

2001

# John Groberg and Shauna Groberg v. Housing Opportunities, Inc., Margaret M. Dahle, John L. Krueger and Granite Credit Union: Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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JOHN GROBERG and SHAUNA  
GROBERG,

Plaintiffs/Appellants,

vs.

HOUSING OPPORTUNITIES, INC., a Utah  
nonprofit corporation, MARGARET M.  
DAHLE, JOHN L. KRUEGER, and  
GRANITE CREDIT UNION, a Utah  
corporation,

Defendants/Appellees.

Case No. 20010754 CA

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REPLY BRIEF OF APPELLEE/CROSS APPELLANT HOUSING  
OPPORTUNITIES

---

Appeal from a Final Order of the Third Judicial District Court,  
in and for Salt Lake County, State of Utah  
Judge Tyrone E. Medley

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SEP 12 2001

Paulette Stagg  
Clerk of the Court

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## ARGUMENT

### **I. HOUSING OPPORTUNITIES IS ENTITLED TO ATTORNEY FEES AS THE PREVAILING PARTY ON THE GROBERGS' BREACH OF CONTRACT CLAIM BECAUSE THAT CLAIM ARISES FROM THE REPC**

The Grobergs' contention that HOI is not entitled to attorney fees for successfully defending against their breach of contract claim rests on the incorrect assertion that there were in fact two contracts that covered the house-swapping transaction between the parties: (1) the written REPC (which contains the attorney fee provision), and (2) a purported separate contract consisting of "oral representations." Thus, the Grobergs argue that the attorney fee provision in the REPC does not apply to the purportedly separate oral contract. However, this argument must fail because the trial court found that there was only one integrated contract covering the transaction between the parties. (*See R.* at 318-319.)

When a court finds that a contract is fully integrated, this means that the writing contains the whole agreement between the parties and that parol evidence of conversations, representations or statements that vary the terms of the agreement are inadmissible. *See State Bank of Lehi v. Woolsey*, 565 P.2d 413 at 418 (Utah 1977). This includes evidence of all negotiations prior to the making of the integrated agreement that would contradict or add to its terms. *See Hall v. Process Instruments & Control, Inc.*, 890 P.2d 1024, 1027 (Utah 1995); *Lee v. Barnes*, 977 P.2d 550, 552 (Utah Ct. App. 1999). However, a written contract may also be partially integrated. *See Stanger v. Sentinel Life Insurance Company*, 669 P.2d 1201 (Utah 1983). In *Stanger*, the Court held that parol evidence may be admitted

only for the purpose of making the agreement whole, as long as such evidence is not inconsistent with the writing. *See id.* at 1205 (*citing* 30 Am. Jur. Evidence § 1043).

In the case at bar, the trial court found that there was one partially integrated contract that covered the entire transaction between HOI and the Grobergs. (*See R.* at 318-319.) That contract was the written REPC of July 15, 1996. *See* Appellant’s Addendum at 23–26. The REPC contains, *inter alia*, provisions regarding the following: the purchase price for the Groberg’s existing house; the Grobergs’ obligation to purchase Lot 13; the grant of easements over the Groberg property; the Grobergs’ option to be restored to their former state of ownership and debt if not satisfied with the transaction; and the irrevocability of the easements. *See id.* at 26.

The REPC includes both an integration clause and an attorney fee provision. At paragraph 14, the REPC provides that “[t]his Instrument together with its addenda, any attached exhibits, and Seller Disclosures constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties.” *See* Appellant’s Addendum at 24. Paragraph 17 provides that “[i]n any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney’s fees.” *See id.*

The trial court held that the REPC was an integrated contract, except for the price of Lot 13. (*See R.* at 318-19.) Specifically, the trial court held that “[t]he contract is not integrated as to the purchase price of Lot 13 and the house on Lot 13 and parole evidence is admitted as to this issue only.” (*See R.* at 319.) Thus, the only “oral representations”

admitted by the trial court were those necessary to make the REPC whole by supplying the purchase price of Lot 13.

In their Amended Complaint, the Grobergs alleged a breach of a separate contract which could, at best, amount to a prior parol agreement that varied the final terms of the REPC. Under the terms of the oral contract alleged by the Grobergs, they agreed to grant easements to HOI across their property in exchange for either (1) a “substantial discount” on Lot 13 or (2) \$10,000 for each easement plus the restoration of the landscaping. (*See* R. 48-49.)

Even if such representations had been made by HOI, they are of no import because the trial court held that, except for the purchase price of Lot 13, all oral negotiations were superseded by the REPC. Although the Grobergs claim that, in August of 1997, HOI made oral representations that it would give the Grobergs an “additional discount” if they obtained neighbors’ signatures approving HOI’s plans to cover an irrigation ditch, evidence was introduced by HOI that by November of 1998, the parties had agreed that the Grobergs would pay \$138,000 for the home on Lot 13. *See* Cross-Appellant HOI’s Addendum at 19. Accordingly, the trial court found that the parties had either agreed to a \$138,000 price, or in the alternative, that the Grobergs had ratified that price. (*See* R. at 320.) The Grobergs did not appeal this factual finding. *See* Brief of Appellant (Grobergs) at 9, n3. Because this factual finding, along with the REPC, constitutes their final and complete agreement, the Grobergs cannot now argue that they had a separate contract on the easements which pre-dates the REPC in its final, fully integrated form.



Because evidence of negotiations prior to the making of an integrated agreement are inadmissible to contradict or add to the terms of a final agreement, the Grobergs cannot now introduce evidence of an allegedly separate and prior oral agreement. *See Hall*, 890 P.2d at 1027; *Lee*, 977 P.2d at 552. By operation of law, these alleged prior oral negotiations merged into the REPC and are therefore subject to its attorney fee provision. As a consequence, HOI is entitled to its attorney fees for prevailing on the Grobergs' breach of contract claim.

**II. HOUSING OPPORTUNITIES IS ENTITLED TO ATTORNEY FEES AS THE PREVAILING PARTY ON THE GROBERGS' UNJUST ENRICHMENT CLAIM BECAUSE THE CLAIM LEGALLY AND FACTUALLY OVERLAPS THE GROBERGS' MECHANIC'S LIEN CLAIM**

The Grobergs also argue that HOI cannot recover attorney fees for successfully defending against their unjust enrichment claim because the trial court did not specifically find that this claim shared facts and legal theories that overlapped their mechanic's lien claim. However, the overlapping legal and factual aspects of these claims are self-evident. With regard to fact, both claims arose out of the Grobergs' wish to be compensated for labor they performed on Lot 13. With regard to law, Utah courts have held that "at the instance of" the owner means an express or implied contract with the owner. *See Interiors Contracting, Inc. v. Navalco*, 648 P.2d 1382, 1386 (Utah 1982). Unjust enrichment is one type of "implied contract." *See Davies v. Olson*, 746 P.2d 264 at 269 (Utah Ct. App. 1987). Thus, mechanic's lien claims and unjust enrichment claims are of the same legal species.

**III. BECAUSE THE ENTITLEMENT TO ATTORNEY FEES IS A QUESTION OF LAW, THIS COURT CAN DETERMINE HOI'S ENTITLEMENT IN THE ABSENCE OF A TRIAL COURT FINDING THAT THE CASE INVOLVED MULTIPLE CLAIMS AND A COMMON CORE OF FACTS**

Finally, HOI has not found, and the Grobereggs have failed to cite, any Utah case that specifically holds that a trial court must make a finding that the compensable claims (for purposes of attorney fees) overlap the non-compensable claims before a reviewing court can determine whether attorney fees should have been awarded to the prevailing party. Indeed, whether attorney fees are recoverable is a question of law, not one of fact. *See Valcarce v. Fitzgerald*, 961 P.2d 305, 315 (Utah 1998). As argued in Point II, above, the overlap between the mechanic's lien claim, the contract claim, and the unjust enrichment claim are plainly evident from the record and from relevant case law. Therefore, assuming that HOI prevails on this appeal, HOI is entitled, as a matter of law, to reasonable attorney fees for prevailing on the Grobereggs' breach of contract and unjust enrichment claims.

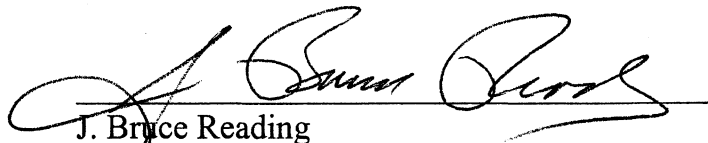
**CONCLUSION**

The trial court erred in failing to award attorney fees to HOI on the breach of contract and unjust enrichment claims because HOI was the prevailing party at trial, and both the mechanic's lien statute and the REPC provide for attorney fees to the prevailing party. When a party is entitled to attorney fees by contract or statute, and prevails on multiple claims involving a common core of facts and related legal theories, he is entitled to all fees reasonably incurred in the litigation. *See Dejavue, Inc. v. U.S. Energy Corp.*, 993 P.2d 222, 227 (Utah Ct. App. 1999); *Kurth v. Wiarda*, 991 P.2d 1113, 1117 (Utah Ct. App.

1999). In the event that HOI prevails on this appeal, it requests a reversal of the trial court's denial of its attorney fees on the breach of contract and unjust enrichment claims. In addition, HOI requests a remand of the case for a determination of an appropriate award to HOI, including the attorney fees it has incurred on appeal.

DATED this 11 day of September, 2002.

SCALLEY & READING, P.C.

  
J. Bruce Reading

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12 day of September, 2002, a true and correct copy of the foregoing REPLY BRIEF OF APPELLEE/CROSS APPELLANT HOUSING OPPORTUNITIES was served upon counsel of record by depositing the same in the United States mail, postage prepaid and addressed as follows:

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