2016

Danielle Sprague, Defendant/Counter Claim Plaintiff/Appellant, v. Jeff Price and Ann Price, Plaintiffs/Counter Claim Defendants/ Appellees

Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

DANIELLE SPRAGUE, Defendant/ Counter Claim Plaintiff/ Appellant, v. JEFF PRICE and ANN PRICE, Plaintiffs/ Counter Claim Defendants/ Appellees.	Case No.: 20150663-CA District Case No. 120701157 **ORAL ARGUMENT REQUESTED**

Brief of Appellees

Appeal from Judgment Entered by the Second Judicial district court, Davis County
the Honorable Judge David R. Hamilton

Matthew N. Evans A. J. Green RAY QUINNEY & NEBEKER 36 South State Street, Suite 1400 Salt Lake City, UT 84111 *Counsel for Appellees*	Danielle Sprague Pro Se 9554 Teton Vista Avenue Las Vegas, NV 89117 *Pro Se/ Appellant*

IN THE UTAH COURT OF APPEALS

DANIELLE SPRAGUE, Defendant/ Counter Claim Plaintiff/ Appellant, v. JEFF PRICE and ANN PRICE, Plaintiffs/ Counter Claim Defendants/ Appellees.	Case No.: 20150663-CA District Case No. 120701157 **ORAL ARGUMENT REQUESTED**

Brief of Appellees

Appeal from Judgment Entered by the Second Judicial district court, Davis County
the Honorable Judge David R. Hamilton

Matthew N. Evans A. J. Green RAY QUINNEY & NEBEKER 36 South State Street, Suite 1400 Salt Lake City, UT 84111 *Counsel for Appellees*	Danielle Sprague Pro Se 9554 Teton Vista Avenue Las Vegas, NV 89117 *Pro Se/ Appellant*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT REGARDING JURISDICTION

This court has jurisdiction pursuant to Utah Code § 78A-4-103(2)(j) in that the Utah Supreme court has transferred this case to the Utah Court of Appeals for resolution.

STATEMENT OF ISSUES

In her Statement of Issues, Appellant Danielle Sprague ("Sprague") failed to state the standard of appellate review for each alleged issue as required by Utah Rule of Appellate Procedure 24(a)(5). Sprague also failed to properly identify the actual Rulings, Findings and Conclusions made by the district court. Therefore, Appellees Jeff and Ann Price (the "Prices") restate some of the issues here along with the appropriate standard of appellate review:

1. "Was the trial court's judgment correct that ruled Mrs. Sprague terminated the Lease Agreement by sending a 'Three Days Eviction Notice by Criminal Act' to the Prices and caused her loss for landlord's right to the rent for the remainder term of the Lease Agreement, six (6) months?" (Brief of Appellant (hereinafter "Br.") at 6.)

The district court actually made findings that Sprague served the Prices with a Three Day Notice to Vacate for Committing Criminal Act on Premises requiring the Prices to vacate the leased premises within 3 days without providing them any option to remain in the premises and correct any deficiencies as identified in the Notice. The district court further found that as a result of this Notice, Sprague had no right or basis under the Lease Agreement to seek the remainder of any rent payments under the Lease Agreement, that Sprague was equitably estopped from seeking payment of any further lease payments and that Sprague waived any right to collect any further lease payments

from the Prices after requiring them to vacate the Leased Premise for allegedly committing a "criminal act".

Standard of Review: Clear error. *Bel courtyard Investments, Inc. v. Wolfe*, 2013 UT App 217, ¶ 10 ("We review the district court's findings of fact for clear error.").

2. "Was the trial court's judgment correct that found Defendant Sprague failed to present sufficient evidence proof that the Plaintiff caused the water damages and/or water leaking or failed to allow the property owner access to inspect and repair." (Br. at 6.)

Standard of Review: Clear error. *Bel courtyard Investments, Inc. v. Wolfe*, 2013 UT App 217, ¶ 10 ("We review the district court's findings of fact for clear error.").

3. "Was the trial court's judgment correct that found Mrs. Sprague breached the Lease Agreement by not refunding the security deposit that was demanded by Prices four days before they moved out, and filed this lawsuit two days before they moved out and which Mrs. Sprague was supposed to pay within three weeks after Prices had moved out under the Lease Agreement?" (Br. at 7.)

The court did not find nor was there any evidence presented that the Prices filed this lawsuit two days before they moved out. The district court actually made findings that Sprague served the Prices with a Three Day Notice to Vacate for Committing Criminal Act on Premises requiring the Prices to vacate the leased premises within 3 days without providing them any option to remain in the premises and correct any deficiencies as identified in the Notice. The district court further found that as a result of this Notice, Sprague had no right or basis under the Lease Agreement to seek the remainder of any

rent payments under the Lease Agreement, that Sprague was equitably estopped from seeking payment of any further lease payments and that Sprague waived any right to collect any further lease payments from the Prices after requiring them to vacate the Leased Premise for allegedly committing a "criminal act". Thus, the court found that Sprague breached the Lease Agreement by failing to return the security deposit.

Standard of Review: Clear error. *Bel courtyard Investments, Inc. v. Wolfe*, 2013 UT App 217, ¶ 10 ("We review the district court's findings of fact for clear error.").

4. "Was the trial court's judgment correct that states Prices were not in material breach of the Lease Agreement by creating nuisance, not allowing sufficient time to refund the security deposit, damaging the Water Softener and other appliances and by refusing to pay full rent, late fees, utilities of over $250, cable and internet cost or for early termination of the Lease Agreement?" (Br. at 7.)

The court did not make some of these findings nor where they asserted as claims in this case. The court found that the Spragues failed to present sufficient evidence establishing the Prices caused the water damages and the water leaking and/or failed to allow the property owner access to inspect and repair the leaking. (*See* Ex. D at ¶ 20).

Standard of Review: Clearly error. *Bel courtyard Investments, Inc. v. Wolfe*, 2013 UT App 217, ¶ 10 ("We review the district court's findings of fact for clear error.").

5. "Was the trial court's judgment correct that didn't consider Prices' aggressive behavior towards Mrs. Sprague, frequently calling police, making slanderous statements, filing the 'Unfit Premises Act', 'Rent Abatement and Contract Termination',

and filed a baseless and meritless lawsuit in bad faith, in the violation of Implied Covenant of Fair Dealing and in hasty manner?" (Br. at 7.)

The court did not make any findings, conclusions or judgments about the Prices' alleged aggressive behavior towards Mrs. Sprague nor did the Spragues assert a claim for slander, filing a frivolous complaint and asserting the claims in bad faith and without merit.

Standard of Review: Clearly erroneous. Utah R. Civ. P. 52(a) ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.").

STATEMENT OF THE CASE

A. Nature of the Case.

The Prices are husband and wife. On or about July 17, 2012, the Prices, in response to an advertisement viewed on KSL.com regarding a "Vacation Rental Home" available for rent located at 591 East Oak View court, North Salt Lake, Utah 84054 (the "Leased Premises"), called the phone number listed, and spoke with Danielle Sprague ("Sprague"). On or about the 6th and 7th days of August, 2012, the Prices and Sprague entered into a written Vacation Rental Home Rental Agreement (the "Lease Agreement"). The lease term commenced on September 1, 2013 and was to continue for nine months. On August 3, 2012, Ann Price telephoned Sprague and paid, by credit card, the $3,500 security deposit. On September 3, 2012, the Prices received keys from Sprague and took possession of the Leased Premises.

The relationship between the Prices and Sprague deteriorated early in the owner/renter relationship after Sprague discovered that the Prices were acquaintances of some former tenants of the Leased Premises – the Walkers – with whom Sprague was engaged in litigation. Soon after the Prices moved in they also discovered numerous deficiencies in the equipment and appliances in the Leased Premises, including, but not limited to, the dishwasher, microwave, water softener, plumbing, garage doors, vacuum cleaner, blinds, sliding doors, and windows. The Prices also discovered a water leak and mold problem originating in the furnace room of the Leased Premises.

After numerous, unsuccessful attempts to reach an agreement regarding remedies to the above-mentioned defaults, on November 30, 2012 the Prices served Sprague with a written "Notice of Deficient Conditions" pursuant to the Utah Fit Premises Act, Utah Code Ann. § 57-22-1 *et seq.* (*See* Sprague's Exhibit 8—Notice of Deficient Conditions.) Sprague contacted the Prices on December 1, 2012, and an appointment was made for Sprague to inspect the home. However, on December 2, 2015, a Notice from Sprague to the Prices was sent which wrongfully stated that the water and resulting mold were the fault of the Prices who were responsible to repair all the damage at the Prices' expense, on threat of eviction. (*See* Sprague's Exhibit 45—December 2, 2012 Letter).

On December 6, 2012, Sprague caused to be served on the Prices a "Notice of Eviction – Three Day Notice to Pay or Quit," in which Sprague claimed that the Prices owed $3,178.64 in rent from October 2012 to December 2012, $2,250 late fees from September 2012 to December 2012, and $154.19 in "Misc. Fees - Cable and Internet." Yet, the Lease Agreement called for a late fee charges for late rent only. (*See* Lease

Agreement, attached hereto as Exhibit A.) All rents were paid by the Prices. The alleged late fees of $2,250 are based on Sprague's practice of "serving" on the Prices a statement listing references to utility costs and other items without attaching any copies of supporting invoices or statements, and then, as though rent hadn't been paid, accumulating so-called "late fees" when the same were totally unjustified. Neither the utilities payment nor the cleaning fee that was paid upon demand constitutes "rent." There was no basis for Sprague to charge a late fee on these amounts, even if owed.

Sprague then served a second notice "Notice of Eviction – Three Day Notice to Vacate for Committing a Criminal Act on Premises" on December 6, 2012 and wrongfully accused the Prices of "[i]mproperly using water softener to cause damage and water leaking; failure to clean up water leaking and keep the premises in sanitary manner; refused property owners access to the premises to do the inspection and repairing the damages." (*See* Notice to Vacate for Committing a Criminal Act, attached hereto as Exhibit B.) In the Notice, Sprague cites no criminal statute or charge which she alleges the Prices violated. Importantly, the Notice stated that it was an eviction and demanded that the Prices vacate the premises within 3 days, without any offer, request or demand to cure any deficiencies under the Lease Agreement. On December 7, 2012, the Prices vacated the Leased Premises.

B. Course of Proceedings and Disposition of Case.

The Prices filed their Complaint against Sprague on December 7, 2012 and filed an Amended Complaint on May 3, 2013.[1] The Amended Complaint asserts three causes of action: a claim under the Utah Fit Premises Act, breach of contract, and fraud in the inducement. On May 23, 2013, Sprague filed her Amended Answer and Counterclaim. Sprague asserted four causes of action against the Prices: breach of contract for nonpayment of amounts owed, breach of contract for damage to Leased Premises, breach of the implied covenant of good faith and fair dealing, and waste.

At a two-day trial on March 16-17, 2015, the district court concluded that Sprague served a Notice to Vacate for Committing a Criminal Act on Premise requiring the Prices to vacate the Leased Premises without giving them an opportunity in any way cure any alleged defect under the Lease Agreement. The court further found that in doing so, Sprague was equitably estopped from recovering any further rental amounts under the Lease Agreement, waived any rights to seek any further amounts under the Lease Agreement and had evicted the Prices, thus ending rights to recover money under the terms of the Lease Agreement. The court also found that the Prices had not materially breached the Lease Agreement and had timely made all material payments under the Lease Agreement.

[1] Throughout the course of this litigation, Sprague has had no less than five different attorneys appear and then file notices of Withdrawal of Counsel in this matter. Sprague's last counsel, Michael Zimmerman and Julie Nelson, withdrew after the mediation at the Court of Appeals was unsuccessful. Sprague is now representing herself *pro se*.

The court then concluded that Sprague had breached the Lease Agreement by not refunding to the Prices the remainder of the security deposit and cleaning fee provided for by the Lease Agreement. The court ordered that Sprague refund this amount (calculated by the court to be $2,799.25) to the Prices. Shortly after the two-day trial, the Prices submitted their Proposed Findings of Fact and Conclusions of Law on April 8, 2015.

On April 17, 2015, Sprague filed a Motion to Reconsider with the district court. In that motion, Sprague asked that the court reconsider the Price's Proposed Finding #20 and "its corollary legal rulings." (Mem. in Supp. Mot. to Reconsider, attached hereto as Exhibit C,[2] at 1.) Proposed Finding of Fact #20 states that "[t]he Spragues failed to present sufficient evidence establishing the water damages and/or water leaking or failed to allow the property owner access to inspect and repair." (*Id.* at 3.) The "corollary legal rulings" are the district court's decisions that the Prices did not breach the contract by damaging the property, did not breach the implied covenant of good faith and fair dealing, and did not waste the premises. (*Id.* at 9.)

On June 25, 2015, the district court entered a Ruling and Order denying Sprague's Motion for Reconsideration. In that ruling, the district court declined to make the "great inferential leap" advocated by Sprague. (*See* Sprague's Exhibit 68—Ruling and Order—at 4.) Specifically, the court stated that "[w]ithout any evidence of a causal link between some action by the Prices and damage to the water softener, water heater, or wall, the court is unwilling to make this inferential leap and cannot find that Mrs. Sprague met her burden of proof." (*Id.* at 5.) The district court entered its Findings of Fact and

[2] The Memorandum in Support of Motion to Reconsider is attached without its exhibits.

Conclusions of Law on July 27, 2015. Sprague filed her appeal of the district court's Findings of Fact and Conclusions of Law on January 8, 2016.

C. Statement of Facts

The factual findings of the district court included the following important facts:

1. Sprague and Jeff Price entered into a Lease Agreement on or around August 6, 2012 to lease a home located at 591 East Oak View court, North Salt Lake, Utah 84054 (the "Leased Premises"). Anne Price signed the Lease Agreement on September 20, 2012. (Findings of Fact and Conclusions of Law, hereinafter referred to as "FOF" or "COL," attached hereto as Exhibit D, at ¶ 1.)

2. On or around August 3, 2012, the Prices paid a refundable security deposit of $3,500 to Sprague in accordance with the Lease Agreement. (FOF at ¶ 2.)

3. The Prices moved into the Leased Premises on September 3, 2012. (FOF at ¶ 3.)

4. The Prices paid the agreed upon $150.00 cleaning fee for the Leased Premises on September 20, 2012. (FOF at ¶ 4.)

5. The Prices timely paid rent for September and October of 2012. (FOF at ¶ 5.)

6. With regard to the November 2012 rent, the Prices timely notified Sprague that they intended to deduct $65.00 from the rent for a service call from Pond's Plumbing regarding issues related to the malfunctioning water softener in the utility room in the Leased Premises. (FOF at ¶ 6.)

7. Sprague never objected to the deduction. (FOF at ¶ 7.)

8. The Prices timely paid November 2012 rent in the amount of $2,935.00 ($3,000 minus the $65.00 service charge). (FOF at ¶ 8.)

9. The Lease does not contain any provision obligating the Prices to pay for internet and cable for the Leased Premises. (FOF at ¶ 9.)

10. The Lease Agreement unambiguously states that $250.00 of the utilities is included in the $3,000 monthly rent payment. (FOF at ¶ 10.)

11. The amount for utilities for September 2012 was less than $250.00. (FOF at ¶ 11.)

12. Sprague presented evidence at trial of utility costs above $250.00 for October in the amount of $10.33. (FOF at ¶ 12.)

13. The late fee provision in Lease Agreement only relates to late payment of rent and not utilities or the cleaning fee. (FOF at ¶ 13.)

14. On November 30, 2012, the Prices served on Sprague a Notice of Deficiency Conditions in accordance with Utah's Fit Premises Act, Utah Code § 57-22-1 *et seq*. (FOF at ¶ 14.)

15. The Prices presented evidence at trial of leaking eater in the water manifold in the utility room as well as the water softener and the water heater. (FOF at ¶ 15.)

16. On the morning of December 3, 2012, Sprague delivered via e-mail and hand delivery a letter to the Prices stating that she believed the water problems were caused by the Prices. (FOF at ¶ 16.)

17. Sprague explained in the letter dated December 2, 2012 that she and her husband, Rufus Sprague, "both clearly saw the mold in the utility room on the bottom of

the wall next to the purple room. As by your family concern and by protecting our property, we request that you to have a license mold clean up contractor remove all the mold, and repaid all the damages that the leaking water caused which your refused to clean up in a timely manner. If you fail to do such repair states above within three business days, you will be subject to eviction." (FOF at ¶ 17.)

18. Later that day on December 3, 2012, Jeff Price e-mailed Sprague asking her to confirm that she would not take any action to fix the problems as identified in his Notice of Deficient Conditions dated and served on Sprague on November 30, 2012. Sprague responded in an e-mail that Mr. Price was correct and that she would not fix the problems. (FOF at ¶ 18.)

19. Consistent with her letter dated December 3, 2012, Mrs. Sprague on December 6, 2012 served on the Prices a three day "Notice to Vacate for Committing a Criminal Act on the Premises" claiming that the Prices improperly used the water softener to cause damage and water leaking, failed to clean up the water and keep the premises in a sanitary manner and refused property owner access to the premises to do the inspection and repairs. (FOF at ¶ 19.)

20. The Spragues failed to present sufficient evidence establishing that the Prices caused the water damages and/or water leaking or failed to allow the property owner access to inspect and repair. (FOF at ¶ 20.)

21. The Notice required the Prices to vacate the Leased Premises within three days. There is nothing in the Notice requiring the Prices to continue to pay rent in accordance with the Lease Agreement nor is there any provision in the Lease Agreement

requiring the Prices to pay rent in the event they are evicted by Mrs. Sprague. (FOF at ¶ 21.)

22. On December 7, 2012, the Prices vacated the Leased Premises. (FOF at ¶ 22.)

SUMMARY OF ARGUMENTS

The district court correctly decided the issues in this case after a trial on the merits. First, the right to collect rent payments under the Lease Agreement ended when Sprague evicted the Prices from the Leased Premises on December 6, 2012 by sending a Notice of Eviction for Committing a Criminal Act and when the Prices vacated on December 7, 2012. The district court also correctly decided that Sprague was equitably estopped and had waived the right to collect any further rent after sending the Notice to Vacate. The Prices did not leave "voluntarily," as Sprague argues. Second, Sprague also failed to present sufficient evidence at trial that the Prices caused the water damage to the Leased Premises, and, in fact, ample evidence presented at trial demonstrated that the water damage pre-dated the Prices' tenancy. Third, Sprague breached the Lease Agreement by failing to refund the $3500 security deposit paid by the Prices. Fourth, the Prices did not materially breach the Lease Agreement, no credible evidence to support a finding of material breach was presented at trial, and Sprague does not present any such evidence on appeal. Finally, Sprague's current new theory regarding the implied covenant of good faith and fair dealing was not properly preserved for appeal.

ARGUMENT

I. SPRAGUE'S UNEQUIVOCAL NOTICE OF EVICTION TERMINATED PAYMENTS UNDER THE TERMS OF THE LEASE AGREEMENT.

On December 6, 2012, Sprague served a Notice of Eviction on the Prices. (*See* Ex. B.) The Three Day Notice to Vacate for Committing a Criminal Act on Premises unequivocally states, "You are required to vacate the premises within three calendar days, counting weekends and holidays." (Ex. B.) The Notice warned the Prices that if they did not comply by vacating within three days, "you will be served with a Summons and Complaint for unlawful detainer." (*Id.*) The Notice also warned the Prices that if they were found liable for unlawful detainer, they would "also be liable for three times those damages allowed to be trebled under Utah Code Ann. § 78B-6-811." (*Id.*)

However, Sprague argues that because the Prices complied with her eviction notices, they "voluntarily moved out of the premises." (Br. at 27.) This argument is not supported by the facts or case law. The cases cited by Sprague stand only for the rule that a party may sue for breach of contract upon an *anticipatory* breach of an agreement and, with sufficient proof of a "positive and unequivocal intent [of the other party] not to render its promised performance," the non-breaching party is excused from later performance. *See e.g.*, *Cobabe v. Stanger*, 844 P.2d 298, 303 (Utah 1992). These cases do not permit a landlord to serve an unequivocal notice of eviction on her renters threatening an unlawful detainer action and treble damages, and then sue for breach of contract for future rent upon the renters' compliance with the eviction notice. Thus, the

district court correctly ruled that that Sprague ended rights to collect lease payments under the Lease Agreement when she evicted the Prices.

Further, "the general rule is that, in the absence of express provisions in the lease granting the landlord the right, upon reentry or forfeiture, to look to the tenant for unaccrued rent, a tenant who vacates the premises in compliance with the landlord's notice to pay or quit is not liable for rent due under a lease for subsequent months during which landlord was unable to rent the premises." *First National Bank of Boston v. Dykstra*, 684 P.2d 957, 958 (Colo. Ct. App. 1984). Here, Sprague did not and cannot point to any provision in the Lease Agreement which allows her to collect rent after she sent a notice to the Prices requiring them to vacate the leased premises for committing a criminal act.

In addition, Sprague waived any right to collect further lease payments. Waiver is an intentional relinquishment of a known right. *Meadow Valley Contractors v. State*, 266 P.3d 671, 682 (Utah 2011). "Waiver of a contractual right occurs when a party to a contract intentionally acts in a manner inconsistent with its contractual rights, and as a result, prejudice accrues to opposing party or parties to a contract". *Id* at 682-683. Similarly, equitable estoppel requires a statement, admission, act or failure to act by one party inconsistent with a claim later asserted. Reasonable action or an action taken by the other party on the basis of the first party statement and injury to the second party that would result from allowing the first party to contradict reputable such statement admission, act, or failure to act. *See Id.* at 683.

In this case, Sprague cannot dispute that she ordered and demanded the Prices to vacate the leased premises based on her claim that they had committed a "criminal act". The Prices did so. Sprague waived any right to seek to recover further rent under the Lease Agreement by her statements and acts in preparing and serving the Notice to Vacate for Committing a Criminal Act on Premises. Sprague is also equitably estopped from taking a position inconsistent with the notice and her act of serving it on the Prices. The Prices did take action by vacating based upon Sprague's Notice to Vacate and would be injured if Sprague were allowed to repudiate or revoke the Notice. The court did not error in making findings that the Prices were not liable for any further rent under the Lease Agreement after vacating the Leased Premises on December 7, 2012.

II. SPRAGUE FAILED TO PRESENT SUFFICIENT EVIDENCE THAT THE PRICES CAUSED THE WATER DAMAGE.

The district court's determination that Sprague failed to present sufficient evidence to support her claims of waste, breach of contract, and breach of the implied covenant of good faith and fair dealing was not clearly erroneous. Sprague argues that "[t]he trial court completely ignored [her] losses." (Br. at 27.) However, the district court addressed Sprague's arguments on this issue not once, but twice – both at trial and in deciding Sprague's Motion to Reconsider. (*See* Sprague's Exhibit 68.) Sprague's argument "is nothing but an attempt to have [the Court of Appeals] substitute its judgment for that of the trial court on a contested factual issue. This [the court] cannot do under Utah Rule of Civil Procedure 52(a)." *Covey v. Covey*, 2003 UT App 380, ¶ 28 (quoting *Newmeyer v. Newmeyer,* 745 P.2d 1276, 1278 (Utah 1987).)

At trial, Sprague failed to present "any evidence of a causal link between some action by the Prices and damage to the water softener, water heater, or wall." (Sprague's Exhibit 68 at 5.) On the other hand, ample evidence presented at trial demonstrated that the water damage pre-dated the Prices' tenancy. Mr. Price testified at the trial that on September 8, 2012, he asked Rufus Sprague if he could turn on the water softener and Rufus Sprague allowed him to do so. (*See* Transcript of March 16-17, 2015 Bench Trial, relevant portions attached hereto as Exhibit E, at 49:2-6.[3]) Sprague claims that the Prices signed off a checklist and the water issues were not identified in that checklist. Yet, the Prices were not yet aware of any water damage underneath the manifold when they made that checklist. Moreover, the water softener was not turned on when the Prices completed that checklist on September 6, 2012. (*Id.*)

As important, the pictures introduced into evidence of the leaking on or around the manifold show substantial rust and corrosion on the manifold and the surrounding area. (*See* Photos, attached hereto as Exhibit F.) This rust could not possibly have been developed over a month or two. (*Id.*) The water damage clearly existed before the Prices moved into the premises. (*Id.*) Moreover, testimony from Mr. David and Ms. Kathy Walker, the prior tenants, established that they also experienced water leaking issues in the premises when they had previously rented the premises prior to the Prices. (*See* Ex. E at 178:10-180:7; 183:23-186:7) The overwhelming evidence established that the water damage existed well before the Prices ever occupied the premises.

[3] A complete copy of the Transcript is available upon request.

Furthermore, Sprague asks the court to consider evidence that was not presented at trial. As noted by the district court in its Ruling and Order on Sprague's Motion to Reconsider, neither the email purportedly from her contractor regarding his inspection of the property prior to the Prices taking possession (Sprague's Exhibit 81), nor the bill from Shamrock Plumbing, which Sprague asserts "contains the 'opinion that the problems were caused by the tenant'" were presented or admitted at trial. (Sprague's Exhibit 68 at 5.) Because Sprague did not present this evidence at trial, and does not contend that she did not have these items in her possession before trial, the district court held that "[t]hese materials are therefore untimely and will not be considered by the [c]ourt." (*Id.*) The court's decision not to consider hearsay evidence not presented at trial was reasonable and should not be disturbed by this court. *See Robinson v. Taylor*, 2015 UT 69, ¶ 8 ("[W]e grant a trial court broad discretion to admit or exclude evidence and will disturb its ruling only for abuse of discretion.") (alteration in original) (citation omitted).

Because the district court's determination that Sprague failed to present sufficient evidence to support her claims was not clearly erroneous, it should not be disturbed by this court. *Bel courtyard Investments, Inc. v. Wolfe*, 2013 UT App 217, ¶ 10 ("We review the district court's findings of fact for clear error.").

III. SPRAGUE BREACHED THE LEASE AGREEMENT BY FAILING TO REFUND THE SECURITY DEPOSIT.

The district court correctly determined that Sprague breached the Lease Agreement by failing to refund the security deposit paid by the Prices. Confusingly, Sprague concedes that "[h]ad the security deposit not been paid by 30th December, 2012,

it would be safe to presume that Mrs. Sprague was in breach of the Lease Agreement." (Br. at 28.) In fact, the security deposit was *not* refunded by December 30, 2012, and it was this sum minus certain amounts which the district court ordered Sprague to remit in its July 27, 2015 Findings of Fact and Conclusions of Law. (*See* Ex. E, COL at ¶ 13.) At no time, including at the district court's July 27, 2015 ruling, was Sprague's payment of the security deposit rendered impossible by the Prices' actions. The district court correctly found that Sprague's failure to repay the security deposit was a breach of the express terms of the Lease Agreement.

IV. THE PRICES DID NOT MATERIALLY BREACH THE LEASE AGREEMENT.

The district court's determination that the Prices did not materially breach the Lease Agreement is not clearly erroneous. *See Orlob v. Wasatch Med. Management*, 2005 UT App 430, ¶ 26 ("Whether a breach of a contract constitutes a material breach is a question of fact, which we review under a clearly erroneous standard.") (citation omitted). At trial, the district court found that the Prices complied with the Lease Agreement in all aspects except that they were short in their October utility payment in the amount of $10.33. (*See* Ex. E, FOF at ¶ 12.) However, the court determined that this $10.33 non-payment did *not* amount to a material breach of the Lease Agreement. (*Id.* at COL ¶ 10.) The court did not find any credible evidence of a material breach of the Lease Agreement by the Prices, and Sprague presents no such evidence on appeal. (Br. at 28-29.) "[I]n order to successfully challenge the sufficiency of the evidence to support factual findings, an appellant must first marshal all the evidence supporting the

challenged findings and then demonstrate why it is legally insufficient." *Lamar v. Lamar*, 2012 UT App 326, ¶ 2. Sprague has not met this burden, and the district court's findings should not be disturbed on appeal.

V. SPRAGUE'S CURRENT THEORY REGARDING THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING WAS NOT PRESERVED FOR APPEAL.

Sprague faults the district court for failing to consider the "Prices' aggressive behavior towards Mrs. Sprague, frequently calling police, making slanderous statements, filing the 'Unfit Premises Act', 'Rent Abatement and Contract Termination', and fil[ing] a baseless and meritless lawsuit in bad faith, in the violation [sic] of Implied Covenant of Fair Dealing and in hasty manner." (Br. at 7.) However, any "failure" of the district court to consider this theory of recovery was due to the fact that it was not "specifically raised in such a way as to permit the trial court to rule on the issue." *See In re C.D.M.*, 2014 UT App 130, ¶ 4 ("As a general rule, claims not raised before the trial court may not be raised on appeal.") (citation omitted).

Although Sprague's Amended Counterclaim includes a claim for breach of the implied covenant of good faith and fair dealing, this claim is based on Sprague's waste theory – the theory that the Prices caused the mold growth, refused to remedy it, and refused to allow Sprague to remedy it, in an attempt to free themselves from the Lease Agreement. The district court twice found that the evidence presented by Sprague was insufficient to support such a theory. (*See supra*, Argument Section II.) Similarly, Sprague's trial brief fails to even mention such a theory of recovery on her breach of the

implied covenant of good faith and fair dealing claim. (*See* Sprague's Trial Brief, attached hereto as Exhibit G.)

"An appellate brief must contain 'citation to the record showing that the issue was preserved in the trial court' or 'a statement of grounds for seeking review of an issue not preserved in the trial court.'" *Cromwell v. A & S Const., Inc.*, 2013 UT App 240, ¶ 17 (citing Utah R. App. P. 24(a)(5)). Sprague has done neither. Furthermore, review of the record demonstrates that these issues were not preserved because they were not "specifically raised in such a way as to permit the trial court to rule on the issue." *See In re C.D.M.*, 2014 UT App 130, ¶ 4. Therefore, these issues may not be raised on appeal.[4]

ORAL ARGUMENT

The Prices request oral argument in that it may assist in identifying clearly the issues for appeal and the standards for review.

CONCLUSION

Based on the foregoing reasons, this court should deny Appellant Danielle Sprague's appeal and affirm Judge Hamilton's Findings of Fact and Conclusions of Law.

[4] Moreover, even if these issues had been properly preserved before the trial court, Sprague's current assertions would be barred by the judicial proceedings privilege and contradicted by the court's Findings of Fact which are not clearly erroneous. *See generally, Pratt v. Nelson*, 2007 UT 41, ¶ 27.

DATED this 16th day of February, 2016.

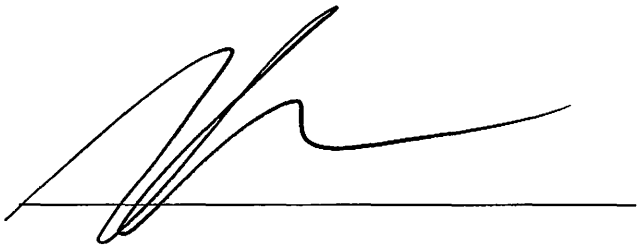
RAY QUINNEY & NEBEKER P.C.

Matthew N. Evans
A. J. Green
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing **BRIEF OF APPELLEE** were mailed, postage prepaid, on this 16th day of February, 2016, to:

Danielle T. Sprague
9554 Teton Vista Ave.
Las Vegas, NV 89117
(702) 927-1184
Pro Se Appellant



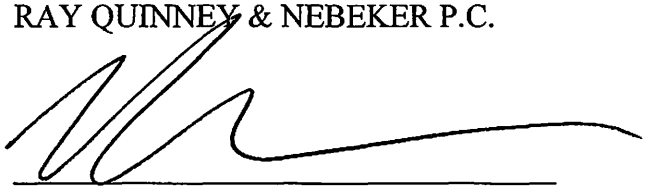
1361397

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations as set forth in Utah R. App. P. 24. This Brief in its entirety contains less than 14,000 words and is less than 30 pages (excluding addendum), and the final word count from the word processing system was 5,489.

DATED this 16th day of February, 2016.

RAY QUINNEY & NEBEKER P.C.



Matthew N. Evans
A. J. Green
Attorneys for Appellant

ADDENDUM

EXHIBIT A

VACATION HOME RENTAL AGREEMENT

CAUTION: This is a legally binding agreement. READ IT CAREFULLY. It is intended to help promote harmony by clarifying the rights, duties, and responsibilities of property owners, managers, and renters. Additions and/or deletions may be made by having all parties initial each change; however, it cannot be changed into a lease.
Verbal agreements often lead to misunderstanding and confusion. MAKE SURE THAT ALL AGREEMENTS ARE MADE IN WRITING.
Both the Owner/Agent and the Renter(s) agree to fulfill the conditions listed below:

The OWNER/AGENT is: Danielle Sprague

Jeff R. Price and Ann K. Price
The RENTER(S) is/are:

519-76-3434 Aug.23, 1961
Renter(s) SS# Date of Birth:

1-406-285-9010
Renter(s) phone #:

ADDRESS of the RENTAL:
591E Oak View Ct. North Salt Lake, Utah 84054

1. RENT
Rent shall be **$3000.00 per month for 5 people with minimum term of 9 months (September 1, 2012 to June 10, 2013)**, and the basic cleaning fee of $150.00 payable in advance before move in. (Tenant may be charged extra cleaning fee if the property is not as clean as move in)
Rent includes the following: (check each item included)
Gas, Water, Garbage, Electricity, (Total utilities up to $250/mo) Dishwasher, Covered Parking, Washer, Dryer and all furniture ....etc.
The Renter(s) must pay deposit by any major credit card for reservation; Rent payment must be paid in advance of 30 days before move in.

2. FAILURE TO PAY RENT (for month to month renter – long term)
If rent is not paid within five (5) days after due date,
Renter agrees to pay a charge of $50 per day (not more than one day's rent) for late rent fee and/or each dishonored bank check, unless waived by written agreement. If the Renter is unable to pay rent when due, the Owner has the legal right to serve notice to pay rent or vacate within three (3) days, as provided by California Code of Civil Procedures Section 1161.

3. OCCUPANCY AND SUBLETTING
A) The rental is for the residential use of the signer of this Agreement and total occupant allowed is based on the signer's declaration when apply. No add on is allowed; or the signer will be charged $50 per person per nigh if add on is found and is limited up to 15 occupants.
B) The Renter(s) will not sublet, assign, share or rent space, or maintain guests beyond days a month without the prior written consent of the Owner.
C) This Agreement is between the Owner/Agent and each renter individually. IN THE EVENT OF DEFAULT BY ANY ONE SIGNER, EACH AND EVERY REMAINING SIGNER SHALL BE RESPONSIBLE FOR ALL PROVISIONS OF THIS AGREEMENT.

4. PERMITTED ITEMS
Renter(s) may have the following items on the property:

Vehicles, all vehicles are to be parked in the following
designated areas: garage parking or visitors parking (street parking).

5. DEPOSITS
A) The Renter shall pay the Owner/Agent the following refundable security deposit:
$3500.00 which shall not exceed 2 months rent for unfurnished property and 3 months rent for furnished.
1. When the Renter moves out the Owner may use the deposit solely for the purpose of:
i. Repairing damages for which the Renter is responsible,
ii. Cleaning beyond normal wear and tear,
iii. Paying due and unpaid rent and/or utilities. (Owner will pay utilities up to $250 a month).

INTEREST:
B) The Owner shall not pay the tenant interest on all security deposits.

REPAIRS AND REFUND:
C) The Owner shall inform the Renter of needed repairs. The Renter shall have the right to make any repairs identified at the pre-move out inspection at his or her expense before the move out date without deduction from the security deposit. Within three weeks after the Tenant moves out, the Owner shall return the deposit to the Renter less any deductions the owner is entitled to under this agreement. If any deductions are made, the owner shall provide the Renter with a written itemized statement of expenses and receipts for cleaning or repairs for which deductions were made from the deposit.

Renter(s) agree to:
1. Keep the premises as clean and sanitary as the condition of the premises permits;
2. Regularly dispose of all rubbish, garbage, and other waste in a clean and sanitary manner;
3. Properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits;
4. Not, nor permit anyone on the premises within her/his control to, willfully or wantonly destroy, deface, damage, impair, alter, or remove any part of the structure, facilities, or equipment;
5. Leave the rental in the same condition as when possession was given to her/him, reasonable use, wear, and damage beyond the control of the Renter(s) excepted; and
6. Not to cause or allow unnecessary noise especially during the quiet times under the city or county noise and/or "party" ordinance (10:00 p.m. to 8:00 a.m.).
7. Renter agrees to do snow and ice removal. a round the side walk and drive way during the winter.

D) ADDITIONAL DUTIES
The maintenance of the following additional items: n/a

The signing of this agreement acknowledges the Owner's receipt of $3500 from the Renter for: security deposit,
Both the Owner/Agent and the Renter receive a copy of this Agreement. This Agreement is entered and will be effective the 6th day of August, 2012.

_____ Date: _____
Owner's Signature

_____ Date: _____
Renter's Signature (type name and sign above the line)

Vehicles, all vehicles are to be parked in the following designated areas: garage parking or visitors parking (street parking).

5. DEPOSITS
A) The Renter shall pay the Owner/Agent the following refundable security deposit: $3500.00 which shall not exceed 2 months rent for unfurnished property and 3 months rent for furnished.
1. When the Renter moves out the Owner may use the deposit solely for the purpose of:
i. Repairing damages for which the Renter is responsible,
ii. Cleaning beyond normal wear and tear,
iii. Paying due and unpaid rent and/or utilities. (Owner will pay utilities up to $250 a month).

INTEREST:
B) The Owner shall not pay the tenant interest on all security deposits.

REPAIRS AND REFUND:
C) The Owner shall inform the Renter of needed repairs. The Renter shall have the right to make any repairs identified at the pre-move out inspection at his or her expense before the move out date without deduction from the security deposit. Within three weeks after the Tenant moves out, the Owner shall return the deposit to the Renter less any deductions the owner is entitled to under this agreement. If any deductions are made, the owner shall provide the Renter with a written itemized statement of expenses and receipts for cleaning or repairs for which deductions were made from the deposit.

Renter(s) agree to:
1. Keep the premises as clean and sanitary as the condition of the premises permits;
2. Regularly dispose of all rubbish, garbage, and other waste in a clean and sanitary manner;
3. Properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits;
4. Not, nor permit anyone on the premises within her/his control to, willfully or wantonly destroy, deface, damage, impair, alter, or remove any part of the structure, facilities, or equipment;
5. Leave the rental in the same condition as when possession was given to her/him, reasonable use, wear, and damage beyond the control of the Renter(s) excepted; and
6. Not to cause or allow unnecessary noise especially during the quiet times under the city or county noise and/or "party" ordinance (10:00 p.m. to 8:00 a.m.).
7. Renter agrees to do snow and ice removal, a round the side walk and drive way during the winter.

D) ADDITIONAL DUTIES
The maintenance of the following additional items: n/a

The signing of this agreement acknowledges the Owner's receipt of $3500 from the Renter for security deposit,
Both the Owner/Agent and the Renter receive a copy of this Agreement. This Agreement is entered and will be effective the 6th day of August, 2012.

Owner's Signature Date: 8-7-12

Renter's Signature (type name and sign above the line) Date: 8-6-12

Jeff R. Price

EXHIBIT B

NOTICE OF EVICTION
THREE DAY NOTICE TO VACATE FOR COMMITTING A CRIMINAL ACT ON PREMISES

This Notice is Given to Tenant(s):		This Notice is Given by Landlord(s):	
Name:	Jeff R Price	Name:	Danielle Sprague
Address:	591 Oak View Ct. North Salt Lake Utah 84054	Address:	511 W 500 N Salt Lake City Utah 84116
	(And all other tenants known)	Phone:	801-936-1109

You are subject to eviction within 3 days under Utah Code § 78B-6-802(1)(d) for committing a criminal act on the premises as follows:

Improperly use water softener to cause the damage and water leaking;
Failure to clean up the water leaking and keep the premise in sanitary manner;
Refuse property owner to access the premise to do the inspection and repairing the damages.

You are required to vacate the premises within three calendar days, counting weekends and holidays. If you do not comply with this notice, you will be served with a Summons and Complaint for unlawful detainer. Unlawful detainer is when you remain in possession of rental property after the owner serves you with a lawful notice to leave, such as this eviction notice. If you are found by the court to be in unlawful detainer, you will be evicted by the court and you will be liable for: (1) any rent due and unpaid through the end of your rental agreement, less any amounts the landlord receives from the next tenant; (2) damages caused by your unlawful detainer of the rental property; (3) damages for any waste of the rental property caused by you, if and only if the landlord alleges them in a court complain and proves them at trial, or submits them to the court by affidavit in the event of your default (Waste is damage you cause beyond normal wear and tear.); (4) damages as provided in Utah Code Ann. § 78B-6-1107 through 1114 for the abatement of nuisance, if any, caused by you. (Abatement of nuisance means to stop a nuisance.); and (5) attorney fees and court costs.

You will also be liable for three times those damages allowed to be trebled under Utah Code Ann. § 78B-6-811 which may include trebling damages mentioned above. Rent due and unpaid shall be trebled each day you remain in the premises after this notice expires.

RETURN OF SERVICE AND SELF AUTHENTICATION DECLARATION

This Notice was served on the above-listed tenant(s) on this 6th day of December, 20 12, in one (or more) of the following manners:

✓ **Personal Service.** A copy was delivered to the tenant personally.

____ **Posted Service.** A copy was posted in a conspicuous place on the premises, as no one was home.

____ **Suitable Age & Discretion – Residence.** A copy was left with a person of suitable age and discretion at tenant's residence and a second copy was mailed to tenant's residence.

____ **Suitable Age & Discretion – Place of Business.** A copy was left with a person of suitable age and discretion at tenant's place of business and a second copy was mailed to tenant's place of business.

✓ **Certified Mail.** A copy was sent through certified or registered mail to tenant's address.

Pursuant to Utah Code Ann. §46-5-01, I declare under criminal penalty that the foregoing is true and correct.

Signature of Notice Giver: Raymond Smith

NOTICE OF EVICTION

THREE DAY NOTICE TO VACATE FOR COMMITTING A CRIMINAL ACT ON PREMISES

This Notice is Given to Tenant(s):		This Notice is Given by Landlord(s):	
Name:	Ann K. Price	Name:	Danielle Sprague
Address:	591 Oak View Ct. North Salt Lake Utah 84054	Address:	511 W 500 N Salt Lake City Utah 84116
(And all other tenants known)		Phone:	801-936-1109

You are subject to eviction within 3 days under Utah Code § 78B-6-802(1)(d) for committing a criminal act on the premises as follows:

Improperly use water softener to cause the damage and water leaking;
Failure to clean up the water leaking and keep the premise in sanitary manner;
Refuse property owner to access the premise to do the inspection and repairing the damages.

You are required to vacate the premises within three calendar days, counting weekends and holidays. If you do not comply with this notice, you will be served with a Summons and Complaint for unlawful detainer. Unlawful detainer is when you remain in possession of rental property after the owner serves you with a lawful notice to leave, such as this eviction notice. If you are found by the court to be in unlawful detainer, you will be evicted by the court and you will be liable for: (1) any rent due and unpaid through the end of your rental agreement, less any amounts the landlord receives from the next tenant; (2) damages caused by your unlawful detainer of the rental property; (3) damages for any waste of the rental property caused by you, if and only if the landlord alleges them in a court complain and proves them at ial, or submits them to the court by affidavit in the event of your default (Waste is damage you cause beyond normal ..ear and tear.); (4) damages as provided in Utah Code Ann. § 78B-6-1107 through 1114 for the abatement of nuisance, if any, caused by you. (Abatement of nuisance means to stop a nuisance.); and (5) attorney fees and court costs.

You will also be liable for three times those damages allowed to be trebled under Utah Code Ann. § 78B-6-811 which may include trebling damages mentioned above. Rent due and unpaid shall be trebled each day you remain in the premises after this notice expires.

RETURN OF SERVICE AND SELF AUTHENTICATION DECLARATION

This Notice was served on the above-listed tenant(s) on this 6th day of December, 2012, in one (or more) of the following manners:

- ✓ **Personal Service.** A copy was delivered to the tenant personally.
- ____ **Posted Service.** A copy was posted in a conspicuous place on the premises, as no one was home.
- ____ **Suitable Age & Discretion – Residence.** A copy was left with a person of suitable age and discretion at tenant's residence and a second copy was mailed to tenant's residence.
- ____ **Suitable Age & Discretion – Place of Business.** A copy was left with a person of suitable age and discretion at tenant's place of business and a second copy was mailed to tenant's place of business.
- ✓ **Certified Mail.** A copy was sent through certified or registered mail to tenant's address.

Pursuant to Utah Code Ann. §46-5-01, I declare under criminal penalty that the foregoing is true and correct.

Signature of Notice Giver: Raymond Cobb

EXHIBIT C

Michael D. Zimmerman (3604)
Julie J. Nelson (9943)
ZIMMERMAN JONES BOOHER LLC
Kearns Building, Suite 721
136 South Main Street
Salt Lake City, UT 84101
mzimmerman@zjbappeals.com
jnelson@zjbappeals.com
(801) 924-0200

Attorneys for Danielle Sprague

SECOND JUDICIAL DISTRICT COURT

DAVIS COUNTY, FARMINGTON DEPARTMENT, STATE OF UTAH

JEFF PRICE and ANNE PRICE, Plaintiffs/Counterclaim Defendants, v. DANIELLE SPRAGUE, Defendant/Counterclaim Plaintiff.	**MEMORANDUM IN SUPPORT OF DANIELLE SPRAGUE'S MOTION TO RECONSIDER OR IN THE ALTERNATIVE RULE 52 MOTION TO MAKE FURTHER FINDINGS AND TO ALTER OR AMEND THE JUDGMENT** Case No. 120701157 Honorable David R. Hamilton

Defendant and Counterclaim Plaintiff Danielle Sprague, by counsel, respectfully submits this memorandum in support of her motion to reconsider, or in the alternative, for further findings.

Ms. Sprague asks this court to reconsider Proposed Finding of Fact #20 (attached at Exhibit 1) and its corollary legal rulings. A motion to reconsider may be filed any time before the court enters final judgment. "It is settled law that a trial court is free to reassess its decision at

any point prior to entry of a final order or judgment." *Ron Shepherd Ins. Inc. v. Shields,* 882 P.2d 650, 654 (Utah 1994).

This motion is alternatively brought under Utah Rule of Civil Procedure 52, which requires that a court "find the facts specially and state separately its conclusions of law thereon." Utah R. Civ. P. 52(a). The rule also allows a party to move the court to make additional findings and amend the judgment accordingly: "Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly." *Id.* R. 52(b); *Regan v. Blount*, 1999 UT App 154, ¶ 6, 978 P.2d 1051 (stating that rule 52 and 59 motions may be filed before entry of the judgment) (abrogated on different grounds by *Gillett v. Price*, 2006 UT 24, ¶ 8, 135 P.3d 861).

It is important that the court's findings are adequate to support its legal conclusions so that an appellate court may review a case on the merits. "Proper findings are essential to enable [an appellate c]ourt to perform its function of assuring that the findings support the judgment and the evidence supports the findings." *Bastian v. King*, 661 P.2d 953, 957 (Utah 1983). If an appellate court does not view the findings as adequate, it will remand for further findings. A rule 52 motion allows a party to ask the trial court to make more complete findings before appeal.

Introduction

This court held a trial in this landlord/tenant case on March 16 and 17, 2015. The tenants, the Prices, rented a long-term vacation rental from Ms. Sprague. The relationship between the parties was hostile and, in the end, the Prices filed a "Notice of Deficient Condition," and alleged that Ms. Sprague refused to clean up mold, and Ms. Sprague filed a "Notice of Eviction" on the basis that the Prices had caused the mold and it was their responsibility to clean it up.

After the Prices moved out, they filed a complaint. The Spragues counterclaimed. At trial, the issues included whether the Prices had paid full rent, whether the "utilities" were part of the rent, whether either party had breached the contract, etc. The court concluded that Ms. Sprague owed to the Prices $2,799.25. The court arrived at that amount by subtracting the number of days the Prices stayed in the Sprague's rental home without paying rent from the security deposit. On April 8, 2015, the Prices filed the "Proposed Findings of Fact and Conclusions of Law" and on April 17, 2015, filed the "Proposed Order."

Argument

Ms. Sprague directs her challenge to Finding of Fact #20, which states: *"The Spragues failed to present sufficient evidence establishing that the Prices caused the water damages and/or water leaking or failed to allow the property owner access to inspect and repair."*

Ms. Sprague challenges this finding for two reasons. First, as described below, Ms. Sprague disputes that she presented insufficient evidence to prove those two items. Second, even if the court concludes that in fact the Prices did not cause the water damage or fail to allow the property owner access to inspect or repair, Ms. Sprague contends that Finding of Fact #20 is inadequate to explain the trial court's reasoning to the appellate court.

This factual finding is important because it underlies several of the trial court's legal conclusions, including: (1) that the Prices were entitled to their security deposit, *Conclusion of Law* at #13; (2) that the Prices did not breach the Lease Agreement by damaging the premises by causing the actual damage and/or unreasonably refusing Sprague to access the premises to rectify the water leaks and their consequences in a timely manner, *Findings of Fact* at #14 and *Amended Counterclaim* at 21 (attached at Exhibit 2); (3) that the Prices did not breach the covenant of

good faith and fair dealing because they damaged the premises or unreasonably denied the Spragues access to repair the property, *Findings of Fact* at #20 and *Amended Counterclaim* at 22-23; and (4) that the Prices did not commit waste, *Findings of Fact* at #20 and *Amended Counterclaim* at 23.

Ms. Sprague respectfully asks the court to reconsider Finding of Fact #20. Below, Ms. Sprague reiterates for the court the governing law and relevant pieces of evidence that are support Ms. Sprague's arguments. All evidence attached is already received in the record, but are reattached to this document for the court's convenience. No new evidence is presented.

I. Whether the Prices damaged the property by tampering with the water heater, water softener, or the wall

The first part of Finding of Fact #20 concerns whether Ms. Sprague presented evidence that the Prices caused the water damages and/or water leaking.

Utah Code section 57-22-4(3) states that "Before an owner and a prospective renter enter into a rental agreement, the owner shall: (a) provide the prospective renter a written inventory of the condition of the residential rental unit, excluding ordinary wear and tear; (b) furnish the renter a form to document the condition of the residential rental unit and then allow the resident a reasonable time after the renter's occupancy of the residential rental unit to complete and return the form; or (c) provide the prospective renter an opportunity to conduct a walkthrough inspection of the residential rental unit." Utah Code § 57-22-4(3) (attached at Exhibit 3).

There is no dispute that Ms. Sprague complied with that statute, and that Ms. Price signed a checklist attesting to several problems in the rental – but made *no mention* of water problems (attached at Exhibit 4). Related to that is the Rental agreement itself, which states that the Renters agrees to leave the rental in the same condition as when possession was given to her/him

(attached at Exhibit 5). Given that the Prices signed to the condition of the property upon taking rental, that they were obligated to leave the rental in the same condition as when they took possession, and that they (the Prices) alleged damages, Ms. Sprague contends that the Prices caused the damage.

Ms. Sprague also presented an email from her contractor saying there was no problem with these items when he inspected the property in June (attached at Exhibit 6). Finally, Ms. Sprague presented a bill from Shamrock Plumbing that offered its opinion that the problems were caused by the tenant (attached at Exhibit 7).

II. Even if the problem was not initially caused by the Prices, whether the Prices nevertheless aggravated it by refusing to allow the Spragues a reasonable opportunity to repair

The second part of Finding of Fact #20 goes to whether Ms. Sprague presented evidence that the Prices failed to allow the property owner access to inspect and repair.

To narrow the issue, this argument will ignore all communications between the parties before November 30. On that day, Friday, November 30, 2012, the Prices provided to the Spragues a "Notice of Deficient Condition(s)" that indicated that the rented premises are unsafe and/or unsanitary because "mold has been located in several areas of the home requiring" certain corrective measures. The Notice of Deficient Condition(s) gave the Spragues three calendar days (which would be Monday, December 3) to fix the condition.

Notices of Deficient Condition are governed by Utah Code section 57-22-6 (attached at Exhibit 8). Under that section, a renter may provide notice of "deficient condition" to the landlord if a condition of a residential rental unit (i) violates a standard of habitability; and (2) is

not caused by the renter. Utah Code § 57-22-6(b). That same section of the Code provides that standards of habitability must be repaired with ten days.

The Prices apparently believed that the mold violated the standard of habitability such that it must be remedied within three days.

Assuming that to be true, Utah Code section 57-22-6(2) further provides that *if a renter believes that the renter's residential unit has a deficient condition, the renter must provide the owner permission to enter the residential unit to make corrective action. Id.* § 57-22-6(2)(b)(iv).

Statute further provides that "an owner shall provide the renter at least 24 hours prior notice of the owner's entry into the renter's residential renter unit," Utah Code § 57-22-4(2), unless the deficient condition is "dangerous," in which case the owner must commence remedial action "within 24 hours after receiving [a notice of deficient condition]." *Id.* § 57-22-6(3)(c)(i).

The Code does not provide the Tenants with further rights regarding having a condition—that they reported to the landlord—remedied.

With that law as the basis for a landlord's and a tenant's respective obligations regarding remedying problems, Ms. Sprague asks this court to reconsider its decision that there is insufficient evidence to establish that the Prices "refused property owner access to the premises to do the inspection and repairs," as stated in Finding of Fact #20. The following evidence is more than adequate to establish that fact.

i. Notice of Deficient Condition provided November 30, 2012 (attached at Exhibit 9)
ii. Letter from Spragues to Prices (Fri. Nov 30) (attached at Exhibit 10) saying they will take action to assess and fix the problems by "tomorrow morning at 9:00 am"
iii. Email Chain (Fri. Nov 30) (attached at Exhibit 11):

1. Price to Sprague stating "there will be ground rules to follow"
2. Sprague to Price saying "Please let us know what your ground rules are, we will do our best to comply if the rules are reasonable"

iv. Letter from Price's lawyer to Spragues (Fri. Nov. 30) (attached at Exhibit 12) stating that he had told the Prices to invite a police officer to be present "for the purpose of keeping the peace as ground rules are established which WILL BE FOLLOWED during the presence of your contractor" and enumerating six rules.

v. Email chain (Sat. Dec 1) (attached at Exhibit 13):

1. Sprague to Price saying that a police officer is unnecessary.
2. Price to Sprague saying "the North Salt Lake Police have been notified"
3. Sprague to Price saying "Our contractor is sending his personal with all the equipment to do the mold cleaning work and will be on the property within an hour"
4. Sprague to Price alerting Prices that the contractor was running late
5. Price to Sprague saying "we are out of the county for several hours. We will need reasonable notice. If you enter you will be trespassing."
6. Sprague to Price saying "We went there to fix the problem and found no body home, so we left. We have arranged with the contractor to come back on Monday Morning at 9:00am. Any cost for the contractor additional travel will be your responsibility. Again, we will be entering the premise on Monday morning 9:00am December 3, 2012." Notably, this was the last day that would suffice under the Tenant's "three day" notice.

vi. Email chain between Sprague and Price's lawyer (Sat. Dec. 1) (attached at Exhibit 14):

1. Sprague to Price's lawyer saying the contractor would be there within an hour.
2. Price's lawyer to Sprague saying that "You must have believed that the Prices would stay at home all day waiting for some word from you AFTER their being told NOTHING by your contractor . . . If it was then your plan for the workers to return today you should have asked the Prices when it would be convenient for them for your contractor to return and commence work."
3. Sprague to Price's lawyer with attachment of "Notice"
4. Price's lawyer to Sprague saying "Your 'Notice' is evidence you are not listening. Your plan to come (again) to the home with your contractor to enter (again) to visit the areas affected with mold (again) is rejected. . . . If you come to the home on Monday, or send your contractor, to do anything less than or other than ***exactly*** and ***completely*** … …and without first committing in writing to do so, specifically, then DO NOT COME. You will not be admitted."

vii. Email from Price to Sprague (Sat. Dec. 1), saying "It would be nice for you to ask nicely instead of demanding entry into my home." (attached at Exhibit 15)

viii. Notice provided by Prices to Sprague Dec 5 saying "three business days have expired without your having made any effort to correct the said deficiencies." (attached at Exhibit 16).

Conclusion

Ms. Sprague respectfully asks this court to reconsider its Finding of Fact #20 and find that she did present sufficient evidence to prove that the Prices caused the water damage, and/or

that the Prices prevented her from repairing the damage. If the court does reconsider, Ms. Sprague would ask the court to also reconsider the impact of its new findings on its decision that the Prices did not breach the contract by damaging the property, breached the implied covenant of good faith and fair dealing, or wasted the premises.

Alternatively, if the court declines Ms. Sprague's request to reconsider, Ms. Sprague asks this court to make further findings explaining why. Ms. Sprague anticipates appealing the decision of the court, but respectfully submits that Finding of Fact #20 is inadequate to reveal the court's thinking to the appellate courts, and that this finding is the basis of the court's rejection of Ms. Sprague's legal claims for damage to the premises, breach of the covenant of good faith and fair dealing, and waste. Ms. Sprague respectfully requests that this court make further findings and amend its judgment to provide the appellate courts with the information it needs to review the court's ruling.

DATED this 17th day of April, 2015.

ZIMMERMAN JONES BOOHER LLC

/s/ Julie J. Nelson
Michael D. Zimmerman
Julie J. Nelson
Attorneys for Danielle Sprague

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of April, 2015, I caused the foregoing to be electronically filed and served on the following via a court-approved e-filing service provider:

Matthew N. Evans
A.J. Green
Ray, Quinney & Nebeker P.C.
P.O. Box 45385
Salt Lake City, UT 84145-0385

Jeffrey J. Owens
Owens Law Firm, PLLC
299 South Main St., Suite 1300
Salt Lake City, UT 84111

/s/ Julie J. Nelson

EXHIBIT D

The Order of Court is stated below:
Dated: July 27, 2015 02:22:13 PM
/s/ David Hamilton
District Court Judge

MATTHEW N. EVANS (7051)
A.J. GREEN (14661)
RAY, QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
mevans@rqn.com
ajgreen@rqn.com

Counsel for Plaintiffs Jeff and Ann Price

IN THE SECOND JUDICIAL DISTRICT COURT, FARMINGTON DISTRICT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH

JEFF PRICE and ANNE PRICE, Plaintiffs/Counterclaim Defendants, v. RUFUS SPRAGUE and DANIELLE SPRAGUE, Defendants/Counterclaim Plaintiffs.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** Case No.: 120701157 Judge David R. Hamilton

This matter came before the Court via bench trial on March 16 and 17, 2015. Plaintiffs Jeff Price and Anne Price (the "Prices") were represented by Matthew N. Evans. Defendants Rufus Sprague and Danielle Sprague (the "Spragues") were represented by Jeffrey Owens. Based upon the facts presented at trial, the Court hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Danielle Sprague and Jeff Price entered into a Lease Agreement on or around August 6, 2012 to lease a home located at 591 East Oak View Court, North Salt Lake, Utah 84054 (the "Leased Premises"). Anne Price signed the Lease Agreement on September 20, 2012.

2. On or around August 3, 2012, the Prices paid a refundable security deposit of $3,500 to Danielle Sprague in accordance with the Lease Agreement.

3. The Prices moved into the Leased Premises on September 3, 2012.

4. The Prices paid the agreed upon $150.00 cleaning fee for the Leased Premises on September 20, 2012.

5. The Prices timely paid rent for September and October of 2012.

6. With regard to November 2012 rent, the Prices timely notified Mrs. Sprague that they intended to deduct $65.00 from the rent for a service call from Pond's Plumbing regarding issues related to the malfunctioning water softener in the utility room in the Leased Premises.

7. Mrs. Sprague never objected to the deduction.

8. The Prices timely paid November 2012 rent in the amount of $2,935.00 ($3,000-$65.00 service charge).

9. The Lease does not contain any provision obligating the Prices to pay for internet and cable for the Leased Premises.

10. The Lease Agreement unambiguously states that $250.00 of the utilities is included in the $3,000 monthly rent payment.

11. The amount for utilities for September 2012 was less than $250.00

12. Defendant Danielle Sprague presented evidence of utility costs above $250.00 for October in the amount of $10.33

13. The late fee provision in the Lease Agreement only relates to late payment of rent and not utilities or the cleaning fee.

14. On November 30, 2012, the Prices served on Danielle Sprague a Notice of Deficiency Conditions in accordance with Utah's Fit Premises Act Utah Code § 57-22-1 *et seq.*

15. The Prices presented evidence of leaking water in the water manifold in the utility room as well as the water softener and the water heater.

16. On the morning of December 3, 2012, Danielle Sprague delivered via e-mail, and hand delivery a letter to the Prices stating that she believed the water problems were caused by the Prices.

17. Danielle Sprague explained in the letter dated December 2, 2012 and attached as Defendants' Exhibit No. 22 that she and her husband (Rufus Sprague) "both clearly saw the mold in the utility room on the bottom of the wall next to the purple room. As by your family concern and by protecting our property, we request that you to have a license mold clean up contractor remove all the mold, and repair all the damages that the leaking water caused which you refused to clean up in a timely manner. If you fail to do such repairs states above within three business days, you will be subject to eviction."

18. Later that day on December 3, 2012, Jeff Price emailed Danielle Sprague asking her to confirm that she would not take any action to fix the problems as identified in his Notice of Deficient Conditions dated and served on Mrs. Sprague on November 30, 2012. Mrs. Sprague responded in an email that Mr. Price was correct and that she would not fix the problems.

19. Consistent with her letter dated December 3, 2012, Mrs. Sprague on December 6, 2012 served on the Prices a three day "Notice to Vacate for Committing a Criminal Act on the Premises" (the "Notice") claiming that the Prices improperly used the water softener to cause damage and water leaking, failed to clean up the water and keep the premises in a sanitary manner and refused property owner access to the premises to do the inspection and repairs.

20. The Spragues failed to present sufficient evidence establishing that the Prices caused the water damages and/or water leaking or failed to allow the property owner access to inspect and repair.

21. The Notice required the Prices to vacate the Leased Premises within three days. There is nothing in the Notice requiring the Prices to continue to pay rent in accordance with the Lease Agreement nor is there any provision in the Lease Agreement requiring the Prices to pay rent in the event they are evicted by Mrs. Sprague.

22. On December 7, 2012, the Prices vacated the Leased Premises.

CONCLUSIONS OF LAW

1. The Lease Agreement was drafted by Danielle Sprague and therefore any ambiguities in the Lease Agreement shall be construed against her.

2. It is unclear from the Lease Agreement what the due date is for payment of rent. Construing the document most favorable to the Prices, the due for rent date is September 5, 2012 and every 5th day of the month after September.

3. The Prices timely paid rent for September, October and November of 2012 and did not breach the Lease Agreement by not paying rent. No late fee payment under the Lease Agreement is applicable to these payments.

4. The late fee provision in the Lease Agreement is not applicable to any other obligation other than rent.

5. The Prices failed to pay utilities in the amount of $10.33 for October and that was the only invoice that was submitted to the Prices prior to them being evicted from the Leased Premises by Mrs. Sprague.

6. The Court finds that Danielle Sprague evicted the Prices from the Leased Premises on December 6, 2012. As a result, she has no legal right or basis under the Lease Agreement or law to seek the reminder of any payments under the Lease Agreement subsequent to that time. The Lease Agreement does not contain any provision requiring the Prices to pay the remainder of the lease payments in the event they are evicted.

7. The Court finds that Danielle Sprague is equitably estopped seeking any additional lease payments after she evicted the Prices from the Leased Premises on December 6, 2012.

8. The Court also finds that Danielle Sprague waived any right to collect further lease payments from the Prices after evicting them from the Leased Premises on December 6, 2012.

9. Utah Code Ann § 57-22-5(h) provides that a renter must be current on all payments required by the rental agreement.

10. The Court finds that the Prices were not in complete compliance with the Lease Agreement because they failed to pay for utilities in the amount of $10.33. While the Court finds that amount is not a material breach of the Lease Agreement, it was still not paid and the availability of a remedy under the Utah Fit Premises Act is not available to the Prices. That

claim is dismissed with prejudice.

11. The Prices did not pay rent for seven days in which they were in the Leased Premises in December which amount is equal to $677.42.

12. The Prices moved out of the Leased Premises before any late fee applied for December rent under the Lease Agreement.

13. The Court finds that Danielle Sprague has breached the Lease Agreement by not refunding to the Prices the remainder of the refundable security deposit and cleaning fee in the amount of $2,799.25 exclusive of prejudgment interest and court costs. The amount of $2,799.25 is calculated by adding the refundable security deposit and cleaning fee ($3,650.00) and then subtracting the seven days of rent for December 10 the amount of $677.42, utilities of $10.33 and cleaning and shampooing fees, for the Leased Premises after the Prices moved out in the amount of $163.00.

14. The Court finds the Prices did not materially breach of the Lease Agreement and that claim brought by Mrs. Sprague is dismissed with prejudice.[1]

1 The Court dismissed the Prices' claim for fraud and recession via directed verdict after the Prices closed presentation of the evidence in support of their case. The Court also dismissed Rufus Sprague as a plaintiff for the breach of contract action via directed verdict after the Spragues closed presentation of their evidence in support of their counterclaims. The Court also dismissed via directed verdict the Sprague's waste claim after they closed presenting evidence in support of their counterclaims.

In accordance with the Utah State District Courts E-filing Standard No. 4, and URCP Rule 10(e), this Order does not bear the handwritten signature of the Judge, but instead displays an electronic signature at the upper right-hand corner of the first page of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2015, I caused the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be electronically filed with the Clerk of the Court using the Utah Trial Court/ECF system, which sent notification of such filing electronically to the following:

Jeffery J. Owens (10973)
Owens Law Firm, PLLC
299 South Main St., Suite 1300
Salt Lake City, Utah 84111
jeff@owenslf.com

/s/Angelica Torres

1322251

EXHIBIT E

SECOND JUDICIAL DISTRICT COURT, FARMINGTON

DAVIS COUNTY, STATE OF UTAH

JEFF R. PRICE and ANN K. PRICE,	:	Case No. 120701157
Plaintiffs,	:	Volume I of II
v	:	
RUFUS SPRAGUE and DANIELLE SPRAGUE,	:	
Defendants.	:	With Keyword Index

BENCH TRIAL MARCH 16 & 17, 2015

BEFORE

JUDGE DAVID HAMILTON

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

Q Not the Walkers. I'm sorry. The Spragues?

A The Spragues? I asked him if the water softener - I told the water softener's empty. It does not have salt in it. Does it work? He told me it worked. He said plug it in, put the salt in it, and it works, and that's - was my instructions on the water softener on that conversation.

Q Did you have any conversation with him about any other conditions at the house?

A Not at that day that I recall.

Q How about any leaking or problems with the house prior to you moving in? Did you have a conversation with him about that?

A We talked about the water leaking in the utility room on the -

Q What did you say to him?

A I asked -

Q And I don't want conversations about what you heard about the Walkers, but -

A I asked him specifically if there was mold in the utility room.

Q What was his response?

A "No."

Q Describe for me where the utility room is -

A The utility room -

Q - in the house?

A Layton, Utah. Do you need the address?

Q Yes, please.

A 1348 North 3100 East.

Q Okay. At any time, did you ever reside at 581 Oakview Court?

A I did.

Q When did you reside at Oakview Court?

A We moved out in May of 2012, and we were there for a year and a half.

Q During the time you resided in the Oakview Court up until May 12th, did you have any problems with any leaking issues - water issues?

A Yes, we did.

Q And what problems did you have?

A There was a leak downstairs - the way that it's set up, the washer and dryer were here and on the other side of a wall was the water heater and the water softener, and, you know, the furnace, and that type of area. And when we first moved in, I noticed that there was water underneath the washer and the dryer. Not a lot, just a little bit. And I didn't know where it was coming from, so I kept watching that area and trying to figure out where it was coming from. And one night I was very, very sick, and so I was downstairs watching TV in the middle of the night, and I noticed - I heard water. So I went over there to see what was going on,

and saw that there was water coming out from underneath the wall there right where the washer was.

Q Like in the washroom?

A Uh-huh (affirmative), where the washer and dryer was. So I called my husband, and he looked at it, and he said that the water softener hose was not seated correctly into the drain, and so it was going down the wall.

MR. OWENS: Objection, hearsay, Your Honor.

THE COURT: Sustained.

Q (BY MR. EVANS) So did you notice that the water was going down the wall at that time?

A No, I did not.

Q Okay. But you could see the water on the ground?

A I could see the water on the ground, yes.

Q Okay. Could you turn to Plaintiffs Exhibit 24? Yeah, that's it.

A Uh-huh (affirmative).

Q There are three pictures there. They're dated March 6th, 2011.

A Uh-huh (affirmative).

Q Do you know who took these pictures?

A My husband took those pictures.

Q Was this on or around the time that you noticed this water issue?

A Yes, it was.

Q Okay. Did you notify the Walkers (sic) about this water issue?

A I'm sorry?

Q Did you notify the Spragues about this water issue?

A I did.

Q Did they do anything about it?

A No, they did not.

Q Did it continue to leak?

A Not to my knowledge.

MR. EVANS: No other questions.

THE COURT: Mr. Owens?

CROSS EXAMINATION

BY MR. OWENS:

Q Ms. Walker, isn't it true that around the time you moved in you had cable TV installed in the home?

A I did.

Q And isn't it true that the cables that were run by the cable technician went through that room?

A They were somewhere in that room, yes.

Q Isn't it true that after you informed the Spragues of the issue it was determined between you, and your husband, and the Spragues that the cable repairman had probably moved the washer and bumped the hose loose?

A That is not true.

Q You don't recall that?

A Yes, I did.
Q All right. What was your address there?
A I don't remember.
Q Did you ever reside at 591 -
A That's it.
Q - Oakview Court?
A Yes.
Q All right. How long did you reside there?
A One year.
Q Okay. I'd like you to turn to Plaintiffs Exhibit 24, if you will.
A Okay. All right, I'm there.
Q Do you recognize those pictures?
A Yes.
Q Okay. Who took those pictures?
A I did.
Q Did you take those pictures on the day that they're marked, 3-6-11?
A Yes.
Q How long did you reside at - number? - 591 Oakview Court?
A About a year.
Q Okay. Tell me - describe for me what the first picture shows.
A The first picture shows inside the furnace room,

the back wall of the laundry area.

Q Okay. And what are you trying to - well, what are you - why are you taking this picture?

A I was showing the water damage that occurred when the overflow valve of the water softener was discovered to have been leaking down this back wall for many months.

Q All right. Describe for me how you learned of the water softener leaking.

A My wife for some reason couldn't sleep, so she went downstairs into the basement to sleep. And in the middle of the night, she heard water running, and she couldn't figure out what it was so she had me investigate what the water was that was running.

Q Did you locate the problem?

A Yes.

Q Okay. And what was it?

A The problem was that the water softener drain hose had been put down inside where the laundry room - where the laundry is suppose to drain - the washing machine drains, but it was not seated down in the hole. It was pulled out and up, and so it was draining in, and around, and running down the wall.

Q All right. And what did you do to fix or repair that, if anything?

A At that point, I just took the hose, and pulled it

down and put it back into the hole.

Q Do you know if that ever leaked again, to your knowledge?

A Not to my knowledge.

Q All right. What is - what does the second page - photo represent?

A Oh, that's the floor of that same area.

Q This is what you say the utility room?

A Yes.

Q All right. And why did you take this picture?

A Just to show that there was standing water on the ground.

Q Okay. What is the black stuff on the bottom there, to your knowledge? Do you see the - I see...

A Well, it appears to be mold.

MR. OWENS: Objection, Your Honor.

THE COURT: Sustained.

Q (BY MR. EVANS) Third picture, what is that a description of?

A Oh, that is showing the top of the receiver box for the laundry where it's showing the white pipe going into the top of it.

Q Why did you take a picture of that?

A Mainly, I was trying to figure out what exactly the piping situation was so I could identify the source of the

leak.

MR. EVANS: We - I would like the -

Q (BY MR. EVANS) Did you notify the Spragues -

A Yes.

Q - of the problem? Did they do anything to repair, fix this issue?

A This issue was never addressed.

MR. EVANS: All right. We would ask that Plaintiffs Exhibit 24 be admitted into evidence.

MR. OWENS: Your Honor, I assume your copy doesn't have the pink - okay. The copies were provided to me and all the photos. It had Post-Its on it. So I have no objection to [inaudible].

THE COURT: Twenty-four - Plaintiffs 24 will be received.

(Plaintiffs Exhibit 24 received)

MR. EVANS: No other questions.

THE COURT: Mr. Owens?

CROSS EXAMINATION

BY MR. OWENS:

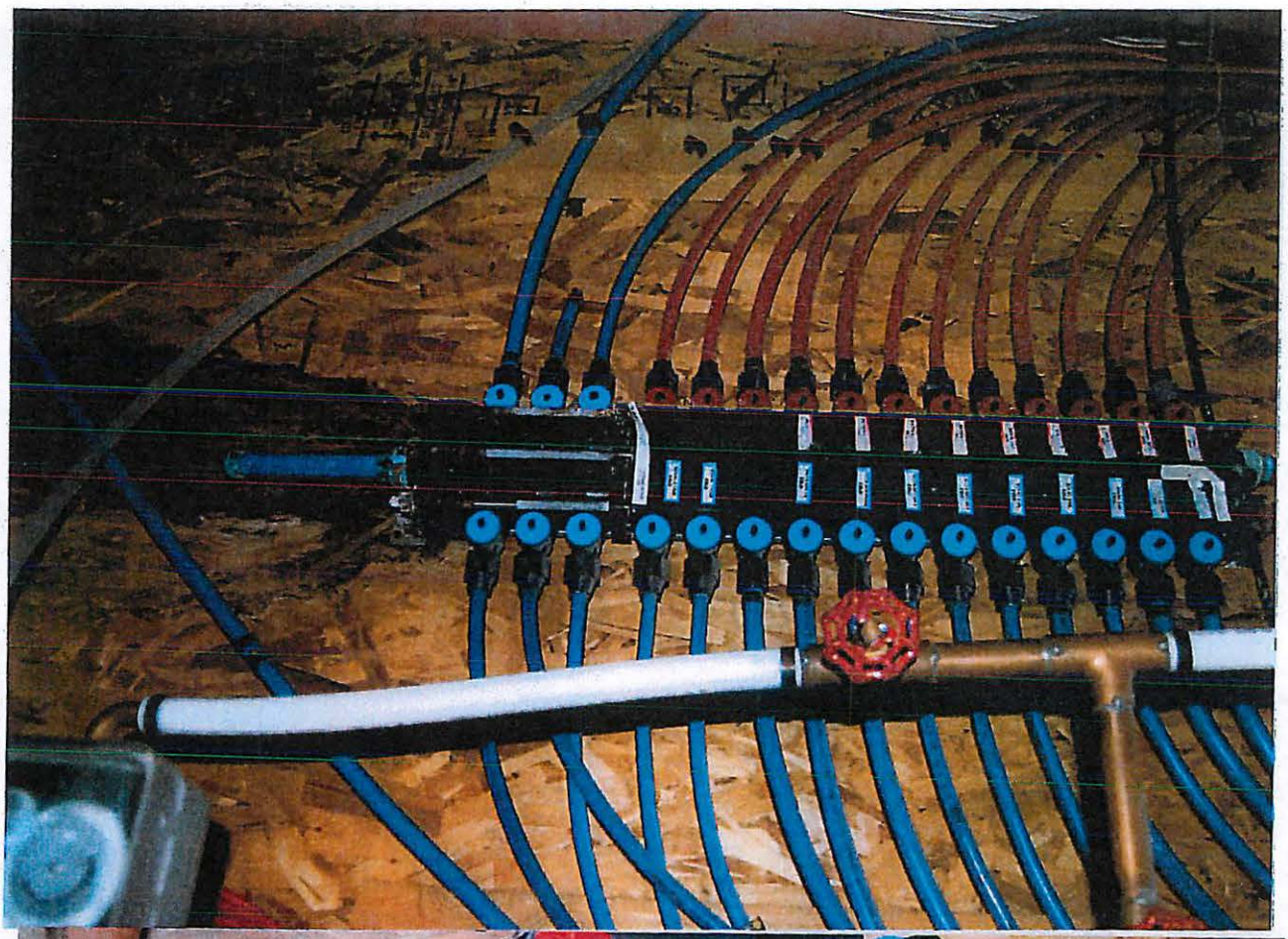
Q Isn't it true, Mr. Walker, that after you moved out, you had a legal dispute with the Sprague's?

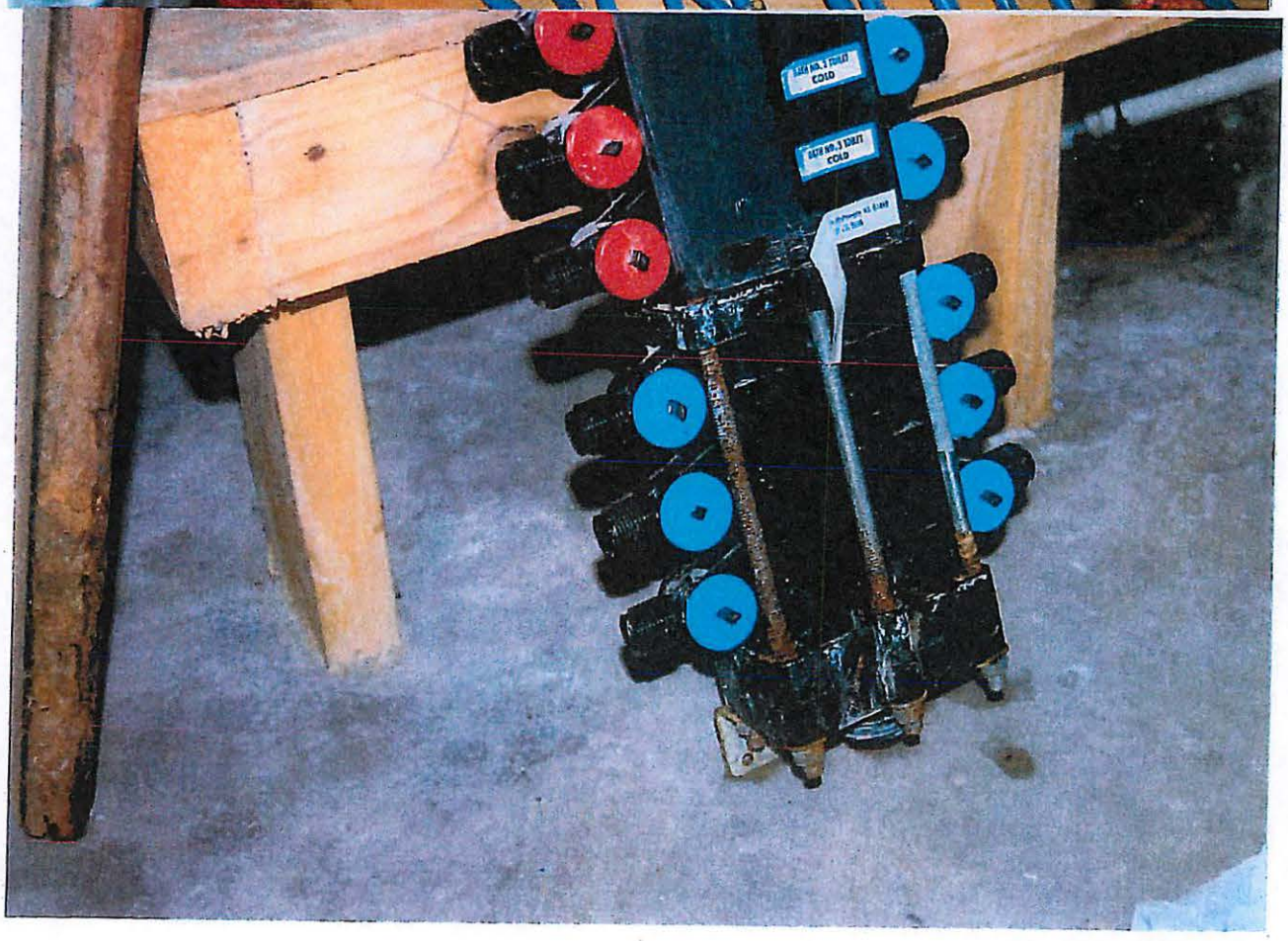
A I don't see how that's relevant to this case.

THE COURT: That's for me to determine, sir, and answer the question.

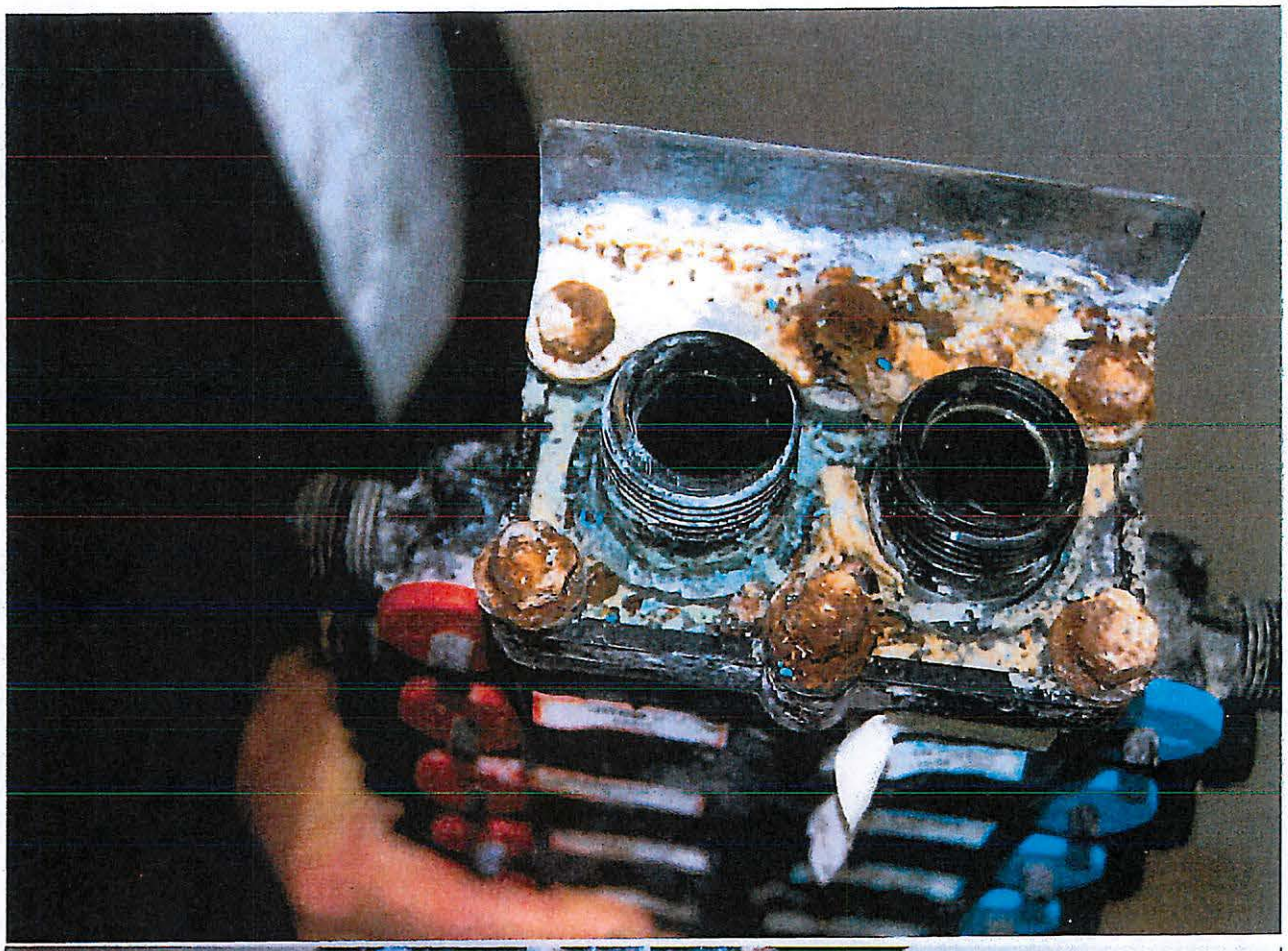
EXHIBIT F

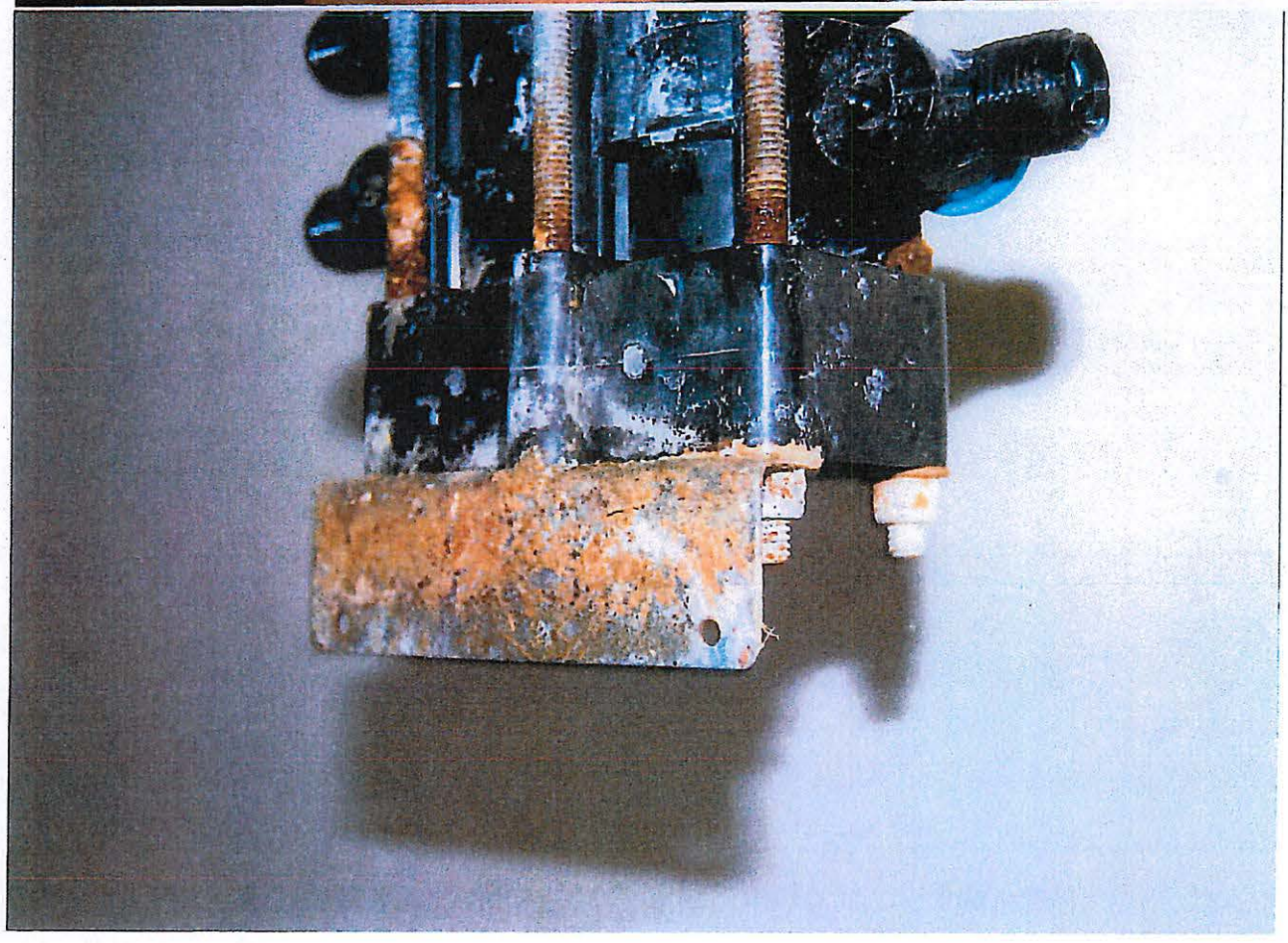
PLAINTIFFS' EXHIBIT 36



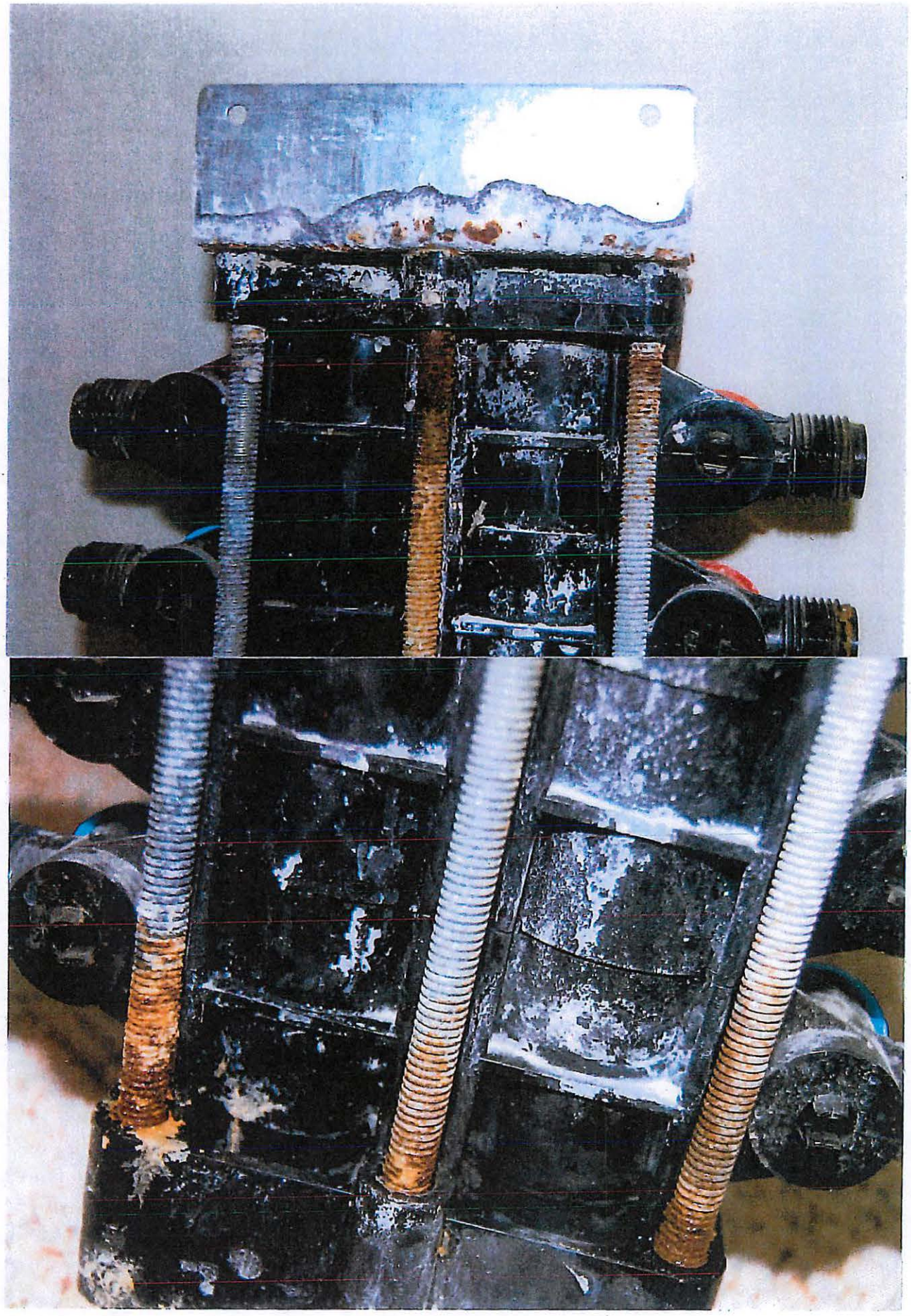


PRICE 0302

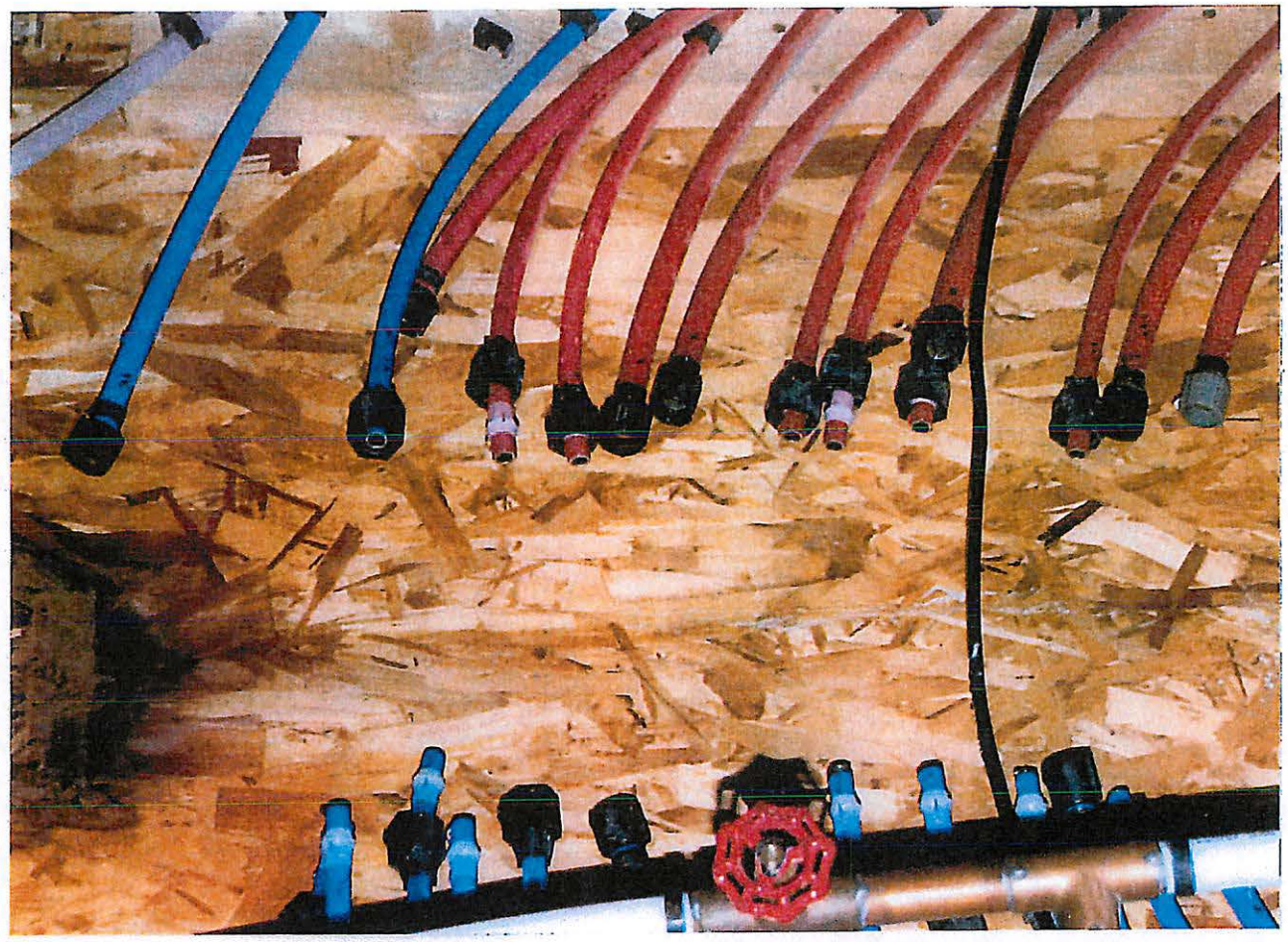




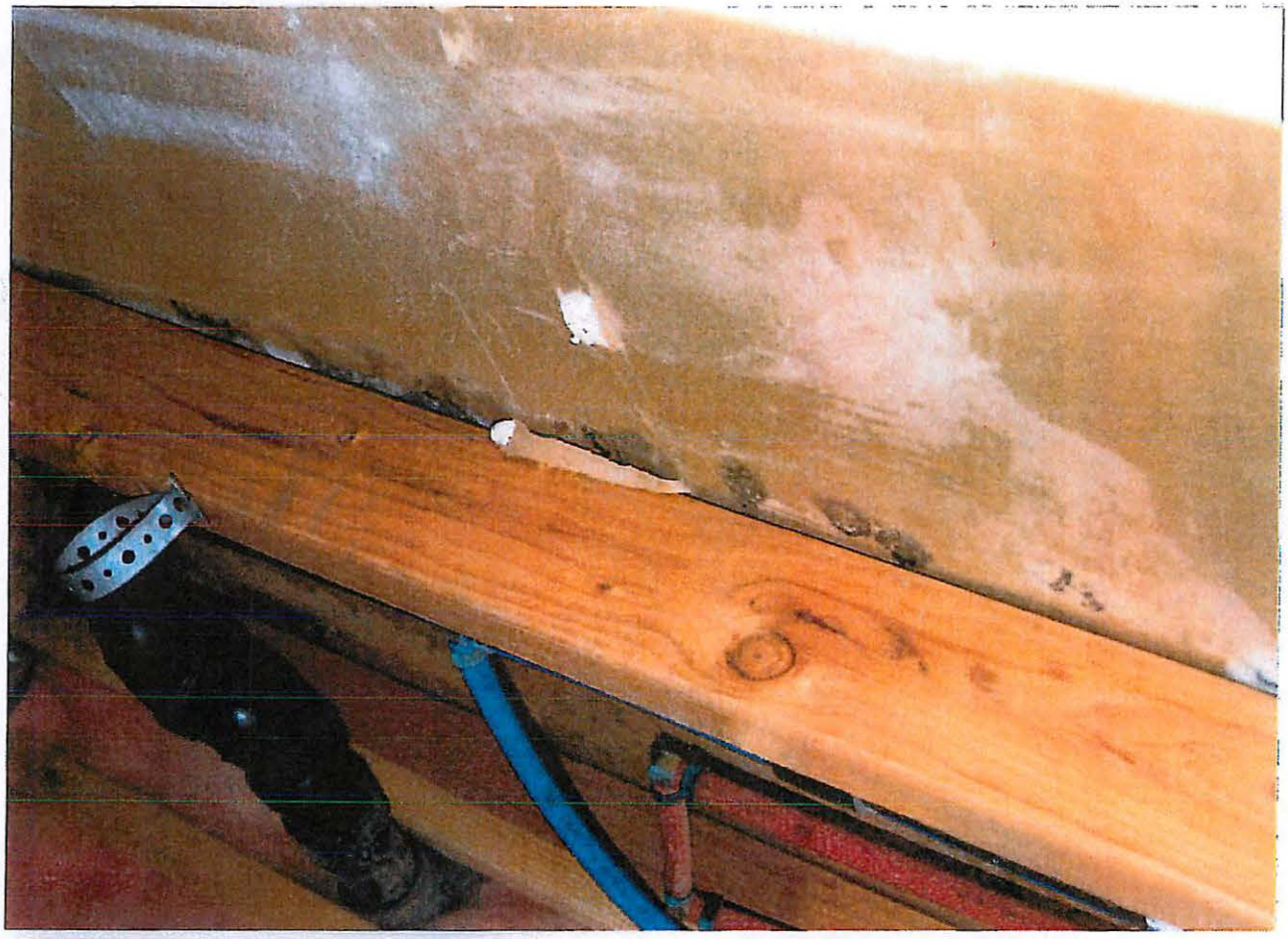
PRICE 0303



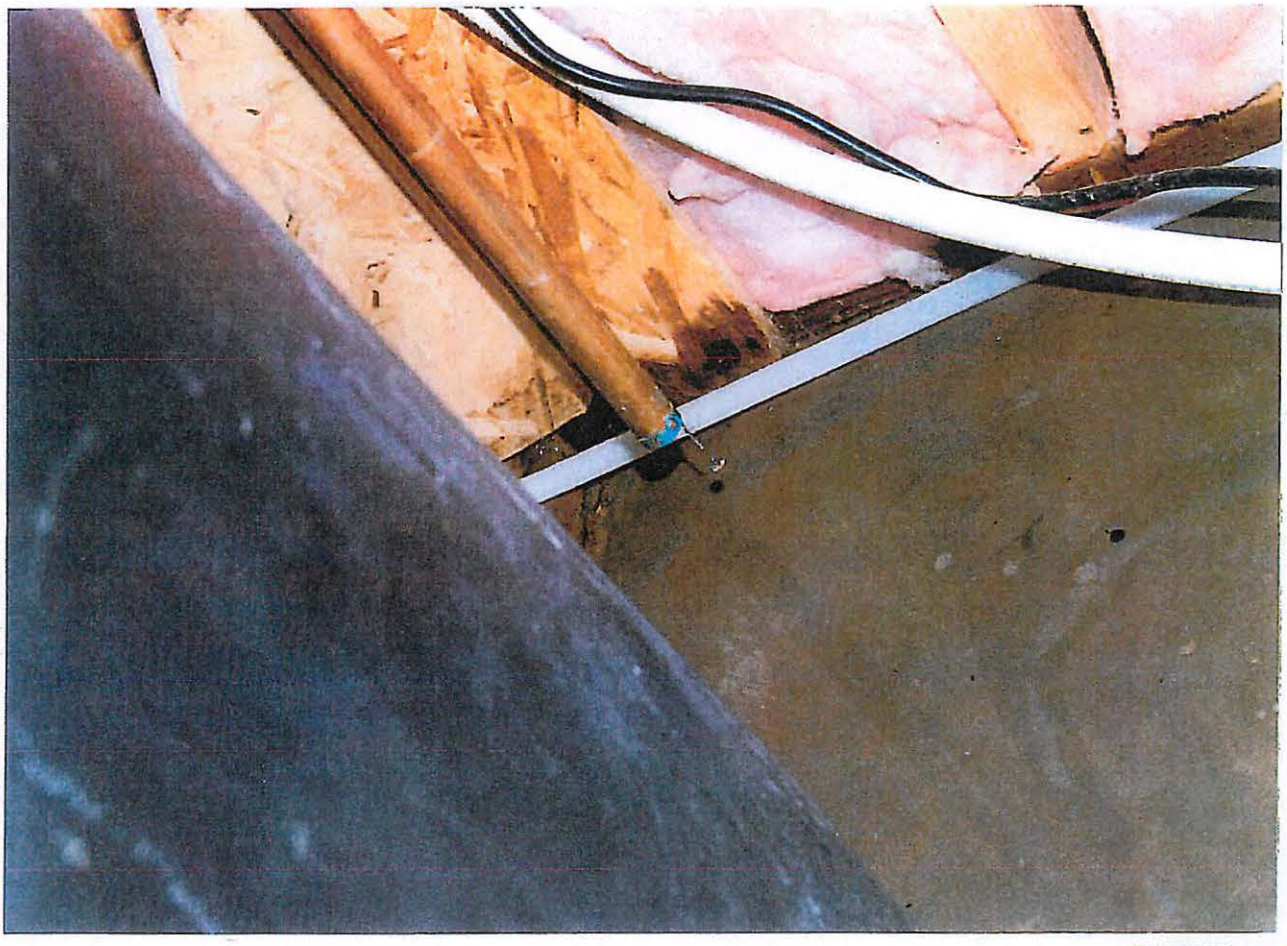
PRICE 0304



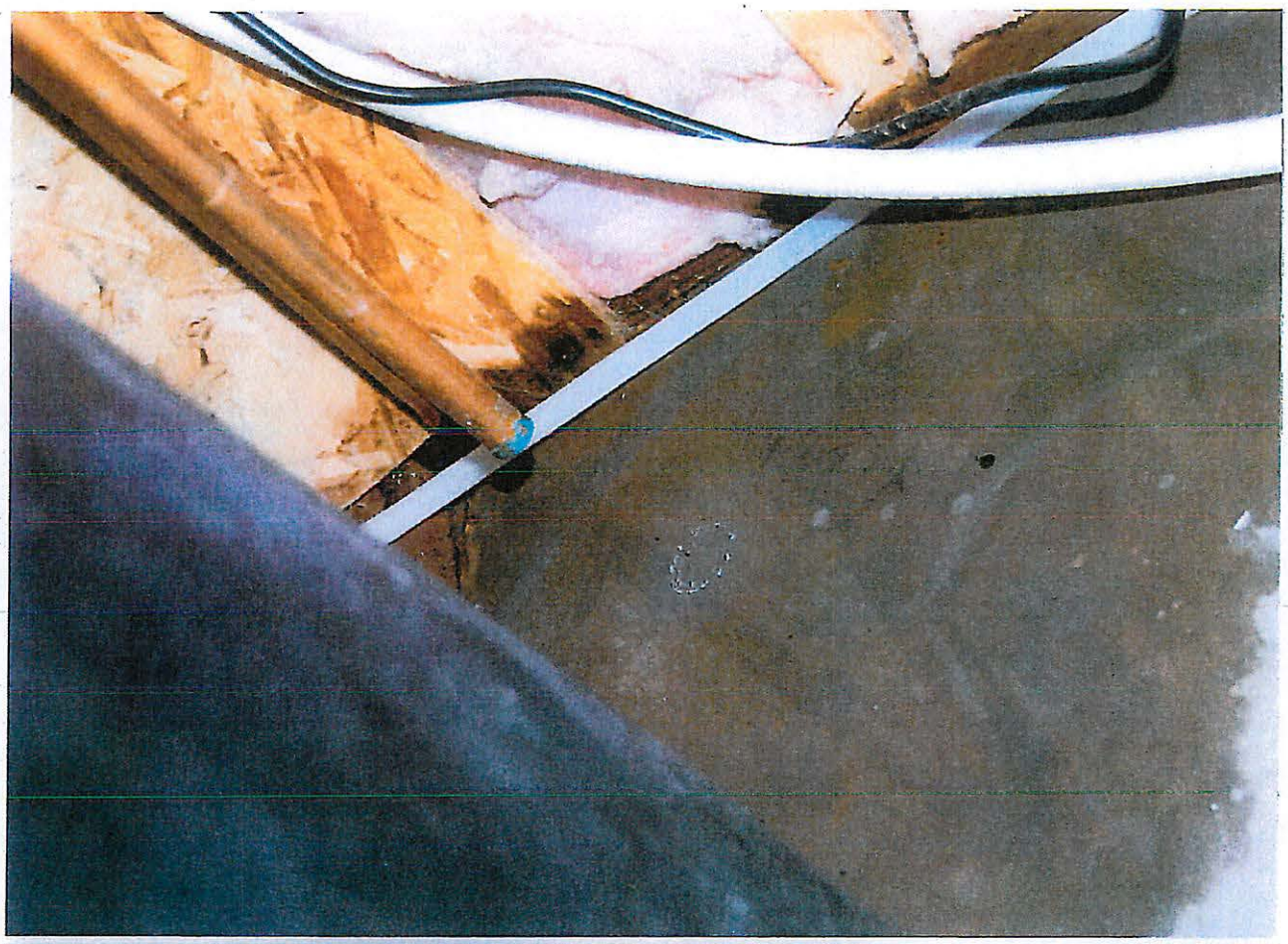
PRICE 0305

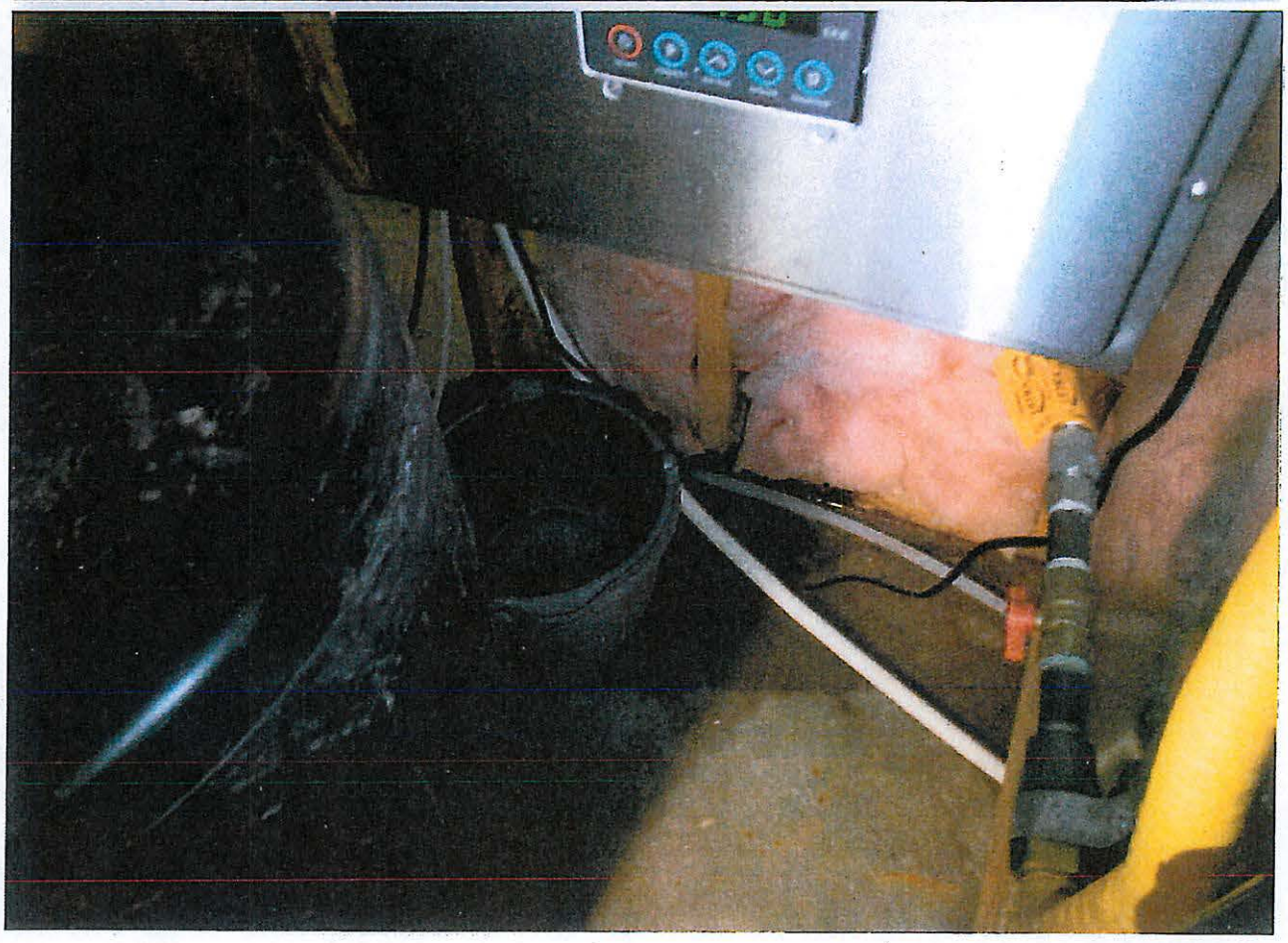


PRICE 0308



PRICE 0309





PRICE 0310

EXHIBIT G

Jeffery J. Owens, #10973
OWENS LAW FIRM, PLLC
299 South Main St., Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 535-4600
Facsimile: (801) 734-8950
jeff@owenslf.com
www.owenslf.com
Attorneys for Defendants

**IN THE SECOND JUDICIAL DISTRICT COURT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

JEFF PRICE and ANN PRICE Plaintiffs, vs. RUFUS SPRAGUE and DANIELLE SPRAGUE, Defendants,	**DEFENDANTS' TRIAL BRIEF** Civil No.: 120701157 (Tier 1) Judge: David R. Hamilton

Defendants/Counterclaim Plaintiffs Rufus Sprague and Danielle Sprague (the "Spragues"), by and through counsel Owens Law Firm hereby submit their Trial Brief.

STATEMENT OF FACTS

Testimony and evidence presented at trial will establish the following facts:

1. On or about August 6, 2012 Plaintiffs and Defendant Danielle Sprague entered into a Vacation Home Rental Agreement (the "Lease Agreement") for the lease of real property located at 591 East Oak View Ct., North Salt Lake, Utah 85054 (the "Property"), owned by the Spragues.

The minimum term of the Lease Agreement was nine months, beginning September 1, 2012 and ending June 10, 2013. *See* Defendants' Exhibit 2.

2. The Lease Agreement provided that the amount payable for "Rent" would include: (1) $3,000 per month; (2) one-time $150 cleaning fee payable before move-in; and (3) all utilities that exceed $250 per month. See Defendants' Exhibit 2.

3. The Lease Agreement provides that if rent is not paid within five days after its due date, a late fee of $50 per day would be incurred. *See* Defendants' Exhibit 2.

4. The Lease Agreement provided for payment of a security deposit in the amount of $3,500.00, payable in advance before move in. See Defendants' Exhibit 2.

5. Before Plaintiffs moved into the Leased Premises, the parties conducted a walkthrough inspection in August 2012, and again on September 7, 2012, immediately after Plaintiffs moved in. During the inspections, Plaintiffs called out a number of items that they felt needed attention, including such things as minor paint defects and hairline cracks in the kitchen tile, but did not list any mold or leaking plumbing fixtures. *See* Defendants' Exhibit 3.

6. Shortly after Plaintiffs moved in, several appliances malfunctioned, including the microwave, vacuum cleaner, and dishwasher, and the garage door was dented. The Spragues immediately fixed each of these problems.

7. Also shortly after Plaintiffs moved in, the Spragues discovered that some prior tenants of the Property with whom the Spragues were currently involved in a legal dispute (the Walkers) were life-long friends of Plaintiffs, and that Plaintiffs were assisting the Walkers in their

dispute with the Spragues. The Spragues requested that the Walkers not be allowed on the Property.

8. The relationship between the parties broke down considerably, and Plaintiffs asked if they could get out of the lease.

9. On Saturday, October 13, 2012, Danielle Sprague, with prior notice to Plaintiffs, conducted an inspection of the Property. See Defendants' Exhibit 7..

10. During the inspection, it was discovered that the water softener tank was leaking, and that the utility room floor was wet. This was unusual because Rufus Sprague had previously shut off and completely bypassed the water softener well before Plaintiffs had moved in. It was also discovered that the water manifold had a very slow leak.

11. Mr. Price informed the Spragues during the inspection that he was leaving on a trip and would not return until October 16, 2012. The water softener was shut off so that it would not continue to leak while he was gone.

12. On October 16, 2012 at 10:23 p.m., Plaintiff Jeff Price sent an email to Defendant Danielle Sprague informing her that he had just returned from his trip and that the water manifold was still leaking.

13. On the morning of October 17, Defendant Danielle Sprague forwarded Mr. Price's email to Plaintiffs' attorney Bill Bradford and indicated that she would need Plaintiffs' permission to have a contractor come in and to inspect the problem. Ms. Sprague contacted Plaintiffs' attorney rather than Plaintiff Jeff Price because she had been instructed to communicate with Plaintiffs only through their attorney William Bradford.

14. Later on October 17, 2012, Plaintiff Jeff Price sent an email to Defendant Danielle Sprague again informing her that the water manifold was still leaking. See Defendants' Exhibit 8.

15. Shortly before noon the next day October 18, 2012, Plaintiff Jeff Price emailed Danielle Sprague informing her that he had arranged for a contractor to come on October 22, 2012, and that the Spragues did not have permission to enter the premises before then. He wrote, "I remind you that you do not have permission to enter the premises with out [sic] us present. I will give you one other option. If [sic] you choose to contact our lawyer, Mr. Bradford, and reimburse us for his fee, he would come to supervise." Mr. Price also opined that the leaking had stopped, and that there was unlikely to be any further damage over the following four days. *See* Defendants' Exhibit 8.

16. On October 22, 2012, Pond's Plumbing inspected the water manifold. Plaintiffs paid the $65 service fee. Pond's Plumbing cleaned up the water that had flooded the furnace room and dried it out. Pond's Plumbing bypassed the water softener so that it would no longer leak.

17. On October 26, 2012, Pond's Plumbing repaired the leaking water manifold.

18. On November 14, 2012, Danielle Sprague inspected the Leased Premises following a report that there was water leakage in the furnace room again. Pond's Plumbing again made a service call that same day.

19. During the inspection, Danielle Sprague noticed that the wall of the furnace room was damaged by a hole that had been cut that was not previously present before Plaintiffs moved in.

20. Upon noticing the hole in the wall, Danielle Sprague began taking photographs to document the damage. Mr. Price insisted that she leave immediately. When she did not leave because was still working with the contractor of fixing the water heater, Mr. Price called the police. *See* Defendants' Exhibit 11.

21. On November 16, 2012, attorney William Bradford sent an email to Danielle Sprague indicating that in his opinion there was a black mold problem at the Property caused by the water leak in the utility room, and that it was her problem and obligation to remedy.

22. On November 23, 2012, Danielle Sprague informed Mr. Bradford that she intended to be at the Property on November 28, 2012 with a contractor to perform any necessary work. *See* Defendants' Exhibit 13.

23. On November 25, 2012, Mr. Bradford copied Mrs. Sprague on an email he sent to his clients in which he referred to Ms. Sprague as a "_itch" and indicated that there had been "mold developments" at the Property and that the Prices planned to "get the hell out of" the Leased Premises.

24. Defendants refused to allow the Spragues access to the Leased Premises on November 28 to investigate and correct any alleged mold.

25. In the afternoon on Friday, November 30, 2012, Plaintiffs served a Notice of Deficient Conditions pursuant to the Utah Fit Premises Act. *See* Defendants' Exhibit 14.

26. Later that same day, the Spragues hand-delivered and emailed a letter to the Prices marked "URGENT NOTICE" indicating that the Spragues would be taking action to assess and

fix the problems stated in the Notice of Deficient Conditions the next day, December 1, 2012 at 9:00 a.m. *See* Defendants' Exhibit 15.

27. Mr. Price responded to the email simply stating that "There will be ground rules to follow." *See* Defendants' Exhibit 16.

28. Ms. Sprague responded, "Please let us know what your ground rules are, we will do our best to comply if the rules are reasonable." See Defendants' Exhibit 16.

29. Mr. Bradford then hand-delivered and emailed a letter that purported to outline a series of 10 specific steps to correct the alleged mold problem and 6 specific ground rules the Spragues would be required to follow.

30. Ms. Sprague responded by thanking Mr. Bradford for his letter and asking that the police not be called as it was not really necessary.

31. Mr. Price (who had been copied on the email) responded by saying, "The North Salt Lake Police have been notified.

32. On the morning of December 1, 2012, the Spragues arrived at the Property with a contractor with whom they had previously worked that was experienced in mold identification and remediation. Immediately upon arriving, the Spragues and their contractor were greeted by the North Salt Lake Police, and Mr. Price began to interrogate the contractor as to his qualifications and as to whether he planned to specifically comply with their demands. The contractor decided he would rather not be a part of the situation and left without completing his work.

33. Within two hours, Danielle Sprague had obtained another contractor, and emailed Plaintiffs indicating that the new contractor would be there within an hour. *See* Defendants' Exhibit 18.

34. Jeff Price responded by saying, "We are out of the county for several hours. We will need reasonable notice. If you enter, you will be trespassing." *See* Defendants' Exhibit 18.

35. Nevertheless, the Spragues arrived at the Property later that day to complete the work, and found nobody home. Danielle Sprague emailed Jeff Price indicating that they would come back on Monday, December 3, 2012 at 9:00 a.m.

36. Later that evening, Plaintiff's attorney William Bradford emailed Ms. Sprague telling her that if they come on Monday or send a contractor to do anything less than or other than ***exactly*** and ***completely*** what [was outlined in his previous letter] . . . and without first committing in writing to do so, specifically, then DO NOT COME. You will not be admitted." See Defendants' Exhibit 20.

37. On December 5, 2012, Plaintiffs served a "Notice of Violation of Fit Premises Act and Notice of Termination of 'Vacation Rental Home Agreement' and Demand for Immediate Refund of Entire Security Deposit." *See* Defendants' Exhibit .

38. On December 6, 2012, as Plaintiffs had not paid the December rent, had not paid the late fee associated with the cleaning deposit, and had never paid for any of the utility bills sent by the Spragues, the Spragues served on Plaintiffs a Notice to Pay or Quit. *See* Defendants' Exhibit 23.

39. Plaintiffs vacated the Leased Premises on December 9, 2012.

40. Plaintiffs paid the following amounts to the Spragues pursuant to the Lease Agreement on the dates indicated: (a) $3,500.00 deposit on or about August 6, 2012; (b) $3,000.00 for rent on or about September 4, 2012; (c) a late payment of the $150 cleaning deposit by check on September 20, 2012; (d) $3,000.00 for rent on or about October 1, 2012; and (e) $2,935.00 for rent on or about November 1, 2012. *See* Defendants' Exhibit 31.

41. Plaintiffs paid no further amounts for the remainder of the term of the Lease Agreement, and never paid any late fees *See* Defendants' Exhibit 31.

42. Plaintiffs never paid any amounts for utilities despite having been provided invoices by the Spragues.

ARGUMENT

I. PLAINTIFF'S CLAIMS AGAISNT THE SPRAGUES.

A. VIOLATION OF THE UTAH FIT PREMISES ACT (THE "ACT"), UTAH CODE ANN. § 57-22-1 ET SEQ.

a. Generally

The Utah Fit Premises Act, codified at Utah Code Ann. § 57-22-1 requires that owners of rental properties keep the unit "in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health . . ." Utah Code Ann. § 57-22-3. It also provides for renter's remedies and procedures in the event a renter feels the residential rental unit does not meet that standard. Utah Code Ann. § 57-22-6. If a renter believes the rental property has a deficient condition, the renter may give the owner a notice of deficient condition. *Id.* The notice of deficient condition must provide a corrective period during which if the owner does not take

substantial action toward correcting the deficient condition, the renter may choose one of two remedies known as the "repair and deduct remedy" and the "rent abatement" remedy." *Id.*

b. Compliance with Rental Agreement Required

However, the Act also provides that "[a] renter **is not entitled to a renter remedy** if the renter is not in compliance with all requirements under Section 57-22-5." Utah Code Ann. § 57-22-6 (emphasis added). Section 57-22-5 requires in order to be entitled to a remedy, the renter, among other things, must be current on all payments required by the rental agreement. It also provides that "A renter may not . . . (c) unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit. *Id.*

Plaintiffs are not entitled to a remedy under the Act because they were not in compliance with all requirements under Section 57-22-5. Specifically, Plaintiffs were not current on all payments required by the rental agreement. They did not pay for any utilities they were obligated to pay, did not pay any late fees for paying the cleaning deposit late, and paid less than the full amount of rent for the month of November, 2012. Thus, they are not entitled to any remedy.

Furthermore, Plaintiffs unreasonably denied access to, refused entry to, and withheld consent to enter the Property to make any necessary repairs, by calling the police, making unreasonable demands, and blocking entry by both intimidation and physically blocking the Spragues from entering.

c. Applies to Principal Place of Residence Only

In addition, the Act defines "Residential Rental Unit" as "a renter's principal place of residence. . ." Utah Code Ann. § 57-22-2. The Property was not Plaintiffs' principal place of residence. They maintained their primary residence in Montana. They repeatedly and consistently referred to the Property as a "Vacation Home," and admitted that their home in Montana was their residence. *See* Defendants' Exhibit 12. Therefore, because it was not their principal place of residence, they are not entitled to avail themselves of the remedies set forth in the Act.

d. Inapplicable to Conditions not Affecting Physical Health or Safety

The Act also specifically provides that "This chapter does not apply to breakage, malfunctions, or other conditions which do not materially affect the physical health or safety of the ordinary renter.

Plaintiffs are unable to establish that there was any condition that materially affected the physical health or safety of the ordinary renter. Plaintiffs failed to designate any expert witnesses in this case, and on March 4, 2015, the Court entered a ruling granting the Spragues' Motion in Limine preventing any lay witness from testifying as to whether any observed substance was or was not mold. If Plaintiffs cannot establish by competent evidence that there was mold in the property, and furthermore cannot testify that any alleged mold if in fact present would affect the physical health or safety of the Prices, then the Act does not apply, and the Prices cannot recover thereunder.

B. BREACH OF CONTRACT

a. Generally

The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of contract by the other party, and (4) damages. *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, ¶ 14, 20 P.3d 388.

Plaintiffs' Breach of Contract claim does not point to any specific breach of the Lease Agreement. Rather, in their Amended Complaint, they point to ambiguous "additional verbal covenants and exchanges between [the parties]" and "implied covenants arising out of the conduct of the parties and 'custom and usage' in the vacation home rental industry." However, they do not specify what those "additional verbal covenants and exchanges" were or how the Spragues supposedly breached them, nor do they specify what the implied covenants are that supposedly arise out of the conduct of the parties and the custom and usage in the vacation home rental industry. Plaintiffs' breach of contract claim must fail for at least three reasons. First, the Parol evidence rule does not permit the court to look outside the unambiguous terms of the Lease Agreement to "additional verbal covenants and exchanges between [the parties]" and "implied covenants arising out of the conduct of the parties and 'custom and usage' in the vacation home rental industry." Second, Plaintiffs' breach of contract claim is barred by the prior breach doctrine. Finally, Plaintiffs have produced no evidence that the Spragues breached any specific term of the written Lease Agreement.

b. The Parol Evidence Rule

Plaintiffs' breach of contract claim, at least insofar as it is based upon any alleged "additional verbal covenants and exchanges between [the parties]," fails under the parol evidence rule. Plaintiffs do not allege that the written Lease Agreement is ambiguous in any way. Any such evidence would constitute nothing more than parol evidence that should not be considered. Parol evidence is admissible only to clarify ambiguous terms; it is not admissible to vary or contradict the clear and unambiguous terms of the contract. *Tangren Family Trust v. Tangren*, 2008 UT 20, ¶ 11, 182 P.3d 326. Plaintiffs have not produced and cannot present at trial any evidence that the Spragues breached any specific term of an admittedly unambiguous verbal or written Agreement.

Therefore, the Court cannot consider "additional verbal covenants and exchanges between [the parties'" and "implied covenants arising out of the conduct of the parties and 'custom and usage' in the vacation home rental industry," whatever they may be.

c. Plaintiffs Did Not Perform on the Lease Agreement.

Plaintiffs' breach of contract claim must also fail under the prior breach doctrine. In this case, Plaintiffs did not perform on the Lease Agreement, and are therefore barred from recovery for any alleged breach by the Spragues. Specifically, Plaintiffs had not paid their portion of the utilities; had not paid late fees required by the Lease Agreement; and had not paid the full amount of rent for the month of Novembher, 2012. Thus, Plaintiffs are not entitled to recover for breach of contract, and their claim must fail.

d. Plaintiffs can offer no evidence that the Spragues breached the written Lease Agreement.

Plaintiffs have failed to point to any specific provision of the written Lease Agreement the Spragues allegedly breached. It is undisputed that the Spragues granted a leasehold interest in the Leased Premises for the term of the Lease Agreement. That was all that was required of them pursuant to the Lease Agreement. Prior to signing the Lease Agreement, and again after moving in, Plaintiffs had the opportunity to inspect the Leased Premises, and found no significant defects (though they did point out a multitude of minor paint defects).

C. FRAUD IN THE INDUCEMENT.

a. Generally

Plaintiffs' third claim is for rescission of the Lease Agreement on the basis of fraud in the inducement. However, Plaintiffs cannot produced any evidence of fraud.

> Under Utah law, to bring a claim sounding in fraud, a party must allege (1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage.

Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060, 1067 (Utah 1996). Plaintiffs' fraud claims fail on all of the nine elements. Furthermore, "to prevail [a plaintiff] must present evidence that

clearly and convincingly establishes every essential element of fraud." *Armed Forces Ins. Exch. V. Harrison*, 2003 UT 14 at ¶ 27.

b. Plaintiffs Fail to Establish the Essential Elements of Fraud.

The evidence to be presented at trial in this case will clearly demonstrate that Plaintiffs fail to carry their burden on each of the elements of fraud. For example, there is no evidence that prior to and at the time the Lease Agreement was signed (which is the relevant time period for a fraud in the inducement claim) that the Leased Premises was not in fact safe, habitable, and fully furnished with functioning appliances and equipment. In fact, Plaintiffs inspected the Leased Premises fully prior to signing the Lease Agreement. Thus, any such statement was not made concerning a presently existing material fact (the second element); was not false (the third element); was not made by the Spragues knowing it to be false (the fourth element); and Plaintiffs could not have reasonably relied on any such statement because they thoroughly inspected the Leased Premises prior to signing the Lease Agreement, and again after moving in.

Plaintiffs' allegation that the Spragues committed fraud by making the statement that "The Vacation Home contained all features and amenities 'like a vacation home should'" similarly fails. First, Plaintiffs do not specify what features and amenities a vacation home should contain. The features and amenities that should be contained in a vacation home is a matter of personal opinion, and cannot therefore be false. In addition, Plaintiffs do not allege what features and amenities were missing that should be contained in a vacation home. Second, Plaintiffs have produced no actual evidence that the Spragues ever made such a statement in the first place.

Plaintiffs' allegation that the Spragues committed fraud by allegedly making a statement that their ad on KSL.com was true and reliable fails for the same reasons. There is no evidence that at the time it was published, the ad was anything but true and reliable. Plaintiffs do not allege what makes it untrue or non-reliable, or how any statement contained in the ad influenced their decision to rent the property, or produce any evidence supporting any of those elements.

Finally, the fourth statement identified by Plaintiffs as allegedly fraudulent, that "Defendants were acting in good faith and intended to perform all of their covenants, express or implied, contained in their Agreement with plaintiffs" fails on similar grounds. Plaintiffs do not allege, and can produce no evidence that the Spragues did not act in good faith and intend to perform all of their covenants contained in their Agreement with Plaintiffs. They do not identify what covenants were not performed. They make no allegation as to anyone's state of mind prior to the signing of the Lease Agreement.

For the foregoing reasons, Plaintiffs' claim for fraud in the inducement must fail. There are no material facts in dispute, and the Spragues are entitled to judgment as a matter of law.

II. THE SPRAGUES COUNTERCLAIM FOR BREACH OF CONTRACT.

The Spragues counterclaimed against Plaintiffs for breach of contract and other related claims. It is undisputed that the Lease Agreement is valid, binding, and enforceable upon the parties. It is undisputed that the Spragues in fact granted a leasehold interest to Plaintiffs. It is undisputed that pursuant to the Lease Agreement, Plaintiffs had an obligation to lease the Leased Premised for a period of nine months, to pay rent and a cleaning fee, to pay late fees in the event rent was paid after a certain date, to pay any utilities over and above $250.00 per month.

The evidence to be presented at trial is clear and uncontroverted that Plaintiffs did not in fact pay all amounts required for rent and the cleaning fee; and that Plaintiffs failed to pay amounts due and owing for utilities. In addition, Plaintiffs moved out on December 9, 2012 in violation of the Lease Agreement. At trial, the Spragues will present evidence of actual damages in the amount of at least $14,190.79 in unpaid rent, plus late fees in the amount of $50 per day from September 6, 2012 to September 20, 2012 ($700.00) relating to the unpaid cleaning deposit and from October 10, 2012 to December 9, 2012 ($3,000.00) relating to unpaid utility charges. In addition, the Spragues will present evidence of waste to the Property totaling $5,613.00. Finally, the Spragues are entitled to prejudgment interest at the statutory rate from December 9, 2012 to the date of judgment. Utah Code Ann. § 15-1-1.

Therefore, Plaintiffs breached the Lease Agreement, resulting in monetary damages to the Spragues, and the Spragues are entitled to judgment on their counterclaim against Plaintiffs.

CONCLUSION

Plaintiffs fail to establish a prima facie case on each of their claims, and the Spragues are entitled to judgment thereon. Furthermore, the Spragues will present evidence at trial that supports their claim for breach of contract, and are entitled to judgment against Plaintiffs thereon.

DATED this ____ day of March, 2015.

OWENS LAW FIRM, PLLC

/s/ Jeffery J. Owens
Jeffery J. Owens
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March, 2015, a true and correct copy of the foregoing **TRIAL BRIEF** was served by the method indicated below, to the following:

Matthew N. Evans	( ) U.S. Mail, Postage Prepaid
A.J. Green	( ) Hand Delivered
36 South State Street, Suite 1400	( ) Overnight Mail
PO Box 45385	( ) Facsimile
Salt Lake City, Utah 84145-0385	(X) E-Filing

/s/ Jeffery J. Owens