

2006

# Wasatch Oil and Gas, L. L. C. v. Edward A. Reott, key Enery Services, Inc., J-west Oilfield Service, Inc., Mission Energy, LLC : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](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.

Lawrence E. Stevens; Gary E. Doctorman; Dianna M. Gibson; Parson, Behle and Latimer; Attorneys for Defendants-Appellees.

Eric C. Olson; Matthew K. Richards; Kirton and McConkie; Carolyn L. McIntosh; David E. Brody; Patton Boggs, LLP; Nick Sampinos; Attorneys for Appellant.

---

## Recommended Citation

Brief of Appellee, *Wasatch Oil and Gas, L. L. C. v. Edward A. Reott, key Enery Services, Inc., J-west Oilfield Service, Inc., Mission Energy, LLC*, No. 20060562 (Utah Court of Appeals, 2006).

[https://digitalcommons.law.byu.edu/byu\\_ca2/6613](https://digitalcommons.law.byu.edu/byu_ca2/6613)

This Brief of Appellee 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

IN THE UTAH COURT OF APPEALS

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company,

Plaintiff-Appellant,

vs.

EDWARD A. REOTT, an individual, KEY  
ENERGY SERVICES, INC., a Maryland  
corporation dba Key Energy Services, Inc.  
Four Corners Division, J-WEST OILFIELD  
SERVICE, INC., a Utah corporation,  
MISSION ENERGY, LLC, a Colorado  
limited liability company, and ALL OTHER  
UNKNOWN PERSONS OR PARTIES  
CLAIMING ANY RIGHT, TITLE, LIEN  
OR INTEREST IN THE PROPERTY  
DESCRIBED IN THE COMPLAINT  
HEREIN,

Defendants-Appellees.

GOAL, L.L.C., a Utah limited liability  
company, as the real party in interest to the  
rights of Edward Reott, Key Energy  
Services Lien and J-West Oilfield Lien, and  
REGOAL, INC., a Pennsylvania  
corporation,

Counterclaim, Third Party Plaintiffs  
and Crossclaim Plaintiffs-Appellees,

vs.

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company, MISSION L.L.C.,  
a Colorado limited liability company,  
WASATCH OIL & GAS PRODUCTION  
CORPORATION, a Utah corporation,  
WASATCH GAS GATHERING, a Utah  
limited liability company, BILL BARRETT

**BRIEF OF APPELLEES**

Case No. 20060562-CA

Priority No. 15

**(ORAL ARGUMENT REQUESTED)**

FILED  
UTAH APPELLATE COURTS

NOV 17 2006

**IN THE UTAH COURT OF APPEALS**

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company,

Plaintiff-Appellant,

vs.

EDWARD A. REOTT, an individual, KEY  
ENERGY SERVICES, INC., a Maryland  
corporation dba Key Energy Services, Inc.  
Four Corners Division, J-WEST OILFIELD  
SERVICE, INC., a Utah corporation,  
MISSION ENERGY, LLC, a Colorado  
limited liability company, and ALL OTHER  
UNKNOWN PERSONS OR PARTIES  
CLAIMING ANY RIGHT, TITLE, LIEN  
OR INTEREST IN THE PROPERTY  
DESCRIBED IN THE COMPLAINT  
HEREIN,

Defendants-Appellees.

GOAL, L.L.C., a Utah limited liability  
company, as the real party in interest to the  
rights of Edward Reott, Key Energy  
Services Lien and J-West Oilfield Lien, and  
REGOAL, INC., a Pennsylvania  
corporation,

Counterclaim, Third Party Plaintiffs  
and Crossclaim Plaintiffs-Appellees,

vs.

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company, MISSION L.L.C.,  
a Colorado limited liability company,  
WASATCH OIL & GAS PRODUCTION  
CORPORATION, a Utah corporation,  
WASATCH GAS GATHERING, a Utah  
limited liability company, BILL BARRETT

**BRIEF OF APPELLEES**

Case No. 20060562-CA

Priority No. 15

**(ORAL ARGUMENT REQUESTED)**

---

CORPORATION, a Maryland corporation,  
and all other persons unknown claiming any  
right, title, estate or interest in or a lien upon  
the real property described herein adverse to  
the complainant's ownership or clouding his  
title thereto,

Third Party, Counterclaim and  
Crossclaim Defendants-Appellants.

---

---

**APPEAL FROM SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
CARBON COUNTY, STATE OF UTAH, OF THE RULING OF THE  
HONORABLE BRYCE K. BRYNER, AND ORDER OF THE HONORABLE  
GEORGE M. HARMOND, JR. GRANTING REOTT'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT TO QUIET TITLE IN THE SECTION 32 LEASES TO  
THE REOTT PARTIES**

---

ERIC C. OLSON (4108)  
MATTHEW K. RICHARDS (7972)  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
P.O. BOX 45120  
Salt Lake City, Utah 84145-0120  
*Attorneys for Appellant Wasatch Oil &  
Gas, LLC*

CAROLYN L. MCINTOSH  
DAVID E. BRODY  
PATTON BOGGS, LLP  
1600 Lincoln Street, Suite 1900  
Denver, CO 80264

NICK SAMPINOS (3950)  
1990 North Carbon Avenue  
Price, UT 84501  
*Attorneys for Appellant Bill Barrett  
Corporation*

LAWRENCE E. STEVENS (3103)  
GARY E. DOCTORMAN (0895)  
DIANNA M. GIBSON (7533)  
Parsons Behle & Latimer  
One Utah Center  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
*Attorneys for Appellees Edward A. Reott,  
Goal, LLC and Regoal Inc.*

## **PARTIES TO PROCEEDING**

A. **Plaintiff:**

Wasatch Oil & Gas, L.L.C., a Utah limited liability company

B. **Defendants:**

Edward A. Reott, an individual (“Ed Reott”)

Key Energy Services, Inc. (“Key”)

J-West Oilfield Services, Inc., a Utah corporation (“J-West”)

Mission Energy, L.L.C., a Colorado limited liability company (“Mission”)

C. **Counterclaim, Third Party and Cross-Claim Plaintiffs:**

Edward A. Reott (“Ed Reott”)

Goal, L.L.C., a Utah limited liability company (“Goal”)

Regoal, Inc., a Pennsylvania corporation (“Regoal”)

D. **Third Party, Counterclaim and Cross-Claim Defendants:**

Wasatch Oil & Gas, L.L.C. (“Wasatch”)

Mission Energy, L.L.C., a Colorado limited liability company (“Mission”)

Wasatch Oil & Gas Production Corporation, a Utah corporation (“WOGC”)

Wasatch Gas Gathering, L.L.C., a Utah limited liability company

Bill Barrett Corporation, a Delaware corporation (“BBC”)

E. **Defined Terms:** As used herein, “Reott” collectively refers to Ed Reott and the companies he owns, Goal and Regoal. “Wasatch” refers collectively to Wasatch Oil & Gas, L.L.C., Wasatch Oil & Gas Production Company and Wasatch Gas Gathering, L.L.C., as they all are commonly controlled. For simplicity of reference to legal positions and in non-factual contexts, “Wasatch” may also refer to both BBC and all three Wasatch entities.

## TABLE OF CONTENTS

	Page
JURISDICTIONAL STATEMENT .....	0
DETERMINATIVE RULES OF CIVIL PROCEDURE.....	0
STATEMENT OF ISSUES PRESENTED .....	1
I. DID THE DISTRICT COURT CORRECTLY DETERMINE THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT IN FAVOR OF REOTT? .....	1
II. DID THE DISTRICT COURT CORRECTLY CONCLUDE THAT REOTT, AS THE PURCHASER AT THE SHERIFF’S SALE AND THE PARTY AFFECTED BY REDEMPTION, HAD STANDING TO CHALLENGE WHETHER WASATCH IS A SUCCESSOR-IN- INTEREST TO MISSION? .....	1
III. DID THE DISTRICT COURT CORRECTLY CONCLUDE THAT WASATCH DID NOT OBTAIN LEGAL TITLE TO SECTION 32 AND THEREFORE IS NOT A SUCCESSOR-IN-INTEREST TO MISSION WHEN MISSION IS NOT IDENTIFIED AS GRANTOR ON THE CONVEYANCE DOCUMENTS? .....	1
IV. DID THE DISTRICT COURT CORRECTLY CONCLUDE THAT WASATCH HAS NO EQUITABLE TITLE TO SECTION 32 AND THEREFORE IS NOT A SUCCESSOR-IN-INTEREST TO MISSION WHERE WASATCH OBTAINED ITS INTEREST BY FRAUDULENT TRANSFER AND WHERE WASATCH HAS NOT PROVEN MISSION’S INTENT TO TRANSFER SECTION 32?.....	1
V. DID THE DISTRICT COURT CORRECTLY CONCLUDE THAT WASATCH’S INTEREST IN THE SECTION 32 LEASES (AND OTHER INTERESTS) WERE OBTAINED BY FRAUDULENT TRANSFER?.....	1
STANDARD OF REVIEW .....	1
STATEMENT OF THE CASE.....	2
COURSE OF PROCEEDINGS .....	2
STATEMENT OF FACTS .....	2
SUMMARY OF THE ARGUMENTS .....	9

# **TABLE OF CONTENTS** **(continued)**

	<b>Page</b>
ARGUMENT .....	12
POINT I. THE TRIAL COURT CORRECTLY DETERMINED THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT THAT PRECLUDED SUMMARY JUDGMENT IN FAVOR OF REOTT.....	12
A. Wasatch and BBC Did Not Dispute the Material Facts. ....	13
B. The District Court Did Not “Find” Any Fact And Did Not Make Any Impermissible “Findings” Regarding The Nine Badges Of Fraud Or The “Materiality” Of Any Specific Fact.....	14
POINT II. THE DISTRICT COURT SHOULD BE AFFIRMED IN RULING THAT REOTT HAS STANDING TO CHALLENGE WASATCH’S CLAIM TO BE MISSION’S SUCCESSOR-IN-INTEREST, UNDER RULE 69 UTAH R CIV. P., AND ENTITLED TO REDEEM THE SECTION 32 LEASES.....	17
A. Reott Has A Personal Stake Sufficient For Standing. ....	17
B. The District Court Correctly Determined That Reott, As The Purchaser At The Sheriff’s Sale, Has Standing To Challenge Wasatch’s Right To Redeem. ....	18
C. Brockbank Does Not Apply To The Facts Of This Case Because Mission Did Not Transfer Its Personal Right To Redeem to Wasatch; It Transferred (Or Attempted To Transfer) Its Real Property Interest. ....	20
POINT III. THE DISTRICT COURT SHOULD BE AFFIRMED IN RULING THAT WASATCH IS NOT A SUCCESSOR-IN-INTEREST TO MISSION, DOES NOT HAVE LEGAL OR EQUITABLE TITLE TO THE SECTION 32 LEASES, AND IS NOT ENTITLED TO REDEEM .....	21
A. The District Court Correctly Concluded That The Assignments Of The Section 32 Leases Signed By Justin Sutton And Not By Mission Did Not Convey Legal Title To Wasatch As A Matter Of Law.....	22
1. Principles Of Equity Dictate That Wasatch Is Not Entitled To Reform The Lease Assignments To Effect The Conveyance Of The Section 32 Leases, And By Judicial Fiat Finish The Fraudulent Transfer.....	23

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
<b>B.</b>	
The District Court Correctly Ruled That Wasatch Does Not Have Equitable Title In The Section 32 Leases. ....	24
1. The District Court Correctly Concluded That Wasatch Has No Equitable Title In The Section 32 Leases Because It Obtained Its Interest Through A Fraudulent Transfer. ....	25
2. The District Court Correctly Concluded That SITLA’s Approval Had No Legal Effect On The Validity Of The Section 32 Lease Assignments .....	26
3. The June 2000 Letter Does Not Grant An Equitable Interest In the Section 32 Leases. ....	28
4. Wasatch Cannot Establish Mission’s Intent To Assign Its Interests to Wasatch In The Section 32 Leases. ....	29
5. The June 2000 Letter Is Not Supported By “Sufficient Consideration.” .....	31
6. Liberal Construction Of Rule 69 Is For The Benefit Of One Legally Entitled To Redeem, Not To Liberally Grant Someone The Right To Redeem.....	36
7. Even If Legal Title Could Be Established, It Should Be Voided As A Result Of The Fraudulent Transfer.....	37
<b>POINT IV. THE DISTRICT COURT PROPERLY CONCLUDED THAT, AS A MATTER OF LAW, WASATCH RECEIVED ITS INTEREST IN THE SECTION 32 LEASES, AND OTHERS, BY A FRAUDULENT TRANSFER .....</b>	<b>37</b>
<b>A.</b>	
Fraudulent Transfer Can Be Resolved On Summary Judgment.....	38
<b>B.</b>	
The District Court Properly Concluded, Based on the Undisputed Facts And The Lack Of Any Opposition, That Wasatch and BBC Conceded The Existence of Nine Badges of Fraud. ....	40
<b>C.</b>	
The Undisputed Evidence Establishes Eleven Badges of Fraud. ....	41



**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
CONCLUSION .....	50
ADDENDUM	
QUIET TITLE RULING.....	TAB A
STATEMENT OF MATERIAL UNDISPUTED FACTS SUPPORTING ORDER GRANTING PARTIAL SUMMARY JUDGMENT .....	TAB B
2001 VERSION OF RULE 69, UTAH R. CIV. P.....	TAB C

## TABLE OF AUTHORITIES

### Page

### FEDERAL CASES

<i>Devon Energy Corp. v. United States</i> , 45 Fed. Cl. 519 (Fed. Cls. 1999) .....	27
<i>Morganroth &amp; Morganroth v. DeLorean</i> , 213 F.3d 1301 (10th Cir. 2000) .....	39
<i>Taylor v. Rupp (In Re Taylor)</i> , 133 F.3d 1336 (10th Cir. 1998) .....	39, 41
<i>United States v. Christensen</i> , 751 F. Supp. 1532 (D. Utah 1990), <i>appeal dismissed</i> , 961 F.2d 221 (10th Cir. 1992) .....	16, 42, 46, 47, 49, 50

### STATE CASES

<i>Anderson v. Gardner</i> , 647 P.2d 3 (Utah 1982) .....	23
<i>Bank of Salt Lake v. Corporation of President of the Church of Jesus Christ of Latter-Day Saints</i> , 534 P.2d 887 (Utah 1975) .....	30
<i>Battistone v. American Land &amp; Development Co.</i> , 607 P.2d 837 (Utah 1980) .....	24
<i>Blue Cross and Blue Shield of Utah v. Utah State Tax Commission</i> , 779 P.2d 634 (Utah 1989) .....	2
<i>Bodell Const. Co. v. Stewart Title Guaranty Co.</i> , 945 P.2d 119 (Utah Ct. App. 1997) .....	30
<i>Bradshaw v. McBride</i> , 649 P.2d 74 (Utah 1982) .....	30
<i>Brockbank v. Brockbank</i> , 2001 UT App. 251, 32 P.3d 990 .....	10, 17, 20, 21
<i>Burnham v. Bankers Life &amp; Casualty Co.</i> , 470 P.2d 261 (Utah 1970) .....	17
<i>Butler v. Wilkinson</i> , 740 P.2d 1244 (Utah 1987) .....	37
<i>Casserleigh v. Spar Consolidated Mining Co.</i> , 128 P. 863 (Colo. Ct. App. 1912) .....	19

<i>Coleman ex rel. Schefski v. Stevens</i> , 2000 UT 98, 17 P.3d 1122.....	15
<i>Colonial Film &amp; Equip. Co. Inc. v. MacMillan Prof'l. Magazines, Inc.</i> , 252 S.E.2d 61 (Ga. Ct. App. 1979).....	31
<i>Dahnken, Inc. of Salt Lake City v. Wilmarth</i> , 726 P.2d 420 (Utah 1986)...	16, 39, 41
<i>Forty-Four Hundred East Broadway Co. v. 4400 East Broadway</i> , 660 P.2d 866 (Ariz. Ct. App. 1982) .....	21
<i>Francis v. White</i> , 49 So. 334 (Ala. 1909) .....	18
<i>Hansen v. Eyre</i> , 2005 UT 29, 116 P.3d 290 .....	2
<i>Harper v. Great Salt Lake Council, Inc.</i> , 1999 UT 34, 976 P.2d 1213 .....	29
<i>Heglar Ranch, Inc. v. Stillman</i> , 619 P.2d 1390 (Utah 1978).....	12
<i>Hone v. Hone</i> , 2004 UT App. 241, 95 P.3d 1221 .....	23
<i>Horton v. Horton</i> , 695 P.2d 102 (Utah 1984).....	26
<i>Hottinger v. Jensen</i> , 684 P.2d 1271 (Utah 1984).....	24
<i>Hyland v. Kirkman</i> , 498 A.2d 1278 (N.J. Super. Ct. 1985).....	22
<i>Meyer v. General America Corp.</i> , 569 P.2d 1094 (Utah 1977).....	35, 37
<i>Monson v. Carver</i> , 928 P.2d 1017 (Utah 1996).....	3, 17, 38
<i>Olsen v. Bank of Ephraim</i> , 68 P.2d 195 (Utah 1937) .....	25, 26
<i>Phyfe v. Riley</i> , 15 Wend. 248 (N.Y. Sup. Ct. 1836) .....	18
<i>RHN Corp. v. Veibell</i> , 2004 UT 60, 96 P.3d 935.....	26, 31
<i>Resource Management Co. v. Weston Ranch &amp; Livestock Co., Inc.</i> , 706 P.2d 1028 (Utah 1985).....	34
<i>Robertson v. Moline, Milburn &amp; Stoddard Wagon Co.</i> , 55 N.W. 495 (Iowa 1893) .....	18, 19

<i>Ryan v. Dan's Food Stores, Inc.</i> , 972 P.2d 395 (Utah 1998).....	1
<i>Silva v. Holme</i> , 241 P.2d 21 (Cal. Ct. App. 1st Dist. 1952).....	31
<i>Starley v. Deseret Foods Corp.</i> , 74 P.2d 1221 (Utah 1938).....	31
<i>State v. Nelson</i> , 725 P.3d 1353 (Utah 1986) .....	18
<i>Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.</i> , 787 P.2d 1328 (Utah Ct. App. 1990).....	36
<i>Territorial Sav. &amp; Loan Association v. Baird</i> , 781 P.2d 452 (Utah Ct. App. 1989) .....	15, 38, 39, 41
<i>University of Utah v. Shurtleff</i> , 2006 UT 51, 144 P.3d 1109.....	2
<i>Utah Assets Corp. v. Dooley Brothers Association.</i> , 70 P.2d 738 (Utah 1937) .....	35
<i>Vali Convalescent &amp; Care Institute v. Division of Health Care Finance</i> , 797 P.2d 438 (Utah Ct. App. 1990) .....	27
<i>Waddoups v. Amalgamated Sugar Co.</i> , 2002 UT 69, 54 P.3d 1054.....	12, 13
<i>Walter v. Stewart</i> , 2003 UT App. 86, 67 P.3d 1042 .....	14
<i>Washington County Water Conservancy District v. Morgan</i> , 2003 UT 58, 82 P.3d 1125 .....	18
<i>Winter Park Devil's Thumb Inv't. Co. v. BMS Partnership</i> , 926 P.2d 1253 (Colo. 1996) .....	21

## STATE STATUTES

Utah Admin. Code R850-20-2200.5 (2003) .....	26, 27
Utah Code Ann. § 25-6-1 (1998 & Supp. 2006).....	20
Utah Code Ann. § 25-6-3(2) (1998 & Supp. 2006) .....	44
Utah Code Ann. § 25-6-4(1) (1998 & Supp. 2006) .....	34

Utah Code Ann. § 25-6-5 (1998 & Supp. 2006) .....	10, 15, 16, 35, 42, 44, 45, 46, 48, 49
Utah Code Ann. § 25-6-5(2) (1998 & Supp. 2006) .....	42
Utah Code Ann. § 38-10-101(2005) .....	6
Utah Code Ann. § 38-10-102 (2005) .....	6
Utah Code Ann. § 57-1-1(3) .....	2
Utah Code Ann. § 63-46b-15(1) .....	27
Utah Code Ann. § 65A-6-1 .....	26

## RULES AND REGULATIONS

### Utah Rules of Civil Procedure

Rule 7(c).....	9
Rule 7(c)(3)(A) .....	1
Rule 7(c)(3)(B).....	1
Rule 56(c).....	12
Rule 69 .....	iii, 1, 21, 23, 36, 37, iii
Rule 69A .....	1

## MISCELLANEOUS

58 C.J.S. Mines and Minerals § 139 (2002) .....	27
Restatement (Second) of Agency § 27 (1957).....	30

## **JURISDICTIONAL STATEMENT**

Reott accept Wasatch and BBC's Statement of Jurisdiction.

### **DETERMINATIVE RULES OF CIVIL PROCEDURE**

#### **Rule 7(c)(3)(A), Utah Rules of Civil Procedure:**

A memorandum opposing a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

#### **Rule 7(c)(3)(B), Utah Rules of Civil Procedure:**

A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

#### **Rule 69(j)(1), Utah Rules of Civil Procedure<sup>1</sup>:**

Real property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest: (A) the judgment debtor; (B) a creditor having a lien by judgment, mortgage, or other lien on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

---

<sup>1</sup> Rule 69, Utah R. Civ. P., was repealed effective November 1, 2004 and replaced with Rules 69A, B and C. All references herein are to Rule 69 in existence in 2001 and 2002 when Wasatch attempted to redeem. (A copy of former Rule 69 is provided in Appellees' Addendum, Tab C.)

## **STATEMENT OF ISSUES PRESENTED**

Pursuant to Rule 24(a)(5) of the Utah Rules of Appellate Procedure, Reott offers the following Statement of Issues in lieu of those offered by Appellants', as it more accurately identifies the issues before the Court:

- I. Did The District Court Correctly Determine That There Are No Genuine Issues Of Material Fact Precluding Summary Judgment In Favor Of Reott?**
- II. Did The District Court Correctly Conclude That Reott, As The Purchaser At The Sheriff's Sale And The Party Affected By Redemption, Had Standing To Challenge Whether Wasatch Is A Successor-In-Interest To Mission?**
- III. Did The District Court Correctly Conclude That Wasatch Did Not Obtain Legal Title To Section 32 And Therefore Is Not A Successor-In-Interest To Mission When Mission Is Not Identified As Grantor On The Conveyance Documents?**
- IV. Did The District Court Correctly Conclude That Wasatch Has No Equitable Title To Section 32 And Therefore Is Not A Successor-In-Interest To Mission Where Wasatch Obtained Its Interest By Fraudulent Transfer And Where Wasatch Has Not Proven Mission's Intent To Transfer Section 32?**
- V. Did The District Court Correctly Conclude That Wasatch's Interest in The Section 32 Leases (And Other Interests) Were Obtained By Fraudulent Transfer?**

Each of these issues were presented to the District Court in the parties' summary judgment briefs. (R. 2622-2644, 2645-2728, 4073-4107, 4349-4416.)

## **STANDARD OF REVIEW**

In considering an appeal from a grant of summary judgment, this Court determines whether the District Court correctly determined that there are no genuine issues of material fact and that judgment is appropriate as a matter of law. *Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 400 (Utah 1998). When the material facts are not disputed, this Court reviews *de novo* the legal basis for the District Court's ruling, for correctness.

*University of Utah v. Shurtleff*, 2006 UT 51, ¶ 15, 144 P.3d 1109, 1114; *Hansen v. Eyre*, 2005 UT 29, ¶ 8, 116 P.3d 290, 292. The “[f]acts are viewed in a light most favorable to the losing party below.” *Blue Cross and Blue Shield of Utah v. Utah State Tax Commission*, 779 P.2d 634, 636 (Utah 1989).

### **STATEMENT OF THE CASE**

After Reott purchased Mission’s interest in Section 32 at Sheriff’s Sale, Wasatch filed a Notice of Redemption, and, that same day, sued Reott to quiet title. Reott objected to Wasatch’s redemption and counterclaimed, asserting that Wasatch has no legal title, due to the defects in the conveyance, and no equitable title because it had obtained its interest in Section 32 by fraudulent transfer. The District Court granted Reott’s Motion for Partial Summary Judgment concluding that Wasatch is not entitled to redeem.

### **COURSE OF PROCEEDINGS**

Reott accepts Wasatch and BBC’s statement of the course of proceedings.

### **STATEMENT OF FACTS**

On December 16, 2005, the District Court entered its Ruling, granting partial summary judgment to Wasatch and Reott on issues of redemption, fraudulent conveyance, quiet title, trespass, trespass to chattels and conversion (“Ruling”). (R. 4810-4818; a copy is provided in Appellees’ Addendum, Tab A.) On May 24, 2006, the District Court entered the Statement of Material Undisputed Facts, which lists 128 undisputed facts. (R. 5395-5424; a copy is provided in Appellees’ Addendum, Tab B, and all citations herein to “Fact ¶” refer to that Statement of Undisputed Facts.) In that Statement and following each fact is a citation to the parties’ summary judgment



pleadings. The citation identifies the party who proposed the fact and confirms that the fact was not disputed below. These are the operative facts for consideration on appeal.

Reott rejects Wasatch's Statement of Facts because they virtually ignore the Statement of Undisputed Facts and present their own version of the facts, including disputed and new facts. In addition, Wasatch includes legal argument regarding whether the facts support each of the eleven badges of fraud. These should not be considered as a basis to undermine facts that Wasatch elected, for strategic or other reasons, not to dispute or failed to include below. *See Monson v. Carver*, 928 P.2d 1017, 1022 (Utah 1996) (declining to consider issues raised for first time on appeal). As such, for purposes of reviewing the Quiet Title Ruling, only the material undisputed facts, as determined by the District Court, are relevant. They are summarized as follows:

Mission is a Colorado limited liability company. (Fact ¶ 109.) Mission's Operating Agreement identifies four initial managers: Fred J. Jager, ("Jager") Justin C. Sutton ("Sutton"), William F. Muller, and Charles B. Willard. (Fact ¶ 110.) The Operating Agreement requires four managers at all times and requires a majority (i.e., three) of these managers to agree and approve all major company decisions. Signatures of two managers are required to convey corporate assets. (Fact ¶¶ 111, 112.)

In 1997, Mission was the record title owner of two mineral leasehold interests in Carbon County, Utah—ML 43541 (560 acres) and ML 43798 (80 acres)—issued by the Utah School and Institutional Trust Lands Administration ("SITLA") and located in Section 32 of Township 12 South, Range 16 East, Salt Lake Base and Meridian ("Section

32 Leases”). (Fact ¶¶ 12, 13.) The Section 32 Leases cover the entire 640 acres of Section 32, with mineral rights from the surface to the center of the earth. (Fact ¶ 16.)

On February 24, 1997, the Estate of Lavinia Reott, Ed Reott’s mother, made a bridge loan of \$160,000 to Mission. (Fact ¶ 17.) In 1997, Mission began drilling operations for a well on Section 32, which bears Lavinia’s name (“Lavinia Well”). Mission promised, but did not, repay the bridge loan in three months. (Fact ¶¶ 17, 18.) After trial in the Colorado Federal District Court, and on December 20, 1999, Reott obtained a judgment against Mission in the amount of \$204,000, plus costs and post-judgment interest at 5.67% (“Reott Judgment”). (Fact ¶ 19.)

At the time Reott made the bridge loan to Mission in February 1997, Mission had no ability to repay the loan within the time promised. (Fact ¶ 95.) Mission’s accountant, Bruce Hill, testified that Mission was undercapitalized, that its financial condition was marginal in 1998, and that it did not have the money to pay the 1999 Reott Judgment. (Fact ¶ 94.) Mission’s June 1999 and December 1999 accounts payable ledgers reflect that Mission was not paying its debts as they came due. (Fact ¶ 97.) Mission’s balance sheet showed that its liabilities exceeded its assets. (Fact ¶ 98.) Mr. Hill stated that by December 1999, he would have advised Mission’s creditors not to bother attempting to collect debts from Mission. (Fact ¶ 94.)

Mission did not pay the February 1997 Reott bridge loan. (Fact ¶¶ 17, 18.) Between February 1998 and May 2000, eleven mechanic’s liens were recorded against Mission’s interest in the Section 32 Leases. (Fact ¶¶ 20, 96.) Key Energy recorded its mechanic’s lien against Mission’s interest in Section 32 in February 1999. (Fact ¶ 21.)

J-West filed its mechanic's lien against Mission's interest in Sections 27, 32, 33 and 34 in August 1999. (Fact ¶ 22.)

Notwithstanding the liens, lawsuits and judgments, Mission, only through the action of Sutton, conveyed, in three separate transactions, essentially all of its assets to Wasatch, pursuant to three separate agreements which occurred in June 1999, May 2000 and June 2000 (Fact ¶¶ 99, 100, 101). The last transfer occurred on or about June 21, 2000, is reflected in a letter, and contemplates Mission's transfer of interest in ten leases, including the Section 32 Leases, existing APDs (drilling permits), and the Jack Canyon Unit operations, ("June 2000 Letter"). (Fact ¶ 101.)

The June 2000 Letter was never recorded. (Fact ¶ 102.) It is signed only by Sutton, and not two managers as required by the Operating Agreement. (Appellants' Br., Tab E.) There is no evidence that the letter was approved by three managers.

After the second, but before the last transfer in June 2000, J-West obtained a default judgment against Mission on May 22, 2000. (Fact ¶ 27). On October 27, 2000, Reott domesticated his judgment against Mission in Carbon County. (Fact ¶ 57.) On December 13, 2000, Key Energy obtained its judgment against Mission. (Fact ¶ 61.)

The Section 32 Leases at issue here are part of the Jack Canyon Unit ("JCU") and were part of the June 2000 Letter. The terms of that letter provide that Mission "will" assign to Wasatch Mission's interest in ten leases, including the Section 32 Leases, in exchange for "a right to participate in a 'trade' relating to a drilling deal that Wasatch may be successful in putting together on the leases." (Fact ¶¶ 28-32; Appellant's Br., Tab E.). Wasatch was not required to put together a drilling deal. (Fact ¶ 52.). And,

Wasatch never did. (*Id.*) Wasatch agreed to assume the obligation to maintain the leases and agreed to “reimburse” Mission for \$3,629.40 in rental payments that Mission had made on the leases. (Fact ¶ 31.)

On June 23, 2000, Sutton executed three Mineral Lease Assignment Forms for the Section 32 Leases. (Fact ¶ 33.) The forms do not reflect that they were signed by Mission Energy, LLC, nor do they reflect Mr. Sutton’s representative capacity. (Fact ¶ 35.) *See* Appellants’ Br., Tab F. The notary does not indicate that Mission signed the Assignments. (Fact ¶ 38.) Sutton was not the record title leasehold owner of the Section 32 Leases and never held any interest in them. (Fact ¶ 36.) Mission held record title.

Wasatch decided, on its own, that the Key Energy mechanic’s lien, the J-West mechanic’s lien and the J-West judgment only attached to forty-acre spacing for the Lavinia Well (Fact ¶ 46), and not to the 640-acre spacing previously established by the then operative spacing order.<sup>2</sup> (Fact ¶ 44.) Wasatch and Mission decided to horizontally and vertically “carve or fillet out that well and the forty acres that goes with it and move it aside.” (Fact ¶ 47.) Horizontally, Mission and Wasatch agreed that from ML43541, originally a 560 acre lease (with rights from surface to earth’s center), Mission would retain only those leasehold rights limited to the forty-acre parcel upon which they

---

<sup>2</sup> Prior to the Sheriff’s Sale, the Spacing Order attributable to Section 32 provided that one well could be drilled on every 640 acres. Under Utah Code Ann. § 38-10-102 (2005), liens on mineral rights attach to the “production unit,” among other interests. Utah Code Ann. § 38-10-101 (2005) defines “production unit” as “the drilling unit for a well established by lawful order or rule of the Board of Oil, Gas, and Mining in which the well is located; or if not applicable, 40 acres comprising the quarter-quarter section . . . in which the well is located.” In this case, all liens and judgments would attach to the entire 640 acre section of Section 32.

determined Lavinia 1-32 well is located. (Fact ¶ 41.) Vertically, Mission would retain only those leasehold rights in ML43541 from the surface to a production depth of only 3,398 feet. (Fact ¶ 41.) Wasatch would obtain the remaining 520 acres, with rights from surface to earth's center, and the deep production rights below the Lavinia Well, beginning at 3,398 ft to earth's center. Mission and Wasatch requested that SITLA partition and re-designate the remaining 520 acres as lease ML43541-A. (Fact ¶ 54.)

Wasatch was not interested in the Lavinia Well, and it believed that it was “more of a liability than it was of any value.” (Fact ¶ 48.) WOGC knew that after the June 2000 transaction, Mission would be without any assets with the exception of the Lavinia Well, which WOGC believed to be more of a liability than of any value. (Fact ¶¶ 48, 50.)

The Mineral Lease Assignment Forms for the Section 32 Leases were not recorded at the time of the transaction, were not recorded at the time of the subsequent Sheriff's Sale, and were not recorded at the time Wasatch filed its Redemption Notice. (Fact ¶ 103.)

After transferring the last of Mission's assets, Sutton, on August 22, 2000, sent a letter to Todd Cusick of Wasatch, directing him keep the transfers confidential:

There are several creditors with outstanding issues . . . specifically Ed Reott. . . . I must advise your offices to refer any similar creditor, or legal calls directly to my attention. Further given the confidentiality of the agreements entered into between our companies, I would request that no verbal, or written information be sent to anyone without prior written permission from Mission Energy.

(Fact ¶ 104.)

That same day, August 22, 2000, Sutton wrote to Ed Reott, representing, among other things that Mission was “protecting” the company’s business:

. . . the managers of Mission Energy are doing everything possible to protect the assets of the company. We are working with several companies to develop a drilling program in hopes of receiving revenues to pay off creditors of the company. In that regard, many of those creditors who are owed monies for operations and permitting that have not been paid are working with Mission to try and make the company successful.

The letter did not disclose to Reott that nearly all assets had been transferred to Wasatch. (Fact ¶ 105.) By letters dated October 23, 2000, Sutton wrote to Reott’s attorney, federal judges, magistrates and court clerks, that effective October 1, 2000, Sutton resigned as manager. (Fact ¶ 107.) The forwarding address he provided was not to “legal counsel,” as he represented. (Fact ¶ 108.) Thereafter, Mission conducted no further business.

On October 27, 2000, Reott domesticated his Colorado Federal Court judgment against Mission by filing it with the Carbon County Recorder. (Fact ¶¶ 57-58.) The Key Energy, J-West and Reott Judgment all predate the recording of the Mission-Wasatch Assignment. (Fact ¶¶ 103, 27, 61, 19.) Reott purchased the Key Energy and J-West judgments. (Fact ¶¶ 62, 64.) On May 16, 2001, Reott executed against Mission’s interest in Sections 27, 32, 33 and 34. (Fact ¶ 66.) The Sheriff’s Sale was held on August 9, 2001. (Fact ¶ 67.) No bidders appeared at the sale so Reott credit bid \$1.00 and received a Certificate of Sale from the Sheriff for all of Mission’s interests in Sections 27, 32, 33 and 34. (Fact ¶ 18.) Wasatch attempted to redeem and tendered \$1.06 to the Sheriff. (Fact ¶¶ 71, 79.) On the same day, Wasatch filed a complaint to quiet title (“Quiet Title Action”). (Fact ¶ 71.) In response to the Notices of Redemption, Reott filed a “Notice

that Wasatch is not a Proper Party to Redeem or the Amount of Redemption is Insufficient.” (Fact ¶ 87.) Reott did not accept the redemption money. (Fact ¶ 86.) On February 9, 2002, the Sheriff issued the Sheriff’s Deed to Reott (Fact ¶ 82), and on March 11, 2002, Reott recorded it. (Fact ¶ 84.)

In this action, Reott counterclaimed, and on April 14 and 18, 2002, Reott filed *Lis Pendens* against the disputed property. (Fact ¶ 89.) On April 30, 2002, Wasatch sold numerous leases, including its purported interest in Section 32, to BBC. (Fact ¶ 92.) BBC did not require Wasatch to pay the judgment liens. On October 7, 2002, Reott filed a motion to add BBC as a defendant, which was later granted. (R. 220, 1096).

### **SUMMARY OF THE ARGUMENTS**

In its Statement of Undisputed Facts, the District Court numerically identified 128 undisputed facts. The reality is that Wasatch did not dispute these 128 facts. These facts were entered by the District Court after reviewing Wasatch and BBC’s pleadings. In their Summary Judgment Memorandum, Wasatch and BBC objected to nineteen of Reott’s ninety-nine facts and stated that sixty-four specific facts were not disputed and offered undisputed facts of their own. In objecting, neither Wasatch nor BBC followed Rule 7(c), Utah R. Civ. P. After failing to dispute sufficient material facts to preclude a summary judgment, Wasatch and BBC now belatedly assert that there are material facts in dispute preventing summary judgment. The District Court was careful to specifically reference each fact to the record and to demonstrate that neither Wasatch nor BBC disputed the fact or that the dispute was not material. (See Appellees’ Addendum, Tab B.) The District Court was correct in entering the Statement of Undisputed Facts.

Neither Wasatch nor BBC provided legal argument in the District Court that the undisputed facts do not apply to the statutory factors that define intent for a fraudulent transfer. Wasatch did not dispute that the undisputed facts supported nine badges of fraud (factors) under Utah Code Ann. § 25-6-5 (1998 & Supp. 2006). The District Court was correct in reviewing the undisputed facts and applying them to the factors for actual intent for a fraudulent transfer and concluding a fraudulent transfer occurred.

In apparent recognition of their inability to defend against the merits of the District Court's ruling, Wasatch and BBC assert that Reott lacks standing to assert his defense of their claims. Specifically, Wasatch now asserts that (i) Reott has no standing because he suffered no injury; and (ii) under this Court's holding in *Brockbank*, Reott, as a foreclosing creditor, cannot rely on a fraud theme to defeat redemption. Neither Wasatch nor BBC argued below that Reott has no standing because he suffered no injury. Wasatch and BBC have misapplied *Brockbank* because it deals with execution against the personal right of redemption, something Reott did not do. As the purchaser at the Sheriff's Sale and recipient of the Sheriff's Deed, Reott has an inherent right to protect his interests against a party with no legal right to redeem.

Wasatch claims in its Introduction "[t]he trial court correctly held that, absent a sufficient defense, the lease assignment forms in tandem with the Letter Agreement gave Wasatch an equitable interest in Section 32 interests sufficient to support a right of redemption." (Appellant's Br. 21.) This is a false statement. The District Court did not so rule. (*See* Ruling at 7, Tab B.) The District Court ruled Wasatch does not have legal or equitable title. *Id.*



Wasatch states that the undisputed evidence establishes Mission's intent to transfer to Wasatch an interest in Section 32. (Appellants' Br. 30-31.) Wasatch's statement is not cited to the record and is false. First, Mission did not sign the Section 32 Assignments so Wasatch does not have legal title. Second, Wasatch has no ability to prove Mission's intent because: (i) it has no testimony from Mission; (ii) it cannot introduce parol evidence to indicate Mission's intent to construe a conveyance executed solely by Sutton; and (iii) Mission's Operating Agreement requires three managers to approve and two managers to sign a conveyance, which did not occur. Mission's intent to transfer the Section 32 Leases was not and cannot be proven. Further, a fraudulent transfer occurred. Therefore, since Wasatch has not shown legal or equitable title, it is not a successor-in-interest and cannot redeem.

SITLA does not have authority to make final judicial decisions on legal title to property. That is reserved for the courts. While SITLA does approve lease assignments, its approval governs only the relationship between SITLA and its "apparent" lessees. SITLA's approval does not determine the legal contest between Reott, as the purchaser of the lease rights at the Sheriff's Sale, and Wasatch who, without legal title, claims to be the legal lessee.

The District Court determined a fraudulent transfer occurred in the attempt to transfer the property from Mission to WOGC. In its ruling it did not do a detailed discussion. It did not need to do so. Wasatch and BBC contested few of the facts surrounding the attempt to transfer property from Mission to WOGC. Such a transfer would keep the property away from Mission's creditors, such as Reott. In the District

Court, Reott specifically provided facts to support and legal argument showing eleven badges of fraud to support his claim of fraudulent transfer from Mission to WOGC. Wasatch and BBC only argued against two of the eleven badges of fraud supporting a fraudulent transfer. They failed to contest facts and Reott's legal arguments that the undisputed facts supporting nine uncontested badges of fraud constitute a fraudulent transfer. One badge of fraud is sufficient to find fraudulent transfer. The District Court was correct in ruling a fraudulent transfer from Mission to WOGC occurred, and Quieting Title in Reott.

### **ARGUMENT**

**POINT I.     THE TRIAL COURT CORRECTLY DETERMINED THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT THAT PRECLUDED SUMMARY JUDGMENT IN FAVOR OF REOTT.**

Pursuant to Rule 56(c) of the Utah Rules of Civil Procedure, summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Summary judgment is not precluded simply when some fact remains in dispute, but only when a material fact is genuinely controverted. *Heglar Ranch, Inc. v. Stillman*, 619 P.2d 1390, 1391 (Utah 1978). When a moving party “challenges an element of the nonmoving party’s case on the basis that no genuine issue of material fact exists, the burden then shifts to the nonmoving party to present evidence that is sufficient to establish a genuine issue of material fact.” *Waddoups v. Amalgamated Sugar Co.*, 2002 UT 69, ¶ 35, 54 P.3d 1054, 1064. The nonmoving party must present “evidence that could be interpreted to satisfy the elements of the claim.” *Id.* at 1064. This evidence must be “more than just conclusory assertions

that an issue of material fact exists to establish a genuine issue.” *Id.* at 1063. Further, genuine issues of material fact must be established, as required by Rules 7 and 56, Utah R. Civ. P.

**A. Wasatch and BBC Did Not Dispute the Material Facts.**

The District Court entered its Statement of Undisputed Facts, identifying 128 specific facts that were not disputed.<sup>3</sup> (R. 5395-5427.) While Wasatch and BBC make myriad arguments contending that genuine issues of material fact exist regarding Reott’s fraudulent transfer claim, they do not challenge the specific facts contained in the Statement of Undisputed Facts. They do not identify that any one of the 128 facts is in dispute. The reason that Wasatch does not challenge the Statement of Undisputed Facts on appeal is simple—Wasatch and BBC did not dispute them below.<sup>4</sup> (*See* Wasatch’s Opposition and Reply, R. 4076-4085; BBC’s Opposition, R. 3665-3668.) The Statement of Undisputed Facts stand unchallenged on this appeal, and this Court should affirm the District Court’s determination that the material facts are not in dispute.

---

<sup>3</sup> Those facts were taken, for the most part, verbatim from the parties’ Statement of Undisputed Facts as proposed in the summary judgment briefs. In support of its Motion for Summary Judgment, Reott identified ninety-nine facts as undisputed. Wasatch listed by number ten facts it identified as disputed: 1, 30, 30B, 30C, 44, 55, 56, 72, 73 and 82. (R. 4080-84.) As to the remaining facts, Wasatch stated there was “not a material dispute.” (R. 4080-85.) BBC joined in that statement. (BBC Opposition at 5, R. 3665.) In addition, BBC identified nine facts that it disputed: 49, 83, 84, 85, 87, 90, 93, 96 and 97. (R. 3665-68.) Only one (number 49) relates to the issues on this appeal. As to facts they attempted to dispute, they did not meet their burden, as the nonmoving party under Rules 7 and 56, Utah R. Civ. P., to repeat verbatim the fact in dispute, explain the dispute, and provide evidence to prove that a genuine issue of material fact existed.

<sup>4</sup> The Statement of Undisputed Facts is comprised of the undisputed facts from Wasatch, BBC and Reott’s briefs.

On appeal, and in Wasatch's Statement of Facts, Wasatch states that "besides the badges of fraud," it disputed "many other facts alleged by Reott and adopted by the trial court." Wasatch improperly provides a record cite to R. 4851-4914, 4924-59. This record cite is to Wasatch's *post-judgment* Objections to Reott's proposed Statement of Undisputed Facts requested by the District Court. Challenging Reott's proposed facts for the first time after the District Court's ruling does not show that Wasatch and BBC met their burden to establish a genuine issue of material fact before the Court ruled.

**B. The District Court Did Not "Find" Any Fact And Did Not Make Any Impermissible "Findings" Regarding The Nine Badges Of Fraud Or The "Materiality" Of Any Specific Fact.**

Although the material facts were not disputed below, Wasatch and BBC attempt to create a "genuine issue of material fact" on appeal. Wasatch and BBC make several new arguments asserting that the District Court made impermissible findings of fact, including "finding" the nine badges of fraud, inferring fraudulent intent, and finding that certain facts were material to the fraudulent transfer claim. (Appellants' Br. 14.) Each of these arguments fail for three reasons.

First, these arguments are raised for the first time on appeal and were not presented, in any manner, for consideration to the District Court. (*See generally* Wasatch's Opposition and Reply, R. 4073; BBC Opposition, R. 3661.) As this Court has repeatedly confirmed, it does not address arguments for the first time on appeal. *Walter v. Stewart*, 2003 UT App 86, ¶ 33, 67 P.3d 1042, 1049. Wasatch has not established there is any reason for this Court to raise issues that could have been raised below.

*Coleman ex rel. Schefski v. Stevens*, 2000 UT 98, ¶ 9, 17 P.3d 1122, 1123. As such, this Court should not consider them.

Second, the District Court did not make “findings.” A determination that undisputed facts may or may not satisfy a statutory or common law “badge of fraud” is nothing more than the application of fact to law for the purpose of determining a fraudulent transfer. It is not an impermissible “finding of fact,” and Wasatch and BBC cite no authority in support of this new argument.

The Fraudulent Transfer Act (“Act”)<sup>5</sup> provides that a transfer is fraudulent if it is made with the “actual intent to defraud, hinder or delay” a creditor. Utah Code Ann. § 25-6-5 (1998 & Supp. 2006). Because “actual intent” is difficult to prove absent an outright admission, the Act provides that “actual intent” can be proven through “badges of fraud,” which are comprised of “facts that throw suspicion on a transaction.” *Territorial Sav. & Loan Ass’n v. Baird*, 781 P.2d 452, 462 (Utah Ct. App. 1989) (citation omitted). The Act provides a non-exclusive list of factors historically considered in common law as “badges of fraud,” including whether:

- (c) the transfer or obligation was disclosed or concealed;
- (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit . . . ;
- (e) the transfer was of substantially all of the debtor’s assets;

---

<sup>5</sup> Utah’s Uniform Fraudulent Transfer Act provides alternative bases to prove that a transfer was fraudulent. A transfer is fraudulent under § 25-6-6 of the Act if it is made for less than reasonably equivalent value while the debtor is insolvent. *See id.*, § 25-6-6 (1998). A transfer also is fraudulent under § 25-6-5 of the Act if it is made with the “actual intent to defraud, hinder or delay.” Utah Code Ann. § 25-6-5 (1998). Reott argued both below. In this case, the undisputed facts support both.

- (f) the debtor absconded . . . ;
- (h) the value of the consideration received . . .
- (i) the debtor was insolvent or became insolvent shortly after the transfer was made . . .

Utah Code Ann. § 25-6-5(2) (1998). Other badges of fraud include failure to record the conveyance, secrecy or haste in the transfer, and conveyance not made in the ordinary course of business. *See United States v. Christensen*, 751 F. Supp. 1532, 1536 (D. Utah 1990), *appeal dismissed*, 961 F.2d 221 (10<sup>th</sup> Cir. 1992); *see also Dahnken, Inc. of Salt Lake City v. Wilmarth*, 726 P.2d 420 (Utah 1986).

Determining whether undisputed facts support one or more badges of fraud is nothing more than applying the undisputed facts to the elements of a claim. In concluding that the undisputed facts establish the elements of a fraudulent transfer, a court is not “finding” actual intent or “drawing inferences of fraud.” Rather, the Act provides that if certain codified and common law factors are established, “actual intent” may be proven and the statutory elements of fraudulent transfer are established.

Third, the District Court did not enter “findings” regarding the materiality of any fact. In fact, the “materiality” of any specific fact and its application to fraudulent transfer was not at issue below, because Wasatch and BBC did not properly make it one. In his summary judgment brief, Reott identified the undisputed facts, discussed Utah’s fraudulent transfer law, and analyzed how the facts established eleven badges of fraud. Wasatch and BBC did not oppose the fraudulent transfer claim and did not challenge Reott’s analysis of the badges of fraud. Wasatch and BBC did not argue that any specific fact was or was not material to the existence of any specific badge of fraud or to the

fraudulent transfer claim. (R. 3665-68, 4076-85.) As such, this Court should decline to consider for the first time on appeal Wasatch and BBC's arguments that certain facts are not material to establishing a badge of fraud or to proving Reott's fraudulent transfer claim. *Monson v. Carver*, 928 P.2d at 1022.<sup>6</sup>

**POINT II. THE DISTRICT COURT SHOULD BE AFFIRMED IN RULING THAT REOTT HAS STANDING TO CHALLENGE WASATCH'S CLAIM TO BE MISSION'S SUCCESSOR-IN-INTEREST, UNDER RULE 69 UTAH R CIV. P., AND ENTITLED TO REDEEM THE SECTION 32 LEASES.**

Wasatch asks this Court to rule that, even if Wasatch obtained the Section 32 Leases by fraudulent transfer, its right to redeem is absolute. As such, Wasatch's focus has been on challenging Reott's ability to dispute Wasatch's redemption. However, all of Wasatch's arguments fail.

**A. Reott Has A Personal Stake Sufficient For Standing.**

Wasatch and BBC argued below that Reott lacked "standing" to challenge Wasatch's redemption based on *Brockbank v. Brockbank*, 2001 UT App. 251, 32 P.3d 990, and based on the argument that he is no longer a "judgment creditor." (R. 2636-40.) On appeal, Wasatch and BBC now assert that Reott lacks standing "because he suffered no injury by reason of Wasatch's redemption of the Section 32 Lease interests."

---

<sup>6</sup> Wasatch cites *Burnham v. Bankers Life & Cas. Co.*, 470 P.2d 261, 263 (Utah 1970) for the proposition that the "materiality" of a fact is a finding of fact, requiring a trial. *Burnham* does not apply. In *Burnham*, the court was faced with the specific issue of "whether or not a misstatement in an [insurance] application *is material to the risk*." The court essentially stated that the importance of the false information provided or the true information withheld, was a question of fact for the jury. *Id.* at 263. *Burnham* is not a fraudulent transfer case, has nothing to do with the materiality of any fact to a badge of fraud, and has nothing to do with applying facts to law. *Burnham* is inapplicable.

(Appellants' Br. 24.) This Court need not consider this new argument on appeal. *State v. Nelson*, 725 P.3d 1353, 1356 (Utah 1986).

Nevertheless, this argument is without merit. Reott agrees that to have standing, he must have "some distinct and palpable injury that gives rise to a personal stake in the outcome of the dispute." *Washington County Water Conservancy Dist. v. Morgan*, 2003 UT 58, ¶ 17, 82 P.3d 1125, 1131. Reott has a personal stake in the outcome of this dispute. As a Sheriff's Sale purchaser, he has a property interest in Section 32, and will suffer a "distinct and palpable injury" if title is quieted in Wasatch, a party not entitled to redeem.

**B. The District Court Correctly Determined That Reott, As The Purchaser At The Sheriff's Sale, Has Standing To Challenge Wasatch's Right To Redeem.**

Wasatch argues that Reott relinquished his judgment creditor status by bidding at the Sheriff's Sale and therefore does not have standing to challenge Wasatch's attempt to redeem. (Appellants' Br. 25.) It is well-settled that, as the Sheriff's Sale purchaser with a Sheriff's Deed, Reott has an inherent right to protect his interests in the property acquired and to challenge the validity of Wasatch's attempt to redeem. *Phyfe v. Riley*, 15 Wend. 248 (N.Y. Sup. Ct. 1836) ("A purchaser is not bound to accept the amount of his bid from a person who has no right to redeem, and may insist that the deed be executed to him in pursuance of the sale. . . ."); *see also Francis v. White*, 49 So. 334, 335 (Ala. 1909) (court intervention appropriate and necessary if validity of redemption is disputed between purchaser and redemptioner). In fact, it is well accepted that a sheriff's sale purchaser has the right to challenge the redemptioner's right to redeem. *Robertson v.*



*Moline, Milburn & Stoddard Wagon Co.*, 55 N.W. 495, 496 (Iowa 1893). This right continues until the sheriff's sale purchaser accepts the tendered redemption money. *Casserleigh v. Spar Consol. Mining Co.*, 128 P. 863, 866 (Colo. Ct. App. 1912). Here, Reott has preserved his right to challenge Wasatch's attempted redemption, by timely objecting and by rejecting the tendered redemption payment. (Fact ¶¶ 86, 87, R. 5415.)

The *Robertson* court's analysis of a purchaser's rights is particularly instructive:

When appellant purchased said lot at the sale on execution, he took it subject only to redemption from the sale by the persons and in the manner authorized by statute. If those entitled to redeem failed to do so within the time and in the manner provided, the lot became his absolutely. *He might surely question the right of one not authorized to redeem to do so, and ask that an attempted redemption be set aside as a cloud upon his title.* For the same reasons he may question a redemption by one authorized to redeem, who does not do so within the time allowed.

*Robertson*, 55 N.W. at 496 (emphasis added).

Like the judgment creditor in *Robertson*, Reott, as the Sheriff's Sale purchaser and the recipient of the Sheriff's Deed, took the property subject only to a redemption by one actually authorized to redeem. As such, Reott has the legal right to challenge the validity of Wasatch's claim to title and by disputing Wasatch's claim that it is entitled to redeem.

C. ***Brockbank* Does Not Apply To The Facts Of This Case Because Mission Did Not Transfer Its Personal Right To Redeem to Wasatch; It Transferred (Or Attempted To Transfer) Its Real Property Interest.**

Wasatch asserts that “the trial court committed error in permitting Reott to allege fraud to defeat redemption.” (Appellants’ Br. 27).<sup>7</sup> In making this argument, Wasatch interprets *Brockbank v. Brockbank* to stand for the proposition that a fraudulent transfer can never be asserted to defeat redemption. *Brockbank* does not so hold.

*Brockbank* is a divorce case. In *Brockbank*, the ex-wife claimed that her ex-husband fraudulently transferred his *personal right of redemption* to a third-party. 2001 UT App. 251, at ¶ 7. In this case, Mission did not transfer its personal right of redemption to Wasatch. Mission transferred (or attempted to transfer) the Section 32 Leases to Wasatch in June 2000. Reott claims that it is this June 2000 transfer of the “real property,” including the Section 32 Leases, that was a fraudulent transfer, not the personal right of redemption that arose after the Sheriff’s Sale in August 2001. *Brockbank* clearly holds that the transfer of the personal right of redemption cannot be a fraudulent transfer. *Id.* at ¶ 12 (personal rights of redemption are not subject to execution to collect a judgment). It does not, however, support Wasatch’s argument that Reott cannot challenge the validity of Wasatch’s title to the real property leases.

The *Brockbank* court also ruled that Mrs. Brockbank waived objection to the redemption because she had accepted the \$15,000 redemption amount and had applied it to the judgment. *Id.* at ¶ 16. In this case, Reott rejected the redemption payment and

---

<sup>7</sup> Reott did not allege fraud; Reott alleged fraudulent transfer which is similar but not the same as fraud. Fraudulent transfer is governed by both statutory and common law. Utah Code Ann. § 25-6-1. et seq. (1998 & Supp. 2006); *See* Points III and IV, *infra*.

immediately filed an Objection to Wasatch's redemption, asserting that Wasatch was not a proper party to redeem. (Fact ¶ 87, R. 5415.) Therefore, Reott did not waive objection to redemption.

*Brockbank* stands for the narrow proposition that the "Uniform Fraudulent Transfer Act does not apply to the circumstances of [the *Brockbank*] case," i.e., the transfer of the personal right of redemption, along with an acceptance of the redemption payment. *Id.* at ¶ 19. These are not the facts here. *Brockbank* does not apply.

**POINT III. THE DISTRICT COURT SHOULD BE AFFIRMED IN RULING THAT WASATCH IS NOT A SUCCESSOR-IN-INTEREST TO MISSION, DOES NOT HAVE LEGAL OR EQUITABLE TITLE TO THE SECTION 32 LEASES, AND IS NOT ENTITLED TO REDEEM**

Both Wasatch and Reott agree that Wasatch's right to redeem the Section 32 Leases arises only if this Court concludes that Wasatch is a "successor-in-interest" to Mission. *See* Rule 69(j), Utah R. Civ. P. Wasatch's only basis for claiming successor-in-interest status is its claim that it acquired either legal or equitable title to Mission's interest in the Section 32 Leases prior to the Sheriff's Sale. If Wasatch acquired neither legal nor equitable title to the leases from Mission, it has no lawful right to redeem. *See Winter Park Devil's Thumb Invt. Co. v. BMS P'ship.*, 926 P.2d 1253, 1255 (Colo. 1996) (*en banc*) ("Those holding a legal or equitable claim in the property have the right to redeem. . . . [O]ne who has no interest in the land has no right to redeem."); *Forty-Four Hundred East Broadway Co. v. 4400 East Broadway*, 660 P.2d 866, 868 (Ariz. Ct. App. 1982) ("A successor in interest has been defined as the one who has acquired or succeeded to the interest of the judgment debtor in the property.").

A. **The District Court Correctly Concluded That The Assignments Of The Section 32 Leases Signed By Justin Sutton And Not By Mission Did Not Convey Legal Title To Wasatch As A Matter Of Law.**

The only conveyance documents Wasatch has ever produced to support the claim to legal “title” to the Section 32 Leases are the three SITLA Mineral Lease Assignment Forms (“Assignments”). (Appellant’s Br., Tab F.) The documents speak for themselves. There is no dispute about what is on the face of the documents. Each Section 32 Lease assignment is signed only by Justin C. Sutton individually, with no reference to a representative capacity. (Fact ¶¶ 35, R. 5405.) Mission’s name does not appear in the body of the assignment and it is not identified as the “grantor.” (Fact ¶ 35, R. 5405.)

Based on these undisputed facts, and the fact that Sutton is not in the chain of title (Fact ¶ 36, R. 5405), the District Court properly concluded, as a matter of law, that the Assignments were “wild deeds,” and that without clearly identifying Mission (the business) as the grantor, the wild deeds did not convey Mission’s interests in the Section 32 Leases to Wasatch. (R. 4814.) *See also Hyland v. Kirkman*, 498 A. 2d 1278, 1284 (N.J. Super. Ct. 1985).

The District Court correctly rejected Wasatch’s argument that the failure to identify “Mission” as grantor and Sutton’s corporate capacity to sign was merely a technical defect. (R. 4814.) Utah law is clear that interests in non-extracted minerals are interests in real property. *See* Utah Code Ann. § 57-1-1(3). Any attempts to convey such interests must (i) be expressed in writing, and (ii) clearly identify the grantor, particularly when that grantor is a business or other entity. *See* §§ 57-1-12 and 57-1-13; *see also*

*Anderson v. Gardner*, 647 P.2d 3, 4-5 (Utah 1982) (holding that where it is not clear that a corporate officer signs a contract in a representative capacity, he is personally liable).

The District Court properly rejected Wasatch's request to liberally construe Rule 69's "successor-in-interest" requirement, and allow it to redeem in spite of the defects. The District Court noted that even a liberal construction cannot overcome the fact that the Assignments "did not comply with a basic rule of conveyances, i.e., the assignor must be clearly identified." (R. 4814.) For these reasons, the District Court should be affirmed in ruling that Wasatch does not have legal title to the Section 32 Leases.<sup>8</sup>

1. **Principles Of Equity Dictate That Wasatch Is Not Entitled To Reform The Lease Assignments To Effect The Conveyance Of The Section 32 Leases, And By Judicial Fiat Finish The Fraudulent Transfer.**

Because the Section 32 Lease Assignments convey only Sutton's interest in the Section 32 Leases, the only way to correct what Wasatch described below as a "technical" title defect and insert "Mission" as the grantor is to request that a court reform the Assignments. As Reott argued below, reformation is not an option.

It is not an option because Wasatch has never asserted a reformation claim against Mission. Even if it had, reformation is an equitable remedy that cannot be granted to one with "unclean hands." *Hone v. Hone*, 2004 UT App. 241, ¶ 7, 95 P.3d 1221, 1223

---

<sup>8</sup> Wasatch argues an earlier SITLA assignment of the Section 32 Leases is also defective, as it is signed by an individual. (Appellants' Br. 7,33 n.13.) The 1997 White River-to-Mission transfer is neither relevant nor material to issues before this Court. That transfer was and is not challenged. The SITLA assignment form is signed by "Kevin Williams, Manager." (See Appellants' Br., Ex. D.) There is a properly executed and recorded conveyance document—bill of sale and assignment—documenting White River's transfer to Mission of the Section 32 Leases, among others. (R. 3157 at ¶ 5, 4395 at n.13.)

(quoting *Park v. Jameson*, 364 P.2d 1, 3 (Utah 1961)) (“A party who seeks an equitable remedy must have acted in good faith and not in violation of equitable principles,” which includes fraud and deceit); *Hottinger v. Jensen*, 684 P.2d 1271, 1273 (Utah 1984) (“[T]he party seeking reformation must have an equity superior to that of [the person] against whom reformation is sought.”). Further, reformation is not a remedy if it adversely impacts the rights of an innocent third party. *Id.* at 1273.

A “court of equity will generally not assist one in extricating himself from circumstances which he has created,” *Battistone v. American Land & Dev. Co.*, 607 P.2d 837, 839 (Utah 1980). Given the circumstances here, the undisputed facts supporting fraudulent transfer and the impact on third party, reformation is not an option.

**B. The District Court Correctly Ruled That Wasatch Does Not Have Equitable Title In The Section 32 Leases.**

Wasatch’s interest in the Section 32 Leases exists only because of a fraudulent transfer. The transaction was tainted *ab initio*, and no equitable rights were created. Nonetheless, Wasatch asks this Court to rule that, even if Wasatch obtained the Section 32 Leases by fraudulent transfer, it should still be allowed to redeem. It argues here, as it did below, that it has the right to redeem, as Mission’s successor-in-interest, by virtue of SITLA’s approval of Assignments, the “enforceable” June 2000 Letter, which was supported by “sufficient consideration,” and Mission’s clear intent to convey. (Appellants’ Br. 30-39.) The District Court properly rejected Wasatch’s arguments below. This Court should affirm the District Court’s ruling and do the same.

**1. The District Court Correctly Concluded That Wasatch Has No Equitable Title In The Section 32 Leases Because It Obtained Its Interest Through A Fraudulent Transfer.**

A review of the briefs below show: Wasatch did not dispute the majority of the facts Reott proposed as undisputed (R. 4080-4085), notwithstanding that Reott identified many of them as facts specifically supporting fraudulent transfer. (R. 2678-2685). Wasatch did not deny or oppose Reott's fraudulent transfer claim on summary judgment. Wasatch did not challenge Reott's statement of Utah law regarding fraudulent transfer and, most importantly, did not challenge Reott's application of the facts to the law, i.e., that the facts establish up to eleven badges of fraud. (*See generally* R. 3662-3671, 4073-4107.) As such, the District Court agreed with Reott's analysis and ruled that Wasatch conceded fraudulent transfer. (R. 4815.) Additionally, as discussed below in Point IV, the undisputed facts show that, as a matter of law, Wasatch obtained its interest in the Section 32 Leases by a fraudulent transfer.

In *Olsen v. Bank of Ephraim*, 68 P.2d 195, 198 (Utah 1937), the Utah Supreme Court expressly rejected the argument that a transferee of a fraudulent conveyance obtains an equitable interest in property, reasoning:

No such title can arise or be established from acts contrary to public policy nor in favor of the guilty party out of acts which have their origin in a fraudulent purpose. . . . ***It is a universal rule that no one can claim a right through the fraud of himself or another. The rule is founded upon honesty and fair dealing and courts of equity do not permit the parties to such transactions to reap any benefits therefrom.*** The law will not permit a party to deliberately put the property out of his control, or the title thereto in another, for a fraudulent purpose, and then, through the intervention of a court of equity, to regain the same after his fraudulent purpose has been accomplished. . . . ***Such conveyances are binding upon him and***

*all parties in privity with him. A court of equity will not lend its aid to relieve a party from the consequences of his fraud, but will leave him where his fraudulent undertaking has placed him.*

*Id.* (emphasis added). Equity does not allow a party, “innocent or not,” to reap the benefits of a fraudulent conveyance, because “[i]t is generally accepted that he who seeks equity must do equity.” *Horton v. Horton*, 695 P.2d 102, 107 (Utah 1984), *abrogated on other grounds by RHN Corp. v. Veibell*, 2004 UT 60, 96 P.3d 935.

The genesis of Wasatch’s claim to title in the Section 32 Leases is a fraudulent transfer. Under Utah law, Wasatch, and BBC, can have no equitable interest in property. As such, the District Court’s ruling that Wasatch has no equitable title in the Section 32 Leases should be affirmed.

**2. The District Court Correctly Concluded That SITLA’s Approval Had No Legal Effect On The Validity Of The Section 32 Lease Assignments**

Wasatch contends the District Court failed to attach significance to SITLA’s approval of the Assignments. (Appellant’s Br. 33-34.) Wasatch, however, cites no authority to support its contention that SITLA’s approval matters in title disputes.

Interests in oil and gas estates owned by the State of Utah are *administered* by SITLA and are granted by lease. Utah Code Ann. §§ 65A-6-1 through 12 (2000); Utah Admin. Code R850-20-2200.5 (2003). SITLA is not and does not hold itself out as a title repository or as a county recorder. SITLA (like its federal counterpart BLM) oversees its mineral interests, exclusively for SITLA’s own purposes. SITLA requires all lease transfers to be approved; SITLA, however, cannot withhold approval of properly



executed conveyances.<sup>9</sup> *See* Utah Admin. Code R850-20-2200.5(b)(i) (“The director shall not withhold approval” of properly executed transfer, appearing to comply with law, with required filing fee)). The approval requirements are purely ministerial and serve SITLA’s internal administrative needs. *See Devon Energy Corp. v. United States*, 45 Fed. Cl. 519, 530-31 (Fed. Cls. 1999) (discussing BLM’s approval provisions). It ensures that a “responsible party” is of record (for notice purposes) and accountable for royalties, rentals and lease obligations. *See id.* The approval requirements, however, do not impact “substantive property interests.” *See id.*; *see also* 58 C.J.S. Mines and Minerals § 139 (2002). Courts of law, not SITLA, determine legal title.

SITLA’s approval of a lease assignment, as between two private parties, has no bearing on the validity of the transfer. SITLA’s approval cannot breathe life into an otherwise invalid transfer and or create an equitable interest, where none existed. Logically, SITLA’s treatment of Wasatch as the new lessee is simply irrelevant.<sup>10</sup>

---

<sup>9</sup> In approving lease transfers, SITLA is not making any legal determination about the validity of conveyance. Even if he or she is, the agency’s decision as to the legal validity of the assignments would be subject to *de novo* review. *See* Utah Code Ann. §§ 63-46b-15(1)(a) and 63-46b-16(1) (1957); *Vali Convalescent & Care Inst. v. Division of Health Care Fin.*, 797 P.2d 438, 443 (Utah Ct. App. 1990) (“When reviewing pure questions of law, courts generally apply the ‘correction-of-error’ standard and accord the agency decision no particular deference.”).

<sup>10</sup> Wasatch asserts Reott “voiced no objection” to SITLA’s treating Wasatch/BBC as the lessee of the Section 32 Leases. (Appellants’ Br. 33.) This assertion is baseless and made for first time on appeal. The Section 32 case file at SITLA contains Reott correspondence regarding the improper Assignments. There is documentation of SITLA’s decision to allow the courts to resolve title. In fact, due to Reott’s communication with SITLA and the BLM (First Amendment right), Wasatch and BBC sued Reott for intentional interference with business relations. That claim was dismissed below in a separate summary judgment ruling, also entered on December 16, 2005. (R. 4802.)

**3. The June 2000 Letter Does Not Grant An Equitable Interest In the Section 32 Leases.**

Wasatch asserts that the June 2000 Letter supports redemption and overcomes any “belated claim of fraud” because the letter has not harmed Reott or any other creditor and because no one, with the exception of Reott, has questioned it. (Appellants’ Br. 35-36.) Therefore, it must be valid. Wasatch’s argument is unconvincing.

The reality is that Mission’s creditors did not question the validity of the June 2000 Letter because none of them know about it. The June 2000 Letter is an agreement, not a conveyance document.<sup>11</sup> The June 2000 Letter was never recorded. (*See* Abstract of Title, R. 3155-3382). The Section 32 Lease Assignments were not recorded in the Carbon County Recorder’s office until well after Wasatch sued Reott to quiet title. (R. 5419, ¶ 103.) And, Sutton directed Wasatch to keep quiet about the transfers. Just two months after the June 2000 Letter, on August 22, Sutton (Mission) sent a letter to Cusick (Wasatch) stating:

There are several creditors with outstanding issues ... specifically *Ed Reott* ... I must advise your offices to refer any similar creditor or legal calls directly to my attention. Further, *given the confidentiality of the agreements entered into* between our companies, I would request that no verbal or written information be sent to anyone without prior written permission from Mission Energy.

---

<sup>11</sup> Wasatch did not argue in the District Court that the June 2000 Letter should be equitably converted into an equitable interest in land. Wasatch did not pursue this theory and did not cite to any equitable conversion cases below. While this Court should reject any suggestion that the June 2000 Letter should be converted into an equitable interest in land, where it was never argued below, under the circumstances, Wasatch is not entitled to “equity.”

(R. 5419, ¶ 104, emphasis added). Further, there is no evidence that any other Mission creditor knew about the June 2000 Letter. Finally, Wasatch's conclusory assertion that the June 2000 Letter did not harm Reott or any creditors is without merit, without support in the record and is the very reason why Utah has a fraudulent transfer act.<sup>12</sup>

**4. Wasatch Cannot Establish Mission's Intent To Assign Its Interests to Wasatch In The Section 32 Leases.**

In an effort to establish an equitable interest in the Section 32 Leases, Wasatch asserts "there can be no genuine dispute that Mission intended to convey the Section 32 [Leases] to Wasatch." (Appellants' Br. 31.) There is no evidence to support Mission's intent.

**a. Mission's Intent With Regard to Disposing of Company Assets is Clearly Stated In It's Operating Agreement.**

The undisputed facts do not show that Mission intended to sign the June 2000 Letter or to execute the Section 32 Lease Assignments. Mission's Operating Agreement, Section 5.2 requires four managers, the majority vote of three managers and the signature of two managers in order to dispose of company assets. (R. 2883-84.) Absent evidence that at least three managers of Mission approved the purported Assignments to Wasatch, there is no evidence that Mission, as opposed to Sutton, "intended" to execute the June 2000 Letter and transfer Mission's interests in the Section 32 Leases. Both are signed only by Sutton.

---

<sup>12</sup> Wasatch cites *Harper v. Great Salt Lake Council, Inc.*, 1999 UT 34, ¶ 20, 976 P.2d 1213, 1218, for the proposition that a plaintiff, who is not a party to or beneficiary of, an agreement has no standing to object to "modification of agreement." Reott does not disagree. Reott, however, is not requesting any modification to the June 2000 Letter.

Based on the plain language of Mission's Operating Agreement, Reott asserts that Sutton did not have actual authority, alone, to dispose of any property. Wasatch asserts that Sutton had "apparent authority." It is well settled law that the apparent authority of an agent can be inferred *only* from the acts and conduct of the principal. *Bank of Salt Lake v. Corporation of President of the Church of Jesus Christ of Latter-Day Saints*, 534 P.2d 887, 891 (Utah 1975). The focus of an apparent authority inquiry is on the conduct of the principal which, reasonably interpreted, causes a third party to believe that the agent has authority to act on behalf of the principal. RESTATEMENT (SECOND) OF AGENCY § 27 (1957). An agent does not have apparent authority merely because it looks so to every person with whom he deals. "It is the principal who must cause third parties to believe that the agent is clothed with apparent authority." *Bodell Const. Co. v. Stewart Title Guar. Co.*, 945 P.2d 119, 124 (Utah Ct. App. 1997). It follows that one who deals exclusively with an agent has the responsibility to ascertain that agent's authority despite the agent's representations. *Bradshaw v. McBride*, 649 P.2d 74, 79-80 (Utah 1982).

Here, Sutton did not possess actual or apparent authority to convey Mission's property. There is no evidence that the principal, Mission, performed any act granting authority to Sutton to convey property in contravention of the Operating Agreement. Wasatch, in dealing exclusively with only one agent of Mission, had the responsibility to ascertain whether Sutton in fact had authority to convey the property in question. Wasatch did not and cannot prove Mission's intent as to how it will dispose of its property is other than as stated in the Operating Agreement.

b. The June 2000 Letter and the Assignments Do Not Convey Mission's Intent to Convey It's Property.

In construing conveyance documents, Utah courts look to the four-corners of the documents to ascertain the grantor's intent. *RHN Corp.*, 2004 UT 60, ¶ 40; *see also Starley v. Deseret Foods Corp.*, 74 P.2d 1221, 1223 (Utah 1938) (extrinsic evidence considered *only* where documents are ambiguous or unclear). Here, the June 2000 Letter and the Assignments are signed only by Sutton. The documents clearly evidence Sutton's intent (as opposed to Mission's) intent to transfer Mission's interest in the Section 32 Leases.

Where a corporate officer executes documents in his own name, without any indication of agency, courts presume that the individual intended to sign in his individual capacity. *See Colonial Film & Equip. Co. Inc. v. MacMillan Prof'l. Magazines, Inc.*, 252 S.E. 2d 61, 62 (Ga. Ct. App. 1979) ("One who executes a note in his own name with nothing on the face of the note showing his agency cannot introduce parol evidence to show that he executed for a principal"); *see also Silva v. Holme*, 241 P.2d 21, 24 (Cal. Ct. App. 1st Dist. 1952).

**5. The June 2000 Letter Is Not Supported By "Sufficient Consideration."**

Wasatch asserts that the June 2000 Letter was supported by "sufficient consideration." (Appellants' Br. 36-39.) The facts, viewed in the light most favorable to Wasatch, show that Wasatch did not pay "sufficient consideration," let alone consideration that qualifies as "reasonably equivalent value." Wasatch's arguments as to the sufficiency of consideration fail for numerous reasons.

First, Wasatch attempts to bolster the amount of consideration paid, beyond what it argued below. Wasatch identifies five types of consideration, when it only discussed three below (Appellants' Br. 9-10.; Wasatch Opp. 16-17, R. 4101-02.) Each claim of "consideration," nonetheless, is addressed in turn: (1) While Wasatch asserts that it reimbursed Mission for \$3,629.40 for "rentals" paid on certain leases, Wasatch never produced the cashed check that it claims to have issued, notwithstanding Reott's request.<sup>13</sup> Further, "reimbursement" for lease rentals is not "consideration." It is "reimbursement." (2) Wasatch asserts that it accepted future SITLA and BLM financial obligations with respect to the leases, and asserts that it has paid \$4,560. Lease obligations due to SITLA and BLM are not consideration to Mission. It is an obligation paid to SITLA to maintain the lease. This \$4,590 figure is presented for the first time on appeal, obviously includes monies paid after Wasatch's attempted redemption, and should be disregarded. (3) Wasatch argues that it gave Mission the right to participate in a drilling deal, *if* Wasatch put one together. It is undisputed that Wasatch never put together a drilling deal, and admitted that it was never obligated to do so. (Fact ¶¶ 51-52, R. 5408.) Instead, it sold the property to BBC in April 2002. (Fact ¶¶ 90-93, R. 5416-17.) (4) Wasatch argues for the first time that it "fronted" costs to get some of the leases

---

<sup>13</sup> Although Todd Cusick, president of Wasatch, testifies that "WOGC paid \$3,629.40 to Mission Energy as reimbursement for rental payments made on leases . . . ," (*see* Affidavit of Todd Cusick ("Cusick Affidavit") at 2-3, ¶ 2, Appellants' Br. Tab H), there is no evidence in the record to support this statement. The Reott Parties asked Wasatch to provide a copy of the cancelled check or some other objective evidence of payment in the course of discovery and received nothing in response. Tellingly, Mr. Cusick did not attach to his affidavit a copy of the cancelled check or a bank statement to independently verify its claim it reimbursed Mission.

in good standing. (Appellants' Br. at 9-10.) While Reott disagrees with Wasatch's interpretation of the June 2000 Letter, this is pure argument. Wasatch has provided no evidence that it in fact made any such payments, or that Mission either did or did not pay Wasatch back. As such, this argument for additional consideration should be disregarded.

(5) Wasatch cites *Territorial Savings* for the proposition that the assumption of antecedent debts is valuable consideration. The June 2000 Letter does not show that Wasatch assumed any of Mission's old debts and there is no evidence that it did. (Appellants' Br. Tab E.) To the contrary, a full reading of the letter reveals that Wasatch clearly is protecting itself from Mission's debts.

Second, Wasatch has never attempted to affirmatively prove that the consideration paid under the June 2000 Letter was sufficient in any way. Wasatch has never provided to this Court any analysis of the value of *all* the property it obtained in comparison to the consideration that it alleges it paid. It merely has argued that it paid something. Something does not mean "reasonably equivalent value," and without reasonably equivalent value, the transfer was fraudulent and there is no equitable interest.

Third, the District Court correctly concluded that the promise to allow Mission to participate in a drilling deal that Wasatch "may be able," but is not obligated, to put together is not consideration. (R. 4815) Wasatch admits it had no obligation to actually pursue this drilling deal, choosing instead to transfer its interests in the leases to BBC, the promise, insofar as it was a promise at all, was illusory and unperformed, and cannot

constitute “reasonably equivalent value” under Utah law.<sup>14</sup> *See* Utah Code Ann. § 25-6-4(1) (“[V]alue does not include an unperformed promise made other than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.”). *See also* *Resource Mgmt. Co. v. Weston Ranch & Livestock Co., Inc.*, 706 P.2d 1028, 1036-37 (Utah 1985) (“When there exists only the facade of a promise, i.e., a statement made in such vague or conditional terms that the person making it commits himself to nothing, the alleged ‘promise’ is said to be ‘illusory.’ An illusory promise, neither binds the person making it . . . , nor functions as consideration for a return promise.”).

On appeal, Wasatch asserts that because the drilling deal never happened, there was merely a “failure of consideration,” not a lack of consideration. (Appellants’ Br. 38.) Wasatch is wrong because, based on Wasatch’s 30(b)(6) deposition testimony, Wasatch

---

<sup>14</sup> The illusory nature of the promise is highlighted by the 30(b)(6) deposition of Wasatch:

Q: *And were you ever able to obtain a drilling deal?*

A: *No. Well, rather than doing a drilling deal we sold it all. . . .*

Q: *So did you give Mission any consideration back for its interest in your prospective drilling deal?*

A: *Why would we do that?*

Q: *They got nothing for that part of the contract?*

A: *They got the right to participate in a drilling deal that never happened . . . .*

Q: *And you didn’t provide Mission any consideration for that failure as a result of the Bill Barrett transaction?*

A: *The deal is self-explanatory. You can see there was no consideration for that event if we were to sell it all. What they wanted was the right to participate in a drilling deal if it happened, and it didn’t happen and so that’s what they got. They got what they asked for.*

(Emphasis added). Wasatch 30(b)(6) Dep. at 175:17-178:8 (Fact ¶ 53, R. 5408.)



made clear that it never had an obligation to obtain a drilling deal. (*See* Wasatch 30(b)(6) Dep., Fact ¶ 53.) As such, there was a lack of consideration from the beginning.

Fourth, viewing the facts in the light most favorable to Wasatch, and assuming that the \$3,629.40 was paid, it is insufficient to constitute “reasonably equivalent value.”<sup>15</sup> As Reott argued below, Wasatch acquired ten leases pursuant to the June 21, 2000 Letter, covering at least 7,020 net acres of land. (*See* Reott Reply, viii-ix, R. 4363-64; Affidavit of Don Stinson, at ¶ 3, R. 4419.). Wasatch argued that Wasatch offered to pay Mission five dollars (\$5) per acre for the leases, in lieu of the drilling deal. (*See* R. 4083-84.) Taking Wasatch’s own evidence, the leases have a minimum value of at least \$35,100 (\$5.00 per acre x 7020 acres). Considering the facts in the light most favorable to Wasatch, a payment of \$3,629.40 is but 10.34% of Wasatch’s proposed value of just the leases transferred, without any consideration given to taking over APDs and the Jack’s Canyon operations. Such minimal compensation does not, as a matter of Utah law, constitute “reasonably equivalent value.” *See Meyer v. General Am. Corp.*, 569 P.2d 1094, 1098 (Utah 1977) (quoting *Utah Assets Corp. v. Dooley Bros Assn.*, 70 P.2d 738, 742 (Utah 1937) (“Fair equivalent has been deemed to mean ‘such a price as a capable and diligent businessman could presently obtain for the property after conferring

---

<sup>15</sup> *See* Utah Code Ann. §§ 25-6-5(2)(h) (actual intent to defraud may be inferred from the fact that “the value of the consideration received by the debtor was [not] reasonably equivalent to the value of the assets transferred”); *id.* § 25-6-6 (transfer is fraudulent if “debtor made the transfer . . . without receiving a reasonably equivalent value” and “was insolvent at the time or became insolvent as a result”).

with those accustomed to buy such property. . . .’ [It has been] determined that 13% of the property’s proven worth is not a fair equivalent.”).<sup>16</sup>

As such, this Court should affirm the District Court’s determination that the June 2000 Letter, was not supported by any consideration. In the alternative, this Court should affirm on grounds that Wasatch did not provide sufficient consideration to support an “equitable” interest in the Section 32 Leases, and other interests, because the consideration Wasatch paid was not “reasonably equivalent” to the value of the property it received under the June 2000 Letter.

**6. Liberal Construction Of Rule 69 Is For The Benefit Of One Legally Entitled To Redeem, Not To Liberally Grant Someone The Right To Redeem.**

Wasatch cites several cases, arguing that Rule 69 should be liberally construed to effect the remedial goals of redemption. *See, e.g., Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.*, 787 P.2d 1328 (Utah Ct. App. 1990). The problem is that Wasatch cites no court that so liberally construes Rule 69 as to allow a redemption, under the extraordinary circumstances here. Wasatch claims to be the successor-in-interest to Mission, which stopped doing business shortly after Wasatch received its property. The only conveyance document reflecting the transfer of the Section 23 Lease is defective, and conveys no legal title. The property it wishes to redeem was obtained through a fraudulent transfer. There is no equitable title. There is a June 2000 Letter, but the sufficiency of the consideration is disputed, if any was actually paid.

---

<sup>16</sup> BBC paid Wasatch significantly more. Those amounts are filed in the sealed Record pursuant to a confidentiality order, but are found in the sealed portions of the Record at (R. 4364.)

Viewing the evidence in the light most favorable to Wasatch, the best fact for Wasatch is that Reott bid \$1.00 at the sheriff's sale. Regardless of the amount, liberal construction of Rule 69 should benefit persons who properly acquire legal or equitable title or the right of redemption. Liberal construction should not eviscerate the clear requirement that a party entitled to redeem must be a successor-in-interest, with either legal or equitable title. Rule 69 should not be applied to judicially sanction an undisputed fraudulent transfer.

**7. Even If Legal Title Could Be Established, It Should Be Voided As A Result Of The Fraudulent Transfer**

Even assuming *arguendo* that Wasatch somehow acquired legal title, such title should be voided as a result of the fraudulent transfer. Utah law is clear that a fraudulent transfer is void as to the creditors, and that the transferee is divested of legal title in the event such a transfer is proved. *See Meyer*, 569 P.2d at 1098 (“When a conveyance is found void under the Utah Fraudulent Conveyance Act, it is treated as if the transaction never took place at all”); *Butler v. Wilkinson*, 740 P.2d 1244, 1261 (Utah 1987) (“The remedy provided by the Act for a fraudulent conveyance is voiding the conveyance.”). For the reasons set forth in Point IV, this Court could affirm the District Court’s grant of summary judgment on alternative grounds that Wasatch’s title is void, as a matter of law.

**POINT IV. THE DISTRICT COURT PROPERLY CONCLUDED THAT, AS A MATTER OF LAW, WASATCH RECEIVED ITS INTEREST IN THE SECTION 32 LEASES, AND OTHERS, BY A FRAUDULENT TRANSFER**

Below, Wasatch and BBC made a strategic decision not to directly attack or oppose Reott’s fraudulent transfer claim. Instead, they argued that Reott lacked standing

both to challenge Wasatch's attempt to redeem and to assert a fraudulent transfer claim. Now, for the first time on appeal, Wasatch and BBC directly challenge Reott's fraudulent transfer claim. This Court should decline to consider this entirely new argument on appeal. *Monson v. Carver*, 928 P.2d at 1022. Even if considered, they all fail.

**A. Fraudulent Transfer Can Be Resolved On Summary Judgment.**

Wasatch and BBC assert that the District Court erred in resolving Reott's fraudulent transfer claim on summary judgment and without a trial.<sup>17</sup> (Appellant's Br. 20, 44.) Wasatch and BBC's contention is wrong, both as general proposition and based on the summary judgment briefs below.

There is no authority for the blanket proposition that a fraudulent transfer claim can never be resolved on summary judgment. Wasatch and BBC cite selectively from *Territorial Savings & Loan Assoc. v. Baird*, 781 P.2d 452 (Utah Ct. App. 1989), to support their contention "that resolution of any issue of fraud on summary judgment generally constitutes legal error." (Appellant's Br. 44.) *Territorial Savings*, however, does not stand for this proposition. Rather, it stands for the unremarkable proposition that resolution of a fraudulent transfer claim (like any other claim) on summary judgment is improper when there are disputed issues of material fact. 781 P.2d at 462-63 (summary judgment denied where defendant properly raised facts and disputes and

---

<sup>17</sup> Wasatch and BBC did not make this argument during the course of the summary judgment proceedings. It was only after the court ruled in Reott's favor on fraudulent transfer, after Reott proposed a Statement of Undisputed Facts, and after Wasatch and BBC filed an objection to those facts, did Wasatch and BBC make this argument to the court, in a Motion to Supplement its Objections. (R. 4924.) The Motion to Supplement was denied.

contested badges of fraud and reversing summary judgment in light of identified factual disputes, conflicting affidavits and contested badges of fraud). *See, e.g., Morganroth & Morganroth v. DeLorean*, 213 F.3d 1301 (10th Cir. 2000) (affirming summary judgment of a fraudulent transfer). A fraudulent transfer claim is no different than any other claim and can be resolved on summary judgment.

In this case, there was nothing to preclude the District Court from deciding Reott's fraudulent transfer claim on summary judgment. The material facts were not disputed. (R. 4080-85, 3665-68.) Reott's fraudulent transfer argument was unopposed. (*See generally* R. 4082-84, 3665-68.) As the non-moving party, Wasatch and BBC had the duty to assert any and all arguments it had to oppose Reott's fraudulent transfer claim and "the burden of coming forward with rebuttal evidence." *Territorial Savings*, 781 P.2d at 462, n.18. And, because a single badge of fraud may be sufficient to prove a fraudulent transfer, Wasatch and BBC had the affirmative obligation to contest each and every one of Reott's alleged badges of fraud. *Id.* at 462 ("Often a single [badge of fraud] may establish and stamp a transaction as fraudulent.")<sup>18</sup> Wasatch and BBC, for whatever reason, elected not to. So, unlike the defendant in *Territorial Savings*, Wasatch and BBC did not defend against the fraudulent transfer claim or contest Reott's arguments that the facts supported up to eleven badges of fraud.

---

<sup>18</sup> *See also Taylor v. Rupp (In Re Taylor)*, 133 F.3d 1336, 1339 (10th Cir. 1998) (interpreting Utah Fraudulent Transfer Act and holding *single* badge of fraud is sufficient to establish actual intent to defraud); *see also Dahnken v. Wilmarth*, 726 P.2d 420 (Utah 1986) (affirming actual intent on three badges of fraud).

In such case, there was nothing improper about the District Court resolving Reott's fraudulent transfer claim on summary judgment and without a trial.

**B. The District Court Properly Concluded, Based on the Undisputed Facts And The Lack Of Any Opposition, That Wasatch and BBC Conceded The Existence of Nine Badges of Fraud.**

Wasatch argues that the District Court erred in concluding that it had conceded the existence of nine badges of fraud. (Appellant's Br. at 40.) A review of the summary judgment briefs below confirms that that is exactly what happened. Reott argued that Wasatch had received the Section 32 Leases (and eight other leases), as a result of a fraudulent transfer from Mission. Eleven pages of Reott's opening summary judgment brief are dedicated to discussing the law of fraudulent transfer, arguing how the undisputed facts establish 11 badges of fraud, and concluding that Wasatch obtained its interest in the Section 32 Leases by fraudulent transfer. (R. 2694-2711.)

In their Reply/Opposition briefs, Wasatch made little, and BBC made no, effort to oppose Reott's claim that the Section 32 Leases had been fraudulently transferred under Utah law. (R. 3662-3671, 4073-4107.) They did not dispute the majority of the facts presented by Reott. They did not discuss, in any significant way, Utah's fraudulent transfer statute or the case law interpreting it. They did not challenge that certain undisputed facts established nine badges of fraud. They did not argue that any of these facts were not "material" to the determination of any badge of fraud or to the conclusion of fraudulent transfer. At no time did Wasatch or BBC ever argue that these facts have a different meaning in the context of a fraudulent transfer claim or that these "innocuous" facts do not establish a fraudulent transfer. Finally, Wasatch and BBC did not argue that

there was no fraudulent transfer or that the Court could not decide the issue on summary judgment. Because Wasatch and BBC did not dispute the facts, and because they did not challenge the law or Reott's application of the law, Wasatch and BBC did not dispute that the property had been fraudulently transferred. As such, the District Court properly concluded that Wasatch and BBC did not dispute and in fact conceded the existence of nine badges of fraud.<sup>19</sup> (*See* Ruling at 6, Tab A.)

**C. The Undisputed Evidence Establishes Eleven Badges of Fraud.**

For the first time on appeal, Wasatch and BBC argue that the facts do not support Reott's analysis of eleven badges of fraud or the conclusion of fraudulent transfer. (Appellants' Br. at 13-17.) Wasatch and BBC's arguments, however, fail to prove that the evidence does not support even one badge of fraud. This Court need only conclude that the facts support at least one badge of fraud in order to affirm the lower court's entry of summary judgment. *See Baird*, 781 P.2d at 462 ("Often a single one of them may establish and stamp a transaction as fraudulent"); *Taylor v. Rupp*, 133 F.3d 1336, 1339 (10th Cir. 1998) (interpreting Utah Fraudulent Transfer Act and holding *single* badge of fraud is sufficient to establish actual intent to defraud); *see also Dahnken v. Wilmarth*, 726 P.2d 420 (Utah 1986) (affirming actual intent on three badges of fraud).

---

<sup>19</sup> Reott argued below, in its Opposition/Cross Motion For Summary Judgment, that the facts supported 11 badges of fraud. In reviewing Wasatch and BBC's Reply/Opposition briefs, neither one addressed fraudulent transfer. Instead, Wasatch challenged the issue of Sutton's authority to transfer Mission's interest and the issue of consideration. Liberally construing Wasatch's response, Reott noted that Wasatch had challenged two of the badges of fraud, albeit without saying so. (R. 4378-79.) While Reott does not agree that Wasatch successfully knocked out two badges of fraud, nine of them went without even an acknowledgement.

To establish a fraudulent transfer under Utah Code Ann. § 25-6-5(1)(a), a transfer must be made with the “actual intent to hinder, delay or defraud.” “Actual intent” is proven through the existence of certain factors, commonly referred to as “badges of fraud,” which are codified at Section 25-6-5(2)(a) through (k) and discussed in Utah case law. The undisputed facts show up to eleven badges of fraud.

**Badge 1:** Sutton Assigned the Section 32 Leases to WOGC *after* mechanics liens, foreclosure actions and judgments had been entered against Mission.

Under Utah Code Ann. §§ 25-6-5(2)(d) and (j), Mission transferred the Section 32 Leases after eleven mechanics liens were recorded against Mission’s interest in the Section 32 Leases, (Fact ¶ 20, R. 5402), including the Key Energy and J-West Liens (Fact ¶¶ 20-22, 44, R. 5402, 5407), after the Key Energy and J-West foreclosure actions had been commenced (Fact ¶¶ 25-26, R. 5403), after the J-West Judgment had been entered (Fact ¶¶ 27, 45, R. 5403) and after Reott had sued and obtained a Colorado judgment against Mission (Fact ¶ 19, R. 5401-02). On appeal, Wasatch asserts, without explanation, citation to legal authority or evidence, that the timing of the transfer is not material to a fraudulent transfer claim and the conveyance did not harm Reott or any other creditor. Contrary to Wasatch’s argument, timing of a transfer is a badge of fraud.

**Badge 2:** Sutton and WOGC carved up the ML43541 lease with the intent of evading the liens and judgments.

A conveyance not made in the ordinary course of business may be considered a badge of fraud. *See United States v. Christensen*, 751 F. Supp. 1532, 1536 (D. Utah 1990). The “carving up” and splitting ownership of the ML43541 Lease (560 acres, with



rights from surface to earth's center), horizontally and vertically, was not in the ordinary course. Mission retained a small forty-acre portion, with vertically limited rights from the surface down to 3,398 feet. (Fact ¶ 41, R. 5406.) Wasatch obtained 520 acres, with rights from surface to earth center, in addition to the deep rights (from 3398 feet to center of the earth) beneath the forty acres upon which the Lavinia Well. (Fact ¶ 41, R. 5406.) Wasatch then applied to SITLA to have its 520 acres renumbered to ML43541-A. Wasatch contends that in June 2001 it obtained ML43541-A (520 acres of former ML43541), the deep rights under ML43541 (3398 ft to earth's center) and ML43798 (80 acres) free and clear of all liens.

Further, Wasatch expressly admitted that the ML43541 Lease was divided with the intent to avoid liens. Wasatch knew about Mission's liens and liabilities. (Fact ¶¶ 21, 22, 42, 43, R. 5402, 5406-07.) In its 30(b)(6) deposition, Wasatch testified that WOGC wanted title to the Section 32 Leases, but did not want the liability associated with them. (Fact ¶ 42, R. 5406.) WOGC believed that the Lavinia Well was "more of a liability than it was of any value." (Fact ¶ 48, R. 5407.) WOGC determined, *sua sponte*, that the liens and the J-West judgment should only attach to the "valueless" Lavinia Well and the forty acres upon which it is located. (Fact ¶¶ 46, 49, R. 5407.) In an attempt to evade liability for the liens and judgments, but obtain title to the Section 32 Leases, Mission and WOGC decided to "carve or fillet out that well and the forty acres that goes with it and move it aside." (Fact ¶¶ 41-48, R. 5406-07.)

On appeal, Wasatch disagrees that dividing up the Section 32 Leases was intended to defraud creditors and asserts that Mission retained a "significant asset." Wasatch is

misleading. Wasatch's position throughout this entire litigation has been that by dividing up the Section 32 Leases, the liens only attached to the small forty-acre section that Mission retained, notwithstanding that the division and the renumbering of ML43541 lease took place *after* the liens were recorded and judgments were obtained. (*See* Wasatch Complaint, R. 01-37.) In addition, by statutory definition, Mission was insolvent, because it was not paying its debts as they came due. Utah Code Ann. § 25-6-3(2). And, this "significant asset" that Mission retained was described by Wasatch as a liability during its 30(b)(6) deposition (Fact ¶ 42, R. 5418).

**Badge 3:** WOGC gave no value, or less than reasonably equivalent value, for the Section 32 Leases and the other leases received pursuant to the June 2000 Letter.

Whether the transfer was made for "reasonably equivalent value" is a badge of fraud, under Utah Code Ann. § 25-6-5(2)(h). The sufficiency of the "consideration" is disputed. Reott discusses, under Point III,C,4, that Wasatch did not pay reasonably equivalent value for the property it received, which establishes another badges of fraud. Consideration, however, is but one of many. Even if this Court determines that consideration was sufficient, this Court can still affirm the District Court's ruling on fraudulent transfer, given the other badges of fraud which were not disputed.

**Badge 4:** Mission was insolvent at the time of the June 2000 transfers, and substantially before.

Solvency is a factor under Utah Code Ann. § 25-6-5(2)(i). Under the Act, "[a] debtor who is generally not paying his debts as they become due is presumed insolvent." Utah Code Ann. § 25-6-3 (1998). Mission was not paying its debts as they came due;

between 1998 and 2000, there were eleven mechanics liens, Reott's Colorado Judgment entered in December 1999, the Key Energy and J-West foreclosure actions, and the J-West Judgment entered on May 22, 2000, just one month before the June 2000 Letter. (Fact ¶ 20-27, 96; R. 5402-03, 5417.) Moreover, Mission's accountant Bruce Hill testified that Mission was undercapitalized, had no ability to repay the Reott bridge loan when it was made in 1997, that its financial performance in 1998 was marginal and that debts were uncollectible in 1999. (Facts ¶¶ 94, 95, R. 5417.)

On appeal, Wasatch provided no evidence to contradict that Mission was insolvent at the time of the June 2000 Letter. Wasatch provided no evidence of Mission's or the Lavinia Well's value. Reott's expert report is not evidence; it is hearsay. Moreover, the report opines about the production capability of the Lavinia Well for purposes of damages for Wasatch and BBC's denial of pipeline access since 2001, not the Well's value or Mission's value.

**Badge 5:** Pursuant to the June 2000 Letter, Mission essentially conveyed to WOGC the last of Mission's assets.

Utah Code Ann. § 25-6-5(2)(e) considers whether the transfer is of substantially all of Mission's assets. Mission (or Sutton) conveyed (or attempted to convey) substantially all of its assets to WOGC in three transfers—in June 1999, May 2000 and June 2000. (Fact ¶¶ 99-101, R. 5418.) The June 2000 Letter reflects the last of the three transfers. Thereafter, Mission had no assets, with the exception that Mission retained the “liability” of the Lavinia Well and a limited forty-acre section of the ML43541 lease, with rights limited to a depth of 3,398 feet. (Fact ¶¶ 48-49, R. 5413-12.) On appeal,

Wasatch does not challenge badge 5. Wasatch does, however, assert that the Lavinia Well is now a ‘significant asset’ (Appellants’ Br. 15), while in its 30(b)(6) deposition, Wasatch asserted the Lavinia Well was more of a “liability.” (R. 5418.)

**Badge 6:** Sutton Resigned and Mission Absconded.

Utah Code Ann. § 25-6-5(2)(f) considers whether the debtor absconded after the transfer. Less than four months after the June 2000 transfer, Mission and Sutton essentially disappeared. Effective October 1, 2000, Justin C. Sutton resigned as Manager of Mission. (Fact ¶ 107, R. 5420.) Afterwards, Mission stopped doing business.

On appeal, Wasatch argues that Fred Jager replaced Sutton as Mission’s manager. Appellant’s Br. at 16 (citing R. 3960, 4091.) This statement is misleading. The record at 3960 is a page from Fred Jager’s deposition and a portion of that deposition states: “You know I have never been involved in the operations of the company so I don’t know what leases are left or anything like that.” Below, Wasatch represented that “Mr. Jager was not a manager or member of Mission, and had no personal involvement with Mission’s management at any relevant time.” (R. 4079.) Further, Wasatch presented no evidence to contradict that Mission absconded and was no longer doing business.

**Badge 7:** The Section 32 Lease Assignments, reflecting the wild conveyance from Sutton to WOGC, were not recorded, i.e., concealed.

Concealing a transfer, *see* Utah Code Ann. § 25-6-5(2)(c), and failing to record a conveyance, *see United States v. Christensen*, 751 F.Supp. 1532, 1536 (D. Utah 1990), are badges of fraud. Here, the undisputed facts show that the Section 32 Lease Assignments were not recorded in the Carbon County Recorder’s office at the time of

several key events, including the foreclosure of Key Energy and J-West liens and Sheriff's Sale. (See Abstract of Title, R. 3155-3382.) They were not recorded until after Reott was sued for quiet title (Fact ¶ 40, R. 5406) and after BBC had purchased the property from Wasatch in April 2002. As such, there was no public notice that Mission's interest in the Section 32 Leases had been transferred to Wasatch.

On appeal, Wasatch addresses badges of fraud 7, 8 and 9 collectively. In response, Wasatch asserts that recording is not required by law and that it served no purpose. Wasatch, however, does not deny that the leases were not recorded with the County Records office, which is required as a matter of Utah law, if a party desires to protect itself from and give notice to third parties regarding any real property transfer. SITLA is not a county recorder. It maintains its leases for its own administrative purposes. Wasatch provides no authority to support its assertion that assignments of SITLA mineral leases are not recorded and such is "consistent with standard practices for State mineral leases." (Appellant's Br. 16.)

**Badge 8:** Sutton executed the Section 32 Leases Lease Assignments in haste, without regard to Utah's title and recording laws, and without regard to Mission's own rules with regard to the disposal of company assets.

Transfers that are not recorded, executed in secrecy and haste, and conveyed out of the ordinary course, *see Christensen*, 751 F. Supp. at 1536, are considered badges of fraud. Here, the Section 32 Lease assignments were signed by only by Sutton, were not properly executed (Sutton not Mission), not properly notarized (and therefore not recordable under Utah law), and not recorded (nor was any other document, like a Bill of

Sale and Assignment or Deed). (Fact ¶ 30b, 30d, R. 5405.) Moreover, the transfer was not done in accordance with Mission's Operating Agreement, which requires the signature of two managers to dispose of Mission property. (Fact ¶ 112, R. 5421.)

On appeal, Wasatch collectively addresses badges of fraud 8 and 11. Wasatch does not deny that the Operating Agreement requires the signature of two managers. Wasatch asserts that Sutton was Mission's only manager. Assuming that he is, the Operating Agreement still requires two signatures to effect a conveyance, and if we assume that Mr. Jager was involved, in some way, he at least was available to provide a second signature. He, however, was not contacted in any way about the transfers, and had no idea that they had even taken place. Moreover, Wasatch has provided no affirmative evidence to support that Mission "ratified" any transfers. There is none.

**Badge 9:** The June 2000 transfer to WOGC was concealed from creditors.

Utah Code Ann. § 25-6-5(2)(c) considers concealing transfers from creditors a badge of fraud. By letter dated, August 22, 2000, Sutton informed that Wasatch that there were "creditors with outstanding issues," and directed Wasatch to keep the agreements (the transfers) confidential, to not send any Mission creditor any information without Mission's prior written approval. (Fact ¶ 104, R. 5419.) That same day, Sutton wrote a letter to Reott telling him Mission was protecting "the assets of the company" and working to "make the company successful." (Fact ¶ 105, R. 5419.) In addition, in December 2000, after he had resigned and after all property had been conveyed, Sutton sent a letter, dated December 26, 2000, to J-West's counsel requesting J-West recognize

Mission's rights, but not disclosing the transfers, or attempted transfers of Sections 27, 32, 33 and 34—the property covered by the J-West mechanics lien and resulting judgment. (Fact ¶ 106, R. 5419-20.)

On appeal, Wasatch asserts only that the Section 32 Leases were publicly available. Wasatch does not address, at all, the fact that Mr. Sutton's letters direct Wasatch to say nothing, while simultaneously leading Reott and other creditors to believe that Mission is still in business and "protecting assets."

**Badge 10:** To further place the Section 32 Leases beyond the reach of creditors, WOGC Promptly Conveyed the Section 32 Leases, along with other former Mission property, to an affiliate Wasatch.

Utah Code Ann. § 25-6-5(2)(a) and *Christensen*, 751 F. Supp. at 1536 consider transfers to insiders a badge of fraud. Wasatch Oil & Gas Corporation and Wasatch Oil and Gas, L.L.C. are owned and operated by the same three people, Todd Cusick, Brian Watts and Mark Smoot. (R. 2672.) After obtaining the Section 32 Leases, WOGC promptly conveyed them to Wasatch, just eight days later, on July 1, 2000. (Fact ¶ 59, R. 5410.) The conveyance, however, was not executed until October 27, 2000, just one day after the Reott Judgment is domesticated in Carbon County, and not recorded until November 27, 2000. *Id.* The transfer to an insider, combined with backdating the effective date of the conveyance appears to be an attempt by Wasatch to obtain some type of priority. On appeal, Wasatch asserts that the transfer was for "tax purposes." (Appellant's Br. 17.) No explanation is provided for the effective date of July 1, 2000, execution date of October 27, and recording date of November 27.

**Badge 11:** Under Mission's Operating Agreement, Sutton had no authority, on his own, to convey Mission's interests.

Conveying property contrary to the dictates of Mission's governing Operating Agreement is ultra vires and out of the ordinary course, and is a badge of fraud. *See Christensen*, 751 F. Supp. at 1536. Wasatch did dispute Reott's contention that Sutton lacked authority, but not in the context of opposing fraudulent transfer. Mission's Operating Agreement expressly states that Mission cannot dispose of company assets without the signature of two managers. (Fact ¶ 57, R. 5421.) The June 2000 Letter and the Section 32 Leases are signed only by Sutton. (Fact ¶ 34, R. 5405.) Viewing the facts in the light most favorable to Wasatch, even if Sutton is the only manager, and even if Jager is somehow still involved, the Operating Agreement still requires two signatures. Under Mission's Operating Agreement, Sutton had no authority, on his own, to give away the last remaining assets of Mission.

The undisputed facts shows that the circumstances surrounding the June 2000 transfer from Mission to Wasatch was suspicious and indeed motivated by the intent to avoid pre-existing liens, the foreclosure action, and the judgments. While the facts establish as many as eleven badges of fraud, this Court needs only one to confirm the District Court's ruling that Wasatch obtained its interest in the Section 32 Leases by fraudulent transfer. As such, Wasatch has no equitable title, as a matter of law.

### **CONCLUSION**

Reott requests this Court affirm the District Court's Quiet Title Ruling and Order.



DATED this 17<sup>th</sup> day of November, 2006.



LAWRENCE E. STEVENS

GARY E. DOCTORMAN

DIANNA M. GIBSON

PARSONS BEHLE & LATIMER

Attorneys for Edward A. Reott, Goal, LLC  
and Regoal, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of November, 2006, I caused to be mailed, first class, postage prepaid, two true and correct copies of the foregoing **BRIEF OF APPELLANTS**, to:

Eric C. Olson  
Matthew K. Richards  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
P.O. BOX 45120  
Salt Lake City, Utah 84145-0120  
*Attorneys for Wasatch*

Carolyn McIntosh  
David E. Brody  
PATTON BOGGS, LLP  
1600 Lincoln Street, Suite 1900  
Denver, Colorado 80264  
  
Nick Sampinos  
190 North Carbon Avenue  
Price, Utah 84501

*Attorneys for Bill Barrett Corporation*

*Dianne M. Thibaut*

## **ADDENDUM**

Tab A

IN THE SEVENTH DISTRICT COURT IN AND FOR  
CARBON COUNTY, STATE OF UTAH

DEC 16 2005

WASATCH OIL & GAS, L.L.C., A )  
Utah Limited Liability Company, )

Plaintiff, )

VS. )

EDWARD A. REOTT, et al., )

Defendants. )

**RULING ON WASATCH'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
RE: REDEMPTION ISSUES**

**AND**

GOAL, L.L.C., A Utah limited liability )  
company, as the real party in interest to the )  
rights of Edward Reott, Key Energy )  
Lien and J-West Oilfield Lien, and )  
REGOAL INC., A Pennsylvania )  
Corporation, )

Counterclaim, Third Party )  
and Crossclaim Plaintiffs, )

VS. )

WASATCH OIL & GAS., et al, )

Third Party, Counterclaim )  
and Crossclaim Defendants. )

**RULING ON REOTT'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT FOR QUIET TITLE,  
FRAUDULENT CONVEYANCE,  
TRESPASS, CONVERSION, AND  
TRESPASS TO CHATTELS**

Civil No. 010700991

Judge Bryce K. Bryner

On April 15, 2004, the plaintiff filed a *Motion for Partial Summary Judgment* supported by a memorandum to which the defendant's filed a *Memorandum in Opposition*. The Reott defendants also filed a *Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance*. Each party filed a responsive memorandum and a *Reply*. Bill Barrett Corporation also filed a memorandum in opposition to the Reott Parties' *Motion for Partial Summary Judgment Re: Quiet Title, Fraudulent Conveyance* and joined in the position advocated by the

plaintiff Wasatch. The court heard oral argument, allowed counsel to submit post-hearing memorandum, and took the matter under advisement.

### I. Brief Factual Background

Reott obtained a judgment against Mission Energy (hereinafter “Mission”) and purchased two other judgments that had been previously obtained against Mission. Reott executed on the three judgments at a Sheriff’s Sale on August 9, 2001, which involved oil and gas interests in four section of land in Utah: 27, 32, 33 (collectively the “BLM” Leases) and portions of 32 (the “SITLA” Leases). Reott was the only bidder at the sale and bid \$1.00. Wasatch, who claims it was the successor-in-interest to Mission prior to the Sheriff’s Sale, filed with the court and sent two notices of redemption to Reott and tendered a check in the amount of \$1.06, which includes interest, within the 6 month redemption period after the sale under Rule 69(j) URCP. The tender was rejected by Reott.

On February 9, 2002, Reott transferred his title to the Sheriff’s Sale Properties to Regoal, Inc., and on March 6, 2002, the Sheriff of Carbon County signed a Sheriff’s Deed to Regoal. By a Purchase and Sale Agreement dated April 30, 2002, BBC acquired all of Wasatch’s right, title and interest in and to the Sheriff’s Sale Properties.

### II. Issue Presented

The main issue presented by the reciprocal motions for partial summary judgment is: Did Wasatch properly exercise a valid right of redemption with respect to the Sheriff’s Sale Properties pursuant to Rule 69(j) of the Utah Rules of Civil Procedure?

### III. Relief Sought by the Parties

A. Wasatch: Wasatch Oil & Gas, L.L.C. (hereinafter “Wasatch”) seeks a ruling that Wasatch held and validly exercised a right of redemption to certain oil and gas interests in Sections 27, 33, 34, and portions of Section 32 (hereinafter collectively referred to as the “Sheriff’s Sale Properties”) which were acquired by the defendant Edward Reott (hereinafter “Reott”) at a Sheriff’s Sale on August 9, 2001. Wasatch also requests a ruling that it holds title

to the said oil and gas interests free and clear of any interest of the defendants by reason of its exercise of the right of redemption.

B. Bill Barrett Corporation: In April of 2002, Bill Barrett Corporation (hereinafter “BBC”) purchased the interests of Wasatch in the Sheriff’s Sale Properties and therefore claims that it is the owner of the Sheriff’s Sale Properties, less a 40 acre section of the Section 32 Leases and the Lavinia Well and all appurtenant equipment, pipelines, etc. BBC joins with Wasatch in urging the court to find that Wasatch was a successor-in-interest to Mission and that Wasatch properly exercised a right of redemption.

C. Reott: The Reott defendants urge the court to hold that neither Wasatch nor BBC has legal or equitable title to the Sheriff’s Sale Properties because Wasatch was and is not a successor in interest to Mission and therefore cannot redeem the Sheriff’s Sale Properties. Reott requests the court to quiet title to the Section 32 Leases in Reott.

#### IV. Analysis

At the outset, the court finds that Reott, as the purchaser at the sheriff’s sale and the recipient of the sheriff’s deed, received the property subject only to redemption by one actually authorized to redeem. As such, Reott has standing to challenge Wasatch’s purported title and has standing to dispute Wasatch’s claim that Wasatch was a lawful successor-in-interest to Mission. Because BBC acquired all of Wasatch’s right, title, and interest in and to the Sheriff’s Sale Properties, any consequence to Wasatch in this ruling should also be ascribed to BBC as Wasatch’s successor.

##### Part I. The BLM Leases

The BLM owns the land underlying the leases in Sections 27, 33, and 34. BLM forms were used to transfer the leases in those sections to Wasatch in June of 1999, the transfers were approved by the BLM, and those leases were sold at the August 9, 2001 Sheriff’s Sale. The court finds that Wasatch is in the chain of title to those leases, which Reott does not dispute, and is a successor-in-interest to Mission with respect to the BLM Sections and, as such, had a right to

redeem those properties from the Sheriff's Sale under the provisions of Rule 69(j).

Reott concedes that Wasatch, and now its successor BBC, can redeem the BLM properties, but only if Wasatch pays the prior full amount of the J-West lien, the Key Energy lien, and the judgment in favor of Reott, the combined total of which is approximately \$280,000.00.

The court finds, as a matter of law, that Reott's lien interests in the Sheriff's Sale properties are extinguished because the sale on a judgment exhausts it as to the property sold. The court finds that under Brockbank v. Brockbank, 32 P.3d 990 (Utah App. 2001) and Tech-Fluid Servs. Inc. V. Gavilan Operating, Inc., 787 P.2d 1328 (Utah Ct. App. 1990) the amount to be paid by Wasatch to redeem the BLM properties is the amount for which they were purchased by Reott at the Sheriff's Sale together with interest and any other costs required by the provisions of Rule 69(j).

#### Part Two: The SITLA Leases

A resolution of the question whether Wasatch is a successor-in-interest to Mission for purposes of the SITLA Leases (Section 32, less the Lavinia 1-32 well and limited adjacent forty acres to a specified depth, which is not disputed by Wasatch) necessitates consideration of the following:

##### A. Do the Three Mineral Lease Assignment Forms Executed by Justin Sutton Transfer Mission's Legal Title in the Section 32 Leases?

The undisputed facts show that prior to any purported transfer to Wasatch, Mission was the lessee of record of the Section 32 Leases. It is also undisputed that Justin Sutton was a manager at Mission at the times relevant herein and that he himself held no interest in the Section 32 Leases.

Reott claims that Wasatch is not a successor in interest to Mission because Justin Sutton signed the three Mineral Lease Assignment Forms in favor of Wasatch on June 23, 2000 in his own individual capacity and not as an agent for Wasatch. Further, Reott asserts that Wasatch paid no consideration for the transfers.



Wasatch responds that Sutton, as the manager for Mission, signed the three mineral lease assignment forms on the Section 32 Leases as an agent for Mission even though his capacity as an agent or manager is not stated on the face of the assignment forms. Wasatch further claims that the failure to specifically designate his capacity is only a “technical” defect and is not fatal to Wasatch’s title to the Section 32 Leases because: (1) the assignments were approved by SITLA despite the absence of Sutton’s title; (2) the reverse side of each of the assignment forms contains a statement by Wasatch that it accepts the assignments; and (3) the June 21, 2000 Letter Agreement signed two days before the assignments confirms the intent to transfer to Wasatch.

The court finds as a matter of law that the failure to identify Sutton on the assignment forms as a person authorized to execute the assignments on behalf of Mission results in no title passing from Mission to Wasatch. Interests in non-extracted minerals are interests in real property, and any attempts to convey must be expressed in writing and clearly identify the grantor, particularly where the grantor is a business or corporate entity. Although Wasatch argues that the court should liberally construe the definition of successor-in-interest under Rule 69(j) to implement remedial policies for redemption, the court finds that even a liberal construction cannot overcome the fact that the conveyances from Mission to Wasatch did not comply with a basic rule of conveyances, i.e., the assignor must be clearly identified.

Moreover, the approval by SITLA has no legal effect on the validity of the transfer and does not, of itself, yield a legal conclusion that title to the Section 32 Leases is vested in Wasatch. It is only an approval of the apparent transaction, which approval, under SITLA’s regulations, cannot be withheld if the assignment is properly executed. Furthermore, the acceptance of the conveyance by Wasatch on the reverse side of the assignment forms only reflects Wasatch’s intent to accept the conveyance - it does not reflect the intent of Mission to convey.

In summary, the assignments from Sutton in his own capacity were equivalent to “wild deeds” and were therefore insufficient to transfer Mission’s interests in the Section 32 Leases to Wasatch.

## II. Does the June 21, 2000 Letter Agreement Convey Equitable Title to Wasatch?

It is clear under Utah law that an equitable interest in property sold at a Sheriff's Sale would be sufficient to confer successor-in-interest status on Wasatch, and Wasatch claims such an interest in the Section 32 and other property (less the Lavinia well and adjacent acreage to a certain depth) by virtue of the June 21, 2000 Letter Agreement. Reott disputes Wasatch's claim of equitable title on the basis of fraudulent conveyance.

Utah law is clear that property transferred by fraudulent conveyance confers no equitable title. Beginning on page 12 of its memorandum, Reott cites 11 "Badges of Fraud" surrounding Mission's transfer of its interests in the Section 32 Leases to Wasatch. Wasatch, in its Reply, addresses only two of them and the court therefore finds that Wasatch concedes 9 of them. (See p. 3 of Reott's Reply memorandum). Utah case law indicates that even one badge of fraud is sufficient to invalidate a conveyance and the court therefore finds that Wasatch received no equitable title because of fraudulent conveyance.

The court also finds that the June 21, 2000 Letter agreement does not convey equitable title to Wasatch because no consideration was ever paid. The Letter Agreement provided that Mission would transfer its interest in certain Leases, including the Section 32 Leases, in exchange for the right to participate in a drilling deal that Wasatch "may be able" to put together. An interest in a drilling deal that admittedly may not come to pass does not constitute consideration.

In conclusion, although Wasatch argues that the June 21, 2000 Letter Agreement cures any defect (failure to insert the title of "manager" or "agent") in the three Mineral Lease Assignment Forms and confers equitable title on Wasatch, the court finds the purported transfers were fraudulent and therefore conveyed no equitable or legal title to Wasatch.

#### V. Trespass, Conversion, and Trespass to Chattels

The Reott parties have had title to the Section 32 Leases since the February 9, 2002 when the Sheriff's Deed was issued. Subsequent to that date BBC developed Section 32 by drilling two wells and reported to Division of Oil, Gas and Mining that the two wells were producing gas as of December 4, 2003. The court therefore finds as a matter of law that BBC is liable for trespass as a result of the drilling of the two wells. The court also finds as a matter of law that BBC is liable to the Reott parties for any minerals converted on Reott's Section 32 Leases since February 9, 2002, with the amount to be determined at trial.

The court also finds that BBC forcibly removed the Lavinia Pipeline which caused the meter house to be pulled off its foundation, bending the oil production line, and damaging the connection to the oil tank causing an oil spill. BBC is liable for these damages together with any other damages that may be proved in an amount to be determined at trial.

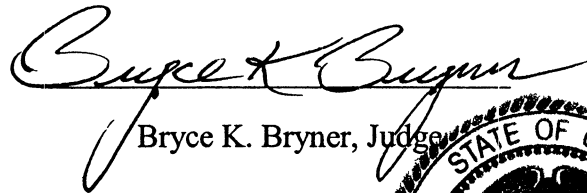
#### VI. Summary

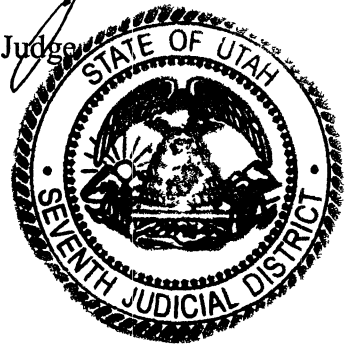
After due consideration of the memorandum and the arguments of counsel the court finds that Wasatch is a successor-in-interest to Mission with respect to the BLM properties and may redeem them by paying to Reott the amount that Reott bid at the Sheriff's Sale. The court is persuaded that Wasatch is not a successor-in-interest to Mission as to the Section 32 properties and therefore cannot redeem those properties because (1) Wasatch does not have legal title based on three assignment forms signed by Justin Sutton in his individual capacity, and (2) Wasatch does not have equitable title by reason of fraudulent conveyance. Title to the Section 32 properties sold at the sheriff's should therefore be quieted in the Reott Parties.

BBC is liable to the Reott parties for any minerals converted on Reott's Section 32 Leases since February 9, 2002, in an amount to be determined at trial. BBC is also liable in damages for resulting from forcibly removing disconnecting the Lavinia Pipeline.

Defendants' counsel is directed to draft and submit to the court proposed *Findings of Fact* and a *Partial Summary Judgment* which are not inconsistent with this ruling.

DATED this 15<sup>th</sup> day of December, 2005.

  
Bryce K. Bryner, Judge



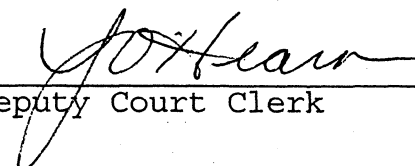
CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

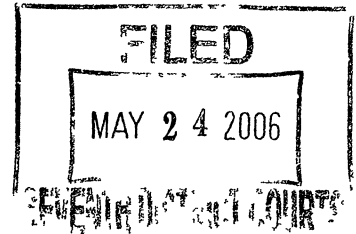
METHOD NAME

Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
Mail	ERIC C OLSON ATTORNEY PLA POB 45120 SALT LAKE CITY UT 84145-0120
Mail	NICK J SAMPINOS ATTORNEY 190 N CARBON AVE PRICE UT 84501
Mail	CAROLYN MCINTOSH ATTY 1660 Lincoln Street Suite 1900 Denver CO 80264

Dated this 16<sup>th</sup> day of December, 20 05.

  
Deputy Court Clerk

Tab B



*Proposed and prepared by:*

LAWRENCE E. STEVENS (3103)

GARY E. DOCTORMAN (0895)

DIANNA M. GIBSON (7533)

PARSONS BEHLE & LATIMER

One Utah Center

201 South Main Street, Suite 1800

Post Office Box 45898

Salt Lake City, UT 84145-0898

Telephone: (801) 532-1234

Facsimile: (801) 536-6111

*Attorneys for Edward A. Reott, Goal, L.L.C., and  
Regoal, Inc.*

---

**IN THE SEVENTH JUDICIAL DISTRICT COURT  
CARBON COUNTY, STATE OF UTAH**

---

WASATCH OIL & GAS, L.L.C., a Utah  
limited liability company,

Plaintiff,

vs.

EDWARD A. REOTT, an individual, KEY  
ENERGY SERVICES, INC., a Maryland  
corporation dba Key Energy Services, Inc. Four  
Corners Division, J-WEST OILFIELD  
SERVICE, INC., a Utah corporation, MISSION  
ENERGY, LLC, a Colorado limited liability  
company, and ALL OTHER UNKNOWN  
PERSONS OR PARTIES CLAIMING ANY  
RIGHT, TITLE, LIEN OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT HEREIN,

Defendants.

**STATEMENT OF MATERIAL  
UNDISPUTED FACTS SUPPORTING  
ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT**

**WASATCH'S MOTION FOR SUMMARY  
JUDGMENT RE: REDEMPTION,**

**AND,**

**THE REOTT PARTIES' MOTION FOR  
SUMMARY JUDGMENT ON QUIET  
TITLE, FRAUDULENT CONVEYANCE,  
TRESPASS, CONVERSION AND  
TRESPASS TO CHATTELS**

Case No. 010700991

Judge Bryce K. Bryner

---

---

GOAL, L.L.C., a Utah limited liability company, as the real party in interest to the rights of Edward Reott, Key Energy Services Lien and J-West Oilfield Lien, and REGOAL, INC., a Pennsylvania corporation,

Counterclaim, Third Party and  
Crossclaim Plaintiffs,

vs.

WASATCH OIL & GAS, L.L.C., a Utah limited liability company, MISSION L.L.C., a Colorado limited liability company, WASATCH OIL & GAS PRODUCTION CORPORATION, a Utah corporation, WASATCH GAS GATHERING, a Utah limited liability company, BILL BARRETT CORPORATION, a Maryland corporation, and all other persons unknown claiming any right, title, estate or interest in or a lien upon the real property described herein adverse to the complainant's ownership or clouding his title thereto,

Third Party, Counterclaim and  
Crossclaim Defendants.

---

The defendants Edward A. Reott, Goal, LLC, and Regoal, Inc. (collectively, the "Reott Parties"), through counsel and at the direction of the Court, submit the proposed Statement of Undisputed Material Facts, supporting this Court's December 16, 2005 Ruling and its Order granting Partial Summary Judgment on Wasatch Wasatch's Motion for Summary Judgment Re:



Redemption, and, the Reott Parties' Motion for Summary Judgment on Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels.

On April 15, 2004, Plaintiff Wasatch Oil and Gas, LLC ("Wasatch") filed a Motion for Summary Judgment. On April 30, 2004, the Reott Parties filed a Memorandum in Opposition in addition to its own Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels. Wasatch, Bill Barrett Corporation ("BBC") and the Reott Parties each filed opposing and reply memoranda. After full consideration of the briefs submitted by all parties, consideration of supplemental submissions, oral arguments held on January 24, 2005 and March 18, 2005, and post-hearing briefing submitted by all parties, the Court entered its Conclusions of Law on December 16, 2005. Pursuant to Rules 52(a), 56(c), and 56(d) of the Utah Rules of Civil Procedure, the Court states as follows:

#### **STATEMENT OF MATERIAL UNDISPUTED FACTS**

This court reviewed all of the material information contained in the record and submitted by Wasatch, BBC and the Reott Parties in conjunction with Wasatch's and the Reott Parties' Motions for Summary Judgment. For purposes of summary judgment, Wasatch specifically identified ten of the facts presented by the Reott Parties in their supporting memorandum to which there was a *material* dispute: 1, 30, 30b, 30c, 44, 55, 56, 72, 73, and 82.<sup>1</sup>

---

<sup>1</sup> See Wasatch's Reply in Support of Motion for Partial Summary Judgment and In Opposition to Reott's Motion for Partial Summary Judgment Re: Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattel, at viii – ix and n.1, x - xi, The Wasatch parties asserted generally that some of the Reott Parties' facts "are mainly contentions regarding the legal meaning of the underlying documents—which of course, are not [facts] at all, but legal argument," (*see id.* at iii), Wasatch, however, contrary to the requirements in Rule 7(c)(3)(B), did not identify

With regard to the remaining facts, Wasatch took the position that there either was not a dispute or that the dispute was not material.<sup>2</sup> With regard to the issues relating to title and fraudulent conveyance, BBC joined and adopted the facts and arguments presented in Wasatch's briefs, and disputed just one of those facts – number 49.<sup>3</sup> With regard to the claims for trespass, conversion and trespass to chattels, BBC identified only eight facts as presented by the Reott Parties to which BBC claimed there was a “dispute.” Those facts, as presented in the briefs, are numbered 83, 84, 85, 87, 90, 93, 96 and 97.<sup>4</sup> With regard to Wasatch's Statement of Undisputed Facts, Reott stated that it disputed or partially disputed fifteen of Wasatch's facts: 2, 9, 10, 11, 13, 15, 20, 22, 23, 24, 26, 27, 31, 39, and 57.<sup>5</sup>

This Court reviewed all the undisputed facts proposed by the parties and considered all objections to and identified disputes with those facts. The Court finds that the following material facts are not in dispute:

**STATEMENT OF UNDISPUTED MATERIAL FACTS**  
**REGARDING TITLE AND FRAUDULENT CONVEYANCE**

1. The following entities are referred to collectively herein as “Wasatch”:

i. Third-party defendant Wasatch Oil & Gas Production Corporation

(“WOGC”), a Utah corporation;

---

which of the specific facts it disputed as “legal argument.” As such, facts not disputed are deemed admitted.

<sup>2</sup> See *id.* at vii-viii, ix – x.

<sup>3</sup> See Bill Barrett Corporation's Memorandum in Opposition to Reott Parties' Motion for Partial Summary Judgment re: Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattel, at 5.

<sup>4</sup> See *id.* at 6-7.

<sup>5</sup> See Reott Parties' Memorandum in Opposition to Wasatch's Motion for Summary Judgment re: Redemption *and* Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion, and Trespass to Chattels Against Wasatch and BBC, at iv – xvi.

ii. Plaintiff and counterclaim defendant Wasatch Oil & Gas, L.L.C. (“Wasatch LLC”), a Utah limited liability company; and

iii. Third-party defendant Wasatch Gas Gathering, LLC (“Wasatch Gas”), a Utah limited liability company.

2. The following persons or entities are referred to collectively herein as the “Reott Parties:”

i. Defendant and counterclaim/third-party plaintiff Edward A. Reott (“Reott”), an individual residing in Carbon County, Utah;

ii. Third-party claimant Goal, LLC (“Goal”), a Utah limited liability; and

iii. Third-party claimant Regoal, Inc. (“Regoal”), a Pennsylvania corporation authorized and doing business in the State of Utah.

3. Third-party defendant Bill Barrett Corporation (“BBC”) is a Maryland corporation with its principal place of business in Denver, Colorado, authorized to do, and doing business in, the State of Utah.

4. Defendant Key Energy Services, Inc. (“Key Energy”) is a Maryland corporation authorized and doing business in the State of Utah as Key Energy Services, Inc. Four Corners Division.

5. Defendant J-West Oilfield Services, Inc. (“J West”) is a Utah corporation.

Mission Energy

6. From approximately 1997 to 2000, Mission Energy LLC (“Mission”) was a Colorado LLC engaged in the oil and gas business on federal and state land in Carbon and Duchesne Counties. (*See Wasatch Fact No. 1: Undisputed.*)

7. During that time, Justin C. Sutton (“Sutton”) was a manager of Mission. (*See Wasatch Fact No. 2: Undisputed.*)

*Mission Owned Federal BLM Leases – Sections 27, 33 and 34*

8. As of May 31, 1999, Mission was the record title owner in three Bureau of Land Management (“BLM”) Mineral Leases Nos. U-08107, No. SL-069551 and No. SL-071595. (*See Wasatch Fact No. 3: Undisputed.*)

9. Lease No. U-08107 covered the south half of Section 27, Township 12 South, Range 16 East, SLB&M (“Section 27”). (*See Wasatch Fact No. 4: Undisputed.*)

10. Lease No. SL-069551 covered certain depths in Section 33, Township 12 South, Range 16 East, SLB&M (“Section 33”). (*See Wasatch Fact No. 5: Undisputed.*)

11. Lease No. SL-071595 covered depths below 3,460 feet in the south half of Section 34, Township 12 South, Range 16 East, SLB&M (“Section 34”). (*See Wasatch Fact No. 6: Undisputed.*)

*Mission Owned State SITLA Leases – Section 32*

12. As of April 16, 1997, Mission was the record title owner of two mineral leasehold interests, issued by the Utah School and Institutional Trust Lands Administration (“SITLA”), in Section 32—ML 43541 (560 acres) and ML 43798 (80 acres) (“Section 32

Leases”)—as reflected in the Carbon County Recorder’s abstract of the chain of title for Section 32. (*See Reott Fact No. 2: Undisputed; Wasatch Fact No. 7: Undisputed.*)

13. ML 43541 (560 acres) and ML 43798 (80 acres) collectively covered the entire 640 acres of Section 32, Township 12 South, Range 16 East, SLB&M (“Section 32”). (*See Wasatch Fact No. 8 and Reott Fact No. 2: Undisputed.*)

14. Mission Energy drilled the Lavinia State #1-32 well within the NW ¼ of the SE ¼ of Section 32 (the “Lavinia Well”). (*See Wasatch Fact No. 9: Undisputed.*)

15. Mission operated the Lavinia Well pursuant to *ML 43541*. (*See Wasatch Fact No. 10: Undisputed.*)

16. In 1997, Mission owned the following property in Section 32: (1) two mineral leases, identified as ML43798 (80 acres) and ML43541 (560 acres), which covered Section 32’s entire 640 acres, with rights from the surface to the center of the earth; and (2) the Lavinia Well, and all equipment, pipelines, improvements, production, and all other personal property. (*See Reott Fact No. 3: Undisputed.*)

*Reott Obtains a Judgment Against Mission*

17. On or about February 24, 1997, at the request of Mission, the Estate of Lavinia Reott, Ed Reott’s mother, made a bridge loan of \$160,000 to Mission, which loan was promised to be repaid in three months. (*See Reott Fact No. 4: Undisputed.*)

18. Mission did not repay the loan. (*See Reott Fact No. 5: Undisputed.*)

19. On May 15, 1998, Reott filed a lawsuit against Mission in Pennsylvania federal district court to recover the unpaid bridge loan. The case was removed to Colorado

federal district court in August 1998, and after trial on December 20, 1999, Reott obtained a judgment against Mission in the amount of \$204,000, plus costs and post-judgment interest of 5.67%. (*See Reott Fact No. 6: Undisputed.*)

*Various Other Creditors Assert Claims Against Mission*

20. From February 1998 through May 2000, eleven mechanics liens were recorded against Mission's interest in Section 32 because Mission had failed to pay for goods and services provided. (*See Reott Fact No. 7: Undisputed.*)

21. Key Energy Services, Inc. recorded its mechanics lien against Mission's interest in Section 32, on February 24, 1999 in the Carbon County Records office, identifying July 16, 1998 as the date of first work, and August 29, 1998 as the date of last work. (*See Reott Fact No. 8: Undisputed.*)

22. J-West Oilfield Service, Inc. recorded its Notice of Lien against Mission's interest in Sections 27, 32, 33 and 34, on August 12, 1999 in the Carbon County Records office, identifying January 1, 1998, as the date of first work and May 22, 1999, as the date of last work. (*See Reott Fact No. 9; Wasatch Fact No. 18: Undisputed.*)

*Transfer of Mission's BLM Leases to WOGC*

23. On June 1, 1999 and December 20, 1999, Mission executed "Transfer[s] of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources," in favor of Wasatch Oil & Gas, Corp. ("WOGC"), to convey its interests in Sections 27, 33 and 34 (among other interests), including Mineral Lease U-08107, No. SL-069551 and No. SL-071595. (*See Wasatch Fact No. 11, 12.*)

24. The BLM approved the June 1, 1999 transfer on September 1, 1999, and it approved the December 20, 1999 transfer on March 1, 2000. (*See Wasatch Fact No. 14: Undisputed.*)

*Key Energy and J-West file foreclosure actions and record Lis Pendens against Mission Energy*

25. On August 13, 1999, Key Energy recorded a *Lis Pendens* in the Carbon County Recorder's office, giving notice that Key Energy had filed a lawsuit against Mission to foreclose its mechanics lien against Mission. (*See Reott Fact No. 10: Undisputed.*)

26. On January 6, 2000, J-West filed a *Lis Pendens* in the Carbon County Recorder's office, giving notice that J-West had filed a lawsuit against Mission to foreclose its mechanics lien against Mission. (*See Reott Fact No. 11: Undisputed.*)

*J-West obtains Judgment and Order of Foreclosure Against Mission*

27. On May 22, 2000, J-West obtained a Default Judgment and Order of Foreclosure against Mission, in the amount of \$14,825.26, plus "after accruing legal fees and costs." (*See Reott Fact No. 12; Wasatch Fact No. 18: Undisputed.*)

*Sutton Attempts to transfer Section 32 Leases; June 21, 2000 Letter Agreement*

28. On June 21, 2000, Mission and WOGC executed a letter agreement (the "Letter Agreement") providing, among other things, for the transfer of Mission's mineral lease rights in Section 32 (ML 43541 and ML 43798), in addition to Mission's interests in other leases, to WOGC. (*See Reott Fact No. 66: Undisputed.*)

29. The following Leases were the subject of the June 21, 2000 Letter Agreement: The ten leases are identified as: UT65486, UT69463, UT60470, UT62890, UT66801, UT62645,

UT65782, UT65783, ML 43541, ML43798. Collectively, these leases are referred to hereafter as the “Jack Canyon Leases.” (*See Reott Fact No. 66a: Undisputed.*)

30. The Letter also states that “Mission will assign the [Jack Canyon Unit] operations to Wasatch,” and that “Mission will work in good faith to transfer to Wasatch any pending APDs on the Leases,” and that Mission will indemnify Wasatch. (*See Reott Fact No. 67: Undisputed.*)

31. The Letter Agreement stated that Mission will “assign to Wasatch all record title and working interest to all the Leases except for the well bore rights and attributable spacing unit relating to the [Lavinia Well],” in exchange for “a right to participate in a ‘trade’ relating to a drilling deal that Wasatch may be successful in putting together on the Leases.” In addition, Wasatch assumed the obligation to maintain the leases it received and agreed to reimburse Mission for \$3,629.00 in rental payments that Mission had made on four of the leases. (*See Reott Fact No. 68: Undisputed; Wasatch Reply at x, xii.*)

32. Under the Letter Agreement, Mission would retain the Lavinia Well, and the mineral lease rights to the forty-acre section of Section 32 where the Lavinia 1-32 Well sits (NW1/4, SE1/4), from the surface down to the depth of 3,398 feet. (*See Wasatch Fact No. 20: Undisputed.*)

*Sutton executes three Mineral Lease Assignment Forms for Section 32*

33. On June 23, 2000, Sutton executed three “Mineral Lease Assignment Forms” purporting to transfer to WOGC all of the “lessee / assignor’s” interest in Section 32, specifically the ML 43541 and ML 43798 leases, with the exception of the Lavinia Well and the forty-acre



section of the ML 43541 lease (located NW1/4, SE1/4), from the surface to a depth of 3,398 feet. (*See Wasatch Fact No. 21: Undisputed.*)

34. The three Mineral Lease Assignment Forms related to the *ML43541* and *ML43798* leases (“Mineral Lease Assignments”), are signed by Justin C. Sutton, and state that the “assignor’s / lessee’s” rights to the leases are assigned to WOGC. (*See Reott Fact No. 30: Undisputed; See Mineral Lease Assignments, attached at Appendix to Reott Parties’ Motion for Summary Judgment, Exhibits 16, 17, 18.*)

35. The Mineral Lease Assignments identify Justin C. Sutton as the “assignor/lessee.” Mission’s name does not appear in the body of the assignment. (*See Reott Fact No. 30b: Undisputed; See Mineral Lease Assignments, attached at Appendix to Reott Parties’ Motion for Summary Judgment, Exhibits 16, 17, 18.*)

36. Sutton did not, and has never held, any personal interest in the Section 32 Leases. (*Undisputed; See Wasatch/BBC Objection.*)

37. Sutton is not identified on the Mineral Lease Assignments as the manager of Mission or as a person authorized to execute the assignments on behalf of Mission. (*See Mineral Lease Assignments, attached at Appendix to Reott Parties’ Motion for Summary Judgment, Exhibits 16, 17, 18.*)

38. In addition, the Mineral Lease Assignment Forms are improperly notarized, reflecting that Heather Holdorf—and not Justin C. Sutton—executed the documents. (*See Reott Fact No. 30d: Undisputed.*)

39. On the backside of the Mineral Lease Assignments, WOGC hand writes that it accepts the transfer of the Section 32 Leases from Mission. (*See Mineral Lease Assignments, attached at Appendix to Reott Parties' Motion for Summary Judgment, Exhibits 16, 17, 18.*)

40. The Mineral Lease Assignment Forms (nor any other conveyance document) for the Section 32 Leases were not recorded with the Carbon County Recorder. (*See Reott Fact No. 31: Undisputed.*)

*The ML43541 Lease, in Section 32, is carved up to excise the Lavinia Well*

41. The Mineral Lease Assignment Forms carve up the *ML 43541* lease, and appear to convey to WOGC, all of the leasehold interests in Section 32, with the exception of a carved out 40-acre section of the *ML 43541* lease, upon which the Lavinia 1-32 well is located, with rights limited to a depth of 3,398 feet, which was retained by Mission. (*See Reott Fact No. 32: Undisputed.*)

42. Todd Cusick, WOGC's President, testified during WOGC's 30(b)(6) deposition as follows:

Q. · Tell me each reason why the Lavinia Well was carved out of the June letter, June 2000 Letter agreement.

A. Somewhere along there, as I told you before, I don't know exactly where to place it, but by virtue of our business with J-West and Key Energy, you know, it became apparent that there were some monies owed there and we didn't want anything to do with that. And so that part was just carved out so that we could stay away from issues between Mission and J-West and Key Energy, or filleted out.

(*See Reott Fact No. 34: Undisputed.*)

43. WOGC knew about Mission's debts to Key Energy and J-West. (*See Reott Fact No. 35: Undisputed.*)

44. The Key Energy and J-West mechanics liens and *lis pendens* were recorded in the Carbon County Recorder's office, against Mission's interest in Section 32, prior to the June 21, 2000 attempt to transfer the Section 32 Leases to WOGC. (*See Reott Fact No. 36: Undisputed.*)

45. The J-West Judgment had been entered on May 22, 2000, by this Court, and automatically became a lien against *all* of Mission's real property owned as of May 22, 2000, including all of its interest in Section 32, before WOGC acquired any interest through the June 23, 2000 Mineral Lease Assignment Forms. (*See Reott Fact No. 37: Undisputed.*)

46. WOGC decided, on its own, that the Key Energy mechanics lien, the J-West mechanics lien and the J-West judgment only attached to the Lavinia Well. (*See Reott Fact No. 38: Undisputed.*)

47. WOGC and Mission decided to "carve or fillet out that well and the 40 acres that goes with it and move it aside." (*See Reott Fact No. 39: Undisputed.*)

48. WOGC was not interested in the Lavinia well, and believed that it was "more of a liability than it was of any value." (*See Reott Fact No. 40: Undisputed.*)

*After June 23, 2000, Mission Retains Only the Lavinia 1-32 Well*

49. After June 23, 2000, Mission retained only the Lavinia 1-32 well, and a limited 40-acre section of the *ML 43541* lease, with rights limited to a depth of 3398 feet. (*See Reott Fact No. 41: Undisputed.*)

50. WOGC knew that, if the June 2000 transaction was completed, Mission was without any assets, with the exception of the Lavinia Well. (*See Reott Fact No. 75: Undisputed.*)

WOGC and Wasatch Do Not Obtain Drilling Deal as promised for the June 2000 Transfers

51. WOGC/Wasatch did not put together a drilling deal. (*See Reott Fact No. 70: Undisputed.*)

52. WOGC/Wasatch testified that it had no obligation to obtain a drilling deal. (*See Reott Fact No. 71: Undisputed.*)

53. Mr. Cusick, as the 30(b)(6) deponent for WOGC/Wasatch, testified:

Q: . . . What did you do to determine the value of the property you received from Mission with respect to the June 2000 letter agreement?

A: . . . [W]e negotiated what we thought the value was and the value came out to be—or what they wanted was what we call a back-in, meaning that if we were able to go out there and get somebody to take those leases and drill wells on those leases and carry us for our percentage of that drilling arrangement, that Mission could back into a specific percentage of what we were given. . . . I asked them what they wanted and what he wanted was the chance to participate in a drilling arrangement. That's what they were trying to accomplish, and that's what we gave them.

Q: And do you know what value you placed on the property, just the contract value that's mentioned in the . . . June 11th letter?

A: The trade there is their right to participate in a drilling deal that was cut. . . . We did not place a dollar value on the acreage in that. We simply traded the operating rights in those agreements for giving them a piece of a drilling deal that we were able to obtain, and that's what they wanted. They wanted to do it that way. They didn't—we—and so that's what we gave them.

Q: And were you ever able to obtain a drilling deal?

A: No. Well, rather than doing a drilling deal we sold it all. . .

Q: So did you give Mission any consideration back for its interest in your prospective drilling deal?

A: Why would we do that?

Q: They got nothing for that part of the contract?

A: They got the right to participate in a drilling deal that never happened. . . .

Q: And you didn't provide Mission any consideration for that failure as a result of the Bill Barrett transaction?

A: The deal is self-explanatory. You can see there was no consideration for that event if we were to sell it all. What they wanted was the right to participate in a drilling deal if it happened, and it didn't happen and so that's what they got. They got what they asked for.

*(See Todd Cusick Depo cited in Reott Facts No. 70 and 71: Undisputed.)*

WOGC Requests ML 43541 be Partitioned to ML 43541 and ML43541-A

54. On or about September 15, 2000, SITLA granted WOGC's request to partition the **ML 43541** lease into two sections; a 520 acre section and a forty-acre section. The 520 acre section is now identified as **ML43541-A**. *(See Reott Fact No. 42: Undisputed.)*

55. The forty-acre section upon which the Lavinia Well is located remains identified as the **ML 43541** lease. *(See Reott Fact No. 43: Undisputed.)*

56. After September 21, 2000, Section 32 now contains mineral leases, currently identified as **ML43798** (80 acres, w/rights from surface to center of the earth), **ML43541-A** (520 acres, w/rights from surface to center of the earth), and **ML43541** (40 acres, w/rights from

surface to center of the earth); and (2) the Lavinia Well, and all equipment, pipelines, improvements, production, and all other personal property located on the same 40 acre section as lease ML43541. (*See Reott Fact No. 43: Undisputed.*)

*Reott Domesticates the Colorado Judgment Against Mission in Carbon County*

57. On October 27, 2000, defendant Edward A. Reott domesticated in this Court, the Colorado Judgment against Mission. (“Reott Domesticated Judgment”). (*See Reott Fact No. 13: Undisputed.*)

*WOGC transfers the Section 32 Leases to Wasatch; Wasatch records a wild deed*

58. The Carbon County Recorder’s office shows that on November 27, 2000, a Bill of Sale and Assignment between WOGC and Wasatch LLC is recorded. (*See Reott Fact No. 14: Undisputed.*)

59. The Bill of Sale and Assignment, and the related WOGC Asset Purchase Agreement, purports to transfer WOGC’s interest in the Section 32 Leases to Wasatch. The documents were executed on October 27, 2000, but they state that they are effective as of July 1, 2000 – just nine days after Sutton executed the Mineral Lease Assignment Forms related to the Section 32 Leases. (*See Reott Fact No. 15: Undisputed.*)

60. As of November 27, 2000, the Carbon County Recorder’s abstract of Section 32 does not show any transfer of Mission’s property interest in Section 32 to WOGC, and it does not show any transfer of such interests to WOGC. (*See Reott Fact No. 16: Undisputed.*)

Key Energy obtains Judgment and Order of Foreclosure Against Mission

61. On December 13, 2000, Key Energy obtained an Order Granting Motion for Summary Judgment and Decree Foreclosing Oil & Gas Lien, entering judgment against Mission in the amount of \$33,159.82, plus interest at a rate of 24%, plus post-judgment attorney fees and costs. (See *Reott Fact No. 18*; *Wasatch Fact No. 19*: *Undisputed*.)

J-West and Key Energy Assign Interest in Judgments and Liens to Reott

62. On January 19, 2001, J-West assigned its interest in its judgment and lien to Reott. Reott paid J-West \$15,000 for the assignment. (See *Reott Fact No. 19*: *Undisputed*.)

63. Reott recorded the assignment from J-West on January 29, 2001, in the Carbon County Recorder's office. (See *Reott Fact No. 20*; *Wasatch Fact No. 29*: *Undisputed*.)

64. On April 27, 2001, Key Energy assigned its interest in its judgment and lien against Mission to Reott. Reott paid Key Energy \$14,000 for the assignment. (See *Reott Fact No. 21*; *Wasatch Fact No. 30*: *Undisputed*.)

65. Reott recorded the assignment from Key Energy on May 4, 2001, in the Carbon County Recorder's office. (See *Reott Fact No. 22*: *Undisputed*.)

The August 9, 2001 Sheriff's Sale

66. On May 16, 2001, Reott through his former counsel filed with this Court three separate pleadings styled "Motion for Writs of Execution" seeking enforcement of (1) the Key Energy Default Judgment, (2) the J-West Default Judgment, and (3) the Reott Colorado Judgment against Mission's interest in Sections 27, 32, 33 and 34, and served the Sheriff of

Carbon County with a Praeipce for each of these judgment interests. (*See Wasatch Fact No. 32; Reott Fact No. 23 and 24: Undisputed.*)

67. The Sheriff's sale was held on August 9, 2001. (*See Reott Fact No. 25; Wasatch Fact No. 33: Undisputed.*)

68. No other bidders appeared, so Reott credit bid \$1.00, and received a Sheriff's Certificate of Sale for all of Mission's interests in Sections 27, 32, 33 and 34. (*See Reott Fact No. 26; Wasatch Fact No. 34: Undisputed.*)

69. Deputy Craig thereafter issued a Sheriff's Certificate of Sale verifying that he had sold to Reott for the sum of \$1.00, as the "highest bid made," the following property: (*See Wasatch Fact No. 35: Undisputed.*)

Township 12 South Range 16 East; Sections 27, 32, 33 and 34 in Carbon County Utah together with oil and gas lease (Utah State Mineral Lease No.. ML-43541), the oil and gas well located thereon referred to as Lavinia State L# 1-32 [sic], and all productions, improvements, equipments and pipelines on or appurtenant to the well.

70. The Sheriff's Certificate of Sale was recorded on August 9, 2001, reflecting a transfer of Mission's interest in Sections 27, 32, 33 and 34 to Edward A. Reott. (*See Reott Fact No. 27: Undisputed.*)

*Wasatch Files Notice of Redemption & Quiet Title Action*

71. On December 24, 2001, Wasatch Oil & Gas, LLC, filed a Notice of Exercise of Right of Redemption ("Redemption Notice"). That same day, Wasatch filed a complaint to quiet title ("Quiet Title Action"). (*See Reott Fact No. 28; Wasatch Fact No. 36: Undisputed.*)



72. The Wasatch Redemption Notice consisted of eleven pages and eighteen exhibits. (*See Wasatch Fact No. 37: Undisputed.*)

73. Attached to Wasatch's Redemption Notice are the three Mineral Lease Assignment Forms related to the Section 32 Leases, *ML43541* and *ML43798* ("Mineral Lease Assignments"), signed by *Justin C. Sutton*. (*See Reott Fact No. 30: Undisputed.*)

74. The Wasatch Redemption Notice provides:

(C) Unredeemed Interests.

Wasatch does not redeem and asserts no right or redemption, and disclaims any right, title or interest in or to that portion of the Sale Properties described as follows:

(a) A portion of Utah State Mineral Lease No. ML-43541, covering the Green-Mesa Strata of the NW¼ of the SE¼ of Section 32, Township 12 South, Range 16 East, SLB&M, Carbon County, Utah (i.e., the site of the Lavinia 1-32 Well);

(b) The improvements, equipment, pipelines, wells and other personal property situated on or appurtenant to the Lavinia 1-32 Well or located on the NW¼ of the SE¼ of said Section 32

(*See Wasatch Fact No. 40 and Redemption Notice: Undisputed.*)

75. Wasatch does not redeem nor claim an interest in the Lavinia Well, the upper portion of the ML 43541 lease—which covers the 40-acres upon which the Lavinia Well sits, from the surface to a depth of 3,398 feet—or the equipment, improvements, pipelines, or production within the 40-acre section. (*See Reott Fact No. 33: Undisputed.*)

76. The Wasatch Redemption Notice was served by certified mail on the Clerk of the Court, the County Recorder and the County Sheriff and was served by mail on then-counsel for Reott. (*See Wasatch Fact No. 38: Undisputed.*)

*Sheriff's Office's Response to Wasatch's Notice of Redemption*

77. On January 10, 2002, Deputy Craig of the Carbon County Sheriff's office sent a letter to Wasatch (a) certifying receipt of the Wasatch Redemption Notice on December 26, 2001, and (b) stating that, "after due and diligent search and inquiry I. am unable to find MISSION ENERGY within Carbon County, State of Utah. EDWARD A. REOTT, KEY ENERGY SERVICES AND J-WEST OILFIELD SERVICES ARE NOT LOCATED IN CARBON COUNTY, UTAH." (*See Wasatch Fact No. 49: Undisputed.*)

78. The Carbon County Sheriff's office returned to Wasatch check #686507335 for \$1.06. (*See Wasatch Fact No. 51: Undisputed.*).

*Wasatch's Second Redemption Notice*

79. On January 18, 2002, filed a second Notice of Redemption and Tender of Redemption Amount in the Key Energy case, the J-West case, and the Reott Judgment case (the "Second Wasatch Redemption Notice"). (*See Wasatch Fact No. 52: Undisputed.*)

80. The Second Wasatch Redemption Notice was served on the same persons who were served with the First Redemption Notice: the Clerk of this Court, the County Recorder, the County Sheriff's Office and then-counsel for Reott. (*See Wasatch Fact No. 53: Undisputed.*)

81. At the same time, on January 18, 2002, Wasatch filed with this Court a "Notice of Filing Notice of Redemption and Tender of Redemption Amount" (the "Wasatch Notice of Filing") in order to give further, formal notice that it had filed the Second Wasatch Redemption Notice. (*See Wasatch Fact No. 54: Undisputed.*)

Reott Obtains Sheriff's Deed and Transfers Interests to Regoal

82. On or about February 9, 2002, Reott obtains a Sheriff's Deed to the property. That same day, Reott transferred whatever rights he acquired at the Sheriff's Sale, as evidenced by the Certificate of Sale, to Regoal, Inc. ("Regoal"), a company he controls. (*See Reott Fact 47; Wasatch Fact No. 56: Undisputed.*)

83. The Carbon County Sheriff's Office did not issue a redemption certificate to Wasatch. (*See Reott Fact 46: Undisputed.*)

84. On March 11, 2002, the Reott Parties recorded the Sheriff's Deed in the Carbon County Recorder's Office. (*See Reott Fact No. 47: Undisputed.*)

85. The Carbon County Abstract for Section 32 shows no recorded conveyance from Mission to anyone, not to mention WOGC, until February 9, 2001, when the Reott Parties acquired the Sheriff's Deed. (*See Reott Fact No. 51: Undisputed.*)

Reott's Objection to Redemption

86. The tender was rejected by Reott. (*Undisputed; See Wasatch/BBC Objection.*)

87. In response to Wasatch's Notice of Redemption, the Reott Parties filed a "Notice that Wasatch is Not a Proper Party to Redeem or That the Amount of Redemption Is Insufficient." (*See Reott Fact No. 29: Undisputed.*)

Reott files and records Motion to Prohibit Transfer of Property

88. In response to Wasatch's Redemption Notice, Reott filed a Motion to Prohibit the Transfer of Property. (*See Motion to Prohibit Transfer of Property Pursuant to Rule 69(Q) and 69(S), Case Nos. 000700003, 006700886, 990700565.*) And, on February 8, 2002, Reott

recorded with the Carbon County Recorder's office, a "Notice of Motion Pending Pursuant to Rule 69(Q) and 69(S), Utah Rules of Civil Procedure." (*See Reott Fact No. 45: Undisputed.*)

*Reott records Lis Pendens, giving notice of the pending lawsuit*

89. On April 18, 2002, Reott filed a *lis pendens* in the Carbon County Recorder's office, giving notice of Reott's current quiet title action in Sections 27, 32, 33 and 34. (*See Reott Fact No. 48: Undisputed.*)

*Wasatch Sells Section 32, and Other Former Mission Property, to Bill Barrett Corporation*

90. On May 17, 2002, Bill Barrett Corporation ("BBC") recorded an Assignment and Bill of Sale, reflecting that Wasatch sold to BBC all of the property it had acquired from Mission, including the Section 32 Leases. The Bill of Sale was executed on or about April 15, 2002, and noted an "effective date" of April 1, 2002. (*See Reott Fact No. 49: Undisputed by Wasatch; BBC dispute taken into account.*)

91. As reflected in the plain language of the Purchase and Sale Agreement, BBC and Wasatch had knowledge—prior to the sale to BBC—of the J-West mechanics lien and judgment, the Key Energy mechanics lien and judgment, and the Reott Domesticated Judgment, and BBC knew about the pending quiet title action filed by Wasatch, and the claims and defenses asserted by the Reott Parties. (*See Reott Fact No. 50: Undisputed.*)

92. Through a Purchase and Sale Agreement dated April 30, 2002, BBC acquired all of Wasatch's right, title and interest in and to Sections 27, 32, 33 and 34. (*Undisputed; See Wasatch/BBC Objection.*)

93. As Wasatch's successor, BBC acquired only whatever rights Wasatch had in Sections 27, 32, 33 and 34. (*Undisputed; See Wasatch/BBC Objection.*)

**Additional Findings of Material Undisputed Facts Concerning Fraudulent Transfer**

94. Mission's accountant Bruce Hill testified that Mission was undercapitalized, that its financial condition was marginal in 1998, that it did not have the money to pay the Reott Colorado Judgment obtained in December 1999, and that he would have advised Mission's creditors not to bother attempting to collect debts in December 1999. (*See Reott Fact No. 59: Undisputed.*)

95. At the time the Reott Bridge Loan was made, in February 1997, Mission had no ability to repay the loan within the time promised. (*See Reott Fact No. 60: Undisputed.*)

96. Mission was not paying its debts as they came due, as evidenced by

a. the Key Energy Lien (2/1999), Lis Pendens (8/1999), and Judgment (12/2000),

b. the J-West Lien (8/1999), Lis Pendens (1/2000) and Default Judgment (5/2000),

c. the Reott Colorado Judgment (12/1999), domesticated in Carbon County on 10/26/2000), and

d. the nine other mechanics liens recorded in the Carbon County Recorder's office, against Mission's interest in Section 32, Township 12S, Range 16E, in Carbon County from February 20, 1998 to April 20, 2000. (*See Reott Fact No. 61: Undisputed.*)

97. Mission's June 1999 and December 1999 accounts payable ledger reflects that Mission was not paying its debts as they came due, and that several debts were more than one year past due. (*See Reott Fact No. 62: Undisputed.*)

98. Mission's balance sheets show that its liabilities exceeded its assets. (*See Reott Fact No. 63: Undisputed.*)

99. Effective June 1, 1999 (executed June 30, 1999, recorded July 17, 1999), Mission conveyed to Wasatch all of its interests in 18 leases and 11 wells, located in Carbon and Duchesne Counties, including all of its interest in several leases and a pipeline located on Sections 27, 33 and 34 in Carbon County. (*See Reott Fact No. 64: Undisputed.*)

100. On May 1, 2000, by letter, Mission agreed to transfer to Wasatch Oil & Gas Corporation all of its interest in approximately 16 leases ("May 2000 Letter"). (*See Reott Fact No. 65: Undisputed.*)

101. On June 21, 2000, Mission, by letter, states that "Mission will assign to Wasatch all record title and working interest to all the Leases except for the wellbore rights and attributable spacing unit relating to the Lavinia #1-32 well." ("June 2000 Letter Agreement") The "Leases" include Mission's interest in ten leases, including the leases covering Section 32—ML43541, ML43798, and any pending APDs on the Leases. (*See Reott Fact No. 66, 67: Undisputed.*)

102. The June 2000 Letter was never recorded. (*See Reott Fact No. 69: Undisputed.*)

103. The Mineral Lease Assignment forms for the Section 32 Leases—*ML43541* and *ML43798*—were not recorded with the Carbon County Recorder’s Office at the time of the alleged transfer, were not recorded at the time of the Sheriff’s sale, were not recorded at the time Wasatch filed its Redemption Notice, and were not recorded when Wasatch sold its interests to BBC. In fact, the Mineral Lease Assignments were not recorded until March 17, 2003. (*See Reott Fact No. 76: Undisputed.*)

104. On August 22, 2000, Mission sent a letter to Todd Cusick of WOGC stating:

There are several creditors with outstanding issues. . . . specifically Ed Reott . . . I must advise your offices to refer any similar creditor, or legal calls directly to my attention. Further given the confidentiality of the agreements entered into between our companies, I would request that no verbal, or written information be sent to anyone without prior written permission from Mission Energy.

(*See Reott Fact No. 77: Undisputed.*)

105. That same day, August 22, 2000, Justin C. Sutton of Mission wrote to Ed Reott, representing, among other things:

. . . the managers of Mission Energy are doing everything possible to protect the assets of the company. We are working with several companies to develop a drilling program in hopes of receiving revenues to pay off creditors of the company. In that regard, many of those creditors who are owed monies for operations and permitting that have not been paid are working with Mission to try and make the company successful.

(*See Reott Fact No. 78: Undisputed.*)

106. On December 26, 2000, Justin C. Sutton, on behalf of Mission, sent a letter to J-West’s counsel Clark Allred, stating that Mission will satisfy the judgment, and requesting that

J-West recognize Mission's rights. The letter contains no mention that Mission had transferred assets—not to mention its interests in Section 32, 33, 34 and the S/2 of 27, to WOGC. (*See Reott Fact No. 79: Undisputed.*)

107. By letter dated October 23, 2000, Justin C. Sutton represented to Mr. Reott's attorney, federal judges, magistrates and court clerks, that effective October 1, 2000, Justin C. Sutton had resigned as Manager of Mission, and that future correspondence should be sent to "legal counsel at 531 Encinitas Blvd. #200, Encinitas, California, 92024." (*See Reott Fact No. 80: Undisputed.*)

108. The address Sutton provided was not the address of "legal counsel," as represented, but the California address for Intermarket Trading. (*See Reott Fact No. 81: Undisputed.*)

109. Mission was organized as a Colorado limited liability company. (*See Wasatch Fact No. 1: Undisputed.*)

110. Mission's Operating Agreement identifies four initial managers—Fred G. Jager, Mr. Sutton, William F. Muller, and Charles B. Willard. (*See Reott Fact No. 56, and Wasatch's Response to Fact No. 56; See Reott Reply Brief at vi and Operating Agreement in Reott Appendix, Exhibit 8 – Undisputed.*)

111. The Operating Agreement expressly states that there must be four managers at all times, and that a majority (i.e., three) of these managers must agree to and approve of all major company decisions, including the disposition of corporate assets. (*See Operating Agreement in Reott Appendix, Exhibit 8.*)



112. The Operating Agreement expressly requires the signature of two managers to dispose of company property. (*See Reott Fact No. 57—undisputed; Operating Agreement in Reott Appendix, Exhibit 8*)

113. Mr. Sutton was the only signatory on the documentation surrounding the purported June 1999, May 2000 and June 2000 Transfers to WOGC. (*Undisputed – see Transfer Documents.*)

114. The documents Mission executed to transfer the BLM leases covering Sections 27, 33 and 34 and the SITLA leases covering Section 32 to WOGC reflect only one signature from a representative of Mission. (*Undisputed – see transfer documents attached to Wasatch's Notice of Redemption; see Reott Appendix, Exhibits 16, 17, 18.*)

115. At the time of these three transfers, Mr. Sutton was the only manager of Mission. (*See Wasatch Reply Memo at vi, x; see also Wasatch/BBC Objection at 8.*)

**STATEMENT OF MATERIAL UNDISPUTED FACTS REGARDING TRESPASS,  
TRESPASS TO CHATTELS AND CONVERSION**

**BBC Drilled Two Wells on Section 32 and Has Reported Production since December 2003**

116. BBC has drilled two new wells on Section 32, on either side of the Lavinia Well. These wells are connected to the gathering system, and BBC began reporting production from those wells in December 2003. (*See Reott Fact 98, 99 – undisputed; BBC hearing statement confirming production.*)

*BBC Forcibly Removes the Lavinia Pipeline, Damages the Oil Tank, Causes an Oil Spill and Refuses to Replace the Pipeline and to Pay Any Damages.*

117. On or about October 30, 2003, BBC's "pipe crew" inadvertently removed, with force, the pipeline ("Lavinia Pipeline") that provided the physical connection between the Lavinia Well and the gas gathering system. (*See Reott Fact 83, as modified by BBC's identified dispute; See Reott Reply Brief at xiv.*)

118. The next day, on November 1, 2003, Mr. Reott observed the damage caused by BBC's pipe crew. Mr. Reott observed that, when the pipeline was ripped out, the meter house for the Lavinia Well ("Lavinia Meter house) was pulled off its foundation into a pine tree. The gas line running from the meter house to the well head ("Gas Production Line") had been bent on to the oil production line ("Oil Production Line"), and had ruptured at a 90 degree connection. (*See Reott Fact 84; BBC Response No. 84—undisputed; See Reott Reply Brief at xv.*)

119. The Lavinia Well was shut down, the heater in the oil tank ("Oil Tank") was turned off, and the oil in the tank had turned solid. (*See Reott Fact 85; BBC Response No. 85—undisputed; See Reott Reply Brief at xvi.*)

120. BBC's Jeff Addley apologized to Reott for the damage caused by BBC's pipe crew, and stated that BBC would "fix it and take care of it." (*See Reott Fact 86—undisputed.*)

121. On or about November 15, 2003, BBC repaired the Lavinia Meter house and the ruptured Gas Production Line. (*See Reott Fact 87, as modified by BBC Response to 87—no dispute; See Reott Reply Brief at xvii.*)

122. On November 15, 2003, BBC's senior landman, Mr. Tab McGinley visited the Lavinia Well site to confirm that BBC had repaired the Lavinia Meter house. He observed the Oil Tank shaking, due to the co-production of oil and gas into the same tank. (*See BBC Response to Reott Fact 90 – no dispute; See Reott Reply Brief at xvii-xviii.*)

123. That same day, Reott turned the heater back on and began reheating the oil in the Oil Tank. (*See Reott Fact 88 -- undisputed.*)

124. On or about December 1, 2003, the next time Reott returned to the Lavinia Well, after the Oil Tank was heated, approximately 90 barrels of oil leaked from the Oil Tank and had filled the protective berm surrounding the tank. This resulted in the Lavinia Well again being shut down. (*See Reott Fact 89 -- undisputed.*)

125. Reott—as the property owner—inspected the Oil Tank. Reott determined that the force used by BBC in removing the Lavinia Pipeline from the connection to the Lavinia Meter house bent the Gas Production Line approximately 18” into the Oil Production Line, damaging the connection to the Oil Tank. (*See Reott Fact 90 and BBC's claimed dispute; See Reott Reply Brief at xvii-xviii.*)

126. Reott contacted Mr. Addley of BBC to report the spill and asked BBC to repair and cleanup the damage. (*See Reott Fact 91--undisputed.*)

127. BBC has refused to replace or pay the cost to replace the Lavinia Pipeline. (*See Reott Fact 97; BBC Response 97 —undisputed; See Reott Reply Brief at xx-xxi.*)

128. BBC refused to repair the damage to the Oil Tank, refused to clean up the oil spill, and refused to compensate the Reott Parties for lost oil production and the lost sale of

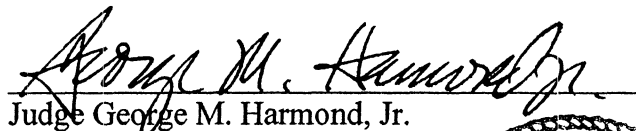
approximately 100 barrels of oil. (*See Reott Fact 97; BBC's Response 97 – undisputed; See Reott Reply Brief at xx-xxi.*)

### CONCLUSIONS OF LAW

Relying on the above statement of undisputed material facts, the Court made its December 16, 2005 Ruling on (1) Wasatch's Motion for Partial Summary Judgment re: Redemption Issues and (2) Reott's Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion, and Trespass to Chattels.

DATED this 24 day of May 2006.

BY THE COURT:



Judge George M. Harmond, Jr.  
Seventh Judicial District Court, Carbon County



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2006, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **STATEMENT OF MATERIAL UNDISPUTED FACTS SUPPORTING ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON WASATCH'S MOTION FOR SUMMARY JUDGMENT RE: REDEMPTION, AND, THE REOTT PARTIES' MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE, FRAUDULENT CONVEYANCE, TRESPASS, CONVERSION AND TRESPASS TO CHATTELS**, to:

Eric C. Olson  
Matthew K. Richards  
KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
P.O. BOX 45120  
Salt Lake City, Utah 84145-0120  
*Attorneys for Wasatch*

Carolyn McIntosh  
David E. Brody  
PATTON & BOGGS, LLP  
1600 Lincoln Street, Suite 1900  
Denver, Colorado 80264  
Nick Sampinos  
190 North Carbon Avenue  
Price, Utah 84501

*Attorneys for BBC*

---

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.


METHOD	NAME
Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
Mail	ERIC C OLSON ATTORNEY PLA POB 45120 SALT LAKE CITY UT 84145-0120
Mail	NICK J SAMPINOS ATTORNEY 190 N CARBON AVE PRICE UT 84501
Mail	CAROLYN MCINTOSH ATTY 1600 Lincoln Street, Suite 190 Denver CO 80264
Mail	DAVID E BRODY ATTY 1600 Lincoln Street Suite 1900 Denver CO 80264
Mail	MATTHEW K RICHARDS ATTY 1800 Eagle Gate Tower PO Box 45120 Salt Lake City UT 84145
Mail	LAWRENCE E STEVENS ATTY 201 S Main Street, Suite 1800 PO Box 45898 Salt Lake City UT 84145
Mail	DIANNA M GIBSON ATTY 201 S Main Street, Suite

Case No: 010700991  
Date: May 24, 2006

---

1800  
PO Box 45898  
Salt Lake City UT 84145

Dated this 24<sup>th</sup> day of May, 2006.

  
Deputy Court Clerk

Tab C



(h) *Appointment of receiver on dissolution of corporation.* Upon the dissolution of a corporation the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, to pay the outstanding debts thereof and to divide the remaining moneys and other property among the stockholders or members.

(i) *Dismissal of action.* An action wherein a receiver has been appointed shall not be dismissed except by order of the court.

#### Rule 67. Deposit in court.

When it is admitted by the pleadings, or shown upon the examination of a party, that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party upon such conditions as may be just, subject to the further direction of the court; provided that if money is paid into court under this rule it shall be deposited and withdrawn in accordance with Section 78-27-4, Utah Code Annotated 1953, or any like statute.

#### Rule 68. Offer of judgment.

(a) *Tender of money before suit.* When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

(b) *Offer before trial.* At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

#### Rule 69. Execution and proceedings supplemental thereto.

(a) *Availability of writ of execution.* A writ of execution is available to a judgment creditor to satisfy a judgment or other order requiring the delivery of property or the payment of money by a judgment debtor.

(b) *Property subject to execution.* A writ of execution may be used to levy upon all of the judgment debtor's personal property and real property which is not exempt from execution under state or federal law.

(c) *Issuance of writ of execution.* Unless otherwise ordered by the court, a writ of execution may be issued at any time within eight years following the entry of a judgment or order (except an execution may be stayed pursuant to Rule 62),

either in the county in which such judgment was rendered, or in any county in which a transcript thereof has been filed and docketed in the office of the clerk of the district court. Notwithstanding the death of a party after judgment, execution thereon may be issued, or such judgment may be enforced, as follows:

(1) In case of the death of the judgment creditor, upon the application of an authorized executor or administrator, or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment is for the recovery of real or personal property or the enforcement of a lien thereon.

(d) *Contents of writ and to whom it may be directed.* The writ of execution shall be issued in the name of the State of Utah, and subscribed by the clerk of the court. It shall be issued to the sheriff or constable of any county in the state (and may be issued at the same time to different counties) but where it requires the delivery of possession or sale of real property, it shall be issued to the sheriff of the county where the real property or some part thereof is situated. If it requires delivery of possession or sale of personal property, it may be issued to a constable. It must intelligibly refer to the judgment, stating the court, the docket number, the county where the same is entered or docketed, the names of the parties, the judgment, and, if it is for the payment of money, the amount thereof, and the amount actually due thereon. The writ may be accompanied by a praecipe executed by the judgment creditor or the judgment creditor's counsel generally or specifically describing the real or personal property to be levied upon. It shall be directed to the sheriff of the county in which it is to be executed in cases involving real property, and shall require the officer to proceed in accordance with the terms of the writ; provided that if such writ is against the property of the judgment debtor generally it may direct the sheriff or constable to satisfy the judgment, with interest, out of the non-exempt personal property of the debtor, and if sufficient non-exempt personal property cannot be found, then the sheriff shall satisfy the judgment, with interest, out of the judgment debtor's non-exempt real property.

(e) *When writ to be returned.* The writ of execution shall be served at any time within sixty days after its receipt by the officer. It shall then be returned to the court from which it issued, and when it is returned the clerk must attach it to the record.

(f) *Service of the writ.* Unless the execution otherwise directs, the officer must execute the writ against the non-exempt property of the judgment debtor by levying on a sufficient amount of property, if there is sufficient property; collecting or selling the choses in action and selling the other property in the manner set forth herein. Levy includes the seizure of the property and holding the property in person or through one or more agents, including the judgment debtor, appointed by the officer. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within view of the officer, the officer must levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

When an officer has served an execution issued out of any court the officer may complete the return thereof after such date of service.

(g) *Notice to judgment debtor of sale and of exempt property and right to a hearing.* At the time the writ of execution is issued, the clerk shall attach to the writ a notice of execution and exemptions and right to a hearing and two copies of an application by which the judgment debtor may request a hearing.

Upon service of the writ, the sheriff or constable shall serve upon the judgment debtor, in the same manner as service of a

summons in a civil action, or cause to be transmitted by both regular and certified mail, returned receipt requested, to the judgment debtor's last known address as provided by the judgment creditor, (i) the notice of execution and exemptions and right to a hearing, and (ii) the application by which the judgment debtor may request a hearing. Upon service of the writ, the sheriff or constable may also set the date of sale or delivery and serve upon the judgment debtor notice of the date and time of sale or delivery in the same manner as service of the notice of execution and exemptions and right to a hearing.

The notice of execution and exemptions that is to be served upon the judgment debtor shall indicate in substance that certain property is or may be exempt from execution including but not limited to a homestead; tools of the trade; a motor vehicle used for the judgment debtor's business or profession; social security benefits; supplemental security income benefits; veterans' benefits; unemployment benefits; workers' compensation benefits; public assistance (welfare); alimony; child support; certain pensions; part or all of wages or other earnings from personal services; certain furnishings and appliances; musical instruments; and heirlooms (each not to exceed the amount allowed by law). The notice shall also indicate that the list is a partial list and other various property exemptions may be available under federal law or the Utah exemptions statute, and that the judgment debtor must request a hearing within ten (10) days from the date of service of the notice upon the judgment debtor. For purposes of this provision, the date of service shall be the date of mailing, if mailed, or date of delivery, if hand-delivered, and no period for mailing under Rule 6(e) shall be used in computing the time period.

If the writ, the notice of execution and exemptions and right to a hearing cannot be served upon the judgment debtor in the same manner as service of a summons in a civil action, and the judgment creditor does not have available the judgment debtor's last known address, only the following notice need be published under the caption of the case in a newspaper of general circulation in each county in which the property levied upon, or some part thereof, is situated:

TO \_\_\_\_\_, Judgment Debtor:

A writ of execution has been issued in the above-captioned case, directed to the sheriff or constable of \_\_\_\_\_ County, commanding the sheriff or constable as follows:

"WHEREAS, \_\_\_\_\_ [Quoting body of writ of execution]."

YOU MAY HAVE A RIGHT TO EXEMPT PROPERTY from the sale under statutes of the United States or this state, including Utah Code Annotated, Title 78, Chapter 23, in the manner described in those statutes.

The date of publication shall be deemed the date of service and the date of publication shall be not less than ten (10) days prior to the date of sale or delivery.

This paragraph (g) shall not be applicable to judicial mortgage foreclosure proceedings commenced under Utah Code Annotated, Title 78, Chapter 37.

(h) *Request for hearing.*

(1) *Time for request.* The judgment debtor or any other person who owns or claims an interest in the property subject to execution may request a hearing to claim any exemption to the execution, or to challenge the issuance of the writ. Such request must be filed or served upon the judgment creditor or the attorney for the judgment creditor within ten (10) days of the service upon the judgment debtor of the materials required to be served by paragraph (g) upon the judgment debtor. The request for a hearing, which shall be provided to the judgment debtor shall be in a form to enable the judgment debtor to specify the grounds upon which the judgment debtor

challenges the issuance of the writ or claims the property executed upon to be exempt, in whole or in part.

(2) *If a request for hearing is filed.* If a request for hearing is filed by or on behalf of the judgment debtor, the court shall set the matter for hearing within ten (10) days from the filing of the request and serve notice of that hearing upon all parties by first class mail. If the court determines at the hearing that the writ was issued improperly, or that any property seized is exempt from or is not subject to execution, the court shall immediately issue an order to the officer releasing such property or portion thereof from the writ of execution. If the court finds that the property or a portion thereof is subject to execution and not exempt, it shall issue an order directing the officer to proceed with the sale of the non-exempt property subject to execution. If the originally scheduled date of sale for which notice has been given has passed, notice of the new date and time of sale shall be provided as required herein. No sale may be held until the Court has decided upon the issues presented at the hearing. At the hearing, the court may award costs as it deems appropriate.

(3) *If no request for hearing is filed.* If a request for hearing is not filed as provided for in this Rule and the time for doing so has expired, then the officer shall proceed to sell or deliver the property subject to execution in accordance with the writ and this Rule 69.

(4) This paragraph (h) shall not be applicable to judicial mortgage foreclosure proceedings commenced under Utah Code Annotated, Title 78, Chapter 37.

(i) *Proceedings on sale of property.*

(1) *Notice of sale.* Before the sale of the property on execution notice thereof must be given as follows: (A) in case of perishable property or animals, by posting written notice of the time and place of sale, and generally describing the property to be sold, in the district courthouse and in at least three other public places of the county or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property; (B) in case of other personal property, by posting written notice of the time and place of sale, and generally describing the property to be sold, in the district courthouse and in at least three public places of the county or city where the sale is to take place, for not less than seven nor more than 14 days, and by publishing a copy thereof at least one time not less than one day preceding the sale in some newspaper of general circulation published or circulated in the county where the sale is to take place, if there is one; (C) in case of real property, by posting written notice of the time and place of sale, and particularly describing the property, for 21 days, on the property to be sold, at the place of sale, at the district courthouse of the county where the real property to be sold is situated, and in at least three public places of the county or city where the sale is to take place, and by publishing a copy thereof at least 3 times, once a week for 3 successive weeks immediately preceding the sale, in some newspaper of general circulation published or circulated in the county, if there is one. In addition, except for the sale of perishable property or animals, if notice of the date and time of sale has not been served upon the judgment debtor previously, notice of the date and time of sale shall be served upon the judgment debtor personally or by causing the same to be transmitted by regular or certified mail to the judgment debtor's last known address.

(2) *Postponement.* If at the time and place appointed for the sale of any real or personal property on execution the officer shall deem it expedient and for the interest of all persons concerned to postpone the sale for want of purchasers, or other sufficient cause, the officer may postpone the same from time to time, until the same shall be completed; and in every such case the officer shall make public declaration thereof at the time and place previously appointed for the sale, and if such

postponement is for a longer time than 72 hours, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

(3) *Conduct of sale.* All sales of property under execution must be made at auction to the highest bidder, Monday through Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor such officer's deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery it must be within view of those who attend the sale. The sale must be held in a place reasonably accessible to the general public. The property must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and the third person requires it to be sold separately, such portion must be thus sold. All sales of real property must be made at the courthouse of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the officer must follow such directions. The officer shall pay to the judgment creditor or the attorney for the judgment creditor so much of the sales proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and reasonable accrued costs must be returned to the judgment debtor, unless otherwise directed by the judgment or the court.

(4) *Accounting of sale.* Upon request of the judgment debtor or the judgment debtor's attorney, the plaintiff shall deliver an accounting of any execution sale, including the amount due on the judgment, accrued costs, and the amount realized at the sale.

(5) *Purchaser refusing to pay.* Every bid shall be deemed an irrevocable offer; and if the purchaser refuses to pay the amount bid for the property struck off to such purchaser at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the party refusing to pay, in addition to being liable on such bid, is guilty of a contempt of court and may be punished accordingly. When a purchaser refuses to pay, the officer may also, in such officer's discretion, thereafter reject any other bid of such person.

(6) *Personal property.* When the purchaser of any personal property pays the purchase money, the officer making the sale shall deliver the property to the purchaser (if such property is capable of manual delivery) and shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall state that all right, title and interest which the debtor had in and to such property on the day the execution or attachment was levied, and any right, title and interest since acquired, is transferred to the purchaser.

(7) *Real property.* Upon a sale of real property the officer shall give to the purchaser a certificate of sale, containing: (A) a particular description of the real property sold; (B) the price paid by the purchaser for each lot or parcel if sold separately; (C) the whole price paid; (D) a statement to the effect that all right, title, interest and claim of the judgment debtor in and to the property is conveyed to the purchaser; provided that where such sale is subject to redemption that fact shall be stated also. A duplicate of such certificate shall be filed for record by the officer in the office of the recorder of the county. The real property sold shall be subject to redemption, except where the estate sold is less than a leasehold of a two-years' unexpired term, in which event said sale is absolute.

(j) *Redemption of real property from sale.*

(1) *Who may redeem.* Real property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest: (A) the judgment debtor, (B) a creditor having a lien by judgment, mortgage, or other lien on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

(2) *Redemption; how made.* The person seeking redemption may make payment of the amount required to the person from whom the property is being redeemed, or for such person to the officer who made the sale, or such officer's successor in office. At the same time the redemptioner must produce to the officer or person from whom the redemptioner seeks to redeem, and serve with the notice to the officer; (A) a certified copy of the judgment under which the redemptioner claims the right to redeem, or, if the redemptioner redeems upon a mortgage or other lien, a copy certified by the recorder; (B) an assignment, properly acknowledged or proved where the same is necessary to establish the claim; (C) an affidavit by the redemptioner or an authorized agent showing the amount then actually due on the judgment, mortgage or other lien.

(3) *Time for redemption; amount to be paid.* The property may be redeemed within six months after the sale by paying the amount of the purchase with a surcharge of 6 percent, thereon in addition, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance and necessary maintenance, upkeep, or repair of any improvements upon the property, which the purchaser may have paid thereon after the purchase, with interest at the lawful rate on such other amounts, and, if the purchaser is also a creditor having a lien prior to that of the person seeking redemption, other than the judgment under which said purchase was made, the amount of such other lien, with interest.

In the event there is a disagreement as to whether any sum demanded for redemption is reasonable or proper, the person seeking redemption may pay the amount necessary for redemption, less the amount in dispute, to the court out of which execution or order authorizing the sale was issued, and at the same time file with the court and serve upon the purchaser a petition setting forth the item or items demanded to which the redemptioner objects, together with the grounds of objection; and thereupon the court shall enter an order fixing a time for hearing of such objections. A copy of the order fixing time for hearing shall be served on the purchaser not less than five days before the day of hearing. Upon the hearing of the petition the court shall enter an order determining the amount required for redemption. In the event an additional amount to that theretofore paid to the clerk is required, the person seeking redemption shall pay to the clerk such additional amount within 7 days. The purchaser shall forthwith execute and deliver a proper certificate of redemption upon being paid the amount required by the court for redemption.

(4) *Subsequent redemptions.* If the property is redeemed by a creditor, any other creditor having a right of redemption may, within 60 days after the last redemption and within six months after the sale, redeem the property from such last redemptioner in the same manner as provided in the preceding paragraph, upon paying the sum of such last redemption, with a surcharge of three percent thereon in addition, and the amount of any assessment or tax, and any reasonable sum for fire insurance and necessary maintenance, upkeep or repair of any improvements upon the property which the last redemptioner may have paid thereon, with interest on such amount, and, in addition, the amount of any lien held by such last redemptioner prior to the redemptioner's own, with interest.

(5) *Notice of redemption.* Written notice of any redemption shall be given to the officer and a duplicate filed with the recorder of the county. Similar notice shall be given of any

taxes or assessments or any sums for fire insurance, and necessary maintenance, upkeep or repair of any improvements upon the property, paid by the person redeeming, or the amount of any lien acquired, other than upon which the redemption was made. Failure to file such notice shall relieve any subsequent redemptioner of the obligation to pay such taxes, assessments, or other liens.

(6) *Certificate of redemption or conveyance.* If no redemption is made within six months after the sale, the purchaser or the purchaser's assignee is entitled to a conveyance, or if so redeemed, whenever 60 days have elapsed and no other redemption by a creditor has been made and notice thereof has been given, the last redemptioner, or assignee, is entitled to a sheriff's deed at the expiration of six months after the sale. If the judgment debtor redeems, the judgment debtor must make the same payments as are required to effect a redemption by a creditor. If the debtor redeems, the effect of the sale is terminated and the debtor is restored to the debtor's estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to the debtor a certificate of redemption, duly acknowledged. Such certificate must be filed and recorded in the office of the county recorder where the property is situated.

(7) *Rents during period of redemption.* The purchaser from the time of sale until a redemption, and a redemptioner from the time of redemption until another redemption, is entitled to receive from any tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or their assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or such purchaser's assigns to such redemptioner or debtor. If such purchaser or such purchaser's assigns shall for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may, within 60 days after such demand, bring an action to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action the right of redemption is extended to such redemptioner or debtor.

(k) *Remedies of purchaser.*

(1) *For waste.* Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, upon motion, with or without notice, of the purchaser, or such purchaser's successor in interest. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs or buildings thereon or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for a family while such person occupies the property. After the estate has become absolute, the purchaser or a successor in interest may maintain an action to recover damages for injury to the property by the tenant or other person in possession after sale and before possession is delivered under the conveyance.

(2) *Where purchaser fails to obtain possession of property or is dispossessed thereof or evicted therefrom.* Where, because of irregularities in the proceedings concerning the sale, or because the property sold was not subject to execution and sale,

or because of the reversal or discharge of the judgment, a purchaser of property sold on execution, or a successor in interest, fails to obtain the property or is dispossessed thereof or evicted therefrom, the court having jurisdiction thereof shall, on motion of such party and after such notice to the judgment creditor as the court may prescribe, enter judgment against such judgment creditor for the price paid by the purchaser, together with interest. In the alternative, if such purchaser or a successor in interest, fails to recover possession of any property or is dispossessed thereof or evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on motion of such party and after such notice to the judgment debtor as the court may prescribe, revive the original judgment in the name of the petitioner for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived shall have the same force and effect as would an original judgment of the date of the revival.

(l) *Contribution and reimbursement; how enforced.* When upon an execution against several persons more than a pro rata part of the judgment is satisfied out of the proceeds of the sale of the property of one, or one of them pays, without a sale, more than such person's proportion, and the right of contribution exists, such person may compel such contribution from the others; and where a judgment against several is upon an obligation of one or more as security for the others, and the surety has paid the amount or any part thereof, by sale of property or otherwise, the surety may require reimbursement from the principal. The person entitled to contribution or reimbursement shall, within one month after payment, or sale of the property in the event there is a sale, file in the court where the judgment was rendered a notice of such payment and the claim for contribution or reimbursement. Upon the filing of such notice the clerk must make an entry thereof in the margin of the docket which shall have the effect of a judgment against the other judgment debtors to the extent of their liability for contribution or reimbursement.

(m) *Payment of judgment by person indebted to judgment debtor.* After the issuance of an execution and before its return, any person indebted to the judgment debtor may pay to the officer the amount of the debt, or so much thereof as may be necessary to satisfy the execution, and the officer's receipt is a sufficient discharge for the amount paid.

(n) *Where property is claimed by third person.* If an officer shall proceed to levy any execution on any goods or chattels claimed by any person other than the defendant, or should the officer be requested by the judgment creditor so to do, such officer may require the judgment creditor to give an undertaking, with good and sufficient sureties, to pay all costs and damages that the officer may sustain by reason of the detention or sale of such property; and until such undertaking is given, the officer may refuse to proceed against such property.

(o) *Order for appearance of judgment debtor; arrest.* At any time when execution may issue on a judgment, the court from which an execution might issue shall, upon written motion of the judgment creditor, with or without notice as the court may determine, issue an order requiring the judgment debtor, or if a corporation, any officer thereof, to appear before the court, a master, or other person appointed by the court, at a specified time and place to answer concerning the judgment debtor's property. A judgment debtor, or if a corporation, any officer thereof, may be required to attend outside the county in which such person resides, but the court may make such order as to mileage and expenses as is just. The order may also restrain the judgment debtor from disposing of any nonexempt property pending the hearing. Upon the hearing such proceedings may be had for the application of the property of the judgment

or toward the satisfaction of the judgment as on execution of such property.

**Examination of debtor of judgment debtor.** At any time execution may issue on a judgment, upon proof by writ or otherwise to the satisfaction of the court that any person or corporation has property of such judgment debtor or is indebted to the judgment debtor in an amount exceeding one hundred fifty dollars, not exempt from execution, the court may order such person or corporation or any officer or agent thereof, to appear before the court or a master at a specified time and place to answer concerning the same. Costs and fees, if any, may be awarded by the court.

**Order prohibiting transfer of property.** If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to the judgment debtor in an amount exceeding fifty dollars, not exempt from execution, has an interest in the property adverse to such judgment debtor or denies such indebtedness, the court may order such person or corporation to refrain from transferring or otherwise disposing of such interest or debt until such time as may be necessary for the judgment creditor to bring an action to determine such interest or claim and prosecute the action to judgment. Such order may be modified or vacated by the court at any time upon such terms as may be just.

**Witnesses.** Witnesses may be required to appear and testify in any proceedings brought under this rule in the same manner as upon the trial of an issue.

**Order for property to be applied on judgment.** The court may order any property of the judgment debtor, not exempt from execution, in the possession of the judgment debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

**Appointment of receiver.** The court may appoint a receiver of the property of the judgment debtor, not exempt from execution, and may forbid any transfer or other disposition of such property or interference therewith until its further order; provided that before any receiver shall be vested with the property of the judgment debtor a certified copy of the judgment shall be recorded in the office of the recorder of deeds of the county in which any real estate sought to be affected by the judgment is situated.

#### 70. Judgment for specific acts; vesting title.

A judgment directs a party to execute a conveyance of land or deliver deeds or other documents or to perform any other act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance and order of the court, the clerk shall issue a writ of habere corpus or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may in proper cases adjudge the party in contempt. If real property is within the state, the court in lieu of issuing a writ of habere corpus or sequestration may enter a judgment divesting title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.

When any order or judgment is for the delivery of property, the party in whose favor it is entered is entitled to execution or assistance upon application to the clerk.

#### 71A. Process in behalf of and against persons not parties.

If an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to

an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

#### Rule 71B. Proceedings where parties not summoned.

(a) *Effect of failure to serve all defendants.* Where the action is against two or more defendants and the summons is served on one or more, but not all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

(b) *Proceedings after judgment against parties not originally served.* When a judgment has been recovered against one or more, but not all, of several persons jointly indebted upon an obligation, the plaintiff may require any person not originally served with the summons to appear and show cause why he should not be bound by the judgment in the same manner as though he had been originally served with process.

(c) *Summons and affidavit; contents and service.* The plaintiff shall issue a summons, describing the judgment, and requiring the defendant to appear within the time required for appearance in response to an original summons, and show cause why he should not be bound by such judgment. The summons, together with a copy of an affidavit on behalf of the plaintiff to the effect that the judgment, or some part thereof, remains unsatisfied, and specifying the amount actually due thereon, shall be served upon the defendant and returned in the same manner as the original summons.

(d) *What constitutes the pleadings.* The pleadings shall consist of plaintiff's affidavit, the summons, and the answer of the defendant, if any; provided that if defendant denies his liability on the obligation upon which the judgment was originally recovered, a copy of the original complaint and judgment shall be included.

(e) *Hearing; judgment.* The matter may be tried as other cases; but if the issues are found against the defendant, the judgment shall not exceed the amount of the original judgment remaining unsatisfied, with interest and costs.

### PART IX. APPEALS

#### Rules 72 to 76. Repealed.

### PART X. DISTRICT COURTS AND CLERKS

#### Rule 77. District courts and clerks.

(a) *District courts always open.* The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) *Trials and hearings; orders in chambers.* All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials and at any place within the state, either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the county wherein the matter is pending without the consent of all the parties to the action affected thereby.

(c) *Clerk's office and orders by clerk.* The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the