

2004

Kitches and Zorn, L.L.C., et al. v. Yong Woo Kim;  
Yong Hwan Kim aka Kim Yong Hwan; and Sak Kwi  
Suk aka Kwi Suk Kim : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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KITCHES & ZORN, L.L.C., et al.,

Plaintiff,

vs.

YONG WOO KIM; YONG HWAN KIM  
aka KIM YONG HWAN; and SAK KWI  
SUK aka KWI SUK KIM,

Defendants.

Appellate Case No. 20040526-CA

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**BRIEF OF APPELLANT**

---

**Appeal from the Final Order of the Second Judicial District Court  
of Davis County, State of Utah  
The Honorable Rodney S. Page, District Court Judge**

---

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**FILED  
UTAH APPELLATE COURTS  
SEP 03 2004**

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**IN THE UTAH COURT OF APPEALS**

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KITCHES & ZORN, L.L.C., et al.,

Plaintiff,

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### **LIST OF PARTIES**

The parties to the proceeding below are: plaintiffs/appellants Kitches & Zorn, L.L.C and Erika E. Zorn and Randy L. Zorn dba ERZ Partnership (collectively "Kitches & Zorn, L.L.C."); and defendants Yong Hwan Kim aka Kim Yong Hwan, Sah Kwi Suk aka Kwi Suk Kim, and Yong Woo Kim. The parties to this appeal are the collective Kitches & Zorn (plaintiffs/appellants) and Yong Woo Kim (defendant/appellee). The other parties below have no interest in this appeal.

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## **JURISDICTIONAL STATEMENT**

This court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j).

## **ISSUES**

I. Did the trial court err in its determination that the plain language of Utah Code Ann. § 78-22-1, *et seq.* required plaintiff to both file its abstract of judgment in the Registry of Judgments and record the abstract of judgment at the office of the county recorder in order to attach its judgment lien to the real property? [Issue preserved in **R. at 54-106**, and **Tr. of 2/17/04 Hrg. at 1-11**]

Standard of Review: The trial court's interpretation of statutes, rules and ordinances is a question of law reviewed for correctness. See Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999); Taylor ex rel. C.T. v. Johnson, 977 P.2d 479, 480 (Utah 1999).

II. Did the trial court err in its conclusion that the language of the statute was unambiguous and err in its decision to not consider evidence submitted regarding the legislative intent and history of the judgment lien statute? [Issue preserved in **R. at 54-106**, and **Tr. of 2/17/04 Hrg. at 1-11**]

Standard of Review: A question of legislative intent associated with statutory interpretation is a matter of law, not of fact. See State v. Mitchell, 824 P.2d 469, 471-72 (Utah Ct. App. 1991).

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND  
REGULATIONS**

Utah Code Ann. § 78-22-1

Utah Code Ann. § 78-22-1.5

**STATEMENT OF THE CASE**

This matter arose when plaintiff tried to collect on a judgment obtained in Third District Court for Salt Lake County by filing a miscellaneous action in Davis County to execute on real property owned by defendant. Although plaintiff complied with the statutory requirements set forth in Utah Code Ann. § 78-22-1(7) to create a lien on real property, the trial court determined Utah Code Ann. § 78-22-1.5 required plaintiff to comply with a two-step process. Accordingly, the trial court determined plaintiff's lien was not properly perfected and granted defendant's motion to quash the Writ of Execution. Plaintiff appeals from the trial court's grant of defendant's motion to quash.

**STATEMENT OF FACTS**

Plaintiff sued defendant Yong Woo Kim in the Third District Court in and for Salt Lake County. Judge Timothy Hansen entered judgement on March 17, 2003 in favor of plaintiff and against defendant in the amount of approximately \$38,000.00 with interest accruing and with a provision allowing augmentation of the judgement by reasonable attorneys fees and costs incurred in effecting collection. **(R. at 1-2)** Plaintiff became aware that Yong Woo Kim was the sole owner of real property in Davis County,

and on May 9, 2003, it recorded an abstract of judgement with the Davis County Recorder in order to establish a lien on the real property. **(R. at 1-2, 32-41)**

After the abstract of judgement was recorded with the Davis County Recorder on May 9, 2003, defendant Yong Woo Kim deeded the real property at issue to his wife, Hye Ok Kim without consideration on May 12, 2003. **(R. at 117-118; Tran. of 2/17/04 hearing at p. 8)** That deed was subsequently recorded. Plaintiff filed a miscellaneous action in the Second Judicial District Court for Davis County for the purpose of obtaining judicial assistance with enforcement of the Third District Court Judgement through Sheriff's Sale. **(R. at 1-25)**

On November 25, 2003, plaintiff obtained a Writ of Execution from the Second District Court for the sale of defendant Kim's Davis County property which was located at 1106 East 400 North, Bountiful, Utah. **(R. at 26-29)** Defendant Kim objected to the Writ of Execution arguing that under Utah Code Ann. § 78-22-1.5(2) plaintiff was required to not only record the Third District Court Judgement with the Davis County Recorder but to also file the Judgement in the Registry of Judgements at the Davis County District Court Clerk's office. **(R. at 42-44; 108-116)**

In response to defendant Kim's objection, plaintiff submitted Affidavits from the sponsor of the 2001 amendments to the Judgement Act, from the Davis County Attorney regarding his interpretation of the proper application of amended statute by the

Davis County Recorder, and by the Second District Court Clerk regarding the practices of the District Court, all to show that the additional filing argued by defendant Kim was not necessary or intended under the statute as amended in 2001. (**R. at 49-51; 52-53; 54-105**)

A hearing on the matter was held by Judge Rodney S. Page on February 17, 2004. On March 2, 2004, Judge Page entered an Order quashing the execution on the real property for the reasons argued by defendant Kim. (**R. at 117-118; 119-121**) Specifically, the trial court determined the statutory language was unambiguous in creating a two-step process for attaching a lien to real property and declined to consider the affidavits submitted by plaintiff. (**Tr. at 5-8, 10**)

### **SUMMARY OF ARGUMENT**

The sole issue on appeal is whether the trial court properly interpreted the judgment lien statute found at Utah Code Ann. § 78-22-1, *et seq.* It is undisputed that plaintiff recorded a proper abstract of judgment in the office of the Davis County Recorder on May 9, 2003.

Notwithstanding defendant's arguments and the trial court's determination, the statutory language unambiguously requires a party to only record an abstract of judgment in order to attach a lien to real property. The trial court's interpretation of the statute creates conflicts between provisions, is at odds with the statute's language and does not follow the legislative intent. The Legislature intended to streamline the process

for creating liens and create one repository for all information affecting title to real property. Nothing in the statute or legislative history indicates the Legislature was trying to create a more cumbersome process for creating and searching for liens on real property. Accordingly, the trial court erred when it determined the 2001 statutory amendments created a more cumbersome two-step process for creating liens.

### **ARGUMENT**

#### **I. The Statute Unambiguously Requires Recording A Judgment In the County Recorder's Office in Order to Create A Lien On Real Property.**

The trial court erred when it interpreted the unambiguous language of the statute to require both a filing in the Registry of Judgments and a recording in the office of the county recorder. Plaintiff has a valid lien against the defendant's real property located in Davis County, Utah, because it recorded an abstract of judgment in the Davis County Recorder's Office on May 9, 2003. The trial court erred when its granted defendant's Motion to Quash the Writ of Execution on the grounds that plaintiff had not created an enforceable interest prior to defendant conveying his interest in the subject property.

Two provisions govern the procedure for filing a lien against real property.

First, Utah Code Ann. § 78-22-1 provides:

(7)(a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78-22-1.5(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of judgment and a separate information statement of the judgment creditor as described in Subsection 78-22-1.5(5) is recorded in the office of the county recorder.

Utah Code Ann. § 78-22-1(7)(a) (2003). As will be discussed below in more detail, this section has historically governed the process for attaching a lien to real property.

According to the plain language of this statute, plaintiff created an enforceable lien by recording the abstract of judgment with the David County Recorder.

When the Registry of Judgments was created, the Legislature enacted Utah Code Ann. § 78-22-1.5 provides, in its current version:

(2) On or after July 1, 1997, a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include . . . .

Utah Code Ann. § 78-22-1.5(2), (3) & (4) (2001).

The sole question on appeal is whether the trial court erred in its determination that the above referenced statutes require a party to file an abstract of judgment both in the Registry of Judgments and the office of the county recorder, or whether the statutes only requires a party attempting to lien real property after July 1, 2002 to file in the office of the county recorder.

“When construing a statute, we must give effect to legislative intent.”

Versluis v. Guaranty National Companies, 842 P.2d 865, 867 (Utah 1992) (citing West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982)). The first step is to look to the statute's plain language and only if some ambiguity exists does a court need to look further. See Schurtz v. BMW of North America, Inc., 814 P.2d 1108, 1112-1115 (Utah 1991). “To that end, we presume that the Legislature used each term advisedly, and we give effect to each term according to its ordinary and accepted meaning.” Versluis, 842 P.2d at 867.

In this case, the question is what provisions in 78-22-1 and 778-22-1.5 apply to the creation of a lien after July 1, 2002. The trial court did not address 78-22-1 and determined subsections (2) and (3) operated together rather than independently, and thus, the statute required both filings. In Schurtz v. BMW of North America, Inc., the Utah Supreme Court was faced with a similar statutory interpretation, namely whether

statutory provision operated independently or dependently. See Schurtz v. BMW of North America, Inc., 814 P.2d 1108, 1112-1115 (Utah 1991).

The first thing the court looked at was the language of the statute in light of the context of the overall statute. See id. at 1112. In this matter, Chapter 22 is appropriately titled "Judgments." See Utah Code Ann. § 78-22-1. Within Chapter 22, section 1 deals with the following topics: "Duration of judgment – **Judgment as a lien upon real property** – Abstract of judgment – Small claims judgment not a lien – Appeal of judgment – Child support orders." Utah Code Ann. § 78-22-1 (emphasis added). Section 1.1 addresses judgment against a party who dies after a verdict is rendered and is not applicable to this issue. See Utah Code Ann. § 78-22-1.1. Next, section 1.5 is entitled: "Definitions – Judgment recorded in Registry of Judgments." Utah Code Ann. § 78-22-1.5. The remaining sections of Chapter 22 have no bearing on the issues in this appeal. Given this context, Utah Code Ann. § 78-22-1 rather than 78-22-1.5 was intended to cover the creation of a judgment lien against real property.

Historically, section 1.5 is new relative to section 1. Prior to 1997, all judgments entered in district court immediately became liens on all of the debtor's property in the county where the judgment was entered. See Utah Code Ann. § 78-22-1 and historical notes. In 1997, the Utah Legislature approved Senate Bill 121 which created the Registry of Judgments. See Utah Code Ann. § 78-22-1.5 and historical notes,

see also Utah Legislature Rep't 1997 Vol. 2, p. 906. With the creation of the Registry of Judgments, a judgment entered in district court did not become a lien on real property until it was filed in the Registry of Judgments. See Utah Code Ann. § 78-22-1 & -1.5.

When it was first enacted, section 1.5 contained only two paragraphs: subsection (1) defined the Registry of Judgment, and subsection (2) stated: "On or after July 1, 1997, a judgment rendered or recorded in a district court does not create a lien upon or affect the title of real property unless the judgment is recorded in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located." Utah Code Ann. § 78-22-1.5 (1997). Furthermore, section 1 was modified in 1997 to indicate that only judgments filed **prior** to July 1, 1997 created liens on real property. See Utah Code Ann. § 78-22-1 (1997). In creating the Registry of Judgments and enacting section 1.5, it is important to note that the 1997 version of section 1 contained no reference to the Registry of Judgments and did not set forth the procedure for creating a lien on real property **after** July 1, 1997. See Utah Code Ann. § 78-22-1 (1997). Accordingly, between 1997 and 2002, Utah Code Ann. § 78-22-1.5 governed the process for attaching a lien against real property and required only a filing the judgment in the Registry of Judgments.

In 2001, the Legislature passed House Bill 305, which modified **both** section 1 and section 1.5. (**R. at 88-96**) Specifically, section 1.5 was amended to include

subsection (3) which changed the requirement for attaching a lien to real property. Additionally, section 1 was modified to include subsection (7) which set forth requirements for filing a lien against real property. As amended and in their current versions, both subsection (3) to section 1.5 and subsection (7) to section 1 provide the same procedure for attaching a judgment lien to real property after July 1, 2002: A judgment becomes a lien on real property if it is recorded in the office of the county recorder. See Utah Code Ann. §§ 78-22-1(7) & -1.5(3). The 2001 modifications to section 1 still do not contain any reference to the Registry of Judgments, nor is there any reference to any provision which would require filing the judgment in the Registry of Judgment in order to lien real property. Both statutes only require recording in the office of the county recorder in order to create a judgment lien on real property.

Examining the plain language of the statutory provisions in the context of the related statutes and history of the amendments, the Utah Legislature intended to change the requirements for creating a lien on real property. Prior to 1997, a lien was created automatically upon entry of a judgment in district court. Between 1997 and 2002, a lien was created only if the judgement was filed in the Registry of Judgments. After 2002, a lien is created only by recording the judgment in the office of the county recorder. The plain language and history of the statute indicate subsections (2) and (3) of section 1.5 are meant to be read independently of one another. The Legislature did not include

any language to indicate recording the judgment was an extra requirement in addition to filing the judgment.

When interpreting the plain language of the statute, the court must look at the language in the context of the related statutory provisions. See Schurtz, 814 P.2d at 1112. Furthermore, the court must "construe statutory provisions so as to give full effect to all their terms, where possible." Id. Construing the statutes as dependent on one another, as the district court did, would create conflict between statutory provisions and force strained readings of other provisions. The only way to harmonize the requirements in section 1 with section 1.5 is to read subsections (2) and (3) of section 1.5 independently. To read them as dependent and creating a two-step process is at odds with subsection (7) of section 1. Specifically, subsection (7) of section 1 sets forth the requirements for creating a lien on real property. The only requirement in subsection (7) is to record the judgment in office of the county recorder in accordance with the notice and content provisions of subsections (4) or (5) of section 1.5. Because subsection (7) sets forth the requirements for creating a lien and does not require filing the judgment in the Registry of Judgments, the trial court's interpretation creates a conflict between sections 1 and 1.5. For this reason, subsections (2) and (3) of section 1.5 should be read to operate independently of one another in order to avoid this conflict.

Subsection (4) in section 1.5 also indicates the provisions are to operate

independently. Subsection (4) states: "In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include . . . ." Utah Code Ann. § 78-22-1.5(4) (2001) (emphasis added). If both filing and recording were required, the Legislature would have used the word "and" rather than "or." The word "or" indicates that the Legislature was intended to require filing in one place or the other, not both.

Because a statute should be construed according to its plain language, to give proper meaning to each term and to harmonize all provisions, the district court erred when it concluded Utah Code Ann. § 78-22-1.5 required plaintiff to file the abstract of judgment both in the Registry of Judgments and to record the abstract of judgment at the office of the county recorder. Plaintiff had a valid lien as of May 9, 2003 when it recorded the abstract of judgment in the Davis County Recorder's Office. Accordingly, the trial court erred in granting defendant's Motion to Quash.

## **II. The Legislative History Supports Plaintiff's Interpretation of the Judgment Lien Statute.**

In addition to the plain language of the statute, the Legislative history of the 2001 amendments also indicates that subsections (2) and (3) should be read independently. "For assistance in ascertaining the meaning of statutory language, we look to the background and general purpose of the statute." Versluis v. Guaranty National

Companies, 842 P.2d 865, 867 (Utah 1992) (citing Jamison v Utah Home Fire Ins. Co., 559 P.2d 958, 959 (Utah 1977)). Specifically, the history of the statute indicates an attempt to create one central repository for judgment liens on real property. Those performing title searches needed a more expedient system to verify clean titles. Because a title search must include a search at the county recorder's office, it makes sense to require a judgment lien to be recorded at the recorder's office.

The trial court's interpretation of the statute does not make sense in light of the objectives of the statute. The statute is in place to ensure notice to the debtor and notice to anyone else interested in the title of subject property. The obvious place to check is at the recorder's office. Nevertheless, defendant and the trial court would place one more hoop into the process. This hoop would serve no purpose, as all the necessary searches on property can be done at the recorder's office. Accordingly, interpreting the statute to require a two-step process does nothing more than create another technicality for anyone trying to recover a judgment. In this respect, it is important to note that those performing title searches and those trying to enforce valid judgments are often not attorneys. Nevertheless, to read the statutory provisions in 78-22-1.5 as dependent, would require lawyers and non-lawyers alike to reconcile the conflicting provisions of 78-22-1(7) with 78-22-1.5(2) & (3). In amending the statute in 2002, it is hard to imagine the Legislature making amendments which add procedural technicalities and inconsistencies

into the statute.

The Legislative history shows that the legislature intended to shift judgment filings from the office of the court clerk to the recorder. This modification was needed to assist title companies searching the records for judgment liens. **(R. at 49-50)** Previously, researchers would visit the clerk's office to locate liens, but with the advent of electronic filing, multiple court sites, expansion of the court system and the archaic archive system still employed in many rural areas, researchers found it difficult if not impossible to locate judgment liens. To rectify this problem, the bill, codified in the above statute, provided that a judgment or abstract of judgment constituted a lien when it was recorded in the office of the county recorder. See Utah Code Ann. § 78-22-1 & -1.5. **(R. at 49-50)**

Also, fiscal notes issued during the bill's consideration demonstrate the Legislature's intention to assist title researchers and to transition filings from the office of the court clerk to the office of the recorder. "If abstracts are no longer filed with the Courts due to passage of this bill there could be a potential loss of General Fund revenue." **(R. at 98-99)** "Passage of this bill would result in cost savings to title companies resulting from the time savings on research related to liens on property." **(R. at 98-99)** There is no indication from any of these sources that the Legislature intended to create a requirement of filing in the Registry of Judgments in addition to recording with the county recorder. Such a rule would increase the cost of researching title and

make it more cumbersome.

Finally, interviews of the clerks of the court reveal that the clerks do not advise the public to file in both places, and they only recognize liens against real property if the judgment or abstract has been filed with the county recorder. (**R. at 101-02**) Likewise, the county recorder confirms that judgments need to be filed solely in his office to be a valid lien against real property. (**R. at 101-02**) Further, the Davis County attorney acknowledges that the “process used in Davis County for recording and establishing judgment liens requires only the filing of a judgment or abstract of judgment with the county recorder and does not require any filing with the clerk of the court.” (**R. at 104-05**)

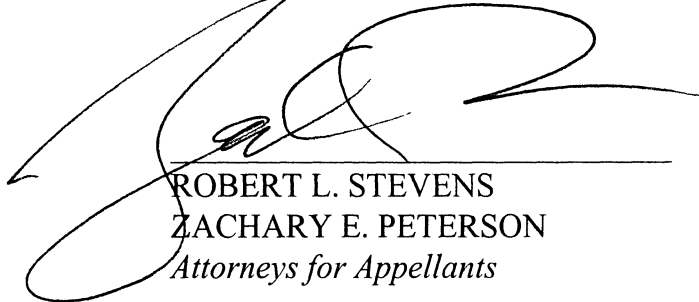
In short, the Legislature intended to simplify and centralize the process for filing and locating liens. The 2001 amendments to the statute were not an attempt to make it more cumbersome to create and search for liens. Accordingly, both Utah Code Ann. §§ 78-22-1 & -1.5 were amended to reflect the legislative intent to streamline the process by requiring all real property liens to be recorded in the office of the county recorder. Upon recording the required information, the statute unambiguously provides in two separate provisions that a lien attaches to real property without any further filings. The trial court's ruling which creates a more cumbersome process is at odds with the language and intent and was in error.

### CONCLUSION

Based on the foregoing facts and authorities, plaintiff/appellant requests this court to reverse the trial court's interpretation of the judgment lien statute and reverse its grant of defendant's motion to quash.

DATED this 3 day of September, 2004.

RICHARDS, BRANDT, MILLER  
& NELSON



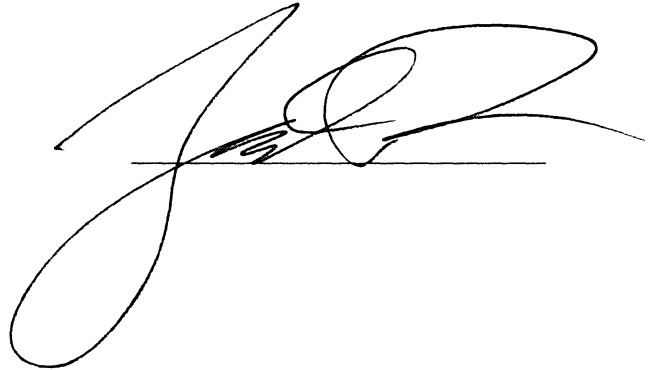
ROBERT L. STEVENS  
ZACHARY E. PETERSON  
*Attorneys for Appellants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed via first class mail, postage prepaid on this 3 day of September, to the following:

Susan C. Noyce  
Susan C. Noyce, P.C.  
1807 East Maple Hill Drive  
Bountiful, Utah 84010

G:\EDS\DOCS\12157\0002\ED4180 WPD

A handwritten signature in black ink, appearing to read 'Susan C. Noyce', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

## **ADDENDUM**

Westlaw.

UT ST § 78-22-1  
 U.C.A. 1953 § 78-22-1

Page 1

**C**

UTAH CODE, 1953  
 TITLE 78. JUDICIAL CODE  
 PART III. Procedure  
 CHAPTER 22. JUDGMENT

**78-22-1 Duration of judgment --Judgment as a lien upon real property --  
 Abstract of judgment --Small claims judgment not a lien --Appeal of judgment  
 -- Child support orders.**

(1) Judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) An abstract of judgment issued by the court in which the judgment is entered may be filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court shall not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit, with the court where the notice of appeal is filed, of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney's fees and costs on appeal, the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

UT ST § 78-22-1  
U.C.A. 1953 § 78-22-1

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(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

(i) within four years after the date the youngest child reaches majority;  
or

(ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78-22-1.5(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78-22-1.5(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

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UT ST § 78-22-1.5  
U.C.A. 1953 § 78-22-1.5

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**C**

UTAH CODE, 1953  
TITLE 78. JUDICIAL CODE  
PART III. Procedure  
CHAPTER 22. JUDGMENT

**78-22-1.5 Definitions --Judgment recorded in Registry of Judgments.**

(1) For purposes of this section, "Registry of Judgments" means the index where a judgment shall be filed and searchable by the name of the judgment debtor through electronic means or by tangible document.

(2) On or after July 1, 1997, a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment is filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

(a) the information identifying the judgment debtor on the judgment or abstract of judgment; or

(b) a copy of the separate information statement of the judgment creditor that contains:

(1) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

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UT ST § 78-22-1.5  
U.C.A. 1953 § 78-22-1.5

Page 2

(11) the name and address of the judgment creditor;

(111) the amount of the judgment as filed in the Registry of Judgments;

(1v) if known, the judgment debtor's social security number, date of birth, and driver's license number if a natural person; and

(v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

(6) (a) Any judgment that requires payment of money and is entered in a district court on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with Subsections (4) and (5).

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

(1) the name of any judgment creditor, debtor, assignor, or assignee;

(11) the date of recording; and

(111) the entry number of the original judgment or abstract of judgment.

(7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with actual or constructive knowledge of the judgment.

UT ST § 78-22-1.5

Page 3

U.C.A. 1953 § 78-22-1.5

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Liens.

**History:** C. 1953, 78-22-1.5, enacted by L. 1997, ch. 96, § 2; 1998, ch. 327, § 3; 2001, ch. 306, § 1; 2001, ch. 370, § 7.

#### NOTES, REFERENCES, AND ANNOTATIONS

**Amendment Notes.** --The 1998 amendment, effective May 4, 1998, added Subsections (3) to (6).

The 2001 amendment by ch. 306, effective April 30, 2001, added the exception at the end of Subsection (6) and added Subsection (7).

The 2001 amendment by ch. 370, effective July 1, 2002, rewrote the section to require recording the judgment or abstract of judgment with the county recorder and to further specify the requirements for the separate information statement.

This section has been reconciled by the Office of Legislative Research and General Counsel.

U.C.A. 1953 § 78-22-1.5, **UT ST § 78-22-1.5**

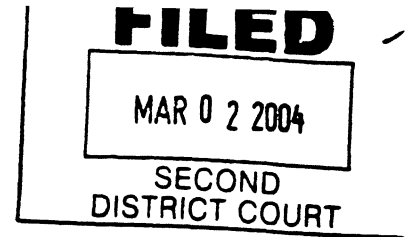
Statutes current through the 2004 Third Special Session. Annotations current through 2004 UT 27 (4/1/2004); 2004 UT APP 102 (4/1/2004) and April 1, 2004 (Federal Cases).

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Telephone: (801) 299-8678  
Fax: (801) 299-8678

Attorneys for Defendant YONG WOO KIM

---

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR DAVIS COUNTY, STATE OF UTAH

---

KITCHES & ZORN, L.L.C. a Utah limited  
liability company, and ERIKA E. ZORN and  
RANDY L. ZORN dba ERZ PARTNERSHIP

Plaintiffs,

vs.

YONG HWAN KIM aka KIM YONG HWAN,  
SAK KWI SUK aka KWI SUK KIM and  
YONG WOO KIM,

Defendants.

ORDER QUASHING PLAINTIFF'S  
WRIT OF EXECUTION

Civil No. 036702072

Judge Rodney S. Page

---

Defendant's Objection to Plaintiff's Writ of Execution came on for hearing on Tuesday, February 17, 2004 before the Honorable Rodney S. Page. Counsel of record Russell C. Ferricks and Ramona E. Garcia of Richards, Brandt, Miller and Nelson were present and represented plaintiff. Counsel of record Susan C. Noyce was present and represented defendant, Yong Woo Kim.

The parties having previously briefed the Court in the matter presented their arguments. The Court after being fully advised enters the following:

Order Quashing Plaintiff's Writ of Execution



VD11510492  
036702072 KIM,YONG HWAN

### **FINDINGS OF FACT**

1. On March 17, 2003, judgment on behalf of plaintiff against defendant, Yong Woo Kim, was entered in Third District Court in Salt Lake City, Utah.
2. On May 9, 2003, plaintiff recorded the judgment against defendant in the office of the Davis County Recorder.
3. On May 12, 2003, Yong Woo Kim executed a Quit Claim Deed quitclaiming his interest in real property located at 1106 East 400 North, Bountiful, Utah to his wife, Hye Ok Kim. The deed was recorded on May 19, 2003 and then recorded again on June 13, 2003.
4. On July 29, 2003, plaintiff filed an abstract of the judgment obtained in Third District Court along with the debtor information sheet with the clerk of the Second District Court in Davis County.

### **CONCLUSIONS OF LAW**

1. Section 78-22-1.5 of the Utah Code Ann. requires a two-step process in order to create a lien on real property. The judgment must be recorded in the office of the County Recorder in the county in which the property is located and filed in the Registry of Judgments in the office of the clerk of the district court of the county in which the property is located.
2. A judgment lien upon a debtor's real property is not perfected until both steps of 78-22-1.5 U.C.A. are taken.
3. The requirements and language of 78-22-1.5 U.C.A. are not ambiguous.
4. Plaintiff's judgment lien did not attach to the property quitclaimed to Mrs. Kim because plaintiff did not complete the second step required by 78-22-1.5 U.C.A. until July 29, 2003.

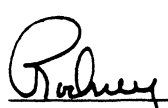
5. Plaintiff has no perfected nor enforceable judgment lien on the property located at  
1106 East 400 North Bountiful, Utah.

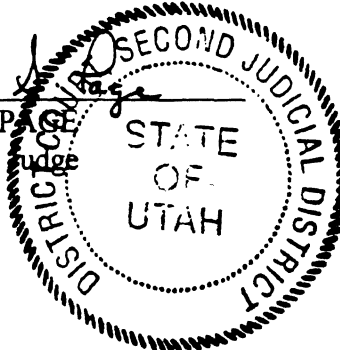
**ORDER**

**NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**  
that defendant's motion to quash the plaintiff's Writ of Execution is granted.

DATED this 2<sup>nd</sup> day of March, 2004.

BY THE COURT:

  
RODNEY S. PAGE  
District Court Judge



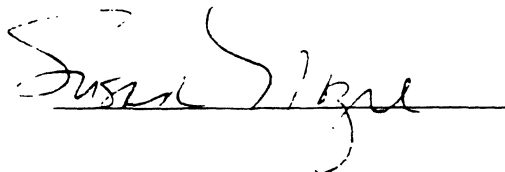
Approved as to form:

By \_\_\_\_\_  
Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *proposed ORDER*  
**QUASHING PLAINTIFF'S WRIT OF EXECUTION**, was mailed, via U.S. Mail, postage  
prepaid, this 18<sup>th</sup> day of February, 2004, to the plaintiff's attorneys at the following address:

Russell C. Ferricks  
Ramona E. Garcia  
RICHARDS, BRANDT, MILLER & NELSON  
50 South Main Street, 7<sup>th</sup> Floor  
Salt Lake City, UT 84110-2465



2nd District - Farmington COURT  
DAVIS COUNTY, STATE OF UTAH

---

KITCHES & ZORN LLC - Et al,	:	MINUTES
Plaintiff,	:	OBJECTION HEARING
	:	
vs.	:	Case No: 036702072 AJ
	:	
YONG HWAN KIM Et al,	:	Judge: RODNEY S PAGE
Defendant.	:	Date: February 17, 2004

---

Clerk: tacyb

PRESENT

Plaintiff's Attorney(s): RUSSELL C. FERICKS

RAMONA E. GARCIA

Defendant's Attorney(s): SUSAN C. NOYCE

Video

Tape Number: 2/17/04 Tape Count: 10:31

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HEARING

TAPE: 2/17/04 COUNT: 10:31

This is the time set for hearing on defendant's objection to plaintiff's Writ of Execution.

Ms. Noyce presents argument.

Ms. Garcia presents argument.

COUNT: 10:41

The Court rules as follows: The Court is aware of the evolution of the law regarding liens. Statute 78-22-1 is referenced. In the past, a lien was automatically attached when a judgment entered.

Now, the mere entry of judgment does not constitute a lien on real property unless other steps are taken.

After July 1, 1997, a lien was not created unless it was filed in the Registry of Judgments in the District Court in the county in which the property is located.

After July 1, 2002, (except regarding Subsection 3B), the law was revised so that a judgment does not become a lien unless it was also filed with the County Recorder in the county in which the real property is located.

Case No: 036702072

Date: Feb 17, 2004

---

The Court has considered the dates of filings and the quitclaim deed and finds that the lien is not attached to the property conveyed to Mrs. Kim prior to July 29th. The Motion to Quash execution is granted.

This ruling does not preclude the plaintiff from pursuing a claim of fraudulent conveyance.

Mr. Fericks represents that that claim has been filed.

Ms. Noyce is to prepare the order from today's hearing and submit it to opposing counsel at least five days prior to its submission to the Court for signature.

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH, FARMINGTON DEPARTMENT

---

KITCHES & ZORN, LLC.,	:	Case No. 036702072
	:	
Plaintiff,	:	
v	:	
	:	
YONG HWAN KIM,	:	
	:	
Defendant.	:	

---

OBJECTION HEARING FEBRUARY 17, 2004

BEFORE

THE HONORABLE RODNEY S. PAGE

---

---

CAROLYN ERICKSON, CSR  
CERTIFIED COURT TRANSCRIBER  
1775 E. Ellen Way  
Sandy, Utah 84092  
801-523-1186

COPY

APPEARANCES

For the Plaintiff:

RUSSELL C. FERICKS  
RAMONA E. GARCIA  
RICHARDS, BRANDT,  
MILLER & NELSON

For the Defendant:

SUSAN C. NOYCE  
ATTORNEY AT LAW

\* \* \*

1 FARMINGTON, UTAH; TUESDAY, FEBRUARY 17, 2004

2 HONORABLE RODNEY S. PAGE, JUDGE PRESIDING

3 P R O C E E D I N G S

4 THE COURT: Good morning, ladies and gentlemen. This  
5 is the time set for argument in the matter of Kitches & Zorn  
6 vs. Kim. This is in regards to an execution which was filed  
7 and objection filed thereto by the defendants.

8 Counsel, will you state your names for the record  
9 please?

10 MR. FERICKS: Your Honor, Russell Fericks and Ramona  
11 Garcia on behalf of the plaintiff, Kitches & Zorn.

12 MS. NOYCE: Susan Noyce, Your Honor, on behalf of  
13 defendant Yong Hwan Kim.

14 THE COURT: Ms. Noyce, this started out as your  
15 motion, so you may speak to it if you'd like to.

16 MS. NOYCE: Thank you, Your Honor.

17 Your Honor, whereas both sides have briefed the court  
18 on this matter, I won't recite the facts or any of that. Our  
19 position is the same that it has always been. The statute,  
20 78-22-1.5 requires that in order to have a judgment lien  
21 against real property there are two requirements: recording in  
22 the office of the county recorder's office and docketing in the  
23 district court. We believe that both requirements are  
24 necessary and that without both of them for any judgment  
25 entered after July 19, 1997 and a judgment entered after July

1 2002 you cannot have a valid lien against real property. We  
2 believe that this statute goes hand in hand with Rule 69  
3 regarding writs of execution. In order to obtain a writ of  
4 execution, you must present to the court clerk evidence of  
5 having docketed the judgment. Without docketing the judgment,  
6 they will not issue a writ of execution. Plaintiff has argued  
7 that you only need one - one requirement under that statute and  
8 that it is recording with the county recorder's office.  
9 However, if that were true they would not have been able to get  
10 the writ of execution. They complied with both steps. They  
11 complied with the first step, recording, in May of 2003. They  
12 complied with the second step in July - at the end of July. By  
13 that time the defendant had no interest in real property.

14 We believe that just logically if we are to take  
15 plaintiff's position that you only need one requirement, that  
16 of recording in the office of the county recorder's office in  
17 order to obtain a judgment lien, you would essentially have a  
18 judgment lien that you couldn't do anything with. It would be  
19 no good for you. You couldn't execute upon it. It's just not  
20 a logical position. We believe that the rule is clear, it  
21 requires both; recording in the county recorder, docketing in  
22 the clerk's office, and that until you have both you have no  
23 valid lien. And if you have no valid lien, you cannot execute  
24 upon it. And we believe that plaintiff at the time it filed  
25 its writ of execution, there was nothing for it to execute

1 upon.

2 THE COURT: Thank you.

3 Who would like to speak for the defense in this  
4 matter? Ms. Garcia.

5 MS. GARCIA: Your Honor, the cardinal rule of  
6 statutory interpretation is determining the intent of the  
7 legislature. The Supreme Court has told us over and over again  
8 that the best way of determining the intent of the legislature  
9 is to look at the plain language of the statute. Paragraph  
10 three in 78-22-1.5 states that after July of 2002 to obtain a  
11 lien a judgment needs to be filed in the county recorder's  
12 office. It does not state that it needs to be filed in the  
13 county recorder's office and with the clerk of the court. It  
14 does not join paragraph two and three by an and or in addition  
15 to, it simply states that after 2002 filing in the county  
16 recorder's office is the way to obtain a lien. We filed our  
17 judgment in 2003 which is after 2002, so we complied with the  
18 statutory requirements.

19 In the defendant's memo she stated that paragraph  
20 four shows that compliance requires dual recordation because it  
21 says subsection two and subsection 3A, but if you read further  
22 in paragraph four, it also states that any judgment that is  
23 filed in the registry of judgments on or after September 1,  
24 1998 or any judgment or abstract of judgment that is recorded  
25 in the office of the county recorder after July of 2002 shall

1 include certain information about the debtor.

2           And it is our position that the language of the  
3 statute clearly indicates that after 2002 filing in the  
4 recorder's office is the full requirement for obtaining a  
5 judgment lien. The writ of execution that the defendant  
6 referred to, the writ does not create the lien. We need to  
7 file in the court in order to execute on the lien, but the  
8 issue is whether or not we had a valid lien at the time that we  
9 recorded with the county recorder, and according to the  
10 statute, we did have a valid lien. We're asking the court for  
11 a reasonable interpretation of the statute.

12           Now, the legislature part of their job is to  
13 harmonize the various books, code sections. The legislature  
14 would not make it more difficult for any party to obtain a  
15 lien. If you look at 78-22-1.5 and 78-22-1, to harmonize those  
16 two sections requires that recording with the county recorder  
17 is the only place that a creditor need file a judgment in order  
18 to obtain a lien. Specifically in 78-22-1 paragraph two  
19 specifies that prior to July of 1997 that a lien should be  
20 filed with the district court. Paragraph seven of that same  
21 code section specifies after July 2002 a judgment entered by a  
22 district court or a justice court becomes a lien upon real  
23 property if the judgment or abstract of judgment is recorded in  
24 the office of the county recorder.

25           If any of this seems ambiguous, Your Honor, then I

1 direct your attention to the affidavits of the county recorder  
2 and of Senator Hatch who sponsored the amendments to the  
3 judgment lien statute, wherein they both say that the purpose  
4 of the statute is to require filing in one location only.

5 THE COURT: Thank you.

6 Response, Ms. Noyce.

7 MS. NOYCE: Your Honor, our argument remains the  
8 same. Had the legislature truly wanted to require only  
9 recording in the office of the county recorder after July 2002,  
10 it would have been a simple matter to amend paragraph two to  
11 say on or after July 1, 1997 and prior to July 1, 2002 that it  
12 would then limit that time period. It didn't do that. Believe  
13 that given the impact on the general revenue fund that I  
14 believe was cited to by plaintiffs, that regardless of what  
15 Senator Hatch envisioned, the rest of the legislature still  
16 required two filings, that in the county recorder's office and  
17 that in the court clerk's office.

18 Ms. Garcia is correct that Rule 69 does not create  
19 the judgment lien. However, it does provide procedure to  
20 execute against a judgment lien. And until you docket it, you  
21 have somewhat of a worthless lien. We believe that that is the  
22 coordination between the statutes that should be read.

23 THE COURT: Well, the Court will rule as follows in  
24 this matter. First of all, this Court has some substantial  
25 history in the development - not the development necessarily,

1 but the evolution of the law in regards to liens. Early on and  
2 until recently the mere fact that a judgment was entered in  
3 either a justice court or a district court in a particular  
4 county would result automatically in a lien being attached to  
5 real property which existed in that county. That lien could be  
6 - that judgment could be filed in any other county in the state  
7 and that same effect would occur even in those counties, even  
8 though that is not where the judgment which originally granted.

9 Our legislature in its wisdom saw fit to depart from  
10 that original law a number of years ago by making it a  
11 requirement that mere entry of a judgment in a court, even one  
12 of record, did not constitute a lien on real property unless  
13 another step was taken.

14 The court would just cite what the Supreme Court has  
15 stated as far as the statutory interpretation. It is stated  
16 that in construing the statute you must assume that each term  
17 of the statute was used advisedly and that statutory words are  
18 read literally unless such reading is unreasonable confusing or  
19 inoperable. Only when you find an ambiguity in the statutes  
20 plain language need we seek guidance from legislative history  
21 and relevant policy considerations.

22 Looking at the statute before the Court it is clear  
23 to the Court that if you read, first of all you start over in  
24 78-22-1 and it talks about the duration of a judgment, it talks  
25 about a judgment entered in a court, may be filed in any court

1 of the state, and it shall have the same force and effect as a  
2 judgment entered in that court. Then you go over and you look  
3 at 78-22-1.5 and it clearly states in paragraph two that on or  
4 after July 1, 1997 a judgment entered in a district court does  
5 not create a lien upon or affect a title to real property  
6 unless the judgment is filed in the registry of judgments of  
7 the office of the clerk of the district court of the county in  
8 which the property is located. So it's got to be filed in the  
9 registry of judgments whether it's in the county in which the  
10 judgment is granted or another county. That's the first step.

11 It goes on to say although that's what you have to  
12 have before it can affect a title to real property, after July  
13 1, 2002, except as provided in subsection 3B which has to do  
14 with governmental agencies, a judgment entered in a district  
15 court does not create a lien upon or affect a title to real  
16 property unless the judgment or abstract of judgment is  
17 recorded in the office of the county recorder in which the real  
18 property of the judgment debtor is located.

19 The court would find that those provisions are clear  
20 and unambiguous and that the law contemplates a two step  
21 process. In this particular matter - before that lien is  
22 perfected - in this particular matter the evidence is  
23 uncontroverted that the plaintiffs in fact recorded a judgment  
24 here in Davis County in the county recorder's office on May  
25 9<sup>th</sup>. Apparently there was some deeds that were exchanged and

1 the first of those deeds transferring the title out of Mr. Kim  
2 occurred on May 19 and apparently was re-recorded on June 13 of  
3 2003, and then subsequent to that time plaintiff filed a copy  
4 of the judgment with the district court here in Davis County in  
5 the registry of judgments.

6           The Court would find that that lien was not perfected  
7 until both of those steps were taken, that is the filing with  
8 the district court and the filing with the county recorder.  
9 The Court therefore finds that that lien had not attached - did  
10 not attach to the property of, I believe it's Mrs. Kim that was  
11 conveyed to her prior to the June 29 date. Therefore, the  
12 Court will grant the defendant's motion to quash the execution  
13 in this particular case and as I've indicated before, this  
14 doesn't preclude the filing of a complaint for fraudulent  
15 conveyance because clearly a conveyance occurred when a  
16 judgment was pending or had been granted in another court.  
17 Where you want to go with that, I don't know, but the Court  
18 will quash the execution at this time in this matter.

19           Anything further?

20           MR. FERICKS: Your Honor, would the Court entertain  
21 some additional discussion about that?

22           THE COURT: I won't.

23           MR. FERICKS: All right.

24           THE COURT: If I'm wrong, you know, you can tell me.

25           MR. FERICKS: With all due respect, Your Honor, I

1 think we probably will.

2 THE COURT: I think it's a point that needs  
3 clarification. It doesn't bother me at all.

4 MR. FERICKS: You know, our thought is that because a  
5 judgment has an eight year duration, the legislature had to set  
6 up this sort of segmented process as they moved it over towards  
7 the county recorder's office which became the single source of  
8 information after July 1, 2002.

9 THE COURT: I don't think it makes any difference  
10 because I think the eight year statute runs from the date the  
11 judgment is granted in the district court where it originates.

12 MR. FERICKS: Right.

13 THE COURT: So however they want to get it in any  
14 other jurisdiction or to perfect that judgment, that's up to  
15 them, but it's still only runs for that eight year period and  
16 that clock starts ticking at the time it's entered by the  
17 court.

18 MR. FERICKS: Your Honor, just so that we have all of  
19 our cards on the table, I don't want to play any subtly with  
20 the Court, we have as a matter of fact filed an action for  
21 fraudulent conveyance and we will be making a prompt motion  
22 with the court for a pre-judgment writ of attachment so that  
23 that fraudulent conveyance can actually play itself out before  
24 what appears to be a fairly volatile title.

25 THE COURT: You know, you may want - I don't want to

1     advise you what you should do, but if you've done that,  
2     probably a lis pendens needs to be filed on that property also.  
3     That hasn't been done.

4             MR. FERICKS: We understand, Your Honor.

5             THE COURT: But anyway, that's my ruling as far as  
6     the attachment of the lien and its perfection and I would  
7     really like some direction on it. To me it's clear, but it may  
8     have not been to the legislature.

9             MR. FERICKS: Pardon me?

10            THE COURT: It may not have been to the legislature,  
11     but the way that the statute is worded it's clear to me and  
12     I'll be frank with you, we've discussed these things as judges  
13     as far as our training because of the significance of departure  
14     from what the law used to be as far as judgments and how they  
15     attached, and so we've talked about this among ourselves at our  
16     trainings and those kinds of things.

17            MR. FERICKS: Your Honor, just to clarify the  
18     rationale under the Court's ruling, is the Court declining to  
19     consider the legislative history as presented by the affidavit  
20     of the sponsoring legislature?

21            THE COURT: I am, because I don't think it's  
22     ambiguous.

23            MR. FERICKS: Okay. Is the Court declining to  
24     consider the county attorney's affidavit with regard to  
25     direction that he's given to the county recorder?

1 THE COURT: It's irrelevant to me. I think you're  
2 wrong.

3 MR. FERICKS: All right. Your Honor, could we ask  
4 the clerk if we could get a copy of - I assume the Court's  
5 decision is on the video?

6 THE COURT: Yes.

7 MR. FERICKS: Okay, we'd like a copy of that. We'll  
8 have a transcript created.

9 THE COURT: What you should do is make that request  
10 to the court and then that goes to the court reporter and they  
11 make those.

12 MR. FERICKS: Thank you, Your Honor.

13 THE COURT: All right, thanks for appearing.

14 Ms. Noyce, would you prepare findings and judgment in  
15 accordance with the court's ruling?

16 MS. NOYCE: Yes, Your Honor.

17 THE COURT: You will circulate to opposing counsel  
18 before it's submitted to me.

19 MS. NOYCE: Yes.

20 THE COURT: Thank you.

21 (Whereupon the hearing was concluded)

22

23

24

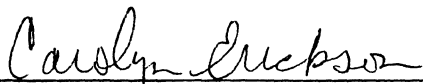
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CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned hearing held before Judge Rodney S. Page was transcribed by me from a video recording and is a full, true, and correct transcription of the proceedings as set forth in the preceding pages to the best of my ability.

Signed this 19<sup>th</sup> day of March, 2004 in Sandy, Utah.

  
Carolyn Erickson  
Certified Shorthand Reporter  
Certified Court Transcriber

My Commission expires May 4, 2006

