

2006

Donald E. Terry v. Wilkinson Farm Service Compnay : Reply Brief

Utah Court of Appeals

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



Part of the [Law Commons](#)

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

H. Thomas Stevenson; Attorney for Appellee.

Michael F. Olmstead; Attorney for Appellant.

Recommended Citation

Reply Brief, *Terry v. Wilkinson Farm Service Compnay*, No. 20060855 (Utah Court of Appeals, 2006).
https://digitalcommons.law.byu.edu/byu_ca2/6816

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

MICHAEL F. OLMSTEAD [2455]
Attorney for Appellant
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Telephone (801) 625-0960
Facsimile (801) 621-0035

IN THE UTAH COURT OF APPEALS

DONALD E. TERRY,)	REPLY BRIEF OF APPELLANT
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	
WILKINSON FARM SERVICE COMPANY,)	
)	
Defendant/Appellee.)	Case No. 20060855

REPLY BRIEF OF APPELLANT

Appeal from a Final Order of the
Second District Court, Ogden Department, Weber County, Utah
By the Honorable Michael D. Lyon

H. Thomas Stevenson
Attorney at Law
3986 Washington Boulevard
Ogden, Utah 84403
Attorney for Appellee

Michael F. Olmstead
Attorney at Law
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Attorney for Appellant

ORAL ARGUMENT REQUESTED

**FILED
UTAH APPELLATE COURTS**

APR 18 2007

MICHAEL F. OLMSTEAD [2455]
Attorney for Appellant
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Telephone (801) 625-0960
Facsimile (801) 621-0035

IN THE UTAH COURT OF APPEALS

DONALD E. TERRY,)	REPLY BRIEF OF APPELLANT
)	
Plaintiff/Appellant,)	
)	
vs.)	
)	
WILKINSON FARM SERVICE COMPANY,)	
)	
Defendant/Appellee.)	Case No. 20060855

REPLY BRIEF OF APPELLANT

Appeal from a Final Order of the
Second District Court, Ogden Department, Weber County, Utah
By the Honorable Michael D. Lyon

H. Thomas Stevenson
Attorney at Law
3986 Washington Boulevard
Ogden, Utah 84403
Attorney for Appellee

Michael F. Olmstead
Attorney at Law
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Attorney for Appellant

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

	<u>PAGE</u>
REPLY TO ARGUMENT NO. 1 [NEED/FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES]	1
REPLY TO ARGUMENT NO. 2 [LACHES]	1, 2
CONCLUSION	2
CERTIFICATE OF MAILING	3

MICHAEL F. OLMSTEAD [2455]
Attorney for Appellant
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Telephone (801) 625-0960
Facsimile (801) 621-0035

IN THE UTAH COURT OF APPEALS

DONALD E. TERRY,) **REPLY BRIEF OF APPELLANT**
)
Appellant,)
)
vs.)
)
WILKINSON FARM SERVICE COMPANY,)
)
Appellee.) Case No. 20060855

REPLY TO ARGUMENT NO. 1
[NEED/FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES]

No new issues or arguments have been raised by Appellee's Brief that were not addressed or argued in Appellant's Brief and, therefore, no additional argument is needed here.

REPLY TO ARGUMENT NO. 2
[LACHES]

Wilkinson argues that, based on the Affidavit of Lorraine Burdett (R. at 202), the Trial Court was justified in finding that the principals of the corporation (including Terry's predecessor) should have known of the problem associated with its expired charter. (Brief of Appellee at page 11.)


Wilkinson then argues that the Trial Court's additional finding that the principals of the corporation "understood and believed they had some sort of de facto existence" should be ignored by the Appeal's Court, because Terry has offered "no evidence on appeal to undermine the District Court's conclusion that there was an unreasonable delay in taking action." (Brief of Appellee at page 11.)

It is not the Appellant's burden to challenge a finding he agrees with, a finding that conflicts with the Trial Court's conclusion that there has been "unreasonable delay" in taking action. If Appellee believed that the Trial Court's finding in this regard was not supported by the record, it should have formally challenged that finding. Wilkinson obviously did not challenge that finding, because the record is replete with references to the fact that it and its principals always believed they were in compliance with the law. [Paragraph 3 of Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss (R. at 8); letter, dated March 13, 2003, from Utah Department of Commerce (R. at 22); letter, dated April 22, 2003, from Utah Department of Commerce (R. at 46); Third-Party Complaint (R. at 116, 117 and 118.)]

CONCLUSION

Terry requests this Court reverse the Trial Court and remand the case with instruction for the Trial Court to enter a Judgment in favor of Appellant upon his Declaratory Judgment Complaint.

RESPECTFULLY SUBMITTED this 18 day of April, 2007.




MICHAEL F. OLMSTEAD
Attorney for Appellant

Reply Brief of Appellant
Case No. 20060855

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing *Reply Brief of Appellant* to H. THOMAS STEVENSON, Attorney for Appellee, 3986 Washington Boulevard, Ogden, Utah, 84403, this 1st day of April, 2007.


Secretary