

2004

Michael L. Hendry, Douglas Bassett, Five T Corporation v. Unidyn Financial Management Corporation, Douglas Longfellow, G. Lawrence Critchfield, Paul Christensen, Wespac Holdings, LLC, Ken Morgan, Western Real Estate Investment Trust, Inc. : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH

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MICHAEL L. HENDRY, DOUGLAS  
BASSETT, AND FIVE "T"  
CORPORATION,

Appellees/Plaintiffs,

vs.

UNIDYN FINANCIAL  
MANAGEMENT CORPORATION,  
DOUGLAS LONGFELLOW, G.  
LAWRENCE CRITCHFIELD, PAUL  
CHRISTENSEN, WESPAC  
HOLDINGS, L.L.C., KEN MORGAN,  
WESTERN REAL ESTATE  
INVESTMENT TRUST, INC., and  
DOES 1-10,

Appellants/Defendants.

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Appellate Case No. 20040772-CA

Civil No. 990906932

Oral Argument Requested  
Priority 15

**APPELLANT'S BRIEF**

APPEAL FROM SUMMARY JUDGMENT

IN THE THIRD JUDICIAL DISTRICT COURT OF

SALT LAKE COUNTY, STATE OF UTAH  
The Honorable Roger S. Dutson, District Judge

Timothy W. Blackburn (U.S.B.No. 0355)  
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Honorable Roger S. Dutson

Oral Argument Requested  
Priority 15

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**JURISDICTION**

Defendant appeals from Summary Judgment within this Court's jurisdiction, having been transferred to this court under Utah Code Annotated. § 78-2-2(4) on May 11, 2000.

**STATEMENT OF ISSUES**

**Issue 1:** The trial court erred by refusing to set aside the judgment in this case after trial was held in the absence of Critchfield and his attorney even though Critchfield through timely motion later informed the court that it mistakenly assumed it had ruled on the Motion to Withdraw as Counsel; therefore the required time to appoint new counsel never began.



**Standard of Review:** Questions of law are reviewed for correctness.

Hebertson v. Willowcreek, 923 P.2d 1389, 1392 (Utah 1996).

Interpretation of the effect of a prior judicial decision is a question of law. State v. Montoya, 887 P.2d 857, 858 (Utah 1994).

A trial court's conclusions of law in civil cases are reviewed for correctness. See S.S. v. State, 972 P.2d 439, 440-41 (Utah 1998); Orton v. Carter, 970 P.2d 1254, 1256 (Utah 1998); A.K. & R. Whipple Plumbing & Heating v. Aspen Constr., 977 P. 2d 518, 522 (Utah Ct. App. 1999). This standard of review has also been referred to as a "correction of error standard." Jacobsen Inv. Co. v. State Tax Comm'n, 839 P.2d 789, 790 (Utah 1992); Sanders v. Ovard, 838 P.2d 1134, 1135 (Utah 1992); Commercial Union Assocs. v. Clayton, 863 P.2d 29, 36 (Utah Ct. App. 1993). As used by Utah's appellate court's "correctness" means that no particular deference is given to the trial court's ruling on questions of law. See Orton v. Carter, 970 P.2d 1254, 1256 (Utah 1998); Pena, 869 P.2d at 936; Rackley v. Fairview Care Ctrs., Inc. 970 P.2d 277, 280 (Utah Ct. App. 1998).

The trial court's interpretation of statutes, rules and ordinances is a question of law reviewed for correctness. See, e.g. Rushton v. Salt Lake County, 977 P.2d 1201, 1203 (Utah 1999); Taylor ex rel. C.T. v. Johnson, 977 P.2d 479, 480 (Utah 1999); Loporto v. Hoegemann, 370 Utah Adv. Rep. 21, 22 (Utah Ct. App. 1999) (judicial code); A.K. & R. Whipple Plumbing & Heating v. Aspen Const., 977 P.2d 518, 521 (Utah Ct. App. 1999).

Whether a statute [or rule] applies to a particular set of facts is a question of law. See Slisze v. Stanley-Bostlitch, 979 P.2d 317, 319 (Utah 1999); State v. Burgess, 870 P.2d 276, 279 (Utah Ct. App. 1994).

Trial judges are given “some discretion” in determining mixed questions of fact and law. State v. Pena, 869 P.2d 932, 936-40 (Utah 1994).

**Issue 2:** The trial court erred by refusing to set aside the judgment in this case after Critchfield pointed out that, through inadvertence, he was not aware of the trial date.

**Standard of Review:** Questions of law are reviewed for correctness. Hebertson v. Willowcreek, 923 P.2d 1389, 1392 (Utah 1996).

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**Issue 3:** The trial court erred when it awarded damages against Critchfield personally and awarded punitive damages without making adequate findings to support the conclusion of fraud and inadequate findings to support the amount of punitive damages ordered.

**Standard of Review:** Trial judges are given “some discretion” in determining mixed questions of fact and law. State v. Pena, 869 P.2d 932, 936-40 (Utah 1994).

The findings of fact must show that the court's judgment or decree follows logically from, and is supported by the evidence. Smith v. Smith, 726 P.2d 423, 426 (Utah 1986). Findings must be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached.

Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987).

A trial court abuses its discretion when it fails to enter specific, detailed findings supporting its financial determinations. Such findings are adequate only if sufficiently detailed and include subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached. Id. To permit appellate review of a property and debt distribution, the distribution must be based upon adequate factual findings and must be in accordance with the standards set by this states's appellate courts. Finlayson v. Finlayson, 874 P.2d 843 (Utah App. 1994). Failure to make findings on all material facts is reversible error unless the facts in the record are clear, uncontroverted and capable of supporting only a finding in favor of the judgment. Haumont v. Haumont, 793 P.2d 421, 425 (Utah App. 1990).

#### **STATUTES/RULES**

Utah Rules of Civil Procedure Rule 60(b)

Utah Rules of Civil Procedure Rule 74(a), (b)

#### **STATEMENT OF THE CASE**

1. Nature of the Case.

Appellant, Lawrence G. Critchfield, appeals from the denial of his timely Motion to Set Aside a Judgment against him for an alleged debt, punitive damages and attorneys' fees, taken without his participation.

2. Course of Proceedings.

Critchfield's attorney, Wesley Sine, moved the court for permission to withdraw as

counsel. See Docket attached hereto as Addendum "A". Although the motion was filed 2 ½ months before trial, none of the parties submitted the Motion to Withdraw for decision. Docket attached hereto as Addendum "A". The court did not rule on Sine's motion even at the time of trial. Docket attached hereto as Addendum "A". Sine did not inform Critchfield of the trial date scheduled prior to Sine's Motion to Withdraw. R. 777-809. The court went forward with trial in the absence of both Critchfield and his attorney. Docket attached hereto as Addendum "A". Within ninety (90) days of the entry of judgment, Critchfield filed a motion to set aside the court's judgment pursuant to Utah Rules of Civil Procedure 60(b). R.774-826. Appellant now appeals the court's granting judgment against him and denial of his Motion for Relief from Judgment. R. 965-967.

3. Statement of Facts.

On May 13, 2003, three attorneys appear before the court, Wesley F. Sine, Derek Langton and Timothy W. Blackburn. See Docket attached hereto as Addendum "A". On June 29, 2003 a Motion to Withdraw as Counsel is submitted (by Mr. Sine). See Docket attached hereto as Addendum "A". On July 2, 2003, a note in the docket reads "Notice to submit needed, copy of docket to Mr. Sine." See Docket attached hereto as Addendum "A". The only other entries between July 2, 2003 and trial regard trial briefs and a subpoena. See Docket attached hereto as Addendum "A". The docket shows no Notice to Submit the Motion to Withdraw as Counsel. See Docket attached hereto as Addendum "A". Although an Order Permitting withdrawal is received by the court, it is never filed. See Docket attached hereto as Addendum "A".

Critchfield had express authority from the board of directors of Western to act individually on behalf of the corporation to secure capital to fund the corporation. R. 777-809.

All of Critchfield's actions in regards to the Plaintiffs in this case was in the capacity of a representative of the Western. R. 777-809. A loan of one hundred fifty thousand dollar (\$150,000.00) was made to Unidyn Financial Management Corp. R. 777-809. ("Unidyn") by Plaintiff Five "T" Corporation pursuant to a Promissory Note. Critchfield relied upon this agreement from Unidyn that there would be sufficient backing to repay the Plaintiffs the money loaned to Unidyn. R. 777-809.

Based on information and belief, Unidyn defaulted on the note to the Plaintiffs. R. 777-809. Based on information and belief, because of Unidyn's breach Western was not able to complete the transaction contemplated with Douglas Longfellow. R. 777-809. Critchfield signed a promissory note on behalf of Western on October 21, 1998 which was for the amount of one hundred fifty thousand dollars (\$150,000.00) without interest. R. 777-809.

Critchfield did not ever agree to personally guarantee any debts of Western. R. 777-809. He fully expected that Western would be able to fund the Trust Deed Note with the Nevada property and signed a trust deed note on behalf of the Corporation on October 21, 1998. R. 777-809. Critchfield did not obtain a personal benefit from any of the money loaned by Five "T". R. 777-809.

Upon the commencement of this lawsuit, Critchfield hired Wesley Sine ("Mr.

Sine") to represent him. R. 777-809. Mr. Sine did not give Critchfield notice that the court had scheduled a pretrial conference in this case. R. 777-809. Mr. Sine gave Critchfield no notice of a trial date. R. 777-809.

After receipt of the notice to appear or appoint, Critchfield contacted Alan Mecham, an attorney who had handled business matters for Critchfield in the past. R. 777-809. Mr. Mecham placed a call to Mr. Langton, the attorney who had prepared the notice to appear and appoint to ascertain the status of the case. See Affidavit of Alan Mecham in Support of G. Lawrence Critchfield's Motion for Relief from Judgment attached hereto as Addendum "B".

Mr. Langton did not indicate to Mr. Mecham that the case had been set for trial or that there was a Motion for withdrawal of counsel pending. See Affidavit of Alan Mecham in Support of G. Lawrence Critchfield's Motion for Relief from Judgment attached hereto as Addendum "B". Mr. Mecham did not ever receive a return phone call from plaintiff's counsel, Blackburn. See Affidavit of Alan Mecham in Support of G. Lawrence Critchfield's Motion for Relief from Judgment attached hereto as Addendum "B".

While Critchfield was out of town at the end of September, 2003, he received word from his wife that a trial brief and a subpoena had come in the mail. R. 777-809. Neither document received by Critchfield's wife had a trial date on it. R. 777-809.

Critchfield contacted a friend of his to check the status of trial in this case while he was out of town. R. 777-809. After the fact, Critchfield learned that the court

proceeded with trial that next day after his wife contacted him about the trial brief and subpoena. R. 777-809. A judgment was rendered against Critchfield personally. See Docket attached hereto as Addendum "A"

At no time did Mr. Sine, the court clerk, opposing counsel, or any other person advise Critchfield that a trial on this lawsuit had been scheduled for October 1, 2003 or for any other date. R. 777-809.

### **SUMMARY OF ARGUMENT**

This is a classic case of mistake. The court proceeded with trial on the mistaken assumption that Mr. Sine had withdrawn as counsel. On October 2, 2003, at trial, the docket states: "Record to reflect that defendant, G. Lawrence Critchfield, is not present nor represented by counsel. Attorney Wesley Sine has withdrawn as counsel and a Notice to Appear or Appoint Counsel has been filed." However, the Motion to Withdraw was not ruled on by the court; none of the three attorneys pointed this out to the court before trial. Therefore the court proceeded with trial without giving Critchfield an opportunity to appoint new counsel to represent him at trial.

Critchfield was not told the trial date by his attorney, the opposing attorneys or by the court. Critchfield did inquire through a separate attorney as to the status of his deposition but received no further word after June, 2003. When Critchfield did not hear back as to his deposition, he inadvertently left this matter unaddressed.

Even if the court did not believe that the mistake in this case was a sufficient basis to set aside the judgment, the court should have set aside judgment based upon



Critchfield's inadvertence. because of the mistaken impression of Critchfield that his deposition would be required before further proceedings. The failure of opposing counsel to get back to Critchfield as to their intentions with discovery and trial on its own creates a basis for the court to set aside the judgment against Critchfield.

### ARGUMENT

**Issue 1:** The trial court erred by refusing to set aside the judgment in this case after trial was held in the absence of Critchfield and his attorney even though Critchfield through timely motion later informed the court that it mistakenly assumed it had ruled on the Motion to Withdraw as Counsel; therefore the required time to appoint new counsel never began.

The general rule in favor of granting a motion to set aside a judgment is set forth in Westinghouse Electric Supply Co. v. Paul W. Larson Contractor, Inc., 544 P.2d 876 at 879 and Footnote 10. "It is indeed commendable to handle cases with dispatch and to move calendars with expedition . . . but it is even more important to keep in mind that the very existence for courts is to afford disputants an opportunity to be heard and to do justice between them." Id. In the present case, Critchfield was not given his day in court because he had no actual notice of the trial date.

Under Rule 60(b) of the Utah Rules of Civil Procedure the court "may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect. . . ." Although the court has discretion in regards to setting aside

judgment, the court abused its discretion in this case by not allowing Critchfield appropriate notice as to whether he was represented, as to when he would have to appoint counsel and as to when he would have to appear for trial.

It appears from the record that the court at trial mistakenly supposed that Critchfield had been given proper notice of the withdrawal and the need to appoint an attorney or appear. The mistake can be readily identified in the court's docket in this case at pages 16-17. See Docket attached hereto as Addendum "A". On May 13, 2003, three attorneys appear before the court, Wesley F. Sine, Derek Langton and Timothy W. Blackburn. On June 29, 2003 a Motion to Withdraw as Counsel is submitted (by Mr. Sine). On July 2, 2003, a note in the docket reads "Notice to submit needed, copy of docket to Mr. Sine." The only other entries between July 2, 2003 and trial regard trial briefs and a subpoena. The docket shows no Notice to Submit the Motion to Withdraw as Counsel. Although an Order Permitting withdrawal is received by the court, it is never filed. On October 2, 2003, at trial, the docket states: "Record to reflect that defendant, G. Lawrence Critchfield, is not present nor represented by counsel. Attorney Wesley Sine has withdrawn as counsel and a Notice to Appear or Appoint Counsel has been filed."

The Supreme Court of Utah in Smith v. Sperry, 694 P.2d 581 (1984), vacated and remanded an order granted in the absence of a party and his attorney. In that case, it was the plaintiff had not sent out a Notice to Appear or Appoint. The trial court, with notice of the withdrawal of counsel and no Notice to Appear or Appoint (under rule 2.5 the predecessor to Rule 74(b)), proceeded to grant summary judgment in favor of the

Plaintiff. In vacating judgment, the Supreme Court held “the trial judge should have required plaintiff’s attorney to then give notice to Saunders and Ritchins in accordance with Rule 2.5 before proceeding to hear and grant the motion for summary judgment. Since the judgment was entered after the failure of the court to follow one of its own rules, we conclude that the trial court abused its discretion in refusing to set aside the summary judgment when the error was brought to its attention.” Id. At p. 583.

The present case is similar to Sperry in that Critchfield was not given the benefit of notice that the court had permitted the withdrawal of his attorney and then given twenty (20) days after that notice to appear or obtain his own attorney. Although a Notice to Appear or Appoint was served in the present case, it did not accomplish the purpose for which it was intended. It was premature, so it gave notice of a withdrawal that had not occurred. The notice of a nonexistent event of withdrawal failed to give Critchfield any notice as to when he would have to appear or to hire his own attorney.

The mistaken assumption by the court goes to the heart of this matter. The court assumes Critchfield is not represented when in fact Mr. Sine has not been permitted to withdraw. It does not appear on the docket that either counsel present corrected the court as to the mistake. The court assumes that there is proper notice to Critchfield in the form of a Notice to Appear and Appoint. However, the Notice to Appear and Appoint is of no effect until there is a withdrawal of counsel, which did not occur in this case. The Motion to Withdraw was never ruled on by the court.

Further the Motion to Withdraw was defective. Rule 74(a) of the Utah Rules of Civil Procedure requires: "The motion to withdraw as counsel shall describe . . . the date . . . of any scheduled hearing." In this case, the Motion to Withdraw states: "The case presently has been scheduled for trial in October, 2003. However no specific date is given." Sine was never removed on the court docket as Critchfield's attorney of record. Therefore, Critchfield did not receive notices directly from the court.

Without sufficient notice of the hearing, Critchfield was deprived of his day in court. The judgment rendered in his absence should be set aside.

**Issue 2:** The trial court erred by refusing to set aside the judgment in this case after Critchfield pointed out that, through inadvertence, he was not aware of the trial date.

Critchfield was not told the trial date by his attorney, the opposing attorneys or by the court. After receipt of a Notice to Appear and Appoint, Critchfield did inquire through a separate attorney as to the status of his deposition. Critchfield understood that Mr. Langton would get back to him about rescheduling the deposition. However, Critchfield received no further word about his deposition after June, 2003. Critchfield did not receive any courtesy notice of trial from either opposing counsel. Mr. Langton did not indicate that he intended to proceed to trial without the deposition. Critchfield, having made the last contact through Mr. Mecham had no reason to take further action. At the very most, Critchfield's failure to act was due to inadvertence and justifies the setting aside of the judgment against him.

**Issue 3:** The trial court erred when it awarded damages against Critchfield

personally and awarded punitive damages without making adequate findings to support the conclusion of fraud and inadequate findings to support the amount of punitive damages ordered.

The court could not find that Critchfield had any assets. There is no finding that Critchfield had income. There are inadequate findings of intent to support a case for fraud. The court made no findings as to the intent or knowledge of Critchfield at the time of the alleged representations. The court only found that Critchfield the facts represented by Critchfield did not occur as he promised. However, the findings are inadequate to determine whether the promises were not fulfilled due to events out of Critchfield's knowledge or control.

Even if the findings with regard to intent had been sufficient, without a finding of income or assets, an award of \$25,000.00 in punitive damages is excessive.

Finally, there is no basis to assign to Critchfield personal liability. He was acting as a representative of Western REIT, Inc. The findings of fact are insufficient to warrant piercing the corporate veil. There are inadequate findings to demonstrate how Plaintiff's suffered actual damages in the amount of \$200,000.00. There is no finding as the amount of a note for \$200,000.00 that was signed by Critchfield. The judgment should be reversed and remanded for further findings regardless of the court's ruling on procedural grounds.

## CONCLUSION

Due to the court's own error as to the status of a pending Motion to Withdraw, the court did not permit withdrawal, but proceeded on the assumption that it had. This left Critchfield without the protection of the court rules which were designed to assure that parties have notice of hearings. Because the errors in this case strike at the heart of Critchfield's right to due process of law, the judgment against him should be reversed and remanded by this court.

DATED this 21<sup>st</sup> day of June 2005.

A handwritten signature in cursive script, appearing to read "Steve S. Christensen", written over a horizontal line.

Steve S. Christensen

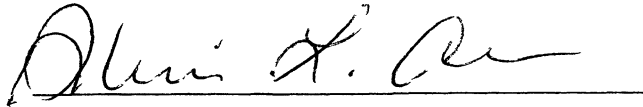
Attorney for Defendants/Counter

Plaintiffs/Appellants

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **APPELLANT'S BRIEF** was mailed via first class U.S. mail, postage prepaid, on the 21<sup>st</sup> day of June 2005. to the following:

Timothy W. Blackburn  
Mara A. Brown  
Attorneys for Michael L. Hendry  
Douglas Bassett, and Five "T" Corp.  
2404 Washington Boulevard  
Ogden, Utah 84401

A handwritten signature in dark ink, appearing to read "Darin H. Brown", is written over a horizontal line.

F:\CHRS-CL\ACTIVE FILES\APPEALS\CRITCHFIELD\APPEAL\PLEADINGS\APPELLANT BRIEF .wpd

## Addendum A



SECOND DISTRICT COURT - OGDEN  
WEBER COUNTY, STATE OF UTAH

MICHAEL L HENDRY vs. UNIDYN FINANCIAL MANAGEMENT

CASE NUMBER 990906932 Miscellaneous

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CURRENT ASSIGNED JUDGE  
ROGER S. DUTSON

PARTIES

Plaintiff - MICHAEL L HENDRY  
Represented by: TIMOTHY W. BLACKBURN  
Represented by: MARA BROWN

Plaintiff - DOUGLAS BASSETT  
Represented by: TIMOTHY W. BLACKBURN  
Represented by: MARA BROWN

Plaintiff - FIVE "T" CORPORATION  
Represented by: TIMOTHY W. BLACKBURN  
Represented by: MARA BROWN

Defendant - UNIDYN FINANCIAL MANAGEMENT  
Represented by: WESLEY F. SINE

Defendant - DOUGLAS LONGFELLOW  
Represented by: WESLEY F. SINE

Defendant - G LAWRENCE CRITCHFIELD  
40 NORTH STATE STREET  
SUITE 3-6  
SALT LAKE CITY, UT 84103

Defendant - PAUL CHRISTENSEN  
Represented by: WESLEY F. SINE  
Represented by: DEREK LANGTON  
Represented by: SHANE D HILLMAN

Defendant - WESTERN REAL ESTATE INVESTMENT

Defendant - WESPAC HOLDINGS LLC  
Represented by: DEREK LANGTON

Defendant - KEN MORGAN

COUNT SUMMARY

TOTAL REVENUE Amount Due: 317.00

	Amount Paid:	317.00
	Credit:	0.00
	Balance:	0.00
TRUST TOTALS	Trust Due:	10,650.03
	Amount Paid:	10,650.03
	Credit:	0.00
	Trust Balance Due:	0.00
	Balance Payable:	0.00
REVENUE DETAIL - TYPE: JURY DEMAND - CIVIL		
	Amount Due:	50.00
	Amount Paid:	50.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: COPY FEE		
	Amount Due:	12.50
	Amount Paid:	12.50
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: CERTIFIED COPIES		
	Amount Due:	2.50
	Amount Paid:	2.50
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: CERTIFICATION		
	Amount Due:	2.00
	Amount Paid:	2.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: CROSSCLAIM 10K-MORE		
	Amount Due:	90.00
	Amount Paid:	90.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: COPY FEE		
	Amount Due:	2.00
	Amount Paid:	2.00
	Amount Credit:	0.00
	Balance:	0.00
REVENUE DETAIL - TYPE: COPY FEE		
	Amount Due:	3.25

.1-11-99	Filed: Memorandum Of Points And Authorities In Support Of Defendant Paul Christensen's Motion To Dismiss	leroyw
.1-11-99	Filed: Defendant Paul Christensen's Motion to Dismiss	leroyw
.1-16-99	Filed return: summons rec'd by wife Party Served: CRITCHFIELD, G LAWRENCE Service Type: Personal Service Date: November 11, 1999	harrietb
.2-10-99	Filed: Answer G LAWRENCE CRITCHFIELD	harrietb
1-13-00	Filed: Notice Of Taking Deposition	leroyw
1-13-00	Note: Received Order of Dismissal of Defendant Paul Christensen without Prejudice	jewelk
1-14-00	Note: file to RSD	jewelk
1-19-00	Filed: Stipulation to Dismiss Defendant Paul Christensen without Prejudice	genem
1-20-00	Filed: Certificate Of Service	leroyw
1-21-00	Filed order: Order Of Dismissal Of Defenant Paul Christensen Without Prejudice Judge rdutson Signed January 17, 2000	leroyw
1-21-00	Case Disposition is Dismsd w/ prejudice Disposition Judge is ROGER S. DUTSON	leroyw
1-27-00	Fee Account created Total Due: 3.75	sharilyr
1-27-00	COPY FEE Payment Received: 3.75	sharilyr
2-02-00	Filed: Answer G LAWRENCE CRITCHFIELD	harrietb
2-07-00	Fee Account created Total Due: 0.50	suem
2-07-00	COPY FEE Payment Received: 0.50 Note: Mail Payment;	suem
2-08-00	Filed: Notice Of Taking Deposition	leroyw
2-16-00	Filed: Memorandum in support of defendant Longfellow's motion to dismiss plaintiffs' complaint	maureem
3-09-00	Filed: AMENDED NOTICE OF TAKING DEPOSITION	susant
4-13-00	Filed: Answer to amended complaint G LAWRENCE CRITCHFIELD	maureem
4-13-00	Filed: Answer to amended complaint WESTERN REAL ESTATE INVESTMENT	maureem
4-14-00	Filed: Answer to Request for Admissions G LAWRENCE CRITCHFIELD	veronica
4-19-00	Filed: Stipulation to amend complaint	maureem
4-19-00	Filed: Amended complaint	maureem
4-19-00	Note: Received Order to Amend Complaint	trinaw
4-21-00	Note: sent file to RSD	trinaw
4-21-00	Filed: Notice of Taking Deposition of Paul Christensen	jewelk

ASE NUMBER 990906932 Miscellaneous

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4-21-00	Filed: Notice of Taking Deposition of Lawrence Critchfield	jewelk
4-26-00	Filed order: Order to amend complaint Judge rdutson Signed April 25, 2000	lorenaa
4-26-00	Filed order: Stipulation and order for dismissal Judge rdutson Signed April 25, 2000	lorenaa
4-26-00	Case Disposition is Dismsd w/ prejudice Disposition Judge is ROGER S. DUTSON	lorenaa lorenaa
5-05-00	Filed: Answer to Defendant G. Lawrence Critchfield's and Western Real Estate Investments Trust, Inc.'s Counterclaim to Amended Complaint (Michael L. Hendry and Douglas Basset and Five "T" Corporation's answer)	jewelk
6-01-00	Filed: Notice of Taking Deposition of Paul Christensen	jewelk
6-05-00	Filed: Subpoena Duces Tecum	jewelk
6-05-00	Filed: Motion to Compel Defendants G. Lawrence Critchfield and Western Real Estate Investment Trust To Cooperate with Discovery, for Sanctions, and for Release of Funds	jewelk
6-05-00	Filed: Memorandum of Points and Authorities in Support of Motion to Compel Defendants G. Lawrence Critchfield and Western Real Estate Investment Trust to Cooperate with Discovery, for Sanctions, and for Release of Funds	jewelk
06-08-00	Filed: Objections to and Motion to Quash Subpoena Duces Tecum Directed to Paul Christensen	jewelk
06-08-00	Filed: Memorandum of Points and Authorities in Support of Objections to and Motion to Quash Subpoena Duces Tecum Directed to Paul Christensen	jewelk
06-08-00	Filed: Notice of Taking Deposition of Western Real Estate Investment Trust, Inc.	jewelk
06-08-00	Filed: Subpoena Duces Tecum to Defendant Western Real Estate Investment Trust, Inc.	jewelk
06-12-00	Filed: Memorandum of points in support of objections to and motion to quash the notice for deposition and subpoena duces tecum to Western Real Estate Investments	maureem
06-26-00	Filed: Memorandum in Opposition to Defendant Western Real Estate Investment Trust's Objection to and Motion to Quash Subpoena duces Tecum and Notice of Deposition to Western Real Estate Investment Trust	jewelk maureem
07-03-00	Filed: Notice to Submit and request for oral argument	maureem
07-06-00	Tracking started for Under advisement. Review date Sep 04, 2000.	maureem
07-07-00	Note: file to RSD	trinaw
07-31-00	Filed: Letter from Joy Young, Production Manager	jewelk
10-13-00	Tracking ended for Under advisement.	dianew
10-13-00	Filed order: RULING Judge rdutson Signed October 12, 2000	dianew
10-25-00	TELEPHONE CONFERENCE scheduled on December 20, 2000 at 10:00 AM in 3rd Floor Northwest with Judge DUTSON.	dianew

10-25-00 Notice - NOTICE for Case 990906932 ID 617632 dianew  
TELEPHONE CONFERENCE is scheduled.  
Date: 12/20/2000  
Time: 10:00 a.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
Before Judge: ROGER S. DUTSON  
11-14-00 Filed: Motion to Amend Complaint (Oral Argument Requested) trinaw  
11-14-00 Filed: Memorandum of Points and Authorities in Support of trinaw  
Motion to Amend Complaint trinaw  
11-20-00 Note: hold til 11/28  
12-01-00 Note: Notice to Submit needed - copy of docket to Timothy trinaw  
Blackburn trinaw  
12-08-00 Filed: Notice to Submit for Decision trinaw  
12-14-00 Tracking started for Under advisement. Review date Feb 12, trinaw  
2001. trinaw  
12-15-00 Note: file sent to RSD trinaw  
12-20-00 Minute Entry - Minutes for LAW AND MOTION dianew  
Judge: ROGER S. DUTSON  
Clerk: dianew  
TELEPHONE CONFERENCE  
PRESENT

Plaintiff's Attorney(s): TIMOTHY W. BLACKBURN  
Defendant's Attorney(s): WESLEY F. SINE  
WESLEY LANG

Video

Tape Number: D122000 Tape Count: 1013

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#### HEARING

Mr. Lang is sitting in for Mr. Powell. Court notes that plaintiff's have filed a Motion to Compel and Release of Funds. There has also been a Motion to Quash Subpoena's and Depositions, a Motion to Amend Complaint, and a Motion to Dismiss. Counsel indicate that the Ruling previously issued by this Court resolved the Motion to Quash. Court directs Mr. Sine to produce answers to interrogatories and production of documents within 30 days. Court orders that the \$10,000.00 being held in the New York account, be deposited with the Court.

Mr. Blackburn addresses concern of obtaining deposition of Lawrence Critchfield. Mr. Sine, Critchfield's

ASE NUMBER 990906932 Miscellaneous

2-21-01	COPY FEE	Payment Received:	12.50	lorenaa
2-28-01	Fee Account created	Total Due:	2.50	ruthw
2-28-01	Fee Account created	Total Due:	2.00	ruthw
2-28-01	CERTIFIED COPIES	Payment Received:	2.50	ruthw
2-28-01	CERTIFICATION	Payment Received:	2.00	ruthw
03-05-01	Filed return: Summons and Complaint			vickiv
	Party Served: CHRISTENSEN, PAUL			
	Service Type: Personal			
	Service Date: February 23, 2001			
03-05-01	Filed return: Summons and Complaint			vickiv
	Party Served: WESPAC HOLDINGS LLC,			
	Service Type: Personal			
	Service Date: February 27, 2001			
03-20-01	Filed: Answer			vickiv
	WESPAC HOLDINGS LLC			
03-21-01	Filed: Acceptance of Service			jewelk
03-22-01	Filed: Answer to Second Amended Complaint			jewelk
	WESTERN REAL ESTATE INVESTMENT			
03-23-01	Filed: Answer to Second Amended Complaint			jewelk
	G LAWRENCE CRITCHFIELD			
04-09-01	Tracking ended for Under advisement.			dianew
04-10-01	Filed: Answer to (Second) Amended Complaint and Cross-Claim			suem
	PAUL CHRISTENSEN			
04-10-01	Filed: Motion to dismiss			maureem
04-10-01	Filed: Memorandum of points and authorities in support of			
	defendant Paul Christensen's motion to dismiss			maureem
04-11-01	Filed: Notice of continuance of deposition of Lawrence			
	Critchfield			maureem
04-13-01	Fee Account created	Total Due:	90.00	suem
04-13-01	CROSSCLAIM 10K-MORE	Payment Received:	90.00	suem
	Note: Code Description: CROSSCLAIM 10K-MORE; Mail Payment;			
04-18-01	Filed: Memorandum of Points and Authorities in Opposition to			
	Defendant Paul Christensen's Motion to Dismiss			jewelk
04-30-01	Fee Account created	Total Due:	2.00	lorenaa
04-30-01	COPY FEE	Payment Received:	2.00	lorenaa
05-01-01	Filed: Answer			vickiv
	MICHAEL L HENDRY			
	DOUGLAS BASSETT			
	FIVE "T" CORPORATION			
05-02-01	Filed: Notice to Submit for Decision (Oral Argument Requested)			krism
05-02-01	Filed: Reply Memorandum in Support of Defendant Paul			
	Christensen's Motion to Dismiss (Oral Argument Requested)			krism
05-04-01	Tracking started for Under advisement. Review date Jul 03,			
	2001.			krism

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5-08-01 Note: Notice to Submit for Decision (Oral Argument Requested)  
sent to Diane for scheduling trinaw

5-11-01 ORAL ARGUMENT scheduled on July 25, 2001 at 10:30 AM in 3rd  
Floor Northwest with Judge DUTSON. dianew

5-11-01 Notice - NOTICE for Case 990906932 ID 725930 dianew  
ORAL ARGUMENT is scheduled.  
Date: 07/25/2001  
Time: 10:30 a.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
Before Judge: ROGER S. DUTSON

5-11-01 Note: Address changed from dianew

5-11-01 Note: Address changed to 40 NORTH STATE STREET SUITE 3-6 SALT  
LAKE CITY UT 84103 dianew

5-16-01 Filed: Plaintiffs' Motion for leave to File an Amended  
Memorandum in Opposition to Motion to Dismiss Paul Christensen jewelk

5-16-01 Filed: Memorandum of Points and Authorities in Support of  
Plaintiffs' Motion for Leave to File an Amended Memorandum in  
Opposition to Motion to Dismiss Paul Christensen jewelk

5-24-01 Filed: Answer to Defendant Christensen's Cross Claim jewelk  
G LAWRENCE CRITCHFIELD

5-30-01 Filed: Answer to Defendant WESPAC Holding's Cross Claim jewelk  
G LAWRENCE CRITCHFIELD

5-12-01 Fee Account created Total Due: 3.25 suem

5-12-01 COPY FEE Payment Received: 3.25 suem

5-19-01 Note: Order Granting Plaintiffs Leave to File a Supplemental  
Memorandum in Opposition to Defendant Paul Christensen's Motion  
to Dismiss and Granting Christensen Leave to File a Surreply  
Memorandum rec'd krism

5-19-01 Filed: Stipulation and Joint Motion to Allow Plaintiffs to File  
a Supplemental Memorandum in Opposition to Defendant Paul  
Christensen's Motion to Dismiss and to Allow Christensen to  
File a Surreply Memorandum krism

5-21-01 Note: Order to RSD krism

5-25-01 Filed: Amended Memorandum of Points and Authorities in  
Opposition to Defendant Paul Christensen's Motion to dismiss jewelk

5-25-01 Filed: Memorandum of Points and Authorities in Support of  
Motion to Amend Second Amended Complaint (Oral Argument  
Requested) jewelk

5-25-01 Filed: Motion to Amend Second Amended Complaint (Oral Argument  
Requested) jewelk

7-02-01 Filed order: Order granting plaintiffs leave to file a  
Supplemental Memorandum in opposition to defendant Paul  
Christensen's Motion to Dismiss and granting Christensen leave  
to file a Surreply Memorandum lorenaa

Judge rdutson

Signed June 28, 2001

7-10-01 Filed: Reply Memorandum in Response to Plaintiffs' "Amended Memorandum of Points and Authorities in Opposition to Defendant Paul Christensen's Motion to Dismiss" jewelk  
7-12-01 Filed: Notice of deposit of funds maureem  
7-20-01 Filed: Second Notice to Submit for Decision with Respect to Defendant Paul Christensen's Motion to Dismiss krism  
7-20-01 Tracking started for Under advisement. Review date Sep 18, 2001. krism  
7-20-01 ORAL ARGUMENT Cancelled. dianew  
Reason: Conflict in Judge schedule  
7-25-01 ORAL ARGUMENT scheduled on August 20, 2001 at 01:30 PM in 3rd Floor Northwest with Judge DUTSON. dianew  
7-25-01 Notice - NOTICE for Case 990906932 ID 765758 dianew  
ORAL ARGUMENT is scheduled.  
Date: 08/20/2001  
Time: 01:30 p.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
Before Judge: ROGER S. DUTSON  
08-02-01 Filed: Notice to Submit krism  
08-06-01 Tracking started for Under advisement. Review date Oct 05, 2001. krism  
08-06-01 Filed: Motion for release of funds (oral argument requested) maureem  
08-06-01 Filed: Affidavit of Michael Hendry maureem  
08-06-01 Filed: Memorandum of points and authorities in support of motion for release of funds (oral argument requested) maureem  
08-07-01 Trust Account created Total Due: 10562.02 maureem  
08-07-01 Trust Account created Total Due: 68.78 maureem  
08-07-01 Interest Bearing Payment Received: 10,562.02 joeyi  
08-07-01 Admin. Fee - IBA Payment Received: 68.78 joeyi  
08-08-01 Note:  
08-08-01 Admin. Fee - IBA Check # 45755 Trust Payout: 68.78 kimikoh  
08-13-01 Filed: Interest bearing trust agreement maureem  
08-20-01 ORAL ARGUMENT scheduled on October 10, 2001 at 02:00 PM in 3rd Floor Northwest with Judge DUTSON. dianew  
08-20-01 Minute Entry - Minutes for ORAL ARGUMENT dianew  
Judge: ROGER S. DUTSON  
Clerk: dianew  
PRESENT

Plaintiff's Attorney(s): TIMOTHY W. BLACKBURN  
MARA BROWN  
Defendant's Attorney(s): ELWOOD P POWELL  
DEREK LANGTON

Video



Tape Number: D082001 Tape Count: 147

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HEARING

This is before the Court on Defendant's, Paul Christensen, Motion to Dismiss. Counsel give argument. Court will allow Mr. Blackburn to file an amended complaint by 09-10-2001 with Mr. Langton filing any motions of 09-24-2001. Court will allow monies being held at the Court released. Motion is taken under advisement. Matter continued to 10-10-2001 at 2:00 p.m. for further argument.

ORAL ARGUMENT is scheduled.

Date: 10/10/2001

Time: 02:00 p.m.

Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401

before Judge ROGER S. DUTSON

8-23-01	Note: Order on Motion for Release of Funds rec'd, hold until 9/5/01	krism
8-24-01	Filed: Third Amended Complaint (Jury Demand Requested)	jewelk
8-28-01	Filed order: Order on Motion for Release of Funds Judge rdutson Signed August 29, 2001	jewelk
8-29-01	Fee Account created Total Due: 1.25	bonniejs
8-29-01	COPY FEE Payment Received: 1.25	bonniejs
8-29-01	Note: (copy of order given to Kim - when check issued, please call attorney's office)	jewelk
8-30-01	Interest Bearing adjusted to \$10581.25 Total Due: 10581.25	kimikoh
8-30-01	Interest Bearing Payment Received: 19.23	kimikoh
8-30-01	Note:	
8-30-01	Interest Bearing Check # 45848 Trust Payout: 10,581.25	kimikoh
9-06-01	Note: Order on Motion for Release of Funds filed unsigned as this is duplicate and original Order has already been signed.	krism
9-12-01	Filed: DEFENDANT PAUL CHRISTENSEN'S MOTION TO DISMISS CLAIMS IN THIRD AMENDED COMPLAINT	franl
9-12-01	Filed: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT PAUL CHRISTENSEN'S MOTION TO DISMISS CLAIMS IN THIRD AMENDED COMPLAINT	franl
9-13-01	Filed: Answer to Plaintiffs' Third Amended Complaint and Cross-Claims of Defendants Paul Christensen and WESPAC Holdings, L.L.C. (Paul Christensen and WESPAC Holdings, L.L.C.'s answer)	jewelk
9-18-01	Filed: Notice of change of address	maureem

9-21-01 Notice - NOTICE for Case 990906932 ID 798752 dianew  
ORAL ARGUMENT is scheduled.  
Date: 10/10/2001  
Time: 02:00 p.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
before Judge ROGER S. DUTSON  
9-21-01 Filed: Answer to Third Amended Complaint harrietb  
G LAWRENCE CRITCHFIELD  
9-21-01 Filed: Answer to Third Amended Complaint harrietb  
WESTERN REAL ESTATE INVESTMENT  
9-24-01 Filed: MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO  
DEFENDANT PAUL CHRISTENSEN'S MOTION TO DISMISS CLAIMS IN THIRD  
AMENDED COMPLAINT stellam  
10-03-01 Filed: REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANT PAUL CHRISTENSEN'S MOTION TO DISMISS CLAIM IN THIRD  
AMENDED COMPLAINT stellam  
10-10-01 Minute Entry - Minutes for ORAL ARGUMENT dianew  
Judge: ROGER S. DUTSON  
Clerk: dianew  
PRESENT  
  
Plaintiff's Attorney(s): TIMOTHY W. BLACKBURN  
MARA BROWN  
Defendant's Attorney(s): DEREK LANGTON  
WESLEY F. SINE  
  
Video  
Tape Number: D101001 Tape Count: 219

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HEARING

This is before the Court for argument on Defendant's Paul Christensen's Motion to Dismiss. Counsel give argument. Motion is granted. Mr. Langton to submit a thorough Findings of Fact and Conclusions of Law and Order to the Court for signature.

Mr. Blackburn addresses the Court relating to the scheduling of the deposition Lawrence Critchfield. Mr. Sine indicates that he is in bad health, but there should not be a reason why he could not appear for deposition. Court directs Mr. Blackburn to schedule deposition.

10-15-01 Fee Account created Total Due: 15.00 harrietb

0-15-01	Fee Account created	Total Due:	3.00	harrieth
0-15-01	VIDEO TAPE COPY	Payment Received:	15.00	harrieth
0-15-01	POSTAGE-COPIES	Payment Received:	3.00	harrieth
0-22-01	Tracking ended for Under advisement.			dianew
0-22-01	Tracking ended for Under advisement.			dianew
0-22-01	Tracking ended for Under advisement.			dianew
2-01-02	Filed: Motion to serve defendant Ken Morgan by alternative means			franl
2-01-02	Filed: Affidavit of Mara A Brown			franl
2-20-02	Filed: Notice to Submit			stellam
2-21-02	Tracking started for Under advisement. Review date Apr 22, 2002.			stellam
2-27-02	Note: File to RSD			krism
5-14-02	Filed order: Order on Motion to serve Defendant Ken Morgan by Alternative means			lorenaa
	Judge rdutson			
	Signed May 14, 2002			
5-29-02	Filed return: 45 Day Summons			harrieth
	Party Served: LONGFELLOW, DOUGLAS			
	Service Type: Personal			
	Service Date: May 21, 2002			
6-21-02	Note: Rec'd Order Granting Defendant Paul Christensen's Motions to Dismiss			jewelk
7-05-02	Note: Order Granting Defendant Paul Christensen Motions to Dismiss, plus red sleeve envelope sent to RSD			trinaw
07-12-02	Filed order: Order granting Defendant Paul Christensen's Motions to Dismiss			lorenaa
	Judge rdutson			
	Signed July 10, 2002			
09-13-02	Tracking ended for Under advisement.			debbiel
11-21-02	Filed: Notice of Taking Deposition of G Lawrence Critchfield			bonniejs
11-22-03	Filed: Notice of taking deposition of G Lawrence Critchfield			franl
03-05-03	Filed: Withdrawal of Counsel			bonniejs
03-19-03	Filed: Request for Pre-Trial Conference			trinaw
04-11-03	Notice - NOTICE for Case 990906932 ID 8118122			trinaw
	TELEPHONE CONFERENCE is scheduled.			
	Date: 05/13/2003			
	Time: 09:30 a.m.			
	Location: 3rd Floor Northwest			
	Second District Court			
	2525 Grant Avenue			
	Ogden, UT 84401			
	Before Judge: ROGER S. DUTSON			

These matters will be discussed: trial dates, discovery completion dates, jury or non-jury trial, trial length, dates for dispositive motions, dates for exchange of witness lists, nature and complexity of case, final pretrial date and settlement status.

Counsel or parties are requested to be in their respective offices

at the time set for the telephone conference. The clerk will initiate the conference call.

-11-03 TELEPHONE CONFERENCE scheduled on May 13, 2003 at 09:30 AM in 3rd Floor Northwest with Judge DUTSON.

trinaw  
dianew

-13-03 Minute Entry - Minutes for LAW AND MOTION

Judge: ROGER S. DUTSON

Clerk: dianew

TELEPHONE CONFERENCE

PRESENT

Plaintiff's Attorney(s): TIMOTHY W. BLACKBURN

Defendant's Attorney(s): WESLEY F. SINE

DEREK LANGTON

Video

Tape Number: D051303 Tape Count: 934

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#### HEARING

This is before the Court for a telephone conference based on a request for pre-trial filed by counsel. Counsel indicates that defendant's Doug Longfellow and Ken Morgan have filed for bankruptcy. Deposition for defendant Lawrence Critchfield has not yet taken place due to continuing medical problems, but should be at a stage where it could be scheduled. Parties are requesting a bench trial be set. Court grants. Trial set 10-01-2003 to 10-03-2003 at 9:00 am.

BENCH TRIAL is scheduled.

Date:

Date:

Date: 10/01/2003

Time: 09:00 a.m.

Location: 3rd Floor Northwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

before Judge ROGER S. DUTSON

Date: 10/02/2003

Time: 09:00 a.m.

Location: 3rd Floor Northwest

Second District Court

2525 Grant Avenue

Ogden, UT 84401

before Judge ROGER S. DUTSON

05-13-03 BENCH TRIAL scheduled on October 01, 2003 at 09:00 AM in 3rd Floor Northwest with Judge DUTSON.

dianew

5-13-03 BENCH TRIAL scheduled on October 02, 2003 at 09:00 AM in 3rd  
Floor Northwest with Judge DUTSON. dianew

5-13-03 BENCH TRIAL scheduled on October 03, 2003 at 09:00 AM in 3rd  
Floor Northwest with Judge DUTSON. dianew

5-15-03 Notice - NOTICE for Case 990906932 ID 8139077 dianew  
BENCH TRIAL is scheduled.  
Date: 10/01/2003  
Time: 09:00 a.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
before Judge ROGER S. DUTSON

Date: 10/02/2003  
Time: 09:00 a.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
before Judge ROGER S. DUTSON

Date: 10/03/2003  
Time: 09:00 a.m.  
Location: 3rd Floor Northwest  
Second District Court  
2525 Grant Avenue  
Ogden, UT 84401  
before Judge ROGER S. DUTSON

5-29-03 Fee Account created Total Due: 0.75 suem

5-29-03 COPY FEE Payment Received: 0.75 suem

Note: Mail Payment;

6-17-03 Filed: Notice to Appear or Appoint Counsel bonniejs

6-19-03 Filed: Motion to Allow Withdrawl of Counsel sarahv

6-19-03 Note: Rec'd Order Allowing Withdrawl of Counsel sarahv

6-20-03 Filed: Withdrawl of Counsel of Wesley F Sine sarahv

6-24-03 Note: hold til 6/26 trinaw

7-01-03 Filed: LETTER BY COURT TO ATTORNEY TIMOTHY W. BLACKBURN dianew

7-02-03 Note: Notice to Submit needed - copy of docket to Wesley Sine trinaw

9-24-03 Filed: Defendant Wespac Holdings, LLC's Trial Brief shannont

9-24-03 Note: Sent Trial Brief to RSD's clerk shannont

9-25-03 Filed: Subpoena jewelk

0-01-03 Minute Entry - Minutes for Bench Trial dianew  
Judge: ROGER S. DUTSON  
Clerk: dianew  
PRESENT

Plaintiff(s): MICHAEL L HENDRY  
DOUGLAS BASSETT

Plaintiff's Attorney(s): TIMOTHY W. BLACKBURN

Defendant's Attorney(s): DEREK LANGTON

Video

Tape Number: D100103 Tape Count: 910

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TRIAL

Counsel stipulate to dismiss the defendant, Wespac Holders, LLC., from complaint. Record to reflect that defendant, G. Lawrence Critchfield, is not present nor represented by counsel. Attorney Wesley Sine has withdrawn as counsel and a Notice to Appear or Appoint Counsel has been filed.

COUNT: 918

Plaintiff Witness #1 Douglas Longfellow is sworn and testifies.

COUNT: 942

Plaintiff Exhibits #1 to #11 are offered and received.

COUNT: 943

Plaintiff Michael Hendry is sworn and testifies.

COUNT: 954

Plaintiff rests.

COUNT: 957

Court issues ruling. Court grants judgment in favor of the plaintiff's and against the defendant's G. Lawrence Critchfield and Western Real Estate Investment, jointly and severally, for \$200,000.00, to include interest at the rate of 10% per annum from the date monies were to paid back in August, punitive damages of \$25,000.00 and attorney fees as requested. Court will also allow any additional attorney fees be augmented. Mr. Blackburn to prepare and submit appropriate pleadings to the Court for signature.

10-01-03 BENCH TRIAL Cancelled.

dianew

Reason: Court Ordered

10-01-03 BENCH TRIAL Cancelled.

dianew

Reason: Court Ordered

10-07-03 Note: Rec'd Order And Judgment Of Dismissal With Respect To Defendant Wespac Holdigns, LLC

rosalinm

10-21-03 Note: file sent to RSD

trinaw

10-24-03 Filed: Memorandum Of Costs And Disbursements

rosalinm

10-24-03 Note: Rec'd Findings Of Fact And Conclusions Of Law

rosalinm

10-28-03 Fee Account created

Total Due: 10.50

lindaf

10-28-03 COPY FEE

Payment Received: 10.50

lindaf

## Addendum B

Steve S. Christensen (U.S.B. No. 6156)

Lloyd E. Allen (U.S.B. No. 5586)

**HIRSCHI CHRISTENSEN, PLLC**

136 East South Temple, Suite 850

Salt Lake City, Utah 84111

Telephone: (801) 322-0593

Facsimile: (801) 322-0594

Attorneys for Defendants Western Real Estate Investment Trust, Inc. and G. Lawrence Critchfield

IN THE SECOND JUDICIAL DISTRICT COURT  
WEBER COUNTY, STATE OF UTAH

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MICHAEL L. HENDRY, DOUGLAS  
BASSET, AND FIVE "T"  
CORPORATION,

Plaintiffs,

vs.

UNIDYN FINANCIAL MANAGEMENT  
CORPORATION, DOUGLAS  
LONGFELLOW, G. LAWRENCE  
CRITCHFIELD, PAUL CHRISTENSEN,  
WESPAC HOLDINGS, L.L.C., KEN  
MORGAN, WESTERN REAL ESTATE  
INVESTMENT TRUST, INC., and DOES  
1-10,

Defendants.

**AFFIDAVIT OF ALAN F. MECHAM  
IN SUPPORT OF G. LAWRENCE  
CRITCHFIELD'S MOTION FOR  
RELIEF FROM JUDGMENT**

Civil No. 990906932

Honorable Roger S. Dutson



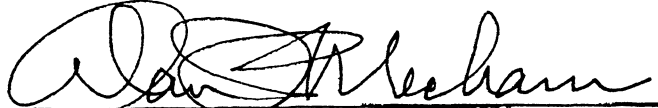
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

ALAN F. MECHAM, being first duly sworn upon oath, deposes and states as follows:

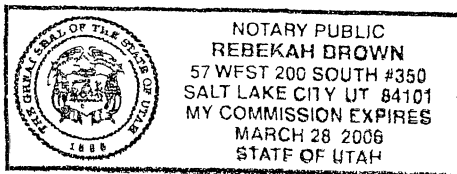
1. The undersigned ("Affiant") is an adult resident of Salt Lake County, State of Utah, and that:
2. Affiant is a member of the Utah State Bar and practices law in Salt Lake City with the law firm of Mackey, Price and Williams.
3. On or before July 7, 2003, G. Lawrence Critchfield ("Critchfield") gave Affiant a copy of a Notice to Appear or Appoint Counsel dated June 16, 2003 directed to Critchfield in this lawsuit and asked if I would check the status of his case.
4. On July 7, 2003, Affiant telephoned and talked to Derek Langton ("Langton"), counsel for one of the other defendants, Wespac Holdings, LLC, to inform him that Affiant was trying to determine the status of the case for Critchfield.
5. Langton said Critchfield needed to appear for a deposition.
6. Affiant told Langton that Affiant was not going to represent Critchfield in the lawsuit but that Affiant was authorized to schedule a date for a deposition.
7. Langton said he would defer to plaintiffs' counsel, Tim Blackburn ("Blackburn"), for scheduling a deposition.


8. During the course of the telephone conversation Langton said nothing about a trial date being scheduled.
9. On July 7, 2003, Affiant telephoned Blackburn and was told by his receptionist that he and Mara Brown ("Brown"), another of plaintiffs' counsel in this lawsuit, were not available but that Brown's secretary was in and could talk to Affiant. Affiant told Brown's secretary that Affiant was authorized to schedule a date for a deposition.
10. Brown's secretary told Affiant he would have to talk to Blackburn to schedule a deposition.
11. Affiant asked Brown's secretary to have Blackburn telephone Affiant. She agreed to do so.
12. Brown's secretary said nothing about a trial date being scheduled.
13. Affiant never received a telephone call from Blackburn.

DATED this 29<sup>th</sup> day of January, 2004.

  
Alan F. Mecham

SUBSCRIBED AND SWORN to before me this 29<sup>th</sup> day of January, 2004.




  
Notary Public

**CERTIFICATE OF SERVICE**

I certify that on the 2<sup>nd</sup> day of <sup>February</sup> ~~January~~, 2004 a true and correct copy of the foregoing AFFIDAVIT OF ALAN F. MECHAM IN SUPPORT OF G. LAWRENCE CRITCHFIELD'S MOTION FOR RELIEF FROM JUDGMENT was sent via U.S. mail, postage prepaid, to the following:

Timothy W. Blackburn  
Mara A. Brown  
Attorneys for Plaintiffs  
2404 Washington Boulevard  
Ogden, Utah 84401

  
\_\_\_\_\_

## Addendum C

### **STATUTES/RULES**

Utah Rules of Civil Procedure Rule 60(b)

Utah Rules of Civil Procedure Rule 74(a), (b)

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**(a)** If a motion is not pending and a certificate of readiness for trial has not been filed, an attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending and no certificate of readiness for trial has been filed. If a motion is pending or a certificate of readiness for trial has been filed, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing.

**(b)** If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.