

1984

UTAH FARM PRODUCTION CREDIT ASSOCIATION/ (Successor in interest to Bank of American Fork) v. WASATCH BANK OF PLEASANT GROVE; BUSHNELL FINANCE & CONSTRUCTION CO.; ADMINISTRATOR/ SMALL BUSINESS ADMINISTRATION; UNITED STATES OF AMERICA; WENDELL HANSEN; LAVON HANSEN; MACKAY B. BOLEY; JOYCE S. BOLEY; MAPLE CANYON INC.; MAPLE CANYON PARTNERSHIP; EVERGREEN TURF AND TREE FARMS/ INC.; WESTERN HOME BANK (PIONEER STATE BANK); RAIN FOR RENT, INC.; UTAH

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STATE TAX COMMISSION; FMA AUTO
LEASING CO.; E. F. HUTTON CREDIT CORP.;
INDUSTRIAL COMMISSION OF UTAH;
STRAWBERRY WATER USERS ASSOC; UTAH
DEPT. OF EMPLOYMENT SECURITY : Reply
Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH FARM PRODUCTION CREDIT :
ASSOCIATION, (Successor in :
interest to Bank of American :
Fork), :

Plaintiff-Respondent, :

vs. :

WASATCH BANK OF PLEASANT :
GROVE; BUSHNELL FINANCE & :
CONSTRUCTION CO.; ADMINIS- :
TRATOR, SMALL BUSINESS :
ADMINISTRATION; UNITED STATES :
OF AMERICA; WENDELL HANSEN; :
LAVON HANSEN; MACKEY B. :
BOLEY; JOYCE S. BOLEY; MAPLE :
CANYON INC.; MAPLE CANYON :
PARTNERSHIP; EVERGREEN TURF :
AND TREE FARMS, INC.; WESTERN :
HOME BANK (PIONEER STATE :
BANK); RAIN FOR RENT, INC.; :
UTAH STATE TAX COMMISSION; :
FMA AUTO LEASING CO.; E. F. :
HUTTON CREDIT CORP.; :
INDUSTRIAL COMMISSION OF UTAH; :
STRAWBERRY WATER USERS ASSOC.; :
UTAH DEPT. OF EMPLOYMENT :
SECURITY, :

Defendants-Appellant. :

JUDGMENT
1984/19988
BOOK

Case No. 19988

REPLY BRIEF OF APPELLANT WASATCH BANK OF PLEASANT GROVE

APPEAL FROM A JUDGMENT RENDERED IN THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
THE HONORABLE DAVID SAM, JUDGE, PRESIDING

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SECURITY, :

Case No. 19988

Defendants-Appellant. :

STATEMENT OF FACTS

Wasatch Bank of Pleasant Grove contests the statement in the third paragraph on page 4 of the respondent's Statement of Facts, which claims that certain deeds were placed in escrow to be delivered upon payment. Respondent gives no citation to the record for that statement and indeed the record does not support the statement.

ARGUMENT

POINT I

WASATCH BANK OF PLEASANT GROVE DID NOT HAVE NOTICE, ACTUAL OR CONSTRUCTIVE, OF ANY INTEREST OF BANK OF AMERICAN FORK IN THE SUBJECT PROPERTY.

There was no evidence before the trial court that Wasatch Bank of Pleasant Grove had any actual notice, prior to obtaining its trust deed for the subject property, of the claims of Bank of American Fork to that property. Although the respondent asserts, on page 8 of its Brief, that Wasatch Bank of Pleasant Grove must have ordered a title report prior to taking its trust deed, that assertion is simply not supported by any evidence which was presented to the trial court.

It is also clear that Wasatch Bank of Pleasant Grove did not have constructive notice of any claim by Bank of American Fork. Although Wasatch Bank of Pleasant Grove has admitted that it had constructive notice of the existence of a contract between Mr. and Mrs. Koyle, trustees, as sellers, and Mr. Hansen and Mr. Boley as purchasers, and also had constructive notice of certain assignments of that contract interest executed by Evergreen Turf and Tree Farms, Inc., to Bank of American Fork, it does not follow that Wasatch Bank of Pleasant Grove had constructive notice of any lien against the property in favor of Bank of American Fork.

As was established in appellant's initial Brief on Appeal, the 16.72 acre parcel of property claimed by Wasatch Bank of Pleasant Grove was presumed to have been deeded by Mr. and Mrs. Koyle and title passed to Mr. Hansen and Mr. Boley, by warranty deed, prior

to the execution of the assignments of the contract interest. The deed was executed and acknowledged prior to the execution or recordation of the assignments. Although the deed was recorded later, it is presumed to have been delivered, and therefore title passed, on the date it was executed. Knighton v. Manning, 84 Utah 1, 33 P.2d 401 (1934); Carmack v. Place, 188 Colo. 303, 535 P.2d 197 (1975). Since the record title indicated that the 16.72 acre parcel of property was no longer subject to the real estate contract, the purported assignments of a contract interest in that same property were of no legal effect.

Utah Farm Production Credit Association, the successor in interest to Bank of American Fork, apparently argues, on page 11 of its Brief, that the warranty deed from Koyles to Hansen and Boley was actually a release of property from a mortgage, and that only Bank of American Fork could release the property from the mortgage. The primary problem with this argument is that the warranty deed in question was dated and presumed delivered, as is established in appellant's initial Brief, long before the assignments to Bank of American Fork were ever executed. The deed, therefore, cannot be considered to be a release from the assignment or mortgage, because the assignment was not in existence at the time the deed was executed and presumed delivered.

It may be that the argument of the respondent is based upon some particular provision of the real estate contract between Koyles and Hansen and Boley. If that is the case, the argument is not well founded. The real estate contract was not recorded, and there was nothing in any recorded document to give Wasatch Bank

of Pleasant Grove constructive notice of the contents of the real estate contract.

The case of Huffaker v. First National Bank, 52 Utah 317, 173 P. 903 (1918), does not, as claimed by the respondent, require a searching investigation into the background of each recorded document. In Huffaker, the seller, Weiss, had conveyed his interest by trust deed to Davis, the escrow agent. Weiss had subsequently also assigned his interest to First National Bank. The assignment to First National Bank was not initially recorded, and while it was still unrecorded, the Inter-Mountain Nursery Company obtained a judgment against Weiss and acquired his interest by execution. First National Bank, in claiming priority over the Nursery Company, claimed that the recordation of the trust deed from Weiss to Davis somehow imposed a duty on the Nursery Company to inquire as to the existence of other assignments. This Court held there was no such duty, and that the interest of Nursery Company's successor had priority over First National Bank. This Court did not discuss, and Huffaker does not support, a rule that would require inquiry in other circumstances.

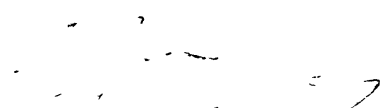
Although recorded documents do give constructive notice of their contents, Utah Code Annotated § 57-1-6 (1974), such documents give notice only of the facts appearing on the face of the document itself. Anderson v. Graham Investment Co., 263 N.W.2d 382 (Minn. 1978). In examining the records to determine the state of the title to the parcel, Wasatch Bank of Pleasant Grove was only required to examine the recorded documents and should not be required to undertake a wide ranging search of unrecorded documents.

Judice-Henry-May Agency, Inc. v. Franklin, 376 So. 2d 991, 992 (La. Ct. App. 1979), cert. denied, 381 S. 2d 508 (La. 1980).

CONCLUSION

As was established in the initial Brief of Wasatch Bank of Pleasant Grove, although the legal descriptions in the assignments to Bank of American Fork included the 16.72 acre parcel claimed by Wasatch Bank of Pleasant Grove, that property had been conveyed away by the seller sometime prior to the execution of the assignments to Bank of American Fork, and the assignments were, therefore, of no legal effect with respect to that parcel of property. Respondent attempts to counter this by references to matters which were not placed of record, and of which Wasatch Bank of Pleasant Grove therefore did not have constructive notice. The record title clearly established that Wasatch Bank of Pleasant Grove had the primary lien on the 16.72 acre parcel of property, and the judgment of the trial court to the contrary should, therefore, be reversed and judgment entered for Wasatch Bank of Pleasant Grove.


DATED this 21st day of December, 1984.



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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Reply Brief of Appellant to James R. Brown, Attorney for Respondent, 370 East South Temple No. 401, Salt Lake City, Utah 84111, this 34 day of December, 1984.


SECRETARY