2011

Annabelle Stone v. Hidden Lake Homeowners Association, Barbara Wise, Earthwork Property Management Co., and Barbara Wilson : Brief of Appellant

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

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ANNABELLE STONE, an individual, Petitioner and Appellee, vs. HIDDEN LAKE HOMEOWNERS ASSOCIATION, BARBARA WISE, an individual, EARTHWORK PROPERTY MANAGEMENT CO., and BARBARA WILSON, an individual, Respondents and Appellants.	)	Case No. 20110990-CA

* * * * * * *

BRIEF OF APPELLANTS

Appeal from the Third Judicial District Court of
Salt Lake County
The Honorable Joseph C. Fratto, Jr.
The Honorable Robert P. Faust

Annabelle Stone
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Salt Lake City, UT 84109
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Petitioner and Appellee

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List of Parties

Annabelle Stone, *Petitioner and Appellee*

Hidden Lake Homeowners Association, *Respondent and Appellant*

Barbara Wise, *Respondent and Appellant*

Earthwork Property Management Co., *Respondent and Appellant*

Barbara Wilson, *Respondent and Appellant*

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j), as the Utah Supreme Court transferred this case to the Utah Court of Appeals.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the district court abuse its discretion in refusing to enforce the settlement agreement (the "Settlement Agreement") between Appellants Hidden Lake Homeowners Association, Barbara Wise, Earthwork Property Management Co., and Barbara Wilson (collectively, "Appellants") and Appellee Annabelle Stone ("Stone"), and in refusing to award Appellants attorney fees incurred in enforcing the Settlement Agreement?

This Court reviews a refusal to enforce a settlement agreement for abuse of discretion. *See T.H. v. R.C. (In re E.H.)*, 2004 UT App 419, ¶ 11, 103 P.3d 177. The Court reviews the district court's conclusions of law *de novo*. *See Duke v. Graham*, 2007 UT 31, ¶ 12, 158 P.3d 540. It reviews findings of fact for clear error. *See Parduhn v. Bennett*, 2005 UT 22, ¶ 24, 112 P.3d 495.

This issue was preserved in Appellants' Motion to Enforce Settlement Agreement. (R. at 525–593.)

2. In the event that Appellants prevail on appeal, are they entitled to an award of attorney fees and costs incurred on appeal?

DETERMINATIVE PROVISIONS

There are no constitutional provisions, statutes, ordinances, rules, or regulations whose interpretation is determinative of this appeal or of central importance to the appeal.

STATEMENT OF THE CASE

Nature, Course, and Disposition of Proceedings

On December 17, 2010, Stone filed a document in the Third Judicial District Court styled "Verified Petition for Wrongful Lien Injunction and Damages" (the "Petition") against Appellants. (R. at 1–14.) Following oral argument on March 1, 2011, the district court dismissed the Petition pursuant to Utah Rule of Civil Procedure 12(b)(6). (R. at 113.) Following the district court's dismissal, Stone filed numerous motions, including a motion pursuant to Utah Rule of Civil Procedure 60(b) for relief from the district court's judgment. (R. at 294–98.) Stone's son, Todd Stone, also had previously sought leave to intervene in the lawsuit. (R. at 67–70.) Perceiving further litigation despite dismissal, Appellants initiated settlement discussions that culminated, on August 9, 2011, in the Settlement Agreement. (R. at 595.)

Upon Stone's breach of the Settlement Agreement, on August 24, 2011, Appellants Filed a Motion to Enforce Settlement Agreement (the "Motion"). (R. 525–26.) Stone did not timely oppose the Motion. (R. at 693–94.) On October 20, 2011, the district court issued a Memorandum Disposition (the "Memorandum Disposition") denying the Motion. (R. at 762–65.) In the Memorandum Disposition, the district court also denied Stone's Rule 60(b) motion. (R. at 762–65.) On November 2, 2011, the

district court entered judgment memorializing and finalizing the rulings contained in the Memorandum Disposition, including the district court's denial of the Motion. (R. at 794–98.)

Stone appealed the district court's dismissal of the Petition—more specifically, the district court's denial of Stone's Rule 60(b) motion. (R. at 799–800.) Appellants cross-appealed the district court's denial of the Motion. (R. at 801–03.) In a per curiam decision entered April 4, 2012, this Court affirmed the district court's denial of Stone's Rule 60(b) motion. (R. at 854–57.) *See Stone v. Hidden Lakes Condo Association*, 2012 UT App 85, ¶ 5, 275 P.3d 283 (per curiam). The Court further stated as follows:

> A ruling on the issues presented in [Appellants'] cross-appeal is deferred pending plenary presentation and consideration of the appeal. Hereafter, Hidden Lakes Condo Association, Barbara Wise, Barbara Wilson . . . and Earthwork Property Management are designated as the Appellants for the remaining portions and briefing of this appeal. Appellants should note that this court lacks jurisdiction to consider issues arising from the May 17, 2011 final order as the filing of a rule 60(b) motion does not toll the time to appeal issues from the underlying judgment. . . . Thus, this appeal is limited to the review of the district court's November 2, 2011 order, which denied the rule 60(b) motion as well as Appellants' motion to enforce the settlement agreement.

(R. at 857.) *See id.* ¶ 5 n.1.

Statement of Facts

Following the district court's grant of Appellants' motion to dismiss the Petition, on June 17, 2011, Appellants' counsel, Ryan B. Braithwaite ("Braithwaite"), sent a letter to Stone's then-counsel, David E. Ross II ("Ross"), proposing settlement. (R. at 595, 602.) At that time, Ross was Stone's formal counsel of record, having filed, only ten

days prior, a Motion for Leave to File First Amended Complaint. (R. at 496–98.) Among other things, the letter proposed the following: (1) release of the lien in question; (2) payment of $17 to Stone; (3) dismissal of the pending district court action and appeal; (4) broad language whereby Stone released Appellants from all claims; and (5) agreement upon a formalized settlement agreement. (R. at 595–96, 602–03.)

On June 18, 2011, at 11:24 a.m., Ross sent Braithwaite an email stating, "See proposed release and settlement agreement. Let me know if this meets with your approval and I will obtain the signatures of my Client." (R. at 596, 605.) Ross's email contained, as an attachment, a draft "Settlement Agreement and Release." (R. at 596, 608–11.) Later on June 18, 2011, at 11:35 a.m., Ross sent Braithwaite a second email conveying a proposed stipulation and order dismissing the pending state court action. (R. at 596–97, 615–16.) Ross further offered to prepare dismissal documents aimed at dismissing the pending appeal. (R. at 613.)

On June 22, 2011, Braithwaite responded to Ross's emails by attaching copies of the proposed settlement agreement and dismissal documents with proposed revisions. (R. at 597, 618, 620–24.) On June 27, 2011, Ross emailed Braithwaite, stating, "The proposed changes were sent to the Stone's [*sic*] and waiting for response." (R. at 597, 626.)

On July 22, 2011, Ross sent an email to Braithwaite stating as follows:

> Mrs. Stone ok, delay is waiting on definitive response from son, Todd—last discussion I had with him was that he was not settling. I propose we proceed with the settlement and release with Mrs. Stone along with dismissal of the suit, her appeal and lien release. At such point I believe

> that Todd Stone would have not standing—assuming that he has any to begin with—I do not see where the Court allowed him to intervene.

(R. at 597, 628.) In response, on July 29, 2011, Braithwaite wrote to Ross as follows:

> My clients would obviously prefer to have a global settlement involving Todd Stone. However, in light of the facts that he wasn't allowed to intervene, his appeal has been dismissed, and he isn't even an owner of a unit within the condo association, we're content to proceed with the settlement with Mrs. Stone only.
>
> To that end, I have re-attached a copy of the settlement agreement I previously sent to you (and which I understand from your 7/22 email that Mrs. Stone has approved) and another version of the settlement that deletes the references to Todd Stone. If he is now willing to participate in the settlement, then we'd prefer to proceed that way and use the settlement agreement to which he is a party. However, if he's not willing to participate, then we can use the other attached settlement agreement.

(R. at 598, 630.) The settlement agreement attached to Braithwaite's July 29, 2011, email, to which Todd Stone is *not* a party, is the Settlement Agreement. (R. at 598, 634–38.) A copy of the Settlement Agreement (which resides at pages 634–38 of the record on appeal) is included in the Addendum for the Court's convenience.

The Settlement Agreement contains the following language[1]:

> Mutual Release: Upon execution of this Agreement, each of the parties, including and without limitation their respective directors, officers, partners, principals, employees, agents, trustees, attorneys, predecessors and successors, insurers, parents, subsidiaries and affiliates, divisions, assigns, representatives, heirs, and executors and administrators, do hereby acknowledge full and complete satisfaction of, and do hereby fully and finally settle, release, and discharge each other individually and collectively from any and all claims, demands, rights, liabilities, contractual obligations, grievances, charges, attorneys' fees, and causes of action of any nature under any laws of any jurisdiction, known or unknown, fixed or contingent,

[1] This language omits redline changes included in the Settlement Agreement, and sets forth the language as Stone agreed to it.

> patent or latent, anticipated or unanticipated, at law or in equity, including and without limitation any rights of subrogation, contribution, indemnification, or apportionment that may exist in law or equity or by contract, that they or any other person had or has or may have against any of the others arising from, based upon, relating to, or in connection with the Lawsuit, or the facts and circumstances surrounding the Lawsuit, or that were asserted in the Lawsuit or the Appeal, could have been asserted in the Lawsuit or the Appeal, or exist as of the date of this Agreement.

(R. at 635–36.) It also contains the following language regarding attorney fees and costs:

> Attorneys Fees: In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

(R. at 637.)

In response to Braithwaite's July 29, 2012, email, on July 29, Ross emailed Braithwaite stating, "I am traveling on business this week and partly next week and then end of week . . . meantime will review your attachments—I read quickly and they look fine. If any concerns will get back with you otherwise I will send out to Mrs. Stone for signature." (R. at 598, 640.) Later, on August 9, 2011, Ross sent an email to Braithwaite stating as follows:

> The stipulation and the settlement agreement with your changes comport with the settlement agreement. I suggest you obtain your clients and earthwork signatures and you sign and send to me. I will sign and obtain the signature of Mrs. Stone—then send the Stipulation to you along with a conforming proposed order that you can sign the "Approved as to Form" part and provide you with an original fully executed settlement agreement. You can then file the Stip and proposed order with court and mail me a copy of the proposed order after you have signed approved as to form.
>
> I sent a copy of the proposed stipulation and settlement agreement to Mrs. Stone indicating that this was the offer she made to you through me and you accepted.

(R. at 598–99, 645.)

Stone subsequently failed and refused to honor the terms of the Settlement Agreement. (R. at 599.) On August 18, 2011, Ross filed a motion to withdraw as Stone's counsel. (R. at 522–24.) On September 6, 2011, the district court granted that motion. (R. at 646.)

On August 24, 2011, Appellants filed the Motion. (R. at 525–26.) Stone did not timely oppose the Motion. On or about September 20, 2011, Stone filed a document, in more or less the form of an affidavit, styled "Annabelle Stone's Notice she has NEVER Authorized or Engaged in any 'alleged' Settlement Agreement Respondent seeks enforce" (the "Notice"). (R. at 693–94.) In that document, Stone generally denied agreeing to the Settlement Agreement. (R. at 693.) In a separate document styled "Notice of Respondent's Misrepresentation of fact Subject to Perjury Charges related to Amounts Alleged to be Due or Attorney Fees," also filed on or about September 20, 2011, Stone cursorily referenced her Notice and further denied agreeing to the Settlement Agreement. (R. at 696.) That was the sum total of Stone's opposition to the Motion.

On October 20, 2011, the Court issued the Memorandum Disposition, which stated as follows regarding the Motion:

> After reviewing the record in this matter and although Petitioner's Opposition was untimely and not in compliance with the applicable Rules, given her contention that a Settlement Agreement was not reached in this case, Respondents' Motion is denied.

(R. at 764.) A copy of the Memorandum Disposition is included in the Addendum for the Court's convenience.

SUMMARY OF ARGUMENTS

The district court abused its discretion by denying the Motion, declining to enforce the Settlement Agreement, and declining to award fees to Appellants. The facts in the record indicate, without question, a binding settlement agreement between Stone and Appellants. Ross was Stone's attorney of record during the course of settlement negotiations, and he conveyed Stone's agreement to the terms of the Settlement Agreement—a specific document with concrete, definable terms. It is well established in Utah that courts may summarily enforce even oral settlement agreements, and Stone's attorney possessed apparent authority to bind her to the Settlement Agreement.

Stone's opposition to the Motion consisted of nothing more than a self-serving affidavit that did not address the reality that her attorney had, in fact, already bound her to the Settlement Agreement, whether or not she even knew it. The district court's decision was based on an erroneous interpretation of applicable law and therefore constitutes an abuse of discretion.

The district court abused its discretion by denying the Motion and declining to enforce the Settlement Agreement, and by declining to award Appellants attorney fees and costs pursuant to the Settlement Agreement. This Court should reverse the district court's ruling, enforce the Settlement Agreement as it is set forth in the Addendum to this

brief, and remand this issue to the district court for a determination of attorney fees and costs to be awarded to Appellants.

Finally, this Court should also award attorney fees and costs on appeal, pursuant to the Settlement Agreement.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY DECLINING TO ENFORCE THE SETTLEMENT AGREEMENT AND BY DECLINING TO AWARD ATTORNEY FEES.[2]

A. The District Court Abused Its Discretion By Declining to Enforce the Settlement Agreement.

As noted above, the district court denied Appellants' motion in a one-sentence ruling:

> After reviewing the record in this matter and although Petitioner's Opposition was untimely and not in compliance with the applicable Rules, given her contention that a Settlement Agreement was not reached in this case, Respondents' Motion is denied.

(R. at 764.) In so ruling, the district court abused its discretion.

"It is a basic rule that the law favors the settlement of disputes." *Mascaro v.*

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[2] Although not, strictly speaking, relevant to the issues of the appeal, it is worth noting that for Appellants, this is not just an appeal of a $17 settlement agreement. The Court may take judicial notice of the fact that its dockets are littered with appeals filed by Stone out of this single district court action. To date, she has filed no fewer than seven. *See* the dockets for Cases Nos. 20110990-CA, 20110992-CA, 20120046-CA, 20120361-CA, 20120423-CA, 20110383-CA, and 20110452-CA. The Court may also note Stone's numerous, repetitive, and meritless filings in the district court, particularly after the district court dismissed her single claim. As the parties that have to defend themselves against Stone's frequent filings (and, apparently, will continue to do so into the future), the release language contained in the Settlement Agreement, as well as its attorney fee provision, is of significant value to Appellants.

Davis, 741 P.2d 938, 942 (Utah 1987). To that end, a "trial court has power to summarily enforce on motion a settlement agreement entered into by the litigants where all the litigation is pending before it." *See Tracy-Collins Bank & Trust Co. v. Travelstead*, 592 P.2d 605, 609 (Utah 1979).

"It is of no legal consequence that the parties have not signed a settlement agreement." *Goodmansen v. Liberty Vending Sys., Inc.*, 866 P.2d 581, 584 (Utah Ct. App. 1993); *see also Murray v. State*, 737 P.2d 1000, 1001 (Utah 1987) (noting that "[t]he fact that plaintiffs had not yet signed a written [settlement] agreement is of no legal consequence," and that so long as the statute of frauds does not require a written settlement agreement, oral or unsigned settlement agreements are unenforceable); *John Deere Co. v. A & H Equip., Inc.*, 876 P.2d 880, 887 (Utah Ct. App. 1994) (affirming the enforceability of oral settlement agreements. "Parties have no right to welch on a settlement deal during the sometimes substantial period between when the deal is struck and when all necessary signatures can be garnered on a stipulation." *Brown v. Brown*, 744 P.2d 333, 336 (Utah Ct. App. 1987) (Orme, J., dissenting) (quoted in *Goodmansen*, 866 P.2d at 585).

Moreover, a party's counsel may bind the party to a settlement agreement. *See Goodmansen*, 866 P.2d at 584–85 (affirming a decision enforcing a settlement agreement based on correspondence between counsel). Indeed, parties are bound by the acts of their counsel pursuant to the doctrine of apparent authority. *See id.* at 584; *see also*

Luddington v. Bodenvest Ltd., 855 P.2d 204, 208–09 (Utah 1993) (outlining the parameters of the doctrine of apparent authority).

Goodmansen, a decision of this Court, is precisely on point. There, counsel exchanged several letters memorializing the terms of a settlement agreement between counsel's respective clients. Those letters reflected the parties' agreement to the terms contained therein. *See Goodmansen*, 866 P.2d at 583–84. One of the parties declined to honor the terms set forth in counsel's correspondence, and counsel for that party withdrew. *See id.* at 584. Although no settlement agreement or other signed settlement documents had been executed, the aggrieved party brought a motion to enforce the settlement agreement based on the letters between counsel. *See id.* The district court granted the motion. *See id.* This Court affirmed, concluding that "the three letters between [counsel] dated March 22, 1991 constitute a binding agreement between the parties." *See id.* at 585. The Court specifically noted the conveyances of offers and acceptances in the letters on behalf of counsel's respective clients. *See id.* In *Goodmansen*, as here, there was no executed, formalized settlement agreement, and the offers and acceptances were exchanged between counsel rather than the parties. Still, the district court and this Court enforced the settlement agreement.

Here, the undisputed record evidence shows that on June 22, 2011, Braithwaite sent Ross a draft settlement agreement and dismissal documents reflecting revisions that Braithwaite had made to documents Ross had previously provided. (R. at 597, 618, 620–22.) On June 27, 2011, Ross emailed Braithwaite, stating, "The proposed changes were

sent to the Stone's [*sic*] and waiting for response." (R. at 597, 626.) Later, on July 22, 2011, Ross sent an email to Braithwaite stating as follows:

> *Mrs. Stone ok*, delay is waiting on definitive response from son, Todd—last discussion I had with him was that he was not settling. *I propose we proceed with the settlement and release with Mrs. Stone along with dismissal of the suit, her appeal and lien release.* At such point I believe that Todd Stone would have not standing—assuming that he has any to begin with—I do not see where the Court allowed him to intervene.

(Emphasis added.) (R. at 597, 628.) In response, on July 29, 2011, Braithwaite stated as follows:

> My clients would obviously prefer to have a global settlement involving Todd Stone. However, in light of the facts that he wasn't allowed to intervene, his appeal has been dismissed, and he isn't even an owner of a unit within the condo association, we're content to proceed with the settlement with Mrs. Stone only.
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> To that end, I have re-attached a copy of the settlement agreement I previously sent to you (and which I understand from your 7/22 email that Mrs. Stone has approved) and another version of the settlement that deletes the references to Todd Stone. If he is now willing to participate in the settlement, then we'd prefer to proceed that way and use the settlement agreement to which he is a party. However, if he's not willing to participate, then we can use the other attached settlement agreement.

(R. at 598, 630.) The Settlement Agreement is the document attached to Braithwaite's July 29, 2011, email—the version that excluded Todd Stone from its purview. (R. at 598, 634–38.)

In response, on July 29, Ross emailed Braithwaite stating, "I am traveling on business this week and partly next week and then end of week . . . meantime will review your attachments—*I read quickly and they look fine. If any concerns will get back with you otherwise I will send out to Mrs. Stone for signature*." (Emphasis added.) (R. at 598,

640.) Subsequently, on August 9, 2011, Ross sent an email to Braithwaite stating as follows:

> *The stipulation and the settlement agreement with your changes comport with the settlement agreement.* I suggest you obtain your clients and earthwork signatures and you sign and send to me. I will sign and obtain the signature of Mrs. Stone—then send the Stipulation to you along with a conforming proposed order that you can sign the "Approved as to Form" part and provide you with an original fully executed settlement agreement. You can then file the Stip and proposed order with court and mail me a copy of the proposed order after you have signed approved as to form.
>
> *I sent a copy of the proposed stipulation and settlement agreement to Mrs. Stone indicating that this was the offer she made to you through me and you accepted.*

(R. at 598–99, 645.) (Emphasis added.)

In this email correspondence, Ross represented twice—once on July 22, 2011, and again on August 9, 2011—that Stone accepted and agreed to the terms of the Settlement Agreement (as well as the terms of the prior draft insofar as they pertained to her).[3] He proceeded to describe a mechanism for obtaining signatures and for orchestrating dismissal. He explicitly stated that he told Stone that the Settlement Agreement memorialized the offer *she* had previously made, *through Ross*, and that her offer had been accepted.

When Ross issued those communications, he was Stone's attorney of record—he did not even file a motion to withdraw as her counsel until after Stone had breached the Settlement Agreement. (R. at 522–24.) As such, he possessed apparent authority to bind

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[3] As Braithwaite explained to Ross, the Settlement Agreement differed from the prior draft only insofar as it omitted Todd Stone.

Stone. *See Goodmansen*, 866 P.2d at 584. Indeed, the Utah Rules of Professional Conduct *prohibited* Braithwaite from speaking directly with Stone, a represented party. *See* Utah R. Prof'l Conduct 4.2(a). Ross was the only person with whom Braithwaite could discuss settlement. Stone cannot hire a lawyer, require all communications to go through him, and then "welch" on her deal by claiming that the attorney did not speak for her after all.

The Settlement Agreement itself clearly addresses all material terms and is unambiguous in its provisions. (R. at 634–38.) There can be no doubt that it evidences a meeting of the minds on all essential terms.

In the face of this mountain of evidence, Stone submitted a sole, conclusory, self-serving affidavit stating simply that she did not agree to the Settlement Agreement. (R. at 693–94.) But even assuming the truth of Stone's statement, pursuant to *Goodmansen* and established Utah case law describing the doctrine of apparent authority, it is irrelevant that she did not personally "agree" to the Settlement Agreement. Her attorney, who was her agent, possessed of apparent authority, agreed to it on her behalf. *See Goodmansen*, 866 P.2d at 584–85. Literally, Stone set forth *no* evidence contradicting Appellants' argument or the facts upon which it was based. The district court's decision to credit Stone's conclusory, self-serving testimony above her counsel's prior, undisputed statements binding her to the Settlement Agreement—the only statements that are legally significant—is legal error, and the district court abused its discretion by basing its decision on that error. *See Taylor-West Weber Water Improv. Dist. v. Olds*, 2009 UT 86,

¶ 3, 224 P.3d 709 ("The district court abuses its discretion when it relies on an erroneous conclusion of law to come to its decision.").

In fine, the undisputed record evidence before the Court bespeaks a fully enforceable settlement agreement between Appellants and Stone. Stone agreed to the Settlement Agreement. This Court should reverse the district court's decision denying the Motion, and it should enforce the Settlement Agreement. Specifically, but without limitation, the Court should enforce the following language regarding Stone's release of Appellants, as well as her agreement to pay attorney fees and costs incurred in enforcing the Settlement Agreement:

> Mutual Release: Upon execution of this Agreement, each of the parties, including and without limitation their respective directors, officers, partners, principals, employees, agents, trustees, attorneys, predecessors and successors, insurers, parents, subsidiaries and affiliates, divisions, assigns, representatives, heirs, and executors and administrators, do hereby acknowledge full and complete satisfaction of, and do hereby fully and finally settle, release, and discharge each other individually and collectively from any and all claims, demands, rights, liabilities, contractual obligations, grievances, charges, attorneys' fees, and causes of action of any nature under any laws of any jurisdiction, known or unknown, fixed or contingent, patent or latent, anticipated or unanticipated, at law or in equity, including and without limitation any rights of subrogation, contribution, indemnification, or apportionment that may exist in law or equity or by contract, that they or any other person had or has or may have against any of the others arising from, based upon, relating to, or in connection with the Lawsuit, or the facts and circumstances surrounding the Lawsuit, or that were asserted in the Lawsuit or the Appeal, could have been asserted in the Lawsuit or the Appeal, or exist as of the date of this Agreement.

(R. at 635–36.)

> Attorneys Fees: In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and

reasonable attorneys' fees incurred in connection with such action.

(R. at 637.)

B. The District Court Abused Its Discretion by Declining to Enter an Award of Attorney Fees and Costs in Appellants' Favor.

The Settlement Agreement contains the following language:

> Attorneys Fees. In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

(R. at 637.) When a party successfully enforces a settlement agreement, Utah courts also enforce the agreement's attorney fee provision. *See Goodmansen*, 866 P.2d at 586 (affirming district court's enforcement of settlement agreement and attorney fee provision).

Here, because the district court should have enforced the Settlement Agreement, and because the Settlement Agreement contains a provision awarding fees and costs to a prevailing party seeking to enforce the Settlement Agreement, the district court further abused its discretion by declining to award Appellants their fees and costs incurred in enforcing the Settlement Agreement. In addition to reversing the district court's decision declining to enforce the Settlement Agreement, the Court should remand this case to the district court for a determination of attorney fees and costs owing for litigation before that court to enforce the Settlement Agreement.

II. CROSS-APPELLANTS ARE ENTITLED TO RECOVER ATTORNEY FEES AND COSTS INCURRED ON APPEAL.

"If the trial court determines that a party is entitled to an award of attorney fees by

law, the party may also recover its attorney fees on appeal." *PP&T, LLC v. Brinar*, Case No. 20070538-CA, 2008 UT App 198, *4 (2008) (unpublished disposition) (citing *Coates v. Am. Economy Ins. Co.*, 627 P.2d 92, 93 (Utah 1981)). Utah appellate courts award attorney fees and costs on appeal where there is a contractual basis for doing so. *See Oakwood Vill. LLC v. Albertsons, Inc.*, 2005 UT 101, ¶ 57, 104 P.3d 1226 (affirming an award of attorney fees and costs on appeal pursuant to contract).

Here, as explained above, the Settlement Agreement is enforceable, and Appellants are entitled to an award of attorney fees and costs incurred in connection with its enforcement. That enforcement has taken Appellants to this Court. This Court should therefore award Appellants their attorney fees and costs on appeal, in addition to remanding to the district court for a determination of attorney fees and costs incurred there. Appellants reserve the right to submit a declaration of costs and attorney fees upon the Court's entry of a ruling on the substantive issues in the case.

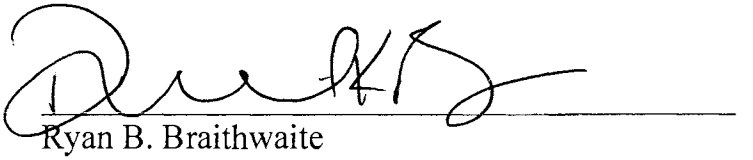
CONCLUSION

The district court abused its discretion by denying the Motion, declining to enforce the Settlement Agreement, and declining to award attorney fees and costs. In abusing its discretion, the district court rested its ruling on a faulty understanding of applicable law. This Court should correct that mistake: it should reverse the district court's denial of the Motion, enforce the settlement agreement, and remand to the district court for a determination of attorney fees and costs incurred there, and with instructions that the

district court award those fees and costs to Appellant. This Court should also award attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 25th day of July, 2012

BENNETT TUELLER JOHNSON & DEERE



Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Appellants

ADDENDUM

1. Memorandum Decision entered October 20, 2011

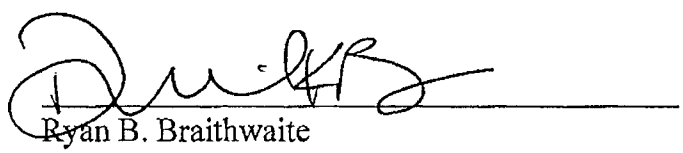
2. Settlement Agreement attached to Braithwaite's July 29, 2011, email to Ross

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2012, I caused to be served, via U.S. Mail, First Class, two (2) true and correct copies of the foregoing **BRIEF OF APPELLANT** and that in accordance with Utah Supreme Court Standing Order No. 8, a **COURTESY BRIEF ON CD** in searchable portable document format (pdf) was filed with the Court and served upon the following:

Annabelle Stone
3747 Hillside Lane
Salt Lake City, UT 84109
Pro Se
Petitioner and Cross-Appellee

BENNETT TUELLER JOHNSON & DEERE

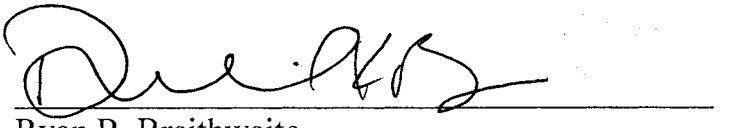


Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Respondents and Cross-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because it contains 4,709 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B) and complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 13 point font size.

BENNETT TUELLER JOHNSON & DEERE



Ryan B. Braithwaite
Daniel K. Brough
Attorneys for Respondents and Cross-Appellants

ADDENDUM NO. 1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ANNABELLE STONE, Petitioner, vs. HIDDEN LAKES HOMEOWNERS ASSOCIATION, BARBARA WISE, EARTHWORK PROPERTY MANAGEMENT CO., and BARBARA WILSON, Respondents.	MEMORANDUM DECISION Case No. 100925189 Hon. JOSEPH C. FRATTO, JR.

The above-entitled matter comes before the Court pursuant to pending motions/filings. As background, this case came before the Court for hearing on March 1, 2011. Based upon the evidence presented at the hearing, the Court, on March 28, 2011, entered an order granting Respondents' Motion to Dismiss with prejudice. The Court requested additional briefing in connection with Respondents' request for an award of attorneys' fees and costs. On April 14, 2011, the matter again came before the Court for a hearing regarding Respondents' request for fees. On May 16, 2011, the Court entered an Order denying the requested fees.

Plaintiff's April 14, 2011 Filed Rule 60b Motion

Turning initially to Plaintiff's April 14, 2011 filed Rule 60b Motion, with this motion, Petitioner seeks relief from the Court's March 29, 2011 Order granting Respondents' Motion to Dismiss. As this Court has already determined, the lien recorded

against Petitioner's property is a statutory lien that is excluded from the purview of the wrongful lien act. While Petitioner has reargued her same statutory provisions, such have been ruled as, and continue to be, inapplicable. Accordingly, Plaintiff's April 14, 2011 Filed Rule 60b Motion is, denied.

Petitioner's Motion Related to Plaintiff's Notice of Court's Misinterpretation of Statutory Lien Law Affording Respondent Preferential & Unjust Consideration at Plaintiff's Expense and Petitioner's 2nd Motion Related to Plaintiff's Notice of Court's Misinterpretation of Statutory Lien Law Affording Respondent Preferential & Unjust Consideration at Plaintiff's Expense

After reviewing the record in this matter, the Court concludes these motions are effectively motions for reconsideration and even if considered, such are untimely and reiterate information, statements, and arguments that have been made and ruled upon on several previous occasions. The aforementioned motions are denied.

Petitioner's Notice of Respondent's Misrepresentation of Fact Subject To Perjury Charges Related to Amounts Alleged To Be Due Or Attorney Fees.

This filing is a re-argument of issues upon which this Court has already ruled and for which there are not appropriate grounds to set that ruling aside. The Court's prior rulings in this case will remain as the law of the case.

Respondents' Motion to Enforce Settlement Agreement

After reviewing the record in this matter and although Petitioner's Opposition was untimely and not in compliance with the applicable Rules, given her contention that a Settlement Agreement was not reached in this case, Respondents' Motion is denied.

Petitioner's Rule 42 Motion to Consolidate.

With this motion, Petitioner seeks to consolidate four cases "to accommodate the statutory requirements afforded Joanne Stone as needing to be given proper notice of any or all court hearings and rulings affecting her property interests or rights that respondents have failed to give such proper notice of their unenforceable lien."

Because the cases do not involve common questions of law or fact, consolidation of this matter with any other case is not appropriate under Rule 42 of the Utah Rules of Civil Procedure. Accordingly, Petitioner's Rule 42 Motion to Consolidate is denied.

DATED this 19th day of October, 2011.

JOSEPH C. FRATTO, JR.
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 100925189 by the method and on the date specified.

MAIL: ANNABELLE STONE 3747 HILLSIDE LANE SALT LAKE CITY, UT 84109
MAIL: RYAN B BRAITHWAITE 3165 E MILLROCK DR STE 500 SALT LAKE CITY UT 84121-5039

Date: 10/20/11

Deputy Court Clerk

ADDENDUM NO. 2

SETTLEMENT AGREEMENT AND RELEASE

The parties to this Settlement Agreement and Release ("Agreement") are Annabelle Stone, an individual and Plaintiff, and Annabelle Lund Stone as Trustee of the Annabelle Lund Stone Family Trust u/a/d April 16, 2004 ~~and Todd Stone, Annabelle Stone's son and an interested party~~ (collectively referred to as "Stone") and Hidden Lake Homeowner's Association, Hidden Lake Condominium Homeowners Association, Inc., Barbara Wise, Barbara Wilson, Earthwork, Earthwork Landscaping, Inc. and Earthwork Property Management Co., Defendants (collectively referred to as "Hidden Lake") and have entered into this Agreement this _____ ~~—~~day of ~~June~~August 2011.

RECITALS

1. Stone has asserted claims against Hidden Lake in case No. 100925189 in the Third Judicial District Court of Salt Lake County, Salt Lake City Department. (the "Lawsuit").
2. The Court dismissed Stone's claim and Stone appealed the dismissal to the Utah Supreme Court and the Supreme Court transferred the matter to the Utah Court of Appeals, Appellate Nos. 20110383 and 20110452 (the "Appeal").
3. None of the parties to this Agreement admit any fault or wrongdoing.
4. By this Agreement, the parties fully settle all disputes between them, without admission of liability or fault, which have been or ~~sh~~could have been brought in connection with the ~~above referenced l~~Lawsuit.
5. Hidden Lake on November 18, 2009 recorded in the Salt Lake County Recorder's Office a Notice of Claim of Lien (the "Lien") as Entry No. 10841222 against Stone's

condominium unit within the Hidden Lake Condominiums for which the ~~subject~~ Lawsuit ensued seeking its release.

TERMS

In exchange for their mutual promises, the parties to this Agreement agree as follows:

6. Lien Release: Hidden Lake hereby agrees to immediately cause the release of the Lien upon receipt by it from Stone of the interest owed that the parties have agreed is $17.00 and upon receipt of a copy of the Agreement executed by Stone.

7. Mutual Release: Upon execution of this Agreement, each of the parties, including and without limitation their respective directors, officers, partners, principals, employees, agents, trustees, attorneys, predecessors and successors, insurers, parents, subsidiaries and affiliates, divisions, assigns, representatives, heirs, and executors and administrators, do hereby acknowledge full and complete satisfaction of, and do hereby fully and finally settle, release, and discharge each other individually and collectively from any and all claims, demands, rights, liabilities, contractual obligations, grievances, charges, attorneys' fees, and causes of action of any nature under any laws of any jurisdiction, known, or unknown, fixed or contingent, patent or latent, anticipated or unanticipated, at law or in equity, including and without limitation any rights of subrogation, contribution, indemnification, or apportionment that may exist in law or equity or by contract, that they or any other person had or has or may have against any of the others arising from, based upon, relating to, or in connection with the Lawsuit, or the facts and circumstances surrounding the Lawsuit,

or that were asserted in the Lawsuit or the Appeal, could have been asserted in the Lawsuit or the Appeal, or exist as of the date of this Agreement.

8. Dismissal of Litigation: Upon release of the Lien as described above, the parties, through their respective counsel, shall file a stipulation and order of dismissal with prejudice of the Lawsuit and Stone shall immediately dismiss the Appeal ~~as described herein~~. Each party to the Lawsuit shall bear its costs, expenses and attorneys' fees in connection with the Lawsuit, the Appeal and in connection with the execution of this Agreement.

9. No Admission: It is understood and agreed that this Agreement is not an admission of liability on behalf of any party.

10. No Other Representations: The parties each represent and acknowledge that, in executing this Agreement, they do not rely and have not relied upon any representation or statement made by each other (except as set forth in this Agreement), or by any agents, representative, or attorneys of the others with regard to the subject matter, basis, or fact of this Agreement.

11. Integration: All understandings and agreements heretofore had or made between the parties are merged in this Agreement, which alone fully and completely express their agreement relating to the subject matter hereof. This Agreement shall not be amended or modified, except in a writing signed by all parties hereto.

12. Approval by Attorneys: The parties each acknowledge that they are entering into this Agreement having fully reviewed the terms hereof, and the legal effect of their signing this Agreement, in consultation with their respective legal counsel.

13. Successors and Assigns: This Agreement shall be binding upon and inure to the

benefit of the Parties hereto and their respective heirs, successors, and assigns. No Party to this Agreement may assign their rights or obligations hereunder without the prior written consent of the other parties hereto.

14. Governing Law: This Agreement shall be governed and construed in accordance with the laws of the State of Utah.

15. Attorneys Fees: In the event any suit is brought to enforce any of the provisions of this Agreement, in addition to any damages which may be claimed, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

16. Counterparts: This Agreement may be executed in counterparts.

17. Authorization: Each of the persons signing below on behalf of the parties specifically represents and acknowledges that they have been authorized to do so by the party on whose behalf they have signed this Settlement Agreement.

Agreed and Accepted:

_____ _____

Annabelle Stone, individually Date

Annabelle Lund Stone Family Trust u/a/d April 16, 2004

BY_____

Annabelle Lund Stone, Trustee Date

Hidden Lake Condominium Homeowners Association, Inc.

BY_____ _____

Barbara Wise, Board Member Date

Hidden Lake Homeowners Association

BY_____

Barbara Wise, Board Member Date

Barbara Wise, individually Date

Barbara Wilson, individually Date

~~Todd Stone, individually Date~~

Earthwork Property Management Co.

BY
Steven Breitling Date

Earthwork

BY
Steven Breitling Date

Earthwork Landscaping, Inc.

BY
Steven Breitling Date

Bennett Tueller Johnson & Deere

BY
Ryan B. Braithwaite Dated
Attorneys for Defendants

David E. Ross II Dated
Attorney for Plaintiff & Todd Stone