

IN THE UTAH COURT OF APPEALS

In The Matter of The Estate of Homer Engle

KATHY ENGLE,
Petitioner / *Appellant*

v.

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

PUBLIC

APPEAL Case No. 20170382-CA

BRIEF OF APPELLEE, JUDY ENGLE

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

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ORAL ARGUMENT REQUESTED

List of All Parties to the District Court Proceedings

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

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

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

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

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

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

Appellate Court proceedings:

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

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

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

Continued:

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

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

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Appellee, Judy Engle's Statement In Support of Appellant's Brief

Appellee, Judy Engle hereby submits her Appellee Brief regarding the Appeal filed by Appellant on May 8, 2017. The Appellee's Brief is in support of Appellant's Brief filed on April 2, 2018, with the Utah Court of Appeals. Appellee, Judy Engle concurs with and supports the Appellant's Brief. Appellee, hereby supplements the Appellant's Brief with additional case law, additional citations, additional facts and additional argument for the seven issues addressed in the Appellant's brief as follows:

Introduction

1. Isaac 'Paxman" on behalf of his firm, Paxman Law, represented the siblings Judy and Roy Engle's during the inception of probate, November 12, 2010 and withdrew as counsel to Judy and Roy on May 28, 2014. [R.02164]

2. Paxman assisted Counsel Gardner in preparing a proposed agreement. [R.14233]

3. Counsel Rich "Gardner" on behalf of Van Cott Bagley, create the proposed settlement agreement, and its terms. Counsel Gardner circulated his offer email setting out the terms of the proposed settlement. In the email Gardner highly encouraged the three siblings to sign the deal. [R.14233]

Gardner stated, "*I have purposely left out mentioning any specific items even though I know they are important to parties. I simply don't think we will ever reach an agreement if we try to work out the specifics today*". [R.14226]

4. A telephonic conference [R.13836] was held with the D.Court, the three siblings,

Wende Throne and Counsels Paxman and Gardner. Paxman instructed his clients Judy and Roy to take the deal. Paxman was fully aware of the intent of the parties, the terms of settlement, and the risks of becoming a priority two claimant or the benefits of him becoming an administrative priority.

5. The D.Court ordered a transcript of the September 3, 2013 hearing [R.15377] for all the parties and counsel to verify the hard copy of the Settlement, which the D.Court order Counsel Gardner to prepare for court approval.

6. Van Cott further substantiated the terms of settlement and the intent of the parties in VanCott's May 23, 2014 [R.00455] memorandum, VanCott also define and clarified its position as a priority 2 claimant of the estate pg.2-5 [R.00456-00459]

7. During, the February 21, 2017 hearing to close out the probate VanCott, Steve Sloan stated, Mayfield "bootstrapped" the settlement regarding YHG's attorney fees. [R.10924, pg 103, lines 2 -4]

8. January 30, 2017, Isaac Paxman submitted an Opposition to Special Administrator's amended Petition for settlement of estate etc. [R.07142-07142]

9. Paxman confirmed by his own statements: *if it is not written in the settlement, it cannot be enforced by the terms of settlement.* [R.07143]

10. Paxman further stated; *It is Paxman's position that to receive payment of his attorney fees through the settlement agreement as a priority 2 claimant, he need not substantiate his fees the way an attorney for the Special Administrator would be required to.* After all, the parties in the settlement Agreement, including the Special Administrator, already deemed Paxman's fees to be "administrative expenses" [R.14218] of the estate".....Id.at 6. Under all circumstances, the

court would be well within its authority to take the escrow funds to which no probate party has valid claim, under the terms of a settlement they all entered into, and direct them entirely to Paxman.

11. Paxman stated in his Opposition; the parties entered into a global settlement September 3, 2013 that was duly approved by the court. [R.07143] and because the settlement did not address the court ordered rents of \$800.00, that was in a different court on an eviction matter against property which was in the probate case.

STATEMENT OF ISSUES

Appellee concurs with Appellant's Statement of issues and Standard of Review and supplements the issues:

Issue 1: Did the District Court's April 7, 2017 "Findings of Facts" and Conclusion of Law and the April 12, 2017 "Order" Closing Probate were consistent with the terms of the Court approved binding Settlement?

Whether, the Findings of Facts and the Order are enforceable final judgments free of deficiencies; errors; ambiguities are within the Jurisdiction of the District Court to enforce the terms of Settlement pursuant to Utah Code Ann. § 75-3-1102(3).

Whether there was an Abuse of Discretion?

Standard of Review: Constitutional issues, including questions regarding due process, are questions of law that the appellate court reviews for correctness. *Neese v. Utah Board of Pardons and Parole*, 2017, 2017 UT 89, 2017 WL 6397082.

The April 7, 2017 Findings of Facts and the April 12, 2017 Final Order to Close the Probate reviewed for correctness to be consistent with the terms of Settlement?

Issue No. 2: Whether there was an Abuse of Discretion?

Issue 3(a): Hi-Country Estate's Phase II, HOA Judgments and HOA delinquent Assessments. Whether there was an Abuse of Discretion?

Issue 3(b): Isaac's Paxman's attorney lien on the Cherokee Property.

Whether there was an Abuse of Discretion?

Issue 4: Kathy's Priority 1 Claim

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

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

Whether, there was an abuse of Discretion?

Issue 6: Whether, there was an abuse of Discretion?

Issue 7: Where the District Court erred closing probate prior to ordering the Special Administrator to fully administer the Estate where there are no actions concerning the estate is pending in "any court" pursuant to Utah Code Ann. 75-3-1007

that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the *personal representative appears to have fully administered the estate in question.*

Whether, there was an abuse of Discretion?

Standard of Review is a correctness standard and supporting Case Law is the same as stated in Appellant's brief.

Preservation: These issues are preserved the D.Court's April 7, 2017 Findings of Facts and the April 12, 2017 Order to Close Probate and through the terms of Settlement, oral arguments during the February 21, 2017 hearing to close out the Estate and the transcript thereof and through various hearing transcripts, various motion, objections filed on the Probate's docket filed in the 3rd District Court, Case No. 103901948.

STATEMENT OF CASE

I. Statement of Facts:

Issue No. 1: The Finding of Facts and the Order closing probate were inconsistent with the terms of the Global Settlement. The D.Court's ruling lacked jurisdiction. Statutes were inapplicable as applied. Attorney fees were paid to YHG when additional attorney fees were not provided in the terms of Settlement and the Estate is insolvent. Creditors were not paid when there were \$70,883.58 funds available to pay Kathy's Priority 1 claim balance of \$11,759 and the balance to Pay Priority 2 Claim as designated per the terms of Settlement. The quiet title orders were not enforced as granted. The Findings of Facts included errors and is deficient. The Findings of Facts and the Final Order to Close Probate did not resolve all actions (including judgments and liens) concerning the estate pending in any court. The Special Administrator has not

fully administrated the Estate when there are pending actions in any Court. Utah Code Ann. § 75-3-1007.

Issue No. 2: Quiet Title

Although the D.Court granted quiet title on its April 12, 2017 Order to Close out Probate [R.08421 ¶ 2], the Order was incomplete and did not included the Quiet title order or the Deeds transferring property to the Parties as stated therein.

The deeds were attached in Exhibit A to the Findings of Facts [R08396 to R.08410] were not attached to the April 12, 2017 Order as stated on the order. [R.08421 ¶1]

Pursuant to the April 12, 2017 Order:

The executor *deeds conveying the real properties, as identified in Exhibit A*, to Kathy, Judy Engle, and Wende Throne respectively are approved and confirmed.

The D.Court approved deeds which were not attached in Exhibit A to the Order. The Order is incomplete without a quiet title order and corrected Findings and Facts. The County recorders rejected all the Deeds without a quiet title order, without deeds, legal descriptions with the designated owners to identify which property was distributed to which party. The Order was unenforceable in the real property distributions and for recordation.

Finding of Facts was incomplete. Quiet title was not stated on the document nor on deeds. The Settlement agreement stated *title will be conveyed to each party in whatever form they prefer*. This could be *quiet title*. Distribution to a Party will be *free and clear of any claims of the Estate* or any other Party. [R.14225]

The D.Court's authority governing the enforcement of Court approved binding

Compromises is mandated under Utah Code Ann. §75-3-1102(3)

Did the D.Court abuse its discretion to modify a side agreement not a part of the Court approve binding Settlement in this probate.

Issue No. 3: The terms of Settlement provided the real properties are distributed free and clear of any claims of the Estate or any other Party. [R.14225], which included Priority 2, attorney liens or claims and the Hi-Country Estates, judgments, HOA current and delinquent assessments. Properties were not distributed to Judy and Kathy free and clear of any claims of the Estate or any other Party:

Issue No. 3(a).

Pursuant to Utah Code §75-3-803, the HOA is forever barred from collecting on its claims for HOA fees and its two default judgments. These judgments were filed in another court on August 26, 2011, “after the death” of the Decedent on November 21, 2010 and were not docketed on the probate of the Decedent, but were in the name of Decedent. The Default judgment were not recorded and not liens have been filed on the Estate or parties, thereof.

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

Issue 3(b):

Settlement provides payment of attorney liens and prevents attorneys, as a creditor of the Estate from attaching to a party’s distribution, especially when the Cherokee is titled in the Estate’s name.

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

Issue No 4 – Kathy’s Priority 1 Claim balance of \$11,759.36

The parties agreed the amount of \$15,000 was increased to \$20,000 payable to Kathy Engle as a Priority 1 Claim under the Global Settlement terms. [R.14237 & R.14220]

The claim could be paid from any available funds from the Estate, including proceeds from the sale of the tangibles. [R.14220 and R.14237] “Claims in each class are paid out of probate assets, meaning Payson + Price + tangibles”.

The Settlement provided Kathy’s pro se litigation costs are administrative expense:

“Whereas, Kathy, who is pro se in this matter, has also incurred litigation costs, which the Parties agree are in the nature of administrative expenses with respect to the Estate.” [R.14218]

Kathy had three claims against the Estate. The (1) Priority 1 claim for litigation costs balance owing of \$11,759.36; (2) the reimbursement claim for paying off McKinley Contract (a Priority 1 claim re: the Crystal Property) and (3) a claim for compensation for the management of the real properties and the Decedent’s tangible personal property (not a priority 1 claim).

Kathy, Judy, Roy and Wende had claims for compensation, which were separate from their priority 1 claims.

The D.Court’s April 7, 2017 Finding of Facts, denied Kathy’s Priority 1 claim, stating there are not funds available to pay any other claim after attorney fees are paid. [R.08389, ¶ 45]

This clearly is an Abuse of Discretion.

Issue No. 5: Kathy Engle’s Opposition to the SA’s Petition to Close Probate, ruled untimely. The Opposition was timely emailed on January 30, 2017 to the relevant parties and FedEx to the Court. However, the Opposition was not docketed by the court’s

clerk until February 1, 2016. The Court's clerks have 1 to 2 days to docket papers after they receive the papers and longer for a holiday. Attorney's have an advantage with online filing and can file and have their papers docketed instantaneously.

There is a due process issue, when the law is not equal in rights.

Issue No. 6: YHG's Attorney Fees.

Issue No. 7: SA's Accounting, transfer of real properties untimely with defective deeds. Wende did *not* protect and preserve the Estate's assets nor did she effectively manage the State Street Property. Pursuant to UT Code §75-3-708 and §75-3-714.

An accurate accounting has not disclosed all rental income, and revenue sources, which was documented by Kathy Engle. [R.7393]. Excessive legal fees included attorney fees charged to the Estate to defend Wende Throne individually during the coin trial.

[R.5824], Affidavits of Wende, stating coins her personal property. [R.5558]. Kathy's objection to the coins. [R.5765], Steve Mayfield's affidavit of legal fees heard during the February 21, 2017 hearing to close probate.

The SA has not fully administered the Estate when there are pending matters in "any court" such as the HOA Judgments, liens or ongoing probate issues. UT Code §75-3-1007

II. Procedural History:

2/1/16 Kathy filed Objection to SA's petition to close Estate [R.7393]

4/26/16 Kathy filed record on HOA Default Judgment [R.3357]

4/26/16 Kathe filed HCEII deed report prior to Decedent's Death [R.3507]

5/12/17 Kathy filed Objection to SA's petition to close Estate [R.8438 -8568]

Issue #6 – YHG's Attorney Fees – The following are YHG's requests for legal fees and Objection filed Opposing the legal fees. The legal fees were excessive and not in the best of the estate. They included a conflict of interest with Wende, individually and real estate transactions, which a real estate was handling.

10/30/15 Affidavit of Counsel Mayfield – Attorney fees [R.1791]

11/10/15 Response to attorney fees – Judy [R.1791]

11/13/15 Objection and response to attorney fees [R.1806]

2/24/16 Approval of attorney fees [R.1979]

3/4/16 Motion Order show cause why Mayfield should be denied attorney fees

Filed by Judy [R.1998 -2136]

3/9/16 Affidavit of Mayfield for attorney fees [R.2254]

3/23/16 Two Opposition and Objection to attorney fees [R.2428] [R.2480]

3/31/16 Order RE attorney fees [R.2580]

June 21, 2016 Affidavit of Mayfield for attorney fees [R.4593]

June 28, 2016 Objection to Mayfield attorney fees, by Kathy [R.4667]

August 29, 2016 Objection to Mayfield attorney fees, by Kathy [R.5257]

October 10, 2016 Order on Mayfield attorney fees [R.5545-5551]

December 29, 2016 Petition Settlement Estate / attorney fees Mayfield [R.5948]

February 24, 2017 Affidavit of Mayfield attorney fee [R.8119]

Filed after Estate was closed on February 21, 2017

March 6, 2017 Object to Mayfield attorney fees [R.8187]

Issue No. 7 - The Special Administrator's accounting – The following includes a history of contempt on Wende and accounting ordered by the Court, which Wende did not fully comply. There was no substantiate of receipts, missing bank records. Kathy's oppositions include spread sheets showing missing funds and Estate checks written by Wende to herself. Funds never recovered.

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

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

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

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

March 1, 2013, Motion was filed to suspend the duties of the SA [R. 13084]

April 26, 2016, Wende file accounting for state street. [R.2650] [R.2967]

Note: accounting not what the Court ordered. See Kathy's objections.

March 15, 2013 Emergency Motion to remove Wende in the alternative to suspend her duties as SA and management of the real properties and Wende not providing bank statement for Wells Fargo and Cyprus Credit Union. [R.13102]

3/4/16, Memorandum/Motion Wende to Produce Accounting Records and documents for the State Street – filed by Kathy. [R.2183]

March 19, 2013 – Certificate of Service of Various Documents (served on Jan 29, 2013 hearing to Kathy Engle and Isaac Paxman) Documents from Wende. [R.13123]

March 22, 2013 Emergency interim Order Addendum – Utility Companies, Zions Bank, Wells Fargo Bank, and Cyprus CU in RE: Contempt. Wende Throne [R.13127] [R.13130], [R.13133] [R.13136]

April 18, 2013 Order and Subpoena Duces Tecum Beehive CU, Primary Children CU, Mountain America CU, Lowes, UT State Department of Motor vehicle, Questar Gas, Homer Depot, [R.13260 to 13280]. RE: Contempt on Wende Throne.

May 17, 2013 Order approving payment of Payson property taxes out of Cherokee Lane Proceeds.

April 28, 2016 Estate Accounting transaction detail filed [R.3749]

Note: not what Court ordered – no substantiation, no receipts.

May 17, 2016, Objection to Mayfield' attorney fees [R.3795]

May 24, 2016, Objection to Mayfield attorney fees by Kathy [R.3973]

June 7, 2016, Opposition to Wende's accounting filed by Kathy [R.4424 to R.4508]

II. Disposition:

A hearing was held on February 21, 2017 to close out the Estate pursuant to the Global Settlement signed on November 14, 2013 [R.142121, Add. H]. The Court has jurisdiction under Utah Code Ann. § 75-3-1101 and § 75-3-1102(3). See Appellant's Add. G for the transcript of the August 21, 2017 hearing [R.10924]

The Court's final rulings to close out the Probate included the Finding of Facts and Conclusions of Law, filed on April 7, 2018 [R.08380] [See Appellant's Add F] and the Final Order Closing Probate, filed on April 12, 2018 [R.08420] [Appellant's Add E]. The disposition of Court's rulings for those two orders, regarding the seven issues on appeal, are as follows:

Issue No. 1 – U.S. Constitutional Article IV, Rights, Due Process, Property Rights, Fairness Approved Compromises UT. Code Ann. § 75-3-1101 and § 75-3-1102(3)

Pursuant to the Court's April 7, 2017 Finding of Facts [Add F]

The Court finds (a) that the \$70,883.58 in funds held by the Estate should be paid to satisfy the administrative expenses under Utah Code §75-3-805(b) in the form of attorney fees incurred by YHG; and (b) that the remaining balance should be equally split the partially payment of attorney fees incurred by Paxman and VanCott, which the Court finds to be properly classified as administrative expenses under Utah Code §75-3-805(b) to the extent they are paid under the instant order. [R.08389, ¶ 46]

The estate of Homer Engle is settled, allowed, and *approved as stated herein.* [R.08392, ¶ 7]

The assets to be distributed to the parties pursuant to the terms of the Settlement. [R.08382, ¶ 10] [R.08392-08392 ¶ 10]

To the extent that prior orders of this Court may be deemed inconsistent with these Findings, Conclusions and Order, such *prior orders are superseded and amended by this order.* [R.08393, ¶ 11]

Issue No. 2 - Distribution of Properties, Quiet Title -

Pursuant to the Court's April 7, 2017 Finding of Facts [Add F]

The executor deeds conveying the real properties, as identified in Exhibit A, to Kathy Engle, Judy Engle, and Wende Throne respectively are approved and confirmed. [R.08392, ¶ 1]

To the extent that prior orders of this Court may be deemed inconsistent with these Findings, Conclusions and Order, such *prior orders are superseded and amended by this order.* [R.08393, ¶ 11]

Pursuant to the Court's April 12, 2017 Order [Add. E]

Counsel for the Special Administrator prepared proposed deeds as ordered by the Court. Copies of the proposed deeds are attached as Exhibit A. [R.08421 ¶ 5, ¶6]

The real properties, as identified in Exhibit A, are transferred to Kathy Engle, Judy Engle, and Wende Throne respectively, *and each shall have quiet title to the respected real property as provided in the designating deed.* [R.08421, ¶ 2]

The problem, the designating deed, as stated in the April 12, 2017 Order, did not state quiet title, like the Payson Property deeds. And the deeds were not attached in Exhibit A on the April 12, 2017 Order. Lot 124 legal description was incorrectly stated preventing recordation. The E direction was not stated on the Deed regard the Thence N 11° 56' 00 [R.08409]. The "E" direction was not included on the deed.

The correct legal description for Lot 124 with the "E" direction stated, is attached to the Settlement Agreement which is: Thence N 11° 56' 00 E". [R.14232]

Issue No. 3 – Property Distribution – free and clear of Estate creditors and any other party.

Issue No. 3(a) – Hi-Country Estates Phase II, Home Owners Association (HOA)

Liens Judgments and encumbrances on three parcels of raw land, No. 123, No. 124 and No. 130.

Pursuant to the Court April 7, 2017 Finding of Facts [Add F]

The Association did not object to the approval of the Settlement and agrees it is bound by it. [R.08388, ¶ 39] and ¶ 40 no payment for the judgment lien in Judge Medley's Court, dated August 26, 2011, Case No. 070918217.

The judgment in Case No. 070918271, is in error, awarded \$87,411.86 and \$44,594. The judgment was served on Ms. Kreeck while she was serving as counsel for the Estate of Homer Engle prior to its entry by the Court. There is no

record that Ms. Kreeck filed any objection to the form of judgment containing the serious error. [R.08388, ¶ 41, ¶ 42]

Kathy Engle filed an Emergency Petition to Stay the Final Order in Closing the Estate to consolidate Case No. 070918272 with the instant case. The Petition is not properly before this Court... The matter is to be addressed by the Judge in Case No. 070918272 by filing an independent action URCP Rule 60(d). [R.08390, ¶ 49]

The Hi-Country judgment lien from Case No. 070918272... is not affected by this Court's order....No funds are available from the Estate to pay the H-Country claim and the Hi-Country did not object to the Settlement Agreement that effectively subordinate payment of the Hi-Country claim. [R.08392 ¶ 6] [R.08393 ¶ 14]

The D.Court ruled the two judgment are in serious error, whereas they exceeded the amount.

URCP Rule 54(c)(2) provides, "A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment".

Issue No. 3(b) – Attorney liens on the Cherokee Property filed by Isaac Paxman, former counsel to Judy and Roy Engle.

Pursuant to the Court April 7, 2017 [Add E] [R.08386 ¶ 33] [R.08387 ¶ 34] [R.08389, ¶ 46] [R.08390 ¶ 47] [R.08392 ¶ 4]

Court's ruling summarized as: Paxman Law's attorney fees are a priority 2 claim, the fees are reasonable and payable under Utah Code 75-3-805(b) in the amount of \$5,284.71, after payment of attorney fees to YHG. There are no other funds available to pay the attorney fees in full.

The Court's authority is mandated under UT Code Ann 75-3-1102(3). The ruling is inapplicable as applied and must be reversed. There was no court ruling to allow any attorney liens on any of the real property distribution as stated in the Settlement.

Issue No. 4 – Kathy Engle’s Priority 1 claim, for Litigation Costs & Expenses parties agreed are in the nature of administrative expenses [R.14218].

The D.Court did not pay Kathy’s \$11,759.36 Priority 1 Claim balance or Kathy’s claim for Compensation [R.08382 ¶ 9(a)] [R.08389 ¶ 45]

Pursuant to the Court Finding of Facts, April 7, 2017 [Add F]

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

- a. *Priority 1 claim of Kathy Engle in the amount of \$11,759.36*
- b. All remaining Priority II claims to the extent of the available or remaining proceeds from the sale of the Payson Property.
[R.08382, ¶ 9(a)(c)]

Because of lack of money, there are insufficient funds to pay for the expenses of attorney fees incurred by the Estate beyond amounts awarded in this Order, or to pay the claims of Wendie Throne, Judy Engle, Kathy Engle, and Roy Engle *after the funds of the Estate are used to pay attorney fees under Utah Code 75-3-805(b)*. [R.08389, ¶ 45]

There are no funds remaining in the Estate to pay additional compensation. Thus, the Court does not award any payment to Wendie Throne, Judy Engle, Roy Engle or Kathy Engle. [R.08390, ¶ 48] [R.08392, ¶ 5]

Issue No. 5 – Kathy Engle’s Opposition to Closing the Estate.

Pursuant to the Court Finding of Facts, April 7, 2017 [Add F]

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

Issue No. 6 – YHG attorney fees, dual Representation for Wendie Throne individually and as the Special Administrator for the Estate. Attorney fees paid under Utah Code Ann. § 75-3-805(b) rather than a priority 2 claim under the terms of Settlement.

Pursuant to the Court Finding of Facts, April 7, 2017 [Add F]

YHG's attorney fees was ruled to be reasonable and payable and the balance owing was paid in the amount of \$60,315.25 under UT Code Ann. §75-3-805(b). [R.08385 ¶ 26] [R.08386 ¶ 27, 30, 31] [R.08391, ¶ 3] [R.08393, ¶12]

The Court finds (a) that the \$70,883.58 in funds held by the Estate should be paid to satisfy the administrative expenses under Utah Code §75-3-805(b) in the form of attorney fees incurred by YHG; and (b) that the remaining balance should be equally split the partially payment of attorney fees incurred by Paxman and VanCott, which the Court finds to be properly classified as administrative expenses under Utah Code 75-3-805(b) to the extent they are paid under the instant order. [R.08389, ¶ 46]

The Court's authority is mandated under Utah Code Ann. §75-3-1102(3) which is inconsistent with §75-3-805(b).

Issue No. 7 – The Special Administrator's Final Accounting and not following prior Court orders including the real property transfers to Judy and Kathy Engle.

Pursuant to the Court's Finding of Facts April 7, 2017 [Add F]

The SA has provided a complete accounting of the Estate financial transactions that have occurred from January 2, 2013 to the present. [R.08384, ¶19] [R.08385, ¶25]

The accounting provided by the Special Administrator is approved as to form and content. [R.08391 ¶ 1]

The administration of the estate of Homer Engle is closed without further accounting. [R.08392 ¶ 8 ¶ 9]

The Special Administrator will be discharged of her duties and any further obligations in connection with the estate of Hoer Engle, (a) after preparing the deeds/orders transferring the real property as stated above; and (b) after payment and distribution to the parties to this matter in the proportions and amounts here outlined. [R.08393 ¶ 13]

Pursuant to the Court's Finding of Facts April 12, 2017 [Add E]

The case is closed based upon the Court's Findings of Facts, Conclusions and Order dated, April 7, 2017. [R.08421, ¶ 3] and

The SA is discharged of her duty and *any further obligations in connection with the Estate of Homer Engle*. [R.08421, ¶ 4]

SUMMARY OF ARGUMENT

The issues on Appeal are of public concern regarding court approved compromises which affects the public's interest. This Court's ruling will affect the general public's confidence in our judicial system when the District Court does not enforce the terms of the Settlement. The D.Court's authority is to enforce the Settlement terms, under the governing statute: UT Code §75-3-1102(3).

The D.Court erred in its Findings of Facts to close the Estate, when it applied the wrong legal standard to pay Kathy's Priority 1 and Priority 2 attorney fees including YHG counsel for the SA. The Findings of Facts and the Order to close the Probate is deficient with inconsistencies in enforcing the term of Settlement, which include errors preventing recordation of deeds and an Order granting quiet title. As a result, there is a Jurisdiction issue with the Court's rulings.

There are pending actions in other courts, which the D.Court refused to resolve. As a matter of law, the D.Court could not rule inconsistent with Utah Code Ann. §75-3-1007, whereas, the Special Administrator cannot be released until all actions in any Court are resolved.

The D.Court's ruling are an Abuse of Discretion. There are State and U.S. Constitutional issues for due process and property rights. The D.Court's ruling harmed Appellee, Judy Engle and possibly others which is a matter of public interest.

ARGUMENT

1. Appellee concurs with Appellant on the issues which Utah law especially favors settlements in cases such as this probate - involving family Disputes. Family settlement agreements are favorites of the law, it is the general policy to encourage these types of agreements. With that being said, the following case law supplements Appellant's argument.

2. The Utah Supreme Court has stated that "it is a basic rule that the law favors the settlement of disputes." *Mascaro*, 741 P.2d at 942. Such "settlements are favored in the law, and should be encouraged, because of the obvious benefits accruing not only to the parties, but also to the judicial system.: *Tracy-Collins Bank & Trust Co. v. Travelstead*, 592 P.2d 605, 607 (Utah 1979)

3. The determination of whether to enforce a settlement agreement is governed by "basic contract principles". *Mascaro*, 741 P.2d at 942. The *Mascaro* Court noted that "whether a court should enforce such an agreement does not turn merely on the character of the agreement." *Id.* Rather, a settlement agreement "constitutes an executory accord. Since an executory accord constitutes a valid determination of when a settlement agreement should be so enforced."

¶2 "The decision of a trial court to summarily enforce a settlement agreement will not be reversed on appeal unless it is shown that there was an abuse of discretion." *Goodmansen v. Liberty Vending Sys., Inc.*, 866 P.2d 581, 584 (Utah Ct. App. 1993).

4. A Settlement Agreement may be summarily enforced by motion in the court of the original action.: *Tracy-Collins Bank and Trust Co. v. Travelstead*, 592 P.2s 605, 607 (Utah 1979)

Citing: *Baxter v. Saunders Outdoor Advertising, Inc.* 2007 UT App. 340, Case No.

20060820-A

¶11 When interpreting a contract, we “first look to the contract’s four corners to determine the parties’ intentions, which are controlling. If the language within the four corners of the contract is unambiguous ... We determine the parties’ intentions from the plain meaning of the contractual language as a matter of law.” *Fairbourn Commercial, Inc. V. American Hous, Partners, Inc.*, 2004 UT 54, 10, 94 P.3d 292

“When determining whether a contract terms is ambiguous, the court is not limited to the contract itself. *Relevant, extrinsic evidence of the facts known to the parties at the time they entered the contract is admissible to assist the court in determining whether the contract is ambiguous.*” See also *Jarman*, 794 P.d at 494 (statin that where billboard lease was ambiguous, parol evidence was admissible to determine intent of the parties”).

¶12 ..*The parties to a contract are obligated to proceed in good faith to cooperate in performing the contract in accordance with its expressed intent.: Brown’s Shoe Fit Co. v. Olch*, 955 P.2d 357, 366 (*Utah Ct. App.* 1998) and *Keith Jorgensen’s, Inc. v. Ogden City Mall Co.*, 2001 UT App 128, 22, 26 P.3d 872 (“under the covenant of good faith and fair dealing, parties to a contract impliedly promise not to intentionally or purposely do anything which will destroy or injure the other party’s right to receive the fruits of the contract. To comply with the covenant, a part’s actions must be consistent with the agreed common purpose and the justified expectations of the other party.” ¶14... no one can avail himself of the non-performance of a condition precedent, who has himself occasioned its non-performance. *Pack v. Case*, 2001 UT App 232, ¶ 25 n.8, 30 P.3d 436 (quoting *Hertz c. Nordic Ltd.*, 761 P.2d 959, 963 (*Utah Ct. App.* 1988)

Implied Covenant of Good Faith and Fair Dealing. “As a general rule, every contract is subject to an implied covenant of good faith and fair dealing, under which both parties to a contract promise not to intentionally or purposely do anything, which will destroy or injure the other party’s right to receive the fruits of a contract”. Malibu Inv. Co. v. Sparks, 2000 UT 30, ¶ 19, 996 P.2d 1043. However, “we will not interpret the implied covenant of good faith and fair dealing to make a better contract for the parties than they made for themselves. Nor will we construe the covenant to establish new, independent rights or duties not agreed upon by the parties”. Id.

5. Utah law requires a court to consider extrinsic evidence when determining whether a contract is ambiguous. This resolve falls under contract law. Where the contract is ambiguous in its terms, then the trial court must apply the rules of construction to determine the intent of the parties as a matter of law prior to any determination law which the parties intended to apply. *Rodney Danie v. Hi-Country HOA – 92 P 3.d 162 (2004)*

6. Contrary to the D.Court’s interpretation and application of the law in determining ambiguities, or the terms of the contract, the D.Court’s application of the law in its April 7, 2017 Findings of Facts and its April 12, 2017 Order closing probate, was inapplicable to contract law for *Interpretation* of contracts. The tendency of the law is to apply in contract matters what the Parties agreed to when the Settlement was signed on September 3, 2013.

7. The intent for the Settlement: it was both Kathy and Judy’s intent to have free and clear property as a condition to give up title and ownership interest in nine others

properties as a means of compromise. It was the intent to have all attorney fees categorized and paid as a Priority 2 claim and Priority 1 claims paid prior to attorney claim in Priority 2.

The intent of all parties and counsel for the Estate, the Special Administrator and Paxman were further clarified in VanCott's memorandum, dated May 23, 2014.

[R.00455] [R.0456-0459]

U.S. Constitution Article IV, Rights - Due Process - Jurisdiction

8. When a motion to vacate a judgment is based on a claim of lack of jurisdiction, the district court has no discretion: if jurisdiction is lacking, the judgment cannot stand without denying due process to the one against whom it runs. *Department of Soc. Servs.v Vijil, 784 P.2d 1130, 1132 (Utah 1989).*

9. The D.Court lacked jurisdiction to pay attorney fees outside of contract and with statues inconsistent with the term of Settlement. There is a jurisdiction issue with the distribution of the properties, whereas, the findings of facts are in error.

10. To annual the judgment, question on review was limited to whether trial court had exceeded its jurisdiction, or was without jurisdiction in making and entering judgment.

Jeffries v. Third Judicial Dist. Court of Salt Lake County, 1936, 90 Utah 525, 63 P.2d 242.

11. In sustaining constitutionality of a statute under due process clause, the Supreme Court must consider both possibility that statute is invalid on its face and possibility that statute is invalid as applied. *U.S.C.A. Const .Amends. 5, 14; Const. Art. 1, § 7. Wells v. Children's Aid Soc. of Utah, 1984, 681 P.2d 199.*

12. “Liberty of contract” does not mean the right to make any kind of contract with anybody but merely the right to make contracts with competent persons on a plane of relative parity or freedom of choice and within the limits allowed or not forbidden by law. *Const. art. 1, § 7. McGrew v. Industrial Commission, 1938, 96 Utah 203, 85 P.2d 608.*

13. In order to have a valid due process property interest in a state-created right, a plaintiff must have more than a unilateral expectation of it; instead, the plaintiff must have a legitimate claim of entitlement to it. *U.S.C.A. Const. Amend. 14; Const. Art. 1, § 7. Patterson v. American Fork City, 2003, 67 P.3d 466, 469 Utah Adv. Rep. 25, 2003 UT 7.*

14. The Settlement vested rights of entitlement in the real property distributions to the Parties along with the terms of Settlement in paying creditor claim. The rights of entitlement were compromised with the D.Court’s rulings set out in its April 7, 2017 Findings of Facts. The D.Court’s lack of enforcement of the terms of Settlement is a valid due process property interest and an entitlement issue, when property has not been distributed and claims not paid as set out in the terms of the contract.

15. The term “property” in state due process clause embraces all valuable interests which a person may possess outside of life and liberty; it is not confined to mere tangible property, but extends to every species of vested right. *Const. Art. 1, § 7. Miller v. USAA Cas. Ins. Co., 2002, 44 P.3d 663, 438 Utah Adv. Rep. 31, 2002 UT 6, rehearing denied.*

16. Court of Appeals reviews a trial court’s exercise of its contempt power to determine whether it exceeded the scope of its lawful discretion, which is subject to constitutional and statutory restraints regarding due process. *LD III, LLC v. BBRD, LC, 2013, 303 P.3d 1017, 733 Utah Adv. Rep. 28, 2013 UT App 115, on remand 2013 WL 12183307.*

ISSUE NO. 3

Estate “NOT” fully administered - UT Code Ann. § 75-3-1007

1. There are pending actions in other courts, which directly involves the Estate regarding Isaac Paxman attorney liens on the Cherokee Property and the Hi-Country Liens and encumbrances on the three parcels of raw land (parcels 123, 124 and 130)

2. Until all these “*liens*”, encumbrances or “*pending actions in any court*” are released, the Special Administrator (personal representative) has not fully administered the estate and cannot be released from her duties. UT Code Ann. § 75-3-1007

Pursuant to §75-3-1007:

After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing , so far as is known by the applicant, *that no action concerning the estate is pending in any court*, is entitled to receive a certificate from the registrar that the *personal representative appears to have fully administered the estate in question*.

The *certificate evidences discharge of any lien on any property* given to secure the obligation of the personal representative in lieu of bond or any surety but does not preclude action against the personal representative or the surety.

3. The Paxman Law Firm, Isaac Paxman’s attorney liens on the Cherokee Property and the Hi-Country’s two Judgment liens, pending in another court. whereas, these liens and other court actions must be resolved and discharged as a statutory requirement to close out Probate. This also, include the Hi-Country documents the Order Wende Throne to deliver to Judy and Kathy on multiple court order. The Court stated, the documents need to go to whoever owns them, which Kathy Engle.

4. There is no provision in Settlement¹ which allows attorney liens to attach to the property prior to distribution or prior to the deed transfer of title. In fact, there are provisions in the Settlement which clearly stated when and how attorney fees are paid, and the real properties are distributed in quiet title free and clear of estate creditors and any other party. [R.14225]

5. In other words, the real properties are transferred free of encumbrances, liens and judgments, which also includes Hi-Country's HOA delinquent assessments and two judgments pending in another court.

6. However, the D.Court has moved forward to close out the probate and to dismiss the Special Administrator having full knowledge title the Cherokee Property which is a cloud on the title and where Paxman's liens have not been released from the county recorders' office. Moreover the Court has not properly resolved the Hi-Country two judgments (pending in another court) with delinquent HOA Assessments.

The court cannot close probate until all matters of judgements, liens, appeals in another court, or colored titles have been fully administered and evidenced that all encumbrances have been discharged as required under Utah Code Ann. § 75-3-1007.

7. The Findings of Facts did not resolve the pending court case and liens. The Findings of Facts must be corrected to be consistent with the April 12, 2017 order and the terms of Settlement, for quiet title. [R08421 ¶ 2].

8. January 30, 2017, Paxman filed an objection to the Petition to Close the Estate and stated, he was not going to accept any funds other than what was owed to him per the terms of the

¹ The settlement provided free and clear title to Judy Engle, Isaac Paxman who advised her to sign the settlement agreement stated his intent to seek legal fees is in a nontraditional way through the terms of settlement. [R.14218] [R.07142 –R.07142]

Settlement. [R.07142 -07143] [R.07146- 07147]

9. Although, the Order Closing Probate allowed quiet title on the real properties [R.08421 ¶ 2] the deeds were not attached to Exhibit A. Thus, the Order is also incomplete and must be corrected for a valid transfer of the Cherokee Property and the three parcels of raw land (parcels 123, 124 and 130) to Kathy and Judy Engle with 5/6 interest and 1/6 interest respectively.

10. The liens and encumbrances on the Hi-Country 3 parcels of land and the Cherokee Property do not prevent the Court from granting an Order on Quiet title for each of these real properties and is further explained and supported, as follows for Issue No. 3(a) and Issue No. 3(b):

ISSUE NO. 3(a) – Hi-Country Judgments And Assessments - No Land Liens

Issue #3(a)(1) – Erroneous Judgments Pending in Case No. 070918271

1. The Judgment process cannot move forward on a deceased individual, even in a different District Court. Under Utah Code Ann. §75-3-1007. The D.Court’s ruling specifically isolated the Judgments (\$44,594 and \$87,411) from resolved in the Findings of Facts [R.08390, ¶49], whereas these two judgments originated in another Court under Case No. 070918272. The D.Court further ruled, there were no available funds to pay the Hi-Country claim and the HOA did not effectively subordinate payment of the claims [R.03392, ¶ 6] and the matter is to be addressed by the judge in Case No. 070918272. [R.08388 ¶ 41 [R/08390 ¶ 49] [R.08393, ¶ 14]

2. The D.Court erred, where the Decedent’s estate must close after all issues have been resolved in “ANY” court, which should have occurred with the pending Case No. 070918272 in another court. As a matter of law, the probate cannot be closed until the Finding of Facts is

corrected and the D.Court has enforced the terms of Settlement regarding the two judgments in the other Court, with an order transferring the judgment case to the instant case in probate.

Under Utah Code Ann. 75-1-303(3) Venue:

If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the Court making the finding may transfer the proceeding or file to the other court.. (4) .. the judge of the Court .. may make any other relating to the proceeding in chambers at any place in his district, and the order shall have the same force and effect as if made by the court sitting in the proper county.

3. The Court may transfer proceedings to other court to comply with 75-3-1007 to release the SA in closing probate. The Special Administrator is not entitled to a certificate of fully administered Estate, *If any actions concerning the Estate are pending in any Court.*

4. To resolve the default judgment, the D.Court should have transfer Case No. 070918272 to the Probate, instant case. The D.Court could then rule on the Default judgment to be set aside whereas, the D.Court ruled the default Judgments were erroneous in its April 7, 2017 Findings of Facts. [R.08388 ¶ 42 & ¶43]

5. URCP Rule 55(c) permits a default judgment to be set aside in accordance with rule 60(b). UTCP 55(c) Good Cause - Rule 55(c)'s standard of "good cause shown". Rule 60(b)'s standards govern relief only default judgment under rule 55(b), while rule 55(c)'s "good cause" standard governs relief from an entry of default under rule 55(a). This distinction is made clear in rule 55(c) which declares that for good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b). *Wisam v. City of Hildale and Twin City Water Authority 2014 UT 20, Case No. 20100993 June 17, 2014.*

6. **The default judgment was not** properly entered against a party under rule 55(a) and

whether the complaint's well-pled facts demonstrate that the plaintiff is entitled to judgment as a matter of law and whether the relief [R.08388 ¶ 42] granted is consistent in kind and amount with the complaint's prayer for relief and is within the district court's authority to grant relief [R.08392 ¶ 6]

7. The Findings of Facts are unenforceable whereas, the Hi-Country two Judgments are pending in another court preventing the SA to be released, as required under 75-3-1007. The Findings of Facts must be remanded for correction to set aside the two default judgments.

ISSUE NO. 3(a)(2): HOA – Assessments Barred Forever

8. The HOA does not have a valid claim against the Estate or the properties, especially, when there are no valid land liens recorded on the properties for any delinquent Assessments.

9. Under Utah Code Ann. § 75-3-100, the HOA is barred from receiving payment of Assessments: (a) 1 year after Decedent's death (b) 3 years as to any other claimant.

10. Further, the HOA's assessment claims are barred forever, pursuant to Utah Code Ann. §75-3-803. Appellant addressed this barred forever claim in her brief and is further address herein for the following grounds.

11. HOA filed a claim on January 25, 2011, with the Special Administrator who did not file it with the Court. The HOA's claim included the Motion for Summary judgment, under Case No. 090718272.

12. The Estate denied the HOA's claim, which was signed by the Special Administrator, Wende Throne on April 12, 2011. The HOA did not file an any response to the denied claim.

13. August 29, 2011, docketed, under the same Case No. 090718272, the HOA filed a default judgment for delinquent assessment for the same amount of \$44,594 which was previously filed on January 25, 2011 And been barred forever.

14. The default judgment, as stated above, is the same assessment amount included on the claim, the HOA filed on January 25, 2011 and subsequent denied by the SA. Because the HOA did not respond or object to the Estate's denial of the \$44,594 the default judgment claim is also barred forever, Pursuant to UT Code Ann. § 75-3-803.

15. This summary judgment claim is a fraudulent claim because it was barred forever and resurfaced again August 29, 2011, as a default judgment which is currently pending in another court as an erroneous Judgment. The D.Court could resolve this matter but has ruled in a different direction and not consistent with the terms of Settlement. Title to the three parcels are free and clear of all claims of the estate, lien free. [R.14225]

16. The D.Court stated: The Judgment for \$44,594 and \$87,411.86 (legal fees) Kathy's was entered in error. [R.080388 ¶ 42]. And, the Emergency Petition to stay the Final Order to Close the Estate to consolidate Case No. 070918272 with the instant case is not properly before this court. The matter is to be addressed by the judge in that case. [R.08390 ¶ 49] [R.08393 ¶14]

17. The D.Court erred when it refused to resolve a matter under its jurisdiction. Additional court time, attorney fees and Pro So litigation costs are escalating due to erroneous court decisions.

18. The SA cannot be released until she has fully administered the estate and resolved all pending matters in “ANY” court, which includes the two HOA judgments.

19. *If the D.Court had approved Kathy’s emergency stay [R.08393 ¶ 14] to consolidate the two cases, we would not be here today (almost 2 years later) still dealing with the same issues.*

This serious error is clearly an abuse of power and abuse of discretion.

Community Association Act – Assessments – No Liens

20. Pursuant to UT Code Ann. §57-8a-102(1)(a) “Assessment” means a charge imposed or levied and An Assessment levied against a lot is a debt of the owner at the tie the assessment is made and collectible as a debts UT Code Ann. §57-8a-201(3).

21. The HOA must go through a Judicial foreclosure for a nonpayment of an assessment in the manner provided by law for the foreclosure of a mortgage on real property UT Code Ann. §57-8a-102(12). There has been no judicial foreclosure process on any of the HOA’s claimed assessments.

22. Because the HOA Assessment becomes a debt of the owner at the time Assessment is levied. The debt of the owner is the Estate and is insolvent. The debt is discharged as in bankruptcy, when the Estate is closed.

23. Any prior assessments are debts of the Estate for all prior years from years 2000 to 2017. Years 2000 to 2011 are over the 6-year statute, which prevents enforcement and collection of these assessments, pursuant to UT Code Ann 78B-2-309.

24. The three parcels of land have not been effectively transferred with valid deeds

recorded on each of the three parcels (1/6th to Judy Engle and 5/6th to Kathy Engle),

25. For all of the above grounds: there are no liens, encumbrances or delinquent HOA assessments on the three parcels preventing the D.Court from granting an Order of quiet title to Judy and Kathy for their respective interests.

ISSUE NO. 3(b) - Paxman Law Firm's Attorney Liens – Cherokee Property

Wrongful Lien on Cherokee Property – Isaac attorney liens

1. Counsel Paxman has wrongful liens on the Cherokee Property.
2. May 19, 2014, Isaac Paxman, on behalf of Paxman Law Firm, filed an Attorney Lien in the amount of \$193,000 on the Cherokee Property and on October 17, 2016, filed a Trust Deed Note in the amount of \$163,685 between Paxman Law and Terra Engles, LLC [R.09104].
3. These two liens were duplicated for the same services provided to Judy and Roy Engle.
4. The liens were overstated when these same services were also included in the terms of the Settlement to be paid as a priority 2 claim. [R.14221]
5. Under the terms of settlement both liens are meritless and erroneous and filed in bad faith whereas, Terra Engle did not own property at the time Paxman recorded these two wrongful liens. Title was vested in the Estate's name as evidenced by the County's abstract. [R.09104]
6. Terra Engles was registered in the State of Utah by Judy and Roy Engle but the company did not own the property at the time Paxman recorded the two liens on Cherokee. Additionally, Terra Engles does not have title to Cherokee, as of to date, whereas, the Estate has not transferred valid title to the Cherokee Property, in the name of Terra Engles, LLC.
7. Paxman filed the two liens on Cherokee Property regarding a side agreement between his

two clients. However, the Court ruled Isaac's side agreement for attorney fees was denied during the October 3, 2017 hearing [R.05496].

The court dismissed those unsupported encumbrances stating: *the court finds that the side agreement is not a matter to litigate or resolve in the probate court as it does not involve the estate.* [R.05496].

8. To further, summarize the Court's ruling on side agreements: the settlement agreement does not recognize any outside side agreements which were not incorporated into or made a part of Settlement, on September 3, 2013.

9. As a result, Isaac Paxmans' liens and Trust Deed Note cannot attach to the Cherokee property prior to distribution from the estate and especially when Judy Engle nor her entity owned the Cherokee Property on May 19, 2014 and October 17, 2016.

10. Further, because Isaac Paxman, placed a Trust Deed Note on Terra Engles, LLC, a corporation that has not yet owns the property or "*does not have fee title in the land*", Paxman's Trust Deed Note is invalid and is a wrongful lien against the current owner. The owner on May 19, 2014 and October 17, 2016 was the Estate of Homer Engle not Terra Engles, LLC and is the current record owner of the Cherokee Property.

11. Paxman could not lien property which the grantor, Terra Engles, LLC could lawfully transfer any interest in payment of the attorney liens and trust deeds at the time of recordation of Paxman's encumbrances on the Cherokee Property. This is clearly cited in the Drazich v. Lasson Case

12. The Court of Appeals held in 964 P.2nd 324 (1998) DRAZICH v. Lasson pg. 3 3rd paragraph;

Because it abandoned its right-of-way subject to abandonment before 1958, the railroad did not have a valid interest in the disputed land when it issued its 1958, deed to Building supply Center. Even were we to accept Drazich's arguments regarding the 1958 deed's language of conveyance and language regarding the fence lines, we would still reach the trial court's conclusion that *Drazich does not have fee title in the disputed land.*

One can only convey as much estate in land as one actually has. See Utah Code Ann. § 57-1-4 (1994) (stating conveyance purporting to convey greater estate than grantor can lawfully transfer passes to grantee only estate which grantor could lawfully transfer.

13. Paxman Law did not service notice on the Special Administrator to the Estate. There is no Certificate of Service filed with the Court under Case No. 103901938, as required by Utah Code Ann. §38-12-102(1) and §38-12-103.

14. If proper notice is not given to the owner of the property for any encumbrances or liens Recorded or attached on the property without the consent of the owner, it is a wrongful lien.

Contingency Title

15. Isaac Paxman has acted in bad faith to add liens/ Trust Deed Notes in the subject to clause on the Cherokee Deed. The subject to clause clouds the title with the same attorney fees which have been included in the Settlement payable as a Priority 2 claim, especially when the D.Court ruled the side agreement regarding these same attorney fees are not a part of Settlement. [R.05496] Further, under the terms of Settlement distribution of the Cherokee Property *is title distributed free and clear of creditors claims and in quiet.* [R.14226]

16. During the November 9, 2017 hearing and without a motion from Paxman, the court allowed the deed on Cherokee to be burden with a "*contingency title*", prior to the Cherokee Property being transferred to Terra Engles, LLC, Judy and Roy's entity. This deed was changed after the Appeal was filed.

17. There was no subject to clause for Paxman's liens stated on the Deed attached to April 7, 2017 Findings of Facts as Ex. A [R.08397]

18. *Contingency Title* is "antithetical to the nature of the action" because a court issues a quiet title by virtue of the claimant's strength of title rather than by reason of the weakness of the opponent's title, citing *Hi-Country HOA v. Bagley*.

19. The *Court of Appeals held 863 P.d 1 (1993) Hi-Country HOA v. Bagley & Co. pg 7 Contingent Quiet Title Order 2nd Paragraph;*

Utah's quiet title statute requires a court to allow as a setoff or counterclaim the value of the improvements provided by one, who in good faith, is holding under color of title adversely to the claims of the [owner]. Utah code Ann. §78-40-5 (1992).

It does not provide for a contingent quiet title. Moreover, a contingent quiet title is antithetical to the nature of the action because a court issues a quiet title by virtue of the claimant's strength of title rather than by reason of the weakness of the opponent's title.

20. Paxman does not have any valid liens on the Cherokee property and cannot burden the title with a contingency title, which is inconsistent with the terms of Settlement [R.14211]

21. The D.Court is under the jurisdiction of UT. Code Ann. §75-3-1102(3) to enforce the terms of Settlement. The D.Court is required to sign an order granting quiet title to Judy Engle for the Cherokee Property, free from any creditor of the Estate, which includes free of Paxman's attorney liens on the property. [R.14225]

Issue No. 4 Kathy Priority 1 Claim – Balance \$11,759

1. The balance of the \$20,000 priority 1 claim, as of February 21, 2017 is \$11,759.36. [R.08382 ¶ 9(a)]. The Whereas Clause of the Settlement defines Kathy's Priority 1 claim for litigation cost is in the nature of Administrative Expense with regards to the Estate. [R.14218]

2. There was no condition precedent or Court approval required under the terms of Settlement. The claim is payable with any available funds, including proceeds from the sale of the tangible property and paid prior to attorney fees, classified as a priority 2 claim. [R.14237]

3. Kathy, Judy, Roy and Wende all had claims for compensation. The D.Court ruled:

“There are no funds remaining in the Estate to pay additional compensation. Thus, the Court does not award any payment to Wende Throne, Judy Engle, Roy Engle or Kathy Engle”. [R.08390, ¶ 48] [R.08392, ¶ 5]

4. The D.Court’s Findings of Facts clearly stated claims for *compensation was payable under UT Code. Ann. § 75-3-718 and paid after attorney fees.*

Because of lack of money, there are insufficient funds to pay for the expenses of attorney fees incurred by the Estate beyond amounts awarded in this Order, or to pay the claims of Wende Throne, Judy Engle, Kathy Engle, and Roy Engle *after the funds of the Estate are used to pay attorney fees under Utah Code §75-3-805(b).* [R.08389, ¶ 45]

5. However, Kathy’s Priority 1 Claim was not paid and was not compensation.

6. Under the terms of Settlement, *Kathy’s \$11,759.36 Priority 1 Claim balance, should have been paid under UT Code Ann. § 75-3-1102(3) and paid prior to attorney fees in Priority II claims.*

7. Kathy Priority 1 claim was superior to attorney fees in Priority 2 claims, which was the intent of the parties, as stated in the terms of Settlement. [R.14220]

Pursuant to the February 21, 2017 Transcript to close the probate:

Pg. 56, Lines 20-25: Ms. K. Engle: I’m a priority one claim through *my administrative fees which is classified the same as attorney’s fees* and it’s not fees, it was for my expenses and *I haven’t been fully compensated for that and it’s a priority one and I think that’s next in line to be paid. And that’s \$11,000..*

pg. 88, Lines 14 - 17: “Ms. K. Engle: A priority one claim for pro se expense. So, it’s kind of the same thing, *I’m getting expenses, I can’t get paid labor but that was part of the Settlement*”.

Pg. 109, Lines 18 -20: “Ms. K Engle: Okay, the conflict of law. He’s quoting something *that 808 and 805 when we have a settlement that says 75-3-....*”

8. Kathy Engle’s Priority 1 claim, for Pro Se Administrative litigation costs and expenses were denied for insufficient funds, whereas there were funds available, as evidenced with the payment of \$70,883.58 to the attorneys, under the April 7, 2017 Findings of Facts [R.08382, ¶ 9(a)] [R.08389 ¶ 45] [R.08389 ¶ 46]

9. The D.Court paid attorney fees, in Priority 2 before Kathy’s Priority 1 Claim and YHG attorney fees, when there were no additional attorney fees authorized or included in Settlement.

10. YHG was overpaid, excess compensation Under Utah Code 75-3-805(b). When there an overpayment of compensation, it is required to be returned to the Estate. UT Code 75-3-909.

Citing: *Menzies v. Galetka 150 P.3d 480 (2006)*: It is unethical to take a case knowing the case is insolvent then bootstrapping those funds allocated to other counsels.

11. This is exactly what YHG did with this Estate’s funds ear marked to pay other attorneys. It was unethical of Counsel Mayfield to partake in such endeavors.

12. All attorneys should have been paid as a Priority 2 claim. [R.14221] whereas, there were no other provisions in Settlement to pay attorney fees. The estate was insolvent [R.14222] and there was a contract provision for attorney fees.

13. When there is a contract clause authorizing payment of attorney fees in the Settlement Agreement. The Court does not have inherent power to impose additional attorney fees not provided in the contract, Citing *Ja v. Cole*:

In the absence of a statutory or contractual authorization, a court has inherent equitable power to award reasonable attorney fees when it deems it appropriate in the interest of justice and equity.
Ja; v. Cole, 412 U.S. 1,5, 93 S. Ct. 1943, 1946, 36 L Ed. 2d 702 (1973).

14. The Finding of Facts is in error when the Court paid \$60,315.25 [R.08391 ¶ 3] to YHG, who was paid outside of contract, which the D. Court does not have inherent power to award attorney fees. The payment to YHG must be reversed to pay creditors in Priority 1, Kathy's Claim and Priority 2, Isaac Paxman's claim for attorney fees. UT Code Ann. § 75-3-909

ISSUE NO. 5 – Kathy's Opposition to the SA's Petition to Close the Estate, *ruled untimely*.

1. Appellant's Opposition was timely emailed on January 30, 2017 to the relevant parties but the Clerks did not docket the paper until February 1, 2018, which rendered the paper untimely by the D.Court.

2. Appellee, Judy Engle is also a Pro Se Litigant and is affected by the mail process or filing papers with the court. There is a constitutional issue, when the law is unfair and bias – without equal rights.

3. Attorneys are allowed online filing, whereas, Pro Se Litigants are not afforded the same privilege especially, when the Pro Se resides out of state. It is unfair when the mail takes 4 to 7 days to reach the Court and then another 1 to 2 days for the Court's clerks to docket the paper.

4. It is unfair when the deadline is two weeks or less. There is a very short window to prepare the paper, especially when the objection is for a request to submit.

5. Attorneys have an advantage with online filing and can file and have their papers docketed instantaneously. Attorneys can gain approximately 7 additional days to prepare their papers with online filing.

6. A review of the current law for revision is in of public concern to allow Pro Se Litigants online services for equal rights in filing paper to prevent untimely filings.

ISSUE #6 York Howell Guymon Attorney Fees

1. The Findings of Facts are ambiguous to the terms of settlement and the YHG legal fees are not part of settlement, as previously stated. YHG attorney fees must be redacted and returned to the Estate to pay the creditors of the settlement agreement. UT Code Ann. § 75-3-909

2. There is no provision in the Global Settlement, which allows for additional attorney fees. In the Case of *Downey State Bank v. Major-Blakeney Corp. 556 P.2d 1273 (1976)* No. 14546, Supreme Court of Utah November 26, 1976, the Court ruled where there was “*no provision for additional attorney’s fees, additional attorney’s fee could not be allowed*”.

3. All attorney fees and costs are categorized in a level 2 tier, called Priority 2 in the terms of Settlement, which stated when and how attorney fees are paid. [R.14221]

4. It was not ethical for an attorney, YHG to take a case knowing, by the terms of settlement and the Estate did not have funds to pay all creditors in full, rendering the estate insolvent.

If we are unable to reach a deal with a creditor that satisfies the conditions... to court and .. persuade the judge to overrule the creditor's objections on the grounds *the estate is insolvent*. [R.14222]

5. The Special Administrator stipulated to those terms and sought to litigate rather than administrate the closing of the estate and had full knowledge the Settlement had a clause for payment of attorney fees.

6. In summary of the case of *Menzies V. Galetka 150 P. 3d 480 (2006)*: when there are insufficient funds, it is improper to take on a case knowing there are no funds available to pay attorney fees.

7. During the February 21, 2017 hearing, Steve Sloan, on behalf of Fabian Vancott stated:

[R.10924] Pg. 102, Lines 23 -25 & Pg. 103 Lines 1 – 7: Mr. Sloan: “with respect to Mr. Mayfield’s argument that the Settlement Agreement subordinates in some fashion prior legal fees to legal fees incurred by him. The Settlement Agreement is only binding as between the parties. *Mr. Mayfield, as a third party, should not be allowed to use the Settlement Agreement that was entered into by the parties in good faith to “bootstrap” his way into a higher priority for his legal fees.*

Our position is that all legal fees, *all legal fees incurred on behalf of the Special Administrator are, should be given equal priority.*

8. The D.Court did not pay attorney fees under the terms of the Settlement. The D.Court ruled payment of attorney fees was appropriate under a different statute. Contrary to the D.Court, it did not have the jurisdiction to pay attorney fees under UT Code Ann. § 75-3-805(b). [R.08389 ¶45; ¶46] [R.080390 ¶ 47] [R.08391 ¶ 3]

9. The D.Court abused its power when it failed to enforce the terms of Settlement as mandated under UT Code Ann §75-1102(3) when it paid attorney fees under § 75-3-805(b), then justified the payment as paid under the “instant order”.

the Court finds to be properly classified as administrative expenses under Utah Code 75-3-805(b) to the extent they are paid under the instant order. [R.08389 ¶ 46]

10. The D.Court has made an “*instant order*” to bypass the terms of the Settlement in paying YHG’s attorney fees. This is clearly is inconsistent with Settlement, whereas, there are three levels for payment of creditor claims. Attorneys are creditors of the Estate and their attorney fees are paid as a priority 2 claim according to the terms of the contract. [R.14221]

11. Settlement does not provide for payment of attorney fees under §75-3-805(b) without regards to tiers of payment for creditor claims. Settlement does not have any provision for additional attorney fees, especially when the Estate is insolvent.

12. The D.Court does not have inherent power to award attorney fees to YHG, when Settlement is a contract with provisions for payment of attorney fees. Citing:

Ja; v. Cole, 412 U.S. 1,5, 93 S. Ct. 1943, 1946, 36 L Ed. 2d 702 (1973).

13. The D.Court did not have jurisdiction to pay attorney fees to YHG or any other attorney, including Paxman and VanCott under statute §75-3-805(b), when attorney fees are paid as a priority 2 in Settlement after Priority 1 claims are paid.

14. Kathy’s Priority 1 claim was side stepped, to pay YHG’s attorney fees. The Court’s ruling under § 75-3-805(b) is inapplicable as applied, without statutory authority.

15. The D.Court’s April 7, 2017 Findings of Facts is inconsistent with the Settlement and must be corrected to comply with UT Code § 75-3-1102(3), whereas the D.Court can only enforce the terms of the Settlement.

16. The D.Court is prohibited, by law to create its own “*instant orders*”. The D.Court is mandated to enforce the law and lacks inherent power to make the law. The D. Court has

exceeded its statutory power in authorizing payment of YHG's attorney fees.

17. The Findings of Facts are inconsistent with the terms of Settlement and are in error. The Court's rulings in the Findings of Facts must be remanded for correctness to reverse the payment of attorney fees paid to YHG and to pay Kathy Engle's Priority 1 claim balance of \$11,759.36 and other Creditors in Priority 2 category.

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

19. There are also issues regarding due process under the U.S. Constitution IV Amendment, due process for fair and equal treatment and rights as stated above.

ISSUE NO. 7 - Improper Accounting & Excessive Attorney Fees

1. Unnecessary, excessive and improper legal fees could have been prevented by the SA with proper management and preserving the assets. See the Procedural History of transactions for YGH, Counsel Mayfield's affidavit and request for attorney fees summarized herein on Page 9.

Improper Accounting

2. October 2016, the D.Court ordered the SA to prepare an accounting substantiated with receipts and a hearing was scheduled to address the oppositions to the accounting.

3. During the October 2016, hearing the SA's Counsel Steve Mayfield stated his firm prepared a financial accounting for the Estate and was the same as he has previously prepared as prepared for other clients and was appropriate. Contrary to Counsel, the accounting was not

what the court ordered. It did not have any substantiation documents with receipts or copies of the bank statements. The accounting was meaningless numbers.

4. Although, the hearing was scheduled, it was re-scheduled several times with the last Hearing scheduled on February 21, 2017, to close out the probate.

5. This same situation occurred in January 2014, when the SA failed to provide an accounting as ordered. The hearing re-scheduled, without cross examination on the SA. In, fact there has been no hearing regarding any of the SA's accounting and allegation of mismanagement of funds.

6. This same situation occurred prior to Settlement, Wende was on the hot seat for contempt of court for not productizing the court ordered accounting and documents. See the Procedural History section of this brief (Page 9) which documents the contempt and orders for Wende's accounting of the rental proceeds. It is improper for the D.Court to knowingly allow a Special Administrator to disobey the Court explicit orders to produce the accounting records and a financial statement with supporting documentation.

7. The D.Court closed out the probate and approved the SA's accounting as to form and did not require an further accounting, as requested by Judy, Kathy and Roy.

8. The D.Court erred when it closed the Probate and discharging the SA of her duties without any further obligation in connection with the Estate. The accounting was insufficient and was not what the D.Court ordered multiple times, yet the D.Court ignored the prior orders and it approved the accounting as to form.

9. The SA cannot be discharged from her duties when there are pending actions in any Court, which included the Hi-Country two Judgments and issues pending in this Appeal.

Further, the SA cannot be discharged when there is pending action regarding Paxman Law's attorney liens on the Cherokee property.

10. And, the SA cannot be discharged when the transfer of the real properties has not occurred. The SA's Special Warranty Deeds are invalid with fatal defects preventing the transfer of the real properties to Judy and Kathy Engle. The Estate's ownership in these real properties has yet to be released and the interest thereof constitutes a lien on the real properties, which is in the form of a security obligation of the SA. UT Code Ann. § 75-3-1007

11. The April 7, 2017 Findings of Facts and April 12, 2017 Final Order to Close probate is in error and inconsistent with UT. Code Ann. § 75-3-1007 and Ann. § 75-3-1102(3).

12. The D.Court can only enforce the terms of the Settlement, which does not provide for attorney liens or other creditor's liens on the real properties, which has been stated above in Issue No. 3. And, the D.Court's Final Order is unenforceable, whereas, the SA, has not transferred the real properties a condition of Settlement and as required under § 75-3-1007.

13. The D.Court abused its power and incorrectly applied the law with unenforceable Finding of Facts and its final order to close probate and did not require an accurate and complete accounting of the Estate from years 2010 (the death of the Decedent) to February 21, 2017 (the final hearing to close the probate).

14. The findings of facts and final order to close probate should be remanded for corrections.

Non-Compliance with Court Orders

15. Wende has not complied with the D.Court's multiple court orders to prepare and record valid deeds to transfer the properties pursuant to the terms of Settlement. Ms. Throne has

breached her duties when the properties have not been distributed for over one and half years from the final order to close probate on April 12, 2017. This breach is evidenced with the October 16, 2017 D.Court's Ruling. The Court ordered Wende to redo and correct the deeds as ordered.

16. Wende has made no good faith efforts to resolve the outstanding disputes related to her failure to perform her duties as the SA. [R.16618]

Conclusion and Relief Sought

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

1. Grant quiet title to Judy and Kathy, in the entity of their choice and issue a separate quiet title for each property.
2. The real property distributions to Judy and Kathy will be completed by a title company of their choice. The Executor General Warranty Deeds must have both the Estate of Homer Engle and the Homer Engle 2010 Trust as named grantors on each deed. The Special Administrator will be fully responsible for the payment to the title company for all associated costs for issuing title insurance, closing fees and any other cost charged by the title company for proper distribution of the Woods Cross Property, the Cherokee

Property and three individuals 20-acre parcels of real land (the Hi-Country Property) to Judy and Kathy as set forth in the terms of Settlement.

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

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

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

6. Issue an Order to the Special Administrator to cooperate in providing the Master Accountant all information necessary to prepare the accounting, which includes (but not limited to) all bank statements, deposits, receipts (which fully substantiates all expenses), all rental contracts, etc. Kathy may participate in provide additional information, as needed.

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

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

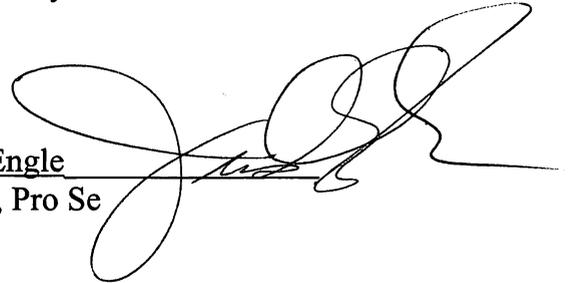
9. It is respectfully requested, an award of costs, transcript costs and other costs is charged to Wende Throne as a result of this appeal.

10. Directing the District Court to grant an order awarding Judy Engle her attorney fees and cost Judy has incurred in total from SEB Legal in defending her interest and title to the real properties

Enter any such further order this Court deems necessary.

Respectfully submitted this 11th Day of February 2019.

/s/Judy Engle
Appellee, Pro Se

A handwritten signature in black ink, appearing to be 'Judy Engle', written over a horizontal line. The signature is cursive and somewhat stylized.

Certificate of Compliance

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(a)(11) and 24 (g) because this brief contains 12,700 words, excluding the parts of the brief exempted by Utah R. app. P.23(g)(2): table of contents, table of authorities, addendums, and certificate of counsel.

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

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

Dated this 11th day of February 2019


/s/ Judy Engle
Judy Engle, Appellee, Pro Se

Certificate of Service

I hereby certify that on this 11th day of February 2019, I caused to be served a copy of the forgoing **Brief of the Appellee, Judy Engle** was served via email to the following:

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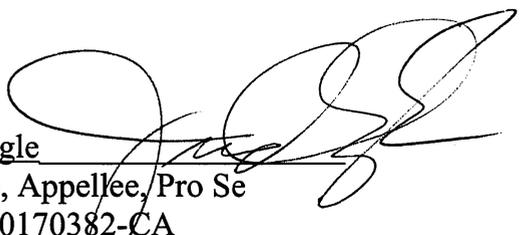
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