

1989

# John W. Jarman and Helene B. Jarman v. Reagan Outdoor Advertising, Company : Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

Brief of Appellant, *Jarman v. Reagan Outdoor Advertising*, No. 890106 (Utah Court of Appeals, 1989).  
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**BRIEF**

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DOCKET NO. 89-0106 IN THE UTAH COURT OF APPEALS

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JOHN W. JARMAN and HELENE B. JARMAN,	)	
	)	
Plaintiffs/Appellees,	)	Docket No. 890106-CA
vs.	)	
	)	
REAGAN OUTDOOR ADVERTISING, COMPANY,	)	Priority No. 14
	)	
Defendant/Appellant.	)	

---

**BRIEF OF APPELLANT**

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On Appeal from the Order of  
the Third Judicial District Court in and for  
Summit County, State of Utah,  
Judge Michael R. Murphy

---

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Attorney for Appellees

Attorney for Appellant

IN THE UTAH COURT OF APPEALS

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JOHN W. JARMAN and HELENE B. JARMAN,	)	
	)	
Plaintiffs/Appellees,	)	Docket No. 890106-CA
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### STATEMENT OF JURISDICTION

The jurisdiction of the Court of Appeals for the State of Utah is appropriate pursuant to Rule 4A of the Rules of the Utah Supreme Court.

### STATEMENT OF THE NATURE OF THE PROCEEDINGS

This appeal is from a judgment and order entered in the Third Judicial District Court of Summit County, State of Utah, the Honorable Michael R. Murphy, judge presiding, following a trial without a jury on September 9, 1988. The court determined that a lease agreement between the respective parties herein, for outdoor advertising purposes, was no longer in effect and that the defendant/appellant, Reagan Outdoor Advertising (hereinafter "Reagan"), was therefore trespassing on the plaintiffs'/appellees', John W. and Helene B. Jarman (hereinafter "Jarmans"), property.

In addition, this appeal is taken from the trial court's denial of Reagan's motion to amend the trial court's Findings of Fact and Conclusions of Law entered after the trial.

### STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in refusing to amend its Findings of Fact and Conclusions of Law to more accurately reflect the evidence presented during the trial?

2. Did the trial court err in finding that the outdoor advertising lease agreement, previously executed between the

parties, was ambiguous with regard to the extent of Reagan's leasehold?

3. If the trial court did not err in finding the extent of Reagan's leasehold ambiguous, did it nevertheless err in finding that Reagan's leasehold only extended to that portion of Jarmans' property upon which the outdoor advertising structures stood at the time the most recent lease agreement was executed?

4. Did the trial court err in finding that the defendant was in trespass of Jarmans' property and in ordering the removal of Reagan's outdoor advertising structures?

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

None.

**STATEMENT OF THE CASE**

In 1971, Mr. Richard Paxman, representing Galaxy Outdoor Advertising, Reagan's predecessor in interest (R. 47), contacted the owners of the Hi-Ute Ranch in Summit County, Jarmans' predecessors in interest (R. 76), to negotiate a lease of the Hi-Ute property in order to emplace two outdoor advertising structures (R. 41). Ultimately, an agreement was reached and two separate lease documents (the "1971 leases") were executed (R. 44 and 45).

Subsequently, two outdoor advertising structures were built on locations adjacent to State Highway 224 picked out by Mr.

Paxman (R. 42). These same structures were on location at the time the Jarmans purchased the property, which contains some 130 acres (sometime in 1980); and, they were aware of their existence, having seen the signs before they purchased the property. Mr. Jarman eventually contacted Galaxy Outdoor to advise them of the change in ownership (R. 209-10, 11).

In 1981, Mr. Terry K. Reid, representing Reagan, entered into discussions with Mr. Jarman to renew the lease agreement for the structures (R. 47). In 1982, the leasehold was renewed with the execution of a lease document (the "1982 lease") (R. 86) to replace the two previous documents. The 1982 lease agreement has become the subject of the instant action.

The description of the property being leased from the Jarmans, pursuant to the 1982 lease, incorporated those descriptions found on the 1971 leases (R. 48). No address for, or better description of, the premises existed at the time the 1971 leases were prepared so a general description of the proposed locations where the structures would be emplaced was used (R. 42). Such a method was a common means of identifying properties without addresses at that time (R. 209-37). There is no address for the property even now; it is generally referred to as Kimball Junction (R. 74). Likewise, there was no specific, or exact, description of the location of the structures, only a general description, approximately identified by using monuments (R. 209-14, 15, 25, 28, 37).

It was the Jarmans' intention to allow Reagan to have two outdoor advertising sign locations next to State Highway 224 (R. 209-29).

Reagan continued to use the leasehold premises and to pay the agreed rental to the Jarmans for the locations from the execution of the 1982 lease to that point in time where the Jarmans refused to accept payment and initiated the instant action (R. 48).

In 1987, the State of Utah began the widening of State Highway 224 in the vicinity of Kimball Junction after acquiring from the Jarmans a right-of-way of approximately 10 to 30 feet (R. 209-16). (The precise amount was never revealed during the trial.) The newly acquired State right-of-way took a portion of the Jarman property upon which the outdoor advertising structures were located (R. 209-41, 42). However, neither structure was completely located within the new right-of-way (R. 209-17, 41).

The State, through Mr. Dear Holbrook, made a request to Reagan to have the structures moved off the right-of-way (R. 209-39). Reagan did move the signs; moving them just far enough away from the highway so that they would no longer be in the State's right-of-way and to be completely located on the property of the Jarmans' (R. 49).

The original description of the location of the structures as found in the 1971 and 1982 leases still describes their location (R. 42, 49). Mr. Jarman admitted during the trial that this is indeed the situation (R. 209-26, 27).

Reagan was paid by the State to relocate, not remove the structures (R. 209-67, 68).

The Jarmans took the position that the 1982 lease only allowed Reagan to maintain the two outdoor advertising structures in the exact locations that these structures occupied when the lease was then renewed. They contended that moving the structures, even the few feet that they were, in fact, moved, constituted a trespass. In their Complaint, filed December 10, 1987, they sought removal of the structures and monetary damages. The claim for money damages was withdrawn at the time of trial (R. 209-3).

Prior to trial Reagan made a motion for the entry of a Summary Judgment in its favor. This motion was denied. Trial was thereafter held in Summit County, the Honorable Judge Michael R. Murphy presiding, on September 9, 1988. The Court entered a judgment in favor of the Jarmans, ordering the structures removed and awarding the Jarmans their costs.

The Court also made and entered Findings of Fact and Conclusions of Law in which it determined that the 1982 lease was ambiguous and Reagan was in trespass. Reagan made a motion to amend the Findings of Fact and Conclusions of law; specifically directing the motion to specific Findings and Conclusions (R. 111), and identifying the discrepancies that needed correcting. This motion was summarily denied. Reagan thereafter appealed to the Supreme Court of the State of Utah.

### SUMMARY OF THE ARGUMENT

The 1982 outdoor advertising lease agreement is a renewal of the original 1971 lease agreements executed by the respective predecessors in interest of the current parties. The extent of Reagan's leasehold interest is clearly defined within the four corners of the instrument. In this respect the lease is not ambiguous. Reagan was entitled to move its structures, within, at least, the same general area that they were originally emplaced, to accommodate the widening of State Highway 224, without suffering a loss of said leasehold. The trial court erred in determining the lease ambiguous in this regard and in ordering the removal of the structures.

The evidence presented during the trial clearly established the intent, and understanding, of the parties with regard to the extent of the leasehold. This evidence flies in the face of the trial court's ruling. In this respect the trial court committed clear error. Reagan is not in trespass of Jarmans' property and is entitled to remain thereon.

The trial court's Findings of Fact, and Conclusions of Law, are not fully reflective of the evidence presented, nor are they completely accurate. It was error for the trial court to not amend the Findings and Conclusions, as requested by Reagan, to render them more accurate and complete. Corrected Findings and Conclusions will not be supportive of the trial court's judgment.

The true reason for the court's ruling was revealed by the Court after the trial. The basis for its decision, it seems, was

for reasons other than the evidence presented, and the issues before it. In this respect, as well, the trial court committed clear error in reaching a decision favorable to the Jarmans.

## ARGUMENT

### I

#### Defendant/Appellant's Motion to Amend the Findings of Fact and Conclusions of Law Should Have Been Granted

Following the trial and the entry of the trial court's Findings of Fact and Conclusions of Law Reagan filed its motion to amend. The Findings (and Conclusions) being challenged were specifically set forth along with the basis therefore (R. 111). Reagan made reference to the evidence presented during the trial in support of each point. Despite this, and a clear basis existing to justify making the proposed amendments the trial court denied the motion in its entirety (R. 131). The Court explained, in making the ruling, that "I didn't see anything different . . ." (R. 209-103, 105).

Findings nos. 2 and 3 state that the 1982 lease agreement was for "specific locations" or "specific sites" (R. 104). And, this is what the trial court stated following the trial (R. 209-98). But this is not in harmony with the facts in evidence. 1) Mr. Paxman testified that a property address would have been used to describing the leasehold, rather than a landmark (or monument),

had the property had an address (R. 209-37). 2) The leasehold description as set forth in the 1982 lease is a general description: "State Hwy 224 across from state Hwy sheds s/o Kimball Jct & State Hwy 224 300' s/o State Hwy shed, s/o Kimball Jct" (R. 86). 3) The leasehold interest allowed Reagan to utilize a "remaining portion" of the property should it be necessary to move the structures to accommodate property building and development (R. 86). 4) The possibility of relocating the structures was discussed by the parties during the negotiations that resulted in the 1982 lease renewal (R. 209-58, 59). These Findings are key points in resolving the case. In light of the evidence presented amending these Findings to provide that the leasehold allowed Reagan to maintain its structures in the general vicinity of the landmarks or "monuments" described is appropriate.

It was (and is) the Jarmans' position that the Reagan leasehold only extended to their property upon which the structures were exactly located when the 1982 lease was executed. This is reflected in Finding no. 4. Yet, Mr. Jarman did not know, even at the time of trial, just where the signs were originally located (R. 209-14, 15, 28), how much of his property the State of Utah acquired (R. 209-16, 17), and where the signs were moved to (R. 209-17,); except that they were still within the leasehold description.

Finding no. 4 goes on to state that it was the parties' intention to continue the leasehold for the existing locations

only. But testimony given during the trial clearly shows that the parties had discussions concerning the possible relocation of the signs (R. 209-54) and, Mr. Jarman stated that he never told Reagan that he wanted the lease to apply only to the specific piece of property that the structures then occupied (R. 209-25). In fact, Mr. Jarman testified that it was his intention to allow Reagan to have two signs next to the State highway (R. 209-29)! It is clear error for the trial court not to amend Finding no. 4 to state that even if it was Mr. Jarman's intent to so limit the leasehold that this was never communicated to Reagan, that he did intend for Reagan to have two signs next to the highway, and that there were discussions regarding the possibility of relocating the structures.

For the purpose of this Appeal Reagan asks that the Court look specifically at but two other points with regard to the Findings of Fact and Conclusions of Law: Findings nos. 5 and 8. In its Finding no. 5 the trial court found that the lease was ambiguous; at lease insofar as it related to the property description (R. 209-97). The appellant will discuss this point in detail in the argument below.

Finding no. 8 states that Reagan moved the structures, or "billboards," from the locations they occupied to other locations on Jarman's property. The implication from this is that the structures were moved to a completely different portion of the Jarman property; to an area that the Jarman's never contemplated would be used for outdoor advertising purposes. (Which is, of

course, what the Jarmans wanted the trial court to think.) From the evidence presented during the trial this is clearly not the case. Only a portion of the structures were moved; just enough to remove them from the State's new right-of-way. In fact, the structures are not only still within the property description that Jarman first observed them at when he purchased the property, but Mr. Jarman admitted at trial that this is the case (R. 209-26, 27). It was clear error for the trial court not to amend Finding no. 8 to state that the structures were only partially relocated.

The trial court's Findings of Fact (and the Conclusions of Law they support) go against the clear weight of evidence presented during the trial of the instant case and are, therefore, clearly erroneous. In this regard they should be set aside. Rule 52 (a) Utah Rules of Civil Procedure. See also Sampson v. Richins, 102 Utah Adv. Rep. 53, 55 (Utah Ct. App. 1989) and General Glass Corp. v. Mast Construction Co., 766 P.2d 429, 98 UAR 53, 57 (Utah Ct. App. 1988). This Court should set them aside and remand the case for the entry of amended Findings that are supported by the evidence.

The Conclusions of Law should be reviewed under the "correction of error" standard identified in the case of Bailey v. Call, 767 P.2d 138, 100 UAR 11 (Utah Ct. App. 1989), and be corrected to conform to the evidence presented.

## II

### The 1982 Lease Agreement is Not Ambiguous

The extent of Reagan's outdoor advertising leasehold can be resolved from the four corners of the 1982 lease document without the need to resort to extrinsic evidence. The pertinent terms and provisions are contained therein allowing the Court to determine, as a matter of law, the rights and liabilities of respective parties.

The 1982 lease agreement states, in pertinent part:

. . . 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 . . . as may be desired by lessee for a term of ten years . . . located in the county of Summit, State of Utah and more particularly described as follows: State Hwy 224 across from state Hwy sheds s/o Kimball Jct. & State Hwy 224 300' s/o State Hwy shed, s/o Kimball Jct. . .

. . . Lessor shall have the right to terminate this lease . . . if : (a) Lessor builds or develops on the property where the sign(s) structure(s) is situated; or (b) In the event Lessor sells the premises, the buyer of said premises has the right to terminate this lease . . . Lessee will remove its sign(s) . . . If any portion of the property is not utilized for such buildings, Lessee has the option to use the remaining portion on the same terms. . . (emphasis added).

From the stated provisions it is clear that the Jarmans gave to Reagan the right to both erect and maintain outdoor advertising structures on their property in Summit County at two locations along State Highway 224 for a term of ten years. One location

was across from the State's highway sheds; the other was 300 feet south of the sheds.

There is no other limitation embodied in the document with regard to the locations of the structures. There is no other reasonable interpretation that can be given the agreement. The lease agreement must be enforced in accordance with the intentions manifest by the language used by the parties. Ephraim Theatre Company v. Hawk, 321 P.2d 221, 223 (Utah 1958). To do otherwise would be to allow the courts to add some term, or terms, to the agreement that the parties could, had they wanted to, put in the agreement themselves. Both appellate courts in Utah have made it clear that they will not inject ambiguity into a contract where no exists in order to save a party from what, in retrospect, seems an ill-advised agreement. Crowther v. Carter, 767 P.2d 138, 99 UAR 29, 31 (Utah Ct. App. 1989); Dalton v. Jerico Const. Co., 642 P.2d 748 (Utah 1982). Six years after entering into the lease agreement with Reagan the Jarmans may have changed their minds with regard to allowing the leasehold, but that does not excuse them from holding to the original agreement.

The lease agreement further provides that the structures may be relocated on Jarmans' remaining property should the signs need be removed because of building and development, or in the event of sale. If, as the Jarmans claim, there was no right to relocate the structures anywhere because the leasehold was limited exclusively to the locations the structures occupied at

the time the 1982 lease was executed then this clause was unnecessary and should have been stricken.

The language used in an agreement is ambiguous only if the words used to express the meaning and intention of the parties are insufficient in a sense that the contract may be understood to reach two or more plausible meanings. American Bonding Co. v. Nelson, 763 P.2d 814, 94 UAR 42, 43-44 (Utah Ct. App. 1988). There is no other plausible meaning!

The interpretation of this lease agreement can be determined by the words of the agreement and is, therefore, not ambiguous. The intent of the parties can be culled from the terms found within the lease.

The interpretation of this lease agreement is a question of law. Copper State Leasing v. Blacker Appliance & Furniture, 90 Utah Adv. Rep. 23, 24 (Sup. Ct. 1988). Because the lease agreement is not ambiguous this Court need not give the trial court's ruling any particular weight, but review it for correctness. Cecala v. Thorley, 764 P.2d 643, 96 UAR 15, 16 (Utah Ct. App. 1988). See also, Heller v. U.S. Rock Wool Co., 762 P.2d 1104, 93 UAR 8, 9 (Utah Ct. App. 1988) and Kimball v. Campbell, 699 P.2d 714, 716 (Utah 1985). It is clear from the foregoing that the ruling of the trial court was not correct and needs be overturned.

### III

Even If The Trial Court Did Not Err In Ruling  
That The 1982 Outdoor Advertising Lease Was Ambiguous  
It Was Error To Find That The Leasehold Was Limited  
To The Exact Locations That The Signs Occupied At The  
Time This Lease Was Executed

It is well settled that the standard of review of a trial court's ruling on a contract found to be ambiguous is that this Court must find that ruling "clearly erroneous." Bailey v. Call, supra., Crowther v. Carter, supra., Power Systems & Controls v. Keith's Electrical Constr. Co, 765 P.2d 5, 97 UAR 34 (Utah Ct. App. 1988). But, as discussed above, it is improper for a court to inject ambiguity in order to "save" a party. Crowther, supra., at 99 UAR p. 31.

Nevertheless, if the 1982 lease agreement is ambiguous the extrinsic evidence presented during the trial of the instant case was more than sufficient to establish that Reagan had the right to relocate its structures in the vicinity of their original locations without a loss of the leasehold and without being in trespass of the Jarman property.

Much of the evidence supporting the above position, extracted from the record (mainly the record made during the trial) has already been stated above. These facts, in review, are: 1) The 1982 lease agreement allows Reagan to relocate its signs; 2) no exact description for the location of the Reagan structures was affixed to the 1971 leases and no attempt fix their exact locations was made at the time the 1982 lease was executed; 3)

the description of the property being leased still matches the description of the structures' locations after the relocation; 4) Mr. Jarman agrees that this is, in fact, the situation, that the structures are still located according to the property description; 5) it was the Jarmans' intention to allow Reagan to have two signs next to State Highway 224; 6) Reagan was paid by the State to relocate, not remove, the structures; 7) no amendment to, or deletion of, the 1982 lease agreement was accomplished to otherwise limit Reagan's ability to relocate the structures or to evidence that the Jarmans did not intend that Reagan should be limited to only those exact locations that the structures then occupied; 8) the Jarmans still own the property the Reagan structures are located upon; 9) Reagan never understood that it was strictly limited with regard to the location of its signs; 10) only a portion of the sign structures were in the new State right-of-way and only a partial relocation of the structures was accomplished in any event.

Only the mere statement by Mr. Jarman that he "intended" the lease to be limited to sign locations of 1982 stands in opposition to the above. This statement is not supported by any other evidence and is directly controverted by Reagan and the 1982 lease document. If nothing else the Jarmans have failed to carry the burden of proof required of them in a case of this nature.

The Appellant has met its burden and shown that the ruling of the trial court goes against the "clear weight of evidence,"

and is "clearly erroneous." Monroc, Inc. v. Sidwell, 104 Utah Adv. Rep. 26, 27 (Utah Ct. App. 1989). The evidence presented during the trial is insufficient to support the finding made. General Glass Corp., supra., 98 UAR at p. 55.

At the close of the trial proceedings the lower court indicated that it was concerned that by its terms the 1982 lease might automatically be continued to the year 2002 and seemed to have some concern that this would cause future contention between the respective parties if the court were to rule for Reagan. Now, the lower court did state that this was not a reason for its ruling, but that "[T]here will be peace now . . ." (R. 209-99.)

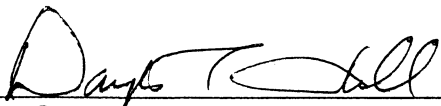
This issue (of an extension to the initial lease term) was never before the court and not interjected into the trial proceedings. If this issue did not enter into the trial court's decision why was it even discussed?

#### CONCLUSION

For those reasons set forth above the defendant/appellant, Reagan Outdoor Advertising, respectfully requests that this Court 1) overturn the judgment of the Third Judicial District Court of Summit County holding that Reagan is trespassing on the property of the plaintiffs'/appellees'; 2) overturn the District Court's order that Reagan remove its two outdoor advertising structures from Jarmans' property at Kimball Junction; and 3) remand the

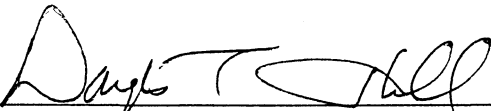
case to the lower court for the entry of Findings of Fact and Conclusions of Law consistent herewith.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of May, 1989.

  
\_\_\_\_\_  
Douglas T. Hall  
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served 4 copies of Appellant's Brief upon the Appellees by causing same to be delivered to the offices of Appellees' attorneys of record, Ronald E. Nehring and Don R. Schow, at City Centre I, Suite 900, 175 East Fourth South, Salt Lake City, Utah 84111, this 15<sup>th</sup> day of May, 1989

  
\_\_\_\_\_

Tab A

306

# Galaxy Outdoor Advertising, Inc.

4180 SOUTH STATE STREET - PHONE 262-2531  
SALT LAKE CITY, UTAH 84107

In consideration of the sum of 50<sup>00</sup> / 100 = \$500.00 dollars  
per annum, payable as follows: \_\_\_\_\_  
the undersigned lessor, having full right and authority in the premises, hereby  
leases to the Galaxy Outdoor Advertising, Inc., lessee, its successors or assigns, ex-  
clusively with the privilege of access to and upon the premises known as one location  
300 FT 30' x 50' Rd Shed on Hwy  
for the erection and maintenance of advertising signs from the 1<sup>st</sup> day of  
Feb 1971 to the 1<sup>st</sup> day of Feb  
1972 and on like terms for the succeeding years, unless terminated as hereinafter  
mentioned.

It is expressly agreed that the lessor may order the advertising signs removed at any time during the  
life of this contract by giving the lessee thirty days written notice that the property is sold or is to be  
improved by the erection of buildings thereon, and in such case, the lessor shall refund, pro-rata, the  
unearned portion of prepaid rental, or by the lessee, by giving the lessor thirty days written notice. If,  
in the opinion of the lessee, the said space becomes in any way obstructed, this lease may, at the option  
of the lessee, be terminated and lessor will refund the unearned portion of prepaid rental. All materials  
placed upon this property under this lease shall remain the property of the lessee and may be removed  
by the lessee at any time.

Accepted:

Galaxy Outdoor Advertising, Inc.

By Robert J. Johnson

[Signature]  
Owner  
Tenant  
Agent

349650361NE  
Address

Tab B

# Galaxy Outdoor Advertising, Inc.

4180 SOUTH STATE STREET - PHONE 262-2531  
SALT LAKE CITY, UTAH 84107

In consideration of the sum of 50.00 FIFTY & NO dollars  
per annum, payable as follows: Advance

the undersigned lessor, having full right and authority in the premises, hereby  
leases to the Galaxy Outdoor Advertising, Inc., lessee, its successors or assigns, ex-

clusively with the privilege of access to and upon the premises known as one location

Across from State Rd Shop on Hwy

for the erection and maintenance of advertising signs from the 1 day of  
Feb 1971 to the 1st day of Feb

1972 and on like terms for the succeeding years, unless terminated as hereinafter  
mentioned.

It is expressly agreed that the lessor may order the advertising signs removed at any time during the  
life of this contract by giving the lessee thirty days written notice that the property is sold or is to be  
improved by the erection of buildings thereon, and in such case, the lessor shall refund, pro-rata, the  
unearned portion of prepaid rental, or by the lessee, by giving the lessor thirty days written notice. If,  
in the opinion of the lessee, the said space becomes in any way obstructed, this lease may, at the option  
of the lessee, be terminated and lessor will refund the unearned portion of prepaid rental. All materials  
placed upon this property under this lease shall remain the property of the lessee and may be removed  
by the lessee at any time.

Accepted:

Galaxy Outdoor Advertising, Inc.

B- Richard P. [Signature]

[Signature] Owner  
Tenant  
Agent

3496503610E  
Address

Tab C

**Reagan Outdoor Advertising**  
4180 South State, Salt Lake City, Utah 84107  
*Terry Reed*

Page 1

This agreement made and entered into by the undersigned lessor, (the "Lessor") and by Reagan Outdoor Advertising, (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 February, 1982 at option of lessee, upon the following described land, together with ingress and egress to and upon the same, located in the county of Summit State of Utah and more particularly described as

follows: State Hwy 224 across from state Hwy sheds e/o Kimball Jct.  
A State Hwy 224 300' e/o State Hwy shed, e/o Kimball Jct.

(Lessee may place on or attach to this instrument, subsequent to execution, a metes and bounds description of the location.)  
Lessee shall pay lessor the amount of \$ 200.00 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 shall have the right to terminate this lease at any time during the term of this lease if: (a) Lessor builds or develops on the property where the sign(s) structure(s) is situated; or (b) In the event Lessor sells the premises, the buyer of said premises has the right to terminate this lease within thirty (30) days immediately following recordation of deed of sale, if buyer gives lessee written notice of termination. Lessee will remove its sign(s) within thirty (30) days after receiving a written copy of the deed or valid building permit together with prepaid unearned rent. If any portion of the property is not utilized for such buildings, Lessee has the option to use the remaining portion on the same terms.

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 Lessor shall decide during the term of this lease to sell the premises described herein, Lessor shall give written notice to Reagan of the terms and price offered by a third party. Reagan shall be entitled for thirty (30) days to acquire the premises on the terms and conditions in said notice. If Reagan does not exercise said right of purchase, the Lessor shall not sell the premises on other terms for six (6) months. Thereafter, Reagan shall have the same right as to any subsequent offer to purchase. 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 10 day of February, 1982

LESSEE: REAGAN OUTDOOR ADVERTISING *Terry Reed 2/10/82*

LESSOR: Kimball Junction Properties  
c/o Bailey & Sons  
P.O. Box 1083, Salt Lake City, Utah 84110  
Mailing Address

STATE OF UTAH  
COUNTY OF \_\_\_\_\_

ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_  
the signer of this foregoing instrument, who duly acknowledged to me that he executed the same.

My Commission Expires: \_\_\_\_\_ Notary Public residing at \_\_\_\_\_

STATE OF UTAH  
COUNTY OF \_\_\_\_\_

ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_  
who, being by me duly sworn, did say that he is the \_\_\_\_\_  
of REAGAN OUTDOOR ADVERTISING, that the foregoing instrument was signed in behalf of said  
corporation \_\_\_\_\_  
by authority of its by-laws, and said \_\_\_\_\_  
acknowledged to me that said corporation executed the same.

My Commission Expires: \_\_\_\_\_ Notary Public residing at \_\_\_\_\_

STATE OF UTAH  
COUNTY OF \_\_\_\_\_

ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_  
who, being by me duly sworn, did say that he is the \_\_\_\_\_  
of \_\_\_\_\_, that the foregoing instrument was signed in behalf of said corporation by authority of its  
by-laws, and said corporation executed the same.

My Commission Expires: \_\_\_\_\_ Notary Public residing at \_\_\_\_\_



## Outdoor Advertising

4180 South State, Salt Lake City, Utah 84107

Page 1

This agreement made and entered into by the undersigned lessor, (the "Lessor") and by Reagan Outdoor Advertising, (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 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at option of lessee, upon the following described land, together with ingress and egress to and upon the same, located in the county of \_\_\_\_\_, State of Utah and more particularly described as

follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Lessee shall pay lessor the amount of \$\_\_\_\_\_ 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 shall have the right to terminate this lease at any time during the term of this lease if: (a) Lessor builds or develops on the property where the sign(s) structure(s) is situated; or (b) In the event Lessor sells the premises, the buyer of said premises has the right to terminate this lease within thirty (30) days immediately following recordation of deed of sale, if buyer gives lessee written notice of termination. Lessee will remove its sign(s) within thirty (30) days after receiving a written copy of the deed or valid building permit together with prepaid unearned rent. If any portion of the property is not utilized for such buildings, Lessee has the option to use the remaining portion on the same terms.

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 Lessor shall decide during the term of this lease to sell the premises described herein, Lessor shall give written notice to Reagan of the terms and price offered by a third party. Reagan shall be entitled for thirty (30) days to acquire the premises on the terms and conditions in said notice. If Reagan does not exercise said right of purchase, the Lessor shall not sell the premises on other terms for six (6) months. Thereafter, Reagan shall have the same right as to any subsequent offer to purchase. 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 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

LESSEE: REAGAN OUTDOOR ADVERTISING

LESSOR: \_\_\_\_\_

Tab E

PRINCE, YEATES & GELDZAHLER  
Jon C. Heaton (1444)  
Ronald E. Nehring (2374)  
Robert G. Wing (4445)  
Attorneys for Plaintiffs  
City Centre I, Suite 900  
175 East Fourth South  
Salt Lake City, Utah 84111  
(801) 524-1000

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

COPY

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JOHN W. JARMAN and HELENE B.	:	
JARMAN,	:	
	:	
Plaintiffs,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
	:	
vs.	:	
	:	
REAGAN OUTDOOR ADVERTISING	:	Civil No. 9636
COMPANY,	:	(Judge Michael R. Murphy)
	:	
Defendant.	:	

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The above-captioned matter came on for trial without a jury before the Honorable Michael R. Murphy sitting in Coalville, Utah on September 9, 1988. Plaintiffs were represented by Ronald E. Nehring. Defendant was represented by Stanley J. Preston. The Court received the testimony of witnesses and documentary evidence. Having considered the same, together with the arguments of counsel, the Court, pursuant to Rule 52 of the Utah Rules of Civil Procedure,

hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs and defendant entered into a Lease dated February 1, 1982. The Lease was drafted in its entirety by defendant.

2. The Lease describes two specific locations on real property owned by the plaintiffs upon which defendant was authorized to locate two billboards.

3. Prior to the execution of the Lease between plaintiffs and defendant, Galaxy Outdoor Advertising, Inc., an entity subsequently acquired by the defendant, entered into two leases with plaintiffs' predecessor in interest. Each of these leases authorized the placement of one billboard on a specific site--the site occupied by the billboards at the time the Lease between plaintiffs and defendant was signed.

4. Based upon the property description in the February 1982 Lease, the fact that the billboards were in place at the time the Lease was signed, and based upon the testimony of Mr. Jarman that he intended to lease defendant only the property upon which the billboards were situated, the Court finds that the parties intended the Lease to continue the right of the defendant to maintain the billboards in their existing locations.

5. The Court finds that the Lease of February 1, 1982 is ambiguous and thus subject to the introduction and consideration of parol evidence to aid in its interpretation.

6. The Court finds that plaintiffs did not intend to grant defendant a leasehold interest in the entire parcel of property owned by him in Snyderville, Utah.

7. In late 1987, the Utah Department of Transportation took possession of the land upon which the billboards were situated.

8. Defendant removed the billboards from the locations they occupied upon the execution of the 1982 Lease then moved them to other locations on plaintiffs' property without the knowledge or consent of the plaintiffs.

#### CONCLUSIONS OF LAW

1. The Lease executed by plaintiffs and defendant dated February 1, 1982 is ambiguous as a whole. For example, under the interpretation of the Lease urged by defendant, the Lease could never be terminated so long as there remained sufficient undeveloped land upon which to position two billboards. The Lease, which was drafted by the defendant and against whom ambiguous terms must be construed, appears to have been prepared for the purpose of leasing property upon which signs had not yet been erected.

2. Under the terms of the Lease and consistent with the intention of the parties, defendant was authorized to maintain its billboards only on two specific locations and was not authorized to move one or both to any other site on plaintiffs' property.

3. Defendant's relocation of its billboards on plaintiffs' property other than that described in the Lease constitutes a trespass.

4. Defendant is ordered to remove the billboards now located on plaintiffs' property no later than 45 days from the date of the Judgment herein.

DATED this 18<sup>th</sup> day of October, 1988.

BY THE COURT:

MS  
Michael R. Murphy  
District Court Judge

Approved as to Form:

\_\_\_\_\_  
Attorney for Defendants

Tab F

STANLEY J. PRESTON (A4119)  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Defendant  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY  
STATE OF UTAH

---

JOHN W. JARMAN and HELEN B.  
JARMAN,

Plaintiffs,

v.

REAGAN OUTDOOR ADVERTISING  
COMPANY,

Defendant.

MOTION TO AMEND FINDINGS  
OF FACT AND CONCLUSIONS  
OF LAW

Civil No. 9636

Judge Michael R. Murphy

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Pursuant to Rule 52(b) of the Utah Rules of Civil Procedure, defendant moves this Court to amend its Findings of Fact and Conclusions of Law entered on October 18, 1988, on the grounds that there is insufficient evidence as a matter of law to support said Findings and Conclusions.

This Motion is based on the points stated below, the files and records of this action, and the evidence introduced during trial. Specifically, defendant objects to and requests that the Court amend the following Findings and Conclusions.

Findings ¶¶ 2 and 3. In these paragraphs, the Court finds that the February 1, 1982 Lease between the parties describes

"two specific locations" on the real property, and that the preceding leases authorized the placement of one billboard each "on a specific site." These Findings are contrary to the evidence at trial as follows:

(a) The Lease by its terms describes approximate locations for two signs along State Highway 224.

(b) Terry Reed testified at trial that during the negotiation of the February 1, 1982 Lease, Mr. Jarman expressed concern over whether the Lease would continue in the event of development or sale of the property. Accordingly, these two concerns were addressed in the Lease, which by its terms, provides for relocation of the signs. Specifically, the Lease gives defendant the option to use the remaining portions of property which are not developed.

(c) While Mr. Reed testified that relocation was discussed during the negotiations for the Lease, Mr. Jarman's testimony was only that he could not recall whether it was discussed or not.

Based on the foregoing, defendant asserts that the Lease was not limited "to specific locations."

Finding ¶ 4. Here the Court states that "based upon the testimony of Mr. Jarman that he intended to lease defendant only the property upon which the billboards were situated, the Court finds that the parties intended the Lease to continue the right of the defendant to maintain the billboards in their

existing locations. These findings are incomplete based upon the evidence at trial and should be amended to further state that Mr. Jarman's intent was never communicated to defendant. Moreover, for the reasons set forth above, defendant asserts that the weight of the evidence supports its position that it could maintain the billboards in their existing locations or relocate them to other locations along the highway in the event of development or sale.

Finding ¶ 5. Defendant objects to the Court's finding that the Lease is ambiguous. For the reasons set forth above, it is defendant's position that the Lease specifically provides for relocation and is not ambiguous as to the manner in which the Lease can be terminated.

Finding ¶ 6. Here the Court finds "that plaintiffs did not intend to grant defendant a leasehold interest in the entire parcel of property owned by him in Snyderville, Utah." This finding implies that it was defendant's position that it did have a leasehold interest in the entire parcel of property. Defendant did not urge such an interpretation of the Lease. It is defendant's position that the Lease granted defendant the right to maintain two signs along the road, which signs could be relocated to other locations alongside the road if the property on which the signs are currently located were sold or developed. The signs only have value if they are located next to the road where they can be seen by passing

motorists. Defendant did not assert that it could relocate the signs anywhere on the property. Rather, the Lease was like an easement which granted them the right to locate two signs along the road on undeveloped property owned by Mr. Jarman.

Finding ¶ 7. Here the Court finds that in 1987, UDOT "took possession of the land upon which the billboards were situated." This finding is directly contrary to the uncontested evidence that only a portion of the property upon which the billboards were located was actually sold to the State. In fact, the evidence established that the property line for the property purchased by the State went through the signs and, the eastern post of each sign was outside the property sold.

Finding ¶ 8. Here the Court finds that "defendant removed the billboards from the locations they occupied upon the execution of the 1982 Lease and moved them to other locations on plaintiffs' property." Defendant objects to this finding because it implies that the billboards were removed to entirely different locations. This finding is contrary to the evidence, which established that the signs were moved directly east approximately 15 feet, and that a portion of each sign still occupied property which it had previously occupied in its prior location.

Conclusion ¶ 1. Again, defendant disputes the Court's conclusion that the Lease is ambiguous as a whole. Defendant also disagrees with the Court's conclusion "that the defendant's

interpretation of the Lease was that the Lease could never be terminated so long as there remained sufficient undeveloped land upon which to position two billboards." This is an exaggeration and overstatement of defendant's position at trial. As noted above, defendant asserts that the Lease was similar to an easement which granted it the right to locate two billboards alongside the road. There was no intent expressed by either party during the negotiations to limit the billboards to the exact and specific locations upon which they were located, and such an interpretation is contrary to the terms of the Lease which provides for relocation.

With respect to termination, the Court will recall that Mr. Jarman specifically stated that it was his understanding that the Lease could only be terminated if the entire parcel of property upon which the billboards were located was sold. The evidence at trial established that the entire parcel of property upon which the billboards were located was not sold to the State and, thus, even under Mr. Jarman's interpretation the Lease could not be terminated because UDOT had not taken possession of the entire parcel of land upon which the billboards were situated. Accordingly, defendant requests that the Court needs to include findings and conclusions that Mr. Jarman did not have the right to terminate the Lease and declare a trespass because the entire parcel of property was not sold to the State.

Conclusion ¶ 2. For the reasons set forth above, defendant states that the Court's conclusion that the Lease authorized defendant to maintain its billboards "only on two specific locations and was not authorized to move one or both to any other site on plaintiffs' property" is contrary to the evidence because the Lease contemplated relocation of the billboards, because there was evidence that this was discussed when the Lease was entered into, and because, even under Mr. Jarman's interpretation, the Lease could not be terminated unless the entire parcel of property was sold.

Conclusion ¶ 3. For the reasons set forth above, defendant asserts that the Court's conclusion that relocation constitutes a trespass is contrary to the evidence at trial.

DATED this 28th day of October, 1988.

SNOW, CHRISTENSEN & MARTINEAU

By: 

STANLEY J. PRESTON

Attorneys for Defendant

AFFIDAVIT OF SERVICE

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

JILL R. BROWN, being duly sworn, says that she is employed  
in the law offices of Snow, Christensen & Martineau, attorneys  
for       Defendant

herein; that she served the attached \_\_\_\_\_  
Motion to Amend Findings of Fact and Conclusions of Law

(Case No. 9636, Summit County Court)  
upon the parties listed below by placing a true and correct  
copy thereof in an envelope addressed to:

Attorneys for Plaintiffs:

Jon C. Heaton  
Ronald E. Nehring  
Robert G. Wing  
PRINCE, YEATES & GELDZAHLER  
175 East 400 South, Suite 900  
Salt Lake City, Utah 84111

and causing the same to be mailed first class, postage prepaid,  
on the 28th day of October, 1988.

Jill R. Brown

SUBSCRIBED AND SWORN TO before me this 28th day of  
October, 1988.

Nancy D. Hughes  
NOTARY PUBLIC  
Residing in the State of Utah

My Commission Expires:

1/22/91