

2017

**Kathy Engle, Petitioner/Appellant v. Wende M. Throne,
Respondent Judy Engle, Petitioner Eldean Roy Engle, Petitioner
Britta Lynn Wilcken, Petitioner Alexa Thayer, Petitioner and Bullock
Law Firm, Former Counsel To the Estate Appellees : Brief of
Appellant**

Utah Court of Appeals

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Kathy Engle, Pro Se; counsel for appellant.

Deborah Bulkeley, Woodall Carr Law Firm; counsel for appellee.

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IN THE UTAH COURT OF APPEALS

In The Matter of The Estate of Homer Engle

KATHY ENGLE,
Petitioner / *Appellant*

v.

WENDE M. THRONE, Respondent
JUDY ENGLE, Petitioner
ELDEAN ROY ENGLE, Petitioner
BRITTA LYNN WILCKEN, Petitioner
ALEXA THAYER, Petitioner
AND
BULLOCK LAW FIRM,
Former Counsel to the Estate
Appellees.

PUBLIC

APPEAL Case No. 20170382-CA

BRIEF OF APPELLANT

Appeal from the Third Judicial District Court, Salt Lake County, Utah,
from Probate, before the Honorable Judge Keith Kelly, District Court Judge
Case No. 103901948

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ORAL ARGUMENT REQUESTED

List of All Parties to the District Court Proceedings

1. List of all parties to the proceeding in the Appellate Court and their counsel:

Kathy Engle, *Appellant / Petitioner / Pro Se*
Judy Engle, *Appellee / Petitioner / Pro Se*
Roy Engle, *Appellee / Petitioner / Pro Se*

Wende M. Throne, *Appellee / Respondent*
Woodall | Carr Law Firm
Counsel Debra Bulkeley

Alexa Thayer and Britta Lynn Wilcken, *Appellees / Petitioners*
Anderson | Hinkins Law Firm
Counsels John W. Anderson and Kurt W. Laird

Bullock Law Firm
Karen Bullock, Kreeck - Former Counsel to the Estate of Homer Engle,
and former Counsel to the Special Administrator, Wende M. Throne)
Kiff and Christensen. PC.
Counsels Kirk G. Gibb & Michael F. Skolnick
Representing the Bullock Law Firm

2. List of all parties to the proceeding in the District Court not part of the

Appellate Court proceedings:

The Estate of Homer Engle
Wende M. Throne, Special Administrator of the Estate of Homer Engle, *Respondent*

Former Counsel / Creditor: York Howell Guymon ("YHG"), Counsel Stephen Mayfield
Represented the Estate of Homer Engle and the Special Administrator,
Wende Throne, *Respondent*

Former Counsel / Creditor: Fabian Van Cott, Counsel Stephen R. Sloan
Represented the Estate of Homer Engle and the Special Administrator,
Wende Throne, *Respondent*

The Homer Engle 2010 Trust,
Wende M. Throne, Trustee of the Homer Engle 2010 Trust

Continued:

Former Counsel / Creditor: Isaac Paxman Law, LC Isaac Paxman represented himself and former counsel to Roy Engle and Judy Engle - *Petitioners* and Represented Judy Engle's entities - *Petitioners*:
Eagle Landing, LLC (involuntarily dissolved)
Black Diamond LLC (aka Black Diamond Properties)
Crystal Star LLC (involuntarily dissolved)
Farmers Insurance, Judy Engle, agent
Enco Sole Corporation (registered in state of Nevada)
Mennco Corporation (involuntarily dissolved)

Creditor: Hi-Country Estates, Phase II Homer Owners Association – (“HOA”)
Represented by: Morris Sperry – Counsels Lauren DeVoe & Quinn Sperry

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- F 4/6/2017 - Finding of Facts & Conclusion of Law to Close Probate dated April 6, served on the relevant parties April 7, 2017. [R.8380-8395]
- G 2/21/2016 Transcript of Hearing to Close Probate [R.10924-R.11074] Excerpts thereof
- H 11/14/2013 Final Approved Settlement Agreement [R.14211-R14237] which included: the September 3, 2013 Settlement Ex. "A" [R.14215-R.14229] the Offer email to the parties for Settlement [R.14229-R.14237] and

Exhibit C -Priority 1, 2 and 3 Claims, classified in three groups for payment setting out the order of payment per claimant. [R.14237 and R.799]

- I 10/29/2014 Transcript of hearing [R.11313-R.11361]
Order denied SA, Wende Throne's Motion to break the Settlement, which included her two daughters, as beneficiaries of the Homer Engle 2010 Trust.

Purpose: Wende's two daughters claimed they were not notified, they were excluded from Settlement, there was a conflict of Interest with their mother, Wende and there was a need for fact discovery [R.11328 ¶17-25]

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- K 2/21/2017 Order on Distribution of Tangible Items [R.8093-R.7680]
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Wende claimed belonged to her she filed Temporary Restraining Orders 11/23/10 against the Siblings to protect the Coins. [R.11075-R.11165] [R.11135-R.11147]

D-Court ruled the coins were assets of the Estate [R.11143 67 ¶20]. The D-Court stated Wende argued today something different [R.11142 ¶¶6-16]

The Estate's Attorney Mayfield YHG represented Wende, individually his position: Wende owned the Coins, he did not represent the Estate during this hearing. [R.11135, ¶¶4-18] Conflict of interest

Mayfield stated: "When Homer Engle died, she was the surviving joint tenant of those boxes. Therefore, by operation of law, she's the owner of the contents of those boxes." [R.11135.59 ¶18]

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Jurisdictional Statement

The Court of Appeals has jurisdiction over this case pursuant to the Order entered on February 12, 2018 by the Utah Court of Appeals and pursuant to Utah Code Ann. §78A-4-103(2)(j). March 22, 2018, the Court Ordered the Brief deadline is April 2, 2018.

Introduction

The probate case involved the Probate with the District Court's ("D.Court") approved of a "Settlement" Agreement of the Estate of Homer Engle ("Estate"). The Decedent had three adult children and he passed away on November 21, 2010. "Wende" Throne is the daughter of "Judy" Engle. Wende is both the Special Administrator ("SA") of the Estate and Trustee of Homer Engle 2010 Trust ("Trust"). Wende and her two daughters, Britta Wilcken and Alexa Thayer are the beneficiaries of the Trust.

The main focus of the disputes was the ownership interest and record title owner of nine real properties, including 3 twenty acre Lots.

The disputes occurred when Homer Engle transferred numerous invalid quick claim deeds into his Trust, when he did not have record title at the time he transferred the deeds on or about February 3, 2010.

Ms. "Kreeck" prepared and recorded these deeds and was fully aware Homer Engle did not have record title to the properties and she was fully aware Homer Engle could not claim 100% ownership to the nine properties listed in the Will she filed with the Probate on November 23, 2010.

After acquired title does not apply to a conveyance by
quitclaim deed. Utah Code Ann. §57-1-10(1)(2)

Additionally, there were disputes of Homer's medical capacity where he was not in sound mind to execute documents. The Decedent's medical records, documented in 2010, were explicit in diagnosing the Decedent's medical condition. The diagnoses included mobility's such as renal failure, along with memory deficiency for dementia, sun downing, several heart surgeries and other serious medical conditions. Counsel Kreeck, had full access to the Decedent's medical records when Wende delivered documents to Homer Engle to execute on November 5, 2010. Homer Engle signed his Will and the Bullock Law Firm's \$44,594.00 Trust Deed. The Trust Deeds were recorded on both the Crystal and State Street properties creating wrongful liens. The Trust Deed was nullified with Crystal trial ruling. Also, there were defective notary acknowledgements which notary was the Bullock Law Firm's in house para legal / notary. To further complicate the disputes, Counsel Kreeck on behalf of Wende filed Temporary Restraining Orders ("TRO's") [R11512 and R.11523] on the Decedent's three adult children, which was two days after his death. As stated in the TRO, Ms. Kreeck acknowledged the Decedent was not the record title owner of these properties. This most certainly was contrary to the Decedent's Will and the Trust language.

These improper invalid quitclaim deeds / transactions set the stage for legal wrangling between creditors, the parties and attorneys for over seven years. To curtail the overwhelming ligation costs for escalating attorney fees with an equitable resolve to

the real property disputes and claims between the Estate, the Special Administrator, the Trust, Wende, individually and the Decedent's adult children agreed to a "*Settlement Agreement approved by the D.Court September 3, 2013*". November 14, 2013, shortly after the Creditor's hearing, the Settlement agreement was finalized with final approval by the D.Court which was binding on all the parties. *Settlement included all persons in the world who had any interest in the probate.*

Disputes occurred with inconsistent Orders and the trial Court's interpretation and resolution of Settlement terms regarding ambiguous conflicting clauses and conflicting probate laws and other statutes inferior to the Settlement terms. The Settlement was the governing statute. [R.11314] [R.11329 ¶22-23] The Trial Court could only rule to carry out the terms of the Settlement Agreement. The Court agreed the Settlement "squarely meets" the standard of Utah Code Ann. §75-3-1102(3) [R.11336¶13-15]

There are disputes with the D.Court's Orders to pay the Special Administrator's legal fees including a dual representation (conflict of interest). There are disputes with closing out the Estate without a correct accounting for the Estate's funds, accounting and assets not fully disclosed by the Special Administrator.

Other disputes will be identified in the Statement of Issues.

Appellant believes these disputes are a matter of law involving due process, fair and equal rights, the U.S. Constitution 14th Amendment, contract law and the manner in which the Trial Court interfered with the contract terms and suppression of evidence.

Appellant believes the Appeal will prevail which is most favorable of the Appellant.

STATEMENT OF ISSUES

Issue 1: November 14, 2014, the District Court gave final approval of the Settlement Agreement, a compromise governed by Utah Code §75-3-1101 which is *binding on all the parties thereto* and governed by Utah Code §75-3-1102(3), whereas, *all further disposition of the estate is in accordance with the term of the agreement.*

The question is, did the District Court's err with its ruling in carrying out the terms of Settlement? Whether its ruling conflicted with other statutes? Whether its ruling violated any constitutional laws, both the State and U.S. Constitution, 14th Amendment, due process for fair and equal treatment?

Whether there was an abuse of discretion?

Issue 2: The District Court granted quiet title on the remaining property distributions as stated in the April 12, 2017 Order to close out the Estate. [R.8421 ¶2] [Add. E] However, It has been over 18 months, since the Payson and Price sold whereas, the recordation and proper distribution for these properties have not occurred without defeats.

Did the District Court err in not provide individual quiet title orders and timely distributions to the Judy and Kathy for the Woods Cross, the Cherokee Properties and the lots for 1/6 and 5/6 interest to Judy and Kathy respectfully?

Did the District Court err when it allowed the Special Administrator (SA), Wende to deliberately hinder a timely and effective transfer of these properties to Judy and Kathy free of defects allowing proper recordation of the quiet title orders and the Executor Special Warranty Deeds, when distribution of these property should have occurred after the sale of the Payson and Price Properties? *1 [R.14225 Title ¶3] [Add H]. Both these properties should have transferred with a Quiet Title Order.

Issue 3(a): Did the District Court resolve ambiguities within the Settlement according to the intent of the parties “most consistent” with the terms of Settlement (on p.10 Title) [R.14225 ¶ 1] [Add H] regarding the Hi-Country judgments and HOA fees which would prevent the District Court from granting an order in quiet title on each of the 3 lots to Judy for 1/6 interest and to Kathy for 5/6 interest?

Whether the District Court’s ruling in the Finding of Facts compromised a quiet title order on the property distribution? [R.8392 ¶ 6] [R.8393 ¶ 14] and

Issue 3(b): Did the District Court err to encumber the Cherokee Property with an attorney lien, which property Judy should have received free and clear of any claims of the Estate or any other Party? [R.14225 ¶ 3] [Add.H]

Issue 4: Did the District Court err when it denied payment on Kathy’s Priority 1 Claim when there were sufficient funds to pay the balance owing of \$11,759.36? [R.8382 ¶ 9a.] [Add.F]

*1 The Price Property sold 2/4/205 [R.8382 ¶ b.]. [See Add F]. The Payson Property sold 9/29/2016 [R.5455] Both properties transferred with a Quiet Title Order

Did the District Court err when it denied \$3,075.75, the appraised value of Coins, to be applied as a partial payment on Kathy's \$11,759.36 claim?

Did the District Court interfere with the Meet and Confer Order to convey tangibles in full or partial satisfaction of Kathy's claim, which was directed to be paid under the September 3, 2013 Settlement? [R.14286 ¶ 8] [Add. J]

Did the District Court abuse its discretion and violated Kathy's due process for fair and equal treatment?

Issue 5: Whether, the District Court erred when it ruled Kathy's Objection to Settlement was untimely?

Issue 6: Whether, the District Court erred when it paid \$115,454.25 to YHG's for improper legal fees which included \$60,315.25 pursuant to Utah Code §75-3-805(b), rather than a Priority 2 claim stated in Settlement in the Finding of Facts to close out the Estate?

Whether, YHG's actions were appropriate under the Rules of Professional Standards?

Did the District Court err when it by-passed Kathy's superior claim, at the discretion of District Court to override the Settlement in order to pay YHG's legal fees in full satisfaction?

Did the District Court use conflicting statutes with the terms of Settlement in its payment to YHG. whereas, the District Court's authority comes from the statute governing compromises, pursuant to Utah Code §75-3-1102(3): the court can only rule

to carry out the terms of Settlement?

Did the Special Administrator's Counsel violate Rules of Professional Standards?

Did the Special Administrator's Counsel commit fraud upon the Court and in conjunction with the SA?

Issue 7: Did the District Court err to allow a disobedient Special Administrator to be grossly negligent in her duties in protecting and preserving the Estate's assets to include (but not limited): to timely execute deeds without defeats for recordation for proper distributions, of the real properties to Judy and Kathy; to provide a proper accounting according to Generally Accepted Accounting Principles (GAAP); to disclose all rental income; to properly disclose and account for the Rental Plus assets, which the Decedent's held a 20% interest; to pay legal fees which was for her personal benefit; to comply with District Court Orders; to provide Hi-Documents to Judy and Kathy; to waste Estate's assets on hard money loans to pay for property taxes, excessive legal fees, and other expenses which were preventable?

Was the District Court derelict in his duties to allow the Special Administrator for all of the above and for not taking action to limit the Special Administrator's duties with supervision from the D.Court?

Standard of Review: If clearly erroneous under the circumstances of the Case *Anesthesiologists Assoc., v. St. Benedict's*, 852 P.2d 1030, 1040 (Utah App. 1993). De Novo, Abuse of Discretion is the standard of review.

Conclusion of law are reviewed de novo, without deference to the decision of the trial Court. In re Adoption of Baby 2012 UT 35, ¶ 41, 308 P.3d 382, (No deference is given to the lower court's analysis of abstract legal questions). My review of conclusions of law is accordingly de novo.

Standard of Review: Calculation of reasonable attorney fees is in the sound discretion of the trial court, and will not be overturned in the absence of a showing of a clear abuse of discretion, *Moore v. Smith*, 2007 UT App 101, ¶ 53, 158 P.3d 562 (quoting *Dixie State Bank v. Bracken*, 764 P.2d 985, 988 (Utah 1988)), while the question of “Whether a party is entitled to an award of attorney fees is a legal conclusion... a Review for correctness, *IHC Health Servs. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 38, 196 P.3d 588; see also *Meadowbrook, LLC v. Flower*, 959 P.2d 115, 116 (Utah 1998) (“We review a trial courts conclusions of law [regarding attorney fees] for correctness, granting no deference to the trial judge's legal determinations.

Rule 23(b)(6) is a question of law that we review for correctness.” *Mackey v. Cannon*, 2000 UT pp 36, ¶ 9, 996 P.2d 1081

Standard of Review This case is subject to constitutional and statutory restraints regarding due process. This Court should employ “a correctness standard, which incorporates a clearly erroneous standard for the review of subsidiary factual determinations.” *State v. Guzman*, 95 P.3d 302, 306 aff'd, 2006 UT 12, 133 P.3d 363. “We review a trial court's exercise of its contempt power to determine whether it exceeded the scope of its lawful discretion,” *Shipman v. Evans*, 2004 UT 44, ¶ 39, 100

P.3d 1151, which “is subject to constitutional and statutory restraints regarding [due process],” *Chen v. Stewart*, 2005 UT 68, ¶ 36, 123 P.3d 416 (internal quotation marks omitted). *Gardiner v. York*, 233 P.3d 500, 507 (Ut. App. 2010) *cert. denied*, 238 P.3d 443 (Utah 2010).

Preservation: This issues are preserved through the terms of Settlement, oral arguments during the February 21, 2017 hearing to close out the Estate and the transcript thereof and through hearing transcripts, various Motions, Objections filed on the Probate’s docket filed in the 3rd District Court.

STATEMENT OF CASE

I. Statement of Facts:

Issue No. 1: State and U.S. Constitutional issues of due process, fair and equal rights. The following constitutional provisions, statutes, ordinances, rules and regulations are determinative of the appeal are of central importance and are set forth at Addendum D: The D.Court conditionally approved the Settlement Agreement on September 3, 2013 with final approval on November 14, 2013. The governing statute for compromises for this probate include:

Utah Code Ann. §75-3-1101 – A compromise of any controversy as to admission to probate ... *Is binding on all the parties thereto...*

Utah Code Ann. §75-3-1102(3) – “Upon the making of the order and the execution of the agreement, *all further disposition of the estate is in accordance with the terms of the agreement.*”

Utah Constitution Article I, Section 11 [Courts open – Redress of Injuries.] Rights

All Courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party. [Add. D]

U.S. Constitution, Article IV – Due Process and Fair & Equal Rights and Property Rights.

Section 1 – All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The right to make or enter into a contract is not an economic right, it is a matter of civil or political liberty and comes under the liberty provision of due process clause of the Constitution and not under the property provision since it is not a property right.

McGrew v Industrial Comm’n 96 Utah 203, 85 P. 2d 608 (1938)

Issue No. 2: The distribution of the Cherokee, Woods Cross and the 3 Hi-Country Lots were not distributed to Judy and Kathy Engle in Quiet title, per the terms of Settlement [R.14225 ¶ 1] [Add . H] and pursuant to the April 7, 2017 Order. [R.8421 ¶ 2] [Add. E]

Pursuant to Settlement: “Title will be conveyed to each party in whatever form they prefer. This could be, for example, by having a court order quieting title in the name of one the existing entities ... and then having the court declare that the party is the sole owner of that entity. This would both (1) protect the party from

personal liability and (2) strengthen our position as against any creditors. But each party can decide what they want.”

“For clarity, any property distribution to a Party under the terms of this Agreement will be distributed free and clear of any claims of the Estate or any other Party.”

Pursuant to the D.Court’s Final Order on April 12, 2017 to Close Probate: [R.8421

¶ 2] [Add.E]

Pursuant to Settlement [R.14225 ¶1] “The real properties, as identified in Exhibit A, are transferred to Kathy... Judy... and Wende... respectively, and *each shall have quiet title to the respective real property as provided in the designating deed.*”

These defective Executor, Special Warranty deeds prevented recordation of the Order, which stated each shall have quiet title.

Additional hearings were required to correct these defeats and for distribution of the properties. The August 25, 2017 hearing, the SA signed the ESW deeds.

The County Recorders rejected the Order again, the same problem, No Exhibit A attached to the April 12, 2017 Order and the Homer Engle 2010 Trust, as the Grantor was not listed on the deeds. Also, Wende failed to attach Exhibit A to the Order, to allow recordation of the ESW deeds. And, Wende failed to list the Trust as the Grantor, including Wende, as the trustee. Wende was aware of this requirement, when the Payson Property sold. The sale required Wende to execute the sale, sign off as the trustee of the Trust and the Estate.

There is no excuse, Judy and Kathy's properties could not transfer properly, the same as the Payson Property did, when it was sold to a third party, as Ordered on September 29, 2016. [R.5316-5321] [R.5455-5460]

All property distribution should be the same for the individual quiet orders. The transfers should be all the same which includes "Executory General Warranty Deeds" not just Executory Special Warranty Deeds to Judy and Kathy and for them to share a deed in a quiet title order, when the Settlement state "each" will have quiet title.

Issue No. 3: Properties were not distribute to Judy and Kathy free and clear of any claims of the Estate or any other Party:

Issue No. 3(a). There appears to be an Ambiguity in Settlement regarding the Hi-Country Estates, Phase II claims for HOA fees and their two after death judgments. The following makes clear the statue overrides this ambiguity which does not interfere with a quiet title action or the intent of the parties as it relates to UT Code §75-3-1102(3) and the intent of the parties for the compromise. Regardless of this ambiguity, Hi-Country cannot perfect on any claims for HOA fees or for the enforcement of an erroneous, [R.8388 ¶42] [Add.F] fraudulent judgment which included 3 liens recorded in 2006 on these individual three 20 acre lots.

There has not been any affidavit recorded on these lots to renew its 2006 liens. These liens include delinquent HOA fees in its default judgments which have expired pursuant to the six year statue Utah Code §78B-2-309. Not only did the D.Court rule the

judgments are erroneous but the judgments are erroneous because the HOA 2006 liens are now over 12 year old and have not been renewed pursuant to Utah Code §78B-6-1802 and §78B-6-1803.

There is no record or entry in the County recorders which documents there was any affidavit recorded to renew the 2006 liens or where the two judgments were recorded on the 3 Lots. Also, Pursuant to Utah Code §78B-5-203, after death judgments do not attach to properties as a land lien. Collection on the HOA fees and judgments are only through the administration of the party's Estate.

Pursuant to UT Code §78B-5-203:

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the judgment is not a lien on the real property of the deceased party, but is payable in the course of the administration of the party's estate. [Add. C]

The D.Court ruled the *Estate is insolvent* and no funds are available to pay the HOA judgments:

Pursuant to the Finding of Fact Order, the District Court ruled:

The Hi-Country judgments lien from ... has not been challenged in this case, and ... is not affected by this Court's Order. This Court's Findings, Conclusion & Order are entered without prejudice to any subsequent challenge to that lien, that affected persons may choose to bring in another case. *No funds are available from the Estate, however, to pay the Hi-Country claim and the Hi-Country did not object to the Settlement Agreement* that effectively subordinated payment of the Hi-Country claim. [R.8392 ¶ 6] [Add. F]

The Association did not object to the approval of the Settlement Agreement and agrees it is bound by it. [R.8388 ¶ 39] [Add. F]

The association seeks to keep its judgment liens, although it has not contested the settlement, which did not provide for payment of the judgment entered by Judge Medley on August 26, 2011, in the case of Hi-Country Estate Phase II Homeowners Association v. Homer Engle, Utah 3rd D.Court Case No. 070918271. [R.8388 ¶ 40]

Additionally, Hi-Country did not submit any billings to the Estate for HOA fees. The deadline to file any claims was March 18, 2011, when all claims were filed. Creditor claims were filed March 18, 2011 as shown on the Appeal Court's Index^{*2} [Page.2]. There is no record to support any filing of a HOA claim against the Estate for its HOA fees or judgments. Pursuant to Utah Code §75-3-803, the HOA is forever barred from collecting on its claims for HOA fees and its two default judgments. These judgments were filed August 26, 2011, after the death of the Decedent on November 21, 2010 in another D.Court and were not docketed in the probate of the Decedent but were in the name of Decedent.

Hi-Country did not appear at the creditors' hearing to prefect their claims for ongoing HOA fees and their two after death default judgments. The HOA has not provided evidence of any claim for HOA fees owed by the Estate or that they have the authority to bill the Estate any HOA fees against these 3 lots, therefore, there should not be an issue preventing the D.Court from granting a separate quiet title action on the each of the 3 lots to Judy and Kathy's for their respective 1/6th and 5/6th interest thereof.

^{*2} The Court index on Page 2 -March 18, 2011 was the deadline to file claims against the Estate. There is no record, where the HOA filed any claims against the Estate prior to that deadline.

Issue 3(b): The Cherokee Property was encumbered by a lien, which was not part of Settlement, was not included on the ESW deed attached to Exhibit A on the April 7, 2017 finding of facts, and was not consistent with the April 12, 2017 final order to grant title to Judy for this property. The Executor's Special Warranty Deeds was changed during the August 25, 2017 hearing to allow Paxman to encumber the property. A subject to clause was added to the Deed. The subject to clause allowed Paxman to lien the Cherokee Property for his legal fees. The D.Court denied Judy and Kathy's objections, and directed the SA to sign the deed with Paxman's lien stated on deed under the subject to clause.

This ruling negated the D.Court's Order's to close out the Estate for properties distributed in quiet title [R.14225 ¶ 2] [Add H]; it conflicted with the April 7, 2017 finding of facts approved deed as attached in Exhibit A (which did not have a subject to clause for attorney liens) [R.08397] and this ruling unilaterally reversed the Settlement terms to distribute properties in quiet title [R.14225, Title]

Settlement provides payment of attorney liens and prevents attorneys, as a creditor of the Estate from attaching to a party's distribution, especially when the Cherokee property has not been distributed to Judy. [R14225]

"For clarity, any property distributed to a Party under the terms of this Agreement will be distributed free and clear of any claims of the Estate or any other Party.

The D.Court's ruling, was clearly an Abuse of Discretion.

Issue No 4 - Kathy Engle's Priority 1 claim, Pro Se Administrative Expenses was denied for insufficient funds, whereas there were funds available, if not for the D.Court's interference with the compromise.

Further, the parties stipulated to the \$3,075.75 value in coins to be applied to Kathy's Priority 1 claim [R.8094 ¶4, R.7685]*³ as a partial payment, which the D-Court denied during the February 21, 2017 hearing to close out the Estate. This was contrary to the Meet and Confer Order*⁴ which stated tangibles could be applied to creditor's claim as [R.14286 ¶8] and as stated on Ex. C-1 in Settlement. [R.14237 ¶1] *"Claims in each class are paid out of probate assets, meaning Payson + Price + Tangibles."*

The D-Court did not afford equal treatment to Kathy to receive these coins, as payment against the balance of her Priority 1 claim. The D-Court stated the coins were not personal property and the coins were considered "new money", The "new money" coin proceeds were paid on claims in Priority 2 category which were attorney fees (including legal fees to YHG). All these claims were inferior to Kathy's Priority 1 claim, pursuant to the Meet and Confer Order to distribute tangibles and the Settlement. [R.14286 ¶ 8] [Add. J]. This clearly is an Abuse of Discretion.

*³ Order on Distribution of Tangibles [R.8094 ¶4] The parties stipulated that allocation of all other tangibles personal property items of the Estate including on the inventory prepared by Kathy, attached here as Exhibit-A, had been agreed – See Ex "A" [Add.K]

*⁴ Meet and Confer Order, stipulated agreement (part of Settlement) signed by Wende, Judy, Roy and Kathy - Decedent's property authorized Kathy to have full responsibilities to sell/distribute the tangible personal property.

The Finding of Facts included rogue^{*5} payments of legal fees, a direct conflict with the compromise and as stated in the terms of Settlement.

Issue No. 5: The District Court ruled Kathy Engle's Objection to Close Settlement was "untimely". Contrary to the Finding of Facts, Kathy's Objection was timely emailed to the relevant parties on 1/30/2017 [R.7393-7519] ^{*6} and timely filed on 2/1/2017 as docketed on the probate file. See the Appeal Court's index P.35, which shows the Objection was docketed on 2/1/2017. Allowing for the 3 day statutory time, for mailing, URCP Rule 6(c). The Objection was filed timely with the D.Court.

Issue No. 6: YHG's legal fees were paid outside of Contract, and included legal fees for a dual representation, the fee were excessive, unreasonable, and improper and included Professional Standard issues. There were many objections filed.

Issue No. 7: Wende did *not* protect and preserve the Estate's assets nor did she effectively manage the State Street Property. Pursuant to UT Code §75-3-708 and §75-3-714.

Wende was a disobedient SA who: who was noncompliance with the D.Court's orders; deed distributions were incomplete, untimely and not prepared according to the terms of Settlement or the D.Court's instructions. Wende used improper accounting methods for the accounting of rental income / expenses. The Sa mismanaged Estate

^{*5} Webster's Dictionary of *rogue*: exhibiting maverick-like behavior, or bucking the status quo –and in today's political arena as "*going rogue*"

^{*6} Addendum Q [7393-7519] Kathy's Objection to Settlement, See Certificate of Service emailed on 1/30/17, the deadline to file objections.

funds, used Estate funds for her personal benefit, failed to disclose all the Decedent's assets*⁷

There is a pending *order to show cause, filed against Wende*, when she failed to deliver all 20 boxes of the Hi-Country documents to Judy and Kathy, as order by the D.Court.

Wende was negligent in her management of Estate funds, payment of property taxes on State Street risking tax foreclosure, legal fees were not paid per the status quo to pay the expenses "etc." on the management of the State Street Property.

The terms of Settlement, allowed the State Street property to be distributed to Wende, until distribution and the Payson and Price was sold, Wende, was tasked with the management of the State Street Property, *as status quo Meaning, she was to continue to use rent proceeds from units 2-5 to pay utilities, maintenance, etc.* just as now. [R.14224 ¶ 6] [Add.H]

Wende did not manage the property using the rent proceeds to pay property taxes and allowed this property to go into a public tax foreclosure sale twice. The Estate's legal fees were not paid. Wende, did not follow D.Court's order to obtain a loan on State Street.

The loan was later diverted to the Payson Property with a hard money loan, which Wende was working for the lender and received commissions. This loan was expanded

^{*7} The Decedent' held an interest in an LLC which was hidden by Wende, who managed and controlled that LLC.

to include payment to YHG and highly contested by the parties and creditors. There was a deadline for Wende to get the Payson property listed for sale. Wende stalled off the deadline to allow investors from the attorneys, representing her two daughters, to purchase the property. An offer came from another buyer but Wende turned down the offer. The investors subsequently withdrew their offer. The property still was not listed for sell.

The hard money loan was now due, one year later, if interest was not paid timely it would be in default and foreclosure to move forward on the Payson Property. Although, Wende had the funds to pay the loan interest, she allowed it to default and the lender refused to renew. Wende then sought out another hard money lender and closed within a day of the State Street property from going up for public auction.

If Wende had paid the interest on the hard money loan, the property would not defaulted and the lender could have renewed the loan as stated in the terms. The default created penalties and hiked up legal fees to bail out Wende from this mess. These fees and the penalties were the negligence of Wende and she should be held accountable for.

II. Procedural History: The, Decedent passed away November 21, 2010.

November 23, 2010: Probate and the Decedent's will was filed with the D.Court [R.11442 - R.11489]. Wende filed an application for SA and appointed as the SA. [R11490] [R.11509] Wende filed temporary restraining order on the siblings. [R.11512] [R.11523]

December 8, 2010, Kathy filed a motion to remove the SA.

March 18, 2011, the deadline to file creditors' claims.

April 6, 2011, Temporary restraining orders filed on Wende to prevent her from selling the tangible property, she was currently in the process of and to stop the sale of any real property. [R.11899] Stipulated agreement signed April 20, 2011 [R.11919]

November 18, 2011, Proof of publication to file claims was noticed. [R.12347]

October 3, 2012, D.Court signed order on Wende to comply with Kathy's Motion to provide a complete accounting, producing bank statement, substantiated receipts and other documents. [R.12743]

October 16, 2012, Counsel Karen Kreeck withdrew from representing the SA and the Estate, which was one day prior to the deadline for Wende to comply with October 3rd Order. [R.12784]

December 4, 2012, Order to show cause was filed against Wende for contempt of Court RE: the October 3, 2012 Order to provide the accounting. [R.12805]

January 29, 2013 – Contempt Hearing on Wende [R.14-16] Wende testified. The D.Court scheduled another hearing to hear testimony from the siblings. The scheduled hearing never occurs as it was continually re-scheduled. Whereas, the siblings did not get their due process. Then Settlement occurred.

March 15, 2013, Motion was filed to suspend the duties of the SA [R.13102]

June 10, 2013 – The 3 day Crystal trial. R.38-43] At the request of the parties, a ruling was postponed due to possible mediation.

September 3, 2013 -The D.Court approved a Settlement Agreement [R.13836], with final approval on November 14, 2014. [R.14211] Pursuant to Utah Code Ann. §75-3-1101 and §75-3-1102(3).

November 26, 2013 –The D.Court approved the Order Conferring Authority to Sell Tangible Property and stipulated agreement to re-assign management of real and personal properties to Judy and Kathy, as defined in Settlement, per the distribution to the parties. [R.14283] [R.14265] This agreement was part of Settlement.

November 26, 2013 - Kathy paid off the Crystal pending foreclosure. The D.Court ruled on the Crystal trial: the Decedent did not own the Crystal property; the promissory note was nullified and cancelled out on SA's prior Counsel Kreeck's lien. [R.64-66]

September 17, 2014 - A creditor's hearing held. [R956] The purpose of the hearing allowed any creditor to object to the Settlement, whereas the parties (as defined in P.1 ¶1) [R.14216¶1], signed the Settlement on September 3, 2013 with conditional court approval.*⁸ There were no objections from any creditor or attorneys. [R.11328]

The Hi-Country Estate Phase II, "Home Owners Association" (HOA) did not appear at the hearing or file any objection in which to preserve their two after death (of the Deceased) default judgments (\$44,594 and \$84,000) and any alleged HOA fees on the three 20 acre lots. In, facts the probate docket file does *not* show where the HOA filed a claim against the Estate for HOA fees or its two judgments.

*⁸ Settlement 3, 2017 Hearing – Transcript entered on 10/23/13 [R.15377-15414]

The only objection to the approval the Settlement was the Special Administrator, Wende and her two daughters (beneficiaries of the Homer Engle Trust).

October 29, 2014, Hearing on Wende and her two daughter's Motion to break the Settlement.

The Court denied Wende's objections [R.11314-11361] to break the Settlement and ruled to preserve the Settlement. See transcript of hearing [Add.I]

The D.Court stated in making his decision he needed to evaluate whether the Settlement Agreement is appropriate and under UT Code 1102,Subpart 3 [R11329 ¶8-10] and upon making the order and execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement. [11329 ¶22-24] The D.Court determined it was and ruled:

I find that the Settlement Agreement squarely meet that standard of 75-3-1102, subpart 3. And I'm going to take a bit of time to talk about why that is the case. [R.11336 ¶13-16]

I'm very concerned that we continue to carry out and execute the terms of the Settlement [R.11342 ¶19-20]

I'm very concerned the Payson Property not sold. I'm inclined to set up a status hearing involving the Payson property and the other issue. [R.11342 ¶21]

I'm approving the settlement Agreement, I'm. striking all the trial dates that we had previously set... I'm denying the motion to reopen discovery. [R.11343 ¶15-16]

December 2, 2014 -The Findings of Facts was entered [R.1153]

II. Disposition: The D.Court did not grant individual quiet orders on the Cherokee Property and the 3 Lots, as stated on the April 12, 2017 Order: each shall have quiet title. [R.08421¶ 2] [Add: E]

This Order has fatal flaws which prevent valid transfer of real property distributions to Judy and Kathy. The Order did not have the Executor Special Warranty deeds, the same as the Payson Property, when it sold. The legal description, with correct legal descriptions were not attached as Ex. "A". Although, another hearing was held to clear up these defects, the distributions are still incomplete; the properties do not have a separate quiet title order on each property and the Cherokee Property remains in the Estate's name encumbered by Paxman's lien.

Also, Wende unilaterally changed Judy's ESW Deed by transferring Judy's 1/6th interest in Lot 124 to some fictitious entity not registered with the Division of Commerce and was not one of Judy's entities. Judy was *not* allowed to have her interest in the entity of choice... The D-Court nor Judy were aware of the change. Wende's interfered with the Judy's ownership interest. This interference created a problem with the boundary line agreement between Judy and Kathy for the 3 lots.

The D-Court ruled in favor of Wende's rendition of the ESW deeds. It was later discovered, Wende's deed to the Cherokee property did not include the Trust as the grantor, which was the Order of the Court. Utah Country reject this deed.

The April 7, 2017, Findings of Facts included the D.Court's approved ESW deeds attached as Exhibit A [R.08397]. The Cherokee Deed did not include the subject to

clause for Paxman's lien. The Cherokee ESW deed was revised at the August 25, 2017 hearing, after the Findings of Facts. This revised deed added the subject to clause allowing Paxman's attorney lien to encumber the property. Judy and Kathy objected to the rendition of Cherokee deeds. The encumbrance was a wrongful lien, as pursuant to how title vested from the estate as stated in Settlement and according to the April 12, 2017 Order granting Quiet title to each party, including Judy. [R.8421 ¶2]

The D.Court did not grant quiet title on the designated deed whereas, the designated deed was not attached as Exhibit A and the Order granting quiet title was not a separate quiet title action for each of the respective real property.

SUMMARY OF ARGUMENT

As of the today, the main purpose of Settlement, has not been completed which included the property distribution and the prevention of excessive aggressive legal fees.

The Cherokee Property remains in the Estate's name and quiet title was not granted individually on each of the properties allowing for unencumbered properties

The D.Court erred in its Findings of Facts to close the Estate, when it applied the wrong legal standard to pay Kathy's Priority 1 and Priority 2 for legal fees including counsel for the SA. The ruling, that as a matter of law, was paid under a difference set of laws in paying creditors' claims.

This was in conflict with the Settlement governed by UT Code 75-3-1102(3) for an approved binding compromise.

The D.Court's ruling was detrimental to Kathy. The D.Court ruled funds were not available to Pay Kathy's Priority 1 Claim balance of \$11,759.00 when it authorized \$60,315 [R.8389 ¶45] [Add. F] to YHG and only \$5,284.00 to Paxman. [R.8390 ¶47].

This was also detriment to Paxman because he took a back seat to YHG's payment when these two attorneys should have been paid equally as Priority 2 claims. Pursuant to UT Code §75-3-1102(3) for an approved binding compromise.

This probate is a very lengthy and complicated case (over 7 ½ years) as it deals with so many issues. There are seven main issues, overlapping each other.

Appellant respectfully requests this Court to consider for review to revise and remand the D-Court's ruling regarding the issues in this brief. As a matter law, the D.Court only had the authority to enforce the terms of Settlement Pursuant to UT Code 75-3-1102(3) and the D.Court agreed with that statute when he denied the SA's motion to break the Settlement. [R.11329] [R.11329 ¶22-24] See the transcript of the hearing [R.11314] [Add. I]

The D.Court's ruling are an Abuse of Discretion and goes to heart our State and U.S. Constitutions for due process. The ruling harmed Kathy and possibly others and is a matter of public interest.

ARGUMENT

Utah law especially favors settlements in cases - such as this one -involving family disputes. In re Estate of Flake, 2003 UT 17, ¶23, 71 P.3d 589

Family settlement agreements are favorites of the law, it is the general policy to encourage these types of agreements.

An accepted stipulated settlement agreement... constitutes a binding and enforceable contract between the parties. *Brighton Corp. v. Ward*, 2001 UT App 236, ¶24, 31 P.3d 594; *accord Murray*, 737 P.2d at 1001.

The plain terms of the Settlement Agreement dictate the outcome of this appeal.

There are two areas of the Settlement where the terms are ambiguous or conflict with each other: the contract ambiguities in regards to the Hi-Country HOA fees.

[R.14222 ¶2] and [R.14225 ¶¶1, 2 Title]

This clause authorized the D.Court to grant quiet title in an entity of the party(s)' choice to be *free and clear of any claims of the Estate* and any other party.

Utah law requires a court to consider extrinsic evidence when determining whether a contract is ambiguous. Although the intent was to resolve the entire universe of potential claims among the parties, the Agreement nevertheless contains an ambiguity clause which conflicts with the intent of the parties and the distribution of the properties in quiet title to clear title to the properties for a free and clear transfer to the parties.

This resolve falls under contract law. Where the contract is ambiguous in its terms, then the trial court must apply the rules of construction to determine the intent of the parties as a matter of law prior to any determination.” *In re Estate of Sims*, 259 Ga.App. 786, 788(1), 578 S.E.2d 498 (2003) (citations omitted); The construction of a contract is a question of law for the court. the trial court was authorized to resolve the ambiguity. See

generally *Archer*, supra. *Envision Printing, LLC v. Evans*, 336 Ga. App. 635, 640, 786 S.E.2d 250, 253–54.

If the parties do not create a complete and binding agreement, the courts are powerless to do it for them, or afford a remedy for a breach. [Cits.]’ ” *Southeastern Underwriters v. AFLAC, Inc.*, 210 Ga.App. 444, 446(1), 436 S.E.2d 556 (1993).

The objective theory of contracts, which means that whether the parties entered into an agreement does not depend on whether the parties had the same subjective understanding of their agreement, that is, on whether their ‘minds met’ on the same understanding. Rather, it depends on whether the parties agreed to the same, express terms of the agreement, and on whether those terms constitute an enforceable agreement. *City of Canby v. Rinkes*, 136 Or.App. 602, 902 P.2d 605, 610 (1995). *Perez-Denison v. Kaiser Found. Health Plan of the Nw.* 868 F. Supp. 2d 1065, 1087 (D. Or. 2012)

Interpretation of contracts must be accomplished under the “law of the contract.” And this law is, in turn, determined by one of the prevailing “rules,” which refers to the place of making, performance or intention. The tendency of the law is to apply in contract matters, the law which the parties intended to apply.

The intent for the Settlement: it was Kathy’s intent to have free and clear property as a condition to give up title and ownership interest in certain other properties as a means of compromise.

The trial court granted quiet title on its April 12, 2017 order but, failed to properly execute the order for issue quiet title on each of Judy and Kathy’s properties. They were

no legal or valid encumbrances on the Woods Cross, Cherokee Properties or on the 3 Lots.

Both the D.Court and the HOA agreed it was bound by the terms of Settlement and the D.Court ruled the HOA has two erroneous judgments.

The D.Court further ruled the Association's two judgments were in error and the Estate did not have funds to pay the judgment liens. [R.8388 ¶42]

Review of the file shows the Order and *Judgment entered was in error* in that it awarded \$87,411.86 in fees and costs, as well as \$44,595 for unpaid assessments. The fees requested in the plaintiff's Affidavit totaled only \$42,760.75, with costs in the amount of only \$244.61; the Affidavit did *not* request \$87,411.86 in fees and costs. Thus, the judgment was entered in error. The erroneous proposed form of judgment was served on Ms. Kreeck, while she was serving as counsel for the Estate of Homer Engle, prior to its entry by the Court, but there is *no record that Ms. Kreeck filed any objection to the form of judgment containing the serious error.*

These judgment should not be enforced in any other District Court whereas, the judgments are in the Decedent's name and filed after death. UT Code §78B-5-203. The Judgment process cannot moved forward on a Deceased Individual, even in a different District Court. The Hi-Country HOA judgments are only payable through the Administration of the Estate. The Estate is insolvent so funds are not available to pay the judgments/liens and liens cannot be recorded on the three lots.

Pursuant to Utah Code Ann. §78B-5-203 – the judgment is not a lien on the real property of the deceased party, but is payable in the course of the administration of the party's estate.

Additionally, there is no record documenting where the HOA billed, for assessments on the 3 lots, after the six years statue. This period may begin with the year

2012 to 2017; if assessments are enforceable against the property under the 6 year statute. Pursuant to Utah Code Ann. §78B-2-309.

There is no record docketed on the probate file where the HOA filed a claim for HOA fees. Thus, the HOA's assessment claims are barred forever pursuant to Utah Code Ann. §75-3-803.

There is no record of any other HOA fees billed to the Estate, which should have been directed to Kathy Engle per the terms of Settlement P.9, last ¶. There are no liens recorded on any of the three lots after 2006. The 2006 liens on the 3 lots have *not* been renewed pursuant to Utah Code Ann. §78B-6-1802. As a result, the 3 lots are unencumbered. The D.Court has the authority to grant quiet title to Judy and Kathy for their interest in these lots as it ruled in its Order to Close of the Estate April 12, 2017. [R.8421¶ 2] *"Specifically, each shall have quiet title".*

The D.Court and the HOA acknowledges the fact the Estate is insolvent, whereas, funds are not available to pay the HOA, as a priority 3 claimant for their two erroneous default judgments which included the un-renewed 2006 lien*⁹. After, six years, a lien un attaches on real property and is void, if not renewed by recording an affidavit in the County records, on the property. Utah Code §78B-6-1803 and §78B-2-309

*⁹ The 2006 liens filed by the HOA on the 3 lots are invalid as a matter of law. UT Code 78B-6-1803. The HOA failed to renew the liens after the 6 year statute but erroneously included the delinquent fees in its August 28, 2011 default judgments, filed after the death of the Decedent and are not in rem where the judgment liens can attach to real property. UT Code 78B-5-203

The HOA agreed to be bound by the terms of Settlement. [R.8388 ¶39] [Add. F] whereas, the 3 lots should have been distributed free and clear of any claims of the Estate or any other Party as stated in the Settlement.

The HOA is a party to the Estate because they have claimed an interest in the Estate for the Judgments and HOA fees against the 3 lots claimed as the Estate's assets.

The Settlement does not provide any attorney, party or creditor the right to lien the property, prior to distribution of the properties to Judy and Kathy Engle for the Hi-Country three lots and for the Cherokee Property. As a result, Counsel Paxman has a wrongful lien on the Cherokee Property and it must be released.

With the removal of Mr. Paxman's lien on the Cherokee Property and the fact the two Hi-Country judgments/liens are not encumbrance in rem on the any of the four lots (Lot 90, 123,124 and 130), stated on the HOA's default Judgements, filed after the Decedent's death and the fact the HOA agreed it would be bound the Settlement, there are no other liens or encumbrance on Judy and Kathy's properties.

There was a clear path for the D.Court to grant quiet title on these two properties, as a condition of Settlement and *it was most consistence* with the intent of parties at the time they agreed to Settlement (i.e. contract law as stated above) and as Ordered on the April 12, 2017 Order. This issue was, quiet title was not granted to each party separately for each property, which allowed for recordation without defeats.

The Hi-Country Estates Phase II, Association and Mr. Paxman are parties to the Settlement, this included closing the Probate of Deceased, Homer Engle. These two

creditors / parties cannot come back after any party to the Probate or party / as creditor of the Settlement and are barred forever by Utah Code Ann. §75-3-803 and by *Res Judicata*:

Pursuant to Farrell v. O'Brien 199 U.S. 89 (1906):

Succession to a deceased person's estate partakes in some degree of the nature of proceeding in rem, in which all *persons in the world who have any interest are deemed parties*, and are concluded as upon *res judicata* by the decision of the court having jurisdiction.

The D.Court had jurisdiction to grant quiet title to Judy, for the Woods Cross, the Cherokee Properties and for 1/6th and 5/6th interest in the 3 Lots to Judy and Kathy, respectfully, especially when there are no liens recorded on these on these properties.

There are specific terms set out the Settlement, the D.Court must rule according to those terms. It was a critical condition of Settlement to pay claims in three priorities. If there are no funds to pay the legal fees in full, the language is clear, the legal fees do not get paid in full but pro rata. [R.14221 ¶2]. The settlement clearly states the Estate is insolvent [R.14222 ¶6].

The creditor, Fannin, Reinhart and Hi-Country were offered a settlement to satisfy their claims. Pursuant to Settlement: [R.14222 ¶6]

if we are unable to reach a deal with a creditor, that satisfies the condition then... go to court and attempt to persuade the judge to overrule the creditor's objections "*on the grounds that*

the estate is insolvent."

All attorneys agreed to Settlement, and became creditors of the Estate and a party to Settlement when they have any interest in probate. Farrell v. O'Brien 199 U.S. 89

(1906). The attorneys were fully aware the Estate was insolvent and the risks they were taking, including former estate attorneys representing the Estate who did not object to Settlement. YHG was a creditor of the Estate and did not object to Settlement, when YHG did a lateral moved from representing Wende, individually to break the Settlement [R.11324-11361]*¹⁰ to representing the Estate and Wende, Special Administrator.

It was mandated, it was the law, for compromises, the D.Court can only rule on those terms within Settlement pursuant to the governing statute, UT Code 75-3-1102(3).

Pursuant UT Code 78B-6-509, regarding the Utah Judicial Code for Particular Proceeding and Powers of Court or judge states: when Settlement Agreement is reached, *it is binding on how legal fees are paid.* In the spirit of justice, this statute aligns with our Settlement, for the payment of legal fees. The payment of YHG's legal fees should be categorized as a Priority 2 claim, alongside Paxman and paid equally (pro rata), whereas, the parties set up this specific category for payment of all legal fees. Wende's prior counsel was also a Priority 2 claim with ongoing legal fees but the fees stopped when he withdrew. YHG replaced her previous counsel and now YHG has ongoing legal fees in the place of the SA's prior Counsel. YHG by substitution became a Priority 2 claim and a creditor of the Estate and paid as a Priority 2 creditor.

The D.Court took a very different view in how to pay YHG and used other statutes in doing so. These statutes were not according to tiers of priority rather for payment of

*¹⁰ See the Transcript for the 10/29/14 Hearing – the D-Court denied Wende and her 2 daughter's motion in their attempt to break the Settlement

administrative expense without any levels of payment, which the D.Court could use its “own” discretion in how to pay administrative expense and what it viewed as fair and reasonable, pursuant to UT Code §75-3-805(b). It was simple and very clear, the D.Court did want to carry out the terms of Settlement and the D.Court’s ruling was no longer consistent with an approved binding legal contract. The D-Court previously paid YHG’s prior legal fees pursuant to UT Code §75-3-718. [R.1677].

In the Findings of Fact, the D.Court changed^{*11} the statute to UT Code §75-3-805(b) for the payment of all legal fees. [R.8389¶ 47] including YHG’s legal fees, stating: YHG’s fees are of “superior statute.”[R.8386 ¶30]

Pursuant to the Finding of Facts [R.8390] The D.Court ruled:

¶47 “In light of the priorities mandated by Utah Code §75-3-805(b), the Court finds and concludes that these fee allocations should supersede and replace any payment orders previously entered in the case.

The D.Court confirmed in the ¶47 it deliberately renounced the Settlement agreement terms and replaced the Settlement terms with his own ruling when the D.Court stated: “the fee allocations should *supersede and replace any payment orders previously entered* in the case.

The Districts Court’s statement clearly shows an *Abuse of Discretion* and its ruling must be reversed whereas, the ruling exceeded the D.Court’s lawful authority. A claimant

^{*11} The court was not consistent with the statute he used to pay YHG legal fees. Prior legal fees were paid under UT Code §75-3-718. [The Finding of Facts, another statute was used: UT Code §75-3-805(b)]

who was improperly paid, is liable to return the property improperly received. Pursuant to UT Code §75-3-909.

There are also issues regarding due process under the U.S. Constitution 1st Amendment and the State Constitution. [Add. D] These type of rulings harms the general public. We lose confidence in our justice system.

Additionally, the D.Court, interfered with the Settlement when it failed to pay Kathy's Priority 1 claim, pursuant to terms of Settlement which terms negate the Judge's ruling. Kathy's Priority 1 claim for Pro Se expenses (classified as administrative, expenses alongside all the attorneys) are paid superior to legal fees whereas, legal fees are in a lower priority, as stated in a Priority 2 class. YHG's legal fees should be included in this tier, "most consistent" with the intent of the Parties.

In the Judge's eye, this may not have appeared fair and reasonable, but it was the law. The law dictates the statute to govern compromises and the D.Court simply chose to rule in a different direction.

The D.Court did not have the authority to jump out the contract to make a ruling of fairness under a different statute to pay the SA's legal fees in full or to determine if those legal fees are fair and reasonable, when in fact, it was not fair nor reasonable. This ruling was at the detriment of Kathy when her Priority 1 claim was not paid for lack of funds, when those funds were diverted to pay YHG legal fees. This ruling side stepped Paxman's legal fees. Paxman was to receive legal fees paid pro rata the same as which YHG's legal fees should have been paid: if not for the D.Court's interference.

Kathy had the superior claim and it should have been paid over all legal fees. The D.Court was under the tight grip of the Settlement to pay Kathy's Priority 1 claim first, in full satisfaction, then move down to Priority 2 for legal fees.

This is the method stated in Settlement and is not only reasonable and fair but the right thing to do but apparently may not have been in the light of the Judge's eye.

The D.Court's ruling on Kathy's Priority 1 Claim must be reversed. The D.Court exceeded its lawful authority. This is a constitutional issue regarding Kathy's due process under the statues of the U.S. Constitution 1V Amendment and the State Constitution [Brief P.10] [Add. D].

Appellant, gave up more than what she received for Settlement and seeks a favorable resolve with the Appeals Court to cure some of the harm resulting from the D.Court's rulings.

The \$20,000 for Pro Se Expenses, was one of the conditions, Kathy agreed to a compromise. To Kathy, this was an unfair compromise but due to all the circumstance, conflicts and issues, it was time to move on. Kathy received lesser properties in value and agreed to accept of the worse properties: Crystal Property was in a dilapidated state with no rental income and in need of repairs to comply with zoning violations requiring infusion of cash. The other property was the 5/6th of the Hi-County 3 lots, with a building moratorium and approximately \$5,000 in annual unfair HOA fees.

The validity of the HOA is currently disputed in the Supreme Court^{*12}

Settlement is now over 4 years without valid property distribution to Judy and Kathy. This is very discerning, frustrating, overwhelming, stressful and without financial pit falls.

Kathy funded the Estate with her personal funds (still paying interest on that loan) to stop a foreclosure on the Crystal Property and spent numerous hours to rescue the State Street property from a tax foreclosure. Managing the real and personal properties was a huge endeavor and costs were not recouped, there was no rental income to draw from and now, at the end of the day there are no funds to pay Kathy's claim. Being a Pro Se litigant, required enormous amount of expenses, especially travelling from Colorado to Salt Lake and paying hotel costs. Kathy paid mediation costs not only for her but that of Judy and Roy. The Court on-line service is \$30/month continually since December 2010. How is this fair and reasonable to take away funds ear marked in Settlement to go to Kathy then strip away those funds allocating the money to attorneys who continued to represent the Estate, knowing the Estate was insolvent and they were creditors of the Estate.

^{*12} See Case No.20170342-SC

The plain and simple language of the Settlement dictated how and when legal fees would be paid and if there was a gap, the D.Court could fill in that gap, “*most consistent*” with settlement and the intend of the parties.

If we later discover that there were gaps where the parties neglected some detail or operated on differing assumptions, then the parties are legally obligated to work together in good faith to resolve those details in a manner “*most consistent with what we have agreed to*”.

If the parties are unable to do this, they agree the court will fill in those gaps based on what it believes is fair and reasonable and “*most consistent with the terms we agreed to*”.

The key words in the paragraph are: “*most consistent with what we have agreed to*” which coincides with the contract law for ambiguities as stated above. The ambiguity can be resolved based on the *intent of the parties*. It is clear in this compromise the intent of the parties, at the end of day is to have free and clear properties, [R.14425 ¶3] [Add. H] which clearly was the purpose to setting aside two properties to pay the insolvent Estate’s debts and set up priority of payment for all claims. The Payson and Price property were those two properties.

It was the intent of the parties to group all attorney in a Priority 2 tier. This did not occur with the D.Court’s ruling. The D.Court did not state there was a “gap” which he filled in with its ruling instead, the judge just went in a different direction and ruled on statutes conflicting with the governing statute for compromises. This is “going rogue” and not acceptable under our judicial system, where legislation has the power to change the law. Judges only have the authority to rule on those laws and in this case, the law governing compromise was the only authority the D.Court had.

Kathy agreed to Settlement with the expectation the Settlement was a binding contract and the terms of Settlement would be enforced by the D.Court.

There were many attorneys who signed on to assist the SA with Probate, then Settlement and finally closing it, as one by one they each withdrew

The only remaining attorney representing the SA was the same attorney who represented her in a failed attempt to break the Settlement and who had her back personally for the coins; for default on taxes; for the default on the Payson hard money loan; for her improper accounting and mismanagement of funds and especially when Mayfield represented Wende in an individual capacity at the coin trial to break the Settlement. How can YHG's fees be paid under the umbrella of probate when there clearly was a conflict of interest / a dual representation. between Wende, individual, Wende, the Special Administrator, and Wende, the trustee of the Decedent's trust, and as a beneficiary of 50% interest in the trust.

YHG was not representing the Estate nor the Settlement between all parties, the creditors, in a fair and reasonable capacity. That is also clear when YHG hired another attorney (from his own firm) to work jointly with Mayfield (YHG). This new attorney attended hearings alongside Mayfield and stood in front of the judge to argue on behalf of YHG to defend YHG's legal fees from attack from all parties except, Wende and YHG, Hasting argued the accounting was proper. This clearly is abusive and excessive legal fees for an insolvent Estate existing on risky hard money loans. These loans paid YHG's legal fees and were funds needed to rescue the State Street Property from tax foreclosure.

This foreclosure was preventable, if Wende had paid the property taxes, which her duties, as a Special Administrator mandated. Settlement did not allow the Estate to be further encumbered with more debt when the Estate was insolvent. These unnecessary, excessive and improper legal fees could have been prevented by the SA with proper management and preserving the assets. See Kathy's Objection to Closing out the Estate regarding the improper, excessive legal fees of YHG and its dual representation of Wende [R.7393 -R7519] and the amount of funds paid to YHG prior to close the Estate. [Ex. J]

YHG filed additional requests for legal after the Settlement was closed on April 12, 2017. [R.8119] Although, Kathy filed an objection [R.8187], the D.Court paid YHG the full amount requested.

The accounting was not prepared according to GAAP. There were no monthly reports to account for the four units Wende managed, with an estimated monthly rental of over \$2,100. Wende failed to produce monthly records of all rental income including the amounts she claimed she deposited into the Estate's checking account. These deposits were made, at random intervals, with undocumented (sometimes meager) amounts of rents deposited. Wende refused to account for the monthly income dispute repeated requests from Judy and Kathy. Although, there were written rental contracts and minimal vacancies the rental deposits did not match the scheduled rents The deposits were not consistent with the monthly ongoing rental income. Wende reported rental income on the amount and time she chose to deposit funds into the Estate checking account.

This type of accounting was not a cash basis nor an accrual basis accounting.

Wende's methods of accounting are improper not according to GAAP. Wende's accounting opens the door for, *fraud, waste and abuse of the Estate's funds*, at the betterment of Wende. See Kathy's Objection to closing out the Estate regarding Wende's accounting. [R.7393- R7519] and the Procedure History of this brief which identifies the Orders Wende did not comply with and the Temporary Restraining Order, restraining her to stop her from selling / disposing the tangibles.

As, mandated, Wende's primary duty included payment of property taxes. UT Code §75-3-708. Wende's excuse for not paying the State Street property taxes: there was no money to pay property taxes. Subsequently, the State Street Property went into foreclosure with a pending public auction sale. It, appeared this was of no concern to Wende whereas, she was not on a fast track to resolve the issue: even after, Kathy convinced the auditor to pull the property off the foreclosure list.

This very situation occurred again next year, taxes were not paid, no funds and no loan to pay the taxes. It is clear to the Appellant, Wende could become a bidder to buy the property back for pennies on the dollar.

With the pressure of the D.Court, the creditors and the other parties, Wende finally obtained a hard money risky loan to borrow money required to stop the 2nd tax foreclosure. This occurred at the midnight hour of the public auction.

Wende used risky hard money loans not only to pay property taxes on pending public foreclosure sales but she borrowed additional money to pay \$45,139 to YGH for legal fees. [R.7393-7519 Ex. J]

Wende stated she received commissions on these loan as she was a loan officer and connected in some capacity with Capital Assets. Wende's position, it was a blessing for us to get these loans to stop pending tax foreclosures.

Pursuant to UT Code §75-3-711, improper exercise of power, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty. Pursuant to UT Code §75-3-909 any property, estate assets, funds misappropriate, must be returned to the Estate.

Conclusion and Relief Sought

For the foregoing reasons, and those reasons set forth in this brief, this Court should reverse and remand to the District Court to amend its Finding of Facts and the Order to close out the Estate of Homer Engle and directing the District Court to Order the following:

1. Grant quiet title to Judy and Kathy, in the entity of their choice and issue a separate quiet title for each property.

2. The real property distributions to Judy and Kathy will be completed by a title company of their choice. The Executor General Warranty Deeds must have both the Estate of Homer Engle and the Homer Engle 2010 Trust as named grantors on each deed. The Special Administrator will be fully responsible for the payment to the title company

for all associated costs for issuing title insurance, closing fees and any other cost charged by the title company for proper distribution of the Woods Cross Property, the Cherokee Property and the three individual 20 acre parcels of real land (the Hi-Country Property) to Judy and Kathy as set forth in the terms of Settlement.

3. Reverse the YHG's legal fees to allow payment of Kathy's Priority 1 claim balance of \$11,659.63 to be fully satisfied, pursuant to UT Code §75-3-909 or any other action as deemed proper by this Court.

4. Determine if YHG is entitled to any legal fees and if so, legal fees are paid pro rata with Paxman as Priority 2 claims or if the Special Administrator is determined to be fully responsible for the payment of the YHG's legal fees.

5. Issue an Order for a court appointed master accountant to prepare a full and complete accounting according GAAP of the Estate's assets, rental income, and accounting of coins sold by the Special Administrator. The accounting will include the Decedent's interest in the Rental Plus property(s), including rental income from the property until time of his death to the, April 12, 2017. The period of the accounting is from the appointment of the Special Administrator, until the close of probate on April 12, 2017.

6. Issue an Order to the Special Administrator to cooperate in providing the Master Accountant all information necessary to prepare the accounting, which includes (but not limited to) all bank statements, deposits, receipts (which fully substantiates all expenses),

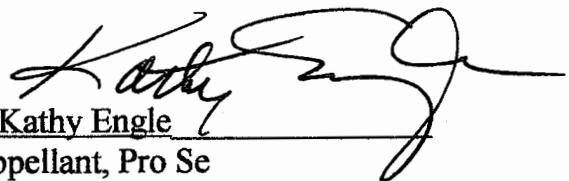
all rental contracts, etc. Kathy may participate in provide additional information, as needed.

7. If the Master Accountant determines there are missing funds, or misuse of the Estate's funds and assets the Special Administrator, Wende will be individually responsible for deficient amounts, waste of funds, and waste of assets.

8. Directing the District Court to rule Kath Objection's to the Closing out of the Estate was timely. The evidence submitted within the Objection is allowed and it is not suppressed; especially in regards to the Special Administrator's accounting and the YHG's legal fees.

Enter any such further order this Court deems necessary.

Respectfully submitted this 2nd day of April 2018.


/s/Kathy Engle
Appellant, Pro Se

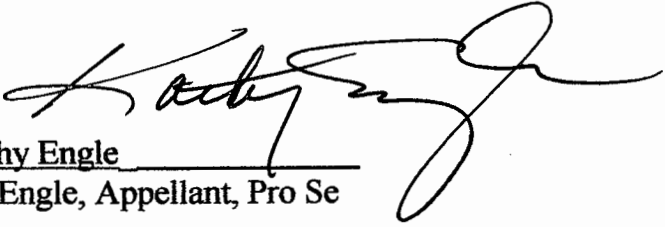
Certificate of Compliance

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(a)(11) and 24 (g) because this brief contain 11278 words, excluding the parts of the brief exempted by Utah R. app. P.23(g)(2): table of contents, table of authorities, addendums, and certificate of counsel.

2. This Brief does not contain private records which complies with Utah Rules of Appellate Procedure 21 for the public/private record requirement.

I certify to the best of my knowledge that the information contained in this certification is true and accurate.

Dated this 2nd day of April 2018


/s/ Kathy Engle
Kathy Engle, Appellant, Pro Se

Certificate of Service

I hereby certify that on this 2nd day of April 2018, I caused to be served a copy of the forgoing **Brief of the Appellant** was served via email to the following:

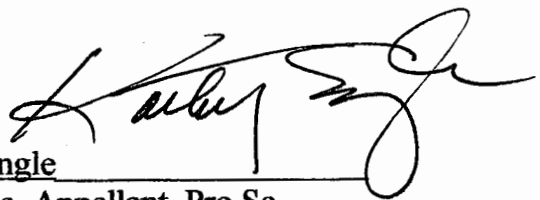
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Case No. 20170382-CA
District Court No 103901948

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Former Counsel to the Estate of Homer Engle, Special Administrator

Wende M. Throne and Homer Engle 2010 Trust


/s/ Kathy Engle

Kathy Engle, Appellant, Pro Se

Case No. 20170382-CA

District Court No 103901948

Addendum A

Case Law

[illegible]

Farrell v. O'Brien

199 U.S. 89 (1906)

Syllabus | Case

U.S. Supreme Court

Farrell v. O'Brien, 199 U.S. 89 (1905)

Farrell v. O'Brien

No. 193

Argued April 4, 6, 1906

Decided May 29, 1906

199 U.S. 89

APPEAL FROM AND CERTIORARI TO THE CIRCUIT

COURT OF APPEAL FOR THE NINTH CIRCUIT

Syllabus

Where the jurisdiction of the circuit court is invoked not only on the ground of diverse citizenship, but also on a constitutional question, the mere averment of the latter is not sufficient if it is so wanting in merit as to be frivolous and, under such circumstances, if an appeal and a petition for certiorari are both pending, as in this case, the appeal will be dismissed; but if the correctness of the decree on the general issue should be considered, the writ will be allowed and the record on appeal treated as a return thereto.

"We do not propose in this case to lay down any precise rule on the subject of adjusting administrators' accounts in the federal courts, or how far certain persons, not made parties in the original suit or incapable of being made parties by reason of their citizenship, may or may not come in before the master, on a general accounting, and protect their rights; nor do we intend to go into that question."

In *Broderick's Will*, 21 Wall. 503, the case was this: a suit in equity was brought in the Circuit Court for the District of California by the alleged heirs at law of Broderick to set aside the

Page 199 U. S. 103

probate of his will, to have the same declared a forgery, and to recover the assets of Broderick's estate, much of which consisted of real property. The defendants were the executors, and several hundred persons who were in possession of portions of the real estate, claiming ownership thereof as purchasers at sales made by the executors. The estate had been administered upon, and distribution had been fully made before the institution of the suit. The first contention which the court disposed of was that a court of equity had no jurisdiction of the subject matter of the suit, the same being vested exclusively in the Probate Court of the City and County of San Francisco. In sustaining this objection, the Court, through Mr. Justice Bradley, said (p. 88 U. S. 509):

"As to the first point, it is undoubtedly the general rule, established both in England and this country, that a court of equity will not entertain jurisdiction of a bill to set aside a will or the probate thereof. The case of *Kerrich v. Bransby*, decided by the House of Lords in 1727, is considered as having definitely settled the question. Whatever may have been the original ground of this rule (perhaps something in the peculiar constitution of the English courts), the most satisfactory ground for its continued prevalence is that the constitution of a succession to a deceased person's estate partakes in some degree of the nature of a proceeding *in rem*, in which all persons in the world who have any interest are deemed parties, and are concluded as upon *res judicata* by the decision of the court having jurisdiction. The public interest requires that the estates of deceased persons, being deprived of a master and subject to all manner of claims, should at once devolve to a new and competent ownership, and consequently that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice and fraud, and that the result attained should be firm and perpetual. The courts invested with this jurisdiction should have ample powers both of process and investigation, and sufficient opportunity should be given to check and revise proceedings

Addendum C

Statues

75-3-708 Duty of personal representative -- Possession of estate.

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

Enacted by Chapter 150, 1975 General Session

75-3-711 Improper exercise of power – Breach of fiduciary duty.

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 75-3-712 and 75-3-713.

Enacted by Chapter 150, 1975 General Session

75-3-712 Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.

Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:

- (1) The will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) The transaction is approved by the court after notice to interested persons.

Amended by Chapter 30, 1992 General Session

75-3-714 Transactions authorized for personal representatives -- Exceptions.

Except as restricted or otherwise provided by this code, by the will or by an order in a formal proceeding and subject to the priorities stated in Section 75-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) receive assets from fiduciaries, or other sources;
- (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
 - (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;
- (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings;
- (8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
- (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
- (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) abandon property when, in the opinion of the personal representative, it is valueless, is so encumbered, or is in condition that it is of no benefit to the estate;
- (12) vote stocks or other securities in person or by general or limited proxy;
- (13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
- (14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
- (15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

- (16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;**
- (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;**
- (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;**
- (19) sell or exercise stock subscription or conversion rights; and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;**
- (20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;**
- (21) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;**
- (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;**
- (23) sell, mortgage, or lease any real or personal property of the estate or any interest in it for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;**
- (24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:**
- (a) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;**
 - (b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or**
 - (c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;**
- (25) incorporate any business or venture in which the decedent was engaged at the time of his death;**
- (26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;**
- (27) satisfy and settle claims and distribute the estate as provided in this code.**

Amended by Chapter 30, 1992 General Session

<< Previous Section (75-3-802) Download Options PDF | RTF Next Section (75-3-804) >>
| XML

Index Utah Code

Title 75 Utah Uniform Probate Code

Chapter 3 Probate of Wills and Administration

Part 8 Creditors' Claims

Section 803 Limitations on presentation of claims.

75-3-803. Limitations on presentation of claims.

- (1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:
 - (a) one year after the decedent's death; or
 - (b) within the time provided by Subsection 75-3-801(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-3-801(1) for all claims barred by publication.
- (2) In all events, claims barred by the nonclaim statute at the decedent's domicile are also barred in this state.
- (3) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - (a) a claim based on a contract with the personal representative within three months after performance by the personal representative is due; or
 - (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1)(a).
- (4) Nothing in this section affects or prevents:
 - (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

75-3-718 Compensation of personal representative and attorney.

- (1) A personal representative and an attorney are entitled to reasonable compensation for their services. If a petition is filed which either directly or indirectly seeks approval of the personal representative's compensation or the attorney's compensation and if no objection is filed by an interested person to the compensation requested, reasonable compensation shall be the compensation sought in the petition. When an interested person objects to the personal representative's compensation, the court shall determine reasonable compensation for the personal representative based on the quality, quantity, and value of the services rendered to the estate and the circumstances under which those services were rendered, including the practice for other fiduciaries who are in similar circumstances to the personal representative in question. When an interested person objects to the attorney's compensation, the court shall determine reasonable compensation for the attorney.
- (2) When a petition seeks approval of or objects to a personal representative's compensation or an attorney's compensation, at least 10 days before the time set for the hearing of the petition, the petitioner or the petitioner's attorney shall send a copy of the petition to all interested persons either by certified, registered, or first class mail or by hand-delivery.
- (3) If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Amended by Chapter 245, 2013 General Session

75-3-805 Classification of claims.

- (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:
 - (a) reasonable funeral expenses;
 - (b) costs and expenses of administration;
 - (c) debts and taxes with preference under federal law;
 - (d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him, and medical assistance if Section 26-19-13.5 applies;
 - (e) debts and taxes with preference under other laws of this state; and
 - (f) all other claims.
- (2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Amended by Chapter 145, 1998 General Session

75-3-807 Payment of claims.

- (1) Upon the expiration of the earliest of the time limitations provided in Section 75-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.
- (2) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:
 - (a) the payment was made before the expiration of the time limit stated in Subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
 - (b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority.

Amended by Chapter 179, 1992 General Session

75-3-909 Improper distribution – Liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Enacted by Chapter 150, 1975 General Session

75-3-1101. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto, including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

Enacted by Chapter 150, 1975 General Session

75-3-1102. Procedure for securing court approval of compromise.

The procedure for securing court approval of a compromise is as follows:

(1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, may make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

Amended by Chapter 30, 1992 General Session

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Index Utah Code
Title 78B Judicial Code
Chapter 5 Procedure and Evidence
Part 2 Judgments
Section 203 Judgment against party dying after verdict or decision.

78B-5-203. Judgment against party dying after verdict or decision.

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the judgment is not a lien on the real property of the deceased party, but is payable in the course of the administration of the party's estate.

Renumbered and Amended by Chapter 3, 2008 General Session

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Index Utah Code

Title 78B Judicial Code

Chapter 2 Statutes of Limitations

Part 3 Other than Real Property

**Section Within six years -- Mesne profits of real property -- Instrument in
309 writing.**

78B-2-309. Within six years -- Mesne profits of real property -- Instrument in writing.

An action may be brought within six years:

- (1) for the mesne profits of real property;
- (2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioned in Section 78B-2-311; and
- (3) to recover fire suppression costs or other damages caused by wildland fire.

Renumbered and Amended by Chapter 3, 2008 General Session

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Renewal by motion.

78B-6-1802. Renewal by motion.

A court of record may renew a judgment issued by a court if:

- (1) a motion is filed within the original action;
- (2) the motion is filed before the statute of limitations on the original judgment expires;
- (3) the motion includes an affidavit that contains an accounting of the original judgment and all postjudgment payments, credits, and other adjustments which are provided for by law or are contained within the original judgment;
- (4) the facts in the supporting affidavit are determined by the court to be accurate and the affidavit affirms that notice was sent to the most current address known for the judgment debtor;
- (5) the time for responding to the motion has expired; and
- (6) the fee required by Subsection [78B-6-1801\(1\)](#) has been paid to the clerk of the court.

Enacted by Chapter 22, 2011 General Session

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[Chapter 6](#) Particular Proceedings

[Section 1803](#) Notice.

78B-6-1803. Notice.

Notice of a motion for renewal of judgment is served in accordance with the Rules of Civil Procedure and opposition may be filed pursuant to the rules.

Enacted by Chapter 22, 2011 General Session

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Addendum D

Other

Article I, Section 11. [Courts open – Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

No History for Constitution

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Sections in this Chapter: [Chapter 9: The OSI Model](#) | [Chapter 10: Network Troubleshooting](#)

Last revised: Wednesday, January 11, 2012

Addendum E

Order to Close Out Probate

April 12, 2017

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Attorney for Special Administrator, Wende Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,

Deceased.

ORDER CLOSING PROBATE BASED ON
COURT'S FINDINGS, CONCLUSIONS,
AND ORDER FILED APRIL 7, 2017

Case No. 103901948
Judge Keith Kelly

1. Wende Throne filed her Petition for Settlement of Estate, Decree of Distribution, Discharge of Personal Representative, and for Approval of Attorneys' Fees on December 15, 2016;
2. The Petition came on for hearing before the Court on February 21, 2017;
3. Based on submissions of the parties, evidence, legal briefing submitted and with good cause appearing, the Court entered Findings of Fact and Conclusions of Law on April 7, 2017;
4. The Court directed counsel for the Special Administrator to prepare executors deeds for the purpose of transferring assets to Kathy Engle, Judy Engle, and Wende Throne, Trustee of the Homer Engle Trust, respectively;
 - a. Pursuant to the Court's Order Quieting Title (Crystal Property) dated

November 26, 2013, the Crystal Property was previously conveyed to Kathy Engle.

See Order attached as **Exhibit B**.

5. Counsel for the Special Administrator prepared proposed deeds as ordered by the Court.

Copies of the proposed deeds are attached as **Exhibit A**; and

6. The proposed deeds included in **Exhibit A** refer to the Court's Order dated April 7, 2017 as an exhibit to each deed. For purposes of this Order the exhibits of the respective deeds are omitted for the convenience of the Court, but will be included upon submission for recordation.

IT IS HEREBY ORDERED:

1. The executors deeds conveying the real properties, as identified in **Exhibit A**, to Kathy Engle, Judy Engle, and Wende Throne respectively are approved and confirmed;
2. The real properties, as identified in **Exhibit A**, are transferred to Kathy Engle, Judy Engle, and Wende Throne respectively, and each shall have quiet title to the respective real property as provided in the designating deed;
3. This case is closed based upon the Court's Findings of Facts, Conclusions and Order dated, April 7, 2017; and
4. The Special Administrator is discharged of her duty and any further obligations in connection with the estate of Homer Engle.

This Order is signed when electronically stamped and dated by the Court at the top of page one.

Addendum F

Findings of Fact and Conclusion of Law

To Close Out The Estate

April 7, 2017

FILED DISTRICT COURT
Third Judicial District
APR 06 2017
SALT LAKE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF THE ESTATE OF
HOMER ENGLE,

Deceased.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

Case No. 103901948

Honorable Keith A. Kelly

The above-entitled matter came before the Court on February 21, 2017, for hearing on Petition for Settlement of Estate, Decree of Distribution, Discharge of Personal Representative, and for Approval of Attorneys' Fees. Based upon the submissions of the parties, evidence and legal briefing submitted, and with good cause appearing, the Court enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Homer Engle ("Decedent"), died on November 21, 2010 at the age of 83 years. At the time of death, he was a resident of Salt Lake County, Utah.
2. Wende Throne was appointed as the Special Administrator, and Letters of Administration were issued to her on November 23, 2010.
3. Petitioner caused to be published a Notice to Creditors pursuant to U.C.A. § 75-3-801, and the first publication of that Notice occurred on December 19, 2010. Proof of Publication of that Notice was filed with the Court on November 18, 2011, and the time for presentment of

claims expired in 2011.

4. Numerous claims were filed against the estate by multiple parties, including, but not limited to, Eagle Landing Properties, Donald B Fannin, Black Diamond Properties, LLC, Judy Engle, Roy & Ellen Engle, Crystal Star LLC, Kathy Engle, Dennis K. Engle, Engle Insurance Agency LLC, Enco Sole Corporation, Bullock Law Firm, Black Diamond LLC, and Mennco Corporation. The Special Administrator largely rejected the numerous claims asserted. The claimants subsequently filed petitions for allowance of claims. The Special Administrator filed objections and counterclaims to the respective petitions for allowance of claims. The claims against the estate of Homer Engle are enumerated in the Court's December 2, 2014 Findings of Fact, Conclusions of Law, and Order on Motion to Approve Settlement Agreement.

5. The administration of the estate of Homer Engle continued for many years due to the numerous claims and issues raised by the parties, which resulted in lengthy litigation, including a trial regarding the ownership of the real property identified in this matter as the Crystal property. Prior to the Court issuing findings of fact and a ruling as to the ownership of the Crystal property, on September 3, 2013, the parties entered into a formal Settlement Agreement regarding all claims against the estate of Homer Engle and the respective parties.

6. The form of the Settlement Agreement was approved by Court Order on November 14, 2013.

7. On December 2, 2014, the Court entered the order titled Findings of Fact, Conclusions of Law, and Order on Motion to Approve Settlement Agreement, which Findings, Conclusions and Order are incorporated herein by reference.

8. The terms of the Settlement Agreement have substantially been fulfilled including:

a. Sale by the Special Administrator of the Payson Property;

b. Sale by the Special Administrator of the Price property to Roy Engle, Judy Engle, and Kathy Engle in exchange for their priority I claims as outlined in the Amended Order Regarding Approval of Sale of Real Property signed by the court on February 4, 2015 and the Real Estate Purchase Contract;

c. Satisfaction of the McKinley Priority I claim;

d. Satisfaction of the State Street Taxes Priority I claim;

e. Satisfaction of the Payson Taxes Priority I claim;

f. Satisfaction of the Watson Priority I claim;

g. Satisfaction of the Fannin Priority I claim; and

h. Satisfaction of the Zions loan (which liability remains with that real property, which remains encumbered by the loan).

9. Outstanding claims to be fulfilled according to the Settlement Agreement exclusively from the sale proceeds of the Payson property, net of payments for reasonable compensation pursuant to Utah Code Ann. §75-3-718, are:

a. Priority I claim of Kathy Engle in the amount of \$11,759.363;

b. Priority I claim of Wende Throne in the amount of \$15,000.00;

c. All remaining Priority II claims to the extent of the remaining or available proceeds from the sale of the Payson property;

d. All remaining Priority III claims to the extent of the remaining or available proceeds from the sale of the Payson property.

10. Assets which remain to be distributed to the parties pursuant to the terms of the Settlement Agreement are:

a. Kathy Engle is to receive 5/6 of Hi-Country property and the Crystal Star

property;

b. Judy Engle is to receive the Cherokee property, the Woods Cross property and 1/6 of the Hi-Country property;

c. Wende Throne, Trustee of the Homer Engle Trust, is to receive the State Street Property, inclusive of all attached and unattached structures on said property. The funds held in trust in Case No. 090921857 should be distributed to the Special Administrator for administration according to this petition. In a prior hearing, the Court instructed the parties that Case No. 090921857 could be consolidated to this matter if the parties so stipulated, which they did. On February 21, 2017, Judge Paul Parker signed the Order consolidating Case No. 090921857 into this Case No. 103901948.

11. Allocation and distribution of any outstanding tangible personal property were addressed by the Court at the hearing set for that purpose, and such have subsequently been addressed and settled.

12. No federal estate tax return or fiduciary income tax return will be filed for the estate as neither is required due to insufficient assets and net income of the estate of Homer Engle.

13. As of the hearing date, \$70,883.58 in cash remained in the Estate.

14. With this Petition, Wende Throne, Special Administrator for the Estate of Homer Engle, through counsel, Stephen J. Mayfield of the law firm of York Howell & Guymon, petitioned the Court for settlement of the administration of the Estate, a decree of distribution to the heirs of the Estate, and pursuant to that Settlement Agreement dated September 3, 2013 and approved by Order of Court on December 2, 2014, for discharge of the Special Administrator, and for an Order approving and authorizing payment of attorney fees and compensation for the Special Administrator.

15. Judy Engle, Roy Engle and Kathy Engle have raised objections to the Petition.

16. Kathy's Objection was filed on February 1, 2017, two days after the deadline established by the Amended Scheduling Order and, therefore, is untimely.

17. Additionally, as to all parties, through the Settlement Agreement, they have released all claims against each other arising on or before September 3, 2013.

18. With respect to Judy Engle, specifically, her allegations of wrongdoing by the Special Administrator arising on or before October 3, 2016, have already been litigated, found to lack credibility, and denied by the Court, and her recent objections appear to raise the same issues.

19. As to Judy's claim that the Special Administrator has failed to provide an accurate accounting for the Estate, the Court finds that the Special Administrator has provided a complete accounting of the Estate financial transactions that have occurred from January 2013 to the present. Judy was allowed to submit questions and requests to the Special Administrator regarding the accounting, which Judy did on May 10, 2016. The Special Administrator timely replied to each question and request in a responsive document filed with the Court on May 24, 2016.

20. Judy raised and argued her objections during the February 21, 2017 hearing. The Court finds that Judy lacks credibility in bringing these claims and finds that they should be denied.

21. With regard to Roy, like Judy's Objection, Roy raises old and new allegations of wrongdoing on the part of the Special Administrator. As with Judy, Roy was a party to the Settlement Agreement and, therefore, has waived all claims against all other parties arising prior to September 3, 2013. As with Judy, Roy has had an opportunity to present evidence of wrongdoing against the Special Administrator. The Court has considered and denied the

allegations of wrongdoing, finding the allegations to be lacking in credibility. In addition, the Court finds that Roy's current allegations of wrongdoing lack credibility.

22. Roy also raised objections regarding distribution of the remaining tangible property, which have now been resolved by stipulation of the parties and otherwise ruled on. The Court finds the distribution of tangible property to be fair and equitable.

23. Roy seeks reimbursement for work performed on various pieces of real property involved in this matter.

24. As for Kathy, like Judy's Objection and Roy's Objection, Kathy's Objection raises old and new allegations of wrongdoing on the part of the Special Administrator. As with Judy and Roy, Kathy was a party to the Settlement Agreement and, therefore, has waived all claims against all other parties arising prior to September 3, 2013. This Court has previously denied the allegations of wrongdoing against the Special Administrator, finding the allegations to be lacking in credibility. The Court also finds that Kathy's current allegations of wrongdoing lack credibility. Accordingly, Kathy's allegations of wrongdoing against the Special Administrator are not well taken, and (as noted above) are untimely.

25. The Special Administrator has provided a complete accounting of the Estate financial transactions that have occurred from January 2013 to the present. Kathy was allowed to submit questions and requests to the Special Administrator regarding the accounting, which Kathy did on or about May 10, 2016. The Special Administrator timely replied to each question and request in a responsive document filed with the Court on May 24, 2016.

26. On the issue of legal fees charged by York Howell & Guymon ("YHG"), as an initial matter, any objection to the YHG attorney fees and costs arising before June 1, 2016 has been ruled on, and such fees were found to be reasonable and payable.

27. Pursuant to the YHG Order, the \$17,211.00 was reclassified and not collected from the Estate. The payable to YHG as of December 31, 2016 of \$38,409.47 does not include the \$17,211.00, but reflects only charges for services provided to the Estate from June 1, 2016 through December 31, 2016.

28. Utah Code Ann. § 75-3-807 states that the “personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for . . . [the] costs and expenses of administration.”

29. Utah Code Ann. § 75-3-805 provides that if “the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order: (a) reasonable funeral expenses; (b) costs and expenses of administration” and so forth.

30. The Settlement does not mention the attorney fees of YHG, and YHG never agreed to subordinate the statutory superiority of its attorney’s fees.

31. The hourly rates charged by YHG are reasonable and appropriate, and comparable with rates charged in the community for matters of the complexity of those facing the Estate.

32. The Settlement Agreement contains the following passage at Paragraph 8, which provides for payment of certain attorney fees from monies held in in trust in Utah 3rd D. Ct. Case No. 090921857 (consolidated with the instant case on 2/21/17):

For Judy, this means she continues to manage 1, 6, WX, Price, and will continue to use those proceeds to reimburse her out of pocket expenses and/or pay into court to be applied equally to Isaac [Paxman]’s and my [Richard K. Gardner’s] attorney fees, consistent with previous orders of the court.

(Order Approving Settlement Agreement, at 8.)

33. Paxman Law, LC, seeks payment of attorney fees for time spent by Isaac Paxman

("Paxman") in this case. This motion is made pursuant to (1) a prior order directing that Paxman's firm be provided certain amounts held in escrow in a separate case, and (2), a global Settlement Agreement of the parties that provides for payment as a Priority 2 claim of amounts owed to Paxman's firm for attorney fees.

34. The declaration submitted by Paxman, with invoices, establishes the reasonableness of the fees incurred by Paxman. Isaac Paxman performed significant work preserving and saving this Estate from total loss. This includes Mr. Paxman's effective and hard work in negotiating the settlement agreement that preserved and prevented the loss of assets that are distributed as part of the settlement agreement. Mr. Paxman also effectively preserved the Estate when, after entering into the settlement agreement, Wende Throne attempted to obtain an order setting aside the settlement agreement. These fees of Paxman are properly considered "costs and expenses of administration" under Utah Code § 75-3-805(b).

35. VanCott, Bagley, Cornwall & McCarthy ("VanCott") has submitted its Affidavit of Attorney's fees.

36. The hourly rates charged by VanCott are reasonable and appropriate, and comparable with rates charged in the community for matters of the complexity of those facing the Estate. Richard Gardner and others of VanCott performed significant effective work preserving and saving this Estate from total loss. This includes Mr. Garner's effective and hard work in negotiating the settlement agreement that preserved and prevented the loss of assets that are distributed as part of the settlement agreement. These fees are properly considered "costs and expenses of administration" under Utah Code § 75-3-805(b).

37. Karen Kreek has submitted a request for fees. The records shows that Ms. Kreek failed to respond to a motion for summary judgment filed against the Estate of Homer Engle, as

discussed below, which resulted in a judgment against the Estate. Ms. Kreek committed an apparent serious lapse by failing to respond to the summary judgment motion while serving as counsel for the Estate.

38. Hi-Country Estates Homeowners Association through the supplemental declaration of Ryan Bonham, filed February 13, 2017, states the Association received notice of the global settlement agreement in this matter and the motion for approval thereof.

39. The Association did not object to the approval of the Settlement Agreement and agrees it is bound by it.

40. The Association seeks to keep its judgment lien, although it has not contested the settlement, which did not provide for payment of the judgment entered by Judge Medley on August 26, 2011, in the case of *Hi-Country Estates Phase II Homeowners Association v. Homer Engle*, Utah 3rd D. Court Case No. 070918272.

41. The judgment entered by Judge Medley in Case No. 070918272 was based upon the Plaintiff's *unopposed* Motion for Summary Judgment properly served upon Karen Bullock Kreek, attorney for Wende Throne, Special Administrator of the Estate of Homer Engle. Despite acting as attorney for the Estate of Homer Engle, Ms. Kreek did not oppose or file a response to the Plaintiff's Motion for Summary Judgment.

42. Review of the file shows the Order and Judgment entered Case No. 070918272 was in error in that it awarded \$87,411.86 in fees and costs, as well as \$44,594 for unpaid assessments. The fees requested in the plaintiff's Affidavit totaled only \$42,760.75, with costs in the amount of only \$244.61; the Affidavit did *not* request \$87,411.86 in fees and costs. Thus, the judgment was entered in error. The erroneous proposed form of judgment was served on Ms. Kreek, while she was serving as counsel for the Estate of Homer Engle, prior to its entry by the Court, but

there is no record that Ms. Kreek filed any objection to the form of judgment containing the serious error.

43. No effort has been made by any party to correct this error.

44. Given this serious oversight by Ms. Kreek, the Court concludes that the attorney fees of Ms. Kreek should be subordinated to payment of the attorney fees of YHG, VanCott and Paxman, whose effective work has preserved the Estate and led to the distribution of properties pursuant to the Settlement Agreement.

45. At the time of the settlement, the parties could not predict with accuracy how much would be obtained by the Estate. But it was hoped that the assets of the Estate would bring in significantly more money than the Estate actually obtained after the properties were actually sold. Certain Estate properties were sold, but did not generate enough money to pay for all of the expenses of the Estate, even though the Court finds that the properties were sold in a commercially reasonable manner. Because of lack of money, there are insufficient funds to pay for the expenses of attorney fees incurred by the Estate beyond amounts awarded in this Order, or to pay the claims of Wende Throne, Judy Engle, Kathy Engle, and Roy Engle after the funds of the Estate are used to pay attorney fees under Utah Code § 75-3-805(b).

46. The Court finds (a) that the \$70,883.58 in funds held by the Estate should be paid to satisfy the administrative expenses under Utah Code § 75-3-805(b) in the form of attorney fees incurred by YHG; and (b) that the remaining balance should be equally split to partially pay the attorney fees incurred by Paxman and VanCott, which the Court finds to be properly classified as administrative expenses under Utah Code § 75-3-805(b) to the extent they are paid under the instant order. Thus the Court finds it to be fair and reasonable to pay YHG in the amount of \$60,315.25 as just and reasonable compensation for services rendered on behalf of the Estate of

Homer Engle. (In its Order entered 2/25/17, the Court ordered that YHG could deduct \$10,000.00 from its trust fund in partial payment for these fees.) This payment of \$60,315.25 leaves a balance of funds remaining in the Estate of \$10,568.33 (*i.e.*, \$70,883.58 less \$60,315.25.)

47. The Court finds that the remaining \$10,568.33 held by the Estate should be split to pay a portion of the fees incurred by Paxman, on the one hand, and VanCott, on the other hand. Thus, \$5,284.17 is to be paid to Paxman in partial compensation for fees incurred, and \$5,284.16 is to be paid to VanCott in partial compensation for fees incurred. The Court finds that these fees are properly classified as administrative expenses under Utah Code § 75-3-805(b) to the extent paid herein, because the fees are paid for work that directly administered and/or preserved the Estate. In light of the priorities mandated by Utah Code § 75-3-805(b), the Court finds and concludes that these fee allocations should supersede and replace any payment orders previously entered in this case. Based upon the findings made above, the Court finds that it is fair and reasonable that Ms. Kreek's fee claim be subordinated to the fee claims of YHG, Paxman, and VanCott.

48. Wende Throne, Judy Engle, Roy Engle and Kathy Engle also played instrumental roles in the preservation of assets of the Estate. While the Court was hopeful for a different outcome, there are no funds remaining in the Estate to pay additional compensation. Thus the Court does not award any payment to Wende Throne, Judy Engle, Roy Engle or Kathy Engle.

49. After the February 21, 2017 hearing on closing the Estate, Kathy Engle filed an Emergency Petition to Stay the Final Order in Closing the Estate of Homer Engle, seeking to consolidate Case No. 070918272, *Hi-Country Estates v. Homer Engle*, with the instant case. This Petition is not properly before this Court, since under Utah R. Civ. P. 42(a)(1) the matter is to be

addressed by the judge in Case No. 070918272—not in the instant case. In addition, the Court is not persuaded that it would be fair and equitable to delay closing of this probate case to join that case with the instant case. In any event, Hi-Country did not object to the settlement in this matter and has recognized that it will not receive payment of its judgment in Case No. 070918272 from the Estate of Homer Engle. To the extent that Kathy and Judy Engle, recipients of the Hi-Country property, believe that such property should not be encumbered by any judgment lien resulting from Case No. 070918272, this Court's order is not intended to prevent them from seeking relief for legal or equitable reasons in Case No. 070918272 or by an independent action. *See, e.g., Utah R. Civ. P. 60(d).*

ORDER

Based upon the Court's Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED AS FOLLOWS:

1. The accounting provided by the Special Administrator is approved as to form and content.
2. The funds held in trust in Case No. 090921857 (consolidated with the instant case by Judge Parker's stipulated Order of February 21, 2017) are to be provided to the Special Administrator for administration and distribution consistent with these Findings, Conclusions, and Order.
3. Payment is to be made to York Howell & Guymon in the amount of \$60,315.25 as just and reasonable compensation for services rendered on behalf of the Estate of Homer Engle and Wende Throne, Special Administrator of the Estate, from June 1, 2016 through February 22, 2017. (\$10,000.00 of this amount has already been ordered paid during the February 21, 2017 hearing and subsequent Order.) The payment of the \$50,315.25 balance is to be made *only after*

the deeds/orders stated below are prepared, submitted to the Court, and signed by the Court.

4. From the remaining \$10,568.33 balance of funds held by the Estate, payment is to be made as follows: \$5,284.17 to Paxman, and \$5,284.16 to VanCott. The fees of Karen Kreek are subordinated to the fees of York Howell & Guymon, Paxman and VanCott, and no amounts remain for payment of the balance of the Paxman or VanCott fees, or for payment of any of the fees of Ms. Kreek.

5. Although Wende Throne, Judy Engle, Roy Engle, and Kathy Engle also played instrumental roles in the preservation of Estate assets and while, again, the Court was hopeful for a different outcome, there are no funds remaining in the Estate to pay additional compensation; thus no payment is made to them.

6. The Hi-Country judgment lien from Case No. 070918272 has not been challenged in this case, and thus is not affected by this Court's Order. This Court's Findings, Conclusions & Order are entered without prejudice to any subsequent challenge to that lien that affected persons may choose to bring in another case. No funds are available from the Estate, however, to pay the Hi-Country claim, and the Hi-Country did not object to the Settlement Agreement that effectively subordinated payment of the Hi-Country claim.

7. The estate of Homer Engle is settled, allowed, and approved as stated herein.

8. The transactions of the Special Administrator during this administration are confirmed and approved.

9. The administration of the estate of Homer Engle is closed without further Accounting.

10. The assets which remain to be distributed to the parties pursuant to the terms of the Settlement Agreement are to be distributed as follows:

a. Kathy Engle is to receive an undivided 5/6 transfer of Hi-Country property and

all of the Crystal Star property;

b. Judy Engle is to receive all of the Cherokee property, all of the Woods Cross property, and an undivided 1/6 transfer of the Hi-Country property;

c. Wende Throne, as Trustee of the Homer Engle Trust, is to receive the State Street Property, inclusive of all attached and unattached structures on said property.

11. To the extent that prior orders of this Court may be deemed inconsistent with these Findings, Conclusions and Order, such prior orders are superseded and amended by this Order.

12. York Howell & Guymon, counsel for the Special Administrator, is ordered to prepare deeds/orders effectuating the transfer of the above-mentioned real properties, along with a brief proposed order for entry by the court stating that, after entry of the Court's orders transferring those properties, this case is to be closed based upon the these Findings, Conclusions and Order.

13. The Special Administrator will be discharged of her duties and any further obligations in connection with the estate of Homer Engle, (a) after preparing the deeds/orders transferring the real property as stated above; and (b) after payment and distribution to the parties to this matter in the proportions and amounts here outlined.

14. The Emergency Petition filed on March 10, 2017 by Kathy Engle is not properly before the Court in the instant case, since under Utah R. Civ. P. 42(a)(1) the matter is to be addressed by the judge in Case No. 070918272.

DATED this 6th day of April, 2017.

BY THE COURT

Keith A. Kelly
KEITH A. KELLY
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 103901948 by the method and on the date specified.

EMAIL: JOHN W ANDERSON john@andersonhinkins.com
EMAIL: RICHARD D BRADFORD rdbpc.law@gmail.com
EMAIL: DANIEL C DANSIE dansie@yorkhowell.com
EMAIL: LAUREN N DEVOE lauren@morrisperry.com
EMAIL: ANDREW L HOWELL teamandrew@yorkhowell.com
EMAIL: KAREN B KREECK kbkreeck@bullocklaw.com
EMAIL: KURT W LAIRD kurt@andersonhinkins.com
EMAIL: STEPHEN J MAYFIELD steve@yorkhowell.com
EMAIL: ISAAC D PAXMAN ipaxman@paxmanattorney.com

04/07/2017

/s/ NAKIA NUUSILA

Date: _____

Deputy Court Clerk

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 103901948 by the method and on the date specified.

EMAIL: JUDY ENGLE wildfire99_2@msn.com

EMAIL: KATHY ENGLE kat22eng@ymail.com

EMAIL: ROY & ELLEN ENGLE Royengle2@gmail.com

04/07/2017

/s/ NAKIA NUUSILA

Date: _____

Deputy Court Clerk

EXHIBIT A

AFTER RECORDING, RETURN TO:

Stephen J. Mayfield, JD, LLM
York Howell & Guymon
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040

Grantee Address:

P.O. Box 991
West Jordan, UT 84088

Serial #: 42:006:0055

Executor's Special Warranty Deed

Wende M. Throne, Special Administrator of the Estate of Homer Engle, pursuant to Order of the Court, dated April 7, 2017, a copy of the Order being attached as Exhibit A, Grantor, of Salt Lake County, State of Utah, conveys to Judy Engle, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration the following described tract of land in Utah County, State of Utah:

Lot 7, Block 3, INDIAN HILLS SUBDIVISION, PLAT A, according to the Official Plat thereof as recorded in the Office of the Utah County Recorder, State of Utah.

Commonly known as: 3059 Cherokee Lane, Provo, Utah 84604.

SUBJECT TO: 1. current general taxes, easements, restrictions, and rights of way of record.

WITNESS the hands of the Grantors on April ____, 2017.

Wende M. Throne, Special Administrator
Estate of Homer Engle

STATE OF UTAH)
COUNTY OF SALT LAKE)

On April ____, 2017, before me _____, a notary public, personally appeared Wende M. Throne, Special Administrator of the Estate of Homer Engle, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same. Witness my hand and official seal.

NOTARY PUBLIC

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AFTER RECORDING, RETURN TO:

Stephen J. Mayfield, JD, LLM
York Howell & Guymon
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040

Grantee Address:

P.O. Box 991
West Jordan, UT 84088

Serial #: 06-108-0061

Executor's Special Warranty Deed

Wende M. Throne, Special Administrator of the Estate of Homer Engle, pursuant to Order of the Court, dated April 7, 2017, a copy of the Order being attached as Exhibit A, Grantor, of Salt Lake County, State of Utah, conveys to Judy Engle, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration the following described tract of land in Davis County, State of Utah:

ALL OF LOT 61, WEST WOODS MOBILE HOME PUD AMD.
CONT. 0.12 ACRES

Commonly known as: 1240 W. 525 S., Woods Cross, Utah 84087.

SUBJECT TO: 1. current general taxes, easements, restrictions, and rights of way of record.

WITNESS the hands of the Grantor on April ____, 2017.

Wende M. Throne, Special Administrator
Estate of Homer Engle

STATE OF UTAH)
COUNTY OF SALT LAKE)

On April ____, 2017, before me _____, a notary public, personally appeared Wende M. Throne, Special Administrator of the Estate of Homer Engle, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same. Witness my hand and official seal.

NOTARY PUBLIC

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AFTER RECORDING, RETURN TO:

Stephen J. Mayfield, JD, LLM
York Howell & Guymon
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040

Grantee Address:

P.O. box 1255
Riverton, UT 84065

Serial #: 16-31-351-020

Executor's Special Warranty Deed

Wende M. Throne, Special Administrator of the Estate of Homer Engle, pursuant to Order of the Court, dated April 7, 2017, a copy of the Order being attached as Exhibit A, Grantor, of Salt Lake County, State of Utah, conveys to Wende Throne, Trustee of the Homer Engle 2010 Trust, dated February 3, 2010, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration the following described tract of land in Salt Lake County, State of Utah:

Beginning at a point 1,028.6 Feet No. and 425.7 Feet East from the Southwest corner of Section 31, Township 1 South, Range 1 East, SLB&M and running thence East 359.1 Feet; thence North 60.65 Feet; thence West 359.1 Feet; thence South 60.65 Feet to the point of beginning.

Subject to a right-of-way in favor of the Salt Lake city Suburban Sanitary District as shown by the right-of-way agreement recorded in Book 2484 Page 536, Official Records, the center line of which is described as follows:

Commencing at a point 161 Feet East of the Southwest corner of the above property; thence North 60.65 Feet more or less to the North property line at a point 161 Feet East of the Northwest corner of said property.

Commonly known as: 3976 S. State Street, Salt Lake City, UT 84109.

SUBJECT TO: 1. current general taxes, easements, restrictions, and rights of way of record.

WITNESS the hands of the Grantors on April ____, 2017.

Wende M. Throne, Special Administrator
Estate of Homer Engle

STATE OF UTAH)
 §
COUNTY OF SALT LAKE)

On April ____, 2017, before me _____, a notary public, personally appeared Wende M. Throne, Special Administrator of the Estate of Homer Engle, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same. Witness my hand and official seal.

NOTARY PUBLIC

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AFTER RECORDING, RETURN TO:

Stephen J. Mayfield, JD, LLM
York Howell & Guymon
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040

Grantee Address:

P.O. 2225
Arvada, CO. 80001

Executor's Special Warranty Deed

Wende M. Throne, Special Administrator of the Estate of Homer Engle, pursuant to Order of the Court, dated April 7, 2017, a copy of the Order being attached as Exhibit B, Grantor, of Salt Lake County, State of Utah, conveys to Kathy Engle (or to any assignee as she shall designate in a subsequent deed), Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration five-sixth (5/6) of the following described tracts of land in Salt Lake County, State of Utah:

Parcel No. 32-21-100-004 (Lot 123)
Parcel No. 32-21-100-003 (Lot 124)
Parcel No. 32-16-300-005 (Lot 130)

See Attached Exhibit A regarding the respective Legal Descriptions.

SUBJECT TO: 1. current general taxes, easements, restrictions, and rights of way of record.

WITNESS the hands of the Grantor on April ____, 2017.

Wende M. Throne, Special Administrator
Estate of Homer Engle

STATE OF UTAH)
 §
COUNTY OF SALT LAKE)

On April ____, 2017, before me _____, a notary public, personally appeared Wende M. Throne, Special Administrator of the Estate of Homer Engle, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged she executed the same. Witness my hand and official seal.

NOTARY PUBLIC

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EXHIBIT A

Parcel No. 32-21-100-004 (Lot 123)

Beginning at a point which is North 2121.69 feet and East 1000.09 feet from the West 1/4 corner of Section 21, T4S, R2W, S.L.B. & M and running thence S 76° 05' 19" E, 853.56 ft. to a point on a 500 ft radius curve to the left (radius point bears S 76° 05' 19" E); thence Southerly along said curve an arc distance of 203.16 ft (delta angle = 23° 16' 49"); thence S 9° 22' 08" E, 130.00 feet to a point on a 600.00 foot radius curve to the right (radius point bears S 80° 37' 52" W); thence Southerly along said curve an arc distance of 240.00 feet (delta angle=22° 55' 06"); thence S 13° 32' 56" W, 29.17 feet, more or less, to the 40 acre line; thence West along said 40 acre line 1823.84 feet, more or less, to the 1/4 Section line; thence N 0° 06' 16" E along said 1/4 section line 123.57 feet to a point on a 1300.00 foot radius curve to the right (radius point bears S 33° 26' 24" E); thence Northeasterly along said curve an arc distance of 206.62 feet (delta angle= 9° 06' 24"); thence N 65° 40' 00" E, 589.82 feet to a point on a 500.00 foot radius curve to the left (radius point bears N 24° 20' 00" W); thence Northeasterly along said curve an arc distance of 451.65 feet (delta angle= 51° 45' 19") to the point of beginning.

Subject to a 25 foot R/W along the Northwesterly, Easterly and Southeasterly sides, and also subject to a restricted area.

Parcel No. 32-21-100-003 (Lot 124)

Beginning at a point which is North 3090.81 feet and East 1499.71 feet from the West 1/4 corner of Section 21, T4S, R2W, S.L.B. & M and running thence S 58° 25' 27" E, 966.27 feet; thence S 56° 58' 10" W, 314.51 feet to a point on a 230.00 foot radius curve to the left (radius point bears S 33° 01' 50" E); thence Southwesterly along said curve an arc distance of 137.17 feet (delta angle = 33° 40' 20") to a point on a 230.00 foot radius curve to the left (radius point bears S 66° 42' 10" E); thence Southwesterly along said curve an arc distance of 10.95 feet (delta angle= 2° 43' 37"); thence S 20° 34' 13" W, 352.65 feet to a point on a 500 foot radius curve to the left (radius point bears S 69° 25' 47" E); thence Southwesterly along said curve an arc distance of 58.11 feet (delta angle= 6° 39' 32"); thence N 76° 05' 19" W, 853.56 feet to a point on a 500.00 foot radius curve to the left (radius point bears N 76° 05' 19" W); thence Northeasterly along said curve an arc distance of 17.26 feet (delta angle = 1° 58' 41") thence N 11° 56' 00", 554.03 feet to a point on a 450.00 foot radius curve to the right (radius point bears S 78° 04' 00" E); thence Northeasterly along said curve an arc distance of 345.58 feet delta angle= 43° 59' 60"); thence N 55° 56' 00" E, 232.99 feet to the point of beginning.

Subject to a 25 foot R/W along the Northwesterly and Southwesterly sides, also subject to a restricted area.

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08405

Parcel No. 32-16-300-005 (Lot 130)

Beginning at a point which is South 1707.20 feet and East 1082.44 feet from the West 1/4 corner of Section 16 T4S, R2W, S.L.B.&M and running thence S 34° 04' 00" E, 727.36 feet; thence S 55° 56' 00" W, 232.99 feet to a point on a 450.00 foot radius curve to the left (radius point bears S 34° 04' 00" E); thence Southwesterly along said curve an arc distance of 345.58 feet (delta angle = 44° 00' 00"); thence S 11° 56' 00" W, 210.00 feet; thence N 78° 04' 00" W, 946.50 feet; thence N 27° 09' 50" W, 314.68 feet; thence N 55° 39' 35" E, 1316.34 feet to the point of beginning.

Subject to a 25 foot R/W along the Southwesterly side, also subject to a restricted area.

4

08406

AFTER RECORDING, RETURN TO:

Stephen J. Mayfield, JD, LL.M.
York Howell & Guymon
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Telephone: (801) 527-1040

Grantee Address:
P.O. Box 991
West Jordan, UT 84088

Executor's Special Warranty Deed

Wende M. Throno, Special Administrator of the Estate of Homer Engle, pursuant to Order of the Court, dated April 7, 2017, a copy of the Order being attached as Exhibit B. Grantor, of Salt Lake County, State of Utah, conveys to Judy Engle, Grantee, for the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, one-sixth (1/6) of the following described tracts of land in Salt Lake County, State of Utah:

Parcel No. 32-21-100-004 (Lot 123)
Parcel No. 32-21-100-003 (Lot 124)
Parcel No. 32-16-300-005 (Lot 130)

See Attached Exhibit A regarding the respective Legal Descriptions.

SUBJECT TO: 1. current general taxes, easements, restrictions, and rights of way of record.

WITNESS the hands of the Grantor on April ____, 2017.

Wende M. Throno, Special Administrator
Estate of Homer Engle

08407

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On April 11, 2017, before me _____, a notary
public, personally appeared Wendie M. Throne, Special Administrator of the Estate of Homer
Engle, proved on the basis of satisfactory evidence to be the person whose name is subscribed to
this instrument, and acknowledged she executed the same. Witness my hand and official seal.

NOTARY PUBLIC

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08408

EXHIBIT A

Parcel No. 32-21-100-004 (Lot 123)

Beginning at a point which is North 2121.69 feet and East 1000.09 feet from the West 1/4 corner of Section 21, T4S, R2W, S.L.B & M and running thence S 76° 05' 19" E, 853.56 ft. to a point on a 500 ft radius curve to the left (radius point bears S 76° 05' 19" E); thence Southerly along said curve an arc distance of 203.16 ft (delta angle = 23° 16' 49"); thence S 9° 22' 08" E, 130.00 feet to a point on a 600.00 foot radius curve to the right (radius point bears S 86° 37' 52" W); thence Southerly along said curve an arc distance of 240.00 feet (delta angle=22° 55' 06"); thence S 13°32' 56" W, 29.17 feet, more or less, to the 40 acre line; thence West along said 40 acre line 1823.84 feet, more or less, to the 1/4 Section line; thence N 0° 00' 16" E along said 1/4 section line 123.57 feet to a point on a 1300.00 foot radius curve to the right (radius point bears S 33° 26' 24" E); thence Northeasterly along said curve an arc distance of 206.62 feet (delta angle= 9° 06' 24"); thence N 65° 40' 00" E, 389.82 feet to a point on a 500.00 foot radius curve to the left (radius point bears N 24° 20' 00" W); thence Northeasterly along said curve an arc distance of 451.65 feet (delta angle= 51° 45' 19") to the point of beginning.

Subject to a 25 foot R/W along the Northwesterly, Easterly and Southeasterly sides, and also subject to a restricted area.

Parcel No. 32-21-100-003 (Lot 124)

Beginning at a point which is North 3090.81 feet and East 1499.71 feet from the West 1/4 corner of Section 21, T4S, R2W, S.L.B & M and running thence S 38° 25' 27" E, 966.27 feet; thence S 50° 58' 10" W, 314.51 feet to a point on a 230.00 foot radius curve to the left (radius point bears S 33° 01' 50" E); thence Southwesterly along said curve an arc distance of 137.17 feet (delta angle = 33° 40' 20") to a point on a 230.00 foot radius curve to the left (radius point bears S 66° 42' 10" E); thence Southwesterly along said curve an arc distance of 10.95 feet (delta angle= 2° 43' 37"); thence S 20° 34' 13" W, 352.65 feet to a point on a 500 foot radius curve to the left (radius point bears S 69° 25' 47" E); thence Southwesterly along said curve an arc distance of 58.11 feet (delta angle= 6° 39' 32"); thence N 76° 05' 19" W, 853.56 feet to a point on a 500.00 foot radius curve to the left (radius point bears N 76° 05' 19" W); thence Northeasterly along said curve an arc distance of 17.26 feet (delta angle = 1° 58' 41") thence N 11° 56' 00", 554.01 feet to a point on a 450.00 foot radius curve to the right (radius point bears S 78° 04' 00" E); thence Northeasterly along said curve an arc distance of 345.58 feet (delta angle= 43° 59' 60"); thence N 55° 56' 00" E, 232.99 feet to the point of beginning.

Subject to a 25 foot R/W along the Northwesterly and Southwesterly sides, also subject to a restricted area.

3

08409

Parcel No. 32-16-300-005 (Lot 130)

Beginning at a point which is South 1707.20 feet and East 1082.44 feet from the West 1/4 corner of Section 16 T4S, R2W, SLB&M and running thence S 34° 04' 00" E, 727.36 feet; thence S 55° 56' 00" W, 232.99 feet to a point on a 450.00 foot radius curve to the left (radius point bears S 34° 04' 00" E); thence Southwesterly along said curve an arc distance of 345.58 feet (delta angle = 44° 00'00"); thence S 11° 56' 00" W, 210.00 feet; thence N 78° 04' 00" W, 946.50 feet; thence N 27° 09' 50" W, 314.68 feet; thence N 55° 39' 35" E, 1316.34 feet to the point of beginning.

Subject to a 25 foot R/W along the Southwesterly side, also subject to a restricted area.

4

08410

EXHIBIT B

08411

FILED DISTRICT COURT
Third Judicial District
NOV 26 2013
SALT LAKE COUNTY

Name: Kathy Engle, Pro Se
Petitioner
Address: P.O. Box 2223
Arvada, CO 80001
Telephone No: 801 898-2444 cell

Pro Se

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

in the matter of the Estate of)
ORDER QUIETING TITLE
(CRYSTAL PROPERTY)
)
HOMER ENGLE,)
)
Deceased)
)
Probate No. 10-3901948
)
Judge Keith Kelly

1768888
12/17/2013 10:57 AM #1-4-00
Box - 1018 Pg - 407-408
RECORDED, SALT LAKE COUNTY, UTAH
KATHY ENGLE
PRO SE
1768888 PG 4407

Kathy Engle claims ownership of certain real property located in Salt Lake County, State of Utah, parcel no. 15-22-476-002, having a street address of 1373 West Crystal Avenue, West Valley, Utah, and legally described as follows (the "Crystal property"):

The West 100 feet of Lots 11 and 12, and the West 100 feet of the North 37.8 feet of Lot 13, Block 11, CHESTERFIELD PLAY "A", according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

Certain other interested persons also claim ownership of the Crystal property, including the Decedent's children, and/or various entities they claim to own.

After hearing and receiving evidence at a contested evidentiary hearing, making findings of fact on the record in open court, and receiving the settlement agreement of the claimed heirs to the estate, the Court finds that all of the persons claiming title to the Crystal property in connection with the above-captioned estate are parties to this proceeding and are subject to the orders of this Court and their claims have been resolved by this order.

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Rec 15768888 BK 10196 PG 4407

08412

As among the parties, title is hereby quieted in the name of KATHY R. ENGLE.

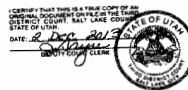
This order evidences that all of the right, title and interest of the parties are subject to the orders of this Court and has been resolved by this order.

This order may be recorded as necessary to clear title to the "Crystal Property".

DATED this 26 day of Nov., 2013

By THE COURT:

Keith Kelly
Keith A. Kelly, District Judge



2

BK 10196 PG 4408

08413

Addendum G

Transcript of Hearing To Close Probate

February 21, 2017

Addendum G

Transcript of Hearing To Close Probate

February 21, 2017

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

IN THE MATTER OF THE ESTATE OF : Case No. 103901948
:
HOMER ENGLE. : Appellate Court No. 20170382
:

PARTIAL TRANSCRIPT - FEBRUARY 21, 2017

BEFORE

JUDGE KEITH KELLY

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 E. Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Petitioner, Wendie Throne: STEPHEN J. MAYFIELD
Attorney at Law

For Other Parties: BRETT W. HASTINGS
KAREN B. KREBECK
STEPHEN R. SLOAN
QUINN A. SPERRY
LAUREN N. DEVORE
Attorneys at Law

For Estates: ISAAC D. FAXMAN
Attorney at Law

Other parties: Kathy Engle
Judy Engle
Roy Engle

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09010

1 the Settlement Agreement it talks about the Woods Cross
2 property was transferred subject to that HOA's claim against
3 that property. So we're asking for the same treatment.
4 THE COURT: Okay, anything else?
5 MR. SPERRY: That's it. Your Honor, unless you have
6 any additional questions for me.
7 THE COURT: Not at this time.
8 MR. SPERRY: Thank you.
9 THE COURT: Okay, let me hear from the Special
10 Administrator's counsel next and then I'll hear from Kathy
11 Engle and then Judy Engle last. I think those are the
12 persons who have an interest in the Hi-Country issues.
13 Mr. Mayfield?
14 MR. MAYFIELD: Your Honor, with regard to Hi-
15 Country, one of the biggest problems we have in this case
16 with regard to Hi-Country is we have certain language in the
17 Settlement Agreement which has just been quoted by counsel
18 suggesting that these properties be passsed, that there's no
19 warranty as to passing free and clear of liens. The problem
20 though is, the Settlement Agreement was entered into by the
21 parties in good faith for the purpose of resolving these
22 issues. I'm certain that Kathy Engle will address this issue
23 but my understanding is Kathy Engle tried in good faith to
24 negotiate with Hi-Country, received no response from them in
25 a reasonable way which would allow her to effect a settlement

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09317

1 which was intended here for the properties to be dealt with
2 in a way so she could receive those properties as well as
3 Judy Engle could receive those properties free of liens.
4 It's also very important that we remind the Court that notice
5 has been given to Hi-Country on numerous occasions, was given
6 to Hi-Country back in 2014 -
7 THE COURT: And I think there's no dispute on that
8 issue.
9 MR. MAYFIELD: Correct, Your Honor.
10 THE COURT: But the question I have is, if I issue
11 an order saying the property is transferred to Kathy and Judy
12 Engle in their fractional percentages, free of liens, is that
13 just going to be immediately overturned by the Court of
14 Appeals saying I have no authority to enter such an order?
15 MR. MAYFIELD: I would argue no, Your Honor, the
16 reason being because they are coming before the Court with
17 unclean hands. They're relying upon a statute which says
18 they get to have their liens in place, the whole time though
19 they were not acting in good faith to negotiate with Kathy
20 Engle to get this resolved in a reasonable manner.
21 THE COURT: Did they have a duty to nego - once
22 they - they obtained a judgment -
23 MR. MAYFIELD: They do.
24 THE COURT: - do they have a duty to negotiate -
25 MR. MAYFIELD: They did, Your Honor, when they were

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09318

1 informed of the fact that this settlement was in place, again
2 we're talking about notice of this settlement which goes back
3 to 2014, they received notice that this issue as to whether
4 liens would be released and whether those claims would go
5 forward. I mean, it's actually very telling the fact that
6 counsel has questioned the Court as to we're here to ask, to
7 actually ask the Court if we're going to have our liens have
8 the teeth they're suppose to have in the statute.
9 THE COURT: Let me ask you this then. We've got -
10 there's a settlement. For a period of time it was an
11 executory settlement and it contemplated that various players
12 who were before the Court who entered - signed the
13 settlement, would negotiate with third parties.
14 MR. MAYFIELD: Correct.
15 THE COURT: And the parties specifically wanted a
16 period of time to try to negotiate and it was successful as
17 to Fannin, as to McKinley due to Kathy Engle's efforts and to
18 others that even the water company that dealt with - I mean,
19 there's a bunch of negotiations that were all resolved and
20 the only one as I recall, as I understand is Hi-Country. It
21 was not resolved. Does Hi-Country have - at the point that
22 the settlement was entered Hi-Country had a judgment, had to
23 file a motion for summary judgment against the estate.
24 Counsel at that time for the estate did not respond to the
25 motion as I understand and as a result, judgment was entered

23

09319

1 against the estate.
2 MR. MAYFIELD: Correct.
3 THE COURT: So - but even absent a judgment,
4 there's this right to a lien under the, under the - I want to
5 say the Community Association Act, I want to say Condominium
6 Code but this was Community Association Act and so where - is
7 there a duty of a lien holder to negotiate, to accept less
8 than full payment of the lien?
9 MR. MAYFIELD: Yes, Your Honor. My response to
10 that is it's based on the circumstances. If this estate had
11 gone through the normal course of estate administration and
12 we're talking about who get distributions of assets, and
13 there's no Settlement Agreement in place which they were
14 informed of as to which might affect their rights, then I
15 think their argument is very sound. But we're not talking *
16 about that, we're not talking about standard administration,
17 we're talking about a specific Settlement Agreement which was
18 agreed by the Court. The Court ordered that they be given
19 notice so they could made aware of the fact that their rights
20 of lien were being potentially modified by court order.
21 THE COURT: But they didn't get notice until about
22 a year later, did they? I thought they got notice -
23 MR. MAYFIELD: They got notice -
24 THE COURT: - after that executory period.
25 MR. MAYFIELD: - (inaudible). 2014 is when they

24

09320

1 So, that period goes by. 2014, it's not longer confidential
2 and notice is given to Hi-Country. So they hear about the
3 settlement at that point.
4 MR. MAYFIELD: But -
5 THE COURT: What duty, if any, did they have?
6 MR. MAYFIELD: That's a great point, Your Honor.
7 There's actually two kinds of - there was formal notice
8 issued by Certificate of Service, but also, as I understand
9 it - again this is for Kathy Engle to address - that she
10 reached out to them and tried to negotiate and informed them
11 of the Settlement Agreement.
12 But here's the issue, the Court ordered us, me
13 specifically as counsel for the Special Administrator to
14 provide notice to them on several occasions which we did as
15 to this issue. So this issue could come before the court so
16 they'd have an opportunity to argue this issue as to whether
17 liens would be still subject to the order of the court. They
18 never did that. They didn't show up here until this hearing,
19 we're trying to get this estate closed and now they're
20 arguing that their liens apply and they've had opportunity
21 upon opportunity to respond to the notice they've been given
22 and to raise an objection as to the terms of the settlement
23 which -
24 THE COURT: Well, that's - and that's true in the
25 sense that once it became public, notice was provided to

25

09321

1 third parties including Hi-Country and those third parties
2 were given a period of time to respond and object to the
3 settlement and that time passed. I considered all objections
4 and approved the settlement. In fact, some of the parties
5 attempted to object to the settlement and we considered all
6 that. The settlement is approved. So Hi-Country misses that
7 boat so to speak -

8 MR. MAYFIELD: Correct.

9 THE COURT: - they get notice, they fail to show up
10 and object to the Settlement Agreement. Does the Settlement
11 Agreement contemplate that their liens would be wiped out?

12 MR. MAYFIELD: The Settlement Agreement does not
13 contemplate their liens would be wiped out but the Court's
14 understanding was as was the parties that they would
15 negotiate because they were informed, they were given notice
16 of the fact that this issue would come before the court and
17 they were - specifically the Court wanted them to have notice
18 so they could raise this issue at a prior time which they
19 didn't do because that was the issue. We're talking about
20 the difference between a standard general administration and
21 this administration subject to a Settlement Agreement which
22 contemplated the possibility that their lien rights would be
23 lost if they didn't negotiate in good faith. I think that
24 does supercede the statute in that they had the opportunity
25 and the question was, did they have the duty? Yes, they had

27

09322

1 a duty because they were given notice -

2 THE COURT: Their duty was to negotiate.

3 MR. MAYFIELD: I think their duty was to negotiate.
4 They're also duty was to come to the Court and say, hey, no,
5 we don't believe that the Court has the authority to remove
6 our lien rights. They didn't do that. And the argument has
7 been, well, the person who received notice, died. The person
8 who received notice was an agent of the organization and they
9 received notice in plenty of time.

10 THE COURT: Well, there's no dispute about that.

11 Notice was -

12 MR. MAYFIELD: Right.

13 THE COURT: - given, that's not disputed.

14 MR. MAYFIELD: Right. So that's the estate's
15 position, Your Honor, is that these liens should not carry
16 forward just because notice was given, they had a duty to
17 negotiate and a duty to come forward and raise these issues
18 years ago. I mean we've been waiting to get this done simply
19 as the Court, as Your Honor indicated, to get properties sold
20 so there would be sufficient liquid funds to get this
21 resolved. They've just been sitting on their hands so to
22 speak to raise this issue which they knew they were subject
23 to years ago.

24 THE COURT: Okay, thank you.

25 MR. MAYFIELD: Thank you, Your Honor.

28

09323

1 THE COURT: Kathy Engle?

2 MS. K. ENGLE: Thank you, Your Honor. The order
3 that was issued on November 27, 2013, it says order to confer
4 authority to negotiate a settlement with the Hi-Country
5 Estates Homeowner's Association. Kathy Engle is granted
6 authority, and I'll kind of skip by that, regarding the
7 \$87,000 judgment including the \$44,594 claim filed. So it's
8 twofold, it was both judgments that I was able to try to
9 negotiate and I did that in good faith on several occasions.
10 I filed my status report with the Court and I went to the
11 Homeowner's Meeting several times to talk to them. Mr.
12 Mayfield wrote a letter to them explaining the Settlement
13 Agreement. I hand delivered it to Arlene Johnson who was the
14 president at that time of the board, also ACS who took over
15 after Libby Wilson passed away, I believe. They were also
16 informed of the Settlement Agreement. So they were fully
17 informed on many occasions, through emails, through verbal,
18 through letters, with counsel and they still did not perfect
19 their claim. They did not even call to even let anybody
20 know, they just ignored it.

21 THE COURT: So are you arguing that under the
22 statute, Community Association Act, they had to do something
23 that they failed to do to perfect their lien on the property
24 as it goes to the property, as opposed to a claim against the
25 estate?

29

09324

1 MS. ENGLE: Well, on the judgment, especially the
2 \$87,000 judgment, that was an after death judgment and both
3 those actually were after death judgments, the 44 and the 87
4 and the 87 actually was doubled up. It included the legal
5 fees as well as the \$44,000. So the judgment is actually a
6 duplicate of the HOA fees for the 2006 lien.
7 The 2006 lien was filed against Homer Engle when he
8 did not own the properties and I was never notified as
9 (inaudible) and my due process, I didn't even know that those
10 liens were on the properties.
11 THE COURT: Let's step back though. The lawsuit -
12 and I've looked at the papers - against, it was against the
13 estate itself. What was the case number of that lawsuit? In
14 other words, wasn't that lawsuit assigned to a different
15 judge?
16 MS. ENGLE: It was and the original lawsuit that
17 was filed back in 2000, 2001, ummm -
18 THE COURT: You mean 2011.
19 MS. ENGLE: 2001 was filed against Ruth Hansen, my
20 stepmother -
21 THE COURT: Oh, oh. I thought we were talking
22 about the lawsuit against the - what I'm referring to is the
23 lawsuit where Hi-Country sued the estate of Homer Engle.
24 MS. ENGLE: Well, that was a counterclaim. The
25 original lawsuit was filed in 2001 and - 2000 -

30

09325

1 MS. ENGLE: That's when they got both judgments.
2 THE COURT: Right. And the reason they got the
3 judgment is because counsel for the estate did not respond to
4 a motion for summary judgment. In other words, they file a
5 motion for summary judgment, at that time the estate could
6 have tried to make all of these arguments.
7 MS. K. ENGLE: That's true.
8 THE COURT: But they defaulted.
9 MS. K. ENGLE: That's true.
10 THE COURT: So isn't this all water under the
11 bridge?
12 MS. K. ENGLE: Well not really because whoever, Mr.
13 Karen Kreeck filed - was silent. She didn't say anything
14 about the motion for summary judgment, she didn't say
15 anything about -
16 THE COURT: Well, I mean that's why judgment was
17 entered.
18 MS. K. ENGLE: Right, because she was silent on it,
19 she didn't do anything about it.
20 THE COURT: There was no response and -
21 MS. K. ENGLE: And when -
22 THE COURT: - under Rule 7 it's deemed, the facts
23 are deemed admitted and judgment was entered against the
24 association.
25 MS. K. ENGLE: Right, and then she withdrew a month

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09326

1 later from this case, 07, but she did not withdraw from the
2 case back in 2001 and 2002 which complicated things.
3 THE COURT: Okay.
4 MS. K. ENGLE: So -
5 THE COURT: But we need to get to the point. I
6 understand your point that you're frustrated that a judgment
7 was entered but the reality here is the judgment was entered
8 because there - no response was made to the Association when
9 it filed for a motion for summary judgment -
10 MS. K. ENGLE: Right.
11 THE COURT: - against the estate.
12 MS. K. ENGLE: And so they couldn't even correct
13 the priorities inside the judgment, you know, the duplicate
14 HOA fees and the motions that weren't filed with the
15 attorney's fees. I mean all of that could have been dealt
16 with, but it wasn't and so what I'm also saying here too on
17 their part, they had a duty to perform and they failed to
18 perform and under 75-3-1102, it says "Upon the making of the
19 order and the execution of the agreement, all further
20 disposition of the estate is in accordance with the terms of
21 the agreement." So, by them failing to show and perfect
22 their claim, and their lien, 2006 lien, and they were fully
23 aware of the Settlement terms, they give up that right
24 because they didn't follow the settlement terms and according
25 to 75-3-1102 is a conflict of interest with the Probate Code

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09327

1 But let me look at the next one which is 070918272.
2 MS. K. ENGLE: They reopened it so that they could
3 do a counterclaim.
4 THE COURT: And that is, that was filed in 2007.
5 There was a motion filed for summary judgment in 2008 and
6 then, and then it looks like there's an order of
7 consolidation - let me look that up to see. It may not even
8 pull up.
9 MS. K. ENGLE: I gave you that Order of
10 Consolidation.
11 THE COURT: Right. There's an order of
12 consolidation but the bottom line was in October 15, 2010
13 there was a motion for summary judgment, there was a notice
14 of death and substitution of party and there was an order and
15 judgment. Basically Judge Medley entered a decision to lift a
16 stay and on plaintiff's motion for summary judgment. That
17 was 5/20 of 2011 and it mentions the fact that a stay was
18 issued because there was a notice of death and the court says
19 this is the key, key language, it says, "The plaintiff has
20 now filed a notice to submit for decision regarding
21 Plaintiff's Motion for Summary Judgment." That's the
22 association's motion against the estate of Homer Engle "and
23 it should be noted that on December 17, 2010 plaintiff filed
24 a notice, withdrawal notice to submit for decision which was
25 served upon counsel, Karen Bullock Kreeck, attorney for Wende

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09328

1 Throne, Special Administrator for the estate of Homer Engle.
2 The Court finds based upon proper service that plaintiff's
3 motion for summary judgment, memorandum in support, the
4 December 17, 2010 withdrawal of notice to submit for
5 decision, the notice of death and stipulated substitution of
6 party and present notice to submit for decision, that the
7 estate of Homer Engle has been properly served and is on
8 notice of plaintiff's pending motion for summary judgment
9 which is unopposed. So the estate of Homer Engle has not
10 sought an extension of time to respond to plaintiff's motion.
11 Based upon the undisputed facts set forth in plaintiff's
12 memorandum in support which are now deemed admitted as set
13 forth in Rule 7C(3)(a), Utah Rules of Civil Procedure,
14 plaintiff's motion for summary judgment is granted and was
15 prayed for including reasonable costs, fees and interest in
16 prosecuting the action. Counsel for plaintiff is directed to
17 submit an order and judgment consistent with the minute
18 entry." And then that was submitted. That was the minute
19 entry. Then the order of judgment was filed and then signed
20 August 29, 2011 and that the judgment was \$44,594 but then
21 when the attorney fees are added, it's, they had attorney
22 fees of \$87,411.86
23 MS. K. ENGLE: That's what I was saying though,
24 they doubled up -
25 THE COURT: Well I think they did, I think they did

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09329

1 because I think the attorney fees that were submitted led
2 there to be a total of \$87,000.
3 MS. K. ENGLE: It was \$42,000 for attorney's fees
4 and -
5 THE COURT: And that's the point, the attorney fee
6 affidavit, I, this has been several years but it looked like
7 the amount of judgment was entered in error. But this is
8 Judge Matthew Bates' case. If the parties to that - I mean
9 the problem was that the estate defaulted. The estate - I
10 mean, that was one of the problems early on in this that
11 there was a default, it was submitted to counsel. The
12 judgment itself that has that major mistake is mailed to
13 Karen Bullock Kreeck, the Bullock Law Firm on July 22nd, more
14 than a month before the order was entered and there was no
15 objection filed.
16 MS. K. ENGLE: That's right.
17 THE COURT: So, basically what we have is the
18 estate defaults, there's a judgment against the estate and
19 that's what we have. So, at any rate, I go through that
20 because the record should be clear as to what happened.
21 There is a judgment for, against the estate for \$44,514 and a
22 \$87,411 and it appears on its face to be in error. \$87,000
23 appears to be what the total judgment should have been but -
24 MS. K. ENGLE: Nobody caught it.
25 THE COURT: Well, it was sent to the counsel for

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09330

1 the estate and the counsel for the estate didn't look at it
2 and say, Hey, abhh, there - essentially what it meant was
3 that instead of the principle amount of the judgment being
4 \$44,594 it was really the principle judgment ended up being
5 \$89,000 because the attorney fee amount, as I recall when I
6 looked at this several years ago was not \$87,000 which you
7 would not have expected there to be \$87,000 of attorney fees
8 in a case where you get a default judgment even with the
9 amount of work that was required due to the estate. It never
10 went to trial. You would not expect \$87,000 of attorney fees
11 to be there in a case where, where there's a complaint filed,
12 an answer, motion for summary judgment. But the point is,
13 this is not my case. This is the case of Matthew Bates and
14 if somebody whose affected by the judgment wants to challenge
15 it, it appears they've got to go to Matthew Bates and do
16 that.

17 MS. J. ENGLE: Can I say something on that?
18 THE COURT: Of course.

19 MS. J. ENGLE: There is a problem with that and
20 correct me if I'm wrong but I was talking to Kathy, this last
21 case number, abhh, the 272, ending in 272 case is what this
22 judgment was filed under but when they consolidated this case
23 they did it the exact same way that is in front of you here
24 today with this eviction matter with me -

25 THE COURT: I agree with you. They should

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09331

1 One of the questions - I ask that the overall
2 question which is how did the work, I mean, what seems to me
3 to be the fairest thing is to look at how the attorneys work
4 helped preserve the estate and prevent it from being lost.
5 One of the big things that we just discussed that kind of
6 stands out is you were counsel for the estate at the time the
7 motion for summary judgment was filed. It was granted
8 because there was no response and then we have what I think
9 should have been an \$87,000 judgment ended up being kind of a
10 double dip because of that form of judgment which essentially
11 - I think what appears from the documents is that it was a
12 \$44,000 judgment in principal and then intended to be a
13 \$87,000 judgment in total. But instead \$87,000 was awarded
14 in attorney fees and if anybody had looked at that, again
15 we're at 20/20 hindsight, if they'd looked at it at the time,
16 things might have been very different. So those are concerns
17 I have when I look back years ago when you were involved in
18 the estate.

19 MS. KREBECK: All right. I'll address those first.
20 THE COURT: Okay.

21 MS. KREBECK: With respect to the time period
22 between when the claim against the estate was denied and the
23 stay lifted and parties substituted and the end of that
24 summer, I unfortunately, do not have my notes here. So I
25 don't recall exactly what was happening.

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09332

1 three type of a claim.

2 THE COURT: Didn't the Settlement Agreement
3 allocate the - I mean -

4 MR. MAYFIELD: It does but still specifies as a
5 priority two claim. I mean, the whole issue is, attorney's
6 fees have to be approved by the court and so we're going to
7 say, Okay, what priority is there, again it has to be
8 submitted as a priority claim on behalf of the Special
9 Administrator or services provided on behalf of the estate.
10 So that \$40,000 was not provided, was not attorney's fees
11 expended on behalf of the estate. It is on behalf of Homer
12 when he was living. So that has to be excluded as a claim
13 for reimbursement as a prior attorney for the estate, for
14 attorney's fees for services rendered on behalf of the
15 estate. You have to pull that aside, that has to be dropped
16 down as a lower priority regardless, even regardless of the
17 Settlement Agreement because of the nature of those fees and
18 how they were incurred.

19 Then you come down to the big issue which has been
20 articulated very clearly today, is a big concern that
21 substantial time and damages have been caused to this estate
22 because of failure of Karen Kresck to adequately represent
23 the Special Administrator when she was counsel, to respond to
24 the motion for summary judgment with regards to Hi-Country,
25 even if she was contemplating withdrawal, or if she had

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09333

1 sought to do so, until she's released formally by an order of
 2 this court, she still had a fundamental obligation under the
 3 Rules of Professional Responsibility to represent the best
 4 interest of her client which was the estate and Wende Throne
 5 as Special Administrator. So she had a duty to at least
 6 respond, at least to provide information to the Special
 7 Administrator as to a motion for summary judgment and it's
 8 completely disingenuous for her to come before this Court and
 9 say I'm entitled to attorney's fees when it's her behavior or
 10 lack of acting on behalf of the estate which has caused
 11 substantial damage to the estate. And so I would submit that
 12 her attorney's fees should not be paid at all. Even if there
 13 was sufficient funds to allow her to be awarded, I would
 14 argue she couldn't be paid. And then just to reiterate, her
 15 claim is a party two claim.

16 For Van Cott - and I have to preface my remarks
 17 with regard to Van Cott that I hold Steven Sloan in the
 18 highest regard. He's a colleague and a mentor and it's
 19 difficult for me personally to argue against him but I have
 20 to state on behalf of the Special Administrator that Van Cott
 21 unfortunately should not be paid in this matter because they
 22 did not follow the court's order as to the scheduling order.
 23 The Court made it very clear that we were to send out notice
 24 of our petition and give all the parties adequate time to
 25 file a response to our petition which they did not do. I got

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09334

1 MS. K. ENGLE: Okay. Karen Kreeck submitted her
 2 legal fees but she did not do it according to Rule 73 -
 3 THE COURT: Would you pull the microphone towards
 4 you?
 5 MS. K. ENGLE: She didn't break out the hourly, she
 6 just put a sum total at the top and say, Oh, I believe I did
 7 this much work for \$5,000 and then she went down and just
 8 bulleted basically what she did. I think that's improper
 9 billing and it should be denied just on that alone.

10 She also billed \$15,758 after she withdrew from the
 11 estate and I'm scratching my head saying, Well, I didn't
 12 think attorneys could do that after they withdraw and that
 13 was part of her claim too. And I couldn't understand if she
 14 was counsel for Van Cott, and then as a witness she couldn't
 15 bill this \$15,000 under the umbrella of Van Cott billing
 16 because she was a witness for them. But then she can't
 17 really come back and charge the estate for that money because
 18 she's not representing the estate. So I didn't think that
 19 was fair.

20 The promissory notes were done and the trust deed
 21 notes were placed on the properties when Homer didn't own the
 22 properties. She pushed them through through, in my opinion,
 23 illegal manipulation. She had Homer sign the documents, she
 24 didn't have them completed and then she put them into, filed
 25 them and initialed that she made a change on it without

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09335

1 Homer's signature.

2 The Deer Ridge deed, ummm, she notarized my
 3 signature as signing it. I never signed the deed. The
 4 problem now that we have facing with Hi-Country,
 5 misconception that the estate owned Hi-Country when, in fact,
 6 the deed didn't even transfer the property to the estate and
 7 when I'm bringing these up is that there's been so many
 8 things that she's done that just plain do not warrant her to
 9 have any attorney's fees paid. In fact, I would request the
 10 Court to grant leave that I would file a claim against her
 11 for causing harm to the parties which is myself for the
 12 damages that's resulted in it, for the Hi-Country. I mean,
 13 I'm just devastated over what's going on with that. She has
 14 not acted in the best interest of the estate, the Hi-Country
 15 judgment.

16 The Crystal lien was nullified and the reason why
 17 she wasn't asked, so I'm asking now Karen,
 18 Ms. Kreeck, please remove that lien.
 19 MS. KREECK: I would be happy to.

20 MS. ENGLE: Thank you. So please deny her fees. I
 21 don't believe she's entitled to them.

22 Mr. Sloan did file late. I don't think he's
 23 entitled to them because he filed them late.

24 Mr. Paxman says he's entitled to the escrow account
 25 but in my calculation he says \$14,400 and he subtracts 28 but

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09336

1 requested that I work with her.
2 THE COURT: Your two minutes is about up. Any
3 final points?
4 MS. KREECK: Yes, I have two more.
5 THE COURT: Okay.
6 MS. KREECK: The document which Judy Engle had
7 directed everyone's attention relating to Wende's divorce
8 action, the only signature, the only mention of my name on
9 here - and I assume she has provided copies of this to you as
10 well - is that I mailed, I physically put the documents in
11 the mail for Wende. That is it. I was not her counsel.
12 That issue -
13 THE COURT: You mean mailing to Wende?
14 MS. KREECK: No, these were documents prepared by
15 Wende in her divorce action.
16 THE COURT: And you mailed them for her?
17 MS. KREECK: I mailed them for her and my signature
18 on there simply is on the Certificate of Mailing saying I
19 mailed them. She was in the office on estate related matters
20 and I mailed them, that is it.
21 THE COURT: Okay, anything else?
22 MS. KREECK: Finally, on the attorney's liens, I
23 did not have advanced confidential information. I did not
24 see the Settlement Agreement or know of its terms until 2014.
25 I was able to file my attorney's liens based on the fact and

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09337

Addendum H

Order Approving Form of Settlement Agreement

November 14, 2013

This Order included the Offer E-mail [R.14233 - R.14237]

Signed September 3, 2013 by the parties with Court approval

Made part of November 14, 2013 Final Approved Order

Exhibit C-1 [R.14237]

List of Priority Claims tiered as Priority 1, Priority 2 Priority 3

Each class paid out of probate assets, meaning
Payson + Price + tangibles

Priority 1 - paid in full, in the order listed, until all are paid in full.

Priority 2 - all claims paid pro rata to extent of available funds.

FILED DISTRICT COURT
Third Judicial District
NOV 14 2013
SALT LAKE COUNTY
By Kelly Deputy Clerk

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Telephone: 801.552.5553
Attorneys for Special Administrator

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

In the Matter of the Estate of

THOMAS F. ENGLE,

Deceased.

ORDER APPROVING FORM OF SETTLEMENT AGREEMENT

Probate No. 103901948

Judge Kelly A. Kelly

At a telephonic status conference on September 3, 2013 the Court gave provisional approval to a settlement agreement among Wende Throne (the special administrator, represented by Richard K. Gardner), Judy Engle (represented by Isaac D. Paxman), Roy Engle (represented by Isaac D. Paxman) and Kathy Engle (pro se). The terms of the settlement agreement were read into the record at that hearing.

Subsequent status conferences were held on September 18, 2013 and October 29, 2013 to ascertain whether the terms of the settlement agreement had been reduced to a signed writing as contemplated in the record. Another hearing was held on November 1, 2013 for the purpose of resolving all remaining disagreements about the written form of the settlement agreement. All of

the above named parties and their respective counsel, if any, were present at all of the above mentioned hearings (either in person or by telephone, as applicable).

At the November 1, 2013 hearing, the Court considered proposed forms of settlement agreement submitted by each of the parties and addressed various points of disagreement among the parties as to the form of the settlement agreement. The Court found that certain provisions were agreed to by all parties. As to disputed provisions, the Court made findings as to whether each disputed provision was or was not consistent with the transcript of the September 3, 2013 hearing.

A form of settlement agreement that reflects the findings of the Court is attached hereto as Exhibit A.¹ The Court finds and declares that the attached form of settlement agreement accurately represents the agreement of the parties as read into the record at the September 3, 2013 hearing. To the extent of any perceived or actual inconsistency, if any, the attached form of settlement agreement shall control.

Mr. Gardner, counsel for the special administrator, was directed to prepare this order. At the November 1, 2013 hearing, the Court also made other orders regarding the implementation of the settlement agreement and other related issues. Those other orders will be reflected in a separate order to be prepared by Mr. Paxman.

Another status conference is scheduled for November 14, 2013 at 8:00 a.m.

¹ Paragraph numbering in the final form of agreement has been preserved from prior drafts. Consequently, the recitals and terms of the agreement are not necessarily numbered consecutively. This is intentional.

DATED this 14th day of November, 2013.

By the Court:


Keith A. Kelly, District Judge



APPROVED AS TO FORM:

/s/ rkg for J Paxman 11/6/2013

Isaac D. Paxman
STEPHAN LEWIS PAXMAN & BARNES
Attorneys for Judy Engle and Roy Engle

Kathy Engle, pro se

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2013, I caused a true and correct copy of the foregoing **ORDER APPROVING FORM OF SETTLEMENT AGREEMENT** to be served, in the manner indicated, upon the following:

Kathy Engle	<input type="checkbox"/> United States Mail
PO Box 225	<input type="checkbox"/> Hand Delivery
Arvada, Colorado 80001	<input type="checkbox"/> Facsimile
kat2eng@gmail.com	<input checked="" type="checkbox"/> Email
Isaac D. Paxman	<input type="checkbox"/> United States Mail
STEPHAN LEWIS PAXMAN & BARNES	<input type="checkbox"/> Hand Delivery
10158 South Jordan Parkway	<input type="checkbox"/> Facsimile
Salt Lake City, Utah 84093	<input checked="" type="checkbox"/> Email
spaxman@slputah.com	

/s/ rkg

EXHIBIT A
Approved form of settlement agreement

4618-0403-5154

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ESTATE SETTLEMENT AGREEMENT

THIS ESTATE SETTLEMENT AGREEMENT (this "Agreement") is made and entered into effective as of the 2nd day of September, 2013 by and among the following parties: Wende Throne, in her capacity as special administrator of the Estate of Homer Engle, as trustee of the Homer Engle 2010 Trust, and individually ("Wende"); Kathy Engle ("Kathy"); Judy Engle ("Judy"); Roy Engle ("Roy"); and any and all other entities that are owned, managed, controlled and/or represented by any of the foregoing. Wende, Kathy, Judy and Roy are sometimes referred to herein collectively as the "Parties" or each a "Party." References herein to a Party include all entities owned, managed, controlled and/or represented by that Party except as otherwise specified or the context may require. References herein to Wende include both her personal and fiduciary capacities, including on behalf of the above mentioned estate and trust, except as otherwise specified or the context may require. The above mentioned estate and trust are also sometimes referred to herein collectively as the "Estate." Kathy, Judy and Roy are sometimes referred to herein collectively as the "Siblings."

WITNESSETH:

WHEREAS, the decedent, Homer Engle, died on November 21, 2010, leaving a purported will, a purported trust, substantial property, and three surviving children—the Siblings—who are the decedent's heirs at law;

WHEREAS, the decedent's will and trust purport to transfer certain assets to Wende and her two daughters, Alexa McCall Thayer and Brian Lynn Wilcken, both of whom were minors at the time of the decedent's death;

WHEREAS, the interests of Wende's said daughters are adequately represented in connection with this matter by Wende herself under Utah Code § 75-7-303(6) and by the consent of Alexa McCall Thayer, who is now an adult, under Utah Code § 75-7-304;

WHEREAS, soon after the decedent's death, a probate proceeding was initiated in Third District Court in Salt Lake County, Utah, case no. 107901948, wherein Wende was appointed as special administrator of the probate estate;

WHEREAS, the will has not yet been probated, the validity of the decedent's will and trust are contested on various grounds including undue influence, and the Parties have been embroiled in litigation on a more or less continuous basis since the decedent's death;

WHEREAS, the Estate claims ownership of nine parcels of real property in which the decedent owned or purported to own an interest (the "Properties"), referred to herein as "Payson," "Price," "Cherokee," "Woods Cross," "State Street," "Crystal," and three lots

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collectively referred to as "Hi-Country," each of which Properties is more fully described in Exhibit A attached hereto.

WHEREAS, the Estate also claims ownership of numerous items of tangible personal property (the "Tangibles");

WHEREAS, Kathy claims ownership of various Properties and Tangibles, including but not limited to Crystal and Hi-Country;

WHEREAS, Judy claims ownership of various Properties and Tangibles, including but not limited to Cherokee, Woods Cross and Hi-Country;

WHEREAS, Roy claims ownership of various Properties and Tangibles;

WHEREAS, Wende claims ownership of various Properties and Tangibles, including but not limited to State Street;

WHEREAS, each of the Siblings has also asserted substantial creditor claims against the estate and/or the decedent based on various causes of action including but not limited to contract, quantum meruit, trust, undue influence, and various other claims;

WHEREAS, each of the Siblings has also asserted substantial claims against Wende personally based on various causes of action including but not limited to breach of fiduciary duty, fraud, conversion, and various other claims;

WHEREAS, other third party creditors have also asserted claims against the estate and/or the decedent, including obligations owed by the decedent at the time of his death as well as obligations accruing during the course of administration of the Estate;

WHEREAS, these obligations include a mortgage loan on Crystal in favor of Christine McKenley having a balance of approximately \$18,000, as more specifically provided in a Settlement and Voluntary Agreement dated July 26, 2013 (the "McKenley Loan"); delinquent property taxes owing on State Street in the estimated amount of \$22,000 (the "State Street Property Taxes"); delinquent property taxes owing on Payson in the estimated amount of \$15,000 (the "Payson Property Taxes"); a judgment in favor of Roy Watson in the amount of \$15,973.32 (the "Watson Judgment"); a judgment against the decedent in favor of Donald Fannin in the amount of \$28,840.50, of which the sum of \$17,000 has been paid in kind in the form of equipment located on Payson, leaving a balance of \$11,840.50 (the "Fannin Judgment"); and a mortgage loan on Cherokee in favor of Zions Bank having an estimated balance of \$42,000 (the "Cherokee Mortgage") (collectively, the "Secured Claims").

WHEREAS, other claims asserted against the estate and/or the decedent include additional amounts owed to Donald Fannin in the amount of \$25,094.75 (stipulated allowed amounts of \$42,000, less secured portion of \$28,840.50 represented by the Fannin Judgment, plus

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other-unsecured fees and costs of \$11,835.03) (the "Faintin Unsecured Claim"), a judgment against the decedent in favor of Hi-Country Estates Phase II Homeowners Association ("Hi-Country HOA") in the amount of \$87,411.86 (the "Hi-Country HOA Judgment"), and an allowed claim against the estate in favor of Rinchart Feltzer Simonsen & Booth, P.C. ("Rinchart") in the amount of \$8,022.87 (the "Rinchart Claim") (collectively the "Unsecured Claims").

WHEREAS, additional claims include (1) the Woods Cross HOA lien in the estimated amount of \$3,300, (2) delinquent property taxes on Woods Cross in the estimated amount of \$2,500, (3) delinquent property taxes on Price in the estimated amount of \$2,000, (4) assessments for Hi-Country in the estimated amount of \$3,500 (no party is relying whatsoever on the accuracy of any of these estimated amounts).

WHEREAS, on May 17, 2013 the Court entered an order directing that Cherokee Lane be sold and the proceeds used to satisfy all of the Secured Claims (except that a portion of the Faintin judgment would remain outstanding).

WHEREAS, Wende, Judy, and Roy are also entitled to compensation and/or reimbursement for services performed and costs advanced on behalf of the Estate in managing the Properties.

WHEREAS, Judy, Inc., by virtue of this Agreement, surrendered any interest in her mobile home located at State Street, including her interest in future income to be earned from the mobile home.

WHEREAS, Wende, Judy, and Roy have incurred substantial attorney fees and costs, all of which the Parties agree are in the nature of administrative expenses with respect to the Estate.

WHEREAS, Kathy, who is pro se in this matter, has also incurred substantial litigation costs, which the Parties agree are in the nature of administrative expenses with respect to the Estate.

WHEREAS, the decedent was represented by attorney Karen Kreck of the Bullock Law Firm ("Kreck") and incurred substantial attorney fees and costs in the amount of \$41,402.00 prior to his death.

WHEREAS, following the decedent's death, Kreck undertook to represent the Estate, and incurred substantial attorney fees and costs in the amount of \$100,084.00.

WHEREAS, Wende, as special administrator, subsequently engaged the law firm of Van Cott, Hagley, Cornwall & McCarthy, P.C. ("Van Cott") to represent the Estate, and has incurred substantial attorney fees and costs, of which the sum of \$140,871.50 is currently unpaid and owing as of August 31, 2013, which amount continues to grow.

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WHEREAS, Judy has been represented in this matter by Isaac D. Paxman of the law firm of Megan Lewis Paxman & Barnes ("Paxman"), and has incurred substantial attorney fees and costs, of which the sum of \$140,354.01 is currently unpaid and owing as of August 31, 2013, which amount continues to grow.

WHEREAS, on September 2, 2013, Richard K. Gardner ("Gardner"), an attorney with Van Cott, circulated an email containing a settlement offer (the "Offer Email"), including a one-page attachment captioned "September 2, 2013 proposal" (the "Attachment"), copies of which are attached hereto as Exhibits B and C, respectively.

WHEREAS, on the morning of September 3, 2013 the Parties and their attorneys met in person and reached an agreement (the "Settlement") to settle all claims and causes of action among the Parties, which agreement was based on the Offer Email and Attachment, subject to certain oral modifications agreed to by the Parties (the "Oral Modifications").

WHEREAS, the terms of the Settlement consist of the Offer Email, the Attachment and the Oral Modifications.

WHEREAS, at a hearing on September 3, 2013, the terms of the Settlement were read into the record, which the Court then provisionally approved as among the Parties.

WHEREAS, this Agreement memorializes the terms of the Settlement and any modifications the Parties have subsequently agreed to.

NOW THEREFORE, in consideration of the foregoing premises and the terms set forth below, the Parties acknowledge and agree that they are legally bound by the terms of the Settlement. All exhibits are by this reference incorporated herein and made a part hereof.

The terms of the Settlement are set forth below. All material portions of the text of the Offer Email are reproduced verbatim below in Courier font and indented. Explanatory text clarifying or modifying the meaning of the Offer Email or otherwise memorializing the terms of the Oral Modifications is inserted below, within the text of the Offer Email, at appropriate locations immediately following the affected paragraph(s) of the Offer Email, in Times New Roman font (i.e., the same font in which the balance of this Agreement is written).

TERMS:

Division of properties: Same property division we contemplated at mediation. Kathy gets 5/6 of Hi-Country plus Crystal. Judy gets Cherokee plus Woods Cross plus 1/6 of High Country. Wende gets State Street, and we sell Payson and Price. We use the proceeds of Payson and Price to pay creditors, expenses, etc.

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Creditor claims and cash distributions: In terms of paying creditors, the pecking order is as follows: First pay all of the "secured" creditors (Priority 1)-items currently ordered to be paid out of the Cherokee proceeds, then all administrative expenses (Priority 2), then unsecured creditors (Priority 3). Each priority paid in full before any funds pass to the next priority level. If any funds remain, then they are split equally among the four parties (Roy, Judy, Kathy, Wende).

These paragraphs alter the existing Court order which provides that Cherokee is to be sold. The Parties have agreed that Cherokee will no longer be sold, but instead Payson and Price will be sold. All of the Secured Claims will then be paid out of the proceeds of Payson and/or Price, instead of being paid out of the proceeds of Cherokee.

The Estate has previously reached agreements with most of the Secured Claim creditors to forgo further collection activity in exchange for the assurance that their claims would be paid out of the Cherokee proceeds. Thus, this change will require the consent of the affected creditors. Nothing in this paragraph prevents Secured Claims from being paid from other available funds.

Therefore, the Parties will seek the consent of all of the Secured Claim creditors to modify the existing order to provide that instead of Cherokee being sold, Payson and Price will be sold, and all Secured Claims will be paid in full out of the proceeds of Payson and/or Price, at closing, in the order reflected in the Attachment.

Priority 1 includes McKinley, State St. taxes, Payson taxes, Watson, Pannin JEN. It also includes 50% of cash towards the Ziona mortgage on Cherokee, plus \$15K to each of Roy, Kathy, Wende. Any remaining balance on the Ziona mortgage follows the property. These payments total \$156K. See attachment.

The numbers used here and in the attachment with respect to Secured Claim creditors are approximations and/or estimates only. The intent is to pay the actual balance owing on those Secured Claims, as described above in the recitals of this Agreement.

The Parties orally modified this paragraph to provide that the Ziona Mortgage will be paid in full (estimated to have a balance of approximately \$42,000) and that the sum of cash being paid to Kathy will be \$20,000 instead of \$15,000. (These payments remain as Priority 1 items.)

The HOA lien on Woods Cross and the delinquent taxes on Woods Cross will follow the property.

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Priority 2 consists of Kreeck 141K, Van Cott 135K to date, Paxman 135K to date. Van Cott and Paxman are subject to increase. Kreeck's are fixed. The parties agree to treat Paxman's attorney fees as an administrative expense of the estate, just like Kreeck and Van Cott. Thus, all three attorneys (Kreeck, Van Cott, Paxman) are paid in full before any cash goes to Priority 3 unsecured creditors.

If funds are not sufficient to pay Priority 2 in full, then each attorney is paid pro rata. However, Van Cott and Paxman are subject to a floor of \$95K, meaning that Van Cott and Paxman must be paid at least \$95K each before anything can be paid to Kreeck.

The Parties orally modified these paragraphs to provide that instead of a \$95,000 floor applicable only to Paxman and Van Cott, the floor applies to all three attorneys and is set at \$100,000 per attorney. No further clarification as to the meaning of this term was agreed upon by the Parties. The only reasonable interpretation of this term is that any available funds are paid equally to each of the three attorneys, until each has been paid the sum of \$100,000, and then any excess funds are applied pro rata in the same manner as would have happened in the absence of any liens.

In avoidance of doubt, the Settlement is contingent upon Kreeck releasing any liens she may have against any of the Properties.

Priority 3 consists of Hi-Country HOA 87K, Fannin 26K, Rinehart 8K. Depending on what the properties sell for, this settlement potentially (almost certainly) renders the estate insolvent. Thus, we will need the consent of the creditors in order for the court to approve the deal.

Rather than try to get their consent in advance, the parties agree to either negotiate with the creditors, or else seek court approval overruling their objections, as follows:

For each creditor, one party is selected to handle negotiations. Any deal must be approved by all parties. However, the parties agree not to object to a deal provided it meets certain conditions.

For Hi-Country HOA, Kathy would handle the negotiations. The conditions for Kathy to approve would be that any and all liens relating to the lawsuit (i.e., the \$49K of

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assessments plus attorney fees totaling \$87K) must be released/discharged as a result of the deal. In other words, the HOA must agree they can't come back and collect anything from Kathy that was covered by the lawsuit. For Wende, Judy and Roy, the condition is that the amount of cash paid under the settlement must not exceed \$20K.

This condition precedent is expressly limited to resolving the Hi-Country HOA lawsuit. There is no warranty or obligation to deliver Hi-Country to Kathy free and clear of all claims whatsoever. While nothing prevents Kathy from discussing or negotiating any after-acquired liens or assessments with Hi-Country HOA, she has a fiduciary duty to seek a settlement as to only those assessments for which the Estate itself is liable by virtue of the Hi-Country HOA Judgment. All other claims or encumbrances relating to Hi-Country follow the property. No Estate funds should be used to help settle any other obligations that do not affect the Estate.

For Fannin, Wende will handle negotiations. The condition is that the total cash payment does not exceed \$10K. Payson tangibles could also be part of any deal.

For clarity, this paragraph refers only to the Fannin Unsecured Claims. The Fannin Judgment is included above as part of the Secured Claims.

For Rinehart, Judy and Roy will handle negotiations. Condition is that cash payment does not exceed \$4K.

If we are unable to reach a deal with a creditor that satisfies the conditions, then either the parties can either choose to approve a less favorable deal (i.e., waive the condition), or go to court and attempt to persuade the judge to overrule the creditor's objections on the grounds that the estate is insolvent, which I think he would probably approve. If we know that we have tried to negotiate in good faith with all creditors.

Each negotiating Party will try to secure the best deal possible with respect to the claim he or she is negotiating.

Any cash settlement reached with a creditor would be treated as a Priority 1 claim.

Procedure for selling Payson and Price: For Payson the parties select a commercial broker. For Price select a realtor. For decisions re listing price, accepting offers,

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making counteroffers, etc., all parties agree to follow agent's recommendations or as otherwise agreed by a majority of them or as ordered by the court. Attorneys (me or Isaac) will handle all communications with agents. To guarantee that all funds will be disbursed in compliance with the deal, funds will either be paid out at closing directly from escrow, or paid into Van Cott trust account for further disbursement. No individual party ever has custody of estate proceeds.

The parties agree that the proceeds identified in the paragraph above may be paid into a court trust account instead of into the Van Cott trust account.

Loan: If neither property sells before the Nov 30 deadline to pay McKinley, then the parties agree to take out a loan against Payson or Price. If unable to get reasonable loan against either property then parties must agree on (or if can't agree, then court will select) another property to borrow against. Closing costs/origination fees roll into loan. Loan will then be paid in full (as a Priority 1 claim) as soon as Payson or Price sells.

To the extent a party pays money toward a Secured Claim, then the amount that would have been paid towards that Secured Claim (but for that payment by a party), but not to exceed the amount actually paid by that Party, will instead be paid to that Party (as a Secured Claim, in the same order of priority as the Secured Claim that was paid).

Management of properties: Unless specifically provided otherwise, management of and rents from properties will remain status quo until either Payson or Price sells.

This was orally modified to provide that status quo remains until both Payson and Price have sold.

For Judy, this means she continues to manage 1, 6, WX, Price, and will continue to use those proceeds to reimburse her out of pocket expenses and/or to pay into court to be applied equally to Isaac's and my attorney fees, consistent with previous orders of the court. (Whether Roy has any interest in these funds is solely between Roy and Judy.)

Judy will also immediately assume management over her 1/6 of High Country.

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Judy will also immediately assume management of Cherokee. This means she collects any rents, but also means she services the mortgage payments out of those rents. As an accommodation, the estate will continue to make the loan payments for so long as the property has not been rented and neither Price nor Payson has sold, but in no event beyond the October payment. Once Judy has secured a tenant for in any event beginning with November payment), Judy assumes responsibility to keep loan current.

subject to the existing court orders and keeping the Cherokee loan current, any remaining rent proceeds are "gravy" for Judy.

To avoid the use of the colloquialism "gravy," the parties now agree that the sentence immediately above is replaced with the following: Subject to the existing court orders and keeping the Cherokee loan current, any remaining rent proceeds are Judy's.

Once Payson or Price sells, then Cherokee will be distributed outright to Judy. \$30K will be paid toward the mortgage, and she will simply own the property and can do whatever she wants with the property and/or the rents.

Consistent with modifications described above, the entire balance of the Cherokee Mortgage will be paid, not just the sum of \$30,000. This was orally modified to provide that status quo remain until both Payson and Price have sold.

Similarly, Wendie continues to manage 2-5 and Payson. She will continue to use rent proceeds from State St 2-5 to pay utilities, maintenance, etc. just as now. In addition, she will continue to service the Cherokee mortgage until Judy gets it rented out (but not beyond the September and October payments). Once Payson or Price sells, State St will be distributed outright to Wendie, including units 1 and 6.

In harmony with the modification noted above that the status quo shall remain in place until both Payson and Price have sold, the word "or" in the sentence immediately above is replaced with "and".

Kathy will immediately take over management of Crystal and her 3/8 of High Country, and will immediately be entitled to collect any rents on those properties or do whatever else she wants with them.

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Title: Title will be conveyed to each party in whatever form they prefer. This could be, for example, by having a court order quieting title in the name of one of the existing entities appearing in the chain of title, and then having the court declare that the party is the sole owner of that entity. This would both (1) protect the party from personal liability and (2) strengthen our position as against any creditors. But each party can decide what they want.

In short, any property distributed to a Party under the terms of this Agreement will be distributed free and clear of any claims of the Estate or any other Party.

Title to all properties will be distributed only at such time as both Payson and Price have sold and final Court approval of the Settlement has been given.

Tangible personal property: All tangibles now located on existing properties remain with those properties. This means Payson items are probate estate assets, Crystal items going to Kathy, etc. This does not prevent a party from retrieving items already owned by that party. For instance, Judy can still remove her items from the State St storage unit. (Each party would have 30 days to do this.)

In harmony with the modification noted above that the status quo will remain in place until both Payson and Price have sold, the 30-day deadline referenced immediately above will begin to run on the date of successful closing on the last sale of Payson and Price. Any Party is free to peacefully remove any item owned by that Party beginning now and continuing until such 30-day deadline has expired.

All tangibles remaining in the probate estate (i.e., all items now located on Payson or Price, plus any stored items) will either be sold or divided among the parties. Items having significant financial value (>\$1,000) will be sold. Other items (<\$1,000) will be divided among the parties.

Nothing in this Agreement prevents the Parties from agreeing to sell Tangibles having a lower value.

The parties will agree on a fair procedure to divide up the items, or if they can't agree, the court will impose a fair procedure.

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The parties will have rights of first refusal to purchase any sellable items at fair market value before the items are offered to third parties. The parties will agree on (or the court will impose) a fair procedure to allocate the proceeds and/or establish valuations.

I have purposely left out mentioning any specific items, even though I know they are important to the parties. I simply don't think we will ever reach an agreement if we try to work out the specifics today.

Contingencies: This agreement is contingent upon court approval. We will first seek court approval as among the parties only, with the understanding that we will then approach the creditors to negotiate away any objections they might have. Then we will return to court either to seek approval of those workouts, or if we are not able to settle with a creditor, then to have the court overrule that creditor's objections. This will include Hi-Country, Fantin, Rinehart, Kreeck, and any other creditors who may have standing to object and/or may have a lien on any of the properties. (For avoidance of doubt: this agreement is expressly contingent upon any liens that Kreeck may have being released or discharged.)

As mentioned above in the recitals, the Court has already given provisional approval to this Settlement as concerns the Parties themselves. Formal approval will require consent of all interested persons and/or a Court order overruling any objections of interested persons.

This is an offer to form a legally binding contract. If and when all three of you accept, then we will immediately have a binding, legally enforceable agreement. We will then proceed to seek court approval. List Payson and Price for sale, negotiate with creditors as described above, divide up tangibles, and live happily ever after.

The Parties agree that the phrase "and live happily ever after" is stricken from the terms of this Agreement.

Full release: There is intended to be a global resolution of all issues. All parties would release all claims against all parties. All assets are accepted as is. No

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further legal proceedings except as necessary to carry out this agreement.

This release takes effect only at such time as both Payson and Price have sold and final Court approval of the Settlement has been given.

Procedure for acceptance: Each party (or their attorney) can accept this offer by replying to this email indicating that they accept all of the terms set forth above. This email replaces all prior communications.

[Non-substantive portions of the Offer Email are omitted here.]

If all of the parties accept this written offer, and if we later discover that there were gaps where the parties neglected some detail or operated on differing assumptions, then the parties are legally obligated to work together in good faith to resolve those details in a manner most consistent with what we have agreed to. If the parties are unable to do this, then they agree the court will fill in those gaps based on what it believes is "fair and reasonable" and most consistent with the terms we agreed to.

[Non-substantive portions of the Offer Email are omitted here.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Wende Thorne, as special administrator of the Estate of Homer Engle

Wende Thorne, as trustee of the Homer Engle 2010 Trust

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Wende Thorne, individually and on behalf of any and all entities that may be owned, managed, controlled and/or represented by her

Judy Engle, individually and on behalf of any and all entities that may be owned, managed, controlled and/or represented by her

Roy Engle, individually and on behalf of any and all entities that may be owned, managed, controlled and/or represented by him

Kathy Engle, individually and on behalf of any and all entities that may be owned, managed, controlled and/or represented by her

CONSENTED TO BY:

Alexa Mccall Thayer, individually and on behalf of Brina Lynn Wilcken under Utah Code § 75-7-304

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EXHIBIT A

Property Descriptions

Payson:

Real property located in Utah County, State of Utah, parcel no. 20-088-0024, having a street address of 4494 W 12400 S, Spring Lake, Utah, and legally described as follows:

Beginning at the corner of 25th Street North of the Southwest corner of the Northwest Quarter of Section 30, Township 6 North, Range 7 East of the Salt Lake Base and Meridian; thence West 2.234 chains, thence North 14.675 14.425 chains to the beginning.

At 503 Beginning 11.23 chains West and 25 chains North of the Southeast corner of the Northwest Quarter of Section 30, Township 6 North, Range 7 East of the Salt Lake Base and Meridian; thence West 7.71 chains, more or less, to the East line of the Corner 40, 1 point and 60 chains Lynn property as recorded in Book 274 Page 111 of official records; thence along the property line North 14.48 chains, thence South 99° East 7.15 chains, more or less, to a point on the North of the prior to beginning; thence South 14.375 chains to the beginning.

14.375 chains, more or less, to the State Right-of-Way for construction of Interstate Highway through the property known as Interstate 70 and 14.375.

At 504 THENCE WITH due notice recorded by that certain Trustee and Boundary Line Agreement recorded June 26, 1996, as Entry No. 53962, in Book 6807, Page 432 of Official Records.

Price:

Real property located in Carbon County, State of Utah, parcel no. 01-0562001, having a street address of 162 N 200 E, Price, Utah 84501, and legally described as follows:

BEGINNING at point 65 FT N of SW CORNER LOT 3 BLK 2, LOCAL SURVEY OF SEC 16, T 14 S R 10 E, S 1/4 & M 1/4, thence E 88.8 FT M/L; thence N 28.85 FT thence E 36.2 FT thence S 17.7 FT, thence E 41.59 FT, thence S 20.95; thence E 50 FT; thence S 41 FT; thence W 216.59 FT M/L to BEGINNING

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Cherokee:

Real property located in Utah County, State of Utah, parcel no. 42-006-0055, having a street address of 3859 Cherokee Lane, Provo, Utah 84604, and legally described as follows:

LOT 7, BLOCK 3, INDIAN HILLS SUBDIVISION, PLAT A, according to the official plat thereof as recorded in the Office of the Utah County Recorder, State of Utah.

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Woods Cross:

Real property located in Davis County, State of Utah, parcel no. 06-108-50001, having street address of 1249 W 525 N, Woods Cross, Utah 84087, and legally described as follows:

All of lot 61, West Woods Mobile Home P.U.D. Amended, Woods Cross City, Davis County, Utah, according to the Official Plat thereof.

understand to be
RJP
KLS

State Street:

Real property located in Salt Lake County, State of Utah, parcel no. 16-21-351-020, having an approximate street address of 3737 W. State Street, Salt Lake City, Utah 84109, and legally described as follows:

understand to be

COM 102.8 FT N & 423.7 FT F FR SW COR SEC 31, T1S, R1E, SL MER., E 339.1 FT, N 60.65 FT, W 339.1 FT, S 60.65 FT TO BEG 0.5 AC.

RJP
KLS

Crystal:

Real property located in Salt Lake County, State of Utah, parcel no. 15-22-476-002, having an approximate street address of 3737 W. Crystal Avenue, West Valley City, Utah, and legally described as follows:

1553, 1573, under RJP

The West 100 feet of Lots 11 and 12, and the West 100 feet of the North 37.8 feet of Lot 13, Block 11, CHESTERFIELD PLAT "A", according to the official plat thereof as recorded in the office of the Salt Lake County Recorder

understand to be
RJP
KLS

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Hi-Country Lot 123:

Real property located in Salt Lake County, State of Utah, parcel no. 32-21-100-004, having an approximate street address of 15952 S Arnold Hollow Road, Riverton, Utah, and legally described as follows:

understand to be

Lot 123
Beginning at a point which is North 2111.69 feet and East 1800.09 feet from the West 1/4 corner of Section 21, T4S, R2W, E1/4, S 1/4, and running thence S 76°05'13" E, 853.56 ft. to a point on a 500 ft radius curve to the left (radius point bears S 79°05'19" E); thence southeasterly along said curve an arc distance of 302.16 ft (delta angle 12°14'43"); thence S 8°22'08" E, 130.00 feet to a point on a 500.00 foot radius curve to the right (radius point bears S 8°37'52" E); thence southeasterly along said curve an arc distance of 240.00 feet (delta angle 22°55'56"); thence S 13°32'55" W, 29.17 feet, more or less, to the 40 acre line; thence West along said 40 acre line 182.84 feet, more or less, to the 1/4 section line; thence N 0°46'16" E along said 1/4 section line 133.37 feet to a point on a 100.00 foot radius curve to the right (radius point bears S 32°26'24" E); thence northeasterly along said curve an arc distance of 226.02 feet (delta angle 08°24"); thence S 65°47'00" E, 589.62 feet to a point on a 500.00 foot radius curve to the left (radius point bears S 28°30'25" W); thence northeasterly along said curve an arc distance of 431.65 feet (delta angle 45°18") to the point of beginning.

Subject to a 75 foot R/W along the Northeasterly, Easterly and Southeasterly sides, and also subject to a restricted area.

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Hi-Country Lot 124:

Real property located in Salt Lake County, State of Utah, parcel no. 32-21-100-003, having an approximate street address of 15852 S Arnold Hollow Road, Riverton, Utah, and legally described as follows:

Lot 124

Beginning at a point which is North 3090.81 feet and East 1699.71 feet from the West 1/4 corner of Section 21, T4S, R2W, E1/4, S 1/4, and running thence S 69°20'27" E, 966.27 feet; thence S 56°58'10" W, 314.51 feet to a point on a 250.00 foot radius curve to the left (radius point bears S 37°01'50" E); thence southeasterly along said curve an arc distance of 137.17 feet (delta angle 33°40'25") to a point on a 250.00 foot radius curve to the left (radius point bears S 60°42'10" E); thence southeasterly along said curve an arc distance of 10.95 feet (delta angle 2°43'37"); thence S 25°34'17" E, 322.65 feet to a point on a 500.00 foot radius curve to the left (radius point bears S 69°25'47" E); thence southeasterly along said curve an arc distance of 58.11 feet (delta angle 4°39'32"); thence N 76°05'19" W, 832.56 feet to a point on a 500.00 foot radius curve to the left (radius point bears S 76°05'13" W); thence northeasterly along said curve an arc distance of 77.25 feet (delta angle 1°58'41"); thence N 11°54'09" E, 554.09 feet to a point on a 450.00 foot radius curve to the right (radius point bears S 18°04'00" E); thence northeasterly along said curve an arc distance of 345.38 feet (delta angle 13°59'08"); thence N 59°55'00" E, 233.99 feet to the point of beginning.

Subject to a 25 foot R/W along the Northeasterly and Southeasterly sides, also subject to a restricted area.

understand to be
RJP
KLS

Hi-Country Lot 130:

Real property located in Salt Lake County, State of Utah, parcel no. 32-16-300-005, having an approximate street address of 15774 S Overlook Road, Riverton, Utah, and legally described as follows:

Lot 130

Beginning at a point which is South 1707.20 feet and East 1082.44 feet from the West 1/4 corner of Section 16, T4S, R2W, E1/4, S 1/4, and running thence S 34°04'00" E, 375.36 feet; thence S 39°51'00" W, 233.39 feet to a point on a 500.00 foot radius curve to the left (radius point bears S 34°04'00" E); thence southeasterly along said curve an arc distance of 345.38 feet (delta angle 14°00'00"); thence S 17°56'00" E, 210.00 feet; thence S 78°01'00" W, 946.50 feet; thence S 27°09'55" E, 314.49 feet; thence S 15°39'35" E, 1316.34 feet to the point of beginning.

Subject to a 25 foot R/W along the Southeasterly side, also subject to a restricted area.

understand to be
RJP
KLS

A-4

14232

EXHIBIT B

Offer Email dated September 2, 2013

Richard K. Gardner

From: Richard K. Gardner
Sent: Monday, September 02, 2013 10:16 PM
To: KATE ENGLE, E. HAZZARD@ymail.com; Isaac Parnian (iparnian@cpusal.com)
Cc: Stephen R. Shain
Subject: settlement offer approved by Wendie
Attachments: 2013.09.02 mediation proposal.pdf
Hi Kathy and Isaac,

Kathy and I have been emailing back and forth and I think we have confronted most of the details and agree on the large issues, if not the small ones. Also, on Friday Isaac and I talked at length about where Judy and Roy stand and what their concerns are about a settlement.

I have spent many hours this "holiday" reviewing everything that has gone back and forth and also working with Wendie to see what areas we can reach agreement on. Based on those negotiations with you and my conversations with Wendie, I am endeavoring to make a settlement offer based on the following terms:

OFFER.

Division of properties: Some property division we contemplated at mediation. Kathy gets 5/6 of Hi-Country plus Crystal. Judy gets Cherokee plus Woods Cross plus 1/6 of High Country, Wendie gets State Street, and we sell Payson and Price. We use the proceeds of Payson and Price to pay creditors, expenses, etc.

Creditor claims and cash distributions: In terms of paying creditors, the pecking order is as follows: First pay all of the "secured" creditors (Priority 1—items currently ordered to be paid out of the Cherokee proceeds), then all administrative expenses (Priority 2), then unsecured creditors (Priority 3). Each priority paid in full before any funds pass to the next priority level. If any funds remain, then they are split equally among the four parties (Roy, Judy, Kathy, Wendie).

Priority 1 includes McKinley, State St taxes, Payson taxes, Watson, Fawcett 12K. It also includes \$30K of cash towards the Doms mortgage on Cherokee, plus \$15K to each of Roy, Kathy, Wendie. Any remaining balance on the Doms mortgage follows the property. These payments total \$136K. See attachment.

Priority 2 consists of Kneek 141K, Van Cott 155K to date, Parnian 135K to date. Van Cott and Parnian are subject to increase. Kneek's are paid. The parties agree to treat Parnian's attorney fees as an administrative expense of the estate, just like Kneek and Van Cott. Thus, all three attorneys (Kneek, Van Cott, Parnian) are paid in full before any cash goes to Priority 3 unsecured creditors.

If funds are not sufficient to pay Priority 3 in full, then each attorney is paid pro rata. However, Van Cott and Parnian are subject to a floor of \$50K, meaning that Van Cott and Parnian must be paid at least \$95K each before anything can be paid to Kneek.

Priority 3 consists of Hi-Country HDA 87K, Fawcett 25K, Bluffhart 8K. Depending on what the properties sell for, this settlement potentially (cannot certainly) render the estate insolvent. Thus, we will need the consent of the creditors in order for the court to approve the deal.

Rather than try to get their consent in advance, the parties agree to either negotiate with the creditors, or else seek court approval overruling their objections, as follows:

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14233

For each creditor, one party is selected to handle negotiations. Any deal must be approved by all parties. However, the parties agree not to object to a deal provided it meets certain conditions.

For Hi-Country HDA, Kathy would handle the negotiations. The conditions for Kathy to approve would be that any and all fees relating to the lawsuit (i.e., the \$45K of assessments plus attorney fees totaling \$48K) must be released/discharged as a result of the deal. In other words, the HDA must agree they can't come back and collect anything from Kathy that was covered by the lawsuit. For Wendie, Judy and Roy, the condition is that the amount of cash paid under the settlement must not exceed \$20K.

For Parnian, Wendie will handle negotiations. The condition is that the total cash payment does not exceed \$10K. Payson tangibles could also be part of any deal.

For Bluffhart, Judy and Roy will handle negotiations. Condition is that cash payment does not exceed \$4K.

If we are unable to reach a deal with a creditor that satisfies the conditions, then either the parties can either choose to approve a real forerunner deal (i.e., waive the conditions) or go to court and attempt to persuade the judge to overrule the creditor's objections on the grounds that the estate is insolvent, which I think he would probably approve if he knows that we have tried to negotiate in good faith with all creditors.

Any cash settlement reached with a creditor would be treated as a Priority 1 claim.

Procedure for selling Payson and Price: For Payson the parties select a commercial broker. For Price select a realtor. For decisions re listing price, accepting offers, making counter-offers, etc., all parties agree to follow agent's recommendations as in an advisory agreement by a majority of them or as ordered by the court. Attorneys (me or Isaac) will handle all communications with agents. To guarantee that all funds will be disbursed in compliance with the deal, funds will either be paid out at closing directly from escrow, or paid into Van Cott trust account for further disbursement. No individual party ever has custody of those proceeds.

Isaac: If neither property sells before the New 30 deadline to pay McKinley, then the parties agree to take out a loan against Payson or Price. If unable to get reasonable loan against either property then parties must agree on (or if can't agree, then court will select) another property to borrow against. Closing costs/signature fees not into loan. Loan will then be paid in full (on a Priority 3 claim) as soon as Payson or Price sells.

Management of properties: Unless specifically provided otherwise, management of and rents from properties will remain status quo until either Payson or Price sells.

For Judy this means she continues to manage 1, 6, WFF, Price, and will continue to use those proceeds to reimburse her out of pocket expenses and/or to pay into court to be applied equally to Isaac's and my attorney fees, consistent with previous orders of the court. (Whether Roy has any interest in these funds is solely between Roy and Judy.)

Judy will also immediately assume management over her 1/6 of High Country.

Judy will also immediately assume management of Cherokee. This means she collects any rents, but also means she services the mortgage payments out of those rents. As an accommodation, the estate will continue to make the loan payments for as long as the property has not been rented and neither Price nor Payson has sold, but in no event beyond the October payment. Once Judy has secured a tenant (or in any event beginning with November payment), Judy assumes responsibility to keep loan current.

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14234

Subject to the existing court orders and keeping the Cherokee loan current, any remaining rent proceeds are "gross" for Judy.

On re Payson or Price sells, then Cherokee will be distributed outright to Judy, \$10K will be paid toward the mortgage, and she will simply own the property and can do whatever she wants with the property and/or the rents.

Similarly, Wendie continues to manage 2-5 and Payson. She will continue to use rent proceeds from State St 2-5 to pay utilities, maintenance, etc., just as now. In addition, she will continue to service the Cherokee mortgage until Judy gets it rented out (but not beyond the September and October payments). Once Payson or Price sells, State St will be distributed outright to Wendie, including units 1 and 6.

Kathy will immediately take over management of Crystal and her 1/6 of High Country, and will immediately be entitled to collect any rents on those properties or do whatever else she wants with them.

Title: Title will be conveyed to each party in whatever form they prefer. This could be, for example, by having a court order quiting title in the name of one of the existing entities appearing in the chain of title, and then having the court declare that the party is the sole owner of that entity. This would both (1) protect the party from personal liability and (2) strengthen our position as against any creditors. But each party can decide what they want.

Tangible personal property: All tangibles now located on existing properties remain with those properties. This means Payson items are probate estate assets, Crystal items belong to Kathy, etc. This does not prevent a party from removing items already owned by that party. For instance, Judy can still remove her items from the State St storage unit. (Each party would have 30 days to do this.)

All tangibles remaining in the probate estate (i.e., all items now located on Payson or Price, plus any stored items) will either be sold or divided among the parties. Items having significant financial value (>\$1,000) will be sold. Other items (<\$1,000) will be divided among the parties.

The parties will agree on a fair procedure to divide up the items, or if they can't agree, the court will impose a fair procedure.

The parties will have rights of first refusal to purchase any sellable items at fair market value before the items are offered to third parties. The parties will agree on (or the court will impose) a fair procedure to allocate the RFRs and/or establish valuations.

I have purposely left out mentioning any specific items, even though I know they are important to the parties. I simply don't think we will ever reach an agreement if we try to work out the specifics today.

Contingencies: This agreement is contingent upon court approval. We will first seek court approval as among the parties only, with the understanding that we will then approach the creditors to negotiate away any objections they might have. Then we will return to court when to seek approval of those workouts, or if we are not able to settle with a creditor, then to have the court overrule that creditor's objections. This will include Hi-Country, Fawcett, Bluffhart, Kneek, and any other creditors who may have standing to object and/or may have a lien on any of the properties. (For avoidance of doubt, this agreement is expressly contingent upon any items that Kneek may have being released or discharged.)

This is an offer to form a legally binding contract. If and when all three of you accept, then we will immediately have a binding, legally enforceable agreement. We will then proceed to seek court approval, list Payson and

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Price for sale, negotiate with creditors as described above, divide up tangibles, and live happily ever after.

Full release: This is intended to be a global resolution of all issues. All parties would release all claims against all parties. All assets are accepted as is. No further legal proceedings except as necessary to carry out this agreement.

Procedure for acceptance: Each party (or their attorney) can accept this offer by replying to this email indicating that they accept all of the terms set forth above. This email replaces all prior communications.

I recognize this offer falls short of what each party wants and/or expects. I hope you will recognize that Wendie is making some significant concessions. Paying \$30K toward the mortgage and agreeing to the floor on Isaac's fees are very significant concessions which I worked very hard to get her to agree to. Also the concept of allowing up to \$10K to go out the door to clear the HI Country assessments is a huge concession to Wendie's view. This does not benefit Wendie or the estate. It just takes dollars that would otherwise pay her attorney fees and instead uses those dollars to benefit the owners of HI-Country.

This is a concrete, binding, written offer. Once all three siblings accept these terms, Wendie is bound and can no longer renegotiate the deal. I hope you recognize the value in that.

We have a hearing tomorrow at 8:30 a.m., after which Isaac will be leaving the continent for a while. So this is likely our last and best chance to avoid prolonged litigation. If you can accept at least the terms set forth above, then I strongly encourage you to simply accept this offer as written—even if you think there are gaps. Keep in mind that there is no such thing as a perfectly comprehensive agreement. Every contract has details the parties haven't worked out beforehand, but that doesn't prevent a binding agreement. If all of the parties accept this written offer, and if we later discover that there were gaps where the parties expected some detail or operated on differing assumptions, then the parties are legally obligated to work together in good faith to resolve those details in a manner most consistent with what we have agreed to. If the parties are unable to do this, then they agree the court will fill in those gaps based on what it believes is "fair and reasonable" and most consistent with the terms we agreed to. This sounds messy, I know, but it is a logical reality and is common practice. We will never reach an agreement otherwise.

Thanks,
Ruth

RICHARD K. EARDNER
ATTORNEY
1147 N. 1
8 SOUTH ST. STREET SUITE 100
BALTIMORE, MD 21201
P 410 551 5551
F 410 551 5577
E reardner@rkeatt.com
www.rkeatt.com

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EXHIBIT C

Attachment to Offer Email dated September 2, 2013

WYOMING 2 2163 PROCD

Priority 1 claims	
Isaac's fee	25,000
Mortgage fees	12,000
Payson's fees	11,000
Wendie's	16,000
Isaac's	11,000
Ruth	11,000
Zimmerman	30,000 (balance remains with property)
Wendie	23,000
Wendie	15,000
Total	196,000

Priority 2 Claims	
Payson	125,000 as of Aug 31 plus future fees incurred
Van Cott	120,000 as of Aug 31 plus future fees incurred
Payson	145,000
Total	410,000

Priority 3 Claims	
Payson	36,000
HI-Country HOA	30,000
Richard's fee	8,500
Total	121,500

Claims in each class are paid out of probate assets, meaning Payson's share + tangibles

Priority 1: much claim paid out of probate assets, while all are assets paid

Priority 2: all claims paid out of probate assets, while all are assets paid

Priority 3: all claims paid out of probate assets, while all are assets paid

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Addendum I

Transcript of hearing Wendie Special Administrator

Joining Beneficiaries to break the Settlement

October 29th, 2014

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

IN THE MATTER OF THE ESTATE OF : Case No. 103601948
HOMER ENGLE. : Appellate Court No. 20170382

PARTIAL TRANSCRIPT - OCTOBER 29, 2014

BEFORE

JUDGE KEITH KELLY

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 E. Ellen Way
Sandy, Utah 84092
801-523-1186

11314

APPEARANCES

For the Petitioner, Wendie Throne: STEPHEN J. MAYFIELD
Attorney at Law
For Beneficiaries: JOHN W. ANDERSON
Attorney at Law
For Entities: ISAAC D. PAXMAN
Attorney at Law
Other parties: Kathy Engle
Judy Engle
Roy Engle

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Mr. Mayfield	1
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Mr. Paxman	36
RULING	9

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1 SALT LAKE CITY, UTAH: OCTOBER 29, 2014
2 JUDGE KEITH KELLY
3 (Transcriber's note: Identification of speakers
4 may not be accurate with the audio recordings.)
5 PARTIAL TRANSCRIPT OF PROCEEDINGS
6 (2:19:31 to 2:31 transcribed as follows as requested)
7 THE COURT: Why don't we hear from counsel for the
8 Special Administrator? Mr. Mayfield.
9 MR. MAYFIELD: Thank you, Your Honor.
10 Your Honor, to begin with I'd like to address one
11 of the questions you asked Mr. Anderson because I think I can
12 clarify some of the issues which are really I think pertinent
13 here. You asked first whether the beneficiaries, these
14 counsels, have standing and the issue is as to the estate
15 they don't have standing. But as to the trusts, they do and
16 in this context per this Settlement Agreement, Wendie Throne
17 as trustee was brought in as a party to that Settlement
18 Agreement which was sought to have approval of that agreement
19 by this Court. Anytime a Court is to authorize an action by
20 the trustee, it's subject to Court approval and it is subject
21 to beneficiary approval. Therefore, the beneficiaries are
22 absolutely noticed, and they're entitled to notice of that
23 Settlement Agreement and the hearing. They weren't - they
24 didn't receive that notice. That's the biggest deficiency as
25 to that Settlement Agreement. And that is the segway to the

1

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1 biggest problem with this whole matter.
2 THE COURT: What is your position? What are you
3 asking me to do at the end of the hearing?
4 MR. MAYFIELD: I'm asking Your Honor to set aside
5 the Settlement Agreement and to allow us to move forward with
6 discovery with Mr. Anderson as to what the assets of the
7 Trust and the estate are and this is why, Your Honor, this is
8 really the crux of this matter.
9 I begin by saying I say this next comment with
10 great hesitation because it's very distasteful to me to
11 disparage a colleague. I know Steven Sloan very well, he's a
12 colleague and I consider him a mentor. But looking at this
13 case from, the outset both previous counsel, Counsel Kreeck
14 was the first attorney, and then Van Cott Bagley -
15 MR. SLOAN?: Objection Your Honor to the extent
16 he's going to disparage other counsel. I don't think it's
17 relevant.
18 THE COURT: I'm overruling the objection.
19 MR. SLOAN?: (Voices overlapping) that's what he's
20 going to do.
21 THE COURT: Well, if he wants to criticize former
22 counsel it's relevant to the issue of whether the settlement
23 should be approved. So I'm overruling the objection.
24 MR. MAYFIELD: Thank you, Your Honor.
25 My point is, as I look at this case and what

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11317

1 happened from the beginning, I have to conclude that either
2 former counsel completely disregarded proper procedure in
3 this matter or was negligent. That's my consideration
4 because here's the issue, Your Honor, most of the assets in
5 the estate - and I put that in quotes - because the assets of
6 the estate are very limited in actual ownership. As we look
7 at these assets, Your Honor, we've gone through all these
8 assets and I can't help but conclude that there is actually
9 no asset of all these properties which is an asset of the
10 estate. There should have been a proper inventory provided.
11 And here's the biggest issue, of course, my client
12 is the party in interest here but she relied upon proper
13 counsel to help with these administrative issues. Probate
14 administration and trust administration is very statutorily
15 driven and a lay person doesn't understand how that operates
16 and they rely upon counsel to provide them the guidance to do
17 this correctly.
18 THE COURT: So you're saying based upon your review
19 the estate does not have an ownership interest in Cherckee,
20 Crystal, Payson, State Street, Price, Ni-Country Estates,
21 (inaudible).
22 MR. MAYFIELD: I would say this, Your Honor,
23 without there being further discovery, at this point my
24 impression is that is the case and I would say that State
25 Street, Crystal Star is either in the trust or it's in - the

3

11318

1 Crystal property is in Crystal Star or Crystal but probably
2 Crystal Star and Ni-Country is in the trust. But my point
3 is-
4 THE COURT: Which trust? The Homer Engle Trust?
5 MR. MAYFIELD: The Homer Engle Trust, Your Honor,
6 yes, the Homer Engle Trust and so at the outset -
7 THE COURT: So was it - you're saying that Homer
8 transferred the property to the trust at the outset?
9 MR. MAYFIELD: Well, while he was alive.
10 THE COURT: You're saying when he created the
11 trust, and the will, he transferred Ni-Country to the trust?
12 MR. MAYFIELD: I'm not sure if it was done at the
13 same time as the creation of the trust, Your Honor, but
14 essentially he created, he executed deeds when he had
15 capacity to do so, to transfer his ownership in those
16 properties to the trust. But here's the issue of that, Your
17 Honor, this matter was escalated as a probate matter. Those
18 items which are trust assets should have been administered
19 under the trust. If anything, former counsel should have
20 brought a separate action as was finally done recently by Mr.
21 Anderson, initiating, bringing the trust into the Court's
22 jurisdiction for administration of the trust assets. And
23 that was never done. And so part of the problem of the
24 Settlement Agreement, at the time the Settlement Agreement
25 was entered into, the Court hadn't taken jurisdiction, the

4

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1 Court hadn't made a party out of the trust. Therefore, the
2 trust was not subject to the Settlement Agreement.
3 THE COURT: Help me understand - I mean I asked the
4 same question of Mr. Anderson but Wende Throne signs this as
5 Special Administrator, trustee of the trust, and
6 individually.
7 MR. MAYFIELD: Correct.
8 THE COURT: Why would I interpret that to say that
9 the trust through the trustee is not a -
10 MR. MAYFIELD: That's a fair question -
11 THE COURT: - party to the Settlement Agreement?
12 MS. ENGLE: - Your Honor. On the face of the
13 document, it appears the trust is the proper party in the
14 matter; however, based upon what actually happened, prior
15 counsel should have advised her that the trust should be
16 administered separately, it should be a separate matter for
17 the trust. Those assets should be outside the scope of this
18 litigation. They shouldn't even be embroiled in this whole
19 litigation whatsoever and so for the Court to say, Okay - for
20 them - for her to agree that the parties - that this is going
21 to be part of the settlement, was improper. What should have
22 happened, Your Honor, is any person who had an issue as to
23 title of those properties should have brought a separate
24 quiet title action against the trust as to ownership rather
25 than seeking to usurp this Court's authority to grab

5

11320

1 ownership of those properties through a probate
2 administration. So it's not the proper venue for that, Your
3 Honor.
4 And so the biggest issue I have with the Settlement
5 Agreement, Your Honor, is the fact that it's based upon
6 improper administration of the estate. It's based upon the
7 trust assets being brought in improperly and certainly the
8 attorney's fees are unreasonable and, you know, this matter
9 was brought to my attention as counsel for Wende Throne when
10 she realized that her daughters were being left out of the
11 administration of this estate. She realized what had
12 happened. This Settlement Agreement had created a situation
13 where her daughters, potentially who were suppose to be
14 collectively 50 percent beneficiaries under the trust,
15 potentially going to get zero.
16 Now this goes to the issue about -
17 THE COURT: So let's step back.
18 MR. MAYFIELD: - her having fiduciary duty.
19 Certainly that's there.
20 THE COURT: Well, help me understand. Did - do you
21 believe that Alexa and Britta have standing then? I thought
22 I heard you say they did not have standing to challenge the
23 administration of the estate because their position, they're
24 not direct beneficiaries of the estate.
25 MR. MAYFIELD: Correct, they can't challenge the

6

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1 administration of the estate but because this matter was
2 brought under this Court's jurisdiction for purposes of a
3 settlement as to the trust, anytime a beneficiary - let me
4 rephrase that - anytime a trust is, the administration of a
5 trust is being supervised and to be approved by a court, the
6 beneficiaries of that trust are entitled to notice as to that
7 court's action as to that administrative matter and so
8 certainly, Britta and Alexa were entitled to notice as to
9 what the trustee was seeking court approval for.
10 And also, the Settlement Agreement refers to them
11 having had counsel. They do not have counsel. It's an
12 inaccuracy which has to be essentially dealt with by Your
13 Honor. How can you just - how can you approve a Settlement
14 Agreement when there's a blatant inaccuracy in the Settlement
15 Agreement?
16 THE COURT: What's the blatant inaccuracy?
17 MR. MAYFIELD: It says they had counsel, they were
18 represented by counsel and their interests were being
19 represented.
20 THE COURT: Which line? Which line you said?
21 MR. MAYFIELD: Your Honor, I don't recall off the
22 top of my head. It's in (inaudible). There's a reference
23 that they had been adequately informed or adequately
24 represented as to their interests.
25 THE COURT: And where - if you'll take a second and

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11322

1 just point me to where that is.
2 MR. MAYFIELD: Okay, Your Honor, the third whereas
3 in the recitals; "Whereas the interest of Wende's said
4 daughters are adequately represented in connection with this
5 matter by Wende herself and by the consent of Alexa, and
6 Alexa Mecall Thayer whose an adult."
7 THE COURT: So where does it say counsel? I
8 thought you said -
9 MR. MAYFIELD: Perhaps I misspoke, Your Honor, I
10 thought it did say counsel but regardless, it says they're
11 adequately represented. They weren't represented. Wende
12 couldn't represent her because of the conflict of interest as
13 to her adult daughter and the minor beneficiary had no
14 representation because remember, Wende Throne is not a
15 custodial parent as to her daughter. Only her father is the
16 custodial parent. So only her father could have provided
17 consent as to these matters. Wende can't do that. She's not
18 a custodial parent.
19 THE COURT: Okay. Anything else, counsel?
20 MR. MAYFIELD: I just wish to express, reiterate
21 that we had joined Mr. Anderson's objection as to Points D
22 and E which I believe are articulated today. I've raised the
23 issue as to the nature of most of the assets were either a
24 trust asset or they belong to an LLC which part of the asset
25 may be an ownership of the estate. Again, ownership of these

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11323

1 assets are not in the estate.
2 And the separate action of the trust is a very
3 important issue here, Your Honor. There should have been a
4 separate action initiated as to the trust administration and
5 I'm not getting there, which brings it properly before the
6 Court's action. And again, as to any action with regard to
7 claims against those properties which are assets of the
8 trust, that requires a separate action.
9 Then with regard to discovery, I think it's vital
10 for us to have discovery which should have been done, I mean,
11 it could have been done years ago as to what the parties are
12 saying as to their ownership in these interests, ownership in
13 these LLCs or parties in these properties.
14 Nothing further, Your Honor.
15 THE COURT: Thank you, counsel. (Ends 2:30:09)
16 (Time 4:26 to 5:15)
17 THE COURT: We are back on the record in the matter
18 of the estate of Homer Engle. This is Case No. 103901948.
19 This hearing was set up to discuss the potential approval of
20 a Settlement Agreement entered in between certain interested
21 parties effective September 3 of 2013. That was over a year
22 ago. The participants in the Settlement Agreement were Wende
23 Throne in her capacity as Special Administrator of the estate
24 of Homer Engle as trustee of the Homer Engle 2010 Trust and
25 individually; Kathy Engle, Judy Engle, Roy Engle. Kathy,

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1 Judy and Roy are all the children of the decedent and any and
2 all other entities there owned, managed, controlled and are
3 represented by any of the foregoing. References in the
4 agreement to Wende expressly include both her personal and
5 fiduciary capacities including on behalf of the mentioned
6 estate in trust except as otherwise specified or the context
7 may require.
8 The Settlement was entered into after some very
9 hard fought litigation between the parties. If the third
10 parties reading, whose not involved in the litigation, is
11 reading this in order to make clear, Wende Throne, as I
12 understand is the daughter of Judy Engle and the
13 granddaughter of the decedent. Again, Kathy, Judy and Roy
14 are the children of the decedent, Homer Engle.
15 There have been objections raised to approval of
16 the Settlement Agreement. Although she signed the Settlement
17 Agreement, Wende Throne - and spent a significant amount of
18 time going forward carrying out the Settlement Agreement,
19 Wende Throne is now raising an objection to the Settlement
20 Agreement.
21 Also objecting to the Settlement Agreement are
22 Alexa Mecall Thayer who is the daughter of Wende Throne, born
23 December 18, 1993 so she is an adult and Britta Lynn Wilckon
24 who is a minor, 17 years old, on behalf of her father, is
25 filing an objection to the Settlement Agreement.

10

11325

1 It's undisputed that - and I'll use first names
2 because there are a number of Engles and I think it will be
3 just clearer, so I'll use first names in referring to the
4 people involved.
5 Alexa and Britta are not, are not named to receive
6 an inheritance in the will of Homer Engle. Rather, the will
7 provides that the residuary estate will go into the trust,
8 what's called the - let's see - Homer Engle 2010 Trust. The
9 beneficiaries of the trust or trust interest are held one-
10 half by Wende, Wende Throne, and Alexa and Britta each have a
11 25 percent interest in the trust. So again, Alexa and Britta
12 are not mentioned in Homer Engle's will; rather, their
13 interest is they have an interest as beneficiaries in a trust
14 that receives the residuary estate pursuant to the last will
15 and testament of Homer Engle.
16 What's clear is Wende is the Special Administrator
17 in this case and she also is the trustee of the Homer Engle
18 Trust. I'll just refer to the trust, Homer Engle 2010 Trust
19 as the Home Engle Trust or just as the Trust in my ruling
20 today.
21 So those are, those parties as I just mentioned
22 entered in the Settlement Agreement. Today - the Settlement
23 Agreement was entered into by the parties I mentioned. It
24 was kept confidential for a specific reason. The Settlement
25 Agreement contemplated that the parties would go out and

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1 negotiate with third party creditors of the estate to attempt
2 to compromise and negotiate claims with them. With the
3 exception of High Country Estates, that negotiation process
4 was largely successful. As a result of the executory
5 settlement, the parties went out, including Wende Throne,
6 borrowed money, took care of tax liens on properties. Some
7 parties were involved in fixing up some of the properties,
8 the critical property was listed for sale. But for the
9 negotiations to go forward in a way to benefit the estate, or
10 at least those who had an interest in the property that was
11 claimed to be part of the estate, it was helpful to have the
12 settlement be confidential and that was successful.

13 But, there came a point where it had to come
14 forward and be - notice needed to be given to all persons
15 having an interest in the Settlement Agreement including
16 those third party creditors and thus the Court set up a
17 process for providing notice, ordered notice to be provided
18 and then allowed, set deadlines for filing objections. At
19 the first hearing on - an earlier hearing that we had on
20 objections to the Settlement Agreement, I allowed additional
21 time for some of the objecting parties, specifically counsel
22 for Alexa and Britta to review documents and provide specific
23 objections to the Settlement Agreement.

24 We now are coming to the time where the final
25 hearing on approval of the Settlement Agreement is before the

12

11327

1 Court. There is no objection by the third party creditors.
2 There is no objection by Judy, Kathy, and Roy Engle who are
3 signers of the Settlement Agreement. Somewhat surprisingly
4 to this Court, Wende Throne, the signer of the Settlement
5 Agreement and a person who carried out many of the executory
6 parts of the Settlement Agreement is now coming back and
7 raising objections to the Settlement Agreement. But there is
8 no dispute that Wende entered in to the agreement along with
9 Judy, Roy, and Kathy Engle. Wende was represented by legal
10 counsel at the time, as were Judy and Roy Engle.

11 Britta and Alexa -
12 MR. FAXMAN: Did you say that Judy was represented
13 by counsel at the time?

14 THE COURT: Yes, Isaac Faxman represented Judy and
15 Roy Engle at the time. Kathy Engle was pro se, in
16 negotiating the Settlement Agreement.

17 Alexa and Britta who are beneficiaries of the 2010
18 Trust raise four objections. They say first they were
19 excluded from settlement negotiations; second, they state
20 that there's a conflict of interest between Wende, their
21 mother, and them in dealing with the estate matters; third,
22 there's a claim, they claim that the settlement fails to
23 address the needs of the beneficiaries; and fourth, they
24 claim that issues of fact exist and thus there's a need for
25 fact discovery. Thus yesterday, Alexa and Britta through

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11328

1 counsel filed a motion to continue this matter and engage in
2 extensive fact discovery to occur, essentially fact discovery
3 that would start now and go through about March of next year.

4 Wende Throne, as I said, also joins in those
5 objections - some of those objections - and urges the Court
6 not to go forward and approve the Settlement Agreement.

7 So there are a couple of critical issues that I
8 need to look at. One is I need to evaluate under Utah Code
9 Section 75-3-1102 whether the Settlement Agreement is
10 appropriate and under subpart 3, after notice to all
11 interested persons or their representatives, including the
12 personal representative of the estate and all affected
13 trustees of trusts, the Court, if it finds that the contest
14 or controversy is in good faith and that the effect of the
15 agreement on the interests of persons represented by
16 fiduciaries or other representatives is just and reasonable,
17 may make an order approving the agreement and directing all
18 fiduciaries under its supervision to execute the agreement.
19 Minor children represented only by their parents may be bound
20 only if their parents join with other competent persons in
21 execution of the compromise.

22 Upon making the order and execution of the
23 agreement, all further disposition of the estate is in
24 accordance with the terms of the agreement.

25 So I need to determine whether the contest or

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11329

1 controversy is in good faith and the effect of the agreement
2 upon the interest of persons represented by fiduciaries or
3 other representatives is just and reasonable.

4 So I'm going to go through and analyze those issues
5 and give you my findings.

6 The first finding, it's a threshold issue on Alexa
7 and Britta's claims. And I want to repeat something I said a
8 few minutes ago, Alexa and Britta are not named in the will.
9 they are named as beneficiaries of Homer Engle's 2010 Trust.
10 Wende Throne, their mother, is the trustee of the trust and a
11 Special Administrator of this estate. Shortly after Homer
12 Engle died she, through counsel, filed a petition for formal
13 probate of will and formal appointment of Personal

14 Representative. She sought to have herself appointed as a
15 Personal Representative. That was on November 23, 2010.

16 On that same day, Wende filed, November 23, 2010,
17 Wende filed an application for emergency appointment of
18 Special Administrator and application for issuance of
19 temporary restraining orders. She alleged in that filing a
20 number of things including the following - and this was sworn
21 as being true and accurate. So this was a verified
22 application. She stated, "The person whose appointment is
23 sought as Special Administrator" namely Wende herself, "is
24 qualified to act as such and has priority because there is no
25 other person with the prior or equal right as she is the

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11330

1 person named in the decedent's will to serve as Personal
2 Representative." And looking at the will, it's correct.

3 Then Paragraph 7 - and this is significant - "The
4 person whose appointment as Special Administrator is sought
5 is also that now, the now serving trustee of the Homer Engle
6 2010 Trust" - it says WAD, I assume that's a typo but
7 "February 3, 2010." I assume that means the trust, that 2010
8 trust created on that date.

9 So Wende Throne shortly after that appointment -
10 shortly after that application, received - this Court issued
11 or my predecessors who was handling this case, on November
12 23, 2010 issued an appointment of a Special Administrator.
13 It was Wende Throne was appointed as Special Administrator of
14 the decedent and she accepted the appointment.

15 So what does that mean? As Special Administrator
16 she had all the duties and responsibilities - well, I will
17 just say she had all of the authority that a - or power of a
18 general personal representative. Since she was appointed by
19 the Court under her authority as specified under Utah Code
20 Section 75-3-617 which says "A Special Administrator
21 appointed by order of the court in any formal proceeding, has
22 the power of a General Personal Representative except as
23 limited in the employment and duties prescribed in the
24 order." And there is nothing in the appointment document
25 indicating or restricting her duties. It just says that

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11331

1 "bond is not required and the order is Wende M. Throne is
2 hereby appointed as Special Administrator of the decedent
3 pursuant to Utah Code Annotated 75-3-614 to act with bond"
4 and it says, "upon qualification and acceptance, special
5 letters of administration shall be issued to the said Special
6 Administrator."
7
8 So the point is, she had the power of a General
9 Personal Representative and in the probate code it makes it
10 very clear that the powers of a General Personal
11 Representative are quite broad in being able to handle the
12 issues of an estate. 75-3-710 of the Utah Code explains that
13 until termination of his employment a Personal Representative
14 has the same power over the title, the property of the estate
15 that an absolute owner would have in trust, however, for the
16 benefit of the creditors and others interested in the
17 estate."
18 And then Utah Code Section 75-3-714, discusses
19 transactions authorized by - for a Personal Representative
20 and again Wende had those powers which include under subpart
21 17, to affect a sale and reasonable compromise with any
22 debtor or obligor to extend, renew, or any matter, modify the
23 terms of any obligation owing to the estate. Her duties
24 include, under subpart 6, being able to acquire or dispose of
25 an asset including land. It includes being able to abandon
property under subpart 11. The bottom line is, Wende was

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1 given broad authority to act on behalf of the estate and she
2 had that authority when she was negotiating the Settlement
3 Agreement.
4
5 At the same time, Wende had authority as the
6 trustee of the Homer Engle 2010 Trust. Under Utah Code
7 Section 75-7-303 it says, "To the extent there is no conflict
8 of interest between the representative and the person
9 represented or among those being represented with respect to
10 a particular question or dispute," subpart 4, "a trustee may
11 represent and bind the beneficiaries of the trust, (b) a
12 Personal Representative of the decedent's estate may
13 represent and bind persons interested in the estate."
14 Wende had authority as trustee to negotiate on behalf of the
15 trust and she entered into the Settlement Agreement as
16 Personal Representative of the estate and as trustee of the
17 trust.
18
19 Now, the question is raised as to whether there was
20 a conflict of interest between herself on the one hand and
21 her daughters, Alexa and Britta, on the other hand. I
22 conclude the answer is no. As I look at the Settlement
23 Agreement the term Wende defines Wende as, in her capacity as
24 Special Administrator of the estate of Homer Engle as trustee
25 of the Homer Engle 2010 Trust and individually. As a Special
Administrator, and as trustee of the Homer Engle 2010 Trust,
Wende has and had fiduciary duties. To the extent property

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11333

1 is transferred to her, she has fiduciary duties to her
2 daughters as a trustee of the trust and the fact that a
3 property is being transferred to her, when she's signing the
4 agreement, at least in part in her capacity as Special
5 Administrator and as trustee of the Homer Engle 2010 Trust, I
6 view this agreement as transferring that property to her with
7 her holding the property as a fiduciary and that means she
8 has to take care of the interest of herself as a beneficiary,
9 50 percent beneficiary of the trust, and her daughters each
10 25 percent beneficiaries of the trust. The agreement really
11 contemplated that by laying out that she's not just entering
12 into the agreement as an individual, but she enters into the
13 agreement as a Special Administrator and a trustee.
14 And the parties agreed that at Page 12 of the
15 Settlement Agreement that the - if there is a different -
16 this is the statement, "If all the parties accept this
17 written offer and if we later discover that there were gaps
18 where the parties neglected some detail or operated on
19 different assumptions, then the parties are legally obligated
20 to work together in good faith to resolve those details in a
21 matter most consistent with what we have agreed to. If the
22 parties are unable to do this, then they agree the court will
23 fill in those gaps based upon what it believes is fair and
24 reasonable and most consistent with the terms we agreed to."
25 I don't even know that we have to go to that

19

11334

1 provision because Wende is clearly entering into this
2 agreement in her capacity as Special Administrator and as
3 trustee and she has fiduciary duties to her daughters. I
4 just do not see a conflict of interest and there's been
5 nothing shown to me that by accepting property as a trustee
6 and as a Special Administrator, that she somehow then has a
7 conflict of interest with her daughters. Part of that is
8 illustrated by the terms of the trust itself. She, along
9 with her daughters are all beneficiaries of the trust. She's
10 a 50 percent beneficiary of the trust, each of her daughters
11 is a 25 percent beneficiary of the trust. No one has shown
12 me - and there's not been any persuasive argument, that Wende
13 somehow, by signing this Settlement Agreement was in a
14 conflict of interest between herself on the one hand as
15 trustee, individually as Special Administrator and her
16 daughters on the other hand.

17 So I conclude that Wende did represent Alexa, the
18 interest of Alexa and Britta as beneficiaries of the trust
19 because she signed the agreement in part as a trustee of that
20 trust. I see no conflict of interest. I conclude that
21 Britta and Alexa were not excluded from the Settlement
22 Agreement because their interests were represented by the
23 trustee, their mother, in signing off on those documents.

24 So that goes to the - so with respect to Alexa and
25 Britta I find they were expressly represented, their

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11335

1 interests were expressly represented by their mother who is
2 the trustee of the trust that they had, have an interest as
3 beneficiaries in. And I have heard no persuasive evidence
4 that a conflict of interest exists and certainly the estate's
5 Settlement Agreement itself does not show a conflict of
6 interest and part of that, part of the reason I conclude
7 there's no conflict of interest goes to the issue of whether
8 the settlement is, whether the settlement under 75-3-1102,
9 subpart 3, whether it was the settlement of a contest or
10 controversy in good faith and the effect of the agreement on
11 the interests of persons represented by fiduciaries or other
12 representatives is just and reasonable.

13 I find that the Settlement Agreement squarely meets
14 that standard of 75-3-1102, subpart 3. And I'm going to take
15 a little bit of time to talk about why that is the case. But
16 to just summarize, if the Settlement Agreement had not been
17 entered into, there's a strong possibility that there would
18 be no property left in the - even left - third parties would
19 likely have the property because the property and what - one
20 of the major problems that we have here in this estate is
21 Homer Engle - well, there are a couple of major problems.
22 One of them was the estate was cash poor and potentially real
23 estate rich and "rich" I use in quotation marks because it's
24 unclear what the value of the real estate was after liens and
25 other encumbrances. There was just no money in the estate to

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11336

1 pay even the most simple things such as tax liens. We were
2 in court on multiple occasions seeking to resolve issues in
3 such a way that properties would not be lost to tax sales.
4 still hanging - even with, even with the Settlement Agreement
5 the State Street property is still potentially subject to a
6 tax sale next spring.

7 There was a creditor foreclosing on the Crystal
8 property. Properties were going to waste. The property out
9 at Price was dilapidated and needed to be fixed up. There
10 were problems with the Woods Cross property, it needed to be
11 fixed up. There were actually notices being provided by
12 government officials about the mess that some of these
13 properties were in. There was actually even a separate claim
14 against the estate brought by a guy named Donald Fennan, who
15 had a judgment against the estate claiming he should be paid
16 because the Payson property was such a mess with so many
17 things, just littered around the Payson property, and we're
18 not talking about small things, we're talking about big
19 pieces of equipment and things that were an eyesore.

20 The bottom line was that there were serious
21 problems facing each of those parcels of real estate that if
22 this matter had not been settled, the real estate would
23 likely have been lost. And frankly, the dispute between
24 Wende on the one hand and Roy, Judy, and Kathy on the other
25 hand, made it difficult to get those issues resolved.

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11337

1 The other issue is that this is an estate where
2 it's by no means clear that any of those pieces of real
3 estate are actually, (a) are actually a part of the estate;
4 or (b) were Homer Engle's property to transfer into the Homer
5 Engle Trust.
6 I'm going to incorporate - we had a two-day trial
7 and I'm going to incorporate my December 16, 2013 findings of
8 fact and conclusions of law - December 16, 2013 findings of
9 fact and conclusions of law that go through in detail the web
10 of transactions affecting just the Crystal property. It took
11 a two-day trial to try to get to the bottom of those issues
12 and what was the issue? One of the issues - the critical
13 issue was was the Crystal property Homer Engle's property to
14 transfer into his trust or transfer via his will in 2010?
15 The evidence was that Homer Engle, frankly created a mess
16 during his life by issuing multiple deeds, by dealing with
17 multiple entities and just transferring properties to himself
18 from himself, to entities.
19 Ultimately, at the end of the hearing, I determined
20 that when - this is Page 4 - "when on February 3, 2010 Homer
21 Engle purported to convey the property from Homer Engle to
22 the Homer Engle 2010 Trust, Homer Engle was not the owner of
23 the property, Crystal Star, LLC was the owner. When on
24 February 2010 Homer Engle purported to convey the property
25 from Crystal Star, LLC to the Homer Engle 2010 Trust, Homer

23

1 Engle lacked authority to convey the property on behalf of
2 Crystal Star, LLC. When on February 5, 2010 Homer Engle"
3 actually I said "When on November 5, 2010 Homer Engle
4 purported to grant rights to Bullock Law Firm, LLC through a
5 trust deed and assignment of rents, Homer Engle was not the
6 owner of the property. Therefore, to the extent Homer Engle
7 attempted to encumber or lien the property by virtue of the
8 trust deed and with assignment of rents, Homer Engle lacked
9 authority to do so and that trust deed was ineffectual."
10 I did not have a trial yet on the remaining pieces
11 of real estate. The information that I've received thus far,
12 indicates that there are strong arguments on behalf of Judy,
13 Roy, and perhaps Kathy Engle that they or their entities are
14 the owners of all those properties. If this case had not
15 been settled, what is a reasonable, there was a reasonable
16 probability - well, let me step back.
17 We had done the trial on the Crystal property. We
18 still had trials on the remaining properties, the Cherokee
19 property in Utah Valley, the Payson property, the State
20 Street property, the Price property, the High Country
21 property and the Woods Cross property. There is a strong
22 probability that if - and each of those properties were
23 scheduled for a two-day trial and out of an abundance of
24 caution, when I knew that there was a challenge to the
25 Settlement Agreement, I set trials for, two-day trials for

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11339

1 each of those properties to determine the threshold issue of
2 whether each of those properties was actually Homer Engle's
3 to convey in 2010.
4 At the time of the Settlement Agreement we had done
5 one of the trials and we had the other trials scheduled to go
6 forward. We were facing the eminent loss of some of those
7 properties to tax sales. We were facing foreclosures or liens
8 on properties. We were facing creditor claims including
9 judgments that had been entered against the estate that be
10 executed against those properties, and we were experiencing
11 those dissipation and problems with the maintenance of those
12 properties, particularly in light of the uncertain state of
13 the ownership of those properties.
14 So when these parties got together including Wende
15 Throne as trustee of the Homer Engle 2010 Trust, and Special
16 Administrator, she was facing litigation that would have
17 drained the estate out just to determine whether or not those
18 parcels of properties were owners of the estate. The
19 evidence had already indicated, although I had not yet ruled,
20 that Homer Engle lacked the ability to transfer the Crystal
21 property. So Wende Throne was facing a situation where
22 potentially all of the value of the estate would be lost,
23 either to the claims of third party creditors or to
24 litigation expenses.
25 She reasonably represented the estate and the

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1 trust, including her daughter's, in entering into a
2 settlement that recognized those risks but would preserve
3 some value for the estate. The Settlement Agreement was a
4 reasonable Settlement Agreement. It was entered into with
5 Wende represented by very competent counsel, with Judy and
6 Roy represented by very competent counsel. It was a
7 settlement that frankly averted the disaster of losing most,
8 if not all of the contested properties to waste, foreclosure,
9 tax sale.
10 There's a objection that issues of fact exist, thus
11 there's a need for additional discovery. The very arguments
12 being made on that ground illustrate why the assets of the
13 estate would have been wasted had this litigation gone
14 forward. At the end of day, there was a strong likelihood
15 that Wende would have litigated these parcels, over these
16 parcels of property and given Homer Engle's, at least with
17 Crystal Star proven track record of purporting to transfer
18 properties that he had no authority to transfer. There was
19 so, there was a strong likelihood that nothing would be left.
20 So I conclude at the end of the day that in this
21 very highly contested probate matter the Settlement Agreement
22 entered in between the parties fully satisfies the
23 requirements of 75-3-1102.
24 I find that the contest or controversy involving
25 the estate was in good faith and that the effect of the

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1 agreement on the interest of persons represented by
2 fiduciaries or other representatives is just and reasonable.
3 And frankly, if I were to set aside - I believe
4 that if I was to set aside the Settlement Agreement now,
5 there's a strong likelihood that by next - and we go through
6 discovery in March - there's a strong likelihood that State
7 Street may end up being lost to a tax sale. It was set to be
8 sold in a tax sale a few months ago. It was only through the
9 intervention of one of the Engles with the county to persuade
10 the tax authorities to hold off for a year. But there's
11 similar issues. Wende Throne and her counsel have done a
12 great job of helping prevent other properties from being sold
13 to taxes or sold to pay unpaid taxes, and I stated a number
14 of times that that kind of loss to either a foreclosure or a
15 sale to the tax, by the taxing authority would result in
16 giving pennies on the dollars to the estate or to whoever is
17 the ultimate owner of the property.
18 So at the end of the day I find that the Settlement
19 Agreement should be approved. I am very concerned that we
20 continue to carry out and execute the terms of the Settlement
21 Agreement. I'm concerned about getting the Payson property
22 sold. I am inclined to set up a status hearing on the issues
23 involving the sale of the Payson property and the other
24 issues in the case.
25 I'll direct Mr. Paxman to find findings of fact and

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1 conclusions of law and I believe that as part of those
2 findings of fact and conclusions of law, I've looked through
3 the whereas clauses in the Settlement Agreement and those
4 whereas clauses are accurate and I find that those are
5 accurate statements of the circumstances. So the findings
6 should include the substance of the whereas clauses, the
7 findings that I've made in the Crystal Avenue property and a
8 discussion of the issues that I have discussed today.
9 Mr. Paxman, prepare that order and submit it to
10 opposing counsel by email pursuant to Rule 7 and then if
11 there's any objections submit the objections to me or approve
12 it as to form - we'll get that signed.
13 What I'm inclined to do right now is just see if we
14 could set up another time to have a status conference - oh,
15 by the way, since I'm approving the Settlement Agreement, I'm
16 striking all the trial dates that we had previously set.
17 number one. I'm denying the motion to reopen discovery.
18 What I'm inclined to do is set up a hearing - I mean, are
19 there any issues that - how far out should we go? Do you
20 need to have one - I mean we could do - my schedule is quite
21 crowded in the next - what if we were to do December 31st as -
22 what I would order - what I would like to do is order the
23 parties through counsel, to the extent you have counsel, to
24 the extent you don't, to meet and confer at least by
25 telephone on the status of carrying out the Settlement

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11343

1 Agreement. In particular, I'm concerned about the sale of
2 that Payson property. If we don't - if it doesn't get sold -
3 I mean part of it, part of it, the way the settlement was
4 structured by the parties was, was to have a, to liquidate
5 some of the properties so we could up with cash to prevent
6 loss of properties. So -
7 MR. PAXMAN: Your Honor, if I may, I believe that
8 equal emphasis should be placed upon the Price property as
9 well. Both of them were -
10 THE COURT: Right, I agree. I agree. So we've got
11 to deal with - in fact is the Price property listed now?
12 MS. THRONE: We have a tentative offer but - so I
13 didn't list it but I was waiting for the results of the
14 Settlement Agreement so that can move forward. Also, there's
15 also a sale of the loan on State Street that was court
16 ordered to have that done and it hasn't been.
17 THE COURT: That's why I'm ordering you to meet and
18 confer because you need to discuss among each other the
19 carrying out of that Settlement Agreement. I mean, I really
20 want - in my view, I mean the Price property needs to be
21 sold. The Payson property needs to be sold and if it's
22 listed at a certain price and there's been no offers, then
23 you need to consult with a real estate agent and come up with
24 a reasonable offer that will get some potential movement and
25 potentially get the property taken care of. I'm very

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1 concerned that it's been over a year since this settlement
2 was entered into and we still don't have sales.
3 MR. FAXMAN: (Inaudible), Your Honor, just for
4 clarification and for everyone's benefit is, what specific
5 tax liabilities are out there which could cause a tax sale?
6 You're talking about one in March and one in May. Are those
7 the only two we're concerned about?
8 THE COURT: That's why I want you to meet and
9 confer and discuss. So what I'm inclined to do is just set
10 this for - how would December 3rd be at 9:00?
11 MR. FAXMAN: For me it's fine, Your Honor.
12 THE COURT: What?
13 MR. FAXMAN: For me it's fine.
14 MR. ANDERSON: I would prefer a later time but I
15 can do it that day. I have a doctor's appointment that
16 morning. I can probably cancel it.
17 THE COURT: What about the 2nd, 2nd of December -
18 did I say 8:00, 9:00.
19 MR. ANDERSON: I'm in court that day. I'd rather
20 do the 3rd and I can make arrangements.
21 MS. THORNE: We could do it on Homer's birthday,
22 December 1st.
23 THE COURT: I don't have time unfortunately on that
24 day. Okay, December 3rd at 9:00. So I'm hearing that works
25 - Mr. Faxman?

30

11345

1 MR. FAXMAN: Yes.
2 MS. T: Yes, Your Honor.
3 THE COURT: Okay. Judy and Roy, does that work?
4 MS. J. ENGLE: December 3rd, 9:00 a.m.?
5 THE COURT: Right. So I will expect you to have
6 met and conferred regarding issues involving the property. I
7 want you to meet and confer by November 14th and you can meet
8 and confer by phone as - but I do want you to meet and confer
9 and discuss the outstanding issues involved in carrying out
10 the Settlement Agreement.
11 Yes?
12 MR. ANDERSON: May I ask just for clarification on
13 one of the findings?
14 THE COURT: Sure.
15 MR. ANDERSON: I wrote down early on that the Court
16 was finding and analyzing the whereas clauses and the
17 capacity with which Ms. Wende Thorne entered into the
18 Settlement Agreement, that the transfer of property to Wende
19 under the Settlement Agreement was in effect a transfer of
20 the property to her as fiduciary and thus, anything that she
21 gets would be 50 percent hers and 25 percent each to the
22 daughters. That's what I wrote down. Is that the finding
23 and order of the Court? Is the Settlement Agreement to be
24 interpreted thusly?
25 THE COURT: That's the way I interpret the

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11346

1 Settlement Agreement. If she settles, she's settling as the
2 trustee, she cannot as a trustee let her personal interest
3 supercede her personal interest. I'm sorry, I'm saying that
4 backwards. She cannot let her personal interest supercede
5 her interest as a Personal Representative - or Special
6 Administrator and trustee. So I interpret that when she - it
7 says she gets the property, she's getting it as trustee for
8 the trust. That's the way I interpret the Settlement
9 Agreement.
10 MR. ANDERSON: And I guess I'm trying to get it
11 very narrowed down because if the Court actually finds on the
12 record that the Settlement Agreement provides for the
13 daughters to essentially, by virtue of their positions as
14 together but 25 percent each beneficiaries under the trust,
15 if the finding is that anything that goes to Wende is then in
16 effect under the Settlement Agreement 25 percent to each of
17 the daughters, that in effect resolves the things that I'm
18 asking the Court to do with our petition and we can be done
19 with all of our petition. So I'm trying to get to that
20 narrow finding.
21 THE COURT: The way - the reason - one of the
22 reasons I conclude that Wendy does not have a conflict of
23 interest is because the only fair way to read, in my
24 interpretation of the intent of the parties was that when
25 Wende said she got the property, she was acting as Special

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1 Administrator and as trustee which meant that the property
2 goes, would be titled in the trust. Does that clarify
3 your...son -
4 MR. ANDERSON: I'd love for you to go further.
5 THE COURT: Yes?
6 MR. ANDERSON: Does it have to go to the trust or
7 are we bypassing the trust? I guess is sort of my question.
8 THE COURT: I don't think I'm in a position - I
9 don't think I'm in a position to administer the trust. The
10 property goes to the trust. How it's dealt with within the
11 trust, I don't think, first of all it's not clear to me
12 there's a dispute on how it should be dealt with. Secondly,
13 I think if I were to make a ruling about the administration
14 of the trust, I would have to be fully briefed on that issue.
15 MR. PAXMAN: The one question I have, Your Honor,
16 if we're (inaudible) the Settlement Agreement then it's still
17 necessary to do a final petition for release of Wende as
18 Special Administrator and closing the probate formal. I think
19 the answer is yes but I want -
20 THE COURT: That's a true. That's true.
21 Any other clarifications?
22 MR. ? : There was a motion on file related to
23 Crystal Avenue and a trust deed that has been placed on that
24 and there is an order from the Court currently on file that
25 prevents Kathy Engle from encumbering or conveying the

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1 property.
2 THE COURT: And that's one of the reasons I need,
3 we need to have that conference -
4 MR. ? : And we'll set that up. But that order is
5 still in effect, we haven't now deemed that the Settlement
6 Agreement is in effect in its entirety and so now -
7 THE COURT: The orders were in place unless I set
8 them aside.
9 MR. ? : Thank you, Your Honor.
10 THE COURT: Anything else, Mr. Paxman?
11 MR. PAXMAN: No.
12 THE COURT: Anything else, Kathy Engle?
13 MS. K. ENGLE: Yes, we have one outstanding issue
14 to address and that's the High Country claim. Since they
15 didn't show up, is that claim now just dismissed?
16 THE COURT: Well, that's something to discuss and
17 report on in this hearing in early December. In other words,
18 that would be I assume one of the agenda items of what you
19 need to discuss. The bottom line is there was a - in the
20 Settlement Agreement there was an attempt to negotiate
21 regarding High Country, High Country did not get resolved.
22 The other creditors did, by and large. But discuss that and
23 we'll go into detail on that at our next hearing.
24 Judy Engle, any clarifications?
25 MS. J. ENGLE: The status hearing, is that going to

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1 be in the court?
2 THE COURT: Yes.
3 MS. J. ENGLE: Okay.
4 THE COURT: And Roy Engle, any clarifications
5 needed?
6 MR. ENGLE: No.
7 THE COURT: Is there anything else that needs to be
8 dealt with today?
9 And just to be crystal clear, all of the trial
10 dates that I set up in this matter are now stricken. The
11 only remaining date is the one that I just scheduled this
12 afternoon.
13 (Inaudible conversation)
14 MR. PAXMAN: Yes, Your Honor, I have one additional
15 clarification issue. If - the Settlement Agreement provides
16 for a certain amount of funds be set aside or paid toward
17 prior counsel and for counsel, Mr. Paxman, does that
18 Settlement Agreement supercede any other claims about
19 attorney's fees for prior counsel? Is that the only amount
20 that they can be paid from the Settlement Agreement or from
21 the estate?
22 THE COURT: Well, I don't know that I'm in a
23 position to deal with that. The issue - that's a question
24 regarding the interpretation of the Settlement Agreement, we
25 could talk about that next month. But you can meet and

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1 confer and discuss it before that time if there's a need for
2 a motion for a particular issue involving the settlement, now
3 that the settlement has been approved, the parties can file-
4
5 MR. PAXMAN: I guess one thing I would like to have
6 in the record, if not at this time then the next hearing is
7 that the accommodation for payment of attorney's fees is
8 provided in the Settlement Agreement is reasonable to that
9 level, that no additional attorney's fees will be paid by the
10 estate or by any other person, personally or in their
11 capacity as Special Administrator or as trustee, that that's
12 the reasonable fees for previous counsel as counsel for the
13 trustee and the estate.
14
15 THE COURT: Well, if there needs to be a motion
16 filed, then file a motion.
17
18 MR. PAXMAN: Okay.
19
20 THE COURT: If you would rather discuss it among
21 the parties or the interested persons, and then discuss it
22 next time, you could deal with it that way but before I make
23 a particular order enforcing or interpreting other issues
24 involving the settlement, I want to make sure everybody has
25 notice and the opportunity to be heard.
26
27 MR. PAXMAN: Certainly.
28
29 THE COURT: So you're welcome to - I mean, the
30 parties are welcome to file motions if you feel like there's
31 a need to clarify a particular issue. On a particular issue

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1 of Wende's status as trustee receiving the property, I think
2 that's inherent. I clarified that because I see that as
3 inherent in a fair interpretation of the parties intentions
4 under the Settlement Agreement.
5
6 MR. PAXMAN: All right. Thank you, Your Honor.
7
8 THE COURT: Anything else? Okay, thank you. I
9 know this has been a long hearing, one of many long hearings
10 we've had in these matters but I appreciate the input and the
11 argument. I thought that the hearing today was very helpful
12 to me in sorting through some very complex issues.
13
14 The court will be in recess.
15
16 MR. PAXMAN: Thank you, Your Honor.
17
18 (Whereupon the hearing was concluded)
19
20
21
22
23
24
25 (Transcript completed on June 12, 2017)

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Addendum J

Order Confirming Results of Meet and Confer

November 26, 2013

Kathy, Authority over Tangibles

NOV 18 2013

SALT LAKE COUNTY

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
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36 South State Street, Suite 1900
Salt Lake City, Utah 84111
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Attorneys for Special Administrator

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

In the Matter of the Estate of HOMER ENGLE, Deceased.	ORDER CONFIRMING RESULTS OF MEET AND CONFER [FILED UNDER SEAL] Probate No. 107901948 Judge Keith Kelly
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At a hearing on November 1, 2013, the parties were ordered to meet and confer regarding various issues in connection with implementing the settlement agreement entered into by them on September 3, 2013.

Wende Thorne, Judy Engle, and Kathy Engle met for more than five hours at the offices of Van Cott, Bagley, Cornwall & McCarthy on November 13, 2013. Richard K. Gardner, counsel for Wende Thorne, and Isaac D. Paxman, counsel for Judy Engle and Roy Engle, were also present. (Mr. Paxman attended a portion of the meeting by telephone.)

The parties agreed upon the following terms:

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1. **Delegation of Authority.** Judy Engle will be solely responsible for marketing and selling the Price property. Wende Thorne will be solely responsible for marketing and selling the Payson property. Each party will use her judgment to both maximize the value of the property and to get it sold as soon as possible. Standard of liability is bad faith or gross negligence. The party in charge of selling will have sole discretion to determine selling price, except that approval of the other parties is needed to sell below an agreed upon floor price. For Price, that floor is \$60,000 plus whatever costs are incurred in improving the property that are to be paid out of the proceeds. For Payson, that floor is \$250,000. However, each party will promptly inform the other parties of any activity such as engaging an agent or listing or delisting the property, and will promptly provide the other parties with a copy of any listing agreements that party enters into and any offers, counteroffers or acceptances that party receives or makes. Each party will make best efforts to list the property no later than April 10, 2014.

2. **Improvements on Price.** If Judy Engle invests any funds out of pocket to fix up the property, then those costs will be reimbursed out of the proceeds upon sale of the property. The parties have agreed that Roy Engle can be paid at the rate previously agreed upon for any work performed by him. ~~Any non-employees who perform work may simply be paid on whatever terms are negotiated at arms length.~~

3. **Price Loan.** Mr. Paxman and/or Judy Engle will attempt to secure a loan against the Price property on terms agreeable to them. Standard of liability is bad faith or gross negligence.

4. **Payson Loan.** Wende Thorne will attempt to secure a loan against the Payson property (and only the Payson property) in the net amount of \$99,000 at standard loan terms,

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No expenditure under the previous sentence shall exceed the previously agreed amount for Hi-Country or Payson without all parties' approval as provided in the settlement agreement. meaning 3 points payable out of loan proceeds, 12% interest, 12 months interest prepaid as part of the loan, renewable at expiration of initial one-year term. The net loan proceeds will be applied first to pay any Priority One claims that constitute liens against Payson, then to pay McKinley, and then the parties estimate approximately \$36,000 will remain. Of this, \$6,000 will go to Judy Engle to help her fix up Price, on condition that she undertake to replace the roof, repaint the exterior, and put sod in the front yard, and account for expenditures. The other \$30,000 will be available to make cash offers to Hi-Country and/or Payson to settle their Priority Three claims as contemplated in the September 3, 2013 settlement agreement. All loan proceeds will be held in an escrow account and/or an attorney trust account until applied as provided herein. The terms of this paragraph are agreeable only to the Payson property.

5. **McKinley.** Mr. Gardner will initially inquire with McKinley's counsel about extending the forbearance agreement. If she agrees, great. If not, then Mr. Paxman will handle negotiations in his discretion. Standard of liability is bad faith or gross negligence.

6. **Authority Over Tangibles.** Kathy Engle will be solely responsible for selling all tangibles in accordance with the September 3, 2013 settlement agreement. She will use her judgment to both maximize the value of the property and to get it sold as soon as possible. Standard of liability is bad faith or gross negligence. Any selling or storage costs incurred by Kathy Engle may be reimbursed out of the proceeds of the tangibles.

7. **Tangibles to Be Sold.** The parties disavowed a partial list of items and identified a number of items that they all agree can be sold. A copy of that list is attached as Exhibit A. In many cases they agreed on the value. On others there are still question marks. There are other

3

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items that are still disputed in terms of whether they are to be sold and/or whether some party already owns it. Items in the exhibit with no letter next to them are items that no one objected to being sold (subject to further review by Roy Engle, who was not at the meet and confer). Items with a letter next to them indicate that one or more of the parties did not wish that item to be sold. (For avoidance of doubt, all of the items listed under "State S" are disputed by all parties.) The Court may need to resolve disputes regarding the interpretation and/or application of the September 3, 2013 settlement agreement as to those items.

Following another hearing on November 14, 2013, some of the parties and/or counsel again met and conferred in the hall outside the courtroom regarding some additional terms regarding tangibles. On November 22, 2013, Wendie Throne, Judy Engle, Kathy Engle, and the respective attorneys again met and conferred at the offices of Van Cott, Bagley, Cornwall & McCarthy, this time for more than seven and a half hours. Based on those discussions, the parties agreed upon the following additional terms:

8. Authority to Abandon or Pay Claims With Tangibles. Kathy Engle's authority to sell tangibles includes discretion to donate, discard or otherwise dispose of tangibles whose value does not justify the cost of selling or holding the same. Her authority to sell also includes the power to offer or convey tangibles in full or partial satisfaction of any claim that is directed to be paid under the September 3, 2013 settlement agreement. Any party who is given responsibility to negotiate with respect to a particular claim under the September 3, 2013 settlement agreement

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may, in consultation with Kathy Engle, offer or convey tangibles in full or partial satisfaction of such claim.

9. Payson Tangibles. Prior to November 26, 2013, Kathy Engle will be granted full access to the Payson property so she can retrieve any tangibles located there from time to time as she deems appropriate. She may remove any items that she deems worth selling. In addition, any item that is to be distributed to a party (if any, in accordance with the terms of the September 3, 2013 settlement agreement) may be removed from the property for distribution to that party. Any items that Kathy Engle chooses to leave on the Payson property, and which are not to be distributed to any party, may be used as part of a settlement with Fannin as contemplated in the September 3, 2013 settlement agreement. At the conclusion of any dealings with Fannin regarding the Payson items, any items remaining on the Payson property (if any) will continue to be governed by paragraph 6 and will therefore be removed by Kathy Engle to be sold or otherwise disposed of as provided herein, provided sufficient proceeds are available to cover the costs associated with removing the property.

10. Stored Tangibles at Residence. Numerous tangibles are being stored in Wendie Throne's residence and/or garage. The parties will select a mutually agreeable day and time for Roy Engle and Wendie Throne (or an agent selected by her) to meet at Wendie Throne's residence and remove all tangibles that are subject to the September 3, 2013 settlement agreement. Kathy Engle will bring a truck or trailer to Wendie Throne's property to transport the items that are removed, and will take an inventory as the items are loaded onto the truck or trailer. However, she will remain near the truck and will not personally enter into the residence, garage, or any

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other dwelling or structure at the property. Judy Engle will not be physically present. Roy Engle may freely consult with the other parties by phone or other means. Kathy Engle and/or Roy Engle may bring a neutral third person to help with removing the items under Roy Engle's direction, provided the third person is reasonably acceptable to Wendie Throne and does not damage her property. Wendie Throne has already agreed that Adam Engle is acceptable. In the event of a dispute as to whether a particular item is to be removed, the item shall be flagged and photographed, and shall remain at the property. The photographs will then be used to compile a list of all disputed items that need to be resolved.

11. Modification of Threshold. The parties agree that any item worth \$500 or more must be sold. This modifies the September 3, 2013 settlement agreement, which set the threshold at \$1,000. Nothing prevents the parties from agreeing to sell items worth less than \$500.

12. Notice Prior to Sale of Tangibles. Kathy Engle will keep an inventory of items as they come into her possession, which shall be made available to the other parties within a reasonable time. Prior to selling or otherwise disposing of any item (including items removed from Payson or from Wendie Throne's residence), Kathy Engle shall provide the other parties with a list of the items to be sold or otherwise disposed of, including her estimate of the value, which need not be based on an appraisal, and the proposed manner of disposition (sale, donate, discard, distribute to party, offer to creditor, etc.). Each party shall then have three business days to designate, by marking up or writing on a copy of that list, any items that they do not want sold by placing an "X" next to those items, indicating the reason, signing the marked-up copy, and

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returning it to Kathy Engle within three business days. The permissible reasons are (1) claim of ownership/entitlement to distribution under settlement agreement, (2) intent to exercise right of first refusal (as to items over \$500), or (3) request for permissive distribution (i.e., item falls under \$500 threshold and party requests that item be distributed to him or her instead of being sold). The party shall also note any disagreements as to value by writing in what they claim is the correct value next to the item. Because Kathy Engle has discretion to sell items as she deems appropriate (see paragraph 6), disagreements regarding value are not material unless (1) there is a dispute about whether a particular item falls above or below the \$500 threshold or (2) a party wishes to exercise a right of first refusal as to the item and disputes the purchase price. For purposes of exercising a right of first refusal, any item that was designated to be donated or discarded will be deemed to have a zero value. Kathy Engle will then proceed to sell or otherwise dispose of items in accordance with the list, except as to those items that have been timely placed in dispute by returning a marked-up copy of the list to Kathy Engle as provided above. If one party requests a permissive distribution of an item or to exercise a right of first refusal as to an item, and there is no material dispute as to value, and no other party has requested that item, then Kathy Engle shall notify the party that the item will be distributed to that party. The party will then have thirty days to pick up the item and tender a cashier's check for the amount of the purchase price, if any. The parties agree that email may be used to carry out the terms of this paragraph. The parties shall send such communications to each other directly, provided that any counsel of record shall also be copied. As stated in paragraph 7 above, items placed in dispute may ultimately need to be resolved by the Court interpreting

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and/or applying the terms of the September 3, 2013 settlement agreement. This paragraph merely provides the procedure for narrowing down which items are actually disputed and which are not.

13. **State Street Tangibles.** There is a dispute among the parties with regard to many of the tangibles located on the State Street property, which may need to be resolved by the Court. In the meantime, the parties agree that Wendie Throne may immediately begin to sell or otherwise dispose of State Street tangibles, provided that she first gives notice to the other parties and follows procedures similar to paragraph 12. Items that are cleared for sale or other disposition under those procedures may then be sold or disposed of as proposed. Items that are designated as disputed under those procedures cannot be disposed of until the underlying dispute is resolved. Any proceeds continue to be governed by the September 3, 2013 settlement agreement.

14. **Repossession of Owned Tangibles.** A party may provide to the other parties a list of items that the party owns and intends to repossess and which the party believes is in the possession or control of another party. Also, Judy Engle may provide such a list on behalf of Jerry Koehler. Any such list that a party chooses to provide is not presumed to be a complete or exhaustive list of all items that party claims to own. Items that are cleared for repossession under procedures similar to paragraph 12 may then be peaceably repossessed by the party at a date and time mutually agreeable to the repossessing/owning party and the party then having possession or control of the item. Items that are designated by any party as disputed under those procedures cannot be repossessed until the underlying dispute is resolved. Notwithstanding the foregoing,

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this paragraph expressly does not apply to items contained in the State Street storage unit. No new terms have been agreed upon with respect to the State Street storage unit.

15. **Use of State Street Property to Store and Sell Tangibles.** The parties disagree as to whether the September 3, 2013 settlement agreement requires the UHaul box van, which is presently located on the State Street property, to be sold. Wendie Throne believes that the September 3, 2013 settlement agreement entitles her to receive the UHaul box van outright because it was located on the State Street property on September 3, 2013. The other parties believe it is required to be sold. Regardless of which view is correct, the parties agree that Kathy Engle may store tangibles in the UHaul at its present location on the State Street property (assuming space is still available inside, which Wendie Throne does not know at this time). The parties further agree that Kathy Engle may use the frontage of the State Street property (from the UHaul box van forward) to display and sell tangibles, provided such use does not interfere with ingress or egress. The parties further agree that the Dodge truck and other like items may be parked on the front portion of the State Street property for the purpose of marketing it for sale. This paragraph is not intended to alter the status quo set forth in the September 3, 2013 settlement agreement with respect to units 2-5 of the State Street property.

16. **Relationship to September 3, 2013 Settlement Agreement.** The agreements reached herein are not intended to alter the terms of the September 3, 2013 settlement agreement except as expressly stated with respect to lowering the mandatory sale threshold to \$500. As to items falling below that threshold, the intent is that if the parties agree to sell or otherwise dispose of a particular item, it will be sold or otherwise disposed of as agreed; if they agree to

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distribute it to a party, then it may be distributed outright to that party as agreed; if the parties don't agree as to a particular item, then the Court may need to resolve disputes regarding the interpretation and/or application of the September 3, 2013 settlement agreement as to that item before it can be sold or distributed or otherwise disposed of.

17. **Effect of Failure of September 3, 2013 Settlement Agreement.** If for any reason the Court expressly rejects or disapproves the settlement agreement entered on September 3, 2013, then (1) if the Price property has not been sold, the Order Partially Quietening Title (Price Property) shall be vacated in a manner designed to protect any encumbrance that Judy Engle allowed to be placed on the property in accordance with that order (2) if the Payson property has not been sold, the Order Partially Quietening Title (Payson Property) shall be vacated in a manner designed to protect any encumbrance that Wende Throne allowed to be placed on the property in accordance with that order (3) to the extent any order partially quietening title is vacated in accordance with (1) or (2) above, an appropriate order will be entered and recorded on the appropriate property so that third parties can be made aware that the order partially quietening title has been vacated; (4) any proceeds from the sale of tangibles or the sale or encumbrance of any real property that have not yet been disbursed shall be considered frozen and shall not be disbursed in any manner without agreement of the parties or court order (5) no real or tangible property shall be sold without further court order; (6) the parties will be deemed to have reserved all rights to litigate all claims, including as to properties already sold and proceeds already disbursed.

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14292

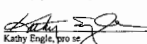
DATED this 26 day of November, 2013.

BY THE COURT:


Keith A. Kelly, District Court Judge

APPROVED AS TO FORM:


Isaac D. Paxman
STEPAN LEWIS PAXMAN & BARNES
Attorneys for Judy Engle and Roy Engle


Kathy Engle, pro se

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
THIRD DISTRICT COURT, SALT LAKE
COUNTY, STATE OF UTAH
DATE 11/29/13
DEPUTY COURT CLERK

11

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2013, I caused a true and correct copy of the foregoing **ORDER CONFIRMING RESULTS OF MEET AND CONFER** to be served, in the manner indicated, upon the following:

Kathy Engle
PO Box 225
Arivada, Colorado 80001
kuz2eng@ymail.com

Isaac Paxman
STEPAN LEWIS PAXMAN & BARNES, LC
10138 South Jordan Gateway
Salt Lake City, Utah 84095
ipaxman@stputah.com

☐ United States Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

☐ United States Mail
☐ Hand Delivery
☐ Facsimile
☒ Email

/s/ rkg

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EXHIBIT A

Tangibles list from November 13, 2013 meet and confer

4037-020-0100

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Page 2 of 4

My estimated price for the items are:

Telephone repair truck	\$300.00 - 1500?
Dodge Truck	\$2,200.00 - 1500?
Antique Radio	\$600.00? <i>what is price tag?</i>
Antique Cedar Chest	\$250.00?
Lower Level	\$100.00 - 500?
Blower	\$250.00?
Diesel Engines (15)	\$1,000.00/ea

Apian estimates are based on good condition. It really is difficult to price any thing without more information. But we need to start the ball rolling.

There are other items that we could list which includes, along with my estimated values:

Big Bubble Trailer	\$2,000.00
Piano	\$600.00
2 chairs w/seat	\$150.00 ea.
Little Giant Ladder	\$150.00 ea.
Dining Set and Hutch	\$800.00 1 ea.
White Chair with brown trim	\$150.00
2 Chairs with brown trim olive green in Wendie's Living room	\$100.00 ea.
K. Dewell Planner New	\$500.00
K. Cane Cabinet	\$500.00
K. Chop Saw	\$75.00 3 ea.
W. Radio Arm Saw	\$100.00
K. Makita Elec. Planner	\$80.00
Electric Hobble Sheet Metal Cutter	\$100.00 1 ea.
3 Pecan Round Tables	\$150.00 ea.
Bubblers Table	\$100.00
Porter Cable Sander	\$50.00
Dayton Battery Charger	\$50.00
Leaf Blower, Gas	\$45.00
K. Post Hole Digger, gas 2 man	\$200.00
K. Husky Air Compressor	\$125.00
R. Rockwell Hammer Drill	\$125.00
K. Makita Planner	\$ 75.00 1 ea.
K. Chicago Generator	\$150.00 3 ea.
Tile cutter Saw	\$150.00
1 Hand Edge Vise	\$500.00
Stark Ken Vertch Truck	\$10,000.00

Please let me know what to do.

Thanks

Kathy

from Wendie's house

1/17/2013

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Addendum K

Order on Distribution Of Tangibles

February 21, 2017



Stephen J. Mayfield (10323)
York Howell & Guyman
6405 South 3000 East, Suite 150
Salt Lake City, Utah 84121
Tel: (801) 527-1040
Fax: (801) 527-1000
steve@yorkhowell.com
Attorney for Special Administrator, Wendie Throne

THE THIRD DISTRICT COURT
SALT LAKE CITY DISTRICT, SALT LAKE COUNTY, STATE OF UTAH
450 South State St., Salt Lake City, UT 84114

IN THE MATTER OF THE ESTATE OF HOMER ENGLE, ORDER ON DISTRIBUTION OF TANGIBLE ITEMS

Deceased.

Case No. 103901948
Judge Keith Kelly

On February 6, 2017, this matter came on regularly for hearing to address the issue of the distribution of tangible personal property pursuant to the Settlement Agreement between the parties. Attorney Stephen J. Mayfield of the law firm of York Howell & Guyman appeared on behalf of the Special Administrator, Wendie Throne. Judy Engle, Kathy Engle, and Roy Engle all appeared *pro se*. Attorney Kurt Laid appeared on behalf of Britta Wilcken and Alexa Theyer.

On proof duly made to the satisfaction of the court, the court finds as follows:

1. The parties spent substantial time and discussion at the court house to negotiate final allocation of items of tangible personal property;
2. After a lengthy discussion and negotiation, the parties reduced the issues of dispute to six

08093

items: two chandeliers originally attached or fixed to the Cherokee property, a ladle which was identified as associated with a lead pot, an archery bow originally built by Homer Engle, a weed wacker, and a floral wall hanging (the "Disputed Items").

3. Having come to an impasse over these items, the parties submitted the dispute of the Disputed Items to the Court for resolution;
4. The parties stipulated that allocation of all other tangible personal property items of the Estate including on the inventory prepared by Kathy Engle, attached here as **Exhibit A**, had been agreed to;
5. The parties agreed in open court to accept the ruling of the Court regarding the allocation of the Disputed Items;
6. The Court ordered for distribution of the Disputed Items as follows:
 - a. The two chandeliers originally attached or fixed to the Cherokee property to be distributed to Judy Engle as part of the Cherokee property;
 - b. The ladle which was identified as associated with a lead pot to be distributed to Judy Engle;
 - c. The archery bow originally built by Homer Engle to be distributed to Wendie Throne for her daughter Britta;
 - d. That there is one weed wacker which shall be distributed to Judy;
 - e. The floral wall hanging to be distributed to Wendie Throne;
7. That all items of tangible personal property, including, but not limited to, the Disputed Items are "as is," with no warranty as to condition or operability;

08094

THEREFORE, IT IS HEREBY ORDERED

1. The Disputed Items shall be distributed as follows:
 - a. To Judy Engle the two chandeliers originally attached or fixed to the Cherokee property as part of the Cherokee property;
 - b. To Judy Engle the ladle which was identified as associated with a lead pot;
 - c. To Wendie Throne the archery bow originally built by Homer Engle;
 - d. To Judy Engle one weed wacker;
 - e. To Wendie Throne the floral wall hanging.
2. The items identified on **Exhibit B**, attached here, to be distributed to Kathy Engle per the agreement of the Parties;
3. The items identified on **Exhibit C**, attached here, to be distributed to Judy Engle per the agreement of the Parties;
4. The items identified on **Exhibit D**, attached here, to be distributed to Roy Engle per the agreement of the Parties;
5. The items identified on **Exhibit E**, attached here, to be distributed to Wendie Throne per the agreement of the Parties;
6. That all items of tangible personal property, including, but not limited to, the Disputed Items are "as is," with no warranty as to condition or operability;
7. Any objection to the proposed order shall be submitted no later than 6:00 p.m. on February 15, 2017;
8. Distribution of the tangible personal property as provided in this Order is in full satisfaction of the terms of the Settlement Agreement between the parties as it relates to allocation

08095

and distribution of the tangible personal property of the Estate of Homer Engle.

This Order is signed when electronically stamped and dated by the Court at the top of page one.

08096

Addendum L

Partial Transcript of October 27, 2016 Hearing

Decedent's Tangible Property RE: Coins

[R.11075 - R.11154]

Excerpts [R.11110 to R.11154]

1 THE COURT: What?
2 MS. ENGLE: This is my only color copy.
3 THE COURT: No, the color copy is going into the
4 Court.
5 MS. ENGLE: Oh, and - can I get photocopies back?
6 THE COURT: No. But it will be in the Court's
7 record.
8 MS. ENGLE: Will it be colored (inaudible)?
9 THE COURT: Umm, when it's scanned -
10 COURT CLERK: I don't scan exhibits.
11 THE COURT: oh, that's right, we'll just keep those
12 as exhibits in the Court record. If you want to look at those
13 documents -
14 MR. MAYFIELD: Yes, Your Honor.
15 MS. ENGLE: I gave Wende copies. They were on your
16 desk.
17 (Inaudible discussion).
18 MR. MAYFIELD: Oh, okay, (inaudible) Your Honor.
19 THE COURT: Okay. Kathy Engle, do you want to show
20 that to the witness?
21 MS. ENGLE: I just (inaudible).
22 THE WITNESS: What's your question?
23 Q (BY MS. ENGLE) I just wanted to know if those are
24 the coins that were in the safety deposit box 'cause I did see
25 pictures of all those coins when you submitted them.

34

1 A As you can see, this is a banker's box so that's the
2 top row of the coins. It's a deep box. So I was not - I
3 didn't photograph every single coin. I attempted to
4 photograph the coins for the hearing last month but -
5 MR. MAYFIELD: Your Honor, I have to object. We
6 haven't established any foundation as to what these coins are.
7 THE WITNESS: Yeah.
8 MR. MAYFIELD: I mean -
9 THE COURT: Well, she just - I think she's saying
10 these were a picture of the coins from the box.
11 Is that what you're saying?
12 (Voices overlapping)
13 THE WITNESS: I'm saying that it's a banker's box
14 and it's a deep box like for storing files and I just took a
15 photograph of the top of the layer of coins so I could - I
16 never did photograph every single coin.
17 THE COURT: Right, so that's your photograph that
18 you took?
19 THE WITNESS: This is my photograph.
20 THE COURT: All three of those?
21 THE WITNESS: Yes.
22 THE COURT: So you're offering that into evidence.
23 MS. ENGLE: Right.
24 THE COURT: And it's -
25 Q (BY MS. ENGLE) Did you submit those to Court?

35

11111

1 A I did.
2 Q In your last hearing these pictures - I didn't see
3 those pictures that's being submitted.
4 A This was not submitted at the last hearing. These
5 were submitted like prior to the Settlement Agreement.
6 Q Right, these were submitted a long -
7 A A long time ago.
8 Q - time ago but they weren't submitted with the -
9 THE COURT: So I'll admit those into evidence.
10 Do you have any other questions?
11 MS. ENGLE: No, that's all. I just wanted to show
12 the Court.
13 THE COURT: Okay. Further cross - any cross
14 examination of Judy?
15 MS. J. ENGLE: Yes, I want to cross. I'm just
16 trying to get my stuff together.
17 THE COURT: Okay, Roy, do you have any cross
18 examination questions?
19 MR. ENGLE: No.
20 MS. J. ENGLE: I could go forward now, Your Honor, I
21 think.
22 THE COURT: We need to keep it moving. So let's
23 have Roy go first.
24 MS. J. ENGLE: (Inaudible).
25 THE COURT: Hold on, you weren't ready so I'm going

36

11112

1 to call Roy.
2 Go ahead, Roy.
3 CROSS EXAMINATION
4 BY ROY ENGLE:
5 Q Umm, when Homer died you were made the Special
6 Administrator. Do you remember what date that was?
7 A I don't know the date, sometime after he died.
8 Q Did you remove these coins before you were made the
9 Special Administrator?
10 A No.
11 MR. ENGLE: Okay, no further questions.
12 THE COURT: Okay. Judy Engle, cross examination.
13 CROSS EXAMINATION
14 BY JUDY ENGLE:
15 Q So your testimony is that the coins were, has
16 basically stayed intact and that you didn't remove any of the
17 coins pre-death?
18 A No.
19 MR. MAYFIELD: Objection, that's a compound
20 question. She needs to clarify what she means.
21 THE COURT: Well, let's rephrase it.
22 Go ahead and restate your question.
23 MS. J. ENGLE: Well, she already said she never -
24 THE COURT: Restate your question and let her
25 answer.

37

11113

1 MS. J. ENGLE: Okay.
2 THE COURT: I sustained the objection.
3 MS. ENGLE: Okay.
4 Q (BY MS. J. ENGLE) You never removed any of the
5 coins from any of the safety deposit boxes before Homer died?
6 A No.
7 Q Okay. And then when you were the Special
8 Administrator you placed TRO, restraining orders against all
9 three of us -
10 MR. MAYFIELD: Objection, Your Honor, that's
11 irrelevant to the issue.
12 THE COURT: Sustained. Move onto a different
13 subject.
14 Q (BY MS. J. ENGLE) Okay. We have - because we did
15 not have the rights to -
16 THE COURT: I understand. I know the order, there
17 was an appointment, there was a TRO, so you can argue that but
18 after the TRO was issued by Judge Medley, you would not have
19 had the ability to go remove coins from the box.
20 Q (BY MS. J. ENGLE) Correct and during that issuance
21 of that temporary restraining order on those coins, did you
22 not receive instructions from Judge Medley as to what to do
23 with those, with the instructions that the Special
24 Administrator would take in preserving the estate of Judy
25 Engle's coins?

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11114

1 MR. MAYFIELD: Objection on relevance.
2 MS. THRONE: I don't know what you're talking about.
3 MR. MAYFIELD: Objection to question, it's an
4 irrelevant issue.
5 THE COURT: Overruled.
6 Q (BY MS. J. ENGLE) What we have here is a document
7 submitted to the Court November 23rd of 2010. It's the
8 application for emergency appointment of the Special
9 Administrator.
10 MR. MAYFIELD: Objection, Your Honor, she's
11 testifying.
12 THE COURT: Okay, what is the relevant, relevance?
13 MS. J. ENGLE: The relevancy is that there was a
14 temporary restraining order and in that restraining order
15 preserving and protecting these coins -
16 THE COURT: What was the date? November 23, 2010?
17 MS. J. ENGLE: Yes.
18 THE COURT: It was the order of the Court is what
19 you have?
20 MS. J. ENGLE: Yes and it says in No. 10 of that
21 order, "The issuance of a temporary restraining order -
22 MR. MAYFIELD: Objection, Your Honor, she
23 (inaudible).
24 MS. J. ENGLE: - will assist the Special
25 Administrator -

39

11115

1 THE COURT: Is this part of a question you have for
2 her? I mean that's a document that's in the record.
3 MS. J. ENGLE: Right, but the -
4 THE COURT: Is it the Wells Fargo, Roy, or just the
5 Kathy Engle or is it the -
6 MS. J. ENGLE: It was the - it was where Wende
7 applied for the application for her appointment as Special
8 Administrator and also the temporary restraining orders
9 including the safety deposit boxes.
10 THE COURT: So this is the Wells Fargo Bank one?
11 MS. J. ENGLE: There's one - that one was part of
12 it, yes.
13 THE COURT: So which one do you have?
14 MS. J. ENGLE: I have -
15 THE COURT: Hand it to the bailiff please. Okay.
16 So this is November 23, 2010, that's the application.
17 MS. J. ENGLE: Right.
18 THE COURT: It's on the (inaudible).
19 MS. J. ENGLE: Right.
20 THE COURT: Why don't you show it to Mr. Mayfield?
21 Okay, you can go ahead. It's - the document is in the record
22 as a document filed by the Special Administrator on November
23 23, 2010. You can hand it to the bailiff and the bailiff will
24 hand it to the witness.
25 MS. J. ENGLE: Okay, but I just need to read what I

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11116

1 have on here.

2 THE COURT: Well, I printed an extra copy so...you

3 can go ahead and read it, go ahead.

4 MS. J. ENGLE: In Paragraph 10 "the issuance of a

5 temporary restraining order will assist the Special

6 Administrator in collecting

7 MR. MAYFIELD: Objection, Your Honor, she's

8 testifying. She isn't providing a question to the witness.

9 MS. ENGLE: I'm just reading what it says.

10 THE COURT: Overruled, go ahead. You're reading is

11 part of asking a question, right?

12 MS. J. ENGLE: Partly, yes.

13 THE COURT: Okay, read it and ask the question.

14 Q (BY MS. J. ENGLE) So collecting management,

15 preserving and accounting for the assets of the estate prior

16 to the general administration of the estate; is that correct?

17 A Yes.

18 Q So that is your duty to manage, preserve and account

19 for these assets?

20 A Yes.

21 Q So did you make an itemized accounting and an

22 inventory of each one of these boxes as you took possession of

23 them?

24 A I did what my attorney advised me to do.

25 Q What was?

41

11117

1 MR. MAYFIELD: Objection, Your Honor, anything is

2 protected by attorney -

3 THE COURT: Sustained. That's covered by the

4 attorney/client privilege. Okay. So repeat your question.

5 Q (BY MS. ENGLE) You're stating that no inventory was

6 every done on each individual box as you recovered it?

7 A I did what my attorney told me to do.

8 MR. MAYFIELD: Objection, Your Honor, she been asked

9 that and can't disclose information which is confidential -

10 THE COURT: I mean, if your client is volunteering

11 information -

12 MR. MAYFIELD: I'd advise my client not to disclose

13 information which is confidential.

14 THE COURT: Okay. Do you have another question?

15 Q (BY MS. J. ENGLE) So, we - do we have any itemized

16 inventory other than what you presented to this Court today?

17 A I presented to the Court what my attorney asked me

18 to provide, exactly what my attorney told me to provide the

19 Court.

20 Q So we subpoenaed the records of the Wells Fargo Bank

21 and in my exhibit which is already before the Court, it shows

22 your signature that you opened the safety deposit box -

23 MR. MAYFIELD: Objection, lack of foundation as to

24 what she's talking about.

25 THE COURT: What exhibit are you talking about?

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11118

1 MS. J. ENGLE: I'm trying to find it, Your Honor.

2 THE COURT: I sent another document to print. If

3 you just want to hand it to me I'll take care of it. Okay.

4 MS. J. ENGLE: I apologize, 'cause I left these out

5 and I had all prepared with copies and I left them at the

6 house.

7 THE COURT: Okay.

8 MS. J. ENGLE: It was - here it is. It's Exhibit

9 19, I believe, and 20 of the two Wells Fargo safety deposit

10 box lease agreements. I'd like to submit them.

11 THE COURT: Okay, do ahead and get them marked.

12 Aren't those the ones you already attached?

13 MS. J. ENGLE: I did.

14 THE COURT: Okay, go ahead and get them marked.

15 While we're doing that, here's the application for

16 the appointment of Special Administrator. That's mine,

17 thanks.

18 Mr. Mayfield.

19 Okay, which exhibits did you hand her?

20 MS. J. ENGLE: I'm sorry (inaudible).

21 THE COURT: Exhibits 4 and 5?

22 COURT CLERK: Yes.

23 THE COURT: Do you have a question?

24 MS. J. ENGLE: Yes.

25 Q (BY MS. J. ENGLE) Are you familiar with those two

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11119

1 signatures on those -
2 A Yeah.
3 Q - documents? And is that the date that you opened
4 the boxes?
5 A I didn't open these boxes.
6 Q You closed them. Is that not correct?
7 A I closed the boxes, yea.
8 Q And so you're testifying that you closed the boxes
9 and never removed the contents and left them there for the
10 bank?
11 A No, that's what you're saying.
12 Q That's what I'm asking you.
13 A I went to Wells Fargo Bank with my Special
14 Administration appointment papers which they told me over the
15 phone to bring and told them that I needed to get the contents
16 that were owned by Homer Engle in his boxes and I gave them
17 the keys.
18 Q And so you removed the contents on that date?
19 A Yes.
20 Q On that date those documents were part of the
21 subpoena that Kathy prepared for the Wells Fargo and the
22 Zion's Bank and those were the documents that accompanied this
23 subpoena. They were the only documents that Wells Fargo had
24 that showed any opening or closing of the box, so...
25 THE COURT: So -

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11120

1 THE WITNESS: I don't - what's the point?
2 Q (BY MS. J. ENGLE) So I'm saying that based on your
3 testimony that you never opened the boxes and then based on
4 the subpoena that you have in front of you, the documents of
5 the signature of the only person who did enter that box then
6 is it safe to say that at the time that you opened that box
7 that you removed all contents that had ever been in these
8 boxes prior to his death?
9 A No, it's not.
10 Q Well, testimony today as stated by both you and I
11 that -
12 MR. MAYFIELD: Objection, misstates her testimony,
13 Your Honor.
14 THE COURT: Overruled. Overruled means you can ask
15 the question. Sustained means that it's objectionable. Go
16 ahead and ask your question.
17 MS. J. ENGLE: Thank you.
18 Q (BY MS. ENGLE) I'm stating that with both of our
19 testimonies today and with the Court appointed subpoena -
20 MR. MAYFIELD: Your Honor, she's asking her to
21 testify as to whether Judy Engle testified -
22 THE COURT: Let me finish her sentence, let her
23 finish her question and then we'll see what the objection is.
24 Finish your question please.
25 Q (BY MS. J. ENGLE) That with the subpoena from the

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11121

1 Wells Fargo Bank that supports that there has been no other
2 entry into that box other than your signature and with your
3 and my testimony today, is it safe to say that this is the
4 only signature that has been obtained of any opening and
5 closing of this box?
6 A No. No.
7 Q And do you have supporting document to prove that?
8 A Wells Fargo is in the process of getting that
9 together right now and they haven't completed their research.
10 But Homer was in and out of that box often. He was there with
11 me on one specific day and I watched him go in that box at
12 Wells Fargo.
13 Q Okay. Well, Wells Fargo's subpoena told me -
14 THE COURT: Hold it, you're not testifying about
15 that. You can ask questions.
16 Q (BY MS. J. ENGLE) Okay. The subpoena in front of
17 you does only show the only documented history of anybody
18 entering that box; is that correct?
19 THE COURT: First of all, -
20 THE WITNESS: No, it's not.
21 Q (BY MS. J. ENGLE) Today, at this hearing?
22 A This is the lease agreement. This is not an access
23 agreement or access records. These are lease agreements,
24 that's it. It shows nothing about access.
25 THE COURT: So, just to clarify, do you want

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11122

1 Exhibits 4 and 5 to be admitted, is that what you're saying?
2 MS. J. ENGLE: Yes, I do.
3 THE COURT: Is there any objection to admitting 4
4 and 5?
5 MR. MAYFIELD: No, Your Honor.
6 MR. PAXMAN: No.
7 THE COURT: Okay. Four and 5 are admitted.
8 (Respondent's Exhibits 4 and 5 are received)
9 THE COURT: Any other questions?
10 Q (BY MS. J. ENGLE) So as the newly appointed Special
11 Administrator with TROs on all parties, nobody could access
12 these boxes and you were given the duty to preserve and
13 protect these assets and account for all assets in these boxes
14 which part of that duty is to itemize and do an inventory, is
15 that not correct?
16 A I provided to the Court what my attorney asked me to
17 provide.
18 Q But as the duty of a Special Administrator is that
19 not correct that you had a 90-day time line after Homer died
20 to put together a complete inventory list of all assets?
21 MR. MAYFIELD: Objection, that calls for a legal
22 conclusion.
23 THE COURT: Sustained. Any other questions?
24 Q (BY MS. J. ENGLE) I have your financial statement
25 and I'd like to include that in as an exhibit.

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11123

1 THE COURT: Get it marked. So that would be
2 Respondent's what?
3 COURT CLERK: These are four and five.
4 (Inaudible conversation)
5 THE COURT: If you'd hand me those.
6 MR. MAYFIELD: Your Honor, (inaudible).
7 THE COURT: I thought it was already provided by
8 Julie Engle prior to the hearing.
9 MR. MAYFIELD: Which one is this?
10 THE COURT: The financial, the gross financial
11 statement. It was attached to Judy Engle's reply. It's the -
12 MS. J. ENGLE: Your Honor, I didn't submit the
13 financial statement because I emailed it to them and it's in
14 my exhibits so they have it.
15 THE COURT: No, it's Exhibit 11.
16 MS. J. ENGLE: Yeah.
17 THE COURT: Exhibit 11, the financial declaration,
18 at least the first couple of pages.
19 MR. MAYFIELD: Your Honor, I'm not seeing it.
20 THE COURT: Why don't you show it - I'll ask the
21 bailiff to show it to Mr. Mayfield.
22 Q (BY MS. J. ENGLE) Is that your financial statement?
23 A Yes, it is.
24 Q And does it show the date that it was prepared?
25 A Umm, yeah, it was signed on May 3, 2012.

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11124

1 Q And that's about two years after Homer died?
2 A Yes.
3 Q Okay, does it list coins?
4 A I don't know why it would, they weren't my property
5 at the time.
6 THE COURT: So are you asking -
7 THE WITNESS: But I don't know -
8 THE COURT: - to have that admitted?
9 MS. J. ENGLE: Yes.
10 THE COURT: Is there any objection to admitting
11 Exhibit 6?
12 MR. MAYFIELD: Yes, Your Honor. I think it is
13 irrelevant to the issue of whether she had ownership of the
14 coins by way of operation of law because at the time Homer
15 died she received ownership (inaudible) law. She didn't
16 understand the real significance of whether she had ownership.
17 THE WITNESS: I don't believe they're on here 'cause
18 it's -
19 THE COURT: They are or are not on there?
20 THE WITNESS: I don't believe they are.
21 THE COURT: Okay. I'm going to overrule that
22 objection and admit Exhibit 6.
23 Do you have any questions.
24 (Exhibit No. 6 is received)
25 MS. J. ENGLE: Yes.

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11125

1 Q (BY MS. J. ENGLE) Is all of the fine jewelry that
2 you own on that document?
3 MR. MAYFIELD: Objection to that question, it's
4 irrelevant to the issue of coins.
5 THE COURT: Go ahead.
6 Q (BY MS. J. ENGLE) And is the thoroughbred horses
7 and all of the other -
8 THE COURT: Look, the document speaks for itself.
9 So...
10 THE WITNESS: Oh, my gosh.
11 THE COURT: ...it's admitted. You can go ahead and
12 hand it to me. We really are out of - we're low on time. So
13 any other questions?
14 Q (BY MS. J. ENGLE) So, it's safe to say that that's
15 an incomplete document as well, that it wasn't filled with all
16 the assets that you own?
17 A The purpose of that document was to reevaluate our
18 child support and the only reason why I had to redo that is
19 because my exhusband and I, when my daughter was six -
20 Q I don't care about that -
21 A - (inaudible) -
22 Q - I want to move on.
23 A No, I need to explain this.
24 THE COURT: Well, look -
25 THE WITNESS: My statement is we were trying to

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11126

1 decide if we were going to readjust our income levels for the
2 distribution of child support and he was going to pay medical.
3 Q (BY MS. J. ENGLE) So you're saying your income
4 level was at \$2100 a month?
5 A My income level at that time was what it was
6 represented in that document for the purpose of reevaluating
7 child support and that was it. My divorce actually occurred
8 16 years prior to that.
9 Q Okay.
10 THE COURT: Okay, anything else?
11 MS. J. ENGLE: Yes.
12 THE COURT: We're really running low on time and it
13 needs to be relevant.
14 Q (BY MS. J. ENGLE) You filed several police reports
15 on the miscellaneous -
16 THE COURT: I'll exclude that. I'm going to go
17 ahead and exclude it. It's already been -
18 MS. J. ENGLE: But, Your Honor, (inaudible) were
19 stolen. How can they be in a safety deposit box if they were
20 stolen?
21 THE COURT: Look, the issue of - we're dealing with
22 the coins that are in the safety deposit box. We're not
23 dealing with other coins. And that, those documents have
24 already been submitted, it's 5:00 p.m., we've been going on
25 for a time, let's focus on the coins that were in the safety

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11127

1 deposit boxes.
2 MS. J. ENGLE: On Monday, January 27, 2014 I have a
3 document here is 3-day notice from the tangibles that Kathy
4 prepared.
5 THE COURT: I mean that's already been submitted and
6 I'm not going to go into that.
7 MS. J. ENGLE: Okay, I have that if you want it.
8 Q (BY MS. J. ENGLE) So the testimony is you gifted
9 these coins to your daughter?
10 A I did not gift the coins to my daughter.
11 Q Items 3 of the safety deposit box is key and access
12 were given prior to death to Wende, gifted coins to Britta and
13 Lexie.
14 A That was the intent of grandpa.
15 Q But that's what you made a declaration on that
16 that's what you did -
17 THE COURT: That's already in the record. We really
18 need to cut - I get your point and I understand that that's
19 been submitted. Is there anything else?
20 Q (BY MS. J. ENGLE) The amount of money that these,
21 the value of these coins, the Krugerrands, then there's
22 nothing in here that shows that the Krugerrands are even in
23 this box but it shows here one distinct coin that I can
24 identify as mine.
25 MR. MAYFIELD: Objection, Your Honor, is she

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11128

1 testifying or asking a question?
2 MS. J. ENGLE: And so ummm, I'm just making clarity
3 to the Court -
4 THE COURT: No, you're asking questions on cross
5 examination, that's all we're doing -
6 MS. J. ENGLE: Okay.
7 THE COURT: - at this point.
8 MS. J. ENGLE: Okay.
9 Q (BY MS. J. ENGLE) On this picture, these coins and
10 they're in this box, ahhh, I can identify a coin that was -
11 THE COURT: Is that a question?
12 MS. J. ENGLE: Yes, I'm leading to the question
13 that I can identify -
14 THE COURT: Ask your question, ask your question. We
15 are out of time.
16 MS. J. ENGLE: These coins are all in a box, all
17 randomly placed in a box.
18 MR. MAYFIELD: Objection, Your Honor, there's no
19 question.
20 Q (BY MS. J. ENGLE) Can you identify which safety
21 deposit box these coins came from?
22 A The bigger boxes came from the Zion's -
23 Q Bigger boxes meaning which one?
24 A These big paper boxes came from Zion's.
25 THE COURT: The first three pages of the exhibit.

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11129

1 Don't get them out of order, please.
2 THE WITNESS: These first three.
3 THE COURT: First three of the exhibit and the last
4 3 were from where? And don't get them out of order please.
5 THE WITNESS: Ummm, these two here came from the
6 Zion's boxes.
7 THE COURT: And that's the fourth and fifth pages.
8 THE WITNESS: Uh-huh (affirmative).
9 THE COURT: Okay. Why don't you put the paperclip
10 in and keep them clipped in the correct order.
11 Q (BY MS. J. ENGLE) So you're saying all five of
12 these came from the Zion's boxes?
13 A Excuse me, these other two came from Wells Fargo.
14 THE COURT: Hold it. Hand me the exhibit. I'm
15 going to staple it so they're not mixed up. So when you say
16 these pages, - I thought there was an exhibit number on the
17 back of the last page. Oh, yeah, it is here. Okay. This is
18 Exhibit 2. I've now stapled it together. Just so the record
19 is clear, go through page by page, Page 1, and I'll ask you
20 write on it with a pen, page number, write the page number,
21 Page 1, tell us where it came from.
22 THE WITNESS: Okay, Page 1 is -
23 THE COURT: Write the No. 1 in the lower right-hand
24 corner.
25 THE WITNESS: Zion's Bank.

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11130

1 THE COURT: Okay, Page 2?
2 THE WITNESS: Zion's Bank.
3 THE COURT: Page 3?
4 THE WITNESS: Zion's Bank.
5 THE COURT: Page 4?
6 THE WITNESS: That would be Wells Fargo.
7 THE COURT: Okay, Page 5?
8 THE WITNESS: That was Wells Fargo.
9 THE COURT: Okay. And Page 6 is a paper.
10 THE WITNESS: Uh-huh (affirmative).
11 THE COURT: Page 7?
12 THE WITNESS: Those were actually from Homer's
13 house.
14 THE COURT: Okay, could you write 7 on that page?
15 THE WITNESS: Uh-huh (affirmative).
16 THE COURT: Okay, thank you.
17 We are out of time. Do you have any other points
18 you need to make, Judy Engle?
19 MS. J. ENGLE: Yes, Your Honor. We have these
20 Krugerrands, we have the receipts that they were purchased.
21 It's my testimony that -
22 MR. MAYFIELD: Objection, Your Honor, she can't
23 testify.
24 THE COURT: You've already submitted that. You've
25 submitted your affidavit. That's all in. I've read your

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1 affidavit.
2 MS. J. ENGLE: Okay. And so, the marked up copy is
3 also submitted in here that shows -
4 THE COURT: That's right, it's already been
5 submitted.
6 MS. J. ENGLE: - that explains were in fact part of
7 the estate and the testimony -
8 THE COURT: Okay, hold on, do you have any other
9 questions for Wende Throne?
10 MS. J. ENGLE: Yes.
11 Q (BY MS. J. ENGLE) The last -
12 THE COURT: Tell me what they're going to go to
13 because we are really out of time and we are about done. I
14 don't want to cut out an important line but things that have
15 already been -
16 MS. J. ENGLE: One last, one last document -
17 THE COURT: - please - things that have not already
18 been submitted, that have already been submitted, let's not go
19 to.
20 MS. J. ENGLE: It's been.
21 THE COURT: And what is the issue?
22 MS. J. ENGLE: This is the April 6, 2011 temporary
23 restraining order.
24 THE COURT: That's in the record.
25 MS. J. ENGLE: No, not in this.

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1 THE COURT: It's in the record in the court case.
2 You can argue based on that already.
3 MS. J. ENGLE: Okay. So, that order actually is an
4 order for the Special Administrator -
5 THE COURT: That's correct and I have a copy of it -
6 MS. J. ENGLE: - that she cannot sell, convey or
7 encumber -
8 THE COURT: That's correct.
9 MS. J. ENGLE: - gift or dispose -
10 THE COURT: And I'll take judicial notice that
11 that's the Court's order.
12 MS. J. ENGLE: And she did so when she did the
13 gifting of her coins to her daughter.
14 THE COURT: That's already in the record. So I'm
15 not going to permit cross examination on that because we're
16 out of time.
17 Followup questions for Wende Throne?
18 Mr. Mayfield?
19 MR. MAYFIELD: Just a simple question.
20 REDIRECT EXAMINATION
21 BY MR. MAYFIELD:
22 Q Wende Throne, when Homer Engle died were you on the
23 title of the Wells Fargo - of the Zion's Bank safety deposit
24 boxes?
25 A Yes.

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1 Q Were the coins located in the safety deposit box
2 when he died?
3 A Yes.
4 MR. MAYFIELD: No further questions, Your Honor.
5 THE COURT: Okay. Any other questions?
6 You can go ahead and step down.
7 You already had your chance to - what do you want to
8 cross examine on?
9 MR. ENGLE: Which box had the Krugerrands?
10 THE WITNESS: There were no Krugerrands.
11 MR. ENGLE: Really?
12 THE WITNESS: Yes. Homer sold those prior to death,
13 everyone of them because he needed money. Why do you think
14 these properties were in such disrepair? He couldn't afford
15 to do it.
16 THE COURT: Okay. Any other questions?
17 Okay, hearing none, we are really out of time. I'll
18 give each party two minutes to make their final points. I
19 think I mean we've already had submissions, let's go ahead and
20 first hear from the Special Administrator's counsel.
21 MR. MAYFIELD: Your Honor, I think it's a very
22 simple issue that at the time of Homer Engle's death there
23 were three safety deposit boxes with Zion's Bank. The parties
24 or the individuals who were on title with that safety deposit
25 box were Homer Engle and Wende Throne. Those safety deposit

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1 boxes -
2 THE COURT: And which exhibit shows Wende having
3 title?
4 MR. MAYFIELD: In the exhibit to her affidavit, Your
5 Honor, it shows her as being a signature, signatory of the
6 Zion's Bank safety deposit boxes.
7 THE COURT: Okay, and that's your argument?
8 MR. MAYFIELD: Yes, Your Honor.
9 And the other issue is, Your Honor, again using for
10 the Court, but there's other evidence with regard to the Wells
11 Fargo accounts which she's been trying to obtain from Wells
12 Fargo and which we have not been able to attain yet which also
13 shows that she is on title with those as well. Regardless,
14 the coins come from the Zion's account, Zion's safety deposit
15 box. Those boxes were in her name as a joint tenant with
16 Homer Engle. When Homer Engle died, she was the surviving
17 joint tenant of those boxes. Therefore by operation of law,
18 she's the owner of the contents of those boxes.
19 THE COURT: So where - you're saying - I don't see
20 Judy's - I'm sorry, Wende's name on five or six. Was there
21 some other document I'm missing?
22 MR. MAYFIELD: Your Honor, if you look to our
23 Exhibit No. B, of the declaration, it refers to her - it shows
24 safe deposit box, down towards the bottom, it shows Wende
25 Throne and shows her signature.

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1 THE COURT: Okay.
2 MS. J. ENGLE: Which exhibit is that? I've not seen
3 that.
4 THE COURT: That's to the October 25th - it was
5 mistakenly Exhibit 2 in the other affidavit and then it was
6 corrected and put in as an exhibit (inaudible).
7 MS. J. ENGLE: October 25 of what?
8 THE COURT: Okay. Okay. Thank you.
9 Okay, Judy, two minutes.
10 MS. J. ENGLE: Yes. Wende Throne did not have a
11 exhibit before this Court that shows that she was on all
12 Zion's Bank accounts. She only had supplied one exhibit with
13 one signature card. She does not show any exhibits that show
14 that she was on any Wells Fargo, but Judy has her in there
15 that she was on one. So I also was an owner of the coins that
16 were in that box.
17 My daughter, Tanya, supplied a declaration to this
18 Court late - she was out-of-town - and she has personal
19 knowledge of the same thing that she declared in her
20 declaration of the coins and their existence and that these
21 coins were not all in Zion's Bank. Wende clearly identified
22 that in her testimony, that some of them came from Wells Fargo
23 as well as Zion's -
24 MR. MAYFIELD: Your Honor, I would object to the
25 reference to this declaration by her daughter -

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1 THE COURT: Sustained.
2 MR. MAYFIELD: - it wasn't subject to cross
3 examination.
4 THE COURT: Sustained. It's excluded.
5 Go ahead.
6 MS. J. ENGLE: Yes and therefore it really is a, a
7 situation where there is some joint ownership in these coins
8 and there is speculation that there is missing coins that have
9 not been accounted for and because there has never been an
10 inventory, a complete itemized inventory of every single coin
11 which is required that the Special Administrator do as part of
12 her duty, that we need to look at the facts here and realize
13 that there is substantial amounts of coins that are missing
14 and that some of those coins in this grouping, I can identify
15 as some of my coins. And they, and some of those coins from
16 one picture versus the last picture she submitted, are
17 substantially reduced even from the first pictures that she
18 presented to this Court.
19 So, my testimony is that Homer had three boxes, two
20 of them four inches high, 24 inches - 12 inches wide and 24
21 inches deep and another one at Zion's, 10 inches high. That's
22 a substantial amount of large boxes for safety deposit
23 purposes.
24 THE COURT: Okay, thank you very much.
25 MS. J. ENGLE: And I testified -

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1 THE COURT: You're out of time, thank you.
2 MS. J. ENGLE: - that the coins were there.
3 THE COURT: Okay, thank you. And just to be clear,
4 you've already submitted an affidavit in great detail on these
5 issues.
6 Roy, do you have any final argument?
7 MR. ENGLE: No.
8 THE COURT: Kathy, any final argument?
9 MS. K. ENGLE: When I prepared the inventory list
10 and we did the meet and confer and Judy had pictures, photos
11 of the coins. There was never one time that she said this
12 coin belongs to me from any of those pictures or on the meet
13 and confer where we marked our initials by what we wanted and
14 identified what coins she was entitled to. I do not believe
15 that Judy has ownership to any of those coins. I know for a
16 personal fact that my father collected coins for many, many
17 years and these coins were his personal property and Judy did
18 not have any ownership of these coins whatsoever in any of
19 those deposit boxes and I don't believe that the title for
20 coins in safety deposit boxes vests to the owner at the time
21 of death for the signature.
22 THE COURT: Thank you.
23 I'm going to take this under advisement. I'll
24 direct everybody to be back in court at 20 after 5:00. It may
25 take a little longer to sort through the issues and issue a

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1 ruling but be back in about five minutes.
2 Court will be in recess.
3 (Whereupon a recess was taken from 5:16 to 5:25)
4 THE COURT: Okay. This is a matter of the estate of
5 Homer Engle. This is Case 103901948.
6 You can head back to your table please.
7 Before the Court are the parties. We have Mr.
8 Mayfield, whose counsel along with, is counsel for the Special
9 Administrator, Wende Throne. Wende Throne is here. Mr.
10 Anderson, for Wende Throne's two daughters who are
11 beneficiaries of the trust. We have Kathy Engle here. We have
12 Isaac Paxman whose counsel for several entities that are
13 controlled by various of the Engle siblings. We have Judy
14 Engle and we have Kathy Engle. And the issue of this hearing
15 is that there were a number of coins that were held in safe
16 deposit boxes at Zion's Bank and Wells Fargo Bank that were
17 being held in boxes that everybody agrees were at least partly
18 owned by Homer Engle at the time of this death.
19 And the issue is that Wende Throne claims that Homer
20 Engle had given those coins to her and her daughters, Homer's
21 great - Wende Throne is the granddaughter of Homer Engle and
22 she's the Special Administrator and Wende says that Homer said
23 that those coins were to be given to her and her daughters,
24 Homer's great-granddaughters.
25 Judy Engle says that at least that some of those

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1 accounts were jointly owned, that would be the Wells Fargo
2 account boxes were jointly owned by her and that at least some
3 of those coins are hers.
4 The first issue in determining whether those, how
5 those coins are being disposed of starts out with the will of
6 Homer Engle and in Paragraph 11 of the will, 11.1, he stated
7 that tangible personal property was to be left by a separate
8 writing at the time of his death, but he never created such a
9 document.
10 I have excluded, under the hearsay rule, oral
11 statements by Homer Engle as to who he intended to deliver
12 those coins to or who they should be gifted to at the time of
13 his death and no one has come up with any kind of hearsay
14 exception that would allow those statements to be in. So I've
15 excluded all the evidence that's have provided, especially in
16 the affidavits or the sworn statements, about what his
17 donative intent was. If you want to, if you want to
18 distribute something at the time of your death, you put it in
19 a will or as was stated in 11.1 of his will, a separate
20 writing that never occurred. So then the issue is whose coins
21 are those?
22 I first look to the - there's several things that
23 make clear what Wende's position was. When she - early on in
24 this case in November 23rd, 2010, two days after the death of
25 Homer Engle, Wende Throne asked to be made Special

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1 Administrator and made it clear in her statement to the Court
2 that these coins were Homer Engle's and they were part of the
3 estate. She states in Paragraph 11 of her application for
4 emergency appointment of Special Administrator, and
5 application for issuance of temporary restraining orders,
6 Paragraph 11 she states, "Tangible personal property and the
7 records of the decedent are believed to be contained in two
8 safety deposit boxes located at Wells Fargo Bank NA, 86 North
9 University Avenue, Provo, Utah. Other tangible personal
10 property of the decedent has been held by the decedent in
11 three safety deposit boxes located at Zion's First National
12 Bank NA, in Provo, Utah and the applicant and the decedent
13 were both lessees from the Zion's Safety Deposit boxes. (A)
14 Applicant had - and that's Wende Throne - has been aware of
15 the two Wells Fargo safety deposit boxes for some time from
16 conversations with the decedent and has now inquired as to the
17 status of the leases. (B) According to Wells Fargo Bank
18 personnel, one of the safety deposit boxes is leased in the
19 name of Homer Engle and another safety deposit box is leased
20 in the name of Homer Engle and Judy Engle. And I'm striking
21 Paragraph 11(b) as hearsay. So I'm not going to consider that
22 as admissible into evidence but it was submitted by Wende
23 Throne when she was seeking the TRO. Subpart F, said, "Access
24 to the box bearing both Homer Engle's and Judy Engle's name
25 should be restricted through a temporary restraining order so

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1 that no property may be examined or removed prior to the"
2 (coughing), excuse me, "appointment by the Court of a Special
3 Administrator at which time the Special Administrator should
4 be empowered to inspect and remove the contents for safe
5 keeping."
6 Wende Throne was clearly representing to the Court
7 at the, right after Homer died that these were Homer's
8 tangible items of personal property and Wende now argues today
9 something different but she submits Exhibit 1, the safe
10 deposit signature card to her amended affidavit of Throne, of
11 Wende Throne regarding the coins and it shows the name of the
12 lessee as Homer Engle. It has Wende Throne as an authorized
13 signer and Homer Engle as an authorized signer but it does not
14 show that Wende Throne is a co-lessee. So I reject the
15 argument that Wende Throne was a co-owner of the contents of
16 those safety deposit boxes. She made clear in her statement
17 to the Court that led to her being appointed as Special
18 Administrator, that these were the - these coins and the other
19 things in the box were the property of Homer Engle. Based
20 upon that she got a temporary restraining order stating that
21 she would be able to go in and get the contents of those boxes
22 and she got an order enjoining anybody from, other than the
23 Special Administrator, from having access to the safety
24 deposit box at the banking branch at 86 North University
25 Avenue, Provo, Utah, enjoining Wells Fargo from letting

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1 anybody else get access to the box, that lessee of the box was
2 Homer Engle.
3 She got access to it. She got to go down and take
4 out the coins which she did shortly after this occurred and
5 she was doing it as the Special Administrator holding those
6 coins for the estate. She herself was saying they were Homer
7 Engle's, part of Homer Engle's estate. She got the relief of
8 the court stating that.
9 At the same time, we have the affidavits of Judy
10 Engle and Wende Throne that were submitted around this time
11 period in their divorce cases in which they were required to
12 list all their personal assets or the personal property.
13 Neither of them listed any of those coins as their assets.
14 I find, based upon the evidence, that the contents
15 of those safety deposit boxes were Homer Engle's property and
16 at the time of his death, they became part of his estate. The
17 only reason Wende Throne got to go get those as part of the
18 Court's order was to hold those as Special Administrator, and
19 I find and hold based upon the evidence that's been submitted,
20 that all of those coins are the property of the estate. I do
21 not find credible, testimony that's been suggesting that
22 they're the personal property either of Judy Engle or Wende
23 Throne. I find they are all part of the estate. They are
24 being held by the Special Administrator in safekeeping for the
25 estate itself.

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1 I'm going to order the Special Administrator, the
2 Special Administrator to hold those for the estate. And I want
3 to talk about the specifics of how we should go about doing
4 this but the Special Administrator is to identify a person
5 with expertise in coins to identify and, and provide an
6 appraisal of the value of those coins and then they are to be
7 put for sale, assuming they are in a group are over \$1000
8 pursuant to the Settlement Agreement, they are to be sold and
9 the money from those coins is to go to the estate. The
10 Settlement Agreement makes clear that - how that process
11 should work.

12 If they are - they appear to have significant
13 financial value above \$1000 -

14 MS. 7: Five hundred, Your Honor.

15 THE COURT: I'm reading from the Settlement
16 Agreement and I don't appreciate being interrupted while I'm
17 doing a ruling. So I'm looking at Page 10 of the Agreement.
18 It will be sold or divided among the parties if it's above
19 \$1000. It appears that as a body, based upon the pictures
20 that have been provided, given the old coins and so forth,
21 they're likely to be above that value and so I'm going to
22 order the Special Administrator - we'll talk about the
23 specifics - but the procedure that I'm ordering is to have an
24 expert in coins look at them, do an appraisal of the coins and
25 then, then they are to be sold for the benefit of the estate.

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1 Certainly if any member of the family wishes to purchase the
2 coins at market value, at the appraised value, I'm open to
3 having that happen but it needs to be money that goes into the
4 estate and it's to be held in the trust account of counsel for
5 the Special Administrator.

6 Do you have any suggestions as to a coin person?

7 MR. MAYFIELD: Just - at this point, I actually I
8 do, I think I have records with regard to that, Your Honor but
9 my question is, I believe there was a modification agreement
10 changing it to \$500.

11 THE COURT: If that's correct then it needs to -
12 above \$500 -

13 MS. 7: Yes.

14 MS. J. ENGLE: Your Honor, it's the order confirming
15 (inaudible) meet and confer and then it's on Line 11 -

16 THE COURT: Okay.

17 MS. J. ENGLE: - modification of threshold to \$500.

18 THE COURT: Okay. Again, it was not - when I do
19 orders, at the end I like to have clarifications and I take
20 your comment as a clarification.

21 MS. J. ENGLE: Thank you, Your Honor.

22 THE COURT: So, so how - what I want to do, I just
23 want to be clear, Wende Throne you understand you are holding
24 all of those coins as Special Administrator?

25 MS. THRONE: Absolutely, yes.

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1 THE COURT: And you will deliver them to a reputable
2 coin dealer for appraisal and then you'll submit their
3 appraisal report to the Court.

4 MS. THRONE: Sure.

5 THE COURT: And then you will propose a procedure for
6 going about selling the coins, give notice of the coins, of
7 the sale value. If any of the siblings or if you, Wende, or
8 your daughters want to buy any of the coins at market value,
9 you can do it.

10 MS. J. ENGLE: Clarification, Your Honor.

11 THE COURT: Yes.

12 MS. J. ENGLE: Wende has testified that she has
13 already disposed of some of those coins and gave them to her
14 daughters. So should she reclaim those coins?

15 MS. THRONE: That's not true.

16 THE COURT: She did not say that -

17 MS. THRONE: I did not say that.

18 THE COURT: - but if any - she is responsible as a
19 fiduciary for all of the coins. I understand from what she
20 has stated earlier that she has them in a safe in her own home
21 and she is a fiduciary, she has a duty to hold those for
22 benefit of the estate.

23 And so the bottom line is, how soon do you think you
24 can identify a fiduciary, Mr. Mayfield?

25 MS. THRONE: For the coins?

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1 THE COURT: I mean not a - an appraiser.
2 MR. MAYFIELD: Yeah - probably a few days, Your
3 Honor, maybe a week.
4 MS. THRONE: Probably a week.
5 THE COURT: So identify the names of three
6 appraisers for the coins, submit that, file it with the Court
7 and submit it to other parties. Within three days, three
8 business days of submitting that by email and filing it with
9 the Court, if anybody has an objection, they're to file their
10 objection and if there's no objection, you can go ahead and
11 use the first person on your list.
12 MR. MAYFIELD: Your Honor, may I have five days
13 please, I'm going to be out of town tomorrow.
14 THE COURT: That's fine. That's fine. So five
15 business days and then three business days for any objection.
16 If there's any objection, submit, have it submitted to me for
17 decision and I will just decide who I'm going to decide on.
18 If there is an objection, anybody objecting needs to provide
19 three names of coin appraisers that they believe I should have
20 instead and they should state why they believe there's an
21 objection to the three that are submitted by Mr. Mayfield.
22 MS. K. ENGLE: What would be the date on this five
23 business days -
24 THE COURT: So five business days are, we are at
25 October 27th, so that's next Friday at - I'm sorry, it's next

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1 Thursday and then any response would be due November 8th and
2 just go ahead and have the appraiser, just go ahead - if
3 there's no objection you can go ahead and hire the appraiser.
4 The appraisal report is due by December 2nd and then you need
5 to go about liquidating those coins and we need to get them
6 sold before we have the final distribution of the estate. So
7 I would anticipate that the coins need to be sold in 30 days
8 of the date of the appraisal and certainly once the appraisal
9 comes in, send it out to everybody and then anybody whose a
10 member of the family would have five business days to, to bid
11 the appraisal price and get the coin. But the only way they
12 would get the coin is if they pay the money in funds that
13 clear your account, Mr. Mayfield.
14 MR. MAYFIELD: Very well, Your Honor.
15 THE COURT: Okay. Mr. Mayfield, I'm going to order
16 you to prepare an order reflecting the Court's ruling. You
17 can refer to findings on the record so you don't have to take
18 a lot of extra time to prepare it and I'll direct you to
19 prepare a scheduling order that will go out and I want you to
20 mail the scheduling order to any of the creditors. So all of
21 the creditors, everybody whose submitted any kind of claim
22 will get a copy of the scheduling order once I sign it.
23 And could you get that scheduling order done in a
24 week and submit it?
25 MR. MAYFIELD: Yes.

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1 THE COURT: And then the other parties will have -
2 MR. MAYFIELD: Well, by the 4th, Your Honor.
3 THE COURT: - three business days to object to the
4 scheduling order. Once it gets signed I'll direct the Special
5 Administrator, counsel, to mail the scheduling order to all
6 creditors, so everybody will have notice that we're having a
7 hearing on a certain date and time and that you have a
8 petition to close the estate. That way, if for some reason
9 they don't, they think they don't get notice of your petition,
10 they know it's coming and should be in a position to ask you
11 for one if they haven't already done it.
12 MR. MAYFIELD: Right, right.
13 THE COURT: So, I just want to say, as I've said
14 before, I understand there's a lot of emotion involved in a
15 case like this. When we're dealing with the coins what it
16 comes down to is Homer did not make the list. If he had made
17 a list he would have saved us all a lot of time but he didn't
18 and I had to go by the evidence that was admissible and I
19 excluded evidence that was not admissible and reached my
20 decision based upon that.
21 I think we've got a schedule for getting this case
22 closed.
23 One of the things that I'll direct you to do, Mr.
24 Mayfield, is if those of you who anticipate receiving
25 properties pursuant to the Settlement Agreement, you have 14

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1 days to submit to Mr. Mayfield the title in which you want
2 that property to be conveyed and a proposed form of
3 conveyance.
4 MS. ? : Your Honor, with that being said, can we do
5 a reform on the order of November 14th where you ordered the
6 approval or not November 14th, where you ordered the approval
7 for a quiet title on Price and can we reform that so that was
8 can be globally, the same alignment with everybody else
9 receiving their property and -
10 THE COURT: Well, that -
11 MS. ? : - have that be a -
12 THE COURT: - that one is already done -
13 MS. ? : - special warrant deed -
14 THE COURT: You're now owners of Price. So I -
15 MS. ? : Right, but -
16 THE COURT: - consider it a done deal, just like,
17 just like Crystal is done. So if you want to, if you want to
18 do a quit claim to yourselves or to some other entity you can
19 do that. You don't need to come to me 'cause that's your
20 property.
21 MS. ? : I'm sorry. I don't mean to interrupt you but
22 I've got one other issue.
23 THE COURT: Let's finish up this point. If you have
24 - what's already been conveyed has been conveyed. The
25 Settlement Agreement is done, property has been conveyed. You

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1 can talk to your own attorney if - those who have an ownership
2 interest want to quit claim it into some other entity, you can
3 do that. What I'm talking about is the properties that have
4 not yet been conveyed, you get the form of conveyance you
5 believe you want that to be in.
6 And just to be clear, you want to make clear it
7 needs to be signed and notarized that the people who are
8 getting it as part of this, agree that it would be conveyed in
9 that other name. So if Judy Engle is suppose to get a
10 property or an interest in a property, and you want it to be
11 an ABC Company, you need to sign your statement under oath
12 that it's to be conveyed and you're waiving any claims against
13 the trustee or the court for conveying it to that other party
14 consistent with the Settlement Agreement.
15 So if Kathy and Judy want to have some alternative
16 conveyance of the HI-County property, this is your time.
17 You've got 14 days, these are 14 calendar days, 10 business
18 days to get that proposal to the Special Administrator and
19 then when the Special Administrator, when you file your
20 petition, include as exhibits, the proposed title documents.
21 So - and if you don't get that done in 14 days -
22 MS. ? : From today?
23 THE COURT: From today. If you don't get that to
24 Mr. Mayfield, then you're deemed to have waived your request
25 that it be titled in some other name other than what the

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1 Settlement Agreement says. I mean, for example, HI-Country,
2 the way it's going to read now is exactly the way it's going
3 to be in the settlement. I think it says 1/6th Kathy, 5/6th
4 Judy. There's going to be one document conveying it to you
5 joint - you know, interest and you'll have to deal with it
6 later unless you can come up with an agreement to deal with it
7 some other way that would be - and obviously there's an issue
8 with the Homeowner's Association, there could be an issue if
9 you're trying to divide up property. But that's something
10 you've got to deal with separately. We just need to have the
11 Settlement Agreement carried out here.
12 Is there any other issues?
13 MS. ? : Yes, Your Honor. I still need to get title
14 on the vehicle and mobile home. I'm still trying to clear up
15 the zoning issue and I'm ordered to get that off the property
16 ASAP.
17 THE COURT: Mr. Mayfield?
18 MR. MAYFIELD: I have no objection to that. My
19 issue is, Your Honor, this is an issue I meant to raise at the
20 last hearing, there was a stove which was removed from the
21 property on State Street.
22 THE COURT: Was that brought back?
23 MR. MAYFIELD: A stove was returned. We do not
24 believe it was the stove that was taken away. We have three
25 people that will testify that is not the stove that was

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1 removed from the property, we believe she found a stove that
2 was complete junk and returned that to -
3 MR. ENGLE: Objection.
4 MR. MAYFIELD: - the property.
5 MR. ENGLE: Objection.
6 THE COURT: Well, then you'd file a motion to deal
7 with it. You can file a motion for contempt. We don't have
8 time to hear the arguments. I'll just take it that Judy is
9 denying that that's what happened. Submit a motion with
10 affidavits for an order to show cause as to why contempt
11 orders should not be issued. If you support it by appropriate
12 affidavits, and it's supported, I may issue an order to show
13 cause and set a hearing. And to be clear, it would be an
14 order to show cause as to why a party allegedly violating the
15 Court's order should not be held in contempt. And that could
16 include damages. It could include that the person whose in
17 contempt won't get their property pursuant to the settlement.
18 So, but again, of course, before I would issue any
19 such order, there would be notice and opportunity to be heard
20 and we'd have a hearing.
21 Okay, anything else?
22 MR. MAYFIELD: No.
23 THE COURT: Okay. I - we have a schedule that
24 hopefully will get this all taken care of and we'll look
25 forward to seeing what you file and issuing the appropriate

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1 orders to get the settlement carried out.
2 Thank you again for your time.
3 The Court will be in recess.
4 (Whereupon the hearing was concluded)

25 (Transcript completed on June 10, 2017)

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Footnotes

*1 The Price Property sold 2/4/205 [R.8382 ¶ b] [See Add F] .The Payson Property sold 9/29/2016 [R.5455] Both properties transferred with a Quiet Title Order

*2 The Court index on Page 2 -March 18, 2011 was the deadline to file claims against the Estate. There is no record, where the HOA filed any claims against the Estate prior to that deadline.

*3 Order on Distribution of Tangibles [R.8094 ¶4] The parties stipulated that allocation of all other tangibles personal property items of the Estate including on the inventory prepared by Kathy, attached here as Exhibit-A, had been agreed - See Ex "A" [Add.K]

*4 Meet and Confer Order, stipulated agreement (part of Settlement) signed by Wende, Judy, Roy and Kathy - Decedent's property authorized Kathy to have full responsibilities to sell/distribute the tangible personal property.

*5 Webster's Dictionary of *rogue*: exhibiting maverick-like behavior, or bucking the status quo -and in today's political arena as "*going rogue*"

*6 Addendum Q [7392-7519] Kathy's Objection to Settlement, See Certificate of Service emailed on 1/30/17, the deadline to file objections.

*7 The Decedent¹ held an interest in an LLC which was hidden by Wende, who managed and controlled that LLC.

*8 Settlement 3, 2017 Hearing - Transcript entered on 10/23/13 [R.15377-15414]

*9 The 2006 liens filed by the HOA on the 3 lots are invalid as a matter of law. UT Code 78B-6-1803. The HOA failed to renew the liens after the 6 year statute but erroneous included the delinquent fees in it August 28, 2011 default judgments, filed after the death of the Decedent and are not in rem where the judgment liens can attach to real property. UT Code 78B-5-203

¹ See the Transcript for the 10/29/14 Hearing - the D-Court denied Wende and her 2 daughter's motion in their attempt to break the Settlement.

*10 See the Transcript for the 10/29/14 Hearing - the D-Court denied Wende and her daughter's motion in their attempt to break the Settlement.

Footnotes

*11 The court was not consistent with the statutes he used to pay YHG legal fees. Prior legal fees was paid under UT Code 75-3-718. [The Finding of Facts, another statute was used: UT Code 75-3-805(b)

*12 See Case No.20170342-SC