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*Pro se Petitioner*

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**IN THE THIRD DISTRICT COURT OF THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY, dba  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION,

Petitioner,

vs.

SIMPLIFI COMPANY, a Utah Corporation;  
ERIC HAWKES, an individual; and  
JENNIFER HAWKES, an individual,

Respondents.

**MOTION TO REINSTATE PERIOD  
FOR FILING DIRECT APPEAL IN A  
CIVIL CASE**

**Case No.: 200905074**

**Judge: Mark S. Kouris**

Pursuant to Rule 4(g) Utah Rules of Appellant Procedure (“URAP”) and Rule 7 Utah Rules of Civil Procedure (“URCP”), Mark Christopher Tracy (“Mr. Tracy”) dba Emigration Canyon Home Owners Association (“The ECHO-Association”) respectfully submits the following *Motion to Reinstate Period for Filing Direct Appeal in a Civil Case*.

**CONCISE STATEMENT OF THE RELIEF REQUESTED AND  
GROUNDS FOR THE RELIEF REQUESTED**

Mr. Tracy seeks appellate review of the Amended Judgement issued by the district court on April 30, 2021, ruling Mr. Tracy to be a vexatious litigant subject to a prefilng order in future litigation and awarding attorney fees and costs in the amount of \$9,029.00.

As opposing counsel failed to serve Mr. Tracy a copy of the Amended Judgement executed by the court over Mr. Tracy's pro forma objections until June 10, 2021, and failed to file proof of service with the court as required under to Rule 58A(g) URCP, the court should reinstate the thirty-day period for filing direct appeal pursuant to Rule 4(g) URCP.

The present motion is timely and appropriate.

### **STATEMENT OF FACTS**

1. On April 30, 2021, during appellant review before the Utah Supreme Court, this court entered an Amended Judgement finding Mr. Tracy to be "a vexatious litigant" subject to a prefiling order for future litigation pursuant to Utah R. Civ. P. 83(b)(5).<sup>1</sup> *See* Amended Judgement, dated April 30, 2021, attached as Exhibit A.
2. The opposing party failed to serve Mr. Tracy a copy of the executed amended judgement and failed to file proof of service with the court per Rule 58A(g) URCP.<sup>2</sup>
3. During the status hearing on June 15, 2021, and upon Mr. Tracy's inquiry, the district court confirmed execution of the amended judgement, and opposing counsel transmitted a copy of the same. *See* excerpt of Certified Transcript pages 1, 18-21, attached as Exhibit B.
4. Mr. Tracy submitted Notice of Appeal of the Amended Judgement the same day.<sup>3</sup>

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<sup>1</sup> The Amended Judgement prepared by opposing counsel incorrectly cited Rule 83(b)(4) URCP (prefiling order in pending litigation) instead of subsection (b)(5)(prefiling order in future litigation). Out of an abundance of caution, Mr. Tracy has included all necessary certifications for a prefiling order in pending litigation per subsection (d). *See* Declaration Mark Christopher Tracy *infra*.

<sup>2</sup> *See Tracy v. Hon. Kouris*, Case No. 20210754-CA (Utah, Writ of Certiorari denied, December 8, 2021).

<sup>3</sup> *Id.*

5. Unbeknownst to Mr. Tracy, the district court withheld the notice of appeal from the court docket and returned the same to Mr. Tracy via United States postal service 85 days later, on September 11, 2021, based upon a non-existent prefiling order in existing litigation.<sup>4</sup>
6. Upon Mr. Tracy's Petition for Writ of Extraordinary Relief, the Utah Court of Appeals ruled that the Notice of Appeal filed on June 10, 2021, was untimely and the present motion appropriate. *See* Order dated November 2, 2021, attached as Exhibit C.
7. The Utah Court of Appeal remitted the case back to the district court on February 10, 2022, *See* Remittitur, dated February 10, 2022, attached as Exhibit D.<sup>5</sup>

### **ARGUMENT**

Under Rule 4(g) URCP, the trial court "shall" reinstate the thirty-day period for filing a direct appeal if by the preponderance of the evidence: (A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule; (B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and (C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

As Mr. Tracy lacked actual notice of the Amended Judgment, exercised due diligence while the opposing party failed to serve a copy of the signed judgement until June 10, 2021, the court should grant the present motion and reinstate the period for filing a direct appeal of the Amended Judgment.

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<sup>4</sup> *Id.*

<sup>5</sup> Mr. Tracy's appeal of the original judgement is currently pending before the Utah Supreme Court. *Tracy v. Simplifi et. al.*, Case No. 20220219-SC (Utah, Writ of Certorari filed February 23, 2022).

## **CONCLUSION**

Based upon the foregoing, Mr. Tracy requests the Court grant the motion and allow Mr. Tracy to file notice of appeal of the Amended Judgement within thirty days of the court's decision.

DATED this 15th day of April 2022.

MARK CHRISTOPHER TRACY dba  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION

/s/ Mark Christopher Tracy  
Mark Christopher Tracy  
*Pro se Petitioner*

## DECLARATION

I, Mark Christopher Tracy, declare and affirm under criminal penalty that the forgoing **MOTION TO REINSTATE PERIOD FOR FILING DIRECT APPEAL IN A CIVIL CASE** is:

1. is based on a good faith dispute of the facts,
2. is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law, and
3. not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter.

/s/ Mark Christopher Tracy  
Mark Christopher Tracy  
*Pro se Petitioner*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of April 2022, a true and correct copy of the foregoing **MOTION TO REINSTATE PERIOD FOR FILING DIRECT APPEAL IN A CIVIL CASE** was sent via electronic mail to the following counsel of record:

Jeremy R. Cook  
[jcook@ck.law](mailto:jcook@ck.law)  
COHNE KINGHORN, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84111

*Attorneys for Simplifi Company, Eric Hawkes and Jennifer Hawkes*

*/s/ Mark Christopher Tracy*  
Mark Christopher Tracy

# EXHIBIT A

The Order of the Court is stated below:

Dated: April 30, 2021  
08:52:33 AM

/s/ MARK KOURIS  
District Court Judge



*Prepared and Submitted by:*

Jeremy R. Cook (10325)  
**COHNE KINGHORN, P.C.**  
111 E. Broadway, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 363-4300  
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*Attorneys for Eric Hawkes, Jennifer Hawkes and Simplifi Company*

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**IN THE THIRD DISTRICT COURT  
IN AND FOR THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY, DBA  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION,

Petitioner,

vs.

SIMPLIFI COMPANY, a Utah Corporation,  
ERIC HAWKES, an individual, and  
JENNIFER HAWKES, an individual

Respondents.

**AMENDED JUDGMENT**

Case No. 200905074

Judge: Kouris

The Court hereby finds as follows:

1. Pursuant to the Court's *Memorandum Decision and Order*, Respondents' Motion to Dismiss is **GRANTED**.

2. Pursuant to the Court's *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to be a Vexatious Litigant and*

{00553316.RTF /}



*Subject to Rule 83 of the Utah Rules* (the “**Motion to Vacate Order**”), Mr. Tracy’s Motion to Vacate is **DENIED**.

3. Pursuant to the Motion to Vacate Order, the Court finds petitioner Mark Christopher Tracy to be a vexatious litigant in accordance with U.R.C.P. 83(b)(4), and the Court orders that Mr. Tracy must obtain leave from the Presiding Judge of the Court prior to Mr. Tracy filing any future actions in Utah State Courts.

4. The Court awards judgment in favor of respondents Simplifi Company, Eric Hawkes and Jennifer Hawkes and against petitioner Mark Christopher Tracy for attorney fees in the amount of Nine Thousand Twenty-Nine Dollars (**\$9,029.00**).

5. The Court further orders that this judgment may be augmented for interest, attorney fees and costs incurred in obtaining and collecting the judgment as permitted by the Utah Rules of Civil Procedure.

Approved as to form:

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**Mark Christopher Tracy**

– Court’s Signature and Date Appear at Top of First Page of this Document –

## EXHIBIT B

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

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MARK CHRISTOPHER TRACY,	)	
	)	
Plaintiff,	)	Case No. 200905074
	)	
vs.	)	STATUS HEARING
	)	
SIMPLIFI COMPANY, ERIC	)	
HAWKES and JENNIFER HAWKES,	)	
	)	
Defendants.	)	

-o0o-

BE IT REMEMBERED that on the 10th day of June, 2021, commencing at the hour of 8:56 a.m., the above-entitled matter came on for hearing before the HONORABLE MARK KOURIS, sitting as Judge in the above-named Court for the purpose of this cause and that the following proceedings were had.

-o0o-

THE COURT: Mr. Cook, response?

MR. COOK: Your Honor, there was an amended--I mean, you--the Court issued a judgment, we filed an amended judgment, and it was entered by the Court. So I'm not--I'm a little confused about what he's--

MR. TRACY: The amended judgment was--was signed by the Court? I never received it.

MR. COOK: I believe the amended judgment was signed by the Court.

MR. TRACY: I don't believe it--

MR. COOK: I thought that's what you were objecting to.

MR. TRACY: No. No. I--I objected to the proposed amended judgment. I never received a copy of it. If the amended judgment's been signed by the Court, then--then I can go ahead and appeal that immediately. Again, I--to amended judgment that's already--that's already been appealed, I don't believe that the Court would have jurisdiction. That's exactly why I filed this.

Again, if the Court signed the--

THE COURT: Let's see, it looks like--I see something here, Mr. Cook, if we're representing--if we're looking at the same document, I see something here that was signed on April 30th, 2--2021. And that's an amended judgment.

There's an amendment after that one?

MR. TRACY: Yeah, there's an amended judgment, I--so there should be two judgments here; the original judgment and the second judgment, the amended judgment finding me to be a vexatious litigant.

THE COURT: Right.

MR. TRACY: I have never received a copy that's signed by the Court.

THE COURT: That was signed--

MR. TRACY: (Inaudible)

THE COURT: --that was signed by--on April 30th, 2021, and it's titled amended judgment and it talks about the vexatious litigant portion as well as the actual judgment of the \$9,000.

MR. TRACY: And that's the (inaudible) and that amended judgment is the plan, the 58 Alpha, 'cause you had to--again, I--it--was there a sepa--separate judgment that was signed for that, your Honor? 'Cause again, I did not--

THE COURT: A separate judgment?

What I just read to you is what was signed. So I--I'm not sure what you're asking me. I don't understand where you're going here.

MR. TRACY: There was--there was the amended--so there was a memorandum order finding me to be a vexatious litigant and then a--a (sic) amended judgment that's separate

from that; correct, your Honor?

THE COURT: Yes, it's an amended--yes, it's titled an amended judgment, so the answer, I guess to your question is yes.

MR. TRACY Perfect, your Honor. If I could--if I could have Mr. Cook forward it, I did not receive that, which is exactly why I filed the objection to that because it was again, signed by the Court, the original judgment is already pending with the Utah Court of Appeals.

So if I could have a--a copy of that, (inaudible) really appreciate it, then I can expedite appellate proceedings for that.

THE COURT: That's fine. And the--the appellate proceeding as well is also under the vexatious litigant portion. You understand that as well; right?

MR. TRACY: I understand that, yes.

THE COURT: Okay.

MR. TRACY: (Inaudible)

THE COURT: All right. Very good. Well, it sounds like we're set then. All right.

If that's the case then, we'll adjourn. Thanks, everyone and we'll take care of what needs to be taken care of.

MR. TRACY: I do appreciate your time, your Honor.

THE COURT: All right.

MR. COOK: Thank you, your Honor.

(Whereupon, this hearing was concluded.)

## EXHIBIT C



FILED  
UTAH APPELLATE COURTS

NOV - 2 2021

IN THE UTAH COURT OF APPEALS

<p>MARK CHRISTOPHER TRACY, D/B/A EMIGRATION CANYON HOMEOWNERS ASSOCIATION, Petitioner, <i>v.</i> THE HONORABLE MARK S. KOURIS, SIMPLIFI COMPANY, JENNIFER HAKWES, AND ERIC HAWKES, Respondents.</p>	<p>ORDER</p> <p>Case No. 20210743-CA</p>
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Before Judges Orme, Pohlman, and Tenny.

This matter is before the court on Mark Christopher Tracy's Petition for Extraordinary Relief and Motion for an Emergency Stay. Extraordinary relief is proper only when the petitioner has "'no other plain, speedy and adequate remedy'" at law. *State v. Stirba*, 972 P.2d 918, 921 (Utah Ct. App. 1998) (quoting Utah R. Civ. P. 65B(a)); *see also* Utah R. App. P. 19(b)(4) (requiring petitioner to explain in his petition why no other plain, speedy or adequate remedy exists). Further, this court's decision to grant extraordinary relief is entirely discretionary. *See Newman v. Behrens*, 1999 UT App 90, ¶ 10, 980 P.2d 1191. Tracy has failed to demonstrate that this court should exercise its discretion to grant him extraordinary relief. While the district court rejected Tracy's notice of appeal for failing to comply with the requirements imposed on a vexatious litigant, that notice of appeal, if accepted, would have been untimely as it was filed more than thirty days after entry of the final order Tracy seeks to have reviewed. He is now using this petition as a substitute for a direct appeal, which is not allowed. *See Gilbert v. Maughan*, 2016 UT 31, ¶ 15, 379 P.3d 1263 (stating that a petition for extraordinary relief "is not a proceeding for general review, and cannot be used as such"). Furthermore, Tracy has not demonstrated that this court should exercise its discretion to grant him the remedies he requests.

IT IS HEREBY ORDERED that the petition for extraordinary relief is denied.<sup>1</sup>

Dated this 2nd day of November, 2021.

FOR THE COURT:

  
\_\_\_\_\_  
Jill M. Pohlman, Judge

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<sup>1</sup> Because we are denying the petition for extraordinary relief, the motion for an emergency stay is also necessarily denied.

## EXHIBIT D

FILED  
UTAH APPELLATE COURTS

FEB 10 2022

IN THE UTAH COURT OF APPEALS

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	)	
	)	
MARK CHRISTOPHER TRACY,	)	REMITTITUR
Petitioner,	)	
v.	)	Appellate Case No. 20210743-CA
THE HONORABLE MARK S. KOURIS,	)	
Respondent.	)	THIRD DISTRICT, SALT LAKE
	)	Trial Court Case No.: 200905074
	)	
	)	

The above-entitled case was submitted to the court for decision and the decision has been issued.

Decision Issued: November 2, 2022

Notice of Remittitur Issued: February 10, 2022

*Lisa A. Collins*

\_\_\_\_\_  
Lisa A. Collins  
Clerk of Court

By: *Hannah Hunter*  
Hannah Hunter  
Judicial Assistant



Date: Feb. 10, 2022