

1997

## Reedeker v. Salisbury : Unknown

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Brent V. Manning, Esq.; Holme, Roberts & Owen; Attorney for the Appellees.

E. Barney Gesas; Joann Shields; Campbell, Maack & Sessions; Attorneys for Appellants.

---

### Recommended Citation

Legal Brief, *Reedeker v. Salisbury*, No. 970032 (Utah Court of Appeals, 1997).

[https://digitalcommons.law.byu.edu/byu\\_ca2/633](https://digitalcommons.law.byu.edu/byu_ca2/633)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

CAMPBELL MAACK & SESSIONS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ONE UTAH CENTER

THIRTEENTH FLOOR

201 SOUTH MAIN STREET

SALT LAKE CITY, UTAH 84111-2215

COURT OF APPEALS

TELEPHONE  
(801) 537-5555

FACSIMILE  
(801) 537-5199

ROBERT S. CAMPBELL, JR.  
ROBERT D. MAACK  
CLARK W. SESSIONS  
E. BARNEY GESAS  
KEVIN EGAN ANDERSON  
MARTIN R. DENNEY  
TRACY H. FOWLER  
MARK A. LARSEN  
PERRIN R. LOVE  
DEAN C. ANDREASEN  
WILLIAM H. CHRISTENSEN  
SEAN N. EGAN  
ROBERT E. MANSFIELD  
BRIDGET K. ROMANO  
KRISTINE EDDE

October 21, 1997

UTAH COURT OF APPEALS  
BRIEF

By Hand-Delivery

Ms. Julia D'Alesandro  
Clerk of Court  
Utah Court of Appeals  
230 South 500 East, Suite 400  
Salt Lake City, Utah 84102

UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 970032 CA

RE: *Reedeker, et al. v. Salisbury, et al.*; Appeal No. 970032-CA

Dear Ms. D'Alesandro,

Pursuant to Rule 24(i) of the Utah Rules of Appellate Procedure, please find the following supplemental authorities which relate to questions raised by Judges Orme and Greenwood during oral argument in the above-cited case on October 20, 1997. Specifically, Judges Orme and Greenwood questioned Plaintiffs/Appellants' counsel why the Defendant/Appellee Trustees should be held to a different — higher — standard of care than the intentional misconduct standard set forth in the Utah Nonprofit Corporation Act.

The following are authorities which include specific contractual provisions contained in the American Towers' Bylaws, expressly indemnifying and providing insurance for the Trustees for their negligent acts, as well as case law regarding whether parties to a contract may adopt a higher standard of care than that set forth by statute or judicial enactment.

American Towers Bylaw Provisions: Article VII, Sections 7.02:

Indemnification Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee or officer of the Association . . . if he acted in good faith

and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine that upon application that . . . such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(R. 106); See also Article VII, sections 7.05 and 7.06 (R. 107).

Case Authority: Presser v. Siesel Const. Co., 119 N.W.2d 405, 408 (Wis. 1963) (holding contract may impose absolute duty of care); Patterson v. Sinclair Refining Co., 123 N.W.2d 479 (Wis. 1963) (same); accord Kaltenbrun v. Gabe's Const. Co., 459 N.W.2d 259 (Wis. App. 1990); Rosemont, Inc. v. Marshall, 481 So.2d 1126, 1131-32 (Ala. 1986) (Jones, J., dissenting) (stating "it is beyond debate" that parties may contract to provide higher standard of care than provided by statute); See Waterways Terminals Co. v. P.S. Lord Mechanical Contractors, 406 P.2d 556, 578-79 (Or.1965) (en banc) (concluding contract provisions admissible as bearing on appropriate standard of care); accord Larson v. Heintz Const. Co., 345 P.2d 835 (Or. 1959); See e.g., Summit County Dev. Corp. v. Bagnoli, 441 P.2d 658, 663 (Colo. 1968); Contra Toone v. Adams, 137 S.E.2d 132, 135 (N.C. 1964); Pinnix v. T.C. Toomey, 87 S.E.2d 893, 898 (N.C. 1955).

Thank you for consideration of this matter.

Sincerely,

CAMPBELL, MAACK & SESSIONS

  
E. Barney Gesas

EBG/bkr

cc Brent M. Manning, Counsel for Defendants/Appellees