

1988

Lorraine Miller v. R.O.A. General Inc : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

Brief of Respondent, *Miller v. R.O.A. General Inc*, No. 880466 (Utah Court of Appeals, 1988).

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

880466

IN THE UTAH COURT OF APPEALS

LORRAINE MILLER,

)

Plaintiff/Appellant,

)

vs.

)

Docket No. 880466-CA

R.O.A. GENERAL, INC., a Utah
Corporation, formerly known as
Reagan Outdoor Advertising, Inc.,
a Utah Corporation,

)

Priority No. 14

)

Defendant/Respondent.

)

)

BRIEF OF RESPONDENT

On Appeal from the Order of
the Third Judicial District Court in and for
Salt Lake County, State of Utah
the Honorable Raymond S. Uno

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DEC 16 1988

IN THE UTAH COURT OF APPEALS

LORRAINE MILLER,)	
Plaintiff/Appellant,)	
vs.)	Docket No. 880466-CA
R.O.A. GENERAL, INC., a Utah)	Priority No. 14
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STATEMENT OF JURISDICTION

Jurisdiction in the Court of Appeals is proper pursuant to rules 3 and 4A of the Rules of the Utah Court of Appeals.

STATEMENT OF THE NATURE OF THE PROCEEDINGS

This is the original appeal from a decision rendered in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Raymond S. Uno, Judge Presiding. The Court, on April 4, 1988, entered a final order granting Defendant's Motion for a Summary Judgment and denying the Plaintiff's Motion for a Summary Judgment.

The Plaintiff filed a Notice of Appeal in the Supreme Court of the State of Utah on the 4th day of May, 1988. On July 29, 1988, this case was poured-over to the Court of Appeals for disposition.

STATEMENT OF THE ISSUES

The Respondent submits that the issues on appeal before this Court are as follows:

1. Whether the lower Court correctly ruled that the lease agreement contains terms that are clear and unequivocal on its face, and therefore unambiguous and

binding upon the parties.

2. Whether the Lower Court correctly ruled that there was no unconscionability at the time the lease was entered into, and that the succeeding lessors failed to show present unconscionability.

3. Whether the Lower Court correctly ruled that a succeeding lessor is bound by a lease agreement, whose terms are clear and unequivocal when the lease agreement specifically states that the agreement is binding upon successors in interest and when the successor has actual knowledge of the lease agreement.

**DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, RULES AND REGULATIONS**

None

STATEMENT OF THE CASE

The Plaintiff and Appellant, Lorraine Miller, filed a complaint on July 28, 1987, seeking a Declaratory Judgment against the Defendant and Respondent, R.O.A. General, Inc., (Reagan Outdoor Advertising). Miller attempted to terminate an advertising lease agreement entered into by Reagan Outdoor Advertising and Lorraine Miller's predecessor in interest, William Jennings. Appellant hoped to obtain a ruling that Reagan was

trespassing.

The parties filed memoranda setting forth their respective position. On December 1, 1987, oral arguments were heard by Judge Uno. Following oral argument the Court requested supplemental information to assist the Court in its decision. On January 4, 1988, Judge Uno issued his Memorandum Decision, denying Miller's Motion and granting Reagan's Motion for a Summary Judgment. Accordingly, Reagan Outdoor Advertising's interest has been judicially recognized.

Following entry of the Judgment with accompanying Findings of Fact and Conclusions of Law the Plaintiff timely filed her Notice of Appeal to the Supreme Court of Utah. The case has been transferred to the Utah Court of Appeals for disposition.

STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED

1. The Defendant/Respondent, Reagan Outdoor Advertising, maintains an outdoor advertising structure, sometimes called a "billboard", on the premises located at 2735 South, 20th East, in Salt Lake City, State of Utah.
(R. 33)

2. This outdoor advertising structure was erected pursuant to a lease agreement between Reagan and a

Mr. William M. Jennings, executed on April 29, 1977.

(R.29)

3. Subsequent to the execution of the lease agreement the property upon which the outdoor advertising structure was located was sold by Mr. Jennings to Gloria Erickson who thereafter sold the property to the Plaintiff/ Respondent, Lorraine Miller (hereinafter "Miller"). (R.79) At the time Miller acquired the subject premises she was aware of the lease agreement and that she was bound by its terms. (R.33-34, 91)

4. Miller believed that the lease could not be "broken", but that it would "expire" in May of 1987. (R.35)

5. Since acquiring the property Miller has received regular rental payments pursuant to the lease agreement. (R.36)

6. Miller believed that she could terminate the lease after 10 years. (R.86)

7. In paragraph 4 (unnumbered) of the subject lease agreement it provides:

This lease shall continue on the same terms and conditions for a like successive period; thereafter, this lease shall continue in full force on the same terms and conditions for a like successive period or periods, unless lessor delivers to lessee notice of termination within 90 days of the end of said term. (R.29)

The Lower Court found that the Reagan Outdoor Advertising, Inc., contract (or lease agreement) was neither a long nor complicated contract. (R.220)

8. Further, the Lower Court found that the terms of the contract were clear and unequivocal; that the term of the lease was designated in a separate paragraph in plain and understandable language; and, the agreement consisting of only one page could be read, very slowly, in five (5) minutes. (R.222)

9. The Lower Court found that there is no question that the lease is a 10 year lease and, more importantly, that upon careful reading of the lease anyone, including a lay person, would understand that there is an option to continue the lease for a "like successive period" to be exercised by the lessee. (R.222)

10. The Court found that some attention was paid to this term of the lease because the Miller affidavits so state "their" understanding. (R.222)

11. The Court did not find that the lease was unconscionable at the time it was entered into or that it became unconscionable because of subsequent events. (R.223)

12. Additionally, in reviewing similar language in a similar lease in another case it was stated that this

language "does not appear to be ambiguous or misleading".
(R.42)

SUMMARY OF THE ARGUMENT

The decision of the Lower Court granting Defendant's Motion for Summary Judgment should be affirmed because there are no genuine issues as to any material fact in the instant case and the Defendant is entitled to a Judgment as a matter of law. The lease agreement between the parties is not ambiguous. The provision in the lease which provides for a continuation of the term of the lease is set forth clearly, using correct English rules of construction and was properly interpreted by the Lower Court.

The lease is not illusory nor unconscionable. Both parties to the lease have certain obligations that they are required to perform, or otherwise comply with, as well as receiving mutual benefits from the agreement.

ARGUMENT

I

There Are No Genuine Issues as to Any Material Facts

The Standard of review by an appellant court of a summary judgment is the same as that of the trial court:

Our inquiry on review is whether there is

any genuine issue as to any material fact,
and if there is not, whether the plaintiffs
are entitled to judgment as a matter of law
. . . . The defendant cannot rely upon the
mere allegations or denials of her pleadings
to avoid a summary judgment but must set
forth specific facts showing that there is
a genuine issue for trial.

Thornock v. Cook, 604 P.2d 934, 936 (Utah 1979). See
also Briggs v. Holcomb, 740 P.2d 281 (Utah App. 1987) (on
reviewing a summary judgment, an appellate court applies
the same standard as that applied by the trial court);

Rule 56(c) of the Utah Rules of Civil Procedure,
requires that a motion for summary judgment shall be
granted if the:

pleadings, depositions, answers to
interrogatories, and admissions on file,
together with the affidavits if any,
show that there is no genuine issue as
to any material fact . . .

Utah's Supreme Court has held that a genuine issue of
fact exists whenever reasonable minds can differ. In
Jackson v. Dadney, 645 P.2d 613 (Utah 1982). The opponent
to summary judgment must affirmatively set forth genuine
issues of fact. Rule 56(e)

In opposition to Defendant's Motion for Summary
Judgment, Plaintiff attempted to cloud the genuine issues
by presenting three affidavits, which are appended as
Exhibits "D", "E", and "F" to Appellant's Brief. These
Affidavits do not raise any genuine issue of fact, but
instead present incompetent evidence to the Court.

Rule 56(e) requires that Affidavits be based on personal knowledge, setting forth "such facts as would be admissible in evidence." Appellant's Affidavits are replete with hearsay evidence, many of the statements prefaced by "I was told . . ." or "I learned from" Such statements are contrary to the Rules of Evidence, and raise no genuine issues of fact.

Plaintiff also submitted title insurance policies and attorney letters to show the duration of the Lease. Such evidence is mere private interpretation of the Lease Agreement. It is the duty of the Court, not some title company or attorney, to interpret the terms of the Lease Agreement.

On appeal, Appellant's Statement of Facts again raise no genuine issues of fact. (Appellant's Brief, pp.3, 4). Appellant states that she was "informed . . . that the billboard lease term was ten years . . .", a statement resounding of hearsay. (Appellant's brief, p. 4, paragraph 3). Even if Appellant were told this information, it is not a material fact precluding summary judgment. Appellant is a successor in interest, and her understanding of the contract is of no importance. The intent of the contracting parties governs.

Similarly, no evidence was presented showing unconscionability, either at the time of entering the contract or at the present time.

II

The Agreement, When Interpreted Using Correct English Rules of Construction, Clearly Extends the Lease for a Ten-Year Period.

In her brief, Appellant has reproduced a paragraph from the Lease Agreement in question. (Appellant's Brief, page 5). Appellant has mistakenly, perhaps intentionally, altered the punctuation the the crucial paragraph, substituting a comma for a semicolon. The paragraph should read:

This lease shall continue on the same terms and conditions for a like successive period; thereafter, this lease shall continue in full force on the same terms and conditions for a like successive period or periods, unless lessor delivers to lessee notice of termination within ninety days of the end of said term.

Lease Agreement, paragraph 4.

The semicolon in this phrase is a proverbial linchpin--without it, the entire paragraph is subject to modification by the last 17 words. With the correct punctuation, only the post-semicolon clause is so modified.

A contract must be interpreted in accordance with the generally prevailing meanings and rules of

language. See Restatement 2d of Contracts, paragraph(3)(a), and comments thereunder. This principal has been recognized by the Utah Supreme Court.

Generally speaking, neither of the parties, nor the court has any right to ignore or modify conditions which are clearly expressed merely because it may subject one of the parties to hardship, but they must be enforced "in accordance with the intentions . . . manifest by the language used by the parties to the contract."

Ephraim Theatre Company v. Hawk, 321 P.2d 221, 223, (Utah 1958).

"Language" includes not only words, but also methods of combining words. Webster's Ninth New Collegiate Dictionary, p. 672. Clearly, punctuation is part of the English language in written form.

A court cannot ignore punctuation when interpreting a contract. Baker v. McDel Corp., 191 N.W.2d 846, 851 (Wis. 1971). It is fair to assume that parties to a contract know and understand grammar, punctuation, words, phrases, and clauses chosen by them to convey the purpose of their contract. St. Louis - San Francisco Railway Co. v. Bengal Lumber, Co., 292 P.2d 52, 53 (Okla. 1930. A semicolon is significant when interpreting a contract. See Western Empire Petroleum Company v. Davenport, 318 S.W.2d 903, 904 (Tex. App. 1958).

The paragraph in question is made of a single

compound sentence that includes two independent clauses joined by a semicolon and adverb. Each of the clauses could individually make a complete sentence, i.e., "This lease shall continue on the same terms and conditions for a like successive period. This lease shall continue in full force on the same terms and conditions for a like successive period or periods, unless the lessor delivers to the lessee notice of termination within 90 days of the end of said term." Grammatically, the two clauses are complete and independent one from the other. The second clause does not modify the first clause.

Furthermore, the two clauses cannot be joined into a compound sentence unless a semicolon is used. A comma is inappropriate.

If two or more clauses grammatically complete and not joined by a conjunction are to form a single compound sentence, the proper mark of punctuation is a semicolon

Note that if the second clause is preceded by an adverb, such as accordingly, besides, then, therefore, or thus, and not by a conjunction, the semicolon is still required.

The Elements of Style, Strunk and White, 3rd Edition, McMillan Publishing Co., Inc., New York, 1979.

Webster further clarifies the proper use of the semicolon.

In general the semicolon functions as a weak period or as a strong comma

As a weak period a semicolon usually separates two statements or clauses when the second begins with a sentence connector or conjunctive adverb as . . . therefore . . .

Webster's Third New International Dictionary, p. 49a

In the paragraph in question, the semicolon is a "weak period", showing the independency of the two clauses. The two clauses are joined by a semicolon and the adverb "therefore", making one compound sentence, but in no way affecting the independency of the two clauses.

The correct interpretation of the language of the contract leads to but one conclusion, that is, the lease is still in full force and effect. The lease agreement was for an initial period of ten years. (Lease, paragraph 3). Upon expiration of the first ten-year period, the lease continues for a successive ten-year period. (Lease, paragraph 4, Clause 1, before semicolon). There is no provision allowing the Lessor to terminate the lease until the expiration of the second ten-year period, at which time the lessor may opt to terminate with adequate notice. (Lease, paragraph 4, Clause 2, following semicolon).

Finally, the Washington Supreme Court has recognized the importance of punctuation.

It is urged that the comma is the lowest and least significant of all punctuation marks and that in this case it should simply be eliminated or moved to the right three words. We must confess, however, to a very high regard

for the lowly comma. When a contract has a clear and certain meaning, we will not, in the absence of fraud or mutual mistake, neither of which is supported here, make a new contract for the parties be eliminating a comma or moving it a certain number of words to the right or left.

Peters v. Watson Co., 241 P.2d 441 (Wash. 1952).

Plaintiff/Appellant should not be permitted to redraft the contract by eliminating the efficacious semicolon.

III

The Lease is not Ambiguous

Appellant contests that the language of paragraph 4 of the lease is ambiguous, unconscionable, and creates a perpetual lease. She argues that the ambiguity of the paragraph is proven by the fact that she personally reviewed the lease, obtained legal opinions, reviewed the title report and received assurances from her seller, Gloria Erickson. It is interesting to note that she, at no time prior to the initiation of these proceedings, contacted Reagan Outdoor Advertising to determine its understanding of its rights and liabilities under this particular lease agreement were.

Personal and professional review of a contract does not alter the original intent of the parties and the legal, binding effect of the writing. Even the best

attorney in town takes a back seat to a judge when it comes to interpreting a legal document. A judge is also bound to construe the document according to age-old rules of interpretation. Attorney opinions sought that the lessor could terminate the lease after the first ten year term is an argument that is at best tenuous. On this point, the law is clear--it is not a defense to rely on the advice and counsel of an attorney contrary to law. See 7 Am.Jur.2d Section 201, Attorneys at Law (1980) (in absence of express agreement, an attorney is not an insurer or guarantor of the soundness of his opinion, or of the successful outcome of litigation, or of the validity of an instrument he is engaged to draft); and Young v. Bridwell, 437 P.2d 686 (1968). (Counsel is required to possess the ordinary legal knowledge and skill common to members of his profession, but he is not required to know all of the law, nor to second guess the trial judge).

Miller has failed to set forth facts to support the contention that the lease is ambiguous. Instead, she has merely alleged ambiguity. Appellant cites Russell v. Valentine, 376 P.2d 548 (1962) for the premise that when lease renewal provisions are not clear they should be construed against the drafter. Appellant argues that this case is applicable to the case at bench, but she fails to pinpoint the ambiguity.

The Valentine case is distinguishable from the present case, because the language of the present lease agreement is clear and unequivocal. In Valentine, the controversial language of the lease stated that "said Lessee shall have the right to renew this lease for a further period beginning as of the termination of this lease." The court, construing this language held:

The crux of the matter is the phrase "for a further period." We agree with defendant, and plaintiff so concedes, that had the renewal provision not contained these words it could be construed as a "general covenant to renew" for an additional term of ten years. . . . However, the lease provision does contain the phrase and it could have a variety of meanings. "For a further period" could mean one day, one week, one month, one year, and so on. The phrase renders the provision so ambiguous and uncertain that its meaning and the intention of the parties must be sought outside the four corners of the lease.

Id. at 549.

The language under consideration in this case does not render the lease so ambiguous and uncertain. "For a like successive period," unlike "for a further period," clearly indicates that the period has only one meaning--a succeeding ten year term under identical terms as the preceding one. Consequently, summary judgment was proper in this case, because the terms are clear and unambiguous and reasonable minds could differ as to this fact. As this court held in Colonial Leasing Co. v. Larsen Bros. Construction, 731 P.2d 483 (Utah 1986):

Only when contract terms are complete,

clear, and unambiguous can they be interpreted by the judge on a motion for summary judgment. . . . If the evidence as to the terms of the agreement is in conflict, the intent of the parties as to the terms of the agreement is to be determined by the jury.

Id. at 488.

A case that is on point is Hampton v. Lum, 544 S.W.2d 839 (Civ. Ct. App. Tex. 1976), where the Lower Court granted summary judgment in favor of Defendant/Tenant. The single point of error urged on appeal was over a lease provision very similar to the one in this case. The provision read:

"at the expiration of the original lease term herein, this lease shall automatically renew for a like term unless either party gives thirty (30) days written notice to the contrary" (emphasis added)

Id. at 840.

The court stated: "Appellant urges that the words like term in paragraph 14 renders the provisions of the paragraph ambiguous, unclear and meaningless." Id. The court rejected the appellant's argument and held that: "Neither the words like term nor the paragraph in which they appear renders the agreement ambiguous, vague or meaningless." Id. Instead, the court found that the phrase "like term" had a clear and understandable meaning:

As the word is used in the context shown term means the interest or estate created by the lease instrument and the estate's duration. In using the words like term

in paragraph 14, the parties agree that at the expiration therein and its duration of twelve months would automatically renew.

Id. See also Faulkner v. Farnsworth, 665 P.2d 1292 (Utah 1983) (when a contract is clear on its face, extraneous or parole evidence is generally not admissible to explain the intent of the contract).

Similarly, the subject of controversy in this case is the phrase "like successive period" and/or "said term". Plaintiff argues that the phrase are ambiguous and, should be construed against the maker of the instrument. However, much like the situation in Lum, "Like successive period" is not ambiguous but clearly creates a renewal at the expiration of the first period, in this case ten years.

The word "period" is the equivalent of "term". Lum; see also Martinez v. Rocky Mountain & San Francisco Railway Co., 47 P.2d 903 (N.M. 1935) (the lexicographers generally give "period" as a synonym of "term"). Any reference to "said term" is the same as a reference to "said period". The word "successive" means automatic, without any gap or time lapse between the initial period and the following one. As held by one court, "Successive is synonymous with 'consecutive' and means 'following each other or another without interruption or interval.'" Copher v. Barbee, 361 S.W.2d 137, 145 (Ct.App.Mo. 1962). Thus, the phrase "for like successive period" even more clearly sets forth what the court held in Lum--that the

lease was intended to renew automatically, without interval, for an identical, subsequent period.

IV

The Lease is Not Illusory or Unconscionable

The lease agreement is not illusory. Reagan Outdoor Advertising is obligated to pay quarterly rent payments or else it is in breach of the lease. Appellant would have sufficient legal remedies to terminate the contract upon Reagan's breach. Reagan Outdoor Advertising is obligated to pay the lease payments whether the sign is in use or not, and Reagan cannot terminate the lease on its whim. The contract expressly penalizes Reagan for its termination, requiring the payment of one year's rent as a penalty. Furthermore, Reagan would have a legal duty to remove its structure from the property, at its own cost. The contract cannot be deemed illusory because if Reagan were to terminate, monetary and other obligations arise by contract and by law.

The argument made by the appellant could likely be made with regard to almost any contractual agreement. Courts have dealt with this by simply providing a requirement that all parties are expected to deal with each other in good faith . Mel Hardman Productions, Inc., v. Robinson, 604 P.2d 913 (Utah 1979). See also Resource

Management Company v. Weston Ranch and Livestock Company, Inc., 706 P.2d 1028, 1037 (Utah 1985). The issue of Reagan Outdoor Advertising's potential breach of the lease agreement is not before the court.

Appellant has attempted to make it appear that Reagan Outdoor Advertising is getting something for nothing. This is simply not the case. The instant lease is an arrangement that not only lays certain obligations on both of the parties but provides a benefit for both parties.

Furthermore, an agreement is not invalid, simply because it gives a lone party the right to terminate the lease. Marcum v. Eambry, 262 Ala. 406, 282 So.2d 49,52 (1873). Nor, is a lease invalid simply because a lessor cannot terminate the lease until the end of the second renewal period. It is not necessary that every covenant in a contract be equal for the consideration of mutuality to be sufficient. Warren v. Ray County Cole Co., 207 S.W. 883, 200 Mo. App. 442 (1919).

Miller also argues that the lease is unconscionable, because "it is terminable at the will of one party, the option of the Defendant, and is so one-sided as to destroy any implied good faith limitation."

Appellant relies on the case of Resource

Management Company v. Weston Ranch and Livestock Company Inc., supra. That case divides unconscionability into two categories:

Recognition of these purposes has led to an analysis of unconscionability in terms of "substantive" and "procedural" unconscionability. "Substantive unconscionability" examines the relative fairness of the obligations assumed. "Procedure unconscionability" focuses on the manner in which the contract was negotiated and the circumstances of the parties.

Id. at 1041.

The critical juncture for determining whether a contract is unconscionable is a moment when it is entered into by both parties. Id. at 1043.

The lower court specifically looked at unconscionability not only when the agreement is entered into by the original parties but also during that period of time since the agreement was executed. There is no factual basis for unconscionability in either instance. The Appellant also fails to show how the Resource Management Company case has a direct application to the instant case.

The term of the lease under question is not lost in a multi-page document. The entire lease is only one page that can be read meticulously in five minutes. There is no fine print, nor shoddy draftsmanship. The agreement was negotiated, as evidenced by the hand-written term

requiring Reagan to provide a "canopy for Jennings front window." The language "for like successive period" does not employ arcane legalese; instead it uses simple, plain, straight-forward English. To argue that such language was skillfully drafted to be incomprehensible to a lay person is a lacks any legal or factual support.

Appellant argues that the instrument is substantively unconscionable, because, relying on the language of Resource Management Company, it is so one-sided. Here again, there is nothing on the record to support such an allegation. According to the court in Resource Management Company, "substantive unconscionability is indicated by contract terms so one-sided as to oppress or unfairly surprise an innocent party." Id. at 1041. The affidavit of A.J. Reagan clearly states that the original lessor had an opportunity to read the document and to discuss its terms. (R.39)

That the original lessor understood its terms and was not oppressed or unfairly surprised by its terms is also evidenced by the bargaining between the parties, the result of which is handwritten on the lease. How the original lessor induced his successors in interest into purchasing the land is a different matter entirely. Both successors had an opportunity to read the language of the lease before they purchased the land. Both appear to have simply relied upon the hasty advice of title companies and

attorneys.

Miller cited the case of Logan v. Time Oil Company, 437 P.2d 192 (Wash. 1968), for the proposition that the provision the ten-year extension lacked in mutuality. Logan is a three paragraph decision, issued PER CURRIAM without any disclosure of the rationale for the decision. It's hardly dispositive of the issue, and is not binding case law. A reading of this case fails to provide any information that would be helpful in the case at bar.

V

Reagan Outdoor Advertising Is Entitled To
Judgment As A Matter Of Law

Even if the court finds that there is an issue as to some material fact(s), summary judgment is still proper when the moving party is entitled to judgment as a matter of law. See Heglar Ranch, Inc. v. Stillman, 619 P.2d 1390 (Utah 1980) (summary judgment is appropriate even if some facts remain in dispute if a material fact is genuinely controverted). As this court held in Themy v. Seagull Enterprises, Inc., 595 P.2d 526 (Utah 1979):

We consider the evidence in the light most favorable to the losing party, and affirm only where it appears there is no genuine dispute as to any material issues of fact,

or where, even according to the facts as contended by the losing party, the moving party is entitled to judgment as a matter of law.

Id. 529. See also Thornick, 604 P.2d at 934 (on review, the court must determine whether there is any genuine issue as to any material fact, and if not, whether the moving party is entitled to judgment as a matter of law).

The interpretation of contractual language is a matter of law:

The accepted principle is that the interpretation of a contracts language is usually a matter of law. . . . If its terms are clear and unambiguous, summary judgment is proper. Even where some ambiguity exists in the contract, resolution of the ambiguity is still a question of law for the court.

Overson v. W.S. Fidelity & Guaranty, Co., 587 P.2d 149, 151 (Utah 1978), citing Central Credit Collection Control Corp. v. Grayson, 7 Wash. App 56, 499 P.2d 57 (1972).

Consequently, even if the court accepts the general allegations of the Plaintiff, it is still a question of law for the court and not for the jury.

Judge Uno found in his Amended Findings of Fact and Conclusions of Law that the contract was not "unconscionable at the time the lease was signed." Conclusions of Law, Paragraph no. 7; and that there was "no ambiguity in the phrase for a 'like successive period.'" Conclusions of Law, Paragraph no. 9. There is nothing to indicate that these conclusions are

unwarranted. Consequently, this court should uphold the decision of Judge Uno.

CONCLUSION

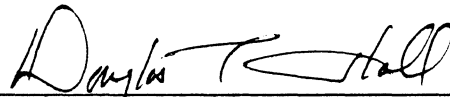
Judge Uno's order granting Reagan Outdoor Advertising's Motion for Summary Judgment should be affirmed. The language of the agreement, when construed in accordance with the rules of English, shows that the lease was to continue for one successive ten-year term on the same conditions as the first ten-year term. Lessor's right to terminate the agreement arises only after completion of the second term, as evidenced by the post-semicolon clause in paragraph 4 of the Agreement. Only the latter clause allows the lessor to terminate, and the latter clause is of no effect until after two successive ten-year terms.

Appellant has not raised any material issues of fact that would preclude summary judgment in favor of Respondent. Many of the points raised by Appellant, even if material, are based on evidence that would be inadmissible at trial. The Agreement can be interpreted as a matter of law, and there has been no evidence to show that the written agreement does not document the intent of the contracting parties. As a result, the contract, as a matter of law, must be interpreted as the agreement and

intent of the parties.

DATED this 16th day of December, 1988.

Respectfully submitted,



Douglas T. Hall
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I served 4 copies of Respondent's Brief upon the appellant by mailing same, first class postage prepaid, to Suzanne Marelius, attorney for appellant, at 426 South, 500 East, Salt Lake City, Utah 84102, this 16th day of December, 1988.

