

Mark Christopher Tracy dba Emigration  
Canyon Home Owners Association

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I am the  Appellant  
 Attorney for the Appellant and my Utah Bar number is \_\_\_\_\_

In the Supreme Court for Utah

450 South State Street, Salt Lake City, UT 84111

Mark Christopher Tracy dba Emigration  
Canyon Home Owners Association  
Appellant

v.

Simplifi Company, Jennifer Hawkes and Eric  
Hawkes

Appellees.

**Docketing Statement – Civil Case  
(URAP 9(c))**

Appellate Court Case Number

**200905074**

Trial Court Case Number

(1) **Nature of the appeal.** This appeal is from the:

- final judgment after a trial
- final order
- default judgment
- judgment after order granting summary judgment
- Amended Judgment.

(2) **Important dates.**

- When was the amended judgment of the trial court entered? **April 30, 2021**
- When was the amended judgment served on the Appellant? **June 10, 2021**
- When was the Notice of Appeal filed in the trial court? **June 10, 2021**
- Did you receive an extension of time under Appellate Rule 4(e) to file the Notice of Appeal?

[ ] Yes [X] No

If yes, when was the Motion for an Extension of Time granted?

\_\_\_\_\_

- Did you file any of the following motions?

[ ] Yes [X] No

Motion filed under:	Date motion filed:	Date of orders ruling on the motion:
URCP 50(b)		
URCP 52(b)		
URCP 59		
URAP 4(g)		

- Are you an inmate confined in an institution?

[ ] Yes [X] No

If yes, when was the Notice of Appeal deposited in the institution's internal mail system? \_\_\_\_\_

(3) **Claims or parties remaining before the trial court.** Is this appeal taken from an order certified as final under Utah Rule of Civil Procedure 54(b)?

[ ] Yes [X] No

If yes, what claims and parties remain before the trial court?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (4) **Issues on appeal.** Separately describe the issue(s) that you plan to argue in your appeal.
- 1) Does the District Court have jurisdiction to amend a judgment pending with the Utah Supreme Court ruling that a federal whistleblower (“*qui tam* Relator”) is a vexatious litigant pursuant to Rule 83(1)(B) and (C) of the Utah Rules of Civil Procedure (“URCP”)?
  - 2) Is a *qui tam* Relator’s constitutional right to request access to public records “harassment” under Utah Code Ann. § 78B-5-825(1)?
  - 3) Is a *qui tam* Relator a “vexatious litigant” pursuant to Rule 83(1)(B) and (C) URCP for complying with a decision and order of the Utah State Records Committee?
  - 4) Is a *qui tam* Relator a “vexatious litigant” for requesting access to public records directly related to pending federal litigation and in the sole custody of the public records office of a governmental entity as confirmed by the legal representative of the same?
  - 5) Must the district court vacate a judgement pursuant to Rule 60(b)(3) URCP when a private Utah corporation and controlling shareholders first refute their legal status as the public records office of a governmental entity in a Rule 12(b)(6) motion to dismiss but then refuse access to governmental records based solely upon their legal status as a public records office of a governmental entity?
- (6) **Summary of what happened in the trial court.** Briefly describe the facts relating to the issue(s) described above.

Sometime in 2013, Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID), a Utah special service water district providing culinary drinking water to less than half of Emigration Canyon residents, awarded a no-bid contract to Appellees Emigration Canyon Deputy Mayor Jennifer Hawkes (“Deputy Mayor Hawkes”) and EID certified public records officer Eric Hawkes (Mr. Hawkes”) of the Simplifi Company (“Simplifi”)(collectively Simplifi Appellees”) to create and maintain government records at their private residence compensated with an annual remuneration of \$118,000.00 of taxpayer funds for the current calendar year.

In September 2014, Appellant Mark Christopher Tracy (“Mr. Tracy”) commenced legal action against EID, Mr. Hawkes and private land-developers R. Steve Creamer, The Boyer Company and City Development Inc. et al. regarding the alleged fraudulent acquisition and diversion of federally backed funds for massive expansion of private urban developments in Emigration Canyon (see *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement*

*District et al.*, 10th Cir., Case No. 21-4059 (pending); see also docketing statement available at the website maintained by the Emigration Canyon Home Owners Association at [https://echo-association.com/?page\\_id=8302](https://echo-association.com/?page_id=8302)).

After EID trustees refused to disclose water levels at a public meeting believed to indicate that EID production wells operated by Simplifi Appellees were pumping at levels lower than the Emigration Canyon Stream and thereby impairing senior surface water rights, Mr. Tracy commenced litigation under the Utah Government Records and Management Act (“GRAMA”) against Simplifi Appellees after receiving a false data file from Mr. Hawkes in possible violation of 18 U.S.C § 1512(b)(2)(A).

Without evidentiary hearing, the district court however granted Simplifi Respondents Rule 12(b)(6) motion to dismiss and awarded Simplifi Respondents attorney fees and costs in the amount of \$5,895.55 under Utah Code Ann. 78B-5-825(1) ruling that Mr. Tracy’s petition for de novo judicial review of the de facto denied request for public records in the sole custody of Simplifi Respondents was “without merit” and based upon “bad faith” for Mr. Tracy having failed to include the contracting governmental entity EID as a “necessary party [under Rule 19(a) Utah Rules of Civil Procedure].”

Mr. Tracy timely appealed the decision (see *Tracy v. Simplifi et al.*, Ut. Ct. App., Case No. 20210227-CA (pending)).

Following the decision and order of the Utah State Records Committee regarding a previous GRAMA request filed by Mr. Tracy for legal invoices of the Salt Lake City law firm Cohne Kinghorn P.C. believed to evidence misuse of public funds administered for EID by Simplifi Respondents for their private legal defense, EID through its legal representative Jeremy R. Cook (“Utah Attorney Cook”) denied Mr. Tracy’s request citing that Simplifi Appellees as the private independent contractor of EID had been awarded a judgement of \$5,895.55 by the District Court and would not disclose public records until payment of “previous GRAMA processing fees” under Utah Code Ann. 63G-2-203(8)(a) in the amount of \$5,895.55 had been received by Simplifi Appellees as the “EID public records office.”

Based upon the express certification of Simplifi Appellee’s status as the “EID public records office” by Utah Attorney Cook contrary to Utah Attorney Cook’s own representations made to (and accepted by) the District Court, Mr. Tracy filed motion to vacate order and judgment under Rule 60(b)(3) URCP.

The District Court however ruled that the confirmation of Simplifi Respondents' legal status as the "EID public records office" by Utah Attorney Cook "doesn't matter."

Although the District Court's previous ruling was pending at that time with the Utah Supreme Court, and over Mr. Tracy's objection, the court executed an amended judgement awarding Simplifi Appellees additional attorney fees and costs finding Mr. Tracy to be a "vexatious litigant" per Rule 83(1)(B) and (C) URCP for having submitted a GRAMA request to Mr. Hawkes pursuant to the order of the Utah State Records Committee (Case No. 21-09) and for having provided Deputy Mayor Hawkes a courtesy copy of the GRAMA request.

Contrary to court rules, Utah Attorney Cook however failed to serve Mr. Tracy a copy of the executed amended judgement until June 10, 2021.

Mr. Tracy filed Notice of Appeal of the amended judgement with the district court the same day.

- (7) Have there been any appeals in this matter before this appeal? Are there any other appeals related to this appeal?

Yes    No

If yes to either question, provide the appellate court case numbers. If the earlier or related appeal resulted in a written decision, provide the decision citation, if available.

Case Number	Citation (For example, 2015 UT 36 or 2015 UT App 103)
20200295-CA	<i>Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District</i>
20200705-CA	<i>Mark Christopher Tracy dba Emigration Canyon Home Owners Association v. Simplifi Company et al.</i>
20210227-CA	<i>Mark Christopher Tracy dba Emigration Canyon Home Owners Association v. Simplifi Company et al.</i>

July 1, 2021

Sign here ► /s/ Mark Christopher Tracy

Date

Typed or Printed Name Mark Christopher Tracy

### Certificate of Service

I certify that on September 22, 2020 a copy of this Docketing Statement was served on all parties listed here by the method indicated below:

Mailed	Emailed	Hand-delivered	Name	Mailing or Email Address
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Jeremy R. Cook</u>	<u><a href="mailto:jcook@ck.law">jcook@ck.law</a></u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tim E. Nielsen</u>	<u><a href="mailto:tnielsen@ck.law">tnielsen@ck.law</a></u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Timothy J. Bywater</u>	<u><a href="mailto:tbywater@ck.law">tbywater@ck.law</a></u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u> </u>	<u> </u>

July 1, 2020 Sign here ► /s/ Mark Christopher Tracy

Date Typed or Printed Name Mark Christopher Tracy