

2017

**In Re Estate of Donald Bret Kouns, Decedent, Greg Torgerson,  
Plaintiff and Appellant, v. Estate of Donald Bret Kouns, Defendant  
and Appellee**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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IN RE ESTATE OF DONALD BRET	)	
KOUNS,	)	
	)	
Decedent,	)	BRIEF OF
	)	DEFENDANT/APPELLEE
GREG TORGERSON,	)	
	)	
Plaintiff and Appellant,	)	
	)	
v.	)	Case No. 20160758
	)	
ESTATE OF DONALD BRET KOUNS,	)	
	)	
Defendant and Appellee.	)	

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RESPONSE IN OPPOSITION TO PLAINTIFF/APPELLANT'S  
APPEAL FROM A JUDGMENT OF THE SIXTH DISTRICT COURT  
IN AND FOR SEVIER COUNTY, STATE OF UTAH  
HONORABLE WALLACE A. LEE

---

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UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

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GREG TORGERSON,	)	DEFENDANT/APPELLEE
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**STATEMENT OF JURISDICTION**

This Court has jurisdiction under a Utah Code Annotated §§78A-3-102 and 78A-4-103 to review the District Court’s decision and order denying Torgerson’s Rule 60 Motion for Relief From Judgment or Order.

**ISSUES PRESENTED FOR REVIEW**

Did the District Court abuse its discretion when it denied Torgerson’s Rule 60 Motion for Relief From Judgment or Order?

**STANDARD OF REVIEW**

A District Court’s decision to grant or deny a Motion to Set Aside a Default Judgment is reviewed under an abuse of discretion standard.

**PRESERVATION OF THE ISSUES**

The issues raised by Torgerson are preserved for review of Torgerson’s Rule 60 Motion for Relief from Judgment or Order.

**DETERMINATIVE STATUTES, RULES AND ORDINANCES**

Utah Rules of Civil Procedure Rule 60, Relief from Judgment or Order.

**STATEMENT OF THE CASE**

On April 19, 2016, the District Court for the Sixth Judicial District issued a judgment permitting the Kouns estate to lease to Josh Talbot certain real property in which Torgerson claimed an interest. Torgerson had not filed any responsive pleadings, affidavits or documents in the default proceedings. Although not required, a hearing had been set for

April 18, 2016 to consider the relief requested by the Personal Representative of the Kouns estate. Neither Torgerson nor his attorney appeared before the court either telephonically or in person. The requested default judgment order was approved and entered on the 19<sup>th</sup> of April 2016.

Torgerson filed a motion for relief from the default judgment under Rule 60 of the Utah Rules of Civil Procedure. The motion was fully briefed by the parties and the hearing on Torgerson's motion was held July 11, 2016. The District Court issued its decision denying Torgerson's motion on August 15, 2016.

The District Court held (1) Torgerson had failed to establish sufficient diligence to warrant relief and (2) Torgerson did not have a meritorious defense.

### **STATEMENT OF FACTS**

Pamela Peterson, Personal Representative of the Estate of Donald Bret Kouns, does not agree with the statement of facts as outlined in Appellant's brief. Therefore, she makes the following Statement of Facts which she believes to be relevant:

1. On June 10, 2015, the decedent, Donald Bret Kouns, hereinafter referred to as "Kouns" passed away. (Record on Appeal [hereafter ROA] 1-4)
2. On the 19<sup>th</sup> day of June 2015 Pam Peterson (hereinafter referred to as "Peterson" or "Personal Representative") filed an Application for Informal Probate of Will and Appointment of Personal Representative. (ROA 1-4)
3. On July 8, 2015 Peterson was appointed Personal Representative of Kouns'



probate estate in Case No. 153600021. (ROA 16-17)

4. August 20, 2015 Peterson, through her counsel, advised Torgerson of the termination of all powers of attorney held by him; that his request to Peterson for “Agreement to Continue Lease and Sell Property” to Torgerson “will not be signed to give you a preference which you have outlined” and that any verbal lease Torgerson held was terminated. The letter notice further advised Torgerson he was allowed “to continue use of the property for the 2015 agricultural season which ends October 1, 2015.” Letter notice of August 20, 2015. (ROA 65-70) Addendum 3.

5. On July 14, 2015 Peterson filed a notice to Greg Torgerson acknowledging Greg Torgerson (hereinafter “Torgerson”) had filed a demand notice and provided Torgerson with copies of the order and letters certifying Peterson’s appointment, along with a copy of a Notice to Creditors published in the Richfield Reaper, beginning July 15, 2015. (ROA 19-25)

6. On October 7, 2015, Torgerson, acting pro se filed a “Claim Against the State”. (ROA 26) A copy of the claim is attached as Addendum 1.

7. On October 9, 2015 Peterson filed a Denial of the Claim on the basis that there was no contract between the decedent and Torgerson which granted rights in property now owned by the estate. (ROA 30-31) Addendum 2.

8. On March 10, 2016 Peterson filed a petition for court approval of agricultural lease and option to sell estate property (“the petition”). The petition further requested a writ

of assistance requiring peace officers to intervene. A copy of the petition was mailed to Torgerson and to Lloyd Rickenbach. (ROA 32-35) Petition is attached as Addendum 5.

9. April 4, 2016 Affidavits of Pam Peterson, Josh F. Talbot and Dallas Blaine Hatch in support of petition were filed and served upon Rickenbach. (ROA 36-45) Addendum 6, Pam Peterson Affidavit designated 6A; Josh F. Talbot Affidavit designated as 6B and Affidavit of Dallas Blaine Hatch designated as 6C.

10. Torgerson did not file any response to the petition for court approval of agricultural lease and option to sell estate property in Probate Case No. 153600021.

11. On March 24, 2016 Torgerson through counsel, Rickenbach, filed a Complaint for Declaratory Relief in a separate case no. 160600010. Torgerson's complaint named the Estate of Bret Kouns, Pam Peterson (executor) and Tex Olsen, attorney for Personal Representative and Josh Talbot as Defendants.

12. On March 29, 2016, Peterson filed a Request to Submit the Petition in the probate proceedings 153600021 for decision and submitted to the Court a proposed Order and Writ of Assistance directed to the Sheriff of Sevier County. The proposed orders were served on both Torgerson and Rickenbach. (ROA 52-53)

13. Previously on November 19, 2015 attorney Rickenbach served notice on Peterson and Olsen, her attorney, that he represented Torgerson concerning all matters in "Bret Kouns Estate Probate No. 153600021 (ROA 197). See Addendum 4.

14. Although Torgerson was in default and filed no objection to the petition in

Probate No. 153600021 the Court scheduled oral argument for April 18, 2016 on the request for a default order. (ROA 63-64)

15. On the 30<sup>th</sup> day of March, 2016 the Court notified Attorney Olsen of the hearing. (ROA 63-64)

16. On March 30, 2016 a copy of the Notice of Oral Argument was mailed to Lloyd D. Rickenbach, attorney at law, 117 Rickenbach Road, Koosharem, Utah 84744, postage prepaid. (ROA 213-237) (Addendum 7 - Jill Miles Affidavit)

17. On Saturday, April 16, 2016 Rickenbach claims he was not given notice of the April 18, 2016 hearing date (ROA 64).

18. Rickenbach on Saturday, April 16<sup>th</sup> did file a Motion for a Continuance of the Hearing of April 18, 2016 (ROA107-109).

19. Rickenbach claims to be a resident of the State of Arizona when he discovered the April 18, 2016 hearing date (ROA351). Since the alleged fact of residency appears to be inaccurate the following facts are stated:

A. Rickenbach's appearance in the Bret Kouns Estate, Probate No. 153600021 dated November 19, 2015 stated:

Lloyd Rickenbach,  
P.O. Box 440008  
Koosharem, Utah 84744

(Addendum 4)

B. All pleading headings:

Lloyd D. Rickenbach (096406)  
P.O. Box 44008  
Koosharem, UT 84744

Including address shown on Motion for a Continuance of April 16, 2016 and all subsequent motions and memorandums.

C. Address listing in 2016 Legal Eagle Directory Services attached as Addendum 8 showing at page 237 the address of

Lloyd D. Rickenbach  
117 Rickenbach Road  
Koosharem, UT 84744

20. At 1:30 p.m. on April 18, 2016 the Court convened Probate Case No. 153600021 for oral argument as scheduled. Only Olsen and Peterson appeared. Olsen expressed surprise and objected to any continuance. Olsen advised the petition was critically important to his clients because the spring planting season was in progress and the estate could not marshal estate assets and use them or sell them for the benefit of the estate beneficiaries and a decision was needed.

21. On April 18, 2016 the Court directed the clerk to place a telephone call from the bench to Rickenbach's office at the telephone number listed on his pleadings. No contact could be made.

22. April 18, 2016, the Court considered the Motion for a Continuance and ruled the motion was not timely filed and the motion was denied.

24. April 19, 2016 at 4:57 the Court executed the proposed orders including an

Order Approving the Lease and Option to Sell Estate Property together with a Writ of Assistance directed to the Sheriff of Sevier County to assist the estate in taking possession of the property for delivery to lessee Talbot. (ROA 122-125)

25. Approximately seven minutes after filing the orders of April 19, 2016 (5:04 p.m.) Rickenbach filed his Motion for Rule 60 Relief from Judgment. (ROA 126-129)

26. On April 20, 2016 Torgerson filed his Motion for Rule 64(f) Discharge of Wrongfully Obtained Order and Writ of Assistance. (ROA 130-155)

27. On July 11, 2016 a hearing was held on Torgerson's Rule 60 Motion which claimed Torgerson should be relieved of the judgment order because of the Court failing to send Torgerson notice on the 18<sup>th</sup> of April, 2016 hearing. (ROA 308)

28. The District Court issued a decision denying Torgerson's Rule 60 Motion on August 15, 2016 (ROA306-331) Addendum 9.

### **SUMMARY OF ARGUMENT**

Torgerson, as a fiduciary and appointed agent, had taken possession of all of the Kouns Estate property. Following the death of Kouns, Torgerson claimed a continuing right by reason of an executed contract. He denied all efforts of the personal representative to marshal the assets of the estate for the benefit of the heirs of Kouns. For a period of approximately one year he used all of the estate property for his benefit. The personal representative was required to file an action to seek Court assistance to obtain possession of the property at a critical time. Torgerson failed to respond to the action where orders were

entered terminating his claimed right to possession and authorizing the estate to possess and sell the property. Torgerson's response was a Rule 60(b) Motion to Set Aside the Default Orders entered. At the motion hearing he was given his day in Court and he failed to show any reasonable evidence that a contract granting him use and possession of the Estate property existed. His motion was properly denied.

## ARGUMENT

### Introduction and Background.

Pamela Peterson, Personal Representative of the estate of Donald Bret Kouns, Appellee, has set out a Statement of Facts numbered 1-28 which facts were before the District Court prior to the issued decision denying Torgerson's Rule 60 Motion. Peterson will refer specifically to some of those facts which seriously concerned the District Court in this very unusual case.

Following the appointment of Peterson as the Personal Representative of the Kouns estate, Case No. 153600021 she discovered Torgerson had possession of all of the assets owned by Kouns at the time of his death. On August 20, 2015 Peterson, through her counsel, advised Torgerson of the termination of all powers of attorney held by him; that his request for "Agreement to Continue Lease and Sell Property" to Torgerson will not be signed; that any verbal lease between Kouns and Torgerson was terminated following the 2015 agricultural season which ends October 1, 2015. (See Addendum 3 for a copy of the letter notice.) On October 7, 2015 Torgerson, acting pro se, filed a "Claim Against the State". The

claim asserted (1) he had a written lease on real property between deceased and claimant that expires at the end of 2017; (2) he was entitled to compensation for investments and improvements to real property; (3) he had legal rights assigned in writing; (4) he had a right of first refusal as found in written lease and that the total value of the claim exceeds \$117,000.

The purported lease delivered with the claim was dated April 17, 2007. It provided no legal description of property. It stated "for use as feed those certain premises described as Charlie's Pasture and Town Cow Pasture east of Koosharem" for the sum of \$15 per head per month.

On October 9, 2015 Peterson denied the claim by Torgerson. The Kouns Estate did not own property known as Charlie's Pasture and property known as the Town Cow Pasture east of Koosharem. There was no contract granting Torgerson an interest in the property owned by the estate consisting of 140 acres of farm land, 130 shares of water stock and irrigation equipment and farm equipment. Torgerson did not commence any proceedings within 60 days after notice of disallowance as required by Probate Section 75-3-804(2).

Following the running of the statute of limitations against Torgerson's spurious claim, Torgerson retained possession of estate property and refused to deliver the property to the Personal Representative. Therefore, the Personal Representative did seek court assistance. On March 10, 2016 Peterson filed a petition for court approval of an agricultural lease and option to sell estate property to Talbot with the additional request that a writ of assistance be

directed to the Sevier County Sheriff in order that the lessee be put in peaceful possession of the real property, water rights and sprinkling equipment. The petition commenced an action and gave the probate court full jurisdiction to determine any right claimed by Torgerson in the estate property (Probate Code 75-5-502).

**ISSUE OF TORGERSON'S RIGHT TO POSSESSION  
AS A FIDUCIARY AND APPOINTED AGENT**

In support of the petition Peterson filed three affidavits. (See Addendum 6.) Addendum 6A is the affidavit of Pam Peterson. Addendum 6B is the Affidavit of Josh Talbot and Addendum 6 C is the Affidavit of Dallas Hatch.

The Affidavit of Pam Peterson, Page 2, Paragraph A details the fact that Kouns had owned an interest in the Town Cow Pasture east of Koosharem. The Koosharem pasture land held by Kouns was deeded by him to Stanley W. Wood and Jesse W. Wood on February 23, 2010 (the recorded deed of conveyance from Kouns to Woods is attached as Exhibit 3)

Paragraph B of the Peterson Affidavit details the fact that in the year of 2000 Kouns owned what is described as Charlie's Pasture. The pasture was sold and conveyed to Josh Talbot on the 3<sup>rd</sup> day of March, 2009. Kouns had become delinquent in his financing and had to secure funds to prevent a foreclosure. The Default Notice served on Kouns and deed of conveyance are attached as Exhibits. In Paragraph C Peterson certifies the 140 plus acres of farming land with appurtenant sprinkling system and 130 shares of capital stock of Koosharem Irrigation Company are the only farm assets now held by the estate. These assets are the assets subject to the proposed (lease) and proposed (option) to sell to Josh Talbot.



The farming land, water stock, sprinkling system and farm equipment have been used by Greg Torgerson for a period of eight or more years.

**TORGERSON POSSESSED THE LAND AND ASSETS NOW OWNED  
BY THE ESTATE AS AN APPOINTED AGENT AND FIDUCIARY  
TO MANAGE THE ASSETS FOR KOUNS**

Peterson's Affidavit in Paragraph 9 identifies three powers of attorney executed by Bret (Kouns) which are:

A. A Utah General Durable Power of Attorney granting Torgerson entire control over all assets owned by Kouns with special hand-written instructions extending the powers granted to agent (Torgerson). See Exhibit 7:

The use of the farm and all ground. Access to manage all pastures and farm ground. Also dealings with "cow pasture" and water rights, voting rights.

The power of attorney was executed on the 15<sup>th</sup> day of September, 2007. On the same document there is an acknowledgment of the agent which states:

By accepting or acting under the appointment, the agent assumes the fiduciary and other legal responsibilities of an agent. Signed  
Greg Torgerson

The executed power of attorney is of special interest since it (1) makes Torgerson a fiduciary who is managing Kouns' property for the benefit of Kouns; (2) the hand-written language specifically identifies the farm ground and water rights as being separate from the pastures and particularly the cow pasture.

Peterson attaches Exhibit 8, a Limited Power of Attorney in which Kouns appointed

Torgerson “to act in my capacity to do any and all of the following: Have all uses, rights, powers, privileges, etc., associated with my ownership of 130 shares of Koosharem Irrigation Company” and identifies the authority of “my attorney in fact to exercise any and all rights and powers herein granted.” The limited power is dated June 22, 2014. The document identifies the fiduciary relationship and appointment of Torgerson as attorney in fact to act for Kouns.

The third identified power of attorney executed by Kouns, Exhibit 9, grants Torgerson the power of attorney to deal with the U.S. Department of Agriculture on “all current and future programs.” All authority of Torgerson as an agent was terminated on the death of Kouns as provided in UCA Probate §75-5-502. However, all of Torgerson’s claims needed close scrutiny because of the fiduciary relationship. In the case of *In Re Swan*, 293 P.2d 682 and (Utah 1956) the Supreme Court stated:

Where a confidential advisor is made the beneficiary of a will, receives gifts or possible benefits from transaction with the person who relies on his advice and counsel...a presumption of fraud and undue influence arises which shifts the burden of persuading the trier of fact that there was no fraud or undue influence.

Further, in the case of *Johnson v. Johnson*, 9 Utah 2d 40 337 P.2d 420 (UT 1959) the Supreme Court in an evaluation of whether Calvin Johnson had taken advantage of an elderly father in receiving substantial assets stated:

...The Plaintiffs here have sufficient help in the rule that when a confidential relationship is shown to exist and a gift or conveyance is made to a party in superior position a presumption arises that the transaction was unfair...

Torgerson has not filed any probate pleadings, opposing affidavits or other evidence challenging the facts stated.

With the foregoing background, Peterson now directly addresses the argument made by Torgerson and asserts:

1. The District Court did not abuse its discretion when it denied Torgerson's Rule 60(b)(1) motion for relief from judgment or order.

**A. Torgerson did not act with sufficient diligence to warrant relief under Rule 60(b)(1).**

It is acknowledged that under Rule 60(b)(1) motion for relief a Defendant must show: (1) the default judgment was entered because of his excusable neglect; (2) his motion was timely, and (3) he had a meritorious defense to the action. Peterson acknowledges "A district court has broad discretion to rule on a motion to set aside a default judgment under Rule 60(b)." (*Bodell Construction v. Robbins*, 334 P.3d at 1007) Peterson agrees the Court's discretion is not unlimited as stated in *Davis v. Goldsworthy*, 602 UT App. 145, 184 P.3d 626 (Ut.Ct.App. 2008).

Contrary to the assertions of Torgerson, the objective facts show:

1. The complete absence of diligence by Torgerson.
2. The request for delay did leave Torgerson in possession of all of the Kouns estate property for his personal use.
3. Torgerson and his attorney had notice of all of the probate petition proceedings including:

(i) The probate petition requesting relief from Torgerson's over reaching.

(ii) The affidavits of Peterson, Talbot and Hatch filed to support the petition and demonstrate the urgency of the estate's situation.

(iii) Torgerson's failure to respond when first advised on August 20, 2015 his authority under powers of attorney were terminated; any verbal lease to the estate property was terminated; Torgerson was permitted to complete agricultural year of 2015 but was required to account; Torgerson made no accounting for his 2015 use of all Kouns Estate property.

(iv) Torgerson did assert a claim against the Estate on October 7, 2015 stating he had contract rights. No contract right to the Estate farm property, water stock, irrigation equipment was shown or showing made for "other legal rights" and \$117,000 money amount. The claim was denied October 9, 2015. The denial was not challenged within 60 days as required [Probate Code 75-3-804(2)]

(v) Rickenbach was served with Peterson's Request for Entry of Default Judgment together with a proposed copy of the requested order approving a proposed lease to Talbot and with a proposed Writ of Assistance. Service was by mailing on the 29<sup>th</sup> day of March 2016;

(vi) Rickenbach was given actual notice of the hearing set for April 18, 2016. See mailing affidavit of Jill Miles, legal assistant to Olsen and District Court finding at page 12 of the Court's decision.

(vi) Rickenbach knew of the hearing since he filed a request for a continuance prior to the scheduled hearing date.

(vii) Torgerson had actual notice of the petition, supporting affidavits, requests for execution of default order and copies of the requested orders for relief.

Torgerson's claim against the Kouns estate was the only responsive act the Court could find. Torgerson showed an abject lack of diligence when he or his lawyer failed to appear at the hearing on the 18<sup>th</sup> day of April, 2016 to argue their motion.

Torgerson has argued in his brief at Page 13 that attorney Lloyd Rickenbach resided in the State of Arizona and therefore it was difficult to make a timely response and motion appearance by April 18, 2016. The question of time must be considered in the light of Rickenbach's filing of notice and entry of appearance for Greg Torgerson in the "Bret Kouns Estate Probate 153600021 (served upon both Peterson and Olsen, her attorney November 19, 2015). Also, the statement that Rickenbach is a resident of Arizona is problematical. In the initial notice of entry in the estate of Bret Kouns (Addendum 7, Item 1) his address is shown:

Lloyd D. Rickenbach (Rickenbach Law)  
P.O. Box 44008  
Koosharem, UT 84744

All pleadings filed by Rickenbach including Torgerson's Motion for a Continuance filed prior to the hearing of April 18, 2016 and all subsequent motions, memorandums had the following heading on pleadings:

Lloyd D. Rickenbach (096406)  
P.O. Box 44008  
Koosharem, UT 84744

The address of Lloyd D. Rickenbach shown in the 2016 legal directory published by CitiCorp entitled “The Legal Eagle, Utah’s premier legal source” attached as Addendum 7 does show at page 237 the address of:

Lloyd D. Rickenbach  
117 Rickenbach Road  
Koosharem, UT 84744

Further, Torgerson and his attorney Rickenbach elected to ignore the pending proceedings in the Probate Court which had exclusive jurisdiction over matters at issue. On March 24, 2016 a separate action was filed for declaratory judgment in a separate case, No. 160600010. Torgerson named as Defendants the Estate of Bret Kouns, Pam Peterson (executor), Tex Olsen, attorney for Personal Representative, and Josh Talbot, the lessee of the proposed lease identified in the probate proceedings. The Complaint sought a declaration that Torgerson’s lease is valid and “interference with such is actionable, torturous interference”.

Torgerson has shown no diligence and has not shown a meritorious defense. His lack of diligence and his attempt to divert the Court’s attention by a collateral action appears to have been to promote delay and to intimidate. The delay would have left Torgerson in possession of all of the estate property for his personal use.

**B. Torgerson did not have a meritorious defense to the Kouns estate petition**

In addition to the issue of diligence, a primary concern of the District Court was

whether Torgerson had a meritorious defense to the Kouns estate petition for relief. During oral argument on July 11, 2016 the District Court insisted that Torgerson make some showing that he had a contractual right granting him possession of the estate property. Torgerson responded by making reference to a check and two short agreements. He presented a lease agreement dated April 17, 2007 for the lease of “Charlie’s Pasture and Town Cow Pasture east of Koosharem for grazing of cattle for a consideration of \$15/head...” The Court was familiar with the lease since it was central in the Peterson’s probate petition and three affidavits filed in support of the relief requested in the petition. The estate did not own Charlie’s Pasture and the Town Cow Pasture. Torgerson presented no proof that the facts were otherwise. The second agreement was an agreement purported to be entered in to by Kouns on the 21<sup>st</sup> day of May, 2006 with Chad Torgerson as lessee. Chad Torgerson is not a party to the proceedings and has filed no claim of interest in the Kouns estate. The document purported to lease some property located “west of Cazier property, north of the canal for use as feed storage.” There was no connection between the purported agreement to a third party and the approximately 140 irrigated acres with pressurized sprinkler irrigation system and 130 shares of Koosharem Irrigation Company water stock. When the Court pressed for some meritorious showing of connection to estate property, Torgerson’s counsel stated that Torgerson was not required to prove his case at this stage of the proceedings.

While Torgerson was not required to prove his case at this point, he was required to

show some evidence of merit to obtain Rule 60(b) relief. Such a showing was needed particularly when the Court's review made it appear that Torgerson's claim was frivolous and over-reaching by a fiduciary asserting a right to possession and control of all of the property owned by Kouns at the time of his death.

The District Court closed the hearing on Torgerson's Rule 60(b) motion by taking the matter under advisement. Judge Lee advised those present all matters before the Court would be considered and a written decision issued. On August 15, 2016 the District Court issued a combined Memorandum Decision and Order in cases numbered 153600021 and 160600010. In Case No. 153600021, Torgerson had filed a Motion for Rule 60 Relief from Judgment or Order and a Motion for Rule 64(f) Discharge of Wrongfully Obtained Order and Writ of Assistance.

In Case No. 160600010, Defendants Peterson, Olsen and Talbot, filed a Motion to Dismiss Plaintiff's Complaint. Torgerson's Motion for Rule 60 Relief from Judgment or Order and for Rule 64(f) Discharge of Wrongfully Obtained Order and Writ of Assistance were both denied. Defendants Peterson, Olsen and Talbot's Motion to Dismiss Plaintiff's Complaint was granted.

The Court then carefully considered the background factors before it and the applicable law.

The Court found Torgerson and his attorney, Lloyd Rickenbach, had actual notice of the April 18, 2016 hearing. Although the hearing was not required since Torgerson was in



default, the hearing was scheduled to give Torgerson further input on the request to the Court for submission and entry of requested default orders in the probate proceedings. Torgerson filed no pleadings or supporting proofs in opposition to the submitted orders. He filed only the request that the hearing be continued. Neither Torgerson or his attorney appeared at the hearing and his request for continuance was denied.

In the denial of Torgerson's Rule 60 motion, the Court did rely upon the Affidavit of Jill Miles certifying that she had mailed on March 30, 2016 actual notice of the April 18, 2016 scheduled hearing to Rickenbach. The finding of the Court that actual notice had been given was reinforced by a study of all notices served upon Torgerson and Rickenbach in the probate litigation including the petition outlining the relief requested, supporting affidavits and service of proposed default orders with a request to submit to the Court which were served upon both Torgerson personally and Rickenbach, his attorney on March 29, 2016.

The District Court in denying Torgerson's Rule 60 motion did find Torgerson did not demonstrate a sufficient meritorious defense to justify relief from the orders previously entered by the Court. Torgerson takes issue with the finding and states the Court relied too heavily upon the fact that Torgerson failed to timely commence proceedings to enforce his claims against the estate contrary to the operation of UCA §75-3-804(2). Therefore, his claim was barred. Torgerson points out that an action for a specific performance is outside of the claim section cited and cites the case of *In Re Estate of Sharp*, 537 at 1037. While the statement made and applied to the situation which existed in the *Estate of Sharp* is correct,

it is not correct in this case. Torgerson had to demonstrate to the personal representative and also to the District Court that a claim for specific performance existed. Since no reasonable claim for specific performance exists, the statute of limitations has in fact run. A consideration of a complete bar pursuant to §75-3-804(2) is not controlling. The controlling fact is the Court determined there was “no meritorious defense”. This finding also supported the running of the statute of limitations herein discussed.

In the case of *Utah State v. Musselman*, 667 P.2d 1053 (Utah 1983) the Supreme Court stated:

(1055) For this court to overturn the discretion of the lower court in refusing to vacate a valid judgment, the requirements of public policy demand more than a mere statement that a person did not have his day in court when full opportunity for a fair hearing was afforded him or his legal representative.

(1056) We have repeatedly held in order to secure the setting aside of a default judgment, the party in default must show first, excusable neglect, and second, a meritorious defense.

(1057) A meritorious defense is one which sets forth specific and significantly detailed facts which, if proven, would have resulted in a judgment different from the one entered.

Torgerson has failed to make any showing to meet the requirements stated by Utah Supreme Court.


### **CONCLUSION**

Torgerson, as a fiduciary and appointed agent, had taken possession of all of the Kouns Estate property. Following the death of Kouns, Torgerson claimed a continuing right by reason of an executed contract. He denied all efforts of the personal representative to

marshal the assets of the estate for the benefit of the heirs of Kouns. For a period of approximately one year he used all of the estate property for his benefit. The personal representative was required to file an action to seek Court assistance to obtain possession of the property at a critical time. Torgerson failed to respond to the action where orders were entered terminating his claimed right to possession and authorizing the estate to possess and sell the property. Torgerson's response was a Rule 60(b) Motion to Set Aside the Default Orders entered. At the motion hearing he was given his day in Court and he failed to show any reasonable evidence that a contract granting him use and possession of the Estate property existed. His motion was properly denied.

Under these unusual circumstances the carefully considered opinion of the District Court should be affirmed.

Respectfully submitted this 14 day of March, 2017.

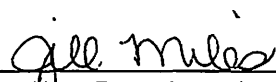
  
\_\_\_\_\_  
Tex R. Olsen  
Attorney for Defendant/Appellee

**SERVICE CERTIFICATE**

I hereby certify that on the 14<sup>th</sup> day of March, 2017, two copies of the foregoing *Response in Opposition to Plaintiff/Appellant's Appeal from a Judgment of the Sixth District Court in and for Sevier County, State of Utah, Honorable Wallace A. Lee* were

mailed, postage prepaid, to the following:

Michael P. Van Tassell  
9524 E. 81<sup>st</sup> Street, Ste. B1559  
Tulsa, Oklahoma 74133

  
\_\_\_\_\_  
Jill Miles, Legal Assistant

**Certificate of Compliance With Rule 24(f)(1)**

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(1) because:
  - this brief contains **5,130** *[number of]* words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B), or
  - this brief uses a monospaced typeface and contains \_\_\_\_\_ *[number of]* lines of text, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B).
  
2. This brief complies with the typeface requirements of Utah R. App. P.27(b) because:
  - this brief has been prepared in a proportionally spaced typeface using Word Perfect in Size 13 Times New Roman, or
  - this brief has been prepared in a monospaced typeface using \_\_\_\_\_ *[name and version of word processing program]* with \_\_\_\_\_ *[name of characters per inch and name of type style]*.

DATED this 14 day of March, 2017.

  
\_\_\_\_\_  
Tex R. Olsen,  
Attorney for Respondent/Appellee

## ADDENDUM

- Addendum 1:** Torgerson's "Claim Against the State"
- Addendum 2:** Personal Representative's Denial of Claim
- Addendum 3:** Letter Notice to Torgerson dated August 20, 2015
- Addendum 4:** Rickenbach Letter serving notice he represented Torgerson
- Addendum 5:** Petition for Court Approval of Agricultural Lease and Option to Sell Estate Property
- Addendum 6:** Affidavits:  
6A - Affidavit of Pam Peterson  
6B - Affidavit of Josh F. Talbot  
6C - Affidavit of Dallas Blaine Hatch
- Addendum 7:** Jill Miles Affidavit
- Addendum 8:** Address listing in 2016 Legal Eagle Directory
- Addendum 9:** District Court decision denying Rule 60 Motion

# ADDENDUM 1

Torgerson's "Claim Against the State"






Accordingly, the value of this claim must be determined by this Court and/or between the claimant and the designated personal representative.

Claimant, however, anticipates and has documentation to support, that the total value of this claim exceeds \$117,000.00.

SIGNED THIS THE 7 day of October, 2015.

  
\_\_\_\_\_  
GREG TORGERSON  
*Claimant*

**CERTIFICATE OF SERVICE**

I certify that on this the 7<sup>th</sup> day of October, 2015, after personally hand-filing the preceding Notice of Claim in the Sixth District Court in Richfield, Utah, I caused a true copy of the following to:

Tex Olsen (attorney for the Estate)-via hand delivery to his office  
Pam Peterson (personal representative) – via email

SIGNED



A handwritten signature in black ink, appearing to read 'Greg Torgerson', is written over a horizontal line. The signature is cursive and somewhat stylized.

GREG TORGERSON

# ADDENDUM 2

Personal Representative's Denial of Claim

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\* \* \* \* \*

IN THE MATTER OF THE ESTATE	)	
	:	<b>DENIAL OF CLAIM AGAINST THE</b>
OF	)	<b>ESTATE BY GREG TORGERSON</b>
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\* \* \* \* \*

Pam Peterson, Personal Representative of the estate of Donald Bret Kouns, through her attorney, does hereby deny the claim against the estate filed by Greg Torgerson on the 7<sup>th</sup> day of October, 2015.

The claimant, Greg Torgerson, asserted his claim in four parts. This denial specifically reaches each part of the claim so made.

1. No lease of real property agreement exists between decedent and claimant which extends lease to the end of the year 2017.
2. Claimant has not made an investment in the decedent's property or improvements thereof which entitle him to a reimbursement. Claimant has farmed property of

the decedent for a period of more than eight years and any labor and improvements were made solely for claimant's convenience and profit in such farming operation.

3. The decedent has not assigned in writing "legal rights" to claimant.

4. Decedent has not granted a "right of first refusal" to claimant with regard to a purchase of the decedent's land and equipment.

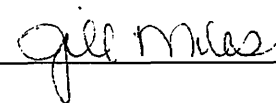
This Denial is dated this 9<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Tex R. Olsen  
Attorney for Personal Representative

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Denial of Claim Against the Estate by Greg Torgerson was mailed, postage prepaid, this 9<sup>th</sup> day of October, 2015 to:

Greg Torgerson, Claimant  
270 South Seegmiller Lane  
Richfield, UT 84701

  
\_\_\_\_\_

# ADDENDUM 3

Letter Notice to Torgerson dated August 20, 2016

TEX R. OLSEN  
ATTORNEY AT LAW  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

TELEPHONE 435-896-4461  
TELEFAX: 435-896-5441

August 20, 2015

Mr. Greg Torgerson  
270 South Seegmiller Lane  
Richfield, UT 84701

RE: Donald Kouns Estate, Sevier County Probate No. 153600021

Dear Mr. Torgerson:

As you have been advised, Pam Peterson has been appointed as the personal representative of the estate of Donald Bret Kouns. You have forwarded to her certain proposals concerning real property which is owned by the estate. In addition, you forwarded copies of certain powers of attorney authorizing you to act for Bret Kouns as well as an item entitled "This Agreement is made on the 17<sup>th</sup> day of April, 2007".

#### **TERMINATION OF ALL POWERS OF ATTORNEY**

You are advised that the death of Donald Bret Kouns on June 10, 2015 terminated all powers of attorney to act for him or his estate. Your request to the personal representative for additional authority to act for the estate cannot be granted by the personal representative. She has the sole authority to act for the estate and would be breaching her fiduciary duty to the probate court and heirs by granting you authority to act in her place. The Federal Farm Service Agency of Richfield, Utah and Koosharem Irrigation Company will be advised of this fact.

#### **REQUEST FOR "AGREEMENT TO CONTINUE LEASE AND TO SELL PROPERTY"**

You also forwarded to the personal representative an agreement you had drafted to continue a lease and for certain preferences in buying estate property. The agreement will not be signed to give you preferences which you have outlined.

#### **TERMINATION OF ANY VERBAL LEASE**

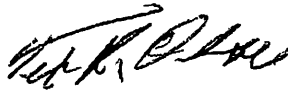
You are advised that any verbal lease arrangements heretofore made which include the 2015 agriculture year are terminated. The estate proposes to sell or distribute the estate assets. Since you

TEX R. OLSEN  
August 20, 2015  
Page 2

were in possession of agricultural property at the time of Bret Kouns' death you have been allowed to continue the use of the property for the 2015 agricultural season which ends October 1, 2015.

Since it appears you have had the use of the property since the agricultural year of 2007 the estate will review your account. The account will include your use of the land and equipment and consideration paid. Submit to the undersigned your accounting for this period including the use of the land, water and equipment for the calendar year of 2015. Please furnish the information to the undersigned attorney for the personal representative.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tex R. Olsen", written in a cursive style.

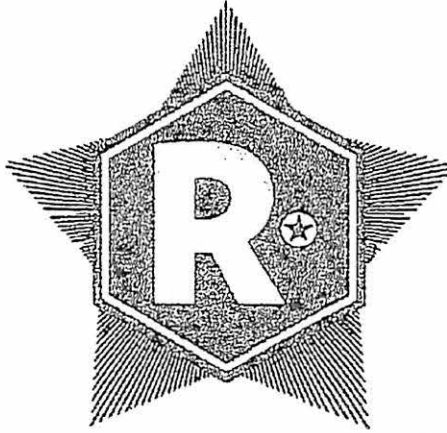
Tex R. Olsen

TRO:jmm



# ADDENDUM 4

Rickenbach Letter Serving Notice he  
Represented Torgerson



## RICKENBACH LAW

November 19, 2015

*Via fax and email*

Pam Peterson [pspeterson29@hotmail.com](mailto:pspeterson29@hotmail.com)  
Tex Olsen (435) 896-5441 (fax)

Subject: Bret Kouns Estate (Probate No. 15300021)

Dear Pam:

I represent Chad Torgerson and Greg Torgerson. I write this letter on behalf of said clients. I have recently been retained to be their attorney and counsel in this matter. I am about caught up on the matter, but before I feel that I'm fully ready to advocate on this matter, one thing first should be addressed that hasn't been addressed at all.

**What are we going to do to resolve this?**

Clearly my client has a valid contract and claim. Clearly Pam has a valid claim. To resolve this we need to communicate. Please consider this an invitation to communicate and get this resolved sooner and less expensively than later.

There are several issues that need to be addressed immediately.

Accordingly, please respond within five days. If I don't hear back from you within five days, I will understand your silence as defiance and an unwillingness to cooperate with me at this time; I will react accordingly. The best way to contact me is email at [lloyd@rickenbachlaw.com](mailto:lloyd@rickenbachlaw.com).

Let us be civil and in harmony with Bret's wishes - simple, less lawyers, fair, and without fighting or bitterness. I'm reasonable with those that are reasonable with me. Let us be reasonable and use good judgment before Bret's estate goes into Tex's pockets.

Sincerely,



Lloyd D. Rickenbach

Cc: client

# ADDENDUM 5

Petition for Court Approval of Agricultural Lease  
and Option to Sell Estate Property

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\* \* \* \* \*

IN THE MATTER OF THE ESTATE	)	
	:	<b>PETITION FOR COURT APPROVAL</b>
OF	)	<b>OF AGRICULTURAL LEASE AND</b>
	:	<b>OPTION TO SELL ESTATE PROPERTY</b>
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\* \* \* \* \*

Pam Peterson, the appointed and qualified Personal Representative of decedent's estate, does petition and represent to the Court:

1. As the appointed and qualified Personal Representative of the estate of the decedent, the undersigned has attempted to proceed with the settlement and distribution of the decedent's estate. In order to do so it is necessary to manage the agricultural property held by the estate until it can be sold.

2. Interested buyers of estate property have been contacted. Josh F. Talbot and this Petitioner have negotiated a lease of estate property for the agricultural year of 2016 which lease does contain an option for the purchase of the property in accordance with Exhibit 1 attached and

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

made a part of this petition.

3. Although this Petitioner has authority to enter into a contract without Court order or direction it has been determined that in accordance with Section 75-3-704 it is advisable to invoke the jurisdiction of this Court to secure an order approving and authorizing the execution of the lease with option

4. This Petitioner caused to be published a Notice to Creditors requiring all creditor's claims against the estate to be filed on or before October 8, 2015.

✓ 5. Gregory Torgerson filed with this Court a creditor's claim dated October 7, 2015 in which he made certain claims which included:

- A. Claim of written lease between decedent and himself which did not expire until the end of 2017.
- B. A claim that he was entitled to compensation for improvements to decedent's real property.
- C. Legal rights assigned in writing to Greg Torgerson.
- D. Right of first refusal to purchase decedent's property.

In addition, Greg Torgerson has made certain claims that he was given a power of attorney to act for the decedent which power was not terminated by decedent's death.

6. A denial of the claim against the decedent's estate by Greg Torgerson was made and served upon Greg Torgerson by mail on the 9<sup>th</sup> day of October 2015. (A copy of the denial is

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

attached as Exhibit 2.)

7. More than 60 days have elapsed since the denial of the Greg Torgerson claim. Torgerson has failed to petition the court for claim review or in the alternative bring an action against the estate, his claim is now barred from further consideration.

8. No other creditor's claims have been filed in these probate proceedings.

✓ 9. Greg Torgerson has made claims against the estate assets and he does now hold certain machinery and equipment owned by the estate. Your Petitioner is apprehensive that unless this Court assumes jurisdiction and approves the lease and option attached as Exhibit A Greg Torgerson will unlawfully interfere with the Lessee. Therefore a writ of assistance authorizing peace officers to intervene may be required.


WHEREFORE, Petitioner requests:

1. The lease of real property and water right with option to purchase granted to lessee be authorized by this Court.

2. A writ of assistance be issued directing the Sevier County Sheriff to assure lessee has peaceable possession of the property described in Exhibit 1.

3. For such other and further relief as the Court shall determine to be equitable.

DATED this 10 day of March, 2016.

  
Pam Peterson, Personal Representative

  
Tex R. Olsen, Attorney

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Petition for Court Approval of Agricultural Lease and Option to Sell Estate Property was mailed, postage prepaid, this 10 day of March, 2016 to:

Greg Torgerson, Claimant  
270 South Seegmiller Lane  
Richfield, UT 84701

Lloyd Rickenbach  
Attorney at Law  
117 Rickenbach Road  
Koosharem, UT 84744

*Jill Miller*

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

EXHIBIT 1



**FARM LEASE WITH OPTION TO PURCHASE**

\* \* \* \* \*

**THIS AGREEMENT** made and entered into on this \_\_\_\_ day of March 2016 by and between:

PAM PETERSON, Personal Representative of the Estate of Donald Bret Kouns also known as Bret Kouns of 140 East 200 North, Monroe, Utah (84754) hereinafter referred to as LESSOR;

A N D

JOSH F. TALBOT of HC 80,P.O. Box 600, Koosharem, Utah (84744), hereinafter referred to as LESSEE

**W I T N E S S E T H:**

LESSOR for and in consideration of FIVE THOUSAND (\$5,000.00) DOLLARS and the agreements to be kept and performed by LESSEE hereby leases to LESSEE and LESSEE agrees to lease from LESSOR the farm real estate, water right and water distribution equipment and appurtenances described upon the terms herein set forth

1. DESCRIPTION OF PROPERTY: The Leased Property includes approximately 119.20 acres of irrigated crop land and approximately 55.59 acres of dry pasture and a farmstead of approximately six acres together with 130 shares of capital stock of the Koosharem Irrigation Company and four quarter-mile wheel lines with four inch wheels, five inch pipe and western movers. The property is specifically described in Exhibit A attached hereto and by this reference made a part hereof.
2. TERM OF LEASE: The term of this lease shall commence from the date of this contract and terminate on the 31<sup>st</sup> day of December 2016.
3. CONSIDERATION FOR LEASE: LESSEE shall pay to LESSOR at the time of

signing this lease a cash consideration of \$5,000. In addition, LESSEE agrees to the following conditions:

- A. LESSEE shall assume and pay the power bill incurred in irrigating the Leased Property;
- B. LESSEE shall maintain pumps and water delivery infrastructure and wheel lines during the term of the lease;
- C. LESSEE shall repair and keep in good order boundary fences now located on premises;
- D. LESSEE shall use all water from the 130 shares of Koosharem Irrigation Company water stock on the property herein leased.

4. LEASE CONDITIONS: LESSEE'S right to possession and use of the real property is for the purpose of agricultural use and grazing. Operations on the property shall be conducted in a good and conventional manner.

5. PROPERTY EXPENSES: LESSOR shall pay general property taxes assessed against the real property and shall further pay water assessments on the 130 shares of Koosharem Irrigation Company water stock.

6. INDEMNITY: LESSEE shall indemnify and save LESSOR harmless from any and all damage, injury or loss arising directly or indirectly from activities of the LESSEE on the property.

7. LESSOR'S RESERVED RIGHT OF INSPECTION: There is reserved to LESSOR the right to have an agent come upon the property leased at any reasonable time to inspect and determine whether LESSEE is in compliance with all these conditions herein set forth.

8. DEFAULT PROVISIONS: In the event LESSEE fails to perform any of the terms,

conditions or agreements to be performed by him during the leased within fifteen (15) days of receipt of written notice of such default, such default shall give LESSOR the right to bring an action for the enforcement of this contract and LESSEE shall be responsible for all costs and reasonable attorney fees.

### **OPTION TO PURCHASE**

As an additional consideration for the payment and performances of LESSEE, LESSOR does grant to the LESSEE the option to purchase the property herein leased and specifically described in Exhibit A for the purchase price of SIX HUNDRED THOUSAND (\$600,000) DOLLARS. The option herein granted may be exercised by the LESSEE at any time during the term of this lease.

The option herein granted shall be exercised by LESSEE giving written notice to the LESSOR of his election to exercise the option herein granted thereafter a cash payment of \$600,000 shall be made not later than sixty (60) days from the date of such notice of elction.

The option herein granted is for the purchase of the ownership interest of Donal Bret Kouns also known as Bret Kouns in the property. The LESSEE shall purchase the property in "AS IS" condition with no warranties of title and with his reliance upon the property records in the office of the Sevier County and Piute County Recorders.

It is known the property may be subject to road easements, possible fence line encroachments, pipeline easements and condition of irrigation equipment and other factors to be determined by LESSEE during his farming occupancy under the lease herein granted. Therefore, title to the property will be taken in an "AS IS" condition as herein stated.

WITNESS the hands of the parties hereto on the date above written.

---

Pam Peterson, Personal Representative of the  
Estate of Donald Bret Kouns also known as  
Bret Kouns

---

Josh F. Talbot

## EXHIBIT A

Property in Piute County, Utah:

Beginning at the Northwest Corner of the Southeast Quarter of the Northwest Quarter of Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence East 26 rods; thence South 2 rods; thence East 24 rods; thence South 78 rods; thence West 50 rods; thence North 80 rods to beginning. SN 03-0005-0486

Lot 3, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian.

ALSO: Beginning at the Northwest Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence South 80 rods, more or less to Southwest Corner of said Lot 2; thence East 19 rods; thence North 80 rods; more or less to point East of beginning; thence West 19 rods to beginning. SN SN 03-0005-0490

Beginning 19 rods East of the Northwest Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence East 19.5 rods, more or less to the West side of the East half of said Lot 2; thence South 80 rods, more or less to South line of said Lot 2; thence West 19.5 rods, more or less to point South of beginning; thence North 80 rods, more or less to beginning. SN 03-0005-0483

Beginning 40 rods East of the Northwest Corner of the Southwest Quarter of the Northeast Quarter of Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence North 30 rods; thence East 10 rods; thence South 20 rods; thence Southeasterly 11 rods, more or less to point 262 feet East of beginning; thence West 262 feet to beginning. SN 03-0005-0485

Beginning at the Northeast Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence South 29.5 chains; thence West 3.75 chains; thence Northwesterly 14 chains; thence North 5 chains; thence West 2.5 chains; thence North 11 chains; thence East 10 chains to beginning. SN 03-0005-0484

The Southwest Quarter of the Southeast Quarter of Section 34,

Township 26 South, Range 1 West, Salt Lake Base and Meridian. SN  
03-00050-0718

Property in Sevier County, Utah:

The Northwest Quarter of the Southeast Quarter of Section 34,  
Township 26 South, Range 1 West, Salt Lake Base and Meridian. SN  
5-118-3

Underground Water Rights Nos. 61-337 and 61-279

Together with 130 Shares of Koosharem Irrigation Company Water  
Stock.

Four quarter-mile wheel lines with four inch wheels, five inch pipe  
and western movers.

Bureau of Land Management Oak Springs Grazing Permit #833

**EXHIBIT 2**

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\* \* \* \* \*

IN THE MATTER OF THE ESTATE	)	
	:	<b>DENIAL OF CLAIM AGAINST THE</b>
OF	)	<b>ESTATE BY GREG TORGERSON</b>
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\* \* \* \* \*

Pam Peterson, Personal Representative of the estate of Donald Bret Kouns, through her attorney, does hereby deny the claim against the estate filed by Greg Torgerson on the 7<sup>th</sup> day of October, 2015.

The claimant, Greg Torgerson, asserted his claim in four parts. This denial specifically reaches each part of the claim so made.

1. No lease of real property agreement exists between decedent and claimant which extends lease to the end of the year 2017.
2. Claimant has not made an investment in the decedent's property or improvements thereof which entitle him to a reimbursement. Claimant has farmed property of

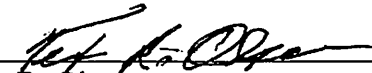


the decedent for a period of more than eight years and any labor and improvements were made solely for claimant's convenience and profit in such farming operation.

3. The decedent has not assigned in writing "legal rights" to claimant.

4. Decedent has not granted a "right of first refusal" to claimant with regard to a purchase of the decedent's land and equipment.

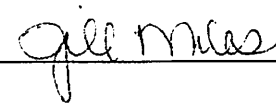
This Denial is dated this 9<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Tex R. Olsen  
Attorney for Personal Representative

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Denial of Claim Against the Estate by Greg Torgerson was mailed, postage prepaid, this 9<sup>th</sup> day of October, 2015 to:

Greg Torgerson, Claimant  
270 South Seegmiller Lane  
Richfield, UT 84701

  
\_\_\_\_\_

# ADDENDUM 6A

Affidavit of Pam Peterson

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\*\*\*\*\*

IN THE MATTER OF THE ESTATE	)	
	:	<b>AFFIDAVIT OF PAM PETERSON</b>
OF	)	
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\*\*\*\*\*

STATE OF UTAH	)	
	:	ss.
COUNTY OF SEVIER	)	

Pam Peterson, being first duly sworn, deposes and says:

1. She is the appointed Personal Representative of the estate of Donald Bret Kouns also known as Bret Kouns.
2. She is a sister of the decedent who died June 10, 2015 at the age of 50 years.
3. She was a resident of Koosharem, Utah prior to her marriage and is well acquainted with her brother, Donald Bret Kouns and his assets.
4. In the year of 2000 Bret Kouns was the owner of assets described generally as

follows:

A. 163 shares (approximately 68% of outstanding shares) of Koosharem Grazing and Pasture Company. The company owned 328 acres of land and appurtenant water rights. Each stock holder was able to pasture approximately one animal unit on the company property per share during the grazing season.

The Koosharem Pasture Company was dissolved and the land and water right owned by the company distributed to Bret Kouns, Ronald A. Rees and Delmar Sterling. (Deed to Bret Kouns attached as Exhibit 1)

The Koosharem pasture land so distributed to Bret Kouns was deeded to Stanley W. Wood and Jesse W. Wood on February 23, 2010 (deed attached as Exhibit 2).

The "Town Cow Pasture east of Koosharem" is not an asset owned by the estate.

B. In the year of 2000 the decedent owned what is described as "Charlie's Pasture". Charlie's Pasture consisted of 50 acres of land located in Piute County, State of Utah. The land was not farmed since it had an inadequate water right but was used for pasture. Greg Torgerson grazed cattle on Charlie's Pasture until the property was transferred by sale to Josh Talbot. A copy of the deed of conveyance to Talbot is attached as Exhibit 3. At the time the property was sold to Talbot the decedent had all of his property financed. He became delinquent on his financing and on November 19, 2008 he was served with a Notice of Default and Election to Sell Property by the United States of America (the lender). A copy of which Notice of Default

and Election to Sell is attached as Exhibit 4.

The decedent sold "Charlie's Pasture" to refinance his debt obligation and avoid foreclosure.

The property known as "Charlie's Pasture" is not an asset of the estate and is owned by Josh Talbot.

C. 140 plus acres of farming land with appurtenant sprinkling system and 130 shares of capital stock of the Koosharem Irrigation Company. These assets are the assets subject to the proposed sale to Josh Talbot. The farming land, water stock, sprinkling system and farm equipment have been used by Greg Torgerson for a period of approximately eight years. This affiant does not know of any agreement authorizing that use and has had no accounting or reasonable rental payments for such use.

D. Farm equipment specifically described in the Inventory filed with this Court and appraised at having a present value of \$60,000. Greg Torgerson has possession of the estate equipment.

E. Cattle. It was estimated that Bret had 150 head of cows, the exact number is being investigated.

5. Bret had a severe alcohol problem which was disabling. He appeared before this District Court on various occasions for alcohol violations. The cases were identified as *State of Utah v. Donald Bret Kouns*, Case No. 001600232FS; Case No. 031600047FS; Case No. 031600238FS; Case No. 041600011FS with the last appearance in Case No. 071600089FS, a copy of which judgment and order is attached as Exhibit 5.

6. Greg Torgerson purported to be a friend of Bret and since Bret's drivers license was revoked would transport him to Court hearings and other places.

7. At and about the time Bret was to serve a jail sentence and thereafter enroll in a drug rehabilitation program, Greg Torgerson acquired all of Bret's cattle. The exact terms of the acquisition of cattle by Greg Torgerson are not known.

8. On the 17<sup>th</sup> of April, 2007 Greg Torgerson caused Bret to execute a certain agreement wherein he designated as Lessor <sup>to</sup> Greg Torgerson and Chad Torgerson. A copy of the agreement is attached as Exhibit 6. The lease purports to lease "Charlie's Pasture" and "Town Cow Pasture east of Koosharem", for furnishing livestock feed apparently to the cattle ~~he had~~ acquired from Bret.

As stated in this affidavit Greg Torgerson pastured cattle on "Charlie's Pasture" and the Koosharem town pasture so long as those properties were owned by Bret. Those properties are not owned by the estate and were not owned by Bret for a period of more than six years.

Greg Torgerson makes the claim that the purported lease (Exhibit 6) authorized him to lease all of the remaining real property in the estate which he has also used under a claimed power of attorney.

9. Greg Torgerson had Bret execute three or four powers of attorney: The powers of attorney known to this affiant are:

A. Utah general durable power of attorney; a copy of which is attached as Exhibit 7. The durable power of attorney granted Greg A. Torgerson entire control over all assets owned by Bret including "The use of farm ground, access to manage all pastures plus farm ground, and

also, dealings with 'Cow Pasture' and water rights, voting water rights which power was executed on the 15<sup>th</sup> day of September 2007 .”

B. Greg Torgerson acquired from Bret Kouns a “limited power of attorney” dated June 22, 2014 which dealt specifically with water stock and water rights. (Exhibit 8)

C. The third power of attorney was caused to be executed on March 25, 2015 in which Greg Torgerson was granted power of attorney and authority to deal in Bret’s name with the U.S. Department of Agriculture. (Exhibit 9)

As heretofore stated, Greg Torgerson took over all of the farming property and equipment owned by Bret. He has farmed the farming land, used the irrigation water, raised crops, harvested crops and used the crops to feed his cattle and no accounting has been given to this affiant for such use.

10. Bret died June 10, 2015 and at the time of his death Greg Torgerson was in possession and farming Bret’s 140 plus acres of farm ground. Torgerson was given notice that he would need to vacate the property at the end of the agricultural year of 2015.

11. Greg Torgerson has not accounted for his use of the property and equipment owned by Bret. Greg Torgerson has made no payment to the undersigned Personal Representative for his agricultural use of the property during the agricultural year of 2015 or offered or made any accounting of prior use and payment.

12. In the year of 2000 the decedent also owned a red Dodge pickup truck approximately 2001 model and a Grizzly 77 4-wheeler. These items were also taken by Greg Torgerson and are believed to be in Torgerson’s use at the present time.

WITNESS THE HAND of the undersigned this 4<sup>th</sup> day of April, 2016.

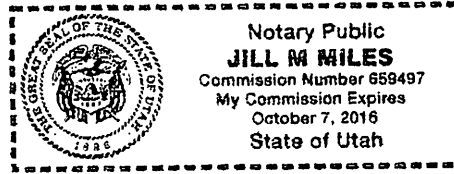
Pam Peterson  
Pam Peterson, Personal Representative

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF SEVIER    )

The applicant, being sworn, says that the facts set forth in the foregoing application are accurate and complete to the best of the applicant's knowledge and belief.

Jill M. Miles  
Notary Public

Residing at: Richfield, Utah  
My Commission Expires: 10/07/2016



LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701



**EXHIBIT 1**

DOC # 00364289

Correction Corporate Warranty Deed B: 0642 P: 0663  
Jayrene B Nielsen Sevier County Recorder Page 1 of 2  
03/03/2010 11:10:31 AM Fee \$15.00 By RONNIE REES

Tax ID#: part of S-120-1



**CORRECTION WARRANTY DEED**

(Corporate Form)

**KOOSHAREM GRAZING AND PASTURE**

a corporation organized and existing under the laws of the State of Utah, with its principal office at Loa, Wayne County, State of Utah, Grantor, hereby CONVEYS and WARRANTS to

**BRET KOUNS**

grantee of PO BOX 440033, KOOSHAREM, UT 84744  
for the sum of: TEN (\$10.00) DOLLARS and other good and valuable consideration  
the following described tract of land in Sevier County, State of Utah:

See Exhibit "A", attached hereto

Subject to easements and rights-of-way of record or enforceable in law and equity.

This CORRECTION WARRANTY DEED is given to correct the legal description in that certain WARRANTY DEED dated April 30, 2009 and recorded May 1, 2009 as Entry No. 359967 in Book 623, Page 786, recorded of Sevier County, Utah, and to clarify the non-appurtenance of the well right to the transfer of the land.

Dated this 2 ~~March~~ day of March, 2010

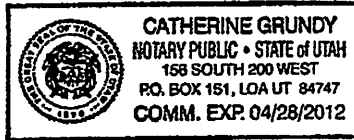
KOOSHAREM GRAZING AND PASTURE

By: Ronald A. Rees  
Ronald A. Rees, aka Ronnie Rees

PRESIDENT

STATE OF UTAH )  
  ) :ss  
County of Sevier )

On the 2 day of March, 2010 personally appeared before me Ronald A. Rees, aka Ronnie Rees who being by me duly sworn did say that he is the is the President of KOOSHAREM GRAZING AND PASTURE and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and that said corporation executed the same.



Catherine Grundy  
Notary Public  
Residing In: Loa UT  
Commission Expires: 4-28-2012

EXHIBIT "A"  
PROPERTY DESCRIPTION

PARCEL 3

SEVIER COUNTY: BEGINNING AT THE SOUTHEAST CORNER OF THE NW1/4 SE1/4 OF SECTION 36, TOWNSHIP 26 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING LOCATED N 89°48'45" W 1320.145 FEET ALONG THE SECTION LINE AND N 00°23'43" E 1312.68 FEET ALONG THE 1/16 SECTION LINE FROM THE SOUTHEAST CORNER OF SAID SECTION 36; RUNNING THENCE N 89°34'56" W 1323.40 FEET ALONG THE 1/16 SECTION LINE TO THE SOUTHWEST CORNER OF SAID NW1/4 SE1/4; THENCE N 89°34'59" W 2639.72 FEET ALONG THE 1/16 SECTION LINE TO THE SOUTHWEST CORNER OF THE NW1/4 SW1/4 OF SAID SECTION 36; THENCE N 00°16'42" E 1292.08 FEET ALONG THE SECTION LINE TO A FENCE; THENCE S 87°23'48" E 871.25 FEET ALONG SAID FENCE TO A FENCE CORNER; THENCE SOUTH 163.19 FEET; THENCE S 89°21'12" E 3094.07 FEET TO THE 1/16 SECTION LINE; THENCE S 00°23'43" W 1083.28 FEET ALONG SAID 1/16 SECTION LINE TO THE POINT OF BEGINNING.

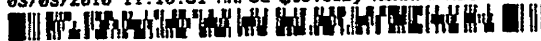
PIUTE COUNTY: THE SOUTH HALF OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 26 SOUTH, RANGE 1 WEST SALT LAKE BASE & MERIDIAN.

SUBJECT TO A 20-FOOT ACCESS RIGHT-OF-WAY AND EASEMENT FOR INGRESS, EGRESS, BUILDING, MAINTENANCE, AND REPAIR ACROSS THE NORTH SIDE OF THE ABOVE-DESCRIBED PROPERTY.

EXPRESSLY RESERVING TO THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, ALL INTEREST IN WATER RIGHT NO. 61-266 AS ON FILE WITH THE UTAH STATE ENGINEER.

**DOC # 00364289**

Correction Corporate Warranty Deed B: 0542 P: 0554  
Jayrene B Nielsen Sevier County Recorder Page 2 of 2  
03/03/2010 11:10:31 AM Fee \$15.00 By RONNIE REES



**EXHIBIT 2**

D LAND TITLE  
No. Acc

Security Title Company 18881

MAIL TAX NOTICE TO  
Jesse W. Wood  
10 N. Main  
Lyman UT 84749

STC File No. 00020014  
Tax Parcel Number (s): 5-120-1 (portion) and 665

### Warranty Deed

**Bret Kouns**

of PO Box, Koosharem, UT 84744, County of , State of UTAH, hereby CONVEY and WARRANT to

**Jesse W. Wood and Stanley W. Wood**

of Lyman, UT 84749 Grantee for the sum of Ten Dollars and Other Good and Valuable Consideration the following described tract(s) of land in State of UTAH:

*Plute & Sever*

**See Exhibit A attached hereto and made a part hereof.**

WITNESS, the hand(s) of said Grantor(s), this 23 of February, 2010

Signed in the Presence of:

*Bret Kouns*  
Bret Kouns

**DOC # 00364216**

Warranty Deed B: 0642 P: 0367  
Jayrene B Nielsen Sevier County Recorder Page 1 of 2  
02/25/2010 11:29:47 AM Fee \$13.00 By D LAND TITLE



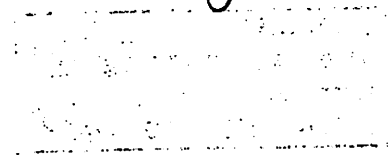
STATE OF Utah )  
County of Garfield ) SS.

On this day personally appeared before me Bret Kouns  
to me known to be the individual, or individuals described in and who executed the within and foregoing instrument,  
and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed, for the uses and  
purposes therein mentioned.

Given under my hand and official seal this 23 day of February 2010

*Helen Mays*  
NOTARY PUBLIC

Commission Expires: 7-16-13



**Exhibit A**

Sevier County:

Beginning at the Southeast corner of the Northwest quarter of the Southeast quarter of Section 36, Township 26 South, Range 1 West, Salt Lake Base and Meridian, said point being located North 89°48'45" West 1320.145 feet along the section line and North 00°23'43" East 1312.68 feet along the 1/16 section line from the Southeast corner of said Section 36; running thence North 89°34'56" West 1323.40 feet along the 1/16 section line to the Southwest corner of said Northwest quarter of the Southeast quarter; thence North 89°34'59" West 2639.72 feet along the 1/16 section line to the Southwest corner of the Northwest quarter of the Southwest quarter of said Section 36; thence North 00°16'42" East 1292.08 feet along the Section line to a fence; thence South 87°23'48" East 871.25 feet along said fence to a fence corner; thence South 163.19 feet; thence South 89°21'12" East 3094.07 feet to the 1/16 section line; thence South 00°23'43" West 1083.28 feet along said 1/16 Section line to the point of beginning.

Subject to a 20 foot access right of way and easement over and across the North side of the above legal description for ingress, egress, building, maintenance and repair.

Reserving unto Grantor 49% of all oil, gas and/or other minerals in, on or under said land, together with the right of ingress and egress for the purpose of exploring and/or removing the same.

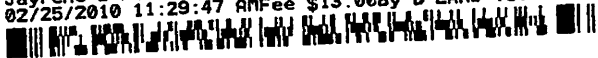
Piute County:

The South half of the Southwest Quarter and the Southwest Quarter of the Southeast quarter of Section 36, Township 26 South, Range 1 West, Salt Lake Base and Meridian.

Reserving unto Grantor 49% of all oil, gas and/or other minerals in, on or under said land, together with the right of ingress and egress for the purpose of exploring and/or removing the same.

**DOC # 00364216**

Warranty Deed B: 0642 P: 0368  
Jayrene B Nielsen Sevier County Recorder Page 2 of 2  
02/25/2010 11:29:47 AM Fee \$13.00 By D LAND TITLE



**EXHIBIT 3**

Utah Title & Abstract  
Order No. 9911-P  
Tax Serial No. 519 03-0005-0523  
528 03-0005-0545

Ent 107397 Bk 130 Pg 175  
Date: 05-MAR-2009 10:36AM  
Fee: \$13.00 Check  
Filed By: RC  
SHANE A. MILLETT, Recorder  
PIUTE COUNTY CORPORATION  
For: UTAH TITLE CO

# WARRANTY DEED

BRET KOUNS  
aka

DONALD BRET KOUNS

grantor

of KOOSHAREM, County of SEVIER, State of Utah, hereby  
CONVEYS and WARRANTS to

JOSHUA F. TALBOT and CASSANDRA TALBOT,  
husband and wife, as joint tenants

grantee

of 2343 NORTH HIGHWAY 118, MONROE, UTAH 84754 for the sum of  
TEN AND OTHER GOOD AND VALUABLE CONSIDERATION-----DOLLARS,

the following described tract of land in PIUTE County,  
State of Utah:

SEE ATTACHED EXHIBIT "A"

SUBJECT TO Restrictions, Easements, and Rights of Way of Record or Enforceable in Law and equity.

WITNESS, the hand of said grantor, this 3<sup>rd</sup> day of  
MARCH 2009, A.D.

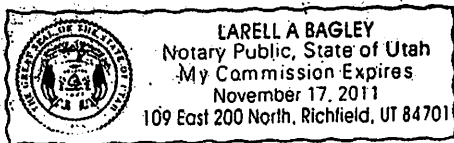
Donald Bret Kouns  
DONALD BRET KOUNS

Signed in the Presence of

STATE OF UTAH, )  
SS.

COUNTY OF Sevier )  
On the 3<sup>rd</sup> day of MARCH 2009, A.D.

personally appeared before me DONALD BRET KOUNS  
the signer of the within instrument, who duly acknowledged to me that he executed the same.



Larell A Bagley  
Notary Public

My Commission Expires: Nov 17, 2011 Residing at Richfield Utah



EXHIBIT 'A'

The Southeast Quarter of the Southeast Quarter of Section 10, Township 27 South, Range 1 West, Salt Lake Base and Meridian.

Beginning at the Southwest Corner of Section 11, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence North 80 rods; thence East 20 rods; thence South 80 rods; thence West 20 rods to beginning.

TOGETHER WITH WATER RIGHT NO. 61-2218.

TOGETHER WITH WATER RIGHT NO. 61-2204.

**EXHIBIT 4**

**NOTICE OF DEFAULT AND ELECTION TO SELL**  
(With Provision for Acceleration of Secured Indebtedness)

The UNITED STATES OF AMERICA, acting through the Farm Service Agency, UNITED STATES DEPARTMENT OF AGRICULTURE, the Beneficiary under the following described Deed(s) of Trust executed by Donald Bret Kouns, acting through Farm Service Agency, an agency of the United States Department of Agriculture as assignee.

<u>Records of</u>	<u>Dated</u>	<u>Date Recorded</u>	<u>Book, Library Volume</u>	<u>Page or File No.</u>
Piute County	4-29-02	4-30-02	109 101798	668-672
Piute County	2-11-00	2-16-00	105 100576	339-343
Sevier County	2-11-00	2-16-00	388 294097	909-913

Describing land as follows: See attached Exhibit "A" for land described on Deed of Trust dated 2-11-08 recorded in Sevier and Piute Counties and Exhibit "B" for land described on Deed of Trust dated 4-29-02 recorded in Piute County

Hereby gives notice that a BREACH OF THE OBLIGATIONS under said Deed(s) of Trust has occurred. The nature of such breach is monetary default. Amount necessary to bring debt current \$127,635.86 plus interest accruing and installments becoming due hereafter. Costs of Trustee's sales proceedings to date approximately \$500.00. Total amount payable \$128,135.86 plus interest accruing and installments becoming due hereafter.

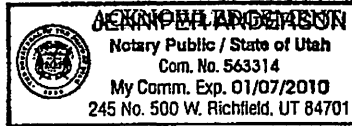
Because of such breach, said Beneficiary hereby gives notice of it's intent to, and hereby does, declare the entire unpaid balance secured by said Deed(s) of Trust due and payable as of February 27, 2009. Said Beneficiary, by reason of such breach, hereby elects to cause the trust property to be sold by the Trustee to satisfy entire unpaid balance.

UNITED STATES OF AMERICA

Date: November 19, 2008

By: Dallen C. Quarnberg  
Dallen C. Quarnberg  
District Director

State of Utah )  
                  ) ss.  
County of Sevier )



On the 19th day of November 2008, before me Jennifer Anderson, a Notary Public in and for said State, personally appeared Dallen C. Quarnberg, known to me to be the District Director of the Farm Service Agency, an agency of the United States of America, and known to me to be the person who executed the within instrument on behalf of said agency, and acknowledged to me that the United States of America executed the same.

Jennifer Anderson  
Notary Public for the State of Utah  
Residing in Richfield, Utah  
My Commission Expires 1-7-2010

Direct any questions and make payment to the Farm Service Agency at: 340 North 600 East, Richfield, Utah, telephone 435, 896-5489 Ext 118.

Ent 107240 Bk 129 Pg 494  
Date: 21-NOV-2008 1:20PM  
Fee: \$25.00 Check  
Filed By: RC  
SHANE A. MILLETT, Recorder  
PIUTE COUNTY CORPORATION  
For: UTAH TITLE CO

**DOC # 00357370**

Notice of Default B: 0612 P: 0750  
Jayrene B Nielsen Sevier County Recorder Page 1 of 4  
11/21/2008 03:23:50 PM Fee \$16.00 By UTAH TITLE & ABSTRA

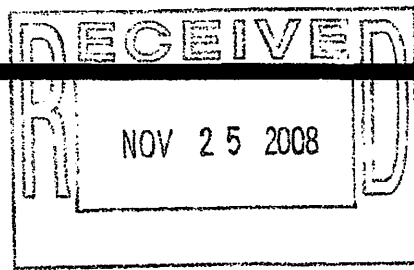
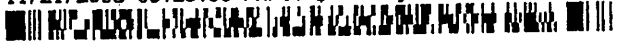


EXHIBIT 'A'

PARCEL 1: Beginning at the Northwest Corner of the Southeast Quarter of the Northwest Quarter of Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence East 26 rods; thence South 2 rods; thence East 24 rods; thence South 78 rods; thence West 50 rods; thence North 80 rods to beginning.

EXCEPTING THEREFROM that portion lying within County Road right of way. (03-0005-0486)

PARCEL 2: Lot 3, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM that portion lying within County Road right of way. (03-0005-0490)

PARCEL 3: Beginning at the Northwest Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence South 80 rods, more or less to Southwest Corner of said Lot 2; thence East 19 rods; thence North 80 rods, more or less to point East of beginning; thence West 19 rods to beginning. (03-0005-0490)

PARCEL 4: Beginning 19 rods East of the Northwest Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence East 19.5 rods, more or less to the West side of the East half of said Lot 2; thence South 80 rods, more or less to South line of said Lot 2; thence West 19.5 rods, more or less to point South of beginning; thence North 80 rods, more or less to beginning. (03-0005-0463)

PARCEL 5: Beginning 40 rods East of the Northwest Corner of the Southwest Quarter of the Northeast Quarter of Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence North 30 rods; thence East 10 rods; thence South 20 rods; thence Southeasterly 11 rods, more or less to point 262 feet East of beginning; thence West 262 feet to beginning. (03-0005-0445)

PARCEL 6: Beginning at the Northeast Corner of Lot 2, Section 3, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence South 29.5 chains; thence West 3.75 chains; thence Northwesterly 14 chains; thence North 5 chains; thence West 2.5 chains; thence North 11 chains; thence East 10 chains to beginning. (03-0005-0464)

PARCEL 7: The Southwest Quarter of the Southeast Quarter of Section 34, Township 26 South, Range 1 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM that portion lying within County Road right of way. (03-0005-0718)

PARCEL 8: The Northwest Quarter of the Southeast Quarter of Section 34, Township 26 South, Range 1 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM that portion lying within County Road right of way and Koosharem Canal right of way. (5-118-3)

TOGETHER WITH 130 Shares of KOOSHAREM IRRIGATION COMPANY WATER STOCK.

TOGETHER WITH all rights (including the rights to mining products, gravel, oil, gas, coal or

**DOC # 00357370**

Notice of Default #: 0612 P: 0751  
Jayrene B Nielsen Sevier County Recorder Page 2 of 4  
11/21/2008 03:23:50 PM Fee \$16.00 By UTAH TITLE & ABSTRA



Ent 107240 Bk 0129 Pg 0495

EXHIBIT 'B'

The Southeast Quarter of the Southeast Quarter of Section 10, Township 27 South, Range 1 West, Salt Lake Base and Meridian. (03-0005-0523)

ALSO: Beginning at the Southwest Corner of Section 11, Township 27 South, Range 1 West, Salt Lake Base and Meridian; thence North 80 rods; thence East 20 rods; thence South 80 rods; thence West 20 rods to beginning. (03-0005-0545)

50 \* TOGETHER WITH Water Right No. 61-2218 from Otter Creek from June 1st to June 15<sup>th</sup> of each year.

TOGETHER WITH Water Right No. 61-2204; 1.27 second feet of Otter Creek Water or the irrigation of 30 acres in the Southeast Quarter of the Southeast Quarter of Section 10, Township 27 South, Range 1 West, and 10 acres in the Southwest Quarter of the Southwest Quarter of Section 11, Township 27 South, Range 1 West,, from April to June 15<sup>th</sup>.

TOGETHER WITH 49% OF ALL COAL, OIL, GAS AND OTHER MINERALS AS RESERVED IN AND TO THE FOLLOWING TRACT OF LAND.

The Southwest Quarter of the Southeast Quarter of Section 35, Township 26 South, Range 1 West, Salt Lake Base and Meridian. (03-0005-0729)

TOGETHER WITH all rights (including the rights to mining products, gravel, oil, gas, coal or other minerals), interest, easements, hereditaments and appurtenances thereunto belonging, the rents, issues and profits thereof and revenues, income and insurance proceeds therefrom, all improvements, all water, water rights, water stock and sprinkling and irrigation systems, pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein-all of which are herein called "the property."

**DOC # 00357370**

Notice of Default B: 0612 P: 0753  
Jayrene B Nielsen Sevier County Recorder Page 4 of 4  
11/21/2008 03:23:50 PM Fee \$16.00 By UTAH TITLE & ABSTRA



**EXHIBIT 5**

2008 APR 30 PM 2:21

CLERK Jae

Casey W. Jewkes #10232  
Deputy Sevier County Attorney  
Sevier County Justice Complex  
835 East 300 North, Suite 100  
Richfield, Utah 84701  
Telephone: (435) 896-2675

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

IN AND FOR SEVIER COUNTY, STATE OF UTAH

---

STATE OF UTAH,	:	
	:	
Plaintiff,	:	JUDGMENT
	:	
vs.	:	
	:	
DONALD BRET KOUNS,	:	
DOB:01/17/65	:	Case No. 071600089FS
Defendant.	:	Judge Wallace A. Lee

---

The above-captioned matter having come on for sentencing on the 22<sup>nd</sup> day of April, 2008, pursuant to a guilty plea to the offense of Driving Under the Influence of Alcohol or Drugs, a Class B Misdemeanor; and the Court having entertained the arguments of Casey W. Jewkes for the State of Utah, and of Douglas L. Neeley, Attorney for the Defendant; and being apprised of no further impediment to entry of Judgment;

NOW THEREFORE, the Defendant is sentenced to serve a term of six months in the Sevier County Jail, and fined in the amount of \$1,875.00, including the state surcharge; provided that execution of the confinement sentence shall be stayed and all but \$1,300.00 of the fine and surcharge suspended subject to the successful completion of

Judgment



JD23105154

pages: 3

071600089 KOUNS,DONALD BRET

S

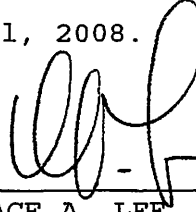
an eighteen month period of probation under the direction and control of the court; which probation, in addition to all normal and customary terms shall contain the following conditions:

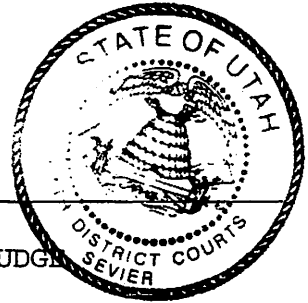
1. Violate no laws.
2. The Defendant will keep the court and the county attorney advised of a current address at all times.
3. The Defendant will serve thirty days in the Sevier County Jail beginning April 22, 2008, to be served as straight time without special privilege, release or review.
4. The Defendant shall pay the fine from the cash bail posted in this case. Payment should be made payable to the Sixth District Court and mailed to the following address: Sixth District Court, 895 East 300 North, Richfield, Utah 84701.
5. The Defendant will not use, consume or possess alcohol or illegal drugs, frequent places where alcoholic beverages or illegal drugs are being consumed, or be in the company of persons who are consuming or who are under the influence of alcohol or illegal drugs.
6. The Defendant will submit to searches of person, vehicle and property and to seizures of blood, breath, and urine upon the request of any law enforcement officer without the necessity of probable cause.
7. The Defendant will maintain full-time employment, education or a combination of such pursuits.
8. The Defendant will obtain a substance abuse evaluation from a recognized provider, provide a copy of the evaluation to the court and will complete any recommended treatment, all at the Defendant's own cost.



9. The Defendant shall enter into and successfully complete a DUI school and pay all costs thereof.

DATED this 28<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
WALLACE A. LEE  
DISTRICT COURT JUDGE




MAILING CERTIFICATE

I hereby certify that a full, true and correct copy of the above and foregoing JUDGMENT was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid on the 29<sup>th</sup> day of April, 2008, addressed as follows:

Mr. Douglas L. Neeley  
Attorney at Law  
1<sup>st</sup> South Main Street, Suite 205  
P. O. Box 7  
Manti, Utah 84642

Sevier County Jail  
Sevier County Justice Complex  
835 East 300 North, Suite 200  
Richfield, Utah 84701

Deputy Ernest Peterson  
Sevier County Sheriff's Office  
Sevier County Justice Complex  
835 East 300 North, Suite 200  
Richfield, Utah 84701

  
\_\_\_\_\_

**EXHIBIT 6**

This Agreement is made on the 17<sup>th</sup> day of April 2007

between

Bret Koons, of Koosharem, ("Lessor")

and

Greg Torgerson & Chad Torgerson, of Koosharem, ("Lessees").

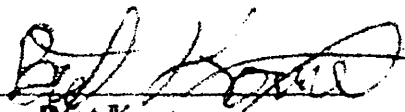

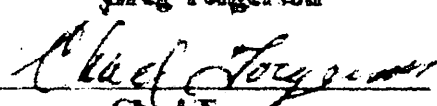
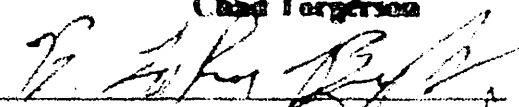
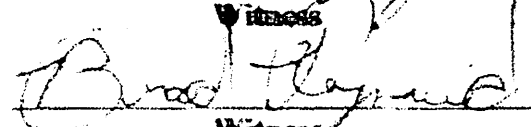
For and in consideration of the payment of the rents and the performance of the covenants contained on the part of the Lessees, Lessor does hereby demise and let unto the Lessees, and Lessees rent from Lessor for use as feed those certain premises described as Charlie Pasture and Town Cow Pasture East of Koosharem, for the sum of \$15.00/head/per month for tenancy commencing on April 17, 2007 to October 31, 2007.

The parties stipulate and agree further that: Lessee shall quit said premises in the event of default on rent.

This agreement shall be effective for ten years from year signed, with Lessee offered first option to purchase when put up for sale.

Down Payment of \$3,000 paid upon signing; Balance due November 15, 2007.

Signed:

 Bret Koons	<u>4-17-07</u> Date
 Greg Torgerson	<u>4-20-07</u> Date
 Chad Torgerson	<u>4-17-07</u> Date
 Witness	<u>4-17-07</u> Date
 Witness	<u>4-20-07</u> Date

**EXHIBIT 7**

UTAH GENERAL DURABLE POWER OF ATTORNEY

THE POWERS YOU GRANT BELOW ARE EFFECTIVE  
EVEN IF YOU BECOME DISABLED OR INCOMPETENT

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I Bret Kouns

[insert your name and address] appoint

Greg A. Torgerson

[insert the name and address of the

person appointed] as my Agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

**Note: If you initial Item A or Item B, which follow, a notarized signature will be required on behalf of the Principal.**

INITIAL

~~BK~~ (A) **Real property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, tear down, alter, rebuild, improve manage, insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds, and in any way or manner deal with all or any part of any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of Utah, under such terms and conditions, and under such covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt.

~~BK~~ (B) **Tangible personal property transactions.** To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange,

and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of Utah or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

\_\_\_\_\_ (C) **Stock and bond transactions.** To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me.

~~XXX~~ (D) **Commodity and option transactions.** To buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the principal could if present and under no disability.

\_\_\_\_\_ (E) **Banking and other financial institution transactions.** To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

~~OKY~~ (F) **Business operating transactions.** To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in. To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability

\_\_\_\_\_ (G) **Insurance and annuity transactions.** To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

~~SKX~~ (H) **Estate, trust, and other beneficiary transactions.** To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could exercise if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the Agent unless specific authority to that end is given.

~~SKX~~ (I) **Claims and litigation.** To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.

~~SKX~~ (J) **Personal and family maintenance.** To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

\_\_\_\_\_ (K) **Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service.** To prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the principal could exercise if present and under no disability.

\_\_\_\_\_ (L) **Retirement plan transactions.** To contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan,

individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

\_\_\_\_\_ (M) Tax matters. To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which I am or may be liable.

\_\_\_\_\_ (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

**SPECIAL INSTRUCTIONS:**

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT

The use of Farm Council Access  
To manage All Pastures + Farm Ground.  
Also dealings with the "COW PASTURE"  
And water rights.  
Voting water rights.

**THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.**

**THIS POWER OF ATTORNEY SHALL BE CONSTRUED AS A GENERAL DURABLE POWER OF ATTORNEY AND SHALL CONTINUE TO BE EFFECTIVE EVEN IF I BECOME DISABLED, INCAPACITATED, OR INCOMPETENT**



(YOUR AGENT WILL HAVE AUTHORITY TO EMPLOY OTHER PERSONS AS NECESSARY TO ENABLE THE AGENT TO PROPERLY EXERCISE THE POWERS GRANTED IN THIS FORM, BUT YOUR AGENT WILL HAVE TO MAKE ALL DISCRETIONARY DECISIONS. IF YOU WANT TO GIVE YOUR AGENT THE RIGHT TO DELEGATE DISCRETIONARY DECISION-MAKING POWERS TO OTHERS, YOU SHOULD KEEP THE NEXT SENTENCE, OTHERWISE IT SHOULD BE STRICKEN.)

**Authority to Delegate.** My Agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my Agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(YOUR AGENT WILL BE ENTITLED TO REIMBURSEMENT FOR ALL REASONABLE EXPENSES INCURRED IN ACTING UNDER THIS POWER OF ATTORNEY STRIKE OUT THE NEXT SENTENCE IF YOU DO NOT WANT YOUR AGENT TO ALSO BE ENTITLED TO REASONABLE COMPENSATION FOR SERVICES AS AGENT.)

**Right to Compensation.** My Agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAME(S) AND ADDRESS(ES) OF SUCH SUCCESSOR(S) IN THE FOLLOWING PARAGRAPH.)

**Successor Agent.** If any Agent named by me shall die, become incompetent, resign or refuse to accept the office of Agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such Agent:

---

**Choice of Law.** THIS POWER OF ATTORNEY WILL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. IT WAS EXECUTED IN THE STATE OF UTAH AND IS INTENDED TO BE VALID IN ALL JURISDICTIONS OF THE UNITED STATES OF AMERICA AND ALL FOREIGN NATIONS.

I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my Agent.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this 15<sup>th</sup> day of September, 2007

[Handwritten Signature]  
[Your Signature]

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

STATE OF UTAH  
COUNTY OF \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ [Date] by  
\_\_\_\_\_ [name of principal].

[Notary Seal, if any]:

\_\_\_\_\_  
(Signature of Notarial Officer)

Notary Public for the State of Utah

My commission expires:  
Jan-01-07 2009 - Jan-01-17

**ACKNOWLEDGMENT OF AGENT**

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES  
THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT

Greg Torgerson  
[Typed or Printed Name of Agent]

[Handwritten Signature]  
[Signature of Agent]

**PREPARATION STATEMENT**

This document was prepared by the following individual:

Greg Torgerson & Brett Kouns  
[Typed or Printed Name]

[Handwritten Signature]  
[Signature]

**EXHIBIT 8**

## LIMITED POWER OF ATTORNEY

I, Brett Kouns of Koosharem Ut, 84744 hereby appoint GREG TORGERSON of 270 S Seegmiller Ln Richfield Ut, 84701 to act in my capacity to do any and all of the following:

*Have all uses, rights, powers, privileges, etc. associated with my ownership of 130\_ shares in the Koosharem Irrigation Company ("KIC").*

a. *This authority I hereby grant to Gregory Torgerson specifically authorizes him to use my shares as his own for purposes of any litigation (derivative or otherwise) wherein such litigation (or court action) requires >10% of the total number of shares in KIC as a requirement for being qualified to initiate such litigation.*

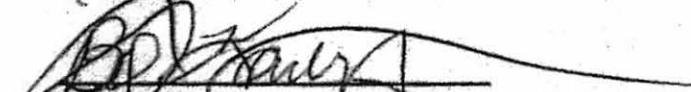
b. *The only exception to the power I grant regarding my shares in KIC is the ability to sell or transfer ownership of the shares.*

The rights, powers, and authority of my attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect as of January 1, 2014 and shall remain in full force and effect through December 31, 2021, unless rescinded earlier by either party.

DATED:

6.22.2014

SIGNED:

  
Brett Kouns

**EXHIBIT 9**

POWER OF ATTORNEY

THE UNDERSIGNED does hereby appoint the following grantee,

of the following address,

in the county of \_\_\_\_\_ of the State of \_\_\_\_\_

the attorney-in-fact for \_\_\_\_\_

insert grantor's name in connection with the Farm Service Agency, Natural Resources Conservation Service Agency, or Commodity Credit Corporation programs checked below. NOTE: This power of attorney form is not valid for FSA Farm Loan Program purposes.

A. FSA, NRCS and CCC PROGRAMS

B. TRANSACTIONS for FSA, NRCS, and CCC PROGRAMS

(Check applicable programs)

(Check applicable actions)

- 1 All current programs
2 All current and all future programs
3 Agricultural Risk Coverage/Price Loss Coverage (ARC/PLC)
4 Biomass Crop Assistance Program (BCAP)
5 Tree Assistance Program (TAP)
6 Livestock Intermity Program (LIP)
7 Livestock Forage Disaster Program (LFP)
8 Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP)
9 Noninsured Crop Disaster Assistance Program (NAP)
10 Marketing Assistance Loans and Loan Deficiency Payments
11 Margin Protection Program for Dairy Producers (MPP Dairy)
12 Farm Storage Facility Loan Program
13 Conservation Reserve Program (CRP)
14 NRCS Conservation Programs
15 Emergency Conservation Program (ECP)
16 Emergency Forest Restoration Program (FERP)
17 Other (Specify)

- 1 All actions
2 Signing applications, agreements, and contracts
3 Making reports
4 Conducting all marketing assistance loan and LDP transactions
5 AGI Certification
6 Routing Banking Accounts
7 Other (Specify)

This form may also be used to grant authority to an attorney-in-fact to act in the grantor's behalf with respect to FCIC crop insurance policies. Checking any of the FCIC transactions does not have any impact as to the FSA, NRCS or CCC transactions checked above.

C. INSURED CROPS STATE COUNTY

D. CROP INSURANCE TRANSACTIONS

(Enter "All" or specify which crop, state, county and year(s))

(Check applicable actions)

- 1 All actions
2 Making applications for insurance
3 Reporting crop acreage and production reports
4 Reporting a notice of damage or loss and making claim for indemnity
5 Making transfers and cancellations
6 Making contract changes
7 Other (Specify)

This Power of Attorney is valid in all counties in the United States unless otherwise noted. This power of attorney shall remain in full force and effect until the written notice of its revocation has been duly served upon FSA, NRCS or CCC as appropriate (a) death of the undersigned grantor, or (b) incompetence or incapacitation of the undersigned grantor. The undersigned grantor shall provide separate written notice of revocation to the applicable crop insurance agent. This power of attorney shall not be effective until properly executed and served to a USDA Service Center.

AUTHORIZED SIGNATURES

6A. Signature of Grantor (Individual)
6B. Signature Date (MM-DD-YYYY)
6C. For Grantor's Signature Continuation, check here if FSA-211A is attached
7A. Signature of Grantor (Partnership, Corporation, Trust, etc.) (By)
7B. Title/Relationship of Individual Signing in the Representative Capacity
7C. Signature Date (MM-DD-YYYY)

8. Notary Public (this form shall be acknowledged by a notary Public unless witnessed by a FSA employee or a corporate seal of grantor is affixed)

Signature (s) \_\_\_\_\_ the state of \_\_\_\_\_ the County of \_\_\_\_\_

FOR FSA USE ONLY

9A. Witness Signature (FSA Employee Only)
9B. Signature Date (MM-DD-YYYY)
9C. Official Position
10. This power of attorney was served to (a) \_\_\_\_\_ State of (b) \_\_\_\_\_ and became effective this (c) \_\_\_\_\_ day of (d) \_\_\_\_\_

NOTE: The following statement is made in accordance with the January 4, 2014 USC EOPR... (b) (5) - DPP... The information on this form is for internal use only...

For those FSA, CCC and NRCS programs that are not covered from PRA, FSA may not conduct or disclose any information regarding or responding to a collection of information... RETURN THIS COMPLETED FORM TO THE APPLICABLE USDA SERVICE CENTER.

USDA Service Center... (b) (5) - DPP... This information is for internal use only... Do not disseminate to the public...

# ADDENDUM 6B

Affidavit of Josh F. Talbot

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\* \* \* \* \*

IN THE MATTER OF THE ESTATE	)	
	:	<b>AFFIDAVIT OF JOSH F. TALBOT</b>
OF	)	
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\* \* \* \* \*

STATE OF UTAH	)
	: ss.
COUNTY OF SEVIER	)

Josh F. Talbot, being first duly sworn, deposes and says:

1. I was contacted in the year of 2009 by Bret Kouns and advised that his lender was going to foreclose and sell his real property unless he could get refinanced.
2. Bret Kouns sold to me 50 acres of property located in Piute County, State of Utah. The property was strictly used for grazing since it had an inadequate water supply for a more concentrated agricultural use.
3. I purchased the 50 acres of property and the purchase funds were used to refinance

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701



LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

Bret Kouns' properties and avoid the foreclosure proceedings.

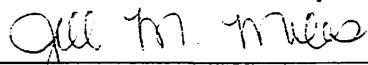
4. I am a resident of Koosharem, Utah and have been familiar with the property described in the deed from Bret Kouns attached as Exhibit 1. Prior to my ownership, I saw the property was used by Greg Torgerson for pasturing of livestock.

WITNESS THE HAND of the undersigned this 4<sup>th</sup> day of April, 2016.

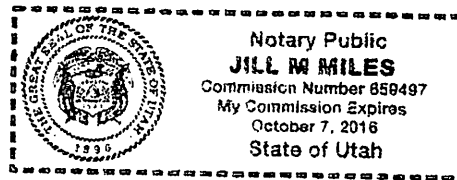
  
\_\_\_\_\_  
Josh F. Talbot

STATE OF UTAH            )  
  : ss.  
COUNTY OF SEVIER        )

The applicant, being sworn, says that the facts set forth in the foregoing application are accurate and complete to the best of the applicant's knowledge and belief.

  
\_\_\_\_\_  
Notary Public

Residing at: Richfield, Utah  
My Commission Expires: 10/07/2016



**EXHIBIT 1**

Utah Title & Abstract

Order No. 9911-P

Tax Serial No.

519 03-0005-0523  
528 03-0005-0545

Ent 107397 Bk 130 Pg 175  
Date: 05-MAR-2009 10:36AM  
Fee: \$13.00 Check  
Filed By: RC  
SHANE A. MILLETT, Recorder  
PIUTE COUNTY CORPORATION  
For: UTAH TITLE CO

# WARRANTY DEED

BRET KOUNS  
aka

DONALD BRET KOUNS

grantor

of KOOSHAREM, County of SEVIER, State of Utah, hereby  
CONVEYS and WARRANTS to

JOSHUA F. TALBOT and CASSANDRA TALBOT,  
husband and wife, as joint tenants

grantee

of 2343 NORTH HIGHWAY 118, MONROE, UTAH 84754 for the sum of  
TEN AND OTHER GOOD AND VALUABLE CONSIDERATION-----DOLLARS,

the following described tract of land in PIUTE County,  
State of Utah:

SEE ATTACHED EXHIBIT "A"

SUBJECT TO Restrictions, Easements, and Rights of Way of Record or Enforceable in Law and equity.

WITNESS, the hand of said grantor, this 3<sup>rd</sup> day of  
MARCH 2009, A.D.

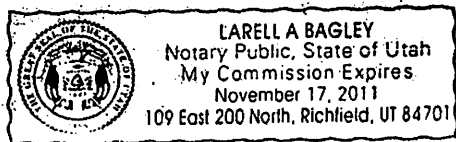
Signed in the Presence of

Donald Bret Kouns  
DONALD BRET KOUNS

STATE OF UTAH, )  
SS.

COUNTY OF Sevier )  
On the 3<sup>rd</sup> day of MARCH 2009, A.D.

personally appeared before me DONALD BRET KOUNS  
the signer of the within instrument, who duly acknowledged to me that he executed the same.



Larell A Bagley  
Notary Public

My Commission Expires: Nov 17, 2011 Residing at Richfield Utah

# ADDENDUM 6C

Affidavit of Dallas Blaine Hatch

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\*\*\*\*\*

IN THE MATTER OF THE ESTATE	)	
	:	<b>AFFIDAVIT OF</b>
OF	)	<b>DALLAS BLAINE HATCH</b>
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\*\*\*\*\*

STATE OF UTAH	)
	: ss.
COUNTY OF SEVIER	)

Dallas Blaine Hatch, being first duly sworn, deposes and says:

1. He is now 19 years of age and a resident of Elsinore, Utah. He was well acquainted with Bret Kouns during his lifetime.
2. He knew of his own knowledge that Bret Kouns was addicted to alcohol. He was aware that Bret Kouns had served jail time in the Sevier County Jail for alcohol offenses; that he had been required to go through rehabilitation programs approved by the state of Utah.
3. The undersigned is also well acquainted with Greg Torgerson who contributed to

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

Bret's alcoholic condition by furnishing alcohol.

4. In the year of 2008 the undersigned was living with his parents in Koosharem, Utah. Dallas was a nephew of Bret Kouns and he spent considerable time on the property where Bret lived. In the 2008 he recalls Greg Torgerson driving in in the red Dodge pickup he had acquired from Bret. He unloaded a box in the shed at Bret's home.

5. The undersigned was curious as to what was in the box so he went to the shed and found that it was a case of one-half gallons of vodka.

My memory is clear since after I had opened the box of vodka provided by Torgerson my uncle accused me of taking some of the vodka.

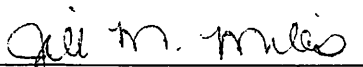
6. I have observed on many occasions Torgerson bringing whiskey and drinking with my uncle Bret.

WITNESS THE HAND of the undersigned this 4 day of April, 2016.

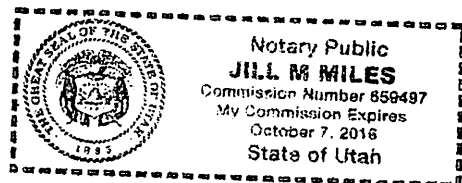
  
Dallas Blaine Hatch

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF SEVIER     )

The applicant, being sworn, says that the facts set forth in the foregoing application are accurate and complete to the best of the applicant's knowledge and belief.

  
Notary Public

Residing at: Richfield, Utah  
My Commission Expires: 10/07/2016



# ADDENDUM 7

Jill Miles Affidavit

TEX R. OLSEN [2467]  
ATTORNEY FOR PETITIONER  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701  
TELEPHONE: (435) 896-4461

IN THE SIXTH JUDICIAL DISTRICT COURT OF SEVIER COUNTY,

STATE OF UTAH

\*\*\*\*\*

IN THE MATTER OF THE ESTATE	)	
	:	<b>AFFIDAVIT OF JILL MILES</b>
OF	)	<b>OF SERVICE OF NOTICE</b>
	:	
DONALD BRET KOUNS also known as	)	
BRET KOUNS,	:	Probate No. 153600021
	)	
Deceased.	:	Judge Wallace A. Lee

\*\*\*\*\*

STATE OF UTAH	)
	: ss.
COUNTY OF SEVIER	)

JILL MILES, being first duly sworn, deposes and says:

1. I am a secretary and legal assistant to Tex R. Olsen, attorney at law.
2. I receive fax and email messages and deliver them to Mr. Olsen.
3. On March 30, 2016 I received from the Sixth District Court the attached Notice of Oral Argument in the matter of the estate of Donald Bret Kouns stating the hearing was scheduled for April 18, 2016 at 1:30 p.m. (Item 1)
4. I was aware Lloyd D. Rickenbach, attorney at law, advised our office he was

W OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701



LAW OFFICES  
TEX R. OLSEN  
225 NORTH 100 EAST  
RICHFIELD, UTAH 84701

representing Greg Torgerson in matters involving the estate of Bret Kouns, Probate No. 15300021.

A copy of the letter dated November 19, 2015 is attached as Item 2.

5. After discussing the matter with Mr. Olsen I mailed a copy on March 30, 2016 of the attached Notice of Oral Argument (Exhibit 1) to Lloyd D. Rickenbach, attorney at law, P.O. Box 440008, Koosharem, Utah (84744) postage prepaid.

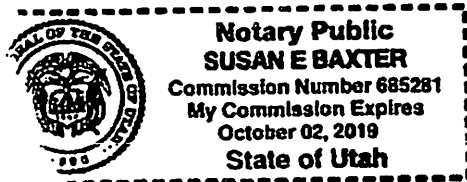
This Affidavit is dated this 27<sup>th</sup> day of April, 2016.

Greg Mules

SUBSCRIBED AND SWORN to before me, a notary public, this 27<sup>th</sup> day of April, 2016.

Susan E Baxter  
Notary Public

Residing at: Richfield, Utah  
My Commission Expires: 10/02/2019



ITEM 1

SIXTH DISTRICT COURT-RICHFIELD  
SEVIER COUNTY, STATE OF UTAH

---

IN THE MATTER OF THE ESTATE OF DONALD

BRET KOUNS, : NOTICE OF  
: ORAL ARGUMENT  
:  
: Case No: 153600021 ES  
: Judge: WALLACE A LEE  
Decedent. : Date: March 30, 2016

---

ORAL ARGUMENT is scheduled.

Date: 04/18/2016

Time: 01:30 p.m.

Location: Room 200

STATE COURTS BUILDING

845 East 300 North

RICHFIELD, UT 84701

Before Judge: WALLACE A LEE

\* The court will provide an interpreter upon request. If you need an interpreter, please notify the court at (435)896-2700 five days before the hearing.

\* El tribunal proveerá un intérprete si lo solicita. Si usted necesita un intérprete, por favor notifique al tribunal llamando al número (435)896-2700 cinco días antes de la audiencia.

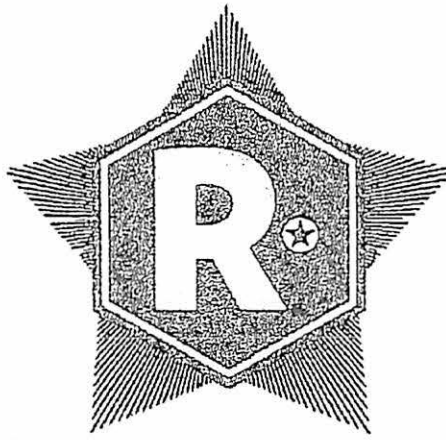
Individuals needing special accommodations (including auxiliary communicative aids and services) should call at (435)896-2700 three days prior to the hearing. For TTY service call Utah Relay at 800-346-4128.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 153600021 by the method and on the date specified.

EMAIL: TEX R OLSEN jmiles@xmission.com

ITEM 2



## RICKENBACH LAW

November 19, 2015

*Via fax and email*

Pam Peterson [pspeterson29@hotmail.com](mailto:pspeterson29@hotmail.com)  
Tex Olsen (435) 896-5441 (fax)

Subject: Bret Kouns Estate (Probate No. 15300021)

Dear Pam:

I represent Chad Torgerson and Greg Torgerson. I write this letter on behalf of said clients. I have recently been retained to be their attorney and counsel in this matter. I am about caught up on the matter, but before I feel that I'm fully ready to advocate on this matter, one thing first should be addressed that hasn't been addressed at all.

**What are we going to do to resolve this?**

Clearly my client has a valid contract and claim. Clearly Pam has a valid claim. To resolve this we need to communicate. Please consider this an invitation to communicate and get this resolved sooner and less expensively than later.

There are several issues that need to be addressed immediately.

Accordingly, please respond within five days. If I don't hear back from you within five days, I will understand your silence as defiance and an unwillingness to cooperate with me at this time; I will react accordingly. The best way to contact me is email at [lloyd@rickenbachlaw.com](mailto:lloyd@rickenbachlaw.com).

Let us be civil and in harmony with Bret's wishes - simple, less lawyers, fair, and without fighting or bitterness. I'm reasonable with those that are reasonable with me. Let us be reasonable and use good judgment before Bret's estate goes into Tex's pockets.

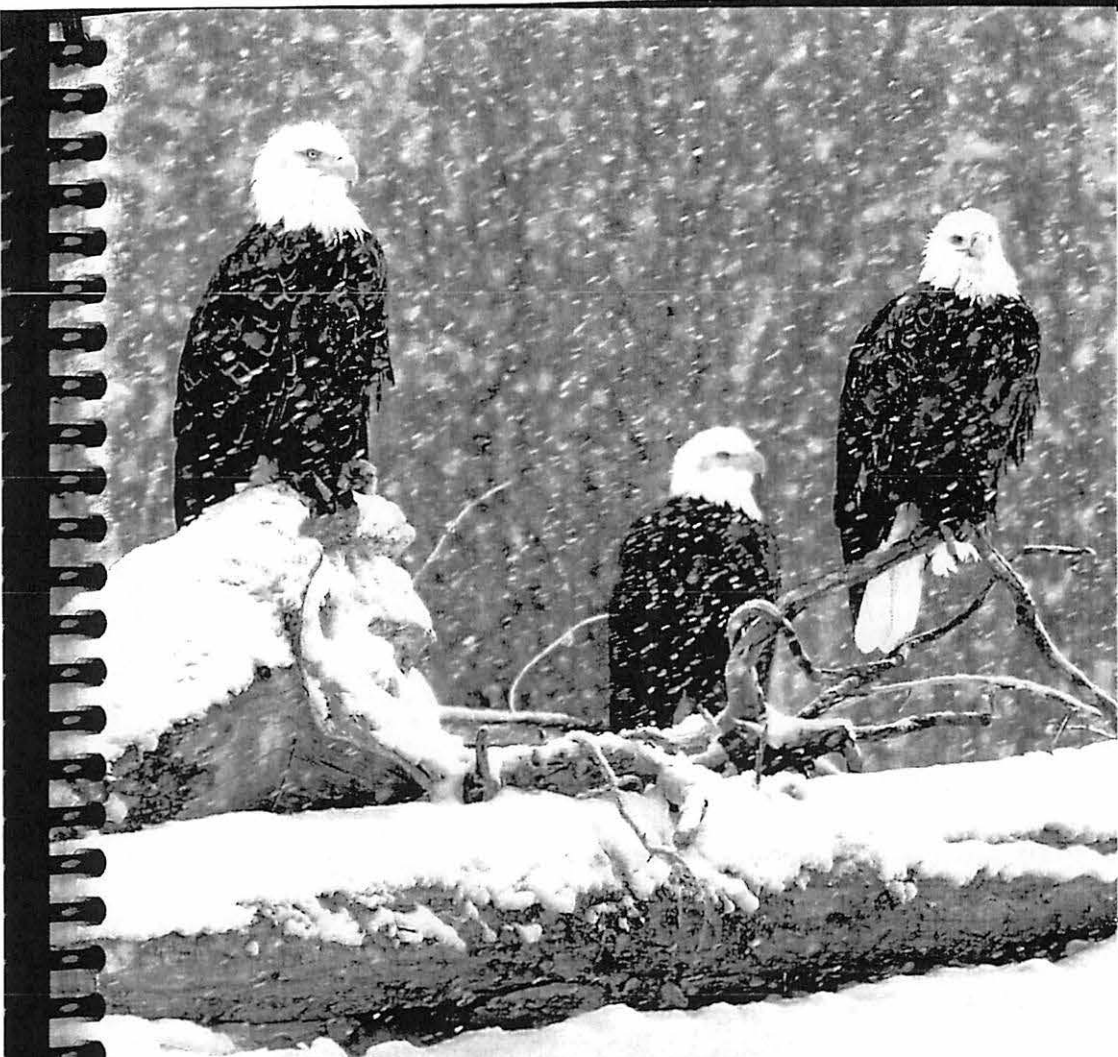
Sincerely,

Lloyd D. Rickenbach

Cc: client

# ADDENDUM 8

Address Listing in 2016 Legal Eagle Directory



Attorneys A-E

Attorneys F-K

Attorneys L-R

2016

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bjjensen1982@msn.com
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- RICHER, Arnold (Richer & Assoc) (801) 561-4750 (801) 561-4744  
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aricher@richerlaw.com
- RICHES, Waive C. (801) 363-3422  
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117 Rickenbach Rd, Koosharem, 84744  
lloyd@rickenbachlaw.com

1st  
District Court

2nd  
District Court

3rd  
District Court

4th  
District Court

Attorneys S-Z

5th

Utah Bar

Fees



# ADDENDUM 9

District Court Decision Denying Rule 60 Motion

**SIXTH DISTRICT COURT, STATE OF UTAH  
COUNTY OF SEVIER**  
State Courts Building 845 East, 300 North  
Richfield, Utah 84701  
Telephone: (435) 896-2700; Facsimile: (435) 896-2743

**IN THE MATTER OF THE ESTATE OF  
DONALD BRET KOUNS, also known as  
BRET KOUNS,**

*Deceased,*

**AND**

**GREG TORGERSON,**

*Plaintiff,*

v.

**JOSH TALBOT  
TEX OLSEN  
ESTATE OF BRET KOUNS, PAM  
PETERSON (EXECUTOR),**

*Defendants.*

**COMBINED MEMORANDUM  
DECISION AND ORDER**

Case Nos. 153600021 and 160600010

Assigned Judge: Wallace A. Lee

In case number 153600021, Claimant, Greg Torgerson filed a Motion for Rule 60 Relief From Judgment or Order, and a Motion for Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance.

In Case number 160600010, Defendant, Pam Peterson, filed a Motion to Dismiss Plaintiff's Complaint.

All three motions have been briefed. The Court held oral argument on these motions on 11 July 2016. These motions are now ready for decision.

### DECISION

Claimant, Greg Torgerson's Motions for Rule 60 Relief From Judgment or Order, and for Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance, are both DENIED. In addition, Torgerson's Objection to Proposed Order Prepared by Tex Olsen For Estate of Bret Kouns is OVERRULED.

Defendant, Pam Peterson's Motion to Dismiss Plaintiff's Complaint, is GRANTED.

### ANALYSIS

1. Background:

These cases share a strange and tortured history which the Court will attempt to summarize.

On 10 June 2015, the decedent, Donald Bret Kouns (hereinafter referred to as "Kouns"), passed away. On 19 June 2015, Pam Peterson (hereinafter referred to as "Peterson" or "Personal Representative") filed an Application for Informal Probate of Will and Appointment of Personal Representative. On 8 July 2015, Peterson was appointed personal representative of Kouns' probate estate in Case Number 153600021.

On 14 July 2015, Peterson filed a Notice to Greg Torgerson, Demandant. This notice acknowledged Greg Torgerson's (hereinafter referred to as "Torgerson") "Demand for Notice,"<sup>1</sup> and provided Torgerson with copies of the order and letters certifying Peterson's appointment as personal representative, along with a copy of the Notice to Creditors published in the Richfield Reaper, beginning 15 July 2015. The Notice to Creditors required all persons having claims against the estate to present them to Peterson on or before 8 October 2015, or their claims would be forever barred.

One day before the deadline for claims, on 7 October 2015, Torgerson, acting *pro se*, filed a "Claim Against the State." In this claim, Torgerson asserted a vague claim against the estate exceeding \$117,000.00. The nature of the claim was a lease of undisclosed real property which allegedly expired in 2017, compensation for unspecified improvements to the property, a right of first refusal upon attempted sale of the property, and unspecified legal rights allegedly assigned to Torgerson.

On 9 October 2015, Peterson filed a Denial of Claim Against the Estate by Greg Torgerson.<sup>2</sup> The filing of this disallowance triggered the procedural mechanism of Utah Code Annotated Section 75-3-804(2). This required that any proceeding on the denied

---

<sup>1</sup> No demand for notice was ever filed with the Court.

<sup>2</sup> The disallowance document filed with the Court does not bear a signature and is not dated. However, the same document was attached as Exhibit 2 to Peterson's Petition for Court Approval of Agricultural Lease and Option to Sell Estate Property. Exhibit 2 shows the disallowance of Torgerson's claim was signed by Tex R. Olsen, Attorney for Personal Representative, and dated 9 October 2015.

claim be commenced no later than 60 days after the notice of disallowance. Thus, Torgerson had 60 days, until 8 December 2015, to commence a proceeding on his claim.

Torgerson failed to commence any proceeding to enforce his claim by 8 December 2015. Therefore, pursuant to §75-3-804(2), Torgerson's claim was barred and of no further force or effect against the estate.

Nevertheless, on 10 March 2016, apparently out of abundance of caution, Peterson filed a Petition for Court Approval of Agricultural Lease and Option to Sell Estate Property (hereinafter referred to as "the Petition." In this Petition, Peterson explained that even though Torgerson's claim against the estate was barred, Peterson was "apprehensive that unless this Court assumes jurisdiction and approves [a lease and option to buy certain real property of the estate] Greg Torgerson will unlawfully interfere with the [lessee under the proposed lease]. Therefore, a writ of assistance authorizing peace officers to intervene may be required." A copy of the Petition was mailed to Torgerson and Lloyd Rickenbach.<sup>3</sup>

Torgerson failed to file any response to the Petition for Court Approval of Agricultural Lease and Option to Sell Estate Property in the probate case number 153600021.

---

<sup>3</sup> Lloyd Rickenbach (hereinafter "Rickenbach") is a lawyer who was purportedly representing Torgerson at the time the Petition was filed. Though Rickenbach had not yet entered a formal appearance in the probate case, on November 19, 2015, he faxed and emailed a demand letter to Tex Olsen and also directly to Pam Peterson in which he referenced the Bret Kouns Estate (Probate No. 153600021 and stated he represented Torgerson in that matter.

Instead, on 24 March 2016, through counsel, Lloyd Rickenbach, Torgerson filed a Complaint for Declaratory Relief, in a separate case number 160600010. In his Complaint, Torgerson named the Estate of Bret Kouns, Pam Peterson (Executor), Tex Olsen (hereinafter "Olsen"), Attorney for the Personal Representative, and Josh Talbot, the lessee of the proposed lease identified in the Petition, as defendants. The Complaint seeks a declaration from the Court that Torgerson's lease is valid and "interference with such is actionable tortious interference."

Meanwhile, in the probate case number 153600021, because Torgerson had failed to respond to the Petition, on 29 March 2016, Peterson filed a request to submit the Petition for decision, along with a proposed order and writ of assistance directed to the Sheriff of Sevier County. The proposed orders were mailed to Torgerson and Rickenbach by Olsen's office assistant Jill Miles (hereinafter "Miles") on 29 March 2016.

The Court became aware of the request to submit in probate case number 153600021, about the same time it became aware of the Complaint for Declaratory Relief in case number 160600010. Because both cases appeared to concern the Kouns estate, the Court declined to sign the proposed orders submitted by Peterson in the probate case. Instead, in an effort to afford both parties a meaningful opportunity to be heard,

the Court scheduled the Petition in the probate case number 153600021 for oral argument on 18 April 2016.<sup>4</sup>

The Court sent notice of the hearing on 30 March 2016. However, the certificate of notification shows it was sent only to Olsen. Nevertheless, Jill Miles, Olsen's assistant, submitted an affidavit in which she testified that after receiving the notice from the Court on 30 March 2016, she mailed a copy of the Court's notice to Rickenbach at the address on his letter dated 19 November 2015, postage prepaid. Rickenbach later submitted a declaration in which he swears he did not receive the notice mailed by Miles.

On Saturday 16 April 2016, Rickenbach electronically filed an Entry of Appearance for Claimant Greg Torgerson and an *ex parte* motion to continue the 18 April 2016 hearing, along with a proposed order. The Certificate of Service on both filings indicates the only notice of these two filings was "via the Court's ECF system." Because these documents were filed when the Court was closed on a weekend, the Court did not learn of the Entry of Appearance and *Ex parte* Motion to Continue Hearing until the morning of Monday, 18 April 2016, the day scheduled for oral argument.

---

<sup>4</sup> There was nothing before the Court in the declaratory judgment action in case number 160600010. Therefore, only the Petition in probate case number 153600021 was scheduled for hearing on 18 April 2016.

The basis for Torgerson's motion to continue was that the Court failed to provide notice of the hearing to Torgerson, and that in a telephonic hearing in a separate case on 1 March 2016, Rickenbach had informed the Court of his unavailability on 18 April 2016. However, Rickenbach had not entered an appearance in the probate case on 1 March 2016, and the motion candidly admits there was no reason to suppose the Court would remember that Rickenbach was unavailable on 18 April.

At 1:30 PM on 18 April 2016, the Court convened probate case number 153600021 for oral argument on the Petition as scheduled. Only Olsen and Peterson appeared. Apparently presuming the Court would grant the motion to continue the hearing, neither Torgerson nor Rickenbach appeared.

Olsen expressed surprise when the Court informed him of Torgerson's Motion to Continue Hearing, and objected to any continuance. Olsen explained to the Court that due to application of §75-3-804(2), Torgerson no longer had a valid claim against the estate. Olsen also explained that Torgerson had indeed been afforded proper notice of the hearing when Miles mailed the Court's notice to Rickenbach on 30 March 2016. Olsen argued a decision on the Petition was critically important to his clients because the spring planting season was in progress, and the estate needed a decision about whether the lease of the property would be approved by the Court.



The Court immediately directed the Clerk to place a telephone call from the bench to Rickenbach's office at the telephone number on his Appearance of Counsel, in an attempt to offer him an opportunity to be heard on the motion to continue the hearing, but the telephone call was not answered and there was no other way to contact Rickenbach. Because Rickenbach had entered his appearance for Torgerson, the Court made no effort to contact Torgerson directly.

Thereafter, the Court considered the Motion to Continue and ruled the motion was not timely filed because it was filed the Saturday before the hearing without adequate notice to Peterson. Furthermore, because Olsen had shown that Torgerson no longer had a valid claim against the estate, because proper notice of the 18 April hearing was apparently mailed to Rickenbach by Miles, and because neither Torgerson nor Rickenbach were present to argue the motion to continue, the Court concluded it should deny the motion to continue.

The Court then heard oral argument from Olsen, and was persuaded to grant the Petition authorizing Peterson to execute the lease and option agreement. The Court also authorized a writ of assistance directed to the Sheriff of Sevier County to enable the Kouns estate to take possession and control of the property and to keep the peace.

The next day, 19 April 2016, when proposed orders were presented for signature in the Court's e-filing queue, the Court signed both the proposed order and writ of

assistance at 4:57 PM. Approximately 7 minutes later, at 5:04 PM, Torgerson filed his Motion for Rule 60 Relief from Judgment. The next day, 20 April 2016, Torgerson filed his Motion for Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance.

Against this background, the Court proceeds to analysis of the pending motions in both cases.

2. **Motion for Rule 60 Relief from Judgment or Order:**

Torgerson seeks "relief from the April 18, 2016 determination of this Court to proceed with Oral Argument in this matter without the attendance of the claimant or his counsel." As grounds for the motion, Torgerson claims that "[d]ue to the mistake or inadvertence, this Court never notified Claimant of the March 28, 2016 notice of the April 18, 2016 Oral Argument in this estate matter." See Motion at Page 2.<sup>5</sup> The motion was not supported by any affidavit.

Peterson counters that Torgerson and his counsel were given notice of all proceedings in the probate case, including oral argument scheduled for 18 April 2016, and that Torgerson's claim against the estate is barred under §75-3-804(2). In any event, Peterson argues the properties known as "Charlie's Pasture" and the "Koosharem Pasture," the only properties referenced in Torgerson's alleged lease, were both sold in 2009 and no longer belong to the estate.

---

<sup>5</sup> The motion is not paginated.

In *Judson v. Wheeler RV Las Vegas, L.L.C.*, 2012 UT 6, 270 P.3d 456, the Utah Supreme Court noted the standard the Court must apply in considering a motion under rule 60(b), Utah Rules of Civil Procedure: (1) the motion must be timely; (2) the motion must show an explicit basis for granting relief under one of the subsections of rule 60(b); and (3) there must be an allegation of a meritorious defense. *Id.* at ¶14.

**(1) Timeliness:**

In this case, the Court finds the motion was timely. It was filed 7 minutes after the Court signed the orders presented after the 18 April 2016 hearing.

**(2) Basis for relief:**

The Court next considers whether there is an explicit basis for granting relief under one of the subsections of rule 60(b). As grounds for his motion, Torgerson appears to claim mistake or inadvertence by the Court in failing to send Torgerson notice of the 18 April 2016 hearing.

Rule 60(b)(1) provides that the Court may relieve a party or its legal representative from a judgment, order or proceeding for mistake, inadvertence, surprise or excusable neglect.

“[T]here is no specific legal test for excusable neglect. Rather, [t]he equitable nature of the excusable neglect determination requires that a district court be free to consider all facts it deems relevant to its decision and weigh them accordingly.” *Aghdasi*

v. *Saberin*, 2015 UT App 73, ¶5, 347 P.3d 427, quoting *Jones v. Layton/Okland*, 2009 UT 39, ¶27, 214 P.3d 859. Further, “excusable neglect requires some evidence of diligence in order to justify relief.” *Id.*

In this case the Court finds Torgerson did not receive statutory notice of the 18 April hearing directly from the Court. However, the Miles affidavit shows that on 30 March 2016, after receipt of the Court’s notice of hearing in Olsen’s office, Miles mailed a copy of the Court’s notice to Rickenbach at P.O. Box 440008, Koosharem, Utah 84744 postage prepaid. In response, Torgerson filed the Declaration of Lloyd Rickenbach.<sup>6</sup> In his declaration, Rickenbach merely states that “I also did not receive the notice of said hearing that was purportedly sent to me by an assistant to Petitioner’s counsel, Tex Olsen.”

It is well established that the mailing of a letter, postage prepaid, and properly addressed, creates a strong factual inference that the letter reached its destination. See *Campbell v. Gowans*, 100 P.397, 403 (Utah 1909). See also, *Crude Oil Corp. v. C.I.R.*, 161 F.2d 809, 810 (10<sup>th</sup> Cir. 1947), *Thiessans v. Department of Employment Sec., Bd. Of Review of the Indus. Com’n of Utah*, 663 P.2d 72, 73 (Utah, 1983), rule 5(b)(4), Utah Rules of Civil Procedure.

---

<sup>6</sup> This declaration was submitted as an exhibit to an unauthorized second reply memorandum filed well after the motion was submitted for decision.

The Court finds the Miles notice was mailed postage prepaid and properly addressed to Rickenbach at the address listed on Rickenbach's entry of appearance, and there is no evidence Rickenbach was having problems receiving mail at that address. Under these circumstances, although the Court recognizes it is difficult to prove a negative, the Court finds it extremely hard to believe Rickenbach did not receive fair and actual notice of the hearing on behalf of his client.<sup>7</sup>

Nevertheless, even assuming Rickenbach did not receive the notice Miles mailed on 30 March 2016, the Court finds Rickenbach and Torgerson were both provided timely notice of the Petition on 10 March 2016,<sup>8</sup> and failed to file any response.

Finally, the Court finds Rickenbach clearly knew about the hearing by at least Saturday, 16 April 2016 when he entered his appearance and filed the motion to continue. By this time, Rickenbach had already filed his Complaint for Declaratory Relief in case number 160600010 which covers the same subject matter as the Petition, therefore, there should have been no surprise. In his opposing memorandum to Defendant's motion to dismiss the declaratory judgment action, Torgerson urged the Court to issue a decision in an "efficient, fast, judicious manner. . . ." See Page 4. The Court cannot see how Rickenbach could not have been prepared, even on short notice,

---

<sup>7</sup> Under rule 5(b)(1), Utah Rules of Civil Procedure, if a party is represented by an attorney, even though no formal appearance has yet been made, a paper must be served upon the attorney unless the court orders service upon the party. Therefore, Miles properly effected service of the notice when she mailed it to Rickenbach who had previously indicated in an email to Olsen that he represented Torgerson.

<sup>8</sup> The mailing certificate on the Petition shows it was sent to Rickenbach at a different address: 117 Rickenbach Road, Koosharem, UT 84744, but there is no evidence Rickenbach did not receive it.

to argue the motions at the 18 April 2016 hearing, or at least to argue the motion to continue.

The Court concludes that even though Torgerson did not receive notice of the hearing directly from the Court, both he and Rickenbach had actual notice by at least 16 April 2016, and were provided a reasonable opportunity to be heard. Apparently, they had other things to do on 18 April 2016 that were more important to them than attending the hearing.<sup>9</sup> “Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010).

Here, Torgerson had actual notice of the Petition and hearing. This more than satisfied his due process rights. Accordingly, given his actual knowledge of the hearing, lack of formal notice directly from the Court does not constitute the kind of mistake, inadvertence, surprise or excusable neglect, for which the Court can, in furtherance of justice, grant Torgerson the relief he seeks.

**(3) Diligence:**

A moving party is not “entitled to relief on the ground of excusable neglect

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<sup>9</sup>When asked about their whereabouts on 18 April 2016 at oral argument, Torgerson replied he was in Koosharem, and Rickenbach replied he was in Phoenix celebrating his wife’s birthday.

anytime such relief might be equitable. . . excusable neglect requires some evidence of diligence in order to justify relief." *Jones v. Layton/Okland*, 2009 UT 39, ¶7, 214 P.3d 859. Therefore, the Court must determine whether Torgerson "has been sufficiently diligent that the consequences of [his] neglect may be equitably excused." *Id.* "In making this determination, the district court is free to consider all relevant factors and give each factor the weight that it determines it deserves." *Id.* at ¶25.

The Court acknowledges that perfect diligence is not required. *Id.* at 22.

However, in this case, the Court finds Torgerson has not been very diligent at all. First, even though he timely filed his claim against the estate, he entirely neglected to timely commence a proceeding to enforce his claim. Further, despite notification of the Petition, he failed to respond. Finally, though he had actual notice of the 18 April 2016 hearing two days before the hearing, he failed to avail himself of the opportunity to attend the hearing and be heard concerning the Petition or his motion to continue the hearing.

In fact, other than filing his claim against the estate in the first place, the only act of diligence the Court can find in this case is the filing of the motion to continue the hearing. However, the Court finds Torgerson showed an abject lack of diligence when he and his lawyer both inexplicably failed to appear at the hearing on 18 April 2016 to

argue their motion. As a result, the Court did not have the opportunity to hear Torgerson's side of the story concerning the continuance or the Petition.

Torgerson apparently presumed the Court would summarily grant his motion to continue. However, "[a] party is not granted a continuance as a matter of right, but rather as an act of discretion by the court. Indeed, courts have substantial discretion in deciding whether to grant continuances." *Clarke v. Clarke*, 2012 UT App 328, ¶19, 292 P.3d 2012.

All things considered, Torgerson was not diligent, and his lack of diligence is inconceivable to the Court. Relief from a judgment or order under rule 60(b)(1) is an equitable matter and it is well settled that "equity aids the vigilant and not those who slumber on their rights." *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶29, 289 P.3d 502.

**(4) Meritorious defense:**

The next issue is whether Torgerson has alleged a meritorious defense. In his Motion for Rule 60 Relief from Judgment or Order, Torgerson makes only a vague, passing reference to a potential meritorious defense. He argues only "... that there are many items intermingled that clearly belong to claimant (i.e., paper trail of receipts, payments, titles, etc.), that should have been addressed." Torgerson also failed to



address the issue of meritorious defense in his reply memorandum and second, unauthorized reply memorandum.

Similarly, at oral argument on 11 May 2016, Torgerson made reference only to a photocopy of a check and two short lease agreements. He argued he has more compelling evidence, but that he is not required to prove his case at this stage of the proceedings.

The Court agrees Torgerson is not required to prove his case at this point. However, clearly, allegation of a meritorious defense serves as a “sentry that guards the gateway to Rule 60(b) relief – it prevent[s] the necessity of judicial review of questions which, on the face of the pleadings, are frivolous, and ensures that vacating the judgment will not be an empty exercise or a futile gesture.” *Judson v. Wheeler*, 2012 UT 6, ¶14, 270 P.3d 456. Accordingly, “[m]ere proof of surprise or excusable neglect would be insufficient without some assertion of a meritorious defense, for example, as it would be an empty formality to set aside a default judgment for a defendant who had no chance of prevailing on the merits.” *Id.*

In this case, the Court finds Torgerson has failed to allege a sufficient meritorious defense to justify relief from the orders previously entered by the Court. His reference to an alleged paper trail, including the leases and check, simply ignores the elephant in the room, the major, obvious problem Torgerson seems reticent to address: the fact that

due to his own failure to timely commence a proceeding to enforce his claim against the estate, by operation of Utah Code Annotated Section 75-3-804(2), his claim is barred.

The Court has no jurisdiction to consider it. See *In re Estate of Ostler*, 2009 UT 82, ¶ 21, 227 P.3d 242. Accordingly, the Court can see no meritorious defense and concludes that vacating the judgment in this case would be an empty exercise or a futile gesture.

Although Torgerson's 60(b) motion was timely, the Court concludes he has failed to show an adequate basis for relief, and a meritorious defense. Accordingly, Torgerson's Motion for Rule 60 Relief from Judgment or Order is DENIED.

3. **Motion For Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance:**

Torgerson insists the Order Authorizing 1. Execution of Lease and Option to Sell Estate Property; 2. Writ of Assistance, and the Writ of Assistance Directed to Sevier County Sheriff, both of which were signed by the Court and entered on 19 April 2016, were wrongful and should be discharged.

Torgerson cites three grounds for his motion: (1) that the order and writ were obtained at the 18 April 2016 hearing without proper notice; (2) that the proposed order and writ are premature because they were submitted to the Court for signature before Torgerson had a chance to object to the form of the order and writ as provided in rule 7(j)(2), Utah Rules of Civil Procedure; and (3) the proposed order does not contain

language requested by the Court at the hearing on 18 April 2016, and is therefore, wrongfully issued.

On 27 April 2016, Torgerson also filed an Objection to Proposed Order Prepared by Tex Olsen For Estate of Bret Kouns. The objection basically mirrors his argument in the Motion for Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance. Therefore, the Court will address the Motion and Objection together.

Rule 64(f) pertains to a number of statutory writs directing seizure of real and/or personal property. The rule provides that "at any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the writ was wrongfully obtained." Rule 64(f) does not apply to discharge of orders of the Court, but only to writs.

The Court finds the writ in this case fundamentally different from the statutory writs, such as replevin, attachment, garnishment and execution, covered by rule 64. The Writ of Assistance Directed to Sevier County Sheriff in this case is not a statutory writ. It merely notes the Court has authorized the estate to enter into a farm lease and option, and directs the sheriff to "assist the tenant, Josh Talbot in taking exclusive possession of the property . . . and, when necessary assist in maintaining the peace and restraining Greg Torgerson, his agents and assigns, from entering upon the property or

asserting any authority over occupation and use of the property.” Therefore, the Court is not sure the provisions of rule 64(f) apply.

Nevertheless, the Court will address the issues Torgerson raises. First, the Court has already ruled on the notice and due process issues in its ruling on Torgerson’s rule 60(b) motion. That ruling also applies to this motion and the Court will not repeat it here.

With regard to the rule 7(j)(2) issue raised by Torgerson, the Court notes that at the time of the hearing on 18 April 2016, not only was Torgerson’s claim against the estate invalid under §75-3-804(2), but he had failed to respond to the Petition and failed to appear at the hearing. Therefore, the Order and Writ signed by the Court on 19 April 2016 were merely the same proposed orders properly submitted by Peterson on 29 March 2016, along with the Request to Submit for Decision, pursuant to rule 7(j)(6)(E), Utah Rules of Civil Procedure. The rules simply do not afford those who do not participate in a hearing the right to object to the form of resulting orders.

Nevertheless, the Court notes that even if rule 7(j)(2) applied to the circumstances of this case, it is well established in Utah law that “nothing in rule 7(f)<sup>10</sup> requires the trial court to wait for the expiration of a party’s objection period prior to signing a proposed judgment or order. To the contrary, Utah case law indicates that the rules

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<sup>10</sup> The provisions of former rule 7(f) interpreted by the Court in *Henshaw v. Estate of King* are now codified in rule 7(j) and they contain nearly identical language.

pertaining to the entry of proposed judgments and orders are binding only on the litigants and not on the trial court." *Henshaw v. Estate of King*, 2007 UT App 378, ¶25, 173 P.3d 876. Thus, the fact that the Court signed the proposed Order and Writ during the objection period of rule 7(j) does not nullify either the Order or Writ or render them wrongful or subject to discharge.

Finally, the fact that the proposed order and writ signed by the Court did not contain language regarding Torgerson's motion to continue the 18 April hearing or the Court's reasons for denying the motion do not render either the Order or the Writ wrongful or subject to discharge. The Court has addressed the motion to continue in this memorandum decision and order, and the issue is preserved in the event Torgerson decides to appeal. Therefore, the Court cannot see how Torgerson is prejudiced by the fact that the language of the Court's findings was not included in the proposed order submitted to the Court.

Accordingly, for the reasons explained above, the Court finds Torgerson's Motion For Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance without merit. The Motion is DENIED, and the Objection is OVERRULED.

**4. Motion to Dismiss Plaintiff's Complaint - Case Number 160600010:**

In this Motion, Peterson notes that the sole issue raised in the Complaint for

Declaratory Relief is virtually identical to issues concerning validity of the alleged Lease previously raised in Torgerson's Claim against the Estate in the probate case number 153600021. Therefore, Peterson argues pursuant to Utah Code Annotated Section 75-3-704, the probate court has prior exclusive jurisdiction over property belonging to the estate or its administration, and the Court must dismiss this case or consolidate it and treat it as a response to the Petition.

Torgerson disagrees and suggests a declaratory judgment is entirely appropriate to resolve the dispute between the parties concerning the written lease in this case and should be liberally, and expeditiously construed and administered.

Utah Code Annotated Section 75-1-302 vests the Court with probate jurisdiction over all subject matter relating to estates of decedents, "with full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in matters which come before it."

Similarly, under the provisions of 78B-6-410, the Court also has power to issue declaratory judgments "to determine any question arising in the administration of the estate . . . including questions of construction of wills and other writings."

Torgerson asks the Court to invoke its jurisdiction to make a declaratory judgment that the farm lease presented by Torgerson "remains valid despite Mr. Koun's

[sic] death, until the expiration of the term of said lease . . ." and "interference with such is actionable tortious interference."

The Court finds it may have been proper for the Court to issue such a declaratory judgment if the Complaint for Declaratory Relief had been timely filed. However, in this case, Utah Code Annotated Section 75-3-804(2) requires that to be effective, such a proceeding had to be commenced within 60 days "after the personal representative has mailed a notice of disallowance." No such proceeding may be commenced thereafter.

Therefore, even if the Court were to find the leases proffered by Torgerson were valid leases, because Torgerson did not timely file his Complaint for Declaratory relief, his claim, based on the leases, would still be barred under §75-3-804(2).

Utah Code Annotated Section 78B-6-404 vests the Court with discretion to "refuse to render or enter a declaratory judgment or decree where a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."

Section 78B-6-404 precisely describes the situation in this case. Accordingly, the Court exercises its discretion to refuse to enter the declaratory judgment requested by Torgerson because it is essentially moot due to the preclusive effect of §75-3-804(2), and would not be of any assistance to the parties in the probate case. Accordingly,

Peterson's Motion to Dismiss Plaintiff's Complaint is GRANTED, and case number 160600010 is DISMISSED with prejudice.

CONCLUSION

For the reasons stated in this decision, Claimant, Greg Torgerson's Motions for Rule 60 Relief From Judgment or Order, and for Rule 64(F) Discharge of Wrongfully Obtained Order and Writ of Assistance, are both DENIED. Torgerson's Objection to Proposed Order Prepared by Tex Olsen For Estate of Bret Kouns is OVERRULED.

Defendant, Pam Peterson's Motion to Dismiss Plaintiff's Complaint, is GRANTED.

The parties shall each bear their own costs and attorneys fees in both cases.

DATED this 15th day of August, 2016.

**Wallace A. Lee**

Digitally signed by Wallace A. Lee  
DN: cn=Wallace A. Lee, o=6th District Court,  
ou=Utah State Court, email=wlee@utcourts.gov  
c=US  
Date: 2016.08.15 15:47:25 -06'00'

WALLACE A. LEE, Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 153600021 by the method and on the date specified.

~~MAIL: GREG FORGENSEN 270 SO SEEGMILLER LANE RICHFIELD, UT 84701~~

MAIL: TEX R OLSEN 225 N 100 E RICHFIELD UT 84701

MAIL: MICHAEL P VAN TASSELL 9524 E 81ST ST STE B1559 TULSA OK 74133

08/15/2016

/s/ TAMI HUNT

Date: \_\_\_\_\_

Deputy Court Clerk

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 160600010 by the method and on the date specified.

MAIL: TEX R OLSEN 225 N 100 E RICHFIELD, UT 84701

MAIL: LLOYD D RICKENBACH 117 RICKENBACH RD KOOSHAREM UT 84744

08/15/2016

/s/ TAMI HUNT

Date: \_\_\_\_\_

Deputy Court Clerk