

2015

Charles C. Rehn, an Individual; And That Certain Real Property Located at 4118 Saddleback Road, Park City, Utah Plaintiffs/ Appellants/Crossappellees, v. Steves. Christensen, an Individual; Steves. Christensen, p.c., a Utah Professional Corporation; Henroid, Nielsen, & Christensen, a Utah General Partnership; Christensen, Corbett & Pankratz, PLLC, a Utah Professional Limited Liability Company; Hirschi Christensen,pLLC,a Utah Professional Limited Liability Company; And All Unknown Persons Who Claim Any Interest in the Subject Matter of the Action. Defendants/ Appellees/ Crossappellants.

Utah Court of Appeals
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IN THE UTAH COURT OF APPEALS

CHARLES C. REHN, an individual; and
that certain real property located at **4118
SADDLEBACK ROAD, PARK CITY,
UTAH**

Plaintiffs/Appellants/Cross-
Appellees,

v.

STEVE S. CHRISTENSEN, an individual;
STEVE S. CHRISTENSEN, P.C., a Utah
professional corporation; **HENROID,
NIELSEN, & CHRISTENSEN**, a Utah
general partnership; **CHRISTENSEN,
CORBETT & PANKRATZ, PLLC**, a
Utah professional limited liability company;
HIRSCHI CHRISTENSEN, PLLC, a
Utah professional limited liability company;
and **ALL UNKNOWN PERSONS WHO
CLAIM ANY INTEREST IN THE
SUBJECT MATTER OF THE ACTION.**

Defendants/Appellees/Cross-
Appellants.

**BRIEF OF APPELLANT
CHARLES C. REHN**

Appellate Case No. 20150119-CA

District Court Case No. 130500115

Appeal from Rulings and Orders from the Trial Court
Granting Summary Judgment for Defendants
And Denying Attorneys' Fees to Plaintiffs
In the Third Judicial District Court of Utah County, State of Utah
The Honorable Ryan M. Harris, Presiding

FILED
UTAH APPELLATE COURTS

SEP 28 2015

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Plaintiff/Appellant/Cross-Appellee Charles C. Rehn ("Rehn"), by through his counsel, respectfully submits this Opening Brief.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to UTAH CODE ANN. § 78A-4-103(2)(j).

ISSUES ON APPEAL AND STANDARDS OF REVIEW

ISSUE 1: Whether the trial court erred in refusing to extend Utah's Reciprocal Attorney fees Statute (UTAH CODE ANN. § 78B-5-826) to situations wherein a Defendant asserts the enforceability of a contract as a defense to a tort claim and alleges a right to recover attorney fees as a result of the enforceability of that contract, and the Plaintiff thereafter prevails on the tort claim and defeats the Defendant's contract defense.

STANDARD OF REVIEW: This Court reviews the trial court's decision regarding a prevailing party's statutory right to recover attorney fees for correctness as a matter of law. *Insight Assets, Inc. v. Farias*, 2013 UT 47, ¶ 8; *Bilanzich v. Lonetti*, 2007 UT 26, ¶ 8. Utah's Appellate Courts afford "no deference to the district court's legal conclusions." *State v. Gallegos*, 2007 UT 81, ¶ 8. This Court can review a trial's court decision regarding an abuse of discretion.

ISSUE 2: Whether the trial court erred in failing to consider an attorney's malicious falsification and recording of a lien against his own client's property, and that attorney's subsequent attempt to use litigation to force that client into capitulating to paying off the falsified lien, as factors in determining whether to issue an equitable award of attorney fees to the victim of the attorney's malice.

STANDARD OF REVIEW: This Court reviews the trial court's decision regarding an equitable award of attorney fees for an abuse of discretion. *Hughes v. Cafferty*, 2004 UT 22, ¶ 20.

**CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, RULES AND REGULATIONS**

UTAH CODE ANN. § 78B-5-826 is directly at issue in this appeal. The text of this rule is attached as Addendum 1.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an appeal from the trial court's Ruling, Final Judgment, and Order denying Trial Court Plaintiff Rehn's motion for attorney fees against Defendants Steve S. Christensen ("Mr. Christensen"), Steve S. Christensen, P.C. ("SSC"), Henroid Nielsen & Christensen, Christensen ("HNC"), Christensen, Corbett & Pankratz, PLLC ("CCP"), and Hirschi Christensen, PLLC's ("HC") (collectively, "Christensen"). Copies of the Final Judgment and Order are attached as Addenda 2 and 3, respectively. R. 3614; 3616-20; and 3721-24.

II. DISPOSITION BELOW

Charles Rehn filed a Verified Complaint against his former attorney, Steve Christensen, on February 15, 2013 (the "Complaint"). R. 1-109. The central allegation in Rehn's Complaint was that Christensen had intentionally falsified an attorney's lien, then recorded the false instrument against Rehn's personal residence, and thereafter refused to release the lien unless Rehn paid Christensen a substantial amount of money. R. 1-22. The

Complaint asserted specific claims for: (a) a declaratory judgment that Christensen's Lien against Rehn's property was void and that Christensen's Lien should be immediately removed; (b) a permanent injunction against the enforcement of Christensen's Lien; (c) slander of title; (d) promissory estoppel; and (e) wrongful lien. *See id.*

On February 20, 2013, Rehn filed a Combined Petition for Civil Wrongful Lien Injunction & Motion for Temporary Restraining Order and Preliminary Injunction. R. 110-265. Shortly thereafter, the trial court entered a temporary restraining order commanding Christensen's Lien to be released upon Rehn's deposit of \$40,000 into an escrow account pending resolution of the question of the Lien's validity. R. 304-8. The Parties then stipulated to the entry of a preliminary injunction, which the trial court entered on March 12, 2013. R. 311-12. Christensen then filed an Answer and Counter-Complaint seeking enforcement of Christensen's Lien. R. 313-52. In his Counter-Complaint, Christensen demanded an award of attorney fees pursuant to an attorney fees provision in his engagement letter with Rehn. *See id.*

On January 22, 2014, the trial court granted summary judgment in favor of Rehn on Rehn's declaratory judgment claim and dismissed Christensen's claim for the foreclosure of Christensen's Lien. R. 3617-8. This ruling mooted Rehn's claim for a permanent injunction. *See id.* The trial court dismissed Rehn's wrongful lien claim, but ruled that Rehn had established several elements of Rehn's slander of title claim as a matter of law, and that two elements of that claim involved questions of fact that required trial. *Id.* The trial court also found that Rehn's promissory estoppel claim required trial. *Id.*

On December 9-10, 2014, the trial court conducted a two-day jury trial on the two remaining elements of Rehn's slander of title claim. R. 3617. The Court intended to rely upon the same trial evidence to adjudicate Rehn's promissory estoppel claim. The elements of slander of title that Rehn was required to prove at trial were: (1) that Christensen acted with malice in recording the Lien; and (2) that Rehn had suffered damages in a specific amount. R. 3616.

At the conclusion of trial, the jury found that Christensen had acted with malice and had caused Rehn to suffer consequential damages of \$77,752.29. R. 3617. After the jury returned its verdict, Rehn withdrew his remaining bench trial claim for promissory estoppel because the damage award for that claim would have been redundant with the jury award. *See id.* After the jury trial, but before the entry of final judgment, Rehn filed his Motion for Award of Attorney Fees and Costs as Prevailing Party ("Rehn's Motion"). R. 3319-84. Rehn also filed the Declaration of Joseph E. Wrona, Rehn's counsel, in support of Rehn's Motion. R. 3385-3407. Briefing on Rehn's Motion concluded on January 7, 2015, and Rehn's Motion was submitted to the trial court that same day. R. 3611-13.

On January 8, 2015, the trial court heard oral argument on Rehn's Motion. R. 3614-15. At the conclusion of that hearing, the trial court denied Rehn's Motion and signed the Final Judgment. R. 3614. On January 21, 2015, the Court entered its Order denying Rehn's Motion. R. 3721-3724. On January 19, 2015, after the Court had already entered its Final Judgment, Christensen moved for a judgment notwithstanding the verdict, to alter or amend the judgment, and for a new trial. R. 3652-3715. On February 13, 2015, the trial court denied Christensen's Motions. R. 3865-69.

III. STATEMENT OF FACTS

A. Christensen Falsified a Lien and Recorded the Falsified Lien against Rehn's Personal Residence.

Christensen represented Rehn in a trial court divorce action from 1996 – 1997, and in an appeal of certain findings in the divorce action afterward. R. 44-61; 3264; 3944, 153:9-12; 154:1-2; 154:23-156:22, 281:23-282:3. During the divorce action, Rehn did not own any real property, and the trial court in the divorce issued written findings, approved by Christensen, stating that no real property was at issue in the divorce. R. 3944, 154:3-13; 156:1-158:6.

In 2000, i.e., several years after the divorce, Rehn purchased a small two-bedroom townhouse at 4118 Saddleback Road, Park City, Utah (“the Property”), to house himself and his two teenage boys. R. 63-64; 3944, 160:24-161:7; 279:22-280:10. On July 25, 2001, Christensen recorded an “Amended Notice of Attorney Lien” (the “Lien”) against the Property. R. 389. Christensen still represented Rehn at the time and still owed fiduciary duties to Rehn at that time. At trial, Christensen testified as follows:

Q. Okay. So when you record—when you drafted the lien more than 60 days earlier, you obviously were still representing Mr. Rehn; correct?

A. Right. I had not withdrawn.

Q. So you drafted this lien while you were still under a fiduciary duty of undivided, impeccable honesty and loyalty to Mr. Rehn; correct?

A. I am not disputing that I had a duty of loyalty to Mr. Rehn.

Q. Honesty and loyalty?

A. Honesty and loyalty.

R. 3944, 168:10-20. Mr. Christensen also admitted that when he drafted the Lien, he also had a duty to be "careful and diligent." *Id.* at 183:15-21.

The title of "Amended Notice of Attorney Lien" was false. Christensen conceded at trial that he had never recorded a prior lien against the Property, and that the Lien was not an "Amended Notice" of a lien. R. 389, R. 3944, 184:5-7. Christensen also falsified a statement in the "Amended Lien" that the Property was connected to Rehn's divorce action. R. 389. Christensen conceded at trial that Rehn did not acquire the Property until two years after his divorce decree was entered, and that the Findings of Fact and Conclusions of Law issued by the divorce court explicitly stated there was "no real property owned by the parties and thus no allocation is necessary." R. 5-6; 390-391; 3944, 113:15-114:4, 156:1-158:6, 160:24-161:7.

Christensen also falsified the lien to make it appear that the entire principal amount of the lien related to divorce work performed by SSC. For instance, the Lien falsely stated that SSC began working for Rehn on September 29, 1995, and that Rehn agreed to pay SSC for the legal work performed in the divorce action. R. 389. In reality, Mary Rehn did not file for divorce until 1996, SSC did not exist until at least January of 1999, Rehn never made any agreement for services with SSC, and SSC did not perform legal services for Rehn prior to March of 1999. R. 391-2.

Christensen also falsified the amount of the Lien that was related to divorce work. The Lien stated Rehn owed Christensen \$26,807.14 for work associated with Rehn's divorce. R. 389. But according to Christensen's own records, as of July 2, 2001, Rehn only allegedly owed Christensen \$6,198.19 in relation to the trial court divorce action as

of the date the Lien was recorded. R. 393. Christensen's records also demonstrated that some of the legal fees owed were for legal work completely unrelated to Rehn's divorce.

Id.

B. Christensen Originally Recorded the Notice of the Lien without Notifying Rehn, and Christensen subsequently Misrepresented the Reason for the Lien to Rehn.

Christensen originally recorded the Lien without alerting Rehn. R. 393-5. When Rehn met with Christensen two months later and told Christensen that Rehn was attempting to refinance his mortgage on the Property, Christensen still did not disclose that he had recorded the Lien against Rehn's Property. *See* R. 394 and 564. But shortly after that meeting, Christensen recognized that Rehn would discover the Lien during the refinance process, so Christensen decided to issue a letter to Rehn to inoculate against any surprise discovery of the Lien by Rehn. *See id.* Christensen's letter to Rehn stated:

I am told by lenders that you are able to withdraw a higher percentage of your equity if the money is to refinance existing obligations rather than to obtain cash for yourself. In the event it would be helpful, I have filed the enclosed attorney's lien for your use in a refinance. If it turns out that this lien will not be useful to you, I can release the lien.

R. 568 (emphasis supplied). Mr. Christensen conceded at trial that, contrary to the statement he made in his letter to Rehn, Christensen had actually recorded the Lien before Rehn met with Christensen to discuss a refinance. R. 3944, 178:4-15. Mr. Christensen also acknowledged at trial that he was still representing Rehn when Christensen drafted the September 26, 2001 Letter and that he was still "under a fiduciary duty of loyalty and honesty to Mr. Rehn" when he lied to Rehn about the purpose of the Lien. *Id.* at 168:6-9; 177:11-13.

C. Even after Rehn Discharged his Legal Fee Debt in a 2004 Bankruptcy, Christensen Refused to Release the Lien.

On March 26, 2004, Rehn was forced to file for Chapter 7 bankruptcy protection. R. 396. In his bankruptcy schedules, Rehn identified the entire \$43,244.00 of outstanding attorney fees that Christensen had billed Rehn from Christensen's various law practices since 1996. *Id.* Christensen appeared at the meeting of creditors, and Christensen did not file any claim or objection to the bankruptcy court's discharge of Rehn's entire \$43,244.00 legal fee debt. R. 397. On July 7, 2004, the bankruptcy court granted Rehn a Chapter 7 discharge of his debts, including his attorney fee debt. At trial, Christensen admitted that he did not release the Lien after Rehn's bankruptcy discharge. R. 3944, 206:25-207:7; 255:1-23.

In December of 2012, Rehn entered into a contract to sell the Property and discovered that Christensen's Lien was still recorded against the Property. R. 398. Rehn then asked Christensen to release the Lien. *Id.* Christensen refused to release the Lien despite having promised to release the lien in his letter to Rehn eleven years earlier. *Id.* Rehn then filed this action to remove the Lien.

D. Christensen Invoked a Contractual Right to Recover Attorney Fees in Defense against Rehn's claims, including Rehn's Slander of Title Claim.

After Rehn filed suit to remove the Lien, Christensen filed an Answer & Counter-Complaint that alleged that Rehn signed an engagement letter on October 24, 1997, whereby "[Rehn] agreed to pay attorney fees in the event that legal action is taken to enforce the agreement." R. 327-8. Christensen then went on to assert a contractual entitlement to recover interest, attorney fees, and costs not only for prosecuting

Christensen's Counter-claim, but also for defending against Rehn's claims. Christensen's Answer and Counter-claim stated in paragraphs 65 and 66:

65. SSC is entitled to receive \$26,807.14 plus contractual interest at the rate of 18% per annum...

66. SSC is entitled to receive attorney fees and costs...defending itself in this legal action pursuant to its contract with Rehn.

R. 333 (emphasis supplied). The contract upon which Christensen was relying to recover interest, attorney fees, and costs was the Engagement Letter, and specifically language in the Engagement Letter that states that,

In the event legal action is taken to enforce this agreement the law of Utah shall apply and the prevailing party shall be entitled to reasonable costs and attorney's fees.

R. 328.

When Christensen and SSC filed their Motion for Summary Judgment Dismissing Plaintiffs' Claims of Slander of Title and Promissory Estoppel and their Renewed Motion for Leave to Amend Answer and Counter-Complaint, (R. 1981-2287), Christensen again asserted that Christensen had a contractual right under the October 24, 1997, Engagement Letter (the "Engagement Letter") to record a lien against Rehn's Property. R. 1991-1994. Christensen argued that because he had a contractual right to record the Lien, the Lien could not constitute a slander of title. *Id.* If Christensen had prevailed in that argument, Christensen would have then been entitled to seek the recovery of attorney fees on the ground that he had invoked the enforceability of the Engagement Letter to defect Rehn's slander of title claim.

At trial, Christensen again argued that the Engagement Letter gave Christensen the contractual right to record the Lien against Rehn's Property, and that Christensen had the right to invoke the enforceability of the Engagement Letter as a defense to Rehn's slander of title claim. Christensen argued that the preliminary jury instructions should not state as fact that there was no contractual right to a lien, and that Christensen should be able to produce evidence about the Engagement Letter as a contract. R. 3944, 15:7-18:1. In Christensen's opening statement, Christensen argued that by signing the Letter, Rehn gave Christensen the contractual right to record a lien against Rehn's property. *Id.* at 131:5-25. Christensen also argued that Christensen relied on the Letter. *Id.* at 134:21-135:2. Christensen further argued that the Engagement Letter not only authorized Christensen to record the Lien against Rehn's property, but also gave Christensen a reasonable belief that Christensen was justified in doing so, and thus no malice existed. *Id.* at 140:7-14.

Mr. Christensen repeatedly asserted on direct examination that he had a contractual right to the Lien. *Id.* at 169:11-170:1; 174:13-17; 202:2-204:5. On cross-examination, Christensen continued to assert that the Engagement Letter gave him a contractual right to record the Lien. *Id.* at 220:15-221:2; 236:2-4; 242:8-243:15; 256:13-16. On re-direct, Christensen again asserted that the Engagement Letter gave him the contractual right to record the Lien. *Id.* at 262:4-6. On re-cross-examination, Mr. Christensen maintained that the Engagement Letter gave him the right to record the Lien against Rehn's property. *Id.* at 269:16-23; 270:12-15. Christensen then again argued for jury instructions that the parties could have entered into a contractual agreement regarding the Lien. *See id.* at 313:21-318:1; 329:12-15.

After the conclusion of evidence, and prior to closing arguments, Christensen repeatedly asserted that the Engagement Letter gave Christensen the right to record the Lien against Rehn's Property. R. 3945, 124:1-5. Christensen then asserted that the Engagement Letter was the basis of recording the Lien, and that the Letter gave Christensen the right to record a lien against Rehn's Property. R. 3945 at 183:10-23. Afterwards, Christensen continued to assert that the Letter allowed Christensen to record the Lien. *Id.* at 190:20-191:8.

The jury rejected Christensen's argument and found that Christensen acted with malice in recording the Lien against Rehn's Home. *See* R. 3617. The jury concluded that Rehn suffered \$77,752.29 in damages. *Id.*

A few days after the Trial Court issued its Final Judgment, the Utah Supreme Court issued its *Dahl v. Dahl* an opinion addressing Christensen's attempt to obtain \$2.1 Million in attorney fees for a simple divorce in which the Trial Court found that Christensen was ineffective. *See Dahl v. Dahl*, 2015 UT 23, ¶¶ 198-201. The Utah Supreme Court in that case found that Christensen had imposed an unlawful lien on his divorce client's property that was in violation of the Attorneys Lien Statute and Rule 1.8 of the Utah Rules of Professional Conduct. *See id.* at ¶¶ 191-197.

E. **The Trial Court's Denial of Rehn's Motion for an Award of Fees under Hooban.**

After the trial, Rehn moved for an award of attorney fees and costs as the prevailing party pursuant to *Hooban v. Unicity Int'l, Inc.*, 2012 UT 40, and pursuant to the Court's equitable powers. R. 3319-84. On January 8, 2015, the trial court held oral argument on

Rehn's Motion. R. 3942. At the conclusion of the hearing, the trial court denied Rehn's Motion. *Id.* at 52:25-53:1. The trial court based its decision on a narrow interpretation of *Hooban* and *Bilanzich v. Lonetti*, 2007 UT 26. The Trial Court concluded that those cases only allowed a party to recover attorney fees associated with the actual prosecution of contract claims. *See id.* at 53:10-24. The Trial Court went on to conclude that because Rehn's slander of title claim was a tort claim, neither party was entitled to collect attorney fees. *Id.* at 55:16-56:2.

With regard to the Court's equitable powers to award fees, the trial court reasoned that such equitable powers should be "sparingly invoked." R. 3942, 56:8-10. The trial court then stated that Christensen's malice was not "much more egregious than any other claim that successfully proves malice." *Id.* at 56:19-22. In making its finding, the trial court failed to consider that Christensen, a member of the Utah bar, had slandered his own client's title when Christensen owed that client a fiduciary duty of honesty, loyalty, care, and diligence. *See* R. 3944, 168:10-20; 183:15-21. Thus, the trial court failed to consider the heightened duty and corresponding heightened repugnance of Christensen's intentional betrayal of his own client. *See* R. 3942, 57:6-9.

On January 21, 2015, the trial court entered its Order Denying Plaintiffs' Motion for Award of Attorney Fees and Costs as Prevailing Party that Christensen prepared (the "Order"). R. 3721. The Order stated that neither party had a right to recover attorney fees associated with prosecuting or defending against Rehn's slander of title claim. R. 3724. The Order stated that attorney fees on equitable grounds are not justified because there is nothing in the facts of this case that distinguish it from other slander of title cases. *Id.*

SUMMARY OF ARGUMENTS

I. Rehn is entitled to his attorney fees and costs pursuant to UTAH CODE ANN. § 78B-5-826 and the Utah Supreme Court's interpretation of that statute in *Hooban v. Unicity Intn'l, Inc.*, 2012 UT 40. Christensen invoked the enforceability of his Engagement Letter with Rehn as a basis to recover Christensen's attorney fees and costs incurred by Christensen to defend against Rehn's slander of title claim. By asserting the enforceability of the Engagement Letter to defend against Rehn's slander of title claim, and by asserting a right to recover attorney fees pursuant to an attorney fees provision in that Engagement Letter, Christensen triggered Rehn's right to reciprocal attorney fees pursuant to UTAH CODE ANN. § 78B-5-826, as interpreted by the Utah Supreme Court in *Hooban v. Unicity Intn'l, Inc.*, 2012 UT 40, and its progeny. This is necessarily so because the Engagement Letter allowed "at least one party to recover attorney fees." See *Hooban*, 2012 UT 40 at ¶ 12 and R. 328. The Trial Court thus erred when it denied Rehn's Motion for Attorney Fees.

II. The Trial Court erred by characterizing this case as an "average" slander of title case. Christensen, the attorney who represented Rehn, owed his client fiduciary duties of undivided honesty and loyalty, and Christensen intentionally betrayed those sworn duties by falsifying a lien against Rehn's property and then lying about the Lien to Rehn afterwards. Years later, when Rehn gave Christensen the chance to redeem himself by removing the Lien, Christensen refused and instead attempted to use his power as a litigator to force Rehn to pay the falsified amount in the Lien, with interest. These circumstances render Christensen's slander of Rehn's title particularly repugnant, and the trial court erred

by failing to consider those special circumstances when declaring Christensen's conduct to be "average" in a slander of title action and not worthy of an equitable award of attorney fees.

III. Because Rehn is entitled to his attorney fees and costs in the underlying matter, Utah law entitles Rehn to an award of attorney fees and costs associated with this appeal concerning those attorney fees and costs.

ANALYSIS

I. UTAH LAW ENTITLES REHN TO A RECIPROCAL AWARD OF ATTORNEY FEES AND COSTS.

Christensen's assertion that the Engagement Letter gave Christensen a contractual right to attorney fees in defending against Rehn's claims triggered a reciprocal right to attorney fees and costs under the Utah Supreme Court's decision in *Hooban v. Unicity Intn'l, Inc.*, 2012 UT 40. In *Hooban*, the Utah Supreme Court considered the scope of Section 78B-5-826, which 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. § 78-5-826. The *Hooban* Court noted that, "The statute [78B-5-826] clearly provides that it is triggered 'when the provisions' of a contract 'allow *at least one party*' to recover attorney fees.'" *Id.* at ¶ 18 (emphasis in original). The Utah Supreme Court also held that the statute,

[C]onsists of a conditional if/then statement: (a) If the provisions of a written contract allow at least one party to recover attorney fees in a civil action based

upon the contract, (b) then a court may award attorney fees to either party that prevails.

Id. at ¶ 12. The Utah Supreme Court went on to declare that, “an action is ‘based upon’ a contract under the statute if a ‘party to the litigation assert[s] the writing’s enforceability as a basis for recovery.’” *Id.* at ¶ 22. The *Hooban* Court ultimately concluded that,

A party is entitled to reciprocal fee-shifting by statute ‘when the provisions’ of a contract would have entitled at least one party to recover its fees had that party prevailed ‘in a civil action based upon’ the contract. That condition is met in this case because, had Hooban prevailed in this suit, he would have been a party to the contract upon which the suit is based and would have been contractually entitled to attorney fees.

Id. at ¶ 32.

The Utah Supreme Court re-affirmed its position on the reciprocity of attorney fee provisions in *Insight Assets, Inc. v. Farias*, 2013 UT 47. In *Insight*, the Utah Supreme Court quoted *Hooban*, and determined that had Insight prevailed on its mortgage foreclosure, Insight would have been entitled to attorney fees. *Id.* at ¶ 25.

Thus, the statutory trigger for fee shifting is met: the contract allows at least one party, Insight Assets, to recover attorney fees, and consequently the court may award attorney fees to the party that prevails in the action.

Id. (emphasis supplied).

In the present action, Christensen’s Counter-Complaint asserted that the October 24, 1997 Engagement Letter gave Christensen the contractual right to interest at the rate of “18% per annum” for any amounts not paid. R. 333. Christensen also specifically asserted that the Engagement Letter allowed Christensen to recover attorney fees for defending itself in the present action.

66. SSC is entitled to receive attorney fees and costs from the proceeds of the sale of the Saddleback Property that it incurred in prosecuting its claims and defending itself in this legal action pursuant to its contract with Rehn.

R. 333 (emphasis supplied). Christensen filed his Counter-Claim in conjunction with filing his Answer, and Christensen thereafter defended against Rehn's slander of title claim on the ground that the Engagement Letter gave Christensen a contractual right to lien, and that Christensen was enforcing that contractual right when Christensen liened Rehn's Residence. If Christensen had prevailed in that defense, Rehn would have been forced to reimburse Christensen's attorney fees and costs incurred in asserting the enforceability of the Engagement Letter as a defense.

According to *Hooban* and its progeny, Christensen's attempt to invoke the enforceability of the Engagement Letter's contractual right to lien Rehn's residence, combined with Christensen's demand for attorney fees pursuant to the Engagement Letter, should trigger the application of 78B-5-826, because the Engagement Letter allowed "at least one party to recover attorney fees." See *Hooban*, 2012 UT 40 at ¶ 12 and R. 328. If Christensen had prevailed, Rehn would have thereafter faced a demand for attorney fees from Christensen. It necessarily follows that Rehn should be entitled to a reciprocal right to attorney fees given that he was exposed to the threat of an adverse attorney fee award if Christensen had prevailed.

II. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER AN ATTORNEY'S MALICE TOWARDS HIS OWN CLIENT AS AN AGGRAVATING FACTOR IN CONSIDERING AN EQUITABLE AWARD OF ATTORNEY FEES AND COSTS.

An attorney who lies to his own client and undertakes malicious acts against his own client is guilty of a particularly repugnant act. Our system of legal representation is grounded in the policy that an attorney must never intentionally set out to harm his own client. When an attorney intentionally does so and thereafter uses his position of power to force his victim to spend significant legal resources to defend against that malice, the situation falls into that very limited category of cases that require an equitable award of attorney fees. There is no other way to level the playing field given the attorney's upper hand in the legal arena.

There is no question that trial courts possess the power to level the playing field in this kind of situation. The Utah Supreme Court has declared that,

[I]n the absence of a statutory or contractual authorization, a court has inherent equitable power to award reasonable attorney fees when it deems it appropriate in the interests of justice and equity. This power is part of the original authority of the chancellor to do equity in a particular situation.

See Hughes v. Cafferty, 2004 UT 22, ¶ 21 (internal citations omitted). *See also Stewart v. Utah Pub. Serv. Comm'n*, 885 P.2d 759, 782 (Utah 1994) (same). The *Hughes* Court confirmed that "trial courts retain discretion to decide whether an award of attorney fees is appropriate in the interests of justice and equity in any given case." *Hughes*, 2004 UT 22 at n.1 (internal citations omitted). No particular formula governs the equitable award of costs and fees, but trial courts must consider the specific circumstances of each situation.

A court acting in equity is not required to recite its decision in terms of specific factors or to adhere to formulaic tests. Rather, its obligation is to effectuate a result that serves equity given the overall facts and circumstances of the individual case.

Id. at ¶ 24.

In this case, a licensed¹ attorney intentionally falsified a lien against his own client's property. The attorney then recorded the lien against his own client's property without notifying the client. When the attorney learned that the client was about to discover the existence of the lien, the attorney lied to his client about the purpose of the lien in order to lull the client into complacency. When this same attorney had the chance to mitigate the harm caused by his malice years later, the attorney chose instead to try to exhaust his former client in litigation in an effort to extract a pound of flesh.

The trial court failed to consider any of these special circumstances, and instead summarily found that this case was no different from a run-of-the-mill slander of title case. The trial court abused its discretion by failing to consider and recognize that the circumstances of Christensen's slander of Rehn's title constituted a repugnant breach of an attorney's fiduciary duty to a client and elevated the heinousness of Christensen's actions far beyond a 'run-of-the-mill' slander of title case.

¹ Mr. Christensen's bar license may no longer be active when this appeal is decided. The Utah Bar's Office of Professional Conduct has initiated an action against Mr. Christensen for transferring money belonging to his clients into Mr. Christensen's personal bank account so as to obtain a personal loan and failing to advise the lender that the funds did not belong to Mr. Christensen. See Third Dist. Court Case No. 150902323.

III. REHN IS ENTITLED TO HIS ATTORNEY FEES AND COSTS FOR THIS APPEAL.

Rehn should be entitled to an award of his attorney fees and costs for this appeal. It is well settled in Utah that where there is an entitlement to attorney fees and costs below, there exists an entitlement to attorney fees on appeal. *See Federated Capital Corp. v. Haner*, 2015 UT App 132, ¶ 11. This Court has recently stated that, “Utah appellate courts have ‘interpreted attorney fee statutes broadly so as to award attorney fees on appeal where a statute initially authorizes them.’” *Pepperwood HOA v. Mitchell*, 2015 UT App 137, ¶ 13 (quoting *Valcarce v. Fitzgerald*, 961 P.2d 305, 319 (Utah 1998)). Here, Utah’s fee-shifting statute, as interpreted by *Hooban* and its progeny, entitle Rehn to an award of attorney fees. Thus, pursuant to the broad interpretation of attorney fee statutes in Utah, Rehn is also entitled to the attorney fees regarding this appeal.

CONCLUSION

Based on the foregoing, this Court should reverse: (1) the trial court’s denial of an award of attorney fees to Rehn; (2) order the trial court to award Rehn his attorney fees incurred in prevailing against Christensen’s wrongful attempt to enforce the Engagement Letter’s right to lien provision; and (3) direct the trial court to award Rehn his attorney fees incurred in this appeal.

REQUEST FOR ORAL ARGUMENT

Rehn respectfully requests oral argument on this appeal.

DATED this 28th day of September, 2015.

WRONA GORDON & DUBOIS, P.C.



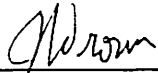
Joseph E. Wrona
Jared C. Bowman
Attorneys for Appellants

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of UTAH R. APP. P. 24(f)(1) because it contains 8063 words, excluding the parts of the brief exempted by UTAH R. APP. P.24(f)(1)(B).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman, 13 point.

DATED this 28th day of September, 2015.

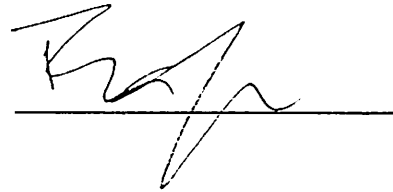


Joseph E. Wrona

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2015, two copies of the foregoing **BRIEF OF APPELLANT CHARLES C. REHN** were hand delivered to the following:

Steve S. Christensen
CHRISTENSEN LAW, COUNSELORS AND PRACTITIONERS
340 East 400 South
Salt Lake City, UT 84111



ADDENDUM 1

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.

Renumbered and Amended by Chapter 3, 2008 General Session

ADDENDUM 2

THIRD DISTRICT COURT - SUMMIT

JAN - 8 2015 11:16 a.m.

FILED BY hly

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Attorneys for Plaintiffs

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

**CHARLES C. REHN, an individual; and
that certain real property located at 4118
SADDLEBACK ROAD, PARK CITY,
UTAH**

Plaintiffs,

v.

**STEVE S. CHRISTENSEN, an individual;
STEVE S. CHRISTENSEN, P.C., a Utah
professional corporation; HENROID,
NIELSEN, & CHRISTENSEN, a Utah
general partnership; CHRISTENSEN,
CORBETT & PANKRATZ, PLLC, a Utah
professional limited liability company;
HIRSCH CHRISTENSEN, PLLC, a Utah
professional limited liability company; and
ALL UNKNOWN PERSONS WHO
CLAIM ANY INTEREST IN THE
SUBJECT MATTER OF THE ACTION.**

Defendants.

FINAL JUDGMENT

Case No. 130500115

The Honorable Ryan M. Harris

This matter came before the Court for a jury trial on December 9-10, 2014, with David M. Corbett of Christensen, Corbett & Pankratz, PLLC representing Defendant Steve S. Christensen ("Christensen") and Defendant/Counterclaim Plaintiff Steve S. Christensen, P.C. ("SSC"), and Joseph E. Wrona of Wrona, Gordon & DuBois, P.C. representing Plaintiff Charles C. Rehn ("Rehn") and Plaintiff/Counterclaim Defendant 4118 Saddleback Road, Park City, Utah (the "Property") (collectively, the "Plaintiffs"). On December 9-10, 2014 the Parties tried the following issues to a jury: (1) whether Christensen and SSC acted with malice when they recorded the Amended Notice of Attorney Lien, Entry No. 00594032, Bk. 01384, Pg. 00187 on July 25, 2001(the "Lien") against the Property; and (2) whether the Plaintiffs suffered damages, and in what amount. Prior to trial, the Court granted summary judgment in favor of the Plaintiffs on the Plaintiffs' cause of action for declaratory judgment, which the Court construed as a quiet title action and deemed the Plaintiffs' cause of action for an injunction moot. Prior to trial, the Court also found that the Plaintiffs had established the first two elements of their Slander of Title claim as a matter of law. Prior to trial, the Court further dismissed the Plaintiffs' claim for wrongful lien as being outside the statute of limitations.

On December 10, 2014, the jury in this action found that Christensen and SSC acted with malice and the jury awarded \$77,752.29 in consequential damages. In the wake of that jury verdict, the Plaintiffs withdrew their promissory estoppel claim in order to conserve the resources of the Court and the Parties.

ORDER AND JUDGMENT

Based upon the findings and conclusions of the Court and the Jury, THE COURT
HEREBY ORDERS, ADJUDGES, AND DECREES THAT:

1. The Plaintiffs' First Cause of Action (Declaratory Judgment against All Defendants) was proven as a matter of law on January 22, 2014.
2. The Plaintiffs' Second Cause of Action (Permanent Injunction against All Defendants) was dismissed with prejudice as moot on January 22, 2014.
3. The Plaintiffs' Third Cause of Action (Slander of Title against Christensen and SSC) has been proven by a preponderance of the evidence.
4. The Plaintiffs' Fourth Cause of Action (Promissory Estoppel against Christensen and SSC) has been withdrawn.
5. The Plaintiffs' Fifth Cause of Action (Wrongful Lien against Christensen and SSC) was dismissed as a matter of law on January 22, 2014.
6. SSC's First Cause of Action (Enforcement of Lien Against the Saddleback Property) was dismissed as a matter of law on January 22, 2014.
7. The Court therefore grants relief and money damages to the Plaintiffs on their Slander of Title Claim against Christensen and SSC in the following amounts:
 - a. \$77,752.29, representing the special damages of attorney's fees and costs that Rehn paid to remove the cloud placed on his title by the Lien;
 - b. Post-Judgment Interest at the rate of ~~2.27%~~ per annum; and

2.27%

~~c. Additional costs and attorney fees as the prevailing party in the amount of~~ ²


\$ 0 (RH)

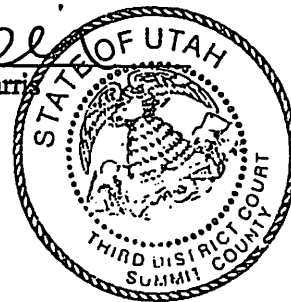
8. The total amount of the monetary judgment awarded to Rehn is \$77,752.29, plus ¹ ~~the additional costs and attorneys' fees to in the amount of \$~~ ^(RH) 0, for total award of 0.
\$ 0

(RH) 9. The total award shall accrue interest from the date of this Final Judgment at the 2.27% rate of ~~2.25%~~ per annum.

10. This Final Judgment is the final order of the court in this case, DATED this 8th day of January, 2015. and no further order is required. (RH)

BY THE COURT:


The Honorable Ryan M. Harris
Third District Court Judge



ADDENDUM 3

The Order of Court is stated below:

Dated: January 21, 2015
12:25:12 PM

/s/ RYAN HARRIS
District Court Judge



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In The Third Judicial District Court in and for
Summit County, State of Utah

CHARLES C. REHN, an individual; and
that certain real property located at **4118
SADDLEBACK ROAD, PARK CITY,
UTAH**

Plaintiffs,
v.

STEVE S. CHRISTENSEN, an individual;
STEVE S. CHRISTENSEN, P.C., a Utah
professional corporation; **HENROID,
NIELSEN, & CHRISTENSEN**, a Utah
general partnership; **CHRISTENSEN,
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professional limited liability company;
HIRSCHI CHRISTENSEN, PLLC, a Utah
professional limited liability company; and
**ALL UNKNOWN PERSONS WHO
CLAIM ANY INTEREST IN THE
SUBJECT MATTER OF THE ACTION.**

Defendants.

s

**Order Denying Plaintiffs' Motion for
Award of Attorney Fees and Costs as
Prevailing Party**

Civil No. 130500115

Judge Ryan Harris

This matter came before the Court on Plaintiff's Motion for Award of Attorney Fees and Costs as Prevailing Party. The Court held a hearing on January 8, 2015 to discuss the motion. Plaintiffs were represented by Joesph Wrona, and Defendants were represented by David Corbett. Plaintiffs

asserted three grounds for an award of attorney fees: (1) through the retainer agreement between Mr. Rehn and Mr. Christensen and his law firm; (2) by virtue of Utah Code Ann. § 78B-5-826; and (3) through the Court's inherent equitable powers to award attorney fees when required by justice. Having received the arguments of the parties, and finding itself fully advised of the premises, the Court makes the following ruling:

FACTUAL BACKGROUND

1. On October 24, 1997, Charles Rehn ("Rehn") signed a retainer agreement ("1997 Retainer") with Henriod, Nielsen & Christensen ("HNC"). Paragraph 15 of the retainer agreement stated, "In the event legal action is taken to enforce this agreement the law of Utah shall apply and the prevailing party shall be entitled to reasonable costs and attorney's fees."
2. Plaintiffs filed their Verified Complaint on February 15, 2013. The complaint asserted five causes of action: (1) A declaratory judgment seeking a judgment that the lien was unenforceable and void *ab initio*; (2) A permanent injunction prohibiting efforts to enforce the lien; (3) Slander of Title; (4) Estoppel; and (5) Wrongful Lien.
3. In their counter-complaint, Defendants sought enforcement of the lien. Defendants cited to the 1997 Retainer as the basis for the amounts owed and in support of their claim that Rehn had consented to the lien against his property. The counter-complaint included a request for attorney fees in prosecuting and defending the matter pursuant to the 1997 Retainer.
4. On January 22, 2014, the Court entered its Order on Summary Judgment Motions. The Court granted summary judgment to Plaintiff on his first cause of action (declaratory judgment) and determined that the second cause of action (injunctive relief) was moot. The Court denied summary judgment to either party on the slander of title cause of action because of the factual issues related to Defendants' intent when the lien was recorded. The Court denied

summary judgment on the estoppel cause of action because of factual issues. And the Court dismissed the Wrongful Lien cause of action. Finally, the Court dismissed Defendants' counterclaim.

5. The parties then proceeded to trial on the Slander of Title and Estoppel causes of action. However, after trial concluded, Plaintiffs' withdrew their Estoppel claims.

CONCLUSIONS OF LAW

1. Generally, attorney fees are awarded only if authorized by statute or contract. *Eldridge v. Farnsworth*, 2007 UT App. 243, ¶ 51, 166 P.3d 639. A party may recover attorney fees under Utah Code Ann. § 78B-5-826 where that party prevails in a civil action based upon a promissory note, written contract, or other writing executed after April 28, 1986, which writing contains an attorneys' fee provision that allows at least one party to recover attorneys' fees. Utah Code Ann. § 78B-5-826. As described by the Utah Supreme Court, "an action is 'based upon' a contract under the statute if a 'party to the litigation assert[s] the writing enforceability as basis for recovery.'" *Hooban v. Unicity Inten., Inc.*, 2012 UT 40, ¶ 22, 285 P.3d 766 (citing *Bilanzich v. Lonetti*, 2007 UT 26, ¶ 15, 160 P.3d 1041). If provided by contract, they can only be awarded in "in strict accordance with the terms of the contract." *Foote v. Clark*, 962 P.2d 52, 54 (Utah 1998). For this reason, a trial court must separate fees related to contractual claims from those fees related to other claims "for which there is no entitlement for attorney fees." *Cottonwood Mall Co. v. Sine*, 830 P.2d 266, 269-70 (Utah 1992).
2. The language of the contract in question only allowed a party to recover attorney fees in a legal action brought to enforce the terms of the contract. The slander of title claim was not brought to enforce the terms of the contract and was not otherwise based upon the contract.

Neither party had a contractual right to recover attorney fees associated with prosecuting or defending against the slander of title claim. Therefore, Plaintiffs cannot recover any fees for their prosecution for the slander of title cause of action pursuant to the contract or Utah Code Ann. § 78B-5-826.

3. A court may, however, exercise its inherent authority to award attorney fees where it is appropriate in the interest of justice and equity. The Court, however, declines to exercise its equitable powers in this case. Although the jury found that the Defendants acted with malice when they recorded the subject lien, the Court does not find that the facts of this case distinguish it from other slander of title cases such that justice requires an award of attorney fees in addition to those already awarded by the jury, which the jury determined to be reasonably necessary to remove the cloud of title from Mr. Rehn's property. Absent such facts to distinguish this case from other slander of title of case, Plaintiffs argument would allow a party to recover all attorney fees in every slander of title case. The Court is not willing to exercise its discretion in that manner.

Wherefore, premises considered, and good cause appearing, IT IS HEREBY ORDERED that Plaintiff's Motion for Award of Attorney Fees and Costs as Prevailing Party is denied.

This order is signed and entered of record as indicated on the top of the first page.