

1990

Warren T. Lessley, Helen T. Lessley, Romie F.
Lessley, Viola J. Lessley, Virginia L. Ward Kleinert v.
Clealon B. Mann, Nannell H. Mann, Brighton
Building, Inc. : Brief of Appellee

Utah Court of Appeals

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Jerrald D. Conder; Peter L. Rognlie; Conder & Wangsgard, Attorneys for Appellants.

Willaim W. Downes, Jr.; Winder & Haslam, P.C.; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Warren T. Lessley, Helen T. Lessley, Romie F. Lessley, Viola J. Lessley, Virginia L. Ward Kleinert v. Clealon B. Mann, Nannell H. Mann, Brighton Building, Inc.*, No. 900407 (Utah Court of Appeals, 1990).

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DOCKET NO.

900407 CA

UTAH COURT OF APPEALS

WARREN T. LESSLEY, HELEN T.
LESSLEY, ROMIE F. LESSLEY,
VIOLA J. LESSLEY and
VIRGINIA L. WARD KLEINERT,

Plaintiffs,

vs.

CLEALON B. MANN, NANNELL H.
MANN, BRIGHTON BUILDING, INC.,
and DOES I through X,

Defendants.

ROMIE F. LESSLEY, VIOLA J.
LESSLEY, and VIRGINIA L. WARD
KLEINERT,

Cross-Plaintiffs
and Appellants,

vs.

WARREN LESSLEY,

Cross-Defendant
and Appellee. :

Docket No. 900407-CA

Priority Classification 16

BRIEF OF APPELLEE

Appeal from final order entered in the Third Judicial
District Court for Salt Lake County, the Honorable
Leonard H. Russon, Judge

Jerrald D. Conder
Peter L. Rognlie
CONDER & WANGSGARD
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UTAH COURT OF APPEALS

WARREN T. LESSLEY, HELEN T.
LESSLEY, ROMIE F. LESSLEY,
VIOLA J. LESSLEY and
VIRGINIA L. WARD KLEINERT,

Plaintiffs,

vs.

Docket No. 900407-CA

CLEALON B. MANN, NANNELL H.
MANN, BRIGHTON BUILDING, INC.,
and DOES I through X,

Defendants.

ROMIE F. LESSLEY, VIOLA J.
LESSLEY, and VIRGINIA L. WARD
KLEINERT,

Cross-Plaintiffs
and Appellants,

vs.

Priority Classification 16

WARREN LESSLEY,

Cross-Defendant
and Appellee. :

BRIEF OF APPELLEE

Appeal from final order entered in the Third Judicial
District Court for Salt Lake County, the Honorable
Leonard H. Russon, Judge

Jerrald D. Conder
Peter L. Rognlie
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	2
DETERMINATIVE PROVISIONS OF THE CONSTITUTION, STATUTES, ORDINANCES, RULES AND REGULATIONS	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
POINT I	
WARREN LESSLEY ASSIGNED TO APPELLANTS A JUDGMENT AGAINST THE MANNS IN THE SUM OF \$13,131.92	3
CONCLUSION	7
CERTIFICATE OF SERVICE	7
ADDENDUM	
Judgment	Add-1
Stipulation and Settlement	Add-4
Ruling	Add-7
Order on Motion Re: Allocation of Judgment	Add-10

TABLE OF AUTHORITIES

CASES

<u>Mountain Fuel Supply Co. v. Salt Lake City Corp.</u> , 752 P.2d 884 (Utah 1988)	3
<u>Exxon Corp. v. Eastman Kodak Co.</u> , 589 S.W.2d 473, 478 (Tex. Civ. Ap. 1979)	3
<u>Big Cottonwood Tanner Ditch Co. v. Salt Lake City</u> , 740 P.2d 1347, fn. 1 (Utah App. 1987)	3
<u>Jack B. Parson Companies v. Nield</u> , 751 P.2d 1131 (Utah 1988)	5
<u>Aird Insurance Agency v. Zions First Nat'l Bank</u> , 612 P.2d 341 (Utah 1980)	5

STATUTES

<u>Utah Code Ann.</u> Section 78-2-2(3)(j)	1
<u>Utah Code Ann.</u> Section 78-2(a)-3(2)(j)	1

OTHER PUBLICATIONS

<u>Assignments</u> , Section 72, 6(A) C.J.S. 708	3
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UTAH COURT OF APPEALS

WARREN T. LESSLEY, HELEN T.
LESSLEY, ROMIE F. LESSLEY,
VIOLA J. LESSLEY and
VIRGINIA L. WARD KLEINERT,

Plaintiffs,

vs.

CLEALON B. MANN, NANNELL H.
MANN, BRIGHTON BUILDING, INC.,
and DOES I through X,

Defendants.

ROMIE F. LESSLEY, VIOLA J.
LESSLEY, and VIRGINIA L. WARD
KLEINERT,

Cross-Plaintiffs
and Appellants,

vs.

WARREN LESSLEY,

Cross-Defendant
and Appellee. :

Docket No. 900407-CA

Priority Classification 16

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon the Utah Court of Appeals to hear this matter pursuant to Sections 78-2-2(3)(j) and 78-2(a)-3(2)(j), Utah Code Ann.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the trial court err in its interpretation of a settlement agreement entered into by parties to this litigation?

DETERMINATIVE PROVISIONS OF
THE CONSTITUTION, STATUTES,
ORDINANCES, RULES AND REGULATIONS

There are no constitutional provisions, statutes, ordinances, rules or regulations which are determinative of this matter.

STATEMENT OF THE CASE

Appellee accepts Appellants' Statement of the Case.

SUMMARY OF ARGUMENT

The parties entered into a settlement agreement to resolve claims between them. The settlement agreement provided that if the Lessleys should prevail against the Manns, Warren Lessley assigned to the appellants \$13,131.92 of said judgment. Upon entry of judgment against the Manns, Warren Lessley's interest in said judgment was reduced by \$13,131.92 and the appellants' interest in the judgment was increased by \$13,131.92. The Manns filed bankruptcy shortly after the entry of the Lessley judgment. The bankruptcy trustee paid the Mann claimants in an amount equal to 25% of the claims. This reduced the value of the judgment assigned to the appellants to 25% of \$13,131.92 plus accrued interest.

ARGUMENT

POINT I

WARREN LESSLEY ASSIGNED TO APPELLANTS A JUDGMENT AGAINST THE MANNS IN THE SUM OF \$13,131.92.

The trial court in this matter was called on to interpret language from a settlement agreement entered into by Warren T. Lessley and his family members, Romie F. Lessley, Virginia L. Kleinert, and Viola J. Lessley. As the appeal presents only a question of law, the appellate court will review the trial court's ruling for correctness and accord it no particular deference. Mountain Fuel Supply Co. v. Salt Lake City Corp., 752 P.2d 884 (Utah 1988).

At issue in this matter is the interpretation of an assignment contained in a settlement agreement. An assignment is interpreted in accordance with the rules of construction governing contracts, the primary object being to ascertain and carry out the intention of the parties from the words and language employed. Assignments, Section 72, 6(A) C.J.S. 708.

In the interpretation of a contract, the whole agreement must be considered, and the whole object is not to determine what the parties meant to say, but the meaning of what the parties did say.

Exxon Corp. v. Eastman Kodak Co., 589 S.W.2d 473, 478 (Tex. Civ. Ap. 1979). Cited with approval in Big Cottonwood Tanner Ditch Co. v. Salt Lake City, 740 P.2d 1347, fn. 1 (Utah App. 1987).

The pertinent language from the settlement agreement provides as follows:

In the event that plaintiff Warren Lessley obtains a judgment against defendants Clealon B. Mann and Nannell H. Mann by settlement or after trial of this matter, Warren Lessley assigns to Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert \$13,131.92 of said judgment. In the event plaintiff Warren Lessley fails to obtain a judgment against defendants Clealon B. Mann and Nannell H. Mann, plaintiff Warren Lessley shall not be indebted to plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert.

This settlement agreement was entered into prior to the resolution of a claim by Warren Lessley, Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert against Clealon Mann and Nannell Mann. The Lessley claim arose from the sale of a parcel of real property in which the plaintiffs had the following undivided interests:

Warren Lessley	11/27
Romie F. Lessley	11/27
Virginia L. Kleinert	2/27
Viola J. Lessley	3/27

A settlement was reached between the Lessley plaintiffs and the Mann defendants wherein a judgment was entered against the Manns in favor of the Lessleys in the sum of \$260,000. Shortly thereafter, the Manns filed a petition in the United States Bankruptcy Court. An interim distribution occurred in the bankruptcy proceeding wherein each creditor was paid 25% of their claim. The claim filed by the Lessleys in

the Mann bankruptcy was for \$266,000. This represented the principal amount of the judgment, \$260,000, plus \$6,000 of accrued interest.

The respective interests of the Lessley family in the Mann judgment was based upon their respective interest in the real property that gave rise to the entry of the judgment. Accordingly, Warren Lessley submit the judgment should be apportioned as follows:

Warren Lessley	\$260,000 x 11/27 = \$105,925.92
Romie Lessley	\$260,000 x 11/27 = \$105,925.92
Viola Lessley	\$260,000 x 3/27 = \$ 28,888.88
Virginia Kleinert	\$260,000 x 2/27 = \$ 19,259.25

Appellee submits that the settlement agreement would reduce his interest in the judgment by \$13,131.92, and increase the interest of his family members in the judgment in the same amount. This is the impact of an assignment.

An assignment of an interest in a judgment gives the assignee the same rights in the judgment that the assignor had and nothing more. Jack B. Parson Companies v. Nield, 751 P.2d 1131 (Utah 1988); Aird Insurance Agency v. Zions First Nat'l Bank, 612 P.2d 341 (Utah 1980).

Appellee, Warren Lessley, did not agree to pay to the appellants any sums of money. He did not agree that upon his recovery from the Manns of \$13,131.92, he would pay said sum to the appellants. He merely assigned to the appellants a portion of his interest in the Mann judgment, thereby retaining an

interest in the judgment in the sum of \$92,794. Accordingly, when the bankruptcy trustee makes a 25% interim distribution from the Mann bankruptcy, appellee would be entitled to 25% of \$92,794 plus his portion of accrued interest. The language of the settlement agreement demonstrates Warren Lessley's intention to transfer to the appellants a judgment against the Manns in the sum of \$13,131.92. It was not his intention to do more than that. Consequently, in light of the bankruptcy filing and the trustee's distribution, that judgment in the sum of \$13,131.92 resulted in a distribution to the appellants of only 25% of that sum. Thus, the trial court properly ruled that "the assignment of \$13,131.92 was of the judgment Warren Lessley obtained against the Manns, and since that judgment has been effectively reduced through bankruptcy to a percentage on the dollar, the assignees are only entitled to that percentage." Ruling of Judge Leonard H. Russon, April 17, 1990.

Appellants argue that the assignment "requires Warren Lessley to pay to appellants the first \$13,131.92 of any recovery obtained by him from the Manns." Appellants' Brief, page 6. However, that is not the effect of an assignment. The assignment divested in Warren Lessley of a portion of his judgment against the Manns and invested that portion of the judgment in the appellants. Thus, the appellants must share in the loss occasioned by the Mann bankruptcy.

CONCLUSION

Warren Lessley submits that this court should affirm the order of the trial court allocating the proceeds from the Mann bankruptcy.

DATED this 15 day of January, 1991.

WINDER & HASLAM, P.C.

By WS
William W. Downes, Jr.
Attorneys for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I caused four true and correct copies of the foregoing Brief of Appellee to be mailed, postage prepaid, on the _____ day of January, 1991 to Jerrald D. Conder and Peter L. Rognlie, CONDER & WANGSGARD, 4059 South 4000 West, West Valley City, Utah 84120.

WS

ADDENDUM

FILMED

JUDGMENT

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

FEB 22 1984

H. Dixon ~~Myers~~ Kayser Clerk and Dist. Court
By Kayser Deputy Clerk

WILLIAM W. DOWNES, JR.
Attorney for Plaintiff Warren Lessley
COLLARD, PIXTON, IWASAKI & DOWNES
417 Church Street
Salt Lake City, Utah 84111
Telephone: (801) 534-1663

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WARREN LESSLEY, HELEN P.
LESSLEY, ROMIE F. LESSLEY,
VIOLA J. LESSLEY and VIRGINIA
L. WARD KLEINERT,

Plaintiffs,

-v-

CLEALON B. MANN, NANELL H.
MANN, BRIGHTON BUILDERS, INC.,
and DOES I through X,

Defendants.

JUDGMENT

Civil No. C-80-6041

BR. 185 NO. 3047

2-24-84 - 9:40
A.M.

ROMIE F. LESSLEY, VIOLA J.
LESSLEY, and VIRGINIA L.
WARD KLEINERT,

Cross-Plaintiffs,

-v-

WARREN LESSLEY,

Cross-Defendant.

The above captioned matter, having come before the Court for
trial on February 1, 1984, the Honorable Philip R. Fishler, Judge
presiding; plaintiff, Warren Lessley, being represented by counsel,
William W. Downes, Jr.; plaintiffs, Romie F. Lessley, Viola J. Lessley,

and Virginia L. Kleinert, being represented by counsel, Jerrald D. Conder; and defendants, Clealon B. Mann, Nanell H. Mann and Brighton Builders, Inc, being represented by counsel, Richard S. Nemelka; the parties having fully settled any and all claims in this action and said settlement, having been read into the record, and the Court, being fully advised in the premises, and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs, Warren Lessley, Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert are granted a judgment against defendants, Clealon B. Mann and Nanell H. Mann in the sum of Two Hundred Sixty Thousand Dollars (\$260,000.00), execution thereon is stayed until April 13, 1984. In the event defendants, Clealon B. Mann and Nanell H. Mann tender to plaintiffs a certified check in the sum of Eighty-Five Thousand Dollars (\$85,000.00) at the office of plaintiff, Warren Lessley's counsel, William W. Downes, Jr., 417 Church Street, Salt Lake City, Utah 84111 on or before April 13, 1984, plaintiffs shall enter a full Satisfaction of said Judgment.

2. The Counterclaim filed by defendant Brighton Builders, Inc. against plaintiff Warren Lessley, be and the same hereby is dismissed with prejudice.

3. The beneficial interest in a certain Trust Deed and Trust Deed Note executed by George and JoAnn Billings to Security Title Company arising out of their obligation from the purchase of Lot 40, Lessley Estates Subdivision shall be allocated between plaintiffs and

C-80-604

defendants as follows:

A. The first \$2,500.00 received by Security Title Company (after Security Title Company fulfills its obligation to Richard S. Nemelka for attorney's fees incurred in securing the Trust Deed and Trust Deed Note) is to be paid to Richard S. Nemelka on behalf of Clealon B. Mann, Nanell H. Mann and Brighton Builders.

B. The balance of the proceeds of said Trust Deed and Trust Deed Note is to be paid to plaintiffs, Warren Lessley, Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert.

DATED this 22^d day of February, 1984.

BY THE COURT:

H. DIXON HINDLEY
CLERK

By

K. G. G. G.

Philip R. Fishler
PHILIP R. FISHLER
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to Jerrald D. Conder, Attorney for Plaintiffs/Cross-Plaintiffs, CONDER, HANSON & WANGSGARD, 4059 South 400 West, West Valley City, Utah 84120, and to Richard S. Nemelka, Attorney for Defendants, NEMELKA, BLAKESLEY & BLAKESLEY, 455 East 400 South, Suite 302, Salt Lake City, Utah 84111, this 10 day of February, 1984.

CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

Tami Stewart

12-18-90
Jerrald D. Conder

FILMED

FILED IN CLERK'S OFFICE
Salt Lake City, Utah

FEB 3 1984

H. Dixon Hindley, Clerk, 3rd Dist. Court
By K. Chateras
Deputy Clerk

WILLIAM W. DOWNES, JR.
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Warren Lessley, Plaintiff/Cross-Defendant
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417 Church Street
Salt Lake City, Utah 84111
Telephone: (801) 534-1663

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

WARREN LESSLEY, HELEN P.	:	
LESSLEY, ROMIE F. LESSLEY,	:	
VIOLA J. LESSLEY and VIRGINIA	:	STIPULATION AND SETTLEMENT
L. WARD KLEINERT,	:	

Plaintiffs,

-v-

CLEALON B. MANN, NANELL H.	:	
MANN, BRIGHTON BUILDERS, INC.,	:	Civil No. C-80-6041
and DOES I through X,	:	

Defendants.

ROMIE F. LESSLEY, VIOLA J.	:	
LESSLEY, and VIRGINIA L.	:	
WARD KLEINERT,	:	

Cross-Plaintiffs,

-v-

WARREN LESSLEY,	:	
-----------------	---	--

Cross-Defendant.

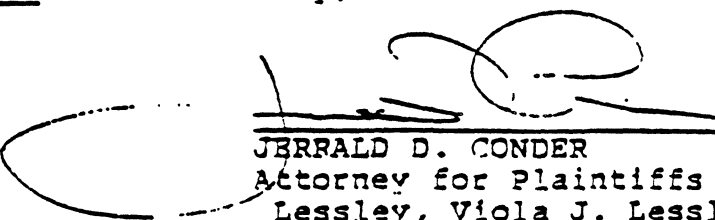
Plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert, by and through counsel, Jerrald D. Conder, and plaintiff, Warren Lessley, by and through counsel, William W. Downes, Jr., hereby

stipulate and agree as follows:

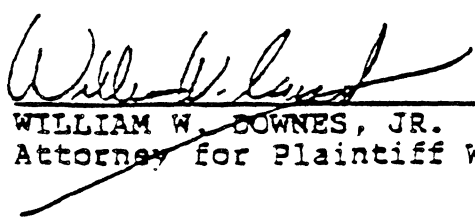
1. In the event that plaintiff Warren Lessley obtains a Judgment against defendants Clealon B. Mann and Nanell R. Mann by settlement or after trial of this matter, Warren Lessley assigns to Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert \$13,131.92 of said Judgment. In the event plaintiff Warren Lessley fails to obtain a Judgment against defendants Clealon B. Mann and Nanell R. Mann, plaintiff Warren Lessley shall not be indebted to plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert.

2. Plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert hereby dismiss their Crossclaim against plaintiff Warren Lessley and agree that any and all claims they may have against Warren Lessley arising out of the sale and development of that parcel of land known as the Lessley Estates Subdivision are compromised, fully settled and satisfied.

DATED this 31 day of January, 1984.



JERRALD D. CONDER
Attorney for Plaintiffs Romie F.
Lessley, Viola J. Lessly and
Virginia L. Kleinert



WILLIAM W. DOWNES, JR.
Attorney for Plaintiff Warren Lessley

00448

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or delivered to Jerrald D. Conder, Attorney for Plaintiffs/Cross-Plaintiffs, CONDER, HANSON & WANGSGARD, 4059 South 4000 West, West Valley City, Utah 84120, and to Richard S. Nemelka, Attorney for Defendants, NEMELKA, BLAKESLEY & BLAKESLEY, 455 East 400 South, Suite 302, Salt Lake City, Utah 84111 this 25 day of January, 1984.

Tami Stewart

I CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL DOCUMENT ON FILE IN THE TRUST
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

Cindy Anderson 12-18-90

AUG 17 1979

R. L. Anderson

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WARREN T. LESSLEY, HELEN T.	:	RULING
LESSLEY, ROMIE F. LESSLEY,	:	
VIOLA J. LESSLEY and	:	CIVIL NO. C-80-6041
VIRGINIA L. WARD KLEINERT,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
CLEALON B. MANN, NANELL H.	:	
MANN, BRIGHTON BUILDING,	:	
INC., and DOES I through X,	:	
	:	
Defendants.	:	

The Motion allocating distribution of Judgment was submitted to the Court for decision, and oral argument requested. The Court has now given consideration to the arguments of counsel, and rules as follows.

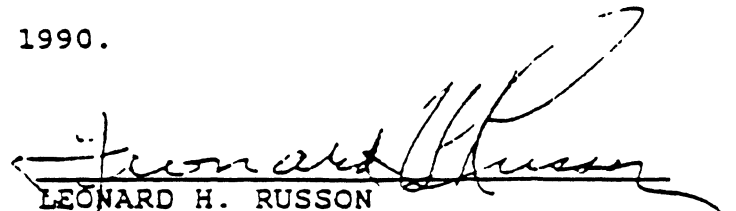
1. The total Judgment of \$260,000.00 includes attorney's fees, and should be divided between the plaintiffs in the percentages set forth in the Objection to Motion Allocating Distribution of Judgment filed by attorneys for Romie Lessley, Viola Lessley and Virginia Kleinert.

2. The interim distribution should be divided by the same percentages. However, the Court rules that the assignment of

\$13,131.92 was of the Judgment Warren Lessley obtained against the Manns, and since that Judgment has been effectively reduced through bankruptcy to a percentage on the dollar, the assignees are only entitled to that percentage.

The attorney for Romie and Viola Lessley and Virginia Kleinert will prepare the Order.

Dated this 17th day of April, 1990.


LEONARD H. RUSSON
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling, to the following, this 17 day of April, 1990:

Jerrald D. Conder
Attorney for Plaintiffs Romie F.
Lessley, Viola J. Lessley and
Virginia L. Ward Kleinert
4059 South 4000 West
West Valley City, Utah 84120

William W. Downes, Jr.
Attorney for Plaintiff Warren Lessley
175 West 200 South, Suite 4000
P.O. Box 2668
Salt Lake City, Utah 84110-2668

D. F. Olinberg

VERIFIED THAT THIS IS A TRUE COPY OF
DOCUMENT ON FILE IN THE
COURT, SALT LAKE COUNTY, STATE OF UTAH
12-18-90
Carol Anderson

00464

MAY 08 1990

JERRALD D. CONDER #0709
of CONDER & WANGSGARD
Attorneys for Plaintiffs
4059 South 4000 West
West Valley City, Utah 84120
Telephone: (801) 967-5500

SALT LAKE COUNTY

JUDGMENT

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

WARREN T. LESSLEY, HELEN T.
LESSLEY, ROMIE F. LESSLEY,
VIOLA J. LESSLEY and
VIRGINIA L. WARD KLEINERT,

Plaintiffs,

vs.

CLEALON B. MANN, NANELL H.
MANN, BRIGHTON BUILDING, INC.,
and DOES I through X,

Defendants.

ORDER ON MOTION RE:
ALLOCATION OF JUDGMENT

2156614
5-10-90 8:05am
Civil No. C-80-6041

Russon

Plaintiff, Warren Lessley's Motion for Allocation of Judgment came on regularly for hearing on Monday, the 16th day of April, 1990. Plaintiff Warren Lessley was represented by counsel William W. Downes, Jr. of the Firm of Winder & Haslam. Plaintiffs, Romie F. Lessley, Viola J. Lessley and Virginia L. Ward Kleinert were represented by Jerrald D. Conder of the firm of Conder & Wangsgard.

The Court having reviewed the memorandums of counsel and oral argument makes the following Order:

1. The total judgment awarded Plaintiffs' in the above action of \$266,00.00 includes attorney's fees and should be divided between the Plaintiffs in the following percentages:

Warren T. Lessley	\$266,000.00 X .4074 = \$108,370.37
Romie F. Lessley	266,000.00 X .4074 = \$108.370.37
Virginia L. Kleinert	266,000.00 X .0741 = \$ 19,703.71
Viola J. Lessley	266,000.00 X .1111 = \$ 29,555.56

2. The interim distribution of \$66,500 should be divided between the parties based on the same percentages as the total judgment as follows:

Warren T. Lessley	\$66,500.00 X .4074 = \$27,092.10
Romie F. Lessley	66,500.00 X .4074 = \$27,092.10
Virginia L. Kleinert	66,500.00 X .0741 = \$ 4,927.65
Viola J. Lessley	66,500.00 X .1111 = \$ 7,388.15

\$66,500.00

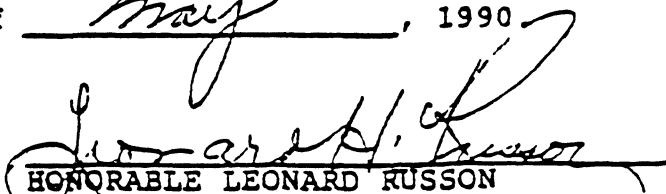
Additionally since the Judgment appears to be reduced through bankruptcy Warren Lessley is ordered to pay the same percentage of the assignment which the interim distribution bears to the total judgment computed as follows:

Interim distribution \$66,500.00 divided by \$266,000.00 (total judgment) equals percentage reduction of 75% based thereon Warren Lessley is ordered to pay, from his share of the interim distribution the sum of \$3,282.98. In the event of further distribution shares payable to Plaintiff in a sum less than full payment, Warren Lessley shall pay against the assignment the same

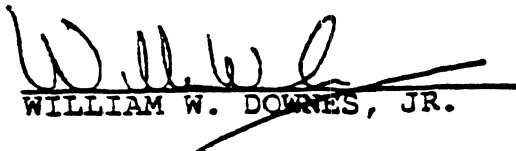
percentage that the additional distribution bears to the total judgment.

3. For the purpose of Rule 72 Utah Rules of Civil Procedure This ruling shall be considered a final Order.

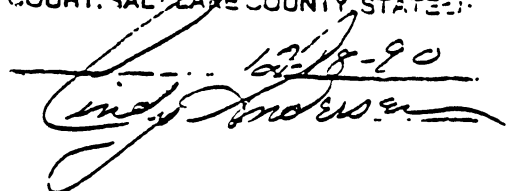
DATED this 7th day of May, 1990


HONORABLE LEONARD RUSSON
District Court Judge

Approved as to form:


WILLIAM W. DOWNES, JR.

TESTIFY THAT THIS IS A TRUE COPY OF THE
DOCUMENT ON FILE IN THE
COURT, SALT LAKE COUNTY, STATE OF UTAH


12-18-90