

1995

Marvin Jarvis v. Dan L. Baker and Linda Thiessens : Brief of Appellee

Utah Court of Appeals

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David B. Thompson; Joseph E. Tesch; Tesch, Thompson & Sonnenreich; Attorneys for Appellants.
S. Junior Baker; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

MARVIN JARVIS, :
Plaintiff/Appellee, : Case No. 950130-CA
vs. :
DAN L. BAKER and LINDA THIESSENS, :
Defendants/Appellants. :

BRIEF OF THE APPELLEE

APPEAL FROM THE FINAL JUDGMENT OF THE FOURTH
JUDICIAL DISTRICT COURT OF WASATCH COUNTY,
STATE OF UTAH, THE HONORABLE GUY R. BURNINGHAM,
PRESIDING

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UTAH COURT OF APPEALS
BRIEF

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

MARVIN JARVIS, :
Plaintiff/Appellee, : Case No. 950130-CA
vs. :
DAN L. BAKER and LINDA THIESSENS, :
Defendants/Appellants. :

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Park City, UT 84060

Attorneys for Appellants

LIST OF PARTIES

Plaintiff and Appellee: Marvin Jarvis

Defendants and Appellants: Dan Baker and Linda Thiessens

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JURISDICTION OF THE APPELLATE COURT

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. §78-2a-3(2)(k).

STATEMENT OF ISSUES ON APPEAL

The only issue is whether the trial court erred in failing to grant the Defendants, Baker and Thiessens, a credit for improvements made to property.

A question of law is reviewed for correctness. United Park City Mines Company vs. Greater Park City Company, 870 P.2d 880 (Utah 1993).

DETERMINATIVE STATUTES

Utah Code Ann. §78-40-5 (1953 as amended):

In any action affecting the title to, or the right of possession of, real property, the Plaintiff at the time of filing the Complaint or thereafter, and the Defendant at the time of filing his answer when affirmative relief is claiming such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or encumbrance of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

Utah Code Ann. §78-40-2 (1953 as amended):

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by the Defendant,

or those under whom he claims, holding under color of title adversely to the claims of the Plaintiff, in good faith, the value of such improvements, except improvements made upon mining property, must be allowed as a setoff or counterclaim against such damages.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

The Plaintiff, Marvin Jarvis, is the owner of real property located in Wasatch County, which property was sold at a tax sale. Defendants, Baker & Thiessens, are the successors in interest of the purchaser of said tax sale. The tax sale was invalidated and title quieted to Jarvis.

This is an appeal from the order of the Honorable Guy R. Burningham, Judge of the Fourth District Court, granting judgment to Jarvis for the rental value of the property owned by him and leased to the Defendant, Baker, prior to the tax sale. In making that order, Judge Burningham disallowed treble damages to the Plaintiff and the costs of improvements to the Defendants.

II. STATEMENT OF FACTS

1. Jarvis owned property in Wasatch County which was leased to Baker by a lease agreement dated June 29, 1990 (Stipulated Facts, R. at 47).

2. Baker and Thiessens used the premises for some form of automobile salvage operation (Jarvis Affidavit, R. at 64).

3. The parcel in question was sold at a tax sale in May 1992 (Stipulated Facts, R. at 46). This sale was invalidated and

title quieted to Jarvis in this case (Order Granting Partial Summary Judgment, R. at 117-119). No appeal is taken from that ruling.

4. Giles Brothers, L.C. purchased the property at the tax sale (Stipulated Facts, R. at 46).

5. Jarvis filed this action against Giles Brothers, L.C. for quiet title and against Baker & Thiessens for unlawful detainer. Jarvis caused to be recorded a lis pendens on the subject property recorded in the Wasatch County Recorder's Office on June 22, 1992 at Book 243, Page 640, Entry No. 160999 (R. at 56).

6. Thiessens obtained a quit claim deed to the parcel from Giles Brothers, L.C. dated the 3rd day of August 1992 and recorded in the office of the Wasatch County Recorder thereafter at Book 245, Page 524, Entry No. 161668 (R. at 46).

7. The parties stipulated that Defendants had made improvements to the property in excess of \$9,000.00 (Transcript at p. 4).

8. The Defendants were allowed to remove all of their assets from the property, including the improvements (Order, R. at 156).

SUMMARY OF ARGUMENT

**THE DEFENDANTS DID NOT MAKE IMPROVEMENTS IN GOOD FAITH
AND THEREFORE CANNOT RELY ON THE OCCUPYING CLAIMANTS STATUTE**

The Defendants did not make improvements in good faith since:

A. A lis pendens was recorded prior to the time that the Defendants received a quit claim deed from Giles Brothers, L.C.; and

B. The lease agreement specifically provides that any improvements are at the cost of lessee. Defendants cannot, therefore, rely upon the occupying claimants statute.

ARGUMENT

THE DEFENDANTS DID NOT MAKE IMPROVEMENTS IN GOOD FAITH AND THEREFORE CANNOT RELY ON THE OCCUPYING CLAIMANTS STATUTE

This case is essentially identical to the matter of Erickson vs. Stokes, 120 Utah 653, 237 P.2d 1012 (1951). There, a tax sale was invalidated and title quieted to the original owner. The tax sale purchaser made substantial improvements to the property. He claimed reimbursement for the cost of his improvements pursuant to the occupying claimants statute. Like this case, the original owner had filed suit and recorded a lis pendens prior to the date of the improvements. The Supreme Court held that knowledge of the suit precluded the purchaser from prevailing. The purchaser was unable to meet the good faith requirement of the statute because of his knowledge of an adverse claim.

This same result was reached in Hidden Meadows Development Company vs. Mills, 590 P.2d 1244 (Utah 1979). Although this case did not involve a tax sale, the issue of good faith conduct in light of a recorded lis pendens was reviewed. The court followed Erickson and held that incurring expenses for improvements

subsequent to the recording of a lis pendens was not done in good faith. The court noted:

An occupying claimant is required by our statute to establish two elements before he can recover for improvements placed on real property by him: (1) that he has color of title; and, (2) that he placed the improvements in good faith. If he fails to establish either one, he cannot recover.

A number of jurisdictions, including Utah, have announced the broad proposition that no recovery can be had for improvements made with the knowledge of the existence of an adverse claim which subsequently proves to be superior to that of the occupant. . . .

As was noted . . . the doctrine of lis pendens imposes upon one who deals in property, which is the subject of pending litigation, the burden of doing so at his peril. Consequently, one who relies upon the rights afforded by statute as an occupying claimant is charged with the burden of demonstrating his good faith in placing improvements in the face of an adverse claim.

Id. at 1249, 1250.

In the present case, a suit was filed against Giles Brothers, L.C. and a lis pendens recorded on June 22, 1992. At the same time, an unlawful detainer action was brought against both Baker and Thiessens. These actions were later consolidated. The Defendant, Thiessens, received a quit claim deed from Giles Brothers, L.C. dated August 3, 1992, over one month after the recording of the Lis Pendens by the Plaintiff. Any improvements made by the Defendants after the recording of the lis pendens are made at their peril, in light of this adverse claim. A lis pendens gives notice to the Defendants. See UCA §78-40-2 (1953 as

amended).

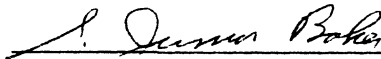
Any improvements made prior to the date of the quit claim deed are not done under color of title and must be under pursuant to the lease agreement between Baker and Jarvis wherein the Defendants, Baker and Thiessens, occupied the premises. The lease agreement between Jarvis and Baker reads, in pertinent part: "The costs for all improvements to the PROPERTY C that are required by local ordinance or that are made voluntarily by LESSEE, are to be paid by LESSEE."

The parties are allowed to make such contracts as they will, which will be upheld by the court. See Jensen vs. Nielsen, 26 Utah 2d 96, 485 P.2d 673 (1971).

CONCLUSION

Baker and Thiessens cannot rely on the occupying claimant statute where a lis pendens was recorded prior to the date of the quit claim deed. In addition, the lease agreement requires improvements to be paid by lessee. Defendants are on clear notice, by both the lease agreement and by the lis pendens that there is an adverse claim and that any improvements must be made at their cost or at their peril. Defendants' appeal is not well taken. The judgment should be affirmed and costs awarded to the Plaintiff.

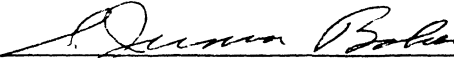
DATED this 27 day of March, 1995.



S. JUNIOR BAKER,
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, postage prepaid, to David B. Thompson, TESCH, THOMPSON & SONNENREICH, L.C., 314 Main Street, Suite 201, P.O. Box 3390, Park City, Utah 84060, this _____, day of _____, 1995.



SECRETARY

ADDENDUM

SCOTT G. CHARLIER (5930)
Attorney for Plaintiff
440 South 700 East, Suite 101
Salt Lake City, UT 84102
Telephone: (801) 534-0651

FILED
IN THE DISTRICT COURT
OF THE COUNTY, UTAH
9-12-94 Date
Clerk
RMB Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH

MARVIN JARVIS,
Plaintiff,

v.

DAN L. BAKER and
LINDA THIESSENS,
Defendants.

)
)
) **JUDGMENT AND ORDER**
)
)
)
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Civil No. 7105

The above-entitled matter came on for trial before the Honorable Guy R. Burningham, Judge of the above-entitled court on Friday the 10th day of June, 1994 at the hour of 1:30 p.m. The Plaintiff was present and was represented by S. Junior Baker. Defendants were present and represented by Scott G. Charlier. The parties having reached a partial stipulation, the court having received exhibits and heard the argument of the parties, having entered its Findings of Fact and Conclusions of Law, and good cause appearing herein, now hereby ORDERS, ADJUDGES AND DECREES:

1. Judgment is entered in favor of the Plaintiff and against the Defendants for the sum of \$4,302.71.

2. Defendants are ordered to pay \$900.00 to the Plaintiff as quickly as they can bring in a car crusher and obtain said cash, provided that a minimum of \$300.00 of said sum must be paid on or before the 15th day of June, 1994.

3. Defendants are ordered to vacate the premises on or before the 15th day of September 1994.

4. In the event that any payments due prior to September 15, 1994 are delinquent, Defendant is entitled to an immediate order of eviction and Writ of Restitution.

5. The Defendant, Thiessens, is ordered to obtain a Quit Claim Deed from William A. Baker to either herself or the Plaintiff for the subject property on or before the 10th day of August, 1994.

6. Plaintiff may seek additional damages if the sums from the state treasurer, unclaimed property division are not returned to him or if he does not receive the benefit of the tax payment of \$2,815.35.

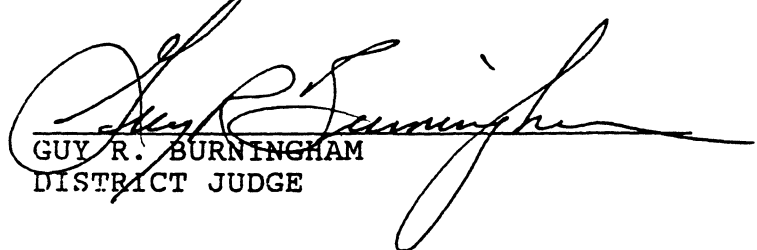
7. Defendants are ordered to remove all of their assets from the property, and are allowed to take any and all improvements with them. Defendants further have the option to

remove the assets of the previous tenants which were on the property at the time Defendants took possession.

8. Judgment entered herein shall bear the interest rate of 10% per annum, the contract rate.

DATED this 7 day of September, 1994.

BY THE COURT:


GUY R. BURNINGHAM
DISTRICT JUDGE

Approved as to form:


S. JUNIOR BAKER

SCOTT G. CHARLIER (5930)
Attorney for Defendants
440 South 700 East, Suite 101
Salt Lake City, Utah 84102
(801) 534-0651

FILED
IN THE DISTRICT COURT
WASATCH COUNTY, UTAH
5-13-93 Date
Clerk
Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT FOR WASATCH COUNTY
STATE OF UTAH

MARVIN A. JARVIS,	:	
	:	
Plaintiff,	:	STIPULATED FACTS
	:	
vs.	:	
	:	Civil No. 7105
GILES BROS. L.C.; and WASATCH	:	
COUNTY, a political subdivision	:	Judge:
of the State of Utah; DAN L.	:	
BAKER and LINDA THIESENS,	:	
	:	
Defendants.	:	

COME NOW the parties, Marvin A. Jarvis, Dan L. Baker and Linda Thiessens, and hereby stipulate to the following facts:

1. On or about the 29th day of June, 1990, Dan L. Baker and another entered into a Lease/Option Agreement with Marvin A. Jarvis for the lease of a certain parcel of property.

2. The lease agreement contained an option to purchase a parcel of property which is the subject of this action.

3. The option to purchase said property was never exercised.

4. On or about the 23rd day of February, 1984, Snider and Leger entered into a Uniform Real Estate Contract with Marvin A. Jarvis to purchase a parcel of property which is the subject matter

of this action.

5. Paragraph 12 of the Real Estate Contract gives the seller the option to pay the taxes if the buyer fails to do so.

6. Marvin Jarvis passed his interest to a large parcel of Property to Xenia Farms, a dba of Marvin jarvis, by quit claim deed on the 13th day of November, 1985 at Book 176, page 445 of the records of the Wasatch County Recorder. The property which is the subject of this action was included within the large parcel deeded to Xenia Farms.

7. Property taxes for the parcel, which is the subject matter of this action, were not paid for the year 1987.

8. Wasatch County conducted a judicial tax sale on or about the 28th day of May, 1992, in accordance with U.C.A. §59-2-1363 and a tax deed was issued to Giles Bros., L.C..

9. Linda Thiessens received a quit claim deed to the subject property from Giles Bros., L.C. as evidenced by the Quit Claim deed dated August 3, 1992.

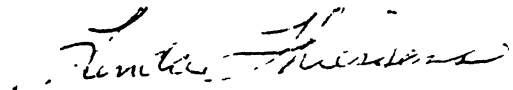
10. Giles Bros., L.C. has filed an answer in this action disclaiming any interest in the property.

11. No lease was ever signed between Linda Thiessens and Marvin Jarvis concerning the property which is the subject matter of this action.

DATED this 7th day of May, 1993


MARVIN JARVIS


DANNY BAKER


LINDA THIESENS

S. JUNIOR BAKER 0182
BAKER & HICKEN
Attorneys for the Plaintiff
40 South Main, Suite 10
P.O. Box 306
Spanish Fork, Utah 84660
(801) 798-1800

PAGE (L) INDEX () ABSTRACT (L) PLAT () CHECK ()

160999
ENTRY NO. _____ DATE 6-22-92 TIME 1349 FEE 7.00
RECORDED FOR XENIA FARMS BOOK 213 PAGE 646
RECORDER JOE DEAN HUBER BY: LIZ PARCELL

IN THE FOURTH JUDICIAL DISTRICT COURT FOR
WASATCH COUNTY, STATE OF UTAH

MARVIN JARVIS, dba XENIA FARMS
Plaintiff,
vs.
GILES BROS. L.C.
Defendant.

: LIS PENDENS
:
: Civil No.
:

COMES NOW the Plaintiff and claims an interest in the
following described real property located in Wasatch County, State
of Utah:

BEG S 590.32 FT FR NE COR SE $\frac{1}{4}$ SW $\frac{1}{4}$ SEC 7, T4S, R5E, SLM;
S 295.16 FT; W 295.16 FT; N 295.16 FT; E 295.16 FT TO
BEG. AREA: 2.00 ACRES.

DATED this 22nd day of June, 1992.

Marvin Jarvis
MARVIN JARVIS

On the 22 day of June, 1992, personally
appeared before me Marvin Jarvis, the signer of the foregoing
instrument, who duly acknowledged to me that he executed the same.

Deborah E. Lioss
NOTARY PUBLIC



DEBORAH E. LIOS
NOTARY PUBLIC - STATE of UTAH
40 SOUTH MAIN
SPANISH FORK, UT 84660
COM. EXPIRES 03-02-96

ate of Utah

ounty of Wasatch :ss

ELIZABETH M. PARCELL, Recorder in and for Wasatch County,
ate of Utah, do hereby certify that the foregoing and annexed is a
ll, true and correct copy of the LIS PENDENS
s the same appears of record in book 243 page 640,
f the records of said Wasatch County, in witness whereof I have
are into set my hand and affixed my official seal this 22 day
f MARCH, 19 95.

Elizabeth M. Parcell

COUNTY RECORDER
ELIZABETH M. PARCELL

BY _____

DEPUTY

ENTRY NO. 161668 DATE 4-92 TIME 1552 FEE 7.00
RECORDED FOR LINDA THIESSENS BOOK 245 PAGE 524
RECORDER JOE DEAN HUBER BY: JOE DEAN HUBER

MAIL TAX NOTICE TO:

Linda Thiessens

2211 S. AIRPORT RD

HEBER

QUIT CLAIM DEED

Giles Bros. LC., Grantor, of Heber City, County of Wasatch, State of Utah, hereby QUIT-CLAIMS to Linda Thiessens, Grantee, for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the following described tract of land in Wasatch County, State of Utah:

BEGINNING at a point which is 590.32 feet South of the Northeast Corner of the Southeast quarter of the Southwest quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian and running thence South 295.16 feet; thence West 295.16 feet; thence North 295.16 feet; thence East 295.16 feet to the point of beginning.

aug, WITNESS the hand of said Grantors, this 3rd day of July, 1992.

GILES BROS. LC.

By: Lynn Giles
Lynn Giles, Partner

By: David Giles
David Giles, Partner

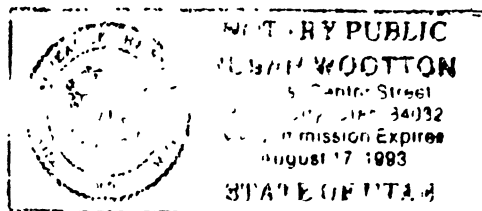
STATE OF UTAH)

) ss.

COUNTY OF WASATCH)

On this 3rd day of July, 1992, personally appeared before me Lynn Giles and David Giles, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Susan Wootton
NOTARY PUBLIC



REAL ESTATE LEASE/OPTION AGREEMENT

Page 1 of 3

This is an agreement between MARVIN A. JARVIS, residing at 301 South Salem Hills Drive, Elk Ridge, Utah 84651 (hereinafter called "LESSOR") and GRANT M. BODINE, residing at 840 South Main Street, Heber City, Utah 84032 and DANNY L. BAKER residing at 900 South Main Street, Heber City, Utah 84032. (GRANT M. BODINE and DANNY L. BAKER are hereinafter called "LESSEE").

LESSOR agrees to lease to LESSEE, and LESSEE agrees to lease from LESSOR, that certain 2.108 acre parcel of land in Heber City, Wasatch County, Utah (hereinafter called "PROPERTY A") which is further described as follows:

Beginning at a Rebar, Northerly along the Section Line, 434.52 feet from the South 1/4 corner, Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian, said point also being North 434.44 feet and West 23.81 feet from a 2 inch Brass Cap with the following State Plane Coordinates: X= 2,021,363.80 and Y= 781,225.79, thence South 89°49'34" West, 311.16 feet, thence North 0°16'15" West, 295.16 feet, thence North 89°49'34" East, 311.16 feet, thence South 0°16'15" East, 295.16 feet along a fenceline, along the 1/4 Section Line to the point of beginning.

Together with a non-exclusive right of way over an undeveloped access roadway (hereinafter called "PROPERTY B") which is further described as follows: described as follows:

Beginning at a point which is 295.16 feet West of the Southeast corner of the Southwest Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian, and running thence North 1320 feet; thence West 60 feet; thence South 1320 feet, thence East 60 feet to the point beginning.

The lease for PROPERTY A and right of way over PROPERTY B will be for a twelve month period, beginning July 1, 1990 and ending June 30, 1991. The total amount of the lease payments will be three thousand dollars (\$3000.00), payable in twelve equal payments of two hundred fifty dollars (\$250.00) per month in advance. The first payment will be due on or before July 1, 1990, and each subsequent payment will be due on or before the first day of each subsequent month.

A ten dollar (\$10.00) late fee will be charged for any payment that is made ten or more days late.

Payments are to be mailed to:

Marvin A. Jarvis
301 South Salem Hills Drive
Elk Ridge, Utah 84651

The date of the postmark on the envelope of a valid lease payment will be considered the date of that payment.



In further consideration of the timely payment of the lease payments, as described above, by LESSEE, LESSOR hereby grants to LESSEE an option to purchase a two acre parcel of land (hereinafter called "PROPERTY C"), which is further described as follows:

Beginning at a point South 590.32 feet from the Northeast corner of the Southeast Quarter of Section 7, Township 4 South, Range 5 East, Salt Lake Base and Meridian, and running thence South 295.16 feet; thence West 295.16 feet; thence North 295.16 feet, thence East 295.16 feet to the point of beginning.

Together with a non-exclusive right of way over PROPERTY B.

The description of PROPERTY C differs slightly from from PROPERTY A for the following reason. There presently exists a small building which was located by mistake partly in an area that is designated to be an access roadway. For the one year lease period described above, it is the intention of both parties that LESSEE be allowed to utilize this building in its present location. However, eventually this building must be moved from the area that is designated to be an access roadway. LESSOR is not offering the area in the access roadway for sale.

The option to purchase PROPERTY C will automatically expire in the event that any of the lease payments becomes delinquent by 90 days or more. In the event that none of the lease payments become delinquent by 90 days or more, this option will expire on June 30, 1991.

If the option to purchase PROPERTY C is exercised, the total purchase price will be twenty four thousand dollars (\$24,000) payable as follows.

A minimum down payment of two thousand dollars (\$2000.00) for PROPERTY C will be made. The date of the postmark on the envelope containing such a valid down payment will be the "DATE OF FORMAL NOTIFICATION" by LESSEE that the option to purchase PROPERTY C is being exercised. Lease payments for PROPERTY A will be prorated to this DATE OF FORMAL NOTIFICATION.

Beginning 30 days after the DATE OF FORMAL NOTIFICATION, monthly payments of four hundred dollars (\$400.00) minimum on the remaining balance for PROPERTY are to be made. In addition to the monthly payments, a special annual payment of one thousand six hundred dollars is to be made on or before July 1 of each year, beginning July 1, 1991. The monthly and special annual payments are to continue until the balance and all applicable interest is fully paid.



Simple interest at ten percent (10%) per year is to be charged on the unpaid balance, compounded monthly. The total amount, or any amount in excess of the minimum, can be paid at any time by LESSEE, and there will be no penalty charged for prepayment.

If any payment due should be delinquent by 180 days or more, LESSOR may be released from all obligations in law and equity to convey PROPERTY C to LESSEE, and LESSEE shall become at once a tenant at will of seller. All payments which have been made by LESSEE to LESSOR theretofore relating to the purchase of PROPERTY C shall be retained by LESSOR as liquidated and agreed damages.

As a condition of this agreement, LESSEE agrees to comply with all applicable laws and ordinances. The costs for all improvements to the PROPERTY C that are required by local ordinances, or that are made voluntary by LESSEE, are to be paid by LESSEE. LESSOR has no obligation to make improvements to PROPERTY B.

Date of Agreement JUNE 29, 1990

LESSEE Grant M Bodine
GRANT M. BODINE

LESSOR Marvin A Jarvis
MARVIN A. JARVIS

LESSEE Dan Baker
DANNY L. BAKER