

1986

# Milton A. Oman v. Robert S. Warburton Utah Livestock Production Credit Association, and John Doe I : Brief of Respondent

Utah Court of Appeals

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Perkins, Schowobe & McLachlan; Mark C. McLachlan; Attorney for Plaintiff.

Barrie A. Vernon; Attorney for Defendant.

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## Recommended Citation

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BRIEF

Priority No. 13 B

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

CKET NO. 860368-CA

MILTON A. OMAN,

Plaintiff/Appellant,

vs.

ROBERT S. Warburton  
UTAH LIVESTOCK PRODUCTION  
CREDIT ASSOCIATION,  
and JOHN DOE I,

Defendants/Respondent.

Case No. 86-0199

860368-CA

BRIEF OF RESPONDENT

Appeal from a Judgment of No Cause of Action of the  
Seventh Judicial District Court, Emery County  
Honorable Boyd Bunnell, District Judge

Perkins, Schwobe & McLachlan  
MARK C. McLACHLAN  
Attorney for  
Plaintiff/Appellant  
Milton A. Oman  
343 South 400 East  
Salt Lake City, Utah 84111  
Telephone (801) 521-0177

BARRIE A. VERNON  
Attorney for  
Defendant/Respondent  
Robert S. Warburton  
P.O. Box 531  
Tooele, Utah 84074  
Telephone (801) 882-5536

FILED

JAN 23 1987

Clerk, Supreme Court, Utah

IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

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MILTON A. OMAN,	:	
Plaintiff/Appellant,	:	
vs.	:	Case No. 86-0199
ROBERT S. WARBURTON	:	
UTAH LIVESTOCK PRODUCTION	:	
CREDIT ASSOCIATION,	:	
and JOHN DOE I,	:	
Defendants/Respondent.	:	

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BRIEF OF RESPONDENT

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Appeal from a Judgment of No Cause of Action of the  
Seventh Judicial District Court, Emery County  
Honorable Boyd Bunnell, District Judge

---

Perkins, Schwobe & McLachlan  
MARK C. McLACHLAN  
Attorney for  
Plaintiff/Appellant  
Milton A. Oman  
343 South 400 East  
Salt Lake City, Utah 84111  
Telephone (801) 521-0177

BARRIE A. VERNON  
Attorney for  
Defendant/Respondent  
Robert S. Warburton  
PO Box 531  
Tooele, Utah 84074  
Telephone (801) 882-5536

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

---

MILTON A. OMAN,	:	
PlaintiffAppellant,	:	
vs.	:	BRIEF OF RESPONDENT
ROBERT S. Warburton	:	Case No. 86-0199
UTAH LIVESTOCK PRODUCTION	:	
CREDIT ASSOCIATION,	:	Priority No. 13 B
and JOHN DOE I,	:	
Defendants/Respondent.	:	

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STATEMENT OF ISSUES PRESENTED ON APPEAL

Pursuant to Rule 24 (b), U.R.A.P., Respondent is satisfied with the Statement of Issues contained in Appellant's Brief.

STATEMENT OF FACTS

Pursuant to Rule 24 (b), U.R.A.P., Respondent is satisfied with the Statement of Facts contained in Appellant's Brief.

## SUMMARY OF ARGUMENT

### POINT I

The Supreme Court can only overturn the judgment of a trial court when the evidence clearly preponderates to the contrary or the trial court has abused its discretion or misapplied principles of law.

### POINT II

Plaintiff failed to prove evidence of damages with sufficient certainty to allow the trial court to award the same.

### POINT III

Plaintiff received sufficient consideration under the Agreement to permit the trial court to find no damages.

## ARGUMENT

### POINT I

THE SUPREME COURT CAN ONLY OVERTURN THE JUDGMENT OF A TRIAL COURT WHEN THE EVIDENCE CLEARLY PREPONDERATES TO THE CONTRARY OR THE TRIAL COURT HAS ABUSED ITS DISCRETION OR MISAPPLIED PRINCIPLES OF LAW.

After a two day trial without a jury in which the plaintiff and defendant Robert Warburton testified at length, Judge Lloyd Bunnell ruled that although defendant Warburton breached an agreement with the plaintiff, the plaintiff had failed to prove evidence of damages as a result of the breach.

The agreement between the parties basically provided that plaintiff would obtain 200 head of cattle and defendant would operate plaintiff's ranch in Emery County.

In March, 1983, defendant Warburton indicated that he could no longer continue to operate the ranch under the agreement and he sold the cattle with the proceeds going to the plaintiff.

Plaintiff asserts that the trial court erred in finding that he suffered no damages as a result of the breach.

This court, however, of necessity, has established standards for reviewing matters from a trial court. Judge Bunnell had the advantage of hearing the testimony first-hand, observing the demeanor of the witnesses and questioning the parties on issues that were raised by the examination of counsel.

On appeal, we must not, and cannot lightly reverse his well-founded findings.

"In reviewing matters in equity, this Court will reverse the trial court only when the evidence preponderates against the findings below. Although we may review



that evidence, we are particularly mindful of the advantaged position of the trial court to hear, weigh and evaluate the testimony of the parties ... where the evidence may be in conflict this Court will not upset the findings below unless the evidence so clearly preponderates against them that this Court is convinced that a manifest injustice has been done. J & M Construction, Inc. c. Southam, 38 Utah Adv. Rep. 7 (1986). See also, Gill v. Gill, 33 Utah Adv. Rep. 3 (1986).

Stated another way,

"This Court is obligated to review the evidence and all inferences that may be drawn therefrom in a light most supportive of the findings of the trier of fact." Tebbs, Smith and Associates v. Brooks, 41 Utah Adv. Rep. 10 (1986).

The only evidence of damages presented by plaintiff was \$17,850.00 in forage "consumed and destroyed by Mr. Warburton's cattle." This is contrary to the evidence that the cattle belonged to the plaintiff, not the defendant, and that the Agreement required defendant to graze the cattle on plaintiff's land.

## POINT II

PLAINTIFF FAILED TO PROVE EVIDENCE OF DAMAGES WITH SUFFICIENT CERTAINTY TO ALLOW THE TRIAL COURT TO AWARD THE SAME.

Even assuming for sake of argument that plaintiff identified and testified as to damages which he believed he suffered, they were so speculative and not supported by competent evidence that the court could not either adopt them or find that they resulted from the defendant's breach.

The uncertainty of the damages and the absence of testimony or evidence based on sufficient foundation dictated that the trial judge had no choice but rule as he did.

"If we can predict circumstances with reasonable certainty, that is sufficient foundation upon which to base our plan and actions. The traditionally accepted test of the law is that a fact may be found if reasonable minds may believe it by a preponderance, or greater weight of the evidence. This means that if it can reasonably be believed that it is more probable than not, or that it will with reasonable certainty occur, a finding of such fact is justified. This is the test to apply in determining whether the evidence will support an award of future damages."  
Gould v. Mountain States Telephone and Telegraph Company, 309 P.2d 802 (Utah, 1957)

The \$17,850.00 to which plaintiff testified was variously characterized as "forage consumed and destroyed" by defendant's cattle and the amount of the winter lease for a future period.

The trial judge correctly held that there was no evidence of loss after the breach by defendant in March, 1983.

Even if plaintiff had proven a sum certain in damages, it was not traceable to defendant's breach, Highland Construction Company v. Union Pacific Railroad Company, 683 P.2d 1042 (Utah, 1984).

### POINT III

PLAINTIFF RECEIVED SUFFICIENT CONSIDERATION UNDER THE AGREEMENT TO PERMIT THE TRIAL COURT TO FIND NO DAMAGES.

Plaintiff argues that he did not receive what he contracted for and that, therefore, defendant was unjustly enriched. The Cattle Grazing Agreement, however, reveals that defendant was to operate a cattle ranch, grazing cattle and then sell the cattle.

Because the cattle were sold early and defendant failed to operate the ranch after March, 1983, plaintiff assumes that he lost the right to run additional cattle and that defendant was unjustly enriched based on the forage that his (plaintiff's) cattle consumed. There was no benefit to defendant from grazing plaintiff's cattle.

Plaintiff relies on the case of J & M Construction, Inc.,  
. Southam, supra, for the proposition that defendants should not  
be unjustly enriched by accepting the benefit of a contract. This  
case may be distinguished, however, because it involved a  
defendant who received something of value, i.e., real property  
improvements, upon which a price can be determined.

Plaintiff has not pointed to anything but the forage  
which his cattle consumed as anything close to unjust enrichment.

The trial court correctly ruled that the plaintiff  
received everything he contracted for as did the defendant. This  
is a far cry from the tangible real property improvement which  
defendant received in the J & M Construction case.

Defendant received nothing under the contract except the  
experience of operating plaintiff's ranch and running plaintiff's  
cattle and living in plaintiff's mobile home for six months.

### CONCLUSION

Defendant's breach should have been determined to be excusable because of plaintiff's actions. A breach, however, does not necessarily mean that the other party has suffered damages. Plaintiff in this case failed to show damages as a result of the breach and was correctly awarded no damages.

Defendant received no unjust enrichment because he received what he contracted for as did the plaintiff.

Defendant respectfully prays that the findings and judgment of the trial court be affirmed.

DATED this 19th day of December, 1986.

Barrie A. Vernon

BARRIE A. VERNON  
Attorney for Defendant  
Robert S. Warburton

MAILING CERTIFICATE

I certify that I have mailed four true and correct copies of the foregoing Brief of Respondant to MARK C. McLACHLAN, 343 South 400 East, Salt Lake City, Utah 84111 this 19th day of December, 1986.

Darin A. Jensen

ADDENDUM

- A. CATTLE GRAZING AGREEMENT
- B. MEMORANDUM DECISION
- C. FINDING OF FACT AND CONCLUSIONS OF LAW
- D. JUDGMENT

# CATTLE GRAZING ARRANGEMENT

MILTON A. OMAN and ROBERT WARBURTON, hereinafter referred to as OMAN and WARBURTON respectively, hereby enter into a cattle grazing and ranching operation upon and within the San Rafael Ranches operated by OMAN located along the San Rafael River in eastern Emery County.

OMAN shall lease from WARBURTON not to exceed two hundred (200) head of cattle of any age and size in a condition of good health. WARBURTON may buy these cattle at any place and at any time elected by him, and he shall be permitted to continue to operate them from the time they are purchased until December 31, 1984.

For the reason that WARBURTON is not in a financial condition to buy or to otherwise acquire these cattle, OMAN will advance him the funds to buy the same or will sign the necessary notes and other documents with lending institutions for the purpose of having the necessary monies for the purchase of the said cattle advanced to WARBURTON.

In order to arrange for and to receive the funds for the acquisition of the said cattle, WARBURTON will notify OMAN ten (10) days in advance when and where the funds are to be made available to him for his use. The cattle to be purchased shall not be an exotic breed costing substantially more than running age average quality grade cattle. OMAN may determine whether to use his own funds in the acquisition of the cattle for WARBURTON or to underwrite WARBURTON in procuring funds from regularly established lending institutions engaged in the making of the type of loans involved.

OMAN shall take a mortgage upon the cattle purchased in behalf of WARBURTON whether he buys them with his own funds or whether they are purchased by funds from banking institutions.

Prior to December 31, 1984, WARBURTON may sell such portion saleable cattle as are in the herd which has prior to that time been acquired for him under the terms hereof, but he shall sell those only upon the prior consent and permission of OMAN.



The said Warburton cattle shall be operated by him within the San Rafael Ranch operated by OMAN, and this operation shall be done under the direction and control of OMAN at all times. The management of the said Warburton cattle shall be at his exclusive and sole cost and expense except that OMAN agrees to furnish to the said cattle their forage requirements which are produced upon his lands. These forage requirements shall be without cost to Warburton. In the event these cattle require supplemental feeding during the said period of time prior to December 31, 1984, then such supplemental feed shall be acquired and fed to the cattle at the sole cost and expense of Warburton; and this feed shall be placed upon the range at such places and in such quantities as OMAN directs.

During the said two (2) year period OMAN reserves the right unto himself to place into the same range with the Warburton cattle not to exceed two hundred (200) cattle of his own, and it shall be Warburton's responsibility to herd and care for these cattle so far as moving them from place to place upon the range prior to December 31, 1984, but Warburton shall have no obligation to furnish supplemental feed to the said cattle.

At the end of 1984 Warburton shall have the right to sell all of his said cattle at such prices as he elects providing they sell for more than the obligation then due and owing upon said cattle. If they are selling for substantially less than the amount owed upon said cattle, then OMAN shall have the right to buy them as his own livestock.

Warburton shall keep OMAN advised in advance by as long a period as is known the date and the places from which it is intended to ship any cattle from the said San Rafael Ranches.

It is understood that the Bureau of Land Management owns and controls the grazing use of a very great percentage of the lands located within the OMAN San Rafael Ranches, and all things done by way of grazing the cattle at different places and times and under different conditions will need to be in accord with their regulations or instructions; and it shall be for Warburton to clear such matters with them at all times.

In view of the fact that much of the cattle grazing in the area involved will be upon Bureau of Land Management lands, it will be necessary that a license or permit be secured periodically from that agency for the operation of the said cattle; and all licenses and permits shall be issued in the name of San Rafael Ranches, and OMAN, alone, shall have authority to approve or to procure any such license.

LIVING QUARTERS. The parties hereto have available to them two (2) large trailer houses. The said house located furthest to the east at the Ranch Headquarters shall be reserved and made available to Warburton for his exclusive use and benefit and for that of his family. He shall be responsible for the payment of any changes he makes in the trailer house assigned for his use; and he may, at his own expense, acquire for his own use such items as will furnish electric power or other lights for his use.

Warburton shall buy and arrange for and pay for all propane and other fuel used by him, including the gasoline for his trucks and cars.

OMAN reserves the other trailer which is located in the said Ranch Headquarter's yard located furthest to the west for his own exclusive use, and no other person shall make any use of said trailer without his consent or permission.

There are irrigated fields located immediately to the south and to the southeast of the Ranch Headquarters and to the west of the creek toward the head of the ditch which furnishes the irrigation waters to all of these ranch lands. OMAN shall be responsible for all of the taxes to said lands and waters and to all items used upon the ranch except the cattle owned by Warburton and the machinery and equipment which Warburton may acquire and use.

The said farm lands or irrigated lands are required to be continually irrigated during the irrigation of each season from at March 10, to October 15. It shall be the complete and absolute and full responsibility of Warburton to irrigate these lands in the proper and husbandlike manner during said term, all to be done at his sole cost and expense. OMAN already has upon the ranch a few head of milk cows which he intends to leave there, and he elects at this time to reserve for their use one of the fields south of

the house or Ranch Headquarters. Warburton shall have the full right to milk and use the milk products from these cattle, and he shall also have the right to use the eggs from the chickens which are upon the ranch at this time and which are owned by OMAN. It shall be the responsibility of OMAN, at his sole cost and expense, to furnish the grain and other feed which is supplementally fed to these milk cows and chickens.

All other fields into which crops are planted and which fields are irrigated shall be utilized for or by the OMAN and Warburton cattle collectively, if OMAN acquires any cattle, which he may not do. Only cattle covered by this Agreement shall be permitted to graze in these fields and, in the event crops are harvested from these fields, a division of them shall be made with one-half (1/2) to each of the parties hereto at the time of the harvest completion. OMAN possibly contemplates placing birds of a meat-type upon the ranches, and it is possible that he may place mammals of game kind and quality also upon them for this purpose. All of this shall be done in his own discretion and at his own sole cost and expense. Warburton shall cooperate to deny any hunting privileges to any person or persons whomsoever who come upon the property and begin engaging in such activity and shall take such steps as to order them from the properties forthwith unless they have come with permission of OMAN.

OMAN also reserves unto himself and for his sole use and benefit all other ranges located in the San Rafael Ranches in the San Rafael Desert located in Emery County and in Wayne County which has a capacity for very substantially greater numbers of cattle than it is intended by this Agreement to be operated by Warburton and OMAN. OMAN shall lease cattle from third parties for the use of such other range areas, or he shall allow them to be used only by game or he shall close them to any use of any kind whatsoever all in his sole discretion.

The Ranch Headquarters and the properties located to the north and to the south and east thereof are located behind a gate which OMAN has previously constructed for the purpose of keeping vandals and unwanted persons from coming into these properties.

This gate shall be kept locked by WARBURTON and by OMAN at all times whenever there is any likelihood of trespassers endeavoring to come into the property. This gate may be left open for a day or two whenever it seems quite certain that there is no danger of travel by vandals. It is intended by the parties hereto that this ranch shall not be left unattended at any time.

During the term of this Agreement and following the termination thereof at the end of the year 1984 it is entirely possible and is contemplated by the parties that they may enter into some different arrangement for the operation of substantially greater numbers of cattle or of game or of both such species of life, but during the somewhat more than two (2) year period of this term it shall be kept intact.

PAYMENT BY OMAN TO WARBURTON. During the term hereof and beginning September 1, 1982, OMAN shall pay to WARBURTON as living expenses until his cattle are producing enough income for him to earn a going wage Four Hundred Eighty Dollars (\$480.00) per month which shall continue as OMAN obligation until but not beyond December 31, 1984.

Whether the same is correctly spelled out herein or not or at all, it is intended by the parties that the interest and other expenses involved in buying the cattle and in winding up the obligation created by the placing of a mortgage upon said cattle and the release thereof shall be at the sole cost and expense of WARBURTON.

DATED this 20 day of Sept, 1982.

Milton A. Oman  
MILTON A. OMAN

Robert Warburton  
ROBERT WARBURTON

FEB 26 1986

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR EMERY COUNTY,  
STATE OF UTAH

BRUCE C. FUNK.

By CU De

MILTON A. OMAN,	)	MEMORANDUM DECISION
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ROBERT S. Warburton, UTAH	)	
LIVESTOCK PRODUCTION CREDIT	)	Civil No. 4356
ASSOCIATION, and JOHN DOE I,	)	
	)	
Defendants.	)	
	)	

At the conclusion of the trial of this matter, the Court ruled on all matters pertinent to the case except for the plaintiff's First, Third and Fourth Causes of Action, and took those matters under advisement and rules on them as hereinafter stated.

The Court finds that the defendant, Warburton, breached the Cattle Grazing Agreement with the plaintiff by refusing to continue under its terms after March 1983, and further, by selling the cattle herd at that time which in effect destroyed his ability to perform under the Agreement.

The Court further finds that the plaintiff has failed to establish by a preponderance of the evidence any damage as a result of the breach. All the evidence presented by the plaintiff as to his damage covered the period of time prior to the sale of the cattle by the defendant, Warburton. None of the evidence established any resulting loss from the breach itself.

Recorded in Judgment Record  
1 at Page 668  
BRUCE C. FUNK, Clerk

Under the Agreement, Warburton was entitled to use the range and forage for his cattle which he did up until the time that the herd was sold. In return, the defendant, Warburton, was to look after the ranch and supervise any cattle of the plaintiff that may be on the ranch and the defendant performed this obligation up until the time that he sold the herd and left the area.

The plaintiff received everything he contracted for under the Agreement until such time as the defendant sold the herd and left the ranch. Plaintiff has presented no evidence of any loss occurring to him after that date and, therefore, the Court concludes that the plaintiff has failed to prove any damage as a result of the breach of the Agreement by the defendant, Warburton, and, therefore, grants a judgment of no cause of action on plaintiff's first cause against defendant Warburton.

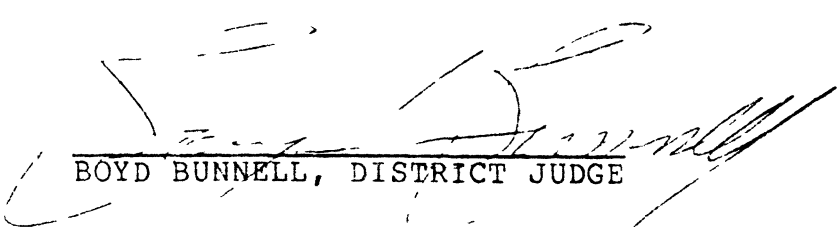
Based upon the same findings, that the plaintiff received all that he was entitled to during the period that the defendant was on plaintiff's ranch, and the fact that there is no evidence that the defendant was unjustly enriched over and above what he was entitled to receive under the Agreement for the period of time that he was there and for the period of time that he performed under the contract, the Court further finds that the plaintiff is entitled to no cause of action on the third claim for relief for unjust enrichment.

As to the Fourth Cause of Action, the plaintiff failed to present evidence of damage to the mobile home. The defendant did install a woodburning stove in the mobile home and did cut a hole in the roof for the purpose of installing the exhaust system. However, the plaintiff presented no evidence, other than speculative estimates, as to how much damage resulted from such action. To the contrary, the plaintiff testified that he used and is still using the flu pipe and the hole installed by the defendant, to his own benefit. If the Court is to reach any conclusion at all relative to this matter, the Court would have to conclude that the mobile home has been benefited by such action rather than being damaged.

The Attorney for the defendant, Warburton, is instructed to prepare Findings of Fact and Conclusions of Law and a Decree in accordance with this decision and the previously announced decision of the Court on all causes of action against the defendant, Warburton.

The Attorney for Utah Livestock Production Credit Association is directed to prepare Findings of Fact, Conclusions of Law and a Decree relative to the cause of action against that defendant and submit them for the Court's signature.

DATED this 25<sup>th</sup> day of February, 1986.

  
BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I mailed true and correct copies of the foregoing MEMORANDUM DECISION by depositing the same in the United States Mail, postage prepaid, to the following:

Mark C. McLachlan  
Attorney at Law  
343 South 400 East  
Salt Lake City, Utah 84111

James R. Brown  
JARDINE, LINEBAUGH, BROWN & DUNN  
Attorneys at Law  
370 East South Temple  
Salt Lake City, Utah 84111

Barrie A. Vernon  
Attorney at Law  
Post Office Box 8000  
Salt Lake City, Utah 84108

Dated this 25<sup>th</sup> day of February, 1986.

  
Mavis Wilson, Secretary



MAR 17 1986

BARRIE A. VERNON, USB#3329  
Attorney for Defendant  
Robert S. Warburton  
P.O. Box 8000  
Salt Lake City, Utah 84108  
Telephone: 524-3682

By BRUCE C. FUNK Clerk  
CJ Deputy

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
EMERY COUNTY, STATE OF UTAH

---

MILTON A. OMAN,	)	
Plaintiff,	)	FINDINGS OF FACT AND CONCLUSIONS
	)	OF LAW
vs.	)	
	)	Civil No. 4356
ROBERT S. Warburton, UTAH	)	
LIVESTOCK PRODUCTION CREDIT	)	Judge Boyd Bunnell
ASSOCIATION AND JOHN DOE I,	)	
Defendants.	)	

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This matter having come on for trial on the 7th and the 19th days of February, 1986, before the Honorable Boyd Bunnell sitting without a jury and the plaintiff being present and represented by his counsel Mark C. McLachlan and the defendant Robert S. Warburton being present and represented by his counsel Barrie A. Vernon and defendant Utah Livestock Production Credit Association being present and represented by their counsel James R. Brown and the court having heard testimony on all matters and having rendered a Memorandum Decision and good cause appearing, the court enters, in regard to the defendant Robert S. Warburton, the following:

FINDINGS OF FACT

1. On the First Cause of Action, the court finds that the defendant

Recorded in Judgment Record  
1 at Page 514  
BRUCE C. FUNK, Clerk

Robert S. Warburton entered into a Cattle Grazing Agreement in September, 1982 with the plaintiff and that the defendant breached that Agreement by refusing to continue under its terms after March, 1983, and further, by selling the cattle herd at that time which in effect destroyed defendant's ability to perform under the Agreement. The court further finds that the plaintiff failed to establish by a preponderance of the evidence any damage as a result of the breach by the defendant. The court finds that under the Agreement, Warburton was entitled to use the range and forage for the cattle and that he did so up until the time the cattle were sold. The court finds that Warburton performed his obligation to look after the ranch and cattle until he sold the cattle and left the area and that plaintiff therefore received everything for which he contracted.

2. On the Second Cause of Action, the court finds that Warburton did not misrepresent his experience and qualification in the area of desert management of livestock but that Warburton's statements to plaintiff were of such a general nature that they did not represent false statements or misrepresentation of his experience.

3. On the Third Cause of Action, the court finds that the plaintiff received all that he was entitled to receive during the period of time when Warburton was on his ranch and that plaintiff has failed to show that Warburton was unjustly enriched while he was on the ranch pursuant to the Agreement.

4. On the Fourth Cause of Action, the court finds that plaintiff has failed to present evidence of damage to the mobile home in which Warburton lived. The court finds that, while Warburton did cut a hole in the roof of the home to vent a woodburning stove, plaintiff has presented no evidence as

to how much damage resulted from this act. In fact, the court concludes that the mobile home benefitted from Warburton's action rather than being damaged thereby.

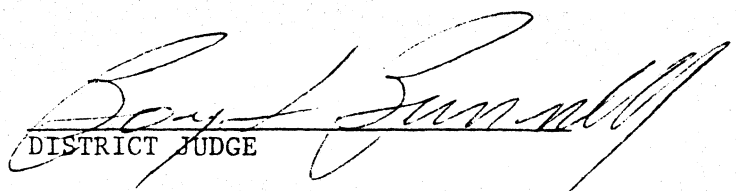
From the foregoing FINDINGS OF FACT the court now makes and enters the following:

CONCLUSIONS OF LAW

1. Defendant Robert S. Warburton is entitled to a judgment of no cause of action against the plaintiff on the First Cause of Action.
2. Defendant Robert S. Warburton is entitled to a judgment of no cause of action against the plaintiff on the Second Cause of Action.
3. Defendant Robert S. Warburton is entitled to a judgment of no cause of action against the plaintiff on the Third Cause of Action.
4. Defendant Robert S. Warburton is entitled to a judgment of no cause of action against the plaintiff on the Fourth Cause of Action.

DATED this 14 day of March, 1986.

BY THE COURT:

  
DISTRICT JUDGE

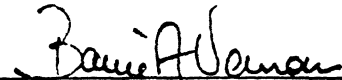
MAILING CERTIFICATE

I certify that I have mailed a true and correct copy of the  
attached FINDINGS OF FACT/CONCLUSIONS OF LAW postage prepaid to the  
following:

Mark C. McLachlan, Esq.  
Attorney at Law  
343 South 400 East  
Salt Lake City, Utah 84111

James R. Brown, Esq.  
Attorney at Law  
370 East South Temple  
Salt Lake City, Utah 84111

DATED this 4th day of March, 1986.

  
\_\_\_\_\_  
BARRIE A. VERNON

MAR 17 1986

BARRIE A. VERNON, USB#3329  
Attorney for Defendant  
Robert S. Warburton  
P.O. Box 8000  
Salt Lake City, Utah 84108  
Telephone: 524-3682

BRUCE C. FUNK, Clerk  
By CJ Deputy

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR  
EMERY COUNTY, STATE OF UTAH

FILED  
3-25-86

MILTON A. OMAN,	)	
Plaintiff,	)	JUDGMENT
vs.	)	Civil No. 4356
ROBERT S. WARBURTON, UTAH	)	Judge Boyd Bunnell
LIVESTOCK PRODUCTION CREDIT	)	
ASSOCIATION AND JOHN DOE I,	)	
Defendants.	)	

This matter having come on for trial on the 7th and 19th days of February, 1986, before the Honorable Boyd Bunnell sitting without a jury and the plaintiff being present and represented by his counsel Mark C. McLachlan and the defendant Robert S. Warburton being present and represented by his counsel Barrie A. Vernon and the defendant Utah Livestock Production Credit Association being present and represented by their counsel James R. Brown and the court having heard testimony on all matters and having rendered a Memorandum Decision and having heretofore entered its Findings of Fact and Conclusions of Law and good cause appearing, the court ORDERS, AFJUDGES AND DECREES:

1. On the first cause of action, the court enters no cause of action against the plaintiff and in favor of the defendant Robert S. Warburton.
2. On the second cause of action, the court enters no cause of

Recorded in Judgment Record  
5 at Page 548  
BRUCE C. FUNK, Clerk

Recorded in Judgment Docket  
D at Page 211  
BRUCE C. FUNK, Clerk

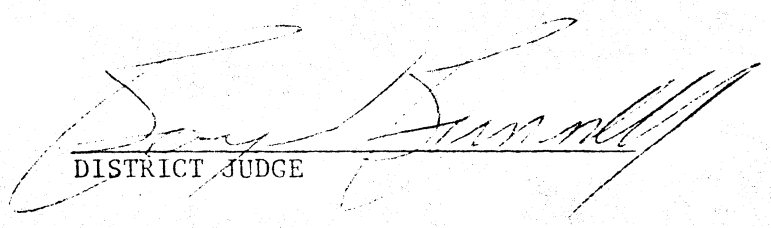
action against the plaintiff and in favor of the defendant Robert S. Warburton.

3. On the third cause of action, the court enters no cause of action against the plaintiff and in favor of the defendant Robert S. Warburton.

4. On the fourth cause of action, the court enters no cause of action against the plaintiff and in favor of the defendant Robert S. Warburton.

DATED this 11<sup>th</sup> day of March, 1986.

BY THE COURT:

  
DISTRICT JUDGE

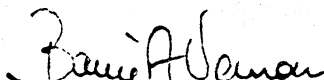
MAILING CERTIFICATE

I certify that I have mailed a true and correct copy of the  
attached JUDGMENT postage prepaid to the  
following:

Mark C. McLachlan, Esq.  
Attorney at Law  
343 South 400 East  
Salt Lake City, Utah 84111

James R. Brown, Esq.  
Attorney at Law  
370 East South Temple  
Salt Lake City, Utah 84111

DATED this 4th day of March, 1986.

  
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BARRIE A. VERNON