

1998

Wesley Clock and Anne Clock v. John Green and Larue Green : Brief of Appellee

Utah Court of Appeals

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Stephen G. Homer; Attorney for Appellants.

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**COURT OF APPEALS
BRIEF**

**UTAH
DOCUMENT**

IN THE UTAH COURT OF APPEALS

FILED NO. 981612

WESLEY CLOCK and)	
ANNE CLOCK,)	APPELLEE'S BRIEF
)	
Plaintiffs/Appellees,)	
)	
vs.)	Case No. 981612-CA
)	
JOHN F. GREEN and)	Priority No. 15
LARUE GREEN,)	
)	
Defendants/Appellants.)	

**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY,
THE HONORABLE HOMER WILKINSON, DISTRICT JUDGE**

Bryan W. Cannon, Esq.
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FILED
Utah Court of Appeals
MAY 12 1999
Julia D'Alessandro
Clerk of the Court

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)	APPELLEE'S BRIEF
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	(i)
TABLE OF AUTHORITIES	(ii)
STATEMENT OF JURISDICTION AND NATURE OF PROCEEDINGS BELOW	1
STATEMENT OF ISSUES ON APPEAL	1
DETERMINATIVE AUTHORITY	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	6
ARGUMENT	7
POINT I THE INTEREST ISSUE RAISED BY APPELLANTS' SECOND APPEAL IS TIME BARRED AND APPELLANTS HAVE NO RIGHT OR BASIS FOR MAKING A CLAIM FOR PAYMENT OF INTEREST	7
POINT II THE APPELLANTS ARE NOT ENTITLED TO AN AWARD OF INTEREST IN CONNECTION WITH A FINAL JUDGMENT WHICH IS DECLARATORY IN NATURE	9
POINT III THE APPELLEES ARE ENTITLED TO AN AWARD OF ATTORNEY'S FEES, COSTS, AND/OR SANCTIONS	12
CONCLUSION	15
CERTIFICATE OF MAILING	17

TABLE OF AUTHORITIES

CASES CITED:	PAGE
<i>Dairy Distributors, Inc. v. Local Union</i> , 976, <i>Joint Counsel</i> 87 <i>Western Conference of Teamsters</i> , 396 P.2d 47 (Utah 1964) . . .	11
<i>Estate of Lunga</i> , 360 So.2d 109 (Fla.App. 1978)	11
<i>Gayden v. Kurt</i> , 44 So.2d 410 (Miss. 1950)	11
<i>Gen v. Penopescot Co.</i> , 342 A.2d 270 (Me 1975)	11
<i>Hoffman v. Love</i> , 523 S.W.2d 503 (Tex.App.1975)	11
<i>Hunt v. Hurst</i> , 785 P.2d 414, (Utah 1990)	12
<i>Jacobsen v. Jacobsen</i> , 703 P.2d 303 (Utah 1985)	9
<i>Kamaole Resort Twenty-One v. Ficke Hawaiian Investment</i> , 591 P.2d 104 (1979).	10, 11, 13
<i>Olmsted v. Liza Jennings, Inc.</i> , 565 N.E.2d 389 (Ohio App. 1995)	11
<i>Penrod v. Nu Creations Creme, Inc.</i> , 669 P.2d 873 (Utah 1983)	9
<i>Redke v. Silver Trust</i> , 490 P.2d 805 (Cal. 1971)	11
<i>Salt Lake Citizens Congress v. Mtn. States Tel. Co</i> , 846 P.2d 1245 (Utah 1992)	8
<i>Schoney v. Memorial Estates, Inc.</i> , 863 P.2d 59 (Utah App. 1993)	7, 8
<i>Sidney Stevens Implement Co. v. South Ogden Land Building and Implement Co.</i> , 58 P.843 (Utah 1989)	9
<i>State Road Commission v. Danielson</i> , 247 P.2d 900 (Utah 1952)	10
STATUTES CITED:	
U.C.A. §§ 78-2-2	1

U.C.A. § 15-1-4	9
-----------------------	---

COURT RULES CITED:

Rule 3(a), Utah Rules of Appellate Procedure	1
Rule 24(a)(5), Utah Rules of Appellate Procedure	2
Rule 33(b), Utah Rules of Appellate Procedure	12

OTHER CITED AUTHORITIES:

74 Am.Jur.2d <i>Tender</i> § 39	13
77 Am.Jur.2d <i>Vendor and Purchaser</i> §311	13

IN THE UTAH COURT OF APPEALS

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JOHN F. GREEN and)	Priority No. 15
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Defendants/Appellants.)	

**STATEMENT OF JURISDICTION AND
NATURE OF PROCEEDINGS BELOW**

This appeal is from an Order entered pursuant to a final judgment. The final judgment was affirmed by this court. The District Court issued an Order pursuant to a motion upon Appellants’ refusal to abide by the terms of the final judgment, a copy of which is attached hereto as Exhibit “A”. Under the authority vested in the Supreme Court of the State of Utah, this case was poured over to the Court of Appeals for disposition. This court has jurisdiction to adjudicate the appeal pursuant to Utah Code Annotated §§78-2-2(3)(j) and 78-2-2(4) and Rule 3(a) of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES ON APPEAL

1. Do the Appellants have the right to bring a second appeal on an issue that was adjudicated or could have been raised on their first appeal?

2. If Appellants are entitled to this appeal, are they entitled to an award of interest on a final judgment which is not a money judgment?

3. Are Appellees entitled to an award of attorney fees and/or sanctions?

The Appellees adopt the standard for review set forth in Appellants' brief.

DETERMINATIVE AUTHORITY

Rule 24(a)(5) Utah Rules of Appellate Procedure.

(a) *Brief of the Appellant.* The brief of the appellant shall contain under appropriate headings and in the order indicated . . .

(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; . . .

Utah Code Annotated §15-1-4.

1. "Any judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment."
2. Other judgments shall bear interest at the federal post-judgment interest rate as of January 1 of each year, plus 2 percent.

STATEMENT OF THE CASE

Appellants, John F. Green and LaRue G. Green ("Greens") filed a first appeal from a final judgment entered pursuant to a motion for summary judgment by Wesley Clock and Anne Clock ("Clocks"). The Court of Appeals affirmed the judgment and the Appellants requested a rehearing. Rehearing was denied by this Court on December 18, 1997. The

Appellants then filed a Petition for Writ of Certiorari to the Utah Supreme Court which was denied April 9, 1998. Thereafter, the Appellants refused to abide by the terms and conditions of the final judgment claiming that they were entitled to interest, rent and other payments in addition to the amounts set forth in the final judgment. Based upon the Greens' refusal to abide by the terms and conditions of the final judgment, the Clocks made a Motion to Quiet Title, for release of funds held by the Court and for Sanctions. An Order granting said motion (and reserving the request for sanctions for later determination) was entered on August 26, 1998. A copy of the said Order from which this appeal is taken is attached hereto as Exhibit "B". The Order determined that the Clocks would be quieted in title to the subject property upon deposit of \$81,500.00 with Surety Title Company. Prior to the completion of the real estate loan which would have created the deposit with Surety Title, a second Notice of Appeal was filed by the Greens thereby preventing the loan transaction from being completed, since the lender would not complete the loan where title was still listed in Greens and the order to quiet title was being appealed on.

STATEMENT OF FACTS

1. The Clocks and Greens entered into a rental arrangement for property at 1324 East 5485 South, Salt Lake City, Utah. R. 1, 2, 12, 13, 19, &33.
2. In connection with the rental arrangement, the Clocks insisted that the Greens provide them with an option to purchase the property. R. 19.
3. The Greens prepared a hand written agreement for rent and for an option to purchase:

I Wesley Clock and Anne Clock agree to pay \$675.00 per month plus sewer and water. There is a \$350 deposit plus a \$1,000 for lease option to buy. Starting July 29, 1991 pro-rated to Aug. 4, 1991. The selling price to be \$81,500.00 at 10 ½ % interest. When option is picked up, the \$350 plus the \$1,000 will be applied to the down payment of the \$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 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. August 2 is \$500; August 5 is \$700. Balance by Aug. 20, 1991. If the Clocks do not buy they will be renters and money will not be refunded. R. 5, 20, & 33.

4. The Clocks paid the \$350.00 deposit and the \$1,000.00 lease option amount to the Greens at the time of the execution of the agreement. The Greens accepted said payments. R. 2 & 20.
5. The Greens did not give a notice of the termination of the option to purchase until after the Clocks gave a notice of an intent to exercise the option on April 12, 1996. R. 7, 13, 20.

6. The Greens have refused to sell the property at 1324 East 5485 South, Salt Lake City, Utah, to the Clocks for the option price of \$81,500.00. R. 13, 20, & 21.
7. The Clocks, in connection with this action, tendered \$3,650.00 to the court as the balance of the \$5,000.00 down payment called for in the option. R. 21 & 28.
8. Pursuant to Motion, a final judgment was entered on September 5, 1996. R. 68.
9. The Defendants appealed the final judgment to this Court and the final judgment was affirmed on October 2, 1997. R. 74 and 81.
10. The Appellants requested a rehearing on the appeal before this Court, which request was denied December 18, 1987.
11. The Appellants filed a Petition for Writ of Certiorari to the Utah Supreme Court was denied on April 9, 1998. R. 84.
12. The Clocks obtained a loan commitment for payment of the amount set forth in the final judgment, but defendants refused to execute documents to transfer title for the sum of \$81,500.00. R. 94, 94 and 98.
13. The Greens demanded interest payments and rental payments before they would comply with the terms of the final judgment. R. 94 and 96.
14. Pursuant to a motion by Clocks, an Order was entered with the following specifics: (A) The subject real property was to be quieted in the Clocks upon

their deposit of \$81,500.00 with Surety Title; (B) Evidence of the quieting of title would be sufficient upon the recording of notice by Surety Title of the deposited funds. R. 115.

15. Prior to the completion of the financing that would deposit funds with Surety Title, a Notice of Appeal was filed in this case by Greens, thereby preventing the funding of the loan that would have paid the purchase price of the property of \$81,500.00. R. 118.

SUMMARY OF ARGUMENTS

1. The trial court's final judgment is that Clocks pay the purchase price of \$81,500.00, without interest. This is the law of the case. The interest issue raised by the Appellants/Greens is time barred. Therefore, there is no jurisdiction over this issue.
2. Statutory interest under UCA-15-1-1, et. seq., or interest as established under case law applies only to in personam money judgments, not orders of specific performance or declaratory judgments. If a declaratory judgment or a judgment ordering specific performance does not provide for payment of interest, interest is not due. Thus, even if there is jurisdiction for this appeal, Greens are not entitled to an award of interest on the final judgment.
3. The Clocks are entitled to an award of attorney fees and costs and/or sanctions since this appeal is one that is not grounded in fact, not warranted by existing law, or not based upon a good faith argument to extend, modify or reverse

existing law. Since the Greens were not entitled to this appeal by reason of the prior affirmation of the final judgment by this Court, this second appeal is merely a delay and imposition upon the Clocks causing them to incur substantial additional costs and attorney fees in order to compel the Greens to comply with the final judgment.

ARGUMENT

I.

THE INTEREST ISSUE RAISED BY APPELLANTS' SECOND APPEAL IS TIME BARRED AND APPELLANTS HAVE NO RIGHT OR BASIS FOR MAKING A CLAIM FOR PAYMENT OF INTEREST.

In its ruling on the cross-motions for Summary Judgment, the Trial Court specifically found that the purchase price to be paid by the Clocks is \$81,500. The Order and Judgment dated September 5, 1996, paragraph 3, is emphatically clear on this point:

“3. The Defendants shall upon receipt of \$81,500 convey the said real property to the Plaintiffs, Wesley Clock and Annie Clock.” [See Exhibit “A”].

The final judgment precludes interest and sets the amount of the purchase price with specificity. The effect of the Defendants’ failure to argue the interest issue during the first appeal is that the decision of the Utah Court of Appeals reaffirming the Trial Court’s decision of the purchase price without interest became the “law of the case”, and is *res judicata*. See *Schoney v. Memorial Estates, Inc.*, 863 P.2d 59 (Utah App. 1993). Therefore,

the right to raise the interest issue by the Defendants was waived in the first appeal and became the law of the case and irreversible after the Memorandum Decision of the Utah Court of Appeals issued on the first appeal in this case. This second appeal constitutes nothing more than an attempt to reinstate and relitigate the case on matters which have been fully and finally adjudicated, and on which the Greens have failed to raise objections and issues on appeal with the Appellate Court in the first instance.

In *Schoney v. Memorial Estates, Inc.*, 863 P.2d 59 (Utah App. 1993), the court held that matters concluded by the Appellate Court become *res judicata* and the law of the case and barred further determinations by the Trial Court. In *Schoney*, the Court further stated that such final decisions by the Appellate Court do not constitute a remand of the case to the trial court for further determinations of the issues which should have been raised on appeal. *Id.* At 863 P.2d 61.

Essentially what the Defendants are attempting here is to twist the Order (Exhibit “B”), issued by the Trial Judge Homer Wilkinson on August 26, 1998, into a new ruling thus hoping for a second right to appeal. Nevertheless, they are not entitled to a second appeal because the issues which they raise in this second appeal had to be raised in the first appeal. This Order is nothing more than an Order enforcing of the Utah Court of Appeals Memorandum Decision and does not constitute a new ruling by the Trial Court.

The Defendants’ attempt to raise the interest issue by a Post Trial Motion is barred by the law of the case and *res judicata* and is time barred. See *Schoney v. Memorial Estates, Inc.*, 863 P.2d (Utah 1983); *Salt Lake Citizens Congress v. Mtn. States Tel. Co.*, 846 P.2d

1245 (Utah 1992); *Jacobsen v. Jacobsen*, 703 P.2d 303 (Utah 1985); *Penrod v. Nu Creations Creme, Inc.*, 669 P.2d 873 (Utah 1983). The legal effect of these doctrines is that the Appellate Court lacks jurisdiction to entertain the interest issue which is precluded by the Defendant's failure to raise this issue timely in the first appeal.

The Appellants are trying a fall back position. Since they did not win on the initial appeal, they are attempting to obtain the same result by another course. The route of the first appeal did not work. They are using this second appeal to still try to get more money than they had agreed to sell the property for.

II.

THE APPELLANTS ARE NOT ENTITLED TO AN AWARD OF INTEREST IN CONNECTION WITH A FINAL JUDGMENT WHICH IS DECLARATORY IN NATURE.

Utah Law and the law of other jurisdictions is clear that the statutory interest provided on judgments only applies to money judgments rendered against a person "in personam". A final order or judgment which cannot be executed upon for money does not constitute a "money judgment" or a judgment "in personam".

The applicable statute is Utah Code Annotated §15-1-4, which provides as follows:

1. "Any judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment."
2. Other judgments shall bear interest at the federal post-judgment interest rate as of January 1 of each year, plus 2 percent.

The seminal case in Utah is *Sidney Stevens Implement Co. v. South Ogden Land*

Building and Implement Co., 58 P.843 (Utah 1989). In this case, the Utah Supreme Court reviewed the original interest judgment statute which contained language similar to the current Utah Statute, that “any judgment rendered on a contract shall conform thereto and shall bear interest agreed upon by the parties, which should be specified in the judgment.” The Utah Court held that “the statute has no application, except to personal judgments”. The Court’s analysis focused on the fact that a personal judgment is found only where an execution can be made on the judgment.¹ [Greens cannot obtain a writ of Execution on the Order of Judge Wilkinson which does not grant them a judgment. It orders the Greens to specifically perform on the set purchase price].

The same principles have been upheld in *State Road Commission v. Danielson*, 247 P.2d 900 (Utah 1952). This case involved a condemnation proceeding. The Court ruled that until damages for condemnation are determined, there is no judgment which will bear interest within the meaning of Utah’s Judgment Interest Statute. The Court reasoned that “judgment” as contemplated by the Utah Judgment Interest Statute means only a final judgment where the exact amount of damages is ascertained. [Our judgment did not determine damages, but ordered specific performance].

The case of *Kamaole Resort Twenty-One v. Ficke Hawaiian Investment*, 591 P.2d

¹In the *Sidney Stevens Implement* case, the court issued a judgment of foreclosure on a mortgage. The plaintiff asked that interest accrue on the mortgage foreclosure judgment from the date of the order. However, the Utah Supreme Court ruled that until the return of the Sheriff was made, there was no deficiency which could be determined, and no execution could be obtained on the deficiency. Therefore, until that took place, there was not a personal judgment against the debtor. The Court specifically stated that this statute has no application except to personal judgments.

104 (1979) is very helpful in understanding when a judgment is eligible for statutory interest. In *Kamaole*, the Court notes that other jurisdictions have universally applied the judgment interest statute only to “money judgments”. The Court stated as follows:

“However, it is obvious that a judgment which requires the performance of an act other than the payment of money or its equivalent could not provide a basis for the computation of interest and that statutory interest could not accrue on such a judgment . . .”

The primary case cited by Appellants, *Dairy Distributors, Inc. v. Local Union*, 976, *Joint Counsel* 87, *Western Conference of Teamsters*, 396 P.2d 47 (Utah 1964) is personal money judgment case. Dairy Distributors obtained a personal money judgment for \$100,000 against defendants. The clerk did not fill in the blanks providing for interest. It was not a declaratory judgment ordering specific performance. Therefore, the holding of the *Dairy Distributors* case does not apply to our case and is much different than our declaratory final judgment which specifically enforces a set purchase price for the property.

Other jurisdictions have held that the judgment interest statute is inapplicable to judgments which order the completion of an act or transfer of property. See *Redke v. Silver Trust*, 490 P.2d 805 (Cal. 1971); *Gen v. Penopescot Co.*, 342 A.2d 270 (Me 1975); *Hoffman v. Love*, 523 S.W.2d 503 (Tex.App.1975). The *Kamaole* Court further notes that other courts hold that statutes awarding interest on judgments are applicable only to judgments which may be enforced by writ of execution. See *Gayden v. Kurt*, 44 So.2d 410 (Miss. 1950); *Estate of Lunga*, 360 So.2d 109 (Fla.App. 1978).

In the more recent decision of *Olmsted v. Liza Jennings, Inc.*, 565 N.E.2d 389 (Ohio

App. 1995), the Court held that interest is statutorily required under the Ohio statute only on the rendering of a money judgment that is definite in amount.

While our initial contract does include a provision for 10 ½ % interest, that interest recitation only applies to an early contract purchase of the property. If the property were to have been purchased under the contract, (before the balloon payment date of August 5, 1996), that contract would have been carried at a 10 ½ % interest. The Clocks instead chose to finance the purchase of the property under the contract by paying the lump sum selling price of \$81,500.00. Therefore, no interest on a lump sum payment is called for under the contract.

III.

THE APPELLEE'S ARE ENTITLED TO AN AWARD OF ATTORNEY'S FEES, COSTS, AND/OR SANCTIONS.

Rule 33(a) of the Utah Rules of Appellate Procedure provides that if an appeal is “either frivolous or for delay, the Court shall award the just damages, which may include single or double costs, including reasonable attorneys fees, to the prevailing party. The Court may order that the damages be paid by the party or by the party’s attorney.”

A frivolous appeal is one that is not grounded in fact, nor warranted by existing law, or not based on a good faith argument to extend, modify or reverse existing law. See Utah Rules of Appellate Procedure, Rule 33(b). In *Hunt v. Hurst*, 785 P.2d 414, (Utah 1990), the Supreme Court stated that a frivolous appeal is “one in which no justiciable question has

been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.”

The second appeal filed in the instant action is frivolous, in bad faith and clearly imposed for delay based upon the underlying facts:

- a. The Defendants’ counsel failed to raise the interest issue in the first appeal and the Trial Court’s decision affirmed by the Memorandum Decision of the Utah Court of Appeals became law of the case and *res judicata* on the interest issue.
- b. Had the Defendants properly raised the interest issue in the first appeal, the Utah Court of Appeals would have correctly decided that interest did not accrue on the purchase price because the Trial Court and the Utah Court of Appeals both concluded that the Defendants breached the contract by refusing to close with the buyers, equitably barring the accrual of interest. (See 74 Am. Jur.2d *Tender* § 39; 77 Am.Jur.2d *Vendor and Purchaser* § 311). The Greens’ argument that the Trial Court’s Order dated September 5, 1996, is a judgment bearing interest is frivolous because said Order is not an *in personam* judgment on which interest accrues. See *Kamaole Resort Twenty-One v. Ficke Hawaiian Investment*, 591 P.2d 104 (1979). R. 113 and 115.
- c. Rather than comply with the Order and Judgment rendered by the Trial Court and Utah Court of Appeals Memorandum Decision, and having

realized that the interest issue was precluded and time barred and waived by Defendants' failure to raise the interest issue in the first appeal, the Defendants proceeded to file a non-meritorious motion, namely the Motion for Contempt, which was denied by the Trial Court. R. 113 and 115.

- d. The Greens continue to refuse to comply with the Trial Court and Utah Court of Appeals mandates and continue to refuse to close the real estate transaction with the Clocks. The Greens have now filed the instant non-meritorious second appeal to further delay in having to close with the Clocks.
- e. The Clocks continue to incur substantial costs and attorneys fees to compel the Greens to comply with the Trial Court and Utah Court of Appeals' Decision. The Clocks have attempted to close with the title company and have incurred substantial loan costs and continue to incur attorneys fees to fight this frivolous second appeal. (See Affidavit of Wesley Clock, Exhibit "F" to Motion for Summary Disposition).

The defendants have exhausted every available remedy they have with regard to the final judgment (Exhibit "A") issued by this Court. It was upon their own choice that they did so. They have delayed the closing of the sale for over two years. Yet, the Greens continue to try to exercise their own judgment in place of that set forth in the final judgment.

The natural course of financing property is that loans are funded when they can be

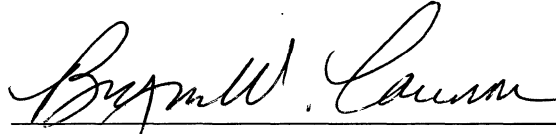
closed. The Greens refused to transfer the property thereby binding up the financing of the purchase from a lender. (Affidavit of Wesley Clock attached as Exhibit “F” to Appellees’ Motion for Summary Disposition and for Motion for Attorney Fees, Affidavit of Anne Clock R. 98, and Affidavit of Brenda Jones R. 94). The Greens have argued that they are suffering damages by not getting interest on the purchase price. However, the delays in the closing of the purchase are by their own choice. There are damages being caused to the Clocks by reason of these delays since financing has been arranged at multiple times on a belief that the Greens would abide by the final judgment (Exhibit “A”).

The Trial Court in its Order (Exhibit “B”) dated August 26, 1998, reserved the issue of sanctions, obviously waiting to see if the Greens would comply with the repeated orders of the courts to close the sales transaction with the Clocks. The Greens have instead continued to delay and raise untimely and frivolous obstacles to the closing. The Court should impose sanctions on the Greens under Rule 33(a), Utah Rules of Appellate Procedure.

CONCLUSION

The decision of the Trial Court as affirmed by the Utah Court of Appeals Memorandum Decision on the first appeal, extinguished all further claims of the defendants to payment of interest. Also, the Greens are not entitled to an award of interest under the final judgment because it is declaratory. The Clocks are entitled to an award of attorneys fees and costs for this appeal due to the nature of the delay and second appeal taken by the Greens.

Dated this 12th day of May, 1999.

A handwritten signature in cursive script, reading "Bryan W. Cannon". The signature is written in black ink and is positioned above a horizontal line.

Bryan W. Cannon
Attorney for Plaintiffs/Appellees

CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing **APPELLEE'S BRIEF**, this 12th day of May, 1999, to the following:

Stephen G. Homer
Attorney for Defendants/Appellants
9225 South Redwood Road
West Jordan, Utah 84088

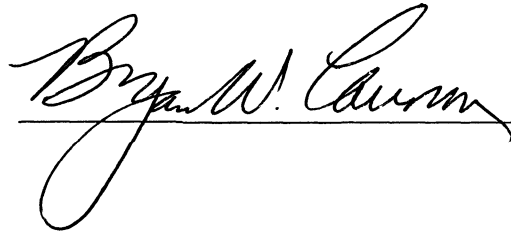


EXHIBIT “A”

FILED (SALT LAKE COUNTY)
Third Judicial District

SEP 5 1996

SALT LAKE COUNTY
[Signature]

BRYAN W. CANNON, #0561
Attorney for Plaintiff
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IN THE THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WESLEY CLOCK AND ANN CLOCK,)	
)	
Plaintiffs,)	ORDER & JUDGMENT
)	
vs.)	Civil No. 960902949cv
)	
JOHN F. GREEN AND LARUE)	JUDGE WILKINSON
GREEN,)	
)	
Defendants.)	

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:

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 ^{Sept} day of ~~August~~, 1996.


JUDGE WILKINSON

EXHIBIT “B”

EXHIBIT “B”

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THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

WESLEY CLOCK and ANN CLOCK,)	
)	
Plaintiff,)	ORDER
)	
vs.)	Civil No. 960902949
)	
JOHN F. GREEN and LARUE GREEN,)	JUDGE WILKINSON
)	
Defendants.)	

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 particularly described as follows:

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

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