

1995

Golden Meadows, Inc., a Utah corporation v. Douglas B. Coons and Laura Coons : Brief of Appellee

Utah Court of Appeals

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Mark P. Ethington; Day & Barney; Attorneys for Golden Meadows; Larry L. Whyte; Attorneys for Crowley.

Carvel R. Shaffer; Attorney for Appellees.

Recommended Citation

Brief of Appellee, *Golden Meadows, Inc v. Coons*, No. 950762 (Utah Court of Appeals, 1995).

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 950762-0

GOLDEN MEADOWS, INC., a
Utah corporation,

Plaintiff/Appellant,

v.

DOUGLAS B. COONS and
LAURA COONS,

Defendants, Third-Party
Plaintiffs/Appellees,

v.

DEBRA G. CROWLEY and
MICHAEL E. CROWLEY,

Third-Party Defendants/
Appellants.

Case No: 950762-CA

Priority No. 15

BRIEF OF APPELLEES

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

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Michael E. Crowley

FILED

JUL 19 1996

GOLDEN MEADOWS, INC., a
Utah corporation,

y.

y.

Third-Party Defendants/ Appellants.

Priority No. 15

Appeal from Order Denying Motion to Vacate or Modify and Order Confirming Arbitration Award
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STATEMENT OF JURISDICTION

DOUGLAS B. COONS and LAURA COONS, Appellees, hereby respond to the appeal of Golden Meadows and Debra Crowley and Michael E. Crowley concerning the Order denying Motion to Vacate and Modify Arbitration Award and Order Confirming Arbitration Award entered August 16, 1995, by the Honorable Jon M. Memmott of the Second Judicial District Court, Davis County, State of Utah. The Supreme Court has jurisdiction over this matter because Judge Memmott confirmed the arbitration award pursuant to Utah Code Ann. § 78-31a-19 (1985). This matter has been transferred to the Court of Appeals pursuant to Utah Code Ann. § 78-2a-3(2)(k)(1992).

STATEMENT OF ISSUES OF APPEAL AND STANDARD OF REVIEW

A. ISSUE ON APPEAL

Whether or not the District Court erred in denying Appellants' Motion to Vacate the Arbitration Award and Supplement thereto entered by Former Chief Justice Gordon R. Hall, retired, on February 24, 1995 and March 1, 1995, respectively.

B. STANDARD OF REVIEW.

Douglas Coons submits that the standard of review in an arbitration case by the Court of Appeals is the same as has been followed in Utah since the inception of arbitration. By virtue of the law in support of arbitration, the judicial review of arbitration awards, is limited to those grounds and procedures provided under the act, pursuant to Utah Code Ann. § 78-31(a)14, (1953). These would include (a) the award was procured by corruption, fraud, or other undue influence; (b) an arbitrator, appointed as a neutral, impartial, or an arbitrator who was guilty of

misconduct that prejudiced the rights of any party; (c) the arbitrators exceeded their powers; (d) the arbitrators refused to postpone the hearing upon sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to the substantial prejudice of the rights of a party; or (e) there was no arbitration agreement between the parties to the arbitration proceedings.

An award will not be set aside merely because the arbitrators did not follow strict legal rules in hearing and deciding the case, unless they were required by the submission or by statute to follow such rules. Utah does not have any such requirement.

STATEMENT OF THE CASE

A. PARTIES.

Golden Meadows, Inc., (hereinafter “Golden Meadows”) is a Utah corporation in good standing and purchased the Promissory Note and Trust Deed from Zions Mortgage Co. The principals of the corporation are Michael E. Crowley and Debra Crowley, Third-Party Defendants and Appellants.

Debra Crowley (hereinafter “Mrs. Crowley”), wife of Michael E. Crowley, is the purchaser of the home that is the subject of this dispute pursuant to the Real Estate Purchase Contract, and is the Secretary of Golden Meadows, Inc.

Michael E. Crowley (hereinafter “Mr. Crowley”), husband of Debra Crowley, is President of Golden Meadows, Inc., which purchased the construction loan for the home in question.

Douglas Coons (hereinafter “Mr. Coons”) is a resident of Davis County, State of Utah, and is a home builder.

Laura Coons (hereinafter “Mrs. Coons”) wife of Douglas Coons, is a guarantor on the construction loan obtained by Douglas Coons from Zions Mortgage Co. and subsequently purchased by Golden Meadows, Inc.

B. NATURE OF THE CASE

Mr. Coons is a homebuilder. On June 26, 1992, Mr. Coons purchased the real property that is the subject of this action (the property). Mr. Coons obtained a construction loan from Zions Mortgage Company and commenced construction on the home. Mr. Coons either intended to move into the home himself or sell the same to a third-party purchaser. While Mr. Coons was constructing the home, Michael E. Crowley approached Mr. Coons for the purpose of purchasing the home. On or about February 1, 1994, a Real Estate Purchase Contract was entered into wherein Mr. Coons agreed to sell the home and Mrs. Crowley agreed to purchase the home. Mr. Crowley is the one who negotiated the purchase of the home with Mr. Coons. Mr. and Mrs. Crowley determined they wanted to do a substantial amount of upgrades on the home over and above what Mr. Coons and the Crowleys had previously agreed upon in the Real Estate Purchase Contract and Addendum, attached as Exhibits A and B respectively. Mrs. Crowley entered into direct contracts with various subcontractors and suppliers to have work done on the home including installation of extensive woodwork, a spa, sauna and other items which were not contemplated in the original plans.

Subsequent thereto, Michael E. Crowley on behalf of his wife, Mrs. Crowley, informed Mr. Coons that Mrs. Crowley would not close the transaction because of defects in the home. However, the Honorable Gordon R. Hall ruled in the award that “the various stages of construction were duly inspected by Bountiful City, the inspection authority, and no departures from the provisions of the Uniform Building Code were noted.” A copy of the Arbitration Award is attached as Exhibit C. Mr. Coons had taken the home off the market and as a result had lost considerable time in order to obtain another purchaser. Mr. Coons made written demand upon Mrs. Crowley; however, Mrs. Crowley continued to refuse to close the transaction. During the month of July 1994, Mr. Coons had scheduled all work required in order to complete the home for occupancy. When Mrs. Crowley refused to close, Mr. Coons canceled the work on the home.

Mr. Coons requested that Mrs. Crowley provide Mr. Coons with a list of alleged defects in the construction of the improvements on the property and for written notice of any defaults on Mr. Coons’s part that Mrs. Crowley claimed under the Real Estate Purchase Contract. Mrs. Crowley did not supply Mr. Coons with written notice of any claimed defect nor any alleged defaults. Because Mr. and Mrs. Crowley had refused to purchase the home, it necessitated Mr. Coons renegotiating the terms and conditions of the construction loan.

Michael E. Crowley is President and Debra Crowley is Secretary of Golden Meadows, Inc. Both Mr. and Mrs. Crowley are directors of Golden Meadows, Inc. Subsequent to Debra Crowley and Michael E. Crowley refusing to close the transaction, Golden Meadows, by and through Michael and Debra Crowley, purchased the construction loan from Zions Mortgage

Company. However, Zions Mortgage Co. sold the Note and Trust Deed to Golden Meadows on or about August 15, 1994, at the request of Crowleys.

Mrs. Crowley, through her attorney, executed and recorded a Notice of Interest encumbering the property.

Upon purchase of the Promissory Note and Trust Deed from Zions Mortgage Co., Golden Meadows, by and through Mr. and Mrs. Crowley, declared the Promissory Note in default and commenced foreclosure proceedings. Therefore, Mr. and Mrs. Crowley attempted to take possession of the home by foreclosure instead of purchasing the home as originally agreed. The principal amount of the loan was \$179,000.00. On or about September 30, 1994, Mr. Coons requested a payoff on the loan and tendered the full amount due under the Promissory Note secured by the Deed of Trust. Golden Meadows, Inc., by and through Mr. and Mrs. Crowley, refused such tender.

Golden Meadows filed an action against Douglas and Laura Coons seeking a permanent injunction. The Second Judicial District Court in and for Davis County entered a temporary restraining order without notice to counsel for Mr. Coons or Mrs. Coons, even though it was known that Mr. and Mrs. Coons were represented by counsel. Mr. and Mrs. Coons filed a Counterclaim and Third-Party Complaint against Mr. and Mrs. Crowley. The Crowleys thereafter filed a Counterclaim to the Third-Party Complaint.

During the time Mr. Coons was constructing the home, or prior thereto, Mr. Coons' contractor's license had expired. Mr. Coons inadvertently was of the opinion that the required request and fee had been provided to the Department of Contractors so that his license would

remain intact. During these proceedings, it was determined that the license had expired. Upon becoming aware of the same, Mr. Coons immediately responded and accomplished all requirements in order to have the contractor's license reinstated.

The trial was set in this matter for December 22 and 23, 1994. However, on or about December 21, 1994, Golden Meadows, by and through their counsel, moved the Court for a stay of proceedings in order to invoke the arbitration provisions of the Trust Deed of Promissory Note purchased by Golden Meadows from Zions Mortgage Company.

Subsequent thereto, the parties agreed that the Honorable Gordon R. Hall be named as the arbitrator.

The arbitration proceedings commenced February 14, 1995, and continued for three days. There was no court reporter nor formal record taken of the arbitration proceedings. An Arbitration Award dated February 24, 1995, was issued.

The Honorable Gordon R. Hall, among other things, found that:

1. Neither party had breached the Real Estate Contract.
2. Even though Seller (Mr. Coons) was without a valid contractor's license due to inadvertence in the non-payment of renewal fee, Mr. Coons did not act as a contractor in the construction of the home. Rather he was the owner and built the house on speculation or for his own occupancy. Mr. Coons was therefore not precluded from enforcing the terms of the contract.
3. Each party had expressed its desire specifically that equity be done between them and that the circumstances in this case lend themselves to equitable remedies.

4. Both parties were given specific direction how to resolve the matter by having the work completed on the home by Mr. Coons and Mr. and Mrs. Crowley closing the home within thirty days.

5. The purchase price was to be \$335,000 less the \$5,000 earnest money.

6. Buyers were to forego the payment of any late charges, interest that may have accrued or other sums deemed to have accrued in connection with the construction loan. Those items were precluded (late charges, interest that may have accrued in connection with the construction loan) because Seller was entitled to some measure of the appreciated value of the property occasioned by the escalation of values generally in the area during the time the matter had been in dispute and as reflected by the respective appraisals submitted by the parties. See Exhibit C, Arbitration Award.

ARGUMENT

POINT I

THE DISTRICT COURT DID NOT ERR IN REFUSING TO VACATE THE ARBITRATION AWARD AND SUPPLEMENT TO ARBITRATION AWARD PURSUANT TO SECTION 78-3- 1(a)-14, UTAH CODE ANNOTATED.

Golden Meadows and Crowleys have appealed this matter based upon the fact that the Honorable Judge Jon M. Memmott, District Court, Second Judicial District, Davis County, erred in refusing to vacate the Arbitration Award entered by the Honorable Gordon R. Hall on February 25, 1995, and Supplement to Arbitration Award on May 1, 1995. Judge Memmott set forth in his Order Denying the Motion to Vacate and Order Confirming Arbitration Award, the following issues. A copy of the Order is attached as Exhibit D.

1. The arbitrator did not exceed his powers nor did the arbitrator manifestly disregard the law on issues presented to the arbitrator.
2. The Arbitration Award and supplement thereto are within the legal parameters that the parties pled
3. The Arbitration Award and supplement thereto did not exceed the powers of the arbitrator.
4. The clear intent of Utah Supreme Court is that the Utah Arbitration Act be narrowly construed and that the legislative intent of the act should be strictly followed. The Court did not feel it was appropriate to create additional standards for modification of the Arbitration Award.
5. A number of issues presented required discretion and judgment on the part of the arbitrator. Those issues were factually sensitive and as a matter of law the Court could not find that there had been any miscalculation of the law.

The longstanding policy in Utah favors arbitration as a speedy and inexpensive method of adjudicating disputes. Allred v. Educators Mut. Ins. Ass'n., 909 P.2d 1263, 1265 (Utah 1995); DeVore v. IHC Hospitals, Inc., 884 P.2d 1246, 1251 (Utah 1994); Robinson & Wells, P.C. v. Warren, 669 P.2d 844, 846 (Utah 1983). Because of the public policy and law in support of arbitration, the Utah Courts have limited their judicial review for arbitration to Utah Code Ann. § 78-31a(14) (1953) which provides as follows:

(1) Upon motion to the Court by any party to the arbitration proceedings for vacation of the award, the Court shall vacate the award if it appears:

(a) the award was procured by corruption, fraud or other undue means;

(b) an arbitrator, appointed as a neutral, showed partiality, or an arbitrator was guilty of misconduct that prejudiced the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause shown, refused to hear evidence material to the controversy, or otherwise conducted the hearing to a substantial prejudice of the rights of a party; or

(e) there was no arbitration agreement between the parties.

Appellants contend that the arbitrator violated subsections (a), (b) and (c) in that the arbitrator exceeded his powers, showed partiality and/or because the award was procured by **undue means**, by issuing an award in direct conflict with the long established legal principles; that the arbitrator deliberately disregarded the law and as a result showed partiality.

Appellants further argue that the arbitrator (1) ignored the clear language of the construction loan documents and refusing to award Golden Meadows interest late fees and penalties, costs and attorney's fees; (2) the arbitrator ignored the clear language of the real estate purchase contract refusing appellant, Mrs. Crowley, her costs and attorney's fees; (3) the arbitrator ignored the clear language of Section 58-55-604 of the Utah Construction Trade and Licensing Act in not prohibiting an unlicensed contractor from commencing or maintaining an action to collect compensation; and (4) the arbitrator ignored the clear language of the Real Estate Purchase Contract in awarding Mr. Coons any amount above \$5,000.

When the Honorable Gordon R. Hall issued his Arbitration Award he stated that a failure to close the home on April 15, 1994, did not constitute a breach since there was no firm date for

closing. Appellants would like you to believe that the Honorable Gordon R. Hall ruled that Mr. and Mrs. Crowley did not breach the contract, but that Mr. Coons breached the contract. The Honorable Gordon R. Hall never did rule there was any breach of the contract by either party.

The Honorable Gordon R. Hall set forth in his Award that both parties had expressed their desire and specifically requested that equity be done between them and that indeed the circumstances of this case lend themselves well to equitable remedies.

Based upon the Honorable Gordon R. Hall's Award, there was no breach of either party; therefore, neither party is entitled to costs or attorney's fees. The Honorable Gordon R. Hall also held in the Award that the value of the home had escalated significantly subsequent to the Real Estate Purchase Contract being entered into; therefore, Appellants were compensated.

The Honorable Gordon R. Hall did not ignore the clear language of Section 58-55-604 of Utah Construction Trades Licensing Act. Judge Hall addressed that issue in his Award stating that,

Seller [Douglas Coons] was without a valid contractor's license due to inadvertence in the non-payment of a renewal fee; however, Seller [Douglas Coons] did not act as a contractor for Buyer in construction of the house. Rather he [Douglas Coons] was the owner and built the house on speculation or for his own occupancy. He is, therefore, not precluded from enforcing the terms of the contract of sale. Arbitration Award, pg. 2.

Appellants further argue that the Arbitrator ignored the clear language of the Real Estate Purchase Contract in awarding Mr. Coons any sum above \$5,000 which was the remedy for liquidated damages.

Pursuant to a letter dated July 22, 1994, addressed to Mrs. Crowley and signed by Douglas B. Coons, Third-Party Defendants confirmed they no longer wanted to purchase the

home. A copy is attached as Exhibit E. That was confirmed by Robert F. Babcock, attorney, representing Mr. Coons in a letter addressed to Mrs. Crowley dated July 28, 1994, a copy of which is attached as Exhibit F.

Appellants completely missed the point in suggesting that the Arbitrator ignore the clear language of the Real Estate Purchase Contract. If Mr. Coons was to receive the \$5,000 as liquidated damages, Mr. Coons would have maintained ownership of the home and been entitled to all appreciation on the home together with the \$5,000 liquidated damages. In paragraph 16 of the Real Estate Purchase Contract, a copy of which is attached hereto as Exhibit A, states:

DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages, a sum equal to the Earnest Money Deposit, or to sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy, the parties intend that the remedies shall be exclusive regardless of rights which might otherwise be available under common law.

POINT II

THE DISTRICT COURT DID NOT ERR IN REFUSING TO VACATE THE ARBITRATION AWARD AND SUPPLEMENT TO ARBITRATION AWARD PURSUANT TO THE JUDICIALLY-CREATED STANDARD OF "MANIFEST DISREGARD OF THE LAW."

Appellants argue that the District Court erred in refusing to vacate the Arbitration Award pursuant to the judicially-created standard of "manifest disregard of the law" and that the arbitrator knowingly disregarded the law in several points in the Arbitration Award and Supplement thereto.

Appellants acknowledge that Utah has not adopted such a standard. Allred, 909 P.2d 1263, 1265; DeVore, 884 P.2d 1247, 1251. Appellants are suggesting that the Court adopt a new standard. It would be improper for the Court to adopt a different standard than that which has been followed since the inception of arbitration in the State of Utah. The intent of the legislature in the State of Utah when it adopted the Arbitration Act was that the Judicial Review of Arbitration Award be limited to those grounds and procedures provided in the Act and whether the arbitration proceedings were fair and honest and whether the substantial rights of the parties were respected.

Appellants argue that the Honorable Gordon R. Hall undermined and ignored the law in this matter, that he further had a manifest disregard for the law.

It would be difficult to assume that the Honorable Gordon R. Hall does not understand that law, that he was inattentive or misapplied the law. In fact, Appellants go so far as to say that the record revealed that the arbitrator clearly understood the law, but deliberately disregarded the law.

The only record that is available in this case would be the pleadings, memorandums and any other documents filed with the District Court. There was no record made of the proceedings before the Honorable Gordon R. Hall.

In the Allred case, the Court ruled:

In order to serve that policy and achieve its objective, judicial review of arbitration awards should not be pervasive in scope or susceptible to repetitive adjudications, but should be limited to the statutory grounds and procedures for review.

As a general rule, awards will not be disturbed on account of irregularities or informalities or because the Court does not agree with the award, so long as the

proceedings have been fair and honest and the substantial rights of the parties have been respected. Allred, 909 P.2d 1263, 1265.

In reviewing the Arbitration Award and supplement thereto, it is obvious that the Honorable Gordon R. Hall understood the facts and law and thus rendered an award. The intent of the Honorable Gordon R. Hall's Award is that the parties complete the contract as agreed. In fact, the Honorable Gordon R. Hall stated that the parties shall fully cooperate in scheduling, coordinating, performing and completing the work on the house and closing the sale within the next 30 days. Because Appellants Michael E. Crowley and Debra Crowley failed and refused to follow the Arbitration Award and Supplement thereto and close on the house as set forth therein, Mr. Coons has been damaged in that he has had to pay additional property taxes, utilities, fire insurance and interest on a signature loan.

Appellants quote several cases that are not applicable in this matter. It is Appellees' **opinion** and position that the Utah law has been clearly established regarding arbitration and that the Court should continue to follow the same standard.

Arbitration was entered into at the request of Appellants because of the language in the Trust Deed and Note. The Trust Deed Note, Exhibit G, states,

ARBITRATION DISCLOSURE: Arbitration is usually final and binding on the parties and subject only to a very limited review by a court.

The parties are waiving their right to litigate in court including their right to a jury trial, pre-arbitration discovery is generally more limited and different from court proceedings. Arbitrator awards are not required to include factual findings or legal reasoning and any parties right to appeal or to seek modifications of rulings by arbitrators is strictly limited.

When Appellants desired arbitration, they realized or should have realized that it was limited and that the award is usually final and binding and subject only to very limited review by a Court.

POINT III

MRS. CROWLEY IS NOT ENTITLED TO AN AWARD OF COSTS AND ATTORNEY'S FEES.

Appellants argue that Mrs. Crowley prevailed in this matter. The Arbitration Award does not indicate that Mrs. Crowley prevailed; therefore, she is not entitled to any attorney's fees or any costs associated therewith. The arbitrator ruled that neither party breached the contract.

POINT IV

GOLDEN MEADOWS IS NOT ENTITLED TO AN AWARD FOR INTEREST, LATE FEES AND PENALTIES FOR ITS COSTS AND ATTORNEY'S FEES.

The Honorable Gordon R. Hall was very well aware of the loan that Golden Meadows had purchased from Zions Mortgage Co. Mr. and Mrs. Crowley and Golden Meadows are basically one and the same in that Mr. and Mrs. Crowley own Golden Meadows and/or are officers of Golden Meadows.

Appellants state "it is undisputed that Mr. Coons was in breach and default of the terms and conditions of the Construction Loan Agreement and Trust Deed Note as of August 15, 1994." (Page 24, Brief of Appellants) the Honorable Gordon R. Hall never ruled that Mr. Coons was in breach or in default of the terms and conditions of the Construction Loan Agreement, and in fact he ruled Buyers (Crowleys) were to forego interest or any other sums deemed to have accrued in connection with the construction loan.

POINT V

MR. COONS IS ENTITLED TO AN AWARD EVEN THOUGH HIS LICENSE HAD EXPIRED.

The Honorable Gordon R. Hall addressed that issue very adequately in the Award wherein Judge Hall states that Seller (Mr. Coons) did not act as a contractor for Buyer in the construction of the house, that Mr. Coons was the owner and built the house on speculation or for his own occupancy. The Honorable Gordon R. Hall therefore determined that Mr. Coons was not precluded from enforcing the terms of the contract.

Appellants are evidently suggesting that Appellants receive the property as a gift from Mr. Coons. Appellants are desirous of obtaining a windfall by forcing Mr. Coons to transfer title to the home to Mr. and Mrs. Crowley without compensation.

POINT VI

MR. COONS IS ENTITLED TO RECEIVE AN AWARD IN EXCESS OF \$5,000.

As stated above, the Real Estate Purchase Contract sets forth the fact that if Mr. Coons received the \$5,000 Earnest Money as liquidated damages, Mr. Coons would continue to own the home and Mr. and Mrs. Crowley would be relieved of any further responsibility or liability whatsoever in purchasing the home. Mr. Coons would then be able to sell the home and receive the appreciated value.

POINT VII

APPELLEES ARE ENTITLED TO AWARD OF ATTORNEY'S FEES AND COSTS

It is Appellees' position that Appellants had no meritorious claim in this matter, that the appeal is frivolous, and as a result, Appellees should be awarded attorney's fees for costs incurred in the appeal. Porco v. Porco, 752 P.2d, 365, p. 368.

POINT VIII

BURDEN OF PROOF IS ON APPELLANTS TO SHOW ARBITRATOR DISREGARDED THE LAW

The burden of proof is on Appellants to show that the Honorable Gordon R. Hall exceeded his powers, showed partiality, engaged in misconduct which prejudiced the rights of the parties and that the award was procured by undue means. Appellants have failed to show there was any reasonable means by which the Honorable Gordon R. Hall showed any disregard of the law. Arbitrators are presumptively able to interpret contracts, and know the law, and it is upon Appellants to show disregard of the law in this matter. In this case, there is no proof that the Honorable Gordon R. Hall disregarded the law.

In 4 Am. Jur.2d, Section 234, Page 259, Section XII (Vacating or Correcting the Award) it states:

An award will not be held invalid under the common law merely because unjust, inadequate, excessive, or contrary to law. Nothing in the award relative to the merits of the controversy as submitted, however wrongly decided is grounds for setting it aside. An award will not be set aside merely because the arbitrators did not follow strict legal rules in hearing and deciding the case, unless they were required by the submission or by statute to follow such rules.

It is the general rule that, unless restricted by the agreement of submission, arbitrators are the final judges of both law and fact. Pg. 259, 260, 261

SUMMARY OF ARGUMENT

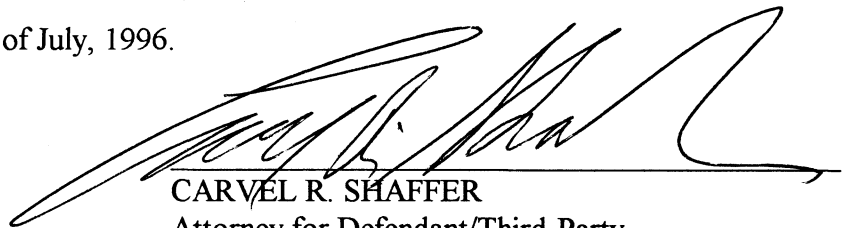
It is the position of Appellees that the Honorable Gordon R. Hall's Arbitration Award and supplement thereto should be upheld in its entirety. It is difficult to satisfy all parties in any dispute. The Honorable Gordon R. Hall with concurrence of the parties provided an equitable remedy for both. The Honorable Gordon R. Hall certainly understands the law, followed the law and the Arbitration Award and supplement thereto are in total conformity with the law.

CONCLUSION

Appellees, Douglas B. Coons and Laura Coons, submit that the Arbitration Award and Supplement to Arbitration must be confirmed by this Court. Subsequent to Arbitration being effective in Utah, Courts have favored Arbitration. The Judicial Review of Arbitration Awards should strictly be limited to statutory grounds and procedures for review.

Appellees, Douglas B. Coons and Laura Coons, hereby respectfully request that the Award and Supplement thereto in this matter issued by the Honorable Judge Gordon R. Hall, be upheld.

DATED this 17 day of July, 1996.



CARVEL R. SHAFFER
Attorney for Defendant/Third-Party
Plaintiffs/Appellees

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of July, 1996, I served two copies of the foregoing
by placing them in the United States Mail postage pre-paid to the following:

MARK P. ETHINGTON
DAY & BARNEY
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 and Michael E. Crowley

A handwritten signature in black ink, appearing to read "Mark P. Ethington", is written over a horizontal line.

C:\OFFICE\WPWIN\WPDOCS\COON-FIN.BRF

Tab A

EARNEST MONEY RECEIPT

The Buyer Debra H. Cronley offers to purchase the Property described below and delivers to the Seller, as Earnest Money Deposit \$ 5,000.00 In the form of check to be deposited within three business days after Acceptance of this offer to purchase by all parties.

None Received by _____ on _____ (Date)
Brokerage _____ Phone Number _____

1. PROPERTY: 3550 Vinecrest Drive
City Bountiful County Blaine, Utah.
1.1 Included Items. Unless excluded herein, this sale shall include all fixtures presently attached to the Property: plumbing, heating, air-conditioning and venting fixtures and equipment, water heater, built-in appliances, light fixtures and bulbs, bathroom fixtures, curtains and draperies and rods, window and door screens, storm doors, window blinds, awnings, installed television antenna, satellite dishes and system, wall-to-wall carpets, automatic garage door opener and transmitter(s), fencing, trees and shrubs. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: None

1.2 Excluded Items. The following items are excluded from this sale _____.

2. PURCHASE PRICE AND FINANCING. Buyer agrees to pay for the Property as follows:

\$ 5,000.00 Earnest Money Deposit
\$ _____ Existing Loan: Buyer agrees to assume and pay an existing loan in this approximate amount presently payable at \$ _____ per month including principal, interest (presently at _____ % per annum), ☐ real estate taxes, ☐ property insurance premium and ☐ mortgage insurance premium. Buyer agrees to pay any transfer and assumption fees. Seller ☐ shall ☐ shall not be released from liability on said loan. Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be adjusted in ☐ Cash ☐ Other _____.
\$ _____ Proceeds from New Loan: Buyer reserves the right to apply for any of the following loans under the terms described below.
☐ Conventional ☐ FHA ☐ VA ☐ Other _____. Seller agrees to pay \$ _____ toward Discount Points and Buyer's other loan and closing costs, to be allocated at Buyer's discretion.
☐ For a fixed rate loan: Amortized and payable over _____ years, interest shall not exceed _____ % per annum; monthly principal and interest payment shall not exceed \$ _____, or
☐ For an Adjustable Rate Mortgage (ARM): Amortized and payable over _____ years; initial interest rate shall not exceed _____ % per annum; initial monthly principal and interest payments shall not exceed \$ _____. Maximum Life Time interest rate shall not exceed _____ % per annum.
\$ _____ Seller Financing: (See attached Seller Financing Addendum)
\$ _____ Other: _____
\$ 830,000.00 Balance of Purchase Price in Cash at Closing
\$ 835,000.00 Total Purchase Price

2.1 Existing/New Loan Application. Buyer agrees to make application for a loan specified above within _____ calendar days (Application Date) after Acceptance. Buyer will have made Loan Application only when Buyer has: (a) completed, signed, and delivered to the Lender the initial loan application and documentation required by the Lender; and (b) paid all loan application fees as required by the Lender. Buyer will continue to provide the Lender with any additional documentation as required by the Lender. If, within seven calendar days after receipt of written request from Seller, Buyer fails to provide to Seller written evidence that Buyer has made Loan Application by the Application Date, then Seller may, prior to the Qualification Date below, cancel this Contract by providing written notice to Buyer. The Brokerage, upon receipt of a copy of such written notice, shall release to Seller, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit without the requirement of any further written authorization from Buyer.

2.2 Qualification. Buyer and the Property must qualify for a loan for which application has been made under section 2.1 within _____ calendar days (Qualification Date) after Acceptance. The Property is deemed qualified if, on or before the Qualification Date, the Property, in its current condition and for the Buyer's intended use, has appraised at a value not less than the Total Purchase Price. Buyer is deemed qualified if, on or before the Qualification Date, the Lender verifies in writing that Buyer has been approved as of the verification date.

2.3 Qualification Contingency. If Seller has not previously voided this Contract as provided in Section 2.1, and either the Property or Buyer has failed to qualify on or before the Qualification Date, either party may cancel this Contract by providing written notice to the other party within three calendar days after the Qualification Date, otherwise Buyer and the Property are deemed qualified. The Brokerage, upon receipt of a copy of such written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization of Seller.

3. CLOSING. This transaction shall be closed on or before April 15, 1994. Closing shall occur when: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/title company), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; and (b) the monies required to be paid under these documents, have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated as set forth in this Section. Unearned deposits on tenancies shall be transferred to Buyer at Closing. Prorations set forth in this Section, shall be made as of ☒ date of Closing ☐ date of possession ☐ other _____.

4. POSSESSION. Unless otherwise agreed in writing by the parties, Seller shall deliver possession to Buyer within 8 hours after Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract the listing agent N/A represents ☐ Seller ☐ Buyer, and the selling agent N/A represents ☐ Seller ☐ Buyer. Buyer and Seller confirm that prior to signing this Contract written disclosure of the agency relationship(s) was provided to him/her. () Buyer's initials () Seller's initials.

6. TITLE TO PROPERTY AND TITLE INSURANCE. (a) Seller has, or shall have at Closing, fee title to the Property and agrees to convey such title to Buyer by general warranty deed, free of financial encumbrances as warranted under Section 10.6; (b) Seller agrees to pay for and furnish Buyer at Closing with a current standard form owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall conform with Seller's obligations under subsections (a) and (b) above. Unless otherwise agreed under subsection 8.4, the commitment shall conform with the title insurance commitment provided under Section 7.

7. SELLER DISCLOSURES. No later than 3 calendar days after Acceptance, Seller will deliver to Buyer the following Seller Disclosures: (a) a Seller property condition disclosure for the Property, signed and dated by Seller; (b) a commitment for the policy of title insurance required under Section 6, to be issued by the title insurance company chosen by Seller, including copies of all documents listed as Exceptions on the Commitment; (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing; and (d) a copy of all leases affecting the Property not expiring prior to Closing. Seller agrees to pay any title commitment cancellation charge under subsection (b).

8. GENERAL CONTINGENCIES. In addition to Qualification under Section 2.2 this offer is: (a) subject to Buyer's approval of the content of each of the items referenced in Section 7 above; and (b) ☒ is ☐ is not subject to Buyer's approval of an inspection of the Property. The inspection shall be paid for by Buyer and shall be conducted by an individual/company of Buyer's choice. Seller agrees to fully cooperate with such inspection and a walk-through inspection under Section 11 and to make the Property available for the same.

8.1 Buyer shall have 3 calendar days after Acceptance in which to review the content of Seller Disclosures, and, if the inspection contingency applies, to complete and evaluate the inspection of the Property, and to determine, if, in Buyer's sole discretion, the content of all Seller Disclosures (including the Property Inspection) is acceptable.

8.2 If Buyer does not deliver a written objection to Seller regarding a Seller Disclosure or the Property Inspection within the time provided in subsection 8.1 above, that document or inspection will be deemed approved or waived by Buyer.

8.3 If Buyer objects, Buyer and Seller shall have seven calendar days after receipt of the objections to resolve Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer's objections are not resolved within the seven calendar days, Buyer may void this Contract by providing written notice to Seller within the same seven calendar days. The Brokerage, upon receipt of a copy of Buyer's written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect those items warranted in Section 11.

8.4 Resolution of Buyer's objections under Section 8.3 shall be in writing and shall be specifically enforceable as covenants of this Contract.

9. SPECIAL CONTINGENCIES. This offer is made subject to: # 7

The terms of attached Addendum # 7 are incorporated into this Contract by this reference.

10. SELLER'S LIMITED WARRANTIES. Seller's warranties to Buyer regarding the condition of the Property are limited to the following:

10.1 When seller delivers possession of the Property to Buyer, it will be broom-clean and free of debris and personal belongings;

10.2 Seller will deliver possession of the Property to Buyer with the plumbing, plumbed fixtures, heating, cooling, ventilating, electrical and sprinkler systems, appliances and fireplaces in working order;

10.3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller;

10.4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations;

10.5 Seller will be responsible for repairing any of Seller's moving-related damage to the Property;

10.6 At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations which Buyer has not so assumed; and

10.7 As of Closing, Seller has no knowledge of any claim or notice of an environmental, building or zoning code violation regarding the Property which has not been resolved.

11. VERIFICATION OF WARRANTED AND INCLUDED ITEMS. Before Closing, Buyer may conduct a "walk-through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify items included in Section 1.1 are presently on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer, escrow an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk-through" inspection, or to claim during the "walk-through" inspection that the Property does not include all items referenced in Section 1.1, or is not in the condition warranted in Section 10, shall not constitute a waiver by Buyer of Buyer's rights under Section 1.1 or of the warranties contained in Section 10.

12. CHANGES DURING TRANSACTION. Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

14. COMPLETE CONTRACT. This instrument together with its addenda, any attached exhibits, and Seller Disclosures constitute the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit, the breach or termination of this Contract, or the services relating to this transaction, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Disputes shall include representations made by the parties, any Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Each party agrees to bear its own costs of mediation. Any agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation. By marking this box ☐, and adding their initials, the Buyer (), and the Seller (), agree that mediation under this Section 15 is not mandatory, but is optional upon agreement of all parties.

16. DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages, a sum equal to the Earnest Money Deposit, or to sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.

17. ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.

18. DISPOSITION OF EARNEST MONEY. The Earnest Money Deposit shall not be released unless it is authorized by: (a) Section 2, Section 8.3 or Section 15; (b) separate written agreement of the parties; or (c) court order.

19. ABROGATION. Except for express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss or damage to the Property shall be borne by Seller until Closing.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which references a date shall be required absolutely by 5:00 PM Mountain Time on the stated date.

22. FACSIMILE (FAX) DOCUMENTS. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. If the transaction involves multiple Buyers or Sellers, facsimile transmissions may be executed in counterparts.

23. ACCEPTANCE. Acceptance occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counter where noted to indicate acceptance; and (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.

24. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 ☐ AM ☒ PM Mountain Time 2-7-94 1994, this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

(Buyer's Signature)

(Offer Date)

(Buyer's Signature)

(Offer Date)

The above date shall be the Offer Reference Date.

(Notice Address)

(Phone)

(Notice Address)

(Phone)

ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

☒ Acceptance of Offer to Purchase: Seller Accepts the foregoing offer on the terms and conditions specified above, and the addendum

Douglas Coons
(Seller's Signature)

2-7-94
(Date)

4:30 P.M.
(Time)

Sandra H. Crowley
(Seller's Signature)

2-7-94
(Date)

5:10 PM
(Time)

673 W. 2300 N.
(Notice Address)

W. Bt. Mt 84087

(Notice Address)

☐ Rejection: Seller Rejects the foregoing offer. _____ (Seller's Initials) _____ (Date) _____ (Time)

☐ Counter Offer: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer # _____.

Tab B

Addendum to Real Estate Purchase Agreement

The Seller cannot give a definite date of closing until the Buyer gives to the Seller a list in writing of all his selections, i.e.: Cabinets, hardwood flooring, brick, floor coverings, paint colors, etc. At that time the Seller will schedule all the work for completion and may have to give the Buyer a new date for completion, without penalty.

Plumbing Fixtures

a. Bath sinks - Briggs 6510 - 20x17 oval,
faucet Moen Chateau 4621

b. Kitchen sink - Kohler efficiency, white
33x22 Delta faucet

c. Master bedroom bath - Faucet sinks,
Moen 4621, tub faucet T973W
Moen
1-50 gal. water heater

2-7-94 Lebra S. Crowley
2-9-94 Douglas B. Coors

Air Conditioning

Unit I upstairs 3 ton central air
Unit II basement 3 ton central air

Paint

One color throughout house

Gutters

Across front and back of house.

Bedroom Closets

To be finished by buyer.

~~Garage~~

Garage Door Opener's

Builder will provide only two (2)
automatic door opener's

Intercom

2-7-94 Debra S Browley
Will be installed.

DATE: _____
PAGE: _____

Alarm System / Home Entertainment,
Central Pac., Soft Water and Steamer.

These items are roughed in by the Seller. The Buyer will choose which make of system and which accessories, and pay the cost for their completion either through the Seller, or by himself at another date.

Allowances

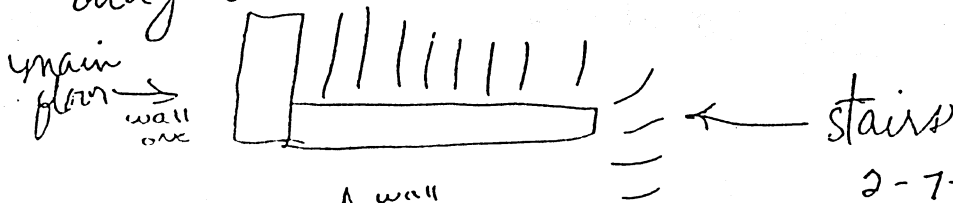
From seller to buyer:

a. Cabinet bid	D.H.C. \$20,400.00/	
b. light fixtures	D.H.C. - 2,000.00/	5,000.00
c. floor coverings (all)	D.H.C. - 7,100.00/	12,100.00
d. stair railing	- 1,600.00/	
e. appliances:	D.H.C. - 3,000.00/	

1. free standing or
x drop-in stove
2. dishwasher
3. hood.

Seller shall also open the two walls on the main level leading to the basement.

diagram:



2-7-94 Debra J Crowley

Electrical Cover Plates - white standard

Allowances

a. Mantel	\$475.00/
b. Intercom	-650.00/
c. Door handles	
1) privacy each	-17.79
2) passage each	-16.01
3) keyed each	-22.75
4) dead bolt each	-17.55
handles are Weiser Corsair in bright brass	

Brick - 9 ft. in rear of house.

Retaining Wall -

The rock retaining wall in front will be done as described by seller. ✓

Dirt -

The dirt removed from back yard will be done as described by seller.

2-9-94 Douglas B. Coors

Fireplace -

2-7-94 Debra S. Crowley

The sale of the home also includes one row of tile around fireplace to be paid

PREPARED BY	
DATE	

Seller must also approve choices made by buyer of the following items.

- a. hand rail
- b. cabinets
- c. stucco color
- d. brick

If the Seller does not approve these choices made by the Buyer, then the Buyer at his option, can pay the total cost of each item in full in advance. The money would be non-refundable.

Example

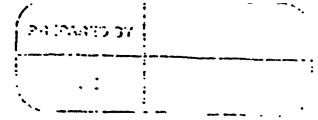
The Seller would most likely not allow:

1. fir handrail
2. plastic cabinets
3. stucco color (pink)
4. brick that's unpopular or unattractive in the seller's opinion

Stucco

The brick and stucco color must be approved by the Architectural Committee.

2-9-94 Douglas B. Conn



Finishing of home

During the finishing of the home if any work is of poor quality, the Buyer must contact the Seller within 48 hrs. in writing after the completion of that particular item.

Before the Buyer takes possession of the home the Buyer must give a written list to the Seller of any item not approved by the Buyer.

All changes are to be in writing.

All extras are to be paid in advance or arrangements of payment agreed to by both parties in writing.

Earnest money

At that point of construction that the Buyer chooses cabinets, hand railings, etc., the earnest money is no longer refunded to the Buyer.

2-7-94 Debra S Crowley

If there is an ambiguity between the Real Estate Purchase Contract and the Addendums (pgs 1-7), the Addendums will be controlling.

Tile

Tile under washer and dryer will be white.

Deck top and Splash in Masterbedrm. bathroom.
Will be white marble.

Title Work

The title work is to be done by Black's Title of Bountiful, Utah.

2-7-94 Debra H Crowley
2-9-94 Douglas B. Coons

Tab C

In the Matter of the Arbitration Between:

GOLDEN MEADOWS, INC.

vs.

DOUGLAS G. COONS and LAURIE COONS

vs.

DEBRA G. CROWLEY and MICHAEL E. CROWLEY

ARBITRATION AWARD

X The Real Estate Purchase Contract dated February 1, 1994, together with the addenda thereto bearing dates of February 3, 1994, and February 28, 1994, remain in full force and effect and binding upon the parties. The 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. In addition, the parties reached a subsequent agreement which permitted the Buyer to contract with others, at her expense, to customize the house and to upgrade the finish work to satisfy her personal tastes. The Buyer was also authorized to contract independently for the work necessary to finish the basement level which was not otherwise provided for by the contract of sale. The performance of this work carried on long after the designated closing date of April 15, 1994, and remains uncompleted today.

From and since the designated closing date of April 15, 1994, there has been a general escalation of property values in the area, and the subject property thus has significant more value at present as is reflected in the appraisals submitted by the parties.

The various stages of construction were duly inspected and approved by Bountiful City, the inspection authority, and no departures from the provisions of the Uniform Building Code were noted.

At a time pertinent to the contractual relationship of the parties, Seller was without a valid contractor's license due to inadvertence in the non-payment of a renewal fee. However, Seller did not act as a contractor for Buyer in the construction of the house. Rather, he was the owner and built the house on speculation or for his own occupancy. He is, therefore, not precluded from enforcing the terms of the contract of sale.

X Golden 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.

Each of the parties have expressed their desire and have specifically requested that equity be done between them, and indeed the circumstances of this case lend themselves well to equitable remedies. As a consequence, the parties shall proceed forthwith to complete the construction of the house so as to

obtain final inspection and approval and the certificate of occupancy necessary to close the sale. Specifically, the Buyer shall complete the work undertaken to customize the house and bear the expense thereof. Seller in turn, at his expense, shall perform in a good workmanlike manner, in accordance with the Uniform Building Code and the inspection and approval authority of Bountiful City, all of the remaining work necessary to complete the house.

✓ The parties shall fully cooperate in scheduling, coordinating, and performing the work necessary to complete the construction of the house, all of which shall be accomplished within the next 30 days. Inasmuch as the finish of the basement is being done by Buyer under a separate building permit, completion of that project need not delay the closing of the sale.

Any mechanics' liens outstanding against the property shall be promptly satisfied by the party obligated therefor so as not to delay closing of the sale.

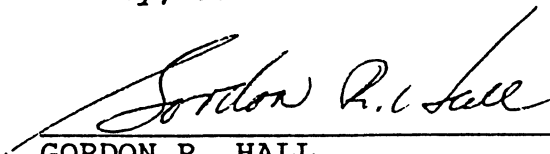
The purchase price of \$335,000.00, less the earnest money deposit of \$5,000.00, shall be adjusted in accord with the allowances and extras set forth in the sales contract addenda.

At the time of closing, Seller shall pay to Golden Meadows, Inc., the sum paid in consideration of the assignment of the construction loan instruments from Zions Mortgage Company. Buyer shall forego the payment of any late charges, interest that may

have accrued, or any other sums deemed to have accrued in connection with the construction loan. Such shall be done for the purpose of sharing with the Seller some measure of the appreciated value of the property occasioned by the escalation of values generally in the area during the time this matter has been in dispute as is reflected by the respective appraisals submitted by the parties.

Each of the parties shall assume and pay their own costs and attorney fees.

DATED this 24th day of February, 1995.



GORDON R. HALL
Arbitrator

In the Matter of the Arbitration Between:

GOLDEN MEADOWS, INC.

vs.

DOUGLAS G. COONS and LAURIE COONS

vs.

DEBRA G. CROWLEY and MICHAEL E. CROWLEY

SUPPLEMENT TO ARBITRATION AWARD

The parties have expressed their inability to agree upon the adjustments to be made in the purchase price for the allowances and extras provided for in the sales contract and the addenda thereto. The parties also recite instances wherein they each departed from the contract provisions which required changes in the work to be reduced to writing. In regard thereto, there is considerable dispute in the testimony offered in support of the respective positions of the parties. As a consequence, and at the mutual instance and request of the parties that equity be done, the adjustments to be made at closing are submitted for determination by the arbitrator.

NOW, THEREFORE, the credits due at closing are determined to be as follows:

ALLOWANCES

Cabinets
Light fixtures
Floor coverings
Stair railing
Fireplace
Appliances
Hall bath, tile
Master bath
Soil removal, rear yard

TOTAL

CREDITS TO BUYER

\$ 20,400.00
3,100.00
12,375.00
1,600.00
200.00
3,000.00
441.00
2,120.00
2,500.00

\$ 45,736.00

EXTRAS

Brick \$ 3,135.00
Less stucco cost 1,500.00

Chimney (brick) 1,188.00
Less stucco cost 388.00

Floor coverings

Paint 15,500.00
Less original bid 5,661.00
Less advance of Buyer

TOTAL

CREDITS TO SELLER

\$ 1,635.00

800.00

1,748.79

9,839.00

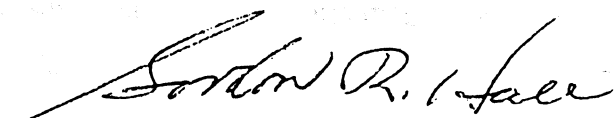
6,500.00

3,339.00

\$ 7,522.79

In all other respects, the Award bearing date of February 24, 1995, remains the same.

DATED this 1st day of May, 1995.


GORDON R. HALL
Arbitrator

Tab D

Steven D. Crawley (0750)
WALSTAD & BABCOCK
Attorneys for Defendants and
Third-Party Plaintiffs
57 West South Temple, Suite 800
Salt Lake City, Utah 84101
Telephone: 531-7000

FILED IN CLERK'S OFFICE
DAVIS COUNTY, UTAH

AUG 16 10 07 AM '95

CLERK, 2ND DIST. COURT

BY
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY
STATE OF UTAH

GOLDEN MEADOWS, INC., a Utah
corporation,

Plaintiff,

vs.

DOUGLAS B. COONS and LAURA
COONS,

Defendants and
Third-Party
Plaintiffs,

vs.

DEBRA G. CROWLEY and MICHAEL E.
CROWLEY,

Third-Party
Defendants.

ORDER DENYING MOTION TO
VACATE OR MODIFY AND
ORDER CONFIRMING
ARBITRATION AWARD

Civil No.: 940700327~~8~~
Judge Memmott

Plaintiff's and Third-Party Defendants' Motion to Set Aside Arbitration Agreement or in the alternative Motion to Vacate and/or Modify Arbitration Award came on for hearing before the above entitled Court on July 14, 1995. Larry L. Whyte appeared for Plaintiff and Third-Party Defendants and Steven D. Crawley appeared for Defendants.

During argument, a motion was made by Defendants in open court to confirm the arbitration award.

JUDGMENT ENTERED
X O

00320998

The Court, having reviewed the pleadings, the Arbitration Award of Gordon R. Hall, Arbitrator, dated February 24, 1995 and the Supplement to Arbitration Award, dated May 1, 1995 and considered the arguments of counsel, makes the following findings:

1. The argument put forward by Plaintiff and Third-Party Defendants is that the arbitrator exceeded his powers and that the arbitrator manifestly disregarded the law on some issues presented to the arbitrator.

2. The Arbitration Award and Supplement to Arbitration Award are within the legal parameters that the parties plead because the enforcement of the contract was one of the legal options available to the arbitrator.

3. As a matter of law, the Arbitration Award and the Supplement to Arbitration Award do not exceed the powers of the arbitrator.

4. The clear intent of the Utah Supreme Court is that the Utah Arbitration Act be narrowly construed. The role of this Court is to strictly construe the Act and the Court is bound to give legislative intent to the Act. The Court does not feel that it is appropriate to create an additional standard for the modification or vacation of an arbitration award as suggested by the moving parties.

5. A number of issues presented to the arbitrator required discretion and judgment on the part of the arbitrator in order that they may be resolved. Further, those issues are factually sensitive and as a matter of law the court can not find that there

has been a miscalculation rather there was judgment as to which credits should be given.

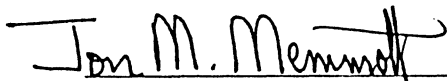
Therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of Plaintiff and Third-Party Defendants to Set Aside Arbitration Agreement or in the alternative Motion to Vacate and/or Modify Arbitration Award is denied;

IT IS FURTHER ORDERED that the Arbitration Award of Gordon R. Hall, Arbitrator, dated February 24, 1995 and the Supplement to Arbitration Award, dated May 1, 1995 are hereby confirmed and entered as a judgment of this Court as provided by §78-31a-16, Utah Code Ann.

DATED this 11th day of Aug., 1995.

BY THE COURT:



Jon M. Memmott
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July,
1995, I mailed a copy of the foregoing, ORDER DENYING MOTION TO
VACATE OR MODIFY AND ORDER CONFIRMING AWARD, postage prepaid, to
the following:

Larry Whyte
265 East 100 South, Suite 300
Salt Lake City, Utah 84111

David H. Day
Mark T. Ethington
DAY & BARNEY
45 East Vine Street
Murray, Utah 84107

LeDeana Wade

Tab E

Douglas B. Coons Construction
673 W. 2300 North
West Bountiful, Utah 84087
801-292-3871

July 22, 1994

Debra Crowley
1983 Ridgewood Way
Bountiful, Utah

Debra Crowley
c/o Embassy Suites
14th South, West Temple
Salt Lake City, Utah

RE: Home being constructed at 35 South Viewcrest Drive, Bountiful

Dear Debra:

This letter is to confirm that your husband, Mike, informed me on Wednesday July 20, 1994, that you no longer want to buy the home that I am building for you and that you would not pay for some of the extras in the home. Since almost all of my dealings during construction have been with your husband I believe he is authorized to speak on your behalf. I consider each of those statements to be a breach and default of the Real Estate Purchase Contract that you entered into with me. As you can imagine I was surprised to be told that. I have tried hard to accommodate both you and your husband in customizing this home.

I now need to get on with resolving the problem that has been forced upon me. Beginning Tuesday July 26, 1994, I will mitigate my damages by continuing with work towards completion of the home as I see fit (which will not necessarily be according to the finishes that you had requested). I will also put the home on the market to sell it as soon as practicable in order to pay off the construction loan and other construction bills that I have incurred. According to the terms of our contract (and the addendum), I will retain the Earnest Money Deposit as liquidated damages due to your defaults.

If you want to remedy the breaches and defaults of the agreement that have occurred please contact me by noon on Tuesday, July 26, 1994, and be prepared to demonstrate your ability to pay for the extras now and also pay for the home at a closing in the immediate future. I hope that you will honor the contract we entered into and save yourself the financial impacts of breaching the contract. If I do not hear from you by that time I will proceed as outlined above.

Sincerely yours,

Douglas B. Coons

cc: Mike Coons- Kelly Co.

Tab F

BABCOCK, P.C.

MITT
BOSTWICK
CRAWLEY
KASEN
PRICE
BABCOCK
NEUENSCHWANDER
WALSTAD, P.C.

BARRY — OF COUNSEL

IN ILLINOIS
IN PENNSYLVANIA
IN CALIFORNIA

WALSTAD & BABCOCK

A PARTNERSHIP OF
PROFESSIONAL CORPORATIONS
ATTORNEYS & COUNSELORS AT LAW
TEMPLE VIEW CENTRE
57 WEST SOUTH TEMPLE, 8TH FLOOR
SALT LAKE CITY, UTAH 84101
(801) 531-7000
FAX: (801) 531-7060

PROVO OFFICE

COTTON TREE SQUARE SUITE 15
2255 NORTH UNIVERSITY PARKWAY
PROVO, UTAH 84604

VIA HAND DELIVERY

July 28, 1994

Debra Crowley
c/o Embassy Suites
8th South, West Temple
Salt Lake City, Utah

RE: Home being constructed by Doug Coons Construction

Dear Mrs. Crowley:

Please be advised that this office represents Doug Coons Construction in relation to the agreement to build a home for you in Bountiful. This letter also confirms that both you and your husband, Mike, informed Doug Coons on Friday, July 22, 1994, that you no longer want to buy the home that he has been constructing for you. Your stated reason is that the home was costing too much. Your refusal to consummate the purchase is a breach and default of the Real Estate Purchase Contract that you entered into with Doug Coons Construction.

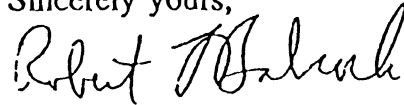
In order to mitigate his damages, Doug Coons Construction will now proceed to list the property for sale to others and will continue with work towards completion of the home as I see fit (which will not necessarily be according to the finishes that you had requested). According to the terms of the Real Estate Purchase Contract (and the addendum), Doug Coons Construction will retain the Earnest Money Deposit as liquidated damages due to your defaults.

Doug Coons Construction will give you one last opportunity to remedy the breaches and defaults of the Real Estate Purchase Contract that have occurred thereby potentially salvaging some of the investment that you have made. Please contact me by

Mrs. Debra Crowley
July 28, 1994
Page 2, 1994

the close of business on Friday, July 29, 1994, and be prepared to demonstrate your ability to pay for the extras now that have been performed on your behalf and also pay for the home at a closing in the immediate future. If I do not hear from you we will assume that you have no further interest in the home. Please govern yourself accordingly.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert F. Babcock".

Robert F. Babcock

cc: Doug Coons Construction
Mike Crowley- Kelly Company (VIA HAND DELIVERY)

Tab G

TRUST DEED NOTE
(Construction Loan)

DO NOT DESTROY THIS NOTE: When paid, this Note, with Trust Deed securing same, must be surrendered to Trustee for cancellation, before reconveyance will be made.

\$ 179,000.00

Bountiful, Utah

June 26, 1992

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to
ZIONS MORTGAGE COMPANY, a Utah Corporation or order, the principal sum of
 One Hundred Seventy Nine Thousand and No/100
 DOLLARS (\$ 179,000.00) payable as follows, viz:

- a. Interest shall accrue hereunder at an annual rate of 2.000 % above, the base rate of interest, (as defined below), being offered by Zions First National Bank, as the same may change or be adjusted from time to time. Upon any default hereunder which is not cured within ten days, the interest rate hereon shall immediately increase to an annual rate of 5.000 % above the Base Rate.
- b. The Base Rate of said Bank on the date of this Note is 6.500 % per annum. The interest rates payable hereon shall be effective both before and after judgment.
- c. The rate of interest applicable under this Note shall change on the first day of each month following a change in Base Rate, except that the rate of interest applicable shall at no time be less than 8.000 %.
- d. The maximum interest rate on this obligation shall not exceed 18.000 %.
- e. Interest payments shall be payable on demand, and, monthly.
- f. The entire outstanding principal balance and accrued but unpaid interest shall be paid in full on or before **March 26, 1993**.
- g. Interest is based on a year of 365/365.
- h. A late charge of 5.0% of the total monthly installment may be added to any payment that is not received within 15 days after the payment is due.

This Note is payable in lawful money of the United States of America to Zions Mortgage Company, a Utah Corporation at its Main Office, at 4460 South Highland Drive, Salt Lake City, Utah 84124, or at such other place as the legal holder hereof may designate in writing, delivered or mailed to the debtor.

In case of default in payment of any said installments of principals and interest or any part thereof, it shall be optional with the legal holder of this Note to declare the entire principal sum hereof due and payable, and proceedings may at once be instituted for the enforcement and collection of the same by law. If this Note is placed with an attorney for collection, or if suit be instituted for collection, then in either event, the undersigned agrees to pay reasonable attorney's fees.

The makers, sureties, guarantors and endorser hereof severally waive presentment for payment, protest, notice of protest and of non-payment of this Note, and consent that this Note and any payment due or to become due hereunder may be extended renewed without previous demand or notice.

This Note is to be governed by and construed in accordance with the laws of the State of Utah.

This Note is given for an actual loan of the above amount and is secured by a Trust Deed of even date herewith and Construction Loan Agreement.

ARBITRATION DISCLOSURES:

1. ARBITRATION IS USUALLY FINAL AND BINDING ON THE PARTIES AND SUBJECT ONLY TO A VERY LIMITED REVIEW BY A COURT.
2. THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.
3. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS.
4. ARBITRATORS' AWARDS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY ARBITRATORS IS STRICTLY LIMITED.
5. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.
6. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

ARBITRATION PROVISIONS:

(a) Any controversy or claim between or among the parties, including but not limited to those arising out of or relating to this Note or any agreements, security instruments relating to the pledge of collateral, or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of any party be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in Salt Lake City, Utah. The arbitrator(s) shall have the qualifications set forth in subparagraph (c) hereto. All statutes of limitations which would otherwise be applicable in a judicial action brought by a party shall apply to any arbitration or reference proceeding hereunder.

(b) In any judicial action or proceeding arising out of or relating to this Note or any agreements, security instruments relating to the pledged collateral or instruments relating hereto or delivered in connection herewith, including but not limited to a claim based on or arising from an alleged tort, if the controversy or claim is not submitted to arbitration as provided and limited in subparagraph (a) hereto, all decisions of fact and law shall be determined by a reference in accordance with Rule 53 of the Federal Rules of Civil Procedure or Rule 53 of the Utah Rules of Civil Procedure or other comparable, applicable reference procedure. The parties shall designate to the court the referee(s) selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored arbitration proceedings. The referee(s) shall have the qualifications set forth in subparagraph (c) hereto.

(c) The arbitrator(s) or referee(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. A single arbitrator or referee shall be knowledgeable in the subject matter of the dispute. Where three arbitrators or referees conduct an arbitration or reference proceeding, the claim shall be decided by a majority vote of the three arbitrators or referees, at least one of whom must be knowledgeable in the subject matter of the dispute and at least one of whom must be a practicing attorney. The arbitrator(s) or referee(s) shall award recovery of all costs and fees (including reasonable attorneys' fees, administrative fees, arbitrators' fees, and court costs). The arbitrator(s) or referee(s) also may grant provisional or ancillary remedies such as, for example, injunctive relief, attachment, or the appointment of a receiver, either during the pendency of the arbitration or reference proceeding or as part of the arbitration or reference award.

(d) Judgment upon an arbitration or reference award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration or reference award is binding upon the parties only if the amount does not exceed Four Million Dollars (\$4,000,000.00); If the award exceeds that limit, either party may commence legal action for a court trial de novo. Such legal action must be filed within thirty (30) days following the date of the arbitration or reference award; if such legal action is not filed within that time period, the amount of the arbitration or reference award shall be binding. The computation of the total amount of an arbitration or reference award shall include amounts awarded for arbitration fees, attorneys' fees, interest, and all other related costs.

(e) At the Bank's option, foreclosure under the deed of trust or mortgage may be accomplished either by exercise of a power of sale under the deed of trust or by judicial foreclosure. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(f) Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this Arbitration paragraph.

Douglas B Coons
DOUGLAS B. COONS

PAY TO THE ORDER OF GOLDEN^{1st} MEADOW, Inc., without recourse

ZIONS MORTGAGE COMPANY

By: Shirley B. Malinsky
Title: Operations Manager

Date: August 15th, 1994

DEFINITION OF BASE RATE

The following definition of Lender's Base Rate may be utilized in any and all documents evidencing loans, present or future, from Zions First National Bank ("Zions"):

Zion's Base Rate means an index which is determined daily by the published commercial loan variable rate index held by any two of the following banks: Chemical Bank, Wells Fargo Bank N.A., and Bank of America N.T. & S.A. In the event no two of the above banks have the same published rate, the bank having the median rate will establish Zion's Base Rate. If, for any reason beyond the control of Zions, any of the aforementioned banks becomes unacceptable as a reference for the purpose of determining the Base Rate used herein, Zions may, five days after posting notice in Zions Bank offices, substitute another comparable bank for the one determined unacceptable. As used in this paragraph, "comparable bank" shall mean one of the ten largest commercial banks headquartered in the United States of America. This definition of Base Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the variable interest rate used herein. It is not the lowest rate at which Zions may make loans.