

2002

## J. Scott Ockey v. Christena White : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

unknown.

unknown.

---

### Recommended Citation

Reply Brief, *Ockey v. White*, No. 20021073 (Utah Court of Appeals, 2002).

[https://digitalcommons.law.byu.edu/byu\\_ca2/4115](https://digitalcommons.law.byu.edu/byu_ca2/4115)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

CHRISTENA WHITE  
440 EAST BROADWAY #25  
SALT LAKE CITY, UTAH 84111

---

IN THE UTAH COURT OF APPEALS

---

J. SCOTT OCKEY

PLAINTIFF/APPELLEE,

V

CHRISTENA WHITE

DEFENDANT/APPELLANT.

}  
}  
}  
}  
}  
}  
}  
}  
}

DISTRICT COURT NO. 20021073

APPELLANT COURT NO: ~~010909255~~

20021073

---

APPELLANT'S REPLY TO APPELLE BRIEF

---

LIST OF PARTIES

PLAINTIFF/APPELLEE

J. SCOTT OCKEY

DEFENDANT/APPELLANT

CHRISTENA WHITE

## TABLE OF AUTHORITIES

Barber v. Emporium Partnership, 800 P.2d 795

Garcia v. Garcia, 712 P.2d 288

Locke v. Peterson, 285 P.2d 1111.

Lucas v. Murray City (Civil Service Commission), 949 P.2d 746

Wasatch Livestock Loan Co., v. District Court, Ex. Rel., Uintah County, 46 P.2d 399

Woody v. Rhodes, 461 P.2d 465

Barlow v. Cappo, 821 P. 2d 4465 (Utah Ct. App. 1991)

Brown v. Wanlass, 18 P. 3d 1137 (Utah Ct. App. (2001)

Christensen v. Munns, 812 P.2d 69 (Utah Ct. App. (1991)

Phillips V. Hatfield, 904 P. 2d 1108 (Utah Ct. App. (1995)

Redwood Land Co. v. Kimball, 433 P.2d 1010 (Utah 1967)

Salt Lake City Corp. v James Constructors, Inc. 761 P.2d 42 (Utah Ct. App. (1988)

Sorensen v. Sorenson, 417 P.2d 118 (Utah 1966)

State v. Hendricksen, 546 P. 2d 901 (Utah 1976)

Smith v. Smith, 995 P. 2d 14, *cert. denied*, 4 P.3d 1289 (Utah 2000)

State v. Thomas, 961 P.2d 299 (Utah 1998)

State v. Wareham, 772 P. 2d 960 (Utah 1989)

Timm v. Dewsnup, 921 P.2d 1381 (Utah 1996)

## JURISDICTIONAL STATEMENT

~~This court~~ has jurisdiction as a matter of right to hear and determine this appeal.

## **STATEMENT OF ISSUE AND STANDARDS OF REVIEW**

(1) Whether the trial court err in denying defendant's Motion to Reconsider the trial court's entry of Summary Judgment in plaintiff's favor and proper service. The Plaintiff states "The Court should apply an abuse of discretion standard of review. *See, e.g. Timm v. Dewsnap*, 921 P.2d. 1381, 1386 (Utah 1996). Where this case exactly state "Trial court's decision on motion to reconsider prior grant of summary judgment is within trial court's discretion, and will not be disturbed on appeal absent abuse of discretion. The Utah Supreme Court in *Lucas v Murray City (Civil Service Commission)*, 949 P 2d 746 states,

"Any public entity who has rules, regulations or policies must comply with them and the employee has a right to rely on them"

The court's by definition is a public entity. The court and the parties' have procedures imposed upon them by the Utah Supreme Court by and through the "*Utah Rules of Civil Procedures*". *Rule 1(a) of the Utah Rules of Civil Procedure* clearly states,

"These rules shall govern the procedures in the courts of the State of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or equity .."

*Rule 10(a) of the Utah Rules of Civil Procedures* mandates that all pleadings or other papers filed with the court must contain the specific information as contained in the rule.

*Rule 56(c) of the Utah Rules of Civil Procedure* states,

*Motion and proceedings thereon.* The motion memoranda and affidavits shall be filed and served in accordance with CJA 4-501. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the

affidavits, if any, show that there is no admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

The reconsideration of granting the judgment motion showed many leases with different amounts that the Plaintiff on his own kept drawing up, so the defendant did not know which lease to use for damages if any. The defendant Christena Whites' attorney Carlos Chavez set forth an affidavit in not filing in a meanly timely manner and withdrew from counsel so the Summary Judgment was awarded because of the delays in filing on behalf of her attorney. These material facts were not presented in time of summary judgment.

(2) Whether the defendant's brief comply with *Rule 24 of the Utah Rules of Appellate Procedure*. The plaintiff was fully aware at the time of filing of the Motion for Appeal by the defendant, and that she would be representing herself *pro se*. The defendant is not well versed in the law, and also does not claim to be an attorney. If the defendant was not in compliance with the Rule 24 of the Utah Rules of Appellate Procedure than it was an accidental oversight on her behalf. The defendant Ms. White is not an attorney of law. If the defendant did not understand or follow the rules under the appellate procedures than she apologizes to the court for her lack of knowledge of the rules and laws governing the appellate procedures, and will make sure, in the future this will never happen again.

(3) Whether the defendant Ms. White raised before the trial court her claims now on appeal. The Rules, Articles, UCA laws and the specific cases that apply are listed below:.

(A) *56 of the Utah Rules of Civil Procedure* as interpreted . *Salt Lake Corp. v. James Constructors, Inc.*, 761 P.2d 42 (Utah Ct. App. 1988), Permits a the court to reconsider a grant of summary judgment when the party seeking reconsideration presents legal theories that have not been considered already, and presents material facts that have not been considered before this court at the time of the original decision to grant summary judgment.

(B) *Rule 10(a) of the Utah Rules of Civil Procedures* requires: Whether or not the summons and complaint are fatally defective, because to contain Pertinent information.

(C) *Rule 3(a)(2), Utah Rules of Civil Procedure* states: the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service.

(D) *Rule 3(a)(1), Utah Rules of Civil Procedures* states: The complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause.

(E) *Rule 12(b), Utah Rules of Civil Procedures* states: Every defense, in law or fact, to claim relief in any pleading, whether a claim, counter-claim, cross-claim, or third-Party claim, shall be asserted in their responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Insufficiency of Process,
- (2) Insufficiency of Service of process.

(F) *Rule 4(g) Utah Rules of Civil Procedures* states: Five days after service of process, proof thereof shall be made by written admission or waiver of service by person to be served,

duly acknowledged or otherwise proved, is purposed to safeguard against entering default judgment against persons except where it is satisfactorily appears that they have consented thereto.

(G) *Rule 4(b) Utah Rules of Civil Procedure* states: Based on summons and complaint not being served within 120 days this case should have been dismissed.

(H) *Rule 1(a) Utah Rules of Civil Procedure* states: These rules shall govern the procedures in the courts of the State of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or equity...

*Constitutional Articles:*

*Article 1 § 7 of the Utah Constitution (Due Process)*

No person shall be deprived of life, liberty, or property, without due process of law

*Article 1 § 4 of the United States Constitution (Due Process)*

No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property *without due process of law*.

*UCA:*

The *Code Annotated §78-12a-2(3)* a motion can be made for insufficiency of process and service of process, leaving out date time, and official title.

(4) Whether any error established or claimed by defendant constitute irreversible error. If there are any errors that have been made, previously mentioned by the defendant, Ms. White is she is representing herself in this civil appeal as *pro se*. So the briefs and responses are not

going to be written as perfect as if the defendant were an attorney. The defendant, Ms. White is doing her best to follow all procedures that the appellate courts are requiring from her.

### **STATEMENT OF THE CASE**

The trial court granted plaintiff's Motion for Summary Judgment awarding plaintiff damages due to defendants cannot be said for breach of written lease agreement, when their were so many written lease agreement by the plaintiff Scott Ockey. The Motion for the Summary Judgment was awarded because of the failure on behalf of the defendant, Ms. Whites' attorney's inability to get the proper filing into the courts on time. In fact on the same day there was a meeting with both the defendant and the plaintiff's attorney to come to an amount, and the plaintiff, Mr. Ockey would not settle for less than \$9000.00 for three months of rent that was only suppose to be at \$1500.00 a month. The defendant's attorney offered \$4500.00 but the plaintiff, Mr. Ockey refused. The rent amount was \$20000.00 a month then discounted by \$500.00 a month for stock. The plaintiff changed his mind on the agreement two weeks after the defendant Ms. White moved in and wanted to change everything and charge the defendant much more. The plaintiff told the defendant if she did not go along with this than he would have charges brought against her with the SEC as seen in the Motion in Reconsidering the Summary Judgment ATOA FORM 3.

The other issue concerning the damages is that the Plaintiff did get a restitution amount that is still being settled with the criminal court. The honorable Judge Judith Atherton is the judge representing the criminal court matter, Judge Atherton stated "that two restitutions do not need to be paid". So once their is an amount decided on the criminal restitution it is to be



subtracted from the Civil Summary Judgment. This was on January 27, 2003 in Judge Atherton's court.

The Plaintiff, Mr. Ockey notified the defendants' probation office on May 27, 2003 stating that the criminal courts had decided on an amount of over \$14,000 and that the defendant need to start paying him immediately. The criminal courts have not decided on an amount even to date.. The civil judgment is right around \$12,000 and the criminal restitution is to include the rent and stock for three months that equal \$6000.00 and not include attorney fees. The plaintiff is trying to say that the defendant owes \$26,000 for three months of rent. I can get an affidavit from the probation officer showing this statement and information is true. This is extortion that was already brought up in the defendant's Memorandum in Reconsideration of Summary Judgment Motion, and the plaintiff is still continuing this to date.

### **FACTS**

1. On October 18, 2001 plaintiff filed his Verified Complaint against defendant seeking defendant's eviction from premises she leased from plaintiff and a judgment for damages for nonpayment of rent are correct.

2. The defendant was personally served with the Summons and Complaint on October 22, 2001, but the complaint and summons did not fall under the guidelines of *Rule 12(b) of the Utah rules of Civil Procedure* states," Every defense, in law or fact, to claim relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the

option of the pleader is made by motion:

1. ...
2. ...
3. ...
4. Insufficiency of Process,
5. Insufficiency of Service of Process,
6. ...

The rule is clear at the point of the pleader the following defenses may be made by motion:

- a. Insufficiency of Process and
- b. Insufficiency of Service of Process.

The service process server failed to annotate their name, date, time, and official Title if any, which is required under *Rule 4(k) of the Utah Rules of Civil Procedures And Utah Code Annotated 78-12a-2(3)*.

*Under Rule 10(a) Of the Utah Rules of Civil Procedures* it states: that the summons together with the copy of the Complaint and the subsequent service of these documents are fatally defective, because they do not contain pertinent information on them, which is required under this *Utah Rule of Civil Procedure established by the Utah Supreme Court.*.. In this case the plaintiff failed to do so and their mistake could and must be classified as fatal.

In addition to this the plaintiff failed to ensure that the required information was contained in the summons and / or complaint. This is in direct violation under the defendants' rights under Article 1 7 of the United States Constitution and Article 1 4 of the United States

Constitution to due process. These requirements are necessary for any defendant to properly defend, if it is not provided then one cannot be required to properly defend the matter which makes it a fatally defective summons.

The Summary Judgment should therefore be set aside and the action dismissed against the defendant, Ms. White.

3. The defendant through legal counsel, did file an Answer and “Counterclaim” on October 26, 2001, although at the time she was unsure about the rules and guidelines and procedures since she was not given any of the pertinent information that was necessary for this summons and complaint. The defendant did vacate the premises. A challenge of service was brought up in the Answer. The “Counterclaim” was brought in for the protection of the defendant because of all of the leases and inaccurate information the plaintiff gave to the courts.

4. The plaintiff did file a Motion for Summary Judgment on July 11, 2002, supported by plaintiff’s affidavit, seeking damages. There was no breach of contract because there were too many contracts, five to be exact, as in the information contained in the Reconsideration of the Summary Judgment Motion ATOA 1,2 3. According to the affidavit of the Plaintiff regarding Rule 56, the material facts had not yet been presented in the case to allow a Summary Judgment to be applied. The material facts were presented later in the Reconsideration for the Summary Judgment Motion.

5. On July 25, 2002, defendant, through legal counsel, filed a Motion to Enlarge the Time to Respond to Plaintiff’s Motion for Summary Judgment requesting an additional 30 days in which to file a response and this is a true statement. The reason for asking the enlargement is because the day before filing the Motion on the Summary Judgment the defendants’ attorney met

with the plaintiff's attorney hoping for a cash settlement which unfortunately they could not come to an agreement, so the defendants' attorney filed for an enlargement of time. The other reason were the defective service, the defendant waiting for her plea in relation to the criminal charges which did come as a result from the order of restitution for damages sought by the plaintiff under his summary judgment motion. This was clearly stated in the "Statement of the Case". The numerous, but unspecified facts that the plaintiff is mentioning goes along with all the slander, abuse, extortion, sexual and made up lease all contained in the Defendant's Memorandum to Reconsider Grant the Plaintiff's Summary Judgment Motion.

6 On August 30, 2002 the defendant responded to the plaintiff's Motion for Summary Judgment by filing through her counsel an "Objection to Plaintiff's Motion for Summary Judgment, this is correct. All of the information for instance, included in the Memorandum to Reconsider Grant to Plaintiff's Summary Judgment Motion had so many angles and pieces it took time to get affidavits and all of the leases contained therein. That is why under *Rule 56 of Rules of Civil Procedures* most of the material evidence took much longer than planned. The Reconsideration of Granting the Summary Judgment contained over 75 pages.

(7) The plaintiff did file a reply to the Defendant's Objection a Memorandum in Opposition to Defendants Motion to Dismiss because this contained all of the pertinent material information needed to support the defendant.

(8), (9) On October 16, 2002 the trial court did grant a Motion for Summary Judgment based on defendant failing to respond in a meaningful way including her failure to contradict any of the Plaintiff's facts. The material facts were not all presented because it contained so much

That was the defendant's reason for Reconsideration of Granting the Summary Judgment Motion , also following Rule 56.

(10) The court record did overlook that the defendant had in fact filed a Motion to Dismiss on July 25, 2002. The defendant was waiting for an answer from the courts. and the plaintiff. The plaintiff sent in a Motion for Summary Judgment, past the 120 days, which is the time allowed to respond. The Plaintiff was gave no response to the Motion to Dismiss, and still went forward with a Motion for Summary Judgment, which the courts granted. This was an injustice.

(11) The defendant did write in her brief "default judgment" instead of "summary judgment", as a mistype.

### **SUMMARY OF ARGUMENT**

There may have been a harmless error in the Answer and Counterclaim and the Motion for Extension of Time. Through this process the defendant attorney's did apologized for the delays and harm he cased. These were addressed to the court and to the opposing counsel. The defendant had to put together what was left and put the pieces together of the Reconsideration of Granting the Summary Judgment Motion and for the first time the defendant had no choice but to represent her *pro se*.

The defendant followed all procedural guidelines to the best of her ability with the Rule 24 of the Utah Rules of Appellate Procedure. Through the instructions from the Appellate Courts Pro Se guide.

Throughout the appellant's breif there were citing of record evidence and review. It may

not come across the way an attorney may write, but the contents were not left out of the brief

The appeal should not be denied

The plaintiff continues to harness the fact that procedural guidelines were not followed by the defendant. These guidelines were followed, maybe not in the way the plaintiff would like to read them, but the pertinent information was contained and presented in the appellant's brief

### **ARGUMENT OF APPELLE**

#### **A. Appellant's Challenges to Service of Process are Procedurally and Substantively Without Merit.**

If the plaintiff had followed the proper procedures and guidelines in reference to the proper order and sequence and time allowed for proper service, there would be no argument, because the case should have been dismissed at the district court level when this was addressed July 25, 2002. This was a fatally defective summons. The service process server failed to annotate their name, date, time, and official Title, if any, and file in the summons and complaint within the proper amount of time to the Third District Court. The Plaintiff then failed to file an Answer to the Motion for dismissal and proceeded to file a Summary Judgment Motion nine months later, not in the 120 day allotted time the court allows. This is required under Rule 4(k) of Utah Rules of Civil Procedures And Utah Code Annotated 78-12a-2(3). The cases involved with improper service are Locke v. Peterson, 285 P 2d 111 and Callahan v. Sheaffer 877 P 2d 1259

The defendant vacated the premises because of the threats, lies and allegation the plaintiff was putting on her which then violated her "quiet peaceful and enjoyment". The plaintiff would constantly harass, stick letters and notes of all sorts on the defendant's door, and threaten

even to shut off the electricity and telephones and lock her out. These are contained in the Reconsideration of Granting the Summary Judgment Motion under the ATOA and the Exhibits. All of this material was not represented before the granting of the summary judgment. The facts are all written in the plaintiff's handwriting. The defendant had no other alternative except to leave the premises which the plaintiff was evicting her from anyway. When the plaintiff did not receive the sexual favors from the defendant and her friends which the plaintiff was anticipating, the plaintiff changed the leases over and over to his satisfaction. This information is contained in the Memorandum in Reconsideration of Granting the Summary Judgment Motion.

The plaintiff states that even if their complaints regarding service are accurate that reversal is not warranted by stated case law from Barlow v. Capps, 821 P 2d 465 (Utah Ct App 1991). This case is not applicable because there is a jurisdictional issue in this Summary Judgment case involving Rule 56, there has been an omission of material fact to have the summary judgment reconsidered. The plaintiff quotes jurisdiction issues related to the case of State v. Hendricksen, 546 P 2d 901,902 (Utah 1976). This case deals with the defendant's timely filing of his notice of appeal to distract the court. This case deals with the timelessness of filing an appeal not being jurisdictional. In the defendant's case the service was not filed within the 3 days to the district court, and improper service on the summons/complaint, which this does render as a jurisdictional issue. Which violates *Rule 4(h) of the Rules of Civil Procedure*. And the case laws which substantiate the jurisdiction issues of improper service are *Locke v. Peterson*, 285 P 2d 111 and *Callahan v. Shaefer* 877 P 2d 1259.

The plaintiff quotes case law of *Sorenson v. Sorenson*, 417 P2d 118, 119 (Utah 1966) in evaluating a jurisdictional issue. This case actually states (Up Until) this time of service

seemed to have been satisfactorily. So there was no jurisdiction issue because service was satisfied.

The plaintiff states the next argument that failure to make proof of service does not affect the validity of the service, in quoted case law: *Redwood Land Co. v. Kimball*, 433 P.2d 1010 (Utah 1967) (only purpose of proof of service is to supply court and parties information that service has been effected). Under *Rule 4(k) of the Utah Rules of Civil Procedures and Utah Code Annotated*

78-12a-2(3), the process server cannot annotate their name, date, time, and official Title, if any from a summons or complaint. Under these rules the court should have dismissed the defendant's case. The plaintiff also failed to comply by not Answering the Motion to Dismiss within 120 days.

According to *Rule 4(e) of Utah Rules of Civil Procedures* states: If the summons and complaint are served by mail or commercial service, then subparagraph (1) require the receipt be signed by the defendant, to be included in the proof of service. The proof of service was not handled in this manner, and the defendant did not sign anything or a receipt of service.

**B. Defendant's Brief Fails to Comply with Rule 24 of the Utah Rules of appellate Procedure and Should be Disregarded or Stricken**

The plaintiff was fully aware, even at the time of Reconsideration of Granting the Summary Judgment Motion that the defendant was going to represent herself as *pro se*. The defendant is not well versed in the law, and does not claim to be an attorney. The defendant Ms. White has complied with all of the Appellate and Supreme Court *Pro Se* guidelines that had



been given to her from the Appellate Court when she filed her appeal. If the defendant, in any way, did not comply with the procedures under Rule 24 than it was not intentional. The defendant will make sure in the future that she will be more specific. The defendant is not an attorney, nor does she speak or write as an attorney. The defendant followed all guidelines that were specifically outlined for her in the *Pro Se* guidelines from the Appellate Court. The Breif or the Appellant should not be stricken or disregarded in any way. Rule 24 was in compliance.

The plaintiff quotes from Rule 24 that the defendant's breif should be stricken and not considered with this case law to support this. Case law *State v. Wareham*, 772 P.2d 960, 996 (Utah 1989) states: *Rule 24(a) of the Rules of the Utah Supreme Court* requires the argument section of a "Breif" contain the contentions of the [party] with respect to the issues presented and the reasons therefore, with citations. The defendant's Breif has set forth contentions and citations, and there has been arguments presented with total support. So this case actually supports the defendant.

In the case of *Christensen v. Munns*, 812 P.2d 69, 72 (Utah Ct. App. 1991) states:

## **2. Appeal and Error 756,761**

Where appellant's brief contained less than single page of assertions on particular point and citations to record, no legal authorities and no analysis whatsoever, their brief was not in compliance with rules which require brief of appellant to contain argument; thus, Court of Appeals declined to address issue and assumed correctness of judgment below. *Rules App. Proc., Rule 24(a) (9)*. The defendant in her case shows five pages of arguments and seven cases of case law including arguments, citations and assertations. So this case does not apply to the

defendant's case.

The citation of the case *Brown v. Wanlass* , 18 P.3d 1137 (Utah Ct. App. 2001)

Judgment 185.1(3)

Brown contended, conclusory affidavits that contain unsubstantiated belief rather than personal knowledge are insufficient to defeat summary judgment. In the defendant's case there are no unsubstantiated beliefs or personal knowledge of insufficiencies to defeat the summary judgment. There is accrual documentation in the plaintiff's handwriting as evidence and many affidavits are also included. The reason for Rule 56 in the case of the defendant is there was an omission of material facts that brought the case together, did not get recognized or included for Reconsidering the Summary Judgment Motion.

The plaintiff quote *Rule 56(e) of the Utah Rules of Civil Procedures* to establish existence of genuine dispute of fact in response to motion for summary judgment. The defendant quotes *Rule 56(c) of the Utah Rules of Civil Procedures*. Motion and proceedings thereon. The motion, memoranda and affidavits shall be filed and served in accordance with CJA 4-501. The judgment sought shall be rendered if the pleadings, depositions, answers, to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

*Salt Lake Corp. v James Constructors, Inc.*, 761 P.2d 42 (Utah Ct. App. 1988), permits the court to reconsider a grant of summary judgment when the party seeking reconsideration

presents legal theories that have not been considered already, and material facts that have not been considered before this court at this time of the original decision to grant summary judgment.

The plaintiffs next arguments I need to correct the case it is not *State v. Smith* but, *Smith v. Smith*, 995 P.2d 14, 16, *cert. denied* , 4P.3d 1289 (Utah 2000). States the appellant bears the burden of demonstrating thru validity of her points on appeal. Rules App. Proc., Rule 24. As the defendant as said over in this reply that the validity of her points have been written to the best of her ability. And in the reply the defendant has made extra effort in going into more explicit detail of statutes, case law, provisions, and articles to the best of her ability.

**C The Record Evidence, Even That Presented Along With Defendant's Motion for Reconsideration, Does Not Create a Genuine Dispute Of Material Fact.**

The Memorandum in the Motion for Reconsideration of Granting the Summary Judgment includes all types of Facts, Affidavits, Personal Handwritten Statements and Leases by the plaintiff, along with many Exhibits and all different forms of Leases the plaintiff made up. This information was not readily available at the time of filing that is why there was a Motion for Enlargement of Time, so the defendant could produce and gather all of these records. As quoted many times throughout this Reply Rule 56(c) where the legal theories and material facts have not been considered before the court at the time of the original decision to grant summary judgment. Rule 56© is not contrary to the facts in *James Constructors*.

The plaintiff claims that there was a breach of contract which is quite the contrary. There were so many “contracts?, leases?. Then which one was breached. The defendant only

signed one contract, any other signatures are forged. The defendant was also evicted, so the plaintiff could try to force the issue of a breach of contract.

The plaintiff brings up the fact that defendant's first response to the motion of the Summary Judgment was to secure an enlargement of time. The defendant was surprised and needed time to address this motion, where the plaintiff was initially suppose to address the Motion to Dismiss. The plaintiff did not file an Answer to the Motion to Dismiss. The Plaintiff also did not Answer the Motion to Dismiss because the time in which the Answer was suppose to be filed was too late, six months to late.

1. The dispute on the form of the written agreement is not applicable since the plaintiff presented many written agreements to the defendant which goes right into number 2.

2. The reason for all of the agreement from the plaintiff offered was in leau of sexual favors from the defendant and her friends. There are affidavits supporting these theories.

1. The defendant occupied the premises for a total of 3 months.

2. The defendant did occupy the premises for only 3 months not 6 months and left the premises in perfect condition

3. The defendant can prove she only occupied the premises for three months and the defendant's attorney did meet with the plaintiff's attorney to resolve an amount for the 3 months of rent a t \$1500.00 a month for 3 months equaling \$4500.00. The plaintiff refused and did not even offer a counter offer. He wanted at the time at least \$9000.00 for 3 months of rent.

The defendant did her best in her writing to comply with all the Appellate Procedures. The defendant did her best to support all assertions and legitimate facts presented in her Breif.

go to these extremes if the total of monies due was even close to correct.

D. **Defendant's Constitutional Argument are Frivolous.**

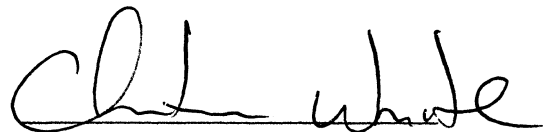
The Plaintiff claims that the defendant constitutional Arugiment are frivolous. I guess they are if we are not allowed to follow the Articles Of The Consitution Of The United States Of America.

**CONCLUSION**

The defendant asks the court in her reply that this case has many merits to be dismissed. The reconsideration of granting the summary judgment motion should be reviewed. And if this gets remanded back to trial court for a trial, at least some justice has been served so the defendant can get a clean and proper hearing.

Dated this 9<sup>th</sup> day of June, 2003.

Respectfully Submitted,

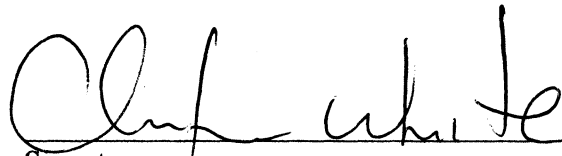
A handwritten signature in black ink, appearing to read 'Christena White', written over a horizontal line.

Christena White

CERTIFICATE OF SERVICE BY MAIL

I certify that on this 9th day of June, 2003, I personally placed a true and correct copy of the "Appellant Brief", in a sealed envelope. I further placed the same in the United States Postal Service and addressed it to the following:

Jeremy M Hoffman (5290)  
YOUNG, ADAMS 7 HOFFMAN, LLP  
170 South Main Street, Suite 1125  
Salt Lake City, Utah 84101-1639

  
Signature