

2003

# Laurie L. Freedman (Barnett) v. Gilbert Freedman : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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**LAURIE L. FREEDMAN (BARNETT),**

**Plaintiff and Appellee,**

**v.**

**GILBERT FREEDMAN,**

**Defendant and Appellant.**

**OPENING BRIEF OF THE APPELLEE**

**Case No. 20030476-CA**

**District Court No. 954400884**

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**APPEAL FROM ALL FINAL ORDERS OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH  
PROVO DEPARTMENT  
JUDGE STEVEN L. HANSEN**

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**FILED  
UTAH APPELLATE COURTS  
APR 14 2004**

**LIST OF PARTIES**

Laurie L. Barnett  
Plaintiff/Appellee,

v.

Gilbert Freedman,  
Defendant/Appellant.

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**IN THE UTAH COURT OF APPEALS**

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|---|---|
| <p><b>LAURIE L. FREEDMAN (BARNETT),</b></p> | <p><b>OPENING BRIEF OF THE APPELLEE</b></p> |
| <p><b>Plaintiff and Appellee,</b></p>       | <p><b>Case No. 20030476-CA</b></p>          |
| <p><b>v.</b></p>                            | <p><b>District Court No. 954400884</b></p>  |
| <p><b>GILBERT FREEDMAN,</b></p>             |   |
| <p><b>Defendant and Appellant.</b></p>      |   |

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**APPEAL FROM ALL FINAL ORDERS OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH  
PROVO DEPARTMENT  
JUDGE STEVEN L. HANSEN**

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**STATEMENT OF JURISDICTION**

Whether husband Gilbert Freedman (Appellant) is appealing the trial court's Amended Findings of Fact and Conclusions of Law and Amended Supplemental Decree of Divorce, filed August 26, 1997, (not "September 1999" as stated by Appellant on page 4 of his Brief), finalizing his divorce from Laurie L. Freedman (*Barnett*) (Appellee); or Appellant is appealing the miscellaneous motions or the cumulative final post-judgment Order on Plaintiff's Motion to Dismiss Defendant's

Amended Verified Counterclaim (Exhibit No. 13 of Appellant's Brief), filed April 24, 2003, jurisdiction appears to be in dispute on any appeal of opinions of the trial court; and **Appellee supports summary dismissal by this court**, pursuant to UTAH R. APP. P.4(a), for lack of jurisdiction untimely filed.

Additionally, Appellant cannot be appealing the pending Order to Show Cause awaiting adjudication before the trial court, as this court lacks jurisdiction, pursuant to UTAH R. APP. P.4(b), where no final order is filed disposing of this matter. There is also the pending ruling wanting jurisdiction, on the **amount** of attorney's fees and costs to be awarded to Appellee by the trial court, outside this court's opinion. There are no other related or prior, *implied, inferred or real* appeals filed in connection with this action.

Yet, to settle any possibility that Appellant may instigate another frivolous round of legal proceedings in this divorce, Appellee acquiesces to any finding that this court would seize upon to exercise its lawful jurisdiction – ending once and for all the parties' legal relationships.

#### **STATEMENT OF ISSUES AND STANDARDS OF APPELLATE REVIEW**

**Issue 1:** Did the Trial court err in ruling that the "binding agreement (Exhibit No. 1 of Appellant's Brief) signed by the parties before the divorce decree was resolved and agreed upon, stipulated to and integrated, and became merged with the decree of divorce in this case and the findings of fact and conclusions of law, and there is no longer a binding agreement that survived that judgment." See April 1, 2003, hearing transcript page 30 lines 17-23 (Exhibit "A"). The ruling is reviewed for correctness, without deference to the trial court. Robinson v. Tripco Investment, 2000 UT App 20, 21 P.3d 219; Macris & Associates v. Images & Attitude, 941 P.2d 636 Utah App. 1997,



quoting Jones, Waldo, Holdbrook & McDonough v. Dawson, 923 P.2d 1366,1370 (Utah 1996); Throckmorton v. Throckmorton, 767 P.2d 121, 123 (Utah App. 1988); Miller v. USAA Casualty Insurance Co., 2002 UT 6, quoting Salt Lake City v. Silver Fork Pipeline Corp., 913 P.2d 731, 733 (Utah 1995); American Interstate Mtg. Corp. v. Edwards, 2002 UT App 16, 41 P.3d 1142;

**Issue 2:** Did the trial court err in ruling that the motion to set aside the decree is denied? The ruling is reviewed for correctness, without deference to the trial court. Maertz v. Maertz, 827 P.2d 259 (Utah App. 1992).

**Issue 3:** Did the trial court err in ruling that the motion to reopen the case be denied? The ruling is reviewed for correctness, without deference to the trial court.

**Issue 4:** Did Appellant have ineffective assistance of counsel? SLW/UTAH, STATE v. MUNSON, 972 P.2d 418 at 422 (Utah 1998).

## **DETERMINATIVE STATUTES AND RULES**

### **UTAH RULES OF CIVIL PROCEDURE RULE 60(B)**

UTAH RULES OF CIVIL PROCEDURE RULE 60(B), provides in pertinent part as follows:

(B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether hereto fore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; . . . The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken.

**Doctrine of Merger** – The Judgment is the final, integrated agreement of the parties and abrogates

all prior agreements, whether written or oral.

**Doctrine of Res Judicata** – When there has been an adjudication, it becomes res judicata, as to those issues which were either tried and determined, or upon all issues which the party had a fair opportunity to present and have determined in the other proceeding.

**Collateral Estoppel (Issue Preclusion)** - Prevents parties or their privies from re-litigating “particular issues that have been contested and resolved.”

### **STATEMENT OF THE CASE**

#### **(A) Nature of the Case and Course of Proceedings Below**

This is a matter of a divorce that was filed by Appellee in April 1995. The Bifurcated Decree of Divorce was entered in October 1996, and the final Amended Supplemental Findings of Fact and Conclusions of Law and Amended Supplemental Decree of Divorce were signed and entered by the Court on August 26, 1997. After the final Amended Supplemental Decree of Divorce was entered by the Court, Appellee continued to allow Appellant to live in the basement of the marital residence. In June 1999, Appellee had to evict Appellant from the marital residence due to his failure to pay his rent, and his constant interference with her personal affairs. Appellee filed an eviction claim and Appellant responded by filing a counterclaim. After several hearings and orders to consolidate all issues into the original divorce case, Appellant filed a Second Amended Counterclaim. Appellee filed a Motion to Dismiss in response to the Second Amended Counterclaim. The Court heard Oral Arguments on April 1, 2003, and issued the Order, which is now the subject of this appeal.

#### **(B) Statement of Facts**

On or about April 21, 1995, Appellee filed for Divorce from Appellant (Exhibit No. 3 of

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IN THE UTAH COURT OF APPEALS  
STATE OF UTAH

**LAURIE L. FREEDMAN (BARNETT),**  
**PLAINTIFF AND APPELLEE,**  
  
**vs.**  
  
**GILBERT FREEDMAN,**  
  
**DEFENDANT AND APPELLEE.**

**CERTIFICATE OF SERVICE**

**CASE No. 20030476-CA**  
**DISTRICT COURT No. 954400884**

Appellee, Laurie L. Freedman (Barnett), by and through her attorney of record, Clayne I. Corey of Clayne I. Corey PLLC, hereby certifies that Appellee's Opening Brief of the Appellee was mailed, first class postage prepaid, on this 14<sup>th</sup> day of April, 2004, to:

Gilbert Freedman  
P.O. Box 250  
Lehi, Utah 84043

**CLAYNE I COREY PLLC**



BY: **CLAYNE I. COREY**  
*ATTORNEY FOR PLAINTIFF/APPELLEE*

Appellant's Breif). On or about September 24, 1996, after many meetings, discovery, and many hearings, the Court granted a Bifrucated Decree of Divorce (hereinafter "Decree"). The Decree was signed by the Honorable Steven L. Hansen and entered by the Court on October 1, 1996. In that Decree, Appellee was restored to her maiden name of Barnett.

After the Decree was entered, Appellee graciously allowed Appellant to rent the basement of the marital home until he could find other living arrangements. On or about December 3, 1996, the parties met with their respective attorneys and worked out a Preliminary Settlement Agreement which was then executed by both parties. This was the only agreement entered into and signed by the parties that day.

On or about December 6, 1996, the parties contacted the Court and stipulated to having the Court strike the trial that was scheduled for that day upon the grounds that the parties had reached a stipulated full and final resolution of all matters pending before the Court. Also, it was agreed that Appellee's attorney would prepare the Settlement Agreement (Exhibit No. 2 of Appellant's Breif) and send it to Appellant's attorney for approval and signature by all parties.

In or about February 1997, Appellee's attorney submitted the final Settlement Agreement to Appellant's attorney for approval and execution.

On or about March 19, 1997, with the approval from her attorney, Appellee wrote a letter to Appellant. The letter reiterated, that due to the fact that he was a renter, he did not have authority to spend her money for improvements to the property, and he did not have the authority to deduct any money from his agreed upon rent. This was consistent with the parties Settlement Agreement.

Between February 1997 and April 1997, Appellant refused to execute the Settlement Agreement, and refused to even respond to the documents sent over by Appellee's attorney to

Appellant's attorney. Accordingly, Appellee's attorney filed a Motion to Enforce Settlement Agreement with the Court. Oral arguments were set but thereafter the parties came to an agreement.

On or about June 9, 1997, Appellee and Appellant executed the Settlement Agreement and filed the same with the Court on or about June 10, 1997. In August 1997, the Court entered an Order to Enforce the Settlement Agreement. On or about August 26, 1997, the Honorable Steven L. Hansen entered Judgment by ordering the Amended Supplemental Findings of Fact and Conclusions of Law, and the Amended Supplemental Decree of Divorce reflecting the arrangement in the Settlement Agreement.

Paragraph 13 of the Amended Supplemental Decree of Divorce states: "That the parties desire the terms of this Decree be confidential and the Court finds that desire to be fair and reasonable." Paragraph 16 goes on to state: "The court concludes that this file should be sealed and should not be opened except upon motion and with notice to the parties and an opportunity to be heard."

The parties acknowledged that the Settlement Agreement resolved all issues raised by the pleadings and that a Decree of Divorce should be entered by the Court, consistent with the terms and provisions of the Settlement Agreement. In fact, Appellant intended to sell Starfire Industries. The value of Starfire Industries was believed to far exceed that of the marital property assigned to Appellee, in both the Settlement Agreement and the Amended Supplemental Decree of Divorce.

Appellant did not oppose or otherwise challenge the Amended Supplemental Findings of Fact and Conclusions of Law, Amended Supplemental Decree of Divorce, or any other aspect of the Court's Judgment thereafter. In its own minute entry, dated September 10, 1997, the Court instructed the attorney for Appellant to proceed, if desired, by Motion if he had any objection to the

Court's entered Amended Supplemental Findings of Fact and Conclusions of Law and Amended Supplemental Decree of Divorce

Appellant continued to live in the basement of Appellee's home until December 1998. At this time, Appellee served Appellant with a 15-day Notice to Quit and Vacate for failure to pay his rent. In or about May 1999, after Appellant again refused to pay his rent, and without authorization from Appellee, Appellant changed the locks on the home, and continued to harass service people and friends, Appellee then served Appellant with another eviction notice. Upon notice of his eviction, Appellant sent a letter to Appellee threatening a "fight in court."

On or about May 21, 1999, Appellee informed Appellant, for the final time, that he must make the appropriate arrangements to vacate the premises and remove his personal items.

On or about August 13, 1999, Barnett was served with a Writ of Execution for an unrelated Judgment previously entered against Appellant in the Third Judicial District Court, Salt Lake Department, Case No. 920905473. Pursuant to said Writ, Appellee made all of Appellant's personal property available to David Overholt, Esq., counsel of record in Case No. 920905473. Mr. Overholt held a Constable's Sale on or about September 7, 1999, and all items not sold at the sale were delivered to Mr. Overholt by Appellee, and then given to Appellant by Mr. Overholt. In a letter dated September 30, 1999, Mr. Overholt indicates that he returned all exempt and personal property that did not sell at the Constable's Sale – including Appellant's mother's jewelry – directly to Appellant.

### **SUMMARY OF ARGUMENTS**

Under the Doctrine of Merger, all agreements were consolidated and merged into the final Amended Supplemental Findings of Fact and Conclusions of Law, and Amended Supplemental

Decree of Divorce. Appellee acted within the scope of that Judgment. Under the Doctrine of Res Judicata and Collateral Estoppel (Issue Preclusion), all issues presented by Appellant in his Second Amended Counterclaim were adjudicated during the initial divorce proceedings, and therefore are barred from being brought forth again.

Under Rule 60(b) of the UTAH RULES OF CIVIL PROCEDURE, Appellant had three (3) months after the judgment or entry of the Amended Supplemental Decree of Divorce to file a Motion to Set Aside the Decree. Appellant did not file a motion before the time limit set by the Rule.

Defendant failed, for over three (3) years, to file a Motion to Reopen the case pursuant to the provisions of the Decree of Divorce, and did so only after counsel for Appellee addressed the matter during Oral Arguments.

Appellant repeatedly informed counsel that he was of sound mind and had competent counsel throughout the proceedings. The fact that counsel refused to perpetrate his lies did not make Appellant's counsel incompetent.

### **ARGUMENTS**

Appellant has submitted that the parties entered into a binding agreement. This agreement apparently took place outside the confines of the Judgment that was ultimately and finally entered by the Court, and at the same time that the Preliminary Settlement Agreement was negotiated and executed. However, the "binding agreement" is not dated. There is no record in the Divorce file that such a contract ever existed, was ever filed, or was ever included in the Court determination of final judgment. Also note, that Appellee's signature on the afore mentioned document was "Laurie L. Freedman," when in fact Appellee had used her maiden name for **all** purposes since September 26,

1996, when the Bifurcated Divorce Decree went into effect. In fact, she signed the Preliminary Settlement Agreement as “Laurie Freedman Barnett,” which comports with the use of her maiden name at the very time Appellant asserts that there was a second agreement.

If the agreements were reached on the same day, and Appellant, along with his prior attorneys, believed that the “binding agreement” was the final *meeting of the minds*, Appellant had ample opportunity to present and argue the fictional agreement’s merits in his Memorandum in Response to Plaintiff’s Motion to Enforce Settlement Agreement, but clearly omitted any reference to the fictional agreement.

Any and all agreements previously entered into by the parties were *merged* into the final Judgment of the Court, and therefore, fall under the rules that govern Judgments. Appellant seeks damages which he admits are the direct and proximate result of the “binding agreement,” under the assumption that it is a valid contract. If the “binding agreement” was ever, at any time, a legally binding negotiated contract between the parties, it has matured as a direct result of the entry of the Amended Supplemental Decree of Divorce. Any presumed duty to perform under the contract is merged in its entirety into the final Judgment entered by the Court. Consistent with merger doctrine, the Judgment “...is the final, integrated agreement of the parties and abrogates all prior agreements, whether written or oral.” Robinson v. Tripco Investment Therefore, any and all obligations of the parties under contract, prior to Judgment, are discharged by the Judgment. If the “binding agreement” ever existed, as a reflection of negotiations between the parties, it was adjudicated during arguments on the Motion to Enforce the Settlement Agreement, merged and discharged by the Judgment, and the Judgment supercedes any agreement or contract previously entered into by the parties during settlement negotiations for the divorce.



Appellant contends that he relied on the “binding agreement” to his detriment. However, Appellee continually spoke with Appellant about rent and the disposition of the property that now belonged to her pursuant to the Amended Supplemental Decree of Divorce. Consistent with her letter dated March 16, 1997, written prior to the final entry of the Decree, but after the Agreement had been reached, Appellee clearly reiterates that Appellant was a renter and nothing more.

**Amended Verified Counterclaim was properly dismissed under the  
Doctrine of Res Judicata and Collateral Estoppel (Issue Preclusion)**

All issues now presented to the court have been decided by this Court prior to final entry of the Amended Supplemental Findings of Fact and Conclusions of Law and the Amended Supplemental Decree of Divorce. “The party seeking to invoke the doctrine of collateral estoppel must establish four elements: First, the issue challenged must be identical in the previous action and in the case at hand. Second, the issue must have been decided in a final judgment on the merits in the previous action. Third, the issue must have been competently, fully, and fairly litigated in the previous action. Fourth, the party against whom collateral estoppel is invoked in the current action must have been either a party or privy to a party in the previous action.” Macris & Associates v. Images & Attitude Appellee has met all prongs of the test for proof of relief under the Doctrine of Res Judicata for Collateral Estoppel.

The issues in the Divorce and the Amended Verified Counterclaim are identical. There was a final adjudication which Appellant has not appealed nor disputed in any way until now. There has been no argument presented that the Court acted in any other way, but competently and fairly, and all previous parties are the same as those herein. “When there has been an adjudication, it becomes

res judicata, as to those issues which were either tried and determined, or upon all issues which the party had a fair opportunity to present and have determined in the other proceeding.” Throckmorton v. Throckmorton “The doctrine of res judicata serves the important policy of preventing previously litigated issues from being relitigated.” Miller v. USAA Casualty Insurance Co. Res judicata has two prongs: claim preclusion and issue preclusion. . . Issue preclusion . . . prevents parties or their privies from relitigating “particular issues that have been contested and resolved.” American Interstate Mtg. Corp. v. Edwards

Appellant had the available remedy to appeal or oppose the final Judgment but decided not to, or failed to do so, whichever the case may be. Consequently, even if the Court views the facts in a light most favorable to Appellant, it must also see that all facts have been presented and adjudicated in previous actions.

The Amended Verified Counterclaim was properly dismissed under the doctrine of merger, doctrine of res judicata for lack of jurisdiction and Collateral Estoppel, primarily because the “binding agreement” signed by the parties before the divorce decree was resolved and agreed upon, stipulated to and integrated, and became merged with the decree of divorce in this case and the findings of fact and conclusions of law, and there is no longer a binding agreement that survived that judgment.

**Motion to set aside the Decree of Divorce was properly denied under Rule 60(b) of the Utah Rules of Civil Procedure governing relief from Judgment**

Rule 60(b) of the UTAH RULES OF CIVIL PROCEDURE clearly provides that a motion shall be made within a reasonable time and not more than 3 months after the judgment, order, or proceeding was entered or taken. Relief was available to Appellant to file a motion to reverse or otherwise vacate the Judgment entered by Judge Hansen in this matter. In fact, any objection Appellant might

have had to the Judgment was entreated by the Court in the Minute Entry, dated September 10, 1997. Appellant did not file any motion, or pursue any remedy possibly available to him within the three (3) month time limit set by Rule 60(b), essentially or for all intents and purposes denying the Courts entreatment to respond.

It is well recognized under Utah law, that although relief may be sought in the form of a complaint, which can be treated as an independent action, “an action may be treated as a motion when there is no prejudice to the opposing party” Maertz v. Maertz. Therefore, the Amended Verified Counterclaim, when considered a Rule 60(b) Motion, is subject to the rule’s “reasonable time” limitation. Appellant was made aware of the Judgment being entered on August 26, 1997, and made aware of once again, when the Court entreated his counsel in September 1997, reminding Appellant’s attorney that any objection must be made by motion. Appellant was reminded yet again, when Appellee relied on the Judgment when she served Appellant with notice of eviction on or about December 28, 1998, and again on May 17, 1999. It would be preposterous for the Court to conclude that Appellant was without notice that his right to timely file a Rule 60(b) Motion had tolled – especially in light of the Court itself educating Appellant of the time period specified in the rule and that the Judgment would stand without filing such a motion. Appellant failed to file a motion within the time frame set by Rule 60(b), and therefore his Amended Verified Counterclaim was properly dismissed.

#### **Motion to Reopen was properly denied**

Appellant failed to file a Motion to Reopen, pursuant to the provision of the Decree of Divorce which states: “That the parties desire the terms of this Decree be confidential and the Court

finds that desire to be fair and reasonable.” Paragraph 16 goes on to state, “The Court concludes that this file should be sealed and should not be opened except upon Motion and with notice to the parties and an opportunity to be heard.” The Motion to Reopen was properly denied.

**Appellant does not meet the burden of proof required for  
ineffective assistance of counsel**

Appellant had raised, for the first time on appeal, the issue that he was a victim of ineffective assistance of counsel. In order to show ineffective assistance of counsel, “. . . a defendant must show, first, that his counsel rendered a deficient performance in some demonstrable manner, which performance fell below an objective standard of reasonable professional judgment, and second, that counsel’s performance prejudiced the defendant.” SLW/UTAH, STATE v Munson It furthermore states “that to establish the prejudice prong, the defendant must show ‘a reasonable probability exists that except for ineffective counsel, the result would have been different.’” Appellant’s assertion that he is dyslexic, and old, does not show evidence of ineffective counsel. Appellant repeatedly informed counsel that he was of sound mind and had competent counsel throughout the proceedings. The fact that counsel refused to perpetrate his lies does not make his counsel incompetent. Finally, Appellant has shown no proof of actual incompetence by his multiple counsels, or that the outcome would have been any different.

**CONCLUSION**

The terms and conditions of the Settlement Agreement executed by the parties on or about June 9, 1997, were sealed by the Court upon the execution of the Amended Supplemental Findings of Fact and Conclusion of Law, and Amended Supplemental Decree of Divorce. Appellant was well

aware that it would not be prudent for counsel to present, as evidence, that which was ordered sealed by the Court unless the case had been reopened by the Court, upon motion, with notice to the parties, and presentation of oral arguments by the parties. Appellant sought damages which he admits are a direct and proximate cause of the “binding agreement,” presumed to be entered into by the parties. The “binding agreement,” should it have ever existed as a settlement negotiation, has matured as a direct result of the entry of the Amended Supplemental Decree of Divorce. Any presumed duty to perform under it was merged into the Judgment, and any and all obligations of the parties under contract, prior to Judgment, are discharged by the Judgment. The statute of limitations is a sufficient defense for relief from the causes of action complained of, and in fact, it is the defense allowed by the law and also agreed to by the parties upon entry of the Judgment.


Appellant failed to timely file a Rule 60(b) Motion for Relief from the Judgment. He bases his whole counterclaim on two (2) agreements, one being the Preliminary Agreement, and the other being the “binding agreement.” Regardless of their existence, they were merged into the final Settlement Agreement and subsequent Judgment and discharged thereby. It would be grossly unfair and highly prejudicial to Appellee for this Court to alter the final Judgment.

Appellant has provided no proof supporting his appeal and not proof that the ruling of the Court on April 1, 2003, or the subsequent Order entered by the Court should be reversed. He has not shown that the trial court abused its discretion by not distributing the marital assets fairly and equitably, and by not making findings of fact properly. Appellant has not shown any evidence to prove that the Court did not rely on a valid agreement between the parties. Appellant has not shown that he did not have competent legal representation, and has shown no evidence that he was denied due process of law.

Given the trial court's detailed findings in this case, there was no abuse of discretion in its determinations regarding the final orders on all issues stated herein. Additionally, Appellee requests attorney fees due to the frivolous nature of this appeal.

**RESPECTFULLY SUBMITTED** this 14 day of April, 2004.

**CLAYNE I COREY PLLC:**

  
By: Clayne I. Corey  
*Attorney for Appellee*

## **EXHIBIT “A”**

1 think you have a claim in American Fork, it's been  
2 consolidated into this court, would you please rewrite it  
3 all, because you didn't write it in the beginning, and  
4 present it to this Court here to see if you still have a  
5 claim

6 **ARGUMENT BY MR. BUSHMAN**

7 **MR. BUSHMAN:** Your Honor, if I may respond just a  
8 little bit on that. The, the eviction claim of the  
9 plaintiff was what was dismissed by the Court after  
10 adjudication. The counterclaim of my client for breach of  
11 contract lived on.

12 **THE JUDGE:** It survived and that's here today  
13 and you're asking to amend it, and there's a motion to  
14 dismiss.

15 Okay. Well, thank you. Thank you both.

16 **COURT'S RULING**

17 **THE JUDGE:** It seems to me that the claim that  
18 there's a binding agreement signed by the parties before the  
19 divorce decree was resolved and agreed upon, stipulated to  
20 and integrated, and became merged with the decree of divorce  
21 in this case and the findings of fact and conclusions of law,  
22 and there is no longer a binding agreement that survived that  
23 judgment.

24 So, therefore, I'm going to dismiss the amended  
25 verified counterclaim in this case that has survived the