

2000

# Linda Brown v. Robert L. Miller, Owna Miller, Gerald E. Richards, Wardley Better Homes and Gardens, and Steve B. Goff: Reply Brief

Utah Court of Appeals

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## Recommended Citation

Reply Brief, *Brown v. Miller*, No. 20000279 (Utah Court of Appeals, 2000).

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IN THE UTAH COURT OF APPEALS

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LINDA BROWN,

Plaintiff/Appellee,

vs.

ROBERT L. MILLER, OWNA MILLER,  
GERALD E. RICHARDS, **WARDLEY  
BETTER HOMES & GARDENS**, and  
STEVEN B. GOFF,

Defendants/**Appellant**

APPEAL NO.: <sup>20000279-CA</sup>~~2000079-CA~~

PRIORITY 15

Civil Case No.: 960900289 CN

**ORAL ARGUMENT REQUESTED**

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**REPLY BRIEF OF APPELLANT, WARDLEY BETTER HOMES & GARDENS**

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**APPEAL FROM JUDGMENT OF SECOND DISTRICT  
COURT IN AND FOR WEBER COUNTY,  
JUDGE PARLEY P. BALDWIN**

---

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Utah Ct

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Paulette Stagg  
Clerk of the Court

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## ARGUMENT

### **I. The Parties' Stipulation That Brown's Compensatory Damages Totaled \$9,000 Bound The Trial Court And Precluded It From Entering A Verdict Inconsistent With That Stipulation**

The question this Court must address is whether the parties' stipulation that Brown's compensatory damages would be limited to \$9,000 should be enforced. "A stipulation is an admission which 'may not be disregarded or set aside at will.'" *Rivera v. State Farm Auto Ins. Co.*, 2000 UT 36, ¶11, 1 P.3d 539; (citing *DLB Collection Trust v. Harris*, 893 P.2d 593, 595 (Utah App.1995); other citations omitted). "Ordinarily, courts are bound by stipulations between parties." *First of Denver Mortgage Investors v. C.N. Zundel & Assocs.*, 600 P.2d 521, 527 (Utah 1979). A party should be relieved from the effects of a stipulation **ONLY** where the mistake or inadvertence which lead to the stipulation "is not due to [the party's] failure to exercise due diligence and it could not have been avoided by the exercise of ordinary care." *Rivera*; (quoting *State v. Velasquez*, 672 P.2d 1254, 1265 (Utah 1983)). The Utah Supreme Court recently noted that "there is an institutional hesitancy to relieve a party from a stipulation negotiated and entered into with the advice of counsel." *Id.*; (citing *Birch v. Birch*, 771 P.2d 1114, 1116 (Utah App. 1989) and *Dove v. Cude*, 710 P.2d 170, 171 (Utah 1985)). See also *United Factors v. T.C. Assocs., Inc.*, 445 P.2d 766, 769 (Utah 1968) (refusing to set aside stipulation where "a lack of full knowledge of the facts . . . was plainly due to [the] failure to exercise due diligence to ascertain them").

In this case, Brown and her attorney agreed on the record in open court that the damages awardable on the only claim submitted to the jury against Wardley and Richards should be capped at \$9,000. Brown now seeks relief from that stipulation by relying upon the trial

court's mistake and the jury's confusion and misunderstanding which resulted in a jury verdict that conflicted with the stipulation. There is, however, no justifiable reason why Brown should be relieved from the effects of her stipulation. Brown's brief, in fact, did not assert any basis to disregard the stipulation. Instead, she argued that the jury verdict should be respected in spite of its clear conflict with the stipulation. It is doubtful, however, that Brown would argue to ignore a hypothetical stipulation regarding a minimum amount of damages if the jury had returned with a verdict for less than the stipulated minimum. Without some rational basis to set aside or ignore the stipulation, the jury's verdict should have been modified to reflect the terms of the stipulation.

Furthermore, and perhaps most importantly, Wardley relied upon the fact and enforceability of that stipulation when it presented its defense. Wardley's conduct throughout the remainder of the trial (after the stipulation regarding a cap on compensatory damages was reached), its closing argument (which as Brown kindly points out did not include admonitions regarding an appropriate measure of damages because of the stipulation) and its acquiescence to the jury instructions given by the trial court were all impacted by and altered to conform with and take advantage of the parties' stipulation. If this Court decides not to enforce the stipulation, Wardley, should at least be given the opportunity to fully and fairly present a defense to Brown's claims. Allowing the trial court, Brown and the jury to disregard that stipulation would result in extreme injustice to both Wardley and to Richards. Enforcing the stipulation, on the other hand, would give the parties exactly what they bargained for and expected, right up until the jury returned with its verdict.

Brown's position in this case is quite similar to State Farm's position in the *Rivera* case. In *Rivera*, State Farm stipulated to certain facts which it believed would support its legal

arguments. When the trial court returned a verdict adverse to State Farm, State Farm moved to set aside the stipulated facts upon which the adverse finding was based. The Utah Supreme Court, however, recognized that “State Farm's error in agreeing to the stipulated language arose from a misjudgment of its legal position, not from a misunderstanding of what it was stipulating to, as a matter of fact. It could clearly have been avoided by simply “exercis[ing] due diligence and . . . ordinary care.” *Rivera* at ¶ 15; (citing *Velasquez*, 672 P.2d at 1265). In the instant case Brown's post-verdict desire to disavow the stipulation arises from her misjudgment of what the jury could do, “not from a misunderstanding of what [she] was stipulating to, as a matter of fact.” *Id.* Brown, like State Farm, should not be allowed to rescind her stipulation and it should be enforced by modifying the verdict to reflect its terms.

**II. Wardley Did Not Ratify Richard's Allegedly Fraudulent Conduct**  
**Ratification Requires Full Knowledge And The Intent To Ratify**

“Ratification is premised upon the knowledge of all material facts and upon an express or implied intention on the part of the principal to ratify.” *Bradshaw v. McBride*, 649 P.2d 74, 78 (Utah 1982). Ratification, may be express or implied, but regardless, ratification “requires the principal to have knowledge of all material facts and an intent to ratify.” *Bullock v. UDOT*, 966 P.2d 1215, 1219 (Utah App. 1998); (citing *Zions First Nat'l Bank v. Clark Clinic Corp.*, 762 P.2d 1090, 1098 (Utah 1988)). See also *City Electric v. Dean Evans Chrysler-Plymouth*, 672 P.2d 89 (Utah 1983). Without knowledge there can be no ratification.

In the instant case there is no evidence that Wardley had full knowledge of any false or misleading representations its independent contractor, Richards, had made to Brown. Goff did speak with Brown about her complaints on two occasions. On those occasions Brown



complained to Goff about the sellers' and Richard's alleged misrepresentations regarding the roof, the electrical system, the enclosed swimming pool, the appraisal and the inspection. The magnitude and nature of Brown's dissatisfaction, along with the sellers' disavowal of any knowledge of problems, prevented Goff from satisfactorily resolving her concerns. The failure to resolve a complaining party's concerns, however, should not be deemed to provide a principal with the knowledge or intent required for ratification of prior conduct. Knowledge of the conduct, along with an intent to ratify it should be required.. In the instant case there was no evidence that Wardley had "knowledge of all material facts and [the] intent to ratify" Richard's conduct. *Id.* Without knowledge and intent, there can be no ratification. Without ratification, damages cannot be awarded against Wardley and Wardley cannot be held vicariously liable for the punitive damages awarded against its independent contractor, Richards.

The case relied upon by Brown, *Hodges v. Gibson Products Co.*, 811 P.2d 141 (Utah 1991) is not analogous to this action. In *Hodges*, Gibson's manager (Cosgrove) accused its bookkeeper (Hodges) of stealing money which Cosgrove had actually taken. Criminal charges were commenced against the bookkeeper on the testimony of Cosgrove, Gibson's auditor and Gibson's general manager. A subsequent audit revealed Cosgrove as the actual thief and he admitted to the crime. In spite of that admission, nobody at Gibson advised the prosecuting attorney about Cosgrove's role in the missing funds or that Hodges was innocent of the charges until the eve of trial, two months later. After the criminal charges were dismissed Gibson added insult to injury by firing Hodges, who had been on suspension for eight months, for "failure to follow proper procedures." *Id.* at 155.

A **managerial employee** of Gibson had knowledge of the false accusations in *Hodges* while an **independent contractor/real estate sales agent** was the only one with knowledge of the allegedly false representations he made to Brown in this case. Gibson had **actual knowledge** of the bookkeeper's innocence and of the falsity of Cosgrove's statements supporting the charges against Hodges in *Hodges* while Wardley had **no knowledge** of the improprieties involved in this case. Even **with actual knowledge, Gibson failed to do anything** to remedy the injustice in *Hodges*, while Wardley never got that chance. Finally, knowing Hodges had not done anything wrong, **Gibson terminated her employment** without just cause, while **no actions were taken by Wardley** that detrimentally impacted Brown. The significant differences between this case and *Hodges* provide an even greater reason for this Court to conclude that there was insufficient evidence to find Wardley ratified Richard's conduct at the heart of this case. Without ratification there can be no independent award against Wardley and Wardley cannot be forced to pay the punitive damages awarded against Richards.

**III. Even If Wardley Ratified Richard's Conduct It Should Not Be Held Vicariously Liable For The Punitive Damages Awarded Against Richards**

Punitive damages are not intended to reward plaintiffs. *Prince v. Peterson*, 538 P.2d 1325, 1329 (Utah 1975). In *Terry v. Zion's Cooperative Mercantile Institution*, 605 P.2d 314 (Utah 1979), the Utah Supreme Court stated “[t]he purpose of a punitive or exemplary damage award is **not** to compensate the party harmed but rather to punish the wrongdoer, to deter him from similar acts in the future, and to provide fair warning to others similarly situated that such conduct is not tolerated. *Branch v. Western Petroleum, Inc.*, 657 P.2d 267, 278 (Utah 1982) (emphasis added). In the instant case Wardley was not the wrongdoer. Holding Wardley vicariously liable for the punitive damages awarded against Richards would frustrate two of the


three key purposes of punitive damages without impacting in anyway its only other purpose. Wardley's willingness to be vicariously liable for the compensatory damages awarded against Richards makes Brown whole. Forcing Wardley to pay for the punitive damages awarded against Richards in this case would not punish Richards nor deter him from acting similarly in the future. Justice requires that the punitive damage award rendered against Wardley be vacated and that Richards be solely responsible to satisfy the punitive damage award rendered against him.

### **CONCLUSION**

For the reasons set forth above Wardley requests this Court to remand this case to the trial court with instructions that the verdict against it be vacated, the claims against Wardley, except for those regarding its vicarious liability for the damages directly caused by Richard's wrongful conduct, be dismissed and that Wardley be held vicariously liable for only the verdict for compensatory damages rendered against Richards.

**RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of October 2000.**

**SCALLEY & READING, P.C.**  
Attorneys for Appellant/Wardley

  
Steven B. Smith

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of October 2000, two true and correct copies of the foregoing REPLY BRIEF OF APPELLANT was deposited in the U.S. Mail, first-class postage prepaid, addressed to the following:

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