

IN THE UTAH COURT OF APPEALS

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Jillene Barnes,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellant,	)		
	)	Case No. 20050213-CA	
v.	)		
	)		
Lagoon Corporation, Inc., a	)	F I L E D	
corporation; and John Does	)	(March 30, 2006)	
I-V,	)	<table border="1"><tr><td>2006 UT App 127</td></tr></table>	2006 UT App 127
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	)		
Defendants and Appellees.	)		

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Second District, Farmington Department, 040700166  
The Honorable Michael G. Allphin

Attorneys: Daniel F. Bertch and Kevin K. Robson, Salt Lake City,  
for Appellant  
Brian P. Miller and Sam Harkness, Salt Lake City, for  
Appellees

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Before Judges Greenwood, McHugh, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

Although we recognize that district courts may summarily enforce settlement agreements,

"it is apparent that the summary procedure for enforcement of unperformed settlement contracts is not a panacea for the myriad types of problems that may arise. The summary procedure is admirably suited to situations where, for example, a binding settlement bargain is conceded or shown, and the excuse for nonperformance is

comparatively unsubstantial. On the other hand, it is ill-suited to situations presenting complex factual issues related either to the formation or the consummation of the contract, which only testimonial exploration in a more plenary proceeding is apt to satisfactorily resolve."

Tracy-Collins Bank & Trust Co. v. Travelstead, 592 P.2d 605, 609 (Utah 1979) (quoting Autera v. Robinson, 419 F.2d 1197, 1200 (D.C. Cir. 1969)). Thus, summary enforcement is only "for use in connection with problems capable of precise resolution without attendant hazard to the interests of the parties." Autera, 419 F.2d at 1200. This is not such a case.

It is clear from the record that there are factual disputes regarding whether a settlement agreement was reached and what exactly the terms of that agreement might have been. The district court found that an agreement was created and that Appellant's claims to the contrary were "unlikely," but these findings necessarily required the court to weigh evidence and judge credibility without the benefit of hearing actual testimony from the parties and without the benefit of cross-examination.<sup>1</sup> See id. at 1202. Such summary resolution of conflicting facts presented wholly in affidavits is improper.

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<sup>1</sup>Indeed, Defendants argue that Barnes failed to marshal the evidence in support of the district court's factual findings, that we should defer to those findings, and that we should only reverse if those "factual findings are against the clear weight of the evidence." Such arguments highlight the existence of disputed facts but are otherwise wide of the mark. Summary enforcement, like summary judgment, is only proper when "there is no genuine issue as to any material fact." Utah R. Civ. P. 56(c). In a summary proceeding, we do not expect the district court to resolve factual disputes by making findings. Rather, consistent with our approach on review, it must "review the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." Regal Ins. Co. v. Bott, 2001 UT 71, ¶2, 31 P.3d 524. Looking at the submitted evidence in the light most favorable to Barnes, it appears she never actually assented to any settlement but merely agreed to "think about it."

Accordingly, we vacate the judgment of the district court and remand for further proceedings consistent with this decision.

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Gregory K. Orme, Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Associate Presiding Judge

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Carolyn B. McHugh, Judge