

1976

Steven D. Walton And Ursula Walton, His Wife;  
Douglas P. Holbrook And Suzanne M. Holbrook,  
His Wife v. State of Utah, By And Through Its Road  
Commission v. Summit County And Summit Park,  
Inc. : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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STEVEN D. WALTON and URSULA )  
WALTON, his wife; DOUGLAS P. )  
HOLBROOK and SUZANNE M. )  
HOLBROOK, his wife, )

Plaintiffs-Appellants, )

vs. )

Case No. 14532

STATE OF UTAH, by and through )  
its ROAD COMMISSION, )

Defendant and )  
Third-Party Plaintiff, )

vs. )

SUMMIT COUNTY and SUMMIT )  
PARK, INC., )

Third-Party Defendants. )

---

BRIEF OF APPELLANTS

APPEAL FROM THE JUDGMENT OF THE  
DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH  
HONORABLE JAMES S. SAWAYA, DISTRICT JUDGE

---

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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STEVEN D. WALTON and URSULA )  
WALTON, his wife; DOUGLAS P. )  
HOLBROOK and SUZANNE M. )  
HOLBROOK, his wife, )

Plaintiffs-Appellants, )

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BRIEF OF APPELLANTS

NATURE OF THE CASE

This action was brought in equity by the Plaintiffs-Appellants to compel the State of Utah to either restore certain property rights taken by the State without the payment of just compensation or to condemn their property.

### DISPOSITION IN THE LOWER COURT

The Trial Court granted a Motion for Summary Judgment which had been filed by the State of Utah on the basis that the requirements of the Utah Governmental Immunity Act, Utah Code Annotated 63-30-1 et. seq. (1953) had not been complied with. Specifically, the State contended and the Trial Court accepted the argument that the Plaintiffs' failure to file written notice of their claim with the Utah Attorney General within one year after their cause of action arose barred them for pursuing the matter.

### RELIEF SOUGHT ON APPEAL

The Appellants seek a reversal of the Summary Judgment entered by the Trial Court and a chance to proceed with their case.

### STATEMENT OF FACTS

The Plaintiffs-Appellants are the owners of two lots in the Summit Park Subdivision, which is located east of Salt Lake City in Summit County.

In 1970 and 1972 (R.114), the State of Utah acquired (by purchase and condemnation) various lots in the Summit Park Plat "E" Subdivision in the general vicinity of the lots owned by the Plaintiffs. The lots were acquired in connection with certain planned changes and improvements involving Summit Drive, a roadway located in the Summit Park Subdivision (see Exhibit A which is attached to Plaintiffs' original Complaint - R.3). The

lots owned by the Plaintiffs were not acquired since the State apparently believed that the planned work on the roadway would not result in a taking of any of the property owned by them. (R.44).

In September of 1972 (R.94) the State completed work on the roadway. The result of the work was the elimination of practical access from the roadway to the cul-de-sac on which the Plaintiffs' lots were located and a consequent taking of the access to Plaintiffs' property. (R.74).

In August of 1971 (R.109), the State entered into a lease with Third-Party Defendant Summit County covering part of the property acquired by the State in connection with the planned improvements to the roadway. The property covered by the lease is located very close to the property owned by the Plaintiffs. Summit County proceeded to locate an equipment shed on the property which, according to the allegations of Plaintiffs' Complaint, violated recorded Summit Park Subdivision Restrictive Covenants (see Exhibit B attached to Plaintiffs' original Complaint - R.5) and resulted in a taking of Plaintiffs' property rights of view and light.

Plaintiffs Steven D. Walton and Ursula Walton are residents of the State of Illinois (Walton deposition - p.3). They had purchased their lot with the thought in mind of someday moving back to Utah and building a home on it. The first time that they became aware of what had happened to the property was in January of 1974 when they traveled to Utah for the funeral

of Mr. Walton's mother (Walton deposition - p.11). They contacted a lawyer and this case was thereafter filed in August of 1974.

Plaintiffs Douglas P. Holbrook and Suzanne M. Holbrook are residents of Salt Lake City, Utah. They too purchased their lot with the idea of eventually building a home on it. (Holbrook deposition - p.4). Mr. Holbrook testified that he first became aware of what the State had done to the property in late 1972 or early 1973 (Holbrook deposition - pp.9,10). Mr. and Mrs. Holbrook became a part of this action when, with leave of the Court, an Amended Complaint was filed naming them as parties plaintiff in December of 1975. (R.74).

#### ISSUE PRESENTED FOR REVIEW

Under the circumstances of this case, are the Plaintiffs barred from prosecuting this equitable action by the one year limitation period contained in the Utah Governmental Immunity Act?

#### ARGUMENT

##### POINT I

WHERE THERE IS A TAKING OF PRIVATE PROPERTY  
WITHOUT JUST COMPENSATION, SOVEREIGN IMMUNITY  
DOES NOT PROTECT THE STATE FROM SUIT AND THUS,  
IN A CASE SUCH AS THIS ONE, THERE IS NO OBL-  
IGATION TO COMPLY WITH THE PROCEDURES SET FORTH  
IN THE STATUTES BY WHICH THE GOVERNMENT WAIVED  
ITS SOVEREIGN IMMUNITY.

In 1965 the State Legislature enacted the Utah Governmental



Immunity Act (Utah Code Annotated 63-30-1 et. seq. (1953)), thereby waiving its immunity from suit for certain designated governmental activities. In connection with this waiver of immunity, procedures and time periods were established for presenting and thereafter prosecuting claims which were authorized by the waiver.

However, long before the passage of this legislation this Court held that the defense of sovereign immunity had no application where the State had taken property, in the constitutional sense, without having agreed to compensate the property owner or instituted condemnation proceedings. State v. District Court, Fourth Judicial District, 94 Utah 384, 78 P.2d 502 (1938). The Court specifically approved the issuance of an injunction under circumstances where property is taken or damaged for public use without appropriate steps being taken in an eminent domain proceeding, and held that governmental immunity is not available as a defense where the aid of equity is sought with respect to an act forbidden by law.

In the case of Hampton v. State Road Commission, 21 Utah 2d 342, 445 P.2d 708 (1968), this Court again held that the defense of sovereign immunity was not available in an equitable action involving an alleged taking of a property right (in that case, as in the instant case, the right of access to property).

Since equitable actions of the sort initiated by the Appellants had been approved by this Court well prior to the passage of the Utah Governmental Immunity Act and since, in such equitable actions, it has always been the rule that the

concept of laches, rather than the otherwise applicable statute of limitations applies (Fisher v. Davis, 77 Utah 81, 291 Pac. 493 (1930)), the question is whether the State Legislature intended to apply the limitation provisions contained in the Utah Governmental Immunity Act to such equitable actions. It is interesting to note that the full title of the Act which was designated as S.B. 4 and was passed by the Legislature in 1965 was "An Act Relating to the Immunity of the State, Its Agencies and Political Subdivisions from Actions at Law; Providing for Exemption Thereof, for the Purchase of Liability Insurance, and for the Payment of Claims and Judgments" (emphasis added). Laws of Utah, 1965, Ch. 139, pg. 390. A review of the provisions of the Act supports the conclusion that it was intended to apply to actions at law for damages and that nothing contained therein was directed towards equitable actions with respect to which the State had already been held to be not immune.

Thus, it seems clear that the limitation provision contained in the Utah Governmental Immunity Act which is relied upon by the State has absolutely no application to this equitable action and that the Trial Court erred in applying it.

#### POINT II

THE TRIAL COURT, SITTING AS A COURT OF EQUITY, SHOULD HAVE APPLIED THE CONCEPT OF LACHES, RATHER THAN THE STATUTORY LIMITATIONS PERIOD. UNDER THE STANDARD OF LACHES THE PLAINTIFFS' ACTION WAS TIMELY COMMENCED AND IT SHOULD BE PERMITTED TO PROCEED.

"The doctrine of laches has existed since the beginning of equity jurisdiction and its existence and application are independent of statutes of limitation". 30A C.J.S. "Equity" §113.

Whereas statutes of limitation are based upon a fixed time period, the equitable concept of "laches" is not. This Court has held that the basic standard to be applied where laches is asserted as a defense is whether the plaintiff neglected, for an unreasonable length of time, and under circumstances suggesting a lack of diligence, to pursue his claim. Ruthrauff v. Silver King Western Mining and Milling Co., 95 Utah 279, 80 P.2d 338 (1938).

Sometimes, however, courts of equity will consider the statute of limitations which would apply to a suit at law in considering the question of laches, though the statute is not binding and other factors such as diligence on the part of the plaintiff and prejudice to the defendant will usually be given principal consideration in deciding whether the action should be permitted to proceed. 30A C.J.S. "Equity" §131. Thus, it might be helpful to consider what the statute of limitations period was which applied at the time that this Court approved the bringing of actions in equity under the circumstances involved in this case.

The statute of limitations which seems to have the closest relationship to a case such as this one is Utah Code Annotated 78-12-26 (1953), which requires that actions for injury to real property be brought within three years after the cause of action

accrued. This statute should be considered in light of the rule that,

"Courts of equity generally decline to apply the statute where the plaintiff neither knew nor had reasonable means for knowing of the existence of a cause of action . . ."

51 Am. Jur. 2d "Limitation of Actions" §146.

Taking into account the concept of laches, the statute of limitations which has the closest relationship to these facts and the equitable rule that lack of knowledge of facts giving rise to a cause of action on the part of the plaintiff will be considered in applying the statute, the Appellants believe that it will be obvious that the Trial Court erred in dismissing the action on the basis that it had not been timely filed.

Plaintiffs' property rights were taken at the following times:

1. Sometime subsequent to August of 1971 the large equipment shed was moved onto property owned by the State which is located very close to the Plaintiffs' property. This action resulted in a taking of the right that the Plaintiffs had to have the applicable restrictive covenants complied with and a taking of their rights of light and view.
2. In September of 1972 the State completed work on Summit Drive, cutting off the access to Plaintiffs' property.

plaintiffs Steven D. Walton and Ursula Walton became aware of what had happened to their property in January of 1974, and plaintiffs Douglas P. Holbrook and Suzanne M. Holbrook became aware of what had happened to their property in late 1972 or early 1973. This action was filed by the Waltons in August of 1974 and the Holbrooks became parties in December of 1975.

Based upon these facts, the Appellants submit that this action was timely filed. It was initiated within six months after the Waltons became aware that they had been injured and the Holbrooks became parties within three years after they learned of the State's actions.

#### CONCLUSION

The Trial Court incorrectly applied a statute of limitations which has no application to this equitable proceeding. Actions such as this one are not covered by sovereign immunity and the statute of limitations contained in the Act by which the State waived part of its immunity specifically applies only to actions at law. It has no bearing on cases such as this one where the State has never been immune from suit.

The Plaintiffs-Appellants pursued their claims against the State with reasonable diligence after they became aware of them and, under the circumstances, the defense of laches does not apply. The decision of the Trial Court should be reversed and the matter should be remanded for trial.

Respectfully submitted,

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