

2004

Gordon Case & Company v. Arnold West, Mary Helen West : Unknown

Utah Court of Appeals

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IN THE UTAH APPELLATE COURT

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* ORAL ARGUMENT REQUESTED
UTAH APPELLATE COURTS
DEC 09 2004

IN THE UTAH APPELLATE COURT

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GORDON CASE & COMPANY, a
Utah business entity,

Appellant,

vs.

ARNOLD WEST, an individual and
MARY HELEN WEST, an individual,

Appellees.

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OPENING BRIEF ON APPEAL

Appellate No. 20040135-CA

Trial Civil No.030200433

**APPELLANT GORDON CASE AND COMPANY'S
OPENING BRIEF ON APPEAL**

Appeal from the Order of the Fourth District Court,
Utah County, Orem Division, The Honorable Judge John C. Backlund

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* ORAL ARGUMENT REQUESTED

APPELLANT'S BRIEF

Appellant, Gordon Case & Company, submits this brief in the appeal before this Court.

LIST OF ALL PARTIES TO THE PROCEEDING BELOW

The Plaintiff-Appellant:

Gordon Case & Company

The Defendant-Appellee:

Arnold West and Mary Helen West

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Rules

Utah Rule of Civil Procedure, Rule 7(f)	3, 7, 9, 10, 11
Utah Rules of Civil Procedure, Rule 73(a) & (b)(1)-(4)	3, 8, 14, 15
Rule of Judicial Administration 4-504(1)	4, 6, 7, 11
Rule of Judicial Administration 4-505(1) & (2)	4, 8, 13, 15

Constitutions, Statutes, and Regulations

Utah Const., Article VIII, § 5.	1
Ut. Code Ann., § 78-2-2(3)(j) (1953, as amended)	1
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JURISDICTION OF APPELLATE COURT

The jurisdiction of all appellate courts “shall be provided by statute.”¹ Section 78-2-2(3)(j) of the Utah Code, provides that: “The Supreme Court has appellate jurisdiction ..., over orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction[.]”² This is an appeal from the final judgment of the Fourth District Court in a civil matter, and although it has original appellate jurisdiction, the Supreme Court has transferred this matter to the Court of Appeals pursuant to § 78-2-2(4) and § 78-2a-3(2)(j), which provide that the Supreme Court may transfer any matter over which it has original appellate jurisdiction.

ISSUES PRESENTED FOR REVIEW

1. Whether the lower court erred in signing an order prepared by opposing counsel awarding attorney’s fees without proper notice, opportunity to be heard, and when they had not been awarded in the Court’s original decision of the case months earlier?
2. Whether the lower court erred by signing an order prepared by opposing counsel changing the Court’s ruling to add “fraud” and “bad faith” when neither had been part of its original decision months earlier?

¹ Utah Const., Article VIII, § 5.

² Ut. Code Ann., § 78-2-2(3)(j) (1953, as amended).

3. Whether the lower court denied the appellant due process by ruling, and then months later changing its ruling by signing an order prepared by opposing counsel without notice and an opportunity to challenge the changed findings in a new plenary hearing?

STANDARD OF REVIEW

This Court should review the legal conclusions of the trial court (since this was a motion to dismiss it was resolved *in toto* upon legal conclusions) for correctness. “Generally, we review a trial court’s legal conclusions for correctness, according the trial court no particular deference.” *Wilson Supply, Inc. v. Fradan Mfg. Corp.*, 2002 UT 94, P 11, 54 P.3d 1177, 1181 (quoting *Orton v. Carter*, 970 P.2d 1254, 1256 (Utah 1998)).

APPLICABLE RULES AND REGULATIONS TO APPEAL

Utah Rule of Civil Procedure, Rule 7(f):

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

Utah Rules of Civil Procedure, Rule 73(a) & (b)(1)-(4):

(a) When attorney fees are authorized by contract or by law, a request for attorney fees shall be supported by affidavit or testimony unless the party claims attorney fees in accordance with the schedule in subsection (d) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) An affidavit supporting a request for or augmentation of attorney fees shall set forth:

(b)(1) the basis for the award;

(b)(2) a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such

as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work;

(b)(3) factors showing the reasonableness of the fees;

(b)(4) the amount of attorney fees previously awarded[.]

Rule of Judicial Administration 4-504(1):

- (1) “In all rulings by a court, counsel for the party or parties obtaining the ruling shall within fifteen days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.”

Rule of Judicial Administration 4-505(1) & (2):

- (1) “Affidavits in support of an award of attorney fees must be filed with the court and set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for which attorney fees are claimed, and affirm the reasonableness of the fees for comparable legal services.
- (2) The affidavit must also separately state hours by persons other than attorneys, for time spent, work completed and hourly rate billed.”

STATEMENT OF THE CASE

Nature of the Case:

Plaintiff filed this action for eviction based upon the non-payment of construction services provided to Defendants. Before this eviction, Plaintiff had made written demand

for payment, had noticed up a foreclosure proceeding, had foreclosed, and had acquired title to the property through public auction. Throughout these activities, the Defendant did nothing. Only when an eviction proceeding had progressed to the point that an actual order to remove them from the property was threatened did the Defendants finally respond. A Motion to Dismiss the eviction proceeding was filed by Defendants and granted by the Court in a ruling from the bench. More than five months after the hearing Defendants filed a Proposed Order and included in that Proposed Order language ordering the payment of attorney fees and a finding of bad faith and fraud against the Plaintiffs. That Order does not reflect the determination of the Court as there had been no finding by the Court of bad faith or fraud, nor was there an award of Attorney fees asked for nor granted. Plaintiffs do not appeal the ruling that the matter be dismissed, but do dispute the award of attorneys fees and finding of bad faith and fraud.

Course of Proceedings and Disposition Below:

On or about March 12, 2003, Plaintiffs filed their complaint in this matter. See Court Record, p. 1-7. On or about March 19, 2003, Defendants filed a Motion to Dismiss, See Ct. Rec. p. 11-69, which Plaintiff opposed. See Ct. Rec. p. 72-94. On June 13, 2003, Defendants' Motion to Dismiss came on for hearing, at the conclusion of which, the lower court granted Defendants' motion. See Ct. Rec. p. 127, see also transcript of hearing attached hereto as Exhibit 1 in Addendum. In November, 2003, almost six months after the hearing, Defendants submitted their Findings of Fact and Conclusions of Law, Order Granting Defendant's Motion to Dismiss, and Affidavit Regarding Attorney Fees. See Ct.

Rec. p. 130-139. Plaintiff filed its Objection to the Proposed Findings of Fact and Conclusions of Law and Award of Attorney Fees, preserving its right to appeal. See Ct. Rec. p. 140-142. On January 9, 2004, Plaintiffs Objection came on for hearing, which the lower court inappropriately titled an “Eviction Hearing.” See Ct. Rec. p. 145. The lower court affirmed Defendants’ Proposed Findings of Fact and Conclusions of Law and Award of Attorney Fees. See Ct. Rec. p. 145. On or about February 9, 2004, Plaintiff filed its Notice of Appeal in the Utah Supreme Court, see ct. rec. p. 155-157, which was subsequently transferred to this Court on or about February 20, 2004. See Ct. Rec. p. 163.

Facts established in the Record below:

1. The lower court never made any ruling awarding attorney fees in this matter, nor was such an award ever argued for nor even mentioned by the lower court during any portion of the hearing where the lower court granted Defendants’ Motion to Dismiss. See June 13th Transcript, attached hereto as Exhibit 1.

2. The lower court never made any finding of bad faith, nor was it ever argued for, nor even mentioned by the lower court during any portion of the hearing where the lower court granted Defendants’ Motion to Dismiss. See June 13th Transcript, attached hereto as Exhibit 1.

3. The lower court never made any finding of fraud, nor was it ever plead nor proven. See June 13th Transcript, attached hereto as Exhibit 1.

4. Defendants did not submit an order within the 15 days required by Rule 4-504 of the Utah Rules of Judicial Administration, rather it, along with a surprise Affidavit of

attorney fees, was filed almost six months after the lower court made its ruling. See Exhibits 2, 3, and 4.

SUMMARY OF ARGUMENTS

1. Plaintiff does not dispute that their action should be dismissed, however, they do dispute that extra findings and awards, which were never a part of the ruling of the lower court, should be included. Rule 7 of the Utah Rules of Civil Procedure provides that “[a]n order includes every direction of the court[.]” See Ut. R. Civ. Proc. 7(f)(1). That rule requires that a party include *only* the directions of the court, and not innovations of the attorney preparing the order. Defendants included a finding of fraud and bad faith in their findings of fact and conclusions of law. Neither of those issues were ever discussed, argued, or presented to the lower court. And most especially, the lower court never made any ruling where such a finding was decided. It was improper for Defendants to include such a finding, and error for the lower court to affirm such a finding. Furthermore, Defendants included an award of attorneys fees and costs in their Proposed Order. That was never discussed, argued, or presented to the lower court. Neither did the lower court make any such award. To include such an award was improper, and for the lower court to affirm the award, six months after the ruling, was error.

2. The law of the case was made at the time the lower court made its ruling on the motion to dismiss. The law of the case at that time was only that the Plaintiff's action should be dismissed. Inclusion of such additional findings and awards violates the law of the case and was erroneous.

3. Rule 4-504 of the Utah Rules of Judicial Administration, as well as current Rule 7 of the Utah Rules of Civil Procedure, require that orders of the court be submitted within 15 days of the ruling of the court. Defendants failed to submit any proposed order or any other document for almost six months after the lower court made its rulings. That was in direct violation of those rules, for which it would be appropriate to have those submissions stricken and to allow Plaintiff's counsel opportunity to submit their own.

4. Even assuming for the sake of argument that this Court accepts the untimely and incorrect findings of fact and conclusions of law, order, and attorney fee affidavits to somehow be valid, the attorney fee affidavit does not comply with the requirements set forth in either Rule 4-505 of the Utah Rules of Judicial Administration nor the current Rule 73 of the Utah Rules of Civil Procedure, and therefore it must be stricken.

ARGUMENT

In March of 2003, Defendants filed a Motion to Dismiss an action previously filed by Gordon Case & Company to foreclose upon certain property. In June of 2003, hearing on that motion was held in the Orem Department of the Fourth District Court, with Judge Backlund presiding. At the conclusion of that hearing, the Court granted Defendants' Motion to Dismiss and requested that they prepare an order memorializing that ruling. See Transcript of June 13, 2003 hearing, attached as Exhibit 1 to the Addendum to this brief (hereinafter, "June 13th Transcript"), p. 15. Defendants did not present any order to the Court with regard to that ruling until November, 2003, almost six months later. Not only was the timeliness of their presentation in violation of the Rules of Civil Procedure, but they additionally included findings of fraud and bad faith and made an award of attorneys fees, none of which were a part of the Court's ruling in June. Although Plaintiff objected to the form of the order, the Court affirmed Defendants' untimely and incorrect order in January, 2004. Those terms were not a part of the Court's prior ruling and should not have been affirmed in Defendants' January 2004 order.

I. Defendants' Proposed Order Goes Beyond the Direction of the Lower Court and Violates the Rules of Civil Procedure.

Rule 7 of the Utah Rules of Civil Procedure provides in pertinent part that: "An order includes every direction of the court[.]" See Ut. R. Civ. Proc. 7(f)(1). In this case, although the order potentially included every direction of the Court, it also included several directions of Defendants' creation. The Court in making its ruling in June, 2003 stated that "[t]he only

thing before this Court is a motion to dismiss. The Court finds that the grounds are well taken and grants the motion.” See June 13th transcript, p. 15, ln. 1-3. The Court went further to state, “And request the defendants to prepare an order dismissing the complaint in accordance with the arguments raised in your motion.” *Id.*, at ln. 5-7. Those are the instructions of the Court.

There is no instruction of the Court allowing for or awarding attorney fees, nor was it ever mentioned during any portion of the hearing. (See June 13th transcript). Nevertheless, Defendants’ Order, a copy of which is attached hereto as Exhibit 2 to the Addendum, makes an award of attorney fees. There was no instruction of the Court making a finding of bad faith or fraud, nor were either of those ever argued during any portion of the hearing. (See June 13th Transcript). Nevertheless, Defendants’ Findings of Fact and Conclusions of Law include specific Conclusions of Law, that “Plaintiff fraudulently and in bad faith commenced this action.” See Defendants’ Findings of Fact and Conclusions of Law, which are attached hereto as Exhibit 3 in the Addendum, p. 3, ln.6.

Those actions do not comply with Rule 7 of the Utah Rules of Civil Procedure. That rule specifically requires that the order of the Court should contain the directions of the Court. There was no direction of the Court to award attorney fees, nor were they asked for nor mentioned at any point in the hearing. To add them at Defendants’ own discretion is inappropriate and violates the Rules of Civil Procedure. There was no direction or finding of bad faith or fraud, nor was either specifically plead as is also required by the Rules of Civil Procedure, to add them at Defendants’ own discretion was inappropriate. For the

Court to, eight months after the hearing, affirm them without that ruling having been made was error and violates the law of the case.

II. Defendants' Order Violates the Law of the Case.

The “law of the case” doctrine specifies that when a legal “decision [is] made on an issue during one stage of a case,” that decision “is binding in successive stages of the same litigation.” *Thurston v. Box Elder County*, 892 P.2d 1034, 1037 (Utah 1995) (citation omitted). This is true even if the lower court “believe[s] that the issue could have been better decided in another fashion.” *Id.* This, however, appears to be exactly what the lower court has done. Although an award of attorney fees was not made, nor were findings of fraud or bad faith made or even argued, it included those terms in its order. That violates the law of the case doctrine, was in error, and should be reversed.

III. Defendants' Order Should Be Stricken for its Untimely Submission.

Defendants' order and Findings of Fact and Conclusions of Law should also be stricken for their untimeliness. Rule 7(f)(2) of the Utah Rules of Civil Procedure requires that an order be submitted within 15 days of the ruling of the Court. See Ut. R. Civ. Proc. 7(f)(2). Plaintiff recognizes that portion of the rule was recently adopted. That same language however, was included in Rule 4-504 of the Utah Rules of Judicial Administration prior to its removal from there and placement in the Rules of Civil Procedure. In any event the requirement was and is the same. This Court has routinely dismissed appeals of court orders to which there was no timely objection. See e.g., *Evans v. State*, 963 P.2d 177, 180 (Utah 1998). The same standard should be held true for the remaining requirements of the

rule. In this case, Plaintiff is not appealing the dismissal of the case, what is being appealed is only the inclusion of language that was disingenuously and independently added by Defendants. There was no finding of bad faith, as it was never argued. There was no finding of fraud, as it was never argued. Neither did the Court ever address the subject of attorney fees, nor make any such award. It was improper and each of those terms should be removed from the Findings of Fact and Conclusions of Law and Order of Dismissal, respectively.

IV. Defendants' Attorney Fee Affidavit is Insufficient, Does Not Comply with the Rules of Judicial Administration, and Should Therefore Be Stricken.

Even assuming *arguendo* that this Court can affirm the award of attorney fees despite the fact that no such award was actually made, the attorney fee affidavit submitted by Defendants' counsel does not meet the requirements set forth in the Rules of Civil Procedure and therefore must be stricken.

The calculation of reasonable attorney fees is within the sound discretion of the trial court and will not be overturned absent a clear showing of abuse of discretion. *Dixie State Bank v. Bracken*, 764 P.2d 985, 988 (Utah 1988). However, an award made without adequate supporting evidence constitutes an abuse of discretion and must be overruled. *Id.*; *Barnes v. Wood*, 750 P.2d 1226, 1233 (Utah Ct.App. 1988). While findings of fact are unnecessary in connection with summary judgment decisions, a summary judgment is improper when material facts are disputed. *See Taylor v. Estate of Taylor*, 770 P.2d 163, 168 (Utah Ct.App. 1989). Essentially, the lower court, because it relied upon affidavits and

evidence from both parties, did not dismiss this case pursuant to a motion to dismiss, rather, summary judgment was granted. “[W]here attorney fees are awarded to a prevailing party on summary judgment, the undisputed, material facts must establish, as a matter of law, that (1) the party is entitled to the award, and (2) the amount awarded is reasonable.” *Id.* at 169. First, Defendants never established to the lower court or in any other manner that they were entitled to an award of attorney fees. Rather, they just simply submitted an order with that award. That can never constitute establishing entitlement. Secondly, Defendants have not shown that the award is reasonable, even if it were proper. Plaintiffs believe the award was outrageous, and certainly not reasonable.

Under rule 4-505(1) of the Utah Rules of Judicial Administration, Affidavits in support of an award of attorney fees must be filed with the court and set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for which attorney fees are claimed, and affirm the reasonableness of the fees for comparable legal services.

In this case, Defendants’ affidavit sets forth no legal basis for the award, rather it refers to Rule 4-505 of the Utah Rules of Judicial Administration, which does not provide a basis, but rather sets forth the requirements. That is not sufficient. In *Hall v. NACM Intermountain, Inc.*, 988 P.2d 942 (Utah 2001), the Supreme Court held that because both the court and counsel were aware of the legal basis for seeking attorney fees, there was no prejudice from a failure to state a legal basis in the affidavit. In this case, however, nobody,

not the lower court, nor the Plaintiff were ever aware of any legal basis for seeking attorney fees. The subject was never even broached by any party during the hearing on this matter. There certainly is prejudice where a party surprises another with an unsubstantiated award of attorney fees six months after a court's ruling, where such an award had never been made.

Plaintiff can acknowledge that the attorney fee does detail hours spent, however, nowhere in the affidavit does it specify what rates are being applied, nor who performed the work. What makes it even more difficult to examine is that the rates differ from item to item. No court could sufficiently determine the reasonableness of any portion of that fee given what is provided in the affidavit.

Nowhere in the affidavit does it affirm the reasonableness of the fee as is required by the rule. This is the affidavit's chief failing. The fees charged were not reasonable for the work performed. Nor does it specify what work was performed by persons other than attorneys as is required by the rule. In essence, the affidavit violates every requirement of the rules. It should therefore be stricken.

Rule 73(a) & (b)(1)-(4) of the Utah Rules of Civil Procedure provides the following:

(a) When attorney fees are authorized by contract or by law, a request for attorney fees shall be supported by affidavit or testimony unless the party claims attorney fees in accordance with the schedule in subsection (d) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) An affidavit supporting a request for or augmentation of attorney fees shall set forth:

(b)(1) the basis for the award;

(b)(2) a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work;

(b)(3) factors showing the reasonableness of the fees;

(b)(4) the amount of attorney fees previously awarded[.]

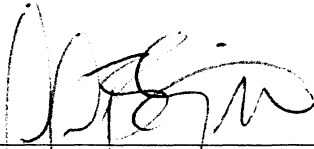

Those requirements are substantially the same as the requirements set forth in Rule 4-505 of the Utah Rules of Judicial Administration. The only requirement of Rule 73 Defendants complied with was a listing of the hours and work performed. But it doesn't say who performed the work, what hours what person worked, what rates were charged, whether or not the person is an attorney, associate attorney, paralegal, what experience the person has in the practice, or any other reasonably required detail. The affidavit, along with the unsubstantiated award of attorney fees was improperly presented, and furthermore is so deficient as to require it to be stricken.

CONCLUSION

Pursuant to the foregoing arguments and law, Appellant respectfully requests this Court reverse the error made by the Fourth District Court in this matter and require the Court to enter an Order which follows the actual decision of the Court. The award of attorney's fees and the finding of bad faith should both be stricken from the final Order of the lower Court.

DATED this 9 day of December, 2004.

NELSON, SNUFFER, DAHLE & POULSEN

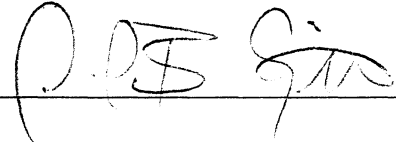
Denver C. Snuffer, Jr.
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served two true and correct copies of the foregoing
APPELLANT'S OPENING BRIEF ON APPEAL, via first class mail, postage prepaid,
on the following:

James Tucker Hansen
DUVAL HANSEN WITT & MORELEY LLC
306 West Main Street
American Fork, Utah 84003

on this 9 day of December, 2004.



ADDENDUM

1. Transcript June 13, 2003, hearing on Defendants' Motion to Dismiss.
2. Defendants' "Order Granting Defendant's Motion to Dismiss."
3. Defendants' "Findings of Fact and Conclusions of Law."
4. Defendants' "Affidavit Regarding Attorneys Fees."

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

GORDON CASE AND COMPANY,
a Utah business entity,

Plaintiff,

vs.

ARNOLD WEST, an individual,
and MARY HELEN WEST, an
an individual,

Defendant.

COPY

Case No. 030200433

Hearing
Electronically Recorded on
June 13, 2003

BEFORE: THE HONORABLE JOHN C. BACKLUND
Fourth District Court Judge

APPEARANCES

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EXHIBIT

tabbles

P R O C E E D I N G S

(Electronically recorded on June 13, 2003)

THE COURT: Okay, we have a hearing on a motion to dismiss. It's oral argument. Gordon Case and Company, a Utah business entity, plaintiff, versus Arnold West and Mary Helen West. Do we have the attorneys present on that?

MR. SNUFFER: Mr. Snuffer here in Court with the plaintiff.

THE COURT: Good morning.

MR. SNUFFER: Good morning.

THE COURT: And is there an attorney present for the defendant, either Casey Wright or Mr. Tucker Hansen?

MR. SNUFFER: I have not seen either of them, and it's their motion, so we'd ask that it be denied.

THE COURT: Well, I think we owe them the courtesy of finding out if they're en route or something. I would do that for you, Counselor.

MR. SNUFFER: Sure.

THE COURT: So we'll take a brief recess. We'll have the clerk call them to see if they're planning to be here. Thank you.

(Recess taken.)

THE COURT: Pending oral argument on a case, I think Counsel for the other side is en route. So as soon as they arrive we'll take care of that.

1 MR. SNUFFER: We called their local office and they
2 weren't there. They called down to I think the American Fork
3 office. I'd be willing to waive oral argument.

4 THE COURT: Well, are they en route, as far as you
5 know?

6 COURT CLERK: Yes.

7 THE COURT: I think they'll -- they'll be here soon.

8 (Court addresses other matters unrelated to this case)

9 THE COURT: Okay. I see that Counsel is here on our
10 civil case that I said we would handle. So I'm sorry, ladies,
11 but they were going to go first. So let me do that and then
12 we'll come back to this case.

13 FEMALE ATTORNEY: That's fine.

14 THE COURT: Okay. All right. We'll have Counsel come
15 up, please, Mr. Hansen and Mr. Snuffer, on oral argument on the
16 defendant Arnold and Mary West's motion to dismiss. Mr. Hansen
17 represents Mr. and Mrs. West. Mr. Denver Snuffer represents
18 Gordon Case and company, the plaintiff.

19 I've read through the entire file. Counsel, as I
20 understand it -- you can, you know, correct me if I'm wrong --
21 but the position of the defendants is basically they were
22 buying this real property in American Fork pursuant to a
23 Uniform Real Estate Contract, and apparently there was a
24 warranty deed placed in escrow at that time from Mrs. West's
25 mother, as I understand it.

1 MR. HANSEN: That's correct, your Honor.

2 THE COURT: And then Mr. Case alleges that he or his
3 company did some work on the property, and that he alleges that
4 he wasn't paid, and then he alleges that his wife, as trustee
5 for a trust created by the mother of Mrs. Case and Mrs. West
6 -- they're sisters -- that she ultimately became the trustee,
7 and then that in her position as trustee she conveyed the
8 property that is the subject of this lawsuit to Mr. Gordon
9 -- to Mr. Case's company because he wasn't paid for work on
10 Mr. and Mrs. West's property.

11 In looking at the file, that -- on November 1st, 2000
12 that trust deed was recorded in behalf of Gordon Case and
13 Company, and I don't know if that was the original trust deed
14 or that was a successor trust deed where Mr. Snuffer, acting
15 as the trustee executed a trust deed to Mr. Gordon Case and
16 Company.]

17 I think on that very same date is the date that Judge
18 Gary Stott in the quiet title action in Provo quieted title in
19 Mr. and Mrs. West on the same day; is that true?

20 MR. SNUFFER: Correct.

21 THE COURT: What a coincidence. Well, Mr. Hansen, I'll
22 listen to your argument and then I'll listen to Mr. Snuffer's
23 argument.

24 MR. HANSEN: Thank you, your Honor. I will be very
25 brief. When this action was originally filed by Mr. Murdock at

1 our office he had filed an action quiet titling the property,
2 and along with that he filed a notice of lis pendens. The
3 notice of lis pendens then puts the world on notice that if
4 you take an interest in this property, you take it subject to
5 that litigation.

6 So the deed that was -- the trust deed that was
7 executed to the plaintiff in this matter, Gordon Case and
8 Company, was filed after that lis pendens had already been
9 recorded with the County Recorder's Office. Therefore, under
10 the law as I understand it, Gordon Case and Company would take
11 it subject to whatever the outcome of that litigation for which
12 the lis pendens was filed.

13 So the outcome of that litigation was that we got
14 our quiet title granted, that property was transferred to my
15 client, and therefore -- if you look at it there is a parcel of
16 property that Gordon Case and Company took an interest in, and
17 that partially includes two sub-parcels that my clients now
18 own.

19 So as to the rest of the parcel of property, I
20 anticipate that, you know, Gordon Case and Company may have
21 a right to that --

22 THE COURT: I realize that this was originally one
23 larger piece of property that was -- part of it was sold
24 pursuant to the Uniform Real Estate Contract to Arnold and
25 Mary West.

1 MR. HANSEN: That's correct. There were two parcels --
2 sub-parcels that were sold off of that.

3 THE COURT: Okay.

4 MR. HANSEN: So they take it -- you know, when you have
5 a trust deed like that they take an interest in it subject to
6 the outcome of the Court proceedings. The outcome of the Court
7 proceedings quiet titling my clients, and so therefore they
8 have no interest in that property. That's the position.

9 THE COURT: Okay, thank you. Mr. Snuffer, I'll listen
10 to your argument, then.

11 MR. SNUFFER: What they've filed is a motion to dismiss
12 and although we don't think any evidence can be taken under the
13 rules dealing with the motion to dismiss, since they submitted
14 evidence and we submitted evidence, but we think that the
15 standard requires you to read the complaint and to ask the
16 question whether any stated facts might be proven which would
17 give the plaintiff entitlement to relief. That's the legal
18 standard under the rule.

19 The plaintiff not only performed improvements on
20 the property, the plaintiff also paid taxes on the property.
21 At the moment that the trust deed was given, the plaintiff
22 would have been entitled alternatively to take the trust deed
23 to get more time for them to pay for the improvements, file a
24 mechanic's lien on the property for having made improvements,
25 or do nothing and sue in contract.

1 We do not think that the lis pendens has any effect
2 on the validity of the trust deed, because at the moment the
3 trust deed was given, she was of record title holding the
4 property, and it's not necessary in that setting for there to
5 be anything other than a colorable presence on the grant of
6 relief.

7 At this point the question we think is were they aware
8 of the indebtedness, which they were. They saw the improvements
9 going up. They were present on the property at the time of the
10 improvements. We supplied an affidavit and photographs of the
11 improvements that were made.

12 They were the beneficiaries of the payment of the
13 taxes by my client, and with the standards apply to a motion
14 to dismiss, we have a right to go forward and prove a set of
15 facts in which they had actual notice of these events as they
16 occurred, in which they were making promises to make a payment
17 on this stuff and just have never done it. My client after
18 years of waiting has gotten tired of it.

19 That earlier action involving the --

20 THE COURT: Were you the one that --

21 MR. SNUFFER: -- quiet title --

22 THE COURT: Were you the one that acted as the grantor
23 -- or signing on behalf of the grantor that issued the trustee
24 deed to Gordon Case and Company on the very same day that Judge
25 Stott quieted title in favor of Mr. Hansen's clients?

1 MR. SNUFFER: No, I am a successor trustee.

2 THE COURT: So you're the successor trustee.

3 MR. SNUFFER: I was not the one at the time. However --

4 THE COURT: Do you want to comment on that coincidence;
5 the fact that the Judge issued a ruling on that day quieting
6 title in his clients to the property --

7 MR. SNUFFER: I don't think there was one --

8 THE COURT: -- and then Mrs. Case issued a deed that
9 very same day to her husband's company?

10 MR. SNUFFER: Correct. I think that was intentional.
11 I don't think it was coincidental. It preceded the entry of
12 the order in order to preserve --

13 THE COURT: So it was designed to beat Judge Stott's
14 order, then?

15 MR. SNUFFER: Well, it was designed to have the lien
16 preserved so that as the title moves over to the other party
17 in that action --

18 THE COURT: It didn't move to them. He just confirmed
19 that it was their -- they had title to the property. It didn't
20 move to them on that day. He was just confirming that between
21 these combatants, they had the superior right to the title.

22 MR. SNUFFER: She was -- she was the record title
23 holder --

24 THE COURT: Based on their complaint.

25 MR. SNUFFER: -- until the Judge signed the order

1 changing the record title holder from her -- or from the trust,
2 rather, to someone else, and she is the trustee of the trust,
3 intended to record that document before the entry of the order
4 so that more time would be granted --

5 THE COURT: Well, isn't that fraud?

6 MR. SNUFFER: I think not. It was not the subject of
7 the earlier litigation. The earlier litigation dealt with the
8 question of the trust --

9 THE COURT: Okay. Then she conveyed whatever interest
10 she had -- the trust had in the property to Mr. Case, which as
11 of that day was zero, because the Judge quieted title in his
12 client's name.

13 MR. SNUFFER: The rules --

14 THE COURT: She didn't convey anything because she
15 didn't have anything to convey.

16 MR. SNUFFER: Chronologically what occurred was
17 the conveyance, and then the order that changed the title.
18 Chronologically the entry of the trust deed preceded quiet
19 title.

20 THE COURT: But the Judge had decided that their claim
21 to the title was superior to the trust claim to the title.

22 MR. SNUFFER: But the Judge was never confronted with
23 the improvement to the property.

24 THE COURT: Which should have been part of that lawsuit
25 then. You're claiming payment of a debt and using the property

1 as collateral, and they're talking about title to the property
2 involving the same exact parties, and you never brought it up.
3 Why? That seems kind of odd to me.

4 MR. SNUFFER: The improvements that were made were not
5 connected to the then pending litigation. The then pending
6 litigation dealt with interests under the trust. It dealt with
7 an inter-family dispute over who was entitled to --

8 THE COURT: Yeah, payment of a debt. It's over payment
9 of a debt for improvement to property.

10 MR. SNUFFER: That's what the trust deed was for.

11 THE COURT: And you never filed a mechanic's lien. You
12 never filed a collection case. You just went ahead and filed a
13 deed that gave her all right and title to the property.

14 MR. SNUFFER: No, we filed a deed that gave her a lien
15 that amounted only to \$9,000, a portion of which has been paid
16 before the --

17 THE COURT: But that's why we have the mechanic's lien
18 section, is to file a lien against somebody else's title, and
19 if they don't pay the lien off they have it sold to pay the
20 lien.

21 MR. SNUFFER: And I understand that, but these are
22 family members --

23 THE COURT: Well, this is just a way to subvert the
24 mechanic's lien statute.

25 MR. SNUFFER: -- against whom they did not want to

1 proceed with litigation at that moment. They wanted to extend
2 additional time for the making of the payment. The debt was
3 non-controversial at the time.

4 If they had filed a mechanic's lien, a foreclosure
5 would have been required within a period of months thereafter.
6 They have waited years now in the expectation that they would
7 get paid, and now they are forced to take the necessary --

8 THE COURT: I'm not deciding whether he should or
9 shouldn't get paid. I don't think that's the issue of the
10 motion to dismiss. That's really not the issue. This is
11 an issue where Gordon Case and Company is seeking to evict
12 Arnold and Mary Helen West from their home. It's an eviction
13 proceeding.

14 MR. SNUFFER: This is now.

15 THE COURT: Yeah, that's what this case is, is an
16 eviction proceeding.

17 MR. SNUFFER: Correct.

18 THE COURT: And it turns out that they actually
19 have superior title to the property to the plaintiff. Res
20 judicata. A Judge has said, "You have title to the property,"
21 and quieting title, which mean these various claimants, and you
22 have the superior title. It's yours.

23 MR. SNUFFER: And one of the arguments that is raised
24 and one of the issues that is raised in their complaint that
25 they have asked to dismiss is an estoppel argument against them

1 for having waited too long to bring the action to resist here.

2 They knew all along of the steps that were being taken
3 to collect on the debt. They were aware of the existence of
4 the debt. They have made promises about payment on the debt,
5 and we wind up all the way to an eviction proceeding with them
6 for the very first time taking some steps to resist it.

7 I'd ask the Court to leave the case pending if for no
8 other reason than to cure that argument. You can't come after
9 a foreclosure, after a notice of eviction, after a suit filed
10 to perfect the eviction, and for the first time raise arguments
11 that could and should have been raised much earlier.

12 THE COURT: You can't foreclose someone's property
13 in a trustee's deed where the trustee had no interest in the
14 property to convey to the grantee. She had no interest to
15 convey to the grantee. Judge Stott had ruled that way; that
16 the trustee of the trust had no interest in the quiet title
17 action, so she conveyed nothing.

18 It's just like me granting a deed to Disneyland to
19 Tom Jones down the street and saying, "Go ahead, they owe me
20 25 bucks. I'm going to give you a deed to Disneyland and you
21 can sell it in three months after notice to pay the debt.

22 MR. SNUFFER: I understand.

23 THE COURT: So what good does it do?

24 MR. SNUFFER: I understand the argument, but my view is
25 to the contrary, that until the order is entered removing her

1 as the record title owner, she had the right to enter the lien,
2 and they knew that that lien was there. They've known it from
3 the beginning, and they've done nothing --

4 THE COURT: But --

5 MR. SNUFFER: -- either in that action --

6 THE COURT: But whether they did or didn't know I think
7 is immaterial. If it means nothing, you know, you can't convey
8 what you don't own. So the Court's going to grant the motion
9 to dismiss.

10 Counsel, this is crystal clear to me. We have a Court
11 case involving these exact parties on that exact issue of who
12 has title to the property. A Judge hears the case. A Judge
13 enters the ruling. A Judge even orders her to convey a deed
14 to them conveying all interest of the trust back to Mr. and
15 Mrs. West.

16 She refuses to do that, so the Judge reserves
17 jurisdiction for the Court to issue the deed, and the Court
18 issues the deed. She wouldn't issue the deed pursuant to his
19 order. So he -- the Judge, through the Court issues a deed.
20 They record it. The title was quieted then. When she conveyed
21 title to their property, she had no interest to convey.

22 MR. SNUFFER: The question of --

23 THE COURT: So whether there's a debt or not is
24 immaterial. You can't evict someone from property that they
25 own and that they have title to.

1 MR. SNUFFER: The question of the payment for that
2 debt, including the payment of the taxes has never been subject
3 of any litigation in any form.

4 THE COURT: Okay.

5 MR. SNUFFER: And I would ask that that would be --

6 THE COURT: That may have been a good way -- you know,
7 why didn't he pursue this? I don't know. I can't answer that.
8 Why didn't he file a mechanic's lien or --

9 MR. HANSEN: I can probably answer that.

10 THE COURT: -- file a debt to collect on the judgment.

11 MR. SNUFFER: Well, if I may be allowed to finish my
12 statement, rather than dismiss, I would ask that we be given
13 leave for an opportunity to amend our action here to make it
14 sound in the collection only in the amount of \$9,000 unpaid in
15 heretofore unlitigated debt paid by my clients. The benefit of
16 which went exclusively to the defendant either in contract or
17 in (inaudible), because they should be given a day in Court on
18 that.

19 THE COURT: Well, if they -- why weren't those listed
20 as causes of action, then, in the complaint?

21 MR. SNUFFER: Because we assumed the validity of the
22 trust deed and all of the steps taken under the trust deed.

23 THE COURT: Okay. I'm not going to grant -- there's
24 no pending motion to amend the complaint. There's no motion
25 before this Court to file an amended complaint and add differ

1 -- differing causes of action. The only thing before this
2 Court is a motion to dismiss. The Court finds that the grounds
3 are well taken and grants the motion.

4 MR. HANSEN: Can I address that, your Honor?

5 THE COURT: And request the defendants to prepare an
6 order dismissing the complaint in accordance with the arguments
7 raised in your motion.

8 MR. HANSEN: Mr. Snuffer had indicated that because
9 this is a motion to dismiss that it should just be taken on
10 the face of the pleadings, but I believe the Rules of Civil
11 Procedure are clear that if --

12 THE COURT: Well, yeah.

13 MR. HANSEN: -- additional evidence is presented --

14 THE COURT: I know. If you raise something and they
15 have -- the burden falls back on them to come back and rebut
16 that.

17 MR. HANSEN: I think it should be treated based on
18 the fact that the way that both parties have pled this as a
19 motion for summary judgment. I'm looking for a dismissal with
20 prejudice, because we have submitted affidavits. They've seen
21 the affidavits.

22 THE COURT: It is a dismissal with prejudice on that
23 claim, on the claim set forth in the complaint. It's dismissal
24 with prejudice on that claim. Thank you very much, Counsel.

25 (Hearing concluded.)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.


That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

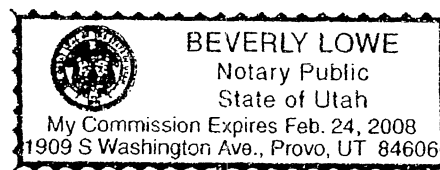
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 18th day of March 2004.

My commission expires:
February 24, 2008



Beverly Lowe
NOTARY PUBLIC
Residing in Utah County



James "Tucker" Hansen, Bar No. 5711
Kasey L. Wright, Bar No. 9169
HANSEN WITT MORLEY & ANDERSON, P.C.
306 West Main Street
American Fork, Utah 84003
Telephone: (801) 756-7658

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH
UTAH COUNTY, OREM DEPARTMENT

GORDON CASE & COMPANY, a Utah)	
business entity,)	
)	ORDER GRANTING DEFENDANT'S
Plaintiff,)	MOTION TO DISMISS
)	
vs.)	Civil No. 030200433
)	
ARNOLD WEST, an individual, and)	Judge John C. Backlund
MARY HELEN WEST, an individual,)	
)	
Defendants.)	
)	

The above-entitled matter having come before the Court in accordance with Rule 4-501 of the Utah Code of Judicial Administration. Defendants having moved the Court for dismissal against the Plaintiff, Gordon Case & Company, a Utah business entity, and the Court having reviewed the pleadings on file herein and all memorandum presented by the parties, the Court having found that the Plaintiff's Complaint is without merit and was brought in bad faith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the Defendants' Motion to Dismiss against the Plaintiff, Gordon Case & Company, a Utah business entity, is hereby granted. Furthermore, the Defendants are entitled to reasonable attorney's fees in the sum of \$3,121.50; with interest to accrue on said total judgment from August 5, 2003, at the statutory

EXHIBIT

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post judgment rate of 3.41% until paid in full, and after accruing costs. This Judgment shall be augmented in the amount of reasonable attorney's fees expended in collecting said judgment by execution or otherwise as shall be established by Affidavit.

DATED this _____ day of _____, 2003.

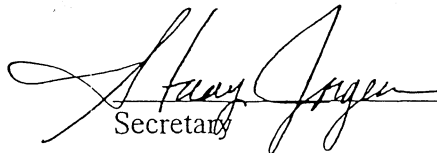
BY THE COURT:

JOHN C. BACKLUND
Fourth District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing ORDER GRANTING DEFENDANTS' MOTION TO DISMISS in an envelope, postage prepaid, this 31st day of October, 2003, to the following:

Denver C. Snuffer, Jr.
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, UT 84070


Secretary

James "Tucker" Hansen, Bar No. 5711
Kasey L. Wright, Bar No. 9169
HANSEN WITT MORLEY & ANDERSON, P.C.
306 West Main Street
American Fork, Utah 84003
Telephone: (801) 756-7658

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH
UTAH COUNTY, OREM DEPARTMENT

GORDON CASE & COMPANY, a Utah
business entity

Plaintiff,

vs.

ARNOLD WEST, an individual, and
MARY HELEN WEST, an individual,

Defendants.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Case No. 030200433

Judge John C. Backlund

After hearing the evidence presented in the motion to dismiss hearing and after reviewing the memorandums filed by the parties, the Court hereby enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. In early 1987, the Defendants, Arnold and Mary West, entered into a Uniform Real Estate Contract with Georgia Lamar West for the purchase of the property in dispute in the case at bar (hereinafter referred to as "the property"). Georgia Lamar West is Defendant Mary West's mother and Arnold Joseph West is Mary's husband.

EXHIBIT

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tabbles

2. Contemporaneous with the execution of the Uniform Real Estate Contract, Georgia Lamar West executed a warranty deed in favor of the Defendants on April 8, 1987.
3. Shortly after entering into the Uniform Real Estate Contract with Georgia Lamar West, the Defendants moved into the house located on the property and have lived there ever since.
4. Georgia Lamar West had other real property that she put in trust. Claudia Case ("Plaintiff") was designated as the trustee of that trust. Mrs. Case is and has been at all times relevant to this lawsuit the wife of Gordon Case, who is the owner of the business that is the Plaintiff in the case at bar.
5. A dispute arose between Mrs. Case as the trustee of the Georgia Lamar West Trust and the Defendants regarding the property at issue in this lawsuit.
6. On or about December 22, 1999, the Defendants filed a Complaint against Mrs. Case, individually, and as Trustee that included a quiet title claim for the property.
7. Defendants also filed a Notice of Lis Pendens on the property on or about December 22, 1999.
8. On or about October 2, 2000, the Honorable Gary Stott of the Fourth District Court issued a Memorandum Decision in the case (#990404457) between the Defendants and Mrs. Case. Judge Stott's decision quieted title in the property to the Defendants.
9. Judge Stott's memorandum decision was put in order form and signed by him on or about November 1, 2000. The Order stated that Mrs. Case is "ordered to execute and deliver a proper Warranty Deed" to the Defendants within 10 days of the date of the Order. The Order further stated that if the Warranty Deed was not executed and delivered to the Defendants within 10 days of the Order, then the Court was authorized to execute and deliver the Warranty Deed on behalf of Mrs. Case.
10. On or about June 6, 2001, the Court executed and delivered to the Defendants the Warranty Deed on the property.

11. On or about November 1, 2000, the same day Judge Stott signed the Memorandum Decision quieting title in the property to the Defendants, Mrs. Case executed a trust deed in the property to Gordon Case & Company. Gordon Case & Company eventually foreclosed on the property and purchased it at the trustee's sale.
12. On or about March 12, 2003, Gordon Case & Company served a Five Day Notice to Vacate the property and filed an Unlawful Detainer Complaint against the Defendants.
13. The Defendants filed a Motion to Dismiss the Unlawful Detainer Complaint on or about March 19, 2003 on the grounds that the Plaintiff did not have an interest in the subject property.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter and the parties herein.
2. The Defendants are the rightful owners of the property.
3. The Plaintiff does not have an interest in the property because the person it purchased the property from did not have an interest in the property.
4. The Plaintiff's trust deed foreclosure and sale of the property did not give the Plaintiff an interest in the Defendants' home.
5. The Defendants did not lose their property rights by not opposing the Plaintiff's foreclosure on the trust deed.
6. The Plaintiff fraudulently and in bad faith commenced this action.

DATED this _____ day of _____, 2003.

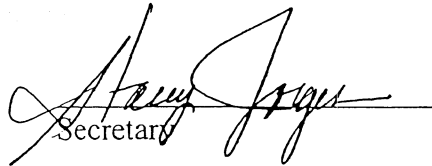
BY THE COURT:

John C. Backlund
Fourth District Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW in an envelope, postage prepaid, this 31 day of October, 2003, to the following address:

Denver C. Snuffer, Jr.
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, Utah 84070


Secretary

JAMES "TUCKER" HANSEN, Bar No. 5711
KASEY L. WRIGHT, Bar No. 9169
HANSEN WITT MORLEY & ANDERSON, P.C.
Attorneys for Defendants
306 West Main Street
American Fork, Utah 84003
Telephone: (801) 756-7658

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
OREM DEPARTMENT, STATE OF UTAH

GORDON CASE & COMPANY, a Utah
business entity,

Plaintiff,

VS.

ARNOLD WEST, an individual, and
MARY HELEN WEST, an individual,
Defendants.

AFFIDAVIT REGARDING ATTORNEYS FEES

Civil No. 030200433

STATE OF UTAH)
)
 : ss
COUNTY OF UTAH)

KASEY L. WRIGHT, being first duly sworn upon his oath deposes and says:

1. That I am one of the attorneys for the Defendants in the above-entitled matter.
2. That this firm performed work in connection with the preparation and presentation of this case having a reasonable value of Three Thousand One Hundred Twenty One and 50/100 Dollars (\$3,121.50).
3. That the time spent on this case was for the following work on which the following amount of time was expended.

<u>Date</u>	<u>Work Performed</u>	<u>Time</u>	<u>Amount Billed</u>
3/11/03	Research criminal section for false 5-day notice; telephone conference with Vince Rampton; review order and real estate contract	.90	\$ 135.00
3/12/03	Review Documents; follow up	.80	120.00
3/13/03	Follow up in Case matter; telephone conference with client; research county recorder's records regarding notice to Gordon Case	.60	90.00
3/14/03	Research at law library regarding lis pendens and Claudia's deed of trust	2.80	420.00
3/17/03	Follow up ; meet with clients and associate Regarding preparing motion to dismiss	.70	105.00
03/17/03	Work on Motion to Dismiss	.50	67.50
3/18/03	Work on Motion to Dismiss	.90	121.50
3/19/03	Prepare and draft Motion to Dismiss	3.90	526.50
3/19/03	Review and revise Motion to Dismiss; follow up file with Orem court	.90	135.00
03/26/03	Follow up with Bruce Murdock regarding legal description	.20	30.00
04/03/03	Review Opposition to Motion to Dismiss	.40	54.00
04/04/03	Conference with clients regarding reply	.40	54.00
04/07/03	Draft Reply to Opposition to Motion to Dismiss	2.60	351.00
04/10/03	Work on Reply	1.70	229.50
05/13/03	Follow up in Case matter	.20	30.00
05/20/03	Meet with clients	.40	60.00

05/21/03	Prepare Supplemental Affidavit	.20	30.00
05/22/03	Meet with clients to finalize affidavit	.20	30.00
06/20/03	Work on Findings of Fact and Conclusions of Law	.50	67.50
06/24/03	Work on Motion to Dismiss Order; Findings of Fact and Conclusions of Law	1.80	90.00
06/26/03	Research slander of title damages	1.10	55.00
06/27/03	Research and organize files	2.80	140.00
06/30/03	Work on slander of title and damages memo	1.30	65.00
07/03/03	Draft memo regarding slander of title damages	.90	45.00
07/07/03	Draft memo regarding slander of title damages	.80	40.00
07/09/03	Follow up in Case matter	.20	30.00

Total Fee

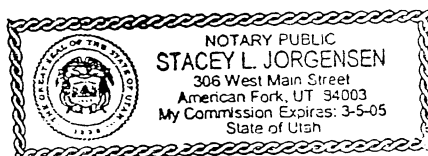
\$3,121.50

4. That Defendants are entitled to have Judgment for attorney's fees, pursuant to Rule 4-505 of the Rules of Judicial Administration, incurred in connection with this case in the total sum of THREE THOUSAND ONE HUNDRED TWENTY ONE AND 50/100 DOLLARS (\$3,121.50).

DATED this 12 day of August, 2003.

Kasey L. Wright
KASEY L. WRIGHT

SUBSCRIBED AND SWORN to before me this 12th day of August, 2003.

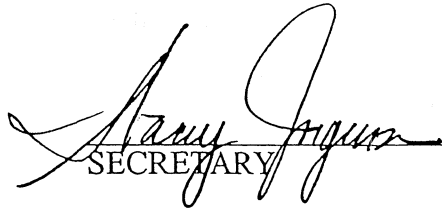


Stacey L. Jorgensen
NOTARY PUBLIC

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing **AFFIDAVIT OF ATTORNEYS FEES**, postage prepaid by first class mail, on this 31st day of October, 2003, to the following:

Denver C. Snuffer, Jr.
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
Attorneys for Plaintiff
10885 South State Street
Sandy, Utah 84070



SECRETARY