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Pro se Petitioner

IN THE THIRD DISTRICT COURT OF THE STATE OF UTAH

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.

**OBJECTION TO REPLY
MEMORANUDM**

AND

**MEMORADUM OPPOSSING ALTERED
MOTION FOR ATTORNEY FEES**

Case No.: 200905123

Judge: Robert P. Faust

Under Rule 7 (d) and (f) of Utah Rules of Civil Procedure (“URCP”), Mark Christopher Tracy (“Mr. Tracy”) dba Emigration Canyon Home Owners Association (“The ECHO-Association”) hereby submits this Objection to the Reply Memorandum and Memorandum Opposing the Altered Motion for Attorney Fees filed by the Simplifi Company (“Simplifi”), Eric Hawkes (“Mr. Hawkes”) and Jennifer Hawkes (“Ms. Hawkes”)(collectively “Simplifi Respondents”).

Simplifi Respondents not only repeat issues already identified in the original motion to dismiss the petition for judicial review for the denied request for records related to lead

contamination of a public drinking water system in violation of Rule 7(d) URCP, but the Simplifi Respondents' also fail to properly cite evidence on record with the Court, and have substantially altered the original motion to award attorney fees and costs to Emigration Improvement District ("EID")¹ and now request the Court award attorney fees and costs to the Simplifi Respondents² thereby necessitating the combined objection and opposing memorandum.

Although repetitive and substantially altered in form, the additional arguments of the Reply Memorandum fail.

I. ARGUMENT

Under Rule 7 (e) URCP, Simplifi Respondents' Reply Memorandum "must be limited to new matters raised in the memorandum opposing the motion" and must provide a "concise statement of the new matters raised."

In the original motion to dismiss the present litigation commenced under the Government Records Access and Records Management Act ("GRAMA"), Simplifi Respondents contend that the appeal to the Chief Administrative Officer was limited "only" to the denial of an expediated response and not the *de facto* denial of the expediated GRAMA request in its entirety.³ To further bolster this assertion, in the Reply Memorandum, Simplifi Respondents' through Utah Attorney Cook^{4,5} cite the first paragraph of the appeal to the Chief Administrative Officer from July 9, 2020

¹ Simplifi Respondents' Motion to Dismiss Petition for Judicial Review and Attorney Fees at page 5.

² Simplifi Respondents' Reply Memorandum at page 4 (but then contradicted at page 5 in an apparent clerical error).

³ Simplifi Respondents' Motion to Dismiss Petition for Judicial Review and Attorney Fees at page 8 *et seq.*

⁴ It appears that Utah Attorney Cook failed to inform the Court that the decision to decline prosecution for possible violations of Utah Rules of Professional Conduct ("URPC") was appealed on June 29, 2020 and is currently pending with the Chair of the Ethics and Disciplinary Committee of the Utah State Supreme Court.

⁵ Mr. Tracy notes that in the present action, it appears that Utah Attorney Cook is both representing EID as a public entity and the Simplifi Respondents as private individuals and a private corporation as "independent contractors" of EID. By definition an independent contractor is not "bound" by instructions in terms of release of documents and/or entry into the private home of Mr. and Mrs. Hawkes. See <https://www.workerclassification.com/State-Resources/Utah>. Where there is a significant and not "merely trivial" violation of the rules of

but conspicuously omit the remainder of the document failing to identify the matter as “newly raised.”⁶

The entire section of the Appeal however records:

Relief Sought / Grounds for Appeal: Expedited Response for the production of laboratory test results for lead contamination will be published on The ECHO-Association website under the rubric “Water Contamination” of the EID public water system No. 18143 (see https://echo-association.com/?page_id=4972) and therefore benefits the public under Utah Code sec. 63G-2-204 (5) justifying an expedited request under subsection (4)(a).

Moreover, we believe that lead contamination may be related to the groundwater mining of the Freeze Creek Aquifer as identified in the 2000 Barnett-Yonkee Study and the improper disposal of construction waste by EID Advisory Committee Chairman R. Steve Creamer (see https://echo-association.com/?page_id=3310; see also https://echo-association.com/?page_id=1474).

...

Also, please note that it appears that the EID water system operator Aqua Environmental Services has not transmitted the lead contamination test results to the Utah Department of Environmental Quality as purported by you below. (See water.link.gov report from July 9, 2020): As such we have requested copies of the actual lab reports believed to have been created by Chemtech Ford Laboratories as identified in our original GRAMA request.

We await the decision of the Chief Administrative Officer (emphasis in original).⁷

Next, Simplifi Respondents first argued that Mrs. Hawkes “has absolutely no involvement with EID”⁸ but now assert that “services [to EID] are *primarily* provided by Mr. Hawkes. Mrs. Hawkes has no direct involvement with EID”⁹ (emphasis added).

professional conduct, a party to judicial proceedings is not only authorized, but “shall” to bring the problem to the “appropriate professional authority” under Rule 8.3 (a) URPC and “is in fact obligated to bring the problem to that court’s attention”. See *In re Gopman*, 531 F.2d 262, 265 (5th Cir. 1976).

⁶ Simplifi Respondents’ Reply Memorandum at page 4.

⁷ Petition for Judicial Review at Ex. EE.

⁸ Simplifi Respondents’ Motion to Dismiss Petition for Judicial Review and Attorney Fees at footnote no. 3.

⁹ Simplifi Respondents’ Reply Memorandum at footnote no. 1.

Although now altered in the Reply Memorandum without explanation, Simplifi Respondents' original and modified contentions are demonstrably false.

Mrs. Hawkes is currently the Deputy Mayor of the Emigration Canyon Metro Township and is currently an officer, director and registered agent of Simplifi.¹⁰ This dual role of public official of the Emigration Canyon Township with zoning authority under the "Community Preservation Act" and director of a private company with substantial economic interest in providing "management services" to a Water District in Emigration Canyon is both relevant and significant.

Specially, under Utah Code Ann. § 63G-2-801(3)(a) a "public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a Class B misdemeanor."

Due to the substantial danger that lead contamination poses to public health and safety, R309-105-17 of the Utah Administrative Code under "Record Maintenance" mandates:

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 *shall retain on its premises* original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Director determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years (emphasis added).

As Simplifi Respondents are subject to GRAMA provisions as an "office [of a public entity] funded to carry out the people's business" under Utah Code Ann. § 63G-2-103(11)(b),¹¹ it appears that under Utah Code Ann. § 76-1-106 both Mr. and Mrs. Hawkes are also subject to criminal penalty under § 63G-2-801(3)(a) and even more so in the case of Mrs. Hawkes as the

¹⁰ See Summary of Online Changes of the Simplifi Company dated 7/22/2012, attached as **Exhibit A**; see also and Articles of Incorporation of the Simplifi Company dated "29 7, 2009" [sic], attached as **Exhibit B**.

¹¹ Opposition Memorandum at page 3 *et seq.*

Deputy Mayor in light of Mrs. Hawkes' conflicting interest as a public official and private economic interest in the continued profitability of Simplifi.¹²

Moreover, as all requested public records must be maintained at the private residence of Mrs. Hawkes under physical custody of both Mr. and Mrs. Hawkes, Mrs. Hawkes is a necessary party to the present litigation under Rule 19 (a) URCP.

Lastly, in support of a premature motion for an award of attorney fees and costs, it appears that the Simplifi Respondents have now altered their original motion to award EID fees and costs of the present litigation without explanation and now request the Court award Simplifi Respondents attorney fees and costs¹³ instead of EID.

Once again, Simplifi Respondents through Utah Attorney Cook cite a decision subsequently vacated by the United States Court of Appeal for the 10th Circuit to bolster the argument that the present action was "not brought in good faith."¹⁴ and "included a bunch of allegations and exhibits that are totally irrelevant to the pending action."¹⁵

We disagree.

As the case against Mr. Hawkes *et al.* currently pending in federal district court will be decided under the statutory authority of the federal False Claims Act and the *procedural* statute of limitations under the United States Code, the *merits* of the present litigation will be determined solely by the Utah State Code, and the express rules of the Utah Administrative Code as related to lead contamination of a public drinking water system operated by the Simplifi Respondents.

¹² As previous cited, EID trustees failed to convene a single trustee meeting during the time frame in question, and Mr. Hawkes failed to identify the issue for open and public discussion during the August 6, 2020 EID trustee meeting. *See* Opposition Memorandum at paragraphs 43 and 45.

¹³ Simplifi Respondents' Reply Memorandum at page 5 *et seq.*

¹⁴ Simplifi Respondents' Motion to Dismiss and Motion for Attorney Fees at page 11 *et seq.*

¹⁵ Simplifi Respondents' Reply Memorandum at page 5.

II. CONCLUSION

For the foregoing reasons, Mr. Tracy respectfully requests the Court reject the additional arguments presented in the Simplifi Respondents' Reply Memorandum and deny the motion to dismiss The ECHO-Association's petition for judicial review of the denied request for public documents related to lead contamination of a public drinking-water system and likewise deny Simplifi Respondents' now altered motion to award attorney fee and costs to Simplifi Respondents instead of EID.

DATED this 2nd day of September, 2020.

MARK CHRISTOPHER TRACY dba
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

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

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2020, a true and correct copy of the foregoing **OBJECTION TO REPLY MEMORANDUM AND MEMORANDUM OPPOSING ALTERED MOTION FOR ATTORNEY FEES** was sent via electronic mail to the following counsel of record:

Jeremy R. Cook
jcook@ck.law
Tim Nielsen
tnielsen@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



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code

Summary of Online Changes



Business Name: SIMPLIFI COMPANY

Entity number: 7416980-0142

Date of Filing: 07/22/2012

Registered Principals:

New Information (added or updated)

NameJENNIFER HAWKES
PositionOfficer
Address271 Margarethe Lane
Salt Lake City, UT 84108

Old Information (removed or updated)

NameJennifer Hawkes
PositionOfficer
Address4920 Emigration Canyon
Salt Lake City, UT 84108

Jennifer Hawkes 07/22/2012

Under GRAMA {63-2-201}, all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.

EXHIBIT B

Profit Corporation
ARTICLES OF INCORPORATION
OF
SIMPLIFI Company

The undersigned persons, acting as incorporators under the Utah Revised Business Corporation Act, adopt the following Articles of Incorporation for such Corporation:

Article I
Corporate Name

The name of the corporation is SIMPLIFI Company

Article II
Purpose

Office/ Managerial responsibilities to operate businesses, manage assets, property, and equipment

The corporation shall further have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be organized under the Utah Revised Business Corporation Act and any amendments thereto.

Article III
Capital Stock

Class of Shares	Number of Shares
Common	50
Preferred	150

Article IV
Name and Address of Registered Agent

The address of the corporation's initial registered office shall be:

4920 Emigration Canyon
Salt Lake City, UT 84108

The corporation's initial registered agent at such address shall be:

Jennifer Hawkes

I hereby acknowledge and accept appointment as corporation registered agent:

Jennifer Hawkes

Signature

Article V
Names and Addresses of Incorporators

The name(s) and address(es) of the incorporators are:

Incorporator #1
Eric Lee Hawkes
4920 Emigration Canyon
Salt Lake City, UT 84108
Eric Lee Hawkes
Signature

In Witness Whereof I / We have executed these Articles of Incorporation on 29 7, 2009 and say:

That they are all incorporators herein; that they have read the above and foregoing Articles of Incorporation; know the contents thereof and that the same is true to the best of their knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters they believe to be true.

Article VI
Names and Addresses of Officers and Directors

The name(s) and address(es) of each officer and director:

Officer #1
Jennifer Hawkes
4920 Emigration Canyon
Salt Lake City, UT 84108
Jennifer Hawkes
Signature

Director #1
Jennifer Hawkes
4920 Emigration Canyon
Salt Lake City, UT 84108
Jennifer Hawkes
Signature

Director #2
Eric Lee Hawkes
4920 Emigration Canyon
Salt Lake City, UT 84108
Eric Lee Hawkes
Signature

Article VII
Principal Place of Business

The street address of the principal place of the business is:

4920 Emigration Canyon
Salt Lake City, UT, 84108

Article VIII

The duration of the corporation shall be perpetual



Under GRAMA {63-2-201}, all registration information maintained by the Division is classified as public record. For confidentiality purposes, the business entity physical address may be provided rather than the residential or private address of any individual affiliated with the entity.