

2014

**Michael S. Robinson, Petitioner/Appellant vs. Debra J. Robinson,
Respondent/Appellee**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MICHAEL S. ROBINSON,

Petitioner/Appellant,

v.

DEBRA J. ROBINSON,

Respondent/Appellee.

BRIEF OF APPELLEE

Appellate Case No. 20130652

Trial Case No. 074900501

BRIEF OF APPELLEE

**APPEAL FROM THE THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

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JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(h).

STATEMENT OF THE ISSUES

Respondent/Appellee Debra J. Robinson ("Debra") has determined that she will not be appealing any issue on a cross appeal. Accordingly, the only issues on appeal are those raised by Petitioner/Appellant Michael S. Robinson ("Michael").

DETERMINATIVE LAW

U.C.A. Section 38-9-1-4. (Addendum, Ex. Q).

U.C.A. Section 78B-6-1304. (Addendum, Ex. R).

STATEMENT OF THE CASE

Nature of the Case

Since being remitted back to the trial court, this case has resulted in protracted litigation caused by Michael's attempts to prevent enforcement by Debra of the terms of a Stipulation and Property Settlement Agreement dated November 2, 2007 (the "Stipulation") (Addendum, Ex. A) entered into by the parties to settle their divorce action. The trial court and this Court have previously held that the terms of the Stipulation, as incorporated into the Decree of Divorce entered December 31, 2008 (the "Decree") (Addendum, Ex. B), were equitable and that Michael was attempting to rescind the Stipulation and have the Decree vacated because he believed, in hindsight, that the terms of the Stipulation were not equitable. *Robinson v. Robinson*, 2010 UT App 96, ¶13, 2" \s "WSFTA_12c935dd61ea451e820de4b92b0b69b6" \c 3 *Robinson v. Robinson*, 2010 UT App 96, ¶13, 232 P.3d 1081 (hereinafter "*Robinson I*") (Addendum, Ex. C.)

Since the decision in *Robinson I* was issued, Debra has taken steps to collect the amounts due her under the terms of the Stipulation and the Decree of Divorce. Michael has taken steps to obstruct, delay and frustrate Debra. Over 7,500 pages of motions, memoranda, affidavits, declarations, orders and other papers now constitute the record in this case. There have been over 15 hearings conducted, culminating in a three-day evidentiary hearing in April 2013. Debra has had to request injunctive relief because of Michael's interference with the sale of properties. Michael has filed two bankruptcy actions, both of which were dismissed. There have been protective order hearings. Michael has been held in contempt on three occasions. All of this could have been avoided had Michael merely performed his obligations under the terms of the Stipulation and the Decree of Divorce.

Course of Proceedings and Disposition at Trial

The Decree was entered by the trial court on December 31, 2008. Michael appealed and this Court rendered its decision on April 22, 2010 in *Robinson I*. Numerous motions were filed and hearings conducted between April 2010 and April 2013 relative to Debra's efforts to collect amounts due her. On May 29, 2013, the trial court entered Findings of Fact and Conclusions of Law (Addendum, Ex. M) and also a Final Order and Judgment. (Addendum, Ex. N) Post-trial motions were filed by both parties and denied by the trial court on July 11 and 12, 2012. Michael filed his Notice of Appeal on July 19, 2013, and Debra filed her Notice of Cross-Appeal on August 1, 2013. As stated above, Debra has decided to withdraw her notice of cross-appeal.

Statement of the Facts

1. The parties were married on October 4, 1992. (R. 661.) On February 2, 2007, Michael filed a Petition for Divorce. (R. 1-5.) On November 2, 2007, after months of negotiations and mediation, during which each party was represented by independent counsel, Michael and Debra entered into the Stipulation to resolve all issues of their divorce action. (R. 14-28, 114-15, 197.)

2. Over the course of the next year, Michael filed motions in an attempt to have the Stipulation set aside. (R. 86-88, 95-97.) The grounds to have the Stipulation set aside included, among others, alleged impossibility of performance, mutual mistake, and Debra's fraud in inducing Michael to enter into the Stipulation and in providing Michael with fraudulent information. (R. 38-85, 98-111.)

3. On December 31, 2008, the trial court entered the Decree after (i) denying Michael's motions to set aside the Stipulation and (ii) finding that Debra had not engaged in any fraudulent or deceptive behavior or acted in bad faith. (R. 676-89, 487-92.) The Decree awarded the parties certain real and personal property including, among others, the real properties commonly referred to as the Sandy Retail Center, Phoenix Plaza, Deer Valley Condominium, St. George Condominium, and Arizona Parcel. (R. 677-89.) Michael was awarded the St. George Condominium with its accompanying debt. (R. 677-78.) Debra was awarded the Arizona Parcel and the Deer Valley Condominium with its accompanying debt. (R. 677-78.) The Sandy Retail Center was to be immediately listed for sale with Debra being awarded the sales proceeds with a potential adjustment to the cash to be awarded to Debra dependent on the actual sales price. (R. 678-79.) Michael

was awarded the Phoenix Plaza and the adjoining parking lot parcel. (R. 679-81.)

Michael was required to file an application to refinance the Phoenix Plaza mortgage within fifteen (15) days from the date the parties signed the Stipulation. (R. 679-80.) The loan proceeds were to be used to pay Debra a cash amount of \$1,912,696 for her share of the marital estate. (R. 679-82.)

4. On January 23, 2009, Michael filed a Notice of Appeal. (R. 692-94.) On appeal, Michael argued, among other issues, that the Decree should be vacated based on alleged impossibility of performance and mistake. (R. 706.) Although Michael argued extensively to the trial court that the Stipulation should be set aside based on Debra's alleged fraud, he did not raise or argue the issue of fraud on appeal before this Court. (R. 705-22.) This Court issued its Opinion affirming the Decree on April 22, 2010. (R. 705-22.) Michael filed a Petition for Writ of Certiorari with the Utah Supreme Court, which was denied on September 1, 2010. (R. 723-26.)

5. Having not received any payment from Michael to satisfy his obligation under the Stipulation and the Decree, two Orders to Show Cause were issued against Michael on October 8, 2010 and November 12, 2010, seeking (i) a judgment against Michael for amounts he owed and had not paid to her, (ii) an order requiring Michael to sign the listing agreement for the sale of Sandy Retail Center, and (iii) and certification of Michael's contempt. (R. 737, 779-83.)

6. On January 13, 2011, Debra's Motion for Order to Show Cause was heard by Commissioner Michael S. Evans. (R. 940.) At the hearing, the parties stipulated to (i) the immediate listing of the Sandy Retail Center and to the appointment of Michael

Carroll as the listing agent, who had authority to set the initial listing price and (ii) the sale of the Phoenix Plaza with a mutually acceptable agent at a price of \$3,000,000. (R. 940, 1213-22.) On February 25, 2011, the trial court entered a Judgment and Order incorporating the stipulations of the parties and also ordering that Debra have sole management of the Phoenix Plaza and the Sandy Retail Center. (Addendum, Ex. D) (R. 940, 1214.)

7. On or about March 11, 2011, Debra discovered that Michael had already listed the Phoenix Plaza for sale with real estate agent Travis Parry for \$3,750,000, a fact that was not disclosed to Debra by Michael at the hearing on January 13, 2011. (R. 1550, 1557-58, 1561-62.)

8. Despite the clear direction in the Decree that the Sandy Retail Center was to be sold, his own stipulation relative to the sale of the Sandy Retail Center and Phoenix Plaza, and the trial court's order, Michael opposed and made attempts to frustrate the sale of the Sandy Retail Center as well as the Phoenix Plaza by refusing to sign the listing agreements and to otherwise accept or respond to offers received by the parties. (R. 1478-80, 1486-1503, 1550-52, 1580-1639.) Due to his ongoing refusal to accept the various offers and his blatant interference with the sale of the Sandy Retail Center and the Phoenix Plaza, Debra filed a Verified Motion to Enforce Sale of Sandy Retail Center on May 20, 2011, and a Verified Motion to Enforce Sale of Phoenix Plaza on June 7, 2011 (collectively referred to as "Verified Motions to Enforce Sale of Property"). (R. 1476-1513, 1548-1639.)

9. On June 21, 2011, both Verified Motions to Enforce Sale of Property filed by Debra were heard by Commissioner Michael S. Evans and were granted. (R. 1824-28.) On June 22, 2011, the trial court entered an Order (Addendum, Ex. E) which divested Michael of all title in the Sandy Retail Center and granted Debra authority to sign all documents necessary to list the Sandy Retail Center and to close its sale. (R. 1825-26.) The trial court further ordered Michael to sign an addendum accepting a pending offer on the Phoenix Plaza, and authorized the court clerk to sign the addendum if Michael refused. (R. 1826.) Michael refused to sign the addendum so the court clerk signed the addendum. (R. 4247.)

10. At an evidentiary hearing before Judge Glenn K. Iwasaki on July 26, 2011, Michael was found to have breached the terms of the Decree and was found in contempt for his failure to abide by and perform his obligations under the Stipulation and Decree, including his failure to pay property settlement to Debra and his failure to submit an application to refinance the Phoenix Plaza mortgage. (R. 1962, 2791-2844, 4360-67.) The trial court also ruled that Michael's asserted defenses of impossibility, mistake, and fraud were barred by claim preclusion. (R. 2816, 4362, 4371-75.) The Findings, Order, and Judgment with respect to the hearing on July 26, 2011, was finally entered by Judge Todd M. Shaughnessy on March 1, 2012. (Addendum, Ex. F) (R. 4360-67.)

11. Having lost another offer on the Sandy Retail Center, Debra filed a Motion for Approval of Reduced Listing Price for Sandy Retail Center ("Motion to Reduce Listing Price") on August 25, 2011, requesting a reduction of the listing price to \$599,000 as recommended by Michael Carroll because (a) the property had not sold and

(b) Michael continued to thwart the sale of the property by refusing to reduce the listing price. (R. 2178-80.) In support of the Motion to Reduce Listing Price, Debra filed the Affidavit of Mike Carroll ("Affidavit") wherein Mr. Carroll asserted that based on a listing price of \$599,000, the parties should expect to receive offers ranging from \$575,000 to \$599,000. (R. 2181-84.)

12. On September 7, 2011, unbeknownst to Debra or her counsel, and despite the claim preclusion found by Judge Iwasaki to Michael's fraud claims at the hearing on July 26, 2011, Michael filed a *pro se* fraud action in the Third District Court, West Jordan Division, against Debra and her children, parents and a friend ("Fraud Action"). (R. 2894-2912.) Michael's complaint in the Fraud Action did not contain any allegations that supplanted the trial court orders in the divorce action. (R. 2894-2912.)

13. One day later, on September 8, 2011, and just minutes before a scheduled hearing in the divorce action, Michael also filed a petition for chapter 11 bankruptcy, thereby invoking the automatic stay. (R. 2495-99.) Michael's bankruptcy case was later dismissed by order of the bankruptcy court on November 16, 2011. (R. 2725.)

14. On October 4, 2011, as a result of the delay caused by Michael filing a chapter 11 petition for bankruptcy, another offer by a potential buyer of the Phoenix Plaza was withdrawn. (R. 2555-56, 2570.)

15. On October 28, 2011, the parties received an offer from Harris Air, Inc. to purchase the Phoenix Plaza for the price of \$3,000,000 (the "Harris Air Offer"). (R. 2556, 2572-78.) On or about November 21, 2011, Debra received an offer to purchase the Sandy Plaza for \$590,000 from Chicago Holdings, LLC ("Chicago Holdings Offer"). (R.

6955, 6971-78.) As required under the Order entered on June 22, 2011, Debra immediately provided Michael with a copy of both offers. (R. 6955, 6968.) In response, Michael filed a Motion to Compel Respondent to Provide Information Sufficient to Obtain Appraisals on Real Property that is Currently Listed for Sale and To Reject Offers to Purchase ("Motion to Reject Offers") on November 23, 2011, wherein he requested the trial court to reject the Harris Air Offer and the Chicago Holdings Offer. (R. 2521-23.) Based on the existing court orders, on November 25, 2011, Debra accepted the Chicago Holdings Offer subject to the trial court's approval. (R. 6955-56, 6971-79.) The closing date was scheduled for January 15, 2012. (R. 6976.)

16. On December 6, 2011, Debra filed a Memorandum in Support of Motion for An Order Permitting Respondent to Retain Petitioner's Half of Net Rental Income From the Phoenix Plaza, Sandy Retail Center, and Deer Valley Condominium, wherein she informed the trial court that the Sandy Retail Center and Phoenix Plaza were currently listed for sale and/or under contract for sale. (R. 2587-91.) On December 13, 2011, Debra filed a Memorandum in Opposition to the Motion to Compel Respondent to Provide Information Sufficient to Obtain Appraisals on Real Property That is Currently Listed for Sale and To Reject Offers to Purchase wherein she once again alerted the trial court that the Sandy Retail Center was under contract for sale with a closing scheduled for January 2012. (R. 2595-2603.)

17. At a hearing before Commissioner Evans on December 20, 2011, (continued from September 8, 2011 due to Michael's bankruptcy), where fourteen motions were scheduled to be heard, testimony was presented regarding the pending

offers relative to the Sandy Retail Center and the Phoenix Plaza and their scheduled closings on January 16, 2012 and January 20, 2012, respectively. (R. 2604, 2647-52, 6956, 6984-99.) On January 24, 2012, the trial court entered its Order with respect to the issues dealt with at the hearing on December 20, 2011. (Addendum, Ex. G) (R. 2647-53.) Michael acknowledged receiving the Harris Air Offer and the Chicago Holdings Offer. (R. 6984-99.) The trial court granted Debra's Motion to Reduce Price and ordered the Sandy Retail Center be listed at \$599,000, as recommended by Michael Carroll. (R. 2650.) The trial court also approved the Harris Air Offer and ordered that the closing agent deem and treat all net sales proceeds from the sale of the Phoenix Plaza as payable to Debra in partial satisfaction of the judgments which Debra had against Michael. (R. 2649-50.) Due to time constraints and the volume of motions to be heard, the hearing was continued until January 6, 2012. (R. 2651.)

18. On January 6, 2012, the trial court, among other things, denied Michael's Motion to Reject Offers. (R. 2620, 2687-93.) Based on the terms of the real estate purchase contracts and pursuant to trial court orders, closing on the Sandy Retail Center sale had been rescheduled to occur no later than February 6, 2012, and the closing on the Phoenix Plaza sale was to occur no later than April 9, 2012. (R. 2706, 2726, 4248.)

19. Notwithstanding the potential negative financial impacts and contractual liabilities the parties would suffer if the pending sales did not timely close, Michael improperly recorded four *lis pendens* on January 27, 2012, against the Sandy Retail Center, Phoenix Plaza, Deer Valley Condominium and Arizona Property. (R. 2726, 2862-87.)

20. Upon receiving notice on January 30, 2012, of the recording of the four *lis pendens*, Debra's counsel alerted Michael's counsel that the *lis pendens* were wrongfully recorded and requested that the *lis pendens* be immediately removed. (R. 2727, 2892.) Michael's counsel was reminded that (i) Debra was the only record title holder of the Sandy Retail Center since Michael was divested of title on June 22, 2011, and (ii) by filing a *lis pendens* against the properties, Michael was violating the trial court's orders. (R. 2891.)

21. On February 1, 2012, Debra was forced to file a Motion for Temporary Restraining Order, Preliminary Injunction, Lien Nullification, Damages, and Other Relief. R. 2705-8. The trial court issued a Temporary Restraining Order relative to the Sandy Retail Center on February 1, 2012 ("TRO") finding that Michael had violated the trial court's orders by filing the *lis pendens*. (R. 3014-18.) A preliminary injunction hearing before the trial court was conducted on February 3, 2012. (R. 2959-62.) Pursuant to paragraph 2 of the Findings and Order (Addendum, Ex. H), the trial court found that the *lis pendens* filed against the Sandy Retail Center "to be a 'wrongful lien' under the provisions of Utah Code Ann. § 38-9-1 et. seq. and, as necessary, Utah Code Ann. § 78B-6-1304." (R. 2960.) Accordingly, the *lis pendens* was declared to be void ab initio. (R. 2960.)

22. Notwithstanding the terms of the Findings and Order, Michael had another *lis pendens* recorded on the Sandy Retail Center early on the morning of February 6, 2012 ("Second *Lis Pendens*"), the morning of the scheduled closing. (R. 2983, 2990-92, 4389-90.) The TRO was still in effect when Michael recorded the Second *Lis Pendens*

on the Sandy Retail Center. (R. 2983.) On February 7, 2012, Michael had another *lis pendens* recorded on the Phoenix Plaza. (R. 4390.)

23. On February 7, 2012, after finding out about the Second *Lis Pendens* having been recorded on the Sandy Retail Center, Debra was forced to file a Second Motion for Nullification of Second *Lis Pendens* Filed by Petitioner, Damages, Contempt and Other Relief and Motion for Order to Show Cause (Expedited Decision Requested) (“Second Motion”). (R. 2982-92.) A telephonic hearing on the Second Motion was scheduled for February 9, 2012 before Judge Shaughnessy. (R. 2999.) At the telephonic hearing, the trial court granted the Second Motion and issued its Second Findings and Order and Order to Show Cause (Addendum, Ex. I), which also included a finding that “[t]he *Lis Pendens* is determined to be a ‘wrongful lien’ under the provisions of Utah Code Ann. § 38-9-1 et seq. and as necessary, Utah Code Ann. § 78B-6-1304.” (R. 3000.)

24. A preliminary injunction hearing before Judge Shaughnessy was held on February 28, 2012, to address, among other issues, all six *lis pendens* filed by Michael. (R. 4384.) The trial court found, among other things, that (i) despite having notice through counsel that the *lis pendens* were wrongfully recorded, Michael refused to remove the *lis pendens* and continued to refuse to remove them, (ii) the six *lis pendens* were “wrongful liens” as that term is defined under the provisions of Utah Code Ann. § 38-9-1 et seq., and as necessary, Utah Code Ann. § 78B-6-1304, and (iii) that the recording of the *lis pendens* was wrongful and in violation of the orders of the trial court. (R. 4368-70, 4388-91.) On March 5, 2012, the trial court entered its Findings and Order Granting Preliminary Injunction, Lien Nullification, and Other Relief (Addendum, Ex. L)

and enjoined Michael from interfering with the sale of the Phoenix Plaza. (R. 4393.) The trial court reserved the issue of damages for the six wrongful liens in violation of U.C.A. § 38-9-4, for a later date. (R. 4394.)

25. On March 1, 2012, the trial court entered its Findings, Order, and Judgment relative to the hearing conducted on July 26, 2011. (Addendum, Ex. J) (R. 4360-67.) Among other relief, the trial court: (i) entered judgment against Michael in the amount of \$1,912,696 (“\$1.9M”); (ii) held Michael in contempt for his failure to pay Debra amounts due her and for his failure to refinance the Phoenix Plaza mortgage; and (iii) awarded Debra attorney’s fees on both a contractual basis and statutory basis. (R. 4365.)

26. On March 5, 2012, the trial court issued another temporary restraining order against Michael, once again enjoining him from interfering with the sale of the Phoenix Plaza by making, uttering, recording, or filing any document which would cloud title to the Phoenix Plaza or contacting any person associated with the sale including, but not limited to, brokers, agents, buyers, and closing agents. (R. 4401.)

27. Despite Michael’s attempts to thwart the closing of the Phoenix Plaza in violation of the trial court’s orders, the sale of the Phoenix Plaza was finally closed on or about April 25, 2012. (R. 5278.)

28. On May 23, 2012, a telephonic hearing was conducted during which the trial court reviewed the history of this action and entered certain rulings. (Addendum, Ex. P) (R. 7563: pps 2-24.)

29. Debra continued her efforts to collect on the judgment against Michael that had been entered on July 26, 2011, by filing a writ of execution against the St. George

Condominium. (R. 5546-49, 5599-603.) Thereafter, beginning in May 2012, Michael stopped making mortgage payments on the St. George Condominium, although the property was awarded to him in the Decree. (R. 677, 5885, 5890-99, 5910-14.) Michael was also ordered to pay all associated debt on the St. George Condominium under the Decree. (R. 677, 5884-85.) Given that Debra is a co-obligor on the mortgage encumbering the St. George Condominium, she began to pay the monthly mortgage payments and late fees to protect her credit. (R. 5885.) At a hearing on October 2, 2012 before Judge Shaughnessy, Michael was ordered to pay in a timely manner all mortgage payments, HOA fees, and other liabilities associated with St. George Condominium and to reimburse Debra the monthly mortgage payments she had paid to that date, which totalled \$5,561.82. (R. 6413-6417.) At another hearing on January 22, 2013, Michael was again ordered by Judge Shaughnessy to timely pay all future costs associated with the St. George Condominium including, but not limited to, the mortgage, HOA fees, utilities, and casualty insurance payments, and to provide immediate evidence of such payments to Debra's counsel. (R. 6482-86.)

30. On April 9, 2013, the trial court entered an Order to Show Cause against Michael to show cause, why he "should not be held in contempt for violating the terms of the Order entered February 13, 2013, relative to the hearing conducted January 22, 2013, by failing to reimburse [Debra] \$3,402.09 for the insurance premium and mortgage payments she previously paid; and by refusing to make the February and March 2013 mortgage payments." (R. 6627-29.)

31. On April 17 through 19, 2013, an evidentiary hearing was conducted before the trial court to address all remaining issues and at the end of trial a ruling was announced by the trial court. (R. 6874, 6863-73.) On May 29, 2013, the trial court entered its Findings of Fact and Conclusions of Law (“Findings”) (R. 6874-87), which among other things, included the trial court:

- Affirming all rulings, orders and judgments previously made in the case to date with one exception involving an issue not relevant to this appeal. (R. 6875.)
- Finding Michael had filed *lis pendens* on the parties’ properties to prevent the sales of those properties that had been ordered to be sold by the trial court. The trial court found that it had authority to nullify the *lis pendens*, and require the removal of the *lis pendens* that were recorded relative to the Fraud Action; however, because of the legal question, and some doubt as to whether Utah’s Wrongful Lien Act should apply to a *lis pendens*, the trial court declined to impose any statutory damages. (R. 6875.)
- Declining to find Michael in contempt, with respect to the recording of the *lis pendens*, for the same reason it declined to impose statutory damages. (R. 6875.)
- Declining in the interest of justice to impose any further contempt finding against Michael or any further sanction with respect to any additional contempt issues that were presented. (R. 6878.)

32. Along with the Findings, the trial court also entered its Final Order and Judgment ("Judgment"). (R. 6888-96.) Paragraph 17 of the Judgment updates the amount of the judgment entered against Michael on March 1, 2012, with various offsets and adjustments as ordered by the trial court. (R. 6892-93.) The updated amount of the judgment entered in favor of Debra was \$1,128,948.62 together with interest from May 23, 2012. (R. 3893.) Under paragraph 8 of the Judgment, Debra was awarded attorney's fees and costs from January 1, 2008 through May 31, 2012, in the total amount of \$309,074.72 for actions required to be taken to enforce the terms of the Stipulation and the Decree. (R. 6890.)

33. Both parties filed post-trial motions, which were denied by the trial court on July 11, 2013 and July 12, 2013 (Addendum, Ex. O). (R. 7125-27, 7131-33.)

SUMMARY OF THE ARGUMENT

The foundational facts in this case are relatively simple. Pursuant to the terms of the Stipulation and Decree, Michael was to pay Debra cash in the amount of \$1.9M as property settlement. Michael was to also refinance the mortgage encumbering the Phoenix Plaza and use the loan proceeds to pay Debra the amount owed. In *Robinson I*, this Court determined the terms of the Stipulation and Decree are equitable. Michael did not perform these obligations and, accordingly, breached the terms of the Stipulation. Michael's failure to perform these obligations resulted in the trial court holding him in contempt. Thereafter, Debra took actions to enforce the terms of the Stipulation and the Decree and was awarded a judgment.

Michael attempts in this appeal to reargue the same defenses of mistake, impossibility and fraud that were present or argued relative to *Robinson I*. In *Robinson I*, this Court found mistake and impossibility were not contractual defenses. Fraud was raised in the trial court but not on appeal. *Res judicata* applies precluding any of these defenses from being raised in subsequent actions for any purpose.

Under the terms of the Stipulation and the Decree, the Sandy Retail Center was to be sold. Under the orders of the trial court relative to Debra's requested relief for enforcement, the Phoenix Plaza was ultimately ordered to be sold. Michael interfered with the sale of these two properties by, among other actions, filing *lis pendens* that clouded title so that the sales could not be closed. The trial court found that the *lis pendens* were "wrongful liens" but declined to award statutory damages due to the issue of whether a *lis pendens* can be a "wrongful lien."

Finally, the trial court awarded Debra her attorney's fees and costs for the enforcement actions she took. Debra has a contractual and statutory basis for the award.

ARGUMENT

IX. THE TRIAL COURT PROPERLY ENTERED A \$1.9M JUDGMENT AGAINST MICHAEL FOR HIS BREACH OF THE TERMS OF THE STIPULATION AND DECREE AND PROPERLY FOUND HIS CONTEMPT IN FAILING TO EVEN SUBMIT AN APPLICATION TO REFINANCE THE MORTGAGE ON THE PHOENIX PLAZA.

Under the terms of the Stipulation and the Decree, Michael was to pay Debra \$1.9M¹ as property settlement. Michael was to also refinance the mortgage encumbering

¹This amount consists of the sum of amounts due under paragraphs 11.B., 12.B. and 15 of the Decree.

the Phoenix Plaza and use the loan proceeds to pay Debra. Michael failed to pay Debra the \$1.9M owed. Michael also failed to submit an application to refinance the mortgage. As this Court stated in *Robinson I*, Michael's "ability to provide evidence that performance was impossible or highly impracticable is severely limited where he never actually applied for a loan as contemplated, let alone having done so in the time frame set forth by the stipulation." *Robinson I*, n. 4.

Michael places great weight on the decision of the Utah Supreme Court in *Goggin v. Goggin*, 2013 UT 16, 299 P.3d 1079. In *Goggin*, the Utah Supreme Court stated:

. . . there is no place for contempt sanctions in an equitable distribution of marital property. Under the Contempt Statute, a court may order a party to pay for the "actual loss or injury" he caused. And although a court has considerable discretion in determining whether to sanction a party, it does not have discretion to impose a sanction beyond the actual injury caused by the contemptuous behavior. Moreover, it does not have discretion to distribute marital property in a way that is designed to punish a party's contemptuous behavior. *Id.* at ¶ 52.

The trial court in *Goggin* fashioned a property distribution taking Mr. Goggin's contempt into account as an element of an "equitable" property distribution. *Id.* at ¶¶ 59-61. In the instant case, the equitable distribution had already been fashioned by the parties, approved by the trial court and affirmed by this Court before contempt was even raised as an issue. In *Robinson I*, this court stated:

Thus, from the district court's decision to enforce the stipulation, we assume - - and have no findings that would indicate otherwise - - that the court determined that the property division was equitable.

Id. at ¶13. Accordingly, in this case, contempt was not a factor in fashioning an equitable property division. Contempt was found only after Michael's breach of the terms of the Stipulation and Decree had been established.

The actual injury to Debra is the loss of the benefit of the terms of the Stipulation entered into by the parties. Debra bargained for and agreed to receive \$1.9M as her equitable share of the division of the marital estate. The trial court and this Court have both determined that such was an equitable distribution. *Id.*

Accordingly, the \$1.9M judgment entered against Michael for having failed to pay Debra her equitable share of the marital estate was proper. Michael's contempt was found for his failure to pay Debra that amount and in his failure to submit the loan application as a means to pay the \$1.9M amount.

X. MICHAEL AGAIN ARGUES IMPOSSIBILITY WHICH HAS ALREADY BEEN DECIDED IN *ROBINSON I*.

Michael next argues that he cannot be held in contempt of the terms of the Decree entered on December 31, 2008, that required him "to go back in time" to make a loan application by November 17, 2007 (within 15 days of the date of the Stipulation on November 2, 2007). This argument is nothing more than Michael's impossibility of performance defense made in *Robinson I*. In *Robinson I*, this court stated:

This defense is wholly inapplicable here because [Michael] alleges no unforeseen event occurring after the stipulation was signed in November 2007 that altered the possibility of performance. . . Thus, without any later-occurring event rendering performance impossible or highly impracticable, [Michael's] argument of impossibility is unavailing . . .

Id. at ¶12.

In *Robinson I*, this Court clearly indicated that Michael's obligation to submit a loan application commenced November 2, 2007, the date of the Stipulation, not December 31, 2008, the date of the Decree. Michael was under a contractual obligation pursuant to the terms of the Stipulation to submit an application to refinance the mortgage by November 17, 2007. He failed to do so. He breached that term of the Stipulation and the Decree. His failure to submit the application constitutes contempt because (i) he knew what was required of him and the time frame, (ii) had the ability to comply, but (iii) willfully failed to do so. *Van Hake v. Thomas*, 759 P.2d 1162, 1172 (Utah 1988).

XI. MICHAEL IS PRECLUDED FROM CLAIMING MISTAKE OR IMPOSSIBILITY AS DEFENSES AGAINST THE CONTEMPT CHARGES BROUGHT AGAINST HIM.

Michael argues that the trial court erred in precluding his claim that mistake and impossibility are defenses against the contempt charges brought against him. In *Robinson I*, this Court ruled that the contractual defenses of mistake and impossibility are not applicable under the facts of this case. *Id.* at ¶¶ 9-12.

Relative to the hearing conducted on July 26, 2011, on March 1, 2012, the trial court issued its Findings, Order and Judgment. (R. 4360-67.) In paragraphs 12-17, the trial court specifically found and held that Michael was in contempt because (i) the Decree awarded Debra \$1.9M, (ii) Michael was required to submit the loan application to refinance the Phoenix Plaza mortgage within 15 days of November 2, 2007; (iii) Michael knew and clearly understood he had an obligation to refinance the Phoenix Plaza

mortgage as the means to pay Debra, but (iv) Michael failed to submit the application at any time after November 2, 2007.

In *Robinson I*, as to mistake, this Court stated that if Michael “did not feel that the information upon which he relied was sufficient, he should have either insisted on any information he felt he needed before he entered into the stipulation or modified the terms of the stipulation accordingly.” *Id.* at ¶11. Asking for the deal to be fair “in hindsight” is not a defense for contempt. *Id.* Similarly, Michael’s defense of impossibility, whether as a contract defense or for civil contempt, and “the ability to provide evidence that performance was impossible or highly impracticable is severely limited where he never actually applied for a loan as contemplated, let alone having done so in the time frame set forth by the stipulation.” *Id.* at n. 4.

Michael is prohibited from raising mistake or impossibility as a defense to contempt because those are now res judicata. When a second defense (in the instant case mistake or impossibility as a defense to contempt) is essentially the same as a previously raised defense (in the instant case mistake or impossibility as a contractual defense in *Robinson I*) which has gone to final judgment, res judicata means that neither of the parties can again litigate that defense or any issue, point or part thereof which was or could have been litigated in the former action.” *Bradshaw v. Kershaw*, 627 P.2d 528, 531 (Utah 1981). Accordingly, Michael is precluded from raising the defenses of mistake and impossibility as defenses to contempt.

Finally, Michael again claims in this appeal that the trial court erred by not conducting an evidentiary hearing and thereby excluding evidence from Mr. Gottschall,

Mr. Wadley and Michael regarding Michael's inability to refinance the Phoenix Plaza mortgage. This issue was decided in *Robinson I*, when this Court determined that the failure of the trial court to hold an evidentiary hearing was immaterial to its decision because there are no disputed facts determinative of whether the contractual defenses applied. *Id.* at ¶ 14.

XII. MICHAEL IS PRECLUDED FROM CLAIMING FRAUD AS A DEFENSE.

Michael next argues that the trial court erred by precluding Michael's claim of Debra's alleged fraud as a defense to his contempt. *Res judicata* bars Michael's claimed defense.

The doctrine of *res judicata* has "two branches: claim preclusion and issue preclusion." *Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, ¶ 20, 285 P.3d 1157. Claim preclusion bars a party from re-litigating a claim for relief that was previously litigated on the merits and resulted in a final judgment. *Id.* at ¶ 21. Issue preclusion, commonly called collateral estoppel, presents a party from re-litigating issues which have been previously decided on the merits and resulted in a final judgment. *Id.* at ¶23. Claim preclusion has three requirements: (1) the second action must involve the same parties, privies, or assigns as the original action; (2) the claim must have been brought or have been available in the original action; and (3) the original action must have led to a final judgment on the merits. *Id.* at ¶ 21.

The trial court determined that "[t]here is claim preclusion as to [Michael's] allegations of fraud against [Debra]. This issue was raised by [Michael] after November 2, 2007. That issue was not taken up on appeal although [Michael] had an opportunity to

raise the issue on appeal. It therefore is not a defense to the contempt charge.” (R. 4362.) Michael alleged fraud in pleadings he filed after November 2, 2007 on at least four occasions. (R. 39, 45-47, 113, 365.).

With respect to the first requirement of claim preclusion, the parties are identical.

With respect to the second element of claim preclusion, Michael now argues that under *Marcis & Associates, Inc. v. Neways, Inc.*, 2000 UT 93, 16 P.3d 1214 (Utah 2000), a party is required to include claims in an action for *res judicata* purposes only if those claims arose *before* the filing of the complaint in the earlier action. Michael then argues that the allegations of Debra’s fraud obviously occurred after this divorce action was already filed. But in the instant case, Michael did, in fact, raise the issue of Debra’s alleged fraud and misrepresentation in the trial court. Those issues were litigated and ruled on by the trial court. Therefore, *Marcis* has no application in the instant case. *Marcis*, at ¶25.

With respect to the third requirement of claim preclusion, Michael argues that under *Noble v. Noble*, 761 P.2d 1369 (Utah 1988), there can be no final judgment entered in a divorce action on a tort claim of fraud and, hence, the third element of claim preclusion is not met. The distinction between claim preclusion and issue preclusion resolves the issue.

Michael raised and litigated the issue of Debra’s fraud in the divorce action and the trial court found that Debra “didn’t engage in any fraudulent or deceptive behavior or bad faith.” (R. 491.) Michael did not appeal that issue in *Robinson I*. Under claim

preclusion, Michael is precluded from again raising that issue in the divorce action as a defense, including as a defense for contempt.

In *Noble*, the issue of husband having intentionally shot wife was litigated in the divorce action and finally determined. In the separate tort action brought by wife, husband was precluded from requiring wife to re-litigate that particular issue under issue preclusion. *Id.* at 1374-75.

Accordingly, all three elements of claim preclusion have been met and Michael is precluded from claiming fraud as a defense to the issue of contempt.

XIII. THE TRIAL COURT DID NOT ADJUDICATE MICHAEL'S TORT CLAIMS BUT IT DID, AS PART OF THE DIVORCE ACTION, ADJUDICATE THAT DEBRA DID NOT DEFRAUD MICHAEL AND FRAUD WAS NOT A DEFENSE TO THE FINDING OF CONTEMPT.

In his brief, Michael argues that it was improper for the trial court to state that Michael's tort claim of fraud is barred under the doctrine of claim preclusion simply because he did not raise it in this divorce action.

This argument is unavailing for several reasons. First, Michael did raise the issue of fraud in numerous pleadings filed with the trial court. See, *infra* IV. Second, the trial court found that Debra did not defraud Michael (R. 491.) Third, the trial court found that Michael had "no applicable defenses to his contempt and he persists in disobeying Court orders." (R. 4362.) Finally, the trial court determined that "[t]here is claim preclusion as to [Michael's] allegations of fraud against [Debra]. This issue was raised by [Michael] after November 2, 2007. That issue was not taken up on appeal although [Michael] had

an opportunity to raise the issue on appeal. It therefore is not a defense to the contempt charge.” (R. 4362.)

The trial court in this action found that Debra had not defrauded Michael.

Accordingly, Michael is precluded under claim preclusion from raising Debra’s alleged fraud as a defense to Michael’s contempt. *Moss*, at ¶ 20.

XIV. THE TRIAL COURT AND THIS COURT FOUND THAT THE DISTRIBUTION OF THE MARITAL ESTATE WAS EQUITABLE UNDER THE TERMS OF THE STIPULATION. ENFORCEMENT OF THE TERMS OF THE STIPULATION, WHICH RESULTED IN A DIFFERENT DISTRIBUTION, WERE THE DIRECT RESULT OF MICHAEL’S ACTIONS.

On appeal in *Robinson I*, Michael argued that the district court erred in failing to make a determination that the division of assets described in the Stipulation was fair and reasonable. *Id.* at ¶ 13. Michael makes the same argument with respect to the ultimate division of the marital estate based on Debra’s enforcement of the terms of the Stipulation. Michael is the only person responsible for the outcome of the ultimate division of the marital estate after Debra’s enforcement actions.

In *Robinson I*, this Court stated:

[Michael] correctly asserts that a stipulation dividing property between divorcing parties should be adopted only “if the court believes it to be fair and reasonable,” *Klein v. Klein*, 544 P.2d 472, 476 (Utah 1975). But [Michael] provides no authority for his resulting assertion that a district court may not enforce a stipulation unless the district court makes a formal finding that it is fair and reasonable. And the presumption seems to be the exact opposite, that is, that a stipulation will ordinarily be enforced “unless the court finds it to be unfair or unreasonable,” *Colman v. Colman*, 743 P.2d 782, 789 (Utah Ct. App. 1987) Thus, from the district court’s decision to enforce the stipulation, we assume - - and have no

findings that would indicate otherwise - - that the court determined that the property division was equitable. And based on the facts of this case, in particular the sophistication of the parties and the facts that they each had the opportunity to consult with counsel and other advisors before entering the stipulation, we cannot say that the court's admittedly cursory finding exceeds the limits of reasonableness.

Id. at ¶13 (emphasis in original).

Michael, in essence, asks this Court for a “redo.” The division of the marital property was found to be equitable by this Court in *Robinson I*. Michael's actions caused the protracted litigation that followed when Debra was required to proceed with enforcement actions. The case of *Allen v. Ciokewicz*, 2012 UT App 162, ¶ 49, 280 P.3d 425 is not applicable for the reason that the trial court in that case was making an initial distribution of property. In the instant case, the initial distribution of property was made pursuant to the Stipulation. Debra's enforcement actions caused, as Michael terms it, an inequitable distribution of the marital property. There are no exceptional circumstances permitting a “redo” given the facts of this case.

XV. THE TRIAL COURT PROPERLY FOUND THAT THE *LIS PENDENS* WERE WRONGFUL LIENS.

Michael twice recorded *lis pendens* on both the Phoenix Plaza and the Sandy Plaza relative to the Fraud Action in an attempt to frustrate scheduled closings. The trial court in the divorce action entered a number of orders, each finding that the *lis pendens* were wrongful liens under Utah Code Ann. § 38-9-1, *et seq.* and, as necessary under Utah Code Ann. § 78B-6-1304. (R. 2960, 3004, 4390.)

Utah Code Ann. § 78B-6-1303 authorizes the filing of a *lis pendens* in only certain narrow circumstances:

Either party to an action affecting the title to, or the right of possession of, real property may file a notice of the pendency of the action with the county recorder in the county where the property or any portion of the property is located.

Utah courts have confirmed that a “*lis pendens* may only be filed in connection with an action (1) ‘affecting the title’ to real property, or (2) ‘affecting . . . the right to possession of [] real property.’” *Winters v. Schulman*, 1999 UT App 119, ¶ 21, 977 P. 2d 1218 (quoting Utah Code Ann. § 78-40-2, the predecessor to § 78B-6-1303). In *Winters*, this Court concluded that the *lis pendens* at issue was “invalid because the complaint and [divorce] decree failed to address title to or possession of the Utah real property.” *Id.* at ¶ 21. The *Winters* court further observed that because a post-divorce enforcement proceeding sought only monetary damages, it was “unrelated to title or possession of the Utah real property,” and the fact that the claimant sought to encourage payment of the damages by requesting a lien on the real property did not change the claim’s “fundamental character.” *Id.* at ¶ 22.

A *lis pendens* may be released upon motion if the “court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.” Utah Code Ann. § 78B-6-1304(2)(b). It is evident that to the extent an action does not affect title to or possession of real property, it cannot be a valid “real property claim,” and thus, requires release of the *lis pendens*.

The complaint in the Fraud Action did not make any claim as to title or the right of possession as to the Sandy Retail Center or the Phoenix Plaza, but only made claims for monetary damages. (R. 2894-2912.) The complaint in the Fraud Action did claim relief for a constructive trust, but *lis pendens* are not appropriate in actions claiming constructive trust relief. *Levinson v. Eighth Judicial District Court of Nevada*, 857 P.2d 18, 20 (Nev. 1993). “In determining the validity of a *lis pendens*, courts have generally restricted their review to the face of the complaint.” *Winters*, at ¶ 19.

Winters also made clear that the filing of an invalid *lis pendens*, in addition to subjecting the *lis pendens* to release pursuant to § 78B-6-1304(2), can form the basis of a claim for wrongful lien as defined by Utah Code Ann. § 38-9-1(6). *See Winters*, 1999 UT App 119, ¶ 14. The Utah Code defines “wrongful lien,” in relevant part, as:

any document that purports to create a lien, notice of interest, or encumbrance on an owner’s interest in certain real property and at the time it is recorded is not:

- (a) expressly authorized by this chapter or another state or federal statute;
- (b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or
- (c) signed by or authorized pursuant to a document signed by the owner of the real property.

Utah Code Ann. § 38-9-1(6). Utah Code Ann. § 38-9-7 allows the owner of the property to petition the court to nullify the wrongful lien. In addition to an order nullifying the lien, the court “shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney’s fees to the petitioner.” Utah Code Ann. § 38-9-7(5)(a).

Even if the *lis pendens* are found to not have been wrongful liens, there was a second basis for the trial court to nullify the *lis pendens*. As the trial court stated in its Minute Entry dated March 1, 2012, (Addendum, Ex. K) (R. 4369.):

Whether a *lis pendens* is a wrongful lien for purposes of Utah's wrongful lien statute, and whether this court has the authority to order removal of a *lis pendens* under the *lis pendens* statute, are not dispositive. Where, as here, the property in question is a marital asset subject to the jurisdiction of this court, and where this court has in the past entered orders associated with that property, this court respectfully submits that it has the authority to issue orders in aid of its jurisdiction or orders that are necessary or appropriate to carry out or enforce its prior orders.

A trial court has authority to issue orders to aid or as may be necessary to enforce its prior orders. "Judicial power 'is the *authority* to hear and determine justiciable controversies . . . [It] includes the authority to enforce any valid judgment, decree or order.'"

Timpanogos Planning and Water Mngt Agency v. Central Utah Water Conservancy District, 690 P.2d 562, 569 (Utah 1984) citing *Galloway v. Truesdell*, 422 P.2d 237, 242 (Nev. 1967) (emphasis in original).

Michael also argues that a motion to have the *lis pendens* nullified must have been filed in the Fraud Action. The trial court noted, however, that:

Section 78B-6-1304(1) states that an affected party "may make a motion to the court in which the action is pending." The statement is permissive, and the "court in which the action is pending" is the Third Judicial District Court. However, the court does not rule on the question of whether the "court in which the action is pending" means the particular judge before whom the case is pending, or that district, because it is unnecessary to do so.

(R. 4369.)

In summary, the trial court properly found that the *lis pendens* were wrongful liens. Alternatively, the trial court had authority to nullify the *lis pendens* under its inherent judicial authority.

VIII. THE TRIAL COURT'S AWARD OF ATTORNEY'S FEES AND COSTS WERE APPROPRIATE UNDER A CONTRACT CLAIM AND ALSO UTAH CODE ANN. § 30-3-3(2).

Debra made a claim for an award of attorney's fees and costs under a contract claim and also Utah Code Ann. § 30-3-3(2) relative to her enforcement of the terms of the Stipulation and the Decree. Attorney's fees may be awarded if authorized by statute or by contract. *Jones v. Riche*, 2009 UT App 196, ¶1, 216 P.3d 357.

With respect to Debra's contract claim, paragraph 44 of the Decree provides:

The prevailing party to an action for breach of a term of the Agreement shall be entitled to his or her attorney's fees and costs.

(R. 685.) Contractual attorney's fees provisions are enforceable under Utah law.

Saunders v. Sharp, 840 P.2d 796 (Utah App. 1992).

With respect to Debra's statutory claim, Utah Code Ann. § 30-3-3 creates two classes of attorney fees – those incurred in establishing court orders and those incurred in enforcing court orders. *Connell v. Connell*, 2010 UT App 139, ¶ 30, 233 P.3d 836. All attorney's fees and costs Debra has incurred since shortly after the date the Stipulation was signed have been to enforce the terms of the Stipulation.

Utah Code Ann. § 30-3-3(1) deals with attorney's fees incurred “to establish an order of . . . division of property in a domestic case. . .” (Emphasis added). However, Utah Code Ann. § 30-3-3(2) provides:

(2) In any action to enforce an order of custody, parent-time, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or limited fees against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees. (Emphasis added.)

In *Connell*, this Court stated:

Fees awarded under subsection (1) must be based on the usual factors of need, ability to pay, and reasonableness. *See Stonehocker*, 2008 UT App 11, 176 P.3d 476, ¶ 49. By contrast, in awarding fees under subsection (2), the court “may disregard the financial need of the moving party.” *Finlayson v. Finlayson*, 874 P.2d 843, 850 (Utah Ct. App. 1994); *see also Lyngle v. Lyngle*, 831 P.2d 1027, 1030 (Utah Ct. App. 1992) (“In an action to enforce the provisions of a divorce decree, an award of attorney fees is based solely upon the trial court’s discretion, regardless of the financial need of the moving party.”). The guiding factor in fee awards under subsection (2) is whether the party seeking an award of fees substantially prevailed on the claim. *See Utah Code Ann. § 30-3-3(2)*.

Connell, at ¶ 28.

In *Connell*, this Court also noted that:

... fee awards under subsection (2) serve no equalizing function but allow the moving party to collect fees unnecessarily incurred due to the other party’s recalcitrance. *See Finlayson*, 874 P.2d at 850-51. In *Tribe v. Tribe*, 59 Utah 112, 202 P.213 (1921), the supreme court discussed the rationale for awarding attorney fees when one party “refuses to comply with the requirements of [an order or] decree” such that the other party “is compelled to bring proceedings against” the offending party to ensure compliance with that order. *Id.* at 216. The court explained that the trial court may award reasonable attorney fees to the moving party so that he or she is not forced “to fritter away in costs and counsel fees” the amounts received under the order “by bringing repeated

actions to enforce payment. . . .” *Id.* The court may in its discretion award no fees or limited fees if it finds the offending party impecunious or enters in the record another reason for not awarding fees. *See* Utah Code Ann. § 30-3-3(2).

Connell at ¶ 30.

Debra submitted her claim for attorney’s fees and costs in admitted trial exhibits 61 and 61A. (R. 7569, 779:12.) The trial court only awarded Debra fees and costs for the time period between January 1, 2008 and May 31, 2012. (R. 6890-91.) Debra’s request for an award of fees and costs incurred prior to January 1, 2008 and after May 31, 2012 in the total amount of \$97,787.05 were denied. (R. 6890-91.)

In its Minute Entry dated July 12, 2013, dealing with post-trial motions, the trial court noted

that it did not award [Debra] all of the fees she sought and did not award her fees she incurred in connection with matters on which she was not successful at the hearing held in April 2013. The court stands by its attorney fee ruling for the reasons stated on the record and as set forth in [Debra’s] opposition papers.

(R. 7132.)

Debra substantially prevailed on every issue. That the trial court did not find Michael in contempt on numerous obstructionist actions he took during the course of the proceedings did not change the ultimate outcome of this case or the ultimate judgment amount awarded to Debra. The findings in a ruling on post-trial issues, in which the trial court awarded additional attorney’s fees to Debra, best describes the award in the Final Order and Judgment:

The Court finds that [Debra] substantially prevailed on all of the issues brought before the court, and Michael overstates the relative degree of his success. More important, as the court has previously noted on the record, the need for those additional proceedings was brought about entirely by Michael's conduct. Throughout these post-judgment proceedings [Michael] has intentionally delayed and interfered with the orderly disposition of the matters before the court. [Debra] has been left with no choice but to proceed as she has. Requiring [Michael] to bear the costs occasioned by his conduct is the only reasonable result under the circumstances.

(R. 7530-31.)

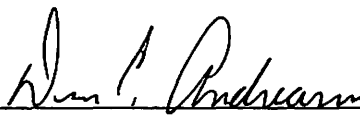
Accordingly, the award of attorney's fees and costs by the trial court should be affirmed.

CONCLUSION

The Final Order and Judgment should be affirmed in all respects. Debra should be awarded her attorney fees and costs on appeal.

DATED this 22nd day of August, 2014.

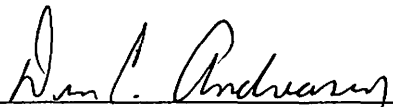
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief contains 9172 words, excluding the table of contents, table of authorities and addendum, in compliance with Rule 24(f)(1)(A) of the Utah Rules of Appellate Procedure.

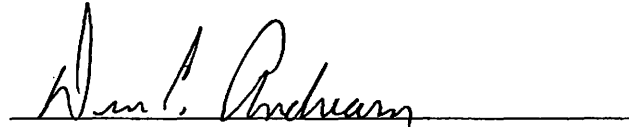


DEAN C. ANDREASEN
Attorney for Respondent/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2014, two true and correct copies of the foregoing BRIEF OF APPELLEE were mailed via first-class U.S. mail, postage prepaid to:

F. Kevin Bond
Budge W. Call
BOND & CALL, L.C.
8 East Broadway, Suite 720
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "Alan P. Anderson", is written over a horizontal line.

IN THE UTAH COURT OF APPEALS

MICHAEL S. ROBINSON,

Petitioner/Appellant,

v.

DEBRA J. ROBINSON,

Respondent/Appellee.

ADDENDUM TO
BRIEF OF APPELLEE

Case No. 20130652

Trial Court No. 074900501

ADDENDUM TO BRIEF OF APPELLEE

EXHIBIT A - Stipulation and Property Settlement Agreement

EXHIBIT B - Decree of Divorce

EXHIBIT C - Opinion Utah Court of Appeals, *Robinson v. Robinson*, 2010 UT App 96

EXHIBIT D - Judgment and Order dated February 25, 2011

EXHIBIT E - Order dated June 22, 2011

EXHIBIT F - Findings, Order and Judgment dated March 1, 2012

EXHIBIT G - Order dated January 24, 2012

EXHIBIT H - Findings and Order dated February 3, 2012

EXHIBIT I - Second Findings and Order and Order to Show Cause dated February 9, 2012

EXHIBIT J - Minute Entry dated March 1, 2012 (entry of order relative to July 26, 2011 hearing)

EXHIBIT K - Minute Entry dated March 1, 2012 (lis pendens issue)

EXHIBIT L - Findings and Order Granting Preliminary Injunction, Lien Nullification, and Other Relief dated March 5, 2012

EXHIBIT M - Findings of Fact and Conclusions of Law dated May 29, 2013

EXHIBIT N - Final Order and Judgment dated May 29, 2013

EXHIBIT O - Minute Entry dated July 12, 2013

EXHIBIT P - Transcript of Ruling, May 23, 2012

EXHIBIT Q - Utah Code Ann. § 38-9-1 et seq.

EXHIBIT R - Utah Code Ann. § 78B-6-1304

Tab A

FILED DISTRICT COURT
Third Judicial District

NOV 6 - 2007

By [Signature] SALT LAKE COUNTY
Deputy Clerk

DEAN C. ANDREASEN (#3981)
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111-2216
Telephone (801) 322-2516

Attorneys for Respondent

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

MICHAEL S. ROBINSON,
Petitioner,

v.

DEBRA J. ROBINSON,
Respondent.

**STIPULATION AND PROPERTY
SETTLEMENT AGREEMENT**

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

The parties make the following stipulations and agreements for the purpose of settlement of this action and respectfully move the Court to adopt the stipulations and agreements in the final Decree of Divorce to be entered herein.

DIVORCE

1. The parties shall proceed to obtain a Decree of Divorce granting each a divorce from the other as provided for by law dissolving the marriage of the parties.
2. The parties consent that a Decree of Divorce may be entered with terms consistent to the terms of this Stipulation and Property Settlement Agreement (the "Agreement").
3. Petitioner is a bona fide and actual resident of Salt Lake County, State of Utah, and has been for more than three months prior to the commencement of this action.

4. Petitioner and Respondent are husband and wife, respectively, having been married on October 4, 1992.

5. Disagreements have ensued between the parties concerning their marriage and their future together; meaningful communication between the parties has ceased; notwithstanding attempts by the parties to reconcile and resolve their differences, the same have been to no avail and have become irreconcilable making continuation of the marriage under the circumstances impossible.

CHILDREN

6. The parties have no children born as issue of their marriage and none are expected.

ALIMONY AND RELATED PROVISIONS

7. Each party irrevocably waives any claim to past, present or future alimony under any circumstance or condition.

8. Each party shall be responsible to maintain his or her own medical and dental insurance coverage and each shall be responsible for his or her own uninsured medical and dental costs.

PROPERTY AND DEBT DISTRIBUTION

9. Prior to and during their marriage, the parties acquired certain real and personal property which shall be divided between the parties as described below. Prior to and during the marriage, the parties incurred certain debts and obligations which shall be allocated between the parties as described below. The party assuming a particular debt or obligation shall indemnify and hold the other party harmless therefrom.

10. Petitioner shall be awarded the Seven Springs residence and shall assume and pay any debt encumbering the property.

11. Respondent shall be awarded the ten acre parcel in Scenic, Arizona and shall assume and pay any debt encumbering the property.

12. Respondent shall be awarded the Mayan Palace timeshare and shall assume and pay any debt encumbering the property.

13. Petitioner shall be awarded the parties' interest in the condominium in St. George, subject to Petitioner assuming and paying any debt encumbering the property. Petitioner may continue to own and rent the condominium or, alternatively, sell it but Petitioner shall be responsible for all costs of sale. Respondent shall be given a credit as described below in the amount of \$62,500 for her equity in the condominium calculated as one half of the difference between the fair market value of the condominium (\$250,000) less the current mortgage (\$125,000). Rental income from the Phoenix Plaza property shall be used to pay all condominium costs and expenses including PITI until such time as Petitioner has paid Respondent for her interest in the Phoenix Plaza property as described below.

14. Respondent shall be awarded the parties' interest in the condominium in Deer Valley, subject to Respondent assuming and paying any debt encumbering the property. Respondent may continue to own and rent the condominium or, alternatively, sell it but Respondent shall be responsible for all costs of sale. Petitioner shall be given a credit as described below in the amount of \$234,000 for his equity in the condominium calculated as (i) one half of the difference between the fair market value of the condominium (\$900,000) less the purchase price (\$515,000), plus (ii) \$27,870 for the down payment paid by Petitioner, plus (iii) \$7,500 for the earnest money paid by Petitioner, plus (iv) one half of the mortgage pay down in the amount of \$6,130, at the time Petitioner has paid Respondent for her interest in the Phoenix Plaza property. Rental income from the Phoenix Plaza property shall be used to pay all condominium costs and expenses

including PITI until such time as Petitioner has paid Respondent for her interest in the Phoenix Plaza property as described below. Rental income shall be recognized as income when earned, not deposited. Cash from rental income when earned shall be equally divided until such time as Petitioner has paid Respondent for her interest in the Phoenix Plaza property as described below. .

15. The disposition of the parties' interest in the retail center in Sandy shall occur as described below.

A. The retail center shall be immediately listed for sale. The parties shall agree to the listing agent, the listing price, any reduction in the listing price, and the ultimate terms of sale. In lieu of Petitioner receiving cash from the sale, Petitioner shall be given a credit in the amount of \$391,000 (\$32,188 + \$358,812) for his interest in the retail center. This credit reflects and assumes estimated net sales proceeds in the amount of \$749,812 of which Petitioner shall receive \$391,000 and Respondent shall receive \$358,812. If the net sales proceeds are greater than \$749,812, Respondent shall pay Petitioner one half of the difference between the actual net sales proceeds and \$749,812. If the net sales proceeds are less than \$749,812, Petitioner shall pay Respondent one half of the difference between the actual net sales proceeds and \$749,812.

B. The parties shall jointly manage the retail center until it is sold. Respondent shall provide the bookkeeping and accounting services for the retail center and provide Petitioner the regular monthly reports. The 2007 real property taxes shall be paid from the joint funds of the parties. Any CAM revenue shall be equally divided between the parties.

C. Until such time as the retail center is sold, the parties may agree to equally distribute to themselves a portion or all of the cash from the net rental

income. At the time the retail center is sold, each party shall be awarded one half of any cash from the net rental income.

D. The parties shall agree as to whether any legal action shall be taken in an attempt to collect certain unpaid rents and other bad debt. Each party shall pay one half of any costs incurred and shall be awarded one half of any monies recovered.

16. The disposition of the parties' interest in the Phoenix Plaza property shall occur as described below.

A. Petitioner shall be awarded the Phoenix Plaza subject to Petitioner taking the following actions.

B. Petitioner shall re-finance the mortgage encumbering the Phoenix Plaza and pay Respondent the amount of \$1,784,419 for her equity in the Phoenix Plaza property calculated as (i) one half of the difference between the stipulated fair market value of the Phoenix Plaza property (\$7.25M) less the purchase price (\$4.5M), plus (ii) \$891,803 for the down payment paid by Respondent, plus (iii) \$12,500 for the earnest money paid by Respondent, plus (iv) one half of the mortgage pay down in the amount of \$67,616 at the time Petitioner has paid Respondent for her interest in the Phoenix Plaza property, plus (v) \$62,500 for the St. George condominium credit, less (vi) \$234,000 for the Deer Valley condominium credit, less (vii) \$391,000 for the Sandy retail center credit. If the re-financing does not occur within one hundred twenty (120) days of the date the parties sign this Agreement, Petitioner shall pay Respondent interest at the rate of eight percent (8%) from one hundred and twenty (120) days after the parties sign this Agreement. Petitioner shall file the loan refinance application within 15 days of the date of this

Agreement. Respondent shall assist Petitioner in preparing and filing the loan refinance application.

C. The parties shall jointly manage the Phoenix Plaza until the time the re-financing occurs, Respondent shall provide the bookkeeping and accounting services for the Phoenix Plaza and provide Petitioner the regular monthly reports.

D. Until Respondent is paid her equity in the Phoenix Plaza, (1) the net rental income shall be used to pay, as necessary, the operating costs of the Phoenix Plaza and the other properties as described above and (2) the parties may agree to equally distribute to themselves a portion or all of the cash from the net rental income. At the time Respondent is paid her equity in the Phoenix Plaza, each party shall be awarded one half of any cash from the net rental income.

E. Tenants of the Phoenix Plaza owe certain common area maintenance fees ("CAM Fees") for the years 2005, 2006 and 2007. Any CAM Fees collected relative to time periods prior to the time Petitioner re-finances the mortgage on the Phoenix Plaza shall be equally divided between the parties. The parties shall agree to any collection costs including attorney fees to be incurred in an attempt to collect the CAM Fees.

F. Each party shall pay one half of all costs and expenses including any prepayment penalty associated with the payoff of any existing mortgage or encumbrance or the origination of any new mortgage or encumbrance relative to the re-financing of the Phoenix Plaza debt.

17. The disposition of the parties' interest in the parking lot parcel next to the Phoenix Plaza shall occur as described below.

A. Petitioner shall be awarded the parking lot property subject to Petitioner taking the following actions.

B. At the time of and as a part of the re-financing relative to the mortgage encumbering the Phoenix Plaza, Petitioner shall pay Respondent the amount of \$105,777 which is equal to one half of the difference between (1) \$425,000 (representing the stipulated fair market value of the parking lot parcel) less (2) the unpaid principal amount of the mortgage in the amount of \$213,446 on the parking lot parcel at the time of the re-financing of the Phoenix Plaza mortgage. This amount may be adjusted as required by each party paying one half of the amount to settle or otherwise resolve the disputed claim of Keith Funk for certain asphalt services provided relative to the parking lot parcel. In the event the amount necessary to resolve the disputed claim of Keith Funk has not been determined by the time of the re-financing occurs, such amount shall not be taken into consideration and each party shall thereafter pay one half of the amount necessary to resolve the disputed claim.

18. Petitioner shall be awarded the Ford Excursion vehicle and the BMW motorcycle. Petitioner shall assume and pay the debt encumbering the Ford Excursion vehicle. There is no debt encumbering the BMW motorcycle.

19. Respondent shall be awarded the Chevrolet Avalanche and Toyota Matrix vehicles. Respondent shall assume and pay the debt encumbering the Chevrolet Avalanche vehicle. There is no debt encumbering the Toyota Matrix vehicle.

20. Petitioner shall be awarded the Cessna 210 airplane. There is no debt encumbering the airplane. On the first closing to occur of either the sale of the Sandy retail center or the refinancing of the Phoenix Plaza property, Petitioner shall pay Respondent \$22,500 from his share of the net sales proceeds in consideration of Petitioner being awarded the airplane.

21. Respondent shall be awarded the aluminum boat and motor. The interest of the parties in the sailboat shall be awarded to Matthew Larson.

22. Petitioner shall be awarded his retirement accounts in the Cardiomed Profit Sharing Plan. Petitioner represents that no contributions have been made to his account in the Cardiomed Profit Sharing Plan during the term of the marriage. Petitioner shall be awarded his IRA accounts.

23. Respondent shall be awarded her 401(k) retirement accounts. Respondent shall be awarded her IRA accounts.

24. Each party shall be awarded one half of any Utah Education Savings Plan accounts in either parties' name.

25. Any bank account maintained jointly by the parties for their personal use or used in conjunction with a real property shall be equally divided between the parties at the time the account is closed, the property is sold, or Respondent is paid out her equity in the property. Petitioner shall be awarded the Rawkin Horse bank account and the cash in Petitioner's possession.

26. Each party shall be awarded his or her individual checking and savings accounts.

27. The parties have no life insurance policy that has a cash surrender value.

28. Each party shall be awarded his or her clothing, jewelry, sporting equipment, musical instruments, and personal effects.

29. Each party shall be awarded as his or her separate property, property acquired prior to the marriage, property acquired by gift, devise or inheritance, or as a gift from the other party during the marriage

30. Petitioner shall be awarded the furniture, furnishings and other personal property located in the real properties awarded to him except as described in Exhibit A

attached, which items shall be awarded to Respondent. Respondent shall be awarded the furniture, furnishings and other personal property located in the real properties awarded to her except as described in Exhibit B attached, which items shall be awarded to Petitioner. Respondent may store her personal property at the Seven Springs residence until thirty days after the date this Agreement is signed by the parties. The parties shall clearly identify in a list the property that is being stored. Respondent may store her grand piano at the Seven Springs residence for an indefinite period of time provided that Respondent shall remove the grand piano within 60 days of demand for such from Petitioner.

31. This paragraph is intentionally deleted from this Agreement.

32. Each party shall be awarded one half of any marital property not specifically provided for in this Agreement.

33. Each party shall assume and pay one half of any marital debt or obligation not specifically provided for in this Agreement.

34. Each party shall assume and pay his or her debts and obligations incurred since the time of the separation of the parties, and indemnify and hold the other party harmless therefrom.

TAX PROVISIONS

35. In the event any income tax return of the parties filed on a married filing joint basis is audited, the parties shall be equally liable for any tax, penalty or interest assessed or shall be equally entitled to any refund. The parties shall equally pay one half of the excise sales and lodging taxes due to the State of Utah relative to the rental of the Deer Valley condominium.

36. The parties shall file federal and state income tax returns on a married filing joint basis for the year 2007. Each party shall be awarded one half of any refund or each

party shall pay one half of any taxes, penalties or interest due on the 2007 returns with the exception that the incremental taxes owed relative to retirement distributions taken by Petitioner during 2007 shall be paid solely by Petitioner from his separate funds. Each party shall be awarded one half of any alternative minimum tax credit carryforward from the 2007 federal income tax return.

37. Petitioner shall be entitled to any tax deduction relative to the Seven Springs residence accruing from January 1, 2008. Respondent shall be entitled to any tax deduction relative to the Scenic, Arizona property or the Mayan Palace timeshare accruing from January 1, 2008.

38. Each party shall report one half of any net income or net loss relative to the St. George condominium from January 1, 2008 until Respondent is paid her equity in the Phoenix Plaza property.

39. Each party shall report one half of any net income or net loss relative to the Deer Valley condominium from January 1, 2008 until Respondent is paid her equity in the Phoenix Plaza property.

40. Each party shall report one half of any net income or net loss relative to the Sandy retail center from January 1, 2008 until the time of sale. Respondent shall elect to either realize the gain on the sale of the property or enter into a § 1031 exchange transaction since Respondent has assumed the tax basis in the property by granting Petitioner a credit for his interest.

41. Each party shall report one half of any net income or net loss relative to the Phoenix Plaza property from January 1, 2008 until Respondent is paid her equity in the property.

42. Each party shall be awarded and entitled to claim one half of any quarterly installment payment made for federal or state income taxes prior to Petitioner re-financing

the mortgage on the Phoenix Plaza property and paying Respondent her equity in the property as described above.

43. Petitioner shall be liable for any income tax or penalty relative to distributions he has taken from his retirement during 2007 at the parties' highest marginal tax rate.

MISCELLANEOUS PROVISIONS

44. The parties shall execute such documents as may be necessary to transfer the property as awarded by the Court to the party entitled thereto.

45. Each party shall pay his or her attorney fees and costs individually incurred in this action.

46. Respondent may have her previous surname of Johnson restored to her if she so desires.

47. A restraining order shall be entered enjoining each party from harassing, annoying or bothering the other party or any family member of the other party.

48. Each party has made a full and fair disclosure to the other of his or her assets, financial condition and worth, and each party has had the opportunity to inspect the other's records as they relate to the subject matter hereof and is satisfied by the disclosures of the other party and knowingly and willingly waives any further disclosures.

49. The parties also represent that they have made no assignment, transfer, or distribution of any funds or property to any third party except in the course of typical and reasonable living and business expenses.

50. The parties represent that prior to the execution of this Agreement they have each reviewed and discussed its terms with their respective counsel, if deemed necessary, and that the same represents a fair and equitable distribution of the assets acquired and liabilities incurred by the parties.

51. In the event of a dispute between the parties as to the interpretation of a term of this Agreement, the parties shall mediate the issue before either party may initiate court action. Each party shall pay one half of the mediator's fee.

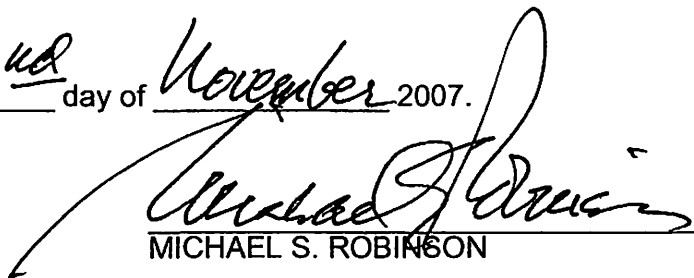
52. The file in this action shall be classified as private.

53. The prevailing party to an action for breach of a term of this Agreement shall be entitled to his or her attorneys fees and costs.

54. Each party shall use his or her best efforts to effectuate the refinancing of the existing mortgage on the Phoenix Plaza property and shall cooperate and provide necessary documentation and signatures on a timely basis.


55. Until the refinancing of the mortgage on the Phoenix Plaza property occurs, the parties shall maintain the status quo on the payment of their expenses and the receipt of funds.

DATED this 2nd day of November 2007.


MICHAEL S. ROBINSON

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 2nd day of November 2007, personally appeared before me
MICHAEL S. ROBINSON, being duly sworn under oath says that he is the signer of the
foregoing instrument.


NOTARY PUBLIC
Residing at: _____

My Commission Expires:

DATED this 2nd day of November 2007.

Debra J. Robinson
DEBRA J. ROBINSON

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 2nd day of November 2007, personally appeared before me DEBRA J. ROBINSON, being duly sworn under oath says that she is the signer of the foregoing instrument.



My Commission Expires:

Dean C. Andreasen
NOTARY PUBLIC
Residing at: _____

EXHIBIT A

ITEMS DEBRA WANTS FROM SANDY RESIDENCE

1. Tempurpedic Bed
2. ~~Marble Buddha~~ to Petitioner *APR ULR*
3. Washer & Dryer
4. Stainless Steel Barbeque
5. New Chase Lounges and Umbrella around pool
6. ~~Flat screen in bedroom~~ to Petitioner *APR ULR*
7. ~~Leather furniture~~ and Rug in downstairs family room
to Petitioner *APR ULR*
8. Treadmill
9. Purchases during travel equally divided
10. Photographs divided or copied - cost divided equally.
11. Equally divide sheet music
12. Freezer in garage

EXHIBIT B

None. *ULR APR*

Tab B

IMAGED

DEAN C. ANDREASEN (#3981)
CLYDE SNOW SESSIONS & SWENSON
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111-2216
Telephone (801) 322-2516

FILED DISTRICT COURT
Third Judicial District

DEC 31 2008

SALT LAKE COUNTY

ENTERED IN REGISTRY
OF JUDGMENTS

Deputy Clerk

Attorneys for Respondent

DATE 12/31/08

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

DECREE OF DIVORCE

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

The above-captioned matter came on regularly for consideration by the Court without hearing pursuant to Utah Code Ann. § 30-3-4. The parties entered into a Stipulation and Property Settlement Agreement (the "Agreement") to settle all issues of this action. Pursuant to the terms of the Agreement, the parties consented that a Decree of Divorce could be entered consistent with the terms of the Agreement. The Court considered the testimony of Respondent by way of affidavit as to jurisdiction and grounds for this divorce. The Court having reviewed the Agreement and other pleadings on file herein, and having entered its Findings of Fact and Conclusions of Law, does now ORDER, ADJUDGE and DECREE as follows:

DIVORCE

1. Each party is awarded a divorce from the other.

Decree of Divorce @J



JD27754402

pages: 14

074900501 ROBINSON, MICHAEL S

ALIMONY AND RELATED PROVISIONS

2. Each party irrevocably waives any claim to past, present or future alimony under any circumstance or condition.

3. Each party shall be responsible to maintain his or her own medical and dental insurance coverage and each shall be responsible for his or her own uninsured medical and dental costs.

PROPERTY AND DEBT DISTRIBUTION

4. Prior to and during their marriage, the parties acquired certain real and personal property which shall be divided between the parties as described below. Prior to and during the marriage, the parties incurred certain debts and obligations which shall be allocated between the parties as described below. The party assuming a particular debt or obligation shall indemnify and hold the other party harmless therefrom.

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Petitioner has paid Respondent for her interest in the Phoenix Plaza property as described below.

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C. Until such time as the retail center is sold, the parties may agree to equally distribute to themselves a portion or all of the cash from the net rental income. At the time the retail center is sold, each party shall be awarded one half of any cash from the net rental income.

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A. Petitioner shall be awarded the Phoenix Plaza subject to Petitioner taking the following actions.

B. Petitioner shall re-finance the mortgage encumbering the Phoenix Plaza and pay Respondent the amount of \$1,784,419 for her equity in the Phoenix Plaza property calculated as (i) one half of the difference between the stipulated fair market value of the Phoenix Plaza property (\$7.25M) less the purchase price

(\$4.5M), plus (ii) \$891,803 for the down payment paid by Respondent, plus (iii) \$12,500 for the earnest money paid by Respondent, plus (iv) one half of the mortgage pay down in the amount of \$67,616 at the time Petitioner has paid Respondent for her interest in the Phoenix Plaza property, plus (v) \$62,500 for the St. George condominium credit, less (vi) \$234,000 for the Deer Valley condominium credit, less (vii) \$391,000 for the Sandy retail center credit. If the re-financing does not occur within one hundred twenty (120) days of the date the parties signed the this Agreement, Petitioner shall pay Respondent interest at the rate of eight percent (8%) from one hundred and twenty (120) days after the parties sign this Agreement. Petitioner shall file the loan refinance application within 15 days of the date of this Agreement. Respondent shall assist Petitioner in preparing and filing the loan refinance application.

C. The parties shall jointly manage the Phoenix Plaza until the time the re-financing occurs, Respondent shall provide the bookkeeping and accounting services for the Phoenix Plaza and provide Petitioner the regular monthly reports.

D. Until Respondent is paid her equity in the Phoenix Plaza, (1) the net rental income shall be used to pay, as necessary, the operating costs of the Phoenix Plaza and the other properties as described above and (2) the parties may agree to equally distribute to themselves a portion or all of the cash from the net rental income. At the time Respondent is paid her equity in the Phoenix Plaza, each party shall be awarded one half of any cash from the net rental income.

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to any collection costs including attorney fees to be incurred in an attempt to collect the CAM Fees.

F. Each party shall pay one half of all costs and expenses including any prepayment penalty associated with the payoff of any existing mortgage or encumbrance or the origination of any new mortgage or encumbrance relative to the re-financing of the Phoenix Plaza debt.

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27. Each party shall assume and pay one half of any marital debt or obligation not specifically provided for in the Agreement.

28. Each party shall assume and pay his or her debts and obligations incurred since the time of the separation of the parties, and indemnify and hold the other party harmless therefrom.

TAX PROVISIONS

29. In the event any income tax return of the parties filed on a married filing joint basis is audited, the parties shall be equally liable for any tax, penalty or interest assessed or shall be equally entitled to any refund. The parties shall equally pay one half of the

excise sales and lodging taxes due to the State of Utah relative to the rental of the Deer Valley condominium.

30. The parties shall file federal and state income tax returns on a married filing joint basis for the year 2007. Each party shall be awarded one half of any refund or each party shall pay one half of any taxes, penalties or interest due on the 2007 returns with the exception that the incremental taxes owed relative to retirement distributions taken by Petitioner during 2007 shall be paid solely by Petitioner from his separate funds. Each party shall be awarded one half of any alternative minimum tax credit carryforward from the 2007 federal income tax return.

31. Petitioner shall be entitled to any tax deduction relative to the Seven Springs residence accruing from January 1, 2008. Respondent shall be entitled to any tax deduction relative to the Scenic, Arizona property or the Mayan Palace timeshare accruing from January 1, 2008.

32. Each party shall report one half of any net income or net loss relative to the St. George condominium from January 1, 2008 until Respondent is paid her equity in the Phoenix Plaza property.

33. Each party shall report one half of any net income or net loss relative to the Deer Valley condominium from January 1, 2008 until Respondent is paid her equity in the Phoenix Plaza property.

34. Each party shall report one half of any net income or net loss relative to the Sandy retail center from January 1, 2008 until the time of sale. Respondent shall elect to either realize the gain on the sale of the property or enter into a § 1031 exchange transaction since Respondent has assumed the tax basis in the property by granting Petitioner a credit for his interest.

35. Each party shall report one half of any net income or net loss relative to the Phoenix Plaza property from January 1, 2008 until Respondent is paid her equity in the property.

36. Each party shall be awarded and entitled to claim one half of any quarterly installment payment made for federal or state income taxes prior to Petitioner re-financing the mortgage on the Phoenix Plaza property and paying Respondent her equity in the property as described above.

37. Petitioner shall be liable for any income tax or penalty relative to distributions he has taken from his retirement during 2007 at the parties' highest marginal tax rate.

MISCELLANEOUS PROVISIONS

38. The parties shall execute such documents as may be necessary to transfer the property as awarded by the Court to the party entitled thereto.

39. Each party shall pay his or her attorney fees and costs individually incurred in this action.

40. Respondent may have her previous surname of Johnson restored to her if she so desires.

41. Each party is restrained from harassing, annoying or bothering the other party or any family member of the other party.

42. In the event of a dispute between the parties as to the interpretation of a term of the Agreement, the parties shall mediate the issue before either party may initiate court action. Each party shall pay one half of the mediator's fee.

43. The file in this action shall be classified as private.


44. The prevailing party to an action for breach of a term of the Agreement shall be entitled to his or her attorneys fees and costs.

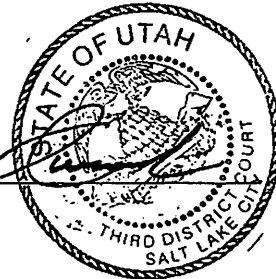
45. Each party shall use his or her best efforts to effectuate the refinancing of the existing mortgage on the Phoenix Plaza property and shall cooperate and provide necessary documentation and signatures on a timely basis.

46. Until the refinancing of the mortgage on the Phoenix Plaza property occurs, the parties shall maintain the status quo on the payment of their expenses and the receipt of funds.

DATED this 31 day of ^{Dec.}~~January~~, 2008.

BY THE COURT:


GLENN K. IWASAKI
District Court Judge



APPROVED this ____ day of
_____, 2007

JONES WALDO HOLBROOK & McDONOUGH

MELISSA M. BEAN
Attorney for Petitioner

CERTIFICATE OF SERVICE

On this 19th day of November, 2007, I hereby caused to be served on the
Petitioner a true and correct copy of the foregoing **DECREE OF DIVORCE** by having
the same delivered by U.S. mail, postage prepaid, to:

Kenneth A. Okazaki, Esq.
Melissa Bean, Esq.
Jones Waldo Holbrook & McDonough
170 South Main Street, #1500
P. O. Box 45444
Salt Lake City, Utah 84101

A handwritten signature in dark ink, appearing to read "Melissa Bean", written over a horizontal line.

EXHIBIT A

EXHIBIT A

ITEMS DEBRA WANTS FROM SANDY RESIDENCE

1. Tempurpedic Bed
2. ~~Marble Buddha~~ to Petitioner *APR ULR*
3. Washer & Dryer
4. Stainless Steel Barbeque
5. New Chase Lounges and Umbrella around pool
6. ~~Flat screen in bedroom~~ to Petitioner *APR ULR*
7. ~~Leather furniture~~ and Rug in downstairs family room
to Petitioner *APR ULR*
8. Treadmill
9. Purchases during travel equally divided
10. Photographs divided or copied - cost divided equally.
11. Equally divide sheet music
12. Freezer in garage

EXHIBIT B

None. *ULR APR*

Tab C

FILED
UTAH APPELLATE COURTS
APR 22 2010

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

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Michael S. Robinson,)	OPINION
)	(For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090082-CA
v.)	
)	F I L E D
Debra J. Robinson,)	(April 22, 2010)
)	
Respondent and Appellee.)	2010 UT App 96

FILED DISTRICT COURT
Third Judicial District

Third District, Salt Lake Department, 074900501
The Honorable Glenn K. Iwasaki

APR 23 2010

SALT LAKE COUNTY

By [Signature] Deputy Clerk

Attorneys: Stephen T. Hard, Holladay, for Appellant
Dean C. Andreasen and Sarah L. Campbell, Salt Lake
City, for Appellee

Before Judges Davis, Orme, and Voros.

DAVIS, Presiding Judge:

¶1 Petitioner Michael S. Robinson (Husband) appeals the Decree of Divorce finalizing his divorce from Respondent Debra J. Robinson (Wife). Husband argues that the district court erred, in several respects, by enforcing a stipulation between the parties. We affirm.

BACKGROUND

¶2 During Husband and Wife's marriage, they acquired many pieces of income-producing real property, including condominiums, vacant land, and strip malls. The most valuable of these pieces of property was a strip mall in southern Utah (the plaza). After Husband filed for divorce in February 2007, the parties, over the course of several months, discussed their differing views as to how they should divide the various properties in which they had an interest.

¶3 On November 2, 2007, Husband and Wife attended formal mediation, at which they were each represented by counsel. At the mediation, the parties finally resolved the property division

issues and signed a Stipulation and Property Settlement Agreement (the stipulation). The stipulation calculated Wife's share of various assets to be approximately \$1.78 million, awarded the plaza to Husband, and provided that Husband would refinance the mortgage on the plaza so as to pay Wife the \$1.78 million. The parties stipulated that the fair market value of the plaza was \$7.25 million. The stipulation also provided that Husband would file a loan application within fifteen days and that Wife would provide information necessary to assist Husband in preparing the application.

¶4 Husband not only failed to apply for a loan within the fifteen days provided for in the stipulation, but he at no time thereafter made such an application. In February 2008, Wife moved for entry of a divorce decree based on the stipulation. Husband thereafter filed motions to set aside the stipulation, arguing that his performance under the stipulation was excused because due to the parties' mistaken assumptions regarding the status of the plaza's leases, it was impossible for him to secure the contemplated loan on the plaza.

¶5 Based upon affidavits and proffered testimony, the commissioner recommended that the stipulation be enforced. The commissioner reasoned, "[I]t's clear to me that the deal was reached in a fair fashion, and it represented the parties' agreement at the time." The district court then, without complying with Husband's request for an evidentiary hearing, accepted the commissioner's recommendations and entered the decree of divorce incorporating the provisions of the stipulation.

ISSUES AND STANDARD OF REVIEW

¶6 Husband argues that his performance under the stipulation should have been excused under the contractual defenses of mutual mistake and impossibility. Whether such defenses should have afforded Husband relief under the facts as he argues them is a question of law that we review for correctness. See American Towers Owners Ass'n v. CCI Mech., Inc., 930 P.2d 1182, 1185 (Utah 1996).

¶7 Husband next argues that in order to enforce the stipulation, the district court was obliged to make a specific determination that the stipulation represented a fair and equitable division of the parties' property. Whether the district court made the necessary factual findings to support its determination is a question of law that we review for correctness. Cf. State v. Nelson, 950 P.2d 940, 942-43 (Utah Ct. App. 1997).

¶8 Husband also argues that the district court violated his due process rights when it failed to hold an evidentiary hearing before enforcing the stipulation and entering the decree of divorce. "Constitutional issues, including questions regarding due process, are questions of law that we review for correctness." Chen v. Stewart, 2004 UT 82, ¶ 25, 100 P.3d 1177.

ANALYSIS

I. Contractual Defenses

¶9 Husband argues that the district court erred in failing to grant relief under two contractual defenses. Because neither of these defenses was applicable to the facts of this case, we conclude that the district court did not err in this regard.

A. Mutual Mistake

¶10 Husband alleges that he should have been relieved from performance under the stipulation because of the contractual defense of mutual mistake.¹

"A party may rescind a contract when, at the time the contract is made, the parties make a mutual mistake about a material fact, the existence of which is a basic assumption of the contract. If the parties harbor only mistaken expectations as to the course of future events and their assumptions as to facts existing at the time of the contract are correct, rescission is not proper."

Deep Creek Ranch, LLC v. Utah State Armory Bd., 2008 UT 3, ¶ 17, 178 P.3d 886 (quoting Mooney v. GR & Assocs., 746 P.2d 1174, 1178

1. In making his argument for mutual mistake, Husband places some reliance on the case of Kendall Insurance, Inc. v. R & R Group, Inc., 2008 UT App 235, 189 P.3d 114. But the lead opinion in that case is that of only one judge because the second judge concurred only in the result--without elaboration--and the third judge dissented. Thus, the opinion relied on is not binding as precedent, as it would be had at least two judges joined the opinion. See generally State v. Thurman, 846 P.2d 1256, 1269 (Utah 1993) (quoting authority stating that "'a decision of a panel constitutes a decision of the court and carries the weight of stare decisis in a subsequent case before the same or different panel'").

(Utah Ct. App. 1987)). The mistaken assumptions to which Husband points are regarding the money that the plaza "would generate"; the vacancy rate that "would" exist; the value the plaza "would have"; that the leases "would be" sufficient to secure a new loan or else the existing tenants "would re-sign extensions"; and that Husband "would be able to" refinance the plaza. These assumptions are simply expectations as to future events--that those events would not vary significantly from the current state of events--and therefore do not support the contractual defense of mutual mistake. As to the current status of the leases and the income of the plaza--the amounts from which the plaza's value was calculated²--Husband was well aware of those figures. Indeed, the evidence Husband offers to show that the parties were mistaken as to the value of the plaza speaks only to the value of the plaza after events unfolded regarding the expiring leases. Husband sets forth no evidence that at the time the stipulation was signed the plaza was not worth the value the parties attributed to it.

¶11 Further, even had Husband, as he alleges, made a mistake in his valuation due to inadequate information, his argument would still be unavailing because "[u]nder contract law, a party may not rescind an agreement based on mutual mistake where that party bears the risk of mistake." State v. Patience, 944 P.2d 381, 387-88 (Utah Ct. App. 1997) (citing 17A Am. Jur. 2d Contracts § 215 (1991)). "A party bears the risk of a mistake when . . . he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient" Restatement (Second) of Contracts § 154 (1981); see also Klas v. Van Wagoner, 829 P.2d 135, 141 n.8 (Utah Ct. App. 1992) (applying the above rule from the restatement). Thus, if Husband did not feel that the information upon which he relied was sufficient, he should have either insisted on any information he felt he needed before he entered into the stipulation or modified the terms of the stipulation accordingly. But as the commissioner recognized, Husband took no such steps to avoid the risk associated with inadequate information:

To the extent [Husband] relied upon [Wife]'s handwritten analysis or any other verbal

2. Interestingly, although the parties agreed on a fair market value for the plaza, they did not agree as to the underlying amounts on which such a calculation is typically based. For example, although the parties knew that the property was fully occupied at the time of the stipulation, they could not agree on whether to use a vacancy rate of three percent or five percent.

representations that she made, [Husband] chose to rely upon those representations and he chose not to include any of those representations in the [stipulation], to make any reference to them whatsoever, or to include them as pre-conditions.

The commissioner determined that, instead, Husband was simply asking for the deal to be fair "in hindsight," which is not a ground for rescission, see Blackhurst v. Transamerica Ins. Co., 699 P.2d 688, 692 (Utah 1985) (stating that an appellate court "will not nullify a settlement contract because one of the parties would have acted differently if all the future outcomes had been known at the time of agreement"). Thus, the defense of mutual mistake does not provide relief under the facts of this case.

B. Impossibility

¶12 Husband also argues that his performance under the stipulation should have been excused due to the impossibility of such performance. "Under the contractual defense of impossibility, an obligation is deemed discharged if an unforeseen event occurs after formation of the contract and without fault of the obligated party, which event makes performance of the obligation impossible or highly impracticable." Western Props. v. Southern Utah Aviation, Inc., 776 P.2d 656, 658 (Utah Ct. App. 1989) (emphases added) (footnote omitted); see also Restatement (Second) of Contracts § 266(1) (1981) ("Where, at the time a contract is made, a party's performance under it is impracticable without his fault because of a fact of which he has no reason to know and the non-existence of which is a basic assumption on which the contract is made, no duty to render that performance arises, unless the language or circumstances indicate the contrary." (emphasis added)). This defense is wholly inapplicable here because Husband alleges no unforeseen event occurring after the stipulation was signed in November 2007 that altered the possibility of performance. See generally Western Props., 776 P.2d at 658 n.3 ("The requirement that the event occur after formation of the contract distinguishes a case of supervening impossibility . . . from a case in which the contract cannot be performed because of a mistake, an unknown legal requirement, or other fact in existence at the time the contract is made."). Instead, Husband argues in his brief that at no point could he have obtained a loan "given the state of the leases in November 2007, January 2008, or

anytime thereafter."³ Thus, without any later-occurring event rendering performance impossible or highly impracticable, Husband's argument of impossibility is unavailing and the district court did not err in failing to address the issue.⁴

II. Fair and Equitable Division of Property

¶13 Husband next argues that the district court erred in failing to make a determination that the division of assets contained in the stipulation was fair and reasonable. But the district court did discuss whether the division of the properties was equitable:

The Court finds that the parties represent that prior to the execution of the [stipulation] they have each reviewed and discussed its terms with their respective counsel, if deemed necessary, and that the same represents a fair and equitable distribution of the assets acquired and liabilities incurred by the parties.

We do, however, recognize that this finding is somewhat ambiguous in that it could have been relating that the parties determined

3. Husband argues that his ineligibility for a loan based on the status of the leases was an unforeseen future event. However, when Husband entered the stipulation, he was well aware of the current status of the leases and could have checked to see if such would be adequate to support the contemplated loan. This ineligibility therefore fails as an unforeseen future event. Likewise, the future expectations advanced under Husband's mutual mistake argument do not support his impossibility claim because they are not future events that made performance impossible. Husband admits that the alleged impossibility of performance existed even when the stipulation was signed. Furthermore, as a general rule, stability in market events and financial ability are not basic assumptions of contracts. See Restatement (Second) of Contracts § 261 cmt. b (1981) ("The continuation of existing market conditions and of the financial situation of the parties are ordinarily not such [basic] assumptions, so that mere market shifts or financial inability do not usually effect discharge under the rule [regarding impracticability]").

4. We further note that Husband's ability to provide evidence that performance was impossible or highly impracticable is severely limited where he never actually applied for a loan as contemplated, let alone having done so in the time frame set forth by the stipulation.

the division to be equitable, as opposed to the district court having made such a determination.⁵ Nonetheless, we are unconvinced that further findings are necessary in this case. Husband correctly asserts that a stipulation dividing property between divorcing parties should be adopted only "if the court believes it to be fair and reasonable," Klein v. Klein, 544 P.2d 472, 476 (Utah 1975). But Husband provides no authority for his resulting assertion that a district court may not enforce a stipulation unless the district court makes a formal finding that it is fair and reasonable. And the presumption seems to be the exact opposite, that is, that a stipulation will ordinarily be enforced "unless the court finds it to be unfair or unreasonable," Colman v. Colman, 743 P.2d 782, 789 (Utah Ct. App. 1987) (emphases added). Thus, from the district court's decision to enforce the stipulation, we assume--and have no findings that would indicate otherwise--that the court determined that the property division was equitable. And based on the facts of this case, in particular the sophistication of the parties and the fact that they each had the opportunity to consult with counsel and other advisors before entering the stipulation, we cannot say that the court's admittedly cursory finding exceeds the limits of reasonableness.

III. Failure to Hold an Evidentiary Hearing

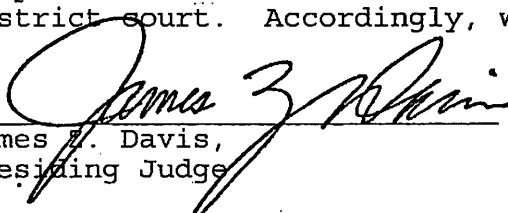
¶14 Despite Husband's request for an evidentiary hearing, the district court accepted the commissioner's recommendation and entered the decree of divorce without holding an evidentiary hearing. Husband argues that this denied him due process. We disagree. Importantly, Husband argues that we may reach his first issue on appeal because there are no disputed facts determinative of whether the contractual defenses apply. We agree and determine that for this same reason, no evidentiary hearing was required. Although factual disputes ordinarily require a complete evidentiary hearing, there is simply no need for such a hearing when, as here, all factual disputes are

5. However, according to comments made at oral argument, both parties apparently considered this finding to express the determination, albeit a conclusory one, by the district court that the stipulation was fair and equitable. Yet Husband neither marshals the evidence to adequately challenge this finding nor cites to any authority providing that more detailed findings are required to explain why the stipulation was fair and reasonable. See generally Chen v. Stewart, 2004 UT 82, ¶¶ 76-80, 100 P.3d 1177 (explaining the marshaling requirement); Smith v. Smith, 1999 UT App 370, ¶ 8, 995 P.2d 14 (discussing briefing requirements).

immaterial to the district court's decision. See Beltran v. Allan, 926 P.2d 892, 898 (Utah Ct. App. 1996) ("There is no dispute to these facts, and an evidentiary hearing would be of no benefit."); Liska v. Liska, 902 P.2d 644, 650 (Utah Ct. App. 1995) ("We have already determined the commissioner's recommendation was appropriate . . . because the undisputed facts overwhelmingly demonstrate [such]. Accordingly, any error made by the district court in failing to conduct an evidentiary hearing to determine the appropriateness of the commissioner's recommendation is likewise harmless."). Regardless of the disputed issues--who had the financial records of the plaza, who was responsible for signing leases, whether Husband had sufficient information from Wife to file a loan application, and what representations Wife made as to the financial situation of the plaza--Husband was not, as we have explained above, entitled to relief under the contractual defenses asserted. Therefore, the district court did not err in declining to hold an evidentiary hearing before enforcing the stipulation and entering the decree of divorce.

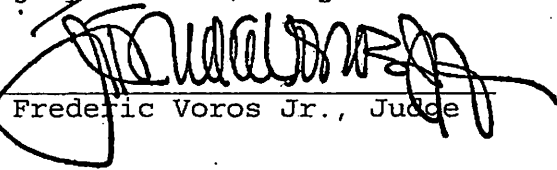
CONCLUSION

¶15 We determine that the contractual defenses of mutual mistake and impossibility are inapplicable under the facts of this case. We also determine that the district court did not err in accepting the stipulation without making further findings that the stipulation was fair and equitable. Finally, we are convinced that Husband's due process rights were not violated due to the absence of an evidentiary hearing because there were no disputed factual issues material to the question before the district court. Accordingly, we affirm.


James E. Davis,
Presiding Judge

¶16 WE CONCUR:


Gregory K. Orme, Judge


J. Frederic Voros Jr., Judge

CERTIFICATE OF MAILING


I hereby certify that on the 22nd day of April, 2010, a true and correct copy of the attached DECISION was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

DEAN C. ANDREASEN
SARAH L CAMPBELL
CLYDE SNOW & SESSIONS
201 S MAIN ST 13TH FLR
SALT LAKE CITY UT 84111-2216

STEPHEN T HARD
ATTORNEY AT LAW
4141 S HIGHLAND DR STE 220
HOLLADAY UT 84124

HONORABLE GLENN K. IWASAKI
THIRD DISTRICT, SALT LAKE
450 S STATE ST BX 1860
PO BOX 1860
SALT LAKE CITY UT 84114-1860

THIRD DISTRICT, SALT LAKE
ATTN: MARINA DAVIS & SUSAN NORBY
450 S STATE ST BX 1860
PO BOX 1860
SALT LAKE CITY UT 84114-1860


Judicial Secretary

TRIAL COURT: THIRD DISTRICT, SALT LAKE, 074900501
APPEALS CASE NO.: 20090082-CA

Tab D

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SARAH L. CAMPBELL (#12052)
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FILED DISTRICT COURT
Third Judicial District

FEB 25 2011

SALT LAKE COUNTY
By [Signature] Deputy Clerk

Attorneys for Respondent

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

JUDGMENT AND ORDER

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

On January 13, 2011, the Order to Show Cause of Respondent Debra J. Robinson came on regularly for hearing before Commissioner Michael S. Evans. Petitioner was present and represented by Steven Kuhnhausen. Respondent was present and represented by Dean C. Andreasen and Sarah L. Campbell. Counsel informed the Court that the parties had entered into a partial stipulation to resolve certain issues of the action. The stipulation was read into the record, acknowledged by the parties, and accepted by the Court. With respect to the disputed issues, the Court considered the papers and affidavits filed by the parties, and also the arguments and proffers of counsel. Based thereon, the Court made findings and recommendations as

described in the unofficial transcript of the ruling of the Court, attached hereto as Exhibit A. Based on those findings and recommendations, it is hereby ordered, adjudged and decreed as follows:

1. Respondent's Motion to Strike the affidavits of John Gottschall and Eric Wadley is hereby granted.

2. Respondent shall manage the Phoenix Plaza and Sandy Retail Center, and she shall continue to manage the Deer Valley condo. She shall be the one to interact directly with the tenants, secure the deposits and rents, and deposit all funds from those rental properties into the parties' joint account. From the joint account, Respondent shall pay the expenses for the Phoenix Plaza, the Sandy Retail Center, the St. George home, and the Deer Valley condo. No other expenses shall be paid from the parties' joint account, and Respondent shall provide a monthly accounting to Petitioner.

3. The parties shall immediately list the Phoenix Plaza property for sale with a mutually acceptable agent at a price of \$3,000,000. If and when the Phoenix Plaza is sold, the sales proceeds shall be placed in an escrow account.

4. The Sandy Retail Center shall be listed for sale. Michael Carroll is appointed as listing agent for the Sandy Retail Center and has authority to determine the initial listing price. Any reductions in the listing price shall be agreed to by the parties. In making a decision to reduce the listing price, each party may submit to Mr. Carroll up to two expert opinions as to the property's value.

5. Judgment is entered against Petitioner in favor of Respondent in the amount of \$438,924.43 representing interest at a rate of eight percent (8%) per annum

on the amounts owed under the Decree of Divorce (§ 11(B): \$1,784,419.00; § 12(B): \$105,777; § 15: \$22,500) from March 2, 2008 (120 days after the parties signed the Agreement) to January 13, 2011.

6. The Court finds there has been a prima facie showing of Petitioner's failure to comply with and breach of the terms of the Decree of Divorce.

7. The Court finds Petitioner never filed an application to refinance.

8. The issue of Petitioner's contempt is certified for evidentiary hearing regarding his failure to comply with the terms of the parties' Decree of Divorce.

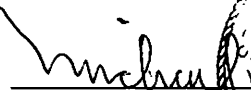
9. The issue of attorney fees and costs being awarded to Respondent in connection with this Order to Show Cause hearing is certified for evidentiary hearing and shall be considered at the hearing on the issue of Petitioner's contempt.

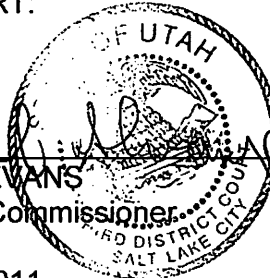
10. The Court finds the language of the Decree of Divorce does not trigger the award of a judgment for the principal amounts involved, which principal amounts are due and owing upon the refinance of the property or perhaps as a sanction following a finding of contempt.

11. Petitioner's motion to require mediation is not required and, therefore, not ordered.

DATED this 24 day of February 2011.

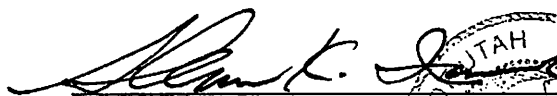
BY THE COURT:

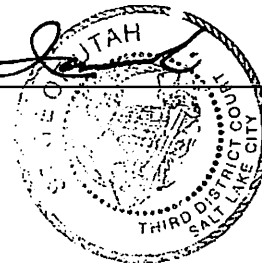

MICHAEL S. EVANS
District Court Commissioner




DATED this 25 day of Feb. 2011.

BY THE COURT:


GLENN K. IWASAKI
District Court Judge



APPROVED this 31 day of
January 2011


STEVEN KUHNHAUSEN
Attorney for Petitioner

CERTIFICATE OF SERVICE

On this 28th day of January 2011, I hereby caused to be served on the
Petitioner a true and correct copy of the foregoing **JUDGMENT AND ORDER** by having
the same hand delivered to:

Steven Kuhnhausen, Esq.
10 West 300 South, #603
Salt Lake City, UT 84101

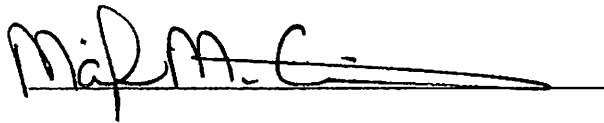


EXHIBIT A

DEAN C. ANDREASEN (#3981)
SARAH L. CAMPBELL (#12052)
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slc@clydesnow.com

Attorneys for Respondent

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

(UNOFFICIAL) PARTIAL TRANSCRIPT
OF RULING PORTION OF HEARING –
JANUARY 13, 2010

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

CE: Commissioner Michael S. Evans

SK: Steven Kuhnhausen, Attorney for Petitioner

DCA: Dean C. Andreasen, Attorney for Respondent

DR: Debra Robinson

MR: Michael Robinson

CE: I'll receive and approve the agreement of the parties as has been stated on the record. In regard to the issue of contempt, I will recommend the same be certified for further hearing. It appears to me as though, there's been, in fact, there's no dispute that a prima facia showing of failure to comply with the Decree

of Divorce has occurred. The Decree provides specifically, and you've read it a lot, counsel, but one very specific direction to Mr. Robinson was the "shall file the loan refinance application within 15 days of the date of this Agreement." Mr. Robinson doesn't say he couldn't file the loan refinance application, that it was impossible for him to do that. He says he was dissuaded and that's insufficient. And because he didn't take the first step, of course, the other steps resulting in the refinance have never occurred. So again, I will recommend the issue of contempt be certified. However, given the language of the Decree, I can't find that that would trigger the award of a judgment for the principal amount involved. I will recommend that a judgment for the 8% interest be awarded as that is separate and apart and there's no dispute that that portion of the Decree has been triggered. I'll recommend that the request for fees in connection with this hearing be certified and considered by the Court at the hearing on the issue of contempt. I have reviewed again, in cursory fashion today, the Court of Appeals decision, no mention is made of attorneys' fees there, and it's my understanding that it's appropriate to request an award of fees of the Court before whom you are appearing, so I'll recommend, well, I'll not rule one way or the other, but I'll not award attorneys fees that were incurred on appeal. I'm certainly not certain where that stands, but I'll not recommend any be awarded at this time. I believe I've addressed all the issues. Have I missed anything counsel?

SK: No, I think you're done. Oh, my countermotion to go to mediation on those unclear paragraphs.

CE: I can't find there's, the language is, if a term needs to be interpreted they go to mediation, I can't find there are any unclear terms that would require mediation, not that mediation would be a bad idea to talk about what you do now that everything that was contemplated three years ago is no longer in place, as if selling the home, but I'm not going to require it.

SK: Okay.

DCA: What about payments of amounts coming out as distributions from the rental proceeds, the net rental proceeds after payment of expenses.

CE: That was left within the discretion of the parties, was it not?

SK: Yes.

CE: In the Decree? Well, I've awarded a Judgment for the interest amount and I trust that you'll provide the formula you arrive at to Mr. Kuhnhausen that you apply in arriving at the grand total of the interest accrued from the date of the triggering event to today is my recommendation of, it would appear those proceeds would be available for execution if you can't reach some other agreement.

DCA: May I ask a clarification, then, of the distinction, I'm assuming the Court's going to have me draft the Order, the distinction between no judgment being entered against Mr. Robinson for the principal amounts owing, as compared to the interest. What is the distinction?

CE: The principal amount is due and owing upon the refinance of the property. The interest is due and owing upon the lack of refinance of the property. So, the 8% is a fixed amount. The other amounts aren't due until the refinance occurs or perhaps as a sanction following a finding of contempt.

DCA: And the Court's findings that he has never filed an application to refinance?

CE: That was my finding, yes.

DCA: Thank you.

SK: Thanks again for accommodating my schedule.

CE: Thank you. I appreciate counsel, your cooperating together to allow this hearing to proceed. And I will ask Mr. Andreasen, you prepare the Order. Thank you counsel. Thank you folks. Good luck.

Tab E

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SARAH L. CAMPBELL (#12052)
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slc@clydesnow.com

FILED DISTRICT COURT
Third Judicial District

JUN 22 2011
SALT LAKE COUNTY
By [Signature] Deputy Clerk

Attorneys for Respondent

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

ORDER

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

On June 21, 2011, the (i) Motion for Stay of Proceedings to Enforce the Judgment, (ii) Motion for Order, and (iii) Motion to Strike Respondent's Verified Motion for Sale of Phoenix Plaza filed by Petitioner Michael S. Robinson ("Petitioner") and the (a) Verified Motion to Enforce Sale of Sandy Retail Center and (b) Verified Motion to Enforce Sale of Phoenix Plaza filed by Respondent Debra J. Robinson ("Respondent") came on regularly for hearing before Commissioner Michael S. Evans. Petitioner was present and represented by Steven Kuhnhausen. Respondent was present and represented by Dean C. Andreasen and Sarah L. Campbell. The Court considered the

papers filed by the parties and the arguments and proffers of counsel. Based thereon, it is hereby ordered, adjudged and decreed as follows:

1. Petitioner's Motion for Stay of Proceedings to Enforce the Judgment is denied.

2. Petitioner's Motion to Strike Respondent's Verified Motion for Sale of Phoenix Plaza is denied

3. Respondent's Verified Motion to Enforce Sale of Sandy Retail Center is granted.

4. Respondent's Verified Motion to Enforce Sale of Phoenix Plaza is granted.

Sandy Retail Center

5. Pursuant to Rule 70 of the URCP, Petitioner is divested of all title in the Sandy Retail Center (sometimes also referred to as the "Sandy Plaza" or "Demi Plaza") located in Salt Lake County, State of Utah at 7760 South 700 East, Sandy, Utah 84047 and more particularly described as follows:

Commencing at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Meridian, thence North 183 feet, thence West 183 feet; thence South 183 feet, thence East 183 feet to the place of beginning.

Less and excepting the following described parcel conveyed to Sandy City by that certain Special Warranty Deed recorded November 16, 1989 as Entry No. 4848748 in Book 6176 at Page 1435 of Official Records:

Beginning at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°02'05" East 183.0 feet, along the section line thence North 89°53'10" West 53.0 feet; thence South 0°02'05" West 117.0 feet; thence South 45°04'31" West 36.74 feet; thence North 89°53'10" West 104.0 feet; thence South 0°02'05" West 40 feet; thence South 89°53'10" East 183.0 feet to the point of beginning.

Tax Parcel ID NO: 22-30-478-008-0000

6. Respondent is vested with complete title in the Sandy Retail Center (described above), clear and free of any title of Petitioner. Respondent may sign all documents necessary to list the Sandy Retail Center for sale and to close the sale of it. This Order divesting Petitioner of title is solely for the purpose of facilitating the listing and sale of the Sandy Retail Center and does not affect the term of any previous order of the Court.

7. If Respondent receives an offer to purchase the Sandy Retail Center, Respondent shall provide Petitioner a copy of all documents relative to the sale and an accounting of the sales proceeds.

Phoenix Plaza

8. Petitioner is ordered to execute addendum No. 3, attached hereto as Exhibit A, of the Real Estate Purchase Contract for the Phoenix Plaza by June 21, 2011.

9. The Court finds there are no substantial changes between addendum no. 3 and addendum no. 2, which is Petitioner's counteroffer related to sale of the Phoenix Plaza.

Other Provisions

10. Should Petitioner fail to execute addendum No. 3, the court clerk is authorized and ordered to do so before noon on June 22, 2011, and such signature shall have the same effect as if Petitioner had personally signed the document.

11. Respondent's request for attorney's fees in connection with the motions heard today is certified for evidentiary hearing and shall be considered at the hearing on

the issue of Petitioner's contempt, currently scheduled for July 21, 2011.

12. Petitioner's request for attorney's fees related to his Motion to Strike Respondent's Verified Motion for Sale of Phoenix Plaza is denied because he was not damaged by the motion failing to be verified.

13. Relative to Petitioner's Motion for Order, Respondent's contempt in not providing a full accounting to Petitioner is certified for evidentiary hearing because there is a prima facie case that she has not provided a full accounting.

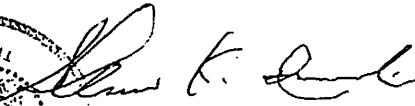
DATED this 22 day of June 2011.


BY THE COURT:


MICHAEL S. EVANS
District Court Commissioner

DATED this 22 day of June 2011.

BY THE COURT:


GLENN K. IWASAKI
District Court Judge



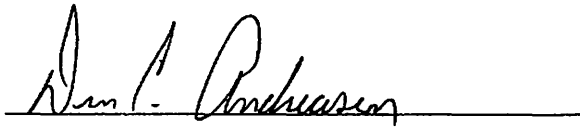
APPROVED this 22 day of
June 2011


STEVEN KUHNHAUSEN
Attorney for Petitioner

CERTIFICATE OF SERVICE

On this 22nd day of June 2011, I hereby caused to be served on the Petitioner a true and correct copy of the foregoing **ORDER** by having the same hand delivered to:

Steven Kuhnhausen, Esq.
10 West 300 South, #603
Salt Lake City, UT 84101

A handwritten signature in cursive script, appearing to read "Alan C. Anderson", is written over a horizontal line.

Tab F

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dca@clydesnow.com
slc@clydesnow.com

Attorneys for Respondent

FILED DISTRICT COURT
Third Judicial District

MAR 01 2012

SALT LAKE COUNTY

By _____ Deputy Clerk



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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

FINDINGS, ORDER, AND JUDGMENT

Civil No. 074900501

Judge Glenn K. Iwasaki

Comm. Michael S. Evans

On July 26, 2011, the Court conducted an evidentiary hearing on (i) the certification of Petitioner's contempt under the Order entered March 1, 2011; (ii) the certification of Respondent's contempt under the Order entered June 22, 2011; and (iii) the certification of Respondent's attorney fees incurred as a result of her motions to enforce the Decree of Divorce and subsequent orders. Petitioner was present and represented by Steven Kuhnhausen. Respondent was present and represented by Dean C. Andreasen and Sarah L. Campbell. The Court considered the papers filed by the parties, the arguments and proffers of counsel, and the stipulation of the parties as

to certain issues. Based thereon, the Court made the following findings as more completely described in the transcript of the Court's ruling, attached hereto as Exhibit A:

Motion in Limine

1. Petitioner has not established Mr. Wadley as an expert such that he can offer an opinion about facts to which he does not have personal knowledge.
2. Mr. Wadley has no personal knowledge of the matters before this Court. In fact, any information upon which he could base his testimony he received from Petitioner, who is Mr. Wadley's father-in-law.
3. While Petitioner's counsel has indicated that Mr. Wadley will not be testifying as an expert, it seems that the proffer centers on expert opinion and expert testimony.
4. If Petitioner is not calling Mr. Wadley as an expert and he is a lay witness, then Mr. Wadley's proffered testimony lacks foundation and is irrelevant because he was not involved with or present during any of the communications between the parties during the relevant timeframes.
5. Accordingly, it is proper that Respondent's motion in limine be granted.

Motion to Dismiss Contempt Proceedings

6. The crux of Petitioner's Motion to Dismiss is what more can be done to Petitioner and why doesn't Petitioner have an opportunity to purge his contempt.
7. There is a dual component as to contempt proceedings. Petitioner has an opportunity to purge his contempt if he complies with the Court's direction and order, and there is also the viable component of punishment for failure to comply.

8. The claims in Petitioner's Motion to Dismiss are not well taken because he has no applicable defenses to his contempt and he persists in disobeying Court orders.

9. The defenses of impossibility and mutual mistake were both completely addressed in the Court of Appeals opinion, and the Petitioner is precluded from arguing defenses.

10. There is claim preclusion as to Petitioner's allegations of fraud against Respondent. This issue was raised in every motion and memorandum filed by Petitioner after November 2, 2007. That issue was not taken up on appeal although Petitioner had an opportunity to raise the issue on appeal. *It therefore is not a defense to*

11. Accordingly, Petitioner is precluded from arguing impossibility, mutual mistake, or fraud *as a defense to the contempt charge.*

Petitioner's Contempt

12. Petitioner is held to be in contempt for the following reasons.

13. The Decree awards the Phoenix Plaza to Petitioner and also requires that he refinance the mortgage encumbering the Phoenix Plaza and pay Respondent \$1,784,419. Specifically, Petitioner was required to file an application to refinance the Phoenix Plaza mortgage within fifteen (15) days from the parties' signing of the Stipulation. Decree ¶ 11(B).

14. The Decree also requires Petitioner to pay Respondent the following amounts to accomplish an equitable division of the marital estate:

- a. Paragraph 12(B) of the Decree requires Petitioner to pay Respondent the sum of \$105,777;

b. Paragraph 15 of the Decree requires Petitioner to pay Respondent the sum of \$22,500.

c. Accordingly, a total of \$1,912,696 was to be paid to Respondent.

15. Petitioner knew and clearly understood he had an obligation to refinance the Phoenix Plaza mortgage.

16. Petitioner failed to apply for a loan to refinance the Phoenix Plaza mortgage within the time agreed and has made no application at any time thereafter.

17. Petitioner has still not submitted a mortgage refinance application relative to the Phoenix Plaza, which has now become the subject of a sale pursuant to a stipulation of the parties incorporated into the Order entered March 1, 2011.

18. Petitioner has not made a single payment to Respondent to satisfy his obligations to her under the Decree.

19. Petitioner has had some ability to pay Respondent property settlement from the sale of other property and insurance proceeds.

Respondent's Contempt

20. Respondent is not in contempt for failing to provide the accounting based upon the totality of the circumstances as well as providing the accounting in June of 2011 and July of 2011, with no objections by Petitioner at this time.

21. Under the terms of the Decree, Respondent is responsible to "provide the bookkeeping and accounting services" and "provide Petitioner the regular monthly reports" for the Sandy Retail Center and the Phoenix Plaza. Decree ¶¶ 10(B), 11(C).

22. Pursuant to ¶ 2 of the Judgment and Order, which transferred management of the parties' commercial properties to Respondent, Respondent is also

{00225576-1}

to provide a monthly accounting for the Phoenix Plaza and the Sandy Retail Center to Petitioner.

23. On June 13, 2011, Respondent provided Petitioner with an accounting for the Sandy Retail Center and the Phoenix Plaza that is complete except for the year 2010 and the months of January and February 2011, during which time Petitioner was still managing the properties.

24. Respondent was unable to complete the accounting for the year 2010 and January and February of 2011, ~~because Petitioner refused and continues to refuse to provide necessary information including rental deposits for the relevant periods.~~

Respondent's Attorney Fees

25. There is both a statutory basis and a contractual basis for awarding Respondent her attorney fees and costs incurred in enforcing certain provisions of the Decree.

26. The parties' Decree provides that "[t]he prevailing party to an action for breach of a term of the Agreement shall be entitled to his or her attorneys fees and costs." Decree ¶ 44.

27. Respondent has had to seek enforcement of the Decree.

28. Respondent is entitled to her attorney fees, the specific amount which will be subject to proof by affidavit and a response and reply.

Based on these findings and the stipulation of the parties, it is hereby ordered, adjudged and decreed as follows:

1. Respondent's Motion in Limine to Exclude Testimony of Eric Wadley is granted.

{00225576-1 }

TMS

No showing was made at the July 26, 2011

hearing that Respondent is in contempt

for having failed to do so.

TMS

2. Petitioner's Motion to Dismiss Contempt Proceeding is denied.
3. Judgment is entered against Petitioner and in favor of Respondent in the amount of 1,912,696.00, representing the amounts owed under the Decree of Divorce (¶ 11(B): \$1,784,419.00; ¶ 12(B): \$105,777; ¶ 15: \$22,500).
4. Judgment is entered against Petitioner in favor of Respondent in the amount of \$81,748.10 representing interest at a rate of eight percent (8%) per annum on the amounts owed under the Decree of Divorce from January 13, 2011 to July 26, 2011.
5. Petitioner is in contempt.
6. Respondent is not in contempt.
7. Petitioner is sentenced to thirty days in the Salt Lake County jail, which sentence is suspended at the present time.
8. Respondent is awarded her attorney fees, the specific amount which will be subject to proof by affidavit and a response and reply.
9. Based upon the positions taken by counsel and the Court's suggestion, Respondent is not precluded from exercising collection means to satisfy her judgments. However, collection actions will be stayed (limited forbearance) relative to the Phoenix Plaza for a period of 60 days from the Court's ruling at the evidentiary hearing on July 26, 2011.
10. The parties shall meet and confer to determine the least expensive approach and most effective means to resolve account reconciliation issues.

11. Petitioner is restrained from contacting people associated with the closing of the sale of the Phoenix Plaza—including brokers, agents, buyers, and closing agents—other than as he is requested to provide documents or information.

12. For at least sixty days, Petitioner is restrained from selling, transferring, conveying, gifting, secreting, or otherwise disposing of any personal or real property.

13. Each party is restrained from making disparaging comments about the other party.

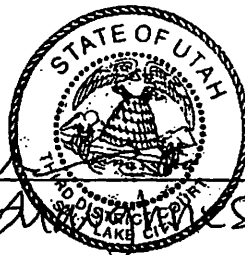
14. Petitioner shall sign deeds to the Scenic Arizona property and the Park City condo conveying complete title to Respondent within ten days of the deeds being presented to him.

DATED this 18th day of MARCH 2011.

BY THE COURT:



GLENN K. IWASAKI
District Court Judge



APPROVED this _____ day of
August 2011

STEVEN KUHNHAUSEN
Attorney for Petitioner

CERTIFICATE OF SERVICE

On this 22nd day of August 2011, I hereby caused to be served on the Petitioner
a true and correct copy of the foregoing **FINDINGS, ORDER, AND JUDGMENT** by
having the same mailed via first class U.S. mail, postage prepaid, to:

Steven Kuhnhausen, Esq.
10 West 300 South, #603
Salt Lake City, UT 84101

Michael C.

Tab G

1-19
DEAN C. ANDREASEN (#3981)
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Fax (801) 521-6280
dca@clydesnow.com
slc@clydesnow.com

Attorneys for Respondent

FILED DISTRICT COURT
Third Judicial District

JAN 24 2012

SALT LAKE COUNTY

By _____
Deputy Clerk

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

ORDER

Civil No. 074900501

Judge Todd M. Shaughnessy

Comm. Michael S. Evans

On December 20, 2011, seven of the fourteen pending motions came on regularly for hearing before Commissioner Michael S. Evans. The motions considered were the (A) Motion to Terminate 8% Interest as Per Paragraph 11 in the Divorce Decree filed by Petitioner Michael S. Robinson ("Petitioner") and the (B) Motion for Order to Compel Compliance of Bank of the West; (C) Motion for an Order to Compel Petitioner to Sign Seller Disclosures Related to the Phoenix Plaza and for a Permanent Restraining Order; (D) Motion for Approval of Reduced Listing Price for Sandy Retail Center; (E) Objection and Motion to Quash Subpoena Duces Tecum; (F) Motion for Issuance of Bench Warrant Against Carol Busche; and (G) Motion to Approve and

Enforce Substitute Offer to Purchase Phoenix Plaza filed by Respondent Debra J. Robinson ("Respondent"). Petitioner was present and represented by Steven Kuhnhausen. Respondent was present and represented by Dean C. Andreasen and Sarah L. Campbell. Carol Busche was present and represented by Budge W. Call. Cardiomed Incorporated Profit Sharing Plan was represented by Scott A. Hagen.

Counsel informed the Court that the parties had entered into a stipulation to resolve two of the pending motions. The stipulations were read into the record, acknowledged by the parties, and approved by the Court. With respect to the disputed issues, the Court considered the motions, the papers and affidavits filed in support and opposition, and the arguments and proffers of counsel. Based thereon, the Court hereby finds, orders, adjudges, and decrees as follows:

(A). Petitioner's Motion to Terminate 8% Interest

1. Petitioner's Motion to Terminate 8% Interest as Per Paragraph 11 in the Divorce Decree is denied.

2. There is no statutory or contractual basis for awarding Petitioner his attorney's fees and this request is denied.

(B). Respondent's Motion to Compel Bank of the West

3. The Objection of the Cardiomed Incorporated Profit Sharing Plan to Subpoena Duces Tecum is overruled.

4. Respondent's Motion for Order to Compel Compliance of Bank of the West is granted.

5. Bank of the West is ordered to respond to the Subpoena Duces Tecum dated May 16, 2011, served on it relating to the accounts of Michael S. Robinson and the Cardiomed Incorporated Profit Sharing Plan.

(C/D). Petitioner's Motions as to Seller Disclosures and Substitute Offer on Phoenix Plaza

6. Respondent's Motion to Approve and Enforce Substitute Offer to Purchase Phoenix Plaza is granted.

7. The new offer has been made at the same price and under the same terms as the prior offer.

8. Petitioner is the owner of the Phoenix Plaza and the only person subject to IRS form 1099 reporting pursuant to paragraph 11 of the Decree.

9. The Phoenix Plaza shall be sold free and clear of any interest of the parties.

10. Petitioner is ordered to sign all documents necessary to close sale of the Phoenix Plaza including, but not limited to, the Real Estate Purchase Contract, counteroffers (addendums), deeds, seller disclosures, affidavits and/or indemnities, and other closing documents.

11. In the event Petitioner fails to sign a document necessary to close the sale of the Phoenix Plaza within twenty-four hours of the document being presented to him, the court clerk is authorized and ordered to sign the relevant document on Petitioner's behalf, and such signature shall have the same effect as if Petitioner had personally signed the document.

12. In the event Petitioner fails to sign a document necessary to close the sale of the Phoenix Plaza, Respondent is authorized and may sign the relevant document on Petitioner's behalf, so long as the document does not place Respondent in the chain of title.

13. The closing agent shall deem and treat all seller proceeds from the sale of the Phoenix Plaza including, but not limited to, seller proceeds, rents, and rent deposits, as if they were payable to Petitioner but such funds shall not be disbursed to Petitioner but shall be disbursed to Respondent in partial satisfaction of the judgments which Respondent has against Petitioner.

14. Respondent shall provide Petitioner a copy of all documents relative to the sale of the Phoenix Plaza and an accounting of the sales proceeds.

15. Respondent's request for attorney's fees and costs is certified for evidentiary hearing.

16. Petitioner's contempt for non-compliance with the terms of the Decree of Divorce is certified for evidentiary hearing.

17. The sixty-day restraining order imposed on Petitioner by the Court at the hearing on July 26, 2011, is hereby made permanent for the duration of this action.

(E). Reduced Listing Price of Sandy Retail Center

18. Respondent's Motion for Approval of Reduced Listing Price for Sandy Retail Center is granted.

19. The Sandy Retail Center may be listed at \$599,000, as recommended by Mike Carroll.

(F). Respondent's Objection and Motion to Quash

20. If Petitioner decides to re-issue any subpoenas, he will give Respondent the proper notice required by the Rules of Civil Procedure and serve them on her.

21. Additionally, Petitioner will immediately give Respondent copies of all documents received in response to the subpoenas duces tecum previously issued and served in connection with this case.

(G). Motion for Issuance of Bench Warrant Against Carol Busche

22. Budge Call has entered an appearance on behalf of Carol Busche and will accept service of a Subpoena to Appear at Deposition.

23. The deposition of Carol Busche will be scheduled for a mutually convenient date in January 2012.

Additional Motions

24. The other motions that remain pending before the Court will be heard on January 6, 2012 at 10:00 a.m.


DATED this 23 day of January 2012.

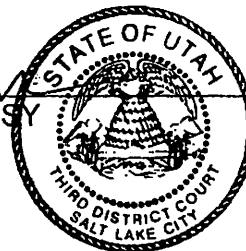
BY THE COURT:


MICHAEL S. EVANS
District Court Commissioner

IT IS SO ORDERED this 23 day of JAN 2012.

BY THE COURT:

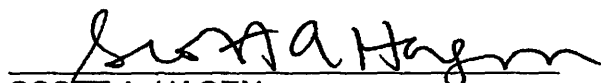

TODD M. SHAUGHNESSY
District Court Judge



APPROVED as to form this
_____ day of January 2012

STEVEN KUHNHAUSEN
Attorney for Petitioner

APPROVED as to form this
13th day of January 2012


SCOTT A. HAGEN
Attorney for Cardiomed Incorporated Profit Sharing Plan

APPROVED as to form this
_____ day of January 2012

BUDGE W. CALL
Attorney for Carol Busche

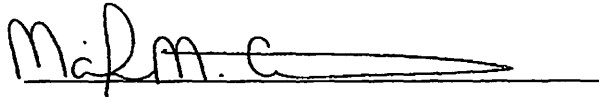
CERTIFICATE OF SERVICE

On this 5th day of January 2012, I hereby caused to be served on the
Petitioner a true and correct copy of the foregoing **ORDER** by having the same hand
delivered to:

Steven Kuhnhausen, Esq.
10 West 300 South, #603
Salt Lake City, UT 84101

Budge W. Call, Esq.
Bond & Call
8 East Broadway, #720
Salt Lake City, UT 84111

Scott A. Hagen, Esq.
Ray Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, UT 84111



Tab H



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SARAH L. CAMPBELL (#12052)
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slc@clydesnow.com

Attorneys for Respondent

FILED DISTRICT COURT
Third Judicial District

FEB 03 2012

By SALT LAKE COUNTY
Deputy Clerk

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

FINDINGS AND ORDER

Civil No. 074900501

Judge Todd M. Shaughnessy

Comm. Michael S. Evans

On February 3, 2012, Respondent Debra J. Robinson's Motion for Temporary Restraining Order, Preliminary Injunction, Lien Nullification, Damages, and Other Relief came on regularly for hearing before the Court, Judge Todd M. Shaughnessy presiding. Respondent was present and represented by Dean C. Andreasen. Petitioner Michael S. Robinson was present and represented by Michael A. Jensen via telephone.

The Court considered the Motion, the papers filed in support and opposition thereto, and the arguments and proffers of counsel. Based thereon, and for good cause shown, it is hereby ordered, adjudged and decreed as follows:

1. The Court finds that on January 27, 2012, Petitioner recorded a document entitled Lis Pendens with the Salt Lake County Recorder's Office of the State of Utah, as entry no. 11322084, in book 9986, at pages 2486-2489 (the "Lis Pendens") affecting that certain parcel of property located in Salt Lake County, Utah, and more particularly described as follows:

Commencing at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Meridian, thence North 183 feet, thence West 183 feet; thence South 183 feet, thence East 183 feet to the place of beginning.

Less and excepting the following described parcel conveyed to Sandy City by that certain Special Warranty Deed recorded November 16, 1989 as Entry No. 4848748 in Book 6176 at Page 1435 of Official Records:

Beginning at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°02'05" East 183.0 feet, along the section line thence North 89°53'10" West 53.0 feet; thence South 0°02'05" West 117.0 feet; thence South 45°04'31" West 36.74 feet; thence North 89°53'10" West 104.0 feet; thence South 0°02'05" West 40 feet; thence South 89°53'10" East 183.0 feet to the point of beginning.

Street Address: 7760 South 700 East, Sandy, Utah 84047

Parcel No. 22-30-478-008-0000

(the "Property").

2. The Lis Pendens is determined to be a "wrongful lien" under the provisions of Utah Code Ann. § 38-9-1 et seq. and, as necessary, Utah Code Ann.

3. Accordingly, the Lis Pendens is declared to be void ab initio and of no force or effect.

§ 78B-6-1304.

TMS

4. The Property is released from any lien, cloud, or encumbrance to title based on the Lis Pendens. The Lis Pendens provides no notice of claim or interest to the Property.

5. A certified copy of this document shall be recorded with the Office of the Salt Lake County Recorder.

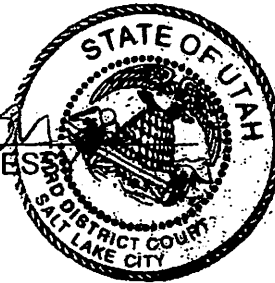
6. Respondent is awarded her costs and reasonable attorney's fees as may be established by way of affidavit of counsel to be submitted pursuant to Utah Code Ann. § 38-9-1 et seq. and Utah Code Ann § 78B-6-1304(6). *TM 8*

7. The issue of damages for this wrongful lien is reserved for further hearing.

DATED this 3rd day of February, 2012.

BY THE COURT:

T. Shaughnessy
TODD M. SHAUGHNESSY
District Court Judge



CERTIFICATE OF SERVICE

On this ____ day of February 2012, I hereby caused to be served on the
Petitioner a true and correct copy of the foregoing **FINDINGS AND ORDER** by having
the same emailed and mailed via first-class U.S. mail, postage prepaid, to:

Michael A. Jensen, Esq.
Jensen Law Firm
136 South Main Street, #430
P. O. Box 571708
Salt Lake City, UT 84145
mike@utahattorney.com

Tab I

Issued

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FILED DISTRICT COURT
THIRD JUDICIAL DISTRICT

FEB 09 2012

By [Signature]
SALT LAKE COUNTY
Deputy Clerk

Attorneys for Respondent

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

**SECOND FINDINGS AND ORDER
And
ORDER TO SHOW CAUSE**

Civil No. 074900501

Judge Todd M. Shaughnessy

Comm. Michael S. Evans

On February 8, 2012, Respondent Debra J. Robinson's Second Motion for Nullification of Second Lis Pendens Filed by Petitioner, Damages, Contempt and Other Relief and Motion for Order to Show Cause (Expedited Decision Requested) came on regularly for consideration before the Court, Judge Todd M. Shaughnessy presiding.

The Court considered the Motion, papers filed in support and opposition thereto, and the arguments and proffers of counsel. Based thereon, and for good cause shown, it is hereby ordered, adjudged and decreed as follows:

1. The Court finds that on February 6, 2012, Petitioner recorded a document entitled Lis Pendens with the Salt Lake County Recorder's Office of the State of Utah, as entry no. 11327536, in book 9988, at pages 8694-8696 (the "Lis Pendens") affecting that certain parcel of property located in Salt Lake County, Utah, and more particularly described as follows:

Commencing at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Meridian, thence North 183 feet, thence West 183 feet; thence South 183 feet, thence East 183 feet to the place of beginning.

Less and excepting the following described parcel conveyed to Sandy City by that certain Special Warranty Deed recorded November 16, 1989 as Entry No. 4848748 in Book 6176 at Page 1435 of Official Records:

Beginning at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°02'05" East 183.0 feet, along the section line thence North 89°53'10" West 53.0 feet; thence South 0°02'05" West 117.0 feet; thence South 45°04'31" West 36.74 feet; thence North 89°53'10" West 104.0 feet; thence South 0°02'05" West 40 feet; thence South 89°53'10" East 183.0 feet to the point of beginning.

Street Address: 7760 South 700 East, Sandy, Utah 84047

Parcel No. 22-30-478-008-0000

(the "Property").

2. The Lis Pendens is determined to be a "wrongful lien" under the provisions of Utah Code Ann. § 38-9-1 et seq. and, as necessary, Utah Code Ann. § 78B-6-1304.

3. Accordingly, the Lis Pendens is declared to be void ab initio and of no force or effect.

4. The Property is released from any lien, cloud, or encumbrance to title based on the Lis Pendens. The Lis Pendens provides no notice of claim or interest to the Property.

5. A certified copy of this document shall be recorded with the Office of the Salt Lake County Recorder.

6. Respondent is awarded her costs and reasonable attorney's fees as may be established by way of affidavit of counsel to be submitted pursuant to Utah Code Ann. § 38-9-1 et seq. and Utah Code Ann. § 78B-6-1304(6).

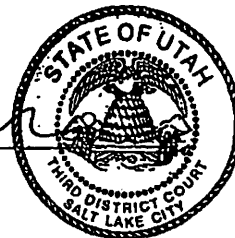
7. The issue of damages for this wrongful lien is reserved for further hearing.

8. Petitioner is ordered to appear before this Court, 450 South State Street, Fourth Floor – W47, Salt Lake City, Utah 84114-1860, on FEB, 28, 2012, at 12:00 noon and show cause why he should not be held in civil contempt for the violation of this Court's orders and why appropriate sanctions should not be imposed including a fine, incarceration, an award of Respondent's attorney's fees and costs, and other equitable relief.

DATED this 9 day of February, 2012.

BY THE COURT:


TODD M. SHAUGHNESSY
District Court Judge

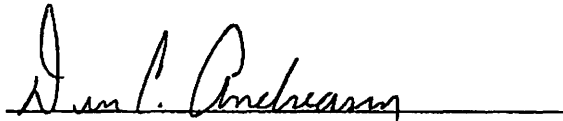


CERTIFICATE OF SERVICE

On this 7th day of February 2012, I hereby caused to be served on the
Petitioner a true and correct copy of the foregoing **SECOND FINDINGS AND ORDER**
and **ORDER TO SHOW CAUSE** by having the same emailed and mailed via first-class
U.S. mail, postage prepaid, to:

Michael A. Jensen, Esq.
Jensen Law Firm
136 South Main Street, #430
P. O. Box 571708
Salt Lake City, UT 84145

Notice is not being made directly to Petitioner based on the request of his counsel.

A handwritten signature in dark ink, appearing to read "Dan P. Anderson", is written over a horizontal line.

Tab J



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

MICHAEL S. ROBINSON,

Petitioner,

vs.

DEBRA J. ROBINSON,

Respondent.

MINUTE ENTRY

Case No. 074900501

Judge Todd Shaughnessy

Pending before the court is Petitioner's objection to the form of order proposed by Respondent for the hearing held on July 26, 2011. The matter was briefed and then argued on February 28, 2012. Petitioner was represented by Kevin Bond. Respondent was represented by Dean Andreasen. Following the hearing, the court received and reviewed a supplemental brief and exhibits from Petitioner. The court also reviewed, among other things, orders and transcripts related to proceedings in the case prior to July 26, 2011, the court of appeals' opinion in *Robinson v. Robinson*, 2010 UT App 96, the transcript of the July 26, 2011, hearing, and related materials. On the basis of the foregoing, and for good cause appearing, the court now enters this minute entry and rules on Petitioner's objection as follows.

The only issue now before the court is documenting the rulings that were made at the hearing held on July 26, 2011. Judge Iwasaki presided over that hearing, and

over this case, prior to his retirement. However, he did not have an opportunity to sign the order or rule on the objection before he retired, and consequently that responsibility now falls on a new judge. The change in judges, however, does not change the scope of the task at hand. The court appreciates efforts by counsel for both parties to help get the court up to speed on the long and complicated history of the case, but whether the objection is being made to the judge who heard the motion or to a new judge, it is not the proper method to re-argue matters upon which the court made a clear ruling or to revisit prior related rulings in the case. As stated, the court's current task is simply to document accurately Judge Iwasaki's rulings at the July 26 hearing.¹

The July 26, 2011, hearing was set as an evidentiary hearing on an order to show cause arising from Petitioner's purported failure to refinance, or attempt to refinance, the property and various issues related thereto. The parties first argued a motion in limine to exclude testimony from Eric Wadley, which was granted. (Tr. 5). Next, the parties argued a Motion to Dismiss Contempt Proceedings that has just been filed by Petitioner. (Tr. 5). Petitioner's principal argument was that because the court had ordered the sale of the property, Petitioner could not purge any contempt that may be found and/or that by seeking a sale of the property, Respondent had effectively purged any contempt. In that context, the parties argued whether

¹ Much of the supplemental memorandum filed by Petitioner is devoted to arguing that the fraud claims asserted by Petitioner in the separate action he recently filed against Respondent and others in West Jordan are not barred by the doctrines of claim preclusion or issue preclusion. The court does not fully understand why those arguments are being made here, and why they are being made in the context of an objection to the form of the order for the July 26 hearing. The West Jordan lawsuit was not discussed at the July 26 hearing; indeed, it could not have been discussed since it had not yet been filed. Though there was a discussion of res judicata at the July 26 hearing, that discussion involved whether fraud claims had been raised, or could have been raised, earlier in *this* case.

impossibility, mistake, or fraud, could serve as a defense to contempt. (Tr. 7, 9). And, in that context, Judge Iwasaki referenced a motion that Petitioner had filed seeking relief based on fraud, and suggested that it at least appeared the motion was pending before the commissioner. (Tr. 13).

In arguing against the motion to dismiss, Respondent's counsel noted that impossibility and mutual mistake were not available as defenses to contempt because these defenses had been considered and rejected by the Utah Court of Appeals. (Tr. 18-19). Respondent's counsel then addressed fraud as a defense to contempt, arguing claim preclusion. Specifically, Respondent's counsel argued that fraud could not be a defense because Petitioner "raised it at the commissioner level, at the trial court level and didn't take it up on appeal." (Tr. 20). Respondent's counsel also pointed out that, in fact, there was *no* motion pending before the commissioner related to fraud because Petitioner's counsel "withdrew that motion on June the 22nd." (Tr. 20).² In reply, Petitioner's counsel again mentioned fraud, but disagreed that it had been raised, saying "he didn't get it raised properly, it's still available to him. He has until – he has three years *to file an independent action*." (Tr. 21-22).³

² Petitioner's supplemental memorandum acknowledges that Petitioner did in fact withdraw this motion. (Supp. Mem. Para. 68). On June 16, 2011, Petitioner's counsel signed a Notice of Withdrawal of Motion for Relief from Judgment Pending Assertion of Additional Claims. That notice apparently was served on June 17, 2011, and it was docketed on June 21, 2011, the same day on which a hearing was held before Commissioner Evans.

³ The court's independent review of the docket and record confirms Respondent's statement that Petitioner has asserted from very early on, in a variety of contexts, that Respondent provided false and misleading information, that she misled him into entering the stipulation, and engaged in a wide variety of misconduct. Ultimately, Petitioner's position seems to be that unless and until he discovers *all* of Respondent's purported misdeeds, he is under no obligation to assert any of them. Aside from the passing reference quoted above, that issue was not raised before Judge Iwasaki at the July 26 hearing, and consequently it is not addressed herein.

Against this background, Judge Iwasaki (i) denied the motion to dismiss the contempt proceeding (Tr. 24), (ii) "as to the issues of impossibility and mutual mistake, the Court finds that they were both addressed completely in the Court of Appeals opinion", and therefore could not be relied upon by Petitioner as a defense to contempt (*Id.*), and (iii) relying on the doctrine of claim preclusion, ruled that fraud likewise could not be relied upon by Petitioner as a defense to contempt (*Id.*). He summarized that ruling by stating, "But as to impossibility, mutual mistake, and fraud as to claims preclusion, the Court denies – the Court finds that the petitioner is precluded from arguing those matters." (Tr. 24).

Petitioner relies on the following statement made by Judge Iwasaki at the July 26 hearing: "As to claim preclusion, while there's a pending fraud motion and allegations to support a fraud before the commissioner, the Court again finds that there is claim preclusion as to that issue." (Tr. 24). From this, Petitioner seems to argue that the court did not rule on the claim preclusion issue. That statement, however, must be read on context: Petitioner's counsel had just argued there was a fraud motion before the commissioner; Respondent's counsel had pointed out that the fraud motion had been voluntarily withdrawn by Petitioner. In fact, the fraud motion had been voluntarily withdrawn by Petitioner several weeks earlier. Judge Iwasaki was not in a position to verify either party's position, and therefore stated that "what recommendation comes out of the fraud recommendations, the court will address it at that time." (Tr. 24).⁴ After addressing each of Petitioner's claimed defenses to

⁴ In reality, there was no such motion before the commissioner, and therefore no recommendation to consider.

contempt, the court proceeded to find Petitioner in contempt and impose sanctions. If Judge Iwasaki had concluded that fraud was a valid defense, available to Petitioner, and then-pending before the commissioner, he would not have taken these steps. Thus, the hearing transcript alone demonstrates that Judge Iwasaki squarely ruled fraud was not a defense to the contempt charge. Whether Judge Iwasaki was correct is not before the court. As stated, the task at hand is to correctly document the ruling and nothing more.

The court has reviewed the Findings, Order, and Judgment submitted by counsel for Respondent. The court has made interlineations as shown and signed the proposed order.

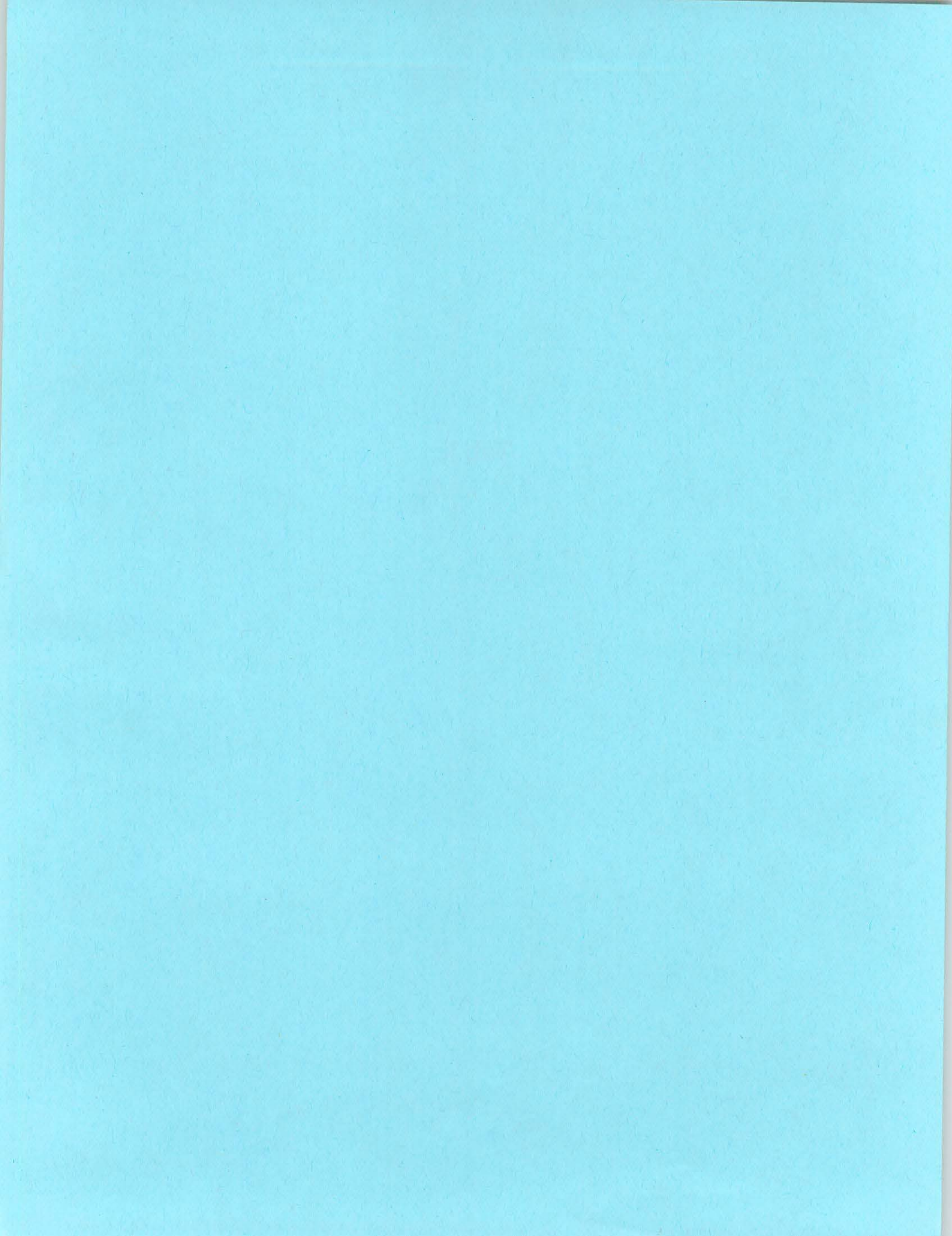
Based on the foregoing, Petitioner's objection to the form of the order is overruled. The order proposed by Respondent is being signed by the court, with the changes as noted therein.

DATED this 1st day of March, 2012.

DISTRICT COURT JUDGE




Tab K





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

MICHAEL S. ROBINSON,

Petitioner,

vs.

DEBRA J. ROBINSON,

Respondent.

MINUTE ENTRY

Case No. 074900501

Judge Todd Shaughnessy

Pending before the court is Respondent's motion for a preliminary injunction, lien nullification, damages, and other relief. The court previously ruled, on an emergency basis, on that portion of the motion dealing with the Sandy Retail Center. The court deferred ruling on the balance of the motion because Petitioner's counsel was out of the country and was in the process of attempting to withdraw from the case. To ensure that Petitioner could be heard on the matter, and be represented by counsel of his choice, the court heard only that portion of the motion necessary to address the then-immediate sale of the Sandy Retail Center, and deferred the balance of the motion. The balance of the motion was argued on February 28, 2012. Petitioner was represented by Kevin Bond. Respondent was represented by Dean Andreasen. The court has reviewed the moving and opposition papers, the pleadings and papers on file in the case, along with the evidence presented by both sides, and now grants Respondent's motion.

Some of Petitioner's arguments in opposition to the motion are addressed by other orders entered by the court today, which the court incorporates by reference. The remaining issues are (i) whether a lis pendens is properly characterized as a wrongful lien for purposes of Utah Code Ann. § 38-9-1, (ii) whether this court, as opposed to the court in West Jordan, has the authority to order removal of the lis pendens pursuant to Utah Code Ann. § 78B-6-1304(1), and (iii) whether Petitioner is permitted to record serial lis pendens pursuant to the Utah Court of Appeals' opinion in *Doug Jessop Constr., Inc. v. Anderton*, 2008 UT App. 348.

Whether a lis pendens is a wrongful lien for purposes of Utah's wrongful lien statute, and whether this court has the authority to order removal of a lis pendens under the lis pendens statute, are not dispositive.¹ Where, as here, the property in question is a marital asset subject to the jurisdiction of this court, and where this court has in the past entered orders associated with that property, this court respectfully submits that it has the authority to issue orders in aid of its jurisdiction or orders that are necessary or appropriate to carry out or enforce its prior orders. The court is not persuaded that the *Anderton* case permits serial recording of lis pendens. The holding in *Anderton* is very narrow – in that case, the first lis pendens was invalidated because there was no legal proceeding pending to support the lis pendens thereby rendering it invalid; the court acknowledged that such an action could be filed and when it was, the

¹ The court notes that section 78B-6-1304(1) states that an affected party "may make a motion to the court in which the action is pending." The statement is permissive, and the "court in which the action is pending" is the Third Judicial District Court. However, the court does not rule on the question of whether the "court in which the action is pending" means the particular judge before whom the case is pending, or that district, because it is unnecessary to do so.

second lis pendens was recorded. The second lis pendens did not violate the court's injunction because the court permitted the lawsuit to be filed, and the lis pendens merely provided record notice of that lawsuit. The case does not support the proposition that a party may file a lawsuit, record a lis pendens, and then, in response to an order invalidating that lis pendens, record another one.

Based on the foregoing, counsel for Respondent is directed to submit to the court an order granting the remaining relief sought in her motion for a preliminary injunction. Because this matter is time-sensitive, the court suspends the time periods in Rule 7 for lodging objections. Respondent must serve her proposed order, by electronic mail or hand delivery, before close of business today. Petitioner will have until the close of business tomorrow, March 2, 2012, to file any objections and, with them, a proposed form of order that Petitioner believes correctly reflects the court's rulings herein.

DATED this 1st day of March, 2012.

DISTRICT COURT JUDGE




Tab L



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Attorneys for Respondent

FILED DISTRICT COURT
Third Judicial District

MAR 05 2012

SALT LAKE COUNTY

By _____
Deputy Clerk

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

MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

**FINDINGS AND ORDER GRANTING
PRELIMINARY INJUNCTION, LIEN
NULLIFICATION, AND OTHER RELIEF**

Civil No. 074900501

Judge Todd M. Shaughnessy

Comm. Michael S. Evans

On February 28, 2012, the (i) Motion for Temporary Restraining Order, Preliminary Injunction, Lien Nullification, Damages, and Other Relief dated February 1, 2012, and the (ii) Second Motion for Nullification of Second Lis Pendens Filed by Petitioner, Damages, Contempt, and Other Relief and Motion for Order to Show Cause dated February 7, 2012 (collectively the "Motion") filed by Respondent Debra J. Robinson ("Respondent") came on for hearing before the Court, Judge Todd M. Shaughnessy presiding. Petitioner Michael S. Robinson ("Petitioner") was present and

represented by F. Kevin Bond and Budge W. Call. Respondent was present and represented by Dean C. Andreasen and Sarah L. Campbell. The Court considered the papers filed by the parties and the arguments and proffers of counsel. Based thereon, the Court made the findings reflected in the Minute Entry dated March 1, 2012, attached hereto as Exhibit A, and as follows:

FINDINGS

1. Petitioner recorded Lis Pendens against four properties in four different counties in Utah and Arizona, in which Respondent has an interest (the "Lis Pendens"). The Lis Pendens were recorded on the properties commonly known as the Sandy Retail Center, the Phoenix Plaza, the Deer Valley Condominium, and the Arizona Parcel—described more fully below.

2. On January 27, 2012, Petitioner recorded a document entitled Lis Pendens with the Salt Lake County Recorder's Office of the State of Utah, as entry no. 11322084, in book 9986, at pages 2486-89 affecting that certain parcel of property located in Salt Lake County, Utah, and more particularly described as follows:

Commencing at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Meridian, thence North 183 feet, thence West 183 feet; thence South 183 feet, thence East 183 feet to the place of beginning.

Less and excepting the following described parcel conveyed to Sandy City by that certain Special Warranty Deed recorded November 16, 1989 as Entry No. 4848748 in Book 6176 at Page 1435 of Official Records:

Beginning at the Southeast corner of Section 30, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence North 0°02'05" East 183.0 feet, along the section line thence North 89°53'10" West 53.0 feet; thence South 0°02'05" West 117.0 feet; thence South 45°04'31" West 36.74 feet; thence North

89°53'10" West 104.0 feet; thence South 0°02'05" West 40 feet; thence South 89°53'10" East 183.0 feet to the point of beginning.

Street Address: 7760 South 700 East, Sandy, Utah 84047

Parcel No. 22-30-478-008-0000

(the "Sandy Retail Center").

3. On January 27, 2012, Petitioner recorded a document entitled Lis Pendens with the Washington County Recorder's Office of the State of Utah, as document no. 20120002718 affecting that certain parcel of property located in Washington County, Utah, and more particularly described as follows:

Beginning at a Point Which Lies South 0°35'40" East, 430.15 Feet Along the Section Line and North 81°41'20" East, 212.49 Feet from the Northwest Corner of Section 24, Township 42 South, Range 16 West, Salt Lake Base and Meridian and Running Thence South 0°21'40" East, 9.51 Feet; Thence North 83°00'00" East, 88.52 Feet; Thence North 78°30'00" East, 36.71 Feet; Thence South 47°54'40" East, 288.32 Feet to a Point on the Westerly Right of Way Line of Valley View Drive; Thence North 42°05'20" East, 179.00 Feet Along Said Westerly Right of Way; Thence North 47°54'40" West, 50.46 Feet; Thence North 02°54'40" West, 136.69 Feet; Thence South 74°24'40" East, 134.30 Feet to a Point on Said Westerly Right of Way, Said Point Being Also on a Curve to the Left, the Radius Point of Which Bears North 69°03'15" West, 400.00 Feet Distant; Thence Northeasterly Along Said Westerly Right of Way and Arc of Said Curve Through a Central Angle of 05°21'25", a Distance of 37.40 Feet to the Point of Tangency; Thence North 15°35'20" East, 18.34 Feet Along Said Right of Way; Thence North 74°24'40" West, 148.51 Feet; Thence North 3°01'13" West, 146.25 Feet to a Point on the Southerly Right of Way of Sunset Boulevard, Said Point Being Also on a Curve to the Left, the Radius Point of Which Bears South 5°33'49" West, 1298.14 Feet Distant; Thence Westerly Along Said Southerly Right of Way and the Arc of Said Curve Through a Central Angle of 1°40'50", a Distance of 38.08 Feet; Thence South 97.87 Feet; Thence West 149.91 Feet; Thence North 99.37 Feet to a Point on Said Southerly Right of Way, Said Point Being Also on a Curve to the Left, the Radius Point of Which Bears South 2°44'15" East, 1298.14 Feet Distant; Thence Westerly Along Said Southerly Right of Way and the Arc of Said Curve Through a Central Angle of 9°55'52", a

Distance of 225.01 Feet; Thence South 0°21'40" East, 296.07 Feet to the Point of Beginning.

Street Address: 929 W, Sunset Blvd., Washington, Utah 84770

Parcel No. SG-6-2-24-44451

(the "Phoenix Plaza")

4. On January 27, 2012, Petitioner recorded a document entitled Lis Pendens with the Summit County Recorder's Office of the State of Utah, as entry no. 00938337, in book 2113, at pages 0782-85 affecting that certain parcel of property located in Summit, Utah, and more particularly described as follows:

Unit 59, Fawngrove Condominiums, a Utah Condominium Project, Together With Its Undivided Appurtenant Ownership Interest in and to the Common Areas and Facilities of the Project as the Same are Identified in the Record of Survey Map Recorded December 17, 1980, as Entry No. 174104, and the Condominium Declaration Recorded December 17, 1980 as Entry No. 174105 in Book M174 At Page 773, the First Supplemental Record of Survey Map Recorded March 12, 1982 as Entry No. 189403 and the Supplemental Declaration of and Amendment to the Condominium Declaration Recorded March 12, 1982 as Entry No. 189404 in Book M214 at Page 531, the Record of Survey Map for Fawngrove Condominiums Phase II Recorded November 15, 1985 as Entry No. 241835 and the Second Supplemental Declaration of and Amendment to Condominium Declaration Recorded November 15, 1985 as Entry No. 241836 in Book 361 at Page 623, the Record of Survey Map of Fawngrove Condominiums Phase II Recorded June 16, 1986 as Entry No. 252810, and the Third Supplemental Declaration of and Amendment to Condominium Declaration Recorded June 16, 1986 as Entry No. 252811 in Book 388 at Page 608 and the Record of Survey Map Recorded April 19, 1990 as Entry No. 323325 and the Fourth Supplemental Declaration of and Amendment to Condominium Declaration Recorded April 19, 1990 as Entry No. 323326 in Book 561 at Page 495 of the Official Records, in the Office of the Summit County Recorder.

Street Address: 1654 Deer Valley Drive North, Park City, Utah 84060

Parcel No. FGR-II-59

(the "Deer Valley Condominium")

5. On February 3, 2012, Petitioner recorded a document entitled Lis Pendens with the Mohave County Recorder's Office of the State of Arizona, as fee no. 2012005595 affecting that certain parcel of property located in Mohave County, Arizona, and more particularly described as follows:

The Southwest Quarter (SW ¼) of Parcel 5, of Franhi Chaparral Estates, According to the Plat Thereof, Recorded December 10, 1985, in Book 2 of Parcel Plats, Page 85, Records of Mohave County, Arizona.

Except One-Half of All Minerals, as Reserved in Instrument Recorded in Book 118 of Deeds, Page 462.

Parcel No. 402-77-005

(the "Arizona Parcel")

6. On January 30, 2012, after Respondent received notice of the Lis Pendens recorded against the properties, Respondent's counsel gave notice to Petitioner's counsel that the liens were wrongfully recorded and requested that the Lis Pendens be immediately removed. *Petitioner refused to remove the liens,*

7. ~~Petitioner's then counsel, Michael Jensen, responded to the request for removal of the Lis Pendens by disavowing any responsibility for those liens being recorded.~~ *and continues to refuse requests to remove the liens, TMS*

8. On February 1, 2012, Respondent filed a Motion for Temporary Restraining Order, Preliminary Injunction, Lien Nullification, Damages, and Other Relief. On February 1, 2012, the Court issued a Temporary Restraining Order (the "TRO").

9. The TRO provided for a preliminary injunction hearing on February 3, 2012, at 9:00 am. A copy of the issued TRO was mailed and emailed to Michael Jensen and Petitioner. The issued TRO was sent directly to Petitioner because Mr. Jensen was out of the country for three weeks on vacation. During the weekend of February 3, 2012, a constable attempted to serve Petitioner four times with the TRO but Petitioner evaded service of process. ^{TMS}

10. Mr. Jensen must have received the TRO and the papers filed in conjunction therewith because on February 2, 2012, he filed a memorandum in opposition which was received by the Court on February 2, 2012.

11. The Court attempted to contact Mr. Jensen for the hearing on the morning on February 3, 2012, but without success. The Court proceeded with the hearing. At the hearing, the Court concluded that the *lis pendens* filed on the Sandy Retail Center was a wrongful lien and declared it to be void ab initio and entered Findings and Order. (The Findings and Order incorrectly state that Petitioner was present in person and Mr. Jensen was present via telephone because the document was prepared in advance of the hearing and attendance was anticipated although the correction was not made before the document was signed by the Court.)

12. The Findings and Order were sent to Mr. Jensen via email on February 3, 2012, and ultimately recorded with the Salt Lake County Recorder's Office.

13. Notwithstanding the terms of the Court's Findings and Order, Petitioner had another *lis pendens* recorded on the Sandy Retail Center early on the morning of

February 6, 2012. The TRO was still in effect when Petitioner recorded the second *lis pendens* on the Sandy Retail Center.

14. On February 7, 2012, Petitioner had another *lis pendens* recorded on the Phoenix Plaza as document no. 20120004136 with the Washington County Recorder's Office of the State of Utah.

15. On February 7, 2012, after finding out about the second *lis pendens* being recorded on the Sandy Retail Center by Petitioner, Respondent filed a Second Motion for Nullification of Second *Lis Pendens*.

16. On February 9, 2012, the Court conducted a hearing on the Second Motion for Nullification. Mr. Jensen was present via telephone for the hearing. The Court granted the Second Motion and issued its Second Findings and Order and Order to Show Cause.

17. ~~Petitioner has specifically violated and disobeyed the above-described orders of the Court by recording the first and second *lis pendens* on the Sandy Retail Center.~~ TMS

18. For the same reasons as set forth in the two motions filed to have the *lis pendens* nullified on the Sandy Retail Center, the *lis pendens* on the Phoenix Plaza, Deer Valley Condominium, and the Arizona Parcel should also be deemed wrongful liens and nullified.

19. At the hearing on February 9, 2012, the Court ordered that the hearing on the nullification of the *lis pendens* clouding title to the Phoenix Plaza, Deer Valley

Condominium, and the Arizona Parcel as well as the Order to Show Cause would be conducted on February 28 and 29, 2012.

20. The Court has already found and concluded that the two *lis pendens* recorded on the Sandy Retail Center were wrongful liens and they were, accordingly, nullified by previous order of the Court.

21. The Court finds and concludes that the *lis pendens* recorded on the Phoenix Plaza, the Deer Valley Condominium and the Arizona Parcel are also "wrongful liens" as that term is defined under the provisions of Utah Code Ann. § 38-9-1 *et seq.*, and as necessary, Utah Code Ann. § 78B-6-1304, and that an order shall be entered nullifying the same.

22. The Court finds and concludes that Petitioner's actions in recording the two *lis pendens* on the Sandy Retail Center and the two *lis pendens* on the Phoenix Plaza, and individual *lis pendens* on the Deer Valley Condominium and the Arizona Parcel are wrongful and were ⁱⁿ a knowing violation of the orders of this Court. *TMS*

23. ~~Petitioner has violated Court orders in the this action by filing *lis pendens* against the Sandy Retail Center and Phoenix Plaza and by diverting rent received from the Sandy Retail Center and Phoenix Plaza when Respondent has been granted full authority to list and close the sale of the Sandy Retail Center and the Phoenix Plaza and is the Court-ordered manager of both properties with sole authority to collect and deposit rents.~~ *TMS*

24. Unless the Court grants Respondent's Motion and enters a preliminary injunction, Respondent will suffer actual or threatened immediate and irreparable injury

as a result of Petitioner's efforts to interfere with and jeopardize the sale of the Phoenix Plaza.

25. Respondent will suffer irreparable harm unless a preliminary injunction is immediately issued because of (1) the pending sale of the Phoenix Plaza to a third-party buyer which is under a Real Estate Purchase Contract ("REPC") with a scheduled closing date of no later than April 9, 2012, which transaction is likely or in actual threat of being lost as a result of Petitioner's recording of a *lis pendens* against the Phoenix Plaza; and (2) because of the continuing denial and deprivation of Respondent's right to her interest and control over the Phoenix Plaza, as real property rights constitute a unique interest, the loss of which constitutes irreparable harm to Respondent.

26. The threatened injury to Respondent outweighs the damage, if any, that the preliminary injunction may cause Petitioner given the finding of irreparable harm to Respondent by the deprivation of her real property rights to the Phoenix Plaza, including the right to realize the net sales proceeds of the Phoenix Plaza, and Petitioner will not sustain damage where he stipulated to the sale of the Phoenix Plaza and its sales price.

27. The preliminary injunction will not be adverse to, and will serve the public interest because the Court has an interest in enforcing court orders.

TML
28. Based upon the evidence before the Court demonstrating Petitioner's ~~knowing violation of Court orders and his~~ filing of a *lis pendens* against the Sandy Retail Center, Phoenix Plaza, Deer Valley Condominium, and Arizona Parcel without a sufficient legal basis, there is substantial likelihood that Respondent will prevail on the merits of her underlying claims against Petitioner.

29. Given that Petitioner has stipulated to the sale of the Phoenix Plaza, the Court has ordered the sale of the Phoenix Plaza, and Respondent is the only one as between her and Petitioner who will receive the net proceeds from the sale of the Sandy Phoenix Plaza, the Court finds there is no reasonable basis to require Respondent to provide security under Rule 65A(c) of the Utah Rules of Civil Procedure.

THEREFORE, pursuant to Rule 65A of the Utah Rules of Civil Procedure, and good cause appearing,

IT IS HEREBY ORDERED:

1. Respondent's Motion for Preliminary Injunction, Lien Nullification, Damages, and Other Relief is granted in all respects.
2. Petitioner is enjoined from acting or failing to act, or causing any third party to act or fail to act, contrary to the terms of the Decree of Divorce entered by the Court in this matter on December 31, 2008 and all subsequent orders.
3. Petitioner is enjoined from interfering with the sale of the Phoenix Plaza by making, uttering, recording, or filing any document which will cloud title to the Phoenix Plaza or contacting any person associated with the sale of the Phoenix Plaza without permission of the Court.
4. The above-described Lis Pendens are declared to be void ab initio and of no force or effect.
5. The Phoenix Plaza, Deer Valley Condominium, and Arizona Parcel are released from any lien, cloud, or encumbrance to title based on the Lis Pendens. The

Lis Pendens provides no notice of claim or interest to the Phoenix Plaza, Deer Valley Condominium, and Arizona Parcel.

6. A certified copy of this document shall be recorded with the Offices of the Salt Lake County Recorder, Washington County Recorder, Summit County Recorder, and Mohave County Recorder.

7. Respondent is awarded her costs and reasonable attorney's fees ^{incurred in connection with this motion} as may be established by way of affidavit of counsel to be submitted pursuant to Utah Code Ann. § 38-9-1 *et seq.*, Utah Code Ann. § 78B-6-1301 *et seq.*, and paragraph 44 of the Decree of Divorce.

8. Judgment is ~~entered against Petitioner in favor of Respondent in the amount of \$60,000 for Petitioner's knowing~~ ^{for} filing of six wrongful liens in violation of Utah Code Ann. § 38-9-4, *to be determined at a later date.*

9. ~~An evidentiary hearing on Petitioner's contempt and a hearing on the pending motion for order to show cause shall be held on _____ March _____, 2012, at _____ m.~~ Additional attorney's fees and costs are reserved for the evidentiary hearing and may be awarded.

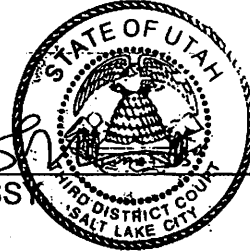
10. Respondent is not required to provide security under Rule 65A(c) of the Utah Rules of Civil Procedure.

DATED this 5 day of March 2012.

BY THE COURT

Todd M. Shaughnessy

TODD M. SHAUGHNESSY
District Court Judge

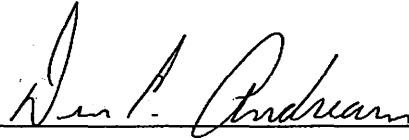


CERTIFICATE OF SERVICE

On this 15th day of March 2012, I hereby caused to be served on the Petitioner
a true and correct copy of the foregoing **FINDINGS AND ORDER GRANTING
PRELIMINARY INJUNCTION, LIEN NULLIFICATION, AND OTHER RELIEF** by having
the same emailed to:

F. Kevin Bond, Esq.
BOND & CALL, L.C.
8 East Broadway, Suite 720
Salt Lake City, Utah 84111
kbond@bondcall-law.com

Attorney for Petitioner

A handwritten signature in black ink, appearing to read "F. Kevin Bond", 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 074900501 by the method and on the date specified.

MAIL: DEAN C ANDREASEN ONE UTAH CENTER 13TH FLR 201 S MAIN ST SALT LAKE CITY, UT 84111-2216

MAIL: F. KEVIN BOND 8 E BROADWAY STE 720 SALT LAKE CITY UT 84111

Date: 03/05/2012

/s/ AMANDA OLSEN

Deputy Court Clerk

Tab M

DEAN C. ANDREASEN (#3981)
DIANA L. TELFER (#10654)
CLYDE SNOW & SESSIONS
201 South Main Street, Suite 1300
Salt Lake City, Utah 84111-2216
Telephone (801) 322-2516
Fax (801) 521-6280
dca@clydesnow.com
dlt@clydesnow.com

Attorneys for Respondent

FILED DISTRICT COURT
Third Judicial District

MAY 29 2013

SALT LAKE COUNTY

By

Deputy Clerk

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


MICHAEL S. ROBINSON,

Petitioner,

v.

DEBRA J. ROBINSON,

Respondent.

~~RESPONDENT'S PROPOSED~~ 
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Civil No. 074900501

Judge Todd M. Shaughnessy

Comm. Joanna Sagers

On April 17-19, 2013, an evidentiary hearing was held in the above-captioned matter before the Court, Judge Todd M. Shaughnessy presiding. Petitioner Michael S. Robinson was present and represented by counsel, F. Kevin Bond and Budge W. Call of Bond & Call, L.C. The Respondent, Debra J. Robinson, was present and represented by counsel, Dean C. Andreasen and Diana Telfer of Clyde Snow & Sessions.

The Court having heard the evidence presented by the parties and the witnesses called, and after considering the additional briefing and oral arguments of counsel;

hereby enters the following Findings of Fact and Conclusions of Law, in the above matter.

FINDINGS OF FACT

Prior Rulings, Orders and Judgments

1. All rulings, orders and judgments that been made in the case to date are affirmed. With the exception of a modification to the Court's prior ruling with respect to the tax liability arising from sale of the Phoenix Plaza, as specifically set forth below, nothing herein is intended to alter or modify, in any way, any of the rulings that have already been made in this case.

Wrongful Lien Damages

2. The Court finds that Petitioner filed lis pendens on the parties' properties to prevent the sales of those properties that were ordered to be sold by this Court. This Court has the authority to nullify, and require the removal of, the lis pendens that were recorded relative to the West Jordan action. However, because there is a legal question, and some doubt as to whether Utah's Wrongful Lien Act should apply to a lis pendens, the Court declines to impose any statutory damages.

Contempt Issues

3. Lis Pendens. The Court will not make a finding of contempt, with respect to the recording of the lis pendens, for the same reason it declined to impose statutory damages.

4. Interfering with the Sale of Properties.

(A) Sandy Retail Center. The Court finds that Respondent sold the Sandy Retail Center for an amount less than the amount authorized by the Court's Order. Therefore, Respondent has unclean hands and is not in a position to enforce a contempt order against Petitioner.

(B) Phoenix Plaza. The Court exercises its discretion and declines to make a finding of contempt with respect to interference with the sale of the Phoenix Plaza. However, the Court does not condone the activities that were undertaken by Petitioner and finds they constituted improper conduct by Petitioner in certain instances.

5. Diversion of Assets. The Court finds that Respondent has failed to prove by clear and convincing evidence all of the elements of contempt relative to her claim that Petitioner diverted certain assets. The amounts that were presented to the Court, other than the diversion of rent, occurred prior to the time that the order was entered in this case, and the Court finds that contempt has not been established.

6. Diversion of Rents. The Court finds that Petitioner did divert the Ernesto's rent. Petitioner acknowledged the same. The Court finds Respondent essentially did the same thing, although the Court finds that Respondent is in a better position because she accounted for it and didn't attempt to conceal it. Nevertheless, the Court finds that because Respondent has unclean hands, she is not in a position to enforce a contempt finding against Petitioner in that regard.

7. Failure to Provide Bankruptcy Accounting. The Court declines to impose contempt for Petitioner's failure to comply with orders of the Bankruptcy Court. This issue should be addressed by Judge Marker if Respondent wishes to pursue contempt of his order.

8. Failure to Sign Documents. The Court finds that with respect to the Sandy Retail Center, the Respondent had unclean hands regarding the amount for which the property was sold, and therefore can't pursue a contempt finding against the Petitioner. The Court declines, in the interest of justice, to make a contempt finding with respect to the Phoenix Plaza.

9. Disparaging Comments. The Court has, by prior order entered November 19, 2012, resolved the issue with respect to disparaging comments and that order stands, including the finding of contempt, the imposition of contempt sanctions and the award of Respondent's attorneys' fees and costs.

10. Contempt for Failing to Refinance the Phoenix Plaza. The Court has already made a contempt finding with respect to Petitioner's failure to refinance the mortgage encumbering the Phoenix Plaza, and is not disturbing that finding. Additional sanctions have been mooted at this point by virtue of the sale of the Phoenix Plaza, and therefore the Court declines to impose any additional sanctions for that contempt.

11. St. George Condo Issues. The Court finds that discovery issues, with respect to the St. George Condo, should be governed by Rule 37, and not through sanctions for contempt. Therefore, to the extent relief is requested under Rule 37 it is

denied. The Court finds that Respondent was not prompt about producing her tax returns so she is not in a position to complain about Petitioner not having produced his tax returns. Additionally, the Court finds that Respondent has not proven by clear and convincing evidence that Petitioner did not provide everything that he had in his possession with respect to the rental income that he has been receiving from the St. George Condo. Furthermore, Respondent has not established that Petitioner had the ability to make the payments that he was required to make.

12. Additional Contempt Issues. The Court declines in the interest of justice to impose any further contempt finding or any further sanction with respect to any additional contempt issues that were presented and have not been covered above.

Attorneys' Fees and Costs

13. The Court finds that Respondent should be awarded her attorneys' fees and costs incurred from January 1, 2008 through May 31, 2012 in the total amount of \$309,074.72. However, this amount should be reduced by \$83,373.18 which was awarded in a previous Judgment entered on January 25, 2012 for attorneys' fees and costs incurred during that same time period. Accordingly, an additional judgment for attorneys' fees and cost should be entered against Petitioner in favor of Respondent in the amount of \$225,701.54 (\$309,074.72 - \$83,373.18).

14. Respondent was also previously awarded attorneys' fees and costs in the amount of \$6,251.26 in the Court's Order entered April 12, 2013 with respect to the disparaging comments issue, and that Order stands.

15. Judgment interest and costs of collection are awarded as permitted under Utah law on the two judgments for attorneys' fees and costs awarded to Respondent above. These two judgments are not included in the Updated Judgment section below because they accrue interest at a different rate than the Updated Judgment.

16. Respondent shall be responsible for her attorneys' fees and costs incurred prior to January 1, 2008 and after May 31, 2012, with the exception of the \$6,251.26 noted in item 14 above. Any additional request for attorneys' fees and costs during those time periods is denied.

Respondent's Accounting and Reconciliation Issues

17. General Observations. The Court finds with respect to the accounting issue that the parties had a history of combining all of their income, including income from investment properties, and all of their expenses into a single or series of accounts. The Respondent provided an accounting that was consistent with the way the accounting had been done historically. The accounting the Respondent has provided is numerically accurate. It is also complete, with the exception of the categorization of expenses. This was not in any way intentional. She did the best job she could and she did it the way she historically had done it. There are some uncertainties and ambiguities about whether some expenses have been properly accounted for. These uncertainties and ambiguities have to be resolved in favor of the Petitioner given that the Respondent provided the accounting.

The Court declines to retain an accountant because the cost would exceed the benefit and would invite more disputes. Both parties should have utilized the last year to complete their accounting through discovery, including revealing documents, records, witnesses, and retaining experts. The Court is not going to prolong this any further and is simply going to rule on all these issues.

The Court has serious concerns about the fact that some of the items it had ruled on, and that Mr. Jayne's relied upon, were not disclosed in a report. However, the Court is not going to prolong this action any further and is simply going to rule on all these issues.

Animating this, to a certain degree, is the equity principle concerning how this case has ultimately come down. Without commenting on why it has ultimately come down the way it has, the reality is that the Respondent has received a tremendous financial advantage compared to the Petitioner. That animates in part what the Court thinks is appropriate with respect to the accounting issue.

18. Mr. Jayne's List of Disputed Items. The Court makes the following findings with respect to the list of items Mr. Jayne's disagrees with, or disputes, in the Respondent's accounting reconciliation.

a. Clark Roofing. The Phoenix Plaza was sold shortly after these expenses were incurred so these expenses should be split 50/ 50, rather than treating them as the Petitioner's capital expenses.

- b. Steve Hard. These expenses are attributed to Petitioner, as his personal expenses.
- c. Steve Shields. These expenses are attributed to Petitioner, as his personal expenses.
- d. Software. These expenses are attributed to Respondent, as her personal expenses.
- e. Appraisals. The costs of the appraisals are attributed to Petitioner, as his personal expenses.
- f. POS/ATM Withdrawals. These expenses are attributed to Respondent, as her personal expenses. The proof on all these issues is thin at best, but in the interest of overall equity the Court includes these withdrawals as an item on which the Petitioner prevails.
- g. Respondent's Tax Deduction for Withdrawing 401k Monies.
Petitioner is given a credit for the amount of the tax deduction listed by Respondent on her reconciliation statement with respect to taxes incurred for withdrawing 401k funds. The Court makes this ruling based on equity.
- h. Credit Card Issue. The Court finds that with respect to the credit card issue, it was an issue that should have been addressed by Respondent's expert but it was not. Therefore, the Petitioner should be given a credit for the recalculated charges. However, Petitioner is not entitled to any credit for the American Express charges made in 2012.

19. Equalization of Distributions. The Court finds with respect to the equalization of distributions that under Respondent's updated accounting, Petitioner owes Respondent \$19,319.96. This amount should be adjusted in the Petitioner's favor by \$81,617.63, which represents one-half of the total adjustments (a) thru (h) listed above. Accordingly, Respondent owes Petitioner the amount of \$62,297.67 (\$81,617.63 - \$19,319.96) and such amount shall be used as an adjustment in the final judgment accounting.

20. Tax Liability on the Phoenix Plaza. The Court is modifying its prior order with respect to the tax liability on the Phoenix Plaza. In paragraph 8 of the Order entered January 24, 2012, the Court ordered "Petitioner is the owner of the Phoenix Plaza and the only person subject to IRS Form 1099 reporting pursuant to paragraph 11 of the Decree." Although the Court affirms that ruling, it further orders that Petitioner is entitled to a credit for one half of the income tax assessed directly attributable to the sale of the Phoenix Plaza, as reported on Petitioner's 2012 federal income tax return. Petitioner is ordered to provide Respondent a complete copy of his 2012 federal income tax return, any amendment thereto, and any supplemental information from Petitioner's accountant necessary to verify the amount of the tax. In the event the sale of the Phoenix Plaza results in a capital loss (i.e. a tax savings), the amount of the judgment shall be increased by one half of the income tax savings directly attributable to the sale of the Phoenix Plaza, as reported on Petitioner's 2012 federal income tax return.

21. Sale of Sandy Property. The Court finds with respect to the sale of the Sandy Retail Center that the Respondent sold the property for an amount not authorized by the Court's Order, and that Respondent has unclean hands. Therefore, the Petitioner is entitled to a \$9,000 credit representing 100% of the amount by which the sales price was unilaterally reduced by Respondent.

22. Equalization of the distributions from the UESP Accounts. The Court finds with respect to the equalization of distributions from the UESP accounts that the parties are to provide each other with documentation verifying the account balance for any account they had with the Utah Educational Savings Plan as of November 2, 2007, the date of the parties' settlement. This information shall be provided within fourteen days of the hearing date of April 19, 2013. The balances in all the accounts for the parties are to be added together and divided by two, with each party receiving one-half of the total amounts as of November 2, 2007. If one party fails to disclose this information to the other within the 14 day period, they will receive nothing from these accounts.

Update of Judgment Initially Entered March 1, 2012

23. The Court hereby finds that the Judgment entered March 1, 2012, should be updated with offsets and adjustments as set forth above and calculated as follows:

Judgment dated 03/01/12	\$1,912,696.00
A. Interest only - Judgment 02/25/11	\$438,924.43
B. Interest only – Judgment 03/01/12	\$81,748.10

C.	Interest only – Accrual of interest (Interest calculated at 8% interest from July 27, 2011 to May 23, 2012 or 301 days at per diem of \$419.22 on principal amount of \$1,912,696.00)	\$126,185.22
D.	Attorneys' Fees/Costs – Judgment 01/25/12 Principal amount Interest amount	\$83,373.18 \$2,342.56
E.	Sandy Retail Center payment relative to Benchmark and sales price of \$590,000 and net sales proceeds of \$523,507.33; and \$9,000 credit	\$113,152.33 -\$9,000.00
F.	Amount Petitioner ordered to pay Respondent under ¶ 3.b. of Order (Hearing 01/22) entered 02/13/13	\$3,402.09
G.	Charge for \$130.00 and payment by Petitioner of \$130.00 for Respondent's service fees	\$0.00
H.	Adjustment as described above relative to Respondent's accounting	-\$62,297.67
I.	Accounting adjustment as described above for UESP accounts	-\$4,286.67
J.	Net sales proceeds from sale of Phoenix Plaza	<u>-\$1,557,290.95</u>

Unpaid principal as of May 23, 2012, relative to Judgment dated 03/01/12	\$1,128,948.62
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Accordingly, the Court finds that a judgment updating the initial Judgment entered on March 1, 2012, should be entered against Petitioner in favor of Respondent

in the amount of \$1,128,948.62 as of May 23, 2012, with interest at the rate of eight percent (8%) accruing on the unpaid principal balance until paid in full. Costs of collection are awarded as permitted under Utah law on this judgment.


CONCLUSIONS OF LAW

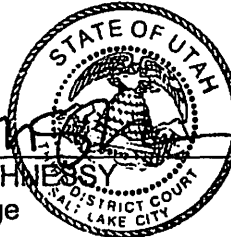
Based on the above Findings of Fact, the Court makes the following Conclusions of Law:

1. That a Final Order and Judgment should be entered with terms consistent with the terms of the Findings of Fact above.

DATED this 29th day of May, 2013.

BY THE COURT:


TODD M. SHAUGHNESSY
District Court Judge



CERTIFICATE OF SERVICE

On this 20th day of May, 2013, I hereby caused the foregoing **[RESPONDENT'S PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be e-filed which in turned caused notification of such filing to be sent to the following counsel who are identified as e-filers with this Court:

F. Kevin Bond, Esq.
Budge W. Call, Esq.
BOND & CALL, L.C.
8 East Broadway, Suite 720
Salt Lake City, Utah 84111

/s/ Marilyn Christensen

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 074900501 by the method and on the date specified.

EMAIL: DEAN C ANDREASEN

EMAIL: F KEVIN BOND

Date: 05/29/2013

/s/ AMANDA OLSEN



Deputy Court Clerk

Tab N

1. The Court affirms all previous rulings, orders and judgments entered in this action except as provided for herein.

Lis Pendens

2. The Court declines to impose statutory damages relative to the six lis pendens recorded by Petitioner.

Contempt

3. The Court declines to hold Petitioner in contempt for:

- a. having recorded the six lis pendens;
- b. having interfered with the sale of the Sandy Retail Center and the Phoenix Plaza;
- c. having diverted assets;
- d. having diverted rents from the Phoenix Plaza;
- e. having failed to comply with the orders of the Bankruptcy Court although Respondent may pursue such with the Bankruptcy Court; and
- f. having failed to sign documents relative to the sale and closing of the sale of the Sandy Retail Center and the Phoenix Plaza;

4. The previous Findings and Order entered November 19, 2012, relative to Petitioner's contempt for having made disparaging comments about Respondent, remains in effect including the ordered sanctions.

5. The previous Findings, Order, and Judgment entered March 1, 2012, relative to Petitioner's contempt for having failed to refinance the mortgage

encumbering the Phoenix Plaza, remains in effect but the Court declines to impose sanctions because the issue is moot in that the Phoenix Plaza property has been sold.

6. With respect to the St. George condominium issues, as far as those concern discovery issues governed by Rule 37, and to the extent relief is requested under Rule 37, the same is denied.

7. Insofar as any other contempt issue presented, the Court declines in the interest of justice to impose any further contempt finding or any further sanction.

Attorneys' Fees and Costs

8. Respondent is awarded her attorneys' fees and costs incurred from January 1, 2008 through May 31, 2012, in the total amount of \$309,074.72. However, the \$309,074.72 amount is reduced by the amount of \$83,373.18 because the \$83,373.18 amount constitutes a Judgment entered on January 25, 2012 for attorneys' fees and costs, which were incurred during the January 1, 2008 through May 31, 2012 time period. The Judgment entered on January 25, 2012 is being satisfied in total as described below. Accordingly, judgment is hereby entered against Petitioner in favor of Respondent in the amount of \$225,701.54 (\$309,074.72 - \$83,373.18) for attorneys' fees and costs.

9. Respondent was also previously awarded attorneys' fees and costs in the amount of \$6,251.26 relative to the Order Awarding Attorneys' Fees and Costs entered April 12, 2013, as awarded in the Findings and Order entered November 19, 2012. Accordingly, a judgment is hereby entered against Petitioner in favor of Respondent in the amount of \$6,251.26.

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10. Judgment interest and costs of collection are awarded as permitted under Utah law on the two judgments for attorneys' fees and costs awarded to Respondent above. These two judgments are not included in the Update of Judgment section below because of the different interest rates involved.

11. Respondent shall be responsible for her attorneys' fees and costs incurred prior to January 1, 2008 and after May 31, 2012, and any request for attorneys' fees and costs during those time periods is denied.

12. Petitioner shall be responsible for his attorneys' fees and costs for all time periods, and any request for such is denied.

Respondent's Accounting

13. Petitioner stipulated that under Respondent's updated accounting, Petitioner owes Respondent \$19,319.96 to equalize the division of the funds between the parties.

14. As detailed in the Court's Findings of Fact, the Court orders certain adjustments to Respondent's accounting. The amount found by the Court is that Respondent owes Petitioner a total of \$81,617.63 to equalize the division of the funds between the parties.

15. Accordingly, Respondent owes Petitioner the amount of \$62,297.67 (\$81,617.63 - \$19,319.96) and such amount shall be used as an adjustment in the final judgment amount as described below.

Utah Education Savings Plan Accounts

16. Under the terms of the Decree of Divorce, the parties were to equalize the division of certain Utah Educational Savings Plan accounts held as of November 2, 2007. On November 2, 2007, Petitioner held accounts totaling \$6,441.39 and Respondent held accounts totaling \$15,014.72 resulting in Respondent owing Petitioner the amount of \$4,286.67 which amount shall be used as an adjustment in the final judgment amount as described below.

Update of Judgment Initially Entered March 1, 2012

17. The updated amount of the Judgment entered on March 1, 2012, with offsets and adjustments as ordered by the Court, is calculated as follows:

	Judgment dated 03/01/12	\$1,912,696.00
A.	Interest only - Judgment 02/25/11	\$438,924.43
B.	Interest only – Judgment 03/01/12	\$81,748.10
C.	Interest only – Accrual of interest	\$126,185.22
	(Interest calculated at 8% interest from July 27, 2011 to May 23, 2012 or 301 days at per diem of \$419.22 on principal amount of \$1,912,696.00)	
D.	Attorneys' Fees/Costs – Judgment 01/25/12	
	Principal amount	\$83,373.18
	Interest amount	\$2,342.56
E.	Sandy Retail Center payment relative to Benchmark and sales price of \$590,000 and net sales proceeds of \$523,507.33; and credit of \$9,000.00	\$113,152.33 -\$9,000.00

F.	Amount Petitioner ordered to pay Respondent under ¶ 3.b. of Order (Hearing 01/22) entered 02/13/13	\$3,402.09
G.	Charge for \$130.00 and payment by Petitioner of \$130.00 for Respondent's service fees	\$0.00
H.	Adjustment as described above relative to Respondent's accounting	-\$62,297.67
I.	Accounting adjustment as described above for UESP accounts	-\$4,286.67
J.	Net sales proceeds from sale of Phoenix Plaza	<u>-\$1,557,290.95</u>

Unpaid principal as of May 23, 2012, relative to Judgment dated 03/01/12	\$1,128,948.62
--	----------------

18. Accordingly, judgment is entered against Petitioner in favor of Respondent in the amount of \$1,128,948.62 as of May 23, 2012, with interest at the rate of eight percent (8%) accruing on the unpaid principal balance until paid in full. Costs of collection are awarded as permitted under Utah law on this judgment.

Tax Liability on Sale of Phoenix Plaza


19. In paragraph 8 of the Order entered January 24, 2012, the Court ordered that "Petitioner is the owner of the Phoenix Plaza and the only person subject to IRS Form 1099 reporting pursuant to paragraph 11 of the Decree." Although the Court affirms that ruling, it further orders that Petitioner is entitled to a credit against the judgment referred to in the prior section for one half of the income tax assessed directly attributable to the sale of the Phoenix Plaza, as reported on Petitioner's 2012 federal income tax return. Petitioner is ordered to provide Respondent a complete copy of his

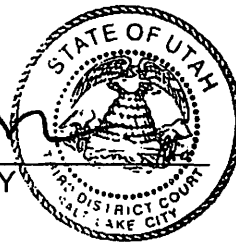
{00382842-1 }

2012 federal income tax return, any amendment thereto, and any supplemental information from Petitioner's accountant necessary to verify the amount of the tax. In the event the sale of the Phoenix Plaza results in a capital loss (i.e. a tax savings), the amount of the judgment shall be increased by one half of the income tax savings directly attributable to the sale of the Phoenix Plaza, as reported on Petitioner's 2012 federal income tax return.

DATED this 29th day of May, 2013.

BY THE COURT:


TODD M. SHAUGHNESSY
District Court Judge



APPROVED this _____
day of May, 2013:

F. KEVIN BOND
BUDGE W. CALL
Attorneys for Petitioner

*Petitioner's Objections
have been considered
and are overruled.
mg*

CERTIFICATE OF SERVICE

On this 20th day of May, 2013, I hereby caused the foregoing [RESPONDENT'S
PROPOSED] FINAL ORDER AND JUDGMENT to be e-filed which in turned caused
notification of such filing to be sent to the following counsel who are identified as e-filers
with this Court:

F. Kevin Bond, Esq.
Budge W. Call, Esq.
BOND & CALL, L.C.
8 East Broadway, Suite 720
Salt Lake City, Utah 84111

/s/ Marilyn Christensen

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 074900501 by the method and on the date specified.

EMAIL: DEAN C ANDREASEN
EMAIL: F KEVIN BOND

Date: 05/29/2013

/s/ AMANDA OLSEN



Deputy Court Clerk

Tab O

FILED DISTRICT COURT
Third Judicial District

JUL 12 2013

SALT LAKE COUNTY

By

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

MICHAEL S. ROBINSON,

Petitioner,

vs.

DEBRA J. ROBINSON,

Respondent.

MINUTE ENTRY

Case No. 074900501

Judge Todd Shaughnessy

Pending before the court are (i) petitioner's Rule 59 Motion for New Trial to Amend the Findings of Fact, Conclusions of Law, and Final Judgment, and (ii) petitioner's Rule 62(b) Motion to Stay Execution of Judgment. The court has reviewed the moving, opposition, and reply papers filed in connection with both motions. Oral argument has not been requested and would not materially assist the court in resolving the motions.

Motion to Amend.

Petitioner's Rule 59 motion challenges the \$1.9 million judgment originally entered on or about March 1, 2012, and the court's award of attorneys' fees following the final hearings in April 2013. The March 1, 2012, judgment was incorporated into and consolidated with the final judgment of the court, entered on or about May 29, 2013. With respect to petitioner's challenges to the \$1.9 million judgment, the arguments raised by petitioner are all arguments that were or could have been raised in his Motion to Amend Judgment, Vacate Judgment, or Relief from Judgment Pursuant to Rules 52, 59, and/or 60(b)(6), filed by petitioner on or about March 14, 2012. That motion was fully briefed,

argued, and the court stands by its ruling and declines to revisit again the March 1, 2012, judgment. That portion of the motion is therefore denied for all of the reasons previously given in connection with the prior challenge to that judgment, and the additional reasons set forth in respondent's opposition papers. With respect to the petitioner's challenge to the court's award of attorneys' fees, the court notes that it did not award respondent all of the fees she sought and did not award her fees she incurred in connection with matters on which she was not successful at the hearing held in April 2013. The court stands by its attorney fee ruling for the reasons stated on the record and as set forth in petitioner's opposition papers. In sum, petitioner's Rule 59 motion is DENIED.

Motion to Stay.

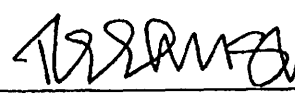
Petitioner requests a stay pursuant to Rule 62(b). The basis for the stay is his pending Rule 59 motion, and he requests a stay "until after a decision has been rendered on Petitioner's Rule 59 Motion...." The court has now ruled on the Rule 59 motion, and the Rule 62(b) motion is therefore DENIED as moot.

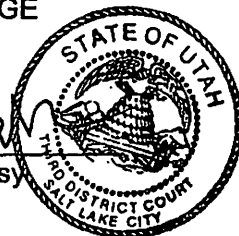
ORDER

Based on the foregoing, and for good cause appearing, petitioner's Rule 59 Motion for New Trial to Amend the Findings of Fact, Conclusions of Law, and Final Judgment, and petitioner's Rule 62(b) Motion to Stay Execution of Judgment are both DENIED. This is the order of the court, and no additional order is required to be prepared in this matter.

DATED this 11th day of July, 2013.

DISTRICT COURT JUDGE


Judge Todd Shaughnessy



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 074900501 by the method and on the date specified.

EMAIL: DEAN C ANDREASEN

EMAIL: F KEVIN BOND

EMAIL: BUDGE W CALL

07/12/2013

Date: _____

/s/ AMANDA OLSEN 

Deputy Court Clerk

Tab P

074900501

ORIGINAL

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

MICHAEL S. ROBINSON,

Petitioner,

-vs-

DEBRA J. ROBINSON,

Respondent.

**TRANSCRIPT OF
RULING**

Case No. 074900501

Judge Shaughnessy

Commissioner Evans

Date:

May 23, 2012

FILED DISTRICT COURT
Third Judicial District

APR 7 - 2012

SALT LAKE COUNTY

By:

Deputy Clerk



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A P P E A R A N C E S

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May 23, 2012

P R O C E E D I N G S

THE COURT: Good morning, Counsel.

(Good mornings from counsel.)

THE COURT: Okay. We are on the record--
we're on the record, right, Mandy?

(No audible response.)

THE COURT: Okay. We're on the record in
the Robinson v. Robinson matter, 074900501. And for
purposes of the record, can we have folks who are on
the line identify themselves?

MR. CALL: Yeah. Budge Call, Your Honor, on
behalf of the Petitioner, Michael Robinson.

MR. ANDREASEN: Dean Andreasen and Sarah
Campbell on behalf of the Respondent, Debra Robinson.

THE COURT: Okay. I appreciate your doing
this. I know it's a little--a little bit of an
unusual way dealing with ruling on the--on the pending
motions, but I--I wanted to--first of all, wanted--as
I said yesterday, the purpose of my--of the call today
is really just to announce to you what my ruling is on
the three pending motions that we've got before us.

And I decided during the hearing yesterday
that--that I wanted to--although I had a good idea of
what I wanted to do, I decided that I wanted to go

1 back and take another look at the file. I wanted to
2 go back and sort of go through everything once again
3 and make sure that I had satisfied myself that I was
4 familiar with the issues.

5 You know, I'm not--I'm sympathetic to the
6 issue that's been raised about this case potentially
7 going up on appeal and it resulting in a lot more
8 delay and a lot more expense in a case that has been
9 subject to, as you all know better than I, a lot of
10 delay and a lot of expense already. And so I really
11 felt like I needed to go back once again, look through
12 everything very carefully.

13 So I did that for the better part of the
14 night last night, went back sort of once again through
15 the file, reviewed everything carefully, reviewed
16 again the briefs that were filed on the pending
17 motions, and am going to just sort of announce to you
18 what I'm--what I'm going to do with respect to the
19 pending motions, and then we'll talk sort of briefly
20 about where we go from there.

21 Let me take up, first, the--the motion to
22 amend the preliminary injunction that the Court
23 entered with respect to the Lis Pendens and the
24 nullification of the Lis Pendens. The Court's going
25 to deny that motion. I believe that the Court had the

1 authority, under 78B-6-1304, or the Court's inherent
2 authority to issue orders effectively in aid of its
3 jurisdiction and to nullify the Lis Pendens in this
4 case.

5 Basically what I said in my March 1, 2012
6 Minute Entry, and I'm going to stand by that ruling.
7 You know, there are some practical considerations that
8 were at issue here that I don't know were ever really
9 spelled out very clearly. The reality is that we were
10 on the eve of a court-ordered sale of one parcel of
11 property and ultimately a second parcel of property;
12 that these Lis Pendens had been recorded not simply
13 once, but twice; that this was obviously done--and I
14 think the Petitioner has been fairly candid that this
15 was done in an effort to prevent that sale from
16 closing.

17 The reality is that going to Judge Stone and
18 --out in West Jordan in that case, you would have been
19 presenting to him, you know, all of these issues with
20 none of the background regarding the--the issues in
21 the divorce case. And I think it would have been
22 unfair to him and he would have been, frankly, very
23 ill-equipped to deal with the issues that had been
24 ordered either by me--the orders that had been entered
25 either by me or by predecessor judges in this case.

1 And I think just as a practical matter, there
2 was no way to deal with that other than by having--by
3 having me handle it. So for these reasons and the
4 other reasons that were advanced, I'm going to deny
5 the--the motion to amend the preliminary injunction
6 and the nullification order. Mr. Andreasen, I'm going
7 to ask you to please prepare a short order on that,
8 okay?

9 MR. ANDREASEN: Certainly. Are you issuing
10 any type of additional minute entry on that or not?

11 THE COURT: I'm not.

12 MR. ANDREASEN: Okay.

13 THE COURT: Well, what--what I will do, when
14 we get done, is I'm going to give--and Mandy's not
15 even in here, but I'm going to have Mandy just do a
16 docket entry of this phone call with, you know,
17 basically a three-sentence summary of what the rulings
18 were and who's been directed to prepare what.

19 MR. ANDREASEN: Okay.

20 THE COURT: Okay?

21 (No audible response.)

22 THE COURT: So next is the--what I call,
23 perhaps inaptly, the omnibus motion, if you will.
24 This is the Rule 52, 59 and 60(b) motion to amend the
25 judgment, to vacate the judgment or for other relief.

1 And this, as I said, is what I spent the bulk of my
2 time, you know, last night and again this morning
3 going back again through the file and making sure that
4 I was comfortable with what had happened up to this
5 point in the case.

6 And I'm going--and I don't know that it's
7 necessary to do this, but I'm going to sort of walk
8 back through a little bit the--the notes that I have
9 from going back through the file so at least it's
10 clear as to how I get to the conclusions that I get
11 to.

12 There was, on November 2nd of 2007, a
13 Stipulation and Property Settlement Agreement,
14 pursuant to which Debra was to receive \$1.7 million,
15 Michael was to receive--at least in connection with
16 the property that we're talking about here, that
17 Michael was to receive the property and this refinance
18 was basically a mechanism that had been agreed to by
19 the parties in order to fund a property distribution,
20 of which the Phoenix Plaza was--was one part, among
21 many.

22 Not long thereafter, there was a sort of a
23 protracted period of litigation in the case, and that
24 ultimately resulted in a motion being filed by Michael
25 to set aside the stipulation. That was heard on

1 October 6, 2008 by the Commissioner. The Commissioner
2 denied that motion. The order was signed, it looks
3 like, on November 14, 2008 by the Commissioner, and
4 then on November 17, 2008 by Judge Iwasaki.

5 That's the order--that, along with the
6 Divorce Decree that is entered on December 31st of
7 2008, are the issues that go up on appeal to the Utah
8 Court of Appeals. And the Court of Appeals' decision
9 is issued on April 20th of 2010.

10 I've taken another look at the Court of
11 Appeals opinion and the Court of Appeals pretty--and I
12 agreed with the--with the point that was made at
13 yesterday's hearing that the Court of Appeals
14 obviously did not have the contempt issue in front of
15 it. The Court of Appeals had in front of it the issue
16 of setting aside the agreement that had been entered
17 into by the parties and the decree that was premised
18 on that agreement. But in that context, the Court of Appeals pretty squarely
19 held that
20 the doctrines of mutual mistake and impossibility were
21 not grounds upon which Michael could set aside the
22 stipulation and decree.

23 The issue of fraud is an issue that, while
24 not directly raised as a defense, is an issue that
25 could have been raised and was not raised and is

1 therefore barred by res judicata, as I found in
2 confirming the ruling from the July 26th hearing.
3 It's important to me, at least from sort of my
4 analysis of--of how we look at this case, is that as
5 of April 22nd of 2010, when the Court of Appeals
6 issued its opinion, the lay of the land was basically
7 this: We had a stipulation and a decree that the
8 Court of Appeals had determined were valid and
9 enforceable.

10 That stipulation and decree and the Court of
11 Appeals opinion represent law of the case. Under the
12 terms of that stipulation and decree, Debra was
13 entitled to the \$1.784 million in property distri-
14 bution. I don't believe, in light of the ruling from
15 the Court of Appeals and the doctrine of law of the
16 case, that I have the authority to change any of that,
17 even if I were inclined to do so.

18 I--there's simply no way that I can properly
19 undo decisions that have been made by the Court of
20 Appeals, and I can't do that either directly or
21 indirectly. It's simply outside the scope of
22 authority that I have. And everything that happened
23 in the case from and after that time has to be viewed
24 in light of the reality of the Court of Appeals
25 decision.

1 You know, there's some significant attention
2 paid in the briefs to what the Commissioner did or did
3 not consider, what Judge Iwasaki did or did not
4 consider, and what the Court of Appeals did or did not
5 consider in the course of making that opinion--in the
6 course of the events prior to April 22nd of 2010.

7 And my response to that is that--that this
8 Court is not the proper forum in which to raise any of
9 those issues. I simply don't have the authority to go
10 back and unwind it. And I don't believe that I can do
11 it indirectly. I don't believe that--that I have the
12 authority to do indirectly what I am prohibited by law
13 of the case and by the binding precedent from the
14 Court of Appeals indirectly.

15 So the events following the issuance of the
16 opinion are really the ones that are most important
17 for purposes of this motion. And so we have, on
18 January 13th of 2011, a hearing before the
19 Commissioner, at which the Commissioner did a few
20 things, one is which--one of which was struck
21 affidavits or declarations that the Commissioner
22 determined had been untimely filed.

23 The Commissioner declined to continue the
24 hearing and at that January 13, 2011, Michael
25 stipulated to the sale of the property for \$3 million.

1 There is a suggestion that that stipulation was
2 somehow not voluntary and I just can't find any
3 evidence to suggest that--that his agreement as of
4 January 13th to sell the property for \$3 million was
5 anything other than a voluntary agreement that he'd
6 entered into at that time.

7 Now, the Commissioner also concluded that--
8 that he could not award the principal amount of the
9 \$1.7 million, and that the--that those amounts would
10 have to be--because they were not yet due--and I--
11 whatever the language of the Commissioner from the--
12 from the hearing is what it is, but essentially that
13 those were not yet due and they would have to be dealt
14 with as a sanction following a finding of contempt.
15 And that's what, it appears to me, kind of led us down
16 the road of the contempt proceedings that followed.

17 There was an objection to the Commissioner's
18 recommendation that was filed in late January. That
19 was addressed and ruled upon by Judge Iwasaki in
20 February. And he also entered his order from the
21 January 13 hearing.

22 We then sort of move--we then move to the
23 April 2011 time frame. And at that point in time
24 Michael filed a relief--again, a--basically a 59 or
25 60(b) motion for relief, in which he raised, again,

1 the fraud issues. That motion was subsequently
2 withdrawn, as we all know from the Minute Entry that I
3 entered and from the docket in the case. And in early
4 June, Debra moved to enforce the stipulation and to
5 sell the property for \$3 million.

6 There is, on June 21st of 2011, a hearing
7 before Judge Iwasaki, at which Judge Iwasaki orders a
8 couple of things. One is a sale of the Sandy Center.
9 The other is the sale of the Phoenix Plaza for \$3
10 million.

11 We then--that then gets us to the point of
12 the July 26, 2011 hearing. I have gone back again
13 last night and reread the transcript of the hearing.
14 And I've gone back again and looked at the Minute
15 Entry that I entered and the Findings of Fact that I
16 entered on March 1st with respect to that issue.

17 And I am, I will tell you candidly, not 100
18 percent comfortable, as I indicated to you at the
19 hearing yesterday, that contempt and a contempt
20 proceeding was the correct vehicle to use to enforce
21 the sale of the property. However, under Rules 59, 60
22 and Rule 52, as well, it's not my role and my job to
23 go back and re-review and second-guess each decision.

24 Now, if there is an obvious or egregious
25 error that's been made, then I think that I need to go

1 back and look at it and try and fix it. And as I say,
2 I'm not entirely comfortable with the idea that a
3 contempt proceeding was the proper way to enforce the
4 terms of the decree.

5 However, in that regard, I can say a few
6 things. One is in going back and looking at the
7 transcript again, there is a certain sense in which
8 that error, if it was an error, was invited by
9 Michael's counsel at the time. Because what happened
10 was there were certain proffers that were made at the
11 hearing with respect to testimony that would be
12 offered.

13 There was a discussion between Judge Iwasaki
14 and--and Michael's counsel about the Court of Appeals
15 opinion and the issues that had been addressed by the
16 Court of Appeals. And essentially, no one said at the
17 time what's being said now, which is, Wait a minute.
18 There was not a contempt issue that was before the
19 Court of Appeals at the time. You still need to
20 consider this issue.

21 Basically, what happened is--is counsel said,
22 Well, if you're not going to consider impossibility
23 and you're not going to consider mistake, and you're
24 not going to consider res judicata because it's
25 something that could have been raised but was not and

1 therefore barred by res judicata, then there's really
2 nothing on which--there's really nothing to present in
3 terms of evidence. And it would--there's a certain
4 sense in which the finding of--the finding of contempt
5 that resulted from that was a foregone conclusion.

6 The other thing I will say is that even if
7 the contempt vehicle was not the proper vehicle to
8 raise the issue, and if it were addressed in some
9 other way, I'm not sure that the result at the end of
10 the day would be any different. And that was the
11 issue I was trying to get at, inartfully I'm sure, in
12 my questions of Mr. Bond yesterday about whether we
13 wouldn't be in the same place we are now if it had
14 been enforced by, for example, a motion for summary
15 judgment or, frankly, even a--a trial on the issue of
16 the contract--the contract being enforceable and no
17 defense to the contract being enforceable on the
18 grounds of impossibility, mutual mistake or fraud.

19 And so I guess the bottom line for me is that
20 unless there was some mechanism by which the Court
21 could go back and undo the Utah Court of Appeals
22 opinion, which this Court can't do and isn't inclined
23 to do, in any event, the deal that was reached by the
24 parties would still have to be enforced. And the
25 mechanism of contempt was a mechanism that was chosen

1 to do that. As I said, I'm not a hundred percent sure
2 that that was the right choice, but what I am sure of
3 is that at the end of the day, if it was not the right
4 choice, I think the result and where we would be if a
5 different path had been followed is exactly where we
6 are today.

7 The other thing I want to make clear is that
8 to the extent there was any confusion about the
9 interlineations that I made to the proposed form of
10 order from the July 26 hearing, my purpose in making
11 those interlineations was--was not to do anything
12 other than make sure that the findings and the order
13 conformed with the issues that were before Judge
14 Iwasaki on July 26th so that the order would correctly
15 reflect what he ruled at the hearing. I didn't intend
16 anything more or anything less than that.

17 That's sort of a long explanation, I think,
18 of getting to the point that I've looked at these
19 issues carefully, I've thought about them carefully,
20 and I just don't see that there is grounds or,
21 frankly, the ability, given the Court of Appeals
22 opinion, to go back and unwind what's happened in the
23 case since July of 2011, or since April, frankly, of
24 2011, when the Court of Appeals opinion came down.

25 So on that basis, I'm going to deny the--what

1 I've called the omnibus motion. And again, we'll do a
2 very short Minute Entry following our telephone
3 conference today documenting that. Mr. Andreasen,
4 I'll ask you to prepare the order. Okay?

5 MR. ANDREASEN: Did you want all of this
6 background in the order or not?

7 THE COURT: No, I don't think--I think the
8 record speaks for itself. I just wanted my rationale
9 to be recorded somewhere in how I got to the point
10 that I got to.

11 MR. ANDREASEN: Okay. Thank you.

12 THE COURT: Now, that brings up the last
13 motion, which is the motion dealing with the temporary
14 restraining order that I issued. And with respect to
15 that issue, I will enter an order, when we finish the
16 phone call today, dissolving my TRO effective
17 immediately. I'm not going to do anything in that
18 order other than dissolve the TRO, because I don't
19 have any other issue, frankly, before me in that
20 regard.

21 The TRO, as I explained yesterday, was
22 entered for purpose--purposes of--and I went back and
23 looked at it again today and I think it was pretty
24 clear--for purposes of preserving the status quo
25 pending a ruling on the motion that I have now just

1 ruled on. And in light of the fact that I denied the
2 motion, I'm going to dissolve the TRO. And so I don't
3 need anybody to prepare anything for me on that. I'll
4 just enter a short order when we get done here. Okay?

5 MR. ANDREASEN: Would that result in the
6 funds being disbursable, if there is such a word,
7 immediately after that is entered?

8 THE COURT: That, I don't know. I mean, I'm
9 assuming that your prior orders that you had in the
10 case dealing with the sale of the property address in
11 some fashion how that's to occur. But I didn't go
12 back and look at those again. And the only issue that
13 I, frankly, view that I have in front of me is
14 dissolving the TRO.

15 MR. ANDREASEN: Okay. Certainly (inaudible)
16 --I think you've answered my question.

17 THE COURT: Okay.

18 MR. ANDREASEN: May I ask one question for
19 clarification?

20 THE COURT: Sure.

21 MR. ANDREASEN: You have the request for
22 attorney fees in responding to their two motions, to
23 (inaudible) motions. Is the Court ruling on that,
24 also?

25 THE COURT: Why don't we do this? On the

1 motion for attorney's fees, indicate in the order that
2 the Court will take up that request for attorney's
3 fees in connection with these motions in resolving--in
4 sort of fully and finally resolving all of the
5 outstanding issues in the case.

6 MR. ANDREASEN: Certainly.

7 THE COURT: So that--I'd prefer not to do it
8 piecemeal.

9 MR. ANDREASEN: (Inaudible.)

10 THE COURT: Okay. The other thing that I
11 suggested yesterday we be prepared to talk about is
12 scheduling. And I wonder if, given that we don't have
13 your all's clients on the line and we don't have
14 Mr. Bond here, what we ought perhaps to do instead is
15 to simply set a date for a scheduling conference at
16 which you all could come in with your proposals as to
17 how I proceed from--from there.

18 And I guess, perhaps --and I say this, hoping
19 against odds, that the two of you have an opportunity
20 to speak with one another and present me some agreed-
21 upon proposal for how we proceed from here to fully
22 and finally resolving the case.

23 MR. ANDREASEN: And certainly I think that
24 makes sense, and we'd be happy to make a proposal and
25 get something over to Mr. Call and Mr. Bond here in

1 the near future. And I see kind of two practices
2 we're following now, one being the contempt issue that
3 we've started.

4 And then number two, a motion dealing with
5 all of the, I'll call, wrap-up issues. For example,
6 attorney fees; for example, accrual of interest;
7 things--additional items that were in the Decree of
8 Divorce that just need to be finalized and either
9 brought to judgment or ruled upon in some fashion.

10 THE COURT: Right. And I think there may be
11 --based on the comments that were made yesterday, I
12 think there may be issues that--that the Petitioner
13 will want to bring up with respect to that sort of
14 final accounting and wrapping up.

15 MR. ANDREASEN: Certainly.

16 THE COURT: And it would--and I guess it
17 would be my hope that we figure out a way to tee up
18 all of those issues and get them--and get them
19 resolved as efficiently as we can.

20 MR. ANDREASEN: We still have, I guess from
21 my perspective, a major issue of are Mr. Call and
22 Mr. Bond going to be involved in the case, given this
23 advice of counsel defense that has been raised.

24 THE COURT: Well, that's put that on the list
25 of things to talk about--

1 MR. ANDREASEN: Okay.

2 THE COURT: --I guess. So--

3 MR. CALL: (Inaudible) that in our proposal
4 to get this thing resolved. But do we want to get a
5 date to come over for a scheduling conference?

6 THE COURT: Yeah, that's what I'm look--
7 that's what--I'm just looking at my calendar here.
8 Let me--let me get Mandy. I hesitate to schedule
9 anything without her knowing what I'm doing, so...

10 Do you guys want to come over here and do it
11 or do we want to do it--do we want to do it on the
12 phone?

13 MR. ANDREASEN: I might suggest, Your Honor,
14 that maybe we just--give us a ten-day period or
15 something at least to see if we can put something down
16 on paper as to all the remaining issues, get it to you
17 and then maybe come--I'm happy either way, a phone
18 call or in person, whichever is most convenient.

19 THE COURT: Okay. Well, let's--

20 MR. CALL: Yeah, that's fine. If we can get
21 a written proposal to you, then may be easier to do it
22 by phone.

23 THE COURT: Yeah. If you all have an
24 agreement as to how you want to do it, then there's--
25 what I don't want to do is have all of you take the

1 time and effort and traipsing down here when we really
2 don't need to. So why don't we do--why don't we--
3 let's figure out what a date is. We'll plan on this
4 being a--sort of a telephone scheduling conference.
5 And if either of you feels like we need--that we need
6 to have everybody down here and we need more time to
7 do it, then just include that in whatever you file
8 with me.

9 We're looking at--I mean, they want at least
10 ten days to sort of sort through the issues, so we're
11 looking at probably two weeks. The first week in June
12 I'm in Summit. We've got a trial (inaudible). If we
13 did it that week, we'd have to--it would have to be on
14 the phone.

15 (One of the attorneys talking, inaudible.)

16 THE COURT: How about Wednesday, June 13th at
17 4:00?

18 MR. ANDREASEN: We're fine.

19 THE COURT: Does that work for you guys? Do
20 you have--do you have Kevin's calendar or not?

21 MR. CALL: I do. He's not available on the
22 13th, but he is available on the 12th.

23 THE COURT: Yeah, I can't do it on the 12th.
24 If we--I'm out of town on the 14th. We could do the--
25 Wednesday, the 20th, at 8:30.

1 MR. ANDREASEN: We're fine.

2 MR. CALL: (Inaudible.)

3 (Judge talking to clerk, inaudible.)

4 MR. CALL: I'm sorry, I had to run into
5 Kevin's office real quick. He doesn't seem to have
6 any conflict on the 20th, so that should work.

7 THE COURT: All right. Let's plan on the
8 20th at 8:30. Can you all make an effort to get to me
9 some kind of a consolidated statement, if you will, of
10 the issues that we need to kind of resolve and talk
11 about?

12 MR. ANDREASEN: Sure.

13 THE COURT: And do that by the--Wednesday,
14 the 13th.

15 MR. ANDREASEN: Certainly.

16 MR. CALL: Okay.

17 THE COURT: And if you--and if--I guess what
18 I envision is if--if--you know, one section of that
19 that says, Here are the issues we all agree need to be
20 resolved and our proposal for how to resolve them.
21 And hopefully that's the end of it. But if not,
22 another section saying, you know, These are the other
23 issues that we think we need to address and how we
24 want to address them. Just so I've got something that
25 kind of has each party's position on that. Okay?

1 MR. CALL: All right.

2 MR. ANDREASEN: Okay.

3 THE COURT: Thanks very much, Counsel. I
4 appreciate it.

5 MR. ANDREASEN: Thank you.

6 MR. CALL: Thank you.

7 THE COURT: Bye.

8 (The ruling was concluded.)

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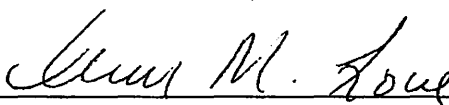
C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Ann M. Love, a Registered Professional
Reporter and Notary Public within and for the State of
Utah, do hereby certify:

That the foregoing tape-recorded proceedings were
transcribed into typewriting under my direction and
supervision and that the foregoing pages contain a
true and correct transcription of said proceedings to
the best of my ability to do so.

IN WITNESS WHEREOF, I have hereunto subscribed my
name and seal this 1st day of June 2012.



ANN M. LOVE, RPR



Tab Q

CHAPTER 9

WRONGFUL LIENS AND WRONGFUL JUDGMENT LIENS

Section		Section	
38-9-1.	Definitions.	38-9-6.	Petition to file lien — Notice to record interest holders — Summary relief — Contested petition.
38-9-2.	Scope.	38-9-7.	Petition to nullify lien — Notice to lien claimant — Summary relief — Finding of wrongful lien — Wrongful lien is void.
38-9-3.	County recorder may reject wrongful lien within scope of employment — Good faith requirement.		
38-9-4.	Civil liability for recording wrongful lien — Damages.		
38-9-5.	Repealed.		

38-9-1. Definitions.

As used in this chapter:

(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

(2) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(b) "Record interest holder" includes any grantor in the chain of the title in certain real property.

(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the property is located.

(6) "Wrongful lien" means any document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded is not:

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

History: C. 1953, 38-9-1, enacted by L. 1997, ch. 125, § 2; 2008, ch. 323, § 1; 2009, ch. 69, § 1; 2010, ch. 331, § 20.

Repeals and Reenactments. — Laws 1997, ch. 125, § 2, repeals former § 38-9-1, as enacted by Laws 1985, ch. 182, § 1, relating to the liability of a person filing a wrongful lien, and enacts the present section. See § 38-9-4 for present liability provisions.

Amendment Notes. — The 2008 amend-

ment, effective May 5, 2008, added "or notice of interest" in (2) and added "notice of interest" in (6).

The 2009 amendment, effective May 12, 2009, added the (4)(a) designation and added (4)(b).

The 2010 amendment, effective May 11, 2010, deleted "or filed" following "recorded" in the introductory language of (6).

38-9-2. Scope.

- (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.
(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.
(c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter applicable to the filing of a notice of interest do not apply to a notice of interest filed before May 5, 2008.
- (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78B-6-1303 or seeking any other relief permitted by law.
- (3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

History: C. 1953, 38-9-2, enacted by L. 1997, ch. 125, § 3; 1999, ch. 122, § 1; 2005, ch. 93, § 1; 2008, ch. 3, § 83; 2008, ch. 223, § 2.

Repeals and Reenactments. — Laws 1997, ch. 125, § 3 repeals former § 38-9-2, as enacted by Laws 1985, ch. 182, § 2, relating to an unauthorized lien as invalid, and enacts the present section. For present comparable provision, see § 38-9-7.

38-9-3. County recorder may reject wrongful lien within scope of employment — Good faith requirement.

- (1) (a) A county recorder may reject recording of a lien if the county recorder determines the lien is a wrongful lien as defined in Section 38-9-1.
(b) If the county recorder rejects a document to record a lien in accordance with Subsection (1)(a), the county recorder shall immediately return the original document together with a notice that the document was rejected pursuant to this section to the person attempting to record the document or to the address provided on the document.
- (2) A county recorder who, within the scope of the county recorder's employment, rejects or accepts a document for recording in good faith under this section is not liable for damages.
- (3) If a rejected document is later found to be recordable pursuant to a court order, it shall have no retroactive recording priority.
- (4) Nothing in this chapter shall preclude any person from pursuing any remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

History: C. 1953, 38-9-3, enacted by L. 1997, ch. 125, § 4; 2010, ch. 381, § 21.

Repeals and Reenactments. — Laws 1997, ch. 125, § 4 repeals former § 38-9-3, as

enacted by Laws 1985, ch. 182, § 3, relating to liability for refusing to correct a document containing a wrongful lien, and enacts the present section.

38-9-4. Civil liability for recording wrongful lien — Damages.

(1) A lien claimant who records or causes a wrongful lien as defined in Section 38-9-1 to be recorded in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.

(2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

(3) A person is liable to the record owner of real property for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or causes to be recorded a wrongful lien as defined in Section 38-9-1 in the office of the county recorder against the real property, knowing or having reason to know that the document:

- (a) is a wrongful lien;
- (b) is groundless; or
- (c) contains a material misstatement or false claim.

History: C. 1953, 38-9-4, enacted by L. 1997, ch. 125, § 5; 2008, ch. 297, § 11; 2008, ch. 223, § 3; 2010, ch. 381, § 22.

Repeals and Reenactments. — Laws 1997, ch. 125, § 5 repeals former § 38-9-4, as enacted by Laws 1985, ch. 182, § 4, relating to venue, costs, and attorney fees, and enacts the present section. For present provisions, see § 38-9-6.

38-9-5. Repealed.

Repeals. — Laws 2005, ch. 93, § 12 repeals § 38-9-5, as enacted by L. 1997, ch. 125, § 6, pertaining to criminal liability and penalties for filing a wrongful lien, effective May 2, 2005.

For present comparable provisions, see § 76-6-503.5; see also Title 38, Chapter 9a, regarding injunctions against wrongful liens.

38-9-6. Petition to file lien — Notice to record interest holders — Summary relief — Contested petition.

(1) A lien claimant whose document is rejected pursuant to Section 38-9-3 may petition the district court in the county in which the document was rejected for an expedited determination that the lien may be recorded or filed.

(2) (a) The petition shall be filed with the district court within 10 days of the date notice is received of the rejection and shall state with specificity the grounds why the document should lawfully be recorded or filed.

(b) The petition shall be supported by a sworn affidavit of the lien claimant.

(c) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.

(d) If the court grants a hearing, the petitioner shall serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing and service shall be accomplished by certified or registered mail.

(e) Any record interest holder of the property has the right to attend and contest the petition.

(3) Following a hearing on the matter, if the court finds that the document may lawfully be recorded, it shall issue an order directing the county recorder to accept the document for recording. If the petition is contested, the court may award costs and reasonable attorney's fees to the prevailing party.

(4) A summary proceeding under this section is only to determine whether or not a contested document, on its face, shall be recorded by the county recorder. The proceeding may not determine the truth of the content of the document nor the property or legal rights of the parties beyond the necessary determination of whether or not the document shall be recorded. The court's grant or denial of the petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.

(5) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section.

History: C. 1953, 38-9-6, enacted by L. 1997, ch. 125, § 7.

38-9-7. Petition to nullify lien — Notice to lien claimant — Summary relief — Finding of wrongful lien — Wrongful lien is void.

(1) Any record interest holder of real property against which a wrongful lien as defined in Section 38-9-1 has been recorded may petition the district court

in the county in which the document was recorded for summary relief to nullify the lien.

(2) The petition shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

(3) (a) If the court finds the petition insufficient, it may dismiss the petition without a hearing.

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

(d) The lien claimant is entitled to attend and contest the petition.

(4) A summary proceeding under this section is only to determine whether or not a document is a wrongful lien. The proceeding shall not determine any other property or legal rights of the parties nor restrict other legal remedies of any party.

(5) (a) Following a hearing on the matter, if the court determines that the document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney's fees to the petitioner.

(b) (i) The record interest holder may record a certified copy of the order with the county recorder.

(ii) The order shall contain a legal description of the real property.

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.

(6) If the district court determines that the lien is a wrongful lien as defined in Section 38-9-1, the wrongful lien is void ab initio and provides no notice of claim or interest.

(7) If the petition contains a claim for damages, the damage proceedings may not be expedited under this section.

History: C. 1953, 88-9-7, enacted by L. 1997, ch. 125, § 8.

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78B-6-1304. Motions related to a notice of the pendency of an action.

(1) Any time after a notice has been recorded pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:

- (a) a party to the action; or
- (b) a person with an interest in the real property affected by the notice.

(2) A court shall order a notice released if:

- (a) the court receives a motion to release under Subsection (1); and
- (b) the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.

(3) If a court releases a notice pursuant to this section, the claimant may not record another notice with respect to the same property without approval of the court in which the action is pending.

(4) Upon a motion by any person with an interest in the real property that is the subject of a notice, a court may require the claimant to give the moving party a guarantee as a condition of maintaining the notice:

- (a) any time after a notice has been recorded; and
- (b) regardless of whether the court has received an application to release under Subsection (1).

(5) A person who receives a guarantee under Subsection (4) may recover an amount not to exceed the amount of the guarantee upon a showing that:

- (a) the claimant did not prevail on the real property claim; and
- (b) the person seeking the guarantee suffered damages as a result of the maintenance of the notice.

(6) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:

- (a) the nonprevailing party acted with substantial justification; or
- (b) other circumstances make the imposition of attorney fees and costs unjust.

Enacted by Chapter 3, 2008 General Session

