

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISIONFILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

FEB 17 2010

JERI RICE,

Plaintiff,

v.

DEER CREST JANNA, LLC, DEER CREST  
MASTER ASSOCIATION, INC., MICHAEL  
ZACCARO, GREGSON PERRY, LYNDIA  
FETTER, ROBERT SAMMONS and  
THOMAS HODGSON,

Defendants.

D. MARK JONES, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK**ORDER**

Case No. 2:09-cv-560

Judge Dee Benson

Pending before the court is defendants Deer Crest Janna, LLC, and Michael Zaccaro's application for attorneys' fees incurred in connection with defendants' motion to remove *lis pendens*. (See Dkt. No. 55). Having considered the law and facts surrounding the application, the court issues the following Order.

Given the somewhat ambiguous state of the law in Utah (*see e.g., Timm v. Dewsnup*, 921 P.2d 1381 (Utah 1996); *Gardner v. Perry City*, 2000 UT App 1, 994 P.2d 811), I find that Ms. Rice had a rational basis for believing that under Utah law she was allowed to file a *lis pendens* against the defendants' parcels. Although I do not think this makes her filing "substantially justified," I do find that under all of the circumstances it would be unjust to require her to pay the defendants' attorneys' fees and costs.

Therefore, the court DENIES defendants' application for attorneys' fees. Each party is to bear its own costs and fees.

IT IS SO ORDERED.

DATED this 16th day of February.

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive style with a long horizontal flourish at the end.

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Dee Benson  
United States District Judge