

2009

Wasatch Oil and Gas, LLC. v. Edward A. Reott, et al. : Unknown

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Carolyn McIntosh; Donna Vetrano Pryor; Patton and Boggs, LLP; Nick Sampinos; Attorneys for Appellee BBC.

J. Craig Smith; D. Scott Crook; Bryan C. Bryner; Smith Hartvigsen, PLLC; Attorneys for Appellants.

Recommended Citation

Legal Brief, *Wasatch Oil and Gas v. Reott*, No. 20090749 (Utah Court of Appeals, 2009).
https://digitalcommons.law.byu.edu/byu_ca3/1857

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS	
<p>WASATCH OIL & GAS, L.L.C., Plaintiff and Appellee,</p> <p>v.</p> <p>EDWARD A. REOTT, et al., Defendant and Appellant.</p>	<p>APPEAL BRIEF</p> <p>Appellate Case No. 20090749</p>
<p>GOAL, LLC and REGOAL INC., Counterclaim, Third Party and Crossclaim Plaintiffs and Appellants,</p> <p>v.</p> <p>WASATCH OIL & GAS, L.L.C., et al., Counterclaim, Third Party and Crossclaim Defendants and Appellees.</p>	
<p>Appeal from the Seventh Judicial District Court, Carbon County, State of Utah The Honorable George M. Harmond</p>	

Carolyn McIntosh
Donna Vetrano Pryor
PATTON & BOGGS, LLP
1801 California Street, Suite 4900
Denver, Colorado 80202

Nick Sampinos
190 North Carbon Avenue
Price, UT 84501
Attorneys for Appellee BBC

J. Craig Smith (4143)
D. Scott Crook (7495)
Bryan C. Bryner (10276)
SMITH HARTVIGSEN, PLLC
215 South State Street, Suite 600
Salt Lake City, Utah 84111
Attorneys for Appellants

FILED

Eric C. Olson
Matthew K. Richards
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120
Attorneys for Appellee Wasatch

IN THE UTAH COURT OF APPEALS	
<p>WASATCH OIL & GAS, L.L.C.,</p> <p>Plaintiff and Appellee,</p> <p>v.</p> <p>EDWARD A. REOTT, et al.,</p> <p>Defendant and Appellant.</p>	<p>APPEAL BRIEF</p> <p>Appellate Case No. 20090749</p>
<p>GOAL, LLC and REGOAL INC.,</p> <p>Counterclaim, Third Party and Crossclaim Plaintiffs and Appellants,</p> <p>v.</p> <p>WASATCH OIL & GAS, L.L.C., et al.,</p> <p>Counterclaim, Third Party and Crossclaim Defendants and Appellees.</p>	
<p>Appeal from the Seventh Judicial District Court, Carbon County, State of Utah</p> <p>The Honorable George M. Harmond</p>	

Carolyn McIntosh
Donna Vetrano Pryor
PATTON & BOGGS, LLP
1801 California Street, Suite 4900
Denver, Colorado 80202

Nick Sampinos
190 North Carbon Avenue
Price, UT 84501
Attorneys for Appellee BBC

J. Craig Smith (4143)
D. Scott Crook (7495)
Bryan C. Bryner (10276)
SMITH HARTVIGSEN, PLLC
215 South State Street, Suite 600
Salt Lake City, Utah 84111
Attorneys for Appellants

Eric C. Olson
Matthew K. Richards
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120
Attorneys for Appellee Wasatch

IDENTIFICATION OF THE PARTIES

Plaintiff:

Wasatch Oil & Gas, LLC (“Wasatch Oil & Gas”)

Defendants:

Edward A. Reott (“Ed Reott”), an individual and owner of Goal, LLC and Regoal, Inc.

Mission Energy, LLC (“Mission”)

Key Energy Services, Inc., dba Key Energy Services Inc. Four Corners Division (“Key Energy”)

J West Oilfield Services, Inc. (“J West”)

Counterclaim, Third Party and Crossclaim Plaintiffs:

Goal, LLC (“Goal”), a Utah limited liability company and Ed Reott’s successor in interest to mineral interests acquired from Mission

Regoal, Inc. (“Regoal”), a Pennsylvania corporation and Ed Reott’s successor in interest to the Lavinia Well

Third Party, Counterclaim, and Crossclaim Defendants:

Wasatch Oil & Gas, LLC

Wasatch Gas Gathering, LLC (“Wasatch Gas Gathering”)

Wasatch Oil & Gas Production Corporation (“WOGPC”)

Bill Barrett Corporation (“BBC”)

Mission Energy, LLC

For ease of reference, Ed Reott, Goal, and Regoal are referred to collectively and interchangeably as “Reott.”

For ease of reference, Wasatch Oil & Gas, Wasatch Gas Gathering, and WOGPC are referred to collectively and interchangeably as “Wasatch.”

TABLE OF CONTENTS

IDENTIFICATION OF THE PARTIES.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iv
STATEMENT OF JURISDICTION.....	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
DETERMINATIVE STATUTES	2
STATEMENT OF THE CASE	3
I. Nature of the Case	3
II. Statement of Facts	3
III. Course of Proceedings & Disposition Below.....	7
SUMMARY OF THE ARGUMENT.....	11
ARGUMENT	14
I. The Trial Court Incorrectly Concluded That Sutton Had “Actual Authority.”..	14
A. Sutton did not have written authorization from Mission to alone convey the	
Section 32	Leases.
16	
B. The trial court violated this Court’s mandate and Utah’s mandate rule.....	17
II. The Trial Court Incorrectly Concluded That Mission Either Orally Authorized	
Or Ratified Sutton’s June 2000 Transfer Of The Section 32 Leases.	20
A. Oral authorization has no legal effect on Sutton’s June 2000 transfer.....	20
(1) <i>Colorado law does not recognize oral authorization.</i>	20
(2) <i>The oral authorization exception is no longer recognized in Utah.</i>	22
(3) <i>Jager was not a manager of Mission and could not give oral authority.</i>	24
B. Mission did not ratify Sutton’s June 2000 transfer.	26
(1) <i>The Jager Letter was not signed by two Mission managers.</i>	27
(2) <i>Jager did not have authority to bind Mission by his ratification.</i>	28
(3) <i>Jager did not have full knowledge of all material facts.</i>	28
C. Sutton’s lack of authority under the statute of frauds defeats Wasatch’s legal and	
equitable title.....	30
III. The Trial Court Incorrectly Concluded That Mission’s June 2000 Transfer Was	
Not A Fraudulent Transfer Under UCA § 25-6-6.	31
A. Mission did not receive reasonably equivalent value.....	32
(1) <i>The only “value” Mission received was the \$3,629.40 reimbursement.</i>	34
(2) <i>The \$3,629.40 received by Mission was not reasonably equivalent value.</i>	34
B. Mission was insolvent in June 2000.....	36
(1) <i>Mission is presumed to be insolvent in June 2000</i>	37
(2) <i>Wasatch did not rebut the presumption of Mission's insolvency.</i>	38
IV. The Trial Court Incorrectly Concluded that Reott Suffered No Damages.....	44
A. The trial court abused its discretion by considering causation on the damages	
issue for Reott’s trespass to chattels claim.....	44

B. The trial court applied an incorrect measure of damages on Reott's breach of common carrier obligation claim.	45
C. Reott presented evidence of lost profits with reasonable certainty.	49
CONCLUSION	50
ADDENDUM.....	53

TABLE OF AUTHORITIES

Cases

<i>Acculog, Inc. v. Peterson</i> , 692 P.2d 728 (Utah 1984).....	49
<i>Atherton v. F.D.I.C.</i> , 519 U.S. 213 (1997).....	22
<i>Balsamo v. Gruppo Ceramiche Ricchetti, S.P.A.</i> , 862 So.2d 812 (Fla. Ct. App. 2003) ...	40
<i>Bradshaw v. McBride</i> , 649 P.2d 74 (Utah 1982)	29
<i>Butler v. Wilkinson</i> , 740 P.2d 1244 (Utah 1987)	34
<i>CADCO, Inc. v. Fleetwood Enterprises, Inc.</i> , 220 S.W.3d 426 (Mo. Ct. App. 2007).....	52
<i>Cady v. Johnson</i> , 671 P.2d 149 (Utah 1983).....	25
<i>Castner v. Richardson</i> , 33 P. 163 (Colo. 1893)	24
<i>Chilton v. Young</i> , 2009 UT App 265, 220 P.3d 171	3, 49
<i>Cook Assocs., Inc. v. Warnick</i> , 664 P.2d 1161 (Utah 1983)	51
<i>Creative Waste Mgmt., Inc. v. Capitol Environ. Svcs., Inc.</i> , 495 F.Supp.2d 353 (S.D.N.Y. 2007).....	55
<i>Curtis v. Harmon Elec.</i> , 575 P.2d 1044 (Utah 1978).....	51
<i>Delahanty v. First Pennsylvania Bank, N.A.</i> , 464 A.2d 1243 (Pa. 1983).....	52
<i>England v. Horbach</i> , 944 P.2d 340 (Utah 1997).....	44
<i>ERA Helicopters, Inc. v. Digicon Alaska, Inc.</i> , 518 P.2d 1057 (Alaska 1974).....	52
<i>Frandsen v. Gerstner</i> , 487 P.2d 697 (Utah 1971).....	25, 30
<i>Harris v. IES Associates, Inc.</i> , 2003 UT App. 112, 69 P.3d 297.....	27
<i>IHC Health Servs., Inc., v. D & K Mgmt., Inc.</i> , 2008 UT 73, 196 P.3d 588.....	20
<i>Ivers v. Utah Dep't of Transp.</i> , 2007 UT 19, 154 P.3d 802.....	20
<i>John Allan Co. v. Craig Allen Co., L.L.C.</i> , 540 F.3d 1133 (10th Cir. 2008)	47
<i>Johnson v. Lennox</i> , 133 P. 744 (Colo. 1913)	24
<i>Kaufmann v. M & S Unlimited, L.L.C.</i> , 121 P.3d 184 (Ariz. Ct. App. 2005).....	35
<i>Laybourn v. Wrape</i> , 211 P. 367 (Colo. 1922)	29
<i>Levin v. Furniture Indus. Of Florida, Inc.</i> , 823 So. 2d 132 (Fl. Ct. App. 2002)	43
<i>Mahana v. Onyx Acceptance Corp.</i> , 2004 UT 59, 96 P.3d 893	2, 50
<i>Manhec v. Manhec</i> , 951 So.2d 1026 (Fla. Ct. App. 2007).....	37
<i>Mathis v. Madsen</i> , 261 P.2d 952, 956 (1953)	18, 24
<i>Mountain States Waterbed Distributors, Inc. v. O.N.C. Freight Systems Corp.</i> , 614 P.2d 906 (Colo. Ct. App. 1980)	29
<i>Murdock v. Springville Mun. Corp.</i> , 1999 UT 39, 982 P.2d 65.....	49
<i>National Loan Investors, L.P. v. Givens</i> , 952 P.2d 1067 (Utah 1998).....	34
<i>Newman v. Tibbitts</i> , 149 P. 266 (Colo. Ct. App. 1915)	24, 29
<i>Nunnally v. Hilderman</i> , 373 P.2d 940 (Colo. 1962)	23
<i>People's Mining & Milling Co. v. Central Consol. Mines Corp.</i> , 80 P. 479 (Colo. Ct. App. 1905).....	29
<i>Rhodes v. Sigler</i> , 357 N.E.2d 846 (Ill. Ct. App. 1976)	52
<i>Simpson v. Nelson</i> , 208 P. 455 (Colo. 1922).....	23
<i>Springer v. City Bank & Trust Co.</i> , 149 P. 253 (Colo. 1915)	24

<i>State v. Pena</i> , 869 P.2d 932 (Utah 1994)	1
<i>Territorial Savings & Loan Assoc.</i> , 781 P.2d 452, (Utah Ct. App. 1989).	36
<i>Thurston v. Box Elder County</i> , 892 P.2d 1034 (Utah 1995)	20
<i>Tolle v. Fenley</i> , 2006 UT App. 78, 132 P.3d 63	2, 34, 35
<i>Tschaggeny v. Milbank Ins. Co.</i> , 2007 UT 37, 163 P.3d 615	49
<i>United Electric Coal Co. v. Rice</i> , 22 F. Supp. 221 (E.D. Ill. 1938)	52
<i>UST Corp. v. General Road Trucking Corp.</i> , 783 A.2d 931 (R.I. 2001)	52
<i>Utah Dept. of Transp. v. Ivers</i> , 2009 UT 56, 218 P.3d 583.	1, 19
<i>Wasatch Oil & Gas, L.L.C. v. Reott</i> , 2007 UT App. 223, 163 P.3d 713	passim
<i>Weinman v. De Palma</i> , 232 U.S. 571, 575 (1914)	52
<i>Williams v. Singleton</i> , 723 P.2d 421 (Utah 1986)	25

Statutes

C.F.R. § 2883.1-4(d)	46
C.R.S. §38-10-106	21
U.C.A. § 25-1-4 (repealed 1988)	33
U.C.A. § 25-5-1 (1953)	2, 17, 30, 53
U.C.A. § 25-5-3 (1953)	17, 30
U.C.A. § 25-6-2 (1992)	2, 31, 32, 33, 34, 53
U.C.A. § 25-6-3 (1988)	2, 36, 37, 53
U.C.A. § 25-6-4 (1988)	2, 33, 53
U.C.A. § 25-6-5 (1988)	10
U.C.A. § 25-6-6 (1989)	1, 2, 13, 31, 32, 44, 53
U.C.A. § 48-2b-143(1998)	21
U.C.A. § 78A-4-103	1
30 U.S.C.A. §185	30, 46

Rules

43 C.F.R. § 2883.1-4(d)	46
Utah R. Civ. P. 69(j)(1)	16

Other Sources

Am.Jur.2d Damages § 455	47
Am.Jur.2d Statute of Frauds §301	23

Prior Related Appeals

<i>Wasatch Oil & Gas, L.L.C. v. Reott</i> , 2007 UT App. 223, 163 P.3d 713	passim
--	--------

STATEMENT OF JURISDICTION

This is an appeal from the trial court's August 19, 2009 final judgment ("Final Judgment") and all other orders entered in the underlying matter. This Court has jurisdiction pursuant to Utah Code Annotated ["UCA"] § 78A-4-103(2)(j) and the Utah Supreme Court's Order dated Sept. 17, 2009, transferring this appeal to this Court.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

The issues set forth below derive from the trial court's Final Judgment.

Issue I: Did the trial court violate this Court's mandate by considering on remand whether Justin Sutton, a manager of Mission, had "actual authority" to assign its Section 32 Leases to Wasatch? (*Issue Preserved:* R. 847; 8009; 8291:15–23, 34, 87–88, 166.)

Standard of Review: "[B]ecause the mandate is a legal determination, reviewing whether a trial court complied with the mandate presents a question of law, which we review for correctness." *Utah Dept. of Transp. v. Ivers*, 2009 UT 56, ¶ 8, 218 P.3d 583.

Issue II: Did the trial court incorrectly conclude that Mission either orally authorized or ratified Sutton's transfer of Mission's mineral leases to Wasatch? (*Issue Preserved:* R. 847–851; 5647–5665; 8293.)

Standard of Review: Ratification and oral authorization involve questions of fact, which are reviewed for clear error, and questions of law based on these findings, which are reviewed for correctness. *See, e.g., State v. Pena*, 869 P.2d 932, 937 (Utah 1994).

Issue III: If the assignment to Wasatch was valid, did the trial court incorrectly conclude that the June 2000 transfer was not a fraudulent transfer under UCA § 25-6-6 (1989)? (*Issue Preserved:* R. 809–818, 831–833.)

Standard of Review: Under UCA § 25-6-6, whether Mission was “insolvent” and whether Mission received “reasonably equivalent value” for the Section 32 Leases “present mixed questions of fact and law.” *See Tolle v. Fenley*, 2006 UT App. 78, ¶ 11, 132 P.3d 63. Appellate courts “review factual questions under the clearly erroneous standard and legal questions under the correctness standard. . . . Questions of statutory interpretation are questions of law that are reviewed for correctness and no deference is given to the trial court’s determination.” *Id.* (citations omitted).

Issue IV: Did the trial court err in awarding Reott no damages on his trespass to chattels and breach of common carrier obligation claims? (*Issue Preserved:* R. 7938–7949.)

Standard of Review: “Whether the trial court applied the correct rule for measuring damages is a question of law that we review for correctness.” *Mahana v. Onyx Acceptance Corp.*, 2004 UT 59, ¶ 25, 96 P.3d 893. The trial court’s reversal of its summary judgment decision on Reott’s trespass to chattels claim is reviewed for an abuse of discretion. *See Chilton v. Young*, 2009 UT App 265, ¶ 4, 220 P.3d 171.

DETERMINATIVE STATUTES

A copy of the following determinative statutes is attached in the Addendum:

- (1) UCA § 25-5-1 (1953)
- (2) UCA § 25-6-2 (1992)
- (3) UCA § 25-6-3 (1988)
- (4) UCA § 25-6-4 (1988)
- (5) UCA § 25-6-6 (1989)

STATEMENT OF THE CASE

I. Nature of the Case

This is an appeal by Reott of the trial court's Final Judgment.

II. Statement of Facts

Mission Energy, LLC ("Mission") was engaged in oil and gas exploration. (R. 8098.) Mission, a Colorado limited liability company, conducted its business during all relevant periods pursuant to an Amended and Restated Mission Operating Agreement (the "MOA," attached hereto as Addendum A). (R. 5400, 5420.) The MOA provided that "[a]ny...assignment . . . intended to bind the LLC or convey . . . title to its real . . . property shall be valid and binding for all purposes if executed by any two of the Managers." (R. 8099–8100.) The MOA identified as "initial managers" of Mission four individuals: Justin Sutton, Charles Willard, William Muller, and Fred Jager. (R. 8099.) Jager did not sign the MOA and there was no evidence at trial that he ever knew he was a manager of Mission. (*Id.*) In May 1998, Willard and Muller terminated their relationship with Mission, and Mission did not appoint any managers to replace them. (*Id.*) From May 1998 to October 21, 2000, when he resigned, Sutton acted as sole manager of Mission. (R. 8101–8102.)

In 1997, Mission obtained approval from the Utah School and Institutional Trust Lands Administration ("SITLA") to drill a gas well (the "Lavinia Well") in Section 32, Township 12 South, Range 16 East, SLB&M ("Section 32"). (R. 8100.) From its inception and as of May 1, 2000 through June 21, 2000, Mission was not able to pay its debts as they became due. (R. 8101.) Reott twice loaned funds to Mission (R. 8100), but

Mission defaulted on repayment of the loans. On December 20, 1999, the U.S. District Court for the District of Colorado awarded Reott a judgment in the amount of \$204,000 against Mission (the “Colorado Judgment”). (R. 8103.)

In Mission’s final months of existence, Sutton disposed of Mission’s mineral leases, its only real assets. On May 1, 2000, pursuant to a letter agreement (the “May Letter Agreement”), Mission transferred eight mineral leases located on the Tavaputs Plateau (the “May Leases”) to Wasatch for an even \$5.00 per net acre. (*Id.*) Following the transfer of the May Leases, Sutton and Todd Cusick of Wasatch discussed a second sale of leases to Wasatch in June 2000 involving another ten mineral leases on the Tavaputs Plateau comprising 7,021.23 net acres (the “June Leases”), including two SITLA leases in Section 32 (the “Section 32 Leases”). (R. 7996; 8103; Trial Exhibits 114, 115.) The Section 32 Leases—ML-43798 (80 acres) and ML-43541 (560 acres)—covered all 640 acres of Section 32. (*Id.*) (Addendum B is a map of the location of the May Leases and June Leases, including the Section 32 Leases.) In June 2000, Mission’s interests in Section 32 were already encumbered by liens filed by Mission’s contractors J-West and Key Energy and others. (*Id.*)

Sutton and Cusick ultimately agreed that Mission would transfer 600 acres of its Section 32 Leases, carving out for Mission only the Lavinia Well and the surrounding 40 acres to a depth of 3,398 feet below the surface of the earth. (*Id.*) Sutton proposed that Wasatch reimburse Mission for past rental payments, obtain reinstatement of any expired leases, maintain the leases as lessee and unit operator, and give Mission a specified percentage of any drilling deal Wasatch or Mission might negotiate in the future with

respect to the leases purchased. (R. 8108.) The letter agreement between Sutton and Cusick dated June 21, 2000 (the “June Letter Agreement,” attached as Addendum C) set forth the terms on which Sutton agreed to assign the June Leases, including the Section 32 Leases, to Wasatch. (R. 8103.) On June 23, 2000, Sutton alone executed three mineral lease assignments (the “MLAs”) to transfer Mission’s Section 32 Leases and returned them to Wasatch.¹ (R. 8110–8111.) Neither the June Letter Agreement nor the MLAs were recorded in the county recorder’s office. (R. 8116)

Pursuant to the June Letter Agreement, Wasatch reimbursed Mission \$3,629.40 for Mission’s prior lease rental payments on the June Leases purchased by Wasatch. (*Id.*) Wasatch also paid to SITLA approximately \$4,000 for lease rental payments between June 21, 2000 and August 9, 2001. (*Id.*) Following the June 2000 transaction, in addition to the right to participate in any drilling deal, Mission retained only the following assets: (a) the Lavinia Well and 40 acres to a depth of 3,398 feet, (b) cash in the bank of \$27,236.27, (c) a \$19,943.15 bond held by the state of Utah, and (d) Gusher leases. (R. 8113.) Neither the value, if any, nor validity of the Gusher leases was addressed at trial. (*Id.*) The trial court found that Reott and Sutton valued the Lavinia Well at an amount in excess of the total of all outstanding Mission liabilities. (*Id.*) Nevertheless, Mission’s financial statements and balance sheets showed that Mission’s total liabilities exceeded its “total assets,” which included “Oil and Gas Properties,” by \$434,778 by the end of 1999 and \$581,282 by the end of 2000. (R. 8293:660–663.)

¹ The MLAs assigned all 80 acres of ML-43798, 520 acres of ML-43541 from the surface to the center of the earth, and 40 acres of ML-43541 below the Lavinia Well from 3,398 feet below the surface to the center of the earth.

Reott filed and docketed the Colorado Judgment in the trial court and acquired the judgments obtained against Mission and its property by J-West and Key Energy. (R. 8115, 8116.) On August 9, 2001, the Carbon County sheriff sold Mission's Section 32 Leases to satisfy Reott's judgments against Mission. (R. 8117.) Reott purchased Mission's Section 32 Leases by his own credit bid of \$1.00 at the sheriff's sale. (R. 8118.) Wasatch, the purported successor to Mission, did not attend or bid at the sale. Wasatch later filed notices to exercise a right of redemption with respect to the Section 32 Leases, which notices Reott rejected. (*Id.*) On February 9, 2002, Reott received a sheriff's deed for the Section 32 Leases. (*Id.*)

The Lavinia Well was "shut in" and not producing at the time of the sheriff's sale, but due to Reott's efforts it became operational within about a week. (R. 8205.) Reott immediately telephoned Cusick to request access to Wasatch's gas gathering pipeline to transport and sell natural gas produced from the Lavinia Well. (R. 8204.) Cusick and Wasatch did not respond to this and other contacts made by Reott. (R. 8204–8205.)

On April 1, 2002, Wasatch sold the Section 32 Leases and gas gathering pipeline, along with other properties, to BBC.² (*Id.*) Again, in August 2002, Reott requested from BBC access to the gas gathering pipeline. (*Id.*) Finally, in 2004 BBC provided to Reott two proposed agreements which the trial court held were commercially unreasonable. (R. 8209.) The parties finally reached an agreement, and Reott signed a gas gathering agreement on July 7, 2005. (*Id.*) Reott began producing and transporting gas under this

² BBC's claim of title to the Section 32 Leases is solely as a successor to Wasatch and therefore rises and falls on Wasatch's claim to be Mission's successor in interest.

agreement later that same year. (*Id.*) Due to Wasatch's and BBC's refusal to allow Reott to transport gas through the gas gathering pipeline, the Lavinia Well remained shut-in and did not produce gas from August 2001 to August 2005. (R. 8204–8209.) In late 2003, BBC forcibly removed the lateral pipeline connecting the Lavinia Well to BBC's gas gathering pipeline, causing the meter house to be pulled off its foundation, bending the oil production line, damaging the connection to the oil tank, and causing an oil spill of approximately 100 barrels of oil. (R. 4816.)

III. Course of Proceedings & Disposition Below

On December 24, 2001, Wasatch filed suit against Reott, Mission, Key Energy, and J West to quiet title, *inter alia*, to the Section 32 Leases. (R. 1–147.) In response, Reott asserted several counterclaims and third-party claims against Wasatch and BBC, including the following claims at issue in this appeal: (1) quiet title of the Section 32 Leases; (2) fraudulent transfer of the June Leases, including the Section 32 Leases;³ (3) breach of common carrier obligations and lost production in refusing to transport gas produced by Reott from the Lavinia Well through the gas gathering pipeline; and (4) BBC's trespass to chattels for damages to the Lavinia Well pipeline and equipment and oil spill.⁴ (R. 2118–2165.)

³ Reott seeks title to the Section 32 Leases, but seeks to set aside the transfer of the June Leases to satisfy his outstanding judgment against Mission. *See infra* Part III, n.26.

⁴ Reott also asserted counterclaims and third-party claims for access to transport gas through the gas gathering pipeline; intentional interference with prospective economic relations; and trespass and conversion of minerals BBC later produced from Section 32. Wasatch and BBC each asserted crossclaims and counterclaims against Reott for fraud; interference with economic relations/ economic advantage; and bad faith litigation. (R. 1911–1934, 1940–1969.) None of these claims are at issue in this appeal.

Quiet Title and Fraudulent Transfer Claims. On cross-motions for partial summary judgment regarding the quiet title/fraudulent transfer claims, the trial court quieted title to the Section 32 Leases in Reott. (R. 5382–5390.) The trial court found that (1) the MLAs did not convey legal title to Wasatch because the MLAs failed to identify Sutton as a person authorized to execute the assignments on behalf of Mission; (2) Wasatch did not obtain equitable title to the Section 32 Leases because the June 2000 transfer was fraudulent; and (3) the June Letter Agreement did not convey equitable title to Wasatch because no consideration was ever paid. (R. 4810–4815.) The trial court entered its order (attached hereto as Addendum D) and certified it as final under Rule 54(b) for purposes of appeal. (R. 5385–5386.) This order was the subject of the first appeal.

Trespass to Chattels Claim. Reott also moved for partial summary judgment on his trespass to chattels claim. (R. 2711–2712, 2723–2724.) The trial court granted Reott’s motion, holding BBC liable for the damages it caused to the Lavinia Well pipeline and equipment and resulting oil spill. (R. 5386.) The trial court reserved for trial determination of the amount of Reott’s damages. (R. 5386.)

Breach of Common Carrier Obligation Claim. Reott also moved for partial summary judgment on his claims for Wasatch’s and BBC’s breaches of their common carrier obligations. (R. 2769–2772.) The trial court held that Wasatch and BBC were common carriers, breached their common carrier obligations to Reott, and were liable to Reott for lost production from the Lavinia Well during the time it was denied access to their gas gathering pipeline. (R. 4819–4823.) The trial court reserved for trial determination of Reott’s damages for lost production. (R. 4283.)

Prior Appeal of Quiet Title and Fraudulent Transfer Claims. After the trial court's rulings on the motions for summary judgment, Wasatch and BBC appealed the trial court's final order quieting title to the Section 32 Leases in Reott. (R. 5428–5434.) This Court reversed the trial court's order quieting title to the Section 32 Leases in Reott, holding that the MLAs' failure to identify Sutton's capacity for Mission was not dispositive of Wasatch's legal title to the Section 32 Leases. *See Wasatch Oil & Gas, L.L.C. v. Reott*, 2007 UT App. 223, ¶ 27, 163 P.3d 713 (Addendum E). While this Court held that Sutton did not have written authorization to assign the Section 32 Leases to Wasatch, as required by the statute of frauds, this Court ruled that it was not clear whether Sutton could meet either the oral authorization or ratification exceptions to the statute of frauds. *Id.* ¶¶ 28–29. It therefore “reverse[d] the trial court's grant of summary judgment as to the issue of legal title and remand[ed] to the trial court to determine whether Mission gave Sutton oral authorization to execute the Assignments or whether Mission subsequently ratified the Assignments; and, if so, the effect thereof.” *Id.*

With respect to equitable title, this Court held that the trial court engaged in improper fact finding on summary judgment on Reott's fraudulent transfer claim under UCA § 25-6-5 by weighing the inferences to be drawn from the undisputed facts and badges of fraud. *See id.* ¶ 31. This Court therefore “reverse[d] the trial court's determination of fraudulent intent and remand[ed] for ‘the fact-finder [to] consider’ whether the undisputed facts support an inference of fraudulent intent.” *Id.* ¶ 36.

Remand and Trial. On remand, Reott moved for partial summary judgment on oral authorization and ratification. (R. 5644–5646.) The trial court held that Mission did not

ratify Sutton's June 2000 assignment of the Section 32 Leases (R. 8289:68–69), but denied Reott's motion with respect to oral authorization (R. 6024–6026; 8289:64–68).

A five-day bench trial was held from October 27–31, 2008, on the quiet title/fraudulent transfer claims, and to determine the amount of Reott's damages for Wasatch's and BBC's breach of their common carrier obligations and BBC's trespass to chattels. The court bifurcated the trial and heard (and decided) the quiet title/fraudulent transfer claims before hearing and deciding the damages issues. The trial court ruled during trial that BBC held title to the Section 32 Leases because Wasatch had acquired legal and/or and equitable title to, and hence a right to redeem, the Section 32 Leases. The trial court also held that the June 2000 transaction was not a fraudulent transfer. (R. 8119–8121.) The trial court entered its Findings of Fact and Conclusions of Law re: Quiet Title and Fraudulent Transfer Claims (Addendum F) on February 27, 2009, and ordered Reott to release all *lis pendens* of record filed against the June Leases (R. 8097–8123).⁵

On the issue of Reott's damages for breach of common carrier obligations, the trial court concluded that Reott suffered no damages as a result of the three-year period that the Lavinia Well was denied transportation of natural gas to market via the gas gathering pipeline owned first by Wasatch and then by BBC. (R. 8210–8212.) Despite its earlier determination of BBC's liability, the trial court also held that Reott suffered no damages on his trespass to chattels claim because the evidence did not show that BBC caused the

⁵ The trial court concluded that appellants, unlike other litigants, are not entitled to the protections afforded by a *lis pendens*. This is contrary to Utah law. *See, e.g., Gardner v. Perry City*, 2000 UT App. 1, ¶24.

damages to the Lavinia Well pipeline and equipment or the oil spill. (R. 8212–8213.)

The trial court entered its Findings of Fact and Conclusions of Law re: Damages on August 19, 2009 (attached as Addendum G). (R. 8201–8215.)

The trial court entered Final Judgment on August 19, 2009 (R. 8216–8219), and Reott filed the Notice of Appeal on September 10, 2009 (R. 8243–8246.) Reott now appeals the trial court’s orders quieting title to the Section 32 Leases in BBC and denying all of Reott’s claims for damages.

SUMMARY OF THE ARGUMENT

Reott challenges the trial court’s conclusions quieting title to the Section 32 Leases in BBC and denying all of Reott’s damages. In arriving at these conclusions, the trial court exceeded the scope of this Court’s remand and reframed the issues to Wasatch’s and BBC’s advantage; reversed and vacated prior summary judgment decisions without a reasonable basis to do so; entered internally inconsistent findings of fact; and erred in its application of the law.

The determinative issue on title to the Section 32 Leases is whether Wasatch had a right to redeem the Section 32 Leases sold to Reott at the sheriff’s sale. Such a right could only arise if Wasatch validly acquired legal or equitable title to the Section 32 Leases from Mission. As the plaintiff in its action to quiet title to the Section 32 Leases, Wasatch had the burden to prove that it was Mission’s successor in interest to the Section 32 Leases. If Wasatch prevailed on this claim, Reott then had the burden to prove that Mission’s conveyance of the Section 32 Leases to Wasatch was a fraudulent transfer.

This Court has already held that Sutton did not have the requisite written authority under the statute of frauds to validly convey Mission's title in the Section 32 Leases to Wasatch, but remanded to the trial court to consider only (1) oral authorization and (2) ratification. *See Wasatch Oil & Gas, LLC v. Reott*, 2007 UT App. 223, ¶ 30, 163 P.3d 713. Despite this clear mandate from this Court, the trial court reframed the oral authority issue to Wasatch's and BBC's advantage and ruled that Sutton had "actual authority" from Mission to alone transfer the Section 32 Leases.

Considering the proper issues on remand, there was no oral authorization or ratification by Mission under the facts as found by the trial court, as a matter of law, because (1) there is no longer a recognized oral authorization exception under Colorado or Utah law, (2) there was no document in writing that satisfied all requirements for a binding ratification by Mission, and (3) Jager was not a manager and could not orally authorize or ratify Sutton's conveyances on behalf of Mission. Because Mission did not orally authorize or ratify Sutton's conveyances, the June Letter Agreement and the MLAs fail to satisfy the statute of frauds.

Furthermore, the trial court incorrectly concluded that Mission's transfer of the June Leases to Wasatch in June 2000 was not a fraudulent transfer. Pursuant to UCA § 25-6-6, Reott had to prove by clear and convincing evidence that (1) Mission did not receive "reasonably equivalent value" for the June Leases it transferred to Wasatch, and (2) Mission was insolvent when it transferred the leases in June 2000. First, while Wasatch gave Mission an unfulfilled promise of a drilling deal that never materialized, the only value received by Mission for the June Leases was a \$3,629.40 reimbursement from

Wasatch. Because this amount comprised a mere \$0.52 per net acre for the June Leases—less than 11% of the \$5.00 per net acre value that the trial court specifically found “constituted reasonably equivalent value” for the very same June Leases—Mission did not receive reasonably equivalent value for the June Leases it transferred to Wasatch.

Second, Mission was presumed insolvent under the Utah Uniform Fraudulent Transfer Act [UFTA] by its inability to pay its debts as they came due, and Wasatch did not meet its burden to rebut the insolvency presumption by proving that Mission was indeed solvent. By early 2000 Mission’s liabilities exceeded the value of its assets by at least \$434,778, but Wasatch failed to establish the fair value of Mission’s remaining assets other than \$47,179.42 in cash and bond. The sole evidence at trial was that the fair value of the Lavinia Well and its 40-acres to a depth 3,398 feet in June 2000 was no more than \$20,000, and there was no evidence whatsoever of the value, if any, of Mission’s Gusher leases. The trial court therefore incorrectly concluded that Wasatch rebutted the insolvency presumption. Because Mission transferred the June Leases for less than reasonably equivalent value, and was insolvent at the time, the transfer is fraudulent and defeats Wasatch’s claims to legal and equitable title.

The trial court also erred in denying all of Reott’s damages for damage to the Lavinia well pipeline, equipment and oil spill based on causation. Although the trial court had decided the issue of causation three years prior on summary judgment, it overturned that decision during trial without notice or a reasonable basis to do so, all to Reott’s prejudice. Such was an abuse of discretion. The trial court also incorrectly concluded that Reott suffered no damages as a result of any breach by Wasatch or BBC of their common

carrier obligations because the trial court failed to apply the correct measure of damages. The proper measure of damages for the disruption to Reott's production from the Lavinia Well is lost profits, which Reott proved.

ARGUMENT

I. The Trial Court Incorrectly Concluded That Sutton Had "Actual Authority."

In the prior appeal, this Court concluded that Sutton did not have express authority acting alone to convey the Section 32 Leases and remanded "to the trial court to determine [1] whether Mission gave Sutton oral authorization to execute the [MLAs] or [2] whether Mission subsequently ratified the [MLAs]; and, [3] if so, the effect thereof." *Wasatch Oil & Gas, L.L.C. v. Reott*, 2007 UT App. 223, ¶ 30, 163 P.3d 713. This Court appropriately ordered the trial court to conduct "further proceedings *consistent with this opinion*." *Id.* ¶ 37 (emphasis added).

In spite of this clear mandate, Wasatch argued on remand that the mandate should be ignored because this Court had a "limited record" before it in the prior appeal, and that the "limited record" required the trial court to go beyond the mandate and look at "actual authority" instead of, or in addition to, "oral authority."⁶ (R. 7514–7517; 8289:42–43; 8291:25–27; 8292:464–469.) The trial court was persuaded and reframed the issue on remand as one of "actual authority." (R. 8291:37–38; 8292:470–472.) Apparently, the trial court's basis for exceeding the mandate was its conclusion that the lack of a second manager who could grant oral authority or ratify Sutton's actions excused the MOA's

⁶ The trial court's application of "actual authority" was confusing and inconsistent, applying "actual authority" *instead* of "oral authority," (R. 8192:470–472), but later finding "oral authorization" *in addition to* actual authority (R. 8116).

prohibition of a single manager disposing of Mission property. The trial court denied Reott's pre-trial *motion in limine* to exclude evidence of actual authority, stating: "[I]t's not clear to me that, if there's no one else who's operating this besides Sutton, how do you determine if there was oral authorization? . . . I don't think the Court of Appeals mandate was strictly that, if there was no one who gave him authorization, if he was just operating on his own, what if no one could give him authorization." (R. 8191:37–38.)

Similarly, the trial court denied Reott's motion to dismiss at the conclusion of Wasatch's case-in-chief, concluding that the trial court must consider "actual authority": "Really, this issue comes down to actual authority versus oral authority[.] . . . Just because there was no one to give oral authority, does that mean he couldn't have any authority?" (R. 8192:470–472.) The appropriate answer is "yes." As is implicit, if not explicit, in this Court's prior opinion and mandate, Sutton did not have had "actual" authority to act alone due to the MOA's requirement that two managers must act to dispose of Mission's property. In other words, the MOA did not give the requisite written authority for a single manager, such as Sutton, to dispose of Mission's property as required by the statute of frauds. Despite this Court's mandate to consider "oral authorization," the trial court reasoned: "I don't think that's what the Court of Appeals intended" (*id.*) and concluded that "Sutton had actual authority to execute the lease assignment documents." (R. 8118, ¶ 5.)

The trial court violated Utah's mandate rule by considering and applying an unrecognized, undefined "actual authority" exception to the statute of frauds. Accordingly, the trial court's conclusion that Wasatch obtained legal title from Mission

because Sutton had actual authority to transfer the Section 32 Leases must be reversed as violating both this Court's mandate and the statute of frauds. "[B]ecause the mandate is a legal determination, reviewing whether a trial court complied with the mandate presents a question of law, which we review for correctness." *Utah Dept. of Transp. v. Ivers*, 2009 UT 56, ¶ 8, 218 P.3d 583.

A. Sutton did not have written authorization from Mission to alone convey the Section 32 Leases.

"The Utah Rules of Civil Procedure govern the exercise of redemption rights." *Wasatch Oil & Gas*, 2007 UT App. 223, ¶ 20. In 2001, when Wasatch attempted to exercise its purported redemption rights, the governing provision was former Rule 69(j) of the Utah Rules of Civil Procedure, which provided that "[r]eal property sold subject to redemption, or any part sold separately, may be redeemed by the [judgment debtor] *or [its] successors in interest[.]*" Utah R. Civ. P. 69(j)(1) (repealed 2004) (emphasis added). Reott purchased Mission's Section 32 Leases at the sheriff's sale. "Thus, as a purchaser, '[Reott] owned the [Section 32 Leases], subject only to the exercise of the right of redemption' by Mission, *or its alleged successor in interest*, Wasatch." *Wasatch Oil & Gas*, 2007 UT App. 223, ¶ 22 (italics added).

Wasatch was Mission's successor in interest only if a valid conveyance occurred, requiring compliance with the statute of frauds, *id.* ¶ 29, which provides:

No estate or interest in real property . . . shall be created, granted, assigned, surrendered[,], or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering[,], or declaring the same, or by his lawful agent thereunto *authorized by writing*.

UCA § 25-5-1 (1953) (emphasis added); *see also* UCA § 25-5-3 (1953). “The requirement that an agent signing on behalf of another party is authorized in writing to do so ‘[n]aturally . . . appli[es] to agents of corporations.’” *Wasatch Oil & Gas*, 2007 UT App. 223, ¶ 28 (quoting *Mathis v. Madsen*, 261 P.2d 952, 956 (1953)). This Court held that the MOA provides the requirements for written authorization and the conditions attendant to such authorization: “the MOA ‘requires two Mission managers to execute instruments conveying Mission’s title to real property, such as the [MLAs].’” *Id.* Because only Sutton executed the MLAs, this Court held that “Sutton, acting alone, did not have the requisite written authority to assign the Section 32 Leasehold Interests.” *Id.* In other words, Sutton did not have actual authority to alone assign the Section 32 Leases to Wasatch, and the trial court was not at liberty to rule otherwise.

B. The trial court violated this Court’s mandate and Utah’s mandate rule.

This Court remanded the case to the trial court to consider whether two exceptions to the statute of frauds’ written authorization requirement applied:

We therefore reverse the trial court's grant of summary judgment as to the issue of legal title and remand to the trial court to determine [1] whether Mission gave Sutton oral authorization to execute the [MLAs] or [2] whether Mission subsequently ratified the [MLAs]; and, [3] if so, the effect thereof.

Id. ¶ 30. The mandate from this Court was clear.

On remand, however, the trial court ignored this mandate and, over the objection of Reott (R. 8291:15–23, 34, 87–88, 166), reframed the issue by concluding that “[t]he Utah Court of Appeals . . . directed this Court to hold a trial with respect to . . . (a) *lack of actual authority* on the part of Sutton to act for Mission in transferring the Section 32

[Leases.]” (R. 8118 (emphasis added).) Although the trial court did not cite to any authority or articulate any standard by which Sutton could arrogate to himself “actual authority” to assign the Section 32 Leases when the MOA denied him such authority, it nevertheless concluded that Sutton had “actual authority” to assign the Section 32 Leases and that Wasatch therefore “held legal title and was a successor in interest.” (*Id.*)

Such departure from this Court’s mandate on remand violates Utah’s mandate rule. Utah courts have “long recognized that branch of the law of the case doctrine known as the mandate rule.” *Utah Dep’t of Transp. v. Ivers*, 2009 UT 56, ¶ 12, 218 P.3d 583 (*“Ivers II”*) (citation omitted). “The mandate rule dictates that pronouncements of an appellate court on legal issues in a case become the law of the case and must be followed in subsequent proceedings of that case.” *Id.* (quotation marks and citation omitted). “The mandate of an appellate court binds the district court and the parties and affords the district court no discretion whether to comply with that mandate.” *Id.* ¶ 8 (citation omitted). “The mandate must be followed even though the lower court subsequently addressing the issue may believe that the issue could have been better decided in another fashion.” *Thurston v. Box Elder County*, 892 P.2d 1034, 1038 (Utah 1995). “The mandate is also binding on the appellate court should the case return on appeal after remand.” *IHC Health Servs., Inc., v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 28, 196 P.3d 588 (citation omitted). Thus, “[t]he application of the mandate rule lacks the flexibility found in other branches of the law of the case doctrine.” *Thurston*, 892 P.2d at 1038.

Ivers, an eminent domain case, highlights the firmness of the mandate rule in cases procedurally similar to the present case. On the first appeal (*Ivers I*) the Utah Supreme

Court had held that “severance damages are awardable [to Arby’s] for the loss of view . . . if the ‘condemned property is essential to the completion of the project as a whole.’” *Ivers II*, 2009 UT 56, ¶ 14 (quoting *Ivers v. Utah Dep’t of Transp.*, 2007 UT 19, ¶ 21, 154 P.3d 802 (“*Ivers I*”). The Supreme Court noted that it had remanded to the trial court to determine “whether Arby’s condemned land was essential to the project,” and if it was, “to award appropriate damages.” *Id.* “This was the scope of remand.” *Id.* Because the parties had stipulated after remand that the condemned land was essential to the project, “all that remained was for the district court to award Arby’s the appropriate severance damages.” *Id.* ¶ 15. On remand, however, UDOT filed a *motion in limine* to exclude all evidence of Arby’s right of view because Arby’s predecessors in interest had allegedly conveyed the right of view in 1961 and 1992. *Id.* At the urging of UDOT, the trial court reframed the issues as presented in UDOT’s motion, ignored the limited scope of remand, granted the motion and concluded that no claim for a taking existed. *Id.*

Arby’s appealed, asserting that the trial court violated the Supreme Court’s mandate to “award appropriate damages.” *Id.* The Supreme Court noted that “the district court was drawn in by UDOT’s attempt to reframe the foreclosed issue of Arby’s right of view.” *Id.* ¶ 15. The prior mandate and UDOT’s subsequent admission that the condemned land was essential to the project “prohibit[ed] UDOT from reframing the issue to its advantage after remand.” *Id.* ¶ 20. Accordingly, the Supreme Court held that “because the trial court violated our mandate by exceeding the scope of remand, we reverse and vacate its order granting UDOT’s motion in limine[.]” *Id.* Since the trial court had made no findings regarding Arby’s severance damages, the Supreme Court

remanded for the second time and once again “direct[ed] the trial court on remand to award appropriate severance damages to Arby’s.” *Id.*

As in *Ivers II*, the trial court in the present case was drawn in by Wasatch’s efforts to reframe, to its advantage, the authorization issue as “actual authority.” As in *Ivers II*, this Court’s mandate prohibited the trial court from reframing the issue as “actual authority.” *See supra* Part I, at 15–16. “[B]ecause the trial court violated this Court’s mandate by exceeding the scope of remand,” this Court should “reverse and vacate” the trial court’s conclusion that Wasatch met its burden to prove actual authority and thereby obtained legal title and became a successor in interest to Mission. *Ivers II*, 2009 UT 56, ¶ 20.

II. The Trial Court Incorrectly Concluded That Mission Either Orally Authorized Or Ratified Sutton’s June 2000 Transfer Of The Section 32 Leases.

Considering the only two proper issues on remand, oral authorization and ratification, the trial court incorrectly concluded that Sutton’s actions were orally authorized or ratified by Mission. (R. 8116; 8118, ¶ 7.)⁷

A. Oral authorization has no legal effect on Sutton’s June 2000 transfer.

(1) Colorado law does not recognize oral authorization.

There could be no oral authorization by Mission sufficient to satisfy the statute of frauds. Although the Utah statute of frauds applies to the June 2000 transaction between Sutton and Wasatch, Utah law defers to Colorado law, the state of Mission’s incorporation, regarding Sutton’s authorization by Mission. The Utah Limited Liability

⁷ The trial court’s determination that Sutton had actual authority to dispose of Mission’s property as the only manager is irreconcilable with its rulings that Sutton obtained both oral authorization and ratification from a non-existent second manager.

Company Act in effect in June 2000 expressly provided that it “does not govern the organization and internal affairs of a foreign limited liability company.” UCA § 48-2b-143(1) (1998). Rather, the “organization and internal affairs” of Mission, including the authority of its members and managers, are governed by the laws of Colorado under which Mission was organized. *See Atherton v. F.D.I.C.*, 519 U.S. 213, 223-24 (1997) (“States normally look to the State of a business’ incorporation for the law that provides the relevant corporate governance[.]”). Under Colorado law, any “oral authorization” given by Mission to Sutton is ineffective because Colorado does not recognize “oral authorization” as an exception to the statute of frauds’ written authorization requirement.⁸ Rather, Colorado requires written authorization, unless the agent’s unauthorized acts are later ratified. *See Simpson v. Nelson*, 208 P. 455, 456 (Colo. 1922).

In *Simpson*, the Colorado court refused to enforce a husband’s agreement to sell property he owned jointly with his wife, in spite of the oral authorization she gave her husband to enter into the agreement on her behalf: “The fact that she was present and heard the oral contract which was afterwards consummated by the writing would amount to no more than oral authority from her to him, *which would be void.*” *Id.* (emphasis added). Other Colorado decisions have consistently required written authorization and given no legal effect to any other authorization, oral or otherwise. *See, e.g., Nunnally v. Hilderman*, 373 P.2d 940, 941 (Colo. 1962) (holding that “agent has no authority over the

⁸ The Colorado statute of frauds is substantively identical to Utah’s: “No estate or interest in lands . . . shall be created, granted, assigned, surrendered, or declared, unless . . . by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering, or declaring the same, *or by his lawful agent thereunto authorized by writing.*” C.R.S. §38-10-106 (emphasis added).

title, unless he is specifically authorized in writing to bind the title or to enter into a contract binding the owner to convey the title).⁹ Accordingly, any oral authorization given by Mission to Sutton to alone execute the June Letter Agreement or MLAs “would be void” and ineffective under Colorado law.

(2) The oral authorization exception is no longer recognized in Utah.

Even applying Utah law to Mission’s internal affairs, whatever oral authorization Sutton may have had from Mission was ineffective. *Mathis v. Madsen*, 261 P.2d 952, 956 (Utah 1953), was both the first and the last time that any appellate court in Utah has allowed oral authorization to overcome the statute of frauds’ written authorization requirement.¹⁰ In *Mathis*, the trustee for a cooperative had signed an instrument to convey the cooperative’s interest in real property to the plaintiffs, but the trustee’s “authority was not in writing.” *Id.* at 955. The court, however, allowed oral authorization to overcome the statute of frauds only ““when the person [1] who acts under an oral authorization [2] is either a general agent or executive officer of the corporation.”” *Id.* at 956. What constituted “oral authorization” was never addressed, but the court found that the trustee had authorization to sign the instrument because “the instrument was authorized by the Board of Directors . . . , although . . . not granted in writing or by

⁹ See also *Newman v. Tibbitts*, 149 P. 266, 268 (Colo. Ct. App. 1915) (contract and deed executed by agent were void because agent was not authorized in writing); *Springer v. City Bank & Trust Co.*, 149 P. 253, 254 (Colo. 1915) (the authority of an agent “must be conferred in writing”); *Johnson v. Lennox*, 133 P. 744, 746 (Colo. 1913) (same); *Castner v. Richardson*, 33 P. 163, 164 (Colo. 1893) (holding that in spite of plaintiff real estate broker’s conversations with the defendant property owner, “plaintiff was not authorized by writing to execute such [real estate sales] contract”).

¹⁰ This Court relied on *Mathis* in its discussion of oral authority in the first appeal.

formal action[.]” *Id.* at 955–56. At the least, oral authorization was given by the company’s governing board.

On the other hand, subsequent Utah cases have refused to recognize the oral authorization exception. For instance, in *Williams v. Singleton*, 723 P.2d 421 (Utah 1986), the defendants offered to purchase property owned by a husband and wife as joint tenants. The husband authorized his agent by telegram to sign the acceptance. The wife did not give written authorization to the agent, but rather “expressly authorized her husband” to accept for her. When the sale failed, the husband and wife brought suit to enforce the purchase agreement. Citing to the statute of frauds’ written authorization requirement, the Utah Supreme Court held that “an agent may sign for his or her principal . . . so long as the authority is given in writing.” *Id.* at 423 (emphasis added). The wife had only given oral authorization, but the court held that “[husband] was a joint tenant with [wife] and could not have accepted on her behalf or as her agent without written authority first obtained. There is no husband-wife exception to the statute of frauds.” *Id.*

Other Utah cases agree. *See Cady v. Johnson*, 671 P.2d 149, 161 (Utah 1983) (“Utah law is clear that only a written power of attorney will authorize one to bind another to a contract for the sale of real property.”); *Frandsen v. Gerstner*, 487 P.2d 697, 700 (Utah 1971) (“The power to execute a contract of sale is an additional authority that must be expressly granted in writing”). These Utah cases subsequent to *Mathis* comport with the well-established general rule across nearly all jurisdictions that a contract within the statute of frauds “executed by an agent acting under parol authority is void and of no effect.” *See* 72 Am.Jur.2d Statute of Frauds § 301 (citing cases).

(3) *Jager was not a manager of Mission and could not give oral authority.*

Even assuming, *arguendo*, that the Utah oral authority exception is still viable and applies in this case, the facts as found by the trial court do not support the conclusion that Jager orally authorized Sutton to execute the MLAs. Jager, not Mission, authorized Sutton to execute the MLAs, and the only evidence of this was Jager's January 17, 2001 letter to Reott (the "Jager Letter" (Trial Exhibit 29), attached as Addendum H), of which the trial court made the following findings:

- "In the letter, *Jager* did not contradict Sutton's authority." (*Id.* (emphasis added).)
- "The January 17, 2001 letter establishes that, to the extent he functioned as a manager of Mission or had ownership as a member of Mission, *Jager* . . . gave oral authorization to Sutton of the May 1, 2000 and June 21, 2000 transactions at the time they took place . . ." (R. 8116 (emphasis added).)
- "At no time did Jager or anyone else associated with Mission contradict Sutton's authority to enter into the May 1, 2000 and June 21, 2000, transactions with Wasatch on behalf of Mission." (*Id.*)
- "While *Jager* was not involved in the management of Mission from May 1998 to October 2000, his correspondence and Sutton's testimony establish that *Jager* had knowledge of and was in agreement with the actions taken by Sutton with respect to the sale of leases to Wasatch." (R. 8119 (emphasis added).)

These findings are unavailing and ineffectual under the oral authorization exception inasmuch as the trial court made no finding that *Mission*, rather than *Jager*, ever approved the transaction or gave the necessary oral authorization. In any event, the Jager Letter itself, written seven months after the June transaction, provides no evidence whatsoever that Jager orally authorized Sutton to execute the MLAs or June Letter Agreement. "[The] trial court's interpretation of written documents . . . presents a

question of law” reviewed for correctness. *Harris v. IES Associates, Inc.*, 2003 UT App. 112, ¶ 27, 69 P.3d 297.

But even more fatal are the trial court’s findings that Jager was not a manager of Mission, never acted for or on behalf of Mission, and was not in a position to authorize Sutton’s actions on behalf of Mission. The trial court specifically found:

- “Jager did not sign the Operating Agreement and there was no evidence at trial that, although he purported to act for Mission as ‘chairman’ once in 1997 and once in 2001, he knew he was a manager of Mission.” (R. 8101–8102.)
- “In May 1998, Sutton became the manager of Mission and from that date through October 21, 2000, when he resigned, Sutton acted as sole manager of Mission.” (R. 8102.)
- “At the time of both the May 2000 and the June 2000 transactions, Sutton was the sole manager of Mission.” (R. 8111.)
- “By letter dated August 31, 2000 . . . , Jager advised Reott that he was ‘on the sidelines’ with respect to the affairs of Mission and presented himself merely as a creditor who, like Reott, was seeking to recover what he had advanced to Mission.” (R. 8114.) “Jager did not sign the August 31, 2000, letter in any representative capacity, nor does the document reflect that it was sent on behalf of Mission.” (R. 8115.)
- “Wasatch had never dealt with Jager and there is no evidence that Wasatch knew of Jager or that, during the relevant time period, Jager purported to act on behalf of Mission.” (R. 8117.)
- “After the departure of Muller and Willard in May 1998, Sutton acted as sole manager of Mission until October 2000.” (R. 8119.)
- “Jager was not involved in the management of Mission from May 1998 to October 2000[.]” (*Id.*)

Consequently, Jager was not a manager of Mission and could not orally authorize the June 2000 transaction on behalf of Mission.

B. Mission did not ratify Sutton's June 2000 transfer.

The trial court also incorrectly concluded that Mission ratified Sutton's assignment of the Section 32 Leases. The trial court had "previously entered Partial Summary Judgment in favor of Reott on the issue of Mission's ratification of Sutton's authority" on remand (R. 6024–6025; 8118, ¶ 7), thus foreclosing the issue of ratification before trial, which all parties recognized (R. 8191:26, 34; 8192:467). At the conclusion of trial, and without notice to the parties that ratification was even in issue, the trial court *sua sponte* "vacate[d] that Partial Summary Judgment based on the contents of Jager's letter dated January 17, 2001 (Exhibit 29)." (R. 8118, ¶ 7.)

As with oral authorization, ratification by Mission of Sutton's unauthorized actions is an internal affair of Mission governed by Colorado law. Under Colorado law, ratification of an unauthorized act occurs only upon "adoption and confirmation by [the principal] with knowledge of all material facts, of an act or contract performed or entered into in his behalf by another who at the time assumed without authority to act as his agent." *Nunnally* 373 P.2d at 942.¹¹ Ratification of a contract also requires the same formality as that required to enter into the contract. *See Laybourn v. Wrape*, 211 P. 367, 369 (Colo. 1922) (company's ratification of contract must be by the power which could make it).¹²

¹¹ *See also Mountain States Waterbed Distributors, Inc. v. O.N.C. Freight Systems Corp.*, 614 P.2d 906, 907 (Colo. Ct. App. 1980) ("[K]nowledge of all material facts is indispensable in order to bind the principal by ratification.").

¹² *See also Newman v. Tibbitts*, 149 P. 266, 268 (Colo. Ct. App. 1915) (holding that "[r]atification in writing was necessary" because statute of frauds required authorization in writing); *People's Mining & Milling Co. v. Central Consol. Mines Corp.*, 80 P. 479 (Colo. Ct. App. 1905) (oral ratification of authorization insufficient because under statute of frauds ratification must be in writing).

Even if Utah law applies, ratification by a principal of an agent's unauthorized act likewise "requires the principal to have knowledge of all material facts and an intent to ratify." *Bradshaw v. McBride*, 649 P.2d 74, 78 (Utah 1982). Additionally, "the same kind of authorization that is required to clothe an agent initially with authority to contract must be given by the principal to constitute a ratification of an unauthorized act." *Id.* at 79. For example, in situations such as those within the statute of frauds "[w]here the law requires the authority to be given in writing, the ratification must also generally be in writing." *Id.* See also *Frandsen v. Gerstner*, 487 P.2d 697, 701 (Utah 1971) (same).

By these principles, ratification by Mission must be with knowledge of all material facts, and with intent to ratify. Also, where "the MOA . . . requires two Mission managers to execute instruments conveying Mission's title to real property," *Wasatch Oil & Gas*, 2007 UT App. 223, ¶ 29, ratification must be in writing executed by two Mission managers. The trial court's findings of fact do not support the conclusion that Mission ratified Sutton's unauthorized assignment of Mission's Section 32 Leases.

(1) The Jager Letter was not signed by two Mission managers.

First, the Jager Letter, the only document purporting to ratify the June 2000 transfer, was not executed by two Mission managers as required by the MOA. The trial court found that the Jager Letter established that "Jager . . . , after receiving full knowledge of the transactions, ratified them at a later date." (R. 8116; 8118, ¶ 7.) Only Jager, who was not a manager, signed the letter. (R. 8116.) This ratification was not by the same formality necessary to sign the MLAs originally, as required by both the MOA. The Jager Letter is ineffective to ratify Sutton's execution of the MLAs.

(2) Jager did not have authority to bind Mission by his ratification.

Second, Jager had no authority and was in no position of authority to act on behalf of Mission. It is axiomatic that ratification of an agent's unauthorized acts must be made by the principal. The trial court found that the Jager Letter established that Jager "confirmed his knowledge of the May 1, 2000 and June 21, 2000 transactions between Wasatch and Mission and his support of the transactions and the reasoning behind them" and "did not contradict Sutton's authority." (R. 8115). But Jager was not a manager with authority to bind Mission by his ratification. Rather, the trial court found that Jager had no involvement with the management of Mission. *See supra* Part II.A.3. Jager simply had no authority to ratify Sutton's unauthorized transfer of the Section 32 Leases to Wasatch.

(3) Jager did not have full knowledge of all material facts.

Third, the trial court erred in concluding that the contents of the Jager Letter satisfy the "knowledge of all material facts" requirement for ratification. The Jager Letter itself shows Jager's incomplete and inaccurate understanding of the June transaction: "Mission Energy conveyed their ownership to Wasatch Energy in return for future consideration as a carried interest for any wells drilled within the unit by Wasatch Energy. There were no drill sites conveyed, only acreage, with the commitment for future compensation." (*See* Jager Letter.) Jager did not testify at trial. His understanding of the material facts of the June 2000 transaction, which the Jager Letter purports to ratify, may only be gleaned from the Jager Letter itself. There are a number of material terms of the June Letter Agreement that the Jager Letter either misstates or omits:

- The June Letter Agreement was actually entered into with Wasatch Oil & Gas Corporation, not “Wasatch Energy” as the Jager Letter states. (*See* Jager Letter.)
- Mission retained the “wellbore rights and attributable spacing unit relating to the Lavinia 1-32 well,” and agreed to “fully indemnify Wasatch for any obligation relating to the Lavinia #1-32 well” and maintain “responsibility for financial obligations of the Lavinia #1-32 well, including lease bonding.” (*Id.* ¶¶ 1, 5.)
- The extent of Mission’s carried interest in any wells drilled by Wasatch would be “proportionally similar to whatever Wasatch is able to retain in a trade with a third party,” e.g. “25% of 25%, or 6.25%.” (*Id.* ¶ 2.)
- “The terms of any trade obtained by Wasatch will be offered to Mission,” which terms Mission may accept or reject, and if rejected “Mission will have been deemed to relinquish any and all interest in the Leases.” (*Id.* ¶ 3.)
- “Mission will assign [Jack’s Canyon Unit] operations to Wasatch.” (*Id.* ¶ 6.)
- “Wasatch makes no guarantee that” it will “meet the [Jack’s Canyon Unit] obligations as defined by the BLM.” (*Id.* ¶ 4.)
- “Mission will work in good faith [to] transfer to Wasatch any pending APD’s on the Leases.” (*Id.* ¶ 7.)
- “Any cost incurred by Wasatch to get the Leases in good standing . . . will be reimbursed to Wasatch by Mission within 10 days notice, except for Burris/Horse Bench leases.” (*Id.* ¶ 8.)
- Wasatch would “reimburse Mission for paying the rentals” on the leases, totaling \$3,629.40, (*id.* ¶ 10), but Mission would receive no other payment from Wasatch.

In fact, the Jager Letter shows that Jager’s understanding of the transaction was expressly contrary to the June Letter Agreement’s provision that “[i]f Mission elects to participate in a trade *then* assignments will be made *after* an operating is executed and *after* a well is completed on a particular lease.” (*Id.* ¶ 3 (emphasis added).) Jager’s statement that Mission had already conveyed its acreage “in return for future compensation” on a future well indicates that he had no knowledge of the conditions precedent to any future

consideration found in paragraph 3 of the June Letter Agreement. The Jager Letter does not establish Jager's knowledge of all material terms of the June Letter Agreement.

C. Sutton's lack of authority under the statute of frauds defeats Wasatch's legal and equitable title.

Because Sutton alone executed the MLAs without requisite authority in violation of the statute of frauds, they are void. *See Wasatch Oil & Gas, L.L.C.*, 2007 UT App. 223, ¶¶ 29–30 (holding that the MLAs were not valid unless the trial court concludes on remand that Mission gave Sutton oral authorization or ratified his actions). For the same reasons, the June Letter Agreement, signed only by Sutton, is also void. *See* UCA §25-5-3 (“Every contract . . . for the sale[] of . . . any interest in lands[] shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the . . . sale is to be made, or by his lawful agent thereunto authorized in writing.”). Sutton's unauthorized and unratified execution of the MLAs defeats Wasatch's legal title in the Section 32 Leases, and his unauthorized and unratified execution of the June Letter Agreement defeats Wasatch's equitable title in the June Leases.¹³ Wasatch's alleged equitable interest by virtue of its rental payments to SITLA is void inasmuch as the statute of frauds broadly provides that “no estate or interest” whatsoever may be “created” or even “surrendered” absent a writing signed by the party “creating” or “surrendering” the interest, or by its agent authorized in writing. *See* UCA §25-5-1.

¹³ The trial court held that Wasatch obtained legal title to the Section 32 Leases by the MLAs (R. 8118, ¶5), and equitable title to all of the June Leases by the June Letter Agreement and/or Wasatch's \$4,000 payment to SITLA to preserve the leases (R. 8119). Wasatch's \$4,000 lease rental payment was actually a debt owed by Mission to Wasatch, (*see* June Letter Agreement ¶ 10), which debt also defeats Wasatch's equitable interest.

III. The Trial Court Incorrectly Concluded That Mission's June 2000 Transfer Was Not A Fraudulent Transfer Under UCA § 25-6-6.

The trial court also incorrectly concluded that “Reott has failed to prove by clear and convincing evidence that Mission’s sale of mineral leases to Wasatch in . . . June 2000 was a fraudulent transfer pursuant to the provisions of UCA §25-6-6.”¹⁴

“The law has long held that transfers of property designed to place a debtor’s assets beyond the reach of the debtor’s creditors are void as to the creditors.” *Butler v. Wilkinson*, 740 P.2d 1244, 1260 (Utah 1987). “Because UFTA is remedial in nature, it should be liberally construed,” *National Loan Investors, L.P. v. Givens*, 952 P.2d 1067, 1069 (Utah 1998), which Utah courts do “so as to reach all artifices and evasions designed to rob the Act of its full force and effect in preventing debtors from paying the just claims of their creditors,” *Butler v. Wilkinson*, 740 P.2d 1244, 1260 (Utah 1987). Thus, a fraudulent transfer conveys no legal or equitable interest to the transferee, but is “void as to the creditors.” *See Tolle v. Fenley*, 2006 UT App 78, ¶ 13, 132 P.3d 63 (citation and quotations omitted)).

Mission’s fraudulent transfer defeats Wasatch’s legal title to the Section 32 Leases because a “transfer” includes “direct” disposals of an asset. UCA § 25-6-2(12). “[I]t is clear the transfer of legal title to real property is a ‘transfer’ within the [Uniform Fraudulent Transfer] Act’s broad provisions.” *Kaufmann v. M & S Unlimited, L.L.C.*, 121 P.3d 181, 184 (Ariz. Ct. App. 2005). Mission’s fraudulent transfer also defeats Wasatch’s equitable title, whether arising by the June Letter Agreement or by Wasatch’s

¹⁴ Reott does not challenge the trial court’s conclusion that “Reott has failed to prove actual intent to defraud” under UCA §25-6-5(1)(a). (R. 8119–8120.)

lease rental payments to SITLA. A “transfer” under UFTA includes “every mode, direct or *indirect*, absolute or conditional, or voluntary or *involuntary*, of disposing of or parting with an asset or an interest in an asset” UCA § 25-6-2(12) (emphasis added). Liberally construed, UFTA prevents Mission from transferring any equitable interest in the June Leases to Wasatch, even involuntarily by Wasatch’s rental payments to SITLA.

The relevant avenue under UFTA to assert a claim for fraudulent transfer is “if the creditor’s claims arose before the transfer, pursuant to Utah Code section 25-6-6.” *Tolle v. Fenley*, 2006 UT App. 78, ¶ 20, 132 P.3d 63. Section 25-6-6 provides:

- (1) A transfer made . . . by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made . . . if:
 - (a) the debtor made the transfer . . . without receiving a reasonably equivalent value in exchange for the transfer . . . ; and
 - (b) the debtor was insolvent at the time or became insolvent as a result of the transfer.

UCA § 25-6-6(a), (b) (1998).¹⁵ “Under section 25-6-6, the debtor’s actual intent is irrelevant and the focus is on [1] whether the debtor received ‘reasonably equivalent value’ for the transferred properties and [2] whether the debtor is ‘insolvent at the time or became insolvent as a result of the transfer.’” *Id.* (quoting UCA § 25-6-6).

A. Mission did not receive reasonably equivalent value.

Whether Mission received “reasonably equivalent value” is a two-part inquiry. First, the trial court must determine whether the consideration received by Mission constituted “value” within the meaning of UFTA, which defines “value” as follows:

¹⁵ Reott is a judgment creditor whose claim against Mission arose no later than December 20, 1999, the date he obtained the Colorado Judgment. *See Tolle*, 2006 UT App. 78, ¶14.

Value is given for a transfer . . . if, in exchange for the transfer . . . , *property* is transferred or an antecedent debt is secured or satisfied. However, *value does not include an unperformed promise* made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

UCA §25-6-4(1) (emphasis added). "Property" is defined by UFTA as "anything that may be the subject of ownership." *Id.* §25-6-2(10). Whether consideration constitutes "value" under the meaning of UFTA is a question of law reviewed for correctness. *See Territorial Savings & Loan Assoc. v. Baird*, 781 P.2d 452, 461 (Utah Ct. App. 1989).

Second, the trial court must determine whether the "value" received by Mission was "reasonably equivalent" to the value of the property exchanged. While neither UFTA nor Utah common law defines what is "reasonably equivalent," guidance may be taken from UFTA's predecessor, the Utah Fraudulent Conveyances Act (UFCA). Under the substantively similar constructive fraud provision of UFCA, a conveyance was fraudulent if the debtor "[1] was insolvent or rendered insolvent by the conveyance, and . . . [2] the conveyance was made without fair consideration." *See Territorial Savings & Loan Assoc.*, 781 P.2d at 458 (citing UCA § 25-1-4 (repealed 1988)). "Fair consideration" required "a fair equivalent exchange," which meant "such a price as a capable and diligent businessman could presently obtain for the property after conferring with those accustomed to buy such property. . . ." *Id.* at 459 (quotations and citations omitted). Whether the value received is "reasonably equivalent" is "ordinarily" a question of fact, but "there may be, on occasion, instances where it is clear that" reasonably equivalent value was or was not exchanged. *See id.* at 461. In those case, the determination of "reasonably equivalent value" is a question of law. *Id.*

(1) *The only “value” Mission received was the \$3,629.40 reimbursement.*

Under the facts found by the trial court, Mission did not receive “value” from Wasatch in exchange for the June Leases other than the \$3,629.40 reimbursement. (R. 8112.) The trial court found that pursuant to the June Letter Agreement, Wasatch promised to “give Mission a specified percentage of any drilling deal Wasatch or Mission *might* negotiate in the future with respect to the leases purchased.” (R. 8108 (emphasis added).) Such promise was never performed or fulfilled (R. 8291:217), and as “an unperformed promise” does not constitute “value” within the meaning of UFTA.¹⁶

Additionally, Wasatch’s “reinstatement of any expired leases” that it obtained from Mission, for Wasatch’s own benefit, and Wasatch’s obligation to “maintain the leases as lessee and unit operator,” were not “subject of ownership” and thus were not “property” or “value” for purposes of UFTA. *See* UCA §25-6-2(10). Additionally, only SITLA received Wasatch’s \$4,000 lease reinstatement payment, not Mission.

(2) *The \$3,629.40 received by Mission was not reasonably equivalent value.*

The “value” actually received by Mission also was not reasonably equivalent to the value of the June Leases transferred. For the May 2000 transaction, the trial court found that Wasatch’s initial offer to Mission of \$24,610.83 for the May Leases “represented the amount that a willing buyer was prepared to pay a willing seller for the leases” and was “more indicative of reasonably equivalent value at the time of the sale than the values

¹⁶ *See also, e.g., Manchec v. Manchec*, 951 So.2d 1026, 1029 (Fla. Ct. App. 2007) (holding that “the promise of 25% of the future royalties of the invention was an ‘unperformed promise’ within the meaning of [the Florida Uniform Fraudulent Transfer Act]” because “there had been no sales of the invention, no projected sales[, and] distribution of the invention required FAA approval, which was, at best, uncertain”).

offered by Dr. Stinson.”¹⁷ (R. 8104, 8105, 8106.) Accordingly, the trial court gave “greater weight to the calculations of Wasatch . . . as a measure of reasonably equivalent value.” (R. 8106.) Shortly thereafter, Mission and Wasatch began negotiating the June 2000 transfer. Wasatch valued the June Leases in the same manner it did the May Leases. (R. 8108.) The trial court found that Wasatch ultimately proposed to purchase the June Leases “for the same \$5.00 per net acre price paid for the leases purchased on May 1, 2000” (R. 8108) and found that “*this amount constituted reasonably equivalent value* and rejects the testimony of Dr. Stinson to the contrary[.]” (*Id.* (emphasis added).) Thus, the trial court expressly found that \$5.00 per net acre constituted reasonably equivalent value for the June Leases.

But \$5.00 per net acre was not the amount that Mission actually *received* for the transfer. The trial court found that “[p]ursuant to the June 2000 Letter Agreement, Wasatch reimbursed Mission \$3,629.40 for rentals paid by Mission on leases purchased by Wasatch.” (R. 8112.) Although “both Mission and Wasatch actively sought other parties to develop and drill on the lease property as contemplated in the June 2000 Letter Agreement” (R. 8113), Wasatch never did obtain a drilling deal, and all that Mission received was the \$3,629.40 reimbursement. (R. 8291:217).

Given that the ten June Leases totaled 7,021.23 net acres (R. 7996; Trial Exhibits 114, 115), Mission received only fifty-two cents (52¢) per net acre in exchange for the June Leases it transferred to Wasatch—less than 11% of the \$5.00 per net acre value that the trial court specifically found “constituted reasonably equivalent value” for the very same

¹⁷ At trial Dr. Stinson gave a much higher value of the May and June Leases.

June Leases. (R. 8108.) Accordingly, the trial court's finding that "the consideration set forth in the June 2000 Letter Agreement and the amounts subsequently paid by Wasatch to preserve the leases and the Jack Canyon Unit constituted reasonably equivalent value for the sale of the leases" (R. 8109) is error.

B. Mission was insolvent in June 2000.

Mission was also insolvent at the time it transferred the June Leases to Wasatch in June 2000. The UFTA defines insolvency by what is known as the "balance sheet test": "[a] debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation." UCA § 25-6-3(1); *see also Tolle*, 2006 UT App. 78, ¶ 24 ("In order to prove insolvency, a balancing of assets and liabilities must be accomplished and only a showing that the debtor's entire nonexempt property and assets are insufficient to pay his debts rises to the level of insolvency." (quotation marks omitted)).¹⁸ "Under the UFTA, the level of insolvency necessary to meet the statute's requirement is not insolvency in the bankruptcy sense but merely a showing that the party's assets are not sufficient to meet liabilities as they become due." *Tolle*, 2006 UT App., ¶ 24 (quotation marks omitted) (emphasis in original).¹⁹ For example, in *Tolle* this Court held that the debtor was insolvent under the balance sheet test where he "transferred 'all the property held in [his] name' and as 'the transfer consisted of all or substantially all of [debtor's]

¹⁸ The trial court rejected the testimony of Reott's expert CPA, who testified that Mission was insolvent under three different standard analyses for insolvency. (R. 8293:656–679.)

¹⁹ Wasatch urged a higher standard for insolvency for "start-up" companies such as Mission, arguing that Mission was not insolvent because it was only a "start-up" and naturally undercapitalized and just needed more time (R. 7519–7520; 7524; 8293:680–682, 689, 691, 801–803, 827). The trial court agreed. (R. 8098; 8113; 8294:903.)

assets,' any moderate debt or liability would result in [debtor's] insolvency.” *Id.* ¶ 25.

The UFTA also provides that “[a] debtor who is generally not paying his debts as they become due is *presumed* to be insolvent.” UCA § 25-6-3(2). “Where failure to pay debts as they are due creates a presumption, such presumption may be logically rebutted by proof that the debtor is not insolvent.” *Balsamo v. Gruppo Ceramiche Ricchetti, S.P.A.*, 862 So.2d 812 (Fla. Ct. App. 2003). The balance sheet test may rebut the presumption, *id.*, but the burden of proof shifts to the party asserting solvency to rebut the presumption.²⁰

(1) Mission is presumed to be insolvent in June 2000.

In the present case, the trial court found that “[a]lmost from the start of its existence and as of May 1, 2000 through June 21, 2000, Mission was not able to pay its debts as they became due for lack of capital and revenue.” (R. 8101.) Thus, the trial court concluded, and Wasatch conceded (R. 8293:827), that “the evidence would support the presumption [of insolvency] found in UCA §25-6-3(2)[.]” (R. 8121.) The burden thus shifted to Wasatch to rebut the presumption and prove that Mission was solvent, i.e. the sum of Mission’s debts was not greater than all its assets *at a fair valuation*.²¹

(2) Wasatch did not rebut the presumption of Mission’s insolvency.

The trial court incorrectly concluded that the “presumption is rebutted by the

²⁰ No Utah court has determined whether rebuttal of the presumption must be by preponderance of the evidence or clear and convincing evidence, but it is not necessary to do so here because Wasatch has failed to rebut the presumption and prove Mission’s solvency even under the minimum preponderance of the evidence standard.

²¹ The trial court expressly recognized Mission’s financial troubles. (R. 8293:680 (“It’s pretty clear Mission was in financial trouble during this period of time.”))

undisputed testimony that the ‘fair value’ of all of the assets of Mission exceeded the sum of its debts as of May and June 2000.” (R. 8121.) There was no testimony, and Wasatch did not prove, that the sum of Mission’s debts was not greater than the value of all of its assets. As in *Tolle*, “any moderate debt or liability would result in [Mission’s] insolvency,” 2006 UT App. 78, ¶ 25, and that is precisely what happened. On September 18, 2000, less than three months after the June 2000 transfer, Reott recovered only \$27,236.37 from Mission’s bank accounts to partially satisfy his \$204,000 Colorado Judgment. (R. 8115.) The trial court found that Sutton resigned effective October 1, 2000, and “[n]o later than March 1, 2001, Mission ceased to function *by reason of Reott’s collection efforts.*” (R. 8117 (emphasis added).) Not only was Mission insolvent but it entirely “ceased to function” for the sole reason that Mission could not meet even the debt it owed to Reott. This finding by the trial court should have precluded it from finding that Wasatch proved that Mission was somehow solvent.

Instead, the trial court found that following the June 2000 transfer, Mission retained the following assets: “a. The Lavinia 1-32 well (valued by Reott and Sutton at an amount in excess of the total of all outstanding Mission liabilities). b. Cash in the bank of at least \$27,236.27. c. Amounts held by the State of Utah as a bond of \$19,943.15. d. The Gusher leases (the precise value of which was not addressed at trial but which Sutton testified had value and the Lease Acquisition Memorandum identified as having value).”²² (R. 8113.) The trial court found that “[t]he sole evidence before the Court was that the fair

²² The trial court also included Mission’s right under the June Letter Agreement to participate in a drilling deal as an asset, but that deal never materialized and Wasatch never presented any evidence of its value, if any.

value of Mission's assets as of June 21, 2000, exceeded its debts, notwithstanding Mission's inability as a start-up company to pay its debts as they became due." (*Id.*)

To rebut the presumption of insolvency, Wasatch had the burden to prove that the value of these remaining assets in June 2000 exceeded Mission's liabilities. By the end of 1999, Mission's liabilities (\$1,145,432) exceeded its assets (\$719,654) by \$434,778, and by the end of 2000 Mission's liabilities (\$1,163,881) exceeded its assets (\$582,599) by \$581,282. (R. 8293:661–663.) The cash on hand and bond totaled \$47,179.42, but Wasatch failed to establish the "fair value" of the Lavinia Well and the Gusher leases.²³

First, there was no evidence at trial as to any value, "fair" or not, of the Gusher leases, and this the trial court expressly found: "[T]he precise value of [the Gusher leases] was not addressed at trial." ²⁴ (R. 8113.) Merely finding that there was evidence that the Gusher leases "had value" does not satisfy Wasatch's burden to establish the quantum of that value, which was necessary for Wasatch to prove that the quantum of Mission's assets exceeded its debts. *See Levin v. Furniture Indus. Of Florida, Inc.*, 823 So. 2d 132 (Fl. Ct. App. 2002) (the presumption of insolvency was not rebutted because "[t]he [debtors], who had the burden of rebutting the statutory presumption of insolvency, put on no evidence as to the value of the judgment while it was on appeal").

With respect to the Lavinia Well, the evidence presented at trial does not support the trial court's finding that the Well's "fair value" exceeded the sum of all of Mission's

²³ There was no evidence at trial that the Gusher leases and Lavinia Well were not included in the "Oil and Gas Properties" assets category on Mission's balance sheets.

²⁴ Counsel for Wasatch admitted at trial that there was no evidence of the value of the Gusher leases. (827:8–9 ("Plus the Gusher interests, which nobody bothered to tell us what they were worth . . .").)

debts. (R. 8113.) This Court “may reverse a factual finding of the trial court only if it determines that the finding is clearly erroneous, . . . that is, if the trial court’s ruling contradicts the great weight of evidence or if a court reviewing the evidence is left with a definite and firm conviction that a mistake has been made.” *England v. Horbach*, 944 P.2d 340, 342 (Utah 1997). Pursuant to Reott’s duty to marshal, all of the evidence presented at trial that could have supported the trial court’s finding is:

- Heggie Wilson gave general testimony about how to value a lease and what he did for Wasatch when making an offer for the leases transferred in May and June 2000. However, he did not opine on the value of the Lavinia Well. (R. 8292:336–348, 356–363, 367–368, 376–377.)
- Sutton testified (by deposition) regarding the Lavinia Well: “I believe then and I still believe today, that that well has value, significantly more than Ed Reott’s judgment ever entailed. . . . Value number 1 of that 40 acres was the well and the hydrocarbons on it. Which I felt had more than significant value than the amount of debt, lien, and judgments against the company.” (R. 6495–6499.)
- Sutton also testified that in February, 2000, Mission (through an independent consultant) valued all of its Peters Pointe leases at \$210,000 to \$560,000, but he did not identify what acreage and leases were included in this valuation, or whether it included the Lavinia Well. (R. 6862, p. 187, to 6863, p. 198.)
- Sutton also testified that as of March 6, 2000, Mission owned 8,000 acres in Peters Pointe which had a value of \$40/acre, but he did not indicate whether this valuation included the Lavinia Well and its 40-acres. (R. 6864, pp. 209–210.)
- Ed Reott estimated that, as of June 2000, the value of the Lavinia Well and surrounding 640 acres without any depth limitation “could be anywhere from \$2.5 million to \$5 million” based on “topography, the access, the ability to—to drill, no [NEPA], and the pipeline there.” (R. 8292:552–553.)

This evidence does not support the finding that the value of the Lavinia Well and the surrounding 40 acres to a depth of 3,398 feet exceeded Mission’s \$1.1 million in liabilities. Reott’s valuation of \$2.5 to \$5 million was not for the Lavinia Well retained

by Mission but encompassed the entire 640-acre tract of Section 32 with an attributable spacing of 640 acres and no depth limitation. (R. 8291:149; 8292:552–553.) He never opined on the value of the Lavinia Well and 40-acre tract to a depth of 3,398 feet (*id.*), which the trial court and Wasatch’s counsel acknowledged (R. 8293:791–792).²⁵

Furthermore, Wasatch did not establish or present any evidence that Reott’s \$2.5 to \$5 million valuation, or that Sutton’s valuation in excess of the “amount of debt, lien, and judgments against the company,” was a “fair value” as would be required to prove Mission’s solvency under the balance sheet test. Rather, the sole evidence at trial established that the “fair value” of the Lavinia well in June 2000 was no more than \$20,000. Prior to the June 2000 transaction, Cusick and Sutton discussed including the Lavinia Well in the transaction, and he and Sutton “discussed what it would be worth.” (R. 8293:646–650.) On May 31, 2000, Cusick sent a letter to Sutton requesting to add the Lavinia Well to transaction if the liens could be cleared for \$20,000, the value Wasatch attributed to the well. (Trial Exhibit 112, attached as Addendum I). (R. 8293:650.) Cusick learned of the liens filed against the Lavinia Well, and it became clear to him that Mission “didn’t pay for this well.” (R. 8291:284–288.) Cusick testified that Wasatch “declined to purchase [the Lavinia well] because we didn’t want to get entangled in any mess there might be . . . on the well.” (R. 8293:648.)

Reott testified that on December 19, 2000, he received a phone call from Cusick in which “[Cusick] wanted to purchase for \$15,000 the J West lien and the Lavinia well.”

²⁵ The trial court’s reliance on Reott’s valuation is akin to attributing to a single condominium unit the appraised value of the entire condominium complex.

(R. 8292:525.) Reott further testified that “[Cusick] stated that he had acquired most of Mission’s assets in the area and that he needed this piece to complete his acquisition and that the well wasn’t worth anything and would cost \$40,000 to \$200,000 to place back into production and that he controlled the pipeline.” (*Id.*) Reott further testified that “[Cusick] insisted that I needed to sell it to him for \$15,000. And I told him, no, I didn’t need to. And he said . . . no one else would be interested in it.” (R. 8293:526.)

Huntington Walker, a landman for BBC, testified (by deposition) that in early 2002 “Wasatch had said that they didn’t think it was a particularly good well.” (R. 6900, p. 88; 6901, p. 90.) He testified that BBC’s “own independent geologic and engineering analysis that we could get from the public records didn’t indicate it was a very good well” and that he thought “it hasn’t been proved to be commercially productive.” (*Id.*)

Even BBC’s expert witness, James C. Creel, testified (during the damages phase) that during the period of 2000 to 2002, the Lavinia Well was “non-commercial”: “So back here in 2000, it was making about 250 MCF a day. 8 MCF—or 250—MCF a month, about 8 MCF or so a day. That’s pretty low. It doesn’t take much expenditure of time or money to make that non-commercial, particularly, I think at that time, gas prices were a little under \$3.” (R. 8295:1326.) He further testified that in 2001–2002 the Lavinia Well was still “non-commercial” and “had no value for its reserves” (R. 8295: 1319–1320, 1324); that “the value in 2002 was zero” and Mission “had no economic value for the reserves” (R. 8295:1360–1361), and that “the well is non-economic” because “[i]t cost more to operate than you’re making in revenue” (*id.*). Mr. Creel opined that in 2003 the “economic value of well” was only \$17,844. (R. 8295:1341.) The trial court relied on

Mr. Creel's testimony and found that "the commercial value of the Lavinia well in 2002 was effectively zero; Reott's costs of production in 2002 would have exceeded any potential revenue." (R. 8210–8211.)²⁶

It is indeed perplexing how the trial court could find that the value of the Lavinia Well for purposes of damages was "effectively zero" but for purposes of quiet title and fraudulent transfer the well had a value in excess of \$1.1 million, the sum of all Mission's liabilities. "[I]nternally inconsistent findings constitute clear error." *John Allan Co. v. Craig Allen Co., L.L.C.*, 540 F.3d 1133, 1139 (10th Cir. 2008). The trial court's reliance on Ed Reott's valuation of the Lavinia Well was also clearly erroneous since he valued the entire 640 acre section with no depth limitation, not the mere 40-acres around the well to a depth of only 3,398 feet. Furthermore, Wasatch did not establish that either Reott's or Sutton's valuation was a "fair valuation", e.g. that a buyer was willing to purchase it for the value of all Mission's liabilities, which exceeded \$1.1 million. The *only* evidence regarding the "fair value" of the Lavinia Well as it was retained by Mission—40-acres to a depth of only 3,398 feet—was no more than the \$15,000 to \$20,000 that Wasatch was willing to pay for it. Indeed, that is the definition of fair valuation—the amount a willing buyer is willing to pay for it. But ultimately not even Wasatch was willing to purchase the Lavinia Well with the "mess" there was on it.

Because Mission was insolvent when it transferred the June Leases to Wasatch, and

²⁶ The maximum value attributed to the Lavinia Well and 40 acres to a depth of 3,398 feet at any point during the trial, and for any time period, was Mr. Creel's valuation of only \$99,975 as of July 1, 2008. (R. 8295:1319.) The trial court concurred, finding that "the well had a value of \$99,000 in 2008." (R. 8211.)

Mission received only \$3,629.40 in “value” for the Leases—merely 11% of what the trial court found was reasonably equivalent value—Mission’s transfer of the June Leases to Wasatch was fraudulent as a matter of law pursuant to UCA § 25-6-6. Reott therefore requests that this Court reverse the trial court’s conclusion and remand to the trial court to implement UFTA’s remedies.²⁷

IV. The Trial Court Incorrectly Concluded that Reott Suffered No Damages.

A. The trial court abused its discretion by considering causation on the damages issue for Reott’s trespass to chattels claim.

Prior to the first appeal, the trial court held on summary judgment that BBC was liable, as a matter of law, to the Reott Parties for all damages arising from BBC’s . . . actions: . . . in physically removing the pipeline that connected the meter house to the main pipeline, damaging the Lavinia Pipeline, damaging the Oil Tank, causing the oil spill and causing the loss of approximately 100 barrels of oil.

(R. 5386.) Having already ruled on causation and liability, the trial court reserved for trial determination of Reott’s damages. (*Id.*) Yet three years later on the first day of trial, and in spite of Reott’s motion *in limine* to exclude evidence of causation (R. 6688–6689), the trial court vacated its decision on summary judgment and ruled that it would consider “causation” as a defense to Reott’s claims for damages, and that “Reott had the burden to prove that the actions of BBC’s crew caused the oil spill” (R. 8212; 8291:39–40).

While the trial court has some discretion to reconsider its own non-final decisions, *see Chilton v. Young*, 2009 UT App 265, ¶ 4, 220 P.3d 171, the trial court abused its

²⁷ UFTA’s remedies for Mission’s fraudulent transfer of the June Leases include: (i) avoidance of the transfer to the extent necessary to satisfy the creditor’s claim; (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; (iii) levy execution on the asset transferred or its proceeds; and (iv) any other relief the circumstances may require. UCA § 25-6-8 (1988).

discretion because there was no “reasonable basis” to overturn its prior decision on causation, *see Tschaggeny v. Milbank Ins. Co.*, 2007 UT 37, ¶ 16, 163 P.3d 615 (reasonable basis required to overturn prior decision). First, there was no intervening change in the law regarding causation warranting re-opening that issue for trial. Second, there was no new evidence presented regarding causation. *See Murdock v. Springville Mun. Corp.*, 1999 UT 39, ¶ 23, 982 P.2d 65. Third, the trial court’s reconsideration *during* trial was untimely and highly prejudicial to Reott. *See Tschaggeny*, 2007 UT 37, ¶ 17 (holding that last minute motion to reconsider on eve of trial was properly denied, and citing cases). Fourth, to the extent the trial court allowed “causation” evidence merely as a “mitigating factor” of Reott’s damages (see R. 8291:39–40), the trial court erred in this conclusion because the duty to mitigate damages presumes causation exists. *See, e.g., Acculog, Inc. v. Peterson*, 692 P.2d 728, 731 (Utah 1984) (defendant did not have a causation defense but only a mitigation of damages defense). Reott therefore requests that this Court reverse and remand to the trial court to determine, without considering causation, the amount of Reott’s damages on his trespass to chattels claim.

B. The trial court applied an incorrect measure of damages on Reott’s breach of common carrier obligation claim.

The trial court also incorrectly concluded that “Reott has suffered no damages as a result of any breach by Wasatch or BBC of their common carrier obligations” (R. 8211–8212) because it incorrectly applied a market value test instead of a lost production/lost profits test for the three-year disruption to Reott’s production from the Lavinia Well. “Whether the trial court applied the correct rule for measuring damages is a question of

law that we review for correctness.” *Mahana v. Onyx Acceptance Corp.*, 2004 UT 59, ¶ 25, 96 P.3d 893.

Without identifying or citing any legal authority, the trial court stated its rule for the measure of damages as follows:

Whether Wasatch or BBC owes damages to Reott for breach of common carrier duties fundamentally depends on whether there exists a finite amount of commercially recoverable gas in the reservoir in which the Lavinia well is drilled. . . . [If so,] damages would be dependent on the price of gas during the period when Reott could not produce because Wasatch or BBC were not gathering Reott’s gas, as compared to a later period when Reott was able to produce.

(R. 8211–8212.) This measure of damages does not follow Utah law and the general rule of damages for disruption to business. Relying on the Mineral Leasing Act (30 U.S.C. §185(r)(2)(A)), the trial court earlier held on summary judgment that “Wasatch and BBC were and are common carriers” and “breached their obligations as common carriers.” (R. 4823.) The measure of damages for violations of the Mineral Leasing Act’s provisions are as set forth by applicable regulation, *see* 30 U.S.C.A. §185(x), which regulation provides that federal right-of-way holders, such as pipeline operators, “shall be fully liable for injuries or damages to third parties . . . in accordance with the law of the jurisdiction in which the damage or injury occurred.” 43 C.F.R. § 2883.1-4(d). Thus, Utah law governs Reott’s damages for breach of common carrier obligations.

Under Utah law, Wasatch and BBC are liable for all injuries and damage arising out of their violation of the statute. *See Curtis v. Harmon Elec.*, 575 P.2d 1044, 1046 (Utah 1978) (noting that the violation of a statutory duty “renders defendant liable for all damages caused by such failure.”). For disruption or interruption of business, such as

Reott suffered for more than three years, the general measure of compensatory damages is lost profits. *See Acculog, Inc. v. Peterson*, 692 P.2d 728, 731 (Utah 1984) (citation omitted) (awarding plaintiff its lost profits for interruption to business caused by defendant's negligence); *Cook Assocs., Inc. v. Warnick*, 664 P.2d 1161 (Utah 1983) (awarding plaintiff its lost profits for the delay in opening manufacturing plant caused by defendant's breach of contract). This rule is consonant with the general rule that the proper measure of damages for interruption or disruption of business is lost profits. *See* 22 Am.Jur.2d Damages § 455 (citing cases and noting that lost profits are recoverable for disruption to business caused by breach of contract or tortious conduct).²⁸

In *Acculog*, the plaintiff's business equipment was destroyed in a vehicle fire proximately caused by the defendant's negligence, resulting in a temporary interruption to plaintiff's business and lost business and profits. The Utah Supreme Court held that "lost profits may be recovered" as long as "the evidence submitted provides a basis for estimating them with reasonable certainty." 692 P.2d at 731.

This general rule was applied in *United Electric Coal Co. v. Rice*, 22 F. Supp. 221 (E.D. Ill. 1938), in a fact situation similar to Reott's. In *Rice*, striking workers conspired to obstruct operation of a coal mine by force, violence, threats, and intimidation, resulting

²⁸ *See, e.g., Weinman v. De Palma*, 232 U.S. 571, 575 (1914) (the loss of future profits forms a proper element of compensatory damages for interruption of a going business); *CADCO, Inc. v. Fleetwood Enterprises, Inc.*, 220 S.W.3d 426, 434 (Mo. Ct. App. 2007) (same); *UST Corp. v. General Road Trucking Corp.*, 783 A.2d 931 (R.I. 2001) (same); *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243 (Pa. 1983) (same); *Rhodes v. Sigler*, 357 N.E.2d 846 (Ill. Ct. App. 1976) (same); *L. H. Bell & Associates, Inc. v. Granger*, 543 P.2d 428 (Ariz. 1975) (same); *ERA Helicopters, Inc. v. Digicon Alaska, Inc.*, 518 P.2d 1057 (Alaska 1974) (same).

in wrongful shutdown of the mine for a period of time. The mine sued the workers, claiming lost profits for the period of the wrongful shutdown. The trial court held that “[a]mong the elements of damages that may be assessed . . . in such case where the employer is wrongfully prevented from operating its plant, mine, or business are loss of profits, loss of business that cannot be regained, . . .” *Id.* at 226 (citations omitted). The defendants moved for a rehearing on the court’s measure of damages, arguing that “the profits were not lost but merely postponed for the period of the wrongful shutdown.” *Id.* at 229. On rehearing, the court again disagreed, holding that “the net profits lost by the plaintiff during the period of the wrongful shutdown caused by defendants’ wrong is a proper element to be included in an equitable and fair assessment of the damages suffered by the plaintiff.” The court reasoned:

When capital investments, including machinery and equipment subject to depreciation, are involved, time is valuable and costly just as it is when personal services are involved. *Earnings upon an investment lost through wrongfully enforced idleness can never be recovered through subsequent earnings any more than a wasted hour can be recalled for subsequent use. Depreciation of machinery and equipment not balanced by contemporary earnings represents a present and not a postponed loss.* Where there is a large capital investment, as here, the fact that the coal remained in the ground is not a controlling factor Whether it can be mined at some future time . . . at a net profit that will fairly compensate plaintiff for its then required use of its capital investment and also for its losses suffered through its enforced idleness during the period in question, as shown by the evidence, takes one into the realm of pure speculation.

Id. at 230 (emphasis added).

Disruption of business “represents a present and not a postponed loss” because creditors need present payment, not postponed payment; business investors demand present returns; and market and business opportunities do not wait until businesses regain

viability. Where debts and business opportunities are not postponed, profits cannot be postponed. Because Reott suffered present losses for more than three years when the Lavinia Well was denied access to the gas gathering pipeline and the equipment sat idle, the measure of Reott's damages does not depend on whether there was "a finite amount of commercially recoverable gas in the reservoir in which the Lavinia well is drilled." (R. 8211.) Rather, the measure of damages for disruption of Reott's business is his lost profits occasioned (i.e. lost production) from the Lavinia Well.

C. Reott presented evidence of lost profits with reasonable certainty.

"[L]ost profits may be recovered when the evidence submitted provides a basis for estimating them with reasonable certainty. While the evidence must not be so indefinite as to allow the jury to speculate as to their amount, some degree of uncertainty is tolerable." *Acculog*, 692 P.2d at 731. Reott presented evidence of his lost profits with reasonable certainty. His expert witness, Don Stinson, Ph.D., P.E., calculated the lost production by estimating the amount of gas production during the shut-in period based on historical production records for the Lavinia Well, subtracted the volume of gas used on-site for well operations to determine net gas sold, multiplied the net gas by the estimated price of gas (adjusted for the heat content of the gas) over the shut-in period to determine gross revenue, then subtracted from the gross revenue the estimated state and county taxes, state royalties and overriding royalty payments, lease operating expenses, and Wasatch's gas gathering costs. (R. 8294:922–934.) Dr. Stinson's evidence established that Reott's lost profits totaled \$116,064 for lost production from April 1, 2002 through January 31, 2004, the date his expert report had been completed. (R. 8294:933–934.)

Because Dr. Stinson's expert report had not been updated after its submission, the trial court refused to allow Dr. Stinson to offer damages figures for the period from February 1, 2004 through August 1, 2005, even though such figures were based on the same method, calculations, and underlying facts and data. (R. 8294:937-942.) The trial court's refusal to allow Dr. Stinson's testimony for the February 1, 2004 to August 1, 2005 period was error inasmuch as there was no surprise or prejudice to Wasatch and BBC since Dr. Stinson merely applied the exact same factors and formula to the later period.²⁹ Also, courts routinely allow experts to testify and offer opinions as to matters broadly covered by their expert reports but not specifically disclosed. *See, e.g., Creative Waste Mgmt., Inc. v. Capitol Environ. Svcs., Inc.*, 495 F.Supp.2d 353, 357 (S.D.N.Y. 2007) (allowing expert's testimony as to damages because expert witness was disclosed pursuant to rules of evidence and the expert's testimony was based solely on evidence admitted at trial).³⁰ Reott therefore requests that this Court remand to the trial court with directions to award Reott the proper amount of damages during the time the Lavinia Well was shut-in and not producing.

CONCLUSION

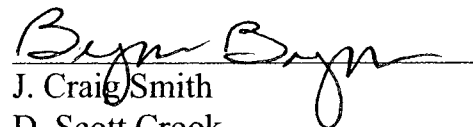
Reott requests that this Court quieting title to the Section 32 Leases in Reott, set aside the June 2000 transfer as fraudulent and void, and remand to the trial court for a proper determination of Reott's damages.

²⁹ Reott proffered that the damages from April 1, 2002 through August 1, 2005, totaled \$281,767 (\$165,703 from February 1, 2004 through August 1, 2005). (R. 8294:965.)

³⁰ BBC never deposed Dr. Stinson. Reott also identified updated damages figures totaling \$387,902 in his trial brief, which was filed and served several days before trial. (R. 7644-7645.)

Respectfully submitted this 19th day of March, 2010.

SMITH | HARTVIGSEN, PLLC

A handwritten signature in cursive script, appearing to read "Bryan Bryner", written over a horizontal line.

J. Craig Smith

D. Scott Crook

Bryan C. Bryner

Attorneys for Appellant Reott

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2010, I caused a true and correct copy of the **APPEAL BRIEF** to be served to opposing counsel at the following address:

By first-class mail:

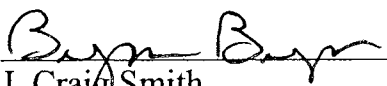
Eric C. Olson
Matthew K. Richards
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120
Attorneys for Appellee Wasatch

Carolyn McIntosh
Donna Vetrano Pryor
PATTON & BOGGS, LLP
1801 California Street, Suite 4900
Denver, Colorado 80202

Nick Sampinos
190 North Carbon Avenue
Price, UT 84501

Attorneys for Appellee BBC

SMITH | HARTVIGSEN, PLLC


J. Craig Smith
D. Scott Crook
Bryan C. Bryner
Attorneys for Appellant Reott

ADDENDUM

- A.** Mission Operating Agreement (“MOA”) (Trial Exhibit 3)
- B.** Map showing location of May Leases and June Leases
- C.** June Letter Agreement (June 21, 2000) (Trial Exhibit 9)
- D.** Order Granting Partial Summary Judgment: Wasatch’s Motion for Summary Judgment Re: Redemption, and The Reott Parties’ Motion for Summary Judgment on Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels.
- E.** *Wasatch Oil & Gas, L.L.C. v. Reott*, 2007 UT App. 223, 163 P.3d 713
- F.** Findings of Fact and Conclusions of Law re: Quiet Title and Fraudulent Transfer Claims
- G.** Findings of Fact and Conclusions of Law re: Damages
- H.** Jager Letter (January 17, 2001 letter from Fred Jager to Ed Reott, Trial Exhibit 29)
- I.** Letter from Todd Cusick to Justin Sutton, May 31, 2000, Trial Exhibit 112
- J.** UCA § 25-5-1 (1953)
- K.** UCA § 25-6-2 (1992)
- L.** UCA § 25-6-3 (1988)
- M.** UCA § 25-6-4 (1988)
- N.** UCA § 25-6-6 (1989)

Tab A

ADDENDUM A

AMENDED AND RESTATED
OPERATING AGREEMENT OF
MISSION ENERGY, LLC
A COLORADO LIMITED LIABILITY COMPANY

THIS AMENDED AND RESTATED OPERATING AGREEMENT is entered into as of this 1 day of April, 1997, among those persons or entities listed in Schedule "A", attached hereto and incorporated herein by reference [hereinafter referred to collectively as "Members" and individually as "Member"], who are the initial Members of MISSION ENERGY, LLC, a Colorado limited liability company, [hereinafter referred to as "LLC."]

In consideration of the mutual covenants and promises set forth in this agreement the Members agree as follows:

ARTICLE I

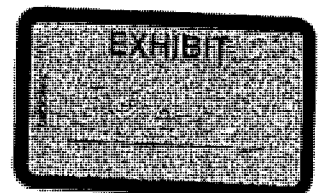
GENERAL

1.1 Formation. The LLC was created pursuant to the Colorado Limited Liability Company Act, C.R.S. 7-80-101, et. seq. (the "Act.") The LLC was formed on September 16, 1996 upon the filing with the Colorado Secretary of State of the LLC's duly executed Articles of Organization. The Members thereafter shall, from time to time, execute such further documents and take such further action as shall be deemed appropriate by the Members or by the Manager to comply with the requirements of law for the formation and operation of a limited liability company in all other counties, states, or other jurisdictions where the LLC may elect to do business.

1.2 Name. The name of the LLC shall be MISSION ENERGY, LLC.

1.3 Location of the Principal Place of Business; Registered Agent and Office. The principal place of business and registered office of the LLC shall be at 1617 Lincolnwood Drive, Glenwood Springs, CO. 81601, or such other address within the State of Colorado as from time to time selected by the Managers. The registered agent of the LLC shall be William F. Muller. If the Managers change the name of the registered agent and/or registered office, they shall notify the Members.

1.4 Records to be Kept at Registered Office. The LLC shall continuously maintain at its registered office all of the following:



(a) A current list of the full name and last known business or residence address of each Member and each holder of an economic interest in the LLC set forth in alphabetical order, together with the contribution and the share in profits and losses of each Member and holder of an economic interest.

(b) A current list of the name and address of each Manager, if any.

(c) A copy of the Articles of Organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(d) Copies of the LLC's federal, state and local income tax or information returns and reports, if any, for the six most recent taxable years.

(e) A copy of this Operating Agreement and any amendments thereto, together with any powers of attorney pursuant to which this Operating Agreement and any amendments thereto are executed.

(f) Copies of the LLC's financial statements for the six most recent fiscal years.

(g) The books and records of the LLC as they relate to the internal affairs of the LLC for at least the current and the four most recent fiscal years.

(h) In the event that the LLC at any time owns an interest in real property, upon the request of an assessor, the LLC shall make available, at the LLC's registered office, a true copy of the business records relevant to the amount, cost, and value of all property that the LLC owns, claims, possesses or controls within the county.

1.5 Term. The term of this LLC shall commence on the date of filing of the Articles of Organization with the Colorado Secretary of State, and shall continue until any of the following:

(a) Upon the death, withdrawal, resignation, expulsion, bankruptcy, or dissolution of a member, unless the business of the LLC is continued by a vote of all of the remaining members within 90 days of the happening of that event;

(b) the entry of a decree of dissolution of the LLC.

ARTICLE II

MEMBERS

2.1 Nature of Interest. A membership interest in the LLC, shall constitute the personal property of the Member or assignee. A member or assignee has no interest in the specific LLC property.

2.2 Admission of Members to LLC.

2.2.1 The founding Members of the LLC shall have those Shares listed beside their names on Schedule A.

2.2.2 All those persons acquiring Membership interests in the LLC's offering of Shares by means of its Private Placement Memorandum dated May 1, 1997 shall be required to pay the LLC the cash sum of \$5,000 per Share. All such persons shall, upon acceptance of their subscriptions, be listed as Members on Schedule A.

2.2.3 Any person or entity other than the persons or entities listed in Schedule A shall become a Member upon the affirmative vote of the holders of a majority of Shares. In the event such person or entity is admitted to Membership in the LLC, such Member shall become a party to this Operating Agreement, and shall have the same rights, duties, obligations and benefits of existing Members.

2.3 Assignment of a Member's Interest. Except as provided in Section 2.4, hereinbelow, a Member may assign his interest in the LLC, provided that the Member shall first have received the written consent of the holders of a majority of the Shares to the assignment. An assignee who has become a Member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a Member under this Agreement and under the Act. However, an assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and that could not be ascertained from the Articles of Organization or this Agreement.

2.3.1 Subject to the requirement that the consent of a majority of the Shares outstanding be first obtained, a Member may assign his Shares in the LLC. An assignment of Shares entitles the assignee to receive, to the extent assigned, the distributions and the allocations of Net Income, Net Gain or Net Loss, or items thereof, or similar items, and Net Cash Flow, to which the assignor would be entitled. Upon the assignment of all or a part of an assignor's Shares, the assignor shall provide the Manager or Member responsible for the books and records of LLC with the name and address of the assignee, together with details of the interest assigned. Upon receipt of the notice, the LLC shall amend its records accordingly. Until the assignee of Shares becomes a Member, the assignor continues to be a Member and to have the power to exercise any rights and powers of a Member, including the right to vote.

2.4 No Involuntary Assignments. No person shall accede to the rights of any Member hereto except upon the voluntary assignment of a Member's rights, and the unanimous written consent of said assignment, pursuant to the provisions of Section 2.3, hereinabove. In the event any person or entity (herein referred to as the "Involuntary Assignee") accedes to the interest of a Member as a result of the execution of a judgment, levy, seizure or other involuntary means, the Involuntary Assignee shall obtain only an economic interest. A court may charge the membership interest of the Member with payment of the unsatisfied debt. However, upon receipt of any such charging order, the Manager or Member receiving such charging order shall notify the other Members, in which event:

(a) No distribution otherwise required to be made to the Member shall be made to the Member or to the Involuntary Assignee; and

(b) The Involuntary Assignee shall offer the interest of the Member to the LLC, and the LLC may, but shall be required to, acquire the interest held by the Involuntary Assignee. In the event that the LLC elects to purchase the interest of the Involuntary Assignee, the consideration that the LLC shall pay to the Involuntary Assignee for the Member's interest shall be the lesser of (i) the fair market value of the Member's interest, determined by a qualified appraiser selected by the LLC and the Involuntary Assignee, or (ii) the book value of the Member's pro rata interest in the assets of the LLC.

2.5 Death or Incompetency of a Member. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member had under this Agreement to give an assignee the right to become a Member.

ARTICLE III

CAPITAL ACCOUNTS; CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. Each of the initial Members shall make, or have already made, those initial capital contributions to the LLC listed beside their names in Schedule A, attached hereto. After a Member has made a contribution to the capital of the LLC and has become a Member, said Member shall have no right to withdraw his capital contribution.

3.2 Additional Capital Contributions. No Member shall be required to contribute additional capital to the LLC at any time during the term of the LLC, and no Member shall suffer any penalty for failure to make voluntary contributions to the capital of the LLC. The foregoing notwithstanding, in the event that any Member makes additional voluntary contributions to the LLC, which contributions shall be only for a valid purpose related to the LLC's business, then upon the sale of any LLC assets, any Net Capital Gain from the sale of LLC assets shall be first allocated and distributed to those Members who made voluntary capital contributions to the extent of those voluntary contributions, before Net Capital Gains are allocated to other Members in accordance with their membership interests. A voluntary contribution of capital to the LLC shall not otherwise result in an increase in the interest of a Member in the LLC owned by the Member having made such voluntary contribution, or in an increase in such Member's right to allocations and distributions of Partnership Cash Flow, or annual income. No Member may at any time make a contribution to the LLC other than in cash.

3.3 Capital Contributions of Additional Members. A person or entity other than the initial Members listed in Schedule A shall make a capital contribution, and obtain an interest in the LLC as a Member, in accordance to that amount agreed to by such additional Member and all of the initial Members.

3.4 Establishment of Capital Accounts. A capital account shall be established for each Member. The account shall be credited with the amount of each Member's capital contributions, including voluntary capital contributions, a) increased by: (i) his share of LLC taxable Net Income and Net Gain and (ii) his share of LLC income and gain not included in (i), and (b) decreased by LLC distributions to him, (ii) his share of LLC tax deductions and tax losses, and (iii) his share of expenses not included in (ii).

3.4.1 Special Allocations.

(a) Except as provided in Section 3.4.1 (b) hereof, in the event any Member unexpectedly receives any adjustments, allocations or distributions described in paragraphs (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), items of LLC income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required in the Regulations, the Adjusted Capital Account deficit of such Member as quickly as possible. This Section 3.4.1(a) is intended to constitute a "qualified income offset" provision described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(b) Notwithstanding any other provision of this Article III, if there is a net decrease in the LLC's Minimum Gain during any LLC fiscal year, each Member who would otherwise have an

Adjusted Capital Account Deficit at the end of such year shall be specially allocated items of LLC income and gain for such year (and, if necessary, subsequent years) in an amount and manner sufficient to eliminate such adjusted Capital Account Deficit as quickly as possible. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-1(b)(4)(iv)(e). This Section 3.4.1(b) is intended to constitute a "minimum gain chargeback" provision within the meaning of such Section of the Treasury Regulations and shall be interpreted consistently therewith.

3.4.2 The provisions of subsections 3.4.1 and 3.4.2 notwithstanding, the Managers, acting upon the written advice of counsel, may refuse to allocate in accordance with a Minimum Gain Chargeback and/or Qualified Income Offset if in their discretion an alternative allocation would have "substantial economic effect" for federal income tax purposes.

3.4.3 Upon dissolution of the LLC:

(a) the LLC will be dissolved and its assets shall be distributed as follows:

(1) all of the LLC's debts and liabilities to persons other than the Members shall be paid and discharged;

(2) all of the LLC's debts and liabilities to the Members shall be paid and discharged;

(3) the net assets of the LLC shall be distributed to those Members who have positive capital account balances, in accordance with the ratio of Members' total capital account balances;

(b) In no event shall any Member be required to restore any deficit capital account upon the dissolution of the LLC.

ARTICLE IV

LLC ALLOCATIONS

4.1 Allocations According to Members' Capital Contributions. Subject to the provisions of Section 3.2 relating to voluntary capital contributions, Members will be allocated Net Income or Loss from LLC operations and Net Gain and Loss from the sale or exchange of LLC assets, and shall receive distributions of available Net Cash Flow, in the same ratio that the number of Shares owned by such Member bears to all of the Shares outstanding.

4.1.1 The foregoing notwithstanding, those Members who acquired Shares by means of the Offering of Shares described in the Private Placement Memorandum shall be entitled, in the aggregate, to receive distributions of fifty percent (50%) of all Net Cash Flow until such time as such Members have received distributions of Net Cash Flow equal to their aggregate capital contributions. Thereafter, Members shall receive a pro rata of all Net Cash Flow.

4.1.2 For the purposes of this Agreement, "Net Cash Flow" shall mean that amount of cash, which the Managers, in their sole and absolute discretion, deem available for distribution to Members, after deduction for all current and anticipated costs, salaries, operating expenses and capital expenditures, including amounts the Managers deem necessary for reserve for contingencies.

4.2 Determination of Share in Event of Transfer. All items of Net Income, Net Gain, Net Loss, deduction or credit, and all available Net Cash Flow for a calendar year allocable to any Member which may have been transferred during the year shall be allocated between the transferor and transferee based upon the period of days that each was a Member, without regard to the actual results of LLC operations during any particular period and without regard to whether cash distributions were made to the transferor or transferee during any particular period.

ARTICLE V

MANAGEMENT

5.1 Management Rights Vested in Managers. The right to operate the LLC shall be vested in the Managers, acting by majority vote. At all times during the term of the LLC, there shall be at least four Managers. A Manager may or may not be one of the Members. The identity of the Manager shall be as disclosed in Schedule B, attached hereto and incorporated herein by reference. The Manager shall have the power and authority to perform the following duties:

(a) all actions reasonable and necessary to carry out the LLC's oil and gas operations, including but not limited to entering into oil and gas leases, farm-out agreements, sub-leases, pooling and unitization agreements, and otherwise dealing with oil and gas operators, contractors, lenders and governmental agencies.

(b) obtain and pay for out of LLC funds the preparation of required LLC tax returns;

(c) maintain accounts in banking institutions or savings and loan associations whose deposits are insured by an agency of the United States Government or the State of Colorado or purchase certificates of deposit, money market fund securities or similar

securities;

(d) incur debt obligations on behalf of the LLC, pay the obligations of the LLC and collect obligations owed to the LLC;

(e) perform normal administrative and ministerial acts;

(f) furnish financial statements to the Members at such time and in such form as the Managers shall deem appropriate;

(g) maintain reserves for the purpose of paying property taxes, insurance costs, mortgage installments, and any and all other types of costs or expenses as required or desired by the Managers;

(h) employ geologists, engineers, accountants, legal counsel, managing agents, or other experts to perform services for the LLC and compensate them from LLC funds;

(i) borrow money and incur secured and unsecured indebtedness on behalf of the LLC and execute on behalf of the LLC without obligation on third party's part for inquiry as to actual authority or as to disposition of funds, all contracts, leases, notes, mortgages, deeds, evidences of indebtedness or security agreements;

(j) purchase, trade, lease, liquidate and sell the properties of the LLC upon such terms, conditions and prices as the Managers deem acceptable;

(k) enter into any and all other agreements on behalf of the LLC, with any other person or entity for any purpose;

(l) make those accounting decisions the Managers deem in the best interest of the LLC.

5.2 Form of Execution of Documents. Any document or instrument, of any and every nature, including without limitation, any agreement, contract, deed, promissory note, mortgage or deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind the LLC or convey or encumber title to its real or personal property shall be valid and binding for all purposes if executed by any two of the Managers.

5.3 Managers; Election and Resignation. A Manager shall be elected upon the consent of the holders of a majority of the Shares. A Manager may resign at any time, in which event the election shall be filled by the holders of a majority of the Shares. A Manager may be removed at any time, with or without cause, upon the unanimous consent of all of the Members. At the option of the Managers, the Managers may adopt the titles of and

hold himself out as being the "President," "Executive Manager," or any similar office of the LLC.

5.3.1 Except as provided in Section 6.7, hereinbelow, no Manager shall be entitled to compensation for acting as Manager, except as agreed upon by the LLC and the Manager in writing. A Manager shall be entitled to reimbursement for his actual expenses incurred in carrying out his duties as Manager.

5.4 Indemnification. The LLC shall indemnify and defend any Member or Manager against any and all judgments, claims, suits, liabilities, expenses, costs and damages arising out of or incident to a person's status or actions as Manager or Member, other than those arising out of the intentional conduct or fraud of said Member or Manager. The foregoing indemnification shall not extend to any suit brought by the LLC against any Manager or Member.

5.5 No Regular Meetings. There shall be no required periodic or annual meetings of the Managers or the Members, and no inference of any kind shall be drawn from the failure of the Managers or Members of the LLC to conduct a meeting.

5.6 Reports to Members. The Managers shall prepare and shall make available to each Member on or before March 15th of each year, the federal income tax information return of the LLC for the preceding fiscal year, showing the distributive share of each item of income, gain or loss, deduction or credit which a Member is required to take into account separately on his individual federal income tax return. The Managers shall also furnish to any Member, at the Member's expense, such other reports on the LLC's operations and conditions as he may reasonably request.

(b) In addition to the foregoing, the Manager shall cause information reports to be mailed to all the Members at reasonable intervals during each year.

5.7 Overriding Royalty Pool. The Managers may elect to award overriding royalty interests in oil and gas leases in which the LLC owns an interest to LLC employees and Managers. In no event will the combination of landowners' royalties and overriding royalties with respect to any lease exceed 20%, nor will the Managers award more than 4% aggregate overriding royalties in any lease.

ARTICLE VI

MANDATORY ARBITRATION

6.1 Mandatory Arbitration. Any party may submit any controversy, claim or matter of difference ("Controversy") to arbitration ("Arbitration") by filing a written demand pursuant to the provisions of this Article VI. If a party has submitted the

Controversy to Arbitration and the responding party has a claim which would be considered a compulsory cross-complaint under Colorado Rules of Civil Procedure the responding party shall assert the compulsory counterclaim in the Arbitration proceeding or it shall be deemed waived. In no event may a party submit a claim or counterclaim for punitive or exemplary damages for arbitration.

6.2 Scope. Without limiting the generality of the foregoing, the following shall be considered Controversies for this purpose:

(a) All questions relating to the breach of any obligation or condition of this agreement;

(b) All questions relating to any representations, negotiations and other proceedings leading to the execution of this agreement;

(c) Failure of any party to deny or reject a claim or demand of any other party; and

(d) All questions as to whether a right to arbitrate exists.

6.3 Place. If a Controversy is submitted to Arbitration the proceedings shall be conducted in the State of Colorado according to the rules and practices of the American Arbitration Association from time to time in force, except that: (i) if such rules and practices shall conflict with the Colorado Rules of Civil Procedure or any other provisions of Colorado law then in force, such Colorado rules and laws shall govern; and (ii) all parties shall be entitled to discovery concerning the Controversy to the same extent as permitted by the Colorado Rules of Civil Procedure then in effect.

6.4 Time Limits. Arbitration of any Controversy shall be initiated by delivery to the other party of a written demand that Arbitration commence. Such demand must be made within a reasonable period of time after the Controversy arises, but in no event shall the Controversy be submitted to Arbitration if the date of delivery of the demand for Arbitration is not within the time limit of the Colorado or Federal Statute of Limitations which would be applicable if the Controversy were asserted in litigation. Arbitration may proceed in the absence of any party if demand for the proceedings has been given to such party.

6.5 Awards. Any Arbitration award shall be final and binding on all parties to an extent and in the manner provided by the Colorado Rules of Civil Procedure. All awards may be filed with the clerk of one or more courts, state or federal, having jurisdiction over the party against whom such an award is rendered or his property, as a basis of judgment and of the issuance of

execution for its collection. No party shall be considered in default under this agreement during the pendency of Arbitration proceedings relating to such default.

6.6 Attorneys Fees; Costs. If Arbitration is brought for the enforcement of this agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled. In no event shall an arbitrator have the authority to award or consider punitive or exemplary damages.

ARTICLE VII

NOTICES

7.1 Method for Notices. All notices provided for in this agreement shall be sent by certified or regular mail addressed as set forth below the Member's signature on the Subscription Agreement (except that any Member may from time to time give notice changing his address for that purpose). Notice shall be effective when deposited in the U.S. Mails, postage prepaid.

7.2 Computation of Time. In computing any period of time under this agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

ARTICLE VIII

AMENDMENTS

This Operating Agreement may be amended only upon the prior written consent of the holders of a majority of the Shares.

ARTICLE IX

MISCELLANEOUS PROVISIONS

8.1 Integration. This agreement embodies the entire agreement and understanding among the Members and supersedes all prior agreements and understandings, if any, among them.

8.2 Applicable Law. This agreement and the rights of the Members shall be construed and enforced in accordance with the laws of the State of Colorado.

8.3 Counterparts. This agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart, except that no counterpart shall be authentic unless signed by a Member.

8.4 Separability. In case any one or more of the provisions contained in this agreement or any application thereof shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions any other application thereof shall not in any way be affected or impaired.

8.5 Binding Effect. Except as herein otherwise provided to the contrary, this agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, representatives, successors and assigns.

8.6 Headnotes. Headnotes are used merely for reference purposes and do not affect the content of any Article or section.

8.7 Gender. Whenever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular includes the plural and the plural and singular.

IN WITNESS WHEREOF, the undersigned, being all of the Members of MISSION ENERGY, LLC, a Colorado Limited Liability Company, have executed and acknowledged this Agreement as of the day and year first above written.

INTERMARKET TRADING COMPANY, LLC

By: Justin C. Sutton
Manager

William F. Muller
William F. Muller

Charles B. Willard
Charles B. Willard

8.2 Applicable Law. This agreement and the rights of the Members shall be construed and enforced in accordance with the laws of the State of Colorado.

8.3 Counterparts. This agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart, except that no counterpart shall be authentic unless signed by a Member.

8.4 Separability. In case any one or more of the provisions contained in this agreement or any application thereof shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions any other application thereof shall not in any way be affected or impaired.

8.5 Binding Effect. Except as herein otherwise provided to the contrary, this agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, representatives, successors and assigns.

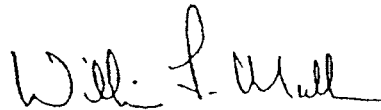
8.6 Headnotes. Headnotes are used merely for reference purposes and do not affect the content of any Article or section.

8.7 Gender. Whenever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular includes the plural and the plural and singular.

IN WITNESS WHEREOF, the undersigned, being all of the Members of MISSION ENERGY, LLC, a Colorado Limited Liability Company, have executed and acknowledged this Agreement as of the day and year first above written.

INTERMARKET TRADING COMPANY, LLC

By: _____
Manager



William F. Muller



Charles B. Willard

SCHEDULE A

<u>Member</u>	<u>No. of Shares</u>	<u>Capital Contribution</u>
Intermarket Trading Company, LLC	480	\$4,800.00
Muller Oil Company LLC	160	\$1,600.00
Charles B. Willard	160	\$1,600.00

SCHEDULE B

Initial Managers

<u>Name</u>	<u>Title</u>
Fred G. Jager	Chief Executive Manager and Chairman
William F. Muller	Chief Operating Manager and President
Charles B. Willard	Chief Production Manager and Executive Vice President
Justin C. Sutton	Chief Marketing Manager and Executive Vice President

Tab B

ADDENDUM B

Tab C

ADDENDUM C



Wednesday, June 21, 2000

J.C. Sutton (VIA FAX: 760-436-5777)
Mission Energy
531 Encinitas Blvd Suite 200
Encinitas, CA 92024

Dear J.C.:

As we have discussed, and as referenced in our Letter of Intent dated May 24, 2000, this letter shall serve as a letter agreement between Wasatch Oil & Gas Corporation ("Wasatch") and Mission Energy, LLC ("Mission"). Inasmuch as Mission desires to transfer their ownership in the Leases ("Leases") described on the attached "Exhibit A," and the operations of the Jacks Canyon Unit ("JCU") to Wasatch, and Wasatch desires to take assignment of the Leases and to operate the JCU, the parties agree as follows:

1. Mission will assign to Wasatch all record title and working interest to all the Leases except for the wellbore rights and attributable spacing unit relating to the Lavinia #1-32 well.
2. Mission will have a right to participate in a "trade" relating to a drilling deal that Wasatch may be successful in putting together on the Leases, but only on the Leases listed on Exhibit A. Mission's participation will be proportionally similar to whatever Wasatch is able to retain in a trade with a third party. For example, if Wasatch is able to sell a drilling deal in which Wasatch is carried for 25% of the drilling of a well, then Mission will have the option to receive 25% of the carry that Wasatch receives. For this example Mission's carry would be 25% of 25% or 6.25%.
3. The terms of any trade obtained by Wasatch will be offered to Mission. If Mission elects to accept the terms then an operating agreement will be executed. If Mission elects not to accept the terms of the trade then Wasatch can proceed without Mission. Consequently, if Mission elects not to participate in any trade then Mission will have been deemed to relinquish any and all interest in the Leases. If Mission elects to participate in a trade then assignments will be made after an operating agreement is executed and after a well is completed on a particular lease.
4. Wasatch will work in good faith to meet the JCU obligations as defined by the BLM. However, due to the time constraints and requirements that at this point are not fully known, Wasatch makes no guarantee that these obligations will be met.
5. Mission will fully indemnify Wasatch for any obligation relating to the Lavinia #1-32 well. Wasatch accepts no financial obligation relating to this well. Mission will continue to have responsibility for financial obligations of the Lavinia #1-32 well, including lease bonding.
6. Mission will assign JCU operations to Wasatch.
7. Mission will work in good faith transfer to Wasatch any pending APD's on the Leases.
- 8. Any cost incurred by Wasatch to get the Leases in good standing, effective the date of this letter, will be reimbursed to Wasatch by Mission within 10 days notice, except for Bonus/
Horsehead Leases. J.C.S.

PO Box 699 • Farmington, UT 84025-0699 • Tel (801) 451-9200 • Fax (801) 451-9204

9. The letter can be executed by facsimile.
10. Wasatch will reimburse Mission for paying the rentals on the following leases in the following amounts: ML - 43798, \$678.40; UTU- 62890, \$640.00; UTU - 66801, \$716.00; UTU - 60470, \$1,595.00. The total amount of \$3,629.40 being paid upon execution of this document and delivery to Wasatch of the assignments.

Sincerely,



Todd Cusick
President

AGREED AND ACCEPTED THIS _____ DAY OF JUNE, 2000, FOR MISSION ENERGY, LLC, BY:



Justin C. Sutton

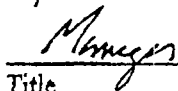

Title

EXHIBIT A

Jacks Canyon Unit Leases

UTU - 65486

UTU - 69463

UTU - 60470

UTU - 62890

UTU - 66801

ML - 43798

ML - 43541 (Record Title: N/2NE/4, W/2, S/2SE/4, NE/SE/4; Operating Rights: NW/4SE/4, Section 36, below depth of 3,398 feet)

Burris/Horse Bench Area Leases

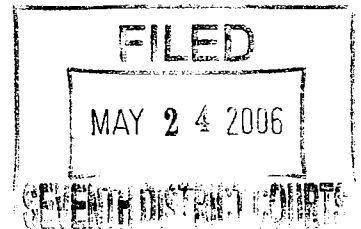
UTU - 62645

UTU - 65782

UTU - 65783

Tab D

ADDENDUM D



Proposed and prepared by:

LAWRENCE E. STEVENS (3103)

GARY E. DOCTORMAN (0895)

DIANNA M. GIBSON (7533)

PARSONS BEHLE & LATIMER

One Utah Center

201 South Main Street, Suite 1800

Post Office Box 45898

Salt Lake City, UT 84145-0898

Telephone: (801) 532-1234

Facsimile: (801) 536-6111

*Attorneys for Edward A. Reott, Goal, L.L.C., and
Regoal, Inc.*

**IN THE SEVENTH JUDICIAL DISTRICT COURT
CARBON COUNTY, STATE OF UTAH**

WASATCH OIL & GAS, L.L.C., a Utah
limited liability company,

Plaintiff,

vs.

EDWARD A. REOTT, an individual, KEY
ENERGY SERVICES, INC., a Maryland
corporation dba Key Energy Services, Inc. Four
Corners Division, J-WEST OILFIELD
SERVICE, INC., a Utah corporation, MISSION
ENERGY, LLC, a Colorado limited liability
company, and ALL OTHER UNKNOWN
PERSONS OR PARTIES CLAIMING ANY
RIGHT, TITLE, LIEN OR INTEREST IN THE
PROPERTY DESCRIBED IN THE
COMPLAINT HEREIN,

Defendants.

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT**

**WASATCH'S MOTION FOR SUMMARY
JUDGMENT RE: REDEMPTION,**

AND,

**THE REOTT PARTIES' MOTION FOR
SUMMARY JUDGMENT ON QUIET
TITLE, FRAUDULENT CONVEYANCE,
TRESPASS, CONVERSION AND
TRESPASS TO CHATTELS**

Case No. 010700991

Judge ~~Bryce K. Bryner~~

GOAL, L.L.C., a Utah limited liability company, as the real party in interest to the rights of Edward Reott, Key Energy Services Lien and J-West Oilfield Lien, and REGOAL, INC., a Pennsylvania corporation,

Counterclaim, Third Party and
Cross claim Plaintiffs,

vs.

WASATCH OIL & GAS, L.L.C., a Utah limited liability company, MISSION L.L.C., a Colorado limited liability company, WASATCH OIL & GAS PRODUCTION CORPORATION, a Utah corporation, WASATCH GAS GATHERING, a Utah limited liability company, BILL BARRETT CORPORATION, a Maryland corporation, and all other persons unknown claiming any right, title, estate or interest in or a lien upon the real property described herein adverse to the complainant's ownership or clouding his title thereto,

Third Party, Counterclaim and
Cross claim Defendants.

On April 15, 2004, Plaintiff Wasatch Oil & Gas, LLC ("Wasatch") filed a Motion for Summary Judgment. On April 30, 2004, the Reott Parties filed a Memorandum in Opposition in addition to its own Motion for Partial Summary Judgment for Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels. Wasatch and Bill Barrett Corporation ("BBC") each filed opposing memoranda. After full consideration of the briefs

submitted by all parties, consideration of supplemental submissions, oral arguments held on January 24, 2005 and March 18, 2005, and post-hearing briefing submitted by all parties, the Court—pursuant to Rules 52(a), 54(b), 56(c), and 56(d) of the Utah Rules of Civil Procedure—enters the following **ORDER GRANTING PARTIAL SUMMARY JUDGMENT** on Wasatch's Motion for Summary Judgment Re: Redemption, and, the Reott Parties' Motion for Summary Judgment on Quiet Title, Fraudulent Conveyance, Trespass, Conversion and Trespass to Chattels.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Wasatch's Motion for Partial Summary Judgment Re: Redemption Issues is granted with respect to all properties formerly owned by Mission Energy ("Mission") in Sections 27, 33 and 34 of Township 12 South, Range 16 East, Carbon County, including the BLM Mineral Leases U-08107, SL-069551 and SL-071595 (the "BLM Leases"). Wasatch may redeem by payment to Regoal, Inc., through the Carbon County Sheriff of \$1.06, plus any other costs under Rule 69, within thirty (30) days of the entry of this final Judgment. If Wasatch redeems, title to the BLM Lease and all real property fixtures, including all equipment, pipelines and any existing APDs is quieted in BBC, Wasatch's successor in interest, and the sheriff is directed to issue a corrected Sheriff's Deed to BBC for all such properties. Wasatch's Motion for Partial Summary Judgment Re: Redemption Issues is denied with respect to its attempt to redeem any former Mission property in Section 32.

2. The Reott Parties' Motion for Partial Summary Judgment for Quiet Title and Fraudulent Conveyance against the Wasatch Entities and BBC is granted with respect to all

properties formerly owned by Mission Energy (“Mission”) in Section 32 of Township 12 South, Range 16 East, Carbon County, including the SITLA Leases in Section 32—ML43541, ML43541-A and ML43798 (“SITLA Leases”)—and all real property fixtures, including all equipment, pipelines and any existing APDs (the SITLA Leases, fixtures and other personal property collectively referred to as “Section 32 Property”). Title to the Section 32 Property is quieted in the Reott Parties as of February 9, 2002, and neither the Wasatch Entities nor BBC have any record, legal or equitable interest in or title to such property. As such, the sheriff is directed to issue a corrected Sheriff’s Deed to the Reott Parties for the Section 32 Property, and the Reott Parties are granted immediate possession and all the rights and benefits in and to the Section 32 Property.

3. Pursuant to Rule 54(b), Utah Rules of Civil Procedure, because this is a multi-claim action involving multiple parties, the Court directs an entry of final Judgment quieting title in the Reott Parties to the Section 32 Leases, ML43541, ML43541-A and ML43798, and all real property fixtures, including all equipment, pipelines and any existing APDs in Section 32. The Court finds no just reason to delay entry of final judgment. BBC and the Wasatch Entities are not the successors-in-interest to Mission with respect to the Section 32 Property, and therefore cannot redeem the former Mission property sold. The Court finds that the Reott Parties have had title to the Section 32 Property since receiving the Sheriff’s Deed on February 9, 2002.

4. Pursuant to Rule 54(b), Utah Rules of Civil Procedure, because this is a multi-claim action involving multiple parties, the Court directs an entry of final Judgment quieting title in BBC to the BLM Leases and all real property fixtures, including all equipment, pipelines and

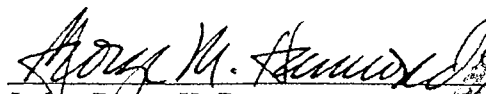
any existing APDs in Sections 27, 33 and 34. The Court finds no just reason to delay entry of final judgment. BBC and the Wasatch Entities are successors-in-interest to Mission, and therefore may redeem the former Mission property sold in Sections 27, 33 and 34, under the procedure prescribed above.

5. Summary Judgment is granted to the Reott Parties on their claims against BBC for trespass, trespass to chattels and conversion. As such, BBC is liable, as a matter of law, to the Reott Parties for all damages arising from BBC's willful, knowing and intentional entry upon the Section 32 Leases and the Lavinia Well Site, and its actions: (a) in drilling two new wells on Section 32, and in converting any and all oil and gas from the Section 32 leases since February 9, 2002, and (b) in physically removing the pipeline that connected the meter house to the main pipeline, damaging the Lavinia Pipeline, damaging the Oil Tank, causing the oil spill and causing the loss of approximately 100 barrels of oil.

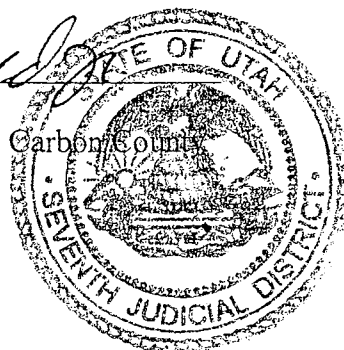
6. Judgment as a matter of law shall therefore be entered in favor of the Reott Parties and against BBC declaring BBC liable for all damages related to, and arising from, the Reott Parties' claims of trespass, conversion and trespass to chattels. Damages will be determined at trial.

DATED this 24 day of May 2006.

BY THE COURT:



Judge Bryce K. Bryner
Seventh Judicial District Court, Carbon County



Approved as to form:

Eric C. Olson
Matthew K. Richards
KIRTON & McCONKIE
Attorneys for Wasatch entities

Carolyn McIntosh
David E. Brody
PATTON & BOGGS, LLP
Attorneys for BBC

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of April, 2006, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON WASATCH'S MOTION FOR SUMMARY JUDGMENT RE: REDEMPTION, AND, THE REOTT PARTIES' MOTION FOR SUMMARY JUDGMENT ON QUIET TITLE, FRAUDULENT CONVEYANCE, TRESPASS, CONVERSION AND TRESPASS TO CHATTELS.**, to:

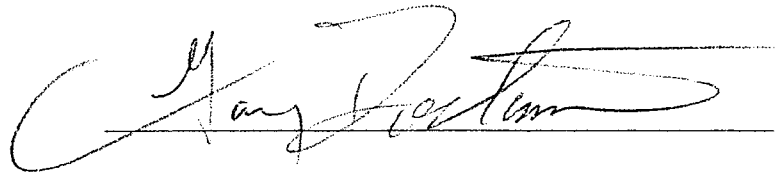
Eric C. Olson
Matthew K. Richards
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. BOX 45120
Salt Lake City, Utah 84145-0120

Attorneys for Wasatch

Carolyn McIntosh
David E. Brody
PATTON & BOGGS, LLP
1600 Lincoln Street, Suite 1900
Denver, Colorado 80264

Nick Sampinos
190 North Carbon Avenue
Price, Utah 84501

Attorneys for BBC

A handwritten signature in cursive script, appearing to read "Gary R. Patton", is written over a horizontal line.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

METHOD	NAME
Mail	GARY E DOCTORMAN ATTORNEY DEF 201 S MAIN ST STE 1800 POB 45898 SALT LAKE CITY, UT 84145-0898
Mail	ERIC C OLSON ATTORNEY PLA POB 45120 SALT LAKE CITY UT 84145-0120
Mail	NICK J SAMPINOS ATTORNEY 190 N CARBON AVE PRICE UT 84501
Mail	CAROLYN MCINTOSH ATTY 1600 Lincoln Street, Suite 190 Denver CO 80264
Mail	DAVID E BRODY ATTY 1600 Lincoln Street Suite 1900 Denver CO 80264
Mail	MATTHEW K RICHARDS ATTY 1800 Eagle Gate Tower PO Box 45120 Salt Lake City UT 84145
Mail	LAWRENCE E STEVENS ATTY 201 S Main Street, Suite 1800 PO Box 45898 Salt Lake City UT 84145
Mail	DIANNA M GIBSON ATTY 201 S Main Street, Suite

Case No: 010700991
Date: May 24, 2006

1800
PO Box 45898
Salt Lake City UT 84145

Dated this 24th day of May, 20 06.


Deputy Court Clerk

Tab E

ADDENDUM E

This opinion is subject to revision before
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Wasatch Oil & Gas, L.L.C., a
Utah limited liability
company,

Plaintiff and Appellant,
v.

Edward A. Reott, et al.,

Defendants and Appellees.

OPINION
(For Official Publication)

Case No. 20060562-CA

F I L E D
(June 21, 2007)

2007 UT App 223

Goal, L.L.C., a Utah limited
liability company; and Regoal,
Inc., a Pennsylvania
corporation,

Counterclaim, Third-party,
and Crossclaim Plaintiffs;
and Appellees,

v.

Wasatch Oil & Gas, L.L.C., et
al.,

Counterclaim, Third-party,
and Crossclaim Defendants;
and Appellants.

Seventh District, Price Department, 010700991
The Honorable Bryce K. Bryner
The Honorable George M. Harmond Jr.

Attorneys: Eric C. Olson and Matthew K. Richards, Salt Lake
City, Nick Sampinos, Price, and Carolyn L. McIntosh,
Denver, Colorado, for Appellant
Gary E. Doctorman, Lawrence E. Stevens, and Dianna M.
Gibson, Salt Lake City, for Appellees

Before Judges Billings, Davis, and Thorne.

BILLINGS, Judge:

¶1 Plaintiff Wasatch Oil & Gas, L.L.C. (Wasatch) appeals the trial court's grant of partial summary judgment to Defendant Edward A. Reott (Reott).¹ On appeal, Wasatch argues the trial court erred in concluding (1) that Reott had standing to challenge whether Wasatch was a lawful successor in interest, entitled to exercise redemption rights, and (2) that Wasatch was not a valid successor in interest because it had no legal or equitable title to the disputed property. We reverse the trial court's grant of partial summary judgment and remand for further proceedings.

BACKGROUND²

¶2 From approximately 1997 to 2000, Mission Energy, L.L.C. (Mission) was a Colorado limited liability company engaged in oil and gas business on federal and state land in Carbon and Duchesne Counties, Utah. Mission was governed by the Mission Operating Agreement (the MOA). According to the MOA, "[t]he right to operate the LLC shall be vested in the [m]anagers, acting by majority vote . . . [and a]t all times during the term of the LLC, there shall be at least four [m]anagers." The MOA requires that the identity of Mission's managers be disclosed in a schedule attached to the MOA. At the time of the MOA's execution in April 1997, the schedule attached to the MOA listed four managers: Fred G. Jager, William F. Muller, Charles B. Willard, and Justin C. Sutton. From 1997 to 2000, Sutton purportedly acted as Mission's sole manager. Sutton officially resigned as manager on October 1, 2000, and Jager acted as manager following Sutton's resignation.

¶3 In 1997, Mission was the record title owner of two mineral leasehold interests (ML 43541 & ML 43798), issued by the Utah

1. For ease of reference, the term "Wasatch" includes Wasatch Oil & Gas Production Corp. and Wasatch Gas Gathering, L.L.C. Similarly, the term "Reott" also collectively includes Reott's companies, Goal, L.L.C. and Regoal, Inc.

2. "[W]hen an appellate court reviews a district court's grant of summary judgment, 'the facts and all reasonable inferences drawn therefrom [are viewed] in the light most favorable to the nonmoving party.'" Massey v. Griffiths, 2007 UT 10, ¶8, 152 P.3d 312 (second alteration in original) (quoting Fericks v. Lucy Ann Soffe Trust, 2004 UT 85, ¶2, 100 P.3d 1200).

School and Institutional Trust Lands Administration (SITLA), in Section 32, Township 12 South, Range 16 East (Section 32). These two leases collectively covered the entire 640 acres of Section 32. In 1997, Mission was also the owner of the Lavinia State #1-32 well (the Well), located on forty acres wholly within Section 32 with a specified depth of 3398 feet.³

¶4 In February 1997, the Estate of Lavinia Reott made a bridge loan to Mission in the amount of \$160,000.⁴ Mission promised to repay the loan within three months. Mission did not repay the loan, and in May 1998, Reott filed suit against Mission in federal court to recover the unpaid loan. In December 1999, Reott obtained a judgment against Mission in the amount of \$204,000, plus costs and post-judgment interest.

¶5 From February 1998 through May 2000, eleven mechanics' liens were recorded against Mission's Section 32 interests due to Mission's failure to pay for goods and services provided. Two companies, J-West Oilfield Services, Inc. (J-West) and Key Energy Services, Inc. (Key Energy), filed lawsuits against Mission to foreclose on their mechanics' liens and, ultimately, obtained judgments and orders of foreclosure against Mission.

¶6 On June 21, 2000, Mission and Wasatch executed a letter agreement (the Agreement) that provided for, among other things, the transfer of Mission's mineral lease rights (ML 43541 & ML 43798) in Section 32 to Wasatch.⁵ The Agreement assigned Wasatch all record title and working interest to the Section 32 leases, "except for the wellbore rights and attributable spacing unit relating to . . . the [Well]." Thus, under the Agreement, Mission retained the Well, including the Well's corresponding mineral lease rights. In return, Wasatch agreed to assume the obligation to maintain the leases it received, reimburse Mission for monies Mission had paid in rental payments on certain leases, and provide Mission with "a right to participate in a 'trade' relating to a drilling deal that Wasatch may be successful in putting together on the [l]eases." The Agreement was never recorded, and Wasatch did not end up putting together the drilling deal.

3. References to the Well include the forty acres on which it is located.

4. Lavinia Reott was Reott's mother.

5. The Agreement also provided for the transfer of Federal Bureau of Land Management (BLM) leases not at issue here.

¶7 On June 23, 2000, Sutton executed three mineral lease assignment forms (the Assignments) purporting to transfer all of Mission's Section 32 leasehold rights. Specifically, the Assignments, signed by Sutton on the line designated for "Lessee-Assignor," assign the assignor's/lessee's rights to ML 43541 and ML 43798 to Wasatch. The Assignments do not expressly identify Sutton as the manager of Mission or as a person authorized to execute the Assignments on Mission's behalf. On the back of the Assignments, Wasatch agrees to "hereby accept[] the assignment from Mission."

¶8 The MOA gives managers the authority to "execute on behalf of [Mission] without obligation on third party's part for inquiry as to actual authority or as to disposition of funds, all contracts, leases, notes, mortgages, deeds, evidences of indebtedness or security agreements" and to "enter into any and all other agreements on behalf of [Mission], with any other person or entity for any purpose." The MOA states, however, that

[a]ny document or instrument, of any and every nature, including without limitation, any agreement, contract, deed, promissory note, mortgage or deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind [Mission] or convey or encumber title to its real or personal property shall be valid and binding for all purposes if executed by any two of the [m]anagers.

¶9 Following the Assignments, Mission retained only the Well. Although Wasatch admits it knew about Mission's debts to Key Energy and J-West prior to the issuance of the Assignments, Wasatch thought the J-West and Key Energy mechanics' liens only attached to the Well.

¶10 The Assignments were not recorded with the Carbon County Recorder. On July 5, 2000, SITLA approved the Assignments. On August 22, 2000, Mission sent a letter to Wasatch stating:

I was informed that you, or your offices had been contacted by several individuals, specifically . . . Reott, regarding potential filings of judgment against Mission. . . . There are several creditors with outstanding issues. . . . I must request that you advise your offices to refer any similar[] creditor, or legal calls directly to my attention.

Further[,] given the confidentiality of the agreements entered into between our companies, I would request that no verbal, or written information be sent to anyone without prior permission from Mission⁶

Wasatch claims that this letter ratifies the Assignments, signed by Sutton, and that "[t]he letter evidences that Mission was not a stranger to the deal and that Sutton did not act ultra vires or on his own behalf but as Mission's manager, when [he] effected the transfers to Wasatch." (Emphasis omitted.) On August 22, 2000, Sutton also wrote Reott, stating, among other things, that:

[T]he managers of Mission . . . are doing everything possible to protect the assets of the company. We are working with several companies to develop a drilling program in hopes of receiving revenues to pay off creditors of the company. In that regard, many of those creditors who are owed monies for operations and permitting that have not been paid are working with Mission to try and make the company successful.

¶11 On October 27, 2000, Reott domesticated the Colorado judgment against Mission in Utah state court. In 2001, Reott purchased J-West's and Key Energy's judgment interests and liens against Mission. Subsequently, on May 16, 2001, Reott sought enforcement of all judgments against Mission's Section 32 interests.

¶12 A sheriff's sale was held on August 9, 2001. No other bidders appeared at the sale and Reott obtained a certificate of sale for Mission's Section 32 interests for a credit bid of \$1.00.⁷ In December 2001, Wasatch, after learning of the sale, filed a redemption notice, tendered a check in the amount of \$1.06, and brought suit to quiet title to certain lease rights on Section 32 (Section 32 Leasehold Interests).⁸ In response, Reott rejected the tender and filed a notice that "Wasatch Is Not a

6. "I" assumably refers to Sutton, although the letter in the record on appeal provides no signature to confirm this.

7. Along with Mission's interest in other sections not relevant here.

8. Wasatch's suit also sought to quiet title to BLM leases not at issue here.

Proper Party to Redeem or That The Amount of Redemption Is Insufficient." On January 10, 2002, the Carbon County Sheriff's Office sent a letter to Wasatch, certifying receipt of the redemption notice and stating that the sheriff's office was unable to locate Mission, Reott, Key Energy, or J-West in Carbon County. The sheriff returned Wasatch's tendered check. On January 18, 2002, Wasatch filed a second redemption notice and tender of redemption amount.⁹ On February 9, 2002, the sheriff issued the deed to Reott, and Reott subsequently recorded it. Reott later filed a lis pendens against the disputed property. On April 30, 2002, Wasatch sold a number of leases to Bill Barrett Corp. (BBC), including its Section 32 Leasehold Interests. BBC recorded its Section 32 Leasehold Interests. Reott added BBC as a defendant in late 2002.

¶13 On April 15, 2004, Wasatch moved for partial summary judgment, arguing that it was entitled to and had properly exercised a valid right of redemption. Reott submitted a memorandum in opposition to Wasatch's motion and filed his own motion for partial summary judgment against Wasatch and BBC as to issues of quiet title, fraudulent conveyance, trespass, conversion, and trespass to chattels. Reott claimed that Wasatch could not exercise a right of redemption because (1) Wasatch did not have legal title on grounds that the Assignments failed to identify Sutton as an agent for Mission and Wasatch did not pay sufficient consideration and (2) Wasatch did not have "equitable title on the basis of fraudulent conveyance." Reott also argued that if Wasatch was not a lawful successor in interest to Mission, BBC was liable for trespass, conversion, and trespass of chattels as to the Section 32 Leasehold Interests. Wasatch and BBC each filed opposing memoranda to Reott's motion.

¶14 The parties argued their motions for partial summary judgment in early 2005. On December 16, 2005, the trial court denied Wasatch's motion with respect to redemption rights in the Section 32 Leasehold Interests¹⁰ and granted Reott's motion. The trial court concluded that there were no disputed material facts, and Reott was entitled to judgment as a matter of law with regard to issues of quiet title and fraudulent conveyance.

9. Wasatch filed both notices within the six-month period required under former Utah Rule of Civil Procedure 69(j), the governing rule effective at the time. See Utah R. Civ. P. 69(j) (repealed 2004).

10. The trial court granted Wasatch's motion with respect to the federal BLM leases that, as previously noted, are not at issue on appeal.

Specifically, the trial court determined that (1) Reott had standing to challenge Wasatch's purported redemption rights and (2) Wasatch was not a successor in interest, entitled to redemption, because the Assignments did not transfer legal title to the Section 32 Leasehold Interests to Wasatch due to "the failure to identify Sutton on the assignment forms as a person authorized to execute the [A]ssignments on behalf of Mission," and the Agreement did not convey equitable title to Wasatch because Mission fraudulently transferred its Section 32 Leasehold Interests to Wasatch. In making its decision, the trial court ruled that "Reott's lien interests in the [s]heriff's [s]ale properties are extinguished because the sale on a judgment exhausts it as to the property sold."

¶15 The trial court therefore quieted title to the Section 32 Leasehold Interests in Reott as of February 9, 2002, ruling that "neither . . . [Wasatch] or BBC have any record, legal[,] or equitable interest in or title to such property." The trial court also granted Reott's motion against BBC as to issues of trespass, trespass to chattels, and conversion.

¶16 Wasatch appeals the trial court's grant of Reott's motion for partial summary judgment.

ISSUE AND STANDARD OF REVIEW

¶17 On appeal, Wasatch claims the trial court erred in granting Reott's motion for partial summary judgment, quieting title to the Section 32 Leasehold Interests in Reott. "A court appropriately grants summary judgment 'only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.'" Benjamin v. Amica Mut. Ins. Co., 2006 UT 37, ¶12, 140 P.3d 1210 (quoting Swan Creek Vill. Homeowners Ass'n v. Warne, 2006 UT 22, ¶16, 134 P.3d 1122); see also Utah R. Civ. P. 56(c). Thus, "[w]e review the district court's grant of partial summary judgment 'for correctness, granting no deference to the district court.'" Id. (quoting Swan Creek, 2006 UT 22 at ¶16).

ANALYSIS

¶18 Wasatch argues the trial court improperly granted Reott's motion for partial summary judgment. Specifically, Wasatch claims the trial court erred in determining (1) that Reott had standing to challenge whether Wasatch was a lawful successor in interest to the Section 32 Leasehold Interests and (2) that Wasatch was not a lawful successor in interest to Mission,

entitled to redemption rights, because it had no legal or equitable title in the Section 32 Leasehold Interests.

I. Standing

¶19 Wasatch first claims that the trial court improperly granted Reott's motion for partial summary judgment because Reott did not have standing to challenge Wasatch's right to redeem its alleged Section 32 Leasehold Interests. In Utah, a party has standing if he or she suffers "'some distinct and palpable injury that gives rise to a personal stake in the outcome of the dispute.'" D.A.R. v. State, 2006 UT App 114, ¶7, 133 P.3d 445 (quoting Berg v. State, 2004 UT App 337, ¶8, 100 P.3d 261).¹¹

¶20 The Utah Rules of Civil Procedure govern the exercise of redemption rights. In 2000, at which time Wasatch attempted to exercise its purported redemption rights, the governing provision was former rule 69(j).¹² Under rule 69(j),

11. Whether a complainant has suffered a "distinct and palpable injury," giving "rise to a personal stake in the . . . dispute," is one means of satisfying Utah's three-tier standing inquiry. D.A.R. v. State, 2006 UT App 114, ¶7, 133 P.3d 445 (citing State v. Mace, 921 P.2d 1372, 1379 (Utah 1996)). That is, "[i]f the complainant cannot [show that he will suffer a distinct and palpable injury], then [the court] will move to the second step of determining whether anyone else would have a more direct interest in the issues who can more adequately litigate the issues.'" Id. (third alteration in original) (quoting Mace, 921 P.2d at 1379). And, "if the complainant cannot meet the first or second steps of [the] inquiry, then the court will 'move to the third step, which is to decide if the issues raised by the [complainant] are of sufficient public importance in and of themselves to grant . . . standing.'" Id. (second and third alterations in original) (quoting Mace, 921 P.2d at 1379). Here, Reott and Wasatch focus solely on whether Reott suffered a distinct and palpable injury.

12. Utah Rule of Civil Procedure 69(j) was repealed in 2004 and replaced by current rule 69C. Rule 69C(b) provides that

[r]eal property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest. If the defendant redeems, the effect of the sale is terminated and the defendant is restored to the

(continued...)

[r]eal property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest: (A) the judgment debtor; (B) a creditor having a lien by judgment, mortgage, or other lien on the property sold; or on some share or part thereof, subsequent to that on which the property was sold.

Utah R. Civ. P. 69(j)(1) (repealed 2004).

¶21 The parties do not dispute that Reott relinquished his judgment creditor status respecting the Section 32 Leasehold Interests when he purchased those interests, and Utah case law appears to acknowledge such relinquishment. For example, in Brockbank v. Brockbank, 2001 UT App 251, 32 P.3d 990, this court held that a judgment creditor who foreclosed and subsequently purchased lien property owned the purchased property, "subject only to the exercise of the right of redemption," and that this right of redemption was not available to the foreclosing creditor turned purchaser, i.e., "she could not execute on it." Id. at ¶12. The court explained that "[t]o allow a foreclosing creditor to control the right of redemption is inconsistent with the purpose of that right--to provide a check on bids that are well below market value." Id.; see also id. at n.3 (citing cases for the proposition that liens are not revived by redemption and that "[t]he principle purpose of the redemption statute, and the only purpose which it serves in a superior way, is the encouragement of adequate bidding at the sale[, and o]bviously this purpose is defeated by holding that liens are revived, or that a deficiency decree will effectively charge the land" (citations omitted)). See also Currier v. Elliot, 39 N.E. 554, 557-58 (Ind. 1895) ("A purchaser at an execution sale stands in no sort of legal privity of contract with the creditor upon whose claim the judgment was obtained. It does not alter the case that the purchaser and the creditor are the same person. In respect to the property purchased they can[n]ot be the same. The creditors ceased to be creditors [respecting the property] when

12. (...continued)

defendant's estate. If the property is redeemed by a creditor, any other creditor having a right of redemption may redeem.

Utah R. Civ. P. 69C(b). Although rule 69C(b) and former rule 69(j) are substantively similar, the parties and the lower court refer to and rely on rule 69(j), the rule in place at the time Wasatch attempted to redeem. For purposes of our analysis, we do the same.

the sale occurred. Thenceforward their interest in the property was as purchasers at an execution sale, not as creditors.'" (citation omitted)).

¶22 Thus, as a purchaser, "[Reott] owned the [Section 32 Leasehold Interests], subject only to the exercise of the right of redemption" by Mission, or its alleged successor in interest, Wasatch. Brockbank, 2001 UT App 251 at ¶12. Wasatch argues that because Reott's ownership of the Section 32 Leasehold Interests was subject only to Wasatch's exercise of its redemption rights, Reott would suffer no injury if Wasatch redeemed because Reott would be reimbursed his credit bid plus cost. The fact that Reott's reimbursement would only be \$1.06 of his \$238,000 lien is, Wasatch claims, no fault but his own. That is, because "the high bid at the sheriff's sale sets the redemption amount, which is the only amount guaranteed to the creditor for the [redemption period;] . . . this is the risk a creditor takes when bidding less than market value." Id. at ¶14. Because "[t]he amount bid . . . is within the creditor's control," id., Wasatch contends that any injury to Reott is self-inflicted and results from Reott's own choice to set a nominal bid amount, not from Wasatch's exercise of its redemption rights.

¶23 Although we agree with Wasatch that Reott "is bound by [his] choices" and "should not now be heard to complain" about his decision to set the redemption value at \$1.00, Tech-Fluid Servs., Inc. v. Gavilan Operating, Inc., 787 P.2d 1328, 1335 (Utah Ct. App. 1990), we conclude that Wasatch mischaracterizes Reott's alleged injury. "Utah case law has long recognized substantive rights vesting in those who purchase property at sheriff[s'] sales." American Interstate Mortgage Corp. v. Edwards, 2002 UT App 16, ¶25, 41 P.3d 1142; see also Huston v. Lewis, 818 P.2d 531, 535 (Utah 1991); Layton v. Layton, 105 Utah 1, 140 P.2d 759, 762 (1943) ("A sale by the sheriff gives the purchaser, under a certificate, an inchoate right to the land, if not an interest in the land itself; and it is such a right as will ripen into a title unless the property be redeemed from him.") (citation omitted)). Thus, because Reott's ownership interest is subject only to Wasatch's redemption rights, if Wasatch, as Reott alleges, is not legally entitled to such redemption rights, Reott will be unlawfully usurped of his ownership rights. In other words, it is this unlawful usurpation, and not the nominal redemption amount, that Reott claims gives rise to injury sufficient to give him standing to challenge Wasatch's redemption rights. Just as a "purchaser at a sheriff's sale [has the substantive right] to receive the proper redemption amount in accordance with [the rules] or to have the title perfected," Huston, 818 P.2d at 535, we think a purchaser likewise has the right to ensure that redemption is only exercised by those

entitled to it under the rules. See Reynolds v. Davis, 252 P. 386, 387 (Mont. 1926) (holding that sheriff sale purchaser was "the actual owner of the property, subject only to the right of redemption" and "[a]s owner he was entitled to protect his interest and to contest the right of [the redemptioner] to redeem"); Leland v. Heiberg, 194 N.W. 93, 94 (Minn. 1923) ("The purchaser at a foreclosure sale has the right to acquire absolute title unless redemption is made by one entitled to redeem, and hence he may question a judgment creditor's right to redeem by attacking the judgment."); Robertson v. Moline, Milburn & Stoddard Co., 55 N.W. 495, 496 (Iowa 1893) ("When the appellant purchased [property] at [a] sale on execution, he took it subject only to redemption from the sale by the persons and in the manner authorized by statute. If those entitled to redeem failed to do so within the time and in the manner provided, the [property] became his absolutely. He might surely question the right of one not authorized to redeem to do so, and ask that an attempted redemption be set aside as a cloud upon his title."); see also United States Fed. Credit Union v. Avidigm Capital Group, Inc., No. 06-4448, 2007 U.S. Dist. LEXIS 20652, at *6 (D. Minn. Mar. 8, 2007) (noting that purchaser could have contested right of redemption). As one court has noted, "[i]f the law [were] otherwise, anybody and everybody might redeem, without the purchaser being able to question their right to do so." Hughes v. Olson, 77 N.W. 42, 42 (Minn. 1898) ("[A] purchaser at a mortgage sale . . . has the right to acquire absolute title to the land, unless it is redeemed within the time allowed by law by one who has a right under the statute to redeem; and he cannot be deprived of this right by one who is not a lawful redemptioner.").

¶24 Furthermore, we point out that in Brockbank, this court noted that the judgment creditor turned purchaser could not object to an assignee's right of redemption because the purchaser "waived her objections when she accepted the [redemption] tender." 2001 UT App 251 at ¶16. Here, the parties do not dispute, and the record is clear that, unlike the purchaser in Brockbank, see id., Reott did not accept the redemption amount tendered by Wasatch.

¶25 In sum, we conclude that as a sheriff's sale purchaser, Reott had standing to question whether Wasatch was a lawful successor in interest, entitled to exercise redemption rights. Given this conclusion, we next address Wasatch's claim that the trial court erred in concluding as a matter of law that Wasatch was not a lawful successor in interest because it did not have legal or equitable title to the Section 32 Leasehold Interests.

II. Legal Title

¶26 We first consider whether the trial court erred in deciding that Wasatch was not a lawful successor in interest because it lacked legal title to the Section 32 Leasehold Interests. The trial court concluded that Wasatch did not have legal title because the Assignments failed to identify Sutton as a person authorized to execute assignments on Mission's behalf.

¶27 We disagree with the trial court's conclusion that the Assignments' failure to identify Sutton as an agent precluded legal title from passing as a matter of law. "It is well established in the law that a principal is liable for the acts of his agent within the scope of the agent's authority, irrespective of whether the principal is disclosed or undisclosed." Garland v. Fleischmann, 831 P.2d 107, 110 (Utah 1992). "The fact that an agent acts in his own name without disclosing [the] principal does not preclude liability on the part of the principal" Id. This is true even when an agent signs a written agreement for the transfer of real property without disclosing his or her agency status. See id. at 108, 110-11 (holding that buyers who entered into an earnest money agreement for the sale of land from sellers, who failed to disclose their agency status, "could look to [the principal corporation] for a deed when [the agent sellers] failed to provide one" and explaining that parol evidence is admissible to establish agency); see also id. at 110 (citing Nalbandian v. Hanson Rest. & Lounge, Inc., 338 N.E.2d 335 (Mass. 1975) (granting specific performance against a corporation for sale of real estate even though the corporation president had signed the sale agreement without indicating he was acting on behalf of the corporation that owned the property)). Thus, we hold the trial court erred in concluding that the Assignments' failure to identify Sutton as an agent of Mission barred legal title from passing as a matter of law.

¶28 But we point out that in Utah,

No estate or interest in real property . . . shall be created, granted, assigned, surrendered[,] or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering[,] or declaring the same, or by his lawful agent thereunto authorized by writing.

Utah Code Ann. § 25-5-1 (1998). The requirement that an agent signing on behalf of another party is authorized in writing to do so "[n]aturally . . . appli[es] to agents of corporations." Mathis v. Madsen, 1 Utah 2d 46, 261 P.2d 952, 956 (1953).

Although courts "have adopted an exception [to this written authorization requirement for corporate agents] when the person who acts under an oral authorization is either a general agent or executive officer of the corporation." Id.

¶29 It is undisputed that the MOA gives Mission managers, such as Sutton, the authority to "execute on behalf of [Mission] without obligation on a third party's part for inquiry as to actual authority or as to disposition of funds, all contracts, leases, notes, mortgages, deeds, evidences of indebtedness or security agreements" and to "enter into any and all other agreements on behalf of [Mission], with any other person or entity for any purpose." But it is also undisputed that the MOA requires that

[a]ny document or instrument, of any and every nature, including without limitation, any agreement, contract, deed, promissory note, mortgage, deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind [Mission] or convey or encumber title to its real or personal property shall be valid and binding for all purposes if executed by any two of the [managers].

Thus, although the MOA gives Sutton the general power to act on behalf of and under the authorization of Mission in the assignment of its property, the MOA limits this power in that it explicitly requires two Mission managers to execute instruments conveying Mission's title to real property, such as the Assignments. The parties agree that Sutton was the only manager who executed the Assignments. Therefore, we conclude that Sutton, acting alone, did not have the requisite written authority to assign the Section 32 Leasehold Interests.

¶30 What is not clear from the record on appeal, however, is whether Sutton had oral authorization from Mission to assign the Section 32 Leasehold Interests. See Mathis, 261 P.2d at 956 (noting that general agents or executive officers of corporations need only show oral authorization to satisfy the statute of frauds' agent authorization requirement). Nor is it clear whether Mission later ratified the Assignments. See Bradshaw v. McBride, 649 P.2d 74, 78 (Utah 1982) (explaining that a principal

may subsequently ratify unauthorized agent acts).¹³ We therefore reverse the trial court's grant of summary judgment as to the issue of legal title and remand to the trial court to determine whether Mission gave Sutton oral authorization to execute the Assignments or whether Mission subsequently ratified the Assignments; and, if so, the effect thereof.

III. Equitable Title

¶31 We likewise reverse and remand the trial court's grant of summary judgment on the issue of equitable title. The trial court determined that Wasatch did not have equitable title to the Section 32 Leasehold Interests because Mission fraudulently transferred those interests. Wasatch contends that the trial court erred in concluding fraudulent transfer occurred as a matter of law because, although the facts supporting the various badges of fraud are not disputed, the parties heavily contest the inferences one could draw from those facts, and, in weighing those inferences, the trial court essentially engaged in improper fact finding. We agree.

¶32 Under the Utah Fraudulent Transfer Act (UFTA), the transfer of an asset "is fraudulent . . . if the debtor made the transfer . . . with actual intent to hinder, delay, or defraud any creditor of the debtor." Utah Code Ann. § 25-6-5(1)(a) (1998). In deciding whether fraudulent intent exists, it is appropriate to infer its existence from "certain indicia of fraud," among other factors, set forth in the UFTA, see id. § 25-6-5(2)(a)-(k). Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452, 462 (Utah Ct. App. 1989). These indicia have been described as so called "badges of fraud." Selvage v. J.J. Johnson & Assocs., 910 P.2d 1252, 1261 (Utah Ct. App. 1996) (quotations omitted).

¶33 The badges' "'value as evidence,'" however, "'is relative not absolute,'" and they are considered "facts which 'throw suspicion on a transaction and which call for an explanation.'" Id. at 1262 (quoting Territorial Sav., 781 P.2d at 462). In other words, "They are not usually conclusive proof; they are open to explanation. They may be almost conclusive, or they may

13. Under Utah law, "[a] principal may impliedly or expressly ratify an agreement made by an unauthorized agent." Bradshaw v. McBride, 649 P.2d 74, 78 (Utah 1982). "However, a ratification requires the principal to have knowledge of all material facts and an intent to ratify." Id. "[T]he same kind of authorization that is required to clothe an agent initially with authority to contract must be given by the principal to constitute a ratification of an unauthorized act." Id. at 79.

furnish merely a reasonable inference of fraud, according to the weight to which they may be entitled from their intrinsic character and the special circumstances attending the case." Territorial Sav., 781 P.2d at 462 (quotations and citations omitted). Importantly, "[t]he existence of fraudulent intent is a factual question," which "necessarily involves weighing the evidence presented and assessing the credibility of witnesses--tasks largely within the province of the fact-finder." Selvage, 910 P.2d at 1262.

¶34 Here, the trial court adopted, with little explanation, Reott's eleven asserted badges of fraud as conclusive evidence of fraudulent intent. While we agree with the parties that many of the underlying facts are undisputed, it was improper on summary judgment for the trial court to weigh these facts and adopt Reott's legal conclusion that these facts necessarily infer fraudulent intent.

¶35 For example, the trial court adopted Reott's alleged badge of fraud that "Sutton and [Wasatch] carved up [one of the leases] with the intent of evading the liens and judgments." While Wasatch does not dispute that it carved up the lease, Wasatch strongly contests Reott's asserted inference that such carving was done with the intent to evade liens and judgments. In fact, Wasatch asserts that it assumed the liens and judgments only applied to the Well. The trial court's decision to adopt Reott's legal conclusion as to the significance of the carving was wholly improper. On summary judgment, "[t]he trial court must not weigh evidence or assess credibility," Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered, 681 P.2d 1258, 1261 (Utah 1984), and where "there are other equally plausible inferences to be drawn from the evidence . . . summary judgment should not have been granted," Ellsworth Paulsen Constr. Co. v. 51-SPR, L.L.C., 2006 UT App 353, ¶18, 144 P.3d 261. Moreover, on summary judgment, the trial court was required to construe "[d]oubts, uncertainties, or inferences concerning issues of fact . . . in a light most favorable to the party opposing summary judgment," which in this case was Wasatch, not Reott. Mountain States, 681 P.2d at 1261.

¶36 We therefore reverse the trial court's determination of fraudulent intent and remand for "the fact-finder [to] consider" whether the undisputed facts support an inference of fraudulent intent. Selvage, 910 P.2d at 1261 (explaining that the badges of fraud are "factors which the fact-finder may consider, among others, to determine if actual intent [to defraud] existed" (quotations omitted)).

CONCLUSION

¶37 In sum, we conclude that as sheriff's sale purchaser of the Section 32 Leasehold Interests, Reott had standing, generally speaking, to challenge whether Wasatch was a lawful successor in interest capable of exercising a right of redemption. Nonetheless, we determine the trial court erred in deciding as a matter of law that Wasatch lacked legal or equitable title, precluding lawful successor in interest status, to the Section 32 Leasehold Interests. We therefore reverse the trial court's grant of partial summary judgment quieting title in Reott and remand for further proceedings consistent with this opinion.¹⁴

Judith M. Billings, Judge

¶38 WE CONCUR:

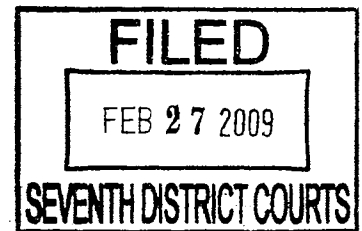
James Z. Davis, Judge

William A. Thorne Jr., Judge

14. Although BBC does not expressly appeal the trial court rulings regarding trespass, conversion, and trespass to chattels, these rulings were based on the trial court's determination that Reott had title to the Section 32 Leasehold Interests.

Tab F

ADDENDUM F



IN THE SEVENTH DISTRICT COURT IN AND FOR
CARBON COUNTY, STATE OF UTAH

WASATCH OIL & GAS, L.L.C., a
Utah limited liability company,

Plaintiff,

v.

EDWARD A. REOTT, et. al.,

Defendants

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
re: QUIET TITLE AND
FRAUDULENT TRANSFER
CLAIMS

Civil No. 010700991

Judge George M. Harmond

and related actions.

The trial of this action to the Court commenced on October 27, 2008 and continued through October 31, 2008. The plaintiff Wasatch Oil & Gas, L.L.C. and related companies ("Wasatch") were represented by Eric Olson and Matthew Richards. The defendant Edward A. Reott and related companies ("Reott") were represented by Craig Smith, Scott Crook and Bryan Bryner. The third-party defendant Bill Barrett Corporation ("BBC") was represented by Carolyn McIntosh, Donna Vetrano Pryor and Nick Sampinos.

At the direction of this Court, evidence relating to the issues of quiet title and fraudulent transfer was presented during the first three days of trial. In this regard, Wasatch called as witnesses Edward Reott, Todd Cusick, Heggie Wilson, Brian Watts and, by deposition, Justin Sutton. Reott called as witnesses Edward Reott, Todd Cusick, Roger Smith (expert), Donald Stinson (expert) and, by

deposition, Justin Sutton. Wasatch called Mr. Cusick in rebuttal.

The following documents were admitted into evidence during the first three days of trial:

Exhibits 2, 3, 6, 7, 9 through 19, 28 through 30, 101A and B, 102, 107 through 111, 113 through 118 (including 114A through D and 115 A and B), 120, 123, 124, 126, 128 through 130, 320, 340, 342, 343, 345, 359A, 359B, 362, 380, 381, 383, 385, 394, 400, 407 through 409, 411, 422, 425 through 431, 438, 442, 444 (Exhibits 2 through 5 thereto only), 492, 557, 562, 569, 575, 639, 652, 728, and 730.

The Court, having heard the testimony presented at trial, having reviewed the deposition testimony received as evidence, having also reviewed the exhibits received at trial, having read into the record its Ruling on the quiet title and fraudulent transfer issues on October 30, 2008, and being otherwise sufficiently advised, hereby enters the following **Findings of Fact and Conclusions of Law** re: **Quiet Title and Fraudulent Conveyance** claims:

FINDINGS OF FACT

1. As of December 1996, Mission Energy, LLC ("Mission") was a start-up company in the oil and gas industry, organized with the stated purpose to acquire mineral leases and then market those leases to third parties as part of a drilling program.
2. For all time periods relevant to this action, Mission conducted its business pursuant to an Amended and Restated Operating Agreement dated April 1, 1997 (the "Operating Agreement").
3. The Operating Agreement identified three members/owners of Mission, with

Intermarket Trading Company, LLC ("Intermarket") owning the majority interest in Mission at 480 shares out of a total of 800 shares.

4. The Operating Agreement identified as "initial managers" of Mission four individuals: Justin Sutton ("Sutton"), Charles Wiliard ("Willard"), William Muller ("Muller"), and Fred Jager ("Jager").

5. Sutton was the sole manager of Intermarket.

6. Jager did not sign the Operating Agreement and there was no evidence at trial that, although he purported to act for Mission as "chairman" once in 1997 and once in 2001, he knew he was a manager of Mission.

7. The Operating Agreement at paragraph 5.1 (i) and (j) provided:

The Manager shall have the power and authority to perform the following duties:

...

(i) Borrow money and incur secured and unsecured indebtedness on behalf of the LLC and execute on behalf of the LLC without obligation on third party's part for inquiry as to actual authority or as to disposition of funds, all contracts, leases, notes, mortgages, deeds, evidences of indebtedness or security agreements;

(ii) Purchase, trade, lease, liquidate and sell the properties of the LLC upon such terms, conditions and prices as the Managers deem acceptable....

8. The Operating Agreement at paragraph 5.2 further provided that "[a]ny ... assignment...,

which is intended to bind the LLC or convey ..., title to its real... property shall be valid and binding for all purposes if executed by any two of the Managers."

9. Reott or related entities twice provided funds to Mission:

- a. On behalf of his mother and through Belle Oil & Gas, Reott invested \$150,000 in Mission's Utah Lease Acquisition Program I pursuant to a signed Subscription Agreement.
- b. At the direction of his mother, Reott made an unsecured loan of \$160,000 to Mission.

10. With respect to the investment identified in finding 9(a) above, Reott executed the Subscription Agreement and the Lease Acquisition Memorandum on behalf of Belle Oil & Gas Inc. as president and Sutton alone executed both documents on behalf of Mission without any statement indicating his authority. (Exhibits 2 and 102)

11. The Subscription Agreement warned that "THE POSSIBILITY EXISTS THAT MISSION MAY BE UNABLE TO SUCCESSFULLY MARKET THE LEASES ACQUIRED UNDER THIS PROGRAM OR EVEN MAINTAIN SUCH LEASES. EITHER EVENT MAY LEAD TO THE LOSS OF SUCH LEASES...."

12. Mission represented in a memorandum to Reott dated February 24, 1997, that it would issue a promissory note to evidence the loan identified in Finding No. 9(b) above but it failed to do so. (Exhibit 28)

13. The memorandum identified in Finding No. 12 above was signed by Jager, without noting his authority next to his signature but with the indication at the top of the memorandum that he was "chairman."

14. Consistent with the disclosures in its offering memorandum, Mission was undercapitalized from the beginning as a start-up company in the oil and gas industry.

15. Mission's stated object, pursuant to the documents the Court has reviewed, was to acquire mineral leases and then to market the leases for a drilling program.

16. Because it was undercapitalized, Mission would be expending cash to acquire those leases but cash flow for development would be problematic and, thus, Mission needed a better capitalized partner to realize the potential value of leases acquired.

17. Pursuant to its lease acquisition program, Mission acquired interests in leases located in the Peter's Point Unit, the Stone Cabin/Prickly Pear area (later a unit), the Jack Canyon Unit, the Burris area, the Gusher area and other locations in the vicinity of Nine Mile Canyon.

18. Mission also obtained approval from SITLA to drill or rework a well called the "Lavinia 1-32" well, located on Township 12 South, Range 16, Section 32 ("Section 32).

19. Pursuant to the application to drill the Lavinia 1-32 well filed by Mission on September 10, 1997 and approved by the State of Utah on September 25, 1997, the spacing for or area assigned to the Lavinia 1-32 well was 40 acres. (Exhibit 385)

20. Almost from the start of its existence and as of May 1, 2000 through June 21, 2000, Mission was not able to pay its debts as they became due for lack of capital and revenue.

21. In May 1998, Willard and Muller terminated their relationship with Mission by selling their membership interests and ceasing to be managers.

22. Mission did not appoint any managers to replace Muller and Willard.

23. In May 1998, Sutton became the manager of Mission and from that date through

October 21, 2000, when he resigned, Sutton acted as sole manager of Mission.

24. Sutton advised Reott no later than August 21, 1998, that he (Sutton) had taken over the operations of Mission as of May 1, 1998. (Exhibit 6)

25. Wasatch acquired certain lease interests in the Peter's Point Unit from McCullis Resources Co., Inc. ("McCullis") together with, among other things, the gas gathering pipeline servicing the Nine Mile Canyon area, including the Lavinia 1-32 well.

26. Immediately upon acquiring the McCullis interests, Wasatch commenced a process to vacate the existing spacing order, No. 157-1, covering the Peter's Point Unit and properties in the Nine Mile Canyon area including Section 32 and the Lavinia 1-32 well.

27. Under Spacing Order No. 157-1, the default spacing for wells on lands owned by the State of Utah, set at 40 acres per well, had been replaced by spacing set at 640 acres per well.

28. In furtherance of its efforts to vacate Spacing Order No. 157-1, Wasatch retained the services of expert legal counsel, a certified landman, a geologist and a petroleum engineer to gather data to present to the Utah Board of Oil, Gas and Mining (the "Board"). (Exhibit 19)

29. As an interest holder in the area, Reott's company Belle Oil & Gas, Inc. was given notice of Wasatch's effort before the Board to vacate Spacing Order No. 157-1 and raised no objection. (Exhibit 19)

30. Mission held minority interests in certain of the Peter's Point mineral leases subject to Wasatch's acquisition from McCullis.

31. As the result of disputes between Mission and McCullis predating Wasatch's acquisition as well as Wasatch's involvement in funding certain McCullis' operations, both Mission and Wasatch

were parties to litigation involving the McCullis/Mission property interests.

32. In June 1999, Wasatch and Mission settled the litigation by entering into a settlement that, by order of this Court and agreement of the parties, is not at issue in this action but does represent part of the course of dealings between Mission and Wasatch.

33. Mission failed to repay the loan by Reott referenced in finding 9(b) above.

34. On December 20, 1999, the United States District Court for the District of Colorado awarded Reott a judgment in the amount of \$204,000 against Mission based on Mission's default in paying the loan (the "Reott Judgment"). (Exhibit 408)

35. Thereafter, and before May 1, 2000, Reott sought to enforce the Reott Judgment by garnishing funds in Mission bank accounts in the amount of \$27,236.27.

36. On May 1, 2000, pursuant to a letter agreement, Mission transferred eight mineral leases- two State of Utah or SITLA leases and six federal or BLM leases consisting of six non-contiguous parcels - to Wasatch for a payment of \$27,443.30. (Exhibit 108)

37. The leases sold on May 1, 2000, did not have any existing wells or oil and gas production.

38. Within a few months prior to the May 1, 2000, transaction, Wasatch had bid successfully at auction for two federal and two state leases contiguous to the property covered by the May 1, 2000, letter agreement.

39. The amount Wasatch initially offered for the May 1, 2000, lease purchase was based on the average price paid for the four leases it acquired at government bid sales just previous to the May 1, 2002, sale.

40. The ultimate price paid for the May 1, 2000, purchase resulted from negotiations between Wasatch and Mission.

41. Wasatch was familiar with the area in which the leases were located, including access and topography, because it had operated wells and a pipeline in that area for nearly a year previously.

42. Todd Cusick and Heggie Wilson of Wasatch worked together to formulate an initial offer for the eight leases by looking at each lease and assessing factors such as access to roads and pipelines and topography for drilling.

43. Thus, the offers made by Wasatch were based on its hands-on experience in the area.

44. Wasatch's initial offer for the leases sold pursuant to the May 1, 2000, letter agreement was the result of calculating the net acres available (four of the BLM leases were only 50% interests) and multiplying that number by the price per acre derived from government bid sale prices paid by Wasatch for four leases contiguous to property included in the transaction as discussed in Findings Nos. 38 and 39 above.

45. As a consequence of this calculation, Wasatch made an initial offer to Mission of \$24,610.83 for the eight leases. (Exhibit 129)

46. Because some of the parcels covered by the leases were quite remote and subject to very challenging terrain, Wasatch's calculations and offer took into account, on a property by property basis, any limiting conditions, including rough terrain, remoteness and access, and whether or not the lease was suspended.

47. Wasatch set forth its calculation and the factors bearing on any limitations in the document received into evidence as Exhibit 129.

48. This offer represented the amount that a willing buyer was prepared to pay a willing seller for the leases.

49. Dr. Donald Stinson's expert testimony as to a much higher value for the leases included in both the May 1, 2000, transaction and the later June 21, 2000, transaction relied heavily on the trend of prices of minerals in determining a value for the subject leases.

50. Dr. Stinson did review some lease sales in the area, but he did not record those sales. He did not rely on sales from state or federal auctions, despite the fact (as he acknowledged) that such sales are competitively bid, and are publicly available.

51. While Dr. Stinson testified that he did review some BLM auction sales, he did not review any SITLA auction sales.

52. The one lease sale specifically identified by Dr. Stinson - a 50 acre sale in Section 36 - took place in November 2000, well after the last of the sales from Mission to Wasatch.

53. Dr. Stinson testified that knowledge of specific conditions of each lease as outlined above in Findings Nos. 41 through 43 is important, but it was not clear if, and to what degree, Dr. Stinson relied on such information in arriving at his opinion of value.

54. Dr. Stinson assumed that, where applications for permits to drill were on file, it was Mission that had done the necessary archaeological, cultural and environmental research; however, the evidence established that Wasatch had either performed the work or paid for this work to be done.

55. Wasatch, not Mission, also had to make the investment and incur the costs to make the leases viable.

56. Dr. Stinson did not consider each lease separately as to the percentage of ownership,

access to pipeline of each lease, topography of each lease and access to existing roads.

57. Dr. Stinson did not make a calculation of estimated gas reserves under each property covered by the leases but rather merely assigned a probability as to the chance that, if one were to drill, a particular property subject to lease would produce gas.

58. Dr. Stinson did not know how many operators were in the area at the time, which the Court finds would be a factor in the price Mission could obtain for the leases.

59. The Court was unable to track how Dr. Stinson came to his conclusions of value in any kind of mathematical model.

60. The values offered by Wasatch, which were developed by extensive field work in the area and detailed knowledge of the leases themselves and the conditions of the field in general, were more indicative of reasonably equivalent value at the time of the sale than the values offered by Dr. Stinson.

61. Dr. Stinson's analysis and opinion were more applicable to proposed pricing were one to market the property for sale, but not necessarily to determine whether the actual sales prices were reasonable under the conditions that prevailed in May and June 2000.

62. The Court gives greater weight to the calculations of Wasatch and rejects the calculations of Dr. Stinson as a measure of reasonably equivalent value.

63. With respect to the May 1, 2000, transaction, Mission countered Wasatch's initial offer with an offer to sell the eight leases at an even \$5.00 per net acre.

64. Wasatch accepted that counteroffer and calculated the final purchase price as set forth in Exhibit 130 at trial.

65. Wasatch provided this calculation to Mission as part of the May 1, 2000, letter agreement received in evidence at trial as Exhibit 109.

66. Following the transfer of the eight leases pursuant to the May 1, 2000, letter agreement, Mission and Wasatch discussed a second sale of leases to Wasatch.

67. This second proposed sale involved interests in ten mineral leases, including seven leases in the Jack Canyon Unit and three in the Burris area, and unit operator status in the Jack Canyon Unit.

68. None of the ten mineral leases had any existing wells or oil or gas production.

69. The total acreage was split fairly evenly between the Jack Canyon Unit and the Burris area; however, two of the Burris leases - UTU-65782 and UTU-65783 - were only 50% interests.

70. Two leases - ML-43798 and ML-43541 - covered Section 32 and were SITLA leases.

71. At the time in June 2000, Section 32 was encumbered by various liens including one filed by J-West Oilfield Service Inc. and one filed by Key Energy for work performed on the Lavinia 1-32 well and related pipeline.

72. With respect to the Section 32 leases, Wasatch and Mission ultimately agreed that Mission would transfer its interest outright in 600 acres, reserving for itself only the Lavinia 1-32 well and the surrounding 40 acres to a depth of 3,398 feet below the surface of the earth (the depth to which the well had been completed).

73. Mission and Wasatch agreed to this division of Section 32 in an attempt to keep Wasatch from becoming entangled in the potential legal disputes associated with the liens, based on their understanding that the Lavinia 1-32 had a spacing unit and assigned acreage of 40 acres to which

the liens attached.

74. Neither Mission nor Wasatch acted with any intent to defraud creditors and, with respect to any liens, such a division and transfer had no effect on the scope of the liens.

75. Of the five BLM leases located in the Jack Canyon Unit, three had expired for non-payment of rentals and another one was in suspension.

76. The Jack Canyon Unit, of which Mission was unit operator, was also expiring.

77. As with the May 1, 2000, transaction, Wasatch valued the leases subject to the June 2000 negotiations by considering the status of the leases and any limiting conditions, such as access, remoteness, development limitations and rough terrain.

78. The Burris leases were located at a distance from other Mission holdings, to the northwest of the Jack Canyon Unit and adjacent to wilderness study areas, with very difficult access.

79. The Burris leases were in suspension.

80. Ultimately, Wasatch proposed to purchase the Jack Canyon and Burris leases for the same \$5.00 per net acre price paid for the leases purchased on May 1, 2000.

81. The Court finds that this amount constituted reasonably equivalent value and rejects the testimony of Dr. Stinson to the contrary for the reasons set forth in Findings Nos. 49 through 60 above.

82. Mission countered with a proposal as set forth in Exhibit 9 that Wasatch reimburse Mission for past rental payments, obtain reinstatement of any expired leases, maintain the leases as lessee and unit operator, and give Mission a specified percentage of any drilling deal Wasatch or Mission might negotiate in the future with respect to the leases purchased.

83. Sutton and Jager believed that, given the financial pressures on Mission including

Reott's judgment collection efforts, the promise of a percentage of a future drilling deal had more potential value to the company and its shareholders and creditors in the long term than the payment of the fixed amount offered for the leases.

84. The June 21, 2000, letter agreement (the "June 2000 Letter Agreement") sets forth the terms on which Mission agreed to sell to Wasatch the ten lease interests including the Section 32 interests. (Exhibit 9)

85. At the time of this sale, Sutton was concerned that the Jack Canyon Unit and related leases would expire and the assets would become worthless, either to Mission, to Wasatch or to creditors.

86. Sutton believed that Wasatch could put together a drilling deal to benefit not only Wasatch, but Mission and its creditors, and that such a deal would prove the best way to permit Mission's investors to recoup money from their investment.

87. Pursuit of a drilling deal comported with the lease acquisition program set forth in the original Mission subscription materials.

88. This Court finds that the consideration set forth in the June 2000 Letter Agreement and the amounts subsequently paid by Wasatch to preserve the leases and the Jack Canyon Unit constituted reasonably equivalent value for the sale of the leases.

89. As of the date of the June 2000 Letter Agreement, Wasatch's efforts to obtain a change in the spacing order governing Section 32 and the surrounding area, as noted in Findings Nos. 26 through 29 above, was well underway.

90. As of June 21, 2000, geologic and engineering data supported the position that 40 acre

spacing was appropriate for the Jack Canyon area.

91. The reservation of 40 acres for the Lavinia 1 -32 well was consistent with the development in the entire Nine Mile Canyon area.

92. In anticipation of performance under the June 2000 Letter Agreement, Heggie Wilson directed Vern Jones to prepare assignments on standard BLM and SITLA forms to document the transfer of the ten lease interests from Mission to Wasatch.

93. The standard BLM form of lease assignment has a line to identify the assignor together with a further line for the signature of the assignor.

94. The standard SITLA form of lease assignment does not have a line for identification of the assignor, but only a signature line for the assignor.

95. Vern Jones prepared lease assignment forms for all ten leases covered by the June 2000 Letter Agreement.

96. The forms for the eight BLM leases included typed identification of Mission as assignor and Sutton as manager.

97. The two forms for assignment of the SITLA leases on Section 32 did not include any typed identification of Mission as assignor nor did they identify Sutton as manager.

98. This was an oversight on the part of Mr. Jones and not an indication of the intent of Mission or Sutton not to transfer the interests identified in the June 2000 Letter Agreement.

99. Wasatch sent the BLM and SITLA forms as prepared by Mr. Jones to Sutton for signature.

100. Sutton signed each form on June 23, 2000, and returned the signed forms to

Wasatch. (Exhibit 10)

101. The clear intent of Mission and Wasatch in executing the lease assignment documents was to transfer Mission's interest in the leases to Wasatch.

102. As to both the May and June 2000 transactions, there were extensive negotiations relative to the terms of the letter agreements and the consideration to be paid for the lease interests.

103. There was no evidence that, in so executing the SITLA forms, Sutton signed in haste or with any intent to sign for any entity other than Mission.

104. Each of the eight BLM lease assignment forms prepared by Mr. Jones, executed at the same time as the SITLA forms, was signed by Sutton in a manner which identified Mission as the assignor and Sutton as Mission's manager.

105. The two SITLA lease forms signed by Sutton did not identify Mission as assignor nor did they include any statement of Sutton's authority.

106. In signing the SITLA forms as prepared by Mr. Jones, Sutton did not note that he was acting for Mission or in what capacity he was acting.

107. At the time of both the May 2000 and the June 2000 transactions, Sutton was the sole manager of Mission.

108. Sutton discussed both the May and June 2000 transactions with Jager, who did not at the time or subsequently express any opposition to the sale of the leases or the terms of the sale and, at all times, manifested support for the actions taken by Sutton.

109. Pursuant to the terms of paragraph 5.1(i) and (j) of the Operating Agreement, Sutton had actual authority, as sole manager of Mission and as the sole manager of Mission member and majority

interest holder Intermarket, to execute the SITLA lease forms on behalf of Mission.

110. Wasatch filed the lease assignment forms as executed by Sutton with the appropriate governmental agencies: the BLM lease assignments with the BLM and the SITLA lease assignments with SITLA.

111. Such lease assignments reside in the files of the particular governmental entity - BLM or SITLA - and, therefore, are a matter of public record available for review by anyone who might wish to do so in order to ascertain lease ownership or the status of title.

112. There was no legal requirement that mineral leases with governmental agencies be recorded in the County Recorder's Office.

113. Consistent with the two SITLA lease assignment forms, SITLA approved the assignment to Wasatch of all 80 acres of ML-43798 and 520 acres of the 560 acres covered by ML-43451 together with all depths below 3398 feet in the 40 acres surrounding the Lavinia 1-32 well.

114. SITLA issued a new lease - ML-43451 A, covering 520 acres- to reflect the transfer of the lease interest in that acreage to Wasatch, consistent with Mission's retention of the Lavinia 1-32 well and surrounding 40 acres to the depth of 3,398 feet under ML-43451.

115. Pursuant to the June 2000 Letter Agreement, Wasatch reimbursed Mission \$3,629.40 for rentals paid by Mission on leases purchased by Wasatch.

116. In addition, with respect to the Section 32 leases, Wasatch paid to SITLA over \$4,000 for assignment of the leases and for rentals between June 21, 2000 and August 9, 2001.

117. In late June 2000, Wasatch met with the BLM and successfully reinstated the Jack Canyon leases that had expired and avoided deunitization of the Jack Canyon Unit.

118. Both Mission and Wasatch actively sought other parties to develop and drill on the lease property as contemplated in the June 2000 Letter Agreement so that all would benefit, and Wasatch made periodic reports in 2000 to Sutton regarding its attempts to commence drilling. (Exhibits 10, 12, 14 through 17, 29)

119. Following the transfer of leases pursuant to the June 2000 Letter Agreement, in addition to the right to participate in any drilling deal, Mission retained the following assets:

- a. The Lavinia 1-32 well (valued by Reott and Sutton at an amount in excess of the total of all outstanding Mission liabilities).
- b. Cash in the bank of at least \$27,236.27.
- c. Amounts held by the State of Utah as a bond of \$19,943.15.
- d. The Gusher leases (the precise value of which was not addressed at trial but which Sutton testified had value and the Lease Acquisition Memorandum identified as having value).

120. Mission did not convey to Wasatch by the June 2000 Letter Agreement all of Mission's remaining assets identified in Finding No. 119 above.

121. The sole evidence before the Court was that the fair value of Mission's assets as of June 21, 2000, exceeded its debts, notwithstanding Mission's inability as a start-up company to pay its debts as they became due.

122. After the transfer of lease interests pursuant to the June 2000, Letter Agreement, Sutton continued to correspond with Reott, including letters dated August 16 and 22, 2000 (Exhibits 11 and 12) and October 24, 2000 (Exhibit 16).

123. Mission was not under any affirmative duty to inform creditors of the two sales of lease

interests to Wasatch.

124. While Sutton did not disclose the particulars of the two transactions with Wasatch that had taken place in May and June 2000 (a fact that is entirely understandable given the adversarial relationship between Reott and Mission), his letters to Reott did accurately disclose that Mission was seeking a joint venture with an industry partner to develop a drilling program in which Mission would participate that would permit Mission to pay Reott and make Mission viable.

125. Sutton did not commit fraud in sending these letters.

126. Reott contacted Wasatch no later than August 22, 2000, regarding potential filing of his judgment against Mission properties.

127. On August 22, 2000, Sutton wrote to Wasatch requesting that Wasatch refer any creditor or legal calls directly to Sutton's attention and not provide any written or verbal information regarding Wasatch's dealings with Mission to third parties without Mission's prior written permission. (Exhibit 118)

128. The fact that Sutton wanted Wasatch to refer creditor inquiries to him, absent more, represents a defensible business decision and is not sufficient to establish fraudulent intent on his part.

129. There was no evidence at trial that Wasatch ever complied with Sutton's request set forth in the August 22, 2000, letter, but rather the testimony was that Wasatch communicated with Mission's creditors both before and after the date of Exhibit 118.

130. By letter dated August 31, 2000 (Exhibit 320), Jager advised Reott that he was "on the sidelines" with respect to the affairs of Mission and presented himself merely as a creditor who, like Reott, was seeking to recover what he had advanced to Mission.

131. Jager did not sign the August 31, 2000, letter in any representative capacity, nor does the document reflect that it was sent on behalf of Mission.

132. On September 18, 2000, Reott recovered the sum of \$27,236.37 from the bank accounts of Mission pursuant to his earlier garnishment.

133. Effective October 1, 2000, Sutton resigned as manager of Mission although he continued to correspond with Wasatch and Reott in some capacity thereafter.

134. On October 27, 2000, Reott filed and docketed his Colorado Judgment in this Court.

135. In early January 2001, Wasatch provided Reott with copies of the documents evidencing the May 1, 2000 and June 21, 2000, letter agreement transactions.

136. By letter dated January 10, 2001 (Exhibit 120), Reott wrote to Jager acknowledging (a) Sutton's resignation as manager, (b) the transfer of leases from Mission to Wasatch pursuant to the May 1, 2000 and June 21, 2000 letter agreements, and (c) Mission's continuing lease interest in the 40 acres surrounding the Lavinia 1-32 well.

137. On January 17, 2001, Jager wrote in response to Reott's January 10, 2001, letter. (Exhibit 29)

138. The January 17, 2001, letter was on Mission letterhead and Jager signed the letter as "chairman" of Mission.

139. In the letter, Jager did not contradict Sutton's authority.

140. Among other things, Jager confirmed his knowledge of the May 1, 2000 and June 21, 2000, transactions between Wasatch and Mission and his support of the transactions and the reasoning behind them.

141. The January 17, 2001, letter establishes that, to the extent he functioned as a manager of Mission or had ownership as a member of Mission, Jager either gave oral authorization to Sutton of the May 1, 2000 and June 21, 2000 transactions at the time they took place or, after receiving full knowledge of the transactions, ratified them at a later date (a finding the Court now makes notwithstanding the previous determination that no genuine issue of material fact existed as to ratification, which finding the Court hereby vacates).

142. At no time did Jager or anyone else associated with Mission contradict Sutton's authority to enter into the May 1, 2000 and June 21, 2000, transactions with Wasatch on behalf of Mission.

143. In connection with Reott's attempts to collect on his Colorado Judgment, he was able to locate both Sutton and Jager and both appeared in May 2001 for depositions.

144. Still later, in this action, Reott was able to locate and take additional deposition testimony from Sutton, which was admitted into evidence at trial.

145. Mission did not abscond or in any way secrete itself to avoid creditors; rather, the evidence shows that Mission remained in touch with Reott, responded to his inquiries and dealt with him until such time as Mission ceased operations in early 2001.

146. By assignments dated January 19, 2001 and April 27, 2001, Reott acquired the judgments obtained against Mission and its property by J-West and Key Energy. (Exhibits 380 and 381.)

147. On February 21, 2001, Wasatch Oil & Gas Corporation transferred its entire interest in the various leases it had acquired from Mission to Wasatch Oil & Gas, LLC.

148. The principals of Wasatch organized Wasatch Oil & Gas, LLC on advice from their tax accountant, who informed them that, with the buyout of a corporate shareholder in 2000, the owners of Wasatch could reduce their tax liability by forming an LLC to take the place of Wasatch Oil & Gas Corporation and transferring the assets of the corporation into the LLC.

149. The February 21, 2001, transfer was a legitimate business transaction and was not undertaken to place any asset formerly owned by Mission out of the reach of creditors or for any other fraudulent purpose.

150. As with previous assignments of government mineral leases, these lease assignments were a matter of public record.

151. The February 21, 2001, transfer was not done with fraudulent intent.

152. No later than March 1, 2001, Mission ceased to function by reason of Reott's collection efforts.

153. Thereafter, there was no one representing Mission with whom Wasatch could deal regarding its promise to include Mission in any drilling deal.

154. Wasatch had never dealt with Jager and there is no evidence that Wasatch knew of Jager or that, during the relevant time period, Jager purported to act on behalf of Mission

155. By order No. 157-3 dated May 29, 2001, the Utah Board of Oil, Gas and Mining vacated order No. 157-1.

156. On August 9, 2001, pursuant to notice and direction from this Court, the Sheriff of Carbon County held a sale to sell the leases on Sections 27, 32, 33 and 34 to satisfy the three judgments held by Reott.

157. Reott received payment on his judgment by reason of the sheriffs sale in the form of his own credit bid of \$1.00 at the sheriff's sale.

158. There were no other bidders at the sheriffs sale.

159. On December 21, 2001 and again on January 18, 2002, Wasatch filed notices to exercise a right of redemption with respect to Sections 27, 33, and 34 and those portions of Section 32 acquired by Wasatch pursuant to the June 2000 Letter Agreement.

160. The Carbon County sheriff either rejected the notices of redemption or simply disregarded them.

161. On February 9, 2002, the Carbon County sheriff issued a sheriffs deed to Reott for Sections 27, 32, 33 and 34.

162. Effective April 1, 2002, Wasatch sold its interests in Section 32, along with other properties, to BBC.

163. Pursuant to this Court's Ruling dated December 15, 2005 and the Order of Summary Judgment entered on May 24, 2006, paragraph 1, Wasatch has redeemed Sections 27, 33 and 34 by paying to Reott the sum of \$1.06 as required by law.

CONCLUSIONS OF LAW

1. The Utah Court of Appeals, reversing a partial summary judgment in favor of Reott on the quiet title issue and Wasatch's attempted redemption of Section 32, directed this Court to hold a trial with respect to the sole potential legal impediments to redemption: (a) lack of actual authority on the part of Sutton to act for Mission in transferring the Section 32 lease interests, and (b) fraudulent

transfer of the Section 32 interests from Mission to Wasatch.

2. The mandate of the Utah Court of Appeals did not limit the evidence this Court could receive and consider with respect to the resolution of these two issues on remand.

3. This Court's resolution of the fraudulent transfer issue could also potentially impact the status of title of the lease interests, apart from Section 32, transferred pursuant to both the May 1, 2000 Letter Agreement and the June 21, 2000 Letter Agreement.

4. Wasatch's claim of successor-in-interest status with respect to Mission's interests in Section 32 in order to redeem that interest after the August 9, 2001, Sheriff's Sale pursuant to Utah Rule of Civil Procedure 69(j) (2001), will be deemed valid if Wasatch had either legal title to the Section 32 leases or an equitable interest in those leases.

5. If Sutton had actual authority to execute the lease assignment documents, Wasatch held legal title and was a successor in interest.

6. With respect to the issue of Sutton's actual authority to execute the Section 32 lease assignments, Wasatch had the burden of proving by a preponderance of the evidence that Sutton had actual authority from Mission.

7. This Court had previously entered Partial Summary Judgment in favor of Reott on the issue of Mission's ratification of Sutton's authority. The Court now vacates that Partial Summary Judgment based on the contents of Jager's letter dated January 17, 2001 (Exhibit 29).

8. Based on the findings of fact set forth above, this Court concludes that Wasatch has met its burden to prove actual authority by a preponderance of the evidence as follows:

a. Mission was a closely held corporation with only two or three members/

owners at any time.

- b. Intermarket, at all times, held the controlling, majority ownership interest in Mission.
- c. Sutton was the sole manager of Intermarket.
- d. After the departure of Muller and Willard in May 1998, Sutton acted as sole manager of Mission until October 2000.
- e. Reott and SITLA both recognized Sutton as authorized to take action on behalf of Mission notwithstanding any requirements in the Operating Agreement.
- f. While Jager was not involved in the management of Mission from May 1998 to October 2000, his correspondence and Sutton's testimony establish that Jager had knowledge of and was in agreement with the actions taken by Sutton with respect to the sale of leases to Wasatch.
- g. No one connected with Mission ever challenged the actions taken by Sutton.

9. Both the June 2000 Letter Agreement and the payments made by Wasatch to SITLA to preserve the Section 32 lease interests gave Wasatch an equitable interest in the Section 32 interests assigned to it by Mission which, absent a valid defense thereto, was a sufficient separate ground to support successor-in-interest status for purposes of redemption under Rule 69(j).

10. Reott advances the defense of actual intent to defraud in the transfer of the Section 32 interests to defeat Wasatch's equitable interest in the Section 32 interests.

11. Reott has the burden of proving fraud, whether premised on actual intent under common law or on statutory grounds, by the heightened standard of clear and convincing evidence.

12. Based on the findings set forth above, this Court concludes that Reott has failed to prove actual intent to defraud - either on the part of Mission or on the part of Wasatch - by clear and

convincing evidence, as follows (referencing the "badges of fraud" as outlined in Exhibit 728):

- a. While the assignment of the Section 32 interests occurred after the recording of mechanics liens, foreclosure actions and judgments, this alone does not prove fraud because Sutton believed (consistent with the testimony of Reott) that the Lavinia 1-32 well, a producing well not transferred to Wasatch, had sufficient value to pay off all creditors including Reott.
- b. The division of lease ML-43541 was not intended to defraud creditors but, based on Wasatch's understanding of the relevant spacing unit, was intended only to avoid entanglement by Wasatch in existing claims against the Lavinia 1-32 well.
- c. While Mission was not paying its debts as they came due, the presumption raised by this fact is rebutted by the undisputed evidence from Sutton and Reott demonstrating that, as of May 1, 2000 and June 21, 2000, the fair value of the Lavinia 1-32 well alone (not taking into account the value of the Gusher interests and cash and bonds in hand) exceeded the total debts of Mission.
- d. Mission did not convey all of its assets to Wasatch.
- e. Mission did not abscond but continued to communicate with Reott at least through February 2001 and to participate in depositions in the Reott collection action in May 2001 and as late as 2004 in this action.
- f. Although the SITLA mineral lease assignment forms for the Section 32 interests were not recorded with Carbon County, they were public records on file with the State of Utah, there was no legal requirement that such leases be recorded, and there was no intent to conceal the forms.
- g. Sutton did not execute the mineral lease assignment forms in haste, nor did he act without regard for any governing rule of Mission then applicable.
- h. The assignment of the Section 32 lease interests was not concealed from creditors. Wasatch provided documentation of the assignment to Reott in January 2001 and Jager acknowledged the transaction in February 2001.
- i. The transfer of leases from Wasatch Oil & Gas Corporation to Wasatch Oil & Gas, L.L.C. was solely for tax and business purposes and was not undertaken to place assets out of the reach of Mission creditors.

13. Based on the findings set forth above, this Court finds that Reott has failed to prove by clear and convincing evidence that Mission's sale of mineral leases to Wasatch in May and June 2000 was a fraudulent transfer pursuant to the provisions of Utah Code Ann. § 25-6-6 as follows:

- a. As already noted, absent more, the evidence would support the presumption found in Utah Code Ann. § 25-6-3(2), but that presumption is rebutted by the undisputed testimony that the "fair value" of all of the assets of Mission exceeded the sum of its debts as of May and June 2000.
- b. The evidence offered through Donald Stinson was not sufficient in content, analysis or detail to support the value conclusions to which he testified or a finding on clear and convincing evidence that Wasatch did not give "reasonably equivalent value" for the lease interests assigned to it by Mission in May and June 2000.
- c. The method of valuation utilized by Wasatch, and accepted by Mission, in fixing the amounts offered at the time of the transactions - including full analysis of properties, reliance on auction prices, reference to status of leases, competitors in the market and obligations undertaken - establishes that Mission received "reasonably equivalent value" for the leases.

14. Wasatch is the successor-in-interest to Mission's leasehold interests in Section 32, excluding the Lavinia 1-32 well and the surrounding 40 acres to a depth of 3,398 feet.

15. Wasatch has redeemed Section 32, excluding the Lavinia 1-32 well and the surrounding 40 acres to a depth of 3,398 feet.

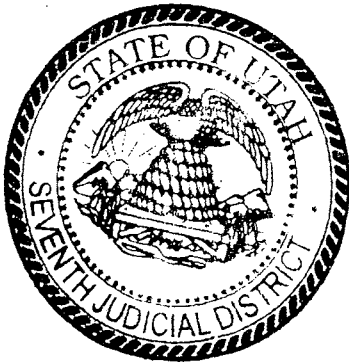
16. Wasatch and BBC are entitled to entry of judgment quieting title to the Section 32 interest - ML 43541 A, ML 43798, and ML 43541 below 3,398 feet in depth to the center of the earth in BBC.

17. The sum of \$1.06 paid to Reott previously in connection with Wasatch's redemption of

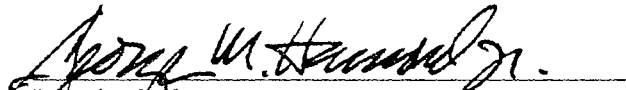
Sections 27, 33 and 34 shall constitute sufficient performance under Rule 69(j) of the Utah Rules of Civil Procedure (2001) with respect to the redemption of the Section 32 interests listed in Conclusion No. 15 above and Wasatch is deemed to have taken all steps precedent to redeeming those interests and need take no further steps.

18. Reott shall remove all lis pendens currently filed against any property of BBC.

Dated February 27, 2009.



By the Court:


District Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

MAIL: BRYAN C BRYNER 215 S STATE ST STE 600 SALT LAKE CITY, UT 84111

MAIL: D SCOTT CROOK 215 S STATE ST STE 600 SALT LAKE CITY UT 84111

MAIL: ERIC C OLSON POB 45120 SALT LAKE CITY UT 84145-0120

~~MAIL:~~ ^{Box} NICK J SAMPINOS 190 N CARBON AVE PRICE UT 84501

MAIL: J CRAIG SMITH 215 S STATE ST STE 600 SALT LAKE CITY UT 84111

Date: 03/16/09

Kyleigh Thompson

Deputy Court Clerk

Tab G

ADDENDUM G

FILED

AUG 19 2009

SEVENTH DISTRICT COURTS

IN THE SEVENTH JUDICIAL DISTRICT COURT
WITHIN AND FOR CARBON COUNTY, UTAH

WASATCH OIL & GAS, L.L.C., a
Utah limited liability company,
Plaintiff,

v.

EDWARD A. REOTT, et. al.
Defendants.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
re: DAMAGES

Case No. 010700991

The trial of this action to the Court commenced on October 27, 2008 and continued through October 31, 2008. The plaintiff Wasatch Oil & Gas, L.L.C. and related companies ("Wasatch") were represented by Eric Olson and Matthew Richards. The defendant Edward A. Reott and related companies ("Reott") were represented by Craig Smith, Scott Crook and Bryan Bryner. The third-party defendant Bill Barrett Corporation ("BBC") was represented by Carolyn McIntosh, Donna Vetrano Pryor and Nick Sampinos.

At the direction of the Court, evidence of damages relating to Reott's claims against Wasatch and BBC for breach of common carrier obligations and against BBC for trespass, trespass to chattels and conversion was presented during the final three days of trial. In its Order

Granting Partial Summary Judgment dated May 24, 2006 (the "2006 Partial Summary Judgment"), the Court had previously granted summary judgment to Reott on the issues of liability under those claims. On the issue of damages, Reott called as witnesses Edward Reott, Randy Smuin, and Dr. Donald Stinson (expert). BBC called as witnesses Greg Hinds, Fred Goodrich, David Posner, and J. Craig Creel (expert). Both Wasatch and BBC called Todd Cusick. Reott called Edward Reott in rebuttal. In addition to the documents already in evidence at trial as identified in this Court's Findings of Fact and Conclusions of Law re: Quiet Title and Fraudulent Transfer Claims dated February 27, 2009 (the "Quiet Title Findings and Conclusions") at page 2 thereof, the following documents were admitted into evidence during the last three days of trial: Exhibits 23, 25 (pages 3 and 4 only), 127, 205-210, 219, 220, 234, 244, 248, 385, 417, 422, 444 (Ex. 2-5 only), 458 (exhibits A and B thereto only), 708, and 728. Finally, following the close of evidence on the issue of damages and at the Court's direction, the parties filed written closing arguments relating to the Reott parties' claims for damages.

The Court, having heard the testimony presented at trial, having reviewed the exhibits received at trial and the written closing arguments submitted by the parties, having issued its written Ruling On Damages dated May 29, 2009, and being otherwise sufficiently advised, hereby enters the following **Findings of Fact and Conclusions of Law re: Damages:**

FINDINGS OF FACT

1. The Court incorporates the Quiet Title Findings and Conclusions.
2. Prior to 2001, when Reott acquired an interest in the Lavinia 1-32 well, Wasatch had acquired from McCullis Resources Co., Inc. a gas gathering system that served the Nine Mile Canyon area.
3. The Wasatch-owned system was quite old, parts of it having been installed in the early 1980s, and included the pipeline that served the Lavinia 1-32 well, from the oriface plate on downstream. (The oriface plate was the interface between the Lavinia 1-32 well and the meter shack.)
4. Wasatch had installed the pipeline from the gathering system to the meter shack, as well as the meter shack itself.
5. Wasatch also maintained the meter shack, replaced the charts measuring the gas from the Lavinia 1-32 well that passed into the gas gathering system, and maintained the pen recorders.
6. Fred Goodrich, who was first employed by Wasatch and later by BBC as maintenance supervisor, had the responsibility for that maintenance, including changing the recording data sheets and ensuring the batteries were changed so the meter functioned properly.
7. During the time that Mission Energy, LLC ("Mission") owned the Lavinia 1-32 well, Wasatch's president, Todd Cusick, informed employees of a contractor, J-West Oilfield Service

Inc., that the pipeline from the meter shack to the main gas gathering line belonged to Wasatch.

8. On June 1, 1999, Wasatch had entered into a gas gathering agreement with Mission that required Wasatch to maintain the equipment necessary to meter the gas collected from the Lavinia 1-32 well, which included the line and meter shack.

9. Mission defaulted on obligations owed to a number of creditors.

10. On August 9, 2001, the Carbon County Sheriff held a foreclosure sale and sold at auction Mission's interests in the mineral leases covering Sections 27, 32, 33 and 34 of Township 12 South, Range 8 East Salt Lake Base and Meridian, which included the Lavinia 1-32 well.

11. Mission never owned the pipeline nor an interest in the pipeline that ran through Sections 27, 32, 33 and 34, and which served the Lavinia 1-32 well. Wasatch owned and maintained the pipeline, meter shack and meter that served the Lavinia 1-32 well.

12. Wasatch did not receive notice of the sheriff's sale.

13. Reott bid \$ 1.00 as a credit bid, and being the only bidder at the sale, received the leases and property.

14. Within a day or so, Mr. Reott telephoned Todd Cusick to request access to the Wasatch pipeline for purposes of transporting and selling natural gas produced from the Lavinia 1-32 well.

15. As Mr. Cusick did not believe that the sale had occurred, he did not respond to Mr. Reott's request for access.

16. After additional telephone calls to Mr. Cusick, Mr. Reott on August 27, 2001, sent Wasatch a letter asking that they respond to his request to access the pipeline.

17. Mr. Cusick did not respond to Mr. Reott; rather, Wasatch attempted to redeem the leases and property located in Sections 27, 32, 33 and 34 (except a portion of a lease in Section 32 and the Lavima 1-32 well) and, when this attempt proved unsuccessful, Wasatch initiated this action to quiet title.

18. On February 9, 2002, the Carbon County Sheriff issued to Reott a deed for the property in spite of objections lodged by Wasatch.

19. The Lavinia 1-32 well was shut in at the time of the sheriffs sale; nonetheless, due to Mr. Reott's efforts, the well was operational within approximately one week from the date of the sheriffs sale.

20. On or about August 6, 2002, Reott became aware that BBC had purchased from Wasatch, and was operating, the pipeline to which the Lavinia 1-32 well was connected.

21. In a letter to BBC dated August 6, 2002, Marcy Underdahl, as president of Regoal, Inc., explained the background of the Lavinia 1-32 well and requested access to the pipeline to market the gas produced by the well.

22. As a result of that letter, the parties began to negotiate a gas gathering agreement, primarily through their attorneys.

23. BBC purchased the gas gathering system from Wasatch effective on April 1, 2002,

and assumed operation of the system on that same date. The purchase agreement was signed on April 15, 2002.

24. The finding in the 2006 Partial Summary Judgment or findings and conclusions in support thereof that June 25, 2002 was the effective date of BBC's assumption of operational control of the pipeline is hereby vacated based on the evidence at trial.

25. When BBC took over the system, the Lavinia well was connected to the gathering system.

26. BBC determined that the gas gathering system, particularly the pipeline servicing the area where the Lavinia well was located, was inadequate: it was comprised of old, leaky piping and was inadequately sized for the field, it consisted primarily of 2" pipe, which was too small to move much gas, and the line pressures would increase with increased gas production volume.

27. In fact, due to the pressures produced by wells drilled in the Prickly Pear field, between 300 to 400 psi, the Lavinia well, which produced only 40 psi, would be unable to move gas into the gathering system without a compressor.

28. In October 2003, BBC began replacing the 2" and 4" gathering system pipe in Sections 32 and 33 with a 10" steel collection pipe.

29. On or about October 30, 2003, the gas gathering pipeline from the BBC lateral connected to the Lavinia well was damaged by a BBC crew in the process of installing the larger lateral line to serve the Lavinia well and two other wells in Section 32.

30. The crew pulled on the line with a piece of equipment, not realizing the line was connected to the meter shack of the Lavinia well.

31. Any damage caused by the removal of the line was accidental on BBC's part, as the crew was unaware that the line was connected to the meter shack of the Lavinia well.

32. The pull on the pipe moved the meter shack into a tree, broke the line connecting the meter shack to the lateral and broke the line from the meter shack to the storage tank.

33. Mr. Reott discovered the damage on or about November 1, 2003.

34. Mr. Reott reported the damage to the Utah Division of Oil, Gas and Mining, who notified Fred Goodrich of BBC, who in turn sent Jeff Adley, BBC's construction foreman, to the Lavinia well to observe the damage.

35. Mr. Adley and Mr. Reott met at the well on or about November 6, 2003.

36. Mr. Adley observed the temperature of the oil in the tank on that date was 138 degrees Fahrenheit.

37. Mr. Goodrich inspected the damages himself on November 7, 2003.

38. A BBC crew promptly repaired the line and meter shack, and completed the work by November 10, 2003, at no cost to Reott.

39. Mr. Goodrich returned to the site personally to inspect the repairs on that date, and observed the flow from the well was bypassing the separator and co-producing oil and gas directly into the fiberglass storage tank, resulting in strong vibrations shaking the oil inlet pipe

connected to the fiberglass tank.

40. Storage tanks normally are metal, not fiberglass.

41. There was no oil leaking at the time Mr. Goodrich visited the site on November 10, 2003.

42. Mr. Reott returned to the well on November 28, 2003 to inspect the repairs and turned on the heater for the storage tank.

43. On or about December 1, 2003, Mr. Reott returned to the well and found that oil had leaked out of the storage tank and into the container berm surrounding the tank.

44. Mr. Reott pulled away the metal skin and insulation from the outside of the tank where the oil line fed into the lower portion of the tank and found the coupling had come loose. He tightened the coupling and this stopped the leak from occurring again.

45. Mr. Reott estimated the loss at 100 barrels of oil.

46. He rented a backhoe and truck to haul away the oil and clean up the residue.

47. BBC did not reconnect the Lavinia lateral to the main line.

48. The court is unable to determine the actual cost of the reconnection of the lateral line to the main gathering line because Reott's testimony at trial was only as to the cost of reconfiguring the entire setup of the meter shack, pipeline, and other lines around the Lavinia well, rather than simply the cost associated with reconnecting to the BBC gathering line.

49. Reott was unable even to identify the quantity of pipe necessary to make the

connection to the gathering line.

50. BBC and Reott continued to negotiate a gas gathering agreement even while this matter was pending.

51. On or about May 27, 2004, BBC provided to Reott two proposed agreements, though each contained a clause permitting interruption of the gas gathering from the Lavinia well to the gathering system at BBC's discretion.

52. The parties finally reached an accommodation, and they signed a gas gathering agreement on July 7, 2005.

53. Reott began production under this agreement later in that same year.

54. This Court previously held on summary judgment that Wasatch and BBC were common carriers, and that each had breached its common carrier responsibilities by failing to provide a reasonable gas gathering agreement to Reott, and consequently were liable for damages during the period from April 1, 2002 through July 7, 2005 as may be proved at trial.

55. At trial, Reott's expert, Dr. Stinson, testified, without explaining the basis for that opinion, that the supply of commercially recoverable gas in the Lavinia 1-32 well is "for all practical purposes, infinite."

56. In contrast, Mr. Creel, expert for BBC and Wasatch, testified that the supply of commercially recoverable gas is not infinite.

57. The gas in a reservoir is finite, otherwise gas wells would never be capped but would

produce infinitely.

58. The Lavinia well is located in a tight sandstone formation, the Wasatch Formation.

59. A reservoir in a tight sandstone formation recovers during a period when a well is shut in and thereafter enjoys a higher pressure at the well bore, and consequent increase in production after that interval, but production eventually declines.

60. Both Dr. Stinson and Mr. Creel testified that production would settle out into a hyperbolic curve after sustained pumping.

61. This is borne out by the production records of the Lavinia well, which show that after each shut-in period, the production of the Lavinia well spiked to a level higher than that at the time the well was shut in, then settled into a period of lower production.

62. Based on the production records, the shut in period beginning in April 2002 did not damage the Lavinia well.

63. The price of gas in January, February and March, 2002 never rose above \$2.19; in contrast, during the time the Lavinia well was connected to the BBC system, April 2005 through April 2006, the price of gas did not drop below \$5.32.

64. The increase in gas prices during the time the well was shut in resulted in higher profits for Reott than could have been realized had he been given access prior to 2005.

65. Primarily due to low gas prices at the time, the commercial value of the Lavinia well in 2002 was effectively zero; Reott's costs of production in 2002 would have exceeded any

potential revenue.

66. In contrast, based on projected co-production of oil and gas over the life of the well, projected price of oil and gas, projected costs of production, taxes and transportation of the product, discounted to a present value, the well had a value of \$99,000.00 in 2008.

67. Dr. Stinson's testimony concerning lost profits covered only the period from April 2002 through March 2004; however, because the Court has adopted Mr. Creel's theory relative to damages, it would not matter if the Court had heard testimony from Dr. Stinson for the period through 2006, because the higher prices commanded by producers during that later period mean Reott suffered no damages, and actually received a higher price for the gas he placed in the system as a result of the delay in obtaining a gas gathering agreement.

68. There was no testimony relative to any time value of money Reott would have received for the sale of gas between April 2002 and July 2005.

69. Reott suffered no damages as a result of any breach by Wasatch or BBC of their common carrier obligations.

CONCLUSIONS OF LAW

Common Carrier Damages

1. Whether Wasatch or BBC owes damages to Reott for breach of common carrier duties fundamentally depends on whether there exists a finite amount of *commercially recoverable* gas in the reservoir in which the Lavinia well is drilled.

2. If the amount of commercially recoverable gas is finite, damages would be dependent on the price of gas during the period when Reott could not produce because Wasatch or BBC were not gathering Reott's gas, as compared to a later period when Reott was able to produce.

3. If the amount of commercially recoverable gas is infinite, Reott would never be able to make up the gas not produced during that period and would have suffered damages whatever the price of gas if that price exceeded the cost of production.

4. Based on the findings of fact set forth above, including the specific finding that the amount of gas in the reservoir drained by the Lavinia well is finite, Reott has suffered no damages as a result of any breach by Wasatch or BBC of their common carrier obligations.

5. Wasatch's obligations as a common carrier ceased upon its sale of the gas gathering system to BBC effective April 1, 2002.

Trespass to Chattels

6. Reott seeks damages from BBC based on the damages to the meter shack, pipeline and oil tank due to BBC's removal of the lateral line connecting the Lavinia to the BBC gathering line in October 2003.

7. As to Reott's claim of damages related to the oil spill, Reott had the burden to prove that the actions of BBC's crew caused the oil spill.

8. On summary judgment, the court found that the oil production line had been bent as a result of BBC's actions; however, the evidence at trial showed the oil production line had not

been bent.

9. Further, there is a logical alternate explanation for causation.

10. Based on the evidence presented at trial, the court vacates its ruling set forth in the 2006 Summary Judgment as to causation of the oil leak.

11. As a matter of law, the evidence at trial did not establish that BBC caused the oil leak or that it is liable for any damages arising from the oil leak.

12. The greater weight of the evidence establishes that the oil spill resulted from a loose connection at the oil inlet coupling between the oil pipe and tank; consequently, BBC is not responsible for any damages caused by the leak.

13. BBC promptly repaired the damage to the meter shack and gas line caused by its removal and upgrade of the lateral line, at no cost to Reott, and so Reott is not entitled to damages therefor.

14. As to the cost of reconnecting the well to the lateral gathering line, BBC had the duty to reconnect the well to the lateral gathering line and BBC would be liable for the cost of reconnecting had Reott established the cost at trial.

15. Because there was no evidence of the cost of reconnection to the gathering line, BBC is not liable to Reott for any damages due to the removal of the lateral line.

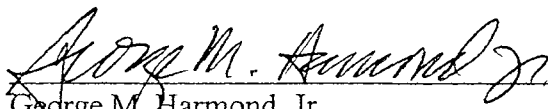
16. BBC is not liable for damages due to removal of the lateral line.

17. Reott is not entitled to an award of damages against Wasatch.

18. Reott is not entitled to an award of damages against BBC.

DATED this 17 day of August, 2009.

BY THE COURT:



George M. Harmond, Jr.,
District Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010700991 by the method and on the date specified.

MAIL: BRYAN C BRYNER 215 S STATE ST STE 600 SALT LAKE CITY, UT 84111

MAIL: D SCOTT CROOK 215 S STATE ST STE 600 SALT LAKE CITY UT 84111

MAIL: ERIC C OLSON POB 45120 SALT LAKE CITY UT 84145-0120

MAIL: NICK J SAMPINOS 190 N CARBON AVE PRICE UT 84501

MAIL: J CRAIG SMITH 215 S STATE ST STE 600 SALT LAKE CITY UT 84111

MAIL: CAROLYN MCINTOSH Patton Boggs LLP 1801 California St, Suite 4900 Dener CO 80202-2613

Date: 8/19/09

B. P. [Signature]

Deputy Court Clerk

Tab H

ADDENDUM H

Mission Energy, LLC
531 Encinitas Boulevard, Suite 200
Encinitas, CA 92024

January 17, 2001

Mr. Edward Roett, President
Belle Oil & Gas, Inc.
93 South Fifth Avenue
Clarion, PA 16214

Good morning, Ed:

I am in receipt of your January 10, 2001 letter, which frankly greatly disturbs me. Allow me please to present you with the facts as I understand them concerning a certain Utah lease transaction, in an effort to correct your apparent misunderstanding of the situation.

I am informed that Mission Energy did sell approximately 2,500 acres that were held in a block as Stone Cabin. These properties were located in various sections of Carbon County. During the development of Peters Pointe, it was determined that these leases would most likely not have any development potential for the company. They were held in an environmentally protected area, were difficult to access, and despite Mission Energy's efforts there had not been any interest by potential partners in this region.

As the leases began to expire, Mission Energy was approached by Wasatch Energy with a proposal to purchase the remaining leases in the Stone Cabin area. No reasons were given regarding their interest in this area. However, it was stated, and we now believe that there was no anticipated drilling on those locations. J.C. Sutton has spoken with Wasatch Energy, and confirmed that they have not drilled any locations in this area. We are convinced that with current BLM positions in that area, the leases will expire before any drilling can commence.

With this background, and the language of the Utah Lease Acquisition program, I can only indicate my opinion that no monies are due at this time to Belle Oil & Gas for the sale of the Stone Cabin acreage block. There may, however, be a liability for the Jacks Canyon Unit acreage in the future. Please understand, in this instance, Mission Energy conveyed their ownership to Wasatch Energy in return for future consideration as a carried interest for any wells drilled within the unit by Wasatch Energy. There were no drill sites conveyed, only acreage, with the commitment for future compensation.

Ed, may I point out to you that the reason this transaction with Wasatch occurred at all was because Mission Energy had substantial ongoing legal expenses and garnishment of its accounts, all as a result of your activities against the company. Whether by design or by coincidence, in my opinion, your continuing harassment of Mission Energy, its assets, other creditors, as well as current and potential partners continues to cause extreme financial and reputation damage. I ask you again to please cease this counter productive activity.

Mr. Roett
Belle Oil & Gas, Inc.
January 17, 2001
Page Two

Over the past several years, J.C. and I have repeatedly requested to meet with you to create a mutually beneficial arrangement which would resolve both your financial concerns, as well as those of other creditors. Personally I have invested over \$200,000 in Mission Energy, been involved with the project for five years as an outside investor, and have never taken one penny out of the company other than a token interest payment three or four years ago. Intermarket Trading Company has over \$165,000 into Mission Energy, and other vendors and investor partners have claims as well.

I understand you have been attempting to buy up creditor liens. If your goal is to foreclose on these liens, that will be an illogical strategy. Instead we should be working together to boost the company, and benefit together from drilling programs, subsequent lease sales, etc. Your negative efforts are destroying these opportunities for everyone associated with this company. Accordingly, I politely invite you to become part of Mission Energy's solution, and to stop being such a destructive force. By being an adversary, you may win a battle here or there, but you will definitely cause the company to die in the process, which no doubt will have its own repercussions and consequences.

I leave you with two thoughts. First, I am told and I now believe that we do not owe Belle Oil & Gas any funds at this time as a result of the Wasatch transaction. Second, Ed, please consider being part of the solution, because your constant negative activities are materially contributing to the destruction of Mission Energy for everyone, including yourself.

Sincerely,

MISSION ENERGY, LLC



By: Fred G. Juger, Chairman

cc: J.C. Sutton

RGR000744

Tab I

ADDENDUM I



Wednesday, May 31, 2000

J.C. Sutton (via fax: 760-436-5777)
Mission Energy
531 Encinitas Blvd Suite 200
Encinitas, CA 92024

Dear J.C.:

We suggest that we modify our letter agreement dated May 24, 2000, between Wasatch and Mission regarding the transfer of the Jack Canyon Unit to Wasatch. We suggest that we include the Lavinia #1-32 in the transfer. This inclusion is contingent upon Mission obtaining agreements to clear all of the liens for less than \$20,000.00. We suggest that you contact the companies that are owed money on the Lavinia #1-32 and see if this can be done. So far we have identified Key Energy and J-West. Please let us know who else may be owed money on this well.

As I said earlier today, we will be meeting with the State Lands Administration on June 6th. This meeting will help us determine if we elect to go forward with this transaction. We are hopeful that we can get them to reinstate the leases that have expired. If we are successful with the State Lands Administration then we will try to accomplish the same with the BLM as three of the five federal leases have been cancelled.

Sincerely,

Todd Cusick
President



KM00215

Tab J

ADDENDUM J

C

West's Utah Code Annotated Currentness

Title 25. Fraud

Chapter 5. Statute of Frauds

→ **§ 25-5-1. Estate or interest in real property**

No estate or interest in real property, other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

CREDIT(S)

Codifications R.S. 1898, §§ 1974, 2461; C.L. 1907, §§ 1974, 24612; C.L. 1917, §§ 4874, 5811; R.S. 1933, § 33-5-1; C. 1943, 33-5-1.

Current through 2009 General Session and 2009 First Special Session

Copr (c) 2009 Thomson Reuters/West. No claim to orig. U.S. govt.

END OF DOCUMENT

Tab K

ADDENDUM K

C

West's Utah Code Annotated Currentness

Title 25. Fraud

Chapter 6. Uniform Fraudulent Transfer Act (Refs & Annos)

→ § 25-6-2. Definitions

In this chapter:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include:

(a) property to the extent it is encumbered by a valid lien;

- (b) property to the extent it is generally exempt under nonbankruptcy law; or
 - (c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) "Creditor" means a person who has a claim.
- (5) "Debt" means liability on a claim.
- (6) "Debtor" means a person who is liable on a claim.
- (7) "Insider" includes:
- (a) if the debtor is an individual:
 - (i) a relative of the debtor or of a general partner of the debtor;
 - (ii) a partnership in which the debtor is a general partner;
 - (iii) a general partner in a partnership described in Subsection (7)(a)(ii);
 - (iv) a corporation of which the debtor is a director, officer, or person in control; or
 - (v) a limited liability company of which the debtor is a member or manager;
 - (b) if the debtor is a corporation:
 - (i) a director of the debtor;
 - (ii) an officer of the debtor;
 - (iii) a person in control of the debtor;

- (iv) a partnership in which the debtor is a general partner;
 - (v) a general partner in a partnership described in Subsection (7)(b)(iv);
 - (vi) a limited liability company of which the debtor is a member or manager; or
 - (vii) a relative of a general partner, director, officer, or person in control of the debtor;
- (c) if the debtor is a partnership:
- (i) a general partner in the debtor;
 - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
 - (iii) another partnership in which the debtor is a general partner;
 - (iv) a general partner in a partnership described in Subsection (7)(c)(iii);
 - (v) a limited liability company of which the debtor is a member or manager; or
 - (vi) a person in control of the debtor;
- (d) if the debtor is a limited liability company:
- (i) a member or manager of the debtor;
 - (ii) another limited liability company in which the debtor is a member or manager;
 - (iii) a partnership in which the debtor is a general partner;
 - (iv) a general partner in a partnership described in Subsection (7)(d)(iii);
 - (v) a person in control of the debtor; or
 - (vi) a relative of a general partner, member, manager, or person in control of the debtor;

(e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(f) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, limited liability company, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual or an individual related to a spouse, related by consanguinity within the third degree as determined by the common law, or a spouse, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

CREDIT(S)

Laws 1988, c. 59, § 2; Laws 1992, c. 168, § 1.

Codifications C. 1953, § 25A-1-2.

Current through 2009 General Session and 2009 First Special Session

Copr (c) 2009 Thomson Reuters/West. No claim to orig. U.S. govt.

END OF DOCUMENT

Tab L

ADDENDUM L

C

West's Utah Code Annotated Currentness

Title 25. Fraud

Chapter 6. Uniform Fraudulent Transfer Act (Refs & Annos)

→ § 25-6-3. Insolvency

- (1) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.
- (2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.
- (3) A partnership is insolvent under Subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.
- (4) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.
- (5) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

CREDIT(S)

Laws 1988, c. 59, § 3.

Codifications C. 1953, § 25A-1-3.

Current through 2009 General Session and 2009 First Special Session

Copr (c) 2009 Thomson Reuters/West. No claim to orig. U.S. govt.

END OF DOCUMENT

Tab M

ADDENDUM M

C

West's Utah Code Annotated Currentness

Title 25. Fraud

Chapter 6. Uniform Fraudulent Transfer Act (Refs & Annos)

→ § 25-6-4. Value--Transfer

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) Under Subsection 25-6-5 (1)(b) and Section 25-6-6, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

CREDIT(S)

Laws 1988, c. 59, § 4.

Codifications C. 1953, § 25A-1-4.

Current through 2009 General Session and 2009 First Special Session

Copr (c) 2009 Thomson Reuters/West. No claim to orig. U.S. govt.

END OF DOCUMENT

Tab N

ADDENDUM N

C

West's Utah Code Annotated Currentness

Title 25. Fraud

▣ Chapter 6. Uniform Fraudulent Transfer Act (Refs & Annos)

→ § 25-6-6. Fraudulent transfer--Claim arising before transfer

(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

CREDIT(S)

Laws 1988, c. 59, § 6; Laws 1989, c. 61, § 1.

Codifications C. 1953, § 25A-1-6.

Current through 2009 General Session and 2009 First Special Session

Copr (c) 2009 Thomson Reuters/West. No claim to orig. U.S. govt.

END OF DOCUMENT