

1978

# L. Keith Lignell et al v. Clifford M. Berg et al : Brief of Plaintiff and Cross Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Joseph S. Knowlton; Attorney for Plaintiff and Cross-Respondent;  
Callister, Skeene & Nebeker; Attorneys for Defendant-Respondent;  
Wilford A. Beesley; Attorney for Defendant-Respondent;  
Earl S. Tanner & Associates; Attorneys for Plaintiffs-Appellants;

---

## Recommended Citation

Brief of Respondent, *Lignell v. Berg*, No. 15001 (Utah Supreme Court, 1978).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/559](https://digitalcommons.law.byu.edu/uofu_sc2/559)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE STATE OF UTAH

---

E. KEITH LIGNELL, MARIAN H. LIGNELL,  
his wife, BURTON M. TODD and PHYLLIS  
W. TODD, his wife,

Plaintiffs and Appellants,

vs.

CLIFFORD M. BERG and WILLIAM R. BERG,  
a partnership, dba BERG BROTHERS CON-  
STRUCTION COMPANY, and FRANK C. BERG,  
an individual, a joint venture, dba  
BERG CONSTRUCTION COMPANY, and FIDELITY  
AND DEPOSIT COMPANY OF MARYLAND, a  
corporation,

Case No. 15001

Defendants and Respondents,

vs.

CLARON BAILEY

Plaintiff and Cross-Respondent.

---

BRIEF OF PLAINTIFF AND CROSS RESPONDENT

---

Appeal from the Third Judicial District Court  
of Salt Lake County, State of Utah  
The Honorable Gordon R. Hall, Judge

---

Joseph S. Knowlton  
Suite 204 Executive Building  
455 East Fourth South  
Salt Lake City, Utah 84111  
Attorney for Plaintiff and  
Cross-Respondent

CALLISTER, GREENE & NEBEKER  
Richard H. Nebeker  
800 Kennecott Building  
Salt Lake City, Utah 84133  
Attorneys for Defendant-  
Respondent Fidelity and  
Deposit Company of Maryland

Wilford A. Beesley  
15 East 400 South  
Salt Lake City, Utah 84111  
Attorney for Defendant-  
Respondent Berg Brothers  
Construction Company

EARL D. TANNER & ASSOCIATES  
Earl D. Tanner, J. Thomas Bowen  
Suite 101, 345 South State Street  
Salt Lake City, Utah 84111

Attorneys for Plaintiffs-

Appellants

**FILED**

**JUN 27 1978**

IN THE SUPREME COURT OF THE STATE OF UTAH

---

E. KEITH LIGNELL, MARIAN H. LIGNELL,  
his wife, BURTON M. TODD and PHYLLIS  
W. TODD, his wife,

Plaintiffs and Apellants,

vs.

CLIFFORD M. BERG and WILLIAM R. BERG,  
a partnership, dba BERG BROTHERS CON-  
STRUCTION COMPANY, and FRANK C. BERG,  
and individual, a joint venture, dba  
BERG CONSTRUCTION COMPANY, and FIDELITY  
AND DEPOSIT COMPANY OF MARYLAND, a  
corporation,

Case No. 15001

Defendants and Respondents,

vs.

CLARON BAILEY,

Plaintiff and Cross-Resondent.

---

BRIEF OF PLAINTIFF AND CROSS-RESPONDENT

---

STATEMENT OF THE CASE

The Defendants-Respondents Berg Brothers Construction Company and Fidelity and Deposit Company of Maryland's brief states that the Defendants and Respondents have paid the judgments in favor of subcontractor Bailey and Murray Electric, and no brief will be filed and no oral arguments will be presented by them. A copy of the Partial Satisfaction of Judgment as per Cross-Respondent Bailey is attached. The principle sum of \$42,653.68, together with costs and attorney's fees was paid. However, the question of interest on the principle amount, both before

and after the judgment, as well as the interest on the attorney's fees after judgment due the Plaintiff-Cross-Respondent, hereinafter referred to as the drywall subcontractors, was reserved for a determination of this Court. The Defendants-Respondents Berg Brothers Construction Company and Fidelity and Deposit Company of Maryland, not wishing to have to pay the interest unless they could recover the interest from the Appellants, reserved the interest question. The drywall subcontractor's claim is a separate and distinct action against the Defendants-Respondents, and a separate and distinct judgment. The question of the drywall subcontractor's right to interest has no relationship whatsoever to the right of the Defendants-Respondents right to interest as against the Appellants.

During the trial of this matter, the Court reserved the question of interest and attorney's fees to be determined by the Court, after the trial by the jury. The jury found that the drywall subcontractor was entitled to recover under the Bond Law against the contractor Berg and the surety, Fidelity and Deposit Company of Maryland. The Court, in its Findings of Fact and Conclusions of Law, (R-C 1402), found that the drywall supplier, Claron Bailey, was the real party in interest and was entitled to the principle amount due of \$42,653.68, together with interest on that amount at the rate of 6 percent per annum from October 15, 1973 until October 5, 1976, which amounted to the sum of \$7,579.50. This was based upon the Findings of Fact that the drywall subcontractors commenced the lawsuit against the Defendants-Respondents on the 15th day of October, 1973, and was entitled to the interest from that date at the legal rate of 6 percent. The only question reserved by the Defendants-Respondents against the Plaintiff-Cross-Respondent, the drywall subcontractor, is whether the drywall subcontractor is legally entitled

to recover interest on the principle amount due him from the date the amount was due until the judgment was rendered, and whether or not the Cross-Respondent, drywall subcontractor, was entitled to interest at 8 percent on the amount of the total judgment award after judgment.

#### ARGUMENT

The award of interest by the trial court was proper. The Plaintiff-Cross-Respondent, drywall subcontractor, joins in the argument submitted in the brief of the Defendants-Respondents in their point 4, that the award of interest by the trial court was proper. In that the Defendants-Respondents, contractor and surety, make this argument, it seems that they are admitting that they owe the interest due to the drywall subcontractor, and that the drywall subcontractor is entitled thereto, since they have settled the question on the principle amount.

#### SUMMARY

The Plaintiff-Cross-Respondent, drywall subcontractor, recovered a judgment against the Defendants-Respondents, and was paid on the principle amount of that judgment. The Defendants-Respondents, contractor and surety, argue in their brief that the trial court made no error in regard to the award of interest. The question of whether or not the drywall subcontractor is entitled to his interest was reserved for determination by this Court. Since the Defendants-Respondents, contractor and surety, argue in point 4 of their brief that the award of interest was proper and legal to them and to us, it seems that the contractor and surety would be hard pressed to deny the right of the drywall subcontractor to receive the interest due, both before and after judgment.

WHEREFORE, the award of the trial court in regard to the interest should be affirmed.

Respectfully submitted,

Joseph S. Knowlton  
Attorney for Claron Bailey  
Suite 204 Executive Building  
455 East Fourth South  
Salt Lake City, Utah 84111

RICHARD H. NEBEKER  
WILFORD A. BEESLEY  
Attorneys for Fidelity and Deposit Company  
of Maryland and Berg Construction Company  
800 Kennecott Building and  
15 East 4th South  
Salt Lake City, Utah 84133 and 84111  
Telephone: 531-7676 and 328-0111

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

\*\*\*\*\*

HENDRIK COPINGA and BRENT GREENWOOD )  
dba WESTERN DRYWALL, a partnership, )  
Plaintiffs, )

CLARON BAILEY, )  
Third-Party Plaintiff, )

vs. )

E. KEITH LIGNELL and BURTON M. TODD; )  
CLIFFORD BERG and WILLIAM BERG dba )  
BERG BROTHERS CONSTRUCTION COMPANY, )  
a partnership; and FIDELITY AND )  
DEPOSIT COMPANY OF MARYLAND, a )  
corporation, )  
Defendants. )

Civil No. 214 954

PARTIAL SATISFACTION  
OF JUDGMENT

MURRAY ELECTRICAL SERVICES, INC., a )  
Utah corporation, and COMSTOCK ELECTRIC )  
OF UTAH, INC., a Utah corporation, )  
Plaintiffs, )

vs. )

CLIFFORD M. BERG and WILLIAM R. BERG )  
dba BERG BROTHERS CONSTRUCTION COMPANY )  
and FIDELITY AND DEPOSIT COMPANY OF )  
MARYLAND, a corporation, )  
Defendants. )

Civil No. 222 531

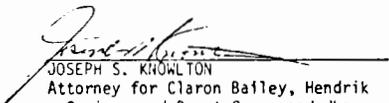
E. KEITH LIGNELL, MARIAN H. LIGNELL, )  
his wife, and BURTON M. TODD and )  
PHYLLIS W. TODD, his wife, )  
Plaintiffs, )

vs. )

CLIFFORD M. BERG and WILLIAM R. BERG, )  
a partnership dba BERG BROTHERS CON- )  
STRUCTION COMPANY and FRANK C. BERG, )  
an individual, a joint venture, dba )  
BERG CONSTRUCTION COMPANY and )  
FIDELITY AND DEPOSIT COMPANY OF )  
MARYLAND, a corporation, )  
Defendants. )

Civil No. 224 441

For and in consideration of the sum of \$54,122.78, receipt of which is hereby acknowledged, partial satisfaction of the Judgment on Verdict entered in favor of plaintiff Claron Bailey and against the defendants Clifford M. Berg and William R. Berg, a partnership, doing business as Berg Brothers Construction Company, and Fidelity and Deposit Company of Maryland, which Judgment on Verdict is docketed at Book 140, No. 1859, in the sum of \$42,653.68, together with attorneys' fees, is herewith and hereby acknowledged, and the Clerk of the Court is hereby directed to enter said Partial Satisfaction of Judgment in the files and records of said case. The matter of interest is reserved as set forth in a letter of attorney Joseph S. Knowlton to the defendants' attorneys dated February 6, 1978.

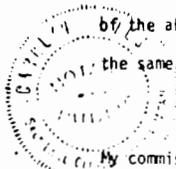
  
 JOSEPH S. KNOWLTON  
 Attorney for Claron Bailey, Hendrik  
 Copinga and Brent Greenwood dba  
 Western Drywall

  
 WILFORD A. BEESLEY  
 Attorney for Clifford M. Berg,  
 William R. Berg, dba Berg  
 Brothers Construction

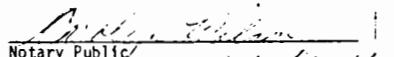
  
 RICHARD H. NEBEKER  
 Attorney for Fidelity and Deposit  
 Company of Maryland

STATE OF UTAH            )  
                                   : ss.  
 COUNTY OF SALT LAKE )

On this 2<sup>nd</sup> day of March, 1978, personally appeared before me Joseph S. Knowlton, Wilford A. Beesley and Richard H. Nebeker, the signers of the above instrument, who duly acknowledged to me that they executed the same.



My commission expires:

  
 Notary Public  
 Residing in Salt Lake City, Utah

JOSEPH S. KNOWLTON  
ATTORNEY AT LAW  
SUITE 204 EXECUTIVE BUILDING  
485 EAST 4TH SOUTH  
SALT LAKE CITY, UTAH 84111

TELEPHONE  
383 3197  
AREA CODE 801

February 6, 1978

Wilford A. Beesley  
15 East Fourth South  
Salt Lake City, Utah 84111

Re: Claron Bailey vs. Berg Brothers Construction and  
Fidelity and Deposit Company of Maryland  
Civil No. 214945  
Supreme Court No. 15001

Dear Bill:

On the basis of our conversations today between you and myself and Richard Nebeker, it is my understanding that we can settle all of the issues in regard to the judgment and the appeal with the exception of the question of interest on the principal amount <sup>both before and after judgment.</sup> of \$42,653.68 and \$219.10 in costs and \$11,000.00 as attorney's fees that were awarded at the time of the judgment, and \$250.00 for attorney's fees earned during the appeal. A.C.  
A.C.  
C.H.M.

It is further understood between us that the question of interest on the attorney's fees that were part of the judgment, that is the \$11,000.00, is not resolved, and that this interest at the rate of 8% per annum from the day of the judgment until the day the \$11,000.00 is paid, will be held by you until the completion of the appeal. Although, since it is not part of the appealed question by the owners, I would prefer to receive the interest at this time, this interest being in the approximate amount of \$1,026.00 to date.

It is further understood and agreed between us that in the event further services are requested by you from me in regard to the appeal, that I will be paid for the time expended by me in this regard at the rate of \$50 per hour. This will be true also if I, in my independent judgment, feel it necessary after consultation with you, to prepare a part of your brief or my own brief on the question of the interest.

It is further my understanding that you would be able to have these payments to us within two weeks of the date hereof.

If this is your understanding, would you please sign and have Richard Nebeker sign on the lines provided at the bottom of this letter and turn the same to me.

Very truly yours,

*Joseph S. Knowlton*  
Joseph S. Knowlton

5

*Ilford A. Beesley*  
Ilford A. Beesley

2-23-78  
Date

*R. H. Nebeker*  
Richard H. Nebeker

3-29-78  
Date

It is understood and agreed that the parties shall be bound by the determination of the Supreme Court as to the question whether interest is recoverable.

I do not intend to perform additional work in preparation for the brief without your concurrence unless absolutely essential for the preservation of my clients rights as to the issue of interest. In such event I will keep these expenses to a minimum.

*Payment to be made within 10 days from Feb. 23, 1978.*

*Joseph S. Knowlton*  
Joseph S. Knowlton