

1981

John M Alexander And Helen Alexander v. Lee  
Dell Brown, Glen F. Brown, Wayne L. Brown, And  
Warren D. Brown, Partners, dba Blw Company :  
Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH  
-----

JOHN M. ALEXANDER and :  
HELEN ALEXANDER, :  
 :  
Plaintiffs- :  
Respondents, :

vs. : Case No. 17,339

LEE DELL BROWN, GLEN F. :  
BROWN, WAYNE L. BROWN :  
and WARREN D. BROWN, :  
Partners, d/b/a BLW :  
COMPANY, :  
 :  
Defendants- :  
Appellants. :

-----  
BRIEF OF PLAINTIFFS-RESPONDENTS  
-----

APPEAL FROM THE FINAL JUDGMENT OF THE FOURTH  
JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY,  
STATE OF UTAH, HONORABLE ALLEN B. SORENSEN,  
DISTRICT JUDGE, PRESIDING  
-----

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Respondents

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Appellants

FILED

FEB 18 1981

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Clerk, Supreme Court, Utah

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Plaintiffs- :  
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IN THE SUPREME COURT

OF THE STATE OF UTAH

JOHN M. ALEXANDER and  
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Plaintiffs-  
Respondents,

vs.

Case No. 17,339

LEE DELL BROWN, GLEN F.  
BROWN, WAYNE L. BROWN  
and WARREN D. BROWN,  
partners, d/b/a BLW  
COMPANY,

Defendants-  
Appellants.

BRIEF OF PLAINTIFFS-RESPONDENTS

NATURE OF THE CASE

This is an action for breach of contract. The plaintiffs sought damages for the defendants' alleged failure to comply with the terms of an earnest money agreement for the sale of real estate. In particular, plaintiffs alleged that defendants failed to provide street paving, sidewalk and curb and gutter as required by the earnest money agreement.

DISPOSITION IN LOWER COURT

The case was tried on June 19, 1980, before the Honorable Allen B. Sorensen, District Judge, in the District Court of the Fourth Judicial District in and for Utah County.

The Court awarded judgment in favor of the plaintiffs in the amount of \$4,500.00, plus attorney's fees of \$960.00 and

and costs of \$27.50. (See Appendix "A" for a copy of the findings of Fact, Conclusions of Law and Judgment.)

#### RELIEF SOUGHT ON APPEAL

Plaintiffs-Respondents seek to have the judgment of the trial court affirmed.

Plaintiffs-Respondents also request that the award for attorney's fees be increased by an amount sufficient to cover the costs of responding to this appeal if the judgment is affirmed.

#### STATEMENT OF FACTS

The plaintiffs, Mr. and Mrs. Alexander, had been looking for an appropriate subdivision lot upon which they intended to build a home. They saw defendants' newspaper advertisement (plaintiffs' Exhibit No. 1) which listed for sale "fully improved lots." (R. 126) The plaintiffs negotiated with Boy Sorensen, a salesman and agent for the defendants, to arrange to purchase a lot in the subdivision. Mr. Sorensen offered the plaintiffs several lots to choose from. (R. 127) They chose lot #5 because it fit their house plans better than any of the other lots. Plaintiffs' house plans had a garage that opened to the side of the house rather than to the front, so a finished side road was essential in order to afford convenient entrance and access to the garage. (R. 128) The plot plan showed a main road running in front (east) of lot #5, and a side street on the north side of the lot (see plaintiffs' Exhibit No. 3).



On November 26, 1973, plaintiffs executed an earnest money receipt and offer to purchase contract (a copy of which is attached as Appendix "B") with the defendants. Lines 29 and 30 of that agreement contained the sentence "The following special improvements are included in this sale;" and listed several possible improvements that could be marked with "x" to indicate "yes" or "o" to indicate "no." An "x" had been placed in the boxes next to the words "sidewalk," "curb and gutter," and "special street paving," among others. Line 31 contained room to list any exceptions; the words "no exceptions" had been entered instead (see plaintiffs' Exhibit No. 2 and Appendix "B" attached). The agreement was prepared by the defendants' agent and representative, Boyd Sorensen.

The defendants did improve the main road (1920 West) as required, but at no time have the defendants made any attempt to provide any of the improvements to the side road (460 South) (R. 129-130).

The north half of the side street was paved by the owner of lot #6, Edwin Darrell Jenkins, because the defendants had not contracted to provide a fully improved lot complete with street paving, sidewalks, and curb and gutter in their contract with Mr. Jenkins. (R. 138, 157-158) Mr. Jenkins also testified that the defendants' agent Sorensen had told him that the defendants intended to provide the improvements to the plaintiffs' lot by putting in the street paving, curb, gutter and sidewalk on

the Alexander's side of 460 South (R. 157-158).

As a result of the side street (460 South) not being on the south side, the plaintiffs have been unable to complete the landscaping of their lot. (R. 134) There is no definite border between the lot and the street. During the winter and spring months, the mud was so bad that plaintiffs were unable to even get into their garage. To mitigate this problem the plaintiffs constructed a driveway at a right angle to their garage and across the lot to 1920 West street. The driveway is serviceable, but access to the two-car garage is inconvenient at best. (R. 134-135) The cost to the plaintiffs of constructing the additional driveway was about \$192.00, not including the cost of plaintiffs' own labor (about one day was spent). (R. 136)

The plaintiffs believed that the city would enforce its requirement that all roads in the subdivision be improved. (R. 141, 145)

The city engineer for the City of Provo testified that the City required that all roads in the subdivision, as shown on the plot plan, be improved, including curb, gutter, sidewalks and paving. (R. 147-149)

There was evidence that the current cost of installing the required improvements would be \$10.00 per lineal foot to install the sidewalk, curb and gutter on the plaintiffs' side of 460 South and an additional \$10.00 per lineal foot to install asphalt street paving. (R. 150-151) The length of

plaintiffs' lot along the unfinished road (460 South) is 99 feet. (R. 131) There was also testimony that in early 1974 the improvements would have cost approximately \$7.00 per lineal foot for the sidewalk, curb and gutter and \$7.00 per lineal foot for the asphalt. (R. 151-152) The cost in 1976 to Mr. Jenkins, the owner of lot #6, to put in the sidewalk, curb, gutter and street paving was \$4,500.00. (R. 161-162)

On the question of attorney's fees, plaintiffs' counsel testified that he had billed the plaintiffs for \$962.50 in attorney's fees including \$27.50 in costs prior to the day of the trial. (R. 163) He further testified that he estimated an additional \$400.00 in attorney's fees would be incurred for the trial itself and the preparation of any additional pleadings if plaintiffs prevailed. (R. 164)

Defendants' counsel testified that \$750.00 would be a reasonable attorney's fee. (R. 166) The Court, after finding in plaintiffs' favor, reached a compromise award of \$960.00 in attorney's fees and \$27.50 in costs. (See R. 106 and Appendix "A" attached.)

### ARGUMENT

#### POINT I

THE TRIAL COURT CORRECTLY CONCLUDED THAT THE CONTRACT WAS UNAMBIGUOUS, AND THAT PAROL EVIDENCE WAS THEREFORE INADMISSIBLE TO MODIFY THE TERMS OF THE CONTRACT.

It is well established that the meaning of a contract is determined by the intent of the parties to the contract, of

which the contract itself is the primary evidence. As the Court stated in Continental Bank and Trust Company vs. Byrum, 6 Utah 2d 98, 306 P.2d 773, 775 (1957), "[t]his intent should be ascertained first from the four corners of the instrument itself, second from other contemporaneous writings concerning the same subject matter, and third from the extrinsic parole evidence of the intentions. If the ambiguity can be reconciled from a reasonable interpretation of the instrument, extrinsic evidence should not be allowed." (Citations omitted)

This parole evidence rule was reaffirmed by the Utah Supreme Court in E. A. Strout Western Realty Agency, Inc. vs. Broderick, 522 P.2d 144, 145-146 (Utah, 1974), where this Court stated that:

. . .parole [sic] evidence may not be given to change the terms of a written agreement which are clear, definite, and unambiguous. To permit that would be to cast doubt upon the integrity of all contracts and to leave a party to a solemn agreement at the mercy of the uncertainties of oral testimony given by one who is in the subsequent light of events discovers that he made a bad bargain. (Footnote omitted)

As stated by the Colorado Supreme Court:

The mere fact that there is a difference between the parties as to the interpretation of an instrument does not of itself create an ambiguity.

Burns vs. Burns, 454 P.2d 814, 818 (Colo. 1969).

The question is not, therefore, whether the contract should be construed to have two different meanings, but rather whether

that is "a reasonable interpretation of the instruments. . ."  
Continental Bank, supra. (Emphasis added)

It is also well established that contract provisions are construed against the party who drafted the agreement, See, e.g., Seal vs. Tayco, Inc., 16 Utah 2d 323, 400 P.2d 503 (1965), and Continental Bank, supra, 306 P.2d at 775.

If there is uncertainty as to which of two possible interpretations is correct, the contract will be construed against the drafter.

In the case at bar, the defendants provided their own printed earnest money receipt and offer to purchase form. One clause, as filled out by the defendants' agent Sorensen, stated:

The following special improvements are included in this sale, . . .sidewalk, curb and gutter, special street paving . . ."

A reasonable interpretation of this contract provision is that all streets bordering the lot would be paved and have curbs, gutters and sidewalks. The word "special" is used twice, indicating that the street paving and other improvements would be different than "ordinary" improvements; it would be reasonable to infer that the word "special" indicated that the paving would be more than ordinary. In addition, the defendants had an opportunity to list any exceptions or explanations relevant to the listed improvements, but chose to write "no exceptions" instead. (See plaintiffs' Exhibit No. 2 - Appendix "B" attached.)

A reasonable interpretation of this contract provision is that all streets bordering the lot would be paved. The trial court so interpreted the contract, and its interpretation should be affirmed.

That the contract term "special street paving" meant paving of all streets in the subdivision is further evidenced by examining "other writings concerning the same subject matter," as was advocated by this Court in Continental Bank, supra.

The writings that were in existence at the time of the contract was signed, and which would thus be relevant in indicating what is the proper meaning of the contract, include the advertisement for the lot which the defendants placed in the newspaper (plaintiffs' Exhibit No. 1) and the plot plan of the subdivision which had been recorded at the Utah County Recorder's Office (plaintiffs' Exhibit No. 3).

In the newspaper advertisement, the defendants described the lot as "fully improved." This is further evidence that the "special street paving" listed in the contract with the other "special improvements" as being provided by the defendants extended to all streets adjoining the lot. If only part of the streets were finished, how could the lot be considered "fully improved?"

The recorded plot plan of the subdivision showed both main and side streets, and thus would indicate that when the contract included "special street paving" as one of the

"special improvements," both the main and side streets would be paved.

In addition, the Provo City subdivision regulations also required that the developer install paving, curbs, gutters and sidewalks on all streets in the subdivision. (R. 148-149)

The defendants rely on the Wyoming case of Kilbourne Park Corp. vs. Buckingham, 404 P.2d 244, 245 (Wyo. 1965) as showing that a contract, requiring simply that the contractor complete all roadways as platted in a certain subdivision, was ambiguous. A careful reading of the case supports the trial court's conclusion in the case at bar that the contract was unambiguous and that parol evidence was inadmissible. The Wyoming court stated (in a sentence only the last part of which is quoted in defendants' brief) that:

Inasmuch as no plat of the Ponderosa Subdivision was attached and no such plat was recorded at the time of the agreement, it is immediately apparent that parol evidence was required to establish what subdivision plat delineated the roads then being contracted to be built and what was the full understanding of the parties as to which roads were being contracted for.

In the case at bar the subdivision plat was recorded before the time the contract was signed, and it was specifically referred to in the contract; the exclusion of parol evidence was, therefore, proper.

The trial court properly held that the contract was unambiguous, and that the term "special street paving" meant that all streets would be paved. The correctness of the

court's conclusion is further evidenced by reference to other writings concerning the same subject matter. The trial court properly excluded parol evidence offered by the defendants seeking to vary the terms of the contract, and its decision should be affirmed.

## POINT II

THE CONTRACT WAS AN INTEGRATION OF THE COMPLETE AGREEMENT BETWEEN THE PARTIES, AND THE TRIAL COURT PROPERLY EXCLUDED PAROL EVIDENCE AIMED AT ALTERING THE AGREEMENT OF THE PARTIES.

Defendants' contention that the contract was not an integration can be answered by simply stating in full this Court's quotation from Wigmore on Evidence §2430, as found in Farr v. Wasatch Chemical Co., 104 Utah 272, 143 P.2d 281, 283 (1944):

The inquiry is whether the writing was intended to cover a certain subject of negotiations; for if it was not, then the writing does not embody the transaction on that subject \* \* \*. Whether a particular subject of negotiation is embodied by the writing depends wholly upon the intent of the parties thereto \* \* \*. This intent must be sought \* \* \* in the conduct and language of the parties and the surrounding circumstances \* \* \*. The question being whether certain subjects of negotiation were intended to be covered, we must compare the writing and the negotiations before we can determine whether they were in fact covered. \* \* \* In deciding upon this intent, the chief and most satisfactory index for the judge is found in the circumstances whether or not the particular element of the alleged extrinsic negotiation is dealt with at all in the writing. If it is mentioned, covered, or dealt with in the writing, then presumably the writing was meant to represent all of the transaction on that element; if it is not, then probably



the writing was not intended to embody that element of the negotiation. (Emphasis added)

Street paving was specifically mentioned in the contract, and, therefore, "presumably the writing was meant to represent all of the transaction on that element. . ."

### POINT III

PLAINTIFFS WERE NOT REQUIRED TO MITIGATE THEIR DAMAGES BY PAVING THE STREET AT THEIR OWN EXPENSE.

It is well established that the party damaged by a breach of contract has a responsibility to act so as to not increase the damages he incurs. However, mitigation of damages does not require that the damaged party completely assume the duty of the breaching party to fulfill the contract.

Where the party whose duty it is primarily to perform a contract has equal opportunity for performance and equal knowledge of the consequences of non-performance, he cannot, while the contract is subsisting and in force, be heard to say that plaintiff might have performed for him. So one who has a right to insist on performance of a contract according to its terms cannot be required to mitigate the damages which the other party will, by reason of a change in the circumstances without his fault, sustain through performance.

25 C.J.S. Damages §34.

The plaintiffs in the instant case were no better able than were the defendants to complete the paving as required by the contract. It would not be reasonable to expect the plaintiff homeowner to himself arrange to have a road in the subdivision paved when the subdivider had promised in the

contract of sale that the street paving would be provided the subdivider.

As stated in 25 C.J.S. Damages §33:

The efforts which the injured party must make to avoid the consequences of the wrongful act or omission need only be reasonable under the circumstances of the particular case, his duty being limited by the rules of common sense and fair dealing. . . .

The plaintiffs did undertake to alleviate their damages as far as was reasonable, by laying a driveway across their lot to the one street the defendants had paved. The trial court was correct in concluding that the plaintiffs had no duty to further mitigate damages by paving the road at their own expense.

#### POINT IV

THE TRIAL COURT CORRECTLY CONCLUDED THAT THE MEASURE OF DAMAGES WAS THE PRESENT COST OF COMPLETING THE CONTRACT.

The rule for measuring compensatory damages, as stated in 25 C.J.S. §74, is:

The measure of damages for breach of contract is substantive law. The measure is the amount which will compensate the injured person for the loss which a fulfillment of the contract would have prevented or the breach of it has entailed, and, under this principle, the measure of damages in the case of breach of particular contracts has been stated, including building and construction contracts. The same is true with respect to the measure of damages with regard to subcontracts.

Compensation is the value of the performance of the contract; the person injured is, as

far as it is possible to do so by monetary award, to be placed in the position he would have been in had the contract been performed.

The plaintiffs cannot be placed "in the position he would have been in had the contract been performed" unless the damage award is sufficient to pave the road at current prices. Were the defendants able to escape by paying, with inflated dollars, what the cost of completing the contract would have been several years ago, then they will have profited from their breach of the contract. Such a rule of law would create a dangerous incentive.

This Court has stated, with reference to damages in personal injury actions, that:

The present cost of living and the diminished purchasing power of the dollar may be taken into consideration when estimating damages. (Citing cases omitted)

Duffy vs. Union Pacific Railroad Company, 118 Utah 82, 218

P.2d 1080, 1083 (1950).

The same rule should apply to contract cases.

The trial court correctly concluded that the sum of \$4,500.00 would be necessary to compensate the plaintiffs for the defendants' breach of contract. That finding should be affirmed.

If, as defendants advocate, the damages are measured at 1974 prices with interest added, the resulting award would be very close to that determined by the trial court. There was evidence that in early 1974 the cost of improving the road would have been approximately \$7.00 per lineal foot for the curb,

gutter and sidewalk and an additional \$7.00 per lineal foot for the asphalt, or a total of approximately \$14.00 per lineal foot for all required improvements. Fourteen dollars (\$14.00) multiplied by the length of plaintiffs' lot, 199 feet, yields a total of \$2,786.00. Interest on that amount at 6% for 10 years would be \$1,170.12 for a total damage figure for the cost of improvements only of approximately \$3,956.12. This does not include the cost to the plaintiffs of installing an extra driveway across their lot.

The damages even under the defendants' theory would be substantially different from those found by the trial court, therefore his judgment should be affirmed.

#### POINT V

#### THE SUMS AWARDED BY THE TRIAL COURT FOR ATTORNEY'S FEES WERE REASONABLE.

This Court has held, with respect to a trial court's award of attorney's fees, that:

In the absence of patent error or clear abuse of discretion, this court will not disturb his findings and judgment. (Citing 20 Am. Jur. 2d Costs §78)

Beckstrom vs. Beckstrom, 578 P.2d 520, 524 (Utah, 1978).

Defendant argues that part of the attorney's fees incurred by the plaintiffs were the result of an error in drafting plaintiffs' first complaint, and that it is not reasonable to include that part of the cost in the award for attorney's fees. The trial court concluded that its award was reasonable. It was obviously a compromise from the testimony offered by plaintiffs and defendants' counsel. It is reasonable to

assume that attorneys will make some errors. The cost of those errors is as much a part of a reasonable attorney's fee as is the cost of the error-free services.

There was evidence presented at the trial that the attorney's fees incurred by the plaintiffs totaled \$962.50 for services in preparation for trial, and an additional approximately \$400.00 for services at and subsequent to the trial. Defendants' evidence was that \$750.00 was a reasonable attorney's fee. The award of \$960.00 was clearly not an abuse of discretion and represented a compromise by the court which obviously considered time spent by plaintiffs' counsel in redrafting the complaint.

#### POINT VI

IF THE JUDGMENT IS AFFIRMED, THE PLAINTIFFS  
ARE ENTITLED TO A REASONABLE ATTORNEY'S FEE  
FOR RESPONDING TO THIS APPEAL.

In Management Service Corp. vs. Development Associates,  
617 P.2d 406, 409 (Utah, 1980), the plaintiff-buyer contracted to buy lots in a subdivision from the defendant-seller, and later brought an action to enforce the contract. The trial court gave judgment for the plaintiffs, and the defendants appealed. The plaintiffs prevailed on appeal and requested additional attorney's fees for successfully defending the appeal.

This Court, overruling two prior cases, stated that:

We therefore adopt the rule of law that  
a provision for payment of attorney's  
fees in a contract includes attorney's

fees incurred by the prevailing party on appeal as well as at trial, if the action is brought to enforce the contract . . .

The earnest money receipt and offer to purchase in the case at bar provides that if a party breaches the contract "he agrees to pay all expenses of enforcing this agreement or of any right arising out of the breach thereof, including a reasonable attorney's fee." (See Exhibit No. 2 - Appendix "B" attached.)

If the plaintiffs are successful in responding to defendants' appeal, the defendants should be ordered to pay to plaintiffs the cost of this appeal, including a reasonable attorney's fee.

#### CONCLUSION

The requirement in the earnest money receipt and offer to purchase agreement that defendants provide "special street paving" and other improvements was unambiguous, and parol evidence to vary the terms of that agreement was properly excluded. The trial court was correct in concluding that defendants were required to pave the side road by plaintiffs' lot. The judgment of the trial court, awarding damages for failure to pave the road, should be affirmed.

The plaintiffs should receive, in addition to the judgment awarded by the trial court, a reasonable attorney's fee for responding to this appeal.

Submitted this 17th day of February, 1981.

Craig M. Snyder

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Respondents

MAILING CERTIFICATE

I hereby certify that I mailed two (2) copies of the foregoing Brief to Mr. Ronald R. Stanger, Attorney for Defendants-Appellants, 38 North University, P.O. Box 477, Provo, Utah 84601, postage prepaid, this 17th day of February, 1981.

Sue Gibson  
SECRETARY

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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

JOHN M. ALEXANDER and HELEN :  
ALEXANDER, :

Plaintiffs, :

vs. :

LEE DELL BROWN, GLEN F. BROWN, :  
WAYNE L. BROWN, and WARREN D. :  
BROWN, partners, d/b/a BLW :  
COMPANY, :

Defendants. :

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Civil NO. 47,426

THIS matter having come on regularly for trial on the 19th day of June, 1980, and the plaintiffs having appeared in person and being represented by their counsel, Craig M. Snyder, and the defendants having appeared by and through Lee Dell Brown and their counsel, Ronald R. Stanger, and the Court having heard the testimony, having received the evidence and the exhibits on file herein, having heard the arguments of counsel for the respective parties, having previously taken the matter under advisement and having rendered its memorandum decision herein and being fully advised in the premises, does hereby make and enter the following:

FINDINGS OF FACT

1. Plaintiffs are residents of Utah County, State of Utah.
2. Defendants, Lee Dell Brown, Wayne L. Brown and Warren D. Brown, are partners doing business as BLW Company.
3. At all times material hereto, BLW Company was doing business in Utah County, State of Utah.
4. Defendants, Lee Dell Brown and Wayne L. Brown, are residents



of Utah County, State of Utah.

5. Defendant Warren D. Brown is a resident of Salt Lake County, State of Utah.

6. On or about the 26th day of November, 1973, defendants and plaintiffs entered into an Earnest Money Receipt and Offer to Purchase concerning property located at 472 South 1920 West in Provo, Utah, and more particularly described as Lot 5, Plat "B", Ranchette Lanes Subdivision.

7. In the Earnest Money Agreement, plaintiffs agreed to purchase said property from the defendants and defendants agreed to sell to the plaintiffs that property described in the said Earnest Money Agreement.

8. Said property was to be sold in accordance with the terms and provisions as set forth in the Earnest Money Agreement.

9. The Court specifically finds no ambiguity in lines 29, 30 and 31 of Exhibit "2" which in fact is the Earnest Money Agreement dated November 26, 1973.

10. Defendants were required to provide to the plaintiffs a lot which was fully improved including sidewalk, curb, gutter and street paving improvements on 1920 West Street and also sidewalk, curb, gutter and street paving improvements on 460 South Street.

11. Demand has been made upon the defendants to complete the improvements in accordance with the provisions of Exhibit "2" and the defendants have failed, neglected and refused to make the said improvements in accordance with Exhibit "2" and particularly those improvements along 460 South Street including the sidewalk, curb, gutter and street pavement.

12. The Court finds that the plaintiffs have been damaged by the defendants' refusal to make the improvements along 460 South Street including the sidewalk, curb, gutter and street paving and that the cost of making those improvements would be \$4,500.00 for which plaintiffs shall be entitled to judgment.

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1 13. The Court finds that the plaintiffs have not breached any  
2 of their obligations under the Earnest Money Agreement dated  
3 November 26, 1973, and they have completed all of the requirements  
4 thereunder including payment of the purchase price of the lot.

5 14. The Court finds that the plaintiffs' second cause of  
6 action for fraud is without merit and should be dismissed.

7 15. The Court finds that the counterclaim filed with the  
8 defendants' amended answer to the amended complaint was not permitted  
9 by the Court at the pretrial conference and, therefore, should be  
10 dismissed.

11 16. The Court finds that the affirmative defenses raised in  
12 the defendants' amended answer to the amended complaint are without  
13 merit and inapplicable in the present case.

14 17. The Court finds that the plaintiffs have retained Craig M.  
15 Snyder, Attorney at Law, Provo, Utah, for the purposes of pursuing  
16 this action and have agreed to pay him a reasonable fee for his  
17 services. The Court finds that \$960.00 is a reasonable fee for the  
18 services of the plaintiffs' attorney herein and that pursuant to  
19 the provisions of the Earnest Money Agreement, the plaintiffs are  
20 entitled to a reasonable attorney's fee herein.

21 From the foregoing Findings of Fact, the Court now makes and  
22 enters the following:

23 CONCLUSIONS OF LAW

24 1. Plaintiffs are entitled to judgment against the defendants  
25 jointly and severally in the amount of \$4,500.00, together with  
26 attorney's fees in the amount of \$960.00 and court costs in the  
27 amount of \$27.50.

28 2. Said judgment shall collect interest at the rate of eight  
29 percent (8%) per annum from the date of judgment herein until paid  
30 in full.

31 3. Defendants are entitled to judgment, no cause of action,  
32 on the second cause of action on the plaintiffs' amended complaint.


1 4. Plaintiffs are entitled to judgment, no cause of action,  
2 and to an order of dismissal of the defendants' counterclaim  
3 herein.

4 DATED this 3 day of September, 1980.

5 BY THE COURT:

6   
7 ALLEN B. SORENSEN, District Judge

8 MAILED a copy of the foregoing to Mr. Ronald R. Stanger,  
9 Attorney for Defendants, 38 North University, Provo, Utah, 84601,  
10 this 5th day of September, 1980.

11   
12 ELAINE PERRY  
13 SECRETARY

CRAIG M. SNYDER, for:

HOWARD. LEWIS & PETERSEN  
ATTORNEYS AND COUNSELORS AT LAW  
120 EAST 300 NORTH STREET  
P. O. BOX 778  
PROVO, UTAH 84601  
TELEPHONE: 373-8349

Attorneys for Plaintiffs

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

JOHN M. ALEXANDER and HELEN  
ALEXANDER,

JUDGMENT

Plaintiffs,

vs.

LEE DELL BROWN, GLEN F. BROWN,  
WAYNE L. BROWN, and WARREN D. :  
BROWN, partners, d/b/a BLW  
COMPANY,

Civil No. 47,426

Defendants.

THIS matter having come on regularly for trial on June 19, 1980, and the plaintiffs having appeared in person and being represented by their attorney, Craig M. Snyder, and the defendants having appeared by and through Lee Dell Brown and their attorney, Ronald R. Stanger, and the Court having heard the testimony, having received the evidence and the exhibits on file herein, having previously taken the matter under advisement and rendered its memorandum decision herein, and being fully advised in the premises and having previously entered its Findings of Fact and Conclusions of Law herein, now upon application of counsel,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Plaintiffs are awarded judgment against the defendants, Lee Dell Brown, Wayne L. Brown and Warren D. Brown, d/b/a BLW Company, jointly and severally in the amount of \$4,500.00 together with attorney's fees in the amount of \$960.00 and court costs in the amount of \$27.50. Interest shall accrue on the total amount of said judgment at the rate of eight percent (8%) per annum from the

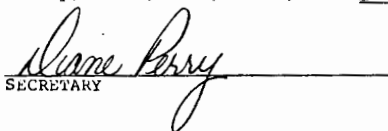
1 date of the judgment herein until such time as it is paid in full.

2 DATED this 3 day of September, 1980.

3 BY THE COURT:

4   
5 ALLEN B. SORESENSEN, District Judge

6 MAILED a copy of the foregoing to Mr. Ronald R. Stanger,  
7 Attorney at Law, 38 North University, Provo, Utah, 84601, this 5th  
8 day of September, 1980.

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10 SECRETARY

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HOWARD, LEWIS & KETTERSON  
ATTORNEYS AT LAW  
100 EAST 500 NORTH STREET  
PROVO, UTAH 84601  
TELEPHONE: 373-8848



TO: Charles E. Brown Name of Broker Company

IN CONSIDERATION OF your agreement to use your efforts to present this offer to the Seller, I have

hereby deposit with you as earnest money the sum of \$5,000.00

to secure and apply on the purchase of the property situated at 144 West 10th St. N.Y.C.

including any of the following items if no present attached to the premises: Plumbing and heating fixtures and equipment including stove and oil tank, water heater and hot water electric light fixtures excluding boiler, bathroom fixtures, cellar shades, curtain rods and fixtures, window blinds, window and door screens, aluminum, all shutters and doors, and all

fixtures except fixtures

The following personal property shall also be included as part of the property purchased none

The total purchase price of \$5,000.00

shall be payable as follows: 2500.00 which represents the above-described deposit receipt of which is hereby acknowledged by you

when seller's current rate, 5.750.00 on delivery of deed to first mortgage

late which shall be in or before June 1, 1974 and 5 each month commencing

until the balance of \$ 2500.00 together with interest is paid; provided, however, that buyer at his option, at any time, may pay amount in excess of the

payments upon the unpaid balance, subject to the limitations of any mortgage or contract by the buyer herein assigned, interest, at 10% per annum on the unpaid balance of

purchase price to be included in the prescribed payments and shall begin as of date of possession which shall be October 1, 1974 At risk of loss and damage of

property and expenses of insurance shall be borne by the seller until date of possession at which time property taxes, rates, insurance, interest and other expenses of the property to be

be prorated as of date of possession. All other taxes and all assessments, mortgages, chattel liens and other liens, encumbrances or charges against the property of any nature and to be

by the seller except none

The following special improvements are included in this sale: Sewer ☒ Connected ☐ Sinks Tank and/or Cesspool ☐ Sidewalk ☒ Curb and Gutter ☒ Landscaping ☒ Street Street Lighting ☐ City Water ☒ Other Community System ☐ Connected ☐ Private ☐ Connected ☐ I signed this (X) No. 100

the following none

Contract of Sale or Instrument of conveyance to be made in the name of Charles E. Brown

Charles E. Brown 144 West 10th St. N.Y.C.

This payment is received and offer is made subject to the written acceptance of the seller, and the seller, on or before June 1, 1974 days from date hereof, and who

expressed the return of the money herein mentioned shall cancel this offer without damage to the undersigned upon.

In the event the purchaser fails to pay the balance of said purchase price or complete said purchase as herein provided, the amounts paid herein shall, at the option of seller, be retained as liquidation and agreed damages.

It is understood and agreed that the terms written in this receipt constitute the entire Preliminary Contract between the purchaser and the seller, and that no verbal agreement or any other relative to this transaction shall be construed to be a part of this transaction unless incorporated in writing herein. It is further agreed that execution of the final contract of sale, subject to the return of the money herein mentioned shall cancel this offer without damage to the undersigned upon.

Charles E. Brown Agent By Charles E. Brown

We do hereby agree to carry out and fulfill the terms and conditions specified above, and the seller agrees to furnish good and marketable title with respect to the property.

option a policy of title insurance in the name of the purchaser and to make final conveyance by warranty deed or

in the event of sale of other than real property, seller will provide evidence of title or right to sell or lease. If either party fails to do so, he agrees to pay all expenses of title.

This agreement, or of any right arising out of the breach thereof, including a reasonable attorney's fee.

By Charles E. Brown Seller

By Charles E. Brown Purchaser

By Charles E. Brown Seller

By Charles E. Brown Purchaser

