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IN THE SUPREME COURT OF THE STATE OF UTAH

ARA OTTESON and NELLIE A. OTTESON, husband and wife,

Plaintiffs-Respondents,

vs

RICHARD D. MALONE and HILA SUE MALONE, husband and wife,

Appellants-Defendants.

Case No. 15478

APPELLANT'S BRIEF

Appeal from the Judgment of the
Seventh District Court for Carbon County
Honorable Edward Sheya, Judge

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FILED

DEC 13 1977

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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APPELLANT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is a civil case wherein the Appellants appeal from that portion of the trial court judgment declaring Appellants' option to purchase real property void and denying Appellants' demand for specific performance of said option. Appellants also appeal from the Order denying their Motion for New Trial and Alternative Relief by Amendment of Findings, Conclusions, and Judgment.

DISPOSITION IN THE LOWER COURT

This matter came for trial before the Honorable Edward Sheya, Judge of the Seventh Judicial District Court for Emery County on December 7 and 8, 1976. The Court declared void the option to purchase provisions of a "Lease and Option" executed between the Appellants and the Respondents. The Court also denied the Appellants' demand for specific performance of the

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option to purchase and denied Appellants' Motion for New Trial and Alternative Relief by Amendment of Findings, Conclusions, and Judgment.

RELIEF SOUGHT ON APPEAL

Appellants seek judgment declaring their option to purchase valid and granting their request for specific performance of said option.

STATEMENT OF THE FACTS

This case came for trial before the Honorable Edward Sheya, District Judge, on December 7 and 8, 1976. That portion of the Judgment appealed from regards an instrument entitled Lease and Option executed by the appellants and the respondents.

The appellants had previously purchased from the respondents 10 acres of land without water rights. Thereafter, on June 27, 1974, appellants prevailed on the respondents to lease them an additional 28 acres which could be irrigated. Considerable discussion followed concerning the exact nature of the lease.

Eventually, Mrs. Otteson suggested that Mr. Boyd Bunnell, Attorney at Law, be contacted to draw up the necessary document. Because of her poor health, Mrs. Otteson did not personally see Mr. Bunnell, but Mr. Otteson and Mrs. Malone visited his office. Mr. Otteson, however, had difficulties with the batteries in his hearing aid and testified that he was unable to hear during the meeting with the attorney.

The instrument entitled Lease and Option was subsequently

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mailed to the parties who all testified that they had read the same.

Again, the parties discussed the instrument and decided that certain provisions needed clarifying. The document was returned to the attorney who re-wrote it accordingly and sent the second draft to the parties.

The testimony at this point is divergent. Mr. Otteson testified that he and his wife read and signed the Lease and Option at home. The appellants claim that all four parties met together and that Mr. Malone read aloud the second draft, after which all of the parties signed the document.

ARGUMENT

POINT I

THE TRIAL COURT SHOULD HAVE GRANTED THE APPELLANTS' PRAYER FOR SPECIFIC PERFORMANCE OF THEIR OPTION TO PURCHASE RESPONDENTS' REAL PROPERTY BECAUSE THE RESPONDENTS ARE BOUND BY THE TERMS AND CONDITIONS OF THE LEASE AND OPTION AS CONTAINED WITHIN THE FOUR CORNERS OF THE WRITTEN INSTRUMENT.

The Lease and Option at issue in this case is neither a lengthy nor a legally complex instrument. It is but three pages long, neatly written in standard size type, and clearly labeled LEASE AND OPTION. There are only nine provisions listed under its "terms and conditions". Three of those nine provisions refer specifically to the right of the Appellants to purchase the property and how that right is to be exercised. In short, the Lease and Option is simple and unambiguous.

The trial Court decided early in its proceedings that

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no question of fraud, misrepresentation, or undue influence was involved. (Tr. 123) Barring these factors, the Respondents should be bound by their signatures on this straight-forward instrument. They should not now be permitted to admit evidence varying the terms of the instrument. In this regard, the authors of 49 Am Jur 2d, Landlord and Tenant, Section 367 at page 383 state:

> "Generally speaking, evidence is inadmissible to vary the unambiguous terms of a written lease granting the lessee an option to purchase the premises. . . An option to purchase in a lease constitutes a contract of sale when the option is exercised, and it has been held that it may be binding to such an extent that a court of equity will remove it as a cloud upon title even after the period of the lease has terminated."

In April of 1974, the Utah Supreme Court handed down a decision which bears directly on the instant case. There the Plaintiff-Appellant was a real estate broker appealing from a lower court decision denying his recovery of a broker's commission. A printed provision in the "Exclusive Right to Sell" document was at issue, and the defendant persuaded the lower court that the provision, although precisely written, was not the actual agreement of the parties. The Supreme Court in reversing the judgment emphasized the importance of excluding parol evidence in the case of an instrument containing unambiguous terms:

> "Parol Evidence may be received to clarify ambiguous language in a contract, to show what the agreement was relative to filling in blanks, and to supply omitted terms which were agreed upon but inadvertently left out of the written agreement. However, under the general rule, which is applicable here, parole evidence may not be given to change the terms of a written agreement which are clear, definite, and unambiguous. To permit

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> that would be to cast doubt upon the integrity of all contracts and to leave a party to a solemn agreement at the mercy of the uncertainties of oral testimony given by one who in the subsequent light of events discovers that he made a bad bargain.
>
> Written words can be examined so as to ascertain what they stand for in connection with particular conduct or particular objects. Thus expressions of the parties prior to and contemporaneous with the execution of a written instrument may be helpful in understanding the meaning of the language used. However, the defendant here does not seek to explain the meaning of a paragraph. He simply wants the court to eliminate it in its entirety. This the courts cannot do." E. A. Strout Western Realty Agency, Inc., vs Owen H. Broderick 522 P2d 145, 146 (1974).

The Court buttressed this position by also citing B. T. Moran, Inc. vs First Security Corporation, 82 U 316, 24 P2d 384 (1933); Hatch vs Adams, 8 U2d 82, 329 P2d 285 (1958); and Fox Film Corporation vs Ogden Theatre Co., Inc., 82 U 279, 17 P2d 294 (1932).

An earlier case, Rainford vs Rytting, 22 U2d 252, 451 P2d 769 (1969) had met with similar treatment by the court. There a corporate shareholder brought an action against two other shareholders seeking to hold them liable as guarantors of a corporate contract for the repurchase of plaintiff's stock. The Supreme Court held that the defendants' affidavit response to the plaintiff's request for summary judgment was inadequate because it consisted only of inadmissible parole evidence. In so holding, the Court on pages 771 and 772 quoted from B. T. Moran, Inc. vs First Security Corporation supra.

> "The rule is well settled that, where the parties have reduced to writing what appears to be a complete and certain agreement, it will, in the absence of fraud, be conclusively presumed that the writing contained the whole of the agreement between the parties, that it is a complete memorial of such agreement, and that parole

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> evidence of contemporaneous conversations, represntations, or statements will not be received for the purpose of varying or adding to the terms of the written document."

Again, the "LEASE AND OPTION" is an unambiguous document written in terms of common usage. A reasonable man perusing the instrument could readily ascertain that two things are the subjects of the instrument: A lease, and an option to purchase. Considering that approximately 1/3 of the document refers directly to the option and that words and phrases such as "purchase", "purchase price", "fair market value" and "retain a life estate", are scattered throughout the document it is difficult to believe that the Respondents were not cognizant of the purpose of the instrument, especially considering the testimony by Mr. Otteson at trial that he had read the document.

The purpose of the parol evidence rule is to protect parties of forthright contracts. Since it is difficult to imagine an instrument more concise and clear than the Lease and Option in the instant case, justice requires that the Appellants be protected in their contractual expectations. To permit otherwise is to preclude the Appellants from a bargain which they made every effort to guarantee by a precise writing. The very purpose of the parole evidence rule as stated by CJS points out the need for its application in the present case:

> "The rule is founded on the long experience that written evidence is so much more certain and accurate than that which rests in fleeting memory only, that it would be unsafe, when parties have expressed the terms of their contract in writing, to admit weaker evidence to control and vary the stronger and to show that the parties intended a different contract from that expressed in the writing signed by them. It is obvious that written instruments would soon come to be of little value if their explicit provisions could be varied, controlled, or superseded by

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parol evidence, and it is also plain that a different rule would greatly increase the temptations to commit perjury. . ."32A CJS Evidence Section 851 at page 216.

POINT II

THE TRIAL COURT ERRED IN RULING THAT RESPONDENTS MISUNDERSTOOD THE OPTION TO PURCHASE, THAT SAID MISUNDERSTANDING CONSTITUTED UNILATERAL MISTAKE OF FACT, AND THAT SAID UNILATERAL MISTAKE OF FACT VOIDS THE OPTION TO PURCHASE.

On page 120 of the Transcript of the trial, Counsel for the Appellants moved for judgment in their favor regarding the Lease and Option, claiming that the Respondents had not sustained the burden of proof of showing any fraud, misrepresentation, or undue influence. After oral arguments by both counsel, the Court replied to the motion:

> "I'll tell you what I'm going to do. If counsel would like an opportunity to brief this, I don't want to be hasty on this thing, but that is the way it looks to me at this time and I will take your motion under advisement. If you care to submit written memoranda to me on this question about whether that consideration extends to the option or not. But I think that is the decisive factor clearly if there was no consideration for that option. I don't think you have a valid option or a binding option. And would you like time to brief that before making a ruling?"

Both counsel then agreed to take two weeks to write memoranda directed to the question of the adequacy of consideration, which they thereafter submitted to the Court.

The Court, however, in coming to its Memorandum Decision completely bypassed the issue of consideration, the factor which it claimed to be decisive, and ruled in the Respondents' favor on the grounds of unilateral mistake. (M. D. pages 2, 3, & 4). This was clearly prejudicial to the Appellants who had addres

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the consideration issue as requested and sufficient to constitute a substantial error as required by Rule 61 URCP. This in itself should be grounds for overturning the lower Court's decision.

Moreover, it is clear from the testimony at trial that Respondents had ample opportunity to fully understand the document which they signed. Mr. Otteson testified that he had at least two conferences with Malones regarding the document before it was ever drafted (T. 42); that he had good eyesight and could read (T. 43); and that both Respondents read the intrument (T. 45 & 46). He further testified that he discussed the first draft of the Lease and Option with the Appellants before sending it back to the attorney and when the second draft arrived both Respondents again read it. (T 72 & 82)

Mrs. Malone testified that the first draft was returned in order to specify that lease payments be credited to the purchased price (T. 127) and when the second draft arrived, Mr. Malone read it aloud to all four parties before they signed it. (T. 129)

Mr. Malone, in turn, testified that the first draft was corrected specifically to clarify the purchase money agreement and that he read aloud the Lease and Option to all of the parties. (T. 148 & 149)

The Respondents, therefore, had ample opportunity to study both drafts of the document before signing. Mr. Otteson verified that both of the Respondents had read the final document and that he himself had realized when he signed that

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the option provision was within the instrument. In its Findings of Fact and Conclusions of Law, the trial Court concluded that Mr. Otteson appeared to be in "good health and of sound and disposing memory".

It is clear from the foregoing that the Respondents had every occasion to study the Lease and Option and to consult with the attorney who had prepared it.

Similarly, the Supreme Court in Garff Realty Co. vs Better Buildings, Inc., 234 P2d 842 (1951) considered an action brought to recover a real estate broker's commission where the central issue concerned the defendant's knowledge of what he had signed. On page 844 the Court pointed to the negligence of the defendant in not exercising care in what he signed:

> "The trial court properly sustained the objection to the question: 'At the time you signed this were you aware of the provision in that last paragraph?' There was no plea of mistake, fraud or overreaching, or of misrepresentation. The answer of the defendant to the effect that the agent of 'defendant who executed said agreement was not aware of the provision of said agreement relating to the payment of the commission and that it was not the intention of the defendant to become bound for the payment of any commission,' does not sufficiently state any legal defense. The governing rule is thus stated in 12 Am Jr, Contracts, Section 137, pp. 628-29: Ignorance of the contents of an instrument does not ordinarily affect the liability of one who signs it. . . If a man acts negligently and in such a way as to justify others in supposing that the writing is assented to by him, he will be bound both at law and in equity, even though he supposes the writing is an instrument of an entirely different character. The courts appear to be unanimous in holding that a person who, having the capacity and an opportunity to read a contract, is not misled as to its contents and who sustains no confidential relationship to the other party cannot avoid the contract on the ground of mistake if he signs it without reading it, at least in the absence of special circumstances excusing his failure to read it. If the contract is plain and unequivocal in its terms, he is ordinarily bound thereby."

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Another case decided in the same year, Ashworth et al vs Charlesworth et al., 231 P2d 724 (1951) touched on the negligence of a party signing a contract and its relationship to a claim of unilateral mistake:

> "Williston on Contracts, Section 1577, P. 4407, explains the effect of negligence on a contract as follows: 'Where the signer of a writing has made an innocent mistake as to the nature of his act without carelessness, whether induced by fraud or not, the writing is not his expression, and there is no contract. But if a man acts negligently, and in such a way as to justify other in supposing that the terms of the writing are assented to by him and the writing is accepted on that supposition, he will be bound both in law and in equity. . .' (Emphasis added by the Court) And in Section 1596, on page 4447, the author states: 'It is frequently said that equity will not reform or rescind a contract if the petitioner has been guilty of negligence, or at any rate of gross negligence. That no such principle can be laid down as a universal rule is obvious. In many if not most cases of mistake in the expression of a contract where reformation is granted, there is some element of lack of care, but, at least, if the mistake is mutual and each party has been careless in failing to make a contract expressing the real intention of both, there seems no reason why relief should not be granted, unless this is made inequitable by some change of position other than merely entering into the contract in question. But if unilateral mistake, where there is no fraud or inequitable conduct, is ever to be regarded as sufficient ground for the rescission of a bi-lateral contract, there is more reason why a court of equity should confine its jurisdiction to cases where the party seeking relief has been free from negligence, since the blame of the situation lies wholly on the party seeking relief. . . ." (Emphasis added by the Court) 231 P2d at 727.

It is the contention of the Appellants that any mistake on the Respondents' behalf could have easily been avoided by the exercise of ordinanry care and diligence. This position is strengthened by the CJS discussion of unilateral mistake as it relates to specific performance:

> "Even a mistake which is entirely defendant's own, or that of his agent, and for which plaintiff is not directly or indirectly responsible, may defeat specific performance.

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> In such case, however, the mistake must be an honest one which is not imputable to defendant's negligence or inexcusable carelessness, and the situation must be such that a granting of specific performance will work an unreasonable hardship on defendant as compared with the injury that will result to plaintiff from a denial of specific relief." CJS, Specific Performance, Section 51, pp. 833-834.

Moreover, it is doubtful if unilateral mistake of the type embodied in the instant case is sufficient to void the option. Unilateral mistake can readily be broken into two divisions: Mistakes of facts and mistakes of law. The situation surrounding the signing of the Lease and Option is better classified as belonging to mistakes of law since the Respondents admitted at trial that they were fully aware of the option provisions in the Lease and Option but supposedly failed to comprehend its legal consequences.

Traditionally, courts of equity have been hesitant to provide relief for mistakes of law. This position is illustrated by a portion of the decision rendered in Board of Education of Sevier School District vs Board of Education of Piute School District, 39 P2d 340 (1934) on page 341:

> "So, too, in 13 C. J. 379, the author says that it is laid down in general language in many cases that a mistake, in order that it may affect a contract, must be a mistake of fact, and that a mere mistake of law will not affect the enforceability of an agreement, and that a mistake of law is where the person knows the facts of the case but is ignorant of the legal consequences."

There are no other Utah cases directly analogous to the present case, but decisions rendered by the Supreme Courts of two other western states are helpful.

The first is Everett G. Schwieger vs Harry W. Robbins

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and Company, 290 P2d 984 (Wash. 1955). This case involved a personal injury action brought for injuries sustained when hay fell from the defendant's truck onto the plaintiff's truck. The court found for the defendant basing its decision on a release signed by the plaintiff. The plaintiff appealed, contending that although the release specifically referred to personal injuries it had been given for the purpose of a property settlement. In finding for the defendant, the court emphasized:

> "The release is in plain and unambiguous language. We often have said that the courts will not interpret the meaning of unambiguous contracts. (Citations omitted) Neither will the courts permit oral evidence to establish or create an ambiguity in a written contract. . . . The appellant admits signing the release. He contends that he signed it because he believed no claim for personal injuries then existed under the law. A mistake of law is an erroneous conclusion with respect to the legal effect of known facts. A mistake of law, in the absence of fraud or some like cause, is not a ground for avoidance of a contract." 290 P2d 986.

The second case, although dealing particularly with workman's compensation, includes an informative discussion as pertaining mistakes of law:

> "It is a legal maxim that everyone is presumed to know the law. . . . It has been held that a mistake of law does not excuse a party to a contract, unless it be a mutual mistake of both parties thereto, and then is analogous to a mistake of fact, but if there is mutuality of mistake, either of law or of fact, the party upon whom the burden rests must allege and prove such fact." Elmer Lee Flott vs Wenger Mixer Manufacturing Co., 189 Kan. 80, 367 P2d 44 (1961).

POINT III

THE TRIAL COURT ERRED IN NOT HOLDING THAT THERE WAS SUFFICIENT CONSIDERATION FOR THE OPTION TO PURCHASE.

The Court itself raised the issue as to whether an

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Option to Purchase real property contained in a written lease of the same property must be supported by sufficient consideration independent and separate from the consideration of other covenants and conditions set forth in the remaining paragraphs of the lease and option agreement. The Court expressed its concern and raised this issue after reading the following language contained in 17 CJS, Contracts, Section 1(1)(F) at page 542 and 543:

> "In the law of contracts, an option is an agreement to keep an offer open, or an offer to enter into a contract coupled with a promise to hold the offer open for a given period of time, which promise is or is not binding on the offeror depending on whether or not it is supported by consideration. In other words, it is a continuing offer or contract, made irrevocable for a fixed period when given for a present consideration. . . ."

Defendants agree that an option to purchase must be supported by sufficient consideration. However, the above quoted language does not answer the question of what would constitute sufficient consideration in an option to purchase. In the case before the Court, defendants argue that the Lease and Option Agreement is a single document, that the Agreement sets forth the amount and number of rental payments to be made, and that the Option to Purchase clause contained in the Lease and Option Agreement need not be supported by independent consideration because the rental payments and other covenants and conditions of the Agreement constitute sufficient consideration to not only support and validate the Lease but also the Option to Purchase. The Court's question is answered and the defendants' position supported by 51C CJS, Landlord and tenant, Section 81[illegible]

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at page 238:

> "An agreement whereby the lessee of property is given an option to purchase the leased premises, like other contracts, must be supported by a sufficient consideration. Where the lease and the option constitute but one contract, the provisions of which are interdependent, the consideration for the lease supports the option; in other words, the agreement to pay rent or do other acts, and the fulfillment of such obligations on the part of the lessee, will support the option as well as the right to occupy under the lease. Thus, an option to purchase contained in a lease is not subject to attack on the ground that it is unilateral and lacks mutuality in that it binds the lessor notwithstanding the lessee is not bound to purchase."

The only Utah case touching upon the issue is Tilton vs Sterling Coal & Coke Company, 28U 173, 77 P 758 (1904). In dispute was an Agreement containing a Lease of and accompanying Option to Purchase water. That Utah Supreme Court addressed itself to the issue of whether the lessee could exercise the Option to Purchase within a reasonable time after the Lease had terminated. However, the opinion contains the following dictum which is relevant to the case presently before the Court:

> "When an option is given to a lessee to purchase the leased premises, the lease is a sufficient consideration to support the option, and the lessor cannot withdraw it before the time given in which to accept it has expired. . . . 77P at 760."

For the sake of brevity, defendants cite a sampling of judicial opinions throughout the Western States only. In Carleno vs Vollmert Tire Company, 540 P2d 1149 (Colorado 1975) plaintiff lessor commenced legal proceedings to terminate the Lease and obtain possession of the premises from defendant lessee. On appeal from adverse trial court decision, plaintiff lessor contended that the Option to Purchase clause contained in the Lease Agreement was not supported by consideration. The Court's

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opinion contains a verbatim quote of the Option to Purchase clause:

> "(2) It is further agreed that at any time prior to April 1, 1977, and within ninety (90) days following April 1, 1977, the lessee, only, shall have an option to purchase all the entire building at a total purchase price of ONE HUNDRED TEN THOUSAND AND NO/100 ($110,000), said sum of money, being the total purchase price, and shall be paid to the lessor by the lessee under the following terms and conditions. . . ." 540 P2d at 1150.

The Colorado Appellate Court affirmed the trial Court, and disagreed with plaintiff lessor's argument that the Option to Purchase lacked consideration:

> "There is also no merit in the lessor's final contention that the option to purchase clause was not supported by consideration. As the trial court found, such clauses are supported by the reciprocal promises in the lease, such as the lessee's promise to pay rent." Id. at page 1151.

The Supreme Court of Wyoming held that an option to purchase contained in a lease is supported by consideration in Braten vs Baker, 323 P2d 929 (Wyoming 1958). Therein, plaintiffs sought specific performance after they elected to exercise the purchase option contained in the written lease agreement. The lease agreement was partially printed and partially type written, and contained the following option to purchase clause:

> "Party of the second part shall have the option of purchasing said real property at the end of five years for the sum of $6,000.00. Interest included. Payment to be made at the rate of $500.00 on March 1, 1955, and a like amount on the first day of March on each year thereafter until the full amount is paid. 323 P2d at page 930.

Defendant lessor contended on appeal that the option to purchase was not supported by consideration and therefore void. The Wyoming Supreme Court disagreed, holding:

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"It seems so well settled that a purchase option contained in a lease is supported by consideration that elaboration should be unnecessary. See James, Law of Option Contracts, 1916 ed., Section 101, p. 2, Section 321, p. 135; 51 CJS Landlord and Tenant Section 81, p. 636; Bacon vs Kentucky Cent. Ry. C., 95 Ky. 373, 379, 380, 25 S. W. 747, 749, 16 Ky. Law Rep. 77, 80; McCormick vs Stephany, 57 N. J. Eq. 257, 262, 41 A. 840, 842, Id., 61 N. J. Eq. 208, 48 A. 25; Frank vs Stratford-Handcock, 13 Wyo. 37, 54, 55, 77 P. 134, 137, 67 L. R. A. 571; 32 Am. Jur., Landlord and Tenant, Section 299, pp. 278, 279; 5 Williston, Contracts, Rev. ed. 1936, Section 1441, p. 4026." Id. at page 931.

In McCreight vs Girardo, 287 P2d 414 (Oregon 1955), the Appellate Court, in ruling, inter alia, on the validity of an option to purchase clause contained in a real estate lease agreement, stated the following:

"This lease contains a right which, if seasonably exercised by the defendant, could have changed the relationship from landlord and tenant to that of vendor and purchaser. The consideration stated in the lease furnishes the consideration for the option to purchase. . . ." 287 P2d at 417.

The option to purchase clause contained in that lease agreement read as follows:

"Lessee shall have an option to purchase the above described premises during the term of this lease or renewal thereof, for the purchase price of Twenty Six Thousand Dollars ($26,000.00), upon terms which will be mutually agreed upon by the parties hereto at the time of said purchase. It being understood that Lessee will be given credit on said purchase price of the amount of $100.00 per month for each month of rental paid to Lessor during the life of this lease or any renewal thereof." Id. at page 415.

Finally, in Bell vs Minor, 199 P2d 718 (California 1949) defendant lessor appealed from the trial Court's decree of specific performance awarded to plaintiff lessee. At issue was the validity of a lease agreement containing an option to purchase clause. The California Court of Appeals stated:

"The provisions of the lease, including the rental to be paid, furnish the consideration for the option to purchase."

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199 P2d at 720.

The foregoing case law and secondary authorities are directly applicable to the case presently before the Court. As a review of the Lease and Option Agreement will reveal, the Lease and Option to Purchase are contained in one single contract. Furthermore, paragraph 2 of said Agreement sets forth the rental payments to be paid on an annual basis, which, according to the foregoing case law and secondary authorities, is sufficient in and of itself to also constitute sufficient consideration for the Option to Purchase. In addition, however, the Option to Purchase clause contained in paragraph 5 of the Agreement makes reference to the Lease payments and that the same shall apply towards the purchase price in the event that the defendant lessees exercise the Option to Purchase the real estate. Consequently, the lease payments are directly tied into the granting of the Option to Purchase and constitute sufficient consideration therefore. Finally, additional consideration in the form of defendants agreeing to let plaintiffs retain a life estate on that portion of the property on which their home was located, was given by defendants in return for the Option to Purchase.

CONCLUSION

There was a concise, written agreement between the Appellants and the Respondents regarding the Lease and potential purchase of the 28 acres of real property. The provisions of the Lease and Option were definite, unambiguous, and to the point. All of the parties read the document, had ample time

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to consider its ramifications, and had opportunity to consult with the attorney who had prepared it.

A reasonable person could ascertain the scope of the instrument by a quick reading of its contents. The Respondents themselves had occasion for a thorough analysis of its contents. If they indeed were mistaken, the mistake was attributable to their own negligence and was a mistake as to the legal consequences of their signing. The Appellants, themselves prudent throughout their dealings in the matter, should not now be deprived of their option to purchase because of a careless mistake on the part of the other parties to the transaction.

Case law firmly supports the proposition that there was sufficient consideration to support the option. This issue, as suggested by the Trial Court itself, was the critical factor in determining the validity of the Lease and Option. The trial Court erred in denying the Appellants' prayer for specific performance on grounds quite apart from this determinative factor. The Appellants should now have their option declared fully valid and they should be granted specific performance of their right to purchase.

DATED this 7th day of December, 1977.

Respectfully submitted,

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By _____
MICHAEL R. JENSEN

CERTIFICATE OF MAILING

Mailed two copies of the foregoing Appellants' Brief with postage prepaid this 17th day of December, 1977, to the attorney for Respondents addressed as follows: Donn E. Cassity, ROMNEY, NELSON & CASSITY, 136 South Main Street, Suite 404, Kearns Buildi Salt Lake City, Utah 84101.

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