

1992

John Deere Company v. A & H Equipment, Inc., Wendell Hansen, Mark B. Anderson and Vada A. Anderson : Brief of Appellee

Utah Court of Appeals

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DOCKET NO. 920774

IN THE COURT OF APPEALS
OF THE
STATE OF UTAH

JOHN DEERE COMPANY,

Plaintiff/
Appellee,

Case No. 920774-CA

vs.

Priority 16

A & H EQUIPMENT, INC., WENDELL
HANSEN, MARK B. ANDERSON and
VADA A. ANDERSON,

Defendants/
Appellants.

BRIEF OF APPELLEE, JOHN DEERE COMPANY

APPEAL FROM A JUDGMENT OF THE FOURTH DISTRICT COURT
THE HONORABLE CULLEN Y. CHRISTENSEN, DISTRICT JUDGE

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FILED
Utah Court of Appeals

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Mary T. Noonan

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JURISDICTIONAL STATEMENT

This Court has appellate jurisdiction over this appeal pursuant to §78-2a-3(2)(k) Utah Code Ann. (1953, as amended), pursuant to an order of the Utah Supreme Court dated November 17, 1992 which poured the case over to this Court.

STATEMENT OF ISSUES

Was the trial court correct in enforcing a settlement agreement between the parties that was unambiguous, contained all essential terms and was confirmed in writing by their respective counsel?

STANDARD OF APPELLATE REVIEW

The decision of a trial court to summarily enforce a settlement agreement should not be reversed unless it is shown that there was an abuse of discretion. Zion's First National Bank v. Barbara Jensen Interiors, 781 P.2d 478, 479 (Utah App. 1989.) This Court should affirm "if the record establishes a binding agreement and 'the excuse for nonperformance is comparatively unsubstantial.'" Id.

DISPOSITIVE STATUTES

There are no statutes or rules that are dispositive of the issue before the Court.¹

¹ Appellants argue that §78-51-32 Utah Code Ann. (1953, as amended), and Rule 4-504(8) CJA support their position. As is shown in Point II, below, their position is incorrect.

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings Below.

This breach of contract action was commenced on June 1, 1989 by Plaintiff/Appellee John Deere Company. Thereafter, Defendants/Appellants² filed an Answer and Counterclaim, and the parties engaged in substantial discovery. On September 21, 1992, the trial judge, upon cross-motions to enforce a settlement agreement, entered an Order granting John Deere's motion, denied Appellants' motion, found that the case was settled and declared that a mutual release prepared and submitted by John Deere was in full force and effect. That mutual release is a general release of all claims between the parties to this action.

Appellants had moved the trial court to enforce a settlement involving a mutual general release between the parties to this action and to force an entity that is not involved in this case to relinquish a Judgment it had obtained through a settlement against some of these Appellants over two years earlier.³ The settlement the trial court enforced was memorialized in correspondence between the parties' respective counsel in April 1991.

²Due to the number of Defendants/Appellants, rather than referring to each by name, they will simply be referred to as Appellants.

³Appellants have never explained how the trial court was supposed to force a party that was not before it to release a judgment.

Also on September 21, 1992, the trial court, pursuant to its Order enforcing the settlement, signed a Judgment dismissing this action with prejudice. (Copies of the trial court's Order and Judgment are attached hereto as Addendum A.) Defendants took this appeal from that Judgment on September 23, 1992.

Statement of Facts.

On June 1, 1989, a Judgment in the principal amount of \$36,062.47 was entered against A & H Equipment, Inc., and Wendell Hansen, two of the four Appellants in the instant case, in favor of an entity entitled Farm Plan Corporation, which is not a party to this case. (R. 295-296.) (That Judgment is hereinafter referred to as the Farm Plan Judgment.) The Farm Plan Judgment was taken pursuant to a settlement wherein Farm Plan agreed to defer execution on the Judgment while the debtors paid terms on the Judgment amount. (R. 390.)

On that same day the instant case was filed by John Deere Company claiming damages in the amount of \$55,392.04 against A & H Equipment, Inc., Wendell Hansen, Mark B. Anderson and Vada A. Anderson. (R. 105.)⁴

On June 20, 1989, the Defendants answered the Complaint. On September 11, 1989, they filed a Counterclaim. (R. 137.) The Counterclaim never mentions the Farm Plan Corporation or its Judgment. (R. 137-131, 397.) Thereafter, the parties filed

⁴Appellants incorrectly state that this action was commenced on May 1, 1989, rather than June 1, 1989. (R. 333.)

various pleadings and engaged in substantial discovery. None of those pleadings or discovery mention the Farm Plan Corporation or the Farm Plan Judgment.⁵ In fact, all of the agreements the Complaint is based upon are John Deere Company documents, such as the John Deere Company Agricultural Agreement and John Deere Dealer Guaranty. (See, e.g., Exhibits A-O attached to Complaint; R. 1-105.)

On April 10, 1991, counsel for Appellants, David Lambert, sent counsel for John Deere, Brent Stephens, a letter which contained a settlement proposal. (A copy of the letter is attached hereto as Addendum B.) That letter states, in pertinent part:

Re: John Deere v. A & H Equipment, et al.

Dear Brent:

I have been asked by my client to propose a settlement in the above referenced case. The settlement proposal is a mutual dismissal with prejudice and general release of claims with each party to bear their costs and fees.

*

*

*

Respectfully,

HOWARD, LEWIS & PETERSON

\s\

D. David Lambert

cc: A & H Equipment

⁵Appellants argue that the claims in this action involved or included the claims in the Farm Plan litigation. (Brief of Appellants at 7.) Inasmuch that the Farm Plan Judgment was the result of a negotiated settlement between those parties, those claims were part of an accord and satisfaction and could not have, legitimately, been part of this litigation.

On April 15, 1992, Mr. Stephens telephoned Mr. Lambert and accepted, without condition or qualification, the offer contained in Mr. Lambert's April 10 letter. (R. 313-311.)

On April 22, 1992, Mr. Stephens confirmed the acceptance of the offer in a letter to Mr. Lambert. (A copy of his letter is attached hereto as Addendum C.) (R. 309.) His letter reads:

Re: John Deere v. A & H Equipment, et al.

Dear David:

This will confirm my telephone conversation of April 15, 1991, in which I accepted your settlement proposal contained in your letter of April 10, 1991. I will prepare the settlement documents and forward them to you for execution.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU
 \s\
R. Brent Stephens

On or about May 8, 1991, Mr. Stephens sent an original of the Mutual Release of All Claims to Mr. Lambert and asked Mr. Lambert to provide John Deere with an executed release and the other settlement documents. (R. 307-304.)

On or about May 20, 1991 Mr. Stephens forwarded Mr. Lambert another original of the Mutual Release of All Claims that had been duly executed by a John Deere representative. (R. 302.)

On or about July 18, 1991, Mr. Stephens sent a brief letter to Mr. Lambert asking why, after two months, Mr. Lambert had not returned the settlement documents, and asked Mr. Lambert to

advise Mr. Stephens as to the status of those documents. (R. 300.)

Finally, on or about July 29, 1991, Mr. Lambert sent a letter to Mr. Stephens which attempted to add an additional party as an additional term to the settlement. (R. 298.)

In his July 29, 1991 letter, Mr. Lambert asserted that Defendants now required that "John Deere Farm Plan" be added as a releasing party on the Mutual Release.⁶ Up to that point, neither Farm Plan nor its Judgment against certain of the Appellants had been discussed between Mr. Lambert and Mr. Stephens. In fact, Mr. Lambert admits that until after he submitted the settlement documents to his client he was specifically unaware of the Farm Plan Judgment. (R. 333, 395.)

At all material times, Farm Plan and John Deere were separate and distinct corporations, although they shared the same parent corporation. They had separate management, kept separate records and had separate in-house counsel. (R. 390.) Although Farm Plan is affiliated with John Deere, it does not use John Deere in its name or its logo. (Id.)

⁶It should be noted that there is no such entity as "John Deere Farm Plan" as set forth in Mr. Lambert's letter. Throughout their brief, Appellants erroneously refer to Farm Plan Corp. as "John Deere Farm Plan Corp." (See e.g., Brief of Appellant at 9, 17, 18, 31, 32.) This reference is misleading as there was no such entity involved in this case.

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion when it enforced a clear settlement agreement between these parties. Appellants' counsel made, in writing, a clear, unequivocal offer to John Deere which contained all essential terms and was within the authorization which he had been given by Appellants. The offer was clearly limited to the parties to this action. The offer was timely accepted by John Deere's counsel, both verbally and in writing, and became a binding agreement between the parties.

If Appellants really did not agree with the settlement, they could have alerted their counsel when they received a copy of his offer letter. Instead, they waited for several months to inform him and John Deere of the additional terms they purportedly expected to be part of the settlement.

In Utah it is clear that settlements can be negotiated by counsel and that such agreements do not need to be in writing, unless otherwise required by the statute of frauds. Nor do settlements need to be entered on the minutes of the court in order to be valid, as is urged by Appellants.

Appellants' claim of unilateral mistake is not supported by the record as the agreement is not unconscionable, Appellants were not diligent, and there was no mistake between counsel for the respective parties who had the authority to settle this case.

ARGUMENT

Appellants base this appeal on four points: (1) That the settlement enforced by the trial court was never proposed nor agreed to by the Defendants; (2) the settlement is not binding because the agreement was not filed with the court or entered upon the minutes of the court; (3) the agreement is void because of mistake; and (4) if an agreement existed it was ambiguous and the court erred in enforcing it. The evidence and law relied upon by Appellants does not support their position.

POINT I

THE UNAMBIGUOUS AGREEMENT REACHED BETWEEN THE
LAWYERS FOR THE PARTIES WAS CORRECTLY
ENFORCED BY THE TRIAL COURT.

Appellants argue that the settlement offer contained in Mr. Lambert's letter of April 10, 1991, included a release of the Farm Plan Judgment or, alternatively, that there was never a meeting of the minds so the settlement was not enforceable. Appellants' argument that the settlement proposal included a release of the Farm Plan Judgment is clearly unsubstantiated. Mr. Lambert's letter references only the instant case, does not mention any Farm Plan claim or Judgment, and specifically states that the settlement is between only these parties. In the subsequent telephone conversation between Mr. Stephens and Mr. Lambert, the Farm Plan case was not mentioned. (R. 312.) Mr. Lambert has sworn that he was not even aware of the Farm Plan Judgment until several months later. (R. 332-333.) Now,

Appellants argue that Mr. Lambert's proposal included the Farm Plan Judgment. "When he [Mr. Lambert] proposed this settlement by means of this wording, Mr. Lambert's understanding was that a general release would release all outstanding matters between the parties, including all outstanding judgments." (Brief of Appellants at 8, emphasis and brackets added.)⁷ The record does not support Appellants' claim that Mr. Lambert's settlement offer included the release of a Judgment that he did not know existed, by an entity that he had no knowledge of or involvement with and which was not even before the trial court.

Appellants argue further that there was no meeting of the minds because Mr. Stephens's telephone call to Mr. Lambert and his subsequent confirming letter do not contain "specific terms." (Brief of Appellant at 8.) In both the telephone call and in his letter Mr. Stephens referred to and accepted the terms contained in the April 10, 1991 offer (R. 312); no additional specificity was needed. Mr. Lambert's letter contains all of the terms necessary to enforce the settlement between these parties. And Mr. Stephens clearly and effectively communicated his client's

⁷Much of Appellants argument presupposes that John Deere and Farm Plan are one and the same. For example, in the passage preceding this footnote, Appellants argue that Mr. Lambert understood that the settlement would "release all outstanding matters between the parties." That is exactly what the trial court did: It enforced the general release between the parties in this case. Farm Plan is a separate entity which was not a party to this litigation, and it had no involvement in the negotiations and settlement in this case.

acceptance of the offer to Mr. Lambert. There can be no doubt that Mr. Lambert and Mr. Stephens, on behalf of their respective clients, had a meeting of the minds as is set forth in their April 1991 correspondence.⁸

The record is also clear that Mr. Lambert had the authority to settle the case in this fashion. In his letter of April 10, 1991 Mr. Lambert states that he was "asked by [his] client to propose a settlement in the above referenced case." This establishes that Mr. Lambert was authorized to settle the case for his clients. The scope of his authority may be inferred from his letter, but, regardless, there is no evidence in the record that Mr. Lambert abused or went beyond his authority.

It is significant that Appellants have not submitted any evidence to suggest that Mr. Lambert was not authorized to settle the case in accordance with his letter of April 10, 1991, which was limited to the parties in this action. The only evidence in the record of Mr. Lambert's authority is his statement that his clients informed him that they would agree to dismiss their Counterclaim in this case in exchange for a complete resolution

⁸Appellants' argument, in large part, focuses on their perception that they, as opposed to their lawyer, never agreed to the settlement as enforced by the court. A lawyer can act for his or her clients, through principles of agency, and can reach settlement agreements on their behalf. Brown v. Brown, 744 P.2d 333, 335 (Utah App. 1987).

of "all John Deere matters". (R. 333.)⁹ That is exactly what he did. The record is conspicuously silent on the point now urged by Appellants that the Farm Plan Judgment was to be part of the settlement in this case. Mr. Lambert had not represented Appellants in the Farm Plan litigation and he was unaware of the Judgment in that case. It is unknown how Appellants believe that Mr. Lambert should have known about and included the Farm Plan Judgment in the settlement of this case when they had never informed him of that action and Judgment.

Of the four groups involved in negotiating this settlement, Appellants were the only ones who had the opportunity to clarify the terms, if, in fact, they were not satisfied by the proposal contained in Mr. Lambert's offer. A copy of his offer letter of April 10, 1991, was sent to A & H Equipment. The letter clearly limits the offer to the parties in this case. If Appellants disagreed with Mr. Lambert's offer they had the opportunity to contact him and clarify their position before the offer was accepted by Mr. Stephens. This they failed to do and John Deere should not be penalized for Appellants' lack of diligence.

⁹Appellants have misstated the record in this regard. They represent that Mr. Lambert was instructed to resolve all "John Deere-related matters," and they reference Mr. Lambert's affidavit for support. (Brief of Appellants at 8.) Mr. Lambert's affidavit is specific that he was instructed to resolve "all John Deere matters" which is much more limited in scope than a resolution of all John Deere related matters. Contrary to Appellant's assertion, there is no evidence that he was instructed to resolve all related matters, and their statement is misleading.

Appellants argue that the settlement documents Mr. Stephens sent to their counsel in early May "unilaterally provided terms limiting the proposed settlement agreement to a release of only those claims made in the present action." (Brief of Appellant at 19.) The record is clear that that is exactly what occurred because that is what the parties had agreed upon. Mr. Lambert's letter of April 10 offered a settlement between the parties to the case referenced in his letter. Therefore, the only parties to the settlement documents would be John Deere Company on the one hand and A & H Equipment, Inc., Wendell Hansen, Mark B. Anderson, and Vada A. Anderson on the other. Appellants' claim that Mr. Lambert's proposal included another unnamed party is unfounded. Mr. Stephens's settlement documents, in fact, effectuated a complete and general release between these parties as was agreed to by Mr. Stephens and Mr. Lambert in their conversations and correspondence in April.

Appellants state that when Mr. Lambert received the settlement documents from Mr. Stephens, the language "was not the comprehensive and general release which Mr. Lambert had anticipated." (Brief of Appellant at 9.) Then, Mr. Lambert forwarded the documents to his clients who advised him of their rejection of the settlement and refused to sign the documents because the "John Deere Farm Plan Judgment" was not included in the release. (Id.) It was at this time that Mr. Lambert first learned of the Farm Plan Judgment. (Id.)

Appellants' position is unfounded in several respects. First, if Mr. Lambert believed that the settlement documents he received from Mr. Stephens were not what he had agreed to, he would not have sent the documents to his clients for their approval. He would have immediately contacted Mr. Stephens to correct the error. And if the documents were not what Appellants were expecting, why did it take them over two months to inform Mr. Stephens that the proposed documents were not what they anticipated? The record suggests that Appellants simply had a change of heart and tried to improve their position after a binding settlement had been negotiated by their counsel.

Appellants rely on the case of Brown v. Brown, 744 P.2d 333 (Utah App. 1987) as support for their position. They claim that Brown is virtually indistinguishable from this case. (Brief of Appellants at 21.) Their reliance is misplaced. In Brown, the plaintiff moved for an order modifying her divorce decree for additional amounts of child support and alimony. On the day plaintiff was to be deposed, the parties met and stated a settlement on the record. The settlement reduced plaintiff's alimony and increased the child support. When the settlement was recited the defendant and both counsel made statements, but plaintiff remained silent. Thereafter, plaintiff refused to sign the settlement documents stating that they were unfair. Defendant filed a motion to enforce the settlement which was granted. Plaintiff opposed the motion by taking the position

that her counsel had changed his position on the day the settlement was read into the record and that her counsel had, in effect, acted contrary to her authority. Her stated reason for not speaking up when the settlement was recited was that she was in shock over her counsel's change in position.

On appeal this Court reversed, finding that there had been no meeting of the minds. This Court found that plaintiff's silence could not be construed as assent to the agreement, therefore there could be no meeting of the minds, a requisite for a binding settlement agreement. In so holding the Court states: "For a stipulation to be binding, agreement by the parties must be evidenced by a signed writing which would satisfy the Statute of Frauds, or the agreement must be stated in court on the record before a judge. 744 P.2d at 335.¹⁰ In Brown, it was necessary that the agreement be in writing to satisfy the Statute of Frauds, such is not the case here. Unlike Brown, there is no evidence in this case that Appellants did not assent to the agreement. Mr. Lambert's letter states he had been asked by his clients to settle the case, and the only evidence in the record is that Appellants agreed to settle the "John Deere matters." Appellants did not propose to make Farm Plan Corporation a party

¹⁰ To the extent this language may be cited as support for the proposition that all settlement agreements must be in writing or stated on the record in open court, this Court has clarified that is not the law in Utah. Zion's First National Bank. v. Barbara Jensen Interiors, 781 P.2d 478, 480, nt. 1, (Utah App. 1989.)

to the settlement until over two months after the settlement had been agreed to by counsel. There is much difference between this case and the Brown case.

Again, the record in the instant case contains no evidence that Mr. Lambert was not authorized to offer the settlement proposal contained in his letter of April 10, 1991. At best, Appellants did not express their intentions to their counsel and were not diligent as the settlement was negotiated. As is affirmed by this Court in Zion's First Nat. Bank v. Barbara Jensen Interiors, 781 P.2d 478, 480 (Utah App. 1989):

It is well established in the law that unexpressed intentions do not affect the validity of a contract "The apparent mutual assent of the parties . . . must be gathered by the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of its words and acts."

Here, the words of Mr. Lambert in his letter are clear and the acts of Appellants, for several months thereafter, are consistent with the settlement enforced by the trial court. Appellants' contrary intentions, which were unexpressed to their counsel, do not affect the validity of the settlement.

POINT II

IN UTAH IT IS CLEAR THAT A SETTLEMENT AGREEMENT DOES NOT HAVE TO BE FILED WITH THE COURT OR ENTERED UPON THE MINUTES TO BE VALID.

Even though Rule 4-504(8) CJA expressly states that such is not the case, Appellants, surprisingly, argue that all settlement agreements must be in writing to be enforceable. They refer to a

discussion in a dissent in the Barbara Jensen Interiors case for support and identify it as the "rule." (Brief of Appellant at 29). Whatever confusion the black letter of Rule 4-504(8) may create, this Court's majority opinion in Barbara Jensen Interiors lays to rest the notion that all settlement agreements must be in writing to be enforceable. "It is a basic and longstanding principle of contract law that [settlement] agreements are enforceable even though there is neither a written memorialization of that agreement nor the signatures of the parties, unless specifically required by the statute of frauds." 781 P.2d at 480, nt. 1. Therefore, Appellants' position is without merit.

POINT III

THERE IS NO EVIDENCE TO SUPPORT APPELLANTS'
CLAIM THAT THE SETTLEMENT SHOULD BE SET ASIDE
DUE TO UNILATERAL MISTAKE.

This issue is raised for the first time on appeal and should not be addressed by the Court. Shoreline Dev., Inc. v. Utah County, 835 P.2d 207, 209 (Utah App. 1992). Even if it is appropriately before the Court, it is groundless because there is no evidence in the record to support the argument. Appellants set forth the appropriate elements which must be present in order to invalidate an agreement because of a unilateral mistake:

(1) The mistake must be so grave as to render the agreement unconscionable;

(2) The mistake must relate to a material feature of the agreement;

(3) The mistake must have occurred notwithstanding the ordinary diligence by the party making the mistake; and

(4) It must be possible to return the parties to the status quo.

(Brief of Appellants at 31, quoting B & A Assocs. v. L.A. Young Sons Const. Co., 796 P.2d 692, 695 (Utah 1990).)

However, in this case, there is no evidence that the settlement is unconscionable. Unconscionability occurs when contracts terms are so lopsided so as to oppress an innocent party or where there is an imbalance of the rights and responsibilities imposed by the contract, excessive price, or a significant cost-price disparity or terms that are inconsistent with accepted mores of commercial practice. Klas v. Van Wagoner, 829 P.2d 135, 139, cert. denied 843 P.2d 1042, (Utah *h.p.* 1992). Here, the parties simply agreed to dismiss their claims against each other and sign a mutual release. There is nothing in the record to suggest that these terms are unconscionable. Appellants are naive to think that, even if the Farm Plan Judgment had anything to do with John Deere Company and could have been part of this settlement, that Farm Plan would release a valid judgment in exchange for a dismissal of speculative claims. Indeed, that would have been inconsistent with accepted mores of commercial practice. Appellants also claim that they "clearly" intended that the settlement would include a release of the Farm Plan Judgment. (Brief of Appellants at 31.) This intent is far

from clear. In fact, there is no evidence in the record to support this claim. The only evidence as set forth in Mr. Lambert's affidavit is that he was directed to settle the "John Deere matters." As we have shown, that is what he did.

Second, there is no evidence in the record that there was a mistake. Appellants set forth a convoluted rendition of events from which they conclude there was a mistake. There was no mistake as to what matters were settled between Mr. Stephens and Mr. Lambert as is explained above. The correspondence between them could not be more clear. The fact that counsel for John Deere was aware of the Farm Plan Judgment does not prove that there was a unilateral mistake as is urged by Appellants, (Brief of Appellants at 32), it is simply immaterial. Farm Plan Corporation was not a party to this case and so what Mr. Stephens may have known about that entity makes no difference here.

Third, Appellants cannot show that the claimed mistake occurred notwithstanding their ordinary diligence. Had they been diligent, the settlement would have never occurred, if, in fact, they did not agree with it at the time. When they received the copy of Mr. Lambert's settlement offer all they had to do was alert him that the terms were not acceptable or a mistake had been made and this matter would have been at an end. Instead, the Appellants allowed the settlement discussions to reach fruition and now they want this Court to unwind what was done several years ago.

The weakness of Appellants' position on this point can be best summed up through their own words: "Plaintiff [John Deere] was well aware of the existence of the Farm Plan judgment, the underlying facts, and the fact that defendants probably intended to include this judgment in the settlement agreement." (Brief of Appellant at 34.) Appellants are not relying on evidence for their position; it is based upon mere speculation. Appellants' unilateral mistake argument is without merit.

POINT IV.

THE SETTLEMENT WAS NOT AMBIGUOUS.

Appellants erroneously argue that the trial court somehow considered extrinsic evidence which means that the agreement was ambiguous. (Brief of Appellant at 35.) Appellants misperceive the court's ruling. Appellants argued, in the court below, that their settlement proposal included the Farm Plan Corporation, even though their offer letter references only this case and these parties. The judge's statement about the posture of the parties clearly refers to the fact that John Deere Company and Appellants were the only parties to this case and were the only parties the settlement offer referenced. The trial court was not referring to extrinsic evidence but was simply restating the fact the settlement was between the parties to this case--the posture of the parties referenced in Mr. Lambert's offer letter.

Again, Appellants' own brief supports the trial court's decision to enforce the settlement. Appellants claim that Mr.

Lambert's offer contemplated two things: "The dismissal of the case and, conjunctively, an agreement for the release of all claims between these parties." (Brief of Appellant at 35, emphasis added.) That is exactly what the trial court accomplished in its Order. Contrary to their own argument, Appellants claim to have asked for a release of all claims between these parties and another entity which was not involved in this case. Appellants' difficulty in explaining their position only underscores its fallacy.

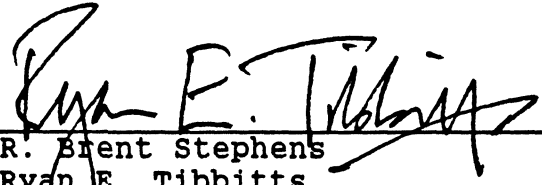
The agreement reached by Mr. Lambert and Mr. Stephens is clear and contains all essential terms. "A contract provision is ambiguous if it is capable of more than one reasonable interpretation because of the 'uncertain meanings of terms, missing terms, or other facial deficiencies.'" Winegar v. Froerer Corp., 813 P.2d 104, 108 (Utah 1991). Appellants do not, and cannot, show that the agreement was ambiguous in any fashion.

CONCLUSION

Based upon the foregoing, it is clear that the trial court, based upon the evidence before it, did not abuse its discretion in enforcing the settlement and, therefore, Appellee John Deere requests that the Judgment and Order of the trial court be affirmed.

DATED this 22nd day of February, 1993.

SNOW, CHRISTENSEN & MARTINEAU

By: 
R. Brent Stephens
Ryan E. Tibbitts
Attorneys for John Deere Company

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, four (4) copies of BRIEF OF APPELLEE, JOHN DEERE COMPANY, this 22nd day of February, 1992, to the following:

D. DAVID LAMBERT
LINDA J. BARCLAY
HOWARD, LEWIS & PETERSEN
Attorneys for Defendants/Appellants
120 East 300 North
Provo, Utah 84601

SNOW, CHRISTENSEN & MARTINEAU

By: 

R. Brent Stephens
Ryan E. Tibbitts
Attorneys for John Deere Company

ADDENDUM A

Fourth Judicial District Court
of Utah County, State of Utah
9-21-92
CARMA B. SMITH, Clerk

 ms Deputy

R. BRENT STEPHENS (A3098)
KIM R. WILSON (A3512)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiff
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

JOHN DEERE COMPANY,

Plaintiff,

JUDGMENT OF DISMISSAL

vs.

A & H EQUIPMENT, INC., WENDELL
HANSEN, MARK B. ANDERSON, and
VADA A. ANDERSON,

Civil No. CV-89-1151
Judge Cullen Y. Christensen

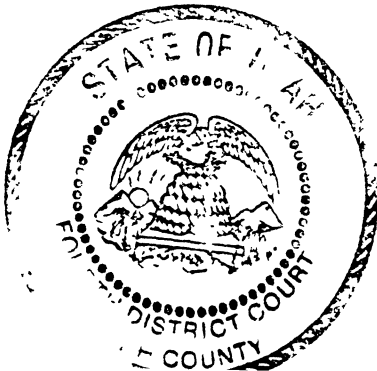
Defendants.

Based upon the Stipulation and Motion of the parties, and
good cause appearing therefor, it is hereby

ORDERED that plaintiff's Complaint and defendants'
Counterclaim be and hereby are dismissed with prejudice, and upon
the merits, with each party to bear their own costs and
attorneys' fees.

DATED this 21 day of September, 1992.

BY THE COURT :



Cullen Y. Christensen
CULLEN Y. CHRISTENSEN
District Court Judge

Fourth Judicial District Court
of Utah County, State of Utah
9-21-92
CARMA B. SMITH, Clerk

UA Deputy

R. BRENT STEPHENS (A3098)
KIM R. WILSON (A3512)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiff
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

JOHN DEERE COMPANY,

Plaintiff,

O R D E R

vs.

A & H EQUIPMENT, INC., WENDELL
HANSEN, MARK B. ANDERSON, and
VADA A. ANDERSON,

Civil No. CV-89-1151
Judge Cullen Y. Christensen

Defendants.

Plaintiff's Motion to Enforce Settlement Agreement and
defendants' cross-motion to enforce settlement agreement came on
regularly for hearing before the Honorable Cullen Y. Christensen
on August 28, 1992, at 3:00 p.m. Plaintiff was represented by
its counsel R. Brent Stephens of the law firm of Snow,
Christensen & Martineau, and defendants were represented by their
counsel D. David Lambert of the law firm of Howard, Lewis &
Petersen.

The Court reviewed the submissions and memoranda and
affidavit submitted by the parties, and the Court heard oral

argument. After being fully apprised, the Court hereby orders the following:

1. Plaintiff's Motion to Enforce Settlement Agreement is hereby granted.

2. Defendants' Motion to Enforce Settlement Agreement is hereby denied.

3. This action is settled upon the following terms and conditions:

a. A Stipulation, Motion and Judgment of Dismissal with prejudice as to the Complaint and Counterclaim will be signed by counsel and presented to the Court in the form attached hereto as Exhibit "A."

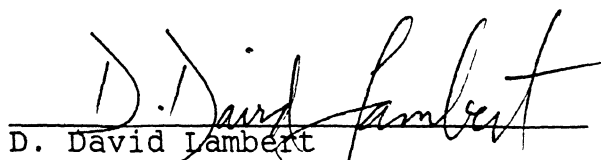
b. The Mutual Release of All Claims attached hereto as Exhibit "B" is hereby declared in full force and effect as though executed by all of the defendants.

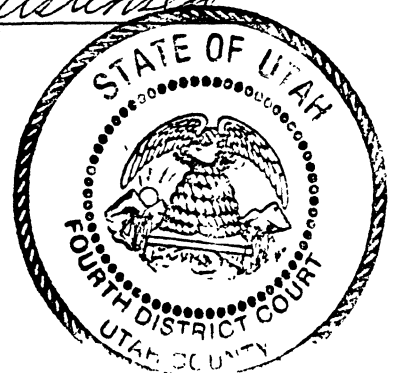
DATED this 21 day of September, 1992.

BY THE COURT :


CULLEN Y. CHRISTENSEN
District Court Judge

APPROVED AS TO FORM:


D. David Lambert
21\RBS\12976.004\Settlement.Ord



ADDENDUM B

ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
Post Office Box 778
Provo, Utah 84603

Jackson Howard
S. Rex Lewis
Don R. Petersen
Craig M. Snyder
John L. Valentine
D. David Lambert
Fred D. Howard
Leslie W. Slauch
Kevin J. Sutterfield
F. Richards Smith, III
Linda J. Barclay

Area Code 801
Telephone 373-6345
Telefax 377-4991

P:A&HEQUIP.DDL
Our File No. 19,456

April 10, 1991

R. Brent Stephens, Esq.
Snow, Christensen & Martineau
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84145

Re: John Deere v. A & H Equipment, et al.

Dear Brent:

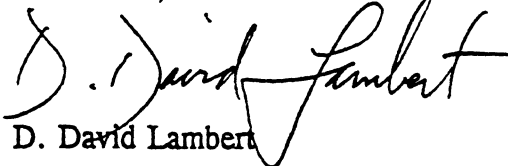
I have been asked by my client to propose a settlement with your client in the above referenced case. The settlement proposal is a mutual dismissal with prejudice and general release of claims with each party to bear their respective costs and fees.

As you may know, the defendants have been involved in other litigation and have generally suffered serious financial reversals. I have evaluated the position of my clients and I believe that they have everything to gain by going forward with the litigation on the counterclaim and little or nothing to lose because they could not respond to a judgment if you were to obtain one.

If this proposal is unacceptable, I need to immediately schedule a time to review your document production and dates for depositions. If I do not have your response by April 22, 1991, I will proceed with discovery scheduling.

Respectfully,

HOWARD, LEWIS & PETERSEN


D. David Lambert

cc: A & H Equipment

ADDENDUM C

FRED L. MARTINEAU
STUART L. POELMAN
RAYMOND M. BERRY
J. JAMES CLEGG
DAVID W. SLAGLE
A. DENNIS NORTON
ALLAN L. LARSON
JOHN E. GATES
R. BRENT STEPHENS
KIM R. WILSON
MICHAEL R. CARLSTON
DAVID G. WILLIAMS
REX E. MADSEN
MAX D. WHEELER
PAUL J. GRAF
PAUL C. DRGZ
MICHAEL D. BLACKBURN
ROBERT M. HENDERSON
DAMIAN C. SMITH
STEPHEN J. HILL
HENRY K. CHAI II
BRYCE D. PANZER
STANLEY K. STOLL

DAVID J. CASTLETON
DAVID W. SLAUGHTER
STANLEY J. PRESTON
THOMAS H. ZARR
JOY L. CLEGG
R. SCOTT HOWELL
SHAWN E. DRANEY
JERRY D. FENN
CRAIG L. BARLOW
JOHN R. LUND
RYAN E. TIBBITTS
ANNE SWENSEN
RODNEY R. PARKER
ANDREW M. MORSE
RICHARD A. VAN WAGONER
DAVID W. STEFFENSEN
ROBERT C. KELLER
ELIZABETH KING
DANIEL D. HILL
MARC T. WANGSGARD
CAMILLE N. JOHNSON
TERENCE L. ROONEY
THOMAS F. TAYLOR

LAW OFFICES
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THURMAN & SUTHERLAND 1886
THURMAN, SUTHERLAND & KING 1888
THURMAN, WEDGWOOD & IRVINE 1906
IRVINE, SKEEN & THURMAN 1923
SKEEN, THURMAN, WORSLEY & SNOW 1952
WORSLEY, SNOW & CHRISTENSEN 1967

JOHN H. SNOW 1917-1960

OF COUNSEL
MERLIN R. LYBBERT
JOSEPH NOVAK

April 22, 1991

WRITER'S DIRECT NUMBER:

(801) 322-9131

D. David Lambert, Esq.
Howard, Lewis & Petersen
Post Office Box 778
Provo, Utah 84603

Re: John Deere Company v. A & H Equipment, et al.

Dear David:

This will confirm my telephone conversation of April 15, 1991, in which I accepted your settlement proposal contained in your letter of April 10, 1991. I will prepare the settlement documents and forward them to you for execution.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU



R. Brent Stephens

RBS:cn
cc: Kim R. Wilson, Esq.
21\RBS\12976.004\Lambert.1tr