

2000

Keith and Lucille Barker v. Ron Henri : Brief of Appellee

Utah Court of Appeals

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George B. Handy; Attorney at Law; Attorney for Appellee.

Candace S. Bridgess; Attorney at Law; Attorney for Appellants.

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IN THE UTAH COURT OF APPEALS

KEITH AND LUCILLE BARKER,)	<u>BRIEF OF APPELLEE</u>
)	
Plaintiffs/Appellants,)	
)	
vs.)	Case No. 20001023CA
)	[Priority No. 15]
RON HENRI,)	
)	
Defendant/Appellee.)	

BRIEF OF APPELLEE

AN APPEAL FROM A FINAL JUDGMENT
OF THE SECOND JUDICIAL DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

THE HONORABLE PAMELA G. HEFFERNAN PRESIDING

GEORGE B. HANDY
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Attorney for Defendant/Appellee

CANDACE S. BRIDGESS
795 East 24th Street
Ogden, Utah 84401
Attorney for Plaintiffs/Appellants

IN THE UTAH COURT OF APPEALS

KEITH AND LUCILLE BARKER,)
)
 Plaintiffs/Appellants,)

vs. $\frac{1}{2}$)

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

BRIEF OF APPELLEE

[Priority No. 15]

BRIEF OF APPELLEE

AN APPEAL FROM A FINAL JUDGMENT
OF THE SECOND JUDICIAL DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

THE HONORABLE PAMELA G. HEFFERNAN PRESIDING

GEORGE B. HANDY
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Attorney for Defendant/Appellee

CANDACE S. BRIDGESS
795 East 24th Street
Ogden, Utah 84401
Attorney for Plaintiffs/Appellants

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IN THE UTAH COURT OF APPEALS

KEITH AND LUCILLE BARKER,

Plaintiffs/Appellants,

vs.

RON HENRI,

Defendant/Appellee.

)
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BRIEF OF APPELLEE

Case No. 20001023CA
[Priority No. 15]

JURISDICTION OF THE COURT

Appeal has been taken from a final Judgment in the Second Judicial District Court of Weber County, State of Utah; the Honorable Pamela G. Heffernan presiding.

This Court has jurisdiction to hear this appeal, pursuant to §78-2a-3 and §78-2-2, Utah Code Annotated.

**STATEMENT OF ISSUES PRESENTED ON APPEAL
AND STANDARD OF REVIEW**

POINT I

DID THE DEFENDANT/APPELLEE EXECUTE A DOCUMENT ENTITLED
“RENTAL AGREEMENT AND DEPOSIT RECEIPT”
AND CAN HE BE BOUND BY ITS TERMS

STANDARD OF REVIEW

The Appeals Court accords the Trial Court’s findings great deference and will not disturb

those findings unless they are against the clear weight of evidence and will set aside factual findings of the Trial Court only if they are clearly erroneous. [Anderson vs. Brinkerhoff, 756, P.2d, 95 at 98 (Utah 1988)]

POINT II
AT THE TIME OF THE TRANSACTION BETWEEN THE PARTIES
DID THE DEFENDANT/APPELLEE LACK THE CAPACITY TO
UNDERSTAND IN A REASONABLE MANNER THE NATURE
AND CONSEQUENCES OF THE TRANSACTION

STANDARD OF REVIEW

The Appeals Court accords the Trial Court's findings great deference and will not disturb those findings unless they are against the clear weight of evidence and will set aside factual findings of the Trial Court only if they are clearly erroneous. [Anderson vs. Brinkerhoff, 756, P.2d, 95 at 98 (Utah 1988)]

STATEMENT OF THE CASE

This is a case where there is a controversy as to whether a document entitled "Rental Deposit and Rental Receipt" (Exhibit "T" and Addendum "A" of Appellants' Brief) was executed by Defendant/Appellee; and, if so, did he have, at that time, the mental capacity to be capable of entering into the contract.

Plaintiffs/Appellants Barkers filed suit against Defendant/Appellee, Ron Henri (correct spelling "Henrie"), alleging that he entered into a lease agreement with Barkers and vacated the

premises owing a total of \$1,640.84, for rent of \$709.50, \$361.54 late charges, \$60.00 unpaid gas bill, and cleaning and repair of \$500.00. Defendant Henrie filed an Amended Answer and Counterclaim denying owing any sums and alleging that he never entered into and executed the Rental Agreement (Exhibit "1" and Addendum "A" of Appellants' Brief).

Trial was had before the Honorable Pamela G. Heffernan on September 29, 2000. Defendant Henrie, at the conclusion of the trial, moved that the pleadings be amended, pursuant to Rule 15(b), U.R.C.P., to conform to the evidence that Defendant Henrie lacked the mental capacity to enter into the lease or Rental Agreement, which Motion was granted, and the Court found that Defendant Henrie lacked the mental capacity to execute the Rental Agreement, and that he, in fact, had never executed the Rental Agreement (see Exhibits "A" and "B" of Defendant/Appellee's Brief), and Judgment was entered October 27, 2000, against the Plaintiffs Barkers and in favor of Defendant Henrie on his Counterclaim for \$480.00.

No transcript of the proceedings in the Trial Court was ordered by Appellants Barkers and, therefore, there can be no references made to statements of fact or references to the record in compliance with paragraph (e) of Rule 24, Utah Rules of Appellate Procedure.

STATEMENT OF FACTS

Plaintiffs Barkers, in 1998, were the owners of rental properties in Ogden, Utah.

Ron Henrie, Defendant/Appellee, and Deanna Henrie became tenants of Barkers and, prior

to their occupancy, were presented with two documents. One was entitled "Rental Application" and requested certain information - such as names, places of employment, length of employment, income, personal references, credit references and debts, among other personal matters. The other document is entitled "Rental Agreement and Deposit Receipt". The "Rental Application" is signed by Defendant/Appellee, Ron Henrie, and Deanna Henrie. The "Rental Agreement and Deposit Receipt" was not signed by Ron Henrie, nor Deanna Henrie. (See Addendum "A" of Appellants' Brief.)

On November 27, 1998, Deanna Henrie delivered a written "Notice to Vacate" to the Plaintiffs/Appellants Barkers and testified that the rent was paid up to date when the Henries moved out. Barkers contended that, according to the unsigned "Rental Agreement and Deposit Receipt", they were entitled to sixty (60) days notice which they did not receive and, therefore, sent a demand letter to Henries asking for, in excess of, \$10,000.00 for delinquent rent, late fees and interest. (Defendant's Exhibit "1".)

Plaintiffs/Appellants Barkers filed suit against Defendant/Appellee Ron Henrie (Henri) alleging that he had entered into a "lease" agreement with Barkers and had vacated rental premises owing a total of \$1,640.00 for rent, late charges, cleaning and repair. Defendant Henrie answered and counterclaimed, alleging that no sums were due, that he had not executed a "lease" or written Rental Agreement with Barkers, and seeking return of his \$500.00 cleaning deposit.

At the trial, Defendant/Appellee Ron Henrie's mother, Janett Crosthwait, testified that Ron had had problems all of his life, that he heard words backwards and wouldn't understand a contract, that he could not read, that he had a mental disability from childhood. Ron did have a driver's license and operated a drill press at his employment, which required a minimal intellectual capacity.

The presiding Judge, Pamela G. Heffernan, interrogated Ron Henrie about his understanding of the "Rental Agreement and Deposit Receipt" and the "Rental Application", and Ron Henrie said that he couldn't remember talking with the Plaintiffs/Appellants Barker. He said he could not read and indicated confusion.

At the conclusion of the trial, the Court made Findings of Fact that, on the 25th day of June, 1997, Defendant/Appellee Henrie executed what he thought to be, and what was identified to be, a rental application. That Defendant Henrie did not execute a document entitled "Rental Agreement and Deposit Receipt". That, at the time of the transaction between the parties, the Defendant lacked the capacity to understand, in a reasonable manner, the nature and consequence of the transaction, and there was no meeting of the minds, and that the Rental Agreement cannot be, and is not binding upon the Defendant.

Judgment was entered for Defendant Henrie for the return of his cleaning deposit of \$480.00, and Plaintiffs/Appellants Barkers were awarded nothing on their Complaint. (See

Defendant/Appellee's Exhibits "A" and "B" in the Addendum.)

SUMMARY OF ARGUMENTS

Defendant/Appellee did not sign and execute the "Rental Agreement and Deposit Receipt" document and, therefore, cannot be bound by its terms or any of them.

Defendant/Appellee, at the time of the transaction between the parties, lacked the mental capacity to understand, in a reasonable manner, the nature and consequences of the transaction; and there was no meeting of the minds, and the Rental Agreement cannot be, and is not, binding upon Defendant/Appellee Henrie.

ARGUMENT

POINT I

DID DEFENDANT/APPELLEE EXECUTE A DOCUMENT ENTITLED "RENTAL AGREEMENT AND DEPOSIT RECEIPT" AND CAN HE BE BOUND BY ITS TERMS?

In accordance with Rule 24(b)(2), Appellee has not included in his Brief the "Rental Agreement and Deposit Receipt", as Appellants have included it in their Brief as Addendum "A". It will be seen, upon examination, that there are two separate documents in said Addendum, one being entitled "Rental Agreement and Deposit Receipt". The other one being entitled "Rental Application", which seeks information as to employment, income and personal and credit references, which is used by a landlord to determine the character, financial responsibility, and

trustworthiness of a prospective tenant. Clearly, they are, and were, intended to be two separate documents. The "Rental Application" was signed by Defendant/Appellee Henrie. The "Rental Agreement and Deposit Receipt" was clearly not signed and executed by Defendant/Appellee, as it does not bear, on any part of the document, his signature, initials or any indication by himself or agent that he has accepted the terms of the document or any part of it. Clearly and obviously, the Court was correct in entering a Finding of Fact "That Defendant did not execute a document entitled "Rental Agreement and Deposit Receipt" (Appellee's Exhibit "A") and, based on this alone, Appellants' appeal should be dismissed.

Appellants Barker have never addressed this issue but assumes the Rental Agreement was executed by Defendant/Appellee Henrie, which he did not and, which was a finding of the Trial Court. (Appellee's Addendum "A".)

POINT II
AT THE TIME OF THE TRANSACTION BETWEEN THE PARTIES
DID THE DEFENDANT/APPELLEE LACK THE CAPACITY
TO UNDERSTAND, IN A REASONABLE MANNER, THE NATURE AND
CONSEQUENCE OF THE TRANSACTION AND
WAS THERE A MEETING OF THE MINDS, AND CAN THE
RENTAL AGREEMENT AND DEPOSIT RECEIPT
BE BINDING UPON THE DEFENDANT/APPELLEE?

Although Defendant/Appellee Henrie did not sign, execute or, in any manner, indicate his acceptance of the "Rental Agreement and Deposit Receipt" document, and the Trial Court so

found this should be the end of the argument and, on this alone, the appeal should be dismissed. Appellants have never addressed this issue. However, because the issue of mental competency is addressed in Appellants' Brief, it must be dealt with.

The testimony of Appellee's mother, Janett Crosthwait, was that the Defendant/Appellee had a mental disability from childhood, that he heard words backwards and wouldn't understand a contract, that he couldn't read. When Ron Henrie was asked if he could read the Rental Agreement, he shook his head and indicated that he could not.

The presiding Judge, Pamela G. Heffernan, interrogated the Defendant, Ron Henrie, herself and concluded that he was not mentally competent to enter into the contract. She observed his demeanor, questioned him herself about the transaction, its circumstances and its meaning and concluded that there was clear and convincing evidence that Defendant, Ron Henrie, was not competent to enter into and execute the Rental Agreement and, in fact, did not.

The standard to determine whether or not someone is "mentally unstable" and thus unable to enter into a contract is found in Walker vs. U. S. General, Inc., 916, P.2d, 903 (Utah 1996) as follows:

"In determining whether a party is sufficiently competent to contract, we have stated that the test is whether "the mental facilities [were] so deficient or impaired that there was not sufficient power to comprehend the subject of the contract, its nature and its probable consequences, and to act with discretion in relation thereto, or with relation to the ordinary affairs of life." Hatch vs. Hatch, 64 Utah 218, 230, 148 P. 433, 438 (1914)

(citation omitted); accord Jiminez vs. O'Brien, 117, Utah 82, 87

Am. Jur. 2nd, Vol. 17A, P.51, §23 stated as follows:

“To form a contract, it is necessary that there be a party capable of contracting and a party capable of being contracted with. In other words, to enter into a valid legal agreement, the parties must have the capacity to do so. The parties must be capable of intelligent assent in order to make a valid contract. Where there is no capacity to understand or agree, there can be no contract.”

From Restatement of Contracts, 2nd Edition, §11, P.30 we find the following:

“(1) No one can be bound by contract who has not the legal capacity to incur at least voidable contractual duties. Capacity to contract may be partial and its existence in respect of a particular transaction may depend upon the nature of the transaction or upon other circumstances.”

Restatement of Contracts, 2nd, §15, P.41:

“(1) A person incurs only voidable contractual duties by entering into a transaction if by reason of mental illness or defect.

(a) He is unable to understand in a reasonable manner the nature and consequences of the transaction.”

There is clear and convincing evidence from the testimony and demeanor of Defendant/Appellee, Ron Henrie, himself, the testimony of his wife and mother, and the interrogation of Judge Heffernan, who heard his answers to her questions and observed his demeanor that, had Defendant/Appellee, Ron Henrie, executed the document entitled “Rental Agreement and Deposit Receipt (Appellants’ Addendum “A”) or that his signature had appeared

anywhere on the document, which it did not, the transaction would have been void and voidable because of his lack of mental competency and capacity.

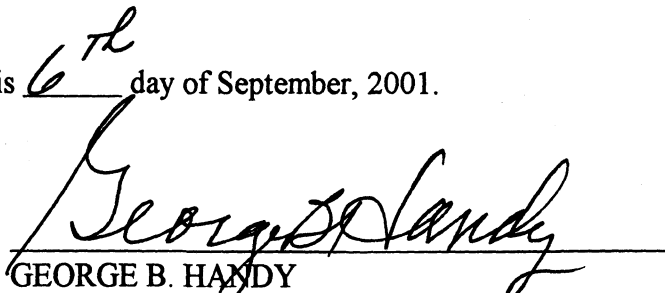
CONCLUSION

The appeal should be dismissed, and Appellee should be awarded costs and attorney's fees in this matter because Appellants have offered no proof or argument whatsoever to controvert the finding of the Trial Court that Defendant/Appellee Henrie did not execute a document entitled "Rental Agreement and Deposit Receipt", and that there was no enforceable Rental Agreement between the parties. (Appellee's Addendums "A" and "B".)

There is clear and convincing evidence that, at the time of the transaction between the parties, Defendant/Appellee lacked the capacity to understand, in a reasonable manner, the nature and consequences of the transaction, and there was no meeting of the minds, and the Rental Agreement cannot be, and is not, binding upon the Defendant/Appellee.

The appeal should be dismissed, and Appellee should be awarded his costs and attorney's fees incurred in resisting this appeal.

RESPECTFULLY SUBMITTED this 6th day of September, 2001.

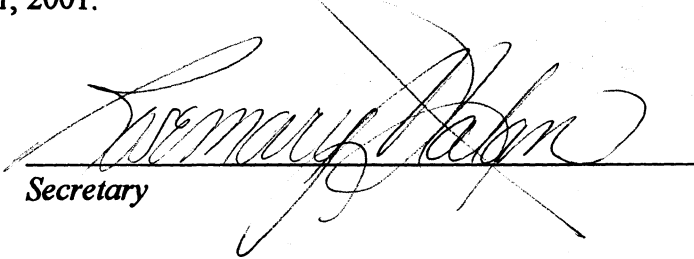


GEORGE B. HANDY
Attorney for Appellee

Brief of Appellee
Case No. 20001023CA [Priority No. 15]

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed ³ a true and correct copy of the foregoing *Brief of Appellee* to CANDACE S. BRIDGESS, Attorney for Appellants, 795 East 24th Street, Ogden, Utah, 84401, this 6th day of September, 2001.


Secretary

ADDENDUM “A”

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FINDINGS OF FACT

1. The parties hereto are residents of Weber County, Utah.
2. That the cause of action herein arose in Weber County, Utah.
3. That on the 25th day of June, 1997, Defendant executed what he thought to be and what was identified to be a rental application.
4. That Defendant did not execute a document entitled "Rental Agreement and Deposit Receipt".
5. That, at the time of the transaction between the parties, Defendant lacked the capacity to understand, in a reasonable manner, the nature and consequences of the transaction, and there was no meeting of the minds, and the Rental Agreement cannot be, and is not, binding upon Defendant.
6. That at the time of the transaction, Plaintiffs required and Defendant paid the sum of \$500.00 as a cleaning deposit.
7. That at the time the premises at 141 Dan Street, Apartment No. 4, Ogden, Utah, were vacated, Defendant left the premises in a satisfactory condition.
8. That a remnant white carpet was left soiled.

CONCLUSIONS OF LAW

As *Conclusions of Law*, the Court awards Judgment as follows:


1. There was no enforceable rental agreement between the parties.
2. That the premises were left in a satisfactory condition.
3. That a white remnant carpet was soiled and, from the cleaning deposit of \$500.00, Plaintiffs should be awarded \$20.00.
4. That Defendant, RON HENRI, is entitled to receive back from Plaintiffs the sum of \$480.00.


DATED and signed this 26 day of October, 2000.

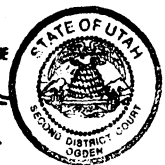
BY THE COURT:


PAMELA G. HEFFERNAN, District Court Judge

APPROVED AS TO FORM:


WILLIAM R. ORMOND
Attorney for Plaintiffs

STATE OF UTAH } ss.
COUNTY OF WEBER }
I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE.
DATED THIS 24 DAY OF Aug. 2002
PAULA CARR
CLERK OF THE COURT
BY  DEPUTY



ADDENDUM “B”

GEORGE B. HANDY, #1325
Attorney for Defendant
2650 Washington Boulevard, Suite 102
Ogden, Utah 84401
Telephone (801) 621-4015
Facsimile (801) 621-0035

WEBER COUNTY
OCT 27 4 44 PM '00

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH

KEITH AND LUCILLE BARKER,)	<u>JUDGMENT</u>	
)		
Plaintiffs,)		OCT 27 2000
)		
vs.)	Civil No. 990904633	
)		
RON HENRI,)		
)		
Defendant.)	Judge PAMELA G. HEFFERNAN	

The above-entitled matter having come on for trial on the 29th day of September, 2000;
the Honorable PAMELA G. HEFFERNAN presiding; Plaintiffs being personally present and
represented by their counsel of record, WILLIAM R. ORMOND, Esquire; the Defendant being
personally present and being represented by his counsel of record, GEORGE B. HANDY,
Esquire; and the Court having entered its *Findings of Fact and Conclusions of Law*, Judgment is
awarded as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is awarded in

Judgment
Civil No. 990904633

favor of the Defendant and against the Plaintiffs for the sum of \$480.00.

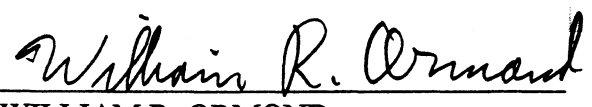
DATED and signed this 24 day of October, 2000.

BY THE COURT:


PAMELA G. HEFFERNAN, District Court Judge

Entered: _____


APPROVED AS TO FORM:


WILLIAM R. ORMOND
Attorney for Plaintiffs

STATE OF UTAH }
COUNTY OF WEBER } ss.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE

DATED THIS 24 DAY OF Aug, 2001
PAULA CARR
CLERK OF THE COURT

BY  CLERK

