

1981

Thach P. Dang and His Wife, Bach T. Le, dba  
Saigon Restaurant and Food Store v. Cox  
Corporation, a Utah Corporation, and Paul Cox :  
Brief of Defendants-Appellants, Cox Corporation  
and Paul Cox

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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THACH P. DANG and his Wife,     )  
BACH T. LE, dba SAIGON  
RESTAURANT AND FOOD STORE,     )

Plaintiffs - Respondents,     )

vs.     )

COX CORPORATION, a Utah     )  
Corporation, and PAUL COX,     )

Defendants - Appellants.     )

CASE NO. 17515

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BRIEF OF DEFENDANTS-APPELLANTS, COX CORPORATION AND  
PAUL COX

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Appeal From A Judgment Of The Third Judicial District Court  
In And For Salt Lake County, Utah  
Honorable James S. Sawaya, Judge, Presiding

---

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

THACH P. DANG and his Wife, )  
BACH T. LE, dba SAIGON )  
RESTAURANT AND FOOD STORE, )

Plaintiffs - Respondents, )

vs. )

COX CORPORATION, a Utah )  
Corporation, and PAUL COX, )

Defendants - Appellants. )

CASE NO. 17515

BRIEF OF DEFENDANTS-APPELLANTS, COX CORPORATION AND  
PAUL COX

NATURE OF THE CASE

This is an action on a Counterclaim to determine:  
(1) If plaintiffs were in unlawful detainer, or (2) If  
defendants were entitled to remove plaintiffs from the premises  
under a theory of common law ejectment, and (3) Whether  
defendants were entitled to damages for plaintiffs' breach of  
the written Lease Agreement, and or (4) Whether defendants were  
entitled to a money judgment against plaintiffs for materials  
provided and services performed.

DISPOSITION IN LOWER COURT

In the lower Court, the matter came on regularly for  
Trial before the Honorable James S. Sawaya on June 5, 1980, at  
which time evidence, testimony and argument were presented by  
the parties. On December 15, 1980 the Court entered its Findings

of Fact, Conclusions of Law and Judgment denying that plaintiffs were guilty of unlawful detainer, and that defendants were entitled to evict plaintiffs under a theory of common law ejectment, and that plaintiffs breached the written Lease Agreement, although the Court did determine the reasonable value of the premises and awarded defendants Judgment against plaintiffs for that amount together with a Judgment for \$100.00 for the value of a sign and a Judgment for \$1,600.00 representing the last months rent under the written Lease Agreement. In addition, the Court held that all other claims of both parties were not supported by the evidence, except that plaintiffs were awarded attorney's fees in the sum of \$1,000.00 and costs.

#### RELIEF SOUGHT ON APPEAL

Defendants-Appellants Cox Corporation and Paul Cox seek a reversal of the lower Court's decision.

#### STATEMENT OF FACTS

Paul Cox is, and at all times material herein, was, the President of Cox Corporation, a Utah Corporation. Cox Corporation is the owner of a building located at 1346 South State, Salt Lake City, Utah. (T-66)

In August, 1979, Thach P. Dang and Paul Cox negotiated the terms of a Lease Agreement whereby Thach P. Dang would lease the above-described property from Cox Corporation. (T-66) That

on September 10, 1979, the parties reduced their agreement to writing. (T-66) Essentially, Thach P. Dang leased the premises for purposes of operating a restaurant and store for five years commencing October 1, 1979, and terminating the 30th day of September, 1984, with rent fixed at \$1,600.00 per month, payable in advance on the first day of each month. Among other things, the Lease provided that the last month's rent would be paid upon signing of the Agreement, and the first month's rent would be paid upon occupancy. The Lease Agreement also provided that Cox Corporation would build an addition on the Southeast part of the principal building. (Exh. #P-1)

Thach P. Dang testified that the building was not ready for occupancy until October 30, 1979, when he started operating his restaurant. (T-10) Paul Cox testified that the building was ready for occupancy on October 1, 1979. (T-71) There was testimony that Thach P. Dang started moving his restaurant equipment and paraphernalia into the building starting on or about October 20, 1979. (T-71)

Thach P. Dang and Reed Oviatt testified that on or about August 15, 1979, Paul Cox promised the addition would be completed within thirty days. (T-8) Paul Cox, on the other hand, denied that and said he promised that he would have the principal building ready for occupancy within thirty days. (T-69)

Thach P. Dang testified that the addition was not



ready for occupancy, and he did not take possession of the addition and use it to operate his store until February 15, 1980. (T-5 ) Paul Cox testified that the addition was completed and ready for occupancy on February 1, 1980, and that, in fact, Thach P. Dang and his friends used the addition for purposes of a celebration and party on two occasions between Christmas and New Years. (T-79)

Paul Cox testified that the principal building consists of approximately 2,500 square feet, and the addition consists of approximately 1,500 square feet. (T-58)

Thach P. Dang testified that he was of the opinion that he was only obligated to pay one-half of the monthly rent (\$800.00) until such time as the addition was ready for occupancy. Paul Cox testified he never agreed to that amount of rent. (T-72)

Some time prior to January 14, 1980, Thach P. Dang paid Cox Corporation the sum of \$1,600.00, ostensibly paying \$800.00 rent for the month of November, 1980, and paying \$800.00 as a deposit for the last month's rent. (T-72)

That on or about January 14, 1980, Thach P. Dang was served with a Three Day Notice to Pay Rent or Vacate. (T-72) That Notice, properly served, required Thach P. Dang to pay the sum of \$4,400.00 as rent representing \$1,100.00 per month for the months of October, November, and December, 1979, and

January, 1980. Cox Corporation, evidently, had agreed to discount the rent because the addition was not completed for \$1,600.00 per month to \$1,100.00 per month.

In addition, the Notice requested that Thach P. Dang pay \$900.00 for a large electrical sign sold to him by Cox Corporation; \$300.00 for plumbing services; \$50.00 for four restaurant-type swinging doors, sold to him by Cox Corporation; \$65.00 to reinstall an air conditioning duct; and \$185.00 for labor and materials to change the hood and for other related gas and electrical work. (Exh.P-4)

Thach P. Dang has always admitted and admitted at Trial that he agreed to purchase the large electrical sign. Paul Cox testified that he agreed to sell the sign to Thach P. Dang for the sum of \$900.00. (T-34) Charles Card of the Impact Sign Company, a qualified expert, testified that the Impact Sign Company initially constructed the large electrical sign in question, and he was familiar with its condition at the present time, and it was his testimony that the reasonable market value of the sign was between \$1,100.00 and \$1,200.00. (T- 99-100)

At all times, including in his testimony at Trial, Thach P. Dang has agreed to pay the \$65.00 charge for the air conditioning work. (T-35)

The Lease expressly provides that Thach P. Dang accepts the premises in an "as is" condition, (Exh. P-1) and

paul Cox testified that in order to adapt the premises to the special needs of Thach P. Dang, he incurred \$300.00 expenses for plumbing services and supplies; \$50.00 expenses to purchase and install four restaurant-type swinging doors; and \$185.00 expenses for labor and materials to change the range hood and for other related gas and electrical work. (T-94)

Keith Gardner of Gardner Plumbing Company, who did the work in question, testified that the repairs were necessary to modify the building to meet the special needs of Thach P. Dang and that some of the work was required because the work done by the gas company hired by Thach P. Dang did the work improperly, and Mountain Fuel Supply Company would not approve the system. (T 95-96) For this work defendants paid the sum of \$416.76.

Paul Cox testified that he was of the opinion that the \$1,600.00 already paid to Cox Corporation represented the deposit for the last month's rental payment required under the terms of the Lease Agreement. (T-72)

Within three days after the service of this Notice upon Thach P. Dang, he tendered to Cox Corporation the sum of \$2,400.00 representing \$800.00 per month for the months of November and December, 1979, and January, 1980. (T-72)

Cox Corporation rejected this tender as a partial payment of the rent. (T-20)

On or about February 6, 1980, Thach P. Dang obtained

a Temporary Restraining Order against Cox Corporation and Paul Cox prohibiting them from re-taking possession of the premises. And, at the same time, deposited the sum of \$2,000.00 with the Court, representing, in Thach P. Dang's opinion, the rent due and owing Cox Corporation, through February 15, 1980; namely, \$800.00 per month for the months of December, 1979, and January, 1980, and paying an additional \$400.00 for February 1 through February 15, 1980.

Subsequently, Thach P. Dang filed a Complaint against Cox Corporation and Paul Cox, and the latter filed a Counterclaim against Thach P. Dang.

Subsequently, on May 17, 1980, Thach P. Dang was served with a second Three Day Notice to Pay Rent or Vacate requiring payment of the sum of \$12,800.00, which represents delinquent rent from October 1, 1979, to May 30, 1980, at the rate of \$1,600.00, the amount of rent set forth in the Lease Agreement. This Notice did not include a claim for any other charges. (T-73)

Within three days after the service of this Notice upon Thach P. Dang, he testified that he deposited an additional amount of money with the Court based upon what he deemed his obligation to pay rent under the terms of the Lease Agreement was, to-wit: \$800.00 per month from November 1, 1979, to February 15, 1980, and \$1,600.00 per month thereafter. (T-20)

The case was set for Trial on June 5, 1980, and the plaintiff, Thach P. Dang, deposited an additional sum of money

with the Court at that time, making his total deposit allegedly \$7,600.00.

During the course of the Trial, Paul Cox testified that since Thach P. Dang had taken possession of the premises, both the principal building and the addition, he had negligently damaged the masonry planter box in front of the building, and the cost to repair it would be approximately \$600.00 - \$700.00; (T-81) the ceiling in the addition, which would cost approximately \$150.00 to repair; (T-80) and the linoleum in the addition, which would cost approximately \$1,400.00- \$1,500.00 to repair. (T-80)

During the course of the Trial, David Peterson, a qualified appraiser and expert witness, testified that based upon his personal experience and observation of the building in question, the reasonable rental value of the principal building, without the addition, was \$970.00 per month, and the reasonable rental value of the addition, without the building proper, was \$565.00 per month, for a total of \$1,535.00 per month . His testimony was based on an "as is" condition of the building and addition. (T 58-59)

Finally, the check deposited by Thach P. Dang with the Court on or about May 20, 1980 in the sum of \$1,600.00 was not honored by the Bank because of insufficient funds making plaintiffs' total deposit with the Court, \$6,000.00.

In a memorandum decision, the lower Court ruled as follows: (1) The Lease Agreement was breached by the defendant in not having the addition ready to occupy when required; (2) That plaintiff was not ever in unlawful detainer and is not subject to removal; (3) That the addition was ready for use and occupancy on February 15, 1980 and that the rental to be paid by plaintiff is the sum of \$800.00 per month for the period October 1, 1979 to February 15, 1980 and the sum of \$1,600.00 per month thereafter to present; (4) That defendant's claim of \$100.00 for the sign is supported by the evidence and he is given credit therefore; (5) That defendant is entitled to payment of \$1,600.00 representing the last months rent under the Lease; and (6) That all other claims of both parties are not supported by the evidence except that plaintiff is awarded attorney's fees in the sum of \$1,000.00 and his costs.

#### ARGUMENTS AND AUTHORITIES

##### POINT I

THAT THE PLAINTIFFS-RESPONDENTS ARE GUILTY  
OF UNLAWFUL DETAINER PURSUANT TO UTAH CODE  
ANNOTATED SECTION 78-36-3(3) (1953) AS AMENDED

Utah Code Annotated, Section 78-36-3(3) (1953)  
provides that:

"A tenant of real property, for a term of  
less than life, is guilty of an unlawful

detainer when he continues in possession, in person or by sub-tenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, shall have remained uncomplished for a period of three days after service thereof. Such notice may be served at any time after the rent becomes due.

In Utah, there are only three recognized defenses to an unlawful detainer action for non-payment of rent; namely, (1) invalidity of the Lease; (2) non-existence of valid Lease or Contract to pay rent; and (3) rent not in arrears. See Dunbar v. Hansen, 250 P. 982 (Ut. 1926); and Williams v. Nelson, 250 P. 982 (Ut. 1926); and Williams v. Nelson, 237 P. 217 (Ut. 1923).

Insufficient tenders of rent do not constitute a valid defense to an unlawful detainer action. See Commercial Block Realty Company v. Merchants Protective Association, 267 P. 1009 (Ut. 1928). Nor is the landlord required in a Notice to Pay Rent or Vacate required to specify the exact amount of rent owing; that is, if the landlord does not state the exact amount of rent owing, or if he states a wrong amount, that does not invalidate the Notice and the tenant is still obligated to tender the actual amount of rent due and owing. See Commercial Block Realty Co. v. Merchants' Protective Association, 267 P. 1009 (Ut. 1917).

Furthermore, landlord breaches of lease agreements are not valid defenses which the tenant is permitted to raise

against an unlawful detainer action. This ruling has been upheld against due process and equal protection challenges. See Lindsey v. Normet, 405 U.S. 56 (1972).

If the Lease Agreement is invalid, then the landlord is entitled to repossession of the premises along with the fair and reasonable rental value of the premises during the time it was occupied by the tenant, and the tenant is entitled to a reasonable opportunity to cease operation, vacate the premises and relocate. See Thomas J. Pack & Sons v. Lee Rock Products, Inc., 515 P. 2d 446 (Ut. 1973).

The remedies available in an unlawful detainer action are set forth in Utah Code Annotated, Section 78-36-10 (1953) as follows:

...judgment shall be entered for restitution of the premises; and if the proceeding is for unlawful detainer . . . after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. . . . The Court . . . shall also assess the damages occasioned to the plaintiff by any . . . unlawful detainer . . . and find the amount of any rent due if the alleged unlawful detainer is after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of . . . unlawful detainer for the rent and three times the amount of damages thus assessed.

There is no question but that plaintiffs have never tendered the correct amount of rent due under the terms of the Lease Agreement or either Notice to Quit, even using their own figures. For example, assuming that plaintiffs were obligated



to pay \$800.00 toward the last month's rent as a deposit on the Lease, and \$800.00 per month from October 1, 1979, to February 15, 1980, and \$1,600.00 per month thereafter, as set forth below, then as of June 1, 1980, he should have paid the sum of \$11,600.00.

\$800.00	Last months rent
800.00	October, 1979
800.00	November, 1979
800.00	December, 1979
800.00	January, 1980
1,200.00	February, 1980
	(1/2 month = \$400.00
	1/2 month = \$800.00)
1,600.00	March, 1980
1,600.00	April, 1980
1,600.00	May, 1980
<u>1,600.00</u>	June, 1980
\$11,600.00	TOTAL

At the time of Trial, June 5, 1980, Thach P. Dang had only deposited, even assuming the May 20, 1980 payment did not bounce, which it did, the sum of \$7,600.00.

Plaintiffs were in unlawful detainer under either the January 14, 1980 Notice to Pay Rent or Vacate, or the May 17, 1980 Notice to Pay Rent or Vacate; and the Court must afford to Paul Cox and Cox Corporation the remedies available and set forth in Utah Code Annotated, Section 78-36-10 (1953). In short, the alleged breaches of the Contract by Cox Corporation as landlord, are not defenses to an action for unlawful detainer

and unless the tenant, Thach P. Dang, tendered the actual amount of rent due and owing, he is guilty of unlawful detainer.

## POINT II

### THE REASONABLE RENTAL VALUE OF THE PREMISES AFTER THE SERVICE OF THE THREE DAY NOTICE TO PAY RENT OR VACATE IS "DAMAGES" AS DEFINED BY THE UTAH UNLAWFUL DETAINER STATUTE

As set forth in the case of Forrester v. Cook, 292 P. 206 (Ut. ), the loss of the value of the use and occupancy of commercial rental property during the period when the premises are unlawfully withheld from the owner is "damage" suffered under the Utah Unlawful Detainer Statute which means that from the fourth day after the proper service of a Three Day Notice to Pay Rent or Vacate, assuming the total rent has not been paid or tendered, or the dispute otherwise settled, the owner is entitled to recover treble the reasonable rental value of the premises.

In this case, the plaintiffs, by failing to tender the proper amount of rent due and owing, were in unlawful detainer after January 18, 1980, the fourth day after the service of the original Three Day Notice to Pay Rent or Vacate or, in the event the Court finds the first Notice to Pay Rent or Vacate to be defective, then plaintiffs were in unlawful detainer, for failing to tender the proper amount of rent due and owing, after May 21, 1980, the fourth day after the service of the second Three Day

Notice to Pay Rent or Vacate.

The Notices to Pay Rent or Vacate were properly served. The question of whether the proper amount of rent was tendered by the plaintiffs is a mathematical one. Since a check in the sum of \$1,600.00 tendered to defendants through the Court was not honored because of insufficient funds, it seems clear that the plaintiffs were in unlawful detainer on the day of Trial.

Accordingly, under the Statute, defendants were entitled to treble the reasonable rental value of the premises from that time forward.

### POINT III

#### THAT COX CORPORATION IS ENTITLED TO RESTITUTION OF THE PREMISES AND DAMAGES UNDER A THEORY OF COMMON LAW EJECTMENT

In the case of Pingree v. Continental Group of Utah, 558 P. 2d 1317 (Ut. 1976), the landlord brought an action against an assignee of a commercial Lease seeking an order declaring the provision granting assignee the option to renew invalid for uncertainty or, in the alternative, a decree declaring rental under the renewal option to be \$900.00 per month and further seeking a determination as to the party responsible under the Lease for installation of the fire escape. The Utah Supreme Court held that the option to renew the Lease was too

vague and indefinite to be enforceable so that the Lease terminated and, under the provisions of the Lease, the assignee became a tenant on a month-to-month basis at an amount equal to the prior monthly rental; that the landlord was not entitled to treble damages; and that assignee's refusal to vacate after Notice of Forfeiture and Notice to Vacate was wrongful and the landlord was entitled to the reasonable rental value of the property for the period during which the assignee wrongfully refused to vacate. The Court specifically held that the landlord did not comply with the Utah Unlawful Detainer Statute but was entitled to prevail under a theory of common-law ejectment.

In this case, Paragraph 4 of the Lease Agreement provided, in effect, that if the rent was unpaid on the due date and for ten days thereafter, that the landlord, without further notice or legal process, could re-enter and take possession of the same as in the landlord's first and formal estate. The law provides that where a Lease Agreement provides for a forfeiture upon non-payment of rent, that provision is valid and enforceable. See Shoemaker v. Pioneer Investments, 381 P. 2d 735 (Ut. 1963).

The law requires that for forfeiture, the tenant must be given notice of: (1) the landlord's intent to declare a forfeiture; (2) the specific grounds; and (3) adequate notice that the landlord is asserting his right. See Day v.

Smith, 30 P. 2d 786 (Wy. 1934); Independent Flying Service, Inc. v. Abitz, 386 S.W. 2d 399 (Mo. 1965); and Moore v. Richfield Oil Corporation, 377 P. 2d 32 (Or. 1962).

Specifically, the Court in Pingree v. Continental Group of Utah, stated:

"This court has consistently ruled a Notice of Forfeiture is sufficient to terminate a lease for breach of covenant, but it is not sufficient to place the lessee in unlawful detainer. This, for the reason the statute requires an alternative notice, viz., the tenant either performed or quit; before he can be held in unlawful detainer, and be subject to treble damages.

The court was correct in its ruling that defendant's refusal to vacate was wrongful after service of the Notice of Forfeiture and to vacate on February 26, 1975. The Amended Complaint filed by plaintiffs in July was a common law action for ejectment. The court property awarded plaintiffs possession of the property, and damages for the time defendant remained in possession. Damages recoverable under such circumstances are generally the reasonable rental value of the premises."

If this Court finds that the January 14, 1980 Three Day Notice to Pay Rent or Vacate was somehow improper or insufficient for defendants to proceed under the terms of the Utah Unlawful Detainer Statute, then defendants should still be entitled to prevail under a theory of common-law ejectment for the following reasons: First, that Notice manifested the defendants intent to declare a forfeiture, setting forth the specific grounds therefore and providing the plaintiffs with

adequate Notice that the landlord was asserting his contractual right to forfeit the Agreement. This is especially true where the Lease provides that "if the rent . . . reserved, or any part thereof, shall be unpaid on the day whereon the same is due and payable" then the defendants "shall . . . take possession of the said demised premises and every and any part thereof . . . and . . . to re-enter, and the same again to repossess and enjoy as in the first and former state." Second, even using plaintiffs figures liberally, plaintiffs never did tender or pay the full amount of rent due and owing even after they given fair opportunity to do so.

Under this fact situation, defendants remedy is not exclusively under the Utah Unlawful Detainer Statute, but based upon the facts established by the evidence, defendants are entitled to a Judgment for restitution of the premises under a common-law ejectment and, in addition, defendants are entitled to recover the reasonable rental value of the premises.

#### POINT IV

SINCE, IN UTAH, A TENANT LEASES REAL PROPERTY  
SUBJECT TO THE DOCTRINE OF CAVEAT EMPTOR,  
DEFENDANTS WERE ENTITLED TO RECOVER FROM PLAINTIFFS  
THE COSTS OF MODIFYING THE LEASED PREMISES TO MEET  
PLAINTIFFS SPECIAL NEEDS

In this case, the express terms of the Lease Agreement provided that Thach P. Dang took possession of the

premises, "as is". In Utah, the tenant leases real property subject to the Doctrine of Caveat Emptor, and absent fraud, deceit or warranty, the tenant has no recourse if the premises are not suitable for his purposes. The tenant has the duty to examine the premises before entering into the Lease to determine their safety and adaptability for his uses. See Jespersion v. Deseret News Publishing Company, 225 P. 2d 1050 (Ut. 1951).

In addition, the duty to make repairs is on the tenant where the Lease is silent, except where the repairs are necessitated by law. See Wolfe v. White, 197 P. 2d 125 (Ut. 1948) and Herring Ltd. v. Canyon Lincoln Mercury, Inc., 548 P. 2d 625 (Ut. 1976). Moreover, even if the repairs are required by law, the duty to make those repairs is still the tenant's if the repairs are necessitated by his special use. See Gaddis v. Consolidated Freightways, 398 P. 2d 749 (Or. 1965) which was cited with approval in Pingree v. Continental Group of Utah, Supra.

That between September 10, 1979 and January 14, 1980, at the above-described premises, defendants at the special instance and request of plaintiffs and for plaintiffs special use and benefit, furnished a large amount of material and labor, to wit: a large electrical sign, the cost of which was at least \$900.00; plumbing services, the cost of which was at least \$300.00; four restaurant type swinging doors, the cost

of which was at least \$50.00; reinstallation of an air conditioning duct, the cost of which was at least \$65.00; other related gas and electrical services, the cost of which was at least \$185.00; and the cost of a final inspection of the gas supply lines, made necessary by modification in those supply lines by the plaintiffs, in the total sum of at least \$416.76.

At all times material herein, the plaintiffs have admitted that they are obligated to pay for, and have agreed to pay for, the electrical sign and the cost of reinstalling the air conditioning duct, yet the lower Court failed to award defendant any sums for the reinstallation of the air conditioning duct and only awarded the defendants the sum of \$100.00 for the large electrical sign. In fact, there was absolutely no evidence before the Court that the sign was worth anything less than the sum of \$900.00 and there was expert testimony before the Court that the sign was worth the reasonable market value of between \$1,100.00 and \$1,200.00.

At Trial, the plaintiffs admitted that they were obligated to reimburse the defendants \$65.00 made necessary by the reinstallation of an air conditioning duct. In addition, the defendants testified that in order to change the leased premises, including but not limited to the gas stoves and ranges from a "sandwich shop" to a "restaurant" the defendants incurred



expenses in the sum of \$300.00 for plumbing services and supplies. In addition, defendants testified that they expended the sum of \$185.00 for labor and materials to change the hood and range to meet the special needs and desires of plaintiffs who were operating a "restaurant" as opposed to a "sandwich shop". Furthermore, defendants testified that plaintiffs broke the seal on the gas line before it was properly inspected by Mountain Fuel Supply Company and made certain other unauthorized alterations and changes. As a result, in order to make certain there were no leaks in the gas system and in order to satisfy Mountain Fuel and Supply Company, defendant was forced to hire the Gardner Plumbing Company and incurred additional expenses in the sum of \$416.76.

#### POINT V

THE LEASE AGREEMENT BETWEEN THE PARTIES  
PROVIDED THAT THE PLAINTIFFS WERE TO  
MAINTAIN THE LEASED PROPERTY AND RETURN  
IT TO DEFENDANTS IN THE CONDITION IT WAS  
IN WHEN LEASED, REASONABLE WEAR AND TEAR  
ACCEPTED

During the course of the Trial, Paul Cox testified that since plaintiffs took possession of the premises, including the principal building and the addition, plaintiffs had negligently damaged the masonry planter box in front of the building and the cost to repair the damaged planter would be approximately \$600.00 to \$700.00. Further, Paul Cox testified

that as a result of the Christmas and New Years celebrations in the addition, the ceiling was damaged and the damage would cost approximately \$150.00 to repair. Furthermore, Paul Cox testified that as a result of the Christmas and New Years parties in the addition, the fresh linoleum was damaged and the cost to repair the damages would be approximately \$1,400. to \$1,500.00. The testimony of Paul Cox was uncontroverted.

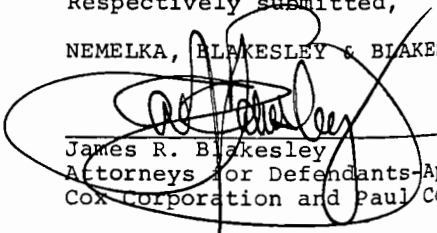
#### CONCLUSION

Based upon the foregoing, it is defendants-appellants position that plaintiffs were in unlawful detainer; defendants were entitled to remove plaintiffs from the premises under a theory of common-law ejectment; defendants are entitled to a money Judgment against plaintiffs for materials provided and services performed to make the leased premises meet the specific needs of plaintiffs; defendants are entitled to the reasonable value of the sign sold to plaintiffs; and defendants are entitled to a money Judgment against plaintiffs for damages caused to the leased premises, beyond reasonable wear and tear.

Dated this 25th day of May, 1981.

Respectively submitted,

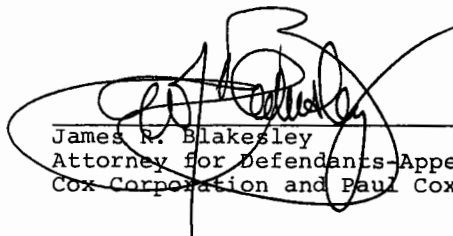
NEMELKA, BLAKESLEY & BLAKESLEY



James R. Blakesley  
Attorneys for Defendants-Appellants  
Cox Corporation and Paul Cox

MAILING CERTIFICATE

I hereby certify that I mailed (3) copies of BRIEF OF DEFENDANTS-APPELLANTS, COX CORPORATION AND PAUL COX to Marcus G. Theodore, attorney for plaintiffs and respondents, 345 South State Street, Suite 105, Salt Lake City, Utah, 84111 and plaintiffs-respondents, Thach P. Dang and Bach T. Le, dba Saigon Restaurant and Food Store, 1346 South State Street, Salt Lake City, Utah on this 26th day of May, 1981.



James R. Blakesley  
Attorney for Defendants-Appellants  
Cox Corporation and Paul Cox