

2016

Patrick Liley, Plaintiff and Appellee, v. Utah Department of Transportation, a Division of the State of Utah, Juab County, a Political Subdivision of the State of Utah, Sanpete County, a Political Subdivision of the State of Utah, Cedar Springs Ranch, Inc., a Utah Corporation, and Dale Do Rius, an Individual, Defendant and Appellant.

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *Liley v Utah Department*, No. 20150267 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3709

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

PATRICK LILEY,

Plaintiff and Appellee,

v.

UTAH DEPARTMENT OF
TRANSPORTATION, a division of the
State of Utah, JUAB COUNTY, a
political subdivision of the State of
Utah, SANPETE COUNTY, a political
subdivision of the State of Utah,
CEDAR SPRINGS RANCH, INC., a
Utah corporation, and DALE DORIUS,
an individual,

Defendant and Appellant.

Case No.: 20150267-CA

Brief of Appellant

Appeal from Judgment Entered by the Fourth Judicial District Court,
Honorable Jennifer A. Brown

Jeffrey T. Colemere
Wrona Gordon & DuBois, P.C.
11650 South State Street, Suite 103
Draper, UT 84020
Attorney for Appellee

Brent D. Wride
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
Salt Lake City, UT 84111
Attorney for Appellant

FILED
UTAH APPELLATE COURTS

MAR 03 2016

IN THE UTAH COURT OF APPEALS

PATRICK LILEY,

Plaintiff and Appellee,

v.

UTAH DEPARTMENT OF
TRANSPORTATION, a division of the
State of Utah, JUAB COUNTY, a
political subdivision of the State of
Utah, SANPETE COUNTY, a political
subdivision of the State of Utah,
CEDAR SPRINGS RANCH, INC., a
Utah corporation, and DALE DORIUS,
an individual,

Defendant and Appellant.

Case No.: 20150267-CA

Brief of Appellant

Appeal from Judgment Entered by the Fourth Judicial District Court,
Honorable Jennifer A. Brown

Jeffrey T. Colemere
Wrona Gordon & DuBois, P.C.
11650 South State Street, Suite 103
Draper, UT 84020
Attorney for Appellee

Brent D. Wride
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
Salt Lake City, UT 84111
Attorney for Appellant

TABLE OF CONTENTS

JURISDICTION	1
ISSUE PRESENTED FOR REVIEW	1
DETERMINATIVE STATUTES, RULES, AND REGULATIONS.....	2
STATEMENT OF THE CASE	3
Nature of the Case, Course of the Proceedings, and Disposition in the Trial Court	3
Statement of Facts	4
SUMMARY OF ARGUMENT	5
ARGUMENT	5
I. AS A MATTER OF LAW, SECTION 41-6a-407(1)(a) DID NOT IMPOSE A DUTY ON CEDAR SPRINGS AS LANDLORD.....	6
II. THERE WAS NO EVIDENCE AT TRIAL THAT CEDAR SPRINGS OWED OR ASSUMED ANY DUTY OTHER THAN IN ITS CAPACITY AS LANDLORD.....	11
III. AS A MATTER OF LAW, CEDAR SPRINGS COULD NOT HAVE BEEN HELD LIABLE UNDER THE DOCTRINE OF RESPONDEAT SUPERIOR BECAUSE THE JURY FOUND THAT WARM CREEK WAS NOT NEGLIGENT.	11
CONCLUSION	12
ADDENDUM	
1. Docket entry showing denial of Cedar Springs' motion for summary judgment (the court met with counsel in chambers and discussed the motion off the record, so there is nothing other than the docket entry to cite to)	

2. **Transcript of oral ruling denying Cedar Springs' motion for summary judgment**
3. **Jury Verdict Form**

TABLE OF AUTHORITIES

Cases

<i>438 Main Street v. Easy Heat, Inc.</i> , 99 P.3d 801, 813 (Utah 2004).....	1, 2
<i>State v. Fuller</i> , 2104 UT 29, ¶17; 764 Utah Adv. Rep. 7.....	1, 2
<i>Stephenson v. Warner</i> , 581 P.2d 567, 568 (Utah 1978).....	7

Statutes

Utah Code Annotated §41-6a-407(1)(a)	1, 2, 5, 6, 7, 10, 11
Utah Code Annotated §78A-4-103(2)(h)	1

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Utah Code Annotated §78A-4-103(2)(h).

ISSUE PRESENTED FOR REVIEW

1. Did the district court err in essentially ruling that, as a matter of law, a landlord that owns real property on which a tenant's cows are grazing is "in possession or control" of the livestock for purposes of Utah Code Annotated §41-6a-407(1)(a)?

Standard of Review: This is a legal issue that is reviewed by the appellate court de novo. *438 Main Street v. Easy Heat, Inc.*, 99 P.3d 801, 813 (Utah 2004). "While the court's factual findings are reviewed for clear error, its legal conclusions are reviewed for correctness, including its application of law to the facts of the case. *State v. Fuller*, 2104 UT 29, ¶17; 764 Utah Adv. Rep. 7.

Preservation of Issue for Appeal: The appellant preserved this issue for appeal in its motion for summary judgment, R. 385-97, and in its motion for a directed verdict, R. 1142 at 161:9 to 164:17, and 167:25 to 169:9.

2. Did the district court err in its legal ruling that, even though the evidence was insufficient to pierce the corporate veil, a relaxed standard applied and the defendant owed a greater duty?

Standard of Review: This is a legal issue that is reviewed by the appellate court de novo. *438 Main Street v. Easy Heat, Inc.*, 99 P.3d 801, 813 (Utah 2004).

“While the court’s factual findings are reviewed for clear error, its legal conclusions are reviewed for correctness, including its application of law to the facts of the case. *State v. Fuller*, 2104 UT 29, ¶17; 764 Utah Adv. Rep. 7.

Preservation of Issue for Appeal: The appellant preserved this issue for appeal in its motion for summary judgment, R. R. 385-97, and in its motion for a directed verdict, R. 1142 at 161:9 to 164:17, and 167:25 to 169:9.

3. Was the jury’s verdict in this case fatally inconsistent with itself?

Standard of Review: This is a legal issue that is reviewed by the appellate court de novo. *438 Main Street v. Easy Heat, Inc.*, 99 P.3d 801, 813 (Utah 2004).

“While the court’s factual findings are reviewed for clear error, its legal conclusions are reviewed for correctness, including its application of law to the facts of the case. *State v. Fuller*, 2104 UT 29, ¶17; 764 Utah Adv. Rep. 7.

Preservation of Issue for Appeal: The appellant raised the legal arguments upon which it now relies in its motion for summary judgment, 385-97, and in its motion for a directed verdict, R. 1142 at 161:9 to 164:17, and 167:25 to 169:9.

DETERMINATIVE STATUTES, RULES, AND REGULATIONS

Utah Code Ann. § 41-6a-407(1)(a) provides:

A person who owns or is in possession or control of any livestock may not willfully or negligently permit any of the livestock to stray or

remain unaccompanied on a highway if both sides of the highway are separated from adjoining property by a fence, wall, hedge, sidewalk, curb, lawn, or building.

STATEMENT OF THE CASE

Nature of the Case, Course of the Proceedings, and Disposition in the Trial Court

This case involves a claim made by the plaintiff, Patrick Liley (“**Liley**”), against Cedar Springs Ranch, Inc. (“**Cedar Springs**”), and other parties. Liley alleges that he sustained injuries when he struck a cow that had entered Utah’s Highway 28 in Juab County. Cedar Springs moved for summary judgment and established that it did not own the cow that was hit by Liley (or *any* cows for that matter). Cedar Springs also argued that, as a matter of law, Cedar Springs did not have a duty to maintain fences along Highway 28.

On the first day of the trial, the district court denied Cedar Springs’ motion for summary judgment, and the case proceeded to trial. *See* District Court Docket, Minute Entry dated 3-3-15 and entitled “Minutes for Jury Trial.”¹ Cedar Springs then renewed its legal arguments in a motion for directed verdict, which the district court also denied. R. 1142 at 161:9 to 164:17, 167:25 to 169:9, and 169:10 to 170:12. Although the district court recognized that Cedar Springs did not own the cow and was not in possession of property near the highway, the district court

¹ The docket sheet is included as part of the record, but it is not paginated.

ruled that there was a “close-interrelationship” between Cedar Springs and its tenant. R. 1142 at 170:1-2. While the district court ruled that it was not piercing the corporate veil, it nevertheless held that a greater duty existed because of the relationship between the companies. *Id.*

The jury returned a verdict against Cedar Springs, and the district court entered judgment against Cedar Springs on March 20, 2015. R. 801-803. Cedar Springs filed a timely notice of appeal on April 2, 2015. R. 846-47.

Statement of Facts

1. At 2:00 a.m. on October 4, 2009, Patrick Liley was travelling north on Highway 28 in Juab County when he hit and killed a cow. R. 1142 at 82:24 to 83:3; R. 864 at 118:16-22.
2. It is undisputed that Cedar Springs did not own the cow that Liley hit and killed. Indeed, it is undisputed that Cedar Springs has never owned *any* cows. R. 390.
3. Cedar Springs owned land on the east side of the highway near where the accident occurred. *Id.*
4. Cedar Springs leased the property to an entity called Warm Creek Ranch, Inc. (“Warm Creek”). *Id.*
5. Under the lease agreement between Cedar Springs and Warm Creek, Warm Creek was responsible to maintain the fences on the property. *Id.*

6. The jury found that Warm Creek (the tenant) was not at fault, R. 788, and that the percentage of the fault that caused Liley's harm was 0% attributable to Warm Creek, R. 789.

SUMMARY OF ARGUMENT

The district court erred in not granting Cedar Springs' motion for summary judgment and in then allowing the jury to decide issues of law. As a matter of law, Cedar Springs did not owe a duty to Liley in this case, and Liley sued the wrong party.²

ARGUMENT

In his First Amended Complaint, Liley alleged just one cause of action against Cedar Springs. That claim was for negligence. In order to establish negligence, a plaintiff must prove that the defendant owed it a duty. In this case, as a matter of law, there are only three possible legal bases upon which Cedar Springs could have owed a duty to Liley.

The first possible basis for a duty is Utah Code Ann. § 41-6a-407(1)(a), which applies to "[a] person who owns or is in possession or control of any livestock." As shown below, Cedar Springs did not own the cow that Liley hit and killed. Indeed, Cedar Springs has never owned or controlled *any* livestock.

² For some reason, Liley did not sue Warm Creek, and although the jury was asked to apportion fault, Warm Creek was never a defendant in the case.

A second possible basis for a legal duty is Cedar Spring's status as a landlord (the theory being that a landlord is in "control" of its tenant's livestock). However, as shown below, the Utah Supreme Court has held that it is the duty of a tenant, not a landlord, to keep premises safe.

Finally, although not relied upon by Liley, it is conceivable that the doctrine of respondeat superior could provide some sort of a basis for a duty on the part of Cedar Springs. However, the jury found that the tenant was 0% at fault here, and, as matter of law, if a tenant is not negligent, its landlord can have no liability under the doctrine of respondeat superior. Stated differently, while it is conceivable that Cedar Springs could have been negligent in supervising Warm Creek, the jury found that Warm Creek was 0% at fault for the accident. Therefore, there is nothing for the landlord to answer for. Accordingly, the jury's verdict is internally inconsistent, and it cannot be sustained.

I. **AS A MATTER OF LAW, SECTION 41-6a-407(1)(a) DID NOT IMPOSE A DUTY ON CEDAR SPRINGS AS LANDLORD.**

Utah Code Ann. § 41-6a-407(1)(a) provides:

A person who owns or is in possession or control of any livestock may not willfully or negligently permit any of the livestock to stray or remain unaccompanied on a highway if both sides of the highway are separated from adjoining property by a fence, wall, hedge, sidewalk, curb, lawn, or building.

As a matter of law, Cedar Springs did not own, possess, or control any livestock.

The district court therefore erred in denying Cedar Springs' motion for summary

judgment, as well as its motion for a directed verdict. The district court then compounded this error by allowing the jury to decide the meaning of the statute.

It was undisputed on summary judgment, that Cedar Springs did not own the cow that Liley hit. Indeed, it is undisputed that Cedar Springs has never owned *any* livestock. None of these facts were disputed at trial.

Further, as pointed out in Cedar Springs' motion for summary judgment, the Utah Supreme Court has held that a landlord "is not deemed to be the principal of his tenant merely because of the landlord-tenant relationship." *Stephenson v. Warner*, 581 P.2d 567, 568 (Utah 1978). Furthermore, the court held that a landlord is "not responsible for the tenant's torts, nor for the tenant's failure to keep the premises reasonably safe and in good repair." *Id.* The supreme court stated: "On the contrary, . . . it is the tenant who is responsible for any dangerous condition on the premises which he creates or permits to come into existence after he has taken possession." *Id.* at 586-69. Thus, as a matter of law, Cedar Springs is not liable to Liley for its tenant's failure (if any) to "keep the premises . . . in good repair." This would apply to the fences on the property. The district court therefore erred in denying the motion for summary judgment.

The district court's error was then compounded when the court allowed the jury to decide issues of law regarding what constitutes "control" under section 41-6a-407(1)(a). Liley's counsel was permitted to tell the jury, "the rule is if you're in

control of livestock *means it's in your property.*" R. 864 at 94:8-9 (emphasis added). Contrary to the holding of the Utah Supreme Court in *Stephenson*, Liley's counsel was allowed to further tell the jury that "[t]he owner of the property is responsible to make sure that they take reasonable care in maintaining their fences." R. 864 at 94:25 to 95:2.

Defense counsel objected to the foregoing statements to the jury, stating: "Object, Your Honor. He's arguing the law, and it's a complete misstatement of the law, Your Honor." R. 864 at 97:4-6. The Court overruled the objection. R. 864 at 97:7-10. The effect of this ruling was to allow the jury—and not the court—to interpret the statute based upon the arguments of counsel. This was error.

After the court overruled defense counsel's objection, Liley's counsel continued to tell the jury how the statute must be interpreted. For example, Liley's counsel told the jury that the law imposes a non-delegable duty on a landlord. R. 864 at 97:13-20. He also told the jury in his closing argument: "[T]he safety law in the state says it's their responsibility. It wasn't Warm Creek's [the tenant]." R. 1453 at 42:18-20. Counsel further instructed the jury as follows: "What percentage belongs to Warm Creek? Zero. Why. I told you what the safety law says." R. 1453 at 45:17-19. In other words, Liley did not argue that Cedar Springs was liable based upon some *factual* issues regarding Cedar Springs' failure to

supervise its tenant. Rather, Liley's argument was a legal one. Liley's counsel was very plain: "Our claims are against Cedar Springs because it was their property, and the cows were on their property, and the safety law in the state says it's their responsibility." R. 1453 at 42:16-20. This argument demonstrates that this case was decided based upon a legal issue. And legal issues should have been decided by the court. Under the supreme court's ruling in *Stephenson*, the district court erred in allowing the jury to decide that—as a matter of law—a landlord "controls" livestock owned by its tenant. Furthermore, this court reviews legal issues de novo, so the jury's determination on this particular point is not entitled to any deference.

Furthermore, the problem in this case was compounded in a significant and prejudicial way when Liley's counsel informed the jury that "[i]f you award any percentage of fault to Warm Creek, Patrick Liley can't be compensated for that." R. 1453 at 42:2-4. It is unclear why Liley chose not to sue Warm Creek, but it was his decision, not Cedar Springs'. More importantly, counsel's comment likely led the jury to believe that under the so-called "safety statute," Cedar Springs was liable and that apportioning fault to Warm Creek would deprive Liley of a recovery.

Of course, as stated above, Liley could have presented *factual* evidence regarding the relationship between Cedar Springs and its tenant. But there was no

such evidence presented. Instead Liley relied on legal arguments, telling (actually, instructing) the jury what the word “possession” in the statute means: Counsel stated: “Possession is *the cows are on their property*.” R. 1453 at 35:23-24 (emphasis added). Counsel continued, “Well, it’s your responsibility, Cedar Springs, it’s your property, and you have cows on the property. That’s what the law says.” R. 1453 at 36:16-19.

Based upon the foregoing, the jury was left with the impression that section 41-6a-407(1)(a) is a strict liability statute for landlords and that ownership of real property is enough to impose *per se* liability under section 41-6a-407(1)(a). However, this is not what the statute says. If the legislature had wanted to base the duty under section 41-6a-407(1)(a) on ownership of real property, it could have easily done so. But it did not. Rather, the legislature based the duty on “possession or control of . . . livestock.” The district court erred in not interpreting the law itself, in not ruling that based on the undisputed facts Cedar Springs was not in possession or control of any livestock, and then in allowing the jury to decide what the statute means.

The district court based its approach on the notion that Cedar Springs and Warm Creek are related corporations. This too was error. The district court acknowledged that there was not sufficient evidence to pierce the corporate veil, but the court decided to bend the rules because of the close relationship between

Cedar Springs and Warm Creek. However, the district court should have simply decided what section 41-6a-407(1)(a) means. The statute cannot mean one thing in one context and another thing in situations in which corporations are related. The statute should be interpreted and applied uniformly. That is the essence of due process. If Warm Creek and Cedar Springs were not entitled to be treated as separate legal entities, then the court should have so held. But if they are separate entities they are entitled to be treated as such under *Stephenson* and under section 41-6a-407(1)(a).

II. THERE WAS NO EVIDENCE AT TRIAL THAT CEDAR SPRINGS OWED OR ASSUMED ANY DUTY OTHER THAN IN ITS CAPACITY AS LANDLORD.

A second possible basis for finding that Cedar Springs owed a legal duty to Liley might be based on evidence at trial that Cedar Springs assumed some sort of duty to maintain the fences. However, it is undisputed that under the lease agreement between Cedar Springs and Warm Creek, it was Warm Creek's duty to maintain the fences. There was no factual evidence regarding any other duty or any failure to supervise.

III. AS A MATTER OF LAW, CEDAR SPRINGS COULD NOT HAVE BEEN HELD LIABLE UNDER THE DOCTRINE OF RESPONDEAT SUPERIOR BECAUSE THE JURY FOUND THAT WARM CREEK WAS NOT NEGLIGENT.

Finally, it might be possible to argue that Cedar Springs was required to answer for the negligence of its tenant under the doctrine of respondeat superior.

However, such an argument would be inappropriate here because Warm Creek (the owner of the livestock) was not negligent. As stated above, the jury specifically found that Warm Creek was 0% responsible for Liley's injuries in this case. If Warm Creek was not liable for failing to maintain fences, then, as a matter of law, there is no negligence for the superior party to answer for. If, for example, a jury finds that a pizza delivery person is not responsible for causing an automobile accident, then there is no basis in the law for holding the owner of the pizza company liable for any damages. Thus, the jury's verdict in this case is internally inconsistent, and it cannot be sustained. It cannot be said that the tenant was 0% responsible but that the landlord should nevertheless answer for the tenant's alleged failure to maintain the fences. If Warm Creek was not a fault in any way, then there was no actionable failure to maintain fences.

CONCLUSION

Based on the foregoing reasons, this Court should reverse the judgment of the district court.

DATED this 3rd day of March, 2016.

RAY QUINNEY & NEBEKER P.C.



Brent D. Wride

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2016, I served two true and correct copies of the foregoing **BRIEF OF APPELLANT** upon the following by
United States Mail:

Jeffrey T. Colemere
Wrona Gordon & DuBois, P.C.
11650 South State Street, Suite 103
Draper, UT 84020
Attorney for Appellee



1364362

ADDENDUM

- 1. Docket entry showing denial of Cedar Springs' motion for summary judgment (the court met with counsel in chambers and discussed the motion off the record, so there is nothing other than the docket entry to cite to)**
- 2. Transcript of oral ruling denying Cedar Springs' motion for summary judgment**
- 3. Jury Verdict Form**

Addendum No. 1

Disclosures

02-12-15 Filed: Certificate of Mailing/Service: Certificate of Service
of Subpoena

02-12-15 Filed: Return of Electronic Notification

02-12-15 Filed: Return of Electronic Notification

02-12-15 Filed: Return of Electronic Notification

02-12-15 Filed: Return of Electronic Notification

02-12-15 Judge JENNIFER A BROWN assigned.

02-17-15 Filed return: Return of Service upon JEAN DAVID VIGOS for

Party Served: PATRICK LILEY

Service Type: Personal

Service Date: February 12, 2015

02-17-15 Filed: Return of Electronic Notification

02-18-15 Filed: Subpoena to Dale Dorius (with Sheriffs Proof of Service)

02-18-15 Filed: Return of Electronic Notification

02-19-15 Filed: Request/Notice to Submit Plaintiffs Motion In Limine to
Preclude David Vigos from Testifying About Plaintiffs Mental
Alertness

02-19-15 Filed: Return of Electronic Notification

02-23-15 Filed: Defendant State of Utahs Proposed Voir Dire of the Jury
Venire

02-23-15 Filed: Exhibit A- Proposed Voir Dire Examination of the Venire

02-23-15 Filed: Exhibit B- Courts Modified Jury Voir Dire Examination of
the Venire

02-23-15 Filed: Return of Electronic Notification

02-24-15 Filed: PLAINTIFF PATRICK LILEYS PROPOSED VOIR DIRE OF THE JURY
VENIRE

02-24-15 Filed: Exhibit 1

02-24-15 Filed: Return of Electronic Notification

03-03-15 Minute Entry - Minutes for Jury Trial

Judge: JENNIFER A BROWN

Clerk: raelenec

PRESENT

Plaintiff(s): PATRICK LILEY

Defendant(s): DALE DORIUS

Plaintiff's Attorney(s): S BROOK MILLARD

Defendant's Attorney(s): JOEL A FERRE

JENNIFER D REYES

TANNER A STRICKLAND LENART

Printed: 04/02/15 11:32:45

Page 13

Audio

Tape Number: 1 Tape Count: 9:21

This matter comes before the Court for day one of jury trial.

Court and counsel meet in chambers off the record regarding the pending motions. Court makes findings and denies the motion for summary judgment, denies the motion to preclude testimony of David Vigos, as to the State's Objections to Plaintiff's pre-trial disclosures the highway patrol report is reserved, affidavit of Tony Dick is excluded, photographs of fence/scene are allowed with foundation, photographs of cattle are excluded, Juab County Sheriff records are excluded, and as to the State's Objections to Cedar Springs' Ranch pre-trial disclosures the highway patrol report is reserved, photographs of fence/scene are allowed with foundation and deposition transcripts are excluded.

TIME: 9:21 AM Jurors are welcomed and thanked for their patience and appearance.

TIME: 9:25 AM Potential jurors are sworn in. Voir dire begins.

TIME: 9:43 AM Court takes a brief recess.

TIME: 9:57 AM Voir dire continues in chambers.

TIME: 11:47 AM Court resumes in the court room. Jurors selected to serve on the case: 1-2, 2-3, 3-12, 4-13, 5-14, 6-17, 7-18, 8-23 and 9-24.

TIME: 11:50 AM Remaining jurors are thanked and excused.

TIME: 11:50 AM Jurors are seated and given the oath for trial jurors.

TIME: 11:52 AM Preliminary Instructions are read to the jury by the Court.

Addendum No. 2

1 CASE NO. 120600012
2 APPELLATE NO. 20150267
3 DEPT. NEPHI - DISTRICT

4 IN THE FOURTH DISTRICT COURT IN
5 AND FOR JUAB COUNTY
6 STATE OF UTAH

7 -----ooOoo-----

7 PATRICK LILEY,)
8 Plaintiff,)
9 vs.) TRANSCRIPT
10) OF
11 UTAH DEPARTMENT OF) JURY TRIAL
12 TRANSPORTATION, CEDAR) VOLUME II
13 SPRINGS RANCH, LLC, a Utah)
14 corporation, and DALE)
15 DORIUS, an individual,)
16 Defendants.)

16 BEFORE THE HONORABLE JENNIFER BROWN
17 DISTRICT COURT JUDGE

18 WEDNESDAY, MARCH 4, 2015
19 8:40 A.M.

19 APPEARANCES:

20 For the Plaintiff: BROOK MILLARD, ESQ.
21 Wrona Law Firm

22 For UDOT: JOEL FERRE, ESQ.
23 Assistant Attorney General

24 For Cedar Springs: JENNIFER REYES, ESQ.
25 Dorius & Reyes

25 Transcribed by: Mary Beth Cook, CSR, RPR

MARY BETH COOK, CSR, RPR (435) 868-1075
161 South 200 West Cedar City, UT 84720

1 becomes theirs; it's their right to take control
2 of that and it's their duty to maintain and it
3 whatnot. That just simply isn't the case. That's
4 not what happens in those situations.

5 And so we still believe that they've
6 failed to provide sufficient evidence to show that
7 there was a duty on behalf of Cedar Springs Ranch
8 to the plaintiff, and we would ask the Court to
9 move for a directed verdict. Thanks.

10 THE COURT: Thank you. In making this
11 ruling, I want to make clear that in no way is my
12 ruling intended to address any breach of piercing
13 the corporate veil. I understand the difference
14 of the different corporations that are at issue
15 here, although I'm hesitant to even try to say the
16 names because I'm sure I would get warm and cedar
17 and springs and creek mixed up. I certainly do
18 understand the distinction between those.

19 However, the difference here is that
20 while they are distinct legal entities, Mr. Dorius
21 is a principal in both. There is a
22 landlord/tenant relationship based upon his own
23 testimony, and I do find that a landlord does have
24 some duty to control the actions of its tenant,
25 and I would say that at least in this case I would

1 think that duty perhaps is slightly greater given
2 the close interrelationship of the parties.

3 And so unlike the directed verdict for
4 UDOT, I am going to find that there is sufficient
5 competent evidence to go to the jury on the issue
6 of negligence with regard to Cedar Springs Ranch.
7 And I note in making this decision that there's
8 already been an indication of an intent to
9 allocate fault to Warm Springs which Cedar Springs
10 still has available to it in this action. And so
11 I'm going to deny the motion for the directed
12 verdict, and we'll move forward on that basis.

13 MR. MILLARD: Thank you, Your Honor.
14 Your Honor, may we deal with one -- well, I guess
15 you could let UDOT go, but could we deal with one
16 issue that I just noted in the jury instructions,
17 and it's with respect to Jury Instruction No. 11.
18 Instead of stating the defendant Cedar Springs
19 Ranch it has Warm Creek. Warm Creek is not a
20 defendant. Plaintiffs made that same allegation,
21 and that is the law of the case is that Utah Code
22 41-6-407 applies to this action, and that needs to
23 be corrected.

24 THE COURT: I will take a look at that.
25 Would you like to be heard on that, Counsel, with

Addendum No. 3

FILED IN
4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
JUAB COUNTY

COPY

RAY QUINNE

15 MAR -5 PM 2:56

MAR 16 201

& NEBEKER

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
JUAB COUNTY, STATE OF UTAH

PATRICK LILEY,

Plaintiff,

vs.

UTAH DEPARTMENT OF
TRANSPORTATION, a division of the State
of Utah, JUAB COUNTY, a political
subdivision of the State of Utah, SANPETE
COUNTY, a political subdivision of the State
of Utah, CEDAR SPRINGS RANCH, INC. a
Utah corporation, and DALE DORIUS, an
individual

Defendants.

VERDICT FORM

Case No. 120600012

Judge Jennifer A. Brown

VERDICT FORM

Members of the jury:

Please answer the following questions in the order they are presented.

If you find that the issue has been proved by a preponderance of the evidence answer "Yes," if not, answer "No."

At least six jurors must agree on the answer to all of the required questions, but they need not be the same six on each question. When six or more of you have agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.

Cedar Springs Ranch, Inc.

Question (1) – Was Cedar Springs Ranch, Inc. at fault? (If you answer "Yes," answer Question (2). If you answer "no," stop here, have the foreperson sign the verdict form, and advise the bailiff.

☒ Yes ☐ No

Question (2) – Was Cedar Springs Ranch, Inc.'s fault a cause of Patrick Liley's harm? (If you answer "Yes," answer Question (3). If you answer "no," stop here, have the foreperson sign the verdict form, and advise the bailiff.)

☒ Yes ☐ No

Warm Creek Ranch, Inc.

Question (3) – Was Warm Creek Ranch, Inc. at fault? (If you answer "Yes," answer Question (4). If you answer "No," go to the next set of instructions.)

☐ Yes ☒ No

Question (4) – Was Warm Creek Ranch, Inc.'s fault a cause of Patrick Liley's harm?

(Regardless of your answer, go to the next set of instructions). ☐ Yes ☐ No

Patrick Liley

Question (5) – Was Patrick Liley at fault? (If you answer "Yes," answer Question (6). If you

answer "No," answer Questions 7 and 8) ☒ Yes ☐ No

Question (6) – Was Patrick Liley's fault a cause of his own harm? (If you answer "Yes," answer

Questions 7, 8 and 9.) ☒ Yes ☐ No

Comparative Fault

Question (7) – What percent of the fault that caused Patrick Liley's harm is attributable to Cedar

Springs Ranch? (If your answer to either (1) or (2) is "No," then enter zero.) 85 %

Question (8) – What percent of the fault that caused Patrick Liley's harm is attributable to Warm

Creek Ranch? (If your answer to (3) or (4) is "No," then enter zero.) 0 %

Question (9) – What percent of the fault that caused Patrick Liley's harm is attributable to

Patrick Liley? (If your answer to (5) or (6) is "No," then enter zero.) 15 %

The total must equal 100% 100 %

If Patrick Liley's fault is 50% or more, stop here, have the foreperson sign the verdict form and advise the bailiff. If Patrick Liley's fault is less than 50%, answer Question (10). Do not deduct from the damages any percentage of fault that you have assessed to Patrick Liley. The judge will make any necessary deductions later.

Question (10) – What amount fairly compensates Patrick Liley for:

- Past Medical Expenses \$ 35,000 ⁰⁰
- Other Economic Damages \$ 0
- Non-Economic Damages \$ 269,940 ⁰⁰

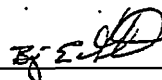
Total \$ 304,940 ⁰⁰

When six or more of you agreed on the answer to each question that is required to be answered, your foreperson should sign and date the form and advise the bailiff that you have reached a verdict.

5 March 2015

Date

Sign here ►



Jury Foreperson