

IN THE UTAH COURT OF APPEALS

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Express Recovery Services, Inc.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
)	
Plaintiff and Appellee,)	Case No. 20060639-CA
)	
v.)	F I L E D
)	(January 11, 2007)
)	
Scott Rice dba MTI,)	2007 UT App 12
)	
Defendant and Appellant.)	

Fourth District, Orem Department, 030200718
The Honorable John C. Backlund

Attorneys: Blake S. Atkin, William O. Kimball, and Brennan H. Moss, Salt Lake City, for Appellant
Edwin B. Parry and Samuel S. McHenry, West Valley City, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Scott Rice appeals an order denying his request for attorney fees pursuant to Utah Code section 78-27-56.5. See Utah Code Ann. § 78-27-56.5 (2002). Rice argues that the trial court erred when it determined that Rice was not a "party" entitled to fees under section 78-27-56.5. The proper interpretation of section 78-27-56.5 is a question of law reviewed for correctness. See Anglin v. Contractor Fabrication Machining, 2001 UT App 341, ¶6, 37 P.3d 267.

Section 78-27-56.5 "provides for reciprocal rights to recover attorney fees in litigation arising under a [note or contract]." Id. at ¶7. The statute states: "A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the . . . writing allow at least one party to recover attorney's fees." Utah Code Ann. § 78-27-56.5.

Rice argues that he is entitled to attorney fees under this provision because he is the prevailing party in litigation that arose under a contract and the contract allowed at least one party to recover attorney fees. "In determining who is entitled to attorney fees under section 78-27-56.5, we must determine who is a 'party' entitled to the benefit of the statute." Anqlin, 2001 UT App 341 at ¶8.

As this court stated in Anqlin:

"In construing any statute, we first examine the statute's plain language and resort to other methods of statutory interpretation[] only if the language is ambiguous. Accordingly, we read the words of a statute literally . . . and give the words their usual and accepted meaning." Hercules, Inc. v. Utah State Tax Comm'n, 2000 UT App 372, ¶9, 21 P.3d 231 (internal quotation omitted). In so doing, we "assume that each term was used advisedly by the legislature." Biddle v. Washington Terrace City, 1999 UT 110, ¶14, 993 P.2d 875.

Id. at ¶9.

Here, Rice "would have us construe the statute to mean that any party to the litigation involving a [contract] may recover attorney fees so long as one party to the [contract] has the right to recover attorney fees" under the contract. Id. at ¶10. However, "[t]he statute states clearly that 'either party that prevails in a civil action based upon any [contract]' may recover attorney fees." Id. (quoting Utah Code Ann. § 78-27-56.5 (1996)). As we explained:

The use of the word "either," which comes directly before and modifies the word "party," is reasonably read to restrict the meaning of "party" to include only the parties to the original [contract], not any party to the litigation. Such a construction is clear not only from the plain language of the statute, but also from the purpose the statute was meant to achieve.

Id. at ¶¶10-11.

Throughout this litigation, Rice has fervently argued that he was not a party to the contract at issue and that he only

signed the contract as president of MTI. Rice now argues that he was indeed a "party" to the contract as "an agent of a disclosed principal." This about-face assertion is not only unsupported, but flies in the face of agency principles. See Carlie v. Morgan, 922 P.2d 1, 6 (1996) ("'If a contract is made with a known agent acting within the scope of his authority for a disclosed principal, the contract is that of the principal alone and the agent cannot be held liable thereon.'" (quoting 3 Am. Jur. 2d Agency § 302 (1986))). As we have previously noted, "[t]he plain language and apparent purpose of section 78-27-56.5 simply does not benefit litigants who are not parties to the underlying promissory note." Anclin, 2001 UT App 341 at ¶12.

Accordingly, we affirm the trial court's denial of attorney fees.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge