5-24-2017

Lincoln Land Co., LLC v. LP Broadband, Inc. Respondent's Brief 2 Dckt. 44612

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

Supreme Court Case Number : 44612-2016
Bonneville County District Court Number: CV-2015-3927

LINCOLN LAND COMPANY, LLC, an Idaho limited liability company,

PLAINTIFF-APPELLANT-CROSS RESPONDENT

vs.

LP BROADBAND, INC.,a Colorado corporation, successor by merger to MicroServ, Inc., an Idaho corporation,

DEFENDANT-RESPONDENT-CROSS APPELLANT

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,

in and for Bonneville County

Hon. Dane H. Watkins, District Judge

DEFENDANT'S - RESPONDNET/CROSS-APPELLANTS' BRIEF

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STATEMENT OF THE CASE

LP Broadband, Inc.("Defendant") is the successor by merger to MicroServ Computer Technologies, Inc. ("MicroServ"). As such, Defendant is entitled to all defenses, rights and obligations of MicorServ.

Lincoln Land Company, ("Plaintiff") brought this action claiming Defendant was unjustly enriched in the use of rooftop space on property Plaintiff purchased. On March 20, 2000, MicroServ entered into an agreement with General Mills ("GM") for the use of a grain elevator rooftop for a location for antenna equipment. This agreement was for the Evans Grainery location owned, operated or in use by GM. This agreement allowed for MicroServ to install and utilize equipment on the property for the payment of $50.00 per month. The agreement requires that any party seeking to terminate the agreement must give a 90 day notice before termination. *Exhibit A to the Affidavit of Adam Gillings* R. pp. 75-76.

MicroServ installed equipment at this location and utilized the equipment until April, 2014. Pursuant to the rental agreement, MicroServ and then Defendant paid the monthly rent pursuant to the agreement with GM for each month beginning March, 2000 until April, 2014. *Exhibit B to the Affidavit of Adam Gillings* R. pp. 77-88. No termination of the agreement was made by Defendant nor GM at any time.

In approximately June, 2010, Plaintiff purchased the property where the rooftop space was being utilized. Defendant and MicroServ did not have any notice or knowledge of any change of ownership of the property by Plaintiff until April, 2014 when Plaintiff sent a letter to Defendant. There was no notification or signage on the property to indicate any ownership change to Plaintiff. *Exhibit C to the Affidavit of Adam Gillings* R. pp. 89-95.

At all times from March, 2000 until April, 2014, GM operated as if it had all authority to rent the property to Defendant. GM allowed access to the property and collected the rent payments from Defendant.

On July 20, 2015, Plaintiff filed suit against Defendant claiming Defendant was unjustly enriched by Plaintiff. The sole claim indicated the unjust enrichment was the result of the use of the rooftop space by Defendant.

Plaintiff filed for partial summary judgment and Defendant filed for summary judgment. Both motions were heard by the District Court on April 13, 2016. The District Court entered a Memorandum Decision and Order on May 18, 2016 granting Defendant's summary judgment motion. Judgment was entered on August 19, 2016. Defendant requested attorney fees and costs on September 2, 2016. The District Court denied the request for attorney fees on October 5, 2016.

Appeal was timely taken by Plaintiff on the judgment granting summary judgment and by Defendant on the denial of attorney fees.

ISSUES PRESENTED ON APPEAL

I. The District Court erred in granting Summary Judgment to LP Broadband by determining that no benefit was conferred to LP Broadband by Lincoln Land Company.

II. The District Court erred in determining that the standard to establish a claim for unjust enrichment requires that the benefit conferred upon the party unjustly enriched must be provided directly by the party seeking to recover.

III. The District Court erred in denying LP Broadband's request for attorney fees. (Cross-Appeal Issue)

IV. Attorney Fees on Appeal

ATTORNEY FEES ON APPEAL

The Plaintiffs hereby request attorney fees on appeal pursuant to Idaho Code §§ 12-120 and 12-121; Idaho Rules of Civil Procedure 54; Appellate Rules 40 and 41; and, all other applicable rules and statutes. . On appeal Idaho Code § 12-120(3) compels an award attorney fees to the prevailing party in any civil action involving a commercial transaction. A commercial transaction is defined as "all transactions except transactions for personal or household purposes." I.C. § 12-120(3). In this case, the alleged interaction between the Plaintiff and Defendant is commercial in nature as it is not a personal or household purpose.

ARGUMENT

Standard of Review

On review of a summary judgment order, this Court employs the same standard used below. *Wyman v. Eck*, 161 Idaho 723, 390 Idaho 449 (2017) Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *I.R.C.P. 56(c)*. When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct.App.1992). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct.App.1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct.App.2000). Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders*, 125 Idaho at 874,

876 P.2d at 156.

The moving party is entitled to summary judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which the party will bear the burden of proof at trial. *Brewer v. Washington RSA No.8 Ltd. Partnership,* 145 Idaho 735, 739, 184 P.3d 860, 864 (2008).

I. The District Court erred in granting Summary Judgment to LP Broadband by determining that no benefit was conferred to LP Broadband by Lincoln Land Company.

Plaintiff's initial issue on appeal seeks to invalidate the District Court's decision that "Lincoln Land did not, as a matter of law, confer a benefit on LP Broadband." *Memorandum Decision and Order,* R. p. 375.

A prima facie case for unjust enrichment exists where: "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." *Stevenson v. Windermere Real Estate/Capital Grp., Inc.,* 152 Idaho 824, 827, 275 P.3d 839, 842 (2012) "A person confers a benefit upon another if he or she gives the other some interest in money, land, or possessions, performs services beneficial to or at the request of the other, satisfies the debt of the other, or in any way adds to the other's advantage." *42 C.J.S. Implied Contracts §9 (2013)*

In this matter, it is undisputed that the only alleged benefit Defendant obtained was the access to and use of the rooftop space. The District Court correctly concluded that this alleged benefit was not given by the Plaintiff, but by GM who occupied the property. It was GM that entered into a rental agreement with Defendant, allowed access to the property and collected the rent for the use. Defendant had been on the property based on this agreement for 10 years prior

to the Plaintiff even purchasing the property. Plaintiff did not confer anything to the Defendant. By its own admission, Plaintiff did not even know of the existence of Defendant on the property until January, 2015. *Complaint para. 5* R. p. 17.

The requirement of the Plaintiff to actually confer a benefit on the Defendant has a long history in Idaho case law. This Court most recently discussed this matter in the case of *Medical Recovery Services, LLC v. Bonneville Billing and Collections, Inc.,* 157 Idaho 395, 336 P.3d 802 (2014). Within the analysis of this case, this Court thoroughly reviewed the relevant case law which flows through *Beco Const. Co., Inc. v. Bannock Paving Co., Inc.*, 118 Idaho 463, 797 P.2d 863 (1990) and *Stevenson v. Windermere Real Estate/Capital Group, Inc.*, 152 Idaho 824, 275 P.3d 839 (2012). Each of these cases and the internally cited cases therein all support this Court's statement that the Plaintiff in an unjust enrichment case must confer an actual benefit to the Defendant to satisfy the first requirement in an unjust enrichment claim. *Medical Recovery Services, LLC at 399.*

The Plaintiff seeks to reduce this Court's analysis in *Medical Recovery Services* to apply to only money and not the requirement that a Plaintiff must confer an actual benefit. This Court in *Medical Recovery Services* did not limit its findings to personal property, but rather consistently referenced the full spectrum of money, land, possessions, or services as noted in the C.J.S.

In *Medical Recovery Services,* a judgment and execution documents were obtained by Medical Recovery Services against a debtor. Medical Recovery Services then undertook efforts to have wages garnished from the employer of debtor. The garnishment was mistakenly sent from the employer to another collection company, Bonneville Billing and Collections, which also had outstanding amounts owed by the same debtor. Medical Recovery Services sought to

obtain the funds from Bonneville Billing and Collections, but was unsuccessful. Medical Recovery Services then filed suit against Bonneville Billing and Collections for unjust enrichment.

On appeal, this Court overturned the District Court's determination that Medical Recovery Services was entitled to relief based on unjust enrichment. In the analysis of the case, this Court noted that Medical Recovery Services did not confer any direct benefit on Bonneville Billings and Collections. *Id.* at 399, 806. The Court held that Medical Recovery Services **did nothing to directly benefit or at the request of Bonneville Billing and Collections**. The Court noted that Medical Recovery Services did nothing for the direct benefit of anyone else. *Id.*

Plaintiff has also argued that GM had no legal basis to confer any benefit on Defendant and therefore any benefit to Defendant must have come from Plaintiff. This assertion is also incorrect. This Court addressed this issue in the case of *Brewer v. Washington RSA No. 8 Limited Partnership*, 145 Idaho 735, 184 P.3d 860 (2008). In *Brewer,* this Court addressed the leasing of a property owned by multiple tenants to Inland Cellular. *Id.* This Court noted that co-tenants had no power or right to lease a portion of the property to the exclusion of the other co-tenants without approval of all tenants. *Id.* at 738. While these facts and legal standing had importance to other legal issues in the case, they had no significance to the Court's analysis of the unjust enrichment.

In evaluating the unjust enrichment claim, this Court made no references to the legal basis for Inland Cellular's occupancy of the property. The analysis turned only on the issues of the use of the property as a benefit and evidence presented in opposition to summary judgment. As the legality of the permission given was not an issue in *Brewer* the same is true for this

matter. The elements for unjust enrichment examine who provided a benefit, not if there was a legal basis for that benefit.

The District Court also relied upon the analysis of the *Brewer* case to determine if a benefit was conferred. This Court's analysis of *Brewer* for the purpose of a benefit being conferred noted that the property was being occupied by Inland Cellular. *Id.* The reading of the decision on *Brewer* shows that this occupancy of the property, by itself, was not sufficient to show a benefit conferred by the Plaintiffs. *Id. at 739.* It is important to note that in *Brewer*, just as in this case, plaintiffs did not know of Inland Cellular's use of the land, and the use was ongoing at the time the plaintiffs acquired their interests. All of these factors show that the occupancy of the property was not sufficient, standing alone, to show a benefit conferred from plaintiffs to Inland Cellular.

The facts of *Brewer* and this matter are very similar. Plaintiff in this matter acquired this property during the time that Defendant was occupying the rooftop pursuant to the agreement with GM. Plaintiff did not know of Defendant's use during this time. Plaintiff has only asserted that the use of the property was the alleged benefit. Just as in *Brewer*, this use under these circumstances is not sufficient to meet the prima facie elements for unjust enrichment, benefit or any cause of action.

The District Court's granting summary judgment based on no benefit given from the Plaintiff to Defendant was proper. There were no material facts in dispute as to the occupancy of the rooftop and there was no legal basis to sustain the assertion that Plaintiff provided a benefit to Defendant.

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II. The District Court erred in determining that the standard to establish a claim for unjust enrichment requires that the benefit conferred upon the party unjustly enriched must be provided directly by the party seeking to recover.

Plaintiff finally argues that the District Court erred in finding there must be a direct benefit provided from the Plaintiff to the Defendant. The District Court primarily relied upon the *Medical Recovery Services* case and the analysis therein for its support of this finding.

As discussed above, the legal history of conferring an actual benefit by the Plaintiff is well established in Idaho. In *Medical Recovery Services,* this Court noted that "to confer a benefit in the context of unjust enrichment, **the plaintiff must give the defendant** an interest in money, land, or possessions, or perform services beneficial to, or at the request of, the other." *Medical Recovery Services* at 399 (emphasis added). This Court further stated,

> The benefit enjoyed by BBC in this case, funds from three checks totaling $1,083.21, was conferred on BBC by WSEC because WSEC sent the checks. In this respect, MRS' argument is very similar to the plaintiff's argument in *Beco,* who argued it could recover on an unjust enrichment theory for a benefit it did not directly confer. It is also similar to the plaintiffs' argument in *Stevenson* that Windermere's benefit resulted from a benefit they conferred on Jefferson. We rejected both those arguments. Likewise, we reject MRS' argument in this case. *Id.*

This Court in *Stevenson* specifically addressed the type of maneuvering Plaintiff seeks to employ in this matter. The Court stated, "The Stevensons' argument, reduced to its essence, is that because they conferred a benefit upon Jefferson, and Jefferson conferred a benefit upon Windermere, they can cut out the middleman and directly recover from Windermere for unjust enrichment." *Stevenson* at 827. This Court rejected this type of recovery in unjust enrichment cases, stating there must be a direct benefit.

In each of the above cases, this Court has required that the benefit in an unjust enrichment case be given directly by the Plaintiff to the Defendant. In *Medical Recovery Services,* the benefit, a check, was given by a third party, WSEC, to the Defendant, BBC. *Medical Recovery Services* at 399. In *Stevenson*, the benefit, a commission check, was given by a third party, Windermere, to the Defendant, Jefferson. *Stevenson* at 829. In *Beco*, the benefit, a contract award, was given by a third party, M-K, to the Defendant Bannock Paving Company. *Beco* at 867. In each of these cases, this Court held that where the benefit did not directly come from the Plaintiff and go directly to the Defendant, there is no unjust enrichment. In this case, the benefit, access to the property and use of the rooftop space was given by a third-party, GM, to the Defendant.

The *Beco* case provides additional insight to the requirements of the direct benefit. In *Beco,* plaintiff made the argument that "the equitable principle of unjust enrichment does not require the plaintiff and the defendant to have any other relationship beyond the nexus that one party may not unjustly enrich itself at the expense of the other." *Id.* This Court rejected this argument, noting that all cited cases by *Beco* involved parties who actually had a contractual relationship or a claim to real property which were the underlying reasons for the unjust enrichment claims. *Id.* It was this connection between the parties that allowed the unjust enrichment claim to stand.

Plaintiff inappropriately relies upon the case of *Idaho Lumber, Inc. v. Buck*, 109 Idaho 737, 710 P.2d 647 (Ct. App. 1985) for the proposition that Idaho law does not require a direct link between the plaintiff's benefit and defendant. Plaintiff's cited quote from the *Idaho Lumber* case is not a statement of the Court, but a reference to *66 Am.Jur.2d Restitution and Implied Contracts §3(1973).* This statement in its entirety states,

> The phrase "unjust enrichment" is used in law to characterize the result or effect of a failure to make restitution of, or for, property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor. It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly.

Thus, Idaho has not adopted this statement into its case law but merely referenced the section.

The facts and holdings of *Idaho Lumber* support the finding of s requirement of direct benefit as well. In *Idaho Lumber,* Idaho Lumber furnished materials and labor pursuant to a contract with Walker for renovations of a building. Walker was not the property owner, but had leased the property from Buck. Walker defaulted on the contract and Idaho Lumber brought suit for the outstanding amount owed for work on the property. Walker filed for and was granted a bankruptcy on the amount owed to Idaho Lumber. Idaho Lumber sought damages against Buck for unjust enrichment. *Idaho Lumber supra.*

The court held that the unjust enrichment action was proper as there was a connection between Idaho Lumber and Buck. This connection was the property Idaho Lumber had supplied materials and services to improve was Buck's property. Idaho Lumber had directly provided a benefit to Buck in increasing the value of his property. *Id.*

The *Idaho Lumber* case does not support a finding that there does not have to be a relationship between the plaintiff and defendant in an unjust enrichment, but just the opposite. There must be some direct link between the plaintiff and defendant and the benefit given in order to support a claim for unjust enrichment.

Plaintiff on appeal continues to ignore the actions of GM and the role GM played in this matter. Specifically Plaintiff states, "it is not material … if General Mills is the actual wrongdoer." If the holdings of *Idaho Lumber* are to be completely applied, Plaintiff was obligated to seek any damages from GM before seeking them against Defendant, and Defendant was not unjustly enriched by its payments to GM. In *Idaho Lumber,* the Court of Appeals adopted the language and rule from the Tennessee case of *Paschall's Inc. v. Dozier*, 219 Tenn. 45, 407 S.W.2d 150 (1966), The rule stated,

> The most significant requirement for a recovery on quasi contract is that the enrichment to the defendant be unjust. Consequently, if the landowner has given any consideration to any person for the improvements, it would not be unjust for him to retain the benefit without paying the furnisher. Also, we think that before recovery can be had against the landowner on an unjust enrichment theory, the furnisher of the materials and labor must have exhausted his remedies against the person with whom he had contracted, and still has not received the reasonable value of his services.

As Plaintiff has not sought recovery for the errors of GM and it is undisputed that Defendant has given consideration to GM for the use of the property, there could be no unjust enrichment claim prosecuted by the Plaintiff in this matter pursuant to the rule adopted in *Idaho Lumber*.

The District Court did not error in finding Plaintiff was required to provide a direct benefit to the Defendant. Summary judgment was proper.

III. The District Court erred in denying LP Broadband's request for attorney fees.

I.C.§12-121(3)

The awarding of attorney fees under I.C. 12–120(3) is reviewed for an abuse of discretion. *Fox v. Mountain West Elec., Inc.*, 137 Idaho 703, 711, 52 P.3d 848, 856 (2002). To prove an abuse of discretion this Court looks to three factors: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of

its discretion and consistent with legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *Id.* However, whether a statute awarding attorney fees applies to a given set of facts is a question of law and subject to free review. *Ransom v. Topaz Marketing, L.P.,* 143 Idaho 641, 644, 152 P.3d 2, 5 (2006). "Whether a district court has correctly determined that a case is based on a 'commercial transaction' for the purpose of I.C. § 12–120(3) is a question of law. This Court exercises free review over questions of law." *Fritts v. Liddle & Moeller Const., Inc.,* 144 Idaho 171, 173, 158 P.3d 947, 949 (2007).

A commercial transaction is defined as "all transactions except transactions for personal or household purposes." I.C. § 12-120(3). This plain language requires the interaction in this matter to be determined a commercial transaction. None of the parties in this matter are individuals and therefore none of the interaction can be personal. Additionally, this matter did not involve a claim related to household purposes. Black's Law Dictionary (10th ed. 2014) defines transaction as "any activity involving two or more persons."

In this matter, Plaintiff alleged an activity involving itself and Defendant. Plaintiff claimed that this activity was sufficient to produce a contract implied in law. This claim is sufficient to satisfy the clear definition of a commercial transaction between Plaintiff and Defendant.

The fact that this connection was adjudicated to not have occurred should not be construed to defeat a claim for attorney fees based on a commercial transaction. Should the Plaintiff prevailed, it could then claim that as a result of the action a commercial transaction had been established, a contract implied in law, and could therefore recover under a theory of

commercial transaction. The ability to recover under a statute should not be beneficial to only one party no matter the outcome of that party's case.

I.C.§12-121 and I.R.C.P 54(e)(2)

An award of attorney fees under Idaho Code § 12–121 is not a matter of right to the prevailing party, but is appropriate only when the court, in its discretion, is left with the abiding belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003). When deciding whether attorney fees should be awarded under I.C. § 12–121, the entire course of the litigation must be taken into account and if there is at least one legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation. *Id.*

The District Court erred in determining that this matter was not brought and defended frivolously. The District Court relied on the fact that, "General Mills clearly did not have the authority to sublease the rooftop space to LP Broadband;" and "Lincoln Land provided evidence that the sub-lease's value was below market." *Memorandum Decision* R. p. 438. These findings, however, do not produce a finding that the case was legitimate.

The required analysis is that there must be **one legitimate issue**. In this matter, only one issue was presented, unjust enrichment. While this issue has several parts, a legitimate issue must be found, not a part of that issue.

Plaintiff's allegation of unjust enrichment is frivolous, despite the apparent claim of at least one legitimate question of one part. Frivolous conduct is defined as actions and claims that are not supported by the facts or in law. In this matter, Plaintiff sought over one-hundred thousand dollars from Defendant without any basis in law or in fact. In the *Memorandum*

Decision and Order the District Court noted that two Idaho Supreme Court cases were directly on point in this matter. Both cases showed that a necessary element of the claim of unjust enrichment was that the Plaintiff confer a benefit on the Defendant. In this matter, Plaintiff knew it did not confer any benefit on the Defendant. In Plaintiff's *Complaint*, Plaintiff acknowledged that Defendant was operating on the property pursuant to an agreement with the third-party, GM. Plaintiff knew that GM was allowing Defendant to access the property and was collecting rent for the Defendant's use of the property. There was no benefit given to the Defendant by the Plaintiff what so ever. The complete lack of any factual support for this initial part of the analysis for unjust enrichment makes the Plaintiff's case frivolous.

In the *Stevenson* case, the district court found and this Court upheld the decision that the Defendant was entitled to attorney fees as the case was brought and/or defended frivolously. *Stevenson* at 830. In *Stevenson*, exactly as in this matter, the Plaintiff's claim was dismissed as there was no benefit given from the Plaintiff to the Defendant. *Id.* The fact that there was no evidence presented of a direct benefit provided from the Plaintiff to the Defendant made the unjust enrichment claim meritless. *Id.*

If there is no factual basis or argument to meet one of the required elements for a cause of action, any suit on that cause of action is frivolous. The argument that on the other two elements there was a potential factual basis is insufficient to legitimize the claim.

In this matter, Plaintiff's knowledge of the actions of GM and the lack of a benefit it provided shown even in the *Complaint*, evidence that the case was brought and defended frivolously.

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CONCLUSION

The allegations of the Plaintiff on appeal are not supported by long standing case law in Idaho. The determinations by the District Court in granting summary judgment are correct and summary judgment was properly granted. Attorney fees both below and on appeal should be granted as this matter meets the clear and unambiguous language of I.C.§ 12-121(3) and this matter has been brought and defended frivolously pursuant to I.C.§ 12-121.

DATED this 24th day of May, 2017.

LARREN K. COVERT, ESQ.
Attorney for Defendant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2017, I served a true and correct copy of the foregoing document on the following by the method of delivery indicated:

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