

2004

Michael T. Bilanzich v. John Lonetti, an individual,
Eunes I. Lonetti, an individual, and JDL Holdings,
L.C., : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MICHAEL T. BILANZICH,

Plaintiff/Appellant,

vs.

JOHN LONETTI, an individual, EUNES
I. LONETTI, an individual, and JDL
HOLDINGS, L.C.,

Defendants/Appellees

**APPELLANT'S BRIEF
(CORRECTED)**

Case No. 20040640-CA

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FILED
UTAH APPELLATE COURTS
MAR 15 2005

MICHAEL T. BILANZICH,

VS.

Defendants/Appellees

Case No. 20040640-CA

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MICHAEL T. BILANZICH,

VS.

HOLDINGS, L.C.,

**APPELLANT’S BRIEF
(CORRECTED)**

Case No. 20040640-CA

JURISDICTION

II.

Did the trial court commit error in ruling that Plaintiff/Appellant Michael T. Bilanzich (“Bilanzich”) is not entitled to recover his attorney’s fees incurred in these consolidated actions under the Guaranty executed by Bilanzich and the Note that

Bilanzich guaranteed on the basis that the court had previously held that the Guaranty was unenforceable because a condition precedent to Bilanzich's liability on the Guaranty had not occurred? This issue presents a question of law and the trial court's decision is reviewed for correctness. *Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc.*, 970 P.2d 1273, 1277 (Utah 1998).

This issue was preserved below. [R. 2527-2536]

III.

DETERMINATIVE STATUTES

Utah Code Ann. §78-27-56.5 is determinative of this case. That statute provides:

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986 where the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

IV.

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS BELOW.

This case arose out of the efforts of Reese's Enterprise, Inc. ("REI") to develop a motel near the entrance of Zions National Park and Bilanzich's execution of a Guaranty

of a Note executed by REI in favor of John and Eunes Lonetti (the “Lonettis”) which was assigned to JDL Holdings, L.C. (“JDL”) of which they are the sole members.

Bilanzich commenced this action in August, 2000. [R. 1] Bilanzich’s Second Amended Complaint asserted a claim for declaratory relief against the Lonettis and JDL that Bilanzich was not liable under the Guaranty because REI had never obtained a \$3.5 Million loan, which was a condition precedent to Bilanzich’s liability on the Guaranty. Bilanzich also sought rescission of the Guaranty on that same basis and upon other grounds, including fraud, and asserted a claim for unjust enrichment. [R. 1306-1330]

JDL filed a separate action against Bilanzich (the “JDL Action”), seeking to recover on the Guaranty. [R. 2499] The JDL Action was consolidated with the Bilanzich case. [R. 671]

On August 15, 2003, Bilanzich filed a motion for partial summary judgment against the Lonettis and JDL both on JDL’s complaint against Bilanzich on the Guaranty and on Bilanzich’s declaratory relief claim. [R. 1725] Bilanzich contended that as a matter of law the Guaranty was not enforceable against Bilanzich because a condition precedent to Bilanzich’s liability under the Guaranty was that REI obtain a \$3.5 Million construction loan, which condition precedent had never occurred. [R. 1728-1739] The Lonettis and JDL opposed the partial summary judgment motion on the ground that

Bilanzich was not a party to the Term Sheet and that the Guaranty was unconditional. [R. 2082-2090]

On December 15, 2003, the trial court granted partial summary judgment, determining that the Guaranty was unenforceable because the condition precedent to Bilanzich's liability thereunder that REI would obtain the \$3.5 Million construction loan had never occurred. [R. 2221-2223] The Lonettis and JDL have not appealed this decision. On March 9, 2004, pursuant to Rule 54(b), the district court entered final judgment in favor of Bilanzich on his declaratory relief claim and on JDL's claim against Bilanzich on the Guaranty. [R. 2424] Thereafter, Bilanzich agreed with the Lonettis and JDL to dismiss his rescission and unjust enrichment claims and the Lonettis agreed to waive their right to appeal the judgment. [R. 2409; 2421; 2435]

Bilanzich filed a motion for an award of attorney's fees and costs pursuant to the Guaranty. [R. 2385] The Lonettis and JDL opposed the motion on the basis that: (1) Bilanzich was not a party to the Note; (2) the Guaranty supposedly did not contain an attorney's fee provision; (3) the claim for the attorney fees and costs was supposedly contrary to a settlement with the Lonettis and JDL (even though there was no agreement whatsoever to waive attorney's fees and costs); and (4) the amount claimed was not reasonable. [R. 2427-2438]

The court held a hearing on the attorney's fee motion on May 4, 2004. At the hearing, Judge Shumate stated that the Guaranty did in fact provide for attorney's fees. [R. 2248 at 2-3] However, Judge Shumate asked for supplemental briefing on the issue of whether the court could award attorney's fees when the court had already determined that the Guaranty was unenforceable against Bilanzich because the condition precedent had not occurred. [*Id.* at 5] The parties subsequently filed supplemental memoranda on this issue. [R. 2520; 2527]

Judge Shumate issued a Minute Entry filed June 23, 2004, denying the motion for attorney's fees and striking the scheduled June 29, 2004 hearing. [R. 2560] Bilanzich filed a Notice of Appeal on July 7, 2004 and an Amended Notice of Appeal on July 14, 2004. [R. 2562]

B. STATEMENT OF FACTS

1. Defendant REI was developing a motel near the entrance to Zions National Park in Springdale, Utah. On December 31, 1996, the Lonettis made a loan to REI with respect to the project. REI executed a \$1,780,600.00 Trust Deed Note (the "Note") in favor of the Lonettis and a Deed of Trust encumbering the motel property as security for repayment of the Note. [R. 1822; 2389]

2. On April 5, 1998, REI and the Lonettis signed a written Agreement modifying certain provisions of the Note and increasing the outstanding balance of the Note to

\$2,167,717.00. The modification contained the following reciprocal attorney's fee provision: "If any action is instituted with respect to this Agreement or supporting documents, the prevailing party shall be entitled to an award of attorney's fees and costs to be paid by the other parties." [R. 1822-1823; 2389; 2397-2399]

3. The Lonettis subsequently filed suit against REI to foreclose their Deed of Trust and collect the Note. [R. 2084-2085]

4. The Lonettis and REI thereafter entered into a settlement agreement. Under the agreement, at closing the Note was to be reduced by a \$250,000.00 payment, the Lonettis were to receive personal guarantees of Bilanzich and an REI principal, and the Lonettis were to subordinate their Deed of Trust to a maximum \$3.5 Million Trust Deed in favor of an institutional lender. [R. 1730-1731; 1823]¹

5. On September 20, 1999, REI, the Lonettis and Bilanzich entered into a written agreement entitled "Term Sheet". [R. 2083] As part of this agreement, REI was to obtain Bilanzich's personal Guaranty of the Note that would be released to the Lonettis at closing. The Term Sheet specifically provided that "[t]he closing is contingent on financing being obtained by REI from an institutional lender" in the amount of \$3.5 Million. The Term Sheet further provided that "[i]f financing is not obtained, the closing

¹ Another alternative under the agreement was that REI would pay the Lonettis in full at closing. That did not occur.

will not occur, all items in escrow will be returned to the party depositing them, and Lonetti will foreclose and realize on the security.” [R. 1730-1731]

6. On September 30, 1999, Bilanzich executed a Guaranty of the Note in favor of the Lonettis which was deposited in escrow. [R. 2401]

7. REI never obtained a \$3.5 Million loan. Instead, only \$300,000.00 was ever disbursed by the lender. [R. 1732] Despite that fact, the Bilanzich Guaranty was released from escrow. [R. 2084-2085] The Guaranty contained the following attorney’s fee provision:

This Guaranty includes all principal, interest, costs, expenses and attorney’s fees incurred in collection of the Note and in realization of the security. [R. 2108]

8. The Lonettis subsequently assigned all their rights with respect to the REI Note and Deed of Trust and the Bilanzich Guaranty to JDL. [R. 1734]

9. REI filed bankruptcy in Nevada. JDL successfully moved for relief from stay in that bankruptcy to foreclose its Deed of Trust on the REI property. In connection with that motion, John Lonetti testified under oath in his affidavit and Lonettis’ counsel argued to the bankruptcy court, that the Subordination Agreement the Lonettis had executed subordinating to the \$3.5 Million loan was not effective because the loan was never fully funded. [R. 1732-1734]

V.

SUMMARY OF ARGUMENT

Both the Guaranty and the Note included attorney's fees provisions pursuant to which the Lonettis and JDL would have been entitled to recover attorney's fees had they prevailed in their attempt to recover from Bilanzich on the Guaranty. Thus, under the reciprocal provisions of Utah Code Ann. §78-27-56.5, Bilanzich is entitled to recover attorney's fees.

The fact that Judge Shumate granted summary judgment in favor of Bilanzich determining he was not liable on his Guaranty because a condition precedent to enforcement of the Guaranty - - funding of the \$3.5 Million construction loan - - had not occurred does not render the attorney's fees provision unenforceable. Judge Shumate did not rescind the Guaranty but only held that the condition precedent had not occurred and, therefore, Bilanzich had no liability. Moreover, even if it were assumed that the district court's decision had the effect of rescinding or voiding the Guaranty, Bilanzich would still be entitled to recover attorney's fees under the reciprocal attorney's fee statute. Both Bilanzich's Complaint and the JDL Action were "based upon" a written contract that allows at least one party to recover fees. It is not necessary to recovery under this statute that the lawsuit seek to enforce a written contract even though the JDL Action did so.

VI.

ARGUMENT

A. THE GUARANTY CLEARLY CONTAINS AN ATTORNEY'S FEES PROVISION.

Pursuant to the Guaranty, Bilanzich agreed to “absolutely guarantee payment . . . of a Promissory Note” executed by REI with a current principal balance at the time the Guaranty was executed of \$2 Million. The Guaranty contained the following attorney’s fees provision:

This Guaranty includes all principal, interest, costs, expenses, and attorney’s fees incurred in collection of the Note and realization of the security.

In the court below, the Lonettis and JDL erroneously argued, without any supporting authority, that this provision only obligated Bilanzich to pay attorney’s fees incurred by the Lonettis and JDL in litigating with REI on the Note and did not obligate Bilanzich to pay attorney’s fees incurred by the Lonettis and JDL in attempting to recover on the Note by litigating with Bilanzich to recover on the Guaranty of the Note.

However, because Bilanzich guaranteed payment of the Note, the attorney’s fees incurred by JDL in seeking to recover on the Guaranty were in fact fees incurred in collecting the Note. Thus, in *Ashland Oil, Inc. v. Cardinal Fuels, Inc.*, 872 F.2d 416, 1989 WL 28404

(4th Cir. 1989), the court affirmed a judgment for attorney's fees where the guarantee agreement provided that the guarantor would pay "reasonable attorney's fees incurred in collection of the note." *Id.* at *2. [Quotation Omitted]

The Lonettis and JDL clearly understood this fact that they were entitled to recover attorney's fees from Bilanzich on the Guaranty if they prevailed. In JDL's complaint seeking to recover on the Guaranty, JDL prayed for recovery of attorney's fees. [R. 2501] Similarly, in their answer to Bilanzich's claims with respect to the Guaranty, the Lonettis prayed for attorney's fees. [R. 85]

In addition, the Note itself obligated REI to pay attorney's fees incurred by the Lonettis in collecting the Note. Thus, REI was liable for any fees incurred to recover on the Guaranty of the Note. Because Bilanzich was liable for all of REI's obligations under the Note, Bilanzich was also liable for the fees incurred in collecting the Guaranty of the Note. *Connecticut Nat'l Bank v. Foley*, 560 A.2d 475 (Conn. App. 1989) involved this very situation. In *Foley*, the guarantor agreed to pay "any other charges, fees or expenses owed by the borrower under the loan agreement." *Id.* at 478 n.2. The note stated that the borrower was obligated to pay "reasonable attorney's fees incurred in collection of all or part of his note." *Id.* at 478. [Quotations Omitted] The court held that because the borrower was obligated to pay any attorney's fees incurred in collecting the note,

including attorney's fees incurred in collecting on the guarantee of the note, the guarantor
was likewise obligated to pay such attorney's fees.

Accordingly, the Guaranty clearly contained an attorney's fee provision which would have obligated Bilanzich to pay attorney fees had the Lonettis and JDL prevailed. Therefore, as the prevailing party, Bilanzich was entitled to recover his attorney's fees under Utah Code Ann. §78-27-56.5, which provides:

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986 where the provisions of the promissory note, written contract, or other writing allow at least one party to recover attorney's fees.

**B. THE FACT THAT THE DISTRICT COURT FOUND THE GUARANTY
TO BE UNENFORCEABLE BECAUSE THE CONDITION PRECEDENT TO
LIABILITY HAD NOT OCCURRED DOES NOT DEFEAT BILANZICH'S
RIGHT TO RECOVER ATTORNEY'S FEES.**

Judge Shumate's order denying Bilanzich's motion for attorney's fees and costs does not expressly state the basis for the ruling. However, based on his statements at the summary judgment hearing and his request for supplemental briefing, Judge Shumate presumably denied the motion on the basis that his prior ruling that the Guaranty was unenforceable because the condition precedent of REI obtaining a \$3.5 Million

construction loan had not occurred also rendered the attorney's fees provision unenforceable. It is respectfully submitted that this ruling was in error.

In their supplemental memorandum in opposition to the motion for award of attorney's fees, the Lonettis and JDL relied upon the Supreme Court's decision in *BLT Investment Co. v. Snow*, 586 P.2d 456 (Utah 1978) for their argument that Bilanzich was not entitled to recover attorney's fees because the court had determined the Guaranty was unenforceable. *BLT* is clearly distinguishable.

In *BLT*, plaintiff sued for specific performance of a contract. The defendant sought rescission of the contract. The trial court granted rescission based upon a failure of a condition precedent to the effectiveness of the contract and awarded the defendant attorney's fees pursuant to a contractual provision. The Supreme Court affirmed the rescission order, but reversed the award of attorney's fees. The Court stated that a "party may not avoid the contract and, at the same time, claim the benefits of the provision for attorney's fees." *Id.* at 458.

In the case at bar, Bilanzich did not obtain an order rescinding the contract.² Bilanzich's defense did not go to whether the Guaranty contract had been formed and Judge Shumate's order did not void that contract. Instead, Bilanzich defended on the

² Bilanzich's rescission claim was dismissed by stipulation of the parties. *Cf. Bennett v. Baugh*, 985 P.2d 1282, 1284 (Or. 1999) (attorneys fees properly awarded where defendant sought rescission but judgment did not award it).

basis that he had no liability on the Guaranty because a condition precedent to his liability had never occurred. The failure of a condition precedent relieves a party of any obligation to perform under the contract. [R. 2409; 2421; 2435] *Kinsman v. Kinsman*, 748 P.2d 210, 213 (Utah App. 1988); *Downtown Athletic Club v. Horman*, 740 P.2d 275, 281 (Utah App. 1987). There is nothing inconsistent with Bilanzich arguing that he had no liability under his Guaranty because the \$3.5 Million construction loan was never obtained and Bilanzich arguing that he is entitled to recover attorney's fees incurred in establishing that he has no liability under his Guaranty and defending JDL's claim on the Guaranty. Further, *BLT* was decided before the enactment of Utah Code Ann. §78-27-56.5 which does not limit a party's entitlement to attorney fees based upon the nature of the claim or defense asserted by the party so long as the lawsuit is based upon a written contract which provides for attorney fees.

Moreover, even if it were assumed for argument that the district court's decision had the effect of rescinding or voiding the Guaranty, Bilanzich would still be entitled to recover attorney fees under Utah Code Ann. §78-27-56.5. That statute provides for attorney fees to the prevailing party in any action "based upon" a written contract that allows at least one party to recover attorney fees. It is not necessary to recovery under this statute that the lawsuit be to enforce a written contract. Certainly, JDL's complaint for recovery on the Guaranty and Bilanzich's claim for declaratory relief that he was not

liable on the Guaranty were civil actions “based upon” a written contract providing for attorney’s fees. By obtaining a judgment that he was not liable on the Guaranty on the basis that the Guaranty was unenforceable because the condition precedent to liability had not occurred, Bilanzich was undeniably the prevailing party in a suit based upon the written Guaranty.

In *Anglin v. Contracting Fabrication Machining, Inc.*, 2001 UT App. 341, ¶11, 37 P.3d 267, this court recognized that the purpose of this §78-27-56.5 was to “creat[e] a level playing field for all parties to a promissory note.” See also *Hsu v. Abbata*, 891 P.2d 804, 809 (Cal. 1995) (California’s reciprocal attorney’s fees statute was “enacted to establish mutuality of remedy where a contractual provision makes recovery of attorney’s fees available for only one party, and to prevent oppressive use of one-sided attorney’s fees provisions”). Had JDL and the Lonettis prevailed, they would have been entitled to attorney fees as they alleged in their pleadings. Having defeated their claims, and established that he was not liable on the Guaranty, Bilanzich should be awarded his attorney’s fees to create a level playing field.

Although Bilanzich has been unable to find any Utah cases directly on point, courts in other states have held that attorney’s fees were properly awarded under reciprocal attorney fee statutes even when rescission of a contract was obtained.

In *Bovard v. American Horse Enterprises, Inc.*, 247 Cal. Rptr. 340-346 (Cal. App. 1988), the court held that under California's reciprocal attorney's fees statute, a party prevailing on a claim that a contract is inapplicable, invalid, unenforceable, or non-existent is entitled to recover attorney's fees if the opposing party would have been entitled to recover attorney's fees had it prevailed unless the contract is held unenforceable because of illegality. Likewise, in *Yuba Cypress Housing Partners, Ltd. v. Area Developers*, 120 Cal. Rptr.2d 273, 277 (Cal. App. 2002), the court held that a plaintiff who successfully voided a contract was nevertheless entitled to recover attorney's fees under the attorney's fee provision in the contract. Thus, in *Hsu v. Abbata*, *supra*, the California Supreme Court stated:

It is now settled that a party is entitled to attorney's fees under Section 1717 even when the party prevails on grounds the contract is inapplicable, invalid, unenforceable or non-existent if the other party would have been entitled to attorney's fees had it prevailed. 891 P.2d at 808 [Quotations and Citation Omitted]

To the same effect, see Carey v. Wallner, 725 P.2d 557, 562 (Mont. 1986) (under Montana's reciprocal attorney's fee statute, plaintiff was entitled to recover attorney's fees and costs incurred in successfully rescinding a purchase contract); *Hackney v. Sunset Beach Investments*, 644 P.2d 138, 142 (Wash. App. 1982) (the court reversed the trial court's refusal to award the purchasers attorney's fees incurred in successfully bringing a

rescission action under the Washington reciprocal attorney's fees statute which applied to "any action on a contract" that provided for attorney's fees).³

JDL and its sole members, the Lonettis, attempted to recover millions of dollars from Bilanzich on his Guaranty. Had they prevailed, they would have been entitled to recover the attorney's fees for which they prayed. However, Bilanzich successfully proved he was not liable on the Guaranty. Bilanzich is therefore entitled to recover attorney's fees under §78-27-56.5.

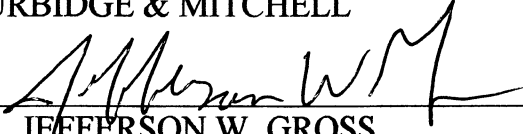
CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order denying attorney fees should be reversed and the case remanded with instructions that Bilanzich is entitled to an award of his reasonable attorney fees in an amount to be determined by the district court.

³ The only contrary authority Bilanzich has found is *Autolend IAP, Inc. v. Auto Depot, Inc.*, 11 P.3d 693, 697 (Or. App. 2000), in which the court held that Oregon's former reciprocal attorney fees statute did not sanction an award of attorney's fees to a defendant who successfully proved that a contract did not exist. However, the Oregon Legislature later amended the statute in 2001 to make the statute truly reciprocal by making it applicable to any suit "in which a claim is made based on a contract." This revised statute is more analogous to Utah's statute which permits an award of attorney's fees in any action "based upon" a written agreement providing for attorney's fees.

DATED this 14th day of March, 2005.

BURBIDGE & MITCHELL

By 
JEFFERSON W. GROSS


Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing **APPELLANT'S BRIEF (CORRECTED)** was mailed to the following:

Terry Wade
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St. George, Utah 84771-0400

Dated this the 15 day of March, 2005.



ADDENDUM A

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

DEC 15 AM 8:24

BY SLM

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

MICHAEL T. BILANZICH,
Plaintiff,

v.

JONES, WALDO, HOLBROOK &
McDONOUGH, a professional
corporation, D. WILLIAMS RONNOW,
an individual, REESE'S ENTERPRISES,
INC., a Nevada corporation, JOHN
LONETTI, an individual, EUNES I.
LONETTI, an individual, CAMBRIDGE
CAPITAL GROUP, INC., a Delaware
corporation, CAMBRIDGE HOLDINGS,
INC., a Delaware corporation, JOHN C.
HOWE, an individual, FOOTBRIDGE
LIMITED TRUST, a Bermuda corporation
OLD HILL PARTNERS, a partnership and
DOES IV through X,
Defendants.

**ORDER GRANTING PARTIAL SUMMARY
JUDGMENT**

Civil No. 010500411

Judge Shumate

On November 18, 2003, at 10:30 a.m., Plaintiff Michael T. Bilanzich's ("Bilanzich")

Motion for Partial Summary Judgment came on for hearing in the above-entitled Court, the

Honorable James L. Shumate presiding. Jefferson W. Gross of Burbidge & Mitchell appeared on behalf of Bilanzich; Brent M. Brindley of Durham Jones & Pinegar appeared on behalf of Defendants John Lonetti and Eunes Lonetti, and Defendant/Consolidated Case Plaintiff JDL Holdings, L.C.; Edwin C. Barnes of Clyde Snow Sessions & Swenson appeared on behalf of Defendants D. Williams Ronnow and Jones Waldo Holbrook & McDonough; J. Gregory Hardman of Snow Jensen & Reece appeared on behalf Defendants Footbridge Limited Trust, Old Hill Partners and John C. Howe; and Mitchell R. Barker appeared on behalf of Defendants Cambridge Capital Group, Inc., Cambridge Holdings, Inc., and Eric Cummings.

After considering the arguments of counsel, both written and oral, after considering those evidentiary materials submitted by the parties pursuant to Utah R. Civ. P. 56(e), after taking judicial notice of those matters and pleadings filed in *In Re Reeses Enterprises, Inc.*, Case No. BK-S-0019134-RCJ in the United States Bankruptcy Court for the District of Nevada, and having considered as true those materials facts identified by Bilanzich in his moving papers which were not disputed by Defendants pursuant to Rule 4-501 of the Utah Rules of Judicial Administration, the Court determines and finds that there is no genuine issue as to any material fact which precludes entry of partial summary judgment as prayed by Bilanzich.


In particular, and among other things, the Court determines that there is no genuine issue of material fact as to the non-completion of either Alternative One or Two of the September 20, 1999, Term Sheet signed by Bilanzich and Defendants John Lonetti and Eunes Lonetti (the "Term Sheet"). The failure of an express condition precedent set forth in the Term Sheet renders Bilanzich's written guaranty unenforceable regardless of whether or not the guaranty was delivered to Defendants John Lonetti and Eunes Lonetti out of escrow. In addition, the affidavit filed by Defendant John Lonetti in the United States Bankruptcy Court for the District of Nevada for the purposes of successfully obtaining leave from the automatic bankruptcy stay to foreclose on security is a compelling admission that the express condition precedent in the Term Sheet did not occur.

Accordingly, Bilanzich is granted partial summary judgment in his favor on his Seventh Claim for Relief in his Second Amended Complaint and on all claims made against him in the Complaint of JDL Holdings, L.C. (Case No. 010501650, which was consolidated with this action on November 1, 2001).

IT IS SO ORDERED.

DATED this 12 day of December, 2003.

BY THE COURT:



Honorable James L. Shumate
Fifth District Court Judge

CERTIFICATE OF SERVICE

On the date below written, the undersigned hereby certifies that a true and correct copy of the foregoing **ORDER GRANTING PARTIAL SUMMARY JUDGMENT** was mailed with all first-class postage pre-paid to:

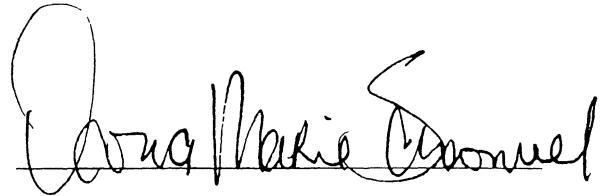
Brent M. Brindley
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192 East 200 North, Third Floor
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St. George, Utah 84771-0400

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2870 South State Street
Salt Lake City, Utah 84115

V. Lowry Snow
SNOW, JENSEN & REECE
134 North 200 East, Suite 302
St. George, Utah 84770

DATED this the 3RD day of December, 2003.

A handwritten signature in black ink, appearing to read "Dana Marie Samuel", written over a horizontal line.

\\Dana\My Documents\MyFiles\Bilanzich\JonesWaldo\Pleadings\OrderGrantingSJ wpd

ADDENDUM B

Order deny motion for attorneys fees

2004 JUN 23 PM 1:03

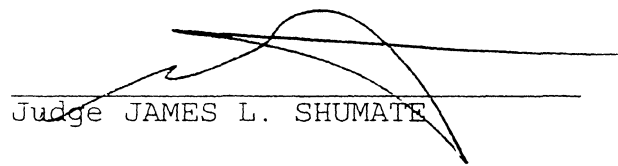
WASHINGTON COUNTY

FIFTH DISTRICT COURT-ST GEORGE COURT
WASHINGTON COUNTY, STATE OF UTAH

MICHAEL T BILANZICH,	:	
Plaintiff,	:	PLAINTIFF'S MOTION FOR ATTORNEY
	:	FEES
	:	
vs.	:	Case No: 010500411
	:	
JONES WALDO HOLBROOK & MCDON,	:	Judge: JAMES L. SHUMATE
Defendant.	:	Date: 06/22/2004

Clerk: loris

Plaintiff's Motion for Attorney's Fees is Overruled and Denied.
Hearing of June 29, 2004 is Ordered Stricken.



Judge JAMES L. SHUMATE

Case No: 010500411
Date: Jun 23, 2004

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010500411 by the method and on the date specified.

METHOD	NAME
Mail	JEFFERSON W GROSS ATTORNEY PLA 215 S STATE ST STE 920 SALT LAKE CITY, UT 84111-2311
Mail	TERRY L WADE ATTORNEY DEF 192 E 200 N 3RD FLOOR ST GEORGE UT 84770

Dated this 23 day of June, 2004.



Deputy Court Clerk