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4-18-1979

### Burrows v. Greene

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(18) years may be obtained "...by delivering a copy or copies thereof to him personally, ..., or at his usual place of business with his stenographer, bookkeeper, or chief clerk; or by delivering a copy to an agent authorized by appointment or by law to receive service of process;". In the instant case the return of service indicates that service was had personally on one Gary Lavoie, Petitioner herein, and that the service which allegedly brings the Defendant, John Burrows, within the jurisdiction of the Court was also had on said Gary Lavoie. Gary Lavoie is a maintenance man who does not and has never occupied a position as stenographer, bookkeeper, or chief clerk. Further, Gary Lavoie is not an agent authorized by appointment. Gary Lavoie testified on April 9th, 1979, to all the above facts.

The Court likewise did not obtain jurisdiction over the subject property, in that its service was not in compliance with 12-40-112. Testimony on April 9th, 1979, reflected that Gary Lavoie, the only party who was personally served with any process in this action, owns no interest in the subject property, does not live at subject property, and merely works there as an employee of Petitioner, John R. Burrows.

The Court, Hon. Richard D. Green, despite being apprised of the jurisdictional defects which existed in the instant case, failed to make any findings of jurisdictional facts prior to proceeding with its hearing on April 9th, 1979, and subsequently entering judgment thereon. The Court was specifically made aware of the defects, yet refused to consider them due to a strained, inequitable, and arbitrary interpretation and enforcement of a local Court rule. That the Court must find jurisdictional facts prior to proceeding to trial is also undisputed in Colorado. Guthrie v. Barda et al., 188 Colo. 124, 533 P.2nd 487 (1975).

### III. CONCLUSION

Without the granting of the requested Writ of Prohibition, mandating the vacating of the void judgment entered by the District Court in and for the County of Arapahoe, and prohibiting execution thereon, the Petitioner, John R. Burrows, will be subjected to forcible removal of his personal property from his own real property. Gary Lavoie, as testimony indicated on April 9th, 1979, bears no relationship other than that of an employee, to John R. Burrows, and owns no interest in the property. If the judgment for possession is

said judgment and directing the Clerk of the Court to issue a Writ of Restitution upon the expiration of forty eight (48) hours from the date of judgment. Counsel herein renewed his Motion to Quash Service, and moved to dismiss the complaint as against the Defendant, Gary Lavoie. The Court, Hon. Richard D. Greene, refused to grant either motion and recessed the Court.

II. Circumstances Which Render It Necessary and Proper  
That the Supreme Court Exercise Its Original Jurisdiction

The District Court in and for the County of Arapahoe and State of Colorado, Hon. Richard D. Greene, has proceeded to enter judgment upon which execution will issue on the 11th day of April, 1979, even though it had no jurisdiction over the subject matter or the parties in the action before it. Execution on said judgment will result in the Clerk of the District Court in and for the County of Arapahoe issuing a Writ of Restitution directing the Sheriff for the County of Arapahoe to forcibly remove from the premises which are described in the complaint, personal property belonging to the Petitioner John R. Burrows, with a value in excess of \$12,000.00 and will do irreparable harm to the Petitioner. The Petitioners have no adequate or speedy remedy at law, and their only possible relief will be that in the nature of the issuance of a Writ of Prohibition, and or Mandamus, as the case may be.

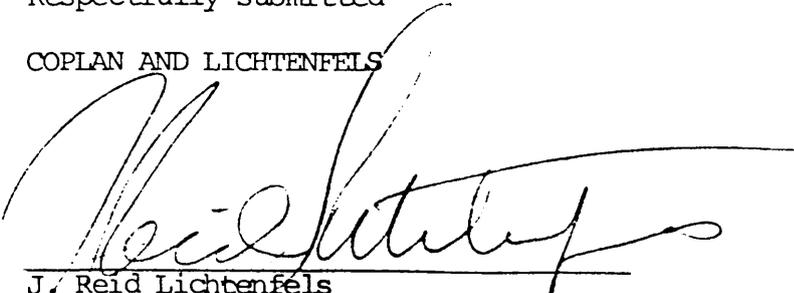
III. Type of Relief Sought

The Petitioners request this Honorable Supreme Court to issue a Writ of Prohibition requiring that the District Court in and for the County of Arapahoe, Hon. Richard D. Greene, vacate the void judgment for possession hereinbefore entered, prohibiting the Clerk of the District Court in and for the County of Arapahoe and State of Colorado from issuing any Writ of Restitution pursuant to the void judgment hereinbefore entered, and requiring the Clerk of that Court to rescind and revoke any Writ of Restitution which may have heretofore and hereafter issue. Further, Petitioners request that this Honorable Court order that Petitioner Gary Lavoie be allowed to file an answer to the Complaint, and that the alleged service of Process on John Burrows, Petitioner herein be quashed

DATED this 10<sup>th</sup> day of April, 1979.

Respectfully submitted

COPLAN AND LICHTENFELS

  
J. Reid Lichtenfels

AFFIDAVIT

I, Virginia Byrnes, being duly sworn upon my oath, depose and say:

That I have examined thoroughly the Court's file in Civil Action No. 79CV505, wherein John Burrows and Gary Lavoie are Defendants and Automatic Laundry is Plaintiff, and the attached Summonses and Returns of Service thereon are the only Summonses and Returns in said file.

Dated April 10, 1979

Signed Virginia Byrnes

The above named Virginia Byrnes, personally known to me, appeared before me this 10th day of April, 1979, and subscribed this affidavit and swore to the truth of the matters herein.

My Commission Expires March 23, 1983

Robert J. Healey  
Notary Public

MAR 30 AM: 38

IN THE DISTRICT COURT

IN AND FOR

CLERK COUNTY OF ARAPAHOE

AND STATE OF COLORADO

Civil Action No. 79-1505 Div.

AUTOMATIC LAUNDRY COMPANY,  
a Colorado corporation,

Plaintiff.....

vs.

JOHN BURROWS and GARY

LAVOIE,

Defendant.s.....

SUMMONS

THE PEOPLE OF THE STATE OF COLORADO  
TO THE ABOVE NAMED DEFENDANT...S., GREETINGS:

You are hereby summoned and required to file with the clerk an answer to the complaint within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the complaint.

If service upon you is made outside the State of Colorado, or by publication, or if a copy of the complaint be not served upon you with this summons, you are required to file your answer to the complaint within 30 days after service of this summons upon you.

Warning: If this summons does not contain the docket number of the civil action, then the complaint may not now be on file with the clerk of the court. The complaint must be filed within ten days after the summons is served, or the court will be without jurisdiction to proceed further and the action will be deemed dismissed without prejudice and without further notice. Information from the court concerning this civil action may not be available until ten days after the summons is served.

This is an action\* as more fully set forth in the attached Complaint for injunctive relief.

Dated March 27, 1979

Clerk of said Court

By Deputy Clerk

*Philip A. Rouse*  
Attorney for Plaintiff

PHILIP A. ROUSE - 118  
1000 Capitol Life Center

Address of Attorney  
Denver, CO 80203 861-1100

(Seal of Court)

\*This summons is issued pursuant to Rule 4, C.R.C.P., as amended. If the summons is published or served without a copy of the complaint, after the word "action" state the relief demanded. If body execution is sought the summons must state, "This is an action founded upon tort."

STATE OF ..... }  
County of ..... } ss.

I hereby certify that I have duly served the within summons this ..... day of .....  
....., 19 ....., by\*

STATE OF ..... COLORADO ..... }  
City and County of ..... Denver ..... } ss.

..... Kenneth B. Elazier ....., the affiant, being sworn, says:  
that affiant is over the age of eighteen years and is not a party to this action; and that affiant has duly  
served the within summons by\* handing and delivering to GARY LAVOIE personally, a  
true and correct copy of the within Summons, together with a true and correct  
copy of Complaint, Exhibit, Motion for Preliminary Injunction, and Notice fo  
Setting, attached thereto; at 8851 East Florida Avenue, County of Arapahoe, State  
of Colorado, on March 27, 1979, at 2:34 PM.

*Kenneth B. Elazier*  
.....  
Kenneth B. Elazier

Subscribed and sworn to before me this 28th day of March, 1979

My commission expires October 25, 1981.

(Seal of Notary)

*Samona Kay*  
.....  
Notary Public.

\*State date, place, and manner of service.

<b>EXPENSE OF SERVICE</b>	
Fees . . . . .	\$ 9.00
Mileage . . . . .	9.00
Total . . . . .	\$

BRADFORD PUBLISHING CO., DENVER

IN THE DISTRICT COURT IN AND FOR THE COUNTY OF ARAPAHOE, COLORADO  
MAR 30 10:38  
FILED

Sealing Stamp

FILED IN THE DISTRICT COURT ARAPAHOE COUNTY COLORADO  
79 MAR 30 AIO 38  
EILEEN [unclear] CLERK

IN THE DISTRICT COURT  
IN AND FOR  
COUNTY OF ARAPAHOE  
AND STATE OF COLORADO

Civil Action No. 79CV505 Div.

AUTOMATIC LAUNDRY COMPANY,  
a Colorado corporation,

Plaintiff.....

vs.

JOHN BURROWS and GARY  
LAVOIE,

Defendant.s.....

SUMMONS

THE PEOPLE OF THE STATE OF COLORADO  
TO THE ABOVE NAMED DEFENDANT.....S., GREETINGS:

You are hereby summoned and required to file with the clerk an answer to the complaint within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the complaint.

If service upon you is made outside the State of Colorado, or by publication, or if a copy of the complaint be not served upon you with this summons, you are required to file your answer to the complaint within 30 days after service of this summons upon you.

Warning: If this summons does not contain the docket number of the civil action, then the complaint may not now be on file with the clerk of the court. The complaint must be filed within ten days after the summons is served, or the court will be without jurisdiction to proceed further and the action will be deemed dismissed without prejudice and without further notice. Information from the court concerning this civil action may not be available until ten days after the summons is served.

This is an action\* as more fully set forth in the attached Complaint for injunctive relief.

Dated March 27, 1979

Clerk of said Court

By Deputy Clerk

*Philip A. Rouse*  
Attorney for Plaintiff

PHILIP A. ROUSE - 118  
1000 Capitol Life Center  
Address of Attorney  
Denver, CO 80203 861-1100

(Seal of Court)

\*This summons is issued pursuant to Rule 4, C.R.C.P., as amended. If the summons is published or served without a copy of the complaint, after the word "action" state the relief demanded. If body execution is sought the summons must state, "This is an action founded upon tort."

STATE OF ..... }  
County of ..... } ss.

I hereby certify that I have duly served the within summons this ..... day of .....  
....., 19....., by\*

STATE OF ..... COLORADO ..... }  
City and County of ..... Denver ..... } ss.

Kenneth B. Elazier

....., the affiant, being sworn, says:  
that affiant is over the age of eighteen years and is not a party to this action; and that affiant has duly  
served the within summons by\* handing and delivering to GARY LAVOIE personally, as  
Agent for JOHN BURROWS, as an individual, a true and correct copy of the within  
Summons, together with a true and correct copy of Complaint, Exhibit, Motion for  
Preliminary Injunction, and Notice for Setting, attached thereto; at 8851 East  
Florida Avenue, County of Arapahoe, State of Colorado, on March 27, 1979, at  
2:54 PM. Gary LaVoie being over the age of eighteen years.

*Kenneth B. Elazier*  
.....  
Kenneth B. Elazier

Subscribed and sworn to before me this 28th day of March, 1979.

My commission expires October 25, 1981.

(Seal of Notary)

*Samona K. [Signature]*  
.....  
Notary Public.

\*State date, place, and manner of service.

EXPENSE OF SERVICE

fees . . . . . \$ 9.00  
fileage . . . . .  
Total . . . . . \$ 9.00

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF ARAPAHOE  
STATE OF COLORADO

FILED

APR 9 1979

Civil Action No. 79CV505 Div. 4

EILEEN M. MANNING  
CLERK OF THE DISTRICT COURT  
ARAPAHOE COUNTY, COLO.

AUTOMATIC LAUNDRY COMPANY, )  
a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOHN BURROWS and GARY )  
LAVOIE, )  
 )  
Defendants. )

MOTION TO QUASH SERVICE OF  
PROCESS

COME NOW the Defendants, by and through their attorneys, COPLAN AND LICHTENFELS, and appearing specially and for purpose of this Motion only, move this Honorable Court to quash, set aside, and hold void the purported summons and service thereof, and as grounds therefore, state, allege and aver as follows:

1. That defective service was obtained by means of serving an improper party or representative of a party to this action.
2. That this defective service was obtained by means of tendering to a maintenance man on the premises of Sundance Apartments a copy of the Summons and Complaint in this action.
3. That said service is faulty on the basis of C.R.C.P. four (e) (1) which states that personal service upon a natural person shall be made by delivering a copy thereof to him personally, or by leaving a copy thereof at his home with some member of his family, or at his place of business, with his stenographer, bookkeeper, or chief clerk; or by delivering a copy to an agent authorized by appointment or by law to receive service of process.
4. That service upon a maintenance person at a place of business does not qualify as perfect service under said rule, and that therefore service was not obtained upon the Defendant, and that the attempted service thereof is void and of no effect.

WHEREFORE, having fully stated the grounds for their Motion to Quash Service of Process, the Defendants hereby move to quash said Service of Process.

Respectfully submitted,

COPLAN AND LICHTENFELS

By J. Reid Lichtenfels  
J. Reid Lichtenfels #5819  
Attorney for Defendants  
50 South Steele Street, Suite 750  
Denver, Colorado 80209  
Telephone: 399-7002

CERTIFICATE OF HAND DELIVERY

I hereby certify that I have on this 6<sup>th</sup> day of April, 1979, hand delivered a true and correct copy of the Motion to Quash Service of Process to the following:

Philip A. Rouse  
1000 Capital Life Center  
Denver, Colorado 80203

Virginia Bynnes

FILED

IN THE DISTRICT COURT IN AND FOR THE  
COUNTY OF ARAPAHOE  
STATE OF COLORADO

APR 9 1979

EILEEN M. MANNING  
CLERK OF THE DISTRICT COURT  
ARAPAHOE COUNTY, COLO.

Civil Action No. 79CV505 Div. 4

AUTOMATIC LAUNDRY COMPANY, )  
a Colorado corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOHN BURROWS and GARY )  
LAVOIE, )  
 )  
Defendants. )

MEMORANDUM BRIEF IN SUPPORT  
OF MOTION TO QUASH SERVICE OF PROCESS

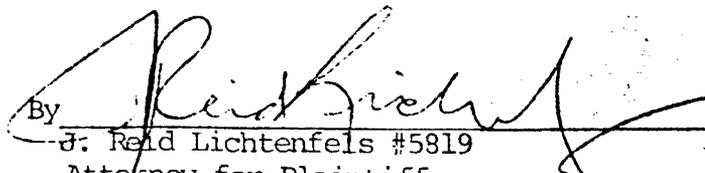
MEMORANDUM BRIEF

COME NOW the Defendants, by and through their attorneys, COPLAN AND LICHTENFELS, and submit unto this Court their Memorandum Brief in Support of their Motion to Quash Service of Process:

The service of a summons and complaint upon one who does not qualify as the person named as a party to the action, a member of his family over the age of eighteen (18) years, or with his stenographer, bookkeeper or chief clerk, or an authorized agent does not constitute perfect service under Rule 4, C.R.C.P., which states: "Personal service within the state shall be as follows: Upon a natural person over the age of eighteen (18) years by delivering a copy or copies thereof to him personally, or by leaving a copy or copies thereof at his dwelling house or usual place of abode, with some member of his family over the age of eighteen (18) years, or at his usual place of business, with his stenographer, bookkeeper, or chief clerk; or by delivering a copy to an agent authorized by appointment or by law to receive service of process . . ." The service upon a maintenance person at the business residence of the Defendants is therefore void.

Respectfully submitted,

COPLAN AND LICHTENFELS

By 

J. Reid Lichtenfels #5819  
Attorney for Plaintiff  
50 South Steele Street, Suite 750  
Denver, Colorado 80209  
Telephone: 399-7002

CERTIFICATE OF HAND DELIVERY

I hereby certify that I have on this 6<sup>th</sup> day of April,  
1979, hand delivered a true and correct copy of the Memorandum Brief in  
Support of Motion to Quash Service of Process to the following:

Philip A. Rouse  
1000 Capital Life Center  
Denver, Colorado 80203

Virginia Byrnes

