

2006

Centennial Investment Company, LLC, a Utah Limited Liability Company v. Brook L. Nuttall and Vanessa Nuttall : Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Jay L. Kessler; Kessler Law Office; Attorneys for Defendant/Appellant; Steven C. Tycksen; Chad C. Shattuck; Zoll & Tycksen.

Shawn D. Turner; Larson, Turner, Dalby & Ethington; Attorneys for Plaintiff/Appellants.

Recommended Citation

Legal Brief, *Centennial Investment Company v. Nuttall*, No. 20060519 (Utah Court of Appeals, 2006).
https://digitalcommons.law.byu.edu/byu_ca2/6580

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

Steven C. Tycksen #3300
Chad C Shattuck, #9345
ZOLL & TYCKSEN, L.C.
12401 South 450 East, Suite E-1
Draper, Utah 84020
Telephone: (801) 748-4081
Facsimile: (801) 748-4087

Attorneys for Appellee Vanessa Nuttall

IN THE UTAH COURT OF APPEALS

CENTENNIAL INVESTMENT
COMPANY, LLC, a Utah Limited
Liability Company,
Plaintiff-Appellant,

Petitioner and Appellee,

vs.

BROOK L. NUTTALL and VANESSA
NUTTALL,

Defendants-Appellees.

**PETITION FOR REHEARING
ON THE ISSUE OF
ATTORNEY'S FEES AND COSTS**

Case No. 20060519

FILED
UTAH APPELLATE COURT
OCT 17 2007

Steven C. Tycksen #3300
Chad C Shattuck, #9345
ZOLL & TYCKSEN, L.C.
12401 South 450 East, Suite E-1
Draper, Utah 84020
Telephone: (801) 748-4081
Facsimile: (801) 748-4087

Attorneys for Appellee Vanessa Nuttall

IN THE UTAH COURT OF APPEALS

CENTENNIAL INVESTMENT
COMPANY, LLC, a Utah Limited
Liability Company,
Plaintiff-Appellant,

Petitioner and Appellee,

vs.

BROOK L. NUTTALL and VANESSA
NUTTALL,

Defendants-Appellees.

**PETITION FOR REHEARING
ON THE ISSUE OF
ATTORNEY'S FEES AND COSTS**

Case No. 20060519

COMES NOW Defendant/Appellee, Vanessa Nuttall, by and through her attorneys of record, Zoll & Tycksen, LC, and pursuant to Rule 35 of the Utah Rules of Appellate Procedure, does hereby petition the Court to for rehearing on the issue of attorney's fees and costs. This petition is made in good faith and is not presented for purposes of delay. As support for this motion, Defendant offers the following:

In her brief, Defendant Vanessa Nuttall included a request and legal support for awarding her attorney's fees and costs incurred on appeal. Her attorney also argued for this award in oral argument. In its' Opinion issued on October 4, 2007, the Court of Appeals affirmed the ruling of the lower court in its entirety, but did not address Defendant/Appellee, Vanessa Nuttall's request for attorney's fees and costs on appeal.

This Court should award Vanessa her attorney's fees incurred to defend this appeal pursuant to Rule 24 of the Utah Rules of Appellate Procedure, and Utah Code §38-9-4(2).

Rule 24 of the Utah Rules of Appellate Procedure indicates that a party shall set forth in its brief any legal basis for recovering attorney fees. See URAP 24(a)(9). The lower court awarded Vanessa her attorneys fees based on Utah Code §38-9-4(2). Since Vanessa substantially prevailed in this appeal, she should be awarded her reasonable attorney's fees on the same basis because this legal action, including the appeal, could have been avoided were it not for CIC's wrongful lien on Vanessa's property, and the admittedly unnecessary inclusion of Vanessa in this lawsuit.

An award of attorney's fees is further justified by CIC unnecessarily forcing Vanessa to defend an appeal of issue No. 2 (whether the trial court erred in holding that Brook Nuttall could not require Vanessa Nuttall to sell her interest in the property), which this Court agreed was never decided by the lower court (Opinion p. 5, footnote 3). In fact, the Plaintiff knew that CIC "never said that Brook Nuttall could sell Vanessa Nuttall's interest without taking some further action or having some further authority to do so. That's never been the claim." T 9/9/05 at 10:4-7. If CIC has never made the claim, and it knew it had not, and the Record being devoid of any decision by the lower court addressing the issue, the appeal on this issue was wholly improper. CIC alone should bear the expense of appealing an issue that was never decided by the lower court, and contrary to its own admission.

Vanessa has also been forced to defend an appeal regarding a ruling on new theory regarding the distinguishing of attorney's fees; an issue that was never raised before the lower court. Again this Court agreed that the new issue could not be raised for the first time on appeal (Opinion p. 11, footnote 7). Likewise CIC should bear the financial consequences of appealing this new issue.

CIC also sought appeal on and unappealable interlocutory decision regarding CIC's first cause of action against Brook Nuttall. This Court agreed at oral argument that CIC's appeal of the lower court's interlocutory order in favor of Brook Nuttall was not ripe for appeal since the litigation between the Plaintiff and Brook Nuttall is ongoing in

district court.¹ It is only fair that CIC bear the costs and fees Vanessa has incurred to defend against that premature argument.

Vanessa has incurred substantial attorney's fees and costs because of the CIC's appeal of the ruling voiding its wrongful lien. She has been forced to defend an appeal and has incurred expenses to do so that as a single mother she cannot afford.

Rule 34(a) provides that the prevailing party in an appeal is to be awarded her costs. On this basis, this Court should award the Vanessa her costs on appeal because the Court has affirmed on all appealable issues.

Because this Court affirmed the lower court's decision in its entirety, based on Utah's Rules of Civil Procedure, The Utah Rules of Appellate Procedure and the Utah Code, CIC should bear Vanessa's attorney fees and costs incurred on appeal.

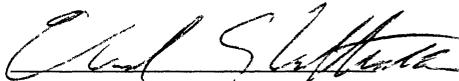
Defendant respectfully asks the Court to award Vanessa's attorney's fees incurred on appeal, and allow her to submit the same via affidavit jointly with her bill of costs upon the Court's deciding this motion. Defendant also asks the Court to include in its decision a directive for the lower court to immediately release to her the supersedeas bond filed with the lower court (copy of notice attached hereto as Exhibit 1), and award a

¹ This is part of the reason the Court did not allow Brook Nuttall's attorney Jay Kessler to make oral argument, the other reason being that Brook's attorney had made no appearance on appeal, and had filed no appellate brief.

judgment in the amount of attorney's fees and costs owing to Vanessa Nuttall above and beyond the \$11,372.25 bond.

DATED and SIGNED this 17 day of October, 2007.

ZOLL & TYCKSEN, L.C.



Chad C Shattuck
Attorney for Defendant/Appellee
Vanessa Nuttall

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, **PETITION FOR REHEARING ON THE ISSUE OF ATTORNEY'S FEES AND COSTS**, postage pre-paid to the following:

Jay L. Kessler
Kessler Law Office
9117 West 2700 South #A
Magna, UT 84044

Shawn D. Turner
Larson, Turner, Dalby & Ethington, LC
P.O. Box 95921
1218 West South Jordan Parkway, Suite B
South Jordan, UT 84095

on this 17 day of October 2007.

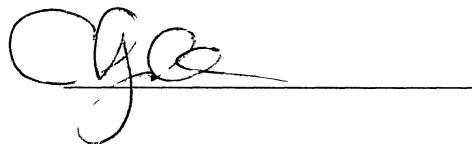


EXHIBIT 1

SHAWN D. TURNER (5813)
LARSON, TURNER, DALBY & ETHINGTON, LC
P.O. Box 95921
1218 West South Jordan Parkway, Suite B
South Jordan, UT 84095
(801) 446-6464

IN THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY
WEST JORDAN DEPARTMENT, STATE OF UTAH

<p>CENTENNIAL INVESTMENT COMPANY, L.L.C., a Utah Limited Liability Company Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Brook L. Nuttall and Vanessa Nuttall</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Notice of filing of Supercedeas Bond</p> <p style="text-align: center;">Civil No. 050405325 Judge Robert Adkins</p>
--	--

Plaintiff, by and through its counsel does hereby give notice of its filing of a cash supercedeas bond in the amount of \$11,372.25. Consisting of the amount of the Court's Judgment including attorney fees of \$9,451.73 together with interest thereon for three years at the rate of 6.36% as set forth in the order.

DATED this 30th day of May, 2006

LARSON, TURNER, DALBY & ETHINGTON L.C.



Shawn D. Turner

ST

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed May 30, 2006 first class postage prepaid to the following:

Jay L. Kessler
KESSLER LAW OFFICE
9117 West 2700 South, #A
Magna, Utah 84044

Steven C. Tycksen
Zoll & Tycksen, LC
5300 South 360 West Ste. 360
Murray, Utah 84123