

1995

Golden Meadows, Inc v. Douglas B. Coons and Laura Coons : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mark T. Ethington; Day, Shell & Liljenquist; Attorneys for Golden Meadows; Larry L. Whyte; Attorneys for Crowley.

Carvel R. Shaffer; Attorney for Appellees.

Recommended Citation

Reply Brief, *Golden Meadows, Inc v. Coons*, No. 950762 (Utah Court of Appeals, 1995).
https://digitalcommons.law.byu.edu/byu_ca1/6997

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU

COPY

IN THE UTAH COURT OF APPEALS

50
A10

DOCKET NO. 950762-CA

GOLDEN MEADOWS, INC., a
Utah corporation,

Plaintiff/Appellant,

vs.

DOUGLAS B. COONS and
LAURA COONS,

Defendants/3rd Party
Plaintiffs/Appellees,

vs.

DEBRA G. CROWLEY and
MICHAEL E. CROWLEY,

3rd Party Defendants/
Appellants.

Case No. 950762-CA

Priority No. 15

REPLY BRIEF OF APPELLANTS

Appeal from Order Denying Motion to Vacate or Modify and Order
Confirming Arbitration Award, Second District Court, Davis County,
State of Utah, Honorable Jon Memmott, Presiding

Mark T. Ethington
DAY, SHELL & LILJENQUIST
45 East Vine Street
Murray, Utah 84107
Attorneys for Appellant
Golden Meadows

Larry L. Whyte
265 East 100 South #300
Salt Lake City, Utah 84111
Attorney for Appellants
Debra & Michael Crowley

Carvel R. Shaffer
110 West Center
Bountiful, Utah 84010
Attorney for Appellees
Douglas & Laura Coons

FILED
Utah Court of Appeals

SEP 04 1996

Marilyn M. Branch
Clerk of the Court

GOLDEN MEADOWS, INC., a
Utah corporation,

Plaintiff/Appellant,

vs.

DOUGLAS B. COONS and
LAURA COONS,

Defendants/3rd Party
Plaintiffs/Apellees,

vs.

DEBRA G. CROWLEY and
MICHAEL E. CROWLEY,

3rd Party Defendants/
Appellants.

Appeal from Order Denying Motion to Vacate or Modify and Order
Confirming Arbitration Award, Second District Court, Davis County,
State of Utah, Honorable Jon Memmott, Presiding

Carvel R. Shaffer
110 West Center
Bountiful, Utah 84010
Attorney for Appellees
Douglas & Laura Coons

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	5
ARGUMENT.....	6
POINT I: THE ARBITRATION AWARD AND SUPPLEMENT TO ARBITRATION AWARD MUST BE VACATED AS A MATTER OF LAW.....	6
A. This Court must not be unduly influenced by virtue of who the arbitrator was.....	6
B. Equity is not available to rewrite Golden Meadows' and Crowley's Contracts with the Coonses.....	8
C. A clear and unambiguous contract must be enforced.....	12
D. Mrs. Crowley is entitled to an award of costs and attorney's fees.....	13
E. Golden Meadows is entitled to an award of interest, late fees, penalties, costs and attorney's fees.....	14
F. Coons is entitled to no award whatsoever.....	14
POINT II: PUBLIC POLICY DEMANDS THAT ARBITRATION PROCEEDINGS BE GOVERNED BY THE SAME LEGAL STANDARDS AS COURT PROCEEDINGS.....	16
CONCLUSION.....	18

TABLE OF AUTHORTITIES

	<u>Page</u>
17A Am. Jur. 2d <u>Contracts</u> §§ 336-341 (1993).....	12

TABLE OF CASES

<u>Coast Trading Co. v. Pacific Molasses Co.</u> , 681 F.2d 1195 (9th Cir. 1982).....	10
<u>First State Bank & Trust Co. of Shawnee v. Wholesale Enterprises, Inc.</u> , 883 P.2d 207 (Okla. App. 1994)..	9
<u>Genest v. John Glenn Corp.</u> , 696 P.2d 1058 (Or. 1985)...	10
<u>Hill v. Hill</u> , 841 P.2d 772 (Ut. App. 1992).....	9
<u>Inter-City Gas Corp. v. Boise Cascade Corp.</u> , 845 P.2d 184 (9th Cir. 1988).....	10
<u>Jenkins v. Prudential-Bache Secur., Inc.</u> , 847 F.2d 631 (10th Cir. (Utah) 1998).....	12
<u>Provo City Corp. v. Nielsen Scott Co., Ins.</u> , 603 P.2d 8034 (Utah 1979).....	12
<u>Ryan v. Board of County Com'rs for Gallatin County</u> , 620 P.2d 1203 (Mont. 1980).....	12
<u>Thornblad v. Thornblad</u> , 849 P.2d 1197 (Ut. App. 1993)..	9
<u>Warner v. Sirstins</u> , 838 P.2d 666 (Ut. App. 1992).....	10
<u>Western Employers Ins. Co. v. Jefferies & Co.</u> , 958 F.2d (9th Cir. 1992).....	9
<u>Willard Pease Oil v. Pioneer Oil & Gas Co</u> , 899 P.2d 766 (Utah 1995).....	10,12

STATEMENT OF THE CASE

While each of the parties have previously set forth the statement of the case in their earlier briefs, Golden Meadows and Crowleys are compelled to correct the purposeful omissions and misrepresentations contained in Coons' Statement of the Case in Brief of Appellees.

In February, 1994, Coons was in the midst of constructing the home in question and was advertising it for sale. At the time Mrs. Crowley entered into the Real Estate Purchase Contract, the home was far from being completed. Her agreement to purchase the home was contingent upon Coons first completing the home as the parties had agreed. This he never did. Several of the upgrades about which Coons complains were upgrades which he agreed would be included in the agreed upon purchase. It is a misrepresentation of the facts for Coonses to state that the upgrades desired by Mrs. Crowley were over and above what was agreed on between the parties. This was the precise issue at the heart of the dispute between the parties as to which upgrades were to have been reasonably included in the purchase price and which ones were not.

By July, 1994, Coons was in a desperate situation. He had run out of money and could not complete construction of the home without additional cash and the construction loan was due. It was at this time that he approached the Crowleys to

see if they would close on the unfinished home, if he promised to complete construction after closing when he would receive the sales proceeds. By this time Mrs. Crowley had already spent tens of thousands of dollars on the home, in addition to the purchase price, paying Coons' subcontractors, paying for various items of materials used in the construction of the home, and even paying for upgrades that Coons had promised to pay for, not to mention the upgrades that were over and above her contract with Mr. Coons. Crowleys told Coons that when he finished construction of their home as agreed that they would close. He never completed construction as agreed resulting in the Crowleys refusing to close.

In July, 1994, when Crowleys refused to close on their partially finished home, and further refused to advance any more funds to Coons, Coons walked off the job claiming breach. Construction on the home was never completed by Coons and the inspections he refers to in his statement of facts were rough inspections only, not final inspections. It is simply untrue that Mr. Coons had scheduled all required work on the house and then canceled it when the Crowleys refused to close. It is also untrue that Coons had to renegotiate the terms of his construction with Zions Mortgage because Mrs. Crowley refused to close. By July, 1994, Coons had successfully obtained four (4) separate extensions of his construction loan from Zions Mortgage Company, despite the fact that he had never made a

payment on the loan. Coons did not obtain any further extensions of his construction loan after July 18, 1994, after Crowleys refused to close on their partially completed home, contrary to his statement of the case. Thereafter, the loan went into default. Again, the point must be emphasized that throughout this entire matter, Coons never made a single payment on the construction loan for money he borrowed to build this home.

Coons is critical of the fact that Golden Meadows purchased the construction loan from Zions Mortgage Company. In fact he has even gone so far as to allege that Golden Meadows and Michael Crowley are one in the same, or that one is the alter ego of the other. That is simply not true. They are two separate and distinct legal entities, even though Mr. Crowley is the president of Golden Meadows. Mr. Coons conveniently omits the fact that Golden Meadows was forced to purchase the construction loan from Zions Mortgage to protect the significant sums of money that had been invested in the home by Golden Meadows and Mrs. Crowley, due to Coonses' threats and attempts to sell the home to a third party. Golden Meadows engaged in no wrongful conduct in purchasing the construction loan and in fact paid Zions Mortgage nearly \$177,000.00 for said note. Golden Meadows would have preferred not to pay out nearly \$177,000 in cash for the construction note to protect the interests of Mrs. Crowley and

itself. However, Coons' wrongful conduct left them no alternative. Coons also conveniently fails to tell the Court that on the date that Golden Meadows delivered its money to Zions Mortgage for the construction loan that Coons was already in default on the note. Remember, Coons never made a single payment on the construction loan. Contrary to his assertions, Coons never tendered or delivered to Golden Meadows the full amount due under the terms and conditions of the Construction Loan Agreement and Trust Deed Note to cure his default. For him to say otherwise is a purposeful misstatement of the truth.

Mr. Coons operated without a contractor's license, in violation of the law, for more than 14 months. He knew very well that he had not paid the required registration fee, but took no action to cure this defect, until he was caught and pleaded guilty in late 1994.

The Coonses continue to mislead this Court by misrepresenting the Arbitration Award. It was Coonses who sued Mrs. Crowley for breach of contract for refusing to close, which claims Mrs. Crowley defended. In response thereto, the arbitrator found that "failure to close the sale...did not constitute a breach of the contract." There is no finding in the Arbitration Award that "Neither party had breached the Real Estate Contract" as the Coonses allege.

A further misrepresentation by Coonses is the claim that

the arbitrator gave both parties "specific direction how to resolve the matter by having the work completed on the home by Mr. Coons and Mr. and Mrs. Crowley closing on the home within thirty days". Coons conveniently omits the fact that despite this directive by the arbitrator, Coons refused to complete construction on the home and went so far as to cutting off the power to the home in an attempt to prevent Crowleys from completing construction on the home without him. The undeniable truth is that Coons never completed construction on the home and by virtue of the contract which he entered into with Mrs. Crowley was never entitled to any payment. The final paragraph of Coons' statement of facts is a prime example of how the arbitrator, exceeded his powers by refusing to award Golden Meadows its late charges and interest.

Coons' statement of the case is a purposeful attempt to mislead this court through omitting and misstating the true facts in this case, which conduct should be sanctioned. Having demonstrated that his entire version of the facts is misleading or false, suffice it to say that the Court should rely upon Golden Meadows' and Crowleys statement of the case.

SUMMARY OF ARGUMENT

The Arbitration Award and Supplement to Arbitration Award must be vacated because the arbitrator exceeded his powers and

failed to follow the law. It does not matter that the arbitrator was the former chief justice of the Utah Supreme Court. What matters is that the legal standards and principles that govern the resolutions of disputes in this state apply equally across the board to tribunals, courts of law, arbitration proceedings and other forms of dispute resolution. None of Coonses' arguments in support of the Arbitration Award and Supplement to Arbitration Award are persuasive, and they factual his is mostly a one-sided version laced with half truths, innuendos, misrepresentations and out right lies.

This Court has the opportunity to correct a fundamental injustice in our arbitration procedure, under various legal theories. Failure to do so will compromise and jeopardize the future of alternative dispute resolution in this state.

ARGUMENT

POINT I:

THE ARBITRATION AWARD AND THE SUPPLEMENT TO ARBITRATION AWARD MUST BE VACATED AS A MATTER OF LAW

A. This Court must not be unduly influenced by virtue of who the arbitrator was

It is no secret that the parties to this matter agreed on an arbitrator, selecting Gordon R. Hall, retired chief justice

of the Utah Supreme Court. Golden Meadows, Crowleys and their counsel respect Mr. Hall and give him due deference for his past accomplishments on the bench. Nevertheless, they submit that when he agreed to act as an arbitrator in this matter, he also agreed to be bound by the governing laws. Golden Meadows and Crowleys submit that ample evidence exists demonstrating that the arbitrator did not follow the law or apply the correct legal standards.

Rather than substantively examine the arbitration proceeding and resulting awards, Coons focuses this Court's attention on the identity of the arbitrator. Coons' brief in this matter is just under seventeen (17) full pages from beginning to end. Within those seventeen (17) pages, Coonses made 31 references to the arbitrator, Gordon Hall, in one form or another. In every instance their reference to him was preceded with the title "the honorable", "judge" or "former chief justice". Several pages of Coons' Brief make multiple references to the arbitrator with page 7 containing seven (7) such references.

Rather than succinctly and substantively addressing the merits of this action, Coonses have engaged in a blatant attempt to cloud the issues and this Court's independent judgment through constant reminder of who the arbitrator was, thereby attempting to improperly influence this Court to affirm the Arbitration Award simply because of who served as

the arbitrator. Anyone who has known or associated with Gordon R. Hall likes him. He is a warm, pleasant and personable individual who is enjoyable to be around. Nevertheless, Golden Meadows and Crowley submit that, with all due respect to former Chief Justice Hall, his personality characteristics, past accomplishments and years of service, his former position has absolutely nothing to do with this matter. What is at issue is whether his arbitration ruling is consistent with the very laws that he helped fashion and develop. In this regard, Golden Meadows and Crowleys respectfully submit that his Arbitration Award and Supplement to Arbitration Award fly in the face of long established legal principles and must be vacated.

Golden Meadows and Crowleys believe that this Court is capable of examining the merits of this matter, without regard to the identity of the arbitrator and independent of our personal feelings of fondness, admiration and respect which we all have for him.

B. Equity is not available to rewrite Golden Meadows' and Crowley's Contracts with the Coonses

It is undisputed that the arbitrator attempted to do equity in rendering his decision. It is further undisputed that the arbitrator failed, for whatever reason, to apply applicable law in fashioning his Arbitration Award and Supplement to Arbitration Award. It is a fundamental rule

that equity cannot be invoked to change rights defined and established by law, or in this case by contract, or to create a right which otherwise does not exist. See, First State Bank & Trust Co. of Shawnee v. Wholesale Enterprises, Inc., 883 P.2d 207 (Okla. App. 1994).

Neither Golden Meadows nor Crowleys submitted to the arbitrator their various contracts with the Coonses for the arbitrator to construe or interpret the language thereof. Rather, Golden Meadows and Crowleys presented to the arbitrator their respective contracts with the Coonses for enforcement of the terms thereof. Golden Meadows and Crowleys did not bargain for or agree to have the arbitrator interpret, construe or rewrite their respective contracts with the Coonses. They cannot be forced to arbitrate the construction, interpretation and meaning of their respective contracts with Coonses, and the arbitrator in doing so exceeded his powers under the arbitration act. See, Western Employers Ins. Co. v. Jefferies & Co., 958 F.2d (9th Cir. 1992).

The arbitrator, in seeking equity, exceeded his powers by failing to apply equity within the proper bounds of the law. As a general rule, equity is not available to reinstate rights and privileges voluntarily contracted away. Thornblad v. Thornblad, 849 P.2d 1197 (Ut. App. 1993); Hill v. Hill, 841 P.2d 772 (Ut. App. 1992). Simply put, a court, or an arbitrator, in equity will not assist one in extricating

himself from the circumstances which he has created, either by action or by contract. See, Willard Pease Oil v. Pioneer Oil & Gas Co, 899 P.2d 766, 772 (Utah 1995). While a court, or an arbitrator, sitting in equity exercises discretion in granting or denying relief, it does not have authority to ignore existing principles of law in favor of its own view of the equities. Warner v. Sirstins, 838 P.2d 666 (Ut. App. 1992). This is precisely what was done by the arbitrator in this action. With the best of intentions, the arbitrator ignored the plain, clear and unambiguous language of Golden Meadows' and Crowley's respective contracts with the Coonses in favor of what he concluded to be an "equitable" result. This he cannot do. Golden Meadows and Crowleys submit that an arbitrator is, or should be, governed by the same legal principles and guidelines that laws that govern a court of law. A court of equity cannot make a contract which it thinks the parties can agree to, it can only enforce the existing agreement, Genest v. John Glenn Corp., 696 P.2d 1058 (Or. 1985). Likewise arbitrators are or should be governed by the same legal principles. Inter-City Gas Corp. v. Boise Cascade Corp., 845 P.2d 184 (9th Cir. 1988) (although an arbitrator may interpret ambiguous language of a contract, the arbitrator may not disregard or modify unambiguous contract provisions); Coast Trading Co. v. Pacific Molasses Co., 681 F.2d 1195 (9th Cir. 1982) (where the arbitrators exceeded the authority given

them by consent of the parties by arbitrarily extending the contract delivery date, the arbitration award is invalid).

In the instant action, the arbitrator ignored: 1) the plain and unambiguous contract provisions which award costs and attorney's fees to Mrs. Crowley and interest, late fees, penalties, costs and attorney's fees to Golden Meadows; and 2) the statute which precluded Mr. Coons from bringing the instant action or obtaining any recovery thereunder in the first place. This Court would not hesitate to reverse these errors of law on appeal from a lower court. No reason exists why this Court should take a different approach from an arbitration proceeding.

All that Golden Meadows and Mrs. Crowley are seeking is a determination by this Court that the same legal principles that govern legal proceedings will also govern arbitration proceedings, and then have this Court enforce those principles. To do otherwise is to establish "arbitrary" not arbitration proceedings which violate public policy and trust and erode the use and effectiveness of arbitration and alternative dispute resolution proceedings in this state. Federal courts have never limited their scope of review of arbitration awards to a strict reading of 9 U.S.C. §10 but rather have traditionally subjected arbitration awards to sort of an "abuse of discretion" standard, viewed either as inherent appurtenance to a right of judicial review or as a

broad interpretation of § 10(d) prohibiting arbitrators from exceeding their powers. Jenkins v. Prudential-Bache Secur., Inc., 847 F.2d 631 (10th Cir. 1998). This Court should do likewise

C. A clear and unambiguous contract must be enforced

Since the rules for construction of contracts are essentially the same in law and equity, 17A Am. Jur. 2d Contracts §336 (1993), a review of those rules would be instructive in this matter. It is a basic rule of contract law that a court cannot and will not rewrite an unambiguous contract to make it more "equitable". See, Provo City Corp. v. Nielsen Scott Co., Ins., 603 P.2d 8034 (Utah 1979); 17A Am. Jur. 2d Contracts §§ 340, 341 (1993). When the meaning of a contract is clear and unambiguous, it is to be interpreted as a matter of law. Willard Pease Oil v. Pioneer Oil & Gas Co., 899 P.2d 766, 770 (Utah 1995); 17A Am. Jur. 2d Contracts § 340 (1993). Where the language of a contract is clear and unambiguous, as it is in the instant action, it is the duty of the court to enforce the contract as made by the parties. Ryan v. Board of County Com'rs for Gallatin County, 620 P.2d 1203 (Mont. 1980); 17A Am. Jur. 2d Contracts § 337 (1993). Golden Meadows and Crowley submit that these rules of construction apply not only to judges and courts but also to arbitrators and alternative dispute resolution proceedings.

D. Mrs. Crowley is entitled to an award of costs and attorney's fees

The Coonses commenced this action against Mrs. Crowley by filing a complaint against her wherein they alleged that she was in breach or default of the terms of the Real Estate Purchase Contract by refusing to close when demanded to do so by Coonses. As a result of Coons' unilateral demands to for Mrs. Crowley to close on the home in question prior to its completion, Mrs. Crowley incurred various costs and was forced to retain counsel to defend her Coons' outrageous demands. The arbitrator specifically found in the Arbitration Award that: "[T]he failure to close the sale on April 15, 1994, did not constitute a breach of the contract since such was not a firm date as is evidenced by the February 3, 1994, addendum". (emphasis added) Mrs. Crowley successful defended against the Coons' claims that she had breached the Real Estate Purchase Contract by refusing to close. Paragraph 17 of the Real Estate Purchase Contract states "ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees." It is undisputed that Mrs. Crowley was the prevailing party on the issue of whether or not she breached the Real Estate Purchase Contract. Nevertheless, in fashioning what the arbitrator deemed to be an "equitable" remedy, the arbitrator exceeded his powers in failing to enforce the attorney's fee

provision of the parties' contract, and in failing to award Mrs. Crowley her costs and attorney's fees, thus making the arbitration award invalid.

E. Golden Meadows is entitled to an award of interest, late fees, penalties, costs and attorney's fees

Golden Meadows purchased from Zions Mortgage Company for valid consideration, Coons' construction loan, resulting in Zions Mortgage Company assigning its interest in the Construction Loan Agreement, Trust deed Note and Trust Deed to Golden Meadows. It is undisputed that as of August 15, 1994, Coonses were in default of the terms and conditions of the Construction Loan Agreement and Trust Deed Note. In the Arbitration Award the arbitrator specifically found that "[G]olden Meadows, Inc. is the successor-in-interest in and to the Construction Loan, Trust Deed, and Deed of Trust, having acquired the same on August 15, 1994, by assignment from Zions Mortgage Company for the recited consideration of \$176,916.64." Nevertheless, the arbitrator failed to award Golden Meadows its interest, penalties, late fees, costs and attorney's fees as provided by the Construction Loan Agreement, Trusteed Deed Not and/or Trust Deed, opting instead for a more "equitable" result. This action of the arbitrator invalidates his award.

F. Coons is entitled to no award whatsoever

Coons was not a licensed contractor during the relevant

period of time at question herein. Utah Code Ann. §58-55-604 precludes all contractors from commencing or maintaining any action for collection or compensation without alleging and proving that the contractor was "properly licensed when the contract sued upon was entered into and when the alleged cause of action arose". Coons fails on both accounts. Instead of disposing of this matter in short order pursuant to state law, the arbitrator, arbitrarily ruled that Coons did not need a license since he was an "owner and built the house on speculation for his own occupancy". While that may have been true at one point in time, he waived that position by agreeing to build the house for Mrs. Crowley. The day he signed the Real Estate Purchase Contract with Mrs. Crowley whereby he agreed to sell Mrs. Crowley the home upon completion of its construction, he ceased building that home either on speculation or for his own occupancy. Even though Mr. Coons knew that his contract's license had not been renewed, and was suspended he nevertheless proceeded forward in performing construction work for Mrs. Crowley. Mr. Coons knew the penalty for engaging in construction without a license was his inability to commence or maintain an action for collection or compensation and still he proceeded forward with construction on Crowleys' home. The arbitrator completely ignored the applicable law on this issue in the name of equity. In order to fashion what the arbitrator deemed to be a more "equitable"

result, he failed to apply governing legal principles. That act invalidates the arbitration Award and Supplement to Arbitration Award.

POINT II

PUBLIC POLICY DEMANDS THAT ARBITRATION PROCEEDINGS BE GOVERNED BY THE SAME LEGAL STANDARDS AS COURT PROCEEDINGS

Golden Meadows and Crowley agree that arbitration is intended to be speedier and less expensive, with less attendant litigation, than a regular court proceeding. It was for those reasons that they agreed to arbitrate. However, Golden Meadows and Crowley were under the impression that the same legal principles and standards applied to all legal proceedings in Utah, whether traditional court proceedings, arbitration proceedings or other forms of alternative dispute resolution proceedings. Furthermore, Golden Meadows and Crowley were under the impression, when they agreed to arbitrate this matter, that the arbitrator was required to follow the law and if he did not, that the Court had power to vacate his decision.

It is undisputed that the arbitrator fashioned an "equitable" remedy in complete abrogation of the law. Had a court so exceeded its powers it would have been reversible error. Golden Meadows and Crowleys submit that the same legal

standards and principles that govern actions before a court should also govern actions before an arbitrator. Golden Meadows and Crowley have suggested alternative legal theories upon which this Court may rely in so adopting a plain, consistent and clear standard for all legal actions in this state. Golden Meadows and Crowleys submit that for this Court so to do would not unnecessarily expand its review or associated litigation. In fact, by adhering to the same clear and consistent legal standards for arbitration proceedings as well as court proceedings, the law would be more certain, this Court's review defined and limited, and less litigation would follow. Furthermore the results would be more fair and equitable.

Golden Meadows and Crowleys are well aware of the backlog of cases clogging courts in this and every other jurisdiction in this country. Golden Meadows and Crowley are proponents of alternative dispute resolution engaging in it in this action. However, for alternative dispute resolution, including arbitration, to be effective and to work, legal principles have to be consistently applied. If in opting for some form of alternative dispute resolution parties realize that they will not know until after the award is entered just what legal principles governed the proceeding and then learn that regardless of the outcome, this Court will not correct manifest errors of law of the arbitrator, as it would any

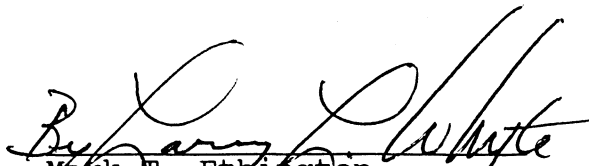
judge, then the effectiveness of alternative dispute resolution is eliminated.

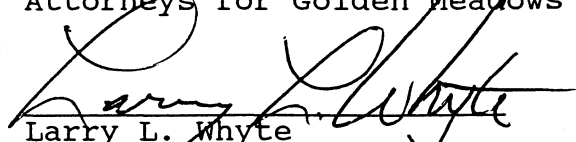
No one in their right mind would knowingly choose such an arbitrary and capricious forum in which to attempt to resolve their disputes. Public policy and the future of alternative dispute resolution in this state requires this Court to once and for all to squarely face this issue, taking whatever action is necessary to insure that legal standards are consistently applied in all legal forums, whether in the formal setting of courtroom or in the informal setting of the conference room.

CONCLUSION

This Court has the power, authority and responsibility, to vacate the Arbitration Award and Supplement to Arbitration Award in this matter. Governing legal principles have to be applied equally to all forms of dispute resolution in this state. Public policy and the justice so demand. Because the arbitrator, exceeded his powers fashioning "equity" in complete abrogation of the law the awards must be vacated.

Respectfully submitted this 4th day of September, 1996.


Mark T. Ethington
Day, Shell & Liljenquist
Attorneys for Golden Meadows


Larry L. Whyte
Attorney for Michael and
Debra Crowley

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 1996,
I served the foregoing by causing true and correct copies to
be placed in the United States Mail, postage prepaid and
addressed to Carvel R. Shaffer, 110 West Center, Bountiful,
Utah 84010.

