

2003

Zions First National Bank v. Steven E Hudson and Cloyee J Hudson : Brief of Appellant

Utah Court of Appeals

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Craig T. Jacobsen; Callister, Nebeker, McCullough; attorney for appellee.

Steven E. Hudson, Cloyee J. Hudson; pro se.

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IN THE UTAH COURT OF APPEALS

Zions First National Bank

Plaintiff / Appellee

vs

Steven E Hudson and Cloyee J Hudson

Defendants / Appellants

Case No. 20030348

Priority No.

BRIEF OF APPELLANTS

Appeal on Final Judgment and Decree of Foreclosure by the Third Judicial District Court in and for Salt Lake County, State of Utah. Where on June 19, 2002, Judge Michael K. Burton heard Oral Argument and on March 21, 2003, Judge Joseph T. Fratto signed the Order.

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The Defendants request time for Oral Argument.

FILED
Utah Court of Appeals

AUG 14 2003

Paulette Staggs
Clerk of the Court

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Zions First National Bank

Plaintiff / Appellee

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	1 - 6
STATEMENT OF CASE	6 - 9
SUMMARY OF ARGUMENT	10
ARGUMENT	
POINT 1. <u>APPELLEE'S REPRESENTATIVE VIOLATED</u>	
<u>UTAH CODE ANNOTATED (SUPP. 1981) 57-1-31.</u>	10
POINT 11. <u>APPELLEE'S COUNSEL VIOLATED RLDD</u>	
<u>RULE 3.5 IMPARTIALITY AND DECORUM OF THE</u>	
<u>TRIBUNAL</u>	10, 11
POINT 111. <u>APPELLEE'S REPRESENTATIVE VIOLATED</u>	
<u>UTAH CODE 61-1-1.</u>	11
POINT IV. <u>APPELLEE VIOLATED FEDERAL REGULATIONS</u>	
<u>OF THE FAIR LENDING CREDIT ACT - REGULATION "B"</u>	
<u>ALSO KNOWN AS THE EQUAL CREDIT OPPORTUNITY</u>	
<u>ACT.</u>	11, 12

POINT V. MR. HUDSON PURCHASED A LIFE INSURANCE TO
COVER PAYMENT ON THE MASTERCARD SHOULD HE
BECOME DISABLE, EMPLOYED OR DIED...... 12

CONCLUSION 12, 13

TABLE OF AUTHORITIES

STATUTES

Federal Regulations “B”/Equal Credit Opportunity Act 9 – 11

Federal Rules of Procedure Rule 21 5

Utah Code Ann. § 57-1-31 (Supp. 1981). 1, 6, 10

Utah Code Ann. § 61-1-1 2, 3, 11

Utah Code Ann. § 78-2-2 (4) 1

RLDD Rule 3.5 Impartiality and decorum of the Tribunal 5, 10

OTHER AUTHORITIES

Appellant’s Transcript of Oral Argument 6, 8

Article I Section 7 (Due Process of Law) 2

Letter from Appellee dated 10/4/2000 (Record pp. 331) 9

Deed of Trust with Assignment of Rents (Record pp. 20) 3

Home Equity Credit Line Agreement and Disclosure Statement 3
(Record pp. 13)

STATEMENT OF JURISDICTION

Following Utah Code Annotated Section 78-2-2 (4), the Utah Supreme Court transferred this matter to the Utah Court of Appeals for disposition. The Appellants Pro-se present to the Court, issues pertaining to Federal Lending laws, Utah Codes, Civil Rights and Constitutional Rights of Appellants that were violated.

STATEMENT OF ISSUES & STANDARD OF REVIEW

The issues presented for review are as follows:

1. Did the Appellee's representative, R. Steven Chambers, discriminate against Appellant's by not allowing them to exercise their Constitutional provisions based on Utah Codes to cure a default of \$718.00. and reinstate the Home Equity Loan.

Standard of Review:

(a) Utah Code Ann. (Supp.1981) 57-1-31

Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of the obligation or of the trust deed, the trustor or the trustor's successor in interest in the trust property or any part of the trust property or any other person having a subordinate lien or encumbrance of record on the trust property or any beneficiary under a subordinate trust deed, at any time within three months of the filing for record of notice of

default under the trust deed, if the power of sale is to be exercised, may pay to the beneficiary or the beneficiary's successor in interest the entire amount then due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees actually incurred) other than that portion of the principal as would not then be due had no default occurred, and thereby cure the existing default. After the beneficiary or beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed shall be reinstated as if no acceleration had occurred.

(b) Record, pp. 107,

(c) Article I, Section 7. [Due process of law].

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

2. Did the Appellee's Representative, R. Steven Chambers, knowingly commit an act of fraud by misrepresenting the terms of the First Amendment to the Home Equity Loan. Leading the Appellants to believe the terms had been approved when the terms were never approved prior to or after Mr. Chambers coerced the Appellants to sign Amendment on December 28, 2000, or lose their home.

Standard of review:

Utah Code Section 61-1-1 Fraud unlawful.

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

- (1) employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(a) Whether Appellee must comply to the terms of its Trust Deed as the Appellants do concerning all terms and in this case notification of Inspections. Appellee giving no notice and (b) the HELC Agreement and Disclosure concerning all terms and in this case assignments such as the unauthorized Amendment to the HELC Loan.

Standard of Review

(a) Record, pp. 20 Inspections

Inspections, Beneficiary may make or cause to be made reasonable entries of the property provided that Beneficiary shall give Trustor notice prior to any such Inspection specifying reasonable cause thereto related to Beneficiaries interest in the property

(b) Record pp.13 under Miscellaneous Heading last sentence.

“and any unauthorized attempted assignment is null and void.”

4. Whether Appellants received a fair and impartial hearing, in view of the fact that opposing Counsel communicated by letter with the Judge, just before scheduled Oral Argument. The Appellants received no copy of the letter and searched the Courts File, finding no copy or entry of letter. Did the contents of the letter have a bearing on the Judge’s decision and if it was sent, the Judge erred by not entering the letter into the Courts File, or the Appellee and/or its Counsel did not send the letter

and chose to raise the amount of the Judgment by charging fees to draft a letter. Which the Appellee has done by continuing to charge fees and contact Defendants Office Of Recovery Services and Jennifer Hunt, disobeying the Trial Court Judge who dismissed both parties during the Scheduling Conference. Appellee's Counsel erred by stating once Defendant is introduced to the litigation they must remain. Rule 21 of the Federal Rules of Civil Procedures disagree. Furthermore the Trust Deed nor the HECL Agreement state the Appellants must pay an Attorney to write a response letter for Scott Anderson, President of Zions Bank, to reply to a resignation letter from Appellant Mrs. Hudson. The Trial Court erred in allowing the Appellee to add fees for the letter and wrongfully joining and continuing to include Defendants ORS and Hunt. A satisfaction of Judgment (Record, pp.59) filed dismissed the two parties of any claim on the Property. In addition ORS represented Hunt until she hired private Counsel.(Record, pp 58) It is not likely that two Liens are put on a property for the same action. A proper Title Search without intentions of defamation of Mr. Hudson would have produced a correct Title Report that revealed Wells Fargo Bank was the Senior Lien Holder not Zions Bank as it claimed in their Complaint (Record, pp. 7) and who failed to include Wells Fargo as a Defendant (Record, pp.27-32)

Standard of Review

Record, pp. 108

RLLD Rule 3.5. Impartiality and decorum of the tribunal.

A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law; or

(c) In an adversary proceeding, communicate, or cause another to communicate, as to the merits of the cause with a judge or other official before whom a matter is pending, except:

(1) In the course of official proceedings in the cause;

(2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if such party is not represented by a lawyer.

Federal Rules of Civil Procedure Rule 21.? Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action.? Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.? Any claim against a party may be severed and proceeded with separately

Record pp. 301-304

5. Whether the Trial Court Judge displayed judicial bias, when dismissing the argument concerning Mr. Hudson's Bankcard before hearing Mr. Hudson's argument, and not allowing either Appellant to raise any issues concerning the Bankcard. The Judge also allowed the Appellee to escape an

Standard of Review

Record, pp. 108

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5. Whether the Trial Court Judge displayed judicial bias, when dismissing the argument concerning Mr. Hudson's Bankcard before hearing Mr. Hudson's argument, and not allowing either Appellant to raise any issues concerning the Bankcard. The Judge also allowed the Appellee to escape an

Appellee's Representative discriminated against the Appellants by refusing them their Rights. He offered his Amendment as a resolution or they would lose their home. The Amendment was not desired by the Appellants, it caused additional hardship by fixing the interest rate at eleven percent and it also caused a \$200.00 a month increase to the payment. The only way the Appellee would accept the Amendment was the terms stated that Mrs. Hudson becomes a Co-borrower, (which violates Federal Regulation AA) and that she sign a Wage Assignment (Record, pp. 26) authorizing the Plaintiff to automatically take the payments out of her paycheck. She was an employee of the Appellee and had been for 20 years. On Dec. 14, 2000, Appellee's Representative led Mrs. Hudson to believe that he was going to arrange to have the automatic payroll deductions set up before they signed the Amendment to the loan and the Wage Assignment. On Dec. 28, 2000, Appellants signed the Amendment to the loan and Mrs. Hudson signed a Wage Assignment for payments to be automatically deducted out of her paycheck.. On Feb. 9, 2001, Appellant Mrs. Hudson was informed that Appellee's Payroll Department said that they cannot do a Wage Assignment on that type of loan Record pp. Appellee's Representative misled the Appellants into believing that he had made all arrangements and that everything had been approved regarding the terms of the Amendment.

Appellee's Representative offered terms that he never should have offered. The Appellee was unable to fulfill their part of the agreement from the beginning. Appellants were deceived and misled by Appellee's Representative. The material items in this case is, the Appellants would not sign any documents if they were aware the documents had not been approved.

At the Oral Argument Hearing on June 19, 2002, Judge Burton dismissed the argument dealing with Mr. Hudson's Bankcard before the Appellants could argue their issues regarding the Bankcard and would not allow either Appellant to bring up any issues about it. Appellee's Counsel stated that the Appellee had forgiven the amount owed on the Bankcard. There was no need to discuss it.

The Judge ordered the Appellee to write an Order and send a new statement to the Credit Reporting Agency stating that the Bankcard had been forgiven and I will sign it today. The Appellee did not do what the Judge ordered. The Appellants have not received copies of the Order showing this has been done. Appellant Transcript of Oral Argument filed with Utah Supreme Court with Docketing Statement on May 13, 2003 pp14

If Mrs. Hudson is a Co-Borrower on the loan then the Appellee has violated Federal Regulation B also known as the Equal Credit Opportunity Act. The Appellants were coerced into signing the Amendment to the Loan. The Appellants did not receive a fair trial because the Trial Judge would not take into account that the terms and everything, regarding the documents Appellants signed, were misrepresented. The Trial Judge insisted "but you signed the Documents." The Trial Judge erred in not taking into account the circumstances surrounding and leading up to signing of the documents. The Appellants had been misled and deceived by the words and actions of the Appellee's Representative that everything had been approved. The Appellants rule is, do not sign any piece of paper if it has not been approved by the necessary authority.

The last communication with the Appellee dated February 3, 2003, it states that the Appellee has allowed Mr. Hudson's loan to remain inactive. According to their communication they have not even sent this case to their Attorneys, and Appellants do not owe Attorney's Fees or Court Costs. Record pp. 331.

SUMMARY OF ARGUMENT

The Trial Judge erred in not listening to all the facts. He erred in not addressing the issues of misrepresentation and deception. He erred in not allowing the Appellants to state their case regarding the Bankcard.

The Appellee violated Utah Code Annotated (Supp. 1981) 57-1-31. Not allowing Appellants to reinstate original loan.

The Appellee's Counsel violated RRLD Rule 3.5 Impartiality and decorum of the Tribunal.

The Appellee violated their own Loan Documents by allowing their Representative to make unauthorized changes which should have made the Amendment and Wage Assignment null and void.

The Appellee violated Federal Regulations of the Fair Lending Credit Act, Regulation B also known as Equal Credit Opportunity Act.

ARGUMENTS

POINT 1. APPELLEE'S REPRESENTATIVE VIOLATED UTAH CODE ANNOTATED (SUPP. 1981) 57-1-31

When Appellants wanted to reinstate the original loan Appellee violated their Constitutional provisions by refusing them to do so.

POINT 11. APPELLEE'S COUNSEL VIOLATED RLDD RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL.

When he wrote a letter to the Judge before Oral Argument and never sent Appellants a copy and then charges Appellants for drafting the letter. What was in that letter could have influenced the Judge's decision.

POINT 111. APPELLEE'S REPRESENTATIVE VIOLATED UTAH CODE 61-1-1

By intentionally misleading Appellants into believing the terms and everything was approved and worked out before having Appellants sign legal documents. The Appellants were coerced into signing the Amendment to the Home Equity Loan. Appellant, Mrs. Hudson, was forced to become a Co-borrower and sign the Wage Assignment. The Appellants **do not** sign unauthorized or unapproved Loan Documents, more so they are not obligated to comply to misrepresented material facts to documents.

POINT IV. APPELLEE VIOLATED FEDERAL REGULATIONS OF THE FAIR LENDING CREDIT ACT – REGULATION “B” ALSO KNOWN AS THE EQUAL CREDIT OPPORTUNITY ACT.

If Appellant Cloyee Hudson is a Co-Borrower on the loan then Appellee has violated Federal Regulation B. It states that a Creditor must list spouse's joint accounts in both names, enabling each person to obtain the credit history (good or bad). This loan does not show up on Mr. or Mrs. Hudson's Credit Report. Appellee's own records do not show a Co-Borrower on this

loan. Therefore, if Mrs. Hudson is in fact a Co-Borrower then Appellee has violated several Federal Regulations by not complying to the notices it must send, prior to becoming a co-borrower not providing disclosures to the co-borrower and improper record retention.

POINT V. MR.HUDSON PURCHASED A LIFE INSURANCE POLICY TO COVER PAYMENT ON THE MASTERCARD SHUOLD HE BECOME DISABLED, UNEMPOLYEED OR DIED.

Appellant Mr. Hudson did purchase a Life Insurance Policy to guarantee payments on his Bankcard and continued for eight years to pay the monthly premiums to keep the Policy. He did not do it to have the Appellee deny him the Insurance and harass him for the payment and destroy his credit rating. That is exactly what the Appellee has done. Record, pp.92-93

CONCLUSION

The Appellee has involved the Appellants in this matter claiming they failed to abide to the Amended HECL Loan Agreement and Disclosure by not making payments according to the terms of the Amendment. The facts are obvious the Amendment to the HECL Agreement does not exist, it was misrepresented and never approved. There was never an Amended HECL agreement put into effect.

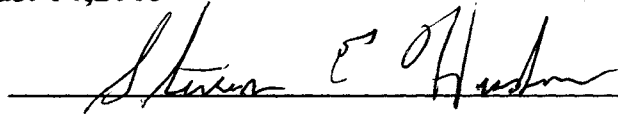
The Appellee has used its influence and power to strip the Appellants of their Rights, Credit and home. It's very disturbing to the Appellants that the Court has allowed this to happen. The Appellants have been forced to defend themselves due to the Appellee's violations. Mr. Hudson became disabled and with no income he was unable to find an Attorney to represent him. e also found that there were Attorneys that felt they did not have the financial capabilities to oppose the Appellee. It may be foolish for the Appellants to believe they have a chance of prevailing in this matter Pro-se and the Counsel for the Appellee has certainly violated many of the Rules he must comply to remain an Attorney. The Appellants believed that an order from the Court was an order that had to be completed. The Plaintiff and its actions of not following the Courts Order and the Court allowing it, has shown the Appellant that very little integrity remains in the Judicial system. An Attorney is supposed to maintain the integrity of the Justice system. In this case it is the Pro-se litigants who are trying to convince the Court that a dollar has as much rights as forty billion dollars when it come to equal justice for all.

Based on the evidence and the laws that Govern, this Court must reverse the decision of the Trial Court and recommend to the Appellee to discipline the Representative who violated the Appellants.

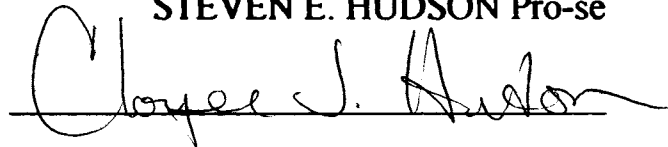
With that said, the Appellant Pro-se prays for a decision to sever the corrupted agreement that has been created and the Appellee becomes responsible to return all money interest and all fees that occurred during and after the sale of the Property.

The Appellant are entitled to damages and fees that have occurred to defend themselves from this wrongful and abusive action. The Appellee must assume responsibility for the illegal action that it representatives commit. Including it legal representatives.

Dated this Day of August 14, 2003



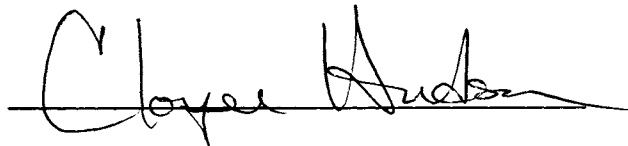
STEVEN E. HUDSON Pro-se



CLOYEE J. HUDSON Pro-se

I hereby certify that I caused a true and correct copy of the foregoing Brief of Appellant to be mailed, to the following this 14th day of August 2003.

Craig T. Jacobsen
Callister Nebeker & McCullough
Gateway Tower East Suite 900
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Salt Lake City, UT 84133



Cloyee J Hudson

ADDENDUM

Final Judgment and Decree of Foreclosure.

Order Granting Motion for Summary Judgment of Zions First National Bank and denying Motion for Summary Judgment of Defendant Steven E. Hudson and Cloyee J. Hudson.

Inter- Office Correspondence from Harris Simmons.

Explanations of how Mr. Hudson's hardship developed.

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Attorneys for Plaintiff Zions First National Bank

FILED
MAR 27 2003
SALT LAKE COUNTY
By: *[Signature]*
Deputy Clerk

ENTERED IN REGISTRY
OF JUDGMENTS
DATE 03/24/03


IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

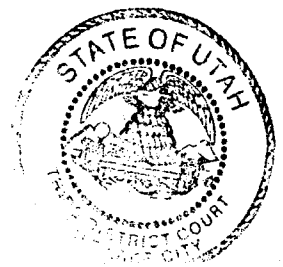
STATE OF UTAH

<p>ZIONS FIRST NATIONAL BANK, Plaintiff, vs. STEVEN E. HUDSON, AKA STEVEN EUGENE HUDSON, CLOYEE J. HUDSON, STATE OF UTAH OFFICE OF RECOVERY SERVICES; and JENNIFER M. HUDSON NKA HUNT, Defendants.</p>	<p>FINAL JUDGMENT AND DECREE OF FORECLOSURE Civil No. 010904874 Judge <i>Frauto</i></p>
--	---

THE COURT, having entered (1) an Order Granting Motion for Summary Judgment of Zions First National Bank, and Denying Motion for Summary Judgment of Steven Eugene Hudson and Cloyee J. Hudson; and (2) Default Judgment against defendant Jennifer M. Hudson nka Hunt; and the Release of Lien filed by defendant State of Utah Office of Recovery Services, NOW, HEREBY ORDERS, ADJUDGES AND DECREES THAT, Defendants Hudson are

364-9127

Final Judgment and Decree of Foreclosure

JD12638333
010904874 HUDSON, STEVEN JD



8/13

indebted jointly and severally to Zions Bank under the Home Equity Credit Line Agreement and Disclosure Statement dated October 18, 1995 as modified by the First Amendment to HCL Agreement and Disclosure dated December 28, 2000, and the Zions First National Bank Deed of Trust with Assignment of Rents to Secure a Home Equity Credit Line and Disclosure Statement dated October 18, 1995, all as more fully described in the Complaint, and that Judgment be and is hereby entered in the following amounts:

For principal, interest, and late charges as of February 20, 2003, in the amount of \$28,332.25; for costs advanced by Zions Bank with respect to this action in the amount of \$1010.55; for attorney's fees incurred by Zions Bank with respect to this action in the amount of \$10,692.00; for the sheriff's costs in the amount of \$700.00 to complete this matter, and attorney's fees in the amount of \$700.00 to complete the foreclosure for a TOTAL JUDGMENT in the amount of \$41,434.80, together with per diem interest on the loan of \$6.86, respectively, as well as interest at the legal rate on all other said amounts from and including until judgment and thereafter until paid and satisfied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, the Trust Deed is a good and sufficient paramount lien upon the real property described therein (hereinafter the "Property") which is superior in all respects to the rights, titles, interests, and/or claims of Defendants Hudson, defendant Utah Office of Recovery Services and defendant Jennifer M. Hudson, nka Hunt, and any persons claiming by, through, or under any of the defendants pursuant to the Trust Deed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, the Property, or such portion thereof as may be sufficient to pay the amounts found to be due and owing under this judgment and decree, together with interest thereon at the legal rate, and accruing costs herein, and expenses of sale, be sold at public auction by the Sheriff of Salt Lake County, State

of Utah, in the manner prescribed by law for such sales; said Sheriff, if and when the Property is sold by him, out of the proceeds of such sale, shall retain first his costs, disbursements, and commissions, and then apply the balance of the proceeds of such sale first to any senior lienholder of Zions Bank; second to Zions Bank, or its attorneys, in payment of the accrued and accruing costs of this action; third, to the payment of the attorney's fees of Zions Bank incurred with respect to this action; fourth, to payment of the amount owing to Zions Bank for principal, interest, costs and expenses, taxes, assessments, and/or insurance premiums as above set forth, together with accrued interest thereon or so much of said sums as said proceeds will pay; and fifth, the surplus, if any, shall be accounted for and paid over to the Clerk of this Court subject to this Court's further order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, all persons having an interest in the Property shall have the right, upon producing satisfactory proof of interest, to redeem the same within the time provided by law for such redemption; that from and after the expiration of the applicable periods of redemption as provided by law, the defendants above named, and each of them, and all persons claiming by, through, or under them, or any of them, be forever barred, and foreclosed of all right, title, interest and estate in and to the Property and from and after the delivery of the Sheriff's Deed to the Property, the grantee named therein be given possession thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, if a deficiency results after due and proper application of the proceeds of such sale, Zions Bank be awarded a personal judgment against defendants Hudson for the full amount of such deficiency. Moreover,

such deficiency shall be augmented in the amount of reasonable costs and attorney's fees expended in collecting said judgment by execution or otherwise as shall be established by affidavit.

The Property is situated in Salt Lake County, State of Utah and is more particularly described as follows:

Lot 169 FOX HILLS NO. 2, according to the official plat thereof, recorded in the Office of the County Recorder of Salt Lake County, Utah.

Parcel No. 21-17-379-021.

DATED this 21st day of ~~February~~, 2003.

March

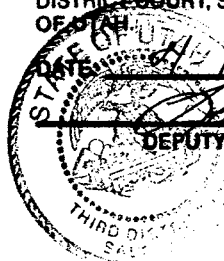
BY THE COURT:

Joseph C. Fr...
District Judge



I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

[Signature]
DEPUTY COURT CLERK



121

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Attorneys for Plaintiff Zions First National Bank

IN THE THIRD JUDICIAL DISTRICT COURT OF SUMMIT COUNTY

STATE OF UTAH

ZIONS FIRST NATIONAL BANK,

Plaintiff,

vs.

STEVEN E. HUDSON, AKA STEVEN
EUGENE HUDSON, CLOYEE J. HUDSON,
STATE OF UTAH OFFICE OF RECOVERY
SERVICES; and JENNIFER M. HUDSON
NKA HUNT,

Defendants.

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT OF
ZIONS FIRST NATIONAL BANK
AND DENYING MOTION FOR
SUMMARY JUDGMENT OF
DEFENDANTS STEVEN E.
HUDSON AND CLOYEE J.
HUDSON**

Civil No.010904874

Judge Michael K. Burton

Before the Court are the Motion for Summary Judgment against Defendants Hudson, filed by plaintiff Zions First National Bank on February 26, 2002 and the Motion for Summary Judgment against Plaintiff Zions Bank, filed by defendants Steven E. Hudson and Cloyee J. Hudson on March 13, 2002. Having reviewed both the parties' legal memoranda and the

relevant authority, as well as having received oral argument at a hearing held on June 19, 2002, the Court concludes as follows:

1. The Home Equity Credit Line Agreement and Disclosure Statement dated October 18, 1995, as modified by the First Amendment to HCL Agreement and Disclosure dated December 28, 2000 (the "Hudson Credit Line") is a valid and enforceable loan agreement obligating both Steven E. Hudson and Cloyee J. Hudson, jointly and severally, to make monthly payments to Zions First National Bank ("Zions Bank") in the amounts set forth in the loan documents.
2. The Zions First National Bank Deed of Trust with Assignment of Rents to Secure a Home Equity Credit Line and Disclosure Statement dated October 18, 1995 (the "Deed of Trust") is a valid and enforceable deed of trust securing repayment of the Hudson Credit Line.
3. The Hudsons' failure to make any of the required monthly payments on the Hudson Credit Line since the Hudson Credit Line was modified in December of 2000 constitutes a material breach of the Hudson Credit Line, entitling Zions Bank to a decree of foreclosure and order of sale, permitting the property subject to the Deed of Trust to be sold at public auction by the Sheriff of Salt Lake County, State of Utah.
4. As of February 20, 2003, the outstanding balance owing by the Hudsons, jointly and severally, on the Hudson Credit Line was \$28,332.25, which included \$22,755.00 principal, \$5,377.25 accrued interest and \$200.00 late charges, with

interest continuing to accrue at the per diem rate of \$6.86, as set forth in the Affidavit of Steven Chambers.

5. Zions Bank is also entitled to an award of reasonable attorney's fees and costs, which shall be added to the final judgment.
6. The Hudsons' various counterclaims fail to state recognizable causes of action.
7. Pursuant to the written and oral representations of Zions Bank, any balance owing on the bank card account of Steven Hudson, more particularly described as Account No. BC 4768 0001 9093 9565, is forgiven and Zions Bank is forever barred from collection efforts on the account.

Based upon the foregoing conclusions of law, the Court hereby grants Zions Bank's motion for summary judgment and denies the motion for summary judgment of the Hudsons. Moreover, Zions Bank shall cooperate with the Hudsons in correcting any inaccuracies in their credit reports arising from efforts of Zions Bank to collect payment on Account No. BC 4768 0001 90939565 subsequent to when Mr. Hudson became disabled.

DATED this ___ day of February, 2003.

BY THE COURT:

Michael K. Burton
District Judge

ZIONS BANK

INTER-OFFICE CORRESPONDENCE

DATE: May 29, 1997

TO: Executive Management, Senior Management, Branch and Department Managers

FROM: Harris H. Simmons, Administration/151-K2

SUBJECT:

A serious incident involving Zions Bank officers should bring home to all of us the importance of exercising extreme caution in issuing any communication, written or oral, from Zions Bank.

Recently, a client opened several business accounts at a local Zions branch, depositing \$1.00 in each one. Informing bank officers that his company was involved in the ongoing transfer of more than one hundred million dollars, the client projected that substantial sums would flow through his Zions accounts. He presented lists of bonds and other securities *supposedly* available, sufficient to cover such a commitment. As part of this projected "funds transfer" — and before any actual money was ever deposited — the client asked bank officers to issue a letter of good faith on his behalf, substantiating funds availability.

Unfortunately, the Bank employees complied with his request and presented the client with the following letter:

To: *Firm Name*
Address

Dear *Client*,

Re: SECURITY CODE - 24275041-DV-182F

We the undersigned bank officers hereby confirm that *Firm Name* has available to them, for transfer, \$100,000,000.00 US Dollars (One Hundred Million US Dollars).

These funds are good, clean, cleared funds, unencumbered and may be freely transferred upon receipt of your instructions.

Yours sincerely,
Signed
Vice President Manager

Signed
Loan Officer

Please review the words of this letter carefully. Note what it implies. Speaking as "bank officers," these employees "confirm" the availability of \$100,000,000, in "good, clean, cleared funds, unencumbered" funds, further stating that such funds may be "freely transferred."

While this transaction was stopped prior to any money leaving the bank, obviously, such a letter should never have been written. Authorities outside the bank who have been involved in the investigation of this incident have called the letter evidence of potential bank fraud — a very serious allegation. ***No bank officer is ever authorized to make such a broad commitment — with no expiration date — on behalf of Zions Bank — and certainly never for the amount indicated.*** Bank employees should never communicate, especially on bank letterhead, statements that they cannot personally substantiate. Unfortunately, the officers in question did not choose to involve a supervisor in their decision. They were acting outside of their authority and without the knowledge and approval of bank management.

Committing Zions Bank and its resources without first obtaining the necessary approvals cannot be tolerated and is grounds for termination. No bank employee should ever sign any document of any type without fully understanding all possible ramifications involved, regardless of who presents the document and attempts to require the employee to sign it.

Anyone who issues any communication on behalf of Zions Bank must fully weigh all of its implications. Good judgement is paramount. Before you sign any letter or document of any kind acting in your capacity as a Bank employee, make sure you are fully aware of what you are signing. Act with wisdom, never in haste and always with caution.

Ask yourself:

- “What am I committing the bank to?”
- “Do I have the authority to do so?”

Particularly in situations involving transactions which are out of the ordinary for your branch or department — regardless of the size of the transaction — you should always involve others before you act. Discuss the matter with your immediate supervisor, area manager, and, where appropriate, alert senior management.

And certainly, while all transactions involving millions of dollars may not be fraudulent, any promise of the potential transfer of millions of dollars should automatically send up a red flag. Falling prey to fund transfer frauds can have serious consequences, and can cause the bank, its employees, and its clients to face substantial losses. The moment you hear of one, back away. Remember the old adage, “If something appears too good to be true — watch out — it probably is.”

If you hear any information of any kind involving the described letter or similar funds transfers, please alert the Security department and Branch Operations immediately.

Please review this memo with all officers in branches and departments.

Mr. Hudson's thirty year occupation was Plumbing and Mechanical installations. The last twenty-seven years of Job Foreman carrying responsibilities, coordinating personnel and completing multi million-dollar Plumbing and Mechanical systems in several State owned facilities throughout Utah and privately owned properties throughout the Western States. An above average income allowed him to maintain a remarkable credit relationship with all financial arrangements including those with the Appellee.

On March 97, in the course of installing a water heater as a favor inside his next-door neighbor's home a brown recluse spider envenomed Mr. Hudson on his right ankle. The disabling effect, caused his lose of employment, his health insurance expired with his job, and treatment for the wounds added several thousand dollars to his hardship for medical attention due to no health Insurance and he continues to suffer open wounds from the bite.

It should be recognized the spider, bit Mr. Hudson on March 1997, and with its financial responsibilities and ability to save money he was able to keep a good relationship with his creditors. He exhausted his saving accounts and sold several personal items until July of 2000. Mr. Hudson began to struggle financially even though Mrs. Hudson was working and with her in come they were barely able to keep up monthly bills.

On October of 2000, Mr. Hudson applied for Disability Benefits. It was after a very lengthy review he was denied the benefits, and an appeal before an Administrative Judge was filed. Again he had to wait a lengthy review. An Administrative Judge of the Department of Social Security Administration found Mr. Hudson unable to perform his occupation as a Journeyman plumber. The very large lesions on his ankle and legs, disabled Mr. Hudson. the Administrative Judge found Mr. Hudson was entitled to receive \$1,450.00 each month and two years back pay that equaled thirty six thousand dollars.

The money received went to pay his creditors to date. They fortunately had the patience and understanding to work with Mr. Hudson during his hardship. Zions Bank however did not want to wait. They showed more interest in taking Mr. Hudson's home and leaving him on the street. Zions Banks representative had a personal conflict against Mr. Hudson. He believes that is the reason Zions Bank has done as it did.