

1993

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

Utah Court of Appeals

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L. Robert Anderson; Attorney for Plaintiff/Respondent.

Richard M. Jensen; Pro Se. Representing Petitioner.

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## Recommended Citation

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
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DOCKET NO.

930063

IN THE UTAH COURT APPEALS

MOAB BUILDING CENTER, INC.,  
a Utah corporation,

Plaintiff and  
Respondent,

vs.

R.M. JENSEN,

Defendant and  
Petitioner.

Appellate Court No. 930063-CA

BRIEF OF APPELLANT

Appeal from an Order of the  
Seventh District Court,  
Grand County, State of Utah  
The Honorable Bruce K. Halliday presiding

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
(801) 723-6194  
Representing  
Petitioner

L. Robert Anderson #0101  
81 East 100 South  
Monticello, Utah 84535  
(801)

Attorney for  
Respondent

**FILED**  
Utah Court of Appeals

JUN 01 1993

  
Mary T. Noonan  
Clerk of the Court

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### Authorities Cited

Angell v. Sixth Judicial Dist. Court of Sevier County  
656 P.2d 405 (Utah 1982)

While generally change of venue or denial of motion therefor is within the discretion of district court, court has no such discretion when original forum is improper and motion is brought to change venue to proper county.

Calder v. Third Judicial Dist. Court in and for Salt Lake County  
273 P.2d 168 (Utah 1954)

Under common law, a "transitory action" is one which may be tried wherever personal service can be obtained on defendant.

Campbell v. Debbens  
518 P.2d 1012 (Ariz. App. 1974)

When a proper request for change of venue has been made, it is mandatory that cause be transferred.

Floor v. Mitchell  
86 Utah 203 (Utah 1935)

Unless there was a written contract with specific terms covering performance and payment, venue had to be changed to the place of residence of the defendant. Mere reference to residence or place of business in writing, having no reference to place of performance, is not sufficient to bring writing within this section. (§ 78-13-8 CHANGE OF VENUE)

Olympia Sales Co. v. Long  
604 P.2d 919 (Utah 1979)

Granting or denial of motion for change of venue is generally discretionary and trial courts decision will not be altered unless it is shown to be arbitrary or capricious.

Palfreyman v. Trueman  
105 Utah 463, (Utah 1943)

The court held that the court should grant a motion for change of venue to defendant's place of residence when the petition is filed with the required affidavits of residence and merit and no traverse and no objections to the sufficiency of the affidavits are made. For purpose of venue, the place where **defendant** (emphasis added) is to perform the obligation must be determinable from either the express terms of the **written agreement** (emphasis added) or from the necessary implication of those terms.

Peterson v. Ogden Union Ry. & Depot Co.  
175 P.2d 744 (Utah 1946)

Ordinarily, venue statutes are for the convenience of the parties and are to restrict the suit to those which because of their geographic location are readily accessible to the parties with the minimum expense and the minimum expenditure of time on the part of the parties and their witnesses.

Rudd v. Crown Intern.  
26 Utah 2d 263, (Utah 1971)

The Motion for Change of Venue was made at the first appearance as required by statute.

Rose v. Etling  
467 P.2d 633, (Or. 1970)

Though right of defendant to change venue has been described as "personal privilege", it is nevertheless a "right".

Shelton v. Farkes  
635 P.2d 1109 (Wash.App. 1981)

Action for recovery of money is clearly in personam and therefore transitory. Defendant to action for recovery of money was entitled to change venue to county of her residence.

State v. Johnson  
114 P.2d 1034 (Utah 1941)

Objection to venue in cases in personam must be seasonably raised or they will be deemed "waived". An objection to venue must be made at or before the filing of a demurrer or an answer to the merits.

Utah Code Annotated, 1953  
§ 78-2a-3, (2)(j)

The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over cases transfer to the Court of Appeals from the Supreme Court.

Utah Code Annotated, 1953  
§ 78-13-8 CHANGE OF VENUE

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.

Utah Code Annotated, 1953  
§ 78-13-9, (3) GROUNDS

When the convenience of witnesses and the ends of justice would be promoted by the change.



#### STATEMENT OF JURISDICTION

Jurisdiction to hear this appeal is conferred on this Court by the Utah Code Annotated, 1953, § 78-2a-3, (2)(j), with jurisdiction being transferred to the Court of Appeals by the Utah Supreme Court.

#### NATURE OF CASE

This is an action by the Respondent to collect money as a result of an oral contract.

#### DISPOSITION IN DISTRICT COURT

The case was not tried to the District Court. From an Interlocutory Order denying a Motion for Change of Venue by the Petitioner, the Petitioner appeals.

#### RELIEF SOUGHT ON APPEAL

Petitioner seeks reversal of the Order of Denial of Change of Venue in his favor as a matter of law, and for the case to be remanded to the place of proper venue, The First District Court for a trial on its merits.

### STATEMENT OF FACTS

On or about May 18, 1992, Petitioner contacted Moab Building Center by phone from 115 North 500 West, Brigham City, Box Elder County, State of Utah, and negotiated a verbal agreement, on behalf of R.M. Jensen Construction Co., to have Moab Building Center deliver building materials to Blanding, Utah. The property that the material was to be delivered to was owned by the United States Government, Department of Agriculture, Farmers Home Administration. The same day the material was to be delivered, R.M. Jensen Construction Co., through one of its subcontractors, installed a new concrete driveway. When the material was delivered, the truck driver, believed to be employed by the Respondent, ignored barriers as well as warnings by other workers on the site not to drive over the freshly poured concrete, did drive over the freshly poured concrete, breaking the new driveway. It was agreed upon by a representative of Farmers Home administration and the Respondent that R.M. Jensen Construction Co. would remove the damaged section of driveway and re-pour another new driveway. It was also agreed that R.M. Jensen Construction Co., could deduct the cost to replace the driveway from any monies owed to the Respondent, if any, for the materials delivered. Approximately two weeks after the replacement driveway was installed and about three weeks before R.M. Jensen Construction Co. was able to get billings from the various sub-contractors involved in the replacement of the driveway, Respondent filed the suit that resulted in this appeal. None of these facts are entered as evidence, except the first

sentence of this paragraph, and it is only intended as background. The remaining has been entered as evidence and should be considered as such.

On August 13, 1992, Respondent filed a Small Claims Affidavit and Order. The Petitioner filed a motion to change venue and his counter-affidavit on August 31, 1992. On September 9, 1992, the court denied the motion to change venue.

STATEMENT OF POINTS

1. The evidence is inconsistent with the findings that Grand County is the place of proper venue.
2. There were no findings or conclusions sufficient to support the denial for the motion to change venue.
3. Venue should have been changed as a matter of law.
4. Venue should have been changed in the interest of justice and convenience of witnesses.
5. The trial court exceeded its discretionary authority and its decision was arbitrary and capricious.

### SUMMARY OF ARGUMENT

The motion for change of venue was properly filed at the time of the first appearance by the Petitioner and was supported by the proper affidavits indicating that the Petitioner resided in another county and any contract, if there was one, between the Petitioner and the Respondent was verbal. The documents previously filed by the Respondent indicated that there was a question of proper venue and substantiated the facts that the Petitioner resided in another jurisdiction and the performance of the verbal contract was to take place in another jurisdiction besides Grand County. There was no written contract between the Petitioner and the Respondent and the trial should be had in the proper jurisdiction, Box Elder County.

### ARGUMENTS DETAILED

Point 1. The evidence is inconsistent with the findings that Grand County is the place of proper venue.

In the original complaint filed in the small claims court the Respondent certified that either the defendant resided in OR the claim arose in Grand County. Both of those statements were false and the face of the small claims affidavit indicated that they were false. The place for service as stated was to be Brigham City, located in Box Elder County and the complaint was for delivery of materials to Blanding, located in San Juan County. The evidence indicated that there was at least a question as to proper venue since the defendant resided in Box Elder County and the claim could have arisen in San Juan County. The court should have questioned proper venue when the complaint was filed. The affidavit filed by the Petitioner was further evidence that Grand County was not the proper place of venue.

Point 2. The findings and conclusions are insufficient to support the denial to change venue.

There were no formal findings or conclusions set out by the court. Unless the decision was made arbitrarily or capriciously, there would have had to been some findings of facts. The only facts in evidence at the time the denial of the motion to change venue was made was that the plaintiff was suing for money on a claim that could have arisen in another jurisdiction and the defendant was a resident of another county. It could not be disputed or questioned that the defendant resided in another county as the address of Brigham City was used on the summons. The complaint never stated that there was a written contract, only that the defendant owed the plaintiff money. Contracts are required to be in writing, as in the case of Palfreyman v. Trueman, 105 Utah 463, (Utah 1943).

Point 3. Venue should have been changed to the First District Court in Box Elder County as a matter of law.

The complaint and counterclaim affidavit indicated on their face that there was probable cause to allow the change because the defendant resided in another jurisdiction and there was no written contract and there was no allegation that there was a written contract. Not only was there no written contract, there was no reference to where the Defendant was to perform his obligation as required by Palfreyman v. Trueman, 105 Utah 463, (Utah 1943).

The motion for change of venue went unopposed. Palfreyman v. Trueman, 105 Utah 463, (Utah 1943), also held that if there is no objections raised, the motion for change of venue should be granted. The Respondent had plenty of time to oppose the motion. Even though the court denied the motion for change of venue within 9 days of its being filed, the court never mailed it for 13 days. This is well past the time for any objection to be raised as defined by Rule 4-501(b) of the Utah Court Rules, Annotated.

The motion for change of venue was filed along with Petitioner's answer, which conformed to the Utah Code Annotated, 1953, § 78-13-8 CHANGE OF VENUE, stating that if "the defendant at the time he answers or otherwise appears files a motion, in writing, that the trial be had in the proper county."



Point 4. Venue should have been changed in the interest of justice and convenience of witnesses.

The interest of justice would not be served by forcing the Petitioner to travel to a distant county to trial. Respondent has hired attorneys and he can hire other attorneys in the proper jurisdiction. There would be no economic or legal handicap to the Respondent. However, the Petitioner is handling this matter Pro Se and does not have the funds to travel to another jurisdiction, especially an improper jurisdiction nor does he have the funds to hire an attorney to represent him (see Exhibit "C" page 22). Forcing him to travel to another jurisdiction would in all likelihood force the Petitioner into a judgment by default.

While the fact that there are witnesses to the act committed by the Respondent that caused damage in the incident in question, they have not been properly identified and their testimony has not been entered properly. However, those 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 and would not be in the interests of justice.

Peterson v. Ogden Union Ry. & Depot Co., 175 P.2d 744 (Utah 1946), held that venue statutes are for the convenience of the parties and are to restrict the suit to those which because of their geographic location are readily accessible to the parties with the minimum expense and the minimum expenditure of time on the part of the parties and their witnesses. All of which applies in the case at hand.

Point 5. The trial court exceeded its discretionary authority and its decision was arbitrary and capricious.

Angell v. Sixth Judicial Dist. Court of Sevier County, 656 P.2d 405 (Utah 1982), held that while generally change of venue or denial of motion therefor is within the discretion of district court, court has no such discretion when original forum is improper and motion is brought to change venue to proper county. The Small Claims Affidavit and Order (see Exhibit "A", page 18) clearly shows that the "forum is improper".

The case of Olympia Sales Co. v. Long, 604 P.2d 919 (Utah 1979), held that granting or denial of motion for change of venue is generally discretionary and trial courts decision will not be altered unless it is shown to be arbitrary or capricious. Denying the motion prior to the period for objections has run, is arbitrary.

### CONCLUSION

The evidence that the trial court had at the time of the denial clearly indicated that the venue should have been changed to the First District Court. There was no evidence that there was a written contract requiring performance by the Petitioner (defendant) in Grand County and the Petitioner resided in Box Elder County. Not only did the evidence support the change of venue, the denial was issued before any objections were submitted. The opposition had ample opportunity to object since the court failed to notify anyone that they had issued the denial for over 13 days after the denial. Yet no objection was ever raised until after the appeal was filed. Even then it was a veiled attempt to apply more pressure on the Petitioner by having the venue changed to San Juan County, making it even further Petitioner would have to travel to court. The interests of justice would not be served by this since the Petitioner is acting Pro Se and impecunious. The Respondent has hired attorneys and is able to hire attorneys in any jurisdiction.

The speed in which the court acted would indicate that the decision was at least arbitrary, if not capricious. There would be no other logical reason to hand down a decision before the time had run for objections to be filed, 5 days before the objections were due to be filed. Actions such as this would have a tendency to lead one to believe that he is getting "home towned".

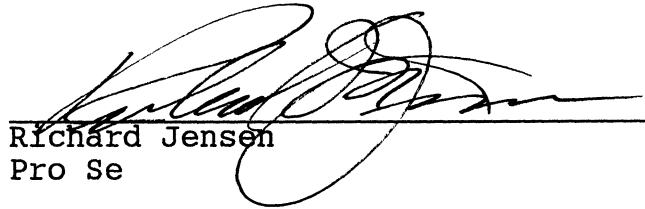
While there has been no evidence set out regarding the witnesses, there are witnesses that reside in Box Elder County and

signed the same day and returned to the Petitioner that day. (see Exhibits "I" through "L")

While there has been no evidence set out regarding the witnesses, there are witnesses that reside in Box Elder County and as a convenience to them the venue should be changed to Box Elder County.

All of the evidence, all of the case law and all of the statutes clearly indicate that this case should be tried in the First District Court. Therefore, the Petitioner requests that the Court of Appeals remand this case to the First District Court in and for Box Elder County for trial.

DATED this 31st day of May, 1993,

  
Richard Jensen  
Pro Se

**CERTIFICATE OF MAILING**

I hereby certify that on this 31st day of May, 1993, personally deposited with the United States Postal Service, First Class Mail, Postage Paid, four true and correct copies of the above brief on appeal to the following:

L. ROBERT ANDERSON #0101  
ANDERSON & ANDERSON  
81 East 100 South  
Monticello, Utah 84535

  
Richard M. Jensen

## ADDENDUM

## List of Exhibits

<b>EXHIBIT "A"</b>	
Small Claims Affidavit and Order . . . . .	1
<b>EXHIBIT "B"</b>	
Motion to Change Venue . . . . .	3
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EXHIBIT "A"  
Small Claims Affidavit and Order

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
125 EAST CLIFTON STREET, MOAB, UTAH, 84 12

Moab Building Center, Inc. Plaintiff )  
Name )  
Richard C. Hover, Sec. )  
Agent & Title )  
2471 S. Highway 191 )  
Street Address )  
Moab, Utah 84532 vs )  
City, State, Zip Phone )  
R.M. Jensen Construction Co Defendant )  
Name )  
Social Security Number )  
R.M. Jensen, owner )  
Agent & Title )  
115 N. 500 W. )  
Street Address )  
Brigham City, Utah 84302 )  
City, State, Zip Phone )

SEVENTH DISTRICT COURT  
Grand County

FILED  
AUG 13 1992

CLERK OF THE COURT  
BY \_\_\_\_\_  
Deputy

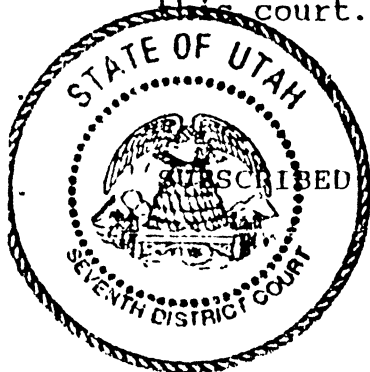
SMALL CLAIMS  
AFFIDAVIT AND ORDER

Case No. 9287-59  
Signed this affidavit & Order  
on the within named defendant R.M. Jensen  
Construction Co on the 13 day of  
Aug 19 92 at BC  
Box Elder County, Utah  
Robert E. Linn,  
Sheriff of Box Elder County.  
By [Signature] Deputy Sheriff

A F F I D A V I T

Plaintiff swears that the following is true:

- (1) Defendant owes plaintiff \$ 733.65 plus a \$15.00 filing fee and an estimated service fee of \$ \_\_\_\_\_, for a total of \$ \_\_\_\_\_. This debt arose on May 21, 19 92, for: Materials delivered to Blanding, Utah
- (2) Plaintiff has asked defendant to pay the debt, but it has not been paid.
- (3) Defendant resides OR the claim arose within the jurisdiction of this court.



SUBSCRIBED and SWORN to before me on Aug 13, 19 92.

[Signature]  
Clerk, Deputy or Notary

O R D E R

THE STATE OF UTAH TO THE DEFENDANT: You are directed to appear at a trial and answer the above claim on:

Date: September 2, 1992

Time: 11:00 a.m.

Location: Grand County Courthouse, 115 West 200 South, Moab, Utah

If you fail to appear at the trial, judgment may be entered against you for the amount listed above. READ THE INSTRUCTIONS ON THE BACK OF THIS FORM.

Dated August 13, 19 92

[Signature]  
Deputy Clerk



**EXHIBIT "B"**  
Motion to Change Venue

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
Telephone (801) 723-6194

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
115 WEST 200 SOUTH, MOAB, UTAH, 84532

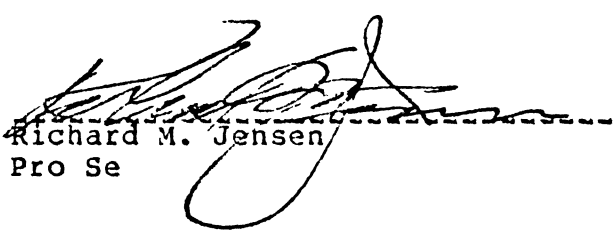
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MOAB BUILDING CENTER, INC.,	)	
a Utah corporation,	)	
	)	
Plaintiff,	)	MOTION TO CHANGE VENUE TO
	)	THE FIRST DISTRICT COURT
vs.	)	
	)	
R.M. JENSEN,	)	Civil No.
	)	
Defendant.	)	
	)	
-----		

COMES NOW THE DEFENDANT, Richard M. Jensen, moves the Seventh District Court to change the place of the trial for the above mentioned action to the First District Court for the following reasons:

1. That Defendant resides in Brigham City, Box Elder County, State of Utah.
2. That Box Elder County is within the jurisdiction of the First District Court.
3. That the contract arose within the jurisdiction of the First District Court.

DATED this 31st day of August, 1992

by

  
-----  
Richard M. Jensen  
Pro Se

**EXHIBIT "C"**  
Affidavit of Impecuniosity

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
GRAND COUNTY, STATE OF UTAH

Case No. 9287-59

Richard M. Jensen

**EXHIBIT "D"**

Motion to Transmit to District Court



**EXHIBIT "E"**  
Counter-affidavit

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
115 WEST 200 SOUTH, MOAB, UTAH

Moab Building Center, Inc. Plaintiff  
Name Richard C. Hover, Sec.  
Agent & Title 2471 So. Highway 191  
Street Address Moab, Utah 84532  
City, State, ZIP Phone  
vs.  
R.M. Jensen Defendant  
Name  
Social Security Number  
Agent & Title 115 No. 500 West  
Street Address Brigham City, Utah 84302  
City, State, ZIP Phone

No fee inc.  
for filing on  
Change of  
Name  
or Affidavit of  
In-practicability

Case No. 9287-59

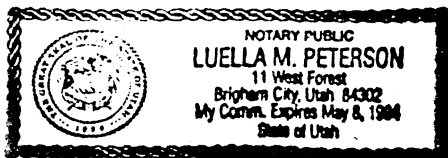
COUNTER AFFIDAVIT

Defendant swears that the following is true:

- (1) Defendant does not owe plaintiff the sum of \$ 753.65.
- (2) Plaintiff owes defendant \$ 11,275 plus a ~~XXXXX~~ filing fee for a total of \$ 11,275. This debt arose on May 21, 1992, for: Property and Punitive Damages
- (3) Defendant has asked plaintiff to pay the debt, but it has not been paid.
- (4) Defendant does not reside NOR did the claim arise within the jurisdiction of this court.

Defendant

SUBSCRIBED and SWORN to before me on Aug. 31, 1992.



Luella M. Peterson  
Clerk, Deputy or Notary

ORDER

- [ ] The trial date indicated on the Affidavit remains.  
[ ] Due to the filing of this Counteraffidavit, the original trial date has been changed to:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Place: \_\_\_\_\_

If you fail to appear at the trial, judgment may be entered against you for the amount listed above.

[ ] mailed [ ] delivered a copy of this Counteraffidavit to plaintiff.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

Clerk or Deputy



**EXHIBIT "F"**  
Affidavit of Residence

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
Telephone (801) 723-6194

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
115 WEST 200 SOUTH, MOAB, UTAH, 84532

MOAB BUILDING CENTER, INC.,  
a Utah corporation,

Plaintiff,

vs.

R.M. JENSEN,

Defendant.

AFFIDAVIT OF RICHARD M. JENSEN

Civil No.

I, Richard M. Jensen, after having been duly sworn, states and  
alleges under oath as follows:

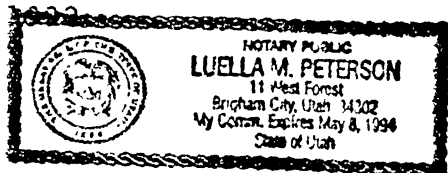
1. That I reside at 115 North 500 West, Brigham City, Box  
Elder County, State of Utah.


2. That on or about May 18, 1992, I contacted Moab Building  
Center by phone from 115 North 500 West, Brigham City, Box Elder  
County, State of Utah, and entered into an agreement to deliver  
material.

DATED this 31st day of August, 1992,

  
Richard M. Jensen

SUBSCRIBED AND SWORN to before me this 31st day of August,



  
NOTARY PUBLIC  
Residing in Brigham City, Utah

My Commission Expires: 5-8-94

**EXHIBIT "G"**  
Order Denying Motion for Change of Venue

SEVENTH DISTRICT COURT  
Grand County

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
Telephone (801) 723-6194

FILED SEP 14 1992

CLERK OF THE COURT

BY Deputy

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
115 WEST 200 SOUTH, MOAB, UTAH, 84532

MOAB BUILDING CENTER, INC.,  
a Utah corporation,

Plaintiff,

vs.

R.M. JENSEN,

Defendant.

*Denying*  
ORDER ~~GRANTING~~ DEFENDANT'S  
MOTION TO CHANGE VENUE  
TO THE FIRST DISTRICT COURT

Civil No. *9207-94*

The Court having reviewed the motion of the Petitioner and  
good cause appearing therefore,

IT IS HEREBY ORDERED that the Defendant's motion to change the  
place of trial to the First District Court is hereby ~~granted~~ *Denied*.

DATED this *9<sup>th</sup>* day of September, 1992

BY THE COURT

*J. Bruce K. [Signature]*

**EXHIBIT "H"**  
Notice to Submit for Decision

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
Telephone (801) 723-6194

---

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
GRAND COUNTY, STATE OF UTAH

---

MOAB BUILDING CENTER, INC.,  
a Utah corporation,

Plaintiff,

vs.

R.M. JENSEN,

Defendant.

NOTICE TO SUBMIT FOR DECISION


Case No.

---

The following motions are now at issue and ready for decision  
of the Court:

1. (a) Type of motion: Motion to Change Venue to the First  
District Court.
- (b) Date filed: 31st day of August, 1992.
- (c) Party filing motion: Richard M. Jensen
- (d) No Affidavits in opposition have been submitted.
- (e) No Memorandum in opposition have been submitted.
- (f) No Memorandum in reply have been submitted.
- (g) No Other pleading(s) necessary to determine the motion  
have been submitted.

Dated and signed this 19th day of September, 1992,

  
Richard M. Jensen  
Pro Se

**EXHIBIT "I"**

Mailing Certificate for Denial of Motion to Change Venue

Case No: 920700094 CV

Certificate of Mailing

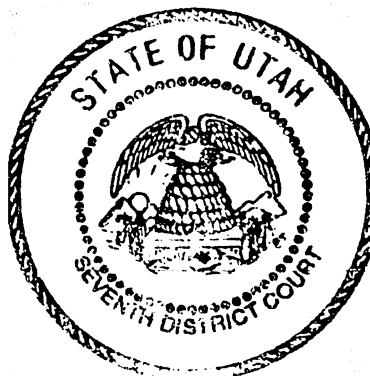
I certify that on the 22nd day of September, 1992,  
I sent by first class mail a true and correct copy of the  
attached document to the following:

MOAB BUILDING CENTER, INC.  
Plaintiff  
RICHARD C. HOVER, SEC.  
2471 SO. HIGHWAY 191  
MOAB UT 84532

R. M. JENSEN  
Defendant  
115 NORTH 5TH WEST  
BRIGHAM CITY UT 84302

District Court Clerk

By: *Lee Batchelder*  
Deputy Clerk





**EXHIBIT "J"**  
Order Granting Motion to Transmit to District Court

Richard M. Jensen, Pro Se  
115 North 5th West  
Brigham City, Utah 84302  
Telephone (801) 723-6194

SEVENTH DISTRICT COURT, STATE OF UTAH  
GRAND COUNTY  
115 WEST 200 SOUTH, MOAB, UTAH, 84532  
SMALL CLAIMS COURT

MOAB BUILDING CENTER, INC.,  
a Utah corporation,

Plaintiff,

vs.

R.M. JENSEN,

Defendant.

ORDER GRANTING DEFENDANT'S  
MOTION TO TRANSMIT CASE  
TO THE DISTRICT COURT

Case No. 9287-59

The Court having reviewed the motion of the Petitioner and  
good cause appearing therefore,

IT IS HEREBY ORDERED that the Defendant's motion to transmit  
case to the District Court is hereby granted.

*on condition*  
*Defendant file an original Affidavit of Impeachment*  
*forthwith and not later than 10 days hereof.*

DATED this 9 day of September, 1992

BY THE COURT

*Daniel K. Heltz*

**EXHIBIT "K"**

Return Note from District Court on Order

Saturday, September 5, 1992

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

Clerk of the Seventh District Court  
115 West 200 South  
Moab, Utah 84532

Attn: Vickie Riley

In Re: Moab Building Center vs. R.M. Jensen


Dear Vickie;

Thank you for your note today in re that I never included the Affidavit of Impecuniosity in with my counterclaim complaint. I have gone through my file and the only one I could find was a copy of the original. I thought I placed the original with the other papers I filed with the court. Please accept my apology for apparently misplacing the original and I have sent you the copy from my file. I believe that a copy would be acceptable now that the original has been lost.

I have previously submitted to the Utah State Supreme Court, Utah Court of Appeals as well as the First District Court, an Affidavit of Impecuniosity and all courts have accepted those filings. If it would help, you could call Sharon L. Hancey, the Clerk in the First District Court, to confirm that I have filed an Affidavit of Impecuniosity with them and they have accepted the filing.

I have been previously scheduled for depositions on September 9, 1992, and I will not be able to attend the small claims hearing. Therefore, if there is a problem with the filing I will need a continuance on the small claims hearing. Thank you for your cooperation and if you have any questions please feel free to contact me at 723-6194.

Sincerely,



Richard M. Jensen

9/8/92  
See copy Order  
of Judges  
Attached -  
Note 10 day time  
limitation - If  
not filed case  
will be continued  
on small claims  
calendar  
for 9/30/92  
BKH

**EXHIBIT "L"**

Acknowledgment of Note to District Court on Order

Saturday, September 12, 1992

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

Clerk of the Seventh District Court  
115 West 200 South  
Moab, Utah 84532

Attn: Vickie Riley

In Re: Moab Building Center vs. R.M. Jensen  
Case No. 9287-59

Dear Vickie;

Per your request I have prepared an original Affidavit of Impecuniosity. Thank you for your cooperation and if you have any questions please feel free to contact me at 723-6194.

Sincerely,

Richard M. Jensen