

1992

Lori Waters v. Garth T. Howard, Afton Jean Howard : Brief of Appellee

Utah Court of Appeals

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Garth T. Howard, Afton Jean Howard; Appellees Pro Se.

Bruce Plink; Utah Legal Services; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

LORI WATERS,

Plaintiff/Appellant

VS

GARTH T. HOWARD and

AFTON JEAN HOWARD

Defendant/Appellees,

*

*

Case No. 920662 - CA

*

Priority No. 15

*

*

Trial Case # 893001449 CV

BRIEF OF APPELLEES

APPEAL FROM THE THIRD CIRCUIT COURT

SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

HONORABLE JUDGE PAUL G. GRANT PRESIDING

**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO.

920662

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FILED

Utah Court of Appeals

MAR 2 1993


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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Plaintiff/Appellant

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"NEW DISCOVERY" - *

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LORI WATERS,	*	
Plaintiff/Appellant	*	
vs.	*	Case No. 920662-CA
GARTH T. HOWARD and	*	
AFTON JEAN HOWARD	*	
Defendants/Appellees,	*	Trial Case No. 893001449 CV

BRIEF OF APPELLEES

JURISDICTION AND NATURE OF REVIEW

This court has jurisdiction of this appeal pursuant to
Utah code SS78-2a-3(2) (d) and 78-4-11.

***** STATEMENT OF THE ISSUES AND STANDARD OF REVIEW **

May the buyer of property on a Real Estate Contract (Ex."A- 4pages) which has been acknowledged and signed before a Notary, be able to BREACH the covenanted provisions (Ex."F") and then also destroy the premises, PAY NO PAYMENTS/or RENT and refuse to give up possession of the property/premises as he has covenanted to do ? And then CONSPIRE A INTERVENOR - POSSESSION - OCCUPANCY - RENT of the premises with Co-conspirer wife of his employee Waters and by so doing are violating UTAH CODES 78-36-1, and 78-36-2, and 78-36-3, 78-36-10, 78-36-12.6, the violations are also violating the UTAH AND UNITED STATES CONSTITUTIONS.

"TO MAKE A LONG STORY SHORTER:" (Legend: Ex. means exhibit/s,)

- a) THERE SHOULD BE STRICT PERFORMANCES REQUIRED
TO ALL THE CONTRACTUAL PROVISIONS OF THE CONTRACT .(Ex."A")
- b) THERE SHOULD BE VERY STRICT "STATUTORY COMPLIANCE " TO
CONTRACT"S PROVISIONS. (CASE NO. 883004435
- 2) THE FACTS SEEM REASONABLY CLEAR IN THIS MATTER: HOWARD"S EXECUTED
A REAL ESTATE CONTRACT OF SALE TO A 3rd PARTY (KRUKOWSKI) THEN
KRUKOWSKI DEFAULTED/BREACHED THE CONTRACT"S PROVISION"S (EX."F")
and HOWARD FILED AN ACTION **in Sandy Circuit Court,
(case No. 883004435 - DOCKET-(addendumEx'B")); Brenda
Krukowski made a hand written answer to complaint (Ex."6")
(addendum- 37- 1) ; COURT ruled AGAINST HOWARD ; THEN Howard's
filed action in Murray Circuit Court (R.44); Krukowski ABANDONED-
THE PREMISES (UTAH CODE 78-36-12.6 and 78-36-3 and 78-36-10).
- 3) Bruce Plenk; Waters attorney made a EGREGIOUS MISTAKE in filing
case No. 893001449- Murray Circuit Court. Pro- Se Garth Howard
informed him that I had a prior action against Krukowski's in the
SANDY Circuit Court, and I told him the case No.883004435 ; BUT he
knew I had not AMENDED the cases together and that I was a very dumb
Pro-Se and that I did not know the UTAH CODES and RULES :
GOLLY just look at the facts
of this case No.893001449, Murray Circuit Court : HE AS A SCHOOLED
ATTORNEY; & KNEW THAT WATERS HAD NO CASE (UTAH CODE 78-36-7)
THE Real Estate Contract can give birth to PROPERTY RIGHTS(Ex."A-4p)
IT can also give DEATH TO IT'S PROVISIONS(Ex."F").
- 4) Randy Krukowski fraudulently rented aforesaid premises -
(Ut. code 78-36-3
to Lori Waters ; AND Randy was already in a BREACHING condition
PRIOR to the fraudulent renting to waters; which resulted in the
TERMINATION of Krukowski's Ownership Rights
and started the controversy of PROPERTY POSSESSION.(Ex."F")

This court should review the facts and inferences in the light most favorable to Howard's the partially winning party below and resolve doubts or uncertainties about the facts in Howard's favor. The trial court's legal conclusions are reviewed for correctness ; Canfield V. Albertson's, Inc., 200U. A. R. 61, 62 (Utah Ct. of App.,Nov. 13, 1992).

DETERMINATIVE STATUES AND RULES and EXHIBITS*

UTAH CODE SS 78-36-1, 2, 3, 6, 7, 8, 10, 11, 12, 12.1, 12.3, 12.6, and Tanner V. Lawler, 6 Utah 2d 84, 305P. 2d 882, modified on another point, 66 Utah 2d 268, 311 P.2d 791- intervenor claim -(1957)* Legend :Ex. means Exhibit/ss)* and Ex. A-4pages, Ex. B- 2pages, Ex. C- 3pages, Ex. COV, Ex. F- 2pages, Ex. G, Ex. H, Ex. N, Ex. RENT, Ex. R, Ex. S, Ex, S-C -3pages, Ex. S-R- 4pages, Ex. 2, Ex. 6, Ex. 7, Ex. 8, Ex. 10, Ex. 11, Ex.12aa, Ex. 12, Ex. 13, THIRD CIRCUIT COURT Sandy Dept. Case No. 883004435 CV-"NEW DISCOVERY"

STATEMENT OF THE CASE

This action for conversion, forcible entry and detainer, wrongful eviction, and other claims was filed by the INTERVENOR Waters against the Howard's(R.1-6). The action was set for trial, (R.31) on the courts own motion, the Howard's trial brief was deemed a motion for summary judgement on the issues of forcible entry and detainer and wrongful eviction and granted without testimony or affidavits being presented. (R.63-4, 71-75).

The trial court found that the facts were not in dispute. on Oct. 88, INTERVENOR alleged she rented the premises of: 1067 E. Diamond Way, Sandy, Utah, from her husband's employer/friend Randy Krukowski, who had previously

DEFAULTED/BREACHED his Real Estate Contract that was used to (Ex."F") purchase the aforesaid property from Garth and Afton Jean Howard on a Real Estate Contract, the contract was not a UNIFORM (Ex."A")(Ex."C", real estate contract (R.51, 53), Krukowski defaulted and Howard's (R.23-27) Howard's started an ACTION against Krukowski's in the SANDY DEPT. of the Third circuit court case No.883004435 (Exhibit "C 3-pages and exhibit ss F, G, H and S, and S-C, and exhibit"8", and Ex."B")

A SECOND ACTION was served on Krukowski (R.44) Howard obtained a default judgement against Krukowski (R.72, para.6) Howard also got a Writ of restitution(R.45)a constable posted the writ on the premises(R.45)(Utah code 78-36-6).

SUMMARY OF ARGUMENT

This fraudulent/wrongful INTERVENOR renting by krukowski to his employee's wife Lori Waters was conspired by mutual agreement of krukowski/Waters and HER occupancy of the aforesaid premises as of Oct. 25, 1988,
Which is (52)days after the commencement of the action that (Ex."F")
Howard's started against the krukowski's breaching of the (Ex."C")
contract provisions and the Utah code 78-36-7 and by so
becomeing a INTERVENOR , she is guilty of the same and more
of the same codes she is accuseing me of violating, AND

THERE IS RECORDED BY THE COURT FILES PROOF THAT SHE IS LYING
ABOUT THE ISSUE,*The Krukowski's were served by a Constable
at the premises address of 1067 E. Diamond WAY, sandy,
Ut. on 3rd day of September 1988 -"NOTICE OF DEFAULT" (Ex"F")
Which is (52) days before she ALLEGES *occupancy of the premises
that her and the krukowski's were shareing, at that time so
Lori was well informed about the issues of the problems the
Howard's were having with the Krukowski's at the
Commencement start of the eviction process., AND that the (ExHIBIT"F")
ACTION that I filed in the SANDY DEPARTMENT of the THIRD
CIRCUIT COURT, Sandy ,Utah, (Exhibit"B- 2pages)Judge said; as of
that DATE ; Mr. Krukowski had the status of OWNERSHIP and
not "A TENANT AT WILL")because he was in breach of the
Contract ,me and him signed, (there was a error made by the
Judge)in that action No.883004435 of Sandy Dept. of the (Ex. "b- 2pages)
THIRD CIRCUIT COURT), The error was that the Howard's could
CONTRACT AWAY" ownership by aforesaid Real Estate contract
.BUT the same contract IF/WHEN was breached by Krukowski did
not PUT krukowski in the position of "TENANT at WILL" which
it had the option to do upon NOTICE of DEFAULT being served
on the Krukowski's,(golly talk about a frustrating issues)
*The Howard's by Contract could give but the same (Exhibit"A- 4-pages)
PRIVILEGES could not be used by "Howard's", in DEFENSE of
their interests in the Property possession/Ownership AND it
required another legal ACTION which was initiated in*(This action
was commenced*(Exhibit"B- 2pages")and is (29) days prior
to Waters Intervenor claim of Premises Occupancy Via Krukowski's),
"MURRAY DEPT. , Third Circuit Court case No. 883009797 CV. \$

where Judgement of Restitution and Damages were Rendered to
 the Howard's * (this information was made available to Bruce
 Plenk* prior to his filing the Action against the Howard's
 for the intervenoring Waters Action No. 893001449 AND as
 a PRO-SE person I did not know then that I could use the
 facts from the prior actions in my defenses of waters
 intervenoring claim to Occupancy of Howard's property/Rights
 , possession ; AND later she was put off of the premises
 by a court writ and she is crying foul; even after she had
 many notices gave to her about her illegal taking/possession
 of the howard's property .

1) ARGUMENT

Waters and Krukowski are conspiring about Lori Waters
 alleged renting of aforesaid Premises and they
 are committing a Intervenor/fraud.

Utah Code- 78-36- 7. was violated; by action filed by Waters
 and the Real Estate Contract was breached by krukowski; the
conditions which had been agreed to by all parties
 which signed said contract; **KRUKOWSKI and trespasser Waters
 are TRYING TO MAKE CLAIM OF:-*(INTERVENOR-78-36-3- see notes-
to decisions-.78-36-10-UTAH CODES)-(Tanner V. Lawler, 6 -
 Utah 2d 84, 305 P. 2d 882* modified on another point- see
 aforesaid utah codes notes)*- owner/manager Rights that had been
TERMINATED_by"Notice of Default" Via Real Estate Contract the
ORIGINAL SOURCE of ANY RIGHTS that -KRUKOWSKI was privy to
in the first place, which KRUKOWSKI- before A NOTARY PUBLIC :
signed and sealed and DELIVERED said contract TO all parties who
was related to said Contract's COVENANTS
 and accepted/agreed to by Krukowski-

(see "Real Estate Contract (Exhibit"A"-4pages).

(see summons and complaint- case No.883004435, Sandy (Exhibit "B")

Dept.-Third Circuit Court-(Exhibit"S" Summons

and Complaint as Exhibit "C "of three(3)pages and

Utah code 78-36-6, and 78-36-7, and 78-36-12.6 and

78-36-12.3 para.2),3 para.(a),(b) and 78-36-3- para. 1,

a,c,d,e)-78-36-6 and 78-36-3 para. 1,c,d,e)-

KRUKOWSKI'S ABANDONED THE PROPERTY-(Ut.Code-

78-36-12.3-sub. para.(2),(3,a. b.)).(Utah Code 78-36-12.3-

paragraph (3)- * DEFINITIONS OF ABANDONMENT "

KRUKOWSKI'S were served : "SUMMONS and COMPLAINT-

were served AT : 1067 E. Diamond Way, Sandy, Utah

on Krukowski : on the 08/15/1988(see return of service

mark as(Exhibit "2"of (2)two pages and

Utah code 78-36-6 and 78-36-3 para. 1,c,d,e)-78-36-7-utah code,-

"NOTICE OF DEFAULT was served on Krukowski- 20 Oct, 1988-

see Exhibit"F" -Utah Code 78-36-6).-

said notice of default put Krukowski into the status of a

"TENANT AT WILL" ,because of the breached COVENANTS of the

aforesaid CONTRACT's provisions/covenants'*(Exhibit-

*F,para. 4, a). and Utah code 78-36-6.,and 78-36-3 para,1,

c, d, e)-Utah code 78-36-3. -Notes to decisions- Tenancy at Will-,

1.)

ARGUMENT

Waters did not have any TENANT RIGHTS or SUB-TENANT RIGHTS-

SUMMARY OF ARGUMENT

WATERS' lost her rights at same time that Krukowski's was a
TENANTS AT WILL on the property/premises by Krukowski's-
"COVENANT BREACHING OF :the aforesaid contract's covenant's
To Howard's owners of premises at 1067 E. Diamond Way,
Sandy, Utah. ALSO (see UTAH CODE-78-36-7. (1),(2)-And-
* Necessary parties defendant.;and Exhibit"F,para. 4,a.")-
and Utah code 78-36-6) Exhibit "D")

WATERS AT THIS part OF THE ACTIONS

WAS NOT PART OF CASE No. 883004435 Sandy dept. action

when the action was Commenced(Utah code 78-36-7, and

Utah Code 78-36-7 para.(1) AND paragraph -2)-

- Waters was a "INTERVENOR" and/or-

WATERS WAS A TRESPASSER and is GUILTY OF: UTAH CODE . 78-36-1

FORCIBLE ENTRY" defined.

2.)

ARGUMENT

AND Krukowski had damaged the premises and then moved most
of his personal possession were gone from the premises .

SUMMARY OF ARGUMENT

Krukowski ABANDONED THE PREMISES (Exhibit "C",and Utah
Code 78-36-6, and 78-36-12.6 and 78-36-12.3,)-

There was NO RENT PAID BY : krukowski or Waters-(Utah code-
78-36-12.3,(3)a,b.).

The Howard's was not paid any RENT FOR TWO (2) MONTHS -

(see "notice to perform Covenant- Exhibit COV",

and Utah code 78-36-6, and 78-36-12.6 para.1, and 2)-

3) ARGUMENTS

WHEN THE SECOND ACTION -case No. 883009797 was commenced

does not give WATERS and/or KRUKOWSKI any RE-NEWED RIGHTS

pertaining to the aforesaid property/premises

SUMMARY OF ARGUMENT

(Utah Code 78-36-7.(1), (2).

4) ARGUMENT

When the Waters/INTERVENOR/trespassers were Evicted from the
Premises/PROPERTY , HOWARD's USED NO SELF-HELP.

SUMMARY OF ARGUMENT

THERE WAS A S.L.County Sheriff there
to referee the eviction process which was done on the
date of: 01/04/1989 at time of 1830 hours, AND "NO RENT had
been paid, since the INTERVENOR'S/trespasser took the premises
(see the S.L.County Sheriff's report, case No. 89-971
consisting of *four* (4) pages ,
as Exhibit " S-R -(4) pages)case No. 883004435 RESULTS

Krukowski's/Waters to go without paying any rent which violated the
Ut. Code 78-36-12.3 sub. para. (3) and (a) -

KRUKOWSKI had not paid any RENT-(see Exhibit "COV")-
(R.72para.6)-, (R.45),-(R.58)

Waters /not paid any rent since (as she stated) she had
paid Krukowski rent on 25 OCTOBER 1988 -(R.72,para.2).
(R.72para.6), (R.45), (R.58).

HOWARD'S used the S.L. county Sheriff Dept. to do the-
EVICTON OF WATERS'(R.58), (R.59)(R.72para.6), (R.73),-
No. 89-971)integrated hereto as Exhibit "S-R (4 pages

5) ARGUMENT

THE FACTS SEEM REASONABLY CLEAR IN THIS MATTER.

SUMMARY OF ARGUMENT

Howard's executed a contract of sale with a 3rd party.
 The third party Defaulted contract and Howard's filed a
ACTION case No. 883004435, in the SANDY DEPT. of the
THIRD CIRCUIT COURT - and (see Exhibit"C-of three(3)pages.)-
also(EXhibit"COV"), (exhibit"C"), (Exhibit"F"-of two(2)-pages)-
(Exhibit "Rent")(Exhibit"B"of 2-pages)

6) ARGUMENT

KRUKOWSKI wasted the premises and moved in Oct, 1988
(Exhibit"N")- AND Violated (Utah code 78-36-3(1,a,b,c,d,e)).-
(Unlawful detainer by tenant for term less than life,)

SUMMARY OF ARGUMENT

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

(a).When he continues in possession, in person, or by
 subtenant, of the property, or any part of it,-

(c).or rent defaulted after (3)day notice

(d).WHEN HE ASSIGNS OR SUBLETS THE LEASED PREMISES CONTRARY TO COVENANTS OF THE , OR COMMITS OR PERMITS WASTE ON THE PREMISES,

7) ARGUMENT

KRUKOWSKI ABANDONED THE PROPERTY/PREMISES

SUMMARY OF ARGUMENT

HOWARD's the owners took POSSESSION OF THE PREMISES BY

AND PURSUANT TO Utah Code 78-36-12.Retaking abandoned PROPERTY

MURRAY DEPT. THIRD CIRCUIT COURT- issued judgement of :-

A WRIT OF RESTITUTION WAS GRANTED:- (Exhibit"12aa)-

(subsequently to the Real Estate- Contracts/-BREACHED-covenants and conditions which Krukowski had previously made a

Contract DEFAULT and TERMINATION OF SAID CONTRACT RIGHT that

were previously privy to Krukowski; NOW for a SECOND TIME-

A writ foreclosed ANY RIGHTS that Krukowski held in

the Premises/Property, ALSO it foreclosed ANY RIGHT

that INTERVENOR/trespasser Waters held in the Premises; (R.73)-

BECAUSE WATERS was in POSSESSION only under the aspecess

of Krukowski; AND there was no Privity of contract- (R.73-74)-

between HOWARD'S or Waters either by written or Oral Lease.

Waters had NOTICE OF THE LEGAL PROCEEDINGS- (R.45)and

Exhibit "10"), AND knew that she must move from the premises

because her rights of possession were only good so long

as Krukowski had any legal Rights in the Premises/Property.

(see 3rd Cir.,Court-Docket- Exhibit "12a.a.)

8) ARGUMENT

INTERVENORS/Krukowski's/Waters' made "FORCIBLE Entry into the premises,

SUMMARY OF ARGUMENT

TRESPASSERS - Waters' were found living in the house.

Howard's took no further action, because Waters' said

they were renting from Krukowski's (Exhibit"N")-

PREVIOUSLY ***

HOWARD filed Second ACTION Murray Dept. Case No.883009797

in the Third Circuit Court - Murray Department -(emphasis added)

DETERMINATIVE STATUES AND RULES

UTAH CODES, 78-36-1, and 78-36-7, and 78-36-10 and 78-36-12.

3, and 78-38-12.3 . ; 78-36-7, 78-36-3, 78-36-6, 78-36-12.6,)

AND LEGEND: Ex.is made to mean EXHIBITS) EXHIBITS-"A of 4)pages,

and- Ex."C-3 pages, and Ex."Ca, and Ex."COV" and Ex."H",and

Ex."F" and Ex."N", and Ex."RENT", and EX."S", and Ex."S-R-of

4)pages, and Ex."2", and Ex."7", and Ex."8", and Ex."10",

and Ex."11",and Ex."12", and Ex.12aa, AND Ex."12",).

AND THE NEW DISCOVERY OF PRIOR ACTION, SANDY Dept.

THIRD CIRCUIT-(Ex."C-3pages)-

COURT - CASE No. 883004435 - Filed 11 / August 1988

The Howard's, Plaintiffs,filed Action against Randy P. Krukowski

and Brenda Mast Krukowski, Defendants ... in a (Ex."B- 2-pages)

COMPLAINT FOR : UNLAWFUL DETAINER; and BREACH OF CONTRACT : Case

No. 883004435 *Third Circuit Court SANDY CITY DEPARTMENT,

9) ARGUMENT

*Many NOTICES served on Krukowski **

SUMMARY OF ARGUMENT

09/03/88/ Return of service/ Constable Nemelka/ Exhibit "F"(2)pages
10/20/88 - Constable Nemelka - POSTED PROPERTY and
mailed CERTIFIED COPY to : Randy - Exhibit "7"-2-pages)-
COURT HEARING NOTICE - mailed by court - Exhibit "H ").
DEFENDANT had ATTORNEY - see Attorney's letter- Exhibit "8").
NOTICE TO PERFORM COVENANT -served by -Owner - Exhibit "C').

10) ARGUMENT

Krukowski was destroying the premises ,broken doors,-(
window(removed coal stove -

SUMMARY OF ARGUMENT

Sheriff Report - Exhibit "S-R).

10a.) ARGUMENT

HANDICAPPED ** Pro Se GARTH T. HOWARD is DISABLED *.
 AND had a hard time climbing the STAIRS to the COURT -
 At the time Sandy dept. case No. 883004435 was filed
 the Sandy dept. was located two (2) levels of upstairs;
 the Pro- Se Howard found the stairs real hard to climb

SUMMARY OF ARGUMENT

Pro- SE Howard phoned the CLERK AT SANDY DEPT. AND
 explained that the Pro-Se Howard was DISABLED and he had
 a hard time getting to the court; and that the Pro-SE
 Howard was HAVING A LOT OF PROBLEMS FROM THE DEFENDANT'S
 KRUKOWSKI'S and that he needed further HELP from the
courts in getting possession of his property from Krukowski's.

I the Pro-Se Howard asked if I could
go down to the MURRAY Dept. because it was more easy for
me(Howard), to get to the court for they had no stairs
HOWARD WAS INFORMED BY : the SANDY COURT CLERK -THAT IT
WAS THE SAME COURT SYSTEM **
BUT JUST A DIFFERENT DEPT.OF THE THIRD CIRCUIT COURT .
and that I could seek help LEGALLY down there at the
MURRAY dept.so PRO- Se Howard FILED -(Exhibit"12aa.)-
A SECOND COMPLAINT: WAS ALSO SERVED ON KRUKOWSKI ,
AS COMPLAINT FOR : BREACH OF CONTRACT: COMPLAINT FOR
EVICTON, (unlawful detainer,) case No. 883009797
issued from MURRAY CIRCUIT COURT (R.44) and the
constable had a real hard time trying to locate the
KRUKOWSKI's.. They had abandoned the property and moved
to parts unknown to nobody but the *INTERVENOR (Waters'
see Constable's unable to locate Return - Exhibit "12").

11) ARGUMENT

WATERS DID NOT KNOW WHERE HER LANDLORD LIVED

SUMMARY OF ARGUMENT

She said she was renting from Krukowski but yet she did not know where Krukowski had moved to ; Waters' Husband was employed by krukowski and was a good friend of krukowski; and Mr. Waters ; each day (five/six days a week - went to work with krukowski and the Waters and Krukowski's SHARED/THE PREMISES at 1067 E. Diamond Way and was a close friend of Randy's also and he being their landlord who they said they had paid rent to:(Exhibit"N")

12) ARGUMENT

WATERS and KRUKOWSKI COMMITTED "INTERVENOR FRAUD

SUMMARY OF ARGUMENT

(utah Code-78-36-3-Note to Decisions
sub para-INTERVENOR-(Tanner V lawler,6 Utah 2d 84,305 P.2d 882, modified on another point ,66 Utah 2d 268, 311 P.2d 791 (1957)-A INTERVENOR (Exhibit"N")-
that they did not know where he lived. The house was in shambles/ a lot of damage (Utah code 78-36-10, c) had been done to the premises(-Exhibit "11").
Howard spoke with the trespasser/Intervenor Waters at premises and told her she was trespassing on Howards property;
Waters said she had rented the premises from Krukowski and paid the rent to Krukowski, HOWARD phoned the Sheriff dept. for HELP , (see Salt Lake County Sheriff report case No. 89-971 - Exhibit "S-R -four (4)pages , this-Sheriff Report tells in a good detail of what was happening and what the dispute was all about.

13) ARGUMENT

THE TRIAL COURT ERRED IN FINDING HOWARD GUILTY OF CONVERSION OF PERSONAL PROPERTY BELONGING TO WATERS.

SUMMARY OF ARGUMENT

Howard obtained a default judgement (Exhibit "F" and Exhibit "G") against KRUKOWSKI (R.72, para.6). Howard also obtained Writ against Krukowski and ordering the removal from the premises of any and all persons claiming an interest in the (Exhibit "12aa.")- premises through Krukowski." (R.45) a constable posted the- (Utah code 78-36-6), Writ on the premises. (Exhibit "R" addendum 22-1), SUBSEQUENTLY Howard had the Salt lake County Sheriff dept. assist Howard in removing Trespasser/INTERVENOR- Waters' off of premises (R.58). AFTER THE INTERVENOR had removed her personal property under the supervision of the aforesaid Sheriff; (Exhibit "S-R-page 4 AND Utah code 78-36-10, and 78-36-12.6)- AND pursuant to UTAH CODE 78-36-12.6 para. 2 - (ABANDONED premises - Retaking and rerenting by owner - Liability of tenant - Personal property of tenant left on premises.- Howard had loaded up certain personal property that was abandoned on the premises to put items in STORAGE (Exhibit "S-R -page 4 " and when Lori Waters was packing some of her belongings she discovered some missing items- (Exhibit "S-R -page 4") : THE MISSING ITEMS were given to Sheriff who returned items to Waters- (Exhibit "S-R -page 4 ") Waters personal items were removed pursuant to Utah code 78-36-12.6 para. 1 and see Sheriff Report) waters packed and moved her own personal/property with the aid of Darrel Waters, but there was bad weather - SNOWING and re: cold, AFTER DARK so waters decided to finish moving LATER.

14) ARGUMENT

HOWARD DID NOT COMMIT FORCIBLE ENTRY AND DETAINER BY
EXCLUDING WATERS FROM THE PREMISES ;

SUMMARY OF ARGUMENT

THE TRIAL COURT WAS CORRECT IN DISMISSING
WATERS' COMPLAINT (78-36-12 and 78-36-12.3 and 78-36-12.6 and 78-36-3)

15) ARGUMENT

HOWARD ACTED PROPER IN EXCLUDING WATERS FROM TRESPASSING ON THE PREMISES

SUMMARY OF ARGUMENT

SUBSEQUENTLY then Howard secured the premises by nailing
shut the broken doors, covering the broken window
and CLOSEING shut the gate to the driveway : To deny Any
person access to the property, at that time the
(R.59)and Utah code 78-36-10, and 78-36-12.6, and 78-36-3,-
para. 1,d.); The trial court FOUND THAT HOWARD
HAD ACTED PROPERLY IN EXCLUDING THE TRESPASSER WATERS'
from the premises without judicial process, but with posted
notice ; WATERS' was a trespasser not a
tenant since her rights were derivative through
Krukowski, her HUSBAND's EMPLOYER (R.73). The trial
court further found that not naming Waters as a party in
the EVICTION PROCESS against her husband's employer
Krukowski was proper and that posting the writ of
Restitution rather than personally serving it was
proper(R.73-74 AND Utah code 78-36-6),
** KRUKOWSKI had been previously served (Exhibit"F")-
aforesaid Writ's, Notices, Via the Sandy Dept Court as
aforesaid ** (see Exhibit "H ").(caseNo. 883004435)

16) ARGUMENT

JUDGEMENT AGAINST WATERS DISMISSING HER COMPLAINT NO
CAUSE OF ACTION ON THESE ISSUES WAS ENTERED SEPTEMBER
23, 1991 (R.76-77).

SUMMARY OF ARGUMENT

a notice of appeal was filed but
subsequently withdrawn. (R.78-79, 81-82). The remaining
issues were resolved at a hearing on May 21, 1992
The Howard's made payments of ten dollars per month by
personal checks which were made out to Bruce Plenk
and/or Lori Waters, BRUCE PLENK had
processed the Howard's personal checks before he
notified Howard's of the appeal he was launching, the
final judgement was entered on September 20, 1992 (R.83)

17) ARGUMENT **

INTERVENOR/TRESPASSER WATERS LIVING ON PREMISES

SUMMARY OF ARGUMENT

On 22 November 1988- Howard's went to 1067 E. Diamond Way
property AND found trespassers living on Premises, Howard's
called S.L. County Sheriff dept. and made a complaint of
WATERS living on Property,(see Sheriff Report - Exhibit -10)
** KRUKOWSKI'S had ABANDONED the PROPERTY -Utah code 78-36-12.6)-
AND 78-36-3,para. 1, d, e, AND 78-36-6).

18) ARGUMENT**

THE HOWARD'S RETOOK PROPERTY TO RERENT

SUMMARY OF ARGUMENT

The Howard's, pursuant to Utah Code 78-36-12. and subsection 78-36-12.6(2) , retook said premises and attempted to rent at a fair market rental value. **

UTAH CODE 78-36-10.(1),(2) ...JUDGEMENT FOR RESTITUTION, DAMAGES, AND RENT-- IMMEDIATE ENFORCEMENT - TREBLE DAMAGES .

19) ARGUMENT

PERSONAL PROPERTY NOT REMOVED

SUMMARY OF ARGUMENT

FRONT DOOR/latch/ knob gone/ from door; Door would not stay closed; (Utah code 78-36-10, para. 1, 2 a, b, c, para. 4)
* so Howard nailed front door(only) shut to help keep water pipes from freezing, and pursuant to the aforesaid UTAH CODE THE abandoned personal contents could of been removed BUT were NOT REMOVED FROM the aforesaid Premises. until later

20) ARGUMENT

PROPERTY/PREMISES DAMAGED - DESTROYED PROPERTY

SUMMARY OF ARGUMENT

1067 E, Diamond Way PREMISES had been trashed/ broken-up window ,and doors broken inside of premises, wall paneling ruined, (Exhibit "S-R- 4,pages)- Howard's subsequently (78-36-10) ENTERED COMPLAINT ACTION - Case No. 883009797 for POSSESSION costs/damages; that had been done to the premises

Refile SANDY Dept. COURT ACTION WAS MOVED TO:
MURRAY Dept. Third Circuit Court (Case No. 883004435)
and "COMPLAINT FOR: Breach of Contract; Complaint for
Eviction,(unlawful Detainer) Case No. 883009797 was filed.
September 26, 1988 - FILING DATE (Exhibit"12aa)-
* see UTAH CODE - 78-38-7 (1) (2),Necessary Parties Defendant.

21) ARGUMENT

KRUKOWSKI AND WATERS CONSPIRE A INTERVENOR RELATIONSHIP

SUMMARY OF ARGUMENT

INTERVENOR'S Randy Krukowski and Lori Waters sub-tenant * Document was
Notarized on 14 Nov. 1988 WHICH is ninety-five (95) days
from the 11 Aug.1988, date: Case No. 883004435 Sandy Dept.
action was filed;* Waters claimed occupancy from
Oct.25,1988,*(see to whom it may concern*- Exhibit "N").
which is SEVENTY-FIVE*(75)days after the case *
No. 883004435 * Sandy Dept ,*case was filed by the Howard's
against the Krukowski's ; (Exhibit "s' and Exhibit S-C')

22) ** ARGUMENT ** and ** Summary of Argument **

**May a purchaser of property at 1067 E. Diamond Way,
Sandy, Utah ; from the Howard's be able to BREACH
ALL OF THE "CONTRACTUAL COVENANTS HE HAS AGREED TO :

Krukowski signed a "REAL ESTATE CONTRACT " said contract
WAS NOT, ** A UNIFORM REAL ESTATE CONTRACT,**(R.51,53)-
It was a contract which gave Krukowski VERY SMALL
LIMITING CONTROL OF THE REAL ESTATE HE WAS PURCHASING
FROM THE HOWARD'S, (see Exhibit "12,aa,
KRUKOWSKI BROKE INTO THE PREMISES CAUSING LARGE DAMAGES *
HOWARD'S FILED ACTION AGAINST THE KRUKOWSKI'S (Exhibit"12aa)

COMPLAINT FOR : UNLAWFUL DETAINER, and BREACH OF CONTRACT

OCTOBER ,20 ,1988 the property/premises was abandoned by
Krukowski.(Exhibit"N")-and Utah code 78-36-12.6)-

THE ABANDONED premises at 1067 E. Diamond Way, Sandy, Utah.

23) ARGUMENT

WATERS HAD NO TENANT RIGHTS

SUMMARY OF ARGUMENT

Of the Utah Code Waters Via-/Krukowski DID NOT have any
RIGHTS in the property/ premises at 1067 E. Diamond Way
Sandy, Utah, (Exhibit"F")-

BECAUSE INTERVENOR/ Waters ; had lost HER - claim to
SUB-TENANT in the PREVIOUS COURT ACTION case No. 883004435
(Exhibit"H")- (UTAH CODE 78-36-7.-"Necessary parties defendant.

(2) If a person has become subtenant of the premises in
controversy after the service of ANY NOTICE was not served
on the subtenant is not a defense to the action.ALL PERSONS
WHO ENTER UNDER THE TENANT after the COMMENCEMENT OF THE
ACTION SHALL BE bound by the judgement the same as if they
had been made parties to the action.)(emphasis added)

LORI WATERS WAS NEVER "TENANT OF" the KRUKOWSKI'S
AT TIME OF KRUKOWSKI'S purchasing the aforesaid
property or PRIOR to the commencement of the action for
Eviction of Krukowski from the PREMISES. (Exhibit"F")-

LORI WATERS was never a tenant of HOWARD"S and/or
subtenant of Krukowski prior to the commencement of the
Krukowski eviction from the premises at 1067 Diamond Way,
(Utah code 78-36-7, and Exhibit "s" and Exhibit S-C',
AND Utah code 78-36-3,para.1 d,e,)-Exhibit ss "F and "G")
EVICTION ACTION was COMMENCED ON " AUGUST 23, 1988 in "Third
Circuit Court - SANDY Department case no. 883004435 (Exhibit"G")

24)

ARGUMENT

INTERVENOR/S CAME INTO THE ISSUES ABOUT PROPERTY POSSESSION

SUMMARY OF ARGUMENT

**INTERVENORS came into the issues pertaining to the premises and the following intervenor agreement was NOTARIZED by Krukowski/Waters in TRY to keep possession of the premises.

"TO WHOM IT MAY CONCERN, Lori Waters is the occupant (Exhibit"N")- of 1067 Diamond Way as of(and back dated to)

October 25, 1988., AND then KRUKOWSKI, SIGNED IT

(and NOTARIZED at * LATER DATE OF - 11/14/1988 date WHICH IS/WAS A total of EIGHTY-THREE (83)days after Commencement

of SANDY DEPT . case No. 883004435, (emphasis added)

the action against Krukowski for "Breach of Contract;

Complaint for Eviction, (unlawful Detainer. case

no. 883009797 CV as aforesaid above .(emphasis added).

(see Court DOCUMENT Exhibit "D1"integrated herein.

Sherriff was Ordered by the Court to evict the Krukowski's forthwith

KRUKOWSKI abandoned the Premises, HOWARD changed the door

locks on the front and rear doors, (Utah code 78-36-12.6,AND

Waters said she had rented and paid a rent (Exhibit "N")

fee to Krukowski (her husband's employer/friend

whom had all been Co-habiting together most of the summer)

they all INTERVENOR/conspired together on aforesaid

instrument/document ;they waited 20 days before

they got occupancy's document signed by Krukowski as "owner /manager ")

see aforesaid Document's NOTARY date EXHIBIT "N").

KRUKOWSKI'S had home Gas shut off;THE PROPERTY WAS ABANDONED (Exhibit 12")

ABANDONED (Exhibit 12")

**The HOWARD'S WANTED TO PROTECT THEIR PROPERTY FROM MORE
DAMAGES (Utah code 78-36-12.6 AND EXHIBIT "RENT")
=====

COLD weather temp. were bad AND Krukowski had BROKEN THE
BIG REAR WINDOW OUT and kicked in the house"s front
door so that the wind would blow OPEN FRONT DOOR
freeze the water pipes and etc.SO (78-36-12.6)-
Mr. Howard nailed the front door shut and nailed
and boarded-up the broken windows to help keep the
house water pipes from freezing.And tried
to have the Constable serve Mr. Krukowski/22 Nov. 1988
KRUKOWSKI stole the Heating system stove,
took the refrigerator broke the doors/latches,
Krukowski could not be found to be served by the (Exhibit "12")-
Constable, PROPERTY WAS ABANDONED, the Constable POSTED
THE PROPERTY, (exhibit "F")-
THE HOWARD'S TRIED TO PROTECT PROPERTY FROM FURTHER DAMAGE FROM
REAL COLD WEATHER, CLOSING UP THE BROKEN WINDOWS AND DOORS
AND TO KEEP TRESPASSERS OUT and DRUG PARTIES FROM (UTah code
78-36-12.6)-BEING HELD ON THE PREMISES .
WATERS HAD NOW USED A CROWBAR TO BREAK-
INTO THE HOUSE,LORI WATERS said she rented/occupied
1067 Diamond Way from Krukowski.
(Exhibit "S-R -4pages) and the (Utah code 78-36-1)
WATERS had pulled off the big back window cover

to let in COLD outside air so that their milk
 ,and etc. could be kept cold; by so doing
 let the pipes in the floor between the second
 and third level FREEZE and BREAK AND flood out
 the first level, which contained the furnace, water
 heater, bathroom, washroom, and family room

THE CONSTABLE WAS SENT ON A WILD GOOSE CHASE BY :(Exhibit"12)-
 WATERS, told Constable that : Krukowski was living at 5300
 So. State, Constable John A. Sindt was unable to locate
krukowski at such address(copy of constable's return
(Exhibit "12)

; The Waters's said

"Krukowski done all of the damages to the property
before he moved out. (Exhibit"11")-

" I (Howard) said if Krukowski done DAMAGES that they
 (Waters) better give me the address of Krukowski
 or else I would have the Water's charged for all damages
 which had been done to property, They did. Lori Waters
LIED to the constable about NOT KNOWING WHERE, Krukowski
was residing, about 22 Nov. 1988, The Waters'S (Exhibit"12")-
 gave me.(Mr. Howard); Mr. Krukowski's address, so I phoned
 Constable John A. Sindt WHO went and served the papers on
 the Krukowski's at 10340 s. 360 E., County of Salt Lake, State
of Utah, dated :22 Nov. 1988,(see CONSTABLE'S RETURN and
Exhibit 13")

Just because Krukowski Committed a fraudulent renting of the property;
which BREACHED the contract terms with HOWARD'S does not give
Waters right to say that she was tenant of Howard's.

If I was to rent you the " BROOKLYN BRIDGE " !

Would you be a TENANT of New York City, and (Ex."A" and Ex."N")
New York City be your LANDLORD ?

KRUKOWSKI did not have any RIGHTS Left to the property
at : 1067 E. Diamond Way, Sandy ,Utah. KRUKOWSKI had
LOST ANY SAID PROPERTY RIGHTS that he had as owner/manger
(Exhibit "N", and Exhibit "F"), and Exhibit "A- 4pages) AND
just because the HOWARD'S started a separated/or
second ACTION against the KRUKOWSKI'S " does not give"

the krukowski's RENEWED RIGHTS to the aforesaid property/premises.
the Pro SE Howard's FAILURE TO AMEND the case No. 883004435 TO THE
later case No.883009797 does not/did Not give any person any RENEWED
PROPERTY/PREMISES RIGHTS. AND The UTAH LEGAL SERVICES, INC./ the
Attorney's for the PLAINTIFF /APPELLANT* BY ERROR TO start ACTION case
No. 893001449 CV AGAINST THE HOWARD'S and start their action from the
MURRAY DEPARTMENT OF THE THIRD CIRCUIT COURT case No. 883009797
DID NOT RENEW ANY PERSONS RIGHTS TO THE AFORESAID PROPERTY/PREMISES.
**ONLY THE CONTRACT (Exhibit"A- 4-pages) OF ITSELF CAN GIVE AWAY ANY
PROPERTY/PREMISES RIGHTS WHICH ARE OWNED BY THE HOWARD'S and BY
CONSTITUTIONAL LAW NOT EVEN THE COURT's CAN GIVE AWAY ANY RIGHTS OF
HOWARD's TO THE PROPERTY/PREMISES UNLESS THE COURT IS PETITIONED TO
REFEREE THE DISPUTED CONTROVERSY OVER ANY OF THE CONTRACT'S COVENANTED
PROVISION'S - SO...."TO MAKE A LONG STORY SHORTER ; "

*"THE REAL ESTATE CONTRACT - can give Birth to Rights; But/And at the same
time - THE CONTRACT's PROVISIONS CAN GIVE/ASSIGN DEATH TO THE SAID RIGHTS."

AND the Pro Se Howard's not knowingly/or knowledgeable of:

FIGHTING THE aforesaid case No, 883001449 CV, DID NOT (Ex: "A-4 pages")

GIVE ANY PERSON , RENEWED RIGHTS OR AUTHORITY TO RENT

THE aforesaid property/premises

The UTAH LEGAL SERVICES Via Attorney Bruce Plenk were

told about the SANDY DEPARTMENT OF THE THIRD CIRCUIT

COURT'S PROCEEDINGS OF case NO, 883004435 : Against

Krukowski's, and they decide to START FROM THE case No.

883009797 , MURRAY,DEPT. OF THE THIRD CIRCUIT COURT,

I DID . GIVE MR. BRUCE PLENK case No., 's but I

thought he would DO THE RESEARCH

.HONESTLY, and UNBIASED, maybe by ERROR he did omit the

SANDY DEPT. case No. 883004435 from his research of the

aforesaid actions, AND

this ERROR by Mr.PLENK did not/does not give ANY PERSON

ANY PREMISES/PROPERTY RIGHTS RENEWABLE TO ANY PERSONS

25). ARGUMENT

WATERS/INTERVENOR HAD BROKEN AND ENTERED PREMISES

SUMMARY OF ARGUMENT

AFTER THE INTERVENOR/trespasser WATERS HAD BROKEN and -

ENTERED THE PREMISES, (Utah code 78-36-1, and 78-36-2, and

78-36-3, and 78-36-7-Notes to decisions- analysis- Liability

of parties. -Intervenor)- She had not PAID ANY RENT (Exhibit "F")

NOV. 22, 1988 and KRUKOWSKI'S HAD NOT PAID NO RENT FOR

TWO MONTHS or more (Exhibit "F" and Exhibit "RENT")-

Howard , Phoned " The Sheriff

dept. and logged complaint of: TRESPASSERS on his

PREMISES/property . (Exhibit "10")-

and at that INSTANCE OF TIME the Howard's DID NOTHING TO Remove
THE TRESPASSER'S off of the Property, (Exhibit "10")

Answers to APPELLANT's Arguments

6 Argument # 1.) Howard did not commit a forcible entry and
detainer by physically excluding Waters from the
Premises (Exhibit "F", and Utah code 78-36-7, and 78-36-12.6,
and 78-36-3, and 78-36-10)-

The Trial Court WAS CORRECT in dismissing Waters's
complaint ; INTERVENOR/trespasser Waters had knowledge
of her trespassing on the property and she was notified by the
SALT LAKE COUNTY SHERIFF'S DEPARTMENT, on 11-22-1988 that
she was trespassing, (see Exhibit "10 ")

7 Argument # 2.) The trial Court WAS CORRECT in Sanctioning
HOWARD'S Waters Eviction. (Exhibit"S-R- 4 pages)
S.L.C. SHERIFF'S officer was called to the property to keep
the PEACE, and to show that Howard's had the RIGHT to
physically prevent her from trespassing on aforesaid property;

18 Argument # 3.) There WAS NOT a violation of Waters's rights,
TRESPASSERS DO NOT have the RIGHT of NOTICE or of
Due Process before EVICTION from the
Property.(Exhibit"RENT"and Utah code 78-36-10)-

Waters WAS NOT A TENANT in possession of aforesaid property
nor Did she have ANY RIGHTS to PROCEDURAL DUE PROCESS
as in GREENE v. Lindsey, 456 U.S. 444 (1982), the Supreme

Court held and the Greene Court Stated : (i)

" The sufficiency of notice must be TESTED with reference to its ability to INFORM PEOPLE of the pendency of the proceedings that affect their interests . "IN ARRIVING at this Constitutional Assessment, we look to the realities of the case before us : In determining the Constitutionality of a procedure established by the State to provide notice in a particular CLASS OF CASES, " ITS EFFECT MUST BE JUDGED IN LIGHT OF ITS Practical APPLICATION....." (emphasis added).

456 U.S. at 451, (emphasis added) The Summons and Complaint were posted on the door, (KRUKOWSKI had ABANDONED the (Exhibit"F")- premises) and then HOWARD'S changed the locks to the doors,

AND then the CONSTABLE POSTED THE PROPERTY, BEFORE Krukowski came back to the property AND kicked-in the front and rear doors, breaking the LOCKS and Latches

Krukowski as a INTERVENOR.....to give Waters possession to the aforesaid premises AND Being different from the GREENE case, (the COUNTY SHERIFF Officer was called)

Waters received NOTICE that she was a TRESPASSER from the S.L.C. SHERIFF'S officer whom was called to the Property by HOWARD'S , TO KEEP THE PEACE and to NOTIFY Waters she was TRESPASSING , (see aforesaid EXHIBIT "10)-

The trial court found that Waters was aware of the eviction proceedings against Krukowski, (R. 63 , 73 para. 3) that court also found that not including her in the eviction case or even naming her in the writ of (Utah code 78-36-7)- restitution was proper (R.74, para. 5)

this ruling IS CONSISTENT with CONSTITUTIONAL SAFEGUARDS ,

and is DIFFERENT from : " Mendoza v. Small Claims Court of
Los Angeles Judicial District, 321 P. 2d 9, 12 (Cal. 1958).
The Howard's HAD NOT ACCEPTED NO RENTAND....WATERS
WAS NOT A Co-Tenant at any time of : "Krukowski's ownership
(Utah code 78-36-7, and 78-36-3para. 1 c,d,e, and 78-36-10-
para.1, 2c)-

Of aforesaid property eviction proceedings , nor had she

been in possession as the person was in the
ARRIETA v.644 P. 2d 1249 (Cal. 1982), THE PROCEDURAL
differences in the two cases ARE VERY DIFFERENT in that

Constable posted the "Krukowski's ABANDONED PROPERTY (Exhibit "F")

(Utah code 78-36-12. "Exclusion of tenant without judicial
process prohibited - ABANDONED PREMISES EXCEPTED.)

It is unlawful for an owner to willfully exclude a
tenant from the tenant's premises in any manner except
by judicial process, PROVIDED, an owner or his agent shall
not be prevented from removing the contents of the ,leased
PREMISES under+Subsection 78- 36- 12.6(2) and retaking the
premises and attempting to rent them at a fair rental value
when the tenant has abandoned the premises) emphasis added)

HOWARD'S CHANGED the LOCKS to premises property protect it
from damages: INTERVENOR-KRUKOWSKI and WATERS AT A LATER DATE
BROKE INTO the premises to GAIN ENTRY FOR Waters and WATERS
Was not physically turned out, nor was any fraud,
intimidation or stealth, or by any kind of violence or

circumstances of terror, used to enter upon the property
(as defined in)(Utah code # 78-36-1 "Forcible entry "),
HOWARD'S phoned the Sheriff dept., to NOTIFY Waters that she
 she was trespassing on the property (Exhibit"10" and Utah
code 78-36-12.6, and 78-36-6, and Exhibit"RENT")-

CONCLUSIONS

- 1.) THE TRIAL COURT'S SUMMARY JUDGEMENT DISMISSING WATERS'
 CLAIMS SHOULD BE UPHELD. (CASE No.' 883009797 and 893001449)
- 2.) AND a Summary Judgement granted to the Defendants/Appellees
 as to Waters liability and the case remanded for a
 determination of their damage .
- 3.) And rule that the said COURT does have JURISDICTION OVER WATERS
 and that Waters has/had received Proper and timely Notice/s and
 that Waters should not be given any opportunity to raise defenses,
 and Render Judgement against Waters,
- 4.) and void all her claims for wrongful eviction and forcible entry
- 5.) AND FIND WATERS/KRUKOWSKI GUILTY OF "INTERVENOR " TO THE AFORESAID
 PROPERTY/PREMISES ISSUES BEFORE SAID COURT.
- 6.) AND FIND THAT THE TRIAL COURT MADE A ERROR WHEN THE COURT FOUND
 HOWARD GUILTY OF PERSONAL PROPERTY CONVERSION.
- 7.) AND FIND WATERS GUILTY OF VIOLATEING "UTAH CODE 78-36-1 *,
 FORCIBLE ENTRY AS DEFINED IN UTAH CODE 78-36-2, para. 1),
- 8.) and find Randy Krukowski guilty of "INTERVENOR to the aforesaid
 ISSUES with the aid/help of Lori Waters.
- 9.) and find Krukowski and Waters GUILTY OF VIOLATION OF THE UTAH CODE
 78-36-3 para. 1a, c,d,e,)-"UNLAWFUL DETAINER BY TENANT FOR TERM
 LESS THAN LIFE

- 10) AND FIND/RULE THAT LORI WATERS AND HER ATTORNEY BRUCE PLENK RETURN/REFUND THE HOWARD"S FIFTY(\$50.)DOLLARS THAT THEY PAID TO THE TRIAL COURT"S FINAL JUDGEMENT AND SAID REFUND BE PAID FORTHWITH TO THE HOWARD"S.
- 11) and award the HOWARD"S THE SUM OF : \$ 1,750.00 as costs for the PRO-SE DEFENSE/s OF THE AFORESAID CASE"S ISSUES. (UTAH CODE 78-36-10 - Notes to the Decisions.)(Case No. 883009797 and 893001449)
- 12) AND REMAND THE CASE BACK TO THE TRIAL COURT FOR A DETERMINATION OF THE HOWARD"S DAMAGES THAT KRUKOWSKI AND WATERS HAVE COMMITTED AGAINST THE HOWARD"S.

DATED THIS 2nd day of March, 1993.

GARTH HOWARD and

Garth Howard

AFTON JEAN HOWARD

Afton Jean Howard

APPELLEES PRO-SE

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY THAT I MAILED TWO TRUE AND CORRECT COPIES OF THE FOREGOING BRIEF OF THE APPELLEES TO: BRUCE PLENK AND LORI WATERS, AT 124 So. 400 E. #400, Salt Lake City, Utah. 84111, on this 2nd day of March, 1993, postage prepaid.

Garth Howard

CHAPTER 36 PAGE (1)

FORCIBLE ENTRY AND DETAINER

Section		Section	
78-36-1	"Forcible entry" defined	78-36-10	Judgment for restitution, damages, and rent — Immediate enforcement — Treble damages
78-36-2	"Forcible detainer" defined		
78-36-3	Unlawful detainer by tenant for term less than life		
78-36-4	Right of tenant of agricultural lands to hold over	78-36-11	Time for appeal
78-36-5	Remedies available to tenant against undertenant	78-36-12	Exclusion of tenant without judicial process prohibited — Abandoned premises excepted
78-36-6	Notice to quit — How served		
78-36-7	Necessary parties defendant	78-36-12 3	Definitions
78-36-8	Allegations permitted in complaint — Time for appearance — Service of summons	78-36-12 6	Abandoned premises — Retaking and rerenting by owner — Liability of tenant — Personal property of tenant left on premises
78-36-8 5	Possession bond of plaintiff — Alternative remedies		
78-36-9	Proof required by plaintiff — Defense		

78-36-1. "Forcible entry" defined.

Every person is guilty of a forcible entry, who either:

- (1) by breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or,
- (2) after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-1.

Cross-References. — Burglary and criminal trespass, §§ 76-6-201 to 76-6-206

NOTES TO DECISIONS

ANALYSIS

Damages
 — Mental anguish
 — Nominal
 Forcible detainer distinguished
 Landlord and tenant
 — Contract rights
 — Motel operator and occupant
 — Unlawful eviction
 Policy of section
 — Abolishment of common-law
 Purpose of provisions
 — Preventing disturbances of peace
 — Summary remedy
 — Rent
 Separate tort action
 What constitutes forcible entry
 — Removal of doors

Damages.

— Mental anguish.

Tenant who is wrongfully evicted can collect damages for mental anguish and humiliation. Mental pain and suffering in connection with a wrong which apart from such pain and suffering constitutes a cause of action is a proper element of damages where it is a natural and proximate consequence of the wrong. *Lambert v. Sine*, 123 Utah 145, 256 P 2d 241 (1953).

— Nominal.

The statute places a duty upon any person, whether entitled to possession or not, not to use force or stealth or fraud in gaining possession of realty. Correspondingly, it creates a right in the person in actual peaceable possession not to have his possession disturbed other than by legal process. Therefore, regardless of his lack of entitlement to the property, the tenant has a cause of action for the invasion of

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AINER

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Therefore, regardless of
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that right Where no actual damages are
proved he should be awarded nominal damages
to preserve the right King v Firm, 3 Utah 2d
419, 285 P 2d 1114 (1955)

Forcible detainer distinguished.

Forcible entry and forcible detainer, while
often spoken of together, are in fact separate
and distinct wrongs Buchanan v Crites 106
Utah 428, 150 P 2d 100, 154 A L R 167 (1944)

Landlord and tenant

—Contract rights

Anyone committing acts specifically prohib-
ited under this section would be guilty of forc-
ible entry including a party who may by con-
tract be authorized to enter or an owner who as
a matter of law may have a right to possession,
contract purporting to establish right of re-
entry for default of rent payments did not give
landlord right to remove employee of tenants
from office and change locks on all doors Free
way Park Bldg, Inc v Western States Whse
Supply, 22 Utah 2d 266, 451 P 2d 778 (1969)

—Motel operator and occupant.

—Unlawful eviction.

Where evidence disclosed that relationship
between operators of a motel and the occupants
of an apartment therein was one of landlord
and tenant, and not one of innkeeper and
guest, the occupants could only be dispossessed
of the apartment by resort to the statutory
remedy of unlawful detainer When the owner
of the motel locked out the occupants for
unpaid rent, there was an unlawful eviction
Lambert v Sine, 123 Utah 145, 256 P 2d 241
(1953)

Policy of section

—Abolishment of common-law.

The forcible entry statute expressed a policy
that no person should enter by force, stealth,
fraud or intimidation, premises of which an
other had peaceable possession This had the
effect of taking away the common law right of
a landlord to possess his own property by no
more force than was necessary and left the one
against whom force was used to pursue his

common law action Buchanan v Crites, 106
Utah 428, 150 P 2d 100, 154 A L R 167 (1944)

Purpose of provisions.

—Preventing disturbances of peace.

The forcible entry and detainer statute was
enacted for the primary purpose of preventing
disturbances of the peace brought about
through self help in the matter of disposses-
sion King v Firm, 3 Utah 2d 419, 285 P 2d
1114 (1955)

—Summary remedy.

Purpose of this statute is to provide a speedy
remedy, summary in character, to obtain pos-
session of real property Paxton v Fisher 86
Utah 408, 45 P 2d 903 (1935)

—Rent

This chapter provides a summary remedy for
the recovery of real property in case of forcible
entry or the forcible or unlawful detainer
thereof That is the purpose of the chapter and
not to deal with the subject of remedies for
rent The question of rent is drawn into the
statute, not for the purpose of providing a rem-
edy for its recovery, but to complete a case of
unlawful detainer, which is the gist of the ac-
tion Voyles v Straka, 77 Utah 171, 292 P 913
(1930)

Separate tort action.

A landlord who is entitled to possession
must, on the refusal of the tenant to surrender
the premises, resort to the remedy given by
law to secure it A violation of that duty set by
the statute gives rise to an action for damages
not in an action under the forcible entry and
detainer statute but as a separate tort King v
Firm, 3 Utah 2d 419 285 P 2d 1114 (1955)

What constitutes forcible entry.

—Removal of doors

Where defendant landlord entered upon the
premises in plaintiff's absence by unlocking
the doors and removing the doors from their
hinges and carrying them away, the weather
being at the time freezing these facts were
held to sufficiently show a forcible entry Bu-
chanan v Crites, 106 Utah 428, 150 P 2d 100
154 A L R 167 (1944)

COLLATERAL REFERENCES

Utah Law Review. — Landlord Tenant
Law A Perspective on Reform in Utah, 1981
Utah L Rev 727, 738

Brigham Young Law Review. — Necessity
or Overkill? Regulating Residential Landlord-
Tenant Relations through the Utah Consumer
Sales Practices Act 1990 B Y U L Rev 1063

Am Jur 2d — 35 Am Jur 2d Forcible
Entry and Detainer § 1

C.J.S — 36A C J S Forcible Entry and De-
tainer §§ 1 2

Key Numbers — Forcible Entry and De-
tainer = 4

2-1

78-36-2. "Forcible detainer" defined.

Every person is guilty of a forcible detainer who either:

(1) by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,

(2) in the nighttime, or during the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such lands.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-2.

Cross-References. — Burglary and criminal trespass, §§ 76-6-201 to 76-6-206

NOTES TO DECISIONS

ANALYSIS

Consent to entry
— Evidence
— Failure of action
Issues
— Immediate right of possession
Liability
— Lessor
— Purchaser
Occupancy "within five days"
— Allegation
"Unlawfully enters"

Consent to entry.

— Evidence.

To show intention of parties and acquiescence by plaintiff in defendant's possession, escrow agreement and quitclaim deed executed by plaintiff were held to be properly admitted in evidence *Seeley v Houston*, 105 Utah 202, 141 P 2d 880 (1943)

— Failure of action.

As one of the elements of this action is the unlawful entry, the action must fail if it is found that defendant entered with consent of plaintiff *Seeley v Houston*, 105 Utah 202, 141 P 2d 880 (1943)

Issues

— Immediate right of possession

In action of forcible entry and detainer, the only question involved is the immediate right to possession *Seeley v Houston*, 105 Utah 202, 141 P 2d 880 (1943)

Liability.

— Lessor.

Where, without serving the three days' notice required by § 78-36-3(1)(c), a lessor entered the premises of his tenant, whose rent

was two months in arrears, changed the locks on the doors and refused to allow the tenant to enter to remove equipment and perishable goods, lessor was guilty of forcible detainer and conversion of the personal property on the premises *Peterson v Platt*, 16 Utah 2d 330, 400 P 2d 507 (1965)

— Purchaser.

Where purchaser of state land took possession of land while lessee from state was away and refused to quit premises upon demand, he was liable for forcible entry and detainer, since such purchaser should have made proper demand, and if it was refused, should have settled question of possession by law *Paxton v Fisher*, 86 Utah 408, 45 P 2d 903 (1935), *Buchanan v Crites*, 106 Utah 428, 150 P 2d 100, 154 A L R 167 (1944)

Fact that one of defendants in forcible detainer action by lessee of state land had signed purchase contract covering such land would not, in itself, make him personally liable *Paxton v Fisher*, 86 Utah 408, 45 P 2d 903 (1935), *Buchanan v Crites*, 106 Utah 428, 150 P 2d 100, 154 A L R 167 (1944)

Occupancy "within five days."

— Allegation.

Allegation of "more" than five days includes period of "within" five days *Woodbury v Bunker*, 98 Utah 216, 98 P 2d 948 (1940), *American Mut Bldg & Loan Co v Jones*, 102 Utah 318, 117 P 2d 293 (1941), rehearing denied, 102 Utah 328, 133 P 2d 332 (1943)

"Unlawfully enters."

"Unlawfully enters" in Subsection (2) means unlawfully as relating to an occupant who was there within five days *Woodbury v Bunker*, 98 Utah 216, 98 P 2d 948 (1940), *Buchanan v*

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adding 1

Crites, 106 Utah 428, 150 P.2d 100, 154 A.L.R.
167 (1944).

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COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Forcible
Entry and Detainer § 1.

Key Numbers. — Forcible Entry and De-
tainer ⇐ 5.

C.J.S. — 36A C.J.S. Forcible Entry and De-
tainer §§ 1, 2.

78-36-3. Unlawful detainer by tenant for term less than life.

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(a) when he continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved:

(i) he continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, his designated agent, or any successor in estate of the owner, 15 days or more prior to the end of that month or period, has served notice requiring him to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;

(c) when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, has remained uncomplied with for a period of three days after service, which notice may be served at any time after the rent becomes due;

(d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after service upon him of a three days' notice to quit; or

(e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon him and upon any subtenant in actual occupation of the premises remains uncomplied with for three days after service. Within three days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or cove-

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addendum
PAGE(1) 3-1

no notice needed

1c.
(E)
tenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

(2) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-3; L. 1981, ch. 160, § 1; 1986, ch. 137, § 1; 1989, ch. 101, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, inserted the subsection designation (1) at the beginning of the section, designated former Subsections (1) and (2) as Subsections (1)(a) and (1)(b), designat-

nated former Subsections (2)(a) and (2)(b) as Subsection (1)(b)(i) and Subsection (1)(b)(ii); designated former Subsections (3) to (5) as Subsections (1)(c) to (1)(e), added Subsection (2); and made minor stylistic changes

Cross-References. — Nuisances, Title 47,

Right to recover treble damages from tenants committing waste, § 78-38-2

NOTES TO DECISIONS

ANALYSIS

In general

Cause of action

— Default in rent

— Prerequisites

— Presumptions

— When determined

— When exists

Federal regulations

— Modification of state remedies

Notice to quit

— Administrative claim

— Liability of tenant

— Prerequisites

— Sufficiency

Tenancy at will

Persons liable

Pleadings

— Tenancy at will

Right of re-entry

— Contractual provisions

Strict performance

— Waiver

Strict statutory compliance

— Not required

— Required

Termination of lease

Treble damages

— Contract of sale

— Intervenor

— Lease

In general.

This chapter takes away the landlord's common law right to use self-help to remove a tenant, grants the landlord a summary court proceeding to evict a tenant who has violated some express or implied provision of the lease, and provides five instances in which the tenant is in unlawful detainer. The remedy for a successful landlord is restitution of the premises, treble damages, and recovery for waste or rent due. If the unlawful detainer action is based on

default in payment of rent, the judgment will also mandate forfeiture of the lease P. H. Inv. v. Oliver, 818 P.2d 1018 (Utah 1991)

Cause of action.

— Default in rent.

No cause of action for unlawful detainer based on default in payment of rent survived where tenant tendered rent due within three days after service of unlawful detainer action, regardless of defects in such notice. Dang v. Cox Corp., 655 P.2d 658 (Utah 1982)

Prerequisites.

Notice to quit is necessary to give rise to cause of action. Carstensen v. Hansen, 107 Utah 234, 152 P.2d 954 (1944)

— Presumptions.

Action of unlawful detainer presupposes absence of fraud and force, as well as existence of relation of landlord and tenant. Holladay Coal Co. v. Kirker, 20 Utah 192, 57 P. 882 (1899).

— When determined.

Whether a cause of action exists under this section is to be determined at the time the action is commenced. Van Zyverden v. Farrar, 15 Utah 2d 367, 393 P.2d 468 (1964)

— When exists.

Upon expiration of tenant's lease, the tenant is subject to ouster by an unlawful detainer action (not forcible detainer) under and pursuant to this section. Woodbury v. Bunker, 98 Utah 216, 98 P.2d 948 (1940); American Mut. Bldg. & Loan Co. v. Jones, 102 Utah 318, 117 P.2d 293 (1941), rehearing denied, 102 Utah 328, 133 P.2d 332 (1943)

Unless tenant has retained the right to refuse inspection by prospective purchasers of premises, unreasonable refusal to permit entry of premises for that purpose constitutes unlawful detainer. Glenn v. Keyes, 107 Utah 415, 154 P.2d 642 (1944)

Federal regulations.

—Modification of state remedies.

OPA rental and housing regulations, under *Federal Price Control Act*, were binding upon Utah courts and modified any state remedy to extent that such remedy was in conflict with that act *Callister v Spencer*, 113 Utah 497, 196 P 2d 714 (1948)

Notice to quit.

—Administrative claim.

Notice to quit or pay rent served on government as required by this section was not an administrative claim sufficient to satisfy 28 U S C § 2675(a), and federal court therefore had no jurisdiction over forcible entry and detainer action brought under Federal Tort Claims Act *Three-M Enters, Inc v United States*, 548 F 2d 293 (10th Cir 1977)

—Liability of tenant.

Action by lessor, after end of fixed term of lease, to terminate lease and require lessee to vacate premises did not terminate provision obliging tenant to pay attorney fees, where parties entered stipulation, while matter was pending, that lessee considered lease in effect and held under it after end of fixed term *Milliner v Farmer*, 24 Utah 2d 326, 471 P 2d 151 (1970)

—Prerequisites.

Notice in accordance with Subsection (1)(e) should precede notice to quit, and must be unaccomplished with for five days after the service before a notice to quit is in order *Fireman's Ins Co v Brown*, 529 P 2d 419 (Utah 1974)

—Sufficiency.

A notice to quit is sufficient under Subsection (1)(b) in the case of a tenancy at will, as provided in contract of sale in case of default, where it merely declares a forfeiture, and is not insufficient under Subsection (1)(e) because not giving purchasers alternative of performing conditions of the agreement *Forrester v Cook*, 77 Utah 137, 292 P 206 (1930), *American Holding Co v Hanson*, 23 Utah 2d 432, 464 P.2d 592 (1970)

Notice to quit which notified tenant that he was violating substantial obligations of tenancy by conducting certain businesses on premises, and which plainly informed tenant that he must desist from such objectionable practices by certain date and that, if on or before that date he failed to desist therefrom and had not surrendered premises, action would be commenced for restitution of premises, was not defective because notice was not expressed in the alternative as required by Subsection (1)(e) of former § 104-60-3, i.e., that violation must cease or tenancy be vacated, since such was plain intent of notice without use of word "or"

Callister v Spencer, 113 Utah 497, 196 P 2d 714 (1948)

Notice by landlord stating that tenants had failed to make payments of rent due under lease, had failed to pay utility bills and further providing that tenants were to quit premises and deliver up possession to landlord within fifteen days did not comply with statutory requirements under this section, in absence of compliance, landlord was not entitled to maintain action for restitution of premises *American Holding Co v Hanson*, 23 Utah 2d 432, 464 P 2d 592 (1970)

Notice of forfeiture, while sufficient to terminate a lease for breach of covenant, is not sufficient to put lessee in unlawful detainer, the notice to quit must be in the alternative, i.e., either perform or quit, before lessee becomes subject to the provisions of this chapter *Pingree v Continental Group of Utah, Inc*, 558 P 2d 1317 (Utah 1976)

Lessee was not in unlawful detainer and lessor was not entitled to maintain an action under this section where lessor's notice to vacate premises was defective in that it did not state that lessee had the alternative of paying the delinquent rent or surrendering the premises *Sovereign v Meadows*, 595 P 2d 852 (Utah 1979)

A notice to a month-to-month tenant to quit the premises need not contain the alternative of paying rent *Ute-Cal Land Dev v Inter-mountain Stock Exch*, 628 P 2d 1278 (Utah 1981)

The critical distinction between a notice of unlawful detainer and a notice of forfeiture is that the notice of forfeiture simply declares a termination of the lease without giving the lessee the alternative of making up the deficiency *Dang v Cox Corp*, 655 P 2d 658 (Utah 1982)

—Tenancy at will.

At common law a tenant at will was not entitled to notice to quit possession *Buchanan v Crites*, 106 Utah 428, 150 P 2d 100, 154 A L R 167 (1944)

It is only after buyer is in the status of a tenant at will that he is amenable to the notice provided by this section, which requires him to vacate within five days or be guilty of an unlawful detainer *Van Zyverden v Farrar* 15 Utah 2d 367, 393 P 2d 468 (1964)

Where lease was terminated by failure of tenant to pay rent and taxes, the tenant became a tenant at will and landlord properly proceeded to regain possession by the procedure set forth in Subsection (1)(b) by giving notice to vacate *Shoemaker v Pioneer Invs*, 14 Utah 2d 250, 381 P 2d 735 (1963)

Notice to purchaser who had become tenant at will for failure to make payment was sufficient under Subsection (1)(e) even though sev

~~eral months had elapsed between first and final notice~~ Beneficial Life Ins Co v Dennett, 24 Utah 2d 310, 470 P 2d 406 (1970)

Persons liable.

No one but tenant of real property for term less than life can be guilty of unlawful detainer Holladay Coal Co v Kirker, 20 Utah 192, 57 P 882 (1899)

Pleadings.

—Tenancy at will.

Since on month-to-month tenancy owner could recover property on fifteen-day notice, ~~allegation in complaint that such tenant had violated substantial obligations of rental agreement was not necessary in unlawful detainer action~~ Callister v Spencer, 113 Utah 497, 196 P 2d 714 (1948)

Right of re-entry.

—Contractual provisions.

Under contract for sale and exchange of real estate, providing that seller at his option could re-enter premises and be released from his obligations upon default of buyer, seller was bound to give buyer notice of his intention to take advantage of forfeiture provision of contract, since such provision was not self-executing Leone v Zuniga, 84 Utah 417, 34 P 2d 699, 94 A L R 1232 (1934)

Strict performance.

—Waiver.

Acceptance by vendor of purchaser's past due payments under uniform real estate contract and other conduct leading latter to believe that strict performance would not be required by vendor, imposes duty on vendor to give purchaser reasonable notice before vendor may insist on strict performance by purchaser Pacific Dev Co v Stewart, 113 Utah 403, 195 P 2d 748 (1948)

Strict statutory compliance.

—Not required.

There is no reason for the strict rule that landlord must demand the precise or exact ~~amount of rent due or lose his right to recover possession of the premises. A tenant is guilty of unlawful detainer when he continues in pos-~~

~~session after default in payment of any rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the premises, etc~~ Commercial Block Realty Co v Merchants' Protective Ass'n, 71 Utah 505, 267 P 1009 (1928)

—Required.

This section, which provides a severe remedy, must be strictly complied with before the cause of action thereon may be maintained Van Zyverden v Farrar, 15 Utah 2d 367, 393 P 2d 468 (1964)

Termination of lease.

A lease may be terminated pursuant to an unlawful detainer action Hackford v Snow, 657 P 2d 1271 (Utah 1982)

Treble damages.

—Contract of sale.

In a suit for amounts due under a contract of sale of real estate, where the vendors gave notice of forfeiture of the contract only and did not give the purchaser an alternative to pay up or quit, as is required under this section, the vendors were not entitled to treble damages for unlawful detainer Erisman v Overman, 11 Utah 2d 258, 358 P 2d 85 (1961)

—Intervenor.

A person not actually occupying the premises who intervenes in an action to obtain possession and for damages for unlawful detainer, and who asserts ownership and the right to possession by the occupier as his tenant, may be guilty of unlawful detainer and liable for treble damages where the court finds this intervenor's claim invalid Tanner v Lawler, 6 Utah 2d 84, 305 P 2d 882, modified on another point, 66 Utah 2d 268, 311 P 2d 791 (1957).

—Lease.

Under a lease contract for a period of years, in which the lessee defaulted notice by the lessor for the lessees to quit the premises was not sufficient for treble damages Under such a lease the statutes require an alternative notice that the tenant either perform or quit before he becomes an unlawful detainer and subject to treble damages Jacobson v Swan 3 Utah 2d 59, 278 P 2d 294 (1954)

COLLATERAL REFERENCES

Am. Jur. 2d. — 49 Am Jur 2d Landlord and Tenant § 1115 et seq, 50 Am Jur 2d Landlord and Tenant § 1205 et seq

C.J.S. — 52A C J S Landlord and Tenant § 758

A.L.R. — Right of landlord legally entitled to possession to dispossess tenant without legal process, 6 A L R 3d 177

Grazing or pasturage agreement as violation

of covenant in lease or provision of statute against assigning or subletting without lessor's consent, 71 A L R 3d 780

Express or implied restriction on lessee's use of residential property for business purposes, 46 A L R 4th 496

Key Numbers. — Landlord and Tenant 290

78-36-4. Right of tenant of agricultural lands to hold over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of possession or notice to quit by the owner, his designated agent, or his successor in estate, he shall be deemed to be held by permission of the owner, his designated agent, or his successor in estate, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-4, L. 1981, ch. 160, § 2.

COLLATERAL REFERENCES

Am. Jur 2d. — 50 Am Jur 2d Landlord and Tenant § 1193 Key Numbers — Landlord and Tenant 114(3)
C.J.S. — 51C C J S Landlord and Tenant § 136(3)

*** 78-36-5. Remedies available to tenant against undertenant.**

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him

History. L. 1951, ch 58, § 1; C. 1943, Supp., 104-36-5

COLLATERAL REFERENCES

Am. Jur 2d — 49 Am Jur 2d Landlord and Tenant § 506 Key Numbers. — Landlord and Tenant 80(3)
C.J.S. — 51C C J S Landlord and Tenant § 48(1) et seq

78-36-6. Notice to quit — How served.

The notices required by the preceding sections may be served

(1) by delivering a copy to the tenant personally,

(2) by sending a copy through registered or certified mail addressed to the tenant at his place of residence,

(3) if he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the address of his place of residence or place of business, or

(4) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property. Service upon a subtenant may be made in the same manner.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-6; L. 1981, ch. 160, § 3; 1986, ch. 137, § 2; 1987, ch. 123, § 1.

Cross-References. — Service of process, Rules 4, 5, U.R.C.P.

NOTES TO DECISIONS

ANALYSIS

Death of landlord
— Substitution of parties
Delay in bringing action
Improper service
— Failure to mail
— Leaving copy with spouse
— Failure to personally serve
— Mail

Rules of Civil Procedure

— Effect
Strict statutory compliance

Death of landlord.**— Substitution of parties.**

Notice served by agent of landlord during his lifetime did not lose its force upon landlord's death in view of C.L. 1917, § 6513 permitting substitution of personal representative for deceased, nor was executor under necessity of serving another demand for possession before bringing action, for he was entitled to carry on the litigation from point where original party left it *Boland v Nihlros*, 77 Utah 205, 293 P 7 (1930)

Delay in bringing action.

Mere lapse of time does not operate as an abandonment of all claim and demand under the notice, nor does mere delay in bringing suit, where explained, render demand for possession of the premises of no force or effect *Boland v Nihlros*, 77 Utah 205, 293 P 7 (1930), an action in which six years elapsed between demand for possession on commencement of action and in which there were delays in bringing suit to trial

Improper service.**— Failure to mail.****— Leaving copy with spouse.**

An action for unlawful detainer cannot be

maintained against a tenant to whom no copy of the notice required by the statute was mailed, although a copy was left with his wife *Perkins v Spencer*, 121 Utah 468 243 P 2d 446 (1952)

— Failure to personally serve.**— Mail.**

Assuming that compliance with this section can be waived by defendant tenant, entering general appearance cannot have that effect. It was not a compliance with statute for landlord, after failing in a few attempts to find tenants at home and serve them personally with notice, to mail a copy of notice to quit, addressed to them at their place of residence *Carstensen v Hansen*, 107 Utah 234, 152 P 2d 954 (1944) (decided under prior law)

Rules of Civil Procedure.**— Effect.**

The general provisions of Rule 4, U.R.C.P., relating to service do not modify the provisions of this section, which specifically applies to service in unlawful detainer actions *Ute-Cal Land Dev v Intermountain Stock Exch*, 628 P 2d 1278 (Utah 1981)

Strict statutory compliance.

To hold that any method of service other than that prescribed in the statute is sufficient to comply with it would be to nullify the intention of the legislature *Carstensen v Hansen*, 107 Utah 234, 152 P 2d 954 (1944)

Unlawful detainer being a summary procedure, the statute must be strictly complied with in order to enforce the obligations imposed by it *Perkins v Spencer*, 121 Utah 468, 243 P 2d 446 (1954)

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am Jur 2d Landlord and Tenant § 1213

C.J.S. — 52A C.J.S. Landlord and Tenant § 769(1) et seq

Key Numbers. — Landlord and Tenant 283

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78-36-7. Necessary parties defendant.

No person other than the tenant of the premises, and subtenant if there is one in the actual occupation of the premises when the action is commenced, need be made a party defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment must be rendered against them. In case a person has become subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter under the tenant after the commencement of the action hereunder shall be bound by the judgment the same as if they had been made parties to the action.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-7.

Nonsuit, dismissal of actions, Rule 41, U R C P

Cross-References. — Necessary joinder of parties, Rule 19, U R C P.

NOTES TO DECISIONS

ANALYSIS

Liability of parties
~~— Intervenor~~
 Necessary parties
 — Agent of landlord
 — Assignor of sales contract

Liability of parties.

~~— Intervenor.~~

A person not actually occupying the premises who intervenes in an action to obtain possession and for damages for unlawful detainer, and who asserts ownership and the right to possession by the occupier as his tenant, may be guilty of unlawful detainer and liable for treble damages where the court finds this intervenor's claim invalid *Tanner v Lawler*, 6

Utah 84, 305 P 2d 882, modified on another point, 66 Utah 2d 268, 311 P 2d 791 (1957)

Necessary parties.**— Agent of landlord.**

Agent of landlord is not a necessary or proper party in forcible detainer proceeding *Dunbar v Hansen*, 68 Utah 398, 250 P 982 (1926)

— Assignor of sales contract.

It was not necessary for assignee of seller's interest in real estate sale contract to notify original purchaser of the forfeiture for default or make him a defendant in the unlawful detainer action since an action for unlawful detainer is primarily against the person in possession and it is not necessary for everyone having an interest to be made a party *Pearce v Shurtz*, 2 Utah 2d 124, 270 P 2d 442 (1954)

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am Jur 2d Landlord and Tenant § 1236

C.J.S. — 52A C J S Landlord and Tenant § 764

Key Numbers. — Landlord and Tenant ⇌ 291(6)

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a delendum

Possession.**—Constructive.****—Right of entry.**

Under an allegation of possession plaintiff can show constructive possession, in that it is an association of qualified persons in possession of coal mines upon which sufficient money has been expended to give a preference right of entry to 640 acres of surrounding land under the law *Holladay Coal Co v Kirker*, 20 Utah 192, 57 P 882 (1899)

—Public land.

Possession of public land is prima facie evidence of right to possession as against a mere intruder or trespasser *Wilson v Triumph Consol Mining Co*, 19 Utah 66, 56 P 300, 75 Am St R 718 (1899)

Security interest in personal property.**—Partial possession of premises.**

Plaintiff's security interest in bar equipment did not constitute partial possession of premises, and plaintiff could not maintain action for forcible entry or for wrongful eviction *Wangsgard v Fitzpatrick*, 542 P 2d 194 (Utah 1975)

Title adjudication.

In action for possession and damages for unlawful detention of farm lands, trial court erred in rendering judgment and decree in defendant's favor quieting title to premises, since question of title is not ordinarily involved in

such actions. *Welling v Abbott*, 52 Utah 240, 173 P 245 (1918)

It is not proper to quiet title to real estate in action of forcible entry or in action for unlawful detainer *Thomson v Reynolds*, 53 Utah 437, 174 P 164 (1918)

—Color of title.**—State lease.**

In suit for forcible entry, it was proper to introduce lease from State Land Board (now Board of State Lands) to plaintiffs to show that they held under color of title and that it was necessary for defendants to resort to statute to obtain possession *Paxton v Deardon*, 94 Utah 149, 76 P 2d 561 (1938)

—Deed.**—Fraud and duress.**

It is not intention of forcible entry and detainer proceedings to try title or equities between parties, so that, in such an action, defendant was not permitted to show that deed executed by him to plaintiff was obtained from him by means of fraud and duress since such defense would constitute an attempt to dispute landlord's title *Williams v Nelson*, 65 Utah 304, 237 P 217 (1925)

—Tax title.

Affirmative defense and counterclaim setting up tax title and seeking to have property in question quieted in defendant, held not to lie in forcible detainer action *Woodbury v Bunker*, 98 Utah 216, 98 P 2d 948 (1940)

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am Jur 2d Forcible Entry and Detainer §§ 42 to 44

C.J.S. — 36A C J S Forcible Entry and Detainer § 53 et seq

Key Numbers. — Forcible Entry and Detainer — 29

78-36-10. Judgment for restitution, damages, and rent — Immediate enforcement — Treble damages.

(1) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises. If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

- (a) forcible entry;
- (b) forcible or unlawful detainer;
- (c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial; and

addend

(d) the amount of rent due, if the alleged unlawful detainer is after default in the payment of rent.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(c), and for reasonable attorney's fees, if they are provided for in the lease or agreement.

(4) If the proceeding is for unlawful detainer after default in the payment of the rent, execution upon the judgment shall be issued immediately after the entry of the judgment. In all cases, the judgment may be issued and enforced immediately.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-36-10; L. 1981, ch. 160, § 5; 1987, ch. 123, § 4.

Cross-References. — Fees of constable, § 21-3-3
Fees of sheriff, § 21-2-4

NOTES TO DECISIONS

ANALYSIS

Damages

- Loss of value
- Nominal damages
- Rent and profits
- Treble damages
- Execution upon judgment
- Failure to pay rent
- Grace period
- Attempt to use
- Real estate sale contracts
- Liquidated damages
- Separate action for rent
- Statutory remedy
- Tort liability for noncompliance

Damages.

— Loss of value.

The loss of the value of the use and occupation of the premises, during the period when the premises were unlawfully withheld from plaintiff, is "damage" suffered *Forrester v Cook*, 77 Utah 137, 292 P 206 (1930)

— Nominal damages.

Where husband and wife occupy the premises, and the notice required by statute is served only on the wife so that an action for unlawful detainer can be maintained merely against her, the successful plaintiff is entitled to nominal damages only, since, even if the wife had moved, the plaintiff would have had no right to possession of the premises as against the husband, and he thus suffered no actual damage by reason of the fact that the wife remained there *Perkins v Spencer*, 121 Utah 468, 243 P 2d 446 (1952)

— Rent and profits.

Damages recoverable must be the natural and proximate consequences of the unlawful detainer and nothing more. Rents and profits, or rental value of the premises, during deten-

tion are included in damages. Rental value or reasonable value of the use and occupation of the premises becomes an element of damages for retaining possession. This is not rent, it is damages. *Forrester v Cook*, 77 Utah 137, 292 P 206 (1930)

This section was not designed to provide a summary remedy for the recovery of rent. The language thereof that "judgment shall be rendered for the rent," etc., is applicable only when rent is claimed in the complaint for it would be improper in any case to award a judgment for what is not so claimed. *Voyles v Straka*, 77 Utah 171, 292 P 913 (1930)

— Treble damages.

Where all issues were decided in plaintiff's favor, trial court's refusal to treble damages, awarded plaintiff by jury, was error. *Eccles v Union Pac Coal Co*, 15 Utah 14, 48 P 148 (1897)

Where tenant merely remains over upon termination of lease and increase in rent, but does not contest landlord's right to terminate lease or his right to possession, tenant is conclusively presumed to have acquiesced in increased rental and landlord is not entitled to treble damages. *Belnap v Fox*, 69 Utah 15, 251 P 1073 (1926)

The provision for treble damages is highly penal, and, therefore, subject to strict construction. It will be observed that only damages are to be trebled, not rents and waste. But the language is mandatory making it compulsory upon the court to render and enter judgment for three times the amount of the damages assessed, after a finding of damages by the jury. *And rents which may not be trebled are such as accrue before termination of the tenancy*. *Forrester v Cook*, 77 Utah 137, 292 P 206 (1930)

A person not actually occupying the premises who intervenes in an action to obtain pos-

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session and for damages for unlawful detainer, and who asserts ownership and the right to possession by the occupier as his tenant, may be guilty of unlawful detainer and liable for treble damages where the court finds this intervenor's claim invalid *Tanner v Lawler*, 6 Utah 2d 84, 305 P 2d 882, modified on another point, 66 Utah 2d 268, 311 P 2d 791 (1957)

Plaintiff's failure to comply with the provisions of § 78-36-8 converted his action for unlawful detainer into one at common law for ejectment and defeated his right under this section to treble damages *Pingree v Continental Group of Utah, Inc*, 558 P 2d 1317 (Utah 1976)

After the termination of the tenancy by notice to quit, the person in unlawful possession is not owing rent under contract, but must respond in damages. This is not rent, but "damages," and, therefore, may be trebled *Forrester v Cook*, 77 Utah 137, 292 P 206 (1930), *Monroc, Inc v Sidwell*, 770 P 2d 1022 (Utah Ct App 1989)

Execution upon judgment.

—Failure to pay rent.

When landlord prevails in unlawful detainer action because of tenant's failure to pay rent under a lease which has not expired, he cannot have any judgment unless he shows that there is rent due and the amount thereof, when that is done, the tenant has five days in which to pay the judgment and costs, and then he will be restored to the premises under his lease. The landlord cannot prevent the tenant from paying the judgment and regaining his rights under the unexpired lease by the device of failing to have the amount of rent due included in the judgment. In such a case unless the judgment determines the amount of rent due, it is defective, and the restitution part cannot be lawfully enforced *Monter v Kratzers Specialty Bread Co.*, 29 Utah 2d 18, 504 P 2d 40 (1972)

Grace period.

—Attempt to use.

Where evicted lessees asserted that they

were not afforded the five-day post-judgment grace period to pay the delinquency and preserve the lease, the issue was moot since the defendants did not make an attempt to take advantage of the grace period *Allred v Smith*, 674 P 2d 99 (Utah 1983) (decided under facts existing prior to 1981 amendment)

Real estate sale contracts.

—Liquidated damages.

By common practice in Utah, an action in unlawful detainer may be brought against a vendee of realty whose payments are far in arrears, after sufficient demands for payment have been made and subsequent notice to quit has been given by vendor, where a vendor does cancel the contract for sale and bring such an action, vendee may be required, if the contract so provides, to forfeit as liquidated damages all money theretofore paid to the vendor along with all improvements placed on the land by the vendee, unless such forfeiture would be unconscionable *Weyher v Peterson*, 16 Utah 2d 278, 399 P 2d 438 (1965)

Separate action for rent.

Judgment in unlawful detainer for restitution of the premises and for treble damages does not bar action to recover rent due rent not being claimed or adjudged in the possessory action, because the right to recover possession by summary remedy, and the claim for rent, do not constitute one entire and indivisible cause of action *Vovles v Straka*, 77 Utah 171, 292 P 913 (1930)

Statutory remedy.

—Tort liability for noncompliance.

A landlord who is entitled to possession must, on the refusal of the tenant to surrender the premises, resort to the remedy given by law to secure it. A violation of that duty set by the statute gives rise to an action for damages not in an action under the forcible entry and detainer statute but as a separate tort *King v Firm*, 3 Utah 2d 419, 285 P 2d 1114 (1955)

COLLATERAL REFERENCES

Utah Law Review. — Forfeiture Under Installment Land Contracts in Utah, 1981 Utah L Rev 803, 807

Am. Jur. 2d. — 35 Am Jur 2d Forcible Entry and Detainer § 53

C.J.S. — 36A C J S Forcible Entry and Detainer § 68 et seq

A.L.R. — Landlord and tenant respective

rights in excess rent when landlord relets at higher rent during lessee's term, 50 A L R 4th 403

Air-conditioning appliance, equipment or apparatus as fixture, 69 A L R 4th 359

Key Numbers. — Forcible Entry and Detainer ⇐ 38

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78-36-12. Exclusion of tenant without judicial process prohibited — Abandoned premises excepted.

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78-36-12.6(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

History: C. 1953, 78-36-12, enacted by L. 1981, ch. 160, § 6.

NOTES TO DECISIONS

Condemnation of leasehold premises.

A landlord's actions in having a house effectively condemned for the purpose of evicting a tenant rather than repairing a leaking sewer system violated state policy disfavoring self-

help evictions and abused the building inspection process and were unconscionable under the Utah Consumer Sales Practices Act. Wade v. Jobe, 818 P.2d 1006 (Utah 1991).

COLLATERAL REFERENCES

A.L.R. — Landlord and tenant. respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A.L.R.4th 403.

78-36-12.3. Definitions.

(1) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of such entry.

(2) "Owner" means the actual owner of the premises and shall also have the same meaning as landlord under common law and the statutes of this state.

(3) "Abandonment" is presumed in either of the following situations:

(a) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises; or

— (b) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.

History: C. 1953, 78-36-12.3, enacted by L. 1981, ch. 160, § 7.

addendum

Cited in Fashion Place Assocs v Glad Rags,
Inc., 754 P.2d 940 (Utah 1988)

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**78-36-12.6. Abandoned premises — Retaking and
rerenting by owner — Liability of tenant — Per-
sonal property of tenant left on premises.**

(1) In the event of abandonment the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to re-rent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This subsection applies, if less than Subsection (a) notwithstanding that the owner did not re-rent the premises.

(2) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant. The owner shall make reasonable efforts to notify the tenant of the location of the personal property; however, if the property has been in storage for over 30 days and the tenant has made no reasonable effort to recover it, the owner may sell the property and apply the proceeds toward any amount the tenant owes. Any money left over from the sale of the property shall be handled as specified in Section 78-44-18. Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3.

History: C. 1953, 78-36-12.6, enacted by L. 1981, ch. 160, § 8; 1986, ch. 194, § 20.

Meaning of "this act." — The term "this act" in Subsection (2), means Laws 1981, Chapter 160, which appears as §§ 78-36-3,

78-36-4, 78-36-6, 78-36-8 5, 78-36-10, 78-36-12 and 78-36-12 3

Cross-References. — Residential renters' deposits, Chapter 17 of Title 57

COLLATERAL REFERENCES

A.L.R. — Landlord and tenant respective rights in excess rent when landlord relets at higher rent during lessee's term, 50 A L R 4th 403

Air-conditioning appliance, equipment, or apparatus as fixture, 69 A L R 4th 359

addendum

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Exhibit "A" - 4 pages

When Recorded Mail To

Afton Jean Park Howard

P.O. Box 518

Riverton, Utah - 84065

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Space Above This Line For Recorder

CHECK BOX LEGEND: [x]yes....[o]NO

REAL ESTATE CONTRACT

Caution: Read Before You Sign

- [1] This is a legally binding contract; if not understood, seek legal advice before you sign.
[2] To assure protection of certain priority rights in the property, recordation of this contract and any assignments, addenda, or legally sufficient notices of interest is highly recommended.

1. PARTIES. This contract, made and entered into this 28th day of March, 1988, is by and between AFTON JEAN PARK HOWARD, GARTH T. HOWARD (hereafter collectively called "Seller"), whose address is RIVERTON, UTAH- 84065 and RANDY P. KRUKOWSKI and BRENDA MAST KRUKOWSKI, as joint tenants (hereafter collectively called "Buyer"), whose address is 3984 Blue Meadow dr., Bennion, Utah - 84118.

2. PROPERTY. Seller agrees to sell and Buyer agrees to buy the real property (the property) located at 1067 East Diamond Way (street address), in the City of Sandy County of Salt Lake State of Utah, described as: Lot 48, White City No. 9 subdivision according to the official plat thereof, as recorded in the office of the SALT LAKE RECORDER. ALSO KNOWN AS: 1067 East Diamond Way, Sandy, UTAH. **** THIS SALE IS SUBJECT TO: (1.) The said buyers paying the due and owing 1st April 1988, payment for the 3984 Blue Meadow dr., (trade-on-sale- property; account No.02-43-35400, to LOMAS and NETTLETON COMPANY, the mortgage holder of said property, with payment of: \$455.83 dollars plus any/all late charges due for said property.

3. DATE OF POSSESSION. Seller agrees to deliver possession and Buyer agrees to enter into possession of the property on the 29th day of March, 19 88.

4. PRICE AND PAYMENT. Buyer agrees to pay for the Property the purchase price of (\$ 52,275.00), and Fifty-two-thousand-two hundred Seventy-five dollars, payable

at Seller's address above given, or to Seller's order, on the following terms: Five hundred dollars by check as cash deposit/Earnest money and rental (verbal agreement) deposits. THEN starting 1st April 1988, the monthly rent of: \$650.00 dollars and/or the amount of- Dollars: \$ 1,000.00 down payment is paid to said sellers and acknowledged by the said sellers that such payment was received by them; and the balance of Fifty thousand seven hundred seventy-five dollars (\$ 50,775.00) being paid as follows: Starting 1st April 1988 the sum of \$560.00

dollars with interest rate of 9.975% add-on-rate-per annum, and THEN \$560.00 dollars each and every 1st day of each month thereafter, until the unpaid balances together with interest and all late charges are paid-in-full to said sellers or assigns of said sellers..... Payments shall include interest at the rate of 9.975% percent (9.975% %) interest-rate-of NINE point NINE SEVENTY-FIVE percent - add-on- rate per annum on the unpaid balance from the date of 1st day of April 1988.

(5.)..... All payments is due on the 1st day of the calendar month, and considered late on the 11th day of the calendar month. * Buyer may take a discount each month of \$100.00 (one hundred dollars) when and if said Payment is paid on or before said due date, providing the Buyer is not in default or breach of any provisional covenant of this integrated contract, any payment not made within one [1] day of its due date shall subject Buyer to a late payment charge of ten percent (10%) of such over due payment, which charge must be paid before receiving credit for the late payment. The foregoing payments [X]include [O]do not include a reserve for payment of fire insurance premiums, initially, the reserve amount per payment is \$ 90.00 dollars in the event any of payments in underlying obligations for taxes and/or insurance, payment for the Property; change, Seller shall give Buyer thirty days (30) written notice of change, and any payments shall be adjusted by the Seller accordingly to the Seller's sole option of any said adjustments.

SEE PAGE - TWO -

13-1 addendum

Exhibit "A" - 4 pages

13-1

All payments made by Buyer shall be applied first to payment of late charges, next to Seller's payments under section 12, with interest as provided therein, next to the payment of reserves if any, next to the payment of interest, and then to the reduction of principal. Buyer may, at Buyer's option shall not pay any amounts in excess of one hundred dollars (\$100.00) per annum of said Annual payments herein provided, and such excess shall be applied to unpaid principal, minus a prepayment penalty of fifty percent (50%), in any such event of excess payment. In the event of any excess or prepayment, Buyer shall assume and pay all penalties incurred by Seller in making any accelerated payments on any obligations relative to this contract's agreements, nor shall said Buyer assign this contract or sublet the said property or any portion or interests therein without the prior written consent of said Seller first had and obtained, any Sale, lease, subletting, assignment, option, and/or abandonment without the written consent of the said Seller or the assignment or subletting by operation of law, shall be considered a breach of this contract, and at the sole option of said Seller Any or All scheduled payments shall be due and payable in full, and Buyer's privilege to pay any or all periodic installments payments shall be terminated forthwith. The Buyer party(s) hereby grants and agrees not to assert against any act, claim or defense which any Buyer party relative to this contract may have against said Seller herein or assigns of said Seller herein. The herein said Seller hereby reserves the right and/or option of accelerating any relative interest rate and/or payments to a greater amount, said accelerated interest rate shall not exceed five percent per annum per each time per annual accreting increased interest rate and/or said property payments shall not exceed one hundred and fifty percent of the then current (in each event) of said property payment(s), except in the event of any said breach of this contract the aforesaid Seller's option of accelerated payments shall be granted forthwith, each person signing this integrated contract, other than the Seller, is a Buyer-joint and several. If this contract is signed by more than one Buyer, the singular word "Buyer" shall include the plural, and the obligations of all such Buyers shall be joint and several. Seller means the actual Owner and after assignment, Holder of said contract. All words used herein shall be construed to be of such gender and number as the circumstances require and all references herein to Buyer shall include all other persons primarily or secondarily liable hereunder. any one of the following shall constitute an event of breach and/or default: [a] failure of Buyer to pay when due any indebtedness secured hereby; [b] if any warranty, representation or statement made herein or furnished to Seller by or on behalf of Said Buyer in connection with this contract proves to have been false in any material respect when made or furnished to the said Seller party of this contract. [c] The commencement of any bankruptcy, arrangement, reorganization, insolvency, receivership or similar proceedings by or against said Buyer or any guarantor or surety for the said Buyer. [d] The occurrence of any adverse change in the financial condition of the said Buyer deemed material by said Seller party or it, in the judgement of said Seller party, the dwelling or premises becomes unsatisfactory in appearance, character, or condition, or value, or if the Seller party shall deem itself insecure for any reason. [e] If Buyer defaults in performing any of its obligations, promises, covenants or agreements contained herein or in any agreement, paper or document given by said Buyer to the said Seller party. [f] If Buyer fails to pay promptly when due all taxes, liens, fees, charges and assessments upon the said Property, or fails to keep the said property properly insured at all times with a insurance company or companies acceptable to said Seller and with any loss payable to the herein said Seller party as its interests may appear, against fire (with extended coverage), theft, physical damage and such other risks and in such amounts for all risks, as the said Seller party shall require. [g] In the event the said Seller party retakes possession of the said property, the insurance policies thereon shall become the sole property (ownership) of said Seller party and said Buyer shall have no further interest therein Buyer hereby grants, assigns to the said Seller any proceeds of any such insurance to the extent of the unpaid balances hereunder and directs any insurer to make payments and/or refunds directly to said Seller, and in any event of any breach and/or default of any agreement of this contract the said Seller party is granted and authorized to cancel any said insurance and credit any premium refund against said unpaid balances; and any repossession of said property shall not affect said Seller's right, hereby acknowledged by said Buyer, to retain all fees, and/or payments made prior thereto by said Buyer. In any event of any repossession of said property the said Seller shall have all rights and remedies provided and permitted by law, and without any limitations thereto. The said Buyer acknowledges, grants, and agrees to pay any deficiency balance to said Seller party upon said Seller's written demand forthwith. As aforesaid when monthly payments are paid on time for the current periodic calendar month. The buyer may take a one hundred dollar (each on time payment) discount per month, providing that said Buyer is not in default or breach of this contract's agreements, the Seller reserves the option of disallowing any discount, for any reason, at any event (time or instance), the said Buyer gives, and accepts, and agrees to the foregoing discount option terms forthwith. [h] said Seller party is hereby authorized to date and fill in any blanks in this contract after the execution hereof [i] the said Buyer party hereby appoints the County Clerk of the said County in which the place specified in said Seller's address on this contract is located as agent for the purpose of accepting service of process in any action pertaining to this contract and agrees that any such action may be brought in any court of said County. [j] each covenanted provisional condition contained herein shall be satisfied by said Buyer who is totally responsible within the time herein specified, or this contract at the option of said Seller may be terminated and all fees, payments, deposits, impounds, shall be forfeited to the said Seller party as partial damages, said Buyer gives and accepts and agrees to aforesaid agreement

5. NO WAIVER. If Seller accepts payments from Buyer on this contract in an amount less than or at a time later than herein provided, such acceptance will not constitute a modification of this contract or a waiver of Seller's rights to full and timely future performance by Buyer.
- 5a. As to the obligations hereby created the Buyer waives the right to exempt or to claim as exempt any property, Real or Personal, he now owns or may acquire hereafter by virtue of any homestead or exemption law now in force or that may hereafter be enacted, Buyer grants, agrees, and acknowledges the aforesaid integrated agreement.

EXHIBIT A-T-1

6. EVIDENCE OF TITLE. Buyer will, at his expense, furnish Buyer evidence of title in the form of ☒ an up-to-date abstract of title. ☒ an owner's title insurance policy insuring Buyer's interest in the Property under this contract for the amount of the purchase price.

7. UNDERLYING OBLIGATIONS. Seller states that the only underlying obligations against the property are:

(a) obligation in favor of The Kissell Company with an unpaid principal balance of March 1st, 1988 (\$42,100.00 Forty-two thousand one hundred 00/100 DOLLARS as of 1 March 19 88, with monthly payments of \$ N/A, with interest at N/A percent (N/A %) per annum and balloon payments as follows:

Freeman Promissory note \$20,000, due 1992 to Herman

8. CONSIDERATIONS. Seller shall have the option of said Buyer party executing a warranty deed to said Seller for said Buyer's interest in such property, said Buyer shall execute a Warranty Deed-in-lieu of Foreclosure in favor of the said Seller, which said Deed shall be held unrecorded by said Seller, until or in the event that said Buyer is in arrears ten (10) days or more on any payment as set forth in this contract's agreements, and provided that the Seller has sent by certified mail with request for a return receipt a Notice-of-default upon the said Buyer in writing, then, in that event, without any delay the said Seller may record the Warranty Deed-in-lieu of foreclosure from the said Buyer, and the said Buyer, at the option of said Seller, shall be deemed a month-to-month tenant under all the terms and/or agreements of this contract forthwith, and said Buyer shall be liable for any payment deficiency to this contract.
9. RISK OF LOSS, PRORATIONS. All risk of loss, destruction of the Property, shall be equally shared by Buyer and Seller until the agreed date of possession, at which time property, taxes, assessments, rents, insurance, and other expenses of the said property shall be prorated.
10. TAXES AND ASSESSMENTS. Buyer agrees to pay all taxes and assessments of every kind which become due on the property during the life of this contract forthwith.
11. INSURANCE. On and after the agreed date of possession, Buyer shall maintain at Buyer's expense, the following insurance policies naming the Seller as an additional insured. (a) insurance against loss by fire and other risks customarily covered by "all Risk" insurance on insurable buildings and any improvements at replacement value of 80% as a replacement clause endorsement shall designate, and (aa) general liability insurance having coverage of not less than the greater of \$250,000 or of \$45,000.00 or Replacement Cost combined single limit with a certificate of insurance provided to Seller that includes a ten(10) day notice of cancellation in favor of Seller. All such insurance policies shall be in companies which are duly licensed by the State of Utah and are acceptable to the Seller.
12. SELLER'S OPTION TO DISCHARGE OBLIGATIONS. In the event Buyer shall default in the payment of any taxes, assessments, insurance premiums or other expenses of the Property Seller may, at Seller's option, pay said taxes, assessments, insurance premiums or other expenses, and if Seller elects so to do, Buyer agrees to repay Seller upon demand all such sums so advanced and paid by Seller together with interest rate of twenty-five (25%) percent at a add-on-rate semi-annually compounded, thereon from date of payment of said sums at the rate of the greater of ten(10%) per month until paid, and when the principal sum provided in this contract is paid, if Buyer fails to repay Seller such advances, Seller may refuse to convey title to the property until such repayment is made.
13. NO WASTE. Buyer agrees that Buyer will neither commit nor suffer to be committed any waste, spoil, or destruction in or upon the property which would impair Seller's security, and the Buyer will maintain the property in good condition subject to the Seller's approval.
14. ATTORNEY'S FEES. Buyer party agrees that, should Buyer party default in any of the covenants or agreements herein contained, the Seller party shall be entitled to all costs and expenses, including Attorney's fees, which may arise or accrue from enforcing or terminating this contract, or in obtaining possession of the property, or in pursuing any remedy provided hereunder or by applicable law, whether or not any legal action(s) are filed.
15. BINDING EFFECT. This contract is binding on the heirs, executors, administrators, personal representatives, successors and assigns of the respective parties hereto.
16. BUYER'S DEFAULT. Should Buyer fail to comply with any of the terms hereof, Seller shall give Buyer written notice specifically setting forth the provisions under which Buyer is in default. Should Buyer fail to cure such default within fifteen (15) days, but not less than ten(10) days after said notice, Seller may, in addition to any other remedies afforded Seller by law, elect any of the following remedies: [a] Seller may be released from all obligations in law and equity to convey the property, and Buyer shall become at once a tenant at will of Seller. All payments which have been made by Buyer theretofore under this contract shall be retained by Seller as partial liquidated and agreed damages for the breach of the contract. [b] Seller may bring suit and recover judgement for all delinquent installments and all Attorney's fees, and the use of this remedy on one or more occasions shall not prevent Seller, at Seller's option, from resorting to this or any other available remedy in the case of subsequent default; or [c] Seller may, upon written notice to the Buyer, declare the entire principal balance and accrued interest hereunder at once due and payable and may elect to treat this contract as a note secured by a Deed of Trust, with Escrow Agent (hereafter named) as Trustee with power of sale thereunder, and without requirement to tender legal title to Buyer, proceed forthwith to foreclose in accordance with the law of the State of Utah applicable to trust deeds.
17. ESCROW. Seller shall have the sole option of setting up the appointment of any escrow agents relative to this contract, the costs of such escrow shall be borne the by Buyer, and Seller parties. at P.H.
18. ASSIGNMENT. The Buyer shall not assign any portion of this contract without the Prior written consent of said Seller, nor the Buyer shall not make, give, grant, or agree to any option right relative to this contract without Seller's prior written consent. at P.H.

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PAGE - FOUR -

13-1

19. TIME OF THE ESSENCE. It is expressly agreed that time is of the essence in this contract.
20. PHYSICAL CONDITION OF PROPERTY. With respect to the physical condition of the Property, Buyer does acknowledge that said property is in good repair and working order and Buyer hereby accepts said property in its present condition (as is) with no exceptions to said property's condition.
21. The section captions shall not in any way limit, modify or alter the provisions in the section.
22. ENTIRE AGREEMENT. This contract contains the entire agreement between the parties hereto. This contract has been delivered in the State of Utah and shall be construed in accordance with the laws thereof, and Federal Laws where applicable. Where ever possible, each provision of this contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this contract shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this integrated covenants, agreements, forthwith.

23. OTHER PROVISIONS.

(~~\$20,000.00~~) *incumbrances of Herman Freeman promissory for note to be removed from incumbering said property prior to completion of these agreements*

IN WITNESS WHEREOF, the parties have set their signatures on the day and year first above written.

3/28/88

BUYER:

Randy P. Kruskowski
Brenda Kruskowski

SELLER:

Arton Jean Park Howard
Earth P. Howard

STATE OF UTAH

SS.

County of _____

On the _____ day of _____, 19____, personally appeared before me _____

SELLER and

signer of the above instrument, who duly acknowledged to me that he executed the same.

MY COMMISSION EXPIRES:

NOTARY PUBLIC

Residing at: _____

STATE OF UTAH

SS.

COUNTY OF Salt LakeOn the 28 day of March, 1988, personally appeared before me Randy P. KruskowskiBrenda Kruskowski AKA Brenda Mast BUYER and Signerof the above instrument, who duly acknowledged to me that They executed the same.

MY COMMISSION EXPIRES:

5-89

NOTARY PUBLIC

Residing at: S. 1st Lake C.

DOCUMENT RECEIPT: I/WE acknowledge receipt of a final copy of the foregoing Instrument bearing all Signatures:

BUYER:

Randy P. Kruskowski
Brenda Kruskowski
Brenda Mast

SELLER:

3/30/88

Exhibit "A" - 4 PAGES

12-1

Case.....: 883004435 CV Civil
Case Title:

Filing Date: 08/11/88
Judge: Robin W. Reese

HOWARD, GARTH T VS KRUKOWSKI, RANDY P

Cause of Action:

Amount of Suit.: \$9650.00

Return Date.....

Judgment.....

Disposition.....

Date:

Amt:

\$.00

Date:

No Court Settings.

No Tracking Activity.

No Accounts Payable Activity.

Transaction:	Date:	Cash-in	Check-in	Check-out	Total
Civil File Fee	08/11/88	35.00	.00	.00	35.00
Civil File Fee	02/08/93	7.00	.00	.00	7.00

Party...: PLA Plaintiff
Name....:

HOWARD, GARTH T

Party...: DEF Defendant
Name....:

KRUKOWSKI, RANDY P

Party...: ATP Atty for Plaintiff
Name....:

HOWARD, AFTON JEAN

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~~14-1~~

addendum 14-1

PAGE 1 Exhibit "B"

Case.....: 883004435 CV Civil
Case Title:

Filing Date: 08/11/88
Judge: Robin W. Reese

HOWARD, GARTH T VS KRUKOWSKI, RANDY P

Party...: DEF Defendant
Name...:

KRUKOWSKI, BRENDA MAST

08/11/88 Case filed on 08/11/88. BKH
THREE DAY SUMMONS SIGNED AND FILED. BKH
881500211 Civil filing fee received 35.00 BKH
08/19/88 RTN THREE DAY SUMMONS BKH
08/23/88 ANS FILED. BKH
08/31/88 T905,450. PLA & DEFT'S PRESENT WOC. P EXH #1, MARKED, OFFERED CWH
& RECEIVED. PLA, GARTH HOWARD, SW & TEST. P EXH #2, MARKED, CWH
OFFERED & RECEIVED. 1007. PLA RESTS. 1010. DEFT, RANDY P. CWH
KRUSKOWSKI, SW & TEST. 1151. D EXH #1, MARKED, OFFERED & CWH
RECEIVED. D EXH, #2, MARKED, OFFERED & RECEIVED. 1326. D EXH CWH
#3, MARKED, OFFERED & RECEIVED. 1630. X EX. 1912. DEFT, CWH
MRS. KRUKOWSKI, SW & TEST. D EXH #4, MARKED. 2171. X EX. CWH
3155. COURT FINDS DEFT'S NOT IN UNLAWFUL DETAINER. PLA'S WRIT CWH
OF REST AND/OR DEFAULT JUDGMENT DENIED. COURT RETAINS EVIDENCE. CWH
T906,40. P EXH #2, RELEASED TO PLA. CWH
02/01/90 EVIDENCE REVIEWED AND SECURED. DZN
12/27/90 LETTER TO BOTH PARTIES TO PICK UP EVIDENCE SENT TO BOTH PARTIES. DZN
02/12/91 LETTER RETURNED FORWARDING ORDER EXPIRED. JHG
06/19/91 EVIDENCE DESTROYED. WITNESSED BY J. GREEN. DZN
02/08/93 930230043 Copy fee 7.00 DSW
COPIES OF FILE DSW

End of the docket report for this case.

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addendum **14-1**

PAGE-2 EXHIBIT "B"

Garth T. Howard, and
Afton Jean Howard
2270 West 11385 South
South Jordan, Utah - 84065
Telephone # 254-0893

Exhibit "C" - 3 pages

15-1 15-1

addendum

PLAINTIFFS:

THIRD CIRCUIT COURT STATE OF UTAH
SALT LAKE COUNTY, SANDY CITY DEPARTMENT

Garth T. Howard, and
Afton Jean Howard

PLAINTIFFS,

VS.

Randy P. Krukowski, and
Brenda Mast Krukowski

DEFENDANTS,

COMPLAINT FOR:

UNLAWFUL DETAINER; and

BREACH OF CONTRACT:

CASE No. 883004435

Comes now the above named PLAINTIFFS, Garth T. Howard, and Afton Jean Howard, and complains of the above named Defendants, Randy P. Krukowski and Brenda Mast - Krukowski, husband and wife, defendants and in support of its cause of action alleges:

1. That the Defendants are residents of SALT LAKE COUNTY, STATE OF UTAH.
2. That PLAINTIFFS Garth T. Howard and Afton Jean Howard are the Owners/managers of such Real property known as: 1067 East Diamond Way, Sandy, Utah, a single family residence. The premises was rented to the above named defendants under a verbal rental agreement. The defendants agreed to pay rent in the sum of \$550 00, per month, beginning 29th March 1988, until 10th day of April 1988, and/also prior to; the said defendants agreed to tender to said plaintiffs the sum of \$1000.00 cash; as the final portion of down payment on the purchase of said premises which was to be purchased from said Plaintiffs, BUT instead of \$1000 00 cash which defendants couldnot come up with, they, the said defendants instead made to said Plaintiffs a "OFFER TO SELL REAL ESTATE PROPERTY", to the said Plaintiffs, on such Real Property known as: 3984 Blue meadow, Bennoin, Ut., for the total sales price of the mortgage balance due and owing to "The Lomas and Nettleton Co., said balance as of 3 March 1988, shall be \$47,300.00, at a annual interest rate of ten (10%)percent, and with a trade-in allowance of \$1000.00, subject to the said defendants bring up/and/or paying the due and owing mortgage payment then due 1st April 1988, to Loan # 02-43-35400 to the Lomas and Nettleton Co., as evidenced by the "OFFER TO SELL REAL ESTATE PROPERTY", which is signed by said defendants, a copy which is attached

15-1 Exhibit "C" page 1)

Garth T. Howard, and
Afton Jean Howard
2270 West 11385 South
South Jordan, Utah - 84065
Telephone # 254-0893

Exhibit " C " 15-1-
of (3) Three pages

PLAINTIFFS:

THIRD CIRCUIT COURT STATE OF UTAH
SALT LAKE COUNTY, SANDY CITY DEPARTMENT

Garth T. Howard, and
Afton Jean Howard

PLAINTIFFS,

VS.

Randy P. Krukowski, and
Brenda Mast Krukowski

DEFENDANTS,

COMPLAINT FOR:

UNLAWFUL DETAINER; and

BREACH OF CONTRACT:

CASE No.

883004435

Comes now the above named PLAINTIFFS, Garth T. Howard, and Afton Jean Howard, and complains of the above named Defendants, Randy P. Krukowski and Brenda Mast - Krukowski, husband and wife, defendants and in support of its cause of action alleges:

1. That the Defendants are residents of SALT LAKE COUNTY, STATE OF UTAH.
2. That PLAINTIFFS Garth T. Howard and Afton Jean Howard are the Owners/managers of such Real property known as: 1067 East Diamond Way, Sandy, Utah, a single family residence. The premises was rented to the above named defendants under a verbal rental agreement. The defendants agreed to pay rent in the sum of \$550 00, per month, beginning 29th March 1988, until 10th day of April 1988, and/also prior to; the said defendants agreed to tender to said plaintiffs the sum of \$1000.00 cash; as the final portion of down payment on the purchase of said premises which was to be purchased from said Plaintiffs, BUT instead of \$1000 00 cash which defendants couldnot come up with, they, the said defendants instead made to said Plaintiffs a "OFFER TO SELL REAL ESTATE PROPERTY", to the said Plaintiffs, on such Real Property known as: 3984 Blue meadow, Bennoin, Ut., for the total sales price of the mortgage balance due and owing to "The Lomas and Nettleton Co , said balance as of 3 March 1988, shall be \$47,300.00, at a annual interest rate of ten (10%)percent, and with a trade-in allowance of \$1000.00, subject to the said defendants bring up/and/or paying the due and owing mortgage payment then due 1st April 1988, to Loan # 02-43-35400 to the Lomas and Nettleton Co., as evidenced by the "OFFER TO SELL REAL ESTATE PROPERTY", which is signed by said defendants, a copy which is attached

addendum 15-1 EXHIBIT " C "

Exhibit "C" 15-1

hereto, marked as "EXHIBIT "A", and by this reference integrated herein.

3. The said defendants have failed to pay the said payment due on 1st April 1988 on the Real property at 3984 Blue Meadow, which amounts to \$455.83 plus late charges.
4. That the said defendants made a agreement of "EARNEST MONEY SALES AGREEMENT" with said Plaintiffs to purchase Real property at 1067 East Diamond Way, Sandy, Ut., said offer dated 24th March 1988, which is signed by said defendants, a copy which is attached hereto, marked as "EXHIBIT "B". and by this reference integrated herein.
5. A notice To Perform Covenant together with a three day notice to pay the 1st August 1988 rent now due and owing in the amount of \$650.00, a copy of said notice is attached hereto, marked as "EXHIBIT "C", and by this reference integrated herein.
6. That the defendants have not paid nor have they vacated the premises after being served with said notice, and the said defendants are still in possession of the said premises.
- 7 Under the circumstances, the Plaintiffs has the right to recover the possession of the said premises through court action, together with court costs, and treble damages and Attorney's fees, if applicable.
8. The Plaintiffs have made demand on the defendants for the payment of such sums due and owing to said Plaintiffs and said Defendants have failed to pay the due and owing sum of: \$650.00 rent.
9. That said defendants executed and accepted a offer to purchase said Real property known as 1067 East Diamond Way, Sandy, Ut., and tendered to the said Plaintiffs a personal credit Union-bank draft for in the amount of \$500.00 cash as earnest money deposit on said purchase of said Real property, said check was signed by the defendant Randy P. Krukowski, a copy is attached hereto , marked as " EXHIBIT "D", and by this reference integrated herein.
10. The Plaintiffs have made demand on the defendants for payment of such sums due and owing on said Credit Union- bank draft check and said defendants have failed to pay.

WHEREFORE, Plaintiffs Prays Judgement against Defendants as follows:

1. For the sum of \$650.00 for rent due, said Plaintiffs for 1st August 1988 to September 1st, 1988.
- 2 Finding the amount of past due payments/check tendered as earnest money to the said Plaintiffs due and owing to said Plaintiffs together with interest, for the sum of \$500.00 plus interest of legal rate.
3. Finding damages of \$ 9,000.00 plus court costs for Defendants breach of said agreements, or as the court deems to be proper.
4. Finding defendants in breach of said agreements,
5. Ordering the Defendants to move, and allowing the Plaintiffs to retake possession of said premises forthwith, if necessary, ordering the Sheriff to forcibly evict the defendants forthwith and without any delay, and turn over the possession of

15-1

Addendum Exhibit "C" page 2

Exhibit "C" 15-1

said premises to the said Plaintiffs forthwith. (Order of Restitution).

6. Finding Treble damages for rent now due said Plaintiffs, plus all court costs, and Attorney's fees, if applicable, be paid to said Plaintiffs, or as the Court may deem to be proper.
7. For such other and further relief as the Court may deem proper.

DATED THIS _____ DAY OF AUGUST 1988

PLAINTIFFS: Garth T. Howard / Afton Jean Howard
Garth T. Howard, and Afton Jean Howard

Exhibit "
Addendum

C" 15-1
page 3

Exhibit "COV"

NOTICE to Perform Covenant

16-1
addendum

TO Randy P. Kruckowski only or Brenda Kruckowski, TENANT IN POSSESSION:

PLEASE TAKE NOTICE that you have violated the following covenant(s) in your Lease or Rental Agreement:

Failure to pay August 1st, 1988 Rent now due in the amount of \$ 650.00

You are hereby required within 3 days to perform the aforesaid covenant(s) or to deliver up possession of the premises now held and occupied by you, being those premises situated in the City of Sandy, County of Salt Lake, State of Utah, commonly known as _____.

If you fail to do so, legal proceedings will be instituted against you to recover said premises and such damages as the law allows.

This notice is intended to be a 3 day notice to perform the aforesaid covenant. It is not intended to terminate or forfeit the Lease or Rental Agreement under which you occupy said premises. If, after legal proceedings, said premises are recovered from you, the owners will try to rent said premises for the best possible rent, giving you credit for sums received and holding you liable for any deficiencies arising during the term of said Lease or Rental Agreement.

Dated this 4th day of August, 19 88.

Garth T. Howard
Owner/Manager

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served the Notice to Perform Covenant, of which this is a true copy, on the above-mentioned Tenant in Possession in the manner(s) indicated below:

- ☒ On August 4, 19 88, I handed the Notice to the tenant.
☐ I handed the Notice to a person of suitable age and discretion at the tenant's residence/business on _____, 19 _____.
☐ I posted the Notice in a conspicuous place at the tenant's residence on _____, 19 _____.
☐ I sent by certified mail a true copy of the Notice to the tenant at his place of residence on _____, 19 _____.
☐ _____

Executed on August 4th, 19 88, at 1067 East Diamond Way

Garth T. Howard

16-1

16-1
Exhibit "COV"

AUGUST 31, 1988

RECEIVED

SEP 2

EXHIBIT

SEIVED THIS Notice of Default
UPON Randy + Brenda Krukowski
AT 1067 Diamond Way
ON THE 3 DAY OF Sept 1988
BY Erv Landert

*PAGE-1

NOTICE OF DEFAULT

TO: RANDY P. KRUKOWSKI, and

BRENDA MAST KRUKOWSKI, the buyers of such real property known as 116 1/2
DIAMOND WAY, SANDY, UTAH.

In Regards to : Real Estate Contract; dated 28 March 1988 with GARTH T HOWARD,
AFTON JEAN PARK HOWARD, the sellers.

REASONS FOR DEFAULT

- (1.) NON-PAYMENT OF AUGUST 1st, 1988 payment now due and owing for the sum of \$560.00 dollars plus late charges of 10%.
- (2) Agreement # 5 and subparagraphs d,e,f, have been breached
- (3) Down payment check is no good, in the amount of \$500.00 dollars.
- (4) Agreement # 1 has been breached, no Insurance on said property and etc
- (5.) Agreement # 3,a, has been breached, also agreement #5 subparagraphs (d.), and (e.)- and (f)

ACTIONS SELLERS will take because of breach of said agreements

FURSUANT TO. AGREEMENT #16, subparagraph a.), RANDY P. KRUKOWSKI and BRENDA MAST-KRUKOWSKI, are hereby given written notice they both are in default of said contract agreements, and should they the buyers parties of said contract fail to CURE such defaults within fifteen (15) days after this notice. SELLERS may elect any of the following:

- 1 Seller may be released from all obligations in law and equity to convey the property, and the buyers shall become at once a tenant at will of the SELLERS; all payments which have been made by the buyers under this contract shall be retained as partial liquidated and agreed damages
- 11) SELLERS may bring suit and recover judgement for all delinquent installments and all Attorney's fees

sellers may , upon written notice to the buyers, declare the entire principal balance and accrued interest under said contract at once due and payable

FURSUANT TO Agreement #16, subparagraph (c), the aforesaid buyers are hereby given written notice that they are in default of said contract's agreements and said sellers hereby exercise their sole option of declaring the entire principal balance of said contract now due and payable also all accrued interest thereunder said contract shall be due and payable to said sellers; IN THE AMOUNT OF :\$ 52,275.00 dollars, plus interest and late charges.

Garth T. Howard — Afton Jean Park Howard
GARTH T. HOWARD, AFTON JEAN PARK HOWARD, owner/manager

P.O. Box
River View Utah
406

883004435

Exhibit "F"

17

Form 12-1 1987

PAGE 1

Exhibit "F" EXHIBIT "F" - PAGE 2

MICHAEL J. NEMELKA, CONSTABLE
P.O. BOX 16510
SALT LAKE CITY, UTAH 84116-0510
~~531-9307~~
595-6756

addendum 17-1

State of UTAH) RETURN OF SERVICE
County of SALT LAKE) Notice Served

I hereby certify and make return that I am a resident of the state of Utah and a citizen of the United States, over the age of 21 years at the time of service herein, and not a party to or interested in the within action.

I received the attached Notice Served on 09/02/88. I duly served the same upon the named defendant, BRENDA M. KRUKOWSKI, on 09/03/88, at 1600, at SALT LAKE County, UTAH by leaving a copy with RANDY KRUKOWSKI, the Defendant's Spouse, a person of suitable age and discretion, residing at 1067 E DIAMOND WAY, SANDY UT, the usual place of abode of the defendant, in SALT LAKE County, UTAH.

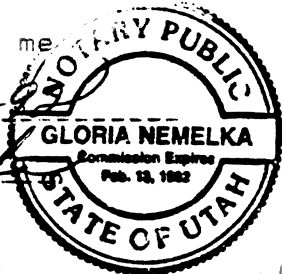
Upon serving, I duly placed the date of such service as well as my name and title.

MICHAEL J. NEMELKA, CONSTABLE
SALT LAKE CITY, UTAH 84116-0510

By: Erin Lambert
LAMBERT, ERV
TITLE Process Server

Subscribed and sworn to before me
this 09/03/88.
My commission expires 2-13-93

Gloria Nemelka
Notary Public



Service Fee \$	3.75
Trips <u>1</u>	
Mileage Fee \$	0.00
Special Fee \$	0.00
Total Due \$	3.75

GARTH HOWARD
P. O. BOX 117
RIVERTON, UT 84065

Garth Howard 565-5700 17-1
Sandy Department
88002437
88002463
Docket

Exhibit "F"
Page - 2

RECEIVED
OCT 11 1988

NOTICE OF DEFAULT

October 11, 1988

TO: RANDY P. KRUKOWSKI, and

BRENDA MAST KRUKOWSKI, the buyers of such real property known as 1067 East-DIAMOND WAY, SANDY, UTAH, or Lot 48, White City No.9, subdivision, according to official pl
In Regards to : Real Estate Contract; dated 28 March 1988, with GARTH T. HOWARD,
AFTON JEAN PARK HOWARD, the sellers.

REASONS FOR DEFAULT

- (1.) NON-PAYMENT OF AUGUST 1st, 1988 payment now due and owing for the sum of \$560.00 dollars plus late charges of 10%.
- (2) Agreement # 5 and subparagraphs d,e,f, have been breached.
- (3.) Down payment check is no good, in the amount of \$500.00 dollars.
- (4.) Agreement # 11, has been breached, no Insurance on said property and etc.

ACTIONS SELLERS will take because of breach of said agreements:

PURSUANT TO: AGREEMENT #16, subparagraph a.), RANDY P. KRUKOWSKI and BRENDA MAST-KRUKOWSKI, are hereby given written notice they both are in default of said contract agreements, and should they the buyers parties of said contract fail to CURE such defaults within fifteen (15) days after this notice. SELLERS may elect any of the following:

- (a) Seller may be released from all obligations in law and equity to convey the property, and the buyers shall become at once a tenant at will of the SELLERS; all payments which have been made by the buyers under this contract shall be retained as partial liquidated and agreed damages.
- (b.) SELLERS may bring suit and recover judgement for all delinquent installments and all Attorney's fees
- (c.) sellers may , upon written notice to the buyers, declare the entire principal balance and accrued interest under said contract at once due and payable.
- ***** (d.) BUYERS also shall be required to pay a monthly rent of \$560.00 dollars per month, plus a security deposit of \$560.00 dollars as the last month's rent, for a total of \$1,120.00 dollars in advance, STARTING fifteen days after this notice has been duly served upon you, if the above contract breach is not cured in a timely way , as said contract has specified/provided for any breaches cure.

OWNERS/MANAGERS:

GARTH T. HOWARD, X
AFTON JEAN HOWARD X
P.O. BOX 117
RIVERTON, UTAH - 84065.
Telephone # 254-0893

SERVED THIS Notice of Default
UPON Randy P. & Brenda M. Krukowski
AT 1067 E Diamond Way
ON THE 24 DAY OF Oct 1988

580027

* Exhibit "G"

Circuit Court, State of Utah

SALT LAKE COUNTY, SANDY DEPARTMENT
8680 South 440 East, Sandy, Utah 84070
Telephone: Traffic 533-7338 Criminal 533-7885

17-1
addendum

Garth J. Howard

Afton Jean Howard
vs

Ramsey P. Krukowski

Brenda Mast Krukowski

Plaintiff,

Defendant.

CASE NUMBER 883004435

() ARRAIGNMENT

() SENTENCING

☒ HEARING

() C O P

() PRE-TRIAL

() BENCH TRIAL

() JURY TRIAL

This case is scheduled for the above checked matter(s) on Wednesday the 31 day of August 1988, at 10:00 A.M./P.M. (or as soon as possible thereafter).

() WAIVER OF VERIFIED INFORMATION SIGNED

****SEE BACK FOR SPECIFIC INSTRUCTION.

DATED THIS 25 DAY OF August 1988

[Signature]
Deputy Clerk

I hereby certify that a true and correct copy of this NOTICE has been served
() Personally, ☒ 1st Class Mail, () Other _____

1. Plaintiff: 2350 West 11400 South

(name, address, telephone number, zip code)

2. Defendant: 1067 East Diamond Way Sandy, Utah

3. _____

[Signature]
Deputy Clerk

EXHIBIT "H"

19-1



EXHIBIT - N

20-1
addendum

Nov. 14, 1988

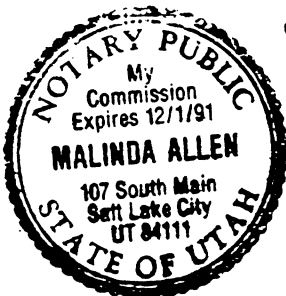
To whom it may concern;

Lori Waters is the occupant of

1067 Diamond way as of October 25, 1988.

Owner/mgrs.

Kandy K. Kowalski



Subscribed and sworn to before me
this 14 day of November 1988
My commission expires: 12-1-91
Malinda Allen
Notary Public
Residing at S.C. County

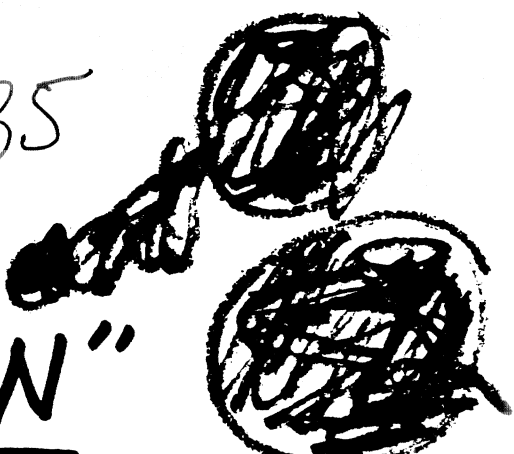
murray - 88-3009797

and

sandy - # 88 300 4435

20-1

Exhibit "N"



~~Exhibit A~~

THREE DAY
NOTICE

21-1
addendum

to Pay Rent or Quit

TO Randy P. Krukowski, and Brenda Mast Krukowski, TENANT IN POSSESSION:

You are hereby notified that the rent is now due and payable on the premises now held and occupied by you, being those premises situated in the
City of SANDY, County of SALT LAKE,
State of UTAH, commonly known as
1067 East Diamond Way

Your account is delinquent in the amount of \$ 1,120.00, being the rent for the period from
8th November 1988 to 7th December 1988 prior total includes deposit amount for last
month's rent.

You are hereby required to pay said rent in full within 3 days or to remove from and deliver up possession of the above-mentioned premises, or legal proceedings will be instituted against you to recover possession of said premises, to declare the forfeiture of the Lease or Rental Agreement under which you occupy said premises and to recover rents and damages, together with court costs and attorney's fees, according to the terms of your Lease or Rental Agreement.

Dated this 8th day of November, 19 88.

X Garth T. Howard
X Afton Jean Howard
GARTH T. HOWARD
AFTON JEAN HOWARD
Owner/Manager

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served the 3 day Notice to Pay Rent or Quit, of which this is a true copy, on the above-mentioned Tenant in Possession in the manner(s) indicated below:

- ☐ On _____, 19 88, I handed the Notice to the tenant.
- ☐ I handed the Notice to a person of suitable age and discretion at the tenant's residence/business on _____, 19 ____.
- ☒ I posted the Notice in a conspicuous place at the tenant's residence on 8th November 1988, 19 88.
- ☐ I sent by certified mail a true copy of the Notice to the tenant at his place of residence on _____, 19 ____.

Executed on 8 Nov, 19 88, at _____ BY: Garth T. Howard
Subscribed and sworn before me on this _____ day of _____, 19 ____.
NOTARY PUBLIC _____ Residing at: _____
My commission expires: _____ S/S
_____, STATE OF UTAH.

Address: 220 W. 11000 So.

Telephone: 254-0893

22-1

RESTITUTION

addendum

*

Exhibit R

CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, MURRAY DEPARTMENT

DATE 20 Dec 88 TIME 8:57
B/R 1067 Diamond Way
UPON Posted
JNDT-DEPUTY CONSTABLE SA S.L. COUNTY, UTAH
DEPUTY

Plaintiff (OWNER), GARTH T. HOWARD, Afton Jean Howard

WRIT OF
RESTITUTION

*

Civil No. 882009797

Defendant (RENTER) RANDY P. KRUKOWSKI, and BRENDA MAST-
KRUKOWSKI, - a/k/a Olesen, Oleson.

The State of Utah to the Sheriff of the County of Salt Lake:

Whereas, PLAINTIFF GARTH T. HOWARD/Afton, on the 19th day of December, 1988 obtained an Order in the Fifth Circuit Court of Salt Lake County, State of Utah against said defendants that (HOWARD) said PLAINTIFF, have restitution of the following described premises situated in the County of Salt Lake: 1067 East Diamond Way, a single family residence

Now, therefore, you said officer to whom this WRIT is directed are hereby commanded to cause defendants to be forthwith removed from said premises along with any and all persons claiming an interest in the premises through defendant and that you deliver peaceable possession thereof to plaintiff and (HOWARD) in the possession thereof from time to time to maintain and defend.

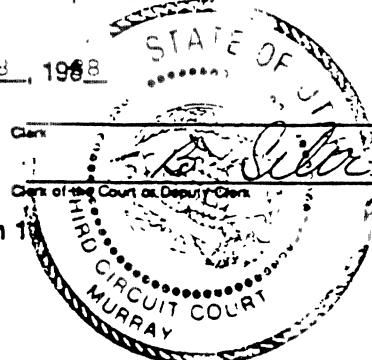
Dated this 5th day of December, 1988.

Property Manager: GARTH T. HOWARD

Telephone: 254-0893

*

Form 1



22-1

Exhibit R

23-1

Plaintiff's name: Garth T. Howard, Afton Jean Howard
Address: 2350 West 11400 South, South Jordan, Utah
Telephone: 254-0893

(3) three DAY
SUMMONS

RECEIVED
AUG 12 1988
M. J. Nemelka Constable

THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SANDY CITY

FILED

DEPARTMENT '88 AUG 10 PM 3 38

Plaintiff (OWNER), Garth T. Howard, Afton Jean Howard
vs.

Defendant (RENTER). Randy P. Krukowski and/or
Brenda Mast Krukowski

SANDY CIRCUIT COURT
SERVED THIS 3 Day summons + complaint
Randy P. Krukowski / Brenda Mast Krukowski
ON THE 15 DAY OF Aug 1988
BY Ew Lambert

Case No. 88-3004435

This is an action in unlawful detainer. Upon motion of owner/attorney, and good cause appearing,

IT IS HEREBY ORDERED that the time for the RENTER to answer or otherwise plead in this case is reduced to (3) three days.

Dated _____, by this Court.

X
JUDGE

THE STATE OF UTAH TO THE RENTER, NAMED ABOVE:

YOU ARE HEREBY SUMMONED AND REQUIRED TO FILE with the clerk of the above court a written ANSWER to the attached complaint, and to serve upon or mail to the owner/attorney, at the address shown above, a copy of your answer within (3) three days after service of this summons upon you.

If you fail to so answer, judgment by default will be taken against you for the relief demanded in the complaint which has been filed with the clerk of the above court and a copy of which is attached and herewith served upon you.

DATED this _____ day of _____, 19____

Garth T. Howard - Afton Jean Howard
OWNER/ATTORNEY Garth T. Howard, Afton Jean Howard

Renter's Address: 1067 East Diamond Way, Sandy, Utah

Brenda Mast Krukowski works for/at "SMITHS FOOD STORE west of I-15 freeway on 5000 South street in Murray, Utah..... in bakery dept.

Form 4A

addition 23-1
88002167

88002168

21.1.7.8"

PP10

SALT LAKE COUNTY SHERIFF'S OFFICE			INITIAL REPORT			Case Number 89-971			
Offense Description Civil Problem		Offense Code	Date of Report/F-U MM DD YY 01 14 89	Time Dispatched 1631	Status: Active <input checked="" type="checkbox"/> Inact <input type="checkbox"/> Clrd <input type="checkbox"/> Comp <input type="checkbox"/> Unld <input type="checkbox"/> CRP <input type="checkbox"/> ARP <input type="checkbox"/>	Date of Occurrence MM DD YY 01 14 89			
Deputy Number 5074	Division So Pat	Residence Phone 254-0893	Address of Occurrence 1067 S 9960 So (Diamond Way)			Time of Occurrence 1631			
Business, Victim or Complainant: Howard, Garth C			D. O. B. 4-30-34	Address 2270 W. 11400 So.			Business None		
B. Additional Witnesses: None									
C. Suspect Data: None									
* See inside report 4 pages									
ELEMENTS OF INVESTIGATION									
1. This is a <u>civil problem (landlord - Tenant)</u> Case and Cue Card No. 12 is used.									
2. Offense: <u>None</u>									
3. Premises: <u>Residence</u>									
4. Pertinent Information <u>Mr Howard stated that he had regained ownership of the house on Diamond way thru a court action from a Mike Kakowski. That Mr Kakowski had illegally rented out the house and he was going to evict the people living in the house. He stated that he had been in contact with a Darrell & Lori Waters just before Christmas. He told them that they would have to move out after Christmas. He stated that</u>									
Offense 2	Offense 3	Weapons Used Gun <input type="checkbox"/> Knife, Cutting inst <input type="checkbox"/> Other dang weapons <input type="checkbox"/>		Type of Premise Hwy Rd <input type="checkbox"/> Comm House <input type="checkbox"/> Gas Station <input type="checkbox"/> Chn Store <input type="checkbox"/> Res <input type="checkbox"/> Bank <input type="checkbox"/> Other/Not Spec <input type="checkbox"/>		When Offense Occurred day D <input type="checkbox"/> night N <input type="checkbox"/> unknown U <input type="checkbox"/>			
Entrance VIA Door <input type="checkbox"/> Window <input type="checkbox"/> Basement <input type="checkbox"/> Fence <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		Property Entrance Means Screwdriver <input type="checkbox"/> Pry Bar <input type="checkbox"/> Rock, Brick <input type="checkbox"/> Slipped lock <input type="checkbox"/> Hack saw <input type="checkbox"/> Explosives <input type="checkbox"/> Wrench <input type="checkbox"/> Pliers, Vice grips <input type="checkbox"/> Wire cutters <input type="checkbox"/> Manual force <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		Stolen/Recovered Auto Codes Stolen Locally, Recovered Locally 1 <input type="checkbox"/> Stolen locally, Recovered Elsewhere 2 <input type="checkbox"/> Stolen Elsewhere, Recovered Locally 3 <input type="checkbox"/>			Arrestee Information Date Offense Deputy Age Race Sex Date Offense Deputy Age Race Sex		
Stolen Value Type		Recovered Value Type		Vandalized Value Type		Lost/Found Value Type		Property Types & Values see stamp	
Officer Assaulted/Killed Weapon Assign Activity Injury		Suicide Age Method Motive Sex		No. Cars Imp		Distribution Records <input checked="" type="checkbox"/> Narcotics Patrol Vice Detective Traffic CAU Media Juvenile Intelligence Bike Auto Other			
Reporting Deputy Paul D. Patchen				Supervisor					

* To Exhibit 5-R Page 1

EXHIBIT 5-R Page 1

24-

Exhibit - DESCRIBE PROPERTY STOLEN/RECOVERED BY QUANTITY, MAKE, MODEL, COLOR, SERIAL NUMBER, AND DOLLAR VALUE

He made additional contact with Danwell and advised that he would be at 1600 to get some money or they would have to move. The Walters were not a home until he arrived a 1600 so he called the sheriff and advised.

Upon my arrival he told me he was visiting the tenants and was going to mail the door shut and lock the gate. I informed that he could not legally lock the people out of the house. That he needed to take the proper eviction steps through the civil division. Mr Howard stated that he had the legal right to lock them out because of the court order that I provided. I advised that he could not lock them out of the house. I requested to see the court order and he could not present them. Mr Howard stated that he did not care if it was legal or not because he had the right because the people living in the house did not have a lease. Mr Howard was told at this time that the report would state that he had called and was making the door shut. He stated that was all he had called for and wanted us to stop the people from trespassing.

3

Reporting Deputy

Deputy Number

5071

Fred O. Hawthorne

X1

Exhibit 5-R Page 2

EXHIBIT S-R Page 3

SALT LAKE COUNTY SHERIFF'S OFFICE

FOLLOW-UP REPORT

Case Number
89-971

Offense Description <i>Civil Problem</i>		Offense Changed To <i>to</i>		Date of Report/F U MM DD YY <i>01 04 89</i>	Status Active <input type="checkbox"/> Inact <input type="checkbox"/> Cld <input type="checkbox"/> Comp <input type="checkbox"/> Unfd <input type="checkbox"/> CRP <input type="checkbox"/> ARP <input type="checkbox"/>	Date of Occurrence MM DD YY <i>01 04 89</i>
Deputy Number <i>5074</i>	Division <i>So Pat.</i>	Residence Phone <i>None</i>	Address of Occurrence <i>1067 E. Diamond Way</i>		Time of Occurrence <i>1830</i>	
Business, Victim or Complainant: <i>Waters, Lori</i>		D. O. B. <i>4-17-64</i>	Address <i>1067 E 9960 SO.</i>		Business <i>None</i>	

24-1
Exhibit S-R-Page 3

Mrs Waters called from the 7-11 at 9800 S. 700 E and stated that her landlord had locked her out of her house. She stated that she had gone to the welfare dept to get her check and when she arrived home the door and the gate were locked. HOWARD I talked with Mrs Waters and explained to her that her landlord had already called us and what I had told him. I suggested that she call him and make arrangements to meet him at the house to settle the problem. Mrs Waters did make the call and started to get in an argument with the landlord. HOWARD I was able to get the landlord to meet with Mrs Waters but he refused to let them back into the house except to move their personal belongings. Mrs Waters was referred to her attorney because of being locked out of her house.

Offense 2	Offense 3 <i>10</i>	Weapons Used Gun <input type="checkbox"/> Knife, Cutting inst <input type="checkbox"/> Other dang weapons <input type="checkbox"/> Strong arm threats <input type="checkbox"/> Not spec, unknown <input type="checkbox"/>		Type of Premise Hwy Rd <input type="checkbox"/> Comm House <input type="checkbox"/> Gas Station <input type="checkbox"/> Chn Store <input type="checkbox"/> Res <input type="checkbox"/> Bank <input type="checkbox"/> Other/Not Spec			
Entrance VIA Window <input type="checkbox"/> Basement <input type="checkbox"/> Door <input type="checkbox"/> Roof <input type="checkbox"/> Fence <input type="checkbox"/> Other/Not Spec <input type="checkbox"/>		Property Entrance Means Screwdriver <input type="checkbox"/> Pry bar <input type="checkbox"/> Rock Brick <input type="checkbox"/> Slipped lock <input type="checkbox"/> Hack saw <input type="checkbox"/> Explosives <input type="checkbox"/> Wrench <input type="checkbox"/> Pliers/Vise grip <input type="checkbox"/> Wire cutters <input type="checkbox"/> Manual force <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		When Offense Occurred day D <input type="checkbox"/> night N <input type="checkbox"/> unknown U			
Stolen Value Type	Recovered Value Type	Vandalized Value Type	Lost/Found Value Type	Property Types & Values see stamp <input type="checkbox"/>	Officer Assaulted/Killed Weapon Assign Activity Injury	Suicide Age Method Motive Sex	No. Cars Im
Stolen/Recovered Auto Codes Stolen Locally, Recovered Locally <i>1 1</i> Stolen Locally, Recovered Elsewhere <i>2 1</i> Stolen Elsewhere, Recovered Locally <i>3 1</i>		Arrestee Information Date Offense Deputy Age Race Sex Date Offense Deputy Age Race Sex		Distribution Records Narcotics Patrol Vice Traffic CAU Media Intelligence Bike Auto Other			
Reporting Deputy		Supervisor		<div style="border: 2px solid black; padding: 5px; display: inline-block;"> Exhibit S-R Page 3 </div>			

EXHIBIT "S-R-PAGE 4" *

SALT LAKE COUNTY SHERIFF'S OFFICE

CONTINUATION SHEET

Page 2 of 2

Case Number

89-971

DESCRIBE PROPERTY STOLEN/RECOVERED BY QUANTITY, MAKE, MODEL, COLOR, SERIAL NUMBER, AND DOLLAR VALUE

When Mrs Waters was packing some of her belongings she discovered some missing items. I went out to Mr Howards truck and asked him if he had the items. He stated that when he nailed the door shut he took the items out of the house. He returned the items to me and I returned them to Mrs Waters.

Mr Howard returned a, Tickle, A.M & F.M clock radio, Sanyo Hair dryer, Proctor silex toaster, brush style curling iron and 2 crow bars.

No further action was taken at this time, because all parties became very angry. Both parties were told to leave and they obeyed.

* The Waters returned later and broke in and finished taking their personal belongings on 01-5-1989 *

Neighbor across street phoned Howard to let him know what was going on - Howard took no action.

58, 415 ST 6 OF 11

* EXHIBIT "S-R-PAGE 4" *

Reporting Deputy

Reed D. Katchner

Deputy Number

507Y

I thought said items were left or abandon on the property.
Garth Howard

20-1

MICHAEL J. NEMELKA, CONSTABLE
P.O. BOX 16510
SALT LAKE CITY, UTAH 84116-0510
531-9307
595-6756

State of UTAH) RETURN OF SERVICE
 :
County of SALT LAKE) Summons and Complaint

I hereby certify and make return that I am a resident of the state of Utah and a citizen of the United States, over the age of 21 years at the time of service herein, and not a party to or interested in the within action.

I received the attached Summons and Complaint on 08/12/88. I duly served the same upon the named defendant, RANDY P KRUKOWKI, on 08/15/88, at 2145, at SALT LAKE County, UTAH by leaving a copy with RANDY P KRUKOWKI, the Defendant personally, at 1067 E DIAMOND WAY, SANDY, UT, the usual place of abode of the defendant, in SALT LAKE County, UTAH.

Upon serving, I duly placed the date of such service as well as my name and title.

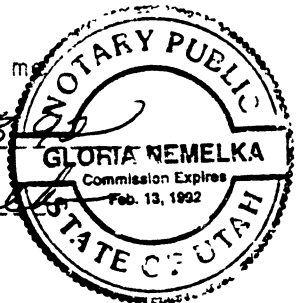
MICHAEL J. NEMELKA, CONSTABLE
SALT LAKE CITY, UTAH 84116-0510

By: Erin Lambert
LAMBERT, ERIN
TITLE Process Server

Subscribed and sworn to before me
this 08/15/88.

My commission expires 2-13-92

Gloria Nemelka
Notary Public



Service Fee \$	3.75
Trips <u>2</u>	
Mileage Fee \$	4.50
Special Fee \$	0.00
Total Due \$	8.25

GARTH HOWARD
2270 W 11385 SO
SO JORDAN, UT 84065

Exhibit "2"
addendum 25-1

26-1
addendum

MICHAEL J. NEMELKA, CONSTABLE
P.O. BOX 16510
SALT LAKE CITY, UTAH 84116
531-9307
595-6756

State of UTAH) RETURN OF SERVICE
County of SALT LAKE) Notice

I hereby certify and make return that I am a resident of the state of Utah and a citizen of the United States, over the age of 21 years at the time of service herein, and not a party to or interested in the within action.

I received the attached Notice on 10/11/88. I duly served/posted the same at/upon the named defendant, RANDY KRUKOWSKI, on 10/20/88 at SALT LAKE County, UTAH, by posting at 1067 EAST DIAMOND WAY, SANDY UT, in SALT LAKE County, UTAH. In addition, I mailed a copy of the same as required by law.

Upon serving, I duly placed the date of such service as well as my name and title.

**Certified copy sent
to Randy.

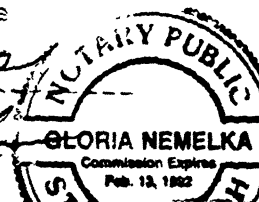
MICHAEL J. NEMELKA, CONSTABLE
SALT LAKE CITY, UTAH 84116-0510

BY: *[Signature]*
NEMELKA, MICHAEL J.,
TITLE *[Signature]*

Subscribed and sworn to before me
this 10/20/88.

My commission expires 2-13-92

[Signature]
Notary Public



Service Fee \$ 3.75
Trips *3*
Mileage Fee \$ 15.75
Special Fee \$ 2.00
Total Due \$ 21.50

Postage 1.00

GARTH HOWARD
P. O. BOX 117
RIVERTON, UT 84065

Exhibit

P-495 760 132
RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to Randy P & Brenda Krukowski	
Street and No 1067 E Diamond Way	
P.O. State and Zip Code Sandy, Utah 84092	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date delivered	
Return Receipt showing to whom Date and Address of Delivery	
TOTAL Postage and Fees	\$ 2.00
Postmark or Date	26-1

Form 3800, JUNE 1989

~~* EXHIBIT *~~

LAW OFFICES OF
PAULSEN, LAUCHNOR & MICKELSON*
KEY BANK TOWER SUITE 500
50 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84144

BRETT F. PAULSEN
WALLACE R. LAUCHNOR
JAMES D. MICKELSON
* AN ASSOCIATION OF SOLE PRACTITIONERS

27-1
addendum

TELEPHONE
(801) 521-7500

August 18, 1988

Garth T. Howard
Afton Jean Howard
2350 West 11400 South
Draper, Utah 84065

Dear Mr. & Mrs. Howard:

Re: Howard vs. Krukowski

I appreciated the opportunity of talking with you on the 17th.

We have an appointment on the 22nd to see if we can resolve the dispute between you and the Krukowskis. The goal of that meeting will be to clear up the problems with regard to the purchase of the home at 1067 Diamond Way.

If possible the Krukowskis wish to obtain title to the home subject only to the first mortgage which I understand is current. Please be prepared to advise me as to the amount of the mortgage on Monday, its current status, and provide me with a copy thereof. It is my understanding that you will clear out the second lien if cash is obtained.

You have agreed not to proceed further on your lawsuit until after we have met and I have had time to respond thereto.

Yours very truly,



Brett F. Paulsen

BFP:ma
cc: Randy P Krukowski
1067 Diamond Way
Sandy, Utah 84070

addendum 27-1

CASC#
883004435

Exhibit "8"

28-1 addendum
"0131914X3"

SALT LAKE COUNTY SHERIFF'S OFFICE			PP10 INITIAL REPORT			Case Number 88-109825		
Offense Description <i>Civil Problem</i>		Offense Code	Date of Report/F-U 11/22/88	Time Dispatched 1100	Status: Active <input type="checkbox"/> Inact <input type="checkbox"/> Cld <input type="checkbox"/> Comp <input type="checkbox"/> Unfd <input type="checkbox"/> CRP <input type="checkbox"/> ARP <input type="checkbox"/>	Date of Occurrence 11/22/88		
Deputy Number 5074	Division 30 Pat.	Residence Phone 254-0893	Address of Occurrence 1067 E DIAMOND Way			Time of Occurrence 1100		
Business, Victim or Complainant: <i>Howard, Sarah D.</i>			D. O. B.	Address 2270 W. 11400 So		Business None		
B. Additional Witnesses <i>Waters, Danell N.</i>			10-13-54			529-84-9953		
C. Suspect Data:								
<p>ELEMENTS OF INVESTIGATION</p> <p>1. This is a <u>civil problem</u> Case and Cue Card No. 12 is used.</p> <p>2. Offense: <u>None</u></p> <p>3. Premises: <u>Residence</u></p> <p>4. Pertinent Information <u>Mr Howard called because he went to a house that he had sold on contract to Randy Kerkowski and found Waters living in the house. Mr Howard is in the process of trying to repossess the house because Randy defaulted. In his agreement Randy cannot sublease the house. Mr Howard wanted it on record that Danell was living in house at this time. No further action taken.</u></p>								
Offense 2	Offense 3	Weapons Used Gun <input type="checkbox"/> Knife, Cutting inst <input type="checkbox"/> Other dang weapons <input type="checkbox"/>		Type of Premise Hwy Rd <input type="checkbox"/> Comm House <input type="checkbox"/> Gas Station <input type="checkbox"/> Chn Store <input type="checkbox"/> Res <input type="checkbox"/> Bank <input type="checkbox"/> Other/Not Spec <input type="checkbox"/>				
Entrance VIA Door <input type="checkbox"/> Window <input type="checkbox"/> Basement <input type="checkbox"/> Fence <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		Property Entrance Means Screwdriver <input type="checkbox"/> Pry Bar <input type="checkbox"/> Rock Brick <input type="checkbox"/> Slipped lock <input type="checkbox"/> Hack saw <input type="checkbox"/> Explosives <input type="checkbox"/> Wrench <input type="checkbox"/> Pliers <input type="checkbox"/> Vice grips <input type="checkbox"/> Wire cutters <input type="checkbox"/> Manual force <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		When Offense Occurred day D <input type="checkbox"/> night N <input type="checkbox"/> unknown U				
Stolen Value Type	Recovered Value Type	Vandalized Value Type	Lost/Found Value Type	Property Types & Values See stamp	Officer Assaulted/Killed Weapon Assign Activity Injury		Suicide Age Method Motive Sex	
Stolen/Recovered Auto Codes Stolen Locally Recovered Locally 1 1 Stolen locally Recovered Elsewhere 2 1 Stolen Elsewhere Recovered Locally 3 1		Arrestee Information Date Offense Deputy Age Race Sex		Total (more infor see stamp 1) Deputy Age Race Sex		Distribution Records <u>1</u> Narcotics Patrol Vice Detective Traffic CAU Media Juvi file Intelligence Bike Auto Juvi Tar Other		
Reporting Deputy <i>Geord D. Katchner</i>				Supervisor				

28-1 addendum

EXNPL 11"

SALT LAKE COUNTY SHERIFF'S OFFICE				La95 INITIAL REPORT				Case Number			
Offense Description THEFT		Offense Code 10-92		Date of Report/F-U 12-14-88		Time Dispatched 1025		Status: Active <input checked="" type="checkbox"/> Inact <input type="checkbox"/> Clrd <input type="checkbox"/> Comp <input type="checkbox"/> Unld <input type="checkbox"/> CRP <input type="checkbox"/> ARP <input type="checkbox"/>		88-118757	
Deputy Number 353/Y		Division PAT. SOUTH		Residence Phone 254-0893		Address of Occurrence 1067 E DIAMOND WAY		Date of Occurrence 12-14-88		Time of Occurrence 1000 HRS	
Business, Victim or Complainant: HOWARD, GARTH T.				D. O. B.		Address 2270 WEST 11400 SOUTH				Business NONE	
B. ADDITIONAL WITS: NONE											
C SUSPECT DATA: MWA <u>KRUKOWSKI, RANDY</u> , 10340 SO. 300 EAST & WIFE BRENDA (NFI)											
D. SUSPECT VEH: NONE											
1) THEFT CASE - 76-6-404											
2) TYPE: FROM THE ABOVE RESIDENCE - 1067 EAST DIAMOND WAY											
3) ARTICLES TAKEN: WOOD/COAL FREE STANDING STOVE. BRAND: POSSIBLY HERITAGE VALUE 1000 ⁰⁰											
4) DAMAGE: DAMAGE TO FRONT DOOR @ 500 ⁰⁰ WASH RM WINDOW @ 50 ⁰⁰ * <u>DARRELL WATERS SAID RANDY KICKED</u>											
" " REAR DOOR @ 500 ⁰⁰ TOTAL DAMAGE \$1050 ⁰⁰											
5) EVIDENCE: NONE											
RANDY KRUKOWSKI AND HIS WIFE BRENDA WERE RENTING FROM MR HOWARD. THE KRUKOWSKI LEFT AND SUB-LET THE HOME TO SOME OTHER PEOPLE CLAIMING HE WAS THE PROPERTY MGR. <u>ALL PROCEEDS</u> i.e. RENT <u>going to RANDY KRUKOWSKI</u> . WHEN THE KRUKOWSKIS MOVED OUT THEY TOOK WITH THEM THE ABOVE FREE STANDING STOVE THAT WAS IN THE BASEMENT.											
MR HOWARD WANTS TO GO CRIMINAL IN REFERENCE TO THE STOVE. ALSO PENDING IS A											
Offense 2		Offense 3		Weapons Used Gun <input type="checkbox"/> Knife, Cutting inst <input type="checkbox"/> Other dang weapons <input type="checkbox"/>		Type of Premise Hwy Rte <input type="checkbox"/> Comm House <input type="checkbox"/> Gas Station <input type="checkbox"/> Chn Store <input type="checkbox"/> Res <input type="checkbox"/> Bank <input type="checkbox"/> Other/Not Spec <input type="checkbox"/>		Entrance VIA Door <input type="checkbox"/> Window <input type="checkbox"/> Basement <input type="checkbox"/> Fence <input type="checkbox"/> Other/Not spec <input type="checkbox"/>		Property Entrance Means Screwdriver <input type="checkbox"/> Pry Bar <input type="checkbox"/> Rock, Brick <input type="checkbox"/> Shipped lock <input type="checkbox"/> Hack saw <input type="checkbox"/> Explosives <input type="checkbox"/> Wrench <input type="checkbox"/> Pliers Vice-grips <input type="checkbox"/> Wire cutters <input type="checkbox"/> Manual force <input type="checkbox"/> Other/Not spec <input type="checkbox"/>	
Stolen Value Type		Recovered Value Type		Vandalized Value Type		Lost/Found Value Type		Property Types & Values see stamp		Officer Assaulted/Killed Weapon Assign Activity Injury	
Stolen/Recovered Auto Codes Stolen Locally, Recovered Locally 111		Arrestee Information Date Offense		Total Deputy Age		micro info (see stamp) 1 Race Sex		Suicide Age Method Motive Sex		No. Cars Imp. 2	
Stolen locally, Recovered Elsewhere 211		Date Offense		Deputy Age		Race Sex		Distribution Records 1 Narcotics Patrol Vice		Detective 1 Traffic CAU Media 1	
Stolen Elsewhere Recovered Locally 311		Reporting Deputy MIKE PAGE 353/Y		Supervisor		Juvenile Intelligence 4		Auto		Other 4	

29-1

29-1

29-1

29-1

EXHIBIT 12

30-1
addendum

STATE OF UTAH)

) ss

Constable's Unable to Locate Return

COUNTY OF SALT LAKE)

I hereby certify and return that I received the within and hereto annexed, SUMMONS & COMPLAINT on the 16 day of NOVEMBER, 1988, and after due search and diligent inquiry, I am unable to find the within named defendant, KRUKOWSKI, RANDY P., at 5300 S. STATE - NOT HERE, in Salt Lake County, State of Utah, and I am reliably informed and do verily believe that said defendant is unable to be located at the above stated address.

Dated: This 22 day of NOVEMBER, 1988.

John A. Sindt, Constable's Office, Salt Lake County, State of Utah.

R. Kelly
DEPUTY

Fee's

Mileage: \$.75

: \$

: \$

TOTAL: \$.75

COMMENTS: NOT HERE

Exhibit "12"

Exhibit "12"

30-1

~~EXHIBIT 12aa~~
THIRD CIRCUIT COURT - MURRAY

DOCKET

31-1 addendum Page 2
FRIDAY APRIL 13, 1990
1:29 PM

Case.....: 883009797 CV Civil
Case Title:

Filing Date: 09/26/88
Judge: Michael K. Burton

HOWARD, GARTH T VS KRUKOWSKI, RANDY P

Party...: DEF Defendant
Name....:

KRUKOWSKI, BRENDA MAST

Home Phone.: () --

Work Phone.:

ECN # - -

09/26/88 Case filed on 09/26/88. ECS
881800233 Civil filing fee received 35.00 ECS
11/16/88 ISSUED: SUMMONS SINDT TT
11/25/88 FILED ANSWER OF DEF ELB
12/26/88 Began tracking CV 4.1 - 210 Cert. Readiness Review on 08/25/89 ELB
12/29/88 FILED 3 DAY SUMMONS ON RETURN BBS
12/30/88 FILED: NOTICE OF HEARING ON UNLAWFUL DETAINER 12/5/88 DCR
TRL scheduled for 12/5/88 at 2:00 P in room 3 with MKB DCR
12/05/88 MKB/LL T G 757 C 277 DEFT P W/O C. PLTF P W/O C. OPENING LL
STATEMENTS MADE. PLTF GARTH T HOWARD TESTIFIED. DEFT'S ALTER LL
TESTIFIED. ARGUMENTS. LL
JUDGMENT RENDERED FOR THE PLTF. - WRIT OF RESTITUTION MAY ISSUE. LL
\$2,800 + COSTS \$56.50. HOLD OPEN DAMAGES. LL
12/06/88 FEE: WRIT OF RESTITUTION ECS
882290009 Miscellaneous civil fee received 2.50 ECS
12/15/88 Case judgment is Default - judge BKS
ENTERED: DEFAULT JUDGMENT 2856.50 MKB BKS
JUDGMENT WAS NOT A DEFAULT BY WAS TRIAL GFC
Case judgment is Trial judgment GFC
12/16/88 Ended tracking of CV 4.1 - 210 Cert. Readiness BKS
12/19/88 ISSUED: WRIT OF RESTITUTION BKS
WRIT OF RESTITUTION GIVEN TO SINDT FOR SERVICE BKS

End of the docket report for this case.

Randy
Brenda

388
Posted copy on
Door
1067 Diamond

archives

Served
12-20-88

Carol 5986
535
County Sheriff's Off
88-109825
4-18-1990

Exhibit 12aa

31-1 addendum

EXHIBIT 13

32-1 addendum

STATE OF UTAH)

) ss.

COUNTY OF SALT LAKE)

CONSTABLE'S RETURN

I, ELVIN BRAMAN , being first duly sworn on oath depose and say:

I am a duly appointed Deputy Constable of the Fifth Precinct, County of Salt Lake, State of Utah, a citizen of the United States over the age of 21 years at the time of service herein, and not a party to or interested in the within action.

I received the within and hereto annexed SUMMONS & COMPLAINT on the 16 day of NOVEMBER, 1988, and served the same upon KRUKOWSKI, RANDY P., a within named defendant personally known to me to be the defendant mentioned in said SUMMONS & COMPLAINT , by delivering to and leaving a true copy of said SUMMONS & COMPLAINT for the defendant with KRUKOWSKI, RANDY P., a suitable person over the age of 14 years, RESIDING at the usual place of RESIDENCE of said defendant, personally this 22 day of NOVEMBER, 1988, at 10340 S. 360 E. County of Salt Lake, State of Utah.

I further certify that at the time of such service of the SUMMONS & COMPLAINT I endorsed the date and place of service and added my name and official title thereto.

Dated this 22 day of NOVEMBER, 1988

JOHN A. SINDT

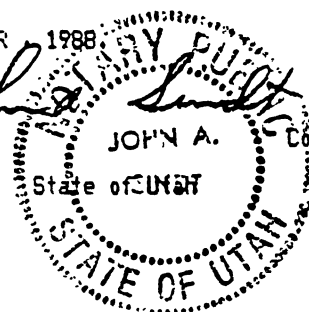
Constable's Office, Salt Lake County

E. Braman
Deputy

Subscribed and sworn to before me this 22 day of NOVEMBER, 1988

My Commission Expires: April 1, 1992.

Notary Public



Fee's

Service: \$	3.75
Mileage: \$	6.75
: \$	
: \$	
: \$	
TOTAL: \$	10.50

Exhibit "13"

* Exhibit "13"

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiff
BY: BRUCE PLENK #2613
124 South Fourth East, #400
Salt Lake City, Utah 84111
Telephone: (801) 328-8891

35 ~~24~~ - 1
addendum 35-1

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, WEST VALLEY DEPARTMENT
3636 Constitutional Blvd., West Valley City, Utah 84119

LORI WATERS,	:	
	:	
Plaintiff,	:	ORDER AND FINAL JUDGMENT
	:	
vs.	:	
	:	
GARTH T. HOWARD and	:	
AFTON JEAN HOWARD,	:	Civil No. 893001449CV
	:	
Defendants.	:	Judge William A. Thorne

This matter came on for trial on October 12, 1990, before the Hon. Paul Grant. The Court entered Findings of Fact, Conclusions of Law and a Judgment on certain of the issues in this case on September 23, 1991. A further hearing to resolve the remaining issues was held on May 21, 1992, before the Honorable William A. Thorne. Plaintiff was present and represented by Eric Mittelstadt of Utah Legal Services. Defendants were present and represented themselves. The court reviewed the file in this matter, and based upon the stipulation of the parties, now enters the following:

ORDER

1. Defendants are to pay \$50.00 to plaintiff as damages for the conversion of plaintiff's property as follows: \$10.00 by July 5, 1992, and \$10.00 each month thereafter until the full amount is paid.

2. Payments are to be made to the West Valley Circuit Court.

addendum 25-1

addendum 25-1

3. If defendants fail to make the \$10.00 payments, a judgment in favor of plaintiff may be entered for \$150.00, less any payments already made.

4. The earlier judgment of September 23, 1991 and this Order resolve all issues between the parties in this matter and constitute a final judgment.

DATED this 20th day of Sept, 1992.

BY THE COURT:


WILLIAM A. THORNE
WEST VALLEY CIRCUIT COURT JUDGE

CERTIFICATE OF MAILING

I do hereby certify that I mailed a true and correct copy of the foregoing ORDER to Garth and Afton Howard, 4125 South 430 East, Apt. 103, Murray, Utah 84107 on this 20th day of September, 1992, postage prepaid.

William A. Thorne

[bp\waters.ord]

addendum 25-1

addendum 36-1

GARTH T. HOWARD AND

AFTON JEAN HOWARD

DEFENDANTS.

4125 south 430 east Apt. #103

Murray, Utah

telephone #268-8493

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

	+	
LORI WATERS	†	DEFENDANTS TRIAL MEMORANDUM * ANSWER.
PLAINTIFF,	†	
V.	†	CIVIL NO. 893001449cv
GARTH T. HOWARD AND	†	
AFTON JEAN HOWARD	†	Judge Grant
DEFENDANTS.	†	

STATEMENT OF FACTS

AS TO THE HOWARD'S self help charges*****Everytime the HOWARD;s PHONED/or
called the SHERIFF for help!!!!!!!!!! ** SEE POLICE REPORTS** attached hereto **

Mr. HOWARD WENT TO HIS PROPERTY TRYING TO FIND THE KRUKOWSKI'S to collect money due the
HOWARDS; instead the Howards found the property being destroyed by SQUATTERS by the name o:
DARRELL NILE WATERS and LORI WATERS.....SEE EXHIBIT #1.

Mr. WATERS went/rode with Mr. Howard to show Mr. Howard the new location the KRUKOWSKIS
had moved to.

THE WATERS TOLD HOWARDS that the front door knob lock mal-functioned quite often
and wouldn't work right all the time so.....

THE HOWARDS TOLD THE * WATERS * to look to the KRUKOWSKIS for their problems and
that they would have to move out.

addendum 36-1

addendum 36-1

There was a police report on squatters on my property. Randy Waters showed me where the Krukowski moved to. Randy Waters gave me Krukowski notice of occupancy of him and Lori.

Lori and Randy Waters want to rent house from me. I inform them that until I get property back, I cannot rent it, but when I do that I would require the 1st and last months rent in cash plus a cleaning deposit of \$100 and references.

Lori Waters told me she was on welfare and that she would have enough money for rent, and that the reason they were in the home, is because Mr. Krukowski owed the Waters wages for some cement work Waters had done with Krukowski and I told Waters that they were squatters and that Mr. Krukowski never had the legal right to lease, rent, or etc. See contract, item # exhibit (A)
page 2.

NO HEAT TO HOME. NO ELECTRICITY TO HOME. USING KEROSENE HEATER IN KITCHEN.

Lori and Randy Waters let me change lock to front door, because the lock was jammed and would not open all the time right, so I put on a new door knob type lock.

Mr. Krukowski came over to the home and could not get in front door, so according to Mr. & Mrs. Waters, Krukowski kicked in the front door, breaking the door jam, where the door would not stay latched shut. So I nailed the door shut and the Waters used the back door to go in and out, until they moved a month later.

The Waters tried to get gas turned on, but gas company refused them, because of previous gas company credit problems. With no heat in the home, the water in the upstairs bathroom froze, and the pipes burst and the water run, filling the bath tub, until it run over and down into the basement, where a pile of

addendum 36-1

addendum

ice froze into a lump as large as a washing machine. The window in the wash room had been broken out and the Waters were using the basement stairs as a refrigerator to keep their foodstuffs cold.

The water running from the upstairs bathroom was the cause of their clothes being ruined as Mrs. Waters claimed they had gotten wet. If they had not let the water freeze up, this would not of happened.

There is a police report, see exhibit #1, given to Waters attorney which tells of Howard calling the sheriff as soon as he learned that Waters was squatting in his home. He told Waters he would have to move & stop using Howards house as a place to have illegal parties and group meetings.

page 2

addendum 36-1

#6

EXHIBIT

Not guilty for reason:

37-1

we were not renters at all, we

purchased property on Diamond way -

88 NOV 25 P4:00

There was a 20,000.00 promissory note

that could not be removed. could never get clear title on the house

Also, have been to Sandy City Court

over this same issue and the judge

denied judgement on us.

Murray Court

Blenda Kruskowski

883009797

Garth Howard

Kruskowski

answer to Murray
Sandy Court

Exhibit #6

Addendum 27-1

Garth T. Howard, and
Afton Jean Howard
2270 West 11385 South
South Jordan, Utah - 84065
Telephone # 254-0893

Exhibit 'S-C'
of 3 pages

EXHIBIT S-C.
of 3 pages

PLAINTIFFS:

THIRD CIRCUIT COURT STATE OF UTAH
SALT LAKE COUNTY, SANDY CITY DEPARTMENT

38-1
P.1

Garth T. Howard, and
Afton Jean Howard

PLAINTIFFS,

VS.

Randy P. Krukowski, and
Brenda Mast Krukowski

DEFENDANTS,

COMPLAINT FOR:

UNLAWFUL DETAINER; and
BREACH OF CONTRACT:

CASE No. 883004435

Comes now the above named PLAINTIFFS, Garth T. Howard, and Afton Jean Howard, and complains of the above named Defendants, Randy P. Krukowski and Brenda Mast - Krukowski, husband and wife, defendants and in support of its cause of action alleges:

1. That the Defendants are residents of SALT LAKE COUNTY, STATE OF UTAH.
2. That PLAINTIFFS Garth T. Howard and Afton Jean Howard are the Owners/managers of such Real property known as: 1067 East Diamond Way, Sandy, Utah, a single family residence. The premises was rented to the above named defendants under a verbal rental agreement. The defendants agreed to pay rent in the sum of \$550 00, per month, beginning 29th March 1988, until 10th day of April 1988, and/also prior to; the said defendants agreed to tender to said plaintiffs the sum of \$1000.00 cash; as the final portion of down payment on the purchase of said premises which was to be purchased from said Plaintiffs, BUT instead of \$1000 00 cash which defendants couldnot come up with, they, the said defendants instead made to said Plaintiffs a "OFFER TO SELL REAL ESTATE PROPERTY", to the said Plaintiffs, on such Real Property known as: 3984 Blue meadow, Bennoin, Ut., for the total sales price of the mortgage balance due and owing to "The Lomas and Nettleton Co., said balance as of 3 March 1988, shall be \$47,300.00, at a annual interest rate of ten (10%)percent, and with a trade-in allowance of \$1000.00, subject to the said defendants bring up/and/or paying the due and owing mortgage payment then due 1st April 1988, to Loan # 02-43-35400 to the Lomas and Nettleton Co., as evidenced by the "OFFER TO SELL REAL ESTATE PROPERTY", which is signed by said defendants, a copy which is attached

Exhibit S-c ⁽³⁾ *three pages*
of page 1 *38-1*

hereto, marked as "EXHIBIT B", and by this reference integrated herein.

3. The said defendants have failed to pay the said payment due on 1st April 1988 on the Real property at 3984 Blue Meadow, which amounts to \$455.83 plus late charges. **P. 2**
4. That the said defendants made a agreement of "EARNEST MONEY SALES AGREEMENT" with said Plaintiffs to purchase Real property at 1067 East Diamond Way, Sandy, Ut., said offer dated 24th March 1988, which is signed by said defendants, a copy which is attached hereto, marked as "EXHIBIT B". and by this reference integrated herein.
5. A notice To Perform Covenant together with a three day notice to pay the 1st August 1988 rent now due and owing in the amount of \$650.00, a copy of said notice is attached hereto, marked as "EXHIBIT C", and by this reference integrated herein.
6. That the defendants have not paid nor have they vacated the premises after being served with said notice, and the said defendants are still in possession of the said premises.
7. Under the circumstances, the Plaintiffs has the right to recover the possession of the said premises through court action, together with court costs, and treble damages and Attorney's fees, if applicable.
8. The Plaintiffs have made demand on the defendants for the payment of such sums due and owing to said Plaintiffs and said Defendants have failed to pay the due and owing sum of: \$650.00 rent.
9. That said defendants executed and accepted a offer to purchase said Real property known as 1067 East Diamond Way, Sandy, Ut., and tendered to the said Plaintiffs a personal credit Union-bank draft for in the amount of \$500.00 cash as earnest money deposit on said purchase of said Real property, said check was signed by the defendant Randy P. Krukowski, a copy is attached hereto, marked as "EXHIBIT D", and by this reference integrated herein.
10. The Plaintiffs have made demand on the defendants for payment of such sums due and owing on said Credit Union- bank draft check and said defendants have failed to pay.

WHEREFORE, Plaintiffs Prays Judgement against Defendants as follows:

1. For the sum of \$650.00 for rent due, said Plaintiffs for 1st August 1988 to September 1st, 1988.
2. Finding the amount of past due payments/check tendered as earnest money to the said Plaintiffs due and owing to said Plaintiffs together with interest, for the sum of \$500.00 plus interest of legal rate.
3. Finding damages of \$ 9,000.00 plus court costs for Defendants breach of said agreements, or as the court deems to be proper.
4. Finding defendants in breach of said agreements,
5. Ordering the Defendants to move, and allowing the Plaintiffs to retake possession of said premises forthwith, if necessary, ordering the Sheriff to forcibly evict the defendants forthwith and without any delay, and turn over the possession of

Exhibit S-C of 3 pages
page-2 38-1

said premises to the said Plaintiffs forthwith. (Order of Restitution, .
Finding Treble damages for rent now due said Plaintiffs, plus all court costs,
and Attorney's fees, if applicable, be paid to said Plaintiffs, or as the Court
may deem to be proper.

7. For such other and further relief as the Court may deem proper.

DATED THIS _____ DAY OF AUGUST 1988.

PLAINTIFFS:

Garth T. Howard / Afton Jean Howard
Garth T. Howard, and Afton Jean Howard

38-1
P.3

38-1

Exhibit
Page ③ P.3