

1986

Katherine Koulis v. Standard Oil Company of California : Brief of Appellant

Utah Supreme Court

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NO. 860064

KATHERINE KOULIS,
Plaintiff-Appellant,
vs.
STANDARD OIL COMPANY OF
CALIFORNIA, WESTERN
OPERATIONS, INC.; CHEVRON
OIL COMPANY dba STANDARD
OIL COMPANY OF CALIFORNIA,
Defendants-Respondents.

Case No. 20205

BRIEF OF PLAINTIFF-APPELLANT
KATHERINE KOULIS

Appeal from Summary Judgment of the District Court of Salt Lake County
State of Utah, Honorable J. Dennis Frederick, Judge

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Oil Company dba Standard Oil
Company of California

FILED

MAR 20 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

KATHERINE KOULIS,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	
STANDARD OIL COMPANY OF)	
CALIFORNIA, WESTERN)	
OPERATIONS, INC.; CHEVRON)	
OIL COMPANY dba STANDARD)	
OIL COMPANY OF CALIFORNIA,)	
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES PRESENTED ON APPEAL.	1
STATEMENT OF FACTS	1
APPELLANT'S FACTS.	2
SUMMARY OF ARGUMENT.	6
ARGUMENT	7
ISSUE I. DOES THE STATUTE OF LIMITATIONS CONCERNING FRAUD, (UTAH CODE ANNOTATED 1953, SECTION 78-12-26(3), BAR AN ACTION FOR BREACH OF LEASE AGREEMENT WHEN THE FRAUD WAS WILLFULLY, KNOWINGLY AND SKILLFULLY CONCEALED, MAKING THE DISCOVERY OF THE FRAUD IMPOSSIBLE TO DETERMINE WITHOUT A LAND SURVEY? . .	7
ISSUE II. DID THE STANDARD OIL COMPANY OF CALIFORNIA MALICIOUSLY AND WILLFULLY CONCEAL THEIR ALLEGED BREACH OF THE CONTINGENT PROVISION PROVIDED IN PARAGRAPH 11 OF THE 1958 LEASE?	9
ISSUE III. DID THE PLAINTIFF HAVE AN OPPORTUNITY OF KNOWING THE FACTS THAT CONSTITUTED THE FRAUD?	10
ISSUE IV. WHEN WAS THE FRAUD DISCOVERED?	11
THE PLAINTIFF'S HAVE SUFFERED IRREPARABLE DAMAGES.	14
CONCLUSION	17
ADDENDUM	

August 2, 1958 Lease (Exhibit "A")
May 16, 1967 Modification of Lease (Exhibit "B")
May 13, 1967 Martin Lease (Exhibit "C")
December 30, 1982 Notice of Breach of Lease (Exhibit "D")
Order Granting Defendants' Motion for Summary Judgment and
Denying Plaintiff's Motion for Summary Judgment (Exhibit "E")
Notice of Appeal to the Utah Supreme Court (Exhibit "F")

TABLE OF AUTHORITIES

CASES

Page

<u>Clawson v. Boston Acme Mines Dev. Co.,</u> 72 Utah 137, 147, 269 P.2d 147, 59 A.L.R. 1318	8
<u>Devas v. Noble,</u> 13 Utah 2d 133, 369 P.2d 290	7
<u>Dugan v. Jones,</u> 615 P.2d 1239.	11
<u>Family Savings and Loan, Inc. v. Cicarello,</u> 157 W.Va 983, 207 S.E.2d 157 (1974).	9
<u>Hart v. Hart,</u> Fla. App., 234	8
<u>McConkie v. Hartman,</u> 519 P.2d 801 (Utah 1974)	9
<u>MedMar, Inc. v. Dilworth,</u> 214 Pa. Super. 402, 257 A.2d 910 (1969).	9
<u>Mumford v. Staton, Whaley & Price,</u> 254 Md. 697, 255 A.2d 359 (1969)	9
<u>Myers v. McDonald,</u> 635 P.2d 84.	8
<u>Rice v. Granite School District,</u> 23 Utah 2d 22, 456 P.2d 159 (1969)	8
<u>Sorenson v. Adams,</u> 98 Idaho 708, 571 P.2d 769	11
<u>Thompson v. Equitable Life Assurance Soc. of U.S.,</u> 447 Pa. 271, 290 A.2d 422 (1972)	9
<u>Vincent v. Salt Lake County, Utah,</u> 583 P.2d 105 (1978).	8

STATUTES AND OTHER AUTHORITIES

<u>Utah Code Ann. (1953)</u>	
78-12-26 (3)	6, 7
37 Am. Jur. 2d Fraud and Deceit, Sec. 4	12

IN THE SUPREME COURT

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OIL COMPANY OF CALIFORNIA,)	
Defendants-Respondents.)	Case No. 20205
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STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Does the Statute of Limitations concerning fraud, (Utah Code Annotated Section 78-12-26(3), bar an action for breach of lease agreement when the fraud was willfully, knowingly and skillfully concealed, making the discovery of the fraud impossible to determine without a land survey?

2. Did the Standard Oil Company of California maliciously and willfully conceal their alleged breach of the contingent provision provided in paragraph 11 of the 1958 Lease?

3. Did the Plaintiff have an opportunity of knowing the facts that constituted the fraud?

4. When was the fraud discovered?

STATEMENT OF FACTS

On August 22, 1984, the Honorable J. Dennis Frederick, District Judge, issued an Order granting the Defendant's Summary Judgment against the Plaintiff. This Order is annexed hereto and by reference made a part hereof as

Exhibit "E". On September 20, 1984, the Plaintiff filed a Notice of Appeal to the Utah Supreme Court. Said Notice of Appeal is annexed hereto and by reference made a part hereof as Exhibit "F." This is an action for damages for breach of lease agreement. Defendants agreed to build a service station fully and completely on Plaintiff's land. The service station was built partly on Plaintiff's land and partly on a third party's land. This breach of the lease rendered the lease void and unenforceable as far as the Plaintiff was concerned, in that the Plaintiff's right to obtain a modern and up to date service station on their land, on termination of the lease was rendered void and non-existent, in that Plaintiff no longer had a right to a modern and up to date service station upon the Defendants terminating the lease by the Defendants giving the Plaintiff thirty (30) days notice. The mutuality of the lease was completely destroyed. Plaintiff seeks damages by reason of the breach of the lease agreement.

APPELLANT'S FACTS

1. On August 2, 1958, the Defendant oil company entered into an agreement with Pauline Koulis. Plaintiff's predecessor in interest) A true and correct copy of the 1958 lease is annexed hereto as Exhibit "A" and is by reference incorporated by reference.

2. On May 16, 1967, Pauline Koulis entered into a Modification of Lease with the Defendant oil company. See Exhibit "B" which is annexed hereto and is hereby incorporated by reference.

3. The Defendant oil company admits that three (3) days prior to the executing of the May 16, 1967 Modification that they entered into a lease with the Martins; and the further admitted that they had changed their plans from the

building of a service station solely on the Koulis property, to plans in which they intended to put the service station partially on the Martin property in direct violation of the 1958 Lease; and they further admit that they made no mention of this fact in the Modification of Lease which was executed three (3) days after the Martin Lease was signed. The Martin Lease is annexed hereto as Exhibit "C" and is hereby incorporated by reference.

4. The Defendant oil company has never denied that the building of the service station partly on the Martin property and partly on the Koulis property, completely destroyed the mutuality as set forth in paragraph 11 of the August 2, 1958 Lease.

5. The Defendant oil company admits that the Martin Lease in paragraph 9, gave the Martins an option to buy the Koulis property. See also paragraph 26 of the Martin Lease, which is dated May 13, 1967, only three (3) days prior to the date of the execution of the Modification of Lease, annexed hereto as Exhibit "B."

6. The Defendant oil company freely admits that they have not at any time up to the time of the filing of this suit herein, ever notified the Plaintiff or her predecessors in interest, that they had built the service station partly on the Koulis property and partly on the Martin property, well knowing that the Plaintiff and her predecessors in interest were completely misled and honestly believed that the service station was built on their land and that should the oil company terminate the lease, that the Plaintiffs would then become the owners of a modern and up to date service station. As it now stands, should the

oil company terminate the lease, all the Plaintiff will have is a portion of the service station and a potential lawsuit with the Martins.

7. The Defendant oil company admits that Pauline Koulis died on January 20, 1968, a few months after the service station was built. Defendants further admit that Katherine Koulis, other than a ride by the service station on her way to Magna, has never physically inspected the service station and further admit that their records show that she was never shown the exact location of the service station, nor was she ever informed that it was built partially on the Martin property. With the houses all removed, and the service station having been surrounded by a parking lot, it cannot be denied that a mere visual inspection of the service station would not reveal a breach. It is undisputed that the Plaintiff did not know of the breach until after the death of her husband. (Paul Koulis died on April 22, 1981) In fact, it was not until the summer of 1982 that the Defendants gave the Plaintiff a copy of the August 2, 1958 Lease and the May 16, 1967 Modification of Lease. Along with these two documents, the oil company gave Katherine Koulis a copy of the Martin Lease. Upon examining these documents, and upon the property being surveyed, it was then and only then, that the breach of the lease became known. Immediately upon this discovery, a demand was made upon the oil company to comply with the lease agreement; and, upon their refusal, this suit was brought. See Exhibit "D."

8. It has never been denied that the Plaintiff had no dealings whatsoever with Diane Amelia Child, and that she was totally unaware of the breach and fraud herein, prior to her receiving the survey in 1982.

9. Defendants have never denied the fact that the layout of the land and the layout of the service station are such that the exact location of the service station is easily concealed.

10. That the Plaintiff's husband, Paul Koulis, had multiple sclerosis and was confined to his home, bedroom and nursing home for the past ten years of his life.

11. That the Plaintiff being a daughter-in-law, had very little to do with the property until after the death of her husband on April 22, 1981.

12. That paragraph 7 of the August 2, 1958 Lease is in direct conflict with paragraph 11 of said Lease, and by reason thereof, paragraph 7 is totally void.

13. That the August 2, 1958 Lease and the option based thereon will expire on August 2, 1987, and on that day the Plaintiff herein is entitled to a modern and up to date service station, as was set forth in the plans and specifications.

14. That the Defendant Chevron U.S.A. and the other Defendants herein, have willfully and maliciously refused to comply with the August 2, 1958 Lease which contained a condition subsequent, to-wit: that they would build a modern and up to date service station and keep same in good repair. That said service station was to be completely constructed on the leased premises; and that the failure of the Defendants herein to comply with said Lease and condition subsequent, has rendered the August 2, 1958 Lease and the May 16, 1967 Modification of Lease totally void.

15. The Standard Oil Company well knew that William J. Cayias was a practicing lawyer with law offices in Salt Lake City, Utah; and that he had represented Pauline Koulis in all prior lease dealings; never the less, on May 16, 1968, without so much as a phone call to Mr. Cayias, Defendants transported the 78 year old woman, Pauline Koulis, to their law offices and for the paltry sum of One Hundred Dollars (\$100.00), the oil company now claims that the 1958 Lease is extended to the year 1992. The signature of Pauline Koulis was obtained on the Modification of Lease on May 16, 1967. At this time the oil company well knew that they intended to breach the 1958 Lease by placing a service station partly on the Martin property and partly on the Koulis property. The oil company knew that the breach of the contract would render void and valueless paragraph 11 of the 1958 Lease. The Modification of Lease made no mention of the Martin Lease. The Martin Lease was recorded. The Koulis Lease was not recorded. The obvious fraud was concealed, hidden and perpetuated against an aged and terminally ill widow and her crippled son, and the Plaintiff herein.

SUMMARY OF ARGUMENT

Plaintiff brought suit for breach of a lease under Utah Code Annotated Section 78-12-26(3). The Plaintiff commenced her action on August 29, 1983, after having served the Defendants with numerous demands that the Lease be complied with and after the Defendants had indicated that they would not comply with the written provisions of the Lease. The wrongdoing had just been discovered! The breach had been carefully concealed. It was only by a professional survey that the fraud was exposed! The survey revealed that the Defendants breached their contract by building a service station on a third party's land, when the contract specifically provided that the service station was to be built on Plaintiff's land.

ARGUMENT

ISSUE I

DOES THE STATUTE OF LIMITATIONS CONCERNING FRAUD, (UTAH CODE ANNOTATED SECTION 78-12-26(3), BAR AN ACTION FOR BREACH OF LEASE AGREEMENT WHEN THE FRAUD WAS WILLFULLY, KNOWINGLY AND SKILLFULLY CONCEALED, MAKING THE DISCOVERY OF THE FRAUD IMPOSSIBLE TO DETERMINE WITHOUT A LAND SURVEY?

1. Section 78-12-26(3) requires that an action for fraud be brought within three years. But it also expressly states that: ***"the cause of action in such case shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake." The Plaintiffs have expressly pleaded and by Affidavit and substantial evidence will prove that the Plaintiffs were unaware of the breach of the contract until October of 1982. See Devas v. Noble, 13 Utah 2d 133, 369 P.2d 290. The land in question had all the buildings removed including all fences and all boundaries. In 1958, when the original Lease was executed, the Defendant oil company submitted to the Plaintiff and her attorney, William J. Cayias, plans and specifications which definitely showed that the Defendants were to build a new service station of modern design on Plaintiff's property. On May 13, 1967, while the contract was in full force and effect, the Defendant did without notice of knowledge, purchase the Martin property, which was directly to the north of Plaintiff's land; and in direct violation of Plaintiff's Lease, did by deception and fraud, build a service station partly on Plaintiff's property and partly on the Martin property. The fraud was such that no reasonable person could or would ascertain a breach

of the contract without a survey. The Defendant oil company whose business is founded on leases and contracts, did willfully on May 16, 1967, by devious means, obtain the signature of a 78 year old terminally ill widow, who could not read or write, on a Modification of 1958 Lease, which made no mention of the fact that they intended to build the service station on another persons land in direct violation of the 1958 Lease. By fraud and deception, the Defendants thereby rendered void and valueless paragraph 11 of the 1958 Lease; and the oil company did by further deception extend the Lease until 1992.

2. It has always been the law in Utah that the cause of action in cases where through fraud and deception, the fraud is concealed, that the cause of action in such case shall not be deemed to have accrued until discovery by the aggrieved party. See Clawson v. Boston Acme Mines Dev. Co., 72 Utah 137, 147, 269 P. 147, 59 A.L.R. 1318. Our Supreme Court has always followed the general rule that the Statute of Limitations does not begin to run until the discovery of the facts forming the basis of the cause of action. See Myers v. McDonald, 635 P.2d 84. The concealment and the misleading of facts by a Defendant, precludes the Defendant from relying on the Statute of Limitations. E.G., Vincent v. Salt Lake County, Utah, 583 P.2d 105 (1978); Rice v. Granite School District, 23 Utah 2d 22, 456 P.2d 159 (1969).

3. In fact, our Supreme Court has held that where the judicial action is such that the application of the statute would be irrational or unjust, the Statute of Limitations does not begin to run until the discovery of facts forming the basis for the cause of action. See Hart v. Hart, Fla. App., 234 So.2d 393.

(1970) (conversion); Mumford v. Staton, Whaley & Price, 254 Md. 697, 255 A.2d 359 (1969) (legal malpractice); Thompson v. Equitable Life Assurance Soc. of U.S., 447 Pa. 271, 290 A.2d 422 (1972) (recovery of insurance policy); MedMar, Inc. v. Dilworth, 214 Pa. Super. 402, 257 A.2d 910 (1969) (architect's malpractice); Family Savings and Loan, Inc. v. Cicarello, 157 W.Va 983, 207 S.E.2d 157 (1974) (legal malpractice).

ISSUE II

DID THE STANDARD OIL COMPANY OF CALIFORNIA MALICIOUSLY AND
WILLFULLY CONCEAL THEIR ALLEGED BREACH OF THE CONTINGENT
PROVISION PROVIDED IN PARAGRAPH 11 OF THE 1958 LEASE?

4. The McConkie v. Hartman case, 519 P.2d 801 (Utah 1974) has no application to the instance case in fact or in law. In the instance case, an examination of the property description and proposed plans and specifications for the service station specifically provide for a service station to be built on Plaintiff's land. The Martin Lease was by deception and careful design, not mentioned in the Modification of Lease, even though the Martin Lease was drafted, entered into and executed by the Defendant oil company three days prior to the execution of the Modification of Lease. It is obvious that the oil company did carefully and fraudulently conceal their intended breach from a 78 year old terminally ill widow. The McConkie case pertains to deeds, contracts and legal descriptions, which on their face would have revealed the fraud had they been properly read and examined. In the instance case, the Martin Lease and the construction of the service station were by design, carefully concealed from the Plaintiff and her predecessors in interest. The reading of the 1958 Lease and the Modification reveals no breach whatsoever.

5. The Defendant oil company has suffered no prejudice by reason of the fact that the breach was carefully concealed from the Plaintiff. Defendants' problems of proof occasioned by the delay are no greater than the Plaintiffs. In fact, it is the Defendants' wrongdoing that prevented the Plaintiffs from bringing their suit sooner. The following facts were a fraudulent design:

(a) Why did Defendants fail to mention the Martin Lease when they typed and prepared the Modification agreement of 1967? See Exhibit "B."

(b) Why did the Defendants fail to record the 1958 Lease? On the contrary, why did they see fit only to record a "skeleton" lease?

(c) The Defendants mentioned the Koulis (1958) Lease in the Martin Lease but no mention of the Martin Lease was made in the 1967 Modification!

(d) New plans and specifications were never mentioned in the Modification Agreement, yet the Defendants well knew at this time (May 17, 1967) that they fully intended to breach the 1958 agreement and build the service station partly on the Martin property.

ISSUE III

DID THE PLAINTIFF HAVE AN OPPORTUNITY OF KNOWING THE FACTS
THAT CONSTITUTED THE FRAUD?

A LESSOR OF REAL PROPERTY, IN ABSENCE OF FACTS PUTTING HER
ON NOTICE, HAD NO DUTY TO INVESTIGATE TO DETERMINE WHETHER THE
LESSEE HAD MISREPRESENTED AND PLACED THE SERVICE STATION PARTLY
ON HER LAND AND PARTLY ON A THIRD PARTY'S LAND.

1. Our Supreme Court has ruled time and time again, that a Lessor is not estopped from recovering for a misrepresentation concerning an area of land leased merely because she viewed or inspected the premises so long as she

did not endeavor to determine independently the exact boundaries of the land, nor is the Lessor estopped from recovering for breach of the lease, merely because she might have driven past the land or merely because she had an opportunity to inspect the land. In the instance case, the only evidence that is before the Court, is:

a. That neither Katherine Koulis or her predecessors in interest had any knowledge whatsoever that the service station had been built partly on the Martin property.

b. The Defendant oil company makes much out of the fact that the Plaintiff lived in Salt Lake City; that she was the co-executor of her mother-in-law's estate; that she could have obtained a copy of the lease on request; that she saw the completed service station once in 1968 after the houses had been removed and the service station was surrounded by a parking lot. On these facts and these facts alone, Defendants seek to impose upon the 78 year old widow, a special duty, to seek out and know the truths of their concealed representations, when the truth can only be ascertained by a skilled surveyor. The record is devoid of any evidence that the Plaintiff or her predecessors were ever advised or ever knew that the service station was not built on their property.

ISSUE IV

WHEN WAS THE FRAUD DISCOVERED?

1. It was not until the middle of 1982, on the advice of counsel, that the Plaintiff discovered that the service station was not on her land. Based on the foregoing facts, the Plaintiffs' claim that they are entitled to have a jury determine the factual issues raised in their claim for fraud, and breach of the lease agreement. See Dugan v. Jones, 615 P.2d 1239. The Court's attention is further called to the case of Sorenson v. Adams, 98 Idaho 708, 571 P.2d 769, a

case that was adopted by this Court in Dugan v. Jones, where the court observed, " under the doctrine of constructive fraud, there is a well established exception that a representation must be made knowingly, willingly, and with the intent to deceive. Thus, in a case where the circumstances impose upon a vendor (in this case the oil company that built the service station) a special duty to know the truth of their representations or where the nature of the situation is such that the wrongdoer is presumed to know the facts to which his reputation relates, a representation is fraudulent even though not made knowingly, willfully or with an intent to deceive." See 37 Am.Jur.2d, Fraud and Deceit, Sec.4, p. 23.

2. The facts of this case our clear that the Defendants did by their deception and deceitful practice carefully conceal their fraud in such a manner that the Plaintiff and her predecessors in interest did not discover said deceit until October 1982. The very fact that a survey was necessary, in order to discover the fraud, along with the execution and signing of leases and agreements three days prior to the signing of the Modification Agreement, all show a carefully conceived plan to deprive these Plaintiffs of the mutuality of their contract. The fact that the fraud was not discovered until October of 1982, cannot be used to defeat Plaintiffs' claim. The Defendant oil company would have the court believe that because the Plaintiff lived on the property during the 1950's and through 1967, that she was familiar with the boundary lines. What they have failed to tell the Court is that all the houses were removed and the ground was leveled, property lines and fences were completely destroyed and the land was turned into one large parking lot, after which the service station was built on the southwest corner thereof. Defendants know that the building of the service station partly on the Martin property could not have been ascertained without the use of a survey. A casual inspection would not

reveal the fraud. There were no facts or circumstances upon which a prudent person would have suspected or known of the intentional, skillful, concealed and deceitful act, nor were there any acts or events that would have caused a reasonable and prudent person to make an inquiry; and even if any inquiry had been made, the fraud could not have been discovered without a survey. There was nothing in the Lease itself that would give a person any notice or knowledge of the fraud. To the contrary, the Lease was drafted in such a manner that a reasonable and prudent person would honestly believe that the service station would be properly built on their property. The Defendant oil company has repeatedly stated that they did nothing to actively prevent the Plaintiff from making an inspection. At the same time, they justify their fraud and deceit with the statement that the Plaintiff lived on the land and knew the boundaries. It is true that the Plaintiff had lived on the land when the land contained houses, fences, streets and alleys, all of which were destroyed, leveled and blended into a substantial parking lot. The Defendant oil company, whose main product is leasing and buying property, skillfully destroyed the mutuality of the 1958 Lease by building the service station partially on the Martin property. This fully and completely destroyed the mutuality of the lease agreement and completely deprived the Plaintiffs of their rights under the termination clause of the contract, in that the Defendant oil company may now terminate the contract at will and without penalty and thereby deprive the Plaintiffs of the buildings, improvements and a modern and up to date service station. The Plaintiffs, on the other hand, have not right under the lease to terminate the contract and are obligated to continue with a unjust fraudulent lease which ultimately will be terminated, at which time the Plaintiffs are faced with a potential lawsuit with

the Martins. Plaintiffs right to a modern and up to date service station as provided in paragraph 11 of the Lease, has been fraudulently destroyed.

THE PLAINTIFF'S HAVE SUFFERED IRREPARABLE DAMAGES

1. Paragraph No. 11 of the 1958 Lease reads as follows:

"11. Lessee may terminate this lease at anytime after completion of construction of a service station thereon by giving Lessor thirty days prior written notice of intention so to do. Provided, however, Lessee executes and delivers to the Lessor a bill of sale covering the service station building then located on the leased premises. Lessee agrees that the service station then on the leased premises shall be of modern design and in good operating condition and state of repair.***

2. Paragraph No. 2 of the August 2, 1958 Lease specifically provided as follows:

"2. The term of this lease shall commence on October 1, 1958, and end fifteen years after the first day of the first calendar month following the month during which a service station is completely constructed on the leased premises, and all fixtures and equipment are installed thereon by Lessee. Provided, however, that in no event shall said fifteen-year period commence on a date later than June 1, 1959."

3. The 1958 Lease was accompanied by plans and specifications of a service station of modern design with a contract provision that the service station would be in good operating condition and in a good state of repair. In direct consideration of the foregoing covenants and agreements, the oil company was given the right to terminate the Lease on thirty days written notice of intention to do so. In addition thereto, paragraph 11 of the 1958 Lease specifically provided that after completion of construction of the service station, that any termination of the Lease resulted in the Lessor receiving a Bill of Sale covering the building then located on the premises.

4. Paragraph 7 of the Lease is in direct conflict with paragraph 11 of the Lease. In fact, the opening sentence of paragraph 7 reads as follows: "Except as provided in paragraph 11 hereof," Paragraph 7 being in direct conflict

with paragraph 11 and being an exception thereto, said paragraph pertaining to the removal of the buildings and improvements becomes null and void and non-existent. Paragraph 7 is further in conflict with the specific requirement that the service station be built completely on the Lessor's premises. There can be but one interpretation of the Lease and that is that the Plaintiffs were to be entitled to a modern up to date service station in good repair and was to become the property of the Lessor upon the oil company terminating or completing the occupancy of the leased premises.

5. The foregoing facts were well known by the oil company on May 13, 1967, yet, the oil corporation saw fit to willfully and intentionally enter into lease agreement with the "Martins," which totally breached paragraph 11 of the 1958 Lease and rendered the said Lease valueless, in that said breach deprived the Lessor of the modern up to date service station in good repair and subjected the Lessor to a potential lawsuit with the "Martins."

6. The measure of damages to which the Plaintiff is entitled is the value of a modern up to date service station in good repair having been built in accordance with the plans and specifications which were submitted and which become the basis of the 1958 Lease. The value of such a service station, less depreciation, is \$150,000.00.

7. The building of the service station on Plaintiff's property is a condition subsequent, and as such, the breach and the right to damages arose when the Chevron U.S.A., Inc. refused to comply with the Lease.

8. Paragraphs 5 and 6 have no application to the issue of damages herein, in that paragraph 5 pertains to the oil company obtaining the necessary permits from the governing authorities and has no application to this case. Paragraph 6 also pertains to the obtaining of necessary licenses to place a

service station on the land with the further provision that should it become unlawful to conduct a service station business, that the lease could be terminated on ten days notice. The necessary permits were granted and the right to operate a service station has been granted by the governing authorities. Therefore, these provisions have no application to the operating and the carrying out of the terms of the Lease.

9. The Defendant oil company claims that there has been no termination of the Lease, nor is one contemplated. Yet, they readily admit that the service station was only partially built on Plaintiff's land. They further admit that paragraph 11 of the Lease has been rendered valueless and void as far as the Plaintiff is concerned, in that their right to cancel within thirty days still exists, and that the Plaintiff is deprived of a modern day up to date service station upon the termination of the Lease or at any other time. They further assert and admit that they have breached the 1958 Lease in its entirety, and that they will not comply with the terms of the 1958 Lease under any conditions and assert that under the law their fraudulent acts are beyond the reach of the courts by reason of the fact that the Plaintiff and her predecessors in interest were not advised of or appraised of the fraud until the year 1982. Such is not the law nor should it be.

10. The oil company has asserted and set forth half truths and splintered facts which have been and which are now refuted by the Plaintiff.

a. The service station was built on a flat and open piece of ground and its exact location with respect to whose property upon which it was built could not be ascertained except by a survey. It was not until the land was surveyed that the Plaintiff became aware of the grievous fraud that the

Defendants perpetuated herein. Any reference or statements to the contrary have been refuted by the Plaintiff herein.

b. Plaintiff was joint executrix of the Estate of Pauline Koulis in 1968 and was only aware of the "skeleton lease" which was recorded by the Defendants, and the contents of the 1958 Lease having never been recorded. In 1968 the oil company carefully concealed the fact that the service station had not been built on the Koulis property.

c. The fact that the Plaintiff saw the completed service station "once" in 1968 has no bearing on the case, in that the position of the service station was such that its exact position could only have been determined by a survey. All fence lines, boundary lines, sidewalks, and gutters had all been removed. Defendants skillfully and with deception stated in their brief that the Defendants provided the Plaintiff with another copy of the Lease, when in truth and in fact, the Plaintiff was never provided a copy of the Lease until the year 1982, at which time she was also given a copy of the Martin Lease which exposed the fraud.

CONCLUSION

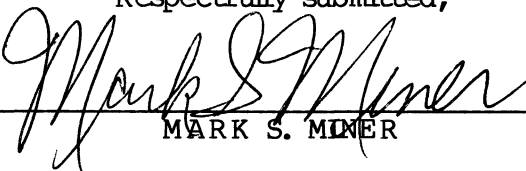
The Defendants carefully, willfully and intentionally represented to the Plaintiffs that should the Plaintiffs lease their land which was carefully described by meets and bounds to the Defendant oil company, that the oil company would build a modern and up to date service station and maintain same in good condition, and that should the Plaintiff grant the oil company the right to terminate said Lease on thirty days notice; and should the Defendants otherwise terminate the Lease, that the modern and up to date service station in good repair would become the property of the Plaintiffs. The Plaintiffs and their

attorney relied upon the foregoing representation to their detriment in the following particulars:

a. On May 13, 1967, in direct violation of the 1958 Lease, the Defendant oil company did purchase the property to the north of Plaintiff's property and did specifically provide in the Martin Lease that the service station would be built partly on the Koulis property and partly on the Martin property; and that the Martins could exercise the oil company's options which were in the Koulis Lease. Well knowing that they were in direct violation of the 1958 Lease, and well knowing that they intended to breach the lease and render it valueless, the oil company did on May 16, 1967, obtain the signature of a 78 year old terminally ill widow on a Modification of Lease, which extended the 1958 Lease for an additional 15 years, without mentioning or providing in the Modification of Lease that the service station was to be placed partly on the Martin property. The 78 year old widow died approximately five (5) months thereafter. The fraud was carefully concealed from the Plaintiffs until the year 1982, when the Plaintiffs demanded that the oil company comply with the terms of the Lease. The Defendants seek to have this Court ignore the discovery rule, which our legislature has adopted and which specifically provides that the limitation period does not begin to run until the discovery of the facts forming the basis of the cause of action. They seek to assert deceptive and exceptional circumstances and thereby bar the Plaintiffs from suing herein. Such is not the law in the State of Utah, and Plaintiffs have moved quickly since the fraud was discovered. Defendant has not asserted nor can he establish in any way, that the oil company has been prejudiced by having to defend their deceptive and wrongful acts.

DATED this 20th day of March, 1985.

Respectfully submitted,



MARK S. MINER

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY, that I hand delivered four (4) copies of the
within brief (Appellants Brief) to:

VANCOTT, BAGLEY, CORNWALL & MC CARTHY

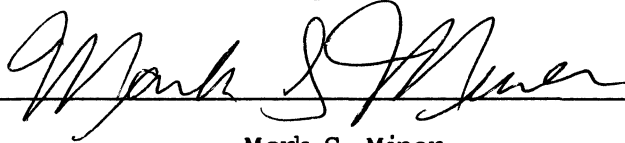
Michael F. Richman. Esq.

Attorneys for the Respondents

50 South Main Street, Suite 1600

Salt Lake City, Utah 84110.

This 20th day of March 1985

A handwritten signature in cursive script, reading "Mark S. Miner", is written over a horizontal line.

Mark S. Miner

L E A S E

Dated: August 2, 1958

1. PAULINE KOULIS, Lessor, hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC., Lessee, the following described premises in the City of Salt Lake, County of Salt Lake, State of Utah, to wit:

Commencing at the southwest corner of Lot 4, Block 63, Plat C, Salt Lake City Survey, and running thence east 123.75 feet, thence north 74.75 feet, thence west 123.75 feet, thence south 74.75 feet, to the point of beginning.

2. The term of this lease shall commence on October 1, 1958, and end fifteen years after the first day of the first calendar month following the month during which a service station is completely constructed on the leased premises, and all fixtures and equipment are installed thereon by Lessee. Provided, however, that in no event shall said fifteen-year period commence on a date later than June 1, 1959.

3. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

(a) An interim rental of Two Hundred Fifty Dollars (\$250.00), payable in advance on the first day of each and every calendar month commencing October 1, 1958, and ending with the rental paid on the first day of the calendar month preceding the commencement date of the fifteen-year period provided in paragraph 2 hereof.

(b) Thereafter, a regular rental in advance on the first day of each and every month during said

fifteen-year period the sum of Three Hundred Fifty Dollars (\$350.00). Provided, however, that no rental shall be due and payable hereunder until the date on which the leased premises are delivered to the lessee free and clear of all leases, liens, and encumbrances, except the lien of taxes and assessments for the current year.

4. Lessee shall have the right to remove from the leased premises all buildings and improvements located thereon, and shall be entitled to all salvable material, except two sinks located in the upstairs apartment.

5. Lessee expects to commence construction of a service station on the leased premises within thirty (30) days after possession of the leased premises is delivered to the Lessee as provided in paragraph 3, or after issuance of all necessary permits and other authorizations, whichever is later. If Lessee shall be unable to obtain such permits and authorizations, Lessee may terminate this lease by giving Lessor ten days written notice of Lessee's intention so to do, provided, however, Lessee shall not tear down or remove any buildings or improvements on the leased premises belonging to the Lessor until the permits and authorizations referred to in this paragraph are obtained.

6. Lessee shall have the right during its occupancy of the leased premises to use such premises for the primary purpose of conducting thereon a service station business and for any other lawful business that will not materially interfere with said primary use. Lessee shall further

*intention to remove
entirely or
partially?*

have the right during its occupancy to construct and maintain on the leased premises such buildings, structures, improvements or equipment as Lessee may desire, and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. Upon the expiration of this lease, or any extension or renewal thereof, Lessee agrees to replace all curbs and sidewalks cut or removed by Lessee during the Lessee's occupancy of the premises. If it is or becomes unlawful for Lessee or anyone holding under Lessee directly or indirectly, to conduct a service station business, or to erect or maintain service station facilities on the leased premises, or if any part of the leased premises or the approaches thereto are condemned or changed by public authority, so that in any such case enumerated above it becomes impossible or impracticable to use the leased premises for service station purposes, then Lessee shall have the right at any time thereafter to terminate this lease by giving Lessor ten days notice in writing of such termination.

7. Except as provided in paragraph 11 hereof, Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment owned or placed by Lessee, Standard Oil Company of California, or the sublessees or licensees of either, in, under or upon the leased premises, or acquired by Lessee whether before or during the term thereof, but Lessee shall not be obliged to do so.

8. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while such facilities are owned by Lessee. All other real or personal property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor. If Lessor fails to pay its share of taxes set forth in this paragraph promptly when due, or fails to perform promptly any obligation owing to a third person, which, if unperformed, might result in termination of this lease, including any obligation to a third person secured by a lien on the leased premises, Lessee may pay such taxes or perform such obligation for the account of Lessor and bill Lessor for the cost thereof, or deduct such cost from rentals accruing under this lease.

9. Lessee, while in possession, shall have the prior right (1) to buy the whole or any part of the leased premises or any larger parcel which includes the leased premises, if Lessor receives from a third party an acceptable bona fide offer to buy, or if Lessor offers to sell, such property, and (2) to lease the whole or any part of the leased premises or any larger parcel which includes the leased premises, if Lessor receives from a third party an acceptable bona fide offer, or if Lessor offers, to lease such property for a term commencing on or after the expiration of the term hereof, or any extension thereof. In either such event, Lessor shall forthwith give Lessee written notice of such offer, together with a copy thereof, and Lessee shall

have sixty days from the receipt of such notice to buy or to lease such property, as the case may be, at the terms of such offer, or at such lesser terms as Lessor and Lessee may agree upon. If Lessee fails to exercise such option within such sixty days, Lessor shall have sixty days thereafter within which to sell or to lease, as the case may be, such property to the party and upon the terms stated in the notice to Lessee without resubmitting such offer to Lessee as hereinabove provided. If Lessor sells such property to a third person, such sale shall be made subject to the terms and provisions of this lease, including but without limiting the generality of the foregoing, the provisions of this paragraph.

10. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants and conditions hereof.

11. Lessee may terminate this lease at anytime after completion of construction of a service station thereon by giving Lessor thirty days prior written notice of intention so to do. Provided, however, Lessee executes and delivers to the Lessor a bill of sale covering the service station building then located on the leased premises. Lessee agrees that the service station then on the leased premises shall be of modern design and in good operating condition and state of repair. Nothing in this paragraph shall be construed as requiring the Lessee to give the Lessor a bill of sale covering the service station building if the lease is terminated by

Service Station
to be actually
on leased
premises?

by the Lessee pursuant to the provisions of paragraphs 5 or 6 hereof.

12. Lessee agrees to reimburse Lessor for all taxes in excess of One Hundred Eighty Dollars (\$180.00) per year levied against the real estate covered by this lease. Special assessments levied against such real estate shall not be considered in determining such excess.

13. Lessee may extend this lease upon all of the terms and provisions hereof for a further period of five years by giving Lessor notice in writing of Lessee's intention so to do at any time prior to the expiration of the term hereof.

14. In the event Lessee exercises the option to extend this lease as provided in paragraph 13, it shall have the further option to extend this lease for a further period of five years by giving Lessor notice in writing of Lessee's intention so to do at any time prior to the expiration of the term provided in paragraph 13. The extension provided for in this paragraph shall be upon all of the terms and conditions of the lease, except that the rental shall be reasonable in view of business conditions then prevailing, but not less than \$375.00 per month, nor more than \$450.00 per month.

15. No failure to perform any condition or covenant of this lease shall entitle Lessor to terminate this lease unless said failure shall have continued for fifteen days after notice in writing requiring the performance of such condition or covenant shall have been given to Lessee.

16. All rentals payable hereunder shall be paid to Pauline Koulis unless and until Lessor designates some other party to receive rentals.

17. Written notices to Lessor hereunder shall, until further notice by Lessor, be addressed to Lessor at 2370 Bryan Avenue, Salt Lake City, Utah.

Written notices to Lessee hereunder shall, until further notice by or on behalf of Lessee, be addressed to Lessee at 164 South West Temple, Salt Lake City, Utah.

All notices shall be delivered personally or deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

18. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

19. The provisions of this lease shall inure to the benefit of Lessee and of its principal, Standard Oil Company of California. This lease shall bind and also inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor. Lessee may assign this lease or sublease the leased premises, or any part thereof, provided that no such act on the part of the Lessee shall operate to relieve it of any of its obliga-

tions under this lease.

IN WITNESS WHEREOF, these presents are hereby signed
by the parties hereto.

Pauline E. Ellis
Lessor

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.,

By H. K. Kamm
Its Attorney in Fact - Lessee

PREPARED BY: <u>E. G. Briggs</u>	DESCRIPTION APPROVED: <u>1920 C. 7. E.</u>
ATTORNEY'S APPROVAL	E. OF W. APPROVAL: <u>Chf</u>
FILLINGSTON, ARIZONA	DIV. MGT. APPROVAL: <u>Chf</u>
E. TUTTO, BY	APPROVED: _____
OTHER ATTORNEY: <u>E. G. Briggs</u>	AFFIRMED: _____
FORM PREVIOUSLY	MANAGER'S APPROVAL: _____
APPROVED BY: <u>[Signature]</u>	FOR EXECUTION: <u>E. G. BRIGGS</u>

not to be used after 1/1/1951

MODIFICATION OF LEASE

This Modification of Lease agreement, dated May 16, 1967, by and between PAULINE KOULIS, Lessor, and CHEVRON OIL COMPANY, a corporation, doing business as STANDARD OIL COMPANY OF CALIFORNIA, successor in interest of STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC., Lessee,

WITNESSETH:

In consideration of the sum of One Hundred Dollars (\$100.00), paid to Lessor by Lessee, receipt of which is hereby acknowledged, and in consideration of the mutual covenants of the parties hereto, it is agreed that the Lease, dated August 2, 1958, wherein the Lessor leased to the Lessee the following described premises in the City of Salt Lake, County of Salt Lake, State of Utah, to-wit:

Commencing at the Southwest corner of Lot 4, Block 63, Plat "C", Salt Lake City Survey, and running thence East 123.75 feet, thence North 74.75 feet, thence West 123.75 feet, thence South 74.75 feet, to the point of beginning,

shall be and the same is hereby modified as follows:

1. The fifteen year term provided for in paragraph 2 of the Lease shall commence on the date Lessee has completed construction of the service station on the leased premises, but not later than November 1, 1967, and shall end fifteen years thereafter, but not later than October 31, 1982.

2. The provisions of paragraph 12 of the Lease shall be amended as follows:

EXHIBIT "B"

12. Lessee agrees to pay the taxes levied or assessed against the leased premises after the year 1967 and during the remainder of the term of the Lease. Taxes for the year 1967 are to be prorated as of June 1st.

3. Lessee indemnifies Lessor and agrees to hold her harmless from and against all claims, demands and causes of action on account of personal injury to or death of any person or on account of damage or injury to property resulting from the use or occupancy of the leased premises or any of the acts or conduct of the Lessee in the operation of its business upon the said premises.

4. The interim rental provided for in paragraph 3 (a) of the Lease shall commence as of June 1st, 1967, and end upon completion of construction of the service station on the leased premises by Lessee, but not later than October 31, 1967.

IN WITNESS WHEREOF, the parties have executed this agreement in triplicate.

163877
1638771
1638771

STATE OF UTAH
COUNTY OF SALT LAKE

Pauline Koulis
LESSOR

CHEVRON OIL COMPANY
d/b/a STANDARD OIL COMPANY OF CALIFORNIA

By A. G. Hansen
LESSEE

)
) SS
)

On this 26 day of June, 1967, personally appeared before me, a Notary Public, PAULINE KOULIS, signer of the foregoing instrument, who acknowledged to me that she executed the same.

Edward K. Hansen
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

July 14 1968

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

On this 3 day of July, 1967, personally appeared before me D. F. Johnson, who being by me duly sworn did say that he is the Asst. Sales Man of CHEVRON OIL COMPANY, doing business as STANDARD OIL COMPANY OF CALIFORNIA, and that said instrument was signed in behalf of said corporation by authority and said D. F. Johnson acknowledged to me that the corporation executed the same.

D. F. Johnson
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires:

July 14, 1968

LEASE

42² (Interim Vacant Site)

Dated May 13, 1967

Wm Amelia
1. DIANA ~~SALENTINE~~ CHILD MARTIN, a widow
_____, Lessor,
hereby leases to CHEVRON OIL COMPANY, doing business as Standard Oil Company of
California, Lessee, the following described premises in the City of
Salt Lake, County of Salt Lake, State of Utah

Commencing at a point on the east line of 8th West Street
74.75 feet north of the Southwest Corner of Lot 4, Block 63,
Plat "C", Salt Lake City Survey, and running thence North
along the East line of 8th West Street 49 feet; thence East
123.75 feet; thence South 49 feet; thence West 123.75 feet
to the place of beginning.

The term of this lease shall commence on June 1, 1967, and end
fifteen years after the first day of the first calendar month following the month during which
a service station is completely constructed on the leased premises and all fixtures and equipment are
installed thereon by Lessee; provided, however, that in no event shall said fifteen year period
commence on a date later than December 1, 1967

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

(a) An interim rental of One Hundred Eighty-Five dollars (\$185.00), payable in
advance on the first day of each and every calendar month commencing June 1, 1967,
and ending with the rental paid on the first day of the calendar month preceding the commence-
ment date of the fifteen year period provided in Paragraph 1 hereof.

(b) Thereafter, a regular rental, payable in advance on the first day of each
and every month during said fifteen year period the sum of Two Hundred Thirty
Three and 33/100 Dollars (\$233.33).

EXHIBIT "C"

provided, however, that no rentals shall accrue or become due and payable hereunder until the date on which possession of the leased premises is delivered to Lessee free and clear of all improvements except ~~improvements existing on the leased premises at the time of delivery of possession to Lessee.~~ Lessor has obtained merchantable title to the above described leased premises.

3. Lessee expects to commence service station construction hereunder within ninety (90) days after possession is delivered to Lessee as provided in Paragraph 2 or after issuance of all necessary permits and other authorizations, whichever is later. If Lessee shall in its opinion be unable to obtain such permits and authorizations, or shall in its opinion be prevented from or unreasonably hindered in commencing construction within said time, or thereafter in completing construction, by reason of act of God or the elements, shortage or unavailability of necessary materials, supplies or labor, shortage of or interruption in transportation facilities, or because of applicable governmental regulations or restrictions, or by other cause beyond Lessee's control, whether similar to the foregoing or not, Lessee may terminate this lease by giving Lessor ten (10) days' written notice of Lessee's intention so to do.

4. Lessee shall have the right during the term of this lease to occupy and use the leased premises for any lawful purposes whatsoever. Lessee shall further have the right during its occupancy to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such buildings, structures, improvements or equipment as Lessee may desire; and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises.

5. No failure to perform any condition or covenant of this lease shall entitle Lessor to terminate this lease unless said failure shall have continued for fifteen (15) days after notice in writing requiring the performance of such condition or covenant shall have been given to Lessee.

6. In the event it shall be or become unlawful to operate a service station upon the leased premises, ~~or if it shall be or become unlawful for Lessee to erect or maintain any particular structure or equipment on the leased premises, or to store thereon or to sell therefrom gasoline or other products of petroleum, or other goods marketed generally by Lessee; or any part of the leased premises or the approaches thereto are condemned or changed by public authority; or if any highway or street change is made diverting or rerouting traffic away from the leased premises, so that it shall become impracticable or unprofitable to construct, maintain, or operate a service station on the leased premises, or to use the leased premises as they were used or intended to be used at that time,~~ then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days' notice in writing of such termination. If, as a result of causes other than those hereinabove set out, such as earthquake, fire, flood, strikes, riot, insurrection, or other similar causes which are beyond the control of Lessee, the leased premises shall become unusable, from a practical standpoint, for business purposes for a period of thirty (30) consecutive days or longer, then Lessee may, effective on the date of the happening of any such event, suspend all rental payments hereunder until the leased premises are again so usable.

7. Lessee shall have the right at any time during Lessee's occupancy, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment, placed by it, or by its predecessor in interest, in, under, or upon the leased premises, or acquired by Lessee whether before or during the term hereof.

8. Lessee shall pay any taxes levied or assessed during the term of this lease on any buildings, equipment or facilities located on the leased premises while such buildings, equipment or facilities are owned by Lessee. All other real or personal property taxes or assessments, including all street improvement or other special taxes or assessments, ~~shall be paid by Lessor.~~ If Lessor fails to pay his share of the taxes promptly when due, or fails to perform promptly any obligation owing to a third person, which, if unperformed, might result in termination of this lease, including an obligation to Lessor's lessor, if any, and an obligation to a third person secured by a lien on the leased premises, Lessee may pay such taxes or perform such obligation for the account of Lessor and bill Lessor for the cost thereof, or deduct such cost from rentals accruing under this lease.

9. Lessee, while in possession, shall have the prior right (1) to buy the whole or any part of the leased premises or any larger parcel which includes the leased premises; if Lessor receives from a third party an acceptable bona fide offer to buy, or if Lessor offers to sell, such property, and (2) to lease the whole or any part of the leased premises or any larger parcel which includes the leased premises, if Lessor receives from a third party an acceptable bona fide offer, or if Lessor offers, to lease such property for a term commencing on or after the expiration of the term hereof or any extension thereof. In either such event, Lessor shall forthwith give Lessee written notice of such offer, together with a copy thereof, and Lessee shall have sixty (60) days from the receipt of such notice to buy or to lease such property, as the case may be, at the terms of such offer, or at such lesser terms as Lessor and Lessee may agree upon. If Lessee fails to exercise such option within such sixty (60) days, Lessor shall have sixty (60) days there-

after within which to sell or use as the case may be, such property the party and upon the terms stated in the notice to Lessee without resubmitting such offer to Lessee as hereinabove provided. If Lessor sells such property to a third person, such sale shall be made subject to the terms and provisions of this lease; including, but without limiting the generality of the foregoing, the provisions of this paragraph. The rights of Lessee under this paragraph may be exercised by any nominee Lessee may designate, whose financial responsibility Lessee hereby guarantees.

10. In addition to the rights granted Lessee under paragraph 9 hereof, Lessee shall have the option to purchase the leased premises at any time prior to the _____ day of _____, 19____ for the sum of _____ dollars (\$_____).

Exercise of this option shall be by written notice from Lessee to Lessor given prior to said _____ day of _____. Within five (5) days after the exercise of this option, Lessor shall deposit in escrow with an escrow agent designated by Lessee a good and sufficient deed conveying to Lessee good and merchantable title to said premises, free of any liens, encumbrances or defects except such as may be approved in writing by Lessee. If such title cannot be conveyed within said time, Lessor shall be allowed a period of thirty (30) days (which said period may be extended for such further period as Lessee may allow) after exercise of the option to remove objections to title and shall use all due diligence to do so; if removed, the balance of the purchase price shall be paid within five (5) days after removal; but if any objection be of such nature that it cannot be removed within the time allowed, Lessee may rescind the exercise of this option or elect to buy the property subject to such objection. Lessor hereby authorizes said escrow agent to deliver said deed to Lessee upon payment into escrow of the balance of the purchase price in accordance with the terms hereof. Lessor shall furnish to Lessee, prior to receiving said purchase price, a title insurance policy issued by a title insurance company designated by Lessee insuring Lessee in the amount of the purchase price, a certificate or abstract of title, or other evidence of ownership, as Lessee may require. The rights of Lessee under this paragraph may be exercised by any nominee Lessee may designate, whose financial responsibility Lessee hereby guarantees.

11. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only (and upon all the terms, covenants and conditions hereof).

12. If any tax or charge is hereafter imposed upon Lessee pursuant to any so-called Chain Store Tax Law hereinafter enacted, or amended, by any governmental authority for or on account of the operation of a service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the effective date of the enactment, or amendment, of such law.

13. Lessee shall have the right to terminate this lease at any time during the term hereof or any extension thereof, by giving Lessor thirty (30) days' written notice of Lessee's intention so to do. Lessee may assign this lease and may sublet the premises or enter into any form of operating agreement with third persons during the term of this lease, including any extensions thereof; however, in the event of assignment or subletting, Lessee shall remain liable for payment of rentals and taxes (to the extent taxes are to be paid by Lessee) in the event of default by the Assignee or Subtenant in making such payments, or either of them.

14. Lessee shall have the option to extend this lease for a further period of _____ five _____ years from the date of expiration of the term hereof, and thereafter for _____ five _____ years, and thereafter for _____ years, and thereafter _____ years upon all the terms, covenants and conditions of this lease. Should Lessee elect to exercise any or all of the options herein granted, Lessee shall give Lessor notice in writing of its intention so to do at any time prior to the expiration of the term or terms hereof, and upon the giving of such notice this lease shall be extended as above provided.

15. All rentals payable hereunder shall be paid to Diana C. Martin, unless and until Lessor shall designate some other party to receive said rentals.

16. Written notices to Lessor hereunder shall be addressed to Lessor at 833 Balra Drive
El Cerrito, California

Written notices to Lessee hereunder shall be addressed to P. O. Box 719
Salt Lake City, Utah. All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

17. (a) Each Lessor (if more than one) warrants that he owns merchantable title to the hereinabove described premises. However, if after investigation of the title, attorneys for Lessee are of the opinion that the title is not merchantable, Lessor, at his sole cost and expense, shall within one hundred twenty days from the date of receipt of the written opinion of attorneys for Lessee cure defects stated in the opinion to the satisfaction of Lessee's attorneys; and if such defects are not so cured within such time Lessee shall have the option of curing such defects and deduct the cost thereof, including reasonable attorneys' fees, from rentals to be paid, or Lessee may terminate this agreement without liability of any kind on its part. Provided, that if there is a mortgage against the premises to secure payment of an indebtedness, and such mortgage is not released of record by the holder of the indebtedness and mortgage prior to the time Lessee takes possession, the existence of such debt and mortgage will not be considered such a defect in the title as to render it not merchantable if the holder of the debt and mortgage executes and delivers to Lessee an instrument satisfactory to Lessee's attorneys subordinating the debt and mortgage to this lease.

24671

Wm

(b) Notwithstanding any other provision of this lease, it is expressly understood and agreed that Lessee shall not become liable for the payment of any rent until Lessee takes possession of the premises.

18. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor. There is no understanding or agreement, express or implied, on any of the subjects referred to in this lease other than this written lease itself, and every agreement or understanding between the parties hereto has been merged herein.

19. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

20. The additional provisions in paragraph(s) 21 thru 26 are hereby made a part of this lease.

IN WITNESS WHEREOF, these presents are hereby signed in triplicate by the parties hereto.

W. J. J.
V. C. B. M.
V. C. B. M. S.

primarily approved lease
Lessor

Anna Amelia C. Child Martin
Dana: ~~Patricia~~ Child Martin Lessor
X Amelia

CHEVRON OIL COMPANY, doing business as
Standard Oil Company of California, Lessee
By W. J. J.

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Wm

21. Lessor shall have until August 1, 1967 in which to remove the present occupants of the leased premises and deliver possession of said premises to Lessee.

22. Lessee shall promptly undertake to procure the necessary permits and licenses for the construction of the service station referred to in Paragraph 3 hereof and upon obtaining such permits and licenses notify Lessor thereof in writing and thereupon the right of termination under said Paragraph 3 is waived. Lessor shall not be required to exercise the option to purchase the leased premises under the purchase option assigned to her by Lessee until Lessee shall have determined whether the necessary permits and authorizations to construct the service station can be obtained.

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23. In the event ^{Lessee} ~~Lessor~~ exercises the options to extend this lease as provided in Paragraph 14 hereof, the minimum monthly rentals during the first 5-year option period shall be Three Hundred Dollars (\$300.00) and during the second 5-year option period shall be Three Hundred Twenty-Five Dollars (\$325.00), or 1/12 of 7% of the appraised value of the leased premises exclusive of the improvements located thereon, whichever is the greater. Such appraisals shall be made at least three months prior to the beginning date of each five year option period.

24. The appraisal of the value of the leased premises as provided for in Paragraph 23 shall be made by three expert appraisers familiar with properties in Salt Lake City, Utah - one to be appointed by Lessor, one by Lessee and the third by the two appraisers appointed by the parties hereto.

25. In the event Lessee elects to exercise any right of termination herein granted to it during the term of this lease or any extensions thereof, except the right of termination set forth in Paragraph 3 hereof, Lessee shall pay to the Lessor a sum of money equivalent to the total of monthly rental payments to become due and payable during the remainder of the lease term in which such exercise of right of termination occurs. The sum which may become due Lessor under the provisions of this paragraph shall be further reduced by the amount received by Lessor on account of condemnation or conveyance of the leased premises or any part thereof for public purposes.

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26. The service station ^{Lessee} ~~Lessor~~ is required to build on the leased premises as provided herein will be constructed partly on the leased premises and partly on leased land adjoining the leased premises to the south. Lessee herein agrees to assign to the Lessor its preferential option to buy the adjoining property which option is contained in its lease from Pauline Koulis. Lessor however will notify Lessee within 30 days whether she desires to exercise this option.

NOTICE OF BREACH OF LEASE
880 WEST NORTH TEMPLE,
SALT LAKE CITY, UTAH 84116
KOULIS TO STANDARD OIL
COMPANY OF CALIFORNIA

Standard Oil Company of California
Western Operations Incorporated
% Service Agent
C.T. Corporations Systems
175 South Main Street
Salt Lake City, Utah 84111

In Re: Lease 880 West North
Temple, Salt Lake City, Utah
84116--Koulis to Standard
Oil Company of California

The Standard Oil Company of California, Western Operations Incorporated is hereby given NOTICE that on August 2, 1958 they did enter into a lease agreement with Pauline Koulis; under the terms and conditions of the said lease, the Standard Oil Company of California did solemnly agree to build a service station and maintain the service station facilities on the property of Pauline Koulis. That in direct violation of the lease, Standard Oil Company of California did not build a service station on Lessee's land as made and provided in the lease agreement and by reason thereof they have violated the lease in its entirety.

That as made and provided in paragraph fifteen (15) of said lease, the Standard Oil Company of California, Western Operations Incorporated is hereby given notice that said corporation does have fifteen (15) days after receipt of this notice to completely construct a service station on the lease premises of Pauline Koulis and Kathrine Koulis, more particularly described as follows:

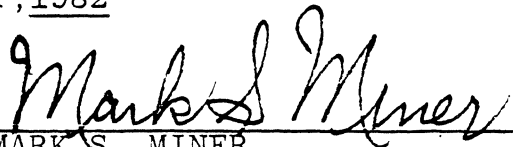
In the City of Salt Lake, County of Salt Lake, State of Utah, commencing at the southwest corner of Lot 4, Block 63, Plat C, Salt Lake City Survey, and running thence east 123.75


EXHIBIT "D"

feet, thence north 74.75 feet, thence west 123.75 feet, thence south 74.75 feet, to the point of beginning.

You are further given NOTICE that should you fail to comply with the lease and completely construct a service station on the lease premises, as made and provided in the August 2, 1958 lease also referred to in the modification of the lease, dated June 26, 1967. That the present Lessor, Mrs. Katherine Koulis, will take appropriate action as is deemed to be required, to require you to carry out the terms and conditions of said lease. You will please govern yourselves accordingly.

DATED this 30th day of December, 1982



MARK S. MINER
Attorney for Lessors
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111

PLEASE SERVE: C.T. CORPORATIONS SYSTEMS
175 South Main Street
Salt Lake City, Utah 84111

VAN COTT, BAGLEY, CORNWALL & McCARTHY
Michael F. Richman, Esq.
James W. Stewart, Esq.
Wayne D. Swan, Esq.
Attorneys for Defendants
50 South Main Street, Suite 1600
P. O. Box 3400
Salt Lake City, Utah 84110-3400
Telephone: (801) 532-3333

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

KATHERINE KOULIS (GORAS),)	
)	
Plaintiff,)	
)	
vs.	)	ORDER GRANTING DEFENDANTS'
	)	MOTION FOR SUMMARY JUDGMENT
	)	AND DENYING PLAINTIFF'S
	)	MOTION FOR SUMMARY JUDGMENT
STANDARD OIL COMPANY OF)	
CALIFORNIA, WESTERN OPERATIONS,)	
INC.; CHEVRON USA, INC.;)	
CHEVRON OIL COMPANY dba STANDARD	)	Civil No. C83-6295
OIL COMPANY OF CALIFORNIA,	)	(Judge Frederick)
)	
Defendant.)	
)	

The above-entitled matter came on regularly for hearing on Defendants' written Motion for Summary Judgment and Plaintiff's written Motion for Summary Judgment, before the Honorable J. Dennis Frederick, District Judge, on the 6th day of August, 1984 at 10:00 a.m. The Plaintiff was represented by Mark S. Miner, Esq., and the Defendants were represented by Michael F. Richman, Esq., James W. Stewart, Esq. and Wayne D. Swan, Esq.

EXHIBIT "E"

Based upon the affidavits and exhibits submitted to the Court and upon the oral argument of the respective counsel, the Court finds that the Plaintiff had the opportunity of knowing the facts consitiuting the alleged fraud and was thereafter inactive and dilatory in commencing her action. The Court finds that all of the facts necessary for Plaintiff to have discovered the alleged fraud and commenced this action were available to her in 1968. The Court further finds that Plaintiff has failed to come forward with any legally cognizable reason to excuse her delayed discovery of the alleged fraud.

Based upon the foregoing, Defendants' Motion for Summary Judgment is granted, and Plaintiff's Motion for Summary Judgment is denied. Plaintiff's action is barred both by the statute of limitations for actions upon a contract (Utah Code Ann. § 78-12-26(2)) and by the statute of limitations applicable to actions for fraud (Utah Code Ann. § 78-12-26(3)).

The Court's determination herein is not based on Plaintiff's counsel's insertion of copies of the 1967 Grade Plans for the Chevron Station as Exhibits to the Memorandum in Support of Plaintiff's Motion for Summary Judgment, the Affidavit of Katherine Koulis, and the Affidavit of Mr. Cayias.

The Court having considered the written pleadings and oral arguments of counsel for all parties concerning the above

motions, the court being fully advised in the premises, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

(1) Defendants' Motion for Summary Judgment is granted;

(2) Plaintiff's Motion for Summary Judgment is denied.

(3) Defendants are awarded their costs herein.

DATED this 22 day of August, 1984.

BY THE COURT:

151 J. Dennis Frederick
J. Dennis Frederick,
District Judge

Approved as to form:

Michael F. Richman
Attorney for Defendants

Mark S. Miner
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand-delivered a true and correct copy of the foregoing Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiff's

Motion for Summary Judgment, this 10 day of August,
1984, to the following:

Mark S. Miner, Esq.
Peter Flangas, Esq.
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111

Wayne Swan

Received copy

Mark S. Miner

8065s
080984

PETER L. FLANGAS
MARK S. MINER
Attorneys for the Plaintiff
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 363-1449
UTAH STATE BAR NO.#2273.

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KATHERINE KOULIS,)	
	)	NOTICE OF APPEAL TO THE
Plaintiff,	)	UTAH SUPREME COURT
)	
vs.)	
STANDARD OIL COMPANY OF)	
CALIFORNIA, WESTERN)	
OPERATIONS, INC., et al.,)	
Defendants.	)	Civil No. C-83-6295
	)	Judge Dennis Frederick

Notice is hereby given that Katherine Koulis hereby appeals to the Utah State Supreme Court from the Order granting Defendants' Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment entered by the Honorable Dennis Frederick on the 22nd day of August, 1984, which granted a Summary Judgment against the Plaintiff and in favor of the Defendants.

The Plaintiff appeals the granting of said Summary Judgment in its entirety, in that there are genuine issues of law and genuine issues of fact which should have been determined by the Court.

DATED this 18th day of September, 1984.

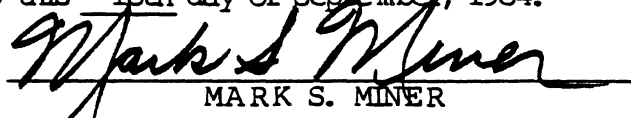

MARK S. MINER
Attorney for the Plaintiff

EXHIBIT "F"

CERTIFICATION OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL TO THE UTAH SUPREME COURT to: Michael F. Richman, 50 South Main Street, Suite 1600, P.O. Box 3400, Salt Lake City, Utah 84110; this 20th day of September, 1984; and that said document was duly served according to law.

