

Jeremy R. Cook (10325)
COHNE KINGHORN, P.C.
111 E. Broadway, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378
Email: jcook@ck.law

Attorneys for Emigration Improvement District

IN THE UTAH COURT OF APPEALS

EMIGRATION CANYON HOME OWNERS
ASSOCIATION, a Utah Corporation,

Appellant

vs.

KENT L. JONES, Division Director of the
Utah State Division of Water Rights, and
EMIGRATION IMPROVEMENT
DISTRICT, a special service district of the
state of Utah,

Appellees

**MOTION TO SUBSTITUTE
PARTY AND TO DISMISS APPEAL**

Case No. 20200295-CA
Trial Court Case No. 190901675

Eric Hawkes, Jennifer Hawkes and Simplifi Company (the “**Moving Parties**”), through counsel and pursuant to Rules 23 and 38(c), Utah Rules of Appellate Procedure, move the Court for an Order, first substituting Moving Parties in place of the Appellant, Emigration Canyon Home Owners Association (“**ECHO**”) and then dismissing the appeal, with prejudice.

STATEMENT OF RELIEF SOUGHT

Moving Parties seek an order substituting them as the appellant herein, and then dismissing the appeal with prejudice.

STATEMENT OF FACTUAL GROUNDS

The factual grounds for this motion are as follows:

1. Paragraph 1 of the Petition states: Petitioner, the ECHO-Association is registered with the Utah Department of Commerce, is a dba entity of Mark Christopher Tracy and is the owner of water-right no. 57-8547 (a16183).

2. On July 26, 2019, Mr. Tracy, through his former legal counsel, filed a *Memorandum in Opposition to Motion to Dismiss*, p. 12, in which Mr. Tracy stated: “The District next argues that the named plaintiff, Emigration Canyon Homeowners Association, is not a natural person and therefore cannot own a water right. This argument misunderstands the nature of a dba. When a person or entity transact business under a dba, the person or entity is transacting business on its own behalf. The complaint alleges that the Emigration Canyon Homeowners Association is a dba of Mr. Tracy.” *See Emigration Canyon Home Owners Association v. Kent Jones, et al.* Case No. 190904621 (emphasis added).

3. On February 10, 2021, Judge Kouris issued a *Memorandum Decision and Order* granting Moving Parties’ *Motion to Dismiss* and awarding Moving Parties’ attorney fees. *See Mark Christopher Tracy d/b/a Emigration Canyon Home Owners Association v. Simplifi Company Jennifer Hawkes and Eric Hawkes, Case No. 200905074*, at 9 (the “**Kouris Case**”).

4. Judgment was entered by Judge Kouris in favor of Moving Parties for their award of attorney fees on February 24, 2021. *See id.*

5. On July 9, 2021, Moving Parties filed a writ of execution to execute on numerous causes of action, including the instant cause of action (this “**Action**”), which was listed in the *Application for Writ of Execution* as follows:

EMIGRATION CANYON HOME OWNERS ASSOCIATION, a Utah Corporation,
Petitioner,

vs.

KENT L. JONES, Division Director of the Utah State Division of Water Rights,
and EMIGRATION IMPROVEMENT DISTRICT, a special service district of the state of Utah,
Respondents.

Case No. 190901675

And all pending appeals including:

Appellate Case No. 20200295-CA

A copy of the *Application for Writ of Execution* is attached hereto as Exhibit A.

6. On the same day, Judge Kouris issued the *Writ of Execution*, which included the Action. A copy of the *Writ of Execution* is attached hereto as Exhibit B.

7. On November 2, 2021, the Utah Court of Appeals issued an *Order* denying Mr. Tracy’s *Petition for Extraordinary Relief* and *Motion for Emergency Stay*.

8. On November 4, 2021, Moving Parties purchased the Action at the Sheriff’s Sale for the amount of \$1,500. A copy of the *Certificate of Sale* is attached hereto as Exhibit C.

9. On November 5, 2021, the Utah Court of Appeals issued an *Order* denying Mr. Tracy’s *Request for Rehearing* and *Second Motion for Emergency Relief*.

ARGUMENT

Utah R. App. P. 38(c) allows for substitution of a party “upon good cause shown.” Moving Parties purchased the Action at the sheriff’s sale to satisfy the judgment for attorneys’ fees, and are now the owners of the Action.

No longer the owner of the right to appeal, ECHO lacks standing to pursue the appeal. See *RMA Ventures Calif. v. SunAmerica Life Ins. Co.*, 576 F.3d 1070, 1075 (10th Cir., 2009), citing *Applied Med. Techs., Inc. v. Eames*, 2002 UT 18, 44 P.3d 699, 701-02. Under Utah law, once the rights of a litigant have been sold,

a new party steps into the shoes of the former plaintiff, and the claims remain cognizable [citation omitted], but the sale cuts off the former plaintiff’s right to pursue those claims. [citations omitted].

Applied Med. Techs., Inc. v. Eames, 2002 UT 18, ¶ 17, 44 P.3d 699, 702-03.

Thus, good cause exists to substitute Moving Parties, the new owner of the right to appeal, as the appellant herein.

Utah R. App. P. 37(b) allows an appellant to ask the Court to dismiss the appeal. The rule indicates that a stipulation of the parties must be filed with the motion “if all parties to an appeal...agree that dismissal is appropriate.” Moving Parties and Emigration Improvement District through their undersigned counsel, agree that dismissal with prejudice, without an award of costs or fees, is appropriate once the substitution is ordered. Appellee the Director of the Utah Division of Water Rights¹ takes no position on the Moving Parties’ motion to substitute. But if

¹ The Utah State Engineer is a public officer and Director of the Division of Water Rights. Kent L. Jones was the State Engineer when this case began, but he has since retired. Teresa Wilhelmsen is the current State Engineer. The State Engineer is a required party under Utah Code § 73-3-14(2).

the Court orders such a substitution, the Director of the Utah Division of Water Rights stipulates to a dismissal of the appeal with prejudice, with each party to bear its own fees and costs.

For the foregoing reasons, Moving Parties respectfully requests the Court for an order substituting it as the appellant herein, and then dismissing the appeal with prejudice.

DATED this 22nd day of November, 2021.

COHNE KINGHORN, P.C.

/s/ Jeremy R. Cook
Jeremy R. Cook
Attorneys for Moving Parties

Stipulation for Motion to Dismiss Only

EMIGRATION IMPROVEMENT DISTRICT

/s/ Jeremy R. Cook
Jeremy R. Cook
Attorney for Emigration Improvement District

DIRECTOR OF THE DIVISION OF WATER RIGHTS

Sean D. Reyes
Utah Attorney General

/s/ Erin T. Middleton (with permission)
Erin T. Middleton
Julie I. Valdes
Norman K. Johnson
Attorneys for Defendant and Appellee the Director of the Division of Water Rights

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November 2021, I caused to be delivered the foregoing **MOTION TO SUBSTITUTE PARTY AND TO DISMISS APPEAL** by electronic mail to the following:

Andrew D. Fox
8915 South 700 East, Suite 202
Sandy, Utah 84070
fox@stavroslaw.com
Attorney for Mark Christopher Tracy
Db a Emigration Canyon Home Owners Association

Erin T. Middleton
Assistant Solicitor General
Sean D. Reyes
Utah Attorney General
160 East 300 South, Fifth Floor
Salt Lake City, Utah 84114-0858
emiddleton@agutah.gov
Attorneys for Defendant and Appellee
the Director of the Division of Water Rights

/s/ Jeremy R. Cook

Jeremy R. Cook

E X H I B I T

A

Jeremy R. Cook, Esq (10325)
COHNE KINGHORN, P.C.
111 East Broadway 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Email: jcook@ck.law
Attorney for Respondents

Third Judicial District Salt Lake County

Court Address: 450 S. State Street, Salt Lake City, Utah 84111

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.

Application for Writ of Execution
(Utah Rule of Civil Procedure 64E)

Case Number: 200905074

Judge: Kouris

-
1. On February 24, 2021 judgment against petitioner Mark Christopher Tracy, also referred to as the judgment debtor, was entered in the amount of \$5,758.50. On April 30, 2021, amended judgment in the amount of \$9,029.00 was entered against petitioner Mark Christopher Tracy.

2. The amount due is:

Amount of original judgment	\$ 9,029.00
Post-judgment interest www.utcourts.gov/resources/intrates/interestrates.htm	\$
Cost to file Application for Writ of Execution	\$ 50.00

Cost to serve this writ	\$	
Filing and service fees for other writs (Attach receipts.)	\$	136.00
Subtotal	\$	9,215.00
Less payments made	\$	0.00
Total amount due	\$	9,215.00

3. The judgment debtor is:

Name	Mark Christopher Tracy
Address	1160 E. Buchnell Drive Sandy, Utah 84094

4. I request that a Writ of Execution be issued directing the sheriff or constable to seize and sell enough of the judgment debtor's property described below to satisfy the judgment. I request that the Writ be served on the debtor and on the people named in paragraphs 5 and 6, along with the attached forms, in the manner indicated in the Writ of Execution.

5. I request that the Writ of Execution direct the sheriff or constable to seize and sell the debtor's following **personal** property:

Description	Location	Estimated value
<p>a. Cause of Action –</p> <p>Appeal in the Tenth Circuit Court of Appeals for the following matter:</p> <p>UNITED STATES OF AMERICA Ex. Rel. Mark Christopher Tracy</p> <p>Plaintiff,</p> <p>vs.</p> <p>EMIGRATION IMPROVEMENT DISTRICT, a Utah Special Service District; et al.</p> <p>Tenth Circuit Case No. 21-4059</p>		\$ 100

Description	Location	Estimated value
Name & address of anyone other than debtor claiming an interest:	Price Parkinson & Kerr, PLLC 5742 W. Harold Gatty Dr. Suite 101 Salt Lake City, UT 84116	
<p>b. Cause of Action –</p> <p>EMIGRATION CANYON HOME OWNERS ASSOCIATION, a Utah Corporation,</p> <p>Petitioner,</p> <p>vs.</p> <p>KENT L. JONES, Division Director of the Utah State Division of Water Rights, and EMIGRATION IMPROVEMENT DISTRICT, a special service district of the state of Utah,</p> <p>Respondents.</p> <p>Case No. 190901675</p> <p>And all pending appeals including:</p> <p>Appellate Case No. 20200295-CA</p>		\$100
Name & address of anyone other than debtor claiming an interest:	None	
<p>c. Cause of Action –</p> <p>Mark Christopher Tracy</p> <p>v.</p> <p>Vail Resorts Inc. dba Park City Mountain Resort</p> <p>Case No. 2:21 cv 00250</p>		\$100
Name & address of anyone other than debtor claiming an interest:	None	
<p>d. Cause of Action –</p> <p>MARK CHRISTOPHER TRACY, DBA EMIGRATION CANYON HOME OWNERS ASSOCIATION,</p> <p>Petitioner,</p>		\$100

Description	Location	Estimated value
<p>vs.</p> <p>SIMPLIFI COMPANY, a Utah Corporation, ERIC HAWKES, an individual, and JENNIFER HAWKES, an individual</p> <p>Respondents.</p> <p>Case No. 200905123</p> <p>And all pending appeals including:</p> <p>Appellate Case No. 20200705-CA.</p>		
<p>Name & address of anyone other than debtor claiming an interest:</p>	None	
<p>e. Cause of Action –</p> <p>All pending appeals from:</p> <p>MARK CHRISTOPHER TRACY, DBA EMIGRATION CANYON HOME OWNERS ASSOCIATION,</p> <p>Petitioner,</p> <p>vs.</p> <p>SIMPLIFI COMPANY, a Utah Corporation, ERIC HAWKES, an individual, and JENNIFER HAWKES, an individual</p> <p>Respondents.</p> <p>Case No. 200905074</p> <p>Including, but not limited to:</p> <p>Appellate Case No. 20210227-CA</p>		\$100
<p>Name & address of anyone other than debtor claiming an interest:</p>	None	

6. I request that the Writ of Execution direct the sheriff to seize and sell the debtor's following **real property** (real estate).

Property description or address	Estimated value	Name and address of anyone other than debtor claiming an interest

Water Right 57-8947 (a16183)	\$ 100	None
------------------------------	--------	------

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____
Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

7/9/2021
Date

Signature ► /s/ Jeremy R. Cook
Printed Name Jeremy R. Cook, Esq.

Certificate of Service

I certify that I filed with the court and am serving a copy of this Application for Writ of Execution on the following people by US Mail and Email to the addresses below:

Mark Christopher Tracy
dba Emigration Canyon Home Owners Association
1160 E. Buchnell Dr.
Sandy, Utah 84094
m.tracy@echo-association.com
MARK.TRACY72@gmail.com

7/9/2021

Date

Signature ► /s/ Jeremy R. Cook

Printed Name Jeremy R. Cook, Esq.

EXHIBIT
B

The Order of the Court is stated below:

Dated: July 09, 2021
03:26:34 PM

/s/ KATHERINE CARLSON
District Court Clerk



Jeremy R. Cook, Esq (10325)
COHNE KINGHORN, P.C.
111 East Broadway 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Email: jcook@ck.law
Attorney for Respondents

Third Judicial District Salt Lake County

Court Address: 450 S. State Street, Salt Lake City, Utah 84111

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.

Writ of Execution

Case Number: 200905074

Judge: Kouris

To the Sheriff of Salt Lake County:

1. A judgment has been entered against the judgment debtor. After calculation of interest, costs and payments, the judgment debtor owes \$ 9,215.00.
2. You are directed to seize and sell enough of the judgment debtor's non-exempt property described in paragraphs 5 and 6 of the Application for Writ of Execution to satisfy that amount.

3. In accordance with URCP Rule 64(a)(10), you are directed to serve this Writ and all attachments on the plaintiff and judgment debtor **Mark Christopher Tracy, dba Emigration Canyon Home Owners Association** in accordance with URCP Rule 5(b)(3), and serve this Writ and all attachments on potential interested party **Price Parkinson & Kerr, PLLC** in accordance with URCP Rule (4)(d).
4. You are to return this Writ within 10 days after receiving it, with a signed account of your actions in executing this Writ.

***** EXECUTED AND ENTERED BY THE COURT AS INDICATED BY THE STAMP
AND SEAL AT THE TOP OF THIS DOCUMENT *****



RETURN OF SERVICE

STATE OF UTAH }
 COUNTY OF SALT LAKE } s.s. SHERIFF'S OFFICE

Original
 Amended
 Duplicate

1) SERVED Price Parkinson & Kerr Defendant Plaintiff
 Witness Garnishee (3rd Party) Defendant Plaintiff Other _____

2) DATE RECEIVED 7-25-2021 3) DATE SERVED 7-28-2021

4) PROCESS: Summons Complaint Criminal Summons Complaint for Forfeiture Pretrial Protective Order
 Verified Complaint Order to Show Cause Supplemental Order Small Claims – Order & Affidavit
 Order Garnishment Notice Subpoena Affidavit Motion Petition Decree
 Notice of Hearing Information Acceptance of Service Statement Certificate Exhibits
 Declaration NAA GRAMA Request Verified Petition
 Other Application/Request for hearing

5) TYPE OF SERVICE Personal Left at residence with _____
 _____ (Name and Relationship)
 _____ at usual place of abode with a person of suitable age and discretion there residing.
 Posted Company or Corporation Jason Kerr Attorney
 _____ (Name and Title)
 Other _____

6) LOCATION OF SERVICE 5742 W Harold Grady Dr. #101 Home Business
 Other _____ (Specify: Jail, Hospital, etc.)

7) I further certify that at the time of service, on the copy served, that I endorsed the date, signed my name and official title thereto.
 8) I tendered a fee of \$ _____ and took receipt which is hereto attached.

ROSIE RIVERA, Sheriff of Salt Lake County, State of Utah

DOCKET # 21-6729
 PROCESSED BY: GR
 SHERIFF'S FEES:
 Service: \$ 20.00
 Mileage: \$ 90.00
 Total: \$ 100.00

I Certify that the forgoing is true and correct and that this Certificate
 is executed on (date) 7-28-2021

By [Signature]
 (Police Officer / Deputy Sheriff)

EXHIBIT
C

CERTIFICATE OF SALE

EXECUTION-PERSONAL PROPERTY

MARK CHRISTOPHER TRACY, DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

Petitioner

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

Respondents

Judgment Rendered
February 24, 2021
Execution Issued
July 9, 2021
Property Sold
November 4, 2021
Civil No. 200905074

I do hereby certify that under and by virtue of an Execution issued out of the District Court, Salt Lake County, State of Utah, in a certain action lately pending in said Court at the suit of Mark Christopher Tracy, DBA Emigration Canton Home Owners Association, Plaintiff, against SIMPLIFI COMPANY, a Utah Corporation, ERIC HAWKES, an individual, and JENNIFER HAWKES, an individual, Defendants, attested on the 24th of February 2021, by which I was commanded to make the sum of \$9,215.00, with interest, costs, Sheriff's fees, and payments made amounting in all to the sum of \$9,623.86, to satisfy judgment in said action, out of the personal property of said Petitioner, if sufficient personal property could be found, all as more fully appears by the said Writ, reference thereto being hereby made.

All right, title, and interest which the debtor had in and to such property on the day the execution or attachment was levied, and any right, title, and interest since acquired, is transferred to the purchaser.

I have caused on the 4th of November 2021, at Noon, of said day at 450 S State Street Salt Lake County, Utah, duly sold at public auction, according to law, and after due and legal notice, to Simplifi Company, Eric Hawkes and Jennifer Hawkes for the sum of \$4,000.00, Credit bid, which was the highest bid made and the whole price paid for all the right, title, claim and interest, owned by said Plaintiff, to said property described as follows, to-wit:

a. Cause of Action-

Appeal in the Tenth Circuit Court of Appeals for the following matter:
UNITED STATE OF AMERICA
Ex. Rel. Mark Christopher Tracy

Plaintiff,

EMIGRATION IMPROVEMENT DISTRICT, a Utah Special Service District; et al.
Tenth Circuit Case No. 21-4059

b. Cause of Action-

EMIGRATION CANYON HOME OWNERS ASSOCIATION, a Utah Corporation,
Petitioner,

vs.

KENT L JONES, Division Director of the Utah State Division of Water Rights, and
EMIGRATION IMPROVEMENT DISTRICT, a special service district of the state of
Utah,
Respondents.

Case No. 190901675

And all pending appeals including:
Appellate Case No. 20200295-CA

c. Cause of Action-

Mark Christopher Tracy

v.

Vail Resorts Inc. dba Park City Mountain Resort
Case No. 2:21 cv 00250

d. Cause of Action-

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.

Case No. 200905123

And all pending appeals including:
Appellate Case No. 20200705-CA

e. Cause of Action-
All pending appeals from:

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.

Case No. 200905074

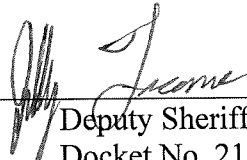
Including, but not limited to:

Appellate Case No. 20210227-CA

DATED at Salt Lake City, Utah, November 10, 2021

ROSIE RIVERA, Sheriff of Salt Lake County, State of Utah

By


Deputy Sheriff

Docket No. 21-8752

