19. While the Marziales submitted two separate Complaints for filing August 2, 2013 – one Complaint with the district court located in Spanish Fork City and the other with the district court located in Provo – the Court of Appeals only determined that the Provo complaint was timely filed and did not address the filing status of the same Complaint with the district court located in Spanish Fork City. Opinion, ¶ 10.

12. In its opinion, the Court of Appeals held that the Marziales’ complaint was filed on August 2, 2013 and within the statute of limitations because it was “received” by the electronic filing system and because nothing in the Utah Rules of Civil Procedure “permits a court clerk to reject a filing for lack of payment [of a filing fee].” Opinion ¶¶ 17-18.

C. Facts Material to the Appeal

1. The Marziales allege injury and damages as a result of Carole Marziale’s fall on a sidewalk at the City Sports Complex on July 11, 2011. (R. 1-5.)

2. The Marziales mailed a Notice of Claim along with a Certificate of Mail to the City Recorder on July 9, 2012. (R. 35.)

3. The Marziales' claim against the City was denied pursuant to Utah Code § 63G-7-403(1)(b) on September 7, 2012. (R. 5, 18, 34.)

4. The Marziales' attorney submitted a complaint to the eFiling system twice on August 2, 2013. Both of these submissions were rejected. Declaration of Tracy Walker ("Walker Decl."), ¶¶ 13-18. (R. 167-66.)

5. All attorneys who seek to submit documents through the eFiling System must contract with an approved "service provider," an entity capable of delivering documents in a compatible form to allow documents to be filed. Walker Decl., ¶ 5. (R. 169.)

6. The Electronic Filing Manager is a computing application that receives and processes data submitted by service providers, and then passes information included in the data received to a court's "Document Management System." The Document Management System receives, manages, stores, and retrieves documents that are electronically filed with the courts. Walker Decl., ¶ 7. (R. 169.)

7. As a courtesy to filers, the Electronic Filing Manager is programmed to automatically send a response to a service provider acknowledging whether a document electronically submitted to a court has been accepted or rejected. A service provider should then transmit whether a document electronically submitted to a court has been accepted or rejected by a court to a filer. A filer may, however, opt out of receiving these acceptance or rejection notices with their service provider. Walker Decl., ¶ 8. (R. 168.)

8. A clerk of court or other authorized personnel may access and review any document that is submitted to the Electronic Filing Manager through a computer

application called the “Clerk Review Interface.” If a document is not automatically approved for docketing, a Technical Support Specialist or other authorized court personnel may manually reject or accept electronically submitted documents through Clerk Review Interface. Walker Decl., ¶ 10. (R. 168.)

9. Data and other information electronically submitted to a court, in addition to being reviewable through the Clerk Review Interface, is also recorded and managed by the “Case Management System.” The Case Management System (“CMS”) manages information related to court cases including records, calendars, and finances. Walker Decl., ¶ 11. (R. 168.)

10. Each submission to the eFiling System is assigned a Filer Identification Number (“FIN”). Walker Decl., ¶ 12. (R. 167.)

11. On August 2, 2013, Mark T. Flickinger, the Marziales’ attorney, provided his Service Provider with two submissions. The FINs assigned to these submissions are 172227 and 172245. Walker Decl., ¶ 13. (R. 167.)

12. The submission assigned FIN 172227 included a Civil Cover Sheet and a Complaint and occurred at 4:10:04 PM on August 2, 2013. These documents were automatically rejected by the CMS because the documents sought to be filed were for the Fourth District Court located in Spanish Fork City because that court does not accept claims for more than \$20,000.00, and the submission failed to specify the amount sought through the claim. These documents were automatically rejected by the eFiling System and Mr. Flickinger’s service provider received this rejection notice from the EFM at 4:10:49 PM on August 2, 2013. Walker Decl., ¶ 14. (R. 167.)

13. A screenshot of the rejection notification provided to Mr. Flickinger's service provider states "The CMS returned a 'failure' status during the validation step. The message from the CMS is: this court accepts only claims 20000 or less; you submitted 'unspecified.'" Walker Decl., ¶ 15. (R. 167, 145.)

14. Ten minutes after the documents submitted for filing with the Fourth District Court located in Spanish Fork City were rejected, Plaintiffs' attorney submitted a Civil Cover Sheet, Complaint, and a Notice of Undertaking and Motion for filing with Fourth District Court located in Provo. This submission was assigned FIN 172245 and was made at 4:20:08 PM on August 2, 2013. This submission was manually rejected through the Clerk Review Interface because a credit card error occurred, and the service provider received this rejection notice from the EFM on August 2, 2013 at 4:41:56 PM. The rejection notice submitted to Mr. Flickinger's service provider stated: "A credit card error has occurred; please resubmit filing with valid credit card information for fee payment. You may want to try re-entering the credit card information, or a different credit card, before resubmitting. thank you, tracyw@utcourts.gov 801-578-3850 ext 4." Walker Decl., ¶ 16. (R. 167-166.)

15. The Marziales explained to the Court of Appeals that they submitted this second complaint for filing on August 2, 2013 in the Fourth District Court located in Provo because they had failed to file the required undertaking fee pursuant to Utah Code § 63G-7-502(2) with the district court located in Spanish Fork City. Opinion, ¶ 3, fn. 2.

16. The documents submitted with FINs 172227 and 172245, specifically a Civil Cover Sheet, Complaint, and Notice of Undertaking and Motion, were not accepted by the district court on August 2, 2013. Walker Decl., ¶ 18. (R. 166.)

17. On September 10, 2013, 39 days after the papers submitted for filing had been rejected, the Marziales' complaint was electronically filed with the trial court. Court Docket, R. 23; Affidavit of Bobbi Convery, ¶¶ 4-5, 20-21. (R. 69, 67); Summary Judgment and Order. (R. 332C.)

SUMMARY OF THE ARGUMENT

The Court of Appeals incorrectly held that the Marziales' complaint was filed on August 2, 2013 and within the applicable statute of limitations. According to the Court of Appeals, a complaint (or other paper) only needs to be received by the electronic filing system, court clerk, or a judge for it to be considered filed. Utah law, however, clearly provides that more than just receipt of a paper is required for filing.

This Court has held that the legislature may generally prescribe the methods or means by which the jurisdiction of the courts may be invoked in the absence of constitutional inhibition. The legislature has mandated the payment of a filing fee for a complaint to be accepted by and filed with a district court.

The decision of the Utah Court of Appeals also sets forth a definition of "accept" utilized by Rule 5 of the Utah Rules of Civil Procedure that is incompatible with the text and structure of other rules and puts the responsibility of ensuring proper filing of papers on the judiciary rather than litigants.

Finally, while the Court of Appeals did not address the filing status of the Marziales' complaint with the Fourth District Court in Spanish Fork City, the record on appeal shows that the Marziales failed to submit an "undertaking," a jurisdictional prerequisite to filing an action under the Governmental Immunity Act. Further, even if this Court does address the filing status of the Marziales' complaint with Fourth District Court in Spanish Fork City, it should affirm that that the district court appropriately rejected that complaint through its case management system, which is required to be implemented by Utah statute.

ARGUMENT

The decision of the Court of Appeals should be reversed because it incorrectly applies Rules 3 and 5 of the Utah Rules of Civil Procedure and statutes requiring clerks to be paid filing fees to accept a complaint. The Court of Appeals, citing the decision of *Dipoma v. McPhie*, 2001 UT 61, ¶¶ 13-16, 29 P.3d 1225, held:

As our supreme court explained in *Dipoma*, rule 3 'contains no express reference to filing fees as a jurisdictional requirement,' and '[c]ertainly, if it had been intended that payment of filing fees be a jurisdictional requirement for commencing an action, a provision expressly requiring that fees be paid in advance would have been included.' After *Dipoma*, rule 3 was amended to make this principle explicit: 'Dishonor of a check or other form of payment does not affect the validity of the filing.'

(citations omitted). The Court of Appeals further held that "rule 5 defines filing as the 'earliest of acceptance by the electronic filing system, the clerk of court, or the judge'" and "[w]e conclude that the complaint's electronic receipt was the meaningful equivalent of its acceptance." *Id.* at ¶ 17 (defining the term "accept" by utilizing Merriam-Webster

Online, <http://www.merriam-webster.com/dictionary/accept> [<https://perma.cc/YW5W-DVWH>]). Finally, the Court of Appeals held that “nothing in the rules permits a court clerk to reject a filing for lack of payment.” *Id.* at ¶ 9 (citations omitted).

The decision of the Court of Appeals should be reversed. First, the decision of the Court of Appeals does not properly consider Utah constitutional provisions related to the jurisdiction of district courts, the 2008 amendment to Utah R. Civ. P. 5(e), and Utah statutes setting forth the duties of clerks of court to collect filing fees. Second, this case is factually and legally distinguishable from *Dipoma*, making that decision inapplicable to this case. Third, the decision of the Court of Appeals utilizes a definition of “accept” that is incompatible with the text and structure of the Utah Rules of Civil Procedure and puts the onus of ensuring that papers are properly filed on the judiciary rather than litigants. Last, this Court should refuse to consider the filing status of the Marziales’ complaint with the Fourth District Court in Spanish Fork City because the record on appeal makes clear that the Marziales failed to submit an “undertaking,” a jurisdictional prerequisite to filing an action under the Governmental Immunity Act. Alternatively, if this Court does address the filing status of the Marziales’ complaint with Fourth District Court in Spanish Fork City, it should affirm that that complaint was appropriately rejected by the Fourth District Court’s case management system and, therefore, was never filed.

I. A FILING FEE MUST BE PAID FOR A COMPLAINT TO BE ACCEPTED BY THE ELECTRONIC FILING SYSTEM OR COURT CLERK.

Utah law provides that the “district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs.” Utah Const., Art. VIII, Sec. 5; *See also*, Utah Code § 78A-5-102(1) (“The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law”). In *State v. Johnson*, 114 P.2d 1034, 1040 (Utah 1941), this Court held:

A power to constitute courts is power to prescribe its powers and the mode of trial, and consequently if nothing is said in the Constitution to the contrary, the legislature would be at liberty to prescribe what cases should be tried therein....The legislature may generally prescribe the methods or means by which the jurisdiction of the courts may be invoked in the absence of constitutional inhibitions...

The Utah legislature is, therefore, authorized to impose requirements for the jurisdiction of district courts to be invoked. Further, Rule 1(a) sets forth the scope of the Utah Rules of Civil Procedure and provides: “These rules govern the procedure in the courts of the state of Utah in all actions of a civil nature, whether cognizable at law or in equity, and in all statutory proceedings, excepts as governed by other rules promulgated by the court *or statutes enacted by the Legislature* and except as provided in Rule 81.” (Emphasis added).

In this case, Utah Code § 78A-2-301(1)(dd) directs that “[e]xcept as provided in this section, all fees shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.” An exception to the payment of filing fees prior to the

institution of any action is set forth in Utah Code § 78A-2-302(2), which provides “any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.” Absent the submission of an affidavit of impecuniosity, the legislature has clearly mandated that private¹ litigants shall pay filing fees as a precondition to a complaint being accepted by a court clerk.

The versions of Rules 3 and 5 of the Utah Rules of Civil Procedure applicable to this case are consistent with the requirements of these filing fee statutes. With regard to when a district court obtains jurisdiction, Utah R. Civ. P. 3(b) provides that the “court shall have jurisdiction from the time of filing of the complaint or service of the summons and copy of the complaint.” Rule 5(e) of the Utah Rules of Civil Procedure (2013) sets forth the definition of “filing”:

Filing with the court defined. A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. *Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.* The filing date shall be noted on the paper.

(emphasis added). This version of Rule 5(e) became effective pursuant to the 2008 amendments to the Utah Rules of Civil Procedure and requires that papers are only filed

¹ Filing fees may not be charged to the state, its agencies, or political subdivisions filing or defending any action. See Utah Code § 78A-2-301(1)(ee)

when they are “accepted,” the precise word utilized by Utah Code § 78A-2-301(1)(dd).²

A complaint, therefore, cannot be accepted by a court clerk unless a filing fee is paid, and the Utah Rules of Civil Procedure make clear that a filing is not complete until is accepted by a court clerk, the electronic filing system, or a judge. In this case, the Marziales’ complaint was not filed, i.e., accepted, on August 2, 2013 – the complaint submitted for filing that day was expressly rejected by the court clerk and the electronic filing system. The Marziales were required to submit a third complaint for filing on September 10, 2013, which was accepted by the electronic filing system. This filing, as the district court correctly ruled, was untimely.

II. THE *DIPOMA* DECISION IS NOT DISPOSITIVE OF THIS CASE.

The Court of Appeals based its decision on this Court’s ruling in *Dipoma*. The legal issues and facts with which the *Dipoma* Court was presented differ significantly from those of this case. The issue presented by this appeal is whether clerks of court or the electronic filing system managed by the clerks of court must accept a complaint even when a filing fee is not paid. *Dipoma*, on the other hand, dealt with the issue of whether a complaint is properly filed when it is accepted with a filing fee that is subsequently dishonored. *Dipoma*, at ¶¶ 2, 3.³ In *Dipoma*, the clerk of court “accepted Dipoma’s check and stamped her complaint ‘filed.’” 2001 UT 61, ¶ 2. Thus, because the clerk had

² The current version of Rule 5 still provides that “[f]iling is complete upon the earliest acceptance by the electronic filing system, the clerk of court or the judge.” Utah R. Civ. P. 5(e) (2016).

³ The *Dipoma* decision was made prior to the electronic filing system being instituted and was at a time when it was more common for practitioners to pay filing fees by check.

already filed the complaint, the relative duties of clerks of court to accept a complaint without payment of the filing fee were not reviewed. *Dipoma* simply involved a motion for summary judgment in which the defendant argued that even though the complaint had been accepted and was stamped as having been filed within the statute of limitations, it nonetheless should not have been considered filed because the filing fee had not been paid. *Id.* ¶ 4. Citing the parties' "reasonable reliance" on the acceptance of a pleading, the *Dipoma* Court held that "payment of filing fees is not a jurisdictional prerequisite for the commencement of an action under rule 3 of the Utah Rules of Civil Procedure." *Id.* at ¶ 15.

The Marziales argue in this case that their complaint should be construed to have been filed on August 2, 2013 and within the statute of limitations even though it was never accepted by the electronic filing system. (R. 37, 40.) However, the Marziales' complaint was expressly rejected consistent with Utah law requiring that a filing fee be paid at the time at which a clerk accepts a pleading or a judge on that date. (R. 167-166); *see also*, Utah Code § 78A-2-301(1)(dd). In this case, and in contrast to the issues reviewed in *Dipoma*, the basis of the City's motion for summary judgment was that the district court did not have jurisdiction over the Marziales' claim until a complaint was filed, which, under Rule 5, required it to be accepted by the clerk of court, electronic filing system, or judge. Here, the statute of limitations had run by the time the Marziales' complaint was actually filed.

The *Dipoma* Court also did not review versions of Rules 3 and 5 of the Utah Rules of Civil Procedure applicable to this case. Implicit in the decision of the Court of

Appeals is that Rule 3 was amended to account for the *Dipoma* holding. *See*, Opinion, ¶ 13. However, the opinion of Court of Appeals does not account for the 2008 amendment to Rule 5(e) in the context of statutes and issues presented to the *Dipoma* Court. The *Dipoma* Court confirmed that “filing” was defined by Rule 5, which stated, in pertinent part at that time, that “the filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court.” 2001 UT 61, ¶ 10. The version of Rule 5 reviewed in the *Dipoma* decision, therefore, did not specifically define “filing” to require that papers be “accepted” by a clerk of court. As shown above, the version of Rule 5(e) applicable to this case (and still in effect) requires that papers be “accepted,” the precise word utilized by Utah Code § 78A-2-301(1)(dd), to be considered filed. To reach its decision, the Court of Appeals utilized the Merriam-Webster Online Dictionary to conclude that “the complaint’s electronic receipt was the meaningful equivalent of its acceptance.” Opinion, ¶ 17. As explained below, an analysis of the text and structure of the Utah Rules of Civil Procedure shows that the definition of “accept” used by the Court of Appeals is incorrect.

III. THE DEFINITION OF “ACCEPT” USED BY THE COURT OF APPEALS IS INCONSISTENT WITH THE TEXT AND STRUCTURE OF THE UTAH RULES OF CIVIL PROCEDURE AND ALSO SHIFTS THE RESPONSIBILITY OF ENSURING THAT PAPERS ARE PROPERLY FILED TO THE JUDICIARY.

Statutes and rules are to be interpreted according to their plain meaning and courts do not look beyond that plain meaning unless an ambiguity exists. *Dahl v. Harrison*, 2011 UT App 389, ¶ 32, 265 P.3d 139. “The plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute

and with other statutes under the same and related chapters.” *Lyon v. Burton*, 2000 UT 19, ¶ 17, 5 P.3d 616 (internal quotations and citations omitted). A term is ambiguous when its terms remain susceptible to two or more reasonable interpretations after a plain language analysis has been conducted. *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 15, 267 P.3d 863.

The plain language of the term “acceptance” in Rule 5(e) connotes the authority to reject, or not retain, a document. *See* Black’s Law Dictionary, 6th ed. (defining “accept” as “[t]o receive with approval or satisfaction; to receive with intent to retain...Means something more than to receive, meaning to adopt, agree to carry out provisions, to keep and maintain...”) (citations omitted) [Add. C]. Yet, the Court of Appeals held that the mere receipt of the Marziales’ complaint by the electronic filing system was the “meaningful equivalent” of its acceptance. Opinion, ¶ 17 (citing the Merriam-Webster Online dictionary, which defines the term “accept” as “to receive or take (something offered); to take (something) as payment; to be able or designed to take or hold (something)”). This Court, in *Craig v. Provo City*, 2016 UT 40, ¶ 26, fn. 3, recently noted that “as with many problems of statutory interpretation, dictionaries just don’t answer the question. Instead they highlight the ambiguity – by including definitions encompassing both parties’ positions.”⁴ *Craig* further clarifies that “ambiguities are

⁴ The Marziales argued in their opening brief before the Utah Court of Appeals that the term “acceptance” should be defined by using the Merriam-Webster Dictionary. *See Brief of Appellants*, filed April 10, 2015, p. 17.

often resolved by the text and structure of the statute.” 2016 UT 40, ¶ 26, fn. 3 (citing *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 13, 248 P.3d 465).

The text and structure of Rule 5(e) and other Rules of Civil Procedure demonstrates that the term “acceptance” as used in Rule 5(e) implicates some form of consent to receive or intention to retain a paper submitted for filing. This Court⁵ uses the term “receive” throughout the Utah Rules of Civil Procedure and yet that term is not used in Rule 5(e). For example, Rule 26(b)(8)(B) provides:

If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any *receiving* party of the claim and the basis for it. After being notified, a *receiving* party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved...

(emphasis added). Similarly, Rule 65A(d) provides that a restraining order “is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who *receive* notice, in person or through counsel, or otherwise, of the order.” (emphasis added). Consistent with other provisions of the Utah Rules of Civil Procedure, the term “receive” would have been utilized if only receipt of a paper by the electronic filing system, clerk of court, or judge was all that is required for a filing to be considered perfected. The fact that the term “receive” is not used in Rule 5(e) indicates that something more than mere receipt of a paper is required for filing to be perfected.

⁵ Article VIII, Section 4 of the Utah Constitution requires that the Utah Supreme Court to “adopt rules of procedure and evidence to be used in the courts of the state...”

Further, the definition of “accept” utilized by the Court of Appeals is inconsistent with how that same term is utilized by Rule 10(f) of the Utah Rules of Civil Procedure. Rule 10(f) provides that “[t]he clerk of the court may examine the pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) – (e), the clerk must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers...” Here, the Rules of Civil Procedure make it clear that court clerks are required to accept papers for filing even when the format provisions of Rule 10 are not followed. Thus, court clerks are required to “accept,” and therefore file, nonconforming papers under Rule 10. Rule 5(e), however, does not contain any language requiring court clerks, the electronic filing system, or judges to accept all papers received. The term “acceptance” in Rule 5(e), construed harmoniously with the other provisions of the Utah Rules of Civil Procedure, means something more than receipt of a paper is required for a filing to be completed.

Finally, the Court of Appeals’ ruling puts the onus on ensuring proper filing with a district court on the judiciary. As an obvious matter, the responsibility to timely file a case is upon a claimant. *See, e.g., Stevens v. Saunders*, 220 S.E.2d 887, 892 (W.Va. 1975) (“...it is a well-established rule that the plaintiff or his attorney bears the responsibility to see that an action is properly instituted...”). The Court of Appeals has also recently emphasized that an expectation of diligence exists on behalf of parties and that parties remain obligated to monitor a court’s docket. *See Aghdasi v. Saberlin*, 2015 UT App 73, ¶¶ 7-8, 347 P.3d 427. In this case, the Marziales’ attorney attempted to file a complaint twice on August 2, 2013, both complaints were rejected, and then 39 days

elapsed before any inquiry was made about whether the Marziales' complaint was actually filed. Rather than keeping the responsibility of making sure that an action is properly instituted with a claimant, the opinion of the Court of Appeals allows for circumstances where the mere electronic transmission of information, regardless of how that information is processed, or the simple handing of papers to a judge, constitutes filing of a paper. As shown above, however, the responsibility of making sure documents are properly and timely processed so as to allow a claimant to proceed with a case should be on a claimant and not on the judiciary.

IV. SUBJECT MATTER JURISDICTION CANNOT EXIST OVER THE COMPLAINT SOUGHT TO BE FILED WITH THE FOURTH DISTRICT COURT LOCATED IN SPANISH FORK CITY AND, EVEN IF JURISDICTION COULD BE INVOKED, THE DISTRICT COURT CORRECTLY RULED THAT THAT COMPLAINT WAS NEVER FILED.

The Court of Appeals expressly did not rule on whether the complaint submitted for filing in the district court located in Spanish Fork City was properly filed. This Court should hold that jurisdiction cannot exist over that complaint or, alternatively, should affirm the ruling of the district court. The record on appeal makes clear that the Marziales failed to submit an undertaking required by Utah Code § 63G-7-601(2) with its complaint sought to be filed with the Fourth District Court located in Spanish Fork City. Opinion, ¶ 3, fn. 2. The GIA, through section 63G-7-601(2), requires that “[a]t the time the action is filed, the plaintiff shall file an undertaking in a sum fixed by the court that is: (a) not less than \$300; and (b) conditioned upon payment by the plaintiff of the taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.” The GIA demands strict compliance with its

requirements to allow suit against governmental entities. *Wheeler v. McPherson*, 2002 UT 16, ¶ 13, 440 P.3d 632. In *Craig*, 2016 UT 40, ¶¶ 17-18, this Court affirmed the dismissal of a claim against a governmental entity when the required undertaking was not paid and further held that the that the GIA forecloses the applicability of Utah's Savings Statute, Utah Code § 78B-2-111. Subject matter jurisdiction in this case cannot exist for the Marziales' complaint sought to be filed with the district court in Spanish Fork City because no undertaking was filed and the Savings Statute does not allow for the refileing of the complaint within the applicable statute of limitations. Consequently, this Court should not consider the filing status of the Marziales' complaint sought to be filed with the court located in Spanish Fork City. *See Brown v. Division of Water Rights*, 2010 UT 14, ¶ 13, 228 P.3d 747 (Holding that challenges to subject matter jurisdiction may be raised at any time, even for the first time on appeal).

Even assuming that the court's jurisdiction could be invoked for the Marziales' complaint sought to be filed with the district court located in Spanish Fork City, Utah law clearly requires district courts to create a case management system to "ensure judicial accountability for the just and timely disposition of cases" and to "provide for each judge a full judicial work load that accommodates differences in the subject matter or complexity of cases assigned to different judges." Utah Code § 78A-5-103(2). In this case, the Marziales complaint sought to be filed in Spanish Fork City was automatically rejected by the case management system implemented by the Fourth District Court. Walker Decl., ¶ 14, R. 167. As shown above, the legislature may generally prescribe the methods or means by which the jurisdiction of the courts may be invoked in the absence

of constitutional inhibitions, and the Marziales' complaint sought to be filed with the district court located in Spanish Fork City was rejected pursuant to the mandates set forth in Utah Code § 78A-5-103(2). Consequently, the ruling of the district court that the Marziales' complaint was not filed with the district court located in Spanish Fork City should, if necessary, be affirmed.


CONCLUSION

For the reasons set forth above, the City respectfully requests that this Court reverse the decision of the Utah Court of Appeals and affirm the district court's determination that the Marziales' complaint was not filed within the applicable statute of limitations.

RESPECTFULLY SUBMITTED this 19th day of December, 2016.

STRONG & HANNI

By



JOHN M. ZIDOW

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Spanish Fork City*

CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. App. P. 24(f)(1)(c), I hereby certify that this Brief complies with the type-volume limitation provided by Rule 24(f)(1)(a). This brief was prepared in 13-point Times New Roman font, and contains 6,776 words, as calculated by Microsoft Word 2013.

DATED this 19th day of December, 2016.



JOHN M. ZIDOW

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of December, 2016, two
(2) true and correct copies of the foregoing **BRIEF OF APPELLANTS** and a courtesy
copy of the brief on CD in searchable PDF format were mailed by first-class U.S. mail,
postage prepaid thereon, to:

Mark T. Flickinger
Flickinger Sutterfield & Boulton
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JOHN M. ZIDOW

THE UTAH COURT OF APPEALS

CAROLE MARZIALE AND JAMES MARZIALE,
Appellants,
v.
SPANISH FORK CITY,
Appellee.

Opinion
No. 20140982-CA
Filed July 29, 2016

Fourth District Court, Provo Department
The Honorable Darold J. McDade
No. 130401364

Mark T. Flickinger, Attorney for Appellants
Dennis C. Ferguson and John M. Zidow, Attorneys
for Appellee

JUDGE KATE A. TOOMEY authored this Opinion, in which JUDGE
STEPHEN L. ROTH and SENIOR JUDGE PAMELA T. GREENWOOD
concurred.¹

TOOMEY, Judge:

¶1 In this appeal, we must determine whether the district court correctly granted summary judgment in favor of Spanish Fork City (the City) based upon Carole and James Marziales' (Plaintiffs) failure to timely file their complaint. Because we determine that the complaint was filed within the period prescribed by the statute of limitations under the Governmental Immunity Act of Utah, we reverse.

1. Senior Judge Pamela T. Greenwood sat by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

BACKGROUND

¶2 Carole Marziale fell at the Spanish Fork City Sports Complex on July 11, 2011. She and her husband, James Marziale, filed a notice of claim against the City alleging injuries caused by the fall. The notice of claim went unanswered, and as a consequence, was deemed denied on September 7, 2012, thereby opening the door for Plaintiffs to file a civil action against the City.

¶3 On August 2, 2013, an employee of Plaintiffs' counsel (Employee) electronically transmitted to counsel's electronic filing service provider² two nearly identical complaints against the City to be electronically filed³ with the court. Employee first submitted a complaint without the required undertaking⁴ in the Spanish Fork department of the Fourth Judicial District. The

2. An electronic filing service provider is a vendor outside the court "capable of delivering Legal XML compliant electronic filings. Vendors will provide an interface to their customer . . . to file electronic documents with a court." Utah State Courts, *Utah Trial Court System Electronic Filing Guide*, at v (Dec. 2013), http://www.utcourts.gov/efiling/docs/electronic_filing_guide.pdf [<http://perma.cc/N2ED-H48X>].

3. "An Electronic Filing or eFiling is an electronic document delivered to a court by electronic means." *Id.* "[P]leadings and other papers filed in civil cases in the district court on or after April 1, 2013 shall be electronically filed using the electronic filer's interface." Utah R. Jud. Admin. 4-503(1).

4. An undertaking in this context is a promise to pay "taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment." Utah Code Ann. § 63G-7-502(2) (LexisNexis 2011).

complaint alleged damages for negligence and loss of consortium, and its first page included the words “Tier III” under the caption “Complaint.”⁵ Approximately ten minutes later, Employee submitted the same complaint, with the required notice of undertaking, to the Provo department of the Fourth Judicial District. The service provider transmitted both complaints to the courts.

¶4 On September 10, Employee used Xchange⁶ to locate the filed complaints. Unable to find either complaint in Xchange, Employee contacted the administrator for the Fourth District Court and learned that although the documents had been transmitted to the court, both had been rejected.

¶5 Employee requested that the court provide her with images of the display on a computer screen, or “screenshots,” showing the filing status for each of the complaints. The screenshots of the eFiling portal confirmed that both the Spanish Fork and Provo complaints were transmitted to the courts on August 2, 2013; the complaints were also rejected that day. The Spanish Fork complaint was rejected because “[the Spanish Fork] court accepts only claims [\$]20000 or less; you submitted ‘unspecified.’” The Provo complaint was rejected because of a “credit card error.” A different screenshot of the administrator’s

5. Rule 26 sets limits on fact discovery that correlate with the amount of damages being sought. *See* Utah R. Civ. Pro. 26(c)(5). A Tier III case is one in which the claimed damages are \$300,000 or more. *Id.*

6. Xchange is “[a] subscription service that allows individuals to use the Internet to search and access case information filed in Utah’s district and justice courts” to look up Plaintiffs’ case. Utah State Courts, *Utah Trial Court System Electronic Filing Guide*, at v (Dec. 2013), http://www.utcourts.gov/efiling/docs/electronic_filing_guide.pdf [<http://perma.cc/N2ED-H48X>].

system for the Provo complaint shows the word "Approved" under the words "Status History," but its status, which was "set by Administrator," was changed to "Invalid." Upon discovering that the Provo complaint was rejected due to a problem with the payment of the filing fee, Employee immediately re-submitted the complaint to the Provo department with proper payment.

¶6 The administrator explained in an affidavit that, although the court received the service provider's transmissions of Plaintiffs' documents, the Spanish Fork complaint was automatically rejected because that department does not accept claims exceeding \$20,000. The administrator also explained that she manually rejected the Provo complaint and notice of undertaking because "[a] credit card error has occurred." Because she rejected them, the administrator concluded that Plaintiffs' complaint and notice of undertaking "were not accepted by the Court on August 2, 2013."

¶7 Notice of the rejections was transmitted to Plaintiffs' service provider on August 2, 2013. There is no evidence in the court's records or in the administrator's affidavit that Plaintiffs' counsel received notice of the rejection, and Plaintiffs' counsel and Employee each attested that they did not receive notice of the rejections from the service provider.

¶8 In December 2013, the City moved for summary judgment on the ground that Plaintiffs' civil action was barred because it was filed after the period specified in the applicable statute of limitations under the Governmental Immunity Act of Utah. Utah Code section 63G-7-403(2)(b) requires that "a claimant shall begin the action within one year after the denial of the claim." Utah Code Ann. § 63G-7-403(2)(b) (LexisNexis 2011). Thus, to be timely, the action needed to be filed no later than September 6, 2013. *See id.* Plaintiffs opposed the motion, and filed a separate motion, asking the court to declare that their complaint was filed August 2, 2013. The district court denied Plaintiffs' motion and

determined that because the complaints were transmitted on August 2, 2013, but not accepted, they were not instituted within the period specified by the statute of limitations. *See id.* The court reasoned that because the complaints were not timely filed, it had no subject matter jurisdiction over Plaintiffs' claims, and it therefore granted the City's motion for summary judgment. Plaintiffs appeal.

ISSUE AND STANDARD OF REVIEW

¶9 At issue is whether Plaintiffs timely filed their complaint. In reviewing a district court's decision to grant summary judgment, we consider "the facts and any reasonable inferences to be drawn therefrom in the light most favorable to the losing party," "giving no deference to [the district court's] conclusions of law." *Flowell Elec. Ass'n., Inc. v. Rhodes Pump, LLC*, 2015 UT 87, ¶ 8, 361 P.3d 91. Further, "[t]he application of [a] statute of limitations is a question of law, which we review for correctness." *Ottens v. McNeil*, 2010 UT App 237, ¶ 20, 239 P.3d 308.

ANALYSIS

¶10 On appeal, Plaintiffs argue they timely filed their complaint in both Provo and Spanish Fork. Specifically, Plaintiffs argue the Provo complaint was erroneously rejected for problems with payment. They also argue that the Spanish Fork complaint was erroneously rejected because there was no indication the Spanish Fork department of the Fourth Judicial District is "limited in scope or jurisdiction," and there was "no basis in law for rejecting" their complaint. Finally, Plaintiffs argue that even if the complaint was validly rejected, the court failed to give notice of the rejection which violated Plaintiffs' constitutional due process rights. Because we determine that the

Provo complaint was timely filed, we do not address Plaintiffs' remaining arguments.

¶11 Plaintiffs contend the Provo complaint and notice of undertaking were filed on August 2, 2013 when counsel's service provider transmitted these documents to the court and the court received and "approved" them. Plaintiffs' argument requires us to determine whether the district court erred in concluding that Plaintiffs did not file their action within the statutory one-year period. If the action was filed August 2, 2013, the date Plaintiffs' complaint was initially electronically transmitted to the district court, it was filed in time; if it was filed September 10, the date the complaint was again transmitted, it was not.

¶12 Plaintiffs rely on rule 5 of the Utah Rules of Civil Procedure, which provides that "[f]iling is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge." Utah R. Civ. P. 5(e). We therefore consider whether the administrator's rejection of a complaint because "[a] credit card error has occurred" means that the complaint was not filed for purposes of preserving a claim under that statute of limitations. Plaintiffs argue that neither the eFiling system nor the administrator can reject a complaint because of a problem with payment. We agree.

¶13 Rule 3 of the Utah Rules of Civil Procedure specifies that civil actions are commenced "by filing a complaint with the court." See *id.* 3(a).⁷ By statute, the court must collect filing fees, see Utah Code Ann. § 78A-2-301 (LexisNexis 2012), but the payment and collection of the filing fee is not a requirement for filing an action, see *Dipoma v. McPhie*, 2001 UT 61, ¶¶ 13–16, 29 P.3d 1225. As our supreme court explained in *Dipoma*, rule 3

7. The rule provides alternate means of commencing an action but it is not relevant to this case.

“contains no express reference to filing fees as a jurisdictional requirement,” and “[c]ertainly, if it had been intended that payment of filing fees be a jurisdictional requirement for commencing an action, a provision expressly requiring that fees be paid in advance would have been included.” *Id.* ¶ 13. After *Dipoma*, rule 3 was amended to make this principle explicit: “Dishonor of a check or other form of payment does not affect the validity of the filing.” Utah R. Civ. P. 3(a).

¶14 In this case, the administrator rejected the Provo complaint and notice of undertaking due to a “credit card error.” This is equivalent to the dishonor of a form of payment, and as the rule provides, it did not affect the validity of the filing. *See id.*; *see also Dipoma*, 2001 UT 61, ¶ 16.

¶15 The City counters that another rule of civil procedure requires that a complaint “be accepted not merely received.” (Citing Utah R. Civ. P. 5(e) (“Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.”).) As the City sees it, “Utah law mandates that a filing fee is to be paid for a complaint to be accepted,” and the complaint’s rejection “did not conflict with the provisions of Rule 3,” which “do not apply until after a complaint is accepted.” We are not persuaded.

¶16 Rule 5(e) specifies that

[a] party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

The rule does not expressly require a filing fee as a prerequisite to “acceptance.” Thus, the City’s argument impermissibly reads additional language into the rule. Moreover, it conflicts with the

reasoning that our supreme court articulated in *Dipoma*: “[I]f it had been intended that payment of filing fees be a jurisdictional requirement for commencing an action, a provision expressly requiring that fees be paid in advance would have been included.” 2001 UT 61, ¶ 13.

¶17 Rather, rule 5 defines filing as the “earliest of acceptance by the electronic filing system, the clerk of court or the judge.” Utah R. Civ. P. 5(e). In this case, the record establishes that the earliest event was an electronic transmission received by the electronic filing system. We conclude that the complaint’s electronic receipt was the meaningful equivalent of its acceptance.⁸ See *Accept*, Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/accept> [<https://perma.cc/YW5W-DVWH>].

¶18 Further, rule 3 of the Utah Rules of Civil Procedure provides that “[i]f a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier’s check within 10 days after notification by the court.” Although the system administrator notified the service provider that there was a problem with the credit card payment, neither the system administrator nor the service provider directly

8. We note that the Utah Trial Court System Electronic Filing Guide, prepared by the Administrative Office of the Courts, explains that “[a]ll documents are accepted and filed by the court when they are received.” Utah State Courts, *Utah Trial Court System Electronic Filing Guide*, 2 (Dec. 2013), http://www.utcourts.gov/efiling/docs/electronic_filing_guide.pdf [<http://perma.cc/N2ED-H48X>]. It acknowledges that “[e]lectronic filing is subject to the rules of the Utah Judicial Council and the Utah Supreme Court,” and “[i]n the event of a conflict between the electronic filing system requirements and the rules of the Judicial Council or the Utah Supreme Court, the rules of the council or court will prevail.” *Id.*

notified Plaintiffs. Instead, Employee discovered the problem by contacting the court on September 10, and payment was immediately made at that time. And while “[d]ishonor of a check or other form of payment . . . may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees,” nothing in the rules permits a court clerk to reject a filing for lack of payment. Utah R. Civ. P. 3(a); *see also Dipoma v. McPhie*, 2001 UT 61, ¶¶ 13–16, 29 P.3d 1225. We thus determine the Provo complaint was timely filed.

CONCLUSION

¶19 We conclude that the Provo complaint was filed on August 2, 2013, and was thus within the period provided by the statute of limitations applicable to actions brought under the Governmental Immunity Act of Utah. We therefore reverse the district court’s grant of summary judgment in favor of the City and remand this case for further proceedings.

The Order of Court is set below:

Dated: September 24, 2014 /s/ DAROLD MCDAD
04:16:17 PM



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IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY

STATE OF UTAH

CAROLE MARZIALE and JAMES
MARZIALE,

Plaintiffs,

v.

SPANISH FORK CITY,

Defendant.

SUMMARY JUDGMENT AND ORDER

Civil No. 130401364

Judge Darold J. McDade

On Tuesday, July 1, 2014, at 9:00 a.m., following briefing by the parties, the Court, the Honorable Darold J. McDade presiding, heard oral argument on (1) the Motion for Summary Judgment of Defendant Spanish Fork City (the "City"); (2) the Motion to Correct Record filed by the Plaintiffs; (3) Motion to Strike Declaration of Tracy Walker filed by the Plaintiffs; (4) Motion to Strike Affidavit of Mark T. Flickinger filed by the City; and (5) Motion to Strike

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Affidavit of Bobbi Convery filed by the City. Plaintiffs Carole Marziale and James Marziale were represented by Mark T. Flickinger of Flickinger & Sutterfield, P.C. The City was represented by John M. Zidow of Williams & Hunt.

The Court entertained extensive argument from counsel and reviewed the various memoranda and other documents filed by the parties. After hearing and carefully considering the arguments of counsel and the legal issues to be addressed, the Court finds as a matter of law that the Plaintiffs' Complaint was not filed within the applicable statute of limitations set forth by Utah Code Ann. § 63G-7-403(2)(b). Rule 5(e) of the Utah Rules of Civil Procedure provides that a "[f]iling is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge." Plaintiffs' counsel submitted a Complaint for filing through the electronic filing system twice on August 2, 2013. These submitted Complaints were not accepted by the electronic filing system, the clerk of court, or a judge as required by Rule 5(e) of the Utah Rules of Civil Procedure and therefore were not filed with the Court. 39 days later, on September 10, 2013, Plaintiffs' counsel again submitted the Complaint to the electronic filing system, at which time the Complaint was accepted and, therefore, filed. However, the filing of Plaintiffs' Complaint on September 10, 2013 was not within the applicable statute of limitation set forth by Utah Code Ann. § 63G-7-403(2)(b). Because strict compliance with the filing requirements of the Governmental Immunity Act of Utah is jurisdictional, Plaintiffs' failure to file a legal action within one year of their Notice of Claim being denied by the City deprives the Court of subject matter jurisdiction over Plaintiffs' claims and the City is entitled to judgment as a matter of law.

Because the Court finds as a matter of law that the Plaintiffs' Complaint was not filed within the applicable statute of limitations, there is no basis for Plaintiffs' Motion to Correct Record. Finally, rather than strike the Affidavit of Mark T. Flickinger, Affidavit of Bobbi Convery, or the Declaration of Tracy Walker, the Court considered them and all of the evidentiary objections related thereto. However, the Court finds no admissible evidence from the affidavits or declaration that creates an issue of fact that would preclude the legal conclusion that the filing of the Plaintiffs' legal action is untimely.

Therefore, **IT IS HEREBY ORDERED, ADJUDGED & DECREED** that:

1. The Motion for Summary Judgment of the City is granted, and the claims of Plaintiffs are dismissed with prejudice. The parties shall bear their respective costs and attorney fees related to this action;
2. The Motion to Correct Record filed by the Plaintiffs is denied;
3. The Motion to Strike Declaration of Tracy Walker filed by the Plaintiffs is denied;
4. The Motion to Strike Affidavit of Mark T. Flickinger filed by the City is denied;
and
5. The Motion to Strike Affidavit of Bobbi Convery filed by the City is denied.

[End of Document]

The Court's electronic signature and the date of entry are affixed to the first page of this Judgment

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BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

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Academy. An institution of higher learning. An association of experts in some particular branch of art, literature, law, or science (e.g. American Academy of Matrimonial Lawyers). In its original meaning, an association formed for mutual improvement, or for the advancement of science or art; in later use, a species of educational institution, of a level between the elementary school and the college. *U. S. ex rel. Jacovides v. Day*, C.C.A.N.Y., 32 F.2d 542, 544; *Sisters of Mercy v. Town of Hooksett*, 93 N.H. 301, 42 A.2d 222, 225. In current usage, term commonly refers to private high school or one of the service academies (e. g. Air Force Academy). *See School.*

A cælo usque ad centrum /èy síylow áskwiy æd séntrom/. From the heavens to the center of the earth. Or more fully, *Cujus est solum ejus est usque ad cælum et ad inferos*. The owner of the soil owns to the heavens and also to the lowest depths. Or, *Cujus est solum est usque ad cælum*,—the owner of the soil owns to the heavens. This doctrine has, however, been abrogated; the flight of airplanes and oil and gas regulations have qualified the owner's dominion not only in the heavens but in the lowest depths. *See Air rights.*

A cancellando /èy kànsələndow/. From cancelling. 3 Bl.Comm. 46.

A cancellis /èy kànsələs/. The Chancellor.

A cancellis curia explodi /èy kànsələs kyúriyiy èkspləwday/. To be expelled from the bar of the court.

Acapte /əkəpt/. In French feudal law, a species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis*.

A causa de ey /ey kóza də síy/. For this reason.

Accedas ad curiam /ækseydəs æd kyúriyəm/. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff to go to the lower court, and enroll the proceedings and send up the record. 3 Bl.Comm. 34.

Accede. To consent; agree.

Accelerated Cost Recovery System. (ACRS). An accounting method whereby the cost of a fixed asset is written off for tax purposes over a prescribed period of time. Instituted by the Economic Recovery Tax Act of 1981, and modified by Tax Reform Act of 1986, the system places assets into one of various recovery periods and prescribes the applicable percentage of cost that can be deducted each year. I.R.C. § 168. *See also Asset Depreciation Range.*

Accelerated depreciation. Various methods of depreciation that yield larger deductions in the earlier years of the life of an asset than the straight-line method. Examples include the double declining-balance and the

sum of the years' digits methods of depreciation. *See Accelerated Cost Recovery System; Depreciation.*

Acceleration. The shortening of the time for the vesting in possession of an expectant interest. Hastening of the enjoyment of an estate which was otherwise postponed to a later period. *Blackwell v. Virginia Trust Co.*, 177 Va. 299, 14 S.E.2d 301, 304. If the life estate fails for any reason the remainder is "accelerated". *Elliott v. Brintlinger*, 376 Ill. 147, 33 N.E.2d 199, 201.

Doctrine of "acceleration", as applied to law of property, refers to hastening of owner of future interests toward status of present possession or enjoyment by reason of failure of preceding estate. *Aberg v. First Nat. Bank in Dallas, Tex.Civ.App.*, 450 S.W.2d 403, 408. A remedy used where there has been an anticipatory repudiation or a possibility of a future breach. *Rose City Transit Co. v. City of Portland*, 18 Or.App. 369, 525 P.2d 1325, 1353.

Acceleration clause. A provision or clause in a mortgage, note, bond, deed of trust, or other credit agreement, that requires the maker, drawer or other obligor to pay part or all of the balance sooner than the date or dates specified for payment upon the occurrence of some event or circumstance described in the contract. Such clause operates when there has been a default such as nonpayment of principal, interest, or failure to pay insurance premiums. *General Motors Acceptance Corp. v. Shuey*, 243 Ky. 74, 47 S.W.2d 968. U.C.C. § 1-208 provides that if the provision for acceleration is "at will" such demand must be made only under a "good faith" belief that the prospect of payment is impaired.

Acceleration of remainders. Hastening of owner of remainder interest in property toward status of present possession or enjoyment by reason of failure preceding estate. *Aberg v. First Nat'l Bank in Dallas, Tex.Civ. App.*, 450 S.W.2d 403, 408.

Acceleration premium. Increased rate of pay for increased production.

Accept. To receive with approval or satisfaction; to receive with intent to retain. *Morris v. State*, 102 Ark. 513, 145 S.W. 213, 214. Admit and agree to; accede to or consent to; receive with approval; adopt; agree to. *Rocha v. Hulen*, 6 Cal.App.2d 245, 44 P.2d 478, 482, 483. Means something more than to receive, meaning to adopt, to agree to carry out provisions, to keep and retain.

In the capacity of drawee of a bill, means to recognize the draft, and engage to pay it when due. *See Acceptance.*

Acceptance. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act. *Aetna Inv. Corporation v. Chandler Landscape & Floral Co.*, 227 Mo.App. 17, 50 S.W.2d 195, 197.