1977

David Bowen v. Ruth Olsen : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT

OF THE STATE OF UTAH

DAVID BOWEN,

Plaintiff-Appellant,

vs.

RUTH OLSEN,

Defendant-Respondent.

CASE NO. 15,137

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT IN AND FOR UTAH COUNTY,
STATE OF UTAH, HONORABLE J. ROBERT BULLOCK JUDGE

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STATEMENT OF FACTS

Appellee suggests that the Court will better understand the facts if Exhibit 2 is kept in front of the reader for ready reference.

In the fall of 1975, Mrs. Olsen was the owner of approximately five acres of land located at 1400 North and 200 West in Provo. (Exhibit 1). The property has about 400 feet of frontage on 200 West and the north and south lines are approximately parallel in an east west direction. The eastern boundary was on an angle generally north-northeast as the navigator might call it. Within a distance of 50 to 100 feet from the east boundary the property is bisected by a canal commonly called the Mill Race which runs generally north and south approximately parallel to the east boundary.

Mrs. Olsen was formerly Mrs. Frazier and Exhibit 1, prepared by the engineer and surveyor erroneously labels the

property as Frazier property. His second diagram, Exhibit corrects his error and properly designates it as the Olse property.

In the fall of 1975 Mrs. Olsen began to receive a number of proposals relating to the property. In order to explain those proposals and better understand the facts, they are considered chronologically.

1. Summer of 1975. It was contemplated by Mrs. Olse that the city would construct a road running east and west along the south side of the property. This street was necessary because of the large apartment house complex that was then under construction on North University Avenue east of the Olsen property. This street requirement was further dictated by the fact that there were no other east and west streets between 1230 North and 1550 North.

2. September 3, 1975. Earnest Money Receipt and Offe to Purchase - Walters. (Exhibit 3). On this date a Mr. Warren C. Walters made a proposal to Mrs. Olsen to purchase the property shown as parcel A on Exhibit 2. The property which Mr. Walters then desired to purchase was 163.03 foot of frontage on 200 West which commenced 33 feet north of Mrs. Olsen's south boundary. The reason for the 33 foot reservation is that it was then contemplated that Mrs. Olse would contribute the 33 feet for a proposed roadway to Provo City. That offer was never accepted.

3. December 19, 1975. Earnest Money Receipt and Off to Purchase - Walters. (Exhibit 4). At this time Mr. Wal

again negotiated a purchase of substantially the same property described in his previous earnest money, except that this time he was to acquire the 33 feet and to make the dedication of the roadway to Provo City himself. This offer was accepted. The offer by its terms required closing on or before December 31, 1975.

4. December 22, 1975. Earnest Money Receipt and Offer to Purchase - Bowen. (Exhibits 5 and 6). The property subject to this offer lies immediately to the east of the property subject to the Walters offer of December 19, 1975.

Exhibit 5 is the Earnest Money Receipt and Offer to Purchase as signed by Mr. Bowen. At that time, December 22, 1975, the option language on lines 47 to 55 was not included. The option was added on January 8, 1976, by Mr. Ronald G. Gardner, acting on behalf of Mr. David Bowen, and outside of the presence of Mr. Bowen. (See Exhibit 6). Mr. Gardner, on behalf of Mr. David Bowen, prepared this instrument on December 22, 1975, however, it was not presented to Mrs. Olsen until January 8, 1976.

Gardner, who had been Bowen's agent in the previous transaction, arranged to meet with Mrs. Olsen in his office on the 8th of January, 1976, after Mrs. Olsen's work day. Mrs. Olsen was employed at Z.C.M.I., and when she completed her duties that day she proceeded to Mr. Gardner's office. At that time he added the "option" language included on lines 47 through 55 of Exhibit 6 which is as follows:

> Seller also agrees to give buyer an option on part or all property west of piece being purchased. Buyer understands there presently exists an Earnest Money Offer in favor of Iron Horse Corporation. This is preserved as a back-up to that offer. This option good for ninety days from time of original offer being released and notice given to buyer. Option to be same price and terms of contract effected between Iron Horse Corporation and Ruth Olsen. (D. Ex. 6).

All of the writing and all of the language contained on Exhibit 6 were selected by Mr. Gardner. At that time, while Mrs. Olsen was present, he called Mr. Lee Bamgartner, Mrs. Olsen's real estate agent, and explained the nature of the suggested option. Mrs. Olsen then signed the document of December 22, 1975. She did not know who "Iron Horse" Corporation was, but she assumed that the language was meaningful to Gardner and Bowen. (R. 104, 106).

As of January 8, 1976, Mrs. Olsen had never met Mr. Bowen, and all dealings related to the Bowen offer were conducted by Mr. Gardner. (R. 101).

5. Early February, 1976. Mr. David E. Castle contacted Mrs. Olsen and explained his interest in purchasing her property that had heretofore been the subject of Walter's offer of December 19, 1973. Walters, by this time, appeared to have forfeited his interest in the property. Mrs. Olsen told Mr. Castle that she could not deal with him because she had some sort of an option agreement with Bowen. (R. 110). Mrs. Olsen told Castle that he would have to resolve the matter with Bowen before she could deal directly with him. (R. 110).

Thereafter, Mrs. Olsen, Mr. Bamgartner and Mr. Castle all talked with Mr. Gardner, who appeared to be Mr. Bowen's agent. Mr. Gardner advised all three of these people that "Bowen does not want the property". Mrs. Olsen remembered the conversation clearly because she had to go to Georgia on February 16, so she knew the conversation with Mr. Gardner took place prior to that date. She located the discussion as having occurred in the Z.C.M.I. store when she saw Mr. Gardner. He advised her that "Bowen does not want the property". (R. 108, 109).

6. February 17, 1976. Earnest Money Receipt and Offer to Purchase - Castle. (Exhibit 7). Mr. Castle testified that he had been dealing with Walters in January and February of 1976 and had discovered that Walters did not want the property and could not complete the contract by himself. Walters was, however, interested in a portion of the property.

After learning of the Walters interest in the property, he then contacted Gardner to find out if Bowen had continuing interest in an option on the Walters property. He believes that he talked to Gardner on February 17, because he has a memo dated that date with information that he could only have acquired from Gardner. (R. 194). He at that time told Gardner that he had been approached by Walters and had agreed that they would allow him to negotiate with Mrs. Olsen for the property that Walters had theretofore offered to buy. Gardner and Castle discussed some arrangement to give Bowen some additional parking on the property that

Castle would be buying from Mrs. Olsen if he were successful in presenting his Earnest Money Receipt and Offer to Purchase.

On the basis of Mr. Castle's discussion with Mr. Gardner and Mr. Walters, he prepared the Earnest Money Agreement dated February 17, 1976, which is Exhibit 7. He would not have prepared that had he felt that there was an outstanding option for the same property on behalf of Mr. Bowen. In Mr. Castle's words, "I had to clear with Ron Gardner in order to purchase the property." (R. 193). The Earnest Money Agreement of Mr. Castle was not accepted by Mrs. Olsen and this proposal failed.

7. March 11, 1976. Earnest Money Receipt and Offer to Purchase - Bowen. (Exhibit 8). At this time, Bowen, still acting through Gardner, had concluded he needed an additional piece of property to the north of that which we had agreed to purchase. This was made necessary in order to acquire a building permit.

Mr. Gardner represented Mr. Bowen in this entire transaction and Mrs. Olsen never, at any time, met Mr. Bowen.

By this time, Gardner had visited with Mr. Castle at Castle's home in Lindon and they had discussed the Bowen property and Castle's negotiation with Mrs. Olsen for the property that had formerly been the subject of the Walters transaction. Gardner was advised concerning Castle's plans and Gardner never, at any time, told Castle that Bowen had an option on the property or that he had any interest in the Olsen (Walters) property, and in fact, Gardner indicated

that Bowen had no further interest in the option.

As of March 4, 1976, Gardner was negotiating with Castle for additional parking for Mr. Bowen in the event Castle was able to complete his transaction with Mrs. Olsen. (R. 173). Castle testified that when he met with Garnder in his home on March 4, 1976, he connected his conversation with Gardner with the previous instructions that he had received with Mrs. Olsen early in February to the effect that he had to get Mr. Gardner's clearance. He was asked specifically the following questions:

> Q. When you met with Mr. Gardner in your home, did you connect that meeting with Mr. Gardner with a comment of Mrs. Frazier made earlier in February that you had to get his clearance?
>
> A. Yes, I did.
>
> Q. And did you assume by the fact that you had told him that you were buying the property and he registered no dissent that it was a agreeable?
>
> A. Yes, I did. (R. 206)
>
> * * *
>
> Q. Mr. Castle, in respect to your negotiations with Mr. Gardner, did you associate Mr. Gardner as being the agent for the bike shop? [Mr. Bowen]
>
> A. Yes, I did. (R. 207-208)

Mr. Castle never met Mr. Bowen personally, but had all of his dealings concerning the Bowen property with Gardner.

As of March 4, 1976, Mrs. Olsen had never had any dealings with Mr. Bowen, except through Mr. Gardner.

The Earnest Money Agreement of March 11, 1976, was

handled entirely by Mr. Gardner and Mrs. Olsen did not meet Mr. Bowen.

8. April 7, 1976. Earnest Money Receipt and Offer to Purchase - Castle. (Exhibit 9). On April 7, 1976, Mr. Castle revised his Earnest Money Receipt and submitted it to Mrs. Olsen. At this time, the Castle offer was to include all of the property that had formerly been subject to the Walters offer, but including an additional 30 feet to the north. (See Exhibit 2). Mr. Castle, at this time, had acquired an agreement from Mr. Walters to build a structure on the property purchased for him (Walters). Mrs. Olsen testified she would not have dealt with Mr. Castle on this property had she thought that Bowen claimed any further interest in the property. She was further of the opinion that Mr. Gardner was completely informed of the Castle transaction and Castle testified that Gardner was completely informed of his transaction with Mrs. Olsen.

9. April 9, 1976. Earnest Money Receipt and Offer to Purchase - Walters, (Exhibit 10). On this date Walters negotiated with Mrs. Olsen to buy the property immediately North of that which is being purchased by Castle. (Exhibit 2).

The testimony is in dispute as to whether the $4,500.00 which was paid on March 29, 1976, by Mr. Walters was then to apply on the property purchased under Exhibit 10, or whether it was to continue the option on the December 19, 1975,

earnest money agreement. Mr. Bamgartner, who handled the matter for Mrs. Olsen, categorically stated that the $4,500.00 was to be applied with the $500.00 theretofore paid on the December 19th contract as the down payment for the purchase of the property covered by Exhibit 10. Mr. Walters contends that it was consideration for extending his right to purchase under the December 19, Earnest Money Offer, Exhibit 4. The question is moot, however, since there is no dispute between Walters and Mrs. Olsen and Walters apparently was content to have the entire $5,000.00 apply to the Earnest Money Agreement, Exhibit 10, which, in fact, has now been converted into a deed secured by a Deed of Trust.

10. April 20, 1976. At this time, the Bowen contract was closed and Mr. Gardner and Mr. Bamgartner prepared the Warranty Deed, Exhibit 11, the closing statement for seller, Exhibit 12, the closing statement for buyer, Exhibit 13, and a letter agreement dated April 20, 1976, Exhibit 14. The letter agreement pertained to Bowen's responsibility for paying for improvement to his property connected with the construction of the street. That agreement was written by Mr. Gardner.

The transaction with Mr. Bowen was closed at Zions First National Bank (R. 112). Those present at the time of closing were Lee Bamgartner, Mrs. Olsen, Mrs. Olsen's son, and Ron Gardner, the representative for Mr. Bowen. Mr. Bowen did not appear.

Nothing was said at this time concerning Mr. Bowen's option, if in fact he intended to retain one.

12. May 25, 1976. On this date Mr. Jeril B. Wilson, attorney for Mr. Bowen, wrote a demand letter to Mrs. Olsen which she received subsequent to that date. (Exhibit 15).

On May 28, 1976, Mr. Wilson acting on behalf of Mr. Bowen, filed a Lis Pendins against the property of Mrs. Olsen. (Exhibit 21).

Because of the letter of May 25, and the lis pendins that was filed, Mr. Castle refused to go forward with the earnest money agreement dated May 9, 1976, which was then in the process of closing. It is from this point the litigation commenced.

Mr. Bowen acknowledges that all of the transactions concerning the acquisition and purchase of the property in question were handled on his behalf by Mr. Gardner, and at no time prior to the taking of the depositions in this case did Mrs. Olsen ever meet Mr. Bowen. Mr. Bamgartner testified that all of his transactions on behalf of Mrs. Olsen, in connection with the Bowen transaction were completed through Mr. Gardner.

There is also submitted as Exhibit 20, an Earnest Money Receipt and Offer to Purchase, between Lawrence Walters and others, with Mr. David E. Castle. This exhibit was offered to demonstrate that Castle, as of February 13, 1976, had resolved his right to purchase the Walters contract and was merely waiting authority from Gardner on behalf of Bowen

deal directly with Mrs. Olsen concerning the property which was subject to the Walters Earnest Money Receipt of December 19, 1975.

It is defendant's contention that the terms of the earnest money agreement of December 22, 1975, (Exhibit 6), were merged into the deed and subsequent agreement between Mrs. Olsen and Bowen. Since the option was not preserved beyond that time, it is null and void. In the alternative, defendant asserts that Bowen waived any rights in the option by telling Mrs. Olsen, through Gardner, that he was no longer interested in the property and allowing her to negotiate with Mr. Castle and Mr. Walters. In addition, it is defendant's position that the option agreement was not supported by consideration, and therefore, it is not an enforceable contract. Finally, the purported option agreement is completely unintelligeable, and therefore, void for vagueness.

POINT I

THE LANGUAGE OF THE EARNEST MONEY AGREEMENT CLEARLY ABROGATES ALL OTHER TERMS AND CONDITIONS OF THE EARNEST MONEY AGREEMENT NOT INCLUDED IN THE FINAL CONTRACT OR DEED.

The language of the Earnest Money Agreement is clear that execution of the final contract abrogates the Earnest Money Receipt and Offer to Purchase.

Lines 39 through 41 of the Earnest Money Agreement contain the following language:

> It is understood and agreed that the terms written in this receipt constitute the entire preliminary contract between the purchaser and the seller, and that no verbal statement made by anyone relative to this transaction shall be construed to be a part of this transaction unless incorporated in writing herein. It is further agreed that execution of the final contract shall abrogate this Earnest Money Receipt and Offer to Purchase. (Emphasis added).

It is a well stated rule that "a deed executed subsequent to the making of an executory contract for the sale of land supercedes that contract not only as to provisions made pursuant to the terms of the contract but also as to stipulations in the contract of which the conveyance is not a performance, if the parties intended to surrender them, but they are not superceded if the parties did not intend to surrender them." 77 Am.Jur.2d 449, Vendor and Purchaser, Section 290.

The facts clearly indicate that Bowen never intended to preserve the option. Between December 22, 1975, the date of writing of the option, and May 25, 1976, there was never any indication by Bowen that he intended to preserve the option. To the contrary, Gardner, Bowen's agent, repeatedly stated to Mrs. Olsen, to Mrs. Bamgartner, and to Mr. Castle that Bowen had no intention of exercising the option. In addition, at the closing of the Bowen-Olsen transaction on April 20, 1976, absolutely no mention was made of preserving the option in the deed and agreement executed at that time. The transaction was closed with Mrs. Olsen, Mrs. Olsen's son, Mr. Gardner, and Mr. Bamgartner present. Nothing

said at that time concerning Mr. Bowen's option. Prior to, and at the time of closing, there was absolutely no evidence of Bowen's intent to exercise the option. The only evidence of Bowen's intent is to preserve the option is the belated letter from Bowen's attorney on May 25, 1976.

It was upon these factors that the Court based its Finding that:

> "The earnest money agreement drafted by the plaintiff was a single integrated agreement with consideration sufficient to support all of the terms of the earnest money agreement, including the option, and that by the express terms of the earnest money receipt and option to purchase, the option contained therein was abrogated at the time of the final contract. (R. 14, paragraphs 8 and 9).

A case somewhat similar to the present is Kelsey v. Hansen, 18 Utah2d 226, 419 P.2d 198 (1966). That was an action by a plaintiff-vendor to compel a real estate agent-purchaser to pay for certain extras (drapes and the like) pursuant to an agreement in an executed earnest money agreement. There was a subsequent conveyance by warranty deed, and the plaintiff's theory was that the deed was not decisive of the agent's committment to buy and pay for the extras. The court held that the deed was decisive and

> "That a merger resulted, especially since the Earnest Money Receipt also said that 'it is further agreed that execution of the final contract shall abrogate this Earnest Money Receipt.' We have difficulty in seeing why a warranty deed to Hansen should not abrogate the preliminary, loosely drawn, and almost incoherent Earnest Money Receipt, and thus merge what really amounted to signed notes of a contemplated future transaction. . ."

In absence of proof to the contrary, there is a presumption that the parties intended all of the terms of the prior agreements to be merged into the deed. Webb v. Grant 212 Kan. 364, 510 P.2d 1125 (1973). And the execution of a deed to realty without any reservation in it, merges all prior negotiations and agreements relating thereto. Smith v. Baker, 95 C.A.2d 877, 214 P.2d 94.

In the present case, there is absolutely no mention at all in the warranty deed between Mrs. Olsen and Bowen of the option or a reservation in any manner. (Exhibit 1-).

Appellant has failed to overcome the presumption that there was a merger and has failed to show that there was not, in fact, an intention of the parties to abrogate the option agreement. As a result, the judgment of the trial court in that regard should be affirmed.

POINT II

BOWEN, THROUGH HIS AGENT GARDNER, WAIVED HIS RIGHT TO CLAIM THE OPTION AND IS ESTOPPED FROM DOING SO.

It is undisputed that every transaction involving Bowen, whether it was with Olsen, Castle, or Walters, was negotiated for Bowen by Gardner. Bowen had no personal contact, so far as the evidence discloses, with any of the parties privy to the property which is in dispute. There were many negotiations on many occasions between Gardner and Bamgartner, between Gardner and Mrs. Olsen, between Gardner and Castle, all of which required representations discussions, assertions, and conclusions. At no time di

Gardner, by words or conduct, state or imply that there was a limit to his authority to act on behalf of Bowen.

On the contrary, Gardner prepared every Earnest Money Agreement submitted, (Exhibits 5, 6, 8, and 14). He further participated in the preparation of Exhibits 11, 12 and 13, all on behalf of Bowen and all outside of the presence of Bowen.

None of the parties to this transaction ever met with Bowen, but conducted their entire negotiations with Gardner. At no time prior to trial did Bowen attach any restrictions or limitations to the authority given to Gardner to act on his behalf. Finally, and probably most importantly, it was Gardner who added, in his own handwriting, the option language to Exhibit 6, after Bowen had signed the document. Since Bowen's case is an attempt to enforce the option, obviously he cannot quarrel with Gardner's authority to act on his behalf with regard to the option.

An agent is deemed to have the authority inherent in the nature of the transaction which he is performing on behalf of his principal and for which his principal knows he is performing. 3 Am.Jur.2d 472, Agency §71; Park v. Moorman Mfg. Co., 121 Utah 339, 241 P.2d 914, 40 A.L.R. 2d 273 (1952).

A principal who authorizes the agent to perform general duties, also authorizes the agent to perform all functions necessarily implied by reason of the specific duties assigned. 3 Am.Jur.2d 472, Agency §71.

The terms of Exhibit 6 were selected by Bowen, acting through his agent Gardner. When on April 20, 1976, Bowen, again acting through his agent Gardner, did not make any effort to preserve what has been deemed an option, the option provision was abrogated, for it was not included in the final contract between the parties. The language of the Earnest Money Agreement says specifically: "It is further agreed that execution of the final contract shall abrogate this Earnest Money Agreement and Offer to Purchase". Nowhere in Exhibits 11, 12, 13, and 14, is there any preservation of the option. If Gardner had the authority to write the option in the first place, he certainly had the authority to preserve that option. His failure to speak and preserve the option is certainly chargeable to Bowen.

This conclusion is consistent, and only consistent, with the testimony of Olsen, Bamgartner and Castle that Gardner had advised them that Bowen claimed no interest whatever in the Walters contract or the property that was then contemplated to be purchased by Walters. Gardner's continued involvement in the negotiations between Walters and Castle and Olsen and Castle required him to give notice to those parties that Bowen claimed an option interest. It is inconceivable that Castle and Bamgartner, both experienced real estate brokers, would deal with the property itself, had they thought Bowen continued to have an interest or had they not relied upon Mr. Gardner's assertion that Bowen claimed no interest. Mrs. Olsen's dealings with Castle

only consistent with her assertion that Gardner had told her prior to February 16, that Bowen had no further interest in the Walters property. She had specifically told Castle, which is verified by Castle, that he would have to get a release from Gardner.

The fact that Castle prepared an Earnest Money Agreement on February 17, 1976, (Exhibit 7), to purchase from Mrs. Olsen the Walter's property, is only consistent with his conversation with Gardner of that date that the property was available for purchase.

The Earnest Money Agreement of April 9, (Exhibit 10), between Castle and Mrs. Olsen, is only consistent with Castle's conference with Gardner at Castle's home, which occurred on or about March 4, 1976. Mr. Castle told Gardner that he, himself, would be the owner of the property, that he had no relationship with Mr. Walters, except that he was going to construct an improvement upon the property and lease it to Mr. Walters, but that he was not an agent of Mr. Walters. This conversation was sufficient to put Gardner on guard and to require him to notify Castle or Mrs. Olsen that Bowen had an interest in the property.

The only logical explanation of Gardner's conduct is that he in fact, on February 17, told Castle, and had prior to February 16, 1976, told Mrs. Olsen, that Bowen did not claim any further interest in the Walters property.

This circumstance is further corrobrated by the fact that Mr. Gardner had not completed his representation of Mr.

Bowen, for he was still negotiating with the property as late as March 11, 1976, when he negotiated for the additional 22 feet to the north of the Bowen property and April the 20th when he handled the closing of the transaction.

The only involvement of Mr. Bowen in this entire transaction, was his appearance at Zions First National Bank on April 20, for the purpose of signing the borrowers closing statement, Exhibit 14, and the letter agreement dated April 20, 1976.

One other powerful fact in corroboration of the testimony that Gardner told Mrs. Olsen and Castle that Bowen claimed no option is that Mrs. Olsen by her subsequent dealings would have left herself an unsold piece of property 34.27 feet wide by 245.87 feet deep. (See cross-hatched parcel on Exhibit 2). It is inconceivable that Mrs. Olsen would have so acted.

There could be no case in which the broad, general and implied authorities of the agent are more consistent with his conduct than the instant case. The trial court's finding that "Ronald Gardner, acting for and as the agent of the plaintiff, by his words, acts and conduct, caused the defendant to believe that the plaintiff had waived, abandoned and relinquished his right to exercise the option", should be affirmed. (R. 13, paragraph 7).

POINT III

IN THE EVENT THAT THE OPTION AGREEMENT CONTAINED IN THE EARNEST MONEY RECEIPT OF DECEMBER 22, 1975, WAS NOT ABROGATED, IT WOULD FAIL FOR LACK OF CONSIDERATION.

The appellant is faced with a dilemna. The Earnest Money furnished by Bowen was tendered prior to the inclusion of the option provision. Mr. Bowen, at the time of tendering $1,000.00 Earnest Money, on December 22, 1975, did not include the option provision. That was added later on the evening of January 8, 1976. If the contract is severable as the appellant argues, then certainly, there is no consideration for the option. If it is not severable, then it fails because it was abrogated by not being included in the final deed of the sale.

The Court, in its Findings of Fact No. 8, stated as follows:

> "The earnest money agreement drafted by the plaintiff was a single integrated agreement with consideration sufficient to support all of the terms of the earnest money agreement, including the option". (R. 14).

Appellant argues that although there was consideration for the entire agreement, the option was a separate agreement that could stand alone. If that is the case, then the appellant condones the finding of consideration by the Court but condemns the single integrated agreement finding. The appellant cannot have it both ways.

If he disputes the "single integrated agreement" finding, then he must necessarily convince the Court that

there was consideration for the separate option agreement. This, of course, is impossible because the consideration for the earnest money agreement was proffered before the option agreement was added. The earnest money, therefore, could only be for the offer and could not be for the option. This argument is further bolstered by the fact that on April 20, when the closing took place, Bowen got full consideration for the earnest money against the purchase price of the property described as parcel "B" on Exhibit 1 and nothing remained as consideration for the "option". If the option were to remain as a viable contract, there had to be consideration for it.

CONCLUSION

Respondent respectfully argues that the trial court was correct in its analysis of the facts and the application of the law, and the judgment should be affirmed.

DATED this 11th day of August, 1977.

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MAILED a copy of the foregoing Brief of Respondent to Jeril B. Wilson, Attorney for Appellant, 84 East 100 South, Provo, Utah 84601, this 11th day of August, 1977.

Marianne Peterson

SECRETARY