

1988

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

Utah Court of Appeals

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## Recommended Citation

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

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IN THE UTAH COURT OF APPEALS

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IN AND FOR THE STATE OF UTAH

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DOCKET NO.

**880466**

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LORRAINE MILLER,

Plaintiff/Appellant,

v.

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

Defendant/Respondent.

APPELLANT'S BRIEF

Civil No. 881181

**88-0466 CA**

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On Appeal from the Third Judicial District Court  
in and for Salt Lake County, State of Utah

Honorable Raymond S. Uno, District Court Judge

Nov 1 1988

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IN THE UTAH COURT OF APPEALS  
IN AND FOR THE STATE OF UTAH

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Plaintiff/Appellant,	)	
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v.	)	
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January 4, 1988.

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Defendant/Respondent.	)	

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STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the Trial Court erred in applying the law to the facts of the case concerning contract interpretation, standards of ambiguity, unconscionability, mutuality and whether a contract is illusory.

2. Whether there are sufficient findings by the trial court upon which to base its Order that the lease in question is not ambiguous or unconscionable.

3. Whether it was error for the trial court to fail to apply principals of contract interpretation wherein ambiguity in a document are to be construed against the party drafting the document.

4. Whether it was error for the trial court to fail to consider the Affidavits of the Plaintiff/Appellant and of Gloria Erickson and to make no findings thereon.

STATUTES REQUIRING INTERPRETATION

None.

STATEMENT OF JURISDICTION

This is an appeal of a Summary Judgment Order on an issue of contract interpretation issued in the Third Judicial District Court. The Utah Supreme Court transferred this appeal to the Court of Appeals which has jurisdiction to hear this appeal under Utah Code Annotated §78-2a-3(h).

STATEMENT ON THE NATURE OF THE CASE

This appeal is from a decision rendered in the Third Judicial District Court for Salt Lake County, by the Honorable Raymond S. Uno, on the parties' Cross-Motions for Summary Judgment. The case arose by Plaintiff filing a Complaint on July 22, 1987, and a Motion for Summary Judgment November 25, 1987, on which a hearing was held December 1, 1987. Judge Uno issued a written Memorandum Decision which was entered January 4, 1988, ruling against Plaintiffs Motion for Summary Judgment (Memorandum Decision attached as Exhibit B hereto). An Order and Findings of Fact and Conclusions of Law were entered on April 4, 1988. (Order, Findings of Fact and Conclusions of Law attached as Exhibit C hereto). This Order was appealed to the Utah Supreme Court and subsequently transferred to the Utah Court of Appeals.

This case involves Plaintiff who is a successor in interest to a lease executed April 29, 1977 between William N. Jennings as Lessor and Defendant, Reagan Outdoor Advertising, Inc., as Lessee. (Lease attached as Exhibit A.) The lease allows



Defendant to erect and maintain a large billboard on Plaintiff's property in exchange for an annual rent. Plaintiff is the third owner of the property subject to the lease agreement since it was executed and she acquired the property by purchase in 1983. At all times material to this proceeding it was Plaintiff's understanding that the lease term was ten years and that lease would thus expire on April, 1987. At that time Plaintiff attempted to terminate the lease with the Defendants and was told that they considered the lease term to be for twenty years.

On Summary Judgment the Plaintiff argued that the lease was unconscionable, illusory, ambiguous and should be construed against the Defendant who drafted the document to find that Plaintiff could terminate the lease after the ten year term. Judge Uno determined that "the terms of the contract are clear and unequivocal," that the contract was not unconscionable by present or subsequent events, and that it stated a lease term for ten years with an automatic renewal option for the term of the lease which, in effect, created a twenty year term. Judge Uno also ruled that the lease was binding on all successor owners of the premises. (Exhibit B, R. 220-225.)

#### STATEMENT OF FACTS

Defendant Reagan Outdoor Advertising currently has a billboard at 2735 South 2000 East, Salt Lake City, Utah, (hereinafter the "Premises"). Plaintiff Lorraine Miller, owns the premises upon which Defendant maintains it's billboard which she purchased in late 1983. (Exhibit E, Miller Affidavit, para. 1).

Defendant entered into a lease agreement (hereinafter "Lease") on or about April 29, 1977, with William Jennings, a prior owner of the premises providing that the Defendant could construct and maintain a billboard on the premises in exchange for a \$240.00 annual rental fee. (Exhibit A.)

The lease states that it is effective "for a term of ten years commencing on or before the first day of May, 1977". (Lease, Exhibit A, para. 2.)

Defendant did construct and has maintained this billboard on said premises up until the present time. (Exhibit D, Miller Affidavit, para. 3, R-54).

Plaintiff purchased the premises on which the billboard is located in 1983, from Gloria Erickson who informed her that the billboard lease term was ten years and that it would expire in May of 1987. (Exhibit F, Miller Affidavit, para. 2; Exhibit E, Erickson Affidavit, para. 1-4, R-53; 79.)

Plaintiff notified Defendant by letter dated January 26, 1987, and by Certified Letter dated April 29, 1987, that she desired to terminate the lease and requested that Defendant remove the billboard from the premises. Defendant refused to vacate the premises and told Plaintiff that he interpreted the lease as providing for a twenty year term. (Exhibit D, Miller Affidavit, para. 4 & 5, R-53.)

The lease provides for termination exclusively at the option of the Lessee (Defendant) prior to the end of the lease term, upon various conditions. (Lease, para. 5).

In a separate paragraph from the lease term, the lease contains a renewal-type clause as follows:

"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, para. 4.)

#### SUMMARY OF ARGUMENTS

I. That the lease is ambiguous as a matter of law and should be construed against the drafter to find it can be terminated by Plaintiff Lessor after a ten year term.

II. That the lease is so overwhelmingly favorable to the Defendant Lessor as to make the lease unconscionable, and thus not binding on Plaintiff.

III. That the Defendant is not bound by the lease which makes the contract illusory and void, and not binding on the Plaintiff.

#### ARGUMENTS

##### Introduction

At all material times Plaintiff understood that the lease agreement with Defendant Reagan Outdoor Advertising could be terminated ten years from its inception, that is, April, 1987. Plaintiff took all possible steps to understand and confirm that this was the case when she purchased the premises in 1983. These steps included personal review of the contract, obtaining a legal

opinion, reviewing the title report and receiving assurances from the seller Gloria Erickson. (See Affidavits, Exhibits D, E, F.) All of these sources assured or confirmed to Plaintiff that the lease could be terminated after ten years and that the billboard could then be removed. Plaintiff submits that a review of the lease and the facts herein reveal a clear ambiguity on the length of the lease term which should be resolved against the Defendant who drafted the contract.

The District Court decision on Summary Judgment did not even address the issues of ambiguity or lack of mutuality in its decision which is reversible error. Plaintiff submits that this is not a case of wanting to be relieved from an undesirable bargain but that the lease contains patent ambiguities which Plaintiff, her predecessors in interest, the title company and several attorneys have all confirmed.

Other defects exist in the lease which arguably lacks mutuality, is thus illusory, and because of its deceptive language and one-sidedness is also unconscionable. For these reasons the lease should be found not binding on Plaintiff. Judge Uno failed to properly apply these principles of contract interpretation to the facts herein which, if properly applied require this court to find the lease is now terminated and rule for Plaintiff.

I. THE COURT SHOULD FIND AS A MATTER OF LAW THAT THE LEASE IS AMBIGUOUS.

Plaintiffs submit that the question of ambiguity is patent on the face of the lease and supported by a review of the circumstances surrounding the lease history. On review of an issue of law this Court is not required to give deference to the trial court's judgment. Forbes v. St. Marks, 81 Ut.Adv.Rpt 18. The trial court herein in fact ignores Plaintiff's arguments on ambiguity and lack of mutuality focusing instead on unconscionability. Plaintiff submits that there are several ambiguities in the term provisions of the lease which make it impossible to determine what the parties' intended and must be construed against the drafter of the contract Reagan Outdoor Advertising.

A. Contradictory Terms in the Lease Create Ambiguity.

The lease in part provides:

The lessor does hereby grant and convey to the lessee... for a term of ten years commencing on or before 1st day of May 1977....

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. (Emphasis added.)

The above quoted language granted to Defendant explicitly a term of ten years, yet also appears to provide for continuation of the lease term for a "like successive period." By this language the Defendant may have contemplated a minimum term of twenty years, although drafted as two ten year terms. The Plaintiff herein

however, did not have this understanding and due to the contradictory provisions the intent of the original parties cannot be determined from the face of the lease.

This Court is thus presented with a question of construction and in Utah, this lease must be construed against the drafter, in this case the Defendant Reagan Outdoor Advertising. The Supreme Court has stated it thus:

"The well-established rule in Utah is that any uncertainty with respect to construction of a contract should be resolved against the party who had drawn the agreement".

Sears v. Riemersma, 655 P.2d 1105, 1107 (Utah 1982). See also §206 Restatement of Contracts, (Second) comment (a).

Additionally, the Utah Supreme Court has held in Russell v. Valentine, 376 P.2d 548 (Utah, 1962), that where lease renewal provisions are unclear, they should be construed against the drafter. The Defendant herein drafted the lease; it now relies on the ambiguity, written into the lease for its own benefit, to retain the premises for another ten years. Construing the Lease against its drafter requires a conclusion that it was for a term of ten years and that Plaintiff's interpretation prevail.

B. Use of the Phrase "Said Term" in the Lease Term and Renewal Provisions is Ambiguous

In the lease language quoted above it is clear that the Plaintiff, as Lessor, has a right to terminate the agreement "within ninety days at the end of "said term". (emphasis added).

What is unclear is what the phrase "said term" refers to. Since this phrase is subject to more than one interpretation it is therefore ambiguous.

Plaintiff's submit that the phrase "said term" can be interpreted three different ways:

- (i) to refer only to the initial "term of ten years";
  - (ii) to refer only to the subsequent "like successive period" or, "like successive period or periods"; and,
  - (iii) to refer to the initial phrase "term of ten years".
- the subsequent phrase "like successive period" and the phrase "like successive period or periods".

Importantly, the phrase "said term" may be interpreted to refer only to the initial "term of ten years." The word "term" is used in the phrase "same term" and the phrase "term of ten years" although it is never used in the phrases "like successive period" or "like successive period or periods". Thus, Plaintiff's belief that she could terminate the lease after one ten year term is unquestionably a reasonable construction of the contract language.

Ambiguity is created as the phrase "said term" may also be interpreted to refer to the initial language "term of ten years" the subsequent "like successive period" and "the like successive period or periods." Each of these phrases pertain to the duration of the agreement and it is impossible to determine what is intended on the face of the document.

It is evident that Defendant Reagan Outdoor Advertising apparently believes that because of the placement of the phrase "said term" that phrase refers only to the subsequent "like successive period" or the "like successive period or periods". However, the phrase "said term" can definitely be interpreted in several fashions as indicated above. Notwithstanding Defendant's belief, it is Plaintiffs position that since the phrase "said term" is subject to more than one interpretation, that the termination provision is patently ambiguous. Because it is ambiguous, the termination provision must be construed against Reagan Outdoor Advertising, the drafter of the agreement and Plaintiff should have been allowed to terminate the agreement "within ninety days of the end of" the initial "ten year term". Timely notice of termination was sent to Defendants and thus the agreement should be deemed terminated.

C. Applying Rules of Contract Interpretation Requires a Finding of a Ten Year Lease Term.

The Restatement of Contracts (Second) sets forth certain standards of preference in contract interpretation, including, the rule that "specific terms and exact terms are given greater weight than general language". Section 203(c), comment (e) to that section states that:

"Attention and understanding are likely to be in better focus when language is specific or exact, and in case of conflict, the specific or exact term is more likely to express the meaning of the parties with respect to the situation than the general language."



In the lease in question attention is directed to the blanks in the second paragraph which are filled in with the date the lease term begins and where it states "a term of ten years commencing on or before (blank) day of (blank), 19\_\_...". Applying this rule of interpretation requires the Court to uphold Plaintiff's view that the lease creates a ten year term which is an explicit exact term rather than the ambiguous and deceptive language buried in the contract which arguably creates an automatic renewal provision and a twenty year term (although without ever using the word "renewal" or "lease term"). Plaintiff thus requests a declaration by this Court that the lease is ambiguous as a matter of law and that the ambiguity be resolved against the Defendant.

II. THE DEFENDANT IS NOT BOUND BY THE TERMS OF ITS LEASE;  
THE CONTRACT IS THEREFORE, ILLUSORY.

When the entirety of the lease is examined, it is evident that it can be terminated at the sole option of the Defendant without limitation. It thus becomes clear that only one party is bound by this lease, the Plaintiff herein, which makes the contract illusory and void. Although this argument was presented at the Summary Judgment hearing, Judge Uno makes no reference to this argument in his Memorandum Decision.

Defendant has reserved for itself, the contractual right of termination at its sole option as specified in paragraph 5 of the lease; to wit:

1. If the advertising space becomes "obstructed so as to lessen the advertising value of any of Lessee's signs";
2. If "traffic is diverted or reduced";
3. If the use of any sign is "prevented or restricted by law";
4. If "for any reason a building permit for erection or modification is refused;"

Reason one and two are entirely subject to the discretion of the Defendant to interpret and thus present no real limitations. The fourth reason presented definitely gives the Defendant unbounded discretion to terminate the contract at his sole option. The building codes which govern Defendant's advertising are undoubtedly within the Defendant's expertise and knowledge. Defendant could easily submit a building permit for modification of the billboard that does not comply with applicable codes, expecting and desiring refusal of it's permit. Such refusal would create in Defendant, the contractual power to terminate the lease. The lease provides that Defendant may terminate the lease if the building permit is refused "for any reason". The Salt Lake City Ordinances on advertising regulations found at Title 51, Chapter 7, et seq., contain explicit standards which are easily breached. Even the failure to include a required document in a permit application can result in disapproval. Rev.Ord. SLC §51-7-308. Such an omission comes within the contractual language giving Defendant the power to terminate his lease for that reason. That such a reason is within the exclusive control

of the Defendant, that it can be contrived, that it can be used by Defendant to avoid it's contractual obligations, renders the lease invalid as unconscionable and as an illusory contract.

Such mutuality was at issue in the case Resource Management Company v. Weston Ranch and Livestock Company, Inc., 706 P.2d 1028 (1985, Utah), where the Court said:

"When there exists only the facade of a promise, i.e., a statement made in such vague or conditional terms that the person making it commits himself to nothing, the alleged 'promise' is said to be 'illusory'. An illusory promise, neither binds the person making it, nor functions as consideration for a return promise."

In this case, the lease gives only the Defendant-Lessor specific termination privileges prior to the end of the lease term and three of the four grounds for termination are wholly within its control. The lease was thus one terminable at the will of one party, the option of the Defendant.

Dealing with renewal rather than termination, in an opinion without extensive analysis, the Washington Supreme Court considered an analogous fact situation in Logan v. Time Oil Company, 437 P.2d 192 (Wash. 1968). The lessee of a gas station sued for specific performance, relying on a provision giving it the right to extend a ten-year lease for an additional ten years. The Court affirmed the trial court's decision that the "so-called lease [was] lacking in mutuality and binding upon neither party for a fixed term," Id. at 193. Therefore it "created no more than

a tenancy from month to month, and, ...was not subject to renewal or extension against the will of the lessor." Id. Defendant Lessee's power of termination in this case produce a similar result and this Court should declare that the lease is an illusory contract and therefore void for lack of mutuality.

III. THE TERMS OF THE LEASE ARE SO OVERWHELMINGLY FAVORABLE TO DEFENDANT AS TO MAKE THE LEASE UNCONSCIONABLE

The Defendant, or it's agents, drafted the lease. As presented to Plaintiff's predecessor, the lease is a form contract consisting of eight unnumbered paragraphs, containing blanks for the insertion of the date, commencement of rental term, property address, and rental amount. A property owner reviewing this lease would very likely believe that the only term open for negotiation was price. That property owner, even after carefully reading the lease, would be unlikely to understand how favorable to the Defendant the lease was.

The contradictory clauses can be interpreted to create a lease for a term of ten years or for a term of twenty years. The Plaintiff interprets the lease as a term of ten years based on paragraph 2 giving the lessee the right to maintain outdoor advertising structures on the premises "for a term of ten years" which is explicitly written in the lease. In contrast, Defendant interprets this as a lease for a term of twenty years based on paragraph 4 of the lease which states "this lease shall con-

tinue on the same terms and conditions for a like successive period". Defendant claims this clause gives it the automatic right to lease the premises for an additional ten years, creating in effect, a twenty year lease. Such a construction is unconscionable.

Granting the Defendant an automatic twenty year leasehold renders the ten year term meaningless, except as used by the Defendant to double the stated term. If Defendant desired a term of twenty years, it could have easily created a document explicitly stating that the term of the lease was to be twenty years. This Court should not now sanction such misleading practices which have no other purpose then to deceive an innocent lessor, by allowing Defendant an additional ten years.

Utah has described unconscionability as a strong inequality in bargaining power and as a contract "in which no decent, fairminded person would view the ensuing result without being possessed of a profound sense of injustice". Resource Management Company v. Weston Ranch and Livestock Company, Inc., 706 P.2d 1028, 1041 (1985), (quoting Carlson v. Hamilton, 332 P.2d 989 (Utah 1958)). The Court further stated that substantive unconscionability "is indicated by contract terms so one-sided as to oppress or unfairly surprise an innocent party." Id. (quoting Bekins Bar V Ranch v. Huth, 664 P.2d 445 (Utah, 1983)). See also, Bray Livestock, Inc. v. Utah Carriers, Inc., 61 Ut.Adv.Rpt. 44 (filed 7/10/87.) When read with the provision granting lessee a

ten-year term, as it must be, the provision granting continuation "on the same terms and conditions for a like successive period" is a semi-concealed and self-serving provision; and it is thus unconscionable. The deceptive nature of the language creating the alleged twenty year lease term claimed by Defendant, alone or combined with Defendant's unilateral right of termination, creates a gross disparity in terms which is unconscionable.

This lease is also unconscionable as 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. The present situation also contains many of the elements of a transaction which the Utah Supreme Court held in the Resource Management case were substantively unconscionable. Supra 706 P.2nd at 1042. In this case there is a gross disparity of bargaining power and contradictory printed terms which are hidden in the contract. The facts of Plaintiff's case also contain elements of procedural unconscionability as noted in the Resource Management case such as "the use of a printed form or boiler plate contracts drawn skillfully by the party in the strongest economic position...in language that is incomprehensible to a layman or that diverts his attention from the problems raised by them or the rights given up through them." Supra 706 P.2d 1042. In totality, these elements precluded a meaningful choice on the part of Mr. Jennings and his successors in interest to this contract whose terms are unreasonably favorable to the Defendant.

This Court should thus hold that the contract is unconscionable and illusory and find it void.

The Utah Supreme Court in Christopher v. Larson Ford Sales, 557 P.2d 1009 (1976) examined the question of whether an implied warranty disclaimer must be conspicuous which presents identical policy issues to the case at bar.

"[I]t is the policy of the law to look with disfavor upon semi-concealed or obscured self-protective provisions of a contract prepared by one party, which the other is not likely to notice. We think it is a correct and salutary rule, that where there are provisions of this character in a contract, either buried in other provisions in fine print or are otherwise semi-concealed or secreted in some manner, such as being found only by reference to the backside of the document, they should not be binding on the signer (buyer) unless it is shown that the provision was actually called to his attention."

Id. at 1012. See also, Seal v. Tayco, Inc., 400 P.2d 503, 505 (Utah 1965) (holding it was unfair to allow a party to set forth a clear promise to induce acceptance where another provision takes away that promise).

Although the words of the term and renewal provisions may be understood in isolation, when read together they are deceptive and ambiguous giving a distinct advantage to the Lessor. As the cases reflect, the policy and letter of the law in Utah is against the taking of such unfair advantage and requires a ruling in Plaintiff's favor.

IV. THE CIRCUMSTANCES SURROUNDING THE LEASE HISTORY  
SUPPORT A FINDING OF AMBIGUITY AND UNCONSCION-  
IBILITY HEREIN

The lease contract in question states that it shall be "binding upon the successors and assigns of the parties" thereto. Judge Uno also specifically found Plaintiff bound by this lease as a successor in interest. Plaintiff does not dispute that she understood this language and had notice of this contract at the time she purchased the property in 1983. Notwithstanding this, Plaintiff also always had the understanding that the lease could be terminated after a ten year term. That is, she understood that she could terminate the contract ten years after it became effective in April, 1977. (Exhibit F, Miller Affidavit; R-85.)

Plaintiff's understanding of the ten year lease term came directly from her predecessor in interest, Gloria Erickson who sold the property to her. Mrs. Erickson purchased the property from William Jennings who was the original signer of the lease contract with the Defendant, Reagan Advertising. Mrs. Erickson's Affidavit states that when she purchased the property from Mr. Jennings she first learned of the lease contract at the time of closing and the lease term was represented to be ten years. (Exhibit E, Erickson Affidavit; R-79.) This fact was set forth in the closing documents which were not disputed by Mr. Jennings, a copy of which is attached to her Affidavit. (R-82.) Plaintiff's Affidavit contains a copy of her title insurance policy which also confirms that the Reagan Outdoor Advertising lease term was considered to be a ten year term. (R-88-91.) Additionally, both of these parties had their respective attor-



neys review the lease contract at the time of their purchase of the property and both attorneys confirmed that it was a ten year lease term which they could terminate at the end of that time. (Exhibit F, Miller Affidavit, R-85 Exhibit E, Erickson Affidavit, R-79.)

The Utah Supreme Court case of Hayes v. Gibbs 169 P.2d 781 (Utah 1946) is instructive on whether restrictive covenants bind successive purchasers beyond the original parties and applies a five part test. (Case copy, R-92.) Although whether the contract is binding is not in dispute here, this case states the importance of reviewing the chain of title and understandings of prior purchasers as to what restrictions may exist on the property. In it's analysis, the Court refers to the title record as showing certain restrictions and states that subsequent purchasers are thus chargeable with the knowledge of the purpose for which those restrictions were made. Supra, 169 P.2d at 784. In the present case, all subsequent purchasers from the original covenantee (William Jennings) and their attorneys understood the lease term to be ten years. The chain of title which these purchasers reviewed as represented by their title companies also confirmed that the lease was to be ten years.

Furthermore, it is reasonable to conclude that the title company acting for Mr. Jennings was his agent when they prepared the closing documents for his sale of the property to Mrs. Erickson. That title company documented the Defendant's lease as one for ten years. (R-82.)

Without the benefit of Mr. Jennings personal testimony, the Court must construe the circumstances in this case to find the most consistent, reasonable interpretation of this lease term. Plaintiff submits that the provisions of this lease are more consistent in every way with a ten year term than with an extended term and many practical elements support this view. For instance, it is unreasonable to believe a landowner would knowingly commit to a twenty year term without any formula to adjust rent, or agree to a lease which gives him no right to terminate before twenty years while giving the tenant essentially a unilateral right to terminate any time. These elements favor an interpretation that a shorter term lease was intended.

It is also possible to construe the Defendant's reading of the lease and the alleged renewal clause as creating a "perpetual" lease. Courts traditionally disfavor perpetual leases and they are only upheld if the intent of the parties is clearly expressed. In the case of Burke v. Permian Ford Lincoln Mercury, 621 P.2d 1119 (New Mexico 1981), the Court states the following:

"[w]here we to accept the trial court's interpretation of the lease, [as allowing successive renewals] the landlord would be placed in an untenable position whereby he would have no right to terminate the lease, no right to negotiate a fair rental price that reflects the burden of inflation and taxation, and no means of relieving the property of it's encumbrance. Without a clear manifestation of the landowner's intent to assume this position, we cannot allow a trial court to imply such intent by it's construction of a poorly written instrument". (Case copy, R-107.)

In the present case, the Court should also consider the practical

aspects of this case which, if Defendant's arguments were accepted, would bind the Plaintiff to an unfair and unexpected result and one which was never understood to be the case by the Plaintiff or her predecessors.

The issue facing the Court is basically to interpret in light of the available evidence and by applying rules of contract construction. The affidavits establish that this contract has consistently been interpreted as a ten year lease. None of the successors in interest to Mr. Jennings were informed or understood that there was a renewal provision or continuation clause which would make the lease term twenty years as Defendant argues. Indeed, the word "renew" never appears in the lease, rather, misleading language is used referring to "successive periods". The proven effect of these words was to mislead all of the successors in interest to Mr. Jennings, that is, Mrs. Erickson and the Plaintiff; both of their attorneys; and two title companies, all of whom construed the term to be ten years.

#### CONCLUSION

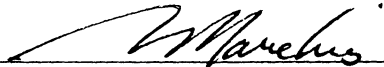
Plaintiff submits that the lease is ambiguous and, as such, must be construed against the drafter, Defendant Reagan Outdoor Advertising. Additionally, the lease language is deceptive and overwhelmingly favorable to the Defendant making it lacking in mutuality, illusory, unconscionable and therefore void. For the reasons stated herein, this Court should find the lease term expired in April, 1987, and is no longer binding on Plaintiff.

RESPECTFULLY SUBMITTED this 1 day of November,  
1988.

  
SUZANNE MARELIUS  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I ~~mailed~~ <sup>delivered</sup> a true and correct copy  
of the foregoing to the attorney for Defendant/Respondent, Mr.  
Douglas T. Hall, 1775 North 900 West, Salt Lake City, Utah,  
84116, postage prepaid this 1 day of November, 1988.



31200(6)

SUZANNE MARELIUS - 2081  
Attorney for Plaintiff  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	GLORIA ERICKSON
v.	)	
	)	
R.O.A. GENERAL, INC., a Utah	)	
Corporation, formerly known as	)	
Reagan Outdoor Advertising,	)	
Inc., a Utah Corporation,	)	
	)	
Defendant.	)	Civil No. 87-04928
	)	(Judge Raymond Uno)

-----oo0oo-----

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SALT LAKE )

COMES NOW Gloria Erickson who upon her oath deposes and  
says:

1. I am a previous owner of the premises located at 2735  
South 20th East, Salt Lake City, Utah, on which Reagan Outdoor  
Advertising has a billboard. I purchased this property from  
William Jennings in May, 1978, and sold it to Lorraine Miller in  
9.2.1983. 1985. I first learned of the billboard lease to Reagan Outdoor  
Advertising about the time of closing on my purchase of the pro-

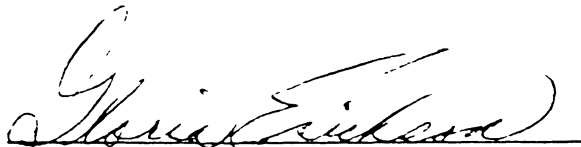
perty from Mr. Jennings in 1978. I learned of the lease from the title company which told me it was a ten year term lease which began April 29, 1977. The closing statement from Utah Title Company at the time of my purchase also reflects this to be the term of the lease. A copy of that statement is attached to this Affidavit as Exhibit A.

2. The closing documents were reviewed personally by Mr. Jennings and myself and he did not dispute the fact that the Reagan Outdoor Advertising Lease was listed as a ten year term.

3. After I took over the Jennings property I received no payment under the billboard lease and contacted my attorney, Lee Pratt, to review the situation and determine my rights. Mr. Pratt informed me that the lease was proper, that I could not terminate it, and that I had to wait out the term of the lease which he stated was ten years from April 29, 1977. A copy of the letter I received from this Attorney is attached hereto, dated October 13, 1978. Although this letter does not assess the term of the lease this issue was discussed with Mr. Pratt and his conclusion was that it was a valid lease for ten years at which time I could terminate the lease.

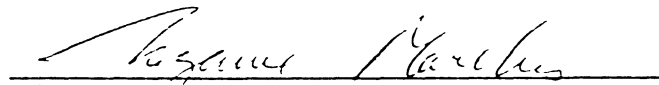
4. When I sold the property to Lorraine Miller in 1985, and I told her that it was a lease for ten years at which time it could be terminated by her. This was my belief based on my contact with Mr. Jennings, the closing documents from Utah Title, my own reading of the lease and the legal reviews I had done of the lease.

DATED this 18<sup>th</sup> day of December, 1987.

  
GLORIA ERICKSON

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this 18 day of  
December, 1987.

  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires:

May 1988

24301

# UTAH TITLE COMPANY

355-7533

629 East 400 South  
Salt Lake City, Utah 84102

## CLOSING STATEMENT

Our File No T-48276

Lasting No. ....

1—Seller.....	WILLIAM M. JENNINGS	Address .....	Phone.....
	PATSIE A. JENNINGS		
2—Buyer.....	GLORIA S. ERICKSON	Address .....	Phone .....
	GLORIA GAY ERICKSON		

### 9. ASSIGNMENT OF CONTRACT FOR SECURITY PURPOSES

Assignor: WILLIAM M. JENNINGS and PATSIE A. JENNINGS  
Assignee: THE HOUSING AUTHORITY OF THE COUNTY OF SALT  
LAKE  
Amount: \$4,154.00  
Dated: May 10, 1977  
Recorded: May 27, 1977  
Entry No.: 2050144  
Book/Page: 4495/618

### 10. LIEN

Claimant: A. VERNON WATERBURY dba DON WATERBURY ASSOCIATES,  
GENERAL CONTRACTOR  
Amount: \$4,154.00  
For: Contracted Rehabilitation work including  
exterior, carpentry, roofing, plumbing,  
heating and electrical  
Recorded: April 20, 1978  
Entry No.: 3095558  
Book/Page: 4658/213

### 11. UNRECORDED LEASE

Lessor: W. M. JENNINGS dba BILL'S SUBBPEY  
Lessee: PFAGAN OUTDOOR ADVERTISING, INC.  
Term: 10 Years  
Dated: April 20, 1977

### 12. FEDERAL TAX LIEN

Taxpayer: WILLIAM JENNINGS and PATSIE JENNINGS  
Amount: \$656.20  
Dated: Not Dated  
Recorded: February 26, 1973  
Entry No.: 2520716

13. The terms and conditions of that certain Agreement dated July 17, 1970, as disclosed by Warranty Deed dated August 25, 1970, recorded August 26, 1970, as Entry No. 2347451, in Book 2691, at page 648 of Official Records. It will be necessary to furnish a copy of said Agreement to Utah Title and Abstract Company, before title insurance will be issued.



EDWARD A. CLAY  
EDWARD A. CLAY  
WILLIAM G. GIVES  
FRANK J. ALLEN  
ALLEN B. WRIGHT  
JOHN T. EVANS  
RICHARD C. CLARKSON  
ROBERT G. SNOW  
MICHAEL M. O'NEALY  
STEVEN E. CLYDE

**GLYDE & PRATT**  
ATTORNEYS AT LAW  
351 SOUTH STATE STREET  
SALT LAKE CITY, UTAH 84111

PHONE 531-1234  
AREA CODE 801

October 13, 1978

Mr. & Mrs. Frank Erickson  
2796 South 20th East  
Salt Lake City, Utah 84109

Dear Mr. & Mrs. Erickson:

I have looked at the Reagan contract. I find in the contract an absolute requirement that the lessee shall pay the amount of \$240.00 annually, payable in quarterly installments. If in fact he has not paid these quarterly installments and you have done nothing to indicate a reason why he should not pay or have in no way extended his time for payment, then he is in breach of the lease.

If he is in breach of the lease, then you are justified in refusing to accept his late payment and in telling him that the lease is terminated. I am sure, however, that in view of the investment involved he is going to dispute the termination in any way that he can. Thus, I caution you that in any conversations that you may have with him you should not recognize any time extension or any reason why he should not have paid, if in fact there is no such reason.

I understand that you have returned his check which he brought in to your office yesterday after you had informed him that the lease was terminated.

I can anticipate, however, that in disputing the termination he may make some claims that he is losing money by reason of your wrongful (allegedly) refusal to permit him to go ahead. Thus, I can anticipate that there will be legal problems and there may be some claims made against you. Thus in taking this action and adopting a strong position, you can expect problems.

I will check on the County zoning requirements to see whether

Mr. & Mrs. Frank Erickson  
Page 2  
October 13, 1978

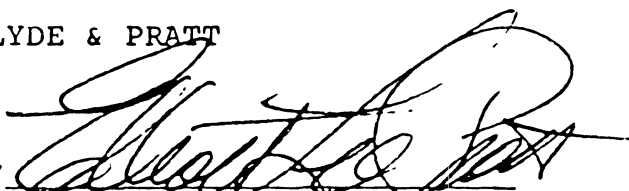
or not the sign violates those zoning requirements.

I am returning your lease and have made a copy of it for my file.

Yours truly,

CLYDE & PRATT

By



Elliott Lee Pratt

ELP:gbb  
Enclosure

SUZANNE MARELIUS - 2081  
Attorney for Plaintiff  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

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

-----oo0oo-----

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	LORRAINE MILLER
v.	)	
	)	
R.O.A. GENERAL, INC., a Utah	)	
Corporation, formerly known as	)	
Reagan Outdoor Advertising,	)	
Inc., a Utah Corporation,	)	
	)	Civil No. 87-04928
Defendant.	)	(Judge Raymond Uno)

-----oo0oo-----

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SALT LAKE )

LORRAINE MILLER, Plaintiff, being first duly sworn upon  
oath, deposes and says that:

1. I am the Plaintiff above-named and am making this  
supplemental Affidavit concerning the property that I own at 2735  
South 20th East, Salt Lake City, Utah, which I purchased in late  
1985 from Gloria Erickson. Mrs. Erickson had purchased the pro-  
perty from Mr. William Jennings who is now deceased.

2. I had no personal contact with Mr. Jennings. I first  
learned about the billboard lease to Reagan Outdoor Advertising

from Gloria Erickson who sold me the property. At all times she told me that the lease was for ten years at which time I could end the lease. She said that an attorney had reviewed it and confirmed this fact. I also had my attorney, Mr. Steven Swindle review the lease and he told me that it could not be ended by me until it's full term expired which was ten years from the time it was signed, April 29, 1977.

3. When I purchased the property from Mrs. Erickson I also acquired a policy of title insurance which listed all of the existing liens and interest in that parcel of property. This title insurance policy listed the unrecorded lease between Mr. Jennings and Reagan Outdoor Advertising as a ten year lease dated April 29, 1977. A copy of this title insurance report is attached to this Affidavit as Exhibit A.

4. At all times during my purchase of this property and until I attempted to terminate the lease earlier this year, I was told and believed that the lease could be terminated by me after ten years.

DATED this 17 day of December, 1987.

A handwritten signature in cursive script, appearing to read "Lorraine Miller", written over a horizontal line.

LORRAINE MILLER  
Plaintiff

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE    )

SUBSCRIBED AND SWORN to before me this 17 day of  
December, 1987.

*Arzanne Hardy*  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires:

*May 1988*

24302



ALTA - OWNER'S

SAFECO

I. D. NO. 180-OP

Nº 605525

POLICY OF TITLE INSURANCE

## SAFECO TITLE INSURANCE COMPANY

ISSUED FROM THE OFFICE OF

UTAH TITLE AND ABSTRACT COMPANY

629 East 4th South Street  
Salt Lake City Utah 84102

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, SAFECO TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of

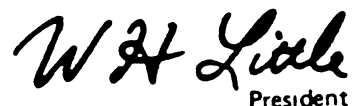
- 1 Title to the estate or interest described in Schedule A being vested otherwise than as stated therein,
- 2 Any defect in or lien or encumbrance on such title
- 3 Lack of a right of access to and from the land or
- 4 Unmarketability of such title,

and in addition, if a mortgage is referred to in Schedule A as the insured mortgage by reason of

- 5 The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability or claim thereof arises out of the transaction evidenced by the insured mortgage and is based upon
  - a usury, or
  - b any consumer credit protection or truth in lending law
- 6 The priority of any lien or encumbrance over the lien of the insured mortgage,
- 7 Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to Date of Policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance,
- 8 Any assessments for street improvements under construction or completed at Date of Policy which now have gained or hereafter may gain priority over the insured mortgage
- 9 The invalidity or unenforceability of any assignment shown in Schedule A of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the name insured assignee free and clear of all liens

In Witness Whereof, SAFECO Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers as of Date of Policy shown in Schedule A

  
Secretary

  
President

  
An Authorized Signatory

**SCHEDULE A (Owners - Purchasers - Lessee)**

Page 2

Order No	T-92344	Premium: \$	423.00
Amount of Insurance: \$	97,000.00	Date of Policy:	September 30, 1983 at 8:00 A.M.

1. Name of Insured:

LORRAINE A. MILLER, as her interest may appear

2. The estate or interest in the land described herein and which is covered by this policy is:

Fee Simple

3. The estate or interest referred to herein is at Date of Policy vested in:

ALYCE BAI, subject to the marital interest of her husband, if married

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

Salt Lake

Lot 4, Block A, JOHNSON SUBDIVISION, according to the official plat  
thereof, recorded in the office of the County Recorder of Salt Lake  
County, Utah.

SCHEDULE B (Standard)

Page 3

Policy No OP 605525

This policy does not insure against loss or damage by reason of the following (all clauses if any which indicate any preference limitation or discrimination based on race color religion or national origin are omitted from all building and use restrictions covenants and conditions if any shown herein)

- 1 Rights or claims of persons in possession or claiming to be in possession easements liens or encumbrances including material or labor liens, which are not shown by the public records reservations in patents or state grants or in acts authorizing the issuance thereof mineral rights water rights claims or title to minerals or water
- 2 Questions of location boundary and areas overlaps and encroachments by improvements belonging to these or adjoining premises all dependent upon actual survey for determination
- 3 Assessments which are not shown as existing liens by the public records taxes not yet payable pending proceedings for vacating opening or changing streets or highways preceding entry of the final ordinance or order therefor

4. Taxes for the year 1983 are now due and payable, but will not become delinquent until November 30th.

5. Said property is included within the boundaries of Salt Lake City Suburban Sanitary District No. 1, and is subject to the charges and assessments thereof.

6. COVENANTS, CONDITIONS, RESTRICTIONS and/or EASEMENTS, EXCEPT THOSE BASED ON RACE, COLOR, CREED OR NATIONAL ORIGIN, CONTAINED IN INSTRUMENT:

Dated: January 3, 1940  
Recorded: January 3, 1940  
Entry No.: 872313  
Book/Page: 239/316

A copy of which is attached hereto.

7. CONTRACT OF SALE AND THE TERMS AND CONDITIONS CONTAINED THEREIN

Seller: ALYCE BAI aka ALYCE B. ROBERTSON  
Purchaser: WILLIAM M. JENNINGS and PATSIE A. JENNINGS, his wife, as joint tenants  
Dated: December 1, 1968  
Recorded: October 19, 1977  
Entry No.: 3012251  
Book/Page: 4566/1173

The interest of WILLIAM M. JENNINGS and PATSIE A. JENNINGS, his wife was conveyed to GLORIA S. ERICKSON and GLORIA GAYE ERICKSON, her daughter, as joint tenants by Quit Claim Deed dated May 10, 1978 and recorded May 16, 1978 as Entry No. 3108498, in Book 4673 at page 358 of Official Records.



8. UNRECORDED LEASE

Lessor: WM. M. JENNINGS dba BILL'S SUPPLY  
Lessee: REAGAN OUTDOOR ADVERTISING, INC.  
Term: 10 years  
Dated: April 29, 1977

9. UNRECORDED UNIFORM REAL ESTATE CONTRACT

Seller: GLORIA S. ERICKSON and GLORIA GAYE ERICKSON,  
her daughter  
Purchaser: LORRAINE A. MILLER  
Dated: September 15, 1983

NOTICE OF CONTRACT

Recorded: September 16, 1983  
Entry No.: 3844954  
Book/Page: 5491/1390



Outdoor Advertising, Inc.

1548 South West Temple Salt Lake City, Utah 84115

Page 1

This agreement made and entered into by the undersigned lessor, (the "Lessor") and by Reagan Outdoor Advertising, Inc., (the "Lessee"). Both lessor and lessee acknowledge the receipt and sufficiency of good and valuable consideration and agree as follows:

The lessor does hereby grant and convey to the lessee and its assigns and successors, the exclusive right to use the following described property for the purpose of erecting and maintaining thereon outdoor advertising structures including such necessary devices, structures, connections, supports and appurtenances as may be desired by lessee for a term of ten years commencing on or before 1st day of MAY, 1977 at option of lessee, upon the following described land, together with ingress and egress to and upon the same, located in the county of SALT LAKE

State of Utah and more particularly described as follows:

2735 So. 20th East

(Lessee may place on or attach to this instrument, subsequent to execution, a meter and bounds description of the location.)

Lessee shall pay lessor the amount of \$ 240.00 annually, payable (monthly, quarterly, semi-annually); however, prior to construction and obtaining permits by lessee the rental shall be Five Dollars.

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.

It is further expressly agreed that lessee may terminate this lease by giving written notice and paying a penalty of one year's rent at any time within thirty days prior to the end of any twelve month period subsequent to the commencement date of this lease. Provided further, if the said space becomes obstructed so as to lessen the advertising value of any of lessee's signs erected on said premises, or if traffic is diverted or reduced, or if the use of any such signs is prevented or restricted by law, or if for any reason a building permit for erection or modification is refused this lease may, at the option of lessee, be terminated or the rent reduced to Five Dollars while said condition exists and in such event lessor shall refund prorata any prepaid rental for the unexpired term. Lessor agrees that no such obstruction insofar as the same is within lessor's control will be permitted or allowed. Lessor authorizes lessee to trim and cut whatever trees, bushes, brush as it deems necessary for unobstructed view of its advertising display.

All advertising signs placed upon the described premises are to remain the property of lessee and may be removed by lessee at any time. If lessee is prevented by law, or government or military order, or other causes beyond lessee's control, from illuminating its signs, the lessee may reduce the rental provided herein by one-half with such reduced rental to remain in effect so long as such condition continues to exist.

Lessor warrants the title of said leasehold for the term herein mentioned. In the event this lease is not renewed or cancelled, lessor agrees that he will not for a period of five years subsequent to the date of termination, release said premises to any other advertiser other than lessee for advertising purposes. In the event that lessor shall decide to sell the property upon which lessee's structure(s) are located and enters into an agreement to sell or receives an offer to purchase either which lessor is willing to accept lessor agrees to first offer the property to lessee on the same terms and conditions and lessee shall have thirty days in which to enter into an agreement to purchase with lessor. It is expressly understood that neither the lessor nor lessee is bound by any stipulations, representations, or agreements not printed or written in this lease.

This agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors, and assigns of the parties hereto.

Executed this 27th day of APRIL, 1977

LESSEE: REAGAN OUTDOOR ADVERTISING, INC.

*[Signature]*

LESSOR: *[Signature]*

*[Signature]*  
2735 So. 20th East SALT LAKE CITY, UT 84115  
Mailing Address 84109

EXHIBIT A

Reagan and Lessee as successors to permit full use of advertising space for television and radio

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

-----

LORRAINE MILLER,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. C-87-4928
vs.	:	
R.O.A. GENERAL, INC., a Utah	:	
Corporation, formerly known as	:	
Reagan Outdoor Advertising,	:	
Inc., a Utah Corporation,	:	
Defendant.	:	

-----

Summary Judgment motions were heard by this Court on December 1, 1987. Memoranda were submitted by both parties and arguments made. The Court requested any additional information which would assist the Court in making a ruling on this case. Supplemental information was provided by both parties. After reviewing the file, pleadings, memoranda and arguments, the Court hereby finds and rules as follows:

The Reagan Outdoor Advertising, Inc. contract is neither a long nor complicated contract. As a matter of fact, it consists of only one page. The essential terms of the contract provide a lease to lessee and its assigns and successors for a term of ten years, commencing on or before the 1st day of May, 1977 at the option of the lessee of the land at 2735 South 2000 East for \$240.00 annually, payable quarterly. Further this lease shall continue on the same terms and conditions for a like successive

**EXHIBIT B**

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. (Underlined for emphasis)

A person who affixes his signature to a contract is presumed to have read, understood and agreed to the terms of a contract he signs. There is no evidence before this Court to show the lessor was incompetent, under undue influence, or coerced when he signed the contract, or that he did so involuntarily. On the contrary, there is evidence this provision was specifically discussed and that the lessor knew and understood the lease would continue for a like successive period or periods. If he did not agree with the terms, he could very easily have not signed the lease, had the provision removed, modified the provision, or had it made more clear if he did not understand it. This he failed to do either because he felt it not necessary, or because he was satisfied with the contract as written. As it was pointed out, two additional provisions were handwritten on the face of the contract with signatures of the parties affixed to it, further manifesting the intent of the parties, and supporting the proposition they were satisfied, otherwise, with the contract as written.

On its face, the contract is clear who shall be bound by the terms of the contract. Specifically, it states "this agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto." (Underlined for emphasis) It is undisputed plaintiff is a successor to a successor of the original lessor. Therefore, she is bound by the terms of the lease.

The terms of the contract are clear and unequivocal. The terms cannot be said to be in fine print nor lost in a multi-paged document. The print is clear and of the same size for the entirety of the contract. It follows sequentially with the original lease term and there is no attempt to conceal or mislead the lessor. It is designated in a separate paragraph in plain and understandable language. Finally, the contract consists of only one page. It may be read, very slowly, in five minutes.

There is no question the lease is a ten year lease. More importantly, however, upon carefully reading the lease anyone, including a lay person, will understand there is an option to continue the lease for a "like successive period" to be exercised by the lessee. Obviously, there was some attention paid to this term of the lease because the affidavits so state "their" understanding. If there clearly was any question, a legal opinion should have been requested at the time the issue arose specifically asking what "continue for a like successive period"

meant. There is nothing in evidence to demonstrate this simple procedure was undertaken.

Parties are entitled to the benefit of the bargain they enter into. Since the original lessor is now deceased, the presumption is he received the benefit of his bargain at the time the lease was entered into. We cannot, from hindsight, say he received a bad bargain. If he had continued to live and held this property, he may still be satisfied with the lease. Because his successor is unhappy, should not be any reason to deny an innocent lessee from the benefit of his side of the bargain.

Unconscionability must be determined based on the circumstances of the case at the time the lease was entered into. There is no evidence to show the lessor did not benefit from the lease, or that the terms of the lease were unconscionable to the lessor at the date, time, place and his circumstances. At this time, this Court cannot find the contract was unconscionable at the time the lease was signed.

A contract may become unconscionable because of subsequent events. Again, the affidavits submitted by plaintiff do not support any grounds to show unconscionableness. As successors, they knew, or should have known, the express terms of the contract. If they had any questions or were unhappy with being successors to a contract they disliked, they had the option of negotiating then or not purchasing the property. This they

failed to do. Pleading ignorance or lack of understanding to a contract after affixing ones signature to it is, generally, as a matter of law, insufficient to set aside a contract.

It is the general rule that where the provision of renewal or continuance of a lease is stated in general terms, the lease will be construed as providing for only one renewal. 50 Am.Jur.2d, Landlord and Tenant, Section 1171 (1970) as cited in Burke v. Permian Ford-Lincoln-Mercury, 671 P.2d 1119 (1981). The Court, however, does not find any ambiguity in the phrase for a "like successive period." If, perchance, there is any ambiguity, the lessee would still be entitled to one ten year renewal period under this lease agreement.

Based on the foregoing findings, the Court now makes and enters its Order hereby denying plaintiff's Motion for Summary Judgment, and hereby grants defendant's Motion for Summary Judgment.

Defendant is to prepare proper Findings and Judgment pursuant to this Memorandum Decision.

Dated this 4th day of January, 1988.

15/  
\_\_\_\_\_  
RAYMOND S. UNO  
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, postage prepaid, to the following, this 4 day of January, 1988:

Suzanne Marelius  
Attorney for Plaintiff  
426 South 500 East  
Salt Lake City, Utah 84102

Douglas T. Hall  
Attorney for Defendant  
1775 North 900 West  
Salt Lake City, Utah 84116

15/



**FILMED**

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

DOUGLAS T. HALL #1305  
Attorney for Defendant  
1775 North 900 West  
Salt Lake City, Utah 84116  
Telephone (801)521-1775

APR 4 1988

By H. Dixon Hinkle 3rd Dist Court  
Deputy Clerk

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

---

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	AMENDED FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW
vs.	)	ON MOTIONS FOR SUMMARY
	)	JUDGMENT
R.O.A. GENERAL, INC., A Utah	)	
Corporation, Formerly Known as	)	Civil No. C87-4928
REAGAN OUTDOOR ADVERTISING, INC.,	)	
A Utah Corporation,	)	(Judge Uno)
	)	
Defendant.	)	

---

The Parties' respective Motions for Summary Judgment were heard by the court on December 1, 1987. The Plaintiff appeared through counsel, Suzanne Marelius. The Defendant appeared through its counsel, Douglas T. Hall. The Court heard the argument of counsel and thereafter requested that additional information be submitted by counsel to assist the court in making a ruling on the case. Subsequently, additional information was provided by both parties. After reviewing the file, the pleadings therein, the memorandum and arguments of parties' counsel and the objections to the Courts original Findings of Fact and Conclusions of Law amendments thereto have been made and the court does now hereby make the following amended

FINDINGS OF FACT

1. That the Reagan Outdoor Advertising Contract, which is the subject matter of this lawsuit, is neither a long nor complicated contract and, as a matter of fact, consists of only one page.

2. The essential terms of the contract provide a lease to lessee and its assigns and successors for a term of ten (10) years, commencing on or before the first day of May, 1977, at the option of the lessee, of the land at 2735 South, 2000 East, for \$240.00 Annually, payable quarterly.

3. The lease further provides for its continuance on the same terms and conditions for a like successive period.

4. Furthermore, the lease provides that it shall thereafter 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 (90) days at the end of said term.

5. There is no evidence before the court to show that the original lessor, William M. Jennings, was incompetent, under undue influence, or coerced when he signed the contract, or that he did so involuntarily.

6. That the provisions providing for the term of the lease were specifically discussed and that the original lessor knew and understood the lease would continue for a "like successive period or periods".

7. That the original lessor did not require the provisions regarding the "like successive period or periods" of the lease term to be removed or modified either because he felt it

was not necessary, or because he was satisfied with the contract as written.

8. Additional provisions were handwritten on the face of the contract with the signatures of the parties affixed to it, further manifesting the intent of the parties' and supporting the proposition that they were satisfied, otherwise, with the contract as written.

9. The lease agreement further states that "this agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto."

10. The plaintiff is a successor to or a successor of the original lessor.

11. The print on the lease agreement is clear and of the same size for the entirety of the contract. There is no attempt to conceal or mislead the lessor.

12. The provisions of the contract with regard to the original lease term and its subsequent terms is designated in a separate paragraph in plain and understandable language.

13. The lease contract as a whole can be read, very slowly, in five minutes.

14. There is no evidence that a legal opinion was requested at the time the issue arose with regard to the "like successive period" provision of the lease agreement.

15. The original lessor is now deceased.

16. There is no evidence to show the original lessor did not benefit from the lease or that the terms of the lease were

unconscionable to the lessor at that date, time, place and under the circumstances attending the original lessor at that time.

17. Successor lessors failed to obtain a legal opinion specifically asking what "continue for a like successive period" meant.

Based upon the foregoing findings of fact the court makes and enters its

#### CONCLUSIONS OF LAW

1. The terms of the lease agreement are clear and unequivocal.

2. The terms cannot be said to be in fine print nor lost in a multi-page document.

3. The plaintiff is bound by the terms of the lease agreement as written.

4. The courts presumption is that the original lessor received the benefit of his bargain at the time the lease was entered into.

5. Because the successor lessor is unhappy is no reason to deny an innocent lessee from the benefit of his side of the bargain.

6. The court cannot say that the original lessor received a bad bargain.

7. The court cannot find that the contract was unconscionable at the time the lease was signed. The affidavits submitted by the plaintiff did not support any grounds to support unconscionableness.

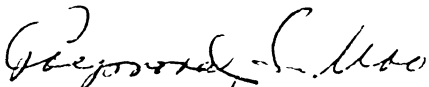
8. Plaintiff's pleading in this case regarding ignorance or lack of understanding is insufficient to sent aside this lease agreement.

9. The court finds no ambiguity in the phrase for a "like successive period".

10. The Plaintiff's Motion for Summary Judgment should be denied and the Defendant's Motion for Summary Judgment should be granted.

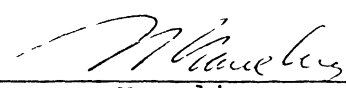
DATED this 4<sup>th</sup> day of April, 1988.

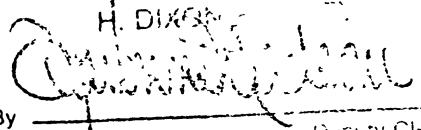
BY THE COURT:



Raymond S. Uno,  
District Judge

APPROVED AS TO FORM:

  
Suzanne Marelus,  
Attorney for Plaintiff

ATTEST  
H. DIXON  
  
By \_\_\_\_\_ Deputy Clerk

FILED IN CLERK'S OFFICE<sup>1-46</sup>  
Salt Lake County Utah

DOUGLAS T. HALL #1305  
Attorney for Defendant  
1775 North 900 West  
Salt Lake City, Utah 84116  
Telephone: (801)521-1775

MAR 22 1988

M. Gordon Hindley, Clerk, 3rd Dist. Court  
Deputy Clerk

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

---

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	ORDER ON PARTIES MOTIONS
	)	FOR SUMMARY JUDGMENT
vs.	)	
	)	Civil No. C-87-4928
R.O.A. GENERAL, INC., A Utah	)	
Corporation, Formerly Known as	)	(Judge Uno)
REAGAN OUTDOOR ADVERTISING, INC.,	)	
A Utah Corporation,	)	
	)	
Defendant.	)	

---

The Parties' respective Motions for Summary Judgment were heard by the court on December 1, 1987. The Plaintiff appeared through counsel, Suzanne Marelius. The Defendant appeared through its counsel, Douglas T. Hall. The Court heard the argument of counsel and thereafter requested that additional information be submitted by counsel to assist the Court in making a ruling on the case. Subsequently, additional information was provided by both parties. After reviewing the file, the pleadings therein, the memorandum and arguments of parties' counsel and having previously made and entered its Findings of Fact and Conclusions of Law, and being duly apprised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. That Plaintiff's Motion for Summary Judgment is denied.
2. The Defendants Motion for Summary Judgment is granted.
3. Said outdoor advertising lease contract is not unconscionable and shall not be set aside.
4. That the outdoor advertising lease agreement which is the subject matter of this action is a ten (10) year lease which is not ambiguous in providing for an additional ten (10) year term for a "like successive period".

DATED this 22ND day of <sup>MARCH</sup>~~February~~, 1988.

BY THE COURT:

Raymond S. Uno  
Raymond S. Uno,  
District Judge

APPROVED AS TO FORM:

Suzanne Marelius  
Suzanne Marelius,  
Attorney for Plaintiff

H. D. [unclear]  
By [Signature]  
[unclear]

Subject to Objections -  
filed separately.

**FILED**

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

DOUGLAS T. HALL #1305  
Attorney for Defendant  
1775 North 900 West  
Salt Lake City, Utah 84116  
Telephone (801)521-1775

APR 4 1988

By [Signature] Deputy Clerk  
H. Dixon Hinkle, Third Dist. Court

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

---

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	AMENDED FINDINGS OF FACT
	)	AND CONCLUSIONS OF LAW
vs.	)	ON MOTIONS FOR SUMMARY
	)	JUDGMENT
R.O.A. GENERAL, INC., A Utah	)	
Corporation, Formerly Known as	)	Civil No. C87-4928
REAGAN OUTDOOR ADVERTISING, INC.,	)	
A Utah Corporation,	)	(Judge Uno)
	)	
Defendant.	)	

---

The Parties' respective Motions for Summary Judgment were heard by the court on December 1, 1987. The Plaintiff appeared through counsel, Suzanne Marelius. The Defendant appeared through its counsel, Douglas T. Hall. The Court heard the argument of counsel and thereafter requested that additional information be submitted by counsel to assist the court in making a ruling on the case. Subsequently, additional information was provided by both parties. After reviewing the file, the pleadings therein, the memorandum and arguments of parties' counsel and the objections to the Courts original Findings of Fact and Conclusions of Law amendments thereto have been made and the court does now hereby make the following amended

FINDINGS OF FACT



SUZANNE MARELIUS - 2081  
Attorney for Plaintiff  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

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

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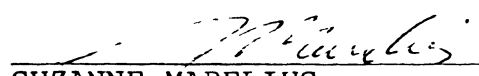
LORRAINE MILLER,	)	
	)	NOTICE OF APPEAL
Plaintiff,	)	
	)	
v.	)	
	)	
R.O.A. GENERAL, INC., A Utah	)	
Corporation, formerly known as	)	
REAGAN OUTDOOR ADVERTISING,	)	
INC., A Utah Corporation,	)	
	)	Civil No. C87-4928
Defendant.	)	(Judge Uno)

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Lorraine Miller, Plaintiff herein, gives notice of her appeal to the Supreme Court, State of Utah, from the decision on Summary Judgment rendered by the Honorable Raymond Uno, Judge presiding, Third District Court in and for Salt Lake County, State of Utah. Plaintiff appeals the following Judgment:

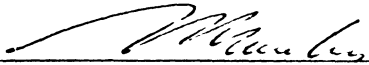
1. Amended Order and Findings of Fact and Conclusions of Law on Motions for Summary Judgment entered April 4, 1988.

DATED this 4 day of May, 1988.

  
\_\_\_\_\_  
SUZANNE MARELIUS  
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing to Attorney for the Defendant, Mr. Douglas T. Hall, 1775 North 900 West, Salt Lake City, Utah, 84116, postage prepaid this 4 day of May, 1988.

  
\_\_\_\_\_

26714

SUZANNE MARELIUS - 2081  
Attorney for Plaintiff  
LITTLEFIELD & PETERSON  
426 South 500 East  
Salt Lake City, Utah 84102  
Telephone: (801) 531-0435

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

-----oo0oo-----

LORRAINE MILLER,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	LORRAINE MILLER
	)	
v.	)	
	)	
R.O.A. GENERAL, INC., a Utah	)	
Corporation, formerly known as	)	
Reagan Outdoor Advertising,	)	
Inc., a Utah Corporation,	)	
	)	
Defendant.	)	Civil No. <u>87-04928</u>
	)	(Judge <u>Raymond Uno</u> )

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STATE OF UTAH            )  
                              : ss.  
COUNTY OF SALT LAKE )

LORRAINE MILLER, Plaintiff, being first duly sworn upon  
oath, deposes and says that:

1. I am the Plaintiff above named and am the owner of  
Cactus and Tropicals of Utah, a business located at 2721 South  
20th East, Salt Lake City, Utah 84109. I am also the owner of  
the adjacent property located at 2735 South 20th East, Salt Lake  
City, Utah 84109, which I purchased in late 1985 and on which I now  
operate a business called the Southwest Shop.
2. When I purchased the property at 2735 South 20th  
East, I was told by the seller that I would be the successor in

interest to a lease executed between William Jennings and Reagan Outdoor Advertising, Inc., dated April 29, 1977. That Lease provided for the rental of a billboard on those premises and I was told that it was a ten year Lease which would terminate in May 1987.

3. Throughout my ownership of the property at 2735 South 20th East the Defendant Reagan Advertising, Inc., as lessee, has maintained an advertising billboard at that location and has received advertising revenue from that billboard and paid me rental pursuant to the Lease.

4. I notified Reagan by letter dated January 26, 1987, that I desired to terminate the Lease as of May 1, 1987. I also had my attorney send a certified letter dated April 29, 1987, to Reagan Outdoor Advertising, Inc. informing them that I desired to terminate the lease and requesting that they remove the billboard and restore the condition of the ground to its original form.

5. Reagan Outdoor Advertising, Inc., has refused to terminate the Lease and has informed me that they interpret it as a twenty year Lease.

6. The presence of the billboard on my property is damaging my business by preventing me from effectively advertising; by limiting my access to my business and by preventing me from enlarging my driveway to expand my business operations.

7. I believed, and was told by the prior owners of the premises, that the lease was for a term of ten (10) years and

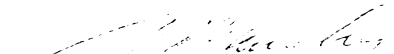
expired on May 1, 1987, and that the defendant is now trespassing on my property.

DATED this 22 day of July, 1987.



LORRAINE MILLER  
Plaintiff

SUBSCRIBED AND SWORN to before me this 22 day of  
July, 1987.



NOTARY PUBLIC

Residing at: Salt Lake City

My Commission Expires:

May 1988

21117