

1970

Beneficial Life Insurance Company v. John Ellwood Dennett : Respondent's Brief

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IN THE SUPREME COURT
OF THE STATE OF UTAH

BENEFICIAL LIFE INSURANCE
COMPANY, a corporation,
Plaintiff and Appellant,

vs.

JOHN ELWOOD DENNETT,
Defendant and Respondant,

Case No.
11865

RESPONDANT'S BRIEF

Appeal from the Judgment of the
Third District Court in and for Salt Lake County,
The Honorable Bryant H. Croft, Judge

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RESPONDANT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

Appellant has correctly characterized the case as being an action in unlawful detainer which seeks to recover possession from respondant of real property.

DISPOSITION IN LOWER COURT

Appellant has correctly stated that Judge Bryant H. Croft granted summary judgement, after hearing appellant argue its case once in May, 1969, and then after deciding against appellant, hearing the appellant re-argue

its case once again in June and once again in September, in each instance patiently considering and reconsidering what appellant had to say, but in each instance failing to find any basis whatsoever upon which to allow appellant's case to continue.

STATEMENT OF THE FACTS

Appellant's version of the facts is so fraught with irrelevancies, omissions, inaccuracies, and misleading inferences, that it seems best to competely restate the facts than to try to improve upon appellant's statement of them.

Prior to June 1964, Ellis J. Robinson, and several corporations which he controlled became indebted to the respondent for large sums of money for services rendered over several years next prior hereto. The specific items of service were so numerous that at a certain point, when respondent's claim exceeded the obvious ability of Mr. Robinson to pay, respondent and Mr. Robinson simply quit keeping track of the debt.

Hanover Construction Comany was one of Robinson's companies, which on the first day of June 1964, conveyed several homes and lots in Oak Hills to Eliza S. Robinson, wife of Ellis J. Robinson.

One of the lots conveyed to Mrs. Robinson by Hanover Construction Co. was Lot 1 of Oak Hills, Plat "H", which respondent and his wife had an interest in acquiring.

On Lot 1 was a beautiful, modern, new, brick veneer home. It had and has 3,134 square feet of finished living space, a double garage of 330 square feet, and porches,

patios and balconies of 284 square feet. The lot itself was and is 10,200 square feet. It is located in a neighborhood which has homes consistently selling for \$65,000.00 to \$95,000.00. Based on the minimum costs (then) of \$17.00 per square foot for living space and \$2.50 square foot for garages, porches, etc., and the lot price of \$15,000.00, the home had and has a value of at least \$69,102.00. (3,134 X \$17.00 plus 330 X \$2.50, plus 284 X \$2.50, plus \$15,000.00) These values are set forth carefully in an affidavit on page 199 of the principal record, which appellant has not, cannot, and dare not controvert, without risking perjury.

Doxey Layton Company is a mortgage company doing business in Salt Lake City, Utah 35 South 500 East . It had a prior construction mortgage on the subject property against which it had disbursed a total of \$18,749.00 (\$5,000.00 plus \$7,500.00, plus \$4,875.00, plus \$448.70, plus \$700.00).

Because of minor prior disputes between Ellis J. Robinson and Doxey Layton Company in other transactions, respondent had come to know Doxey Layton Co. When respondent expressed a tentative interest in the subject property, Doxey Layton promptly volunteered to make a \$30,000.00 loan on the property if respondent would take it as his own home.

When Mr. Robinson said he would transfer title to the subject property for a credit on his debt, he said that he would probably accept Doxey Layton's appraisal as a basis for the credit.

Mr. Melvin Teerlink, an appraiser for Doxey Layton, undertook the appraisal; and after due study, returned

a written appraisal for \$54,000.00 (The amount is mentioned in Judge Croft's memorandum decision on page 208 of the record). The appraisal was low, but not as low as it seemed in light of the fact that the basement had not then been finished (as it is now) (at a cost of over \$6,000.00) in rich hardwood panelling.

Respondant and Ellis J. Robinson agreed that the property would be deeded to respondant in exchange for a credit of \$54,000.00 minus the \$18,749.00 construction mortgage and minus the approximately \$1,850.00 in accrued interest thereon and and minus a \$9,000.00 second mortgage. Title was conveyed to respondant by Warranty Deed executed by Eliza S. Robinson on June 29, 1964 and recorded in the Salt Lake County Recorder's office on June 29th, 1964 in Book 2208 at page 232.

In November 1964 the new mortgage loan was ready to close. No-one had even intimated that Beneficial Life Insurance Company was to be involved, either directly or indirectly in the making of the loan. Negotiations were conducted entirely with the Doxey Layton Company.

The closing was very straight forward and simple. With accruing interest, the pay-off on the construction mortgage was \$20,685.23. There was a partial pay-off to Oak Hills on a second mortgage of \$4,404.69, miscellaneous recording and title costs of \$107.25, and an escrow to insure the clearance of a mechanic's lien of \$800.00, leaving \$4,002.83 available funds out of the \$30,000.00 loan. Respondant drew out \$3,108.51 to pay part of the costs of finishing the basement and left \$894.32 on hand with Doxey Layton to apply against future monthly installments to become due on the mortgage. (See page 3 and 4 of the record on case #174076

on appeal in this court for exact details).

From the exhibits to case #160928, which is also a part of the record in the appeal, it appears that Doxey Layton secretly assigned their mortgage to Beneficial Life Insurance Company on November 2nd, 1964, almost the same date of the closing, but said nothing to respondent about the assignment, which indeed was unnecessary.

Doxey Layton continued to service the mortgage, so that payments which fell due thereunder were made to Doxey Layton Company, instead of the mortgagee's assignee, Beneficial Life Insurance Company, in spite of the assignment.

Doxey Layton omitted one small detail, however. *They forgot to send the payments respondent made to Doxey Layton Co. to Beneficial Life Insurance Company with the consequence that although the mortgage was current in all respects, it showed delinquent on the books of Beneficial Life Insurance Co.*

Beneficial Life Insurance Company, through its newly acquired attorney, was apparently not concerned about checking out basic facts before filing suits. He simply filed a complaint for foreclosure on the representations of Beneficial Life Insurance Company and without any prior notice to respondent as to his intentions. (See the file in case 160928 of the record on appeal in this case.)

Upon receiving the summons and complaint, respondent went directly to Max Jensen, head of the mortgage loan department at Beneficial Life Insurance Company,

and showed him undisputed evidence that the mortgage was not in default in any way and asked him to collect his alleged arrearage from his agent Doxey Layton Company and to tend to the prompt dismissal of the foreclosure complaint before more disastrous consequences attached to Beneficial's rather indiscriminate practice of filing fraudulent law suits.

Doxey Layton Company was in the process of converting its accounting system and it was virtually impossible at this time to find out anything from them about this or any other loan. Apparently Beneficial wasn't able to get any satisfactory explanations from Doxey Layton, either, and suggested that respondent pursue Doxey Layton Co. for an accounting, which was attempted with the same result, namely no result at all.

Since it appeared that Beneficial had made a rather regrettable but somewhat unintentional mistake and since some time would be required to pursue the Doxey Layton matter, and since, at that time, several pressures were mounting against respondent from other quarters, it seemed to respondent that the best solution would be to let Beneficial Life Insurance Company save face by a simple stipulated foreclosure in exchange for a stipulated reinstatement privilege.

but would pursue that company in an independent claim. Respondent and his wife would give Beneficial Life Insurance Company a stipulated foreclosure in exchange for a stipulated reinstatement of the mortgage at the end of the redemption period and upon tender of the back payments. Respondent and his wife agreed that they would not claim anything against Beneficial for the unremitted and wrongfully withheld funds of Doxey Layton Co.,

but would pursue that company in a independent claim.

The stipulation was mostly oral, and left that way because it was none of the business of the other parties, who joined in the written portion of the stipulation, which is to be found on page 50 of Case #160928 which is part of the record on appeal in this case.

The court entered a decree of foreclosure, the sheriff sold the property, and at the end of the redemption period, respondents brought to Beneficial Life Insurance Company the back payments with which to reinstate the mortgage, all in pursuance of the agreement between appellant and respondent.

When the back payments were brought to Beneficial, however, a new face was encountered, that of one Eugene Watkins. His comment on the until then smoothly running agreement was, "We can't reinstate the mortgage now. Interest rates have gone up." (As indeed they had)

This breach of agreement coupled with the untoward personal conduct of Eugene Watkins (described in paragraph 37 on page 10 of the record in suit #174076) provoked the filing of a suit against appellants and its agents to perform the agreement to reinstate and to recover damage for the attendant torts.

Upon receiving copies of the summons and complaint, Beneficial Life Insurance Company suddenly saw the light, and decided to reconsider its decision to breach the reinstatement agreement. They suddenly wanted to perform the reinstatement agreement if only the attendant tort claims would be dismissed.

In response to the persuasion of mutual friends, but

against respondent's better judgement, respondent agreed to dismiss the tort causes of action and release his claim for damages in exchange for performance of the earlier agreement of Beneficial Life Insurance Company to reinstate the mortgage.

Respondant prepared the papers to reinstate the mortgage by simply setting aside the decree and sale in case No. 160209, but appellants seemed worried about proceeding this way. There were some junior lien claimants in case 160928 (Oak Hills, Travis Wendelboe, and the United States of America) and Beneficial was worried that there might be some argument about the paramouncy of their lien if the foreclosure decree were simply vacated by court order.

In order that the paramouncy of the appellant's lien might be preserved, appellant suggested that the same objective could be achieved if the sale were allowed to stand and the property simply resold under contract. The contract was objectionable to respondent and his wife because it would contain a forfeiture provision and Beneficial Life Insurance had already demonstrated that they weren't to be trusted, despite their ecclesiastical ownership. Appellants suggested that the forfeiture provisions could be removed by striking, but that they should not be struck until the agreed balloon payment had been made. Respondant expressed concern that the anticipated monies with which to make the balloon payment might not be received exactly as anticipated, and that in light of this exigency, a provision for last-minute rescue must be incorporated in case the rescue developed into a foot-race.

After due discussion, it was agreed that wording which

would allow the defeasance of the forfeiture provision, and down to the time of an adverse trial or appellate decision, and down to the very moment that respondent was factually dispossessed, would be acceptable. Appellant suggested and respondent agreed that that would be accomplished by the usage of the phrase "at any time." After due deliberation, wording of the addendum was finally agreed upon. It reads:

"Addendum: Remedies provided under paragraph 16(a) of this contract shall not be available to seller *at any time* after the attached Judgement Note has been paid. All other remedies shall be available at any time.

The other remedies are set forth in paragraphs 16(c), and would allow the appellant, at its option, at any time, to either sue for delinquent installments or to foreclose the contract as a mortgage.

Simultaneously with the performance of the earlier reinstatement agreement, which was accomplished when the appellants signed the contract, respondent and his wife released the appellant and its agents from any claims for damages by reason of their torts and dismissed the causes of action in the law suit which had been filed to collect damages for the torts. Since the mortgage had been reinstated and the agreement fully performed, those causes of action seeking to compel that performance were also dismissed.

Although appellants seem to delight in choosing words like "bankrupt" to unnecessarily belittle and discredit respondent for no relevant purpose, they do correctly

point out that respondant filed a petition under Chapter XII of the Chandler Act with the Federal District Court on September 14, 1967. Appellant intimates and implies that the petition was calculated to effect or alter the rights of the respondant under the reinstatement agreement just performed. The very opposite is true. In all probability appellant's agents never stopped long enough in the last 2½ years to even read the arrangement. If they had, they would have discovered that the plan would have left the subject relationship between appellant and respondant unaffected. They seem to close their minds and ears to the repeated reminder that it was filed solely and exclusively to counteract the illegal conduct of Messrs Tuft, Marshall and Smith in a wholly unrelated law suit.

The plan and arrangement provided for the full and complete performance of the respondant's obligation to Beneficial Life Insurance Company in the following words (Paragraph 7 of the arrangement).

"That the \$3,100.00 being held in escrow by Stanley Tile Company be applied to meet the balloon installment due to Beneficial Life Insurance Company on the property owned by the debtor. . . . Debtor proposes keeping current all payments due on said contract out of current income and without burdening the corpus of the estate for these payments."

Appellants, in their hysterical preoccupation to categorically oppose anything respondant proposes, and to adjudge ipso facto, anything respondant suggests as something meriting their opposition, have never stopped long enough to realize that the approval of the plan would

have provided insurance for the complete performance of respondent's obligation on the reinstated mortgage. Instead of supporting the plan, which would have guaranteed their payments, they joined with the respondent's detractors and expended their energies for the next 18 months keeping respondent in litigation, and so pre-occupied with law suits, writs, appeals, briefs, pleadings and attendant difficulties that it was virtually impossible to do anything except live in courts, and especially impossible to earn an income.

Even though one phase of that Chapter XII proceeding has been resolved adversely, thanks to the mindless opposition of the detractors, other phases are currently being pursued on appeal in the United States Courts of Appeal.

Appellants in their statement of the facts make a great production of the action of Bruce Jenkins who gave approval to pursue their relief in the State Courts. The date originally set for hearing on the appellant's petition was continued to a date convenient to appellants. On the date of the continued hearing, appellants did not show up, stating that the hearing had been held, in respondent's absence, a day earlier, without any notice. Appellants also forgot to tell this court that the order of Bruce Jenkins is on appeal now.

During December 1967, respondent sold his equity in the subject property, subject to the Beneficial lien, to one C. Dwayne Harrison, who, about January 1, 1968, assumed possession of the property. As would be expected, he had the gas, lights, and water changed to his name as soon as he moved in. The affidavits supporting and opposing summary judgment, as well as the deposition

of both respondant and Mr. Harrison attest this fact abundantly, and the appellant has never undertaken or attempted to controvert this fact.

Appellants were advised of the transfer of title orally during meetings held in 1968. Appellants were also well advised that under 428 of the Chandler Act, (15 USC 828), all proceedings were automatically stayed as to respondant. Appellants also knew that an appeal was pending before the Tenth Circuit Court of Appeals, which also had the effect of vitiating anything appellants might do with respect to respondant.

At the time all of this was going on, Beneficial Life Insurance Company was a corporation, organized and existing under the laws of the State of Utah. Its capital stock was owned 100 per cent by the Corporation of the First Presidency of the Church of Jesus Christ of Latter-day Saints. (See page 104 of the principal record, answer #7.) It had a board of directors which reads like a page out of Who's who and discloses the following constituency: Presidents David O. McKay, Hugh B. Brown, N. Eldon Tanner, and Joseph Fielding Smith, also Conway A. Ashton, Ezra Taft Benson, Victor L. Brown, J. Alma Burrows, Marion D. Hanks, Gordon B. Hinckley, G. Marion Hinckley, Howard W. Hunter, Spencer W. Kimball, Harold B. Lee, Thomas S. Monson, LeGrande Richards, Marion G. Romney, Roy W. Simmons, Robert L. Simpson, Virgil H. Smith, Henry D. Taylor, Eugene P. Watkins, Ernest L. Wilkinson, and Rulon W. White. (See page 102 and 103 of the principal record.)

Besides being obviously prominent in the community, the list of directors discloses the names of at least five nationally prominent and highly respected attorneys.

The board of directors of Beneficial Life Insurance Company, like any corporate board of directors, ran the company.

But because men of this standing and repute would obviously not tolerate the horse-play being conducted in the name of Beneficial Life Insurance Company by some of its officers and attorneys, and because men of this background would not knowingly be party to this bizarre attempt on the part of Beneficial Life Insurance Company to reap a \$30,000.00 windfall through legal chicanery, at a 30,000.00 expense to respondent, and since such unconscionable conduct would obviously reflect adversely on the church which not only owns Beneficial Life Insurance Company but which this same board of directors, in another capacity, governs, knowledge of these proceedings was carefully withheld from them, except Eugene Wakins, Conway A. Ashton and Virgil Smith, who participated directly in the management and affairs of the company.

The minutes of the directors' meeting discloses that no action of any kind was taken by the board in this matter, neither was it discussed. Neither were any resolutions, one way or the other passed. The board simply did not know and does not know what is going on in this case. This whole action is the result of the contrivance of a small group of individuals who understandably want to remain nameless.

The by-laws of the appellant contain under Article IV, Officers, Section 2, the standard boiler-plate provisions, which delegate to the Chairman of the Board, or in his absence and the absence of all Vice Chairmen, to the president of the corporation, the right to tend to the

ministerial affairs of the corporation, like hiring and firing clerks, and buying rubber bands and paper clips and paying the phone bill. Indeed, this delegation might be sub-delegated, but the responsibility to make important decisions rests with the chairman of the board. The Article provides:

“In the absence of the Chairman of the Board and of all vice chairmen, the president, if present, shall preside at all meetings of the stockholders and directors and shall have the general supervision of the affairs of the corporation.”

How this can be stretched into a delegation to make important decisions involving the property of other people defies explanation, but had it been the then Chairman of the board who was making the decisions, one could have been comfortable in the thought that the decision would have been a just and fair one. As it is, the action taken by the appellant was carefully withheld not only from the board of directors, but from the chairman of the board, whose first right it would be to know. President David O. McKay, to whom these duties were perhaps delegated, was never absent and not only did not authorize the action taken by appellants, but in fact had no knowledge of it.

Now notwithstanding the knowledge of the conveyance of the property to C. Dwayne Harrison, and notwithstanding the knowledge of the appellant of the pendency of the appeal to the Tenth Circuit, and notwithstanding the absence of any authorization to act from the Board of Directors, or its chairman (if he, *arguendo*, had under his general supervisory powers the right to make such major decisions without a resolution from the

board), J. Thomas Greene, served the confusing and contradictory notice set forth on pages 10 and 11 of the appellant's brief on February 19th, 1968 (but not on the other dates stated in appellant's brief.)

Mr. Greene makes some mention (on page 12 and 13 of appellant's brief) about a letter. While respondent does not claim that this is the first time it has come to his attention, since it was mentioned (for the first time) late in the litigation, when it was attached to an affidavit which was in turn attached to a memorandum of authorities which Mr. Greene submitted to Judge Croft on June 2nd, 1969, it is extremely doubtful if it was ever sent, and if it was, it is extremely doubtful if it was ever received either by respondent or Mr. Harrison, although it may have been. For purposes of a review of Judge Croft's action it is at least a highly suspect item and is not one of those uncontroverted facts which might form the basis of a summary judgment.

It is true that on October 21, 1968, (as alleged in Mr. Greene's brief, but not on October 3rd, 1968, as intimated in his brief) respondent, (not Mr. Harrison, who should have been served) was served with the notice to vacate the premises, as set forth on page 14 and 15 of the appellant's brief. It is likewise true that none of the directors, except Virgil Smith, Conway Ashton, and Eugene Watkins knew anything about this action, either. Neither did the chairman of the board.

Two days after the notice to quit aforesaid was received, C. Dwayne Harrison (and not respondent) tendered first to Max E. Jenson, at Beneficial, and then on Mr. Jenson's instructions, tendered to J. Thomas Greene, two checks, one in the amount of \$3,192.00 and one in the

amount of \$3,360.00(See page 70 of the principal record for Xerox pictures thereof). One check paid the cognovit note in full, including interest and the other check paid all installments to date, reducing the principal balance on the mortgage to about \$28,000.00.

Because of the appellant's illegal refusal to accept the same, Mr. Harrison, by written document kept the tender continuous.

In May 1969, in a separate unrelated transaction, respondant reacquired from Mr. Harrison the property in question; Mr. Harrison moved out of the home, respondant took possession, and at the time of Judge Croft's judgment respondant was the owner and continues to be the owner of the property at this time.

Judge Croft, upon extensive and diligent consideration of appellant's arguments rendered his decision on June 23rd, 1969. Parting with his custom and practice, he tolerated two additional hearings, one in July and one in September 1969 in which he patiently permitted appellants to re-argue and re-hash their positions and legal theories. In each instance he patiently reconsidered his former action, making all allowances he could for the new arguments presented, could not possibly see how the law would allow any result except a summary judgment for respondant. Appellant's case could not possibly stand under the multiple obvious defects therein.

ARGUMENT

Judge Croft's scholarly opinion bases the decision on the notices, the actions of the appellant after the notices, and the tender, and in doing this, he perceptively analyzes the cases, applies the facts, and reaches a completely cor-

rect decision. However, even if he were wrong on these points, there are additional reasons he doesn't even touch upon which would justify the same result. His theories, based upon the notices, the conduct and the tender, which are under attack by appellants will be defended by this response, but going beyond that, the theories which Judge Croft disregarded in reaching his decision, which would produce the same result, will also be brought to the attention of this court as additional reasons for up holding the decision of Judge Croft.

Appellants cite seven cases as authority for their position, but they confuse the issue by not citing them in chronological order. The oldest case is *Forrester vs. Cook*, 77 U 137, 292 P 206 (1930). The most recent case they cite is *Van Zyverden vs. Farrer*, 15 U 2d 367, 393 P 2d 468 (1964). By considering them in chronological order, one can observe the growth of the law in Utah in forfeiture actions.

Moreover, we are dealing here with the "rule of each case." Each Supreme Court opinion is the "law of the case" which it decides, and rests upon the facts and issues which it decides. There are admittedly some similarities in the cases cited, but the similarities are few when compared with the differences, and the general propositions stated are only somewhat helpful. There are no cases in point, and every case decided can be easily distinguished on the facts.

Respondant has undertaken to do a "canned brief" on each case so that the propositions for which the case stands can be understood in light of the context in which the propositions are announced and in light of the facts of the particular case in which the opinion was rendered.

The "canned briefs" are set forth in the appendix to the respondent's brief.

POINT I.

FORRESTER VS COOK IS DISTINGUISHABLE ON THE FACTS AND IS NOT CONTROLLING.

The Forrester vs. Cook case (77 U 137, 292, P 206, 1930) is really not very helpful. It took a later decision to articulate and differentiate the difference between self-executing and non-self executing provisions in a forfeiture clause in a contract. (*Leona vs. Zuniga*, *infra*). But that is wholly unimportant. The provision in the Forrester contract was self-executing. It stated:

"In the event of a failure to comply with the terms hereof by the buyer or upon failure to make any payment when the same shall become due, or within sixty days thereafter, the seller shall be released from all obligations in law and equity. . . . (etc.) . . . the buyer at once becoming a tenant at will of the seller."

The notice which the seller served upon the buyer said the following

"You and each of you will further take notice that by reason of your failure to make the payments hereinbefore referred to, you and each of you under the terms of said agreement have become and now are and are hereby declared to be the tenants at will of Diana Forrester; and as such you and each of you are hereby required to vacate the property . . . and surrender possession thereof

to said Diana Forrester within five days from the date of the service of this notice upon you.”

The buyers first refused to comply, then later, but prior to trial, disclaimed any interest in the property and tendered possession to the seller.

The law suit was not over possession, but over the question of damages and attorney fees. The opinion, in fact, states so expressly: (Page 208)

“The cause was thereupon tried upon the issues of damages and an attorney’s fee only.”

The trial court allowed trebled damaged and denied an attorney’s fee. Both parties appealed. The only issues which were before the Supreme Court for decision were (1) Whether the claim for the hold-over was “rent” or “damages,” damages being subject to being trebled and rent not being subject to being trebled, and (2) whether an attorney’s fee would lie.

The Supreme Court made the statement which Appellants cite on page 25 of the brief in order to establish at which point the buyers became tenants at will of the sellers.

POINT II.

THE CASE OF LEONA VS. ZUNIGA DOES NOT STAND FOR THE PROPOSITION FOR WHICH APPELLANT CITES IT.

In reading the Leona vs. Zuniga case (84 U 417, 34 P 2d 699, 1934) and re-reading the case, and reading and re-reading what appellant claims for it, it becomes increas-

ingly unclear how this case could in any way relate to the issues at bar in the instant case.

The *Leona vs. Zuniga* case was indeed a very important milestone in the growth of the law, but it doesn't stand for anything helpful in this case. The *Leona vs. Zuniga* case holds that the seller's complaint for possession didn't state a cause of action because it did not allege that seller had given buyer notice of seller's election.

Now how that can possibly bear on anything relevant in this case is something appellant should explain better. There was no way the Supreme Court could decide (in the *Leona vs. Zuniga* case) the sufficiency of a notice that was never served.

The dictum is interesting, however. It distinguishes between self-executing and non-self-executing provisions in a contract, and gives a good example of each kind. It observed that the *Leona-Zuniga* contract was unlike the *Bergman vs. Lewis* contract (68 U 178, 249 P 470), which was self-executing, and like the *Howorth vs. Mills* (62 U 574, 221 P 165) contract, which was not self-executing, and which required notice from seller to buyer that the seller had made the election available to him in order to put the buyer in unlawful detainer status.

The articulation of the rationale in the *Leona vs. Zuniga* case is very helpful. The court clarified the reason for the holding. It said that in non-self-executing type forfeiture contracts, the seller merely gains the right to make elections upon the buyer's default. He may elect to stand up on his right to declare a forfeiture, or may elect to waive the forfeiture and to enforce the contract according to its terms. The object of the language

is to give the vender his election. If he wants to avail himself of his right to avoid the contract, he must make an unequivocal election evidencing that intention. A contrary rule would place the buyer in a dilemma. If the buyer vacates the premises, he may be confronted with an action to enforce the contract. If he fails to vacate, he may be met with a suit for possession.

In one respect, the Leona vs. Zuniga case is similar to the case at bar. Respondant certainly agrees that the case at bar is not self-executing. But the similarity ends there. Aside from the fact that the Leona-Zuniga contract did not have an addendum, like the case at bar, which took away the forfeiture remedies entirely, the forfeiture clause itself is vastly different.

By juxtaposing the two clauses, the differences can be readily ascertained. The Leona-Zuniga contract provided as follows:

“In the event of a failure to comply with the terms hereof, by buyer, or upon failure to make any payment when the same shall become due, or within 60 days thereafter, the seller, at his option, shall at his option be released . . . (etc).

The clause at the case at bar provides as follows:

“Upon the failure of the buyer to make any payment or payments when the same shall become due, or within 30 days thereafter, the seller, at his option shall have the following alternative remedies, (a) Seller shall have the right, upon failure of the buyer to remedy the default within five days after written notice, to be released. . . . (etc).

In the Leona-Zuniga contract, the seller had the auto-

matic option, after 60 days of continuous default in making payments, to be released. If that seller, (Leona) had only acted upon that option, had only given the notice of his election that option entitled him to give, and had only alleged in his complaint that he had, by written notice, exercised the option he was entitled to exercise, the Supreme Court probably would not have mandated the district court to sustain the buyer's demurrer to the seller's complaint.

In the instant Beneficial Life Insurance case, as distinguished from the Leona-Zuniga case, the appellant has no rights at all until there is a 30 day default. But only after 30 days, when it has some choices to make, can it make some choices. It can proceed with remedy (b) (file suit to recover the delinquent payments), or with remedy (c) (foreclose the contract like a mortgage) without any further notice at all. Remedies 16(b) and 16(c) are available without giving any notices first.

However, if it chooses remedy (a), it must first of all give notice that the contract is in default and demand that the default be remedied within five days after notice. It must then patiently await the expiration of five days. If the buyer does not remedy the default in the five days, seller has some new choices. It can do several things at that point:

1. Do nothing at all.
2. Treat the contract as being in full force and effect, and proceed to enforce it.
3. Exercise the remedies available in paragraph 16(b).

4. Exercise the remedies available in paragraph 16(c).

5. Exercise its remedy available in paragraph 16(a) to be released from his obligations in law and equity to convey the property, forfeit the payments made as liquidated damages (under certain very strict conditions, not present here), and re-enter and take possession of the property (if it can do so without breaching the peace), which, if it succeeds in doing, would make the respondent a tenant at will of the appellant.

There is only one hitch. If respondent elects not to do nothing at all, and not to treat the contract as being in full force and effect, and not to exercise the remedies provided in 16(b) and 16(c), it must give an additional notice that it has elected to exercise the rights which are conditionally given to it in paragraph 16(a).

But the appellant doesn't have any rights to exercise until after the contract is 30 days in default, AND after the appellant has given notice to remedy the default within 5 days, AND after five days have elapsed that the respondent has not remedied the default.

Now if all of that happens, the appellant can start making its choices. The appellant might choose to do any number of things, but if it chooses to go on with remedy 16(a), it must notify respondent that it is going to do that and not something else. And if it does notify respondent that it is going to go on with remedy 16(a), and respondent doesn't allow the appellant to re-enter the premises, as the contract provides, then the appellant would have succeeded in putting the respondent in statu-

tory unlawful detainer status, and could file its suit for possession.

Now the unlawful detainer statutes require that one in unlawful detainer status is entitled to still additional notices in writing, requiring in the alternative the performance of (the breached) conditions or covenants, or the surrender of the property. It also provides that within three days after the service of the notice, the tenant (or other interested parties) may perform (the breached) conditions or covenants and hereby save the (contract) from forfeiture. (See 68-36-3(5)).

Now no decision in Utah has gone as far as to describe each of the notices required, mainly because it hasn't needed to in order to decide the cases. Mr. George McMillan, who argued the case for the Van Zyverdens in their case against Seagull Investment Co. (15 U 2d 367, 393 P 2d 468) urged this court to consider the additional notices required by the unlawful detainer statute itself, but since this court found the Van Zyverden notices insufficient to place the Van Zyverdens in unlawful detainer status, it was unnecessary to decide the question Mr. McMillan urged in his brief, namely, what notices a person in unlawful detainer status is entitled to, and what he might do to save his contract, once he is in that status. When we get to the Van Zyverden case in this brief, we will examine the argument in greater detail.

But to end the consideration of the Leona vs. Zuniga case with an unanswered question, we might ask ourselves why appellant would cite a case which holds that at least some notice must be given in order to state a cause of action. No one quarrels with that proposition, but how

is appellant helped by it? We need to examine cases where notices *were* served, not where they *weren't* served, and look into the facts and rationale to find out how and when they might be served and what they have to say in order to be legally sufficient.

POINT III.

THE CHRISTY VS. GUILD IS IN POINT IN PART BUT IS DISTINGUISHABLE ON THE FACTS FROM THE INSTANT CASE.

Of all of the cases appellant cites, Christy vs. Guild (101 U 313, 121 P 2d 401, 1942) is its strongest case, but it can easily be distinguished from the case at bar. The case is set forth in "canned brief" form in the appendix, but briefly, the transaction involved a \$3,200.00 home on which the buyer made no down payment, but agreed to pay the entire purchase price in deferred installments of \$20.00 for six months, then \$25.00 for six months, then \$30.00 for six months for the duration of the contract.

The Supreme Court did not favor us with the language of the contract, as it usually does in forfeiture cases, but merely paraphrased it. On the very last page of the opinion, under the second paragraph of headnote (5), we read the following:

"In the present action, respondents in their complaint set out the contract, which provided that upon default of the vendees, the vendors might elect to terminate the contract and upon such termination might retain as liquidated damages the payments theretofore made by the vendees,

the latter thereupon becoming tenants at the will of the former.

Since this case is one of the most important cases which appellants cite, it was thought wise to get the verbatim language before us, so that it can be compared with the instant case. The files and records of the Salt Lake County Clerk's office contain the contract, which is reproduced, in part in the appendix. The exact wording of the salient provisions of the contract reads as follows:

"On failure of the parties of the second part, . . . to make any of the payments when due or for fifteen days after they become due, . . . or on faailure to comply with the provisions of this agreement in any other respect, all payments made under this contract may, at the option of the parties of the first part, become forfeited . . . as liquidated damages, . . ."

Juxtaposing that language with the language of the Beneficial Life contract we can draw the comparisons and disinctions. The language in this (The Beneficial) contract, already set forth earlier in this brief, provides that only *after* 30 days default, and only *after* the failure of the respondant to remedy the default after 5 days written notice, does the appellant have the elections the seller in the Christy-Guild contract automatically had upon 60 days default. There is quite a difference. Both the instant contract and the Chrisy-Guild contract require the seller to make an affirmative, overt election and to give the buyer notice that the election was made. But there the similarity ends. In the Christy-Guild contract, the seller had the *right to make an election* after 60 days of unremedied continuous default in making installments.

In the instant (Beneficial) contract, the seller had *the right to serve a demand* after 30 days of unremedied continuous default. To say there is an obvious difference is an unpardonable understatement.

The Christy vs. Guild case is a baffling case, however. The buyers tendered partial performance of the defaults prior to suit. They were required, by the notice of election, to bring current \$130.00 in arrearages, pay \$297.20 in back taxes and insurance, and made improvements on the property they had agreed to make. The buyers tendered the arrearages, but did not tender the back taxes and insurance and did not make the improvements.

The buyers apparently felt secure in the tender of the partial performance required by the notice. They at least felt secure enough to argue that it was a question for the jury as to whether there was a default, their theory apparently being that the partial tender remedied the default.

On appeal, the appellants (in the Christy vs. Guild case) didn't even attack the sufficiency of the notice. The appellants (in that case) simply argued that (1) the default was a question for the jury and (2) that the trial court should have considered the "equities" between the parties and have adjudged the buyers entitled to some reimbursement for the improvements made and the large amount paid on the contract (approximately one-third of the principal plus interest).

The second point seemed to bother the court some, but it found that in light of the fact that the buyers had paid no down payment, only \$20.00 for six months, then \$25.00 for six months, then \$30.00 per month thereafter,

and that the improvemens made were reasonably worth \$2,000.00 and that the property had yielded a net income of \$75.00 per month, and that the buyers had been in possession from 1935 to 1942, that there were no equities in favor of the buyers to be considered.

It is curious to ponder the holding of that case in light of the issues presented by instant case.

The first issue in the Christy vs. Guild case was whether undisputed evidence on a question of fact should be submitted to a jury for determination.

The Supreme Court held it need not be.

The second issue was whether the forfeiture on the facts of this case constituted a forefeiture.

The Supreme Court held that *on the facts* of the Christy vs. Guild case, the forfeiture was not a penalty.

Beneficial Life Insurance Co. has failed to tell us in their brief how the Christy vs. Guild issues relate to the issuses between Beneficiial Life Insurance Co. and respondant.

POINT IV.

THE PACIFIC DEVELOPMENT VS. STEWART CASE IS IN POINT IN PART BUT IS DISTINGUISHABLE ON THE FACTS FROM THE INSTANT CASE.

The Pacific Development vs. Stewart case (113 U 403, 195 P 2d 748, 1948) case is very much like the Christy vs. Guild case, but it can be distinguished from

Christy vs. Guild on the facts of the case and on the issues decided on appeal.

On the facts, the Stewart property involved a \$5,900.00 purchase with \$100.00 down. The balance of the purchase price was payable in deferred monthly installments of \$55.00. The rental value of the property was \$50.00. The Christy vs. Guild case involved a \$3,200.00 property with no down payment, and the entire balance payable in deferred payments beginning at \$20.00 and ending at \$30.00 per month. The rental value of the Christy property was \$75.00 per month.

In the Christy vs. Guild case, the buyer tendered *partial performance* on the demanded performance prior to the time suit was filed. In the Pacific Development vs. Stewart case, the buyer tendered *no performance* at all, even up to and including the time in trial. The court also held that Stewarts would not have been unable to perform even if given a longer time in which to do so.

The issue before the Court in the Christy case was whether the evidence presented a question for the jury and whether the forfeiture was a penalty.

The issue before the Court in the Pacific case was whether 23 days was a reasonable period of time in which to cure the default. The trial court found 23 days unreasonable. The Supreme Court found 23 days reasonable.

As far as the contract provisions are concerned, the Stewart and Christy cases are alike, but in their likeness, are unlike the contract provisions in the Beneficial contract.

This difference has already been pointed out (in point 3 supra). In both the Christy and Pacific cases, the buyer was automatically given the right to make an election after 60 days of continuous default.

In the Beneficial contract, the appellant has the right to make an election to be released *ONLY IF* the contract is 30 days or more in default, *AND ONLY IF* he then gives 5 days notice to remedy the default, *AND ONLY IF*, after 5 days notice, he buyer has failed to remedy the default. Now assuming arguendo, all of this has happened, it may make an election. Now *IF* it makes that election, and *IF* it gives notice to the respondent of that election, he may (under certain conditions not here present) place the respondent in unlawful detainer status. *AND IF* it gives the statutory notices required by the unlawful detainer statutes *AND IF* the respondent does not comply, it may file a suit for dispossession.

There are other distinctions, which question the service of the notices, the equities, the penalty forfeiture, the need for appellant not to obstruct respondent's performance, and which question the sufficiency of the notices, but that will be saved for later argument in order to avoid too much redundancy.

POINT V.

FUHRIMAN VS. BISSEGGER IS NOT IN POINT.

The court held in the Fuhriman vs. Bissegger case (13 U 2d 379, 375 P 2d 27) as in the Leona vs. Zuniga case, that since the contract had no self-executing provision, a notice was necessary, and since the seller gave the buyer no notices, there could be no forfeiture and

the counterclaim of buyer, to compel specific performance should be upheld.

Among numerous obvious differences, which are amply set forth in the discussion of the prior cases, and which do not need repeating here, it might be noted that the contract called for \$10.00 per month and that the buyer was in possession of the property from about 1946 to 1952.

It seems almost a shame to dignify this citation with further responses and it leaves us wondering why appellant chose to cite the case at all.

POINT VI.

JACOBSEN VS. SWAN IS NOT IN POINT.

Appellants have so completely mis-quoted Jacobsen vs. Swan (3 Utah 2d 59, 278 P 2d 294, 1954) case that there is cause for some alarm, if it be found that it was intentional. The citation on page 26 of the appellants' brief doesn't relate to the purchase contract at all. Appellants would (mis)(?)lead us into believing that the Supreme Court, in discussing the question of tender, was talking about tender of performance under a vendor-vendee contract.

This is a rank case of misquoting an opinion by lifting the quotation out of context and giving it a meaning not intended by the court.

The Jacobsen vs. Swan case does not involve the litigation over a sale purchase contract, but over a lease agreement. It is true there was initially a contract between Jacobsen and Swan, but it was twice superseded. The contract which was executed in June, 1947, was, be-

cause of aggravated defaults thereunder, cancelled by mutual consent and replaced with a lease agreement. That lease agreement because of aggravated defaults thereunder, was cancelled by mutual consent and replaced with a new lease agreement on June 27, 1950. On March 5, 1952, lessor served lessee with an unconditional notice to quit. On August 12, 1952, a similar unconditional notice to quit was served. When the lessees failed to quit, an unlawful detainer action was filed.

As an interesting aside, the trial court gave the buyer judgment against seller for \$3,190.00, being the excess of the monies paid to seller over the rental value of the property. The Supreme Court gave the buyer even more, and required the seller to account, in addition to the sums awarded by the trial court, for excess payments under the first lease and excess payments under the second lease.

POINT VII.

THE VAN ZYVERDEN VS. SEAGULL CASE IS VERY MUCH IN POINT AS FAR AS SOME ISSUES ARE CONCERNED, BUT CAN BE DISTINGUISHED ON OTHER ISSUES, AND IN PART, ON THE FACTS.

The Van Zyverden vs. Seagull case (15 U 2d 364, 393 P 2d 468, 1964) is the most helpful of all cases cited, and being the most recent of the seven cases cited by appellant, is the most controlling. But in addition to these obvious reasons to pay greater heed to its holding, it is most closely in point on the facts relating to the notice.

In that case, the court held that the notice to the Van

Zyverdens of February 10, 1962 was not effective to perfect Seagull's right to maintain an unlawful detainer action.

Now that Court does not say in its opinion what notice it was that was served on February 10, 1962, but implies that the notice of February 10, 1962 was served because of some uncertainty in the sufficiency of the notice served January 3, 1962. Neither the briefs of Mr. McMillan who argued the case for the Van Zyverdens, nor the brief of Mr. Parker, who argued the case for Seagull shed any light on which notices were served on which dates. Only through an examination of the records of Wasatch County Clerk's office could this be ascertained.

Copies of the relevant documents have been xeroxed and are supplied in the appendix to this brief.

The Uniform Real Estate Contract is dated September 25, 1960. Ralph W. Farrer and his wife appear as sellers and Leo Van Zyverden and his wife appear as buyers. The sellers assigned their interest in the contract to Seagull.

The contract provided for a purchase price of \$60,000.00, reflected a down payment of \$5,000.00, and a balance of \$55,000.00 to be paid in deferred annual installments of \$2,750.00 beginning November 1, 1961.

The forfeiture clause in the contract in question was worded identically with the Beneficial Life contract, (except that the Van Zyverden contract did not have the addenda).

It, like the Beneficial Life contract, provided that upon the failure of the buyer to make payments when

due, or within 30 days thereafter, the seller, *at his option* shall have the following alternative remedies:

A. Seller shall have the right, upon failure of the buyer to remedy the default within five days after written notice, to be released from all obligations in law and equity to convey said property . . . and to forfeit all payments as liquidated damages . . . the buyer becoming at once a tenant at will. . . .

On December 1, 1961, Seagull declared the contract in default, and by written notice served on that date, gave the Van Zyverdens until noon on December 7, 1961 to remedy the default.

On January 3, 1962, Seagull served another somewhat redundant notice in expanded form alleging other defaults, and demanding in the last paragraph of that notice, that the buyers remedy the defaults within 5 days, in this language:

You are further notified that in the event that you fail to remedy your defaults in performance of the contract annexed hereto as exhibit "A", and to perform the covenants and conditions which you are obligated to perform under the terms of said contract *within five days* . . . (etc.).

On January 16, 1962, Seagull filed an action against the Van Zyverdens, in unlawful detainer.

On February 10, 1962, R. E. Weaver, constable, served a "Notice to Vacate Premises," which required the Van Zyverdens to vacate the premises within 5 days.

On February 13, 1962, he Seagulls filed a counter-claim in the action which the Van Zyverdens had filed against Seagull on December 1, 1961. The cases were consolidated for trial.

The trial court held that the notice of February 10, 1962 was not effective to perfect Seagull's right to maintain unlawful detainer in that action.

If one follows the dates of the events closely, one might infer that the reason for the court's action was that the actions were filed prematurely. It does indeed appear that Seagull got ahead of itself, but that is not the basis of the ruling.

On January 16, 1962, when Seagull filed its action, it had only served the one notice "to remedy the default within 5 days of the notice," although it apparently served a similar notice on December 1, 1961. While it is undisputed that Seagull served a five day notice twice, (even though the second notice was worded somewhat differently) it was deemed to be two services of the same five day notice, because he notices demanded the identical performance on the part of the buyer.

On February 13, 1962, when Seagull filed its counter-claim, it had only allowed three days to elapse since its "notice to quit" was served (it was served on February 10, 1962).

The timing was obviously wrong and was by itself sufficient to justify a dismissal of Seagull's unlawful detainer action, but we should not allow ourselves to be distracted from the holding and rationale of the case, as

reported, by these incidental facts, which would have justified the same result on a different legal theory.

The Van Zyverden case is not decided on the timing of the notices. *It is based upon the failure of the seller to make the elections he was entitled to make, when he was entitled to make them, and to give notice of those elections to the buyer.*

The Supreme Court, in referring to paragraph 16(a) cited just prior to the following quote, says:

“This provision requires the seller to make his election, and the buyer is entitled to notice that he has done so.”

Now what election is the court talking about? One could easily misunderstand that it refers to the option contained in the stem of paragraph 16 and not the right to elect that is contained in paragraph A, since the words to be found in the stem “at his option” are italicized for emphasis.

The election the court is talking about is not the option referred to in the stem to choose between remedies A, B, and C, but the *election* the seller has to make AFTER he has given the five day notice required by paragraph A, and AFTER five days have elapsed, and AFTER the five day failure of buyer to respond. This means that after one election is made it must be followed by another election at least five days later.

The opinion cannot have any other meaning. Paragraph A set forth in the opinion is indented on both sides. It is set off in quotes, as a sub-paragraph should be. Immediately following the close of quotes, the opinion said

"This provision requires seller to make his election." What provision requires seller to make his election? The provision in paragraph A. While an antecedent option was already exercised, in deciding between A, B, and C, the opinion does not refer to this antecedent exercise of options between A, B, and C, but the *election* which A itself requires, AFTER the five day notice is served and AFTER five days have elapsed, and AFTER the five day failure of buyer to respond. The option referred to in the stem is exercised BEFORE the five day notice, and *a priori*, before any other notices are served.

The Van Zyverden case is extremely closely reasoned. It is amazing to observe the fidelity with which appellant in its brief has reproduced the opinion, and has correctly observed that the Van Zyverden opinion held that whether a cause of action in unlawful detainer exists is to be determined at the time the action is commenced and that the notices were insufficient to impart notice of an election of the optional forfeiture remedy under paragraph 16A.

On page 33 of the appellant's brief, however, is a disturbing and erroneous conclusion in an attempt to apply the legal principles pronounced in the opinions the appellant cites, to the facts of this case.

Mr. Greene says: (in the second paragraph on page 33)

"Paragraph 16A is non-self-executing provision similar to those in *Christy vs. Guild*, *Pacific Development Company vs. Stewart* and *Van Zyverden vs. Farrer*."

At the bottom of page 33, he continues:

“The option within paragraph 16A is clearly explained in *Leona vs. Zuniga* where the Court construed a virtually identical provision, stating that it: (etc).”

None of the cases, *Christy vs. Guild*, *Pacific Development vs. Stewart* and *Leona vs. Zuniga* stand for the proposition he urges. It is indeed true that they deal with non-self-executing contracts, and that regard they are like the contract at bar, *but in what these options and elections entitle the seller to do, and when he may exercise them, they are unlike the case at bar and the Van Zyverden case.* (Van Zyverden and the case at bar are alike.)

In the *Christy*, *Pacific*, and *Leona* cases, the seller had the option automatically to be released, etc., etc., in case of buyer's default. He only had to exercise it and give notice to the buyer, in writing, that he had exercised it.

In the case at bar and in the *Van Zyverden* case, the seller had the option of choosing between A, B, and C, in case of buyer's default. Now if he chose B and C, he could give notice of that election and proceed with the remedies B and C provided. *But if he chose A, he had to begin by giving a 5-day notice to remedy the default, and then wait five days, and then upon the buyer's five day failure to respond, make another election, and to give the buyer notice of this election.* This, *Seagull* failed to do, and this is what the Supreme Court talks about in the *Van Zyverden* opinion. This *Beneficial Insurance Co.* has also failed to do, and aside from the multitudinous

other reasons for dismissing the complaint, it is fatally defective on this ground alone.

It is interesting to follow the logic of Mr. George McMillan on page 32 of his brief in the Van Zyverden case. He claimed that even if Seagull had followed all of these notices, it could not successfully maintain an unlawful detainer action until it had served the buyer with the requisite *statutory notices*. The court never pursued this argument, but it is interesting. If one turns to the Unlawful Detainer Statutes, one observes that once one gets into unlawful detainer status, certain *statutory* notices, (in addition to the *contractual* notices) are required. In other words, it takes all of the *contractual* notices to get a buyer into unlawful detainer status, and then once in unlawful detainer status, it takes *statutory* notice to get him out of possession. Neither this case nor the Van Zyverden case need go that far, but it does provide an interesting glimpse into the future.

POINT VIII.

APPELLANT HAS NEVER OWNED THE PROPERTY WHICH IS THE SUBJECT OF THIS LITIGATION.

Beginning on the bottom of page 40, appellants make the incredible claim that they were the owners of the subject property at the time the complaint was filed. The same deception which they attempted to foist upon the trial court, they now try to foist upon the Supreme Court.

They base their whole claim to ownership on the sheriff's return of sale and the record title. Respondant's affidavit does not admit that the appellant is the *fee* title

holder, but does admit that appellant is the *record* title holder. Do we have to play children's games with words and labels? Do we have to resort to such deception in order to avoid the substance of things?

If words aren't supposed to convey concepts and ideas, why do we even use them? If we twist a word or use it to convey the exact opposite meaning it is supposed to have, what integrity are words and meanings supposed to have?

Of course the Sheriff's return shows a change of record title. We aren't concerned here with what the sheriff's return shows. We are concerned with what it doesn't show. It doesn't show that the foreclosure was pursuant to a stipulation, and with the understanding that the mortgagors would continue to own the property and be entitled to a reinstatement upon the payment of the back payments. Is a sheriff's return supposed to show the underlying agreement? Is our thinking so juvenile that we have to stop and explain things like this?

Of course the record title shows in the appellant. How could it be otherwise? The County Recorder doesn't stop to ask questions about how documents came into existence. Is she supposed to? What would happen to her if she refused to record recordable documents? Her office is a repository for documents, not a board of inquiry. She records the documents placed before her for the benefit of third parties who may know the actual facts. Are we so bereft of reason and such robots that we have to waste people's time in explaining such obvious facts?

What does it mean to be an "owner" of property? Is this the same as being "record title holder?" What does

“fee title” mean? Does the record title holder in this case (appellant) enjoy the same status as the sellers in the seven cases cited in appellant’s brief?

Harry Emerson Fosdick has characterized our generation as one mindlessly pursuing slogans and labels without regard to the substance of the labels, designations and terms which we throw around like so many magpies. Is appellant trying to prove him correct?

POINT IX.

APPELLANT EVER SOLD TO AND RESPOND-
ANT NEVER BOUGHT FROM ANYTHING FROM
EACH OTHER.

On page 41 of the brief, appellant pursues the absurdity of its complaint a little further. It recites paragraph 3 of its complaint and then urges the Supreme Court, of all things, to believe it.

Just what does it means to sell something? What does it mean to buy something? What happened to the buyer and seller in each of the seven cases quoted by appellants in their brief?

Did the seven buyers and the seven sellers in the cases, quoted as authorities, contract at the market price for the property which was bought and sold? Were any of the buyers suing the seller to compel the “seller” to perform its agreement to reinstate the mortgage which it had wrongfully and illegally, but nonetheless in pursuance to a stipulation, foreclosed in exchange for an agreement to reinstate it upon the payment of the back payments?

Did the “sellers” in each of the seven cases cited by

the appellant's "sell" the property for approximately 50 per cent of its value? Did any of the sellers arrive at an asking price by taking the mortgage balance, adding accrued interest and deducting the payments? (Note the unusual sales price of \$34,613.59) Did any of the sellers agree to accept an interest rate on the deferred balance 1 per cent below prevailing interest rates on mortgages? (Note the 5½ per cent rate in the contract—the exact rate in the mortgage.)

Were there any of the "sellers" in each of the seven cases who had never set foot inside of the house that was being "sold"? Had any of the "buyers" been in occupancy and ownership of the home they were "purchasing" three years before they bought it from the "seller"?

Are appellants trying to tell the court that they are "sellers" like the seven sellers in the seven cases cited? Are appellants trying to tell the court that the respondent was a "buyer" like the seven buyers in the seven cases cited?

Just what is it the appellants *are* trying to tell the court? That they feel secure in the status a label might confer upon them? That the substance of an item is of no consequence? That law is concerned with labels and slogans and not substance? Or just wherein do rational men fail to undersand these appellants?

POINT X.

ALLOWANCE OF THE FOREFEITURE WOULD
RESULT IN A \$30,000.00 WINDFALL TO APPEL-
LANT AND A \$30,000.00 PENALTY TO RESPOND-
ANT.

While advocacy has always been an art, it has reached new heights of perfection in appellant's case. The appellant has been able to achieve an impression 100 per cent false without making one false statement.

Paragraph 4 of the complaint and the argument on the bottom of page 47 of appellant's brief would actually lead the court to believe that a forfeiture of respondent's equity would result in a \$266.00 loss.

What happened to the \$60,000.00 home that was on the lot in 1965? What happened to the \$28,000.00 mortgage that was left owing on the home after the payments made in October 1968? What happened to the \$32,000.00 equity?

The answer is very easy, according to the appellants. \$32,000.00 got lost in the paper work. After all, it's not homes and improved real estate that's involved here. It's just papers, and documents, and things like that which have no intrinsic value.

If the paper work shows a \$226.00 forfeiture, that's all that matters? What the paper work really reflects is of no interest or consequence?

Are the appellants trying to tell us that the "buyers" in the seven cases cited all forfeited a 55% equity to those "sellers" who prevailed in their forfeiture actions?

Are the appellants really trying to tell us that they have been damaged \$32,000.00 if the contract was, arguendo breached? Are they trying to tell us that a \$32,000.00 forfeiture is not a penalty? Is this a church-owned institution which is urging such views upon us?

These questions were very ably answered by Judge Croft. Despite all attempts on the part of the appellants to hide and cover up the obvious equities between the parties, Judge Croft saw through the scheme and, in his opinion first questioned why Beneficial Life Insurance Company, a church-owned institution, would turn down the money which the contract called for. He then answered his own question by observing that this was an extremely valuable piece of property, and accepting the money would simply return to Beneficial Life Insurance Company the money which they originally loaned upon the property, together with interest at the agreed rate, and would deny to them the windfall.

Is he really saying that Beneficial Life Insurance Company is motivated by ordinary, old fashioned, everyday greed, and covetness? Is this really a study in human behavior which reveals the lengths to which people will go in constructing fictions and pretenses in order to gain a windfall at the expense of another person? Is this a study of the morals of certain church-owned institutions and the people who run them and make their decisions? Have we forgotten that in this case, the courts who hear such matters sit as courts of equity and not courts of law? Have we forgotten that courts of equity are charged with insuring justice? Have we forgotten that in order to seek equity, a plaintiff must first do equity, or in other words come into court with clean hands? Does this type of subterfuge, do these pretenses, does this covert attempt to obtain a windfall reflect the appellant's definition and understanding of "equity?"

Has the world gone completely mad?

If, assuming, arguendo, the appellant denies or questions the equities, where are the affidavits which place at issue the values set forth in respondent's affidavits? (See page 199 of the principal record)

If appellants take issue with facts established by affidavits, they have the perfect right to file opposing affidavits. If the values set forth in respondent's affidavits are not true, where are the opposing affidavits?

POINT XI.

A PERSON SEEKING A FORFEITURE MUST
SERVE THE NOTICES ON THE PARTY WHO
OWNS THE PROPERTY AT THE TIME THE
NOTICES WERE SERVED.

The subject property was sold to C. Dwayne Harrison in December 1967. He paid for it with an interest in a data-processing bureau which he had previously owned with his brother. Respondant and Mr. Harrison worked closely in a number of projects for about a year and a half and then split up.

In May, 1969, when respondent and Mr. Harrison split up, respondent reacquired the property from Mr. Harrison.

Mr. Harrison was in actual, physical possession of the property during the entire period of his ownership. Utilities were furnished to him, obviously, in his own name and on his own account.

Appellant was told repeatedly about Mr. Harrison's ownership, possession, and occupancy. It is, indeed possible that appellant didn't understand. For nearly

two years, appellant's agents didn't listen to anything or read anything which would distract them from the pursuit of their major objectives. Mr. Harrison's ownership was open, notorious, and obvious, and not secret and covert like appellant tried to make it look to Judge Croft.

They talk about proof. The affidavits which accompany the motions for summary judgement establish this fact beyond question. Appellant has, understandably, never undertaken to controvert any of them. Because they are not controverted, they are to be considered to be proven facts.

The appellants urge the court to grant a forfeiture because the person on whom they did serve some defective and insufficient notices acquired the property during the course of the litigation.

Are they really serious? Do the seven cases which they cite stand for such a proposition? Do any cases stand for such a proposition?

POINT XII.

THE RELEASE RESPONDANT EXECUTED HAS
NO REVELANCY TO ANY ISSUES
IN THIS LAW SUIT.

Appellant has made a big production out of a release signed by respondent and his wife. It is set forth verbatim on page 2 and 3 of the appellant's brief. But why? What does it have to do with this law suit?

What does it mean to appellant to be released? What is appellant's definition of release? Is a release an act

of forgiving? Or is it some magical document which changes facts?

If a person has a car accident and injures someone needlessly and negligently, the injured party has a claim. If the tortfeasor makes an acceptable settlement with the injured party, the injured party releases him, in other words forgives him. In forgiving the tortfeasor, no-one claims that the accident didn't happen or that the injury wasn't sustained. One simply says that in spite of the facts of the accident and the injury, the injured party will make no further claim.

A release is simply an act of forgiveness.

Now if the tortfeasor who caused the injury also had a contractual duty to convey a piece of property to the injured party, and does in fact convey it on the same day he obtains a release, does the conveyance have anything to do with the tort? or the forgiveness of the claim for damages for the tort? or the antecedent duty to convey the property? Do such obvious principles have to be explained?

One need only to read first the complaint and then the release. The release releases the tortfeasors therein from "the alleged wrongful foreclosure or other grievance or cause of action or problem whatsoever in connection with the taking of title and foreclosure procedure proceedings by (the tortfeasors) etc." These things are torts. They fall under the common-law causes of action of malicious prosecution and abuse of process, and are torts. Nothing else.

Now admittedly, there were other causes of action in case no. 174076. These other causes sought to enforce

Beneficial Life Insurance's agreement to reinstate the mortgage. An action for specific performance is an action in equity. Actions for damages for torts are actions at law.

Beneficial Life Insurance finally decided to perform its contractual duty and to reinstate the mortgage. A person never releases another person *from performing* something that person *has performed*. When a duty is performed, there is nothing left to release. The performance ipso facto extinguishes the duty to perform, and extinguishes ipso facto the cause of action seeking to coerce the performance.

Why do such simple concepts get so muddled up?

POINT XIII.

BENEFICIAL LIFE INSURANCE COMPANY
HAS NEVER MADE ANY ELECTIONS AT ALL
IN THIS CASE, AND ELECTIONS MADE BY
MR. GREENE, OR OTHER UNNAMED PERSONS
INTERESTED IN BENEFICIAL LIFE INSURANCE
COMPANY ARE NOT ACTS OF THE
CORPORATION.

All corporations are legal fictions. Beneficial Life Insurance Co. is no exception. Corporations have no soul, no *Id*, no *alter ego*, no mind. Corporations can only act act through agents. These agents are styled directors. The overt acts of the agents are recorded in the minutes of the directors meetings.

The minutes of the directors meetings have been examined and they show that this corporation has never ever done one overt thing with respect to the subject property.

Now admittedly, this authority can be delegated. But the delegation itself requires an overt act on the part of the delegator. The only overt act that can be found is in the by-laws, quoted earlier in this brief.

But assuming the board of directors has done enough overt things to delegate some of the authority to someone named in the by-laws. The first thing that we must examine is the person to whom the authority is delegated. That person is the Chairman of the Board. Now if he is absent, the delegation falls to the vice chairmen. If they are absent too, it falls to the President.

But there is another problem. The delegation is limited. It gives the delegatee authority to preside at stockholder and director's meetings and to have the general supervision of the ministerial affairs of the company.

This doesn't say anything about forfeiting \$30,000.00 equities, or terminating contracts, or pursuing windfalls. Ministerial affairs are the little things that a corporation has to do to keep going. Now maybe the concept of big-ness and littleness is a relative concept and maybe the pursuit of a \$30,000.00 windfall is a little thing to appellant, but judging this question by the energy the appellant has expended, it is a big thing to Beneficial Life Insurance Company, too.

But there is still another problem. The mantle of this delegated authority, whatever it is, falls upon the chairman of the board. Where is the evidence that he made an election? If he is absent, it falls upon the chairmen, whoever they are. Where is the evidence that any of them made an election? If they are all absent, together with the chairman, it falls on the president. Where

is the evidence that he made an election? Where is the evidence the chairman was ever absent?

More importantly, where is the evidence that any of them made any elections *at the time* (or times) and *under the circumstances*, and *upon the conditions they were entitled to make them?*

The record shows some confusing minutes of the “home office committee” and “loan committee”, but the minutes of the directors meetings and the by-laws don’t even show that these committees, whatever they are, even exist. This part of the record can be disregarded as being informal socializing at the home office.

POINT XIV.

THE ADDENDUM TO THE CONTRACT AND THE PERFORMANCE OF MR. HARRISON THEREON DEFEATS THE FORFEITURE AND MAKES EVERY OTHER ISSUE MOOT.

The addendum has already been set forth. The pivotal words in the addendum are “at any time” The addendum clearly states that 16(a) remedies shall not be available *at any time after the judgment note has been paid.* The payment and performance is not in dispute. It was performed by Mr. Harrison two days after the notice of October 21st, 1968 was served on respondent.

If the English Language were a limited language and if simple concepts were difficult to express, one might be justified in reading implied restrictions into simple words. “Any” means “any” and not something else. Other adverbs are available if something other than “any” is meant. But instead of using alternate adverbs, people usually modify “any.” People can say “almost any time”

or can say “any time up to ” or “any time until”, or “any time except”. But the addendum doesn’t say any of these things. It says simple “any time” Now what else can be said about something so simple. It means *any time* without any restrictions or limitations whatsoever.

Judge Croft didn’t need to decide that point. The appellant’s case was too weak on other points. But if the Supreme Court should disagree with Judge Croft and not find the other points so fatally weak, it would seem that this issue alone would be dispositive of the case. What else can be said about a contract which has an addendum which takes away all forfeiture rights upon payment, which may be made at any time, and about a record which evidences undisputbly that the payment referred to therein was actually made? Is there really any other issue to decide?

POINT XV.

APPELLANT’S NOTICES WERE TOTALLY INSUFFICIENT.

While this point should be fully expanded and explored, this brief has already approached its allowable length. What needs to be said about this point has already been said. On pages 191 through 197 of the principal record, there is a memorandum prepared and filed by respondant for Judge Croft. Pages 192 through 195 address themselves to this point and appellant incorporates that argument herein by reference thereto. A flow chart explaining what steps may be taken by appellant, in what sequence they must be taken, and when they may be taken is included in the appendix to this brief, which is prepared and filed as a separate volume

because of the length. Point one of the argument on page 191 of the brief addressed to Judge Croft is not a valid point. Respondant should not have urged it, since respondant was clearly in error, but point two in that brief is very much in point and is incorporated herein by reference. Things must be done in their proper order, and the strict requirements of forfeiture must be meticulously complied with if appellant expects to prevail.

Appellant must wait until the contract is 30 days in default. This appellant did.

At the end of that time, appellant may make some choices. Since there is no evidence of any overt corporate action, it is questionable whether it made that choice, but assuming *arguendo* that it did, it must proceed either under A, or B, or under C, or elect to proceed at all.

If it proceeds under A, it must serve a notice that the contract is in default, and demand that that default be remedied within 5 days. That is all the notice is supposed to say. Appellant's notice goes further and advises respondant what it intends to do at the end of the 5 days. That is well and good, but it is surplusage, and can be disregarded. It might even invalidate the notice. After all, the appellant might change its mind within the 5 days and either decide to do nothing, or proceed to remedy B, or proceed to remedy C.

At the end of the five days, if there has been no response to the demand, appellant may make a new choice. The same doubt exists on the question of this choice as on the question of the earlier choice.

If the corporation makes that choice, which it is only entitled to make if there is no response, then it

must serve notice of that election. It is not entitled to anticipate the non-performance, or rely upon an earlier statement of what it, five days earlier, intended to do.

At that point, the respondent, *might* be in unlawful detainer status, but since this never occurred, there is no point in pursuing that any further.

If the respondent were in unlawful detainer status, the statutory notices come into play, but that is all moot since the requisite notices up to that point were never given and since the performance by Mr. Harrison under the terms of the addendum short-stopped the play anyway.

Appellant's comment on the alleged notice set forth on pages 12 and 13 of appellant's brief has no significance. First of all, it is disputed that it was sent. but procedurally, the notice is not proper subject matter for consideration, either at this level or at the trial court level. Nowhere in the pleadings is the notice mentioned. When both appellant and respondent filed motions for summary judgment, no mention was made by appellant of that notice. If it was to be an operative fact it should have been pleaded in the complaint, or at least established by affidavit attached to appellant's motion for summary judgement.

This mysterious document makes its first appearance long after the motion for summary judgment were argued and after briefs were submitted. Mr. Greene, attached to his reply brief, an affidavit which had attached to it the mysterious letter of May 27, 1968. This is far too late for any consideration at all, and should be disregarded, but even if it were not disregarded, it doesn't add anything or lend anything to appellant's case.

Its purport is to obtain the abatement of some weeds that were prevelant in the neighborhood during the time adjoining and adjacent lots (not belonging to either appellant or respondent) were vacant and frequently overgrown with weeds. While it is denied that there was any significant growth of weeds, if there was, they were promptly cleared. The rest of the letter can simply be regarded as Mr. Greene's own interpretation of what the earlier notice accomplished, which of course is highly debatable, and which is one of the issues presented on this appeal. It certainly does not purport to be the new notice of the new election which appellant might have been able and entitled to make, but did not.

POINT XVI.

THE APPELLANT WAIVED ITS RIGHTS TO FOLLOW UP ITS NOTICES JANUARY 12, 1968.

Judge Croft has said all that needs to be said about this, and appellant adopts Judge Croft's argument on page 8 of his opinion which is to be found on page 215 of the record as his own argument.

CONCLUSION

Judge Croft, amazed at the contentions of appellant, expresses wonderment why plaintiff refused to accept a \$7,000.00 tender and suggests that the plaintiff was more interested in the forfeiture than the other remedies.

He perceptively observes that the existence of a very substantial equity in the property in favor of respondent suggests why. (See page 9 of the opinion at page 216).

His very astute comment sums up what this law suit is all about, and once the court has seen through appellant's charade, everything else has an easy explanation.

Legally, however, appellant's biggest area of miscomprehension is in the contract provisions. Appellant has created two bins and tried to toss all of the cases into one bin or the other. Actually there are three bins. One is for self-executing contracts. There are two types of self-executing contracts. Forrester vs. Cook belongs in the the first bin. The rest of the cases, except the Van Zyverden case belong in the second bin. The Van Zyverden case and the Beneficial Contract belong in the third bin.

This, of course, is a classification in terms of the contract provisions. Should the contracts be considered in terms of other differences, the Beneficial-Respondant contract is in a class all by itself. What other forfeiture threatened a \$30,000.00 equity, for instance? What other contract has an addendum?

In spite of everything appellant urges, there is no theory upon which appellant can maintain a case, and its case should die quietly and gracefully in light of its multiple anomolies and defects.

Respectfully submitted,

/s/ John E. Dennett
1243 East 21st South
Salt Lake City, Utah 84106

IN THE SUPREME COURT OF THE STATE OF UTAH

BENEFICIAL LIFE INSURANCE
COMPANY, a corporation

Appellant : Case No. 11865

vs. :

JOHN ELWOOD DENNETT :

Respondant :

APPENDIX TO RESPONDANT'S BRIEF

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APPENDIX TO RESPONDANT'S BRIEF

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Forrester vs Cook
(77 U 137, 292 P 206, 1930)

Facts: On May 19, 1924 Diana Forrester, as seller and Harry F. Cook and a Mr. Noyes, as buyers, entered into a contract under the terms of which the seller agreed to sell and the buyer agreed to buy the Ivy Apartment in Salt Lake City, Utah. The purchase price was \$17,100.00. The buyer was given \$3,000.00 credit for the pre-existing mortgage on the premises, which the buyer agreed to assume and pay. The buyer was also given \$2,420.11 credit for equities in two pieces of undescribed real estate transferred from the buyer to the seller. The deferred balance of \$11,579.89 was payable in quarterly installments of \$300.00.

The contract contained this self-executing provision:

"In the event of a failure to make any payment when the same shall become due or within 60 days thereafter, the seller shall be released from all obligations in law and equity to convey said property, and buyer shall forfeit as liquidated damages all payments which have heretofore been made on this contract... the buyer becoming at once a tenant at will of the seller. "

All quarterly payments (of \$300.00) were made until November, 1927 (apparently 13 of them). After one extension from its original undisclosed due date, the Walker Bank mortgage became finally due on October 11, 1927 and was not paid. Disputes arose over irrelevant matters and seller on January 28, 1928 served on the buyer a notice in this words:

"You and each of you will further take notice that by reason of your failure to make the payments hereinbefore referred to, you and each of you under the terms of said agreement have become and now are and are hereby declared to be the tenants at will of Diana Forrester; and as such you and each of you are hereby required to vacate the property... and surrender possession thereof to said Diana Forrester within five days from the date of the service of this notice upon you. "

The buyer failed to comply with the notice and on January 21, 1928 (?) (the date seems to be in error) the seller commenced an unlawful detainer action. Prior to trial, the buyer disclaimed any interest in the property, and tendered possession to seller.

The question went to trial on the issue of damages and attorney fees.

The trial court held that the plaintiff was not entitled to an attorney fee and, ultimately, that damages of \$910.00, which the court refused to treble, should be allowed. The court struck buyer's counterclaim.

Both buyer and seller appealed. The Supreme Court held:

- (1) No attorney fees will be allowed in an unlawful detainer action where it does not purport to enforce, but rather to avoid the agreement.
- (2) A counterclaim in an unlawful detainer action cannot be filed.
- (3) There was no competent evidence (in the record) on which to base damages.

The court remanded for a retrial, but gave some helpful dictum. In examining the wording of this particular contract, the court observed that the agreement ipso facto and automatically made the buyer tenants at will of the seller upon failure to comply with the terms of the contract, (and other dictum not helpful here.)

Leone vs Zuniga
(84 Utah 417, 34 P 2d 699, 1934)

Facts: On an undisclosed date (presumably in 1926) Leone as seller and Zuniga as buyer, entered into a contract under the terms of which the seller agreed to sell and buyer agreed to buy undisclosed property in Salt Lake County for the agreed consideration of \$6,900.00. The buyer was credited \$1,750.00 down payment by reason for a conveyance to seller of other property. The balance of \$5,150.00 was to be paid in monthly installments of \$45.00 beginning March 20, 1926.

The contract contained this language:

"In the event of a failure to comply with the terms hereof by buyer or upon failure to make any payments when the same shall become due, or within 60 days thereafter, the seller shall, at his option, be released from all obligations in law and equity to convey said property and the buyer shall forfeit as liquidated damages, all payments which have been made . . . the buyer becoming at once a tenant at will of the seller."

No notices were served.

The evidence showed, without conflict, that the Zunigas were in default. The trial court ruled that the contract was cancelled and forfeited and that the seller was entitled to \$250.00 attorney fees.

The buyer, on appeal, alleged that it was necessary for the seller to allege and prove notice of forfeiture. (Other error, not relevant here, was also assigned.)

The Supreme Court, in ruling on this issue, distinguished between self-executing and non-self-executing type contracts. It held that notice is a pre-requisite when the terms are not self-executing and that it may not be a pre-requisite when the terms are self-executing. It cited Bergman vs. Lewis (68 U 178, 249 P 470) as an example of a contract where the contract was self-executing and notice was not necessary, and Howorth vs. Mills (62 Utah 574, 221 P 165) where it was not self-executing and notice was required.

The Supreme Court found the Leone-Zuniga contract unlike Bergman vs. Lewis and like Howorth vs. Mills.

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Rationale: In non-self-executing contracts, the seller merely gains the right to make elections upon the buyer's default. He may elect to stand upon his right to declare a forfeiture, or may elect to waive the forfeiture and elect to enforce the contract according to its terms. The object of the language is to give the vendor an election. If he wants to avail himself of his right to avoid the contract, he must make an unequivocal election evidencing that intention. A contrary rule would place the buyer in a dilemma. If he vacates the premises, he may be confronted with an action to enforce the contract. If he fails to vacate, he may be met with a suit for possession.

Held: Reversed and with instructions to sustain the buyer's demurrer. Since the contract was not self-executing a notice was required and since it was not given and not alleged, the complaint failed to state a cause of action.

BRIEF

Christy vs Guild
(101 Utah 313, 121 P 2d 401 1942)

On an undisclosed date in 1935, John Christy et ux as seller, and Edward L. Guild et ux as buyer, entered into an agreement according to the terms of which the sellers agreed to sell and the buyers agreed to buy property in Salt Lake County for \$3,200.00. The buyer paid nothing down and undertook to pay the entire purchase price in deferred monthly installments of \$20.00 for six months, then \$25.00 for the next six months, then \$30.00 per month until the entire balance was paid.

The contract provided that upon the buyer's default, the seller might elect to terminate the contract and retain the payments made as liquidated damages, the buyer becoming a tenant at will of the seller.

On April 30, 1940, the installments were \$130.00 in arrears and the sellers served notice on the buyers (paraphrased) as follows:

Unless the arrears of \$130.00 are brought current, the improvements are made to the property and the taxes and insurance of \$297.20 are paid before May 12, 1940, the contract would be terminated, and the payments made would be retained as liquidated damages and the buyers would be a tenant at will of the sellers.

On May 15, 1940, a notice to quit was served on buyers.

The buyers failed to comply with the notice to quit. The sellers sued for restitution of the premises and for damages. Before institution of the suit, the buyer tendered \$130.00 but did not tender payment of the \$297.20 taxes and insurance and did not make the agreed improvements.

The buyer did not raise any of the usual questions on appeal, such as the sufficiency of the notice. The buyer simply questioned (1) whether the question of default should have been submitted to the jury and (2) whether in light of the equities, reimbursement should not be made for the improvements made and the large amount paid (1/3 of the principal) (plus interest) on the contract.

The court held on the first point. (1) That the lower court did not err in directing a verdict, since there was no dispute on the question of a default.

The court held on the second point (2) that the property had produced \$75.00 per month income which over a period of five years and had more than reimbursed the seller, not only for his monthly installments, but the \$2,000.00 in improvements and that the forfeiture of the monthly payments was not, on the facts of this case, a penalty.

the contract other than according to the terms herein mentioned that so doing will not alter the terms of the contract as to the forfeiture hereinafter mentioned.

The parties of the second part agree to pay all taxes and assessments of whatsoever nature which may hereafter be assessed against said premises during the life of this agreement. Should the parties of the second part fail to pay any taxes or assessments as herein specified, the parties of the first part may pay them, and all moneys so paid shall become a debt against the parties of the second part, and the parties of the second part will, on demand, repay the parties of the first part in lawful money of the United States, all money paid by the parties of the first part for any taxes or assessments of any kind with interest thereon from the date of payment until paid, at the rate of ten per centum per annum, and any payments so made by the parties of the first part shall be secured by this contract.

It is further agreed that the parties of the second part shall keep the improvements on said premises insured for Three Thousand Dollars (\$3,000.00) in the name and for the benefit of the parties of the first part in a company approved by the parties of the first part. In default of the parties of the second part so keeping said improvements insured as aforesaid, then the parties of the first part may cause them to be insured at the expense of the parties of the second part, and all expenses incurred in so doing shall draw interest at the rate of ten per cent per annum from the date incurred and shall be secured by this contract.

The parties of the second part are entitled to the possession of said premises and may continue unless forfeited by the non-payment of the purchase money, or any installment thereof or interest or any other payment as herein stipulated or the fulfillment of every and each one of the provisions of this agreement. On failure of the parties of the second part, their heirs, executors, administrators, successors or assigns to make any of the

payments of principal or interest, taxes or assessments or insurance premium charges when due or for fifteen days after they become due, time being of the essence of this contract, or on failure to comply with the provisions of this agreement in any other respect all payments made under this contract may, at the option of the parties of the first part, become forfeited to the parties of the first part and be retained and settled as liquidated damages, and thereupon the parties of the first part be released and are hereby for the purpose above mentioned released from all obligations of law and equity to convey said described property, and the parties of the second part shall and for the purpose above mentioned hereby forfeit all right thereto and shall immediately deliver up possession of said land and all improvements thereon and additions made thereon, and the property including said additions and improvements shall remain with the land and become the property of the parties of the first part, the said parties of the second part becoming at once mere tenants at will of the parties of the first part.

The parties of the second part, their heirs, executors, administrators, successors or assigns, agree not to sell, grant or convey or transfer this estate or any part thereof to any person not of the Caucasian race.

The parties of the first part on receiving the payments herein reserved to be paid at the times and in the manner above mentioned agree to execute and deliver to the parties of the second part or assigns, a good and sufficient warranty deed conveying the marketable title to the above described premises free and clear of all encumbrances except as may have accrued by or through the acts or neglect of the parties of the second part, and to furnish the parties of the second part at the expense of the parties of the first part an abstract brought down to date of sale or time of delivery of deed, at the option of the parties of the second part.

BRIEF

Pacific Development vs. Stewart
(113 Utah 403, 195 P 2d 748 1948)

On an undisclosed date, Pacific Development, as seller, entered into a contract with J. P. Stewart etux, as buyers, according to the terms of which the sellers agreed to sell and the buyers agreed to buy property in Provo, Utah for \$5,900.00. The buyer paid \$100.00 down and undertook to discharge the deferred balance of \$5,800.00 in monthly installments of \$55.00 .

The contract contained the following language:

"In the event of a failure to comply with the terms hereof by the buyer, or upon the failure to make any payments when the same shall become due or within 20 days thereafter the seller shall at his option be released from all obligations in law and equity to convey said propertythe buyer coming at once a tenant of the seller."

After multiple defaults there was an arrearage of \$557.50 on October 24, 1946. On that date the seller gave notice that unless the arrearage was paid in full within seven days, the seller (would) elects to declare the entire contract forfeited.

On November 12, 1946, a notice to quit was served. By that notice the defendants were given an additional five days in which to pay the past due obligation. They were unable to do so (and did not do so).

The trial court held that the 23 day notice was unreasonable.

The Supreme Court held that 23 days was a reasonable time, and since up until the time of trial they had not cured the default and the buyers had not paid the equivalent of the rental value of the property (\$55.00 per month) for the time they had occupied the property, and since there was doubt as to whether the buyer could have cured the default even if given additional time, a forfeiture should be allowed and a writ of possession should be issued.

BRIEF

Fuhriman vs Bissegger
(13 Utah 2d 379, 375 P 2d 27, 1952)

On an undisclosed date in 1946, Festus Fuhriman, as seller, entered into a contract with Alfred Bissegger and LaRene Bissegger as buyers according to the terms of which the seller agreed to sell and the buyers agreed to buy for an undisclosed price. No down payment is mentioned and no monthly payments are set forth, although it is intimated that the payments were to be \$10.00 per month.

The contract provided that if the buyer failed to make the payments as they came due, the seller, at his option, could forfeit the buyers' rights to take possession of the property.

The seller let the buyer remain in possession almost 14 years with virtually no payments.

The seller served no notice of his election and in 1960 commenced a suit for possession.

The buyer counterclaimed for specific performance. The trial court granted specific performance provided all amounts due under the contract were deposited within 60 days.

The Supreme Court held that since there were no notices, there was no forfeiture and the counterclaim for specific performance should be granted.

BRIEF
Jacobsen vs. Swan
(3 Utah 2d 59, 278 P 2d 294 1954)

The opinion says that on or about June 27, 1947 (which appears to be erroneous) a Mr. Neilson offered property in Orem, Utah for sale through Dixon Real Estate for \$14,000.00. A salesman for the company found a willing buyer who had a \$4,000.00 down payment. Since the down payment was inadequate to satisfy Mr. Neilson, the salesman, Emil Jacobsen, advanced \$10,000.00 and combining it with \$4,000.00 received from the prospective purchasers (the Swans) paid Mr. Neilson cash for the property.

The new title owner (the Jacobsens) then, as seller, entered into an agreement with the Swans, as buyers, according to the terms of which the sellers agreed to sell the subject property for \$14,000.00. The buyers paid \$4,000.00 down and agreed to pay the deferred balance of \$10,000.00 in monthly installments of \$80.00.

The contract provided that in case of buyer's default, the sellers at their option would be released from all obligations to convey the property, that all payments made would be forfeited as liquidated damages and the buyers would be come tenants at will of the sellers.

On March 11, 1947, the buyers were in default, and after notices the original agreement was superseded by a lease agreement under the terms of which the buyers became the lessee of the seller who became lessors. One Hundred Dollars per month was to be paid, \$80.00 of which would be "rent" and \$20.00 of which would be credited to the accrued arrearage of \$889.41 under the contract. If the buyers did not default on the lease, the parties agreed to revert to the original agreement.

On June 27, 1950 still another lease was entered into, superseding the lease of March 11, 1947. The lessees were to pay \$300.00 on or before August 31, 1950. This \$300.00 was paid, but on March 5, 1952 the lessees were in default again.

On March 5, 1952, lessor served lessees with unconditional notice to quit, requiring the defendants to quit the premises by March 31, 1952. Nothing happened. On August 12, 1952 a similar notice to quit was served requiring the lessee to quit the premises by September 15, 1952.

The lessors sued in unlawful detainer. The trial court awarded possession of the property to the lessor, but required the lessor to account for the sums paid under the original contract but not under the two subsequent lease agreements. The trial court found that the payments on the original contract was \$3,190.00 more than the rental value of the property.

The Supreme Court held that under the original contract the lessees were entitled to a credit of \$3,190.00; under the first lease the lessees were entitled to a credit of \$480.00 and under the second lease agreement the lessor was entitled to \$1,246.62 plus \$600.00 for the lessee's hold-over, giving the Swans a net judgment of \$1,823.38.

BRIEF

Van Zyverden vs Farrar
(15 Utah 2d 367, 393 P 2d 468 1964)

On an undisclosed date, presumably in 1960, the Farrars, as sellers, entered into an agreement with the Van Zyverdens, as buyers, according to the terms of which the sellers agreed to sell and the buyers agreed to buy certain property known as the Daniels Creek Ranch for an undisclosed price and on undisclosed terms.

The contract provided that for buyer's failure to make payments when due, the seller, at his option, would have certain alternative remedies including:

"* * Upon failure of the buyer to remedy the default within five days after written notice, to be released from all obligations and forfeit all payments as liquidated damages, the buyer becoming at once a tenant at the will of the seller.* *"

In November, 1961, the Farrars assigned their interest to Seagull Investment Co. On November 15, 1961 Seagull made demand on the buyers for the first annual payment. Seagull gave notice on January 3, 1961 to the buyers to remedy the default in five days or quit the premises. On January 16, 1962, Seagull brought an action for possession.

On February 10, 1962, Seagull caused another similar notice to be served. On February 13, 1962, Seagull filed a counterclaim in an earlier action brought by the Van Zyverdens against them.

Without making any comment on the notice of January 3, 1961 and the action commenced on January 16, 1962 based there upon, the court held that the notice of February 10, 1962 was inadequate because it was served after the action had been commenced.

The Supreme Court held this to be a contest, saying that whether such a cause of action exists is to be determined at the time the action is commenced.

UNIFORM REAL ESTATE CONTRACT

1. THIS AGREEMENT, made in duplicate this 25th day of September, A.D., 1960,
by and between Ralph W. Farrar and Helen R. Farrar, his wife
hereinafter designated as the Seller, and Leo van Zyverden and Sytske van Zyverden, his wife
as joint tenants and not as tenants in common with full right of survivorship
hereinafter designated as the Buyer, of Salt Lake City Utah

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer, and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in the county of Wasatch, State of Utah, to-wit: Heber City Utah R.F.D. Box #140.
More particularly described as follows: The Southeast Quarter of the Southwest Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Meridian.

Also, Beginning at the Southeast Corner of the Northeast Quarter of Section 21, Township 4 South, Range 5 East, Salt Lake Meridian, thence West 6 chains, thence North 25 chains, thence East 6 chains, thence South 25 chains to the beginning.

Also, The Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 22, Township 4 South, Range 5 East, Salt Lake Meridian.
See Attached Rider hereto.

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of \$60,000.-
Sixty thousand Dollars (\$60,000.-)
payable at the office of Seller, his assigns or order in Ogden Utah
strictly within the following times, to-wit: five thousand (\$5000.-)
cash, the receipt of which is hereby acknowledged, and the balance of \$55,000.- shall be paid as follows:
\$2750.- or more, plus interest of 6% per annum on or before Nov. 1st. 1961.
and \$2750.- or more plus 6% interest per annum on the unpaid balance,
every November 1st. each year thereafter untill paid in full.

Possession of said premises shall be delivered to buyer on the 25th day of September, 1960.

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the principal. Interest shall be charged from September 15th. 1960 on all unpaid portions of the purchase price at the rate of 6 per cent (6 %) per annum. The Buyer, at his option at anytime, may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of M.R. Michelsen with an unpaid balance of \$ 22,000.-, as of Septemeber 25th. 1960

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said premises now in the process of being installed, or which have been completed and not paid for, outstanding against said property, except the following none

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the then unpaid contract balance hereunder, bearing interest at the rate of not to exceed 5 or 6 percent (ann. %) per annum and payable in regular ann. installments; provided that the aggregate ann. installment payments required to be made by Seller on said loans shall not be greater than each installment payment required to be made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obligations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in obtaining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees that there are no assessments against said premises except the following:

[Signature]

[Signature]

which you entered into with Ralph W. Farner and Helen R. Farner, dated September 25, 1960, which contract was assigned to Seagull Investment Co., November 1, 1961, in which you agreed to pay \$2,700.00 plus interest at the rate of 6% per annum from September 25, 1960 to November 1, 1961, and which payment was due and payable November 1, 1961, and which contract allowed 30 days in which to pay said sums amounting to \$6,334.17, we hereby declare said contract in default, and unless said amount is in our office at 581 East 3900 South, Salt Lake City, Utah, by noon December 7, 1961, we shall take possession of properties referred to in said contract and Rider and Inventory, which is also a part of said contract, according to conditions referred to in Paragraph 16 A of said contract, which states:

"Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land and become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller;"

We also demand at this time the amount of \$333.93, which is the amount advanced for the payment of the water assessments for the year on the water shares, which is a part of the property above mentioned.

We also demand that all the properties mentioned on the Rider to the Contract above mentioned, be returned to the farm in Heber, where the contract requires that it be kept, and in good condition. Also the 12 head of horses.

We hereby give you this notice of default of contract dated this 1st day of December, 1961, by certified mail.

SEAGULL INVESTMENT CO.,

Eben R. T. Blomquist, President

Wayne T. Blomquist, Secretary.

NOTICE OF TERMINATION OF CONTRACT

and

FIVE DAY NOTICE TO VACATE PREMISES

To: Leo Van Zyverden and
Sytske Van Zyverden
2880 East 3535 South
Salt Lake City, Utah

WHEREAS, on or about the 25th day of September, 1961 you made and entered into a contract for the purchase of property situated in the County of Wasatch, State of Utah and more particularly described as follows:

The Southeast Quarter of the Southwest Quarter of Section 7, Township 4 South, Range 3 East, Salt Lake Meridian.

Also, Beginning at the Southeast Corner of the Northeast Quarter of Section 21, Township 4 South, Range 5 East, Salt Lake Meridian, thence West 6 chains, thence North 25 chains, thence East 6 chains, thence South 25 chains to the beginning

Also, The Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 22, Township 4 South, Range 5 East, Salt Lake Meridian.

Also, Beginning 13 Chains South and 6 Chains West of the Northeast Corner of Section 21, Township 4 South, Range 5 East, Salt Lake Meridian, thence South 58 Rods, thence North 37° 50' West 28.3 Rods, thence Northerly 41 Rods, more or less, to the point of beginning.

Together with all water and water rights, however shown, held or evidenced used upon or in connection with, or in any wise appertaining to the above described lands, particularly but not exclusively, mentioned, to-wit: 120.8 shares of the Capital Stock of Daniels Irrigation Company; 137.5 Shares of the Capital Stock of Extension Irrigation Company; 18.0 shares of the Capital Stock of Wasatch Irrigation Company.

Also included in said contract of sale are: 12 head of horses, 7 saddles, 1 Ford Tractor, 1 cover, 1 plow, 1 rake, 2 wagons, 1 springtooth harrow, 1 land leveler, 750 gallon tank, 1 Eureka water, 3" waterpipe with rainbird sprinklerheads, 1 Milkcan (Dairy King) 455 lbs. Highland Dairy Base, and

WHEREAS, a copy of said contract is annexed hereto as exhibit "A" and made a part hereof by reference thereto, and

WHEREAS, you have defaulted in performance of your obligations under the terms of said contract in many particulars including but not

limited to the following defaults which are the subject matter of this demand and notice and which defaults must be cured to release said contract as herein provided, and

WHEREAS, on or about the first day of November, 1961 the interest of the sellers in the contract annexed hereto as Exhibit "A" was assigned by said Ralph W. Parter and Helen R. Parter, his wife, to Seagull Investment Company, a Utah Corporation and Seagull Investment Company is now the owner thereof and has succeeded to all of the rights, powers and privileges of said sellers in and to said contract, a copy of which assignment is annexed hereto as Exhibit "B" and made a part hereof by reference thereto.

WHEREAS, paragraph 16 of the contract annexed hereto as Exhibit "A" defines the remedies available to the holder of said contract in the event of your default.

1. You have failed to make the payment of \$2,750.00 plus interest 6% per annum as required by paragraph 3 of said contract on or before November 1, 1961 within the 30 day grace period provided in paragraph 16 of said contract, or at all and said payment remains unpaid in total as of the service of this notice upon you.

2. You have failed to pay 1961 property taxes assessed against said premises as required by paragraphs 11 and 13 of said contract on or before the due date for payment of said taxes, which taxes became delinquent November 30, 1961, and which taxes have not been paid by you as of the date of service of this notice upon you. The taxes assessed which you have failed to pay as shown by the records of the County Treasurer of Wasatch County, Utah are as follows:

Serial #	Tract #	Page #	Line #	Amount Due
44022-1406	A-2	29	31	\$ 322.55
4447-1216	A-2	8	40	86.26
45021-1591	A-2	28	26	23.43
45021-1587	A-2	28	13	7.50

3. You have failed to pay the assessments against said premises for water for use charges as follows:

Sanfield Irrigation Company	\$ 172.28
Defension Irrigation Company	100.70
Wasatch-Tyler Irrigation Company	54.00

Which amounts have been paid by Seagull Investment Company, the present holder of said contract, and which amounts plus interest you are indebted

Seagull Investment Company is informed that the provisions of paragraph 16 of said contract, and which covenants you did not pay by the due date thereof and which remain unpaid as aforesaid as of the date of service of this notice upon you.

4. You have incurred obligations for construction and installation of improvements upon and to said premises and for repairs and maintenance to said premises, which obligations Seagull Investment Company is informed have not been paid and that mechanic's liens have been filed or are about to be filed on said premises in violation of the provisions of the contract annexed hereto as Exhibit "A".

5. Seagull Investment Company is informed that certain of the personal property described in Exhibit "A" annexed hereto has been removed from said premises and or disposed of by you in violation of said contract and without the knowledge or consent of the seller or seller's assignee under said contract; that said contract in title retaining and that you have no authority or power to sell or dispose of any personal property described therein except strictly in accordance with the terms of said contract.

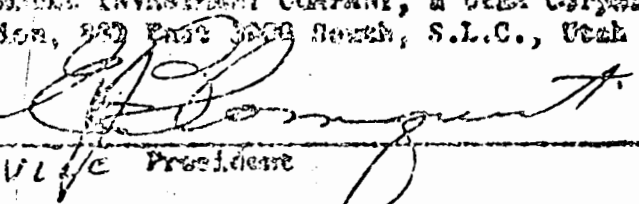
NOW THEREFORE, you are hereby notified that Seagull Investment Company does elect to exercise its rights as provided by subparagraph "A" of paragraph 16 of the contract annexed hereto as Exhibit "A" to be released from all obligation in law and equity to convey said property and to terminate your interest in and to said premises at the end of five days after service of this notice upon you in the event that you fail to remedy the aforesaid defaults and to fully perform all of your obligations under said contract within said time; that in the event that you fully perform all of your obligations under said contract within said five day period you may terminate said contract.

You are further notified that in the event that you fail to remedy your defaults in performance of the contract annexed hereto as Exhibit "A" and to perform the covenants and conditions which you are obligated to perform under the terms of said contract within five days after service of this notice upon you, that you will be guilty of unlawful retention of said premises in accordance with the provisions of

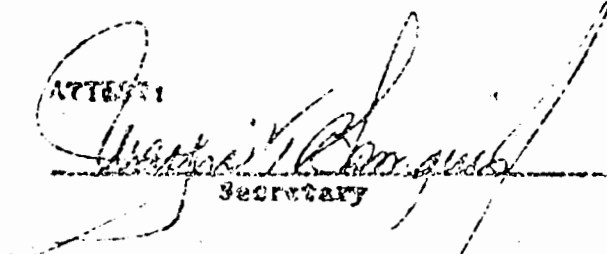
78-36-3(1), Utah Code Annotated, 1933, and that thereafter you will be liable for three times the amount of damage assessed for said unlawful detainer as provided by 78-36-10, Utah Code Annotated, 1933 and related statutes, and that legal action will be commenced against you for recitation of said provisions, treble damages, attorney fees, court costs, etc....

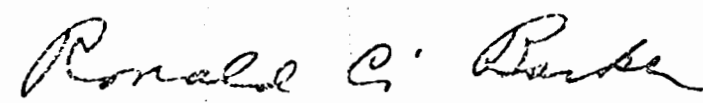
You are further advised that if you any question concerning the reinstatement of this contract or the proposed termination of your interest in and to said contract and the premises herein described and the proceedings pending for your eviction for the said premises, that you should consult your attorney.

SEAGULL INVESTMENT COMPANY, a Utah Corporation,
2870 East 3000 South, S.L.C., Utah


By J. P. Long
Vice President

ATTEST:


Secretary


Ronald C. Barker, Attorney for Seagull Investment Company, 2870 South State Street, Salt Lake City, Utah

NOTICE TO VACATE PREMISES

TO LEO VAN ZYVERDEN and
SYTSIE VAN ZYVERDEN
2880 East 3535 South
Salt Lake City, Utah

WHEREAS, on or about the 3rd day of January, 1962 Seagull Investment Company did cause to be served upon you a document entitled "Notice of Termination of Contract and Five day Notice to Vacate Premises", a copy of which is annexed hereto as exhibit "A" and made a part hereof by reference thereto as fully as if all of the terms thereof were spelled out herein in detail, and

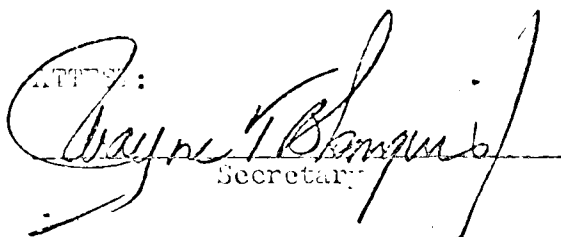
WHEREAS, you failed to comply with said demand and to remedy your default under the terms of the contract annexed thereto and have failed, neglected and refused to vacate and surrender said premises.

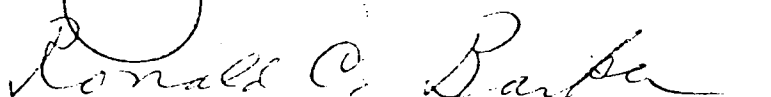
NOW THEREFORE, you are hereby notified that if for any reason the demand to terminate your occupancy of the premises annexed hereto as exhibit "A" as aforesaid was for any reason ineffective, that you are further notified that you must vacate said premises within five (5) days after service of this notice upon you and that if you fail so to do, that you will thereafter be guilty of unlawful detainer of said premises in accordance with the provisions of 78-36-3(2)/and related statutes and that you will be liable for three times the damages assessed in accordance with the provisions of 78-36-10, UCA, 1953 and related statutes; that this notice shall in no way affect the existing legal proceedings now pending concerning said property and that the triple damages therein claimed are the damages herein mentioned.

SEAGULL INVESTMENT COMPANY, a Utah Corporation,
881 East 3900 South, Salt Lake City, Utah

By 
President

ATTEST:


Secretary


Ronald C. Barker, Attorney for Seagull Investment Company, 2870 South State Street, Salt Lake City, Utah

Dated February 8, 1962.

Exhibit # 5

Case No. 2456

Dec. 4, 1962

STATE OF UTAH

COUNTY OF SALT LAKE

I, R. E. WEAVER, CONSTABLE 7TH PRECINCT, SALT LAKE COUNTY, STATE OF UTAH,

DO HEREBY CERTIFY AND RETURN THAT I RECEIVED THE HERETO ANNEXED **NOTICE COMPLAINT**

ON THE 9 DAY OF Feb, 1962, THAT I SERVED SAID **NOTICE & COMPLAINT**

UPON Leo Van Zyverden THE SAID DEFENDANT, AT SALT LAKE COUNTY, STATE OF

UTAH, ON THE 10 DAY OF Feb., 1962, BY THEN AND THERE DELIVERING

AND LEAVING WITH Leo Van Zyverden THE

OF SAID DEFENDANT, BEING A PERSON OF SUITABLE AGE AND DISCRETION THERE RESIDING AND

SERVED AT THE USUAL PLACE OF ABODE OF SAID DEFENDANT IN

SALT LAKE COUNTY, STATE OF UTAH, A TRUE COPY OF THE ATTACHED **NOTICE SUMMONS AND COMPLAINT**

I ALSO SERVED Sytske Van Zyverden THE SAID DEFENDANT, AT SALT LAKE COUNTY,

STATE OF UTAH, ON THE 10 DAY OF Feb, 1962, BY THEN AND THERE DELIVERING

AND LEAVING WITH Sytske Van Zyverden THE

OF SAID DEFENDANT, BEING A PERSON OF SUITABLE AGE AND DISCRETION THERE RESIDING AND

SERVED AT THE USUAL PLACE OF ABODE OF SAID DEFENDANT IN

SALT LAKE COUNTY, STATE OF UTAH, A TRUE COPY OF THE ATTACHED **NOTICE SUMMONS AND COMPLAINT**

I DO FURTHER CERTIFY AND RETURN THAT AT THE TIME OF THE SERVICE OF SAID

NOTICE COMPLAINT UPON SAID DEFENDANT(S), AS AFORESAID, I ENDORSED UPON SAID COPY(IES)

SO SERVED, THE DATE AND PLACE OF SAID SERVICE, ADDING THERETO MY NAME AND OFFICIAL TITLE.

DATED AT SALT LAKE COUNTY, STATE OF UTAH, THIS 10 DAY OF

Feb, 1962.

R. E. WEAVER
CONSTABLE, 7TH PRECINCT

FEE \$ 2⁰⁰
MILEAGE 2⁵⁰
TOTAL \$ 4⁵⁰

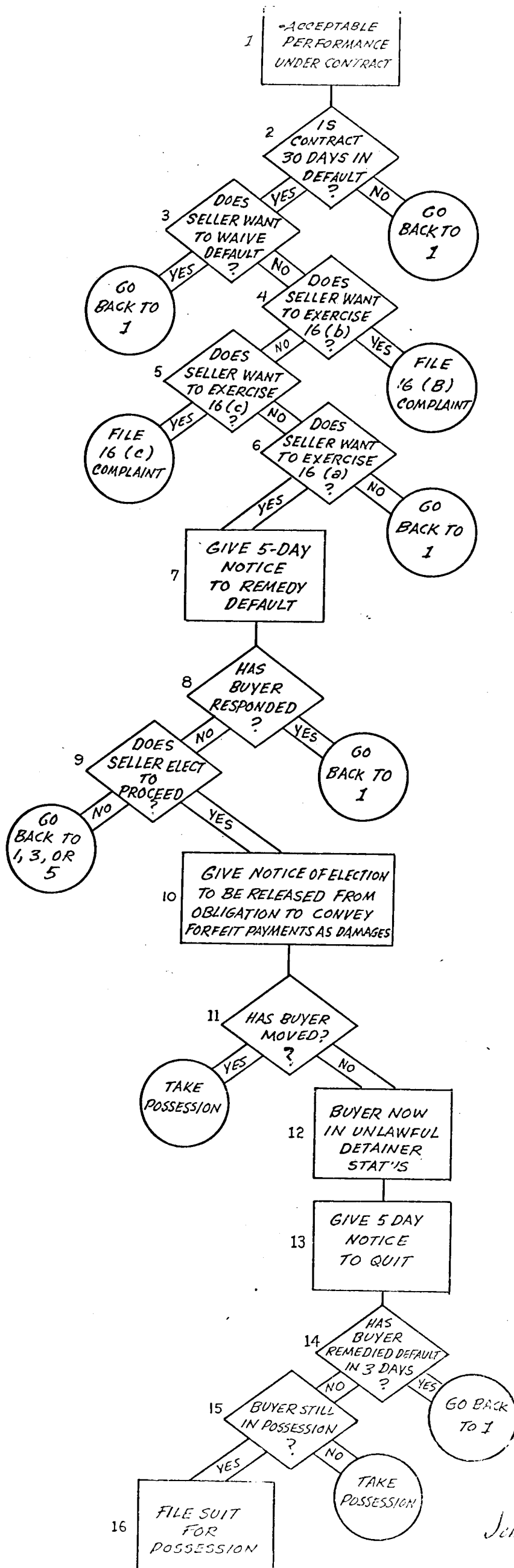
BY Almond DEPUTY

STATE OF UTAH
COUNTY OF SALT LAKE

ENDORSED AND RETURNED TO DEPT. ME THIS

10 DAY OF Feb., 1962.

[Signature]
NOTARY PUBLIC



John E. Dennett 5-10-70