

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 Appellant

Utah Court of Appeals

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Brief of Appellant, *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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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO.

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 1 through X,

Defendants.

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

Cross-Plaintiffs and
Appellants,

-vs-

WARREN LESSLEY,

Cross-Defendant and
Appellee.

Docket No.

90-0407-CA

PRIORITY CLASSIFICATION 16

BRIEF OF APPELLANT

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

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FILED

DEC 26 1990

COURT OF APPEALS

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

-VS-

Docket No.

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

-VS-

WARREN LESSLEY,

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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I

STATEMENT OF JURISDICTION

Jurisdiction for the Utah Court of Appeals to hear this appeal is conferred by Utah Code Ann., §§78-2-2(3)(j) and 78-2a-3(2)(j) (1990).

II

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the District Court err in granting appellee's Motion Re: Allocation of Judgment without requiring appellee to fully honor his assignment in satisfaction of the cross-claim filed by appellants?

III

STATEMENT OF THE CASE

Appellants, Romie F. Lessley, Viola J. Lessley and Virginia L. Ward Klienert, together with appellee, Warren Lessley, were plaintiffs in an action for breach of contract against defendants Clealon B. Mann, Nannell H. Mann, Brighton Building, Inc., and Does I through X, in Civil No. C-80-6041, Third Judicial District Court, in and for Salt Lake County, State of Utah. In that underlying action, appellants filed a cross-claim against appellee. (Appellants' Reply to Counterclaim and Cross-Claim is included as Exhibit "A" in the Appendix attached hereto and is incorporated herein by reference.)

Appellants' cross-claim against appellee was settled by stipulation. (The Stipulation and Settlement is included as

Exhibit "B" in the Appendix attached hereto and is incorporated herein by reference.) Appellee assigned to appellants \$13,131.92 of any judgment he might obtain against defendants in the underlying action.

A judgment of \$260,000.00 was awarded to the plaintiffs (appellants and appellee herein) in the underlying action. (The Judgment is included as Exhibit "C" in the Appendix attached hereto and is incorporated herein by reference.)

The defendant in the underlying action filed bankruptcy. The bankruptcy trustee recovered significant assets on behalf of the bankrupt estate and proposed an interim distribution in an amount less than the judgment obtained by plaintiffs in the underlying action.

The trial court below, on motion by appellee, entered an order allocating the interim distribution between the parties by ordering a payment to appellants in a sum less than \$13,131.92. (Appellee's Motion Re: Allocation of Judgment is included as Exhibit "D" in the Appendix attached hereto, Appellants' Objection to Motion Allocating Distribution of Judgment is included as Exhibit "E", the trial court's Ruling dated May 17, 1990, is included as Exhibit "F", and the Order on Motion Re: Allocation of Judgment is included as Exhibit "G". Exhibits D through F are incorporated herein by reference.)

The parties agree that certified copies of the documents described in the foregoing paragraphs shall be included as an Appendix to this agreed Statement of the Case in lieu of the record on appeal as contemplated by U.R.A.P., Rule 11(f), and shall be considered a part thereof, and that the parties may attach copies of those documents as appendices to their briefs.

IV

SUMMARY OF ARGUMENTS

The District Court erred in granting appellee Warren Lessley's Motion Re: Allocation of Judgment because the Stipulation and Settlement executed by the parties included an assignment of a sum certain, \$13,131.92, that the District Court had no power to alter or set aside and because Warren Lessley should be estopped from changing his position after he agreed to the assignment.

V

ARGUMENT

A. THE ASSIGNMENT IS AN UNCONDITIONAL ASSIGNMENT OF A SUM CERTAIN AND IS NOT SUBJECT TO "ADJUSTMENT" BY THE DISTRICT COURT.

The crux of this appeal is the assignment by appellee, Warren Lessley, to appellants of a sum certain, \$13,131.92, and the effect, if any, on that assignment produced by the subsequent bankruptcy of Clealon B. Mann, the defendant in the underlying

action. Specifically, appellants submit that the District Court erred when it reduced the amount to be paid under the assignment, reasoning that because the judgment from which the assignment amount was to be paid was reduced in bankruptcy, the amount agreed to in the unrelated assignment should also be reduced.

The Stipulation and Settlement entered into by the parties to this appeal stated, in pertinent part:

1. 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. Klienert, \$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.

(Stipulation and Settlement at 2, attached as Exhibit "A" to Appendix; R. 448.)

The total judgment awarded in the underlying action was divided among the plaintiffs by the District Court as follows:

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
	TOTAL <u>\$265,999.81</u>

(Order on Motion Re: Allocation of Judgment at 2, attached as Exhibit "G" to Appendix; R. 466.) The interim distribution of \$66,500.00, representing twenty-five percent (25%) of the total judgment, was divided 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
TOTAL	<u>\$66,500.00</u>

When the claim for the \$260,000.00 judgment was submitted to the bankruptcy court, an additional \$6,000.00 in accrued interest was approved. Thus, appellants' and appellees' total claim against the bankrupt defendant is for \$266,000.00.

Id. Warren Lessley recovered more than sufficient funds to pay the assigned amount. However, the District Court, without reference to legal authority, reduced the amount Warren Lessley was to pay to appellants under the assignment by seventy-five percent (75%) because the underlying judgment, "has been effectively reduced through bankruptcy to a percentage on the dollar," and required Warren Lessley to pay only \$3,282.89 to appellants. (Ruling at 2, attached as Exhibit "F" to Appendix; R. 463.) The interim distribution, recognizing the full amount agreed to in the assignment, should have been divided as follows:

Warren T. Lessley	\$66,500.00 X .4074 = \$27,092.10	
	- 13,131.92	
	<u>\$13,960.18</u>	

Romie F. Lessley	\$66,500.00 X .4074 =	\$13,960.18
Virginia L. Kleinert	\$66,500.00 X .0741 =	\$27,092.10
Viola J. Lessley	\$66,500.00 X .1111 =	4,927.65
		<u>7,388.15</u>
	TOTAL	\$66,500.00

The terms of the assignment are clear and unambiguous.

In construing an assignment, as in the construction of contracts generally, when the words employed are free from ambiguity, there is no occasion for interpretation. Absent ambiguity reflected in the wording of the instrument, it is the court's duty to give effect to the language of the entire document in accordance with the commonly accepted and ordinary meaning of the words.

Benton v. Albuquerque Nat. Bank, 701 P.2d 1025, 1031 (N.M. App. 1985). All provisions of the assignment must be construed as a whole. Prudential Federal Savings and Loan Assn. v. King, 22 Utah 2d 379, 453 P.2d 697, 699 (1969); Sheffer v. Griffiths, 67 Utah 65, 245 P. 698, 700 (1926). The assignment clearly does not contemplate a variable amount dependent upon the financial health of the defendant in the underlying action. It requires Warren Lessley to pay to appellants the first \$13,131.92 of any recovery obtained by him from the defendants in the underlying action. The District Court erred in allowing Warren Lessley to avoid the obligations he agreed to in the assignment.

At the time the parties executed the Stipulation and Settlement, all of Warren Lessley's interest in the \$13,131.92

amount passed immediately to appellants and divested Warren Lessley of all right of title and interest in that amount. See e.g., Jones v. Central States Inv. Co., 654 P.2d 727, 728 (Wyo. 1982); Patrons State Bank and Trust Company v. Shapiro, 528 P.2d 1198, 1203 (Kan. 1974); First Nat. Bank of Topeka v. United Telephone Assn, 353 P.2d 963, 973 (Kan. 1960). Therefore, any recovery Warren Lessley received from the defendants, up to \$13,131.92, must be regarded as trust funds belonging to appellants. Patrons State Bank and Trust Company v. Shapiro, supra at 1203; First Nat. Bank of Topeka v. United Telephone Assn, supra at 973.

Once a valid assignment has been made, the assignor cannot cancel or modify the assignment by unilateral action without assent of the assignee.

Bonanza Motors, Inc. v. Webb, 657 P.2d 1102, 1104 (Idaho App. 1983).

The assignment clearly did not provide for the reduction ordered by the District Court, and there is no legal authority sanctioning such a reduction.

B. APPELLEE IS ESTOPPED FROM ASSERTING THAT THE SUM CERTAIN AGREED TO IN THE ASSIGNMENT SHOULD BE REDUCED.

Warren Lessley's Motion Re: Allocation of Judgment is, in effect, an attempt to set aside the Stipulation and Settlement he

entered into earlier and to substitute in its place a new agreement. The Stipulation and Settlement, "can be set aside only for the reasons generally available to set aside a compromise agreement, i.e., illegality, fraud, duress, undue influences, or mistake." Matter of Estate of Chasel, 725 P.2d 1345, 1348 (Utah 1986). See also, Mascaro v. Davis, 741 P.2d 938 (Utah 1987); Rasmussen v. Martin, 659 P.2d 155 (Idaho App. 1983); Cerbone v. Cerbone, 428 N.Y.S. 2d 777 (1979); McDonald v. Hester, 155 S.E. 2d 720 (Geo. App. 1967).

Warren Lessley did not present any of those grounds to the trial court; they do not exist in this case. His dissatisfaction with the assignment, which arose after it appeared that the bankruptcy of the defendant in the underlying action might reduce his recovery, is not sufficient grounds to set the assignment aside. Recreation Dev. Co., v. American Const., 749 P.2d 1002, 1005 (Colo. App. 1987); Royal v. Colorado State Personnel Bd., 690 P.2d 253, 255 (Colo. App. 1984).

Warren Lessley admitted his liability to appellants and agreed to pay them \$13,131.92 of any judgment obtained in the underlying action. (Stipulation and Settlement at 2, attached as Exhibit A to Appendix; R. 448.) Appellants dismissed the cross-claim against him in return for the assignment.

As a general rule parties to an action are bound by their pleadings and judicial declarations and are estopped to deny or

contradict them where the other parties to the action relied thereon and changed their position by reason thereof.

Arrowhead Const. Co. v. Essex Corp., 662 P.2d 1195, 1201 (Kan. 1983). Equitable estoppel prevents Warren Lessley from changing his position because appellants have justifiably relied on the assignment and will be injured if Warren Lessley is allowed to avoid his obligation. See e.g., Bruer-Harrison, Inc. v. Combe, 146 Utah Adv. Rep 26, 32, ____ P.2d ____ (Utah Ct. App. 1990); Utah Dept. of Transp. v. Reagan Outdoor Advertising, Inc., 751 P.2d 270, 271 (Utah Ct. App. 1988); Esmieu v. Schrag, 598 P.2d 1366, 1369 (Wash. 1979).

Furthermore, Warren Lessley should be prevented, under the doctrine of "judicial estoppel" from playing "fast and loose" with the court...". Citizens Bank v. C & H Const. & Paving Co, Inc., 552 P.2d 796, 802 (N.M. App. 1976); See also, Wade v. Woodings-Verona Tool Works, 469 F. Supp 465 (W.D. Pa. 1979); Rosenburg v. Rosenburg, 601 P.2d 589 (Ariz. 1979); Jamison v. Consolidated Utilities, Inc., 576 P.2d 97 (Alaska 1978).

Finally, in G. Eugene England Found. v. Smith's Food King No. 6, 542 P.2d 753, 755 (Utah 1975), the court stated:

[W]here one of two innocent parties must suffer a loss because of the conduct of the third, the law generally leans toward placing the loss upon the one who made the choice and created the circumstances out of which the loss came about.

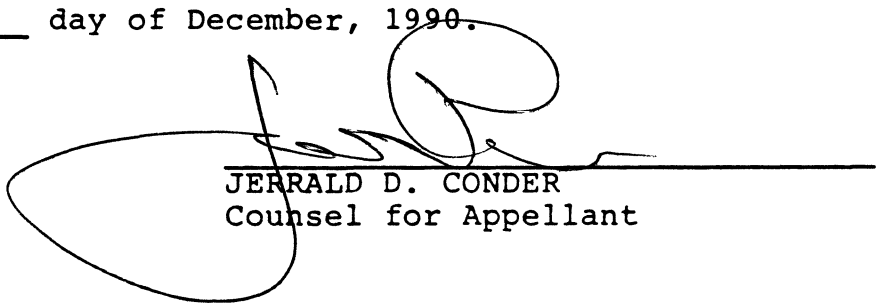
See also, Hanson v. Beehive Security Co., 14 Utah 2d 157, 380 P.2d 66, 67 (1963). While both appellants and Warren Lessley are innocent regarding defendant's bankruptcy, as between Warren Lessley and appellants, Warren Lessley is not innocent in regard to his attempt to avoid paying the full \$13,131.92 to appellants. He should be estopped from claiming equal priority to the interim distribution without first being required to honor the assignment.

VI

CONCLUSION

For the reasons stated above, appellants request that the District Court's ruling on Appellee's Motion Re: Allocations of Judgment be reversed and that appellee, Warren Lessley, be directed to pay the entire amount agreed to in the Stipulation, \$13,131.92, from his share of the interim distribution.

DATED this 24 day of December, 1990.



JERRALD D. CONDER
Counsel for Appellant

CERTIFICATE OF SERVICE

I, Jerrald D. Conder, certify that on December 28, 1990, I served four (4) copies of the attached Brief of Appellant upon William W. Downes, Jr, counsel for the appellee in this matter, by personally serving them upon him at the following address:

William W. Downes, Jr.
WINDER & HASLAM
175 West 200 South #4000
Salt Lake City, UT 84110



JERRALD D. CONDER

APPENDIX "A"

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F60549.

FILMED

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FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

AUG 31 2 58 PM '82

W. STERLING EVANS, CLERK
3rd DIST. COURT
BY *[Signature]*
DEPUTY CLERK

[Signature]

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 BUILDERS, INC., and
DOES I through X,
Defendants.

REPLY TO COUNTERCLAIM
BY PLAINTIFFS
ROMIE F. LESSLEY,
VIOLA J. LESSLEY,
AND VIRGINIA L. WARD KLEINERT
AND
CROSS-CLAIM
VERSUS
WARREN T. LESSLEY

ROMIE F. LESSLEY,
VIOLA J. LESSLEY, and
VIRGINIA L. WARD KLEINERT,
Cross-
Plaintiffs,
vs.
WARREN T. LESSLEY,
Cross-
Defendant.

Civil No. C-80-6041

REPLY TO COUNTERCLAIM

1. Plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Ward Kleinert deny that Warren T. Lessley acted as their agent, representative or in any other capacity on their behalf in the execution of the agreement attached to Defendant's Counter-Claim, a copy of which agreement is attached hereto marked "Exhibit 1."

2. These Plaintiffs have insufficient information, knowledge or belief to admit or deny and, based thereon, deny each and every allegation of this paragraph.

3. These Plaintiffs allege that the written terms of said agreement speak for themselves.

4. Deny the allegations contained in paragraph 4.

5. The Plaintiffs have insufficient information, knowledge or belief to admit or deny and, based thereon, deny each and every allegation of this paragraph.

6. Deny the allegations contained in paragraph 6.

7. Admit the allegations contained in paragraph 7.

FIRST AFFIRMATIVE DEFENSE

Counterclaimant's action is barred as against these Plaintiffs based on Section 25-5-4(2), Utah Code Annotated, 1953.

WHEREFORE, having fully answered Defendants' Counterclaim, these Plaintiffs demand that the same be dismissed, no cause of action.

CROSS-CLAIM

Plaintiffs Romie F. Lessley, Viola T. Lessley, and Virginia L. Ward (Kleinert) cross-complain against co-plaintiff Warren T. Lessley, alleging as follows:

FIRST CLAIM FOR RELIEF

1. Cross-plaintiffs were not aware of Exhibit 1 or any other agreement between Warren T. Lessley and Counter-claimant Clealon Mann purporting to bind cross-claimants to pay a share of losses or to receive a share of profits in the development of certain land sold by Plaintiffs to Defendant/Counter-claimant until shortly before the time this action was scheduled for trial.

2. In the event the Court finds these Plaintiffs liable in any manner as a result of the allegations of the Counterclaim filed herein, these Plaintiffs demand an Order requiring Warren T. Lessley to assume, pay and hold them harmless for any such liability.

WHEREFORE, Cross-plaintiffs demand judgment against Warren T. Lessley as set forth below.

SECOND CLAIM FOR RELIEF

1. On or about April 27, 1978, Plaintiff Warren T. Lessley entered into an agreement with Defendants, a copy of which is attached hereto marked Exhibit "1" and incorporated herein as though fully set forth.

2. Warren T. Lessley did not inform Cross-Plaintiffs of the existence of said agreement and did not share the benefit received therefrom with Cross-Plaintiffs.

3. All monies received by Cross-Defendant Warren T. Lessley as a result of Exhibit 1 should be ordered to be held in trust for the benefit of all Plaintiffs and said sum should be divided between Cross-Plaintiffs and Cross-Defendant in the percentage relationship that each owns of the property sold.

WHEREFORE, Cross-Plaintiffs demand judgment as set forth below.

THIRD CLAIM FOR RELIEF

1. Cross-Plaintiffs incorporate paragraphs 1, 2 and 3 of their Second Claim for Relief as though fully set forth herein.

2. Cross-Defendant, Warren T. Lessley, by executing and concealing the existence of Exhibit 1 and accepting payment thereon, defrauded Cross-Plaintiffs from sums they were and should have been entitled to receive as co-owners (tenants in common) of the property sold.

3. Based on the fraud alleged in paragraph 2 hereof, Cross-Plaintiffs are entitled to an award of punitive damages against Warren T. Lessley in the sum of \$10,000.00.

4. As a result of Warren T. Lessley's fraudulent actions, Cross-Plaintiff have been required to retain the services of an attorney for which it is just and reasonable that said Warren T. Lessley be required to pay reasonable attorney's fees.

WHEREFORE, Cross-Claimants demand judgment against Warren T. Lessley as follows.

FIRST CLAIM FOR RELIEF

1. For an order and judgment against Warren T. Lessley requiring him to assume, pay and hold Cross-Plaintiffs harmless from any judgment or order which Defendants may be awarded against these Cross-Plaintiffs as prayed in the Second Cause of Action in their Counterclaim;

2. For general relief.

SECOND CAUSE OF ACTION

1. For judgment against Warren T. Lessley decreeing all sums received by him as a commission and/or finder's fees be held in trust and Cross-Plaintiffs awarded judgment for their share of said funds;

2. For all costs of court incurred herein; and

3. For general relief.


THIRD CAUSE OF ACTION

1. For punitive damages in the sum of \$10,000.00;

2. Reasonable attorney's fees together with all costs of court incurred herein; and

3. For general relief.

DATED this 30 day of August, 1982.


JERRALD D. CONDER
Attorney for R. Lessley,
V. Lessley and V. Ward Kleinert

CERTIFICATE OF MAILING

I hereby certify that on this 31 day of August, 1982, I mailed a true and correct copy of the foregoing REPLY TO COUNTER-CLAIM BY PLAINTIFFS ROMIE F. LESSLEY, VIOLA J. LESSLEY, AND VIRGINIA L. WARD KLEINERT AND CROSS-CLAIM VERSUS WARREN T. LESSLEY, postage prepaid, to the attorney for Defendants, Richard S. Nemelka, Nemelka, Blakesley & Blakesley, 455 East 400 South, Suite 302, Salt Lake City, Utah 84111, and to Cross-Defendant, Warren T. Lessley, 7325 South 2700 West, West Jordan, Utah 84084.

Kathie Hadin

Warren T. Lessley

April 27, 1978

Brighton Builders Inc., a Utah Corporation hereby enters into an agreement this date with Mr. Warren T. Lessley, who resides at 7325 South 2700 West in West Jordan, Utah. The agreement as follows, has been approved by a resolution of the Board of Directors of said corporation held this 26th day of April 1978.

It is hereby agreed that a finders fee of \$1,450.00 per acre is to be paid to Warren T. Lessley on the 15.35 acres purchased as per Earnest Money dated April 24, 1978. Finders fee to be paid out of the profits of said development.

It is further agreed that Brighton Builders Inc. and Mr. Warren T. Lessley will be 50/50 partners on the development profits of said subdivision, as well as a 50/50 partnership on expenses and losses if any.

It is further agreed that 50% of the lots will be sold to Brighton Builders or Ensign Homes to build their homes on and the listing on those homes will be distributed through the present sales force. The other 50% of the lots are to be sold by Warren T. Lessley at his discretion. ~~be sold to other builders if all parties agree and the list back agreement on homes built by said builders to be exclusively Warren T. Lessley's if sold by him. However, if these are sold by an existing salesman with Hales Realtors, said salesman and Warren T. Lessley to be equal to listers.~~

It is further agreed that Warren T. Lessley is to have an option on two or three lots in said subdivision at the same price as that paid by the builders contracted to purchase lots in said subdivision.

-1-

EXHIBIT #1

It is further agreed that Brighton Builders, Inc. is given the option to purchase an additional 2.6 acres contiguous with that property being purchased under the Earnest Money Agreement dated April 24, 1978. This option will be as per the same terms of the aforementioned Earnest Money Agreement and subject to the terms of this Agreement. The option period shall be ^{sixty (60)} ~~thirty (30)~~ months. Sellers are to notify Buyers when the option can be executed.

If any portion of this Agreement is determined to be illegal, it will not make any other part of this Agreement non-binding or illegal.

DATED this 29th day of April, 1978.

SELLER

BRIGHTON BUILDERS, INC.
Warren T. Lessley
Warren T. Lessley

PURCHASER

BRIGHTON BUILDERS, INC.

By William D. Wood
Its President

By Don Alstis
Its Secretary-Treasurer

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

3

..

Jan 18 90
Cindy Anderson
Clerk

APPENDIX "B"

FILMED

FILED IN CLERK'S OFFICE
Salt Lake City, Utah

FEB 3 1984

H. Dixon Hindley, Clerk, 3rd Dist. Court

By R. G. Golepas
Deputy Clerk

WILLIAM W. DOWNES, JR.
Attorney for Helen P. Lessley, Plaintiff and
Warren Lessley, Plaintiff/Cross-Defendant
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	:	STIPULATION AND SETTLEMENT
L. WARD KLEINERT,	:	

Plaintiffs,

-v-

CLEALON B. MANN, NANELL H.	:	Civil No. C-80-6041
MANN, BRIGHTON BUILDERS, INC.,	:	
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

EXHIBIT "B"

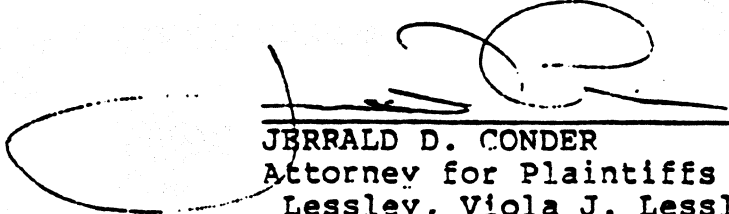
00447

stipulate and agree as follows:

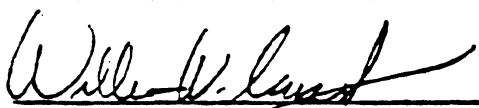
1. In the event that plaintiff Warren Lessley obtains a Judgment against defendants Clealon B. Mann and Nanell H. Mann by settlement or after trial of this matter, Warren Lessley assigns to Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert \$13,131.92 of said Judgment. In the event plaintiff Warren Lessley fails to obtain a Judgment against defendants Clealon B. Mann and Nanell H. 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. Lessley 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
ORIGINAL DOCUMENT ON FILE IN THE
DISTRICT COURT, SALT LAKE COUNTY, S
UTAH.

12-18-90
Cindy Anderson

APPENDIX "C"

FILED

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

FEB 22 1984

H. Dixon *H. Dixon* Clerk and Dist. Court
By *R. J. Soteras* 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.

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,

00439

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 Lesslev, Romie F. Lessley, Viola J. Lesslev 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. Grotz
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.

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

12-18-90
Eric Anderson

Tami Stewart

APPENDIX "D"

FILED
DISTRICT COURT

FEB 11 9 42 AM '88

CLERK

John

William W. Downes, Jr. (#0907)
WINDER & HASLAM, P.C.
Suite 4000
175 West 200 South
Post Office Box 2668
Salt Lake City, Utah 84110-2668
Telephone: (801) 322-2222
Attorneys for Plaintiff
Warren T. Lessley

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

WARREN T. LESSLEY, HELEN T.	:	
LESSLEY, ROMIE F. LESSLEY,	:	
VIOLA J. LESSLEY and	:	
VIRGINIA L. WARD KLEINERT,	:	MOTION RE: ALLOCATION
	:	OF JUDGMENT
Plaintiffs,	:	
	:	
vs.	:	
	:	
CLEALON B. MANN, NANELL H.	:	
MANN, BRIGHTON BUILDINGS, INC.	:	Civil No. <i>C-80-6041 B</i>
and DOES I through X,	:	<i>80-6041</i>
	:	<i>Judge Russon</i>
Defendants.	:	

Plaintiff, Warren Lessley, moves the above-entitled court for an order allocating the \$260,000 judgment rendered in this matter among the four plaintiffs.

This matter was settled on or about February 1, 1984 resulting in a judgment in favor of plaintiffs in the sum of \$260,000. This represented an award of \$248,000 for principal and accrued interest plus \$12,000 attorneys' fees.

The debt at issue arose from the sale of real property. The parcel was owned by the parties in the

60444

following percentages:

Warren T. Lessley	.4073
Romie F. Lessley	.4073
Virginia L. Kleinert	.0740
Viola J. Lessley	.1111

Accordingly, Warren Lessley submits that the \$248,000 should be apportioned in those percentages, rendering the \$248,000 allocated as follows:

Warren T. Lessley	\$101,010
Romie F. Lessley	\$101,010
Virginia L. Kleinert	\$ 18,352
Viola J. Lessley	\$ 27,552

Mr. Lessley would be awarded \$6,000 for his attorneys' fees and the balance of the family would be awarded \$6,000 for their attorneys' fees.

In this action, the Lessley family members sued Warren Lessley in a crossclaim and the matter was settled pursuant to a stipulation. A copy of the stipulation is attached hereto as Exhibit "A". The pertinent language provides that:

In the event that plaintiff Warren Lessley obtains a judgment against defendants Clealon B. Mann and Nanell 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 Warren Lessley fails to obtain a judgment against defendants Clealon B. Mann and Nanell H. Mann, plaintiff Warren Lessley shall not be indebted to plaintiffs Romie F. Lessley, Viola J. Lessley and Virginia L. Kleinert.

Accordingly, plaintiff Warren Lessley believes that the \$101,010.40 principal award allocated to him plus his

\$6,000 attorneys' fees award should be reduced by \$13,131.92, rendering his interest in the judgment to be \$93,878.48. The balance of the judgment, or \$166,121.52, would be the property of the Lessley family.

This dispute arises in light of the fact that defendants Mann filed bankruptcy which will result in a payment to the Lessley family of \$66,500 which should be allocated consistent with their respective interests in this judgment.

WHEREFORE, plaintiff Warren Lessley requests that this court allocate to him \$93,878.48 of the principal award herein of \$260,000.

DATED this 12 day of February, 1990.

WINDER & HASLAM, P.C.

By W.W. Downes, Jr.
William W. Downes, Jr.
Attorneys for Plaintiff
Warren T. Lessley

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Motion re: Allocation of Judgment to be mailed, postage prepaid, on the 12th day of February, 1990 to the following:

Jerald D. Conder
CONDER & WANGSGARD
4059 South 4000 West
West Valley City, Utah 84120

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

12-18-90
Cindy A. [Signature]

APPENDIX "E"

MAR 9 4 19 PM '90

THIRD JUDICIAL DISTRICT
SALAS COUNTY
CLERK

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

1. Plaintiffs, Warren T. Lessley, Helen T. Lessley, Viola Lessley, Virginia L. Ward Kleinert, and Romie F. Lessley were awarded a judgment in the total sum of \$260,000.00. The judgment included an award of \$12,000.00 in attorney's fees.

2. The debt owing Plaintiffs, the subject matter of this action, was for the sale of real property which was owned by Plaintiffs in the following percentages:

Warren T. Lessley	.4074
Romie F. Lessley	.4074
Virginia L. Kleinert	.0741
Viola J. Lessley	.1111

3. Prior to the entry of the judgment a stipulation settling a crossclaim filed against Romie F. Lessley by Warren T. Lessley, Virginia W. Kleinert and Viola Lessley was entered resolving their dispute. The pertinent language is as follows:

In the event that Plaintiff Warren Lessley obtains a judgment against Defendants Clealon B. Mann and Nanell 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.

4. Jerrald D. Conder represented Plaintiffs, Romie F. Lessley, Viola J. Lessley, and Virginia L. Kleinert. William W. Downs represented Warren T. Lessley.

5. Defendants Mann filed a bankruptcy. The trustee in bankruptcy has filed a "Motion for Order Authorizing First Interim Payment....." which shows an allowed claim to Plaintiffs jointly in the sum of \$260,000.00 and a distribution in the sum of \$66,500.00.

POSITION ON TOTAL DISTRIBUTION

The total judgment, including attorney's fees, should be divided between the parties based on their individual ownership interest as follows:

Warren T. Lessley	\$260,000.00	X	.4074	=	\$105,924.00
Romie F. Lessley	260,000.00	X	.4074	=	\$105,924.00
Virginia L. Kleinert	260,000.00	X	.0741	=	\$ 19,266.00
Viola J. Lessley	260,000.00	X	.1111	=	\$ 28,886.00
					<u>\$260,000.00</u>
					=====

grace

POSITION ON INTERIM DISTRIBUTION

The interim distribution should be divided between the parties using the same percentages as above, recognizing the assignment of \$13,131.92 by Warren T. Lessley to Romie, Virginia and Viola as follows:

Warren T. Lessley	\$66,500.00	X	.4074	=	\$ 27,092.10
					-13,131.92
					<u>\$ 13,960.18</u>
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
					<u>\$ 66,500.00</u>

ARGUMENT

The underlying reason for Warren Lessley's motion is to avoid paying the sum of \$13,131.92 to his brother, sister and mother from the proceeds of the First Interim Distribution due him. This payment is required by his stipulation in settlement of the crossclaim.

The stipulation assigning proceeds of judgment and the bankruptcy of Defendants Mann are not related and can not be relied upon by Warren Lessley to alter the assignment.

ASSIGNMENT ARGUMENT

The Assignment by Warren Lessley is an Unconditional
Assignment of a Sum Certain.

In this action the terms of the assignment are clear and unambiguous. This is not an assignment of a percentage or portion of a chose in action against Defendants Mann, but rather an assignment of the sum of \$13,131.92. There is no reservation in the assignment concerning conditional or partial payment of proceeds to be received from any judgment. In the case of Patrons State Bank v. Shapiro, 582 P2d 1198 (Kan 1974), the court held that an assignment passes all of the assignor's interest assigned to the assignee and divests the assignor of all right of control over the subject matter of the assignment.

In the instant action Warren Lessley assigned a sum certain which passed all of his right to receive that amount from any judgment he might obtain against Manns. There is no reservation in said assignment and no basis for Warren Lessley to seek a modification thereto.

ESTOPPEL

Warren Lessley is Estopped From Claiming an Equal
Priority to the Proceeds of the First Interim Distribution
of the Mann Estate to the Extent of his Assignment to Romie
F. Lessley, Virginia L. Kleinert and Viola Lessley

In the case of G. Eugene England Foundation v. Smiths Food King No. 6, 546 P2d 753 (Ut 1975), the court stated

[W]here one of two innocent parties must suffer a loss because of the misconduct of the third, the law generally leans toward placing the loss upon the one who made the choice and created the circumstance out of which the loss came about.

Foundation, supra, p 753.

In Foundation, supra, The G. Eugene England Foundation recovered a judgment that it was unable to collect against a third party. The Foundation then attempted to collect against Defendant Smiths claiming that Smiths had paid certain sums to said third party after receiving notice of Foundation's claimed right to said sums. The court found that Smiths and Foundation were both innocent parties and although it was unfortunate that Foundation could not collect its judgment it should not adversely affect Smiths.

In the case at bar all of the Plaintiffs, including Warren Lessley, are innocent regarding the inability of the Mann estate to apparently pay the full amount of the judgment against it. However, as between Warren Lessley and the remaining Plaintiffs, Warren Lessley is not innocent as it relates to the potential loss of the assignment of \$13,131.92 to Romie, Virginia and Viola. The assignment was based on Warren Lessley's admitted liability to the crossclaim and he should be estopped from

claiming equal priority to the interim distribution without first being required to honor the assignment. See also, Hanson v. Beehive Security Company, 380 P2d 66 (Ut 1963).

CONCLUSION

The following order of distribution should be entered by the court:

1. The total judgment of \$260,000.00, including attorney's fees, should be divided between Plaintiffs as follows:

Warren T. Lessley	\$260,000.00	X	.4074	=	\$105,924.00
Romie F. Lessley	260,000.00	X	.4074	=	\$105,924.00
Virginia L. Kleinert	260,000.00	X	.0741	=	\$ 19,266.00
Viola J. Lessley	260,000.00	X	.1111	=	<u>\$ 28,886.00</u>
					<u>\$260,000.00</u>
					=====

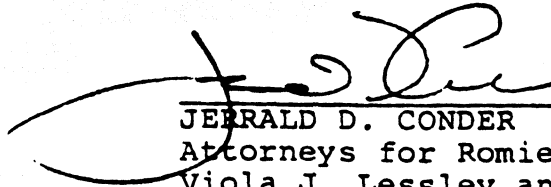
2. The first interim distribution of the Mann estate in the sum of \$66,500.00 should be divided between the parties as follows:

Warren T. Lessley	\$66,500.00	X	.4074	=	\$ 27,092.10
					<u>-13,131.92</u>
					\$ 13,960.18
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	=	<u>\$ 7,388.15</u>
					<u>\$ 66,500.00</u>

3. The sum of \$13,131.92 should be paid to Viola, Virginia and Romie from the first interim distribution pursuant to the assignment.

DATED this 9 day of March, 1990.

CONDER & WANGSGARD



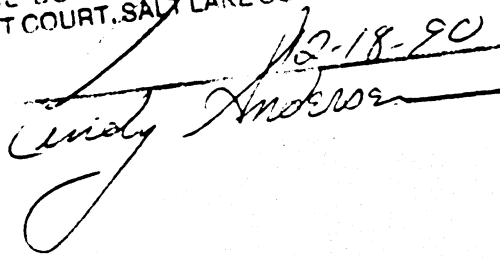
JERRALD D. CONDER
Attorneys for Romie F. Lessley,
Viola J. Lessley and
Virginia L. Ward Kleinert.

CERTIFICATE OF MAILING

I hereby certify that on the 9 day of March, 1990, I
cause a true and exact copy of the foregoing document to be
mailed, via First Class U. S. Mail, postage prepaid, to:

William W. Downes, Jr.
Attorney at Law
417 Church Street
Salt Lake City, Utah 84111

By: 

CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH
12-18-90


APPENDIX "F"

APR 17 1980

R. J. Bunnell

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

LESSLEY V. MANN

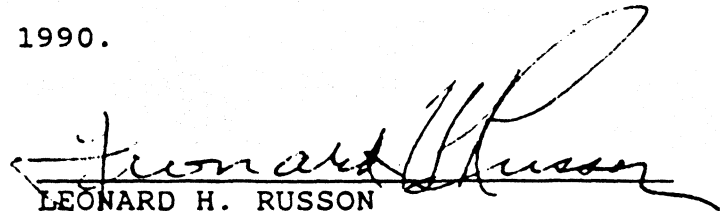
PAGE TWO

RULING

\$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

00463

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

L. F. Lundberg

NOTED, THAT THIS IS A TRUE COPY OF
DOCUMENT ON FILE IN THE 10
COURT, SALT LAKE COUNTY ST.
12-18-90
Lundberg

APPENDIX "G"

Third Judicial District

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

W. A. Handley

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

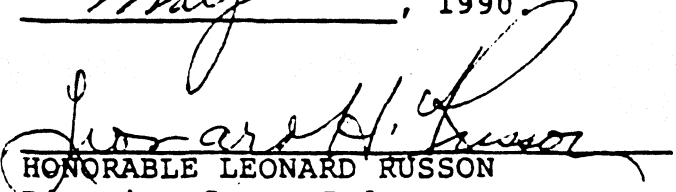
Additionally since the Judgment appears to be reduced through bankruptcy Warren Lessley is ordered to pay the same percentage of the assignment which the interim distribution bears to the total judgment computed as follows:

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 ALL
THE DOCUMENT ON FILE IN THE
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH

12-18-90
