

1999

Keith M. Jonsson v. Reed Bromley, Bromley Farms,
a Utah corporation, and Utah Valley Egg and
Poultry, Inc., an Utah corporation : Brief of
Appellant

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

BRIEF OF APPELLANTS

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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FILED

Utah Court of Appeals

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Clerk of the Court

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LIST OF PARTIES

All parties to this appeal and to the proceedings below are listed in the case caption.

TABLE OF CONTENTS

	Page
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE ISSUES AND STANDARD OF REVIEW.....	1
DETERMINATIVE RULES AND STATUTES.....	2
STATEMENT OF THE CASE.....	3
A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN LOWER COURT	3
B. STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. THE TRIAL COURT ARITHMETICALLY MISCALCULATED THE PLAINTIFF’S DAMAGES.....	5
II. THE TRIAL COURT IMPROPERLY AWARDED PREJUDGMENT INTEREST ON THE PLAINTIFF’S DAMAGES.....	7
CONCLUSION	13
ADDENDUM	

1. Utah Code Ann. §§ 70A-2-711, -713, -715 (1999).
2. Memorandum Decision, dated September 13, 1999.
3. Defendants’ Notice of Objections to Proposed Judgment, dated October 7, 1999.
4. Findings of Fact and Conclusions of Law, dated October 13, 1999.
5. Judgment, dated October 13, 1999.

TABLE OF AUTHORITIES

Page(s)

CASES

<u>Anderson v. State Farm Fire & Cas. Co.</u> , 583 P.2d 101 (Utah 1978).....	12
<u>Archuleta v. Hughes</u> , 969 P.2d 409 (Utah 1998)	1
<u>Bjork v. April Indus., Inc.</u> , 560 P.2d 315 (Utah 1977).....	11
<u>Castillo v. Atlanta Cas. Co.</u> , 939 P.2d 1204 (Utah Ct. App. 1997).....	10, 12
<u>Cornia v. Wilcox</u> , 898 P.2d 1379 (Utah 1995).....	3, 8
<u>Fell v. Union Pac. Ry. Co.</u> , 88 P. 1003 (Utah 1907).....	3, 7
<u>Hebertson v. Willowcreek Plaza</u> , 923 P.2d 1389 (Utah 1996)	1
<u>Jack B. Parson Constr. Co. v. State</u> , 552 P.2d 107 (Utah 1976)	11
<u>Jorgensen v. John Clay & Co.</u> , 660 P.2d 229 (Utah 1983)	12
<u>Klinger v. Kightly</u> , 889 P.2d 1372 (Utah Ct. App. 1995)	1, 3, 9
<u>Price-Orem Inv. Co. v. Rollins, Brown & Gunnell, Inc.</u> , 784 P.2d 475 (Utah Ct. App. 1989)	3, 9
<u>Smith v. Linmar Energy Corp.</u> , 790 P.2d 1222 (Utah Ct. App. 1990).....	10
<u>State v. Pena</u> , 869 P.2d 932 (Utah 1994)	1, 2

STATUTES

Utah Code Ann. § 78-2a-3(2)(j) (1999)	1
Utah Code Ann. §§ 15-1-1 and -4 (1999)	2
Utah Code Ann. §§ 70A-2-711, -713, -715 (1999).....	2, 5

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j) (1999).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Issue 1: Did the trial court err by arithmetically miscalculating the Plaintiff's damages?

This issue was preserved in the trial court by the filing of Defendants' Notice of Objections to Proposed Judgment. (R. 289-90.)

Standard of Review: This issue presents a question of law to be reviewed for correctness. See, e.g., Archuleta v. Hughes, 969 P.2d 409 (Utah 1998); Hebertson v. Willowcreek Plaza, 923 P.2d 1389 (Utah 1996). When reviewing legal determinations, an "appellate court decides the matter for itself and does not defer in any degree to the trial judge's determination of the law." State v. Pena, 869 P.2d 932, 936 (Utah 1994).

Issue 2: Did the trial court err by improperly awarding prejudgment interest on the Plaintiff's damages?

This issue was preserved in the trial court by the filing of Defendants' Notice of Objections to Proposed Judgment. (R. 288-90.)

Standard of Review: The award of prejudgment interest is a question of law to be reviewed for correctness. Klinger v. Kightly, 889 P.2d 1372, 1381 (Utah Ct. App. 1995). When reviewing legal determinations, an "appellate court decides the matter for itself and

does not defer in any degree to the trial judge's determination of the law." State v. Pena, 869 P.2d 932, 936 (Utah 1994).

DETERMINATIVE RULES AND STATUTES

Issue 1. The pertinent statutory provisions governing the award of damages for a seller's breach, as occurred in this case, appear at Utah Code Ann. §§ 70A-2-711, -713, -715 (1999). (Set forth verbatim in Addendum 1).

Issue 2. The pertinent statutory provisions governing the propriety of awarding prejudgment interest appear at Utah Code Ann. §§ 15-1-1 and -4 (1999), set forth verbatim as follows:

15-1-1. Interest rates – Contracted rate – Legal rate.

(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.

(3) Nothing in this section may be construed in any way to affect any penalty or interest charge that by law applies to delinquent or other taxes or to any contract or obligations made before May 14, 1981.

15-1-4. Interest on judgments.

(1) As used in this section, "federal postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

(2) 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.

(3) (a) Except as otherwise provided by law, other civil and criminal judgments of the district court and

justice court shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

(b) The postjudgment interest rate in effect at the time of the judgment shall remain the interest rate for the duration of the judgment.

(c) The interest on criminal judgments shall be calculated on the total amount of the judgment.

Utah case law interpreting the statutory provisions is more relevant. See, e.g., Cornia v. Wilcox, 898 P.2d 1379 (Utah 1995), Fell v. Union Pac. Ry. Co., 88 P. 1003 (Utah 1907), Klinger v. Kightly, 889 P.2d 1372 (Utah Ct. App. 1995), Price-Orem Inv. Co. v. Rollins, Brown & Gunnell, Inc., 784 P.2d 475 (Utah Ct. App. 1989).

STATEMENT OF THE CASE

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN LOWER COURT.

Defendants appeal from the trial court's Judgment, dated October 13, 1999, entered after trial, awarding plaintiff Keith M. Jonsson the sum of \$46,400, plus prejudgment interest in the amount of \$13,533, and costs in the amount of \$600, for a total Judgment of \$60,533 plus postjudgment interest.

This is an appeal of two discrete components of the calculation of the judgment entered by the trial court in this case. Defendants do not otherwise contest the trial court's judgment.

B. STATEMENT OF FACTS.

In 1996, Mr. Jonsson contracted with Mr. Bromley for the purchase of certain used electrical equipment, including a generator and a power switching unit. (R. 302.) Mr.

Jonsson paid the contract price in full but did not take delivery. (R. 300.) Mr. Bromley then breached their contract by selling and delivering the generator to a third party. (R. 298.)

Mr. Jonsson sued Mr. Bromley to recover the benefit of his bargain. (R. 9.) At trial Mr. Jonsson's two experts testified to disparate values for the electrical equipment. (R. 353 at 28:4, 111:20-21.) The trial court found a mid-range value for the equipment and, over the defendant's objections, entered its judgment. (R. 290, 306.)

SUMMARY OF ARGUMENT

ARGUMENT I: The trial court arithmetically miscalculated Mr. Jonsson's damages. The formula for calculating damages in this contract dispute is, as the trial court correctly concluded, (i) the contract price, plus (ii) the difference between market value and contract price, plus (iii) the incidental and consequential damages. The trial court found (i) the contract price to be \$5,900, (ii) the market value to be \$38,000, and (iii) the incidental and consequential damages to be \$2,500. When the trial court's own figures are plugged into its own formula, the result is \$40,500. Regrettably, instead of using the difference between market value and contract price as the second figure in its formula, the trial court used market value alone. Not recognizing its arithmetic error, the trial court concluded that Mr. Jonsson's damages were \$46,400. The trial court's award of damages was incorrect, and it should be reduced by \$5,900. Furthermore, the trial

court's award of prejudgment interest, if it stands at all, should be reduced commensurately, for it is based on an incorrect calculation of damages.

ARGUMENT II: The trial court improperly awarded Mr. Jonsson prejudgment interest. Prejudgment interest is only appropriate when damages are complete, determinable before trial, and calculable with mathematical certainty according to fixed rules of evidence and known standards of value. In this case, the plaintiff's own expert testimony suggested a range of possible values—from \$24,000 to \$35,000—for the generator. With nothing else to guide it, the trial court simply exercised its discretion and concluded that the market value of the generator was \$30,000. The damages were based on the trial court's best judgment, rather than a sum calculable with mathematical certainty. In these circumstances the law in Utah is clear. The trial court's award of prejudgment interest should not stand.

ARGUMENT

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

The appropriate measure of damages for a frustrated purchaser of goods in Utah, and for this case, is: (i) recovery of so much of the price as has been paid, plus (ii) the difference between the market price and the contract price, together with (iii) any incidental and consequential damages. Utah Code Ann. §§ 70A-2-711, -713, -715 (1999). The trial court correctly stated this UCC formula in both its Memorandum

Decision and its Findings of Fact and Conclusions of Law. (R. 269-70, 292-93.)

However, the trial court neglected to calculate the *difference* between the market value and contract price as required by the formula, but instead used the full market value of the goods in its application of the formula. The trial court's award is excessive, and it must be reduced to account for the difference.

The trial court found that the price paid under the contract in this case was \$5,900, and that the plaintiff's incidental and consequential damages totaled \$2,500. (R. 295-96.) However, the trial court also determined that "the difference between market value and contract price for the goods that Mr. Jonsson did not receive is \$38,000." (R. 295-96.) To reach this figure, the court merely added the market value of the generator (\$30,000) and the market value of the switching unit (\$8,000). The court failed to subtract the contract price (\$5,900) from the total market value (\$38,000). The court failed to calculate correctly the *difference* between the market value and the contract price. The figure that correctly represents the difference between the market value and the contract price is \$32,100, the difference between \$38,000 and \$5,900.

The proper calculation of damages is \$40,500. This is the sum of (i) the contract price of \$5,900, (ii) the difference between the market price and the contract price, \$32,100 (\$38,000 - \$5,900), and (iii) the incidental and consequential damages of \$2,500. The trial court, however, mistakenly awarded \$46,400 in damages. The arithmetic error in the trial court's computation of damages is \$5,900 (\$46,400 - 40,500).

Finally, even if prejudgment interest is allowed in these circumstances (which it should not be, as explained below), the trial court's error in computing the damages led it to err in computing prejudgment interest. Ten percent simple interest, as prescribed by Utah Code Ann. § 15-1-1(2), on a judgment of \$40,500 is \$11,812. The court awarded prejudgment interest of \$13,533 based on its arithmetically inaccurate award of damages in the amount of \$46,400. The error is \$1,721. If not eliminated entirely, prejudgment interest should be reduced to \$11,812 (\$13,533 - \$1,721) to conform with the correct computation of damages.

Defendants respectfully request that this Court modify the trial court's final judgment to remedy the errors in its computation of damages.

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

Under longstanding Utah law, a party's loss must be complete, fixed as of a particular time, and calculable according to "fixed rules of evidence and known standards of value," before a trial court may award prejudgment interest on damages. Fell v. Union Pac. Ry. Co., 88 P. 1003, 1007 (Utah 1907). If the court or jury is "guided by their best judgment in assessing the amount" of the loss, and must exercise discretion to determine the total damages, prejudgment interest should not be allowed.¹ Id.

¹ This longstanding rule governs an award of prejudgment interest regardless of whether the action sounds in contract or tort. What matters is how easily and clearly the damages can be calculated, not the nature of the claim itself. Fell, 88 P. at 1007.

According to the plaintiff's witnesses, there was a range of market values for the used generator in question. One of the plaintiff's witnesses, Mr. Richard Mitchell, testified that the generator might be worth "\$23,000 or \$24,000." (R. 353 at 28:4.) Mr. James Yates, another witness for the plaintiff, testified that he would "be selling it for somewhere between \$25,000 and \$35,000." (R. 353 at 111:20-21.) With nothing else to guide it, the court exercised its discretion as follows: "the Court determines the market value of the generator to be \$30,000." (R. 295-96.)

As the court's Findings of Fact and Conclusions of Law make plain, the final determination of the used generator's market value, while based on expert testimony, was a mathematically uncertain amount that was not measurable by fixed standards of value. The damages awarded in this case were the product of the court's best judgment. Defendants are not appealing the trial court's finding with respect to valuation, only its award of prejudgment interest thereon.

The Utah Supreme Court has consistently refused to award prejudgment interest in breach of contract cases when the loss cannot be measured with mathematical certainty or by "facts and figures," but rather is determined by the exercise of judgment and discretion. Cornia v. Wilcox, 898 P.2d 1379, 1387 (Utah 1995). In Cornia, the plaintiff's experts provided a range of values for the market price of cattle and the jury had to "use its best judgment in ascertaining and assessing the damages." Id. The Utah Supreme Court affirmed the trial court's denial of prejudgment interest because the market price of the cattle could not be determined until the jury exercised its discretion in calculating

damages. Id. at 1386-87. Where inconsistent evidence of market value requires the finder of fact to apply its best judgment, this Court does not allow prejudgment interest.

Indeed, this Court has consistently reversed trial courts' awards of prejudgment interest when market value cannot be determined with mathematical certainty on the basis of an expert witness's "imprecise testimony." Klinger v. Kightly, 889 P.2d 1372, 1381 (Utah Ct. App. 1995). In Klinger, the measure of damages was the present market value of the property, plus closing costs, less the contract price. Id. at 1380. The plaintiffs' witness provided a range of possible values, from \$3,000 to \$10,000, and the trial court decided that the market value of the property was \$6,000. Citing Price-Orem Inv. Co. v. Rollins, Brown & Gunnell, Inc., 784 P.2d 475 (Utah Ct. App. 1989), which states that "damages ascertained by determining the fair market value of real property. . . 'cannot be determined with mathematical precision, [and] may be inherently uncertain,' " Id. at 483 (quoting Anderson v. Bauer, 681 P.2d 1316, 1325 (Wyo. 1984)), this Court found that "the amount fixed by the trial court was calculated with mathematical inaccuracy and was inherently uncertain." This Court then overturned the trial court's award of prejudgment interest.

The Klinger case is ultimately the same as this case. In both cases, the plaintiffs' witnesses failed to provide a mathematically calculable market value, and the trial court had to select a value near the middle. In both cases, the courts had to exercise their best judgment and discretion. As it did in Klinger, this Court should reverse the trial court's award of prejudgment interest in this case.

This Court has repeatedly upheld trial courts' denials of prejudgment interest when the damages were based on market value, could not be ascertained with mathematical certainty, and required the fact finder to exercise its best judgment to calculate the loss. See, e.g., Smith v. Linmar Energy Corp., 790 P.2d 1222, 1226 (Utah Ct. App. 1990) (where the fair market value of crops was "not ascertainable in accordance with fixed rules of evidence and known standards of value," and damages were "the type . . . which are not easily calculated and must be ascertained by the general judgment of the fact finder at the time of trial," prejudgment interest is inappropriate); Price-Orem, 784 P.2d at 483 (where the measure of damages was the difference between market value of real property before and after injury, and the expert appraisal was based on known standards of value and "facts and figures," the amount of damages was still too speculative to allow prejudgment interest).

Awarding prejudgment interest promotes the policy of compensating injured parties for the time value of their losses due to the opposing party's failure to tender its obligation, and also deters intentional withholding of a sum certain due under an obligation. See Castillo v. Atlanta Cas. Co., 939 P.2d 1204, 1212 (Utah Ct. App. 1997). If the amount owed under an obligation cannot be calculated with precision and according to known standards of value before trial, then the amount cannot be tendered until the fact finder determines it. If the amount is not fixed until trial, then the breaching party must await the fact finder's determination before tendering what is owed, and it is improper to award prejudgment interest on that sum.

In the case at hand, the trial court chose to fix the market value of the used generator at the mean value of the range of estimates provided by plaintiff's witnesses. Its decision was an independent assessment of the evidence; the amount of damages was based on the trial court's subjective standards of value, and it could not have been calculated before trial. The award in this case runs counter to the policy of denying prejudgment interest on damages that cannot be calculated before trial, and it should be removed from the judgment.

Consistent with the policy, Utah law will allow an award of prejudgment interest in appropriate cases on contract claims, but only where those claims present losses that are fixed as of a particular time, easily calculated, and measurable according to known standards of value. For example, in Bjork v. April Indus., Inc., 560 P.2d 315, 316-17 (Utah 1977), the measure of damages was the highest price of securities during a public offering less the stock's then-current value. The Court determined that the plaintiffs' loss in value was easily measured by "facts and figures" and did not require the fact finder to exercise its best judgment; thus, prejudgment interest was appropriate. Unlike the case at hand, the court in Bjork was able to rely on accurate and undisputed evidence of market value and damages that were complete and fixed as of a specific time.

In another breach of contract case where the Court awarded prejudgment interest, Jack B. Parson Constr. Co. v. State, 552 P.2d 107, 108-09 (Utah 1976), the contract itself provided the calculation of damages. The amount of damages "was ascertainable by calculation and it was only the method to be used in making the calculation that was

uncertain.” Id. at 109. Thus, the damages were not subject to dispute as to value, certainty, or calculation, and the Court properly affirmed the trial court’s award of prejudgment interest. See also Jorgensen v. John Clay & Co., 660 P.2d 229, 233 (Utah 1983) (where the measure of damages was difference between contract price and price received when sheep were actually sold at the then-current market price and there was no evidence of a dispute over market values, the damages were calculable with mathematical accuracy and an award of prejudgment interest was proper); Anderson v. State Farm Fire & Cas. Co., 583 P.2d 101, 104 (Utah 1978) (where the value of lost property was determined by undisputed opinion testimony, the loss was fixed as of a particular time, the amount of loss was calculable with mathematical accuracy, and prejudgment interest was proper).²


In those cases where damages can be ascertained objectively, an award of prejudgment interest is appropriate. But where damages can only be ascertained subjectively, through the application of judgment and the exercise of discretion, such an award is incorrect. In this case, the award of prejudgment interest was incorrect.

² This Court will add prejudgment interest to a trial court’s judgment only when the market value of the loss is clearly determined by the testimony of an expert witness, not the discretionary judgment of the trial judge. Castillo, 939 P.2d at 1206. The decision in Castillo furthers the policy of compensating the injured party for a delay in payment that could be measured by facts and figures before trial. The decision lies in contrast to the case at hand, where the trial judge chose to weigh the opinions of others and then apply his own best judgment in determining the market value of the loss. Thus, Mr. Bromley could not have known before trial what amount he owed after his breach, and should not be punished for not paying when the amount was not ascertainable or calculable.

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. The trial court's total Judgment was \$60,533. Defendant respectfully requests that this Court reduce the damages to \$40,500, remove the prejudgment interest award of \$13,533, and award Plaintiff a total Judgment of \$41,100.

DATED this 7th day of August, 2000.

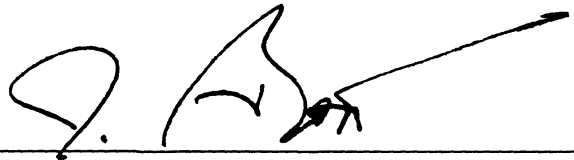


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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2000, I caused to be hand
delivered two true and correct copies of the foregoing BRIEF OF APPELLANTS, to:

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Salt Lake City, Utah 84111



Tab 1

70A-2-711. Buyer's remedies in general — Buyer's security interest in rejected goods.

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 70A-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract, or

(b) recover damages for nondelivery as provided in this chapter (Section 70A-2-713)

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this chapter (Section 70A-2-502), or

(b) in a proper case obtain specific performance or replevy the goods as provided in this chapter (Section 70A-2-716)

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 70A-2-706)

1965

70A-2-712. "Cover" — Buyer's procurement of substitute goods.

(1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 70A-2-715), but less expenses saved in consequence of the seller's breach

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy

1965

70A-2-713. Buyer's damages for nondelivery or repudiation.

(1) Subject to the provisions of this chapter with respect to proof of market price (Section 70A-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 70A-2-715), but less expenses saved in consequence of the seller's breach

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival

1965

70A-2-714. Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (Subsection (3) of Section 70A-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount

(3) In a proper case any incidental and consequential damages under the next section may also be recovered

1965

70A-2-715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise, and

(b) injury to person or property proximately resulting from any breach of warranty

1965

70A-2-716. Buyer's right to specific performance or replevin.

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered

1965

70A-2-717. Deduction of damages from the price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract

1965

70A-2-718. Liquidation or limitation of damages — Deposits.

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty

(2) Where the seller justifiably withholds a delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (1), or

(b) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller

(3) The buyer's right to restitution under Subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this chapter other than Subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (2), but if the seller has notice of the buyer's breach before reselling

Tab 2

IN THE FOURTH JUDICIAL DISTRICT COURT 9-13-99 Deputy
UTAH COUNTY, STATE OF UTAH

KEITH JONSSON,

Plaintiff,

vs.

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

Defendants.

MEMORANDUM DECISION

Case No. 970400247

Judge Gary D. Stott

This case came before the Court for trial on September 7, 1999. Both parties and their counsel were present at trial. The Court, having fully reviewed the file, and having thoroughly considered all of the evidence presented at trial, issues the following memorandum decision:

I

Plaintiff Keith Jonsson offered Defendants Reed Bromley and Utah Valley Egg, Inc. a total of \$8,000 for the purchase of their feed truck, generator, switching unit, electrical panels, and wiring. Douglas Powell conveyed Mr. Jonsson's offer to the Defendants on March 4, 1996 in the form of a written document that Mr. Jonsson had prepared. *See* Plaintiff's Exhibit 1.

Reed Bromley testified in Court that he did not sign Plaintiff's Exhibit 1, but that instead Michael Bromley, Reed Bromley's father, signed his name on the document for him, believing at the time that Reed Bromley would not dispute the sale of the listed equipment. Reed Bromley accepted Mr. Jonsson's check for \$8,000, depositing it the next day, and never told anyone connected to the transaction, including Keith Jonsson, Richard Mitchell (Mr. Jonsson's

electrician), Brandon Woods (Mr Mitchell's assistant electrician), or Steve Bell (representative of Utah Power and Light), that he disputed or was not in agreement with the document his father had signed

Reed Bromley's also testified that he had not intended to sell the electrical panels and that he never would have agreed to sell them To support his position, he testified that he told Mr Powell, Mr Mitchell, Mr Woods, and Mr Bell, while such individuals were at his farm for the purpose of disconnecting and removing Mr Jonsson's equipment, that the electrical panels were not included in the deal with Mr Jonsson

However, Mr Powell, Mr Mitchell, and Mr Woods' testimonies are consistent that Mr Bromley never mentioned to them that the electrical panels were to be excluded from what Mr Jonsson was buying Moreover, Bromley made no personal effort to contact Mr Jonsson to tell him that, despite the fact that he was accepting Mr Jonsson's offer and check, he was excluding the electrical panels from the sale The evidence shows that Bromley deposited the check in his own personal account and that he used the funds for his own personal or business needs

Defendants have alleged that Mr Jonsson did not comply with the following contract clause "The generator will be picked up as soon as possible to be checked out by a qualified person " Plaintiff's Exhibit 1 Being advised of all the evidence presented at trial, the Court finds that Mr Jonsson, after receiving the signed document and after being notified that Reed Bromley had taken his check, acted reasonably and promptly in contacting Alvin Ault to go with him to personally inspect the equipment and in contacting Richard Mitchell to go to the farm to inspect the equipment and to disconnect and remove the equipment

In late May or early June of 1996, Mr Jonsson sent Mr Mitchell to disconnect and pick

up all of the remaining items that Mr. Jonsson had purchased from the Bromley's farm. Mr. Woods and Mr. Bell were present with Mr. Mitchell during his visit to Bromley's farm to assist him in effecting a safe disconnection. During this visit, Reed Bromley was also present with Mr. Mitchell, Mr. Woods, and Mr. Bell at the farm. At Reed Bromley's request, the parties then agreed that the pick up of the items effected in the agreement, except feed truck, would be delayed. This agreement was evidenced by a telephone conversation which took place from the farm to Mr. Jonsson. The parties agreed to allow the items to remain in order to give Reed Bromley power to his shed, thus allowing him the opportunity to sell some egg processing equipment, and in order to avoid turning off a power source to the house where Michael Bromley, Reed Bromley's father, lived. The parties also agreed, per this phone conversation, that the equipment would be picked up and removed "before the snow flew." Reed Bromley admitted to having this agreement on the record.

Based upon all of the testimony provided at trial, the Court finds that Mr. Jonsson made reasonable efforts to contact Reed Bromley to pick up the equipment. The Court finds no unreasonable delay on Mr. Jonsson's part in checking out the equipment by a qualified person or in making arrangements to have the equipment picked up.

In light of all of the circumstances and the evidence surrounding the proposal of the agreement by Keith Jonsson to Reed Bromley, and considering Reed Bromley's actions in either signing the document or accepting the signature of his father on the document and accepting and depositing Mr. Jonsson's check for \$8,000 without personally contacting Mr. Jonsson to inform him of any disagreement as to the electrical panels, the Court concludes that Mr. Jonsson met his burden of proof in establishing that he made an offer to purchase certain personal property, and

that Bromley ultimately accepted it, individually and on behalf of Utah Valley Egg Corporation, without repudiating, rescinding, or modifying the agreement as set forth in Plaintiff's Exhibit 1. There was a meeting of the minds and an understanding as to what was being sold and purchased, and there was an agreement to buy and sell the personal property as reflected in the written document, Plaintiff's Exhibit 1. Plaintiff's Exhibit 1 is a binding document on the Plaintiff, Mr. Jonsson, to purchase and on the Defendants, Reed Bromley and Utah Valley Egg, Inc., to sell the items included in the document for the price indicated.

II

The Court finds that Defendants Reed Bromley, acting individually, and Reed Bromley, acting on behalf of Utah Valley Egg, Inc., breached their agreement with the Plaintiff, Mr. Jonsson. Reed Bromley falsely represented to Mr. Jonsson in October of 1996 that Michael Bromley had taken Mr. Jonsson's generator and switching unit to Salt Lake City to be serviced for Mr. Jonsson; however, Reed Bromley had actually sold the generator and switching unit to a third party. After Reed Bromley had given this false information about the generator to Mr. Jonsson, and after Mr. Jonsson discovered that Reed Bromley had sold the equipment, Mr. Jonsson acted reasonably and timely in determining the value of the property by finding out, at Reed Bromley's request, what it would cost to replace it, and in communicating such price to Reed Bromley.

The Court finds that Bromley represented to Mr. Jonsson that if Mr. Jonsson would find out the replacement cost of the generator and the switching unit, he would replace such equipment, which he admitted he had wrongfully sold. However, testimony indicates that Reed Bromley would not speak with Mr. Jonsson after Mr. Jonsson informed him of the cost of

replacement.

Considering all of the circumstances and the evidence surrounding the attempted pick up of the equipment by Mr. Jonsson, Reed Bromley's request that some equipment remain, Reed Bromley's misrepresentations to Mr. Jonsson, and Reed Bromley's sale of the equipment, which Mr. Jonsson had purchased, to a third party, the Court concludes that Defendants Reed Bromley and Utah Valley Egg & Poultry, Inc. breached their contract with the Plaintiff, Mr. Jonsson, as to the sale of goods indicated on Plaintiff's Exhibit 1, minus the feed truck, of which Mr. Jonsson has possession.

III

Defendants Reed Bromley and Utah Valley Egg and Poultry, Inc. are held jointly and severally liable for damages that Mr. Jonsson has suffered as a result of their breach. The Court finds that Defendant Reed Bromley acted both individually and on behalf of his corporation, Utah Valley Egg and Poultry, Inc., when he was dealing with Mr. Jonsson in this transaction. The contract is marked as Exhibit 1. Reed Bromley, as to the corporate entity of Utah Valley Egg, was its sole shareholder and its only officer. Reed Bromley held himself out individually to Mr. Jonsson and to Mr. Jonsson's agents to be the owner of the property until the filing of this lawsuit, after which he then claimed that Utah Valley Egg & Poultry, Inc. owned the property. There was no evidence at trial to indicate that Bromley Farms was a viable corporation when the parties entered the agreement. On the contrary, the evidence indicated that on March 4, 1996 Bromley Farms was not the owner of the personal property involved in the transaction to Mr. Jonsson. The Court finds that Reed Bromley treated Utah Valley Egg and Poultry, Inc. as his alter ego. Thus, to correctly include the owners of the property, the court holds Reed Bromley and

Utah Valley Egg and Poultry, Inc. jointly and severally liable for damages in this case.

IV

Utah Code has specifically adopted the Uniform Commercial Code, in U.C.A. §§ 70A-1-101 et seq, to govern the sale of goods in Utah. U.C.A. § 70A-1-106 mandates liberal administration of remedies in order to make deserving victims of breach whole: “The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed. . . .”

The Code specifically provides for compensatory remedies for aggrieved buyers in U.C.A. § 70A-2-711(1): “[T]he buyer may . . . in addition to recovering so much of the price as has been paid . . . (b) recover damages for nondelivery as provided in this chapter (Section 70A-2-713).”

Utah Code Annotated § 70A-2-713 then provides for expectational damages in the event of a seller’s breach:

Subject to the provisions of this chapter with respect to proof of market price (section 70A-2-723), the *measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 70A-2-715), but less expenses saved in consequence of the seller’s breach.*

Incidental damages, pursuant to U.C.A. § 70A-2-715(1) “include *expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.*”

According to the UCC, Mr. Jonsson is entitled to recover (1) the amount he paid

Defendants under the contract for the goods he did not receive, (2) the difference between the market and contract prices for the goods, and (3) incidental damages he has incurred as a result of his performance under the breached contract.

1. Mr. Jonsson paid Defendants \$8,000 under the contract for the feed truck, the generator, the switching unit, the electrical panels, and the wiring. Johnson then took possession of the feed truck, but never received the rest of the equipment. Thus, the Court will account for the portion of the contract as to which Defendants have performed and deduct such amount from the total contract price of \$8,000 for all of the goods.

Testimony at trial was that Mr. Powell purchased 2 feed trucks from Mr. Bromley for \$4200.00. One of Reed Bromley's feed trucks is thus worth \$2100. Thus, for the portions of the contract which Defendants did not perform, Mr. Jonsson is entitled to recover \$5,900 (\$8,000 minus \$2100).

2. Expert testimony at trial indicated that a similar used generator would sell for between \$24,000 and \$35,000, according to Richard Mitchell and Jim Yates respectively. Mr. Mitchell also testified that a similar switching unit would cost \$6,000 to \$8,000. The Court determines the market value of the generator to be \$30,000 and the market value of the switching unit to be \$8,000. Based on the testimony of Reed Bromley as to his efforts to sell the panels, the Court determines that the electrical panels were of little or no monetary value. Thus, the difference between market value and contract price for the goods that Mr. Jonsson did not receive is \$38,000.

3. Mr. Jonsson's incidental damages include the cost to Mr. Jonsson of Mr. Mitchell's inspection and disconnection. Mr. Jonsson forgave Mr. Mitchell a \$2500 debt in lieu of

Mitchell's disconnection services that he performed on the Bromley property. Thus, Mr. Jonsson is entitled to recover \$2500 in incidental damages. Although the evidence indicates that Mr. Jonsson spent \$132 on a battery for the generator, Mr. Jonsson presented no evidence that he attempted to mitigate or reduce the \$132 in damages by making any efforts to return or to resell the battery. Thus, the Court will not include the battery's cost of \$132 as incidental damages to which Mr. Jonsson is entitled to recover.

V

Based upon the evidence provided, the Court does not find the actions of the Defendants to be willful, wanton, or malicious, and does therefore not find sufficient evidence to grant punitive damages or attorney's fees to Mr. Jonsson.

CONCLUSION

In summary, judgment may be entered against Defendants, Reed Bromley and Utah Valley Egg and Poultry, Inc., whom the Court shall hold jointly and severally liable, in the amount of \$46,400 (which is the total of \$5,900 + \$38,000 + \$2500), which sum is to be paid to the Plaintiff, Keith Jonsson. The claims against Bromley Farms are dismissed. Counsel for the Plaintiff shall prepare appropriate findings and judgment consistent with this Memorandum Decision and submit them to the Court for signature.

DATED this 13 day of Sept, 1999,

BY THE COURT

ORIGINAL IF IN RED INK
GARY D. STOTT, JUDGE
DIST. COURT, UT.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 970400247 by the method and on the date specified.

METHOD NAME

Mail	ELLEN KITZMILLER ATTORNEY DEF 201 S. MAIN STREET, STE. 1800 P.O. BOX 45898 SALT LAKE CITY, UT 841450898
Mail	MARK C MCLACHLAN ATTORNEY PLA 343 SOUTH 400 EAST SALT LAKE CITY UT 84111

Dated this 14 day of Sept, 19 99.

Keric Singant
Deputy Court Clerk

Tab 3

J. THOMAS BECKETT (5587)
ELLEN KITZMILLER (7566)
PARSONS BEHLE & LATIMER
Attorneys for Defendants
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898
Telephone: (801) 532-1234

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

* * * * *

KEITH JONSSON,

Plaintiff,

vs.

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

Defendants.

**DEFENDANTS' NOTICE OF
OBJECTIONS TO PROPOSED
JUDGMENT**

Case No. 970400247

Judge Gary Stott

* * * * *

Pursuant to Rule 4-504(2) of the Utah Rules of Judicial Administration,
defendants Reed Bromley and Utah Valley Egg and Poultry, Inc., respectfully submit this Notice
of Objections to the proposed judgment prepared by plaintiff's counsel.

I. The Award Mistakenly Grants Plaintiff a Double-Recovery on His Claim For Breach of Contract.

In the Memorandum Decision of September 13, 1999, the Court identified the appropriate measure of damages in this contract dispute to be: (i) recovery of so much of the price as has been paid, plus (ii) the difference between the market price and the contract price, together with (iii) any incidental and consequential damages. Memorandum Decision at 6-7.

The Court found that the contract price of \$5,900 had been paid. It then found that the market price of the goods was \$38,000. Finally, it found that the plaintiff had \$2,500 in incidental and consequential damages. On that basis, the Court concluded that a judgment may be entered in the amount of “\$46,400 (which is the total of \$5,900 + \$38,000 + \$2,500)”. Memorandum Decision at 7-8.

Yet the amount of \$38,000 used by the Court in its calculation is incorrect. \$38,000 is, in the Court’s view, the market price of the goods. The figure which should have been used, *the difference between market price and contract price*, is \$32,100 (which is the difference between \$38,000 and \$5,900). Under the Court’s announced damages rule, the proper calculation of damages would be \$40,100 (which is the total of \$5,900 + \$32,100 + \$2,500).

II. Prejudgment Interest is Inappropriate in This Case Because the Award Represents a “Best Estimate” of the Goods’ Value.

The proposed judgment includes an award of prejudgment interest that was not included in the Court’s Memorandum Decision, and is improper in this case. Under Utah law, an award of prejudgment interest is inappropriate if damages cannot be determined with mathematical precision. Price Orem Investment Co. v. Rollins, Brown & Gunnel, Inc., 784 P.2d 475, 482-83

(Utah Ct. App. 1989) (“For damages to be calculable with mathematical certainty, they must be ascertained ‘in accordance with fixed rules of evidence and known standards of value . . . rather than be guided by [the factfinder’s] best judgment in assessing the amount to be allowed for past as well as future injury, or for elements that cannot be measured by any fixed standards of value.” (affirming trial court’s denial of prejudgment interest on damage award based on expert testimony regarding fair market value) (quoting Fell v. Union Pacific Ry. Co., 32 Utah 101, 88 P. 1003, 1005 (Utah 1907))). As the Court’s Memorandum Decision makes plain, the award of damages on plaintiff’s claim was not determined with mathematical precision, but instead based on the Court’s best judgment of the goods’ value as gleaned from purported expert testimony regarding what a similar used generator and switching unit would sell for. Memorandum Decision at 7.

Defendants respectfully request that the Court revise the proposed judgment in conformity with the Court’s award of damages as announced in its Memorandum Decision.

DATED this 7th day of October, 1999.



J. THOMAS BECKETT
ELLEN KITZMILLER
PARSONS BEHLE & LATIMER
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October, 1999, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **DEFENDANTS' NOTICE OF OBJECTIONS TO PROPOSED JUDGMENT** to:

Mark C. McLachlan
Perkins, Schwobe & McLachlan
343 South 400 East
Salt Lake City, Utah 84111



Tab 4

FILED
Fourth Judicial District Court
of Utah County, State of Utah
10-13-99 Deputy

Mark C McLachlan (#2207)
PERKINS, SCHWOBE & McLACHLAN
Attorney for Plaintiff
343 South 400 East
Salt Lake City, Utah 84111
Telephone (801) 521-0177

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

KEITH JONSSON,

Plaintiff

vs

REED BROMLEY AND BROMLEY
FARMS, a Utah Corporation, and UTAH
VALLEY EGG & POULTRY, INC ,
a Utah Corporation,

Defendants

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

Case No 970400247 CV

Judge Gary D Stott

This matter on came on for trial before the Honorable Gary D Stott on the 7th day of
September, 1999 The Plaintiff, Keith M Jonsson being present and represented by his attorney,
Mark C McLachlan of Perkins, Schwobe and McLachlan and the Defendants, Reed Bromley and
Utah Valley Egg & Poultry, Inc , being present and represented by their attorneys of record, Ellen
Kitzmilller and Thomas Beckett of Parson Behle and Latimer and the Court having fully reviewed
the file and having considered all of the evidence presented at the trial and having here before

entered it's Memorandum Decision, now makes and enters the following:

FINDINGS OF FACT

1. Plaintiff is a resident of Utah County, State of Utah.
2. Defendant, Reed Bromley is a resident of Utah County, State of Utah.
3. Defendant, Utah Valley Egg & Poultry, Inc. is a Utah Corporation and at all times material hereto was doing business in Utah County, State of Utah.
4. Jurisdiction is proper in this Court pursuant to Section 78-3-4, Utah Code Annotated.
5. Venue is proper pursuant to Section 78-13-4, Utah Code Annotated.
6. The Plaintiff, Keith Jonsson offered Defendants, Reed Bromley and Utah Valley Egg & Poultry, Inc., a total of Eight Thousand (\$8,000.00) Dollars for the purchase of their feed truck, generator, switching unit, electrical panels and wiring, as described in Plaintiff's Exhibit 1.
7. That Douglas Powell delivered Mr. Jonsson's offer to Defendants on March 4, 1996 in the form of written documents that Plaintiff Jonsson had prepared, which document was admitted as Plaintiff's Exhibit 1 at the trial.
8. That although Reed Bromley testified he did not sign Plaintiff's Exhibit 1, but instead that his Father, Michael Bromley signed the document, the Court finds that Reed Bromley accepted Mr. Jonsson's check in the amount of Eight Thousand (\$8,000) Dollars and deposited it the next day, and never told anyone connected to the transaction, including Keith Jonsson, Richard Mitchell (Mr. Jonsson's electrician), Brandon Woods (Mr. Mitchell's assistant

electrician), Douglas Powell, or Steve Bell, representative of Utah Power & Light, that he disputed or was not in agreement with the document that Reed Bromley testified his Father had signed.

9. Although Reed Bromley testified that he had not intended to sell the electrical panels, and that he told Mr. Powell, Mr. Mitchell, Mr. Woods and Mr. Bell, all individuals who were present at the Bromley Farm for the purpose of disconnecting and removing Jonsson's equipment, that the electrical panels were not included in the deal with Mr. Jonsson; the Court finds the testimonies of Douglas Powell, Richard Mitchell and Darin Woods are consistent, and that Mr. Bromley never mentioned to them that the electrical panels were to be excluded from what Mr. Jonsson was buying.

10. Reed Bromley made no personal effort to contact Mr. Jonsson to tell Mr. Jonsson that despite the fact that he was accepting Mr. Jonsson's offer and check, he was excluding the electrical panels from the sale, and the Court finds that all items described in the Plaintiff's Exhibit 1 were included in the agreement between Mr. Jonsson and the Defendants, Reed Bromley and Utah Valley Egg & Poultry, Inc.

11. Mr. Bromley deposited the check in his own personal account and used the funds for his own personal or business needs.

12. The Court finds that Mr. Jonsson, after receiving the signed document and being notified that Reed Bromley had accepted his check, acted reasonable and promptly in contacting

Alvin Ault to go with him to personally inspect the equipment. Further, Mr. Jonsson acted reasonably and promptly in contacting Richard Mitchell to go to the farm to inspect the equipment and to disconnect and remove the equipment; and therefore complied with the terms of Plaintiffs', Exhibit 1.

13. In late May or early June of 1996, Mr. Jonsson sent Mr. Mitchell to disconnect and pick up all of the remaining items that Mr. Jonsson had purchased from the Bromley's farm. At this meeting, Mr Woods, Mr. Mitchell, and Mr. Bell of Utah Power and Light were present at the Bromley's farm to assist Mr. Mitchell in effecting a safe disconnection of the generator and switching equipment. During this visit, Reed Bromley was also present with Mr. Mitchell, Mr. Woods, and Mr. Bell and at Reed Bromley's request, the parties then agreed that the pick up of the items identified in the agreement, except the feed truck, would be delayed.

14. The Court finds that during the meeting referred to in the preceding paragraph, a telephone conversation took place from the farm to Mr. Jonsson, and Mr. Jonsson and Mr. Bromley agreed to allow the items to remain at the Bromley farm, in order to give Mr. Reed Bromley electrical power to his sheds, thus allowing him the opportunity to sell some egg processing equipment and also in order to avoid turning off an electrical power source to the house where Michael Bromley, Reed Bromley's Father lived.

15. The parties also agreed per this telephone conversation, that the equipment would be picked up and removed "before the snow flew." Reed Bromley admitted to this agreement on the

record during his testimony

16 The Court finds that Mr Jonsson made a reasonable effort to contact Reed Bromley to pick up the equipment

17 The Court finds no unreasonable delay on Mr Jonsson's part in checking out the equipment by a qualified person or in making arrangements to have the equipment picked up

18 The Court finds in light of all the circumstances and the evidence surrounding the proposal of the agreement by Keith Jonsson to Reed Bromley, and considering Reed Bromley's actions in either signing the agreement or accepting the signature of his Father on the document, and accepting and depositing Mr Jonsson's check without personally contacting Mr Jonsson to inform him of any disagreement as to the electrical panels, that Mr Jonsson met his burden of proof in establishing that he made an offer to purchase certain personal property and that Reed Bromley ultimately accepted the offer, individually and on behalf of Utah Valley Egg Corporation, without repudiating, rescinding, or modifying the agreement as set forth in Plaintiff's Exhibit 1

19 The Court finds there was a meeting of the minds and an understanding as to what was being sold and purchased, and there was an agreement to buy and sell the personal property as reflected in the written document, Plaintiff's Exhibit 1

20 Plaintiff's Exhibit 1 is a binding document on the Plaintiff, Mr Jonsson, to purchase and on the Defendants, Reed Bromley and Utah Valley Egg, Inc , to sell the items included in the document for the price indicated The Court further finds that Defendants Reed Bromley, acting

individually, and Reed Bromley, acting on behalf of Utah Valley Egg, Inc., breached the agreement with the Plaintiff, Mr. Jonsson.

21. The Court further finds that Reed Bromley falsely represented to Mr. Jonsson in October of 1996 that Michael Bromley had taken Mr. Jonsson's generator and switching unit to Salt Lake City to be serviced for Mr. Jonsson; however, Reed Bromley had actually sold the generator and switching unit to a third party. The Court further finds that Reed Bromley had given this false information about the generator to Mr. Jonsson, and after Mr. Jonsson discovered that Reed Bromley had sold the equipment, and the Court further finds that Mr. Jonsson acted reasonably and timely to determine the value of the property by finding out, at Reed Bromley's request, what it would cost to replace the generator and switching unit, and in communicating such price to Reed Bromley.

22. The Court finds that Reed Bromley represented to Mr. Jonsson that if Mr. Jonsson would find out the replacement cost of the generator and the switching unit, he would replace such equipment, which Reed Bromley admitted he had wrongfully sold.

23. The Court finds that Reed Bromley would not speak with Mr. Jonsson after Mr. Jonsson had informed Reed Bromley of the replacement cost of the generator and switching unit.

24. Considering all the circumstances and the evidence surrounding the attempted pick up of the equipment by Mr. Jonsson, Reed Bromley's request that some equipment remain, Reed Bromley's misrepresentations to Mr. Jonsson, and Reed Bromley's sale of the equipment, which

Mr Jonsson had purchased, to a third party, the Court concludes that Defendants Reed Bromley and Utah Valley Egg & Poultry, Inc breached their contract with the Plaintiff, Mr Jonsson , as to the sale of goods described in Plaintiff's Exhibit 1, minus the feed truck, of which Mr Jonsson has possession

25 The Court finds that Defendants Reed Bromley and Utah Valley Egg & Poultry, Inc are held jointly and severally liable for the damages that Mr Jonsson suffered as a result of their breach

26 The Court finds that Defendant Reed Bromley acted both individually and on behalf of his corporation, Utah Valley Egg & Poultry, Inc , when he was dealing with Mr Jonsson in this transaction

27 The contract between Plaintiff and Defendant is marked as Plaintiff's Exhibit 1, and was admitted into evidence

28. Reed Bromley, as to the corporate entity of Utah Valley Egg & Poultry, Inc was its sole shareholder and its only officer and, Reed Bromley held himself out individually to Mr Jonsson and to Mr Jonsson's agents to be the owner of the property described in Plaintiff's Exhibit 1 until the filing of this lawsuit, after which he then claimed that Utah Valley Egg & Poultry, Inc owned the property

29 There was no evidence at trial to indicate that Bromley Farms was a viable corporation when the parties entered the agreement To the contrary, the evidence indicated that

on March 4, 1996, Bromley Farms was not the owner of the personal property involved in the transaction to Mr. Jonsson.

30. The Court finds that Reed Bromley treated Utah Valley Egg & Poultry, Inc as his alter ego. Thus, to correctly include the owners of the property, and to prevent an injustice, the Court holds Reed Bromley and Utah Valley Egg & Poultry, Inc. jointly and severally liable for damages in this case.

31. The Court finds that Mr. Jonsson paid Defendants Eight Thousand (\$8,000) Dollars under the contract for the feed truck, the generator, the switching unit, the electrical panels, and the wiring.

32. Jonsson then took possession of the feed truck, but never received the rest of the equipment. Thus, the Court will account for the portion of the contract as to which Defendants have performed and deduct such amount from the total contract price for all of the goods.

33. The Court finds that Mr. Powell purchased two (2) feed trucks from Mr. Bromley for \$4,200.00. One of Reed Bromley's feed trucks is thus worth \$2,100.00. Thus, for the portions of the contract which Defendants did not perform, Mr. Jonsson is entitled to recover \$5,900 (\$8,000 minus \$2,100).

34. The Court finds that expert testimony at the trial indicated that a similar used generator would sell for between \$24,000 and \$35,000, according to Richard Mitchell and Jim Yates respectively. Mr. Mitchell also testified that a similar switching unit would cost \$6,000 to

\$8,000. The Court determines the market value of the generator to be \$30,000 and the market value of the switching unit to be \$8,000.

35. Based upon the testimony of Reed Bromley, the Court finds that the electrical panels were of little or no monetary value. Thus, the difference between market value and contract price for the goods that Mr. Jonsson did not receive is \$38,000.

36. The Court finds that Mr. Jonsson's incidental damages include the cost to Mr. Jonsson of Mr. Mitchell's inspection of the generator and disconnection of the generator. Mr. Jonsson forgave Mr. Mitchell a \$2,500 debt in lieu of Mr. Mitchell's disconnection services that he performed on the Bromley property. Thus, Mr. Jonsson is entitled to recover \$2,500 in incidental damages.

37. The Court finds that the cost of a battery purchased by Mr. Jonsson in the amount of \$132 as incidental damages which is not recoverable, because Mr. Jonsson did not attempt to mitigate his damages for the battery.

38. Based upon all the evidence provided, the Court does not find the actions of the Defendants to be willful, wanton, or malicious, and does therefore not find sufficient evidence to grant punitive damages or attorneys's fees to Mr. Jonsson.

39. The Court finds that Plaintiff Keith Jonsson is entitled to recover prejudgment interest resulting from the breach of contract pursuant to U.C.A. § 15-1-(2).

40. The Court finds that Plaintiff Keith Jonsson is entitled to recover his costs in the

amount of Six Hundred (\$600) Dollars, and that such costs were necessarily incurred and are reasonable.

From the foregoing Findings of Fact, the Court now makes and enters it's:

CONCLUSIONS OF LAW

1. The Court concludes in light of all the circumstances and the evidence surrounding the proposal of the agreement by Keith Jonsson to Reed Bromley, and considering Reed Bromley's actions in either signing the agreement or accepting the signature of his Father, Michael Bromley on the agreement (Exhibit 1), and accepting and depositing Mr. Jonsson's check without personally contacting Mr. Jonsson to inform him of any disagreement as to the electrical panels, that Mr. Jonsson met his burden of proof in establishing that he made an offer to purchase certain personal property and that Reed Bromley ultimately accepted the offer, individually and on behalf of Utah Valley Egg Corporation, without repudiating, rescinding, or modifying the agreement as contained in Plaintiff's Exhibit 1.

2. The Court finds there was a meeting of the minds and an understanding as to what was being sold and purchased, and there was an agreement to buy and sell the personal property as contained in the written document, Plaintiff's Exhibit 1.

3. Plaintiff's Exhibit 1 is a binding agreement on the Plaintiff, Mr. Jonsson, to purchase and on the Defendants, Reed Bromley and Utah Valley Egg, Inc., to sell the items included in the

document for the price indicated. The Court further finds that Defendants Reed Bromley, acting individually and on behalf of Utah Valley Egg & Poultry, Inc., breached the agreement with the Plaintiff, Mr. Jonsson.

4. Reed Bromley acting individually and as an alter ego of Utah Valley Egg & Poultry, Inc., entered into an agreement with Plaintiff Keith Jonsson, which agreement is identified as Plaintiff's Exhibit 1.

5. That Reed Bromley and Utah Valley Egg & Poultry, Inc., breached the agreement with Mr. Jonsson.

6. Utah has specifically adopted the Uniform Commercial Code, in U.C.A. §§ 70A-1-101 et seq, to govern the sale of goods in Utah. U.C.A. § 70A-1-106 mandates liberal administration of remedies in order to make deserving victims of breach whole: "The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had gully performed. . ."

The Code specifically provides for compensatory remedies for aggrieved buyers in U.C.A. §70A-2-711(1): "[T]he buyer may . . . in addition to recovering so much of the price as has been paid . . . (b) recover damages for non delivery as provided in this chapter (Section 70A-2-713)."

Utah Code Annotated § 70A-2-713 then provides for expectational damages in the event of a seller's breach:

Subject to the provisions of this chapter with respect to proof of market price (section 70A-2-723), the *measure of damages for*

nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 70A-2-715), but less expenses saved in consequence of the seller's breach

Incidental damages, pursuant to U C A § 70A-2-715(1) “include *expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.*”

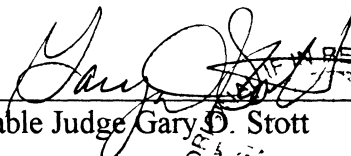
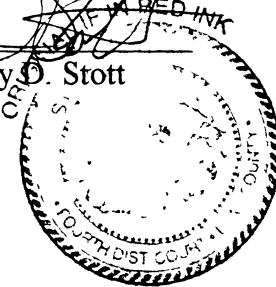
According to the UCC, Mr Jonsson is entitled to recover (1) the amount he paid Defendants under the contract for the goods he did not receive, (2) the difference between the market and contract prices for the goods, and (3) incidental damages he has incurred as a result of his performance under the breached contract

7 Accordingly, Plaintiff Keith Jonsson is entitled to a judgment against the Defendants, Reed Bromley and Utah Valley Egg & Poultry, Inc , jointly and severally in the amount of Forty-Six Thousand Four Hundred (\$46,400) Dollars (which is the total of \$5,900 (amount paid less value of feed truck) + \$38,000 (value of generator and switching unit) + \$2,500 (sum paid to Richard Mitchell), together with interest thereon at the legal rate of 10% per annum from November 14, 1996 through the present, pursuant to Section 15-1-(2) Utah Code Annotated (\$13,533), together with Plaintiff's costs in the amount of Six Hundred (\$600) Dollars

8 The claims against Bromley Farms are dismissed with prejudice

DATED this 13 day of October, 1999.

BY THE COURT


HONORABLE JUDGE GARY D. STOTT


CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Findings of Fact and Conclusions of Law, were hand delivered, this 30 day of September 1999, to the following:

J. Thomas Beckett
Ellen Kitzmiller
Parsons Behle & Latimer
Attorneys for Defendants
201 South Main Street, Suite 1800
Salt Lake City, Utah 84145




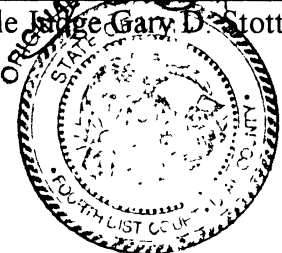
Tab 5

of the evidence presented at trial and having entered it's Memorandum Decision, Findings of Fact and Conclusions of Law, now enters it's Judgment as follows:

Plaintiff Keith Jonsson is hereby awarded a Judgment against Defendants, Reed Bromley and Utah Valley Egg & Poultry, Inc., jointly and severally, in the amount of Forty Six Thousand Four Hundred (\$46,400) Dollars, plus prejudgment interest in the amount of Thirteen Thousand Five Hundred and Thirty-Three (\$13,533) Dollars, plus Plaintiff's costs incurred herein in the amount of Six Hundred (\$600.00) Dollars, for a total Judgment of Sixty Thousand Five Hundred and Thirty-Three (\$60,533) Dollars, such Judgment bearing interest at the rate of 6.545% until paid.

DATED this 13 day of October, 1999.

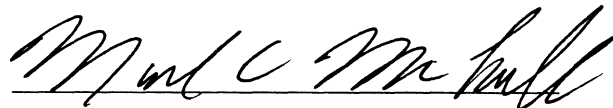
BY THE COURT


HONORABLE JUDGE GARY D. STOTT


CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Judgment was hand
delivered, this 30 day of September 1999, to the following:

J. Thomas Beckett
Ellen Kitzmiller
Parsons Behle & Latimer
Attorneys for Defendants
201 South Main Street, Suite 1800
Salt Lake City, Utah 84145

A handwritten signature in cursive script, appearing to read "Mark C. McCall", written over a horizontal line.