

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 Utah Court of Appeals

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))**

20200705-CA

Appellate Court Case Number

200905123

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
 - an order granting a motion to dismiss

- (2) **Important dates.**

- When was the final judgment of the trial court entered? **September 16, 2020**

- When was the Notice of Appeal filed in the trial court? **September 18, 2020**
- 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) Is a private company subject to the Utah Government Records Access and Management Act ("**GRAMA**") as an "office" of a governmental entity under Utah Code Ann. 63G-2-203(11)(b) when the governmental entity has no employees, no physical presence and has transferred de facto daily operation and control of

a public drinking water system to that private company and that private company is funded entirely with public monies “to carry out the people’s business” and the cost of the proceedings before the district court was paid with public funds of that governmental entity?

2) Are the directors and officers of a private company subject to GRAMA provisions when the governmental entity is required under Utah Administrative Code R309-105-17(2)(a)-(b) to maintain lead contamination test results of a public drinking-water system on its “premises” and all public records have been in the sole physical custody of the directors and officers of that private company at their private residence for the past 7 years?

3) Are the directors and officers of a private company criminally liable under Utah Code Ann. § 63G-2-801(3)(a) when all public records are maintained solely in the private residence of those directors and officers, the directors and officers are not certified as “records officers” of a governmental entity under Utah Code Ann. § 63G-2-108 and refuse to release public records related to an important issue of public health and safety as mandated under the federal Safe Drinking Water Act of 1974?

4) May the trial court grant a motion to strike evidence from a memorandum in violation of Rule 7 (n) of the Utah Rules of Civil Procedure?

(6) **Summary of what happened in the trial court.** Briefly describe the facts relating to the issue(s) described above.

After both the Utah Division of Environmental Quality (“**DEQ**”) and Emigration Improvement District (“**EID**”) refused to disclose lead-contamination test results in almost identical proceedings now pending before the Utah State Records Committee (case nos. 20-44 and 20-62), Appellant commenced legal action against the Appellees upon receiving confirmation from the legal representative of EID Jeremy R. Cook that all public records of EID are maintained at the private residence and in the sole physical custody of the Appellees.

The district court ruled that the Appellees where not necessary parties to the litigation under Rule 19 (a) of the Utah Rules of Civil Procedure, not subject to GRAMA provisions and granted the motion to dismiss without oral arguments thereby striking evidence that the Deputy Mayor of Emigration Canyon is concurrently a director, officer and registered agent to the Appellee Simplifi Company.

During the proceedings before the district court, Appellees through Utah Attorney Cook failed to contest the legal standing of the “dba entity” of the Appellant

“Emigration Canyon Home Owners Association” to commence and/or maintain the present action as currently being argued and adjudicated by EID through Utah Attorney Cook under Case no. 20200295-CA before this Court (see No. 7 below).

(7) **Related appeals.** 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>

September 22, 2020
Date

Sign here ► /s/ Mark Christopher Tracy

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>jcook@ck.law</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tim E. Nielsen</u>	<u>tnielsen@ck.law</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

September 22, 2020 Sign here ► /s/ Mark Christopher Tracy

Date Typed or Printed Name Mark Christopher Tracy