

No. \_\_\_\_\_

---

In The  
Supreme Court of the United States

----- ♦ -----

Russell L. Baldwin,

Petitioner pro se,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT  
SEIDA, SR.; MARY SEIDA, husband and wife; and SEIDA LAND AND  
LIVESTOCK, LLC, an Oregon limited liability company,

Respondents.

----- ♦ -----

On Petition for Writ of Certiorari To

The Oregon Supreme Court.

----- ♦ -----

APPENDICES

----- ♦ -----

Russell L. Baldwin  
Counsel of Record, pro se  
PO Box 757  
Yachats, OR 97498  
Telephone (541) 992-4254  
Baldwin\_atty@embarqmail.com

---

## APPENDICES

### TABLE OF CONTENTS

#### **I. Excerpts of Record, Chronological by court.**

A. Lincoln County Circuit Court No. 140225, Supplemental Judgment and Order July 1, 2015.....	A-1 to A-4
B. Lincoln County Circuit Court No. 15cv12092	
Complaint, May 12, 2015 with liens attached.....	B-1 to B-68
Order, March 30, 2016.....	B-69 to B-76
Limited Judgment, May 20, 2016.....	B-77 to B-78
Supplemental Judgment, June 22, 2017 (awarding \$62,000 attorney fees without foreclosure)	B-79 to B-81
Limited Judgment, June 22, 2017 (dismissing respondents Kent & Mary Seida).....	B-82 to B-83
Supplemental Judgment, June 22, 2017 (awarding \$9,000 more fees without foreclosure).....	B-84 to B-86
Excerpted Transcript of Proceedings October 9, 2017 (preservation of federal takings issue at B-96 to B-100).....	B-87 to B-102
General Judgment December 15, 2017 (dismissing complaint after jury trial and bench trial, with jury verdict attached).....	B-103 to B-115
Supplemental Judgment March 6, 2018 (awarding \$104,000 more attorney fees without foreclosure)...	B-116 to B-117
Supplemental Judgment March 6, 2018 (awarding \$92,000 more attorney fees without foreclosure)...	B-118 to B-119

Table of Contents, Appendices  
--continued

Petitioner's Opposition to Respondent's Motion to Disburse Funds, December 23, 2020 (preservation of federal takings issue at B-132 n. 9 to B-135).....	B-120 to B-138
---	----------------

C. Oregon Court of Appeals, CA A162400

Order, April 1, 2020 (affirming judgments without opinion).....	C-1
Petitioner's objections to respondents' statement of attorney fees, October 7, 2020 (preservation of federal takings issue at C-5).....	C-2 to C-33

[There is no appellate judgment yet per ORAP 13.10 and ORAP 14.05; see App. F and G below]

D. Oregon Supreme Court, S065998

Order denying review, October 4, 2018 (respondents' cross petition for interlocutory appeal from judgment refusing to disburse proceeds to judgment creditors).....	D-1
--	-----

E. Oregon Supreme Court, S067838

Order denying review, September 17, 2020 (from Court of Appeals's affirmance without opinion).....	E-1
Order allowing attorney fees and costs, December 24, 2020.....	E-2
Order denying reconsideration, February 4, 2021.....	E-3
[There is no appellate judgment yet per ORAP 13.10 and ORAP 14.05; see App. F and G below]	

Table of Contents, Appendices  
--continued

**II. Oregon Rules of Appellate Procedure (“ORAP”).**

F. ORAP 13.10.....	F
G. ORAP 14.05.....	G



CIRCUIT COURT  
 FILED \_\_\_\_\_ RECEIVED \_\_\_\_\_  
 JUL 01 2015  
 AT \_\_\_\_\_ O' CLOCK \_\_\_\_\_ M  
 BY \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
 FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
 Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK LLC, an  
 Oregon limited liability company; MISSION  
 STREET SELF STORAGE LLC, an Oregon  
 limited liability company; OREGON SURF  
 SHOP, LLC, an Oregon limited liability  
 company; NORTH LINCOLN AERIE OF  
 THE FRATERNAL ORDER OF EAGLES,  
 #2576, an Oregon corporation; LINCOLN  
 COUNTY, a political subdivision of the State  
 of Oregon; KENT R. SEIDA and MARY M.  
 SEIDA, husband and wife; ELIZABETH J.  
 DUNHAM; MARK A. TYLER and TRUDI  
 A. TYLER; JAMES P. MIMNAUGH and  
 CYNTHIA G. SWEARINGEN, husband and  
 wife; GLEN M. TORRANCE and ELLEN J.  
 TORRANCE, husband and wife; JUDY S.  
 NAGLE; DELORES V. WESSEL; ALLEN  
 TREND and TARYN TREND, husband  
 and wife; and MOLLY K. JOHNSON and  
 MICHAEL N. JOHNSON, husband and wife,

Defendants.

Case No. 140225

SUPPLEMENTAL JUDGMENT RE: RUSSELL  
 BALDWIN'S ATTORNEY FEE CLAIM

ORS 20.140 - State fees deferred at filing

This matter came on for hearing under ORCP 68, plaintiff appearing by and through J.

Nicole DeFever, Senior Assistant Attorney General, Kent R. Seida appearing *pro se*, and Russell

Baldwin, former counsel for defendants Seida Land & Livestock LLC, Kent R. Seida and Mary

M. Seida (the "Seida Defendants"), appearing for himself and by and through attorney Sandra

Fraser, Intelekia Law Group LLC.

Appendix A-2

Verified Correct Copy of Original 7/6/2015.

1 The court having reviewed the briefs on this matter and hearing oral arguments of the  
2 parties, and otherwise being fully advised, and based upon the ruling issued by the Honorable  
3 Kip W. Leonard at that hearing, NOW THEREFORE

4 IT IS HEREBY ADJUDGED that:

5 1.  
6 , The Seida Defendants, by and through the petition of their former counsel Russell L.  
7 Baldwin, are entitled to an award of reasonable attorney fees in the sum of \$2,000.00.

8 2.  
9 That plaintiff has already deposited the sum of \$2,000.00 with the clerk of this court.

10 3.  
11 There shall be no other attorney fees assessed against the State as a result of this action.

12 4.  
13 This supplemental judgment does not resolve or impact any of the lien claims or other fee  
14 disputes between the Seida Defendants and their former counsel Russell L. Baldwin.

15 DATED this 2 day of July, 2015.

16 Nunc pro tunc ~~from~~ January 29, 2015

17   
18 CIRCUIT COURT JUDGE

19  
20  
21 Submitted by: J. Nicole DeFever  
22 Senior Assistant Attorney General  
23 Of Attorneys for Plaintiff  
24  
25  
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN, 17<sup>TH</sup> JUDICIAL DISTRICT



PO BOX 100  
NEWPORT, OR 97365

Thomas O. Branford  
Presiding Circuit Court Judge

Phone: (541) 265-4236  
Fax: (541) 265-7561

July 1, 2015

Ms. Sandra Fraser  
Intelekia Law Group LLC  
308 SW First Avenue, Suite 325  
Portland, OR 97204

Mr. Roger Lenneberg  
Jordan Ramis PC  
Two Centerpointe Drive, 6<sup>th</sup> Floor  
PO Box 230669  
Lake Oswego, OR 97035

Re: State of Oregon v. Seida Land and Livestock LLC et al., Lincoln County Circuit Court case  
No. 140225

Dear Counsel,

This letter follows our telephone conference call of June 25, 2015. Participating in the call were the court, Ms. Fraser, Mr. Lenneberg and lawyers from his office. The call addressed what issues, if any, remain in the above reference case.

The court has reviewed the history and record in this matter and in Lincoln County case No. 15CV12092.

This case is closed and was closed prior to the most current filings and correspondence by and from counsel.

For the assistance of counsel, the court mentions that as part of the above referenced case a contested hearing was held, on January 29, 2015, regarding Mr. Baldwin's request for attorney fees from the State of Oregon. The court decided that issue on the record. The extent of that hearing was the amount of attorney fees, if any, the State of Oregon was obligated to pay Mr. Baldwin for his services in representing the Seidas and Seida Land and Livestock LLC. The court's ruling did not address whether attorney fees may or may not be owed Mr. Baldwin by any other entity or person.

Plaintiff Exhibit 4  
Page 6 of 7  
Exhibit C page 1 of 2

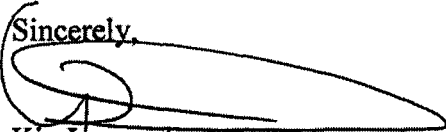
Verified Correct Copy of Original 7/6/2015

There are no remaining justiciable issues in that matter.

This court is not commenting, ruling or suggesting what issues may be raised or litigated in Lincoln County Circuit Case No. 15CV12092.

This matter is closed and the court will not entertain any further motion, correspondence or request.

Sincerely,

A handwritten signature in black ink, appearing to be "Kip Leonard", written over a horizontal line.

Kip Leonard  
Senior Circuit Court Judge

Plaintiff Exhibit 4  
Page 7 of 7

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

Russell L. Baldwin,

Plaintiff,

v.

Suzanne Seida, David M. Seida, Kent Seida  
Jr., Seida Land & Livestock, LLC, an  
Oregon Limited Liability Company, Kent  
Seida Sr. and Mary Seida husband and wife,

Defendants.

Case No. 15CV12092

COMPLAINT

(Breach of contract;  
Account stated;  
Quantum meruit;  
Foreclosure of attorney's lien).

NOT SUBJECT TO MANDATORY  
ARBITRATION (money damages exceed  
the statutory limit for mandatory court-  
annexed arbitration).

JURY TRIAL REQUESTED;

ATTORNEY FEES REQUESTED;

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REQUESTED  
PURSUANT TO ORCP 14 AND ORCP  
62A.

Damages pleaded: \$140,054.40.

Plaintiff alleges against defendants Suzanne Seida, David M. Seida, Kent Seida Jr., Kent  
Seida Sr. and Mary Seida, husband and wife, Seida Land & Livestock, LLC, an Oregon Limited  
Liability Company, (hereafter collectively "defendants Seida"):

CASE SUMMARY.

1.

As alleged below, plaintiff was hired by defendants Seida to perform legal work to  
defend an imminent action by ODOT for eminent domain for a disclosed public need.  
Defendants Seida, through defendant Kent Seida Sr., requested plaintiff's assistance in defending  
the prospective condemnation of defendants Seida's land described in ODOT's complaint in  
Lincoln Circuit No. 140225. Plaintiff's services rendered began at defendants Seida's request

## Appendix B-2

1 beginning in August, 2006 concerning access issues raised by the Oregon Department of  
2 Transportation (ODOT), continuing through May, 2010 at ODOT's road show conducted in  
3 Lincoln City, Oregon, and continuously thereafter until August 27, 2014 when plaintiff was  
4 required to withdraw from representing defendants Seida.

### 2.

6 Among the services rendered were the formation of defendant Seida Land & Livestock  
7 Company, LLC, reviewing appraisals performed for ODOT pertaining to other property  
8 condemned by ODOT serving as a comparable establishing a value of \$24.00 per square foot  
9 (Gillespie appraisal), motion work, filing an answer, consulting with defendants Seida  
10 concerning issues about public road access to and from abutting U.S. Highway 101, and  
11 obtaining consent from Howard Meredith to release the Gillespie appraisal to defendants Seida,  
12 and arranging for appraisal services with plaintiff's chosen appraiser Loren Wright. Mr. Wright  
13 had previously rendered services to plaintiff's other clients in Linn Circuit No. 081164 resulting  
14 in a jury verdict for the property owner in the amount of \$3.378 million in May, 2010.

### 3.

16 As plaintiff's relationship progressed with defendants Seida over time, defendants Seida  
17 requested more and more legal services from plaintiff with the goal of maximizing the appraised  
18 value of defendants Seida's land which ODOT had indicated would be taken to complete a  
19 highway realignment showcased at ODOT's roadshow set forth above. Plaintiff  
20 contemporaneously recorded the time and costs incurred in rendering services to defendants  
21 Seida, and plaintiff sent interim bills to defendants Seida through defendant Kent Seida Sr. with  
22 the expectation of payment from eventual judgment or settlement for ODOT's taking with just  
23 compensation. After approximately four years of work without regular payment from defendants  
24 Seida, defendant Seida Land & Livestock and defendant Kent Seida, on behalf of the remaining  
25 defendants Seida, executed a written contingent fee agreement to compensate plaintiff for the

## Appendix B-3

1 time value of money deferred by providing such services for those 4 years. In June, 2014, a fee  
2 dispute arose between plaintiff and defendants after Kent & Mary Seida's check for attorney fees  
3 from a different matter was dishonored by their bank. Plaintiff allowed defendants Seida 60 days  
4 to cure their failure to pay plaintiff as agreed, but defendants Seida refused to do so. Plaintiff  
5 thereafter withdrew from representing defendants due to an actual or perceived conflict of  
6 interest on or about August 27, 2014. All exhibits referenced herein are attached to this  
7 complaint.

### 8 ALLEGATIONS COMMON TO ALL CLAIMS AND COUNTS.

#### 9 PARTIES.

##### 10 4.

##### 11 Plaintiff.

12 At all times material herein, plaintiff Russell L. Baldwin (hereafter "plaintiff") is a  
13 licensed attorney in good standing with the bar of the Oregon Supreme Court, and he provided  
14 legal services to defendants Seida at their request.

##### 15 5.

##### 16 Defendants Seida.

17 At all times material herein, defendant Suzanne Seida is a resident of Washington  
18 County, Oregon. At all times material herein, defendant Kent Seida Jr. and David Seida are  
19 residents of Clackamas County. At all times material herein, defendants Kent & Mary Seida,  
20 husband and wife, are residents of Lincoln County. At all times material herein, defendant Seida  
21 LLC requested the legal services of plaintiff through defendants Kent and Mary Seida and  
22 defendant Suzanne Seida, and such LLC is a business entity, and is a resident of every county in  
23 Oregon. Defendants Seida is a general partnership. At all times material herein, defendant Kent  
24 Seida Sr. acted on behalf of defendants Seida. At all times material herein, defendant Kent Seida  
25 disclosed his actual or apparent authority to act on behalf of defendants Seida with their

## Appendix B-4

1 knowledge, and defendants Seida did nothing to challenge defendant Kent Seida's authority to  
2 act on their behalf.

3 For a **FIRST CLAIM FOR RELIEF**, plaintiff alleges (Against Defendants Kent Seida Sr.  
4 & Mary Seida, husband and wife):

### 5 BREACH OF CONTRACT.

6  
7 (Expectancy: Contingent Fee Agreement in Lincoln Circuit No. 140225  
8 State v. Seida et al for eminent domain)

9 6.

10 Plaintiff realleges and incorporates by reference paragraphs 1-5 above as though fully set  
11 forth.

12 7.

13 On or about April 24, 2014, defendants Seida requested legal assistance from plaintiff to  
14 defend civil litigation brought by the State of Oregon for eminent domain, whereby the State of  
15 Oregon had initially offered a sum of less than \$95,000.00 to acquire property from defendants  
16 Seida located in Lincoln City, Oregon.

17 8.

18 Defendants Seida requested plaintiff's assistance and advice through defendant Kent  
19 Seida, defendant Seida Land & Livestock Company, LLC, and defendant Suzanne Seida.

20 9.

21 Defendants Seida, through Kent Seida Sr. and defendant Seida Land & Livestock  
22 Company, LLC, promised to pay plaintiff a contingency fee of 40% of their net recovery  
23 collected from ODOT, calculated as follows: gross recovery of \$445,000.00 less the state's  
24 initial offer of \$94,864.00 \* .40 = \$140,054.40. In the event that defendants Seida did not  
25 receive a recovery exceeding \$94,864.00, plaintiff agreed that defendants Seida would have no  
26 direct or personal liability to plaintiff for attorney fees.



## Appendix B-5

10.

Defendants Seida further promised that if defendants Seida discharged plaintiff, plaintiff would be entitled to the greater of his contingent fee or his hourly fees billed at the agreed rate of \$450.00 per hour. A true copy of plaintiff's agreement with defendants Seida is attached as Exhibit 1.

11.

Defendants Seida, by and through defendant Kent Seida Sr. and defendant Suzanne Seida, requested that plaintiff accept ODOT's offer of compromise on May 6, 2014, and plaintiff performed as defendants Seida requested. The offer of compromise was filed with the Lincoln County Circuit Court in Lincoln Circuit No. 140225 that same date, by hand delivery, at defendants Seida's explicit request.

12.

Plaintiff was required to withdraw from further representing defendants Seida after defendants Seida, through defendant Kent Seida, wrote a bad check drawn on insufficient funds dated June 12, 2014 in the amount of \$5,000.00 drawn on Columbia State Bank in Lincoln City, Oregon. Defendants Seida caused plaintiff to be discharged by creating a conflict of interest with plaintiff requiring plaintiff to withdraw in accordance with the Oregon Rules of Professional Responsibility. Defendants Seida stipulated to entry of judgment on their former acceptance of ODOT's offer of compromise on September 11, 2014. A true and correct copy of the stipulated entry of judgment is attached hereto as Exhibit 2.

13.

Plaintiff caused a lien to be filed in Lincoln Circuit No. 140225. Plaintiff previously lienied for only a portion of the amount to which he was entitled, at the contingent rate of one-third, as an attempted accommodation to defendants Seida. Plaintiff thereafter sought by motion to foreclose such lien, with interest and attorney fees for such foreclosure, in supplemental

## Appendix B-6

proceedings in Lincoln Circuit No. 140225 as permitted by *Potter v. Schlessner Co., Inc.*, 335 Or 209, 63 P3d 1172 (2003) and ORS 1.160, a true and correct copy of which is attached hereto as Exhibit 3.

14.

Defendants Seida, by and through defendants Kent Seida Sr., Mary Seida, and Seida Land & Livestock Co. LLC, rejected plaintiff's offer to accept less than the agreed percentage by urging in Lincoln Circuit No. 140225 that the circuit court lacked jurisdiction over plaintiff (Baldwin, lien claimant there). Defendants above named in this paragraph rejected plaintiff's offer on April 22, 2015 by filing what they termed an Answer and Objections to plaintiff's statement of attorney fees, motions, memoranda, and declarations in support of a one-third contingent award.

15.

Plaintiff accepts defendants Seida's rejection of plaintiff's offer to foreclose plaintiff's lien in an amount less than the amount actually due. Plaintiff has therefore amended his existing lien to reflect the actual amounts owing under ORS 87.445. Plaintiff has perfected filing and service of his amended lien in Lincoln Circuit No. 140225, a true and correct copy of which is attached hereto as Exhibit 4.

16.

Plaintiff performed legal services to defendants Seida in consideration for their return promise for payment. Defendants Seida breached the agreement by failing and refusing to pay plaintiff in a timely manner for services rendered and billed.

///

///

## Appendix B-7

17.

Defendants Seida, nor any of them individually, nor any person or entity whatsoever, have paid plaintiff any amount owing for plaintiff's professional services rendered in Lincoln Circuit No. 140225. Plaintiff has been damaged in the amount of \$140,054.40, in addition to prejudgment interest, costs, and attorney fees.

18.

Plaintiff is entitled to prejudgment interest from the date that defendants Seida, or any of them, signed the general judgment of dismissal in Lincoln Circuit No. 140225, which was September 11, 2014, pursuant to ORS 82.010.

19.

Plaintiff is entitled to recover his attorney fees to collect the above sums, pursuant to ORS 87.485.

For a **SECOND CLAIM FOR RELIEF**, plaintiff alleges (Against Defendants Seida):  
ACCOUNT STATED.

20.

Plaintiff realleges and incorporates by reference paragraphs 1-19 above as though fully set forth here.

21.

Plaintiff had an express contingency fee agreement with defendants Seida.

22.

Defendants Seida promised to pay plaintiff professional fees for services rendered to defendants Seida, and at their express request.

23.

Defendants Seida are indebted to plaintiff in the amount of \$140,054.40.

## Appendix B-8

1 24.

2 Defendants Seida have failed to pay plaintiff in breach of their legal duty to do so.

3 25.

4 Defendants Seida have paid no portion of the amounts owing to plaintiff. Plaintiff has  
5 been harmed in the amount of \$140,054.40. Plaintiff is entitled to reasonable attorney fees under  
6 ORS 87.485.

7 For a **THIRD** CLAIM FOR RELIEF, plaintiff alleges (Against Defendants Seida):  
8 (Quantum Meruit); Common Allegations as to All Counts.

9 26

10 Plaintiff realleges and incorporates by reference paragraphs 1-19 above, as though fully  
11 set forth here.

12 27.

13 Defendants Seida received professional services from the plaintiff.

14 28.

15 The reasonable value for the professional services rendered is \$140,054.40.

16 29.

17 Plaintiff provided the goods or services with the reasonable expectation of getting paid.

18 30.

19 Defendants Seida will be unjustly enriched if they are not required to pay to the plaintiff  
20 the reasonable value of the goods or services provided. For example, defendant Mary Seida  
21 relied on the answer filed by plaintiff on her behalf at her request; had plaintiff not filed the  
22 answer when requested, the State of Oregon would have obtained a default order and judgment  
23 against her according to the notice it filed in Lincoln Circuit No. 140225.

24 ///

25 ///

26 ///

## Appendix B-9

1 31.

2 Plaintiffs has suffered damage in the amount of \$140,054.40 for the services provided.  
3 Plaintiff is entitled to reasonable attorney fees under the statutes alleged with more particularity  
4 for such separate counts under plaintiff's first and third claims for relief above.  
5 For a **FOURTH** CLAIM FOR RELIEF, plaintiff alleges (Against Defendants Seida)  
6 (Foreclose Attorney's Lien in Lincoln Circuit No. **140225**):

7 32.

8 Plaintiff realleges and incorporates by reference paragraphs 1-31 above as though fully  
9 set forth.

10 33.

11 (Res)

12 At all times material herein, defendant personal property is the Stipulated Judgment in  
13 Lincoln Circuit No. 140225 (hereafter "the Res") containing a liquidated and adjudicated right of  
14 defendants Seida to receive \$445,000.00 from the State of Oregon, plus attorney fees, and  
15 interest. A true copy of the Res is attached as Exhibit 2.

16 34.

17 The Res is subject to plaintiff's right to lien such proceeds for unpaid attorney fees  
18 pursuant to ORS 87.445 et seq. A copy of plaintiff's lien is attached in Exhibit 3 at pages 6 to 8.  
19 A true copy of plaintiff's amended lien is attached as Exhibit 4.

20 35.

21 General judgment for eminent domain was obtained by defendant State of Oregon against  
22 defendants Seida in Lincoln Circuit No. 140225 without a trial under threat of default.

23 36.

24 Defendant State of Oregon paid the Res into circuit court where it remains subject to  
25 payment of plaintiff's claim of lien in full.

26 ///

## Appendix B-10

1 37.

2 Defendants Kent Seida and Seida Land & Livestock, LLC, on behalf of defendants Seida  
3 as partners, entered into a written contingent fee agreement with plaintiff. The contingent fee  
4 agreement provides that plaintiff be paid forty percent of the net recovery to defendants Seida in  
5 Lincoln Circuit No. 140225, as payment for legal services provided to defendants Seida in such  
6 proceeding. A true copy of the contingent fee agreement is attached as Exhibit 1.

7 38.

8 At all times material herein, neither defendants Seida nor defendant State of Oregon has  
9 paid to plaintiff any sum for the partial or full satisfaction of plaintiff's lien over the Res.

10 39.  
11

12 Plaintiff gave notice of lien under ORS 87.445 et seq in Lincoln Circuit No. 140225, and  
13 it was served on all parties to that proceeding, including defendants Seida under ORCP 9.  
14 Plaintiff gave notice of his amended lien, and it was filed and served on all parties to this  
15 proceeding pursuant to ORS 87.450, within three years of September 11, 2014.

16 40.

17 Plaintiff's amended lien was filed with the clerk of the Lincoln County Circuit Court, the  
18 same court as which issued general judgment in Lincoln Circuit No. 140225. Plaintiff's  
19 amended lien was filed within three years after the judgment was entered, and it was sent to  
20 defendants Seida by certified mail at their last-known address. Plaintiff perfected his lien for  
21 purposes of ORS 87.450.

22 ///

23 ///

24 ///

## Appendix B-11

1 41.

2 The following person(s) may claim a legal or equitable interest in the Res either as a  
3 member of defendant Seida Land & Livestock Company, LLC or as a partner in the defendants  
4 Seida partnership.

5 a. Defendant Suzanne Seida;

6 b. Defendant David Seida;

7 c. Defendant Kent Seida, Jr;

8 d. Defendant Mary Seida;

9 e. Defendant Kent Seida Sr.

10 Any such claim is inferior and subordinate to plaintiff's attorney's lien.

11 41.

12 Plaintiff's lien has priority over and is superior to all other liens except for tax liens,  
13 pursuant to ORS 87.490(1).

14 42.

15 Defendants Seidas are not attorneys for purposes of ORS 87.445 et seq and ORS 9.160 et  
16 seq. As such, defendants Seida's purported lien attached as Exhibit 5 is not a lien for purposes of  
17 ORS 87.445, it has no priority over plaintiff's lien, it is inferior and subordinate to plaintiff's  
18 lien, and defendants Seida's lien is not a valid or existing lien for any lawful purpose.

19 43.

20 The amount due on plaintiff's lien is the amount of \$140,054.40 principal, exclusive of  
21 mandatory attorney fees as shall be awarded by the court pursuant to ORS 87.485.

22 ///

23 ///

## Appendix B-12

1 44.

2 Plaintiff is entitled to pre-judgment interest in the amount of 9% per annum on the  
3 principal amount pursuant to ORS 82.010, from the date of plaintiff's lien.

4 45.

5 Plaintiff is entitled to post-judgment interest in the amount of 9% per annum from the  
6 date of plaintiff's judgment here until such judgment is paid in full.

7 46.

8 Plaintiff is entitled to mandatory attorney fees in an amount to be determined, pursuant to  
9 ORS 87.485.

10 WHEREFORE, plaintiff prays for judgment as follows:

11 A. For a money award in plaintiff's favor, and against all defendants, jointly and severally,  
12 as follows, in the amount of \$140,054.40.

13 B. For prejudgment interest at the rate of 9% per annum pursuant to ORS 82.010(1) on all  
14 claims;

15 C. For attorney fees reasonably incurred, pursuant to ORS 87.485, in an amount to be  
16 determined by appropriate judgment under ORCP 68 with special findings of fact and  
17 conclusions of law hereby demanded pursuant to ORCP 68 C(4)(e);

18 D. For foreclosure of plaintiff's lien against the Res, with an order requiring payment of the  
19 entire amount of plaintiff's lien, including prejudgment interest, costs, and attorney fees;

20 E. For post judgment interest on all sums awarded to plaintiff, at the rate of 9% per annum  
21 from the date of judgment until paid, pursuant to ORS 82.010(2);

22 F. For enhanced prevailing party fees and costs;

23 ///

24 ///



1 G. For such other and further relief as the court deems just or equitable.

2 DATED this 12th day of May, 2015.

3 INTELEKIA LAW GROUP LLC

4 

5 By: \_\_\_\_\_  
6 Sandra D. Fraser, OSB 093548  
7 sandra@intelekia-law.com  
8 Of Attorneys for Plaintiff  
9

### ATTORNEY CLIENT FEE AGREEMENT EXPLANATION

The attached document is called an "Attorney-Client Fee Agreement." It describes how I am to be paid for the work I perform for you. The agreement's basic provisions are as follows:

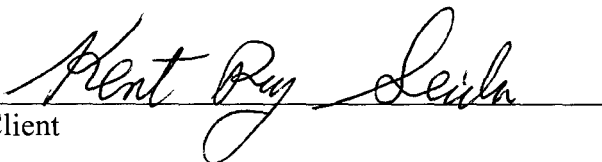
1. I will be paid for my work only if I obtain money for you.
2. You have no obligation to pay me for my time or services if I do not get you any money, unless you discharge me prior to settlement or other resolution of your case.
3. But if I pay for investigators, court filing fees, trial preparation fees (such as bills for medical examinations and reports and expert witness fees for reports or testimony, including consultations), court reporter and deposition costs, or witness fees in connection with your case, I am entitled to be paid back from you. This is whether I win or lose your case.

### HOW I AM TO BE PAID

If I obtain money for you, this agreement says that I will receive an award against ODOT calculated as a percentage of your recovery, or at an hourly rate, whichever is greater. However, if your case is settled before my office has had to begin to prepare for trial, the percentage of the money which you will pay me is 33.3333 %, or at the agreed hourly rate. Settlement will be conditioned on you and me agreeing to the amount, and manner, of payment of my attorney fees. If your case is settled after trial preparation begins, or after an offer of compromise is served regardless of whether accepted or filed, the percentage of the money which I will be paid by ODOT is 40%, or the agreed hourly rate, whichever is greater. If your case is settled after a Notice of Appeal is filed by either party, the percentage of the money which I will be paid is 49 %, or the agreed hourly rate, whichever is greater.

### CANCELLATION

You may cancel this Attorney-Client Fee Agreement by notifying me in writing within 24 hours after you have signed it, or by the same time the next working day. Thereafter, you may discharge me at any time. However, if you do, I am entitled to get back money I have advanced for expenses in your case, and the greater of my contingent fee percentage or my hourly fee at my billable rate of \$450.00 per hour for services I have provided.

  
Client

April 1, 2013 [mis-dated;  
Date Actual date is  
April 24, 2014.  
Russell L. Baldwin]

**RUSSELL L. BALDWIN • ATTORNEY AT LAW**

---

Office:  
4355 N. Highway 101, Suite B  
Lincoln City, OR 97367

Mail:  
PO Box 1242  
Lincoln City, OR 97367

Tel: 541-994-6166

[mis-dated;

Actual date is

April 24, 2014.

Russell L. Baldwin]

**ATTORNEY-CLIENT CONTINGENT FEE AGREEMENT**

This agreement is entered into this 1st day of April, 2013, between Russell L. Baldwin, Attorney at Law ("attorney") and **Seida Land & Livestock LLC**, (hereinafter "client").

Client requests, authorizes, and retains attorney as legal counsel for all purposes concerning:

Prospective direct condemnation by ODOT of US Highway 101 real property in Lincoln County, Oregon, exclusive of outdoor advertising sign rights under the Oregon Motorist Information Act, the Scenic Byway Act, and the Highway Beautification Act;

And on the following terms and conditions:

1. Client promises that no other attorney or legal representative is retained by client with regard to the above matter.
2. Attorney shall devote his full professional abilities to the case and client agrees to fully cooperate with attorney. Neither attorney nor client shall settle the case or legal matter, or any portion, without the other party's approval.
3. Attorney shall investigate client's claim(s) and, after so investigating the claim does not appear to have merit, if the facts or circumstances lead attorney to believe in his independent professional judgment that the claim should not be pursued in the manner requested by client, or attorney has a conflict of interest or the appearance thereof, then attorney shall have the right to cancel this agreement.
4. Attorney shall incur costs in investigating the case to determine the facts and circumstances giving rise to the claims of client. These costs shall include, without limitation, costs of hospital records and similar investigation costs. Client agrees to reimburse attorney for these costs whether attorney agrees to proceed with the case or not following investigation and evaluation.
5. If attorney accepts the case, client agrees to pay all costs, including but not limited to, filing and service fees, expert reports and testimony, depositions, trial and reporter fees, investigators' expenses, subpoenas, and long distance telephone charges. Court costs and money expended in trial preparation are NOT included in the attorney fees. All costs must be paid at or before the time they are incurred, and the attorney is specifically authorized to pay expenses above incurred out of client's share of the settlement or award accruing to the client once the retainer, if any, has been disbursed.
6. Client has previously deposited with attorney a retainer in the amount of \$-0- to be held in trust to pay costs and expenses. Client understands that attorney shall disburse amounts from the retainer held in trust if for expenses as they accrue. In the event that funds remain in trust at the conclusion of the case, whether the case is settled, tried, arbitrated, or if attorney withdraws from the case, then in that event client's account shall be credited for the amount held in trust for any fees or expenses then owing to attorney, and the remainder, if any,

## Appendix B-16

shall be disbursed to client. Client understands that the retainer is usually not large enough to pay all costs or attorney fees. Costs, but not attorney fees, shall be deducted from the gross recovery. **Costs do not include the client's property damage or consequential damages, if any.**

**Attorney may refuse to present any final decree or order to any court for signature until all fees are paid in full.**

7. Client agrees to pay attorney, for services, a contingent fee based upon the following percentages. These percentages are applied to the gross sum recovered for client for the purpose of determining attorney's right to recovery from the ODOT under ORS 20.085, ORS 35.346, ORS 20.190 and the public benefit doctrine acting as a private attorney general under *Armatta v. Kitzhaber*, if applicable.

- |   |          |
|---|----------|
| a. Settlement prior to trial preparation  | 33.3333% |
| b. Settlement after trial preparation initiated, or<br>offer of compromise served whether<br>or not accepted or filed | 40.00%   |
| c. Settlement on appeal, if Notice of Appeal filed  | 49.00%   |

The amount of recovery shall be calculated as follows: for a direct condemnation proceeding filed by ODOT as a plaintiff in Lincoln County, Oregon, the amount of recovery shall be the difference between (a) the amount paid by, or promised to be paid by, the State of Oregon for the acquisition of real property including damage to the remainder if any and (b) the amount of the State's offer accompanied by any written appraisal for purposes of ORS 35.346(2).

Client reserves the right and unbridled discretion to negotiate directly with ODOT or any other state agency, including the Oregon Department of Justice, for payment for the acquisition of any portion of client's real property, but with the assistance and counsel of attorney.

Client and attorney shall work together cooperatively, and in confidence, for the negotiation by client of the maximum amount for the acquisition of client's real property, based upon the highest and best use, including without limitation just compensation for the acquisition and the reduction in value to the remainder of the property, if any.

**Special provisions for court awarded attorney fees against party opponent.** Attorney may, but is not obligated to, keep hourly time records of professional services rendered at the rate of \$450.00 per hour. In the event that attorney fees are awarded by a court or arbitrator to client, attorney may elect the greater of either the contingent fee for recovery as against the ODOT for determination under ORCP 68 as set forth above *or* attorney fees billed at the hourly rate of \$450.00 per hour. In either case, attorney fees shall be sought against Oregon Department of Transportation as required by ORS 20.085 and/or ORS 35.346. **Client assumes no liability**

**hereunder for attorney fees (other than costs) which are in excess of amounts collected from the State of Oregon/ODOT.**

**Factors for mandatory attorney fee awards in the context of inverse condemnation under the Oregon Constitution and ORS 20.085 and ORCP 68.**

The following factors have been considered by attorney and client in setting the hourly fee of \$450.00 per hour for purposes of elective time billing, and in setting the contingent fee schedule set forth above:

A. ORS 20.075

(1) A court shall consider the following factors in determining whether to award attorney fees in any case in which an award of attorney fees is authorized by statute and in which the court has discretion to decide whether to award attorney fees:

(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.

(b) The objective reasonableness of the claims and defenses asserted by the parties.

(c) The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.

(d) The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.

(e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.

(f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

(g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.

(h) Such other factors as the court may consider appropriate under the circumstances of the case.

(2) A court shall consider the factors specified in subsection (1) of this section in determining the amount of an award of attorney fees in any case in which an award of attorney fees is authorized or required by statute. In addition, the court shall consider the following factors in determining the amount of an award of attorney fees in those cases:

(a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.

## Appendix B-18

- (b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.
- (c) The fee customarily charged in the locality for similar legal services.
- (d) The amount involved in the controversy and the results obtained.
- (e) The time limitations imposed by the client or the circumstances of the case.
- (f) The nature and length of the attorney's professional relationship with the client.
- (g) The experience, reputation and ability of the attorney performing the services.
- (h) Whether the fee of the attorney is fixed or contingent.

(3) In any appeal from the award or denial of an attorney fee subject to this section, the court reviewing the award may not modify the decision of the court in making or denying an award, or the decision of the court as to the amount of the award, except upon a finding of an abuse of discretion.

B. Client has disclosed to attorney that client has had approximately 20 years of litigation experience involving condemnation claims. Further, client Kent Seida is a licensed property adjuster in the State of Oregon, and has substantial experience adjusting and settling property claims. Attorney discloses that attorney has extensive experience in litigating property rights matters involving the Oregon Department of Transportation in circuit court, in administrative contested case hearings, in U.S. District Court, in the Ninth Circuit Court of Appeals, in the Oregon Court of Appeals, and in the Oregon Supreme Court.

C. It is anticipated that Oregon Department of Transportation, a very large publicly funded and high profile state agency, will vigorously defend, refuse to provide timely responses to plaintiffs' discovery requests, will likely overproduce unnecessary documents as it did in a recent Linn County Circuit Court Case (No. 081164), and will likely file one or more motions for summary judgment requiring extensive briefing and extensive motion work and depositions requiring personal appearances in Lincoln County, Oregon, and extensive travel time. Further, ODOT will likely refuse to engage plaintiffs or counsel in meaningful settlement negotiation at any time prior to trial. ODOT's course of conduct will likely be one factor used by the circuit court in determining the reasonableness of the fee award.

Client discloses further that client has been unsuccessful at retaining experienced litigation counsel in the Willamette Valley to undertake representation on a deferred hourly fee basis, and no law firm was willing to undertake the risk of representation on a contingency fee basis at all. As a consequence, attorney agrees to undertake representation on a contingency fee basis, or deferred hourly basis at the agreed rate of \$450.00 per hour, whichever is greater.

D. Based upon the above disclosures, trial is assumed to be a necessity at the outset, which will likely require more than a month of trial preparation, and more than a month of unassisted in person trial work in Lincoln County, Oregon. Additionally, the client and attorney are aware that

## Appendix B-19

the case may become high profile, and that the extensive briefing, motion, and trial work will require that attorney not accept new cases or devote professional time to attorney's transactional practice until after settlement or judgment in the Lincoln County Circuit Court. Client is aware of attorney's prior successful performance arguing to the Oregon Supreme Court in matters relating to the unconstitutionality of ODOT regulatory regime under the Oregon Motorist Information Act, and attorney's expertise in the area of Oregon constitutional law and Measure 37 work on appeal is among the factors weighed by client in agreeing to the contingent fee schedule, and the alternative hourly rate (whichever is greater) as set forth above.

E. At the outset, client and attorney have made the following disclosures: client's legal matter is time sensitive because client's substantial equity in the property is illiquid, and the legal matter should be resolved prior to that time to avoid significant economic and consequential damages to client. Timing and illiquidity caused by ODOT's prospective taking is a material term of this agreement, and the manner in which attorney is to be paid. Attorney makes no guarantee as to timing or outcome. Attorney shall use his best efforts to not, during the course of the proceedings and on any appeal, agree to delay, delay, or in any manner cause delay of any hearing, trial, motion, response, pleading, or court imposed deadline. The imposition of timing limitations imposed by the client and the attendant circumstances of the case is among the factors in determining the contingent fee schedule or hourly rate set forth above, whichever is greater.

F. Attorney has disclosed to client that attorney was hospitalized for extensive surgeries in 2007, but has regained his health and is otherwise fully engaged in the practice of law, is in good health, and remains in good standing with the Oregon State Bar, without any existing or anticipated disciplinary matter or proceeding. Attorney's reputation as a practicing attorney in good standing is a substantial and material term of this agreement. Attorney covenants that he will devote his full professional time to client's case matter, not to the exclusion of *existing* legal matters, but it is agreed that attorney will forego taking on extensive civil trial work or transactional matters which would interfere with attorney's ability to complete each task required during the litigation to its timely conclusion without the necessity of requesting additional time either of opposing counsel or the respective court, whether at trial or on appeal.

G. Failure to timely complete necessary tasks within the time allowed by the Oregon Rules of Civil Procedure and the Oregon Rules of Appellate Procedure may be grounds for client termination of attorney and forfeiture of the agreed bonus compensation at the conclusion of the case, unless consented by client for unavoidable casualty or illness, which such consent shall not be unreasonably withheld.

H. Deferment of accrued billable time until case resolution or final judgment is a material term of this agreement, and the contingent percentage rate, or \$450.00 per hour whichever is greater, is intended to compensate attorney for the added risk undertaken by attorney in defending a direct condemnation complaint, pursuing a counterclaim for inverse condemnation against the State of Oregon, the time value of money, and the severe time limitations which will be imposed on attorney in a novel and not widely practiced area of Oregon law requiring extensive common law analysis without statutory guideposts except ORS 20.085 and ORS 35.346.

## Appendix B-20

8. In the event of no recovery, client shall owe attorney nothing for services rendered (other than costs as defined in paragraphs 4 & 5 above): **Client shall owe no fee to attorney for services provided.** In the event that client discharges attorney prior to settlement, client shall pay attorney the greater of either (a) attorney's contingent fee percentage according to the percentages listed above, if a sum certain recovery has been negotiated or achieved; or (b) an hourly fee at the billable rate of \$450.00 per hour for services provided. Should any legal actions, arbitration or proceedings be necessary to collect attorney's fees or costs from the Oregon Department of Transportation, attorney shall be entitled to collect from ODOT the reasonable attorney fees incurred in such action, arbitration or proceeding. In the event that legal actions, including appeals, are necessary to collect attorney's fees or costs from Oregon Department of Transportation, the same contingent fee rate or hourly rate shall apply to calculate the award for submission by such court, but attorney will not seek to recover those fees directly from client without first exhausting all available remedies against ODOT.

9. Client shall keep attorney informed of client's current address and telephone number at all times, and shall not discuss the case with any person except those persons identified by attorney as attorney's agents.

10. Attorney reserves the right to assign all or any portion of the legal or investigative work to be performed to an associate attorney or independent investigator. Moreover, unless client elects to further retain attorney under the provisions of paragraph 7 above, client shall have the right, but not the obligation, to retain specialized legal counsel at an hourly rate at client's cost. If client elects to further retain attorney, then attorney shall have the right, but not the obligation, to retain specialized legal counsel at an hourly rate, which such fees shall be deferred and paid out of attorney's contingent fee or hourly fee.

11. Attorney has made no promise or guarantee regarding the outcome of client's claim(s) or case.

12. Attorney has reviewed this agreement with the client in compliance with the model explanation prepared by the Oregon State Bar, with pertinent changes reflected herein, a signed copy of which is attached hereto and by this reference incorporated herein.

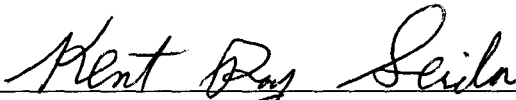
13. Attorney will send client pleadings, documents, correspondence, and other information throughout the case, by email. These copies will be client's file copies. Attorney will also keep the information in a file in attorney's office. The file in attorney's office will be attorney's file. Client shall bring the client's file to all of meetings with attorney so that attorney and client will have all of the necessary information available to them. When attorney has completed all the legal work necessary for client's case, attorney will close attorney's file and return original documents to client, if any remain in attorney's file. Attorney will store attorney's file for approximately 5 years. Attorney will destroy attorney's file after that period of time unless client instructs attorney, in writing on the date signed below, to keep the file a longer period. Case file shall include discovery documents received from ODOT, and the calculation of the attorney fees is intended to cover the costs of reviewing all production requests from, and



Appendix B-21

reviewing all discovery produced by, ODOT, including the cost to transport, store, and the safekeeping of such discovery.

14. Client understands that client may rescind this agreement by notifying attorney of client's desire to do so within 24 hours of the date and time of signature by client, as indicated below.

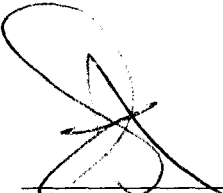
  
Client (Seida Land & Livestock, LLC, Member)

2545 SW Anchor  
Lincoln City, OR 97367  
Address

April 1, 2013 at 2:15 pm.  
Date & Time

[mis-dated;  
Actual date is  
April 24, 2014.  
Russell L. Baldwin]

(541) 994-7988  
Phone No.

  
Russell L. Baldwin, Attorney at Law

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK LLC, an  
Oregon limited liability company; MISSION  
STREET SELF STORAGE LLC, an Oregon  
limited liability company; OREGON SURF  
SHOP, LLC, an Oregon limited liability  
company; NORTH LINCOLN AERIE OF  
THE FRATERNAL ORDER OF EAGLES,  
#2576, an Oregon corporation; LINCOLN  
COUNTY, a political subdivision of the State  
of Oregon; KENT R. SEIDA and MARY M.  
SEIDA, husband and wife; ELIZABETH J.  
DUNHAM; MARK A. TYLER and TRUDI  
A. TYLER; JAMES P. MIMNAUGH and  
CYNTHIA G. SWEARINGEN, husband and  
wife; GLEN M. TORRANCE and ELLEN J.  
TORRANCE, husband and wife; JUDY S.  
NAGLE; DELORES V. WESSEL; ALLEN  
TREND A and TARYN TREND A, husband  
and wife; and MOLLY K. JOHNSON and  
MICHAEL N. JOHNSON, husband and wife,

Defendants.

Case No. 140225

STIPULATED GENERAL JUDGMENT

**ORS 20.140 - State fees deferred at filing**

This judgment comes to the Court upon stipulation of the parties, plaintiff appearing by  
and through J. Nicole DeFever, Senior Assistant Attorney General; defendants Seida Land &  
Livestock LLC, Kent R. Seida and Mary M. Seida appearing in propria persona; and defendants  
Glen M. Torrance and Ellen J. Torrance appearing by and through their attorney Dale M. Roller.

## Appendix B-23

1 The parties by their stipulation below agreeing and advising the court, and the court  
2 finding:

3 That the parties have reached an agreement settling the case through an offer of  
4 compromise;

5 That the parties have reached an Additional Settlement Agreement, resolving the issues  
6 regarding the form of judgment, which does not merge into this judgment;

7 That no good cause exists for setting aside the settlement or setting this case for trial;

8 That this judgment reflects a settlement of all issues raised or raiseable in this action;

9 That the real property described in Exhibit A attached hereto and paragraph 4 of the  
10 plaintiff's complaint is necessary for public use;

11 That the acquisition and use are subject to the "Terms of State's Offer," as set out in  
12 Exhibit B, attached hereto;

13 That the acquisition and use are subject to the terms of the two Modification of Approach  
14 letters dated March 15, 2013, which are referenced in Exhibit B and attached hereto as Exhibit C;

15 That the parties agree that the letter regarding access permit number 51230 provides that  
16 the barrier may be removed from that access upon development of an adequate driving surface  
17 for cars to safely enter and exit;

18 That the plaintiff, prior to the commencement of this action and pursuant to its resolution,  
19 attempted to acquire said real property by agreement and purchase, but was unable to do so;

20 That the total sum to be paid jointly to defendants Seida Land & Livestock LLC, Kent R.  
21 Seida and Mary M. Seida for their property interests is \$445,000.00 plus interest up to the date of  
22 entry of judgment;

23 That the total sum to be paid jointly to defendants Glen M. Torrance and Ellen J.  
24 Torrance for their property interests is \$5,000.00;

25 That plaintiff on January 23, 2014, deposited with the clerk of this court \$94,864.00 for  
26 the use and benefit of defendants;

## Appendix B-24

1 That plaintiff shall deposit with the clerk of this court the remaining balance due in the  
2 amount of \$355,136.00 plus interest at the rate of 9.000% per annum from January 23, 2014, the  
3 date plaintiff took possession of the property, to the date of entry of judgment;

4 That defendants waive the right of repurchase of the property being acquired for the  
5 public purpose pursuant to ORS 35.385(2)(b);

6 That defendants may submit a petition for attorney fees, and costs and expenses as  
7 defined in ORS 35.335(2), and the amount of fees, costs and expenses if any, may be awarded by  
8 supplemental judgment;

9 That defendants Seida Land & Livestock LLC, Kent R. Seida and Mary M. Seida dismiss  
10 their counterclaims with prejudice;

11 That plaintiff is now entitled to judgment appropriating the real property described in  
12 Exhibit A hereto, and paragraph 4 of the Complaint, to the State of Oregon, by and through its  
13 Department of Transportation, free and clear of all liens and encumbrances except as hereinafter  
14 provided; and

15 That the acquisition in this case does not change the access to U.S. Highway 101 for the  
16 remainder property; now, therefore,

17 **IT IS HEREBY ADJUDGED:**

18 1.

19 The real property described in Exhibit A is appropriated for public purposes; and title to  
20 said acquisition, together with all rights and easements therein is vested in the State of Oregon,  
21 by and through its Department of Transportation, free and clear of all liens and encumbrances,  
22 except as herein provided.

23 The acquisition and use consist of:

24 The property, fee simple, described as Parcel 1 in the Exhibit A  
25 attached hereto. This parcel of land contains 3,362 square feet, more  
26 or less.

## Appendix B-25

1 A permanent easement upon, over, under, and across the property  
2 described as Parcel 2 in Exhibit A attached hereto, for the purpose of  
3 constructing and maintaining slopes, and for the purpose of  
4 relocating, constructing and maintaining water, gas, electric and  
5 communication service lines, fixtures and facilities, and  
appurtenances therefore. Since fee simple title is not being acquired,  
any use may be made of the real property provided that such use  
shall not interfere with the purpose of this easement or endanger the  
lateral support of the highway. This parcel of land contains 11,168  
square feet, more or less.

6 A temporary easement across the property described as Parcel 3 in  
7 the Exhibit A attached hereto, for the purpose of a work area for  
8 construction purposes. Since fee simple title is not being acquired,  
9 any use may be made of the real property provided that such use  
10 shall not interfere with the purpose of this easement. This  
easement automatically terminates on completion of the project or  
on February 28, 2017, whichever is the earlier. This parcel of land  
contains 332 square feet, more or less.

### 2.

11 The acquisition and use are subject to the "Terms of State's Offer," as set out in Exhibit  
12 B; the terms of the two Modification of Approach letters dated March 15, 2013 as set out in  
13 Exhibit C; the parties agreement that the barrier on access permit number 51230 may be removed  
14 upon development of an adequate driving surface for cars to safely enter and exit; and the  
15 Additional Settlement Agreement.

### 3.

17 Plaintiff previously deposited with the clerk of this court the sum of \$94,864.00.

### 4.

19 Plaintiff shall deposit with the clerk of this court the remaining balance due in the amount  
20 of \$355,136.00, plus interest at the rate of 9.000% per annum from January 23, 2014, the date  
21 plaintiff took possession of the property, to the date of entry of judgment.

### 5.

23 The court clerk and/or treasurer, without further order of this court, shall pay \$5,000.00  
24 on account of just compensation to defendants Glen M. Torrance and Ellen J. Torrance, by check  
25 payable to "Client Trust Account of Dale M. Roller" and mailed to the attention of Dale M.  
26 Roller, Attorney at Law, 161 High Street SE, Suite 243, Salem, OR 97301.

Appendix B-26

6.

The court clerk and/or treasurer, without further order of this court, shall pay the balance of the funds deposited into the Court on account of just compensation, to wit: \$445,000.00 plus interest up to the date of entry of judgment, to defendants Seida Land & Livestock LLC, Kent R. Seida and Mary M. Seida, by check payable to Seida Land & Livestock LLC and mailed to the attention of Kent Seida, 2545 SW Anchor Avenue, Lincoln City, OR 97367.

7.

Defendants may submit a petition for attorney fees, costs and expense. Fees, costs and expenses, if any, may be awarded by supplemental judgment.

8.

There shall be no right of repurchase of the property pursuant to ORS 35.385(2)(b).

9.

Defendants Seida Land & Livestock LLC, Kent R. Seida and Mary M. Seida's counterclaims are dismissed with prejudice.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

CIRCUIT COURT JUDGE

**IT IS SO STIPULATED:**

Dated: 9-11, 2014.

Kent R. Seida  
Kent R. Seida, authorized member on behalf of  
Defendant Seida Land & Livestock LLC

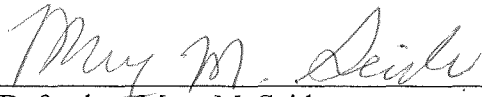
Dated: 9-11, 2014.

Kent R. Seida  
Defendant Kent R. Seida

Appendix B-27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Dated: 9-11-, 2014.

  
Defendant Mary M. Seida

Dated: \_\_\_\_\_, 2014.

DALE MAXIMILIANO ROLLER #091897  
Of Attorneys for Defendants Glen M. Torrance  
and Ellen J. Torrance


Dated: \_\_\_\_\_, 2014.

J. NICOLE DEFEVER #030929  
Of Attorneys for Plaintiff

Dated: \_\_\_\_\_, 2014.

Defendant Mary M. Seida

Dated: 12 Sep, 2014.

  
DALE MAXIMILIANO ROLLER #091897  
Of Attorneys for Defendants Glen M. Torrance  
and Ellen J. Torrance

Dated: Sept 15, 2014.

  
J. NICOLE DEFEVER #030929  
Of Attorneys for Plaintiff



EXHIBIT A - Page 1 of 2

File 7375020  
Drawing 11B-3-23  
3/7/2013

**PARCEL 1 – Fee**

A parcel of land lying in Parcel 1 of PARTITION PLAT 2000-20, Lincoln County, Oregon and being a portion of that property described in that Warranty Deed to Seida Land & Livestock, LLC, recorded January 26, 2009 in Lincoln County Book of Records as Instrument No. 2009-00857; the said parcel being that portion of said property lying Southwesterly of a line at right angles to the 'P' center line at Engineer's Station 1+90.00, which center line is described as follows:

Beginning at Engineer's center line Station 'P' 0+00.00, said station being 87.97 feet North and 511.42 West of the South quarter corner of Section 22, Township 7 South, Range 11 West, W.M.; thence South 71°18'50" East 58.15 feet; thence on a 30.00 foot radius curve left (the long chord of which bears North 71°00'11" East 36.68 feet) 39.46 feet; thence North 33°19'13" East 102.39 feet to Engineer's center line Station 'P' 2+00.00.

Bearings are based on County Survey No. 18251, recorded February 29, 2008, Lincoln County, Oregon.

This parcel of land contains 3,362 square feet, more or less.

**PARCEL 2 – Permanent Easement for Slopes, Water, Gas, Electric and Communication Service Lines, Fixtures and Facilities**

A parcel of land lying in Parcel 1 of PARTITION PLAT 2000-20, Lincoln County, Oregon and being a portion of that property described in that Warranty Deed to Seida Land & Livestock, LLC, recorded January 26, 2009 in Lincoln County Book of Records as Instrument No. 2009-00857; the said parcel being that portion of said property included in a strip of land variable in width, lying on the Northwestern side of the center line of the relocated Oregon Coast Highway, which center line is described as follows:

Beginning at Engineer's center line Station 985+00.00, said station being 3,197.95 feet North and 1,618.44 feet East of the South quarter corner of Section 22, Township 7 South, Range 11 West, W.M.; thence South 1° 02' 01" East 261.80 feet; thence on a spiral curve right (the long chord of which bears South 0° 50' 29" West 179.92 feet) 180.00 feet; thence on a 916.73 foot radius curve right (the long chord of which bears South 15° 50' 16" West 357.58 feet) 359.88 feet; thence on a spiral curve right (the long chord of which bears South 30° 50' 04" West 179.92 feet) 180.00 feet; thence South 32° 42' 33" West 710.35 feet; thence on a 11,459.16 foot radius curve right (the long chord of which bears South 36° 15' 31" West 1,418.92 feet) 1,419.83 feet; thence South 39° 48' 30" West 46.04 feet; thence on a 4,583.66 foot radius curve right (the long chord of which bears South 40° 21'

EXHIBIT A - Page 2 of 2

File 7375020  
 Drawing 11B-3-23  
 3/7/2013

18" West 87.46 feet) 87.46 feet; thence South 40° 54' 06" West 375.41 feet; thence on a spiral curve left (the long chord of which bears South 39° 21' 06" West 179.95 feet) 180.00 feet; thence on a 1,108.95 foot radius curve left (the long chord of which bears South 17° 26' 36" West 715.06 feet) 728.07 feet; thence South 1° 21' 54" East 135.03 feet to Engineer's center line Station 1031+63.87.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Northwestern Side of Center Line
1017+95.00		1018+85.00	70.00
1018+85.00		1021+20.77	70.00 in a straight line to 80.00
1021+20.77		1021+50.00	80.00 in a straight line to 88.00
1021+50.00		1022+12.00	88.00 in a straight line to 90.00

Bearings are based on County Survey No. 18251, recorded February 29, 2008, Lincoln County, Oregon.

This parcel of land contains 11,168 square feet, more or less.

**PARCEL 3 – Temporary Easement for Work Area (3 years or duration of Project, whichever is sooner)**

A parcel of land lying in Parcel 1 of PARTITION PLAT 2000-20, Lincoln County, Oregon and being a portion of that property described in that Warranty Deed to Seida Land & Livestock, LLC, recorded January 26, 2009 in Lincoln County Book of Records as Instrument No. 2009-00857; the said parcel being that portion of said property lying Southwesterly of a line at right angles to the center line of the relocated Oregon Coast Highway at Engineer's Station 1021+50.00 and included in a strip of land 55.00 feet in width, lying on the Northwestern side of said center, which center line is described in Parcel 2.

This parcel of land contains 332 square feet, more or less.



**TERMS OF STATE'S OFFER**

**THE STATE'S OFFER IS AS DESCRIBED IN THE ENCLOSED ACQUISITION DOCUMENTS AND INCLUDES THE FOLLOWING ADDITIONAL TERMS:**

1. The State will pay recording costs, title insurance premiums, and all other normal costs of sale.
2. Outstanding encumbrances, including taxes and other interests, may need to be paid out of the just compensation in order to provide sufficient title to the State.
3. Taxes will be prorated as of the date of possession or transfer of title, whichever is earlier.
4. As part of this acquisition for the Project, the State will require the following actions:
  - A. The ODOT contractor and all subcontractors shall maintain in full force and effect a public works bond, as required by Oregon statutes, and the mandatory insurance coverage required by the construction contract. The contractor shall verify subcontractors have filed a public works bond and required insurance certificates before the subcontractor begins work. All construction shall be completed in conformance with standard engineering and construction practices.
  - B. If the Project impacts public utilities on the property, those utilities will be reconnected, except for the following utilities: N/A. If a public utility on the property is not reconnected, just compensation has been provided to cure the public utility disconnection.
  - C. If the Project impacts any driveways on the property, those driveways will be reconnected, except for the following driveways, which will be closed as part of the Project: See Paragraph G on the following page, as noted in the access closure letter dated \_\_\_\_\_.
  - D. Access to the property after the Project, other than reservations of access noted in Exhibit "A", shall be public access and shall be located at or near the following location(s) See Paragraph G on the following page and shall have a width of \_\_\_\_\_ feet; said access before and after the Project is subject to the government's police powers.
  - E. Access to the property shall remain open during construction with at least one lane for vehicle traffic, except for minimal (up to 2 hour) closures that are reasonably necessary pursuant to the Oregon Standard Specifications for Construction, Volume 2, Chapter 00220.02.
  - F. Any sidewalks adjacent to Owner's Property that are impacted by the Project will be reconnected to preexisting sidewalks, except at the following locations:

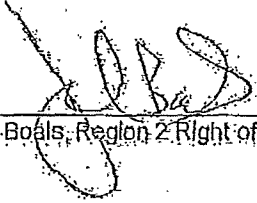
- G. Other terms of offer: In addition to the access to Highway 101 described below, the subject property has access to SW 32<sup>nd</sup> Street. The subject's current access to SW 32<sup>nd</sup> Street will be closed. The project will build a new public road off of SW Coast Avenue that will replace this access. The new public road will be approximately 30' in width where it connects with SW Coast Avenue and will taper to approximately 20' in width at the subject property. The new public road will connect to the subject property at the approximate engineering station 1+90.00 ("P" Line) as shown more or less in the attached sketch map.
  - (1) the Unpermitted Approach on Oregon Coast Highway 6 (US 101), No. 9 at Mile point 116.64 west will be reconstructed to a width of approximately 36 feet, and (2) the Permitted Approach on the Oregon Coast Highway 6 (US 101), No. 9 at Mile point 116.72 west (Permit Number 51230) will be reconstructed to a width of approximately 36 feet, as noted in the access modification letters sent March 15, 2013.
  - It should also be noted that the approximate 36' access located at milepost 116.72 will be a shared approach with the property to the south. Additionally, a temporary barricade will be installed and shall be maintained in place until such a time the property is developed and connected to the approach.
  - The slopes within the slope easements will range between 2:1 and 6:1 slope more or less.
  - Wetlands mitigation for the Project shall be conducted pursuant to the DSL permit #54426.
5. The acquisition shall be substantially the same as shown on the attached Sketch Map.
6. To accept this offer, each of the persons listed on the signature block below must (i) sign and return this document; and (ii) sign, notarize and deliver to ODOT all of the necessary real estate documents, if included, in an original and unaltered form sufficient for transferring title and recording in the appropriate county recorder's office.
7. If this offer is addressed to multiple persons, then it is a joint offer to all of those persons and must be accepted by all of the persons listed. If accepted, the just compensation in a joint offer may be apportioned among the persons listed in any mutually agreed upon manner.
8. The persons executing this offer each warrant and represent that they have authority to act for and bind their respective party with respect to the transfer of the real property interests that are the subject of this offer.
9. This document may be signed in counterparts. Once the signature of each person as set forth below has been affixed to one or more counterparts and returned to ODOT, this document shall be deemed fully executed as if all of the signatures were contained in a single document.

[See attached Signature page]

Appendix B-33

SIGNATURE PAGE for TERMS OF STATE'S OFFER

STATE OF OREGON, by and through its  
DEPARTMENT OF TRANSPORTATION

  
\_\_\_\_\_  
John Boals, Region 2 Right of Way Project Manager

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Grantor



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

District 4

3700 SW Philomath Blvd.

Corvallis, OR 97333-1194

Phone: 541-757-4211

March 15, 2013

**VIA CERTIFIED MAIL**

Seida Land & Livestock LLC

Attn: David Seida

21895 S Salamo RD

West Linn, OR 97068

**Subject: Modification of Unpermitted Approach within Highway Project Limits**  
Oregon Coast Highway, (US101), No. 9 at Mile point 116.64 west  
Tax Lot 13602, Map 7-11-22CD

Dear Mr. Seida:

The Oregon Department of Transportation (ODOT) is currently engaged in a highway improvement project known as FFO - US101: SE23rd – SW35th Street (Lincoln City). The project would modernize US101 by adding a center turn lane between 23<sup>rd</sup> and 32<sup>nd</sup> Street, construct bicycle lanes and sidewalks, realign the 32<sup>nd</sup> Street intersection and install a traffic signal at 32<sup>nd</sup>. Additional improvements include roadside drainage, striping and upgrading traffic control devices.

You have a private road approach located on the Oregon Coast Highway (US101) at mile point 116.64 on the west side of the highway. **This approach is within the project limits** and has been reviewed according to Oregon Administrative Rule (OAR) 734-051-5120(5), (Project Delivery). The Region Manager has determined that **this approach shall be modified as follows:**

Your existing approach is a 24 foot wide gravel approach. Curb and sidewalk will be constructed along your property frontage requiring reconstruction of your approach. As discussed with you, the approach will be reconstructed to a finished width of 36 feet as per the approved site plan. All reconstruction work of the approach will be done at no cost to you.

**Application of Administrative Rule**

ODOT has the responsibility of providing the traveling public a safe and efficient transportation facility. Oregon Revised Statutes (ORS) 374.310(2) charges the state to manage its highways "In the best interest of the public for the protection of the highway or road and the traveling public." ORS 374.305 states that certain actions may be taken, including removal, alteration or change of an approach road when "the public safety, public convenience and general welfare" require such action.

## Appendix B-35

Modification of Approach within Highway Project Limits  
Oregon Coast Highway, (US101) No. 9 at Mile point 116.64 West  
Page 2

OAR 734-051-5120(5) provides the following instructions regarding modification, mitigation, or removal of approaches:

The Region Manager may require modification, mitigation, or removal of approaches, including grandfathered approaches, within project limits:

(a) Pursuant to either:

(A) An adopted access management plan or interchange area management plan; or

(B) An approved access management strategy; and

(b) If necessary to meet the classification of highway or highway designation, mobility standards, spacing standards, sight distance, channelization or safety factors; and

(c) If a property with an approach to the highway has multiple approaches and if a property with an approach to the highway has alternate access in addition to the highway approach.

(d) In considering the closures, modification or mitigation of approaches during project delivery the region manager must find that vehicle access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

The statutes and rules cited above were applied to the project in the following manner: One of the primary tasks of the Access Management Sub-team (AMST) is to prepare and recommend to the Project Development Team (PDT) an Access Management Strategy. The Strategy is to be applied consistently throughout the entire project. The Strategy should also support the purpose and need for the project. The specific purpose and source of funding for this project is to modernize US101 from SE 23<sup>rd</sup> — SW 35th St. In conjunction with these improvements, the AMST is tasked with evaluating the existing approaches for safety and operations. The AMST evaluated the existing approaches and developed the following Access Management Strategy:

1. Modify, mitigate, or remove approaches (driveways) to the highway if necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards or safety factors.
2. Modify, mitigate, or remove approaches (driveways) to the highway if a property has multiple approaches to the highway or if a property with an approach to the highway has alternate access in addition to the highway approach.
3. Create shared approaches (driveways) with agreement of the property owners.
4. Close approaches (driveways) to the highway that are illegal or issue permits in accordance with Division 51.

The following condition shall be met before a closure, modification, or mitigation action is taken:

## Appendix B-36

Modification of Approach within Highway Project Limits  
Oregon Coast Highway, (US101) No. 9 at Mile point 116.64 West  
Page 3

- Access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

Based on the project objectives of improving safety and operations on the Oregon Coast Highway and in accordance with items 1 and 4 of the Strategy, the AMST cited the following reasons for modifying the approach:

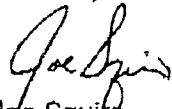
- Increasing the width to 36 feet will provide access to the proposed business complex as per the approved site plan.
- The reconstruction of US101 along with curb and sidewalk construction will necessitate the need for reconstruction of the approach.

It should be noted that a review of ODOT records indicates this approach does not have a valid road approach permit. According to Oregon Revised Statutes, ORS 374.305, no person, firm or corporation, may place, build or construct on any State highway right-of-way, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance without first obtaining written permission from ODOT. Therefore, a permit will be issued for this approach through the district office at the completion of the project.

If you would like more information about the scope of this highway project, or if you have further questions, contact us at (541) 757-4211 and ask for the Senior Permit Specialist. If you have information that this approach has been in existence for the current use since 1949, you may have additional rights. I would encourage you to contact us in a timely manner upon receipt of this letter to discuss any questions you may have concerning this decision.

Thank you for your prompt attention to this matter.

Sincerely,



Joe Squife  
District Manager  
ODOT District 4

cc: Angela Kargel – ODOT Region 2 Traffic Manager  
David Knitowski – ODOT Region 2 Access Management Engineer  
Jamie Hollenbeak – ODOT Region 2 Access Mgmt. Project Delivery Coordinator  
Jerry Wolcott – ODOT Project Leader  
Keith Blair – ODOT District 3 Permits Specialist  
Randy Brusven – ODOT Right-of-Way Project Manager  
John Boals – ODOT Interim Region 2 Right of Way and Utilities Manager  
Ann Zeltmann – ODOT Appeals Coordinator





Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

District 4

3700 SW Philomath Blvd.

Corvallis, OR 97333-1194

Phone: 541-757-4211

March 15, 2013

**VIA CERTIFIED MAIL**

Suzanne L. Seida, David M. Seida & Kent Ray Seida  
21895 S. Salamo Road  
West Linn, OR 97068

**Subject: Modification of Approach within Highway Project Limits  
And Appeal Options**  
Oregon Coast Highway, (US101), No. 9 at Mile point 116.72 West  
Permit Number 51230  
Tax Lot 13603, Map 7-11-22CD

Dear Suzanne, David & Kent:

The Oregon Department of Transportation (ODOT) is currently engaged in a highway improvement project known as FFO - US101: SE23rd - SW35th Street (Lincoln City). The project would modernize US101 by adding a center turn lane between 23<sup>rd</sup> and 32<sup>nd</sup> Street, construct bicycle lanes and sidewalks, realign the 32<sup>nd</sup> Street intersection and install a traffic signal at 32<sup>nd</sup>. Additional improvements include roadside drainage, striping and upgrading traffic control devices.

You have a private road approach located on the Oregon Coast Highway (US101) at mile point 116.72 on the west side of the highway. **This approach is within the project limits** and has been reviewed according to Oregon Administrative Rule (OAR) 734-051-5120(5), (Project Delivery). The Region Manager has determined that **this approach shall be modified as follows:**

Your existing approach is a 40 foot wide approach. Curb and sidewalk will be constructed along your property frontage requiring reconstruction of your approach. As discussed with Kent Seida, the approach will be reconstructed to a finished width of 36 feet as per the approved site plan and at a location where it is shared with tax lots 13602 and 13603. A barrier will be installed across the approach to prevent vehicles from using the approach and proceeding into the undeveloped drainage area until such time the property is developed. All reconstruction work of the approach will be done at no cost to you.

### Application of Administrative Rule

ODOT has the responsibility of providing the traveling public a safe and efficient transportation facility. Oregon Revised Statutes (ORS) 374.310(2) charges the state to manage its highways "in the best interest of the public for the protection of the highway or road and the traveling public." ORS 374.305 states that certain actions may be taken, including removal, alteration or change of an approach road when "the public safety, public convenience and general welfare" require such action.

OAR 734-051-5120(5) provides the following instructions regarding modification, mitigation, or removal of approaches:

The Region Manager may require modification, mitigation, or removal of approaches, including grandfathered approaches, within project limits:

(a) Pursuant to either:

(A) An adopted access management plan or interchange area management plan; or

(B) An approved access management strategy; and

(b) If necessary to meet the classification of highway or highway designation, mobility standards, spacing standards, sight distance, channelization or safety factors; and

(c) If a property with an approach to the highway has multiple approaches and if a property with an approach to the highway has alternate access in addition to the highway approach.

(d) In considering the closures, modification or mitigation of approaches during project delivery the region manager must find that vehicle access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

The statutes and rules cited above were applied to the project in the following manner: One of the primary tasks of the Access Management Sub-team (AMST) is to prepare and recommend to the Project Development Team (PDT) an Access Management Strategy. The Strategy is to be applied consistently throughout the entire project. The Strategy should also support the purpose and need for the project. The specific purpose and source of funding for this project is to modernize US101 from SE 23<sup>rd</sup> — SW 35th St. In conjunction with these improvements, the AMST is tasked with evaluating the existing approaches for safety and operations. The AMST evaluated the existing approaches and developed the following Access Management Strategy:

1. Modify, mitigate, or remove approaches (driveways) to the highway if necessary to meet the classification of highway or highway segment designation, mobility standards, spacing standards or safety factors.
2. Modify, mitigate, or remove approaches (driveways) to the highway if a property has multiple approaches to the highway or if a property with an approach to the highway has alternate access in addition to the highway approach.

## Appendix B-39

Modification of Approach within Highway Project Limits and Appeal Options  
Oregon Coast Highway, (US101) No. 9 at Mile point 116.72 West  
Permit Number 51230  
Page 3

3. Create shared approaches (driveways) with agreement of the property owners.
4. Close approaches (driveways) to the highway that are illegal or issue permits in accordance with Division 51.

The following condition shall be met before a closure, modification or mitigation action is taken:

- Access will remain adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property.

Based on the project objectives of improving safety and operations on the Oregon Coast Highway and in accordance with items 1, 2 and 3 of the Strategy, the AMST cited the following reasons for modifying the approach:

- Reducing the width to 36 feet and centering it on tax lots 13602 and 13603 will provide access for the proposed business complex as per the approved site plan.
- The new curb and sidewalk construction will necessitate the need for reconstruction of the approach.
- A barricade will be installed and shall be maintained in place until such time the property is developed and connected to the approach.

Because the approach that ODOT intends to modify possesses a valid road approach permit (number 51230), you are entitled to appeal this decision by submitting a request in writing for one of the following Post-Decision Review Processes.

1. A Post-Decision Collaborative Discussion is conducted pursuant to OAR 734-051-3090. It is an informal collaborative process that allows you to explain your objections to the closure and to present additional information in writing or in person to ODOT staff. If the parties reach an agreement using the post-decision collaborative discussion process, the director shall issue the written decision. The written decision is a binding agreement for the department and for the applicant or permit holder. The decision is not appealable. Where an agreement is not reached, the department will notify the applicant of their right to request review of the final decision by dispute review board under OAR 734-051-3100 or contested case hearing under OAR 734-051-3110.

2. An Access Management Dispute Review Board is conducted pursuant to OAR 734-051—3100. The department shall appoint an access management dispute review board by selecting members for a board consisting of any or all of following:

- (a) The director, or a designee of the director who is familiar with the location in which the disputed approach is located;
- (b) A representative of the local jurisdiction in which the disputed approach is located;
- (c) A traffic engineer who practices engineering in Oregon; and
- (d) A representative from the economic or business sector.

## Appendix B-40

Modification of Approach within Highway Project Limits and Appeal Options  
Oregon Coast Highway, (US101) No. 9 at Mile point 116.72 West  
Permit Number 51230  
Page 4

The dispute review board review shall be conducted as follows:

- (a) The access management dispute review board shall consider information presented by the parties;
- (b) The applicant or permittee and the department may present new information to the dispute review board, if the new information has been shared with the other party in advance of the scheduled meeting and the party receiving the new information has a reasonable amount of time to prepare a response; and
- (c) The dispute review board shall notify the applicant or permittee and the director of its findings regarding the department's original decision.

The director shall review the access management dispute review board's findings and recommendation and may approve, modify or reverse the department's original decision. The director shall notify the applicant or permit holder in writing of the department's determination following a review by an access management dispute review board appointed under this section and notify the applicant or permit holder of the right to a contested case hearing and of the 21-day appeal period.

3. Finally you may request a Contested Case Hearing pursuant to OAR 734-051—3110. A Contested Case Hearing is a formal on-the-record hearing conducted by an Administrative Law Judge (ALJ) from the Office of Administrative Hearings pursuant to OAR 137-003-0501 through 137-003-0700. The Office of Administrative Hearings is not a part of the Department of Transportation. The ALJ will consider all information presented and decide whether the Department's original decisions are consistent with the requirements of OAR 734-051. The ALJ typically decides in favor of, or against, the Department's original decision, but does not usually offer alternative solutions to resolve any disagreements.

If you request a Post-Decision Collaborative Discussion or Access Management Dispute Review Board and are not satisfied with the outcome, you may request a Contested Case Hearing at that time. You may also choose to skip the Post-Decision Collaborative Discussion or Access Management Dispute Review Board processes altogether and proceed directly to a Contested Case Hearing.

Whether you are requesting a Post-Decision Collaborative Discussion, an Access Management Dispute Review Board or a Contested Case Hearing, the Department must receive your request within twenty-one (21) calendar days of the date of this letter. If your request is not received within this time period, your right to these Post-Decision Review Processes is considered waived. If you withdraw a request for a hearing, if you notify the Administrative Law Judge that you will not appear, or if you fail to appear at a scheduled hearing, then ODOT's Executive Deputy Director may issue a final order by default. In that case, ODOT designates its files on this matter as the record.

If you wish to request a Post-Decision Review Process, please send your request to:

Sonny Chickering  
Region 2 Manager  
455 Airport Road SE, Bldg. B  
Salem, Oregon 97301-5395

Following receipt of your request for a Post-Decision Review Process, you will receive a follow-up communication from ODOT advising you of the next steps in the process.

If you would like to discuss the closure of this approach further without requesting a hearing, or even after requesting a hearing, please feel free to contact us at 541-757-4211 and ask for the Senior Permit Specialist. If you have questions about the Post-Decision Review Process, please contact Ann Zeltmann, ODOT's Appeals Coordinator, at (503) 986-4379 for more information.

Thank you for your prompt attention to this matter.

Sincerely,



Joe Squire  
District Manager  
ODOT District 4

cc: Angela Kargel - ODOT Region 2 Traffic Manager  
David Knitowski - ODOT Region 2 Access Management Engineer  
Jamie Hollenbeak - ODOT Region 2 Access Mgmt. Project Delivery Coordinator  
Jerry Wolcott - ODOT Project Leader  
Kelth Blair - ODOT District 3 Permits Specialist  
Randy Brusven - ODOT Right-of-Way Project Manager  
John Boals - ODOT Interim Region 2 Right of Way and Utilities Manager  
Ann Zeltmann - ODOT Appeals Coordinator

CERTIFICATE OF SERVICE

I certify that on September 15, 2014, I served the foregoing STIPULATED GENERAL JUDGMENT upon the parties hereto by the method indicated below, and addressed to the following:

Dale Maximiliano Roller  
Attorney at Law  
161 High Street SE, Suite 243  
Salem, OR 97301

Of Attorneys for Defendants Glen M.  
Torrance and Ellen J. Torrance

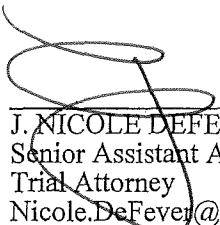
☐ HAND DELIVERY  
☒ MAIL DELIVERY  
☐ OVERNIGHT MAIL  
☐ TELECOPY (FAX)  
☒ E-MAIL lawyer@daleroller.com

Russell L. Baldwin  
Attorney at Law  
PO Box 1242  
Lincoln City, OR 97367  
(former counsel)

☐ HAND DELIVERY  
☒ MAIL DELIVERY  
☐ OVERNIGHT MAIL  
☐ TELECOPY (FAX)  
☒ E-MAIL baldwin\_atty@embarqmail.com

Kent Seida, Mary Seida and  
Seida Land and Livestock, LLC  
2545 SW Anchor Avenue  
Lincoln City, OR 97367

☐ HAND DELIVERY  
☒ MAIL DELIVERY  
☐ OVERNIGHT MAIL  
☐ TELECOPY (FAX)  
☒ E-MAIL seidalandl@embargmail.com

  
J. NICOLE DEFEVER #030929  
Senior Assistant Attorney General  
Trial Attorney  
Nicole.DeFeuer@doj.state.or.us

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER and TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND A AND TARYN  
TREND A, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

Case No. 140255

Baldwin's Motion to Strike Notice of Lien  
filed by Defendant Kent Seida.

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REQUESTED  
PURSUANT TO ORCP 14, ORCP 62,  
AND ORCP 68 C(4)(e).

Notice of acceptance of breach of contingent  
fee agreement by defendant Kent Seida;

Notice of Attorney's Lien pursuant to ORS  
87.445 et seq.

Notice of Intent to Seek Sanctions by  
Separate Motion under ORCP 17 Against  
Defendant Kent Seida.

UTCR 5 CERTIFICATE.

The below motion does not arise under ORCP 21, ORCP 23, or ORCP 36 through 46.  
Consequently, no conferral is necessary under UTCR 5.010. Movant Russell L. Baldwin  
(hereafter "Baldwin") requests oral argument on the below motions. Telephonic hearing is **not**  
requested. Court reporting services are requested. Time estimated for hearing is 20 minutes.

Page 1 Baldwin's Motion to Strike; Notice of acceptance; Notice of Attorney's Lien; Notice of  
Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike; notices by Baldwin 140923  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

Background.

Baldwin is former counsel of record herein for defendant SEIDA LAND & LIVESTOCK, LLC, an Oregon limited liability company; KENT R. SEIDA and MARY M. SEIDA, husband and wife; hereafter collectively “defendants Seida.” Baldwin filed a statement of attorney fees requesting imposition of attorney fees against plaintiff ODOT under the terms of a contingent fee agreement, and in the alternative according to the billing records of the undersigned submitted therewith. The total amount of fees sought was \$116,711.88 from ODOT alone. Baldwin had not, prior to this filing, sought attorney fees against defendants Seida. Nor had Baldwin sought costs, expenses, or other fees against ODOT other than for Baldwin’s attorney fees, because irreconcilable difference arose between Baldwin and defendants Seida.

An actual conflict of interest arose between Baldwin and defendants Seida after Kent Seida wrote a bad check to Baldwin in the sum of \$5,000.00 to pay for services rendered in unrelated proceedings, Lincoln Circuit No. 132390. In that case, plaintiff Green Tree Servicing, LLC seeks judicial foreclosure of Kent and Mary Seida’s residence for non-payment of an alleged note secured by a deed of trust. After a conflict of interest arose between Baldwin and defendants Kent & Mary Seida, Baldwin was required by the Oregon Rules of Professional Conduct to withdraw. Baldwin gave defendants Seida 60 days’ notice of his intention to withdraw, and provided defendants Kent Seida and Mary Seida an opportunity to cure.

Defendants Kent and Mary Seida failed to cure within that time frame, so Baldwin withdrew from representation in all cases in which Baldwin represented defendant Kent Seida or defendant Mary Seida, or both. Defendant Kent Seida then complained to the Oregon State Bar, and requested that Baldwin not be allowed to withdraw. That administrative complaint is still pending as of this writing.

Page 2 Baldwin’s Motion to Strike; Notice of acceptance; Notice of Attorney’s Lien; Notice of Intention to Seek Sanctions Against Kent Seida by Separate Motion.



Defendant Kent Seida served the undersigned with a purported notice of lien predicated on an unadjudicated claim for breach of contract. It is handwritten. It bears the caption of the above case matter. It is undated, but attached is a handwritten certificate of service and mailing dated September 20, 2014. Defendant Kent Seida is not a member of the Oregon State Bar.

The above facts are set forth in the sworn declaration of Russell L. Baldwin, submitted herewith. Attached there are pertinent copies of defendant Kent Seida's bar complaint against Baldwin, and Baldwin's written response in defense of that action, which are public records.

Motion.

Baldwin moves to strike the Notice of Lien above referenced.

POINTS AND AUTHORITIES.

UTCRC 2.010(3) requires that all documents must be printed or typed, except that blanks in preprinted forms may be completed in handwriting, and notations by the trial court administrator or judge may be made in handwriting.

UTCRC 1.090(1) provides that the court may strike a document not complying with the form requirements imposed by the Uniform Trial Court Rules.

ORCP 14 A defines motions to be an application for an order, which must be in writing. Motions must be in the form required by the UTCRCs. ORCP 14 B.

ORS 87.445 is the singular statutory authority for a lien upon actions and judgments. It provides (**emphasis added**):

An **attorney has a lien** upon actions, suits and proceedings after the commencement thereof, and judgments, orders and awards entered therein in the client's favor and the proceeds thereof to the extent of fees and compensation specially agreed upon with the client, or if there is no agreement, for the reasonable value of the services of the attorney. [1975 c.648 §59 (enacted in lieu of 87.495); 2003 c.576 §338]

Page 3 Baldwin's Motion to Strike; Notice of acceptance; Notice of Attorney's Lien; Notice of Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike; notices by Baldwin 140923  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

## Appendix B-46

1 ORS 87.475 provides in relevant part:

2  
3 (1) Except as provided in subsections (3) and (4) of this section, the lien created by ORS  
4 87.445 is not affected by a settlement between the parties to the action, suit or proceeding  
5 before or after judgment, order or award.

6 (2) Except as provided in subsections (3) and (4) of this section, a party to the action, suit  
7 or proceeding, or any other person, does not have the right to satisfy the lien created by  
8 ORS 87.445 or any judgment, order or award entered in the action, suit or proceeding  
9 until the lien, and claim of the attorney for fees based thereon, is satisfied in full.

10 (3) A judgment debtor may pay the full amount of a judgment into court and the clerk of  
11 the court shall thereupon fully satisfy the judgment on the record and the judgment debtor  
12 shall be thereby released from any further claims thereunder.

13 ORS 9.005(1) and (7) define “attorney” to mean a member of the Oregon State Bar.

14 ORS 9.320 provides:

15 Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by  
16 attorney, except that the state or a corporation appears by attorney in all cases, unless  
17 otherwise specifically provided by law. Where a party appears by attorney, the written  
18 proceedings must be in the name of the attorney, who is the sole representative of the  
19 client of the attorney as between the client and the adverse party, except as provided in  
20 ORS 9.310. [Amended by 1975 c.451 §171]  
21

### 22 ARGUMENT.

23 I. Form. Defendant Kent Seida has interposed a purported handwritten notice of  
24 lien not meeting the minimum standards for a printed form or a typewritten document. It  
25 therefore violates UTCR 2.010(3), and should be stricken pursuant to UTCR 1.090(1). *Ewald v.*  
26 *Ewald*, 254 Or. App. 170, 294 P.3d 511 (2012)(Trial court struck *pro se* documents of both  
27 parties not meeting the standards imposed by UTCR 2.010; affirmed).

28 II. Substance. Defendant Kent Seida is not an attorney, because he is not a  
29 member of the Oregon State Bar. As such, he cannot represent the interests of persons other than  
30 himself, *e.g.* the interests of Mary Seida or Seida Land & Livestock, LLC. ORS 9.320.

Page 4 Baldwin’s Motion to Strike; Notice of acceptance; Notice of Attorney’s Lien; Notice of  
Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike; notices by Baldwin 140923  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

III. No Lien. Defendant Kent Seida has purported to assert a lien *against* his former attorney, without any citation to any statute or common law authority for the proposition that a natural person can assert a lien over an attorney. And for good reason. There is no such authority.

ORS 87.445 gives **attorneys** the statutory right to lien the proceeds of an action or proceeding, including judgments and orders. Thus, Baldwin has a statutory right to assert a lien over defendants Seida's proceeds in this case. However, Baldwin had not done so in this case before submission of this document. The contingent fee agreement attached to Baldwin statement of attorney fees herein provides that such attorney fees are to be paid by ODOT directly, not by defendants Seida. However, defendant Kent Seida's Notice of Lien claims an alleged breach of contract.<sup>1</sup>

Defendant Kent Seida has submitted his hand written Notice of Lien using a document previously submitted by attorney Baldwin in other proceedings, against defendant Kent Seida, following Baldwin's withdrawal. Attached to the declaration of Russell L. Baldwin is one such document from Lincoln Circuit No. 140624; note that the statutory basis of the lien is set forth prominently there, ORS 87.445.

Only attorneys are authorized by statute to lien the proceeds of actions and proceedings under ORS 87.445. *Id.*; *Potter v. Schlessner Company, Inc.*, 335 Or. 209, 63 P.3d 1172 (2003)(construing statute under *PGE* template as applicable to attorneys).

In *Potter v. Schlessner*, *supra*, at issue was whether a plaintiff and defendant could defeat plaintiff's previous attorney's claim of lien for services rendered by settling the lawsuit without

---

<sup>1</sup> Baldwin gives notice of acceptance of defendant Seida's anticipatory or antecedent breach in contravention of the contingent fee agreement, below.

Page 5 Baldwin's Motion to Strike; Notice of acceptance; Notice of Attorney's Lien; Notice of Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike; notices by Baldwin 140923  
 Russell L. Baldwin, Attorney at Law  
 P.O. Box 1242, Lincoln City, OR 97367  
 Tel. (541) 994-6166

satisfying such lien. Following a plain construction of ORS 87.445 and ORS 87.475, text in context, the court held that the legislature intended to create a lien for attorney for fees incurred in a proceeding, and that “the parties to the action cannot extinguish or affect the attorney’s lien by any means (such as settlement) other than by satisfying the underlying claim of the attorney for the fees incurred in connection with the action.” *Id.* at \_\_\_, 63 P.3d 1172, 1175.

Since defendant Kent Seida is not an attorney, he has no statutory or common law right to lien the proceeds of his own lawsuit. This is particularly the case as against his former counsel, who has a right to lien, and he having been required to withdraw arising out of defendant Kent Seida’s willful negotiation of a bad check to the undersigned in the amount of \$5,000.00.

Conclusion.

The Notice of Lien by non-attorney defendant Kent Seida as against his former attorney Baldwin should be stricken because it is inadequate in form, and is indefensible under ORS 87.445.

Special findings of fact and conclusions of law are requested pursuant to ORCP 14, ORCP 62, And ORCP 68 C(4)(e).

**NOTICES: ACCEPT BREACH; ATTORNEY’S LIEN BY BALDWIN.**

**1. PLEASE TAKE NOTICE:** Baldwin hereby accepts defendant Kent Seida’s statement of breach, and the notice of lien itself, as anticipatory and/or antecedent breach of the contingent fee agreement of record herein. Baldwin reserves all rights to seek attorney fees first from plaintiff ODOT under the attorney client agreement. Baldwin also reserves all rights to seek attorney fees against defendant Kent Seida directly for attorney fees for (a) the difference between \$116,711.88 and the amounts actually awarded to Baldwin and paid by ODOT according to any supplemental judgment favoring Baldwin herein; or (b) the actual time billed to Page 6 Baldwin’s Motion to Strike; Notice of acceptance; Notice of Attorney’s Lien; Notice of Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike; notices by Baldwin 140923  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

defendant Kent Seida; or (c) the reasonable value of services herein, on a quantum meruit basis; whichever amount is larger. Baldwin also reserves all rights to collect additional attorney fees from defendant Kent Seida arising out of his breach of the fee agreement, including without limitation attorney fees, costs, and expenses to the fullest extent allowable under Oregon law, including without limitation ORS 20.083 and ORS 20.105.

**NOTICE OF LIEN.**

**2. PLEASE TAKE NOTICE:** based upon the assertions of defendant Kent Seida of alleged breach, set forth above and of record herein, the undersigned hereby gives notice of lien for attorney fees incurred by the plaintiff above captioned on the account of the undersigned, pursuant to ORS 87.445 and ORS 87.475. No lien is claimed for defendants Seida's papers, which have been copied to them by the undersigned during litigation in the regular course, and by certified mail on August 27, 2014 in CD ROM format. A lien is claimed on the actions, suits, and proceedings after commencement by ODOT, and following defendants Seida's acceptance of ODOT's offer of compromise through to defendants Seida's stipulated judgment of dismissal herein. A lien is also claimed on the judgments, orders, and awards entered herein in defendants Seida's favor to the extent of fees and compensation agreed upon, or in the absence of such agreement, for the reasonable value of the services of the undersigned, not to exceed \$116,711.88 principal, exclusive of additional attorney fees as may be awarded and post-judgment interest bearing at the statutory rate of 9% per annum pursuant to ORS 82.010. Baldwin's lien for attorney fees can only be satisfied through payment. This lien shall remain, and the parties herein shall remain liable for such payment, even in the case of settlement between defendants Seida, or any of them, and plaintiff ODOT, pursuant to ORS 87.445 and the

Page 7 Baldwin's Motion to Strike; Notice of acceptance; Notice of Attorney's Lien; Notice of Intention to Seek Sanctions Against Kent Seida by Separate Motion.

motion to strike, notices by Baldwin 140923  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

points and authorities set forth in *Potter v. Schlusser Company, Inc.*, 335 Or. 209, 63 P.3d 1172 (2003) (*supra*).

NOTICE OF INTENT TO SEEK SANCTIONS

AGAINST DEFENDANT KENT SEIDA.

Baldwin, as lien claimant under ORS 87.445 and ORS 87.475, gives notice pursuant to ORCP 17 that he will seek sanctions against defendant Kent Seida, including all costs and additional attorney fees incurred herein, for willfully violating the certificate requirements imposed on *pro se* litigants pursuant to ORCP 17 C and D, by separate motion, unless defendant Kent Seida withdraws his meritless attorney's lien within 20 days of service of this notice. If such lien is not withdrawn within such time, by filing and service under ORCP 9 B and C, Baldwin hereby gives notice that he will file a separate motion for sanctions against defendant Kent Seida without further notice.

Dated this 23<sup>rd</sup> day of September, 2014.

/s/ Russell L. Baldwin

Russell L. Baldwin, OSB 89189  
Movant/Lien Claimant/Defendant Seida's Former Counsel  
P.O. Box 1242, Lincoln City, Oregon 97367  
Tel. (541) 994-6166

**CERTIFICATE OF MAILING**

I hereby certify that I directed to be served the foregoing:

1. Baldwin's Motion to Strike Notice of Lien Filed by Defendant Kent Seida; Notice of acceptance of breach; Notice of Attorney's Lien; Notice of Intent to Seek Sanctions by Separate Motion under ORCP 17 Against Defendant Kent Seida;
2. Declaration of Attorney Fee Claimant and Lien Claimant Russell L. Baldwin;

on:

Ms. Nicole DeFever  
Assistant Attorney General  
1515 SW Fifth Avenue, Suite 410  
Portland, OR 97201

Dale Maximiliano Roller  
Dale M Roller Attorney at Law  
161 High St SE Ste #243  
Salem OR 97301

Kent & Mary Seida  
2545 SW Anchor Avenue  
Lincoln City, OR 97367

( x ) by mailing to said person(s) a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office with postage prepaid on this same date.

( ) by hand delivery ( ) in court.

Dated this 23 day of September, 2014.

*/s/ Russell L. Baldwin*

Russell L. Baldwin - OSB 89189  
P.O. Box 1242  
Lincoln City, OR 97367  
(541) 994-6166

**CERTIFIED TRUE COPY**

I, the undersigned, certify that the aforementioned documents listed above and attached hereto are true and correct copies of the originals filed in the within proceeding in accordance with ORCP 9.

Dated this 23 day of September, 2014.

*/s/ Russell L. Baldwin*

Russell L. Baldwin - OSB 89189  
P.O. Box 1242  
Lincoln City, OR 97367  
(541) 994-6166

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER and TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND A AND TARYN  
TREND A, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

Case No. 140255

Declaration of Attorney Fee Claimant and  
Lien Claimant Russell L. Baldwin;

In Support of Claimant Baldwin's Motion to  
Strike Non-attorney Kent Seida's Claim of  
Lien to Attorney Fees;

In Opposition to Non-attorney Kent Seida's  
Claim of Lien to Attorney Fees;

In Support of Claimant Baldwin's  
Attorney's Lien Under ORS 87.445 and  
ORS 87.475.

1  
2 State of Oregon )  
3 County of Lincoln )ss.  
4

5 I, Russell L. Baldwin, having been sworn on oath, declare and say:

6 1. I am previously counsel for the first three above captioned defendants, hereafter  
7 collectively "defendants Seida."



## Appendix B-53

1           2.       I am a member in good standing of the bars of the Oregon Supreme Court, the  
2       United States Supreme Court, the United States Ninth Circuit Court of Appeals, and the United  
3       States District Court for Oregon.

4           3.       I make this declaration in support of my motion to strike defendant Kent Seida's  
5       handwritten purported lien of record herein, containing a certificate dated 20 September 2014. I  
6       also make this declaration in support of my notices following my argument on such motion,  
7       including without limitation my partial acceptance of defendant Kent Seida's breach of my fee  
8       agreement with defendants Seida, and my attorney fee lien set forth there pursuant to ORS  
9       87.445 and ORS 87.475.

10          4.       Attached are many pages of exhibits, Exhibit A through Exhibit C. They are true  
11       and correct copies of the originals. The exhibits are of record with the Oregon State Bar Client  
12       Assistance Office, due to the complaint of defendant Kent Seida concerning my professional  
13       conduct; the documents are all public records. They are marked by me as Exhibits A, B, and C  
14       for this proceeding.

15          5.       My statement of attorney fees claiming \$116,711.88 is of record herein for  
16       services rendered to defendants Seida.

17          6.       I withdrew from representing defendants Seida in this, and several other litigation  
18       cases, after defendant Kent Seida wrote to me a bad check, which he subsequently refused to pay  
19       in full. A copy of that check is attached here at Exhibit C page 11. That controversy, and the  
20       conflict of interest that defendant Kent Seida created, is detailed in Exhibit C page 2 first  
21       paragraph and pages 5-6.

22          7.       I withdrew after a conflict of interest arose between me and defendant Kent  
23       Seida, because the Oregon Rules of Professional Conduct required me to do so. I gave defendant

Page 2 -- Declaration of Attorney Fee Claimant and Lien Claimant Russell L. Baldwin.

caption 140502  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

1 Kent Seida 60 days' notice of my intention to withdraw before I did so. Attached as Exhibit C  
2 page 5 to 10 is my letter to defendant Kent Seida of my intention to withdraw; it is dated June  
3 23, 2014. I withdrew from representing defendants Seida in this matter by notice given August  
4 27, 2014. Each of the cases from which I withdrew are listed in Exhibit C at page 5. Defendants  
5 Kent and Mary Seida failed to cure their failure to pay Exhibit C page 11 in full prior to August  
6 27, 2014. An actual conflict of interest had thus arisen.

7 8. After I sought to withdraw from representing defendant Kent Seida, he  
8 complained about my conduct to the Oregon State Bar. He drove to the Oregon State Bar to file  
9 his complaint with the Client Assistance Office, and he met with Ms. Owen to discuss his  
10 complaints. Exhibit B, page 1. He accused me of having a "mental meltdown," and complained  
11 that I had been long neglecting legal matters, ostensibly including this one. Defendant Kent  
12 Seida's bar complaint against me is set forth at Exhibit B pages 2 to 6.

13 9. I have not ever neglected any legal matter in which I represented any of the  
14 defendants Seida. An OJIN court print from this case, or any other, will demonstrate that far  
15 from ever neglecting any legal matter, the sheer number of filings in each case show that I did  
16 not in fact neglect any legal matter.

17 10. My written response to defendant Seida's bar complaint against me is set forth at  
18 Exhibit C, pages 1 through 25. As indicated, all exhibits attached here are public records on file  
19 with the Oregon State Bar (although they do not bear any exhibit numbers marked by me).

20 11. Defendant Seida's bar complaint against me remains pending, so far as I know, as  
21 of this writing.

22 12. I did not breach any agreement I had with defendant Kent Seida. He created an  
23 actual conflict of interest by failing to accurately to the Oregon Court of Appeals that we had a

Page 3 -- Declaration of Attorney Fee Claimant and Lien Claimant Russell L. Baldwin.

caption 140502  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

1 disagreement over my fees. He breached the confidential nature of our professional relationship  
2 by making knowingly false accusations to the Oregon State Bar. He breached our fee agreement  
3 by corresponding directly with opposing counsel *in other case matters*, and by failing to keep me  
4 apprised of his changing legal position when complaining about my alleged conduct to the  
5 Oregon State Bar. He breached our fee agreement by ignoring my legal advice, and creating  
6 disturbances in court in Lincoln Circuit No. 123935 before Judge Hart. These facts are detailed  
7 in Exhibit C.

8           13. Prior to this date, I had not sought attorney fees directly from defendants Seida.  
9 Nor have I sought costs, expenses, or other fees against ODOT other than for my attorney fees,  
10 because irreconcilable differences arose between defendant Kent Seida and me.

11           14. Exhibit A attached is a copy of the lien that I filed as an attorney against the  
12 proceeds of the case proceeding involving plaintiff Kent Seida (there) and those defendants,  
13 Lincoln Circuit No. 140624. A review of defendant Kent Seida's Notice of Lien shows that it is  
14 based upon my prior lien in that other case.

15           15. Before today, I had not asserted a lien against defendants Seida in this proceeding.  
16 But based upon defendant Kent Seida's assertion of a meritless attorney's lien, by a non-lawyer,  
17 predicated on an alleged breach of contract, I do so now. I give notice of lien following my  
18 motion to strike that meritless lien.

19           16. Defendant Kent Seida served me with his handwritten, purported lien predicated  
20 on an unadjudicated claim for breach of contract, by mail. I received in on September 23, 2014,  
21 under ORCP 9. The lien is undated other than the attached backer.

22           17. The records of the Oregon State Bar reflect that defendant Kent Seida is not a  
23 member of the Oregon State Bar.

Page 4 -- Declaration of Attorney Fee Claimant and Lien Claimant Russell L. Baldwin.

caption 140502  
Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

18. Oregon law requires that a person filing a lien for attorney fees must be a member of the Oregon State Bar. ORS 87.445; *Potter v. Schlessner Company, Inc.*, 335 Or. 209, 63 P.3d 1172 (2003). Since defendant Kent Seida is not a member of the Oregon State Bar, his purported handwritten lien for attorney fees is without entirely merit.

**I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

Dated this 23<sup>rd</sup> day of September, 2014.

~~/s/ Russell L. Baldwin~~

Russell L. Baldwin, OSB 89189  
Movant/Lien Claimant/Defendant Seida's Former Counsel  
P.O. Box 1242, Lincoln City, Oregon 97367  
Tel. (541) 994-6166

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

Kent Seida,

Plaintiff,

v.

KNRJ Investments, LLC, Jim Irving, and  
Kent Landers aka Kert Landers,

Defendants.

Case No. 140624

NOTICE OF LIEN.

Please take notice: the undersigned hereby gives notice of lien for attorney fees incurred by the plaintiff above captioned on the account of the undersigned, pursuant to ORS 87.445. No lien is claimed for the plaintiff's papers, which have been copied to plaintiff by the undersigned during litigation in the regular course, and by certified mail on August 27, 2014 in CD ROM format.

A lien is claimed on the actions, suits, and proceedings after commencement by the plaintiff, and on the judgments, orders, and awards entered herein in plaintiff's favor to the extent of fees and compensation agreed upon, or in the absence of such agreement, for the reasonable value of the services of the undersigned herein.

The mailing address of the plaintiff is:

Kent Seida  
2545 SW Anchor Avenue  
Lincoln City, OR 97367

Dated this 5<sup>th</sup> day of September, 2014.  
/s/ Russell L. Baldwin  
Russell L. Baldwin, OSB 89189  
P.O. Box 1242, Lincoln City, Oregon 97367  
Tel. (541) 994.6166

Page 1 – NOTICE OF LIEN

Russell L. Baldwin, Attorney at Law  
P.O. Box 1242, Lincoln City, OR 97367  
Tel. (541) 994-6166

Exhibit A  
Page 1 of 2

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER AND TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND AND TARYN  
TREND, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

Case No. 140225

Amended Notice of Attorney's Lien  
pursuant to ORS 87.445 et seq.

**NOTICE OF LIEN (AMENDED).**

**PLEASE TAKE NOTICE:** based upon the assertions of defendant Kent Seida of  
alleged breach, of record herein, the undersigned hereby gives notice of lien for attorney fees  
incurred by the plaintiffs above captioned on the account of the undersigned, pursuant to ORS  
87.445 and ORS 87.475. No lien is claimed for defendants Seida's papers, which have been

Page 1 Baldwin's Notice of Amended Attorney's Lien pursuant to ORS 87.445 et seq.

## Appendix B-59

1 copied to them by the undersigned during litigation in the regular course, and by certified mail  
2 on August 27, 2014 in CD ROM format.

3 A lien is claimed on the actions, suits, and proceedings after commencement by ODOT,  
4 and following defendants Seida's acceptance of ODOT's offer of compromise through to the last  
5 final judgment entered or to be entered herein. A lien is also claimed on the judgments, orders,  
6 and awards entered herein in defendants Seida's favor to the extent of fees and compensation  
7 agreed upon, or in the absence of such agreement, for the reasonable value of the services of the  
8 undersigned. The name of the case in which the judgment was entered is *State v. Seida et al*, as  
9 above captioned.

10 The date on which the judgment was entered in the register, according to the Oregon  
11 eCourt Case Information System, is September 16, 2014. A description of the personal property  
12 which was awarded to defendants Seidas was a money award of \$445,000.00. The court  
13 subsequently awarded defendants Seida the sum of \$2,000.00 against plaintiff ODOT, the  
14 proceeds of which have also been paid into court and for which the lien claimant also claims a  
15 lien. The date of entry of such order is not presently of record according to the Oregon eCourt  
16 Case Information System as of this writing.

17 Plaintiff ODOT was awarded title to real property as part of the general judgment, and  
18 the lien claimant claims no lien as to such real property awarded to plaintiff ODOT.

19 Defendants Seidas, through Kent Seida Sr. and defendant Seida Land & Livestock  
20 Company, LLC, promised to pay plaintiff a contingency fee of 40% of their net recovery  
21 collected from ODOT. Defendants Seida promised to pay Baldwin a contingency fee of the sum  
22 ultimately recovered in the condemnation as consideration for the services previously provided by  
23 Baldwin to assist defendants Seida in forming a limited liability company and preparing the  
Page 2 Baldwin's Notice of Amended Attorney's Lien pursuant to ORS 87.445 et seq.

## Appendix B-60

1 defense of the condemnation action by ODOT. In the event that defendants Seida did not receive  
2 a recovery exceeding \$94,864.00, plaintiff agreed that defendants Seida would have no direct or  
3 personal liability to plaintiff for attorney fees.

4 Defendants Seida received a recovery of \$445,000.00. The 40 percent attorney's fee is  
5 calculated as follows: gross recovery of \$445,000.00 less the state's initial offer of \$94,864.00 \*  
6 .40 = \$140,054.40.

7 The lien claimant asserts a lien of \$140,054.40, exclusive of the lien claimant's attorney  
8 fees as may be awarded to foreclose the lien pursuant to ORS 87.485, and post-judgment interest  
9 bearing at the statutory rate of 9% per annum pursuant to ORS 82.010. The amount claimed is a  
10 true and bona fide existing debt as of the date of the filing of this notice of claim of lien  
11 (amended).

12 The date on which payment was due to the attorney for professional services rendered to  
13 the client was the date of entry of judgment, September 16, 2014.

14 The lien for attorney fees can only be satisfied through payment. This lien shall remain,  
15 and the parties herein shall remain liable for such payment, even in the case of settlement  
16 between defendants Seida, or any of them, and plaintiff ODOT, pursuant to ORS 87.445 and the  
17 points and authorities set forth in *Potter v. Schlessner Company, Inc.*, 335 Or. 209, 63 P.3d 1172  
18 (2003).



Appendix B-61

1 I, Russell L. Baldwin, having been sworn on oath, declare, say, and verify for purposes of  
2 ORCP 1 E and ORS 87.470 as follows:

3 **I hereby declare that the above statement is true to the best of my knowledge and**  
4 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
5 **for perjury.**

6  
7 Dated this 8<sup>th</sup> day of May, 2015.

8  
9 */s/ Russell L. Baldwin*

10  
11 Russell L. Baldwin, OSB 89189  
12 Lien Claimant  
13 P.O. Box 1242, Lincoln City, Oregon 97367  
14 Tel. (541) 994-6166

## Appendix B-62

### CERTIFICATE OF MAILING

I hereby certify that I directed to be served the foregoing:

Amended Notice of Lien

on:

Ms. Britt Nelson, Attorney at Law  
4353 NE Friedman Way  
Otis, OR 97368

By first class

Kent & Mary Seida  
Seida Land & Livestock, LLC  
2545 SW Anchor Avenue  
Lincoln City, OR 97367

Dale Maximiliano Roller  
Dale M Roller Attorney at Law  
161 High St SE Ste #243  
Salem OR 97301

By first class

Certified Mail, return receipt requested  
7009 0960 0000 0791 6710

Ms. Nicole DeFever  
Assistant Attorney General  
1515 SW Fifth Avenue, Suite 410  
Portland, OR 97201

By first class

Suzanne Seida & David Seida  
Windyridge Boarding Kennels  
13015 SW Tonquin Rd,  
Sherwood, OR 97140

Certified Mail, return receipt requested  
7009 0960 0000 0791 6727

Kent Seida, Jr.  
25641 SW Yewwood Drive  
Boring, OR 97009

Certified Mail, return receipt requested  
7009 0960 0000 0791 6734

by mailing to said person(s) a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the addresses set forth, and deposited in the United States Post Office with postage prepaid on this same date.

Dated this 8<sup>th</sup> day of May, 2015.

*/s/ Russell L. Baldwin*

—

Russell L. Baldwin, OSB 891890, For:  
Sandra Fraser, OSB 093548  
Intelekia Law Group LLC  
308 SW First Avenue, #325  
Portland, OR 97204

### CERTIFIED TRUE COPY

I, the undersigned, certify that the aforementioned documents listed above and attached hereto are true and correct copies of the originals filed in the within proceeding in accordance with ORCP 9 and ORS 87.450.

Dated this 8<sup>th</sup> day of May, 2015.

*/s/ Russell L. Baldwin*

—

Russell L. Baldwin, OSB 891890

BORING OR 97009-9112 Zone-1 \$0.70  
 First-Class Mail Letter  
 Appendix B:63

Expected Delivery: Mon 05/11/15  
 @@ Certified \$3.30  
 USPS Certified Mail #: 70090960000007916734  
 Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

Total: \$21.57

NEOTSU  
 NEOTSU, Oregon  
 973649778  
 4067870564-0099  
 05/08/2015 (541)994-3141 12:27:46 PM

Sales Receipt  
 Product Sale Unit Final  
 Description Qty Price Price

SALEM OR 97301 Zone-1 \$0.49  
 First-Class Mail Letter  
 1.00 oz.  
 Expected Delivery: Mon 05/11/15

Issue Postage: \$0.49

PORTLAND OR 97201 Zone-1 \$0.49  
 First-Class Mail Letter  
 1.00 oz.  
 Expected Delivery: Mon 05/11/15

Issue Postage: \$0.49

OTIS OR 97368 Zone-1 \$0.49  
 First-Class Mail Letter  
 1.00 oz.  
 Expected Delivery: Mon 05/11/15

Issue Postage: \$0.49

SHERWOOD OR 97140-8344 \$0.70  
 Zone-1  
 First-Class Mail Letter  
 1.10 oz.

Expected Delivery: Mon 05/11/15

@@ Certified \$3.30

USPS Certified Mail #:

70090960000007916727

Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

LINCOLN CITY OR 97367-2013 \$0.70

Zone-1

First-Class Mail Letter

1.10 oz.

Expected Delivery: Mon 05/11/15

@@ Certified \$3.30

USPS Certified Mail #:

70090960000007916710

Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

7009 0960 0000 0791 6734

Postage \$0.70  
 Certified Fee \$3.30  
 Return Receipt Fee (Endorsement Required) \$2.70  
 Restricted Delivery Fee (Endorsement Required) \$0.00  
 Total Postage & Fees \$6.70

NEOTSU, OR  
 0564  
 04  
 Postmark Here  
 MAY 08 2015  
 05/08/2015

Sent To Kent Seida Jr 97364  
 Street, Apt. No., or PO Box No. 25641 SW Yewwood Dr  
 City, State, ZIP+4 Boring OR 97009

PS Form 3800, August 2006

See Reverse for Instructions

**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

7009 0960 0000 0791 6710

Postage \$0.70  
 Certified Fee \$3.30  
 Return Receipt Fee (Endorsement Required) \$2.70  
 Restricted Delivery Fee (Endorsement Required) \$0.00  
 Total Postage & Fees \$6.70

LINCOLN CITY OR 97367  
 0564  
 04  
 Postmark Here  
 MAY 08 2015  
 05/08/2015  
 97364

Sent To Kent & Mary Seida  
 Street, Apt. No., or PO Box No. 2545 SW Anchor Ave  
 City, State, ZIP+4 Lincoln City OR 97367

PS Form 3800, August 2006

See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

7009 0960 0000 0791 6727

Postage \$0.70  
 Certified Fee \$3.30  
 Return Receipt Fee (Endorsement Required) \$2.70  
 Restricted Delivery Fee (Endorsement Required) \$0.00  
 Total Postage & Fees \$6.70

NEOTSU, OR  
 0564  
 04  
 Postmark Here  
 MAY 08 2015  
 05/08/2015

Sent To Suzanne Seida i Paul Seida  
 Street, Apt. No., or PO Box No. 13015 SW Tongue Rd  
 City, State, ZIP+4 Sherwood OR 97140

PS Form 3800, August 2006

See Reverse for Instructions

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER AND TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND AND TARYN  
TREND, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

Case No. 140225

Certificate of Service

I hereby certify that I directed to be served the foregoing:

Amended Notice of Lien

on:

Ms. Britt Nelson, Attorney at Law  
4353 NE Friedman Way  
Otis, OR 97368 By first class

Dale Maximiliano Roller  
Dale M Roller Attorney at Law  
161 High St SE Ste #243  
Salem OR 97301 By first class

## Appendix B-65

Ms. Nicole DeFever  
Assistant Attorney General  
1515 SW Fifth Avenue, Suite 410  
Portland, OR 97201 By first class

Kent & Mary Seida  
Seida Land & Livestock, LLC  
2545 SW Anchor Avenue  
Lincoln City, OR 97367

Certified Mail, return receipt requested  
7009 0960 0000 0791 6741

Suzanne Seida & David Seida  
Windyridge Boarding Kennels  
13015 SW Tonquin Rd,  
Sherwood, OR 97140

Certified Mail, return receipt requested  
7009 0960 0000 0791 6758

Kent Seida, Jr.  
25641 SW Yewwood Drive  
Boring, OR 97009

Certified Mail, return receipt requested  
7009 0960 0000 0791 6765

1 by mailing to said person(s) a true and correct copy thereof, certified by me as such, placed in a  
2 sealed envelope addressed to them at the addresses set forth, and deposited in the United States  
3 Post Office with postage prepaid on this same date.

4  
5 Dated this 11<sup>th</sup> day of May, 2015.

6  
7 /s/ *Russell L. Baldwin*

8  
9 \_\_\_\_\_  
10 Russell L. Baldwin, OSB 891890, For:  
11 Sandra Fraser, OSB 093548  
12 Intelekia Law Group LLC  
13 308 SW First Avenue, #325  
Portland, OR 97204

## Appendix B-66

BORING OR 97009-9112 Zone-1 \$0.70  
 First-Class Mail Letter  
 1.30 oz.  
 Expected Delivery: Wed 05/13/15  
 @@ Certified \$3.30  
 USPS Certified Mail #:  
 70090960000007916765  
 Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

BORING OR 97009-9112

Postage	\$ \$0.70	0564
Certified Fee	\$3.30	04
Return Receipt Fee (Endorsement Required)	\$2.70	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ \$6.70	05/11/2015

Sent To *Kent Seida Jr*  
 Street, Apt. No., or PO Box No. *25641 SW Yewwood Drive*  
 City, State, ZIP+4 *Boring OR 97009*

PS Form 3800, August 2006

See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

Postage	\$ \$0.70	0564
Certified Fee	\$3.30	04
Return Receipt Fee (Endorsement Required)	\$2.70	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ \$6.70	05/11/2015

Sent To *Kent Mary Seida Seida Land LLC*  
 Street, Apt. No., or PO Box No. *2545 SW Anchor Ave*  
 City, State, ZIP+4 *Lincoln City OR 97367*

PS Form 3800, August 2006

See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

SHERWOOD OR 97140

Postage	\$ \$0.70	0564
Certified Fee	\$3.30	04
Return Receipt Fee (Endorsement Required)	\$2.70	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ \$6.70	05/11/2015

Sent To *Suzanne Seida & David Seida, W. 18, 21, 22*  
 Street, Apt. No., or PO Box No. *13015 SW Tongue Rd*  
 City, State, ZIP+4 *Sherwood OR 97140*

PS Form 3800, August 2006

See Reverse for Instructions

NEOTSU

NEOTSU, Oregon

973649778

4067870564-0099

05/11/2015 (541)994-3141 11:58:13 AM

**Sales Receipt**

Product Description	Sale Unit Qty	Final Price
---------------------	---------------	-------------

OTIS OR 97368 Zone-1 \$0.70

First-Class Mail Letter

1.20 oz.

Expected Delivery: Wed 05/13/15

Issue Postage: \$0.70

SALEM OR 97301 Zone-1 \$0.70

First-Class Mail Letter

1.20 oz.

Expected Delivery: Wed 05/13/15

Issue Postage: \$0.70

PORTLAND OR 97201 Zone-1 \$0.70

First-Class Mail Letter

1.20 oz.

Expected Delivery: Wed 05/13/15

Issue Postage: \$0.70

SHERWOOD OR 97140-8344 \$0.70

Zone-1

First-Class Mail Letter

1.30 oz.

Expected Delivery: Wed 05/13/15

@@ Certified \$3.30

USPS Certified Mail #:

70090960000007916758

Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

LINCOLN CITY OR 97367-2013 \$0.70

Zone-1

First-Class Mail Letter

1.30 oz.

Expected Delivery: Wed 05/13/15

@@ Certified \$3.30

USPS Certified Mail #:

70090960000007916741

Return Rcpt (Green Card) \$2.70

Issue Postage: \$6.70

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER AND TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND A AND TARYN  
TREND A, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

Case No. 140255

NOTICE OF LIEN

PLEASE TAKE NOTICE: The undersigned hereby  
gives NOTICE FOR A LIEN ON ATTORNEY FEES  
THAT MAY BE GRANTED TO RUSSELL L. BALDWIN.  
The LIEN is CLAIMED FOR BREACH OF CONTRACT.

A LIEN is CLAIMED ON JUDGMENTS, ORDERS, AND  
AWARDS ENTERED IN ATTORNEY RUSSELL L. BALDWIN'S  
FAVOR FOR ATTORNEY FEES AWARDED IN CASE # ~~140255~~  
MAILING ADDRESS FOR RUSSELL L. BALDWIN PO BOX 1242 140255  
LINCOLN CITY OR 97367

KENT SEIDA  
2545 S.W. Anchor AVE LINCOLN CITY OREGON 97367  
PH (541) 994-7988 FAX (541) 994-7988

# CERTIFICATE OF MAILING

I hereby certify that I served the foregoing:  
NOTICE OF LIEN

ON:

MS. NICOLE DEFEVER  
ASSISTANT ATTORNEY GENERAL  
1515 SW FIFTH AVE. SUITE 410  
PORTLAND, OREGON 97201

DALE MAXIMIZIANO ROLLER  
DALE M. ROLLER ATTORNEY AT LAW  
161 HIGH ST. SE. STE # 243

RUSSELL L. BALDWIN  
RUSSELL L. BALDWIN ATTORNEY AT LAW  
P.O. BOX 1242  
LINCOLN CITY, OREGON 97367

DATED this 20 DAY OF SEPT. 2014  
BY MAILING TO SAID PERSONS A TRUE AND CORRECT COPY  
thereof, CERTIFIED by me AS SUCH, PLACED IN A SEALED  
ENVELOPE ADDRESSED TO THEM AT THE ADDRESSES SET  
FORTH, AND DEPOSITED IN THE UNITED STATES POST OFFICE  
WITH POSTAGE PREPAID ON THIS SAME DATE

SEPT. 20, 2014 KENT SEIDA 2545 S.W. ANCHOR AVE  
LINCOLN CITY, OR 97367  
CERTIFIED TRUE COPY

I, the UNDERSIGNED, CERTIFY THAT THE AFORENAMED  
DOCUMENTS LISTED ABOVE AND ATTACHED HERETO ARE  
TRUE AND CORRECT COPIES OF THE ORIGINALS FILED  
IN THE WITHIN PROCEEDINGS IN ACCORDANCE WITH ORCP

DATED this 20<sup>th</sup> DAY OF SEPT, 2014

Kent Ray Seida 2545 S.W. ANCHOR AVE  
LINCOLN CITY ORS. 97367



Verified Correct Copy of Original 3/30/2016.

Thomas O. Branford  
Circuit Court Judge  
PO Box 100  
Newport, OR 97365  
  
541-265-4236, ext. 8505



CIRCUIT COURT  
FILED ☒ RECEIVED  
MAR 30 2016  
AT \_\_\_\_\_ O' CLOCK \_\_\_\_\_ M  
BY HMH

March 23, 2016

Ms. Sandra D. Fraser  
Intelekia Law Group LLC  
308 SW First Avenue, Suite 330  
Portland, OR 97204-3136

Mr. Roger A. Lenneberg  
Jordan Ramis PC  
Attorneys at Law  
P.O. Box 230669  
Portland, OR 97281

re: Baldwin v. Seida, et al  
#15CV12092

Dear Ms. Fraser and Mr. Lenneberg:

The Court takes judicial notice of the following:

- [1] The Complaint was filed on May 12, 2015.
- [2] The Answer and Affirmative Defenses were filed on December 3, 2015.

In Paragraph 41 of the Complaint, Mr. Baldwin alleged that Suzanne Seida, David Seida and Kent Seida, Jr. **may claim** a legal or equitable interest in the ODOT proceeds, and that any such interest would be subordinate to Mr. Baldwin's lien. That "claim" is not identified as a secured claim of any kind. Seven months later, the Defendants' Answer and Affirmative Defenses included Paragraph 30, in which all of the Defendants alleged that the "Res" was owned by the LLC and Kent and Mary Seida, and otherwise denied any interest in the "Res" on the part of Suzanne, David and Kent, Jr.

At oral argument, Ms. Fraser described what happened next as "a race to the courthouse," a trek required because both parties agreed [on and after 12/3/15] that Suzanne, David and Kent, Jr. have no dog in this fight. The conundrum is ascertaining who the prevailing party is.

That examination must begin with ORS 20.077[1], which identifies the “prevailing party” as “...the party who receives a favorable judgment or arbitration award on the claim.” Subsection [2] of that statute requires the Court to identify each party that prevails on a claim for which attorney fees could be awarded and decide the amount of the award of attorney fees on claims for which the court is required to award attorney fees. It is not, as Plaintiff argued, “premature” to decide who is the prevailing party as to Suzanne, David, and Kent, Jr. When both parties agree on the conclusion that Suzanne, David and Kent, Jr. have no claim to the money in dispute, who “receives a favorable judgment” by a limited judgment dismissing those three persons? To determine that, one must look at the pleadings and the factual background.

Defendants’ Motion for Partial Summary Judgment [to remove Suzanne, David and Kent, Jr. as Defendants in the case] was filed on January 8, 2016. Three days later, Plaintiff rejoined with the Motion for Judgment on the Pleadings pursuant to ORCP 21B. The happenstance that Defendants got to Odyssey first should not be determinative as the competing means by which Suzanne, David and Kent, Jr. may be ousted from this litigation. In that regard, the Defendants argue that Plaintiff should be required to file a notice of voluntary dismissal under ORCP 54A[1], but cite no authority for that proposition. A compelling reason exists for Defendants’ argument, in that ORCP 54A[3] provides that a judgment may include attorney fees, and further provides that absent facts pointing to a contrary result, “...the dismissed party shall be considered the prevailing party.” Absent authority to require Plaintiff to proceed under ORCP 54A, the Court will not enter such an order. Alternatively, ORCP 21B allows a party to file a motion for judgment on the pleadings once the pleadings are closed. The result as to the three Seida children would be identical, except that they might lose the entitlement to be denominated as the “prevailing party.” Despite Defendants’ objections, Plaintiff lawfully chose ORCP 21B to pursue dismissal of Suzanne, David and Kent, Jr. from the litigation.

Exhibit #11 to Mr. Baldwin’s declaration includes the 11/5/14 e-mail from Suzanne Seida to Mr. Baldwin, in which Ms. Seida referred to “our ODOT settlement funds.” That was included in a sentence which implored Mr. Baldwin not to involve the three adult Seida children in the conflagration between their parents and Mr. Baldwin. In essence, she said “it’s not our beef” and she expressly referred to the “hardship” inflicted if the three of them were to be drug into the brawl. She did assert that “I expect to receive [the ODOT settlement funds] on 1/2/15...or my damages will begin.”

Paragraph 5 of the Complaint alleges that all of the named defendants comprise “a general partnership.” Paragraph 5 of the Answer denies that.

In response to the “our ODOT settlement funds” and “my damages language, Mr. Baldwin thereafter named Suzanne, David and Kent, Jr. in the Complaint. It is noteworthy that Ms. Fraser couched the interest of those three persons in the Res in the tentative phrase “may claim.” Any such claim was not described as being either secured or unsecured. The Attorney-Client Contingent Fee Agreement which Mr. Baldwin signed, and which is the foundation of his attorney’s lien on the ODOT

settlement funds, have as signatories Mr. Baldwin and Kent Seida as a member of Seida Land & Livestock, LLC. There are no signatures by, or empty signature lines for, Mary Seida, Suzanne Seida, David Seida, Kent Seida, Jr., or Kent Seida himself in a personal capacity.

If Suzanne, David and/or Kent, Jr. were/are members of Seida Land & Livestock, LLC, they have no personal liability to Plaintiff for the attorney fee debt. ORS 63.165. As members, their “claim[s]” to any portion of the ODOT settlement proceeds could inure to them, individually, as provided in ORS 63.185. Apart from that, the three adult children could not have had, or have, a personal claim to the funds independent of the LLC. The settlement proceeds were awarded to the LLC, not to the three children. Such a member’s “claim” to the ODOT funds would not constitute a tax lien, prior encumbrance and/or prior lien of record on the personal property [the money]. As such, the foreclosure of Plaintiff’s attorney fee lien would trump any unsecured interest [“claim”] of Suzanna, David, and Kent, Jr. in the proceeds. ORS 87.490.

The Complaint alleges that “...plaintiff was hired by defendants Seida to perform legal work to defend an imminent action by ODOT for eminent domain for a disclosed public need. Defendants Seida, through defendant Kent Seida Sr., requested plaintiff’s assistance in defending the prospective condemnation of defendants Seida’s land... .” Thereafter, in Paragraph #2, plaintiff alleges: “Among the services rendered were the formation of defendant Seida Land & Livestock Company, LLC... .” Finally, in Paragraph #3, plaintiff alleges: “After approximately four years of work without regular payment from defendants Seida, defendant Seida Land & Livestock and defendant Kent Seida, on behalf of the remaining defendants Seida, executed a written contingent fee agreement to compensate plaintiff...for those 4 years.” In the first paragraph of the Complaint, Plaintiff identifies as “defendants Seida” Suzanne Seida, David M. Seida, Kent Seida Jr., Kent Seida Sr. and Mary Seida, husband and wife, and Seida Land & Livestock, LLC, an Oregon Limited Liability Company.

The factual recitations in the two preceding paragraphs are relevant to the issue at hand: who, if anyone, is a prevailing party now? Despite 4 years of reported representation in the ongoing conflict with ODOT, Plaintiff never alleged in the Complaint that he represented an alleged Seida partnership concerning the ODOT issue. Plaintiff did not allege that he acted as an attorney to formalize a Seida partnership or that he was ever asked to represent that alleged entity. After this history, plaintiff certainly may be charged with knowing who owned the real property subject to the ODOT dispute, and the owners of the property did not include Suzanne, David and/or Kent Seida, Jr. Even if there were a Seida partnership, that was not the entity to which the ODOT settlement proceeds were awarded. Such a partnership could, at most, be a member of the LLC, subject to a distributive share according to ORS 63.185. The existence of a Seida partnership would not affect Plaintiff’s rights in the foreclosure of the attorney fee lien because it would have nothing to do with the priority of that lien compared to tax liens, prior encumbrances and prior liens of record on the funds.

Furthermore, the only conceivable inference which may be drawn is that plaintiff drafted the contingent fee agreement in question. If there were an ambiguity as to the identities of the contracting parties, it must be resolved in favor of the other party to the contract. However, there is no ambiguity as to who the parties to the contract were; the parties were identified as Russell L. Baldwin and "Seida Land & Livestock, LLC (hereinafter "Client")." "Client." Not "Clients." Not one of the Seida family was named in an individual capacity, either on the first page or on the signature page, and Kent Seida signed only as a "Member" on behalf of Seida Land & Livestock, LLC. If, at the time of the preparation and execution of the Attorney-Client Contingent Fee Agreement, Plaintiff contemplated that he needed such a contract "After approximately four years of work without regular payment from defendants Seida," Plaintiff would have included all "defendants Seida" as parties to the contract if he had actually felt that all defendants Seida were indebted to him and that all of them were his clients.

That same sentence on lines 24-25 of page 2 of the Complaint avers that "...defendant Seida Land & Livestock and defendant Kent Seida, on behalf of the remaining defendants Seida, executed a written contingent fee agreement..." Kent Seida, Sr. was not a party to the contract. If Plaintiff had intended that Kent Seida, Sr. be a party to the attorney-client contingent fee agreement, Plaintiff would have provided a separate signature line for Kent Seida, Sr. as an individual contracting party.

It is a novel proposition that one individual may sign a contract in an individual capacity, only, and thereby make all other members of that individual's family parties to the contract, without a signature by any of those other family members and also without a power of attorney to the individual authorizing the signing of another individual's name to the subject contract. The fact that family members may have an indirect financial interest in the outcome of litigation and/or a contract obligation does not make non-signatory family members parties to a contract.

All of that is germane to the identification of the prevailing party. Suzanne, David and Kent, Jr. were not parties to the attorney-client contract. The Defendants' Answer disavowed any interest, legal and/or equitable, in the Res on the part of Suzanne, David and Kent, Jr. The fact that Suzanne Seida referred to "our" ODOT settlement funds and to "my" damages in an e-mail does not change the fact that she had no personal claim to the ODOT settlement funds. Those funds belonged exclusively to Seida Land & Livestock, LLC, less whatever fees may have been owing to Plaintiff, and Plaintiff may be charged with knowing that.

ORS 87.445 declares that an attorney has a lien upon actions, suits and proceedings "...to the extent of fees and compensation specially agreed upon with the client..." Suzanne, David and Kent, Jr. did not "specially agree" with Plaintiff as to how Plaintiff was to be compensated for his work on the ODOT condemnation. If any portion of the ODOT settlement was subject to any claim by the three of them, or any one of them, the claimant[s] had nothing but an unsecured claim to the ODOT settlement proceeds. From the absence of such an assertion in both the Complaint and

## Appendix B-73

Verified Correct Copy of Original 3/30/2016

the Answer, the Court infers that from neither Plaintiff nor the three defendants asserted any secured interest in the settlement funds.

ORS 87.490[1] reads:

Except for tax liens, prior encumbrances and prior liens of record on the real or personal property subject to the lien created by ORS 87.445, the lien created by ORS 87.445 is superior to all other liens, including a lien created by ORS 147.285. [emphasis added]

Plaintiff, as an attorney with 20+ years of experience in civil litigation, and having handled the ODOT condemnation case, well knew, or at a minimum may be charged with knowing, that there were no tax liens, prior encumbrances or prior liens of record on the settlement funds. Thus, Plaintiff knew that his attorney lien had the highest priority to the settlement funds.

In Clarke-Woodward Co. v. H.L. Sanatorium, 88 Or 284, 169 P 796 [1918] at page 298, the Supreme Court noted in resolving competing claims to property, "...equity will apply the assets first to the payment of secured debts, which were a lien upon the property and second to unsecured debts *pro rata*." After 98 years, that principle remains unchanged.

ORS 87.455[2] requires that a lien under ORS 87.445 on a judgment for the possession, award or transfer of personal property must be foreclosed in the manner provided in ORS chapter 88.

ORS 88.030 provides for mandatory and permissive joinder of other lienholders. It is mandatory for those having a lien subsequent to the plaintiff's lien, and also for those who have given a promissory note or other personal obligation for the payment of the debt. Joinder of another person is permissive if the other person has a prior lien.

In his Complaint, Plaintiff alleges that Suzanne, David and Kent, Jr. may claim an interest in the Res. The Plaintiff does not allege any fact which would make the joinder of those parties either mandatory or permissive in the foreclosure of the attorney's lien.

ORCP 28 allows the permissive joinder as defendants of persons if plaintiff claims any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

## Appendix B-74

In contrast, ORS 88.030 also provides:

The failure of any junior lien or interest holder who is omitted as a party defendant in the suit to redeem within five years of the date of a sheriff's sale under ORS 88.106 shall bar such junior lien or interest holder from any other action or proceeding against the property by the person on account of such person's lien or interest.

In short, the statute addresses the fate of potential unsecured claimants such as Suzanne, David and/or Kent Seida, Jr. They need not be named in the foreclosure. Their rights, if any, are limited to redemption within five years of the sheriff's sale.

More explicitly, the statute implies that unsecured claimants should not be named as parties defendant. The first sentence of the statute declares who shall be made parties and thereafter, quite tellingly, who may be named defendants. It is limited to those having a prior lien on the subject property. That's the exclusive list of prospective defendants in an attorney's lien foreclosure. ORS 87.455[2] requires that an attorney's lien must be foreclosed as set forth in ORS 88.030.

In addition, in this instance, the joinder was, and is, superfluous because of ORS 87.490. Subsection [1] reads:

Except for tax liens, prior encumbrances and prior liens of record on the real or personal property subject to the lien created by ORS 87.445, the lien created by ORS 87.445 is superior to all other liens, including a lien created by ORS 147.285.

Two principles of statutory construction are relevant:

[1] ORS 174.010 declares that "...the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted..." ORS 87.455[2] declares that an attorney lien foreclosure must be foreclosed in the manner provided in ORS chapter 88. ORS 88.030 dictates who shall be made a defendant and who may be made a defendant.

[2] ORS 174.020[2] provides:

When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.

In this situation, ORCP 28 is the general provision, and ORS 87.455[2] and ORS 88.030 are, collectively, the particular provisions.

## Appendix B-75

Verified Correct Copy of Original 3/30/2016.

If Plaintiff's lien is valid and enforceable, Plaintiff's attorney fee lien has priority over any unsecured claim that Suzanne, David and/or Kent, Jr. may have in the ODOT proceeds. Naming them as defendants in the lien foreclosure was utterly unnecessary as a matter of law, and also improper as a matter of law [ORS 87.455{2} and ORS 88.030].

Furthermore, Suzanne, David and/or Kent, Jr. are not persons whose involvement in the litigation is not needed for just adjudication [for the reasons already stated]. ORCP 29. If they actually have an unsecured claim, or any secured interest other than those identified in ORS 87.490[1], it's subordinate to that of Plaintiff's attorney lien. Any judgment following successful foreclosure of the attorney lien would not need to recite that priority; it would exist as a matter of law.

Further examination of the rules of statutory construction is appropriate. Chapter 87 of ORS commences with construction liens. ORS 87.060 dictates the procedures to be used in the foreclosure of a construction lien. In Subsection [7] of that statute, the text reads:

In such a suit, all persons personally liable, and all lienholders whose claims have been filed for record pursuant to ORS 87.035, shall, and all other persons interested in the matter in controversy, or in the property sought to be charged with the lien, may be made parties; but persons not made parties are not bound by the proceedings.

In construction lien foreclosure, the legislature expressly permitted the inclusion of "...all other persons interested in the matter in controversy, or in the property sought to be charged with the lien..." in the foreclosure action. If the legislature had intended that such persons could be included as parties defendant in the foreclosure of an attorney's lien, the legislature would have said so by including such language in ORS 88.030. It did not. Instead, it omitted that language, and the Court is not free to add what the legislature left out. Nothing in Osborn v. Logus, 28 Or 302, 37 Pac 456 [1894] {a suit to foreclose a mechanic's lien} holds to the contrary. Even if there were a contrary message from that case, the current version of ORS 88.030 would control.

Similarly, the foreclosure of a trust deed or mortgage, when coupled with a suit to quiet title under ORS 105.605 in the same complaint, is regulated by ORS 88.020. That statute allows the joinder of any person who is a "proper party" to either cause of suit. Again, there is no such provision in ORS 88.030. The legislature is presumed to mean what it says and also what it does not say. ORS 174.010.

In light of this analysis, only Suzanne, David and Kent, Jr. could be the prevailing party when they are extricated from this litigation. They should never have been made parties and had to incur the ordeal and expense of rancorous litigation. It is they who will receive a "favorable judgment" from this ruling by the Court.

Alternatively, if it would be proper to name an unsecured claimant or creditor in a suit to foreclose an attorney's lien, the Court's ruling would remain the same. Plaintiff did not allege that Suzanne, David and/or Kent, Jr. had a judgment to enforce against Seida Land & Livestock, LLC, but instead raised the amorphous language "may claim" some interest allegation. Even if any of the three adult children did have such a judgment, Plaintiff's attorney lien has priority as a matter of law. Plaintiff did not need to obtain a judgment declaring that to be the fact. In addition, as the attorney for Seida Land & Livestock, LLC, and before that for a period of up to 4 years as the attorney for Kent Seida and Mary Seida, Plaintiff would have been made aware by Kent and/or Mary Seida of such intra-family litigation from one or more of their three adult children. Plaintiff did not allege the existence of such a judgment in the Complaint because he knew there wasn't one. Suzanne, David and Kent, Jr. were mere surplusage in the Complaint against Seida Land & Livestock LLC, Kent Seida, Sr. and Mary Seida.

Accordingly, the Court grants Defendants' Motion for Partial Summary Judgment and denies Plaintiff's motion to dismiss pursuant to ORCP 21B. Suzanne, David and Kent, Jr. shall be awarded a reasonable amount as attorney fees. ORS 87.485.

Motions to Strike.

The Motion to Strike the First, Second, Third, Fourth, Fifth, Sixth and Seventh affirmative defenses is denied, as the affirmative defenses are neither sham nor insufficient.


The Motion to Strike Defendants' Reservation of Unpleaded Affirmative Defenses is granted.

Motions to Make More Definite and Certain.

The Motions to make more definite and certain in the First, Second and Fifth Affirmative Defenses is granted. The Motion in paragraph D on page 17 of Plaintiff's Rule 21 Motions is denied.

The Defendants are granted until April 22, 2016 to file an amended pleading. Plaintiff is granted until May 13, 2016 to file a responsive pleading to the amended answer, counterclaim and affirmative defenses.

Very truly yours,

  
THOMAS O. BRANFORD  
Circuit Judge



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

Case No. 15CV12092

LIMITED JUDGMENT DISMISSING  
DEFENDANTS SUZANNE SEIDA,  
DAVID M. SEIDA, AND KENT  
SEIDA JR.

THIS MATTER comes before The Honorable Thomas O. Branford upon the Order on  
file granting Defendants' Motion for Partial Summary Judgment, declaring defendants Suzanne  
Seida, David M. Seida, and Kent Seida, Jr. as prevailing parties, and awarding fees and costs.  
The Court finding that there is no just reason for delay of entry of this judgment, now therefore;

////

////

////

////

////

////

////

////

1 IT IS HEREBY ADJUDGED that Suzanne Seida, David M. Seida, and Kent Seida, Jr.  
2 are dismissed from this case with prejudice and with reasonable attorney fees and costs incurred  
3 to be taxed as allowed on the statement of fees and costs to be filed 14 days from the date of the  
4 entry of this Limited Judgment.

Signed: 5/20/2016 03:16 PM



5/20/16

**Circuit Court Judge Thomas O. Branford**

14 SUBMITTED BY:

15 Roger A. Lenneberg, OSB # 842733  
16 JORDAN RAMIS PC  
Attorneys for Defendants

## Appendix B-79

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

Case No. 15CV12092

SUPPLEMENTAL LIMITED  
JUDGMENT AND MONEY AWARD

This Court entered the LIMITED JUDGMENT DISMISSING SUZANNE SEIDA,  
DAVID M. SEIDA, AND KENT SEIDA, JR. on May 20, 2016. The LIMITED JUDGMENT  
allowed the named parties to seek their reasonable attorney fees and costs. The Court, having  
reviewed the statement of attorney fees and costs for expenses incurred to Jordan Ramis PC, having  
heard oral argument, having issued its letter opinion dated April 18, 2017, and having entered  
ORDER REGARDING MOTIONS HEARD SEPTEMBER 26, 2016, and otherwise being fully  
advised, now therefore,

IT IS HEREBY ADJUDGED that a Supplemental Limited Judgment be entered against  
plaintiff Russell L. Baldwin and in favor of defendants Suzanne Seida, David M. Seida, and Kent  
Seida, Jr. in the amount of \$62,608.63 for attorney fees and costs incurred to Jordan Ramis PC.

////

////

## Appendix B-80

### MONEY AWARD

Judgment Creditors: Suzanne Seida  
David M. Seida  
Kent Seida, Jr.

Attorney for Judgment Creditors: Roger A. Lenneberg, OSB # 842733  
c/o Jordan Ramis PC  
Two Centerpointe Dr 6th Flr  
Lake Oswego OR 97035  
503-598-7070

Name of Judgment Debtor: Russell L. Baldwin  
PO Box 1242  
Lincoln City OR 97367  
(541) 994-6166

Date of Birth N/A

Social Security No N/A

Driver's License No N/A

State Issued N/A

Attorney for Judgment Debtor: Steve Norman, OSB # 961003  
Law Office of Steve Norman  
1500 SW 1st Ave Ste 1170  
Portland OR 97201  
(503) 206-7495

Other persons or public bodies who are entitled to any portion of a payment made on this judgment: None

Principal Amount of Supplemental Judgment: \$62,608.63

Prejudgment interest on principal amount of judgment: N/A.

## Appendix B-81

Interest at the rate of 9% per annum on  
the total judgment from date of entry of  
judgment until fully paid:

Upon Entry of Judgment

Signed: 6/22/2017 01:49 PM



6/22/17

**Circuit Court Judge Thomas O. Branford**

**SUBMITTED BY:**

Roger A. Lenneberg, OSB # 842733

JORDAN RAMIS PC

Attorneys for Defendants

## Appendix B-82

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

Case No. 15CV12092

LIMITED JUDGMENT DISMISSING  
DEFENDANTS KENT SEIDA, SR. AND  
MARY SEIDA

THIS MATTER comes before The Honorable Thomas O. Branford upon the ORDER  
REGARDING MOTIONS HEARD SEPTEMBER 26, 2016 on file herein granting Defendants'  
Motion for Partial Summary Judgment, declaring defendants Kent Seida, Sr. and Mary Seida as  
prevailing parties, and awarding attorney fees and costs. The Court finding that there is no just  
reason for delay of entry of this judgment, now therefore;

////

////

////

////

////

////

////

## Appendix B-83

1 IT IS HEREBY ADJUDGED that Kent Seida, Sr. and Mary Seida are dismissed from  
2 this case with prejudice and with reasonable attorney fees and costs incurred to be taxed as  
3 allowed on the statement of fees and costs to be filed 14 days from the date of the entry of this  
4 Limited Judgment.

Signed: 6/22/2017 01:50 PM

6/22/17



**Circuit Court Judge Thomas O. Branford**

**SUBMITTED BY:**

Roger A. Lenneberg, OSB # 842733  
JORDAN RAMIS PC  
Attorneys for Defendants



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN ,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA;  
KENT SEIDA, Jr.; SEIDA LAND &  
LIVESTOCK, LLC, an Oregon limited  
liability company; KENT SEIDA, Sr., and  
MARY SEIDA, husband and wife,

Defendants

Case No. 15CV12092

SUPPLEMENTAL LIMITED JUDGMENT  
AND MONEY AWARD

The Court entered the LIMITED JUDGMENT DISMISSING SUZANNE SEIDA,  
DAVID M. SEIDA, and KENT SEIDA, JR., on May 20, 2016. The LIMITED  
JUDGMENT allowed the named parties to seek their reasonable attorney fees and  
costs. The Court, having reviewed the statement of attorney fees and costs for  
expenses incurred to Britt Nelson, Attorney at Law, having heard oral argument,  
having issued its letter opinion dated April 18, 2017, and having entered the Order  
Regarding Motions Heard September 26, 2016, and otherwise being fully advised, and

**Page 1 of 3 -- SUPPLEMENTAL LIMITED JUDGMENT AND MONEY AWARD**

*Britt Nelson, Attorney at Law*

6416 SW Fleet Avenue, Lincoln City, Oregon 97367

Tel: (541) 614-0298; Fax: (503) 345-0945; email: [britt@brittnelsonlaw.com](mailto:britt@brittnelsonlaw.com)



there being no reason to delay entry of this Supplemental Limited Judgment, now  
therefore,

IT IS HEREBY ADJUDGED that a Supplemental Limited Judgment be entered  
against Plaintiff Russell L. Baldwin and in favor of Defendants SUZANNE SEIDA,  
DAVID M. SEIDA, and KENT SEIDA, JR., in the amount of \$ 9,063.00 for attorney  
fees and costs, and expenses incurred to Britt Nelson, Attorney at Law.

**MONEY AWARD**

Judgment Creditors:	Suzanne Seida David M. Seida Kent Seida, Jr.
---------------------	--

Former Attorney for Judgment Creditors:	Britt Nelson, OSB #820942 6416 SW Fleet Ave. Lincoln City, OR 97367 541-614-0298
---	---

Name of Judgment Debtor:	Russell L. Baldwin PO Box 1242 Lincoln City, OR 97367 541-994-6166
--------------------------	---

Date of Birth:	N/A
----------------	-----

Social Security Number:	N/A
-------------------------	-----

Driver's License Number:	N/A
--------------------------	-----

State Issued:	N/A
---------------	-----

Attorney for Judgment Debtor:	Steve Norman, OSB #961003 Law Office of Steve Norman 1500 SW 1 <sup>st</sup> Avenue, Suite 1170 Portland, OR 97201 503-449-7125
-------------------------------	---

Appendix B-86

Other persons or public bodies  
who are entitled to any portion  
of a payment made on this  
judgment:

None

Principal Amount of  
Supplemental Judgment:

\$ 9,063.00

Prejudgment interest on  
principal amount of judgment:

N/A

Interest at the rate of 9% per annum  
on the total judgment from date of  
entry of judgment until fully paid:

Upon Entry of Judgment

Signed: 6/22/2017 01:50 PM

6/22/17



Circuit Court Judge Thomas O. Branford

**SUBMITTED BY:**

Britt Nelson, OSB No. 820942  
Attorney (former) for Defendants Suzanne  
Seida, David M. Seida, and Kent Seida, Jr.

## Appendix B-87

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,  
Plaintiff-Appellant,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.;  
KENT SEIDA, SR. and MARY SEIDA, husband and wife,  
Defendants-Respondents;

and

SEIDA LAND & LIVESTOCK, LLC,  
an Oregon Limited Liability Company,  
Defendant.

Lincoln County Circuit Court  
Case No. 15CV12092

CA A162400

**PROPOSED FINDINGS OF FACT HEARING, OBJECTION TO ATTORNEY FEE  
HEARING, MOTION TO DISBURSE FUNDS HEARING, HEARING ON THE  
GENERAL JUDGMENT & ORDER TO DISBURSE FUNDS,  
MOTION TO COMPEL & MOTION FOR ATTORNEY FEES HEARING**

TRANSCRIPT OF PROCEEDINGS

VOLUME I OF I (Pages 1 to 251)

BE IT REMEMBERED THAT the above-entitled matter came  
on regularly for hearing before the HONORABLE THOMAS O.  
BRANFORD, Judge of the Circuit Court of the County of Lincoln,

\* \* \*

**Continued to Volume I, Page ii.**

## Appendix B-88

State of Oregon, commencing on MONDAY the 9TH day of OCTOBER, 2017; FRIDAY, the 13TH day of OCTOBER, 2017; MONDAY, the 4TH day of DECEMBER, 2017; FRIDAY, the 15TH day of DECEMBER, 2017; and FRIDAY, the 16TH day of FEBRUARY, 2018.

APPEARANCES: MR. RUSSEL BALDWIN  
Plaintiff  
Appearing pro se;

MR. DAVID BOWSER  
Attorney at Law  
Appearing telephonically in behalf of Defendants.

\* \* \*

## Appendix B-89

1           Uh, Judge Leonard -- Number (33) is just false,  
2 because Judge Leonard prohibited me and prohibited opposing  
3 party from submitting anything further in that case. That's in  
4 the Judgment, and he wrote a letter to that effect. 'I'm not  
5 deciding anything else. The case is closed. The, the parties  
6 shall not submit anything further.'

7           So what is Mr. Bowser doing now? He's proposing these  
8 special findings of fact, making it look like, oh, all Baldwin  
9 had to do is ask for the money and, sure, we would have given it  
10 over. There was no reason for him to make this lawsuit. It's,  
11 it's, it's poppycock. It's ridiculous.

12           They had five lawyers on this case, on a simple  
13 collection case, and they ran up \$160,000 before we got near  
14 trial. We weren't even near trial. It was a year ago they had  
15 run up \$160,000. For what? For \$140,000 lien that they knew  
16 that I was entitled to \$2,000 of as a matter of law?

17           The interesting thing, and this is in my declaration,  
18 what they did is they actually threatened me. They threatened  
19 me in Exhibit E, F and G. They threatened me with financial  
20 ruin if I wouldn't just leave. 'Oh, you don't get any money,  
21 Baldwin. Leave. If you don't, we're going to cause you  
22 financial rusin -- ruin and we're going to force you into  
23 bankruptcy.' That's attached to my Declaration, um, and that's  
24 Exhibits E, pages 1, 2, 3. That was from Roger Lenneberg.  
25 His -- And, uh, Exhibit F, his, uh, correspondence between Roger

## Appendix B-90

1 Lenneberg and my then lawyer, Sandra Fraser.

2 And then, fascinatingly, after, uh, my lawyer withdrew  
3 because of the health problem that this law firm caused her, he  
4 writes me Exhibit G, and he basically threatens me with  
5 defamation for statements that I made in court.

6 And what's, what's -- that's just fascinating is just  
7 eight hours ago I had -- or less than eight hours ago, I had to  
8 be in Washington County to defend this law firm's contention  
9 that anything that a lawyer says in court is absolutely  
10 privileged. Isn't that brilliant?

11 So I guess, taking, taking that to the logical  
12 conclusion, it doesn't really matter what your special findings  
13 of fact and -- or conclusions of law say, because I'm an officer  
14 of the court, and an officer of the court in court can say  
15 whatever he wants and you -- there -- there's no remedy.

16 Okay. So let's go to Number (34). Any conclusion of  
17 law a person thereof deemed to be a finding of fact is hereby  
18 adopted as such. There's no determinate -- there's no citation  
19 to any law. It's ridiculous.

20 Okay. So we go to Number (2). Um, Number (2) is  
21 false. I don't know why he's numbered them these -- this way.  
22 But on page 7, line 3, the agreement is between Defendant and  
23 Mr. Baldwin. False. Judge Leonard has already determined that  
24 the agreement was between Mr. Baldwin and Mr. Seida, Mary Seida  
25 and Limited -- the Limited Liability Company. That's the basis

## Appendix B-91

1 why I asked for summary judgment, which was denied without an  
2 explanation. Okay?

3 We know what the -- who the agreement was between,  
4 Your Honor. We know as a matter of law, because we have a final  
5 Judgment that says so. And it was not appealed. Res judicata,  
6 claim preclusion, (inaudible) versus Transport. (Inaudible)  
7 Freeway versus Transport.

8 So why are we here? We're here because I wanted to be  
9 paid. We could not agree on what the amount was, although I  
10 knew and my lawyer -- every one of my lawyers knew that there  
11 was no way that I could lose on the foreclosure because Your  
12 Honor had already concluded that my lien has highest priority.  
13 You did that a year, a year before trial.

14 Judge Leonard's Supplemental Judgment is my, uh --  
15 Plaintiff's Exhibit 4 attached to my, um, uh, Declaration today.  
16 Judge Hart's letter, where he awards me attorney fees within  
17 about one hour of court time, that's all it took, one hour, and  
18 I was paid without any, um -- with just a verbal agreement. I  
19 was paid \$105,000 by Judge Hart right next door. Nick Gillette  
20 was there and there was no problem.

21 What I don't understand is why, in this courtroom, um,  
22 it takes two and a half years. I asked to be paid for work that  
23 I did, and this Court knows that I did the work, for two  
24 reasons. Much of the work I did in this case --

25 THE COURT: Stop.

## Appendix B-92

1 MR. BALDWIN: -- and --

2 THE COURT: Stop. I won't listen to this. I  
3 won't listen to this. This is for the findings of fact that  
4 were made.

5 MR. BALDWIN: Okay.

6 THE COURT: I'm --

7 MR. BALDWIN: So --

8 THE COURT: I'm just going to alert you to a  
9 case. This is a courtesy. The hearing we're having today is a  
10 courtesy. It's not required.

11 In the marriage of Pea (phonetic), 33 ORAP 463. The  
12 trial court is not required to hold a hearing on objections to  
13 proposed findings that have been filed with the court. The  
14 decision to hold such a hearing is within the trial court's  
15 discretion and its failure to do so does not constitute  
16 reversible error.

17 MR. BALDWIN: Could I have the cite again --

18 THE COURT: I --

19 MR. BALDWIN: -- please.

20 THE COURT: I just gave it to you. It's 33 ORAP  
21 463.

22 MR. BALDWIN: Thank you.

23 THE COURT: It's still good law.

24 MR. BALDWIN: Okay.

25 THE COURT: And the point is this is not a time



## Appendix B-93

1 to litigate your complaint about me or about the other trial or  
2 about rulings I've made in this case. It's only regarding the  
3 findings of fact that I'm -- you asked for.

4 MR. BALDWIN: (Inaudible.)

5 THE COURT: You --

6 MR. BALDWIN: I did?

7 THE COURT: Yeah.

8 Stop. Don't interrupt me.

9 You asked for findings of fact and conclusions of law  
10 in --

11 MR. BALDWIN: Yes.

12 THE COURT: -- this case. I'm going to give them  
13 to you. It's different than a jury's verdict, because they  
14 weren't given specific questions to answer other than yes or no,  
15 was there a breach of contract? Was there a --

16 MR. BALDWIN: I --

17 THE COURT: -- contract that required the payment  
18 of the 140,000?

19 So --

20 MR. BALDWIN: If they --

21 THE COURT: -- limit your comments to that,  
22 because I'm not going to sit here and be berated.

23 MR. BALDWIN: Very good.

24 And I certainly don't mean to berate, Your Honor.  
25 That would be counterproductive for me.

## Appendix B-94

1           What I'm trying to do is normalize the relationship  
2 that I once had with you twenty years ago. And I, I still hope  
3 to do that, because I like practicing in Lincoln County. I  
4 don't want to practice in a county where there -- where I feel  
5 that there is animosity from the presiding judge. That's what I  
6 seek.

7           And I know, it's, uh, uh -- I'm, I'm already up on  
8 appeal. I know that it's very unlikely that I'm going to get  
9 remand back here to get my \$140,000. But I think it's quite  
10 likely that the Court of Appeals will hear and determine if  
11 there were insufficient findings on the \$160,000 before.

12           I want to normalize my relationship with this Court.  
13 I'm an officer of this court. It's how I make my, my living.  
14 It's how I support my family. I didn't get paid for about eight  
15 years' worth of work, and this Court knows it because of the  
16 invoices that are already of record that you kept from the jury.

17           That's water under the bridge. I understand that.  
18 I'm trying to normal -- I'm trying to figure out what a lawyer  
19 has to do in this county in order to get paid when they stupidly  
20 extend credit to somebody who ends up not paying them. This  
21 shouldn't be any different than somebody -- than Meier and Frank  
22 suing on a -- somebody who didn't pay their credit card. But I  
23 feel like I'm being treated differently, and I want to get to  
24 the bottom of that.

25           Now addressing the special findings. In Number (4),

## Appendix B-95

1 um, and such funds have not been disbursed due to Plaintiff's  
2 lien. That's false. That's, uh, uh, page 8, line 4. The funds  
3 were not disbursed because of Kent Seida's lien.

4 You remember that Kent Seida first filed his lien in  
5 140225. It's a handwritten lien. It's, it's, it's, it's an  
6 exhibit in this case. Okay? That's the reason why I filed my  
7 lien. That's --

8 And I explained that to Ms., uh, Suzanne Seida.  
9 Remember? The reason why I filed the lien was the person that I  
10 was suing beat me to the courthouse and filed his lien first.  
11 So then I met his lien with my own lien, and then his lawyer  
12 brilliantly said, 'You have to file a new proceeding.' And I  
13 didn't think that was the case, but I didn't want to have a  
14 jurisdictional fight. Okay. So we know that Number (4) is just  
15 patently false. Just false.

16 Plaintiff has never requested or moved this Court to  
17 disburse the \$2,000 to Plaintiff. Okay. Well, that's false and  
18 misleading. The reason is, Judge Leonard told the parties they  
19 couldn't. I had to go for a decree of foreclosure. There was  
20 no other choice. Res judicata.

21 Number (6). Since Plaintiff has failed to prove that  
22 he is entitled to any percentage of the 445. Okay. Well, here  
23 we had a jury trial. The jury found that, that the Limited  
24 Liability Company did not breach the lease. It is not relevant  
25 to the foreclosure. That was a separate trial. Completely

## Appendix B-96

1     separate.   Has no bearing.

2                 Now the coup de grâce, Your Honor, is within -- in --  
3     on line 25 of page 8 where they, they write in something that  
4     you've never ordered.   Not once.   Plaintiff's complaint is  
5     dismissed with prejudice.

6                 There's no Motion to Dismiss.   I think there might  
7     have been Motions to Dismiss before, but this Court denied them.  
8     What this Court instructed Mr. Bowser to do is to prepare a  
9     Decree of Non-Foreclosure.   Where is the Decree of Non-  
10    Foreclosure, Your Honor?   That came from the bench.   There is no  
11    Decree of Non-Foreclosure.   Instead, they want to dismiss the  
12    complaint.   Well, let's dismiss the answer too and pretend like  
13    none of this ever happened.

14                I filed a complaint because they said I had to to get  
15    paid.   They did so through their lawyer.   They did that after my  
16    lawyer obtained payment from me without any written agreement at  
17    all.

18                I followed what Judge Leonard told me I had to do.  
19    Fight it in this other case.   And that's what I did.   And Your  
20    Honor has blamed me for doing that and has awarded attorney fees  
21    to the adult children because I followed Judge Leonard's  
22    instructions.   I followed, um, um, Ms. Nelson's demands.

23                And what I end up with is, after two and a half years  
24    of litigation, I am terrified, Your Honor, that now I'm going to  
25    lose everything that I have.   Why?   I don't know.   I did what

## Appendix B-97

1 the court demanded of me. I did what Ms. Nelson demanded of me,  
2 and this Court has entered \$160,000 in money judgments against  
3 my interest as though these people are prevailing parties, and  
4 they're not. How do I know as a matter of law? Because as a  
5 matter of law, the lien has still not been foreclosed. It's  
6 still there. You're still holding my money.

7 Now there's a case on point from the U. S. Supreme  
8 Court called Stop the Beach Reinvigoration versus Florida  
9 Department of Environmental Quality. I've cited it to this  
10 Court before but not in this case. The cite is 130 Supreme  
11 Court 252, 177 L.Ed. 184, 560 US 702. It's a 2010 case, and I  
12 have a copy for Your Honor.

13 But what it says is that a court can and does  
14 effectuate an unconstitutional taking by, um, the takings  
15 clause, unlike the expro facto clause, etcetera, um, is not  
16 addressed for the action of a specific branch or branches. It's  
17 talking about government. Um, it is concerned simply with the  
18 act and not with a governmental actor, nor sh -- "nor shall  
19 private property be taken."

20 It goes on, then there's -- and I'll provide this to  
21 the Court -- uh, there's a citation to a fascinating case from  
22 Oregon, Stevens versus Cannon Beach, 510 US 1207, where the  
23 author, Justice Scalia, dissented from, uh, certiorari.

24 Uh, on page 6 of the opinion, it concludes, in sum,  
25 the takings clause bars the state -- and for our purposes here,

## Appendix B-98

1 Your Honor, the state is this Court -- the state -- the takings  
2 cars -- clause bars the state from taking private property  
3 without paying for it, no matter which branch is the instrument  
4 of the taking. To be sure the manner of state action may  
5 matter. Condemnation by imminent domain, for example, is always  
6 a taking, while a legislative, executive or judicial restriction  
7 of property used may or may not be, depending on its nature and  
8 extent. But the particular state actor is irrelevant.

9 If a legislature -- and this is an emphasis, an  
10 original -- or a court declares that was what -- that what was  
11 once an established right of private property no longer exists,  
12 it has taken that property no less than if the state had  
13 physically appropriated it or destroyed its value by regulation.  
14 "A state, by (inaudible), may not transform private property  
15 into public property without compensation." (Inaudible.)

16 Okay. So what I'm contending, Your Honor, is that I  
17 have a valid property right, and it's called a lien. I'm  
18 entitled to that by statute. The Oregon State Bar, uh, lobbied  
19 the Oregon legislature about fifty years ago, sixty years ago.  
20 We have in this state a law that says that an attorney is  
21 entitled to assert a lien. And a lien is a property right.

22 And this Court has not yet foreclosed my lien,  
23 although I had an obligation to this Court to foreclose it  
24 within two years. I had to. And Judge Leonard required me to  
25 do it, and so did Britt Nelson. And I, I, I -- that's what I

## Appendix B-99

1 did. And I did it through counsel.

2 So what's fascinating is when the Court blames me in  
3 its opinion letter before for suing people that didn't need to  
4 be sued. Okay? In addition to being just erroneous as a matter  
5 of law, it's, it's -- it was fairly -- How do I say this?

6 Um, Your Honor, I didn't take any joy or glee in suing  
7 my former clients. What I tried to do is obtain payment from  
8 them when they were busy complaining to the Oregon State Bar,  
9 contending that I was -- could not resign because I had an  
10 agreement with them whereby I had to provide services to them  
11 for free forever. That's what they said. And the Oregon State  
12 Bar told them, you know what? That's not how it works. And  
13 the, the vindications, my vindications from the Oregon State Bar  
14 are also part of, of this record.

15 The Oregon State Bar decided that Baldwin did nothing  
16 wrong. And by the way, Kent Seida --

17 THE COURT: Stop.

18 MR. BALDWIN: -- you wrote a bad check --

19 THE COURT: Stop.

20 MR. BALDWIN: -- of twenty --

21 THE COURT: This isn't about the Oregon State  
22 Bar. We're here to talk about findings of fact in this case.

23 MR. BALDWIN: Right.

24 THE COURT: Stop.

25 MR. BALDWIN: So I was on the General Judgment at

## Appendix B-100

1 page 8, and, uh, I'm wondering where the Decree of Non-  
2 Foreclosure is. The Court ordered Judge -- uh, the Court  
3 ordered Mr. Bowser to prepare a Decree of Non-Foreclosure, but  
4 one has not been forthcoming.

5 I ask that the Court reconsider its decision awarding  
6 attorney fees to Defendants because no such Defendant has  
7 prevailed over my priority lien. This Court found that my lien  
8 had highest priority and that no judgment was required in order  
9 for me to get that. It was, it was just legal error.

10 I still have not received my money, and my lien has  
11 still not been foreclosed. Indeed, the Defendants withdrew  
12 their meritless lien after forcing me to file this proceeding  
13 here. Remember that --

14 So there's -- I don't think there's anything in the  
15 General Judgment about Mr. Seida's lien. Hmm. Okay. So it  
16 was -- there's a, there's a -- there's a lot in the General  
17 Judgment about how I trapped the \$2,000, like, like, you know,  
18 look how shifty Baldwin is. Right? The court's got his money  
19 and all he has to do is ask for it.

20 Well, we know that that's wrong, because Judge Leonard  
21 entered a judgment completely contrary to that. Okay? And I  
22 didn't trap the money, they did. Kent Seida and his family  
23 filed a meritless lien for breach of contract against me without  
24 any statutory authority and I received no remedy for that.  
25 None.



## Appendix B-101

1           Okay. So the, um -- I can understand why Mr. Bowser  
2 would like to put my conduct in issue, but it is not. I simply  
3 sued to recover money that was lawfully owed to me, and I lost  
4 in front of a jury on that issue. But the Court still has my  
5 \$2,000 that this court earlier said that both Kent and Mary and  
6 their LLC owed me for work that I performed for them under  
7 contract. That's not going to change. No findings of fact by  
8 this Court is going to take away that judgment.

9           I feel sick to my stomach. I shouldn't have to do  
10 this to get paid. Shouldn't. I should not have to risk my  
11 livelihood in order to get paid. I didn't think it was  
12 possible, Your Honor.

13           When I come to you for justice --

14           THE COURT: Mr. Baldwin --

15           MR. BALDWIN: Isn't --

16           THE COURT: -- we're done.

17           MR. BALDWIN: It's not my turn to speak?

18           THE COURT: We're, we're --

19           No. You won't talk about what I've told you to talk  
20 about for the last forty minutes.

21           MR. BALDWIN: I --

22           THE COURT: The findings of fact. You're -- You  
23 are once again berating me for providing, um, lack of justice  
24 and for a host of other errors. Focus on the findings of fact  
25 only, because that's all we're doing here today. That's it.

## Appendix B-102

1 MR. BALDWIN: All right. Okay.

2 So, um --

3 THE COURT: And if you deviate from that again,  
4 your argument will be over. I'll hear no more.

5 Remember I'm not required to conduct this hearing. I  
6 could have done this in my office without you even being here or  
7 Mr. Bowser being here, under the case I, I gave you. 33 ORAP  
8 in, in the marriage of Tea (phonetic). So make productive use  
9 of your time, because I'm --

10 MR. BALDWIN: Right. Okay. I will. Thank you,  
11 Your Honor.

12 So in the General Judgment, to the extent that it  
13 says, uh, anything other, uh, that, um, that I only provided  
14 services to the LLC, it's false.

15 THE COURT: And what, what page are you looking  
16 at? I don't even know if I've seen -- I certainly haven't  
17 signed one.

18 MR. BALDWIN: You haven't signed what?

19 THE COURT: A judgment.

20 MR. BALDWIN: Oh. Judge Leonard.

21 THE COURT: All right.

22 MR. BALDWIN: Okay. So turning to my -- the --  
23 it's, it's simplest to find it in the Declaration that I filed  
24 this morning.

25 THE COURT: I've, I've got the Judgment in front

DEC 15 2017

AT \_\_\_\_\_ OCLOCK 3:51 PM

BY \_\_\_\_\_

Verified Correct Copy of Original 12/15/2017

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Case No. 15CV12092

Plaintiff,

v.

**GENERAL JUDGMENT**

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

THIS MATTER came before the Court on August 23, 2017 for a jury trial on Plaintiff's claims for breach of contract and account stated and before The Honorable Thomas O. Branford on Plaintiff's claim for foreclosure of his attorney fee lien. Plaintiff Russell Baldwin appeared by and through his counsel Steve Norman. Defendant Seida Land & Livestock LLC appeared by and through its counsel David H. Bowser.

A 12 person jury was duly empaneled and sworn, opening statements were made, evidence was presented, the jury was instructed, and closing arguments were made. After deliberation, the jury returned a verdict on August 25, 2017, finding in favor of Defendant Seida Land & Livestock, LLC and against Plaintiff on Plaintiff's claims for breach of contract and account stated. A copy of the verdict form completed by the jury is attached to this General Judgment as Exhibit A and is incorporated by this reference.

///

After verdict, the Court heard additional evidence and argument upon Plaintiff's claim for foreclosure of his attorney fee lien, and after making the below findings of fact and conclusions of law, finding in favor of Defendant Seida Land & Livestock, LLC and against Plaintiff on Plaintiff's claim for foreclosure of his attorney fee lien.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### The Court hereby makes the following findings of fact:

1. On January 23, 2014, ODOT filed a condemnation action against Defendant.
2. Defendant wanted to avoid incurring attorney fees so it decided to negotiate a settlement with ODOT without the assistance of Mr. Baldwin.
3. On January 27, 2014, ODOT offered Defendant \$284,103 for the taking.
4. On April 4, 2014, Mr. Baldwin notified the mediator that he would not be participating in the mediation.
5. On April 8, 2014, ODOT confirmed to the Defendant that the current ODOT offer was \$284,103 for the taking.
6. On or about April 22, 2014, ODOT, at the mediation, offered to pay \$450,000.
7. On or about April 24, 2014, Mr. Baldwin requested ODOT to provide him with a copy of the condemnation complaint. Mr. Baldwin also informed ODOT that it could continue to negotiate with Defendant without attorneys being involved.
8. On April 25, 2014, Mr. Baldwin informed the Court that the Defendant had not yet filed an appearance, that Defendant had been mediating with ODOT, that he was supplying "unbundled legal services," and that all negotiations should be between ODOT and Defendant without interference by attorneys.
9. Also on April 25, 2014, Mr. Baldwin sent ODOT's attorney a letter. Mr. Baldwin informed her that Defendant had expressly requested that Baldwin inform ODOT that his services were "unbundled" and his authority was "thereby limited." Mr. Baldwin acknowledged



1 that he did not have authority to negotiate a compromise, to make or accept offers or negotiate  
 2 for terms of the condemnation. Mr. Baldwin wrote “[a]t this juncture Mr. Kent Seida has  
 3 settlement authority to engage ODOT as it might desire in dispute resolution through direct  
 4 negotiation without any lawyers.” Mr. Baldwin expressly informed ODOT that it was  
 5 Defendant’s “desire to engage in direct negotiations without involving any deal breaking or  
 6 egocentric lawyers.”

7 10. On April 27, 2014, Kent Seida wrote to ODOT. He continued to negotiate the  
 8 condemnation action. Mr. Seida said that Defendant’s “main goal is to settle not litigate and  
 9 keep as much money as possible in ODOT and Seida’s hands not lawyers and experts.”

10 11. On April 29, 2014, ODOT confirmed that its last offer was \$450,000 and if  
 11 Defendant proposed that number it would be recommend it for acceptance.

12 12. On April 30, 2014, ODOT made an offer of judgment to Defendant in the total  
 13 sum of \$450,000.

14 13. On May 6, 2014, Plaintiff, on behalf of Defendant, executed and filed the Offer of  
 15 Compromise, accepting the sum of \$450,000. This was Plaintiff’s first appearance in the case.

16 14. On May 7, 2014, the day started without there being a signed Contingency Fee  
 17 Agreement (“Agreement”). Plaintiff informed Defendant that it needed a written agreement to  
 18 seek fees from ODOT. Around noon of that day, Kent Seida requested that Plaintiff send a draft  
 19 of the proposed Agreement to Suzanne Seida via email. The draft Agreement included language  
 20 requiring a \$5,000 retainer. On that same day, May 7, 2014, at 1:38 PM, Ms. Suzanne Seida sent  
 21 Plaintiff the following question:

22 So.  
 23 We owe you \$000.00...and you will bill ODOT at \$450 per hour...  
 24 Any fees collected... will be your fee..  
 Is that the Agreement....  
 I hope they are huge....

25 An hour and 20 minutes later, at 2:58 PM, Plaintiff responded:

1 Yes. The \$5,000 is previously paid per your dad.

2 On May 8, 2014, Plaintiff sent Ms. Suzanne Seida a copy of the signed Agreement, which  
3 deleted the \$5,000 retainer.

4 15. The Agreement is the foundation of Mr. Baldwin's lien.

5 16. Mr. Baldwin drafted the Agreement.

6 17. The Agreement contains bolded underlined language that clearly states:

7 **Client assumes no liability hereunder for attorney fee (other than costs) which are in**  
8 **excess of amounts collected from the State of Oregon/ODOT.**

9 This is the only bolded and underlined language in the written Agreement.

10 18. The only "client" identified in the Agreement is the Defendant. Kent Seida  
11 signed as a member of the Defendant. In the Agreement, Plaintiff inserted dates indicating that  
12 the Agreement was "executed" on April 1, 2013.

13 19. On May 9, 2016, ODOT's attorney requested that Mr. Baldwin supply a copy of  
14 his fee agreement.

15 20. On May 30, 2014, the Oregon Supreme Court issued its opinion in S060879 (Hall  
16 v. Oregon) thereby fully and finally reversing a circuit court judgment. The reversed judgment  
17 included an award of attorney fees for Mr. Baldwin totaling approximately \$1,000,000.

18 21. On June 12, 2014, Mr. Baldwin sought advice from a Condemnation Consultant  
19 about seeking contingent fees under ORS 35.300 after accepting an offer of compromise.  
20 Plaintiff identified the date of the Agreement as April 1, 2013 and listed documents in their  
21 chronological order, including placing the Agreement before the lawsuit.

22 22. On June 23, 2014, Mr. Baldwin wrote to Kent Seida. Regarding the ODOT  
23 condemnation action, Mr. Baldwin expressed his concern that Mr. Seida's desire to seek a  
24 contingent expert fee would likely result in the Court not awarding any attorney fees, which  
25 would mean he would receive no payment for the case. Mr. Baldwin wrote:



1 As our agreement is written, I have undertaken the risk of the court not awarding  
2 me any attorney fees, with the consequence that you would be relieved of paying  
3 me any money for any of the work I have performed on that case. That is a risk  
4 that I was willing to take, before you indicated that you also expected to be paid  
5 on a contingent fee basis as expert. With all respect to you, I did not undertake  
6 the risk of defeating my own attorney fee claim by pursuing costs and expenses  
7 for non-lawyers. And I am not willing to do so now. That is just too much risk.

8 23. On June 27, 2014, Mr. Baldwin sent the Defendant an email wherein he  
9 acknowledged he had suffered a "significant financial setback."

10 24. On August 26, 2014, Mr. Baldwin wrote to Defendant that he was withdrawing.  
11 Mr. Baldwin said he would protect his right to be paid for services rendered including by lien  
12 and or quantum meruit, excluding the ODOT condemnation action. Regarding the ODOT  
13 condemnation case, Mr. Baldwin wrote:

14 On the direct condemnation, State v. Seida (Lincoln County, DeFever opposing  
15 counsel) I intend to seek my attorney fees at my standard hourly rate in  
16 supplemental proceedings. [...] I will not seek your alleged contingent fee costs,  
17 or those of Mr. Wright. [...] As we previously agreed, I will not pursue you in  
18 existing, supplemental, or additional judicial proceedings for services I have  
19 rendered on that singular case, for which I am to collect from ODOT on your  
20 behalf by statute and court rule.

21 25. On September 15, 2014, a Stipulated General Judgment was entered in the  
22 condemnation action awarding the Defendant and Kent and Mary Seida \$445,000. Defendant  
23 and Kent and Mary Seida were permitted to submit a petition for attorney fees.

24 26. On September 15, 2014, Mr. Baldwin filed his Statement of Attorney Fees. Mr.  
25 Baldwin sought attorney fees both on a contingent basis and hourly.

26 27. On October 31, 2014, Mr. Baldwin filed a claim of lien against the condemnation  
27 action for 33% the principal amount totaling \$116,711.88

28 28. On November 4, 2014, Ms. Suzanne Seida sent Mr. Baldwin an email demanding  
29 that he remove his claimed lien as the agreement was that Baldwin would collect his fees from  
30 ODOT and the LLC would owe him nothing, as indicated by the prior written correspondence.

31 29. On January 29, 2015, a hearing was held upon Mr. Baldwin's petition for attorney

1 fees in the ODOT condemnation action. The Court awarded \$2,000 as reasonable attorney fees,  
2 calculated by multiplying 8.75 hours at a rate of \$225 an hour, rounded up.

3 30. On or about May 8, 2015, Mr. Baldwin filed an Amended Notice of Attorney's  
4 Lien, claiming a lien of 40% against the \$445,000 from ODOT, for \$140,054.40. In his  
5 Amended Lien, Plaintiff identified the \$2,000 as separate from a claimed percentage of the  
6 \$445,000.

7 31. On July 2, 2015, the Court signed, nunc pro tunc January 29, 2015, and entered  
8 Supplemental Judgment re Russell Baldwin's Attorney Fee Claim, awarding reasonable fees in  
9 the sum of \$2,000. The \$2,000 was paid into Court.

10 32. In his Complaint, Plaintiff described the "res" he foreclosed against as the  
11 \$445,000 ODOT paid for the taking by Stipulated Judgment. *See* Complaint ¶33. Plaintiff  
12 calculated his claimed amount due by calculating 40% of the net amount between the \$445,000  
13 paid and the initial ODOT offer of \$94,864.00, yielding \$140,054.40. *See* Complaint ¶9.

14 33. During trial, Defendant offered to stipulate to disbursement of \$2,000 to  
15 Plaintiff. The Court indicated to Plaintiff that such would be done by the Court if Plaintiff  
16 requested disbursement. Plaintiff refused to request disbursement of the \$2,000.

17 34. Mr. Baldwin's amended notice of lien included the \$2,000 in attorney's fees  
18 which Judge Leonard had awarded to Defendant.

19 35. Defendant's trial memo says that Exhibit #131 shows the \$2,000 deposit into the  
20 court. The Court takes judicial notice of the Supplemental Judgment re: Russell Baldwin's  
21 Attorney Fee Claim which was signed July 2, 2015, nunc pro tunc January 29, 2015. The  
22 \$2,000, and the remainder of the \$445,000, has been held by the court since the award of \$2,000  
23 was paid by ODOT. At no point in this litigation have any of the named defendants claimed any  
24 portion of the \$2,000 paid by ODOT or denied Mr. Baldwin's entitlement to that sum.  
25



36. The 7/2/15 Supplemental Judgment recites that prior to that document being signed and filed in Odyssey, ODOT had already deposited the \$2,000 with the Court. Whether that was done by verbal order of Judge Leonard, with the attorney lien in mind, is not clear from the Supplemental Judgment. What is clear is that Defendant was not free to squander it and Mr. Baldwin had no fear of not recovering that money; he would get \$2,000 directly from the Court at the conclusion of the litigation, because it was money paid to Defendant by ODOT for Mr. Baldwin's attorney's fees. That had already been judicially determined. It was the proper subject of an attorney fee lien, but Defendant would not have opposed a foreclosure of that lien because of Judge Leonard's decision and because the testimony in the trial from the Seida family members was that Mr. Baldwin was to be paid for his services exclusively by funds from ODOT.

37. Mr. Baldwin filed his Amended Notice of Attorney's Lien on May 11, 2015. Starting on line 4 of page 3 of that lien, Mr. Baldwin recited that Defendant received a recovery of \$445,000. The Amended Notice recites that the 40% attorney's fee is calculated as follows: gross recovery of \$445,000 less the state's initial offer of \$94,864 times .40 equals \$140,054.40. The lien claimant asserts a lien of \$140,054.40. It is noteworthy that the calculations exclude the \$2,000 from ODOT, although Mr. Baldwin specifically added that amount to the amended lien claim. That reflects the fact that Mr. Baldwin knew he was guaranteed to get the \$2,000 at some point.

38. The following day, May 12, 2015, Mr. Baldwin filed his Complaint, which has never been amended. The fact that Judge Leonard had not signed a supplemental judgment in favor of Defendant and Kent & Mary Seida until 7/2/15 makes no difference as to the lien foreclosure Complaint. Mr. Baldwin had just included the \$2,000 in his amended lien, on lines 14-15, the day before.

39. The failure to include the \$2,000 lien as part of the lien foreclosure claim was not an inadvertent mistake. When the Amended Notice of Attorney's Lien was drafted on May 11,

1 2015, 102 days had elapsed since Judge Leonard had announced the \$2,000 award to Defendant  
 2 and Kent & Mary Seida for attorney fee reimbursement in open court. Mr. Baldwin had plenty  
 3 of time to contemplate that the additional \$2,000 would also be subject to his amended attorney's  
 4 lien and how that might impact the proceedings in #15CV12092. Obviously, Mr. Baldwin  
 5 sought almost another \$24,000 dollars in the Amended Notice of Attorney's Lien beyond the  
 6 \$116,711.88 originally claimed. Mr. Baldwin was careful to include the \$2,000 in the Amended  
 7 Notice of lien, but must be charged with deliberately omitting that sum from the lien foreclosure  
 8 claim.

9 40. Mr. Baldwin's omission of the \$2,000 awarded by Judge Leonard in his lien  
 10 foreclosure claim was a calculated back-up position to try to avoid an award of attorney's fees to  
 11 Defendant if the lien foreclosure for the \$140,054.40 were to fail. At that very moment in the  
 12 litigation, Mr. Baldwin could claim that he was entitled to foreclose the lien for the \$2,000 and  
 13 thereby seek recovery of his own attorney's fees to foreclose that, as opposed to merely facing  
 14 the prospect of liability for all of the named defendants' attorney's fees as to the \$140,054.40  
 15 component of the lien foreclosure.

16 41. That is precisely what happened. When the Court prepared to announce that  
 17 Defendant prevailed on the lien foreclosure as to the \$140,054.40, Mr. Baldwin quite  
 18 spontaneously brought up the \$2,000 in the Amended Notice of Attorney's Lien and sought an  
 19 order from the Court that he prevailed on that foreclosure and, therefore, was entitled to recover  
 20 his reasonable attorney fees. It was a cunning move to keep one arrow in his quiver to draw at  
 21 the darkest hour. Mr. Baldwin did not just suddenly remember the \$2,000; he had been aware of  
 22 it all along. He had purposely chosen not to seek permission to file an Amended Complaint  
 23 earlier to include the \$2,000, because it would have alerted Defendant to that issue. Defendant  
 24 would have conceded that Mr. Baldwin was entitled to the \$2,000 all along, as Mr. Bowser  
 25 logically argued, and Defendant would have not had any prospect of liability for attorney fee



1 reimbursement to Mr. Baldwin as to that \$2,000. After all, the written contract between the  
 2 parties said that Mr. Baldwin was entitled to all attorney's fees recovered from ODOT, but only  
 3 that. Mr. Baldwin knew that was Defendant's position, and the amended lien claim for the  
 4 \$2,000 Supplemental Judgment was far more valuable as a tactical maneuver than it was on its  
 5 face. Whoever prevailed on the lien foreclosure would be entitled to a reasonable, but  
 6 presumably significant, recovery of money to reimburse the prevailing party for attorney fees.  
 7 That award would dwarf the \$2,000. The \$2,000 lien claim was nothing more than a potential  
 8 escape valve to Mr. Baldwin. The Court's conclusion is strongly supported by how quickly that  
 9 issue was raised at counsel table once it was apparent that Defendant would prevail on the lien  
 10 foreclosure claim.

11 42. The above Findings 34 through 41 are relevant to the lien foreclosure issue and  
 12 attorney's fees generally, but are also germane as to the Court's refusal to allow an amendment  
 13 to the Complaint to include the \$2,000 as part of the lien foreclosure after the jury had reached  
 14 its verdict. To allow that amendment then, or now, would amount to bushwhacking Defendant  
 15 as to this issue because it had not been raised in the Complaint. That issue cannot surface now to  
 16 torpedo Defendant's entitlement to seek attorney's fees after the jury's verdict and the Court's  
 17 findings as to the foreclosure.

18 The Court, based upon the findings of fact, hereby makes the following conclusions of  
 19 law:

20 1. Under ORS 87.445, "[a]n attorney has a lien upon actions, suits and proceedings  
 21 after the commencement thereof, and judgments, orders and awards entered therein in the  
 22 client's favor and the proceeds thereof to the extent of fees and compensation specially agreed  
 23 upon with the client...."

24 2. The Agreement is between Defendant and Mr. Baldwin. The Agreement, which  
 25 was drafted by Plaintiff, contains bolded underlined language that clearly states:

**Client assumes no liability hereunder for attorney fee (other than costs)  
which are in excess of amounts collected from the State of Oregon/ODOT.**

The Court finds this language to unambiguously limit Mr. Baldwin's recovery under the Agreement to the amount he was able to collect from ODOT for fees. This interpretation is bolstered by the circumstances under which the Agreement was made. Defendant had expressed its desire to avoid incurring attorney fees, had handled the negotiations with ODOT and the Agreement was not executed until after ODOT's offer of \$450,000 had been made and accepted. At the time the Agreement was executed, the only outstanding amount to determine was the amount that ODOT would have to pay Defendant for attorney fees. The only reasonable interpretation of the quoted language under these circumstances is Mr. Baldwin's recovery under the Agreement was limited to the amount he was able to collect from ODOT for fees. Defendant had no direct liability for any additional fees to Mr. Baldwin for the condemnation other than what Mr. Baldwin could collect from ODOT for fees. That amount has been previously found by this Court to be \$2,000, and such amount was entered by Supplemental Judgment, was paid by ODOT into Court, and such funds have not been disbursed due to Plaintiff's lien.

3. Even if the Court found the language of the Agreement to be ambiguous, such ambiguity would be resolved in favor of Defendant based upon Mr. Baldwin's prior and subsequent statements agreeing with the interpretation advanced by Defendant and under the maxim of interpretation that the language should be construed against the drafter, Mr. Baldwin.

4. Plaintiff has failed to establish that he is owed a contingent percentage of \$445,000 paid by ODOT for the taking. Plaintiff is only entitled to the fees and compensation specially agreed upon with the client. The amount agreed upon and owed to Mr. Baldwin by Defendant for the condemnation action has been previously found by this Court to be \$2,000, and such amount was entered by Supplemental Judgment, was paid by ODOT into Court, and such funds have not been disbursed.




5. In his Complaint, Plaintiff described the “res” he foreclosed against as the \$445,000 ODOT paid for the taking by Stipulated Judgment. *See* Complaint ¶33. Plaintiff calculated his claimed amount due by calculating 40% of the net amount between the \$445,000 paid and the initial ODOT offer of \$94,864.00, yielding \$140,054.40. *See* Complaint ¶9. Plaintiff did not foreclose against the \$2,000 awarded by Supplemental Judgment. It is fundamentally unfair for Plaintiff to claim after the fact that he was foreclosing against the \$2,000. During trial, Defendant offered to stipulate to disbursement of \$2,000 to Plaintiff. The Court indicated to Plaintiff that such would be done by the Court if Plaintiff requested disbursement. Plaintiff refused to request disbursement of the \$2,000.

6. Since Plaintiff has failed to prove that he is entitled to any percentage of the \$445,000 paid by ODOT against which he foreclosed, Defendant is the prevailing party and entitled to its attorney fees and costs under ORS 87.485 as regards Plaintiff’s claim for foreclosure of his attorney fee lien.

Now therefore,

**IT IS HEREBY ADJUDGED** that General Judgment in favor of Defendant Seida Land & Livestock LLC on all claims is entered, Plaintiff’s complaint is dismissed with prejudice, Defendant Seida Land & Livestock LLC is the prevailing party, and that Defendant Seida Land & Livestock LLC shall be allowed its reasonable attorney fees and costs incurred under ORS 87.485 to be determined pursuant to ORCP 68 on its statement of attorney fees to be filed pursuant to the Oregon Rules of Civil Procedure and applicable statutes.

DEC 15, 2017 

**SUBMITTED BY:**

David H. Bowser, OSB # 012098  
JORDAN RAMIS PC  
Attorneys for Defendant Seida Land & Livestock, LLC

Appendix B-114

Verified Correct Copy of Original 12/15/2017.

CIRCUIT COURT  
FILED \_\_\_\_\_ RECEIVED \_\_\_\_\_  
AUG 25 2017  
AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M  
BY \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC

Defendant.

Case No. 15CV12092

VERDICT FORM

At least the same nine jurors must agree to the answer for each of the following questions  
that you answer.

We, the jury, find:

**BREACH OF CONTRACT**

1. Did Defendant Seida Land & Livestock, LLC breach the written Contingency Fee  
Agreement by failing to pay Plaintiff Baldwin as required by the contract? (At least nine jurors  
must agree to the answer)

ANSWER: NO (Yes or No)

If "yes," go to Question 2.

If "no," go to Question 3.

///

///

///

///

1 ~~X~~ If you answered "Yes" to Question 1, how much does Defendant Seida Land &  
 2 Livestock, LLC owe Plaintiff Baldwin under the written Contingency Fee Agreement? (At least  
 3 the same nine jurors must agree to the answer for Question 2 who answered "yes" on  
 4 Question 1).

5 ANSWER: \$ \_\_\_\_\_

6 If you answer "Yes" to Question One and completed Question 2, do not answer any more  
 7 questions. You are done. Your presiding juror must sign this verdict form.

8 ACCOUNT STATED

9 3. Did Defendant Seida Land & Livestock, LLC agree that it owed Plaintiff Baldwin  
 10 the sum of \$140,054.40 and promise to pay that amount to Plaintiff Baldwin? (At least nine  
 11 jurors must agree to the answer)

12 ANSWER: NO (Yes or NO)

13 You are done. Your presiding juror must sign this verdict form.

14 DATED: August 25, 2017.

15   
 16 Presiding Juror

17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

Case No. 15CV12092

**SUPPLEMENTAL GENERAL  
JUDGMENT AND MONEY AWARD**

This Court entered a GENERAL JUDGMENT on December 15, 2017. The GENERAL JUDGMENT allowed the Defendant Seida Land & Livestock, LLC to seek its reasonable attorney fees and costs. The Court has entered an ORDER granting Defendant Seida Land & Livestock, LLC's Statement of Attorney Fees, and now, therefore,

IT IS HEREBY ADJUDGED that a Supplemental General Judgment be entered against plaintiff Russell L. Baldwin and in favor of Defendant Seida Land & Livestock, LLC in the amount of \$104,552.79 for attorney fees and costs incurred herein.

**MONEY AWARD**

Judgment Creditors:

Seida Land and Livestock, LLC

Attorney for Judgment Creditors:

Roger A. Lenneberg, OSB # 842733  
c/o Jordan Ramis PC  
Two Centerpointe Dr 6th Flr  
Lake Oswego OR 97035  
503-598-7070



## Appendix B-117

1 Name of Judgment Debtor: Russell L. Baldwin  
2 PO Box 1242  
Lincoln City OR 97367  
(541) 994-6166  
3 Date of Birth N/A  
4 Social Security No N/A  
5 Driver's License No N/A  
6 State Issued N/A  
7 Attorney for Judgment Debtor: Russell L. Baldwin, pro se  
8 Other persons or public bodies who  
9 are entitled to any portion of a  
payment made on this judgment: None  
10 Principal Amount of Supplemental  
11 Judgment: \$104,552.79  
12 Prejudgment interest on principal  
amount of judgment: N/A  
13 Interest at the rate of 9% per annum on  
14 the total judgment from date of entry of  
judgment until fully paid: Upon Entry of Judgment

Signed: 3/6/2018 01:42 PM

3/6/18



**Circuit Court Judge Thomas O. Branford**

18 SUBMITTED BY:  
19 Roger A. Lenneberg, OSB # 842733  
JORDAN RAMIS PC  
20 Attorneys for Defendants  
21  
22  
23  
24  
25

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

RUSSELL L. BALDWIN,

Plaintiff,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT  
SEIDA, JR.; SEIDA LAND & LIVESTOCK,  
LLC, an Oregon limited liability company;  
KENT SEIDA, SR. AND MARY SEIDA,  
husband and wife,

Defendants.

Case No. 15CV12092

**SUPPLEMENTAL LIMITED  
JUDGMENT AND MONEY AWARD**

This Court entered a LIMITED JUDGMENT on June 23, 2017. The LIMITED JUDGMENT allowed the Defendants Mary Seida and Kent Seida, Sr. to seek their reasonable attorney fees and costs. The Court has entered an ORDER Granting Defendants Mary Seida and Kent Seida, Sr.'s Statement of Attorney Fees, and now, therefore,

IT IS HEREBY ADJUDGED that a Supplemental Limited Judgment be entered against plaintiff Russell L. Baldwin and in favor of Defendants Mary Seida and Kent Seida, Sr. in the amount of \$92,802.73 for attorney fees and costs incurred herein.

**MONEY AWARD**

Judgment Creditors:

Mary Seida and Kent Seida, Sr.

Attorney for Judgment Creditors:

Roger A. Lenneberg, OSB # 842733  
c/o Jordan Ramis PC  
Two Centerpointe Dr 6th Flr  
Lake Oswego OR 97035  
503-598-7070

## Appendix B-119

Name of Judgment Debtor:	Russell L. Baldwin PO Box 1242 Lincoln City OR 97367 (541) 994-6166
Date of Birth	N/A
Social Security No	N/A
Driver's License No	N/A
State Issued	N/A
Attorney for Judgment Debtor:	Russell L. Baldwin, pro se
Other persons or public bodies who are entitled to any portion of a payment made on this judgment:	None
Principal Amount of Supplemental Judgment:	\$92,802.73
Prejudgment interest on principal amount of judgment:	N/A
Interest at the rate of 9% per annum on the total judgment from date of entry of judgment until fully paid:	Upon Entry of Judgment

Signed: 3/6/2018 01:41 PM



**Circuit Court Judge Thomas O. Branford**

SUBMITTED BY:  
Roger A. Lenneberg, OSB # 842733  
JORDAN RAMIS PC  
Attorneys for Defendants

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

Russell L. Baldwin,

Plaintiff,

v.

Seida Land & Livestock, LLC, an Oregon  
Limited Liability Company, Kent Seida Sr.  
and Mary Seida husband and wife,

Defendants.

Case No. 15CV12092

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' AMENDED MOTION  
TO DISBURSE PROCEEDS OF  
JUDGMENT HELD IN LINCOLN 140225:**

(NO SUBJECT MATTER  
JURISDICTION).

ORAL ARGUMENT REQUESTED.

SPECIAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REQUESTED;  
ORCP 62 A; ORCP 14 A.

1

2

ORAL ARGUMENT, FINDINGS AND CONCLUSIONS REQUESTED.

3

Oral argument and official court reporting services have been requested by plaintiff.

4

Defendants have expressly waived argument in their motion and amended motion.

5

If this court determines that it has subject matter jurisdiction, plaintiff requests findings of  
fact and conclusions of law applying the jurisdictional statutes and rules upon which it relies.

7

INTRODUCTION.

8

Defendants have requested post-judgment relief from this court following the [alleged]  
affirmance without opinion of this court's general judgment, but without an effective decision of  
the Oregon Court of Appeals pursuant to ORAP 14.05(2)(a): no appellate judgment has issued  
to this court. It therefore follows that this court lacks judicial power (subject matter jurisdiction)  
to grant defendants' motion, unless and until such time as a higher court remands the general  
judgment back to circuit court. ORS 18.082(1), *verbatim infra* at page 11.

13

Page 1 -- PLAINTIFF'S **OPPOSITION TO DEFENDANTS' AMENDED MOTION TO DISBURSE PROCEEDS OF JUDGMENT HELD IN LINCOLN 140225.**

1           This court thus lacks subject matter jurisdiction for two principal reasons. First, because  
2   the legislature determines the scope of Oregon circuit courts' jurisdiction by statute. The only  
3   applicable statute, ORS 19.270(1), does not allow this court to disburse during an appeal.

4   *Verbatim infra* at page 8.

5           Second, because this court will not regain subject matter jurisdiction unless and until its  
6   general judgment of dismissal is reversed or vacated, and remanded. ORS 18.082(1), *supra*. At  
7   this stage of plaintiff's appeal, such a remedy might follow a successful petition for *writ of*  
8   *certiorari*, as previously disclosed to opposing counsel and to the Oregon appellate courts.

9   Although such writs are sought much more often than granted in practice, plaintiff estimates that  
10   there is a good chance such writ will issue—due to the seriousness and constitutional magnitude  
11   of the assigned error: the alleged taking of plaintiff's lien and compensation for his services  
12   performed in state court, by the Oregon Judicial Department (State). Such taking obviously  
13   violates the Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

14           By contrast, if the general judgment is not modified on appeal, there will be nothing for  
15   this court to do because the lawsuit will have been dismissed instead of adjudicating the validity  
16   and priority of such claims to the proceeds of judgment elsewhere—in Lincoln 140225.

17                               Summary of Plaintiff's Opposition Here.

18           This opposition is made in three parts.

19           In Part I, plaintiff briefly analyzes defendants' motion in comparison to their amended  
20   motion. [The latter urges an application of ORS 19.310(2) in conflict with the jurisdictional  
21   requirements imposed by ORS 19.270(1)].

In Part II, plaintiff addresses the legal issues raised in defendants' Reply to plaintiff's opposition of record. Defendants filed it prematurely—before this opposition was due for filing under the civil rules.

In Part III, plaintiff makes a summery record in this court to demonstrate to defendants, and their counsel, the benefit of pursuing alternative dispute resolution (settlement discussion or mediation) while the Oregon appellate courts still have jurisdiction over the proceeding. But in any case, the parties cannot now request relief not already contained in the general judgment.

**This court lacks subject matter jurisdiction to disburse any proceeds of judgment held by it in Lincoln 140225, because there is no such judgment adjudicating those claims or allowing such disbursement.**<sup>3</sup>

#### **Part I. Defendants' Amended Motion.**

Defendants' Amended Motion differs from their original motion by adding ORS 19.310(2) as authority for this court to disburse proceeds of judgment held by it elsewhere—in Lincoln 140225. *Def. Am. Motion* at 1:16. (ORS 19.270(1) is *contra*, discussed *infra passim*).

Next, defendants reprise the same alleged findings in support of their motion. *Def. Am. Motion* at 2:1 to 4:17. For reasons that should be clear from plaintiff's earlier opposition, there are no set of facts which would allow this court to exercise judicial power at a time when it lacks subject matter jurisdiction. Stated another way, this court acquires judicial power from the Oregon legislature alone, *i.e.* not from the parties. This court's subject matter jurisdiction is not

/

---

<sup>3</sup> The Oregon Judicial Department's taking of plaintiff's lien and the compensation it secures will become complete on the issuance of an appellate judgment effectuating this court's general judgment dismissing the controversy stated in the complaint.

1 subject to change on a case by case basis, even if the alleged facts are allegedly “bad enough.”<sup>4</sup>

2 Turning next to defendants’ Argument, they urge this court apply ORS 19.310(2)  
3 [notwithstanding this court’s general judgment]. *Def. Am. Motion* at 5:8. They delete<sup>5</sup> their  
4 former paragraph, which previously urged (~~strikethrough~~ supplied here):

5 Any requirement for a restitution bond is moot. The restitution bond is there to  
6 guarantee repayment if the funds are removed prior to appeals being finalized (just in  
7 case the appellant prevails). See ORS 19.345. Here, the appeals, and even petitions, are  
8 “finalized.” There are no further appeals or petitions under Oregon law. There is no need  
9 or justification for any restitution bond.

<sup>4</sup> In *Oregon v. Kitzman*, this court convicted a medical doctor of child abuse. On judicial review granted by the Oregon Supreme Court, S041793, Mr. Alan Dershowitz for defendant made personal, *ad hominem* attacks impugning the reputation of the then presiding judge of this court, Charles P. Littlehales. At oral argument, May 5, 1995, Justice Gillette asked such counsel whether it was necessary for him to prove the veracity of his attacks on such judge to prevail. He responded “no.”

Similarly, opposing counsel’s *ad hominem* attacks are neither persuasive nor relevant to the inquiry at hand: does this court have jurisdiction to disburse proceeds of judgment that it refused to adjudicate in the general judgment or elsewhere, and at a time when this court’s jurisdiction is narrowly confined by the legislature pursuant to ORS 19.270(1)?

<sup>5</sup> Although pleadings may be amended under ORCP 23 and ORCP 25, there is no known procedure for a party to amend a motion. However, good practice dictates that amendments to such motions, if they occur, be accomplished after conferral with a suitable UTCR 5.070 markup, which provides in relevant part:

(1) Except as provided in section (2) of this rule, whenever a motion for leave to amend a pleading, including a motion to amend to assert a claim for punitive damages, is submitted to the court, it must include, as an exhibit attached to the motion, the entire text of the proposed amended pleading. The text of the pleading must be formatted in the following manner:

- (a) Any material to be added to the pleading must be underlined and in bold with braces at each end.
- (b) Any material to be deleted from the pleading must be italicized with brackets at each end.

The strikethrough and underlining set forth in the text above by *plaintiff* is intended to meet or exceed that standard. Defendants did not confer before filing their amended motion. See UTCR 5.010(1) (requiring conferral before moving to amend pleadings).

Turning next to defendants' Conclusion, *Def. Am. Motion* at 6:1, they add "and ORS 19.310(2), waive any restitution requirement of defendants," (underlining supplied to denote addition). As far as plaintiff can tell, defendants made no other changes in their amended motion. (Defendants' Reply at f.n. 1, states that the only difference between the two is a clarification [in the latter] that jurisdiction is expressly found at ORS 19.310).

Thus, defendants urge this court grant relief under ORS 19.310(2). But no such authority is given to the court by the legislature pursuant to ORS 19.270(1). Its authority to act is narrowly confined by the legislature during the pendency of an appeal. *Id.*

Moreover, no judgment of this court allows for any disbursement *because* this court dismissed the lawsuit instead of foreclosing plaintiff's lien according to its statutory priority over the judgment proceeds in Lincoln 140225.

/

## PART II.

### OPPOSITION TO ISSUES RAISED IN DEFENDANTS' REPLY (ON THE MERITS).

As noted above, rather than await plaintiff's opposition to their amended motion, defendants prematurely filed their "Reply in Support of Defendants' (Amended) Motion to Disburse Funds." This Part II is responsive to that reply. It addresses each point raised.

1. THIS COURT DOES NOT HAVE JURISDICTION TO ALLOW DEFENDANTS' MOTION.

This court's subject matter jurisdiction is determined by the legislature according to statute, ORS 19.270(1), not by the acts or conclusions of the circuit court itself. Thus, this court's order on March 6, 2018 did not confer subject matter jurisdiction upon itself. Nor does a party's failure to raise subject matter jurisdiction in a court confer it, whether by oversight or error. Subject matter jurisdiction can be raised at any time, even for the first time on appeal.



1 Parties cannot by agreement or through negligence confer subject matter jurisdiction on a court  
2 which does not have such judicial power. *See generally, Utsey v. Coos County*, 176 Or. App.  
3 524, 82 P.3d 933 (2001)(explaining how “justiciability” is necessary for a court to acquire  
4 judicial power to adjudicate an actual controversy regardless of the desires of individuated  
5 parties).

6 Defendants now apparently urge this court to **change** its March 6, 2018 order refusing to  
7 disburse proceeds of judgment located elsewhere, in Lincoln 140225. But this court lacks  
8 jurisdiction to do so. ORS 19.270(1). Orders entered by a circuit court are not subject to change  
9 while the general judgment remains on appeal. *Id.*

10 Moreover, defendants have failed to truthfully apprise this court that they already  
11 appealed that same order—and that the Court of Appeals affirmed it—twice. **Thus, it is**  
12 **defendants who have lost on the very issue that they now invite this court to remedy**  
13 **without an appellate judgment.** Defendants also fail to truthfully disclose that they further  
14 appealed to the Oregon Supreme Court, **and they lost yet again.**

15 **Thus, defendants have already lost three times on the very order they ask this court**  
16 **to modify now, without any appellate judgment (no jurisdiction).** And they have  
17 intentionally sought to mis-direct this court by mis-stating the court records.

18 A copy of defendants’ unsuccessful petition for review, contending that this court was  
19 “wrong,” is attached here as Exhibit I. But more fundamentally, defendants also fail to disclose  
20 to this court that the Court of Appeals already ordered that defendants pursue their alleged  
21 disbursement remedy in their cross-appeal:

22 Respecting whether respondents have any remedy for seeking appellate review of the trial  
23 court’s order, the court observes that respondents have filed notice of cross-appeal from  
24 the trial court’s order.  
25

Exhibit F at page 1, n.1.<sup>6</sup>

But defendants elected to not exhaust that remedy. They *dismissed* their cross-appeal, *i.e.* despite the order they received from a higher court, the Court of Appeals. They thus *denied themselves any judicial remedy* from this court’s general judgment in 15cv12092 (which dismissed the lawsuit instead of disbursing the proceeds of judgment according to lien priority). Next, defendants sought to *affirm* each of this court’s judgments, urging that this court made no error (*despite their earlier notice of appeal and their protestations to the contrary in the Oregon Supreme Court*). It is thus extremely doubtful that defendants have any further judicial remedy anywhere *because* they knowingly dismissed their cross-appeal (judicial estoppel).

2. ALLEGED GOOD CAUSE TO WAIVE AN UNDERTAKING DOES NOT TRANSFORM THIS COURT’S STATUTORY JURISDICTION UNDER ORS 19.270(1).

Defendants urge that because plaintiffs have not yet prevailed on appeal, “[t]here is nothing for the Circuit Court to do. The general judgment remains in place, without any modification, as do the supplemental judgments awarding defendants their fees and costs.” *Reply* at 3:6 to 3:8.

**Such is a correct statement of law. The parties are in agreement on that point.** And so ends the controversy defendants have conjured prior to issuance of an appellate judgment. There is nothing for the Circuit Court to do because its judgments have not been modified, as yet, on appeal.

/

/

---

<sup>6</sup> All exhibits are described on page 19 below; exhibits A through G are attached to plaintiff’s initial opposition; exhibits H to J are attached here.

ORS 19.270 provides in relevant part:

(1) The Supreme Court or the Court of Appeals has jurisdiction of the cause when the notice of appeal has been served and filed as provided in ORS 19.240, 19.250 and 19.255. The trial court may exercise those powers in connection with the appeal as are conferred by law, and retains jurisdiction in the matter for the following purposes:

- (a) Deciding requests for attorney fees, costs and disbursements or expenses pursuant to ORCP 68 or other provision of law.
- (b) Enforcing the judgment, subject to any stay of the judgment.
- (c) Deciding a motion for judgment notwithstanding the verdict under ORCP 63.
- (d) Deciding a motion for new trial under ORCP 64.
- (e) Deciding a motion for relief from judgment under ORCP 71 B.

Defendants' motion does not seek to enforce the general judgment. The general judgment provides no such remedy of disbursement. It failed to adjudicate the competing claims according to statutory priority. Defendants motion thus does not fit within the confines of ORS 19.270(1)(b), or any other provision (a) through (e) above (detailed in this section below).

In their *Reply* at 3:9, defendants assert that the money that this court holds (in Lincoln 140225) "belongs" to them. That is true, and has always been true—subject to plaintiff's priority lien to those proceeds. ORS 87.475; Exhibit C, page 5 (finding plaintiff's lien has the highest possible statutory priority). Since the judgment proceeds are subject to plaintiff's lien under ORS 87.445 and ORS 87.475, they cannot be paid to the judgment creditor(s) until such time as plaintiff's priority lien is first foreclosed by judgment and satisfied according to statutory priority. *Potter v. Schlessner Co., Inc.*, 335 Or. 209, \_\_\_, 63 P.3d 1172, 1175-1176 (2003)(Holding that ORS 87.475(1) and (2) "establish[] that an attorney's lien upon an action remains even after the parties have settled their dispute, and protects the lien from extinguishment by 'a party to the action' or 'any other person' until the 'claim of the attorney for fees' underling the lien has been paid in full.")

The judgment proceeds were awarded to defendants in Lincoln 140225, and were paid into court at a time when defendants asserted a “lien” over their own judgment proceeds. Exhibit J, page 49 attached (defendants’ lien); Exhibit D page 2 (judgment showing payment into court). Defendants’ assertion of a lien over their own judgment is the reason that this court ordered there (Lincoln 140225) that all money be paid into court, and that the claims of the parties be heard and foreclosed by judgment in Lincoln 15cv12092: to resolve the competing claims to proceeds.

ORS 87.445 and ORS 87.475 required that the competing claims to the judgment proceeds be adjudicated here, as this court directed (Judge Leonard) in the State’s eminent domain proceeding, Lincoln 140225. *See Potter, supra*. But this court next incongruently determined that this suit was “superfluous” (Judge Branford) because plaintiff should be charged with knowing that his claim of lien had the highest possible statutory priority to the proceeds. Exhibit C, page 5. It then refused to foreclose plaintiff’s lien by judgment, and instead dismissed the lawsuit—rather than consistently following its earlier instruction to the parties to foreclose their claims here. Exhibit D, pages 3-4. Plaintiff assigned that inconsistent dismissal in the general judgment as legal error, but without success to date.

By contrast, defendants sought affirmance of this court’s general judgment dismissing suit. But none of the judgments in this case (15cv12092) permit any such disbursement of proceeds of judgment in Lincoln 140225 to any party. ORS 18.082, briefed and applied in section 3 *infra*.

**This court now lacks subject matter jurisdiction because its general judgment dismissing suit has not, as yet, been modified on appeal.** Nothing has changed since this court refused to adjudicate and foreclose the competing liens and claims to the proceeds of judgment. **Simply, there is no judgment establishing the priorities of the parties, or allowing**

disbursement of any kind. Since there is no judgment allowing disbursement of the proceeds of judgment in Lincoln 140225, ORS 19.270(1)(b) is unavailable during the pendency of the appeal. After the appeal is over, the general judgment which defendants have been at pains to have affirmed will not allow this court to disburse any such proceeds. It makes no such provision; it instead dismisses the lawsuit. This case would then be closed. Compare Exhibit D (same result: refusing to disburse proceeds of judgment after judgment closing the case).

To recap, for this court to lawfully disburse the proceeds of judgment under ORS 87.475, the claims between the parties must be adjudicated by judgment. That has never occurred—due primarily to (a) defendants’ earlier objections to this court’s jurisdiction in Lincoln 140225 to prevent disbursement there; and (b) this court’s later failure to disburse proceeds by general judgment here. Exhibit H, attached (defendants’ challenge of jurisdiction in Lincoln 140225).

Or more simply, since this court’s order refusing to disburse the remaining proceeds of judgment was deemed correct by the Court of Appeals and the Oregon Supreme Court (denying review), there is nothing for this court to correct. The order is not now capable of correction or being withdrawn because this court lacks jurisdiction to do so. ORS 19.270(1).

### 3. PLAINTIFF HAS AN UNFORECLOSED LIEN.

Defendants assert that plaintiff’s attorney’s lien was declared “invalid” by this court. The assertion is **entirely false**.<sup>7</sup> There is no such declaration in any judgment.

**No judgment of this court has ever declared plaintiff’s lien invalid.** Rather, as noted above, this court found that plaintiff’s lien had the highest possible statutory priority. The words this court used are as follows:

---

<sup>7</sup> And see n. 8, *post* (defense counsel’s asserted privilege to mis-direct Oregon courts with knowingly false statements of fact and law).

Plaintiff, as an attorney with 20+ years of experience in civil litigation, and having handled the ODOT condemnation case, well knew, or at a minimum may be charged with knowing, that there were no tax liens, prior encumbrances or prior liens of record on the settlement funds. Thus, Plaintiff knew that his attorney lien had the highest priority to the settlement funds.

Opinion Letter, March 23, 2016 (emphasis in original)(Exhibit C at page 5, attached).

Defendants' assertion that this court declared plaintiff's lien invalid is not supported anywhere in the record, much less in the general judgment itself (which remains on appeal).

/

a. Oregon Judgment Statutes.

ORS 18.005 provides in relevant part (**emphasis added**):

(7) "General judgment" means the judgment entered by a court that decides **all** requests for relief in the action except:

- (a) A request for relief previously decided by a limited judgment; and
- (b) A request for relief that may be decided by a supplemental judgment.

ORS 18.082 provides in relevant part (**emphasis added**; **additional emphasis**):

(1) Upon entry of a judgment, the judgment:

- (a) **Becomes the exclusive statement of the court's decision in the case and governs the rights and obligations of the parties that are subject to the judgment;**
- (b) May be enforced in the manner provided by law;
- (c) May be appealed in the manner provided by law;
- (d) **Acts as official notice of the court's decision;** and
- (e) May be set aside or modified only by the court rendering the judgment or by another court or tribunal with the same or greater authority than the court rendering the judgment.

(2) A general judgment incorporates a previous written decision of the court that decides one or more requests for relief in the case and that:

- (a) Is not a judgment;
- (b) Is consistent with the terms of the general judgment and any limited judgments in the case; and

(c) Reflects an express determination by the court that the decision be conclusive as to the requests for relief that are resolved.

This court lacks subject matter jurisdiction to modify any of its judgments. ORS 19.270(1). They remain on appeal without an effective decision of the appellate courts. ORAP 14.05(2)(a). Defendants' contention that this court "invalidated" plaintiff's lien is patently false. ORS 18.082(1)(a). What is surprising is that defendants apparently don't know, don't remember, or haven't recently read what this court's general judgment actually says, even though it is they who prepared it for this court.<sup>8</sup> It alone is the "exclusive" statement of the rights of the parties to the proceeds of judgment in Lincoln 140225, and it "acts as judicial notice" of this court's final decision. *Id.*

b. General Judgment, Summarized.

The general judgment is 13 pages long. Page 1 lists the parties, their counsel, and recites that a jury trial was had on a portion of the claims for relief, and attaching a copy of the verdict.

Page 2 recites that after the verdict, the court received argument and made findings of fact and conclusions of law on the foreclosure tried to the bench. Those findings of fact are set forth in 42 separately numbered paragraphs, pages 2 to 9. Nowhere in those findings did the court conclude that plaintiff's lien was "invalid" or unenforceable. (Plaintiff appealed from the general judgment and all others).

The court made conclusions of law beginning at page 9. It concluded that \$2,000 had been ordered paid into court, but had not been disbursed. It also concluded that plaintiff failed to

---

<sup>8</sup> In related proceedings in Washington County Circuit No. 17cv31416, defendants' counsel Mr. Bowser and Jordan Ramis P.C. urge there and on appeal that they have a judicial privilege to make intentionally false statements of fact and law in the Oregon courts. Defense counsel's false assertions here, and in Washington 17cv31416, plainly violate Oregon Rule of Professional Conduct 3.3 (duty of candor to tribunal).

1 prove entitlement to any percentage of the money paid into court, so it ordered plaintiff's  
2 complaint dismissed. **Simply, the circuit court did not ever order that plaintiff's lien was**  
3 **invalid.**<sup>9</sup>

4 Had the court determined that plaintiff's lien were invalid, it would have found that  
5 plaintiff's lien had no priority—which would have been entirely inconsistent with its earlier  
6 findings that plaintiff's lien had the highest possible priority so as to [allegedly] render the  
7 lawsuit “superfluous.” This court could not have lawfully ordered that plaintiff's lien had no  
8 priority, because ORS 18.082(2)(b) requires that the general judgment be consistent with its  
9 earlier limited judgment dismissing some but not all parties—*i.e.* after charging plaintiff with  
10 knowing that his lien has the highest possible priority among claims to the proceeds. Exhibit C,  
11 page 5.

12 /

---

<sup>9</sup> Defendants also falsely urged, in the Oregon Supreme Court, that this court found plaintiff's lien “invalid.” As plaintiff pointed out there when asking for reconsideration, this court in Case No. 140225 *required* plaintiff to pursue foreclosure proceedings in 15cv12092 in order to be paid *any amount* for services he provided in the State's eminent domain proceeding. The salient argument is reprised here for convenience:

It would not ever be appropriate for unpaid attorneys to be tricked out of their compensation by following the circuit court's instruction to judicially foreclose their lien. Such a scheme would obviously violate appellant's right to a timely and complete remedy, by due course of law, as guaranteed by Or. Const. Art. I, section 10 and 18. Unless the circuit court's errors are corrected by [the Court of Appeals], the money that the circuit court awarded to appellant and held under his lien would be “taken” by the state's judiciary also in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

In the last analysis, we know that appellant's lien was not “bad,” because properly functioning courts do not require that lawyers foreclose “bad” liens in new proceedings as a means to swindle them out of their compensation previously awarded by a court. \* \*

\*

[Plaintiff's] *Pet. for Reconsid.*, Exhibit J at page 10, attached.



1 4. PLAINTIFF HAS GIVEN NOTICE THAT THIS COURT LACKS SUBJECT MATTER JURISDICTION  
2 TO DO ANYTHING FURTHER WHILE ITS GENERAL JUDGMENT REMAINS ON APPEAL.  
3

4 **As noted in section 2 above, plaintiff and defendants are in agreement that there is**  
5 **nothing more for this court to do.**

6 Yet defendants quibble about the intended effect of plaintiff's notice to the public that no  
7 person or this court should take further action *because it lacks subject matter jurisdiction*.

8 Defendants request that this court "admonish" plaintiff for warning the court, its staff and the  
9 public, that defendants have requested relief which this court expressly lacks judicial power to  
10 grant.

11 Plaintiff has not threatened the court or its staff. Plaintiff has simply notified all persons  
12 that Oregon law does not allow the court to do what defendants demand by motion under ORS  
13 19.310. Plaintiff should not be admonished for giving that notice, particularly because this court  
14 earlier faulted plaintiff in this case for allegedly "hiding an arrow in his quiver," *i.e.* not  
15 informing the court by amending his complaint prior to trial that such court held funds  
16 "belonging" to plaintiff as compensation for work he performed in that same court. General  
17 judgment on appeal at page 8 line 20, ER-194.

18 Plaintiff should thus not be faulted for warning of third party liability for mis-payment as  
19 required by ORS 87.475 and *Potter, supra*.

20 To punish a person because he has done what the law plainly allows him to do is a  
21 due process violation of the most basic sort, and for an agent of the State to pursue  
22 a course of action whose objective is to penalize a person's reliance on his legal  
23 rights is patently unconstitutional.  
24

25 *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978).

26 /

The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this Court, an illegitimate assumption of power, **and be resisted as mere abuse.** [D'Arcy v. Ketchum et al.](#), 11 How. 165.

*Pennoyer v. Neff*, 95 U.S. 714 (1878)(**emphasis added**)(Determining in rem proceeding arising in Multnomah County exceeded the jurisdiction of the District Court for Oregon).

The Takings Clause (unlike, for instance, the Ex Post Facto Clauses, see Art. I, §9, cl. 3; §10, cl. 1) is not addressed to the action of a specific branch or branches. It is concerned simply with the act, and not with the governmental actor (“nor shall private property *be taken*” (emphasis added)). There is no textual justification for saying that the existence or the scope of a State’s power to expropriate private property without just compensation varies according to the branch of government effecting the expropriation. Nor does common sense recommend such a principle. **It would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat.** See *Stevens v. Cannon Beach*, [510 U. S. 1207](#), 1211–1212 (1994) (Scalia, J., dissenting from denial of certiorari).

**Our precedents provide no support for the proposition that takings effected by the judicial branch are entitled to special treatment, and in fact suggest the contrary.** [Citations omitted].

*Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702 (**emphasis added**)(Part II A of plurality, Justice Scalia with whom the Chief Justice and Thomas, J. and Alito, J., also join).

Turning back to the general judgment, we see that plaintiff has thus not “lost.” Rather, he has been unexpectedly denied any remedy by final judgment of the Oregon Judicial Department through dismissal of the controversy—after it collected his compensation from ODOT for his services to defendants in the state’s eminent domain proceeding. It was thus simply error for this court to dismiss this lawsuit without giving plaintiff final judgment on the merits it had earlier required. It had instructed the parties to litigate their competing claims here so it could disburse the proceeds of judgment. That determination in Lincoln 140225 required a judgment in 15cv12092, not merely an order. ORS 18.082(1)(a).

1 And there is still no enforceable judgment allowing disbursement *because* this same court  
2 dismissed the foreclosure suit rather than adjudicating it on the merits.

3 Conclusion, Parts I and II.

4 There is nothing for this court to do on either of defendants' motions to disburse. The  
5 reason is that this court lacks subject matter jurisdiction. No appellate judgment has issued. The  
6 general judgment does not provide for any disbursement to any person. Consequently, unless  
7 this court receives an appellate judgment reversing its general judgment dismissing the  
8 controversy, there is nothing for this court to do—for want of judicial power.

9 Plaintiff is in the process of petitioning the United States Supreme Court for writ of  
10 certiorari to correct the Oregon Judicial Department's taking of his lien and his compensation it  
11 secures, and which this court collected for his benefit. Defendants have no further appellate  
12 remedy, because they elected to dismiss their cross-appeal. They urged affirmance rather than  
13 identifying any error in the general judgment, when such general judgment dismissed the  
14 controversy rather than providing a remedy.

15 **Part III.**

16 Why Defendants Should Engage Plaintiff to  
17 Resolve Their Differences Contractually (Settlement).  
18

19 Defendants should engage plaintiff in objectively reasonable settlement negotiations.  
20 Plaintiff has sought to resolve all of his claims against defendants since June, 2014, but without  
21 success. Exhibit A and Exhibit E (requesting resolution over a 6 year span). Unless the parties  
22 can reach a compromise of their claims to the proceeds of judgment, no disbursement will  
23 otherwise be available to any party except on remand.

24 Defendants successfully challenged this court's jurisdiction to disburse funds in Lincoln  
25 140225 (eminent domain). Exhibits D and E. Defendants also submitted a general judgment

1 dismissing this lawsuit, over plaintiff's objections, effectively ending this court's jurisdiction to  
2 disburse the proceeds of judgment elsewhere. Unless remanded, there is nothing more for this  
3 court to do: the general judgment in 15cv12092 does not adjudicate the relative priorities of the  
4 parties' claims or authorize disbursement, it merely dismisses the lawsuit.

5 The general judgment from this case remains on appeal, and it does not allow any  
6 disbursement to any party on the merits. It fails to adjudicate the statutory priority(ies) of the  
7 competing claims to judgment in Lincoln 140225 necessary for disbursement under ORS 87.475.

8 The above result is both plain and obvious from the Court of Appeals' written order,  
9 Exhibit F. That order denied reconsideration of the Appellate Commissioner's order. Such  
10 Commissioner's order had denied review of this court's order, finding no error. Simply, this  
11 court's order refusing to disburse the proceeds of judgment from 140225 might be effectively  
12 affirmed, subject to *writ of certiorari*, when appellate judgment issues. Defendants have no  
13 further judicial remedy in this court or on appeal because they sought affirmance of the judgment  
14 denying them disbursement, and they voluntarily dismissed their cross-appeal.

15 It should not be this hard, nor this expensive, for an officer of this court to obtain the  
16 compensation it has awarded and collected for his benefit. Be that as it may. The legal errors  
17 below are particularly salient, because plaintiff's right to compensation was lawfully secured by  
18 a judicial lien of highest statutory priority under state law. Yet as those laws have been applied  
19 by this court, plaintiff has gone unpaid now for in excess of 6 years. That has in large part been  
20 the consequence of defendants' challenge of this court's subject matter jurisdiction in Lincoln  
21 140225. This court still holds plaintiff's money, but has refused to give plaintiff any judgment  
22 according to the priority of his lien. It also refused plaintiff leave to amend his complaint for the  
23 express purpose of denying him prevailing party status.

1 COURT DENIES MOTION TO AMEND PLEADING.

2  
3 THE COURT: Um, I'm going to deny that motion, because that could, uh,  
4 trigger, as Mr. Bowser said, a claim that Mr. Baldwin was the prevailing party on  
5 the lien foreclosure.

6  
7 Tr.-591 (8/25/2017).

8  
9 The court then refused to foreclose plaintiff's [priority] lien. ER.-186 (Tr.-  
10 598 (8/25/2017).  
11  
12

13 *Pl. Op. Br.* at 15-16.

14 Based upon the recent statements of Mr. Bowser to plaintiff by telephone, plaintiff awaits  
15 defendants' offer to contractually split the remaining proceeds held by the circuit court equally. As  
16 discussed, such would occur in consideration for dismissal of all claims with prejudice in Lincoln  
17 15cv12092, 15cv13467, 17cv31416, all appeals therefrom, and the filing of full satisfaction of every  
18 such judgment in any of those proceedings without payment of any further money by any party other  
19 than equal disbursement of the approximately \$250,000.00 held by this court (approximately  
20 \$125,000 to plaintiff and the same amount to defendants).

21 Such offer, if made by defendants, would be objectively reasonable. Plaintiff's statements of  
22 account in Lincoln 15cv13467 alone totals more than \$341,000, excluding sums owing for  
23 prejudgment interest, and mandatory attorney fees to be determined later against defendants for their  
24 \$5,000.00 bad check (the initial cause of all controversies between plaintiff and defendants).

25 /

26 /

1 Dated this 23<sup>rd</sup> day of December, 2020.

2  
3 s/ Russell L. Baldwin

4 Russell L. Baldwin, OSB 891890

5 Attorney at Law, plaintiff / lien claimant pro se

6  
7 Attachments.

8  
9 The following attachments were submitted in plaintiff's earlier opposition, and are attached there.

10  
11 Exhibit A: Settlement correspondence requesting payment on accounts.

12 Exhibit B: Limited judgment against defendants / bad check.

13 Exhibit C: Opinion letter finding plaintiff's lien has the highest possible statutory priority  
14 (highlighted pages 3 and 5).

15 Exhibit D: Order of the circuit court requiring competing claims of lien in Lincoln 140225 be  
16 foreclosed in Lincoln 15cv12092.

17 Exhibit E: Conferral on objections to proposed order of disbursement.

18 Exhibit F: Order affirming this court's refusal to disburse proceeds of judgment in this  
19 proceeding; determining that defendants have an available remedy in their cross-  
20 appeal.

21 Exhibit G: Oregon Supreme Court Order denying defendants' petition for review of order  
22 (relating to Exhibit F above).

23  
24 The following attachments are submitted here in further opposition to defendants' amended motion  
25 to disburse and Reply.

26  
27  
28 Exhibit H: True copy / pertinent part of defendants' challenge to jurisdiction in Lincoln 140225.

29 Exhibit I: True copy / complete copy of defendants' [unsuccessful] petition for review to the  
30 Oregon Supreme Court (contending this court was wrong to deny their proposed  
31 order of disbursement, relating to Exhibits F and G above).

32 Exhibit J: True / complete copy of plaintiff's motion for reconsideration in Oregon Supreme  
33 Court.

**FILED: April 01, 2020**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

RUSSELL L. BALDWIN,  
Plaintiff-Appellant

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT SEIDA, SR.;  
MARY SEIDA, husband and wife; and SEIDA LAND & LIVESTOCK, LLC,  
an Oregon limited liability company,  
Defendants-Respondents.

Lincoln County Circuit Court  
15CV12092

A162400

Thomas O. Branford, Judge.

Argued and submitted on March 11, 2020.

Before Lagesen, Presiding Judge, and Powers, Judge, and Kamins, Judge.

Attorney for Appellant: Russell L. Baldwin *pro se*.

Attorney for Respondents: Christopher K. Dolan.

**AFFIRMED WITHOUT OPINION**

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondents

☐ No costs allowed.

☒ Costs allowed, payable by Appellant.

---

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

RUSSELL L. BALDWIN,

Plaintiff-Appellant,

v.

SUZANNE SEIDA; DAVID M. SEIDA;  
KENT SEIDA, JR; SEIDA LAND &  
LIVESTOCK, LLC, an Oregon limited  
liability company; KENT SEIDA, SR.  
AND MARY SEIDA, husband and wife,

Defendant-Respondents,

Lincoln County

Circuit Court No. 15cv12092

CA A162400

Related Cases: 15cv13467; 17cv31416.

Appellant's Objection to Respondents'  
Reply and Supplemental Request for  
Fees; Request for Findings Under  
ORAP 13.10(7).

Appellant opposes imposition of **any and all** costs or fees to respondents in this appeal. Rather, this court should remedy its prior failure to correct the circuit court's judgment on appeal. Special findings of fact and conclusions of law are requested under ORAP 13.10(7).

**I. Appellant has not been paid for his legal work;****such right is secured by statutory lien which remains unforeclosed.**

Appellants' objections to imposition of any fees (and requesting findings and conclusions) was/were timely filed. Respondents' assertion that appellant's objections are impermissibly late is false.

Page 1 – Appellant's Objection to Respondents' Reply and Supplemental Request for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).



**1. ORS 20.075(1)(a) – conduct of the parties.**

Respondents incorrectly assert that appellant’s lien was “bad.” There was no evidence supporting such a finding, and no such finding can be tied to the trial court record.

In fact, the circuit court did not find that the lien was “bad.” Judge Leonard did not require appellant to foreclose a “bad” lien, and had he done so that would have been legal error.<sup>1</sup> It was the circuit court’s duty to foreclose plaintiff’s lien consistently with ORS 87.445 and the requirements of *Crawford v. Crane*, 204 Or. 60, 66-67, 282 P.2d 348, \_ (1955) and *Potter v. Schlessor Co., Inc.*, 335 Or. 209, 63 P.3d 1172 (2003). Since the court determined that appellant’s lien had to be foreclosed in separate proceedings, that determination already decided that appellant’s lien was not “bad.” Had it been “bad,” it would have been simple enough for the circuit court to make such a finding. But it didn’t.

Rather, the circuit court expressly found that appellant knew or should have known that he would prevail as a matter of law when he sued all persons required for a complete adjudication. This point was made in appellant’s objections at page 11:

---

<sup>1</sup> Appellant argues in this opposition that circuit courts are without lawful authority to require its officers to foreclose “bad” or “invalid” liens, particularly where such courts “charge” the lien claimant with knowledge that its lien has priority over all other claims and encumbrances—as happened in this case.

The circuit court found that appellant's lien had the highest priority, and that appellant knew when he filed it that he would prevail as a matter of law. Opinion letter, ER.-87 to ER.-94.

Turning to the actual record, the circuit court expressly found (emphasis in original):

Plaintiff [appellant], as an attorney with 20+ years of experience in civil litigation, and having handled the ODOT condemnation case [Lincoln 140225], well knew, or at a minimum may be charged with knowing, that there were no tax liens, prior encumbrances or prior liens of record on the settlement funds. Thus, Plaintiff [appellant] knew that his attorney lien had the highest priority to the settlement funds.

ER-91.<sup>2</sup>

Thus, we see that respondents are incorrect. The first block quotation was not appellant's "hubris," as they contend. Those were the words of the circuit court, not of appellant. Respondent's urging that appellant be punished with excessive fees for the circuit court's [alleged] hubris should be roundly rejected.

Appellant was never paid for his work, and after Judge Leonard required appellant to sue to foreclose his lien in a new proceeding, Judge Branford in those new proceedings found that appellant's lien had the highest priority to the settlement funds.

(Incongruently, that that same court later refused to disburse according to plaintiff's priority lien, for which appellants assigned error and requested relief from this court).

Stated another way, it is legally impermissible for respondents to urge that appellant's lien was in some way "bad" when the circuit court required that appellant

---

<sup>2</sup> Appellant requests mandatory judicial notice in the text, *infra*.

foreclose it in order to get paid any of the amounts previously paid into court by ODOT—including appellant’s \$2,000 for which that same court would later express “shock” after learning that it was still holding that money. ER.-200 to ER.-201.

It would not ever be appropriate for unpaid attorneys to be tricked out of their compensation by following the circuit court’s instruction to judicially foreclose their lien. Such a scheme would obviously violate appellant’s right to a timely and complete remedy, by due course of law, as guaranteed by Or. Const. Art. I, section 10 and 18. Unless the circuit court’s errors are corrected by this error correcting court, the money that the circuit court awarded to appellant and held under his lien would be “taken” by the state’s judiciary also in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

In the last analysis, we know that appellant’s lien was not “bad,” because properly functioning courts do not require that lawyers foreclose “bad” liens in new proceedings as a means to swindle them out of their compensation previously awarded by a court. The law is not an ass (Charles Dickens, *Oliver Twist*).<sup>3</sup>

---

<sup>3</sup> Mr. Bumble had just been told that “the law supposes that your wife acts under your direction” (after blaming her for something that he himself was accused of doing). He responds, having made sure that his wife has left the room:

If the law supposes that, the law is an ass — an idiot. If that’s the eye of the law, the law’s a bachelor; and the worst I wish the law is, that his eye may be opened by experience — by experience.

**2. ORS 20.075(1)(b) – objective reasonableness of claim.**

Appellant's appeal was objectively reasonable, since this court is an error correcting court. Appellant submitted nine assignments of error, and each and every one had obvious, unassailable merit. They are again summarized to rebut respondents' false assertion that "plaintiff says absolutely nothing about the objective reasonableness of his appeal." [Reply at 3].

- Error in concluding that respondents prevailed over appellant's subsisting lien which was perfected yet never foreclosed by the circuit court (assignments 1 through 4);
- Error in disbursing proceeds of judgment without first foreclosing appellant's lien (assignment 5);
- Error in awarding excessive, uncompensable attorney fees in circuit court because no person has prevailed over appellant's lien (assignment 6);
- Error in denying motion to compel production of fee agreements and unredacted fee statements (assignment 7);
- Error in excluding appellant's written statements of account from the jury (assignment 8);
- Error in dismissing the complaint instead of awarding attorney fees on appellant's account stated claim (assignment 9).

Since each of the above assignments was meritorious, it is incorrect for respondents to assert that nothing was said about the objective reasonableness of the appeal. Stated another way, this court's failure to correct the assigned errors in no way suggests that there was anything objectively unreasonable about appellant's appeal. After all, had the appeal been without merit, one would assume that this court would have said so during this appeal. But it didn't.

Instead, respondents read this court's AWOP<sup>4</sup> as a tautological vindication, akin to "respondents prevail because they prevailed." But such does nothing to demonstrate how it could be just or fair for the circuit court to enter hundreds of thousands of dollars in attorney fees against appellant who did nothing more than file a new proceeding exactly as that court required to get paid the value the court set for services respondents had refused to pay him.

This court simply failed to correct the circuit court's legal errors, and that failure should be corrected.

### **3. ORS 20.075(1)(c) and (d) – deter claims.**

Respondents falsely assert:

"If an attorney is owed money by his client, he or she may certainly file and foreclose a *valid* lien claim. Plaintiff's lien, however, was not valid because it was grossly overstated and frivolous."

*Reply* at 3.

---

<sup>4</sup> Affirmance without opinion.

No court has ever found that appellant's lien was in any way invalid. Rather, as set forth above, the circuit court necessarily found that appellant's lien was valid, because it expressly found that appellant knew that it had statutory priority over all other claims and encumbrances. Had the circuit court found that appellant's lien was not valid or perfected in any sense, it would not have required appellant to foreclose it in new proceedings. Thus, that same court would not have later "charged" appellant with knowing that his lien had the highest possible statutory priority.

With all respect, this court erred by failing to correct the legal errors identified in appellant's opening brief and reply.<sup>5</sup>

**4. ORS 20.075(1)(e) – objective reasonableness of the parties.**

As noted in section 1 above, it was the circuit court that concluded that appellant knew or should have known that he would prevail. Those are the court's words, not appellant's.

As noted in *Crawford v. Crane* and *Potter v. Schlessner Co., Inc.*, *supra*, the legislative purpose of the attorney's lien statute is to provide security to lawyers performing services in circuit court to guarantee that they will receive payment.

---

<sup>5</sup> A lien is not "invalid" merely because respondents say that it is, particularly because the court would not have "charged" appellant with knowing and understanding its enforceability were it in any way "invalid." Moreover, respondents apparently urge that this court insert the words "grossly overstated and frivolous" into ORS 87.445 as a means to justify their excessive fees. Those words do not appear in the statute, so respondents' urging lacks objective merit. ORS 174.010 (forbidding courts from inserting words not written by the legislature).

However, the legislature has not provided an explicit statutory mechanism for a court to follow when foreclosing such liens. *Id.* Consequently, appellant followed the circuit court's instructions requiring appellant to commence a new proceeding in order to get paid. Respondent's meritless lien is set forth at ER.-79.

Appellant thus sued to determine the amount of his fees secured by his lien, and to be paid through foreclosure. He did not seek more than the amount the fee agreement entitled him to receive: 40% of the amount recovered by judgment against ODOT. Had appellant's lien been "overstated or frivolous" as respondents contend [Reply at 4], the circuit court would have easily made that determination—first before concluding that a new proceeding was necessary, and secondly when "charging" appellant with actual knowledge that his lien was valid and enforceable at the time he filed it.

Thus, Plaintiff [appellant] knew that his attorney lien had the highest priority to the settlement funds.

Opinion Letter, ER-91 (repeated from block quote above for additional emphasis).

**5. ORS 20.075(1)(e) – pursuit of settlement.**

Respondents admit that they failed to pursue any settlement because "there was little incentive" to do so. That is not the correct test.

Parties and their attorneys are charged with engaging in objectively reasonable settlement negotiations. Appellant sought to settle his dispute at every stage of the proceedings—which proceedings were protracted by respondents' repetitive motion

practice. Respondents do not, and cannot, dispute that they refused to give their attorneys *any* settlement authority.

Rather than giving their lawyers any settlement authority, they instead threatened to further protract the proceedings and incur yet more attorney fees in an attempt to cause appellant financial ruin.

I have no authority to make any settlement offer and have not raised the subject with my clients. But in the interest of not wasting thousands in trial fees I would recommend that in exchange for a dismissal with prejudice they waive any fees they are or become entitled to. While this may seem like no offer to Russ, or to you, it is a very valuable offer because the Sedia's already have a right to fees and those amounts are only going to get higher the more he fights them. Unless Russ has assets to pay attorney fees or he wins "big" he will be subject to intense collection and probably end up bankrupt'

Exhibit 4 page 3 of 3 (respondents threatening intense collection efforts through counsel).

Later, those “intense collection efforts” would constitute wrongful execution and violate the automatic stay. *See* this Court’s Order, August 3, 2017 (Appellant’s Exhibit 1 to prior objections). Those collection efforts were patently illegal; wrongful execution is a strict liability tort.

Oregon law, properly applied, should not require a lawyer to fear imposition of excessive attorney fees when he or she is *required* by the circuit court to sue to foreclose a subsisting lien in a new proceeding. That would dissuade members of the bar from petitioning the judiciary for a legislatively enacted, and constitutionally protected, remedy.

ORS 87.445; Or. Const. Art. I, section 10. And it would be anathema to the legislative  
Page 9 – Appellant’s Objection to Respondents’ Reply and Supplemental Request  
for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).



purpose: providing lawyers valuable security over the proceeds of judgment to assure that they get paid first, before any other judgment claimant. *Potter v. Schlessner Co., Inc.*, *supra*.

Lawyers and litigants should not be placed in fear of the courts, or the possibility that unreasonable or excessive fees might be levied against them for merely following the procedures mandated by the circuit court—particularly where the legislature has failed to provide a statutory mechanism for the courts and the parties to follow. *Crawford, supra*.

Indeed, placing lawyers in fear of excessive and unreasonable attorney fees, arising from “intense collection efforts,” is among the statutory factors which cut against the imposition of any fees. ORS 20.075(1)(c) (“The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.”)

Appellant should have been paid the money that the court awarded for his efforts, but instead of doing so, the circuit court required new proceedings. Thus, it cannot be fairly said that appellant was in any sense unreasonable.

Rather, it would have been unreasonable (and most ungrateful) for appellant—an officer of the court—to refuse to follow the court’s instructions to be paid amounts it had awarded him. This is particularly so because the circuit court required that there be no other submissions in Lincoln 140225 (App.-20) after declaring that new proceedings were needed. Had appellant not initiated the new proceedings that the court required,

Page 10 – Appellant’s Objection to Respondents’ Reply and Supplemental Request for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).

how would any of the competing claimants to the judgment proceeds ever obtain payment? Both the lien and its foreclosure was justiciable, but the circuit court simply erred by refusing to do its duty several years afterward.

**6. ORS 20.075(1)(h) – other factors.**

This court is permitted to consider other factors, such as the plain fact that respondents are among the most litigious (uncooperative) persons in the state. As noted above, appellant acted reasonably when requesting disbursement where the money was collected, in Lincoln 140225. But that court required new proceedings, and appellant followed that court's instructions.

Appellant is thus blameless for following instructions given him by lawful authority, the judiciary, particularly because appellant is an officer of the courts. It would have been (arguably) contemptuous for appellant to refuse to commence new proceedings as instructed by the circuit court. That would have left respondents without a ready means to have their [meritless] lien evaluated, or to obtain any of the judgment proceeds each respondent was claiming.

**II. Oppose Supplemental Request for Fees.**

Appellant opposes respondents' supplemental request for fees for the reasons above given. In sum, it would be legal error for this court to award *any* fees to respondents because appellant's lien has still not been foreclosed. There is no judgment of foreclosure, appellant's lien remains perfected, and in addition to appellant being

properly “charged” with knowledge that it is valid, perfected, and fully enforceable—because the circuit court already concluded as much by written opinion at ER-91—so also are respondents, and their attorneys, properly charged with such knowledge. Since the perfected lien has not ever been foreclosed, it remains a charge on the proceeds of judgment from Lincoln 140225, requiring that appellant be paid the amounts previously identified to the contract by that court, and finding appellant the prevailing party.

Appellant earlier asserted in his *Objections* at 18, and it bears repeating:

Since appellant followed the court’s direction, it would be a denial of due process to award fees against appellant for following the court’s instructions.

To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, and for an agent of the State to pursue a course of action whose objective is to penalize a person’s reliance on his legal rights is patently unconstitutional.

*Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978).

### **III. Mandatory Judicial Notice Requested.**

1. Appellant requests that the court take mandatory judicial notice of the statutes and cases cited in appellant’s opposition of September 28, 2020, and in this opposition.

2. Appellant also requests that the court take mandatory judicial notice of the exhibits, excerpts, and appendices referenced there and here.

Specifically and without limitation, appellant requests that the court take judicial notice of the following:

Page 12 – Appellant’s Objection to Respondents’ Reply and Supplemental Request for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).

- a. The circuit court's supplemental judgment awarding appellant \$2,000 in attorney fees for services received by respondents. App.-17 to App.-20.
- b. Respondents' meritless, handwritten "lien" for "breach" without statutory reference. ER.-79 to ER.-80.
- c. The circuit court's first opinion letter of March 23, 2016, ER.-87 to ER.-94, attached.
- d. The circuit court's email to its staff giving a "big homework project" and expressing shock that it was holding appellant's money paid into court by ODOT as instructed by Judge Leonard [at App.-20]. ER.-200 to ER.-201.

### **Oregon Law.**

ORS 40.015 provides in relevant part:

(1) The Oregon Evidence Code applies to all courts in this state except for:

- (a) A hearing or mediation before a magistrate of the Oregon Tax Court as provided by ORS [305.501 \(Appeals to tax court to be heard by magistrate division\)](#);
- (b) The small claims department of a circuit court as provided by ORS [46.415 \(Circuit judges to sit in department\)](#); and
- (c) The small claims department of a justice court as provided by ORS [55.080 \(Formal pleadings unnecessary\)](#).

\* \* \*

ORS 40.070(2) provides:

A court shall take judicial notice if requested by a party and supplied with the necessary information.

Page 13 – Appellant's Objection to Respondents' Reply and Supplemental Request for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).

ORS 40.090 provides in relevant part (**emphasis added**):

Law judicially noticed is defined as: (1) **The decisional**, constitutional **and** public **statutory law of Oregon**, the United States, any federally recognized American Indian tribal government and any state, territory or other jurisdiction of the United States.

ORS 87.445 provides:

An attorney has a lien upon actions, suits and proceedings after the commencement thereof, and judgments, orders and awards entered therein in the client's favor and the proceeds thereof to the extent of fees and compensation specially agreed upon with the client, or if there is no agreement, for the reasonable value of the services of the attorney.

ORS 87.485 provides:

In suits to foreclose a lien created by ORS [87.445 \(Attorney's lien upon actions and judgments\)](#), the court shall allow a reasonable amount as attorney fees at trial and on appeal to the prevailing party.

#### CONCLUSION.

Respondents are not entitled to any award of fees or costs because the only basis for awarding attorney fees is ORS 87.485. No person has ever prevailed over appellant's lien: it remains unforeclosed, a priority lien and charge against the settlement proceeds in Lincoln 140225. It was legal error for the circuit court to refuse to foreclose appellant's lien, which such error this court has yet to correct in furtherance of its error correcting function.

Findings of fact and conclusions of law have been requested on appellant's objections under ORAP 13.10(7).

Page 14 – Appellant's Objection to Respondents' Reply and Supplemental Request for Fees; Request for Findings and Conclusions Under ORAP 13.10(7).

Respectfully submitted this 7th day of October, 2020.

s/ Russell L. Baldwin, OSB 891890  
Attorney for Plaintiff, *pro se*

Attachments (Judicial notice requested):

- **App.-17 to App.-20:** Supplemental judgment awarding appellant \$2,000 in attorney fees for services received by respondents. “The extent of that hearing [January 29, 2015] was the amount of attorney fees, if any, the State of Oregon was obligated to pay Mr. Baldwin for his services in representing the Seidas and Seida Land and Livestock LLC.” **App.-19.**
- **ER.-79 to ER.-80:** Respondents’ handwritten, meritless “lien” for “breach” without statutory reference.
- **ER.-87 to ER.-94:** Circuit court’s first opinion letter of March 23, 2016.
- **ER.-200 to ER.-201:** Circuit court’s email to its staff giving a “big homework project” and expressing shock that it was holding appellant’s money paid into court by ODOT as instructed by Judge Leonard [at App.-19] .

Verified Correct Copy of Original 7/6/2015

CIRCUIT COURT  
 FILED \_\_\_\_\_ RECEIVED \_\_\_\_\_  
**JUL 01 2015**  
 AT \_\_\_\_\_ O' CLOCK \_\_\_\_\_ M  
 BY \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
 Department of Transportation,

Plaintiff,

v.

SEIDA LAND & LIVESTOCK LLC, an  
 Oregon limited liability company; MISSION  
 STREET SELF STORAGE LLC, an Oregon  
 limited liability company; OREGON SURF  
 SHOP, LLC, an Oregon limited liability  
 company; NORTH LINCOLN AERIE OF  
 THE FRATERNAL ORDER OF EAGLES,  
 #2576, an Oregon corporation; LINCOLN  
 COUNTY, a political subdivision of the State  
 of Oregon; KENT R. SEIDA and MARY M.  
 SEIDA, husband and wife; ELIZABETH J.  
 DUNHAM; MARK A. TYLER and TRUDI  
 A. TYLER; JAMES P. MIMNAUGH and  
 CYNTHIA G. SWEARINGEN, husband and  
 wife; GLEN M. TORRANCE and ELLEN J.  
 TORRANCE, husband and wife; JUDY S.  
 NAGLE; DELORES V. WESSEL; ALLEN  
 TREND and TARYN TREND, husband  
 and wife; and MOLLY K. JOHNSON and  
 MICHAEL N. JOHNSON, husband and wife,

Defendants.

Case No. 140225

SUPPLEMENTAL JUDGMENT RE: RUSSELL  
 BALDWIN'S ATTORNEY FEE CLAIM

**ORS 20.140 - State fees deferred at filing**

This matter came on for hearing under ORCP 68, plaintiff appearing by and through J.  
 Nicole DeFever, Senior Assistant Attorney General, Kent R. Seida appearing *pro se*, and Russell  
 Baldwin, former counsel for defendants Seida Land & Livestock LLC, Kent R. Seida and Mary  
 M. Seida (the "Seida Defendants"), appearing for himself and by and through attorney Sandra  
 Fraser, Intelekia Law Group LLC.

Verified Correct Copy of Original 7/6/2015

1 The court having reviewed the briefs on this matter and hearing oral arguments of the  
 2 parties, and otherwise being fully advised, and based upon the ruling issued by the Honorable  
 3 Kip W. Leonard at that hearing, NOW THEREFORE

4 IT IS HEREBY ADJUDGED that:

5 1.

6 The Seida Defendants, by and through the petition of their former counsel Russell L.  
 7 Baldwin, are entitled to an award of reasonable attorney fees in the sum of \$2,000.00.

8 2.

9 That plaintiff has already deposited the sum of \$2,000.00 with the clerk of this court.

10 3.

11 There shall be no other attorney fees assessed against the State as a result of this action.

12 4.

13 This supplemental judgment does not resolve or impact any of the lien claims or other fee  
 14 disputes between the Seida Defendants and their former counsel Russell L. Baldwin.

15 DATED this 2 day of July, 2015.

16 Nunc pro tunc ~~pro tunc~~ January 29, 2015

17   
 18 CIRCUIT COURT JUDGE

19  
 20  
 21 Submitted by: J. Nicole DeFever  
 22 Senior Assistant Attorney General  
 23 Of Attorneys for Plaintiff  
 24  
 25  
 26



IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN, 17<sup>TH</sup> JUDICIAL DISTRICT



PO BOX 100  
NEWPORT, OR 97365

Thomas O. Branford  
Presiding Circuit Court Judge

Phone: (541) 265-4236  
Fax: (541) 265-7561

July 1, 2015

Ms. Sandra Fraser  
Intelekia Law Group LLC  
308 SW First Avenue, Suite 325  
Portland, OR 97204

Mr. Roger Lenneberg  
Jordan Ramis PC  
Two Centerpointe Drive, 6<sup>th</sup> Floor  
PO Box 230669  
Lake Oswego, OR 97035

Re: State of Oregon v. Seida Land and Livestock LLC et al., Lincoln County Circuit Court case No. 140225

Dear Counsel,

This letter follows our telephone conference call of June 25, 2015. Participating in the call were the court, Ms. Fraser, Mr. Lenneberg and lawyers from his office. The call addressed what issues, if any, remain in the above reference case.

The court has reviewed the history and record in this matter and in Lincoln County case No. 15CV12092.

This case is closed and was closed prior to the most current filings and correspondence by and from counsel.

For the assistance of counsel, the court mentions that as part of the above referenced case a contested hearing was held, on January 29, 2015, regarding Mr. Baldwin's request for attorney fees from the State of Oregon. The court decided that issue on the record. The extent of that hearing was the amount of attorney fees, if any, the State of Oregon was obligated to pay Mr. Baldwin for his services in representing the Seidas and Seida Land and Livestock LLC. The court's ruling did not address whether attorney fees may or may not be owed Mr. Baldwin by any other entity or person.

Verified Correct Copy of Original 7/6/2015

There are no remaining justiciable issues in that matter.

This court is not commenting, ruling or suggesting what issues may be raised or litigated in Lincoln County Circuit Case No. 15CV12092.

This matter is closed and the court will not entertain any further motion, correspondence or request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kip Leonard', written over a horizontal line.

Kip Leonard  
Senior Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINCOLN

STATE OF OREGON, by and through its  
Department of Transportation,

Case No. 140255

Plaintiff,

v.

SEIDA LAND & LIVESTOCK, LLC, an  
Oregon limited liability company; KENT R.  
SEIDA and MARY M. SEIDA, husband and  
wife; GLEN M. TORRANCE and ELLEN  
J. TORRANCE, husband and wife;  
MISSION STREET SELF STORAGE LLC,  
an Oregon limited liability company;  
OREGON SURF SHOP, LLC, an Oregon  
limited liability company; NORTH  
LINCOLN AERIE OF THE FRATERNAL  
ORDER OF EAGLES, #256, an Oregon  
corporation; LINCOLN COUNTY, a  
political subdivision of the State of Oregon;  
ELIZABETH J. DUNHAM; MARK A  
TYLER AND TRUDI A. TYLER; JAMES  
P. MIMNAUGH and CYTHING G.  
SWEARINGEN, husband and wife; JUDY  
S. NAGLE; DELORES V. WESSEL;  
ALLEN TREND A AND TARYN  
TREND A, husband and wife; and MOLLY  
K. JOHNSON and MICHAEL N.  
JOHNSON, husband and wife,

Defendants.

## NOTICE OF LIEN

PLEASE TAKE NOTICE: The undersigned hereby  
gives NOTICE FOR A LIEN ON ATTORNEY FEES  
THAT MAY BE GRANTED TO RUSSELL L. BALDWIN.  
The LIEN is CLAIMED FOR BREACH OF CONTRACT.

A LIEN is CLAIMED ON JUDGMENTS, ORDERS, AND  
AWARDS ENTERED IN ATTORNEY RUSSELL L. BALDWIN'S  
FAVOR FOR ATTORNEY FEES AWARDED IN CASE # ~~140255~~  
MAILING ADDRESS FOR RUSSELL L. BALDWIN PO BOX 1242 140255  
LINCOLN CITY OR 97367

KENT SEIDA  
2545 S.W. Anchor AVE LINCOLN CITY OREGON 97367  
PH (541) 994-7988 FAX (541) 994-7988

# CERTIFICATE OF MAILING

I hereby certify that I served the foregoing:  
NOTICE OF LIEN

ON:

MS. NICOLE DEFUEVER  
ASSISTANT ATTORNEY GENERAL  
1515 SW FIFTH AVE. SUITE 410  
PORTLAND, OREGON 97201

DALE MAXIMIZIANO ROLLER  
DALE M. ROLLER ATTORNEY AT LAW  
161 HIGH ST. SE. STE # 243

RUSSELL L. BALDWIN  
RUSSELL L. BALDWIN ATTORNEY AT LAW  
P.O. BOX 1242  
LINCOLN CITY, OREGON 97367

DATED this 20 DAY OF SEPT. 2014  
BY MAILING TO SAID PERSONS A TRUE AND CORRECT COPY  
thereof, CERTIFIED by me AS SUCH, PLACED IN A SEALED  
ENVELOPE ADDRESSED TO THEM AT THE ADDRESSES SET  
FORTH, AND DEPOSITED IN THE UNITED STATES POST OFFICE  
WITH POSTAGE PREPAID ON THIS SAME DATE

SEPT. 20, 2014 KENT SEIDA 2545 S.W. ANCHOR AVE  
LINCOLN CITY, OR 97367  
CERTIFIED TRUE COPY

I, the UNDERSIGNED, CERTIFY THAT THE AFORENAMED  
DOCUMENTS LISTED ABOVE AND ATTACHED HERETO ARE  
TRUE AND CORRECT COPIES OF THE ORIGINALS FILED  
IN THE WITHIN PROCEEDINGS IN ACCORDANCE WITH ORCP

DATED this 20<sup>th</sup> DAY OF SEPT, 2014

Kent Ray Seida 2545 S.W. ANCHOR AVE  
LINCOLN CITY ORS. 97367

CIRCUIT COURT

FILED ☒ RECEIVED

MAR 30 2016

AT \_\_\_\_\_ O' CLOCK \_\_\_\_\_ M

BY HMH



Thomas O. Branford  
Circuit Court Judge  
PO Box 100  
Newport, OR 97365

541-265-4236, ext. 8505

March 23, 2016

Ms. Sandra D. Fraser  
Intelekia Law Group LLC  
308 SW First Avenue, Suite 330  
Portland, OR 97204-3136

Mr. Roger A. Lenneberg  
Jordan Ramis PC  
Attorneys at Law  
P.O. Box 230669  
Portland, OR 97281

re: Baldwin v. Seida, et al  
#15CV12092

Dear Ms. Fraser and Mr. Lenneberg:

The Court takes judicial notice of the following:

- [1] The Complaint was filed on May 12, 2015.
- [2] The Answer and Affirmative Defenses were filed on December 3, 2015.

In Paragraph 41 of the Complaint, Mr. Baldwin alleged that Suzanne Seida, David Seida and Kent Seida, Jr. *may claim* a legal or equitable interest in the ODOT proceeds, and that any such interest would be subordinate to Mr. Baldwin's lien. That "claim" is not identified as a secured claim of any kind. Seven months later, the Defendants' Answer and Affirmative Defenses included Paragraph 30, in which all of the Defendants alleged that the "Res" was owned by the LLC and Kent and Mary Seida, and otherwise denied any interest in the "Res" on the part of Suzanne, David and Kent, Jr.

At oral argument, Ms. Fraser described what happened next as "a race to the courthouse," a trek required because both parties agreed [on and after 12/3/15] that Suzanne, David and Kent, Jr. have no dog in this fight. The conundrum is ascertaining who the prevailing party is.

That examination must begin with ORS 20.077[1], which identifies the "prevailing party" as "...the party who receives a favorable judgment or arbitration award on the claim." Subsection [2] of that statute requires the Court to identify each party that prevails on a claim for which attorney fees could be awarded and decide the amount of the award of attorney fees on claims for which the court is required to award attorney fees. It is not, as Plaintiff argued, "premature" to decide who is the prevailing party as to Suzanne, David, and Kent, Jr. When both parties agree on the conclusion that Suzanne, David and Kent, Jr. have no claim to the money in dispute, who "receives a favorable judgment" by a limited judgment dismissing those three persons? To determine that, one must look at the pleadings and the factual background.

Defendants' Motion for Partial Summary Judgment [to remove Suzanne, David and Kent, Jr. as Defendants in the case] was filed on January 8, 2016. Three days later, Plaintiff rejoined with the Motion for Judgment on the Pleadings pursuant to ORCP 21B. The happenstance that Defendants got to Odyssey first should not be determinative as the competing means by which Suzanne, David and Kent, Jr. may be ousted from this litigation. In that regard, the Defendants argue that Plaintiff should be required to file a notice of voluntary dismissal under ORCP 54A[1], but cite no authority for that proposition. A compelling reason exists for Defendants' argument, in that ORCP 54A[3] provides that a judgment may include attorney fees, and further provides that absent facts pointing to a contrary result, "...the dismissed party shall be considered the prevailing party." Absent authority to require Plaintiff to proceed under ORCP 54A, the Court will not enter such an order. Alternatively, ORCP 21B allows a party to file a motion for judgment on the pleadings once the pleadings are closed. The result as to the three Seida children would be identical, except that they might lose the entitlement to be denominated as the "prevailing party." Despite Defendants' objections, Plaintiff lawfully chose ORCP 21B to pursue dismissal of Suzanne, David and Kent, Jr. from the litigation.

Exhibit #11 to Mr. Baldwin's declaration includes the 11/5/14 e-mail from Suzanne Seida to Mr. Baldwin, in which Ms. Seida referred to "our ODOT settlement funds." That was included in a sentence which implored Mr. Baldwin not to involve the three adult Seida children in the conflagration between their parents and Mr. Baldwin. In essence, she said "it's not our beef" and she expressly referred to the "hardship" inflicted if the three of them were to be drug into the brawl. She did assert that "I expect to receive [the ODOT settlement funds] on 1/2/15...or my damages will begin."

Paragraph 5 of the Complaint alleges that all of the named defendants comprise "a general partnership." Paragraph 5 of the Answer denies that.

In response to the "our ODOT settlement funds" and "my damages" language, Mr. Baldwin thereafter named Suzanne, David and Kent, Jr. in the Complaint. It is noteworthy that Ms. Fraser couched the interest of those three persons in the Res in the tentative phrase "may claim." Any such claim was not described as being either secured or unsecured. The Attorney-Client Contingent Fee Agreement which Mr. Baldwin signed, and which is the foundation of his attorney's lien on the ODOT

settlement funds, have as signatories Mr. Baldwin and Kent Seida as a member of Seida Land & Livestock, LLC. There are no signatures by, or empty signature lines for, Mary Seida, Suzanne Seida, David Seida, Kent Seida, Jr., or Kent Seida himself in a personal capacity.

If Suzanne, David and/or Kent, Jr. were/are members of Seida Land & Livestock, LLC, they have no personal liability to Plaintiff for the attorney fee debt. ORS 63.165. As members, their "claim[s]" to any portion of the ODOT settlement proceeds could inure to them, individually, as provided in ORS 63.185. Apart from that, the three adult children could not have had, or have, a personal claim to the funds independent of the LLC. The settlement proceeds were awarded to the LLC, not to the three children. Such a member's "claim" to the ODOT funds would not constitute a tax lien, prior encumbrance and/or prior lien of record on the personal property [the money]. As such, the foreclosure of Plaintiff's attorney fee lien would trump any unsecured interest ["claim"] of Suzanna, David, and Kent, Jr. in the proceeds. ORS 87.490.

The Complaint alleges that "...plaintiff was hired by defendants Seida to perform legal work to defend an imminent action by ODOT for eminent domain for a disclosed public need. Defendants Seida, through defendant Kent Seida Sr., requested plaintiff's assistance in defending the prospective condemnation of defendants Seida's land... ." Thereafter, in Paragraph #2, plaintiff alleges: "Among the services rendered were the formation of defendant Seida Land & Livestock Company, LLC... ." Finally, in Paragraph #3, plaintiff alleges: "After approximately four years of work without regular payment from defendants Seida, defendant Seida Land & Livestock and defendant Kent Seida, on behalf of the remaining defendants Seida, executed a written contingent fee agreement to compensate plaintiff...for those 4 years." In the first paragraph of the Complaint, Plaintiff identifies as "defendants Seida" Suzanne Seida, David M. Seida, Kent Seida Jr., Kent Seida Sr. and Mary Seida, husband and wife, and Seida Land & Livestock, LLC, an Oregon Limited Liability Company.

The factual recitations in the two preceding paragraphs are relevant to the issue at hand: who, if anyone, is a prevailing party now? Despite 4 years of reported representation in the ongoing conflict with ODOT, Plaintiff never alleged in the Complaint that he represented an alleged Seida partnership concerning the ODOT issue. Plaintiff did not allege that he acted as an attorney to formalize a Seida partnership or that he was ever asked to represent that alleged entity. After this history, plaintiff certainly may be charged with knowing who owned the real property subject to the ODOT dispute, and the owners of the property did not include Suzanne, David and/or Kent Seida, Jr. Even if there were a Seida partnership, that was not the entity to which the ODOT settlement proceeds were awarded. Such a partnership could, at most, be a member of the LLC, subject to a distributive share according to ORS 63.185. The existence of a Seida partnership would not affect Plaintiff's rights in the foreclosure of the attorney fee lien because it would have nothing to do with the priority of that lien compared to tax liens, prior encumbrances and prior liens of record on the funds.

Furthermore, the only conceivable inference which may be drawn is that plaintiff drafted the contingent fee agreement in question. If there were an ambiguity as to the identities of the contracting parties, it must be resolved in favor of the other party to the contract. However, there is no ambiguity as to who the parties to the contract were; the parties were identified as Russell L. Baldwin and "Seida Land & Livestock, LLC (hereinafter "Client")." "Client." Not "Clients." Not one of the Seida family was named in an individual capacity, either on the first page or on the signature page, and Kent Seida signed only as a "Member" on behalf of Seida Land & Livestock, LLC. If, at the time of the preparation and execution of the Attorney-Client Contingent Fee Agreement, Plaintiff contemplated that he needed such a contract "After approximately four years of work without regular payment from defendants Seida," Plaintiff would have included all "defendants Seida" as parties to the contract if he had actually felt that all defendants Seida were indebted to him and that all of them were his clients.

That same sentence on lines 24-25 of page 2 of the Complaint avers that "...defendant Seida Land & Livestock and defendant Kent Seida, on behalf of the remaining defendants Seida, executed a written contingent fee agreement..." Kent Seida, Sr. was not a party to the contract. If Plaintiff had intended that Kent Seida, Sr. be a party to the attorney-client contingent fee agreement, Plaintiff would have provided a separate signature line for Kent Seida, Sr. as an individual contracting party.

It is a novel proposition that one individual may sign a contract in an individual capacity, only, and thereby make all other members of that individual's family parties to the contract, without a signature by any of those other family members and also without a power of attorney to the individual authorizing the signing of another individual's name to the subject contract. The fact that family members may have an indirect financial interest in the outcome of litigation and/or a contract obligation does not make non-signatory family members parties to a contract.

All of that is germane to the identification of the prevailing party. Suzanne, David and Kent, Jr. were not parties to the attorney-client contract. The Defendants' Answer disavowed any interest, legal and/or equitable, in the Res on the part of Suzanne, David and Kent, Jr. The fact that Suzanne Seida referred to "our" ODOT settlement funds and to "my" damages in an e-mail does not change the fact that she had no personal claim to the ODOT settlement funds. Those funds belonged exclusively to Seida Land & Livestock, LLC, less whatever fees may have been owing to Plaintiff, and Plaintiff may be charged with knowing that.

ORS 87.445 declares that an attorney has a lien upon actions, suits and proceedings "...to the extent of fees and compensation specially agreed upon with the client..." Suzanne, David and Kent, Jr. did not "specially agree" with Plaintiff as to how Plaintiff was to be compensated for his work on the ODOT condemnation. If any portion of the ODOT settlement was subject to any claim by the three of them, or any one of them, the claimant[s] had nothing but an unsecured claim to the ODOT settlement proceeds. From the absence of such an assertion in both the Complaint and



the Answer, the Court infers that from neither Plaintiff nor the three defendants asserted any secured interest in the settlement funds.

ORS 87.490[1] reads:

Except for tax liens, prior encumbrances and prior liens of record on the real or personal property subject to the lien created by ORS 87.445, the lien created by ORS 87.445 is superior to all other liens, including a lien created by ORS 147.285. [emphasis added]

Plaintiff, as an attorney with 20+ years of experience in civil litigation, and having handled the ODOT condemnation case, well knew, or at a minimum may be charged with knowing, that there were no tax liens, prior encumbrances or prior liens of record on the settlement funds. Thus, Plaintiff knew that his attorney lien had the highest priority to the settlement funds.

In Clarke-Woodward Co. v. H.L. Sanatorium, 88 Or 284, 169 P 796 [1918] at page 298, the Supreme Court noted in resolving competing claims to property, "...equity will apply the assets first to the payment of secured debts, which were a lien upon the property and second to unsecured debts *pro rata*." After 98 years, that principle remains unchanged.

ORS 87.455[2] requires that a lien under ORS 87.445 on a judgment for the possession, award or transfer of personal property must be foreclosed in the manner provided in ORS chapter 88.

ORS 88.030 provides for mandatory and permissive joinder of other lienholders. It is mandatory for those having a lien subsequent to the plaintiff's lien, and also for those who have given a promissory note or other personal obligation for the payment of the debt. Joinder of another person is permissive if the other person has a prior lien.

In his Complaint, Plaintiff alleges that Suzanne, David and Kent, Jr. may claim an interest in the Res. The Plaintiff does not allege any fact which would make the joinder of those parties either mandatory or permissive in the foreclosure of the attorney's lien.

ORCP 28 allows the permissive joinder as defendants of persons if plaintiff claims any right to relief in respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

In contrast, ORS 88.030 also provides:

The failure of any junior lien or interest holder who is omitted as a party defendant in the suit to redeem within five years of the date of a sheriff's sale under ORS 88.106 shall bar such junior lien or interest holder from any other action or proceeding against the property by the person on account of such person's lien or interest.

In short, the statute addresses the fate of potential unsecured claimants such as Suzanne, David and/or Kent Seida, Jr. They need not be named in the foreclosure. Their rights, if any, are limited to redemption within five years of the sheriff's sale.

More explicitly, the statute implies that unsecured claimants should not be named as parties defendant. The first sentence of the statute declares who shall be made parties and thereafter, quite tellingly, who may be named defendants. It is limited to those having a prior lien on the subject property. That's the exclusive list of prospective defendants in an attorney's lien foreclosure. ORS 87.455[2] requires that an attorney's lien must be foreclosed as set forth in ORS 88.030.

In addition, in this instance, the joinder was, and is, superfluous because of ORS 87.490. Subsection [1] reads:

Except for tax liens, prior encumbrances and prior liens of record on the real or personal property subject to the lien created by ORS 87.445, the lien created by ORS 87.445 is superior to all other liens, including a lien created by ORS 147.285.

Two principles of statutory construction are relevant:

[1] ORS 174.010 declares that "...the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted..." ORS 87.455[2] declares that an attorney lien foreclosure must be foreclosed in the manner provided in ORS chapter 88. ORS 88.030 dictates who shall be made a defendant and who may be made a defendant.

[2] ORS 174.020[2] provides:

When a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.

In this situation, ORCP 28 is the general provision, and ORS 87.455[2] and ORS 88.030 are, collectively, the particular provisions.

If Plaintiff's lien is valid and enforceable, Plaintiff's attorney fee lien has priority over any unsecured claim that Suzanne, David and/or Kent, Jr. may have in the ODOT proceeds. Naming them as defendants in the lien foreclosure was utterly unnecessary as a matter of law, and also improper as a matter of law [ORS 87.455{2} and ORS 88.030].

Furthermore, Suzanne, David and/or Kent, Jr. are not persons whose involvement in the litigation is not needed for just adjudication [for the reasons already stated]. ORCP 29. If they actually have an unsecured claim, or any secured interest other than those identified in ORS 87.490[1], it's subordinate to that of Plaintiff's attorney lien. Any judgment following successful foreclosure of the attorney lien would not need to recite that priority; it would exist as a matter of law.

Further examination of the rules of statutory construction is appropriate. Chapter 87 of ORS commences with construction liens. ORS 87.060 dictates the procedures to be used in the foreclosure of a construction lien. In Subsection [7] of that statute, the text reads:

In such a suit, all persons personally liable, and all lienholders whose claims have been filed for record pursuant to ORS 87.035, shall, and all other persons interested in the matter in controversy, or in the property sought to be charged with the lien, may be made parties; but persons not made parties are not bound by the proceedings.

In construction lien foreclosure, the legislature expressly permitted the inclusion of "...all other persons interested in the matter in controversy, or in the property sought to be charged with the lien..." in the foreclosure action. If the legislature had intended that such persons could be included as parties defendant in the foreclosure of an attorney's lien, the legislature would have said so by including such language in ORS 88.030. It did not. Instead, it omitted that language, and the Court is not free to add what the legislature left out. Nothing in Osborn v. Logus, 28 Or 302, 37 Pac 456 [1894] {a suit to foreclose a mechanic's lien} holds to the contrary. Even if there were a contrary message from that case, the current version of ORS 88.030 would control.

Similarly, the foreclosure of a trust deed or mortgage, when coupled with a suit to quiet title under ORS 105.605 in the same complaint, is regulated by ORS 88.020. That statute allows the joinder of any person who is a "proper party" to either cause of suit. Again, there is no such provision in ORS 88.030. The legislature is presumed to mean what it says and also what it does not say. ORS 174.010.

In light of this analysis, only Suzanne, David and Kent, Jr. could be the prevailing party when they are extricated from this litigation. They should never have been made parties and had to incur the ordeal and expense of rancorous litigation. It is they who will receive a "favorable judgment" from this ruling by the Court.

Alternatively, if it would be proper to name an unsecured claimant or creditor in a suit to foreclose an attorney's lien, the Court's ruling would remain the same. Plaintiff did not allege that Suzanne, David and/or Kent, Jr. had a judgment to enforce against Seida Land & Livestock, LLC, but instead raised the amorphous language "may claim" some interest allegation. Even if any of the three adult children did have such a judgment, Plaintiff's attorney lien has priority as a matter of law. Plaintiff did not need to obtain a judgment declaring that to be the fact. In addition, as the attorney for Seida Land & Livestock, LLC, and before that for a period of up to 4 years as the attorney for Kent Seida and Mary Seida, Plaintiff would have been made aware by Kent and/or Mary Seida of such intra-family litigation from one or more of their three adult children. Plaintiff did not allege the existence of such a judgment in the Complaint because he knew there wasn't one. Suzanne, David and Kent, Jr. were mere surplusage in the Complaint against Seida Land & Livestock LLC, Kent Seida, Sr. and Mary Seida.

Accordingly, the Court grants Defendants' Motion for Partial Summary Judgment and denies Plaintiff's motion to dismiss pursuant to ORCP 21B. Suzanne, David and Kent, Jr. shall be awarded a reasonable amount as attorney fees. ORS 87.485.

Motions to Strike.

The Motion to Strike the First, Second, Third, Fourth, Fifth, Sixth and Seventh affirmative defenses is denied, as the affirmative defenses are neither sham nor insufficient.

The Motion to Strike Defendants' Reservation of Unpleaded Affirmative Defenses is granted.

Motions to Make More Definite and Certain.


The Motions to make more definite and certain in the First, Second and Fifth Affirmative Defenses is granted. The Motion in paragraph D on page 17 of Plaintiff's Rule 21 Motions is denied.

The Defendants are granted until April 22, 2016 to file an amended pleading. Plaintiff is granted until May 13, 2016 to file a responsive pleading to the amended answer, counterclaim and affirmative defenses.

Very truly yours,



THOMAS O. BRANFORD  
Circuit Judge

	<b>big homework project</b>  <b>From:</b> Thomas O BRANFORD/LNN/OJD <b>To:</b> Heather M Hosey/LNN/OJD@ojd <b>Date:</b> Oct 08 2017 09:17:33 AM
---	---

Custodian information		
<b>Internal custodians (2)</b>		
Included in search (1)	Thomas O BRANFORD/LNN/OJD	Custodians who were included in the search.
Excluded from search (1)	Heather M Hosey/LNN/OJD	Potential custodians who were not included in the search but whose email addresses were found on messages in the search results.
<b>Total # of custodians (2)</b>		

Metadata information	
\$Abstract	case #140225, baldwin v. seida. the big question is: is there \$2,000 in the TCA's account being
\$Mailer	IBM Notes Release 9.0.1FP7 August 18, 2016
\$MessageID	<OFC23051F6.26769BE2-ON882581B3.0058AFA8-882581B3.00597FAD@LocalDomain>
\$OnBehalfOf	Thomas O BRANFORD/LNN/OJD
\$Revisions	Oct 08 2017 09:17:33 AM
\$UpdatedBy	OJDMail1/OJD
ConfidentialString	Confidential
dLogo	StdNotesLtr25
DeliveredDate	Oct 08 2017 09:17:34 AM
InetSendTo	Heather.M.Hosey@ojd.state.or.us
INetFrom	Thomas.O.BRANFORD@ojd.state.or.us
Logo	StdNotesLtr25
OriginalModTime	Oct 08 2017 09:17:33 AM
Principal	Thomas O BRANFORD/LNN/OJD
Recipients	Mail1 Journaling/ETSD/OJD
RouteServers	OJDMail1/OJD
RouteTimes	Oct 08 2017 09:17:33 AM Oct 08 2017 09:17:34 AM

case #140225, baldwin v. seida.

the big question is: is there \$2,000 in the TCA's account being held pending the outcome of 15CV12092? if so, why do we have the money?

i cannot find any order or judgment which required that ODOT, or seida, deposit \$2,000 with the court.

there was a hearing on 1/29/15, per judge leonard's supplemental judgment which was signed 7/2/15, and dated "nunc pro tunc" 1/29/15. in other words, his order reflects that he ordered the referenced payments on 1/29/15, but there is no order or judgment preceding the supplemental judgment which was signed 7/2/15. in the EVENTS category in odyssey, there is reference to 1/30/15, something about roller getting \$11,000 and baldwin getting \$2,000. that's all that is said, and no apparent document reflecting that.

so, in the 7/2/15 supplemental judgment, it says that seida is entitled to a total of \$4,200 from ODOT, with \$1,400 to the mediator, sid brockley, and that ODOT was to pay seida directly the sum of \$2,800. it did not require that ODOT put those funds in the court.

do we actually have them? that is, why, if ODOT was to pay seida \$2,800, would we have \$2,000 in the TCA account? [if so, i'm shocked.]

i need to know this before the hearing at 3:30 on monday, if possible.

**Certificate of Compliance.**

**Opposition length.**

I certify that foregoing complies with the requirements of ORAP 7.10 and ORA 13.10.

**Type size.**

I further certify that the type size in this petition is not smaller than **13 point** for both the text and footnotes as required.

**Certificate of Filing.**

I certify that on the 7<sup>th</sup> day of October, 2020, I directed to be filed an original and all necessary copies through electronic filing as mandated by the Oregon State Court Administrator, the foregoing document, and at this address:

State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, OR 97310

**Certificate of Service.**

I certify that on the 7<sup>th</sup> day of October, 2020, I directed to be served the foregoing document by email and/or eService to the following persons:

Mr. Christopher K Dolan  
Mr. David H. Bowser  
Jordan Ramis PC  
2 Centerpointe Dr 6th Fl  
Lake Oswego OR 97035  
chris.dolan@jordanramis.com

s/ Russell L. Baldwin  
Russell L. Baldwin, OSB 891890  
Attorney for Appellant (pro se)

Appendix D-1

IN THE SUPREME COURT OF THE STATE OF OREGON

RUSSELL L. BALDWIN,  
Plaintiff-Appellant  
Cross-Respondent,  
Respondent on Review,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT SEIDA, SR.; MARY  
SEIDA, husband and wife; and SEIDA LAND AND LIVESTOCK, LLC, an Oregon limited  
liability company,  
Defendants-Respondents  
Cross-Appellants,  
Petitioners on Review.

Court of Appeals  
A162400


S065998

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

Nakamoto, J., would allow.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
10/4/2018 10:01 AM

c: Russell L Baldwin  
Roger A Lenneberg  
Amy Heverly

tnb

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563



Appendix E-1

IN THE SUPREME COURT OF THE STATE OF OREGON

RUSSELL L. BALDWIN,  
Plaintiff-Appellant,  
Petitioner on Review,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT SEIDA, SR.; MARY  
SEIDA, husband and wife; and SEIDA LAND & LIVESTOCK, LLC, an Oregon limited  
liability company,  
Defendants-Respondents,  
Respondents on Review.

Court of Appeals  
A162400

S067838

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
9/17/2020 12:53 PM

c: Russell L Baldwin  
David Hunter Bowser  
Christopher K Dolan

jr

**ORDER DENYING REVIEW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT OF THE STATE OF OREGON

RUSSELL L. BALDWIN,  
Plaintiff-Appellant,  
Petitioner on Review,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT SEIDA, SR.; MARY  
SEIDA, husband and wife; and SEIDA LAND & LIVESTOCK, LLC, an Oregon limited  
liability company,  
Defendants-Respondents,  
Respondents on Review.


Court of Appeals  
A162400

S067838

**ORDER ALLOWING PETITION FOR ATTORNEY FEES AND COSTS**

Upon consideration by the court.

The petition for attorney fees filed by respondent on review is allowed in the amount of \$14,590.50. Costs are allowed in the amount of \$206.00.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
12/24/2020 8:19 AM

c: Russell L Baldwin  
David Hunter Bowser  
Christopher K Dolan

els

**ORDER ALLOWING PETITION FOR ATTORNEY FEES AND COSTS**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT OF THE STATE OF OREGON

RUSSELL L. BALDWIN,  
Plaintiff-Appellant,  
Petitioner on Review,

v.

SUZANNE SEIDA; DAVID M. SEIDA; KENT SEIDA, JR.; KENT SEIDA, SR.; MARY  
SEIDA, husband and wife; and SEIDA LAND & LIVESTOCK, LLC, an Oregon limited  
liability company,  
Defendants-Respondents,  
Respondents on Review.

Court of Appeals  
A162400

S067838

**ORDER GRANTING MOTION TO TAKE JUDICIAL NOTICE  
AND DENYING PETITION FOR RECONSIDERATION**

Upon consideration by the court.

The motion to take judicial notice is granted. The court has considered the petition for reconsideration and orders that it be denied.



MARTHA L. WALTERS  
CHIEF JUSTICE, SUPREME COURT  
2/4/2021 8:57 AM

c: Russell L Baldwin  
David Hunter Bowser  
Christopher K Dolan

els

**ORDER GRANTING MOTION TO TAKE JUDICIAL NOTICE AND DENYING  
PETITION FOR RECONSIDERATION**

---

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

**Rule 13.10 PETITION FOR ATTORNEY  
FEES**

(1) This rule governs the procedure for petitioning for attorney fees in all cases except the recovery of compensation and expenses of court-appointed counsel payable from the Public Defense Services Account.<sup>1</sup>

(2) A petition for attorney fees shall be served and filed within 21 days after the date of decision. The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees.

(3) When a party prevails on appeal or on review and the case is remanded for further proceedings in which the party who ultimately will prevail remains to be determined, the appellate court may condition the actual award of attorney fees on the ultimate outcome of the case. In that circumstance, an award of attorney fees shall not be included in the appellate judgment, but shall be awarded by the court or tribunal on remand in favor of the prevailing party on appeal or review, if that party also prevails on remand, and shall be awarded against the party designated on appeal or review as the party liable for attorney fees. The failure of a party on appeal or on review to petition for an award of attorney fees under this subsection is not a waiver of that party's right later to petition on remand for fees incurred on appeal and review if that party ultimately prevails on remand.

(4) When the Supreme Court denies a petition for review, a petition for attorney fees for preparing a response to the petition for review **may** be filed in the Supreme Court.

(5) (a) A petition shall state the total amount of attorney fees claimed and the authority relied on for claiming the fees. The petition shall be supported by a statement of facts showing the total amount of attorney time involved, the amount of time devoted to each task, the reasonableness of the amount of time claimed, the hourly rate at which time is claimed, and the reasonableness of the hourly rate.

(b) If a petition requests attorney fees pursuant to a statute, the petition shall address any factors, including, as relevant, those factors identified in ORS 20.075(1) and (2) or ORS 20.105(1), that the court may consider in determining whether and to what extent to award attorney fees.<sup>2</sup>

(6) Objections to a petition shall be served and filed within 14 days after the date the petition is filed. A reply, if any, shall be served and filed within 14 days after the date of service of the objections.

(7) A party to a proceeding under this rule may request findings regarding the facts and legal criteria that relate to any claim or objection concerning attorney fees. A party requesting findings must state in the caption of the petition, objection, or reply that the party is requesting findings pursuant to this rule.<sup>3</sup> A party's failure to request findings in a petition, objection, or reply in the form specified in this rule constitutes a waiver of any objection to the absence of findings to support the court's decision.

(8) The original of any petition, objections, or reply shall be filed with the Administrator together with proof of service on all other parties to the appeal, judicial review, or proceeding.

(9) In the absence of timely filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, will allow attorney fees in the amount sought in the petition, except in cases in which:

(a) The entity from whom fees are sought was not a party to the proceeding; or

(b) The Supreme Court or the Court of Appeals is without authority to award fees.

<sup>1</sup> This subsection does not create a substantive right to attorney fees, but merely prescribes the procedure for claiming and determining attorney fees under the circumstances described in this subsection.

<sup>2</sup> See, e.g., *Tyler v. Hartford Insurance Group*, 307 Or 603, 771 P2d 274 (1989), and *Matizza v. Foster*, 311 Or 1, 803 P2d 723 (1990), with respect to ORS 20.105(1), and *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84, 957 P2d 1200, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998), with respect to ORS 20.075.

<sup>3</sup> For example: "Appellant's Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)" or "Respondent's Objection to Petition for Attorney Fees and Request for Findings Under ORAP 13.10(7)."

See Appendix 13.10.

**Rule 14.05 APPELLATE JUDGMENT**

(1) As used in this rule,

(a) "Appellate judgment" means a decision of the Court of Appeals or Supreme Court together with a final order and the seal of the court.

(b) "Decision" means a designation of prevailing party and allowance of costs together with,

(i) In an appeal from circuit court or the Tax Court, or on judicial review of an agency proceeding, an order disposing of the appeal or judicial review or affirming without opinion; or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review.

(ii) In a case of original jurisdiction in the appellate court, in addition to the documents specified in subparagraph (i) of this paragraph, an order denying, dismissing, or allowing without opinion the petition or other document invoking the court's jurisdiction. An order allowing a petition for an alternative writ of mandamus or writ of habeas corpus is not a decision within the meaning of this rule.

(c) "Designation of prevailing party and allowance of costs" means that part of a decision indicating, when relevant, which party prevailed before the appellate court, whether costs are allowed, and, if so, which party or parties are responsible for costs.

(d) "Final order" means that part of the appellate judgment ordering payment of costs or attorney fees in a sum certain by specified parties or directing entry of judgment in favor of the Judicial Department for unpaid appellate court filing fees, or

both.

(2) The decision of the Supreme Court or Court of Appeals is effective:

(a) With respect to appeals from circuit court or the Tax Court, on the date that the Administrator sends a copy of the appellate judgment to the court below.

(b) With respect to judicial review of administrative agency proceedings, on the date that the Administrator sends a copy of the appellate judgment to the administrative agency.

(c) With respect to original jurisdiction proceedings, within the time or on the date specified in the court's decision or, if no time period or date is specified, on the date of entry of the appellate judgment. When the effective date is specified in the court's decision, the decision is effective on that date notwithstanding the date the appellate judgment issues.

(3) The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties.

(a) With respect to a decision of the Court of Appeals, the Administrator will not issue the appellate judgment for a period of 35 days after the decision to allow time for a petition for review pursuant to ORS 2.520 and ORAP 9.05. If a petition for review is filed, the appellate judgment will not issue until the petition is resolved.

(b) With respect to an order of the Supreme Court denying review or a decision of the Supreme Court, the Administrator will not issue the appellate judgment for a period of 21 days after the order or decision to allow time for a petition for reconsideration under ORAP 9.25 or a petition for attorney fees or submission of a statement of costs and disbursements under ORAP 13.05 and ORAP 13.10.

(c) If one or more statements of costs and disbursements, petitions for attorney fees, or motions or petitions for reconsideration are filed, the Administrator will not issue the appellate

judgment until all statements of costs and disbursements, petitions for attorney fees, or petitions for reconsideration are determined by order of the court.

*Brotherhood v. Oregon Steel Mills, Inc.*, 180 Or App 265, 44 P3d 600 (2002) (majority, concurring, and dissenting opinions).

(d) Notwithstanding paragraphs (a), (b), and (c) of this subsection, a party may request immediate issuance of the appellate judgment based on a showing that no party intends to file a petition for review, petition for attorney fees, or any other thing requiring a judicial ruling.

(4) (a) The money award part of an appellate judgment for costs, attorney fees, or both, in favor of a party other than the Judicial Department that has been entered in the judgment docket of a circuit court may be satisfied in the circuit court in the manner prescribed in ORS 18.225 to 18.238, or other applicable law.

(b) The money award part of an appellate judgment for an unpaid filing fee or other costs in favor of the Judicial Department shall be satisfied as follows. Upon presentation to the Administrator of sufficient evidence that the amount of the money judgment has been paid:

(i) The Administrator shall note the fact of payment in the appellate court case register; and

(ii) If requested by the party and upon payment of the certification fee, the Administrator shall issue a certificate showing the fact of satisfaction of the money award. As requested by the party, the Administrator shall issue a certificate to the party, to the court or administrative agency to which a copy of the appellate judgment was sent, or to both.

*See generally* ORS 19.450 regarding appellate judgments in appeals from circuit court and Tax Court. A party considering petitioning the United States Supreme Court for a writ of certiorari with respect to an Oregon appellate court decision should review carefully 28 USC § 2101(c) and the United States Supreme Court Rules, currently US Sup Ct Rule 13, to determine the event that triggers the running of the time period within which to file the petition. *See also International*

End of Appendices.