

1975

GEORGE ZEESE and EMILY ZEESE, his wife V.
ESTATE OF MAX SIEGEL; DAN SIEGEL, EVA
SIEGEL, and WESLEY D. WEBB, a partnership d-
b-a Pattern's Travelers; TRAILER MART, INC., a
Nevada corporation d-b-a Dan's Campers N'
Trailers; and HUSKY OIL COMPANY OF
DELAWARE, a Delaware corporation : Brief of
Appellant

Utah Supreme Court

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DEC 6 1975

In the Supreme Court of the State of Utah

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

GEORGE ZEESE and EMILY
ZEESE, his wife, *Plaintiffs-Appellants,*

v.

ESTATE OF MAX SIEGEL; DAN
SIEGEL, EVA SIEGEL, and
WESLEY D. WEBB, a partnership
d-b-a Patton's Travelers; TRAILER
MART, INC., a Nevada corporation
d-b-a Dan's Campers N' Trailers; and
HUSKY OIL COMPANY OF
DELAWARE, a Delaware corporation

Defendants-Respondents.

Case No.
13870

APPELLANTS' BRIEF IN SUPPORT OF PETITION FOR REHEARING

Appeal from the Judgment of the
Third District Court of Salt Lake County
The Honorable James S. Sawaya, Judge

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FILED

APR 24 1975

IN THE SUPREME COURT OF THE
STATE OF UTAH

GEORGE ZEESE and EMILY ZEESE,
his wife,

Plaintiffs-Appellants,

v.

ESTATE OF MAX SIEGEL, DAN SIEGEL,
EVA SIEGEL, and WESLEY D. WEBB,
a partnership d/b/a Patton's
Travelers; TRAILER MART, INC.,
a Nevada corporation d/b/a Dan's
Campers N' Trailers; and HUSKY
OIL COMPANY OF DELAWARE, a Del-
aware corporation,

Defendants-Respondents

PETITION FOR REHEARING

Case No. 13870

FILED

APR 24 1975

Clerk, Supreme Court, Utah

Pursuant to Rule 76(e) of the Utah Rules of Civil Procedure,
Appellants, George and Emily Zeese, petition the Supreme Court of
the State of Utah for a rehearing on the following points in the
above-entitled matter:

I. The Appellate Court erred in applying the principles of
ratification to the lease dispute between the parties, as outlined
in the attached Brief in Support of Appellants' Petition for Re-
hearing.

II. If the Appellate Court did not err in applying the principles
of ratification to the lease dispute, the conclusions of law of the
Lower Court must be modified to conform with the ratified offer, as
outlined in the attached Brief in Support of Appellants' Petition
for Rehearing.

DATED this 24th day of April, 1975

STONE & THEODORE

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George and Emily Zeese

CERTIFICATE OF DELIVERY

Received a copy of the foregoing Petition for Rehearing,
and two copies of Appellants' Brief in Support of their Petition
for Rehearing, this 24th day of April, 1975.

Richard L. Blanck
Attorney for Respondents Estate of
Max Siegel, et al

By Dublin Stork

Arthur H. Nielsen
Attorney for Respondent Husky
Oil Company of Delaware

By Arthur H. Nielsen
by Bruce Findlay

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE ZEESE and EMILY
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Plaintiffs-Appellants,

v.

ESTATE OF MAX SIEGEL; DAN
SIEGEL, EVA SIEGEL, and
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Defendants-Respondents.

Case No.
13870

APPELLANTS' BRIEF IN SUPPORT OF PETITION FOR REHEARING

POINT I

THE APPELLATE COURT ERRED IN
CONCLUDING THAT TRAILER MART, INC.
RATIFIED THE OFFER OF EVA SIEGEL,
EXECUTRIX, TO EXTEND THE LEASE IN
QUESTION ON BEHALF OF THE ESTATE
OF MAX SIEGEL.

Referring to the same authorities cited by the Appellate Court on page 4 of its opinion concluding that Trailer Mart, Inc., ratified the offer of Eva Siegel, Executrix of the Max Siegel Estate, the Appellate Court overlooked those authorities cited¹ which require unauthorized agents to disclose the principal on whose behalf they are purportedly acting in order for *that principal to subsequently ratify their unauthorized acts*. Therefore, when Eva Siegel sent the following letter drafted by her attorney on behalf of the Estate of Max Siegel:

Eva Siegel
4155 Mount Olympus Way
Salt Lake City, Utah
June 16, 1969

Mr. George Zeese
734 South 13th East
Salt Lake City, Utah
Dear Mr. Zeese:

As the Executrix named in the Last Will and Testament of my husband, Max Siegel, who died on June 3, 1969, I am, on behalf of the estate of Max Siegel, deceased, hereby advising and notifying you of the exercise of the option to renew the lease originally made by and between you and Emily Zeese, as Lessors, and Saturn Oil Company, as Lessees, which lease was on May 1, 1969, assigned by Husky Oil Company to Max Siegel.

¹ 3 Am.Jur.2d, Agency §171, p. 555; and also discussed in Re-statement of Law Second, Agency, Vol. 1, §82, p. 210.

The exercise of this option by the estate of Max Siegel will, of course, result in the extension of this original lease for an additional term of 10 years commencing December 18, 1969, and ending December 17, 1979, unless the option to renew said lease for an additional ten-year term is exercised at such time.

Very truly yours,

/s/ Eva Siegel

Eva Siegel, Executrix
Named in the Last Will
and Testament of
Max Siegel, Deceased

ES;DSG:nd

Trailer Mart, Inc. could not ratify an offer which was not represented to be made on its behalf.

Nor could an acceptance of Trailer Mart, Inc.'s offer via conduct occur without written acceptance of Emily Zeese pursuant to Sections 25-5-1 and 3, U.C.A., 1953, of the Statute of Frauds. Nowhere in the record is there any evidence that Emily Zeese signed a written document accepting Trailer Mart, Inc.'s belated offer, or authorizing her husband George Zeese to accept an offer from Trailer Mart, Inc. to extend the lease.

It is therefore clear that when Trailer Mart, Inc., failed to exercise the option to extend the lease before

October 17, 1969, the lease lapsed and could not be resurrected without the written assent of Emily Zeese as required under the Statute of Frauds, *supra*. Since Emily Zeese did not accept Trailer Mart, Inc.'s offer, the lease arrangement was void *ab initio*.

POINT II

THE APPELLATE COURT ERRED IN FAILING TO MODIFY THE CONCLUSIONS OF THE LOWER COURT THAT TRAILER MART, INC. HAD TWO MORE OPTIONS TO EXTEND THE LEASE IN QUESTION, RATHER THAN ONE MORE OPTION TO EXTEND THE LEASE AS SPECIFIED IN THE RATIFIED OFFER SENT BY EVA SIEGEL AS EXECUTRIX OF THE ESTATE OF MAX SIEGEL.

If the Appellate Court's opinion is correct that the principles of ratification apply to the exercise of the lease option provisions, the Lower Court's conclusions of law must be modified in conformance with the opinion. Again referring to the same authorities cited by the Appellate Court on page four of its opinion, if Trailer Mart, Inc., ratified the above offer sent by Eva Siegel as Executrix, it is bound by the explicit terms of that offer.² Since Eva Siegel offered to extend the lease for an additional term of 10 years commencing

² 3 Am.Jur.2d, Agency §172, p. 556.

December 18, 1969, and only reserved one additional ten-year term as stated in her letter:

“The exercise of this option by the estate of Max Siegel will, of course, result in the extension of this original lease for an additional term of 10 years commencing December 18, 1969, and ending December 17, 1979, unless the option to renew said lease for an additional ten-year term is exercised at such time.”

when Trailer Mart, Inc., ratified this offer, it should only have one ten-year option to extend the lease rather than two ten-year options to extend the lease as the Lower Court found. Although the Appellate Court's failure to modify the Lower Court's conclusions of law on this point was probably an oversight, the repercussions to Emily Zeese are severe. If not altered to conform with Eva Siegel's offer, the Lower Court's conclusions of law reduce the present value of Emily Zeese's interest in the property \$21,666.00 (Assuming an appraised value of \$150,000.00 and an annuity of \$2,400.00 a year for 14 years at 10% interest versus 24 years at 10% interest).

Therefore, where this Court has adopted the position that the parties, by their action and performance, have demonstrated their meaning and intent, the contract should be so enforced by the Court³ and the con-

³ **Bullfrog Marina, Inc. v. Lentz**, 28 Utah 2d 261, 268, 501 P.2d 266 (1972); **Bullough v. Sims**, 16 Utah 2d 304, 308, 400 P.2d 20 (1965); **Vernon v. Lake Motors**, 26 Utah 2d 269, 275, 488 P.2d 302 (1971); **Hardinge Co. v. Eimco Corp.**, 1 Utah 2d 320, 323, 266 P.2d 494 (1954).

clusions of law so modified.

CONCLUSION

Appellants, George and Emily Zeese, submit that the Appellate Court erred in applying the principles of ratification to the exercise of the lease option provisions, and therefore the judgment should be reversed or the case remanded for a new trial on this issue. Alternatively, appellants submit that if the Appellate Court did not err, the conclusions of law of the Lower Court must be modified in accordance with the Appellate Court's opinion limiting Trailer Mart, Inc., to one ten-year option to extend the lease rather than two ten-year options to extend the lease.

Respectfully submitted,

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