

1993

Moab Building Center, Inc. v. R.M. Jensen : Brief of Respondent

Utah Court of Appeals

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Respondent.

Richard M. Jensen; Pro Se.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 930063 IN THE COURT OF APPEALS
OF THE STATE OF UTAH

MOAB BUILDING CENTER, INC.,
a Utah corporation,

Plaintiff and Respondent,

vs.

R. M. JENSEN,

Defendant and Petitioner.

Appellate Court No. 930063-CA

ARGUMENT PRIORITY
CLASSIFICATION 10

BRIEF OF RESPONDENT

Appeal from the Seventh Judicial District Court of
Grand County, State of Utah (the Honorable Bruce K. Halliday
presiding)

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FILED

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UTAH CONSTITUTIONAL PROVISION

Art. VIII, § 5 8

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Section 78-2a-3(2)(k), Utah Code Annotated (1992) and Rule 5 of the Utah Rules of Appellate Procedure.

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Whether the trial court correctly denied Petitioner's Motion to Change Venue to the First District Court? The applicable standard of review is abuse of discretion. Olympia Sales Company v. Long, 604 P.2d 919 (Utah 1979); Estate of Thorley, 579 P.2d 927 (Utah 1978).

STATUTORY PROVISIONS

A. U.C.A. § 78-6-1 (1992) is set out in full in Addendum A. It provides in pertinent part as follows:

(1) The Circuit Court . . . may create a department known as the "Small Claims Department" which has jurisdiction in cases:
(a) for the recovery of money where the amount claimed does not exceed \$2,000, including attorney fees but exclusive of court costs and interest and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained.

B. U.C.A. § 78-13-1 (1992) is set out in full in Addendum B. It provides in pertinent part as follows:

Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated . .
. (1) . . . for injuries to real property.

C. U.C.A. § 78-13-4 (1992) is set out in full in

Addendum C. It provides in pertinent part as follows:

When the defendant has signed a contract in the state to perform an obligation, an action on the contract may be commenced in the following venues: . . . (2) . . . in the county where such obligation is to be performed, the contract was signed, or in which the defendant resides.

D. U.C.A. § 78-13-7 (1992) is set out in full in

Addendum D. It provides in pertinent part as follows:

In all other cases, the action must be tried in the county in which the cause of action arises, or in the county in which the defendant resides at the commencement of the action.

E. U.C.A. § 78-13-8 (1992) provides as follows:

If the county in which the action is commenced is not the proper county for the trial thereof, the action may nevertheless be tried therein, unless the defendant at the time he answers or otherwise appears files a motion, in writing, that the trial be had in the proper county.

STATEMENT OF THE CASE

A. Nature of the Case

Petitioner R. M. Jensen, also known as Richard M. Jensen ("Jensen") appeals from the Order Denying Defendant's (Jensen) Motion to Change Venue to the First District Court, signed by the Honorable Bruce K. Halliday of the Seventh Judicial District Court, on September 9, 1992.

On appeal, Jensen contends the trial court erred in denying the motion to change venue. To support this contention, Jensen argues (1) as a matter of law, venue should have been changed to Box Elder County, which is in the First Judicial District; and (2) venue should have been changed to the First Judicial District in the interest of justice and convenience of witnesses.

B. Course of Proceedings

Respondent Moab Building Center, Inc., a Utah corporation ("Moab Building Center") filed a Small Claims Affidavit and Order (the "Small Claims Affidavit") in the Small Claims Department ("Small Claims Department") of the Seventh Judicial District Court, Grand County, Utah ("Seventh District Court") on August 13, 1992. The Small Claims Affidavit alleged that Jensen owed Moab Building Center \$733.65 plus \$20.00 filing fee, for building materials (the "Materials") purchased from Moab Building Center by Jensen.

By separate documents dated August 31, 1993 and filed in the Seventh District Court, on September 14, 1993, Jensen:

1. Counterclaimed for \$11,275.00 in property and punitive damages;
2. Moved to transmit the case from the Small Claims Department to the Seventh District Court; and

3. Moved to change venue from the Seventh District Court to the First District Court, Box Elder County, Utah ("First District Court").

C. Disposition in the Court Below

On September 9, 1993, before the time expired for Moab Building Center to file its objection to the motion to change venue, Judge Halliday denied Jensen's Motion to Change Venue to the First District Court. The Order Denying Defendant's (Jensen) Motion to Change Venue to the First District Court (Addendum E) was signed by the Court on Wednesday, September 9, 1992, and filed on Monday, September 14, 1992. Jensen appealed the trial court's decision to the Utah Supreme Court which poured the case over to this court.

D. Statement of Relevant Facts

Because this case originated as a small claims action, there are no complaint, answer and counterclaim setting out the allegations of the parties. There has been no trial determining which allegations are true. The statement of facts in appellant's brief is accordingly unsupported by any citations to the record. However, Moab Building Center accepts the Statement of Facts as a statement of the facts as Jensen would allege them if an answer and counterclaim were filed. This is not to say Moab Building Center accepts all of Jensen's statement of facts as true. Moab Building Center accepts some of those facts and

disputes others. The correct statement of admitted and disputed facts follows:

1. On May 18, 1992, Jensen contacted Moab Building Center in Grand County, Utah and requested the delivery of the Materials to a building site in Blanding, San Juan County, Utah, where Jensen was building a home.

2. Moab Building Center delivered the Materials in Blanding, San Juan County, Utah, on May 21, 1992.

3. Jensen claims that Moab Building Center damaged the driveway where he was building a home when the Materials were delivered. Moab Building Center disputes this.

4. Jensen claims Moab Building Center agreed to pay for the damage to the driveway, and the damage was \$11,275.20. Moab Building Center disputes this.

5. Moab Building Center filed this action to collect for the delivered Materials.

6. Jensen filed his counteraffidavit (the "Counterclaim") to recover for the alleged damage to the driveway.

7. In addition to the Motion for Change of Venue to the First District Court (Record at 6-7), Jensen filed the following at the same time Jensen filed the motion for change of venue:

a. The Counterclaim in the Small Claims Department denying Jensen owed Moab Building Center \$753.65 and asserting a counterclaim for \$11,275.00 in property and punitive damages (Record at 3);

b. A motion to transmit the dispute from the Small Claims Department to the Seventh District Court.¹

8. The Counterclaim appears to be Jensen's attempt to collect for the alleged damage to the driveway.

9. On September 9, 1992, the Small Claims Department granted the motion to transmit to the Seventh District Court (Record at 2) and denied Jensen's Motion to Change Venue to the First District Court (Record at 8-9).

10. On February 3, 1993, Moab Building Center filed a Motion for Leave to Amend and for Change of Venue. The motion for change of venue states Moab Building Center has no objection to changing venue to San Juan County, Utah (Record at 68-73).

SUMMARY OF ARGUMENT

I. VENUE IS PROPER IN GRAND COUNTY.

U.C.A. § 78-6-1 allows a small claims case to be filed in a small claims department in the county where the actions which gave rise to the indebtedness occurred. All of the actions

¹For some reason this motion is not part of the record. Jensen included this motion as part of his brief as Exhibit "D" and Moab Building Center includes it as ADDENDUM F.

which gave rise to the indebtedness, which is the subject of this action, occurred in Grand County. The Small Claims Department was a proper forum for Moab Building Center to file the Small Claims Affidavit and the denial of Jensen's motion to change venue was correct.

II. JENSEN WAIVED ANY RIGHT HE MAY HAVE HAD TO CHANGE VENUE.

If Jensen had any right to change venue (Moab Building Center contends Jensen had no right), Jensen waived the right. Jensen was required to make a motion to change venue at his first appearance and before making other motions. Because Jensen made other motions before making the motion to change venue, Jensen waived any right he had to object to venue.

III. IN THE ALTERNATIVE, VENUE IS PROPER IN SAN JUAN COUNTY.

The Counterclaim of Jensen asked for monetary relief in excess of the jurisdiction of the Small Claims Department, thus making a motion to transmit to the Seventh District Court necessary. If because the Counterclaim is what removed the dispute to the district court we look at the Counterclaim for proper venue, venue is proper in San Juan County and Grand County. The Counterclaim is for injury to real property located in San Juan County and actions on injury to real property must be tried where the real property is located. Grand County could retain venue because it had venue under the Small Claims

Affidavit.

IV. THE INTEREST OF JUSTICE AND CONVENIENCE OF WITNESSES DOES NOT REQUIRE A CHANGE OF VENUE.

Jensen argues venue should be changed for the interest of justice and convenience of witnesses. This argument was not presented to the trial court and should not be considered by this court. In addition, Jensen does not tell the court why his view of interest of justice and convenience is better than the current circumstances.

V. JENSEN CITES AUTHORITY WHICH DOES NOT SUPPORT HIS PROPOSITIONS AND ARGUES IRRELEVANT MATERIAL.

For many of Jensen's arguments, he cites case law which does not support his contentions or are not controlling law. In addition, most of Jensen's arguments state and argue material which are irrelevant to this disposition of this matter.

ARGUMENT

I. VENUE IS PROPER IN GRAND COUNTY.

I.A. Under U.C.A. § 78-6-1, venue is proper in Grand County.

The venue statutes for a court of general jurisdiction are found in U.C.A. § 78-13-1 et seq. (the "General Venue Statutes"). District courts in the state of Utah have statewide jurisdiction. Utah Const. Art. VIII, § 5; U.C.A. § 78-3-4(1) (1992). The General Venue Statutes, however, may require a district court to decline to exercise jurisdiction where venue lies elsewhere.

In contrast to the district court, the jurisdiction of a small claims department and its venue are coterminous. The jurisdiction statute of the small claims department is found in U.C.A. §78-6-1 (the "Small Claims Jurisdiction Statute"), which states: "[T]he Small Claims Department . . . has jurisdiction in cases: (a) for the recovery of money where the amount claimed does not exceed \$2,000 . . . and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court" U.C.A. §78-6-1 (1992) (emphasis added). A small claims department has jurisdiction only over those matters specified in the Small Claims Jurisdiction Statute.

The General Venue Statutes are inapplicable in a small claims department and the Small Claims Jurisdiction Statute supercedes the General Venue Statutes in a small claims case. Otherwise there is no need for the Small Claims Jurisdiction Statute and the portion of U.C.A. § 78-6-1 which states: "[W]here the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained" is duplicative of the General Venue Statutes and does not make any sense.

In this case, Jensen contacted Moab Building Center at Moab Building Center's sole place of business in Grand County and ordered the Materials. Grand County is the location in which the Moab Building Center agreed to sell, and from which it shipped,

the Materials. Since the value of the Materials is less than \$2,000.00, the Small Claims Jurisdiction Statute is the statute which governed the filing of the Small Claims Affidavit. Since the actions giving rise to the indebtedness occurred in Grand County, Moab Building Center chose the proper venue and Jensen's motion for change of venue was properly denied by the trial court.

Jensen asks this Court to decide that because he was in Brigham City at the time he made the telephone call for the Materials, the actions giving rise to the indebtedness occurred in Box Elder County. The placing of the phone call was the only action which occurred in Box Elder County. However, the placing of a phone call does not give rise to indebtedness. It was not until acts were performed by Moab Building Center, none of which occurred in Box Elder County, any indebtedness arose. The offer of Jensen was accepted, and the contract formed, in Grand County.

I.B. Under the General Venue Statutes, venue is proper in Grand County.

Even if the Court decides the Small Claims Jurisdiction Statute does not supercede the General Venue Statutes, and that somehow the Small Claims Jurisdiction Statute and the General Venue Statutes must be read together, venue is proper in Grand County. The proper venue statute is found in U.C.A. § 78-13-7 which states: "In all other cases the action must be tried in the county in which the cause of action arises, or in the county

in which the defendant resides at the commencement of the action" U.C.A. § 78-13-7 (1992).

Under the General Venue Statutes this case could be tried in either Grand County, where the cause of action arose² or in Box Elder County where the defendant resides. Since Moab Building Center chose a county of proper venue, the court was correct in denying Jensen's motion for change of venue, even though the motion asked the court to change venue to another proper county. Hale v. Barker, 259 P.2d 928 (Utah 1927).

At this point, Moab Building Center points out the case of Olympia Sales Co. v. Long, 604 P.2d 919 (Utah 1979) which Jensen cites in his brief. In Olympia, the court stated, "It is therefore the conclusion of this court that actions upon contract not in writing, upon proper and timely demand being made, must be tried in the county where one of the defendants resides at the commencement of the action". Id. at 921. Olympia interprets the predecessor of U.C.A. § 78-13-4³ as it was written prior to its amendment in 1990. Under the prior statute the court seemed to

²See argument set forth in I.A above.

³Prior to 1990, U.C.A. § 78-13-4 stated:
When the defendant has contracted in writing to perform an obligation in a particular county of the state and resides in another county, an action on such contract, obligation may be commenced and tried in the county where such obligation is to be performed or in which the defendant resides.

say an action of any contract, written or oral, other than when the defendant has contracted in writing to perform an obligation in particular place,⁴ venue is only proper in the county in which the defendant resides. In other words, unless the contract specifies in writing a place of performance, venue is only proper in the county in which the defendant resides.

Moab Building Center contends that Olympia is not controlling law on this point because it interprets a prior law. Since the decision in Olympia, the legislature has amended and clarified U.C.A. § 78-13-4. The statute, as amended in 1990, is quite different than its predecessor which Olympia interpreted. It is clear that U.C.A. § 78-13-4, as it now reads,⁵ applies only to a contract signed in the State of Utah to perform an obligation. Thus the clear meaning of the statute is that the applicability of Section 78-13-4 is limited to contracts signed in the State of Utah. If a contract was signed in the State of Utah, then Section 78-13-4 operates to determine where venue is proper. In this case there is no contract which was signed in the state, therefore, Section 78-13-4 is not applicable and any case interpreting section 78-13-4 or its predecessors is not controlling law.

⁴Moab Building Center believes this to mean the place of performance is specifically designated in writing in the contract.

⁵See Addendum C for full text.

II. JENSEN WAIVED ANY RIGHT HE MAY HAVE HAD TO CHANGE VENUE.

Even if venue under the Small Claims Affidavit is not in Grand County, Jensen waived any right to change venue. U.R.C.P. 12(b) requires that a motion for improper venue "shall be made **before** pleading if further pleading is permitted." U.R.C.P. 12(b) (1992) (emphasis added). In Rudd v. Crown International, 488 P.2d 298 (Utah 1971) the Court said, "Section 78-13-8 . . . requires a defendant to file a motion for change of venue at his first appearance. Making any other motion or appearance **prior** thereto usually forecloses defendant from thereafter objecting to venue." Id. at 301 (emphasis added); State v. Johnson, 114 P.2d 1034, 1042 (Utah 1991). By reading U.C.A. § 78-13-8, U.R.C.P. 12(b), Rudd and Johnson together (and the only way in which the statutes, rules of procedure, and case law harmonize), it is clear a motion for change of venue must be filed before any other motion or pleading.

In this case, Jensen's motion for change of venue was not filed before his other motions or pleadings. Jensen's motion for change of venue asked the Seventh District Court to change venue to the First District Court. In order for the Seventh District Court to rule on Jensen's Motion for Change of Venue,

the Counterclaim⁶ and the Motion to Transmit to District Court had to have been filed first. Jensen's motion to transmit asked the Small Claims Department to transmit to the Seventh District Court. Neither the Counterclaim nor the motion to transmit made a motion for change of venue. Therefore, Jensen did not file his motion to change venue in a timely and proper manner as required by U.C.A. § 78-13-8, U.R.C.P. 12, Rudd and Johnson, and therefore waived any right Jensen may have had to change venue.

The proper procedure under U.C.A. § 78-13-8, U.R.C.P. 12 (b) and Rudd, in order not to waive any right to change venue, would have been for Jensen to file a motion to change venue in the Small Claims Department and obtain a ruling on the same prior to filing the Counterclaim and the Motion to Transmit to the District Court. This is clearly the proper procedure contemplated by U.R.C.P. 12(a) when it states:

The service of a motion under this rule alters these periods of time⁷ as follows, unless a different time is fixed by order of the court:
(1) If the court denies the motion⁸ . . . the responsive pleading shall be served within ten days after notice of the court's action.

U.R.C.P. 12(b)(1992).

⁶Which monetary claim exceeded the jurisdiction of the Small Claims Department, thus making the Motion to Transmit to District Court necessary.

⁷Time periods for filing answers, cross-claims, counterclaims, etc.

⁸A motion for a change of venue (improper venue) is one of the many motions to which this term applies. See U.R.C.P. 12 (b) (1993).

The denial of Jensen's motion for change of venue was proper because Jensen, by his own actions, waived any right to change venue.

III. IN THE ALTERNATIVE, VENUE IS PROPER IN SAN JUAN COUNTY.

Under the Small Claims Affidavit, if the action of indebtedness was not incurred in Grand County (where the Materials were ordered and shipped) it most certainly was incurred in San Juan County where the Materials were delivered, the Invoice was presented and accepted, and the Check delivered. Under no circumstances did the actions which gave rise to the indebtedness occur in Box Elder County.

The Counterclaim is separate and distinct from the Small Claims Affidavit and is essentially an independent cause of action. Although both might be viewed as arising out of the same set of facts when viewed as a whole, the evidence to support each claim is separate and distinct. The Small Claims Affidavit is under a contract and Jensen's failure to perform his obligation thereunder. On the other hand, the Counterclaim appears to be a claim for injury to real property, a tort. Evidence which supports or negates the claims of Moab Building Center for payment have little or no relevancy to the claims of Jensen for injury to real property.

The filing of the Counterclaim and the granting of the motion to transmit to the Seventh District Court removed the

dispute from the Small Claims Department to the Seventh District Court. If, because the Counterclaim is the act which removed the dispute to the Seventh District Court, we therefore look at where venue is proper under the Counterclaim, then U.C.A. §78-13-1 is the governing venue statute for injuries to real property.

U.C.A. §78-13-1 states: "Actions for the following causes must be tried in the county in which the subject of the action or some part thereof is situated . . . (1) . . . injuries to real property." U.C.A. §78-13-1 (1992). Under this statute the proper place for venue, if determined by looking at the Counterclaim, is in the place where the "subject of the action" (the real property) is, which is San Juan County. Therefore, Jensen's motion for change of venue was properly denied because venue is not in Box Elder County but rather under the Counterclaim venue is only proper in San Juan County. Under this scenario Grand County would retain venue for the Counterclaim because venue was proper in Grand County with regards to the Small Claims Affidavit.

IV. THE INTEREST OF JUSTICE AND CONVENIENCE OF WITNESSES DOES NOT REQUIRE A CHANGE OF VENUE.

The second part of Jensen's argument is his motion for change of venue should have been granted in the interest of justice and convenience. This argument was not presented to the trial court by Jensen as a reason to change venue (See Record at 6-7). It is well settled law that issues cannot be raised on

appeal for the first time. Espinal v. Salt Lake City Bd. of Educ., 797 P.2d 412 (Utah 1990); Trayner v. Cushing, 688 P.2d 856 (Utah 1984); Olson v. Park - Craig - Olson, Inc., 815 P.2d 1356 (Utah App. 1991); Ringwood v. Foreign Auto Works, Inc., 786 P.2d 1350 (Utah App. 1990). Therefore, this argument of Jensen's should not be considered by this Court.

However, if this Court should decide to consider this argument, this argument is unpersuasive. Jensen argues, in point 4, that the "interest of justice would not be served by forcing [Jensen] to travel to a distant county to trial." However, Jensen contends it is in the interest of justice to force Moab Building Center to travel to a distant county to trial. Jensen appears to adopt a double-standard.

In point 4, Jensen also argues that the convenience of witnesses requires a change of venue. Jensen alleges "witnesses are all residing in Box Elder or Salt Lake County and forcing them to travel to Grand County would create a hardship on them". This may or may not be true for the witnesses Jensen intends to use at the trial but is a false statement for the witnesses which Moab Building Center may decide to use. In fact, most, if not all, of the witnesses which Moab Building Center may use at trial live in Grand or San Juan County.

Jensen wants this court to adopt his view of what is in the interest of justice and convenience for him, without regards

to the injustice or inconvenience it would cause to Moab Building Center. Moab Building Center did not go to Box Elder County seeking to do business with Jensen. Jensen came to Grand County and asked Moab Building Center to deliver material to San Juan County.

V. JENSEN CITES AUTHORITY WHICH DOES NOT SUPPORT HIS PROPOSITIONS AND ARGUES IRRELEVANT MATERIAL.

In point 2 and point 3 of the argument in Jensen's brief, Jensen cites Palfreyman v. Trueman, 142 P.2d 677 (Utah 1943) for the proposition that "contracts are required to be in writing". Palfreyman in no way supports or eludes to this idea. To accept such an idea would make moot a whole body of contract law dealing with oral agreements. Palfreyman interprets the predecessor to U.C.A. § 78-13-4.⁹

In point 3 of the argument in Jensen's brief, Jensen cites Palfreyman, for the proposition that a motion for change of venue to defendant's place of residence must be granted if no objection is raised. In Palfreyman the court found the facts justified the venue change because the original claim was filed in a county of improper venue and a motion was made to change to a county of proper venue. There was no discussion on the impact of the lack of an objection. There is no requirement in the law that if no objection to a motion is made, the court is required

⁹See discussion under Argument I.B.

to grant the motion. A court can only grant a proper motion and cannot grant an improper motion even if no objection is made. For example, it makes sense for a court to grant a motion for change of venue from a court of improper venue to a court of proper venue. It does not make sense to require a court to grant a motion for change of venue from a court of proper venue to a court of improper venue or even to another court of proper venue unless the extraordinary circumstances of Section 78-13-9(2)(3) or (4) are met. Jensen has tried to argue but has not shown these extraordinary circumstances exist in this case.

In point 5 Jensen states "Denying the motion prior to the period for objections has run, is arbitrary. Jensen makes this conclusion without citing any authority or explaining to the court why the action is arbitrary. Jensen wants the court to adopt his conclusions without providing the court with any authority or reasoning.

CONCLUSION

For the foregoing reasons the decision of the Seventh Judicial District Court of Grand County should be affirmed. Alternatively, if venue is to change at all, it should be changed to San Juan County where the materials were delivered, and where Jensen's alleged injury occurred.

DATED the 1st day of July, 1993.

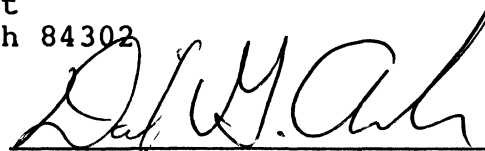


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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 1993, I mailed two copies of the foregoing Brief of Respondent by first-class mail, postage prepaid to the following:

Richard M. Jensen
115 North 500 West
Brigham City, Utah 84302



Daniel G. Anderson

ADDENDUM A

**78-6-1. CREATION -- JURISDICTION -- BIENNIAL REVIEW --
COUNSEL NOT NECESSARY -- DEFERRING MULTIPLE CLAIMS OF
ONE PLAINTIFF -- SUPREME COURT TO GOVERN PROCEDURES.**

(1) The circuit court shall and, if certified by the Judicial Council, the justice court may create a department known as the "Small Claims Department" which has jurisdiction in cases:

(a) for the recovery of money where the amount claimed does not exceed \$2,000 including attorney fees but exclusive of court costs and interest and where the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed \$2,000 including attorney fees but exclusive of court costs and interest.

(2) In no event shall the judgment of the small claims division exceed \$2,000 including attorney fees but exclusive of court costs and interest.

(3) Counter claims may be maintained in the small claims division if the counter claim arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(4) The Judicial Council shall present to the Judiciary Interim Committee prior to the general session of the Legislature during odd-numbered years a report and recommendations concerning the jurisdiction of the small claims

department.

(5) Persons or corporations may litigate actions on behalf of themselves in person or through authorized employees with or without counsel.

(6) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

(7) Small claims shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

ADDENDUM B

78-13-1. ACTIONS RESPECTING REAL PROPERTY.

Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial as provided in this code:

(1) For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

(2) For the partition of real property.

(3) For the foreclosure of all liens and mortgages on real property.

Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county so selected is the proper county for the trial of such action.

ADDENDUM C

78-13-4. ACTIONS ON WRITTEN CONTRACTS.

When the defendant has signed a contract in the state to perform an obligation, an action on the contract may be commenced and tried in the following venues:

(1) If the action is to enforce an interest in real property securing a consumer's obligation, the action may be brought only in the county where the real property is located or where the defendant resides.

(2) An action to enforce an interest other than under Subsection (1) may be brought in the county where such obligation is to be performed, the contract was signed, or in which the defendant resides.

ADDENDUM D

78-13-7. ALL OTHER ACTIONS.

In all other cases the action must be tried in the county in which the cause of action arises, or in the county in which any defendant resides at the commencement of the action; provided, that if any such defendant is a corporation, any county in which such corporation has its principal office or place of business shall be deemed the county in which such corporation resides within the meaning of this section. If none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the state, such action may be tried in any county where any of the parties resides or service is had, subject, however, to the power of the court to change the place of trial as provided by law.

ADDENDUM E

MOTION TO CHANGE VENUE TO THE FIRST DISTRICT COURT

SEVENTH DISTRICT COURT
Grand County
FILED SEP 14 1992
CLERK OF THE COURT
BY _____ Deputy

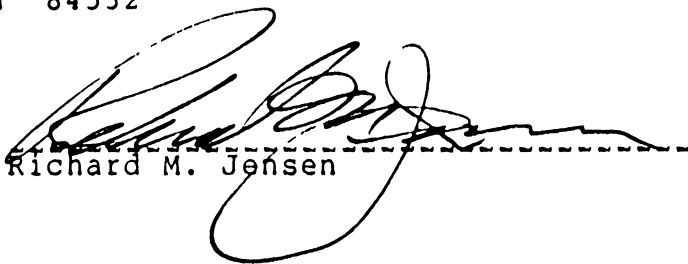
Civil No. 9207-94

E-1

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of August, 1992, I personally deposited with the United States Postal Service, First Class Mail, Postage Paid, a true and correct copy of the above to the following:

RICHARD C. HOVER, SEC.
2471 South Highway 191
Moab, Utah 84532



Richard M. Jensen

ADDENDUM F

MOTION TO TRANSMIT TO DISTRICT COURT

SEVENTH DISTRICT COURT
Grand County

SEP 14 1992

CLERK OF THE COURT

Deputy

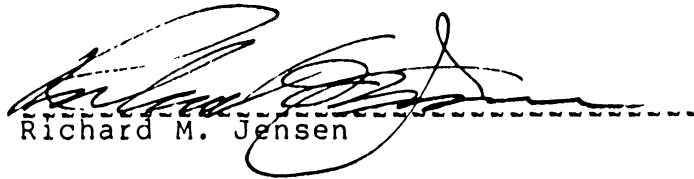
Case No. 9287-59

F-1

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