

1992

# Lundahl Instruments, Inc., a Utah corporation v. Safety Technology, Inc., a California corporation : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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LUNDAHL INSTRUMENTS, INC.,	)	
a Utah corporation,	)	
	)	BRIEF OF APPELLANT
Plaintiff and	)	
Appellant,	)	
	)	
vs.	)	
	)	
SAFETY TECHNOLOGY, INC.,	)	
a California corporation,	)	
	)	Appellate Court No. 910489
Defendant and	)	
Appellee.	)	
	)	

---

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IN THE UTAH SUPREME COURT

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vs.	)	
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a California corporation,	)	
	)	Appellate Court No. 910489
Defendant and	)	
Appellee.	)	
	)	
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STATEMENT OF JURISDICTION

This is an appeal from a Final Order of the District Court for the First Judicial District of the State of Utah, in and for the County of Cache. Since the instant case does not involve any of the types of decisions by a district court which give the Court of Appeals jurisdiction pursuant to § 78-2a-3 Utah Code Ann. (1953), the Supreme Court of Utah has jurisdiction in accordance with § 78-2-2(3)(j) Utah Code Ann. (1953).

ISSUES FOR REVIEW AND STANDARD OF REVIEW

Does Utah permit parties to a private contract having substantial contacts with Utah to provide that venue may be in a state other than Utah?

Does Utah permit parties to a private contract having such substantial contacts with Utah that venue would otherwise lie in courts of Utah to provide that venue may only be in courts of a state other than Utah?

Did the forum-selection clause in the Master License and Marketing Agreement between Lundahl Instruments, Inc. and Safety Technology, Inc. limit venue for a suit based on nonpayment by Safety Technology for units ordered from and provided by Lundahl Instruments exclusively to courts in the State of California?

The standard for review concerning each of these issues is correctness of the trial court's ruling. See Mountain Fuel Supply v. Salt Lake City, 752 P.2d 884, 887 (Utah 1988) and Scharf v. BMG Corp., 700 P.2d 1068, 1970 (Utah 1985).

STATUTES AND RULES

The following statutes and rules are subject to interpretation by this Court:

§ 78-13-9, Utah Code Annotated (1953):

The court may, on motion, change the place of trial in the following cases:

(1) when the county designated in the complaint is not the proper county.



(2) when there is reason to believe that an impartial trial cannot be had in the county, city, or precinct designated in the complaint.

(3) when the convenience of witnesses and the ends of justice would be promoted by the change.

(4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county. Thereupon the court must order the change as agreed upon.

§ 78-13-4, Utah Code Annotated (1953), as amended:

When the defendant has signed a contract in the state to perform an obligation, an action on the contract may be commenced and tried in the following venues:

(1) If the action is to enforce an interest in real property securing a consumer's obligation, the action may be brought only in the county where the real property is located or where the defendant resides.

(2) An action to enforce an interest other than under Subsection (1) may be brought in the county where such obligation is to be performed, the contract was signed, or in which the defendant resides.

§ 78-13-7, Utah Code Annotated (1953):

In all other cases the action must be tried in the county in which the cause of action arises, or in the county in which any defendant resides at the commencement of the action; provided, that if any such defendant is a corporation, any county in which such corporation has its principal office or place of business shall be deemed the county in which such corporation resides within the meaning of this section. If none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the state, such action may be tried in any county where any of the parties resides or service is had, subject, however, to the power of the court to change the place of trial as provided by law.

Article VIII, Section 5, Constitution of Utah, prior to 1985 repeal:

The state shall be divided into seven judicial districts, for each of which, at least one judge shall be selected as hereinbefore provided. Until otherwise provided by law, a district court at the county seat of each county shall be held at least four times a year. All civil and criminal business arising in any county, must be tried in such county, unless a change of venue be taken, in such cases as may be provided by law. Each judge of a district court shall be at least twenty-five years of age, an active member of the bar in good standing, learned in the law, a resident of the state of Utah three years next preceding his selection, and shall reside in the district for which he shall be selected. Any district judge may hold a district court in any county at the request of the judge of the district, and, upon a request of the governor it shall be his duty to do so. Any cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, sworn to try the cause, and agreed upon by the parties, or their attorneys of record. (As amended November 7, 1944, effective January 1, 1945.)

#### STATEMENT OF THE CASE

##### NATURE AND COURSE OF THE CASE

Lundahl Instruments, Inc., Plaintiff and Appellant (a Utah corporation), brought the instant action against Safety Technology, Inc., Defendant and Appellee (a California corporation), to recover the price for goods delivered to Safety Technology. An agreement between the two corporations, which Lundahl Instruments argues was terminated in February, 1991, contained a forum-selection clause. Because of the clause, the trial court granted Safety Technology's Motion To Dismiss on

September 30, 1991 (Record at 53-55). And Lundahl Instruments, consequently, filed the instant appeal.

STATEMENTS OF FACT

Lundahl Instruments, Inc., Plaintiff and Appellant (a Utah corporation), and Safety Technology, Inc., Defendant and Appellee (a California corporation), voluntarily, knowingly, and at arm's length executed a Master License and Marketing Agreement dated April 21, 1989. (Record at 53.)

This Agreement provided that Lundahl Instruments would develop an ultrasonic sensing system and would sell such system to Safety Technology, which was given an exclusive license to market and sell the system and was obligated to use its best efforts to do so. (The information in the preceding sentence is, because of the early dismissal of this case, not in the record; it is provided here simply to give the Court background data and not as a basis for decision.)

The Agreement was - except for minor details - negotiated by both parties in Utah. Lundahl Instruments signed the Agreement in Utah; Safety Technology executed the Agreement in California. (Record at 45.)

The ultrasonic sensing system was developed and manufactured in Utah. (Record at 46.)

Safety Technology ordered a number of units of the ultrasonic sensing systems from Lundahl Instruments, which accepted such orders at its place of business in Cache County by sending such

units and executing invoices therefor between August 16, 1990, and April 26, 1991. (Record at 2, 6-21, 46.)

Safety Technology was to send payment for the units to Cache County, Utah. (Record at 46.) The total principal amount owed was \$38,185.72. On October 1, 1990, Safety Technology paid \$1,684.00; on April 23, 1991, \$1,064.00. Safety Technology made no further payment, leaving a principal balance of \$35,437.72. (Record at 2, 6-19.)

Terms on the invoices obligated Safety Technology to pay interest at the rate of one and one-half percent (1.5%) per month on all accounts over thirty (30) days old and to pay Lundahl Instruments any collection costs or expenses involved in collecting a past due account, including reasonable attorney's fees. (Record at 2, 6-19, especially 19.)

For units Safety Technology had ordered and received prior to those discussed above, Safety Technology owed Lundahl Instruments, as of June 22, 1990, interest in the amount of \$10,895.32. (Record at 3, 21.)

The units were sent by Lundahl Instruments from Cache County, Utah, on a common carrier to Safety Technology in California. (Record at 46.)

Lundahl Instruments has maintained in Cache County, Utah, the documentation demonstrating the ordering of the units, the acceptance of those orders, shipping of the units, invoicing for these shipments, and Safety Technology's nonpayment. (Record at 46.)

The Agreement contains a clause which says, in pertinent part:

Venue for any litigation arising out of this Agreement, or in connection with the transactions contemplated hereby, shall lie in any federal or state court sitting in Defendant's state, with proper jurisdiction over the subject matter thereof. Therefor, if Lundahl were to commence an action against STI, jurisdiction would be in California; if STI were to file an action against Lundahl, jurisdiction would be in Utah.

(Record at 54.)

Lundahl Instruments filed the instant action on June 6, 1991; and the District Court dismissed the action on September 30, 1991, based upon Section 78-13-4 Utah Code Ann. (1953), as amended. (Record at 1, 53-55.)

#### SUMMARY OF ARGUMENTS

Opinions of the United States Supreme Court concerning contractual stipulations for venue, *i.e.*, forum-selection clauses, are by their own terms limited to diversity cases and admiralty cases, where federal law governs the enforceability of the clauses. This leaves each state with the freedom to develop its own policy.

The Utah Supreme Court has recognized that it should not permit venue to be changed unless the Utah Legislature has provided therefor. And the relevant statutes permit a change of venue only from one county in Utah to another county in Utah. Moreover, even if the decisions by the United States Supreme Court were applicable, the policy expressed by the Utah statutes

concerning venue would preclude enforcement of the instant forum-selection clause.

But, in any event, the language in the instant clause merely purported to allow venue in another state, not to deprive the Utah courts of venue.

And termination of the underlying agreement ended any effect which the forum-selection clause would otherwise have had over an action to recover from Safety Technology the price for goods ordered from and shipped by Lundahl Instruments.

#### ARGUMENT

#### THE UNITED STATES SUPREME COURT HAS NOT ISSUED A CONTROLLING OPINION CONCERNING CONTRACTUAL STIPULATIONS FOR VENUE.

Three (3) decisions have been issued by the United States Supreme Court concerning contractual stipulations for venue: M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972); Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988); and Carnival Cruise Lines, Inc. v. Shute, 499 U.S. \_\_\_\_, 113 L.Ed. 2d 622 (1991).

Although these decisions upheld the enforceability of the specific forum-selection clauses in question, they are inapplicable to the instant situation. Bremen and Carnival Cruise Lines were based upon admiralty law, and Stewart Organization was a federal diversity case where ". . . federal law, specifically 28 U.S.C. § 1404(a), governs the District Court's decision whether to give effect to the parties' forum-selection clause . . ." 487

U.S. 22, 32 (1988). Similarly, in Carnival Cruise Lines, 499 U.S. \_\_\_\_\_, 113 L.Ed 2d 622, 629 (1991), the Court had said, "We begin by noting the boundaries of our inquiry. First, this is a case in admiralty, and federal law governs the enforceability of the forum-selection clause we scrutinize.

And in Bremen, 407 U.S. 1, 9 (1972) the Court observed, "Forum-selection clauses have historically not been favored by American courts. Many courts, federal and state, have declined to enforce such clauses on the ground that they were 'contrary to public policy,' or that their effect was to 'oust the jurisdiction' of the court." In footnote 10, the Court then gave examples of such rulings. The Court did, though, in footnote 11, provide citations to cases which advanced the view ". . . that such clauses are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." 407 U.S. 1, 10 (1972). And the Court announced that it believed ". . . this is the correct doctrine to be followed by federal district courts sitting in admiralty." 407 U.S. 1, 10 (1972) (emphasis added).

The crucial point, however, is that the United States Supreme Court has recognized that each state is entitled to develop its own policy concerning the enforceability of contractual stipulations concerning venue.

THIS COURT SHOULD NOT ENFORCE A FORUM-SELECTION  
CLAUSE PROVIDING FOR VENUE IN ANOTHER STATE  
WHEN VENUE WOULD OTHERWISE BE PROPER IN UTAH  
UNTIL THE LEGISLATURE OF UTAH HAS EXPLICITLY  
PROVIDED THEREFOR.

In State v. Cauble, 563 P.2d 775, 777 (Utah 1977), the Supreme Court of Utah quoted from the then existing version of Article VIII, Section 5 of the Utah Constitution:

. . . All civil and criminal business arising in any county, must be tried in such county, unless a change of venue be taken, in such cases as may be provided by law.

The Court continued by explaining that White v. Rio Grande Western Ry. Co., 25 Utah 346, 71 P. 593 (1903), had ". . . pointed out that the Constitution merely recognizes the existing common-law doctrine of venue and intends to prohibit a change of venue except when authorized by law".

Thus, this Court has recognized that it should not enforce a forum-selection clause providing for venue in another state when venue would otherwise be proper in Utah unless the Legislature of Utah has explicitly provided therefor. And the Legislature has not done so.

In pertinent part, § 78-13-9 Utah Code Annotated (1953) provides, "The court may, on motion, change the place of trial in the following cases . . . (4) when all the parties to an action, by stipulation or by consent in open court entered in the minutes, agree that the place of trial may be changed to another county. Thereupon the court must order the change as agreed upon."

It seems apparent that "stipulation" in this section means a written agreement entered by the parties after the commencement of



litigation and that "another county" means another county within the State of Utah. Despite the fact that a highly strained interpretation could find that the section permits pre-litigation contractual stipulations to compel a change of venue to a county in another state, it seems extremely unlikely that the Legislature would allow the courts of this state to be deprived of the ability to adjudicate cases affecting the citizens of this state without clearly and explicitly so stating.

Until April 23, 1990, the relevant statutory directive on venue concerning written contracts, Utah Code Annotated § 78-13-4, read:

When the defendant has contracted in writing to perform an obligation in a particular county of the state and resides in another county, an action on such contract obligation may be commenced and tried in the county where such obligation is to be performed or in which the defendant resides.

Understandably but unfortunately, this is the version of § 78-13-4 which the trial court erroneously concluded to be currently in force and to control the enforceability of the forum-selection clause in question. (Record at 54.)

The trial court gave no indication that venue should be determined by the statutes concerning venue that were in effect when an agreement containing a forum-selection clause was signed. It seems more likely that the trial court implicitly recognized that venue is properly governed by statutes in effect at the time litigation is commenced but inadvertently quoted a superseded version of the relevant statute.

Presently § 78-13-4 provides in pertinent part:

When the defendant has signed a contract in the state to perform an obligation, an action on the contract. . . may be brought in the county where such obligation is to be performed, the contract was signed, or in which the defendant resides.

Since the Defendant in the instant case signed the agreement under consideration, i.e., the Master License and Marketing Agreement in California (Record at 43.), the permissive provisions of § 78-13-4 are inapplicable; and the controlling directive is the mandatory strictures of § 78-13-7 Utah Code Annotated (1953):

In all other cases the action must be tried in the county in which the cause of action arises, or in the county in which any defendant resides at the commencement of the action; provided, that if any such defendant is a corporation, any county in which such corporation has its principal office or place of business shall be deemed the county in which such corporation resides within the meaning of this section. If none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint. . . . (emphasis added)

Although Article VIII, Section 5 of the Utah Constitution was amended in 1985 and no longer contains the explicit language concerning venue that was quoted supra, it is instructive that § 78-13-7 Utah Code Annotated (1953) was enacted under such Constitutional language and that there is no indication of an intent to alter the rule that venue may be changed from the court where common law would place it only when a statute authorizes such change.

The final sentence in the quotation from § 78-13-7 lends additional credence to the argument that the term "county" as used in the Utah statutes concerning venue means county within the

State of Utah. Certainly it would be neither logical nor Constitutional to permit a plaintiff to bring suit in any county of the United States (or another country) simply because none of the defendants resides in Utah.

Plaintiff and Appellant, Lundahl Instruments, Inc., properly followed the guidance of § 78-13-7 and commenced its action in Cache County because Defendant and Appellee, Safety Technology, Inc., is a corporate resident of California (Record at 1.) and the cause of action arose in Cache County in that Defendant and Appellee, Safety Technology, failed to send payment for the goods it received from Plaintiff and Appellant, Lundahl Instruments, and such payment was to have been sent to Plaintiff and Appellant, Lundahl Instruments, in Cache County. (Record at 44.)

The Supreme Court of Idaho in McCarthy v. Herrick, 240 P. 192, 193 (Idaho 1925), considered whether a contractual provision for venue could displace a statutory directive which utilized mandatory language similar to that of Utah Code Annotated § 78-13-7 and declared:

To thus authorize the commencement and maintenance of an action in any other county than that fixed by statute is not a proper subject of contract.

Recently, in Cerami-Kote, Inc. v. Energywave Corp., 773 P.2d 1143 (Idaho 1989), the Supreme Court of Idaho was required to apply Florida law to determine the validity of a forum-selection clause. The Idaho Supreme Court determined that Florida had chosen to adopt the reasoning from M/S Bremen v. Zapata Off-Shore Co., supra, which Florida viewed as imposing three conditions

that must exist in order for a forum-selection clause to be enforceable:

1. The forum was not chosen because of overwhelming bargaining powers on the part of one party which would constitute overreaching at the other's expense.

2. Enforcement would not contravene a strong policy enunciated by statute or judicial fiat, either in the forum where the suit would be brought, or the forum from which the suit has been excluded.

3. The purpose was not to transfer an essentially local dispute to a remote and alien forum in order to seriously inconvenience one or both of the parties.

Cerami-Kote, supra at 1146, quoting Maritime Limited Partnership v. Greenman Advertising Associates, Inc., 455 So.2d 1121 (Fla. App. 4th Dist. 1984) (emphasis in Idaho opinion but not in Florida decision). The Supreme Court of Idaho then found that the requisite "strong policy enunciated by statute" was provided by I.C. § 29-110:

Limitations on rights to sue. - Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the original tribunals, or which limits the time within which he may thus enforce his rights, is void.

Cerami-Kote, supra at 1146 (emphasis in original).

Since this Idaho statute is only slightly more explicit than § 78-13-7 Utah Code Annotated (1953), the policy enunciated in § 78-13-7 that the action must be tried in the county in which the cause of action arises; or, if none of the defendants resides in Utah, in any county the plaintiff designates would - even if the Bremen analysis were applicable - demonstrate that the instant forum-selection clause should not be enforced.

In the only case where the Supreme Court of Utah has considered this conflict between statute and contract, i.e., Petersen v. Ogden Union Railway and Depot Co., 175 P.2d 744, 747 (Utah 1946), the Court ruled: ". . . venue is a privilege which may be waived, but it may not be contracted away in the face of a specific statute which prohibits such contracting, as does Section 5 of the Employer's Liability Act. . ."

EVEN IF ENFORCEMENT OF A FORUM-SELECTION  
CLAUSE IS PROPER, SUCH CLAUSE SHOULD NOT BE  
READ AS A MANDATORY DIRECTIVE UNLESS SUCH  
CLAUSE EXPLICITLY SO PROVIDES.

Even were it appropriate to enforce the instant forum-selection clause, the language of such clause is merely permissive.

Venue for any litigation arising out of this Agreement, or in connection with the transactions contemplated hereby, shall lie in any federal or state court sitting in Defendant's state, with proper jurisdiction over the subject-matter thereof. Therefore, if [plaintiff] were to commence an action against [defendant], jurisdiction would be in California; if [defendant] were to file an action against [plaintiff], jurisdiction would be in Utah.

(Record at 54.)

This clause neither asserts that it is establishing the "sole and exclusive" venue, nor that it is "ousting the Utah courts of venue" should Lundahl Instruments, Inc. sue Safety Technology, Inc. And certainly a minimal requirement for denying the Utah courts an opportunity to adjudicate a dispute involving performance of a contract in Utah should be that such disenfranchisement be explicit.

Examples of mandatory forum-selection clauses can be found in the three decisions by the United States Supreme Court that were discussed supra. In Bremen, supra at 2 (emphasis added), the provision stated:

Any dispute arising must be treated before the London Court of Justice.

The clause in Stewart Organization, Inc. v. Ricoh Corp., supra at 24 (footnote 1) (emphasis added), declared:

Dealer and Ricoh agree that any appropriate state or federal district court located in the Borough of Manhattan, New York City, New York, shall have exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and shall be a proper forum in which to adjudicate such case or controversy.

And the language in Carnival Cruise Lines, supra at 628 (emphasis added) read:

It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to the Contract shall be litigated, if at all, in and before a Court located in the State of Florida, USA, to the exclusion of the courts of any other state or country.

# AND THE EQUITIES OF THIS CASE ARGUE FOR VENUE IN UTAH.

The instant case is essentially simply a failure by the Defendant to pay for goods received pursuant to a Uniform Commercial Code Article 2 sales contract.

Orders for the relevant goods were sent by Defendant to Utah where they were accepted. The goods were sent from Utah to California by common carrier. Invoices for the goods were sent from Utah. Defendant was to send payment for the goods to Utah.

And the relevant documentary evidence is located in Utah. (Record at 46.)

Substantial support for this view of the equities, furthermore, arises from Walker Bank & Trust Co. v. Walker, 631 P.2d 860 (Utah 1981), where the Utah Supreme Court found venue to be proper in Salt Lake County (as opposed to another Utah county) because the contract performance, i.e., payment on a credit card account, was due in Salt Lake County.

IN FACT, THE UNDERLYING CONTRACT HAS  
BEEN TERMINATED.

Additional justification for refusing to displace the statutory directive for venue with a contractual provision proceeds from the fact that the Master Licensing and Marketing Agreement was arguably terminated in February of 1991. (Record at 33, 40, 41, and 45.) This Agreement was, furthermore, negotiated in Utah, as essentially was its termination. (Record at 45.)

It would, indeed, seem peculiar to permit a Defendant to escape the scrutiny of the Utah judicial system through a provision in a defunct contract. The Defendant in the instant case should be treated in the same manner as any customer who has failed to pay his bill. And the instant Motion To Dismiss should, therefore, be denied.

CONCLUSION

Appellant, therefore, respectfully requests that this Court rule that the instant forum-selection clause does not preclude

venue in First Judicial District of the State of Utah, in and for the County of Cache; reverse the decision by the Trial Court dismissing the instant action; and remand the instant action to the District Court for a trial on the merits.

DATED this 19th day of December, 1991.

OLSON & HOGGAN

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CERTIFICATE OF MAILING

I hereby certify that I mailed an exact copy of the foregoing Brief Of Appellant to Defendant's Attorney, David E. Hardy, of Allen Nelson Hardy & Evans, at 215 South State Street, Suite 900, Salt Lake City, Utah, 84111, postage prepaid in Logan, Utah, this 19th day of December, 1991.

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**ADDENDUM**

**for**

**The Trial Court's**

**Findings of Fact,  
Conclusions of Law,  
and Final Order**

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
STATE OF UTAH, COUNTY OF CACHE

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LUNDAHL INSTRUMENTS, INC.,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW,
	:	AND FINAL ORDER
vs.	:	
	:	
SAFETY TECHNOLOGY, INC.,	:	Civil No. 910000418
	:	
Defendant.	:	Judge F. L. Gunnell

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Defendant Safety Technology, Inc.'s Motion to Dismiss having been properly submitted to this Court, and the Court having reviewed the pleadings and papers and arguments of counsel related thereto, as well as all other pleadings and papers on file, and having issued its Memorandum Decision dated August 19, 1991, the Court issues the following findings of fact, conclusions of law, and final order:

FINDINGS OF FACT

1. Plaintiff and defendant voluntarily, knowingly, and at arms length negotiated and entered into a Master Licensing and Marketing Agreement (the "Contract") dated April 21, 1989.

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2. The Contract contains a forum selection clause set forth in Section 8.12, which provides in relevant part as follows:

Venue for any litigation arising out of this Agreement, or in connection with the transactions contemplated hereby, shall lie in any federal or state court sitting in Defendant's state, with proper jurisdiction over the subject-matter thereof. Therefore, if [plaintiff] were to commence an action against [defendant], jurisdiction would be in California; if [defendant] were to file an action against [plaintiff], jurisdiction would be in Utah.

3. The Contract's forum selection clause is clear and unambiguous.

#### CONCLUSIONS OF LAW

1. Utah Code Ann. § 78-13-4 (1951) provides as follows:

When the defendant has contracted in writing to perform an obligation in a particular county of the state and resides in another county, an action on such contract obligation may be commenced and tried in the county where such obligation is to be performed or in which the defendant resides.

2. As set forth in the Contract's forum selection clause, plaintiff and defendant expressly elected prior to this litigation a venue that is proper pursuant to Utah Code Ann. § 78-13-4.

3. The Contract's forum selection clause is valid and enforceable.

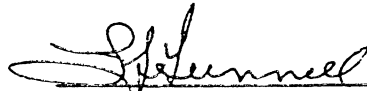
#### ORDER

Based upon the foregoing findings of fact and conclusions of law, and consistent with the Court's Memorandum Decision dated August 19, 1991, and for good cause appearing,

IT IS HEREBY ORDERED that defendant's Motion to Dismiss be and is hereby granted and plaintiff's Complaint, and all claims alleged therein, are hereby dismissed without prejudice.

DATED this 30 day of September, 1991.

BY THE COURT:



F. L. Gunnell  
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 18 day of September, 1991, a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER was served by first-class mail, postage prepaid, upon:

Brad H. Bearnson, Esq.  
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