

1988

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

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Frederick A. Jackman; Attorney for Defendants/Respondents.

Bradley R. Jones; Ashton, Braunberger, Poulsen and Boud; Attorney for Plaintiffs/Appellants.

Recommended Citation

Brief of Appellant, *Bess and Bess v. Jensen and Jensen*, No. 880394 (Utah Court of Appeals, 1988).
https://digitalcommons.law.byu.edu/byu_ca1/1188

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

BRIEF

UTAH
DOCUMENT
KFU
50

CKET NO. 880394

Bradley R. Jones, USB #A4747
ASHTON, BRAUNBERGER, POULSEN & BOUD, P.C.
Attorneys for the Plaintiffs/Appellants
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone Number: (801) 263-0300

UTAH COURT OF APPEALS

J. DESMOND BESS and)	
KRISTINE BESS,)	
)	
Plaintiffs/Appellants,)	880394-CA
)	Case No. 880150-CA
vs.)	
)	
RONALD L. JENSEN and)	
PATRICIA JENSEN,)	(Civil No. CV87-1258)
)	
Defendants/Respondents.)	

BRIEF OF APPELLANTS

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

Bradley R. Jones
ASHTON, BRAUNBERGER, POULSEN
& BOUD, P.C.
302 West 5400 South, Suite 103
Murray, Utah 84107
Attorneys for Plaintiffs/Appellants

Frederick A. Jackman
1327 South 800 East, Suite 300
Orem, Utah 84058
Attorneys for Defendants/Respondents

Bradley R. Jones, USB #A4747
ASHTON, BRAUNBERGER, POULSEN & BOUD, P.C.
Attorneys for the Plaintiffs/Appellants
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone Number: (801) 263-0300

UTAH COURT OF APPEALS

J. DESMOND BESS and)	
KRISTINE BESS,)	
)	
Plaintiffs/Appellants,)	Case No. 880150-CA
)	
vs.)	
)	
RONALD L. JENSEN and)	
PATRICIA JENSEN,)	(Civil No. CV87-1258)
)	
Defendants/Respondents.)	

BRIEF OF APPELLANTS

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

Bradley R. Jones
ASHTON, BRAUNBERGER, POULSEN
& BOUD, P.C.
302 West 5400 South, Suite 103
Murray, Utah 84107
Attorneys for Plaintiffs/Appellants

Frederick A. Jackman
1327 South 800 East, Suite 300
Orem, Utah 84058
Attorneys for Defendants/Respondents

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED ON APPEAL	1
STATMENT OF FACTS	2
SUMMARY OF ARGUMENT	6
ARGUMENT.	7
CONCLUSION.	12

CASES CITED

	<u>Page</u>
<u>Bledsoe v. Hill</u> , 747 P.2d 10 (Colo. App. 1987).	9
<u>Land Reclamation, Inc. v. Riverside Corp.</u> , 261 Or. 180, 492 P.2d 263 (1972)	8
<u>Russell v. Park City Utah Corporation</u> , 548 P.2d 889 (Utah 1976)	10, 11, 12
<u>Sacramento Baseball Club, Inc. v. Great Northern Baseball Company</u> , 73 Utah Adv. Rep., 10 Dec. 29, 1987	8

AUTHORITIES CITED

	<u>Page</u>
17 am. Jur. 2d, Contracts §266 (1964)	8

UTAH COURT OF APPEALS

J. DESMOND BESS and)	
KRISTINE BESS,)	
)	Case No. 880150-CA
Plaintiffs/Appellants,)	
)	
vs.)	(Civil No. CV87-1258)
)	
RONALD L. JENSEN and)	
PATRICIA JENSEN,)	
)	
Defendants/Respondents.)	

APPELLANTS' BRIEF

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 were intended by the parties to be one consolidated agreement. Respondents-Defendants became in default of the lease portion of the agreement, and the Trial Court thereby terminated the same, but did not terminate the option part of the agreement. The issue now before the court is whether termination of the lease portion of the Lease/Option Agreement by the Trial Court for breach thereof by the Respondents-Defendants does, by operation of law, also terminate the option portion of the

agreement.

STATEMENT OF FACTS

On March 20, 1985, Appellants-Plaintiffs entered into a lease/option agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, with the Respondents-Defendants for the purpose of leasing certain real property located at R.D. #1, Box 329-A, Provo, Utah, and more fully described as:

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.

The agreement gave Respondents-Defendants the opportunity to purchase the subject real property upon the conditions stated therein, including the exercise of the six option periods and payment of an additional \$3,000.00 at the exercise of the final option. The agreement provided

The agreement gave Respondents-Defendants the opportunity to purchase the subject real property upon the conditions stated therein, including the exercise of the six option periods and payment of an additional \$3,000.00 at the exercise of the final option. The agreement provided that the monthly rental of \$462.47 was payable on the first day of each month and would be delinquent ten days after the first day of each month. Beginning with the second installment payment due May 1, 1985, Respondents-Defendants on several occasions thereafter were late in their payments and/or issued checks as payments which were subsequently dishonored and returned due to insufficient funds. Of the twenty-seven payments actually made, one-fourth (that is, 6 of the payments) were made with checks that were returned because they were drawn on an account with insufficient funds. Furthermore, five of the last ten checks were made beyond the grace period. Such actions by Respondents-Defendants caused certain of Appellants-Plaintiffs' own checks to be returned for insufficient funds due to Plaintiffs-Appellants' reliance thereon. Additionally, the checks issued by Respondents-Defendants were put directly by Respondents-Defendants into an escrow account at Universal Campus Federal Credit Union (hereafter "Bank") in Provo, Utah, for the purpose of applying the same to the first

mortgage on the subject real property. Due to the problems with Respondents-Defendants' payments as set forth above, the Bank gave Appellants-Plaintiffs notice that payments by check from the Jensens' would no longer be accepted. A copy of said notice is attached hereto as Exhibit "B" and incorporated herein by reference. Also, because of the continual problems with Respondents-Defendants in writing checks with insufficient funds or making late payments, Appellants-Plaintiffs, by and through their attorney, Orson B. West, Jr. wrote a letter to the Respondents-Defendants demanding that they begin living up to the terms of the Agreement, or the Agreement would be terminated. A copy of said letter is attached hereto as Exhibit "C" and incorporated herein by reference. Respondents-Defendants continued to fail to live up to the agreement and the Bank refused to accept Respondents-Defendants' check for May, 1987 as an improper tender of rent. Because Respondents-Defendants failed to make a proper tender of the May, 1987 rent, Appellants-Plaintiffs were forced to file a notice to pay or vacate. Said notice was ignored by Respondents-Defendants, which resulted in the commencement of this action.

Respondents-Defendants further breached the Lease Option Agreement by encumbering the subject property prior to any exercise of the option with judgments and liens in

the amount of at least \$11,962.95. Such encumbrances have damaged Appellants-Plaintiff's interest in the subject property. Respondents-Defendants, pursuant to the agreement terms, cannot exercise the option until all encumbrances have been fully paid, including the back rents.

The trial court found that the Defendants-Respondents were in breach of the Lease Option Agreement, and the court accordingly terminated the lease portion of the agreement. The trial court, however, allowed the option portion to stand contingent upon Defendants-Respondents exercising the final option payment and payment of the rents accrued from May, 1987 through the present in the amount of \$462.47 per month, together with interest thereon at 10% per annum.

Respondents-Defendants have paid approximately \$5,500.00 to the trial court's escrow account, which is being held in lieu of a supersedeas bond while the matter is on appeal. Respondents-Defendants have paid an additional amount of \$2,500.00 directly to Appellants-Plaintiffs, which amount has been applied by Appellants-Plaintiffs towards back rent. Respondents-Defendants were further been ordered to continue making rent payments of \$462.47 per month during the pendency of this action pursuant to a hearing held before the Honorable George E. Ballif on June 3, 1988, a

copy of which is attached hereto as Exhibit "D" and incorporated herein by reference but Respondents-Defendants have failed to make the payments as ordered.

Appellants-Plaintiffs remain ready and willing to return whatever option payments the Respondents-Defendants may be entitled to, if any, should the court so order upon the termination of the option portion of the agreement and restitution of the premises to Appellants-Plaintiffs. Plaintiffs-Appellants have offered to return said option moneys on several occasions in exchange for the restitution of the subject property, but Respondents-Defendants have refused to work out such an equitable result.

The Lease Option Agreement further provides that upon default of the agreement, the lessor may re-enter the premises, thus terminating lessee's rights thereunder. The agreement further provides that lessee shall pay lessor attorney fees and costs for such breach of the agreement by lessee. Despite the language in the contract which provides for upon default by Respondents-Defendants, the Trial Court upheld the option portion of the agreement contrary to the specific interest and terms of the contract as stated therein.

SUMMARY OF ARGUMENT

The facts presented at the initial trial show that

the Lease Option Agreement as intended by the parties to be a single undivided agreement although prepared as two separate documents. The facts also show that Defendants-Respondents were in breach of the lease portion of the agreement, and accordingly, the court terminated the lease portion of the agreement. According to the laws set forth below and the terms of the agreement itself, a termination of the lease portion by operation of law must also result in termination of the option portion of the agreement. Therefore, where the Trial Court ruled to terminate the lease, the subject premises should also have been restored to Plaintiff with a forfeiture of the entire agreement.

ARGUMENT

THE TRIAL COURT PROPERLY FOUND THAT PLAINTIFF WAS ENTITLED TO COMMON LAW EJECTMENT OF DEFENDANTS-RESPONDENTS FROM THE SUBJECT PREMISES, THEREBY TERMINATING THE LEASE PORTION OF THE AGREEMENT, AND SHOULD THEREBY HAVE ALSO TERMINATED THE OPTION PORTION OF THE AGREEMENT.

The Lease Option Agreement at issue before the court was prepared as two separate documents which were both dated March 20, 1985. See Exhibit "A" attached hereto and incorporated herein by reference. The Supreme Court of Utah has ruled that where two documents are prepared separately, they may still be considered as a single agreement. In

other words, an agreement may be a single contract even though it consists of several writings that the parties have never physically attached to each other. Sacramento Baseball Club, Inc. v. Great Northern Baseball Company, 73 Utah Advanced Reports 10, 11. See also 17 Am. Jur. 2d Contracts §266, at 672 (1964). In Sacramento Baseball, the court considered a situation where the parties used two documents for the transaction relating to the purchase of a baseball club. One document was an agreement for the sale of the franchise, and the other was a consultation agreement. \$100,000.00 was to be paid as consideration for the sales agreement, and \$88,000.00 for the consultation agreement. Plaintiff argued that although the two written documents existed, the parties actually entered a single contract. The Supreme Court examined the parties' written agreements and the circumstances surrounding the drafting of the agreements, and determined that the parties' intended one contract. The court stated, as a 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 Sacramento Baseball, the Court cited Land Reclamation, Inc. v. Riverside Corp., 261 Or. 180, 184, 492 P.2d 263, 265 (1972), "No rule of law...precludes the parties from using two written instruments rather

than one to effectually carry out their agreement." The court concluded that the two agreements were executed with the purpose of effecting the sale of the baseball franchise and the parties really only reached one agreement and formed only one contract that was reflected in two separate documents. Accordingly, the court held that the contract as a whole was enforceable, so the consultation agreement as a part of the contract was also enforceable. Similarly, in the present case, the parties entered into the agreement on the same date, each agreement referred to the other agreement, and the parties intended that although two documents were prepared, the two documents formed only one contract. In accordance therewith, where the two documents were one agreement and where a portion of the agreement was terminated, and properly so, by the trial court, the whole agreement should have been terminated. See also Bledsoe v. Hill, 747 P.2d 10 (Colo. App. 1987), where the court held that "If a simultaneously executed agreement between the same parties, relating to the same subject matter, is contained in more than one instrument, the documents must be construed together to determine the intent as though the entire agreement were contained in a single document. Although it is desirable for the documents to refer to each other, there is no requirement that they do so. Accordingly, the two documents

must be read together, and therefore, must be terminated as a whole agreement. This result is necessarily compelling because the very terms of the agreement provide that a default of the lessee (Respondents-Defendants) terminates the contract, giving the lessor (Appellants-Plaintiffs) the right of possession. Neither equity nor common sense would suppose that Respondents-Defendants' breaches in continual late payments and nonpayment of rent, thereby giving Appellants-Plaintiffs the right to possession would allow the Respondents-Defendants the opportunity to keep the possessory interest of the property in limbo while said party was making up their minds whether to exercise the remaining options. This was not the intent of the parties, nor did the contract provide for such. The contract simply and straight-forward provided that if lessee defaults, the possessory interest returns to Appellants-Respondents.

In Russell v. Park City Utah Corporation, 548 P.2d 889 (Utah 1976), the Supreme Court of Utah considered a factual situation and issues almost identical to those presently before the court. In Russell, Plaintiffs terminated the rights of the Defendant under a Lease Option Agreement because the Defendant failed to make the rent payments timely. On March 11, 1971, Plaintiff sent a letter pursuant

to the provisions of the lease agreement that the agreement would be declared terminated should the Defendant fail to pay rent by April 26, 1971. The Defendant did not meet the demand timely, but tendered payment on June 7, 1971, which the Plaintiffs refused. The Supreme Court found that the payment was not made timely and that Plaintiffs were justified in refusing the tender and terminating the lease. Russell at 891. The court, in Russell, also considered the option portion of the agreement, or right of first refusal, wherein Defendant had paid \$2,000.00 consideration for the option. In Russell, the Defendant argued that the option to purchase covenant was a severable contract, supported by separate consideration, and existed independently of the other provisions of the lease for the entire ten-year term of the lease. The Plaintiff, on the other hand, contended that the option was an integral part of the total composite of the lease, and when the lease was forfeited and terminated, the covenant fell with it. The trial court, which was affirmed by the Supreme Court, found in accordance with the Plaintiff on the grounds that the two portions of the agreement were integral to each other and intended as such by the parties, such that forfeiture of the lease would also terminate the option or first right of refusal. Russell at 892. This was so despite the fact that \$2,000.00 consideration had been

paid for the option and right of first refusal.

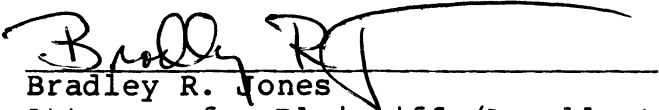
The facts presently before the court are similar to those in Russell where the parties entered into an agreement for the lease and the option to purchase certain real property. The two portions of the agreement are so integral that where the trial court terminated the lease portion of the agreement, the option should also be terminated.

Under the alternative theory, as promoted by Defendants-Respondents, that the option remain in effect despite the termination of the lease, it would have been possible for Respondents-Defendants to tie up the property for three years without paying anything more than the initial first month's rent. This is not a result intended by the parties nor would it be an equitable result.

CONCLUSION

According to the rules of law and facts cited above, the parties entered into a single agreement for the lease of real property with an option to purchase. The Respondents-Defendants defaulted on the lease and the trial court properly terminated the lease, which by operation of law must terminate the option. Accordingly, Appellants/Plaintiffs respectfully request the Court for an order of restitution of the premises, a termination of the Lease Option Agreement, and an award of attorney fees and costs.

Respectfully submitted this 27 day of June,
1988.


Bradley R. Jones
Attorney for Plaintiffs/Appellants
ASHTON, BRAUNBERGER, POULSEN &
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 BRIEF were mailed, postage
prepaid, on the 27 day of June, 1988, to the following:

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



ADDENDUM

Contents

1. Exhibit "A-1" - Lease
2. Exhibit "A-2" - Legal Description
3. Exhibit "A-3" - Option
4. Exhibit "A-4" - Option, continued
5. Exhibit "B" - Letter from Orson B. West, Jr.
6. Exhibit "C" - Letter from Universal Campus
7. Exhibit "D-1" - Order

"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 ~~XXXXXX~~
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 \$
~~XXXXXX~~ \$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]

[Signature]

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

BLANK No. 119—A U GEN PTG CO — 3215 SO 2600 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.

Order #: 7275

THIS IS A LEGALLY BINDING CONTRACT IF NOT UNDERSTOOD SEE 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 con-
sideration of TWO THOUSAND FIVE HUNDRED AND NO/100 - - - - - (\$ 2,500 00) Dollars
paid by RONALD L JENSEN and PATRICIA JENSEN, husband and wife
of R D # 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 follow-
ing described real property located at R D # 1, Box 329-A, Provo Utah 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 5/8 % 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 seller's 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 herein
after 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 expira-
tion 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 post-
marked 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 reason-
able 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 additional months hereinafter referred to as "Sixth Option Period"

6 CLOSING ADJUSTMENTS All risk of loss and destruction of property in expenses of insurance shall be borne by Seller until date of possession. At time of closing of sale property taxes, rent, 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 ~~XX~~ ~~On or before~~ ~~XXXX~~ ~~XXXX~~ 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 UGEM FID CO — 3215 SO 2800 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

ORSON B. WEST JR.
ATTORNEY AT LAW
669 SOUTH 200 EAST, SUITE 201
SALT LAKE CITY, UTAH 84111
(801) 532-5951

COPY

March 9, 1987

Mr. and Mrs. Ronald Jensen
RFD #1, Box 329A
Provo, Utah 84601

RE: Continual late payments on your lease with option to buy

Dear Mr. and Mrs. Jensen:


I have been retained by Mr. and Mrs. Desmond Bess as their attorney. The terms of the agreement provide that you will make rent payments on the first day of each month. In the past you have been late a few days. The last three or four months you have been late by nearly two weeks each month. Also, on the last several months you have bounced at least five checks since August. This has caused a hardship on Mr. and Mrs. Bess. Their checking account has been fouled up because of your bad checks.

A few days ago Mr. and Mrs. Bess received a letter dated February 23, 1987, from the Universal Campus Credit Union. I have enclosed a copy for your perusal. The letter basically states that no longer will they accept any of your personal checks because of the past problems of your bouncing checks there. You will be required from this date forward to pay the monthly rent in either cash, money order or cashier's check placed in Mr. and Mrs. Bess' account. Again, this is to be done on the first day of each month.

Also, Mr. and Mrs. Bess would expect that you would reimburse them \$85.00, which is the cost that they have incurred for bounced checks due to your negligence in paying the rent on time. While Mr. and Mrs. Bess do not wish to commence legal action against you for your delinquency, we are prepared to initiate legal action if you do not correct your delinquent pattern of payments. Furthermore, if it becomes necessary to go to court, we would ask that the entire agreement be struck down as being void because of your violation of the contracts.

I would ask you to please contact my office within the next five (5) days so that we might make the necessary arrangements to clear up this problem of delinquencies, make arrangements for you to pay the charges that the Besses have incurred, and to see what arrangements can be made to insure that this does not happen in the future.

Sincerely,



Orson B. West

OBW/lm

Enclosure

cc: Mr. and Mrs. Bess

CREDIT UNION

February 23, 1987

J. DESMOND BESS
ACCOUNT# 19871-5

DEAR MEMBER:

DUE TO RETURNED CHECK(S) WRITTEN TO (OR CASHED ON) THIS ACCOUNT FROM PATT OR RON JENSEN, WE WILL NO LONGER ACCEPT THESE CHECKS. PLEASE DEPOSIT CASH OR CASHIERS CHECK(S) IN PLACE OF THESE CHECKS. IF YOU HAVE ANY QUESTIONS CONCERNING THIS ACTION, CONTACT CAROLYN BENTLEY.

SINCERELY,

Carolyn Bentley

CAROLYN BENTLEY
GENERAL ACCOUNTING

Ex. 351

EXHIBIT C

Bradley R. Jones, USB #A4747
ASHTON, BRAUNBERGER, POULSEN & BOUD, P.C.
Attorneys for the Plaintiffs
302 West 5400 South, Suite 103
Murray, Utah 84107
Telephone Number: (801) 263-0300

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

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

Plaintiffs' Motion for Order to Show Cause
having been heard before the above-entitled court on
June 3, 1988 at the hour of 10:00 a.m., Bradley R. Jones
appearing on behalf of Plaintiffs and Frederick A. Jackman
appearing on behalf of Defendants,

IT IS HEREBY ORDERED that the moneys being held
in the above-entitled court's escrow account, representing
monies paid pursuant to judgment rendered therein, and
placed in said account by Defendants, remain in said escrow
account and be used as a supersedeas bond pending Plaintiffs'
appeal to the Utah Court of Appeals.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED
that Defendants continue to make rent payments on the
subject property in the amount of \$462.47.

DATED this _____ day of _____, 1988.

BY THE COURT:

151 Ballif
Circuit Court Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy
of the foregoing ORDER was mailed, postage prepaid, on the
1 day of June, 1988, to the following:

Frederick A. Jackman
Attorney for Defendants
1327 South 800 East, Suite 300
Orem, Utah 84058

Brady RJ