

2007

William P. Ramey III v. Salt Lake City Corporation : Reply Brief

Utah Court of Appeals

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Evelyn Furse; City Attorney's Office; Defendant/Appellee.

William P. Ramey, III; Plaintiff/Appellant Pro Se.

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IN THE UTAH COURT OF APPEALS

<p>William P. RAMEY, III, an individual, Plaintiff/Appellant, <i>pro se</i>,</p> <p>v.</p> <p>SALT LAKE CITY CORPORATION, a Utah corporation, and Defendant/Appellee.</p>	<p>Reply Brief of Appellant</p> <p>Appeal from Civil No. 060920071</p> <p>Appeal Number 20070477</p> <p>ORAL ARGUMENT REQUESTED</p>
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Appeal from the Final Judgment of:

The Honorable Glenn K. Iwasaki
Third Judicial Trial court

Parties or Attorneys:

The Salt Lake City Corporation
Ms. Evelyn Furse
City Attorney's Office
451 S. State St.
Salt Lake City, Utah 84111.
Defendant/Appellee

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Plaintiff/Appellant
Pro Se

FILED
UTAH APPELLATE COURTS
05 2007

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Plaintiff/Appellant
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I. Relevant Facts

This case is far more simple than presented by the Salt lake City Corporation ("SLC Corp") as the following facts will show. William Ramey ("Ramey") purchased certain real property at 38 South 1000 east Salt lake City, UT ("SLC Property") in August of 1995. Ramey purchased the property in reliance upon the granted permits for a remodel done on the SLC Property. A title search produced no adverse encumbrances on the SLC Property prior to Ramey purchasing the SLC Property.

After Ramey closed on the purchase of the SLC Property, the SLC Corp recorded an encumbrance, a Certificate of Noncompliance, on the title to the SLC Property for a matter that had been previously approved through a permit. Accordingly, the SLC Corp disregarded the granted permit, issued a Certificate of Noncompliance, and recorded it on the title to Ramey' SLC Property. However, Ramey was an innocent purchaser.

Ramey then accepted a job offer in Houston, TX and prepared to move back, but was prevented from selling the SLC property because of the improperly issued Notice from the SLC Corp.

After speaking with the SLC Corp, Ramey was instructed to file a Special exception which was duly granted by the SLC Corp and recorded on the property.

After Ramey moved from the SLC Property to Texas, but prior to Ramey selling the SLC Property, the SLC Corp issued another Certificate of Noncompliance and recorded it on the title to the SLC property, thereby preventing Ramey from selling the SLC Property during a time when market values were on the decline.

Accordingly, the SLC Corp approved and permitted a building project twice at the SLC Property only to later disregard that approval on two occasions. Ramey did pursue his administrative remedies. All certainty was removed from the process and the statutory and common law framework under which the permitting process functions was not working properly. The SLC Corp appears to believe that it can, at any time, disregard a previously granted permit or Special Exception, thereby never ending the process.

Ramey then filed the Request for a Temporary Restraining Order from the case below. (See Affidavit of William P. Ramey, III accompanying the Request for a Temporary Restraining Order and Preliminary Injunction)(hereinafter referred to as Affidavit) The TRO was denied on or about December 15, 2005. As a result: (1) Ramey suffered irreparable harm; (2) The injury to Ramey outweighed any alleged damage that the SLC Corp might have experienced, as the damage is quantifiable; (3) The

injunction would have served the public interest; and, (4) There is a substantial likelihood that Ramey would have and will prevail on the merits of the underlying claim, as has been well briefed.

Further well briefed is the fact that the SLC Corp admitted damage to Ramey in the Motion Hearing Transcript from March 12, 2007.

II. Ramey's Requested Injunctive Relief and Accompanying Complaint was Proper

In its' Brief of Appellee, the SLC Corp raises only two issues which need to be addressed in this reply. Namely, the SLC Corp incorrectly states that (1) Ramey was complaining of a land use decision and that Ramey's equitable claims were not proper, and that (2) Ramey's equitable claims are moot. Correctly deciding any one of these issues is reason to remand the case to the District Court for a determination of damages suffered by Ramey because of the SLC Corp's actions.

1. Ramey's Requested Injunctive Relief was to Correct a Broken System not Complaining of a Land Use Decision

The SLC Corp is incorrect in asserting that Ramey's requested injunctive relief was subject to an exhaustion of remedies and that Ramey's requested injunctive relief was subject to the Notice provision prior to filing.

There has long been a common law exception for equitable claims. Jenkins v. Swan 675 P.2d 1145, 1153 (Utah 1983). The SLC Corp cites *Patterson v. Am Fork City*, 2003 UT 7, 67 P.3d 466 for the proposition that Ramey's claim would not enjoy the benefit of the common law exception. However, the SLC Corp draws no analogy between the cases.

The *Patterson* case concerns the expiration of the time limit allowed by ordinance to sue a governmental entity after a Notice has been made of a claim. The *Patterson* case does not have a fact situation whereby the SLC Corp approves projects one day and the next day denies the same project. Moreover, the *Patterson* case does not have a fact situation whereby the SLC Corp approves projects one day and the next day denies the same project and then approves the previously denied project the next day only to later deny the now twice approved project. Accordingly, the fact situations are not the same. Therefore, the *Patterson* case provides no basis for this Court not to recognize the common law exception described in the *Jenkins* case.

2. Ramey's equitable claims are not moot and Ramey still had pending claims for damages at the time of dismissal

The SLC Corp alleges that Ramey's equitable claims are moot because Ramey had the Certificate of Noncompliance removed so that Ramey could

sell the SLC Property. However, the equitable claims were pending at the time of the dismissal without the District Court addressing them. In fact, Ramey continued to suffer the irreparable injury in that he could not sell the SLC Property because of the improper actions of then SLC Corp. The SLC Corp destroyed the alienability of the SLC Property.

Ramey recognized this irreparable injury and promptly, after being notified of the second filed Certificate of Noncompliance, traveled from Texas to Salt Lake City and sought the underlying TRO, which was improperly denied. Ramey's other requested relief was for a Preliminary Injunction, which was never addressed, and various other causes of action for damages suffered.

It is arguable now that damages can now be quantified as the reduction in the value of the home caused by the SLC Corp's actions. However, the requested injunction is not moot because the important public policy of returning certainty to the process is still outstanding and this Court should make it very clear that arbitrary and capricious actions by the SLC Corp will not be tolerated. The permitting and Special Exception process exist to provide procedures to have building projects approved. Reliance on a granted permit and on a granted Special Exception is appropriate. Accordingly, this Court should address this issue on this Appeal and not

deem it moot. The public has a right to have the statutory framework followed by the SLC Corp.

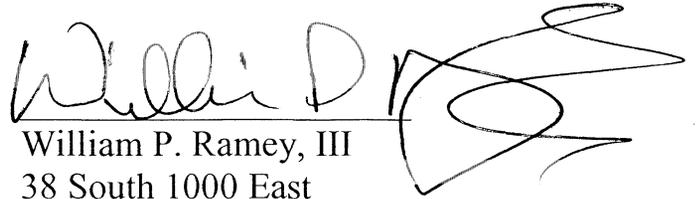
Logically, the reinstatement of the damages with the equitable claims is appropriate. This well-established common law exception to the Governmental Immunity Act does not require the maintenance of two separate actions, as would be the effect if this Court did not reinstate the claims for damages and Ramey was required to file a separate action.

III. PRAYER AND CONCLUSION

Ramey respectfully prays that this Court reinstate Ramey's Causes of Action by Reversing the Trial court's Order Dismissing all of Ramey's causes of Action and Order the Court below to determine the damages suffered by Ramey. Further, Ramey respectfully requests that this Court order the Appellant to pay the costs for this appeal, a reasonable attorney's fee for this appeal, the costs for the Trial court action, and a reasonable attorney's fee for the Trial court action. Ramey finally respectfully prays for Oral argument on this appeal.

Ramey would also call notice to the change of address on file. The Appellant is mailing documents to the wrong address.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "William P. Ramey, III". The signature is written in a cursive style and is positioned above a horizontal line.

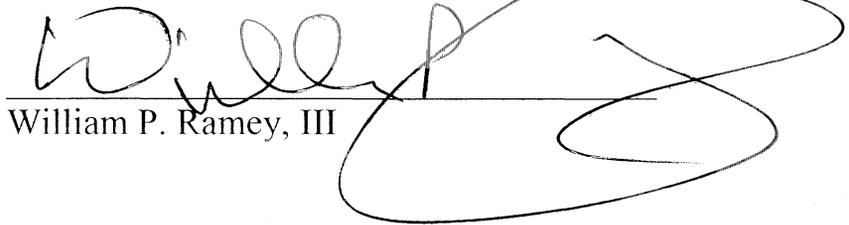
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CERTIFICATE OF SERVICE

I hereby certify that I, William P. Ramey, III, has served, via first class mail, the following documents to the Appellee, The Salt Lake City Corporation at
Ms. Evelyn Furse; The Salt Lake City Corporation; City Attorney's Office;
451 S. State St.; Salt Lake City, Utah 84111.

1. Appellant's Reply Brief

12/6/07
Date



William P. Ramey, III