1990

Ford Consumer Finance Credit Company v. Gabe Salazar, Peggy Salazar, Gabe Salazar, and Chad Salazar : Reply Brief

Utah Court of Appeals

Mikel M. Boley; Attorney for Plaintiff/Appellee.
Wesley F. Sine; Attorney for Defendants/Appellants.

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

FORD CONSUMER FINANCE CREDIT COMPANY, a Corporation Plaintiff/Appellee, v. GARY SALAZAR, PEGGY SALAZAR, GABE SALAZAR and CHAD SALAZAR, Defendants/Appellants	REPLY BRIEF Docket no. 900515-CA Circuit No. 903007491CV Priority Classification 16

* * * *

APPEAL FROM THE RULING OF THE THIRD CIRCUIT COURT,
SALT LAKE COUNTY, MURRAY DEPARTMENT, STATE OF UTAH
THE HONORABLE MICHAEL K. BURTON PRESIDING
TO THE COURT OF APPEALS FOR THE STATE OF UTAH

* * * *

Wesley F. Sine (2967)
Attorney for Defendants/Appellants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

Mikel M. Boley
Attorney for Plaintiff/Appellee
3535 South 3200 West
West Valley City, Utah 84119

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

FORD CONSUMER FINANCE CREDIT COMPANY, a Corporation Plaintiff/Appellee, v. GARY SALAZAR, PEGGY SALAZAR, GABE SALAZAR and CHAD SALAZAR, Defendants/Appellants	REPLY BRIEF Docket no. 900515-CA Circuit No. 903007491CV Priority Classification 16

* * * *

APPEAL FROM THE RULING OF THE THIRD CIRCUIT COURT,
SALT LAKE COUNTY, MURRAY DEPARTMENT, STATE OF UTAH
THE HONORABLE MICHAEL K. BURTON PRESIDING
TO THE COURT OF APPEALS FOR THE STATE OF UTAH

* * * *

Wesley F. Sine (2967)
Attorney for Defendants/Appellants
349 South 200 East, Suite 170
Salt Lake City, Utah 84111
Telephone: (801) 364-5125

Mikel M. Boley
Attorney for Plaintiff/Appellee
3535 South 3200 West
West Valley City, Utah 84119

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. Cases

B. REFERNCE BOOKS

C. STATUTES AND RULES

SUMMARY OF ARGUMENT

POINT I. UNLAWFUL DETAINER WAS NOT A COMMON LAW ACTION

Unlawful Detainer is a Statutory Action and therefore in bringing it, reference must be made to the statutory authorization or the action becomes a Common Law Writ of Ejectment. No reference was made to statutory authorization. If the action is found to be Unlawful Detainer, Plaintiff requested other equitable reliefs beside restitution of the property, thereby affecting the characterization as strictly Statutory Unlawful Detainer Action with its ten day Appeal period, and converting it into an equitable action with its thirty day Appeal Period.

POINT II. ALL INFORMATION ON THE STATUS OF THE APPEAL WAS BEFORE THE COURT.

The fact of the Chapter 13 Bankruptcy Action was presented to the Court by Ford's attorney in great detail. The failure of Salazar to emphasize the Bankruptcy stay does not preclude the Appeal Court from ruling upon its effect, since all information was before the lower court, and Defendants claimed their Appeal was timely.

POINT III. BASED UPON FORD'S OWN INFORMATION, SALAZAR'S APPEAL WAS TIMELY.

Under the events as described by Ford, the Appeal was timely filed and Salazar perfected his Appeal as soon as possible after the Stay was lifted.

ARGUMENT

1. **UNLAWFUL DETAINER WAS NOT A COMMON LAW ACTION.**

Ford claims that the action was clearly one based upon Unlawful Detainer as defined in U.C.A. §78-36-3, but cannot show any place in his Complaint that describes it as such, or refers to the code section under which it is brought, or to Unlawful Detainer.

Under common law, there was no action of Unlawful Detainer. If it were your property you could take it back, so long as your methods were not exceptionally violent, (22 Am Jur 907). The general purpose for the Statutory Unlawful Detainer was to provide a peaceable method of returning property over to the true owner. "**The general purpose of the statues of forcible entry and detainer, xxx...xxx in this country, is that regardless of the actual condition of the title to, or the right of possession of, the property, the party actually in peaceable and quiet possession shall not be turned out by strong hand, violence, or terror.**" emphasis added, (22 Am Jur 909)

To sustain an action in forcible entry or detainer in absence of statutory modification, " **the plaintiff's possession and the forcible entry or detainer are ordinarily the sole questions at issue. To sustain these proceedings it is necessary to prove only that the complainant was in actual and peaceable possession of the premises, and that the defendant forcibly entered and turned him out or deposed him by force after a**

peaceable entry." 22 Am Jur 910, see Scott v. Hewitt 127 Tex 31 90 S.W. 2d 816

Under Pingree v. Continental Group of Utah, Inc., 558 P.2d 1317 (Ut. 1976), the Supreme Court found that Plaintiff's failure to strictly comply with the provisions of section 78-36-8 converted his action for unlawful detainer into one at common law for ejectment. In the first count, Plaintiff sought to recover possession of real estate, and in the second count sought to quiet title to certain land adjoining the property involved in first cause of action. Therefore, the case was tried as an action in equity and Plaintiff could not defeat the Appeal by contending that the action was one of forcible detainer. See also, Ottenheimer v. Mountain States Supply Co. 56 Utah 190, 188 P. 1117 (1920)

In the action at hand, Plaintiffs are not dealing with a buyer of property. They are dealing with a party who claims title through a trust deed as Trustors of the Deed. In this situation, Ford has never been in possession of the land, neither actual nor contractual.

While true, that Ford claimed an interest in the property in its complaint, that interest was denied in Salazar's Answer, therefore placing the burden of proving title on the Plaintiff, and the Court in the position of having to determine title to the real property which under §78-4-7(1)(a) U.C.A., " **The Circuit Court shall have civil jurisdiction both law and equity xxx, except: (a) in actions to determine the title to real property**".

The Circuit Court did not have the jurisdiction to determine the validity of the title. The Court proceeded, over the objection of the Defendants, to hear evidence on who held title and evidence on Defendant's proffering and acceptance of partial payment by Ford prior to the Trustee Sale. The Court subsequently found that it did not believe Defendant Salazar's testimony, and found for the Plaintiffs, and by so doing exceeded its jurisdictional limits by determining where the title lay.

The statutory requirement of §78-36-2, UCA that the Court found the tenant, by force, unlawfully held and kept possession was neither alleged to in Plaintiff's Complaint nor found by the Court in its Findings of Fact and Conclusions of Law or its Judgment, and therefore we have what is an action in Common Law Ejectment, or Common Law Restitution.

Under §78-36-8, "**The Plaintiff in his Complaint in addition to setting forth the facts upon on which he seeks to recover, may set forth any circumstances of fraud, force, or violence which may have accompanied the xxx...xxx Unlawful Detainer, and claim damages therefore or compensation for the occupation of the premises or both.**"

Plaintiff failed to claim Unlawful Detainer in his Complaint and failed to allege the points contained in § 78-36-2(1) which define Unlawful Detainer. Furthermore the Court failed to find any acts that made up Unlawful Detainer. As we speak of Unlawful Detainer, Common Law Ejectment or Restitution it is important for all parties to know which procedure they are dealing with. If an

action in Unlawful Detainer, there is a ten day Appeal period. If an action in Unlawful Detainer and Equity, or an action in Ejectment, Restitution or Equity there is a thirty day Appeal period.

Plaintiffs brought an action claiming title and designating how it received title to the property in question. It further claimed that Defendants refused to leave the premises upon notice. Plaintiffs went on to claim that they had a prospective buyer for the property and might be damaged by Defendants' past and future interference with the sale. The Plaintiffs then held to themselves the right to amend the complaint if necessary if they had a loss from the perceived interference. Under the Prayer, Plaintiffs requested such other relief as the Court deemed proper thereby leaving room for damages caused by the lost sale due to Defendants acts if so adjudged. By so doing, if it were not already an action in ejectment, it became an action in equity by so broadening the requests, i.e. requesting (1) Writ of Restitution, (2) damages for staying in the property, after notice and (3) potential damages for loss of sell .

This action in reality was or became an action for ejectment, i.e., to eject the Defendants from their property. It was based upon the fact that Plaintiff claimed its title to be superior to Defendants; and that its trustee sale was properly held, and that the loan was in default.

Defendants denied Plaintiff's claims of title to the property in its Complaint. It denied that the Trustee Sale was

valid and that the loan was in default. It laid claim to the fact that fraud was perpetuated upon it by the Plaintiff and therefore the Plaintiff had no right for the Prayers in his action. It further demanded that Plaintiff's Complaint be dismissed.

At trial Defendants moved the Court for a dismissal or removal to the District Court based upon the fact that the Court lacked jurisdiction to try an action to determine title to real property.

The Court found under its Findings of Fact that the Defendants claims in equity were not sufficient but made no determination as to the points that make up Unlawful Detainer. Unlawful Detainer was neither alleged or proved. Therefore, this action comes under the thirty day Appeal period.

POINT II: SALAZAR DID NOT WAIVE CLAIMS OF TOLLING BY FAILURE TO ARGUE THAT MATTER BEFORE THE LOWER COURT.

Plaintiffs claimed the ten day period had passed before the appeal was filed. Defendants argued that it had not passed. The Court, along with both Defendants and Plaintiff's counsel struggled with the proper deadline for the Appeal to be filed. The issue before the Court was whether the Appeal was timely after the Court had ruled it did not have jurisdiction, Plaintiff's counsel described to the Court the difficulty it had in evicting Defendants. He discussed the fact of the Chapter 13 Bankruptcy and how he had to have the Stay lifted on an Ex Parte basis. The completed sequence of the timing was before the

Court. The Court could have changed its jurisdictional position if it had desired so to do, but did not. All facts were before the Court.

The clear facts of the case are that Defendants could not have filed the Appeal sooner without being in contempt of the Bankruptcy Court. Defendants received notice that the Stay had been lifted at 7:00 p.m. on May 25, 1990 and on the next day, their Appeal was filed. Plaintiff in his brief has designated May 21'st as the proper date by which the Appeal was to be filed, but for on that date, the Bankruptcy stayed the tolling of Appeal time. After the release of Stay was filed with the Circuit Court, Defendants perfected their Appeal on the very same day. It could not have been filed any sooner after the Bankruptcy was filed and the Stay released and therefore it was timely. The lower Court did have jurisdiction for processing the Appeal and should have allowed the record to be transferred to the proper Appeal Court.

The cases presented by Plaintiffs relative to whether the Court had all the information before it are not in point. In the jury selection case (Salt Lake County vs. Carlston), 776 P.2d 653 (Ut. App. 1989) no objection had been raised as to the method of jury selection at the time of trial, the issue on Appeal was not before the Court. In the case at hand, Defendants claimed the Appeal was timely filed, and argued that issue. The Court had all the evidence before it on the issue of the Bankruptcy staying the tolling of the Appeal time, but chose to continue with its

Judgment that the Appeal was not filed timely.

In the other cases, presented by Plaintiffs all are based upon issues not raised at trial, i.e. hearsay objection not being made, issue of contract amendment, issue of jury selection, objection pertaining to the issue of failure to make a requested voir dire inquiry, all of which are matters not before this Court.

Once again the issue of timeliness was before the Court. All the evidence was before the Court as to when filed, the Bankruptcy filing, etc., but the Court still chose to continue with it lack of jurisdiction based upon its decision that the filing was untimely. Logically, if Plaintiff's position were to be held, only cases given at trial could be used on Appeal- which of course is not the case.

POINT III. THE APPEAL WAS FILED WITHIN THE TEN DAY PERIOD CONTEMPLATED BY THE LAW.

On September 7, 1990, Plaintiffs mailed proposed copy of Findings of Fact and Conclusions of Law and Judgment to Defendants' attorney. On or about September 10, 1990, the Judgment was signed, several days earlier than it should have been - Rule 4-504(2) states that opposing counsel has 5 days after service to object to form and contents. Copies of the signed Judgment and Findings were mailed to Defendants on September 11, 1990. The Plaintiff's attorney signed a Notice of Entry of Judgment on September 13, 1991. Defendants filed

bankruptcy on September 21, 1990. The Stay was released on September 25, and served on Defendants at their home on September 25, at 7:00 p.m. The release of the Automatic Stay was filed with the Circuit Court on September 26, 1990. The Appeal was filed on September 26, 1990, during the day.

According to U.R.C.P., Rule 6(e), "**Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of after the service of notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period**."

Under Rule 58(d) U.R.C.P., "**The prevailing party shall promptly give notice of the signing or entry of Judgment to all other parties and shall file proof of service of such notice with the Clerk of the Court**". This notice was signed on the 13th of September, 1990 and mailed to Defendants, presumably on the 13th. Adding the three days onto the 13th would make the Appeal due on the 26th day of September, 1990, the day it was filed.

Even if the three day mailing is not allowed, with the tolling of the time caused by the filing of the Bankruptcy, the filing was still timely if the Court should find this was an Unlawful Detainer Action. Equity and justice dictates that the Appeal was timely.

CONCLUSION

Clearly under several theories the Appeal was filed timely. (1) This was not an Unlawful Detainer Action but an Action brought in Equity. Since Unlawful Detainer is a statutory act, to claim under it at least some reference must be made to it and if title must be proved and other damages are to be determined, then it becomes an action in ejectment or equity, and therefore a thirty day Appeal period.

(2) All facts were before the Court as to the staying of the tolling of the Appeal time by the Bankruptcy filing. The Court failed to apply the law properly and so, was incorrect in finding the Appeal was filed untimely.

(3) The Plaintiff was careless in perfecting his Judgment. The signed Judgment, etc., papers were not mailed until September 11, 1990. The Notice of judgment was not signed until September 13, 1990 and mailed probably on the same day. Adding on the three days for receiving mail to the ten days would still make the filing date the 26'th of September, 1990 and this does not include the Stay of the tolling produced by the filing of the Bankruptcy Action. Therefore under this argument the Appeal was timely.

WHEREFORE the Appeal Court should overrule the lower courts dismissal and allow the Appeal to be transferred to the proper Appeals Court for a hearing on the merit of the original Appeal.

Respectfully so requested this 13th day of January, 1992.

WESLEY F. SINE

(b) If a governing body establishes a circuit court or returns to a justice of the peace system, it shall cause the Office of the State Court Administrator to be notified in writing within 30 days after the fact.

History: C. 1953, 78-4-6, enacted by L. 1977, ch. 77, § 1; 1987, ch. 228, § 3.

Repeals and Enactments. — Laws 1977, ch. 77, § 1 repealed former § 78-4-6 (L. 1951, ch. 26, § 2(3); C. 1943, Supp., 104-4-3.12), repealing and separability clause, and enacted present § 78-4-6, effective July 1, 1978.

Amendment Notes. — The 1987 amendment, by Chapter 14, divided the former section into Subsections (1)(a), (1)(b), and (2); substituted "is created" for "will be created and deemed to exist on the effective date of this act" in the first sentence of Subsection (1)(a); deleted "shall" preceding "succeed" and "office of" preceding "city judge" and substituted "have" for "shall exercise" in the second sentence of Subsection (1)(a); substituted "is known" for "shall be known" in the second sentence of Subsection (1)(b); added Subsection (1)(c); divided the former first sentence of Subsection (2) into the present first and second sentences by deleting "and"; substituted "a municipal judge of the peace may not" for "no justice of the peace shall" in the present first sentence of Subsection (2); substituted "are successors" for "shall be the successors" and "the" for "such" preceding "municipal departments" in the present second sentence of Subsection (2); and substituted "the" for "such" preceding "election" and inserted "municipal" preceding "justice" in the present third sentence of Subsection (2).

The 1987 amendment, by Chapter 228, designated the previously undesignated provisions of this section as last amended by Laws 1977, ch. 77, § 1; added present Subsection (2)(b); and made minor changes in phraseology and punctuation.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Cross-References. — Justices' courts, Chapter 5 of this title.

NOTES TO DECISIONS

Successors to justices of peace.

—City judges.

The Legislature, by providing that city judges shall be ex officio justices of the peace, did not intend that city judges should hold the office of justice of the peace. What was intended was to annex the duties of justices of the peace to the office of the city judge. City of Ogden City v. Patterson, 122 Utah 389, 250 P.2d 570 (1952)(decided under prior law).

COLLATERAL REFERENCES

C.J.S. — 21 C.J.S. Courts § 291.
Key Numbers. — Courts ⇐ 187.

78-4-7. Civil jurisdiction — Exceptions — Concurrent jurisdiction.

(1) The circuit court shall have civil jurisdiction, both law and equity, in all matters if the sum claimed is less than $10,000, exclusive of court costs, except:

(a) in actions to determine the title to real property, but not excluding actions to foreclose mechanics liens;

(b) in actions of divorce, child custody, and paternity;

(c) in actions under the Utah Uniform Probate Code;

(d) in actions to review the decisions of any state administrative agency, board, council, commission, or hearing officer;

(e) in actions seeking remedies in the form of extraordinary writs;

(f) in all other actions where, by statute, jurisdiction is exclusively vested in the district court or other trial or appellate court.

Rule 6. Time.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), 60(b) and 73(a) and (g), except to the extent and under the conditions stated in them.

(c) **Unaffected by expiration of term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) **For motions — Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) **Additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

Compiler's Notes. — This rule is substantially similar to Rule 6, F.R.C.P.

Rule 73, cited near the end of Subdivision (b), was repealed upon adoption of the Rules of the Appellate Procedure.

Cross-References. — Amendment to pleadings to conform to evidence, time of motion for, Rule 15(b).

Commencement of action, time of service, Rule 4(b).

Corporation or association, mailing of process to, Rule 4(e)(5).

Depositions, objections to errors and irregularities, Rule 32(d).

Discharge of attachment or release of property, Rule 64C(f).

Documents for state or subdivision, filing date on weekend or holiday, § 63-37-3.

Election laws, Sundays included in computation of time, § 20-1-12.

Failure of term or vacancy in office of judge, proceeding not affected, § 78-7-21.

Jury venire, service by mail, § 78-46-13.

kview Apts. ex rel. Hedman
e Farm Ins. Co., 771 P.2d 693
1989); Gilmore v. Salt Lake
r Action Program, 775 P.2d
p. 1989); Utah State Coalition
is v. Utah Power and Light
(Utah 1989); Bergen v. Trav-
76 P.2d 659 (Utah Ct. App.
'. Ford, Bacon & Davis Utah,
3 (Utah 1989); Bailey v. Par-
5 (Utah Ct. App. 1989); Utah
Office v. Salt Lake County,
ah 1989); Donahue v. Durfee,
ah Ct. App. 1989); Territorial
1 v. Baird, 781 P.2d 452 (Utah
'. Adams Ltd. Partnership v.
'd 962 (Utah Ct. App. 1989);
Chapman v. Primary Chil-
P.2d 1181 (Utah 1989); Yoho
v. Shillington, 784 P.2d 1253
)89); Hunt v. Hurst, 785 P.2d
Butterfield ex rel. Butterfield
2d 94 (Utah Ct. App. 1990);
cott, 790 P.2d 578 (Utah Ct.
ge Inn Apts. v. State Farm
790 P.2d 581 (Utah Ct. App.
United Television, Inc., 797
1990); Alford v. Utah League
, 791 P.2d 201 (Utah Ct. App.
Copier Painting v. Van
'd 163 (Utah Ct. App. 1990).

tute, use of evidence exclud-
eat or support summary judg-
d 970.
; for interference with physi-
relationship with hospital, 7

oral testimony at state sum-
earing, 53 A.L.R.4th 527.
vidence to support grant of
nt in will probate or contest
.L.R.4th 561.
aring and oral arguments on
ry judgment or for judgment
in federal courts, 1 A.L.R.

— Judgment ⇐ 178 to 190.

pursuant to Chapter 33
ese rules, and the right
ices and in the manner
adequate remedy does
where it is appropriate.

The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Compiler's Notes. — This rule is similar to Rule 57, F.R.C.P.

NOTES TO DECISIONS

Cited in Oil Shale Corp. v. Larson, 20 Utah 2d 369, 438 P.2d 540 (1968).

COLLATERAL REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d Declaratory Judgments §§ 183, 186, 203 et seq.
C.J.S. — 26 C.J.S. Declaratory Judgments §§ 17, 18, 104, 155.
A.L.R. — Right to jury trial in action for declaratory relief in state court, 33 A.L.R.4th 146.
Key Numbers. — Declaratory Judgment ⇐ 41, 42, 251, 367.

Rule 58A. Entry.

(a) **Judgment upon the verdict of a jury.** Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be forthwith signed by the clerk and filed. If there is a special verdict or a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49, the court shall direct the appropriate judgment which shall be forthwith signed by the clerk and filed.

(b) **Judgment in other cases.** Except as provided in Subdivision (a) hereof and Subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.

(c) **When judgment entered; notation in register of actions and judgment docket.** A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(d) **Notice of signing or entry of judgment.** The prevailing party shall promptly give notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court. However, the time for filing a notice of appeal is not affected by the notice requirement of this provision.

(e) **Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be rendered thereon.

(f) **Judgment by confession.** Whenever a judgment by confession is authorized by statute, the party seeking the same must file with the clerk of the court in which the judgment is to be entered a statement, verified by the defendant, to the following effect:

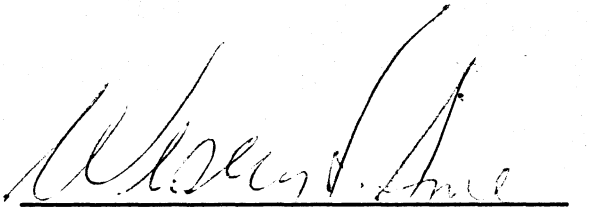
(1) If the judgment to be confessed is for money due or to become due, it shall concisely state the claim and that the sum confessed therefor is justly due or to become due;

(2) If the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, it must state concisely the claim and that the sum confessed therefor does not exceed the same;

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 1992, I mailed a true and correct copy, postage prepaid of the foregoing to the following:

MIKEL M. BOLEY
Attorney for Plaintiff
3535 South 3200 West
West Valley City, Utah 84119



WESLEY F. SINE
Attorney for Defendant