

2004

George Carroll Paar and Carlena Sue Paar v. Clifford L. Stubbs : Brief of Appellees

Utah Court of Appeals

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Clifford Lee Stubbs; Pro Se.

Judy Jorgensen; Lundberg & Associates; Brent Thomas; Scott Lundberg; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

GEORGE CARROLL PAAR AND
CARLENA SUE PAAR,

Appellees/ Petitioners

vs.

CLIFFORD L. STUBBS,

Appellant/ Respondent.

Appellate No. 20040090-CA

**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 20040090-CA

BRIEF OF APPELLEES

Appeal From Order to Remove Wrongful Lien Pursuant to Utah Code
Annotated §38-9-7 From the Fourth Judicial District Court, Provo Department,
Utah County, State of Utah, the honorable Gary D. Stott presiding.

Scott Lundberg (2020)
Judy Jorgensen (6909)
Brent Thomas (9459)
LUNDBERG & ASSOCIATES
3269 South Main Street, Suite 100
Salt Lake City, Utah 84115

Attorneys for George and Carlena Paar
Appellees

Clifford Lee Stubbs aka Clifford L. Stubbs
1430 East 200 South #A
Pleasant Grove, Utah 84062

Appellant Pro Se

**FILED
UTAH APPELLATE COURTS
SEP 13 2004**

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Attorneys for George and Carlena Paar
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Clifford Lee Stubbs aka Clifford L. Stubbs
1430 East 200 South #A
Pleasant Grove, Utah 84062

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I. ISSUES PRESENTED FOR APPEAL

The issue presented by this case is whether the trial court erred in awarding the Paars an Order to Remove the Wrongful Liens filed by Stubbs against the title to their property based upon an alleged lack of proper service under Rule 4 of the Utah Rules of Civil Procedure.

II. STANDARD OF REVIEW

The trial court heard this matter pursuant to a petition for the removal of wrongful lien filed by the Paars in order to remove certain filings by Stubbs from the title to their property.

The standard of review on issues of service of process is a correction of error standard. Parkside Salt Lake Corp. v. Insure-Rite, 2001 UT App. 347, 37 P.3d 1202, 1205 (Ut.Ct. App. 2001); Bonneville Billing v. Whatley, 949 P.2d 768, 771 (Ut. Ct. App. 1997). Further, as the issue involves the interpretation of the Wrongful Lien statute found in Utah Code Annotated §39-9-1 et seq., there is a question of law to be reviewed for correctness. Russell v. Thomas, 2000 UT App 82, 999 P.2d 1244, 1247.

To challenge the trial court's findings, "it is the appellant's burden to marshall the evidence, citing the appellate court to all the evidence in the record that would support the determination reached by the trial court and then demonstrate why, even when viewed in the light most favorable to the court below, it is insufficient to support the finding under attack. " Interiors Contracting, Inc. v. Smith, Halander & Smith Associates, 881 P.2d 929, 933 (Utah App. 1994)(citations omitted). Further, "[i]n order to properly discharge the duty of

marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the Stubbs resists.” Id. (citing West Valley City v. Majestic Inv. Co., 818 P.2d 1311, 1313 (Utah App. 1991). If the appellant fails to marshal the evidence supporting the finding under attack, that finding is presumed to be valid. See Saunders v. Sharp, 793 P.2d 927, 931 (Utah App. 1990).

III. STATEMENT OF THE CASE

1. On August 11, 2003, the Paars filed a Petition for the Removal of Wrongful Lien (the “Petition”) in the Fourth Judicial District Court, including the Affidavit of George Paar. Record 17

2. Upon review of the Petition on or about September 8, 2003, the district court found it sufficient and scheduled a hearing for the Petition for September 30, 2003, which hearing was rescheduled to October 24, 2003 per the court’s request. Court Docket.

3. A Motion for Hearing was filed on or about September 11, 2003 and the Order was subsequently signed on September 22, 2003. Record 18, 19

4. Notice of the hearing date as to the Petition for the Removal of the Wrongful Lien against the Paar’s property was sent to Stubbs by both the district court itself and twice by the Paars to Stubbs. Record 20, 21

5. The hearing was held on October 24, 2003, the honorable Gary D. Stott presiding, with counsel for the Paars present for the Paars and Stubbs present pro se. Record 24

6. The district court heard oral argument from both parties as to the sufficiency of the notice of the summary proceeding given to Stubbs and on the merits of the case, i.e., the alleged basis for Stubbs's alleged Lien for Debt and UCC filings against the Paar's property.

7. After oral argument concluded, the trial court concluded that notice was proper pursuant to Utah Code Annotated §38-9-7 and that Stubbs was fully aware of the claims being asserted by the Paars as to the alleged wrongful lien. Further, the trial court found that Stubbs's filings against the title to the Paars' property were wrongful and were therefore void ab initio. Record 24

8. On November 12, 2003, Stubbs filed "Preseve Petition to Set Aside Order of Wrongful Lien. Record 29

9. On November 12, 2003, the Paars filed an Objection to Stubbs's "Preserve Petition to Set Aside Order of Wrongful Lien." Record 36

10. On November 20, 2003, Stubbs filed a Petition to Set Aside Order of Wrongful Lien. Record 40

11. On November 17, 2003, the Paars filed an Objection to Stubbs's Petition to Set Aside Order of Wrongful Lien. Record 39

12. On November 20, 2003, Stubbs filed a Notice to Submit for Decision on his Petition to Set Aside Order of Wrongful Lien, which was addressed in the Minute Entry dated November 20, 2003. Record 58

13. On December 31, 2003, the Order to Remove Wrongful Lien was signed and entered by the district court, with the changes requested by the

district court including the denial of Stubbs's Petition to Set Aside Order of Wrongful Lien. Record 52

14. On January 20, 2004, Stubbs filed a Petition for Appeal of Order to Remove Wrongful Lien with Stay Pending Appeal. Record 55

15. On January 28, 2004, the Paars filed an Objection to Petition for Appeal of Order to Remove Wrongful Lien with Stay Pending Appeal. Record 60

16. On January 28, 2004, Stubbs filed an Amended Petition and Motion to Set Aside Order of Wrongful Lien and a Petition Under Rule 60(a) to Set Aside or Correct Order of Wrongful Lien, along with a Notice to Submit for Decision. Record 69, 74, 76

17. On February 11, 2004, the Paars filed an Objection to Amended Petition to Set Aside Order of Wrongful Lien. Record 82

IV. STATEMENT OF THE FACTS

1. On or about May 1, 1990, George Carroll Paar and Carlana Sue Paar obtained the ownership interest in the Property pursuant to a Warranty Deed executed by Patterson Construction as grantor to George Carrol Paar and Carlana Sue Paar as grantees, which was recorded in the Utah County Recorder's Office on May 1, 1990 as Entry No. 13654 in Book 2686 at page 265.

2. On or about May 1, 2003, Stubbs filed a Lien For Debt ("Lien") in the Utah County Recorder's Office as Entry No. 66142:2003, referencing a Utah Department of Commerce filing ("UCC Filing") related to an alleged self-executing Security Agreement of Copyright Notice ("Security Agreement") allegedly ratified by George Carroll Paar by silence.

3. The UCC Filing reference by the Lien was recorded by the Stubbs in the Utah Department of Commerce on February 27, 2002, listing George Paar, IndyMac et al. as the debtor and himself as the secured party, also in reference to the alleged Security Agreement.

4. The Lien, including the UCC Filing, is a wrongful lien under Utah Code Annotated §39-9-1 in that it purport to create a lien or encumbrance on an owner's interest in certain real property and at the time that it was recorded, it was not expressly authorized by a state or federal statute, nor authorized by or contained in an order or judgment of a court of competent jurisdiction in this state, nor authorized by petitioners as the owners of record of the Property.

5. Further, Stubbs knew or had reason to know that the Lien, including the UCC Filing was a wrongful lien in that it was groundless and contained false claims by Stubbs to have a security interest against George Paar that did not and does not in fact exist.

6. At no time did the Paars enter into any agreement with Stubbs to give him any security interest in any of their property, real or personal, nor were they ever indebted to Stubbs in any manner or for any reason.

7. At no time did the Paars, as record owners of the property located at 355 East Ridge Circle, Alpine Utah 84004, authorize Stubbs, in writing or otherwise, to file for recording any lien or encumbrance on said property.

8. Mr. Paar's only connection to Stubbs was as the agent involved in evicting Stubbs from a separate property after a foreclosure sale.

9. Stubbs responded to the trial court's inquiry about the legal and factual basis to support his claim that the liens were not wrongful, to which Stubbs responded by claiming an alleged contract between him and Mr. Paar regarding usage rights to Stubbs's alleged "copyrighted" name that was alleged agreed to by Mr. Paar by his silence in the face of a demand letter sent by Stubbs and Mr. Paar's use of Stubbs's "copyrighted" name during eviction proceedings against Stubbs that occurred prior to that date. Stubbs provided documentation regarding his alleged claim against Mr. Paar. Addendum.

V. SUMMARY OF THE ARGUMENT

Stubbs filed wrongful liens against the real property of the Paars, who petitioned the trial court to nullify based upon the wrongful liens being an encumbrance and a cloud on the title to their real property. The trial court found the petition sufficient and scheduled a hearing on the matter in order to allow Stubbs an opportunity to defend the merits of his liens. Notice of the summary proceeding was provided to Stubbs, who attended the hearing personally and presented evidence as to why he believed that his liens were valid.

Stubbs received adequate notice of Paars' claims for the removal of the liens from the title to their property from both the Paars and the trial court and was afforded an opportunity to defend said liens. Rule 4 should be construed liberally in support of the litigation of the matter upon its merits, especially where any defects in the proof of service did not act to prejudice Stubbs. Stubbs had actual notice of the petition and the facts upon which Paars' claim for removal of the wrongful liens from their property and in fact appeared at the time and place

set for the hearing prepared to argue the validity of his claimed liens against the Paars. The trial court found that Stubbs's liens were in fact wrongful and ordered that the liens be removed from the Paars' property as void ab initio.

V. ARGUMENT

Stubbs's claim raised at the hearing in the trial court on Paars' Petition for Removal of Wrongful Lien was that the matter should be dismissed based upon an alleged failure of personal service of a summons and complaint upon him in accordance with Rule 4 of the Utah Rules of Civil Procedure, thereby depriving the trial court of subject matter jurisdiction. District courts have original jurisdiction over all civil and criminal matters not otherwise excepted by the Utah Constitution or prohibited by law in accordance with Utah Code Annotated §78-3-4 and subject matter jurisdiction is conferred upon the district courts upon the filing of a complaint or by the service of a summons and complaint, whichever occurs first, under Rule 3(b) of the Utah Rules of Civil Procedure. The district court would therefore have subject matter jurisdiction from the date of the filing of the Petition for Removal of Wrongful Lien.

Utah Code Annotated §38-9-1 et seq. deals with wrongful liens being filed against real property and allows for a summary procedure in order to obtain a quick hearing on the issue of whether or not the lien complained of by the petitioner is wrongful. It allows for a record interest holder of the real property against which a wrongful lien has been filed to petition for summary relief to nullify the lien. See Utah Code Annotated §38-9-7(1). The petition must set forth specifically a claim that the lien complained of is wrongful under the definition set

forth in Section 38-9-1 and be supported by a sworn affidavit of the record interest holder. The trial court reviews the petition and if the petition is found to be insufficient, the trial court may dismiss the petition without a hearing. If the petition is found to be sufficient, the trial court is to schedule a hearing within ten (10) days in order to determine whether the lien is in fact wrongful. Section 38-9-7(c) provides for the record interest holder to provide the lien claimant with notice of the claim asserted and the hearing date so as to enable the lien claimant the opportunity to defend the alleged wrongful lien by serving a copy of the petition and a notice of the hearing as allowed by Rule 4 of the Utah Rules of Civil Procedure. The summary proceeding is for the determination as to the validity of the lien only and does not encompass any other claims or restrict any other legal remedies.

Stubbs alleges that he did not get properly served with a copy of the Petition for Removal of Wrongful Lien based upon the fact that none of the Certificates of Mailing on record with the trial court specifically referred the Petition for Removal of Wrongful Lien and that, therefore, not only should the Order for Removal of Wrongful Lien be set aside, but that the Petition for Removal of Wrongful Lien should be dismissed with prejudice. Stubbs does not provide any caselaw to support either position.

Rule 4(d) of the Utah Rules of Civil Procedure provides that process can be served by mail provided that the defendant signs a document indicating receipt, with service being complete upon the date the receipt is signed. Proof of the receipt by Stubbs of at least one of the three notices sent to Stubbs was

filed with the trial court. At the hearing, Stubbs alleged that he was never personally served with a summons and complaint in accordance with Rule 4, to which the response was that no such service was required since this was not a traditional summons and complaint but was brought under the summary procedure set forth in Utah Code Annotated Section 38-9-7. The trial court found that Stubbs had received the notice required by the statute and had appeared at the time appointed for the hearing prepared to argue the matter; therefore, Stubbs's motion to dismiss was denied.

The Utah Supreme Court has previously stated that “[w]hen the proper defendant has received actual notice of the suit and notice of the facts upon which the complaint is based, the possibility of prejudice is greatly diminished” and that [i]n the absence of prejudice, it is appropriate to pursue that policy which favors resolution of disputes on the merits rather than technicalities.” Meyers v. Interwest Corp., 632 P12d 879, 881 (Utah 1981). The Utah Rules of Civil Procedure are “liberally construed to afford litigants their day in court on the merits of their claim”. Id. at 882.

In this matter, Stubbs was notified of Paars' claim for the removal of the wrongful liens filed by Stubbs against Paars' property and of the time and place set for the hearing on the issue. Stubbs appeared, fully prepared to argue the merits of his claim for a lien against said property, and did in fact present the arguments to the trial court. The issue was fully and fairly litigated and the trial court's decision on the wrongful lien should be upheld.

VII. CONCLUSION

WHEREFORE, based upon the record and the arguments set forth above, Appellees respectfully request that the ruling of the trial court be affirmed and that Appellees be awarded their attorney fees for having to defend this appeal.

DATED this 13 day of September, 2004.

LUNDBERG & ASSOCIATES

By: Judy Jorgensen
Judy Jorgensen
Attorneys for Paars
George and Carlena Paar

CERTIFICATE OF MAILING

I hereby certify that on this 13 day of September, 2004, I mailed two (2)
copies of the Brief of Appellees, postage prepaid, to

Clifford Lee Stubbs aka Clifford L. Stubbs
1430 East 200 South #A
Pleasant Grove, Utah 84062

A handwritten signature in cursive script, reading "Jody Ferguson", is written over a horizontal line.

ADDENDUM

Rule 3 of the Utah Rules of Civil Procedure

(a) *How commenced.* A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) *Time of jurisdiction.* The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Rule 4 of the Utah Rules of Civil Procedure

(a) *Signing of summons.* The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b) *Time of service.* In an action commenced under Rule 3(a)(1), the summons together with a copy of 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 shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative. In any action brought against two or more defendants on which service has been obtained upon one of them within the 120 days or such longer period as may be allowed by the court, the other or others may be served or appear at any time prior to trial.

(c) *Contents of summons.*

(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after

service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(1) *Personal service*. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and/or the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and/or the complaint to an agent authorized by appointment or by law to receive service of process;

(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person's own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal representative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person;

(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

(E) Upon any corporation, not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as

having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business;

(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board;

(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(2) Service by Mail or Commercial Courier Service.

(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(3) *Service in a foreign country.* Service in a foreign country shall be made as follows:

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint or by any form

of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(C) by other means not prohibited by international agreement as may be directed by the court.

(4) *Other service.*

(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(C) In any proceeding where the summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) *Proof of Service.*

(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant's agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) *Waiver of Service; Payment of Costs for Refusing to Waive.*

(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the

person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service.

Utah Code Annotated Section 38-9-1 et seq. (as applicable)

38-9-1. Definitions.

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(6) "Wrongful lien" means any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

- (a) expressly authorized by this chapter or another state or federal statute;
- (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
- (c) signed by or authorized pursuant to a document signed by the owner of the real property.

38-9-2. Scope.

(1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, 38-9-5, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.

(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78-40-2 or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

38-9-7. Petition to nullify lien — Notice to lien claimant — Summary relief — Finding of wrongful lien — Wrongful lien is void.

(1) Any record interest holder of real property against which a wrongful lien as defined in Section 38-9-1 has been recorded may petition the district court in the county in which the document was recorded for summary relief to nullify the lien.

(2) The petition shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

(3) (a) If the court finds the petition insufficient, it may dismiss the petition without a hearing.

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within ten days to determine whether the document is a wrongful lien.

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

(d) The lien claimant is entitled to attend and contest the petition.

(4) A summary proceeding under this section is only to determine whether or not a document is a wrongful lien. The proceeding shall not determine any other property or legal rights of the parties nor restrict other legal remedies of any party.

(5) (a) Following a hearing on the matter, if the court determines that the document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney's fees to the petitioner.

(b) (i) The record interest holder may record a certified copy of the order with the county recorder.

(ii) The order shall contain a legal description of the real property.

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien

claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.

(6) If the district court determines that the lien is a wrongful lien as defined in Section 38-9-1, the wrongful lien is void ab initio and provides no notice of claim or interest.

(7) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section.

Utah Code Annotated §78-3-4

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction to adjudicate trials de novo of the judgments of the justice court and of the small claims department of the district court.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the matter was properly filed in the circuit court prior to July 1, 1996;

(c) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed a justice court; or

(d) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) The district court has jurisdiction of actions under Title 78, Chapter 3h, Child Protective Orders, if the juvenile court transfers the case to the district court

George Paar

Number	Date	Document Name/Type/Description
7001 2510 0008 6524 0249	Oct 11, 2002	Cash For Keys Offer, Accept For value - w / copies of Constructive Notice and Copyright Notice
7001 2510 0008 6523 9939	Oct 30, 2002	Notice of Dishonor - Notary
7001 2510 0008 6524 0201	Nov 13, 2002	Opportunity to Cure Dishonor - Notary
7001 2510 0008 6524 0140	Nov 27, 2002	Certificate of Dishonor - Notary
7002 2030 0004 3106 6400	Apr 23, 2003	Account Statement

IndyMac

Number	Date	Document Name/Type/Description
7001 2510 0008 6524 1048	Mar 19, 2002	Constructive Notice and Copyright Notice
7001 2510 0008 6524 0980	Apr 05, 2002	Notice of Default
7001 2510 0008 6524 0980	Apr 05, 2002	Invoice
7001 2510 0008 6524 0911 7001 2510 0008 6524 0904	Apr 30, 2002	Administrative Remedy Demand Creditor Disclosure Statement (IndyMac et al) Failure to cure accumulated use fees (8)
7001 2510 0008 6524 0959	May 01, 2002	2nd Invoice No.: CBS 04052002-2
7001 2510 0008 6524 0959 7001 2510 0008 6524 0812 7001 2510 0008 6524 0805	Jun 04, 2002	Strict Foreclosure Notice - copies of Copyright Notice/Constructive Notice / Acknowledgement of Filing / Power Of Attorney(ies) / UCC-3 Filing Indymac / Creditor Disclosure Statement (IndyMac et al / 3rd Invoice No.: CBS 04052002-3 / Eternal and Unchanging Principles of the Law of Commerce
7001 2510 0008 6524 0768	Jun 07, 2002	Direct Challenge to Notice of Default / Creditor Disclosure Statement (Boyce)
7001 2510 0008 6524 0638	Jun 28, 2002	Formal Notice of Failure To Validate
7001 2510 0008 6524 0577	July 17, 2002	Formal Notice of Non-Judicial Res Judicata under Uniform Commercial Code by Strict Foreclosure
7001 2510 0008 6524 0553 7001 2510 0008 6524 0539 7001 2510 0008 6524 0546	Aug 07, 2002	Failure To Validate 4th Invoice No.: CBS 04052002-4

Hand Service on David Boyce	Aug 23, 2002	Notice of Lis Pendens
7001 2510 0008 6524 0409	Sep 16, 2002	Notice To Cease and Desist by Exhaustion of all Administrative Remedies under Fair Debt Collection Practices Act and Through Notice(s) of Default and Strict Foreclosure as given for Judicial Purposes
7001 2510 0008 6524 0379	Sept 20, 2002	Notice of Infringement of Unauthorized Use Without express Written Permission Of Common Law Copyright and Trademark Names Under Constructive and Copyright Notice(s) For Judicial Purposes
7001 2510 0008 6524 0348	Oct 02, 2002	Cease And Desist Notice
7001 2510 0008 6524 0294 7001 2510 0008 6524 0287 7001 2510 0008 6524 0270 7001 2510 0008 6524 0263	Oct 10, 2002	Notice of Dishonor - Notary Protest
7001 2510 0008 6523 9991 7001 2510 0008 6523 9984 7001 2510 0008 6523 9977 7001 2510 0008 6523 9960 7001 2510 0008 6523 9953	Oct 30, 2002	Opportunity To Cure Dishonor - Notary Protest
7001 2510 0008 6524 0225	Nov 13, 2002	Certificate of Dishonor - Notary

COPY

Certificate Of Protest

As a notary public for the County of Salt Lake and State of Utah, I hereby issue this protest and Certificate of Dishonor pursuant to U.C.A. § 70A-3-505, in favor of Clifford L and Barbara A Stubbs and against David B. Boyce, Successor Trustee in favor of Sterling Mortgage Group, LLC; IndyMac Bank; GUARDIAN TITLE CO OF UTAH; and/or INWEST TITLE SERVICES INC. regarding Mr. And Mrs Stubbs presentment dated 4th day of June, 2002 A.D., as evidenced by Certified Mail No(s). 7001 2510 0008 6524 0805, 7001 2510 0008 6524 0829, 7001 2510 0008 6524 0812, and 7001 2510 0008 6524 0799; 7th day of June, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0768; 28th day of June, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0638; 17th day of July, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0577; 7th day of August, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0553, 7001 2510 0008 6524 0539, and 7001 2510 0008 6524 0546; 23rd day of August, 2002 A.D., as evidenced by Certified Mail No. 7001 1940 0002 6136 2132; 16th day of September, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0409; and 3rd day of October, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0348, which was twice dishonored by Mr. Boyce, et al, by nonacceptance and nonperformance. I confirmed the dishonor myself. As of this date the associated default has not been cured.

On this 13th day of November, 2002, I certify that:

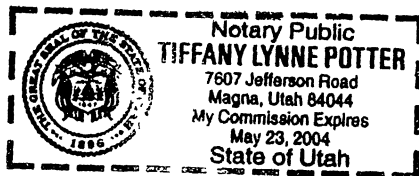
I mailed a Notice of Dishonor to David B. Boyce, et al,
at 68 South Main Street, Suite 800
Salt Lake City, Utah [84101]
on October 10, 2002
by Certified Mail 7001 2510 0008 6524 0294
with a copy(ies) of the original presentment(s)

I mailed a Notice of Dishonor with opportunity to cure to David B. Boyce, et al,
at 68 South Main Street, Suite 800
Salt Lake City, Utah [84101]
on October 31, 2002
by Certified Mail 7001 2510 0008 6523 9991

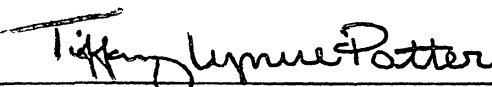
I now mail this Certificate of Protest to David B. Boyce, et al,
at 68 South Main Street, Suite 800
Salt Lake City, Utah [84101]
on November 13, 2002
by Certified Mail 7001 2510 0008 6524 0225

Dated: this 13th day of November, 2002

Sincerely,



Stamp



Notary Public
Tiffany Lynne Potter
7607 Jefferson Road
Magna, Utah 84044-3307

COPY

Certificate of Protest

As a notary public for the County of Salt Lake and State of Utah, I hereby issue this protest and Certificate of Dishonor pursuant to U.C.A. § 70A-3-505, in favor of Clifford L and Barbara A Stubbs and against George Parr, Agent for IndyMac Bank under an offer of Cash For Keys Agreement executed on the 11th day of October, 2002 A.D., as evidenced by Certified Mail No. 7001 2510 0008 6524 0249, as such pertains to accept for value of the Trustee Sale, which was twice dishonored by Mr. Parr, et al, by nonacceptance and nonperformance. I confirmed the dishonor myself. As of this date the associated default has not been cured. I, Tiffany Lynne Potter, Notary Public, do herewith assert that I have no personal interests actual or implied or any claim in the instant matter.

On this 27th day of November 2002, I certify that:

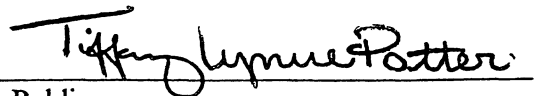
I mailed a Notice of Dishonor to George Parr, et al,
At 6975 South Union Park, #620
Midvale, Utah [84047]
on October 31, 2002
by Certified Mail 7001 2510 0008 6523 9939
with a copy(ies) of the original presentment(s) of the Trustee Sale

I mailed a Notice of Dishonor with opportunity to cure to George Parr, et al,
at 6975 South Union Park, #620
Midvale, Utah [84047]
on November 14, 2002
by Certified Mail 7001 2510 0008 6524 0201

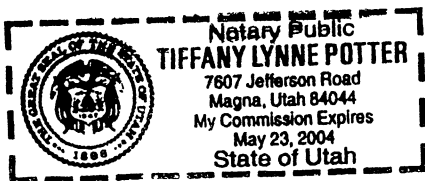
I now mail this Certificate of Protest to George Parr, et al,
at 6975 South Union Park, #620
Midvale, Utah [84047]
on November 27, 2002
by Certified Mail 7001 2510 0008 6524 0140

Dated. this 27th day of November 2002.

Sincerely,



Notary Public
Tiffany Lynne Potter
7607 Jefferson Road
Magna, Utah 84044-3307



Stamp

State of Utah)
) ss
Salt Lake County)

POWER OF ATTORNEY AND
ACKNOWLEDGMENT OF ACCEPTANCE

Know All By These Presents;

That the Appointor CLIFFORD L. STUBBS™, Organization a duly Authorized Corporate Business Organization and a Legal Entity established under the Laws of the United States of America in Puerto Rico, by Organization Number 528-74-7562™, has made, constituted and appointed, and by these presents does make, constitute and appoint the Natural Man, Secured Creditor Clifford-Lee :Stubbs©, True and Lawful Attorney in Fact for the Appointor and in His Name, place and stead, further; to Compile, Sign, File, Convey, Acquire, Transfer, Assign and Accommodate by Indemnity any and all proper Commercial Documents.

Further, Giving and Granting unto Appointee Clifford-Lee :Stubbs©, Full Power and authority to Do and Perform all and every act and thing whatsoever requisite and necessary to be done in any and all Commercial Transactions as fully to all intent and purposes, as Appointor CLIFFORD L. STUBBS™, Business Organization and Legal entity might or could do if personally present, with Full Power of Substitution, Subrogation, and Revocation.

Further; hereby Ratifying and Confirming all that said Attorney in Fact shall Lawfully do or cause to be done by Virtue hereof and imposing no Liability, Limited or unlimited, for Debt upon the Appointee.

Power of Attorney By Appointor: CLIFFORD L. STUBBS™

Acknowledgment of Appointee: By Clifford-Lee :Stubbs©, Agent

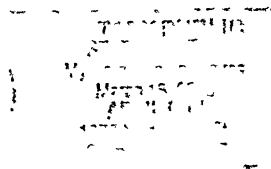
Date Of Acceptance 19th day of March, 2002

Subscribed and Sworn to Before me, April COX (Notary's Name), A Notary

Public for the State of Utah, this 19 day of March, 2002, My Commission expires:

3.18.03


Signature of Notary



Clifford-Lee :Stubbs©

FEDERAL SECURITY AGENCY
PUBLIC HEALTH SERVICE

CERTIFICATE OF LIVE BIRTH
UTAH

STATE FILE NO. **50-180823**
REGISTRAR'S NO. **651**

BIRTH NO. **143**

1. PLACE OF BIRTH a. COUNTY Salt Lake		2. USUAL RESIDENCE OF MOTHER (Where does mother live?) a. STATE Utah b. COUNTY Salt Lake	
b. CITY (If outside corporate limits, write RURAL) OR TOWN Salt Lake City		c. CITY (If outside corporate limits, write RURAL) OR TOWN Salt Lake City	
c. FULL NAME OF (If NOT in hospital or institution, give street address or location) HOSPITAL OR INSTITUTION Salt Lake General Hospital		d. STREET ADDRESS (If rural, give location) 2268 Lake Street	
3. CHILD'S NAME (Type or print) a. (First) Clifford b. (Middle) Lee c. (Last) Stubbs		6. DATE (Month) (Day) (Year) OF BIRTH February 5, 1950	
4. SEX male	5a. THIS BIRTH SINGLE <input checked="" type="checkbox"/> TWIN <input type="checkbox"/> TRIPLET <input type="checkbox"/>	5b. IF TWIN OR TRIPLET 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/>	
FATHER OF CHILD			
7. FULL NAME a. (First) Clarence b. (Middle) Elmer c. (Last) Stubbs		8. COLOR OR RACE white	
9. AGE (At time of this birth) 25 YEARS	10. BIRTHPLACE (City and State or foreign country) Bingham Canyon, Ut.	11a. USUAL OCCUPATION Unemployed	11b. KIND OF BUSINESS OR INDUSTRY
MOTHER OF CHILD			
12. FULL MAIDEN NAME a. (First) Mary b. (Middle) Angeline c. (Last) Elder		13. COLOR OR RACE white	
14. AGE (At time of this birth) 26 YEARS	15. BIRTHPLACE (City and State or foreign country) Salt Lake City, Ut.	16. Children previously born to this mother (Do NOT include this child) a. How many OTHER children are now living? 3 b. How many OTHER children were born alive but are now dead? 0 c. How many children were stillborn (born dead after 20 weeks pregnancy)? 0	
17. INFORMANT'S NAME AND ADDRESS Mrs. Clarence Stubbs 2268 Lake St.			
I HEREBY CERTIFY THAT THIS CHILD WAS BORN ALIVE ON THE DATE STATED ABOVE. AT 2:25 P. M.		18a. SIGNATURE E. B. Zohlnstern	18b. ATTENDANT AT BIRTH M. D. <input checked="" type="checkbox"/> MIDWIFE <input type="checkbox"/> OTHER (Specify)
18c. ADDRESS Salt Lake General Hospital		18d. DATE SIGNED 2-9-50	
19. DATE REC'D BY LOCAL REG. FEB 10 1950	20. REGISTRAR'S SIGNATURE Barry E. Nangle	21. DATE ON WHICH GIVEN NAME ADDED BY (Registrar)	

This is to certify that this is a true copy of the certificate on file in this office. This certified copy is issued under authority of section 26-2-22 of the Utah Code Annotated, 1953 As Amended.

Date Issued:

Barry E Nangle

Barry E. Nangle
DIRECTOR OF VITAL RECORDS

642 22 2000

SL 044420



* 0 0 0 4 4 4 2 0 *



WARNING: IT IS ILLEGAL TO DUPLICATE THIS COPY FOR OFFICIAL PURPOSES.

2 Article Number



7160 3901 9848 1179 4215

3 Service Type **CERTIFIED MAIL**

4 Restricted Delivery? (Extra Fee) ☐ Yes

1 Article Addressed to

Clifford Lee Stubbs aka Clifford L. Stubbs
1430 East 200 South, Apt A
Pleasant Grove, Utah 84062

X0480/Lundberg/JS

COMPLETE THIS SECTION ON DELIVERY

A Received by (Please Print Clearly)

Cliff Stubbs TM

B Date of Delivery

10-2-03

C Signature

Cliff Stubbs TM

☐ Agent

☐ Addressee

D Is delivery address different from item 1?
If YES enter delivery address below

☐ Yes

☐ No