

2018

MELANIE MADSEN THATCHER, Plaintiff and Appellee/Cross-Appellant, v. MICHAEL LANG, Defendant and Appellant/Cross-Appellee. : Brief of Appellant

Utah Court of Appeals

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Bryan J. Pattison, Durham Jones & Pinegar P.C.; attorneys for appellant.

Karra J. Porter, J.D. Lauritzen, Christensen & Jensen P.C.; Benjamin S. Ruesch, Ruesch & Reeve PLLC; attorneys for appellee.

Recommended Citation

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IN THE
UTAH COURT OF APPEALS

MELANIE MADSEN THATCHER,
Plaintiff and Appellee/Cross-Appellant,

v.

MICHAEL LANG,
Defendant and Appellant/Cross-Appellee.

On appeal from a judgment of the Fifth District Court for Washington County,
The Honorable G. Michael Westfall

SUPPLEMENTAL BRIEF FOR APPELLANT/CROSS-APPELLEE
MICHAEL LANG

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J.D. Lauritzen
Christensen & Jensen, P.C.
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Salt Lake City, UT 84111

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FILED
UTAH APPELLATE COURTS

DEC 27 2019

Appellant/Cross-Appellee Michael Lang submits this supplemental brief as required by this Court's December 16, 2019 Supplemental Briefing Order.

Introduction

The Court asked for supplemental briefing on whether the property at issue in this appeal has been sold. It purportedly has. But that does not moot or otherwise affect the primary relief Lang has requested on appeal. This is so because Lang recorded a lis pendens against the property before any sale. As a result, any buyer taking subject to the lis pendens is bound by the final disposition of the action. Thus, even though this Court denied his motion for stay, if Lang prevails on appeal and obtains an order of specific performance, he may proceed to acquire the property, regardless of Thatcher's efforts to convey it out from under him. *See 2DP Blanding, LLC v. Palmer*, 2017 UT 62, ¶ 26, 423 P.3d 1247.

Supplemental Brief

I. Lang's recorded lis pendens protects his interest in the property superior to any subsequent transferee.

After this Court denied Lang's Motion for Emergency Relief and Stay Pending Appeal, Thatcher conveyed the property on September 6, 2018 to what appears to be her own trust, *see Warranty Deed*, recorded Sept. 6, 2018 (attached as Exhibit A), and followed it that same day with a conveyance to another entity, *see Warranty Deed*, recorded Sept. 6, 2018 (attached as Exhibit B). But months

before either conveyance, in June 2018, Lang recorded a lis pendens against the property notifying the public of his pending appeal and claim to the property. *See Lis Pendens*, recorded June 28, 2018 (attached as Exhibit C).

Because Lang's appeal seeks to require Thatcher to specifically perform and convey the property to him, we understand this Court's inquiry about the current status of the property's title. As a general rule, "[w]here there is no stay, an appellant loses all actionable rights to the property that has been lawfully conveyed to a third party." *2DP Blanding, LLC v. Palmer*, 2017 UT 62, ¶ 25, 423 P.3d 1247. But the "one exception to this general rule" is a recorded lis pendens. *Id.* ¶ 26.

The Utah Supreme Court has explained, "[w]hen a third party purchases the property subject to a recorded lis pendens, it 'acquires only the grantor's interest therein, as determined by the outcome of the litigation.'" *Id.* (quoting *Timm v. Dewsnup*, 921 P.2d 1381, 1392 (Utah 1996)). And, importantly here, "[t]his exception applies '[e]ven absent a stay' or supersedeas bond." *Id.* (quoting *Richards v. Baum*, 914 P.2d 719, 720 n.1 (Utah 1996)).

Thus, because Lang took the additional step of recording a lis pendens before Thatcher's conveyance, his claim to the property at issue in this appeal remains viable. *See id.* ¶ 27. That includes recourse against any third parties who

acquired the property subject to Lang's lis pendens. *See id.* ¶¶ 26-27.¹ Indeed, as one court explained, a purchaser of property subject to a lis pendens "is bound by the final disposition of the action," and thus "receives only whatever title remains in his vendor at the termination of the suit." *LeMond v. Yellowstone Dev., LLC*, 236 P.3d 345, 351-52 (Mont. 2014) (cleaned up). Thus, "[i]f the litigation is won by the grantor, the conveyance is effective. If not, the grantee may acquire nothing." *Id.* at 352 (cleaned up).

Accordingly, even though Thatcher transferred the property, it does not affect the outcome of this appeal.

II. The legitimacy of any transfer should be the subject of further proceedings on remand.

The lis pendens is determinative as a matter of law as to any transfer. But there is still another reason the purported transfer should not moot Lang's requested relief: There is a real possibility that it was a sham transaction designed to put the property outside Lang's reach as opposed to a legitimate arm's length sale to a bona fide purchaser.² At the very least, Lang should get to

¹ Not only was the lis pendens a matter of public record, the purchase contract Thatcher put forward below expressly contemplates that it will remain in effect until at least "the conclusion of the appeal process." (*See Thatcher's Closing Argument*, filed July 23, 2018, Ex. A: REPC § 2.3 and Addendum 2).

² To start, the contract Thatcher presented to the trial court for approval in May 2018 was with a different party than whom she eventually transferred the property months later in September 2018, which began with her conveyance of

explore that issue using available discovery procedures so the trial court can make that determination as a fact finder on remand as opposed to allowing Thatcher to moot Lang's requested relief on appeal without having to show the legitimacy of her transaction. After all, the rule the Utah Supreme Court adopted in *2DP Blanding* that an appellant loses actionable rights to the property at issue absent a stay is specific only to lawful transfers to third parties. See 2017 UT 62, ¶ 25.

It thus makes sense that before insulating a party's repudiatory actions, the repudiating party (Thatcher here) should have to demonstrate – and Lang should be allowed to challenge – the legitimacy of her transfer beyond mere paperwork and deeds. Indeed, whether a conveyance is voidable is a fact dependent question involving many possible factors. See Utah Code §§ 25-6-201, -304; *Lakeside Lumber Prod., Inc. v. Evans*, 2005 UT App 87, ¶ 9, 110 P.3d 154 (explaining that fraudulent intent under the fraudulent transfer act is a fact question).

Because the actual transactions and transfers occurred months after the parties litigated the initial question of the stay, and occurred between parties

the property to her own trust. Compare Ex. A to Thatcher's Closing Argument, filed July 23, 2018 *with* Transfer Deeds, attached as Exhibit A & B.

different from those identified previously to the trial court,³ it is not something that has been adequately litigated and explored and should not (and cannot) be resolved in the first instance on appeal. *See, e.g., Richardson v. Hart*, 2009 UT App 387, ¶ 19, 223 P.3d 484 (declining to determine a matter for the first time on appeal and deferring to trial court’s fact finding function to address new fact issues); *Francis v. State ex. rel. Utah Div. of Wildlife Res.*, 2010 UT 62, ¶ 19, 248 P.3d 44 (declining to affirm on alternate ground or theory in absence of sufficient record directed to the issue and clear notice of the outcome determinative nature of the issue).

To conclude otherwise would invite sham transactions and open the door to all sorts of mischief when ownership to property is at issue on appeal and the claimant cannot obtain a stay.

* * *

³ The contract Thatcher presented to the trial court for approval in May 2018 was not the same party to whom she eventually transferred the property months later in September 2018.

Conclusion

In sum, Thatcher did transfer the property. But given Lang's lis pendens, that transfer does not affect the outcome of this appeal.

DATED: December 27, 2019.

DURHAM JONES & PINEGAR, P.C.

/s/ Bryan J. Pattison

BRYAN J. PATTISON

Attorneys for Appellant/Cross-Appellee

Michael Lang

Certificate of Service

I hereby certify that on December 27, 2019, I served the foregoing
Supplemental Brief for Appellant/Cross-Appellee Michael Lang via email to
the following:

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Salt Lake City, UT 84111
karra.porter@chrisjen.com
jd.lauritzen@chrisjen.com

/s/ Bryan J. Pattison

EXHIBIT A

Recorded Warranty Deed

Warranty Deed Page 1 of 2
Russell Shirts Washington County Recorder
09/06/2018 09:51:42 AM Fee \$16.00 By
LEGAL TITLE INSURANCE AGENCY, LLC

4002-486
WHEN RECORDED MAIL TO:
GRANTEE
5513 W. 11000 N #222
Highland UT 84003

WARRANTY DEED

Melanie Starnes, as to a portion of parcel 1, Melanie A. Madsen, aka Melanie Madsen Thatcher as to the remainder
Grantor,
of Springdale, Utah
hereby CONVEYS and WARRANTS to

Melanie Alexandrine Madsen, Trustee of the Melanie Alexandrine Madsen Family Trust dated May 1,
2007,
Grantee,

ACCOMMODATION RECORDING

of Springdale, for the sum of TEN DOLLARS and other good and valuable consideration, the following tract of land in
WASHINGTON, State of Utah, to-wit:

PARCEL 1:

Beginning at a point North 0°08' East, 550.00 feet along the Section Line and South 65°45' East, 536.25 feet from the
West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running
thence North 65°45' West, 536.25 feet; thence North 0°08' East, 770.97 feet to the Southwest Corner of BALANCED
ROCK HILLS SUBDIVISION, a subdivision according to the Official Plat thereof, on file in the Office of the County
Recorder of Washington County, State of Utah; thence North 89°57'22" East along the East West 1/16 Line and the South
Line of said BALANCED ROCK HILLS SUBDIVISION 1077.0 feet, more or less, to the Westerly Line of Balanced
Rock Road; thence along the Westerly Line of said road as follows: South 20°44' West, 301.7 feet; Southerly along the arc
of a 119.4 foot radius curve to the left 68.1 feet; South 11°57' East, 124.2 feet; Southerly along the arc of a 92.5 foot
radius curve to the right 59.4 feet; South 24°53' West, 87.2 feet; Southerly along the arc of a 57.3 foot radius curve to the
left 58.3 feet to the North Line of SUNWEST RESORT CONDOMINIUMS, as recorded in the Office of the County
Recorder of Washington County, State of Utah; thence North 65°45' West along the North Line of said SUNWEST
RESORT CONDOMINIUMS, to the most Easterly Corner of SUNWEST RESORT CONDOMINIUMS PHASE TWO;
thence around said SUNWEST RESORT CONDOMINIUMS PHASE TWO as follows; Westerly 24.28 feet along the arc
of a 112.50 foot radius curve to the left; North 51°10'04" West, 94.87 feet; Westerly 26.85 feet along the arc of a 162.50
foot radius curve to the left; North 20°00' East, 27.17 feet; North 70°00' West, 70.00 feet; South 20°00' West, 25.00 feet;
North 70°00' West, 128.00 feet; North 74°00' West, 127.00 feet; South 16°00' West, 50.00 feet; South 16°42'56" East,
194.48 feet; South 76°00' East, 253.00 feet; thence leaving said SUNWEST RESORT CONDOMINIUMS PHASE TWO
boundary and running thence South 09°53' West, 307.83 feet to the point of beginning.

EXCEPTING THEREFROM that portion described as follows:

Beginning at a point North 933.24 feet and East 239.05 feet from the West Quarter Corner of Section 28, Township 41
South, Range 10 West, Salt Lake Base and Meridian; and running thence North 203.63 feet; thence South 74°00' East,
404.19 feet; thence South 25°00' West, 210.30 feet; thence North 70°00' West, 171.56 feet; thence North 74°00' West,
44.02 feet to the point of beginning.

PARCEL 2:

Beginning at the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian;
and running thence North along the Section Line 550.00 feet; thence South 65°53' East, 974.8 feet; thence South 37°50'
East, 192.0 feet; thence West 1007.5 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion described as follows:

Beginning at the West Quarter Corner of said Section 28, and running thence North 190.34 feet along the Section Line; thence South 66°30' East, 48.40 feet to the point of a 400.00 foot radius curve to the right; thence Southeasterly 91.92 feet along the arc of said curve; thence South 53°20' East, 109.02 feet to a point on a 460.00 foot radius curve to the left; thence Southeasterly 126.33 feet along the arc of said curve to a point on the South Line of the Northwest Quarter of said Section 28; thence North 89°52'30" West, 321.75 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion dedicated to the Town of Springdale for Amphitheater Road, by Instrument recorded in Book 364, at Page 533 of the Official Records of Washington County, Utah.

ALSO LESS AND EXCEPTING THEREFROM any portion of the above described Parcels 1 and 2 lying within SUNWEST RESORT AMENDED, and SUNWEST RESORT, PHASE 2, according to the Official Plans thereof, recorded in the Office of the County Recorder of said County.
Tax Serial Nos.: S-137-A, S-102-B-1, S-102-B-2, S-102-B-6

Subject to easements, restrictions and rights of way appearing of record and enforceable in law and subject to 2018 taxes and thereafter.

WITNESS the hand of said grantor, this 6th day of September, 2018

Melanie Starnes, Melanie A. Madsen, Melanie Madsen Thatcher

Melanie Starnes aka Melanie A. Madsen aka
Melanie Madsen Thatcher

STATE OF UTAH)
 :SS
COUNTY OF Washington)

On the 6th day of September, 2018, personally appeared before me Melanie Starnes aka Melanie A. Madsen aka Melanie Madsen Thatcher, the signer(s) of the within instrument, who duly acknowledged to me that they executed the same.

Ashley Blackner

Notary Public
Residing at Washington, Utah:
My Commission Expires:



EXHIBIT B

Recorded Warranty Deed

Warranty Deed Page 1 of 2
Russell Shirts Washington County Recorder
09/06/2018 12:30:20 PM Fee \$16.00 By
LEGAL TITLE INSURANCE AGENCY LLC

4002-486
WHEN RECORDED MAIL TO:
GRANTEE
5513 W. 11000 N. #222
Highland UT 84003

WARRANTY DEED

Melanie Alexandrine Madsen, Trustee of the Melanie Alexandrine Madsen Family Trust dated May 1, 2007

Grantor,

of Springdale, Utah
hereby CONVEYS and WARRANTS to

East VH Zion, LLC, a Texas limited liability company,

Grantee,

of Springdale, for the sum of TEN DOLLARS and other good and valuable consideration, the following tract of land in WASHINGTON, State of Utah, to-wit:

PARCEL 1:

Beginning at a point North 0°08' East, 550.00 feet along the Section Line and South 65°45' East, 536.25 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 65°45' West, 536.25 feet; thence North 0°08' East, 770.97 feet to the Southwest Corner of BALANCED ROCK HILLS SUBDIVISION, a subdivision according to the Official Plat thereof, on file in the Office of the County Recorder of Washington County, State of Utah; thence North 89°57'22" East along the East-West 1/16 Line and the South Line of said BALANCED ROCK HILLS SUBDIVISION 1077.0 feet, more or less, to the Westerly Line of Balanced Rock Road; thence along the Westerly Line of said road as follows: South 20°44' West 301.7 feet; Southerly along the arc of a 119.4 foot radius curve to the left 68.1 feet; South 11°57' East, 124.2 feet; Southerly along the arc of a 92.5 foot radius curve to the right 59.4 feet; South 24°53' West, 87.2 feet; Southerly along the arc of a 57.3 foot radius curve to the left 58.3 feet to the North Line of SUNWEST RESORT CONDOMINIUMS, as recorded in the Office of the County Recorder of Washington County, State of Utah; thence North 65°45' West along the North Line of said SUNWEST RESORT CONDOMINIUMS to the most Easterly Corner of SUNWEST RESORT CONDOMINIUMS PHASE TWO; thence around said SUNWEST RESORT CONDOMINIUMS PHASE TWO as follows; Westerly 24.28 feet along the arc of a 112.50 foot radius curve to the left; North 51°10'04" West, 94.87 feet; Westerly 26.85 feet along the arc of a 162.50 foot radius curve to the left; North 20°00' East, 27.17 feet; North 70°00' West, 70.00 feet; South 20°00' West, 25.00 feet; North 70°00' West, 128.00 feet; North 74°00' West, 127.00 feet; South 16°00' West, 50.00 feet; South 16°42'56" East, 194.48 feet; South 76°00' East, 253.00 feet; thence leaving said SUNWEST RESORT CONDOMINIUMS PHASE TWO boundary and running thence South 09°53' West, 307.83 feet to the point of beginning.

EXCEPTING THEREFROM that portion described as follows:

Beginning at a point North 933.24 feet and East 239.05 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 203.63 feet; thence South 74°00' East, 404.19 feet; thence South 25°00' West, 210.30 feet; thence North 70°00' West, 171.56 feet; thence North 74°00' West, 144.02 feet to the point of beginning.

PARCEL 2:

Beginning at the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North along the Section Line 550.00 feet; thence South 65°53' East, 974.8 feet; thence South 37°50' East, 192.0 feet; thence West 1007.5 feet, more or less, to the point of beginning.

EXCEPTING THEREFROM that portion described as follows:

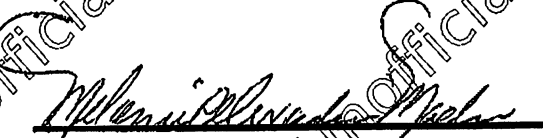
Beginning at the West Quarter Corner of said Section 28, and running thence North 190.34 feet along the Section Line; thence South 66°30' East, 48.40 feet to the point of a 400.00 foot radius curve to the right; thence Southeasterly 91.92 feet along the arc of said curve; thence South 53°20' East, 109.02 feet to a point on a 460.00 foot radius curve to the left; thence Southeasterly 126.33 feet along the arc of said curve to a point on the South Line of the Northwest Quarter of said Section 28; thence North 89°52'30" West, 321.55 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion dedicated to the Town of Springdale for Amphitheater Road, by instrument recorded in Book 364, at Page 533 of the Official Records of Washington County, Utah.

ALSO LESS AND EXCEPTING THEREFROM any portion of the above described Parcels 1 and 2 lying within SUNWEST RESORT AMENDED, and SUNWEST RESORT PHASE 2, according to the Official Plats thereof, recorded in the Office of the County Recorder of said County.
Tax Serial Nos.: S-137-A, S-102-B-1, S-102-B-2, S-102-B-6

Subject to easements, restrictions and rights of way appearing of record and enforceable in law and subject to 2018 taxes and thereafter.

WITNESS the hand of said grantor, this 6th day of September, 2018


Melanie Alexandrine Madsen, Trustee of the
Melanie Alexandrine Madsen Family Trust
dated May 1, 2007

STATE OF UTAH)
 :SS
COUNTY OF Washington)

On this 6th day of September, 2018, personally appeared before me Melanie Alexandrine Madsen, trustee of the Melanie Alexandrine Madsen Family Trust dated May 1, 2007, who, being duly sworn did say that she is the trustee of aforementioned trust and that said instrument was signed on behalf of said trust, by authority granted under the trust agreement, and said Melanie Alexandrine Madsen acknowledged to me that he/she as such trustee executed the same.


Notary Public

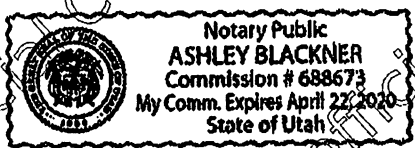


EXHIBIT C

Recorded Lis Pendens

Bryan J. Pattison (8766)
Elijah L. Milne (11171)
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(435) 628-1610 fax
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emilne@djplaw.com
Attorneys for Michael Lang
41930.002

IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

MELANIE MADSEN THATCHER,

Plaintiff,

vs.

MICHAEL LANG,

Defendant.

**Notice of Pendency of Action
(Lis Pendens)**

Dist. Ct. Case No. 120500520
Dist. Ct. Judge Matthew L. Bell

Appellate Case No. 20180009-CA

In accordance with Utah Code § 78B-6-1303, Defendant Michael Lang hereby gives notice of the pendency of the above-captioned action,¹ the object of which concerns and affects, among other things, the parties' respective rights, claims, title, and interest in or to approximately 19 acres of land located in the Town of Springdale, Washington County, Utah, which land (the

¹ In this action, Plaintiff Melanie A. Madsen Thatcher, a.k.a. Melanie Starnes, brought claims against Defendant Michael P. Lang for, among other things, wrongful lien, assignment of rents, breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, promissory estoppel, quiet title, and defamation. And Defendant Michael P. Lang brought a counterclaim against Thatcher for breach of contract (seeking, among other things, specific performance in relation to the subject Property), breach of the implied covenant of good faith and fair dealing, unjust enrichment, promissory estoppel, interference with economic relations, and interference with contract. Although the trial court entered a ruling quieting title to the subject Property in Thatcher's favor, Lang has appealed that ruling, and that appeal is presently pending. See *Hidden Meadow Dev. Co. v. Mills*, 590 P.2d 1244, 1247-48 (Utah 1979) (holding that a lis pendens continues to endure after judgment and pending appeal, and a party's failure to furnish a supersedeas bond does not affect the lis pendens).

"Property") has Tax I.D. numbers S-102-B-1, S-102-B-2, S-102-B-6, and S-137-A, and is more particularly described as follows:

PARCEL 1: Beginning at a point North 0°08' East, 550.00 feet along the Section Line and South 65°45' East, 536.25 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 65°45' West, 536.25 feet; thence North 0°08' East, 770.97 feet to the Southwest Corner of Balanced Rock Hills Subdivision, a subdivision according to the Official Plat thereof, on file in the Office of the County Recorder of Washington County, State of Utah; thence North 89°57'22" East along the East-West 1/16 line and the South Line of said Balanced Rock Hills Subdivision 1077.0 feet, more or less, to the Westerly Line of Balanced Rock Road; thence along the Westerly Line of said road as follows: South 20°44' West 301.7 feet; Southerly along the arc of a 119.4 foot radius curve to the left 68.1 feet; South 11°57' East, 124.2 feet; Southerly along the arc of a 92.5 foot radius curve to the right 59.4 feet; South 24°53' West, 87.2 feet; Southerly along the arc of a 57.3 foot radius curve to the left 58.3 feet to the North Line of Sunwest Resort Condominiums, as recorded in the Office of the County Recorder of Washington County, State of Utah; thence North 65°45' along the North Line of said Sunwest Resort Condominiums, to the most Easterly Corner of Sunwest Resort Condominiums Phase Two; thence around said Sunwest Resort Condominiums Phase Two as follows; Westerly 24.28 feet along the arc of a 112.50 foot radius curve to the left; North 51°10'04" West, 94.87 feet; Westerly 26.85 feet along the arc of a 162.50 foot radius curve to the left; North 20°00' East, 27.17 feet; North 70°00' West, 70.00 feet; South 20°00' West, 25.00 feet; North 70°00' West, 128.00 feet; North 74°00' West, 127.00 feet; South 16°00' West, 50.00 feet; South 16°42'56" East, 194.48 feet; South 76°00' East, 253.00 feet; thence leaving said Sunwest Resort Condominiums Phase Two boundary and running thence South 09°53' West, 307.83 feet to the point of beginning.

Excepting therefrom that portion described as follows: Beginning at a point North 933.24 feet and East 239.05 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 203.63 feet; thence South 74°00' East, 404.19 feet; thence South 25°00' West, 210.30 feet; thence North 70°00' West, 171.56 feet; thence North 74°00' West, 144.02 feet to the point of beginning.

PARCEL 2: Beginning at the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North along the Section Line 550.00 feet; thence South 65°53' East, 974.8 feet; thence South 37°50' East, 192.0 feet; thence West 1007.5 feet, more or less, to the point of beginning.

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Also less and excepting therefrom any portion of the above described Parcels 1 and 2 lying within Sunwest Resort Amended, and Sunwest Resort, Phase 2, according to the Official Plats thereof, recorded in the Office of the County Recorder of said County.

* * *

DATED: June 28, 2018.

DURHAM JONES & PINEGAR, P.C.

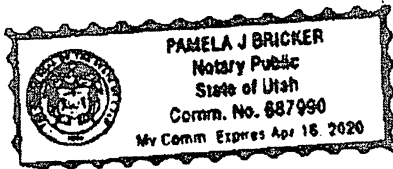
Eli Milne

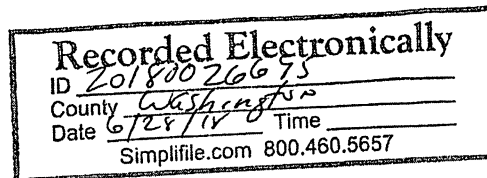
BRYAN J. PATTISON
ELIJAH L. MILNE
Attorneys for Michael Lang

Subscribed to and sworn before me this 28th day of June, 2018

Pamela J Bricker

NOTARY PUBLIC





Bryan J. Pattison (8766)
Elijah L. Milne (11171)
DURHAM JONES & PINEGAR, P.C.
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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

MELANIE MADSEN THATCHER,

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Appellate Case No. 20180009-CA

In accordance with Utah Code § 78B-6-1303, Defendant Michael Lang hereby gives notice of the pendency of the above-captioned action,¹ the object of which concerns and affects, among other things, the parties' respective rights, claims, title, and interest in or to approximately 19 acres of land located in the Town of Springdale, Washington County, Utah, which land (the

¹ In this action, Plaintiff Melanie A. Madsen Thatcher, a.k.a. Melanie Starnes, brought claims against Defendant Michael P. Lang for, among other things, wrongful lien, assignment of rents, breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, promissory estoppel, quiet title, and defamation. And Defendant Michael P. Lang brought a counterclaim against Thatcher for breach of contract (seeking, among other things, specific performance in relation to the subject Property), breach of the implied covenant of good faith and fair dealing, unjust enrichment, promissory estoppel, interference with economic relations, and interference with contract. Although the trial court entered a ruling quieting title to the subject Property in Thatcher's favor, Lang has appealed that ruling, and that appeal is presently pending. *See Hidden Meadow Dev. Co. v. Mills*, 590 P.2d 1244, 1247-48 (Utah 1979) (holding that a lis pendens continues to endure after judgment and pending appeal, and a party's failure to furnish a supersedeas bond does not affect the lis pendens).

“Property”) has Tax I.D. numbers S-102-B-1, S-102-B-2, S-102-B-6, and S-137-A, and is more particularly described as follows:

PARCEL 1: Beginning at a point North 0°08' East, 550.00 feet along the Section Line and South 65°45' East, 536.25 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 65°45' West, 536.25 feet; thence North 0°08' East, 770.97 feet to the Southwest Corner of Balanced Rock Hills Subdivision, a subdivision according to the Official Plat thereof, on file in the Office of the County Recorder of Washington County, State of Utah; thence North 89°57'22" East along the East-West 1/16 line and the South Line of said Balanced Rock Hills Subdivision 1077.0 feet, more or less, to the Westerly Line of Balanced Rock Road; thence along the Westerly Line of said road as follows: South 20°44' West 301.7 feet; Southerly along the arc of a 119.4 foot radius curve to the left 68.1 feet; South 11°57' East, 124.2 feet; Southerly along the arc of a 92.5 foot radius curve to the right 59.4 feet; South 24°53' West, 87.2 feet; Southerly along the arc of a 57.3 foot radius curve to the left 58.3 feet to the North Line of Sunwest Resort Condominiums, as recorded in the Office of the County Recorder of Washington County, State of Utah; thence North 65°45' along the North Line of said Sunwest Resort Condominiums, to the most Easterly Corner of Sunwest Resort Condominiums Phase Two; thence around said Sunwest Resort Condominiums Phase Two as follows; Westerly 24.28 feet along the arc of a 112.50 foot radius curve to the left; North 51°10'04" West, 94.87 feet; Westerly 26.85 feet along the arc of a 162.50 foot radius curve to the left; North 20°00' East, 27.17 feet; North 70°00' West, 70.00 feet; South 20°00' West, 25.00 feet; North 70°00' West, 128.00 feet; North 74°00' West, 127.00 feet; South 16°00' West, 50.00 feet; South 16°42'56" East, 194.48 feet; South 76°00' East, 253.00 feet; thence leaving said Sunwest Resort Condominiums Phase Two boundary and running thence South 09°53' West, 307.83 feet to the point of beginning.

Excepting therefrom that portion described as follows: Beginning at a point North 933.24 feet and East 239.05 feet from the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North 203.63 feet; thence South 74°00' East, 404.19 feet; thence South 25°00' West, 210.30 feet; thence North 70°00' West, 171.56 feet; thence North 74°00' West, 144.02 feet to the point of beginning.

PARCEL 2: Beginning at the West Quarter Corner of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian; and running thence North along the Section Line 550.00 feet; thence South 65°53' East, 974.8 feet; thence South 37°50' East, 192.0 feet; thence West 1007.5 feet, more or less, to the point of beginning.

Excepting therefrom that portion described as follows: Beginning at the West Quarter Corner of said Section 28, and running thence North 190.34 feet along the Section Line; thence South 66°30' East, 48.40 feet to the point of a 400.00 foot radius curve to the right; thence Southeasterly 91.92 feet along the arc of said curve; thence South 53°20' East, 109.02 feet to a point on a 460.00 foot radius curve to the left; thence Southeasterly 126.33 feet along the arc of said curve to a point on the South Line of the Northwest Quarter of said Section 28; thence North 89°52'30" West, 321.55 feet to the point of beginning.

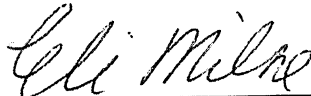
Also excepting therefrom that portion dedicated to the Town of Springdale for Amphitheater Road, by Instrument recorded in Book 364, at Page 533 of the Official Records of Washington County, Utah.

Also less and excepting therefrom any portion of the above described Parcels 1 and 2 lying within Sunwest Resort Amended, and Sunwest Resort, Phase 2, according to the Official Plats thereof, recorded in the Office of the County Recorder of said County.

* * *


DATED: June 28, 2018.

DURHAM JONES & PINEGAR, P.C.



BRYAN J. PATTISON
ELIJAH L. MILNE
Attorneys for Michael Lang

Subscribed to and sworn before me this 28th day of June, 2018



NOTARY PUBLIC