

1994

Woodhaven Apartments v. Bertha Washington : Brief of Appellant

Utah Court of Appeals

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James H. Deans; Attorney for Appellee.

Utah Legal Services; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS
230 South 500 East, Suite 400, Salt Lake City, Utah 84102

WOODHAVEN APARTMENTS,

Plaintiff/Appellee,

vs.

BERTHA WASHINGTON

Defendant/Appellant.

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Case No. 940233-CA

Priority No. 15

BRIEF OF APPELLANT

APPEAL FROM THE THIRD CIRCUIT COURT
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT
HONORABLE WILLIAM A. THORNE, PRESIDING

UTAH COURT OF APPEALS

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UTAH LEGAL SERVICES, INC.
Attorneys for Appellant
BY: ERIC MITTELSTADT #6004
BRUCE PLENK #2613
ANNETTE JAN #6896
254 West 400 South, Suite 200
Salt Lake City, Utah 84101
Telephone: (801) 328-8891

James H. Deans
Attorney for Appellee
440 South 700 East, #101
Salt Lake City, Utah 84102
Telephone: (801) 575-5005

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Utah Court of Appeals

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UTAH LEGAL SERVICES, INC.
Attorneys for Appellant
BY: ERIC MITTELSTADT #6004
BRUCE PLENK #2613
ANNETTE JAN #6896
254 West 400 South, Suite 200
Salt Lake City, Utah 84101
Telephone: (801) 328-8891

James H. Deans
Attorney for Appellee
440 South 700 East, #101
Salt Lake City, Utah 84102
Telephone: (801) 575-5005

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENTS OF ISSUES AND STANDARD OF REVIEW	1
DETERMINATIVE STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	
A. NATURE OF THE CASE	2
B. COURSE OF THE PROCEEDINGS AND DISPOSITION BELOW	3
C. STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
POINT ONE WOODHAVEN'S LIQUIDATED DAMAGES CLAUSE VIOLATES THE UTAH CONSUMER SALES PRACTICES ACT	5
A. WOODHAVEN'S LIQUIDATED DAMAGES CLAUSE IS VOID BECAUSE IT WORKS AS A PENALTY	6
1. WOODHAVEN'S CLAUSE WAS NOT IN A REASONABLY ANTICIPATED AMOUNT	6
B. WASHINGTON LACKED A MEANINGFUL CHOICE REGARDING WOODHAVEN'S LIQUIDATED DAMAGES CLAUSE	8
C. COLLECTION OF WOODHAVEN'S LIQUIDATED DAMAGES CLAUSE IS A DECEPTIVE AND UNCONSCIONABLE ACT AS CONTEMPLATED IN THE UCSPA	9
POINT TWO THE EXCLUSIVE REMEDY FOR A UTAH LANDLORD IN BREACH OF LEASE SITUATION IS ITEMIZATION OF CALCULATED DAMAGES	10
CONCLUSION	12

ADDENDUM

Utah Code §13-11-3(2),(6)	1-1
Utah Code §13-11-5(2)	2-1
Utah Code §70A-2a-504(1)	3-1
Utah Code §78-2a-3(2)(d)	4-1
Decision	5-1

*back-
page-
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Sided*

TABLE OF AUTHORITIES

CASES

<u>Berkins Bar V Ranch v. Huth</u> , 664 P.2d 445 (Utah 1983) . .	8
<u>Commonwealth v. De Cotis</u> , 316 N.E.2d 748 (Mass. 1974) . .	10
<u>Leardi v. Brown</u> , 474 N.E.2d 1094 (Mass. 1985)	10
<u>People v. McKale</u> , 602 P.2d 731 (Cal. 1980)	10
<u>Perkins v. Spencer</u> , 121 Utah 468, 243 P.2d 446 (Utah 1952)	7,8,
<u>Reid v. Mutual of Omaha Ins. Co.</u> , 776 P.2d 896 (Utah 1989)	2,5,6, 7,10, 11,12
<u>State v. Pena</u> , 869 P.2d 932 (Utah 1994)	2,
<u>Wade v. Jobe</u> , 818 P.2d 1006 (Utah 1991)	5

STATUTES

Utah Code §13-11-3(2)	2,5
Utah Code §13-11-3(6)	2,5
Utah Code §13-11-5(2)	1,2,4
Utah Code §70A-2a-504(1)	2,6
Utah Code §78-2a-3(2)(d)	1

IN THE UTAH COURT OF APPEALS
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WOODHAVEN APARTMENTS,	:	
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Plaintiff/Appellee,	:	
	:	Case No. 940233-CA
vs.	:	
	:	
BERTHA WASHINGTON	:	Priority No. 15
	:	
Defendant/Appellant.	:	

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

Appellant Bertha Washington ("Washington") appeals the decision of the Third Circuit Court, West Valley Department, State of Utah. This court has jurisdiction over this appeal pursuant to Utah Code §78-2a-3(2)(d).

STATEMENTS OF ISSUES AND STANDARD OF REVIEW

1. Is a liquidated damages clause unconscionable which penalizes a residential tenant an arbitrary amount beyond the rent actually due?

Because the unconscionability of an act or practice is a question of law for the court pursuant to the Utah Consumer Sales Practices Act, Utah Code §13-11-5(2), the court should review

under the "correctness" standard, affording the trial court's conclusions of law no particular deference. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

2. Is the Reid itemized method of calculating damages after a lease is broken the exclusive remedy for a landlord? Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989).

Because the trial court's decision on this issue rests on interpretation of a Supreme Court decision and applicable law, the court should review under the "correctness" standard, affording the trial court's conclusions of law no particular deference. State v. Pena, 869 P.2d 932, 936 (Utah 1994).

DETERMINATIVE STATUTORY PROVISIONS

The following statutes are controlling in this action:

Utah Code §13-11-3
Utah Code §13-11-5
Utah Code §70A-2a-504

STATEMENT OF THE CASE

A. Nature of the Case

Appellee Woodhaven Apartments ("Woodhaven") and Washington entered into a lease agreement for a period commencing May 30, 1991, to May 15, 1992. [Tr. 7] Washington resided at Woodhaven until Woodhaven's agent verbally informed Washington that her lease would be terminated based upon too many people living in

the apartment. [Tr. 52] Accordingly, Washington vacated the apartment on October 31, 1991. [Tr. 55] Woodhaven subsequently rerented the apartment on November 15, 1991. [Tr. 26] Woodhaven then charged Washington \$705.30 when the lease was terminated. [Tr. 46] The total amount is broken down as follows: fifteen days of rent until the apartment was rerented, the damages incurred within the apartment and a \$531.00 "relet fee" based upon the lease. [Tr. 45-6] Woodhaven brought suit against Washington to collect the \$705.30. [Tr. 1] The trial court found for Woodhaven. Washington now appeals the trial court's decision.

B. Course of the Proceedings and Disposition Below

This matter came on for hearing before the Honorable William A. Thorne on July 15, 1993, in the Third Circuit Court, West Valley Department. The Court heard testimony from numerous witnesses, including the parties. Following this testimony and closing arguments from counsel, the Court entered its decision on November 12, 1993 and the decision is the subject of this appeal.

C. Statement of the Facts

Woodhaven brought this action for damages pursuant to a lease agreement between the parties after Washington vacated the apartment prior to the end of the lease term. [Tr. 7] These damages consisted of rent until the apartment was rerented,

claimed costs of damages and repairs, and a "termination fee" of one and one-half months rent, pursuant to paragraph 26 of the lease. [Tr. 45-6] Washington admitted she owed the rent until reredited, denied she caused the damages and argued that the liquidated damages clause was unconscionable pursuant to the Utah Consumer Sales Practices Act (UCSPA), Utah Code §13-11-5. [Tr. 63-7] Woodhaven argued that this clause was commonly used in lease agreements and was not unconscionable. [Tr. 48-9]

The trial court found Woodhaven to be a supplier under the UCSPA. [R. 134] The trial court found that Woodhaven had not proven that any damages to the property were the responsibility of Washington and found that the UCSPA applied to this transaction but that the liquidated damages clause was not unconscionable. [R. 134-6] Judgment was entered for the unpaid rent, for the liquidated damages of \$531.00, for court costs and for attorney fees, less credit for a payment and for a deposit, leaving a total judgment against Washington of \$819.00. [R. 139]

SUMMARY OF THE ARGUMENT

This court should reverse the lower court's decision because the liquidated damages clause contained in Woodhaven's lease is unconscionable. The clause works as a penalty because it bears no reasonable relationship to the actual damages sustained by

Woodhaven. Therefore, this court should find that this unconscionable clause is in violation of the UCSPA.

Moreover, this court should reverse the trial court's decision regarding the measure of damages and follow the holding of the Utah Supreme Court in Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989). The court should hold that an itemization of actual damages is the exclusive remedy for a landlord in Utah.

ARGUMENT

POINT ONE

WOODHAVEN'S LIQUIDATED DAMAGES CLAUSE VIOLATES THE UTAH CONSUMER SALES PRACTICES ACT

The trial court found that the Utah Consumer Sales Practices Act (UCSPA) applies to residential leases. Specifically, the trial court found that Woodhaven was a "supplier" as defined in Utah Code Ann. §13-11-3(6). [R. 134] The trial court further found that the leasing agreement was a "consumer transaction" as defined in Utah Code Ann. §13-11-3(2). [R. 135] The trial court's finding is consistent with statements of Justices Durham and Zimmerman of the Utah Supreme Court in Wade v. Jobe, 818 P.2d 1006 (Utah 1991). Although the trial court correctly held that the UCSPA applied to residential lease transactions, it ruled incorrectly that the liquidated damages clause was not

unconscionable.

A. Woodhaven's Liquidated Damages Clause is Void Because It Works as a Penalty.

Woodhaven's liquidated damages clause, lease paragraph 26, charges a flat one and one-half months rent for tenants who vacate the premises prior to their lease expiration date.

[R. 11] Woodhaven's measure of charges, paragraph 26, is not designed as a reasonable measure of anticipated damages but as a penalty to the breaching party. The Uniform Commercial Code (UCC), codified in Utah at Utah Code §70A-2a-504, defines liquidated damages as "an amount or . . . a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission." Utah Code §70A-2a-504(1)

1. Woodhaven's clause was not in a reasonably anticipated amount.

Following the UCC, Woodhaven's liquidated damages clause is a penalty. First, the one and one-half times charge is unreasonably large considering the fact Woodhaven had the apartment in question on the market for around only fifteen days before the next tenancy began. Because Utah is suffering a severe shortage of available apartments, rerental within such a short period was to be expected. Moreover, the Utah Supreme Court has held that a landlord has a duty to mitigate damages in the landlord-tenant setting. Reid v. Mutual of Omaha Ins. Co.,

776 P.2d 896, 906 (Utah 1989). The Reid court further held that to not require a landlord to mitigate damages is "analogous to imposing a *disfavored penalty* upon the tenant." Id.

Accordingly, allowing Woodhaven to collect such a "re-let" fee would be allowing it to collect the exact type of penalty disfavored by the Utah Supreme Court.

More specifically, the Utah Supreme Court has held that a liquidated damages clause bearing no relation to the actual damages sustained is unenforceable. Perkins v. Spencer, 121 Utah 468, 243 P.2d 446, 450 (Utah 1952).

Perkins involved a contract for purchase of real estate that contained a clause for forfeiture of the down payment if the purchasing party breached the contract. Perkins held that for a liquidated damages clause to be enforceable, it must satisfy two prongs. First, it must bear "some reasonable relation to the actual damages which could reasonably be anticipated at the time the contract was made[.]" Second, the liquidated damages clause must not be "a forfeiture which would allow an unconscionable and exorbitant (sic) recovery." Perkins, 243 P.2d at 449.

This court should follow the dictates of the Utah Supreme Court in Perkins and find that Woodhaven's liquidated damages clause is unenforceable because it fails to meet the standards set forth in Perkins. Woodhaven's liquidated damages clause

bears no reasonable relationship to the actual damages suffered, thus should be considered an "unconscionable and exorbitant recovery." Id.

Through the liquidated damages clause, Woodhaven received double rent payments for the period of November 16 through November 30, 1991. There can be no doubt that Woodhaven did not "mitigate damages" in the legal sense because to legally "mitigate damages" means to help relieve the burden upon the breaching party. Woodhaven admits that a new tenant had rented the premises by November 16, 1991, therefore the \$531.00 charged to Washington becomes nothing more than a penalty disguised as a termination fee.

B. Washington Lacked a Meaningful Choice Regarding Woodhaven's Liquidated Damages Clause.

The Utah Supreme Court has held that unconscionability includes the absence of a meaningful choice on the part of one of the parties together with the contract terms which are unreasonably favorable to the other party. Bekins Bar V Ranch v. Huth, 664 P.2d 445 (Utah 1983). According to the Utah Supreme Court's interpretation of unconscionability factors, Washington lacked a meaningful choice when she signed Woodhaven's residential lease.

Washington signed Woodhaven's lease during a severe housing shortage. At present and at the time in question, there was a

severe shortage of available apartments in the Salt Lake area. Washington had no choice regarding what terms would be included in her leases because of the tight housing market, and the form contract that was used. The liquidated damages clause was just another paragraph of a typical boiler-plate, closely printed lease agreement that favored the management. As indicated above, Woodhaven was quick to point out some paragraphs in the lease but neglected to point out the penalty clause that instigated this action.

To claim that Washington had a meaningful choice in signing a lease that contained a penalty clause during the tight housing situation is to strip the UCSPA of its intended protections, in complete disregard for the law. Washington had no meaningful choice when she affixed her signature on Woodhaven's lease. The penalty clause contained in the lease should be declared unconscionable.

C. Collection of Woodhaven's Liquidated Damages Clause is a Deceptive and Unconscionable Act as Contemplated in the UCSPA.

The Utah Legislature enacted the UCSPA to protect consumers from deceptive and unconscionable acts. Woodhaven's liquidated damages clause falls into the category of deceptive and unconscionable acts because it is a penalty, not a true liquidated damages clause.

Courts will not enforce penalty clauses, as indicated in California and Massachusetts Supreme Court rulings. These courts have held that an unfair and deceptive practice occurs when landlords include illegal and unenforceable terms in leases. See People v. McKale, 602 P.2d 731 (Cal. 1980) (unfair practice occurs when tenants could be deceived as to mobile home park operator's authority to enforce illegal agreement terms); Leardi v. Brown, 474 N.E.2d 1094 (Mass. 1985). See also, Commonwealth v. De Cotis, 316 N.E.2d 748 (Mass. 1974) (fee for resale of mobile home deceptive where services not rendered).

Woodhaven's inclusion of liquidated damages clause in its residential leases renders such practice deceptive and unconscionable pursuant to the UCSPA.

POINT TWO
THE EXCLUSIVE REMEDY FOR A UTAH LANDLORD
IN BREACH OF LEASE SITUATION IS
ITEMIZATION OF CALCULATED DAMAGES

The Utah Supreme Court addressed the methodology for calculating damages after a breached lease in Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989). Reid held that in a breached lease situation, the landlord retains the burden of proving specific damages and that proper mitigation efforts were taken. This burden is satisfied only through an active, affirmative showing on the landlord's side. The Reid court

supported the landlord's right to collect rent until the premises are rerented, as well as costs of repairs and advertising to find new tenants. However, the Reid court held that to collect monetary damages beyond that stated above, the landlord must institute supplemental proceedings to prove such damages have occurred even with reasonable mitigation efforts. Reid, 776 P.2d at 906. The trial court's ruling allowing Woodhaven to collect under the liquidated damages clause is in direct conflict with this decision from the Utah Supreme Court.

The trial court improperly applied the law when it granted complete judgment to Woodhaven. Woodhaven seeks from Washington expenses for repairs, full amount of rent from October 31, 1991, through November 16, 1991, when the premises were rerented, and \$531.00 under the liquidated damages clause. Reid prevents Woodhaven from collecting under the liquidated damages clause unless it can prove specific damages. Woodhaven admits that it cannot. [Tr. 43-4]

Because Woodhaven cannot prove specific damages and because its liquidated damages clause works as a penalty, this court should rule consistently with the dictates of the Utah Supreme Court and reverse the trial court's decision.

CONCLUSION

This court should reverse the lower court's decision and rule that Woodhaven's liquidated damages clause is unconscionable and contrary to Utah law as expressed in Reid.

RESPECTFULLY SUBMITTED this 7 day of November, 1994.

UTAH LEGAL SERVICES
Attorneys for Appellant

W. Phil. for Eric Mittelstadt

BY: ERIC MITTELSTADT

Waine Riches 4127

CERTIFICATE OF MAILING

I hereby certify that I mailed 2 true and correct copies of the above Brief of Appellant to James H. Deans, Attorney for Appellee, at 440 South 700 East #101, Salt Lake City, Utah 84102, this 7 day of November, 1994.

W. Phil.

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13-11-3. Definitions.

As used in this chapter-

(1) 'Charitable solicitation' means any request directly or indirectly for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including.

(a) any oral or written request, including a telephone request,

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication,

(c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal

is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.

(2) 'Consumer transaction' means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to a person for primarily personal, family or household purposes or for purposes that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation and agreement and performance of an agreement with respect to any of these transfers or dispositions and any charitable solicitation as defined in this section.

(3) 'Enforcing authority' means the Division of Consumer Protection.

(4) 'Final judgment' means a judgment, including any supporting opinion that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

5. 'Person' means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative or any other legal entity.

(6) 'Supplier' means a seller, lessor, assignor, offeror, broker or other person who regularly solicits, engages in or enforces consumer transactions whether or not he deals directly with the consumer.

13-11-5. Unconscionable act or practice by supplier.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.

(2) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

(3) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the supplier knew or had reason to know.

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70A-2a-504. Liquidation of damages.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement, but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with Subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency as provided in Section 70A-2a-525 or 70A-2a-526, the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with Subsection (1); or

(b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.

(4) A lessee's right to restitution under Subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than Subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

History: C. 1953, 70A-2a-504, enacted by
. 1990, ch. 197, § 53.

Effective Dates. — Laws 1990, ch. 197,
§ 82 makes the act effective on July 1, 1990.

IN THE THIRD CIRCUIT COURT, WEST VALLEY DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WOODHAVEN APARTMENTS,

Plaintiff,

vs.

BERTHA WASHINGTON

Defendant.

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DECISION

Case No. 920005207

The above-entitled matter is an action for damages resulting from the early termination of a residential lease. Associated issues raised by the parties included application of a liquidated damages provision in the lease, application of a consumer protection statutory scheme to the transaction, and whether the lease was unconscionable.

This matter came to trial on July 15, 1993. Plaintiff was represented by James Deans and Defendant was represented by Bruce Plenk. Several pretrial conferences were held on this matter with the attorneys.¹ An extended time period was provided for filing of motions and supporting memoranda to accommodate the change of counsel and juggling of attorney and court calendars. Prior to the time of trial, the court determined after review of memoranda from both Plaintiff and Defendant, that the Utah Consumer Sales Practices Act² applied to the lease in this case. The court found that Woodhaven Apartments was a "supplier" as defined in Utah Code Ann. Sec 13-11-3(6). The court also found that the

¹ Plaintiff was previously represented by Martin Pezeley, who appeared several times and filed some of the many motions and briefs in this matter.

² 13-11-1 et seq., U.C.A. (1992).

leasing agreement at issue was a "consumer transaction" as defined in Utah Code Ann. Sec. 13-11-3(2).

ISSUES

Plaintiff claimed actual property damages of \$705.00 plus a re-let fee of \$531.00, calculated at 1 1/2 months rental rate, per the lease contract. Defendant countered that the contract was unconscionable, and that the Plaintiff was liable under the UCSPA for the minimum damages provided in the Act. Defendant also argued that the only monetary remedy available for a broken lease was a damage finding based upon actual expenses attributable to the specific broken lease, including rent until the premises were re-let.

FINDINGS OF FACT

A lease was entered into by Defendant on May 30, 1991, for an apartment in the Woodhaven Apartment complex. Paragraph 26 in the lease agreement, which appeared immediately above the signature line, provided for an assessment of 1 1/2 months rent for early termination of the lease when the property is re-let prior to the termination date of the lease. Defendant and co-tenant paid a deposit of \$354.00, \$25.00 of which was termed non-refundable, at the time of moving into the apartment. The term of the lease was to expire on May 14, 1992. The monthly rental on the apartment unit was to be \$354.00 per month. Defendant vacated the apartment on November 1, 1991. Rent had been paid at the regular rate through October 15, 1991. The apartment was re-let on November 15, 1991. Plaintiff claimed property damages of \$705.00, but was unable to support the claim with itemized invoices or receipts. Nor was plaintiff able to show the condition of the premises prior to defendant occupying the premises.

Defendant's co-tenant signed a written agreement entitled "Agreement To Accept Partial Rent Payment" on October 21. In the agreement Plaintiff's agent agreed to accept \$200 that same day and a balance of \$179.00 by the 31st of October. The \$200 was paid, but the balance per the agreement was never paid. Defendant did not sign the agreement, although the plaintiff believed that the co-tenant was acting on behalf of the Defendant.

CONCLUSIONS OF LAW

Defendant argues that the lease agreement, specifically the provision in Paragraph 26 dealing with an assessment of 1 1/2 months rental for early termination of the lease, is unconscionable and violates the Utah Consumer Sales Practices Act (UCSPA).

The Court hereby finds that the contested provision is not unconscionable. The terms, while not particularly well drafted, are not deceptive or misleading. It is the last substantive provision appearing before the signature. There was no apparent attempt to bury the provision in the body of the lease. While the better practice might have been to place the liquidated damages provision in bold letters, or require that initials be placed in the margin to draw attention to the clause, the lack of these steps does not render the provision unconscionable. There is no complicated formula to be applied. Even a cursory reading would put a tenant on notice that there is a penalty for early termination of the lease. The contract is not an adhesion contract, the tenants were not forced to rent from a complex offering patently offensive terms. In the absence of compelling evidence the court must assume that other rental properties were available in the Salt Lake housing market at the time Defendant chose to lease from Plaintiff.

Plaintiff, whenever there is an early termination of a lease agreement, incurs costs over and above those normally associated with providing residential housing. Plaintiff reasonably could anticipate incurring these costs only when the lease terminates at the expiration of the lease term. Plaintiff is required to clean the premises, perform whatever minor repairs are necessary to make the unit attractive to a prospective tenant, perform the necessary administrative details to ensure that the work is properly and timely done, advertise for the vacancy, have personnel available to show the apartment to prospective tenants, prepare the necessary paperwork for the prospective tenant, perform various checks of prospective tenants, etc. All of these duties draw upon the resources of the plaintiff. Incurring these costs sooner than anticipated when the lease is terminated early results in added costs and expenses for a landlord.

Plaintiff is then faced with deciding how best to cover the costs associated with early terminations. Plaintiff might charge higher rental fees for all tenants, to cover the costs of early terminations.³ Or Plaintiff might keep exacting accounting records of individualized costs related to each individual rental unit.

For good policy reasons, the law applicable to this case should not be interpreted to require that a plaintiff increase potential costs by requiring an exacting accounting of time and effort for each unit, unless there is an express requirement in the controlling statutes or contract. Plaintiff should be entitled to take reasonable steps to minimize the accounting costs by spreading duplicative activities over the entire complex operational expenses. Nor should

³ This, however, would result in higher fees being charged to all tenants. It is not unreasonable for Plaintiff to resist charging all tenants for the costs associated with the actions of only a few, the early terminations.

the law require that separate incremental advertising costs be incurred for each individual unit. Paragraph 26, the liquidated damage provision, appears to be a means of minimizing these costs. In an individual case this may result in a cost savings or increase for an early terminating tenant.⁴ This practice does not rise to the level of unconscionable action in this case.⁵ The liquidated damages provision at issue is interpreted by this court as a replacement for the normal costs which otherwise are routine expenses associated with an early lease termination. Itemized costs would not, therefore, be allowed in addition to liquidated damages except for unusual or intentionally malicious damages.

The provision is not, as a matter of law, unconscionable. An assessment of 1 1/2 months rental is not out of proportion to the effort and resources that must be expended to re-rent the premises. The contract did not grant arbitrary and unfettered rights to the plaintiff, nor was the contract one that raised the spectre of procedural unconscionability.⁶ This liquidated damages provision of the contract does not shock the conscience as being unfair or oppressive. Additionally, there was no evidence that the supplier was in a position where it knew or should have known that the contract provision was unconscionable.

⁴ For example the complex need not run a separate newspaper ad for each vacant apartment, but may rather run one ad. The resultant cost might result in a per apartment cost that varies depending upon the number of vacancies at any one time. If there were several apartments vacant, the cost would be shared among all the vacant apartments, thus a smaller per unit cost. If there were only one vacant unit, the per unit cost would be higher. The same could be applied to the salaries of employees to show the apartments and other associated costs.

⁵ In a one or two unit apartment building the legal conclusion may not necessarily be the same.

⁶ Resource Management Company v. Weston Ranch and Livestock Company, Inc., 706 P. 2d 1028 (Utah, 1985).

At the conclusion of the hearing the court was prepared to issue a ruling from the bench, but was persuaded that the issue of exclusive remedy, as raised in Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah, 1989), should be examined. After review of Reid, this court is not convinced that the current caselaw in Utah specifies itemized damages as the exclusive remedy in cases involving breaches of residential leases.

Computation of Damages

The liquidated damages clause in the lease agreement does not violate the provisions of UCSPA, and will therefore be applied in assessing the damages resulting from the early termination of the lease agreement. The damages provision in the agreement sets the measurement of damages at 1 1/2 months rent. The rental rate was set by contract at \$354, times 1 1/2 months equals \$541.00 in liquidated damages. In addition Defendant is liable for the one month of rent from the end of her paid up time until the apartment was re-let. The filing fee of \$15.00 together with \$9.00 in service of process fees results in \$24.00 of court costs to be added to the judgement damages. Defendant had previously paid \$329.00 in refundable deposits. Defendant should also be given credit for the \$200.00 paid by co-tenant at the time notice of intent to leave was given. Applying the deposit as an offset, leaves a balance due of \$389.00 owed by Defendant to Plaintiff.⁷

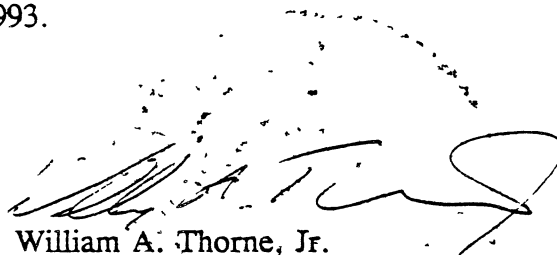
⁷ \$531 liquidated damages
354 rent unpaid Oct 15 to Nov 15
24 court costs
\$909 total owed

-\$329 refundable deposit
- 200 paid by co-tenant
\$389 Judgement

Attorney fees for the prevailing party are provided in the rental agreement. The court finds that the attorney fees in this case should be apportioned. Defendant succeeded in applying the UCSPA to the contract, over the objection of Plaintiff. Plaintiff succeeded in resisting a finding of unconscionability and ultimately obtaining judgement for damages. Plaintiff is therefore awarded attorney fees for work directly related to the breach of the agreement and resultant damages, but not for work done on the question of UCSPA application. Defendant is not awarded attorney fees because they did not prevail on the question of contractual breach nor violation of the UCSPA. This apportionment is done to more accurately reflect the relative success of the parties in pursuing their claims under the rental agreement.

Upon submission of an affidavit reflecting attorney fees, judgement will be entered for \$389.00 plus attorney fees, absent an objection by Defendant as to the reasonableness of the requested fees.

Dated this 12th day of November, 1993.



William A. Thorne, Jr.
Circuit Court Judge

