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Seward v. Musick Auction, LLC Clerk's Record Dckt. 44543

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IN THE SUPREME COURT OF THE
STATE OF IDAHO

KEVIN SEWARD, an individual,)
)
 Plaintiff-Respondent,)
)
 -vs-) Supreme Court No. 44543-2016
)
 MUSICK AUCTION, LLC., an Idaho limited)
 liability company,)
)
)
 Defendant-Appellant,)
)

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE DAVIS F. VANDERVELDE, Presiding

Shelly H. Cozakos, 398 S. 9th Street, Suite 240,
PO Box 240, Boise, Idaho 83701

Attorney for Appellant

Eric S. Rossman, Rossman Law Group, PLC,
737 N. St., Boise, Idaho 83702

Attorney for Respondent

Other Claims

Date		Judge
5/8/2015	New Case Filed-Other Claims	Molly J Huskey
	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Williams, Kimberly L (attorney for Seward, Kevin) Receipt number: 0028212 Dated: 5/8/2015 Amount: \$221.00 (Check) For: Seward, Kevin (plaintiff)	Molly J Huskey
	Complaint and Demand for Jury Trial Filed	Molly J Huskey
	Summons Issued	Molly J Huskey
5/20/2015	Affidavit Of Service-5-11-15 Musick Auction	Molly J Huskey
6/2/2015	Notice Of Appearance - Brian Webb	Molly J Huskey
	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Webb, Brian (attorney for Musick Auction Llc) Receipt number: 0032783 Dated: 6/2/2015 Amount: \$136.00 (Check) For: Musick Auction Llc (defendant)	Molly J Huskey
6/18/2015	Order to File Stipulated Trial Dates	Molly J Huskey
6/29/2015	Motion to Dismiss 12(b)I.R.C.P	Molly J Huskey
	Memorandum in Support of Defendant's Motion to Dismiss Rule 12(b)(6) I.R.C.P	Molly J Huskey
	Affidavit of Roger Worley in Support of Motion to Dismiss	Molly J Huskey
7/1/2015	Stipulated Trial Dates (fax)	Molly J Huskey
7/2/2015	Notice Of Hearing 8-6-15 (fax)	Molly J Huskey
	Hearing Scheduled (Motion Hearing 08/06/2015 09:00 AM) Def Mo Dismiss	Molly J Huskey
7/6/2015	Amended Notice of Hearing (fax)	Molly J Huskey
7/30/2015	Affidavit of Plaintiff Kevin Seward in Opposition to Defendant's Motion to Dismiss	Molly J Huskey
	Memorandum in Opposition to Defendant's Motion to Dismiss	Molly J Huskey
8/5/2015	Hearing result for Motion Hearing scheduled on 08/06/2015 09:00 AM: Hearing Vacated Def Mo Dismiss -vacated per Brian Webb pending mediation	Molly J Huskey
	Amended Notice Of Hearing 11-5-15 (fax)	Molly J Huskey
	Hearing Scheduled (Motion Hearing 11/05/2015 09:00 AM) Def Mo to Dismiss	Molly J Huskey
	Stipulation to Seal Affidavit of Roger Worley (fax)	Molly J Huskey
8/7/2015	Mediation Order 10-28-15 1:00pm	Molly J Huskey
	Hearing Scheduled (Mediation - DC 10/28/2015 01:00 PM)	Stephen Dunn
10/28/2015	Hearing result for Mediation - DC scheduled on 10/28/2015 01:00 PM: District Court Hearing Held Court Reporter: No reporter Number of Transcript Pages for this hearing estimated:	Stephen Dunn
	Hearing result for Mediation - DC scheduled on 10/28/2015 01:00 PM: Hearing Held	Stephen Dunn
10/30/2015	Hearing result for Motion Hearing scheduled on 11/05/2015 09:00 AM: Hearing Vacated Def Mo to Dismiss -settled thru mediation	Molly J Huskey

Other Claims

Date		Judge
12/14/2015	Bond Posted - Cash (Receipt 69610 Dated 12/14/2015 for 25.50)(transcript)	Molly J Huskey
1/5/2016	Change Assigned Judge (batch process)	
1/14/2016	Bond Converted (Transaction number 211 dated 1/14/2016 amount 25.50)(refund, no audio to do transcript)	Davis F. VanderVelde
2/2/2016	Hearing Scheduled (Conference - Status 02/29/2016 01:15 PM)	Davis F. VanderVelde
2/3/2016	Notice Of Hearing	Davis F. VanderVelde
2/29/2016	Hearing result for Conference - Status scheduled on 02/29/2016 01:15 PM: Hearing Held	Davis F. VanderVelde
	Hearing result for Conference - Status scheduled on 02/29/2016 01:15 PM: Continued	Davis F. VanderVelde
	Hearing result for Conference - Status scheduled on 02/29/2016 01:15 PM: District Court Hearing Held Court Reporter: Christine Rhodes - Tucker and Associates Number of Transcript Pages for this hearing estimated: less than 100 pages	Davis F. VanderVelde
	Hearing Scheduled (Conference - Status 03/28/2016 01:15 PM)	Davis F. VanderVelde
3/25/2016	Plaintiff's Motion to attend status conference telephonically (Fax)(w/order)	Davis F. VanderVelde
	Order Granting plaintiff's motion to attend status conference telephonically (no copies/ envelopes provided)	Davis F. VanderVelde
3/28/2016	Substitution Of Counsel - Shelly Cozacos (fax)	Davis F. VanderVelde
	Hearing result for Conference - Status scheduled on 03/28/2016 01:15 PM: Hearing Held	Davis F. VanderVelde
	Hearing result for Conference - Status scheduled on 03/28/2016 01:15 PM: District Court Hearing Held Court Reporter: Christine Rhodes Number of Transcript Pages for this hearing estimated: less than 100 pages	Davis F. VanderVelde
4/8/2016	Plaintiff's Available Trial Dates	Davis F. VanderVelde
4/12/2016	Order Setting Pretrial Conference, Status Conference and Jury Trial	Davis F. VanderVelde
	Hearing Scheduled (Jury Trial 02/13/2017 09:00 AM)	Davis F. VanderVelde
	Hearing Scheduled (Pre Trial 12/19/2016 08:30 AM)	Davis F. VanderVelde
	Hearing Scheduled (Conference - Status 01/30/2017 08:45 AM)	Davis F. VanderVelde
4/25/2016	Stipulation for Scheduling and Planning	Davis F. VanderVelde
4/27/2016	Defendant's Withdrawal of Motion to Dismiss Rule 12(b) I.R.C.P. (fax)	Davis F. VanderVelde
4/28/2016	Order on Stipulation for Scheduling and Planning	Davis F. VanderVelde
5/19/2016	Plaintiff's Motion to Enforce Settlement Agreement	Davis F. VanderVelde
	Affidavit of Kimberly L Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement	Davis F. VanderVelde
	Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement and for Attorney Fees	Davis F. VanderVelde
5/23/2016	Notice Of Hearing	Davis F. VanderVelde

Other Claims

Date		Judge
5/24/2016	Defendant's Motion to Strike Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement and Motion for Attorney Fees (Fax)	Davis F. VanderVelde
	Affidavit of Shelly H. Cozakos in Support of Defendant's Motion to Strike Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement and Motion for Attorney Fees (Fax)	Davis F. VanderVelde
	Defendant's Motion to Shorten Time (NO Order- NOHR)(Fax)	Davis F. VanderVelde
5/25/2016	Hearing Scheduled (Motion Day - Civil 06/02/2016 09:00 AM) Motion to enforce settlement agreement	Davis F. VanderVelde
	Order Shortening Time	Davis F. VanderVelde
	Notice Of Hearing RE: Defendants Motion to Strike Affidavit of Kimberly L Williams 6-2-16 9:00am	Davis F. VanderVelde
5/26/2016	Plaintiff's Opposition to Defendant's Motion for Attorney Fees and Non-Opposition to Defendant's Motion to Strike Affidavit of Kimberly L. Williams (fax)	Davis F. VanderVelde
	Affidavit of Kimberly L. Williams in Opposition to Defendant's Motion for Attorney Fees and Non-Opposition to Defendant's Motion to Strike Affidavit of Kimberly L. Williams (fax)	Davis F. VanderVelde
5/27/2016	Defendant's Memorandum in Opposition to Plaintiff's Motion to Enforce Settlement Agreement (fax)	Davis F. VanderVelde
	Affidavit of Roger Worley in Support of Defendant's Opposition to Plaintiff's Motion to Enforce Settlement Agreement (fax)	Davis F. VanderVelde
5/31/2016	Reply Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement (Fax)	Davis F. VanderVelde
	Reply Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement (fax)	Davis F. VanderVelde
6/2/2016	Hearing result for Motion Day - Civil scheduled on 06/02/2016 09:00 AM: Hearing Held Motion to enforce settlement agreement (UNDER ADVISEMENT)	Davis F. VanderVelde
	Hearing result for Motion Day - Civil scheduled on 06/02/2016 09:00 AM: District Court Hearing Held Court Reporter: Christine Rhodes Number of Transcript Pages for this hearing estimated: less than 100 pages	Davis F. VanderVelde
7/5/2016	Order Granting Motion to Strike and Order Denying Request for Fees	Davis F. VanderVelde
	Order Granting Motion to Enforce Settlement Agreement	Davis F. VanderVelde
8/8/2016	Respondent's Objection to Proposed Judgment (fax)	Davis F. VanderVelde
8/9/2016	Hearing Scheduled (Conference - Status 09/01/2016 09:00 AM) re: proposed judgment	Davis F. VanderVelde
8/10/2016	Notice Of Hearing 9-1-16	Davis F. VanderVelde
9/1/2016	Hearing result for Conference - Status scheduled on 09/01/2016 09:00 AM: Hearing Held re: proposed judgment	Davis F. VanderVelde
	Hearing result for Conference - Status scheduled on 09/01/2016 09:00 AM: Hearing Held re: proposed judgment	Davis F. VanderVelde

Other Claims

Date		Judge
9/1/2016	Hearing result for Conference - Status scheduled on 09/01/2016 09:00 AM: District Court Hearing Held Court Reporter: Christine Rhodes Number of Transcript Pages for this hearing estimated: less than 100 pages	Davis F. VanderVelde
9/9/2016	Judgment (Settlement Enforced in the amount of \$15,000.00 Matter Dismissed with Prejudice Hearing result for Conference - Status scheduled on 01/30/2017 08:45 AM: Hearing Vacated Hearing result for Jury Trial scheduled on 02/13/2017 09:00 AM: Hearing Vacated Hearing result for Pre Trial scheduled on 12/19/2016 08:30 AM: Hearing Vacated Civil Disposition Judgment entered for: Musick Auction Llc, Defendant; Seward, Kevin, Plaintiff. Filing date: 9/9/2016 Case Status Changed: Closed	Davis F. VanderVelde Davis F. VanderVelde Davis F. VanderVelde Davis F. VanderVelde Davis F. VanderVelde
9/21/2016	Memorandum of Costs	Davis F. VanderVelde
10/4/2016	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Cozacos, Shelly H (attorney for Musick Auction Llc) Receipt number: 0056317 Dated: 10/4/2016 Amount: \$129.00 (Check) For: Musick Auction Llc (defendant) Bond Posted - Cash (Receipt 56320 Dated 10/4/2016 for 100.00)(record) Case Status Changed: Closed pending clerk action Appealed To The Supreme Court Notice of Appeal	Davis F. VanderVelde Davis F. VanderVelde Davis F. VanderVelde Davis F. VanderVelde
10/5/2016	Defendant's Motion to Disallow Plaintiff's Memorandum of Costs and Fees (Fax) Memorandum in Support of Defendant's Motion to Disallow Plaintiff's Memorandum of Costs and Fees (Fax)	Davis F. VanderVelde Davis F. VanderVelde
10/13/2016	Hearing Scheduled (Further Proceeding 11/03/2016 09:00 AM) Attorney Fees and costs	Davis F. VanderVelde
10/27/2016	Memorandum in Opposition to Defendant's Motion to Disallow Plaintiff's Memorandum of Costs and Fees	Davis F. VanderVelde

HS.

FILED
9:25 A.M. MAY 08 2015 P.M.

MAY 08 2015

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170

ORIGINAL

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)
)
Plaintiff,)
)
-vs-)
)
MUSICK AUCTION, LLC, an Idaho limited)
liability company,)
)
Defendant.)

CASE NO.
CN15-4118

COMPLAINT AND DEMAND
FOR JURY TRIAL

Filing Fee: \$221.00
Category: AA

COMES NOW, Kevin Seward, the above-named Plaintiff, and for cause of action against
the Defendant Musick Auction, LLC, hereby COMPLAINS AND ALLEGES as follows:

PARTIES

1. Plaintiff Kevin Seward (hereinafter "Seward"), at all times herein mentioned has

been, and presently is, a resident of Canyon County, Idaho.

2. Defendant Musick Auction, LLC (hereinafter “Musick Auction”), at all times herein mentioned was and is an Idaho corporation authorized to conduct business within the State of Idaho.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this matter pursuant to Idaho Code §§ 1-705 and 5-514.

4. Venue is proper, pursuant to Idaho Code § 5-404, because this cause of action arose within Canyon County and Musick Auction maintains an office within Canyon County.

GENERAL ALLEGATIONS

5. Musick Auction is an Idaho limited liability company with over 6 employees. Musick Auction’s primary business office is located in Nampa, Canyon County, Idaho.

6. Seward became an employee of Musick Auction in August of 2014, and worked for Musick Auction until February 5, 2015.

7. Seward earned wages of \$4,500.00 per month plus bonuses in the amount of 10% of the business profit on consignment sales to be paid at the end of each fiscal year.

8. At the time of Seward’s separation from Musick Auction Seward was owed wages which were not paid within ten business days of his termination.

9. Seward made a written demand to Musick Auction for his wages on March 25, 2015.

10. Seward is owed unpaid wages in the amount of \$15,000 in bonus payments from profits generated August 1, 2014 through February 5, 2015.

11. Musick Auction failed to make appropriate income and employment tax withholdings from Seward's paychecks and Seward seeks redress for the unpaid taxes.

12. Seward's employment with Musick Auction was terminated on February 5, 2015.

13. Seward's unpaid consignment bonuses have not yet been paid and remain outstanding.

14. As a result of Musick Auction's failure to pay Seward his wages and consignment bonuses, and employment taxes Seward has suffered damages in an amount exceeding \$10,000, to be proven with specificity at trial.

COUNT ONE

Violation of the Idaho Wage Claim Act

15. Seward hereby realleges the allegations contained in Paragraphs 1 through 14 as set forth above, and incorporates the same herein by reference.

16. At all times herein mentioned, Musick Auction was an "employer" within the meaning of the Idaho Wage Claims Act, Idaho Code § 45-601.

17. From August 1, 2014 to and through February 5, 2015, Seward was employed by Musick Auction and was an "employee" within the meaning of the Idaho Wage Claims Act, Idaho Code § 45-601.

18. The late paid wages and unpaid bonuses constitute wages pursuant to the Idaho Wage Claim Act, Idaho Code § 45-601.

19. Musick Auction was required to pay all wages due to Seward within ten business days of the termination of his employment pursuant to Idaho Code § 45-606.

20. Pursuant to Idaho Code § 45-611, Musick Auction was required to pay the amount

of wages not in dispute by the next regularly scheduled payday. Musick Auction's failure to pay to Seward the wages and consignments constitutes a violation of the Idaho Wage Claims Act, Idaho Code §§ 45-601, *et. seq.*

21. As a direct result of Musick Auction's wrongful conduct, Seward is entitled to recover damages in the amount of three (3) times the unpaid wages and unpaid consignments as provided by the Idaho Wage Claims Act, Idaho Code § 45-615.

ATTORNEY FEES AND COSTS

22. As a consequence of Musick Auction's conduct and/or acts and/or admissions, Seward has been required to retain the services of legal counsel , and therefore, is entitled to recover his attorney fees and costs incurred in prosecuting this action pursuant to Idaho Code § 45-615.

PRAYER FOR RELIEF

WHEREFORE, Seward prays for Judgment, Order and Decree of this Court as follows:

1. For judgment of the Court awarding Seward damages in excess of \$10,000.00, incurred as a result of Musick Auction's violation of the Idaho Wage Claim Act.
2. For prejudgment interest on all damages recovered at the rate set forth within Idaho Code § 28-22-104.
3. For Seward's reasonable attorney fees and costs incurred in prosecuting this action, pursuant to Idaho Code § 45-615.
4. For such other and further relief as court deems just and necessary.

DEMAND FOR JURY TRIAL

Seward hereby demands a jury trial pursuant to Idaho Rule of Civil Procedure 38(b).

DATED this 5th day of ~~April~~^{May}, 2015.

ROSSMAN LAW GROUP, PLLC



Kimberly L. Williams
Attorneys for Plaintiff

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MAY 19 2016

CANYON COUNTY CLERK
M MARTINEZ, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170

CLERK

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,	)	CASE NO. CV 15-4118
)	
Plaintiff,)	
	)	PLAINTIFF'S MOTION TO
-vs-	)	ENFORCE SETTLEMENT
	)	AGREEMENT
MUSICK AUCTION, LLC, an Idaho limited)	
liability company,)	
)	
Defendant.)	
)	


COMES NOW, Plaintiff Kevin Seward, by and through his attorney of record, Kimberly L. Williams, of the law firm of Rossman Law Group, PLLC, and hereby moves the Court for an order enforcing the settlement agreement entered into by the parties in mediation with the Honorable Stephen S. Dunn on or about October 28, 2015.

This motion is based upon the Affidavit of Kimberly L. Williams, Memorandum in

Support and the pleadings on file in this matter.

DATED this 19th day of May, 2016.

ROSSMAN LAW GROUP, PLLC

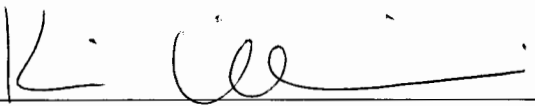
By: 
Kimberly L. Williams
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery
U.S. Mail
Facsimile 954-5099
Overnight Mail
Electronic Mail
shelly@pickenslawboise.com


Kimberly L. Williams

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MAY 19 2016

CANYON COUNTY CLERK
M MARTINEZ, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170

Attorneys for Plaintiff

FILED

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)
)
Plaintiff,)
)
-vs-)
)
MUSICK AUCTION, LLC, an Idaho limited)
liability company,)
)
Defendant.)
_____)

CASE NO. CV 15-4118

AFFIDAVIT OF KIMBERLY L. WILLIAMS IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

STATE OF IDAHO)
 : ss
County of Ada)

KIMBERLY L. WILLIAMS, being first duly sworn, deposes and says:

1. I am one of the attorneys for the Plaintiff in the above-entitled action and have personal knowledge of all facts contained herein.



2. The parties attended mediation with the Honorable Stephen S. Dunn on October 28, 2015 and entered into a settlement agreement.

3. The terms of the settlement were simply that Mr. Seward would dismiss the matter and Musick Auction would pay Mr. Seward the sum of \$15,000.00.

4. After reaching this agreement, Judge Dunn had the parties convene in a courtroom so that he could read the terms of the agreement onto the record in this matter.

5. After the terms of the agreement were read into the record by Judge Dunn, each party acknowledge the terms of the agreement on the record.

6. Finally, Judge Dunn directed Defendant to prepare the appropriate settlement documents within two weeks of that hearing.

7. On November 13, 2015 Musick Auction finally provided a draft of a settlement agreement to me on behalf of Mr. Seward. A true and correct copy of the proposed settlement agreement is attached hereto as Exhibit "1".

8. The proposed settlement agreement contained additional terms that were not discussed at mediation, including a confidentiality clause and a stipulation by Mr. Seward that he had been an independent contractor of Musick Auction instead of an employee.

9. Musick Auction also demanded that Mr. Seward's wife be a party to, and sign, the settlement agreement despite the fact that she was never a party to the litigation.

10. I objected to the additional terms and requested appropriate revisions of the settlement agreement to reflect the agreement reached at mediation.

11. An extensive exchange occurred between me and counsel for Musick Auction, the final result of which was that Musick Auction refused to sign the agreement without the additional

terms. A true and correct copy of the email exchanges between the counsels of the parties is attached hereto as Exhibit "2".

12. Mr. Seward has therefore been forced to file the present motion to enforce the agreement made between the parties at mediation.

13. I reached out to Canyon County's clerk to obtain a copy of the transcript of the hearing held on October 28, 2015. A true and correct copy of the request is attached hereto as Exhibit "3".

14. Unfortunately, due to an error in the audio recording process, the hearing was not successfully recorded. A true and correct copy of the email from the transcript clerk is attached hereto as Exhibit "4".

15. The Canyon County clerk's office did provide a copy of the minutes from that hearing. A true and correct copy of the Court Minutes is attached hereto as Exhibit "5".

16. I contacted Judge Dunn and obtained a copy of his notes from the mediation and a copy of the mediation agreement. A true and correct copy of Judge Dunn's notes and mediation agreement are attached hereto as Exhibit "6".

17. Mr. Seward requests that the Court enter an order enforcing the settlement agreement entered into by the parties on or about October 28, 2015

DATED This 19th day of May, 2016.



Kimberly L. Williams
Attorneys for Plaintiff

SUBSCRIBED AND SWORN TO before me this 19th day of May, 2016.



Jason Carroll
Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires 2/12/2020

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery
U.S. Mail
Facsimile 954-5099
Overnight Mail
Electronic Mail
shelly@pickenslawboise.com

Kimberly L. Williams
Kimberly L. Williams

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made effective the ____ day of November, 2015, by and among Kevin and Hailey Seward (“Seward”), husband and wife, and Musick Auction, LLC (“Musick Auction”), an Idaho limited liability company. Seward and Musick Auction may each be referred to as a “Party” herein (including Hailey Seward) or collectively as the “Parties.”

RECITALS

1. Seward filed a lawsuit in Canyon County, Idaho, Case #CV15-4118, on May 8, 2015, asserting they are entitled to unpaid wages from Musick Auction;
2. Musick Auction denies the allegations made by Seward;
3. The Parties entered into an oral settlement during mediation of the above-captioned case on October 28, 2015 and desire to reduce their settlement to writing;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

A. **Mutual Release.** Seward and Musick Auction, and any persons or entities claiming by, through or under their successors in interest, insurers, assigns, lien holders, members, or occupants, hereby fully, unequivocally and irrevocably releases and forever discharges each other from all claims included in or in any way related to the Subject Matter of this Agreement.

B. **Payment.** Musick Auction will pay Seward the amount of \$15,000.00 on or before November 12, 2015.

C. **Not Admission.** This Agreement is entered into by the Parties to avoid the uncertainty, inconvenience and expense of further disputes on this matter, and shall not be construed to be an admission of the truth or correctness of any of the allegations of any Party of responsibility or liability of any other Party, nor be used in any proceeding as an admission of liability on the part of or concerning any Party. However, in the event proceedings are initiated against Musick Auction by a state or federal administrative or governmental agency, Seward shall acknowledge in any such proceedings that he was an independent contractor during his tenure with Musick Auction.

D. **Amendments.** This Agreement shall not be amended, altered, revised, modified, terminated or changed in any way except by further written agreement signed by the Parties.

E. **Authority.** Each Party represents and warrants to the other Parties that the person executing this Agreement on its behalf has been authorized to sign on its behalf and to bind it to the terms of this Agreement.



F. **Confidentiality / Non-Disparagement.** The Parties agree that they will not disclose the terms of this Agreement with any individuals or third parties. Further, all Parties agree that hereafter they will not disparage any other Party or tend to impede their ability to do transact business of any kind.

G. **Counterparts; Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Any Party's facsimile signature to this Agreement and any emailed copy of a Party's signature to this Agreement, if received from the Party or its legal counsel, will be deemed an original and binding signature of this Agreement by such Party.

H. **Titles and Headings.** Titles and headings of the paragraphs and sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

I. **Entire Agreement.** The Parties each agree that this Agreement constitutes the sole, complete and entire agreement among the Parties relating to the matters released and/or discharged under this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral, among the Parties relating in any respect to the matters released and/or discharged under this Agreement. The Parties agree that there are no oral collateral agreements relating to the matters released and/or discharged under this Agreement, and that all prior discussions and negotiations relating to the matters released and/or discharged under this Agreement have been and are merged, integrated into and superseded by this Agreement.

The Parties hereby execute this Settlement Agreement and Release on the respective date(s) set forth below.

Kevin Seward

Dated this ____ day of November, 2015

Hailey Seward

Dated this ____ day of November, 2015

Musick Auction, LLC

Dated this ____ day of November, 2015

By: The Roger W. Worley Jr. Living Trust, Manager

By: Roger Worley, Trustee

Jason Carroll

From: Kimberly Williams
Sent: Wednesday, November 18, 2015 12:21 PM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Seward v. Musick Auction

Brian,

I received the proposed settlement agreement provided by your legal assistant. However, there are a few changes that need to be made before Mr. Seward can sign it. There are several items included that were not bargained for, nor agreed upon during the mediation. As we did not receive this draft until after the two week period your client agreed to on record in the hearing conducted on October 28th, please provide a revised copy as soon as possible, but no later than noon on November 20, 2015.

1. Remove Hailey Seward's name from the agreement entirely, including the signature block.
2. Recital paragraph 1 change from "*asserting they are entitled to*" and replace with "*asserting a claim for.*"
3. Agreement paragraph B, change the date from November 12th to November 20, 2015.
4. Agreement paragraph C, remove the last sentence.
5. Agreement paragraph F, remove in its entirety.

Finally, please have the check made out to Rossman Law Group, PLLC in trust for Kevin Seward. Once the agreement is signed we will be happy to send our runner to your office to pick it up.

Feel free to contact me if you have any questions.

Sincerely,
Kimberly L. Williams
Rossman Law Group PLLC
737 N. 7th St.
Boise, Idaho 83702
208-331-2030 Office
208-342-2170 Fax
kwilliams@rossmanlaw.com



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Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Wednesday, November 18, 2015 1:23 PM
To: Kimberly Williams
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

My client will not sign without F. Please ask your client to reconsider.

On Wed, Nov 18, 2015 at 12:20 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

Brian,

I received the proposed settlement agreement provided by your legal assistant. However, there are a few changes that need to be made before Mr. Seward can sign it. There are several items included that were not bargained for, nor agreed upon during the mediation. As we did not receive this draft until after the two week period your client agreed to on record in the hearing conducted on October 28th, please provide a revised copy as soon as possible, but no later than noon on November 20, 2015.

1. Remove Hailey Seward's name from the agreement entirely, including the signature block.
2. Recital paragraph 1 change from "*asserting they are entitled to*" and replace with "*asserting a claim for.*"
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Feel free to contact me if you have any questions.

Sincerely,

Kimberly L. Williams

Jason Carroll

From: Kimberly Williams
Sent: Wednesday, November 18, 2015 2:07 PM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: RE: Seward v. Musick Auction

That was not a term discussed at the mediation. If your client's position is that he is going to breach the settlement agreement, we can certainly contact Judge Dunn regarding how to proceed.

From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Wednesday, November 18, 2015 1:23 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

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Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Wednesday, November 18, 2015 2:12 PM
To: Kimberly Williams
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

Part of the agreement that Musick was going to put together a formal document. It was my client's understanding that the future documents would include a confidentiality provision, which is customary, as is other provisions that were not discussed in detail but that are customarily included in settlement agreements. Moreover, given that Hailey was allowed to participate and this is a CP state, she probably should sign the settlement agreement as well. I am not sure what Judge Dunn is going to do. If your client wishes to assert a claim for breach of the settlement agreement then Judge Dunn won't really be involved.

On Wed, Nov 18, 2015 at 2:06 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

That was not a term discussed at the mediation. If your client's position is that he is going to breach the settlement agreement, we can certainly contact Judge Dunn regarding how to proceed.

From: Brian Webb [mailto:brian@brianwebblegal.com]
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1. Remove Hailey Seward's name from the agreement entirely, including the signature block.

Jason Carroll

From: Kimberly Williams
Sent: Wednesday, November 18, 2015 2:20 PM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: RE: Seward v. Musick Auction

Yes, you were tasked with drafting the agreement pursuant to the terms discussed at mediation and on the record at the hearing. While certain provisions such as integration and counterpart signature clauses are standard language in these agreements, confidentiality is always a negotiated term. By no means can it be assumed to be a term of the agreement without being expressly negotiated. The fact that Hailey was at the mediation does not make her a party and there is no basis whatsoever for requiring her signature.

From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Wednesday, November 18, 2015 2:12 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

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Sent: Wednesday, November 18, 2015 1:23 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

My client will not sign without F. Please ask your client to reconsider.

On Wed, Nov 18, 2015 at 12:20 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

Brian,

Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Thursday, November 19, 2015 8:41 AM
To: Kimberly Williams
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

Kimberly - does your client really object to a confidentiality provision? My client will not require Hailey to sign if he will agree to it. Did Kevin tell you about his journal he left at Musick before he left? It seems that confidentiality is something he would want in this case.

On Wed, Nov 18, 2015 at 2:20 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

Yes, you were tasked with drafting the agreement pursuant to the terms discussed at mediation and on the record at the hearing. While certain provisions such as integration and counterpart signature clauses are standard language in these agreements, confidentiality is always a negotiated term. By no means can it be assumed to be a term of the agreement without being expressly negotiated. The fact that Hailey was at the mediation does not make her a party and there is no basis whatsoever for requiring her signature.

From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Wednesday, November 18, 2015 2:12 PM

To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

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On Wed, Nov 18, 2015 at 2:06 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

That was not a term discussed at the mediation. If your client's position is that he is going to breach the settlement agreement, we can certainly contact Judge Dunn regarding how to proceed.

From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Wednesday, November 18, 2015 1:23 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>

Jason Carroll

From: Kimberly Williams
Sent: Monday, November 30, 2015 8:18 AM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: RE: Seward v. Musick Auction

Brian,

Does your client have a copy of Mr. Seward's journal?

I am highly offended by your not-so-veiled threat to reveal personal information regarding my client's private life in order to extort an additional term which was not negotiated at the mediation. While I have no basis to expect better of your client, this is highly improper behavior for a member of the bar to be participating in. The journal was in no way related to Mr. Seward's work for Musick Auction, and certainly is not related to Mr. Seward's litigation against Musick Auction.

My client does object to the confidentiality agreement, and you have no basis whatsoever to request that Mrs. Seward sign any settlement agreement based upon this litigation. The fact that Idaho is a community property state is the reason for the language in Paragraph A of the settlement agreement.

Mr. Seward is prepared to sign the settlement agreement with the revisions sent to you previously. Please have the revised agreement to me by Wednesday, December 2nd, at 12:00 p.m. Otherwise we will have to move forward with the litigation of this matter.

Again, please have the check made out to Rossman Law Group, PLLC in trust for Kevin Seward.

Kimberly L. Williams
Rossman Law Group PLLC
737 N. 7th St.
Boise, Idaho 83702
208-331-2030 Office
208-342-2170 Fax
kwilliams@rossmanlaw.com



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From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Thursday, November 19, 2015 8:41 AM
To: Kimberly Williams <kwilliams@rossmanlaw.com>

Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Wednesday, December 02, 2015 3:02 PM
To: Kimberly Williams
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

Kim - while I understand why you may think I was extorting the situation, that was not my intent. I was merely trying to convey that, given the circumstances, and the lack of agreement to a confidentiality, it can only be supposed that your client intends to disparage mine, in which instance, one could be worried about whether there would be a response, and this would be a way he could prevent that (although that is not something I would condone, or my client for that matter). It was more for your client's peace of mind. A confidentiality provision would be good for both clients.

Additionally, my client is seeking advice from separate counsel. He and they have asked for an extension to tomorrow at noon to consider your demand. Although it is passed the noon deadline already, I would ask that you hold off until tomorrow before taking additional action in the event my client will agree.

Please advise.

On Mon, Nov 30, 2015 at 8:17 AM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

Brian,

Does your client have a copy of Mr. Seward's journal?

I am highly offended by your not-so-veiled threat to reveal personal information regarding my client's private life in order to extort an additional term which was not negotiated at the mediation. While I have no basis to expect better of your client, this is highly improper behavior for a member of the bar to be participating in. The journal was in no way related to Mr. Seward's work for Musick Auction, and certainly is not related to Mr. Seward's litigation against Musick Auction.

My client does object to the confidentiality agreement, and you have no basis whatsoever to request that Mrs. Seward sign any settlement agreement based upon this litigation. The fact that Idaho is a community property state is the reason for the language in Paragraph A of the settlement agreement.

Mr. Seward is prepared to sign the settlement agreement with the revisions sent to you previously. Please have the revised agreement to me by Wednesday, December 2nd, at 12:00 p.m. Otherwise we will have to move forward with the litigation of this matter.

Jason Carroll

From: Kimberly Williams
Sent: Wednesday, December 02, 2015 3:15 PM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: RE: Seward v. Musick Auction

Brian,

Thank you for the explanation. My client has no intention of disparaging Mr. Worley. We do agree to the extension.

Kim

From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Wednesday, December 02, 2015 3:02 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

Kim - while I understand why you may think I was extorting the situation, that was not my intent. I was merely trying to convey that, given the circumstances, and the lack of agreement to a confidentiality, it can only be supposed that your client intends to disparage mine, in which instance, one could be worried about whether there would be a response, and this would be a way he could prevent that (although that is not something I would condone, or my client for that matter). It was more for your client's peace of mind. A confidentiality provision would be good for both clients.

Additionally, my client is seeking advice from separate counsel. He and they have asked for an extension to tomorrow at noon to consider your demand. Although it is passed the noon deadline already, I would ask that you hold off until tomorrow before taking additional action in the event my client will agree.

Please advise.

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Brian,

Does your client have a copy of Mr. Seward's journal?

I am highly offended by your not-so-veiled threat to reveal personal information regarding my client's private life in order to extort an additional term which was not negotiated at the mediation. While I have no basis to expect better of your client, this is highly improper behavior for a member of the bar to be participating in. The journal was in no way related to Mr. Seward's work for Musick Auction, and certainly is not related to Mr. Seward's litigation against Musick Auction.

Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Thursday, December 03, 2015 12:01 PM
To: Kimberly Williams
Cc: Tenille Grant; Jason Carroll
Subject: RE: Seward v. Musick Auction

Kimberly,

Unfortunately, my client will not sign without a confidentiality agreement. Obviously, his position is that there was not a meeting of the minds on that issue. If your client won't agree to it, then please proceed as you have indicated. He will likely be proceeding with different counsel.

Thanks,
Brian

On Dec 2, 2015 3:15 PM, "Kimberly Williams" <kwilliams@rossmanlaw.com> wrote:

Brian,

Thank you for the explanation. My client has no intention of disparaging Mr. Worley. We do agree to the extension.

Kim

From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Wednesday, December 02, 2015 3:02 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: Seward v. Musick Auction

Kim - while I understand why you may think I was extorting the situation, that was not my intent. I was merely trying to convey that, given the circumstances, and the lack of agreement to a confidentiality, it can only be supposed that your client intends to disparage mine, in which instance, one could be worried about whether there would be a response, and this would be a way he could prevent that (although that is not something I would condone, or my client for that matter). It was more for your client's peace of mind. A confidentiality provision would be good for both clients.

Additionally, my client is seeking advice from separate counsel. He and they have asked for an extension to tomorrow at noon to consider your demand. Although it is passed the noon deadline already, I would ask that you hold off until tomorrow before taking additional action in the event my client will agree.

Jason Carroll

From: Kimberly Williams
Sent: Thursday, December 03, 2015 4:17 PM
To: Brian Webb
Cc: Tenille Grant; Jason Carroll
Subject: RE: Seward v. Musick Auction

Brian,

I have spoken with Mr. Seward, he will include a confidentiality agreement upon the following conditions.

First, the language in F needs to be amended as follows: "The Parties agree that they will not disclose the terms of this Agreement with any individuals or third parties, except tax advisors, or other professional consultants. Further, the Parties agree that hereafter they will not disparage any other Party or tend to impede their ability to transact business. As the Parties are currently business competitors in the same and/or similar business, and in the same geographic area, this clause does not restrict the Parties from regular competitive business practices in the running of their respective businesses.

Secondly, Mr. Seward would like an additional \$10,000 in consideration for the confidentiality and non-disparagement term.

The signed agreement will be exchanged for a check made out to Rossman Law Group, PLLC in trust for Kevin Seward. This offer remains open until the close of business on Monday, December 7th.

On another matter, Mr. Seward has received in the mail an insurance check for Musick Auction in the amount of approximately \$25,000. We can deliver this check at the same time the agreement and settlement check are exchanged. If your client would prefer other arrangements regarding the insurance check please let me know.

Thank you,
Kimberly L. Williams
Rossman Law Group PLLC
737 N. 7th St.
Boise, Idaho 83702
208-331-2030 Office
208-342-2170 Fax
kwilliams@rossmanlaw.com



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From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Thursday, December 03, 2015 12:01 PM
To: Kimberly Williams <kwilliams@rossmanlaw.com>

Jason Carroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Monday, December 07, 2015 10:14 AM
To: Kimberly Williams
Cc: Tenille Grant; Jason Carroll
Subject: Re: Seward v. Musick Auction

Kimberly - My client declines your offer. In addition, he just discovered that your client interfered with the negotiations on the Caldwell Auction. He intends to pursue this claim personally against him. By the way, the reason the check was sent to him was because he represented himself as an "owner" on the application, and on multiple others' as well apparently.

On Thu, Dec 3, 2015 at 4:17 PM, Kimberly Williams <kwilliams@rossmanlaw.com> wrote:

Brian,

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First, the language in F needs to be amended as follows: "The Parties agree that they will not disclose the terms of this agreement with any individuals or third parties, except tax advisors, or other professional consultants. Further, the Parties agree that hereafter they will not disparage any other Party or tend to impede their ability to transact business. As the Parties are currently business competitors in the same and/or similar business, and in the same geographic area, this clause does not restrict the Parties from regular competitive business practices in the running of their respective businesses.

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Thank you,

Kimberly L. Williams

jcarroll

From: kwilliams
Sent: Tuesday, December 15, 2015 11:20 AM
To: jcarroll
Subject: FW: Seward v. Musick Auction

Did you ever receive this? My email shows it went out on Friday, but we all know how unreliable that is.

From: Kimberly Williams
Sent: Friday, December 11, 2015 10:35 AM
To: 'Brian Webb' <brian@brianwebblegal.com>
Cc: Tenille Grant <tenille@brianwebblegal.com>; Jason Carroll <jcarroll@rossmanlaw.com>
Subject: RE: Seward v. Musick Auction

Brian,

Your client's claims of interference are clearly nothing more than an attempt to harass and intimidate Mr. Seward in the present matter. Mr. Seward has no concerns whatsoever about any alleged lawsuit which would certainly be baseless, frivolous and subject to sanctions pursuant to Idaho Code 12-123 and I.R.C.P. 11(a)(1). The former owner of Caldwell Auctions is willing to provide an affidavit that he spoke with Mr. Seward and Roger once just before Mr. Seward was fired by Roger, and that Roger never contacted him again regarding the purchase of his business. He will also state the he never had any intention of selling to Roger, and that he would not have sold his business to Mr. Seward if Mr. Seward had still been involved with Roger.

That being said, Mr. Seward would like to put the present matter to rest. He will sign the settlement agreement with all of the revisions we initially proposed and with the language of the confidentiality agreement being revised as provided in my December 3rd email below.

If we cannot come to terms, we will file a motion to enforce the settlement agreement on Wednesday, December 16th.

Kimberly L. Williams
Rossman Law Group PLLC
737 N. 7th St.
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208-331-2030 Office
208-342-2170 Fax
kwilliams@rossmanlaw.com



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From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Monday, December 07, 2015 10:14 AM

jcarroll

From: kwilliams
Sent: Tuesday, December 15, 2015 11:33 AM
To: brian@brianwebblegal.com
Cc: jcarroll; tenille@brianwebblegal.com
Subject: FW: Seward v. Musick Auction

Brian,

We are having difficulties with our email system. I am not sure if you received the below correspondence which I attempted to send out last Friday, so I am resending now. Due to the potential delay in your receipt of the below, we are extending your response date to this Friday, December 18th.

Kim

From: Kimberly Williams
Sent: Friday, December 11, 2015 10:35 AM
To: 'Brian Webb' <brian@brianwebblegal.com>
Cc: Tenille Grant <tenille@brianwebblegal.com>; Jason Carroll <jcarroll@rossmanlaw.com>
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737 N. 7th St.
Boise, Idaho 83702
208-331-2030 Office
208-342-2170 Fax
kwilliams@rossmanlaw.com

RLG
ROSSMAN LAW GROUP

jcarroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Tuesday, December 15, 2015 12:02 PM
To: kwilliams
Cc: jcarroll; tenille@brianwebblegal.com
Subject: Re: FW: Seward v. Musick Auction

I did not receive it. Let me take a look and talk with Roger. Will you send me a draft of what he will (is) agree(ing) to?

Thanks.

On Tue, Dec 15, 2015 at 11:32 AM, kwilliams <kwilliams@rossmanlaw.com> wrote:

Brian,

We are having difficulties with our email system. I am not sure if you received the below correspondence which I attempted to send out last Friday, so I am resending now. Due to the potential delay in your receipt of the below, we are extending your response date to this Friday, December 18th.

From: Kimberly Williams
Sent: Friday, December 11, 2015 10:35 AM
To: 'Brian Webb' <brian@brianwebblegal.com>
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Subject: RE: Seward v. Musick Auction

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jcarroll

From: kwilliams
Sent: Tuesday, December 15, 2015 2:12 PM
To: Brian Webb
Cc: jcarroll; tenille@brianwebblegal.com
Subject: RE: FW: Seward v. Musick Auction

Brian,

Changes to the settlement agreement as indicated in my November 18th email are as follows:

1. Remove Hailey Seward's name from the agreement entirely, including the signature block.
2. Recital paragraph 1 change from "*asserting they are entitled to*" and replace with "*asserting a claim for.*"
3. Agreement paragraph B, change the date from November 12th to November 20, 2015.
4. Agreement paragraph C, remove the last sentence.

The changes to the confidentiality clause from my December 3rd email are as follows:

Paragraph F needs to be amended as follows: "The Parties agree that they will not disclose the terms of this Agreement with any individuals or third parties, except tax advisors, or other professional consultants. Further, the Parties agree that hereafter they will not disparage any other Party or tend to impede their ability to transact business. As the Parties are currently business competitors in the same and/or similar business, and in the same geographic area, this clause does not restrict the Parties from regular competitive business practices in the running of their respective businesses.

With those changes Mr. Seward will sign the settlement agreement.

Kimberly L. Williams
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737 N. 7th St.
Boise, Idaho 83702
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208-342-2170 Fax
kwilliams@rossmanlaw.com



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From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Tuesday, December 15, 2015 12:02 PM
To: kwilliams <kwilliams@rossmanlaw.com>
Cc: jcarroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: FW: Seward v. Musick Auction

jcarroll

From: Brian Webb [brian@brianwebblegal.com]
Sent: Tuesday, December 22, 2015 3:39 PM
To: Kim Williams
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: Re: FW: Seward v. Musick Auction

These changes are fine except my client will not agree unless Hailey signs as well.

On Tue, Dec 15, 2015 at 2:11 PM, kwilliams <kwilliams@rossmanlaw.com> wrote:

Brian,

Changes to the settlement agreement as indicated in my November 18th email are as follows:

1. Remove Hailey Seward's name from the agreement entirely, including the signature block.
2. Recital paragraph 1 change from "*asserting they are entitled to*" and replace with "*asserting a claim for.*"
3. Agreement paragraph B, change the date from November 12th to November 20, 2015.
4. Agreement paragraph C, remove the last sentence.

The changes to the confidentiality clause from my December 3rd email are as follows:

Paragraph F needs to be amended as follows: "The Parties agree that they will not disclose the terms of this Agreement with any individuals or third parties, except tax advisors, or other professional consultants. Further, the Parties agree that hereafter they will not disparage any other Party or tend to impede their ability to transact business. As the Parties are currently business competitors in the same and/or similar business, and in the same geographic area, this clause does not restrict the Parties from regular competitive business practices in the running of their respective businesses.

With those changes Mr. Seward will sign the settlement agreement.

Kimberly L. Williams

Rossman Law Group PLLC

737 N. 7th St.

Boise, Idaho 83702

jcarroll

From: Kim Williams
Sent: Tuesday, December 22, 2015 3:43 PM
To: Brian Webb
Cc: Jason Carroll; tenille@brianwebblegal.com
Subject: RE: FW: Seward v. Musick Auction

She is not a party and there is no basis whatsoever for requiring her to sign. Your client's continued attempts to extort additional terms out of this matter are beyond contempt and our motion to compel will certainly include a motion for fees, and for interest for the delay beyond the two weeks the Judge required you to have this completed by.

From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Tuesday, December 22, 2015 3:39 PM
To: Kim Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com
Subject: Re: FW: Seward v. Musick Auction

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jcarroll

From: Kim Williams
Sent: Tuesday, December 22, 2015 4:02 PM
To: Jason Carroll
Subject: FW: FW: Seward v. Musick Auction

From: Kim Williams
Sent: Tuesday, December 22, 2015 4:02 PM
To: 'Brian Webb' <brian@brianwebblegal.com>
Subject: RE: FW: Seward v. Musick Auction

None of that changes the fact that she is not and never was a party to the wage claim which is the entire basis of the litigation in this matter. Her attendance at mediation has no bearing whatsoever on her signing an agreement. As the terms of the agreement were already made a matter of public record by Judge Dunn at the hearing your request for confidentiality is absurd to say the least with regards to anyone, and certainly with regards to a non-party.

From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Tuesday, December 22, 2015 3:47 PM
To: Kim Williams <kwilliams@rossmanlaw.com>
Subject: Re: FW: Seward v. Musick Auction

Kim - she was present at the mediation, agreed to the terms, was present after hours in what the IT members of Musick believes was an effort to steal data, and from my client's perspective, was the reason things ended the way it did...and they are married. Should we have excluded her from mediation? Regardless, my client will not be agreeing without her signature. If you feel a need to move to "compel" signature, please proceed.

On Tue, Dec 22, 2015 at 3:42 PM, Kim Williams <kwilliams@rossmanlaw.com> wrote:

She is not a party and there is no basis whatsoever for requiring her to sign. Your client's continued attempts to extort additional terms out of this matter are beyond contempt and our motion to compel will certainly include a motion for fees, and for interest for the delay beyond the two weeks the Judge required you to have this completed by.

From: Brian Webb [<mailto:brian@brianwebblegal.com>]
Sent: Tuesday, December 22, 2015 3:39 PM
To: Kim Williams <kwilliams@rossmanlaw.com>
Cc: Jason Carroll <jcarroll@rossmanlaw.com>; tenille@brianwebblegal.com

Subject: Re: FW: Seward v. Musick Auction

These changes are fine except my client will not agree unless Hailey signs as well.

jcarroll

From: Kim Williams
Sent: Wednesday, December 23, 2015 9:32 AM
To: Jason Carroll
Subject: FW: FW: Seward v. Musick Auction

FYI

From: Brian Webb [mailto:brian@brianwebblegal.com]
Sent: Tuesday, December 22, 2015 8:41 PM
To: Kim Williams <kwilliams@rossmanlaw.com>
Subject: Re: FW: Seward v. Musick Auction

Without addressing your argument on the reasonableness or validity of the additions, this could still nonetheless be resolved with what, is in reality, a minor change. I am holding the check in my office if your client wants this to end.

On Tue, Dec 22, 2015 at 4:01 PM, Kim Williams <kwilliams@rossmanlaw.com> wrote:

None of that changes the fact that she is not and never was a party to the wage claim which is the entire basis of the litigation in this matter. Her attendance at mediation has no bearing whatsoever on her signing an agreement. As the terms of the agreement were already made a matter of public record by Judge Dunn at the hearing your request for confidentiality is absurd to say the least with regards to anyone, and certainly with regards to a non-party.

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Sent: Tuesday, December 22, 2015 3:47 PM
To: Kim Williams <kwilliams@rossmanlaw.com>

Subject: Re: FW: Seward v. Musick Auction

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She is not a party and there is no basis whatsoever for requiring her to sign. Your client's continued attempts to extort additional terms out of this matter are beyond contempt and our motion to compel will certainly include a motion for fees, and for interest for the delay beyond the two weeks the Judge required you to have this completed by.

December 8, 2015

Canyon County Clerk of the Court
Canyon County Courthouse
Attention: Kathy, Transcripts Department
1115 Albany Street
Caldwell, ID 83605

Re: Kevin Seward v. Musick Auction, LLC
Case No. CV 2015-4118

Dear Kathy:

Enclosed please find a check in the amount of \$25.50 prepayment for the transcript of the hearing on October 28, 2015 in the above entitled matter.

I appreciate your anticipated courtesy and cooperation in this matter.

Please contact me if you have any questions.

Thank you.

Sincerely,



Jason Carroll
Paralegal

/jsc

Enclosure

\\OFFICESERVER\Rossman Law\Documents\Work\S\Seward, Kevin\Clerk ltr120815.doc



jcarroll

From: Kathy Waldemer [kwaldemer@canyonco.org]
Sent: Monday, December 21, 2015 3:35 PM
To: Jason Carroll
Attachments: Seward v. Musick cv15-4118.pdf

Per our conversation please see attached minute from the 10-28-15 hearing. Hope this helps. I will disburse a refund of the money paid for transcript also.

Thank you,

Kathy Waldemer
Appeals/Transcript Clerk
Canyon County Courthouse
1115 Albany St
Caldwell, ID 83605
208-454-7378
kwaldemer@canyonco.org



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON
PRESIDING: **STEPHEN DUNN** DATE: **OCTOBER 28, 2015**

KEVIN SEWARD,)	
	)	COURT MINUTES
Plaintiff,)	
	)	CASE NO: CV-2015-4118-C
vs.)	
	)	DCRT 1 (409-411)
MUSICK AUCTION, LLC,)	
)	
Defendant.)	
_____)	

This having been the time heretofore set for mediation hearing in the above-entitled matter, the plaintiffs were present in court, and represented by Ms. Kimberly Williams. The defendant was present in court and represented by Mr. Brian Webb.


The Court called the case and noted the parties present.

The Court noted the parties had reached a settlement agreement and stated the terms and conditions of the agreement for the record.

In answer to the Courts inquiry, each of the parties and their counsel concurred with the settlement agreement as set forth on the record by the Court.

The Court noted the settlement agreement entered into resolved the case and it would notify the assigned Judge of the same.

The Court directed Mr. Webb to submit necessary documents to dismiss the case, including a release.


Deputy Clerk



Roger W. Lay
Kevin S. ... Kim Williams

75

A

① 75, m

~~586~~ / 568,

② 60, m

15, m

③ 25, m

15, m

15, m

MEDIATION AGREEMENT

Case Name: Seward v. Musick Auction, Canyon County Case No. CV-2015-4118

We, the undersigned parties and attorneys, acknowledge and accept the following terms and conditions of mediation:

1. The parties consent that Stephen S. Dunn shall act as mediator in this matter and elect to mediate their civil dispute under the terms and conditions of Rule 16(k), Idaho Rules of Civil Procedure. The mediator shall use his best good faith efforts to assist the parties in reaching a mutually acceptable settlement.

2. The mediator is an impartial facilitator, does not represent any party and will not give legal advice. The mediator is not the judge on the case, will not make a decision for the parties and does not have the power or authority to force a settlement on the parties. Parties should consult with their own attorney regarding their legal rights and responsibilities.

3. All statements made during the mediation process are deemed privileged and inadmissible for any purpose in any proceeding. The parties will not subpoena or otherwise require the mediator to testify or produce records, reports, notes, or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

4. The mediator may hold a private meeting or "caucus" with any one party. Information revealed in a private meeting is confidential and will not be disclosed by the mediator unless authorized by the party.

5. The parties agree to completely abide by The Rules of Mediation, which have been provided to all parties, and are incorporated herein by reference.

6. The parties agree to personally attend the mediation, including an authorized representative of any involved insurance company, unless excused in advance by the mediator.

7. If special damages are claimed, the parties agree to disclose to the other party the total amount of all such claims for special damages, including supporting documentation, prior to the mediation.

Handwritten signature and date 10-28-15 over PARTY and DATE labels. Handwritten signature and date 10-28-15 over ATTORNEY and DATE labels.

Handwritten signature and date 10/28/15 over PARTY and DATE labels. Handwritten signature and date 10/28/15 over ATTORNEY and DATE labels.

PARTY DATE ATTORNEY DATE

PARTY DATE ATTORNEY DATE

FILED
A.M. P.M.
MAY 19 2016

CANYON COUNTY CLERK
M MARTINEZ, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170

ORIGINAL

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,	)	CASE NO. CV 15-4118
)	
Plaintiff,)	
	)	MEMORANDUM IN SUPPORT OF
-vs-	)	PLAINTIFF'S MOTION TO
	)	ENFORCE SETTLEMENT
MUSICK AUCTION, LLC, an Idaho limited	)	AGREEMENT AND FOR
liability company,	)	ATTORNEY FEES
)	
Defendant.)	
)	

COMES NOW, Plaintiff Kevin Seward, by and through his counsel of record, Kimberly L. Williams of the law firm of ROSSMAN LAW GROUP, PLLC, and hereby submits this Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement and for Attorney Fees. Filed contemporaneously with this memorandum, and incorporated by this reference, is the

Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement
("Williams Aff.").

I. BACKGROUND

Plaintiff Kevin Seward (hereinafter "Mr. Seward") became an employee of Defendant Musick Auction (hereinafter "Musick Auction") in August of 2014, and worked for Musick Auction until February 5, 2015. Following his termination from Musick Auction Mr. Seward filed the present action for unpaid wages on May 8, 2015. The parties agreed to mediation of this matter which occurred on October 28, 2015. The mediation was conducted by Judge Dunn and the parties were able to reach an agreement to settle the matter. The terms were simply that Mr. Seward would dismiss the matter and Musick Auction would pay Mr. Seward the sum of \$15,000.00. After reaching this agreement, Judge Dunn had the parties convene in a courtroom so that he could read the terms of the agreement onto the record in this matter. After the terms of the agreement were read into the record by Judge Dunn, each party acknowledge the terms of the agreement on the record. Finally, Judge Dunn directed Defendant to prepare the appropriate settlement documents within two weeks of that hearing.

On November 13, 2015 Musick Auction finally provided a draft of a settlement agreement to Mr. Seward. The proposed settlement agreement contained additional terms that were not discussed at mediation, including a confidentiality clause and a stipulation by Mr. Seward that he had been an independent contractor of Musick Auction instead of an employee. Musick Auction also demanded that Mr. Seward's wife be a party to, and sign, the settlement agreement despite the fact that she was never a party to the litigation.

Mr. Seward objected to the additional terms and requested appropriate revisions of the settlement agreement to reflect the agreement reached at mediation. An extensive exchange occurred between counsel for Mr. Seward and Musick Auction, the final result of which was that Musick Auction refused to sign the agreement without the additional terms. Mr. Seward has therefore been forced to file the present motion to enforce the agreement made between the parties at mediation.

Mr. Seward's counsel reached out to Canyon County's clerk to obtain a copy of the transcript of the hearing held on October 28, 2015. Unfortunately, due to an error in the audio recording process, the hearing was not successfully recorded. The Canyon County clerk's office did provide a copy of the minutes from that hearing which have been attached to the Affidavit of Kimberly Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement.

II. ARGUMENT

A. *The Court should enforce the agreement reached between the parties at mediation.*

At the conclusion of the mediation, the parties entered into a valid and binding settlement agreement. The terms of that agreement were entered into the record in this matter by Judge Dunn, and each party was asked, and agreed, on the record that the terms as read by Judge Dunn were accurate.

“The existence of a valid agreement of compromise is a complete defense to an action based upon the original claim.” *Wilson v. Bogert*, 81 Idaho 535, 542, 347 P.2d 341, 345 (1959). The agreement supersedes and extinguishes all pre-existing claims the parties intended to settle. *Id.* “In an action brought to enforce an agreement of compromise and settlement, made in good faith, the court will not inquire into the merits or validity of the original claim” *Id.* All that remains before this Court is the question of the validity and enforceability of the mediation agreement at issue.

Goodman v. Lothrop, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007).

Generally, oral agreements do not have to be reduced to writing in order to be enforceable. *McColm-Traska v. Baker*, 88 P.3d 767, 770 (2004)(citing *Lyle v. Koubourlis*, 771 P.2d 907, 990 (1988)). In order for an oral settlement agreement to be enforceable, there must be a manifestation of mutual intent to and a meeting of the minds regarding the essential terms of the agreement. *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). “Whether the parties to an oral agreement or stipulation become bound prior to the drafting and execution of a contemplated formal writing is largely a question of intent.” *Id.* (citing *Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002)).

“Oral stipulations of the parties in the presence of the court are generally held to be binding, especially when acted upon or entered on the court records....” *Conley v. Whittlesey*, 126 Idaho 630, 633, 888 P.2d 804, 807 (Ct. App. 1995)(citation omitted). “Stipulations for the settlement of litigation are regarded with favor by the courts and will be enforced unless good cause to the contrary is shown.” *Id. at 634, 888 P.2d at 808 (citations omitted)*.

Kohring v. Robertson, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002). See also *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). Such agreements are binding “absent a showing of fraud, duress or undue influence.” *Lawrence*, 146 Idaho at 898.

The present matter is factually similar to *Kohring*, where the parties had likewise reached a settlement agreement, stated the terms of the agreement on the record, and the parties assented to the terms on the record. The parties also informed the court of their intention to execute a written agreement consistent with the expressed terms. During the drafting process a dispute arose between the parties and a motion was brought to enforce the agreement. *Kohring*, 137 Idaho at 99-100. The district court denied the motion to enforce the agreement and the Idaho Supreme Court reversed holding that the agreement was enforceable despite the failure to execute a written agreement. *Id.*

137 Idaho at 101. “The evidence supports the finding that the parties intended the Settlement Agreement to be final. The parties and their attorneys agreed in court that the Settlement Agreement was intended to settle all of the disputes between the Kohrings and the Robersons.” *Id.*

Consistent with that ruling, the Idaho Supreme Court upheld a district court ruling to enforce a settlement agreement reached at mediation in *Goodman v. Lothrop*, 143 Idaho 622, 151 P.3d 818, (2007).

In the present matter a complete compromise of the claims was reached at mediation. Mr. Seward agreed to dismiss the action and Musick Auction agreed to pay Mr. Seward \$15,000.00. No requests were ever made at mediation for a confidentiality agreement or for Mr. Seward’s wife to be a signatory to the settlement agreement. While it was tasked to Musick Auction to draft the settlement documents, that writing is not necessary for the agreement to be enforced, but was merely a ministerial task. The clear intent of the parties was that the agreement was final and binding.

While standard settlement documents were to be executed, the agreement had been reached as to all material terms. Confidentiality is not a standard contract term, but rather is a negotiated component of any settlement. Additionally, the terms of the agreement were read into the record in open court, clearly demonstrating that confidentiality was not an intended term of the agreement. Likewise, asking for the spouse of a party to execute a settlement agreement in which that spouse was not a party could in no way be considered a standard contract term. Had Musick Auction intended that to be a term of the settlement agreement, it would have had to indicate as much during the mediation.

There was no fraud, duress, or undue influence, involved in Musick Auction assenting to the terms of the settlement agreement and Musick Auction is therefore bound to uphold the terms of the

agreement.

III. CONCLUSION

Based upon the foregoing, Seward respectfully asks this Court GRANT his motion to enforce the settlement agreement.

DATED this 19th day of May, 2016.

ROSSMAN LAW GROUP, PLLC




Kimberly L. Williams
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery
U.S. Mail _____
Facsimile 954-5099 _____
Overnight Mail _____
Electronic Mail _____
shelly@pickenslawboise.com



Kimberly L. Williams

FILED
A.M. 10:02 P.M.

MAY 24 2016

CANYON COUNTY CLERK
T. PETERSON, DEPUTY

Shelly H. Cozakos, ISB No. 5374
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, Idaho 83701-0915
Telephone: 208.954.5090
Facsimile: 208.954.5099
shelly@pickenslawboise.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,

Plaintiff,

vs.

MUSICK AUCTION, LLC, an Idaho limited
liability company,

Defendant.

Case No. CV 15-4118

**DEFENDANT'S MOTION TO
STRIKE AFFIDAVIT OF
KIMBERLY L. WILLIAMS IN
SUPPORT OF PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
MOTION FOR ATTORNEY FEES**

Defendant Musick Auction, LLC ("Defendant" or "Musick Auction"), by and through its counsel of record, Shelly H. Cozakos of the firm Pickens Cozakos, P.A., pursuant to Idaho Rule of Civil Procedure 12(f) hereby moves this Court for an Order striking portions of the Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement and for Attorney Fees, filed on May 19, 2016. This motion is supported by the Affidavit of Shelly Cozakos filed herewith.

DEFENDANT'S MOTION TO STRIKE AFFIDAVIT OF KIMBERLY L. WILLIAMS IN SUPPORT OF
PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND FOR ATTORNEY FEES - 1

I. INTRODUCTION

Defendant Musick Auction is requesting the Court strike the mediation notes prepared by Judge Dunn attached as Exhibit 6 to the Affidavit of Kimberly Williams along with those portions of the affidavit which reference the mediation notes on the basis that they are inadmissible pursuant to I.R.C.P. 16(k), I.R.E. 507, and the mediation agreement entered into by the parties prior to the mediation session.

II. ARGUMENT

Plaintiff is seeking to enforce an unsigned settlement agreement he contends was reached during a mediation session on October 28, 2015 during which Judge Dunn served as the mediator. In its effort to do so, Plaintiff's counsel apparently obtained a copy of Judge Dunn's mediation notes from the mediation clerk, and has filed them with the Court in direct contradiction to the rules and mediation agreement.

Prior to mediating, all parties and their attorneys signed a Mediation Agreement provided to them by Judge Dunn. (See, Ex. 6, p.2 of Williams Aff.) Paragraph 3 of the Mediation Agreement reads as follows:

3. All statements made during the mediation process are deemed privileged and inadmissible for any purpose in any proceeding. The parties will not subpoena or otherwise require the mediator to testify or produce records, reports, notes or other documents reviewed, received, or prepared by the mediator during the course of the mediation process.

(See, Ex. 6 to Williams Aff.) Thus, as a prerequisite to the mediation session, all parties agreed mediation notes and the testimony of the mediator to be inadmissible in any court proceeding.

During a recent status conference, counsel for the Plaintiff indicated she had obtained Judge Dunn's mediation notes. Counsel for Musick Auction therefore sent a letter to Judge Dunn's office asking to be provided with a copy of whatever he had provided to Plaintiff's counsel. In response, Judge Dunn sent an email to counsel, stating that his mediation notes should not have been provided to counsel for the Plaintiff because of the relevant language in the mediation agreement. (Cozakos Aff., Ex. 1.) Thus, the mediation notes should not be in the possession of Plaintiff, let alone filed with the Court.

Rule 16(k) of the Idaho Rules of Civil Procedure governs mediation of civil lawsuits, and specifically states that the confidentiality provisions of I.R.E. 408 and 507 extend to civil mediations. I.R.C.P. 16(k)(11). Rule 507 of the Idaho Rules of Evidence provides that mediation communications are privileged and, in a proceeding, "a mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication." Judge Dunn's mediation notes are his rendition of mediation communications by both parties. Thus, Musick Auction has the right to prevent their disclosure in this proceeding.

III. REQUEST FOR ATTORNEY'S FEES

Musick Auction seeks an award of its attorney's fees incurred in bringing this motion pursuant to section 12-123 of the Idaho Code. The parties contractually agreed that all mediation notes were inadmissible, and the law is very clear that said notes and communications are not admissible. Obtaining and filing the notes constitutes frivolous conduct and Plaintiff pay all costs associated with filing this motion.

IV. CONCLUSION

Based on the foregoing, Defendant Musick Auction respectfully requests that those portions of the Affidavit of Kimberly L. Williams referencing or attaching Judge Dunn's mediation notes be stricken and not considered in any manner in ruling on the pending motion to enforce the settlement agreement.

DATED this 24 day of May, 2016.

PICKENS COZAKOS, P.A.

By Shelly Cozakos
Shelly H. Cozakos, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2016, a true and correct copy of the within and foregoing document was served upon the following in the manner listed below:

Eric S. Rossman
Erica S. Phillips
Kimberly L. Williams
Rossman Law Group, PLLC
737 N. 7th St.
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Overnight Mail
- Facsimile - 342.2170



 Shelly H. Cozakos

FILED
A.M. [Signature] P.M.

MAY 24 2016

CANYON COUNTY CLERK
T. PETERSON, DEPUTY

Shelly H. Cozakos, ISB No. 5374
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, Idaho 83701-0915
Telephone: 208.954.5090
Facsimile: 208.954.5099
shelly@pickenslawboise.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,

Plaintiff,

vs.

MUSICK AUCTION, LLC, an Idaho limited
liability company,

Defendant.

Case No. CV 15-4118

**AFFIDAVIT OF SHELLY H.
COZAKOS IN SUPPORT OF
DEFENDANT'S MOTION TO
STRIKE AFFIDAVIT OF
KIMBERLY L. WILLIAMS IN
SUPPORT OF PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
MOTION FOR ATTORNEY FEES**

STATE OF IDAHO)
 : ss.
County of Ada)

SHELLY H. COZAKOS, being first duly sworn upon oath, deposes and says:

1. I am the counsel of record for Defendant herein and as such have personal knowledge of the facts herein.
2. Attached hereto as Exhibit 1 is a portion of Judge Dunn's May 17, 2016 email to me regarding his mediation notes.

AFFIDAVIT OF SHELLY H. COZAKOS IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE
AFFIDAVIT OF KIMBERLY L. WILLIAMS IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND FOR ATTORNEY FEES - 1

DATED this 24 day of May, 2016.

Shelly Cozakos
Shelly H. Cozakos

SUBSCRIBED AND SWORN to before me this 24th day of May, 2016.



Laurie A. Loyd
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 09/19/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2016, a true and correct copy of the within and foregoing document was served upon the following in the manner listed below:

- | | |
|----------------------------|--|
| Eric S. Rossman | <input type="checkbox"/> U.S. Mail |
| Erica S. Phillips | <input type="checkbox"/> Hand Delivery |
| Kimberly L. Williams | <input type="checkbox"/> Overnight Mail |
| Rossman Law Group, PLLC | <input checked="" type="checkbox"/> Facsimile - 342.2170 |
| 737 N. 7 th St. | |
| Boise, ID 83702 | |

Shelly Cozakos
Shelly H. Cozakos

Shelly Cozakos

Subject: FW: Seward v. Musick Auctions

From: Stephen Dunn [mailto:stephend@bannockcounty.us]
Sent: Tuesday, May 17, 2016 3:01 PM
To: Shelly Cozakos <shelly@pickenslawboise.com>
Subject: Seward v. Musick Auctions

Dear Shelly,
I received your letter regarding the Seward v. Musick Auction mediation. I admit to being distressed that this matter is not concluded. I was contacted about this mediation in March by the clerk who assists me in mediations. I provided my notes to her to assist in responding to a request about what the resolution of the mediation was, but was not aware that they may have been provided to anyone, including the Plaintiff's attorney. They should not have been because the mediation agreement specifically provides that: "The parties will not subpoena or otherwise require the mediator to testify or produce records, reports, notes, or other documents reviewed, received, or prepared by the mediator during the course of the mediation process." I have not been able to confirm that my notes were provided to anyone and because of the above quote from the mediation agreement I must decline to provide them to any party.

Sincerely,
Stephen S. Dunn
6th District Judge
Bannock County Courthouse
624 E. Center, Room 220
208-236-7250



FILED
A.M. 4:45 P.M.

MAY 26 2016

CANYON COUNTY CLERK
K BUTLER, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,	)	CASE NO. CV 15-4118
)	
Plaintiff,)	
)	
-vs-	)	PLAINTIFF'S OPPOSITION TO
	)	DEFENDANT'S MOTION FOR
	)	ATTORNEY FEES AND NON-
MUSICK AUCTION, LLC, an Idaho limited	)	OPPOSITION TO DEFENDANT'S
liability company,	)	MOTION TO STRIKE AFFIDAVIT
	)	OF KIMBERLY L. WILLIAMS
Defendant.)	
)	

COMES NOW, Plaintiff Kevin Seward, by and through his counsel of record, Kimberly L. Williams of the law firm of ROSSMAN LAW GROUP, PLLC, and hereby submits this Memorandum in Opposition to Defendant's Motion for Attorney Fees and Non-Opposition to Defendant's Motion to Strike Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY FEES AND NON-OPPOSITION TO DEFENDANT'S MOTION TO STRIKE AFFIDAVIT OF KIMBERLY L. WILLIAMS - 1

to Enforce Settlement Agreement.

I. BACKGROUND

Plaintiff Kevin Seward filed a Motion to Enforce Settlement Agreement, along with the Affidavit of Kimberly L. Williams and supporting Memorandum on May 19, 2016. The hearing is scheduled for June 2, 2016 at 9:00 a.m. Defendant has filed a Motion to Strike the Affidavit of Kimberly L. Williams, including a motion for attorney fees on May 24, 2016.

II. ARGUMENT

Plaintiff does not oppose the motions to strike filed by Defendant on May 24, 2015. Plaintiff additionally does not oppose the motion to shorten time filed by the Defendant on the same date. Plaintiff does oppose the motion for attorney's fees as they are not proper under the present circumstances. Plaintiff additionally objects to any shortening of time on the motion for attorney fees.

Defendant invokes Idaho Code § 12-123 as its basis for seeking fees. Idaho Code § 12-123(1)(b) defines frivolous conduct as "conduct of a party to a civil action or of his counsel of record that satisfies either of the following: (i) It obviously serves merely to harass or maliciously injure another party to the civil action; (ii) It is not supported in fact or warranted under existing law and cannot be supported by a by a good faith argument for an extension, modification, or reversal of existing law."

Idaho Code § 12-123(2) requires the Court to hold a hearing regarding whether conduct is indeed frivolous. Additionally, § 12-123(2)(b)(iii) also allows the Court to request from the party seeking fees an in-depth explanation of the fees incurred. Including, "an itemized list of

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY FEES AND NON-
OPPOSITION TO DEFENDANT'S MOTION TO STRIKE AFFIDAVIT OF KIMBERLY L.
WILLIAMS - 2**

the legal services necessitated by the alleged frivolous conduct, the time expended in rendering the services, and the attorney's fees associated with those services." *Id.* Plaintiff requests that any motion for attorney's fees comply with I.C. § 12-123 hearing and evidentiary guidelines.

Plaintiff's submission of the notes does not qualify as frivolous conduct under I.C. § 12-123. Plaintiff submitted the notes as further evidence of the agreement reached at mediation between the parties. The fact that the notes are not admissible does not make submission of the notes frivolous. Had Defendant simply raised the issue with Plaintiff's counsel the notes would have been voluntarily withdrawn. The submission of the notes in no way serves to harass or maliciously injure Defendant. Defendant has not suffered any injury by the inclusion of the notes in this matter and Plaintiff is not opposing the notes being stricken from the record.

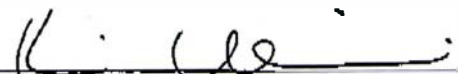
III. CONCLUSION

Based upon the foregoing, Seward respectfully asks this Court DENY Musick Auction's Motion for Attorney Fees.

DATED this 26th day of May, 2016.

ROSSMAN LAW GROUP, PLLC

By:


Kimberly L. Williams
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery _____
U.S. Mail _____
Facsimile 954-5099 ✓
Overnight Mail _____
Electronic Mail _____
shelly@pickenslawboise.com



Kimberly L. Williams

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FILED
A.M. 4:48 P.M.

MAY 26 2016

CANYON COUNTY CLERK
K BUTLER, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Erica S. Phillips, ISB #6009
ephillips@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
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Telephone: (208) 331-2030
Facsimile: (208) 342-2170

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)
)
Plaintiff,)
)
-vs-)
)
MUSICK AUCTION, LLC, an Idaho limited)
liability company,)
)
Defendant.)
)

CASE NO. CV 15-4118
**AFFIDAVIT OF KIMBERLY L.
WILLIAMS IN OPPOSITION TO
DEFENDANT'S MOTION FOR
ATTORNEY FESS AND NON-
OPPOSITION TO DEFENDANT'S
MOTION TO STRIKE AFFIDAVIT
OF KIMBERLY L. WILLIAMS**

STATE OF IDAHO)
 : ss
County of Ada)

KIMBERLY L. WILLIAMS, being first duly sworn, deposes and says:

**AFFIDAVIT OF KIMBERLY L. WILLIAMS IN OPPOSITION TO DEFENDANT'S MOTION
FOR ATTORNEY FESS AND NON-OPPOSITION TO DEFENDANT'S MOTION TO STRIKE
AFFIDAVIT OF KIMBERLY L. WILLIAMS - 1**

1. I am one of the attorneys for the Plaintiff in the above-entitled action and have personal knowledge of all facts contained herein.

2. I participated in the mediation in October of 2015 which resulted in a settlement agreement between the parties to this matter.

3. At the time of filing the motion to enforce the settlement agreement reached in this matter I had not reviewed the mediation agreement which had been entered into in October of 2015. The inclusion of the notes was an oversight on my part. The notes were included as additional evidence of the agreement reached between the parties and was in no way meant to harass or maliciously harm the Defendant.

4. I first became aware of the issue regarding Judge Dunn's notes upon receipt of Defendant's motion to strike. Had I been made aware of the issue, I would have voluntarily withdrawn the notes and portions of my affidavit referencing the same.

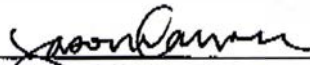
5. Plaintiff does not oppose the motion to strike and is agreeable to the notes and references thereto being stricken from the Affidavit of Kimberly Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement.



Kimberly L. Williams
Attorneys for Plaintiff

SUBSCRIBED AND SWORN TO before me this 26th day of May, 2016.





Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires 2/12/2020

AFFIDAVIT OF KIMBERLY L. WILLIAMS IN OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY FEES AND NON-OPPOSITION TO DEFENDANT'S MOTION TO STRIKE
AFFIDAVIT OF KIMBERLY L. WILLIAMS - 2

CERTIFICATE OF SERVICE

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398 S. 9th Street, Suite 240
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Boise, ID 83701
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Hand Delivery _____
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shelly@pickenslawboise.com



Kimberly L. Williams

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F I L E D
8:10 A.M. P.M.

MAY 27 2016

**CANYON COUNTY CLERK
K BUTLER, DEPUTY**

Shelly H. Cozakos, ISB No. 5374
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, Idaho 83701-0915
Telephone: 208.954.5090
Facsimile: 208.954.5099
shelly@pickenslawboise.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

KEVIN SEWARD, an individual,

Plaintiff,

vs.

MUSICK AUCTION, LLC, an Idaho limited
liability company,

Defendant.

Case No. CV 15-4118

**DEFENDANT'S MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

Defendant Musick Auction, LLC ("Defendant" or "Musick Auction"), by and through its counsel of record, Shelly H. Cozakos of the firm Pickens Cozakos, P.A., hereby submits the foregoing Memorandum in Opposition to Plaintiff's Motion to Enforce Settlement Agreement filed May 19, 2016. This Opposition is supported by the Affidavit of Roger Worley ("Worley Aff."), filed herewith.

I. BACKGROUND

Plaintiff Kevin Seward seeks a court order enforcing an informal, incomplete and alleged oral contract that occurred during a mediation session on October 28, 2015. This motion should

be denied for two reasons. First, the parties agreed during the mediation that the agreement was to be reduced to a writing, which has not occurred because the parties cannot agree on all the terms of a written agreement. Second, there was no mutual assent or meeting of the minds and therefore no enforceable oral agreement.

II. DISCUSSION

A. Factual Background

Plaintiff Kevin Seward, his wife, and their attorney attended a mediation session on October 28, 2015, along with Mr. Roger Worley on behalf of the Defendant, Musick Auction. Judge Dunn served as the mediator. Eventually, Musick Auction agreed to an amount it would be willing to pay to Seward in exchange for a written settlement agreement containing a release agreement along with other material terms. The parties therefore agreed that counsel for Musick Auction would draft a formal, written document. The agreement was to become final, and the money paid, upon execution of the written document. (See, Williams Aff., Ex. 1.; Worley Aff., ¶¶ 1-7.) A clerk at the Canyon County courthouse recorded counsel setting forth certain terms of the initial agreement. According to counsel for Plaintiff, the recording no longer exists or has been lost.

As agreed, counsel for Musick Auction prepared a proposed written settlement agreement and forwarded it to counsel for Plaintiff on November 17, 2015. Plaintiff's counsel requested several changes to the agreement via email, some of which Musick Auction would not agree to, including removing a confidentiality provision. Counsel for the parties disputed whether a confidentiality provision was part of the original agreement and/or was customary. In addition,

Mr. Seward's wife, who was present at the mediation and part of negotiations, refused to sign the agreement. Yet Musick Auction understood she was to be part of the agreement. (Worley Aff., ¶ 8.) The parties therefore could not reach an agreement on all terms of a written agreement and therefore no agreement was signed and monies were not paid, etc. Plaintiff then waited nearly five months and filed a motion seeking to enforce the oral agreement, alleging a final and binding contract formed on October 28, 2015.

III. ARGUMENT

A. Legal Standard.

A motion for the enforcement of a settlement agreement is treated as a motion for summary judgment when no evidentiary hearing has been conducted. *Vanderford Co., Inc. v. Knudson*, 150 Idaho 664, 670-71, 249 P.3d 857, 863-62 (2011). Summary judgment is only appropriate when the pleadings, affidavits and discovery documents before the court indicate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). The moving party carries the burden of proving the absence of a genuine issue of material fact. *Id.* When ruling on a motion for summary judgment, all reasonable inferences and conclusions must be drawn in favor of the party opposing summary judgment. *Id.* Because a settlement agreement is a new contract settling an old dispute, it is best practice for litigants to amend their pleadings to add a cause of action for breach of a contract. *Id.*

It is well settled that the formation of a contract requires mutual assent. *Thompson v. Pike*, 122 Idaho 690, 696, 838 P.2d 293, 299 (1992). "A distinct understanding common to both parties is necessary in order for a contract to exist." *Id.*, citations omitted. It is a question of fact whether mutual assent exists. In addition, when the parties agree to reduce an oral agreement to

a writing, the parties' intent determines whether an oral contract was formed. *Id.* "An oral agreement is valid if the written draft is viewed by the parties as a mere record; the oral agreement is not valid if the parties view the written draft as a consummation of the negotiations." *Id.*

In *Thompson*, the Idaho Supreme Court stated that the intent to have a written contract is can be shown by following factors:

- (1) Whether the contract is one usually put in writing, (2) whether there are few or many details, (3) whether the amount involved is large or small, (4) whether it requires a formal writing for a full expression of the covenants and promises, and (5) whether the negotiations indicate that a written draft is contemplated as the final conclusion of the negotiations.

Id., 122 Idaho at 696. Finally, the Idaho Supreme Court made clear that, when determining whether an oral contract formed when the parties agreed to reduce their agreement to writing, "the burden of proof is on the party asserting that the contract was binding before the written draft was signed." *Id.*

B. An Issue of Material Fact Exists Regarding Whether the Parties Intended the Written Contract to be the Final Consummation of their Negotiations.

When reviewing all of the affidavits on file, clearly the parties agreed their negotiations were to be final upon the signing of a written agreement. As stated by Brian Webb, attorney for Musick Auction, in the initial email exchange, "part of the agreement [was] that Musick was going to put together a formal document." (Ex. 1 to Williams Aff.) In addition, a review of the emails from Ms. Williams show that Plaintiff's intent was that the written document would be the final consummation of the agreement: "Yes, you were tasked with drafting the agreement pursuant to the terms discussed at mediation and on the record at the hearing. While certain provisions such as integration and counterpart signature clauses are standard language in these agreements, confidentiality is always a negotiated term . . ." (*Id.*)

Counsel for Plaintiff was therefore willing to accept some additional terms in a written settlement agreement that she admitted were not part of the oral agreement reached on October 28, 2015, but not willing to accept others and a dispute arose as to what was included and what was customary. Indeed, if Plaintiff intended for the oral agreement to be the final contract, then he should have insisted on a writing that stated solely what was put on record, instead of entering into additional negotiations about the terms of the written agreement.

Moreover, Mr. Worley, Musick Auction's representative at the mediation, has testified that his intent was for the formal, written document to be the actual contract and settlement agreement. (See, Worley Aff., ¶ 4-7.) He further testified that the terms in the proposed written agreement were those that he understood to be a necessary part of the agreement, and that he always understood a confidentiality provision to be an important part of the deal. *Id.* Thus, when viewing all of the evidence in a light most favorable to Musick Auction, the conclusion to be drawn is that the parties intended for the signed, written agreement, to be the final consummation of their negotiations. See, *Thompson*, 122 Idaho at 696; see also, *McCall Weddings, LLC v. McCall*, Federal Dist. Of Idaho, case no. 1:14 cv-00315-REB (June 23, 2015), (whether a settlement agreement exists when an agreement consummating preceding negotiation cannot be finalized is an issue of fact that precludes summary judgment.)

Plaintiff relies upon the opinion of *Kohring v. Robertson*, 137 Idaho 94, 44 P.3d 1149 (2002). In this case, a mediation was held and a detailed agreement relating to watering rights and water spreading on the parties' land was reached. Following the mediation, detailed stipulations setting forth an agreement for their respective water rights, water spreading, etc., was placed on the record. Following the detailed stipulations, the district judge asked each attorney if they agreed with all the stipulations, and if the stipulations "resolved all the issues", to which each attorney agreed. *Id.*, 137 Idaho at 100. The Court therefore determined that the district court should have enforced the agreement. *Id.*

This case is noticeably different from *Kohring*. First, a detailed settlement agreement on the record does not exist. Second, the correspondence between the parties' counsel shows that they intended for the written agreement to be the contract. Finally, the inclusion of a confidentiality provision was of the utmost importance to Musick Auction, and is a material term which the parties clearly did not agree upon. This term, which could not be agreed upon, prevents the formation of a contract, given that "[a] contract must be complete, definite and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty." *Id.*, 137 Idaho at 99.

Finally, all of the factors set forth in the *Thompson* opinion weigh in favor of Musick Auction. Indeed, settlement agreements of a lawsuit are typically reduced to writing. Second, the proposed settlement agreement was very detailed, requiring a writing. Third, Mr. Worley agreed to a arguably a large settlement amount. (Worley Aff., ¶ 3.) Finally, the parties clearly agreed that a written draft was to be the final conclusion of negotiations. These factors, when viewed in light of the fact that Plaintiff carries the burden of proof to establish the absence of any material facts, weigh heavily in favor of Musick Auction. Thus, because no written document could be agreed upon, an enforceable contract did not form between the parties.

IV. CONCLUSION

Based on the foregoing, Defendant submits that material issues of fact exist regarding whether or not an oral contract formed at the mediation session on October 28, 2015, which issues preclude the entry of summary judgment in favor of Plaintiff. Musick Auction therefore respectfully requests that this Court deny Plaintiff's Motion to Enforce Settlement Agreement.

DATED this 26 day of May, 2016.

PICKENS COZAKOS, P.A.

By Shelly Cozakos
Shelly H. Cozakos, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of May, 2016, a true and correct copy of the within and foregoing document was served upon the following in the manner listed below:

Eric S. Rossman
Erica S. Phillips
Kimberly L. Williams
Rossman Law Group, PLLC
737 N. 7th St.
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Overnight Mail
- Facsimile - 342.2170

Shelly Cozakos
Shelly H. Cozakos

FILED
8:40 A.M. P.M.

MAY 27 2016

CANYON COUNTY CLERK
K BUTLER, DEPUTY

Shelly H. Cozakos, ISB No. 5374
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, Idaho 83701-0915
Telephone: 208.954.5090
Facsimile: 208.954.5099
shelly@pickenslawboise.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,

Plaintiff,

vs.

MUSICK AUCTION, LLC, an Idaho limited
liability company,

Defendant.

Case No. CV 15-4118

**AFFIDAVIT OF ROGER WORLEY
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

ROGER WORLEY, being first duly sworn upon oath, deposes and says:

1. I am the managing member of Musick Auction, LLC ("the Company") and this affidavit is based upon my personal knowledge.

2. On behalf of Musick Auction, I attended the mediation session with our counsel, Brian Webb, on October 28, 2015.

3. During the mediation, I agreed to some terms of a settlement agreement, such as the amount to be paid to the Plaintiff. I agreed to some of these terms in order to reach a finality, and not because I think that we did anything wrong or owed the Plaintiff any money.

4. It was always my understanding that, following the mediation session, our respective attorneys would prepare a written settlement agreement, containing all the terms of a final and binding agreement. I further understood that I would have an opportunity to review the written agreement and execute it only if accurate and comprehensive.

5. During the mediation, I agreed, that the settlement would be final when a written agreement containing all terms was signed. Based on discussions that I was privy to during the mediation, this was also the agreement of the Plaintiff.

6. Following the mediation session, my attorney prepared a written agreement, containing essential terms that, in my opinion and belief, are necessary in order for there to be an agreement and I was not willing to have Musick Auction pay any money to the Plaintiff without these terms.

7. One of the main terms was a confidentiality agreement. I only agreed to pay what I considered to be a fairly substantial sum of money to the Plaintiff to buy the peace of the company and stop incurring attorney's fees. It was very important to me that this offer to pay Plaintiff money be kept confidential, as I do not want other employees to hear about the payment and believe that, if they bring a claim against the Company, the Company will be inclined to pay them money rather than dispute it or review it on the merits. This was very important to Musick Auction's business.

8. In addition, it was my understanding at the mediation session that both the Plaintiff, Kevin Seward, and his wife, were going to be signatories to the written agreement. Again, it was important to me that the agreement be kept confidential and given that Mr. Seward's wife was part of the discussions and negotiations at the mediation, it was very important that she also sign the agreement. I also did not want the Company to be vulnerable to a claim brought by Mr. Seward's wife.

9. When I was informed that the Plaintiff would not sign a written agreement unless specific and important terms were removed, I also refused to sign it and pay any money.

10. I never intended the terms we agreed upon at the mediation to be a final and binding settlement agreement. Instead, it was always my intent and agreement that we would have a final and binding settlement agreement once it was put in writing, with all necessary terms, and signed by myself on behalf of Musick Auction and the Plaintiff.

DATED this 26 day of May, 2016.

AW

Roger Worley

SUBSCRIBED AND SWORN to before me this 26 day of May, 2016.

Laurie A. Loyd

Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 09/19/2016



AFFIDAVIT OF ROGER WORLEY IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION TO ENFORCE SETTLEMENT AGREEMENT 4

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of May, 2016, a true and correct copy of the within and foregoing document was served upon the following in the manner listed below:

Eric S. Rossman
Erica S. Phillips
Kimberly L. Williams
Rossman Law Group, PLLC
737 N. 7th St.
Boise, ID 83702

U.S. Mail
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 Facsimile - 342.2170



Shelly H. Cozacos

1. I am one of the attorneys for the Plaintiff in the above-entitled action and have personal knowledge of all facts contained herein.

2. I was present at the mediation of this matter with the Honorable Stephen S. Dunn on October 28, 2015.

3. At no point during the mediation was there any discussion of a written settlement agreement.

4. The first time any indication was made regarding settlement documents was after the conclusion of mediation and after the terms had been read into the record at the hearing held the same day as the mediation, wherein Judge Dunn asked Defendant to prepare the associated documents.

DATED This 31st day of May, 2016.

Kimberly L. Williams
Kimberly L. Williams
Attorneys for Plaintiff

SUBSCRIBED AND SWORN TO before me this 31st day of May, 2016.



Jason Carroll
Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires 2/12/2020

CERTIFICATE OF SERVICE

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Kimberly L. Williams

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MAY 31 2016

CANYON COUNTY CLERK
K BRONSON, DEPUTY

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erossman@rossmanlaw.com
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kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
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Telephone: (208) 331-2030
Facsimile: (208) 342-2170

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,	)	CASE NO. CV 15-4118
)	
Plaintiff,)	
)	
-vs-	)	REPLY MEMORANDUM IN
	)	SUPPORT OF PLAINTIFF'S
MUSICK AUCTION, LLC, an Idaho limited	)	MOTION TO ENFORCE
liability company,	)	SETTLEMENT AGREEMENT
)	
Defendant.)	

COMES NOW, Plaintiff Kevin Seward, by and through his counsel of record, Kimberly L. Williams of the law firm of ROSSMAN LAW GROUP, PLLC, and hereby submits this Reply Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement. Filed contemporaneously with this memorandum, and incorporated by this reference, is the Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement ("Williams

**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT AGREEMENT - 1**

Aff.”).

I. BACKGROUND

At the October 28, 2015 mediation conducted in this matter the parties reached a settlement agreement that was complete as to all material terms. During the mediation process itself, no mention was made of a written agreement and no mention was made in any regard addressing confidentiality of the agreement. After mediation had concluded a hearing was conducted by the mediator to put the terms of the agreement on the record. After the terms of the agreement were read into the record, and each party assented to the accuracy of the terms of settlement, Judge Dunn asked counsel for Defendant Musick Auction to prepare the paperwork associated with the settlement. The drafting of the settlement documents was merely a record keeping task, and execution of those documents was not necessary to consummate the agreement between the parties.

II. ARGUMENT

A. *Intent to be bound to the terms of the agreement has been established.*

Oral agreements entered on the court record are generally held to be binding absent a showing of fraud, duress, or undue influence. *Lawrence v. Hutchinson*, 146 Idaho 892, 898, 204 P.3d 532, 538 (Ct. App. 2009). The entering of the terms on the court record constitutes a manifestation of intent by the parties to be bound by the terms. *Doi v. Halekulani Corp.*, 276 F.3d 1131, 1138 (9th Cir. 2002) (“Any question as to Doi’s intent to be bound was answered when she appeared in open court, listened to the terms of the agreement placed on the record, and when pressed as to whether she agreed with the terms, said ‘yeah.’”).

Failure to execute a written agreement does not negate the effect of an oral agreement to settlement terms. *Milstead v. Guyer*, 2010 U.S. Dist. LEXIS 105044, *10 (D. Idaho September 29,

2010)(citing *Doi v. Halekulani Corp.*, 276 F.3d 1131(9th Cir. 2002) and *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (Ct. App. 2009)). “Moreover, it would be unfair and unjust to allow Plaintiff to back out of the settlement agreement just because he did not execute a written agreement.” *Milstead*, 2010 U.S. Dist. LEXIS 105044 at *11.

Based upon Defendant’s Memorandum in Opposition to the present motion, it appears that the only term Defendant argues was a material term that should have been part of the agreement is a confidentiality provision. However, Defendant never once addressed confidentiality during the process of mediation, nor at the hearing at which the agreement was read into the court record. Only after close of negotiations, and after settlement was reached did the issue of confidentiality come up. Defendant’s own actions in consenting to the terms of the agreement being read into the record in open court, belie that confidentiality was always “a necessary part of the agreement.” See Defendant’s Memo in Opposition, P.5.

Thompson v. Pike, 122 Idaho 690, 838 P.2d 293 (1992) is distinguishable from this action in that the attorneys for the parties in that matter engaged in oral discussions, and followed up with a written exchange indicating that they contemplated a written contract. *Id.* 122 Idaho at 696. However, no mediation took place, and certainly no record was made before the court indicating the terms of the settlement. Therefore the *Thompson* court looked to a series of factors to determine the intent of the parties. While such an analysis is not necessary in the present matter due to the recitation of the settlement agreement into the record in this matter, those factors still weigh in favor of an enforceable settlement agreement.

Mediation, an ever more common occurrence in litigation often results in settlement agreements. While the settlements are generally reduced to writing, it is generally the rule that the

agreement has been made before such formal written agreements are finalized. The settlement amount in this matter is small. Despite Defendant's subjective belief that this is a substantial amount, in comparison to the costs of litigation, the amount is not large. There are very few details to this agreement, a sum of money in exchange for dismissing the matter. A full expression of those terms was laid out in open court on the day of the mediation, and the written agreement is not necessary to express any remaining terms of the agreement. While the Defendant was given the task of drafting the documents, there was no indication that such a written agreement would be necessary for the negotiations to be concluded. Rather, the negotiations had been completed and a written agreement was meant as a record of those terms.

It is also good policy to enforce oral settlement agreements as "stipulations for the settlement of litigation are regarded with favor by the courts." *Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002). Courts routinely encourage parties to engage in mediation. It would generate a lack of confidence in that process for a party to be allowed to participate in mediation, reach a settlement, have the settlement terms read on the record of the court, and then be allowed to get out of the agreement altogether by claiming that a material term which had never been discussed during the entire process was "necessary" to the agreement.

III. CONCLUSION

Based upon the foregoing, Seward respectfully asks this Court GRANT his motion to enforce the settlement agreement.

\
 \
 \

DATED this 31st day of May, 2016.

ROSSMAN LAW GROUP, PLLC



Kimberly L. Williams
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery	<input type="checkbox"/>
U.S. Mail	<input type="checkbox"/>
Facsimile 954-5099	<input checked="" type="checkbox"/>
Overnight Mail	<input type="checkbox"/>
Electronic Mail	<input type="checkbox"/>
<u>shelly@pickenslawboise.com</u>	



Kimberly L. Williams

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FILED
A.M. 4:00 P.M.

JUL 05 2016

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

KEVIN SEWARD, an individual,

Plaintiff,

vs.

**MUSICK AUCTION, LLC, an Idaho
limited liability company,**

Defendant.

CASE NO. CV15-4118

**ORDER GRANTING MOTION TO
STRIKE AND ORDER DENYING
REQUEST FOR FEES**

The Court held a hearing on June 2, 2016 on the Motion to Strike and there being no opposition to the motion and good cause appearing,

IT IS HEREBY ORDERED that the Motion to Strike is GRANTED as to Judge Dunn's notes.

IT IS FURTHER ORDERED that the requests for fees on this motion are DENIED.

Dated 5 day of July, 2016.



Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 5 day of July, 2016, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for plaintiff:

Kimberly L. Williams
ROSSMAN LAW GROUP, PLLC
737 N 7th St
Boise, ID 83702

- upon counsel for defendant:

Shelly H Cozakos
Attorney at Law
PO Box 915
Boise, ID 83701

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

CHRIS YAMAMOTO,
Clerk of the Court

By: 
Deputy Clerk of the Court

FILED
A.M. 4 P.M.
JUL 05 2016
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

KEVIN SEWARD, an individual, Plaintiff, vs. MUSICK AUCTION, LLC, an Idaho limited liability company, Defendant.	CASE NO. CV15-4118 ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AGREEMENT
--	---

The Plaintiff's Motion to Enforce Settlement Agreement and the Defendant's Motion to Strike were heard by the Court on June 2, 2016. Ms. Kimberly Williams appeared on behalf of the Plaintiff and Ms. Shelly Cozakos appeared on behalf of the Defendant. Having considered the arguments of counsel, the pleadings on file, and the court record in this matter the Court finds and rules as follows:

I. Background

A Complaint and Demand for Jury Trial was originally filed in this matter on May 8, 2015, alleging violations of the Wage Claim Act. No Answer to the Complaint was filed on behalf of the Defendant; however, the matter was set for trial. A Mediation Order was thereafter

entered by the Court on August 7, 2015, and the Parties mediated this matter on August 28, 2015, before Judge Dunn.

Immediately following the mediation, a hearing was held in the presence of Judge Dunn. The Court Minutes indicate that the Plaintiff was present along with counsel, Ms. Kimberly Williams, and that the Defendant was present with counsel, Mr. Brian Webb. Counsel placed the terms of a negotiated settlement on the record.

Unfortunately, there is no recording of the hearing which occurred on October 28, 2015, as no court reporter was present, and the audio recording which was made appears to have been muted while recording.

Following the hearing, a release and settlement agreement was prepared by Mr. Webb's office. The Plaintiff alleges that the release and settlement agreement contained terms that were not agreed to at mediation. The Defendant alleges that any agreement was to be reduced to writing and was not final until the parties agreed upon all terms of the written agreement.

On May 19, 2016, the Plaintiff filed a Motion to Enforce Settlement Agreement along with the Affidavit of Kimberly Williams. Thereafter, on May 24, 2016, the Defendant filed a Motion to Strike portions of the Affidavit of Kimberly Williams, and also filed an Opposition to the Motion to Enforce Settlement Agreement and an affidavit of Roger Worley. The Plaintiff filed a reply in Support of Motion to Enforce Settlement Agreement on May 31, 2016.

II. Standard of Review

The Idaho Supreme Court has previously explained:

The existence of a valid agreement of compromise and settlement is a complete defense to an action based upon the original claim. The agreement supercedes and extinguishes all pre-existing claims the parties intended to settle. In an action brought to enforce an agreement of compromise and settlement, made in good faith, the

court will not inquire into the merits or validity of the original claim.

Vanderford Co., Inc. v. Knudson, 150 Idaho 664, 670, 249 P.3d 857, 863 (2011) (citing *Goodman v. Lothrop*, 143 Idaho 622, 625, 151 P.3d 818, 821 (2007)). In such cases, what remains is for the Court to determine the validity and enforceability of the purported settlement agreement. A motion for the enforcement of a settlement agreement is treated as a motion for a summary judgment pursuant to I.R.C.P. 56 when no evidentiary hearing has been conducted. *See id. at 671, at 864.*

Under I.R.C.P. 56(c), the a party shall be entitled to summary judgment if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986). In determining whether an issue of material fact exists, all disputed facts are liberally construed and all reasonable inferences made in favor of the non-moving party. *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P/2d 851 (1991). If the record contains conflicting inferences upon which reasonable minds could differ, summary judgment should not be granted. *Sewell v. Neilson Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct.App.1985).

The burden of proving the absence of a material fact rests at all times upon the moving party. *G&M Farms v Funk*, supra. Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to show that a genuine issue of material fact on the challenged element of their claim does exist. *See Idaho R. Civ. P. 56(e); Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007); *Navarrete v. City of Caldwell*, 130 Idaho 849, 949 P.2d 597 (Ct.App.1997). Moreover, a party against whom a motion for summary judgment is sought may not merely rest on allegations contained in his pleadings, but must come forward and

produce evidence by way of deposition or affidavit to contradict the assertions of the moving party and establish a genuine issue of material fact. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997); *See also* I.R.C.P. 56(c). Failure to do so will result in an order granting summary judgment. Finally, when a party moves for summary judgment, the opposing party's case must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact. *G&M Farms v. Funk Irrigation Co.*, *supra*; *Callies v. O'Neal*, 147 Idaho 841, 846, 216 P.3d 130, 135 (2009). The district court is not required to search the record for evidence of an issue of material fact; it is the nonmoving party's burden to bring that evidence to the court's attention. *Vreeken v. Lockwood, Eng'g, B.V.*, 148 Idaho 89, 103-04, 218 P.3d 1150, 1164-65 (2009). Failure to do so will result in an order granting summary judgment. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997).

A "settlement agreement stands on the same footing as any other contract and is governed by the same rules and principles as are applicable to contracts generally." *Vanderford*, at 672, 865. "A contract must be complete, definite and certain in all its material terms, or contain provisions which are capable in themselves of being reduced to certainty." *id.*

Formation of a valid contract requires a meeting of the minds as evidenced by a manifestation of mutual intent to contract. This manifestation takes the form of an offer followed by an acceptance. An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. The existence and nature of the offer 'is judged by its objective manifestations, not by any uncommunicated beliefs, mental reservations, or subjective interpretations or intentions of the offeror.'

Federal Natn'l Mort.Ass'n. v. Hafer, 158 Idaho 694, 701-02, 351 P.3d 622, 629-30 (2015) (*internal citations omitted*). "[I]f the language of the contract is plain and unambiguous, the intention of the parties must be determined from the contract itself." *Rowan v. Riley*, 139 Idaho

49, 54, 72 P.3d 889, 894 (2003) (citing *Simons v. Simons*, 134 Idaho 824, 827, 11 P.3d 20, 23 (2000)). Further, oral agreements for settlement of litigation are enforceable unless the subject matter of the agreement falls within the proscription of the statute of frauds. *Suits v. First Sec. Bank of Idaho, N.A.*, 125 Idaho 27, 33, 867 P.2d 260, 266 (Ct. App. 1993). “Oral stipulations of the parties in the presence of the court are generally held to be binding, especially when acted upon or entered on the court records.” *Conley v. Whittlesey*, 126 Idaho 630, 633, 888 P.2d 804, 807 (Ct. App. 1995). “Stipulations for the settlement of litigation are regarded with favor by the courts and will be enforced unless good cause to the contrary is shown. *id. at 634, 808.*”

III. The Parties Entered Into a Valid and Enforceable Settlement Agreement

It is undisputed that the parties mediated this matter on October 28, 2015, and that following mediation that a hearing was held before Judge Dunn placing the results of the mediation on the record. *See Court Minute, October 28, 2015.* For purposes of the pending motion, testimony concerning what occurred at the mediation is inadmissible, however, what is relevant and admissible, is evidence of what occurred at the hearing of October 28, 2015. *See I.R.E. 408.*

The parties are both in agreement that the Defendant agreed to pay to the Plaintiff the sum of \$15,000.00 in settlement of the Plaintiff’s claims. It is also undisputed that the Plaintiff agreed to release all claims.

The parties dispute whether additional terms were included, or to be included, in a written settlement agreement, specifically:

- 1) Whether the Plaintiff’s wife would sign a future written settlement agreement;
- 2) Whether a future written agreement would contain a confidentiality agreement; and

- 3) Whether a future written agreement would contain a stipulation that the Plaintiff was an independent contractor.

The Affidavit submitted by Roger Worley indicates that he attended the mediation session with counsel and agreed to various terms of settlement. *Affidavit of Worley* 2-3. Mr. Worley's affidavit does not make any representations as to what occurred at the time of the hearing reflected in the Minute Entry of October 28, 2015. Further, Mr. Worley's affidavit fails to set forth with specificity what terms were agreed to. Mr. Worley's affidavit only indicates his subjective understanding concerning the mediation session, that following the mediation a written agreement would be prepared which would be signed by the parties, and that he believed it would only be final when signed. *See id.* at 4-6. Mr. Worley further asserts that it was important to him that the future written settlement agreement contain a confidentiality clause and that it also be signed by the Plaintiff's wife. He does not state that such terms were addressed before the Court at the time of the hearing on October 28, 2015, or that such terms were ever discussed with the Plaintiff. *See id.* at 4-8. Mr. Worley's affidavit makes no representations as to any terms concerning the Plaintiff as an independent contractor. Rather, Mr. Worley indicates that he did enter an agreement stating:

I never intended the terms we agreed upon at the mediation to be a final and binding settlement agreement. Instead, it was always my intent and agreement that we would have a final and binding settlement agreement once it was put in writing, with all necessary terms, and signed by myself on behalf of Musick Auction and the Plaintiff.

Affidavit of Roger Worley, ¶10.

Conversely, the affidavit submitted by Kimberly Williams indicates that the terms of the settlement were "simply that Mr. Seward would dismiss the matter and Musick Auction would pay Mr. Seward the sum of \$15,000.00." *See Affidavit of Williams* at 4. The affidavit further indicates, "After reaching this agreement, Judge Dunn had the parties convene in a courtroom so

that he could read the terms of the agreement onto the record...” and “...each party acknowledge[d] the terms of the agreement on the record.” *id. at 4-5*. Both parties agree that the terms of the agreement were to be placed in a written settlement agreement.

This is consistent with the Court Minutes which state:

The Court called the case and noted the parties present.

The Court noted the parties had reached a settlement agreement and stated the terms and conditions of the agreement for the record. In answer to the Courts, inquiry, each of the parties and their counsel concurred with the settlement agreement as set forth on the record by the Court.

The Court noted the settlement agreement entered into resolved the case and it would notify the assigned Judge of the same.

The Court directed Mr. Webb to submit necessary documents to dismiss the case, including a release.

Court Minutes October 28, 2015.

The admissible evidence contained in the record before the Court concerning the hearing on October 28, 2015, indicates that an agreement was reached, that the Defendant agreed to pay the Plaintiff \$15,000.00, that the Plaintiff agreed to dismiss all claims, and that a written release and dismissal documents would be submitted to the Court. The Defendant has failed to present any admissible factual information to dispute this evidence. The uncontroverted evidence establishes that the parties established a binding settlement agreement before the exchange of proposed written stipulations occurred. The Court placed the terms of the agreement on the record on October 28, 2015, and the parties, as well as their counsel confirmed the terms of the settlement agreement and that the case was resolved without evidence of qualification.

IV. Subsequent Discussions Did Not Invalidate the Settlement Agreement

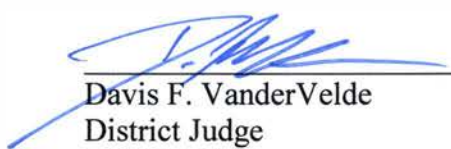
Although there was subsequent discussion concerning terms that were to be obtained in the proposed settlement agreement, the agreement of October 28, 2015, encompassed all the

essential and material terms of the settlement. At best, the discussions following entry of the oral settlement on October 28, 2015, constituted proposals by the Defendant for a modification of the October 28, 2015 contract; they did not invalidate the then-existing oral agreement. See Suits v. First Sec. Bank of Idaho, N.A., 125 Idaho 27, 33, 867 P.2d 260, 266 (Ct. App. 1993); See also *Kohring v. Robinson*, 137 Idaho 94, 44 P.3d 1149 (2002).

V. Conclusion

Viewing the information submitted to the Court in the light most favorable to Musick Auction, LLC, the evidence establishes that a contract was created that was complete, definite and certain in all its material terms. There is no issue of material fact that remains to be determined by a trier of fact and it is appropriate that the Motion for Enforcement of Settlement Agreement be granted. Therefore, the Motion for Enforcement of Settlement is GRANTED. Counsel for the Plaintiff is hereby directed to provide an appropriate Judgment indicating that this matter was settled in the amount of \$15,000.00 and that all claims of the Plaintiff are dismissed with prejudice.

Dated 5 day of July, 2016.



Davis F. VanderVelde
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 5 day of July, 2016, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for plaintiff:

Kimberly L. Williams
ROSSMAN LAW GROUP, PLLC
737 N 7th St
Boise, ID 83702

- upon counsel for defendant:

Shelly H Cozakos
Attorney at Law
PO Box 915
Boise, ID 83701

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

CHRIS YAMAMOTO,
Clerk of the Court

By: 
Deputy Clerk of the Court

E I L E D
1025 A.M. P.M.

SEP 09 2016

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

KEVIN SEWARD, an individual, Plaintiff, vs. MUSICK AUCTION, LLC, an Idaho limited liability company, Defendant.	CASE NO. CV15-4118 JUDGMENT
---	--

JUDGMENT IS ENTERED AS FOLLOWS:

Settlement is enforced in the amount of \$15, 000.00 in favor of Plaintiff, Kevin Seward, and against Defendant, Musick Auction, LLC. This matter is hereby DISMISSED WITH PREJUDICE.

Dated this 8 day of September, 2016.



Davis F. VanderVelde
District Judge

F I L E D
A.M. 4:21 P.M.

SEP 21 2016

CANYON COUNTY CLERK
M: PERRAS, DEPUTY

Eric S. Rossman, ISB #4573
erossman@rossmanlaw.com
Kimberly L. Williams, ISB #8893
kwilliams@rossmanlaw.com
ROSSMAN LAW GROUP, PLLC
737 N. 7th Street
Boise, Idaho 83702
Telephone: (208) 331-2030
Facsimile: (208) 342-2170
Attorneys for Plaintiff

ORIGINAL

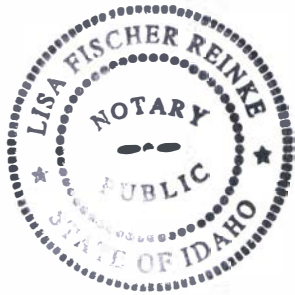
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,	)	CASE NO. CV 15-4118
)	
Plaintiff,)	
	)	MEMORANDUM OF COSTS
-vs-)	
)	
MUSICK AUCTION, LLC, an Idaho limited)	
liability company,)	
)	
Defendant.)	
)	

COMES NOW the Plaintiff, by and through his counsel of record, the law firm of Rossman Law Group, PLLC, and hereby states that the following costs have been incurred in the above-entitled case:

- A. Costs as a Matter of Right - I.R.C.P. 54(d)(1)(C)**
- Filing Fees \$ 221.00

SUBSCRIBED AND SWORN TO before me this 21st day of September, 2016.



Lisa Fischer Reinke
Notary Public for Idaho
Residing at: MERIDIAN, ID
My Commission Expires 4/16/2020

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2016 I caused a true and correct copy of the foregoing to be forwarded with all the required charges prepaid, by the method(s) indicated below to the following persons:

Shelly Cozakos
PICKENS COZAKOS, P.A.
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, ID 83701
Telephone: (208) 954-5090

Hand Delivery _____
U.S. Mail ✓
Facsimile 331-9009 _____
Overnight Mail _____
Electronic Mail _____

Kimberly L. Williams
Kimberly L. Williams

ORIGINAL

Shelly H. Cozakos, ISB No. 5374
PICKENS COZAKOS, P.A.
The Sycamore Building
398 S. 9th Street, Suite 240
P.O. Box 915
Boise, Idaho 83701
Telephone: 208.954.5090
Facsimile: 208.954.5099
shelly@pickenslawboise.com

FILED
A.M. 4:14 P.M.

OCT 04 2016

CANYON COUNTY CLERK
K RUIZ, DEPUTY

Attorneys for Defendant/ Appellant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,

Plaintiff/Respondent,

vs.

MUSICK AUCTION, LLC, an Idaho limited
liability company,

Defendant/Appellant.

Case No. CV 15-4118

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, KEVIN SEWARD, AND HIS ATTORNEY,
ERIC S. ROSSMAN, ERICA S. PHILLIPS AND KIMBERLY L. WILLIAMS,
ROSSMAN LAW GROUP, PLLC, 737 N. 7TH STREET, BOISE IDAHO 83702, AND
THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant Musick Auction, LLC, by and through its counsel of record, appeal against the above-named Respondent to the Idaho Supreme Court from the Judgment entered September 9, 2016, in the above entitled action (the Honorable Davis F. VanderVelde presiding).

2. Appellant has a right to appeal to the Idaho Supreme Court on the grounds that the judgment described in paragraph 1 is an appealable judgment under and pursuant to Idaho Appellate Rules 11(a)(1) and 17(e), as well as Idaho Code § 63-3049(c).

3. Following is a preliminary statement of the issues on appeal that Appellant intends to assert. This list of issues shall not prevent the Appellant from asserting other issues on appeal:

(A) Did the District Court err in determining that the parties had reached an enforceable agreement during mediation?

4. An order has not been entered to seal a portion of the record.

5. A reporter's transcript is **not** requested at this time.

6. Appellant requests the following documents be included in the clerk's record, and includes a notation of those documents that have been filed as confidential:

(A)	05/08/2015	Complaint and Demand for Jury Trial
(B)	05/19/2016	Plaintiff's Motion to Enforce Settlement Agreement
(C)	05/19/2016	Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement
(D)	05/19/2016	Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement and for Attorney Fees
(E)	05/24/2016	Defendant's Motion to Strike Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement and Motion for Attorney Fees
(F)	05/24/2016	Affidavit of Shelly H. Cozakos in Support of Defendant's Motion to Strike Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement and Motion for Attorney Fees
(G)	05/26/2016	Plaintiff's Opposition to Defendant's Motion for Attorney Fees and Non-Opposition to

		Defendant's Motion to Strike Affidavit of Kimberly L. Williams
(H)	05/26/2016	Affidavit of Kimberly L. Williams in Opposition to Defendant's Motion for Attorney Fees and Non-Opposition to Defendant's Motion to Strike Affidavit of Kimberly L. Williams
(I)	05/27/2016	Defendant's Memorandum in Opposition to Plaintiff's Motion to Enforce Settlement Agreement
(J)	05/27/2016	Affidavit of Roger Worley in Support of Defendant's Opposition to Plaintiff's Motion to Enforce Settlement Agreement
(K)	05/31/2016	Reply Affidavit of Kimberly L. Williams in Support of Plaintiff's Motion to Enforce Settlement Agreement
(L)	05/31/2016	Reply Memorandum in Support of Plaintiff's Motion to Enforce Settlement Agreement
(M)	07/05/2016	Order Granting Motion to Strike and Order Denying Request for Fees
(N)	07/05/2016	Order Granting Motion to Enforce Settlement Agreement
(O)	09/09/2016	Judgment

7. Appellants request the following documents, charts, or pictures offered or admitted as trial exhibits be copied and sent to the Supreme Court, and includes a notation of those exhibits that have been marked as confidential: **None requested.**

8. The undersigned hereby certifies:

(A) That a copy of this Notice of Appeal has been served on each reporter who prepared a transcript as named below at the address set out below:

None—no transcript has been requested at this time.

(B) That the reporters have been paid the fee for preparation of the reporter's transcript—**not applicable**;

(C) That the estimated fee for preparation of the clerk's record has been paid;

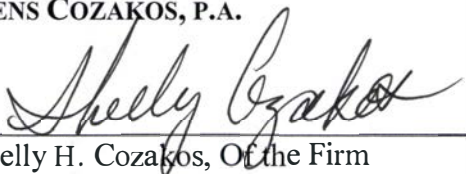
(D) That the appellate filing fee has been paid; and

(E) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED: October 4, 2016

PICKENS COZAKOS, P.A.

By: _____


Shelly H. Cozakos, Of the Firm
Attorneys for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2016, a true and correct copy of the within and foregoing document was served upon the following in the manner listed below:

Eric S. Rossman
Erica S. Phillips
Kimberly L. Williams
Rossman Law Group, PLLC
737 N. 7th St.
Boise, ID 83702

U.S. Mail
 Hand Delivery
 Overnight Mail
 Facsimile – 342.2170



Shelly H. Cozacos

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)
)
Plaintiff/Respondent,)
)
-vs-)
)
MUSICK AUCTION, LLC, an Idaho limited)
liability company,)
)
Defendant/Respondent.)

Case No. CV-15-04118*C
CERTIFICATE OF EXHIBITS

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Canyon, do hereby certify that the following
are being sent as exhibits as requested in the Notice of Appeal:

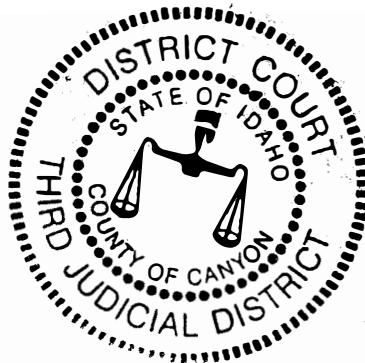
NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
the said Court at Caldwell, Idaho this 1st day of November, 2016 .

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *K. Walden* Deputy

CERTIFICATE OF EXHIBITS



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)	
)	
Plaintiff/Respondent,)	
	)	Case No. CV-15-04118*C
-vs-)	
)	
MUSICK AUCTION, LLC, an Idaho limited)	
liability company,	)	CERTIFICATE OF CLERK
)	
Defendant/Appellant.)	
)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled case was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 1st day of November, 2016.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *K. Williams* Deputy

CERTIFICATE OF CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

KEVIN SEWARD, an individual,)	
)	
Plaintiff/Respondent,)	
	)	Supreme Court No. 44543-2016
-vs-)	
)	
MUSICK AUCTION, LLC. an Idaho limited)	
liability company,	)	CERTIFICATE OF SERVICE
)	
Defendant/Appellant.)	
)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record to the attorney of record to each party as follows:

Shelly H. Cozakos, 398 S. 9th Street, Suite 240,
PO Box 240, Boise, Idaho 83701

Attorneys for Appellant

Eric S. Rossman, Rossman lsw Group, PLLC,
737 N. 7th St., Boise, Idaho 83702

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 1st day of November, 2016.



CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By: *K. Waldemar* Deputy

CERTIFICATE OF SERVICE