

1998

# Wesley Clock and Anne Clock v. John F. Green and Larue Green : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

IN THE UTAH COURT OF APPEALS  
DOCUMENT

WESLEY CLOCK and )  
ANNE CLOCK, )  
Plaintiffs-Appellees )

vs )

JOHN GREEN and )  
LARUE GREEN, )  
Defendants-Appellants )

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DOCKET NO. 981612-CA

Court of Appeals  
Docket No. 981612-CA

Priority 15

APPELLANTS' BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY

The Honorable Homer F Wilkinson, District Judge

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FILED

APR 13 1999

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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WESLEY CLOCK and	)	
ANNE CLOCK,	)	APPELLANTS' BRIEF
	)	
Plaintiffs-Appellees	)	
	)	
vs	)	
	)	
JOHN F GREEN and	)	
LARUE GREEN,	)	Court of Appeals
	)	Case No. 981612-CA
Defendants-Appellants	)	

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**DESIGNATION OF THE PARTIES**

The Plaintiffs-Appellees WESLEY CLOCK and ANNE CLOCK are natural persons, husband and wife, and purchasers of real property pursuant to a written "lease-option" agreement with the Defendants-Appellants JOHN F GREEN and LARUE GREEN, natural persons, husband and wife, as sellers thereto.

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None

**STATEMENT OF JURISDICTION OF THIS COURT**

Jurisdiction of this Court is granted pursuant to the provision of Section 78-2a-3(2)(j), Utah Code, and the "pour over" Order of the Utah Supreme Court, dated as of 2 March 1999, transferring this case to the Court of Appeals.

**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

This appeal and the predicate factual and legal situation in which it arose presents the following issues:

1. Whether the trial court misinterpreted the contract and/or misapplied the law in enforcing the same, by failing to give any effect to the "selling price of \$81,5000 at 10 1/2% interest" clause concerning the purchase price if and when the "option" was actually exercised and which characterized the purchase transaction as "a loan".

2. Whether the trial court erred in failing to take into account the provisions of Sections 15-1-1, 15-1-3 and 15-1-4, Utah Code, which require the assessment of interest on judgments, especially when the contract upon which the judgment was based provides for "interest", at a stated amount, on the forbearance transaction which was characterized as a "loan".

The construction and interpretation of an unambiguous, written contract is a matter of law, to be decided by the court. **Kimball vs Campbell**, 699 P.2d 714 (Utah Supreme Court 1985); **Morris vs Mountain States Telephone and Telegraph Company**, 658 P.2d 1199 (Utah Supreme Court 1983).

Whether the terms of a contract are ambiguous is a question of law. **Wade vs Stangl**, 869 P.2d 9, 12 (Utah Court of Appeals 1994); **Equitable Life & Casualty Insurance Company vs Ross**, 849 P.2d 1187, 1192 (Utah Court of Appeals 1993), cert denied 860 P.2d 943 (Utah Supreme Court 1993).

Whether the trial court properly interpreted an unambiguous contract is a question of law. **Allstate Insurance Company vs Liberty Mutual Insurance Group**, 868 P.d 110, 112 (Utah Court of Appeals 1994); **LMV**

**Leasing, Incorporated vs Conlin**, 805 P.2d 189, 192 (Utah Court of Appeals 1991).

Whether the trial court properly interpreted (or applied) a statute is a question of law reviewed for correctness. **Ong International (U.S.A.), Incorporated vs 11th Avenue Corporation**, 850 P.2d 447, 450 (Utah Supreme Court 1993); **Bennion vs Graham Resources, Incorporated**, 849 P.2d 569, 570 (Utah 1993); **Jacobsen Investment Company vs State Tax Commission**, 839 P.2d 789, 790 (Utah Supreme Court 1992).

A trial court's conclusions of law in civil cases are reviewed for correctness. **Wade vs Stangl**, 869 P.2d 9, 12 (Utah Court of Appeals 1994); **Allstate Insurance Company vs Liberty Mutual Insurance Group**, 868 P.2d 111, 112 (Utah Court of Appeals 1994);.

This standard of review has also been referred to as a "correction of error standard". **Jacobsen Investment Company vs State Tax Commission**, 839 P.2d 789, 790 (Utah Supreme Court 1992); **Sanders vs Ovard**, 838 P.2d 1134, 1135 (Utah Supreme Court 1992); **Commercial Union Associates vs Clayton**, 863 P.2d 29, 36 (Utah Court of Appeals 1993). "Correction of error" means that no particular deference is given to the trial court's ruling on questions of law. **Provo River Water Users' Association vs Morgan**, 857 P.2d 927, 931



(Utah Supreme Court 1993); **Higgins vs Salt Lake County**, 855 P.2d 231, 235 (Utah Supreme Court 1993). The "correction of error" standard means that the appellate court decides the matter for itself and does not defer in any degree to the trial judge's determination of law. **State vs Deli**, 861 P.2d 431, 433 (Utah Supreme Court 1993); **Howell vs Howell**, 806 P.2d 1209, 1211 (Utah Court of Appeals 1993).

#### **STATEMENT OF THE CASE**

In July 1991 the Plaintiffs---Wesley Clock and Anne Clock, husband and wife, as purchasers [hereinafter sometimes referred to as "the Buyers"]---negotiated with the Defendants---John Green and LaRue Green, husband and wife, as sellers [hereinafter sometimes referred to as "the Sellers"]---for the "option" purchase of a parcel of improved residential property located in Salt Lake County. A one-page, hand-written agreement, consisting of a single paragraph of text, was prepared and signed by the parties. The "option" Agreement [hereinafter sometimes referred to as "the Agreement"] contained certain "lease-purchase" provisions under which the Buyers were allowed to reside on the premises.

The 1991 hand-written "Agreement" in its entirety provides:

7-29-1991

I Wesley Clock and Anne Clock agree to pay \$675.00 per month Plus Sewer and water. There is a \$350.00 deposit plus \$1,000 for a lease option to buy. Starting July 29, 1991 prorated to Aug. 4, 1991, the selling price to be \$81500 **at 10 1/2% interest**. When option is picked up, the \$350.00 plus the \$1,000.00 will be **applied to the down Payment of \$5,000 or more**. The Seller will re-roof and make the carport into a double garage, replace the back door. Other than the things above, the Clocks will take care of any repairs during the option period. There will be a **balloon payment due on the balance of the loan** Aug 5, 1996. The rent to be pro-rated from July 29, 1991 to Aug 4, 1991. Rent to begin on Aug 5, 1991. August 2, \$500.00; Aug 5, \$700.00. Balance by Aug 20, 1991. If the Clocks do not buy they will be renters and Money will not be refunded.

/s/ Anne Clock  
/s/ Wesley Clock  
/s/ John F. Green  
/s/ LaRue Green

Emphasis added. [RECORD at 0005 and 0042.] [A photocopy of the Agreement is included herein as ADDENDUM #1.]

Pursuant to the "rental" provisions of the Agreement, the Greens (as Sellers) allowed the Clocks (as purchasers) to reside in the premises. During the period 1991 to 1996, the Clocks "paid rent" to the Greens. In April 1996 the Clocks notified the Greens that they (the Clocks) intended to exercise the "option" for the purchase of the real estate. [RECORD at 0007.] The Greens---citing the Clocks' failure to make the required "down payment" in a timely fashion and the Clocks' non-compliance with other provisions of

the contract---refused to convey title to the real estate, said refusal thus precipitating the instant litigation.

The District Court initially adjudicated the case pursuant to jointly-filed motions for summary judgment. The Plaintiffs moved for summary judgment on the basis of their averments that they (as Buyers) had presented a notice of intent to exercise the "option" within a timely fashion. [RECORD at 0019 thru 0026; 0058 thru 0063.] The Defendants moved for summary judgment in their favor on the basis that the Plaintiffs' notification was defective, in that the Plaintiffs were in breach of the agreement because they had failed to make the required down payment and because the option was not exercised in a timely manner. [RECORD at 0030 thru 0042.]

The specific issue of the price to be paid---as required by the "at 10 1/2% interest" phrase---was NOT directly raised or adjudicated. The District Court ruled in favor of the Plaintiffs. [RECORD at 0068 thru 0069.] The Defendants appealed the 1996 judgment. [RECORD at 0074-0075.] The Utah Supreme Court "poured-over" [RECORD at 0077] the appeal to the Utah Court of Appeals, which issued an unpublished opinion, affirming the District Court's judgment in favor of the

Plaintiffs (purchasers). [RECORD at 81-82.] [A copy of the original "MEMORANDUM DECISION" of the Court of Appeals is attached hereto as APPENDIX 3.] The Utah Supreme Court ultimately denied the Defendant's Petition for Writ of Certiorari. [RECORD at 83.]

Following the filing of the first appeal, the Plaintiffs (as purchasers) took no action to comply with provisions of the agreement concerning the exercise of the "option" and/or the Court's judgment upholding the option and its exercise. The Plaintiffs tendered no money to the Defendants, although they continued to reside upon the premises.

On remand, the District Court---over the objection of the Defendants (sellers)---entered judgment against the Defendants, ordering them to convey to the Buyers the real estate, at the purchase price of \$81,500. [RECORD at 115-116.] [A photocopy of the 1998 "JUDGMENT AND ORDER" is included herewith as ADDENDUM 4.] The "at 10 1/2% interest" clause (pertaining to the purchase price) was given NO EFFECT by the trial court. This latter judgment---which is the basis of the instant appeal---failed to take into account the provisions of agreement concerning the "at 10 1/2% interest" as such affected (i.e. increased). The District Court also seemingly ignored the contractual provisions

characterizing the purchase transaction as a "loan". The judgment also failed to take into account the provisions of Sections 15-1-1 and 15-1-4, Utah Code, pertaining to the assessment of any interest.

#### **SUMMARY OF ARGUMENTS**

The Defendants' arguments are summarized as follows:

1. The "selling price of \$81,500 **at 10 1/2% interest**" (emphasis added) is clear on its face of the Agreement. Given the long-standing rules of contract construction, this unambiguous phrase must be given some meaning. The ONLY meaning and application attributable thereto is that the purchase price was to increase at the rate of 10 1/2% per year. The physical placement of the phrase within the Agreement tends to that conclusion; the grammatical and syntax connection of the phrase to the "selling price" leads to that single conclusion. The trial court ignored the provision and awarded judgment without reference thereto. The Plaintiffs-Appellants (now standing to reap an unintended windfall) desire to have the Court ignore and disregard the provision. But the written text is there; it cannot be ignored or explained away. Its

import must be incorporated into the judgments.

2. In similar vein, the trial court ignored the pertinent Utah statutes which require that judgments bear interest conforming to the written agreements upon which those judgments are based. The entered-judgment (upon which this appeal is based) is absolutely void of any provision which adheres to the statutory mandate.

## **ARGUMENT**

### **I**

#### **TRIAL COURT ERRED IN FAILING TO APPLY THE "AT 10 1/2% INTEREST" PROVISIONS OF THE AGREEMENT RELATING TO THE SELLING PRICE**

The first source of inquiry in a contract interpretation case is the document itself, considered in its entirety. **Hal Taylor Associates vs Unionamerica, Incorporated**, 657 P.2d 743 (Utah Supreme Court 1982); **Larrabee vs Royal Dairy Products Company**, 614 P.2d 160 (Utah Supreme Court 1980). In interpreting the terms of a contract, the reviewing court must look to the agreement as a whole and to the circumstances, nature and purpose of the contract. **Utah State Medical Association vs Utah State Employees Credit Union**, 655 P.2d 543 (Utah Supreme Court 1982). The contract should

be interpreted so as to harmonize all of its provisions. **Jones vs Hinkle**, 611 P.2d 733 (Utah Supreme Court 1980). If possible, ALL of the terms of the contract should be given effect. **G.G.A., Incorporated vs Leventis**, 773 P.2d 841 (Utah Court of Appeals 1987); **Big Cottonwood Tanner Ditch Company vs Salt Lake City**, 740 P.2d 1357 (Utah Court of Appeals 1987), certiorari denied 765 P.2d 1277.

In the case at bar, there are at least FOUR EXPRESS PROVISIONS which clearly indicate that the agreement was to bear interest:

1. The purchase price provision states: "the **selling price to be \$81,500 at 10 1/2% interest**" ...
2. There is to be a "down payment of \$5,000 or more" to be paid;
3. There is to be a "balloon payment"; and
4. The "balloon payment" is to be "due on the balance of the loan".

From the text of the agreement itself, it clearly appears the parties to the transaction contemplated a "loan"-type transaction. And "loans" almost-universally contemplate---and, as in this case, SPECIFY---the payment of interest against the loaned amount, particularly when the contract says it so clearly!

[We are NOT here dealing with an "ambiguity" situation. The "10 1/2% interest" in connection with

the "selling price" is unquestionably clear; it has but one interpretation. The Buyers have advanced no contradictory, reasonable meaning, interpretation or application for the phrase "at 10 1/2% interest". Thus, the rules of construction for "ambiguities" do NOT come into play in the instant analysis.]

### **A**

The Buyers have vigorously contested their desire to enforce the "option" according to its terms, but now seek to have the Court ignore---as the trial court did---the "interest" provisions applicable to the transaction.

If the phrase "the selling price to be \$81500 **at 10 1/2% interest**" doesn't mean that the selling price is to increase---as the Sellers so contend---on an annual basis, then what possible meaning does the phrase "at 10 1/2% interest" mean? The Buyers advance no reasonable interpretation; they merely choose to ignore the phrase. However, disregarding the phrase does violence to the long-established rules of contract interpretation: that ALL the provisions of the contract be given meaning.

The trial court refused to give the phrase any meaning. [Even if the trial court refused to give the provision meaning during the "option period" (i.e. 1991



to 1996), there has to be at least some period of time when the phrase has some effect. The case is almost THREE YEARS AFTER the "option" has been "exercised". Yet the Buyers have yet to fully tender the purchase price! Even if the Court were to ignore the accrual of interest during the 5-year option period (which, for reasons outlined below, is contrary to the intentions of the parties), the Court must---as a minimum---recognize that the contract provided for "10 1/2% interest" following the exercise of the option. Otherwise, the Buyers achieve an interest-free loan for a three-year period or longer.

It is also incongruous to expect that the "at 10 1/2% interest" phrase applies to interest against the selling price AFTER the "option" has been exercised. If the "option" is properly exercised, the real estate is promptly purchased and the Sellers are promptly paid: there is no realistic opportunity for interest to ever accrue (at least in meaningful amounts). Thus, the "at 10 1/2% interest" phrase was not contemplated by the parties for the "post-exercise" situation; the only other situation in which the phrase has any meaning or application is those "pre-exercise" situations---the situations in which the option is not exercised for a considerable time following the execution of the

original contract. That is exactly what we have here and that is exactly why the trial court should have included the "interest" in the judgment(s) ordering the sale.

That the parties agreed to the "10 1/2 interest" to be applied to the "selling price", as applied from the very beginning, can be discerned from the conduct of the parties as well as the face of the document. If, as the Buyers assert, the phrase has NO MEANING or application (either pre-1996 or post-1996), then why would the Sellers go to such extent to put the provision in the contract, directly tied to the purchase price? What possible **other meaning**---any meaning---can the provision have? Why would the Sellers---so seemingly concerned about every dollar involved in the transaction that the parties "prorate" the "rents" down to a five-day period, which apparently increase from \$500 per month (if paid on August 2nd) to \$700 (if paid on August 5th)? Why would the parties---and particularly the Sellers---worry about specifying that the back door is to be repaired (at an undisclosed price, but arguably measured at most in the couple hundred dollar range), and then literally give away tens of thousands of dollars in an interest-free "loan", for as long as five years (as the trial court

originally ruled) and an ADDITIONAL THREE YEARS as the Buyers would have the Court now rule? [Against the \$81,500 "selling price", the "10 1/2% interest" for a single year is approximately \$8500; for the three years 1996 to 1999, the post-judgment interest accruing against the "selling price" which still has NOT YET BEEN PAID is in excess of \$25,000! And that's \$25,000 the Buyers don't want to pay! But its \$25,000 that the contract obligates them to pay. If the contract is not so interpreted, then the rule of construction that "ALL provisions of the contract" are to be given meaning (as per **Leventis**, supra, and **Big Cottonwood**, supra,) is ignored.

## **B**

Another method of approaching the transaction and the meaning of the contract---and the operative effect of its provisions, ALL of them---would be to engage in a couple of hypothetical examples which illustrate, in principle, the "at 10 1/2% interest" provision applicable to the "selling price".

Hypothetical #1: The "option" is exercised a mere two months after the contract is signed. In this case, the purchase price is essentially the \$81,500 specified; the 10 1/2% interest for 60 days is relatively minor. The

Sellers get the \$81,500, which they then can invest---at prevailing "market rates" and "life goes on"! But their investment continues to earn money.

Hypothetical #2: The Buyers exercise the "option" a year later. They must pay about \$90,000 for the real estate. But that's the price they'd pay---whether they or somebody else was renting the property---for it anyway, because that's what "the market" would demand!

Hypothetical #3: In this example, the Buyers don't exercise the option for five years and don't pay anything for three years afterward! [That's what has factually happened and continues to happen, even now!] The Buyers then purchase the residence in 1999---using 1999 "dollars"---for a purchase price set in 1991. It doesn't make sense! And not only does it not make sense; such a result---which is what the Buyers now want---goes against the face of the very contract they seek to have enforced! [Under this "hypothetical", the Sellers lose \$60,000+, over an 8-year period!]

Inflation (albeit in moderate rates) and appreciation of real estate in the Salt Lake Valley

have been a "fact of life" so long with the metropolitan Salt Lake City area that it is almost counter-intuitive to deny their existence! That same inflation and/or real estate appreciation could almost be "judicially noticed". Why, then, is it so difficult to factor such into the actual "selling price", when the same is EXPRESSLY PROVIDED FOR IN THE FACE OF THE AGREEMENT?

The phrase "selling price at 10 1/2% interest" must be given meaning. The only reasonable meaning---from the text itself and from the parties own external conduct---is that it refers to the annual rate of interest at which the "loan" was to be paid by the Buyers. It can have no other reasonable meaning.

IF the Buyers are able to advance an interpretation to the "10 1/2% interest" phrase (as connected to the selling price), we have the result that they are allowed to purchase---now, in 1999---the real estate for the price it would have sold for in 1991! The phrase is simply ignored! On the other hand, if the Sellers' interpretation is followed, the Sellers receive a reasonable return on their investment (i.e. forbearance on the "loan"): 10 1/2%. That rate of interest is not, per se, unreasonable or unrealistic; the "statutory rate" at the time was (and is) 10% [per

Section 15-1-1(2), Utah Code. Thus, had the option been exercised a year later (in 1992), the "selling price" would be about \$90,000. In 1993, it would be another "10 1/2%" greater, about \$98,500; in 1994, \$107,000; and so on. In 1999, the purchase price would have been in the \$130,000-range: again, reflective of the inflationary or "appreciation" factors inherent in this type of situation. If the Buyers' approach is followed, the Sellers must sell in 1999 (or even 1996) at a price in 1991 dollars; NO INTEREST is allowed, even though the contract clearly provides for such, as tied to the "selling price". On the other hand, if the Sellers' interpretation is followed, the "selling price" is approximately \$130,000. Is such fair? Yes! Is it what the contract, on its face, provides? Yes! Is it what the parties reasonably agreed to? Yes!

Where courts have to choose between conflicting interpretations to a contract, the interpretation which will bring an equitable result will be preferred over one which brings about an inequitable result. **First Security Bank of Utah, N.A. vs Maxwell**, 659 P.2d 1078 (Utah Supreme Court 1983). The interpretation and approach advanced by the Buyers and adopted by the trial court leads but to that inequitable result, that the Sellers must, in 1999, accept \$81,500 when the

contract provided they should receive about \$130,000!

It's not reasonable to expect that for the mere payment of a \$1,350 the Buyers would be able to "lock-in", for a five-year period, the purchase of the real estate worth \$81,500. The "five-year period" was, as the previous decisions have affirmed, for the period in which the "option" could be exercised; it is a totally different thing to construe the contract to hold the "selling price" constant for that entire 5-year (or, as the situation has become, 8-year) period! Such flies in the face of logic and CONTRADICTS THE CLEAR MEANING OF THE WRITTEN TERMS!

### **C**

A third approach is to attribute the 10 1/2% interest to those amounts unpaid---and thus accruing interest---from the 1996 "judgment" first entered by the trial court, as to when the "option" was first exercised. [In the intervening three years since that exercise, the amount of the "interest" is substantial: in excess of \$25,000.]

### **D**

In addition to the "contract" requirements, the Court should impose the stated (and agreed-upon) interest rate upon the unpaid balance (from the time the option was exercised), as is required by statute,

as explained in Point II, below.

## II

### TRIAL COURT ERRED IN FAILING TO PROVIDE FOR INTEREST ON THE JUDGMENT RESULTING FROM THE PROVISIONS OF THE CONTRACT OR UNDER THE UTAH STATUTE

It is without dispute that from 1991 to when the "option" would be "exercised", the Sellers would "forebear" in the receipt of monies as proceeds from the sale of the home.

Section 15-1-1, Utah Code, provides:

(1) The parties to a lawful contract **may agree upon any rate of interest for the loan or forbearance of any money, goods or chose in action that is the subject of their contract.**

(2) Unless parties to a lawful contract specify a different rate of interest, the legal rate of interest for the loan or forbearance of any money, goods, or chose in action shall be 10% per annum.

. . .

Section 15-1-3, Utah Code, provides:

Whenever in any statute or deed, **or written or verbal contract**, or in any public or private instrument whatever, **any certain rate of interest is mentioned and no period of time is stated**, interest shall be calculated at the rate mentioned **by the year.**

Emphasis added.

In the instant situation, the "lease-option" agreement specifies "10 1/2% interest". It is reasonable to construe the contract that the "selling



price" is to be adjusted by that amount. [Whether the transaction is also characterized as a "loan" probably doesn't matter. What does matter is that the Agreement clearly contains the provision and, in light of the contract construction principles identified in Point I, above, the provision MUST BE GIVEN SOME MEANING AND EFFECT!]

Section 15-1-4, Utah Code, provides:

(1) Any judgment rendered on a lawful contract **shall conform to the contract and shall bear interest agreed upon by the parties, which shall be specified in the judgment.**

(2) Other judgments shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

. . .

Emphasis added.

The trial judge is required as a matter of law to award the statutorily mandated rate of interest, even though, with the passage of time, the award has become large. **Mont Trucking, Incorporated vs Entrada Industries, Incorporated**, 802 P.2d 779 (Utah Court of Appeals 1990). Interest is allowed on debts overdue, even in the absence of a statute or contract providing therefor. **Wasatch Mining Company vs Crescent Mining Company**, 7 Utah 8, 24 Pac. 586 (Utah Supreme Court 1890), affirmed 151 US 317, 38 L.Ed. 177 (1894). Under the former provisions of Section 15-1-4 (prescribing

the rate at which "judgments shall bear interest" unless otherwise agreed by the parties), the interest follows the judgment as a matter of law and would be collectible even though the judgment did not so provide. **Dairy Distributors, Incorporated vs Local 976, Western Conference of Teamsters**, 16 Utah 2d 85, 396 P.2d 47 (1964). Where no tender of payment was made, interest accrued on a money judgment during the pendency of a federal appeal and during efforts to obtain further review by the United States Supreme Court. **Woodmont, Incorporated vs Daniels**, 290 F.2d 186 (10th Circuit 1961).

The decision of the Utah Supreme Court in the case of **Dairy Distributors, Incorporated vs Local Union 976, Joint Council 87, Western Conference of Teamsters**, 396 P.2d 47 (Utah Supreme Court 1964), is directly on point and to be controlling. In **Dairy Distributors** the Utah Supreme Court wrote:

Defendants appeal, contending that the prior judgment, having been appealed and affirmed by this court had become final, and that the district court was thereafter without authority to change it. We have no doubt about the correctness of the general rule that when a judgment has become final, the court is without authority to change it. However, an examination of the authorities cited by the defendants will disclose that they do not apply to situations such as the Instant one, where there was merely a correction of an inadvertent omission. *Reece v. Knott*, 3 Utah 451, 24 P. 757; *Nichols v. Union Pac. Railway*

Co., 7 Utah 510, 27 P. 693; DaRouch v. District Court, 95 Utah 227, 79 P.2d 1006, 116 A.L.R. 1147; Lees v. Freeman, 19 Utah 481, 57 P. 411; Frost v. District Court of the Fifth judicial District, 96 Utah 106, 83 P.2d 737; Keller v. Chournos, 95 Utah 31, 79 P.2d 86, will be found to actually support plaintiff's position in recognizing that **the interest follows the judgment as a matter of law.**

Our statute, Sec. 15-1-4, Utah Code Ann. 1953, provides that unless otherwise agreed by the parties, " \* \* \* judgments shall bear interest at the rate of eight per cent per annum." **This interest follows the judgment as a matter of law and would be collectible even though the judgment did not so provide.** See Blair v. Durham, 139 F.2d 260 (6th Circuit 1943). The trial court in no way transgressed its authority in filling in the omission and making the record show what was true under the law anyway. Its action was in conformity with the well-established precept that mere lapse of time will not prevent the court from correcting errors or omissions. We so recognized in the recent case of Kettner v. Snow, 13 Utah 2d 382, 375 P.2d 28, stating that " \* \* \* in proper circumstances where the interests of justice so require, the court has power to act nunc pro tunc, that is, to do an act upon one date and make it effective as of a prior date. It is recognized that clerical errors may be corrected or omissions supplied so the record will accurately reflect that which in fact took place." To the same effect see Cook v. Gardner, 14 Utah 2d 193, 195, 381 P.2d 78.

396 P.2d at 48. Emphasis added.

If the obligation to pay interest follows the (first) judgment "as a matter of law", then there simply was no need to raise that issue at the first appeal.

When Judge Wilkinson refused in 1998---following remand subsequent to the Court of Appeals decision---to

order the assessment of interest against the purchase price to be paid (in 1998), the appealed issue became "ripe".

The irony inherent in the objection of the Plaintiffs-Appellees as to the "interest" issue is the fact that they struggled so hard to convince the Court of Appeals that the "option" contract was enforceable, according to its terms. The Court of Appeals accepted that argument and so held. Now the Plaintiffs-Appellants want to ignore the "interest" provisions.

They (the Plaintiffs) have not been harmed at all. They have been allowed---since 1991---to live in the house, according to the "rental" provisions (i.e. payment of \$675 per month). Since 1996 they have been allowed---per the trial court's order---to live there rent-free, for the last three years!

In the intervening three years that this case has taken "on appeal", what should the purchase price actually be? [As the Court interprets a contract "as a matter of law", the framing of such a rhetorical question---to illuminate the relevant considerations and issues---is nevertheless appropriate.] Whether that purchase price reflects the pre-1996 accruing interest "at 10 1/2% interest" as the "option" contract clearly states---is one question. Whether the "interest"

applies to post-1996 interest is a second---and totally different---question. The Appellants are entitled to a judicial decision on both.

That Judge Wilkinson of the trial court in 1996 refused to require interest at the "10 1/2% interest" as the contract clearly provides IS an appealable issue. [The "judgment" bears interest, "as a matter of law", per **Dairy Distributors**, supra.] That for the intervening two years (1996 to 1998) NO interest was included in the purchase price (finally paid in 1998, but only if Plaintiffs hurry) is presently appealable!

The issue is not whether the judgment is "personal" or for a "sum certain"; this issue is whether the provisions of the statute will be followed, by incorporating the "10 1/2% interest" which so readily appears on the face of the "option" agreement. That's the issue. If the "10 1/2% interest" phrase does not mean exactly this result, then what does the phrase mean? The parties (in 1991) obviously had intended some meaning for it! What simply does it mean? The Plaintiffs, having prevailed on the enforceability of the "option" agreement, cannot now be heard to complain if the "option" is enforced according to its clear import!

The instant "appeal" might have the result that the

Clocks might have to pay more than the \$81,500 price they agreed to in 1991, BUT THAT'S BECAUSE THAT IS WHAT THE "OPTION" CONTRACT THEY SIGNED SAID WAS TO HAPPEN! That the purchase price would increase "at 10 1/2% interest".

So when they finally pay in 1999 ---more than three years after the 1996 date (which was the absolute latest date contemplated by the parties as to the transfer of the parcel), shouldn't the Buyers pay the amount they agreed to? The Sellers think so, and have filed this appeal to enforce the contract, according to its terms.

It appears that Judge Wilkinson (and perhaps even Plaintiffs' counsel) framed up the 1998 "judgment" so as to avoid a situation wherein the Greens might refuse to sign over the necessary conveyances. The 1998 judgment doesn't require that they do! The 1998 "judgment" provides the quiet title vesting upon the deposit of the Plaintiffs' monies with Surety Title. Those Plaintiffs cannot now be heard to complain about "delay" or "clouds on title", because the vesting of time is entirely within their control!

If there is a res judicata or "law of the case" concept applicable to the instant situation, it is that the Plaintiffs cannot now be heard to complain about

the 1998 "judgment". They procured it. They prepared it! That "judgment"---in procedure and substance---was obviously designed to supersede and take the place of the 1996 "judgment".

### **CONCLUSION**


The "option" Agreement clearly provides for the incurring of "10 1/2% interest" against the specified "selling price" for the real estate. The ONLY reasonable interpretation for the provision is that the "selling price" increased, annually, at the "10 1/2% interest" amount, until the option was exercised. [The option is not fully exercised until the funds for the purchase are actually received by the Sellers. Thus, due to the fact that the Buyers still have not tendered the agreed-upon amount, the "10 1/2% interest" still continues to accrue.]

The relevant Utah statutes require the "judgment" to incorporate the "interest rate" stated in the "contract" which is the basis for the judgment. Judge Wilkinson's judgement does not do this. Accordingly, it is the proper subject of an appeal and should be corrected.

The Court of Appeals is entitled AND REQUIRED to construe and interpret the written Agreement (and the express provisions thereof) "as a matter of law" and

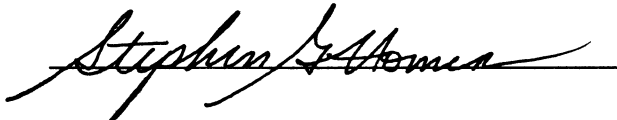
without any deference to the trial court's interpretation! The Court of Appeals should do so: TO GIVE MEANING AND EFFECT to the phrase "selling price of \$81,500 at 10 1/2% interest".

Respectfully submitted this 13th day of April, 1999.

  
STEPHEN G HOMER  
Attorney for Appellants  
JOHN F GREEN and  
LARUE GREEN

**CERTIFICATE OF DELIVERY**

I certify that I caused two copies of the foregoing APPELLANTS' BRIEF to be mailed, first-class postage prepaid, certified mail, return-receipt requested, to Mr Bryan W Cannon, Attorney at Law, 871 East 9400 South, Sandy, Utah 84070, this 13th day of April, 1999.





## ADDENDA

- ADDENDUM 1: 1991 hand-written lease-option Agreement
- ADDENDUM 2: 1996 JUDGMENT AND ORDER
- ADDENDUM 3: 1997 Court of Appeals MEMORANDUM DECISION
- ADDENDUM 4: 1998 ORDER ["JUDGMENT"]

7-9-1991

I Wesley Clark and Anne Clark.  
agree to pay \$675.00 per month Plus Siner  
and water. There is a \$350.00 deposit plus  
a \$1000.00 for a lease option to buy.  
Starting July 29, 1991 Prorated to Aug 4, 1991.  
The selling price to be \$81500.00 at  
10 1/2% interest. When option is picked  
up the \$350.00 plus the \$1000.00 will be  
applied to the down payment of \$5000.00  
or more. The seller will refect and  
make the carpet into a double garage.  
Replace the back door. Other than  
the things above the Clarks will take  
care of any repairs during this option  
period. There will be a balloon payment  
due on the balance of the loan Aug. 5, 1996  
The rent to be prorated from July 29, 1991 to  
Aug 4, 1991. Rent to begin on Aug 5, 1991  
Aug 2, \$500.00 Aug 5, \$700.00 (paid by  
Aug 20, 1991). If the Clarks do not buy they  
will be refunded. Money will not be refunded.

Anne Clark

Wesley Clark

John F. Green  
John Green

## ADDENDUM 1

SEP 5 1996

SALT LAKE COUNTY  
*Danner*

BRYAN W. CANNON, #0561  
Attorney for Plaintiff  
40 East South Temple #300  
Salt Lake City, Utah 84111  
Telephone: (801) 328-3500

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

WESLEY CLOCK AND ANN CLOCK, )

Plaintiffs, )

vs. )

JOHN F. GREEN AND LARUE  
GREEN, )

Defendants. )

**ORDER & JUDGMENT**

Civil No. 960902949cv

JUDGE WILKINSON

This matter came on regularly before the above-entitled court pursuant to plaintiff's Motion for Summary Judgment and defendant's Counter-Motion for Summary Judgment. Bryan W. Cannon appeared for the plaintiff at a hearing on the matter held Friday, August 16, 1996 at 10:00 a.m. The defendants were represented by Craig W. McArthur. Based upon the arguments of counsel, the memoranda submitted by the parties and the court being otherwise fully advised in the premises, the Court hereby finds that the Agreement is fully integrated with regard to the purchase price and the deadline date for exercise of the option. The plaintiffs attempted to exercise the option for the option price prior to the deadline date. Based upon the Court's finding, it is hereby ORDERED AND ADJUDGED as follows:

**ADDENDUM 2**

1. Plaintiff's Motion for Summary Judgment is granted and defendants Counter-Motion for Summary Judgment is denied.

2. The plaintiffs, Wesley Clock and Anne Clock, are entitled to purchase the property at 1324 East 5485 South, Salt Lake City, Utah from defendants, John F. Green and Larue Green.

3. The defendants shall upon receipt of \$81,500.00 convey the said real property to the plaintiffs, Wesley Clock and Anne Clock.

4. Against the purchase price the defendants have received \$1,300.00 toward the down payment thereon. The sum of \$3,650.00 as additional down payment, now held by the court, shall be paid to defendants, John F. Green and Larue Green, and applied toward the purchase price, leaving a balance due thereon of \$76,500.00.

5. Any payments made by the plaintiffs to the defendants after August 4, 1996 shall also be applied to the purchase price.

6. Closing of the purchase shall occur within a reasonable time after the entry of this order. Plaintiffs shall be obligated to set up and arrange at closing for the purchase and defendants shall be obligated to appear at the closing, upon reasonable notice to execute documents to transfer title.

DATED this 5 <sup>Sept</sup> day of ~~August~~, 1996.

  
JUDGE WILKINSON

**ADDENDUM 2**

PAGE 2 OF 2 PAGES

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IN THE UTAH COURT OF APPEALS

COURT OF APPEALS

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Wesley Clock and Ann Clock,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiffs and Appellees,	)	
	)	
v.	)	Case No. 960797-CA
	)	
John F. Green and Larue Green,	)	
	)	F I L E D
Defendants and Appellants.	)	(October 2, 1997)

-----

Third District, Salt Lake Department, Division I  
The Honorable Homer F. Wilkinson

Attorneys: David L. Grindstaff, Salt Lake City, for Appellants  
Bryan W. Cannon, Sandy, for Appellees

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Before Judges Davis, Billings, and Greenwood.

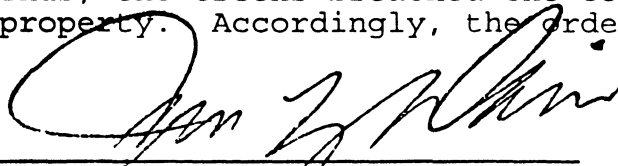
DAVIS, Presiding Judge:

We interpret the option contract as a matter of law because "the contract provision can be determined by the words of the agreement." Estate of Schmidt v. Downs, 775 P.2d 427, 430 (Utah Ct. App. 1989). Options contracts "must be exercised in accordance with [their] terms." Nance v. Schoonover, 521 P.2d 896, 897 (Utah 1974). Here, the parties' agreement does not describe a separate time by which the Clocks were to exercise their option. Yet "the failure to designate the time of payment does not make the contract a nullity." Ferris v. Jennings, 595 P.2d 857, 860 (Utah 1979); see also Hofmann v. Sullivan, 599 P.2d 505, 508 (Utah 1979) (concluding contract lacking specific time of payment not fatally flawed where option price was fixed). Rather, "options to purchase that fail to specify mode of exercise or time of payment must be read to require payment upon exercise," Mills v. Brody, 929 P.2d 360, 364 (Utah Ct. App. 1996).

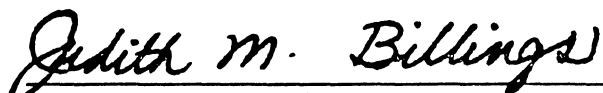
The Clocks provided a notice of intent to exercise the option in April 1996. Under the terms of the contract the Clocks had until August 5, 1996 to pay the balance of the \$81,500.

## ADDENDUM 3

Thus, the Greens breached the contract by refusing to sell the property. Accordingly, the order appealed from is affirmed.

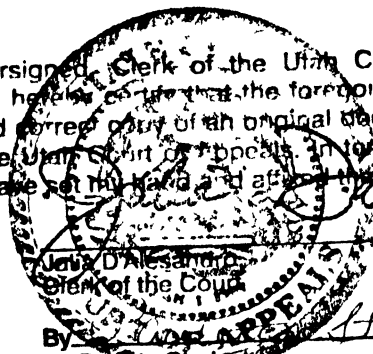
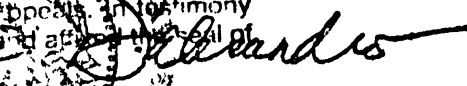

  
James Z. Davis  
Presiding Judge

-----  
WE CONCUR:

  
Judith M. Billings, Judge

  
Pamela T. Greenwood, Judge

I, the undersigned, Clerk of the Utah Court of Appeals, do hereby certify that the foregoing is a full, true and correct copy of an original document on file in the Utah Court of Appeals in testimony whereof, I have set my hand and affixed the seal of the Court.

  
By   
David D'Alessandro  
Clerk of the Court  
By   
Hays  
Deputy Clerk  
Date March 3, 1998

## ADDENDUM 3

BRYAN W. CANNON, #0561  
Attorney for Plaintiff  
Aspen Plaza  
871 East 9400 South  
Sandy, Utah 84094  
Telephone: (801) 255-7475

**FILED DISTRICT COURT**  
Third Judicial District

AUG 26 1998

SALT LAKE COUNTY  
By  Deputy Clerk

**THIRD DISTRICT COURT, STATE OF UTAH**

**SALT LAKE COUNTY, SALT LAKE DEPARTMENT**

---

WESLEY CLOCK and ANN CLOCK, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOHN F. GREEN and LARUE GREEN, )  
 )  
Defendants. )

---

**ORDER**

Civil No. 960902949

JUDGE WILKINSON

This matter came on regularly for hearing before the above entitled court on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Contempt (a copy of which was not served upon plaintiff). The court being fully advised on the premises and based upon the pleadings filed herein, hereby grants Plaintiff's Motion for Summary Judgment as follows:

1. Plaintiffs are quieted in fee simple as to the following described real property commonly known as 1324 East 5485 South, Salt Lake City, Utah and more particular described as follows:

Lot 10, Olympus View Subdivision No. 3, according to the official

**ADDENDUM 4**

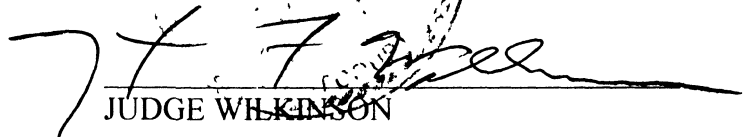
plat thereof as recorded in the office of the Salt Lake County Recorder.

Said real property shall hereby be quieted in the plaintiffs, Wesley Clock and Ann Clock, upon their deposit of the sum of \$76,500 plus the sum of \$3,650 now held by the court with Surety Title Company.

2. The sum of \$3,650 now held by the court shall be released and made payable to Surety Title Company.
3. The sums of \$76,500 plus the \$3,650 transferred by the court shall be held by Surety Title Company for the account of John F. Green and LaRue Green as the purchase price of the above described real property.
4. The issue of sanctions for plaintiff against defendant shall be reserved for later determination.
5. Evidence of the quieting of title in the plaintiffs shall be sufficient upon the recording of a notice by Surety Title Company evidencing the deposit of the funds required herein.

In connection with Defendant's Motion for Contempt, the same is denied. However, plaintiffs are ordered to pay real property taxes from April 12, 1996 to date and water and sewer fees from July 29, 1991 to date.

DATED this 26 day of August, 1998.

  
JUDGE WILKINSON

## ADDENDUM 4