

2006

John Baxter v. Saunders Outdoor Advertising, Inc : Brief of Appellant

Utah Court of Appeals

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Scott W. Holt; Attorney for Appellee.

Gregory B. Wall; Kimberly M. Hammond; Wall & Wall; Attorneys for Appellant.

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IN THE UATH COURT OF APPEALS

JOHN BAXTER,

Plaintiff/Appellant,

v.

SAUNDERS OUTDOOR ADVERTISING
INC., a corporation,

Defendant/Appellee.

Case No. 20060820-CA

APPELLANT'S BRIEF

This appeal is from a final order of the Third District Court of Salt Lake County, State of Utah,
the Honorable Sheila McCleve, presiding.

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FILED
UTAH APPELLATE COURTS

FEB 21 2007

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NATURE OF THE PROCEEDINGS AND JURISDICTION

This appeal is from a final order of the 3rd District Court, concerning a motion for unlawful detainer, the Honorable Sheila McCleve, presiding. The Utah Court of Appeals has original appellate jurisdiction of this appeal to Utah Code Ann. §78-2a-3, and Rule 3 of the Utah Rules of Appellate Procedure.

STATEMENT OF THE ISSUES

- I. Under Utah law, should the trial court have granted Appellant's motion for summary judgment?

After Appellant filed his motion for unlawful detainer and the Appellee made no effort to pay rent, Appellant filed for summary judgment as all of the elements of the unlawful detainer action had been met. The trial court denied Appellant's motion for summary judgment. "When we review the district court's decision to grant summary judgment, we review the court's legal decisions for correctness, giving no deference, and review the facts and inferences to be drawn there from in the light most favorable

to the nonmoving party.” J.R. Simplot Co. v. Sales King Intern., Inc., 2000 UT 92, ¶13, 17 P.3d 1100, 1104 (quotations omitted).

II. Under Utah law, did the trial court improperly grant summary judgment to the Appellee?

The Appellee also filed for summary judgment on the Appellant’s unlawful detainer action, and the trial court granted Appellee’s summary judgment based on finding a condition precedent in the Lease Agreement. A trial court’s conclusions of law in civil cases are reviewed for correctness and therefore no deference is given to the trial court’s ruling on questions of law. See, State v. Pena, 869 P.2d 932 (Utah 1994).

III. Did the trial court deny the Appellant his constitutional right to due process by denying him use of his property, and leaving him with no remedy to regain access?

The trial court’s decision to dismiss Appellant’s motion for unlawful detainer without removing the Appellees from his property left Appellant with no recourse to regain access and use of this property. “When we review the district court’s decision to grant summary judgment, we review the court’s legal decisions for correctness, giving no deference, and review the facts and inferences to be drawn there from in the light most favorable to the nonmoving party.” J.R. Simplot Co. v. Sales King Intern., Inc., 2000 UT 92, ¶13, 17 P.3d 1100, 1104 (quotations omitted).

DETERMINATIVE AUTHORITIES

Appellant submits that the following Statutes, Rules, and Constitutional provisions may be determinative of certain issues in this Appeal:

Utah Code Ann. §78-36-3(e)—Unlawful Detainer Statute

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

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

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

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

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

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

(d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78-38-9, and remains in possession after service upon him of a three days' notice to quit; or

(e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon him and upon any subtenant in actual occupation of the premises remains uncomplished with for three days after service. Within three days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

Rule 56 Utah Rules of Civil Procedure-Summary Judgment

(c) Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

U.S. Const. Amend. XIV, § 1

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Const. Art. I, § 7

§ 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

This case presents an appeal from an Order of the Third Judicial District Court of Salt Lake County, State of Utah, dated August 28, 2006, which dismissed Saunders' counterclaim, and made the previous order granting summary judgment and dismissing Mr. Baxter's unlawful detainer action ripe for appeal.

Mr. Baxter filed his complaint for unlawful detainer on November 14, 2003, in order to evict Saunders from his property for failure to pay rent for more than three years. Mr. Baxter filed a motion for summary judgment in January 2004. The district court denied this motion in May 2004.

Saunders filed a motion for summary judgment in September 2004. From here the course of proceedings gets complicated because of scheduling errors, and mistakes of the court. In November 2004 there was a pretrial conference held in which Mr. Baxter's attorney, Greg Wall,

was not present due to a scheduling error. Despite Mr. Wall's inability to attend the court granted Saunders' motion for summary judgment on November 1, 2004. R. 102.

After Mr. Baxter objected to the order on Saunders' summary judgment the court agreed to hear more pleadings on the issue and suspend the order. In December 2004 the court reaffirmed its order on Saunders' summary judgment, but failed to send notice of this order to either party. In January 2005 Saunders filed a notice to submit, unaware the court had already ruled on the summary judgment issue. In April 2005, Mr. Baxter filed another motion to vacate the order and/or clarify it because of the lack of notice by the court. In July 2005, the court gave another ruling on Saunders motion for summary judgment, granting the motion.

Immediately after in August 2005, Mr. Baxter filed a motion to dismiss Saunders counterclaim. In February 2006, the court denied Mr. Baxter's motion to dismiss. Mr. Baxter objected to this order immediately. The court reaffirmed the order in March 2006. A date for trial on the counterclaim was set for August 16, 2006. Twelve days before the trial was to begin Saunders filed a motion to voluntarily dismiss their own counterclaim. Mr. Baxter did not oppose this motion, but asked for sanctions to be imposed, as it was the same motion Saunders had opposed a year earlier. No sanctions were imposed. The motion for voluntary dismissal was granted by the court in August 2006 and this appeal was filed nine days after, on September 6, 2006.

STATEMENT OF THE FACTS

John Baxter is the owner of real property located at 1615 South State Street, Salt Lake City, Utah. R. 1. Located on Mr. Baxter's property is an outdoor advertising sign, which Mr. Baxter has a permit to advertise on. R. 1. Mr. Baxter and Saunders Outdoor Advertising, Inc., ("Saunders"), entered into a Lease Agreement, ("Lease Agreement" or "Agreement"), on

February 14, 2000. R. 2, 4. Under the Lease Agreement Mr. Baxter leased to Saunders the property in question, for the purpose of using and erecting outdoor advertising signs, along with easements of ingress and egress for the purpose of maintaining and operating the outdoor advertising sign. R. 2, 4. In consideration for the use of the advertising structure, and the right to tear down the existing structure, Saunders agreed to pay Mr. Baxter 5,000 dollars up front and 6,600 dollars per year, for the term of 15 years. R. 2, 4. The \$5,000 covered rent payments which would start after Saunders obtained the necessary permits to build a new sign structure, or no later than December of 2000 if no permits were sought. R. 4.

In November of 2003, the Appellant, John Baxter, filed a complaint for unlawful detainer against the Appellee, Saunders Outdoor Advertising Inc. R. 1-7. At the time the complaint was filed Saunders was in arrears in rent in the amount of \$14,800. R. 1. In the three years since Mr. Baxter's complaint was filed, Saunders has failed to pay \$19,800 in rent. Thus, as of the filing of this appeal Saunders is in arrears \$34,600 in rent owed to Mr. Baxter. R. 4. In January of 2004, Mr. Baxter filed a motion for summary judgment arguing that Saunders had defaulted on the parties Lease Agreement and the court should enter a judgment for unpaid rent and an order removing Saunders from Mr. Baxter's Property. R. 16-17. Judge McCleve denied this motion at a hearing in April 2004. R.59-60.

In September of 2004, Saunders filed a motion for summary judgment against Mr. Baxter, arguing that no unlawful detainer action could be established because the terms necessary for the Lease Agreement to begin never occurred. R. 78-85. While arguing that the terms of the Lease Agreement never began, Saunders still refused to vacate the premises and filed a counterclaim trying to enforce the Agreement in order to get a refund on their \$5,000 upfront payment. R. 31-36. Regardless of the contradictions in Saunders argument, Saunders continued presence on the property without payment, or the facts that were at issue, the Court

granted Saunders motion for Summary Judgment on November 1, 2004, and reaffirmed this order on December 21, 2004, and again on July 18, 2005. R. 102, 132-134, 176-178.

Saunders' argument in their motion for summary judgment, which was accepted by the Court when it granted the summary judgment, was that no leasehold was created because the formation of the lease was based on conditions precedent that were never completed. R. 78-85. Saunders argued that the Lease Agreement did not commence until the permits were obtained to build a new sign. R. 78-85.

In February of 2004 Saunders also filed a counterclaim, Mr. Baxter filed a motion to dismiss this counterclaim in August of 2005, and this motion was denied by Judge McCleve in February of 2006. R. 31-36, 179-183, 227. In the counterclaim Saunders asks for a return of his initial \$5,000 payment under the terms of the Lease Agreement. R. 31-36. Mr. Baxter filed a motion to dismiss this counterclaim because after the court granted Saunders summary judgment the issue of enforcing the Lease Agreement was moot. R. 132-134. The court had already ruled the terms of the Lease Agreement had never commenced. R. 132-134. Notwithstanding the court still denied Mr. Baxter's motion to dismiss. R. 227. However, in August of 2006, Saunders filed a motion to dismiss his own counterclaim based on the same arguments Mr. Baxter had made one year earlier. R. 255-256. The court granted this motion. R. 263-264. Mr. Baxter asked for sanctions against Saunders for opposing a motion that was clearly necessary, and then filing the same motion a year later. R. 261-262. No sanctions were granted by Judge McCleve.

Directly after the court dismissed Saunders counterclaim Mr. Baxter filed this appeal in order to remove Saunders from his property and obtain a judgment for the seven years Saunders has occupied the property rent free. R. 265-266.

SUMMARY OF THE ARGUMENT

The facts of this case are egregious and the result extreme injustice. Mr. Baxter entered into a Lease Agreement seven years ago, because of health problems, to rent out his billboard sign to Saunders for \$550.00 per month. Under the terms of the Agreement, Saunders had the option to tear down the old sign and build a new one. Saunders' has never made any effort to exercise this option, but refused to pay rent. After waiting three years Mr. Baxter filed a motion for unlawful detainer, and both parties filed motions for summary judgment. The trial court incorrectly granted Saunders motion for summary judgment. Mr. Baxter's unlawful detainer action was complete and valid. The trial court based its' ruling on the finding that a condition precedent delayed the commencement of the terms of the lease. There is no condition precedent explicit in the terms of the lease and therefore summary judgment in favor of Saunders was incorrect. However, at the very least, the terms of the Lease are material questions of fact that precluded a summary judgment in favor of Saunders. The trial court's decisions have denied Mr. Baxter use of his property without due process, and left him with no remedy to regain access. This court must correct this injustice and restore Mr. Baxter to possession and use of his own property.

ARGUMENT

- I. The trial court should have granted Mr. Baxter's motion for summary judgment, removed Saunders from his property, and ordered a judgment for unpaid rents.**

The trial court should have granted Mr. Baxter's motion for summary judgment in the unlawful detainer action. Mr. Baxter filed a complaint for unlawful detainer in district court in November 2003, in order to remove Saunders from his property after Saunders failed to abide by the terms of the parties' Lease Agreement for more than three years. In denying Mr. Baxter's motion for summary judgment the court stated, "the plaintiff has failed to state a basis upon

which he requests the Court to grant relief.” R. 176-178. The trial court gave no further elaboration as to what elements of Mr. Baxter’s unlawful detainer action failed to state a claim.

A prima facie case for unlawful detainer includes proof that a person “continues in possession . . . after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held . . . and after notice in writing . . . remains uncomplied with for three days after service.” Utah Code Ann. §78-36-3(e).

The facts of this case are simple. The Parties entered into a Lease Agreement. Saunders took possession of the property but refused to pay rent. Saunders also failed to obtain the permits and build a new sign as he had the option to under the terms of the Agreement. On September 23, 2003, Mr. Baxter served on Saunders a notice to quit or pay rent. R. 6. The validity of this notice has never been challenged. These facts support an action for unlawful detainer because every element of the statute is fulfilled. Saunders continued in possession of Mr. Baxter’s property after he had neglected to pay rent as due under the Lease Agreement, Mr. Baxter gave notice in writing, and Saunders did not comply within three days.

Saunders should have been removed from the property three years ago, and a judgment entered for unpaid rents. The trial court made no findings that any element of the unlawful detainer statute had not been fulfilled. Notwithstanding, the court dismissed Mr. Baxter’s unlawful detainer action and left him with no remedy to regain possession and use of his property, for what is now seven years.

II. The summary judgment granted in favor of Saunders should be reversed because both the law and facts of this case do not support the decision.

a. The terms of the Lease Agreement do not support the trial court’s finding for summary judgment for the Appellee.

The summary judgment granted by the lower court in favor of Saunders must be reversed as a matter of law, to enforce the existing contract between the parties, and restore equity. Under rule 56 of the Utah Rules of Civil Procedure a summary judgment may only be granted if given all the facts the petitioner has no case under existing law. In granting the summary judgment the Court found that "there was no real issue of material fact in this matter since the cause of action was . . . based upon a lease agreement which provided rent to start only after a billboard sign had been built." R. 133. Thus, the Court based its decision on the finding that there was no Lease Agreement because building a new sign was a condition precedent to the formation of the lease. "A condition precedent is one which must be performed by the one party to an existing contract before the other party is obligated." Commercial Union Assocs. v. Clayton, 863 P.2d 29, 37-38 (Utah Ct. App. 1993). Furthermore, "[t]he intention to create a condition in a contract must appear expressly or by clear implication." Cheever v. Schramm, 577 P.2d 951, 953 (Utah 1978).

There is no explicit language in the lease agreement that creates a condition precedent. The language the court relied on in the Lease Agreement, under numeral one, reads, "It is agreed that the terms of this lease shall commence upon completion of the installation of the structure which is the subject mater of the lease agreement but not commencing later than pending permits 12-1-00 or longer if need be pending permits." R. 4. Saunders argued before the trial court that because they never built a new sign, as they had the option to do under lease agreement (see special terms R. 4), the terms of the lease agreement never commenced and therefore they had no obligation to pay rent. R. 34.

This reasoning is not only erroneous under the terms of the agreement, but unconscionable. The terms cited above explicitly state that the terms of agreement would start no later than 12-1-00. R. 4. The only exception is made for pending permits. Saunders has never applied for any permits to build a new sign. R. 71. In his own words, "I did not file for an

off premise sign permit or any type of sign permit.” R. 71. Therefore, at the very latest the terms of the agreement commenced on December 1, 2000, and Saunders has been in breach since that date. Furthermore, the idea that the Agreement could not commence until Saunders built a new sign, but they have no obligation to build that sign is unconscionable. No reasonable person would agree to such terms, and even if the trial court found the terms of the lease to be ambiguous they should have interpreted it against the drafter, which was Saunders. Instead, the trial court condoned this reasoning, which allows Saunders to occupy and profit from Mr. Baxter’s property indefinitely with no obligation.

Saunders places blame on Mr. Baxter for their delay in tearing down the old sign, and thus their inability to comply with the terms of the Agreement. However, the facts show that no one, including Mr. Baxter, interfered with Saunders ability to obtain a building permit, or build a new sign. In Saunders Affidavit in Response to Mr. Baxter’s motion for Summary judgment Robert Saunders stated, “Plaintiff thereafter did refuse to allow the defendant to tear down the structure nor would he allow us to obtain the necessary permits to move forward to erect the new billboard structure as the terms of the agreement provided.” R. 24. However, later Saunders admitted in their answers to Palintiff’s interrogatories that “He [John Baxter] never did stop me from tearing down the old structure, I simply was not going to go to the expense of tearing down the old sign and build a new one and have John own it.” R. 70-71. Saunders admitted on the record that it was and is their decision to not build a new sign. R. 70-72. They cannot be allowed to profit from this material breach.

b. Summary judgment was incorrectly granted because there are disputed issues of fact.

The Appellant argues that there was no condition precedent to the formation of a lease or the Appelle’s obligation to pay rent. However, at the very least the starting date of the lease

and determining whether a condition precedent existed are material facts that should have precluded a motion for summary judgment in favor of Saunders. The summary judgment was incorrectly granted and left Mr. Baxter with no recourse to gain revenue from his property. The Court allowed Saunders to not exercise his option under the contract to build a new sign, while claiming there was no obligation to pay rent for the existing sign. Under this decision Saunders could refuse to build a new sign for eternity and still never pay Mr. Baxter for their use of the old sign. This result is an injustice that must be corrected.

The Court's decision that the terms of the Lease Agreement never commenced because of a condition precedent is not supported by contract law or the facts of this case. The validity of the Lease Agreement and who is responsible for the breach are disputed facts that must be addressed in Court. The summary judgment granted in favor of Saunders must be reversed.

III. The trial court's handling of this case has resulted in a violation of due process and left Baxter without remedy to regain possession of his property.

a. Due Process

The decisions of the lower court have denied Mr. Baxter his constitutional right to due process. Mr. Baxter came to the district court to find a remedy at law to regain control of his property. Instead, he has not had possession, rent payments, or profits from his property for seven years. "No principle is more fundamental to the integrity of a society that claims allegiance to the rule of law than the principle that a person may not be deprived of his property without first being afforded due process of law. This guarantee is enshrined in both the United States Constitution and the Constitution of Utah." Brigham Young Univ. v. Tremco Consultants, Inc., 2007 UT 17, ¶28, citing U.S. Const. amend. XIV, § 1; Utah Const. art. I, § 7.

Mr. Baxter correctly filed a motion for unlawful detainer, which action should have removed Saunders from his property. Instead Mr. Baxter has been without the use of his

property for seven years. In addition to the trial court's improper granting of summary judgment, the court further delayed Mr. Baxter's ability to appeal and therefore his right to due process.

The courts failure to serve notice caused further delay that robbed Mr. Baxter of the right to use his own property. In November 2004, the court entered an order on Defendant's motion for summary judgment. R. 102. This order was entered after a pre-trial conference where Mr. Baxter's counsel was not present due to a scheduling error. Before entering the order, the court did not hear testimony or argument regarding the motion for summary judgment from Mr. Baxter. In addition, the issue of summary judgment was not scheduled to be argued at the pretrial. As a result of this hasty decision, the court allowed further pleadings to be filed on the issue of summary judgment before signing the order. R. 103-09. However, after the court heard from both parties, neither party was notified of the court's final decision. "The clerk of the court inadvertently failed to inform counsel of the ruling." R. 177. After not be informed of the court's ruling the Appellant was forced to request another hearing to amend the order to allow for an appeal, further delaying Mr. Baxter's use of his property.

This appeal was also delayed by the courts denial of Mr. Baxter's motion to dismiss Saunders' counterclaim. After the court found summary judgment in favor of Saunders their counterclaim was moot. The court found the terms of the Lease Agreement had not commenced, therefore Saunders could not enforce the Lease Agreement as stated in their counter claim. R. 31-36. However, in August of 2005 when Mr. Baxter filed a motion to dismiss the counterclaim, the court denied the motion. Instead, the trial court waited a year to dismiss the counterclaim at Saunder's request in August of 2006. This delayed Mr. Baxter's appeal for a year and the trial court has allowed Saunders to remain in control of the sign, advertise on the sign, and collect rents for such advertising—all while paying the rightful owner of the sign nothing for seven

years. Mr. Baxter has a constitutional right to possession of his property, which right has been denied without remedy.

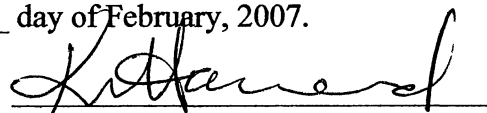
b. No Remedy

Mr. Baxter asked the trial court in April of 2005 to clarify its ruling so that Mr. Baxter could regain control of his property. R. 137-142. No clarification was made. Even if the court correctly granted summary judgment to Saunders, Judge McCleve should not have allowed them to maintain possession of the property. If there was no Lease Agreement then the court should have ordered Saunders to quit the premises. Each month's delay in this case costs Mr. Baxter considerable revenue. Mr. Baxter is entitled to regain possession of his property by using the procedural devices of the courts. His rights have been denied and can only be restored through this appeal.

CONCLUSION

The right to own and use property is a fundamental constitutional right in America. Mr. Baxter has been denied this right because of the trial court's granting of summary judgment in favor of Saunders. It is nonsensical to think that Saunders can possess and profit from Mr. Baxter's property without any obligation to pay rent. The trial court has left Mr. Baxter without remedy to regain access to his property. This Court must fix this injustice by reversing the trial court's ruling and restoring Mr. Baxter's possession of his property and entering a judgment against Saunders for unpaid rents and breach of the Lease Agreement. Mr. Baxter has already been denied seven years of income and profit from his property, further delay can and should be avoided by this Court. Mr. Baxter respectfully asks this court to reverse the decision of the trial court.

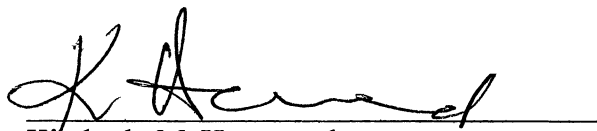
RESPECTFULLY SUBMITTED this 21 day of February, 2007.



Kimberly M. Hammond
Attorney for Petitioner/Appellant

CERTIFICATE OF DELIVERY

I, Gregory B. Wall, hereby certify that I have caused to be hand-delivered eight copies of the foregoing to the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114-0230, and four copies to the Appellee, Scott W. Holt, 44 North Main Street Layton, Utah 84041, this 21 day of February, 2007.



Kimberly M. Hammond

DELIVERED to the Utah Court of Appeals and the Appellant as indicated above this 21 day of February, 2007.

ADDENDUM

Exhibit “A”

Lease Agreement signed by the parties February 14, 2000.

Exhibit “B”

Order Denying Plaintiff’s Motion for Summary Judgment

Exhibit “C”

Order on Motion for Summary Judgment and Pre-trial Hearing

Exhibit “D”

Ruling

Exhibit “E”

Order for Voluntary dismissal of Defendant’s Counterclaim

EXHIBIT A



Saunders
OUTDOOR ADVERTISING INC.

3133 Lincoln Avenue
P.O. Box 706
Ogden, Utah 84402-0708
(801) 621-2350

LEASE AGREEMENT

The undersigned (hereinafter referred to as "Lessor") in possession or control of the premises described below and having full right and authority in said premises, hereby grants to LESSEE; Saunders Outdoor Advertising, Inc. (hereinafter referred to as "Lessee"), the exclusive right to use said premises for the purpose of erecting and maintaining outdoor advertising signs and other advertising media thereon, with or without illumination, and further grants to Lessee during the terms of this lease and for a reasonable period thereafter an easement across said premises as may be reasonably necessary for the ingress and egress of Lessee's men and equipment to erect, illuminate, repair, maintain and remove said structure outdoor advertising signs or other advertising media.

1. It is agreed that the terms of this lease shall commence upon completion of the installation of the structure which is the subject matter of this lease agreement but not commencing later than Providing Permits 12-1-00 or longer it will be providing permits

2. The premises are located in the County of Salt Lake State of Utah and more particularly described as follows:
1615 South State Street, Salt Lake City, Utah 84111. The sign will be placed (rebuild) on the South West corner of the property.

3. The lease shall be for a term of 15 (# of years) commencing on the date of the first payment described in paragraph 1. The lease shall be automatically renewed for an additional term of the same length, subject to all of the terms and conditions contained herein unless Lessee gives written notice of its intention to terminate at least one hundred twenty (120) days prior to the end of said period. Thereafter, the lease shall be automatically extended for additional periods of the same length subject to all of the terms and conditions contained herein unless either party hereto gives one-hundred twenty (120) days written notice of their intent to terminate prior to the end of such renewal period. In the event that Lessor shall terminate this lease, Lessor agrees not to lease said premises for advertising purposes to any other party other than Lessee for a period of three (3) years after the date of termination.

4. The annual rental for the premises above described shall be \$6,600.00 (Six thousand Six Hundred) DOLLARS (\$6,600.00) which shall be payable to Lessor at the address shown below in 12 payments of Five Hundred Fifty DOLLARS (\$550.00) each.

Special Terms: Saunders agrees to pay \$500 (Five Hundred Dollars) upfront for the right to tear down existing sign and also the monthly lease payments. After the first five years the lease rate will increase by 10%. Thereafter each of every five years in 5 yr. increments, the lease rate will increase by 10% until the end of this 30 yr. contract. Saunders will be rebuilding the present sign into a 14' x 48' Fullcolor sign. John Baxter will be rebuilding a 4' x 10' sign on the Northwest corner.

5. Lessor will not permit any other advertising media to be placed within 500 feet of the premises.
6. Lessor will not allow anything upon the premises which would interfere or obstruct Lessee's structure.
7. The parties hereby specifically agree that all signs, billboards, or other advertising media placed upon the described premises shall remain the property of Lessee and may be removed at any time and in no event be considered fixtures and a part of the realty even though a portion of same might be affixed to real property.
8. Lessor acknowledges and agrees that Lessee shall be entitled to, but not obligated to defend, prosecute or otherwise participate in any litigation respecting said advertising structure or media and Lessor agrees to give Lessee notice of all such proceedings served upon it.
9. No party hereto is bound by any warranty, stipulation, representation or agreement not contained herein. This lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
10. This lease is subject to Lessee obtaining state and local approval for location of advertising structures and is cancelable by Lessee if such consent is not obtained. If during the term of the Lease, the Lessee, at its sole discretion, determines the premises to not be sufficiently suitable for its advertising purposes, Lessee may terminate this lease upon 30 days written notice.

RIGHTS OF FIRST REFUSAL; in the event Lessor shall decide during the term of this lease to sell the premises described herein, Lessor shall give written notice to Lessee of the terms and price offered by a third party. Lessee shall be entitled for thirty (30) days to acquire the premises on the terms and conditions in said notice. If Lessee does not exercise said right of purchase, the Lessor shall not sell the premises on other terms for six (6) months. Thereafter Lessee shall have the same right as to any subsequent offer to purchase.

DATED: 2-14-2000

ACCEPTED:

Lessee

By [Signature]

Address: 3133 Lincoln Ave. Ogden, UT 84401

(Owner or Owner's agent)

[Signature]
JOHN BAXTER

(Lessor's Printed Name)

(Lessor's Address)

(I.D. or Social Security Number)

ACKNOWLEDGEMENT

STATE OF _____)

) ss.

COUNTY OF _____)

On the _____ day of _____, 19____, personally appeared before me _____, the signer of the above instrument, who duly acknowledged to me that he executed the same and was duly authorized to do so.

NOTARY PUBLIC

EXHIBIT B

SCOTT W. HOLT, #1532
Attorney for Defendant
44 North Main Street
Layton, Utah 84041
Telephone: (801) 546-1264

FILED DISTRICT COURT
Thrd Judicial District

MAY 12 2004

SALT LAKE COUNTY

By [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

JOHN BAXTER,

Plaintiff,

vs.

SAUNDERS OUTDOOR
ADVERTISING, INC., a corporation
Defendant.

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

Case No. 030925365
Judge Sheila McCleve

This matter having come on regularly for oral argument on the 12th day of APRIL, 2004, upon the Plaintiff's Motion for Summary Judgment before the Honorable Sheila McCleve.

Present were Gregory B. Wall, attorney for the Plaintiff, and the defendant together with its counsel, Scott W. Holt. The Court, after having reviewed the Motion for Summary Judgment and affidavits together with the responses thereto and after review of the underlying lease agreement and hearing oral argument presented by the parties respective counsel and for good cause thereby appearing, enters the following Order, namely:

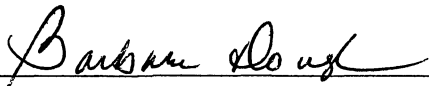
1. That the Court finds that there are material issues of fact and denies Plaintiff's Motion for Summary Judgment.

DATED this 11 day of May, 2004.

[Signature]
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order Denying Plaintiff's Motion for Summary Judgment was mailed to the Attorney for Plaintiff, Gregory B. Wall, at 4460 S. Highland Drive #200, Salt Lake City UT 84124, this 6 day of May, 2004 by depositing same in the U.S. Mail, postage prepaid.


Secretary

NOTICE

TO GREGORY B. WALL, ATTORNEY FOR PLAINTIFF:

You will please take notice that the undersigned, Attorney for Defendant, will submit the above and foregoing ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT to the Judge of the above-entitled Court for his signature, upon the expiration of five (5) days from the date this Notice is mailed to you, and after allowing three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504(2) of the Rules of Practice in the District Courts of the State of Utah. Kindly govern yourself accordingly.

DATED this 6 day of May, 2004.

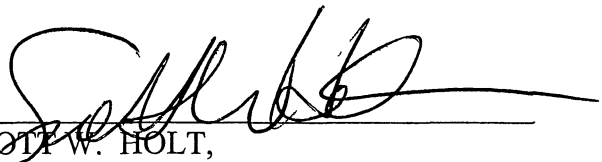

SCOTT W. HOLT,
Attorney for Defendant

EXHIBIT C

SCOTT W. HOLT, #1532
Attorney for Defendant
44 North Main Street
Layton, Utah 84041
Telephone: (801) 546-1264

FILED DISTRICT COURT
Third Judicial District

DEC 21 2004

SALT LAKE COUNTY

By
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

JOHN BAXTER,

Plaintiff,

vs.

SAUNDERS OUTDOOR
ADVERTISING, INC., a corporation
Defendant.

ORDER ON MOTION FOR SUMMARY
JUDGMENT AND PRE-TRIAL
HEARING

Case No. 030925365
Judge Sheila McCleve

This matter came on regularly for Pre-Trial hearing on the 1st day of November, 2004 before the Honorable Sheila McCleve, one of the Judges of the above entitled Court. Neither the Plaintiff nor his attorney appeared or were present and Defendant was represented by its attorney, Scott W. Holt.

The Court, after reviewing the file and pending Motions before this Court and for good cause appearing, hereby makes the following observations, ruling, and judgment in this matter and enters the following Order:

1. That the parties were required to appear at the time and place scheduled for this Pre-Trial conference, which hearing setting was made in open Court to the parties and also by the written Order of the Court.

2. That the Clerk of the Court telephoned Plaintiff's counsel before the Court proceeded with the hearing and that the Court waited approximately 45 minutes after the scheduled time for Plaintiff's counsel to appear and that neither Plaintiff nor his attorney appeared for the Pre-Trial Hearing.

3. That the Court reviewed Defendant's Motion for Summary Judgment, Plaintiff's Objection and Response to the same and Defendant's Objection to Plaintiff's Response in this matter.

4. That the Court, after review of the said Motions and Response, does hereby grant Defendant's Motion for Summary Judgment, that the Court finds that there was no real issue of material fact in this matter since the cause of action was based upon a complaint for unlawful detainer based upon a lease agreement which provided for rent to start only after a billboard sign had been built and that said structure had never been erected and that Plaintiff's Complaint and cause of action is hereby dismissed for good cause thereby appearing with prejudices.

5. That the Court will proceed with Defendant's Counterclaim in this matter and that the Defendant will schedule a further scheduling conference when the issues presented therein are ready for trial if the parties are unable to resolve the remaining issues as are contained therein.

6. That the Court takes under advisement the issue of awarding attorney's fees to Defendant's counsel for Plaintiff's attorney's failure to appear for the Pre-Trial hearing.


DATED this 21 day of November, 2004.



DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing ORDER ON MOTION FOR SUMMARY JUDGMENT AND PRE-TRIAL HEARING was mailed to the Attorney for Plaintiff, Gregory B. Wall, 2168 East Fort Union Blvd., Salt Lake City, UT 84121, this 9 day of November, 2004 by depositing same in the U.S. Mail, postage prepaid.

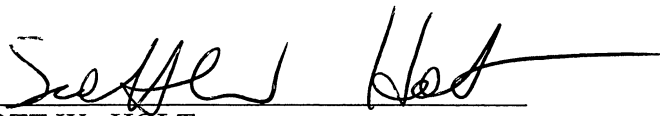

Secretary

NOTICE

TO GREGORY B. WALL, ATTORNEY FOR PLAINTIFF:

You will please take notice that the undersigned, Attorney for Defendant, will submit the above and foregoing ORDER ON MOTION FOR SUMMARY JUDGMENT AND PRE-TRIAL HEARING to the Judge of the above-entitled Court for his signature, upon the expiration of five (5) days from the date this Notice is mailed to you, and after allowing three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504(2) of the Rules of Practice in the District Courts of the State of Utah. Kindly govern yourself accordingly.

DATED this 9th day of November, 2004.



SCOTT W. HOLT,
Attorney for Defendant

EXHIBIT D

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOHN BAXTER,	:	RULING
Plaintiff,	:	CASE NO. 030925365
vs.	:	
SAUNDERS OUTDOOR ADVERTISING,	:	
INC., a corporation,	:	
Defendant.	:	

This Court scheduled a pretrial/scheduling conference on November 1, 2004. Neither plaintiff nor his attorney appeared, even after the clerk called to inform him that we were waiting for him to appear. His appearance was not excused. The Court heard several other matters, waited another 20 minutes, and proceeded with the hearing. Plaintiff's attorney never called the Court, nor made any appearance.

The Court reviewed the pleadings and instructed defendant to prepare an Order granting defendant's Motion for Summary Judgment. When plaintiff received notice of the Order, he requested oral argument on the Summary Judgment, which the Court allowed and stayed entry of the Order.

After oral argument, the Court took the case under advisement and informed the attorneys that it would rule on the matter before Christmas. The Court decided for the defendant and on December

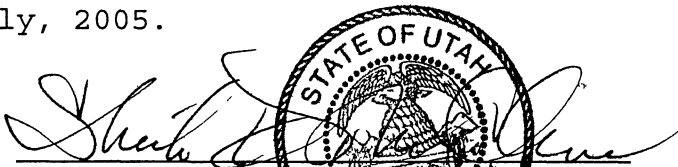
21st, signed the November 1st proposed Order interlineating the December date. The clerk of the court inadvertently failed to inform counsel of the ruling. Unknown to the Court, the clerk responded to defendant's later Request for Decision in January with a copy of the Summary Judgment Order, which only defendant's counsel acknowledges having received. Plaintiff then requested another hearing, which the Court again allowed.

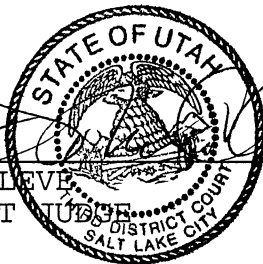
The Court finds that the plaintiff has failed to state a basis upon which he requests the Court to grant relief. Therefore, his Motion is denied. The previously entered Order remains in effect.

Defendant's counsel is to prepare the Order denying plaintiff's Motion to Amend the Order.

Both plaintiff and defendant to be notified by mail.

Dated this 18 day of July, 2005.


SHEILA K. MCCLAVE
DISTRICT COURT



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Ruling, to the following, this 18th day of July, 2005:

Gregory B. Wall
Attorney for Plaintiff
2168 E. Fort Union Blvd.
Salt Lake City, Utah 84121

Scott W. Holt
Attorney for Defendant
44 N. Main Street
Layton, Utah 84041



EXHIBIT E

10/1/68

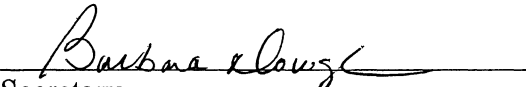
JOHN BAXTER,)	
)	ORDER FOR VOLUNTARY
)	DISMISSAL OF DEFENDANT’S
Plaintiff,)	COUNTERCLAIM
)	
vs.)	
)	
SAUNDERS OUTDOOR)	
ADVERTISING, INC., a corporation)	Case No. 030925365
Defendant.)	Judge Sheila McCleve

DATED this 25 day of August, 200

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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing ORDER FOR VOLUNTARY DISMISSAL OF DEFENDANT'S COUNTERCLAIM was mailed to the Respondent, Gregory B. Wall, at 2168 E. Fort Union, Salt Lake City UT 84121, this 11 day of August, 2006, by depositing same in the U.S. Mail, postage prepaid.



Secretary

NOTICE

TO Plaintiff's Attorney, Gregory B. Wall:

You will please take notice that the undersigned will submit the above and foregoing ORDER FOR VOLUNTARY DISMISSAL OF DEFENDANT'S COUNTERCLAIM to the Judge of the above-entitled Court for his signature, upon the expiration of five (5) days from the date this Notice is mailed to you, and after allowing three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 7(f)(2) of the Utah State Rules of Civil Procedure. Kindly govern yourself accordingly.

DATED this 10 day of August, 2006.


SCOTT W. HOLT
Attorney for Defendant