

1988

J. Desmond Bess and Kristine Bess v. Ronald L. Jensen and Patricia Jensen : Reply Brief of Appellants

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Bess and Bess v. Jensen and Jensen*, No. 880394 (Utah Court of Appeals, 1988).

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UTAH COURT OF APPEALS
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DOCKET NO. 880394

UTAH COURT OF APPEALS

J. DESMOND BESS and)	
KRISTINE BESS,)	
)	APPELLANTS'
Plaintiffs/Appellants,)	REPLY BRIEF
)	
vs.)	Case No. 880394-CA
)	
RONALD L. JENSEN and)	
PATRICIA JENSEN,)	(Civil No. CV87-1258)
)	
Defendants/Respondents.)	

APPEAL FROM THE JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT
FOR UTAH COUNTY, STATE OF UTAH
JUDGE GEORGE E. BALLIF

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ARGUMENT PRIORITY CLASSIFICATION: CATEGORY 14b

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UTAH COURT OF APPEALS

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RONALD L. JENSEN and)	(Civil No. CV87-1258)
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Defendants/Respondents.)	

STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction to hear this matter pursuant to Section 78-2a-3 of the Utah Code Annotated, 1953 as amended, and pursuant to Rule 3 of the Rules of the Utah Court of Appeals.

STATEMENT OF NATURE OF PROCEEDINGS

This is an appeal, in part, from an judgment entered in the Fourth District Court on April 6, 1988, by Judge Ballif. The appeal deals with a single issue relating to the Trial Courts failure to terminate an option portion of a Lease Option Agreement although the lease portion thereof was terminated.

STATEMENT OF ISSUES PRESENTED ON APPEAL

This appeal concerns a Lease Option Agreement which was prepared in the form of two documents, although each referred to the other and was intended by the parties to be one consolidated

agreement. Respondents became in default of the lease portion of the agreement, and the Trial Court held that the lease portion of the agreement was properly terminated by the plaintiff; however, the court did not terminate the option part of the agreement. The issue now before the court is whether the Trial Court erred by terminating the lease portion of the agreement without terminating the entire agreement.

STATEMENT OF THE CASE

On March 20, 1985, Appellants entered into a lease option contract with the Respondents for the purpose of leasing certain real property located at R.D. #1, Box 329-A, Provo, Utah. (See Addendum "A".)

The lease and option contract are in the form of two documents however the documents were both signed and dated March 20, 1985. The parties stipulated at trial that it was their intent and understanding that the lease and option were related to and contingent upon each other, and in fact was one single agreement. (See paragraphs 1 and 2 of Addendum "B".) The documents not only were entered into on the same date, but the documents specifically refer to each other. (See Addendum "A".) The lease specifically refers to the option agreement in the second paragraph where it states ". . . an option dated April 1, 1985." [The April 1, 1985 date merely reflects the date that the option period was to begin and not the date that the agreement was entered into which date was March 20, 1985. (See Addendum "A".)] Paragraph 6 of the option also expressly refers to the

lease agreement where it states ". . . except as required by buyer under existing lease as a tenant." (See Addendum "A".) Parties further acknowledged that neither party would have signed one part of the agreement without the other part of the agreement. (See Addendum "C", page 27, lines 2-4.) In accordance therewith, the only possible conclusion is that the parties intended one agreement to be memorialized in two documents so that should either the lease portion or the option portion of the agreement be terminated by a default of one of the parties the entire agreement should be terminated.

The Respondents had a history of making late payments or making payments with checks written on an account with insufficient funds. (See Addendum "C" at pages 3 and 4 and Addendum "D".) It was because the Respondents constantly defaulted in making payments by making late payments or payments with checks drafted on account with insufficient funds, that Appellants elected to terminate the lease and option contract. (See Addendum "C" at page 9, lines 10-24.) For this reason, and the additional reason that Respondents have encumbered the real property in the amount of approximately \$11,962.95, (See Addendum "E"), Appellants are extremely reluctant to enter into another agreement for eight years with the Respondents, as provided in paragraph 2 of the option, should the option portion of the agreement be enforced by the court. This encumbrance by the Respondents of Appellants collateral is also an express violation of the terms of the agreement (See Addendum "A-4",

paragraph 6.)

Furthermore, paragraph 9 of the option portion of the agreement provides that if the option is not exercised on or before the specified dates therein, said option expires of its own force and effect and the Seller may retain such option monies as have been paid. (See Addendum "A", paragraph 9.) Respondents did not tender the sixth option timely and in fact only tendered it to the Trial Court on or about April 6, 1988 where said monies are still being held in escrow. Said option payment was due in October 1987.

SUMMARY OF THE ARGUMENT

The facts at the trial show the lease option contract to be a single undivided agreement although prepared as two separate documents. This is the standard of practice of real estate transactions to prepare lease and option contracts as two separate documents although the agreements are intended by the parties to be one single agreement supported by mutual consideration. Respondents acknowledged their breach of the lease portion of the contract and the Trial Court terminated the lease portion of the contract. As a matter of law, a termination of the lease must also result in termination of the entire agreement. Also, where the Respondents have a past history of constant default in making payments and have so encumbered the subject real property with liens,, the Court must as a matter of equity, terminate the entire agreement to avoid the inequitable result of making Appellants carry Respondents on a subsequent

eight year contract for the remaining unpaid balance owing on Appellants equity in the subject property. The result requested by Appellants conforms to the intent of the parties as established at trial.

ARGUMENT

TERMINATION OF THE LEASE PORTION OF THE LEASE AND OPTION AGREEMENT AS A MATTER OF LAW AND EQUITY TERMINATES THE ENTIRE AGREEMENT.

Respondents argue in their brief that the lease and option contract are distinct and separate agreements. However, Respondents are estopped from making such arguments as they have already stipulated that the lease and option contract are related and dependant upon each other. (See Addendum "B" and Addendum "F" where Respondents allege in their counter claim the documents were one agreement.) In fact, the documents even refer to each other and show the date of execution to be March 20, 1985. Additional facts established at the trial show that the Respondents were in default of the lease portion of the agreement. Since the documents are so interrelated and in effect one single agreement, a default in and subsequent termination of a portion of the agreement must result in a termination of the entire agreement.

The Respondents argue that the extinguishment of the option part of the agreement would create an injustice to the Respondent. However, this is not so as the Respondents entered into the contract knowing the terms thereof including the terms that time is of the essence and that, as stated in paragraph 9,

if the option is not exercised on or before the specified dates that the option should expire of its own force and effect. The facts show that the Respondent defaulted in their payments of the lease and in fact further show that Respondents did not timely exercise the sixth option payment which was due on or before October 1, 1987. Said option monies were not tendered to Appellants until March 1988. Respondents further failed to pay rent while residing at the subject premises from May 1987 through April 1988 after being served with a Writ of Restitution. (See Addendum "G".)

The Respondents attempt to distinguish the Sacramento Baseball Club, Inc. vs. Great Northern Baseball, Co., 73 Utah Advanced Reports 10 (1987), from the present case. However that case is for all intents and purposes undistinguishable from the present case as the parties in Sacramento used two documents for the purpose of entering a single agreement. The issue before the Utah Supreme Court in Sacramento was to determine the enforceability of both of the executed contracts. The Court determined that intent of the parties to a contract is a question of fact and that although the Court would not over turn a trial court's findings of fact unless such findings were clearly erroneous, where the Trial Court relies on a stipulated version of the facts, as in the case now before the court, the Supreme Court does not apply a clearly erroneous standard but will sustain a lower Court's decision only if convinced of its correctness. Id. at 11. In accordance therewith the Court

examined the facts de novo. Id. at 11. The Court then examined the parties written documents and the circumstances surrounding the drafting of the documents which led the Court to the conclusion that the parties intended one contract. Accordingly, the Court stated as the rule of law that "an agreement may be a single contract even though it consists of several writings that the parties have never physically attached to each other. " In citing Land Reclamation, Inc. v. Riverside Corp. 492 P.2d 263, 265 (Or. 1972), the Court said, "No rule of law . . . precludes the parties from using two written instruments rather than one to effectually carry out their agreement." Just as in the Sacramento case, the parties have intended to create one contract and the number of documents that memorialize the agreement are not relevant. See 17 Am. Jur. 2d, Contracts, Section 266, (1964). The Respondents attempt to distinguish the Sacramento case by arguing that the Court determined that there was never any intention to provide consultation services and the second contract was therefore a scam. Such statement was not part of the Court decision and in fact the Court stated that "We do not consider Sacramento Baseball claims regarding the sufficiency of the considerations supporting the consultation agreement." In accordance with these findings the court held that the two separate documents represent one contract and the contract as a whole was enforceable, therefore the consultation agreement, as part of the entire contract, was enforceable because the sale agreement was enforceable. Similarly, in the present case, an

examination of the facts showed that the parties intended one agreement and it is not necessary to consider the sufficiency of the consideration of each individual agreement but instead the Court must look at the agreement as a whole. Since the intent of the parties was to use two documents to memorialize a single agreement, a termination of the lease portion of the agreement must result in termination or extinguishment of the entire agreement.

Respondents also misconstrue the holding in Russell V. Park City Utah Corporation, 548 P.2d 889 (Utah 1976). Unlike Respondents contention, the Russell decision is directly on point to the present matter. Although the record is not clear, even if Respondents are correct that the lease and option were one document in Russell, this fact is irrelevant, because of the law as stated in Sacramento above. The second and third points of Respondents argument that Russell is not relevant has to do with the intent of the parties. However, the intent of the parties has been stipulated to that these documents were intended to be one agreement. Also if there is any ambiguity as to intent, the court is entitled to review the facts de novo. Sacramento at page 11. In Russell, the Trial Court, which was confirmed by the Supreme Court, found that the lease and option parts of the agreement were integral to each other as intended by the parties, such that forfeiture of the lease would also terminate the option or right of first refusal regardless of the fact that \$2,000.00 had been paid as additional consideration for

the option. In the present case, the parties entered into a lease and option agreement each of which part was so integral and interrelated that a termination of the lease must as a matter of law result in a termination of the entire agreement.

Respondents further attempt to cloud the facts by stating that considerable work was done on the subject property in contemplation of exercising the option. On page 11 of Respondents brief, several items are identified which Respondents claim to have made as improvements to the home thereby developing an equity of what they determine to be \$30,000.00. However, no facts were presented at trial to this point and in fact the Trial Court concluded that there were no supporting facts evidencing such improvements, and the lease agreement further provided that the tenant was responsible for many if not all of the alleged improvements. Respondents are further inflating costs in their claim for value of improvements in an attempt to prejudice the Court. Consequently, The alleged equity Respondents are claiming is not properly before the Court.

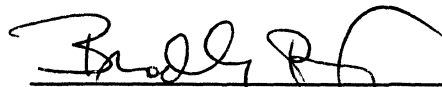
As a further point of equity, Appellants on several occasions have offered to refund the option monies paid by Respondents to settle this matter or alternatively for the Respondent to refinance on the purchase of the Appellants equity in the subject premises. Respondents have refused to accept these two equitable offers and at this point in time it would not now be reasonable or fair to require Appellants to finance Respondents on an eight year purchase agreement where Respondents

have breached the option by failing to make a timely final option payment and have further breached the option by encumbering the subject property with almost \$12,000.00 in liens and judgments.

CONCLUSION

As a matter of law Appellants respectfully request the Court hold that the entire agreement should be terminated and the Respondents be ordered to restore the subject real property to Appellants as a matter of law and equity.

Respectfully submitted this 30 day of September,
1988.




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Attorney for Plaintiffs/Appellants
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& BOUD, P.C.
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone (801) 263-0300

CERTIFICATE OF MAILING

I hereby certify that 4 true and correct copies of the foregoing APPELLANT'S REPLY BRIEF were mailed, postage prepaid, on the 30 day of September, 1988, to the following:

Frederick A. Jackman
Attorney at Law
1327 South 800 East, Suite 300
Orem, Utah 84058



ADDENDUM "A"

LEASE OPTION AGREEMENT

"THIS IS A LEGALLY BINDING CONTRACT IF NOT UNDERSTOOD. SEEK COMPETENT ADVICE."

Lease

J. DESMOND BESS and KRISTINE BESS, his wife
of P.O. Box 134, County of Laie, Hawaii 96762-0134 ~~STANDARD~~
hereinafter referred to as landlord, hereby remise, release and let to RONALD L. JENSEN and PATRICIA JENSEN
of RFD#1 Box 329, Provo, County of Utah, State of Utah,
hereinafter referred to as tenant, all those premises situate, lying and being in the
County of Utah
and State of Utah, commonly known as
and more particularly described as follows, to wit: (See Exhibit "A" ATTACHED HERETO AND
INCORPORATED HEREIN)

(Legal Description)

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the tenant, from the 1st
day of April A.D. 1985, for and during and until the 15th day of April A.D.
1988 a term of three years unless terminated by Lessee's purchase of said premises
under an Option dated April 1, 1985.

And tenant covenants and agrees to pay to landlord as rental for said premises, the sum of \$462.47 PER MONTH, BEGINNING THE FIRST DAY OF APRIL 1985 and
continuing on the first day of each month thereafter during the term hereof.

And tenant further agrees to deliver up said premises to landlord at the expiration of said term in as good order
and condition as when the same were entered upon by tenant, reasonable use and wear thereof and damage by the
elements excepted, and the tenant will not let or underlet said premises, or any part thereof without the written
consent of landlord first had and obtained, which consent will not be unreasonably withheld.

And tenant further covenants and agrees that if said rent above reserved or any part thereof shall be unpaid
for ten days after the same shall become due; or if default in any of the covenants herein contained to be
kept by tenant is not cured within five days from written notice, or if tenant shall vacate such premises,
landlord may elect, without notice or legal process, to re-enter and take possession of said premises and every and
any part thereof and re-let the same and apply the net proceeds so received upon the amount due or to become
due under this lease, and tenant agrees to pay any deficiency.

Responsibility for the maintenance shall be as indicated: Tenant responsible (T), Landlord responsible for (L).
Roof T, Exterior Walls T, Interior Walls T, Structural Repair T, Interior Decorating T,
Exterior Painting T, Yard Surfacing T, Plumbing Equipment T, Heating and Air Conditioning Equip-
ment T, Electrical Equipment T, Light Globes and Tubes T, Glass Breakage T, Trash Removal T,
Snow Removal T, Janitor T, Others Landlord to pay assessments on 1/2 share of
LakeBottom Irrigation Co.

Responsibility for utilities, taxes and insurance shall be as indicated: Tenant responsible for (T), Landlord res-
ponsible for (L).
Power T, Heat T, Water T, Sewer T, Telephone T, Real Property tax L, Increase
above 1985 in Real Property Tax L, Personal Property Tax T, Fire Insurance on Building L, Fire
Insurance on Personal Property T, Glass Insurance T, Other

Each party shall be responsible for losses resulting from negligence or misconduct of himself, his employees
or invitees.

Furniture, fixtures and personal property of tenant may not be removed from the premises until rent and other
charges are fully paid.

In case of failure to faithfully perform the terms and covenants herein set forth, the defaulting party shall pay
all costs, expenses, and reasonable attorneys fees resulting from the enforcement of this agreement or any right
arising out of such breach.

Tenant shall deposit monthly rent payments to Landlord's account #198715
at Universal Campus Credit Union in Provo, Utah

Witness the hands and seals of said landlord S and said tenant S at Provo, Utah
this 20th day of March A.D. 1985

Signed in presence of

[Signature]
Adrian

[Signature] (Seal)
Desmond Bess
[Signature] (Seal)
Kristine Bess
[Signature] (Seal)
Ronald L. Jensen
[Signature]
Patricia Jensen

BLANK No. 119—A U GEN FPG CO — 3213 SO 2400 EAST — SALT LAKE CITY

EXHIBIT "A"

DESCRIPTION:

PARCEL 1: Commencing 25.39 chains North and 7.63 chains West of the Southeast corner of the Southwest quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 102.8 feet; thence East 168.77 feet; thence North $30^{\circ} 20'$ West 38.74 feet; thence East 429 feet to the West line of the Road; thence North $39^{\circ} 35'$ West 90 feet along said road; thence West 534 feet to the place of beginning.

PARCEL 2: Commencing 25.39 chains North and 7.63 chains West and South 102.8 feet of the Southeast corner of the Southwest Quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence East 168.77 feet; thence South $30^{\circ} 20'$ East 488.02 feet; thence West 430.6 feet; thence North 421.20 feet to the place of beginning.

Together with 1/2 share of Lake Bottom Irrigation Water.

Order No. 7275

"THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE."

OPTION

KNOW ALL MEN BY THESE PRESENTS:

That J. DESMOND BESS and KRISTINE BESS, husband and wife
of P.O. Box 134, Laie, Hawaii 96702-0134, hereinafter referred to as "Seller, hereby agrees for and in consideration of TWO-THOUSAND FIVE HUNDRED AND NO/100 - - - - - (\$ 2,500.00) Dollars, paid by RONALD L. JENSEN and PATRICIA JENSEN, husband and wife
of RFD #1, Box 329 A, Provo, Utah 84601, hereinafter referred to as "Buyer", as follows:

1. PROPERTY: Seller hereby gives and grants to Buyer and to his heirs and assigns for a period of 6 months from the date hereof, hereinafter referred to as "First Option Period", the exclusive right and privilege of purchasing the following described real property located at R.D. # 1, Box 329-A, Provo County of Utah State of Utah and more particularly described as follows:

(SEE EXHIBIT "A" APPEARING ON THE REVERSE SIDE HEREOF, INCORPORATED HEREIN FOR DESCRIPTION)

Together with 1/2 share of Lake Bottom Irrigation Co., Water Stock.

Together with all water rights appurtenant thereto or used in connection therewith.
(Said real property and improvements, if any, shall hereinafter be referred to as "The Property").

2. PRICE. The total purchase price for said property is EIGHTY THOUSAND AND NO/100 - - - - - (\$ 80,000.00) Dollars, payable in lawful money of the United States, strictly within the following times, to-wit: All sums paid for this option and any extension thereof as herein provided, shall be first applied on the purchase price, and the balance shall be paid as follows:

Total down payment including funds paid hereunder to be \$15,000.00.

Buyer to assume existing loan from Real estate Contract dated June 30, 1978, by and between Stephen William Neal and Barbara Ann Neal, as Seller and J. Desmond Bess and Kristine Bess, as Buyers in accordance with the terms thereof. Balance of Seller's equity to be paid together with interest thereon at the rate of 11.5 % per annum in equal annual installments including principal and interest in the amount of \$3,000.00, with first installment due one year after exercise of option and annually thereafter until sellers equity is paid in full.

3. EXTENSION OF OPTION. Upon payment by Buyer to Seller of an additional sum of TWO-THOUSAND FIVE HUNDRED AND NO/100 - - - - - (\$ 2,500.00) Dollars, cash or by cashier's check, prior to the expiration of the first option period, this option shall be extended for six months, hereinafter referred to as "Second Option Period". Upon Buyer's payment to Seller of a further sum of TWO-THOUSAND FIVE HUNDRED AND NO/100 - - - - - (\$ 2,500.00) Dollars, prior to the expiration of the second option period, this option shall be extended for a third period of SIX additional months, hereinafter referred to as "Third Option Period". Upon Buyer's payment to Seller of a further sum of TWO-THOUSAND FIVE HUNDRED AND NO/100 (\$2,500.00) Dollars, prior to the expiration of the third Option period, this option shall be extended for a fourth period of six additional months, hereinafter referred to as "Fourth Option Period". Upon Buyer's payment to Seller of a further sum of TWO-THOUSAND FIVE HUNDRED AND NO/100 (\$2,500.00) Dollars, prior to the expiration of the Fourth Option period, this option shall be extended for a fifth period of (SEE BELOW *)

4. EXERCISE OF OPTION. This option shall be exercised by written notice to Seller on or before the expiration of the first option period, or if extended, the expiration of the second or third option periods as the case may be. Notice to exercise this option or to extend the option for the additional option period, whether personally delivered or mailed to Seller at his address as indicated after Seller's signature hereto, by registered or certified mail, postage prepaid, and postmarked on or before such date of expiration, shall be timely and shall be deemed actual notice to Seller.
or within 10 days thereafter

5. EVIDENCE OF TITLE.

(a) Promptly after the execution of this option, Seller shall deliver to Buyer for examination such abstracts of title, title policies, and other evidences of title as the Seller may have. In the event this option is not exercised by Buyer, all such evidences of title shall be immediately returned without expense to Seller.

(b) In the event this option is exercised as herein provided, Seller agrees to pay all abstracting expense or at Seller's option to furnish a policy of title insurance in the name of the Buyer.

(c) If an examination of the title should reveal defects in the title, Buyer shall notify Seller in writing thereof, and Seller agrees to forthwith take all reasonable action to clear the title. If the Seller does not clear title within a reasonable time, Buyer may do so at Seller's expense. Seller agrees to make final conveyance by Warranty Deed or

In the event of sale of other than real property. If either party fails to perform the provisions of this agreement, the party at fault agrees to pay all costs of enforcing this agreement, or any right arising out of the breach thereof, including a reasonable Attorney's fee.

* of six additional months, hereinafter referred to as "Fifth Option period", Upon Buyer's payment to Seller of a further sum of TWO-THOUSAND FIVE HUNDRED AND NO/100 (\$2,500.00) Dollars, prior to the expiration of the Fifth option period, this option shall be extended for a sixth period of six addition months hereinafter referred to as "Sixth Option Period".

6. CLOSING ADJUSTMENTS. All risk of loss and destruction of property and expenses of insurance shall be borne by Seller until date of possession. At time of closing of sale, property taxes, rents, insurance, interest and other expenses of property shall be prorated as of date of possession. All other taxes, including documentary taxes, and all assessments, mortgage liens and other liens, encumbrances or charges against the property of any nature, shall be paid by Seller except as required by Buyer under existing lease as a tenant. **

7. POSSESSION. Seller agrees to surrender possession of the property ~~XXXXXX~~ XXXXXX following written notice of the exercising of this option by Buyer, and closing of sale through Escrow, at Security Title and Abstract Company.

8. The Seller recognizes None N/A Real Estate Company (Broker and Agent) through its salesman None as the Real Estate Broker with whom Seller listed this property for sale, and Seller agrees to pay a commission to said Broker equal to None % of the gross sale price, and Seller hereby authorizes the agent to withhold such commission from the proceeds of sale at time of closing.

or within ten days thereafter

9. If this option be not exercised on or before the dates specified herein for exercise of same, the option shall expire of its own force and effect and the Seller may retain such option monies as have been paid to the Seller as full consideration for the granting of this option.

IN WITNESS WHEREOF, the Seller hereunto has set his name this 1st day of April, 1985. ** Any insurance funds paid to Seller for damage, loss, or destruction of dwelling shall be used to replace or repair said dwelling to original condition.

SIGNED IN PRESENCE OF:

[Signature]

J. Desmond Bess
J. Desmond Bess
Kristine Bess
Kristine Bess Seller

Address of Seller: P.O. Box 134
Laie, Hawaii 96762-0134

APPROVED FORM — UTAH STATE

BLANK No. 119—A U GEN PRG. CO. — 3213 SO. 2400 EAST — SALT LAKE CITY

EXHIBIT "A"

DESCRIPTION:

PARCEL 1: Commencing 25.39 chains North and 7.63 chains West of the Southeast corner of the Southwest quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 102.8 feet; thence East 168.77 feet; thence North 30° 20' West 38.74 feet; thence East 429 feet to the West line of the Road; thence North 39° 35' West 90 feet along said road; thence West 534 feet to the place of beginning.

PARCEL 2: Commencing 25.39 chains North and 7.63 chains West and South 102.8 feet of the Southeast corner of the Southwest Quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence East 168.77 feet; thence South 30° 20' East 488.02 feet; thence West 430.6 feet; thence North 421.20 feet to the place of beginning.

Together with 1/2 share of Lake Bottom Irrigation Water.

APPROVED: March 20, 1985

Ronald L. Jensen
Ronald L. Jensen Buyer
Patricia Jensen
Patricia Jensen Buyer

10 BOX 10 LASI CENTER • PROVO UTAH 84601 TELEPHONE 373 4650

DATE March 1 1961
ORDER NO 7473

SW 1/4 Sec. 34, T6S, R2E, S14E4M

PERTY: _____

FR J. Desmond Bess (Ronald L. Jensen)

ALL ACCOUNTS ARE DUE AND PAYABLE ON OR BEFORE THE 01TH OF THE FOLLOWING MONTH

INVOICE
B 10567

DATE March 20 1985
ORDER NO 1

PROPERTY SW 1/4 Sec. 34, T6S, R2E, S13E, M
J. Desmond Bess (Ronald L. Jensen
ER:

EXHIBIT A-5



Commercial Security Bank

PROVO OFFICE

PROVO, UTAH

No. 30059

97-213/1243

DATE *****MARCH 20, 1985**DC

PAY TO THE
ORDER OF

*****DES AND KRIS BESS*****

\$***2500.00**

COMMERCIAL SEC
BANK \$2500dols00cts

Cashier's Check

Baron Little
AUTHORIZED SIGNATURE

⑈0030059⑈ ⑆124302134⑆

750970029⑈

-Original of the above check received in Escrow #7275 this 20th day of March, 1985 for disbursal to J. Desmond Bess and Kristine Bess for Option on property at RD #1, Box 329-A, Provo, Utah per Option dated April 1st 1985.

SECURITY TITLE & ABSTRACT COMPANY

BY:

Don D. Furrow

Original of the above check received by the undersigned this 20th day of March, 1985 as payment on Option dated April 1st 1985 by Ronald L. Jensen and Patricia Jensen.

J. Desmond Bess

EXHIBIT

A-L

Wed

47275

\$80,000

Lease — \$462.47 until April 1, 1988

Option (royalty with water)
\$2,500.00 initial

\$2,500.00 each six months
extension

85
86

87

franchise
10 days
of date line

Executed April 1988

assume existing contract \$15,000.00 down

Bal Equity on Note — 11.5% @ 3,000.00
P.O.D. annual from date of closing

Deposit Lease Payments in UCC. (BYU)
acct # 198715

J. Desmond Bess
Kristine Bess

(377-8488)

Ronald L. Jensen
Patricia Jensen

374-8881

R.F.D. #1 Box 329 A

EXHIBIT

A-7

ADDENDUM "B"
STIPULATED FACTS

FREDERICK A. JACKMAN #1632
Attorney for Defendants
1327 South 800 East, Suite 300
Orem, UT 84058
Phone: 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

J. DESMOND BESS and
KRISTINE BESS,

Plaintiffs,

vs.

RONALD L. JENSEN and
PATRICIA JENSEN,

Defendants.

STIPULATED FACTS

Civil No. CV 87 1258

JUDGE BALLIF

1. On or about March 20, 1985, the defendants entered into a Lease with the plaintiffs to rent the plaintiffs' house located at RFD #1, Box 329A, Provo, UT 84601.

2. On or about March 20, 1985, the defendants entered into an Option Contract with the plaintiffs to purchase the plaintiffs' house located at RFD #1, Box 329A, Provo, UT 84601.

3. Although the Lease and Option Contract were signed by the plaintiffs at different times, the parties understood that the Lease and Option Contract were related to each other.

4. The Lease Agreement provides that the monthly rental of \$462.47 is payable on the 1st day of each month and is

delinquent 10 days after the same shall become due.

5. That on or about the 12th day of May, 1987, the derendants deposited to the plaintiffs' account #198715 at the Universal Campus Credit Union in Provo, Utah, the sum of \$462.47, for rent for the month of May 1987.

6. On May 14, 1987, Universal Campus Credit Union by and through their agent Carolyn Bentley notified the defendants that the plaintiffs had requested them to send a cashiers' check in the amount of \$462.47 back to the defendants because of their deposit being past the 10th of the month. The letter also stated that the defendants would no longer be able to make deposits into the account.

7. The derendants received the letter from the Universal Campus Credit Union on or about the 17th day of May, 1987.

8. On the 20th day off May, 1987, the defendants sent the endorsed Universal Campus Credit Union check to the plaintiffs' address in Laie, Hawaii, certified mail, return receipt requested, which was returned to sender as being refused. On May 21, 1987, the defendants were served with a Landlord's Notice to Pay Rent or Quit within three days of service.

9. The derendants have tendered the rent for the month of May 1987, as set forth above and further, have tendered each of the subsequent months as they became due. In addition, the

defendants have tendered the sum of \$2,500.00 for the 5th Option period in a timely manner.

10. The defendants having paid their Options in a timely manner, the necessity of written notice of intent to exercise their Option as required by the Contract was waived by the parties by performance.

11. That both parties claim they are entitled to attorney's fees as provided for in the Contract.

DATED _____, 1987.

DATED _____

FREDERICK A. JACKMAN
Attorney for Defendants
, 1987.

ORSON B. WEST, JR.
Attorney for Plaintiffs

ADDENDUM "C"
TRANSCRIPT OF TRIAL

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

J. DESMOND BESS and :
KRISTINE BESS, :

Plaintiffs, :
vs. : Civil Case No. CV 87-1258

RONALD L. JENSEN and : TRANSCRIPT OF TRIAL
PATRICIA JENSEN, :

Defendants. :

DECEMBER 1, 1987
Tuesday - 9:10 a.m.
Room 300, Utah County Building
51 South University Avenue
Provo, Utah County, Utah 84601

BEFORE
HONORABLE GEORGE E. BALLIF, DISTRICT JUDGE

APPEARANCES

For the Plaintiffs: ORSON B. WEST, JR., ESQ. (4166)
Attorney at Law
669 South 200 West, Suite 201
Salt Lake City, UT 84111

For the Defendants: FREDERICK A. JACKMAN, ESQ.
Jackman & Johnson
Attorneys at Law
1327 South 800 East, Suite 300
Orem, UT 84058

--oo0oo--

WHEREUPON, the following proceedings were had:

1 P R O C E E D I N G S

2 THE COURT: The case that is before the Court
3 this morning is Bess vs. Jensen. I take it you're ready to
4 proceed, Mr. West, for the plaintiff?

5 MR. WEST: Yes, your Honor.

6 THE COURT: Mr. Jackman for the defendant?

7 MR. JACKMAN: Yes sir.

8 MR. WEST: If it would be approved by the Court,
9 we would suggest, Mr. Jackman and I, that we proffer an
10 outline of the history of the case, and based on those facts,
11 and on the Stipulated facts that the Court make a decision
12 without calling witnesses.

13 THE COURT: All right. That's fine. That's
14 agreeable with you, Mr. Jackman?

15 MR. JACKMAN: Yes.

16 THE COURT: All right. You may proceed.

17 MR. WEST: Your Honor, I think an outline of the
18 history of this contract and the dealing between the parties
19 would help the Court understand my client's position to show
20 that it's not a rash one-time decision to sue the Jensens.

21 On March of 1985, March 20th, the parties entered
22 into two contracts. A lease for three years, and an option
23 contract giving the Jensens an option to purchase the Bess's
24 home.

25 THE COURT: These are two separate documents?

1 MR. WEST: These are two separate documents.
2 We have Stipulated that the parties understood that both
3 documents were contingent upon each other, that they refer
4 to each other.'

5 We would proffer that our clients--that my
6 clients, the plaintiffs, would not have entered into just
7 a lease agreement or a rental agreement, and that the rental
8 agreement was also based upon the agreement with the option
9 to buy the property.

10 The Jensens had a good history of making payments
11 up until August 1st, 1986. At that time they bounced a
12 check. My clients had been transferred to Hawaii, and so
13 the contract called for the payments to be made to their
14 credit union direct. Thereupon, the Jensens would make the
15 payments directly to my clients' checking account at the
16 credit union. And having a subsequent history record, this
17 is the first time they had bounced a check, my clients had
18 already written out a check, which caused them several costs.

19 Then the Jensens were good for approximately
20 three more months, and then--

21 THE COURT: --That first date was when?

22 MR. WEST: August 13th, 1986. I have a copy for
23 the Court, your Honor.

24 THE COURT: Is this the payment schedule?

25 MR. WEST: Yes. As you can see, the later half

1 of '86 and through '87 they bounced several checks. And they
2 were consistently late. The rent payment was due on the
3 first day of each month. There was a clause in the contract
4 that gives them a ten-day grace period.

5 They became consistently later and later in their
6 payments during the month. And, as you will note on the
7 sheet that was given to the Court near the asterisk on the
8 dates when they paid, it was beyond the ten-day period.

9 Now, my clients were still in Hawaii.

10 They came back to Utah the first of this year.
11 At the first of this year--actually, it was February the
12 23rd, 1987, my clients received a letter from the Universal
13 Campus Credit Union.

14 THE COURT: They came back in February, but they
15 were here earlier and that's when they got the letter?

16 MR. WEST: They came back earlier.

17 MR. BESS: We came back the 1st of March.

18 MR. WEST: Excuse me. They came back the 1st
19 of March. A week prior to their coming back, they received
20 a letter from the General Accounting of the Universal Campus
21 Credit Union, which states, "Dear Member: Due to returned
22 checks written to or cashed on this account from Pat or
23 Ron Jensen, we will no longer accept these checks. Please
24 deposit cash or a cashier's check in place of these checks.
25 If you have any questions concerning this action, contact

1 Carolyn Bently." I'll give the Court a copy of that letter.

2 THE COURT: All right.

3 MR. WEST: So my clients are here. They arrived
4 here on March 4th and they contacted my office. I directed
5 a letter to Mr. and Mrs. Jensen concerning the late payments.
6 I have a copy of that letter also. In this letter--I believe
7 Mr. Jackman has a copy of all these letters?

8 MR. JACKMAN: Yes.

9 MR. WEST: I instructed the Jensens to pay by
10 cash or cashier's check when they made the payments to the
11 Bess's account. I also reminded them that the payment was
12 still due on the first day of each month, and I also asked
13 them if they would reimburse the Besses for approximately
14 \$85.00 for costs that they had incurred from the credit
15 union for late fees and long distance phone calls from Hawaii
16 in trying to rectify this matter with the credit union.

17 I asked them to respond to me within five days
18 after receiving this letter. After about ten days I had no
19 response from them.

20 The letter dated March 9th.

21 On March 19th I called Mr. Jensen and asked them
22 to please respond to me in writing so that I might have some-
23 thing for my records, and what their intentions were.

24 On March 22nd I received a letter from the
25 Jensens in which they basically stated that they were sorry

1 for the inconvenience they had caused the Besses. They said,
2 "We will make payments as per our contract agreement," and
3 saying that they would pay the \$85.00 upon documentation of
4 the charges. Again, I will give a copy of that letter to
5 the Court.

6 On March 27th, I had another conversation with
7 Mr. Jensen. In this conversation, and in a follow-up letter
8 dated April 10th, 1987 I made the following statement: "I'm
9 putting you on notice at this time that if your payments are
10 not on time, either the rent payments or the option payments,
11 we will commence legal action to terminate both the lease and
12 the option agreements."

13 The problem the Besses had was that they wanted
14 to be able to plan their budget so as not to cause them great
15 financial hardship. They had suffered several hardships
16 because of the bounced checks of the Jensens.

17 And so on April 10th they received Notice that
18 the payments had to be on time, or be timely made.

19 The next payment was due May 1st, 1987. On May
20 1st no payment was received.

21 On May 10th, which is the last day the payment
22 can be made, no payment was made. My clients called me.
23 I suggested, let's give them a couple more days. We waited
24 until May 12th. No payment was forthcoming. My clients
25 called the credit union and told them not to accept any

1 payment at this time from the Jensens. Apparently later in
2 the day the Jensens did come and make a payment to the credit
3 union. The credit union did accept that payment, which was
4 against the instructions of my clients. My clients again
5 contacted the credit union and, apparently they had flagged
6 their computer not to accept this, but the teller had not
7 read the "flag" on the computer and, therefore, the credit
8 union cut a cashier's check for the exact amount of the May
9 payment and returned it to the Jensens. And I believe that
10 was on May 14th.

11 MR. JACKMAN: Their letter was dated May 14th.

12 MR. WEST: In the meantime I prepared a Notice
13 to the Jensens to pay rent or quit. And on that Notice they
14 were instructed to make contact--to make payment or contact
15 my office. This Notice was served on the Jensens on May
16 21st, your Honor. At that time my clients had not received
17 any payment. So we are looking at three weeks from any
18 payment or since the check had been returned to them and the
19 Notice told them to contact my office.

20 THE COURT: The late check that the credit union
21 received contrary to their request bounced also?

22 MR. WEST: No. The credit union returned it to
23 the Jensens.

24 MR. JACKMAN: It was a cashier's check, your
25 Honor. It was deposited with the credit union, so they just

1 cancelled it and sent them back another cashier's check.

2 It was forwarded to the Jensens in Hawaii.

3 MR. WEST: So now we are talking about three weeks
4 from May 1st after the payment was due. In the meantime,
5 apparently the Jensens not realizing that the Besses had
6 returned to Utah, forwarded the check to Hawaii and,
7 apparently, the check was sent there certified, I believe,
8 and it remained there for several days. Apparently it was
9 sent back here. And, in the meantime, the Jensens had them
10 served with this eviction notice. It was forwarded to my
11 clients' mailbox. I told them not to accept the certified
12 letter, that the Jensens had received the instructions to
13 contact my office.

14 At that time the Jensens had other counsel,
15 Jeffery E. Brown. I received a letter from him dated June
16 4th, 1987. It says, "Dear Mr. West: Please be advised that
17 my clients telephoned me today and informed me that the
18 certified letter came back from the Besses and they refused
19 to pick up the letter."

20 So this June 4th was the first time that we have
21 had any notice that the Jensens had attempted to make a
22 second payment. So we're talking a month's difference. And,
23 in the meantime, they hadn't paid for June either.

24 And then, basically, this is the history. We
25 filed the Complaint. We asked that they be evicted from the

1 premises and pay triple damages. And we feel they have not
2 been timely. They have shown a history of not making timely
3 payments. They have caused a great hardship and burden on
4 my clients from just being able to plan a monthly budget to
5 ruining their Christmas one year when the Jensens' check
6 bounced twice and they had to make double house payments on
7 their house in Hawaii and the house here, and it's pretty
8 tough when they have four little kids for Christmas. It's
9 going to be pretty sparse. They were patient. They tried
10 everything.

11 I wrote them two letters asking them to be
12 patient, or asking them to pay on time.

13 The very next month after the last letter they
14 received from me, they were not timely on their payment.
15 They didn't pay it on the 1st; they didn't pay it by the
16 10th; they don't come in until the 12th. And they are
17 continually late.

18 My clients are just tired of it, your Honor.
19 It's not fair to them. It's not fair to place their family
20 in jeopardy, financially because of the irresponsible acts
21 of the Jensens. They have thought this out. They took this
22 action only after the Jensens had done this for several
23 months, and they finally could tolerate it no more, and so
24 they returned to Utah, and they immediately did what they
25 could to rectify the situation. It's been a constant

1 harrassment because of the late payments.

2 And we would tender to the Court that because
3 of these two contracts are contingent on each other, that
4 they also violated the Option Agreement, and that they owe
5 may clients from May 21st, 1987 triple rent as provided for
6 by Utah law. That my clients--

7 THE COURT: Are they still in possession of the
8 house?

9 MR. WEST: They are still in possession.

10 MR. JACKMAN: Your Honor, we have Stiuplated in
11 the Stipulated Facts that they have tendered the money each
12 and every month. The rent is accumulating in an account and
13 is available. We have also Stipulated that the option
14 payment was made in a timely manner by a tender.

15 THE COURT: "By a tender." Who was it tendered
16 to?

17 MR. JACKMAN: By the defendants, pursuant to the
18 Statute. It's a written tender. It's Stipulated in the
19 Facts. The tender was timely made.

20 MR. WEST: And we have agreed with Mr. Jackman
21 that the Jensens could pay to his trust account or trust
22 fund.

23 MR. JACKMAN: Originally they paid into my trust
24 account, and since that time the money has been accumulating
25 in a savings account. I have two months in my trust account,

1 and the option money is in a savings account. But that's
2 Stipulated to.

3 THE COURT: Is that in this Stipulation?

4 MR. JACKMAN: Yes, your Honor.

5 MR. WEST: Yes, your Honor.

6 THE COURT: Are you going to make available to
7 me the copies of the Lease and the Option?

8 MR. WEST: Yes. I have a copy right here, your
9 Honor. There is one in the file. This one might be a little
10 more readable. I think the important thing to look at at
11 the Lease is concerning late payments. It says, "And the
12 tenant further covenants and agrees if said rents above
13 reserved or any part thereof shall be unpaid for ten days
14 after the same shall become due" and there is a semicolon
15 and some other different conditions, we would contend it
16 should be landlord may elect without notice or legal process
17 to re-enter and take possession of said premises and every
18 and any part thereof and relet the same and apply the net
19 proceeds to receive upon the amount due or become due under
20 this lease and tenant agrees to pay any deficiency.

21 We believe we have provided written notice. We
22 believe the contract doesn't even provide that, that we have
23 to do that. Our contention would be that any provision in
24 the contract calling for written notice applies to any other
25 covenants in the contract.

1 On the Option Agreement, we would argue as
2 brought up in Mr. Jackman's Counterclaim, that the Jensens
3 have no equity, whatsoever, in the property. That this is
4 an Option Agreement, that the option has not been completed
5 yet, that the option fails.

6 Paragraph 9 states, "If this option be not exer-
7 cized on or before the date specified herein or for exercise
8 the same shall expire of it's own force and effect and the
9 seller may retain such option monies as have been paid to
10 sellers as full consideration for granting of this option.

11 THE COURT: There's nothing in the Option that
12 credits any rent payments against the purchase price?

13 MR. WEST: None, whatsoever.

14 MR. JACKMAN: No sir, but the option price my
15 clients paid five \$2,500.00 payments and those are credited.

16 THE COURT: Those are in accordance with the
17 Option?

18 MR. JACKMAN: That's in accordance with the
19 Option.

20 MR. WEST: Once the option is completed and they
21 agreed to purchase the house. But if they were to default
22 on the option payment--they have made the option payment,
23 but if they were in default, our contention would be that
24 they are not entitled to any of that option payment.

25 And we would also contend that while they made

1 the option payment by violating the Lease, they also violated
2 the Option Agreement, because they both signed at the same
3 time, and they were contingent on one another. Thank you,
4 your Honor.

5 THE COURT: Thank you, Mr. West. Mr. Jackman?
6 Will you mark these as exhibits?

7 MR. WEST: Yes, your Honor.

8 THE COURT: Have them marked in the consecutive
9 order that you offered them.

10 (Whereupon, some Exhibits were marked for
11 identification by the Clerk.)

12 MR. JACKMAN: The thing that I would like to do
13 is just follow through with the same Stipulated Facts that
14 we have. I'm not in a lot of disagreement with Mr. West.

15 THE COURT: You haven't give me the Stiuplated
16 Facts. All right. Go ahead, Mr. Jackman.

17 MR. JACKMAN: I think that 1, 2, 3 and 4 are
18 pretty-much self-explanatory and we agree that there was an
19 Option and we agreed there was a Lease, and we agreed that
20 they were signed at different times and that they were
21 related to each other. In other words, it was an option to
22 buy this property, and it was a lease for this property.

23 No. 4 says that the Lease Agremeent provides for
24 the monthly rental and is payable at the 1st of each month
25 and if he is delinquent ten days after it's due. Now this

1 is important, because if you read the Lease Agreement it
2 gives you a penalty if it is not paid within ten days. And
3 that penalty is simply a forfeiture. There is no accelera-
4 tion clause in the Lease. There is really nothing other than
5 it simply says that the landlord has the right to re-enter
6 the premises and re-let them. I'm assuming that's to
7 mitigate the damages. And then charge the tenant for any
8 deficiency. That's a forfeiture. In other words, the
9 landlord has the right to enter the premises and forfeit the
10 tenant.

11 No. 5 says that he is to be paid on or about--

12 THE COURT: --Let me ask you about No. 4. You
13 say that that's after the due date that it becomes
14 delinquent? Isn't it due on the 1st? If it isn't paid on
15 the 1st, isn't it delinquent? If it does not get paid, then
16 it becomes actionable?

17 MR. JACKMAN: Yes. The language of the Lease
18 says it is delinquent ten days after it shall become due.
19 That is the actual language in the Lease. It is delinquent
20 ten days after. And then it has a semicolon, and then it
21 says five days after written notice it talks about any other
22 covenants in the Lease. I suppose its arguable, but that
23 could be covenants other than to pay up the rent, although
24 the Lease is a little bit ambiguous on that.

25 But the final remedy in that same paragraph in

1 the Lease is simply that Mr. West stated that the landlord
2 then has the right to re-enter the premises and relet them,
3 et cetera.

4 No. 5. My clients made the payment on or about
5 the 12th day of May to the credit union. Now, we're not
6 sure, frankly, whether it was the 11th or the 12th. But
7 we're willing to go with the 12th. In any event, it was
8 late. The 10th was a Sunday, so we did pay late.

9 Now, I would like to point out to the Court that
10 if you take a look at the late payment schedule that the
11 plaintiffs have given to the Court, you'll notice that the
12 payment in March was on time, the payment in April was on
13 time, and now we're to May.

14 Further, we have Stipulated that the May payment
15 was tendered on May the 12th, and we have Stipulated that
16 all of the payments since that time for June, July, August,
17 September, October, November, and now December have been
18 tendered and are accumulating and are timely.

19 But on May 12th they deposited to the credit
20 union account, which was the instructions given in the Lease.
21 At this point in time my clients had received no word that
22 they were not to have deposited the money. They had received
23 no Notice of Forfeiture. They had received no Notice to Quit
24 or pay rent.

25 On May 14th, they received a letter--and so the

1 file will be complete, I'll give you a copy of that letter--
2 from the credit union which basically says as we have said
3 in the Stipulated Facts, that Carolyn Bently notified the
4 defendants that the plaintiffs has requested them to send
5 a cashier's check in the amount of four hundred and sixty-two
6 dollars and forty-seven cents back to the defendants, and
7 as the next exhibit, I'll give you a copy of that Cashier's
8 Check that they received back from the Universal Campus
9 Credit Union, and you can see it's dated May the 13th, 1987.

10 My clients received that letter on or about the
11 17th day of May. They then endorsed the back of the check
12 and made it payable to the plaintiffs and forwarded it to
13 Hawaii, which was the last place they knew that the plaintiffs
14 were residing. They included with that a letter that
15 explained that the Universal Campus Credit Union had given
16 them the Cashier's Check back and that here was the check
17 for the month of May, and it said that since the Universal
18 Campus Credit Union would no longer accept their payments
19 as per their agreement, we will await further instructions
20 from you as to how you would like us to make payment. I have
21 a copy of the envelope that was sent and the postmarks on
22 a copy of the Certified Receipt which shows May 20th, 1987,
23 which is the basis for the Stipulated Facts at the time that
24 it was sent on May 20th. And it also shows that it was
25 refused. The Certified Letter was refused.

1 On May 21st, then, we received the Notice to Quit
2 or Pay Rent. At that time Mr. West is correct, they were
3 represented by Mr. Jeffery Brown. He actually sent two
4 letters to Mr. West. The first one was dated June 3rd, 1987.
5 He says, "In response to your Notice to Pay Rent or Quit,
6 apparently served July 21st, 1987"--that's a typographical
7 error--"please find a copy of a letter from my client
8 Mr. and Mrs. Bess dated May 20, 1987, wherein they enclose
9 payment. This letter was necessary because the credit union
10 had returned their earlier payment and had indicated that
11 the credit union had been instructed to no longer accept
12 payments from the Jensens. There appears to have been an
13 attempt to cause confusion in this matter, where your clients
14 on the one hand refused payments by instructing the credit
15 union to return the payments back, and then instructing you
16 to serve a Notice to Pay Rent or Quit, apparently attempting
17 to capitalize on the confusion they could create. I have
18 instructed my clients to make all future payments to you.
19 Please let me know in the event you do not wish to handle
20 payments. In such event, please give me instructions for
21 future payments."

22 He then followed that up with the June 4th
23 letter, which I think you have a copy of. And I think that
24 pretty-much--other than the fact that we have agreed that
25 the defendants have entered the rent for the month of May,

1 1987 as set forth above, and further tendered each and every
2 month as they have become due.

3 ~~We are also in agreement that they tendered the~~
4 ~~sum of \$2500.00 for the fifth option payment in a timely~~
5 ~~manner.~~ We have also, both parties, pursuant to the terms
6 of the Lease, have requested attorney's fees.

7 I have prepared an Affidavit for our attorney's
8 fees. I believe Counsel will Stipulate to it?

9 MR. WEST: Yes, your Honor.

10 MR. JACKMAN: If I might submit that?

11 THE COURT: You may.

12 MR. JACKMAN: I want to address first the
13 Complaint, and then I want to address the Counterclaim. It's
14 pretty-much Horn Book Law, and I'll draw the Court's
15 attention to 103, 49 Am Jur 2d, "LANDLORD AND TENANT," and
16 I have a copy of that for you. If I might just read that.
17 It says, "Generally, failure to pay rent when due does not
18 automatically terminate the lease, but gives the lessor the
19 option to terminate on some definite unequivocal act showing
20 the exercise of this option by him. At least, mere
21 nonpayment of the rent reserved will not forfeit a leasehold
22 where the lease imports that it is to be void only on
23 re-entry." That's exactly our situation.

24 "It is the general rule, at common law and in
25 the absense of contrary statutory provision, that a demand

1 for payment must be made to entitle a landlord to enforce
2 a forfeiture for its nonpayment under a power to re-enter
3 or declare a forfeiture for such cause, or as a prerequisite
4 to enforcement of a lease provision for forfeiture or
5 termination upon nonpayment of rent. There must be neglect
6 or refusal to pay on the part of the tenant before the
7 landlord can claim a forfeiture. Provisions for the
8 forfeiture of a lease for nonpayment of rent, whether
9 contractual or statutory, are considered in equity as
10 securing the rent, and not as providing for the forfeiture
11 of the lease where the tenant acts in good faith and pays
12 promptly on demand. It has even been held that a stipulation
13 that a lease shall be void if any payment remains unpaid for
14 a certain time does not make a forfeiture for delay in
15 payment absolute and self-operative."

16 Now, that's followed in the Utah case of Dang
17 v. Cox Corp. And I would also draw the Court's attention
18 to Page 662. It's about halfway down that long paragraph.
19 It talks about the situation that we have in this case. This
20 lease contemplates, in order to have a forfeiture, a notice
21 of forfeiture, not a notice to quit and pay rent or a notice
22 of unlawful detainer. And the Court addresses that
23 specifically about a third of the way down. "The critical
24 distinction between a notice of forfeiture and a notice of
25 unlawful detainer is that the notice of forfeiture simply

1 declares a termination of the lease without giving the
2 lessee the alternative of making up the deficiency. That
3 unambiguous distinction does not exist in the notice served
4 by the appellant." He was served, basically, a Notice of
5 Eviction and it talks about pay rent or quit, similar to what
6 we have reserved in this case.

7 In the Cox case it was a stationery store.

8 "Even if we disregard the language in the body
9 of the notice which repeatedly refers to 'unlawful detainer'
10 the appellant added the option to pay the back rent to the
11 standard form notice to vacate. It would be anomalous to
12 find that a notice which gives the option of performance also
13 serves as a notice of forfeiture, which by definition does
14 not give that option. The ambiguity in this document is the
15 appellant's own doing and, since forfeiture is a harsh
16 remedy, clarity must be required before any notice will work
17 such a result."

18 What we simply have in this case is this: They
19 were late on their rent. That had been late before and had
20 been accepted. They were being pretty good after Mr. West's
21 admonition that they were to pay on time. They were two days
22 late with their rent, but they were not declared as a
23 forfeiture, rather a Notice to Quit or Pay Rent was made.
24 We've Stipulated that they then tendered their rent. That
25 means they complied. And they have also complied each and

1 every month since then. So I don't think the plaintiffs in
2 this case has an unlawful detainer, nor do the plaintiffs
3 in this case have a forfeiture. So, really, their Complaint
4 should be dismissed.

5 I think the law is fairly clear on that.

6 With regard to the Counterclaim, that basically
7 only goes to the proposition that if there is a forfeiture,
8 our testimony would be, or the proffered testimony would be
9 that by the improvements to the home, and I would submit a
10 copy of that to the Court, that by the major improvements
11 to the home, including establishing water lines into the
12 home, et cetera, the payment of the option amounts, some
13 \$12,500.00, plus the payment of the rents, you know, the
14 difference between what they owed and the difference of the
15 value of the house today because of the improvements, et
16 cetera, that the Jensens claim an equity of about \$30,000.00
17 in the home. And our Counterclaim simply goes to the fact
18 that if the Court did declare a forfeiture for some equity,
19 we would claim title to some of the equity. However, I
20 really don't think we get that far.

21 I think on the Stipulated Facts we have tendered
22 they did give us a Notice of Forfeiture. They gave us a
23 Notice to Pay Rent or Quit, we tendered the rent in a timely
24 fashion, so I think we are back under the contract and the
25 Complaint should be dismissed, and we should be awarded our

1 costs. Thank you.

2 THE COURT: Now, you have made one of the
3 Exhibits the Notice that you had served on them relative to
4 the treble damages and forfeiture?

5 MR. WEST: Yes, your Honor.

6 MR. JACKMAN: Oh, I would just like to make one
7 last statement. The \$85.00 here referred to was not asked
8 for in the Complaint. I do not know anything about that,
9 to be honest with you. We never discussed that figure or
10 those costs.

11 MR. WEST: Your Honor, basically again, we would
12 just state that going back, on April 10th I sent a letter
13 to the Jensens telling them that they had to be timely
14 henceforth, that they had to pay on time, and that we would
15 not tolerate late payments. The very next month they were
16 late. They didn't pay on May 1st. They were not two days
17 late, as Mr. Jackman would indicate. They paid on the 12th,
18 twelve days late. They only have until the 10th to rectify
19 that situation. They didn't pay. We did not receive the
20 payment. They paid the credit union. I guess my clients'
21 instruction got mixed up, and that money was returned. My
22 clients did not accept the payment. We gave them a Notice
23 to Quit. Again, they had the address where to contact us.
24 That was served on May 21st. They did not do that. We
25 received no indication that they had made a second attempt

1 to pay until June 4th, when I received a letter from
2 Mr. Brown.

3 I think it's clear that these people have had a
4 history of not being on time--not paying on time. My clients
5 acted reasonably. They gave them notice, and now no more.
6 No more hassles to us. You live by the contract. They
7 didn't live by it. We sent them a notice to pay rent or
8 leave the premises. They were directed by that on May the
9 21st. They did not tender the rent under the instructions
10 of that Notice. They did not contact my office.

11 The easiest thing would have been to pick up the
12 phone and call somebody. If I had received a notice like
13 that, I would have picked up the phone and called up the
14 attorney and said, "Hey, we're sorry. We sent the payment
15 to Hawaii," or whatever. "We received no communication
16 whatsoever." Based on no communication, I prepared a
17 Complaint and filed it with the Court. And still, we received
18 no notice and no reaction until June 4th. It was over 33
19 days that payment was due.

20 I think my clients have been more than tolerant.
21 Probably too tolerant. I think you have to look at the
22 contract again.

23 Mr. Jackman talked about common law. We have
24 a contract here, and also the statutory provisions. And the
25 contract, I think, is clear that we did not even have to give

1 them notice, but we did. They were late. They paid on the
2 12th. And that is also Stipulated to in the Facts.

3 The May payment, although it was tendered, it
4 wasn't tendered until June.

5 As far as the Counterclaim, your Honor, on the
6 home improvements, we would just state that under the Lease
7 contract, that the Jensens were responsible for many of these
8 common items of maintenance. That some of the things which
9 they did were extra.

10 THE COURT: Well, there hasn't even been anything
11 really tendered on that, has there? I don't have any idea
12 as to what any improvements were made. I don't have any idea
13 as to what the value of the home was before and after. I
14 don't have anything on that.

15 MR. JACKMAN: That was the \$30,000.00.

16 THE COURT: That was claimed in your Counter-
17 claim. What is to support that claim by way of evidence?

18 MR. JACKMAN: We are talking about making that
19 in the proffer. Mr. Jensen would testify that he, in the
20 owner's opinion, the value of the improvements made, he
21 increased the value of the home by at least \$30,000.00, for
22 whatever weight you want to give that.

23 THE COURT: But he is not an owner.

24 MR. JACKMAN: Well, he has an ownership interest
25 in the home.

1 THE COURT: Who is the owner? We're getting into
2 this owner business, aren't we?

3 MR. JACKMAN: You deal 'em as you got 'em. I
4 think he has an ownership interest, both pursuant to the
5 Lease Agreement and a leasehold interest, which gives him
6 an interest in the value of the property. He lives there
7 and he has possession of the property. But, more important,
8 he has a possessory interest, atleast an interest in the
9 property by way of the Option. Even if the lease has been
10 violated, the option is still in effect, because it's been
11 stipulated that it's timely.

12 THE COURT: Well, I have that question on my
13 mind. I'm with you, and I understand your position very
14 clearly when it comes to the Lease and the operation of
15 Mr. Jensen regarding the problems that your people have had
16 with that Lease, and the clear Notice that was given to them
17 in April, and then they violated it in May, and your people
18 never accepted it after it was past due or delinquent under
19 the terms of the Lease. I can see that.

20 However, I can't see, just from what I'm hearing
21 you two say, I can't see that there is anything in the Lease
22 that has anything to do with the Option. If he's paying the
23 \$2500.00 payments as they fall due under that, and there has
24 been no notice given to him that he has violated the Option,
25 as I understand--

1 MR. WEST: --Our contention would be that the
2 Option and the Lease are interrelated, your Honor.

3 THE COURT: Can you direct me to where they say
4 they are? I don't want to miss that.

5 MR. WEST: Okay. One of the Stipulated Facts
6 is that they relied on each other when the documents were
7 signed together when the various parties--

8 THE COURT: --Yes, but you said that the Lease
9 is violated but the Option is not? Is that it?

10 MR. WEST: The Lease refers to the Option. It
11 doesn't specifically say--I lost my train of thought--

12 THE COURT: --Well, what I'm concerned about is,
13 what facts can you point to for a forfeiture of that Lease?

14 MR. WEST: The Lease has a paragraph that says
15 that the Lease is for a period of three years unless
16 terminated by the purchase of said premises under an Option
17 dated April 1st, 1985.

18 THE COURT: It just says if the exercise on the
19 option of the Lease is no longer valid.

20 MR. WEST: On the second page of that Lease--
21 excuse me--of the Option, in Paragraph 6 it says, it talks
22 about closing adjustments and it says, "Mortgages, liens,
23 or encumbrances or charges against the property and each
24 shall be paid by the seller, except as required by the buyer
25 under the existing lease as a tenant." I think what that

1 shows is that the two were interrelated. And we would
2 proffer that my client would not have just rented to them
3 without the Option Agreement, and the Jensens would not have
4 signed the Option Agreement without the Lease. And, you
5 know, if they are expelled from the home we would contend
6 that the Option Agreement has been violated also, just by
7 the fact that they were signed together on the basis of the
8 Lease, that one was based on the other, that they wouldn't
9 have signed both of them.

10 MR. JACKMAN: There is no cross-default there,
11 your Honor, If that's the point that you're going to take,
12 I don't think there's a cross-default.

13 THE COURT: Well, there may not be express
14 language to that effect, but there may be something that
15 clearly infers that between the parties. I don't know. But,
16 then, you have a problem with the statute of frauds.

17 MR. JACKMAN: Well, there's no question that the
18 two of them made it, because they had to deal with the same
19 property. And the documents were signed at the same time.
20 But it is conceivable--see, the Lease doesn't provide, if
21 I remember correctly, that the tenant has certain obligations
22 to pay the taxes or something, and the landlord or the tenant
23 has to pay the taxes. I can't remember what it says, or
24 maybe it's just the lease payments. But I do think they are
25 separate documents. And why else would we have tendered--and

1 by tendering, you know, the inference being and the tender
2 being proper the fifth option payment. We have kept the
3 option up.

4 THE COURT: Well, you do that for your own
5 protection. I don't know that you do it for anything other
6 than to see to it that you cement any rights that you think
7 you have. I don't think you can give any motivation to it
8 beyond that. Anyway, there are some problems there.

9 MR. WEST: Again, basically, your Honor, we would
10 proffer that these are the things that we proffer. If we
11 invited the agent for Security Title that typed up these two
12 documents, the Lease and the Option Agreement, that he would
13 testify that they were related to each other and they were
14 both signed with the basis and understanding that one was
15 contingent upon the other, and they were Stipulated to.

16 In regard to the home improvement, this list that
17 Mr. Jackman has prepared and handed to the Court, we would
18 proffer that there are no costs attributed to what was done
19 on the home improvements. We would also proffer that we
20 believe that the items listed here are certainly not worth
21 \$30,000.00. The work that was done is not worth that amount
22 of money.

23 We would also proffer again that as a renter,
24 they have the right to paint a bedroom and wallpaper a
25 bedroom, et cetera, but that does not substantially increase

1 or improve the value.

2 THE COURT: Is there anything in the Lease that
3 requires that they do certain things such as those items they
4 have done?

5 MR. WEST: Yes, your Honor. It says, "The
6 responsibility for maintenance shall be as indicated. The
7 tenant is responsible for" and then it has the "T" and the
8 "L" for "Tenant" and "Landlord." Roof, the tenant is respon-
9 sible for. Exterior walls, the tenant. Interior walls, the
10 tenant. Structural repair, the tenant. Interior decorating,
11 the tenant. Exterior painting, tenant. Yard surfacing,
12 tenant. The plumbing, tenant. Heating and air conditioning
13 and equipment, tenant. Electrical equipment, tenant. Light
14 globes and tubes, tenant. Glass breakage, tenant. Trash
15 removal, tenant. Snow removal, tenant. And janitor, tenant.
16 The landlord is to pay one-half of the shares for the water
17 rights. So, basically, all of those were the responsibil-
18 ities of the tenant, anyway. And that does not give him any
19 equity in the home.

20 THE COURT: Well, I guess that lends more
21 credence to your position that everything about the home was
22 considered theirs as long as the Lease was kept up?

23 MR. WEST: Yes, your Honor.

24 THE COURT: All the aspects of ownership and
25 responsibility for it?

1 MR. WEST: Yes, your Honor. And then, again,
2 under the Option Agreement, itself, under Paragraph 9 it
3 states that if they don't perform the option, they forfeit
4 all money that they have paid, and they have no recourse--it
5 says, "The seller may retain such option money as have been
6 paid to the sellers. Full consideration for granting the
7 option. That option money is a consideration for granting
8 them the option. It's not an equity in the home." Upon
9 completing the Option Agreement, yes, we would agree that
10 the \$15,000.00 would apply to the house. But it hasn't yet--

11 THE COURT: --If you're right, and everything was
12 terminated back in the middle of July and the only payments
13 on the Option would be those that accrued prior to that that
14 was paid, as far as the forfeiture goes, that's the only
15 place where you would have any right, isn't it?

16 MR. WEST: Yes, your Honor.

17 THE COURT: When were those payments made? Do
18 you have any record of that?

19 MR. WEST: Yes. I believe they are on Exhibit
20 1, and they were also timely, your Honor.

21 MR. JACKMAN: There were four payments, your
22 Honor.

23 THE COURT: Prior to May 12th?

24 MR. JACKMAN: The next option payment didn't come
25 due until October 1st, and that was tendered.

1 THE COURT: Okay. Anything further?

2 MR. JACKMAN: The only question I have, I don't
3 know whether they requested a termination of the Lease or
4 an unlawful detainer? If they are requesting termination--

5 THE COURT: --That's a determination I have to
6 make, isn't it, on the basis of the Notice? And what the
7 allegations of the Complaint are? I take it you are termin-
8 ating, as well as forfeiting?

9 MR. WEST: Yes, your Honor.

10 THE COURT: And I take it you think you're
11 entitled to treble damages at the time your Notice was served
12 if they did not pay up and get out?

13 MR. WEST: Yes, your Honor. We claim that from
14 May 21st.

15 MR. JACKMAN: I think that's the Cox case.

16 THE COURT: All right. We'll look at the Cox
17 case and the other Horn Book Law that you might have for me.

18 MR. WEST: I would just like to point out that
19 my clients did pay the property taxes on the property and
20 the insurance on the home.

21 THE COURT: The plaintiffs did?

22 MR. WEST: Yes.

23 THE COURT: All right. Thank you very much.
24 We'll be in recess.

25 (Whereupon, this Hearing was concluded at 9:55 A.M.)

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ADDENDUM "D"
PAYMENT SCHEDULE

JENSEN DEPOSITS

Due	Paid	Amount	
4-1-85	4-2-85	\$462.47	
5-1-85	4-30-85	\$462.47	Bounced Once
6-1-85	6-1-85	\$462.47	
7-1-85	7-1-85	\$462.47	Bounced Once
8-1-85	8-2-85	\$462.47	
9-1-85	9-3-85	\$462.47	
10-1-85	9-27-85	\$2962.47	
11-1-85	10-31-85	\$462.47	
12-1-85	12-4-85	\$462.47	
1-1-86	1-3-86	\$462.47	
2-1-86	2-4-86	\$462.47	
3-1-86	3-3-86	\$462.47	
4-1-86	4-1-86	\$2500.00	
4-1-86	4-8-86	\$462.47	
5-1-86	5-2-86	\$462.47	
6-1-86	6-6-86	\$462.47	
7-1-86	7-7-86	\$462.47	
8-1-86	8-13-86 *	\$462.47	Bounced Once
9-1-86	9-10-86	\$462.47	
10-1-86	10-1-86	\$2500.00	
10-1-86	10-10-86	\$462.47	
11-1-86	11-12-86 *	\$462.47	Bounced Twice
	12-4-86 *	\$463.00	
12-1-86	12-11-86 *	\$462.47	
1-1-87	1-12-87 *	\$462.47	Bounced Once
2-1-87	2-13-87 *	\$462.47	Bounced Twice
	2-28-87 *	\$462.47	
3-1-87	3-9-87	\$462.47	
4-1-87	4-1-87	\$2500.00	
4-1-87	4-10-87	\$462.47	

* Paid Beyond 10-Day Grace Period

JENSEN BAD CHECKS

5-7-85	#341	\$462.47
7-9-85	#368	\$462.47
8-19-86	#583	\$462.47
11-19-86	#121	\$462.47
12-4-86	#121	\$462.47
1-20-87	#136	\$462.47
2-20-87	#152	\$462.47
3-3-87	#152	\$462.47

ADDENDUM "E"

TITLE REPORT

COMMITMENT FOR TITLE INSURANCE

J. Desmond Bess
P.O. Box 1258
Orem, Utah 84057

ISSUED BY

Security Title and Abstract Company

55 EAST CENTER STREET • PROVO, UTAH 84601
(801) 373-4650

Ronald L. Jensen
800 South University Avenue
Provo, Utah 84601

Re: Order No. 7275
Ronald L. Jensen

FIRST AMERICAN TITLE INSURANCE COMPANY, herein called the Company, for valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent indorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company. This Commitment shall not be valid or binding until countersigned by an authorized officer or agent.

IN WITNESS WHEREOF, the Company has caused this Commitment to be signed and sealed, to become valid when countersigned by an authorized officer or agent of the Company, all in accordance with its By-Laws. This Commitment is effective as of the date shown in Schedule A as "Effective Date."



First American Title Insurance Company

BY  PRESIDENT

ATTEST  SECRETARY

BY  COUNTERSIGNED

SCHEDULE A

1. Effective Date: March 25, 1988 @ 8:00 A.M. Commitment No.: 7275

2. Policy or Policies to be issued:	Amount	Premium
(a) (X) ALTA Owner's Policy	\$ 80,000.00	415.00

Proposed Insured: RONALD L. JENSEN and PATRICIA JENSEN

(b) ALTA Loan Policy	\$
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Proposed Insured:

(c)	\$
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3. The estate or interest in the land described or referred to in this commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

WILLIAM J. BOWDISH and FAYE S. BOWDISH, husband and wife, not as tenants in common, but as joint tenants according to the rules of the common law, with the right of survivorship.

4. The land referred to in this commitment is situated in the County of Utah, State of Utah, and is described as follows:

PARCEL NO. 1: Commencing 25.39 chains North and 7.863 chains West of the Southeast corner of the Southwest quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 102.8 feet; thence East 184.135 feet; thence North 30° 20' West 38.74 feet; thence East 429 feet to the West line of the road; thence North 39° 35' West 90 feet along said road; thence West 534 feet to the place of beginning.

PARCEL NO. 2: Commencing 25.39 chains North and 7.863 chains West and South 102.8 feet to the Southeast corner of the Southwest quarter of Section 34, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence East 184.135 feet; thence South 30° 20' East 488.02 feet; thence West 430.6 feet; thence North 421.20 feet to the place of beginning.

**SCHEDULE B - Section 1
Requirements**

Order No. 7275

The following are the requirements to be complied with:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage or deed of trust to be insured.
- (B) Pay us the premiums, fees and charges for the policy. In the event the transaction for which this commitment is furnished cancels, the minimum cancellation fee will be **\$75.00**.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage or deed of trust to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this commitment who will receive an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

SCHEDULE B - Section 2

No. 7275

Exceptions

The policy or policies to be issued will contain exception to the following unless the same are disposed of to the satisfaction of the Company.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
 3. Easements, claims of easement or encumbrances which are not shown by the public records.
 4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
 5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
 6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
 7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
- - - - -
8. Taxes for the year 1988, now a lien but not yet due. Serial No. EE-2140 (19-045-0004) 1987 taxes are paid in the amount of \$633.07.
 9. Special Improvement Taxes, if any, due or to become due.
 10. An Unrecorded Uniform Real Estate Contract dated October 24, 1975, by and between William J. Bowdish and Faye S. Bowdish, Husband and Wife, as Sellers and Stephen William Neal and Barbara Ann Neal, Husband and Wife, as joint tenants with full rights of survivorship and not as tenants in common, as Buyers.
 11. An Unrecorded Uniform Real Estate Contract dated July 30, 1978, executed by and between Stephen William Neal and Barbara Ann Neal, as Sellers and J. Demond Bess and Kristine Bess, as Buyers.

Continued.....

SCHEDULE B Continued.....

Notice Of Interest In Real Property executed by and between Stephen William Neal and Barbara Ann Neal, as Sellers and J. Desmond Bess and Kristine M. Bess, as Buyers, recorded July 3, 1978, as Entry No. 26045, in Book 1660, Page 251, in the office of the Recorder, Utah County, Utah.

Re-recorded July 11, 1978, as Entry No. 27274, in Book 1662, Page 691, in the office of the Recorder, Utah County, Utah.

12. The interest, if any, of Lucille Wing and Shirley Kirschling, as shown by Warranty Deed dated February 16, 1979, executed by Stephen William Neal and Barbara Ann Neal, recorded February 26, 1979, as Entry No. 7143, in Book 1722, Page 609, in the office of the Recorder, Utah County, Utah.
13. Assignment Of Contract dated August 2, 1979, executed by J. Desmond Bess and Kristen M. Bess, Assignors, to The Lockhart Co., as Assignee, given to secure the payment of a promissory note in the principal sum of \$4,867.57; Assignment recorded August 7, 1979, as Entry No. 30752, in Book 1767, Page 283, in the office of the Recorder, Utah County, Utah.
14. A Trust Deed With Assignment Of Rents dated November 30, 1979, executed by J. Desmond Bess and Kristine Bess, as Trustors, given to secure the payment of a promissory note in the principal sum of \$7,212.53, bearing even date therewith with interest thereon according to the terms of said note, to _____, as Trustee, in favor of The Lockhart Co., a Utah Corporation, as Beneficiary, recorded December 4, 1979, as Entry No. 47042, in Book 1796, Page 750, in the office of the Recorder, Utah County, Utah.
15. The Conflicting Interest of Dennis Christen and Carolyn Christen, acquired under and by virtue of that certain Warranty Deed dated May 6, 1969, executed by K. E. Bullock and Mertilla J. Bullock, Husband and Wife, recorded January 16, 1970, as Entry No. 505, in Book ____, Page 446, in the office of the Recorder, Utah County, Utah. (Affecting approximately the Southerly 9.76 feet of Parcel No. 2)

NOTE: We have checked the Judgment Dockets of Utah County, Utah, against the names of William J. Bowdish, Faye S. Bowdish, Ronald L. Jensen and Patricia Jensen, and find the following:

A Judgment for \$1,109.67, plus interest and costs, against Patricia O. Jensen, et al, in favor of Universal Campus Federal Credit Union, entered on November 23, 1984, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. A-49-230. ABSTRACT OF JUDGMENT

A Judgment for \$2,215.73, against Ronald Jensen, in favor of State Tax Commission, entered on December 27, 1984, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. A-50-516. SALES/USE TAX

A Judgment for \$283.78, against Ronald Jensen, in favor of State Tax Commission, entered on July 10, 1985, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. A-54-132. WITHHOLDING TAX

SCHEDULE B - Continued....

A Judgment for \$2,637.32, plus interest and costs, against Patricia M. and Gert S. Jensen, in favor of IHC Hospitals Inc., entered on July 30, 1985, in the Fourth Judicial District in and for Utah County, Utah, Case No. A-54-452. ABSTRACT OF JUDGMENT

A Judgment for \$1,231.41, against Ronald Lee Jensen, in favor of Department of Employment Security, entered on September 17, 1985, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. A-55-144.

A Judgment for Decree of Divorce against Patricia Dawn Jensen, in favor of Darrell E. Jensen, entered on February 6, 1986, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. 71,064.

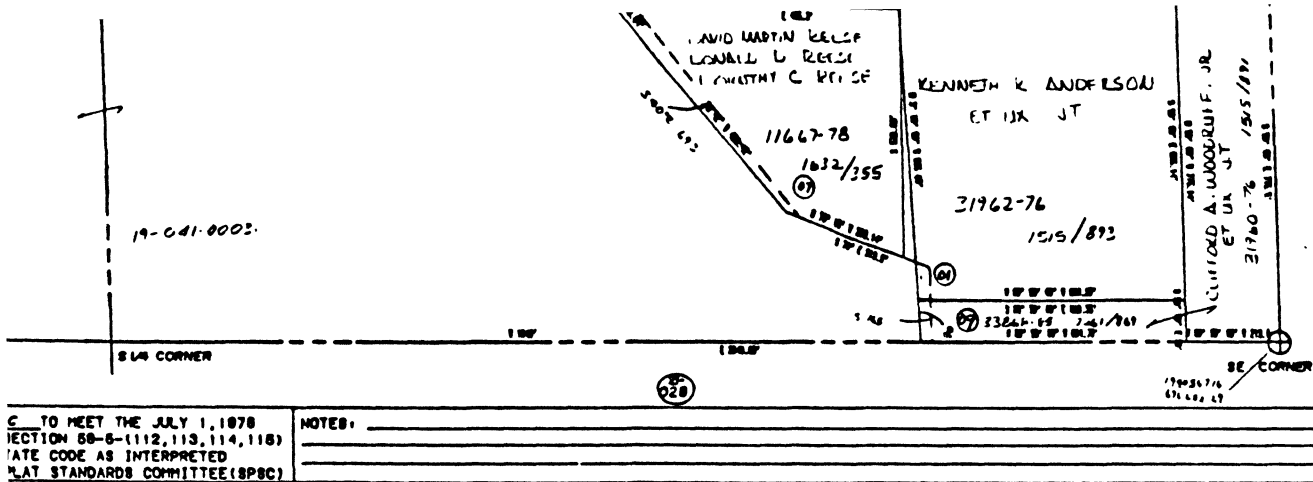
Notice of Federal Tax Lien Under Internal Revenue Law dated May 13, 1986, executed by Internal Revenue Service, by S. A. Phipps, Revenue Officer, Chief Collection Branch, against Taxpayers Ronald L. Jensen & Parricia D. Jensen, in the amount \$3,217.36, filed June 4, 1986, as Entry No. 17254, in Book 2309, Page 874, in the office of the Recorder, Utah County, Utah.

A Judgment for \$2,500.01 against Ronald Jensen and Patricia Jensen, in favor of State Tax Commission, entered on December 12, 1986, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. ST 86 4804. WARRANT FOR DELINQUENT TAX

A Judgment for \$2,514.66 against Ronald Jensen and Patricia Jensen, in favor of State Tax Commission, entered on February 27, 1987, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. ST 87 1681. WARRANT FOR DELINQUENT TAX

A Judgment for Decree of Divorce against Patricia Lee Jensen, in favor of Gert S. Jensen, entered on September 2, 1987, in the Fourth Judicial District Court in and for Utah County, Utah, Case No. CV 87 1126.

* * * * *

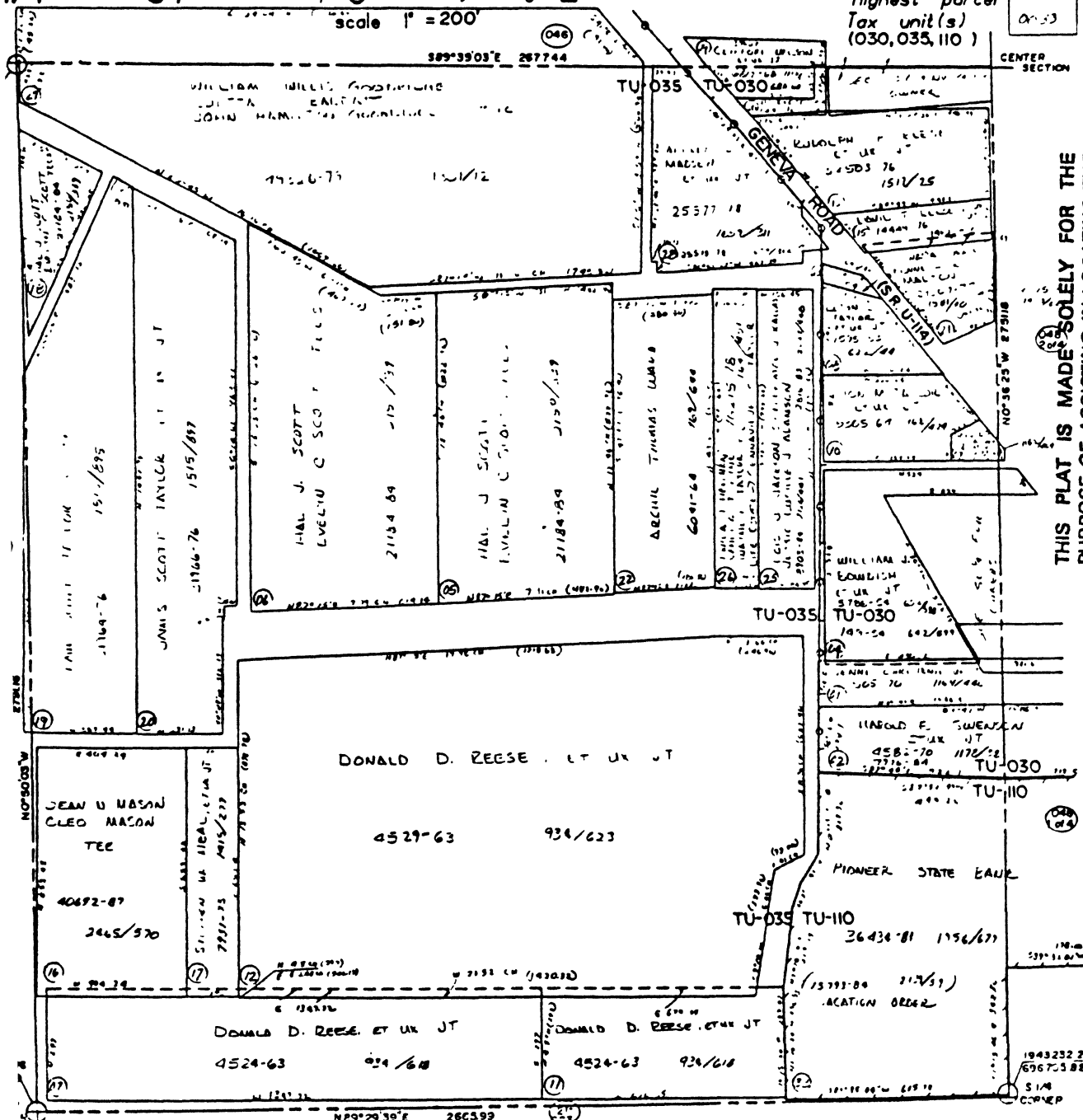


UTAH COUNTY PLAT

Ser No: book-page-parcel 19-045

1/4 section 34 township 6 south, range 2 east

Highest parcel
Tax unit(s)
(030, 035, 110)



THIS PLAT IS MADE SOLELY FOR THE
PURPOSE OF ASSISTING IN LOCATING THE
LAND, AND THE TITLE COMPANY ASSUMES
NO LIABILITY FOR VARIATIONS, IF ANY,
WITH AN ACTUAL SURVEY.

ADDENDUM "F"

RESPONDENTS COUNTER CLAIM

FREDERICK A. JACKMAN
Attorney for Defendants
1327 South 800 East, Suite #300
Orem, Utah 84058
Telephone: (801) 225-1632

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY
STATE OF UTAH

J. DESMOND BESS and	:	
KRISTINE BESS,	:	
	:	COUNTERCLAIM
Plaintiff,	:	
	:	
vs.	:	
	:	
RONALD L. JENSEN and	:	
PATRICIA JENSEN,	:	
	:	Civil No. CV-87-1258
Defendants.	:	

COME NOW the defendants, by and through their attorney, Frederick A. Jackman, and pursuant to leave of Court granted at the pre-trial, hereby file the following Counterclaim.

1. On or about the 20th day of March, 1985, the plaintiffs and the defendants entered into a contract with regard to that certain real property located at RFD #1, Box 329 A, Provo, Utah 84601, which contract purported to be a lease with an option to purchase, but was in essence a sales contract for the property.

2. That on or about the 29th day of May, 1987, the plaintiff caused a Complaint to be filed against the defendants which as part of its second claim alleged that the defendants are in breach of the option portion of the contract and as part of their relief request that the defendants vacate the real property immediately.

3. That the defendants have made substantial improvements to the property and have paid sufficient sums to the plaintiff and that they have developed an equity of approximately \$30,000.00 in the property. It would be unjust enrichment to the plaintiffs if they were to receive the property without having to pay back to defendants some of the equity the defendants have developed in the property.

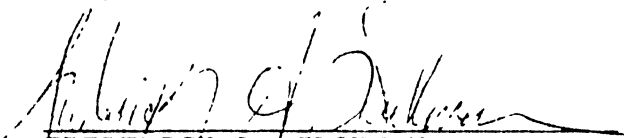
WHEREFORE, the defendants pray judgment as follows:

1. That they are not in default under the sales contract.

2. That in the event the Court determines the plaintiffs are entitled to restoration of possession of the real property, that a reasonable sum be paid to these defendants with respect to the equity they have developed in the property so as to avoid unjustly enriching the plaintiffs.

3. For such other and further relief as the Court may deem appropriate.

DATED this 20th day of October, 1987.



FREDERICK A. JACKMAN
Attorney for Defendants

ADDENDUM "G"
EVICTIION ORDER

Orson B. West, Jr. (#4166)
 Attorney for Plaintiff
 669 South 200 East, Suite 201
 Salt Lake City, Utah 84111
 Telephone: 532-5951

FILED
 CLERK OF DISTRICT COURT
 SALT LAKE COUNTY, UTAH

1988 APR -6 AM 10:05

WILLIAM A. JACKMAN
 JUDGE

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
 STATE OF UTAH

J. DESMOND BESS and)	
KRISTINE BESS,)	
)	
Plaintiffs,)	EVICTION
)	
vs.)	Civil No. CV87-1258
)	
RONALD L. JENSEN and)	Judge Ballif
PATRICIA JENSEN,)	
)	
Defendants.)	

This matter came before the Court for trial on the 1st day of December, 1987, Orson B. West, Jr., appearing for the Plaintiffs and Frederick A. Jackman appearing for the Defendants. The parties filed with the Court a written Stipulation of fact augmented by oral proffers, argued the case and submitted it to the Court for its decision. The Court having fully considered the matter, entered its decision on the 28th day of January, 1988.

EVICTON

1. The Court found that the Defendants had violated the terms of the Lease and the Lease was terminated.

2. The Defendants have failed to pay any lease payments since May, 1987.

IT IS ORDERED:

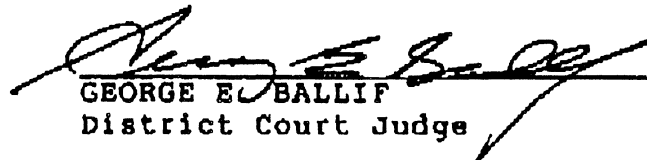
3. That the Defendants vacate the premises immediately.

TO THE SHERIFF OF UTAH COUNTY:

You are hereby directed to evict Ronald L. Jensen and Patricia Jensen from the house located at RPD. #1, Box 329A, Provo, Utah.

DATED this 6th day of April, 1988.

BY THE COURT:


GEORGE E. BALLIF
District Court Judge

STATE OF UTAH
COUNTY OF UTAH

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS

6th DAY OF April, 1988
WILLIAM F. HUISH, CLERK

By Daniel L. Mendenhall DEPUTY

RETURN

SHERIFF'S OFFICE

STATE OF UTAH, }
COUNTY OF UTAH } SS. J. DESMOND BESS AND KRISTINE BESS,
Plaintiff

I hereby certify and return that I received the within and hereto annexed
WRIT OF EVICTION on the 6th day of April, 19 88 10:10 a.m.
and served the same upon

RONALD L. JENSEN AND PATRICIA JENSEN

the within named Defendant..., personally, by delivering to and leaving with
said Defendant...

RONALD L. JENSEN AND PATRICIA JENSEN

at Provo, Utah County, State of Utah, a true copy of said

WRIT OF EVICTION
on the 6th day of April, 19 88.

I further certify that on the copy of WRIT OF EVICTION
so served I endorsed the date and place of service and added my name and
official title thereto.

Dated at Provo City, Utah, this 7th day of April, 19 88.

DAVID R. BATFMAN, Sheriff of Utah County, State of Utah

Docket # 6634

Sheriff's Fees:

Service . . . \$ 15.00

Mileage . . . \$ 4.50

Total . . . \$ 19.50

By Art Adcock
Deputy Sheriff
Return to Plaintiff. Court issued
an Order Vacating Eviction Order.

Art Adcock 4-7-88