

2008

Maurine J. Lloyd, an individual v. Cynthia M. Lloyd, an individual, Dennis S. Lloyd, an individual, and all persons unknown claiming any right, title or interest and/or lien upon the real property described in the complaint adverse to the plaintiff's ownership or clouding title thereto : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)

 Part of the [Law Commons](#)

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

Billie Crocker; Attorney for Plaintiff Maurine J. Lloyd; Susan L. Martinez; Richard D. Martinez; c/o Billie Crocker.

Russell A. Cline; Attorneys for Defendants Cynthia M. Lloyd and Dennis S. Lloyd.

---

### Recommended Citation

Reply Brief, *Lloyd v. Lloyd*, No. 20081050 (Utah Court of Appeals, 2008).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/1373](https://digitalcommons.law.byu.edu/byu_ca3/1373)

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

UTAH COURT OF APPEALS

---

MAURINE J. LLOYD, an individual,

Plaintiff and Appellee,

vs.

CYNTHIA M. LLOYD, an individual,  
DENNIS S. LLOYD, an individual, and  
all persons unknown claiming any right,  
title or interest and/or lien upon the real  
property described in the complaint  
adverse to the plaintiff's ownership or  
clouding title thereto

Defendants and Appellants.

Appellate Case No. 20081050

Trial Court No. 030922233

---

REPLY BRIEF OF APPELLANTS

---

APPEAL FROM ORDER ENTERED DECEMBER 4, 2008  
BY THE HONORABLE LEE DEVER  
THIRD DISTRICT COURT, SALT LAKE COUNTY

---

Billie Crocker  
1106 East 4500 South  
Salt Lake City, UT 84117  
Attorney for plaintiff and Appellee Maurine J. Lloyd

Susan L. Martinez  
Richard D. Martinez  
c/o Billie Crocker  
1106 East 4500 South  
Salt Lake City, UT 84117

Russell A. Cline  
10 W. 100 S., Suite 425  
Salt Lake City, UT 84101  
Attorneys for Defendants and  
Appellants  
Cynthia M. Lloyd and  
Dennis S. Lloyd

FILED  
UTAH APPELLATE COURTS  
MAY 19 2009

UTAH COURT OF APPEALS

---

MAURINE J. LLOYD, an individual,

Plaintiff,

vs.

CYNTHIA M. LLOYD, an individual,  
DENNIS S. LLOYD, an individual, and  
all persons unknown claiming any right,  
title or interest and/or lien upon the real  
property described in the complaint  
adverse to the plaintiff's ownership or  
clouding title thereto

Defendants.

Appellate Case No. 20081050

Trial Court No. 030922233

---

REPLY BRIEF OF APPELLANTS

---

APPEAL FROM ORDER ENTERED DECEMBER 4, 2008  
BY THE HONORABLE LEE DEVER  
THIRD DISTRICT COURT, SALT LAKE COUNTY

---

Billie Crocker  
1106 East 4500 South  
Salt Lake City, UT 84117  
Attorney for plaintiff Maurine J. Lloyd

Susan L. Martinez  
Richard D. Martinez  
c/o Billie Crocker  
1106 East 4500 South  
Salt Lake City, UT 84117

Russell A. Cline  
10 W. 100 S., Suite 425  
Salt Lake City, UT 84101  
Attorneys for Defendants  
Cynthia M. Lloyd and  
Dennis S. Lloyd

LIST OF ALL PARTIES

Maurine L. Lloyd  
Cynthia M. Lloyd  
Dennis S. Lloyd  
Susan L. Martinez\*  
Richard D. Martinez\*

\* Susan L. Martinez and Richard D. Martinez were parties to the Stipulation and Agreement for Court Supervised Sale of Real Property that is at issue in his appeal. In that Stipulation both Susan L. Martinez and Richard D. Martinez submitted themselves to the jurisdiction of the Court. Neither Susan L. Martinez and Richard D. Martinez are parties to underlying action in this case.

## TABLE OF CONTENTS

	PAGE
I. <u>THE TRIAL COURT ERRORED IN EXTENDING THE SALES PERIOD SINCE THERE WAS NO EVIDENCE THAT SUCH AN EXTENSION WOULD LIKELY RESULT IN THE SALE OF THE SUBJECT PROPERTY FOR NOT LESS THAN \$9.50 PER SQUARE FOOT</u> .....	1
a. <u>The Subject Property had previously been under contract</u> .....	3
b. <u>Listing agent had withdrawn his services</u> .....	4
c. <u>That the defendants were not cooperating in the listing or sale of the Subject Property</u> .....	5
d. <u>The opportunity for the sale of the property still existed</u> .....	7
e. <u>Summer was approaching and it would be a good time to get the Property back on the market</u> .....	7
II. <u>THE TRIAL COURT DID NOT HAVE AUTHORITY UNDER THE STIPULATION TO MAKE OTHER CHANGES TO THE MANNER OF SALE</u>	9
A. <u>The Trial Court Errored in Changing The Listing Agent to Equity Real Estate</u> .....	9
B. <u>The Court Did Not Have Authority to Eliminate the \$9.50 Per Square Foot Minimum</u> .....	9
C. <u>The Trial Court Did Not Have Authority to Extend the Sales Period Past July 10, 2008</u> .....	9
III. <u>THE COURT ERRORED IN MAKING THE OTHER CHANGES</u> .....	12
A. <u>None of the changes were requested in plaintiff's motion</u> .....	12
B. <u>There was no factual basis supporting those changes</u> .....	12

Appellants Cynthia M. Lloyd and Dennis S. Lloyd submit their reply brief in this matter as follows.

I. THE TRIAL COURT ERRORED IN EXTENDING THE SALES PERIOD SINCE THERE WAS NO EVIDENCE THAT SUCH AN EXTENSION WOULD LIKELY RESULT IN THE SALE OF THE SUBJECT PROPERTY FOR NOT LESS THAN \$9.50 PER SQUARE/FOOT.

Under the Stipulation and Agreement for Court Supervised Sales of Real Property, among Maurine J. Lloyd, Cynthia M. Lloyd, Dennis Lloyd, SusanL. Martinez and Richard Martinez (the “Stipulation”), certain properties (the “Subject Property”) were listed for sale with Ralph Reidell of Coldwell Bankers “for six (6) months for sale at the highest price possible, [but] no less than \$9.50/square foot.” Stipulation at ¶ 3. (R. 401.) The Stipulation authorized the trial court to extend the sales period for an additional six (6) months if “the Court [was] persuaded that an additional six (6) months sales period [would] likely result in the sale of the Subject Property [for not less than \$9.50 per square/foot.]” Id. at ¶ 7. (R.402.)

At a May 19, 2008 scheduling conference - over four months after the initial listing agreement had expired on January 10, 2008 - plaintiff’s counsel made an oral motion to extend the sales period six months. Defendants’ counsel requested that plaintiff’s counsel file that motion in writing, but the trial court declined to grant that request. No written motion was ever filed. Defendants’ counsel filed a written opposition to that oral motion, and the trial court granted plaintiff’s oral motion. Because plaintiff failed to present any evidence at the time that oral motion

was made (or otherwise) that a six month extension would “likely result in a sale of the Subject Property” at not less than \$9.50 per square foot, this Court should reverse the Order granting that motion.

Plaintiff argues that the Stipulation “only required that the court be persuaded that an extension would likely result in a sale,” not necessarily a sale at \$9.50 a square foot. That is not correct. Although the section of the Stipulation that states that “the sales period may be extended for an additional six (6) months” if “the Court is persuaded that an additional six (6) month period will likely result in the sale of the Subject Property” does not expressly include the \$9.50 per square foot minimum, other sections in the Stipulation make it clear that any sale of the Subject Property must be for not less than \$9.50 a square foot - both before and after any extension. For example, the Stipulation provides that the listing agent is to “market the Subject Property for sale at the highest possible sale price, no less than \$9.50/square foot” - without limiting that minimum sales price to the initial listing period. *Id.* at ¶ 3. (Emphasis added.)<sup>1</sup>

To obtain a six month extension, the moving party must “persuade” the trial court that an

---

<sup>1</sup>Similarly, the Stipulation provided that “[i]f escrow is not opened for sale of the Subject Property within six (6) months of the date of the courts order [July 10, 2007] in an amount of not less than \$9.50 per square foot” then the stay on the state court litigation would be lifted and the matter would proceed. *Id.* at ¶ 7. R. 402.) (Emphasis added.)

“additional six (6) months would likely result in the sale of the Subject Property.” If the \$9.50 per square foot minimum sales price did not also apply to the extension period there would be no need to “persuade” the trial court, since the Subject Property would obviously sell within an “additional six (6) months” if the price was low enough. The Subject Property was not to be sold at any price, no matter how low. The Stipulation is clear that the Subject Property must sell for at least \$9.50 per square foot - irrespective of whether the Subject Property sells during the initial listing period or during any extension that may be granted.

Plaintiff next alleges that the trial court relied on five “factors” in granting her oral motion to extend the sales period six months. None of those “five factors” were relevant to the criteria for extending the deadline - that the court had to be persuaded the Subject Property would likely sell for not less than \$9.50 a square foot if the sales period was extended six (6) months.

a. The Subject Property had previously been under contract. Plaintiff claims that one of the grounds for extending the sales period six months was that the Subject Property “had previously been under contract.” Appellee’s Brief at 11. At the May 19, 2008 scheduling conference, plaintiff’s counsel represented that the Subject Property had been under contract, but that she didn’t “know what happened” and didn’t know “why [the sale] fell through:”



Ms. Crocker: We did actually have the property under contract last fall and it went through two due diligence period. One was extended and I don't know what happened, why it fell through.

R. 727.

There is nothing about the Subject Property previously being under contract that is probative of whether extending the sales period an additional six months would likely result in a sale of the Subject Property for not less than \$9.50 per square foot," especially where counsel acknowledged that she "didn't know what happened" or "why the sale fell through."

b. Listing agent had withdrawn his services. In her brief, plaintiff makes numerous claims that Ralph Reidell "withdrew" as the listing agent. The only basis in the record to support this claim is a statement made by plaintiff's counsel at the May 19, 2008 status conference wherein she said that even though she "hadn't been able to talk to [Ralph Reidell] personally," she "understood" that Mr. Reidell was "unable to finish up:"

We did have a listing agent, Ralph Reidell. It's my understanding - and I haven't been able to talk to him personally - but its my understanding that he had difficulty working with the defendants and was unable to finish up.

R. 727 (Emphasis added.)

That statement is speculation, has no foundation and is hearsay. There was no affidavit, letter or

document of any kind from Ralph Reidell (or otherwise) indicating that Mr. Reidell wouldn't be willing to relist the Subject Property. Plaintiff claims that "defendants admit that the realtor resigned" - a false statement. Plaintiff claims that "[t]he parties could not agree on a replacement and the appointment was required to accomplish the stated goals in the stipulation" - a false statement. There was never a discussion with defendants as to a replacement for Ralph Reidell as the listing agent. The first time defendants were aware that plaintiff wanted to replace Ralph Reidell as the listing agent is when plaintiff submitted a form of Order to the trial court that substituted "Equity Real Estate" as the listing agent. Plaintiff claims that "the trial court was also presented with information that a new realtor was going to list the property" - again a false statement. The trial court was never "presented with any information that a new realtor was going to list the property." A new realtor simply showed up for the first time in plaintiff's form of Order.

In any event, whether Mr. Reidell would agree to relist the Subject Property has no relevance to whether the Subject Property is "likely" to sell at \$9.50 a square foot if there is a six (6) month extension.

c. That the defendants were not cooperating in the listing or sale of the Subject Property.

In her brief, plaintiff makes repeated claims of "interferences" by defendant. The only basis

in the record to support that claim is a statement made by plaintiff's counsel at the May 19, 2008 status conference that even though she "hadn't been able to talk to [Ralph Reidell] personally" she "understood" that "[Ralph Reidell] had difficulty working with the defendants:" (R. 727.)

We did have a listing agent, Ralph Reidell. It's my understanding - and I haven't been able to talk to him personally - but its my understanding that he had difficulty working with the defendants and was unable to finish up.

R. 727 (Emphasis added.)

Again, this statement is speculative, has no foundation, and is based on hearsay. There was no affidavit, letter or document of any kind evidencing any such "interference." Furthermore, where one party claims that the other party has "refused to cooperate," the Stipulation specifically provides a procedure for dealing with such a claim, including an "evidentiary hearing" to determine whether the allegation is justified:

In the event that any party to this Stipulation fails, refuses to cooperate, fails to perform in accordance with the terms of the Agreement to Sell Real Property or otherwise acts as an impediment to the sale of the Subject Property, the non-defaulting party shall have the right to seek a Court order ordering the sale of the Subject Property in accordance with a proffered offer to purchase as presented by the Listing Agent. The parties hereto shall have the right to an evidentiary hearing in which the court shall receive evidence, testimony and argument as to why a particular sale should or should

not be ordered. Upon conclusion of the hearing the Court may issue its order as the Court determines to be just and proper and the parties herein agree to be bound by any such order and waive the right to trial, appeal or further proceedings regarding the sale of the Subject Property.

Stipulation, ¶ 8. (R. 420.)

In this case, it is undisputed that no evidentiary hearing was held - which would have been required under the Stipulation if such an allegation had been made. Even if evidence of interference had been presented, “interference” is not probative of whether the Subject Property will likely sell at not less than \$9.50 square foot if a six month extension is granted.

d. The opportunity for the sale of the property still existed. Plaintiff next claims that “the opportunity for the sale of the property still existed.” Obviously, the opportunity to sell the Subject Property “still existed” at some price. However, the Stipulation required that the opportunity for the sale of the Subject Property must “still exist” at not less than \$9.50 per square foot. There is nothing about the existence of the “opportunity for the sale of the property” alone that supports a finding that the six month extension would likely result in the sale of the Subject Property at not less than \$9.50 a square foot.

e. Summer was approaching and it would be a good time to get the Property back on the

market. Finally, plaintiff claims that “summer was approaching and it would be a good time to get the Property back on the market.” There was no evidence before the trial court that the summer of 2008 was a “good time” to “get the Property back on the market.” The mere fact that summer was approaching was not, alone, evidence that the Subject Property was likely to sell for not less than \$9.50 per square foot during the summer. This Court can take judicial notice of the fact that the real estate market in the Salt Lake area was (and still is) seriously depressed during the summer of 2008.

Plaintiff attaches as Exhibit D to her brief a “listing packet” by Equity Real Estate (the “Listing Packet”) that was never made part of the record below. Even so, the Listing Packet only supports defendants’ position that there was no factual basis for the trial court to find that a six month extension would likely result in the sale of the Subject Property for not less than \$9.50 per square foot. The Listing Packet states that the Subject Property “will probably sell between \$8.50 and \$9.00 per square foot. This is due to the market cycle.” Appellee’s Brief, Exhibit D. Accordingly, even considering the Listing Package presented by plaintiff - which states that the Subject Property “will probably sell between \$8.50 and \$9.00 per square foot” - it is clear that there was no evidence before the trial court to support a finding that if the listing period was extended for six months the Property would likely sell for not less than \$9.50 per square foot.

## II. THE TRIAL COURT DID NOT HAVE AUTHORITY UNDER THE STIPULATION TO MAKE OTHER CHANGES TO THE MANNER OF SALE.

### A. The Trial Court Errored in Changing The Listing Agent to Equity Real Estate.

As discussed in Appellants' Brief, the Stipulation provided that Ralph Reidell was to be the listing agent. Appellants' Brief, pg. 5. At the May 19, 2008 scheduling conference, Ms. Crocker said that she "understood" that Ralph Reidell had "been unable to finish," but stated that she had not spoken to Mr. Reidell. There was no evidence that Ralph Reidell was not willing to relist the Subject Property. Plaintiff's representations regarding the need to replace the listing agent had no basis in the record. In any event, Stipulation did not give the trial court authority to change the listing agent, absent defendants' consent.

### B. The Court Did Not Have Authority to Eliminate the \$9.50 Per Square Foot Minimum.

Plaintiff claims that a \$9.50 per square foot sales price minimum was not required during any six month extension. As previously discussed, the \$9.50 per square foot minimum sale price continued during any extension. The Stipulation did not give the trial court authority to eliminate the \$9.50 per square foot minimum sales price, absent defendants' consent.

### C. The Trial Court Did Not Have Authority to Extend the Sales Period Past July 10, 2008.

Plaintiff claims that the Court did not “abuse its discretion” in extending the sales period past July 10, 2008 since defendants “interfered” with the sale and marketing of the Subject Property and defendants counsel was “unavailable” for a lengthy period of time.

Even assuming that defendants interfered with the marketing of the Subject Property or that counsel was unavailable for a lengthy period of time - neither of which are true - under the terms of the Stipulation, the Court did not have discretion to extend the sales period past July 10, 2008. The stipulation provided that the “the sales period [from July 10, 2007 to January 10, 2008] may be extended six months.” Stipulation, ¶ 7. R. 402.) “If the sale of the Subject Property is not concluded within six (6) months or a year as the case may be” the Stipulation was void. Id. R. 402. (Emphasis added.) Accordingly, the Stipulation clearly identified a “one year” limit on the sales period for the Subject Property - which was July 10, 2008.

As previously discussed, defendants did not interfere with the sale or marketing of the Subject Property and there is nothing in the record indicating that they did. At the May 19, 2008 scheduling conference, Ms. Crocker stated that she “understood” that Mr. Reidell had difficulty working with defendants, but acknowledged that she had not spoken to Mr. Reidell. Furthermore, where one party “fails to cooperate” in the marketing or sale of the Subject Property, the Stipulation

provides for a specific procedure - including an evidentiary hearing - for resolving that issue. In this case, that procedure was never invoked. In short, there is no basis for any claim of interference.

Plaintiff's representation that counsel for defendants was "unavailable from October 2007 to April 2008" is also a blatant misrepresentation. Appellee's Brief at 15. On October 4, 2007 defendants' counsel at the time - Nelson J. Warner - filed a "Notice of Unavailability of Counsel" advising the Court and opposing party that he would be unavailable for two and one-half weeks - from October 5, 2007 through October 22, 2007. R. 435-436. On February 4, 2008, a Substitution of Counsel was filed substituting Russell A. Cline for Nelson Werner as counsel for defendants. (R. 438.) Plaintiff has provided no explanation as to how Mr. Warner's unavailability for 2 ½ weeks effected Mr. Reidell's efforts to market the Subject Property during that period. Mr. Warner's unavailability from October 5, 2007 through October 22, 2007 is not an unavailability "from October 2007 to April 2008," as plaintiff claims.

If plaintiff believed that there were claims of "interference" or "unavailability" that justified an extension, those claims should have been made in November 2007 or December 2007, so as to extend the sale period within the limits of the Stipulation - from January 10, 2008 through July 10, 2008. Plaintiff allowed the listing to expire on January 10, 2008, and said nothing until the status



conference requested by defendants over four months later - on May 19, 2008. These claims were unfounded, untimely and under the Stipulation did not provide the trial court with authority to extend the sales period past July 10, 2008.

### III. THE COURT ERRORED IN MAKING THE OTHER CHANGES

Even if the trial court did have authority to make the three changes discussed above, the trial court erred in making those changes since none of them were requested in plaintiff's motion and there was no factual basis supporting those changes.

#### A. None of the changes were requested in plaintiff's motion.

Plaintiff does not dispute that her May 19, 2008 oral motion did not include a motion to change the real estate agent, eliminate the \$9.50 per square foot minimum or change the period of any extension to other than January 10, 2008 to July 10, 2008. R. 725-732. These changes simply "showed up" in the form of Order that plaintiff provided to the court after her motion had been granted.

#### B. There was no factual basis supporting those changes.

As previously discussed, there is no evidentiary basis for plaintiff's claim that Mr. Reidell would not relist the Property, and needed to be replaced. Plaintiff claims that "[i]nformation

regarding Equity Real Estate and the plaintiff's proposed listing agent was supplied to the defendants...and [defendants] never made any attempt to suggest another realtor." Appellee Brief, pg. 1. The new listing agent first appeared in plaintiff's proposed form of Order. In its Objection to Form of Order, defendants requested that the sentence "The Property should be immediately listed for sale with Equity Real Estate" be stricken from the form of Order. R. 592. At the October 28, 2008 hearing on that Objection to Form of Order, defendants specifically objected to changing agents from the listing agent agreed upon in the Stipulation:

Mr. Cline: The other problem is that under the agreement, the stipulated real estate agent was Ralph Reidell of Caldwell Bankers, and when Ms. Crock...said that the property shall be immediately listed with Equity Real Estate...[that] was the first time we ever heard [of this and that] would be a material change in what the parties agreed to.

R. 736.

The email from Dovey Roach of Equity Real Estate attached as Exhibit C to Appellee's Brief is not part of the record below and, in any event, is hearsay.<sup>2</sup>

As to extending the sales period beyond the one year limit, even if the Court did have discretion under the Stipulation to grant an extension beyond July 10, 2008 (which it did not), there

---

<sup>2</sup>None of the exhibits attached to Appellee's Brief were part of the record below.

was no evidence supporting such an additional extension. The listing expired January 10, 2008, and plaintiff for the first time moved for a six month extension (from January 10, 2008 to July 10, 2008) at the May 19, 2008 scheduling conference. The issue of when the six-month extension begins and ends was first discussed before the trial court at the October 28, 2008 hearing on the Objection to Form of Order. At that hearing the Court stated that if a motion to extend is made during the extension period, it “doesn’t make sense” for the time to be running while you are waiting for the trial court to rule:

If [the Subject Property] hasn’t been listed and they’re waiting for the Court to make a decision...[it] doesn’t make much sense to say...it should have been listed from January to June and now its August so you’re time as listed is already running even though the Court did have a hearing [or issue] an order until after the time was up.

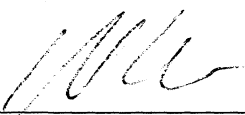
R. 735-36.

In making that statement, the trial court ignored the fact that the maximum listing period authorized under the Stipulation was one year (until July 10, 2008.) The trial court also ignored the fact that, if plaintiff wanted to extend the listing agreement (which expired January 10, 2008) an additional six-months and wanted the benefit of the full six months listing period, it was her responsibility to file in November or December 2007 - so as to have the issue decided at or about the time the initial

listing period expired.

For the foregoing reasons, the trial court's Order should be vacated and defendants should be awarded their costs and attorney's fees.

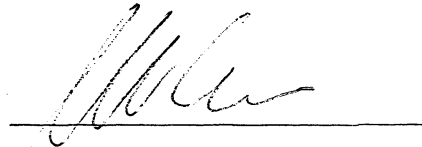
Dated this 19 day of May, 2009.

  
\_\_\_\_\_  
RUSSELL A. CLINE, attorney for Defendants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 19 day of May, 2009, I caused to be delivered via first class mail, postage pre-paid, the foregoing to:

Billie Crocker  
1106 East 4500 South  
Salt Lake City, UT 84117

A handwritten signature in dark ink, appearing to read "Billie Crocker", is written over a horizontal line.