

2016

**Staci Baker, Defendant/Appellant vs. C504750p, LLC, Plaintiff/  
Appelle**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STACI BAKER,

Defendant/Appellant,

vs.

C504750P, LLC,

Plaintiff/Appellee.

Case No. 20150826-CA

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**BRIEF OF APPELLANT**

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Appeal from Order Denying Relief from Default Judgment of the  
Fourth District Court, Utah County, State of Utah,  
the Honorable James R. Taylor Presiding

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UTAH APPELLATE COURTS

APR 05 2016

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## **JURISDICTIONAL STATEMENT**

The Utah Supreme Court has original jurisdiction to decide this appeal pursuant to Utah Code section 78A-3-102(3)(j). The Utah Supreme Court transferred this appeal to the Utah Court of Appeals pursuant to rule 42 of the Utah Rules of Appellate Procedure, thereby conferring jurisdiction on this Court pursuant to Utah Code section 78a-4-103(2)(j).

## **STATEMENT OF THE ISSUES**

**1. Whether Mrs. Baker’s due process rights were violated and the trial court exceeded its discretion in denying relief from default judgment where Mrs. Baker was served by publication despite there being other, more reliable means of service available that would have easily informed her of the pending action.**

Standard of Review: Whether a trial court properly ruled on a motion for relief from judgment under rule 60(b) of the Utah Rules of Civil Procedure is reviewed for an abuse of discretion. *Frito-Lay v. Utah Labor Comm’n*, 2009 UT 71, 22 n. 29, 222 P.3d 55 (quoting *Menzies v. Galetka*, 2006 UT 81, ¶ 54, 150 P.3d 480)) (“[A] district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities.”).

Preservation of Issue: Mrs. Baker preserved this issue below. R. 129–131; 226–230.

**2. Whether the trial court exceeded its discretion in denying relief from default judgment where the default judgment awarded contractual attorney fees in the absence of a contract between the parties.**



Standard of Review: Whether a trial court properly ruled on a motion for relief from judgment under rule 60(b) of the Utah Rules of Civil Procedure is reviewed for an abuse of discretion. *Frito-Lay v. Utah Labor Comm'n*, 2009 UT 71, 22 n. 29, 222 P.3d 55 (quoting *Menzies v. Galetka*, 2006 UT 81, ¶ 54, 150 P.3d 480)) (“[A] district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities.”).

Preservation of Issue: Mrs. Baker preserved this issue below. R. 230.

**3. Whether the trial court exceeded its discretion in denying relief from default judgment where Mrs. Baker was entitled under controlling precedent to have the judgment set aside.**

Standard of Review: Whether a trial court properly ruled on a motion for relief from judgment under rule 60(b) of the Utah Rules of Civil Procedure is reviewed for an abuse of discretion. *Frito-Lay v. Utah Labor Comm'n*, 2009 UT 71, 22 n. 29, 222 P.3d 55 (quoting *Menzies v. Galetka*, 2006 UT 81, ¶ 54, 150 P.3d 480)) (“[A] district court should exercise its discretion in favor of granting relief so that controversies can be decided on the merits rather than on technicalities.”).

Preservation of Issue: Mrs. Baker preserved this issue below. R. 228–230.

## **CONSTITUTIONAL PROVISIONS AND DETERMINATIVE STATUTES**

The following rule excerpt and statute are determinative or of central importance to the issues raised in this appeal:

## **Relief from Judgment or Order**

**(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:

(b)(1) mistake, inadvertence, surprise, or excusable neglect;

(b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

(b)(4) the judgment is void;

(b)(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application;

or(b)(6) any other reason that justifies relief.

**(c) Timing and effect of the motion.** A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

Utah R. Civ. P. 60(b) and (c)

## **Partial interest tax sales**

(1) For purposes of this section:

(a) "Tax sale interest purchaser" means an owner of an undivided interest in a parcel of tax sale property that bid for and purchased the undivided interest:

(i) at a tax sale in accordance with Section 59-2-1351.1;

(ii) on or after July 1, 2007; and

(iii) if the undivided interest in the tax sale property equals 49% or less.

(b) “Tax sale property” means a parcel of real property that was sold in part as an undivided interest at a tax sale in accordance with Section 59-2-1351.1.

(2) If a parcel of tax sale property is sold, a tax sale interest purchaser may only receive from the sale of the tax sale property, an amount equal to the greater of:

(a) the amount the tax sale interest purchaser paid for the undivided interest in the tax sale property at the tax sale plus 12% interest; or

(b) the tax sale interest purchaser’s pro rata share of the sale price of the tax sale property based on the percentage of the undivided interest the tax sale interest purchaser holds in the tax sale property.

(3) A tax sale interest purchaser may not object to the sale of the tax sale property if the tax sale interest purchaser receives an amount in accordance with Subsection (2).

Utah Code § 59-2-1351.7

## **STATEMENT OF THE CASE**

### **I. Nature of the Case.**

This appeal concerns circumstances that amount to an abuse of discretion when a trial court denies a motion for relief from a default judgment under rule 60(b) of the Utah Rules of Civil Procedure. It also concerns the rights of persons who purchases property at a tax sale. Specifically, the case concerns (1) whether the trial court properly ordered Plaintiff/Appellee C504750P, LLC (“Plaintiff”) to serve Defendant/Appellant Staci Baker (“Mrs. Baker”) by publication when Plaintiff knew how to get in touch with Mrs. Baker through both an email address and a physical address; (2) whether the trial court properly awarded Plaintiff its attorney fees pursuant to a contract to which Mrs. Baker was not a party;

and (3) whether the term “sale” as used in Utah Code section 59-2-1351.7 should be interpreted to mean only a legitimate arm’s length transaction between disinterested parties as opposed to a sham transaction with a family member at a fraction of the property’s fair market value designed to deprive a “tax sale interest purchaser” the benefit of her bargain.

## **II. The Course of Proceedings.**

Plaintiff filed a quiet title action against Mrs. Baker on August 28, 2014. R. 1–41. After several unsuccessful attempts to serve Mrs. Baker with process,<sup>1</sup> the trial court ordered that Plaintiff could serve the complaint on Mrs. Baker by publication. R. 61–62. When Mrs. Baker did not file an answer after service by publication was effected, the trial court granted Plaintiff default judgment. R. 95–100. When Mrs. Baker learned of the default judgment, and correspondingly, the complaint, she filed a motion pursuant to rule 60(b) of the Utah Rules of Civil Procedure to have the judgment set aside.

## **III. Disposition in the Trial Court.**

The trial court denied Mrs. Baker’s motion to set aside the default judgment.

## **IV. Statement of Facts Relevant to the Issue Presented.**

1. Mrs. Baker paid \$5,070.07 for a 40 percent undivided interest in a parcel of property at a tax sale pursuant to Utah Code section 59-2-1351.1 on or about July 31, 2013 (the “Property”). R. 126 at ¶ 8; R. 142.

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<sup>1</sup> As Mr. Baker testified below, “During September 2014, Mrs. Baker was 5 months pregnant with twins and was often not home, as she was dealing with pregnancy complications and spent a lot of time staying at other family member’s homes in order to receive their help and care.” R. 286 at ¶ 9.

2. The Property was owned by C161P, LLC (“C161P”), which continued to own 60 percent of the Property after the tax sale. R. 126–27 at ¶¶ 9–10.

3. On June 1, 2014, C161P purportedly entered into a real estate purchase contract (“REPC”) to sale the Property to Plaintiff, C504750P, LLC, for \$15,000. R. 127 at ¶ 11.

4. The Property has been appraised at \$124,000, more than eight times the sales price. R. 127 at ¶ 12.

5. Seller, C161P, was an expired Utah limited liability company at the time of the sale whose registered agent was Elizabeth Collings, and whose managers were Elizabeth Collings and Timothy Collings. R. 126 at ¶¶ 3 and 5.

6. Plaintiff and purchaser, C504750P, LLC, is a Utah limited liability company whose registered agent is Howard Collings. R. 126 ¶ 4.

7. It was alleged below that Elizabeth and Timothy Collings are husband and wife, and that Howard Collings is Timothy Collings’s father. R. 126 at ¶¶ 6–7.

8. A couple months after entering into the REPC, on July 25, 2014, Mrs. Baker received a letter via certified mail from Stephen Quesenberry of Durham, Jones & Pinegar—presumably on behalf of the Collingsez—asking her to attend a closing and sign a quit claim deed for her interest in the Property in exchange for 40% of the \$15,000 sales price. R. 3 at ¶¶ 12–13; R. 206–07.

9. Mrs. Baker’s husband, Matt Baker, responded to the letter via email on July 31, 2014 to inform Mr. Quesenberry that Mrs. Baker would not cooperate with the proposed sale of the Property for \$15,000. Mr. Baker explained:

I am quite confident that the 'sale' referenced in the tax sale statute was never intended to refer to a process in which the original owner who had lost interest in the property was able to cheat the tax sale interest purchaser out of their [sic] statutorily defined return by selling the property to a related party in a non-arm's length transaction and at a very steep discount from fair market value. Furthermore, I am strongly convinced you would have a difficult time selling that interpretation to a judge. If you would like to put the property up for sale and sell it at fair market value then I would not oppose the sale. Unless and until such time, I oppose the sale and will not cooperate with it. However, if Mr [sic] Collings believes his 'sale' represents the property's fair value, then I would happily agree to purchase the property for \$15,100 and buy Mr. Collings out of his interest.

R. 3 at ¶ 14; R. 222–23.

10. Subsequently, Plaintiff placed the \$15,000 purchase price into escrow and C161P/Elizabeth and Timothy Collings quit claimed their interest in the Property to Plaintiff.

R. 3 at ¶¶ 15–17.

11. Plaintiff then sued Mrs. Baker to force her to sale her 40 percent interest in the Property to Plaintiff in exchange for her pro rata share of the purchase price, or \$6,000. R. 4–5 at ¶¶ 20–30.

12. After several unsuccessful attempts to serve Mrs. Baker with process, the trial court ordered that Plaintiff could serve the complaint on Mrs. Baker by publication in a newspaper of general circulation in Utah County as opposed to simply sending her the complaint and summons either by mail or email, both of which means had been successfully used by Plaintiff's counsel to communicate with Mrs. Baker prior to the filing of the complaint. R. 61–62.

13. When Mrs. Baker did not file an answer after service by publication was effected, the trial court granted Plaintiff default judgment on November 26, 2014 in a form of judgment prepared by Plaintiff and unaltered by the trial court. R. 95–100.

14. The judgment included an award of attorney fees based on an attorney fees clause contained in the REPC between C161P/Elizabeth and Timothy Collings and Plaintiff, an agreement to which Mrs. Baker was not a party. R. 8–16; R. 98–99.

15. Notice of the judgment was mailed directly to Mrs. Baker, not published in a section of the newspaper no one reads, with an Amended Notice of Quiet Title Judgment mailed to her on January 23, 2015. R. 101–117.

16. Accordingly, Mrs. Baker received notice of the entry of the judgment, and thereafter immediately took action to find and retain legal counsel, who filed the Motion for Relief from Default Judgment on February 24, 2015. R. 287 at ¶ 13; R. 121–23.

### **SUMMARY OF THE ARGUMENTS**

1. The trial erred in allowing Plaintiff to serve Mrs. Baker exclusively by publication, as controlling precedent recognizes that publication is “is not reasonably calculated to reach those who could easily be informed by other means at hand.” Because this deprived Mrs. Baker of her constitutional due process rights, the trial court exceeded its discretion in not affording Mrs. Baker relief under rule 60(b) of the Utah Rules of Civil Procedure by setting aside the default judgment.

2. The trial court erred in adopting without alternation Plaintiff’s proposed order, which included an award of contractual attorney fees against Mrs. Baker, even though Mrs.

Baker is not a party to the contract on which the attorney fees award was based. The trial court exceeded its discretion in not setting aside the judgment after Mrs. Baker brought this error to its attention.

3. The trial court exceeded its discretion by not setting aside the default judgment in light of multiple Utah Supreme Court and Court of Appeals cases holding that defendants are generally entitled to have default judgments set aside when a meritorious defense exists.

### **ARGUMENT**

The trial court exceeded its discretion in refusing to set aside the default judgment entered against Mrs. Baker. Rule 60(b) of the Utah Rules of Civil Procedure empowers judges in the interests of Justice to “relieve a party or its legal representative from a judgment” in a number of circumstances, including any “reason that justifies relief.” Utah R. Civ. P. Rule 60(b). In elaborating on this rule, the Utah Supreme Court has stated:

The rule “seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the court’s conscience that justice be done in light of all the facts.” And, in fact, finality, “standing alone, is unpersuasive in the interpretation of a provision whose whole purpose is to make an exception to finality.”

*Kell v. State*, 2012 UT 25, 16, 285 P.3d 1133, 1137 (quoting *Cessna Fin. Corp. v. Bielenberg Masonry Contracting, Inc.*, 715 F.2d 1442, 1444 (10th Cir. 1983); *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005)).

With respect to default judgments, the Utah Supreme Court has reminded us that “[i]t is well established that 60(b) motions should be liberally granted because of the equitable nature of the rule. Therefore, a district court should exercise its discretion in favor of



granting relief so that controversies can be decided on the merits rather than on technicalities.” *Frito-Lay v. Utah Labor Comm’n*, 2009 UT 71, 22 n. 29, 222 P.3d 55 (quoting *Menzies v. Galetka*, 2006 UT 81, 54, 150 P.3d 480)).

As explained next, there were three compelling reasons in this case that called for Mrs. Baker’s motion to be granted: (1) the trial court authorized service by a means that had almost no chance of actually informing Mrs. Baker of the lawsuit; (2) the default judgment granted Plaintiff attorney fees prohibited by long-established law; and (3) Mrs. Baker had a meritorious defense to the complaint’s sole cause of action.

#### **I. THE TRIAL COURT ERRED IN ORDERING SERVICE BY PUBLICATION.**

There is nothing more fundamental to the American rule of law than the requirement that a party be given proper notice of a civil proceeding prior to being deprived of its rights or property. Indeed, this principle is embodied in both the United States and Utah Constitutions. U.S. Const. amend. V (“No person shall be . . . deprived of life, liberty, or property, without due process of law.”); Utah Const. art. I, § 7 (“No person shall be deprived of life, liberty or property, without due process of law.”).

The United States Supreme Court has long recognized that “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is 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.” *Mullane v. Central Hanover Bank & Trust Co.* 339 U.S. 306, 314 (1950). In this regard, the Court has assailed service by publication as a constitutionally impermissible means of service

when a person's place of residence is known or when there are other means available of serving the individual. In *Mullane*, a decision handed down more than 65 years ago, the Court discussed the fiction that service by publication actually apprises a person of court proceedings:

It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper . . . .

*Id.* at 315.

In light of this reality, the Court held that service by publication “is not reasonably calculated to reach those who could easily be informed by other means at hand,” including specifically those parties in that case whose addresses were known and therefore could be reached by “ordinary mail.” *Id.* at 318–19. In subsequent cases, the Court recognized that service by publication “is the method of notice least calculated to bring to a potential defendant’s attention the pendency of judicial proceedings.” *Boddie v. Connecticut*, 401 U.S. 371, 382 (1971) (citations omitted).

Following this precedent, the Utah Supreme Court likewise long ago limited service by publication to persons who could not be served by any other means: “Even [where alternative service is justified], however, publication is not a constitutionally acceptable means of notice of the pendency of litigation where “it is not reasonably calculated to reach

those who could easily be informed by other means at hand.” *Graham v. Sawaya*, 632 P.2d 851, 853–54 (Utah 1981).

The relevance and appropriateness of these holdings is even greater today than it was decades ago, when the general public actually read newspapers. In today’s world, where newspaper subscriptions have become something of a rarity, service by publication should never be employed except when there is absolutely no other means available of giving notice of court proceedings to a party.

Despite this reality, despite this controlling precedent, and despite the fact that Plaintiff had previously communicated with Mrs. Baker both by email and regular mail (the very means by which notice of the default judgment would later be sent), the trial court authorized Plaintiff to serve Mrs. Baker by publication to the exclusion of all other methods of service that could have easily informed Mrs. Baker of the proceedings. As a result, Mrs. Baker was not notified of the proceedings and default judgment was allowed to enter against her.

Consistent with the Utah Supreme Court’s admonition to liberally grant rule 60(b) motions “so that controversies can be decided on the merits,” and to correct the due process deficiencies in the notice method previously authorized, the trial court should have set aside the default judgment. Yet, inexplicably, it refused to do so. Given the fundamental constitutional rights at stake, it was an abuse of the trial court’s discretion not to do so. This Court should reverse the trial court’s decision so that due process may be afforded to Mrs. Baker and this controversy decided on its merits.

## **II. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES.**

There was no basis on which the trial court could have permissibly awarded attorney fees in this case. “In general, Utah follows the traditional American rule that attorney fees cannot be recovered by a prevailing party unless a statute or contract authorizes such an award.” *Utahns For Better Dental Health-Davis, Inc. v. Davis County Clerk*, 2007 UT 97, ¶ 5, 175 P.3d 1036. In this case, the trial court awarded fees to Plaintiff based on the REPC entered into between Plaintiff, the buyer of the Property, and C161P, the seller, at least of its 60 percent share. R. 98–99. There were no other parties to the agreement. R. 8–16.

It is axiomatic that a person is not bound by the terms of an agreement to which she is not a party. In short, there was no contractual basis on which to award attorney fees against Mrs. Baker. Nevertheless, the trial court adopted without the slightest change the order prepared by Plaintiff’s counsel, which included such an attorney fees award. That the trial court refused to correct this glaring injustice when given the opportunity to do so, in addition to its refusal to remedy the constitutional infirmities of the prescribed method of service, underscores the abuse of discretion inherent in the trial court’s order denying Mrs. Baker’s rule 60(b) motion.

## **III. MRS. BAKER WAS ENTITLED TO HAVE THE DEFAULT JUDGMENT SET ASIDE.**

Unlike the typical discretion allowed to trial courts to rule on 60(b) motions seeking relief from judgments entered after a case has been decided on its merits, a movant is generally *entitled* to have a judgment entered by default set aside under rule 60(b) where the movant has alleged a meritorious defense. The Utah Supreme Court and Court of Appeals

have repeatedly held: “Generally, ‘a movant is entitled to have a default judgment set aside under [rule] 60(b) [of the Utah Rules of Civil Procedure] if (1) the motion is timely; (2) there is a basis for granting relief under one of the subsections of 60(b); and (3) the movant has alleged a meritorious defense.’” *Aspenbrook Homeowners Ass’n v. Dahl*, 2014 UT App 99, ¶10, 329 P.3d 822, 826 cert. denied sub nom. *Aspenbrook v. Dahl*, 337 P.3d 295 (Utah 2014) (citations omitted); *see also Menzies*, 2006 UT 81 at ¶ 108 (holding defendant was “entitled to relief under rule 60(b)(6)” inasmuch as he met “meritorious defense requirement”).

**A. Mrs. Baker’s Motion Was Timely.**

There is no question in this case that Mrs. Baker’s rule 60(b) motion was timely. The rule requires that a movant seek relief within 90 days for the reasons in paragraph (b)(1), (2), or (3), or “within a reasonable time” for the reasons in all other paragraphs, including paragraph (b)(6)—“any other reason that justifies relief”—under which Mrs. Baker moved. Utah R. Civ. P. 60(c). The default judgment was entered on November 26, 2014. R. 95–100. The Amended Notice of Quiet Title Judgment was mailed to Mrs. Baker on January 23, 2015. R. 101–117. Just about a month after receiving the Amended Notice of Quiet Title Judgment, Mrs. Baker found and retained legal counsel, who filed for relief under rule 60(b) on February 24, 2015. This is certainly a reasonable time frame under the rule. *E.g.*, *Robinson v. Baggett*, 2011 UT App 250, ¶ 31, 263 P.3d 411 (Utah Ct. App. 2011) (holding motion was timely filed “approximately three months after [judgment] was entered); *cf Crane-Jenkins v. Mikarose, LLC*, 2015 WL 7075152, No. 20140940-CA at ¶¶ 16–17 (Utah

Ct. App. Nov. 12, 2015) (holding motion not timely when filed 197 days after receipt of notice of default judgment).

**B. Rule 60(b)(6) Provides Mrs. Baker with a Basis for Relief.**

There is a basis for granting relief under one of the subsections of 60(b). Here, Mrs. Baker moved under 60(b)(6), allowing a motion for “any other reason that justifies relief.” Utah R. Civ. P. 60(b)(6). This is not a case where default entered against a defendant who failed to protect its rights after receiving notice of a complaint. Mrs. Baker never received actual notice of the complaint. Rather notice was only constructively given, contrary to controlling precedent, by publication, the least effective means known of apprising a defendant of a pending lawsuit. *Boddie*, 401 U.S. at 382. If there were ever a reason justifying relief from a judgment under rule 60(b)(6), it would be to ensure a person’s constitutional guarantee to due process was afforded to them.

Not surprisingly, court’s throughout the country deem judgments that are entered without due process of law to be void. *First W. Bank of Minot v. Wickman*, 404 N.W. 2d 195, 196 (N.D. 1990) (“A judgment entered on motion of one party without proper notice and the opportunity to be heard by the other party is contrary to fundamental principles of justice”); *Metro Dade County v. Curry*, 632 So.2d 667, 668 (Fla. Dist. Ct. App. 1994) (per curiam) (“An order entered without notice or opportunity to be heard is a void order.”); *cf.* *Utah State Employee Credit Union v. Riding*, 469 P.2d 1, 3 (Utah 1970) (“We think the motion to reconsider the motion to vacate the judgment is abortive under the rules, but even if it weren’t, it was error under the rules to hear and act upon it without notice.”). Rule

60(b)(6) is never more properly invoked than when it is invoked to remedy a deprivation of due process.

**C. Mrs. Baker Has a Meritorious Defense.**

Mrs. Baker has a meritorious defense to Plaintiff's sole cause of action. "A defense is sufficiently meritorious to have a default judgment set aside if it is entitled to be tried." *Id.* at ¶ 108 (quoting *Erickson v. Schenkers Intern. Forwarders, Inc.*, 882 P.2d 1147, 1149 (Utah 1994)). Here, Plaintiff's sole claim sought the trial court to sanction a sham transaction that contravened the purpose of the tax sale statute. The trial court should have rejected this effort out of hand.

Tax sales are an important means by which county governments can recover delinquent taxes from parties who otherwise refuse to pay the taxes they owe. In order to entice people to purchase tax sale properties, the legislature offers them certain protections, including a guaranteed minimum return on their investment. This is especially important, as most "tax sale interest purchasers," as they are referred to in the Code, purchase something less than a 100 percent interest in a tax sale property. Thus, if the original owner (the delinquent taxpayer) decides to sell the property following the tax sale, the tax sale interest purchaser is entitled to the greater of a 12 percent return on its investment or its pro rata share of the sale price. Utah Code § 59-2-1351.7(2). The Code provides that "[a] tax sale interest purchaser may not object to the sale of the tax sale property if the tax sale interest purchaser receives an amount in accordance with Subsection (2)." *Id.* at § 59-2-1351.7(3).

In this case, the delinquent taxpayer, C161P, did not engage in a legitimate arm's length sale of the property for its fair market value (approximately \$124,000) as contemplated by the statute. Instead, it reverse-engineered the sales price by determining what the minimum sales price must be in order to prevent Mrs. Baker from objecting to what by all counts was an illegitimate sale. Mrs. Baker paid \$5,070.07 for her interest in the property, so she was entitled to receive at least a \$608.40 return in a subsequent sale. By setting the price at \$15,000, Mrs. Baker's pro rata share would be \$6,000 ( $\$15,000 \times .40$ ), just enough to cover the \$5,678.47 minimum. C161P/Elizabeth and Timothy Collings then found a party—Mr. Collings's father—who would take the property at \$15,000, presumably with a side deal to quitclaim the property right back to Mr. and Mrs. Collings or otherwise hold the property for the Collingses' benefit. In this way, the Collingses, with Mr. Collings's father as their accomplice, attempted to "launder" the property to cleanse the unwanted tax sale interest purchaser, Mrs. Baker, off of the title.

Of course, this sham transaction undermines the protections set forth for tax sale interest purchasers in the statute and makes a mockery of the term "sale" as used by the statute. This Court should do what the trial court failed to do and reject Plaintiff's effort to abuse the statute in this way. As is well established:

A fundamental rule of statutory construction is that statutes are to be construed according to their plain language. . . . A corollary of this rule is that "a statutory term should be interpreted and applied according to its usually accepted meaning, where the ordinary meaning of the term results in an application that is neither unreasonably confused, inoperable, nor in blatant contradiction of the express purpose of the statute."



*State v. Bohne*, 2001 UT App 11, ¶ 7, 18 P.3d 514, 516 *aff'd*, (Utah 2002) 63 P.3d 63 (citing *O'Keefe v. Utah State Retirement Bd.*, 956 P.2d 279, 281 (Utah 1998) (citations omitted)). Certainly, the “usually accepted meaning” of the term “sale,” does not include sham transactions in which property is sold for a fraction of its fair market value to a relative in order to cleanse an unwanted tenant in common from title and escape the consequences of not paying one’s taxes. Rather, the legislature surely intended for the term “sale” to mean only a legitimate arm’s length transaction between disinterested parties that would realize the property’s true market value.

Because Mrs. Baker had a meritorious defense to Plaintiff’s sole cause of action, the trial court exceeded its discretion in refusing to give her relief pursuant to her timely filed rule 60(b) motion, especially where the means of service allowed for by the Court denied Mrs. Baker her due process rights, and where the default judgment improperly awarded attorney fees to Plaintiff.

### CONCLUSION

For the foregoing reasons, Mrs. Baker respectfully requests that this Court reverse the trial court’s decision to deny relief to Mrs. Baker under rule 60(b) of the Utah Rules of Civil Procedure and remand this action to the trial court for further proceedings.

DATED this 4<sup>th</sup> day of April, 2016.

HOOLE & KING, L.C.

  
Gregory N. Hoole  
Attorneys for Defendant/Appellant

## **CERTIFICATE OF COMPLIANCE**

The text of this brief is presented in a proportionally spaced typeface using WordPerfect in Times New Roman 13-point type, and, according to WordPerfect's word count feature, consists of 5,044 words, including headings, footnotes and quotations.

A handwritten signature in blue ink, written over a horizontal line. The signature is stylized and appears to be a cursive or semi-cursive script.

## CERTIFICATE OF SERVICE

I hereby certify that on the 5<sup>th</sup> day of April, 2016, a true and correct copy of the foregoing was served upon the following in the manner indicated below:

Counsel for Plaintiff/Appellee:

Stephen Quesenberry (8073)  
Kimberly N. Barnes (14589)  
DURHAM, JONES & PINEGAR, P.C.  
3301 North Thanksgiving Way, Suite 400  
Lehi, Utah 84043

☒ U.S. Mail  
☐ Hand Delivery  
☐ Overnight Mail  
☐ Facsimile



## **ADDENDUM**



A-1  
Complaint

**STEPHEN QUESENBERRY (8073)**

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**KIMBERLY N. BARNES (14589)**

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**Attorneys for Plaintiff**

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

C504750P, LLC, a Utah limited liability  
company,

Plaintiff,

vs.

STACEY BAKER, an individual,

Defendant.

**COMPLAINT**  
[Tier 2]

Case No.

Judge

Plaintiff, by and through counsel, hereby alleges and complains against Defendant as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, C504750P, LLC, is the attempted purchaser of property located in Utah County at 161 W. Pacific Dr., American Fork, UT 84003.

2. Defendant, Staci Baker, is the owner of a 40% undivided interest in real property located at in Utah County at 161 W. Pacific Dr., American Fork, Utah 84003.

3. The Court has jurisdiction in this matter in accordance with Utah Code Ann. § 78A-5-102(1).

4. Venue is proper in this Court in accordance with Utah Code Ann. § 78B-3-301.

5. Request for relief is for specific performance and thus non-monetary relief, making this a Tier 2 case.

### **BACKGROUND FACTS**

6. Defendant is a "tax sale purchaser" of a 40% undivided interest in the real property located at 161 W. Pacific Dr., American Fork, UT 84003 (hereinafter, "the Property") pursuant to section 59-2-1351.7 of the Utah Code. (Tax Deed attached as **Exhibit A.**)

7. Defendant, purchased a 40% undivided interest in the Property on or about July 31, 2013 for \$5,070.07.

8. C161P, LLC owned the Property in entirety prior to the tax sale and the Defendant buying her interest in the Property.

9. C161P, LLC continued to own a 60% undivided interest in the Property after the tax sale, as of, and after July 31, 2013.

10. On June 1, 2014, C504750P, LLC entered into a Real Estate Purchase Contract ("REPC") to purchase the Property from C161P, LLC for \$15,000. (REPC and Addenda attached as **Exhibit B.**)

11. Closing was to be held on August 1, 2014.

12. C504750P, LLC's counsel sent a letter via certified mail, dated July 25, 2014, to the Defendant advising her of the sale of the Property. (Letter attached as **Exhibit C.**)

13. This letter requested her to attend closing—pursuant to the REPC and section 59-2-1352.7 of the Utah Code—and convey her interest in the Property in exchange for her share (40%) of the purchase price of the Property (all as set forth in section 59-2-1352.7 of the Utah Code).

14. Defendant sent an email on July 31, 2014, explaining that she would not be attending the closing on the Property, and subsequently did not attend the closing on the Property. (Email attached as **Exhibit E.**)

15. C504750P, LLC tendered the \$15,000 purchase price into escrow prior to the date of closing.

16. A check was prepared for the Defendant prior to the closing date, and was available at closing. (Copy of the Check attached as **Exhibit D.**)

17. C161P, LLC quitclaimed its 60% interest in the Property to C504750P, LLC. (Quitclaim deed from C161P, LLC attached as **Exhibit F.**)

18. The closing, pursuant to Addendum No. 2 of the REPC, was unable to take place because the Defendant refused to quitclaim her interest in the Property to C504750P, LLC pursuant to section 59-2-1351.7 of the Utah Code. (Prepared, but unsigned quitclaim deed prepared from Staci Baker attached as **Exhibit G.**)



19. Thus, the purchaser has been unable to finalize the purchase and the REPC requirements have not been met. C161P, LLC has fulfilled its requirements under the REPC by signing a deed conveying its interests in the subject property.

**FIRST CAUSE OF ACTION**

**Specific Performance to Quitclaim Property pursuant to Utah Code § 59-2-1351.7**

20. Plaintiff incorporates and realleges by reference each of the foregoing allegations.

21. Defendant is a tax sale interest purchaser of an undivided interest of less than 49% of the Property that was purchased in accordance with section 59-2-1351.1 of the Utah Code.

22. Defendant purchased her tax sale interest on July 31, 2013.

23. Plaintiff entered into the REPC on June 1, 2014 to purchase the entire Property for \$15,000.

24. Defendant has been informed of the sale of the Property and was requested to attend closing, to be held on August 1, 2014, and quitclaim her interest of the Property in exchange her pro rata share of the sale price (being 40%), which equals \$6,000.

25. Defendant's pro rata share of the sale price is greater than the amount she paid for her interest in the Property at the tax sale plus 12% interest.

26. Defendant refused to attend the closing.

27. Defendant refused to sign a quitclaim deed to the purchaser for her interest in the Property.

28. Defendant refused to accept her \$6,000 check for her pro rata share of the sale price of the Property.

29. C161P, LLC has signed a quitclaim deed of its 60% interest in the Property to Plaintiff.

30. Pursuant to section 59-2-1351.7 of the Utah Code and section 16.2(b) of the REPC, Plaintiff is entitled to specific performance for the Defendant to convey her tax sale interest to the Plaintiff in exchange for her pro rata share of the Property's purchase price.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for relief as follows:

1. An order requiring Defendant to quitclaim her interest in the Property to the Plaintiff in exchange for her pro rata share of the sale price of the Property pursuant to section 59-2-1351.7 of the Utah Code and section 16.2(b) of the REPC.
2. For attorney's fees and costs pursuant to section 17 of the REPC.
3. For whatever further relief this Court deems fair and just.

DATED this 28<sup>th</sup> day of August, 2014.

DURHAM JONES & PINEGAR, P.C.

\_\_\_\_ s. Stephen Quesenberry  
Stephen Quesenberry  
Kimberly Barnes  
*Attorneys for Plaintiff*

**Plaintiff's Address:**

C504750, LLC  
P.O. Box 971622  
Orem, UT 84097

A-2  
Default Judgment

The Order of Court is stated below:

Dated: November 26, 2014 /s/ James R. Taylor  
12:36:26 PM District Court Judge

**STEPHEN QUESENBERRY (8073)**

squesenberry@djplaw.com

**KIMBERLY N. BARNES (14589)**

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**Attorneys for Plaintiff**

IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY  
PROVO DEPARTMENT, STATE OF UTAH

C504750P, LLC., a Utah limited liability  
company.

**DEFAULT JUDGMENT**

Plaintiff,

vs.

STACI BAKER, an individual.

Case No. 140401249

Defendant.

Judge James R. Taylor

Pursuant to the default entered against Staci Baker entered on November 12, 2014,  
judgment is hereby entered as follows:

1. The subject property located at 161 W. Pacific Dr., American Fork, UT 84003 (the "Property") is quieted in C504750P, LLC, free and clear of any other interests.
2. C504750P, LLC, the buyer of the Property, must pay Staci Baker her pro rata share of the sale price of the Property (being 40% of the \$15,000 sale price), which equals \$6,000.
3. As the prevailing party, the Plaintiff is awarded costs in the amount of \$609.20.
4. Based on the Attorney's Fee Affidavit of Stephen Quesenberry, the Plaintiff is awarded

attorney's fees pursuant to section 17 of the Real Estate Purchase Contract at issue in the amount of \$4,517.00.

5. Staci Baker's sale proceeds, as set forth in paragraph 2 above, are currently in the Plaintiff's Attorney's, Durham, Jones & Pinegar's, trust/escrow account. The fees and costs above, totaling \$5,126.20, shall be deducted from said trust/escrow account and paid to Plaintiff. The remaining balance of the sale price, totaling \$873.80, shall be paid into the registry of the Court. Staci Baker may attain these funds upon presentation of this judgment and proper identification.
6. Plaintiff's counsel, Durham, Jones & Pinegar, is entitled to make all transfers or transactions from their trust/escrow account as anticipated by this order.

\*\*Executed and entered by the Court as indicated

by the date and seal at the top of the first page\*\*

-----END OF ORDER -----

**NOTICE**

Pursuant to Rule 7(f)(2) of the Utah Rules of Civil Procedure, notice of any objection to the Order above shall be submitted to the Court and counsel within seven days after service. If no such objection is so submitted, the Court may enter this order.

DATED this 17th day of November, 2014.

**DURHAM JONES & PINEGAR, P.C.**

/s/ Stephen Quesenberry

Stephen Quesenberry

Kimberly N. Barnes

*Attorneys for Plaintiff*

A-3

Order Denying Relief from Default Judgment

The Order of Court is stated below:

Dated: August 21, 2015

10:27:43 AM

/s/ James R. Taylor

District Court Judge

**EVAN SCHMUTZ (3860)**

*eschmutz@djplaw.com*

**KIMBERLY N. BARNES (14589)**

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**DURHAM, JONES & PINEGAR, P.C.**

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*Attorneys for Plaintiff*

**IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY**

**PROVO DEPARTMENT, STATE OF UTAH**

C504750P, LLC., a Utah limited liability  
company.

Plaintiff.

vs.

STACI BAKER, an individual.

Defendant.

**ORDER DENYING MOTION FOR  
RELIEF FROM DEFAULT JUDGMENT**

Case No. 140401249

Judge James R. Taylor

THIS MATTER came before the Court on July 20, 2015 for oral argument on Defendant's Motion for Relief From Default Judgment. Plaintiff was represented by Evan A. Schmutz of Durham Jones & Pinegar. Defendant was represented by Craig Carlile of Ray Quinney & Nebeker.

The Court having reviewed the pleadings, papers and evidence filed by the parties, and having heard the argument of counsel, denied the Defendant's Motion from the Bench and, good cause appearing.



IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

Defendant's Motion for Relief from Default Judgment is denied for the reasons and upon the authority and evidence set forth in Plaintiff's Memorandum in Opposition to the motion.

**\*\*Executed and entered by the Court as indicated by the date and seal at the  
top of the first page\*\***

-----END OF ORDER-----

**CERTIFICATE OF MAILING**

I hereby certify that on this 12<sup>th</sup> day of August 2015, I electronically filed the foregoing with the Clerk of the Court using the GreenFiling system which sent notification of such filing to the following:

Craig Carlile  
A.J. Green  
Ray Quinney & Nebeker PC  
86 North University Avenue, #430  
Provo, Utah 84601

/s/ Kim Altamirano