

2002

Holli Lundahl Appellant/Plaintiff vs. Judge Ray Harding Jr. and Clerk Mike Tronier Appellees/ Defendants: Reply Brief

Utah Court of Appeals

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CLERK OF DISTRICT COURT

APPEAL CASE NO. 20020240-CA
BEFORE THE UTAH APPELLATE COURTS

HOLLI LUNDAHL

Appellant/Plaintiff

vs.

JUDGE RAY HARDING JR AND CLERK MIKE TRONIER

Appellees/Defendants

REPLY BRIEF OF APPELLANT HOLLI LUNDAHL

Appeal from the Fourth Judicial District Court Case
No. 010401896 Before The Honorable Louis Tervort

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REQUEST FOR ORAL ARGUMENT

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REQUEST FOR ORAL ARGUMENT

Appellant Holli Lundahl requests oral argument on the following grounds:

1. Based upon the ruling in LUNDAHL I and the Utah Supreme Court's failure to yield a competent result in LUNDAHL I through LUNDAHL'S Petition for Writ of Certiorari in appeal case no. 20010049 [See pending motion to reinstate appeal case no. 20010049-CA due to extrinsic mistake] & based upon Ray Harding Jr's fraud committed at both the trial court level and before the Utah Appellate Court, LUNDAHL requests that oral argument be given in this case because LUNDAHL'S Utah Governmental Immunity Act claim against a judicial officer is the first case to have ever been properly served administrative process thus giving a trial court subject matter jurisdiction to reach the claims of fraud and malice committed by a judicial officer. Accordingly the Utah Court of Appeals will be deciding a First Impression case. As such this case should be orally argued for a full comprehensive record to be considered by higher courts should the appellate process proceed in that manner.

LUNDAHL'S OBJECTION TO APPELLEE'S STATEMENT OF ISSUES AND THE STANDARDS OF REVIEW APPROPRIATE TO THIS APPEAL

1. Appellees claim that the entry of a default judgment is never a ministerial matter and therefore LUNDAHL failed to state a claim for relief against Ray Harding Jr. [This issues raises an identical issue to LUNDAHL'S Issue nos. 3 & 4, but against a different official.]

OBJECTION: LUNDAHL contends that entry of a default judgment under URCP rule 55(b)(1) by a clerk of the court¹ for a sum certain pled in a verified complaint or by affidavit, is a ministerial matter and

1. Mike Tronier could not enter a default judgment for money damages against Continental Insurance Company now CNA Financial Corporation aka Loes Corporation because LUNDAHL's complaint did not plead a sum certain damage against this defendant; therefore Lundahl's motion for entry of default judgment for money damages against CNA was properly deferred to Ray Harding Jr.

accordingly plaintiff properly stated a claim against Mike Tronier

Appellees claim that this issue was not raised in the trial court.

OBJECTION: LUNDAHL directly raised this issue in the trial court by verified First Amended Complaint and by her joint Opposition and cross motion for summary judgment on her verified FAC in her favor. The trial court granted the appellee's motion to dismiss with prejudice and thereby mooted LUNDAHL's cross claims.

STANDARD OF REVIEW: Because the facts supporting LUNDAHL's claimed right to default judgments as against defendants Empire of America Realty Credit Corporation and Source One Mortgage Services Corporation are undisputed [see ultimate facts in exhibits "51" and "57" attached to OB], this issue raises only a question of law for which this Court gives the trial court's ruling no deference and reviews it under the correctness standard. *Zion's First National Bank v. Fos & Co.*, 942 P.2d 324, 326 (Utah 1997).

2. Appellees claim that LUNDAHL's EX PARTE YOUNG declaratory relief and injunction claim against them is an attempt to collaterally attack final decisions of Ray Harding Jr and therefore not permitted. [This issue is similar to the second part of LUNDAHL's issue no. 2.]

OBJECTION: LUNDAHL denies that her EX PARTE YOUNG claim does not allow her to collaterally attack void interlocutory orders which represent imminent and prospective harm to her. ²

2. It should be noted that one month after Ray Harding Jr entered the at issue interlocutory orders, Ray Harding jr refused to certify the foregoing interlocutory orders as final under rule 54(b) or to sever LUNDAHL's claims against the foregoing defendants from her unrelated claims against the other defendants. Additionally the Utah Supreme Court denied LUNDAHL's petition for interlocutory appeal under rule 5. [See exhibit "35" attached to OB for this order.] Subsequently

Appellees claim that the foregoing issue was not raised in the trial court.

OBJECTION: It is true that the appellee's did not raise a collateral attack defense during the trial of the underlying action and accordingly should not be permitted to raise this defense now.

STANDARD OF REVIEW: No review should be permitted on this question. See State of Utah v. South, 924 P.2d 354, fn 3 (Utah 1996) (refusing to address argument offered on appeal in defense of lower court's decision where argument was not raised in pleadings or argued by the parties below.)

3. Appellees claim that LUNDAHL sought to add new claims and causes of action that were not set out in her original notice of claim or her original complaint. [This issue is similar to the first part of LUNDAHL's issue no. 2.]

OBJECTION: LUNDAHL filed TWO Notices of claims as set forth in exhibits "1" and "3" attached to the Opening Brief. LUNDAHL's Second Notice of claim identifies the fraud committed by Ray Harding Jr. in LUNDAHL I and additional fraud committed by Mike Tronier in case no.

the state action was removed to the federal court and consolidated with a federal action which was ordered indefinitely stayed until final disposition of several state actions pending in the third judicial district court in Salt Lake. [See exhibit "10" in O.B., second part, the court docket for stay order.] Because the interlocutory orders entered by Ray Harding Jr. are part of the stayed federal case which has now been stayed for 3½ + years and is likely to be stayed for additional years, because Ray Harding Jr refused to certify his interlocutory orders as final and because the Utah appellate court refused to grant LUNDAHL permission to pursue an interlocutory appeal [see exhibit "35" attached to O.B.], the questioned orders were not able to be turned over or brought into question in the same proceeding. URCP rule 1, FRCP rule 1 and the First Amendment petition clause entitle LUNDAHL to a speedy, just and inexpensive resolution of her claims. LUNDAHL has been denied these rights. In addition LUNDAHL has suffered past and stands to suffer future harm based upon Harding Jr's freezing of proper and fair appellate review of the interlocutory orders as more fully exculpated in this brief.

990402021 and other actions LUNDAHL had pending before other courts. Post filing the second Notice of Claim, LUNDAHL merged the claims presented in both Notices into her First Amended Complaint. 3

STANDARD OF REVIEW: This matter was decided below on defendants motion to dismiss. Because the issue raises only a question of law, the Court gives the trial court's ruling no deference and reviews it under the correctness standard. *Zion's First National Bank v. Fox & Co.*, 942 P.2d 324, 326 (Utah 1997).

4. Appellees claimed that they were entitled to absolute judicial immunity under the Utah Governmental Immunity Act. [This Issue raises similar issues to LUNDAHL'S issue nos. 3-8.]

OBJECTION: LUNDAHL claimed that both official and personal immunities were waived under the Utah Governmental Immunity Act because the rule 60(b) subject matter jurisdiction violations committed by Ray Harding Jr; the rule 55(b)(1) violations committed by Mike Tronier in case no. 990402021, and; the rule 55(a) violations by Mike Tronier in case no. 990403068 were ministerial acts not entitled to official immunity protection. Furthermore LUNDAHL argued that she had sued the defendants personally under the Utah Governmental Immunity Act and that the personal defense of absolute judicial immunity was waived under the UGIA since the defendants performed or failed to perform their duties

3. In December of 2001, the trial court claimed lack of subject matter jurisdiction over LUNDAHL's claims presented in the second Notice of claim because the second notice was served upon the Attorney General after the action was commenced by the original complaint. In other words LUNDAHL was not permitted to merge additional claims and facts which became actionable by the Second Notice of claim into the pending action by the filing of a First Amended Complaint. The trial court was incorrect in dismissing LUNDAHL's Utah Governmental Immunity Act Claim as it pertained to the second Notice of Claim for lack of subject matter jurisdiction because the doctrine of merger and bar required LUNDAHL to merge her administrative claims.

through fraud and malice. Under federal law, the appellees actions were not immuned under the EX PARTE YOUNG Doctrine.

STANDARD OF REVIEW: This matter was decided on defendant's motion to dismiss. Because the facts were undisputed, this issue only raises a question of law which this Court reviews under the correctness standard granting the trial court's ruling no deference. Zions First Nat'l Bank, 942 P.2d at 326.

5. Appellees claim that all of LUNDAHL's claims against Ray Harding Jr. are barred by res judicata. [This issue is similar to LUNDAHL'S issue nos. 1 & 2.]

OBJECTION: LUNDAHL claimed that Ray Harding Jr's fraud committed in LUNDAHL I barred res judicata application and further that the trial court lack subject matter jurisdiction to entertain a Utah Governmental Immunity Act claim at the time LUNDAHL I was commenced because the administrative process had not yet run it's coarse.

This issue was raised by defendant's motion to dismiss.

STANDARD OF REVIEW: Because the facts underlying this claim were undisputed, this issue raises solely an issue of law which this Court reviews under a correctness standard granting no deference to the trial court's ruling. ZIONS, supra.

6. Appellees claim that all of LUNDAHL's claims against Deputy clerk Tronier are barred by Collateral estoppel by the prosecution of LUNDAHL I against Ray Harding JR. Appellees admit this issue was not raised in the trial court below.

OBJECTION: This issue was not raised in the trial court below and therefore appellees have waived this issue on appeal. 4

4. Moreover contrary to Appellees contention, this court is

STANDARD OF REVIEW: Appellees waived the right to challenge this issue because it was not raised in the trial court below. State v. South, 924 P.2d 354, 355 (Utah 1996).

7. APPELLEES HAVE WAVED THE RIGHT TO ARGUE THAT RAY HARDING JR'S RULE 60(B)(1) RULINGS MADE WITHOUT THE FILING OF THE REQUIRED MOTIONS BY EMPIRE OF AMERICA AND SOURCE ONE MORTGAGE WITHIN THE 3 MONTH STATUTORY TIME PERIOD UNDER RULE 60(B)(1), DEPRIVED RAY HARDING JR OF SUBJECT MATTER JURISDICTION TO GRANT EMPIRE AND SOURCE ONE ANY EQUITABLE RELIEF FROM THE DEFAULT ORDERS/JUDGMENTS ENTERED AGAINST THEM.

DETERMINATIVE STATUTES

LUNDAHL AGREES WITH APPELLEES DETERMINATIVE STATUTES PLUS ADDS:

UTAH RULES OF CIVIL PROCEDURE RULE 60(b)(1):

On Motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect (2) newly discovered evidence...; (3) fraud whether heretofore denominated as intrinsic or extrinsic; misrepresentation or other misconduct of an adverse party; ...the motion shall be made within a reasonable time and for reasons (1), (2) & (3), not more than 3 months after the judgment, order or proceeding entered or taken.

additionally barred from considering this issue because Tronier was not made party to the EX PARTE YOUNG claim prosecuted against Ray Harding Jr. in LUNDAHL I and because the issue of Mike Tronier's failure to enter a sum certain default judgment against SOURCE ONE in his capacity as the clerk under URCP rule 55(b)(1) was never argued or raised in LUNDAHL I nor was Tronier's failure to enter certain default certificates in case no. 990403068 an issue raised in LUNDAHL I.

LUNDAHL sought decrees declaring: (1) the October 12, 1999 interlocutory order vacating the defaults/judgments against EMPIRE and SOURCE ONE void based upon Ray Harding Jr's lack of subject matter jurisdiction to grant equitable relief to EMPIRE and SOURCE ONE, (2) the January 25, 2000 oral dismissal order as to LUNDAHL's claims against CNA [committed to writing on February 18, 2000], void, as not barred by res judicata; (3) the March 7, 2000 order quashing LUNDAHL's service on SOURCE ONE as allegedly improper, as void; and (4) the order granting dismissal of LUNDAHL's claims against EMPIRE on the basis of the December 10, 1995 accord & settlement agreement, as void, on the basis that LUNDAHL's claims against EMPIRE accrued after the December 10, 1995 settlement agreement termed.

OBJECTIONS TO APPELLEE'S STATEMENT OF THE CASE

Appellees fail to acknowledge that when LUNDAHL filed an Opposition to appellees motion to dismiss her First Amended Complaint, Lundahl also cross moved for summary judgment in her favor on her claims set forth in her First Amended Complaint. Moreover on December 27, 2001 LUNDAHL filed a rule 54(b) motion to correct the December 10, 2001 order not a rule 59 order. On February 22, 2002 the trial court entered a final judgment affirming the December 10, 2001 ruling on the motion to dismiss while simultaneously denying LUNDAHL's rule 54(b) motion which sought to declare the defendants jurisdictional argument as moot. Appellees statement of the case is otherwise correct.

OBJECTIONS TO APPELLEES STATEMENT OF RELEVANT FACTS

1. Appellees are correct that they did not challenge the factual claims made in LUNDAHL's FAC which comprise nearly identical facts as presented by LUNDAHL in her statement of facts set forth in her opening brief. Furthermore the defendants did not challenge the validity of any document attached to the FAC, which documents are now attached to the Opening Brief and support LUNDAHL's factual contentions.

2. Appellees are correct that LUNDAHL sued 19 defendants in state case no. 990402021 and obtained default certificates against 3 of the 19 defendants named in state case number 990402021 after these 3 defendants were properly and personally served and failed to appear.

OBJECTION: Appellees fail to note however that LUNDAHL also submitted and obtained a sum certain default judgment against defendant EMPIRE [ex. "51" attached to O.B.] and submitted a sum certain proposed default judgment against SOURCE ONE [ex. "57" attached to O.B.].

3. Appellees are correct that Ray Harding Jr. conducted a hearing on September 23, 1999 pursuant to LUNDAHL'S request to enter a default judgment for uncertain money damages against CNA.

OBJECTION: Appellees fail to note however that 40 days prior to the hearing date, Judge Harding Jr. ordered SOURCE ONE and EMPIRE to appear for the September 23, 1999 hearing by way of rule 60(b)(1) in order to challenge the default judgment entered against EMPIRE and the sum certain default judgment LUNDAHL sought against Source One. Although counsel for EMPIRE and SOURCE ONE appeared at the September 23, 1999 hearing, they did not file any rule 60(b)(1) motions to set aside the defaults or default judgments entered against them. Moreover they also did not file these motions after the September 23, 1999 hearing and by the deadline of October 9, 1999 as ordered by Ray Harding Jr.

4. Appellees incorrectly state that Harding Jr. at the hearing set aside the default judgments against CNA and EMPIRE and on October 12, 1999 set aside the default of Source One.

OBJECTION: Judge Harding Jr. only set aside the default judgment as to CNA on September 23, 1999. At this hearing Judge Harding Jr. instructed EMPIRE and SOURCE ONE's counsels to file rule 60(b)(1) motions by October 9, 1999 so that he would have subject matter jurisdiction to set aside the default judgment against EMPIRE [see exhibit "51" attached to OB] and the default order against SOURCE ONE. See ex. "31" attached to FAC. In fact neither EMPIRE nor SOURCE ONE filed the required rule 60(b)(1) motions by the October 9, 1999 deadline. Judge Ray Harding Jr. LIED in his October 12, 1999 order, ruling no. 6, when he stated that EMPIRE had filed the required motion to grant EMPIRE relief from a default judgment [See ex. "30" attached to OB.]; EMPIRE never filed any such motion and the docket verifies that

no such motion was filed by EMPIRE. Moreover Ray Harding Jr had no authority to grant Source One sua sponte relief from a default or judgment without SOURCE ONE's filing of the required motion. Ray Harding Jr. failed to acquire subject matter jurisdiction to vacate the default judgment against EMPIRE [ex. "51" attached to O.B.] and the default and proposed sum certain default judgment against SOURCE ONE [ex(s) "56" & "57" attached to O.B.] .

5. Appellees state that Ray Harding Jr. granted CNA'S motion to dismiss on January 25, 2000 [in written order on February 18, 2000]and Source One's motion to quash on March 7, 2000.

OBJECTION: This statement omits other pertinent material facts. Specifically, Appellees fail to acknowledge that the basis for the dismissals were void and fraudulent. Specifically, Ray Harding Jr corruptly held that: (1) LUNDAHL's mortgage interference claims against Continental Insurance Company were barred by an unrelated interlocutory order entered by a federal court dismissing LUNDAHL's claims against an unrelated CNA entity for ERISA violations respecting health care contracts. The res judicata argument was also invalid because Continental Insurance Company was not a party to the Utah federal action, was not served process in the federal action and never made a general or special appearance in the federal action. Therefore the federal judgment could not have prejudiced LUNDAHL's claims against Continental Insurance Company in the action before Harding Jr's court; (2) LUNDAHL had not properly served Source ONE. This was also a false,⁵ and (3) On March 15, 2000 Ray Harding Jr fraudulently dismissed

5. It is important to note that Ray Harding Jr conducted no evidentiary hearing to determine the propriety of LUNDAHL's service on Source One. Under Utah law, Ray Harding Jr. was required to look to the documentary evidence on file with the court to determine the propriety of service and any disputes in the documentary evidence were required to

LUNDAHL's claims against EMPIRE claiming that LUNDAHL'S claims accrued during the contract period identified in the December 10, 1995 Accord and Settlement Agreement. This was also a false statement of fact.⁶

LUNDAHL'S FAC alleged that Ray Harding Jr had no valid legal basis to dismiss LUNDAHL's claims against CNA and EMPIRE nor to quash and dismiss LUNDAHL's claims against SOURCE ONE.

6. On April 12, 2000 LUNDAHL brought a federal civil rights action against Ray Harding Jr. claiming that Ray Harding JR. violated LUNDAHL's federal civil rights by adjudicating equity claims on defendants EMPIRE and SOURCE ONE, by vacating the default judgments entered against EMPIRE and SOURCE ONE and by subsequently dismissing LUNDAHL's claims against all three defendants in interlocutory orders which Ray Harding Jr refused to certify as final. 7

be determined in LUNDAHL's favor. A review of the returns of service on file [ex(s) "52" & "53" attached to OB] prima facially established the question of propriety of service in LUNDAHL's favor. Ray Harding Jr. was therefore barred from quashing said service upon SOURCE ONE nearly one year after SOURCE ONE was served as he was mandated to determine any disputes in the documentary evidence in LUNDAHL's favor.

6. LUNDAHL's claims against EMPIRE did not commence until April 9, 1996, 9 days after the federal court approved Accord/Settlement Agreement terminated by it's own terms. The record shows that EMPIRE recorded a false assignment document which had been back dated to a date before the federal court approved December 10, 1995 settlement agreement in order to nullify the settlement agreement for lack of capacity to contract by EMPIRE. As a matter of law, LUNDAHL had the right to (1) enforce the federally approved settlement agreement, (2) charge EMPIRE with having filed a wrongful lien/encumbrance against LUNDAHL's real property which stated a false assignment date, ommitted the existence of the federally approved settlement agreement, and was not supported by consideration until April 30, 1996, and; (3) charge EMPIRE for emotional and mental distress damages for aiding and abetting a wrongful foreclosure.

7. Appellees only identify a portion of the true facts in the civil rights action LUNDAHL brought against Ray Harding Jr in LUNDAHL I. The following facts are also material. First, LUNDAHL did not sue Ray Harding Jr. in his personal capacity for money damages in LUNDAHL I. Ray Harding Jr. was sued strictly in his official capacity under EX PARTE YOUNG for declaratory and injunctive relief. On appeal Ray Harding Jr fraudulently argued that LUNDAHL sued him personally for money damages in order to corruptly obtain an appellate judgment in his

7. Appellees correctly state that on April 24, 2000 LUNDAHL filed a Notice of Claim against the defendants. On August 8, 2001 LUNDAHL brought a Second Notice of claim to include the fraud and malice committed by Ray Harding Jr in the prosecution of LUNDAHL I and other fraud and malice committed by Tronier in other unrelated cases wherein LUNDAHL sued a CNA merged entity.

OBJECTION: Appellees fail to acknowledge that on April 13, 2001 LUNDAHL timely filed the underlying action to address the personal fraud and malice claims presented in her first Notice of claim. LUNDAHL then amended her underlying complaint to include the additional claims made in her second notice of claim which were directed to the fraud committed

favor. While LUNDAHL argued on appeal that she did not sue Harding Jr. for Money damages but only sued him to EX PARTE YOUNG relief, the Utah appellate court completely disregarded LUNDAHL's argument. In addition Ray Harding Jr. to fraudulently obstruct LUNDAHL's EX PARTE YOUNG claim on appeal, argued that the challenged interlocutory orders were final and ready for appeal - thus causing the appellate court to again disregard LUNDAHL's pleadings and sustain a finding that LUNDAHL was seeking retrospective relief. Ray Harding Jr never produced evidence to sustain his defense that his interlocutory orders were final and appealable, and it is clear that Ray Harding Jr defrauded the trial court into believing that such interlocutory orders were made final by a subsequent order issued by Ray Harding Jr. [See hearing transcript of oral argument as exhibit "38" attached to OB.] Harding Jr. also concealed to the appellate court that LUNDAHL did not have an adequate remedy in the federal court after the state action had been removed because the federal action had been ordered indefinitely stayed. Ray Harding Jr's false representations resulted in an obstructed and void appellate judgment against LUNDAHL. See Appellees Appendix "A". Additionally, Appellees fail to acknowledge that LUNDAHL requested rehearing of the appellate order which was denied. [See ex. "41" attached to OB.] On May 20, 2001 LUNDAHL filed a petition for certiorari review. [See ex. "1" attached hereto.] The docket in the appellate case shows that on March 20, 2002 the Supreme Court denied a petition for permission to file an interlocutory appeal and issued a remittitur. [See exhibit "2" attached hereto.] A recent review of the appellate file revealed no such order issued on March 20, 2002 or any remittitur issued on that same date. Instead the file erroneously included an order dated August 21, 2001 denying a petition for permission to file an interlocutory appeal; an order which belonged in another case filed by LUNDAHL. LUNDAHL'S petition for certiorari review of the May 3, 2001 appellate order has never been adjudicated by the Utah Supreme Court.

by Ray Harding Jr in the prosecution of LUNDAHL I. Appellees correctly state that they objected to the court considering the second notice of claim because it was merged into an action which had commenced 5 months earlier on the First Notice of claim and LUNDAHL's merger violated the procedural requirements for prosecuting an UGIA claim. LUNDAHL argued that the doctrine of merger and bar required she amend the complaint to include the second allegations.

SUMMARY OF ARGUMENT

Holli Lundahl claims that Judge Harding Jr. violated the jurisdictional statutes under URCP rule 60(b)(1) with respect to EMPIRE and SOURCE ONE and thereby entered void orders vacating defaults/judgments against these defendants, that Harding Jr's clerk Tronier should have entered the sum certain default judgment against SOURCE ONE under URCP rule 55(b)(1), and that Tronier should have entered defaults against LILLY, Advanced Cardiovascular Systems and Leahy in case number 990403068 under URCP rule 55(a).

LUNDAHL contends that the entry of a default judgment for sums certain pled in a complaint and or supported by affidavit under rule 55(b)(1) is a ministerial act. LUNDAHL further contends that she stated a valid legal basis for obtaining default judgments against all three defendants. The record shows that Mike Tronier and Ray Harding Jr engaged in a fraudulent and malicious conspiracy with attorneys for the defendants to claim: (1) that LUNDAHL's claims against EMPIRE were barred by the federally approved December 10, 1995 settlement agreement, (2) that LUNDAHL was not entitled to a default judgment against CNA as

LUNDAHL's claims against CNA were allegedly barred by res judicata⁸, and (3) that LUNDAHL had not properly served SOURCE ONE⁹; thereby justifying Tronier's failure to enter the sum certain default judgment LUNDAHL submitted to TRONIER.

The record shows that Appellees made no effort to argue in either the trial court or this court that Ray Harding Jr acted without subject matter jurisdiction to grant EMPIRE or SOURCE ONE equitable relief from the final defaults/judgments; thus rendering Ray Harding Jr's equity orders VOID and subject to collateral attack in any proceeding.

In addition the defendants failed to acknowledge that LUNDAHL is unable to appeal the removed interlocutory orders in the federal court due to an indefinite stay order; thus leaving LUNDAHL with her federal remedy under the EX PARTE YOUNG DOCTRINE. Nevertheless this did not deprive LUNDAHL of her state civil rights remedy under the Utah Governmental Immunity Act.

The trial court was not without subject matter jurisdiction to hear LUNDAHL's UGIA claims presented in second Notice of claim because

8. Harding Jr concluded that LUNDAHL's claims before his court for mortgage interference, insurance bad faith, fiduciary fraud, etc. against Continental Insurance Company, LUNDAHL's homeowners insurer, which accrued on December 13, 1996, were identical to claims LUNDAHL had pending before the Utah federal court against an ERISA health contract insurer known as Continental Assurance Company which accrued on July 23, 1993.

9. To avoid entry of LUNDAHL's submitted default judgment against SOURCE ONE, Ray Harding Jr sua sponte quashed LUNDAHL's service upon this defendant falsely claiming it was improper. Ray Harding Jr violated the common law rules respecting challenges to service of process which required that any dispute in documentary evidence go in favor of the plaintiff. Moreover SOURCE ONE did not provide competent evidence to dispute LUNDAHL's service returns as to SOURCE ONE. Finally SOURCE ONE did not file any rule 60(b)(1) motion to challenge the sufficiency of service of process within the time allowed under Utah even though Ray Hardin Jr had twiced petitioned SOURCE ONE to do so within the 3 month limitations period.

under the doctrine of merger and bar LUNDAHL had an obligation to merge her claims and by the time the trial court ruled as to this defense the issue of subject matter jurisdiction was mooted.

Under the UGIA, neither defendants are entitled to personal judicial immunity. LUNDAHL's claims against Harding Jr are not barred by res judicata by LUNDAHL I because of the fraud Ray Harding Jr. committed in the prosecution of LUNDAHL I and because the administrative process was not completed to permit the trial court to acquire subject matter jurisdiction over LUNDAHL's UGIA claim. Moreover the appellate process in LUNDAHL I is still ongoing and has never reached a valid, final or competent disposition of the violations committed in LUNDAHL I as contemplated in the statutory scheme. Finally plaintiffs claims against Mike Tronier are not barred by collateral estoppel because (1) the defendants did not raise this defense in the lower court (2) Mike Tronier was not named a party, was not served process and did not appear in LUNDAHL I, and (3) LUNDAHL's claims against Tronier were never fully and fairly litigated in LUNDAHL I.

ARGUMENT

II. LUNDAHL DID NOT FAIL TO STATE A CLAIM AGAINST THE DEFENDANTS

A. HARDING JR. DID NOT HAVE SUBJECT MATTER JURISDICTION TO VACATE THE DEFAULTS/JUDGMENTS ENTERED AGAINST EMPIRE AND SOURCE ONE

APPELLEES claim that LUNDAHL's entitlement to a sum certain default judgment against EMPIRE and SOURCE ONE was not a ministerial act of Tronier's office.

Appellees quote to a common law authority supporting the right to relief from a default when a timely motion is made under rule 60(b)(1) in re Heathman V. Fabian & Cledenin, 377 P.2d 189, 190 (1962), I.e.

"that default judgments are not favored...and when a timely motion under rule 60(b)(1) is filed, the court should grant relief and hear the action on it's merits." However in the case at bar, neither EMPIRE nor SOURCE ONE filed timely motions under rule 60(b)(1). "Utah courts do not recognize distinctions between relief procedures employed to obtain relief from defaults or default judgments". Heber v. U.S.A., 145 F.R.D. 576 (D. Utah 1992) citing to Moore's Federal Practice 3d section 60.22[3][b]. "In both instances defendants are required to file motions to set aside the default or default judgment." Id at 577. "Failure to file the required motion within 3 months of the challenged order, judgment or proceeding, deprives the court of subject matter jurisdiction to grant any relief." Richman v. Delbert Chipman & Sons Co., 817 P.2d 382, 387 (Utah App. 1991)(citing to URCP rule 60(b). Moreover rule "60(b)(1) only permits relief if the movant can demonstrate the existence of a meritorious defense." In re Stone, 588 F2d 1316, 1319 (10th Cir. 1978). Also "a primary factor in setting a default or judgment aside is whether the plaintiff will be prejudiced." Westinghouse El. Sup. Co. v. Paul W. Larsen Con. Inc., 544 P2d 876, 879 hn 3 (Utah 1980).

Here neither EMPIRE or SOURCE ONE filed the required motions under rule 60(b) to obtain relief... likely because they had no meritorious defenses. In addition LUNDAHL was severely prejudiced by the vacation of the judgments not only because the acts were prohibited under the jurisdictional rules of 60(b)(1) but also because EMPIRE was in dissolution and there was no means by which to obtain enforcement of any money judgment against EMPIRE unless LUNDAHL obtained the money judgment before the dissolution was complete.¹⁰ With respect to SOURCE ONE,

10. EMPIRE has now dissolved thereby leaving LUNDAHL's only

LUNDAHL has now been forced to file bankruptcy proceedings to stave off
Creditors related to her home illegally stolen by SOURCE ONE.¹¹

Not surprisingly, the defendants have not addressed Ray Harding Jr's lack of subject matter jurisdiction in the equity proceedings as to EMPIRE and SOURCE, nor did they attack this established factual contention in the trial court. Appellees have therefore conceded that the October 12, 1999 order vacating LUNDAHL's defaults/judgments against EMPIRE and SOURCE ONE are void. Being VOID LUNDAHL is entitled to collaterally attack them in these proceedings.

B. THE UTAH SUPREME COURT HAS DETERMINED THAT WHEN A
PLAINTIFF SUBMITS A SUM CERTAIN DEFAULT JUDGMENT
UNDER RULE 55(B) (1) AND REQUESTS ENTRY FROM A CLERK,
THE CLERK PERFORMS A MINISTERIAL DUTY IN ENTERING
THE DEFAULT JUDGMENT

Attached hereto as exhibit "69" is the only Utah Supreme Court authority opining duties under URCP rule 55(b) (1) in re Utah Ass'n of Credit Men v. Bowman, 113 P 63 (Utah 1911). A clerk in an identical fact pattern as the case at bar, entered a default but refused to enter a default judgment in plaintiff's favor based upon sum certain damages pled in plaintiff's complaint. The clerk, likened to the case at bar, forwarded the default judgment onto the judge who then refused to order the clerk to enter the default judgment. A writ was filed to the Utah Supreme Court to compel performance of the ministerial duty. The Supreme Court decisioned that it was not an answer to the writ that the judge directed the clerk not to perform her duties. [hn.4]. The High Court also held that when a complaint states a sum certain damage supported by admissible evidence and the defendant does not respond, the remedy as an action against the defendant Ray Harding Jr. for obstruction of LUNDAHL's right to obtain and enforce her judgment against EMPIRE.

11. In addition failure to enter judgment against SOURCE ONE has resulted in multiple lawsuits being filed against Holli Lundahl.

defendant makes a tacit admission, as in a judgment by confession, that the cause sued upon is valid and that the money damages claimed are owed. Id at 67. Furthermore the court directly decisioned:

"The only difference in entering a judgment by confession and a judgement by default ...is that in the first instance the defendant in proper terms confesses the judgment while in the second he tacitly consents by his silence that the judgment may be entered against him for the amount claimed in the complaint. IN ENTERING JUDGMENT THEREFORE, IN EITHER CASE, THE CLERK ACTS MERELY MINISTERIALLY, AND WITH EITHER THE EXPRESSED OR IMPLIED CONSENT OF THE DEFENDANT." ID at 67.

The appellees argue that entering a default judgment is a discretionary judicial function because a court is required to confirm whether the facts set forth in the complaint support the legal claims, citing to Pennington, etc. None of the cases cited by appellees involved a complaint which had attached thereto admissible documents establishing the plaintiff's claims as a matter of law or pleaded sum certain and statutory damages, likened to the case at bar. On the contrary, the case to which appellees cite involved an action where the plaintiff was found to have pursued a bad faith breach of contract action against his car insurance company for failure to pay medical expenses in excess of his policy limits.. The plaintiff did not admit in his initial complaint that he himself had breached his own insurance contract before his carrier did. The court sanctioned the plaintiff \$25,000 in attorneys fee for bringing the bad faith action. Furthermore the plaintiff in Pennington petitioned the court, not the clerk, UNDER RULE 55(B)(2) to enter default judgment. That case and others cited by Appellees are therefore distinguishable.

In Harding's court, LUNDAHL petitioned the clerk for entry of sum certain default judgments against EMPIRE and SOURCE ONE. LUNDAHL'S

factual allegations and causes of action were fully supported by the necessary contracts, public recording documents, previous trial testimony and discovery documents. Under rule 55(b)(1), LUNDAHL had the statutory right to make her submissions for default judgments to the clerk considering the fixed nature of LUNDAHL's facts and claims. The clerk had no authority to deny LUNDAHL entry of the sum certain default judgments, especially when LUNDAHL'S judgments on their face contained sufficient admitted facts, set forth the legal claims under which LUNDAHL grounded her entitlements, and set forth authorized liquidated damages. [See exhibit "51" attached to OB for Empire's Judgment.] [See ex. "57 attached to OB for SOURCE ONE'S judgment.] 12 If the defaulted defendants questioned the propriety of the judgments, there was a statutory scheme available to the defaulted to obtain relief, if timely made. It is a safe presumption that if the defendant does not obtain timely relief from a default judgment, especially when given clear advance notice and opportunity to obtain relief by the court as in the case at bar, the defendants conceded that the judgments were based upon valid claims.¹³

III. LUNDAHL IS ENTITLED TO COLLATERALLY ATTACK VOID INTERLOCATORY ORDERS IN ANY CASE AND IN ANY PROCEEDING

12. SEE ADDENDUM "A" attached hereto for a factual and legal synopsis establishing the validity of LUNDAHL'S claims against EMPIRE and SOURCE ONE.

13. Restated, on August 13, 1999 Judge Harding Jr. ordered CNA, EMPIRE and SOURCE ONE to appear at the September 23, 1999 by proper motion under rule 60(b). When these defendants counsels failed to properly appear, Judge Harding Jr. again ordered EMPIRE and SOURCE ONE's counsels to file the required motions by October 9, 1999 to give the court subject matter jurisdiction to grant relief. Still these defendants did not comply. It therefore cannot be said that these defendants did not effectively consent that LUNDAHL had stated proper claims against them.

Appellees falsely claim that LUNDAHL's entire action is an effort by LUNDAHL to relitigate valid and final decisions from prior lawsuits to which LUNDAHL disagreed with the results. IN TRUTH, THE INTERLOCATORY DECISIONS LUNDAHL ATTACKS WERE NOT VALID AND WERE NOT FINAL. The Utah courts have long held that where the record shows that a judgment was entered without subject matter or personal jurisdiction, the judgment is void and may be collaterally attacked anywhere and at anytime. Bowen v. Olsen, 246 P.2d 602 (1946). Here the claim is that Ray Harding Jr. vacated default judgments against EMPIRE and SOURCE ONE without subject matter jurisdiction; thus permitting LUNDAHL to collaterally attack Ray Harding Jr's rulings in any proceeding.

Appellees next claim that no trial judge has the authority to alter decisions alleged to be erroneous [or in this case void], even if the decisions are interlocutory, citing to Johnson v. Johnson, 560 P2d 1132 (1977) which is based upon the law of the case doctrine.¹⁴ Aside from the fact that the defendants waived this argument in the trial court and therefore should not be permitted to raise it on appeal, the law of the case doctrine has no application to the case at bar as it requires the same action to impose the rule. The underlying action is a different action naming different parties.

Appellees next cite to inapplicable state authority Collins v. Sandy City Bd. Of Adjustments, 52 P.3d 1267, holding that a plaintiff who fails to appeal a final decision cannot normally collaterally attack that decision in a new action. This authority is also inapplicable because there are no final decisions at issue which permitted LUNDAHL access to an appeal. Next the appellees cite to Supreme Court authority

14. However, the law of the case doctrine has evolved and the Utah appellate courts now hold, "Notwithstanding the law of the case doctrine, a trial court is not inexorably bound it's own precedents." Jones Constructors, 761 P2d at 45. "A judge or co-ordinate sitting

in Heck v. Humphrey, 512 US 477 (1994) holding that unless a conviction is overturned or otherwise declared invalid by an appellate court, a defendant has no cognizable section 1983 claim. This authority is inapplicable because the challenged orders did not derive from a criminal conviction and LUNDAHL has never had the opportunity to appeal the challenged interlocutory orders. The Correct rule of law applicable to the question of collateral attack on interlocutory orders is the EX PARTE YOUNG DOCTRINE. 209 US 123 (1908). This doctrine specifically permits a suit against a judge in his official capacity for prospective equitable relief to remedy 14th amendment violations; such as those that might be presented by void interlocutory orders that represent an imminent and irreparable harm to a litigant. Smith v. Plati, 258 F.3d 1167, fn. 1 (10th Cir. 2001). As previously stated, the interlocutory orders represent imminent and ongoing harm to LUNDAHL. While LUNDAHL once before sought relief under this doctrine, Ray Harding Jr. corrupted the process through his continued fraud committed at all levels of the trial and appellate proceedings. Appellees falsely argue that since LUNDAHL lost her statutory review proceedings in LUNDAHL I, LUNDAHL should be barred from filing the underlying action. In fact LUNDAHL has not lost the appellate proceedings in LUNDAHL I because LUNDAHL's Petition for Writ of Certiorari has never been disposed. [See Lundahl's motion filed in appeal proceedings case no. 20010049 to dispose of LUNDAHL's petition for writ of certiorari.]

Appellees also purport to hold LUNDAHL responsible for this court's or the federal court's failure to overturn the challenged orders

judge is free to change a ruling until a final decision as been formally rendered. URCP rule 54(b). Ron Shepard Inc. v. Shields, 882 P2d 650, 652-654 (Utah 1994).

by deceptively claiming that LUNDAHL did not attempt to bring these orders into question in the action formerly before Ray Harding Jr's Court. This statement is a blatant lie. A review of the court docket in re case no. 990402021 shows that LUNDAHL filed a rule 54(b) motion for certification which Harding Jr. refused. LUNDAHL then requested interlocutory review under rule 5. This was denied by the Utah Supreme Court in 2000. [See ex. '35" attached to OB.] LUNDAHL also requested review by extraordinary writ and this was rejected in 2000. LUNDAHL then sought her federal remedy under EX PARTE YOUNG. This was obstructed because Ray Harding Jr lied to the trial court in those proceedings by falsely representing that the challenged orders were final and immediately subject to appeal through the normal processes. Ray Harding Jr then continued to perpetrate his fraud upon the appellate court by asserting that the orders were final and subject to immediate appeal in the federal court resulting in an obstructed and void appellate order. Now 31/2 years later LUNDAHL seeks her federal and state remedies for Harding Jr's gross fraud and malice in the performance or non-performance of his duties. The defendants petition to this court to affirm the dismissal of LUNDAHL's underlying action on the basis of an alleged impermissible collateral attack lacks merit and should be denied. Furthermore the appellees fraud and malice with respect to the challenged orders has never been previously heard in any forum and therefore cannot be precluded from being heard in this forum.

IV. THE TRIAL COURT DID NOT LACK SUBJECT MATTER JURISDICTION TO HEAR LUNDAHL'S ALLEGATIONS OF INTERFERENCE WITH AN ACTION BEFORE JUDGE HOWARDS COURT

Appellees argue that because LUNDAHL did not raise her interference claims in her original notice of claim, the trial court

was without jurisdiction to consider the interference claims. Appellees then argue Notice requirements under the UGIA. LUNDAHL concedes that Appellees are correct about the notice requirements. However on page 14, para. 3, Appellees admit that LUNDAHL filed a second Notice of claim including the additional allegations regarding interference with proceedings before Howard's Court. Appellees complain that LUNDAHL filed her first Amended Complaint including the new allegations in the Second Notice of Claim, before the 90 days for review had expired by the state. Appellees then argue that "plaintiff failed to show that the second notice of claim was ever denied" [an implied requirement before proceeding on an action under the UGIA.] LUNDAHL concedes that she prematurely filed her FAC. However after the FAC was filed, the 90 days had expired, and in support of LUNDAHL'S REPLY papers, LUNDAHL filed a declaration with the court attesting that the second notice of claim was effectively denied when the state failed to respond by November 6, 2001 and therefore any jurisdictional defect was cured. In the alternative LUNDAHL requested that the court refile her FAC and responses to a date after November 6, 2001 to permit merger of her claims. The Court chose not to do so. LUNDAHL contends that the defect became moot by the time the court issued its order on December 10, 2001. If this Court should concur with the trial court's ruling, it was nevertheless clear error for the trial court to have dismissed the claims subject matter of LUNDAHL's second notice of claim with prejudice on the grounds of lack of subject matter jurisdiction. See URCP rule 41(b) - dismissal for lack of subject matter jurisdiction must be without prejudice.

V. PLAINTIFF'S CLAIMS AGAINST HARDING JR AND TRONIER ARE NOT
BARRED BY ABSOLUTE JUDICIAL IMMUNITY

A. THE APPELLEES ARE NOT ABSOLUTELY JUDICIALLY IMMUNED UNDER THE
FEDERAL CIVIL RIGHTS ACT

THE FACTS STATED BY APPELLEES ARE FALSE. Plaintiff's claims against Harding Jr are based upon Harding Jr acting without subject matter jurisdiction and fraudulently and maliciously vacating defaults/judgments against EMPIRE and SOURCE ONE and fraudulently and maliciously dismissing LUNDAHL's claims against CNA as barred by res judicata. LUNDAHL's claims against TRONIER is based upon his failure to enter a sum certain default judgment against SOURCE ONE in case no. 990402021 and defaults and sum certain default judgments against LILLY, Advanced Cardiovascular Systems and Leahy in case no. 990403068 for specifically pled equitable relief. LUNDAHL's FAC clearly alleged the jurisdictional defect on Harding JR's equity rulings and TRONIER's ministerial violations. Appellees claim that LUNDAHL's claims against TRONIER was mooted by Harding Jr's decisions to vacate the default judgments against EMPIRE and SOURCE ONE and hence argue this defense as to Harding jr only.

Appellees argue a plethora of federal civil rights cases standing for the correct legal proposition that a judge cannot be sued for money damages unless "the court's subject matter jurisdiction is circumscribed by statute or case law," [See Stump v. Sparkman, 435 US 349, hn c (1978)], or the court acts in a non-judicial manner. LUNDAHL agrees. In the case at bar however Harding JR's subject matter jurisdiction over the defaults/default judgments of EMPIRE and SOURCE ONE was circumscribed by statute and by case law under rule 60(b)(1) and Richins, supra, because EMPIRE and SOURCE ONE never filed the required motions to give Harding Jr subject matter jurisdiction. Therefore he was not protected by absolute judicial immunity under the federal civil

rights act. Nevertheless LUNDAHL did not sue Harding Jr for money damages under the federal civil rights act. LUNDAHL'S suit against Harding Jr under the federal civil rights act was limited solely to EX PARTE YOUNG declaratory and injunctive relief. The 10th circuit in re Smith v. Plati, 258 F3d 1167, fn 1 (10th Cir. 2001) held to the long established rule that a state official can be sued in his official capacity for prospective equitable relief to remedy violations to the Constitution or other federal laws citing to EX PARTE YOUNG, 209 US 123 (1908). Because Harding Jr violated LUNDAHL'S 14th amendment right to be free from deprivation of property [a cause of action is property] without due process of law and because Harding Jr's violations are ongoing and continue to inflict prospective harm upon LUNDAHL. Under the doctrine, LUNDAHL was entitled to decrees declaring the October 12, 1999 order VOID as to EMPIRE and SOURCE ONE and the February 18, 2000 order void as to CNA. LUNDAHL was also entitled to a permanent injunction order compelling reinstatement of the defaults and default judgments against EMPIRE AND SOURCE ONE as a matter of law and to a jury trial of LUNDAHL's claims against CNA.

B. APPELLEES HAVE WAIVED ANY CLAIM THAT THEY WERE ABSOLUTELY JUDICIALLY IMMUNED UNDER THE UTAH GOVERNMENTAL IMMUNITY ACT

All of the state and federal authorities cited by appellees deal solely with immunities available under the federal civil rights act. APPELLEES HAVE NOT ARGUED AND THEREFORE HAVE WAIVED ANY CLAIM TO PERSONAL IMMUNITIES UNDER THE UTAH GOVERNMENTAL IMMUNITY ACT. It is uncontested that the Utah Governmental Immunity Act waives personal immunity for officials of the state if they act with fraud and malice in the performance or non-performance of their duties. U.C.A. section

63-30-4(3)(b); Nielson v. Gurley, 888 P.2d 130, 136 (UT App. 1995). The record shows that Harding Jr acted with malice in vacating defaults/judgments entered against EMPIRE and SOURCE because he acted in reckless disregard of the law and LUNDAHL's legal rights on matters for which he had no subject matter jurisdiction. Moreover Harding Jr could not claim any misconduct on the part of LUNDAHL that led to EMPIRE and SOURCE ONE's defaults because Judge Harding Jr. himself twice ordered EMPIRE and SOURCE ONE to file the required motions to give his court subject matter jurisdiction to vacate the defaults/judgments entered against EMPIRE and SOURCE ONE on July 9, 1999. These defaulting defendants twice chose with deliberation not to file the required motions within the statutory time periods. On October 12, 1999, to overcome the jurisdictional defect, Harding Jr executed a deceptive and fraudulent interlocutory order whereby he falsely represented that EMPIRE had filed the required motion and that he was granting relief to SOURCE ONE sua sponte. He also vacated the default against CNA which was a legally permissible given CNA did file the required motion within the time allowed by law. However Harding Jr's malice and fraud did not stop there. On October 12, 1999 when he vacated the judgments against EMPIRE, SOURCE ONE and CNA, he also ordered the parties to file responses within 30 days to LUNDAHL's Verified FAC. Again the only party to file a response was CNA who fraudulently claimed that LUNDAHL's claims before Harding Jrs court relating to the wrongful foreclosure of her home, were identical to the Anti trust and police brutality claims subject matter of a Utah federal action. 16 On February 18, 2000 Ray

16. During the prosecution of CNA's motion to dismiss, LUNDAHL provided Harding Jr's court with commercial publications showing that CNA Financial Corporation was the surviving corporation to a merger with over 120 companies formerly belonging to Continental Corporation and for which Continental Insurance Company and Continental Assurance Company

Harding Jr not only maliciously and fraudulently barred LUNDAHL claims before his court but based upon the global and broad nature of his order, Harding Jr barred LUNDAHL from bringing any claim against any CNA related entity forevermore. CNA then subsequently presented this corrupted order to every court wherein LUNDAHL and a CNA entity were named parties. Moreover to further maliciously injure LUNDAHL, Harding Jr then subsequently dismissed LUNDAHL's claims against EMPIRE as covered by the federally approved December 10, 1995 settlement agreement and unilaterally quashed service of LUNDAHL's process upon SOURCE ONE by falsely claiming that LUNDAHL had improperly served SOURCE ONE. After these dispositions, there were no remaining claims against CNA, EMPIRE or SOURCE ONE. LUNDAHL moved for rule 54(b) certification which Harding denied. LUNDAHL sought permission to file an interlocutory appeal which was denied by the Utah Supreme Court. LUNDAHL sought extraordinary relief which was denied. LUNDAHL'S action was then improperly removed to the federal court, ordered consolidated and then indefinitely stayed. In the meantime: (1) some of LUNDAHL's unrelated claims against other unrelated CNA entities were dismissed as barred under res judicata by Harding Jr's interlocutory order [It should be noted that LUNDAHL still has two state actions pending against unrelated CNA merged corporation parties which LUNDAHL has not yet served CNA to avoid the corrupt effect of Harding Jrs void interlocutory order; hence these state cases are in limbo.] (2) LUNDAHL has filed bankruptcy to avoid creditors created by

were separate merged corporation parties insuring different legal interests. LUNDAHL provided Harding Jr's court with the homeowners insurance policy at issue before Harding Jr's Court and the ACS ERISA health plan document which Continental Assurance Company insured in the federal court. LUNDAHL testified that the injuries in Harding Jr's Court and the injuries in the federal action were completely different, the transactions and contracts at issue were unrelated, the causes accrued at the very least 4 years apart from each other, no evidence was alike, and the parties were not the same nor in privity with one another.

the theft of her home by SOURCE ONE and a number of these creditors have filed adversary proceedings against LUNDAHL, and (3) EMPIRE has undergone dissolution making payment of the judgment impossible.

Under the UGIA, there were no legal justifications for Harding Jr's fraudulent and malicious conduct towards LUNDAHL and under the UGIA LUNDAHL is entitled to money damages as a matter of law.

With respect to TRONIER, he fraudulently refused to enter the sum certain default judgment against SOURCE ONE under URCP rule 55(b)(1). Hence if this court does not reinstate the default judgment against SOURCE ONE, Tronier along with Harding Jr should be held liable to LUNDAHL for the judgment amount therein stated as well as any additional actual, special and/or punitive damages LUNDAHL might be therefore entitled.

V| LUNDAHL'S CLAIMS AGAINST RAY HARDING JR ARE NOT BARRED BY
RES JUDICATA IN LUNDAHL I

HARDING JR claims that LUNDAHL's claims against Harding JR are barred by the prosecution of LUNDAHL I. First, LUNDAHL I only sued Judge Harding in his official capacity. The underlying action sues Judge Harding Jr. in his personal capacity. The federal and state courts generally hold that a subsequent action that sues the defendant in a different capacity as the prior action, does not bar prosecution of the second claim. Roush v. Roush, 589 P.2d 841 (Wyo. 1979); Also VanSickle v. Halloway, 791 F2d 1431 (10th Cir. 1986). In addition, LUNDAHL could not have included her state law claims in the prior federal action because the administrative process had not completed on the federal claims. See Havercombe v. Dept. of Ed., 250 F.3d 1, fn 9 (1st Cir. 2001) citing to exceptions in the claim spitting rule in

Restatement (Second) of Judgments section 26, cmt c ("where formal barriers existed against full presentation in the first action," such as where subject matter jurisdiction is limited in the court of the first action thus preventing plaintiff from relying on a theory of law or a form of remedy) or, id., cmt j (where the defendant has committed fraud in the prosecution of the first action by concealing material evidence). Respecting the first exception above stated, LUNDAHL argued in her opening brief that she could not prosecute her state law UGIA claims in the EX PARTE YOUNG declaratory/injunction action because the tribunal in the EX PARTE YOUNG action lacked subject matter jurisdiction to hear LUNDAHL'S UGIA claims until the administrative process had completed. 17 In response thereto, Judge Harding argues that LUNDAHL should have waited to file her federal civil rights action until the state law claims became actionable. However as set forth supra, LUNDAHL stood in risk of not being able to recover her damages against EMPIRE due to dissolution, LUNDAHL was attempting to prevent multiple lawsuits from being prosecuted against her by creditors on her home which had been admittedly stolen by SOURCE ONE, and LUNDAHL needed to nullify the effect of Harding's void res judicata ruling as to CNA before CNA successfully used this fraudulent ruling to obstruct the prosecution of 7 other unrelated actions against other CNA merged entities pending before 7 different federal and state courts. [See pending appeal case no. 20010845, LUNDAHL v. HOTSY, et al where CNA successfully used

17. Harding Jr. has deferred to federal court decisions holding that it was not necessary to obtain a right to sue letter from a state agency in order for a Title IV federal civil rights court to hear plaintiff's state law civil law civil rights claims. First Harding Jr appears to want his cake and eat it to as he has argued that LUNDAHL should not be able to proceed on the claims presented in her second notice of claim because LUNDAHL filed an amended complaint joining the allegations of the second notice of claim, before the state of Utah issued a denial letter on the claims presented in the second notice.

Harding Jr.'s interlocutory order as res judicata bar to the prosecution of an automobile personal injury action.] The Utah Supreme Court in *Nebecker v. Utah State Tax Commission*, 2001 UT 74, 34 P.3d 180, 184 (UT 2001) citing to well established law affirmed "As a general rule parties should exhaust administrative remedies before bringing constitutional claims... However exceptions to this rule exist in unusual circumstances where it appears that there is a likelihood that some oppression or injustice is or will occur such that it would be unconscionable not to review the alleged grievance immediately.") LUNDAHL met these exceptional circumstances.

With regards to the second contention, Ray Harding Jr committed fraud in both the trial court and the appellate court in the prosecution of LUNDAHL I by concealing a very material fact to wit: that the challenged orders were not final but were interlocutory thereby barring LUNDAHL from seeking EX PARTE YOUNG prospective declaratory/ injunctive relief.¹⁸ Not only does Harding Jr's commission of fraud bar the application of res judicata in accordance with Restatement (Second) of Judgments, cmt f because the prior court was unable to yield a coherent disposition of LUNDAHL's EX PARTE YOUNG claim due to Harding Jrs fraud,

¹⁸. Black's law dictionary defines fraud by a state official as "a misrepresentation made recklessly without belief in it's truth to induce another person [public officer or member] to act." The definition cites to 10th circuit authority, *Chesholm v. House*, 160 F2d 632 (10th Cir. 1947) (fraud by an official occurs when official executes reports [or in the instance of a judge - orders], which are false and misleading, with knowledge that the orders will inflict unjustified or unauthorized injury upon a person subject to the report or order.) Fraud on the court is defined by Black's law dictionary as serious misconduct in a proceeding as committed by an officer of the court such that the integrity of the judicial process is undermined. Legal and constructive fraud is defined as unintentional or intentional deception that causes injury to another. Malice by an official is defined as "reckless disregard of the law or of a person's legal rights." Deception and misrepresentation is defined as creating or confirming by words or conduct an impression of law or fact that is false... and that is likely to effect the judgment of another in the transaction.

but also because Restatement (Second) of Judgments, cmt d [exhibit "66" attached to OB] precludes res judicata when the judgment in the first action was plainly inconsistent with the fair and equitable implementation of a statutory scheme [here the appellate scheme]. [Refer back to exhibits 1-2 attached hereto for showing that even the appellate courts committed due process errors in addressing the claims in LUNDAHL I]. As stated in *Montana v. United States*, 440 US 147, 164, no. 11, 99 S Ct 970, 979 n.11, 59 L Ed 2d 210 (1979), the high court held that "If there is reason to doubt the quality, extensiveness or fairness of procedures followed in prior litigation, redetermination of issues and claims are warranted." Finally, the challenged orders are and were clearly interlocutory. Utah Courts have long held that interlocutory orders are not entitled to res judicata or law of the case effect. Cf *Richardson v. Grand Central* ., 572 P.2d 396,397 (Utah 1977).

VII. LUNDAHL'S CLAIMS AGAINST MIKE TRONIER ARE NOT BARRED BY COLLATERAL ESTOPPEL AND FURTHER THE APPELLEES WAIVED THE RIGHT TO RAISE THIS DEFENSE ON APPEAL

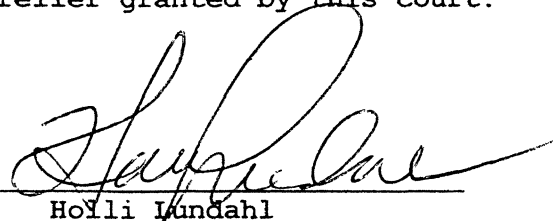
TRONIER did not raise the defense of collateral estoppel in the lower court action and should not be permitted to argue this defense on appeal. "Issues not raised in trial court may not be raised on appeal." *DeBry v. Noble*, 889 P.2d 428, 444 (Utah 1995). In addition issue preclusion could not otherwise apply because Tonier was not made a party to LUNDAHL I, Harding Jr was not sued in Tronier's capacity as a clerk for failing to perform statutory duties under URCP rule 55(b)(1) and 55(a), the issues of Tronier's failures to perform certain statutory duties was never litigated in LUNDAHL I, Harding Jr committed fraud upon the trial and appellate courts in LUNDAHL I and therefore such obstruction would translate to Tronier, and LUNDAHL could not present

all of her claims in LUNDAHL I. Based thereon, this court should not consider much less affirm a dismissal of LUNDAHL's claims against Tronier on this ground.

VIII CONCLUSION

For the above stated reasons, this Court should reverse the trial court's dismissal order, find the underlying complaint not barred under the theory of collateral attack, by res judicata or by collateral estoppel, find LUNDAHL's action not barred by absolute judicial immunity, find the acts under the subject matter jurisdiction provisions of rule 60(b)(1), and the default functions under rules 55(a) and (b)(1) ministerial, find appellees failed to performed their ministerial duties and acted with fraud and malice, find appellees personally liable to LUNDAHL as a matter of law, grant LUNDAHL's claim for EX PARTE YOUNG declaratory and injunctive relief and reinstate the default judgments entered against EMPIRE and SOURCE ONE, vacate the dismissal order as to CNA, remand this action to the trial court with permission to add CNA as a party, allow LUNDAHL to prosecute her claims against CNA on the merits under the claims presented in case no. 990402021 and as a joint conspirator with Harding Jr and Tronier, and order that this case be sent to a jury for a trial on the damages incurred after the EX PARTE YOUNG relief granted by this court.

Dated: February 19, 2003




Holly Lundahl
Attorney Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that on February 20, 2003 she served
REPLY BREIF OF APPELLANT on the following parties, along with her MOTION
FOR EXTENSION OF TIME TO FEBRUARY 24, 2003:

Brent Burnett
Assistant Attorney General
160 East 300 South, Sixth Floor
Salt Lake City, UT 84114
Facsimile No. 801 366-0101



Holli Lundahl

ORIGINAL

FILED

JUN 20 2001

CLERK SUPREME COURT
UTAH

PETITION FOR WRIT OF CERTIORARI

BEFORE THE UTAH SUPREME COURT

HOLLI LUNDAHL	:	SUPREME COURT NO.:
	:	
Petitioner	:	Court of Appeals
	:	No: 20010049-CA
v.	:	
	:	Trial Court No.
JUDGE RAY HARDING JR	:	990402021
	:	
Respondent	:	

Attorney for Ray Harding Jr.
Brent Johnson
3rd floor
450 S. State Street
Salt Lake City, Utah 84114

Holli Lundahl
Attorney Pro Se
1042 E. Fort Union Blvd
Ste 481
Midvale, utah 84047

Utah Court of Appeals

01/29/2003

Docket Event Listing

Lundahl v. Harding

Docket No: 20010049 Docket Date: 01/17/2001

App. Type: Civil Appeal

Agency: FOURTH DISTRICT, PROVO DEPT

Case: 000401252

Status: Closed

Holli Lundahl - Appellant Pro Se

Judge Ray Harding, Jr. - Appellee

BRENT M. JOHNSON (ADMINISTRATIVE OFFICE OF THE COURTS)

01 01/17/2001 Notice of Appeal Filed

02 02/02/2001 Extension of Time Filed By FaxReceived 02/05/2001 PHB
Motion for extension of time to file a Docketing Statement

03 02/02/2001 Ack. of Request for Transcript
Beverly Lowe, reporter, received request on Jan. 23, 2001 for the
12/18/00 transcript.

04 02/02/2001 Extension of Time for DocketinGranted 02/05/2001 PHB
Appellant's motion for a 19-day extension to February 21, 2001 to file
the docketing statement.

05 02/05/2001 Extension Granted PHB
IT IS HEREBY ORDERED the motion is granted. The appellant's docketing
statement is due to be filed with the Supreme Court on or before February
21, 2001. Absent exigent circumstances, no further enlargments of time
will be granted.

06 02/05/2001 Hard Copy Received of Fax
Extension for docketing statement.

07 02/13/2001 Notice of Transcript Filed TC
Beverly Lowe, reporter gives notice that Transcripts were completed and
filed in trial court.

08 02/21/2001 Docketing Statement Filed CS

09 03/06/2001 Motion-Appellee-Summary Dispos CS

10 03/06/2001 Memorandum of Points & Authori CS

11 03/12/2001 Extension of Time-Misc. Granted 03/19/2001 PHB
Appellant's Motion for Extension of Time to File Summary Motions.

12 03/16/2001 Extension of Time-Misc. Granted 03/19/2001 PHB
Appellant's Motion for Extension of Time to Respond to Judge Ray Harding
Jr's [Permissive] Moiton for Summary Disposition.

13 03/19/2001 Extension Granted PHB

IT IS HEREBY ORDERED the motions are granted. The appellant's response to appellee's motion for summary disposition and appellant's motion for summary disposition are due to be filed with the Supreme Court on or before March 30, 2001. Absent exigent circumstances no further extensions of time will be granted.

14 03/30/2001 Transfer to CA per Sec 78 PHB

15 03/30/2001 Clerk's Note

CS
Appellant's opposition to Ray Harding Jr's motion for summary disposition
and alternative motion for summary reversal and judgment in appellant's
favor as a matter of law.

17 04/05/2001 Received from Supreme Court(po
Pourover letter informed parties that motions for summary disposition was
not ruled on by the Supreme Court prior to the pourover, therefore, the
motion is before the Court of Appeals for disposition. Once this Court
has ruled, parties will be notified.

18 04/06/2001 Call for Record Pursuant to R.
I left a message with Teri, Fourth Dist., Provo requesting records AS IS
per CS.

19 04/13/2001 Record Filed - Pursuant to R.1
2 VOL pleadings, 1 VOL 12/18/00 transcript.

20 04/19/2001 Courtesy Copy
Plaintiff's motion to modify the appellate record pursuant to utah rules
of appellate procedure

21 05/03/2001 Summary Disposition
PER CURIAM: Affirmed before JJ's Greenwood, Billings, Orme.

22 05/14/2001 Petition for Rehearing Denied 05/21/2001 PTG
Filed by appellant. Forwarded to CS.

23 05/21/2001 Petition for Rehearing Denied PTG
IT IS HEREBY ORDERED that her petition is denied.

24 06/27/2001 Courtesy Copy
Letter from Supreme Court to Appellant that the petition for writ of
cert. filed is being returned back. The Writ of Cert must be filed within
thirty days form the final order of the Utah Court of Appeals.

25 07/12/2001 Notice - Writ of Cert Filed
Writ of Cert filed in Supreme Court - Copy sent to CS.

26 03/27/2002 Notice- Writ of Cert Denied in
IT IS HEREBY ORDERED that the petition for permission to appeal an
interlocutory order filed on June 20, 2001 is denied.

27 03/27/2002 Remitted
Returned 2 VOL. Pleadings, 1 VOL. 12/18/00 Transcript to Fourth Dist.,
Provo Dept.

APPENDIX "A"

The verified FAC in re 990402021 showed that LUNDAHL sued EMPIRE for: wrongful lien; RICE violations for fiduciary fraud, recording of a false instrument & communications Fraud; emotional and mental distress; a declaration that the December 10, 1995 Settlement Contract was valid and enforceable; attorneys fees and contractual prejudgment interest. All that LUNDAHL needed to prove was that: (1) an encumbrance operating as a lien was recorded against LUNDAHL's property, (2) the encumbrance/lien contained false information; (3) the false information was communicated to LUNDAHL and others; (4) the fraudulent scheme would likely deprive LUNDAHL of valuable properties; and (5) [in the case of wrongful lien] LUNDAHL was actually injured by recordation of the false encumbrance/lien. LUNDAHL in her judgments specifically identified her causes of actions against EMPIRE and SOURCE ONE and the admitted facts which would support her causes of actions. [Refer to ex. "51" attached to OB for true and correct copy of EMPIRES' judgment.] The established facts in EMPIRE'S Judgment showed that: (1) EMPIRE assigned all rights, obligations, interests, benefits, duties and liabilities under LUNDAHL's mortgage contract to SOURCE ONE on April 9, 1996, (2) EMPIRE cashed LUNDAHL's April 1996 mortgage payment before assignment, (3) all of LUNDAHL's mortgage duties under the First Note and Trust Deed were current to the date of April 30, 1996, (4) the December 10, 1995 settlement agreement was valid and enforceable; (5) On April 9, 1996 EMPIRE recorded a wrongful lien against LUNDAHL's property by filing an assignment contract which had been fraudulently backdated to the date of October 30, 1995, which was not then supported by any consideration, and which was an endeavor to invalidate the settlement contract approved as valid and final by a California federal Court; (6) the recording of the false and void assignment contract ultimately resulted in actual damages to LUNDAHL as it was instrumental in obtaining a wrongful foreclosure against LUNDAHL's real property in December of 1996; (7) the filing and recording of the false assignment contract constituted a material breach of LUNDAHL's settlement contract, was a wrongful lien under the Utah wrongful lien act, and constituted fiduciary fraud on EMPIRE's part because EMPIRE was purporting to convey property rights to a third person under a VOID contract knowing that certain omissions under the contract would injure LUNDAHL. LUNDAHL alleged contractual damages against EMPIRE in the amount of \$5,000. The judgment identifies trebled damages of \$15,000 being awarded to LUNDAHL as authorized under the wrongful lien statute and the fiduciary fraud statute. LUNDAHL also sued EMPIRE severally for emotional and mental distress. The record shows that LUNDAHL served EMPIRE with requests for admissions wherein she asked EMPIRE to admit that a damage award of \$25,000 for emotional and mental distress would be fair for EMPIRE's participation in the schemes alleged by LUNDAHL in her complaint. These admissions were made part of the trial record before Tronier properly entered the default judgment against EMPIRE. Also under Utah RICE, LUNDAHL was entitled to any attorneys fees expended for prosecution of her claims. [It should be noted that LUNDAHL paid attorney Mary Ann Hansen \$2500 for special

assistance in the prosecution of her claims regarding her home.] In addition, in accordance with the mortgage contract LUNDAHL entered into with EMPIRE, LUNDAHL was entitled to prejudgment interest and other costs for prevailing on any claims relating to her mortgage contract. THE JUDGMENT SET FORTH IN EXHIBIT "51" ATTACHED TO THE OB WAS BASED ON ADMITTED FACTS AND WAS SUPPORTED BY VALID CLAIMS PLED BY LUNDAHL IN THE FAC.

AS to SOURCE ONE, a referral to exhibit "57" attached to the OB - the judgment - shows the following admitted facts and identifies LUNDAHL's valid legal claims against SOURCE ONE. The admitted facts are: (1) the backdated assignment contract on the 1st Note and trust deed held by EMPIRE and recorded on April 9, 1996 was VOID because it was backdated and because no consideration supported the assignment, (2) the assignment of LUNDAHL's mortgage contract did not occur until April 30, 1996 when Source One supported the assignment contract with consideration and the mortgage note was actually delivered to SOURCE ONE; (3) All of LUNDAHL's obligations as the trustor under the 1st Note and Trust Deed were current to the date of April 30, 1996; (4) SOURCE ONE received LUNDAHL'S May 1, 1996 mortgage payment and refused to cash same in violation of the Mortgage Servicing Act; (5) SOURCE ONE illegally froze Holli Lundahl's mortgage account commencing June 1, 1996; (6) Holli Lundahl never defaulted upon her obligations under the 1st Note and Trust Deed; (7) SOURCE ONE had no legal justification for recording an instrument declaring Holli Lundahl in default; (8) The Notice of Default contained false material statements; (9) SOURCE ONE caused innocent people to publish said false Notice of Default for the purpose of defrauding LUNDAHL of money properties or other valuable things constituting a violation of the Utah Fraudulent Communication Fraud Act; (10) SOURCE ONE was a beneficiary, a self appointed trustee and a fiduciary to Holli Lundahl under the 1st Note and Trust Deed; (11) SOURCE ONE never served LUNDAHL statutory notice of the Default or the trustee's sale thereby rendering both VOID; (12) recording of the Notice of default constituted the filing of a wrongful lien in that it was materially false on it's face; (13) on December 13, 1996 without notice to LUNDAHL, SOURCE ONE became the owner to LUNDAHL's home at a trustee sale at which no one but SOURCE ONE appeared; (14) SOURCE ONE on December 13, 1996 converted \$1,089,000 in CONTRACTUALLY INSURED valuable real and personal properties belonging to LUNDAHL on a 6500 square foot home with a pool, spa, decks, ½ acre fully landscaped lot in an affluent neighborhood 1 block from the provo temple; (15) LUNDAHL was entitled to treble the actual damages sustained from the conversion, under the Utah Wrongful Lien Act; Utah RICE and RICO totaling \$3,267,000.00; (17) LUNDAHL was entitled to statutory attorneys fees in the amount of \$50,000 under RICE; (18) SOURCE ONE was a constituent entity of Fireman's Insurance Company of Newark New Jersey at all times herein mentioned; (19) CNA Financial Corporation owns Fireman's Insurance Company of Newark New Jersey; (20) CNA Financial Corporation owned Continental Insurance Company which insured LUNDAHL's home against any losses LUNDAHL sustained; (21) CNA's position as a mortgagee under the name of SOURCE ONE and CNA's position as the insurer on LUNDAHL's mortgaged real property violated the

conflict of interest rules under the Utah Insurance Code and rendered the assignment contract void under U.C.A. section 31A-4-107(2), and (22) SOURCE ONE committed a wrongful foreclosure. In addition, LUNDAHL served upon SOURCE ONE requests for admissions wherein LUNDAHL requested SOURCE ONE admit the amount of statutory damages LUNDAHL would be entitled under the Utah Wrongful Lien Act; admit the amount of special damages LUNDAHL would be entitled to for intentional infliction of emotional and mental distress for a wrongful foreclosure, admit attorneys and other contractual fees LUNDAHL would be entitled to as a matter of law. The record shows that SOURCE ONE received LUNDAHL's requests for admissions and never filed an objection. These requests for admissions were submitted in support of LUNDAHL's default judgment against SOURCE ONE. [See ex. "57" attached to OB for default judgment.] Since LUNDAHL stated valid claims against Source One and sought sum certain damages, then Tronier had a ministerial duty to enter LUNDAHL's default judgment against SOURCE ONE under rule 55(b)(1) and Harding Jr could not sua sponte set aside LUNDAHL's default against SOURCE ONE because he lacked subject matter jurisdiction to do so and because LUNDAHL stated valid claims against SOURCE ONE.