

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 UTAH COURT OF APPEALS

I-D ELECTRIC, INC.,

Plaintiff/Appellee,

vs.

LINDA GILLMAN,

Defendant/Appellant.

Case No. 20150682-CA

Brief of Appellee

APPEAL FROM A BENCH TRIAL AND AWARD OF ATTORNEY FEES
OF THE THIRD DISTRICT COURT, IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH, THE HONORABLE RICHARD D.
MCKELVIE PRESIDING

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UTAH APPELLATE COURTS

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IN THE UTAH COURT OF APPEALS

I-D ELECTRIC, INC.,

Plaintiff/Appellee,

vs.

LINDA GILLMAN,

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Case No. 20150682-CA

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDING

This is an appeal from a bench trial and award of attorney fees in favor of Appellee I-D Electric, in the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable Richard D. McKelvie presiding. This Court has jurisdiction pursuant to UTAH CODE ANN. § 78A-4-103(2)(j) (2015).

STATEMENT OF ISSUES PRESENTED ON APPEAL
AND STANDARDS OF APPELLATE REVIEW

ISSUE NO. 1: Did the court abuse its discretion in determining Gillman was not entitled to any attorney fees and costs?

STANDARD OF REVIEW: “Whether attorney fees are recoverable in an action is a question of law, which [an appellate court] review[s] for correctness.” *Fericks v.*

Lucy Ann Soffe Trust, 2004 UT 85, ¶ 22, 100 P.3d 1200 (citation and internal quotation marks omitted). However, the determination of which party prevailed in a civil action—and thus may be entitled to attorney fees—is reviewed for an abuse of discretion. See *Anderson & Karrenberg v. Warnick*, 2012 UT App 275, ¶ 8, 289 P.3d 600 (citation omitted).

ISSUE NO. 2: Did the court err in determining I-D Electric’s mechanic’s lien did not constitute a wrongful lien?

STANDARD OF REVIEW: The question of what constitutes a wrongful lien for purposes of the Wrongful Lien Injunction Act is a legal question of statutory interpretation, which is reviewed for correctness. *Hutter v. Dig-It, Inc.*, 2009 UT 69, ¶ 8, 219 P.3d 918.

ISSUE NO. 3: Did the court err in determining there was a valid and binding contract between the parties.

STANDARD OF REVIEW: Whether a contract exists is a mixed question of law and fact. See *Cal Wadsworth Const. v. City of St. George*, 865 P.2d 1373, 1375 (Utah App. 1993), *aff’d*, 898 P.2d 1372 (Utah 1995).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes are reproduced in Addendum A.

UTAH CODE ANN. § 38-1-3 (2011);
UTAH CODE ANN. § 38-1-7 (2011);
UTAH CODE ANN. § 38-1-18 (2011);
UTAH CODE ANN. § 38-9-1 (2010);
UTAH CODE ANN. § 38-9-2 (2005);
UTAH CODE ANN. § 38-9-4 (2010);
UTAH CODE ANN. § 38-9-205 (2014);

UTAH CODE ANN. § 78B-5-826 (2008);
UTAH R. APP. P. 3;
UTAH R. APP. P. 4; and
UTAH R. CIV. P. 52(b).

STATEMENT OF THE CASE

This case arose from an unpaid debt for electrical services provided by I-D Electric, Inc. to Appellant Linda Gillman. *See* R. 1-6. On September 22, 2011, I-D Electric filed its Complaint against Gillman. *Id.* Gillman filed an Answer and Counter Petition to Nullify Wrongful Lien. R. 17-31. I-D Electric filed an Amended Complaint on December 19, 2011. R. 76-87, 100-07, 110-11. On September 4, 2012, Gillman filed a Motion for Partial Summary Judgment. R. 143-150. The court denied Gillman's Counter Petition to Nullify Wrongful Lien on May 16, 2013. R. 275. Then on July 8, 2013, the court granted Gillman's Motion for Partial Summary Judgment. R. 284-88.

This case was tried on November 10, 2014 and November 13, 2014. R. 597-99, 960-1437. On January 29, 2015, the court entered its Finding of Fact, Conclusions of Law and Order in favor of I-D Electric. R. 647-59. Gillman filed a Rule 52 Motion to Amend the Court's Findings of Fact and Conclusions of Law, which motion was denied by the court on March 18, 2015. R. 739-41. On June 8, 2015, the court granted I-D Electric's Motion for Attorney's Fees, Costs and Interest. R. 660-67. On July 17, 2015, the court entered an amended judgment against Gillman. R. 874-76. Gillman filed her Notice of Appeal on August 10, 2015. R. 879-80.

STATEMENT OF FACTS¹

[T]he expenses in this case, born by both parties, have been exacerbated by [Gillman's] continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use [I-D Electric's] harmless (and arguably beneficial, to [Gillman]) error to create a wrongful lien cause of action.

R. 658.

* * *

Background

Gillman graduated from law school in the 1970s. R. 652, 1403-04. Although she does not have a license to practice law, admittedly Gillman is trained in the law and even engaged in the practice of law in the construction law arena. R. 655, 920, 1093-95, 1104, 1403-06. Regarding her legal acumen and experience Gillman boasted: "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;]" and "I didn't draft the initial pleading but I've drafted most of the rest." R. 652, 1093-95.

Gillman also claimed to be a capable and savvy businessperson with extensive experience in construction and in the construction industry. R. 653-54, 1104-05, 1109, 1137, 1139, 1312, 1324, 1403-06. Gillman testified at trial that she "grew up in the construction business." R. 1323. In correspondence (dated May 6, 2011), which the

¹ The facts are recited in a light most favorable to the trial court's findings. *See Spanish Fork v. Bryan*, 1999 UT App 61, ¶ 2, 975 P.2d 501.

court found was intended to bully I-D Electric, Gillman touted her vast construction litigation experience:

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.

R. 650.

***Gillman Hires I-D Electric to
Perform Emergency Electrical Services***

Gillman owns two properties in Salt Lake County; a home located at 4708 Canary Bird Cove (the “Herriman House”), which is the subject of the instant case, and a condominium located at 753 Shady Creek Place (the “Salt Lake Condo”). R. 652, 1089. Gillman was in the process of remodeling the Herriman House. R. 988, 1090-93.

On March 10, 2011, Chet Hunter, a journeyman electrician and I-D Electric employee since 1998, was at Electrical Wholesale Supply picking up materials for a job when he was approached by Gillman. R. 647, 652, 981-84, 988, 1097, 1234. Gillman asked Hunter if he was an electrician. R. 647, 984, 1234. When Hunter replied in the affirmative, Gillman told Hunter she wanted to hire him to do some emergency electrical work on a house, and asked him to follow her to her residence. R. 647, 984, 999, 1097, 1234-35. Hunter was working on a job and could not follow Gillman at that time, but he

gave her I-D Electric's contact information and asked Gillman to schedule an appointment with I-D Electric. R. 648, 984, 1098, 1234-35.

Later that day, Hunter was dispatched to Gillman's Herriman House on an I-D Electric service call, where Hunter met Gillman. R. 648, 652, 984, 1099-1100. This meeting lasted just over a "couple of hours." R. 648, 984-85, 998, 1100. Gillman detailed the scope of the emergency electrical work she needed, which Hunter described as a "hefty list of things to do." R. 648, 652, 985, 999, 1100-01. The primary work requested included moving wires hung over the trusses of the garage so a floor could be installed in the attic of the garage. R. 648, 652, 985, 999, 1113-14, 1311. The other work Gillman requested included replacing power outlets, moving switches, moving a sprinkler control box, installing electrical for the jetted tub, installation of a generator, and moving a sprinkler control box. *Id.* Although the work requested was standard electrical work, the extensive nature of the work made it very time-consuming. R. 988-92. Further, because Gillman had other construction workers waiting to lay the floor in the attic of the garage, Gillman considered the electrical work to be an "emergency" and needed it done immediately. R. 990-91, 998-99.

Gillman did not ask for a bid on the work she requested, but she did ask Hunter how much the work would cost. R. 648, 993-94. Hunter explained that he did not know the exact price of the work, and that pricing was done in-office by I-D Electric. R. 993-94, 1037-38, 1235-36. However, Hunter discussed with Gillman the extensive labor that would be involved in the project. *Id.* Gillman showed Hunter some construction materials in the garage that had been left behind by a previous electrician, which she

asked Hunter to use on the project to save costs. R. 648, 985-86, 994-95, 1016-17.

Hunter agreed to use her materials to the extent possible. R. 648, 986, 994-95. Upon Gillman's request, arrangements were made to immediately begin work the next day. R. 648, 986.

The following morning, March 11, 2011, between 8:00 and 8:30, Hunter returned to Gillman's Herriman House with Blake Trip and Brick Anderson. R. 648, 998-1001. Trip was a journeyman electrician and Anderson was an apprentice. *Id.* They accessed Gillman's Herriman House using her garage key code, which Gillman gave to Hunter so that he could start work as early as possible on Friday. R. 648, 1000. They first started relocating wire in the garage attic. R. 648, 1001. In addition to performing the work in the garage attic, Hunter, Trip and Anderson performed a number of other involved tasks including installation of lights, switches, and outlets, as well as tracing and fishing wire through the walls to move a sprinkler time clock. R. 1002-03, 1046-47. To save Gillman money, where possible, the electricians used the materials provided by Gillman. R. 1002-03. The electricians took no unreasonable breaks during the day and there were no delays in their work. R. 1005-06, 1008.

Gillman arrived at her Herriman House mid-morning and remained through much of the day. R. 648, 1003-04. Although Gillman observed some of the electrical work in progress, she was largely engaged in other projects during the day. R. 648, 1013-14. Anderson saw Gillman only "a few times" when she came up to the attic to check his progress. R. 649, 1082. In the afternoon, Hunter left the project to go to Home Depot in order to purchase special wire needed to complete the relocation of the sprinkler box. R.

648, 1003-04. 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. R. 648, n. 2, 1021. The GPS log indicates that Hunter left the Herriman House at 2:13 p.m. and returned at 2:51 p.m. R. 648; Trial Exhibit 5. Consistent with the GPS log, the Home Depot receipt indicates a time of 2:41 p.m. R. 648, n. 3, 1012-13, 1040. When Hunter returned to the Herriman House, Gillman had left and did not return that day. R. 648, 1004, 1008-09.

Trip and Anderson participated with Hunter in performing electrical work at Gillman's Herriman House. R. 648-49, 998-1001, 1051-62, 1064-67, 1085-86. Throughout the day on March 11, 2011, Trip and Anderson were busily engaged for eight and a half hours completing a large amount of work for Gillman. R. 1052-62, 1064-67, 1085-86, 1236-38. Trip assisted Hunter in performing electrical work outside of the garage attic. *Id.* Because of Anderson's slight build, he was able to access small spaces, such as Gillman's garage attic. R. 649, 1070-71. Anderson spent most of the day in the garage attic replacing the wiring so the flooring could be placed. R. 649, 1078-83. He also necessarily expended a great deal of physical labor moving an abundance of building supplies from the attic to the garage floor to facilitate the electrical work. R. 649, 1074-78. Because most of the attic had no floor, Anderson performed his electrical work by balancing himself while lying down on the narrow edge of the roof joists and trusses. R. 649, 1072, 1080-81, 1103-04, 1313. The electricians left for the day at 5:17 p.m. R. 648, 1006, 1008; Trial Exhibit 5.

Gillman never complained about the quality of work performed by I-D Electric or about the time that it took to perform the work. R. 649, 1014-15, 1055-58. In fact, Trip

observed that Gillman appeared happy and satisfied with I-D Electric's work. R. 1059-60.

***Gillman Signs the Contract and
Accepts the Price Terms***

Before Hunter left to go to Home Depot, he prepared a work order detailing the tasks completed. R. 648, 1008-11, 1023-35; Trial Exhibit 2. Hunter filled in all portions of the work order except for the prices. R. 1009-10, 1023-35, 1180-81. While Hunter was at Home Depot, Gillman reviewed and signed the work order and gave it to Trip. R. 648-49, 1110-11, 1055-59; Trial Exhibit 2. Adjacent to Gillman'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.

R. 649; Trial Exhibit 2. Gillman signed the work order with the understanding that this was standard language on a construction invoice, and also knowing there would be a cost associated with the work the electricians performed. R. 1110-11.

On Monday, March 14, 2011, Hunter gave the work order to the President of I-D Electric, Kim Olson. R. 1016, 1174. Olson completed the pricing section on the work order, which totaled \$1,827.61. R. 1112, 1136, 1180-81. Because the job was an emergency, Olson voluntarily gave Gillman a discount on the pricing. R. 1182-83. He then telephoned Gillman and informed her of the cost for the work performed. R. 650, 1112, 1184. Olson wanted to be sure that the bill was paid by Gillman before I-D

Electric did any more work. R. 650, 1185-86. Gillman expressed some surprise at the amount of the bill. R. 1112, 1186. Olson then offered to send Gillman an itemized statement of the charges, and he asked her to call him when she received the statement so they could review it together. R. 1186, 1189. Gillman asked how much the additional work would cost, which Olson inferred as a request for a bid. R. 650, 1187, 1189. Olson then contacted Hunter and requested that he contact Gillman to discuss the invoice and resolve any of her concerns. R. 1017.

On March 14, 2011, Hunter telephoned Gillman. R. 1018, 1238. During that conversation Hunter reviewed the work order and prices with Gillman, who stated she was “OK” with it and she wanted I-D Electric to return to complete more work. R. 648, 1013, 1018-19, 1186-87. Gillman never complained to Hunter about the quality of I-D Electric’s work or time it took to perform that work. R. 1019. Most importantly, Gillman did not complain about the price for the work. *Id.* Instead, Gillman requested additional electrical services be performed at her Herriman House. R. 1018-19, 1238. Based upon that telephone conversation, Hunter informed Olson that he should schedule the electricians to go back to Gillman’s Herriman House to perform additional work. R. 1019-20, 1238.

Gillman Refuses to Pay her Debt

The following Thursday, March 17, 2011, Hunter went to Gillman’s Herriman House to provide a bid for the additional work requested by Gillman. R. 1020. Hunter attempted to use the garage code to gain entry, but the garage code had been changed. R. 649, 1020, 1118. He also attempted to telephone Gillman, leaving her several messages

over the next week, which she did not return. R. 649, 1020-21, 1118-19. Olson also tried to contact Gilman by telephone. R. 1187-88. Gillman was aware that I-D Electric was trying to call her, but chose not to answer. R. 1126.

On March 24, 2011, Olson sent Gillman a letter thanking her for the opportunity to perform work and enclosing an itemized invoice for the work I-D Electric performed at Gillman's request. R. 650, 1189-91; Trial Exhibit 3. The letter also states:

You have asked for pricing on the remaining work which needs to be completed. Before we are able to give you cost, we need to have access to the home. [Hunter] needs to do a take-off sheet and an assessment so both of us will be aware of what needs to take place. We have called several times to make arrangements with you and haven't been able to make contact. Please call and let us know what you would like to have done so the job can be completed.

The take-off and assessment will be at no cost to you. We look forward to hearing from you soon.

R. Trial Exhibit 3. Thirty days after the billing was due, I-D Electric began leaving numerous telephone messages for Gillman, none of which were returned. R. 650, 1188, 1198. Eventually, Gillman sent back a copy of the invoice with a handwritten note stating, "These charges seem quite excessive. Please allocate the total of 25.5 hrs. [sic] to each of the tasks. Please list the professional credentials of [Trip] & [Anderson]." R. 1127, 1191-92; Trial Exhibit 4. In response, on April 7, 2011, Olson sent Gillman another letter detailing the tasks performed by each electrician, the hours of their respective work, copies of the professional licenses for all of the electricians and a copy of the GPS log from Hunter's work truck for March 11, 2011. R. 1127-35, 1192-96; Trial Exhibit 5.

Nearly one month after receiving that second letter, on May 6, 2011, Gillman sent a detailed letter to I-D Electric complaining that she was overcharged for the work performed. R. 650, 1135-36, 1197. Gillman also demanded that Olson reconsider the amount charged, and threatened Olson with a recitation of her extensive experience in high-value construction projects, as well as her recent court victories in multimillion dollar construction litigation. R. 650, 1135-36; Trial Exhibit 6. Because Olson felt that Gillman was trying to bully him, Olson contacted legal counsel. R. 650, 1198. Olson also hoped legal counsel could get Gillman to discuss resolution of this situation. R. 1198-99. For that reason, Olson directed his counsel to send a demand letter by certified mail on May 12, 2011. *Id.* Gillman never responded, claiming that she did not receive it because she was out of town. R. 654, 1142, 1199. Gillman paid nothing toward her debt to I-D Electric. R. 1111.

The Mechanic's Lien

Because Gillman was nonresponsive, Olson directed I-D Electric's attorney to file a mechanic's lien, which Olson had done only two times in the past 5 years. R. 62-75, 650, 1199-1200. I-D Electric's counsel prepared a mechanic's lien (the "Lien") and presented it to Olson for review. R. 62-75, 651, 1200. However, Olson did not notice that the Lien listed the Salt Lake Condo as the subject property, rather than the Herriman House. *Id.* Despite the fact that I-D Electric's work was performed on the Herriman House, Gillman consistently used her Salt Lake Condo address on all correspondence with I-D Electric. R. 1160-61. Nonetheless, Olson did not intend to place a lien on Gillman's Salt Lake Condo. R. 62-75, 651, 1200. Further, the Lien was for the minimal

amount of \$1,827.61, and it was used only for the express purpose of forcing Gillman to respond to repeated efforts to collect the debt. R. 62-75, 651, 1200-02.

On June 15, 2011, a copy of the Lien was sent via certified mail with a letter to Gillman at her Salt Lake Condo address. R. Trial Exhibit 8. Again, however, Gillman claimed that she did not receive the certified mailing. R. 654, 1142-43, 1148. But, on June 16, 2011, Gillman spoke with I-D Electric's counsel by telephone. R. 654, 1143-46. Counsel informed Gillman that a lien had been placed on her Herriman House. *Id.* Gillman went to the County Recorder's office to confirm the Lien, but could not do so. R. 654, 1146-47. Gillman only checked title records for the Herriman House, and not for the Salt Lake Condo. *Id.* On August 16, 2011, I-D Electric's counsel sent another letter to Gillman at her Salt Lake Condo address, informing her that a foreclosure action and *lis pendens* were eminent. R. 1148. Once again Gillman claimed that she did not receive the certified letter. *Id.* Later, Gillman claimed the first time she realized the lien had been placed on the wrong property, was on September 25, 2011, the date she was served with the instant lawsuit. R. 654, 1148-49.

***Gillman Stages a Claim for
Wrongful Lien Against I-D Electric***

Gillman claimed she obtained legal counsel in mid-October. R. 655, 1149-53, 1158-59. However, billing records reflect that Gillman actually retained counsel on September 27, 2011. R. 338-43. Acting "on the advice of counsel," Gillman personally delivered a letter to Olson's office on November 11, 2011 (the "November 11, 2011 Letter"). R. 651, 655, 1159-60, 1163-64, 1166. Gillman and her counsel determined that

the November 11, 2011 Letter would be more effective if Gillman delivered it personally to I-D Electric rather than to I-D Electric's counsel. *Id.* At that time, Gillman understood that the 180-day statutory period for filing a lien had expired in September. R. 1155. Furthermore, Gillman knew that the failure to remove the Lien within 10 days would result in a potential damage claim in her favor against I-D Electric. R. 655, 1161.

Unlike her prior letter to I-D Electric, dated May 6, 2011, which spans two pages and is very detailed, Gillman's November 11, 2011 Letter was deliberately vague:

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.

R. 651; Trial Exhibit 12. Although Gillman knew at the time that she drafted that letter that the Lien had been placed on the wrong property, there was no mention of that issue in Gillman's November 11, 2011 Letter. *Id.* More importantly, Gillman knew then that she was deliberately attempting to establish a wrongful lien claim against I-D Electric. R. 651.

***I-D Electric Removes the Lien
From the Salt Lake Condo and Records an
Amended Lien Against the Herriman House***

On December 6, 2011, Olson received an email from his attorney indicating the Lien had been placed on the wrong property. R. 62-75, 651, 1205-06. Olson immediately instructed counsel to remove the Lien. R. 62-75, 651, 1206. This was the first date Olson knew the Lien had been erroneously recorded. R. 62-75, 651, 1205-06. That same day, I-D Electric released the Lien and removed the *lis pendens* from the Salt

Lake Condo, then refiled an amended mechanic's lien on the Herriman House (the "Amended Lien"). R. 62-75, 651-52, 1206-07.

***Gillman's Partial Motion for
Summary Judgment***

Gillman submitted her Counter Petition to Nullify Wrongful Lien to the trial court for decision on May 13, 2013. R. 17-31, 248-49. Shortly thereafter, the court denied Gillman's petition for the reason that "[a] mechanic's lien is statutory and, therefore, not a wrongful lien even if it is not valid." R. 275. Thus, having failed on her petition, on August 28, 2012, Gillman filed a Partial Motion for Summary Judgment. R. 142-52. In that motion Gillman requested dismissal of I-D Electric's mechanic's lien foreclosure claim on grounds that the Amended Lien was not timely recorded. *Id.* Additionally, Gillman requested her attorney fees and costs. *Id.*

Prior to the filing of Gillman's summary judgment motion, I-D Electric sought a stipulation from Gillman allowing I-D Electric to withdraw its mechanic's lien foreclosure claim.² R. 201. Gillman refused that proposal and opted instead to file for summary judgment in an effort to increase her claim to attorney fees. R. 201, 757-58. For that reason, on summary judgment, I-D Electric requested that the court reserve the

² In a declaration of counsel dated April 3, 2015, Gillman's counsel claimed the conversation with I-D Electric's counsel regarding the stipulation occurred after Gillman's summary judgment motion was filed. *See* R. 757-58. Nonetheless, Gillman's counsel conceded that I-D Electric offered to withdraw its foreclosure claim provided that Gillman would withdraw its Petition to Nullify Wrongful Lien. *Id.* Gillman's counsel also admitted that I-D Electric offered to remove the Amended Lien provided that Gillman stipulate to reserve the attorney fees issue for trial. *Id.* Instead of accepting those offers, Gillman and her counsel strategically opted to pursue additional litigation of Gillman's claim to attorney fees on the mechanic's lien issue. *See id.*

issue of an award of attorney fees until the resolution of I-D Electric's contract claim against Gillman. *Id.*

A hearing on Gillman's summary judgment motion was held on June 19, 2013. R. 276, 895-911. At the beginning of that hearing the court framed the issues, stating: "It really comes down to two issues, whether the original mechanic's lien filed in this case substantially complied with the mechanic's lien statute and whether the amendment stating--re-stating the address of the affected property relates back to the time that the original mechanic's lien was filed." R. 897. Ultimately, on July 8, 2013, the court entered its order dismissing the foreclosure action, and reserving the issue of attorney fees until trial for a determination as to the prevailing party. R. 284-88, 897, 906-07.

The Trial Court's Findings

This case was tried over two days. R. 599, 600-01. The trial court's recitation of testimony and findings were memorialized in comprehensive detail on January 20, 2015, as the court's Finding of Fact Conclusions of Law and Order. R. 647-659.

At trial Olson testified that he has worked for I-D Electric for 45 years. R. 649, 1174. He further testified that in 2011, I-D Electric's rate for journeyman and apprentice electricians, respectively, was \$65 and \$50 per hour. R. 649, 1174-75. Olson acknowledged that these rates were "a little above median" for the Salt Lake market, but I-D Electric's ability to get to jobs quickly and on short notice made up for the slight premium over the median market. R. 649, 1175-77. Regarding I-D Electric's billing practices, Olson testified he most often uses a "cost plus" billing arrangement, where the labor and materials are calculated at the end of a job. R. 650, 1177-80. Most of I-D

Electric's customers prefer cost plus billing. *Id.* Because Gillman permitted I-D Electric to perform work without a price, Olson believed this job was a cost plus project. R. 1209.

Gillman also testified at trial. R. 652-65, 1089-1169, 1310-1418. When Gillman arrived at her Herriman House on March 11, 2011, Gillman observed that the three electricians were not working. R. 652, 1102-04. Gillman testified that "[i]t never crossed [her] mind that [she] was paying these guys \$100 an hour to do nothing." R. 653, 1104. But Gillman did not comment or complain, because she thought she would only be charged "for the time they were actually working." R. 653, 1104-09. Gillman also acknowledged that she is not a licensed electrician. R. 1109. Further, Gillman failed to provide any admissible evidence as to what hourly rates would be reasonable for electricians in the industry. R. 1089-1169, 1310-1418.

Despite Gillman's testimony, given the objectiveness, consistency and truthfulness of the testimony of Hunter, Trip and Blake, the court found all three were substantially engaged in pursuit of their work during their entire time at Gillman's Herriman House.³ R. 652-63. Moreover, Gillman contradicted her own testimony.⁴ *See* R. 1109-10. When asked on cross-examination if she voiced any concerns about the electricians' work,

³ At the time that Trip and Anderson testified, neither of them were working for I-D Electric, and therefore, their testimony was unbiased. *See* R. 1050, 1069-70.

⁴ The trial court found "a wealth of evidence that contradicts her [testimony]." R. 653. That evidence is carefully detailed in the Trial Court's Findings of Fact, Conclusions of Law, and Order. *See id.* Gillman's testimony was contradicted by objective evidence such as the GPS logs, common sense and logic, and by other examples of Gillman's own testimony. *See* R. 653-54, 1118, 1120, 1107, 1128-29.

Gillman replied, “No. They did a good—what they did, what they accomplished during the day, they did a good job of it . . . I think they did a good job of what they did.” *Id.* The court also pointed to Gillman’s professed knowledge of construction and the construction industry, finding that Gillman surely realized 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 of inactivity. R. 653.

The court found many other deficiencies in Gillman’s testimony. R. 653. For example, Gillman testified that when she arrived at the Herriman House at 10:00, the rewiring in the attic had already been completed. R. 653, 1114, 1318. The court noted that this testimony conflicts with the electricians’ testimony that the attic project took all day. R. 653, 1078-83. More unbelievable, however, was Gillman’s testimony that Anderson was in the attic the entire time she was there. R. 653, 1103, 1107-08. The court found this testimony to be unsupported by the greater weight of the facts and simply nonsensical; “To accept [Gillman’s] testimony then, would be to accept that from 10:00 a.m. to 3:30 p.m., when [Gillman] testified she left, Anderson lay on his back in an unheated, unlit attic, on narrow trusses, doing absolutely nothing.” R. 653.

Gillman also testified she did not receive the certified letters sent by I-D Electric’s counsel because she was “out of town.” R. 1142-43, 1148, 1199. But, the court found that Gillman failed to provide any evidence indicating the dates she was gone, where she was, or the dates she was back in town. R. 654. Furthermore, the trial court rejected Gillman’s testimony that she never got the certified letters:

By all observations, including her own testimony, [Gillman] 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 [I-D Electric], leads the Court to conclude that her avoidance of these letters was willful rather than circumstantial.

Id. Overall, the court observed a pattern that emerged regarding Gillman's unwillingness to directly confront I-D Electric's billing issues, respond to letters, and return phone calls, which "contributed greatly to the costs incurred by [I-D Electric] in collecting the debt." R. 650, n. 4.

Concerning the mechanic's Lien incorrectly placed on Gillman's Salt Lake Condo, Gillman claimed that Olson intentionally recorded the Lien on the wrong property. R. 651. In contrast, Olson testified that the filing of the Lien on the Salt Lake Condo was an unintentional administrative mistake. R. 651, 1200-01, 1206-07. The court believed Olson's testimony, and rejected Gillman's claim. R. 651. Specifically, the court found no record evidence that the Salt Lake Condo was deliberately targeted. *Id.* Instead, the court found that the placement of the Lien on the Salt Lake Condo rather than on the Herriman House "was a clerical error" and nothing more. *Id.*

Based upon the testimony adduced at trial, the court found that Gillman knew that the lien had been placed on the wrong property, and she intentionally and deliberately failed to mention that fact in her November 11, 2011 Letter to Olson. *Id.* Further, the court noted that Gillman's intentional omission was made after consulting with counsel in

a deliberate effort to establish a cause of action against I-D Electric for filing a wrongful lien. R. 651. Specifically, the trial court stated:

[Gillman] 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 [November 11, 2011] letter would have to be delivered directly by her to [I-D Electric] is not only an invalid legal conclusion, it is an improper one. She and her counsel both knew that [I-D Electric] was represented by counsel, and presumably her counsel knew, even if she did not, that direct communication with a represented party i[s] a violation of the Canons of Ethics. The Court finds that [Gillman'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 [Gillman] knew or reasonably should have known that any such letter authored or signed by her counsel and directed to [I-D Electric'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 [Gillman], 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.

R. 655. Thus, the court found that Gillman was inappropriately seeking to utilize the Wrongful Lien Act as a bludgeon rather than a shield. R. 656-57.

Further, referencing *Hutter v. Dig-it*, 2009 UT 69, 219 P.3d 918, the court found that the Lien was not wrongful under the Wrongful Lien Act because it was authorized by statute, which takes the Lien out of the definition of a wrongful lien. R. 657. The court then noted that there was an understandable and good faith basis for the filing of the Lien, which was misplaced due to an explainable error—although the work was done on the Herriman House, Gillman used her Salt Lake Condo address as a billing address and in all of her correspondence with I-D Electric. *Id.* In any event, the court found that

Gillman suffered no harm from the misplaced Lien. *Id.* Also, Gillman’s “lying in wait” strategy has one positive effect for Gillman—it made the Amended Lien unenforceable. *Id.* Even though Gillman’s intentional delays created a legal impediment to I-D Electric’s filing of the subsequent Amended Lien on the correct property, the court refused to permit Gillman to use that defensive tactic as an appropriate cause of action to obtain damages from I-D Electric. *Id.*

In discussing I-D Electric’s breach of contract claim, the court found that there was a valid and binding contract between I-D Electric and Gillman. R. 655. Gillman’s request for I-D Electric’s services constituted an offer to contract. *Id.* The acceptance of that offer was manifested by Hunter’s act of going to the Herriman House, completing the scope of work, and arranging for a crew of electricians to start work the following day. *Id.* Accordingly, the court found that there was a clear meeting of the minds—I-D Electric expected to be paid for its services and materials provided, and Gillman expected to pay. R. 655-56. Further, Gillman’s signing of the work order when the work was nearly complete was an obvious indication to the court of Gillman’s acknowledgment not only of an obligation to pay, but of an undertaking to pay a service charge and collection costs, to include attorney’s fees, in order to enforce the contract. R. 656. In the court’s view, that contractual provision was not ambiguous in any way. *Id.* The court also concluded that I-D Electric performed the terms of the contract by engaging in the work for which they were employed.⁵ *Id.*

⁵ In its findings, the court noted that Gillman went to great lengths to point out that many of the tasks performed by the electricians were menial, and that she could have done them

The court recognized that the price term for labor and materials was missing from the work order when it was signed. *Id.* However, the court pointed to the evidence surrounding the signing of the work order to fill in that term. *Id.* In particular, the court pointed to Gillman's experience as someone well-versed in construction contracts, as evidence that she expected to be billed a reasonable rate for both supplies and labor. *Id.*

Having made those determinations, the court lastly focused on the issue of attorney's fees and costs. R. 657. The court acknowledged that I-D Electric prevailed on its breach of contract claim, and therefore, was entitled to its attorney's fees and costs pursuant to the terms of the signed work order. *Id.* Accordingly, the court awarded I-D Electric judgment in the amount of \$3,393.09, representing principal, service fees, and interest through November 20, 2014. R. 658. I-D Electric was instructed to submit to the court a proposed order regarding attorney's fees. R. 657-58. Because the court ruled against Gillman on the breach of contract claim and on her wrongful lien claim, the court recognized no cause of action for which Gillman may be entitled to attorney fees. *Id.*

Gillman's Rule 52(b) Motion to Amend

Following issuance of the trial court's Findings of Fact, Conclusions of Law and Order, Gillman filed a Rule 52 Motion to Amend Findings of Fact and Conclusions of Law. R. 678-84, 722-32. In that motion, Gillman argued that she is the prevailing party

herself. R. 656. But, the court rejected that testimony, finding instead that Gillman engaged the services of trained and licensed 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 a more sophisticated task. R. 656, 1211. In any event, the court found that Gillman's testimony was a dramatic understatement of the amount of work performed by I-D Electric, and of the time that it took. R. 656.

in this litigation with respect to the issue of mechanic's liens, and therefore, she is entitled to attorney's fees pursuant to UTAH CODE ANN. § 38-1-18 (2001). *Id.* The court disagreed. R. 739-41. On March 18, 2015, the trial court issued a Ruling and Order on Motion to Amend. *Id.* In its order, the court stated:

As specifically set for in the Court's Order, the Court found against [Gillman] on [the] breach of contract claim, wrongful lien claim and determined that there was "no cause of action for which [Gillman] may be entitled to fees." (Order, pp. 11-12). The Court further found that [Gillman's] "continued and unreasonable efforts to avoid paying a contractual obligation" entitled [I-D Electric] to an award of fees in this case.

R. 739. On those grounds, the court denied Gillman's motion to amend. *Id.* Gillman chose not to appeal the court's denial of her motion to amend. *See* record generally.

***The Trial Court's Judgment on
Contractual Attorney Fees***

On June 8, 2015, the court entered an Order on Motion for Attorney's Fees. R. 815-18. In that order, the court reiterated that Gillman is liable for damages and attorney's fees based upon her breach of contract. R. 815. The court expounded on its finding that the attorney fees in this case, of both parties, were exacerbated by Gillman's continued and unreasonable efforts to avoid paying a contractual and valid obligation, and by using I-D Electric's harmless error to create a wrongful lien claim. R. 815-16.

The court summarized this case as follows:

To [I-D Electric], this action was nothing more than an effort to collect a valid debt. To [Gillman], it appeared to be an affront to her professional abilities and her sense of propriety. The Court views [Gillman] as primarily, if not solely, responsible for the excessive and unnecessary costs associated with this case[.]

R. 817. Nevertheless, the court recognized that Gillman prevailed on summary judgment and credited her \$3,632 in I-D Electric's attorney fees as to that issue. R. 816. Overall, the court awarded I-D Electric Judgment in the amount of \$36,939.29. R. 874-77.

SUMMARY OF ARGUMENT

POINT I: In sections I and II of her brief, Gillman argues that she is entitled to statutory attorney fees for this entire case because she defeated I-D Electric's Amended Lien on summary judgment. However, after the court entered its Findings of Fact, Conclusions of Law and Order, Gillman filed a Rule 52 Motion to Amend. That motion was denied without any appeal from Gillman. Accordingly, this Court has no jurisdiction to hear Gillman's section I and II claims. Alternatively, pursuant to the terms of the parties' contract, and after performing a flexible and reasoned analysis, the court appropriately granted I-D Electric's attorney fees as the prevailing party, and denied Gillman's attorney fees.

POINT II: Gillman next claims the court erred in finding that I-D Electric's Amended Lien was not wrongful under the Wrongful Lien Act. The Amended Lien, although untimely recorded, was not wrongful because it had a statutory basis under UTAH CODE ANN. § 38-1-3; it was recorded pursuant to work performed on property. Despite being mistakenly placed on the wrong property; the original Lien was recorded in good faith. In any event, statutory analysis of the Wrongful Lien Act reveals that Gillman was not entitled to use the Act as a bludgeon to escape a valid debt and create a claim for attorney fees against I-D Electric. Moreover, Gillman suffered no harm from the erroneous Lien, and therefore, has no cause of action.

POINT III: Lastly, Gillman claims the court erred in finding an express contract between the parties. However, an examination of the contract and the circumstances under which the agreement was executed reveals that the work order constituted a valid and binding agreement. All of the necessary elements of a binding contract are present. The parties had a clear meeting of the minds—I-D Electric expected to be paid for its services and materials provided, and Gillman expected to pay. Gillman signed the work order agreeing to pay for the services she received, and for attorney fees and costs. The missing price was not an essential term of the contract, and therefore, did not affect its validity.

POINT IV: I-D Electric is entitled to its attorney fees on appeal.

ARGUMENT

POINT I

THIS COURT LACKS JURISDICTION TO CONSIDER GILLMAN'S CLAIM TO STATUTORY ATTORNEY FEES, AND ALTERNATIVELY, THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN GRANTING I-D ELECTRIC ITS ATTORNEY FEES AND IN DENYING GILLMAN'S ATTORNEY FEES

The trial court awarded attorney fees to I-D Electric pursuant to contract, and not under Utah's mechanic's lien statute. *See* R. 655-58. On appeal, however, Gillman claims that she is entitled to statutory attorney fees and costs because she defeated I-D Electric's Amended Lien on summary judgment. *See* Br. of Appt. at 16-28. Gillman made this exact claim within the context of her Rule 52 Motion to Amend Findings of Fact, and Conclusions of Law, which motion was denied by the trial court. *See* R. 739-

41. Because Gillman failed to timely appeal this claim, this Court lacks jurisdiction over Gillman's claims. Alternatively, the trial court acted within its discretion in awarding I-D Electric its attorney fees and costs, and in denying Gillman's claim to attorney fees.

A. Where Gillman Failed to Timely Appeal her Rule 52(b) Motion to Amend, this Court Lacks Jurisdiction Over Gillman's Claim to Statutory Attorney Fees.

In sections I and II of her brief, Gillman claims that she is entitled to attorney fees and costs pursuant to UTAH CODE ANN. § 38-1-18. Br. of Aplt. at 16-28. Section 38-1-18 provides: "in 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." UTAH CODE ANN. 38-1-18 (2001).⁶ Because the trial court granted Gillman's Partial Motion for Summary Judgment, thereby dismissing I-D Electric's Amended Lien, Gillman claims she is entitled to all of her attorney fees pursuant to section 38-1-18. Br. of Aplt. at 16-28. This Court lacks jurisdiction to hear Gillman's section I and II claims.

Rule 3(a), Utah Rules of Appellate Procedure, allows an appeal from a district court to an appellate court with jurisdiction over the appeal "from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4." UTAH R. APP. P. 3(a). Rule 4(a) specifies that the time for filing an appeal is "within 30 days after the date of entry of the judgment or order appealed from." UTAH R. APP. P. 4(a). After a trial judgment is

⁶ Effective May 8, 2012, section 38-1-18 was renumbered by the legislature as UTAH CODE ANN. § 38-1a-707 (2012).

rendered, Rule 52(b) of the Utah Rules of Civil Procedure permits a party to move to amend the judgment. *See* UTAH R. CIV. P. 52(b). Accordingly, Rule 4(b) extends the time for appealing a motion to amend made pursuant to Rule 52(b), Utah Rules of Civil Procedure. *Id.* at 4(b)(1)(B). Thus, to appeal from a final order disposing of a Rule 52(b) motion to amend, “a party must file a notice of appeal . . . within the prescribed time measured from the entry of the order.” *Id.* at (b)(2).

“As a general rule, an appellate court lacks jurisdiction over an appeal that is not taken from a final order or judgment.” *Anderson v. Wilshire Invs., LLC*, 2005 UT 59, ¶ 9, 123 P.3d 393. The Utah Supreme Court has affirmed that “[w]hen a party files a post-judgment motion pursuant to [] rule 52(b) . . ., a notice of appeal must be filed after the order disposing of the motion is entered in order to vest jurisdiction in this court.” *Swenson Associates Architects, P.C. v. State*, 889 P.2d 415, (Utah 1994). This Court has also followed that directive. *See Kurth v. Wiarda*, 1999 UT App 153, ¶ 5, 981 P.2d 417 (“To vest jurisdiction in the appellate court, the notice of appeal must be filed after entry of the order disposing of [Rule 52(b)] motions.”); *DeBry v. Fidelity Nat’l Title Ins. Co.*, 828 P.2d 520, 523-24 (Utah App.1992) (Where the appellant failed to file a notice of appeal within 30 days from the date their Rule 52(b) motion was denied, the appellate court was without jurisdiction to hear the appeal).

In this case, the trial court awarded I-D Electric its attorney fees and costs on the basis of contract. *See* R. 655-58. Gillman timely appealed that issue. *See* R. 879-880. But that is not the issue that Gillman raises before this Court in sections I and II of her brief. Instead, Gillman claims that the trial court erred by not awarding her attorney fees

pursuant to section 38-1-18. *See* Br. of Aplt. at 16-28. Gillman's claim to statutory attorney fees raises the same claims on appeal (nearly verbatim) as the claims she brought before the trial court in her Rule 52(b) motion to amend. *See* R. 678-84, 722-32. The trial court denied Gillman's motion on March 18, 2015, thereby terminating her claim to statutory attorney fees and creating a final and appealable judgement. R. 739-41. Gillman did not file a notice of appeal in this case until nearly five months later on August 10, 2015. R. 879-80. Where Gillman failed to file a notice of appeal within thirty days from March 18, 2015, this Court lacks jurisdiction to hear Gillman's claims as to the issue of statutory attorney fees. Accordingly, Gillman's section I and II claims should be dismissed.⁷

B. Under the Terms of the Parties' Contract, the Trial Court Appropriately Awarded I-D Electric its Attorney Fees and Denied Gillman's Attorney Fees.

Irrespective of whether this Court has jurisdiction to decide Gillman's section I and II claims, the Trial court appropriately awarded I-D Electric its attorney fees and denied Gillman's attorney fees. In arguing that the trial court erred by not awarding her

⁷ In *ProMax Dev. Corp. v. Raile*, the Utah Supreme Court held that "[w]here attorney fees are awarded to a party, whether denominated as an item of 'costs' or not, and the amount is not stated in the judgment rendered on the merits of the case, and evidence must be taken afterwards by the trial court either by affidavit or live testimony, there is no final judgment for the purposes of appeal until the amount of the fees has been ascertained and granted." *ProMax Dev. Corp. v. Raile*, 2000 UT 4, ¶ 12, 998 P.2d 254. But the *ProMax* rule is not applicable to this case because Gillman asserted her claims to statutory attorney fees under a Rule 52(b) motion to amend, and the trial court denied Gillman's request for attorney's fees in its Ruling and Order on Motion to Amend. *See Anderson*, 2005 UT 59, ¶ 28 ("The *ProMax* rule is inapplicable to cases where . . . a court makes an outright denial of a request for attorney fees. For the attorney fees issue to be pending, there must be something left for the district court to decide.").

statutory attorney fees, Gillman ignores the obvious—it was pursuant to the parties’ contract that the trial court determined that I-D Electric was the prevailing party, and therefore, was entitled to an award of its attorney fees. *See* R. 655-58. Although the issue of whether attorney fees should be awarded is reviewed for correctness, the determination of which party prevailed in a civil action—and thus may be entitled to attorney fees—is reviewed for an abuse of discretion. *See Fericks*, 2004 UT 85, ¶ 22; *Anderson*, 2012 UT App 275, ¶ 8. The trial court correctly concluded that the parties’ contract permitted an attorney fees award, and the court acted within its discretion in awarding I-D Electric its attorney fees, and in denying Gillman’s attorney fees.

(1) **The Signed Work Order Permitted an Award of Attorney Fees.**

In this case, the work order signed by Gillman permitted the trial court to award attorney fees to the parties. “In Utah, attorney fees are awardable only if authorized by statute or by contract.” *Dixie State Bank v. Bracken*, 764 P.2d 985, 988 (Utah 1988).

Utah's reciprocal attorney fee statute states:

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

UTAH CODE ANN. § 78B–5–826 (2008).

“Where the terms of a contract provide for the award of attorney fees, such fees are awarded as a matter of legal right.” *Saunders v. Sharp*, 818 P.2d 574, 579 (Utah App. 1991) (citation and internal quotation marks omitted). Consequently, “[p]rovisions in written contracts providing for the payment of attorney[] fees should ordinarily be

honored by the courts.”” *Federated Capital Corp. v. Haner*, 2015 UT App 132, ¶ 13, 351 P.3d 816 (quoting *Soffe v. Ridd*, 659 P.2d 1082, 1085 (Utah 1983), *abrogated on other grounds by Commercial Real Estate Inv., LC v. Comcast of Utah II, Inc.*, 2012 UT 49, 285 P.3d 1193). Attorney fees should be awarded ““where no compelling reasons appear otherwise.”” *Id.*; *see also Trayner v. Cushing*, 688 P.2d 856, 858 (Utah 1984) (“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.”).

In the instant case, Gillman admittedly signed the work order, which clearly states: “Purchaser agrees to pay all costs and expenses including reasonable attorney’s fees in the event collection becomes necessary.” R. 649, Trial Exhibit 2. On that basis, the trial court correctly made an award of attorney fees. *See Saunders*, 818 P.2d at 579.

(2) **The Trial Court Acted Within its Discretion in Determining that I-D Electric was the Prevailing Party.**

Upon weighing the evidence adduced at trial, the court determined that I-D Electric was the prevailing party in its breach of contract claim, and that I-D Electric was entitled to its attorney fees and costs. R. 647-59. Additionally, the trial court “recognized no cause of action for which [Gillman] may be entitled to fees.” R. 657-58. Despite the trial court’s earlier decision granting Gillman’s Partial Motion for Summary Judgment on I-D Electric’s Amended Lien foreclosure action, the trial court acted within its discretion in determining at trial that I-D Electric was the overall prevailing party.

Section 78B–5–826 “provides no guidance as to when fees should be awarded.” *Bilanzich v. Lonetti*, 2007 UT 26, ¶ 17, 160 P.3d 1041. Accordingly, “district courts

should look to the policies underlying the statute in exercising [the] discretion” allowed.

Id. Accordingly, “a court's discretion to award or deny attorney fees under the statute must be exercised in furtherance of the statute's policy of allocating the risk of paying attorney fees equally between the party protected by the statute and the party protected by the contract.” *Federated Capital Corp.*, 2015 UT App 132, ¶ 12.

Furthermore, “[a]lthough . . . an award [of attorney fees] is a matter of legal right, it must be reasonable and supported by adequate evidence.” *Equitable Life & Cas. Ins. Co. v. Ross*, 849 P.2d 1187, 1194 (Utah App.1993) (citing *Hoth v. White*, 799 P.2d 213, 219 (Utah App.1990)). “Determination of such fees is within the sound discretion of the trial court, and will not be overturned unless there is a showing of a clear abuse of discretion.” *Id.* (citing *Dixie State Bank*, 764 P.2d 985, 989).

Here, the trial court reasonably exercised its discretion by examining evidence of the parties’ actions contributing to the substantial accrual of attorney’s fees and costs in the case.⁸ The trial court summarized its findings stating: “the expenses in this case, born by both parties, have been exacerbated by [Gillman’s] continued and unreasonable efforts to avoid paying a contractual obligation, and by attempting to use [I-D Electric’s] harmless (and arguable beneficial, to [Gillman]) error to create a wrongful lien cause of action.” R. 815.

⁸There is compelling record evidence that Gillman’s attorney fees incurred in this case were minimal at best. At trial, Gillman admitted that “I have drafted most of the pleadings [in the instant case;]” and “I didn’t draft the initial pleading but I’ve drafted most of the rest.” R. 652, 1093-95. Those admissions reveal that it was Gillman and not her attorney that did the lion’s share of work in this case.

The trial record is rife with evidence of Gillman's unreasonable efforts to avoid payment and create fees. Those efforts included a pattern of Gillman's intentional unwillingness to directly confront I-D Electric's billing issues, respond to letters, and return phone calls, which "contributed greatly to the costs incurred by [I-D Electric] in collecting the debt." R. 650, n. 4. Of particular note is Gillman's and her attorney's unethical decision to deliver Gillman's vague November 11, 2011 Letter requesting release of the Lien directly to Olson, which was done for the express purpose of avoiding a timely correction of the Lien, and to create a wrongful lien claim. *See* R. 655. Overall, there are many examples of Gillman's use of her legal acumen and extensive knowledge of construction and the construction industry to avoid payment and to set a trap for I-D Electric. *See* R. 647-59, 815-18. I-D Electric, on the other hand, was simply trying to get paid for the work it performed, which payment never came. *See id.*

Because Gillman breached the parties' contract, and failed in her claim for wrongful lien, the trial court acted within its discretion in finding that I-D Electric was the prevailing party, and therefore, entitled to an award of attorney's fees and costs pursuant to the parties' contract.⁹

⁹ There various other instances in the record that support the trial court's finding that Gillman was not the prevailing party. For example, although not mentioned by the trial court in its Findings of Fact, Conclusions of Law and Order, the court denied Gillman's Counter Petition to Nullify Lien, which Gillman did not appeal. R. 275. The statutes governing Gillman's failed petition contain an attorney's fee provision. UTAH CODE ANN. § 38-9-205(5)(c) provides that where a petitioner fails to nullify a lien, the court "may award costs and reasonable attorney's fees to the lien claimant." UTAH CODE ANN. § 38-9-205(5)(c) (2014). Under that statute, I-D Electric may be entitled to attorney fees and costs for defending against Gillman's petition.

(3) **The Trial Court Correctly Applied the Flexible and Reasoned Approach in Awarding I-D Electric's Attorney Fees.**

Gillman argues that because she defeated I-D Electric's Amended Lien on summary judgment, she is automatically entitled to an award of her attorney fees and costs. Br. of Aplt. at 25-26. That argument, however, is not consistent with the "flexible and reasoned approach" outlined by the Utah Supreme Court in *Whipple Plumbing & Heating v. Guy*. In *Whipple* the Supreme Court identified the flexible and reasoned approach to determining the prevailing party for purposes of making an attorney fees award. *Whipple Plumbing & Heating v. Guy*, 2004 UT 47, ¶¶ 11, 26, 94 P.2d 270. The flexible and reasoned approach requires the trial court to view the totality of the circumstances, weigh the relative success of the parties on all claims, and use common sense when deciding which party prevailed. *Id.*

In determining the prevailing party for the purposes of an attorney fee award, the trial acknowledged that Gillman defeated I-D Electric's Amended Lien on summary judgment. R. 815-818. However, viewing this case from a common sense perspective, the trial court found that I-D Electric's two victories over Gillman's wrongful lien claim and on I-D Electric's breach of contract claim were more significant. R. 739, 815-818. Nonetheless, the trial court examined the net attorney fees requested by I-D Electric, and then credited Gillman by extracting \$3,632.00 of those claimed fees generated as a result of I-D Electric's "active litigation of the Mechanic's Lien." R. 816. Additionally, the trial court found that Gillman was the principal party responsible for the excessive attorney fees and costs in this case. R. 815-18. Specifically, the Court noted:

[T]he driving force behind this litigation was [Gillman'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 [I-D Electric's] counsel. It is extremely doubtful that this matter would have extended to a [two]-day trial (or gone to trial at all) over the initial claim based on work performed and not paid for. [Gillman] 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 [I-D Electric] for taking action against her.

...

To [I-D Electric] this action was nothing more than an effort to collect a valid debt. To [Gillman], it appeared to be an affront to her professional abilities and her sense of propriety. The Court views [Gillman] as primarily, if not solely, responsible for the excessive and unnecessary costs associated with this case[.]

R. 816-17. Thus, upon correctly applying the flexible and reasoned approach to this case, the trial court found that I-D Electric was the prevailing party. On that basis, Gillman is not entitled to attorney fees originating from the dismissal of the Amended Lien on summary judgment, and her claims on appeal are unfounded.

POINT II

THE TRIAL COURT CORRECTLY DETERMINED THAT I-D ELECTRIC'S LIEN WAS NOT WRONGFUL

Next, Gillman argues that the trial court erred in finding I-D Electric's Lien was not wrongful. Br. of Aplt. at 29-39. In particular, Gillman argues that because I-D Electric's Lien was recorded against the wrong property (the Salt Lake Condo), the Lien was not authorized by statute, and therefore, constitutes a wrongful lien under section 38-9-1. As described below, Gillman's claim lacks merit.

"When faced with a question of statutory interpretation, [an appellate court's] primary goal is to evince the true intent and purpose of the Legislature." *State v.*

Parduhn, 2011 UT 57, ¶ 21, 266 P.3d 765 (internal quotation marks omitted); *see also Bd. of Educ. Of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37, ¶ 8, 94 P.3d 234 (The Utah Supreme Court’s “aim in construing a statute is to give effect to the legislature’s intent in light of the purpose the statute was meant to achieve.”). “To discern legislative intent, [an appellate court] first looks to the plain language of the statute.” *Parduhn*, 2011 UT 57, ¶ 21. “As part of [its] plain language analysis, [an appellate court] read[s] the language of the statute as a whole and also in its relation to other statutes.” *Id.*

“‘Mechanics’ liens are statutory creatures unknown to the common law.’” 2 *Ton Plumbing, L.L.C. v. Thorgaard*, 2015 UT 29, ¶ 21, 345 P.3d 675 (citations omitted). “The Utah Mechanic’s Liens statute is to be ‘liberally construed’ to effect its purpose, which is ‘to provide protection to those who enhance the value of a property by supplying labor or materials.’” *Id.* (citations omitted). For that reason, Utah’s Wrongful Lien Act “defines ‘wrongful lien’ narrowly.” *Anderson v. Wilshire Invs., LLC*, 2005 UT 59, ¶ 10, 123 P.3d 393.

“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.

UTAH CODE ANN. § 38-9-1(6) (2010).¹⁰ “This section is explicit that the wrongfulness of a lien must be determined as of ‘the time it is recorded or filed[.]’” *Pratt v. Pugh*, 2010 UT App 219, ¶ 10, 238 P.3d 1073 (citation omitted). Indeed, “this section requires a court to evaluate the validity of a lien ‘based on the facts known at the time it was recorded, not at a later point in time after evaluating the merits.’” *Id.* (citing *Eldridge v. Farnsworth*, 2007 UT App 243, ¶ 50, 166 P.3d 639). “Mechanic’s liens generally do not fall within the scope of the Wrongful Lien Act.” *Total Restoration, Inc. v. Merritt*, 2014 UT App 258, ¶ 18, 338 P.3d 836.

A. I-D Electric’s Amended Lien, Although Unenforceable, was Statutory and had a Plausible Basis.

Gillman’s argument that I-D Electric’s mechanic’s lien was wrongful because it was recorded on the wrong property, and therefore, not authorized by statute, is muddled. Gillman fails to acknowledge that the mechanic’s lien that was dismissed on summary judgment was the Amended Lien. The record is clear, and Gillman does not dispute, that on December 6, 2011, the prior Lien against the Salt Lake Condo was voluntarily released. R. 62-75, 651-52, 1206-07; Br. of Appt. at 12. The Amended Lien was then recorded against the Herriman House that same day. *Id.* At that time, the requisite 180-day statutory period for filing a mechanic’s lien had expired. *See* UTAH CODE ANN. § 38-

¹⁰ Effective May 13, 2014, section 38-9-1 was renumbered by the legislature as UTAH CODE ANN. § 38-9-102 (2014).

1-7(1)(a)(i) (2011).¹¹ Thus, the Amended Lien, although unenforceable, was statutory and had a plausible claim to the Herriman Property.

The Utah Supreme Court's seminal case of *Hutter v. Dig-It* was cited by the trial court in its decision. R. 656. In *Hutter*, Dig-It provided construction services to the Hutters for which payment was not made. *Hutter v. Dig-It*, 2009 UT 69, ¶ 5, 219 P.3d 918. Consequently, Dig-It asserted a mechanic's lien and initiated a foreclosure action. *Id.* at ¶ 6. The district court determined that Dig-It's mechanics lien was unenforceable for failure to file a preliminary notice, and therefore, was a "wrongful lien" under Section 38-9-1(6). *Id.* On appeal, the Utah Supreme Court examined the plain language of the section 38-9-1(6) together with its legislative history. *Id.* at ¶¶ 49-52. That analysis led the High Court to conclude that mechanic's liens, which are expressly authorized by statute, though unenforceable, cannot be wrongful under section 38-9-1(6), the Wrongful Lien Injunction Act. *Id.* at ¶ 52. Pointing to the holding of the *Hutter* case, the trial court found that even though the Amended Lien was unenforceable, it was not wrongful. *See* R. 656-57. Further, because the Amended Lien was authorized by statute, the trial court found that inaccuracies or misidentifications of the property that the lien sought to encumber did not render the lien "wrongful" under the section 38-9-1(6). *See id.*

Five years after the *Hutter* case was decided, this Court offered further guidance as to what constitutes a wrongful lien in *Bay Harbor Farm, LC v. Sumsion*. 2014 UT App 133, ¶ 12, 329 P.3d 46. Specifically, this Court held "a lien claimant may [not] escape

¹¹ Effective May 8, 2014, section 38-9-4 was renumbered by the legislature as UTAH CODE ANN. § 38-1a-205 (2014).

the reach of the Wrongful Lien Act simply by alleging that his or her lien is ‘expressly authorized by statute.’” *Id.* (citing *Hutter*, 2009 UT 69, ¶ 52). Rather, there must also be a “plausible [good faith] claim to the property that is the subject of the lien[.]” *Id.* at ¶¶ 52-53; *see also Total Restoration*, 2014 UT App 258, ¶ 18 (“[T]he trial court should ‘consider whether a lien claimant has a good-faith basis for claiming a statutory lien.’ [] If 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.’”) (citing *Bay Harbor Farm, LC*, 2014 UT App 133, ¶ 12).

Statutory and plausible basis for I-D Electric’s Amended Lien is found in UTAH CODE ANN. § 38-1-3. At the time of the filing of the Amended Lien, section 38-1-3 provided that “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” UTAH CODE ANN. 38-1-3 (2011).¹² Liberally construing section 38-1-3 in favor of the lien claimant, there is no factual dispute that I-D Electric provided construction services to Gillman as contemplated under section 38-1-3. *See 2 Ton Plumbing*, 2015 UT 29, ¶ 21. Thus, I-D Electric was entitled to its Amended Lien on the Herriman House for services provided to Gillman, which services remain unpaid.

¹² Effective May 8, 2012, section 38-1a-301 was renumbered by the legislature as UTAH CODE ANN. § 38-9-203 (2014).

Furthermore, the court found that there was a good faith basis for filing the original Lien on the Salt Lake Condo. *See* R. 657. The original Lien was misplaced due to an explainable error—Gillman’s use of her Salt Lake Condo address on all communications with I-D Electric. *Id.* Although the original Lien was mistakenly and innocently recorded against the wrong property, Gillman nonetheless knew I-D Electric remained unpaid for work performed on the Herriman House and that the Lien was incorrectly recorded. *See id.* Realizing that error, Gillman made a determined effort to take advantage by “lying in wait” for the deadline to correct the Lien to pass. *Id.* Gillman’s strategy rendered the Lien unenforceable, and her delay created a legal impediment to I-D Electric’s filing of a subsequent lien on the correct property. *See id.* But those efforts did nothing to alter the good faith basis for the original Lien. *See id.* In any event, Gillman suffered no harm from the misplaced Lien on her Salt Lake Condo. *See id.*

Consequently, notwithstanding the fact the Amended Lien was unenforceable, the trial court correctly found the Amended Lien was authorized pursuant to statute and had a plausible, good faith basis, and therefore, was not a wrongful lien.¹³ *See Hutter*, 2009 UT 69, ¶ 52. As such Gillman’s appellate claim that the court erred in denying her wrongful lien lacks merit.

¹³ Furthermore, UTAH CODE ANN. § 38-9-2(3) states that “[t]his 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.” UTAH CODE ANN. § 38-9-2(3) (2008) (renumbered as 38-9-103, eff. May 13, 2014). Thus, where I-D Electric was properly licensed and performed work on Gillman’s Herriman House, it’s Amended Lien could not be constitute a wrongful lien.

B. Utah's Wrongful Lien Statute was Not Intended to be Used as a Bludgeon.

The trial court found that Gillman inappropriately sought to use the Wrongful Lien Act as a bludgeon rather than a shield. R. 657. In her brief, Gillman refers to this finding as the “Gillman-Fault theory.” Br. of Aplt. at 35-39. Simply put, the trial court found Gillman deviously used her legal acumen and knowledge of the construction industry to set up I-D Electric for a wrongful lien claim, which she could then use to avoid payment for I-D Electric’s services and create her claim to extensive legal fees.¹⁴ R. 647-59, 816-18. The trial court found that those legal fees became the “tail wagging the dog” and that Gillman was relentless in her pursuit of it. R. 816. Even though Gillman claims to have made various attempts at settlement, she never budged on her claim to attorney fees under her “wrongful lien” cause of action. R. 657. Accordingly, the trial court concluded that Gillman’s use of the Wrongful Lien Act was not an appropriate cause of action to obtain damages against I-D Electric. *Id.*

The language of the Wrongful Lien Act and the legislative history of the Act support the trial court’s determination. As a companion to section 38-9-1(6), section 38-9-4 lists the penalties for a wrongful lien. *Compare* UTAH CODE ANN. § 38-9-1(6) (2010) *with* UTAH CODE ANN. § 38-9-4 (2010).¹⁵ Under section 38-9-4, there are three

¹⁴ Gillman’s plan was made clear through her November 11, 2011 Letter to I-D Electric, which was intentionally vague (one paragraph), was deliberately delivered personally by Gillman to Olson rather than to I-D Electric’s attorney, and was calculatedly provided after the deadline for correcting the Lien. *See* R. 654-55.

¹⁵ Effective May 13, 2014, section 38-9-4 was renumbered by the legislature as UTAH CODE ANN. § 38-9-203 (2014).

levels of civil sanctions. First, if a lien claimant “records . . . a wrongful lien as defined in Section 38–9–1 . . . against real property” she becomes “liable to a record interest holder for any actual damages proximately caused by the wrongful lien.” *Id.* at § 38–9–4(1). Next, if a claimant who has recorded a wrongful lien “refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of real property . . . the person is liable . . . for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.” *Id.* at § 38–9–4(2). Finally, a claimant who has filed a wrongful lien “is liable to the record owner . . . for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs,” if at the time he recorded the wrongful lien he knew or had reason to know that the document was “a wrongful lien,” was “groundless,” or “contain[ed] a material misstatement or false claim.” *Id.* at § 38–9–4(3).

A reading of section 38-9-1(6) together with section 38-9-4 reveals that the Wrongful Lien Act was meant to shield property owners from improper liens. *See id.* at §§ 38–9–1(6) and 38-9-4. By its language, section 38-9-4 provides incentive, in the form of specified damages, not to perpetrate a wrongful lien as defined under section 38-9-1(6). Furthermore, the language of the section 38-9-4 requiring a lien claimant to, upon notice, “release or correct the wrongful lien within 10 days” demonstrates that the Wrongful Lien Act was intended to provide assurances to property owners as to the validity of recorded liens. *Id.* at § 38–9–4(2). Nothing in the Wrongful Lien Act permits a party to set up a claim for a wrongful lien to avoid payment of a lawful debt or to extort attorney fees from a party who performed legitimate construction services.

Legislative history confirms the Wrongful Lien Act's purpose was to shield property owners from meritless common law liens. In the *Hutter* case, the Utah Supreme Court cited dialogue between Utah State Senators during debate on the Wrongful Lien Act. *See Hutter*, 2009 UT 69, ¶¶ 50-51. In their colloquy, Senators Matheson and Moll revealed the true purpose of the Wrongful Lien Act:

Senator Matheson: Now Mr. President, . . . [y]ou know the purpose of the [wrongful lien] bill and that's to cover all of you . . . [who] might . . . find yourself in the same position if you resist what these people are attempting to do.

. . .

Senator Moll: . . . I believe you already know the purpose of the bill and that is to take care of . . . the problems raised by [some groups] in this state . . . where as a punitive measure if we don't do it their way they file what we call common law liens with recorders who are hard put to know whether they even file them or whether they have any liability. . . . [I]t addresses only liens on real property and I suggested some language to . . . Senator Matheson, . . . which says in effect, this act shall have no application to . . . [mechanic's] or materialmen's liens and I believe that that would clear it up and express the . . . intent of the body. . . .

Id. at ¶ 50 (citing Senate Floor Debate, S.B. 178, 42nd Leg., Gen. Sess. (February 21, 1985) (statements of Senators Matheson and Moll)). Thus, the Legislature's purpose in enacting the Wrongful Lien Act was to shield property owners, including themselves, from meritless common law liens. On those grounds, the trial court correctly interpreted the Wrongful Lien Act to prohibit its inappropriate use by Gillman as a bludgeon against I-D Electric. Accordingly, Gillman's wrongful lien claim on appeal necessarily fails.

C. I-D Electric's Lien Against the Salt Lake Condo was Voluntarily Released and was Harmless.

Gillman argues that I-D Electric knew, or should have known, that the Lien was wrongful when it was recorded against the Salt Lake Condo on June 15, 2011. Br. of Aplt. at 35. The court, however, found that Olson first discovered that the Lien was recorded on the wrong property on December 6, 2011. R. 651. When Olson made that discovery he immediately instructed his attorney to release the Lien, which was done that same day. R. 651-52. The court determined the reason the Lien was mistakenly placed on the Salt Lake Condo was because Gillman used her condo address as a billing address and in all of her correspondence with I-D Electric. R. 657. Accordingly, the trial court determined the Lien was misplaced due to an explainable and understandable error, and that Gillman suffered no harm from the recording of the Lien. R. 656-57. Given those facts and findings, Gillman's wrongful lien claim on appeal lacks merit.

POINT III

**THE TRIAL COURT CORRECTLY DETERMINED
THAT AN EXPRESS CONTRACT WAS FORMED
BETWEEN THE PARTIES**

Gillman lastly argues the trial court erred in finding an express contract existed between the parties. Br. of Aplt. at 40-51. In particular, Gillman claims that because the price term was missing when she signed the work order, there is no express contract. Instead, Gillman claims the contract between the parties was an implied contract. The reason behind Gillman's claim is clear—Gillman seeks to avoid liability for attorney fees

and costs pursuant to section 78B-5-826. Because the parties' contract was valid and binding, Gillman's claims are without merit.

"It is fundamental that a meeting of the minds on the integral features of an agreement is essential to the formation of a contract." *Richard Barton Enters. v. Tsern*, 928 P.2d 368, 373 (Utah 1996). Therefore, a binding contract exists where it can be shown that the parties had a meeting of the minds as to the "integral features of [the] agreement" and that the terms are sufficiently definite as to be capable of being enforced. *Prince, Yeates & Geldzahler v. Young*, 2004 UT 26, ¶ 13, 94 P.3d 179 (internal quotation marks omitted). "A contract may be enforced even though some contract terms may be missing or left to be agreed upon, but if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." *Nielsen v. Gold's Gym*, 2003 UT 37, ¶ 12, 78 P.3d 600 (citations omitted). "Whether or not the [missing term] was essential to the contract requires an examination of the entire agreement and the circumstances under which the agreement was entered into." *Id.* at ¶ 13 (citations omitted).

In the instant case, the court examined the parties' contract and the circumstances under which the agreement was entered into and correctly concluded that the work order constituted a valid and binding agreement. Succinctly stated, the court concluded that the necessary elements of a binding contract are present. R. 655. Gillman's request for I-D Electric's services, made at the electrical supply warehouse, constitutes an offer to contract. *Id.* Hunter accepted that offer by going to the Herriman House and completing the scope of work, and arranging for a crew of electricians to start work the following

day. *Id.* Thus, there was a clear meeting of the minds—I-D Electric expected to be paid for its services and materials provided, and Gillman expected to pay. R. 655-56.

As further evidence of the meeting of the minds, Gillman signed the work order when the work was nearly complete, indicating Gillman acknowledged not only an obligation to pay, but an undertaking to pay attorney fees and costs in order to enforce the contract. R. 656; Add. B. At trial Gillman acknowledged that she signed the work order with the understanding this was standard language on a construction invoice, and also knowing there would be a cost associated with the work the electricians performed. R. 1110-11. Thus, the court correctly concluded that there was no ambiguity in that contractual provision, and no dispute that Gillman was aware of that provision when she signed it. R. 656.

The court also concluded that I-D Electric performed the terms of the contract by engaging in the work for which they were employed. *Id.* The evidence demonstrated, and the court found, that the electricians were continuously and properly engaged in the work for which they were employed. *Id.* Gillman never complained to the electricians about the quality or time of their work. R. 649, 1014-15, 1055-58. In fact, the electricians observed that Gillman appeared happy and satisfied with their work. R. 1059-60. Although, after she received her bill, Gillman complained about the quality and amount of work performed, she nonetheless knew the electricians would be compensated for their time and work. *Id.* Regardless of her complaints, Gillman acknowledged at trial that I-D Electric “did a good job.” R. 1109-10.

Concerning the issue of price, the evidence demonstrated that, when contracting with I-D Electric, Gillman was concerned with getting her “emergency” electrical work done immediately, and not concerned with price. R. 990-91, 998-99. Although Gillman asked Hunter how much the work would cost, she did not ask for a bid. R. 648, 993-94. When Hunter explained that he did not know the price of the work, and that pricing was done in-office by I-D Electric, Gillman offered no objection. R. 993-94, 1037-38, 1235-36. As part of the scope of the work, Hunter discussed with Gillman the extensive labor that would be involved in the project, which Gillman accepted without dispute. *Id.* Moreover, Olson’s testimony that I-D Electric’s hourly rates charged to Gillman were reasonable within the industry, was the only expert evidence offered at trial from an experienced, licensed electrician as to the reasonableness of the rates listed in the work order. R. 649, 1175-77.

In any event, the court pointed to Gillman’s experience as someone well-versed in construction contracts, as evidence she knew to expect she would be billed a reasonable rate for both supplies and labor. *See* R. 656. The fact that Gillman later expressed some dissatisfaction regarding the amount billed does not diminish the fact that she undertook a responsibility to pay. *Id.* Moreover, when she spoke with Hunter on the telephone about the prices on the work order, she stated she was “OK” with it, and asked for more work to be done. R. 648, 1013, 1018-19, 1186-87. On that basis, the trial court reasonably concluded price was not a material or essential term to the contract.

Given the foregoing evidence, I-D Electric and Gillman had a meeting of the minds as to the “integral features of [the] agreement[.]” *See Prince, Yeates &*

Geldzahler, 2004 UT 26, ¶ 13. Those features were Gillman’s employment of I-D Electric to perform emergency work at the Herriman House, the extensive scope of the work to be performed, Gillman’s prime need for the work to be performed immediately, and Gillman’s willingness to pay to have the work done quickly. Each of those terms are sufficiently definite as to be capable of being enforced. *See id.* Moreover, even though the price term was missing from the work order when Gillman signed, price was not an “essential term” to the parties’ contract. *See Nielsen v. Gold’s Gym*, 2003 UT 37, ¶ 12. The contract was performed without that term. Therefore, the court correctly determined that there was a binding contract between the parties.

POINT IV

I-D ELECTRIC IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS ON APPEAL

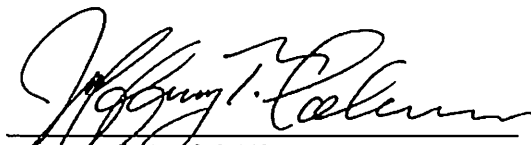
Because I-D Electric was the prevailing party before the trial court, I-D Electric should be awarded its attorney fees and costs on appeal. *Valcarce v. Fitzgerald*, 961 P.2d 305, 319 (Utah 1998) (when a party who received attorney fees below prevails on appeal, “the party is also entitled to fees reasonably incurred on appeal.”) (Citations omitted).

CONCLUSION

Based upon the foregoing, I-D Electric respectfully requests that this Court affirm the decisions of the trial court, and award I-D Electric its attorney fees and costs on appeal.

Respectfully submitted this 18th day of April 2016.

COLEMERE GIBBS & STOUT, PLLC

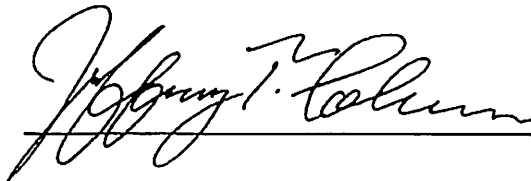


JEFFREY T. COLEMERE
Attorney for Appellee

MAILING CERTIFICATE

I hereby certify that on the 18th day of April, 2016, I served a copy of the foregoing **BRIEF OF APPELLEE** on each of the following by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

Mark D. Stubbs
Fillmore Spencer, LLC
3301 North University Avenue
Provo, Utah 84604



Certificate of Compliance with Rule 24(f)(1)

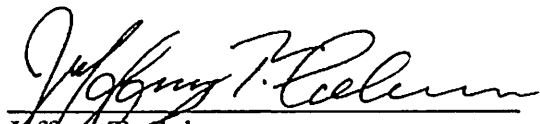
Certificate of Compliance With Type-Volume, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(1) because:

- ☒ this contains 13,998 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B), or
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Jeffrey T. Colemere

Dated: April 18, 2016

ADDENDA

ADDENDUM A

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 1. MECHANICS' LIENS
PART 3. THOSE ENTITLED TO LIEN -- WHAT MAY BE ATTACHED

UTAH CODE ANN. § 38-1-3 (2011)

§ 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.

Credits

Laws 1911, c. 27, § 12; Laws 1973, c. 73, § 1; Laws 1981, c. 170, § 1; Laws 1987, c. 170, § 1; Laws 1994, c. 308, § 3; Laws 2011, c. 339, § 4, eff. May 10, 2011.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 1. MECHANICS' LIENS
PART 7. NOTICE OF CLAIM FOR CONSTRUCTION SERVICE LIEN--CONTENTS--
-RECORDING--SERVICE ON OWNER OF PROPERTY

UTAH CODE ANN. § 38-1-7 (2011)

§ 38-1-7. Notice of claim for construction service lien--Contents--Recording--Service on owner of property

(1)(a)(i) Except as modified in Section 38-1-27, a person claiming a construction service lien shall file for record with the applicable county recorder a written notice to hold and claim a lien no later than:

(A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed under Section 38-1-33; or

(B) 90 days after the day on which a notice of completion is filed under Section 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).

(ii) For purposes of this Subsection (1), final completion of the original contract, and for purposes of Section 38-1-33, final completion of the project, means:

(A) if as a result of work performed under the original contract a permanent certificate of occupancy is required for the work, the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project;

(B) if no certificate of occupancy is required by the local government entity having jurisdiction over the construction project, but as a result of the work performed under the original contract an inspection is required as per state-adopted building codes for the work, the date of the final inspection for the work by the local government entity having jurisdiction over the construction project;

(C) if with regard to work performed under the original contract no certificate of occupancy and no final inspection are required as per state-adopted building codes by the local government entity having jurisdiction over the construction project, the date on which there remains no substantial work to be completed to finish the work on the original contract; or

(D) if as a result of termination of the original contract prior to the completion of the work defined by the original contract, the compliance agency does not issue a certificate

of occupancy or final inspection, the last date on which substantial work was performed under the original contract.

(b) Notwithstanding Section 38-1-2, if a subcontractor performs substantial work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's subcontract shall be considered an original contract for the sole purpose of determining:

(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1); and

(ii) the original contractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1) for that subcontractor's work.

(c) For purposes of this chapter, the term "substantial work" does not include:

(i) repair work; or

(ii) warranty work.

(d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of that work.

(2)(a) The notice required by Subsection (1) shall contain a statement setting forth:

(i) the name of the reputed owner if known or, if not known, the name of the record owner;

(ii) the name of the person:

(A) by whom the claimant was employed; or

(B) to whom the claimant furnished the equipment or material;

(iii) the time when:

(A) the first and last labor or service was performed; or

(B) the first and last equipment or material was furnished;

(iv) a description of the property, sufficient for identification;

(v) the name, current address, and current phone number of the claimant;

(vi) the amount of the lien claim;

(vii) the signature of the claimant or the claimant's authorized agent;

(viii) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section 38-11-107.

(b) Substantial compliance with the requirements of this chapter is sufficient to hold and claim a lien.

(3)(a) Within 30 days after filing the notice of lien, the claimant shall deliver or mail by certified mail a copy of the notice of lien to:

(i) the reputed owner of the real property; or

(ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees against the reputed owner or record owner in an action to enforce the lien.

(4) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(a)(ix).

Credits

Laws 1931, c. 6, § 1; Laws 1949, c. 63, § 1; Laws 1979, c. 143, § 1; Laws 1981, c. 169, § 1; Laws 1985, c. 197, § 1; Laws 1987, c. 170, § 3; Laws 1995, c. 172, § 1, eff. May 1, 1995; Laws 1998, c. 49, § 1, eff. July 1, 1998; Laws 1999, c. 223, § 1, eff. May 3, 1999; Laws 2004, c. 85, § 1, eff. May 3, 2004; Laws 2004, c. 250, § 3, eff. May 1, 2005; Laws 2005, c. 64, § 3, eff. May 2, 2005; Laws 2006, c. 205, § 1, eff. May 1, 2006; Laws 2006, c. 297, § 2, eff. May 1, 2006; Laws 2007, c. 332, § 1, eff. April 30, 2007; Laws 2009, c. 50, § 1, eff. May 12, 2009; Laws 2011, c. 339, § 9, eff. May 10, 2011.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 1. MECHANICS' LIENS
PART 18. ATTORNEYS' FEES--OFFER OF JUDGMENT

UTAH CODE ANN. § 38-1-18 (2011)

§ 38-1-18. Attorneys' 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 a reasonable attorneys' fee, 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 38-1-25 is not entitled to recover attorneys' fees under Subsection (1).

(3) A party against whom any action is brought to enforce a lien under this chapter may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure. 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 attorneys' fees incurred by the offeror after the offer was made.

Credits

Laws 1899, c. 58, § 1; Laws 1961, c. 76, § 2; Laws 1995, c. 172, § 4, eff. May 1, 1995;
Laws 2001, c. 257, § 1, eff. April 30, 2001.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 9. MECHANICS' LIENS
PART 1. DEFINITIONS

UTAH CODE ANN. § 38-9-1 (2010)

§ 38-9-1. Definitions

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

property.

Credits

Laws 1997, c. 125, § 2, eff. May 5, 1997; Laws 2008, c. 223, § 1, eff. May 5, 2008; Laws 2009, c. 69, § 1, eff. May 12, 2009; Laws 2010, c. 381, § 20, eff. May 11, 2010.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 9. WRONGFUL LIENS AND WRONGFUL JUDGMENT LIENS
PART 2. SCOPE

UTAH CODE ANN. § 38-9-2 (2005)

§ 38-9-2. Scope

(1)(a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.

(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.

(c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter applicable to the filing of a notice of interest do not apply to a notice of interest filed before May 5, 2008.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

Credits

Laws 1997, c. 125, § 3, eff. May 5, 1997; Laws 1999, c. 122, § 1, eff. May 3, 1999; Laws 2005, c. 93, § 1, eff. May 2, 2005; Laws 2008, c. 3, § 83, eff. Feb. 7, 2008; Laws 2008, c. 223, § 2, eff. May 5, 2008.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 9. WRONGFUL LIENS AND WRONGFUL JUDGMENT LIENS
PART 2. CIVIL LIABILITY FOR RECORDING WRONGFUL LIEN--DAMAGES

UTAH CODE ANN. § 38-9-4 (2010)

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

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

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

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

(a) is a wrongful lien;

(b) is groundless; or

(c) contains a material misstatement or false claim.

Credits

Laws 1997, c. 125, § 5, eff. May 5, 1997; Laws 2006, c. 297, § 11, eff. May 1, 2006; Laws 2008, c. 223, § 3, eff. May 5, 2008; Laws 2010, c. 381, § 22, eff. May 11, 2010.

UTAH CODE ANNOTATED
TITLE 38. LIENS
CHAPTER 9. WRONGFUL LIEN ACT
PART 2. RECORDING A WRONGFUL LIEN
SECTION 205. PETITION TO NULLIFY LIEN--NOTICE TO LIEN CLAIMANT--
SUMMARY RELIEF--FINDING OF WRONGFUL LIEN--WRONGFUL LIEN IS
VOID

UTAH CODE ANN. § 38-9-205(2014)

Formerly cited as UT ST § 38-9-7

§ 38-9-205. Petition to nullify lien--Notice to lien claimant--Summary relief--Finding of wrongful lien--Wrongful lien is void

(1) A record interest holder of real property against which a wrongful lien is recorded may petition the district court in the county in which the document is recorded for summary relief to nullify the wrongful lien.

(2) The petition described in Subsection (1) shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

(3)(a) If the court finds the petition insufficient, the court may dismiss the petition without a hearing.

(b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.

(c) The record interest holder shall serve a copy of the petition on the lien claimant and a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

(d) The lien claimant is entitled to attend and contest the petition.

(4) A summary proceeding under this section:

(a) may only determine whether a document is a wrongful lien; and

(b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.

(5)(a) If, following a hearing, the court determines that the recorded document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio,

releasing the property from the lien, and awarding costs and reasonable attorney fees to the petitioner.

(b)(i) The record interest holder may submit a certified copy of the order to the county recorder for recording.

(ii) The order shall contain a legal description of the real property.

(c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.

(6) If the court determines that the recorded document is a wrongful lien, the wrongful lien is void ab initio and provides no notice of claim or interest.

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

Credits

Laws 2014, c. 114, § 8, eff. May 13, 2014.

UTAH CODE ANNOTATED
TITLE 78B. JUDICIAL CODE
CHAPTER 5. PROCEDURE AND EVIDENCE
PART 8. MISCELLANEOUS
SECTION 825.5. ATTORNEY FEES—RECIPROCAL RIGHTS TO RECOVER
ATTORNEY FEES

UTAH CODE ANN. § 78B-5-826 (2008)

Formerly cited as UT ST § 78-27-56.5

§ 78B-5-826. Attorney fees—Reciprocal rights to recover attorney fees

A court may award costs and attorney fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney fees.

Credits

Laws 2008, c. 3, § 858, eff. Feb. 7, 2008.

UTAH RULES OF APPELLATE PROCEDURE
TITLE 2. APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS
RULE 3. APPEAL AS OF RIGHT: HOW TAKEN

UTAH R. APP. P. 3

Rules App.Proc., Rule 3

Rule 3. Appeal as of Right: How Taken

(a) Filing appeal from final orders and judgments. An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

(b) Joint or consolidated appeals. If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

(c) Designation of parties. The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

(d) Content of notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

(e) Service of notice of appeal. The party taking the appeal shall give notice of the filing of a notice of appeal by serving each party to the judgment or order in accordance with the requirements of the court from which the appeal is taken. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

(f) Filing fee in civil appeals. At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall accept a notice of appeal regardless of whether the filing fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

(g) Docketing of appeal. Upon the filing of the notice of appeal, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a statement by the clerk indicating whether the filing fee was paid and whether the cost bond required by Rule 6 was filed. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

Credits

[Amended effective October 1, 1992; November 1, 1996; November 1, 1999; November 1, 2008; November 1, 2014.]

UTAH RULES OF APPELLATE PROCEDURE
TITLE 2. APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS
RULE 4. APPEAL AS OF RIGHT: WHEN TAKEN

UTAH R. APP. P. 4

Rules App.Proc., Rule 4

Rule 4. Appeal as of Right: When Taken

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following motions, the time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion:

(b)(1)(A) A motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) A motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) A motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) Filing prior to entry of judgment or order. A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.

(d) Additional or cross-appeal. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal is docketed in the court in which it was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(e) Motion for extension of time.

(e)(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(e)(2) The trial court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(f) Motion to reinstate period for filing a direct appeal in criminal cases. Upon a showing that a criminal defendant was deprived of the right to appeal, the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement shall file a written motion in the sentencing court and serve the prosecuting entity. If the defendant is not represented and is indigent, the court shall appoint counsel. The prosecutor shall have 30 days after service of the motion to file a written response. If the prosecutor opposes the motion, the trial court shall set a hearing at which the parties may present evidence. If the trial court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date of entry of the order.

(g) Motion to reinstate period for filing a direct appeal in civil cases.

(g)(1) The trial court shall reinstate the thirty-day period for filing a direct appeal if the

trial court finds by a preponderance of the evidence that:

(g)(1)(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(g)(1)(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(g)(1)(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

(g)(2) A party seeking such reinstatement shall file a written motion in the trial court within one year from the entry of judgment. The party shall comply with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(g)(3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

Credits

[Amended effective November 1, 1998; April 1, 1999; November 1, 2002; November 1, 2005; November 1, 2006; April 1, 2012; November 1, 2013; May 1, 2015.]

UTAH RULES OF CIVIL PROCEDURE
PART IV. TRIALS
RULE 52. FINDINGS BY THE COURT; CORRECTION OF THE RECORD

UTAH R. CIV. P. 52(b)

Utah Rules of Civil Procedure, Rule 52

RULE 52. FINDINGS BY THE COURT; CORRECTION OF THE RECORD

<Rule 52 effective until May 1, 2016. See also Rule 52: Findings and Conclusions by the Court; Amended Findings; Waiver of Findings and Conclusions; Correction of the Record; Judgment on Partial Findings, effective May 1, 2016.>

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41(b). The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b), 50(a) and (b), 56, and 59 when the motion is based on more than one ground.

(b) Amendment. Upon motion of a party made not later than 14 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

(c) Waiver of findings of fact and conclusions of law. Except in actions for divorce, findings of fact and conclusions of law may be waived by the parties to an issue of fact:

(c)(1) by default or by failing to appear at the trial;

(c)(2) by consent in writing, filed in the cause;

(c)(3) by oral consent in open court, entered in the minutes.

(d) Correction of the record. If anything material is omitted from or misstated in the transcript of an audio or video record of a hearing or trial, or if a disagreement arises as to whether the record accurately discloses what occurred in the proceeding, a party may move to correct the record. The motion must be filed within 10 days after the transcript of the hearing is filed, unless good cause is shown. The omission, misstatement or disagreement shall be resolved by the court and the record made to accurately reflect the proceeding.

Credits

[Amended effective January 1, 1987; July 1, 2009; May 1, 2014.]

ADDENDUM B

MATERIAL					LABOR HOURS		I-D Electric, Inc. Electrical Contractors 3690 South 500 West # 101 Salt Lake City, Utah 84115 (801) 268-1471		
AMT.	CAT. #	BRAND NAME	DESCRIPTION	UNIT PRICE	TOTAL	NAME	REG.	O.T.	DATE 11 March 11
1			Spang plastic Nail up		3.20				
1			Spang plastic Cut in		1.77				
4			Brown S1 toggle	1.75	7.00	Cher	8.5		JOB NUMBER 511 316
1			Brown P-1	.50	.50	Bric	8.5		CUSTOMER P.O.
1			Brown P-3		2.00	Blake	8.5		
175'			12-2 Romex	.55	96.25				
1			4/10 Round Cut in		3.56	THIS SECTION MUST BE COMPLETED IN FULL			
1			4/10 perhanger		3.65	JOB NAME: Linda Gillman			
			Deep 4 5/8 special	2.40	9.60	OWNER:			
2			4 5/8 Blank	1.77	3.54	JOB SITE ADDRESS:			
1			PCA 50	.80	.80				
7			deep igang Nail up	1.27	8.61	CONTRACTOR:			
50			5" Hook zip ties	1.00	50.00	BILL TO:			
40			staples	.10	4.00	ADDRESS:			
55			wirenuts	.15	8.25				
6			P-14 Blanks	.75	4.50	PHONE NUMBER:			
200'			14-2 Romex	.32	64.00	WORK DESCRIPTION			
*			See Attached Receipt	18.50	18.50	More wires in attic			
				1.99		Add 4 & Switch in closet			
						More speaker control box			
						Add 4 for speaker box			
						Add switch for attic 4's			
						Change devices to Brown			
						Add & install 4 above			
						Change switch			
				6.5	65	50%			
				6.5	50	552			
				6.5	50	425.00			
						425.00			
						1697.64			

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: _____

ADDENDUM C

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.

**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

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.

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.

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.

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.

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.

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.

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

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

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

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.

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.

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.

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."

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.

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.

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."

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.

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

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.

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."

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."

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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. R 1211

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.

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

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.

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.

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.

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

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

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.

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.

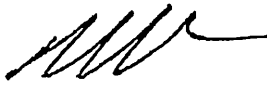
ORDER

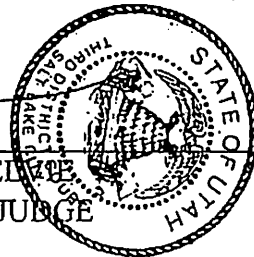
It is the order of the Court that Defendant is directed to pay to Plaintiff the following amounts:

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

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 24 day of January, 2015.


RICHARD D. McKELVEY
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

ADDENDUM D

MAR 18 2015

SALT LAKE COUNTY

Deputy Clerk

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

I-D ELECTRIC, INC. a Utah Corporation,

Plaintiff,

v.

LINDA T. GILLMAN,

Defendant.

**RULING AND ORDER ON
MOTION TO AMEND**

Case No. 110917777

JUDGE: RICHARD D. McKELVIE

DATE: March 18, 2015

This matter is before the Court on Defendant's Rule 52 Motion to Amend the Court's Findings of Fact and Conclusions of Law (the "Motion") dated February 12, 2015 and submitted to the Court for decision on March 16, 2015. A hearing has not been requested by either Party. Now, having considered the arguments of counsel and relevant law, the Court hereby denies the Motion and rules as follows:

Defendant claims that she is the prevailing party in this litigation with respect to the issue of mechanic's liens and that she is therefore entitled to attorney's fees pursuant to statute. As such, Defendant moves the Court to amend its January 29th Findings of Fact and Conclusions of Law and Order (the "Order") to reflect "that she is the prevailing party on I-D's second cause of action, foreclosure of the Herriman house lien, and as the successful party in defeating the mechanic's lien under UCA § 38-1-3, is entitled to reasonable attorney fees under UCA § 38-1-3." (Memorandum, p.6).

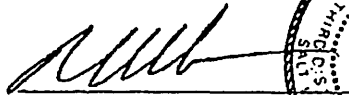
As specifically set forth in the Court's Order, the Court found against Defendant on her breach of contract claim, wrongful lien claim and determined that there was "no cause of action for which Defendant may be entitled to fees." (Order, pp. 11-12). The Court further found that Defendant's "continued and unreasonable efforts to avoid paying a contractual obligation" entitled Plaintiff to an award of fees in this case.

Having reviewed the Court's Order and considered Defendant's objections and Plaintiff's response thereto, the Court holds that its Order accurately reflects the findings and ruling of the Court. The Court therefore declines to amend its findings, make additional findings or amend the judgment as requested by Defendant. Utah R. Civ. P. 52(b).

As per the Court's Order and the Parties' February 18th Stipulation, the Court will reserve its ultimate ruling on attorney's fees and costs once briefing is complete and the matter submitted to the Court in accordance with Rule 7. Utah R. Civ. P. 7(d).

SO ORDERED this 18th day of March, 2015.

BY THE COURT:



RICHARD D. McKELVIE
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

03/18/2015

/s/ MCKAE MARRIOT

Date: _____

Deputy Court Clerk

ADDENDUM E

FILED DISTRICT COURT
Third Judicial District

JUN 08 2015

SALT LAKE COUNTY

By [Signature]
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

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.

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.

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).

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.

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.

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.

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.

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

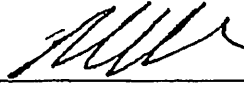
construction project in December. The second \$1.5 million phase is now underway and will be finished this summer. This recent construction project resulted from a multi-million construction defect lawsuit, out of state. The last five adversaries who lined up on the other side of a courtroom from me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


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

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:

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.
2. Defendant is to pay Plaintiff's costs in the amount of 465.32.
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. McKEEVIE
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

06/08/2015

/s/ MCKAE MARRIOT

Date: _____

Deputy Court Clerk

ADDENDUM F

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

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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

Return of Electronic Notification

Recipients

BRADY T GIBBS - Notification received on 2015-07-17 09:45:38.457.

MARK D STUBBS - Notification received on 2015-07-17 09:45:39.05.

PAUL D DODD - Notification received on 2015-07-17 09:45:38.237.