

1977

# Hidden Meadows Development Co. v. Dee Mills et al : Brief on Appeal of Cross-Respondent

Utah Supreme Court

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Tuft & Marshall; Edward Garrett; Leonard Russon; James Sadler; Attorneys for Defendants and Cross-Appellants;

Cullen Y. Christensen; Christensen, Taylor & Moody;

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## Recommended Citation

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IN THE SUPREME COURT OF THE STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY,

Plaintiff and  
Cross-Respondent,

vs.

DEE MILLS and EVELYN I. MILLS, his :  
wife, MILTON C. CHRISTENSEN, aka :  
MILTON A. CHRISTENSEN, PARADISE :  
VALLEY ESTATES, INC., LAKE MILLS :  
COMPANY, a Limited Partnership, :  
CAROLE LEE CHRISTENSEN, formerly :  
CAROLE LEE DAVIS, ENVIRONMENTAL : NOS. 15027  
RESOURCES, INC., INTERNATIONAL : 15157  
ENVIRONMENTAL SCIENCES, a Limited : 15188  
Partnership, JOHN DENNIS HIGGINSON :  
and SHERREL HIGGINSON, aka RAYMA :  
SHERREL W. HIGGINSON, his wife, :  
R. W. DAVIS LIVESTOCK COMPANY, :  
VERL ROTHLSBERGER, EVE RHODES, :  
EVELYN I. MILLS TRUST, FIRST :  
SECURITY BANK OF UTAH, N. A., and :  
DALE A. ALLSOP and DONNA B. ALLSOP, :  
his wife, :

Defendants and  
Cross-Appellants. :

BRIEF ON APPEAL OF CROSS-RESPONDENT,  
HIDDEN MEADOWS DEVELOPMENT COMPANY

Appeal from Judgment of Fourth District  
Court of Wasatch County  
Honorable Ernest F. Baldwin, Jr., Judge

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POINT I

THE TRIAL COURT DID NOT ERR IN FAILING TO  
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SPECIFIC PERFORMANCE TO COMPENSATE  
DEFENDANTS MILLS FOR THE REASONABLE VALUE  
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CASES CITED

Hidden Meadows Development Company, 29 Utah 2d 469,  
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Matthews vs. Matthews, 102 Utah 428, 132 P. 2d 111 . . . 5

RULES CITED

Rule 13, Utah Rules of Civil Procedure . . . . . 5

Rule 15, Utah Rules of Civil Procedure . . . . . 5

IN THE SUPREME COURT OF THE STATE OF UTAH

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HIDDEN MEADOWS DEVELOPMENT COMPANY, :  
 :  
 Plaintiff and :  
 Cross-Respondent, : NOS. 15027  
 : 15157  
 vs. : 15188  
 :  
 DEE MILLS, et al., :  
 :  
 Defendants and :  
 Cross Appellants. :  
 :  
 \_\_\_\_\_ :

BRIEF ON APPEAL OF CROSS-RESPONDENT  
HIDDEN MEADOWS DEVELOPMENT COMPANY

STATEMENT OF THE NATURE OF THE CASE

Plaintiff sought specific performance of an option to purchase certain real property in Wasatch County, Utah.

DISPOSITION IN THE LOWER COURT

This case was previously tried and reversed on appeal. (Hidden Meadows Development Company vs. Mills, 29 Utah 2d 469, 511 P.2d 737).

After remand the trial court ordered specific performance upon the payment to defendants Mills of the sum of \$87,800.00 as the balance due on the option price, and the further payment to defendant International Environmental Sciences of the sum of \$35,000.00 under its Counterclaim for improvements to the land as an occupying claimant.

## RELIEF SOUGHT ON APPEAL

Plaintiff seeks affirmance of the ruling by the court below to the effect that the defendants Mills were not entitled to introduce evidence pertaining to alleged improvements to the land in question made after the date of the option to purchase, other than the depreciated cost of a dairy barn as subsequently agreed to by the parties involved.

## STATEMENT OF FACTS

Plaintiff essentially agrees with the Statement of Facts set forth in the Brief of defendants Mills, except that the itemization of "other capital improvements" set forth on page 7 of said Brief, namely: fencing (materials only), \$1188.82; septic tank (materials only), \$354.48; improvements to reservoir and irrigation ditches, \$2333.20; purchase of additional reservoir rights, \$2462.71; improvements to house and garage (materials only), \$1655.66; miscellaneous, \$753.30, does not appear in the record or transcript of the proceedings by way of testimony or by way of exhibit offered into evidence or otherwise.

Plaintiff's objection to such proffer of proof as was made by the defendants Mills was based on the fact that since, pursuant to the mandate of the Supreme Court, the Decree of the court below entered on August 28, 1973 (R 48-51) directed the defendants Mills to specifically perform the option agreement and transfer the property in question to the

plaintiff for the sum of \$86,200.00, from which Decree no appeal was taken by the defendants Mills, the amount which defendants Mills were entitled to receive for said property had already been determined and settled (Cooley TR 298, 302, 303, 306, 308, 323).

## ARGUMENT

### POINT I

THE TRIAL COURT DID NOT ERR IN FAILING TO REQUIRE PLAINTIFF AS A CONDITION OF SPECIFIC PERFORMANCE TO COMPENSATE DEFENDANTS MILLS FOR THE REASONABLE VALUE OF THE CAPITAL IMPROVEMENTS ALLEGEDLY CONSTRUCTED BY THEM UPON THE LAND IN QUESTION AFTER THE DATE OF THE EXECUTION OF THE OPTION TO PURCHASE.

The main issue before the court below, Judge Ernest F. Baldwin, Jr., Judge, in connection with the matter now pending before this court on appeal, was whether or not the parties designated as "Second Defendants" in plaintiff's Amended Supplemental Complaint (R 72-76) were bona fide purchasers of the property in question by reason of their having purportedly acquired their interests in the property between the date of the "Wilkins Decree" entered on October 12, 1972, (R 34-35) which held that the plaintiff did not have a valid option, and the decision of this court rendered on July 5, 1973, reversing the Wilkins Decree and holding that plaintiff did have a valid option (Hidden Meadows Development Company vs. Mills, 29 Utah 2d 469, 511 P.2d 737). The question of whether the defendants Mills may have made some improvements to the property between the time

of the original option given in 1964 and the date when plaintiff gave notice that it was exercising the option in September of 1971 was not before the court in connection with the proceedings before Judge Baldwin. The defendants Mills in their Answer and Counterclaim to the plaintiff's Amended Supplemental Complaint raised no such issue and did not assert any such claim (R 151-157). It is clear that the decision of this court in Hidden Meadows Development Company, vs. Mills, supra., and the Decree of Specific Performance entered by Judge Wilkins on August 28, 1973, pursuant to the mandate of the Supreme Court, determined the amount of money to be paid by the plaintiff to the defendants Mills in connection with plaintiff's acquisition of the property in question under the option (R 48-51). No appeal with respect to that amount was ever taken or raised by the defendants Mills.

When defendants Mills attempted, during the trial before Judge Baldwin, to raise the issue of improvements allegedly made by defendants Mills between the time of their giving the option and the exercise thereof by the plaintiff, plaintiff objected on the grounds that such matters had been previously determined and included in the prior Decree of Specific Performance entered on August 28, 1973 (R 48-51; Cooley TR 298, 302, 303, 306, 308, 323), and the objections were sustained by the court below on the grounds that the plaintiff and the defendants Mills were parties to the prior Decree of Specific Performance in this same action, the same property was involved,

and the amount to be paid by the plaintiff to the defendants Mills to acquire the property had already been determined. Such prior determination is res judicata as to the issue of the amount payable by the plaintiff under the option to the defendants Mills, and the defendants Mills should not now be permitted to re-try the same thing over again (Matthews vs. Matthews, 102 Utah 428, 132 P.2d 111).

Further reasons for sustaining the ruling of the court below in precluding defendants Mills from litigating the question of such alleged improvements lie in the facts that defendants Mills did not plead any such claim in their Answer and Counter-claim to plaintiff's Amended Supplemental Complaint (R 151-157; Rule 13 Rules of Civil Procedure), nor did the defendants Mills at any time move the court for an order permitting an amendment to their pleadings to include such an issue (Rule 15, Utah Rules of Civil Procedure).


#### CONCLUSION

The amount to be paid by the plaintiff to the defendants in order to acquire the property in question under the option from the defendants Mills was determined by prior Decree of the court below entered on August 28, 1973, from which determination no appeal was taken by the defendants Mills. The defendants Mills should not now be allowed to resurrect the issue of compensation for alleged improvements, which issue was previously determined by an unappealed Decree of the court below, and which issue was



not raised by the pleadings, nor within the scope of the proceedings, to be considered by the Honorable Ernest F. Baldwin, Jr., Judge. The ruling of the court below in sustaining plaintiff's objection to the admission of evidence by defendants Mills relative to alleged improvements to the property in question between the time the option was given and the date it was exercised should be sustained.

Respectfully submitted,

  
CULLEN Y. CHRISTENSEN, for  
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Cross-Respondent  
55 East Center Street  
Provo, Utah 84601

CERTIFICATE OF MAILING

Two copies of the foregoing were mailed, postage prepaid to Tuft & Marshall, attorneys for defendants, Dee Mills, Evelyn Mills, and Evelyn I. Mills Trust, 103 Social Hall Avenue, Salt Lake City, Utah 84101; to Edward Garrett, attorney for International Environmental Sciences, 144 South 5th East, Salt Lake City, Utah 84100; and to Leonard Russon and James Sadler, attorneys for Milton A. Christensen, Paradise Valley Estates, Inc., Lake Mills Company, Carole Lee Christensen, and Environmental Resources, Inc., 702 Kearns Building, Salt Lake City, Utah 84101, this 5<sup>th</sup> day of September, 1978.

  
CULLEN Y. CHRISTENSEN, Attorney