

1993

Yvonne Gillham dba Concepts West Interiors v. Donald E. Armstrong : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Brief of Appellant, *Gillham v. Armstrong*, No. 930236 (Utah Court of Appeals, 1993).
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IN THE UTAH COURT OF APPEALS

YVONNE GILLHAM, dba
CONCEPTS WEST INTERIORS,

Plaintiff/Appellee,

DONALD E. ARMSTRONG,

Defendant/Appellant.

)
) APPELLANT'S BRIEF
)
) Case No. 930236-CA
)
) District Court No. 923000086
)
) Category 15
)
)
)

REPEAL 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

JAN 05 1994

Mary T. Noonan
Clerk of the Court

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CONCEPTS WEST INTERIORS,)	APPELLANT'S BRIEF
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vs.)	District Court No. 923000086
)	
DONALD E. ARMSTRONG,)	Category 15
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III.

STATEMENT OF JURISDICTION

The Utah Court of Appeals has original jurisdiction of this matter pursuant to the provisions of § 78-2a-3(2)(d), Utah Code Ann. (1953, as amended) and Rules 3(a) and 4 of Utah Rules of Appellate Procedure.

IV

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the trial court's failure to grant appellant/defendant's Motion for Continuance was inappropriate? The standard of review for determining whether to grant a continuance is the "abuse of discretion" standard by acting unreasonable. Batty v. Mitchell, 575 P.2d 1040, 1043 (Utah 1978).

II. Whether trial court's statements concerning possible repercussions resulting from appellant/defendant's decision to depose witnesses was improper and precluded appellant/defendant from deposing witnesses? Rulings of questions of law by the trial court will be reviewed by the appellate court for correctness and accord them no particular deference. Mountain Fuel Supply Co. v. Salt Lake City Corp., 752 P.2d 884 (Utah 1988).

III. Whether the trial court's decision not to admit appellant's documentary evidence of work performed by both parties to the contract was improper? The trial court's determination as to admissibility will not be upset absent an

abuse of discretion. Marshall v. Van Geruen, 790 P.2d 62 (Utah Ct.App. 1990).

IV. Whether the trial court's theory and grounds for determining whether appellant terminated the contract between the parties was proper? The trial court's interpretation of a contract is not entitled to any particular weight on appeal, where the court interprets contract as matter of law without regard for extrinsic evidence. Baker v. Western Sur. Co., 757 P.2d 878 (Utah Ct.App. 1988).

V. Whether the findings of fact drafted by appellee accurately reflected the trial court's findings? The trial court's findings of fact will not be disturbed on appeal unless they "are against the clear weight of the evidence", or if the appellate court otherwise reaches a definite or firm conviction that a mistake has been made. State v. Walker, 743 P.2d 191, 193 (Utah 1987).

V.

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

The following rules are applicable to the issues on appeal.

Rule 401, Utah Rules of Evidence:

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence.

Rule 402, Utah Rules of Evidence:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the

state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Rule 804(b) (5), Utah Rules of Evidence:

A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness [will not be excluded] if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

. . . .

Rule 40(b), Utah Rules of Civil Procedure:

Upon motion of a party, the court may in its discretion , and upon such terms as may be just, including the payment of costs occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

. . . .

Rule 52(a), Utah Rules of Civil Procedure:

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially (sic) and state separately its conclusions of law thereon ...

Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous ...

VI.

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the judgment granted by the Third

Circuit Court, Summit County, the Honorable Roger A. Livingston presiding. Plaintiff sued defendant for breach of service contract. Parties entered into an agreement, partly written and partly oral, for plaintiff to perform interior design work on defendant's home. Plaintiff's work was unsatisfactory and defendant terminated the contract before the work had been substantially completed. Appellant contends that he was not given sufficient time to prepare his defense and was not given a fair trial. Appellant maintains that the following acts by the trial court prevented a fair trial:

a. Defendant's Motion for Continuance was granted for either one week after the trial date (when defendant was to be out of town), or granted for the same day the trial date was previously set. The trial was held on the date of the original trial date set.

b. Defendant was told by the trial judge that depositions might result in an attorneys' fees judgment against the defendant regardless of whether there was in fact an attorneys' fee provision.

c. The trial court did not allow admission of relevant evidence relating to the amount of work addressed in the contract by either party.

d. The trial court found that plaintiff substantially completed the interior design work and therefore the total design fee of \$8,000 was due to plaintiff, minus the amount that defendant had already paid towards satisfaction of this amount.

e. The trial court found that the type of contract entered into by the parties was not terminated by defendant; defendants' attempt to terminate the contract was not sufficient to warrant such termination.

B. Course of Proceedings and Disposition at Trial Court

On February 10, 1993, this matter came before the Third Circuit Court, Summit County, the Honorable Roger A. Livingston presiding, for trial. The plaintiff was present and represented by her counsel, Brent A. Gold. The defendant was present and represented himself as a Pro Se defendant.

The trial court found that the plaintiff substantially completed the interior design work and thereby the total design fee of \$8,000.00 was due to plaintiff, minus the amount that the defendant had already paid plaintiff towards satisfaction of this amount. A judgment was entered on March 17, 1993, against defendant in the amount of \$2,000.00 for design fees owed to the plaintiff. The defendant's counterclaims were dismissed upon the merits. Notice of Appeal was filed on April 12, 1993.

VII.

SUMMARY OF ARGUMENT

I. THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR CONTINUANCE WAS UNREASONABLE.

It is well established that the trial court judge has the discretion to grant or deny motions for continuance and will not be reversed by the appellate court unless it is clear that the

court has abused its discretion by acting unreasonable. Hunt v. Hurst, 785 P.2d 414 (Utah 1990).

In the case at bar, the appellant was not given a reasonable amount of notice regarding the trial date. Consequently, the appellant filed a motion for continuance which was granted, but was, in effect, a denial when the court offered a one week continuance on a date that appellant could not attend trial and the same date of February 10, 1993, that was previously the trial date set. Such conduct by the trial court judge was an abuse of discretion by not providing appellant reasonable alternative dates to continue the trial.

II. THE TRIAL COURT'S STATEMENTS REGARDING SANCTIONS WERE INAPPROPRIATE AND PRECLUDED DEPOSING APPELLEE.

The trial court judge's lengthy, condescending statements and personal views as to the validity of taking the deposition of the appellee were inappropriate and, in effect, coerced appellant into not deposing appellee by threatening attorneys fees and costs against appellant. The trial court judge created an atmosphere of intimidation and inhibition in the courtroom and in effect denied appellant his fundamental due process right of having adequate time to prepare his defense through adequate discovery.

III. REFUSAL TO ADMIT RELEVANT DOCUMENTARY EVIDENCE REGARDING WORK PERFORMED UNDER THE AGREEMENT WAS ABUSE OF TRIAL COURT'S DISCRETION.

The trial court abused its discretion by not admitting

relevant extrinsic evidence offered by appellant at trial. Appellant offered extrinsic evidence that went to the very issue of substantial performance regarding the contract between the parties. Appellant offered into evidence documents that were prepared by Susan St. James which evidenced invoicing, billing dates, check numbers, dates of payments, room-by-room breakdowns of who actually located furnishings, and who actually arranged for the purchase of the furnishings. Unfortunately, due to technical malfunction of the recording equipment, Susan St. James' testimony, appellant's motion to enter such evidence and his objections, appellee's attorney's objections to admissibility, and the courts denial of admission were not recorded and did not become part of the transcript.

IV. and V. THE TRIAL COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW ARE NOT SUPPORTED BY THE EVIDENCE.

Rule 52(a), Utah Rules of Civil Procedure provides that in all actions tried on the merits without a jury, the court shall find the facts specifically and state separately its conclusions of law. In order to determine whether the evidence adduced at trial supports the trial court's findings, the findings must provide sufficient detail and include facts to clearly show the evidence upon which they were grounded. Woodward v. Fazzio, 823 P.2d 474 (Utah App. 1991). The failure to enter adequate findings of fact to support material issues may be reversible error. Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989).

In the case at bar, the trial court's findings that the appellee substantially performed her obligations under the contract are not supported with sufficient specificity and adequate evidentiary support. In addition, the trial court interpreted the contract between the parties based solely on appellee's extrinsic evidence and did not admit relevant extrinsic evidence that went to the issue of substantial performance offered by the appellant. Therefore, the trial court's findings were not adequately supported by the evidence and do not accurately reflect the trial court's findings.

VIII.

ARGUMENT

I. THE TRIAL COURT'S DENIAL OF APPELLANT'S MOTION FOR CONTINUANCE WAS UNREASONABLE.

The issue is whether the trial court's denial of appellant's Motion for a Continuance was unreasonable such that it was an abuse of discretion. Batty v. Mitchell, 575 P.2d 1040, 1043 (Utah 1978).

Rule 40(b) of the Utah Rules of Civil Procedure provides the trial courts with substantial discretion in deciding whether to grant continuances "upon good cause shown." Utah R. Civ. P. 40(b) (1953 as amended 1987); Hunt v. Hurst, 785 P.2d 414 (Utah 1990); Christenson v. Jewkes, 761 P.2d 1375, 1377 (Utah 1988); Hill v. Dickerson, 839 P.2d 309, 311 (Utah App. 1992); Hardy v. Hardy, 776 P.2d 917 (Utah App. 1989). It is also well established that the trial judge's decision will not be reversed

by the appellate court unless it is clear that the court has abused that discretion by acting unreasonably. Id.

In determining whether to grant continuances, the court should examine the reasonableness of a request in light of the tradition that a party should be afforded every reasonable opportunity to be in attendance at his trial. Bairas v. Johnson, 13 Utah 2d 269, 373 P.2d 375, 378 (1962); see Gonzales v. Harris, 542 P.2d 842, 843-44 (Colo. 1975). The trial court should not prejudice the substantial rights of a party by forcing him to go to trial without being able to fairly present his case solely because of the court's legitimate concern for the prevention of delay in the trial of cases. Gonzales v. Harris, 542 P.2d at 844; Yates v. Superior Court In and For City of Pima, 120 Ariz. 436, 586 P.2d 997, 998 (Ariz. App. 1978). "One of the most important ingredients of due process is the time to prepare a defense." Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983).

Appellant contends that he was not given a reasonable amount of notice regarding the trial date. Notice of the trial hearing was not received by appellant until after the trial date was already set, due to the fact that he was out of the state conducting business at that time. As soon as he was notified of the trial date he filed his Motion for Request of Discovery and Motion for Continuance.

It is appellant's contention that the trial court's offer of a one week continuance beyond the original trial date was, in effect, a denial of the Motion for a Continuance and was

unreasonable under the particular circumstances of this case. Appellant, because of previously scheduled business obligations, would be out of the state of Utah on the only offered date of February 17, 1993. Thus, appellant was not given an actual choice or afforded another date, but was limited to the original trial date of February 10, 1993. The trial court's failure to grant a continuance resulted in denying appellant sufficient time to perform discovery and adequately prepare his defense.

Due to the fact that the trial court did not establish any cut-off date for discovery, appellant, as a pro se defendant¹, did not have a time table to determine when discovery was to be completed in this case. For that reason, during the five (5) months that expired between the time appellant answered appellee's complaint until the filing of his Motion for Continuance, he did not commence discovery in the expectation that the court would give him, a pro se defendant, some notice as to the discovery cut-off date. In addition, appellant was hoping in good faith to settle the matter before it ever went to trial.

Under these particular circumstances, the trial court's denial of appellant's Motion for a Continuance was unreasonable and inconsistent with substantial justice and, therefore, was an

¹. Courts, as a general rule, have held that a party who represents himself will be held to the same standard of knowledge and practice as any qualified member of the bar. Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983). However, The Utah Supreme Court has cautioned that "because of his lack of technical knowledge of law and procedure [a layman acting as his own attorney] should be accorded every consideration that may reasonably be indulged." Id. (quoting Heathman v. Hatch, 13 Utah 2d 266, 268, 372 P.2d 990, 991 (1962)).

abuse of its discretion.

II. THE TRIAL COURT'S STATEMENTS REGARDING SANCTIONS WERE INAPPROPRIATE AND PRECLUDED DEPOSING APPELLEE.

The issue is whether the trial court's statements concerning possible repercussions resulting from appellant's decision to depose witnesses was improper and precluded appellant from deposing witnesses.

Appellant contends that the trial judge's lengthy and condescending statements and personal views as to the validity of taking the deposition of the appellee in a \$3,000 collections case were inappropriate and ultimately denied him the fundamental legal right to depose the appellee/plaintiff in this case, and thereby, denied him access to discoverable information to help him adequately prepare for trial.

"One of the fundamental principles of due process is that all parties to a case are entitled to an unbiased, impartial judge. 'A fair trial in a fair tribunal is a basic requirement of due process.'" Padilla v. Utah Bd. of Pardons, 839 P.2d 874, 877 (Utah App. 1992) (quoting Anderson v. Industrial Com'n of Utah, 696 P.2d 1219, 1221 (Utah 1985)); see Bunnell v. Industrial Com'n of Utah, 740 P.2d 1331, 1333 (Utah 1987). "Fairness requires not only an absence of actual bias, but endeavors to prevent even the possibility of unfairness." Id. "The right to an impartial judge embraces a defendant's right to present and conduct his own defense unhampered by the judge's idea of what that defense should be or how it should proceed." State v.

Rhodes, 224 S.E.2d 631, 638 (N.C. 1976).

The Court's review of the record in Bunnell, showed that the administrative law judge ("ALJ") conducted the hearing in an unacceptable manner that was sufficiently unfair as to constitute a denial of plaintiff's constitutional right to a fair hearing. The ALJ created an atmosphere where witnesses were inhibited and intimidated by the judges conduct, and felt defensive; the ALJ interfered with the plaintiff's counsel's ability to make a record or argue the evidence; and the judge gave the appearance of having decided the case without even considering the medical records. Bunnell, 740 P.2d at 1333.

In the case at bar, the judge's statements and demeanor, although an attempt to merely educate the pro se defendant, had the effect of discouraging and persuading appellant from actually deposing the appellee and effectively denied appellant the legal right to depose the appellee, thereby, denying him access to discoverable information that would have helped him adequately prepare for trial. See Transcripts of Hearing, January 27, 1993. The trial judge's comments went far beyond the realm of informing or educating appellant. They in fact deterred appellant from deposing the appellee for fear of reprisal in the form of attorneys fees and costs against him. See Transcript of Hearing, January 27, 1993, p.18, lines 13-14. Such conduct was unreasonable. Thus, the trial court erred in its attempted explanation of the rules and abused its discretion in that regard. The trial court's conduct denied appellant right of due

process in this case by not affording him sufficient time or means to prepare an adequate defense.

The judge in this case created an atmosphere of intimidation and inhibition. Like the ALJ in Bunnell, the judge would abruptly cut-off appellant's attempt to object or express his disagreement with the trial court's purported explanation of sanctions. See Transcript of Hearing, January 27, 1993, p.13 lines 11-15, pp. 15-16.

Based on the foregoing arguments, appellant asks this Court to find that the trial court's statements regarding sanctions for deposing appellee were inappropriate and ultimately denied appellant the fundamental right of due process of having adequate time to prepare his defense.

III. REFUSAL TO ADMIT RELEVANT DOCUMENTARY EVIDENCE REGARDING WORK PERFORMED UNDER THE AGREEMENT WAS ABUSE OF TRIAL COURT'S DISCRETION.

The issue involved 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. Marshall v. Van Geruen, 790 P.2d 62 (Utah Ct.App. 1990).

Appellant contends that the trial court did in fact abuse its discretion by not admitting relevant documentary evidence that went to the very issue of substantial performance. However, because of technical difficulties, there is no record of the discussion and testimony between the parties and the court regarding the exclusion of appellant's documentary evidence.

"An admissibility decision is the `sum of several rulings, each of which may be reviewed under a separate standard.'" State v. Horton, 848 P.2d 708, 713 (Utah App. 1993) (quoting State v. Thurman, 846 P.2d 1256, 1270 (Utah 1993)). This Appellate Court in Horton, applied two standards of review in determining whether the trial court properly excluded a witness' affidavit: a correction of error standard to the legal content of the trial court's ruling not to admit the affidavit, Id.; see Thurman at 1268-72; and an abuse of discretion standard in reviewing the trial court's ruling, pursuant to Rule 804(b)(5) of the Utah Rules of Evidence. Horton, at 713.

In reviewing the legal content, the Court will examine (1) whether the trial court selected the correct rule of evidence, (2) whether the trial court correctly interpreted that rule, and (3) whether the trial court correctly applied the rule. Id. Applying an abuse of discretion standard in reviewing the trial court's ruling, pursuant to Rule 804(b)(5)², the Court will examine whether the probative value of the evidence in question

² Rule 804(b)(5) of the Utah Rules of Evidence provides: A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness [will not be excluded] if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

outweighs the probative value of other evidence on point. Id. For rulings requiring a balancing of factors an abuse of discretion or reasonability is the appropriate standard of review. Id.; see Thurman at 1270 n. 11; see also State v. Knowles, 709 P.2d 311, 312 (Utah 1985).

During appellant's direct examination of Ms. Susan St. James ("St. James"), appellant offered into evidence documents that were prepared by St. James which evidenced invoicing, billing dates, check numbers, dates of payments, room-by-room breakdowns of who actually located the needed furnishings, and who actually arranged for the purchase of the furnishings involved in this case. Unfortunately, due to technical difficulties with the recording equipment, St. James' testimony, appellant's motion to enter such documentary evidence into the case and his objections, appellee's attorney's objections to admissibility, and the courts denial of admission were not recorded and did not become part of the transcript. See Exhibit J (Index and page 30). Such testimony and documentation were crucial in appellant's attempt to show the court that there was in fact no substantial performance on the part of the appellee. See Exhibit G. A review of the Summary Report indicates that the appellee performed only twenty-three percent (23%) of all the items (includes both old furnishings and purchase of new items) required by the agreement and only twenty-nine percent (29%) of the new items (includes only new items purchased) required by the agreement. See Exhibit G, page 4. Based upon the Summary

Report of performance regarding the agreement by both parties, it is apparent that appellant performed a good portion of the work that was required by the agreement. Consequently, it is appellant's contention that appellee performed only seventy-five percent (75%) of her obligation under the agreement. The Summary Report goes into detail regarding which party performed what functions under the agreement. This Summary Report was, in fact, of probative value to the very issue at hand, that is, substantial performance. Consequently, appellant asks this court to find that the trial court's decision to not admit such relevant documentary evidence was improper and an abuse of discretion.

IV. and V. THE TRIAL COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW ARE NOT SUPPORTED BY THE EVIDENCE.

The issues are whether the trial court's theory and grounds for determining that appellant unjustifiably terminated the contract between the parties was proper and whether the trial court's findings were accurate.

The appropriate standards of review are that (1) the trial court's interpretation of a contract is not entitled to any particular weight on appeal, where the court interprets contract as matter of law without regard for extrinsic evidence. Baker v. Western Sur. Co., 757 P.2d 878 (Utah Ct.App. 1988); and (2) the trial court's findings of fact will not be disturbed on appeal unless they "are against the clear weight of the evidence", or if the appellate court otherwise reaches a definite or firm

conviction that a mistake has been made. State v. Walker, 743 P.2d 191, 193 (Utah 1987).

Appellant contests the trial court's findings that the appellee substantially performed her obligations under the contract and contends that the trial courts findings of fact lack sufficient specificity and adequate evidentiary support.

Utah Rule of Civil Procedure 52(a) provides: that "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon. . . ." Utah R.Civ.P. 52(a) (as amended Jan. 1, 1987). The Utah Supreme and Appellate Courts "consistently stress" the importance of adequate "findings of fact." State v. Vigil, 815 P.2d 1296, 1300 (Utah App. 1991). The failure to enter adequate findings of fact on material issues may be reversible error. Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896, 899 (Utah 1989); see also Acton v. J.B. Deliran, Corp., 737 P.2d 996, 999 (Utah 1987). To succeed in challenging the findings, appellant must prove they are clearly erroneous, i.e., against the clear weight of the evidence. Reid v. Mutual, 776 P.2d at 899-901; Reinbold v. Utah Fun Shares, 850 P.2d 487, 489 (Utah App. 1993); Woodward v. Fazzio, 823 P.2d 474, 477 (Utah App. 1991). "Therefore, if we are to determine whether the evidence adduced at trial supports the trial court's findings, the findings must embody sufficient detail and include enough subsidiary facts to clearly show the evidence upon which they are grounded." Woodward v. Fazzio, 823 P.2d at 477.

Meaningful review of a decision's evidentiary basis is virtually impossible absent adequate findings of fact. Id.; see State v. Lovegren, 798 P.2d 767, 771 (Utah App. 1990).

In order to mount a successful challenge to the correctness of a trial court's findings of fact the evidence supporting the findings must be marshalled in order to demonstrate "that the evidence, including all reasonable inferences drawn therefrom, is insufficient to support the findings." Grayson Roper Ltd. v. Finlinson, 782 P.2d 467, 470 (Utah 1989). The following is the evidence admitted at trial: the appellee was to provide interior decorating services to appellant and St. James; appellee agreed to provide those services over a twelve month period, beginning July 1, 1991 and ending June 30, 1992; appellee agreed to payment of \$2,000 per quarter for a total of \$8,000; appellee agreed to assist in all decisions and in the purchase of furniture and accessories for the home; appellee was out of town frequently as a flight attendant; appellee assisted in the purchase of approximately \$30,000 worth of furnishings for the home; appellee was paid \$6,000 for services rendered; appellant was frustrated by appellees performance and unavailability.

Appellant challenges the court's findings in that it refused to hear or admit testimonial and documentary evidence through his witness, St. James. This evidence would have shown the amount of services that was provided over the eight month period for which the appellee was paid \$6,000. It would have

shown that appellant and St. James had to do the majority of the work for which appellee was paid. The trial court, by its decisions and statements made, appears to have concluded early on that appellee was being paid for having obtained \$30,000 worth of furnishings and nothing more. Each time appellant attempted to explain his reasoning for wanting to present his evidence, to prove the insufficiency of the appellee's services, the trial judge would cut him off stating that the evidence was irrelevant to the type of contract that he believed it to be. Due to the conclusory nature of the trial court's findings of fact, the marshalling of facts in this case will largely be ineffectual. See Woodward v. Fazzio, 823 P.2d at 477. In Woodward, the Appellate Court stated:

There is, in effect, no need for an appellant to marshal the evidence when the findings are so inadequate that they cannot be meaningfully challenged as factual determinations. . . . [W]here the findings are not of that caliber, appellant need not go through a futile marshaling exercise. Rather, appellant can simply argue the legal insufficiency of the court's findings as framed.

Id. Although, the trial court's findings of fact in Woodward, constituted three full pages of text, they nonetheless provided an inadequate account of the actual facts supporting the court's ultimate decision. Id.

In this case at bar, it appears that the trial court interpreted the agreement between the parties as a matter of law without regard to the relevant extrinsic evidence that appellant tried to enter into evidence. "If the trial court interprets a contract as a matter of law without regard for extrinsic

evidence, we afford its interpretation no particular weight." Baker v. Western Sur. Co., 757 P.2d 878, 881 (Utah App. 1988); see Seashores Inc. v. Hancey, 738 P.2d 645, 647 (Utah Ct.App. 1987). In our case, although it was clear that the trial court did look at the appellee's extrinsic evidence, the trial court did not consider the appellant's extrinsic evidence that went to the very heart of substantial performance. (i.e., billing statements, check #'s, work performed).

Although the agreement between appellant and appellee was a verbal agreement, it was memorialized by appellant, to which appellee acquiesced. As such it has been held to be legally binding. The trial judge stated that it was his duty to hear testimony as to what agreement the parties understood they were entering into and to interpret the terms of that agreement. "The primary rule in interpreting a contract is to determine what the parties intended by looking at the entire contract and all its parts in relation to each other, giving an objective and reasonable construction to the contract as a whole." Appellant contends that the trial court did not read the memorialized agreement in its entirety. It would seem that had the judge read the agreement more carefully he would have allowed the admission of evidence that would have contradicted the trial court's conclusion that the appellee substantially performed.

Based on these arguments, appellant asks this Court to find that trial court's findings of fact and conclusions of law are not supported by the evidence and do not accurately reflect

the trial court's findings.

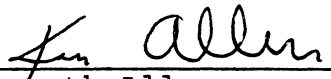
IX.

CONCLUSION

Based upon the foregoing arguments, it is apparent that the appellant did not, in fact, receive a fair trial, thereby denying him a fundamental principle of due process. The trial court erred when it refused to grant appellant a reasonable amount of time to prepare an adequate defense, made improper statements that inhibited the appellant's right to discovery, failed to admit relevant extrinsic evidence that went to the very issue of substantial performance and made findings that were not supported by the evidence. The trial court's conduct regarding these matters did not provide appellant with his fundamental due process right of a fair trial on the merits.

Consequently, the judgment of the trial court should be reversed and/or remanded to the trial court to be tried to an impartial jury in the interest of justice.

DATED this 4th day of January, 1994.




Kenneth Allen
Attorney for Appellant

CERTIFICATE OF MAILING

On this 5th day of January, 1994, I hereby certify that I mailed by first-class, postage-prepaid, two (2) true and correct copies of the attached APPELLANT'S BRIEF to the following:

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



Kenneth Allen

ADDENDUM

Table of Contents

- A. Letter of Agreement
- B. Notice of Appeal
- C. Judgment (March 17, 1993)
- D. Findings of Fact and Conclusions of Law (March 16, 1993)
- E. Motion for Continuance (January 15, 1993)
- F. Affidavit of Susan St. James (Nov. 1, 1993)
- G. Summary Report of Performance
- H. Transcript: Discussion of Findings of Fact and Conclusions of Law
- I. Transcript: Production of Documents & Motion for Continuance Hearing (January 27, 1993)
- J. Portions of Transcript of Trial Evidencing Missing Testimony (Feb. 10, 1993)

A

Don Armstrong
P.O. Box 1059
Park City, Ut. 84060
801-649-6477 Fax: 801-649-8470

August 14, 1991

Yvonne M. Gillham
Concepts West Interiors
P.O. Box 2813
Park City, Utah



Ms. Gillham:

This letter is to confirm my understanding regarding our agreement for your providing interior decorating services to Susan and I regarding our new home at 218 Golden Eagle Dr. Park City, Utah.

The basic term of the agreement is one year beginning July 1, 1991 and ending June 30, 1992. We will pay you a total of \$8,000.00 payable \$2,000.00 each quarter at the end of each quarter with the first payment being due on September 30, 1991. You have agreed to assist in all of our decisions and in the purchase of furniture and accessories for the home at your cost.

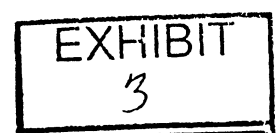
If you have any additions or questions please contact me at your convenience.

Susan and I already appreciate your assistance and look forward to pleasant and fun experience sharing our new home with you.

Respectfully,

A handwritten signature in cursive script, appearing to read "Donald E. Armstrong".

Donald E. Armstrong



B

Donald E. Armstrong
P.O. Box 1059
Park City, Utah, 84060
Telephone: 801-649-6477

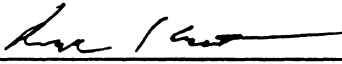
IN THE THIRD CIRCUIT COURT OF THE STATE OF UTAH
SUMMIT COUNTY, PARK CITY DEPARTMENT

YVONNE GILLHAM, d.b.a.	)	NOTICE OF APPEAL
CONCEPTS WEST INTERIORS,)	
)	
Plaintiff,)	
	)	Civil No. 923000086 CV
vs.)	
)	
DONALD E. ARMSTRONG,	)	Judge: Roger A. Livingston
)	
Defendant.)	

TO PLAINTIFF, YVONNE GILLHAM, dba CONCEPTS WEST INTERIORS, AND HER
ATTORNEY OF RECORD, BRENT A. GOLD.

NOTICE IS HEREBY GIVEN that Defendant, Donald E. Armstrong, is
filing an appeal in the above case.

Dated this 12 day of April, 1993



Donald E. Armstrong,
Defendant

3RD CIRCUIT COURT - PARK CITY

04/12/93 TIME: 15:08 CLERK: NLH

CASE: 9230000086CV

PLAINTIFF: GILLHAM, YVONNE

DEFENDANT: ARMSTRONG, DONALD E.

PAYOR: DONALD E. ARMSTRONG

Amt. Received: 160.00

Civil Fees NO: 639 Check : 160.00

Receipt No: 930640008

JUDGE: LIVINGSTON, ROGER A.

SAVE THIS RECEIPT ***** SAVE THIS RECEIPT

PROOF OF SERVICE BY FAX

Short Title of Case: **GILLHAM VS ARMSTRONG**
MUNICIPAL COURT CIVIL NO: 923000086 CV

I, am employed in the Summit County, State of Utah, I am over the age of 18 years and not a party to the within action. My business address is:

218 Golden Eagle Drive
P.O. Box 1059
Park City, Utah 84060

On the date referred to below, I served the following document(s):
Notice Of Appeal

by placing a true copy thereof, in the fax machine, and addressed as follows:

Brent Gold Fax #649-8412
P.O. Box 1994
Park City, Utah 84060

I declare under the penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

Executed on April 13, 1993

Marlena Huggard

c

RECEIVED

MAR 17 1993

THIRD CIRCUIT COURT
PARK CITY DEPARTMENT

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

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SUMMIT COUNTY, PARK CITY DEPARTMENT

YVONNE GILLHAM, dba)	
CONCEPTS WEST INTERIORS,	)	JUDGMENT
)	
Plaintiff,)	
)	
vs.)	
	)	Civil No. 923000086
DONALD E. ARMSTRONG,)	
	)	Judge Roger A. Livingston
Defendant.)	

Trial in the above-entitled matter came on before the Honorable Roger A. Livingston, Circuit Court Judge, on Wednesday, the 10th day of February, 1993, in Park City, Summit County, State of Utah. The plaintiff, Yvonne Gillham, dba Concepts West Interiors, was present and represented by her counsel, Brent A. Gold. The defendant, Donald E. Armstrong, was present and represented himself.

The Court, having heard the sworn testimony of plaintiff and defendant and witnesses called by each party, and having reviewed and examined the evidence and exhibits submitted by the respective parties and having made and entered its Findings of Fact and Conclusions of Law, now herewith makes and enters judgment for and in behalf of the plaintiff.

IT IS HEREWITH ORDERED, ADJUDGED AND DECREED AS FOLLOWS

Yvonne Gillham, dba Concepts West Interiors, plaintiff in the above-entitled matter, is herewith granted judgment as against the defendant Donald E. Armstrong as follows:

1. Judgment in the amount of \$2,000.00 for design fees owed to the plaintiff is herewith granted to the plaintiff as against said defendant.

2. Judgment for sales tax owed by defendant to plaintiff in the amount of \$1,925.00 is not granted to plaintiff as against said defendant, for the reason that said amount was voluntarily paid at the conclusion of the trial. No interest or penalties as may be assessed by the Utah State Tax Commission are awarded to the plaintiff on said sales tax amount. Payment by the defendant of said \$1,925.00 to the plaintiff at the conclusion of trial between the parties shall constitute satisfaction of and be in lieu of said judgment amount. No interest is awarded to plaintiff in connection with said amount.

3. Plaintiff is hereby awarded Judgment as against defendant in the amount of \$76.83 for costs expended by plaintiff.

4. Plaintiff is further awarded Judgment against the defendant for accrued interest from and after July 7, 1992 on all of the amounts set forth in paragraphs 1 and 3 above, as follows:

(a) Pre-judgment interest on all of the above-said amounts at the rate of 10% per annum until Judgment is entered or

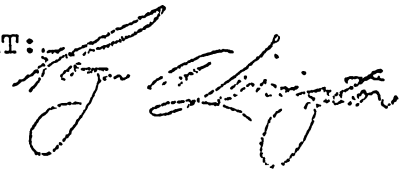
until paid; and

(b) Post-judgment interest at the rate of 12% per annum from and after entry of Judgment until paid in full.

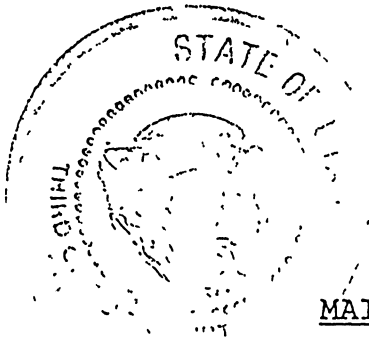
5. The defendant is to take nothing by reason of his counterclaims, and the same are hereby dismissed upon the merits.

DATED this 17th day of March, 1993.

BY THE COURT:



Roger A. Livingston
Circuit Court Judge



MAILING CERTIFICATE

I hereby certify that on this ____ day of March, 1993, a true and correct copy of the foregoing Judgment was mailed by U.S. mail, postage pre-paid, to the following:

Donald E. Armstrong
P. O. Box 1059
Park City, Utah 84060

D

RECEIVED

MAR 16 1993

THIRD CIRCUIT COURT
PARK CITY DEPARTMENT

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

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SUMMIT COUNTY, PARK CITY DEPARTMENT

YVONNE GILLHAM, dba)	
CONCEPTS WEST INTERIORS,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Plaintiff,)	
)	
vs.)	
	)	Civil No. 923000086
DONALD E. ARMSTRONG,)	
	)	Judge Roger A. Livingston
Defendant.)	

Trial in the above-entitled matter came on before the Honorable Roger A. Livingston, Circuit Court Judge, on Wednesday, the 10th day of February, 1993, in Park City, Summit County, State of Utah. The plaintiff, Yvonne Gillham, dba Concepts West Interiors, was present and was represented by her counsel, Brent A. Gold. The defendant, Donald E. Armstrong, was present and represented himself.

The Court, having heard the sworn testimony of plaintiff and defendant and witnesses as called by each party, and having reviewed and examined the evidence and exhibits submitted by the respective parties, and being fully advised in the premises, does now make and adopt the following:

FINDINGS OF FACT

1. The plaintiff is a resident of and is licensed to do business as an interior designer in Park City, Summit County, State of Utah.

2. The defendant owns a home and property in Park City, Summit County, State of Utah.

3. That all services rendered by the plaintiff and all matters and agreements related to this matter were entered into and occurred in Park City, Summit County, State of Utah.

4. The amount in controversy and claimed by the defendant in this matter is less than \$20,000.00.

5. On or about August 14, 1991, an agreement was entered into between plaintiff and defendant whereby plaintiff was to perform interior decorating services for defendant at his home located in Park City, Utah.

6. The agreement between the parties was in writing and was prepared solely and exclusively by the defendant.

7. The agreement of August 14, 1991 between the parties was preceded by approximately 10 months of periodic consultation and negotiation between plaintiff and defendant.

8. By reason of those negotiations and consultations, the defendant was fully advised of plaintiff's job as a flight attendant and the time constraints upon plaintiff, and availability of plaintiff by reason of said job as a flight attendant.

9. The contract between plaintiff and defendant provided that plaintiff would be paid a design fee in the amount of \$8,000.00 for her services, and that said design fee would be paid by way of \$2,000.00 quarterly payments with the first payment being due on September 30, 1991.

10. Further, the contract between the parties provided that the defendant would pay for the purchase of furniture and accessories obtained by the plaintiff at cost.

11. At the commencement of, or prior to the agreement between the parties, the plaintiff had informed the defendant that her work could be completed in approximately eight months.

12. The work to be performed by the plaintiff was substantially completed by the end of March, 1992.

13. Notwithstanding interpersonal disputes and disagreements that arose between plaintiff and defendant, the defendant acknowledged that the work performed by the plaintiff and the furniture and furnishings obtained by the plaintiff were of acceptable types, kinds and quality.

14. On or before June 30, 1992, the defendant had paid plaintiff the amount of \$30,801.32 for the furniture and furnishing packages that had been provided by the plaintiff.

15. The defendant failed and refused to pay to the plaintiff Utah state sales tax upon the furniture package purchase price, which sales tax was in the amount of \$1,925.00.

16. Sales tax in the amount of \$1,925.00 was a cost of the plaintiff pursuant to the agreement between the parties. Plaintiff

demanded payment of sales tax by the defendant, and defendant refused payment of said sales tax amount. At the conclusion of the trial, the defendant fully and completely acknowledged that the sales tax amount was in fact owed to the plaintiff, and in presence of the Court, the defendant made payment to the plaintiff of the full \$1,925.00 sales tax amount.

17. On or before June 30, 1992, defendant had paid to plaintiff \$6,000.00 of the \$8,000.00 design fee that was owed plaintiff pursuant to the contract between the parties.

18. Despite requests and demands from the plaintiff that the balance of the design fee in the amount of \$2,000.00 be paid by the defendant, the defendant failed and refused to pay said remaining balance.

19. The defendant claims that during the latter portion of March, 1992, he attempted to terminate the agreement between plaintiff and defendant by sending a notice of such termination to the plaintiff. Defendant admits that he did not mail the notice of termination and alleges that his secretary mailed the letter to plaintiff. Defendant's secretary did not attend trial and did not testify.

20. Plaintiff alleges that she never received the letter of termination in March or April of 1992, and did not see the letter until a copy was supplied by the defendant in August of 1992.

21. The work to be performed by the plaintiff in any event was completed by late March or early April of 1992. Performance by the plaintiff was timely and in accord with the contract between

the parties.

22. The plaintiff continued to communicate with defendant and defendant's wife during April and May of 1992, and was not^{fully} informed by them of any termination.

23. On or about July 7, 1992, the plaintiff provided defendant final billing for work performed by her, which billing included request for payment of the remaining balance of \$2,000.00 of the design fee and sales tax in the amount of \$1,925.00 owed to the State of Utah.

24. Defendant failed and refused to pay said amounts.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court now makes and enters its Conclusions of Law.

1. The Court in this matter has full and complete jurisdiction, both over the parties and over plaintiff's cause of action.

2. That a good and valid written contract was entered into between the parties on or about August 14, 1991.

3. The letter dated August 14, 1991, which memorialized the agreement between the parties was prepared solely and exclusively by the defendant, and accordingly any ambiguities in the agreement should be and are construed as against the drafter of the document.

4. The agreement between the parties provided that the plaintiff was to be paid a design fee of \$8,000.00, with said amount to be paid by quarterly installments, with the first installment due on September 30, 1991.

5. The agreement between the parties further provided that the defendant is to pay all costs of furniture and accessories obtained by the plaintiff for the defendant.

6. As a matter of law, the sales tax amount of \$1,925.00 assessed as against the purchase price for the furniture and furnishings provided by the plaintiff is a cost to be paid by the defendant under the agreement between the parties.

7. In breach and violation of the agreement between the parties, the defendant failed to pay the plaintiff the final \$2,000.00 of the design fee owed to the plaintiff, and also failed to pay the \$1,925.00 sales tax amount to the plaintiff.

8. Plaintiff's performance under the agreement between the parties was fully and satisfactorily performed pursuant to the agreement between the parties.

9. Whatever attempts that were made by the defendant to terminate the contract in the latter portion of March, 1992, were unilateral in nature, untimely, and occurred after the plaintiff had already substantially performed under her agreement with the defendant. Defendant's attempt to terminate the contract was not based upon facts and circumstances sufficient to warrant any such termination.

10. Plaintiff is entitled to judgment against defendant in the following amounts:

a. \$2,000.00 for balance of design fee owed to plaintiff.

b. \$1,925.00 owed as sales tax owed to the State of

Utah. Payment by the defendant of said \$1,925.00 to the plaintiff at conclusion of trial shall constitute satisfaction of said judgment amount.

c. Plaintiff is to be awarded her costs as may be duly verified in accord with Rule 54(d)(2) of the Utah Rules of Civil Procedure.

d. Pre-judgment interest in the amount of 10% per annum upon the above-said amount, after July 7, 1992 until Judgment is entered or until paid; and post-judgment interest in the amount of 12% per annum upon the above-said amounts from and after entry of Judgment until paid.

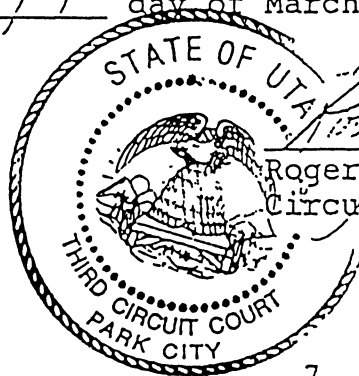
11. The defendant is to take nothing by reason of his counterclaims and the same are to be dismissed upon the merits.

12. No judgment is to be awarded the plaintiff for any interest or penalty that may be assessed by the Utah State Tax Commission.

13. No attorney fees are awarded to either plaintiff or defendant. The Court determines that there was no bad faith sufficient to justify awarding of such fees.

Judgment is to be awarded plaintiff consistent with the above and foregoing.

DATED this 17th day of March, 1993.



Roger A. Livingston,
Circuit Court Judge

MAILING CERTIFICATE

I hereby certify that on this 17th day of March, 1993, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law was mailed by U.S. mail, postage pre-paid, to the following:

Donald E. Armstrong
P. O. Box 1059
Park City, Utah 84060

B. A. C. L.

E

Donald E. Armstrong
P.O. Box 1059
Park City, Utah, 84060
Telephone: 801-649-6477

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

YVONNE GILLHAM, d.b.a.	)	NOTICE OF MOTION AND MOTION FOR
CONCEPTS WEST INTERIORS,	)	REQUEST FOR CONTINUATION OF
	)	TRIAL
Plaintiff,)	
)	
vs.	)	Civil No. 923000086 CV
)	
DONALD E. ARMSTRONG,)	
	)	Judge: Roger A. Livingston
Defendant.)	

TO PLAINTIFF, YVONNE GILLHAM, dba CONCEPTS WEST INTERIORS, AND HER ATTORNEY OF RECORD, BRENT A. GOLD.

NOTICE IS HEREBY GIVEN that on January 27, 1993
10:30 AM or as soon thereafter
as may be heard in the Third Circuit Court of the State of Utah, Summit
County, Park City Department, Donald E. Armstrong, defendant, by his
signature below, hereby requests a hearing in the above case to continue
the trial and to complete discovery.

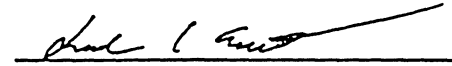
This motion is made pursuant to Utah Rules of Civil Procedure 7 and
40. Rule 40 states that the Court can continue a trial at it's discretion.

Defendant represents to the Court the following items for the Court to consider:

1. That defendant has not had reasonable time to pursue discovery and that additional time is required to complete discovery.
2. That defendant believes it will take approximately 90 days to complete said discovery subject to the cooperation of the Plaintiff and of Defendant's ability to discover the necessary documents. It is contemplated that Plaintiff can provide most documents but in the event Plaintiff resists, Defendant may have to seek other sources for the necessary documents.
3. Defendant is now serving notice to Plaintiff of taking Plaintiff's deposition, a Request for documents and a Request for Admissions (Copies attached).
4. Estimated time for trial is one to two days.

Defendant requests a continuance of this trial until after May 1, 1993. This motion is based upon this notice of motion and motion.

Dated this 15th day of January, 1993



Donald E. Armstrong,
Defendant

F

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

IN THE UTAH COURT OF APPEALS

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 good 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. That appellant asked me on direct examination,

questions about the relationship with appellee and the problems that arose.

4. That during my direct examination by appellant, the appellant attempted to introduce some documentation that I 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.

5. That the testimony that I gave was material to the issue of substantial performance in this case. My testimony would have supported appellants claim that appellee in fact did not substantially perform her obligation in locating and arranging for the purchase of furnishings pursuant to our agreement.

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

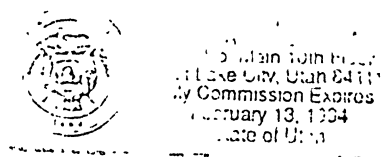
7. That such portion of my testimony did in fact take place at the trial on February 10, 1993, but was omitted from the transcript due to the audio recording equipment not functioning at that particular time.

8. That attached to this affidavit is the actual documentation that appellant attempted to admit into evidence at the February 10, 1993, trial during my direct examination.

DATED this 1 day of November, 1993.

Susan St. James
Susan St. James

The foregoing instrument was acknowledged before me by SUSAN ST. JAMES on this 1st day of November, 1993.



Doreen A. Bennett
Notary Public

G

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	Alter this we decided we needed Yvonne to provide documentation for all transactions. <i>But we didn't Ask for it let it be</i>
Verbal Request	5-2-92		10/19/91	4558	\$2,804.00	We were concerned about this, we discussed it. <i>Paid \$1694.29 more by invoice</i>
			11/7/91	126	\$1,012.00	
Pkg. #1 No Purchase orders Statement of Account pg. 5	11/14/91	\$3,428.80	Nothing Due - This was merely a Statement of account for that date. <i>Balance = Not Merchandise had still not been shipped.</i>			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. <i>No accounting was requested from Yvonne until February. I was writing alot & Don wanted to know exactly where \$ was going.</i>
#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. <i>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>
Statement of Acct. <i>turn pg 2</i>	2/4/92	\$1,724.37	2/14/92	202	\$1,724.37	
<i>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.</i>						
STATEMENTS aided 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. <i>I was really disappointed because I was not promised decoration the same. I just long after it & I needed to have a cushion?</i>
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

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		
Computer Room	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		
First Guest Bedroom	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		
Second Guest Bedroom		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		
Three Downstairs Bedrooms		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
Recreation Room	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		
Lower Landing		Framed Art	We did	We did		0	2		
Foyer		Hutch	Both	We did		1	2		
		Bench	We did	We did		0	2		
Master Bath		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		
Second Level Landing		Hall Tree	We did	We did		0	2		
Office Bath		Mirror	We did	We did		0	2		
		Wall lights	We did	We did		0	2		
		Bathroom fixtures	We did	We did		0	2		
Susan's Office									

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	We did	We did		0	2		
		Fabric	Yvonne	Yvonne		0	2		
			Both	Yvonne		2	0		
						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

Total of New Items

Percentages

19

38

58

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

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

-oOo-

YVONNE GILLHAM, dba CONCEPTS
WEST INTERIORS,

Plaintiff,

-vs-

DONALD E. ARMSTRONG,

Defendant.

Civil No. 92300086CV

Judge: Roger Livingston

Discussion of Findings of
Fact and Conclusions
of Law

-oOo-

A P P E A R A N C E S

For the Plaintiff:

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For the Defendant:

PRO SE

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INAUDIBLES

Yvonne Gillham v. Donald E. Armstrong

PAGE	COMMENTS
25	talking over each other - recorded on only one track, couldn't separate them out
33	three of four words missing- not talking into mike - only one track
49	away from mike
72	couldn't understand the word
76	couldn't understand him
79	couldn't understand him

DISCUSSION OF FINDINGS OF FACT

5	away from mike
12	"Unidentified Speaker" - I couldn't tell if it was Mr. Gold or Mr. Armstrong
14	speaking too fast

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1 Then with respect to the \$1,925, that--paragraphs 15
2 and 16 have been altered by putting as a finding of fact, "At
3 the conclusion of the trial the defendant fully and completely
4 acknowledged that the sales was in fact owed to the plaintiff
5 in the presence of the Court. The defendant made payment to
6 the plaintiff of the full \$1,925 sales amount." So, that is
7 reflected, rather than having that reflected in the judgment.

8 Okay. Then I also requested that in--on paragraph 22
9 that we insert the word "orally"--"that plaintiff continued to
10 communicate with defendant and defendant's wife during April
11 1992 and was not orally informed by them of"--

12 MR. GOLD: That was not inserted, Your Honor. I have
13 no objection.

14 THE COURT: Okay. Mr. Armstrong, by interlineation
15 I'm just going to insert the word "orally." I believe that
16 when you and I talked briefly about those findings I told you
17 that I did not make a specific finding as to whether or not
18 that letter was mailed, delivered or whatever. The finding
19 was that it was not orally informed. Indeed, I indicate in
20 the findings it didn't--my oral ruling that it didn't matter
21 whether that letter was delivered or not, it would make no
22 difference because of the timeliness of it. The work had
23 essentially been completed.

24 Then on the Conclusions of Law, I had suggested to
25 both of you--and I did this at different settings but said the

1 same thing to both of you--that paragraph 9 needed to be
2 changed.

3 MR. GOLD: That was changed, Your Honor.

4 THE COURT: Right. And we inserted the words "what-
5 ever attempts were made by defendant." And, again,
6 understand, both of you, that I didn't make a finding whether
7 the letter was sent or not. There was competing testimony
8 whether it was sent or received. But whatever attempts were
9 made by the defendant to terminate the contract in the latter
10 portion of 1992 were unilateral in nature, untimely, and
11 occurred after the plaintiff had already substantially
12 performed under her agreement with the defendant.

13 MR. ARMSTRONG: I think the last sentence there,
14 there's been no discussion ever of anything like that that I
15 remember.

16 THE COURT: The last sentence?

17 MR. ARMSTRONG: In the 9 that I have.

18 THE COURT: "Defendant's attempt to terminate the
19 contract was not based upon facts and circumstances sufficient
20 to warrant any such termination." Well, that's really--it's a
21 little bit redundant but that's not my finding. Is that--if
22 it were opposite of that, I would rule in your favor. But
23 they were--that did not terminate--that did not contemplate a
24 termination of the contract. Indeed, because it was already
25 performed. So, I have no problem with that.

1 I did want No. 10(b) delineated--why are we leaving
2 the judgment and then satisfying it?

3 MR. GOLD: Your Honor, let me explain that. It was
4 changed from the way that it was set forth (inaudible). And
5 it was changed--"Payment of the \$1,925 to the plaintiff at the
6 conclusion of trial constitutes satisfaction of said judgment
7 amount." And the reason that I think it's imperative that it
8 be left in there is--

9 THE COURT: That's to avoid your hassle with the
10 State Tax Commission as far as--

11 MR. GOLD: The State Tax Commission and not only
12 that, Mr. Armstrong has indicated that he may well appeal.
13 And I think it's very important to note that except for the
14 payment of the money at the time--

15 THE COURT: Well, I think the important thing is the
16 judgment only be for the correct amount and not for the
17 \$1,925.

18 MR. GOLD: That's right. The judgment reflects
19 exactly the same thing, that the \$1,925 is fully and
20 completely satisfied. No judgment, including interest,
21 penalties of any kind, are related to the \$1,925.

22 THE COURT: Now, Mr. Armstrong, what specific objec-
23 tion do you have, then, with the--it appears that Mr. Gold has
24 in fact corrected and modified his previously submitted
25 documents to comport with the concerns that I had. What other

1 objections do you have to either the Findings of Fact,
2 Conclusions or the separate judgment form?

3 MR. ARMSTRONG: Well, first of all, the last hear-
4 ing--both the trial and at the hearing where Mr. Gold wasn't
5 present, you specifically wanted the \$1,925 not included here
6 and now we've changed that again. I don't understand that.

7 I don't, you know, want a judgment (a) for any more
8 than it should be and all this discussion of it, and (b) that
9 that is specifically against what you had said twice.
10 Mr. Gold has changed things around and then he's added things
11 back in, like the second sentence. And if I'm going to
12 appeal, then--

13 THE COURT: What second sentence of what?

14 MR. ARMSTRONG: I'm talking about that one you just
15 read. Defendant admits--let's see, wait.

16 THE COURT: Where are you?

17 MR. ARMSTRONG: I'm trying to find it. In the--at
18 the hearing where, again, Mr. Gold wasn't here, the word you
19 wanted in one of those paragraphs was "some consultation," not
20 "periodic" or "extensive." There was two meetings.

21 THE COURT: Well, I direct Mr. Gold to do periodic.
22 In fact, that's what I wrote on the--on my corrected copy.

23 Okay, do you have any objection, then?

24 MR. ARMSTRONG: Yes, I'm looking.

25 THE COURT: Okay.

1 MR. ARMSTRONG: Paragraph 19--no, I'm sorry, that's
2 that same--paragraph 9 of the--we've already talked about--
3 conclusion of law. "Defendant's attempt to terminate the
4 contract was not based upon"--I don't understand why it needs
5 to be in there, that was never discussed. I guess I feel like
6 there was testimony at the trial that--it was pretty even.
7 And most of Mr. Gold's position is in here and my position
8 isn't and he's taken some things out to comply with you and
9 then he adds sentences back in to cover it again. He's got
10 the tax--

11 THE COURT: Mr. Armstrong, I know you don't like the
12 ruling. That's what the Court of Appeals is for. Go appeal
13 me, if that's what you want to do. But I ruled against you.

14 MR. ARMSTRONG: I understand, but this--

15 THE COURT: And that sentence, "Defendant's attempt
16 to terminate the contract was not based upon fact and circum-
17 stances sufficient to warrant any such termination," is
18 exactly what I ruled. If it were not that, then you would
19 have won.

20 MR. ARMSTRONG: Okay.

21 THE COURT: What's the legal objection to that? I
22 say you don't like--you don't like the answer but that's
23 different--

24 MR. ARMSTRONG: No, no, what I'm saying is that isn't
25 what you said in trial. That isn't what was the finding--you

1 made that first sentence and you did specifically say you
2 didn't want sales tax in there and now Mr. Gold wants it in
3 there and--

4 THE COURT: Let's deal with one issue at a time,
5 Mr. Armstrong, and this is--you know, I have, frankly, dealt
6 with this to the point of adnauseum and I think--I want to end
7 it. Now, number one, that second sentence, frankly, I'm not
8 sure that it even adds anything to the first sentence. But it
9 is not in an accurate statement. A conclusion of law is
10 whatever attempt that you made to terminate the contract, it
11 was not based upon the facts and circumstances sufficient to
12 warrant such termination, i.e., it was not--even if made, as
13 you argued, that it was not done in a timely way. It would a
14 prospective, not a retroactive termination.

15 And I have, you know, stated that repeatedly. It
16 does not diminish--Mr. Gold, I'm not sure it adds anything,
17 either. I mean, so what if it's there, I guess, is what I'm
18 saying. That is my ruling and it was not in his first draft
19 and it's in that one. Do you care if it's in it, Mr. Gold?

20 MR. GOLD: I think I want it in there because on an
21 appeal, that is the ultimate conclusion. I think the first
22 part is specific. The last sentence is a statement--

23 THE COURT: It's the "thus," I suppose. That is
24 what--I know you disagree with the ruling, but that's what the
25 ruling was. I'm going to have that sentence remain in

1 paragraph 9.

2 Now, with respect to the \$1,200, however--or \$1,925,
3 Mr. Gold, I don't think there's any question that
4 Mr. Armstrong paid that to you in court with the firm under-
5 standing that that was not to be a judgment. That was paid in
6 lieu of a judgment being entered. That was paid that day.

7 MR. GOLD: Well, Your Honor, here is what I would
8 have to say in connection with that. If there is an appeal in
9 this matter, I think it's very important to note that had he
10 not paid that amount, there would have been a judgment.

11 THE COURT: Sure, and that's clear from the Findings
12 of Fact. There's no question about that.

13 MR. GOLD: All right. So, if he goes in and he makes
14 some--without reference that that was the Court's conclusion--
15 I mean, he should pay the \$1,925 if there was a full
16 acknowledgment.

17 THE COURT: Yeah. There's no question that's in
18 there. But, still, in the judgment form in paragraph 2,
19 you're still taking judgment for \$1,925 and satisfying it.
20 Again, I don't think it makes a bit of difference one way or
21 another except that it's different than what the arrangement
22 was. I suppose Mr. Armstrong, I mean, could have chosen to
23 pay the \$1,925 today or not at all, or whatever, if a judgment
24 had been entered.

25 The advantage really is to you, Mr. Armstrong, is

1 that the \$1,925 just takes care of it. There's not legal
2 interest on that, it doesn't--and regardless of how we do
3 that, it's taken care of. Again, as with the prior concern
4 you had in that paragraph 9, I don't know that it makes any
5 difference one way or another. But I will amend that para-
6 graph 2 simply to accurately cite what we did. And that is
7 the judgment for the sales tax by the defendant is not granted
8 for the reason that the amount was paid in court. And the
9 Findings of Fact already acknowledge that it was due and owing
10 and it was paid.

11 MR. ARMSTRONG: Your Honor, just as Mr. Gold wants
12 that sentence in there, I don't want it in there.

13 THE COURT: Did you not hear me? I'm going to take
14 it out, okay?

15 MR. ARMSTRONG: In paragraph 9?

16 THE COURT: In paragraph 2. I've already ruled on
17 that one. I'm going to keep that--

18 MR. ARMSTRONG: I don't see why he can have things
19 that never happened in court--

20 THE COURT: Because--I'll tell you exactly why,
21 Mr. Armstrong. And that is because these are my findings and
22 my conclusions, I found them and I ruled that way. If you
23 don't like it, appeal it. I don't know how else to say it to
24 you, okay? If you don't like it, appeal that. That statement
25 accurately reflects my best judgment. I want you to know I

1 listened very carefully, I did the very best job I could in
2 this case, okay? I ruled against you. When we have a law-
3 suit, somebody wins, somebody loses, okay? I found the
4 evidence to be more persuasive that the contract, in fact,
5 (a) was completed, (b) that you owed the money, (c) that your
6 attempting to terminate it was a day late and a dollar short.
7 She already earned the money.

8 Whether or not this letter was mailed, it didn't
9 matter one iota in the decision to me because she had already
10 earned the money. I believe that by a simple preponderance of
11 the evidence. It's not a criminal case, it's a civil case.
12 The preponderance of the evidence was indeed that she was
13 entitled to the money. Your efforts to terminate had no force
14 or effect.

15 Again, paragraph No. 9 is consistent with that. To a
16 degree it's arguably multiplying words that may be unnecessary
17 but it certainly is consistent with the ruling of the Court.
18 And there is nothing in paragraph 9 that is inconsistent with
19 my ruling. It accurately reflects what it is. Had I written
20 it first instead of having attorneys draft it, I'd probably
21 have been a little less wordy. I probably would have made the
22 two sentences into one sentence. But I have no problem with
23 signing that, it accurately reflects the ruling of the Court.

24 Okay. Now, does that answer that one for you?

25 MR. ARMSTRONG: Never mind.

1 THE COURT: What does never mind me?

2 MR. ARMSTRONG: I don't agree with you.

3 THE COURT: Well, I just--you're the litigant and I'm
4 the Judge.

5 MR. ARMSTRONG: That doesn't matter.

6 THE COURT: You're entitled to understand--you're
7 entitled to present your position but that doesn't mean that
8 you get it granted every time.

9 MR. ARMSTRONG: Well, that's fine.

10 THE COURT: Okay. All right, now paragraph No. 2 on
11 the judgment form, I'm going to have that paragraph No. 2
12 altered, Mr. Gold, again to reflect consistently both with the
13 prior direction by the Court and the firm understanding when
14 that payment was made in court. And that is that judgment
15 would not be--would, in fact, not enter for that amount.

16 Again, I'm not sure it makes any practical difference
17 to enter and--simultaneously enter and satisfy a judgment. It
18 probably has the same--it doesn't make any practical
19 difference. But, again, that was the understanding
20 Mr. Armstrong had and the Court had and I think that it's more
21 appropriate that the judgment reflect that.

22 UNIDENTIFIED SPEAKER: Well, I don't agree with you
23 but you're the Judge.

24 THE COURT: Okay. So, what I'm going to do is--I
25 don't have any problem making one word change by

1 interlineation. Is this on your word processor?

2 MR. GOLD: Yes.

3 THE COURT: Okay. How I'm going to change this,
4 paragraph No. 2, is, "Judgment for sales tax owed to plaintiff
5 by defendant in the amount of \$1,925 is"--instead of "here-
6 with," I'm going to strike that and put "not granted to
7 plaintiff as against defendant." And then eliminate the
8 period and put "for the reason that said amount was volun-
9 tarily paid at the conclusion of the trial."

10 The next sentence will remain, "No interest or
11 penalties as may be assessed by the Utah State Tax Commission
12 are awarded to the plaintiff on said amount." So, that
13 protects you, Mr. Armstrong, that you're not going to--at
14 least this Court is not going to order that you pick up any
15 additional amount for the late payment.

16 The next sentence, "Payment by plaintiff of the
17 \$1,925"--I'm being a little redundant. "Said payment"--we'll
18 insert the word, "Said payment by the defendant of"--let's
19 eliminate that second "said"--"\$1,925 to the plaintiff at the
20 trial between the parties shall constitute satisfaction of
21 said"--"shall constitute satisfaction and be in lieu of said
22 judgment amount. No interest is awarded to plaintiff in
23 connection with said amount."

24 Okay. Do you--Mr. Gold, do you have that that you
25 could run it off on your word processor today?

1 MR. GOLD: We could do that in very short order. How
2 long will you be here today? I'd like to get this thing
3 signed and entered today.

4 THE COURT: I'll be here, oh, I'm sure an hour.

5 MR. GOLD: We can do that.

6 THE COURT: Can we do that? Okay, and Mr. Armstrong
7 I will also direct the Clerk of the Court to provide a copy of
8 the Findings of Fact and Conclusions of Law and Judgment to
9 you with those amendments. And specifically, then, as I
10 understand it, there were two objections that you had to the
11 proposed Findings of Fact--to the second submitted proposed
12 Findings of Fact. One regarding the second sentence of
13 paragraph 9 on the Conclusions of Law. I overruled that
14 objection and agreed to sign that document as submitted.

15 With respect to your second objection, the judgment
16 being granted for \$1,925 and then simultaneously satisfied,
17 I'm granting your objection to that and indicating that it
18 does not technically comport with the understanding during the
19 course of the trial. I note Mr. Gold objects to that but I'm
20 granting your objection and directing that paragraph 2 be so
21 amended.

22 And let me say again, I think I do understand that
23 Mr. Gold would have preferred to have a judgment (inaudible).
24 I would presume that he would prefer to have interest and the
25 penalties that his client may incur past on and also would

1 have the \$1,925 earn interest since the day it was due. For
2 whatever equitable powers this Court has in hearing this
3 matter, I simply ruled against that as a matter of equity.
4 Specifically, that both parties really were party to this
5 nonpayment of sales tax initially. And I just didn't think it
6 was fair and appropriate that Mr. Armstrong bear the burden of
7 that when both parties, with their eyes open, acknowledged
8 that sales tax was not being paid initially. And, again,
9 that's just a matter of equity and fairness.

10 Again, I guess this is what trials are for, to sort
11 out contesting perspectives and different points of view.
12 Again, I tried to do the best I can for that and so the--and I
13 do believe that the judgment, then, form and Findings of Fact
14 as I've directed those be changed, accurately reflect those.
15 Again, it's not as either of you would have them but I believe
16 the findings and conclusions and judgment form is consistent
17 with the ruling of the Court. And I have no problem with any
18 of that.

19 Anything else then for the record, Mr. Gold?

20 MR. GOLD: For the record, I have just delivered to
21 Mr. Armstrong Notice of Entry of Judgment, it being the
22 anticipation that it will be entered this date. And I would
23 ask the Court to sign--

24 THE COURT: Yeah, I will sign and enter it today. If
25 you can be back by 1:00, that will be just great.


C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Rashell Garcia, a Certified Shorthand Reporter and
Notary Public within and for the County of Salt Lake, State of
Utah, do hereby certify:

That the foregoing tape-recorded proceedings were trans-
cribed into typewriting under my direction and supervision and
that the foregoing pages contain a true and correct transcrip-
tion of said proceedings.

IN WITNESS WHEREOF, I have hereunto subscribed by name and
affixed my seal this 12th day of May, 1993.



RASHELL GARCIA, C.S.R.
License No. 144

My Commission Expires:

12/15/96

I

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

-000-

AVONNE GILHAM, dba CONCEPTS
WEST INTERIORS,

Plaintiff,

-VS-

DONALD E. ARMSTRONG,

Defendant.

Civil No. 92300086CV

Judge: Roger Livingston

Transcript of Hearing

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Dated:

January 27, 1993

A P P E A R A N C E S

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Gillham v. Armstrong
January 27, 1993

PAGE	COMMENTS
6	voice faded
10	couldn't understand him, voice faded
10	paper rattling and noise overriding Mr. Armstrong
13	couldn't understand him
19	talking over each other

P R O C E E D I N G S

THE COURT: This matter is--I can't tell from the--

THE CLERK: Which one is that, Judge Livingston?

THE COURT: On the--

THE CLERK: Small claims?

THE COURT: No, on the Concept West Interiors.

THE CLERK: Just a hearing.

THE COURT: Prior to trial.

MR. GOLD: Is this Gillham?

THE CLERK: Yes.

THE COURT: Uh-huh.

MR. GOLD: Brent Gold, Your Honor, for the plaintiff in this matter. Mr. Armstrong has filed a motion.

Mr. Armstrong represents himself in this matter. He's filed a motion, it's his motion, that's the reason we're here today.

THE COURT: And this is your Motion for Request for Production of Documents, is this what we're talking about?

MR. ARMSTRONG: What I filed, Your Honor, was a request for production of documents to them and also a request for a continuance of the trial so I can complete getting the documents and the deposition of Ms. Gillham and some documents from the state.

MR. GOLD: This matter is scheduled for trial on February 10th right now, Your Honor. And we would oppose his motion and I'd like to be heard on that.

1 THE COURT: Okay. Why--golly. We're going to have
2 some problems, I know, with this. We're being cut back to two
3 days a month, essentially, in this court. The problem is--I'm
4 just speaking out loud to you, Mr. Gold, you certainly have a
5 right to file cases in the--wherever the Circuit Court sits.
6 The problem is, there's so few of them that I don't--I can't
7 schedule regular trial days for civil cases and it just
8 becomes really, really awkward. So, I'm just telling you
9 right up front that I'm going to put a little pressure on you
10 this morning to see if we can resolve this. If it can't be,
11 I'll--I may have to hear this in Coalville. How long do you
12 think it would take, the trial?

13 MR. GOLD: Well, I think that if we try the case, we
14 should be able to do this--I'd like to say half a day.
15 Recently, I don't think I've ever been able to accomplish
16 anything in half a day. It always runs to a day. We ought to
17 be able to do it in half a day. I don't think there would be
18 any more than three or four witnesses called in the matter.
19 But, again, we don't--at this point, I don't know how many
20 witnesses Mr. Armstrong would intend to call.

21 In terms of our position in connection with his
22 motion, this matter has been filed with this Court since
23 August of last year. And until Mr. Armstrong's documents were
24 filed with the Court approximately the middle part of this
25 month, nothing had been done. At that point the trial date

1 had been set that spurred his filing of these motions. And,
2 of course, pursuant to our procedural rules and rules of the
3 Court, his request for discovery less than 30 days prior to
4 trial is inappropriate.

5 I understand he is not represented by counsel. We
6 have letters in the file where he's clearly indicated he's
7 very knowledgeable and you can see from his filings he's been
8 in court before. The one significant communication we have
9 had with him was where he indicated he's been involved in
10 several litigation amounts, he knows full well the conse-
11 quences and I don't think he minced any words in emphasizing
12 to my client that this could be very costly and expensive for
13 her if she continued to pursue the matter. I think now he's
14 evidencing that sort of situation.

15 The matter is set for trial. He's done nothing in
16 connection with prior preparation for it. The matter is a
17 relatively simply matter, straightforward contract. That
18 which he doesn't have, he ought to have. He claims he doesn't
19 have, he ought to have. He's had plenty of time to do it and
20 in the interests of justice we'd like to try this matter and
21 be done with it so as to avoid the accumulation of costs and
22 fees that he so well pointed out.

23 THE COURT: Let's go through just a moment and let
24 Mr. Armstrong say what he wants to about the trial. He is
25 asking for what--what documents are you specifically

1 requesting?

2 MR. ARMSTRONG: I'm requesting her records of what
3 services she provided to us, the receipts she provided when
4 she bought the furniture, etc. for our account, her records of
5 communication and documenting what she did for us and didn't
6 do. I'm also asking for the copies of her returns with the
7 Utah State Tax Commission.

8 THE COURT: Okay, those are nondiscoverable. That's
9 going to be real easy. I'm not going to make her give you a
10 copy of her--you don't get to look at her state tax returns
11 because she claims you owe her money. That's--there's no
12 reason that should be. Is that going to be at issue? You're
13 not going to introduce her tax returns, are you, Mr. Gold?

14 MR. ARMSTRONG: She's claiming that we owe sales tax
15 on the purchases. And so the sales tax returns are very
16 valid, Your Honor.

17 MR. GOLD: There is an issue that may legitimately be
18 in question. The contract that we're talking about was a
19 contract for furnishings, furniture, fixtures, etc. for
20 Mr. Armstrong's home. My client is an interior designer.
21 Part of the claim is for sales tax owed to the State of Utah
22 that my client claims that Mr. Armstrong has not paid, all
23 right?

24 As I understand what he's asking for is something
25 from the State of Utah and from us indicating--evidencing the

1 sales tax amount.

2 MR. ARMSTRONG: And the fact that she reported these
3 purchases and that they, in fact, were--and the sales tax, in
4 fact, has (inaudible).

5 MR. GOLD: And we have absolutely no problem in
6 giving him that information. We really don't. We can provide
7 him--

8 THE COURT: Well, she's a cash basis taxpayer, I
9 presume? She's not paying sales tax on to the state that she
10 didn't collect, is she?

11 MR. GOLD: Well, that's part of the problem, I would
12 represent to the Court, is this: We've informed the State of
13 Utah as--and she is a cash basis, all right? The State--we
14 informed the State of Utah of this problem, that there is a
15 matter in litigation and that there is money that we believe
16 is owed to the State of Utah in connection with this matter.

17 The State of Utah is fully informed of the matter and
18 they claim to have lien rights as against my client because
19 they claim, notwithstanding her cash basis, that if she hasn't
20 collected from him she should have collected it from him and
21 should have paid it to the State of Utah. So, they claim--

22 THE COURT: Did she pay sales tax when she purchased
23 it? Or she--no, she buys it wholesale and doesn't pay sales
24 tax.

25 MR. GOLD: She buys it wholesale--

1 THE COURT: And doesn't pay sales tax?

2 MR. GOLD: And does not pay sales tax at that point,
3 that's correct.

4 THE COURT: I see.

5 MR. ARMSTRONG: Your Honor, she's to report that at
6 the time she purchases it and the time the transactions take
7 place, whether or not we pay--

8 THE COURT: Whether she does or doesn't, that doesn't
9 have anything to do with whether or not you owe her money,
10 frankly. I'm not going to turn into this. I want you to
11 understand right up front, Mr. Armstrong, this trial's going
12 to be very narrow. And it's on whether or not you in fact owe
13 Concepts West Interiors some money or not. And if you do,
14 then there's going to be a judgment. If you don't, you don't.

15 And if you owe her sales tax, whether or not she in
16 fact paid that on to the state, whether she's got a problem
17 with the State Tax Commission or not, that's a matter that I'm
18 not going to be concerned with. That's beyond the purview of
19 this case. The State Tax Commission is a--they're big boys
20 and girls and they can handle it and they can do what they're
21 going to do as far as collecting sales tax. I don't work for
22 the State Tax Commission, I'm not going to turn this trial
23 into more than it is.

24 So, to the degree that existence of these documents
25 go to the validity of the claim, it's hard for me to imagine

1 how they do or how they don't. But to that degree, you're
2 entitled to discover them. Even assuming worst case, and that
3 is that Ms. Gillham, dba Concepts West Interiors, is not
4 paying the sales tax that she is required under law to pay,
5 that is not your concern nor is it the concern of this Court.
6 And that's not going to make any difference whatsoever how I
7 rule in this case.

8 MR. ARMSTRONG: Your Honor, I beg to differ. There
9 are certain circumstances where she's obligated to pay the
10 sales tax and there's certain circumstances she's not. And
11 that's a big part of the issue of this case.

12 THE COURT: Well, let me just say, Mr. Armstrong,
13 whether in fact she owes money to the State of Utah, I don't
14 care about for the purpose of this case. That has nothing to
15 do what I'm--is it six percent of the amount that you're
16 claiming is sales tax? Is that what you're--

17 MR. GOLD: The exact percentage, Your Honor, is
18 probably something in excess of that. It amounts to--
19 originally amounted to approximately \$1,900. And, of course,
20 the State of Utah is now claiming penalty and interest in
1 connection with it because this is a third quarter '92 matter.
2 That's when the--at least the State of Utah claims it should
3 have been paid.

THE COURT: I see. Well, let's just get to the heart
of it. Whatever documents you have you'll be willing to

1 deliver to Mr. Armstrong; is that correct?

2 MR. GOLD: Absolutely.

3 THE COURT: Okay. Well, that answers that one, then.
4 When can they be delivered to him?

5 MR. GOLD: I'll have to meet with my client and
6 obtain those. But we can provide those within--not later than
7 a week.

8 THE COURT: Okay. So, that answers that--

9 MR. ARMSTRONG: I also ask for a depo--to be able to
10 depose her.

11 THE COURT: Well, why did you wait to make a deposi-
12 tion--request a deposition prior to the--until after a trial
13 notice was sent?

14 MR. ARMSTRONG: Okay. I hate to make an excuse. I'm
15 not an attorney. I just moved here from California. I got
16 the notice--the request for the trial hearing while I was out
17 of town and by the time I got back from that trip you'd
18 already set the trial.

19 THE COURT: What information are you attempting to
20 elicit from Ms. Gillham?

1 MR. ARMSTRONG: That goes to the heart of the matter,
2 but there are issues about the sales tax and furniture and
3 when she did work for us. And there's disputes over all
4 that--all those issues. And I'd like to ask her those
5 questions.

1 THE COURT: And the total amount you're claiming is
2 \$3,000; is that correct?

3 MR. GOLD: The total amount, Your Honor, is set forth
4 in the complaint. It's approximately \$3,900. We claim that
5 all of that was owed on or about, I'm estimating, July 31,
6 1992. It might have been July 1, 1992, plus interest. We've
7 made an allegation with respect to attorney's fees and bad
8 faith defense in connection with the matter.

9 THE COURT: Is there any basis for attorney's fees
10 other than the bad faith defense?

11 MR. GOLD: There is no contract--

12 THE COURT: There's not contract or statute for it?

13 MR. GOLD: --that sets forth the requirement, the
14 allegation. Again, we're (inaudible) statutory basis of bad
15 faith (inaudible).

16 THE COURT: Okay. Uh--

17 MR. ARMSTRONG: Your Honor. I want to say
18 (inaudible) is I've had an interest in resolving this from the
19 beginning, from the first conversation with Ms. Gillham and
20 even today (inaudible).

21 THE COURT: Okay. Now, this is set for trial for
22 February the 10th. I suppose, Mr. Gold, that a pro se
23 defendant really ought not have the rules of procedure--even
24 though he's certainly not the most naive of pro se defendants,
25 based upon the pleadings that I see before me-- ought to have

1 some generous application of the rules in terms of time.

2 I will say this, though, Mr. Armstrong. I'm not
3 certain on a \$3,000 claim, essentially, why someone would want
4 to spend a--oh, a third or maybe a fourth, anyway, of the cost
5 of that in terms of taking a deposition. Other than, I
6 suppose, there is some legitimate--there is some legitimacy to
7 the point that Mr. Gold's making, frankly, that you're just
8 trying to drive up the cost of litigation to force a settle-
9 ment. And I guess what I want to say to you is there's a lot
10 that can be accomplished in terms of looking at documents.
11 You can ask Mr. Gold, What's your position on this, Why are
12 you claiming that, that could be handled a lot less expen-
13 sively for what is essentially a collection matter of \$3,000.

14 What I'm saying to you is I'm going to give you the
15 right to--give you the opportunity to exercise your right to
16 take a deposition. If--I'm going--however, if the plaintiff
17 prevails in this case, number one, and if, number two, there
18 was no substantial information gleaned from that or I'm not
19 able to receive in the course of a trial some information that
20 makes that a legitimate exercise in discovery, I want you to
21 understand that I'm going to award attorney's fees to Mr. Gold
22 for the benefit of his client for the--at least for the cost
23 of the deposition. May or may not be liable for attorney's
24 fees for the trial and other things, but at least for that
25 four or five hundred dollars or whatever is involved in that

1 appearance for deposition if ultimately I determine that
2 simply was not needful or appropriate.

3 And, again, I just got to say to you, if you had an
4 attorney, I don't think an attorney is going to say to you,
5 Let's go depose the plaintiff, unless for some reason Mr. Gold
6 is just--is not very well forthcoming on providing information
7 to you. Spending the cost for a deposition on a \$3,000 claim
8 smells of, smacks of simply trying to needlessly escalate the
9 costs of litigation, number one. And number two, just trying
10 to postpone, unfairly, a trial.

11 And I think particularly when--and, again, I say
12 when--if this turns out to be more or less a personal
13 relationship, personal contractual relationship to which you
14 already had know--this involves conversations you've already
15 had--you had, not other people. If this were a large
16 corporate conglomerate and you talked to someone who's not a
17 party to the action and it's information you really need,
18 that's one thing. If it's--if you are--if what I end up
19 hearing at trial the evidence is simply conversations between
0 the two of you, you're already party to those and you don't
1 really need to depose someone to discover what was said. You
2 were a party to those. That's exactly the kind of case that
3 I'm going to liberally award costs and fees on, if that's why
4 you're doing it.

 I don't know if that helps you at all or if that

1 provides any guidance to you. What I am saying to you is I'm
2 going to grant your motion, even though technically you're not
3 entitled to that, because you're a pro se defendant. And if
4 you really want the opportunity to depose the plaintiff, I'll
5 let you do that.

6 But I would urge you to think carefully if--why
7 you're really doing that. If it's really information that
8 you're genuinely seeking, that you can get no other way, and
9 I'm going to let you put the plaintiff to that cost. But,
10 again, it's an issue I'm going to deal with later at trial.

11 MR. ARMSTRONG: Can I respond for a second?

12 THE COURT: Well, I'm not--the rule is you can appeal
13 me but you can't argue with me. I'm not going to--and I want
14 you to understand that now and at trial, also. That's not the
15 point of this.

16 MR. ARMSTRONG: There's a request for admissions and
17 possibly after looking at the documents and seeing their
18 request for admissions that maybe a deposition isn't
19 necessary. So far this case has not been very amicable or
20 (inaudible) been working together and I have no thought that
21 that would change.

22 MR. GOLD: Your Honor, in connection with this--the
23 lack of amicability is certainly not between Mr. Armstrong and
24 myself. I've never talked to him prior to today. It might be
25 between my client and Mr. Armstrong.

1 THE COURT: Sure, that's why you have lawsuits. We--
2 hopefully, people don't punch each other out, they hire
3 lawyers. That's right.

4 MR. GOLD: He has filed requests for production of
5 documents. He has filed notice with the State of Utah for
6 requests for production of documents.

7 THE COURT: The State of Utah?

8 MR. GOLD: Tax Commission.

9 THE COURT: Well, they're not going to respond to
10 that. You can give them a subpoena, I suppose. They won't
11 respond to that, either. These are confidential--aren't they?

12 MR. GOLD: Exactly.

13 MR. ARMSTRONG: They would only respond to a court
14 order.

15 THE COURT: And they're not going to get one.

16 MR. GOLD: And he mentions admissions. And he has--
17 he has asked for six admissions and those can be summarily
18 given to him. I mean, you know, there's a formal form that we
19 use. I'm not going to take 30 days to do that. I'll give him
20 his response to those request for admissions and I can assure
21 him that they're all going to be in the negative to what he's
22 looking for. But he will have those, as well, within that
23 one-week period of time.

24 Again, in granting his motion, are you saying you're
25 going to continue the trial date?

1 THE COURT: Well, I'm going to ask him--if he wants
2 to take the deposition, I'm going to continue the trial date.
3 But I'm just cautioning him that (a) I'm not sure that is in
4 the--is what you really want to do, given the scope of this
5 case. And, again, I'm just going to say it's a \$3,000 collec--
6 tion case, is what it is. And I'm not going to--I'm not going
7 to allow you just to escalate the cost needlessly for a \$3,000
8 case.

9 On the other hand, if it's something you legitimately
10 need to do, then do it. But you ought to make that decision,
11 understanding that ultimately if the plaintiff prevails in
12 this case and we get to an issue of awarding costs and fees,
13 I'm going to look at what attorney's fees were incurred in bad
14 faith. And, frankly, compelling a deposition when--if all
15 you're going to ask about are conversations the two of you had
16 with each other you're already a party to, I'm just not--that
17 doesn't even pass the smell test, okay? And that's something
18 you're very likely to be hit on on some attorney's fees.

19 MR. ARMSTRONG: I feel, Your Honor, that her filing a
20 lawsuit and hiring an attorney was the same idea--(inaudible)
21 they expected me to hire an attorney and have to pay the
22 expenses.

23 THE COURT: Okay. I don't know if Mr.--what has
24 Mr. Gold done that's been unreasonable and that you believe I
25 should award some sanctions?

1 MR. ARMSTRONG: I'm saying, just to bring me into
2 court over this--I tried to resolve it with Ms. Gillham a long
3 time ago--to file a lawsuit against me anticipating that I
4 have to get an attorney is no different than--they're trying
5 to run up costs to force me to settle.

6 THE COURT: Well, I don't--I'm not going to--I'll
7 help you with that one right now. And that is I'm not going
8 to rule that filing a lawsuit is, in and of itself, inapprop-
9 riate, harassment or anything else. That's what trials are
10 for. You get your day in court and everyone gets to present
11 their side and I try to listen fairly and impartially the best
12 I can and make the best judgment I can, Mr. Armstrong.

13 But simply because you file--I don't know of many
14 defendants that like the fact they were sued. I don't think
15 that you're in a particularly unique situation from any other
16 civil defendant.

17 MR. ARMSTRONG: I just don't see the difference
18 between them causing me attorney's fees and me causing them
19 attorney's fees, why that would be in relation to how you
20 award attorney's fees.

21 THE COURT: Well, I'm not going to award you
22 attorney's fees if you didn't incur any, number one. You've
23 chosen to be pro se. If in the course of a trial you were to
24 convince me that this action was brought in bad faith, without
25 any legitimate basis, that if your costs were--if Mr. Gold

1 required you to take depositions and do things that were
2 simply a waste of time and running up costs, then absolutely,
3 I would consider a motion to award fees back.

4 But that's not what I have before me. I have a
5 plaintiff that brought an action. There was no ostensible
6 reason why a deposition should be taken in the case. And if
7 that proves to be correct, that there was no needful, approp-
8 riate reason for the deposition, I'm just telling you you're
9 on the hook for the costs of those.

10 If Mr. Gold required something for you to do that
11 incurred a cost that was not needful, it was merely for
12 harass, delay, then absolutely you're going to be looking--
13 you'd be entitled to some sanctions back to him. The rules
14 apply both ways.

15 MR. ARMSTRONG: I contemplated hiring an attorney
16 actually for the trial. Do I still have the right or the
17 ability to do that?

18 THE COURT: Sure. You can--you have the right to
19 represent yourself or anyone that you want to have--licensed
20 to practice law in the State of Utah--can appear on your
21 behalf.

22 MR. ARMSTRONG: Okay, thank you.

23 THE COURT: There's no problem with that at all.
24 Again, what I want to know is just whether or not you want to
25 take the deposition. I'm waiving--you're technically too

1 late. The trial date was set when you made the request.
2 Because you are a pro se defendant, I'm willing to let you
3 still take the deposition in a late fashion. If you want to
4 do that, that's fine. But I want you to understand the--that
5 you're, in one sense, upping the ante by doing that.

6 MR. ARMSTRONG: What I would like to do is get some
7 kind of a continuance on the trial, see these documents, get
8 these answers and hopefully not have the deposition. But if
9 these--if I don't get--I don't have the documents to review to
10 see if I'm getting all the information that I'd like to have
11 at this point.

12 THE COURT: Well--

13 MR. ARMSTRONG: Taking what you've said in mind,
14 trying not to do the deposition.

15 THE COURT: The problem is--see, once I go into
16 March, I go on this half-day in Park City matter that is going
17 to be really hard. And February 24th I have two jury trials
18 that I could--Mr. Gold, if this meets with your schedule--I
19 could bump it back one week to Wednesday, the 17th.

20 MR. ARMSTRONG: I'll be out of town that day.

21 MR. GOLD: We can accommodate you. We had two
22 choices of dates, the 10th and the 17th.

23 THE COURT: The 10th and the 17th is really all there
24 is. And you can have your choice, also, Mr. Armstrong, of the
25 10th or 17th. But I'm telling you after then I just--I've

1 got, again, a jury trial on the 24th and then I'm only here
2 half days and this is a half day civil trial and it would
3 really be extremely difficult to fit that in.

4 MR. ARMSTRONG: Well, I can't do it the 17th.

5 MR. GOLD: Your Honor, let me propose this: We can
6 give him the documents. If he wants to take his deposition,
7 he can take it before the 10th.

8 THE COURT: Any reason why you couldn't do that?

9 MR. GOLD: (Inaudible) everything--I think he's
10 scheduled--at least tentatively, he's got it scheduled for--
11 no, he's scheduled it for March 12th.

12 THE COURT: Any reason why--why don't you just take
13 the deposition before February 10th? Like--

14 MR. ARMSTRONG: I probably don't have any choice, do
15 I? So--

16 THE COURT: Well, I mean, you have some input. No,
17 the choice is mine, that's correct. The choice is mine,
18 ultimately. I'm trying to be fair and listen to your
19 concerns, Mr. Gold's concerns, trying to balance--

20 MR. ARMSTRONG: I asked for the continuance so that
21 I'd have more time to prepare for this. I didn't have an idea
22 that it was going to be coming that fast. I want to look at
23 these documents. That's why I asked for the continuance. If
24 I thought I could get it done, I wouldn't have asked. I can't
25 do it the 17th because I will be out of town.

1 THE COURT: Okay. Well, okay. So, if we went on the
2 10th, what day could you take the deposition before the 10th?

3 MR. ARMSTRONG: Uh, what's the Friday before that?
4 When are you going to have the documents to me?

5 MR. GOLD: We'll have them to you by Wednesday of
6 next week, and hopefully earlier.

7 MR. ARMSTRONG: Well, it would be that Friday, then.

8 THE COURT: Okay.

9 MR. ARMSTRONG: If I choose to do it.

10 THE COURT: And the date for that, then, Mr. Gold,
11 is?

12 MR. GOLD: Today is the 27th.

13 THE COURT: And Friday's the 30th. It would be--is
14 that the 6th of February?

15 MR. GOLD: So, that would be the 5th of February.

16 THE COURT: 5th of February. Okay. Then why don't
17 we--is there any problem, then, with making--with ordering
18 that the plaintiff respond to the discovery in terms of
19 providing documents and providing--for responding to the
20 request for admissions not later than one week from today,
21 which would be February 3rd, at the latest, have that
22 responded, and ordering that if the plaintiff--rather, the
23 defendant chooses to do so, can depose the plaintiff in this
24 case on Friday, February the 5th?

25 Any problem with that? That meet all of your needs,

1 then, Mr. Armstrong?

2 MR. ARMSTRONG: Well, honestly no, but I don't see
3 any choices, so, yes.

4 THE COURT: Okay. What need doesn't that meet?

5 MR. ARMSTRONG: It's too fast for me. You know,
6 that's why I asked for a continuance. We're still going to
7 trial on the same day and I'm going to have two days to look
8 at the documents. But, you know, that's what you can do,
9 that's what you can do.

10 THE COURT: Yeah. If there were a--and just for the
11 record and so you understand that I know, again, those are
12 choices that you made, I've--I just can't--I've got a criminal
13 jury trial set on the 24th. All I can do is do what I can
14 with the resources that I have. And I offered to you the 17th
15 as an alternate and that was a choice that you made that
16 you'd--

17 MR. ARMSTRONG: I have an airline ticket, I will be
18 out of the state.

19 THE COURT: Okay. Well, I have a criminal jury trial
20 the next week. And as between you and me, guess who gets to
21 choose? Okay? So, that's the answer to that. But I just
22 want you to know that the fact on the 10th and not the 17th, I
23 mean, that's, again, at least partially a consequence of a
24 choice that you've made, okay?

25 We'll set this matter, then, for--the trial date will

1 remain but your motions--the motion for discovery is granted.
2 The motion to take a deposition is granted but the motion to
3 continue the trial date is denied. Thank you.

4 (This hearing was concluded.)

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

-ooo-

YVONNE GILLHAM, dba CONCEPTS :
WEST INTERIORS, :

Plaintiff, :

-vs- :

DONALD E. ARMSTRONG, :

Defendant. :

Civil No. 92300086CV

Judge: Roger Livingston

Transcript of Trial

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Date:

February 10, 1993

A P P E A R A N C E S

For the Plaintiff:

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1 THE COURT: I'll be in recess just very briefly.

2 (A recess was taken.)

3 (When tape starts again, it begins in progress with
4 another witness who later is identified as Susan St. James.)

5 DIRECT EXAMINATION (IN PROGRESS)

6 BY MR. ARMSTRONG:

7 A And so I went through another designer to get that.

8 Q This is after March of '92; is that correct?

9 A Uh-huh.

10 THE COURT: You went directly to the vendor and not
11 through the plaintiff?

12 THE WITNESS: I went through the vendor and then
13 through another designer.

14 THE COURT: You had to have another designer because
15 that vendor only sold to designers; is that correct?

16 THE WITNESS: Yes.

17 Q Now, were you the one that handled most of the--
18 going over these bills that Yvonne gave us and tried to make
19 sense of them?

20 A Yes.

21 Q Did I give you that set of documents?

22 A You've given me a set of invoices and purchase orders
23 and copies of checks.

24 Q Okay. The first calls for money we got from Yvonne
25 were sometime in 1991; is that correct?