

1993

# Yvonne Gillham dba Concepts West Interiors v. Donald E. Armstrong : Appellee\'s Supplemental Brief

Utah Court of Appeals

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Kenneth Allen; Attorney for Appellant.

Brent A. Gold; Attorney for Appellee.

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930236

IN THE UTAH COURT OF APPEALS

YVONNE GILLHAM, d/b/a	)	
CONCEPTS WEST INTERIORS,	)	
	)	
Plaintiff,	)	APPELLEE'S SUPPLEMENTAL BRIEF
	)	
vs.	)	Case No.930236-CA
	)	
DONALD E. ARMSTRONG,	)	Argument Priority 15
	)	
Defendant.	)	

APPEAL FROM JUDGMENT GRANTED BY THE THIRD CIRCUIT COURT OF SUMMIT  
COUNTY, STATE OF UTAH  
HONORABLE ROGER A. LIVINGSTON

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**FILED**  
Utah Court of Appeals

**MAY 17 1994**

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IN THE UTAH COURT OF APPEALS

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YVONNE GILLHAM, d/b/a  
CONCEPTS WEST INTERIORS,

Plaintiff,

vs.

DONALD E. ARMSTRONG,

Defendant.

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)  
)

APPELLEE'S SUPPLEMENTAL BRIEF

Case No.930236-CA

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APPEAL FROM JUDGMENT GRANTED BY THE THIRD CIRCUIT COURT OF SUMMIT  
COUNTY, STATE OF UTAH  
HONORABLE ROGER A. LIVINGSTON

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### STATEMENT OF JURISDICTION

The Utah Court of Appeals has original jurisdiction of this matter pursuant to the provisions of Utah Code 78-2a-3(2)(d) and Rule 3(a) of the Utah Rules of Appellate Procedure.

### STATEMENT OF THE CASE

Plaintiff/appellee (Hereinafter "the designer") entered into a personal services contract with defendant/appellant (Hereinafter "the homeowner") to perform interior design work and consultation at homeowners' Deer Valley home. The oral agreement between the parties was reduced to writing by the homeowner, and was prepared in its entirety by the homeowner. Homeowner agreed to pay the designer a total design fee in the amount of \$8,000.00. That fee was to be paid in quarterly payments of \$2,000.00 each over the course of one year. The term of the agreement began July 1, 1991 and ended June 30, 1992. At the end of the term of the agreement homeowner had paid only \$6,000.00 of the total amount due, and had also failed and refused to pay Utah State sales tax, in the amount of \$1,925.00. The homeowner refused to pay the remaining amount and attempted to unilaterally terminate the contract after the designer had completed her work under the contract. On August 18, 1992, designer filed her Complaint with the trial court. Designer complained, among other things, that she had substantially performed her part of the agreement and that the remaining \$2,000.00, plus the additional

amounts of Utah State Sales tax was due and owing.

The trial was held on February 10, 1993. During the Trial, the homeowner conceded to the trial court that he owed the Utah State sales tax as alleged by the designer, and the homeowner paid the sales tax to the designer. During the proceedings, a recess was taken. When the court again resumed the proceedings, the tape recorder failed to record the proceedings. When the tape starts again, it begins in progress with a witness who is identified as Susan St.James, wife of the homeowner.

The trial court found that the designer had substantially performed her obligations under the agreement and entered judgment in favor of the designer.

The homeowner filed his appeal on April 19, 1993. On or about October 21, 1993, the designer filed her Motion for Summary Disposition to Dismiss, specifically stating therein, that there was no record of any type or kind that the trial court had refused to accept evidence, testimony, or documents that were offered by the homeowner.

On or about November 3, 1993, the homeowner filed his Memorandum in Opposition to the Motion for Summary Disposition to Dismiss. In his memorandum, the homeowner attempted to unilaterally supplement the trial court record with self-serving affidavit and exhibits which, the homeowner admits are not part of the official trial court record. The unilateral attempt made by the homeowner to supplement the trial court record occurred without reference or recourse to the record supplementation

procedures as set forth in Rule 11(g)&(h) and Rule 11 (e)(2) of the Utah Rules of Appellate Procedure (U.R.A.P.).

On or about November 15, 1993, the designer filed her Objection, Motion to Strike and Motion for Sanctions by reason of homeowner's attempted unilateral supplementation. The homeowner did not respond to designer's Objection, Motion to Strike and Motion for Sanctions, dated November 15, 1993, and this court did not rule on said Motions prior to homeowners submission of Appellant's Brief on January 4, 1994.

The Appellants Brief again included the offending affidavits and documents which are not part of the trial court record, and to which designer had previously objected as above stated. On or about January 14, 1994, the designer again filed with this court her Renewal of Motion to Strike and Motion for Sanctions by reason of the continued unilateral record supplementation by the homeowner. To that date, the homeowner had made no attempt to follow this Court's record supplementation procedure.

No decision was forthcoming by this Court with respect to designer's Motions dated November 15, 1993, and January 14, 1994, and designer filed Appellee's Brief on February 7, 1994.

By this court's Order of February 22, 1994, this case was temporarily remanded to the trial court for the limited purpose of proceedings under Rule 11(g) of the Utah Rules of Appellate Procedure. Pursuant thereto, the homeowner submitted his proposed Statement of Proceedings and Evidence Omitted from Record, and the Affidavit of Susan St. James, to the trial court



on March 3, 1994. Homeowner's statement and documents are attached as Exhibit A. At no time did the homeowner request a hearing with respect to these record supplementation proceedings.

The designer submitted her Objection to Appellant's Statement of Proceedings and Evidence Omitted from the Record, the Affidavit of Hope Mills in support thereof, and her proposed Statement of Evidence where Transcript is Unavailable, on March 16, 1994. Designer's statement and documents are attached as Exhibit B.

After reviewing the above cited documents filed in connection with this court's Order of February 22, 1994, the trial court issued the settled and approved Statement of Evidence where Transcript Unavailable on March 23, 1994. The trial court's statement is attached as Exhibit C. That settled statement concluded that no evidence had been excluded at the trial. At no time did the homeowner file any objection with the trial court with respect to the signed Statement of Evidence where Transcript is Unavailable, nor did homeowner object to the lack of a hearing, nor did the homeowner request a hearing.

#### **SUMMARY OF ARGUMENT**

##### **I. SETTLEMENT OF THE TRIAL COURT RECORD WAS FAIR AND CONFORMED TO THE PROCEDURAL GUIDELINES.**

The homeowner and designer submitted to the trial court their opposing statements with respect to the missing transcript of record. The trial court settled the record based upon

competent and sufficient evidence and the trial court's recollection.

**II. THE RECORD DOES NOT SUPPORT HOMEOWNER'S CLAIM OF A FAILURE TO ADMIT EVIDENCE.**

There is no evidence in the record to support homeowner's claim of a failure to admit evidence at the time of trial.

**III. ISSUES III, IV, AND V RAISED IN THE HOMEOWNER'S PLENARY BRIEF ARE PER SE FRIVOLOUS AND LACK ANY FOUNDATION OR MERIT.**

No evidence was excluded at the time of trial. The error assigned to the trial court by the homeowner lacks any foundation in the record. These issues, based upon the purported exclusion of evidence, lack any merit whatsoever. The issues pursued by the homeowner after the settlement of the record are per se frivolous as lacking any foundation or merit.

**IV. RULE 33 SANCTIONS SHOULD BE IMPOSED ON THE HOMEOWNER.**

The homeowner has continued to engage in a frivolous and non-meritorious pursuit of his issues on appeal in the face of all the evidence to the contrary. The homeowner's obdurate obstinence should be sanctioned by the court.

**V. RULE 40(a) SANCTIONS SHOULD BE IMPOSED ON THE HOMEOWNER.**

The homeowner has continually cited inappropriate authority and mis-characterized cited authority in his Briefs on appeal. The homeowner should be sanctioned for his continued inappropriate citations of authority and misstatements of the issues on appeal.

**ARGUMENT**

**I. SETTLEMENT OF THE TRIAL COURT RECORD WAS FAIR AND CONFORMED  
TO THE PROCEDURAL GUIDELINES.**

The homeowner submitted his Statement of Proceeding and Evidence Omitted from the Record on March 3, 1994. See Exhibit A. The designer submitted her Objection to that Statement on March 16, 1994. See Exhibit B. Among other objections, designer objected to statement No. 4 of homeowner's Statement, which reads as follows:

4. During Ms. Susan St. James (sic) direct examination by appellant, the appellant attempted to introduce some documentation that Ms. Susan St. James (sic) had prepared, which evidenced invoicing, billing dates, check numbers, dates of payments, room by room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding the case.

Designer submitted the Affidavit of Hope Mills, an observer of the trial, that directly and unequivocally contradicted the assertions made in Statement No. 4. See Exhibit B. The trial court judge had no recollection of the attempt to introduce evidence. Homeowner's counsel, who was not even present at the trial, now makes the absurd contention that because the trial

court judge, who ruled against the homeowner at the time of trial, is not objective, because he disagrees with the homeowners fully contested and opposed Statement of Proceedings where Transcript is Unavailable. Homeowner's argument that the judge lacks objectivity and that the record supplementation process is therefore inadequate is improper. This position is patently offensive and contrary to the entire construct of our judicial system. That system provides that a neutral and impartial magistrate, who by his oath of office is sworn to uphold the highest of judicial standards, will rule objectively. The logical extension of the argument made by the homeowner's counsel is that every judge who makes a ruling adverse to one's client is deemed to lack objectivity and impartiality. That position, absent some evidence to the contrary, is reprehensible and, coming from an officer of the court, is sanctionable and censurable. There is no evidence submitted even suggesting bias on the part of the trial judge.

In this case, the homeowners contention as to what occurred when the transcript is unavailable is absolutely opposed to designer's recollection with respect to those proceedings. Further, homeowner's contention is contrary to the recollection of other persons who attended the trial and were not parties to this action, and the direct recollection of the trial court judge. See Affidavit of Hope Mills, attached as Exhibit B. Homeowner's counsel, who has absolutely no personal knowledge of what transpired at trial, cannot produce any competent,

independent evidence which shows that the trial court judge lacks objectivity or impartiality. The trial court judge, in good faith, based upon competent, corroborating evidence and, in accord with his own recollection, has provided this Court with the Statement of Evidence Where Transcript is Unavailable. See Exhibit C. In accord with that statement, and consistent with this Court's mandate and direction as enumerated in Horton v. Gem State Mutual of Utah, 794 P.2d 847, 849 (Utah App. 1990), the homeowner's claim of error must be reduced simply to an unsupported, unilateral allegation, and it must be presumed that the judgment is supported by sufficient and competent evidence.

Homeowner further argues that the trial court judge unilaterally decided the issues on remand, without hearing or discussion, and that this resulted in unfairness to the homeowner. See Appellant's Supplemental Brief, p3. This argument is not supported by even a cursory examination of the proceedings on remand. Requests for a hearing before the trial court are governed by Rule 4-501(3) of the Utah Rules of Judicial Administration. It is apparent from this provision that decisions before the trial court on motions and documents submitted to the trial court, shall be rendered without a hearing unless ordered by the court or requested by the parties. Homeowner's counsel never requested a hearing with respect to the submission before the trial court. Such a request for hearing, no doubt would have been granted if homeowner's counsel had complied with the simple requirements of Rule 4-501(3). Having

failed to make any request for hearing, as required by the Rule, homeowner's counsel now assigns lack of objectivity, lack of impartiality, and "unilateralism" by the judge as the reason no hearing took place. This argument of unilateralism is merely another example of homeowner's obdurate and obstinate disagreement with the trial court. His disagreement flies in the face of the best available evidence. The argument of unilateralism is without any foundation. Homeowner's assignation of blame is misplaced. It is the homeowner's fault that no hearing took place, not the fault of the trial judge.

Notwithstanding the fact that the homeowner had no further evidence to submit at such a hearing, there is no showing by the homeowner that the hearing, if held, would have affected the outcome of the supplementation proceedings.

Homeowner argues that because designer's counsel prepared the Final Statement of Evidence where Transcript is Unavailable, that it further biased the objectivity of the trial court. This argument lacks any serious substance. The trial court judge had no recollection of the attempt to introduce evidence. He signed an order reflecting that recollection. Homeowner's argument is simply an exhibition of his obdurate and obstinate position that anytime the trial judge disagrees with him, then error must be found. This position lacks any serious substance on appeal.

Homeowner next argues that the trial court judge's recollection is inadequate. Citing Guardian State Bank v. Humphreys, 762 P.2d 1084 (Utah 1988), the homeowner alleges that

the purpose of Rule 11 U.R.A.P. is to avoid the trial court's attempt to recreate, based upon conflicting testimony of counsel, what oral arguments were made by counsel at the time of a hearing. A sober reading of Guardian State Bank reveals that the Utah Supreme Court reached the opposite conclusion than that which the homeowner would thrust upon this Court. In Guardian State Bank, the appellant asserted as error the fact that the trial court had rejected and struck from the record, on appeal, affidavits submitted under former Rule 75(m) of the Utah Rules of Civil Procedure. The trial court in the instant matter has used its own recollection, along with weighing the available evidence in the form of Affidavits from both parties, in reconstructing the record. The trial judge in Guardian State Bank substituted his recollection for the submitted affidavits and the Utah Supreme Court held that:

...the lower court acted properly under Rule 75(m). After refusing to approve the affidavits as submitted, the court "settled" the issue by providing its own statement, based upon a specific recollection and appropriately included it in the record on appeal.  
Guardian State Bank at 1087.

The holding in Guardian State Bank is correctly characterized as holding that a lower court acts properly when it settles disputed issues by providing its own statement, based upon recollection. The court in the present case agreed with the designers proposed statement and signed that statement based upon the trial court's recollection and the available evidence. Such a finding in the present case, was reasonable, competent and entirely consistent with the requirements of Guardian State Bank.

Homeowner next cites Emig v. Hayward, 703 P.2d 1043 (Utah 1985), as supporting the proposition that the homeowner must show that the procedures provided by Rule 11 for reconstructing and settling the record were inadequate, and thereby denied homeowner due process. See Appellant's Supplemental Brief, p6-7. Again, a more sober reading of Hayward reveals a stark difference from the homeowner's interpretation. Hayward denied the appellant's arguments regarding the inadequacy of the procedures provided under the rule regarding supplementation proceedings. See Hayward at 1045. Additionally, Hayward involved a situation where the lawyer representing Emig could not be reached for testimony at a supplementation hearing. The result in Hayward was to uphold the trial court supplementation procedure, which procedure lacked all the evidence presented in the instant case. The instant case offers corroborating evidence of the trial judge's recollection. Hayward provides that the judge's recollection alone is sufficient for a Statement on appeal. Hayward does not support the homeowner's contention that he has proven a lack of fairness under Rule 11 U.R.A.P.

Homeowner next argues that the Affidavit of Susan St. James should be considered by this court. This argument is merely another obdurate disagreement with the trial court. The trial court considered the affidavit, did not recollect that version of events, and took the view of more convincing evidence to the contrary. The homeowner thrusts another non-meritorious argument before this court in an attempt to obstinately deny the validity



of the trial court's fair and just ruling on all the available evidence. The affidavit of Susan St. James, in accord with Horton v. Gem State Mutual of Utah, 794 P.2d 847, 849 (Utah App. 1990), must be rejected as an unsupported, unilateral allegation, and it must be presumed that the judgment is supported by sufficient and competent evidence.

Homeowner further complains of unequal treatment before the trial court. This issue is not properly before this Court. It merits no further discussion as these issues were dealt with in the plenary Briefs of both parties.

II. **THE RECORD DOES NOT SUPPORT HOMEOWNERS CLAIM OF A FAILURE TO ADMIT EVIDENCE.**

The record, as now supplemented by the Statement of Evidence where Transcript Unavailable, fails to support any claim made by the homeowner that evidence was excluded from the trial by the ruling of the trial court judge. There was, in fact, no such exclusion of evidence. The record is now, and has consistently been, throughout the pendency of this appeal, devoid of any evidence of record of an exclusion of evidence at the time of trial.

Designer has consistently argued that the record does not support the claim that there was an exclusion of evidence at the time of trial. The issue raised by the homeowner in this regard has never had merit or basis in the record. The "last minute" attempts by homeowners' new counsel, on appeal, to improperly

supplement the record, have failed to color his non-meritorious claims in this respect.

**III. ISSUES III, IV, AND V RAISED BY THE HOMEOWNER IN HIS BRIEF  
ARE PER SE FRIVOLOUS AND WITHOUT MERIT.**

The record, as now supplemented by the Statement of Evidence where Transcript is Unavailable, does not support the homeowner's claim that the trial court failed to admit relevant evidence.

Issue III raised by the homeowner is whether the trial court's decision not to admit appellant's documentary evidence of work performed by both parties to the contract was an abuse of discretion. There was no court decision not to admit documentary evidence. There is not now, nor has there ever been, any evidence in the record that such a decision was ever made. The issue raised by the homeowner is therefore per se frivolous and is without merit on appeal.

Issue IV raised by the homeowner is whether the trial court's theory and grounds for determining that homeowner unjustifiably terminated the contract between the parties was proper. The homeowner "challenges the court's findings in that it refused to hear or admit testimonial and documentary evidence through his witness, Susan St. James." See Appellant's Brief, p18. There was no such refusal. The record does not and cannot support the assertion made by the homeowner that the court refused to admit evidence. In fact, the record is replete with instances where the trial court asked the homeowner if he wished

to introduce any more evidence, offer additional testimony, or add anything to his case. This issue is raised without support from the record. It is, therefore, without merit and is plainly frivolous as lacking any foundation in the official record.

Issue V raised by the homeowner is coupled with Issue IV on plenary presentation. See Appellant's Brief, p16. The homeowner challenges the accuracy of the trial court's findings of fact based upon the exclusion of evidence. There was no such exclusion. The homeowner has raised the issue without foundation in the record. Issue V is therefore, without merit and is per se frivolous.

**IV. RULE 33 SANCTIONS SHOULD BE IMPOSED ON THE HOMEOWNER FOR HIS FRIVOLOUS AND NON-MERITORIOUS APPEAL.**

Homeowner has pursued this appeal even though it has no reasonable likelihood of success, continued to display a pattern of dilatory practices, obdurate disagreements with the trial judge's proper holdings, and has failed to exercise reasonable inquiry when stating questions of law and standards of review before this Court.

Designer maintains that the issues brought before this Court are without merit and are pursued as a dilatory tactic to avoid final judgment. Homeowner brings a case to this Court which cannot be reasonably expected to succeed.

The frivolous nature of the appeal brought by the homeowner is further revealed by the most recent outcome of the Record

Supplementation Proceedings. The record now reflects, as was always maintained by designer, that no basis existed for homeowners issues raised in Issues III, IV, and V in the Appellant's Brief. In Hunt v. Hurst, 785 P.2d 414, this Court has stated that a frivolous appeal is:

...one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law."  
Hurst at 416.

The issues raised by the homeowner were not grounded in fact, but grounded in his obdurate disagreements with the trial court's conclusions. These disagreements have never risen to the level of proving that the trial court was even incorrect. The claims made by the homeowner with respect to an exclusion of evidence are phantom claims that are not supported by the record or competent evidence.

Designer requests this Court impose sanctions on the homeowner, award attorney fees' on appeal to her, and asses double costs against the homeowner.

#### **V. RULE 40(a) SANCTIONS SHOULD BE IMPOSED ON THE HOMEOWNER**

Homeowner's various legal counsels have mischaracterized the proceedings below, misstated basic questions of law, attached unrelated authority, and fumbled basic standards of appellate review. This type of preparation is indicated by the four different docketing statements, filed in connection with this case, this Court's prior dismissal of the appeal, the filing of improper affidavits and exhibits which are not part of the

record, and failing to even attempt record supplementation proceedings without the direction of this Court. All of these instances have delayed these proceedings and have caused unnecessary costs and fees to be incurred by the designer

Homeowner's present counsel was not engaged by homeowner until well after this appeal had been filed. Homeowner's counsel has consistently pursued his "exclusion of evidence at the time of trial" argument without any knowledge, reasonable foundation, or diligent inquiry into the factual basis for such an argument. In Hurst, this court stated that sanctions for this type of conduct is appropriate when attorneys:

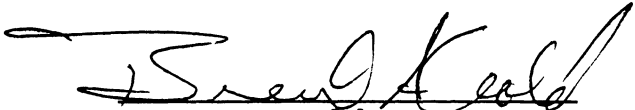
...pursue what in reality are nuisance claims and do so in an unlawyer-like fashion by writing an unprofessional brief and relying on improper materials and arguments in the brief.  
Hurst at 417.

#### CONCLUSION

The trial court settled the record based upon competent and sufficient evidence and the trial court's recollection. Homeowner has not been denied any constitutional right to appeal the judgment of the trial court. No evidence was excluded at the time of trial. The error assigned to the trial court by the homeowner lacks any foundation in the record. These issues, based upon the purported exclusion of evidence, lack any merit whatsoever. The issues pursued by the homeowner after the settlement of the record are per se frivolous as lacking any foundation or merit. The homeowner should be sanctioned for his

non-meritorious, frivolous, and unprofessionally presented appeal.

DATED this 17<sup>th</sup> day of May, 1994.

  
Brent A. Gold  
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that on this 17<sup>th</sup> day of May, 1994, that I mailed by first-class, postage pre-paid, two (2) true and correct copies of the foregoing Appellee's Supplemental Brief to the following:

Kenneth Allen  
Attorney for Appellant  
5181 W. Amelia Earhart Drive  
Salt Lake City, Utah 84116



**EXHIBIT "A"**

Kenneth Allen (6162)  
Attorney for Defendant/Appellant  
10 West Broadway, Suite 500  
Salt Lake City, UT 84101  
Telephone: (801) 322-2458

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IN THE THIRD CIRCUIT COURT IN AND FOR SUMMIT COUNTY

PARK CITY DEPARTMENT, STATE OF UTAH

---

YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS,	)	
	)	STATEMENT OF PROCEEDINGS AND
Plaintiff/Appellee,	)	EVIDENCE OMITTED FROM RECORD
	)	
vs.	)	
	)	
DONALD E. ARMSTRONG,	)	
	)	CIVIL NO. 92300086CV
Defendant/Appellant.	)	(UTAH COURT OF APPEALS
	)	CASE NO. 930236-CA)

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Appellant, by and through his attorney, hereby respectfully submits his Statement of Proceedings and Evidence Omitted From the Record, pursuant to the Utah Court of Appeals Order, dated February 22, 1994, and in accordance with Rule 11(g), Utah Rules of Appellate Procedure. The following represents a general overview of the statements of proceedings and evidence omitted from the record, from the best available evidence and means available, consisting primarily of the recollection of Ms. Susan St. James, who was the witness being examined at the time the record was omitted. Ms. Susan St. Jame's attached affidavit more particularly supports and sets forth the statements of proceedings and evidence omitted from the record:



1. Ms. Susan St. James was called as a witness for appellant at the February 10, 1993, trial in the above referenced case.

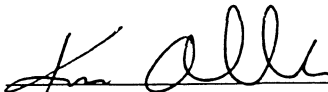
2. A major portion of Ms. Susan St. Jame's testimony, by way of direct examination by appellant, which began on page thirty (30) of the trial transcript was omitted. That the entire swearing in, several questions and answers were not recorded.

3. On direct examination by appellant, questions were asked about the relationship Ms. Susan St. James had with the appellee and the problems that arose.

4. During Ms. Susan St. Jame's direct examination by appellant, the appellant attempted to introduce some documentation that Ms. Susan St. Jame had prepared, which evidenced invoicing, billing dates, check numbers, dates of payments, room by room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding this case. (See exhibit A)

5. The appellee's attorney objected to the admissibility of such documentation and the trial court judge sustained appellee's objection and appellant was not allowed to admit such documentation into evidence.


DATED this 18<sup>th</sup> day of March, 1994.

  
Kenneth Allen  
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

On this 18<sup>th</sup> day of March, 1994, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing STATEMENT OF PROCEEDINGS AND EVIDENCE OMITTED FROM RECORD to:

Brent A. Gold  
333 Main Street, Second Floor  
P.O. Box 1994  
Park City, Utah 84060

  
\_\_\_\_\_  
Kenneth Allen

HOMEOWNER'S  
EXHIBIT A

Statements From Yvonne	Date	Amount Due	Date Paid	Yvonne Bills Check #	Amount Paid	Comments
#170	8/14/91	\$162.00	8/14/91	4529	\$162.00	
#114	9/30/91	\$2,000.00	9/30/91	4552	\$2,000.00	
#112 (Invoice Really Confusing)- With Cover Letter	10/4/91	\$10,115.21	10/8/91	1002	\$11,209.50	After this we decided we needed Yvonne to provide documentation for all transactions. - But we didn't ask for it we let it
Verbal Request			10/19/91	4558	\$2,804.00	We were concerned about this, we discussed it. Paid \$1694.29 more than invoice
			11/7/91	126	\$1,012.00	
Pkg. #1	11/14/91	\$3,428.80	Nothing Due - This was merely a Statement of account for that date.			At this time we were moving into our new house about 2 months ahead of schedule. Yvonne was gone alot. I had to call various companies to see where the orders stood.
No Purchase orders						
Statement of Account pg. 5						
#123	12/15/91	\$2,000.00	12/17/91	147	\$2,000.00	Design Fees
Cover Sheet	12/17/91	\$2,542.28	12/17/91	146	\$2,542.38	
Verbal Request			1/7/92	162	\$1,900.00	
Revised Pkg. #1	1/17/92		1/17/92	167	\$877.63	
Furniture Handwritten Sheet						
Revised Statement of Acct. Furniture Pkg. #1	2/4/92	\$1,042.55	2/14/92	201	\$1,042.55	I Requested PO's on this. It was really confusing.
Statement of Acct. Furniture Pkg. #2	2/4/92	\$1,724.37	2/14/92	202	\$1,724.37	
*Note There are 2 page 5's the first one shows \$1200 Deposit due. The Second shows \$1724.37 due in handwriting. This was such a mess it took hours to go over matching payments & how they were disbursed with the purchase orders.						
6 STATEMENTS						
vided on these payments. I paid from purchase orders.						
			2/25/92	221	\$1,138.60	
			2/25/92	223	\$357.43	
			2/26/92	224	\$521.30	
			2/26/92	225	\$267.22	
#152	3/30/92	\$2,000	3/25/92	250	\$2,000.00	Paid 5 days advance by Marlena with letter to end services.
Furniture Pkg. #1	4/7/92	0				
Furniture Pkg. #2	4/7/92	\$1,028.39	4/9/92	258	\$125.00	
Revised STATEMENT			4/9/92	324	\$903.39	Furniture Pkg. now paid in full.

\*NOTE: Neither Statement shows any tax owing

No accounting was requested from Yvonne until February... I was writing alot to find out where the money was going.

DON WAS OUT OF TOWN - he really did not want this paid until he went over the accounting. Yvonne presented statements on 2/4 & wanted payment 2/5. I couldn't pay them until he returned. Yvonne really angry & told me she must have payment from now on immediately - I said it was not a problem - if she provided the accounting I would pay it. Thereafter she produced the paper work & I paid it as soon as she gave it to me.

I was really disappointed because I was not given a clear explanation of the invoice... not long after (checking) I needed to have a business ref

Room	Existing Pieces	Items needed	Who Found	Who Arranged Purchase	Did We Assist	Yvonne Points	Our Points	Complete	Comments Problems
Living Room	Bookshelves		We did	We did		0	2		See Note #1
	Stereo Section		We did	We did		0	2		
	Fireplace Mantle		We did	We did		0	2		
		2 Couches	Yvonne	Yvonne	Yes	2	0		
		2 Chairs	Both	Yvonne	Yes	2	1		
		2 Tables	Both	Yvonne	Yes	2	1		
		1 Coffee Table	We did	Yvonne	Yes	1	1		
		2 Lamps	Both	Yvonne		2	1		
		Fabric	Both	Yvonne	Yes	2	1		
		1 Area Rug	Both	Yvonne	Yes	2	1		
Dining Room		Buffet	We did	We did		0	2		
		Dining Table	We did	We did		0	2		
		1 framed art piece	We did	We did		0	2		
		8 chairs	We did	Yvonne		1	1		
		Side piece	Both	We did		1	2		
		6 barstools	We did	We did		0	2		
		Fabric for stools	Both	Yvonne		2	1		
		Area Rug	Yvonne	Yvonne		2	0		
Reception	Desk		We did	We did		0	2		
	Side Chair/Ottoman		We did	We did		0	2		
		Desk Chair	Yvonne	Yvonne		2	0		
		New Fabric	We did	Yvonne		1	1		
		Credenze	We did	We did		0	2		
Don's Office									
	Backgammon Table		We did	We did		0	2		

Room	Existing Pieces	Items needed	Who Found	Who Arranged Purchase	Did We Assist	Yvonne Points	Our Points	Complete	Comments Problems
		Desk	We did	We did		0	2		
		Credenza	We did	We did		0	2		
		Bookshelves	We did	We did		0	2		
		4 Chairs	Both	Yvonne		2	1		
		Fabric	Both	Yvonne		2	1		
<b>Computer Room</b>	Chairs		We did	We did		0	2		
		Bookshelves	We did	We did		0	2		
		Cabinets	We did	We did		0	2		
		Computer Furniture	We did	We did		0	2		
		Entertainment Center	We did	We did		0	2		
		Refrigerator	We did	We did		0	2		
<b>First Guest Bedroom</b>	Bed & Head Board		We did	We did		0	2		
	2 nite tables		We did	We did		0	2		
	Chest of Drawers		We did	We did		0	2		
	Bedding		We did	We did		0	2		
		Lamps	We did	We did		0	2		
		Window coverings	We did	We did		0	2		
			We did	We did		0	2		
<b>Second Guest Bedroom</b>		Bed/Mattress	We did	We did		0	2		
		Head Board & Foot Board	We did	Yvonne		1	1		
		2 Nite Stands	We did	Yvonne		1	1		
		Chest of Drawers	We did	Yvonne		1	1		
		Rocking Chair	We did	Yvonne		1	1		
		Bedding	We did	We did		0	2		
		Window Coverings	We did	We did		0	2		
<b>Three Downstairs Bedrooms</b>		Wall Mirrors	Both	We did		1	2		
		Towels	We did	We did		0	2		
		Wall Coverings	Both	Yvonne		2	1		

Room	Existing Pieces	Items needed	Who Found	Who Arranged Purchase	Did We Assist	Yvonne Points	Our Points	Complete	Comments Problems
<b>Recreation Room</b>	Entertainment Center		We did	We did		0	2		
	2 Couches		We did	We did		0	2		
	Piano		We did	We did		0	2		
	Table		We did	We did		0	2		
	Coffee Table		We did	We did		0	2		
		Lamp	We did	We did		0	2		
		Television	We did	We did		0	2		
		Stereo System	We did	We did		0	2		
<b>Lower Landing</b>		Framed Art	We did	We did		0	2		
<b>Foyer</b>		Hutch	Both	We did		1	2		
		Bench	We did	We did		0	2		
<b>Master Bath</b>		Wall Covering	Both	Yvonne		2	1		
		Towels	We did	We did		0	2		
		Bathroom Fixtures	We did	We did		0	2		
		Flooring	We did	We did		0	2		
		Cabinets	We did	We did		0	2		
<b>Second Level Landing</b>		Hall Tree	We did	We did		0	2		
<b>Office Bath</b>		Mirror	We did	We did		0	2		
		Wall lights	We did	We did		0	2		
		Bathroom fixtures	We did	We did		0	2		
<b>Susan's Office</b>									

Room	Existing Pieces	Items needed	Who Found	Who Arranged Purchase	Did We Assist	Yvonne Points	Our Points	Complete	Comments Problems
	Rocking Chair		We did	We did		0	2		
	Lawyer's Book Case		We did	We did		0	2		
	Stereo		We did	We did		0	2		
		Desk	We did	We did		0	2		
		Desk Chair	Yvonne	Yvonne		2	0		
		Fabric	Both	Yvonne		2	1		
Floors throughout									
		Carpeting	We did	We did		0	2		
		Wood Flooring	We did	We did		0	2		

Totals	Percentages		
Total of Items We already had		19	38
Total of New Items			58
	Percentages		

Yvonne Participation	26	Items	
Total Items	77		
Percentage of Total Items	34%		
Total of all Items	40	134	Totals 174
Percentage	23%	77%	
New Items	40	96	136
Percentage	29%	71%	



Kenneth Allen (6162)  
Attorney for Defendant/Appellant  
10 West Broadway, Suite 500  
Salt Lake City, UT 84101  
Telephone: (801) 322-2458

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IN THE UTAH COURT OF APPEALS

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YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS,	)	
	)	AFFIDAVIT OF
Plaintiff/Appellee,	)	SUSAN ST. JAMES
	)	
vs.	)	
	)	
DONALD E. ARMSTRONG,	)	
	)	CIVIL NO. 930236-CA
Defendant/Appellant.	)	

---

STATE OF UTAH            )  
                              : ss.  
County of Salt Lake )

SUSAN ST. JAMES ("Affiant"), being first duly sworn upon her oath, deposes and states as follows:

1. Affiant was called as a witness for appellant at the February 10, 1993, trial in the above referenced case.

2. That a major portion of my testimony by way of direct examination by appellant which began on page thirty (30) of the trial transcript was omitted. That the entire swearing in, several questions and answers were not recorded.

3. On direct examination by appellant, I was asked whether I handled paying the appellee for the services she rendered. I

answered that I did handle making the payments to appellee for her services under the agreement.

4. On direct examination by appellant, I was asked whether I paid appellee on time. I answered that we made an extra effort to pay the appellee on time, and in fact paid her in advance at times. The appellee would call me up and ask for a check with no supporting documentation or billing statements. I had to insist that appellee send some form of documentation supporting her expenses.

5. On direct examination by appellant, I was asked whether I did any purchasing of furniture and/or fixtures for the house. I answered that I did personally do some purchasing of furniture and fixtures for the house.

6. On direct examination by appellant, I was asked whether the interior design of our house was finished in March of 1992. I answered that the interior of the house was not finished in March of 1992.

7. On direct examination by appellant, I was asked whether there was any instance where I needed appellee's services after March of 1992. I answered there was, and I explained I needed additional fabric and had to go directly to the vendor and then get another designer to place the order. I explained that the

appellee had not completed the work she was obligated to complete under the agreement and that there were stills things that needed to be completed.

8. On direct examination by appellant, I was asked about the working relationship between appellee and I. I answered that our working relationship had deteriorated over time into an adversarial working relationship.

9. On direct examination by appellant, I was asked how the working relationship with appellee affected my marital relationship. I answered that the stress had caused continual conflict between myself and my husband, which eventually developed into a factor that led to the termination of appellee's services.

10. During the direct examination by appellant, the trial court judge repeatedly interrupted appellant's line of questions and my responses. The trial court judge stated that he was only focusing on the agreement and all other information was irrelevant.

11. On direct examination by appellant, I was asked about what services were provided by the appellee. I answered by referring to a spreadsheet document that I prepared, which summarized and evidenced invoicing, billing dates, check numbers,

dates of payments, room by room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding this case.

12. During the direct examination by appellant referenced in statement 11, the appellant attempted to introduce some documentation, in the form of a spreadsheet, that I had prepared which summarized invoicing, billing dates, check numbers, dates of payments, room by room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding this case.

13. During the direct examination by appellant referenced in statement 12, appellee's attorney objected to the admission of the spreadsheet that summarized invoicing, billing dates, check numbers, dates of payments, room by room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding this case. Appellant responded to appellee's attorney's objection by stating that the documentation to be entered was merely a summary of the information that appellee had already prepared and admitted into evidence (i.e. invoices, payments).

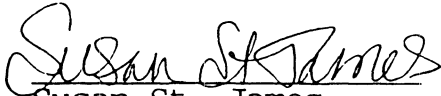
14. The trial court judge sustained appellee's attorneys objection and denied the admission of the summary documentation.

15. On direct examination by appellant, I was asked whether it was hard to reach the appellee due to her travel schedule. I answered that it was hard to reach the appellee.

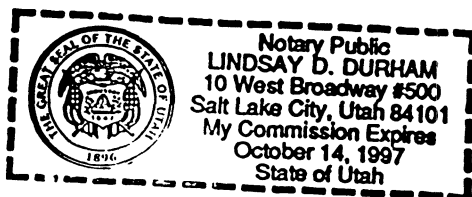
16. On direct examination by appellant, I was asked if I ever contacted the vendors directly to expedite matters. I answered that I did in fact contact vendors directly to expedite matters when appellee was not available.

17. On direct examination by appellant, I was asked whether contacting vendors directly ever created problems. I answered that contacting vendors directly did create problems. I explained that in one instance I did contact a Park City vendor directly because we were told by the appellee that it was appropriate. However, when appellee found out that we had contacted a vendor directly, the appellee told me that it was inappropriate and that we would have to wait and go through her.

DATED this 3rd day of March, 1994.

  
Susan St. James

The foregoing instrument was acknowledged before me by SUSAN ST. JAMES on this 3rd day of March, 1994.



  
Notary Public

**EXHIBIT "B"**

COPY

BRENT A. GOLD, 1213  
Attorney for Plaintiff/Appellee  
333 Main Street, Second Floor  
P.O. Box 1994  
Park City, Utah 84060  
Telephone: (801) 649-8406

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IN THE THIRD CIRCUIT COURT IN AND FOR SUMMIT COUNTY,  
PARK CITY DEPARTMENT, STATE OF UTAH

---

YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS,	)	APPELLEE'S OBJECTION
	)	TO APPELLANT'S STATEMENT OF
Plaintiff,	)	PROCEEDINGS AND EVIDENCE
	)	OMITTED FROM THE RECORD
vs.	)	
	)	Civil No. 92300086CV
DONALD E. ARMSTRONG,	)	(Utah Court of Appeals
	)	Case No. 930236-CA)
Defendant/Appellant.	)	

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Appellee, by and through her attorney, Brent A. Gold, herewith submits her Objection to Appellant's Statement of Proceedings and Evidence Omitted from the Record, submitted on March 3, 1994. Appellee re-states then objects to the matters asserted by appellant as follows:

Statement No. 1. Ms. Susan St. James was called as a witness for appellant at the February 10, 1993, trial in the above referenced case.

**Response:** No Objection to Statement No. 1.

Statement No. 2. A major portion of Ms. Susan St. James' (sic) testimony, by way of direct examination by appellant, which began on page 30 of the trial transcript was omitted. The entire swearing in, several questions and answers were not recorded.

**Response:** Objection to Statement No. 2. The portions omitted from the trial transcript do not constitute a "major portion" of the witness' testimony. The swearing in and a few preliminary questions were asked regarding the witness' personal opinion of the designer's performance. The portion of the witness' testimony that was omitted from the record is not relevant or important in the consideration of the case.

**Statement No. 3.** On direct examination by appellant, questions were asked about the relationship Ms. Susan St. James had with the appellee and the problems that arose.

**Response:** Objection to Statement No. 3. The "relationship" between appellee and appellant's wife is not relevant. Any such statements were also made during portions of the direct examination and cross-examination that have not been omitted from the record. The trial court took judicial notice that the relationship between the parties was "not a happy one". There is no information that was excluded from consideration by the trial court or the Court of Appeals as a result of the non-operation of the trial court recorder.

**Statement No. 4.** During Ms. Susan St. James' (sic) direct examination by appellant, the appellant attempted to introduce some documentation that Ms. Susan St. James (sic) had prepared, which evidenced invoicing, billing dates, check numbers, dates of payments, room-by-room breakdowns, who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings regarding the case.



**Response:** Objection to Statement No. 4. Appellant never proffered or attempted to introduce the documents described above. The purported evidence is not relevant. Any omissions with regard to the issues raised by the purported evidence were raised elsewhere during the trial and were not excluded from consideration by the trial court or the Court of Appeals.

**Statement No. 5.** The appellee's attorney objected to the admissibility of such documentation and the trial court judge sustained appellee's objection and appellant was not allowed to admit such documentation into evidence.

**Response:** Objection to Statement No. 5. Appellee's attorney did not object to the introduction of the documentation described. The trial court judge did not sustain any such objection nor did the trial court judge refuse to admit such documentation into evidence.

Attached hereto is the Affidavit of Hope Mills who attended the trial on February 10, 1993, and who heard the full and complete testimony of Susan St. James. The Affidavit is submitted in opposition to and as objection to the Affidavit of Susan St. James which is attached to the Statement of Proceedings and Evidence Omitted From Record submitted by the defendant. The affidavit of Susan St. James is false, wholly misleading, self-serving, and does not accurately reflect what transpired in the trial proceeding. The Trial Court did not reject evidence or exhibits submitted by Ms. St. James. Any testimony by Ms. St. James that was omitted from the record was short, inconclusive and simply not in accord

with the matters which are set forth in Ms. St. James Affidavit. The trial transcript from page 30 forward contains a very clear indication of what transpired during the alleged testimony of Ms. St. James. The vast majority of that time was consumed by Mr. Armstrong, acting as the direct examiner and his own attorney, arguing his case before the court and attempting to testify in lieu of allowing Ms. St. James to testify. The sum total of Ms. St. James testimony consisted of statements to the effect that the relationship between plaintiff and defendant was unpleasant but that the services provided by the plaintiff were of high quality and were not rejected by the defendant. Mr. Armstrong then insisted on arguing his case. An examination of pages 30 through 41 of the trial transcript of February 10, 1993 reflects consistently the status of the alleged testimony of Ms. St. James. This Court never rejected testimony nor exhibits purportedly introduced by the defendant.

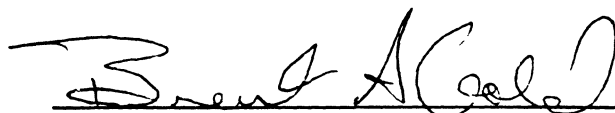
The defendant in this proceeding has not attached the documents and exhibits which he alleges were submitted at the time of the trial by Ms. St. James. Those purported exhibits were improperly included in appellant's brief filed in the Utah Court of Appeals. A summary examination of those exhibits will in any event disclose that they are objectionable as a matter of law and are upon their face in violation of the Utah Rules of Evidence. In the event that the purported exhibits had been introduced at trial, which introduction the plaintiff adamantly denies, then most certainly those exhibits would have been and should have been

rejected by the Trial Court. It can only be speculated that the defendant's present attorney has failed to include the purported exhibits in this proceeding because he must know that those very exhibits are objectionable and improper.

The plaintiff requests hearing in this matter in the event that the Trial Court has any questions or further inquiry requiring the Rule 11(g) (U.R.A.P.) proceedings.

Attached hereto is a proposed Order as to the Statement of Evidence or Proceedings When Transcript is Unavailable. As required by Rule 11(g) the Utah Rules of Appellate Procedure.

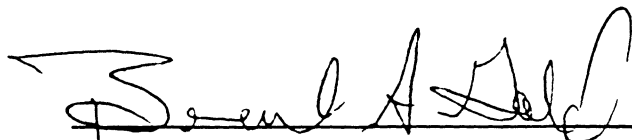
DATED this 16 day of March, 1994.

  
Brent A. Gold, Attorney  
for Plaintiff/Appellee

**MAILING CERTIFICATE**

I herewith certify that on this 16<sup>th</sup> day of March, 1994 a true and correct copy of the foregoing Appellee's Objection was mailed by first class U.S. mail postage prepaid to Defendant/Appellant's attorney at the address as follows:

Kenneth Allen  
10 West Broadway  
Suite 500  
Salt Lake City, Utah 84101



BRENT A. GOLD  
Attorney for Plaintiff/Appellee  
333 Main Street, Second Floor  
P.O. Box 1994  
Park City, Utah 84060  
Telephone: (801) 649-8406

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IN THE THIRD CIRCUIT COURT IN AND FOR SUMMIT COUNTY,  
PARK CITY DEPARTMENT, STATE OF UTAH

---

YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS	)	
	)	
Plaintiff/Appellee,	)	AFFIDAVIT OF HOPE MILLS
	)	
vs.	)	
	)	
DONALD E. ARMSTRONG	)	Civil No. 92300086CV
	)	(Utah Court of Appeals
	)	Case No. 930236-CA)
Defendant/Appellant.	)	

---

HOPE MILLS (hereinafter referred to as Affiant), being first duly sworn upon her oath deposes and states as follows:

1. Affiant is fully competent and qualified to testify in this matter. All facts and statements as set forth herein are made upon the personal information and knowledge of Affiant, and if called to testify such testimony would be in accord with the information set forth herein.

2. On February 10, 1993, this Affiant attended the trial in the above entitled matter. Affiant was present during the entire trial proceedings and personally heard the testimony of all witnesses called in the matter, specifically including the testimony of Susan St. James.

3. Affiant attended the trial with the express purpose of

testifying with respect to Affiant's personal knowledge as to the work performed by the plaintiff; that all work required of plaintiff was complete; that the work was of good quality; and that the defendant did not reject the plaintiff's work or in any way indicate the work was incomplete. Such testimony was based upon Affiant's personal information, knowledge and participation in the project.

4. The testimony of the witness Susan St. James was very short in duration and consisted entirely of matters that were testified to more extensively both by the plaintiff and by the defendant.

5. Susan St. James was specifically asked if the work performed by the plaintiff was of good quality and if any of the work had been rejected. Susan St. James specifically said that the work was of good quality and none of the work was rejected.

6. Susan St. James was asked if there were difficulties between the plaintiff and the defendant, to which she responded that: "yes, they had difficulties and that the relationship was not happy". The Court later specifically commented that the Trial Court was taking notice that the relationship between the parties was "not a happy one".

7. I have no recollection of the Court rejecting any testimony, evidence or exhibits that were proffered by Susan St. James.

8. Susan St. James claims in her affidavit dated March 3, 1994 that the Court refused to accept evidence and exhibits that

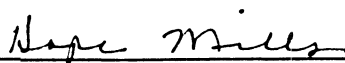
were presented by the witness. Those statements are false and entirely misleading, as the Trial Court allowed the witness of board range in testifying and never rejected any evidence submitted by the witness.

9. A vast majority of the time that Susan St. James was on the witness stand was consumed by the defendant, who was acting as his own attorney, attempting to testify himself, and to argue his case. Very few questions were asked directly of Susan St. James, as Mr. Armstrong repeatedly attempted to testify and argue his case.

10. I have had opportunity to review the Affidavit of Susan St. James dated March 3, 1994 filed in this matter, and based upon my review of that Affidavit, I can only conclude that paragraphs 3 through 17 of the Affidavit of Susan St. James contains false statements, misstatements, self-servings statements and statements with respect to testimony allegedly presented in Court that was never in fact made in Court.

11. Any matters testified to by Susan St. James had little if anything to do with the issue as to whether Yvonne Gillham completed the called for work in a prompt and efficient fashion with all work conforming to the highest standards of the industry.

FURTHER this Affiant sayeth not.

  
\_\_\_\_\_  
Hope Mills

The foregoing instrument was acknowledged to before me by HOPE

BRENT A. GOLD  
Attorney for Plaintiff/Appellee  
333 Main Street, Second Floor  
P.O. Box 1994  
Park City, Utah 84060  
Telephone: (801) 649-8406

---

IN THE THIRD CIRCUIT COURT IN AND FOR SUMMIT COUNTY

PARK CITY DEPARTMENT, STATE OF UTAH

---

YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS	)	
	)	
Plaintiff/Appellee,	)	STATEMENT OF EVIDENCE
	)	WHERE TRANSCRIPT IS UNAVAILABLE
vs.	)	
	)	
DONALD E. ARMSTRONG,	)	Civil No. 92300086CV
	)	(Utah Court of Appeals
	)	Case No. 930236-CA)
Defendant/Appellant.	)	

---

The Trial Court, having reviewed Defendant/Appellant's Statement of Proceedings and Evidence Omitted From Record, and Appellee's Objection to Appellant's Statement of Proceedings and Evidence Omitted From the Record, and having reviewed the file and transcripts in this matter, now herewith makes its Statement of Evidence where Transcript is not available, pursuant to the requirements of Rule 11(g) of the Utah Rules of Appellate Procedure, as follows:

1. Susan St. James was called as a witness for defendant/appellant at the February 10, 1993 trial in the above referenced matter.

2. A portion of Susan St. James' testimony upon direct examination of the appellant, which began on page thirty (30) of the trial transcript was inadvertently omitted.

3. The witness Susan St. James was sworn in and was questioned by Donald E. Armstrong, the defendant, who was acting as his own attorney.

4. The testimony of Susan St. James that is omitted from the record was not significant. Any such omitted statements were also made during portions of the direct examination and cross examination that have not been omitted from the record.

5. The vast majority of the purported testimony of Susan St. James was consumed by argument and attempted testimony by Donald E. Armstrong acting as his own attorney. Pages thirty through forty-one (30 - 41) of the Trial Transcript of February 10, 1993, are a clear indication of the nature of the direct examination conducted by the defendant.

6. The Trial Court allowed wide discretion in permitting the defendant to testify and argue, again as indicated in the Trial Transcript.

7. The Trial Court has no recollection of any evidence or exhibits submitted by the witness Susan St. James that were rejected by the Court and not allowed to be admitted.

8. The Trial Court has no recollection of any testimony, matters or evidence that was rejected in the trial of the matter and gave full consideration to all matters submitted by the defendant/appellee.

DATED this \_\_\_\_ day of \_\_\_\_\_, 1994.

---

Roger Livingston  
Circuit Court Judge



EXHIBIT "C"

BRENT A. GOLD  
Attorney for Plaintiff/Appellee  
333 Main Street, Second Floor  
P.O. Box 1994  
Park City, Utah 84060  
Telephone: (801) 649-8406

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IN THE THIRD CIRCUIT COURT IN AND FOR SUMMIT COUNTY  
PARK CITY DEPARTMENT, STATE OF UTAH

---

YVONNE GILLHAM, dba	)	
CONCEPTS WEST INTERIORS	)	
	)	
Plaintiff/Appellee,	)	STATEMENT OF EVIDENCE
	)	WHERE TRANSCRIPT IS UNAVAILABLE
vs.	)	
	)	
DONALD E. ARMSTRONG,	)	Civil No. 92300086CV
	)	(Utah Court of Appeals
	)	Case No. 930236-CA)
Defendant/Appellant.	)	

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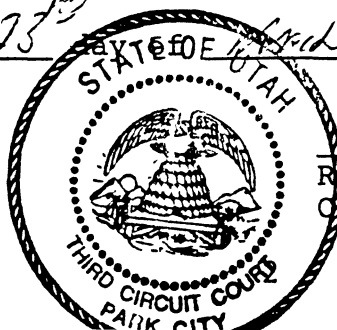
5. The vast majority of the purported testimony of Susan St. James was consumed by argument and attempted testimony by Donald E. Armstrong acting as his own attorney. Pages thirty through forty-one (30 - 41) of the Trial Transcript of February 10, 1993, are a clear indication of the nature of the direct examination conducted by the defendant.

6. The Trial Court allowed wide discretion in permitting the defendant to testify and argue, again as indicated in the Trial Transcript.

7. The Trial Court has no recollection of any evidence or exhibits submitted by the witness Susan St. James that were rejected by the Court and not allowed to be admitted.

8. The Trial Court has no recollection of any testimony, matters or evidence that was rejected in the trial of the matter and gave full consideration to all matters submitted by the defendant/appellee.

DATED this 23<sup>rd</sup> March, 1994.



Roger Livingston  
Circuit Court Judge

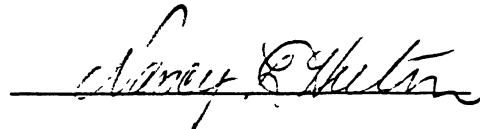
# Third Circuit Court

## MAILING CERTIFICATE

I HEREWITH CERTIFY THAT ON THIS 31ST DAY OF MARCH, 1994  
A TRUE AND CORRECT COPY OF THE STATEMENT OF EVIDENCE WHERE  
TRANSCRIPT IS UNAVAILABLE WAS MAILED BY FIRST CLASS U.S.  
MAIL POSTAGE PREPAID TO PLAINTIFF/APPELLEE AND DEFENDANT/  
APPELLANT'S ATTORNEYS AT THE ADDRESSES AS FOLLOWS:

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PARK CITY, UTAH 84060

KENNETH ALLEN  
10 WEST BROADWAY  
SUITE 500  
SALT LAKE CITY, UTAH 84101

A handwritten signature in cursive script, appearing to read "Gregory R. Hunter", is written over a horizontal line.

NH