

2016

**I-D Electric, Inc. A Utah Corporation, Plaintiff and Appellee vs.
Linda Gillman, Defendant and Appellant**

Utah Court of Appeals

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IN THE COURT OF APPEALS FOR THE STATE OF UTAH

I-D ELECTRIC, INC. a Utah Corporation,

Plaintiff and Appellee,
vs.

LINDA GILLMAN,

Defendant and Appellant.

**OPENING BRIEF OF APPELLANT,
LINDA GILLMAN**

Appeal #20150682-CA
District Court #110917777

APPELLANT'S OPENING BRIEF

Appeal from the Third Judicial District Court, Salt Lake Department
The Honorable Richard D. McKelvie

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UTAH APPELLATE COURTS

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Jurisdiction

Appellate jurisdiction is vested in the Court of Appeals under Utah Code Annotated ("UCA") §78A-4-103(2)(j), and Rule 3, Utah Rules of Appellate Procedure.

Issues for Review Standards of Review Preservation

1. **Mechanic's Lien Attorney Fees.** Defendant summarily defeated Plaintiff's two mechanic's liens before trial. The Mechanic's Lien statute, UCA §38-1-18, provides for attorney fees, as a matter of law, to the successful party defending against a lien under UCA §38-1-3. The trial court denied Defendant's attorney fees for successfully defeating the liens, and awarded Plaintiff its attorney fees for losing them.

Issue for Review: In its interpretation of UCA §38-1-18, did the trial court err in awarding attorney fees to the losing party on the mechanic's liens?

Standard of Review: Statutory interpretation and legislative intent are questions of law, reviewed *de novo* for correctness.

See Adams v. State, 2005 UT 62, ¶18, 123 P.3d 400; Gonzales v. Morris, 610 P.2d 1285, 1286 (Utah 1980) (citing Henrie v. Rocky Mountain Packaging Corp., 113 Utah 444, 202 P.2d 727 (1949))

Preservation: Appellant preserved this issue in the Motion for Partial Summary Judgment. (R. 143-152)

2. **Wrongful Lien.** The Wrongful Lien statute, UCA §38-9-1, specifies that a lien is wrongful, and subject to legislated sanctions, if it is not authorized by statute, the court, or the property owner. Plaintiff's mechanic's lien on Defendant's property had no

statutory authorization. Though the mechanic's lien did not cross the statutory 'entitlement' threshold of UCA §38-1-3, the trial court ruled it was not wrongful because it was "statutory," but "unenforceable."

Issue for Review: In its interpretation of UCA §38-1-3 and UCA §38-9-1, holding that Plaintiff's mechanic's lien was not wrongful, did the trial court err in denying statutory damages and attorney fees to Defendant?

Standard of Review: Statutory interpretation and legislative intent are questions of law, reviewed *de novo* for correctness.

Pratt v. Pugh, 2010 UT App 219, ¶7, 238 P.3d 1073; Russell v. Thomas, 2000 UT App 82, ¶8, 999 P.2d 1244

Preservation: Appellant preserved this issue in the Counter Petition to Nullify Wrongful Lien. (R. 17-31)

3. **Contract.** Plaintiff and Defendant formed a contract for electrical services. At trial, Plaintiff advocated only for an express contract. Despite the court's finding that there was never an agreement on price, the court ruled there was an express contract and awarded Plaintiff the full amount of charges it arbitrarily computed.

Issue for Review: Without an agreement for price, did the trial court err in its conclusion of law, that there was an express contract formed between Plaintiff and Defendant, rather than a contract implied-in-fact?

Standard of Review: Questions of law are reviewed *de novo* for correctness.

John Deere Co. v. A & H Equip., 876 P.2d 880, 883 (Utah Ct.App. 1994) (citing Herm Hughes & Sons, Inc. v. Quintek, 834 P.2d 582, 583 (Utah App.1992))

Preservation: Appellant preserved this issue in the Written Closing Argument of Defendant. (R. 602-622)

Statutes Of Interpretative Importance To Determine Appeal

1. UCA §38-1-3: Mechanic's Liens (Addendum)
2. UCA §38-1-18: Mechanic's Lien Attorney Fees (Addendum)
3. UCA §38-9-1: Wrongful Liens (Addendum)
4. UCA §38-9-4: Wrongful Lien Sanctions (Addendum)

Statement of the Case

This simple contract case over a disputed electrical services invoice totaling \$1,827.61 is now entering its sixth year of litigation, generating attorney fees that are on course to exceed \$100,000, and consuming significant judicial resources. The amount at stake was never the \$1,827.61 invoice total, but only a few hundred dollars. By the end of this litigation, attorney fees will approximate 10,000% of those few hundred. The disproportionate value of wasted judicial resources can never be calculated.

In March 2011, Plaintiff, I-D Electric (I-D), worked one day on a house in Herriman owned by Defendant, Linda Gillman (Gillman), and sent her an invoice. She immediately disputed the amount as excessive and offered to pay a reasonable sum.¹ I-D refused to negotiate over the few hundred dollars of difference, instead electing the harshest device at its disposal—mechanic's liens.

I-D filed two successive mechanic's liens. Both were unlawful. Both were eventually defeated summarily, but not before tens of thousands of dollars in attorney fees were expended. The mammoth attorney fees arising from I-D's failed mechanic's

¹ Exhibit 6, May 6, 2011 Gillman Letter to I-D

liens would drive this case, not the underlying contract claim. (R. 752:3²; 757:7-758:8³; 816:4⁴)

Compounding the litigation complications and expense I-D instigated with the two mechanic's liens, the first lien was filed against a Salt Lake condominium Gillman owned that was unrelated to the electrical work on the Herriman house, introducing the collateral issue of whether this first lien, merely purporting to authority under the Mechanic's Lien statute, UCA §38-1-3, also qualified as "wrongful" under UCA §38-9-1, the Wrongful Lien statute.

The mechanic's liens and the wrongful lien issue completely engulfed the litigation for more than three years. By the time the second lien on the Herriman house was dismissed on summary judgment in July 2013, I-D had done nothing to prosecute the contract claim, but accumulated attorney fees were massive—all attributed to the lien issues. (R. 753:8²; 758:10³) No discovery was ever conducted in this case. (R. 753:7²; 758:9³)

The bloated attorney fees on lien litigation became the impossible barrier to a negotiated resolution of the case, as I-D jockeyed for some means of escaping that liability. I-D would not negotiate a resolution without the *quid pro quo* that Gillman first abandon her statutory right to attorney fees for defeating the liens. (R. 752:3²; 757:5-758:8³; 759:11³) Meanwhile, the contract claim lay dormant and the court twice ordered

² Affidavit of Mark D. Stubbs, Attorney For Defendant

³ Declaration of Paul D. Dodd, Attorney For Defendant

⁴ Order on Motion For Attorney Fees

I-D to show cause why it should not be dismissed for failure to prosecute. (R. 243-244⁵; 294-295⁶) The second order to show cause in February 2014, finally forced I-D to confront the contract claim, which would not commence until July 2014, more than three years after the onset of litigation.

I-D voluntarily dismissed the first lien. Judge Anthony Quinn's summary dismissal of the second lien in July 2013 was a crucial juncture in the case. Gillman had defeated both mechanic's liens and held the statutory right to attorney fees, which then exceeded \$12,000. (R. 387:18-20⁷; 753:10⁸) Facing that statutory obligation, I-D shifted its litigation strategy in the summer of 2013, cultivating a theme that would endure throughout trial and beyond:

Gillman was to blame for I-D's misplaced mechanic's liens because she knew, or should have known, that they were unlawful, and she failed to correct I-D before those liens conclusively broke lien law.

I-D further postulated that Gillman was accountable for I-D's exposure under the Wrongful Lien statute, *creating* the wrongful lien as a "cause of action" by her conduct:

If Gillman had just educated I-D in time to evade the illegality of the mechanic's liens, the wrongful lien on the Salt Lake condo could never have been an issue.

This unfounded, '*Gillman-fault*' theory depended on re-litigation of the mechanic's lien issue, which I-D accomplished at trial, countermanding Judge Quinn's

⁵ Order to Show Cause, May 2, 2013

⁶ Order to Show Cause, February 7, 2014

⁷ Memorandum in Support of Defendant's Motion for Partial Summary Judgment

⁸ Affidavit of Mark D. Stubbs, Attorney For Defendant

summary judgment decision in July 2013 and taking advantage of the fragmented oversight by no fewer than six judges in the case.⁹

The appropriate, remaining issues for trial were the contract claim and the wrongful lien question. The mechanic's liens and the lien foreclosure actions were summarily disposed long before trial. Nevertheless, the court included in its contract and wrongful lien rulings, the '*Gillman-fault*' mantra, re-litigating the mechanic's liens to assess Gillman for attorney fees and costs expended throughout the litigation.

In its Complaint, I-D pled its express contract claim and alternatives of quantum meruit and unjust enrichment. (*R. 80:23-81:26*¹⁰) At trial, I-D argued only for an express contract, and the court entered both findings and conclusions to that effect. The solitary writing between Gillman and I-D was a sketchy work order that included no pricing. The court entered a finding that there was never an agreement for price, which was incompatible with its conclusion of law that there was a binding, express contract. Consistent with its conclusion that the contract was express, the court awarded I-D its full charges of \$1,827.61 as damages.

The court ruled that the mechanic's lien on the Salt Lake condo was not wrongful, because it was "statutory," albeit "unenforceable." Applying the '*Gillman-fault*' theory, the court drew a conclusion of law that it was Gillman's conduct that made the

⁹ This case was originally assigned to Judge Anthony Quinn. Judge Quinn's two accidents moved the case through the hands of six judges (Quinn, Faust, Lindberg, Pueller, Parker, McKelvie). Judge McKelvie inherited the case in July 2014, at pre-trial.

¹⁰ Plaintiff's First Amended Complaint

mechanic's lien unenforceable. Hence, the court denied her any damages because she created "the wrongful lien cause of action."

The only contractual writing between I-D and Gillman was the work order. It included a provision for "reasonable" attorney fees. The court made no attempt to calculate attorney fees on the "reasonable" basis of those factors, as grounded in law, and entered no findings on that core precedent. Invoking the '*Gillman-fault*' maxim, the court awarded I-D its fees in *equity*, because:

- The Herriman house mechanic's lien was not unlawful.
- Gillman did not timely pay the express contract obligation, which virtually compelled I-D to file the mechanic's liens—making her responsible for all the consequences.
- Gillman conspired to use I-D's "harmless error" on its mechanic's liens to "create a wrongful lien cause of action."

The court awarded I-D \$27,821.96 for attorney fees in June 2015, which included 24% in pre-judgment interest that Plaintiff did not plead, but the court bestowed, *sua sponte*. Combined contract damages, attorney fees, and interest totaled to a judgment of \$31,458.02.

I-D filed for an amended judgment on July 15, 2015, seeking additional attorney fees of \$5,481.27, increasing the total judgment to \$36,939.29. The court entered I-D's proposed order for the amended judgment two days later on July 17, 2015, allowing Gillman no chance to respond. Gillman filed Notice of Appeal on August 10, 2015.

Statement of Facts

1. Gillman resided in a Salt Lake City condominium she owned ("Salt Lake condo"). Gillman jointly owned a house in Herriman ("Herriman house"). (R. 652:19, Findings of Fact; 403-404:2-4, Affidavit of Defendant)
2. **March 10, 2011**: Gillman engaged I-D for electrical service on the Herriman house, meeting I-D there in the afternoon to review the work. Gillman's primary purpose was to clear the trusses in the garage attic of electrical wires, so that a floor could be laid to accommodate storage. (R. 648:3¹¹, Findings of Fact, 404:7, Affidavit of Defendant)
3. **March 11, 2011 (Friday)**: I-D worked one day on the Herriman house. Gillman was there most of the day and signed a work order before leaving. (R. Exhibit 2; 404-405:10-11,13, Affidavit of Defendant; 648:4-6, 653:24-25, Findings of Fact)
4. **March 12, 2011 (Saturday)**: Gillman returned to the Herriman house and discovered I-D had not moved most of the wiring that cluttered the garage attic trusses, preventing installation of the attic floor that was the primary purpose of the work: The main electrical line, 220 line, ground line, coaxial line, telephone lines, and other romex lines still randomly draped the area. (R. 650:12, Findings of Fact; 405:12, Affidavit of Defendant; 1324:13-18; 1355:6-17; 1356:24-1358:1; 1382:1-1383:3)

¹¹The court's Findings of Fact, Conclusions of Law and Order and Order On Motion For Attorney Fees did not fully designate paragraphs by number or letter. For convenience of reference, those designations were added to the court's originals and appear as superscript. The altered originals are Tab #1 and Tab #2 in the Addendum.

5. **March 14, 2011 (Monday)**: Kim Olson, president of I-D, called Gillman to report that the cost of the work was \$1,827.61. Gillman protested immediately.
(R. 405:15, Affidavit of Defendant; 1112:20-23; 1186:10-17; 1190:19-23)
6. **March 24, 2011**: I-D sent Gillman an invoice for \$1,827.61. Gillman made a hand notation on the remittance copy, asking for a labor allocation against each of the tasks on the work order and mailed it back. *(R. Exhibit 4; 654:28, Findings of Fact; 405:16-17, Affidavit of Defendant; 1366:13-22)*
7. **April 7, 2011**: Olson responded by letter to Gillman's request for the labor allocation. *(R. Exhibit 5; 650:12, Findings of Fact; 405:17-18, Affidavit of Defendant)*
8. **May 6, 2011**: Gillman replied to Olson's labor breakdown, challenging the validity of the charges and offering to pay a reasonable amount for the work accomplished. I-D never answered. *(R. Exhibit 6; 405-406:19-22, Affidavit of Defendant; 1145:2-9; 1169:5-13; 1366:23-1368:9; 1371:25-1372:3)*
9. **May 12, 2011**: Olson turned the Gillman account over to I-D's counsel for collection. *(R. 607, Billing Records, Brady Gibbs)*
10. **June 15, 2011 (approx.)**: Gillman was out of town until about mid-June. On her return, notice of certified mail was waiting, but had already been returned to the sender on May 28th. The postman had written "Wrona Law Firm" on the notice. Not recognizing the name, Gillman found a number and called to inquire after the certified mail. She was connected to Brady Gibbs (Gibbs), who informed her that a lien had been filed against her property to collect the I-D invoice. Gillman

expressed surprise that a lien would be filed over such a small amount of money, particularly since Olson had never replied to her May 6th letter, offering to settle. Gillman specifically advised Gibbs that she was working out of state and could be gone for weeks at a time, asking him to send her regular mail, not time-sensitive certified mail, as she might not be in town to receive it. Gibbs did not comply, twice sending more certified mail that was returned while Gillman was away. Gillman offered Gibbs \$650 to settle. (R. 406:23-407:27, Affidavit of Defendant; Exhibits 8, 9, 26; 1368:12-1372:13; 1375:24-1376:4; 1147:24-1148:22)

11. Following this initial phone call with Gibbs, Gillman checked the County Recorder's records for a lien on the Herriman house, but found nothing. (R. 654:30, Findings of Fact; 406:26-407:29, Affidavit of Defendant; 1375:13-1376:4) Unknown to Gillman at the time, I-D had recorded a mechanic's lien against her Salt Lake City condominium, where no work or materials were ever provided, claiming authority under UCA §38-1-3. (R. Exhibit 10; 654:30, Findings of Fact; 407:29, Affidavit of Defendant)
12. **June 21, 2011 (approx.):** Gibbs called Gillman to convey a counteroffer of \$1,650, which Gillman evaluated as unrealistic. She suggested Gibbs ask I-D for a more equitable amount. Gibbs never contacted Gillman again to pursue settlement negotiation. (R. 407:27, Affidavit of Defendant; 1372:24-1373:9; 1145:2-9) Olson testified at trial that he directed Gibbs to convey a lower counteroffer of \$1,350. (R. 1215:1-10) Gillman testified she never heard that number, except

during Olson's trial testimony. Gibbs' billing records indicate no other phone calls to Gillman. (R. 1373:25-1374:10; 670)

13. During the call, Gillman asked Gibbs to confirm that a lien had been filed, as she could not find one in the county records, which he did. Gillman checked the county records twice in succeeding weeks, but found no lien on the Herriman house. (R. 407:28-29, Affidavit of Defendant; 1375:13-1376:4; 1145:10-16; 1147:2-10)
14. ➔ **Sept. 8, 2011**: The 180-day, statutory deadline to file a mechanic's lien on the Herriman house expired, as a matter of law, under UCA §38-1-3.
15. **September 22, 2011**: I-D filed suit to foreclose the mechanic's lien on the Salt Lake condo. (R. 1-11, Complaint, Summons)
16. **September 25, 2011 (approx.)**: Service of the foreclosure lawsuit¹² was Gillman's first information that I-D had filed a lien on the Salt Lake condo. (R. 654:30, Findings of Fact; 407:29, Affidavit of Defendant; 1373:10-12; 1148:12-1149:17) The mechanic's lien notice was appended to the Complaint. (R. Exhibit 10; 1-8, Complaint)
17. **November 4, 2011**: I-D filed a lis pendens on the Salt Lake condo, almost two months past the statutory deadline. (R. Exhibit 11)
18. **November 11, 2011**: Gillman personally delivered a letter to I-D—notifying that the mechanic's lien and lis pendens on the Salt Lake condo had no legal basis,

¹² Gillman was not personally served with the Complaint. The process server pushed the paperwork under the garage door of Gillman's condo, which she noticed a couple of days following the date notation in the service block of the Summons. (R. 9)

- requesting that they be immediately removed. (R. Exhibit 12; 408:32-33, Affidavit of Defendant)
19. **December 5, 2011**: Gillman petitioned the Court to nullify the wrongful lien on the Salt Lake condo. (R. 17-31, Petition to Nullify Wrongful Lien)
 20. **December 6, 2011**: I-D “amended” the Salt Lake condo lien by substituting the legal description of the Herriman house—three months past the statutory deadline, which had expired Sept. 8, 2011. (R. Exhibit 16) Gillman’s counsel warned Gibbs that any amendment was well beyond the statutory deadline and illegal. (R. 757-758:3-7, Declaration of Paul D. Dodd, Attorney For Defendant) The “amendment” effected a voluntary release of the mechanic’s lien on the Salt Lake condo, but liened the Herriman house. I-D released the lis pendens. (Exhibit 15)
 21. **December 19, 2011**: I-D filed its First Amended Complaint, pleading the same causes of action as its original, substituting the Herriman house for the Salt Lake condo. (R. 76-87, First Amended Complaint)
 22. **September 4, 2012**: Gillman filed a Motion for Partial Summary Judgment to remove the Herriman house lien and dismiss the lien foreclosure cause of action. (R. 143-152)
 23. **September 28, 2012**: Gillman submitted a Rule 68 Offer of Judgment for \$1,000. I-D never responded. (R. 758:8, Declaration of Paul D. Dodd, Attorney For Defendant)
 24. **May 2, 2013**: Judge Quinn ordered I-D to show cause why the case should not be dismissed for failure to prosecute. (R. 243-244, Order to Show Cause)

25. **July 8, 2013:** Judge Quinn granted Gillman's Motion for Partial Summary Judgment, dismissing the mechanic's lien and foreclosure cause of action on the Herriman house, and finding the I-D in violation of the Mechanic's Lien statute. (R. 284-288, Order)
26. **February 7, 2014:** The court ordered I-D to show cause why the case should not be dismissed for failure to prosecute the contract claim. Gillman was forced to prematurely plead her attorney fees. (R. 294-295, Order to Show Cause; 296-348, Defendant's Motion for Order Granting Attorney Fees and Costs)
27. ➔ **June 2, 2014:** Trial Judge, Richard McKelvie, was assigned the case. See Docket
28. ➔ **July 10, 2014:** I-D launched its 'Gillman-fault' theme at the pre-trial conference, which would re-litigate the lien issues at trial and overshadow the trial rulings. (R. 581-582, Minutes; 967:1-970:9, Transcript)
29. **November 10, 2014:** The bench trial was scheduled for one day. I-D used the day for its case-in-chief, taking two-thirds of the time. See Clerk's Index
30. **November 13, 2014:** Trial reconvened at 2:00 p.m., concluding at approximately 4:50 p.m. Gillman presented her case in one hour, 30 minutes and I-D cross-examined for one hour, 10 minutes. See Clerk's Index
31. **Post-Trial:**
- **November 21, 2014:** Gillman written Closing Argument (R. 602-622)
I-D written Closing Argument (R. 625-644)
 - **January 29, 2015:** Findings of Fact, Conclusions of Law and Order (R. 647-658)

- **February 4, 2015:** I-D's Motion for Attorney Fees, Costs and Interest (R. 660-673)
- **February 12, 2015:** Gillman's Rule 52 Motion to Amend Findings of Fact and Conclusions of Law (pled entitlement to attorney fees for defeating the mechanic's liens) (R. 676-684)
- **March 18, 2015:** Ruling and Order on Motion to Amend (denying Gillman's Rule 52 Motion) (R. 739-741)
- **April 3, 2015:** Defendant's Opposition to Plaintiff's Motion for Attorney Fees (R. 742-793)
- **June 8, 2015:** Order on Motion for Attorney Fees (R. 815-818)
- **June 25, 2015:** Gillman's Objection to Proposed Judgment (challenged pre-judgment interest on attorney fees that I-D did not plead) (R. 824-828)
- **July 9, 2015:** Order Denying Defendant's Objection to Proposed Order (R. 849-850)
- **July 9, 2015:** Judgment (R. 851-853)
- **July 15, 2015:** I-D's Application for Amendment of Judgment (R. 856-869)
- **July 17, 2015:** Judgment (ex-parte order, granting I-D's motion to increase attorney fees by \$5,481.27) (R. 874-876)
- **August 10, 2015:** Gillman's Notice of Appeal (R. 879-880)

Summary of Argument

I. I-D filed two mechanic's liens, the first on Gillman's Salt Lake condo, the second on her Herriman house. The liens were summarily disposed before trial and I-D lost both of them. Gillman held a statutory right to her attorney fees for defeating them.

The mechanic's lien attorney fees would dominate the case, as I-D sought to escape them, cultivating its '*Gillman-fault*' theory: The liens and their significant costs in attorney fees were Gillman's fault, for which she should be punished. Starting with the pre-trial hearing and extending through the trial, I-D re-litigated the liens. The liens were not relevant to the trial issues but the '*Gillman-fault*' theory acutely prejudiced all of the court's findings of fact and conclusions of law.

II. Gillman had a statutory right to attorney fees for defeating both mechanic's liens. However, the court adopted I-D's '*Gillman-fault*' theory, denied Gillman her attorney fees for defeating the liens and awarded I-D its attorney fees for losing them. The court erred in its interpretation of the Mechanic's Lien attorney fee statute in its award of fees.

III. The Salt Lake condo lien was filed under the authority of the Mechanic's Lien statute, but did not satisfy any of the necessary criteria. A lien that purports to the express authority of the Mechanic's Lien statute, but fails its criteria, can be found wrongful under the Wrongful Lien statute, and is subject to penalties and attorney fees. The Salt Lake condo lien was wrongful under the Wrongful Lien statute.

IV. The only writing between I-D and Gillman was a scant work order that included no pricing. I-D advocated only for an express contract at trial and the court's ruling followed that advocacy, despite the absence of a price term. The law does not support a conclusion of law that a contract is express without the essential price term. Though

there was a contract, it was implied-in-fact, not express. I-D's trial burden for a contract implied-in-fact was proof that its charges were the reasonable market value. I-D failed that burden of proof.

Argument

I. Mechanic's lien attorney fees dominated the case, not the underlying contract claim. I-D lost both liens summarily, but re-litigated the issue at trial to escape statutory attorney fee liability for the losses.

I-D filed two mechanic's liens in the case, the first on the Salt Lake condo, the second on the Herriman house. Time was the foundation of I-D's '*Gillman-fault*' theory: *Gillman* was responsible for the lien debacle and its costs because she did nothing to correct I-D before it broke lien law, a premise that depended on the sequence of events:

- **March 11, 2011**: I-D worked one day on the Herriman house.
- **June 15, 2011**: I-D filed a lien on the Salt Lake condo, where it had never worked.
- ➔• **Sept. 8, 2011**: The 180-day statutory deadline to file a lien expired.
- **Sept. 22, 2011**: I-D filed suit to foreclose the Salt Lake condo lien.
- **Nov. 11, 2011**: In a letter personally delivered, Gillman requested I-D remove the condo lien.
- **Dec. 5, 2011**: Gillman filed a *Petition to Nullify* the Salt Lake condo lien.
- **Dec. 6, 2011**: I-D "amended" the condo lien and designated the Herriman house.
- **July 8, 2013**: Judge Quinn dismissed the Herriman lien on summary judgment. Gillman's attorney fees exceeded \$12,000.

A. I-D's 'Gillman-fault' theory centered on the 180-day statutory time limit to file a mechanic's lien under UCA §38-1-3 (Mechanics Lien statute).

Pivotal to the 'Gillman-fault' theory was the 180-day, statutory deadline governing viability of the mechanic's lien on the Salt Lake condo, and whether Gillman was duty-bound to prevent I-D from violating the statutory limits of lien law. I-D asserted the theory at the pre-trial conference in July 2014, more than 18 months after the condo lien was disposed and more than a year after Judge Quinn dismissed the Herriman house lien on summary judgment:¹³

GIBBS: [w]e filed a lawsuit to foreclose the mechanic's lien. We served that on—on, on her then-attorney, it wasn't Mr. Stubbs, it his law firm, it was Mr. Dodd. And they looked at it, they have it, **nobody gave any indication to either myself or my clients, wait a second, this lien is on the wrong property.**

Had they have done that, and I think that the history speaks for itself, had they have done that, this issue would have been resolved and the tail wouldn't be wagging the dog and we wouldn't be here today in this scenario. (932:25-933:9)

→ **COURT:** You could have corrected it within the statutory time? (R. 933:10)¹⁴

→ **GIBBS:** We could have corrected it and we did. . . (R. 933:11)

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¹³ During this hearing, Gibbs repeatedly referred to the Salt Lake condo as the "Sandy property."

¹⁴ The hearing transcript does not accurately include the last four words of this sentence. The exact text of the court's question above is verbatim, and can be verified at 13.55.05, the time stamp on the recording.

GIBBS: And yes, Ms. Gillman did provide a letter to I-D Electric and **the letter was purposely ambiguous**, and it said, you put a lien on my property,” and, I—I won’t read the entirety of the letter, but in essence, what it said was, you put a lien on my property, this is groundless, you need to remove it. (R. 936:23-937:2)

COURT: Did it identify the property on which the lien was—
(R. 937:3-4)

GIBBS: No, it did not. And it had her address for the Sandy (sic) property right at the top of the letterhead. So I-D Electric gets this and they’re, like, why is this a groundless lien, it has her Sandy (sic) property listed on the top from her letterhead, **doesn’t say anything about, hey, you liened my Sandy (sic) property, not the Herriman property where the work was performed. Had that have been the issue, the same thing would have happened that happened immediately when they filed their petition to nullify the wrongful lien, which is—that one has been corrected.** (R. 937:5-14)

The reason they couldn’t do that is because that was still within the statutory timeframe to allow I-D Electric to amend. If they had given I-D Electric notice that it was the wrong property being referenced, an amendment could have been made to that mechanic’s lien and that amended mechanic’s lien could have been timely foreclosed. But the timing was such that it couldn’t be referenced, they couldn’t let us know, despite the fact that she had counsel and we were in communication, nothing was ever referenced, because had there have been a reference, had there have been any notification, that lien could have been amended timely, and this action would have been proceeding to foreclose the Herriman property. (R. 937:15-938:1) (Emphasis added)

Gibbs’ representations to the court were incendiary, but were not the truth. The Mechanic’s Lien statutory deadline to file or amend had expired Sept. 8, 2011. The letter to which Gibbs refers was personally delivered by Gillman to I-D on Nov. 11, 2011, and identified the only mechanic’s lien in place at the time, the Salt Lake condo lien.

The letter was dated more than two months past the 180-day deadline. I-D “amended” the Salt Lake condo lien to designate the Herriman house on Dec. 6, 2011—three months too late.

The last mechanic’s lien had been settled for at least a year before this pre-trial date in July 2014 and was no longer relevant to the trial issues remaining, yet I-D continued the steady drumbeat that *Gillman* was responsible for the lien misadventure and its costs because she did not correct I-D’s lien before expiration of the statutory deadline. Irrespective of its argument that Gillman was derelict of duty for failing to legally protect I-D from violating the Mechanic’s Lien statute, the 180-day deadline was long past, expiring Sept. 8, 2011, as a matter of law.

B. Evidence at trial and the court’s rulings centered on the ‘*Gillman-fault*’ theory.

The court entered numerous findings of fact that focused on the irrelevant mechanic’s liens, in the ‘*Gillman-fault*’ context:

1. Kim Olson, I-D’s president, directed counsel to file the mechanic’s lien because “Defendant was trying to intimidate him. . .” (R. 650:14, Findings of Fact)
2. Olson did not notice the lien was on the condo. (R. 651:15, Findings of Fact)
3. Gillman’s Nov. 11, 2011 letter to Olson, requesting removal of the condo lien, was “deliberately vague.” (R. 651:16, Findings of Fact) The court drew the first tether of connection between the mechanic’s lien and Gillman’s ‘scheme’ to convert it to a wrongful lien:

[D]efendant knew that the lien had been placed on the wrong property [a]nd intentionally and deliberately failed to mention that fact in the letter to Olson [i]n a **deliberate effort to establish a cause of action against Plaintiff for filing a wrongful lien.** (R. 651:17, Findings of Fact) (Emphasis added)

4. Dec. 6, 2011 was Olson's realization that the condo had been liened and he ordered it removed immediately. (R. 651:18, Findings of Fact)

5. Gillman testified she did not receive certified mail from I-D because she was out of town for long periods between March and mid-June 2011. (R. 654:28-29, Findings of Fact)

Notably, Defendant provided absolutely no evidence indicating the dates she was gone, where she was, or the dates she was back in town. The inference from her testimony is that **she never received the notices for the certified mail,**¹⁵ which she did not pick up from the post office. Again, the court rejects her testimony. By all observations, [D]efendant is a capable, accomplished business-woman who keeps meticulous records and appears to retain everything. **Any documentation of business travel would have been required for business and tax purposes, and could have easily been provided to the Court in support of her contention that she was gone for the entirety of this critical period. The fact that she provided no such testimony or documentation [l]eads the Court to conclude that her avoidance of these letters was willful rather than circumstantial.** (R. 654:29, Findings of Fact) (Emphasis added)

This finding of the court underscores the intense focus on fixing Gillman's fault for not discovering the condo lien and correcting I-D before the Sept. 8th statutory deadline expired—the "critical period." No discovery was ever conducted in this case. Trial was

¹⁵ Gillman received the notices for the certified mail, which she produced at trial and submitted into evidence during her testimony. (R. Exhibit 26, 1142:12-1143:15; 1147:24-1148:14; 1368:12-1371:5)

the first and only time Gillman was ever questioned about her location during the timeframe of the condo lien and foreclosure lawsuit filings. Yet, the court “rejects her testimony,” extrapolating to conclude that her failure to get the certified mail was “willful rather than circumstantial.” Gillman produced no travel records at trial because nobody had ever asked for anything in discovery. Neither had anybody ever asked for an accounting of her whereabouts. Further, the timeframe was only “critical” to the court if Gillman were responsible in some way for the condo lien.

6. The court placed categorical blame on Gillman for the mechanic’s lien litigation expenses, defending I-D for filing them, then losing them:

Defendant argues that “approximately half of total attorney fees on both sides of this case was spent asserting/defending the unlawful lien claims that Plaintiff voluntarily dismissed or summarily lost.” Although **Defendant correctly asserts that many of the fees involved the litigation over the mechanic’s lien, she is incorrect in her assertion that those generated fees are the result of Plaintiff’s own actions.** (R. 815-816:3, Order on Motion For Attorney Fees) (Emphasis added)

7. This finding memorializes the re-trial of the irrelevant mechanic’s liens, the court belatedly deciding that the lien was not “unlawful,” in direct contravention of the summary disposal and Judge Quinn’s ruling more than 18 months prior:

First, it must be noted that **the Court determined that the lien was not “unlawful.”** Although the lien was filed against the wrong property, the Court determined that the errant filing was inadvertent and was corrected immediately upon Plaintiff’s counsel learning of the error. Notwithstanding that correction, Defendant insisted on pursuing a cause of action for wrongful lien, both through motion for summary judgment and at trial. **The**

mechanic's lien issue became the "tail wagging the dog" in this case, and Defendant was relentless in her pursuit of it. (R. 816:5, Order on Motion For Attorney Fees) (Emphasis added)

[t]he Court has previously determined that the driving force behind this litigation was Defendant's intractable position that the original charges for services were unreasonable, and her steadfast determination to take advantage of an inadvertent clerical error committed by Plaintiff's counsel. It is extremely doubtful that this matter would have extended to a three-day trial¹⁶ (or gone to trial at all) over the initial claim based on work performed and not paid for. Defendant made a strategic decision to take advantage of the misplaced lien, not only as a means of avoiding the original debt, but as a means of punishing Plaintiff for taking action against her. (R. 816:8, Order on Motion For Attorney Fees) (Emphasis added)

The court's ruling was rigorously congruent to I-D's 'Gillman-fault' theory of the case. Indeed, the mechanic's liens were the "tail wagging the dog," but the court imposed on Gillman the fault, because she was "relentless in her pursuit of it."

The court erroneously reverses responsibility for the mechanic's liens. I-D was the perpetrator of the lien calamity and filed the liens, not Gillman. Gillman's counsel warned I-D that "amending" the Salt Lake condo lien to designate the Herriman house was illegal and I-D proceeded anyway—restarting the lien carnage with which these courts are still grappling five years later. This case could have been over, and should have been over on Dec. 6, 2011, when I-D 'discovered' its "error." Rather than accept responsibility, I-D aggravated its "error" by "amending" the condo lien and reigniting the litigation it would inevitably lose a second time.

¹⁶ The trial did not extend to three days. I-D consumed the full day of trial on Nov. 10, 2014. Gillman's case was heard Nov. 13, 2014, between 2:00 p.m. and 4:45 p.m.

C. The illegality of the mechanic's liens on the Salt Lake condo and the Herriman house was already settled. The mechanic's liens were not relevant to the trial issues.

I-D could have appropriately appealed the loss of the mechanic's liens and did not, instead choosing a surreptitious means of oblique attack—the '*Gillman-fault*' theory. Under no auspices of trial province should the mechanic's liens have been re-litigated, but they were.

I-D successfully poisoned the water at the pre-trial hearing with the '*Gillman-fault*' theory of responsibility for the liens. The potency of this prejudicial dye would prove devastating to the pure parameters of law in the case, coloring the whole trial and its aftermath. I-D's representations were not the truth, but they hit their mark. Attorney fees were always the principal battle in the case. The court ultimately agreed that I-D was blameless for the mechanic's lien attorney fee debacle, Gillman was at fault, and should be punished accordingly, that punishment taking the form of *equitably* holding her responsible for the massive litigation expenses, including the mechanic's liens, the wrongful lien, *sua sponte*, pre-judgment interest on attorney fees, and an *ex-parte* Order that increased the initial judgment by \$5,481.27.

II. Gillman was the successful party on both mechanic's lien claims and foreclosure causes of action, defeating both the Salt Lake condo lien and the Herriman house lien. Gillman is entitled to statutory attorney fees.

A. I-D's lien claim and foreclosure cause of action on Gillman's Salt Lake condo failed by I-D's own admission, with a voluntary dismissal.

Claiming authority under UCA §38-1-3 (Mechanics Lien statute), I-D filed a lien against Gillman's Salt Lake condo June 15, 2011, then filed suit to foreclose the lien Sept. 22, 2011, followed by a lis pendens on Nov. 2, 2011. (R. 1-8, Complaint; Exhibit 10; 15-16, Notice of Lis Pendens) The Salt Lake condo lien was not authorized by UCA §38-1-3 because I-D provided neither construction service nor materials, the necessary prerequisites under the law. The related lis pendens was unlawful.

Gillman answered I-D's foreclosure complaint Dec. 5, 2011. (R. 17-31, Verified Answer and Counter Petition to Nullify) On Dec. 6, 2011, I-D "amended" the Salt Lake condo lien, essentially implementing a voluntary dismissal of the mechanic's lien and second cause of action in the initial Complaint. I-D released the lis pendens the same day.

B. I-D's lien claim and foreclosure cause of action on Gillman's Herriman house failed on a Summary Judgment Motion.

I-D's Dec. 6, 2011 "amendment" to the Salt Lake condo lien substituted the Herriman house, again claiming authority under UCA §38-1-3, the Mechanics Lien statute. (R. Exhibit 16) The Herriman house lien was three months past the 180-day statutory deadline, which had expired Sept. 8, 2011. On Dec. 19, 2011, I-D filed its First Amended Complaint, designating the Herriman house in its second cause of action, foreclosure of the mechanic's lien. (R. 76-87) Gillman filed a Motion for Partial Summary Judgment, challenging the Herriman house lien under UCA §38-1-3 as unlawful, I-D's claimed statutory authority. (R. 143-152)

On July 8, 2013, Judge Quinn entered an order granting Gillman's Motion for Partial Summary Judgment, dismissing the Herriman house lien, together with I-D's second cause of action, foreclosure of that lien, and finding I-D in violation of lien law. (R. 284-288, Order)

C. I-D claimed authority under UCA §38-1-3, the Mechanic's Lien statute, for both the Salt Lake condo lien and the Herriman house lien. The statute provides the right to attorney fees for the successful party, §38-1-18.

UCA §38-1-18 is the mechanic's lien attorneys' fee statute, which states:

[i]n any action brought to enforce any lien under this chapter ***the successful party shall be entitled to recover a reasonable attorneys' fee***, to be fixed by the court, which shall be taxed as costs in the action. (Emphasis added)

This court has clearly delineated the meaning of "successful party," as it is specified in the statute:

"[A] '**successful party** [under Utah Code section 38-1-18] **includes** one who successfully enforces or **defends against a lien action**.'" Kurth v. Wiarda, 1999 UT App 335, ¶9, 991 P.2d 1113 (Internal citations omitted; emphasis added)

Applying the legislative intent of the mechanic's lien attorney fee statute, this court has conveyed unequivocal guidance for awarding fees to the successful party:

[t]he provision **mandates that the successful party be allowed to recover reasonable attorney fees**. . . **[c]ourts do not have discretion** to decide whether to award reasonable attorney fees to the "successful party." A.K. & R. Whipple Plumbing & Heating v. Guy, 2004 UT 47, ¶7, 94 P.3d 270 (Internal citations omitted; emphasis added)

I-D's voluntary dismissal of the Salt Lake condo lien does not relieve its liability for Gillman's attorney fees, as the court clarified in this recent mechanic's lien case:

The fact that the [plaintiff] recognized the apparent weakness of its claim and voluntarily dismissed it before the district court had an opportunity to do [so] likewise does not relieve the [plaintiff] of its obligation to reimburse the [defendants] for their attorney fees. **Any other rule would be fundamentally unfair to those defendants who are required to incur substantial fees defending a plaintiff's non-meritorious claims up to the point of the plaintiff's voluntary dismissal.** Lane Myers Constr., LLC v. Countrywide Home Loans, Inc., ¶11, 2012 UT App 269 (Emphasis added)

D. The trial court's ruling on attorney fees does not conform to the Mechanic's Lien statute or established precedent.

In its trial ruling, the court expressed its overall perspective on attorney fees, relative to the outcome of the case, assimilating the 'Gillman-fault' theory in its reasoning:¹⁷

The Court has found against Defendant on the breach of contract claim, and has similarly ruled against Defendant on her wrongful lien claim. **The Court has recognized no cause of action for which Defendant may be entitled to fees.**

[i]t is clear, and the court finds, that the **expenses in this case**, born by both parties, have been **exacerbated by Defendant's** continued and unreasonable efforts to avoid paying a contractual obligation, and by **attempting to use Plaintiff's harmless (and arguably beneficial, to Defendant) error to create a wrongful lien cause of action.** **It is therefore appropriate that Defendant bear the costs of Plaintiff's fees as well as her own.** (R. 657:43-658:44, Findings of Fact, Conclusions of Law and Order) (Emphasis added)

¹⁷ The trial court integrated its trial ruling, Findings Of Fact, Conclusions Of Law And Order (R. 647-658) with its Order On Motion For Attorney's Fees (R. 815-817). The two are inseparable in the court's interrelated reasoning for awarding attorney fees.

In response to the trial ruling, Gillman filed a Rule 52 Motion to Amend Findings of Fact and Conclusions of Law, to reflect entitlement to attorney fees for successfully defeating the two mechanic's liens and foreclosure causes of action, fully briefing the court on the Mechanic's Lien attorney fee statute and relevant precedent. (R. 676-684) The court denied Gillman's motion, without explanation. (R. 739-741, Ruling and Order on Motion to Amend)

In its motion for attorney fees, I-D did not segregate amounts between issues it won and lost, though that may not have influenced the court's general appraisal of attorney fee rights, which consolidated all issues beneath the 'Gillman-fault' canopy:

Plaintiff seeks fees in the amount of \$29,144, and costs in the amount of \$465.32. Defendant argues that "approximately half of total attorney fees on both sides of this case was spent asserting/defending the unlawful lien claims that Plaintiff voluntarily dismissed or summarily lost." Although **Defendant correctly asserts that many of the fees involved the litigation over the mechanic's lien, she is incorrect in her assertion that those generated fees are the result of Plaintiff's own actions.** (R. 815-816:4, Order on Motion For Attorney Fees) (Emphasis added)

First, it must be noted that **the Court determined that the lien was not "unlawful."** Although the lien was filed against the wrong property, the Court determined that the errant filing was inadvertent and was corrected immediately upon Plaintiff's counsel learning of the error. **Notwithstanding that correction, Defendant insisted on pursuing a cause of action for wrongful lien, both through motion for summary judgment and at trial. The mechanic's lien issue became the "tail wagging the dog" in this case, and Defendant was relentless in her pursuit of it.** (R. 816:5, Order on Motion For Attorney Fees) (Emphasis added)

This irreconcilable tangle that combined the mechanic's liens with the wrongful lien and contract claims was justification for penalizing Gillman with the attorney fees in the case on an *equitable* analysis, weighing the composite of issues against each other to reach an equilibrium among all of them for fixing *relative* "fault" across the horizon of the whole case—that 'fault' lying squarely at Gillman's feet, because she was "relentless in her pursuit of" the lien litigation that produced the immense attorney fees.

This analytical methodology is not faithful to UCA §38-1-18, the Mechanic's Lien attorney fee statute. There is no license in the precepts of this statute for an *equitable* attorney fee interpretation. The mechanic's liens were not relevant at trial, and there is no stretch of reasoning that can logically combine the mechanic's liens with the contract and wrongful lien issues in the award of attorney fees. The trial court does not have discretion in deciding whether to award attorney fees to the successful party defending against a mechanic's lien; neither can the trial court bend the statute to an *equitable* standard of evaluation for the award.

The mechanic's liens were discrete matters that were settled long before trial and I-D lost both of them. Gillman won summarily and decisively. UCA §38-1-18 is explicit and precedent is indisputable: Attorney fees are mandated for the successful party and Gillman is entitled to them. The trial court erred in denying Gillman her fees for successfully defending against the liens, and awarding I-D its fees for losing them.

III. The Salt Lake condo lien I-D filed under authority of UCA §38-1-3, the Mechanic's Lien statute, was wrongful under UCA §38-9-1, the Wrongful Lien statute.

The trial court ruled in its conclusion of law that the Salt Lake condo lien was not wrongful:

[t]he lien here is not "wrongful" under the wrongful lien act. A lien is not "wrongful" because it is inaccurate or misidentifies the property it seeks to encumber. The lien is "authorized by statute" which takes it out of the definition of a wrongful lien. As the Hutter Court explained, a lien that is ultimately proved unenforceable is not a wrongful lien by virtue of that fact alone. (*R. 657:39, Conclusions of Law*)

A. I-D violated the Mechanic's Lien statute, UCA §38-1-3, on the Salt Lake condo lien.

I-D claimed to authority for the condo lien under the Mechanic's Lien statute, UCA §38-1-3. (*R. Exhibit 10*) However, I-D never provided either service or materials to the property, the requisite 'entitlement' criterion to satisfy the law. While the condo lien purported to authority under the statute, it failed on its face, subjecting it to the scrutiny of UCA §38-9-1, the Wrongful Lien statute.

B. I-D violated the Wrongful Lien statute, UCA §38-9-1, on the Salt Lake condo lien.

The Wrongful Lien statute, UCA §38-9-2(3), specifies that wrongful liens are those not expressly authorized by UCA §38-1-3, the Mechanic's Lien statute:

(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. (Emphasis added)

The Wrongful Lien statute does not automatically prohibit *any* mechanic's lien from being wrongful. It only prohibits a mechanic's lien filed by "a person entitled to a lien" under the authority of UCA §38-1-3. The distinction is in the 'entitlement' provision. If there is authority for entitlement to a lien under UCA §38-1-3, that lien cannot be wrongful. However, a lien can be wrongful if it *purports* to qualify under the entitlement provision of UCA §38-1-3, but does not have that authority. The 'entitlement' provision resides in the solitary requirement that construction services be provided on real property:

. . . a person who performs preconstruction service or construction service on or for real property has a **lien** on the real property for the reasonable value of the preconstruction service or construction service. . (Emphasis added)

I-D's lien on the condo failed the first precondition of the Mechanic's Lien statute. Failing 'entitlement' was fatal from the outset under UCA §38-9-1, and the definitions specify the bases for a wrongful lien and set the timeframe for their evaluation:

(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 or filed 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. (Emphasis added)

The statute is clear that interpretation of “wrongful” does not extend beyond the face of the lien document itself, “at the time it is recorded.” I-D’s Notice of Mechanic’s Lien on the condo claimed authority under UCA §38-1-3, but satisfied none of its conditions in any particular, relegating it to a wrongful lien under UCA §38-9-1 for that reason—it was not legitimate on its face.

The appellate benches have taken considerable notice of the confusion that has arisen in interpreting the Wrongful Lien statute, consistently advancing the articulation of exactly why a property lien, claimed under authority of the Mechanic’s Lien statute, UCA §38-1-3, can be found wrongful under UCA §38-9-1, the Wrongful Lien statute. Beginning in 2008, the Court of Appeals published dicta on the cohesion:

The Wrongful Lien statute declares: 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. Thus, **the statute is not so broad as to exempt any filing that purports to arise under the mechanics’ lien statute.** Instead, **section 38-9-2(3) only excludes persons “entitled” to a mechanics’ lien.** Foothill Park, LC v. Judston, Inc., UT App. 113, ¶19, 182 P.3d 924 (2008) (Internal quotations, citations omitted; emphasis added)

The Supreme Court decided Hutter v. Dig-It in 2009. The contractor followed the Mechanic’s Lien statute perfectly when filing its lien against the Hutters, but then did not follow the rules of the state construction registry. The lien was valid under the statutory authority of UCA §38-1-3, but unenforceable for its failure under construction registry rules. The Hutters pled the lien as wrongful *because* it was unenforceable and

the trial court agreed. The Supreme Court disagreed, identifying these core terms:

- expressly authorized by statute
- unenforceable
- wrongful

Therefore, we conclude that the phrase “not expressly authorized by [s]tatute” in the Wrongful Lien Act does not include statutorily created liens that ultimately prove unenforceable. **Because Dig-It filed a mechanic’s lien, which is expressly authorized by statute, the lien, though unenforceable for the reasons stated above, is not wrongful under the Wrongful Lien Injunction Act. *Hutter v. Dig-It*, 2009 UT 69, ¶152, 219 P.3d 918** (Emphasis added)

When Dig-It filed the lien against the Hutters, the lien document followed the criteria governing its creation under the Mechanic’s Lien statute. Hence, it was “expressly authorized by statute.” Thereafter, Dig-It lost enforcement capacity of the lien for not following the state construction registry rules. Losing enforcement capacity did not change the statutory authority underlying creation of the lien. The lien was still “expressly authorized by statute,” but was now “unenforceable.” Did that make the lien “wrongful”? The Supreme Court’s answer was, “No.” The Supreme Court’s explanation drew together in this dictum, the relationship between the core terms and “wrongful”: A lien cannot be “wrongful” if it is “expressly authorized by statute.” That “express” authority is molded by following the exact criteria of statute when the lien is created. Once extant, “express” authority cannot be eradicated, even if the lien proves unenforceable for other reasons. Liens created under “express” statutory authority cannot be wrongful. However, liens created *without* “express” statutory authority *can*

be wrongful. 'Failing authority' and 'failing enforcement' are two distinctly different concepts. 'Failing authority' can be wrongful. 'Failing enforcement' cannot. The Hutter lien failed enforcement, not authority. It was not wrongful.

In June 2014, the appellate court distinguished that holding in Bay Harbor LC v. Sumsion. If a lien claimant has no plausible claim to the property that is lienied, the Court may declare the lien wrongful under the Wrongful Lien statute, even if it *purports* to fall into the category of a statutory lien, but fails express authority (quoted in part):

This is not to say that a lien claimant may escape the reach of the Wrongful Lien Act simply by alleging that his or her lien is "expressly authorized by statute." See *Hutter, 2009 UT 69, ¶ 52, 219 P.3d 918*. . . **[i]f a lien claimant has no plausible claim to the property that is the subject of the lien, a court may declare the lien wrongful under the Wrongful Lien Act even if it purports to be one falling into the category of statutorily authorized liens.** *Bay Harbor Farm, LC v. Sumsion, 2014 UT App 133, 329, ¶12, P.3d* (Emphasis added)

This holding was reconfirmed October 30, 2014 in Total Restoration, Inc. v. Merritt, a decision through which the appellate court gave this guidance (quoted in part):

[w]e also address Total Restoration's argument that because mechanics' liens are authorized by statute, "mechanics' liens, without exception, are never wrongful liens."

[I]f the claimant has no plausible basis for recording a statutory lien, a court may declare the lien wrongful under the Wrongful Lien Act even if it purports to be one falling into the category of statutorily authorized liens. *Total Restoration, Inc. v. Merritt, 338, ¶18, P.3d 836, 841 (Utah App. 2014)* (Internal citations omitted; emphasis added)

I-D's Notice of Lien on the Salt Lake condo was wrongful on its face. The lien purported to authority under UCA §38-1-3, the Mechanic's Lien statute, but followed none of its criteria. The condo lien 'failed authority'. I-D never had a statutory right to this lien and no plausible basis for filing it. The direction of the appellate benches is that such a lien can be found wrongful under UCA §38-9-1, the Wrongful Lien statute.

UCA §38-9-4 formulates the liability for filing a wrongful lien, and calculates the damages due the aggrieved property owner (Emphasis added):

- (1) A lien claimant who records or files or causes a wrongful lien as defined in Section 38-9-1 to be recorded or filed 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 ten 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 files or causes to be recorded or filed 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.**

The Salt Lake condo lien failed authority under the statute. When I-D filed, it unquestionably knew, or should have known, that it was wrongful, or groundless, or contained a material misstatement or false claim. I-D had to know that it never worked on the Salt Lake condo and had no right to file a lien under the “express” authority of the statute.

On Nov. 11, 2011, Defendant personally delivered to I-D, written notice that the lien and lis pendens were legally baseless, requesting that both be removed from the property. I-D did not remove either before the 10-day time limit.

There are two tiers to the statutory penalties of UCA §38-9-4. The lesser penalty of \$3,000 depends on whether the property owner provided written notice to the lien claimant, requesting removal of the lien—notice that Gillman personally delivered to I-D on Nov. 11, 2011. I-D did not remove the lien until Dec. 6, 2011, almost a month later. By clear, black-letter law, I-D is liable for at least the \$3,000 penalty.

The greater penalty of \$10,000 is assessed against the lien claimant if the lien is wrongful, or groundless, or contains a material misstatement or false claim. Only one of these statutory conditions is necessary to justify the penalty. I-D’s Notice of Lien, on its face at the time it was recorded, met all three, justifying the \$10,000 statutory penalty. Both penalty tiers provide entitlement to attorney fees.

The court’s findings and conclusions on the wrongful lien issue centered in the ‘Gillman-fault’ theory, not the principles of statute or precedent. The court judged

Gillman's Nov. 11, 2011 letter to I-D, which conformed exactly to UCA §38-9-4(2), as a carefully calculated conspiracy that *created* the wrongful lien:

[D]efendant knew that the lien had been placed on the wrong property [a]nd intentionally and deliberately failed to mention that fact in the letter to Olson [i]n a **deliberate effort to establish a cause of action against Plaintiff for filing a wrongful lien.** (*R. 651:17, Findings of Fact*) (Emphasis added)

Gillman knew there was a lien on the condo. However, no reading of the statutory scheme can be construed to a conclusion of law that the property owner aggrieved by a mechanic's lien can convert that lien to "wrongful." Only the lien claimant has control of whether a lien is wrongful or not—control that is asserted when the lien is created, at the time it is recorded. I-D initiated the wrongful lien on the Salt Lake condo when it filed a lien that 'failed authority' under the Mechanic's Lien statute.

The court's censure of Gillman was tainted with the common statutory/enforcement confusion that frequently intermingles in the analysis of wrongful liens:

[r]ealizing Plaintiffs error in filing the lien, Defendant made a **determined effort to capitalize on that error** to her advantage. Clearly, Defendant suffered no harm from the misplaced lien, and her "lying in wait" strategy had at least one positive effect. . .It made the lien unenforceable, and the delay created a legal impediment to Plaintiff's filing of a subsequent lien on the correct property. (*R. 657:41, Conclusions of Law*) (Emphasis added)

The court does not recognize that the Salt Lake condo lien failed the "express" authority of the Mechanic's Lien statute from the outset. Without authority,

“enforcement” of the condo lien could never become an issue. Casting the facts into a complicit, “lying in wait” framework, the court chastises Gillman for a “delay” that “created a legal impediment” preventing I-D from “filing of a subsequent lien on the correct property.” Once again overlapping the unrelated facts of the Herriman lien and the condo lien, within the ‘Gillman-fault’ theory, the court upbraids Gillman for failing to correct I-D before it broke lien law. Gillman never persuaded the court that it was not her legal responsibility to protect I-D from itself. Neither did the court ever grasp that even if it were, the reality of statute made intercession hopeless: The 180-day statutory deadline expired Sept. 8th, as a matter of law, two months before the Nov. 11th letter.

The court’s ruling went further in its criticism of Gillman for ‘trapping’ I-D into a wrongful lien, introducing obligations that are neither contained within, nor plausibly inferred from, the statute:

[D]efendant **knew or reasonably should have known** that any such letter authored or signed by her counsel and directed to Plaintiff’s counsel, would **by ethical standards be required to contain more particularity regarding the factual or legal inadequacies of the mechanic’s lien.** [i]t becomes even more clear that it **was intentionally vague in an attempt to lay a trap for improper or wrongful lien.** (R. 655:32, *Conclusions of Law*) (Emphasis added)

Whether Gillman educated I-D to the “legal inadequacies of the mechanic’s lien” could not have made any difference to its validity. The statute had been expired for two months. Neither was it possible for Gillman to “trap” I-D into a wrongful lien on the

condo. I-D achieved that independently when it filed the lien June 15th without express authority.

Parallel to I-D's '*Gillman-fault*' contentions, the court leveled charges of ethical misconduct, as further verification that Gillman sought to "set up" a wrongful lien:

Defendant is admittedly trained in the law [H]er suggestion that she and her counsel determined that in order to be effective the letter would have to be delivered directly by her to Plaintiff is not only an invalid legal conclusion, it is an improper one. She and her counsel both knew that Plaintiff was represented by counsel, and presumably her counsel knew, if she did not, that direct communication with a represented party in (sic) a violation of the Canons of Ethics. The Court finds that Defendant's decision to deliver the letter personally, whether on advice of counsel or not, was a deliberate attempt to obscure the reason she believed the lien was improper, and thereby set up a claim of wrongful lien.
(R. 655:32, *Findings of Fact*) (Emphasis added)

This ethical principle has already been precisely treated by this court in a wrongful lien case. Plaintiff, Centennial, was the (LLC entity) lienholder. The property owner, Vanessa, delivered notice to Centennial's counsel, initiating debate on the bench for whether this departure from statutory edict conformed to the law:

Vanessa argues that requiring the request to remove the lien to be delivered directly to Centennial would violate rule 4.2(a) of the Utah Rules of Professional Conduct. See Utah R. Prof'l Conduct 4.2(a). On the contrary, a decision that the notice is invalid would comport with rule 4.2(a), which states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with

another's client if authorized to do so by any law, rule, or court order

Id. (emphasis added). Rule 4.2(a) expressly provides that a lawyer may communicate with a party if authorized to do so by law. **The wrongful lien statute's requirement that a request for release of a lien be delivered personally to the lien claimant specifically authorizes such a communication between a lawyer and a party.** As such, rule 4.2 is **not an ethical impediment to compliance with the notice provisions of the wrongful lien statute.** *Centennial Inv. Co., LLC v. Nuttall*, UT App 321, ¶21, 171 P.3d 458 (Emphasis original)

Gillman's notice to I-D conformed to the statutory requirement that delivery be accomplished directly between property owner and lien claimant, which did not violate any rule of professional conduct, and certainly did not "set up" the wrongful lien.

Lost in this overwhelming preoccupation with '*Gillman-fault*' were the grounding principles of mechanic's lien law and wrongful lien law. I-D never had statutory entitlement to a lien on the Salt Lake condo, which was clear on the face of the lien document the day it was recorded. The lien was wrongful on its face for 'failing authority'. Gillman requested removal of the lien, which I-D did not accomplish within the 10-day statutory time, subjecting itself to the first tier of legislated penalty. I-D knew, or should have known, that the lien was wrongful, **or** groundless, **or** contained a material misstatement or false claim. In fact, the lien **was** wrongful, **and** groundless, **and** contained a material misstatement or false claim, subjecting I-D to the second tier of legislated penalty. The law authorizes both penalty tiers and attorney fees to Gillman for the wrongful lien on the Salt Lake condo.

IV. I-D failed its contract burden of proof.

A. The trial court's conclusion of law, that there was an express contract between I-D and Gillman, was erroneous.

At trial, I-D advocated only for an express contract, which the court adopted in its conclusions of law:

Plaintiff claims, and the Court finds, that there was a binding contract between Plaintiff and Defendant. The necessary elements are present. (R. 655:33, *Conclusions of Law*) (Emphasis added)

There is clearly a meeting of the minds. Plaintiff expected to be paid for the work and materials provided, and Defendant clearly expected to pay. Although the exact costs and work were not confirmed at the outset, Defendant was well-versed in construction contracts, and knew to expect that she would be billed for both supplies and labor. The fact that she expressed dissatisfaction about the amount billed does not diminish the fact that she undertook a responsibility to pay. Moreover, she signed the work order, which had been substantially completed (albeit without prices) at the time. (R. 655-656:34, *Conclusions of Law*) (Emphasis added)

Consistent with its ruling that the contract was express, the court awarded I-D its full charges of \$1,827.61 in damages, together with 24% in pre-judgment interest, for a total of \$3,393.09.

B. Without a price term, there was no express contract.

While the court specifically recognized that there was no agreement for price, it nevertheless concluded there was a “meeting of the minds” forming a binding contract.

This conclusion of law does not align with the long history of contract precedent in Utah:

A condition precedent to the enforcement of any contract is that there be a **meeting of the minds** of the parties, which must be spelled out, either expressly or impliedly, **with sufficient definiteness to be enforced**. Valcarce v. Bitters, 12 Utah 2d 61, 362 P.2d 427, 428 (1961) (Emphasis added)

[A] meeting of the minds on the integral features of an agreement is essential to the formation of a contract. **An agreement cannot be enforced if its terms are indefinite**. Nielsen v. Gold's Gym, 2003 UT 37, ¶11, 78 P.3d 600 (Emphasis added)

The crux of this contract dispute was the price. There was never agreement for a price, a conclusion the court also included in its ruling. Without that agreement, there was no price term to enforce and the court erred in selecting I-D's arbitrary calculation of charges as the proxy term for a binding contract.

C. I-D's sole contractual claim lay in quantum meruit.

In its First Amended Complaint, I-D pled three causes of action:

- Breach of contract
- Lien foreclosure
- Quasi-contract, unjust enrichment, and/or quantum meruit

I-D clearly contemplated that the alternative to a "price," under a binding contract was the "reasonable" amount "equal to the **value**" of the services in quantum meruit:

If for any reason the trier-of-fact in this case **fails to identify the existence of an enforceable and binding contract** [P]laintiff asserts an alternative claim for quasi contract, unjust enrichment and/or

quantum meruit. (R. 81:25, First Amended Complaint) (Emphasis added)

Plaintiff **performed electrical services** for Gillman and thereby **conferred a benefit** upon Gillman with a reasonable expectation of being **compensated in an amount equal to the value of such services.** (R. 81:24, First Amended Complaint) (Emphasis added)

Olson testified that the I-D charges were “a lot of money.” (R. 1190:23) But he said, “[t]he bill I thought was already fair and reasonable.” (R. 1218:7-8)

Gillman tried many times to settle this dispute without protracted litigation and has always acknowledged that she owes the reasonable value of I-D’s services, a fact substantiated by the:

- Answer to First Amended Complaint (R. 127:12)
- Remittance copy of I-D’s March 24th invoice that Gillman mailed back to I-D, asking for the labor allocation (R. Exhibit 4, p. 2)
- May 6, 2011 letter to I-D that ended with Gillman’s offer that she was **“willing to pay a realistic amount for the work that was done, but no more. Please recalculate it.”** (R. Exhibit 6, p. 2)
- Repeated trial testimony (1168:3-9; 1169:1-13; 1367:2-9; 1372:24-1374:10; 1399:16-19)

Without an express contract, I-D’s contract alternative was quantum meruit. There has never been a dispute that I-D provided services, or that Gillman expected to pay for them. The only dispute was the reasonable amount due. The seminal case in Utah on the doctrine of quantum meruit is Davies v. Olson, 746 P.2d 264 (Utah Ct. App. 1987).

Davies is very similar to this case. Davies built duplexes for the defendants, Olson, *et al.* Olson requested the services. Davies and Olson agreed the duplexes would

be constructed for cost, plus \$6,000 profit/each. A written contract was prepared, but never signed. When one of the duplexes sold, the price did not satisfy the outstanding construction loan and litigation began to recover the difference. In adjudicating that difference, the trial court found no meeting of the minds on price; hence, there was no contract.

On appeal, the court affirmed the trial court's finding of no enforceable contract, for lack of a price term. The court took occasion to clarify quantum meruit, dividing the principal into two branches (quoted in part):

[c]onfusion surrounds the use and application of quantum meruit because courts have used the term quantum meruit, contract implied in fact, contract implied in law, quasi contract, unjust enrichment, and/or restitution without analytical precision. *Id.* at 268 [Citations omitted]

Contract implied in law, also known as quasi-contract or unjust enrichment, is one branch of quantum meruit. A quasi-contract is not a contract at all, but rather is a legal action in restitution. *Id.* at 269 [Citations omitted]

A contract implied in fact is the second branch of quantum meruit. A contract implied in fact is a "contract" established by conduct. The elements of a contract implied in fact are: (1) the defendant requested the plaintiff to perform work; (2) the plaintiff expected the defendant to compensate him or her for those services; and (3) the defendant knew or should have known that the plaintiff expected compensation. *Id.* [Citation omitted]

Technically, **recovery in contract implied in fact is the amount the parties intended as the contract price. If that amount is unexpressed, courts will infer that the parties intended the amount to be the reasonable market value of the plaintiff's services.** *Id.* [Citation omitted; emphasis added]

I-D's sole remedy was quantum meruit, under a contract implied-in-fact that lacked agreement on price. Gillman requested the work, expected to pay for it, and I-D expected to be paid. Inasmuch as the price was never agreed, the court must infer the amount was the reasonable market value of I-D's work.

D. I-D had the burden of proof for establishing the reasonable market value of the material and service it provided.

Corresponding to the Davies facts, I-D did not have an express contract with a price term. I-D provided material and service. Gillman accepted the benefits and has admitted throughout that she is obligated to pay their reasonable value. The burden of proof for value is upon the party asserting quantum meruit. See Zitterkopf v. Bradbury, 783 P.2d 1142 (Wyo. 1989); Bereman v. Bereman, 645 P.2d 1155, 1160 (Wyo. 1982).

E. I-D did not prove the reasonable market value of its charges.

The court succinctly summarized the substance of evidence I-D presented to prove its express contract case:

Plaintiff substantially performed the terms of the contract. [the] Court found that the **electricians provided by Plaintiff were continuously and properly engaged** in the work for which they were employed. [D]efendant engaged the services of trained electricians, and **had to know that they would be compensated the same amount (as Olson testified) for changing a light bulb as for replacing a circuit box or performing some other sophisticated procedure.** (R. 656:35, Conclusions of Law) (Emphasis added)

Whether the crew was "continuously and properly engaged" does not translate to a computation for the reasonable market value of what was accomplished all day. I-D

did not make that translation, and the court profoundly begs that salient question in its assumption that Gillman “had to know that they would be compensated the same amount [f]or changing a light bulb as for replacing a circuit box or performing some other sophisticated procedure.” Indeed, Gillman did not know—the very reason the law requires *reasonable market* reconciliation of a demand for payment at an excessive price that was never agreed: No reasonable person hires a crew of three professional electricians to change light bulbs at \$165/hr.¹⁸ Gillman does not dispute the court’s account of I-D’s evidence, that the crew was “continuously and properly engaged.” It is a fair and comprehensive synopsis of I-D’s “proof.” However, it was I-D’s burden to prove that the \$1,827.61 it charged for being “continuously and properly engaged” was the *reasonable market* value of the work. I-D did not do it.

F. The only evidence in the record for the reasonable market value of I-D’s services is between \$600 and \$700, evidence adduced at trial by I-D.

I-D bore the burden of proving the basis of their complaint—quantum meruit, or the reasonable market value of the services provided to Gillman. The only evidence adduced at trial was derived during I-D’s case-in-chief in its examination of Gillman. To Plaintiff’s direct question of the reasonable value for its services, Gillman testified that she sought the opinions of two other electricians for an assessment of I-D’s work, one of which was \$600, the other was \$700. (R. 1137:6-1138:2; 1372:4-23) As a comparative

¹⁸ I-D charged the journeyman electrician @ \$65/hr.; the other two were each billed @ \$50/hr., totaling \$165/hr. (R. Exhibit 2)

ratio, Gillman also testified that she engaged another electrician to complete moving the garage attic wires that I-D did not finish in preparation for the flooring, as well as everything else remaining inside the house. She paid \$650 (labor only) for everything, which she evaluated as five times more work than I-D accomplished. (R. 1372:4-23; 406:21, Affidavit of Defendant) Though I-D had ample opportunity during trial, taking two-thirds of the time, Gillman's was the only testimony, which I-D presented to the Court, regarding the reasonable market value of I-D's services, and was between \$600 and \$700.

The court erred in its conclusion of law that there was an express contract. I-D's basis of recovery was an implied-in-fact contract in quantum meruit, as this court explained in Davies, and I-D identified as an alternative in its First Amended Complaint. (R. 81:25). The trial record can only devolve to the evidence available—Gillman's testimony that two independent electricians determined the reasonable market value was between \$600 and \$700.

G. Gillman should be awarded her trial attorney fees, for I-D's failure to meet its burden of proof.

1. The court awarded I-D all of its trial attorney fees.

I-D's work order includes a provision to recover attorney fees in any collection action for its charges: "Purchaser agrees to pay all costs and expenses including reasonable attorney's fees in the event collection becomes necessary." (R. Exhibit 2)

The court was authorized to award attorney fees:

Where the parties have agreed by contract to the payment of attorney fees, the court may award reasonable fees in accordance with the terms of the parties' agreement. Trayner v. Cushing, 688 P.2d, 858 (Utah 1984)

The court invited I-D to apply for attorney fees, then awarded I-D all of its trial attorney fees, and approximately 75% of its pre-trial fees—all of which was expended in the lien battle.

The Court has determined that Plaintiff prevails in its breach of contract claim. **The contract itself has a provision for attorney's fees.** In its written argument, Plaintiff has not claimed an amount for attorney fees, but has not waived the right to do so. **The Court finds that Plaintiff may be entitled to reasonable attorney's fees in this matter, and directs Plaintiff to submit a proposed order regarding attorney's fees.** (R. 657:42, Conclusions of Law) (Emphasis added)

Gillman filed a Rule 52 motion, pleading the court award her attorney fees for defeating the mechanic's liens, which the court denied. (R. 676-684, Rule 52 Motion to Amend Findings of Fact and Conclusions of Law; R. 739-741, Ruling and Order on Motion to Amend). Gillman objected to I-D's motion for fees, which did not segregate fees for issues won or lost, and addressed none of the "reasonableness" factors of precedent. (R. 742-793, Defendant's Opposition to Plaintiff's Motion for Attorney Fees) I-D's motion for fees did no more than outline claimed fees and interest, with billing records appended. (R. 660-673, Motion for Attorney Fees, Costs and Interest) The court entered no findings, beyond the reiteration that Gillman was at fault for the total of the litigation expenses,

“the lien was not ‘unlawful,’”¹⁹ and Gillman tried to manipulate the mechanic’s lien to create a wrongful lien cause of action:

Moreover, it is clear, and the court finds, that **the expenses in this case, born by both parties, have been exacerbated by Defendant’s continued and unreasonable efforts** to avoid paying a contractual obligation, and by attempting to **use Plaintiff’s harmless** (and arguably beneficial, to Defendant) **error to create a wrongful lien cause of action**. It is therefore **appropriate that Defendant bear the costs of Plaintiff’s fees as well as her own**. (*R. 815:3, Order On Motion For Attorney Fees*) (*Emphasis added*)

The court awarded I-D over \$25,997 for attorney fees and costs, with interest at 24%. (*R. 817:10-12, Order On Motion For Attorney Fees*) *Sua sponte*, and over Gillman’s objection, the court’s *Judgment* awarded I-D pre-judgment interest on attorney fees. (*R. 851-853, Judgment*) Thereafter, the court entered an *ex parte* order, awarding I-D additional attorney fees of \$5,481.27, raising the total judgment to \$36,939.29. (*R. 874-876, Judgment*)

2. The Reciprocal Fee statute, UCA §78B-5-826, gives the court discretion to award attorney fees and costs.

Utah’s Reciprocal Fee statute, UCA §78B-5-826, is specific to its intent for extending attorney fee rights to all parties under a contract:

A court may award costs and attorney fees to either party that prevails in a civil action based upon any [w]ritten contract, or other writing, [w]hen the provisions of the [c]ontract [a]llow at least one party to recover attorney fees.

¹⁹(*R. 816:5, Order On Motion For Attorney Fees*)

The court exercised that discretion in this case, granting I-D all of the fees, costs and interest it pled, pre-judgment interest it did not plead that was unsupported by law, and fees the court ordered *ex parte*.

3. UCA §78B-5-826 is intended to equalize litigation risks.

Noting the dearth of direction in the language of the statute, the courts have steered its application toward honoring the underlying policy its enactment was meant to promote, that policy taking the shape of equally allocating the litigation “risk,” against the one-sided reality that the enforcement party enjoys “significant bargaining advantage.”

The **reciprocal attorney** fee statute provides no guidance as to when **fees** should be awarded. . .[d]istrict courts should **look to the policies underlying the statute in exercising this discretion.** *Bilanzich v. Lonetti, 2007 UT 26, ¶17, 160 P.3d 1041.* (Internal citations omitted; emphasis added)

The statute levels the playing field by **allowing both parties to recover fees, [r]emedying the unequal allocation of litigation risks** built into many contracts of adhesion. In addition, this statute **rectifies the inequitable common law result where a party that seeks to enforce a contract containing an attorney fees clause has a significant bargaining advantage over a party that seeks to invalidate the contract.** *Id. at ¶18* (Internal citations omitted; emphasis added)

[u]se of the word “may” also indicates that **courts have broad discretion** in applying **equitable principles** in fixing the amount of any award of **fees** under the statute. *Id. at ¶21* (Emphasis added)

I-D held the “significant bargaining advantage” over Gillman, that advantage forged from I-D’s unwavering insistence that the contract was express, and demanding

collection of its full charges. Along the way, I-D ran up a colossal sum of attorney fees, choosing a litigation strategy that utilized liens it would lose, long before trial. I-D refused to settle before trial, unless Gillman relinquished her statutory rights to attorney fees for defeating the mechanic's liens. Gillman's sole recourse in the standoff was the intercession of the law—intercession that could not be achieved without trial. Within the '*Gillman-fault*' theory, the court re-litigated those liens, then in its "discretion," awarded I-D attorney fees for losing them, together with all of I-D's trial attorney fees, even though the contract failed its burden of proof.²⁰

4. UCA §78B-5-826 is hypothetical in its application.

The courts characterize reciprocity as exclusively hypothetical in the nature of its operational purpose, to level the playing field and equalize the litigation risks among parties to contracts, protecting a single standard, not promoting a double standard:

The **classic application** of the statute involves a one-sided fee provision in a dispute between the parties to the contract. And in that **archetypal scenario**, the **statutory analysis of whether the contract allows "at least one party to recover" is undertaken in the hypothetical—under an alternative consideration in which the tables were turned and the opposite party prevailed.** Because **only that approach preserves the classic case covered by the statute,** we interpret its language to **contemplate the hypothetical analysis.** *Hooban v. Unicity Int'l, Inc., 2009 UT App 287, ¶26, 220 P.3d 485, aff'd, 2012 UT 40, 285 P.3d 766* (Emphasis added)

²⁰ Closing arguments were submitted in writing. Gillman thoroughly briefed the court on the principles of express contract, quantum meruit, their respective burdens of proof, and I-D's failure of its burden. The court was fully advised before ruling and overtly rejected the *Davies* dicta in its decision that the contract was express, rather than implied-in-fact. (R. 602-622, *Written Closing Argument of Defendant*)

5. Gillman is due her trial attorney fees under the Reciprocal Fee statute, and should be awarded her attorney fees on appeal.

Had the court not erred in its conclusion of law that there was a binding contract, and entered the correct conclusion that the contract was implied-in-fact, I-D would have lost the trial outcome for its failure to meet the burden of proof to establish its charges were a reasonable market value. Under that hypothetical scenario, the tables would have turned and Gillman would have recovered her trial attorney fees. In the exercise of its “discretion,” the court awarded I-D all of its trial fees with no inquiry past a scant Affidavit and billing records. In the hypothetical equation of the statute’s intent, reciprocity dictates Gillman be treated identically in recovering all of her trial fees. Anything less would not preserve the integrity of justice that is the Reciprocal Fee statute’s policy intent. The same standard of the court’s discretion for I-D’s fee calculation should be duplicated for Gillman’s fees.

Gillman should be awarded her attorney fees for this appeal. See Valcarce v. Fitzgerald, 961 P.2d 305, 319 (Utah 1998)

Conclusion

This simple contract case over a disputed invoice for electrical services totaling \$1,827.61, exploded into an epic conflict over attorney fees that approximate \$100,000—the result of mechanic’s liens I-D lost pre-trial, but has refused to concede. Re-litigated at trial, the liens jaundiced the court’s rulings with the prejudice of I-D’s

‘Gillman-fault’ theory. The court adopted that theory, assessing Gillman the fees of litigation, which included I-D’s lien losses.

The court erred in its denial of Gillman’s statutory attorney fees for defeating the liens; erred in ruling that the Salt Lake condo lien was not wrongful; and, erred in ruling that I-D’s contract was express, when it had no price. I-D’s basis of contract recovery was in quantum meruit, which carried a burden of proof for establishing the reasonable market value of its charges. I-D failed that burden of proof. The only evidence in the record for the reasonable market value was adduced at trial by I-D in its direct examination of Gillman, and is between \$600 and \$700. I-D had its day in court. Reasonable market valuation between \$600 and \$700 is the only evidence it presented in quantum meruit.

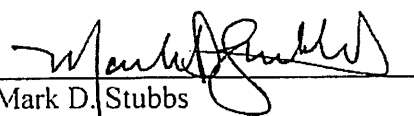
This court should:

1. Reverse the trial court and award Gillman’s statutory attorney fees for successfully defeating the two mechanic’s liens.
2. Reverse the trial court’s ruling that the Salt Lake condo lien was not wrongful, and award Gillman both tiers of statutory penalties and attorney fees.
3. Reverse the trial court’s conclusion of law that the contract was express, rather than implied-in-fact, and direct that:
 - a. The contract burden of proof is the reasonable market value of I-D’s services, which is between \$600 and \$700—the only evidence in the trial record.

- b. Gillman be awarded all of her trial attorney fees under the Reciprocal Fee statute, on the same discretionary basis the trial court utilized to award I-D all of its trial attorney fees.
4. Award Gillman her attorney fees for this appeal.

DATED this 15th day of February 2016.

FILLMORE SPENCER, LLC


Mark D. Stubbs
Attorneys for Defendant

Certificate of Compliance 24(F)(I)

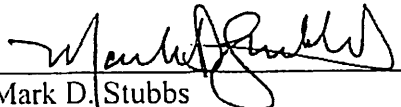
**Type-Volume Limitation
Typeface and Type Style Requirements**

1. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(I), containing 13,922 words, excluding those parts of the brief exempted by Utah R. App. 24(t)(I)(B).

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DATED this 15th day of February 2016.

FILLMORE SPENCER, LLC

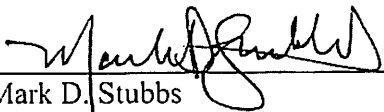

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Certificate of Service

I hereby certify that two true and correct copies of the foregoing Opening Brief of Appellant were hand-delivered this 16th day of February 2016 to:

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Mark D. Stubbs
Attorneys for Defendant

Tab 1

FILED DISTRICT COURT
Third Judicial District

JAN 29 2015

SALT LAKE COUNTY

By _____ Deputy Clerk

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

I-D ELECTRIC, INC.,

Plaintiff,

v.

LINDA T. GILMAN,

Defendant.

RECEIVED
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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

Case No. 110917777

Judge RICHARD D. McKELVIE

DATE: January 20, 2015

This matter came before the Court for trial November 10-13, 2014. The parties thereafter submitted written closing arguments. The Court, having reviewed the testimony and exhibits entered at trial, and having considered the arguments of counsel, enters these findings pursuant to Rule 52(a), Utah Rules of Civil Procedure.

FINDINGS OF FACT

Following is a list of the witnesses testifying at trial, together with a synopsis of their testimony, and (where appropriate) specific findings regarding the adoption or rejection by the Court of their testimony.

A. Chet Hunter

1. Chet Hunter testified that he is a journeyman electrician who has been employed by Plaintiff since 1998. On March 10, 2011, Hunter was at an electrical wholesale supply picking up supplies when he was approached by Defendant, whom he had not met previously. Defendant asked Hunter if he was an electrician, and when he responded in the affirmative, she told him she wanted to hire him to do some work on a house, and asked her to follow him to the residence.¹

¹ Defendant testified that she did not request that Hunter follow her, and would never have done so. As will be explained as appropriate in these findings, the Court credits the testimony of Hunter and discredits the testimony of Defendant on this point. Although this point is clearly not critical to the findings of the Court, there are numerous instances in which Defendant's testimony was directly at odds with other witnesses at trial, which will be identified.

2. Hunter explained that he had another job and could not follow her at that time, but provided contact information. Later that day, he met her at the residence, in Herriman, Utah. They met for "a couple of hours" and went over the scope of work she requested. No work was performed that day, but arrangements were made to begin work the following day.

3. The primary work requested of defendant was in the garage of the property, and included moving wires that were hung over the trusses of the garage so that a floor could be installed in the attic of the garage. Other work included replacing power outlets, moving switches, and moving a sprinkler control box. Defendant did not ask for a bid, but she did ask Hunter how much the work would cost. Defendant had some materials in the garage, which she asked Hunter to use on the project in favor of materials supplied by Plaintiff. He indicated he would use her materials to the extent possible.

4. The following day (Friday, March 11, 2011) Hunter returned to the Herriman property with Blake Trip and Brick Anderson. Trip was a journeyman electrician and Anderson was an apprentice. They arrived at the job site between 8:00 and 8:30 a.m.² and accessed the garage by using a key code given to Hunter by Defendant. Their first priority was to move the wiring across the trusses so the flooring could be placed.

5. Defendant arrived at the residence mid-morning and remained through much of the day. She observed some of the work in progress, and consulted with Hunter to a degree, but was largely engaged in other projects during the day. At some point in the afternoon, Hunter left the residence to go to Home Depot in order to purchase special wire needed to complete the relocation of the sprinkler box. The GPS log indicates he left at 2:13 p.m. and returned at 2:51 p.m.³ When he returned to the residence Defendant had left and did not return that day. Hunter left for the day at 5:17 p.m.

6. Hunter prepared a work order which outlined the tasks completed and the amount of time spent by each electrician. Hunter went over the work order with Defendant, who indicated that she was "OK" with it and wanted them to return to complete more work. She asked for a price estimate, but Hunter explained that the pricing would be done by the company management. That work order was presented to Defendant for signature by one of the other workers while

2 Hunter's company truck was equipped with a GPS tracking device which tracked the time and location of the truck at any time it was operating. The log was produced to Defendant by Plaintiff as an enclosure to a letter dated April 7, 2011 providing an invoice for work done. The letter and accompanying log were introduced as Exhibit 5 at trial. The parties stipulated that the log was off by one hour, and that a notation (as an example) of Hunter's arrival at The Herriman property at 9:19:20 on March 11 was actually 8:19 a.m. The GPS log is critical to the Court's analysis of the credibility of witnesses that follows.

3 The Home Depot receipt, part of Exhibit 2, indicates a time of 2:41 p.m., which is consistent with the GPS log.

7. Hunter was gone to Home Depot, and Defendant signed the work order, which was admitted as Exhibit 2. Adjacent to Defendant's signature is the following notation:

Payable 30 days net – A service charge of 2% per month which is an annual rate of 24% will be charged on all past due accounts. Purchaser agrees to pay all costs and expenses including reasonable attorney's fees in the event collection becomes necessary. There will be handling and restocking charges on all returned goods.

The following Monday, Hunter attempted to contact Defendant to arrange to return to the home to begin completion of the work. He left messages, which she did not return. He went to the Herriman home and attempted to gain entry, but the garage code had been changed.

B. Blake Trip

8. Blake Trip testified that he was a residential journeyman electrician working for Plaintiff in March, 2011. He accompanied Hunter to the Herriman job site on March 11, and participated in the work done. He testified generally that he and his co-workers were busily engaged throughout the day, and completed a large amount of work. He also testified that at some point during the afternoon, Hunter had to go to Home Depot to purchase sprinkler wire. While Hunter was gone, Defendant indicated she was leaving for the day. Prior to her departure, Trip requested and obtained her signature at the bottom of the work order (Exhibit 2). He also testified that at no time did she complain about the quality of the work done.

C. Trip Anderson

9. Trip Anderson testified that he accompanied Hunter and Trip to the Herriman job site. He was an apprentice electrician, and testified that he "got stuck with" the jobs no-one else wanted to do. Because of his slight build, he often was the only one on a job site who could access small areas such as crawl-spaces and attics. He testified that he spent the entire day in the attic replacing the wiring so the flooring could be placed. He indicated there was a great deal of physical labor necessary because there was an abundance of building supplies that needed to be moved. Much of the attic had no floor, and he had to balance himself, while lying down, on the narrow edge of roof joists and trusses. He testified that he saw Defendant "a few times" when she came up into the attic to determine his progress, but that she was mostly in the garage.

D. Kim Olson

10. Kim Olson testified that he is the president of Plaintiff, ID-Electric. He has worked for the company for 45 years. He testified that in 2011, the company rate for journeyman and apprentice electricians, respectively, was \$65 and \$50 per hour, which he acknowledged was "a little above median" for the Salt Lake market. He testified that the company considered their

ability to get to jobs quickly and on short notice made up for the slight premium over the median market.

11. Olson testified that there are two common billing arrangements; "cost plus" billing and "bid" billing. In cost plus billing, the labor and materials are calculated either at the end of a job or, in a longer, more complex project, on an ongoing basis. In bid billing, the company creates and submits a binding bid in advance of the work done. Olson testified that most customers prefer cost plus billing, and that is the company's default billing system.

12. Olson became aware of a billing dispute with Defendant when Hunter contacted him and asked him to go over the bill with Defendant. Hunter told Olson that Defendant "was a little off" and that he had called to offer to go over the bill, and she had changed to code to the garage. Olson contacted Defendant by phone, and she wanted to know how much the remainder of the job would cost, which he inferred as a request for a bid. However, no arrangement to complete the work was ever made.

13. An invoice was sent to Defendant, and after 30 days, the company started to call Defendant to obtain payment. They left numerous messages, which were never returned.⁴ Olson sent a detailed invoice on April 7 (exhibit 5) outlining the work and hours of each electrician. On May 6, 2011, Defendant sent a letter to Olson (exhibit 6), which stated in part:

"Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 2.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first \$4.74 million phase of a 15-month construction project in December. The second \$1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than \$11 million."

14. Olson understandably felt that Defendant was trying to intimidate him with the letter, and he contacted counsel. He gave his attorney directions to file a mechanic's lien on the property, which he has done only two times in the past 5 years.

⁴ A pattern emerged regarding Defendant's unwillingness to directly confront the billing issue; in addition to habitually failing to return phone calls, she ignored several letters and written communications, including certified letters indicating legal proceedings would be or had been initiated. This willful neglect on the part of Defendant contributed greatly to the costs incurred by Plaintiff in collecting the debt.

15. The company's counsel prepared a mechanic's lien for filing, and presented it to Olson for review. Olson did not notice that the lien listed a Salt Lake City Condominium as the subject property, rather than the Herriman house.⁵ Olson testified that he did not intend to place a lien on the condo, and that it would not be ethical to do so. The Court credits this testimony, and rejects defendant's claim that the lien was placed on the condo because the condo was unencumbered by any liens or mortgages, but the Herriman property was. As Olson pointed out in his testimony, the mechanic's lien was for only \$1827, and was placed on the property in an effort to force Defendant to respond to repeated efforts to collect the debt. There is no evidence in the record to support Defendant's contention that the condo was deliberately chosen as a target for the lien. From all of the evidence, and the logical inferences to be drawn therefrom, the Court concludes and finds that the placement of the lien on the condo rather than the Herriman house was a clerical error made by Plaintiff's counsel and not a deliberate act to gain tactical advantage in the collection of the debt.

16. On November 11, 2011, Defendant delivered a letter to Olsen's office. At that time, Defendant knew that Plaintiff was represented by counsel (this issue will be discussed in further detail below) and she had also retained counsel, although the record is not clear that Olson knew that at the time. This letter was introduced as Exhibit 12. Unlike Exhibit 6, which spans two pages and is very detailed, Exhibit 12 is deliberately vague, and states in its entirety (excluding salutations):

"Hasn't this already gone too far? First you file a lien on my property and I understand that has recently been followed by a lis pendens. Neither is either reasonable or justified under the circumstances, and without a legal basis. Please remove both immediately. There is no point in the senseless the [sic] accumulation of any more legal fees. It's about time to do the right thing."

17. The Court finds that Defendant knew that the lien had been placed on the wrong property, and that she intentionally and deliberately failed to mention that fact in the letter to Olson. The Court further finds that Defendant did so, after consulting with counsel; in a deliberate effort to establish a cause of action against Plaintiff for filing a wrongful lien. This finding will be further explored below during a discussion of Defendant's testimony.

18. On December 6, 2011, Olson received an email from his attorney indicating the lien had been filed on the wrong property. Olson instructed counsel to remove the lien immediately. He testified, and the Court finds, that this was the first date on which Olson knew the lien had been placed on a property other than the one on which the work had been completed. The Plaintiff

⁵ Defendant lived at the Salt Lake City Condo, and used the address in all of her correspondence and dealings with Plaintiff. She did not reside at the Herriman home, and shared ownership of that home with her daughter.

filed a motion with the court to remove the lien that same day. ...

E. Linda Gillman⁶

19. Defendant testified that she owns two properties in Salt Lake County; the home in Herriman which is the subject of this lawsuit, and the Salt Lake condo on which the lien was erroneously placed. She purchased the Herriman house in 2007 and remodeled it to accommodate her aging mother. She was planning to update the home, particularly in the garage area, and her primary objective was to move wiring from the trusses in the attic so that flooring could be placed there.

20. Defendant testified that she is a graduate of the University of Utah College of Law (in the 70s). She testified that she has never been a member of any bar. She made the following statements regarding her relationship with the practice of law, in the course of her testimony:

"I'm an attorney of sorts."

"I'm not a member of the bar."

"I've been practicing law for about 10 years."

"I have been working with clients but I have to be associated" with a licensed attorney.

"I do the work and they sign it."

"I have drafted most of the pleadings" in the instant case.

"I didn't draft the initial pleading but I've drafted most of the rest."

21. Defendant testified that she met Chet Hunter at the electrical wholesale supply, and approached him about doing electrical work on the Herriman house. He came to the home later in the day, and they walked through the house, looking at the projects she wanted completed. She testified, however, that "he stood around in my kitchen for a long, long time talking about politics." She testified that she asked for a bid, and that he told her "he would give me a number in the morning."

22. Defendant testified that she arrived at the Herriman home the following morning. All three of the electricians were there when she got there, but they were not working. The Court discredits this testimony and finds, pursuant to the testimony of Plaintiff's witnesses, that all 3 electricians were substantially engaged in pursuit of their work during their time at Defendant's property. Their testimony was consistent with one another, and the Court finds their testimony truthful on that point. Moreover, as will be pointed out in detail, Defendant's testimony that the electricians were not substantially working is contradicted not only by their collective testimony but by objective facts and logical inferences the Court draws from those facts.

⁶ Defendant Gillman testified on two separate occasions. She was initially called by Plaintiff, and then testified on her own behalf. For the sake of continuity, the Court addresses both instances together.

23. Defendant testified that although it seemed Hunter was working, "Blake (Trip) was leaning on a counter" and "Brick (Anderson) was lying on a truss in the attic," but not working. Defendant testified that she didn't comment or complain, because she thought she would only be charged "for the time they were actually working." "It never crossed my mind that I was paying these guys \$100 an hour to do nothing." The Court finds this statement not credible. Anyone with Defendant's professed knowledge of construction and the construction industry would surely realize that workers on a job site, being compensated on an hourly basis, would be paid for the entirety of their time, and would not keep track of minutes or moments during which they were not actively engaged.

24. Defendant testified that when she arrived at the house at 10:00, the rewiring in the attic had already been completed. This testimony is squarely contradicted by testimony that the attic project took all day. Further, Defendant testified that Anderson was in the attic the entire time she was there, and that she only saw him when she went into the attic. To accept her testimony then, would be to accept that from 10:00 a.m. to at least 3:30 p.m., when Defendant testified she left, Anderson lay on his back in an unheated, unlit attic, on narrow trusses, doing absolutely nothing. This testimony is at odds with the weight of the testimony in the case, and contrary to any notion of common sense, and the Court rejects it.

25. Defendant testified that she left around 3:30, and signed Exhibit 2 (the work order) before she left. Hunter was not there at the time, and the work order was presented by Trip. She testified that she did not read the paragraph (regarding payment terms) at the bottom of the form. She acknowledged, however, that it is common language on construction forms, with which she is very familiar.

26. Regarding Defendant's testimony about the work done on March 11, there is a wealth of evidence that contradicts her. As an example, she testified that she observed while Hunter and Trip "fished" the wire and did the other work necessary to move the sprinkler box, and that work was completed before Hunter left. However, the objective evidence is clear that Hunter left in mid-afternoon to obtain that very wire, and that Defendant was gone by the time he returned. Defendant testified that Hunter left more than once; first to get the wire, and then again before she left at 3:30. That testimony is contradicted both by fact and logic. The GPS logs make clear that after returning from Home Depot, Hunter did not leave again until 5:17, long after Defendant was gone. Further, he returned with the wire at 2:51. It is unreasonable to infer that there was time for Hunter and Trip to complete the sprinkler box removal, and for Hunter to leave again, before Defendant left at 3:30. Defendant's testimony regarding the events of that day are largely contradicted by objectively believable evidence.

27. Defendant testified that the following Monday, March 14, Kim Olson called her, and told her the bill for the work to date was \$1827. She expressed to him that she was "stunned" by the amount, and remembered saying, "for one day?" She testified that "after Mr. Olson called me, it was pretty clear what had happened. I didn't want these people working for me any longer." She said that she never talked to Hunter again, and that she left town "a day or two after." She testified that she got a "couple" of voicemails from Hunter because he wanted to get back into the house to finish the work," but she never called him back. In another contradiction, Defendant testified that she had changed the code on the garage door over the weekend. At an earlier time, she testified that she changed the code after she had talked to Olson and found out how much they intended to charge her.

28. Defendant testified that she asked for a breakdown of charges after she received the invoice from Plaintiff. She also testified that she knew the company was trying to reach her, but she was neither taking nor returning their calls. She also testified she never received a certified letter sent by Plaintiff's counsel, urging her to pay the invoice, and suggesting legal action would be taken if she did not (exhibit 7) Nor did she receive Exhibit 8, another letter from counsel dated June 15, notifying her that a mechanic's lien had been placed on her property.

29. Defendant testified she didn't receive the letters because she was out of town for much of the time between March and mid-June, 2011. Notably, Defendant provided absolutely no evidence indicating the dates she was gone, where she was, or the dates she was back in town. The inference from her testimony is that she never received the notices for the certified mail, which she did not therefore pick up from the post office. Again, the Court rejects her testimony. By all observations, including her own testimony, Defendant is a capable, accomplished business-woman who keeps meticulous records and appears to retain everything. Any documentation of business travel would have been required for business and tax purposes, and could have easily been provided to the Court in support of her contention that she was gone for the entirety of this critical period. The fact that she provided no such testimony or documentation, coupled with her admissions that she continually avoided returning phone calls and correspondence from Plaintiff, leads the Court to conclude that her avoidance of these letters was willful rather than circumstantial.

30. Defendant spoke with counsel for Plaintiff on June 16, and he told her a lien had been filed on her property. She went to the County Recorder's office to confirm the lien, but could not. She did not look to determine whether a lien had been filed on the condo, but checked only the Herriman house. Defendant testified that she was served with the pending lawsuit on September 25, 2011, and that it was the first time she realized that the lien had been placed on the wrong property.

31. Defendant testified that she obtained counsel in mid-October, because she wasn't very well-versed in Utah law and wanted to find someone who was. Regarding Exhibit 12, the letter demanding the lien be removed, she testified that she delivered the letter to Plaintiff personally "on the advice of counsel." She testified that she knew that the failure to remove the lien within 10 days would result in a potential damage claim in her favor against Plaintiff.

32. Again, the Court rejects Defendant's testimony on this score. Defendant is admittedly trained in the law, and is engaged in the practice of law, albeit without a license. Her suggestion that she and her counsel determined that in order to be effective the letter would have to be delivered directly by her to Plaintiff is not only an invalid legal conclusion, it is an improper one. She and her counsel both knew that Plaintiff was represented by counsel, and presumably her counsel knew, even if she did not, that direct communication with a represented party in a violation of the Canons of Ethics. The Court finds that Defendant's decision to deliver the letter personally, whether on advice of counsel or not, was a deliberate attempt to obscure the reason she believed the lien was improper, and thereby set up a claim of wrongful lien. The Court finds that Defendant knew or reasonably should have known that any such letter authored or signed by her counsel and directed to Plaintiff's counsel, would by ethical standards be required to contain more particularity regarding the factual or legal inadequacies of the mechanic's lien. This finding is further supported by the testimony of Defendant, who acknowledged that she and her counsel emailed several drafts of the letter back and forth before agreeing on the final version. Given the paucity of the letter, it becomes even more clear that it was intentionally vague in an attempt to lay a trap for improper or wrongful lien.

CONCLUSIONS OF LAW

1. DEFENDANT IS LIABLE FOR BREACH OF CONTRACT DAMAGES AS SOUGHT BY PLAINTIFF

33. Plaintiff claims, and the Court finds, that there was a binding contract between Plaintiff and Defendant. The necessary elements are present. Gillman's request for Plaintiff's services, given to Hunter at the electrical supply warehouse, constitutes an offer to contract. Plaintiff's acceptance is evidenced by Hunter's act of going to the Herriman home and completing the scope of work, and arranging for a crew of electricians to begin work the following day. Thus, offer and acceptance are present.

34. There is clearly a meeting of the minds. Plaintiff expected to be paid for the work and

⁷ It is important to note that the counsel identified by Defendant as having shared this advice was NOT counsel who represented Defendant at trial.

materials provided, and Defendant clearly expected to pay. Although the exact costs and work were not confirmed at the outset, Defendant was well-versed in construction contracts, and knew to expect that she would be billed for both supplies and labor. The fact that she expressed dissatisfaction about the amount billed does not diminish the fact that she undertook a responsibility to pay. Moreover, she signed the work order, which had been substantially completed (albeit without prices) at the time. By doing so she acknowledged not only an obligation to pay, but an undertaking to pay a service charge and collection costs, to include attorney's fees, in order to enforce the contract.

35. Plaintiff substantially performed the terms of the contract. Although disputed by Defendant, the Court has found that the electricians provided by Plaintiff were continuously and properly engaged in the work for which they were employed. In her testimony Defendant went to great lengths to point out that many of the tasks performed by them were menial in nature, and she demonstrated that she could have done many of them herself. That misses the point. Defendant engaged the services of trained electricians, and had to know that they would be compensated the same amount (as Olson testified) for changing a light bulb as for replacing a circuit box or performing some other sophisticated procedure. Further, as outlined above, Defendant has dramatically understated the amount of work performed by Plaintiff, and the time it took. The Court has rejected her testimony on that score. The Court concludes that the work order accurately reflects the goods and services provided to Defendant pursuant to the contract.

36. Further, the contract carries a provision for service charges, collection costs and attorney's fees. This provision was acknowledged by defendant both at the time of receipt and at trial. There is no ambiguity in the contract, and no dispute that defendant was aware of the provision when she signed it.

37. Plaintiff has argued to the Court that, in the event there is no valid contract, principles of unjust enrichment provide the basis for judgment. In light of the Court's ruling on the validity of the contract, the Court will not address the issue of unjust enrichment.

2. PLAINTIFF IS NOT LIABLE FOR DAMAGES RESULTING FROM A WRONGFUL LIEN

38. Defendant's reliance on Hutter v. Dig-it, 2009 UT 69, 219 P.3d 918, is misplaced. The Hutter case does stand for the proposition, as propounded by Defendant, that a mechanic's lien is unenforceable under circumstances similar to those presented here. However, that issue is not before the Court. Plaintiff in this case is not making any effort to enforce the lien, and removed the lien as soon as it was learned that it had been placed on the wrong property. Rather,

Defendant seeks to utilize the Wrongful Lien statute (38-9-2(3)) as a bludgeon rather than a shield.

39. As pointed out by Plaintiff, the lien here is not “wrongful” under the wrongful lien act. A lien is not “wrongful” because it is inaccurate or misidentifies the property it seeks to encumber. The lien is “authorized by statute” which takes it out of the definition of a wrongful lien. As the Hutter Court explained, a lien that is ultimately proved unenforceable is not a wrongful lien by virtue of that fact alone.

40. Further, the evidence supports that there was a good-faith basis for filing the lien, and the Court finds that the lien was misplaced due to an explainable error. Although the work was done on the Herriman property, Defendant used her condo address as a billing address and in all of her correspondence with Plaintiff. Although it evidences a lack of thoroughness, the use of the billing address in the lien is an understandable error. There is no evidence in the record to suggest that the lien was misplaced in an effort to cause damage to Defendant or to gain a legal or tactical advantage.

41. Conversely, the record is abundantly clear that, realizing Plaintiff’s error in filing the lien, Defendant made a determined effort to capitalize on that error to her advantage. Clearly, Defendant suffered no harm from the misplaced lien, and her “lying in wait” strategy had at least one positive effect, from her standpoint. It made the lien unenforceable, and the delay created a legal impediment to Plaintiff’s filing of a subsequent lien on the correct property. The Court sees no impropriety in such a defensive tactic, but will not recognize it as an appropriate cause of action to obtain damages against Plaintiff.

3. ATTORNEY’S FEES.

a. Plaintiff’s fees

42. The Court has determined that Plaintiff prevails in its breach of contract claim. The contract itself has a provision for attorney’s fees. In its written argument, Plaintiff has not claimed an amount for attorney’s fees, but has not waived the right to do so. The Court finds that Plaintiff may be entitled to reasonable attorney’s fees in this matter, and directs Plaintiff to submit a proposed order regarding attorney’s fees.

b. Defendant’s fees

43. The Court has found against Defendant on the breach of contract claim, and has similarly ruled against Defendant on her wrongful lien claim. The Court has recognized no cause of

action for which Defendant may be entitled to fees.

44. Moreover, it is clear, and the Court finds, that the expenses in this case, born by both parties, have been exacerbated by Defendant's continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use Plaintiff's harmless (and arguably beneficial, to Defendant) error to create a wrongful lien cause of action. It is therefore appropriate that Defendant bear the costs of Plaintiff's fees as well as her own.

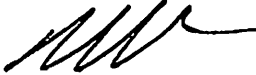
ORDER

45. It is the order of the Court that Defendant is directed to pay to Plaintiff the following amounts:

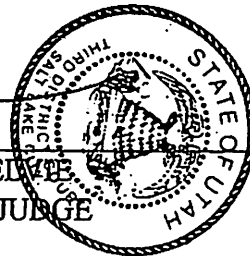
46. 1. \$3,393.09, representing damages due to breach of contract, including service fees (interest) through November 20, 2014.
47. 2. An amount of interest, pre-and-post judgment, to be determined by the Court based on submission by Plaintiff and rebuttal by Defendant.
48. 3. Attorney's fees in an amount to be determined by the Court based on submission by Plaintiff and rebuttal by Defendant.

49. It is the further order of the Court that Defendant's claim based on wrongful lien be, and the same is hereby, dismissed.

SO ORDERED this 29 day of January, 2015.



RICHARD D. McKELEY
DISTRICT COURT JUDGE



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 110917777 by the method and on the date specified.

MAIL: BRADY T GIBBS 11650 S STATE ST STE 103 DRAPER, UT 84020

MAIL: MARK D STUBBS 3301 N UNIVERSITY AVE PROVO UT 84604

01/29/2015

/s/ MCKAE MARRIOT

Date: _____

Deputy Court Clerk

Tab 2

FILED DISTRICT COURT
Third Judicial District

JUN 08 2015

SALT LAKE COUNTY

By Deputy Clerk

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

I-D ELECTRIC, INC.,

Plaintiff,

v.

LINDA T. GILMAN,

Defendant.

ORDER ON MOTION FOR
ATTORNEY'S FEES

Case No. 110917777

Judge RICHARD D. McKELVIE

DATE: June 8, 2015

1. This matter is before the Court on Plaintiff's Motion for Attorney's Fees, Costs and Interest. The matter was heard by bench trial and the Court entered a verdict in favor of Plaintiff on January 29, 2015. The Court thereafter denied Defendant's Motion to Amend Ruling on March 18, 2015. Plaintiff thereafter filed the instant motion and accompanying memorandum, and Defendant filed an appropriate response with exhibits. The Court, having reviewed the pleadings and the record in this case, enters the following order.

2. The Court previously held that Defendant was responsible for damages based upon Defendant's breach of contract. The Court also ruled that Defendant's claim for wrongful lien was improper, and that claim was dismissed.

3. The Court reserved on the issue of attorney's fees, but expressly stated:

"Moreover, it is clear, and the Court finds, that the expenses in this case, born by both parties, have been exacerbated by Defendant's continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use Plaintiff's harmless (and arguably beneficial, to Defendant) error to create a wrongful lien cause of action. It is therefore appropriate that Defendant bear the costs of Plaintiff's fees as well as her own." (Order, January 20, 2015).

4. Plaintiff seeks fees in the amount of \$29,144, and costs in the amount of \$465.32. Defendant argues that "approximately half of total attorney fees on both sides of this case was spent asserting/defending the unlawful lien claims that Plaintiff voluntarily dismissed or summarily

lost.” Although Defendant correctly asserts that many of the fees involved the litigation over a mechanic’s lien, she is incorrect in her assertion that those generated fees are the result of Plaintiff’s own actions. The Court’s earlier ruling is in contravention of that argument.

5. First, it must be noted that the Court determined that the lien was not “unlawful.” Although the lien was filed against the wrong property, the Court determined that the errant filing was inadvertent and was corrected immediately upon Plaintiff’s counsel learning of the error. Notwithstanding that correction, Defendant insisted on pursuing a cause of action for wrongful lien, both through motion for summary judgment and at trial. The mechanic’s lien issue became the “tail wagging the dog” in this case, and Defendant was relentless in her pursuit of it. Indeed, although Defendant argues that she made repeated attempts at settlement in this matter, Plaintiff alleges by Affidavit of counsel that none of her settlement offers included a settlement of her “wrongful lien” cause of action.

6. Defendant correctly asserts: “Why attorney fees escalated to more than 32 times Plaintiff’s underlying contract claim cannot be ignored.” Yet, Defendant then does her best to ignore the cause, casting blame on Plaintiff for filing a mechanics lien after its repeated attempts to collect a valid debt went not just unanswered, but literally ignored.

7. The Court does not excuse Plaintiff’s error, and finds that \$3,632 of its claimed fees were generated as a result of “active litigation of the Mechanic’s Lien.” Plaintiff’s reply brief, p. 4. Accordingly, the Court is of the view that Plaintiff is not entitled to recover those fees, and the award of attorney’s fees will be reduced by that amount.

8. However, the Court has previously determined that the driving force behind this litigation was Defendant’s intractable position that the original charges for services were unreasonable, and her steadfast determination to take advantage of an inadvertent clerical error committed by Plaintiff’s counsel. It is extremely doubtful that this matter would have extended to a three-day trial (or gone to trial at all) over the initial claim based on work performed and not paid for. Defendant made a strategic decision to take advantage of the misplaced lien, not only as a means of avoiding the original debt, but as a means of punishing Plaintiff for taking action against her. Her own words, cited to in the Court’s verdict in this matter, underscore this fact:

“Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 2.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first \$4.74 million phase of a 15-month

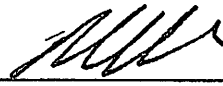
construction project in December. The second \$1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than \$11 million."

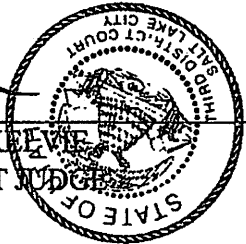
Letter from Defendant to Plaintiff, dated May 6, 2011.

⁹. To Plaintiff, this action was nothing more than an effort to collect a valid debt. To Defendant, it appeared to be an affront to her professional abilities and her sense of propriety. The Court views defendant as primarily, if not solely, responsible for the excessive and unnecessary costs associated with this case, and hereby ORDERS as follows:

- ¹⁰. 1. Defendant is to pay Plaintiff's attorney's fees in the amount of \$25,512 (sought fees of \$29,144 less \$3632 discussed above.
- ¹¹. 2. Defendant is to pay Plaintiff's costs in the amount of 465.32.
- ¹². 3. Defendant is to pay Plaintiff 24% per annum interest on the above amounts calculated from the date of judgment and adjusted for any amounts already taken into consideration by the calculations of Plaintiff's counsel in it' prayer for an award amount.

SO ORDERED this 8 day of June, 2015.


RICHARD D. McKEE
DISTRICT COURT JUDGE



Tab 3

Brady T. Gibbs #11049
WRONA GORDON & DUBOIS, P.C.
11650 S. State St., Suite 103
Draper, Utah 84020
Ph: 801.676.5252
Fax: 801.676.5262
Email: gibbs@wgdlawfirm.com

Attorneys for Plaintiff

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

I-D ELECTRIC, INC. a Utah Corporation,

Plaintiff,

vs.

LINDA T. GILLMAN,

Defendant.

**APPLICATION FOR AMENDMENT
OF JUDGMENT**

Case Number: 110917777

Judge Richard McKelvie

Plaintiff I-D Electric, Inc. ("Plaintiff") by and through its counsel of record, and pursuant to the Judgment entered by this Court on July 9, 2015 (the "Judgment"), a copy of which is attached hereto as Exhibit "A," and hereby requests that the Court augment the Judgment in the amount of reasonable attorney's fees expended in obtaining this Judgment from February 4, 2015 through July 14, 2015.

As grounds for this Application, the current Judgment amount includes only those costs and attorneys fees incurred through February 4, 2015, together with interest from the date of the Court's January 29, 2015 Order. Since February 4, 2015, additional attorney fees have been necessarily incurred in pursuing this action to Judgment. These fees are compensable pursuant to the terms of the underlying contract and paragraph 5 of the Judgment.

This Application is supported by the Affidavit of Attorneys' Fees and Cost in Support of this Application, filed concurrently herewith.

WHEREFORE, Plaintiff respectfully requests that the Court enter the accompanying First Amended Judgment, augmenting the original Judgment in the amount of \$5,481.27 for a total augmented Judgment amount of \$36,939.29.

Dated this 15th day of July, 2015.

WRONA GORDON & DUBOIS, P.C.

/s/Brady T. Gibbs

Brady T. Gibbs

Attorneys for Plaintiff

CERTIFICATE OF DELIVERY

I hereby certify, that on this 15th day of July, 2015, pursuant to Rule 5(b)(1)(a)(i), I caused a true and correct copy of the foregoing **Application for Amendment of Judgment** to be delivered via Utah State Bar electronic filing system and/or via the method of delivery checked below to the following:

Mark D. Stubbs
FILMORE SPENCER, LLC
3301 North University Ave.
Provo, Utah 84604

- ☐ First Class U.S. Mail, Postage Prepaid
- ☐ Facsimile Transmission
- ☐ Personal Delivery
- ☐ E-mail Transmission Attachment

/s/Gwen Mortensen

Tab 4

The Order of Court is stated below:

Dated: July 17, 2015
09:44:33 AM

/s/ Richard McKelvie
District Court Judge



Brady T. Gibbs #11049
WRONA GORDON & DUBOIS, P.C.
11650 South State Street, Suite 103
Draper, Utah 84020
Telephone: (801) 676-5252
Facsimile: (801) 676-5262
Email: gibbs@wgdlawfirm.com

Attorneys for Plaintiff

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
(450 South State Street, Salt Lake City, UT 84114)**

I-D ELECTRIC, INC., a Utah Corporation,

Plaintiff,

vs.

LINDA T. GILLMAN,

Defendant.

FIRST AMENDED JUDGMENT

Case Number: 110917777

Judge Richard McKelvie

The Court having previously entered Judgment against Defendant, Linda T. Gillman on July 9, 2015 (the "Original Judgment"), which provides that "This Judgment may be augmented upon proper application by Plaintiff for costs and attorney fees incurred in collecting the total judgment amount," and Plaintiff having accrued an additional \$5,481.27 in costs and attorneys' fees between February 4, 2015 and July 14, 2015 which have not otherwise been included in the Original Judgment, and which costs and fees are compensable pursuant to the underlying

contract at issue in this action,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Original Judgment is augmented in the amount of \$5,481.27 for a total
Judgment amount of \$36,939.29.

END OF ORDER

Entered by the Court on the date indicated by the Court's Seal at the top of the first page

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2015, pursuant to Rule 5(b)(1)(a)(i), I caused a true and correct copy of the foregoing **First Amended Judgment** to be delivered via Utah State Bar electronic filing system and/or via the method of delivery checked below to the following:

Mark D. Stubbs
FILMORE SPENCER, LLC
3301 North University Ave.
Provo, Utah 84604

- ☐ First Class U.S. Mail, Postage Prepaid
- ☐ Facsimile Transmission
- ☐ Personal Delivery
- ☐ Email Transmission Attachment

/s/ Gwen Mortensen

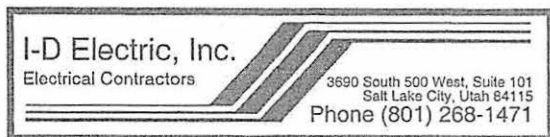
Tab 5

| MATERIAL | | | | | LABOR HOURS | | I-D Electric, Inc. Electrical Contractors 3590 South 500 West - 101 Salt Lake City, Utah 84116 (801) 268-1471 | | |
|----------|--------|------------|------------------------|------------|-------------|--|---|------|--------------------|
| AMT. | CAT. # | BRAND NAME | DESCRIPTION | UNIT PRICE | TOTAL | NAME | REG. | O.T. | DATE |
| 1 | | | Squary plastic Nail up | | 3.20 | | | | 11 March 11 |
| 1 | | | Squary plastic Cut in | | 1.77 | | | | |
| 4 | | | Brown SI toggle | 1.75 | 7.00 | Chet | 8.5 | | JOB NUMBER 311 316 |
| 1 | | | Brown P-1 | .50 | .50 | Bric | 8.5 | | CUSTOMER P.O. |
| 1 | | | Brown P-3 | | 2.00 | Blake | 8.5 | | |
| 175 | | | 10-2 Primer | .55 | 96.25 | | | | |
| 1 | | | 1/16 Round cut in | | 3.56 | THIS SECTION MUST BE COMPLETED IN FULL | | | |
| 1 | | | 410 Perhanger | | 3.65 | JOB NAME: Linda Gillman | | | |
| | | | Deep 4 SQ. special | 2.40 | 9.60 | OWNER: | | | |
| 2 | | | 4 SQ Blank | 1.77 | 3.54 | JOB SITE ADDRESS: | | | |
| 1 | | | PCA 50 | .80 | .80 | | | | |
| 7 | | | deep igany Nail up | 1.27 | 8.61 | CONTRACTOR: | | | |
| 50 | | | 5" Hook ties | 1.00 | 50.00 | BILL TO: | | | |
| 40 | | | Staples | .10 | 4.00 | ADDRESS: | | | |
| 55 | | | weathers | .15 | 8.25 | | | | |
| 6 | | | P-14 Blank-S | .75 | 4.50 | PHONE NUMBER: | | | |
| 200 | | | 14-2 Primer | .32 | 64.00 | WORK DESCRIPTION | | | |
| * | | | See Attached Receipt | 18.50 | 18.50 | move wires in attic | | | |
| | | | | 1.49 | | Add # & Switch in Closet | | | |
| | | | | | | move speaker control box | | | |
| | | | | | | Add # for microphone box | | | |
| | | | | | | Add Switch for attic #5 | | | |
| | | | | | | Change devices to Brown | | | |
| | | | | | | Add # install # above | | | |
| | | | | | | Culley's sink | | | |
| | | | | 8.5 | 65 | 552 | | | |
| | | | | 8.5 | 90 | 425.00 | | | |
| | | | | 8.5 | 90 | 425.00 | | | |
| | | | | | | 1697 | | | |

TERMS: Payable 30 days net - A service charge of 2% per month which is an annual rate of 24% will be charged on all past due accounts. Purchaser agrees to pay all costs and expenses including reasonable attorney's fees in the event collection becomes necessary. There will be handling and restocking charges on all returned goods.

WORK AUTHORIZED BY: *[Signature]*
PHONE NUMBER: _____

Tab 6



INVOICE

INVOICE NO.
84849

BILL TO Linda Gillman
753 Shady Creek Place
Salt Lake City, UT 84106-1547

JOB GILLIN 4708 Canary Bird Cove

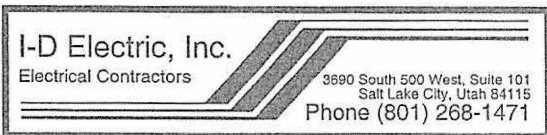
| CUSTOMER | PURCHASE ORDER NO. | | BILL THRU | TERMS | INVOICE DATE | PAGE |
|----------|--------------------|--------|-----------|--------|--------------|------|
| GILLIN | | S11316 | | Net 30 | 3/24/11 | 1 |

| ITEM NO. | QUANTITY | DESCRIPTION | UNIT PRICE | EXTENDED PRICE |
|----------|----------|--|-------------|----------------|
| | | S11316 | | |
| | | Supply and install material and labor for the following: | | |
| | | Relocate wiring in attic area | | |
| | | Add light and switch in closet | | |
| | | Relocate sprinkler control box | | |
| | | Add outlet for sprinkler control box | | |
| | | Add switch for attic lights | | |
| | | Change devices to brown | | |
| | | Install light above garage sink | | |
| | | 3/10/11 | | |
| | 2 | Labor: Chet | 65.00 | 130.00* |
| | | 3/11/11 | | |
| | 1 | 3 gang nail up | 3.20 | 3.20* |
| | 1 | 2 gang cut in | 1.77 | 1.77* |
| | 4 | Single pole toggle | 1.75 | 7.00* |
| | 1 | P-1 | 0.50 | 0.50* |
| | 1 | P-3 | 2.00 | 2.00* |
| | 175 | 12-2 romex | 0.55 | 96.25* |
| | 1 | 4/3 round cut in | 3.56 | 3.56* |
| | 1 | 4/3 barhanger | 3.65 | 3.65* |
| | 2 | 4 square special | 2.40 | 4.80* |
| | 2 | 4 square blank | 1.77 | 3.54* |
| | 1 | RCR50 | 0.80 | 0.80* |
| | 7 | 1 gang deep nail up | 1.23 | 8.61* |
| | 50 | 8" 1 hole zipties | 1.00 | 50.00* |
| | 40 | Staples | 0.10 | 4.00* |
| | | | SALE AMOUNT | |
| | | | | |
| | | | TOTAL | |

PLEASE RETURN YELLOW COPY WITH YOUR PAYMENT.

TERMS - Payment is due within 30 days from invoice date. 2% per month (24% annual) interest charged on overdue accounts. If court action becomes necessary, customer agrees to pay all costs and attorney fees.

CUSTOMER COPY



INVOICE

INVOICE NO.
84849

BILL TO Linda Gillman
753 Shady Creek Place
Salt Lake City, UT 84106-1547

JOB GILLIN 4708 Canary Bird Cove

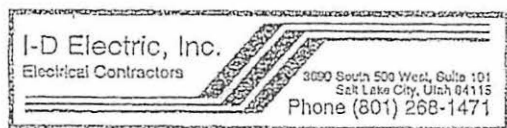
| CUSTOMER | PURCHASE ORDER NO. | | BILL THRU | TERMS | INVOICE DATE | PAGE |
|----------|--------------------|--------|-----------|--------|--------------|------|
| GILLIN | | S11316 | | Net 30 | 3/24/11 | 2 |

| ITEM NO. | QUANTITY | DESCRIPTION | UNIT PRICE | EXTENDED PRICE |
|-----------------------------|----------|--------------|--------------|-------------------|
| | 55 | Wirenuts | 0.15 | 8.25* |
| | 6 | P-14 blanks | 0.75 | 4.50* |
| | 200 | 14/2 romex | 0.32 | 64.00* |
| | 1 | Wire | 27.68 | 27.68* |
| | 1 | Wire twist | 1.00 | 1.00* |
| | 8.5 | Labor: Chet | 65.00 | 552.50* |
| | 8.5 | Labor: Bric | 50.00 | 425.00* |
| | 8.5 | Labor: Blake | 50.00 | 425.00* |
| * means item is non-taxable | | | SALE AMOUNT | 1,827.61 |
| | | | | |
| | | | TOTAL | \$1,827.61 |

PLEASE RETURN YELLOW COPY WITH YOUR PAYMENT.

TERMS - Payment is due within 30 days from invoice date. 2% per month (24% annual) interest charged on overdue accounts. If court action becomes necessary, customer agrees to pay all costs and attorney fees.

CUSTOMER COPY



INVOICE

INVOICE NO.
84849

BILL TO Linda Gillman
753 Shady Creek Place
Salt Lake City, UT 84106-1547

JOB GILLIN 4708 Canary Bird Cove

| CUSTOMER | PURCHASE ORDER NO. | BILL THRU | TERMS | INVOICE DATE | PAGE |
|----------|--------------------|-----------|--------|--------------|------|
| GILLIN | S11316 | | Net 30 | 3/24/11 | 2 |

| ITEM NO. | QUANTITY | DESCRIPTION | UNIT PRICE | EXTENDED PRICE |
|----------|----------|--------------|------------|----------------|
| | 55 | Wirenuts | 0.15 | 8.25* |
| | 6 | P-14 blanks | 0.75 | 4.50* |
| | 200 | 14/2 romex | 0.32 | 64.00* |
| | 1 | Wire | 27.68 | 27.68* |
| | 1 | Wire twist | 1.00 | 1.00* |
| | 8.5 | Labor: Chet | 65.00 | 552.50* |
| | 8.5 | Labor: Bric | 50.00 | 425.00* |
| | 8.5 | Labor: Blake | 50.00 | 425.00* |

*These charges seem quite excessive.
Please allocate the total of 25.5 hrs.
to each of the tasks.*

*Please list the professional credentials
of Bric & Blake.*

* means item is non-taxable

| | |
|--------------|-------------------|
| SALE AMOUNT | 1,827.61 |
| | |
| TOTAL | \$1,827.61 |

PLEASE RETURN YELLOW COPY WITH YOUR PAYMENT.

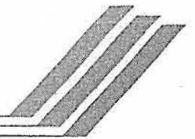
TERMS - Payment is due within 30 days from invoice date. 2% per month (24% annual) interest charged on overdue accounts. If court action becomes necessary, customer agrees to pay a I D and attorney fees.

REMITTANCE COI 5

Tab 7

I-D Electric, Inc.

Electrical Contractors



April 7, 2011

Linda Gillman
753 Shady Creek Place
Salt Lake City, UT 84106-1547

RE: 4708 Canary Bird Cove

Dear Linda,

Enclosed are the Professional Credentials of each of our electricians. A copy of each license, the years they have been with I-D Electric and the hours worked within that period of time. Also enclosed you will find the GPS reports from our company truck. Chet's first appointment on March 10th is a single sheet showing times and mileage. The second time out with Bric and Blake shows the same information for the date of March 11th. The hours written in red are the correct times. The GPS system did not change over to daylight savings time therefore it shows exactly and hours difference in time.

Below you will find a breakout per your request for each electrical task billed for:


| | |
|--------------------------------------|-----------------|
| Relocate wiring in attic area | Bric 8 hours |
| | Blake 3 hours |
| | Chet 3 hours |
| Add light and switch in closet | Blake 1.5 hours |
| Relocate sprinkler control box | Chet 2.5 hours |
| Add outlet for sprinkler control box | Chet 1.5 hours |
| Add switch for attic lights | Chet 1 hour |
| Change devices to brown | Blake 2 hours |
| Install light above garage sink | Blake 1.5 hours |
| Drive time | Chet .5 hours |
| | Blake .5 hours |
| | Bric .5 hours |

This breakout shows each job with the electrician that worked on the job and the hours spent on each job. The time spent on the electrical comes to exactly 25.5 hours. Blake is also a Residential Journeyman which is usually billed out at \$65.00 an hour and we only billed him out at \$50.00 per hour hoping you would find some relief in this. Billing him out at \$50.00 saved you an additional \$127.50.

Hopefully this information will more than clarify any misgivings you may be having with the electrical work at 4708 Canary Bird Cove. If you do need further clarification on any of the work performed, please call and we will have Chet personally meet with you. He will be able to go over all work performed by our electricians per your request.

We are looking forward to having this taken care of in a timely manner. If there are any questions, please get call as soon as possible as to not hold up this business transaction any further.

Sincerely,



Kim Olson
I-D Electric

Tab 8

Linda Gillman

753 Shady Creek Place
Salt Lake City, Utah 84106

May 6, 2011

I-D Electric, Inc.
3690 S. 500 W.
Salt Lake City, Utah 84115

Attn: Kim Olson

Dear Mr. Olson,

I have been working on my house in Herriman for quite a while. I am extremely busy and finishing it has been frustrating, a consequence of my lengthy absences from Utah. I encountered Chet Hunter in the parking lot of EWS on 45th South in March and arranged for some electrical work. He came out that afternoon and spent some time going through everything that remained to be done in the house and the garage. Chet returned the following day with two others, all of whom were there by the time I arrived about 10:00. I left about 3:30. I had first-hand opportunity for observation.

When I returned to the house the next day, the only work accomplished was in the garage, though not everything necessary in the garage was completed. I got a bill for the stunning amount of \$1,827.61. I then asked for an allocation of hours among tasks on the list.

There is no question in my mind that the billed hours are significantly inflated beyond a reasonable amount. As an example, 14 hours are claimed for moving exactly 4 electrical cables, two of which power the ceiling lights in the garage, while the other two power the fixtures on either side of the garage door outside. All were simply draped over the rafters to their destinations and were rerouted to the center of the trusses, to clear the obstruction for installing a floor across the rafters. There was nothing exotic involved and the distance from fixtures to truss centers was short. There is permanent ladder access into the garage attic through retracting ceiling hatches in two places, making movement in and out of the area fast and easy.

Without an exhaustive review of the remaining tasks on the list, please be advised that it is my considered judgment that the 25.5 hours charged for what was accomplished is commensurately unreasonable and warrants careful reconsideration. As you undertake that reconsideration, you might want to factor into your deliberation other salient information: I work in both construction and the practice of law. I am very familiar with job sites and courtrooms. I just completed the first \$4.74 million phase of a 15-month construction project in December. The second \$1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million

construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me are out a total of more than \$11 million.

I hired another licensed electrician to finish the work in my house and garage. What remained after the only day Chet was there is substantially more complicated, representing at least five times more work. I paid \$650 for all of it (labor only).

I am willing to pay a realistic amount for the work that was done, but no more. Please recalculate it.

Very truly yours,

Linda Gillman

Tab 9

When recorded return to:
Wrona Law Offices, P.C.
Brady T. Gibbs, Esq.
11650 South State Street, Suite 103
Draper, UT 84020

11198777
6/15/2011 1:41:00 PM \$10.00
Book - 9930 Pg - 9520
Gary W. Ott
Recorder, Salt Lake County, UT
CORNERSTONE TITLE INS AGCY LLC
BY: eCASH, DEPUTY - EF 1 P.

NOTICE OF MECHANIC'S LIEN

NOTICE OF MECHANIC'S LIEN IS HEREBY GIVEN by WRONA LAW OFFICES, P.C., duly authorized agent of I-D Electric, Inc., 3690 South 500 West, Suite 101, Salt Lake City, Utah 84115, (801) 268-1471 (the "Lien Claimant"). Said agent hereby gives notice of the intention of the Lien Claimant to hold and claim a mechanic's lien and right of claim against any relevant bond, by virtue of and in accordance with the provisions of Utah Code Ann. §§ 38-1-3 *et seq.* (1953 as amended)). The Mechanic's Lien is against the real property and improvements thereon owned or reputed to be owned by Linda T. Gillman. Said real property is located at 753 Shady Creek Place, Salt Lake City, Salt Lake County, Utah and is more particularly described as follows:

UNIT 31, SHADYBROOK CONDOMINIUM PROJECT, TOGETHER WITH A 1.02% INTEREST IN THE COMMON AREAS, ALL ACCORDING TO THE OFFICIAL PLAT THEREOF ON RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE..

Tax Id. No.: 16-29-358-032

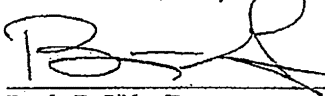
The Lien Claimant was employed by and did provide electrical services at the request of Ms. Linda Gillman for the benefit and improvement of the above-described real property. The Lien Claimant's material and services were first provided on or about March 10, 2011 and last provided on or about March 11, 2011. There is due and owing to the Lien Claimant the sum of \$1,864.16, together with interest at the rate of 24% per annum, attorney fees and costs associated with collection.

PROTECTION AGAINST LIENS AND CIVIL ACTION

NOTICE IS HEREBY PROVIDED in accordance with Utah Code Ann. § 38-11-108 that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as part of this contract, if and only if the following conditions are satisfied: (1) the owner entered into a written contract with an original contractor, factory built housing retailer, or a real estate developer; (2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; (3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract; and (4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

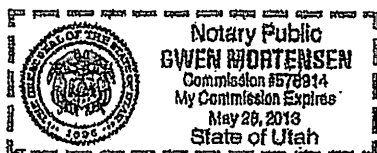
DATED this 8th day of June, 2011.

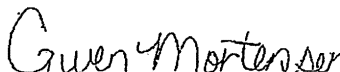
WRONA LAW OFFICES, P.C.



Brady T. Gibbs, Esq.
Attorney for I-D Electric, Inc.

On this 8th day of June, 2011, personally appeared before me, Brady T. Gibbs, Esq., Attorney for I-D Electric, Inc., who upon oath did affirm that he is an authorized agent for I-D Electric, Inc. and as such did voluntarily sign the foregoing Notice of Mechanic's Lien before me.




Gwen Mortensen
Notary Public

Tab 10

Linda Gillman

753 Shady Creek Place
Salt Lake City, Utah 84106

November 11, 2011

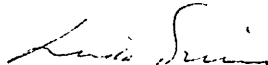
I-D Electric, Inc.
3690 S. 500 W.
Salt Lake City, Utah 84115

Attn: Kim Olson

Dear Mr. Olson,

Hasn't this already gone too far? First you file a lien on my property and I understand that has recently been followed by a lis pendens. Neither is either reasonable or justified under the circumstances, and without a legal basis. Please remove both immediately. There is no point in the senseless the accumulation of any more legal fees. It's about time to do the right thing.

Very truly yours,



Linda Gillman

Received by: Robbi Olson

Date: 11-11-2011 2:18 p.m.

Tab 11

When recorded return to:
Wrona Law Offices, P.C.
Brady T. Gibbs, Esq.
11650 South State Street, Suite 103
Draper, UT 84020

11292588
12/6/2011 4:53:00 PM \$12.00
Book - 9972 Pg - 5353-5354
Gary W. Ott
Recorder, Salt Lake County, UT
CORNERSTONE TITLE INS AGCY LLC
BY: eCASH, DEPUTY - EF 2 P.

AMENDED NOTICE OF MECHANIC'S LIEN

This AMENDED NOTICE OF MECHANIC'S LIEN IS HEREBY GIVEN by WRONA LAW OFFICES, P.C., duly authorized agent of I-D Electric, Inc., 3690 South 500 West, Suite 101, Salt Lake City, Utah 84115, (801) 268-1471 (the "Lien Claimant"), for the purpose of correcting the address and legal description contained in that certain Notice of Mechanic's Lien, previously recorded on June 15, 2011, as Entry No. 11198777, in Book 9930, Page 9520, in the office of the Salt Lake County Recorder, State of Utah, and which Mechanic's Lien was filed against that parcel of real property and improvements thereon owned or reputed to be owned by Linda T. Gillman. Said real property is located at 753 Shady Creek Place, Salt Lake City, Salt Lake County, Utah and is more particularly described as follows:

UNIT 31, SHADYBROOK CONDOMINIUM PROJECT, TOGETHER WITH A 1.02% INTEREST IN THE COMMON AREAS, ALL ACCORDING TO THE OFFICIAL PLAT THEREOF ON RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE..

Tax Id. No.: 16-29-358-032

Said agent hereby gives notice that Lien Claimant does not intend to claim any interest in the above-referenced property, and that the correct address and legal description of the property which the Lien Claimant intended under the Mechanic's Lien in accordance with the provisions of Utah Code Ann. §§ 38-1-3 *et seq.* (1953 as amended), is against the real property and improvements thereon owned or reputed to be owned by Anne Tracy and Linda Tracy. Said real property is located at 4708 Canary Bird Cove, Herriman, Salt Lake County, Utah and is more particularly described as follows:

Lot 663, COPPER CREEK ESTATES PHASE 6, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

Tax Parcel No.: 27-30-151-037

The Lien Claimant was employed by and did provide electrical services at the request of Ms. Linda Gillman for the benefit and improvement of the above-described real property. The Lien Claimant's material and services were first provided on or about March 10, 2011 and last provided on or about March 11, 2011. There is due and owing to the Lien Claimant the sum of \$1,864.16, together with interest at the rate of 24% per annum, attorney fees and costs associated with collection.

PROTECTION AGAINST LIENS AND CIVIL ACTION

NOTICE IS HEREBY PROVIDED in accordance with Utah Code Ann. § 38-11-103 that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as part of this contract, if and only if the following conditions are satisfied: (1) the owner entered into a written contract with an original contractor, factory built housing retailer, or a real estate developer; (2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; (3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract; and (4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

Tab 12

Mechanic's Lien Statute

(Renumbered UCA §38-1a-301)

UCA §38-1-3. Those entitled to lien -- What may be attached.

(1) Subject to the provisions of this chapter, a person who performs preconstruction service or construction service on or for real property has a lien on the real property for the reasonable value of the preconstruction service or construction service, respectively, except as provided in Section 38-11-107.

(2) A person may claim a preconstruction service lien and a separate construction service lien on the same real property.

(3) (a) A construction service lien may include an amount claimed for a preconstruction service.

(b) A preconstruction service lien may not include an amount claimed for construction service.

(4) A lien under this chapter attaches only to the interest that the owner or owner-builder has in the real property that is the subject of the lien.

Mechanic's Lien Attorney Fee Statute

(Renumbered UCA §38-1a-707)

UCA §38-1-18. Attorney fees -- Offer of judgment.

(1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in Section 38-1a-308 may not recover attorney fees under Subsection (1).

(3) (a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.

(4) (b) If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the offeror after the offer was made.

Wrongful Lien Statute

UCA §38-9-1.¹ 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) "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.

(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 or filed 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.

¹ Revised, effective May 13, 2014, numbered UCA §38-9-102

Wrongful Lien Sanctions

(Renumbered UCA §38-9-203)

UCA §38-9-4. Civil liability for filing wrongful lien -- Damages.

(1) A lien claimant who records or files or causes a wrongful lien as defined in Section 38-9-1 to be recorded or filed 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 ten 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 files or causes to be recorded or filed 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.

Tab 13

Mark D. Stubbs (9353)
Fillmore Spencer LLC
3301 N. University Ave.
Provo, Utah 84604
Tel: (801) 426-8200
Fax: (801) 426-8208
mstubbs@fslaw.com
Attorneys for Defendant

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

I-D ELECTRIC, INC. a Utah Corporation,

Plaintiff,

vs.

LINDA T. GILLMAN,

Defendant.

**DEFENDANT'S SUPPLEMENTAL
DISCLOSURE**

Civil No. 110917777

Judge Anthony B. Quinn

Linda T. Gillman, by and through her counsel of record, files this supplemental disclosure pursuant to Utah Rules of Civil Procedure 26(a)(1). Delivery Notice/Reminder/Receipts dated 5/20/11, 6/17/11, 6/23/11, 8/18/11 and 8/24/11 are attached hereto as Exhibit "A."

DATED this 9th day of November, 2014.

FILLMORE SPENCER, LLC

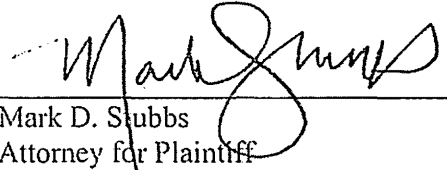

Mark D. Stubbs
Attorney for Plaintiff

EXHIBIT "A"

| | | | |
|---|--|--|----------------------------|
| United States Postal Service® Sorry We Missed You! We'll Deliver for You | | Today's Date 9/20 | Sender's Name W. L. ... |
| Item is at: Post Office™ (See back) | Available for Pick-up After Date: _____ Time: _____ | For Redelivery Go to usps.com/redelivery or see reverse | |
| <input type="checkbox"/> Letter <input type="checkbox"/> Large envelope, magazine, catalog, etc. <input type="checkbox"/> Parcel <input type="checkbox"/> Restricted Delivery <input type="checkbox"/> Perishable Item <input type="checkbox"/> Other: _____ | For Delivery: (Enter total number of items delivered by service type.) For Notice Left: (Check applicable item) <input type="checkbox"/> Express Mail® <input type="checkbox"/> Insured Mail <input type="checkbox"/> Certified Mail™ <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> If checked, you or your agent must be present at time of delivery to sign for item. Article Number(s) 7010 7180 0000 3423 | |
| Article Requiring Payment <input type="checkbox"/> Postage Due <input type="checkbox"/> COD <input type="checkbox"/> Customs \$ _____ <input type="checkbox"/> Final Notice: Article will be returned to sender on 9/20 | | Amount Due \$ _____ Delivered By and Date 9/20 | |
| PS Form 3849, September 2009 | | USPS.com Delivery Notice/Reminder/Receipt | |

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent's name here):

| | | |
|---|---|-----------------------|
| 1.  a. Check all that apply in section 3; b. Sign in section 2 below; c. Leave this notice where the carrier can see it. | SUGARHOUSE POST OFFICE 1953 S 1100 E SALT LAKE CITY, UT 84106-9998 M-F 8:00-6:00 SAT 10:00-2:00 www.usps.com/redelivery or 800-ASK-USPS (275-8777) | |
| 2. Sign Here to authorize redelivery or to authorize an agent to sign for you: | Delivery Section | |
| 3. <input checked="" type="checkbox"/> Redeliver (Enter day of week.): _____ (Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.) <input type="checkbox"/> Leave item at my address (Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.) | Signature  | Printed Name _____ |
| <input type="checkbox"/> Refused <input type="checkbox"/> Forward <input type="checkbox"/> Return | Delivery Address _____ | |

USPS



5293 0368 2744 9107

PS Form 3849, September 2009 (Reverse)

United States Postal Service®

Sorry We Missed You! We'll Deliver for You

Today's Date

2/6/17

Sender's Name

W. R. O. N. G.

Item is at:

☒ Post Office™ (See back)

Available for Pick-up After

Date:

Time:

For Redelivery

Go to usps.com/redelivery

or see reverse

☒ Letter

☐ Large envelope, magazine, catalog, etc.

☐ Parcel

☐ Restricted Delivery

☐ Perishable Item

☐ Other:

For Delivery: (Enter total number of items delivered by service type.)

For Notice Left: (Check applicable item)

☐ Express Mail*

☒ Certified Mail™

(Must claim within 15 days or article will be returned)

☐ Firm Bill

☐ Registered Mail™

☐ Insured Mail

☐ Return Receipt for Merchandise

☐ Delivery Confirmation™

☐ Signature Confirmation™

☐ If checked, you or your agent must be present at time of delivery to sign for item.

Article Number(s)

7010 2750 0000 3542 6294

Notice Left Section

Customer Name and Address

753 Shady Creek

Delivered By and Date

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs \$

☐ Final Notice: Article will be returned to sender on

usps.com

Delivery Notice/Reminder/Receipt

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent's name here):

1. a. Check all that apply in section 3;
b. Sign in section 2 below;
c. Leave this notice where the carrier can see it.

SUGARHOUSE POST OFFICE
1953 S 1100 E
SALT LAKE CITY, UT 84106-9998
M-F 8:00-6:00 SAT 10:00-2:00
www.usps.com/redelivery or 800-ASK-USPS (275-8777)

2. Sign Here to authorize redelivery or to authorize an agent to sign for you:

Delivery Section

3. ☒ Redeliver (Enter day of week.):

Signature

X

Printed Name

Delivery Address

753 Shady Creek

(Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.)

- ☐ Leave item at my address

(Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.)

- ☐ Refused ☐ Forward ☐ Return

USPS



5293 0368 2746 5626

PS Form 3849, September 2009 (Reverse)

| | | | |
|---|--|---|--|
| United States Postal Service® Sorry We Missed You! We Deliver for You | | Today's Date <u>6/23</u> | Sender's Name <u>94020</u> |
| Item is at: <input checked="" type="checkbox"/> Post Office™ (See back) | | Available for Pick-up After Date: _____ Time: _____ | For Redelivery Go to usps.com/redelivery or see reverse |
| <input type="checkbox"/> Letter <input type="checkbox"/> Large envelope, magazine, catalog, etc. <input type="checkbox"/> Parcel <input type="checkbox"/> Restricted Delivery <input type="checkbox"/> Perishable Item <input type="checkbox"/> Other: _____ | | For Delivery: (Enter total number of items delivered by service type.) For Notice Left: (Check applicable item) <input type="checkbox"/> Express Mail® <input type="checkbox"/> Insured Mail <input checked="" type="checkbox"/> Certified Mail™ (Must claim within 15 days or article will be returned) <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Firm Bill <input type="checkbox"/> Delivery Confirmation™ <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Signature Confirmation™ | |
| Article Requiring Payment <input type="checkbox"/> Postage Due <input type="checkbox"/> COD <input type="checkbox"/> Customs \$ _____ | | Article Number(s) <u>70102780001035426294</u> <div style="text-align: center; font-size: 2em; opacity: 0.5;">FINAL NOTICE</div> | |
| <input type="checkbox"/> Final Notice: Article will be returned to sender on <u>7/3</u> | | Notice Left Section Customer Name and Address <u>Gillman</u> <u>753 Sandy Creek Pl.</u> Delivered By and Date _____ | |
| PS Form 3849, September 2009 | | usps.com | |

Delivery Notice/Reminder/Receipt

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent's name here):

| | | | |
|---|--|---|----------|
| 1. <input checked="" type="checkbox"/> Check all that apply in section 3; <input type="checkbox"/> Sign in section 2 below; <input type="checkbox"/> Leave this notice where the carrier can see it. | | SUGARHOUSE POST OFFICE 1953 S 1100 E SALT LAKE CITY, UT 84106-9998 M-F 8:00-6:00 SAT 10:00-2:00 www.usps.com/redelivery or 800-ASK-USPS (275-8777) | |
| 2. Sign Here to authorize redelivery or to authorize an agent to sign for you: | | Delivery Section | |
| 3. <input type="checkbox"/> Redeliver (Enter day of week): _____ | | Signature | <u>X</u> |
| (Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.) | | Printed Name | _____ |
| <input type="checkbox"/> Leave item at my address (Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.) | | Delivery Address | _____ |
| <input type="checkbox"/> Refused <input type="checkbox"/> Forward <input type="checkbox"/> Return | | <div style="font-size: 2em; font-weight: bold;">USPS</div>  | |

PS Form 3849, September 2009 (Reverse)

5293 0368 2741 6277

United States Postal Service®

Sorry We Missed You! We [®] Deliver for You

Today's Date

8-78

Sender's Name

Item is at:

☒ Post Office™ (See back)

Available for Pick-up After

Date:

Time:

For Redelivery
Go to usps.com/redelivery
or see reverse

☐ If checked, you or your agent must be present at time of delivery to sign for item.

☒ Letter

For Delivery: (Enter total number of items delivered by service type.)

☐ Large envelope, magazine, catalog, etc.

For Notice Left: (Check applicable item)

☐ Parcel

☐ Express Mail®

☐ Insured Mail

☐ Restricted Delivery

☒ Certified Mail™

☐ Return Receipt for Merchandise

(Must claim within 15 days or article will be returned)

☐ Perishable Item

☐ Firm Bill

☐ Delivery Confirmation™

☐ Other:

☐ Registered Mail™

☐ Signature Confirmation™

Article Number(s)

7010 2780 0000 35426113

Notice Left Section

Customer Name and Address

Linda Gillman
753 Shady Creek

Delivered By and Date

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs \$

☐ **Final Notice:** Article will be returned to sender on

PS Form 3849, September 2009

usps.com

Delivery Notice/Reminder/Receipt

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent's name here):

1.

a. Check all that apply in section 3;

b. Sign in section 2 below;

c. Leave this notice where the carrier can see it.

SUGARHOUSE POST OFFICE

1953 S 1100 E

SALT LAKE CITY, UT 84106-9998

M-F 8:00-6:00 SAT 10:00-2:00

www.usps.com/redelivery or 800-ASK-USPS (275-8777)

2. Sign Here to authorize redelivery or to authorize an agent to sign for you:

Delivery Section

3. ☐ Redeliver (Enter day of week.):

Signature

X

Printed Name

Delivery Address

753 Shady Creek

(Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.)

☐ Leave item at my address

(Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.)

☐ Refused ☐ Forward ☐ Return

USPS



5293 0386 6994 9418

PS Form 3849, September 2009 (Reverse)

United States Postal Service®

Sorry We Missed You! We'll Deliver for You

Today's Date

8/24

Sender's Name

WANDA LAW

Item is at:

Post Office™ (See back)

Available for Pick-up After

Date:

Time:

For Redelivery

Go to usps.com/redelivery or see reverse

☒ Letter

☐ Large envelope, magazine, catalog, etc.

☐ Parcel

☐ Restricted Delivery

☐ Perishable Item

☐ Other:

For Delivery: (Enter total number of items delivered by service type.)

For Notice Left: (Check applicable item)

☐ Express Mail®

☐ Insured Mail

☒ Certified Mail™

(Must claim within 15 days or article will be returned)

☐ Return Receipt for Merchandise

☐ Firm Bill

☐ Delivery Confirmation™

☐ Registered Mail™

☐ Signature Confirmation™

☒ If checked, you or your agent must be present at time of delivery to sign for item.

Article Number(s)

7010 2280 0000 35426713

Notice Left Section

Customer Name and Address

LINDA GILLMAN

253 S HARDY CREEK PLC

Delivered By and Date

(06)

Article Requiring Payment

Amount Due

☐ Postage Due ☐ COD ☐ Customs

\$

☒ Final Notice: Article will be returned to sender on 9/4

PS Form 3849, September 2009

usps.com

Delivery Notice/Reminder/Receipt

We will redeliver OR you or your agent can pick up your mail at the Post Office. (Bring this form and proper ID. If your agent will pick up, sign below in item 2, and enter agent's name here):

1.

- a. Check all that apply in section 3;
b. Sign in section 2 below;
c. Leave this notice where the carrier can see it.

SUGARHOUSE POST OFFICE

1953 S 1100 E

SALT LAKE CITY, UT 84106-9998

M-F 8:00-6:00 SAT 10:00-2:00

www.usps.com/redelivery or 800-ASK-USPS (275-8777)

2. Sign Here to authorize redelivery or to authorize an agent to sign for you:

Delivery Section

3. ☐ Redeliver (Enter day of week):

Signature

X

Printed Name

(Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.)

☐ Leave item at my address

Delivery Address

(Specify where to leave. Example: "porch", "side door". This option is not available if box is checked on the front requiring your signature at time of delivery.)

USPS



☐ Refused ☐ Forward ☐ Return

5293 0386 6997 8654

PS Form 3849, September 2009 (Reverse)