IN THE UTAH COURT OF APPEALS

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Hi-Country Estates Homeowners Association, a Utah corporation, Plaintiff, v. Bagley & Company, et al., Defendants.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090433-CA F I L E D (April 15, 2010) 2010 UT App 86
Foothills Water Company, a Utah corporation; J. Rodney Dansie; Dansie Family Trust; Richard P. Dansie; Joyce M. Taylor; and Bonnie R. Parkin, Counterclaimants and Appellants, v. Hi-Country Estates Homeowners Association, a Utah corporation, Counterclaim Defendant and Appellee.	

Third District, West Jordan Department, 020107452
The Honorable Stephen L. Roth

Attorneys: J. Thomas Bowen, Midvale, for Appellants
J. Craig Smith, Matthew E. Jensen, and Jeffry R. Gittins, Salt Lake City, for Appellee

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Before Judges Davis, Orme, and Voros.

VOROS, Judge:

This appeal represents the latest episode in a course of litigation spanning a quarter of a century. We last ruled in

this case in Hi-Country Estates Homeowners Association v. Bagley & Co., 2008 UT App 105, 182 P.3d 417. That appeal arose from a counterclaim filed by Foothills Water Company, J. Rodney Dansie, the Dansie Family Trust, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor, and Bonnie R. Parkin (collectively, the Dansies) against the Hi-Country Estates Homeowners Association (the Association). See id. ¶ 1. The Dansies sought damages for breach of a 1977 well lease agreement (the Well Lease). See id. ¶ 2.

The trial court entered an omnibus order somewhat optimistically titled Final Judgment. See id. ¶ 6. First, the court ruled that the Well Lease was an enforceable contract, neither void as against public policy nor unconscionable. See id. Second, the trial court denied the Dansies' breach of contract claims. See id. In the context of these claims, the trial court ruled that, pursuant to a 1986 order of the Public Service Commission (PSC), the Dansies were entitled to receive water under the Well Lease only upon payment of their pro rata share of fees and costs and not, as stated in the Well Lease itself, "at no cost." See id. Because the Dansies had refused to pay these fees, the trial court ruled that the Association had not breached its obligation under the Well Lease. See id. In addition, the trial court found no evidentiary basis for the Dansies' claim of damages in the form of an orchard withering, loss of landscaping, and loss of property value. See id. ¶ 17. Third, the trial court awarded the Foothills Water Company judgment in the sum of $16,334.99 as reimbursement for improvements to the water system. See id. ¶ 6. Finally, the trial court denied the Dansies' claim for attorney fees. See id.

The Dansies appealed. This court "affirm[ed] the trial court on all issues." Id. ¶ 24. We affirmed the trial court's order that the Well Lease was not void as against public policy and was not unconscionable. See id. ¶¶ 13, 15. We affirmed the trial court's judgment in favor of the Foothills Water Company in the sum of $16,334.99. See id. ¶ 21. And we affirmed the trial court's denial of attorney fees. See id. ¶ 22.

We also affirmed the trial court's denial of the Dansies' breach of contract claims relating to the severing of the water systems. See id. ¶ 16. We did so under the rules of appellate procedure, holding that in challenging on appeal the trial court's factual findings on damages, the Dansies had failed to marshal the evidence as required by rule 24(a)(9) of the Utah Rules of Appellate Procedure. See id. ¶ 20; see also Utah R. App. P. 24(a)(9). We thus affirmed the trial court's ruling on the breach of contract claim based on the Dansies' failure to

prove damages.[1] In addition, we approved the trial court's reading of the Well Lease for the period during which the PSC had jurisdiction over the Association. See Hi-Country Estates Homeowners Ass'n, 2008 UT App 105, ¶ 16. This period is bookended by the PSC's 1986 order invoking jurisdiction and its 1996 order revoking jurisdiction. No post-1996 allegations of breach of contract were before us. Likewise, no remedies other than money damages were before us. Nonetheless, mindful of the possibility of future litigation, we opined in dicta that after February 5, 1996, the Water Lease should be construed "according to its plain language." Id. ¶ 12 n.2. To underscore this point, we quoted portions of the Well Lease, including the provision that grants the Dansies twelve million gallons of water per year "at no cost for culinary and yard irrigation use." Id.

On appeal, we review the ruling of the lower court, not its reasoning. See Interwest Constr. v. Palmer, 923 P.2d 1350, 1357 (Utah 1996) ("We thus disapprove of the reasoning employed by the court of appeals to affirm the trial court's ruling but affirm the result reached by both courts."). Thus, while our opinion was explicit that we did not share the trial court's interpretation of the Well Lease for periods after February 5, 1996, we nevertheless affirmed the ruling of the trial court on the breach of contract claims on the ground that the Dansies had failed to prove damages.

The instant appeal arises from the trial court's denial of the Dansies' motion to modify the Final Judgment we reviewed in the previous appeal. We see no need for the trial court to modify its prior order or its treatment of the claims dismissed therein, and we fully appreciate the trial court's reluctance to do so in view of our affirmance. However, to the extent the Final Judgment conflicts with the pronouncements of this court, any future proceedings must be guided by the latter. "[L]ower courts are obliged to follow the holding of a higher court, as well as any 'judicial dicta' that may be announced by the higher court." State v. Menzies, 889 P.2d 393, 399 n.3 (Utah 1994).

Because we essentially read the lease as the Dansies do but we affirmed the dismissal of their breach of contract claims based on the Dansies' failure to marshal the evidence on appeal, nothing in our prior opinion prevents the Dansies from suing on

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[1]Proof of damages is an element of a claim for breach of contract. See Bair v. Axiom Design, 2001 UT 20, ¶ 14, 20 P.3d 388 ("The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages.").

current or future breaches of the Well Lease and pursuing any remedy to which they may be entitled. In the Association's view, all such efforts are doomed to failure. The Dansies are caught, the Association insists, in a catch-22 that renders the promise of free water a perpetual mirage: because the Dansies are not members of the Association, as soon as the Association delivers a drop of water to them at no cost, it falls under the jurisdiction of the PSC. Once under PSC jurisdiction, the Association can no longer deliver water to them at no cost. This question is not, nor has it ever been, before us, and we express no opinion with respect to it. It must be decided, if at all, in a future chapter of this litigation.

Affirmed.

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J. Frederic Voros Jr., Judge

WE CONCUR:

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Gregory K. Orme, Judge

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James Z. Davis, Judge