

1992

Kendrick Brothers Construction Company, Inc. v. Clare T. Morse and Transamerica Equities, Inc. : Brief of Appellee

Utah Court of Appeals

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Marlon L. Bates; Scalley & Reading; Attorneys for Plaintiff and Appellee.

Wesley F. Sine; Attorney for Defendants/Appellants.

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IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : BRIEF OF APPELLEE, KENDRICK
COMPANY, INC., BROTHERS CONSTRUCTION COMPANY,
INC.

Plaintiff and Appellee,

vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Case No. 920103-CA
District Court No. 910900069CN

Defendants and Appellants. : Priority Classification 16

* * * *

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY
HONORABLE HOMER F. WILKINSON

* * * *

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FILED

APR 9 1992

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IN THE COURT OF APPEALS
FOR THE STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION :	BRIEF OF APPELLEE, KENDRICK
COMPANY, INC.,	BROTHERS CONSTRUCTION COMPANY,
	INC.
Plaintiff and Appellee,	
vs.	:
CLARE T. MORSE and	Case No. 920103-CA
TRANSAMERICA EQUITIES, INC.,	District Court No. 910900069CN
Defendants and Appellants. :	Priority Classification 16

* * * *

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY
HONORABLE HOMER F. WILKINSON

* * * *

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JURISDICTION OF APPELLATE COURT

This Court has jurisdiction pursuant to Utah Code Annotated §78-2(a)-3(2)(j) (1953 as amended) which grants jurisdiction over cases transferred to this Court from the Utah Supreme Court.

STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW

Did the trial court abuse its discretion in refusing to set aside a default judgment which was entered after a lengthy pattern of neglect by both the attorney and his clients? The trial court is afforded broad discretion in ruling on a motion to set aside a default judgment under Rule 60(b) of the Utah Rules of Civil Procedure. Only where the appellate court finds a clear abuse of this broad discretion should the trial court's decision be reversed. Russell v. Martell, 681 P.2d 1193, 1194 (Utah 1984); Gardiner and Gardiner Builders v. Swapp, 656 P.2d 429, 430 (Utah 1982); Board of Education of Granite School District v. Cox, 14 Utah 2d 385, 386, 384 P.2d 806, 807 (1963); Mayhew v. Standard Gilsonite Company, 14 Utah 2d 52, 53, 376 P.2d 951, 952 (1962); Airkem Intermountain, Inc. v. Parker, 30 Utah 2d 65, 67, 513 P.2d 429, 431 (1973).

DETERMINATIVE STATUTES AND RULES

"Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. 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; . . . The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken." Rule 60(b)(1), Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

A. Nature and Course of Proceedings: This is an appeal taken from the trial court's order denying defendants' motion to set aside a default judgment under Rule 60(b)(1) of the Utah Rules of Civil Procedure. On June 3, 1991, the trial court signed an order striking defendants' answer and awarding default judgment in favor of plaintiff. (See Order Striking Answer and Awarding Default Judgment and Attorney's Fees, Addendum Exhibit "K".) On August 23, 1991 defendant moved the court to set aside the default judgment. (See Motion to Set Aside Default Judgment, Addendum Exhibit "C".) On October 18, 1991, a hearing was held on defendants' motion and the court determined that a clear and

inexcusable pattern of neglect by both the defendants and their attorney did not merit the setting aside of the default judgment. (See Reporter's Transcript of Hearing, Addendum Exhibit "J," pp. 10-11.)

B. Statement of Facts Relevant to Issue Presented:

1. On January 18, 1991, plaintiff's attorney sent a Request for Production of Documents to Grant G. Orton, the attorney for defendants. The mailing certificate indicates that the document was properly mailed to the address which Mr. Orton uses for his practice of law. The document was not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p.2.)

2. On February 22, 1991, plaintiff's attorney sent Mr. Orton a letter reminding him that the time to answer the Request for Production of Documents had now passed and granting Mr. Orton an extension of time until March 1, 1991 to respond to the Request. Mr. Orton was duly advised that if he failed to respond on or before March 1, 1991, a motion to compel would be brought and sanctions would be requested. The letter was correctly mailed to Mr. Orton's business address and was not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 2.)

3. On March 5, 1991, plaintiff's attorney filed a Motion to Compel Production of Documents and asked the Court to award attorney's fees associated with bringing the motion because of defendants' complete lack of response. This motion was also duly mailed to defendants' counsel and was not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 2.)

4. On April 1, 1991, plaintiff's attorney filed with the Court and duly mailed to defendants' attorney a Notice to Submit for Decision. This document was also not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 3.)

5. On April 5, 1991, the Court granted plaintiff's motion and ordered defendants to respond to the Request for Production of Documents within fifteen (15) days of April 5, 1991. The Court held in reserve the issue of awarding attorney's fees. The Court's Minute Entry was duly mailed to defendants' attorney at the same address to which plaintiff's attorney had been sending correspondence. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 3.)

6. On April 18, 1991, Mr. Orton telephoned plaintiff's counsel to apologize for neglecting the matter. Mr. Orton acknowledged that he received the Court's Minute Entry and

the previous documents but had been too busy to get with Mr. Morse. Mr. Orton said that he told Mr. Morse about the Request for Production of Documents but he did not think Mr. Morse had done anything yet to assemble documents. Mr. Orton then requested additional time and plaintiff's attorney denied the request, reminding Mr. Orton that he had already been given three months to respond. Finally, Mr. Orton said that he could not locate the Request for Production of Documents and asked if plaintiff's attorney would send him a new set. Plaintiff's attorney offered to fax the document to Mr. Orton so that he could have it immediately. As soon as the telephone conversation ended, plaintiff's counsel faxed the Request for Production of Documents to Mr. Orton. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," pp. 3-4.) (See also Affidavit of Marlon L. Bates, Addendum Exhibit "H," pp. 2-3.)

7. On April 23, 1991, plaintiff's attorney filed a Motion to Strike Answer, Enter Default Judgment and Award Attorney's Fees because of defendants' failure to respond in any manner within the time period ordered by the Court. A copy of this motion was duly mailed to Mr. Orton and was not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 4.)

8. On May 7, 1991, plaintiff's attorney filed a Notice to Submit and duly mailed a copy to Mr. Orton. The mailing was not returned by the post office. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 4.)

9. On May 21, 1991, the Court prepared a Minute Entry granting plaintiff's Motion to Strike Answer, Enter Default Judgment and Award Attorney's Fees. Once again, the Court properly sent a copy of the Minute Entry to Mr. Orton. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 4.)

10. On May 30, 1991, plaintiff's attorney sent to Mr. Orton a copy of the proposed Order Striking Answer and Awarding Default Judgment and Attorney's Fees. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 5.)

11. On June 3, 1991, the Court signed the proposed order. (See Order Denying Motion to Set Aside Default, Addendum Exhibit "K.")

12. On June 13, 1991, Clare Morse was personally served by a constable with two Motions and Orders in Supplemental Proceedings. One was served upon him in his capacity as the registered agent of Transamerica Equities, Inc., and the second was served upon him in his individual capacity. These motions fully explained on their face that judgment had been entered against both

defendants in the amount of Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00). (See Addendum Exhibit "B.")

13. Clare Morse and Transamerica Equities, Inc. did not show up at the hearing which was scheduled for June 30, 1991. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 13.)

14. On July 10, 1991, Clare Morse was personally served by a constable for a second time with two Motions and Orders in Supplemental Proceedings. (See Addendum Exhibit "B.")

15. Clare Morse and Transamerica Equities, Inc. did not show up at the hearing which was scheduled for July 23, 1991. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 6.)

16. On August 6, 1991, Clare Morse was personally served by a constable for a third time with two Orders to Show Cause. (See Addendum Exhibit "B.")

17. On August 12, 1991, one day before the Order to Show Cause hearing was scheduled, Clare Morse's new attorney, Wesley Sine, telephoned plaintiff's attorney and notified plaintiff's attorney that defendants had retained him to represent both defendants and that he would be filing a motion to set aside the default judgment. (See Opposition to Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "G," p. 6.)

18. On August 23, 1991, defendants' new attorney filed a Motion to Set Aside Sanctions and Judgment. (See Motion to Set Aside Sanctions and Judgment, Addendum Exhibit "C.")

SUMMARY OF ARGUMENT

The trial court carefully considered the merits of defendants' Motion to Set Aside Sanctions and Judgment and properly concluded that justice and equity would not be served by granting the motion. The basis of this conclusion was that both defendants and their attorney inexcusably neglected this case and several court orders over a period of seven and one-half months. Consequently, it would not be fair to reinstate the very litigation that defendants willfully avoided for such a long period of time.

ARGUMENT

As a general rule, courts in Utah are inclined to grant an applicant's motion to set aside a default judgment so that a case may be adjudicated on its merits rather than on procedural deficiencies. Westinghouse Electric Supply Co. v. Paul W. Larsen Contractor, Inc., 544 P.2d 876, 879 (Utah 1975). But it is also true that parties may lose their right to have their case adjudicated on the merits if their conduct so warrants. *Id.* at 879; Cox, 384 P.2d at 807. When a trial court undertakes this

decision, it is dealing with equitable rather legal principles. Warren v. Dixon Ranch Company, 123 Utah 416, 417, 260 P.2d 741, 742 (1953). Consequently, the court may "exercise wide judicial discretion in weighing the factors of fairness and public convenience, and this court on appeal will reverse the trial court only where an abuse of this discretion is clearly shown." *Id.* at 742. The moving party has the burden of showing that he or she used "due diligence" and was prevented from appearing by circumstances over which he or she had no control. Airkem, 513 P.2d at 431. Warren, 260 P.2d at 742. Furthermore, a party cannot hide behind the negligence of his or her attorney in attempting to set aside a default judgment. Warren, 260 P.2d at 743. Gardiner, 656 P.2d at 430. The negligence of a party's attorney is attributable to that party through principles of agency. Russell, 681 P.2d at 1195.

When the legal principles described above are applied to the facts of this case, it is easy to understand why the trial court refused to set aside the default judgment. In the present case, both the defendants and their attorney demonstrated a complete disregard for the judicial process over a long period of time.

The defendants' attempt to create an image of their original attorney as a patriotic soldier with mail problems who was

called to serve his county in the Kuwait War. (See Appellant Brief, p.6.) Unfortunately, the facts reveal several inconsistencies with this image. First, with respect to the attorney's involvement in the Kuwait War, he states in his affidavit that "During the months of January through May 1991, I have had numerous military assignments outside the State of Utah. . ." (See Affidavit of Grant G. Orton, Addendum Exhibit "F," p.2.) This is the extent to which we are informed of the attorney's military service during his period of neglect. The attorney does not state that he was unable to practice law during this period of time nor that he informed anyone of how his "numerous" assignments would affect the cases he was handling. The unrefuted fact is that defendants' attorney called plaintiff's attorney on April 18, 1991 (during the middle of the period of neglect) and apologized for failing to respond to the discovery request and acknowledged that he had received the trial court's minute entry granting plaintiff's motion to compel production of discovery. Defendants' attorney admitted that he had discussed the discovery with his clients but doubted that anything had been done by the clients to respond. Defendants' attorney further requested an extension of time because he was only two days away from the deadline imposed by the Court and this request was denied by plaintiff's attorney, who reminded him that he had already been given three months to respond.

Finally, defendants' attorney requested a second copy of the discovery request because he said he could not locate the original copy and plaintiff's attorney immediately faxed him a second copy. (See Affidavit of Marlon L. Bates, Addendum Exhibit "H," p.2.) Defendants' attorney did not refute any portion of this affidavit. Indeed, the above-referenced telephone conversation was objectively verified for the trial court by the billing records of the plaintiff's attorney which referenced this telephone conversation in early May of 1991, several months before this telephone conversation became an issue. (See "Exhibit C" to Affidavit of Marlon L. Bates, Addendum Exhibit "H.")

Right in the middle of defendants' attorney's alleged patriotic tour of military duty, he was practicing law in this very matter and had knowledge that his failure to respond to discovery would violate a court order compelling discovery. Notwithstanding this knowledge, absolutely nothing was done to respond and defendants' attorney took no action to withdraw from the case.

With respect to the alleged mail problems of defendants' attorney, he states in his affidavit that the post office would retain his mail during the times when his part-time secretary did not pick it up. Then he claims that this did not happen while he was on military assignments because when he checked with the post office, there was no mail retained. (See Affidavit of Grant G.

Orton, Addendum Exhibit "F," p.2.) With nothing more than this for an explanation of his mail problems, defendants' attorney denies he received a copy of the Judgment nor the motions filed before the Judgment was entered. (See Affidavit of Grant G. Orton, Addendum Exhibit "F," pp. 1-2.) It is undisputed that at least nine separate packages of documents were sent by plaintiff's attorney and the Court to defendants' attorney at his mailing address as contained on his pleadings from January through May of 1991. (See Opposition to Motion to Set Aside Default Judgment, Addendum Exhibit "G," p. 10.) It is also undisputed that none of these mailings from plaintiff's attorney were ever returned by the post office as undeliverable. (See Opposition to Motion to Set Aside Default Judgment, Addendum Exhibit "G," pp. 2-5.) Furthermore, the magnitude of a mailing problem that completely prevented the delivery of all nine packages of legal documents over a five month period should have been serious enough to cause a prudent person to become aware of the problem and solve it. But even if this incredible story regarding the mail is accepted, defendants' attorney's telephone conversation with the plaintiff's attorney on April 18, 1991 establishes that defendants' attorney knew the status of the case at that time and could reasonably have expected that his total neglect of the court order to produce discovery would only make matters worse.

In sum, the trial court was well within its broad discretion to conclude that the neglect by defendants' counsel was inexcusable. And under Utah law, the negligence of one's counsel can be attributed to the client as previously explained on page 9.


Although the defendants' attorney's negligence can be attributed to the defendants, the trial court had a much easier decision to make because the defendants also neglected this matter in an inexcusable manner. The affidavits of the Constables establish that on June 13, 1991, July 10, 1991 and August 6, 1991, Clare Morse was personally served with Orders in Supplemental Proceedings and Orders to Show Cause. On these same three occasions, Clare Morse was also served on behalf of Transamerica Equities, Inc., of which he was and is the Vice-President. (See Addendum Exhibit "B.") Both Clare Morse and Transamerica Equities, Inc. willfully refused to comply with these orders to appear in court to testify regarding assets. In fact, it was not until one day before the third hearing was scheduled wherein a bench warrant for the arrest of Clare Morse and Transamerica Equities, Inc. was going to be issued that defendants' new counsel telephoned plaintiff's counsel and informed him that he had been retained to represent defendants to file a motion to set aside the default judgment. (See Opposition to Motion to Set Aside Default Judgment, Addendum Exhibit "G," p. 6.) Although Clare Morse claims that one

of the three services was made upon his daughter rather than him, the constables' affidavits clearly show this was not the case. On all three occasions, Clare Morse was personally served with his own documents and with those on behalf of Transamerica Equities, Inc. Although defendants now argue that Clare Morse was not the registered agent of Transamerica Equities, Inc., they neglect to tell the Court that Clare Morse was and is the Vice-President and founder of the corporation. Consequently, both defendants had actual knowledge of the judgment from at least June 13, 1991 until the motion to set aside the judgment was filed on August 23, 1991. During this period of time, defendants completely disregarded the court's orders to appear in court. Notwithstanding this contempt for the court's orders and the judicial process, defendants now argue that the trial court abused its broad discretion by failing to reinstate the litigation to the place it was seven and one-half months before the neglect began. The trial court was properly within its broad equitable powers when it found that the defendants' willful violation of several court orders was too serious to allow the court to reinstate the litigation under equitable principles. (See Reporter's Transcript of Hearing, Addendum Exhibit "J," p. 11.)

CONCLUSION

The actions of defendants and their original attorney with respect to this litigation are reprehensible. They demonstrated the worst type of disregard for the judicial system. If trial courts award this type of serious and continuous abuse by reinstating litigation, our judicial system will be without any effective recourse to persuade lawyers and their clients to proceed in good faith and those who do proceed in good faith will be punished for their honorable efforts. The trial court wisely reviewed all the evidence and properly concluded that justice and equity would not be served by setting aside the default judgment. This Court should conclude that the trial court did not clearly abuse its broad discretion by affirming the decision of the trial court.

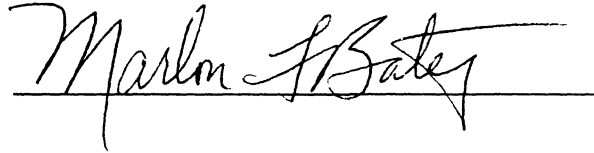
Respectfully requested this 9th day of April, 1992.


Marlon L. Bates
Attorney for Plaintiff and
Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 1992 I hand delivered a true and correct copy of the foregoing Brief of Appellee to the following:

Wesley F. Sine
Attorney for Defendants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Marlon J. Bates", is written over a horizontal line.

ADDENDUM
EXHIBIT "A"

JUDGMENT

Third Judicial District

JUN 03 1991

SALT LAKE COUNTY

By DE Deputy Clerk

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MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH


KENDRICK BROTHERS CONSTRUCTION :	ORDER STRIKING ANSWER AND
COMPANY, INC.,	AWARDING DEFAULT JUDGMENT
	AND ATTORNEY'S FEES
Plaintiff,	
vs.	:
	2165929
CLARE T. MORSE and	6-4-91-8:17am
TRANSAMERICA EQUITIES, INC.,	Civil No.910900069CN
Defendants.	:
	Judge Homer F. Wilkinson

Based upon Plaintiff's Motion to Strike Answer and Award Default Judgment and Attorney's Fees, Memorandum of Points and Authorities in Support thereof, and the Affidavit of Marlon L. Bates, attorney for plaintiff, and good cause appearing therefor,

IT IS ORDERED that defendants' Answer is hereby stricken and default judgment is entered against defendants, jointly and severally in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) plus attorney's fees in the amount of Two Hundred Thirty and No/100 Dollars (\$230.00) all of which shall accrue interest at the rate of 12% per annum until paid.

IT IS FURTHER ORDERED that the judgment awarded above shall be augmented by prejudgment interest at the legal rate, punitive damages, court costs, and additional attorney's fees, all in amounts to be established upon an evidentiary hearing for the purpose proving these additional damages.

BY THE COURT:

June 3, 1991

District Court Judge

MAILING CERTIFICATE

I hereby certify that on the 30 day of May, 1991, I mailed, postage prepaid, a true and correct copy of Order Striking Answer and Awarding Default Judgment and Attorney's Fees to the following:

Grant G. Orton, Esq.
2670 South 2000 East
Salt Lake City, Utah 84109



ADDENDUM
EXHIBIT "B"

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 13 June 91 TIME 5:18 PM
RTB 1682 TO 11400 S2
UPON Person
SANDY PRECINCT. SALT LAKE COUNTY, UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,

vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants.

:

Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Clare T. Morse, to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty Thousand and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 11 day of June, 1991.

200w. 11400 S.

So Jordan, Ut.

✓ 6292 S. 320 W. #200
Murray, Ut. RISA
C:\MLB\PLEADING\MORSE.SUP

SCALLEY & READING

Marlon L. Bates

Marlon L. Bates
Attorney for Plaintiff

Correct add

~~5296 S 320 W #200~~
vacant

ORDER

THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:


IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.


DATE : Thursday, June 20, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 11th day of June, 1991.

BY THE COURT:


Circuit Court Judge
Attest Clerk of the Circuit Court

By: 

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

J. D. MORSE

I am a duly appointed Deputy Constable of Sandy Precinct, Salt Lake County
State of Utah, a citizen of the United States over the age of 21 years at the
time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

PPLEMENTAL ORDER

the 12 of JUNE , 1991 , and served the same upon MORSE, CLARE T.
within named defendant in said,

PPLEMENTAL ORDER

serving a true copy of said,

PPLEMENTAL ORDER

for the defendant with CLARE T. MORSE (PERSONALLY)

person of suitable age and discretion there residing at,

00 WEST 11400 SOUTH

, SOUTH JORDAN

as/her usual place of ABODE

, on this 13 day of JUNE , 1991

I further certify that at the time of service of the said,

PPLEMENTAL ORDER

endorsed the date and place of service and added my name and official
title thereto.

On the 13 day of JUNE , 1991

Deputy

D. Morse

Deputy Constable

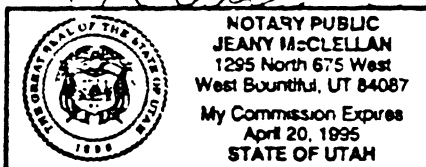
Sandy Precinct, Salt Lake County

Subscribed and sworn to before me this On the 13 day of JUNE , 1991

Commission Expires: April 20 1995

Notary Public

Jeany McClellan
6.00



State of Utah

fees
Service Fee
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2nd address
3rd address
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P&H/Extra's
Total

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6.00

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 13 June 91 TIME 5:18 PM
R/B 1600 W 11400 S
UPON Clare T. Morse (pres.)
SANDY PRECINCT, SALT LAKE COUNTY, UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs. :

CLARE T. MORSE and Civil No. 910900069CN
TRANSAMERICA EQUITIES, INC.,
Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Transamerica Equities, Inc., to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 11 day of June, 1991.

Clare T. Morse - Pres & Agent
~~6292 S. 3200 W #200 N.W.~~
incorrect add
~~5296 S 3200 W #202 Varand~~

SCALLEY & READING

Marlon L. Bates
Marlon L. Bates
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

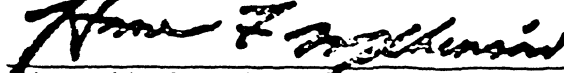
IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Thursday, June 20, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.


DATED this 11th day of June, 1991.

BY THE COURT:



Circuit Court Judge

Attest Clerk of the Circuit Court

By: 

Serve Defendant:
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

I am a duly appointed Deputy Constable of Sandy Precinct, Salt Lake County
te of Utah, a citizen of the United States over the age of 21 years at the
e of service herin, and not a part of or interested in the within action.

I received the within and hereto annexed,

PLEMENTAL ORDER

the 12 of JUNE , 1991 , and served the same upon TRANSAMERICA EQUITIES INC.
(
(
(
ithin named defendant in said,

PLEMENTAL ORDER

serving a true copy of said,

PLEMENTAL ORDER

the defendant with CLARE T. MORSE (PRESIDENT)
erson of suitable age and descretion there residing at,
SALT LAKE CITY
D WEST 11400 SOUTH
her usual place of ABODE
on this 13 day of JUNE , 1991

I further certify that at the time of service of the said,

PLEMENTAL ORDER

ndoresed the date and place of service and added my name and offical
le therto.

On the 13 day of JUNE , 1991

Deputy *D. Muelin*

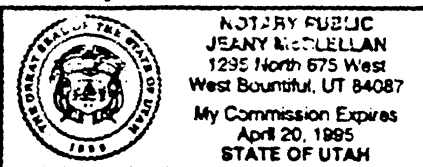
Deputy Constable
Sandy Precinct, Salt Lake County

scribed and sworn to before me this On the 13 day of JUNE , 1991

Commissian Expires: April 20 1995

Notary Public

Jeany McClellan
6.00
14.00



State of Utah

's Service Fee
Mileage
2nd address
3rd address
Copies
P&H/Extra's

Total

=====
20.00

I, O. MADSEN

do hereby certify and return that I received the within and hereto annexed
SUPPLEMENTAL ORDER

this 15 day of JUNE, 1991, and after due search and diligent inquiry I am
unable to find the within named defendant TRANSAMERICA EQUITIES INC.

6292 SOUTH 320 WEST #200

, SALT LAKE CITY

Salt Lake County, State of Utah and I am reliably informed and do verily
believe that said defendant is unable to be located at the above address.

Reason Returned

SUCH ADDRESS

On This 15 day of JUNE 1991

Deputy



Deputy Constable

Sandy Precinct, Salt Lake County

fees

Mileage	10.00
2nd address	
3rd address	
Copies	
P&H/Extra's	
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Total	10.00

I, O. MADSEN

do hereby certify and return that I received the within and hereto annexed
SUPPLEMENTAL ORDER

this 15 day of JUNE, 1991, and after due search and diligent inquiry I am
unable to find the within named defendant TRANSAMERICA EQUITIES INC.

5296 SOUTH 320 WEST #200, SALT LAKE CITY
Salt Lake County, State of Utah and I am reliably informed and do verily
believe that said defendant is unable to be located at the above address.

Person Returned

Amount

On This 15 day of JUNE, 1991

Deputy



Deputy Constable
Sandy Precinct, Salt Lake County

Sub

Mileage	9.00
2nd address	
3rd address	
Copies	
P&H/Extra's	
	=====
Total	9.00

JL 5 1991

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 10 July 91 TIME 9:15 p.
BY 11600 W. 11400 S.
UPON Clare T. Morse
SANDY F. BATES, CLERK OF DISTRICT COURT, SALT LAKE COUNTY, UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs. :

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Clare T. Morse, to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty Thousand and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 20 day of June, 1991.

6292 So. 320 W. #200
Murray
or
1600 W. 11400 So.
So. Jordan

SCALLEY & READING

[Signature]
Marlon L. Bates
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Tuesday, ~~July 9~~ ^{July 23} 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 20th day of June, 1991.

BY THE COURT:

Ann F. [Signature]
District Circuit Court Judge District
Attest Clerk of the Circuit Court

By: *[Signature]*

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

I, S. MANN

, being first duly sworn on oath and say:

I am a duly appointed Deputy Constable, Salt Lake County, State of Utah,
citizen of the United States over the age of 21 years at the time of service
within, and not a part of or interested in the within action.

I received the within and hereto annexed,

JPPLEMENTAL ORDER

on the 5 of JULY , 1991 , and served the same upon MORSE, CLARE T.

within named defendant in said,

(
(
(

JPPLEMENTAL ORDER

✓ serving a true copy of said,

JPPLEMENTAL ORDER

for the defendant with CLARE T. MORSE (PERSONALLY)

person of suitable age and descretion there residing at,

500 WEST 11400 SOUTH

, SOUTH JORDAN

is/her usual place of ABODE

, on this 10 day of JULY , 1991

I further certify that at the time of service of the said,

JPPLEMENTAL ORDER

endorsed the date and place of service and added my name and official
title thereto.

On the 10 day of JULY , 1991

Deputy

Deputy Constable

Salt Lake County, State of Utah

Robert J. Reitz Constable

On the 10 day of JULY , 1991

Subscribed and sworn to before me this

✓ Commission Expires: April 20 1995

Notary Public

ee's

Service Fee
Mileage
2nd address
3rd address
Copies
P&H/Extra's

Jenny
6.00
19.00

Total

=====

25.00



State of Utah

JUL 5 1991

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE July 91 TIME 9:15 p
FILE 1600 W 11400 So
UPON Clare T. Morse - Pres & Reg Agent
SANDY FRECHOT SALT LAKE COUNTY UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs. :

CLARE T. MORSE and Civil No. 910900069CN
TRANSAMERICA EQUITIES, INC.,

Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Transamerica Equities, Inc., to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

are T. Morse (pres & Reg Agent)
DATED this 20 day of June, 1991.

6292 So 320 W. #200
Murray
or
600 W. 11400 So.
So. Jordan

SCALLEY & READING

Marlon L. Bates
Marlon L. Bates
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Tuesday, ~~July 9~~^{July 23}, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 20th day of June, 1991.

BY THE COURT:

District

[Signature]
Circuit Court Judge *District*
Attest Clerk of the Circuit Court

By: *[Signature]*

Serve Defendant:
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Transamerica Equities, Inc.
c/o Clare T. Morse, President
1600 West 11400 South
South Jordan, Utah 84065

I, S. MANN , being first duly sworn on oath and say:

I am a duly appointed Deputy Constable, Salt Lake County, State of Utah,
citizen of the United States over the age of 21 years at the time of service
in, and not a part of or interested in the within action.

I received the within and hereto annexed,

PLEMENTAL ORDER

the 5 of JULY , 1991 , and served the same upon TRANSAMERICA EQUITIES,
(INC.
(
(

PLEMENTAL ORDER

serving a true copy of said,

PLEMENTAL ORDER

the defendant with CLARE T. MORSE (PRESIDENT & REG AGENT)
erson of suitable age and descretion there residing at,

O WEST 11400 SOUTH , SOUTH JORDAN

/her usual place of ABODE , on this 10 day of JULY,1991

I further certify that at the time of service of the said,

PLEMENTAL ORDER

ndoresed the date and place of service and added my name and offical
le therto.

On the 10 day of JULY. 1991

Deputy

Deputy Constable
Salt Lake County, State of Utah
Robert J. Reitz Constable

scribed and sworn to before me this On the 10 day of JUL , 1991

Commissian Expires April 20 1995

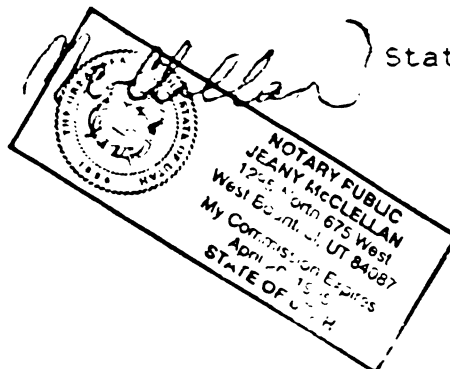
Notary Public

's Service Fee
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3rd address
Copies
P&H/Extra's

Total

6.00

6.00



State of Utah

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 6 Aug 91 TIME 9:00 PM
@ 1600 W 11400 So
UPON Person
[Signature]
Constable Reitz Deputy
5801741

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : ORDER TO SHOW CAUSE
COMPANY, INC.,

Plaintiff,
vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants.

:

Judge Homer F. Wilkinson

1600 W. 11400 So.

So. Jordan

THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:

2 So. 320 W. #200
Turrah

It appears from the records of this court that you were
ordered to appear in person before the District Court at the time
and place shown below to answer questions under oath concerning
your property.

Date: July 23, 1991
Time: 8:30 a.m.
Place: Third District Court
210 East 400 South
Room #303
Salt Lake City, Utah 84111

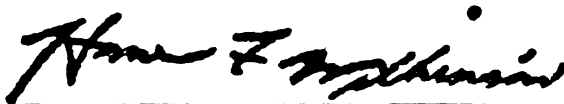
The records of this court further show that the order was
served upon you, and that you failed to appear as required.

IT IS THEREFORE ORDERED that you appear in person before
a judge of the District Court at:

Date: August 13, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

to show cause why you should not be punished for contempt of court
for failure to obey a lawful order of this court.

DATED this 23rd day of July, 1991.



District Court Judge
Attest Clerk of the District Court

By:
Deputy Clerk

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

I, O. MADSEN

, being first duly sworn on oath and say:

I am a duly appointed Deputy Constable, Salt Lake County, State of Utah,
citizen of the United States over the age of 21 years at the time of service
in, and not a part of or interested in the within action.

I received the within and hereto annexed,

ORDER TO SHOW CAUSE

the 25 of JULY , 1991 , and served the same upon MORSE, CLARE T.

within named defendant in said,

(
(
(

ORDER TO SHOW CAUSE

serving a true copy of said,

ORDER TO SHOW CAUSE

for the defendant with CLARE T. MORSE (PERSONALLY)

person of suitable age and discretion there residing at,

00 WEST 11400 SOUTH

, SOUTH JORDAN

s/her usual place of ABODE

, on this 6 day of AUG , 1991

I further certify that at the time of service of the said,

ORDER TO SHOW CAUSE

endorsed the date and place of service and added my name and official
title thereto.

On the 6 day of AUG , 1991

Deputy *O. Madsen* SL 802

Robert Reitz Constable, Salt Lake County
396 Cypress St., Midvale UT. 84047 580-1741

Subscribed and sworn to before me this On the 6 day of AUG , 1991

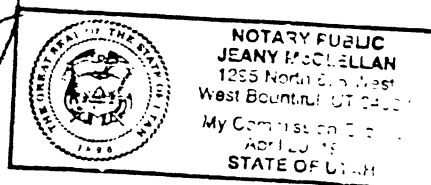
Commission Expires: April 20 1995

Notary Public

State of Utah

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3rd address
Copies
P&H/Extra's

6.00
19.00
10.00



Total

=====

35.00

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 6 Aug 91 TIME 9:10 PM
O-16000 11400 30
UFOL Clare + Morse (Ray)
S-
Constable Reitz 580171

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : ORDER TO SHOW CAUSE
COMPANY, INC.,

Plaintiff,
vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Clare T. Morse (Gen Agent & Pres.)
6292 So 320 W. #200
Murray
Defendants.

:

Judge Homer F. Wilkinson

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

V. 11400 So. It appears from the records of this court that you were
Jordan
ordered to appear in person before the District Court at the time
and place shown below to answer questions under oath concerning
your property.

Date: July 23, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

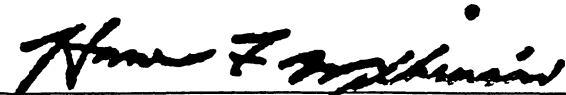
The records of this court further show that the order was
served upon you, and that you failed to appear as required.

IT IS THEREFORE ORDERED that you appear in person before
a judge of the District Court at:

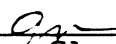
Date: August 13, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

to show cause why you should not be punished for contempt of court
for failure to obey a lawful order of this court.

DATED this 23rd day of July, 1991.



District Court Judge
Attest Clerk of the District Court

By: _____
Deputy Clerk

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

I, O. MADSEN

, being first duly sworn on oath and say:

I am a duly appointed Deputy Constable, Salt Lake County, State of Utah,
citizen of the United States over the age of 21 years at the time of service
in, and not a part of or interested in the within action.

I received the within and hereto annexed,

ER TO SHOW CAUSE

the 25 of JULY , 1991 , and served the same upon TRANSAMERICA EQUITIES,
(INC.
(
(

ER TO SHOW CAUSE

serving a true copy of said,

ER TO SHOW CAUSE

the defendant with CLARE T. MORSE (REG AGENT)

erson of suitable age and descretion there residing at,

WEST 11400 SOUTH , SOUTH JORDAN

her usual place of ABODE , on this 6 day of AUG , 1991

I further certify that at the time of service of the said,

ER TO SHOW CAUSE

ndoresed the date and place of service and added my name and official
e therto.

On the 6 day of AUG , 1991

Deputy *O. Madsen* SL 802

Robert Reitz Constable, Salt Lake County
396 Cypress St., Midvale UT. 84047 580-1741

scribed and sworn to before me this On the 6 day of AUG , 1991

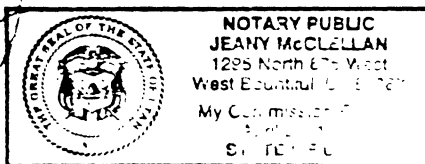
ommission Expires: April 20 1995

Notary Public

State of Utah

s Service Fee
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2nd address
3rd address
Copies
P&H/Extra's

6.00



Total

6.00

ADDENDUM
EXHIBIT "C"

WESLEY F. SINE (2967)
Attorney for Defendants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

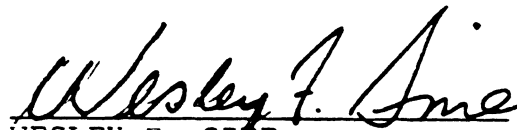
IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION	)	DEFENDANTS TRANSAMERICA
COMPANY, INC.,	)	EQUITIES AND CLARE T. MORSE'S
	)	MOTION TO SET ASIDE SANCTIONS
Plaintiff,	)	AND JUDGMENT
)	
vs.	)	Civil No.: 91090069CN
)	
CLARE T. MORSE and	)	JUDGE: WILKINSON
TRANSAMERICA EQUITIES, INC.,)	
)	
Defendants.)	

DEFENDANTS Transamerica Equities, Inc. and Clare T. Morse hereby move the Court pursuant to rules 55(c) and 60(b) Utah R. Civ. P., to set aside the Judgment Certificate and Sanctions in favor of Plaintiff against Transamerica Equities, Inc. and filed the 3rd day of June, 1991.

The grounds for this Motion and the facts support the same are more particularly set forth in the Affidavits and Memorandum in support hereof that are filed herewith.

DATED this 23rd day of August, 1991.


WESLEY F. SINE
Attorney for Defendants

ADDENDUM
EXHIBIT "D"

WESLEY F. SINE (2967)
Attorney for Defendants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION	)	MEMORANDUM OF POINTS AND
COMPANY, INC.,	)	AUTHORITIES IN SUPPORT OF
	)	PLAINTIFF'S MOTION TO SET
Plaintiff,	)	ASIDE DEFAULT AND DEFAULT
vs.	)	JUDGMENT
CLARE T. MORSE and)	
TRANSAMERICA EQUITIES, INC.,	)	Civil No.: 910900069CN
)	
Defendants.	)	JUDGE: WILKINSON

I. INTRODUCTION

This Memorandum is submitted to the provision of Rule 4-501, Utah Rules of Judicial Administration, in support of Defendants Grant G. Orton and Clare T. Morse's Motion to Set Aside Judgment and Sanctions filed by Plaintiff and served herewith.

II. STATEMENT OF MATERIAL FACTS

The record now before the court establishes the following facts that are material to Plaintiff's Motion:

1. In response to service of the Summons and Complaint in the above matter upon the defendants Transamerica Equities Inc. and Clare T. Morse, an answer was filed and served by mail on behalf of Transamerica Equities, Inc. and Clare T.

Morse on or about January 11, 1991.

2. On July 10, 1991 Clare T. Morse and Transamerica Equities, Inc. learned for the first time that a Judgment had been obtained against Transamerica Equities, Inc. and Clare T. Morse in the instant matter when they were personally served by constable with a Motion and Order in Supplemental Proceedings.

3. Their attorney, Grant Orton was out of town on a military call up. Upon reviewing the files and inquiring into this matter with Grant Orton, it was found that he had never received notice of plaintiff's judgment nor of the Motion apparently filed preliminary to the granting of judgment.

4. The mail to Grant Orton's office is delivered to a mail box in front of the building where his office is located. During the months of January through May 1991, Grant Orton had numerous military assignments outside of the State of Utah, and during that time the mail has been retained on occasion by the Postal Service when his part-time secretary has not picked it up in a timely fashion.

5. In the past when this happened, it has been retained by the post office for it to be picked up there. Upon checking with the post office Grant Orton found that this was not the case since there is no such mail retained by the Postal Service.

6. Had Grant Orton become aware from any source that

a Motion preliminary to the granting of judgment and sanctions had been served in any manner, including by mail, he would have taken the action necessary to timely prepare, file and serve an appropriate response thereto and he would not have permitted or suffered any judgment or sanctions to have been entered against the Defendant herein, without his answering said motions.

7. Defendants have, hold and claim valid and meritorious defenses to each of the claims and issues that are raised in and that are the subject of the Complaint and has asserted them in his Answer.

8. Defendants Transamerica Equities, Inc. nor Clare T. Morse did not receive notice of the Motion for Sanctions and Judgment.

9. Defendants did not receive Notice of Plaintiffs' Motions nor could they find those notices.

10. That Grant Orton was attorney for Defendant Clare T. Morse and Transamerica Equities, Inc. and all defenses for Transamerica Equities included Morse.

11. That Clare Morse did not receive notice of any of Plaintiff's notices.

12. Defendants Clare T. Morse and Transamerica Equities did not have notice of any of the lack of response and therefore were dependent upon their attorney to represent them in this matter.

13. That at the very most, this was caused by excusable neglect.

III. ARGUMENT

Rules 55(c) and 60(b), Utah R. Civ. P., provide for relief from the entry of defaults and default judgments "for good cause shown" and for "mistake, inadvertence, surprise, or excusable neglect". The applicable standard is stated as follows in Westinghouse Electric Supply Co. v. Paul W. Larsen Contractor, Inc., 544 P. 2d 876, 879 (Utah 1975)

It is indeed commendable to handle cases with dispatch and to move calendars with expedition in order to keep them up-to-date. But it is even more important to keep in mind that the very reason for the existence of courts is to afford disputants an opportunity to be heard and to do justice between them. In conformity with that principle, the courts generally tend to favor granting relief from default judgments where there is any reasonable excuse unless it will result in substantial prejudice or injustice to the adverse party.


The facts established by the record now before the Court clearly satisfy the requirements of Rule 55(c) and 60(b) and compel the granting of the relief sought by Defendant's Motion. The failure of Defendants to file and serve a timely and appropriate response to the Motions for Sanctions and Judgment brought by the Plaintiff was caused by problems both with the mail (Orton nor Morse received the notices), and with Grant Orton serving military duty during the war in Kuwait during January - May 1991. The failure was not the result of poor practices, carelessness, or lack of concern on the part of Defendants, but rather a problem with the mail in

part caused by Defendant Orton being called up in the military during this period. Moreover, defendants have, hold and claim, and are fully prepared to assert, good and meritorious defenses to each of the claims and issues that are raised by and that are the subject of the Plaintiff's Complaint.

IV. CONCLUSION

For the reasons stated above Defendant's Motion should be granted.

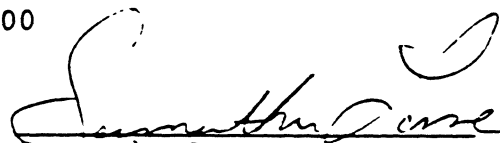
DATED this 21st day of August, 1991.


WESLEY F. SINE
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT was served upon the following named individuals by mailing a copy thereof to said individuals, postage pre-paid, at the address shown below:

J. Bruce Reading,
Marlon L. Bates,
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111


Samantha Lane

ADDENDUM
EXHIBIT "E"

WESLEY F. SINE (2967)
Attorney for Defendants
349 South 200 East, Suite 110
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION)	
COMPANY, INC.,	)	AFFIDAVIT OF CLARE T. MORSE
)	
Plaintiff,	)	Civil No.: 910900069CN
)	
CLARE T. MORSE and	)	JUDGE: WILKINSON
TRANSAMERICA EQUITIES, INC.,)	
)	
Defendants.)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

CLARE T. MORSE, being first duly sworn on oath, deposes
and says:

1. That I am an adult citizen over the age of 18 and
resident of the United States of America and of the State of
Utah, and I make this Affidavit on the basis of facts that are
within my personal knowledge in support of Defendant's Motion
To Set Aside Judgment filed and served herewith.

2. I am now and at all times since 1987 have been an
officer for Transamerica Equities, Inc.

3. That on behalf of myself and Transamerica Equities,
Inc., I contacted and hired Grant Orton, an attorney in good

standing as a member of the Utah State Bar to represent myself and Transamerica Equities Inc. in a lawsuit brought by Kendrick Brothers Construction Company, Inc. on or about the 7th day of January 1991.

4. That at all times I believed that our attorney Grant Orton was properly representing myself and Transamerica Equities and was not in default with the Court or the plaintiff.

5. That during the fall of 1990 and from January to late May of 1991, Grant Orton was on military call up caused by the Desert Storm invasion.

6. That it was my understanding that during the time he was away on military call up, that arrangements had been made by Mr. Orton to protect defendants' rights in this lawsuit.

7. That I, nor Transamerica Equities knew that certain documents had not been delivered to the plaintiffs per court order.

8. That I, nor Transamerica Equities knew of the Default Judgment entered against us by the Court on or about the 3rd day of June, 1991.

9. That if I or Transamerica Equities had become aware from any source that a Motion preliminary to the granting of Judgment had been served in any manner including mail, I would have taken any action necessary to timely obtain new

counsel to timely prepare, file, and serve an appropriate response thereto.

10. I and Transamerica Equities have, hold, and claim valid and meritorious defenses and offsets to each of the issues raised by plaintiffs complaint, and have asserted them in our Answer.

11. I and Transamerica Equities have hired new counsel to work with Grant Orton on representing us in the future.

DATED this 23rd day of August, 1991.



CLARE T. MORSE, personally

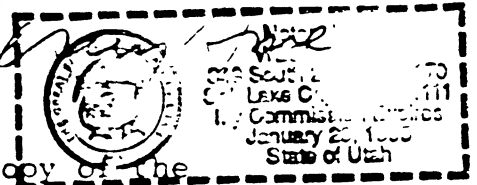
TRANSAMERICA EQUITIES

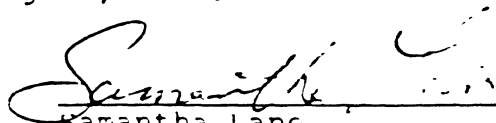
BY:  Sr. V.P.

Subscribed and sworn to before me this 23rd day of August, 1991.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Clare T. Morse, was served upon plaintiff by mailing the same, postage prepaid, to Plaintiff's Attorneys, J. Bruce Reading and Marlon L. Bates, at 261 East 300 South, Suite 200, Salt Lake City, Utah 84111, postage prepaid, on the 23rd day of August, 1991.




Samantha Lane

ADDENDUM
EXHIBIT "F"

Wesley F. Sine (2967)
Attorney for Defendant
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION)	
COMPANY, INC.,	}	AFFIDAVIT OF GRANT G. ORTON
)	
Plaintiff,	}	Civil No.: 91090069CN
)	
CLARE T. MORSE and	)	JUDGE: WILKINSON
TRANSAMERICA EQUITIES, INC.,	}	
)	
Defendants.	}	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

GRANT G. ORTON, being first duly sworn on oath, deposes
and says:

1. That I am an adult citizen over the age of 18
and resident of the United States of America and of the State
of Utah, and I make this Affidavit on the basis of facts that
are within my personal knowledge in support of Defendant's
Motion to Set Aside Judgment filed and served herewith.

2. I am now and at all times since 1977 have been a
member in good standing of the Utah State Bar engaged in the
active full-time practice of law in the State of Utah.

3. Upon reviewing the files and inquiring into this
matter I found that I had never received notice of plaintiff's

Judgment nor of the Motions apparently filed preliminary to the granting of Judgment.

4. The mail to my office is delivered to a mail box in front of the building where my office is located. During the months of January through May 1991, I have had numerous military assignments outside of the State of Utah, and during that time the mail has been retained on occasion by the Postal Service when my part-time secretary has not picked it up in a timely fashion.

5. In the past when this happened, it has been retained by the post office for it to be picked up there. Upon checking with the post office I have not found that this was the case since there is no such mail retained by the Postal Service.

6. Had I become aware from any source that a Motions preliminary to the granting of judgment had been served in any manner, including by mail, I would have taken action necessary to timely prepare, file and serve an appropriate response thereto.

7. ~~I~~^{the} Transamerica Equities, and Clare T. Morse, hold and claim valid and meritorious defenses and offsets to each of the issues raised by plaintiff's complaint, and have asserted them in ~~my~~^{their} answer.

DATED this 23rd day of August, 1991.

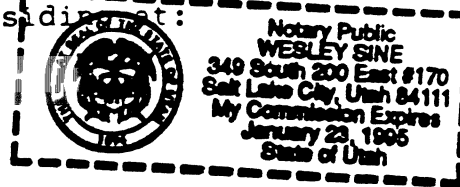

GRANT G. ORTON

SUBSCRIBED AND SWORN to before me this 23rd day of August, 1991.

Wesley Sine

NOTARY PUBLIC

Residing at:



ADDENDUM
EXHIBIT "C"

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : OPPOSITION TO MOTION TO SET
COMPANY, INC., ASIDE SANCTIONS AND JUDGMENT

Plaintiff,

vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No.910900069CN

Defendants.

:

Judge Homer F. Wilkinson

I. INTRODUCTION

This Court properly responded to the defendants' long history of complete disregard for this case by striking defendants' answer and entering judgment against defendants. Now, over seven months after defendants abandoned this matter, they believe they have the right to start over again by setting aside the judgment which was properly entered.

II. STATEMENT OF MATERIAL FACTS

A chronology of material facts in this case establishes an inexcusable pattern of total neglect:

1. On January 18, 1991, plaintiff's attorney sent a Request for Production of Documents to Grant G. Orton, the attorney for defendants. The mailing certificate indicates that the document was properly mailed to the address which Mr. Orton uses for his practice of law. The document was not returned by the post office.

2. On February 22, 1991, plaintiff's attorney sent Mr. Orton a letter reminding him that the time to answer the Request for Production of Documents had now passed and granting Mr. Orton an extension of time until March 1, 1991 to respond to the Request. Mr. Orton was duly advised that if he failed to respond on or before March 1, 1991, a motion to compel would be brought and sanctions would be requested. The letter was correctly mailed to Mr. Orton's business address and was not returned by the post office. A copy of the letter is attached as "Exhibit A" and incorporated herein by this reference.

3. On March 5, 1991, plaintiff's attorney filed a Motion to Compel Production of Documents and asked the Court to award attorney's fees associated with bringing the motion because of defendants complete lack of response. This motion was also duly mailed to defendants' counsel and was not returned by the post office.

4. On April 1, 1991, plaintiff's attorney filed with the Court and duly mailed to defendants' attorney a Notice to Submit for Decision. This document was also not returned by the post office.

5. On April 5, 1991, the Court granted plaintiff's motion and ordered defendants to respond to the Request for Production of Documents within fifteen (15) days of April 5, 1991. The Court held in reserve the issue of awarding attorney's fees. The Court's Minute Entry was duly mailed to defendants' attorney at the same address to which plaintiff's attorney had been sending correspondence.

6. On April 18, 1991, Mr. Orton telephoned plaintiff's counsel to apologize for neglecting the matter. Mr. Orton acknowledged that he received the Court's Minute Entry and the previous documents but had been too busy to get with Mr. Morse. Mr. Orton said that he told Mr. Morse about the Request for Production of Documents but he did not think Mr. Morse had done anything yet to assemble documents. Mr. Orton then requested additional time and plaintiff's attorney denied the request, reminding Mr. Orton that he already been given three months to respond. Finally, Mr. Orton said that he could not locate the Request for Production of Documents and asked if plaintiff's attorney would send him a new set. Plaintiff's attorney offered to

fax the document to Mr. Orton so that he could have it immediately. As soon as the telephone conversation ended, plaintiff's counsel faxed the Request for Production of Documents to Mr. Orton. A copy of the fax transmittal sheet is attached hereto as "Exhibit B" and incorporated herein by this reference. A copy of the April client billing which further proves that Mr. Morse spoke directly with plaintiff's attorney and was denied any extension of time is attached hereto as "Exhibit C" and incorporated herein by this reference.

7. On April 23, 1991, plaintiff's attorney filed a Motion to Strike Answer, Enter Default Judgment and Award Attorney's Fees because of defendants' failure to respond in any manner within the time period ordered by the Court. A copy of this motion was duly mailed to Mr. Orton and was not returned by the post office.

8. On May 7, 1991, plaintiff's attorney filed a Notice to Submit and duly mailed a copy to Mr. Orton. The mailing was not returned by the post office.

9. On May 21, 1991, the Court prepared a Minute Entry granting plaintiff's Motion to Strike Answer, Enter Default and Award Attorney's Fees. Once again, the Court properly sent a copy of the Minute Entry to Mr. Orton.

10. On May 30, 1991, plaintiff's attorney sent to Mr. Orton a copy of the proposed Order Striking Answer and Awarding Default Judgment and Attorney's Fees.

11. On June 3, 1991, the Court signed the proposed order.

12. On June 13, 1991, Clare Morse was personally served by a constable with two Motions and Orders in Supplemental Proceedings. One was served upon him in his capacity as the registered agent of Transamerica Equities, Inc., and the second was served upon him in his individual capacity. These motions fully explained on their face that judgment had been entered against both defendants in the amount of Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00). Copies of these motions together with the constable's return of service affidavits are attached hereto as "Exhibit D" and "Exhibit E" and are incorporated herein by this reference.

13. Clare Morse did not show up at the hearing which was scheduled for June 30, 1991.

14. On July 10, 1991, Clare Morse was personally served by a constable for a second time with two Motions and Orders in Supplemental Proceedings. Copies of these two documents together with the constable's return of service affidavits are attached

hereto as "Exhibit F" and "Exhibit G" and are incorporated herein by this reference.

15. Clare Morse did not show up at the hearing which was scheduled for July 23, 1991.

16. On August 6, 1991, Clare Morse was personally served by a constable for a third time with two Orders to Show Cause. Copies of these two documents together with the constable's return of service affidavits are attached hereto as "Exhibit H" and "Exhibit I" and are incorporated herein by this reference.

17. On August 12, 1991, one day before the Order to Show Cause hearing was scheduled, Clare Morse's new attorney, Wesley Sine, telephoned plaintiff's attorney and notified plaintiff's attorney that defendants had retained him to represent both defendants and that he would be filing a motion to Set Aside the Default Judgment.

18. On August 23, 1991, defendants' new attorney filed a Motion to Set Aside Sanctions and Judgment.

II. ARGUMENT

Defendants' Memorandum in Support of Motion to Set Aside Default Judgment correctly indicates that courts generally tend to favor granting relief from default judgments. But as the preceding statement of material facts makes clear, this case is anything but

typical and the defendants' total and complete neglect of this matter was anything but excusable.

First, defendants' Memorandum states that Clare Morse and Transamerica Equities first learned that a judgment had been obtained against them on July 10, 1991 when Morse was served by a Motion and Order in Supplemental Proceedings. (See paragraph 2 of Memorandum). In Morse's Affidavit, Morse testifies that if he had been aware that a motion preliminary to the granting of judgment had been mailed, he would have taken any action to obtain new counsel and respond timely. Both of these statements are contradicted by the facts. As Exhibits D and E make clear, Morse knew a judgment had been entered against him and his company on June 13, 1991, almost one month before he admits this knowledge and two full months before he took any action to hire new counsel or do anything about the judgment. In fact, if it were not for the order to show cause hearing and the imminent issuance of a bench warrant for Morse's arrest, it is doubtful that any response would have taken place even to this date.

Second, defendants' memorandum states that defendants' attorney, Grant Orton, never received notice of plaintiff's judgment nor of the motion filed preliminary thereto (par. 3); that had Orton been aware of such a preliminary motion, he would have immediately responded (par. 6); that Orton was called up to serve

with the military from January through May, 1991 (par. 4 and third and fourth lines from the bottom of page 4); and that Orton was having problems with his mail from January through May of 1991 (par. 4 and 5, and last 8 lines on page 4). These statements in the memorandum are further alleged in the Morse Affidavit which states that Orton was on military call from January to late May of 1991 (Morse Aff., par. 5) and the Orton Affidavit which states as follows: Orton never had notice of the judgment or motions filed preliminary thereto (Orton Aff., par. 3); Orton had mail problems from January through May of 1991 (Orton Aff., par 4-5); and Orton would have timely responded if he had been aware of motions preliminary to the judgment (Orton Aff., par. 6).

Once again, a review of the facts contradicts each representation made above. In the first place, even if Orton's incredible story about having mail problems for a five month period of time is somehow accepted as truthful, it does not explain the telephone conversation which plaintiff's attorney had with Orton on April 18, 1991. In that telephone conversation, Orton apologized for neglecting to respond to the discovery, acknowledged receipt of the Court's April 5, 1991 Minute Entry granting plaintiff's Motion for Sanctions and requested that plaintiff's counsel grant him more time and send again the Request for Production of Documents (Affidavit of Marlon L. Bates, par. 3-4). If the Court questions

the Affidavit of Marlon L. Bates with respect to the telephone conversation, Exhibit B evidences a fax transmission on that date to Orton. It should be noted that Orton has never claimed that his fax machine was not working. Furthermore, Exhibit C evidences that in the ordinary course of billing for this case, plaintiff's attorney described a telephone conversation with Orton on April 18, 1991 in which plaintiff's attorney denies Orton's request for more time. Exhibits B and C were prepared in April of 1991, well before the issues raised by defendants' motion came to light. Consequently, the validity of Exhibit B and C is much more certain than the validity of affidavits which were prepared in anticipation of this motion. Exhibits B and C establish that Orton was not completely removed from his practice of law from January through May of 1991 as defendants' memorandum and affidavits suggest; rather, in the middle of that period, Orton is documented as having a telephone conversation with plaintiff's attorney regarding the issues of the case and knew enough about the time frame imposed by the Court to request an extension of time. If Orton were placed under oath to testify regarding his practice from February through May of 1991, it is likely that Orton spent a substantial amount of time practicing law.

If the facts of Orton's military service were to show that after his April 18, 1991 conversation with plaintiff's

attorney, Orton became too busy to practice law, Orton has a duty to inform his client of this fact and withdraw as counsel. Orton did not do this. This flagrant neglect of a legal matter entrusted to Orton is certainly not excusable within the meaning of the Rules of Civil Procedure. If defendants honestly believe this neglect injured their case, their remedy is to sue their attorney for malpractice. The defendants picked their attorney and the defendants -- not the plaintiff -- should bear the burden of their choice. It is interesting to note, however, that notwithstanding Orton's total neglect of the case, defendants have not fired him. Instead, they have hired new counsel to work with Orton.

In addition to Orton's responsibility for the legal matters entrusted to him, Orton also bears the burden of solving any problems his legal practice has with the delivery of his mail. From January through May of 1991, Orton was sent at least nine different packages of documents from plaintiff and the court. Orton claims none of these were received by him. Certainly a mail problem of this magnitude (if the Court believes this story) should become apparent to any reasonable person and should be solved in short order. Orton's failure to do this is not excusable neglect and plaintiff should not be forced to bear the burden of Orton's failure to solve his alleged mail problem.

IV. CONCLUSION

Although Courts should generally grant motions to set aside default judgments, this is one case where it should not be granted. The volume of work, time, and considerable expense involved in bringing this particular case to judgment and attempting to collect on that judgment takes it out of the ordinary scope of default judgments. While the plaintiff spent thousands of dollars jumping through a wide assortment of legal hoops and while the Court patiently granted defendants every opportunity to respond, defendants' attorney knowingly neglected the case. And while the plaintiff spent additional sums attempting to collect on the judgment, the defendants totally refused for two months to respond to the Court's orders to attend hearings in Supplemental Proceedings or take any action to set aside the judgment. It is incredible that at this point, defendants are asking the Court to pretend the last seven months never happened. To grant this motion is to render totally ineffective the discovery process and to penalize plaintiff for diligently pursuing its remedies in good faith.

For these reasons, plaintiff respectfully requests that defendants' motion be denied.

DATED this 4th day of September, 1991.

SCALLEY & READING

Marlon L. Bates
Marlon L. Bates

MAILING CERTIFICATE

I hereby certify that on the 4th day of September, 1991, I mailed, postage prepaid, a true and correct copy of the foregoing Opposition to Motion to Set Aside Sanctions and Judgment together with the Affidavit of Marlon L. Bates to the following:

Wesley F. Sine, Esq.
647 W. North Temple
Salt Lake City, Utah 84116

Grant G. Orton, Esq.
2670 South 2000 East
Salt Lake City, Utah 84109

Bonnie Rudd

FORD G. SCALLEY
J. BRUCE READING
STEVEN K. WALKENHORST
MICHAEL W. SPENCE
MARLON L. BATES
DAVID M. CARLSON
SCOTT N. RASMUSSEN
LORI NIELSEN JERMAN

SCALLEY & READING
A PROFESSIONAL CORPORATION
SUITE 200
261 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84111

TELEPHONE
AREA CODE 801
831-7870
FACSIMILE
AREA CODE 801
831-7868

February 22, 1991

Grant Orton, Esquire
2670 South 2000 East
Salt Lake City, Utah 84109


Re: Kendrick Brothers Construction v. Morse and Transamerica
Equities

Dear Mr. Orton:

My records indicate that our Request for Production of Documents was mailed to you on January 18, 1991. Consequently, I believe the 30 days allowed by the Rules of Civil Procedure have expired. I will grant a one week extension of time to produce these documents but if I do not receive the documents on or before Friday, March 1, 1991, I will bring a motion to compel their production and will request sanctions.

Sincerely,

SCALLEY & READING



Marlon L. Bates

btr
cc: Tom Kendrick, Sr.

FORD G. SCALLEY
J. BRUCE READING
STEVEN K. WALKENHORST
MICHAEL W. SPENCE
MARLON L. BATES
JOHN E. HANSEN
SCOTT N. RASMUSSEN
JOHN E. SWALLOW
STEVEN B. SMITH

SCALLEY & READING
A PROFESSIONAL CORPORATION
SUITE 200
261 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84111

TELEPHONE
AREA CODE 801
531-7870
FACSIMILE
AREA CODE 801
531-7968

FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Grant H. Orton, Esq.
LOCATION: 3098 Highland Drive #300
Salt Lake City, Utah 84106

FACS. NO: (801) 487-3502

DOCUMENT(S) SENT FROM:

NAME: Marlon L. Bates, Esquire
LOCATION: SCALLEY & READING
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
TEL. NO: (801) 531-7870
FACS. NO: (801) 531-7968

TOTAL NUMBER OF PAGES INCLUDING THIS COVER LETTER: 5

DATE: April 18, 1991
TIME: 4:50 p.m.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. IF YOU HAVE PROBLEMS, PLEASE CONTACT: Bonnie

COMMENTS:

Telephone: (801) 331-7070

Kendrick Brothers Construction Co.
Attn: Tom Kendrick
4015 South 300 West
Murray, Utah 84107

April 30, 1991
Page 1
Client: 53014
Matter: 88
Invoice # 4816

Matter: Commercial Property Mortgage Corporation

Date	Professional Services Rendered	Hours	Amount
04/18/91	Conference with opposing counsel; send second set of document request to him and deny additional time to respond.	0.30	34.50
04/23/91	Conference with Tom; draft motion to strike, memorandum of law, and affidavit; file with court.	1.00	115.00
Total Hours 1.30 Total Services			149.50
Totals for this matter:			
Prior balance			3,367.89
Balance due			3,517.39

ACCOUNT AGING

Current	Over 30	Over 60	Over 90	Total
				3,517.39

Interest charges at 10% on accounts over 31 days.

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 13 June 91 TIME 2:10 PM
CJB 1600 W 11400 S
UPON Person
SANDY PRECINCT. SALT LAKE COUNTY, UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs.

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Clare T. Morse, to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty Thousand and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 11 day of June, 1991.

1600w. 11400 S
So Jordan, Ut.

SCALLEY & READING

Marlon L. Bates
Marlon L. Bates
Attorney for Plaintiff

or
WY 62925 320w #200
Murray, Ut. RISA
C:\MLB\PLEADING\MORSE.SUP

Correct add

~~5296 S 320w #200~~
Vacant

ORDER

THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:

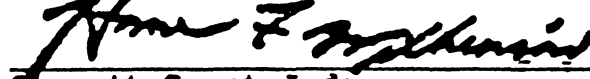
IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.


DATE : Thursday, June 20, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 11th day of June, 1991.

BY THE COURT:


Circuit Court Judge
Attest Clerk of the Circuit Court

By: 

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

OR

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

ate of Utah, a citizen of the United States over the age of 21 years, and
me of service herin, and not a part of or interested in the within action.

I received the within and hereto annexed,

PPLEMENTAL ORDER

the 12 of JUNE , 1991 , and served the same upon MORSE, CLARE T.
within named defendant in said, (

PPLEMENTAL ORDER

serving a true copy of said, (

PPLEMENTAL ORDER

or the defendant with CLARE T. MORSE (PERSONALLY) (

person of suitable age and descretion there residing at, (

500 WEST 11400 SOUTH

, SOUTH JORDAN

is/her usual place of ABODE

, on this 13 day of JUNE , 19

I further certify that at the time of service of the said,

UPPLEMENTAL ORDER

endorsed the date and place of service and added my name and offical
itle therto.

On the 13 day of JUNE , 1991

Deputy *D. McClellan*

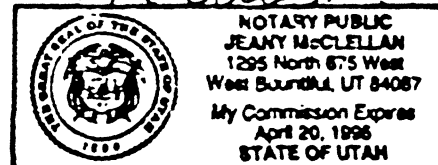
Deputy Constable
Sandy Precinct, Salt Lake County

Subscribed and sworn to before me this On the 13 day of JUNE , 1991

My Commission Expires: April 20 1995

Notary Public

Jeany McClellan
6.00



State of Utah

Fee's Service Fee
 Mileage
 2nd address
 3rd address
 Copies
 P&H/Extra's

Total

=====
6.00

91110279

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 13 June 91 TIME 5:18 PM
BY 1600 W 11400 S
UPON Clare T. Morse (pres.)
SANDY PRECINCT. SALT LAKE COUNTY, UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs. :

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Transamerica Equities, Inc., to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 11 day of June, 1991.

Clare T. Morse - Pres & Agent
~~6292 So 320 W #200 N/A~~
Correct add
~~5296 E 320 W #202 Vacant~~

SCALLEY & READING

[Signature]
Marlon L. Bates
Attorney for Plaintiff

C:\MLB\PLEADING\TRANSAHE.SUP

Res 1600 W 11400 S

ORDER

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

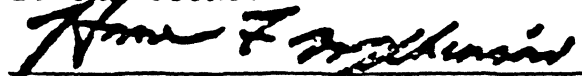
IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Thursday, June 20, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 11th day of June, 1991.

BY THE COURT:



Circuit Court Judge

Attest Clerk of the Circuit Court

By: 

Serve Defendant:
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

tate of Utah, a citizen of the United States over the age of 21 years at the
time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

SUPPLEMENTAL ORDER

on the 12 of JUNE , 1991 , and served the same upon TRANSAMERICA EQUITIES INC.
within named defendant in said, (

SUPPLEMENTAL ORDER

by serving a true copy of said,

SUPPLEMENTAL ORDER

for the defendant with CLARE T. MORSE (PRESIDENT)

a person of suitable age and discretion there residing at,

1600 WEST 11400 SOUTH

his/her usual place of ABODE

, SALT LAKE CITY

, on this 13 day of JUNE , 1991

I further certify that at the time of service of the said,

SUPPLEMENTAL ORDER

I endorsed the date and place of service and added my name and official
title thereto.

On the 13 day of JUNE , 1991

Deputy *D. Muelken*

Deputy Constable
Sandy Precinct, Salt Lake County

Subscribed and sworn to before me this On the 13 day of JUNE , 1991

My Commission Expires: April 20 1995

Notary Public

Jeanie McCallister

State of Utah

Fee's

Service Fee

Mileage

2nd address

3rd address

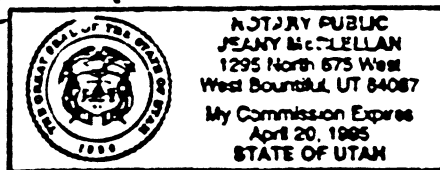
Copies

P&H/Extra's

Total

6.00
14.00

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20.00



91070276

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

UPC: Clare T. Morse
SALT LAKE COUNTY UTAH
DEPUTY [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : MOTION AND ORDER OF
COMPANY, INC., SUPPLEMENTAL PROCEEDINGS

Plaintiff,
vs. :

CLARE T. MORSE and Civil No. 910900069CN
TRANSAMERICA EQUITIES, INC.,

Defendants. : Judge Homer F. Wilkinson

In the above-entitled action, plaintiff moves the Court for an order requiring defendant, Clare T. Morse, to appear before this Court to answer questions under oath concerning its property, and to restrain defendant from disposing of its non-exempt property pending the hearing. Judgment was entered against defendant on the date of June 3, 1991, in the amount of Fifty Thousand Two Hundred Thirty Thousand and No/100 Dollars (\$50,230.00) of which Fifty Thousand Two Hundred Thirty and No/100 Dollars (\$50,230.00) is still unpaid.

DATED this 20 day of June, 1991.

6292 So. 320 W. #200
Murray
or
1600 W. 11400 So.
So. Jordan

SCALLEY & READING

Marlon L. Bates
Marlon L. Bates
Attorney for Plaintiff

ORDER

THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:


IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Tuesday, ^{July 23} ~~June 20~~ 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 20th day of June, 1991.

BY THE COURT:


District Court Judge - District
Attest Clerk of the Circuit Court

By: 

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

Duty Constable, Salt Lake County, Utah
over the age of 21 years at the time of service
interested in the within action.
hereto annexed,

W. J. YOUNG
T. Morse - Pres & Reg A.
SALT LAKE COUNTY, UTAH
[Signature]

d served the same upon MORSE, CLARE T.
id, (((

SALT LAKE COUNTY

ND ORDER OF
NTAL PROCEEDINGS

d,

.910900069CN

T. MORSE (PERSONALLY)

mer F. Wilkinson

descretion there residing at,

, SOUTH JORDAN

, on this 10 day of JULY , 1991

aintiff moves the Court
rica Equities, Inc., to

t the time of service of the said,

s under oath concerning

e of service and added my name and official

disposing of its non-

ment was entered against

On the 10 day of JULY , 1991

in the amount of Fifty

Deputy

Dollars (\$50,230.00) of

Deputy Constable

ty and No/100 Dollars

Salt Lake County, State of Utah

Robert J. Reitz Constable

e me this On the 10 day of JULY , 1991

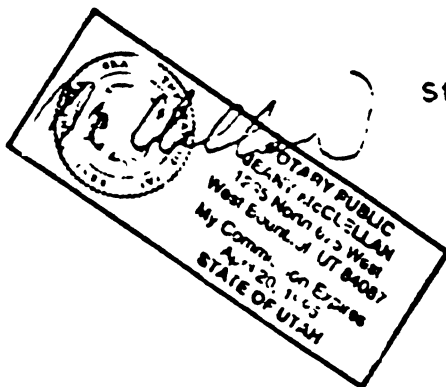
1991.

20 1995

EADING

Jenny
6.00
19.00

State of Utah



J. Baby
ates
r Plaintiff

=====

25.00

ORDER

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions under oath concerning your property.

DATE : Tuesday, ~~July 1~~ ^{July 23}, 1991
TIME : 8:30 a.m.
PLACE: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing. If you have been personally served with this order and you fail to appear, the Court may order a warrant for your arrest.

DATED this 20th day of June, 1991.

BY THE COURT:

Thomas F. [Signature]
District Circuit Court Judge District
Attest Clerk of the Circuit Court

By: *[Signature]*

Serve Defendant:
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Transamerica Equities, Inc.
c/o Clare T. Morse, President
1600 West 11400 South
South Jordan, Utah 84065

I am a duly appointed Deputy Constable, a
citizen of the United States over the age of 21 years at the time of service,
and not a part of or interested in the within action.

I received the within and hereto annexed,

SUPPLEMENTAL ORDER

on the 5 of JULY, 1991, and served the same upon TRANSAMERICA EQUITIES,
(INC.
(
(
within named defendant in said,

SUPPLEMENTAL ORDER

by serving a true copy of said,

SUPPLEMENTAL ORDER

for the defendant with CLARE T. MORSE (PRESIDENT & REG AGENT)
a person of suitable age and discretion there residing at,
1600 WEST 11400 SOUTH, SOUTH JORDAN
his/her usual place of ABODE, on this 10 day of JULY, 1991

I further certify that at the time of service of the said,

SUPPLEMENTAL ORDER

I endorsed the date and place of service and added my name and official
title thereto.

On the 10 day of JULY, 1991

Deputy

Deputy Constable
Salt Lake County, State of Utah
Robert J. Reitz Constable

Subscribed and sworn to before me this On the 10 day of JUL, 1991

My Commission Expires April 20 1995

Notary Public

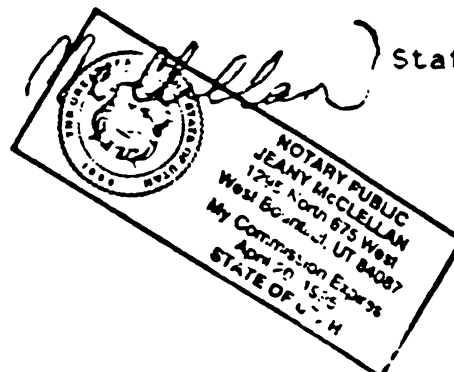
State of Utah

Fee's Service Fee
Mileage
2nd address
3rd address
Copies
P&H/Extra's

Total

6.00

6.00



J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 6 Aug 91 TIME 9:00 PM
Served 1600 W. 11400 So.
UPON Person
[Signature] COUNTY UTAH
Constable Reitz Deputy
5801741

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : ORDER TO SHOW CAUSE
COMPANY, INC.,

Plaintiff,
vs. :

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Defendants. : Judge Homer F. Wilkinson
1600 W. 11400 So.

So. Jordan
THE STATE OF UTAH TO DEFENDANT, CLARE T. MORSE:

2 So. 320 W. #200
Murray

It appears from the records of this court that you were
ordered to appear in person before the District Court at the time
and place shown below to answer questions under oath concerning
your property.

Date: July 23, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

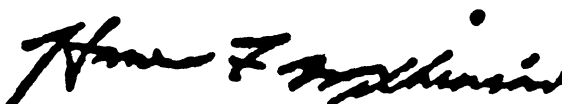
The records of this court further show that the order was
served upon you, and that you failed to appear as required.

IT IS THEREFORE ORDERED that you appear in person before
a judge of the District Court at:

Date: August 13, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

to show cause why you should not be punished for contempt of court
for failure to obey a lawful order of this court.

DATED this 23rd day of July, 1991.



District Court Judge
Attest Clerk of the District Court

By: gr
Deputy Clerk

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

I am a duly appointed Deputy Constable, Salt Lake County, Utah, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,

ORDER TO SHOW CAUSE

on the 25 of JULY, 1991, and served the same upon MORSE, CLARE T.
(
(
(
a within named defendant in said,

ORDER TO SHOW CAUSE

by serving a true copy of said,

ORDER TO SHOW CAUSE

for the defendant with CLARE T. MORSE (PERSONALLY)

a person of suitable age and discretion there residing at,

1600 WEST 11400 SOUTH

, SOUTH JORDAN

his/her usual place of ABODE

, on this 6 day of AUG, 1991

I further certify that at the time of service of the said,

ORDER TO SHOW CAUSE

I endorsed the date and place of service and added my name and official title thereto.

On the 6 day of AUG, 1991

Deputy *O. McCall* SL 802

Robert Reitz Constable, Salt Lake County
396 Cypress St., Midvale UT. 84047 580-1

Subscribed and sworn to before me this On the 6 day of AUG, 1991

My Commission Expires: April 20 1995

Notary Public

Fee's

Service Fee
Mileage
2nd address
3rd address
Copies
P&H/Extra's

6.00
19.00
10.00



NOTARY PUBLIC
JEANY McCLELLAN
1295 North 615 West
West Bountiful, UT 84057
My Commission Expires
April 20, 1995
STATE OF UTAH

State of Utah

Total

=====

35.00

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

DATE 6 Aug 91 TIME 9:10 PM
BY 1600W 11400 So
UFC: Clare T. Morse (Reg. Agent)
S. [Signature]
Constable Reitz 5801

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : ORDER TO SHOW CAUSE
COMPANY, INC.,

Plaintiff,
vs. :

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No. 910900069CN

Clare T. Morse (Reg Agent + Pres.)
6292 So. 320 W. #200
Murray
Defendants.

: Judge Homer F. Wilkinson

THE STATE OF UTAH TO DEFENDANT, TRANSAMERICA EQUITIES, INC.:

OW 11400 So.
J. Jordan

It appears from the records of this court that you were
ordered to appear in person before the District Court at the time
and place shown below to answer questions under oath concerning
your property.

Date: July 23, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

The records of this court further show that the order was
served upon you, and that you failed to appear as required.

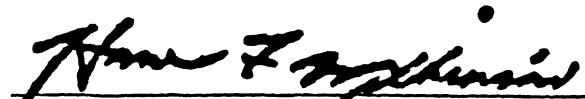
extended 1 week =

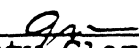
IT IS THEREFORE ORDERED that you appear in person before
a judge of the District Court at:

Date: August 13, 1991
Time: 8:30 a.m.
Place: Third District Court
240 East 400 South
Room #303
Salt Lake City, Utah 84111

to show cause why you should not be punished for contempt of court
for failure to obey a lawful order of this court.

DATED this 23rd day of July, 1991.


District Court Judge
Attest Clerk of the District Court

By: 
Deputy Clerk

Serve Defendant:
Clare T. Morse, President and Registered Agent
Transamerica Equities, Inc.
6292 South 320 West #200
Murray, Utah 84107

or

Clare T. Morse
1600 West 11400 South
South Jordan, Utah 84065

I am a duly appointed Deputy Constable, _____
citizen of the United States over the age of 21 years at the time of service
in, and not a part of or interested in the within action.

I received the within and hereto annexed,

ORDER TO SHOW CAUSE

on the 25 of JULY , 1991 , and served the same upon TRANSAMERICA EQUITIES,
within named defendant in said, (INC.
(
(

ORDER TO SHOW CAUSE

by serving a true copy of said,

ORDER TO SHOW CAUSE

for the defendant with CLARE T. MORSE (REG AGENT)

person of suitable age and discretion there residing at,

500 WEST 11400 SOUTH

, SOUTH JORDAN

is/her usual place of ABODE

, on this 6 day of AUG , 19

I further certify that at the time of service of the said,

ORDER TO SHOW CAUSE

endorsed the date and place of service and added my name and official
title thereto.

On the 6 day of AUG , 1991

Deputy

O. Morse

SL 802

Robert Reitz Constable, Salt Lake County
396 Cypress St., Midvale UT. 84047 580-1

Subscribed and sworn to before me this On the 6 day of AUG , 1991

My Commission Expires: April 20 1995

Notary Public

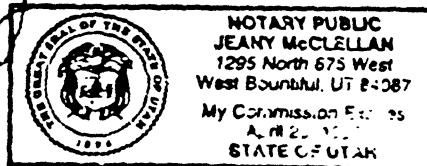
Jeany McClellan

State of Utah

Fee's

Service Fee
Mileage
2nd address
3rd address
Copies
P&H/Extra's

6.00



=====

Total

6.00

ADDENDUM
EXHIBIT "H"

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION : AFFIDAVIT OF MARLON L. BATES
COMPANY, INC.,

Plaintiff,

vs.

:

CLARE T. MORSE and
TRANSAMERICA EQUITIES, INC.,

Civil No.910900069CN

Defendants.

:

Judge Homer F. Wilkinson

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Marlon L. Bates, having been first duly sworn on oath,
deposes and states as follows:

1. I am over eighteen (18) years of age and am a
resident of Davis County, Utah.

2. I am duly licensed to practice law in the state of Utah and am the attorney for the plaintiff in the above-captioned matter.

3. On April 18, 1991, I received a telephone call from Mr. Grant Orton, the attorney for defendants.

4. In the above described telephone conversation, Mr. Orton apologized for neglecting to respond to the discovery and acknowledged to me that he received the court's minute entry granting plaintiff's motion to compel production of documents but had been too busy to get with his client, Mr. Morse. Mr. Orton said that he had told Mr. Morse about the request for production of documents but he did not think Mr. Morse had done anything yet to assemble the requested documents. Mr. Orton acknowledged that he only had two more days to respond to the court order and then requested additional time. I denied the request, reminding Mr. Orton that he had already been given three months to respond. Mr. Orton then said he could not locate the request for production of documents and asked if I would send him a new copy. I told him that I would fax him a new copy so that he could have it immediately and Mr. Orton gave me his fax number.

5. As soon as the above-described telephone conversation ended, I faxed to Mr. Orton a copy of the request for production of documents.

6. The fax transmittal described above is evidenced by a transmittal sheet, a copy of which is attached to the opposition to plaintiff's motion as "Exhibit B."

7. The telephone conference referenced above is evidenced by the April client billing record, a copy of which is attached to the opposition to plaintiff's motion as "Exhibit C."

DATED this 4th day of September, 1991.

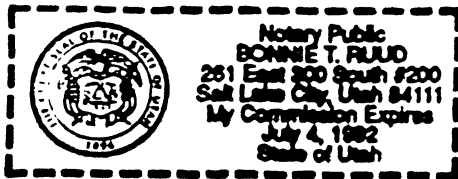
Marlon L. Bates
Marlon L. Bates

SUBSCRIBED and sworn to before me this 4th day of September, 1991.

Bonnie T. Ruud
NOTARY PUBLIC
Residing at:
Salt Lake County, Utah

My Commission Expires:

7/4/92



ADDENDUM
EXHIBIT "I"

RECEIVED

WESLEY F. SINE (2967)
Attorney for Defendants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

SEP 25 1991

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION)	
COMPANY, INC.,	)	REPLY TO PLAINTIFF'S
	)	OPPOSITION TO MOTION TO
Plaintiff,	)	SET ASIDE SANCTIONS AND
	)	JUDGMENT
VS.)	
	)	Judge Homer F. Wilkinson
CLARE T. MORSE and)	
TRANSAMERICA EQUITIES, INC.,	)	Civil No.: 910900069CN
)	
Defendants.)	

I. INTRODUCTION

From January of 1991 to the end of May of 1991, Grant Orton (attorney for Defendants Transamerica Equities, Inc., and Clare T. Morse), served as an Army Reserve Battalion Commander of the 141'st M.I. Battalion. During that period of time, part of his unit was called up, necessitating Grant Orton's efforts to follow through on their call up. During part of that period Grant Orton was out of the state on military call up and during part of that time was at the local headquarters for the 141'st military intelligence battalion. On his part it was not a full time call up but it did take him away from his practice of law for a considerable amount of the time.

This Judgment was taken during that period of time. Defendants claim that but for this national emergency and a subsequent problem with their attorney's mail collection, this Judgment would not have happened.

Section 60 (b)(1) of U.C.A. allows for a setting aside of a judgment if within three months of the Judgment on a basis of excusable neglect. The Judgment was taken on June 3, 1991 and a Motion to Set Aside was filed on August 23, 1991. This falls within those parameters, since the Motion was taken well within the three month allowance.

II. STATEMENT OF MATERIAL FACTS

1. Grant Orton in his Affidavit of August 23, 1991 stated in paragraph number 4 that "During the months of January through May 1991, I have had numerous military assignments outside of the state of Utah".

2. Grant Orton further states that while he was away, "the mail has been retained on occasion by the postal service when his part time secretary did not pick it up in a timely fashion".

3. Grant Orton further states that there was not mail retained for him at the post office.

4. Grant Orton also states in his Affidavit that "he had never received notice of Plaintiff's Judgment nor of the motions filed preliminary to the granting of the Judgment".

5. Answers to interrogatories were filed with the Plaintiffs.

6. On April 18, 1991, under Plaintiff's Statement of Facts (par. 6), Plaintiff's attorney claims he spoke with Grant Orton but further on down states that Plaintiff's attorney spoke with Mr. Morse; but this must be a mistake as there is no evidence that he spoke with Mr. Morse, only Grant Orton.

7. Clare T. Morse was not the registered agent of Transamerica Equities or its President at the time of service of the Supplemental Hearing Motion and Order (see exhibit A).

III. ARGUMENT

The period of time, within which Plaintiff complains of "an inexcusable pattern of total neglect", falls during the crisis in the Gulf War. Grant Orton is a citizen soldier serving as the Commander of the 141'st Military Battalion for the Army Reserve. While his whole unit was not called up during the War, approximately half of it was called to active duty necessitating his call up for periods of time to effect their call up and later their reactivation after the peace was won. This all happened during the period of time complained of and caused the problems complained of by the Plaintiff. Most of the items complained of can be explained not upon willfull denial of the law, but because of the particular situation that attorney Orton found himself in, plus a lack of communication caused by a problem with the mail which was not timely discovered due to the military obligations of attorney

Orton. So far as Clare T. Morse not answering the Supplemental Hearings timely, these items were also turned over to Grant Orton who was to apply for a setting aside of the judgment, but again because of military obligations it was not handled.

Defendant's attorney tried to cover all bases, i.e., serving his country and protecting his clients. Unfortunately, this particular Plaintiff was not concerned with its country's problems but only in expediting an unconscionable lawsuit and took advantage of Mr. Orton's military obligations. Mr. Orton had arranged for his mail to be held for him but during the period of April, May, and June something happened that prevented the mail from reaching Mr. Orton. Therefore this Judgment was taken without the Defendants knowing of it until being served for a Supplemental Hearing.

Once again the Defendants turned to their trusted legal counsel to straighten out the Default Judgment problem but the military was still calling and Lieutenant Colonel Orton was now striving to deactivate his people once again pulling him away from his legal responsibilities. This is why the present counsel was hired to represent the plaintiffs until Grant Orton could committ enough time to represent them properly.

Mr. Orton could not solve his mail problem until he was aware of the problem, by the time he was aware of the problem, the damage had been done. Problems with mail is not an unheard

of event. Coupled with his partial military call up created the problem we have here.

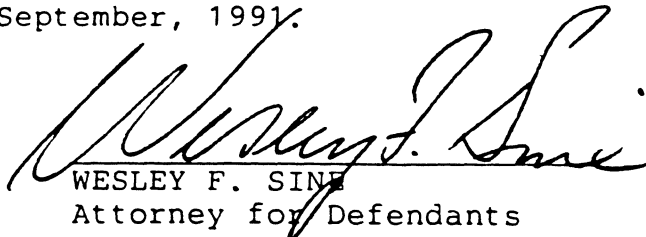
IV. CONCLUSION

This case cries out for justice. Rule 60(b)(1) is written for this type of problem. A war, a lawyer who is a citizen soldier, a mix up with the mail all added together have caused damage to Defendants by a default judgment having been given to the Plaintiffs upon a complaint which was defensible by Defendants. Plaintiffs will not be hurt if this is set aside so that Defendants may have their day in court; but justice will be served.

All of us should feel a debt of gratitude for citizen soldiers like Grant Orton and we should not penalize the Defendants because the lawyer they chose was dedicated to serving his country and failed to adequately represent them because of a mix up in the mail and the military pressures of the moment. Certainly a once in a life time problem should not be left uncorrected.

For these reasons Defendants respectfully request their Motion be allowed and the Judgment sent aside.

DATED this 23rd day of September, 1991.


WESLEY F. SINE
Attorney for Defendants

MAILING CERTIFICATE

I hereby certify that on the 23rd day of September, 1991,
I mailed a true and correct copy, postage pre-paid of the
foregoing REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SET
ASIDE SANCTIONS AND JUDGMENT to:

J. Bruce Reading
Marlon L. Bates
SCALLEY & READING
Attorneys for Plaintiffs
261 East 300 South
Suite 200
Salt Lake City, Utah 84111


Samantha Lane

Exhibit A

9/20/91 UTAH DEPARTMENT OF COMMERCE 13:12:
DIVISION OF CORPORATIONS AND COMMERCIAL CODE

CORPORATION TRANSCRIPT # 126891 PAGE:

INESS NAME: TRANSAMERICA EQUITIES INC.

TUS: GOOD STANDING

CODE: 6519 REAL PROPERTY LESSORS, NEC PROFIT: Y

E OF INCORPORATION: 07/20/1987 DATE OF LAST ANNUAL REPORT: 05/01/91

ED CAPITAL:

STERED AGENT: WESLEY SINE
349 SOUTH 200 EAST #170
SALT LAKE CITY, UT 84111
GENT CHANGED: 05/01/91 ADDRESS CHANGED: 05/01/91
GNATION DATE: 00/00/00 PREVIOUS RESIGNATION DATE: 00/00/00

OFFICERS AND DIRECTORS

NAME	ADDRESS	CITY/STATE	
ERRY VAN DE VELDE	111 PACIFICA #300	IRVINE, CALIFORNIA	21
LARE MORSE	1600 WEST 11400 SOUTH	SOUTH JORDAN, UTAH	2
IRTRINE GOLD	111 PACIFICA #300	IRVINE, CALIFORNIA	9
DAN FRIEDMAN	111 PACIFICA #300	IRVINE, CALIFORNIA	9
ERRY VAN DE VELDE	111 PACIFICA #300	IRVINE, CALIFORNIA	9
LARE MORSE	1600 WEST 11400 SOUTH	SOUTH JORDAN, UTAH	2
IRTRINE GOLD	111 PACIFICA #300	IRVINE, CALIFORNIA	9

STOCK INFORMATION

	PAR VALUE	DATE	AUTHORIZED NUMBER	DATE	ISSUED NUMBER
N	.0000	00/00/00	50,000	05/01/91	
	.0000	00/00/00		00/00/00	

ADDENDUM
EXHIBIT "J"

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

KENDRICK BROTHERS	:	
CONSTRUCTION COMPANY, INC.,	:	<u>REPORTER'S TRANSCRIPT OF</u>
	:	<u>HEARING ON DEFENDANT'S</u>
PLAINTIFF,	:	<u>MOTION TO SET ASIDE SANCTIONS</u>
	:	<u>AND JUDGMENT</u>
VS.	:	COPY
	:	
CLARE T. MORSE AND	:	
TRANSAMERICA EQUITIES, INC.,	:	CIVIL NO. 910900069CN
	:	HON. HOMER F. WILKINSON
DEFENDANTS.	:	

BE IT REMEMBERED, THAT ON THE 18TH DAY OF OCTOBER,
1991, COMMENCING IN THE 10:00 A.M. CIVIL CALENDAR, THE ABOVE
-ENTITLED MATTER CAME ON FOR HEARING IN COURTROOM 502 OF THE
COURTS BUILDING, METROPOLITAN HALL OF JUSTICE, 240 EAST 400
SOUTH, SALT LAKE CITY, UTAH BEFORE THE HONORABLE HOMER F.
WILKINSON, JUDGE IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH.

APPEARANCES

MARLON L. BATES, ATTORNEY-AT-LAW, SCALLEY &
READING, 261 EAST 300 SOUTH, SUITE 200, SALT LAKE CITY, UTAH
84111 TELEPHONE 631-7870 APPEARING ON BEHALF OF THE PLAINTIFF.

WESLEY F. SINE, ATTORNEY-AT-LAW, 349 SOUTH 200
EAST, SUITE 170, SALT LAKE CITY, UTAH 84111 TELEPHONE 364-5125
APPEARING ON BEHALF OF THE DEFENDANTS.

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD
2 IN OPEN COURT:)
3 THE COURT: KENDRICK BROTHERS CONSTRUCTION
4 VERSUS MORSE. WE'LL COME BACK TO THAT.
5 (WHEREUPON, FURTHER PROCEEDINGS WERE HAD ON
6 CALENDAR UNRELATED TO THE INSTANT CASE; AFTER
7 WHICH, THE FOLLOWING PROCEEDINGS CONTINUED IN
8 OPEN COURT:)
9 THE COURT: KENDRICK BROTHER CONSTRUCTION
10 VERSUS CLARE T. MORSE AND TRANSAMERICA EQUITIES, INC.
11 MR. SINE: WES SINE APPEARING FOR THE
12 DEFENDANTS.
13 MR. BATES: MARLON BATES ON BEHALF OF THE
14 PLAINTIFF.
15 THE COURT: HOW MUCH TIME DO YOU NEED, COUNSEL?
16 MR. SINE: PROBABLY JUST TEN MINUTES, YOUR
17 HONOR.
18 THE COURT: YOU MAY PROCEED. AND I'VE READ THE
19 PLEADINGS, SO I KNOW ALL ABOUT WHAT'S GOING ON. SO DON'T
20 SPEND A LOT OF TIME JUST REHASHING IT, BUT GO AHEAD.
21 MR. SINE: THIS IS AN ACTION BROUGHT AGAINST MY
22 CLIENT ON APPROXIMATELY THE 4TH OF JANUARY OF 1991. THE
23 ANSWER WAS FILED BY--.
24 THE COURT: I'VE READ ALL THAT.
25 MR. SINE: DURING THAT SAME PERIOD OF TIME,

1 GRANT ORTON WAS IN THE 141ST MILITARY INTELLIGENCE GROUP FOR
2 THE NATIONAL GUARD AND WAS OUT OF STATE MUCH OF THAT TIME ON
3 MILITARY SERVICE.

4 DURING THAT PERIOD OF TIME, A MOTION WAS FILED
5 FOR SANCTIONS AND TO SET ASIDE--AND ALSO FOR A DEFAULT
6 JUDGMENT BASED UPON THAT. ACCORDING TO MR. ORTON'S AFFIDAVIT,
7 HE DID NOT RECEIVE THAT MOTION FOR SANCTIONS.

8 THE COURT: LET ME INTERRUPT YOU RIGHT THERE.
9 NOW I READ THESE THINGS. I READ THE AFFIDAVIT AND THE
10 STATEMENT BY THE PLAINTIFF AS FAR AS HIM CALLING MR. ORTON ON
11 THE PHONE AND TALKING TO HIM AND REFUSING TO CONTINUE THIS AND
12 FAXING A COPY OF THE--I GUESS THE INTERROGATORIES, MAKING
13 NOTATIONS AS FAR AS THE TIME ON THE CALENDAR. MR. ORTON
14 DOESN'T DENY THAT.

15 MR. SINE: HE DOESN'T DENY IT IN HIS AFFIDAVIT
16 BECAUSE OF THE TIME THAT THAT STATEMENT WAS MAILED, MR. ORTON
17 DIDN'T KNOW THAT STATEMENT WAS TO BE MADE.

18 I TALKED TO MR. ORTON AFTERWARDS AND HE SAID HE
19 DIDN'T RECEIVE A FAX, WASN'T SURE HE HAD TALKED TO MR. BATES
20 ABOUT IT.

21 DURING THIS PERIOD OF TIME, HE WAS TRYING TO BE
22 A MILITARY MAN, AND I THINK--.

23 THE COURT: DON'T GO INTO THAT. I APPRECIATE
24 THE FACT THAT HE MAY HAVE BEEN IN THE MILITARY, BUT I WANT TO
25 KNOW WHETHER THAT TOOK PLACE OR DIDN'T.

1 MR. SINE: THE FAX NEVER GOT TO MR. ORTON.

2 THE COURT: HE DID TALK TO MR. ORTON ON THE
3 PHONE AND MR. ORTON KNEW OF WHAT WAS TAKING PLACE?

4 MR. SINE: THAT'S CORRECT.

5 THE COURT: AND I'M CURIOUS, COUNSEL, WHY, WHEN
6 YOUR CLIENT WAS SERVED I BELIEVED IT WAS IN JUNE, SERVED TWICE
7 WITH A SUPP ORDER, HE DIDN'T RESPOND TO EITHER ONE OF THEM,
8 AND THEN FINALLY CAME IN I GUESS IT WAS ON AN ORDER TO SHOW
9 CAUSE OR A GARNISHMENT.

10 MR. SINE: MY CLIENT SAYS THAT THE FIRST
11 SERVICE WAS NOT SERVED UPON HIM BUT WAS LEFT WITH ONE OF HIS
12 CHILDREN, AND HE DID NOT RECEIVE IT. HE DID NOT--HE DID
13 RECEIVE A SECOND ONE, GAVE IT TO MR. ORTON TO TAKE CARE OF; IN
14 OTHER WORDS, HE BROUGHT IT TO MR. ORTON. THE FACT THAT THIS
15 DEFAULT JUDGMENT HAD BEEN ENTERED, MR. ORTON WAS SUPPOSED TO
16 TAKE CARE OF IT AND DID NOT, AND FINALLY MR. ORTON BROUGHT THE
17 FILE TO ME EARLY IN AUGUST WHEN HE HAD TO GO OUT OF TOWN AGAIN
18 ON MILITARY DUTY FOR ME TO FILE A MOTION TO SET IT ASIDE.

19 DURING THAT PERIOD OF TIME, YOUR HONOR, I HAD
20 TRIED TO CALL MR. ORTON ON OTHER BUSINESS AND HAD A VERY
21 DIFFICULT TIME GETTING HOLD OF HIM, IF EVER, BECAUSE OF NOT
22 BEING IN THE CITY. I CALLED HIS HOME AND WOULD HEAR FROM HIS
23 WIFE THAT HE WAS STILL OUT ON MILITARY CALL.

24 I DID NOT GET INVOLVED IN THIS PARTICULAR
25 ACTION UNTIL AUGUST FIRST, BUT THAT WAS WITHIN THE 90 DAY

1 PERIOD THAT THE COURT ALLOWS.

2 IT WOULD BE A GREAT INJUSTICE, IT SEEMS TO ME,
3 TO LET THAT JUDGMENT STAND WHERE TRANSAMERICA EQUITIES FEELS
4 THEY'RE NOT INITIALLY UNDER THE COMPLAINT.

5 THE COURT: OF COURSE I'M INCLINED TO GRANT
6 YOUR MOTION, BUT FOR THE FACT THAT--WHAT I SHOULD SAY IS
7 BECAUSE OF THE FACT THAT WHAT YOU SAY ABOUT MR. ORTON, AND I
8 DON'T WANT TO PENALIZE YOUR CLIENT BECAUSE OF HIS ACTIONS, BUT
9 I'M NOT INCLINED TO GRANT IT BECAUSE OF HIS--BECAUSE OF YOUR
10 CLIENT RECEIVING TWO SUPP ORDERS AND DOING NOTHING ABOUT THEM.

11 MR. SINE: THE FIRST SUPP ORDER HE CLAIMS HE
12 NEVER RECEIVED. THE SECOND SUPP ORDER, HE GAVE IT TO
13 MR. ORTON TO TAKE CARE OF, AND MR. ORTON DIDN'T TAKE CARE OF
14 IT, AND AFTER THAT HE CONTACTED ME AND HAD ME--ASKED ME TO
15 TAKE CARE OF IT BECAUSE IT WASN'T GETTING DONE.

16 THE COURT: THAT DOESN'T WASH WITH ME WHEN HE
17 KNOWS THAT SOME MISTAKE HAS BEEN MADE ALREADY AND A JUDGMENT
18 HAS BEEN TAKEN AGAINST HIM AND HE'S ORDERED INTO THE COURT.

19 MR. SINE: IT SEEMS TO ME HE TOOK THE PROPER
20 PROCEDURE WHEN HE RECEIVED THE SECOND ONE, HE TOOK IT TO HIS
21 ATTORNEY AND SAID, "WHAT IS HAPPENING? WHY DO I HAVE A
22 DEFAULT JUDGMENT"?

23 AND THE ATTORNEY SAID, "I'LL GET IT SET ASIDE."
24 AND HE DIDN'T RECEIVE ANY OF THE MOTIONS BECAUSE OF THAT
25 PARTICULAR PROBLEM.

1 AND THEN HE SUPPOSEDLY WAS SUPPOSED TO TAKE
2 CARE OF IT AND DIDN'T. AND THAT'S WHEN I GOT BROUGHT INTO IT,
3 WHEN THE THIRD SITUATION AROSE.

4 THE COURT: WHY DIDN'T HE SHOW UP ON THE 23RD
5 ON THE SECOND SUPP ORDER?

6 MR. SINE: I BELIEVE THE SECOND SUPP ORDER WAS
7 THE ONE HE GAVE TO MR. ORTON TO TAKE CARE OF. THE FIRST HE
8 CLAIMS HE NEVER RECEIVED. THERE WAS AN ATTEMPTED SERVICE ON
9 HIS DAUGHTER; IF YOU LOOK AT THE SERVICE NOTATION, IT SAYS "TO
10 A PERSON," AND ON THE AFFIDAVIT IT SAYS THE NAME OF "CLARE T.
11 MORSE," BUT HE SAYS HIS DAUGHTER NEVER GAVE IT TO HIM.

12 THE COURT: ANYTHING ELSE?

13 MR. SINE: THAT'S ALL I WOULD HAVE, YOUR HONOR.

14 MR. BATES: YOUR HONOR, I THINK WE CAN SHORTEN
15 THIS A GREAT DEAL. WITH REGARD TO ACTION TAKEN BY THE
16 DEFENDANTS, AFTER THE JUDGMENT WAS ALREADY ENTERED BY THIS
17 COURT, ON THREE SEPARATE OCCASIONS THE DEFENDANT, IN BOTH
18 INDIVIDUAL CAPACITY AND AS THIS CORPORATION, WAS PERSONALLY
19 SERVED BY A CONSTABLE. THERE IS AN AFFIDAVIT IN THE FILE THAT
20 REFLECTS THAT, AND IT WAS BY A CONSTABLE WHO HAS NO REASON TO
21 LIE, BUT WHO SAYS HE'S SERVING HIM ON THE FIRST TIME, HE WAS
22 SERVED--.

23 THE COURT: WHAT DOES THE RETURN SAY ON THE
24 FIRST SUPP ORDER?

25 MR. BATES: IT SAYS THAT CLARE MORSE WAS

1 PERSONALLY SERVED WITH IT, YOUR HONOR.

2 THE COURT: THAT IT WAS LEFT WITH--.

3 MR. BATES: LEFT WITH HIM PERSONALLY. THE
4 SECOND ONE, THE EXACT SAME THING HAPPENED, YOUR HONOR. CLARE
5 MORSE WAS SERVED PERSONALLY WITH THAT SUPP ORDER. HE DIDN'T
6 APPEAR AT THE HEARING, YOUR HONOR. HE WAS SERVED A THIRD TIME
7 WITH AN ORDER TO SHOW CAUSE.

8 IT WAS ONLY THE DAY BEFORE THE HEARING ON THAT
9 ORDER TO SHOW CAUSE THAT WE RECEIVED, IN OUR OFFICE, A CALL
10 FROM NEW COUNSEL SAYING, "WAIT A MINUTE," SEVEN AND A HALF
11 MONTHS AFTER THIS THING STARTED, SEVEN AND A HALF MONTHS AFTER
12 I BEAT MY HEAD BLOODY AGAINST A WALL AND INCURRED 13.7 HOURS
13 AND \$1,691.70 SPECIFICALLY RELATED TO GETTING THESE FOLKS TO
14 COMPLY WITH THIS DISCOVERY.

15 THIS COURT APPROPRIATELY HELD THAT JUDGMENT
16 SHOULD BE ENTERED. THAT JUDGMENT SHOULD NOT BE SET ASIDE NOW.
17 THE CLIENT DOES HAVE A REMEDY, YOUR HONOR. THE CLIENT CAN SUE
18 HIS COUNSEL FOR MALPRACTICE.

19 THE COURT: DON'T TELL ME THAT, COUNSEL. I
20 DON'T WANT TO HEAR ANYTHING ABOUT THAT.

21 MR. BATES: THAT'S THE REMEDY THE CLIENT HAS.
22 WE PROCEEDED FORTH IN GOOD FAITH. THIS DIDN'T HAPPEN QUICKLY.
23 FOR MR. ORTON TO HIDE BEHIND HIS MAILBOX OR TO HIDE BEHIND THE
24 AMERICAN FLAG IN THIS CASE I THINK IS REPREHENSIBLE.

25 THE FACT THAT HE WOULD HAVE TO CLAIM THAT ON

1 NINE SEPARATE OCCASIONS HE DIDN'T RECEIVE ANY OF THE MAILINGS
2 THAT WERE SENT OUT BY ME OR THIS COURT, OVER A FOUR AND A HALF
3 MONTH PERIOD OF TIME, IF THAT INCREDIBLE AN AMOUNT OF MAIL
4 PROBLEM WAS GOING ON, THAT SHOULD HAVE BEEN BROUGHT TO
5 MR. ORTON'S ATTENTION AND IT WASN'T.

6 IF MR. ORTON COULDN'T PRACTICE LAW, HE SHOULD
7 HAVE DONE WHAT ALL ATTORNEYS ARE REQUIRED TO DO, AND THAT'S
8 WITHDRAW HIS REPRESENTATION, AND HE DID NOT DO THAT, YOUR
9 HONOR.

10 BRUCE READING OF OUR OFFICE WAS PERSONALLY
11 INVOLVED AS A SENIOR STAFF OFFICER FOR THE NATIONAL GUARD, AND
12 PERSONALLY WAS INVOLVED IN ACTIVATING 2,000 TROOPS AND CARRIED
13 ON AN ACTIVE PRACTICE AT THE SAME TIME.

14 THE COURT: COUNSEL, THAT'S NOT APPROPRIATE.

15 MR. BATES: SO ALL OF THE ARGUMENTS THAT ARE
16 RAISED, THAT HE'S EITHER HIDING BEHIND HIS MAILBOX OR BEHIND
17 THE FLAG, DON'T WASH. I SPOKE WITH MR. ORTON ON APRIL 18TH,
18 AS I HAVE SWORN UNDER OATH BY AFFIDAVIT. IF THERE WAS--IF
19 MR. ORTON HAD DARED REPRESENT TO THIS COURT THAT SOME ACCIDENT
20 HAD HAPPENED, HE COULD HAVE SUBMITTED AN AFFIDAVIT. THERE'S
21 BEEN PLENTY OF TIME TO DO SO AND HE HAS NOT DONE SO.

22 THE COURT: WHO WAS THE SECOND SUPP ORDER
23 SERVED ON?

24 MR. BATES: ALSO CLARE MORSE PERSONALLY.

25 THE COURT: AND THE THIRD WAS THE ORDER TO SHOW

1 CAUSE?

2 MR. BATES: YES, YOUR HONOR.

3 THE COURT: THAT WAS SERVED ON HIM ALSO?

4 MR. BATES: YES, YOUR HONOR.

5 THE COURT: COUNSEL?

6 MR. SINE: YOUR HONOR, UNDER EXHIBIT D WHICH IS
7 THE FIRST ONE THAT WAS SERVED, IT DOESN'T SAY IT WAS SERVED ON
8 CLARE MORSE, IT SAYS IT WAS SERVED UPON A PERSON.

9 THE COURT: LOOK AT THE AFFIDAVIT THAT'S BEHIND
10 IT. IT SAYS THAT IT WAS SERVED UPON CLARE MORSE.

11 MR. SINE: BUT ON THE FRONT OF THE DOCUMENT HE
12 GAVE ME IT JUST SAYS "ON A PERSON." MR. MORSE SAYS HE NEVER
13 RECEIVED IT, THAT IT WAS GIVEN TO HIS DAUGHTER.

14 THE COURT: OF COURSE THE AFFIDAVIT IS THE
15 CONTROLLING DOCUMENT AS FAR AS THE COURT IS CONCERNED. THAT
16 HAS TO BE ON THERE AS FAR AS THE STATUTE TO SHOW IT WAS
17 SERVED.

18 MR. SINE: BUT THE AFFIDAVIT DOES NOT SHOW THE
19 SERVICE ON HIM PERSONALLY, YOUR HONOR. THEY ANSWERED THE
20 COMPLAINT, AND MY UNDERSTANDING IS THEY ANSWERED THE
21 INTERROGATORIES; THE PRODUCTION OF DOCUMENTS WAS THE HANG-UP
22 AREA AND THEY DIDN'T GET ANSWERED.

23 BUT WE BROUGHT THIS ACTION WITHIN THE THREE
24 -MONTH PERIOD WHICH THE CODE ALLOWS FOR IT, AND IT WOULD SEEM
25 TO ME THAT IT WAS TIMELY.

1 THE COURT: LET ME INDICATE TO YOU THAT FIRST
2 OF ALL I WOULD SAY I HATE THESE DEALS WHERE WE GET INVOLVED AS
3 FAR AS THIS TYPE OF SITUATION IS CONCERNED, AND I DON'T LIKE
4 THEM, BUT WE HAVE TO FACE THEM.

5 I WOULD BE GRANTING THIS WITHOUT HESITATION IF
6 YOUR ARGUMENT WAS COMING BEFORE THIS COURT AND THAT COUNSEL
7 WAS INVOLVED IN THE MILITARY AND SOME MISTAKE HAD BEEN MADE
8 AND HE DIDN'T GET THE JOB DONE. I WOULD BE GRANTING IT. I
9 THINK THAT'S EXACTLY THE SITUATION AS FAR AS THE STATUTE.

10 AND WE ALL FIND OURSELVES IN THOSE SITUATIONS;
11 IF YOU HAVEN'T, YOU WILL AS FAR AS THE PRACTICE OF LAW IS
12 CONCERNED.

13 BUT I CAN SEE NO REASON WHEN THE DEFENDANT
14 HIMSELF IS SERVED PERSONALLY IN JUNE, JULY AND AGAIN IN
15 AUGUST, AND NOTHING IS DONE ON THIS UNTIL AUGUST THE 12TH,
16 THAT I COULD--I DON'T BUY THIS THAT IT WAS SERVED ON HIS
17 DAUGHTER AND HE LOST IT. I CAN BUY THAT THE PERSON TOOK IT TO
18 AN ATTORNEY AND THE ATTORNEY DIDN'T HEAR OF IT. HE DIDN'T GET
19 THE SECOND ONE, I CAN BUY THAT. OF COURSE THE THIRD ONE, HE
20 CAME TO YOU, AND EVEN JUST BEFORE THE HEARING HE CAME IN AND
21 MOVES FOR IT, AND I HAVE NO FAULT WITH WHAT YOU HAVE DONE.

22 BUT I WOULD STATE THAT ALSO, IF I WERE TO
23 GRANT--SET THIS ASIDE, I WOULD BE ORDERING FULL PAYMENT OF
24 ATTORNEYS FEES.

25 MR. SINE: I THINK THAT WOULD BE APPROPRIATE.

1 THE COURT: BASED ON THE ACTIONS OF THE
2 DEFENDANT, THE DEFENDANT THEMSELVES, WHAT THEY DID AS FAR AS
3 THE NOTICE TO THEM ABOUT THE SUPP ORDERS, I WOULD DENY THE
4 MOTION TO SET IT ASIDE.

5 MR. SINE: COULD I MAKE ONE STATEMENT? I WAS
6 THE REGISTERED AGENT FOR THE CORPORATION. I WAS NEVER SERVED
7 WITH ANY OF THESE. IF MR. MORSE--.

8 THE COURT: COUNSEL, NO, THAT IS NOT--IF YOU
9 HAVE A POINT THERE TO ARGUE, THEN YOU HAVE TO GIVE THEM NOTICE
10 OF IT. I DON'T KNOW IF THEY GOT PROPER SERVICE OR NOT.

11 MR. SINE: IT'S PART OF THE ARGUMENT I GAVE TO
12 YOU, YOUR HONOR.

13 THE COURT: ABOUT PROPER SERVICE?

14 MR. SINE: WELL, PART OF--THE CORPORATION IS A
15 PART OF THE REPLY MEMORANDUM. THERE'S A DOCUMENT, AN EXHIBIT,
16 WITHIN THE REPLY MEMORANDUM WHICH SHOWS WHO THE REGISTERED
17 AGENT IS FOR SERVICE OF PROCESS UPON THE CORPORATION.

18 THE COURT: WELL, I'M NOT GOING TO PROCEED ON
19 THAT HERE. YOU WOULD HAVE TO RAISE THAT AND NOT JUST IN YOUR
20 REPLY MEMORANDUM. IF YOU'RE GOING TO RAISE THAT, YOU HAVE TO
21 GIVE THEM AN OPPORTUNITY TO RESPOND. THAT'S UP TO YOU.

22 MR. SINE: CAN THAT BE RAISED AT THIS POINT,
23 YOUR HONOR?

24 THE COURT: I'M NOT SAYING ANYTHING ELSE--WELL,
25 NOT RIGHT NOW.

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MR. SINE: ALL RIGHT, NOT AT THIS TIME.

THE COURT: WHO WILL PREPARE THE PLEADINGS?

MR. BATES: I'LL PREPARE THEM, YOUR HONOR.

THE COURT: YOU'LL PREPARE THE PLEADINGS?

MR. BATES: YES, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS CAME TO A CLOSE.)

(TRANSCRIBED BY NANCY BURR)


REPORTER'S CERTIFICATE

STATE OF UTAH)
 SS.
COUNTY OF SALT LAKE)

I, EDWARD P. MIDGLEY, RPR, CM, OFFICIAL COURT REPORTER IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING PROCEEDINGS WERE BY ME STENOGRAPHICALLY REPORTED AT THE TIMES AND PLACES HEREIN SET FORTH; THAT THE SAME WERE BY ME SUBSEQUENTLY CAUSED TO BE REDUCED TO TYPEWRITTEN FORM, CONSISTING OF PAGES 1 THROUGH 12, BOTH INCLUSIVE; AND THAT SAID TRANSCRIPTION SO PRODUCED CONSTITUTES A TRUE AND CORRECT TRANSCRIPTION OF TESTIMONY GIVEN, EVIDENCE ADDUCED AND PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

TO WHICH CERTIFICATION I HEREBY SET MY HAND AND NOTARIAL SEAL THIS 27TH DAY OF DECEMBER, 1991, AT SALT LAKE CITY.





EDWARD P. MIDGLEY, RPR, CM
OFFICIAL COURT REPORTER
(UTAH CSR NO. 133)

ADDENDUM
EXHIBIT "K"

OCT 31 1991

SALT LAKE COUNTY

By

J. BRUCE READING, #2700
MARLON L. BATES, #4794
SCALLEY & READING
Attorneys for Plaintiff
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
Telephone: (801) 531-7870

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KENDRICK BROTHERS CONSTRUCTION :	ORDER DENYING DEFENDANTS' MOTION
COMPANY, INC.,	TO SET ASIDE SANCTIONS AND
	JUDGMENT
Plaintiff,	
vs.	:
CLARE T. MORSE and	Civil No.910900069CN
TRANSAMERICA EQUITIES, INC.,	
Defendants.	: Judge Homer F. Wilkinson

This matter was heard by the Court on October 18, 1991 with Wesley F. Sine appearing as counsel for defendants and with Marlon L. Bates appearing as counsel for plaintiff. Based upon the motion of the defendants, the opposition of the plaintiff, the memoranda and affidavits in support thereof, and the arguments made by counsel at the hearing,

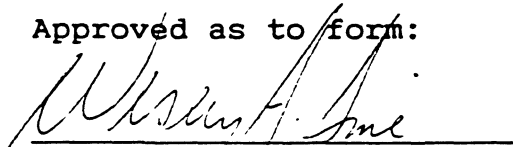
IT IS HEREBY ORDERED that defendants' Motion to Set Aside Sanctions and Judgment is denied.

DATED this 31 day of October, 1991.

BY THE COURT:


Judge Wilkinson

Approved as to form:


Wesley F. Sine
Attorney for Defendants