

2003

James R. Russell and Raylene Russell v. J. Scott Lundberg : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JAMES R. RUSSELL and RAYLENE :
RUSSELL, for themselves and for all other :
similarly situated individuals and entities; :

Plaintiffs/Appellants, :

vs. :

J. SCOTT LUNDBERG; LUNDBERG & :
ASSOCIATES, a professional corporation; :
BACKMAN TITLE COMPANY, a Utah :
corporation; BACKMAN-STEWART :
TITLE SERVICES, LTD., a Utah limited :
partnership; CANYON ANDERSON; :
RODNEY SERVICE COMPANY, a Utah :
corporation; and JOHN DOES 1 through :
10, :

Defendants/Appellees. :

**ADDENDUM TO
BRIEF OF APPELLEES
J. SCOTT LUNDBERG,
LUNDBERG & ASSOCIATES,
AND RODNEY SERVICE CO.**

Case No. 20030938-CA

**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO.

20030938-CA

**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, THE HONORABLE LESLIE A. LEWIS**

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**FILED
UTAH APPELLATE COURTS
NOV 24 2004**

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ADDENDUM

TABLE OF CONTENTS

Rules

Utah Rule of Civil Procedure 56(c)	1
Utah Rule of Civil Procedure 56(e)	1
Utah Rule of Professional Conduct 1.7	2

Statutes

15 U.S.C. § 13(c)	3
Utah Code Ann. § 13-5-1	5
Utah Code Ann. § 13-5-3(1)(a)	5
Utah Code Ann. § 13-5-3(1)(b)(i)	5
Utah Code Ann. § 13-5-3(3)	5
Utah Code Ann. § 13-5-17	5
Utah Code Ann. § 31A-23-404	6
Utah Code Ann. § 57-1-19(1)	7
Utah Code Ann. § 57-1-19(4)	7
Utah Code Ann. § 57-1-20	7
Utah Code Ann. § 57-1-21	7
Utah Code Ann. § 57-1-21.5	8

Utah Code Ann. § 57-1-22(1)	9
Utah Code Ann. § 57-1-23	9
Utah Code Ann. § 57-1-25	9
Utah Code Ann. § 57-1-26(2)	10
Utah Code Ann. § 57-1-26(3)	10
Utah Code Ann. § 57-1-26(4)	10
Utah Code Ann. § 57-1-27	11
Utah Code Ann. § 57-1-29	11
Utah Code Ann. § 57-1-31(1)	12
Utah Code Ann. § 57-1-33.1(1)(a)	13
Utah Code Ann. § 78-18-1(a)	14

Rule 56. Summary judgment.

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. 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.

(e) Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

Rule 1.7. Conflict of interest: general rule.

1. (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) Each client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation to each client of the implications of the common representation and the advantages and risks involved.

15 U.S.C. § 13. Discrimination in price, services, or facilities

2. Release date: 2004-05-18

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

13-5-1. Short title.

This act shall be known and may be cited as the "Unfair Practices Act."

13-5-3. Unlawful discriminations -- Burden of proof -- Taking or offering commissions -- Payments for benefit of customers -- Discrimination among purchasers -- Inducing discriminations.

(1) (a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the state and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

(b) Nothing in this chapter shall prevent:

(i) differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) It is unlawful for any person engaged in commerce in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares, or merchandise.

13-5-17. Policy of act.

The Legislature declared that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be liberally construed that its beneficial purposes may be subserved.

31A-23-404 Sharing commissions.

(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter to act as an agent or broker in Utah as to the particular type of insurance.

(b) A person may only accept commission compensation or other compensation as an agent, broker, or consultant that is directly or indirectly the result of any insurance transaction if that person is licensed under this chapter to act as an agent or broker as to the particular type of insurance.

(2) (a) Except as provided in Section 31A-23-301, a consultant may not pay or receive any commission or other compensation that is directly or indirectly the result of any insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only with another consultant licensed under this chapter, and only to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement.

(4) This section does not prohibit compensation paid to or received by an individual for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

(a) the person is not licensed to sell insurance;

(b) the person sells or provides opinions or advice on the product; and

(c) the compensation does not depend on whether the referral results in a purchase or sale.

(5) In selling any policy of title insurance, no sharing of commissions under Subsection (1) may occur if it will result in an unlawful rebate, or in compensation in connection with controlled business, or in payment of a forwarding fee or finder's fee. A person may share compensation for the issuance of a title insurance policy only to the extent that he contributed to the search and examination of the title or other services connected with it.

(6) This section does not apply to bail bond agents or bail enforcement agents as defined in Section 31A-35-102.

57-1-19. Trust deeds -- Definitions of terms.

As used in Sections 57-1-20 through 57-1-36:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest.

(4) "Trustee" means a person to whom title to real property is conveyed by trust deed, or his successor in interest.

57-1-20. Transfers in trust of real property -- Purposes -- Effect.

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed as if acquired before execution of the trust deed.

57-1-21. Trustees of trust deeds -- Qualifications.

(1) (a) The trustee of a trust deed shall be:

(i) any active member of the Utah State Bar who maintains a place within the state where the trustor or other interested parties may meet with the trustee to:

(A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;

(B) deliver written communications to the lender as required by both the trust deed and by law;

(C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

(D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the property secured by the trust deed.

(ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;

(iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;

(iv) any title insurance company or agency that:

(A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;

(B) is actually doing business in the state; and

(C) maintains a bona fide office in the state;

(v) any agency of the United States government; or

(vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:

(i) that is open to the public;

(ii) that is staffed during regular business hours on regular business days; and

- (iii) at which a trustor of a trust deed may in person:
 - (A) request information regarding a trust deed; or
 - (B) deliver funds, including reinstatement or payoff funds.
- (c) Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.
- (d) The amendments in Chapter 209, Laws of Utah 2002, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.
- (2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).
- (3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).
- (4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

57-1-21.5. Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.

- (1) Except as provided in Subsection (2), the following duties of the trustee may not be delegated:
 - (a) the preparation and execution of:
 - (i) the notice of default and election to sell;
 - (ii) the cancellation of notice of default and election to sell;
 - (iii) the notice of sale; and
 - (iv) the trustee's deed;
 - (b) the notification of foreclosure through publication, posting, and certified or registered mail;
 - (c) the receiving and responding to requests for reinstatement or payoff requirements; and
 - (d) the handling of reinstatement or payoff funds.
- (2) Nothing in this section is intended to prevent:
 - (a) the trustee from using clerical or office staff:
 - (i) that is under the trustee's direct and immediate supervision; and
 - (ii) to assist in the duties described in Subsection (1);
 - (b) the trustee from using the services of others for publication, posting, marketing, or advertising the sale; or
 - (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly performing the functions described in:
 - (i) Subsection (1)(c); or
 - (ii) Subsection (1)(d).
- (3) The amendments in Chapter 209, Laws of Utah 2002, to Subsection (2) do not apply to a foreclosure if the notice of default related to the foreclosure was filed before May 6, 2002.
- (4) (a) Except as provided in Subsection (4)(c), a trustee may not solicit or receive any fee for referring business to a third party.
- (b) Fees prohibited under Subsection (4)(a) include:
 - (i) a commission;

- (ii) a referral based fee, including a fee for the referral of:
 - (A) title work;
 - (B) posting services; or
 - (C) publishing services; or
- (iii) a fee similar to a fee described in Subsection (4)(b)(i) or (ii).
- (c) Subsection (4)(a) does not apply to:
 - (i) fees received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or
 - (ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.
- (5) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:
 - (a) a trustor reinstating or paying off a loan; or
 - (b) a beneficiary acquiring property through foreclosure.
- (6) (a) A person that violates Subsection (4) or (5) is guilty of a class B misdemeanor.
- (b) In addition to a person's liability under Subsection (6)(a), if a person violates Subsection (4) or (5), that person is liable to the trustor for an amount equal to the greater of:
 - (i) the actual damages of the trustor as a result of the violation; or
 - (ii) \$1,000.
- (c) In an action brought under Subsection (6)(b), the party that does not prevail in the action that is brought under Subsection (6)(b) shall pay the attorney fees of the prevailing party.

57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.

(1) (a) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the county recorder of each county in which the trust property or some part of the trust property is situated, a substitution of trustee.

57-1-23. Sale of trust property -- Power of trustee -- Foreclosure of trust deed.

The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and cause the trust property to be sold in the manner provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision for it in the trust deed.

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of sale.

(1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:

- (a) by publication of the notice:
 - (i) at least three times;
 - (ii) once a week for three consecutive weeks;

- (iii) the last publication to be at least ten days but not more than 30 days before the date the sale is scheduled; and
- (iv) in a newspaper having a general circulation in each county in which the property to be sold, or some part of the property to be sold, is situated; and
- (b) by posting the notice:
 - (i) at least 20 days before the date the sale is scheduled; and
 - (ii) (A) in some conspicuous place on the property to be sold; and
 - (B) at the office of the county recorder of each county in which the trust property, or some part of it, is located.
- (2) (a) The sale shall be held at the time and place designated in the notice of sale.
- (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.
- (c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.

57-1-26. Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.

- 2) (a) Not later than ten days after recordation of a notice of default, the trustee or beneficiary shall mail a signed copy of the notice of default:
 - (i) by certified or registered mail, with postage prepaid;
 - (ii) with the recording date shown;
 - (iii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
 - (iv) directed to the address designated in the request.
- (b) At least 20 days before the date of sale, the trustee shall mail a signed copy of the notice of the time and place of sale:
 - (i) by certified or registered mail, return receipt requested, with postage prepaid;
 - (ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
 - (iii) directed to the address designated in the request.
- (3) (a) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed at the address of the person set forth in the trust deed.
- (b) A copy of any notice of default and of any notice of sale shall be mailed to any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request had been filed by each person as provided in Subsection (1) except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the time the notice of default and the notice of sale is provided:
 - (i) the name of the trustee;
 - (ii) the mailing address of the trustee;
 - (iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection

57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection **57-1-21(1)(b)**;

(iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and

(v) a telephone number that the person may use to contact the trustee during the hours described in Subsection (3)(b)(iv)

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, no later than 15 days after the filing for record of the notice of default, a copy of the notice of default shall be:

(a) mailed to the address of the property described in the notice of default; or

(b) posted on the property.

57-1-27. Sale of trust property by public auction -- Postponement of sale.

(1) (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder. The trustee, or the attorney for the trustee, may conduct the sale and act as the auctioneer. The trustor, or the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold separately. The trustee or attorney for the trustee shall follow these directions. Any person, including the beneficiary or trustee, may bid at the sale. The trustee may bid for the beneficiary. Each bid is considered an irrevocable offer. If the highest bidder refuses to pay the amount bid by the highest bidder for the property, the trustee, or the attorney for the trustee, shall either:

(i) renounce the sale in the same manner as notice of the original sale is required to be given; or

(ii) sell the property to the next highest bidder.

(b) A bidder refusing to pay the bid price is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable attorneys' fees. The trustee or the attorney for the trustee may thereafter reject any other bid of that person for the property.

(2) The person conducting the sale may, for any cause he considers expedient, postpone the sale. The person conducting the sale shall give notice of each postponement by public declaration, by written notice or oral postponement, at the time and place last appointed for the sale. No other notice of the postponed sale is required, unless the postponement exceeds 45 days. In that event, the sale shall be renounced in the same manner as the original notice of sale is required to be given.

57-1-29. Proceeds of trustee's sale -- Disposition.

(1) The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, and the balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the

sale took place. If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses. Upon depositing the balance and filing the affidavit, the trustee shall be discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavits within 15 days of receiving the affidavit of deposit from the trustee.

(3) Any claimant may file a petition for adjudication of priority to the funds. The petitioner requesting the funds shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner. The petitioner's notice must specify that all claimants have 20 days to contest the petition by affidavit or counter-petition. If no affidavit or counter-petition is filed within 20 days, the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing. At the hearing, the court will establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) All persons having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fail to appear and assert their claims are barred from any claim to the funds after the entry of the court's order under Subsection (4).

57-1-31. Trust deeds -- Default in performance of obligations secured -- Reinstatement -- Cancellation of recorded notice of default.

(1) 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.

57-1-33.1. Reconveyance of a trust deed -- Erroneous reconveyance.

(1) (a) When an obligation secured by a trust deed has been satisfied, the trustee shall, upon written request by the beneficiary, reconvey the trust property.

78-18-1. Basis for punitive damages awards -- Section inapplicable to DUI cases -- Division of award with state.

(1) (a) Except as otherwise provided by statute, punitive damages may be awarded only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.

CERTIFICATE OF SERVICE

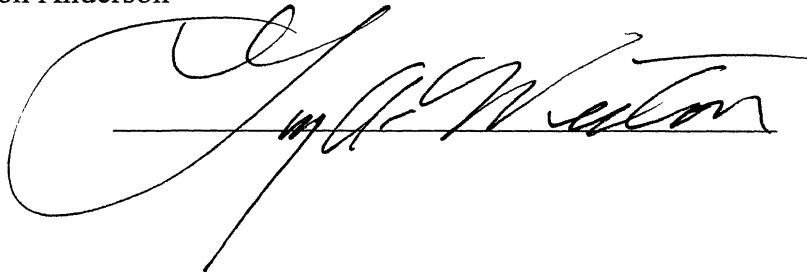
I HEREBY CERTIFY that on this 24th day of November, 2004, I caused two true and correct copies of the foregoing ADDENDUM TO BRIEF OF APPELLEES J.

SCOTT LUNDBERG, LUNDBERG & ASSOCIATES, AND RODNEY SERVICE

COMPANY to be mailed United States mail postage prepaid, addressed to the following:

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A handwritten signature in black ink, appearing to read "Willis Orton", is written over a horizontal line. The signature is stylized with a large, looping initial "W".