

1999

# Keith M. Jonsson v. Reed Bromley, Bromley Farms, a Utah corporation, and Utah Valley Egg and Poultry, Inc., a Utah corporation : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

KEITH M. JONSSON,

Plaintiff and Appellee,

vs.

REED BROMLEY, BROMLEY FARMS, a  
Utah corporation, and UTAH VALLEY  
EGG & POULTRY, INC., a Utah  
corporation,

Defendants and Appellants.

Appeal No. 990970-CA

District Court No. 970400247 CV

Priority No. 15

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**REPLY BRIEF OF APPELLANTS**

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Appeal from the October 13, 1999, Order and Judgment of the Honorable Gary D. Stott,  
District Judge of the Fourth Judicial District Court, Utah County, Utah.

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## ARGUMENT

### **I. THE TRIAL COURT ARITHMETICALLY MISCALCULATED THE PLAINTIFF'S DAMAGES.**

In his response brief, Mr. Jonsson merely parrots the trial court's Memorandum Decision, including its miscalculation of damages. Because no "new matter" is set forth by Mr. Johnson in his Brief of Appellee (see Utah R. App. P. 24(c), limiting reply briefs to answering any new matter set forth in the opposing brief), and because the issue concerning the trial court's miscalculation has been discussed thoroughly in the Brief of Appellants at Argument I, defendants direct the Court's attention thereto.

### **II. THE TRIAL COURT IMPROPERLY AWARDED PREJUDGMENT INTEREST ON THE PLAINTIFF'S DAMAGES.**

Plaintiff's response to defendants' argument that prejudgment interest is not appropriate under the facts of this case cites no law not previously addressed by defendants in their Brief of Appellants. Rather, plaintiff relies exclusively on a stubborn misreading of those cases to insist that such an award is proper because Mr. Jonsson told Mr. Bromley, after "asking around," that the value of the generator and switching equipment was "between Thirty-Six and Forty-Six Thousand Dollars."

Controlling case law prohibits any award of prejudgment interest where the amount of damages is ascertained and assessed by the trier of fact at trial:

[W]here the damage is complete and the amount of loss fixed as of a particular time, and that loss can be measured by facts and figures, interest should be allowed from that time and not

from the date of the judgment. On the other hand, where damages are incomplete or cannot be calculated with mathematical accuracy . . . ***the amount of damage must be ascertained and assessed by the trier of the fact at the trial, and in such cases prejudgment interest is not allowed.***

Klinger v. Kightly, 889 P.2d 1372, 1381 (Utah App. 1995) (citing Price-Orem v. Rollins, Brown & Gunnell, 784 P.2d 475, 482 (Utah App. 1989)) (emphasis added). The mathematical accuracy needed to support an award of prejudgment interest requires that:

[damages] must be ascertainable in accordance with fixed rules of evidence and known standards of value, ***which the court or jury must follow in fixing the amount, rather than be[ing] guided by their best judgment*** in assessing the amount to be allowed for past as well as for future injury, or for elements that cannot be measured by any fixed standards of value.

Smith v. Linmar Energy Corp., 790 P.2d 1222, 1226 (Utah App. 1990) (citing Price-Orem, 784 P.2d at 483) (emphasis added). A damage award that is the product of an exercise of judgment by the trial court or jury is a legally insufficient basis for an award of prejudgment interest.

Two of plaintiff's own cases illustrate the correct application of this principle: Castillo v. Atlanta Casualty Co., 939 P.2d 1204 (Utah App. 1997), and Corina v. Wilcox, 898 P.2d 1379 (Utah 1995). In Castillo (involving a dispute over the value of a car), the appellate court affirmed the trial court's award of prejudgment interest where the amount of the plaintiff's damages was determined by the testimony of an expert witness, whose valuation methodology the trial court accepted and followed in fixing the specific damages. 939 P.2d at 1206. The appellate court agreed that the expert's testimony,

accepted and followed by the trial court, proved a loss that “was fixed as of a particular time, could be measured by facts and figures, and was complete prior to the judgment . . . .” Id. at 1213.

Compare the result in Castillo with the result in Corina (involving a dispute over the value of livestock) in which case the Utah Supreme Court affirmed the trial court’s *denial* of prejudgment interest where:

the jury heard *conflicting testimony from experts* regarding the cattle’s expected pregnancy rates, weight range, loss rates, and market prices. In addition, the jury heard *divergent evidence* regarding the calves’ expected gender, weight range, mortality rates, and market prices. Plaintiffs could not establish these elements as a matter of fact, and *thus the jury was free to use its best judgment in ascertaining and assessing the damages.*

898 P.2d at 1387 (emphasis added). The crucial distinction between the results in Castillo and Corina is that, in the first case, the trial court accepted and followed the expert’s testimony regarding the plaintiffs’ loss; whereas, in the second case, the conflicting and divergent expert testimony required the finder of fact to exercise its best judgment to estimate the value of the plaintiffs’ loss.

As the Utah Supreme Court cogently observed in Corina, “[w]hile the expert’s estimates were a reliable enough basis for awarding damages, the assumptions used to arrive at those estimates are by no means the only way to arrive at [the] damages” and “[w]ithout any clear factual information, plaintiffs’ damages could not be measured by ‘facts and figures’ or ‘calculated with mathematical accuracy.’” Id. at 1387 (citations



omitted). That is the situation here, as well, where plaintiff's experts provided a range of values representing their estimates of plaintiff's loss, and the trial court then exercised its best judgment to select an appropriate figure from that range to ascertain and assess plaintiff's damages. As in Corina, the trial court's method of assessing plaintiff's loss in the case below was a reliable enough basis for awarding damages, but not sufficiently precise to support an award of prejudgment interest. Id.

Mr. Jonsson's repeated reference in his Brief to "wrongful" conduct by Mr. Bromley is irrelevant to the issue on appeal. The purpose of an award of damages to Mr. Jonsson for Mr. Bromely's breach is remedial, not punitive. Mr. Jonsson asserted a claim for punitive damages, which was denied by the trial court. The issue now before this Court is whether Mr. Jonsson's damages for breach of contract were calculable with mathematical accuracy at the time of Mr. Bromley's breach of the parties' contract. In fact, Mr. Jonsson's damages were not calculable with precision at that time, as is apparent where neither Mr. Jonsson nor his expert witnesses were able to agree to the value of the generator and switching equipment without reference to a range of figures. This uncertainty forced the trial court to use its best judgment to estimate Mr. Jonsson's damages.

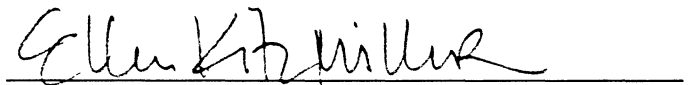
In this case, an award of prejudgment interest is not permitted under controlling Utah precedent. Mr. Jonsson has not, and cannot, identify any authority to the contrary. The best argument that Mr. Jonsson has raised in his Brief is that the amount of damages awarded by the trial court is "very close" to the amount Mr. Jonsson told Mr. Bromley it

would take to supply a suitable replacement for the generator and switching equipment Mr. Bromely had sold to a third party, in breach of the parties' contract. The controlling legal standard for an award of prejudgment interest is that damages be calculable with mathematical certainty, which standard is not satisfied by an estimate, even where that estimate is "very close."

### CONCLUSION

The trial court arithmetically miscalculated the plaintiff's damages. The court's error was compounded when it awarded prejudgment interest on an excessive judgment. Prejudgment interest should not have been awarded at all. Prejudgment interest is not allowed, under Utah law, where the judgment is the result of the trial court's exercise of discretion. The judgment in this case is the result of arithmetic miscalculation and the exercise of discretion.

DATED this 10 day of November, 2000.

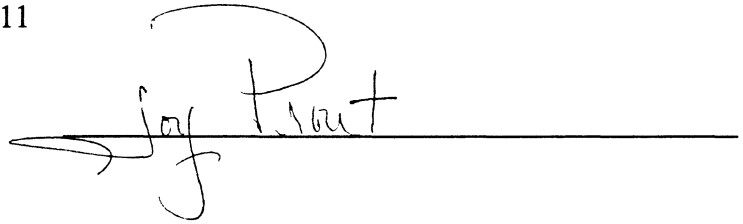


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CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of November, 2000, I caused to be hand delivered two true and correct copies of the foregoing REPLY BRIEF OF APPELLANTS, to:

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A handwritten signature in cursive script, appearing to read "Jay Pout", is written over a horizontal line.