2001

Utah Federal Credit Union v. Kay D. Jenkins : Brief of Respondent

Utah Supreme Court

Golden W Robbins; William H Henderson; Attorneys for Plaintiff .
Earl P Staten; Attorney for Intervenors, Third Party Plaintiffs and Respondents .

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

UTAH C. V. FEDERAL CREDIT UNION,
Plaintiff and Appellant,

vs.

KAY D. JENKINS,
Defendant,

and

WILLIAM E. MEEKS AND JORJANNA I. MEEKS, his wife,
Intervenors and Third Party Plaintiffs and Respondents,

vs.

UTAH C. V. FEDERAL CREDIT UNION and GOLDEN W. ROBBINS,
Third Party Defendants and Appellants.

Case No. 13611

BRIEF OF INTERVENORS AND THIRD PARTY PLAINTIFFS AND RESPONDENTS

EARL P. STATEN
Suite 400 Chancellor Bldg.
220 South 2nd East
Salt Lake City, Utah
Attorney for Intervenors, Third Party Plaintiffs and Respondents

GOLDEN W. ROBBINS
705 Newhouse Building
Salt Lake City, Utah

WILLIAM H. HENDERSON
455 South 3rd East
Salt Lake City, Utah
Attorneys for Plaintiff, Third Party Defendants and Appellants

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

CASES CITED

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

Page

STATUTES (RULES) CITED

TEXTS CITED

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STATEMENT OF THE NATURE OF THE CASE

Appellants' Statement of the Nature of the Case is

inconsistent with the facts and Respondents amend the statement to read as follows:

This case involves a judgment lien. The judgment was obtained by plaintiff Utah C. V. Federal Credit Union (Credit Union) and became a lien upon a house and lot situated in Salt Lake County, State of Utah, then owned by defendant Kay D. Jenkins (Jenkins). The judgment was satisfied by plaintiff and the satisfaction was duly entered by the Clerk of the Court on the docket of the judgment. While the judgment was satisfied and discharged, Jenkins sold the property to a third party Wallace C. Belnap and Carol J. Belnap, his wife, (Belnaps) who later sold the property to Respondents. Subsequent to the purchase by Respondents the Satisfaction of Judgment was vacated by the Court and the judgment was reinstated. Execution was issued to sell the property to satisfy the judgment which was then owned and occupied by Respondents as their home. Respondents applied for Intervention in the case and got a temporary injunction restraining the sale of their house and lot by plaintiff, his attorney and the Sheriff. Respondents claim they own title to the property free and clear of the judgment lien because the judgment was satisfied and discharged and did not constitute a lien at the time they purchased the property, and they were innocent purchasers, for value, without notice of the judgment lien, actual or constructive. Appellants claim the Satisfaction of Judgment was invalid because it was not verified and was not signed by plaintiff's attorney.

DISPOSITION IN THE LOWER COURT

Respondents were allowed to intervene and file a quiet title action to quiet their title against the alleged liens of Appellants, which was granted. Robbins filed Counterclaim against Respondents for attorney fees for defending intervention, injunction and quiet title action, which was denied.

RELIEF SOUGHT ON APPEAL

Respondents seek to have the Trial Court's judgment affirmed.

STATEMENT OF FACTS

The Respondents William E. Meeks and Jorjanna I. Meeks, his wife, (Meeks) submit the following statement of facts to supplement those set out in the Appellants' Brief which are not complete and wholly consistent with the record. The Respondents will be referred to in this brief as "Respondents" or "Meeks". The Appellants Utah C. V. Federal Credit Union, a corporation, and Golden W. Robbins, will be referred to as "Appellants" or "Credit Union" and "Robbins" respectively.

The facts of this case are set forth in Credit Union's Judgment by Default filed November 21, 1967 (R. 6), Satisfaction of Judgment filed December 31, 1969 (R. 15), Motion to Set Aside Satisfaction of Judgment filed May 14, 1970 and the mailing certificate affixed thereto (R. 16), Affidavit of Robbins filed May 14, 1970 (R. 17, 18), Robbins' Attorney's Claim for Lien filed May 14,

1970 (R. 19), Order Setting Aside and Vacating Satisfaction of Judgment filed May 26, 1970 (R. 20), Execution (R. 47), Notice of Levy (R. 48), Proof of Publication (R. 49), Sheriff's Real Estate-Execution Cancelled filed July 14, 1970 (R. 50), Respondents' Motion to Intervene as a Defendant filed June 26, 1970 (R. 21), Respondents' Motion for Relief from Judgment filed June 26, 1970 (R. 28-30), Order to Show Cause and Temporary Restraining Order filed July 1, 1970 (R. 32), Respondents' Notice of Hearing on Motion to Intervene as Defendant filed June 26, 1970 (R. 31), Credit Union's Objections to Time of Hearing on Motion to Intervene as Defendant filed July 3, 1970 (R. 37), Credit Union's Objection to Form of Bond and Notice for Sureties to Justify filed July 3, 1970 (R. 36), Credit Union's Motion Pertaining to Order to Show Cause and Temporary Restraining Order filed July 6, 1970 (R. 43), Respondents' Notice of Substitution of Bond filed July 16, 1970 (R. 51), Respondents' Notice of Hearing on Motion to Intervene as Defendant filed September 3, 1971 (R. 56), Credit Union's Notice of Hearings, Motions and Demands filed September 13, 1971 (R. 60, 61), Order of Judge Stewart M. Hanson filed September 17, 1970, granting Respondents' intervention and right to file Motion for Relief from Judgment or other pleading to put the validity of the judgment lien against Respondents' house and lot at issue (R. 62, 63), Credit Union's Motion to Reconsider filed September 17, 1971 (R. 64), Credit Union's Motion and Notice of Hearing filed September 22, 1971 (R. 65), Order of Judge Stewart M. Hanson filed October 1, 1971, giving Credit Union oppor-

tunity to file Brief and Respondents a Responsive Brief (R. 67), Respondents' Motion for Relief from Judgment filed September 27, 1971 (R. 74-76), Credit Union's Answer to Motion for Relief from Judgment and Motion filed September 30, 1971 (R. 68-70), Counter Affidavit of Robbins filed September 30, 1971 (R. 71), Credit Union's Objection and Motion filed October 7, 1971 (R. 81), Order of Judge Stewart M. Hanson Granting Intervenors' Motion to Intervene and Denying Plaintiff's Motion to Quash filed February 1, 1972 (R. 83, 84), Credit Union's Objections to Order Granting Intervenors' Motion to Intervene and Denying Plaintiffs' Motion to Quash dated February 3, 1972 (R. 85), Credit Union's Motion for Summary Judgment and Notice of Hearing filed August 18, 1972 (R. 87), Respondents' Notice of Hearing on Intervenors' Motion for Relief from Judgment filed August 24, 1972 (R. 88) and Motion for Summary Judgment and Notice of Hearing filed August 24, 1972 (R. 89, 90), Minute Entry of Order of Judge Mark Johnson, dated September 1[illegible], 1972 (R. 91), Minute Entry of Order of Judge Earl Marshall, dated September 15, 1972 (R. 92) and Order of Judge Earl Marshall filed September 25, 1972 denying parties Motions for Summary Judgment and granting Respondents' Motion to file a Responsive Pleading filed September 25, 1972 (R. 103), Respondents' Motion to Reconsider and Objections to Order filed September 25, 1972 (R. 96-98), Credit Union's Notice of Hearing and Motion to Strike filed September 27, 1972 (R. 105), Respondents' Notice of Hearing on Intervenors' Motions to Reconsider and Objections to Order and for Extension

of Time to file Pleadings filed September 25, 1972 (R. 106), Minute Entry of Order of Judge Joseph A. Jeppson dated October 2, 1972 ordering Intervenors are not restrained from pleading any particular issue or joining any person (R. 109), Respondents' Motion to Bring in Third Party Defendant and to File Third Party Complaint and Notice filed September 29, 1972 (R. 110, 111), Credit Union's Motion to Strike Intervenors' Motion to Bring in Third Party Defendant and to File Third Party Complaint filed October 10, 1972 (R. 115, 116), Minute Entry of Order of Judge Joseph G. Jeppson granting Respondents' Motion to file Third Party Complaint and to bring in Appellant Robbins as Defendant and none other dated October 12, 1972 (R. 131), Respondents' proposed Order prepared for signature of Judge Joseph G. Jeppson, filed October 18, 1972 (R. 133) and Notice filed October 18, 18, 1972 (R. 132), Credit Union's Objections to Respondents' proposed Order dated October 13, 1972 (R. 134), Minute Entry of Judge Joseph G. Jeppson's Order dated October 16, 1972, staying the Court's Order dated October 12, 1972 (R. 137), Brief of Intervenors in Opposition to Plaintiff's Motion to Strike Intervenors' Motion to Bring in Third Party Defendant and to file Third Party Complaint filed October 26, 1972 (R. 138-139), Final Order of Judge Joseph G. Jeppson dated December 5, 1972 (R. 150, 151), Credit Union's Objections to Proposed Order filed December 5, 1972 (R. 156, 157), Respondents' Third Party Complaint filed December 5, 1972 (R. 152), Robbins' Objections, Defenses and Answer to Third Party Complaint and Counterclaim filed December 26, 1972

(R. 161-164), Credit Union's Objections, Defenses and Answer to Third Party Complaint filed December 26, 1972 (R. 165-167), Respondents' Reply to Counterclaim of Third Party Defendant Golden W. Robbins filed January 5, 1973 (R. 168-171), Respondents' Motion to Strike Third Party Defendant's Golden W. Robbins' Objections, Defenses and Answer to Third Party Complaint and Counterclaim filed January 5, 1973 (R. 172-173) and Motion to Strike Third Party Defendant's Utah C. V. Credit Union's Objections, Defenses and Answer to Third Party Complaint filed January 5, 1973 (R. 174), Respondents' Supplemental Reply to Counterclaim of Third Party Defendant Golden W. Robbins filed January 8, 1973 (R. 176-179), Intervenors and Third Party Plaintiff's Statement of Points and Authorities dated November 15, 1973 (R. 182-190), the Transcript, Findings of Fact, Conclusions of Law and Judgment.

On *November* 21, 1967 Appellant Credit Union obtained judgment by default against Defendant Jenkins for $884.30 with interest at 8% per annum $270.00 attorney's fees and $20.00 costs (R. 6, Ex. TPP 1 and 21, p. 25). The judgment was duly docketed by the Clerk of the Court in the judgment docket of the District Court of Salt Lake County, State of Utah on November 24, 1967 in Book 104 at Page 1080 (Ex. TPP 3, R. 284-286).

At the time Defendant Kay D. Jenkins and Nadene Jenkins, his wife, were owners of record, as joint tenants, of the house and lot located at 4211 Finair Drive, Granger, County of Salt Lake, State of Utah, described as follows:

All of Lot 14, Fairlane Heights Subdivision according to the official plat filed in Book "R" of Plats at Page 10, Records of Salt Lake County, Utah (T. 85-89, R. 327-333, TPP Ex. 21, p. 19).

This property is the subject matter of this litigation.

On *November* 21, 1968, Defendant Jenkins was adjudged bankrupt in the United States District Court for the District of Utah, Central Division and on April 25, 1969 the Trustee in Bankruptcy, upon Order of the Court, disclaimed any interest in and to the property (Ex. TPP 21, p. 26-27).

By Warranty Deed dated *September* 30, 1969, Defendant Kay D. Jenkins and Nadene Jenkins, his wife, conveyed the property to Third Party Wallace J. Belnap and Carol C. Belnap, his wife, who resided in Phoenix, Arizona (R. 280, Ex. TPP 21, p. 31), said Deed being duly acknowledged before one Reed Davis, a Notary Public on said date. The Deed was duly recorded on March 17, 1970 in the office of the County Recorder of Salt Lake County, State of Utah (R. 281, 282, Ex. TPP 21, p. 31, McDermaid dep. p. 4).

On *September* 30, 1969, Belnaps listed the property for sale with West Crest Realty of Salt Lake City, Utah, as their agent for $31,500.00. One Reed Davis, a Realtor, was proprietor of West Crest Realty and one Brig Young was a salesman (R. 279-281, Ex. TPP 6, 7).

On *December* 1, 1969, Belnaps contracted to sell and Respondents contracted to purchase the property by

Earnest Money Receipt and Offer to Purchase for $29,500.00, payable according to the terms thereof (Ex. TPP 6, R. 278-281). The contract was signed by Brig Young for and on behalf of West Crest Realty as broker, and it provides for Seller Belnaps to pay West Crest Realty a real estate commission for procuring the purchaser (Ex. TPP 6, R. 278-281).

McGhie Land Title Company of Salt Lake City, Utah did the abstracting and title work on the property to close the sale at the request of West Crest Realty as agent of the Belnaps (R. 324-333, 348, 349).

On *December* 31, 1969, Appellant Credit Union filed in this case a written document duly executed by the Credit Union, entitled "*Satisfaction of Judgment*," *Civil* #175524, *whereby the Credit Union acknowledged "the within matter having been fully settled and satisfied, the following officer of said company, Kurt Vollert, does hereby authorize and direct the Clerk of said County of Salt Lake, to enter full satisfaction of record of the judgment heretofore recorded. Dated this* 31*st day of December*, 1969" *signed Kurt Vollert Asst.-Treasurer* (Ex. TPP 2, R. 15).

On *December* 31, 1969, the Satisfaction of Judgment was duly entered on the docket of the judgment, duly witnessed by the Clerk of the Court (Ex. TPP 3, 21, p. 30, R. 275, 284-286).

On *March* 13, 1970, Reed Davis or Brig Young of West Coast Realty directed Respondents to McGhie Land

Title Company for the closing of the sale from Belnaps to Respondents (R. 289-291) and the sale was closed by McGhie Land Title Company on that date (Ex. TPP 11, R. 324-329).

On *March* 13, 1970, Respondents made payment of the purchase price of $29,500.00 as stated in a Buyer's Escrow Statement dated March 13, 1970 (Ex. TPP 11, R. 293) i.e. $5,175.00 down payment (Ex. TPP 8, 9, 10, R. 293-294) credit of $6,000.00 for assignment of equity on Huntington contract (Ex. TPP 11, McDermaid Dep. Ex. p. 1, R. 294) credit for note and second mortgage on property in favor of Belnaps for $8,746.85 (Ex. TPP 11, 13, 14, R. 294) credit for assumption of mortgage on property to Prudential Federal Savings & Loan Association for $9,578.15 (Ex. TPP 11, 15, 19, R. 294) and check for $817.29 (Ex. TPP 12, P. 294, 327-329).

On *March* 17, 1970 Belnaps conveyed the fee title to the property to Respondents by Quit Claim Deed dated January 2, 1970, which was duly recorded on March 17, 1970 in the County Recorder's Office for Salt Lake County, State of Utah. Respondents have occupied the property ever since as their home.(Ex TPP 15, 21 p 32)

On May 14, 1970 *two months after Respondents received title to the property from Belnaps, more or less, Appellant Credit Union filed a Motion to Set Aside the "Satisfaction of Judgment" filed in these proceedings on December* 31, 1969 (*R.* 16, *Ex. TPP* 2(*a*)). *Appellant Robbins also filed an affidavit in support of the Motion wherein he admits Respondents were living in the house*

that is the subject matter of this litigation, and that he didn't know the address of defendant Jenkins (*R.* 17, 18).

On May 14, 1970 *Robbins attempted to perfect his attorney's lien against Respondents' property by filing in the Salt Lake County Clerk's Office, State of Utah, a document entitled "Attorney's Claim for Lien"* (*R.* 19, *Ex. TPP* 4).

All three documents contain a mailing certificate certifying copies were mailed to Defendant Jenkins c/o Respondents at 4211 *Finair Drive, Granger, Utah* (*Emphasis added*).

On May 26, 1970, *more than two months after Respondents purchased the property, the Satisfaction of Judgment was set aside and vacated* (*R.* 20). *A copy was mailed to Defendant Kay D. Jenkins, c/o Respondents at* 4211 *Finair Drive, Granger, Utah* (*Emphasis added*). *It is noted no attempt was made to serve Jenkins personally even though Robbins admitted in his affidavit he knew Jenkins no longer lived at the Finair Drive address, nor was any attempt made by the Appellants to join Respondents as Defendants at the time the Motion to Set Aside the Satisfaction of Judgment was filed, even though Robbins admitted he knew Respondents owned the property* (*R.* 17, 18).

On or about June 1, 1970 Appellant Credit Union caused a Writ of Execution to be issued and levy to be made upon the property of Respondents by filing a Notice of Levy with the County Recorder of Salt Lake

County, State of Utah on *June* 4, 1970 and caused the Sheriff of Salt Lake County to schedule the property to be sold at Public Sale on *June* 30, 1970 by posting a Notice of Sale on Respondents' house and otherwise giving notice, in accordance with the execution laws of this state. (R. 47, 48, 49, 50, Ex. TPP 5, R. 305, 306). *On or about June* 3, 1970 Respondents received envelopes in the U. S. Mail from Appellants, some of them addressed to Defendant Jenkins. These envelopes were marked by Mrs. Meeks upon receiving them: "Mr. Jenkins was not at that address — return to sender" and she put them back in the mail. One envelope was turned over to McGhie Land Title Company (R. 307, 308 Ex. TPP 23).

On June 26, 1970 Respondents filed a Motion to Intervene in the case. An Order to Show Cause and Temporary Restraining Order was issued by the Court and served on the Credit Union, its attorney and the Sheriff, restraining the sale of Respondents' house and lot at Public Sale set for June 30, 1970 (R. 21, 32).

On September 17, 1971 *the Court entered an Order granting Respondents' Motion to Intervene,* continued the restraining order and permitted Respondents to file a Motion for Relief from Judgment, or other pleading, that would put before the court for determination whether the judgment constituted a valid and enforceable lien upon the property (R. 62, 63).

On September 17, 1971 the Credit Union filed a Motion to Reconsider (R. 64).

On February 1, 1972 *the Court re-affirmed its Order Granting Intervention to Respondents* and authorized Respondents to Adopt the Motion for Relief from Judgment theretofore filed, or to otherwise plead, to place before the Court for determination the right of the Credit Union to sell Respondents' home at Sheriff's Sale, or otherwise (R. 83, 84, 74, 75).

On December 5, 1972, after numerous hearings on motions, *the Court granted Respondents' Motion to file a Third Party Complaint against Appellants to quiet Respondents' title to the property against the alleged liens claimed by both Appellants* (R. 150-151). The Third Party Complaint was duly filed on December 5, 1972 (R. 152-153) and the Appellants filed Answers thereto with Robbins counterclaiming for attorney's fees (R. 161-167). Respondents denied the Counterclaim and filed a Supplemental Reply thereto (R. 176-179).

On November 16, 1973 the case was tried in the Third Judicial District Court before the Hon. James S. Sawaya who awarded judgment for Respondents and held:

> "that Mr. and Mrs. Meeks became owners of the fee title to the property in question at a time when the satisfaction of judgment was on file and before the satisfaction had been vacated and the judgment reinstated. The Court believes the Meeks could rely on the record as it existed at the time of purchase and were Bona Fide Purchasers for value and without notice, actual or constructive, of the purported liens of Third

Party Defendants. In addition, the satisfaction had been entered upon the docket by the clerk and pursuant to URCP 58B(d) ceased to be a lien until the satisfaction was vacated and that the claimed liens would not then attach for the reason that the fee title was no longer in the judgment debtor but had become vested in the Meeks.

Upon the foregoing reasons it is the order and judgment of the Court that neither third party defendant has any claim, interest or valid judgment or attorney's lien upon the property in question at the present time and they are permanently enjoined from executing upon said property in satisfaction of the judgment of plaintiff against defendant. No cause of action on counterclaim" (R. 225, 201, 229, 234).

ARGUMENT

POINT I.

THE JUDGMENT OF THE TRIAL COURT THAT RESPONDENTS BECAME OWNERS OF THE FEE TITLE TO THE PROPERTY IN QUESTION AT A TIME WHEN THE SATISFACTION WAS ON FILE AND BEFORE THE SATISFACTION HAD BEEN VACATED AND THE JUDGMENT REINSTATED; THAT RESPONDENTS COULD RELY ON THE RECORD AS IT EXISTED AT THE TIME OF PURCHASE AND WERE BONA FIDE PURCHASERS FOR VALUE

AND WITHOUT NOTICE, ACTUAL OR CONSTRUCTIVE, OF THE PURPORTED LIENS OF APPELLANTS; THAT THE SATISFACTION HAD BEEN ENTERED UPON THE JUDGMENT DOCKET BY THE CLERK AND PURSUANT TO URCP 58B (d) CEASED TO BE A LIEN UNTIL THE SATISFACTION WAS VACATED; THAT THE APPELLANT CLAIMED LIENS WOULD NOT THEN ATTACH FOR THE REASON THAT THE FEE TITLE WAS NO LONGER IN THE JUDGMENT DEBTOR BUT HAD BECOME VESTED IN THE RESPONDENTS AND NO CAUSE OF ACTION ON THE COUNTERCLAIM WAS PROPER AND SHOULD BE UPHELD.

Appellants claim the Court erred in so holding because the judgment was not satisfied and did not cease to be a lien upon the property in question for the reasons set out on pages 12, 13, 14, 16 and 17 of their Brief. Respondents contend Appellants' reasons are without merit and will answer them in the order they appear in Appellants' Brief.

It must be noted that there is a presumption that the judgment of the trial court was correct and every reasonable intendment must be indulged in favor of it; the burden of affirmatively showing error is on the party complaining thereof. *Palfreyman* v. *Bates & Rogers Con-*

struction Co., et al., 108 Utah 142, 158 P. 2d 132 at 133; *Wheat* v. *Denver & R. G. W. R. Co.*, 122 Utah 418, 250 P. 2d 932 at 935; *Burton* v. *Zions Cooperative Mercantile Institution*, 122 Utah 360, 248 P. 2d 514 at 518.

On page 13, paragraph 3 of their Brief, Appellants state Respondents' title to the property in question is subject to Appellants' claimed liens because Respondents Meeks got title by a Warranty Deed from the Judgment Debtor Jenkins after the Satisfaction of Judgment was vacated and therefore Respondents' title became subject to Appellants' liens. Respondents contend this claim of Appellants is ridiculous and without merit. That the referenced Deed is a nullity because Jenkins had no title to the property to convey on the date he executed that Warranty Deed, i.e. August 17, 1970 (Ex. TPP 21, p. 37) for the reason Jenkins had prior to that date conveyed the property to third parties Wallace J. Belnap and Carol C. Belnap, his wife, by Warranty Deed dated September 30, 1969 and which was recorded March 17, 1970 (Ex. TPP 21, p. 31) which was after the date the judgment was satisfied, i.e. December 31, 1969 (Ex. TPP 21, p. 30) and prior to the date the Satisfaction of Judgment was vacated, i.e. May 26, 1970 (Ex. TPP 21, p. 34). *Also, the record clearly shows this is the first time Appellants have made this claim in this case and they are barred from raising this contention for the first time on appeal. See Hamilton, et al.* v. *Salt Lake County Sewerage Improvement District No. 1, et al.*, 15 U. 2d 216, 390 P. 2d 235; *In Re Woodward*, 14 U. 2d 336, 384 P. 2d 110; *Tygesen* v. *Magna Water Co.*,

13 U. 2d 397, 375 P. 2d 456; *Carson* v. *Douglas*, 12 U. 2d 424, 367 P. 2d 462; *North Salt Lake* v. *St. Joseph Water & Irr. Co., et al.*, 118 Utah 600, 223 P. 2d 577; 5 Am. Jur. 2d, Appeal and Error, Sec. 545, et seq. pp. 29, et seq.

On Page 13, paragraph 4, Appellants claim that Respondents hold title to the property subject to Appellants' claimed liens for the reason Belnaps apparently had notice of the liens because they gave a Quit Claim Deed to Respondents recorded on March 17, 1970 (Ex. TPP 21, p. 32) and all Belnaps could convey to Meeks:

> "*Was what they had, and the fee title was not conveyed to Meeks, but was subject to any and all liens.*"

Respondents contend this claim of Appellants is preposterous, frivolous, sham and without merit for the reasons the claim as set forth is ambiguous, unintelligible, not supported by the record and is contrary to law. *Also the record clearly shows this is the first time the Appellants have made this claim in this case and they are barred from raising this contention for the first time on appeal.* For authority see cases cited supra. On this point the Respondents also bring to the attention of this Court that under Sec. 57-1-3 UCA (1953) a fee simple title is presumed to be intended to pass by a conveyance of real estate unless it appears from the conveyance that a lesser estate was intended. That no where in the Warranty Deed from Jenkins to Belnaps, or the Quit Claim Deed from Belnaps to Meeks is there notice a lesser estate was

intended. Also, on this point the Respondents bring to the attention of this Court that Appellants admitted during the proceedings that the chain of title to the property was from the Jenkins to the Belnaps and then to the Respondents (R. 281, Ex. TPP 21, p. 31, 32).

Appellants on page 13, paragraphs 5 and 6 of their Brief contend "There was always notice that plaintiff's attorney (Robbins) had a lien and that he had not satisfied the judgment." and stated that "The law is clear in the State of Utah. That parties cannot abrogate or disregard the attorney's lien." and cites Sec. 78-22-1 UCA (1953) in support thereof. Appellants on page 14, paragraph 2 of their Brief contend "The attorney is the only one who can give a valid release of the lien." "That the release was not valid." "The release was not authorized" and cites Section 78-51-41 UCA (1953) and on page 16 of their Brief cite URCP 58B (d) in support thereof.

On the first point the Respondents admit there is no dispute that under Sec. 78-22-1 UCA (1953) a judgment constitutes a lien upon the real property of the judgment debtor from the time a judgment against him is docketed.

On the second point Respondents violently dispute that under Sec. 78-51-41 UCA (1953) the attorney for the judgment creditor is the only one who can give a valid release of the judgment lien and that the satisfaction in this case by the Credit Union was not valid because the satisfaction was not authorized by Robbins. *On this*

Point the Respondents bring to the attention of this Court that under URCP 58B (a) (2) which Appellants so noticeably omit from their Brief, not only can the attorney of record of the judgment creditor satisfy the judgment but the owner thereof can satisfy the judgment, which in this case was the Credit Union, and under Rule 58B (d) which Appellants badly misquote and misinterpret on pages 16 and 17 of their Brief, the judgment was discharged and ceased to be a lien when the satisfaction was entered upon the docket by the clerk, i.e.:

RULE 58B SATISFACTION OF JUDGMENT

(a) Satisfaction by Owner or Attorney. *A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors, by the owner thereof,* or by the attorney of record of the judgment creditor where no assignment of the judgment has been filed and such attorney executes such satisfaction within eight years after the entry of the judgment, in the following manner: (1) by written instrument, duly acknowledged by such owner or attorney; or (2) *by acknowledgment of such satisfaction signed by the owner or attorney and entered on the docket of the judgment in the county where first docketed, with the date affixed and witnessed by the clerk.* Every satisfaction of a part of the judgment, or as to one or more of the judgment debtors, shall state the amount paid thereon or for the release of such debtors, naming them.

(d) Effect of Satisfaction. *When a judgment shall have been satisfied, in whole or in part, or as to any judgment debtor, and such*

> *satisfaction entered upon the docket by the clerk, such judgment shall, to the extent of such satisfaction, be discharged and cease to be a lien*
> . . .

Respondents submit that Rule 58B (a) (2) and (d) must be accepted at their face value, that the Rule speaks for itself, and under said Rule the owner of the judgment has the authority to satisfy the judgment. To say otherwise would violate Rule 1 (a) of the URCP which provides as follows:

> Rule 1. General Provisions
>
> (a) Scope of Rules. These rules shall govern the procedure in the Supreme Court, the district courts, city courts, and justice courts of the state of Utah, in all actions, suits and proceedings of a civil nature, whether cognizable at law or in equity, and in all special statutory proceedings, except as stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

Respondents further submit that a fair examination of the *Satisfaction of Judgment* executed and filed by the Appellant Credit Union on December 31, 1969, conforms to URCP 58B (a) (2) (Ex. TPP 2,, R. 15). That the Satisfaction of Judgment was docketed by the Clerk as required by URCP 58B (c) (d) and the judgment ceased to be a lien when so docketed (Ex. TPP 3, R. 284-287, 343-346).

Appellants on page 14, 15 and 16 of their Brief cite *Petrie* v. *General Contracting Co.*, 17 U. 2d 408, 413 P. 2d 600, *Jeffries* v. *Third Judicial District Court*, 63 P. 2d 242, 90 U. 2d 525, *Potter* v. *Ajax Mining Company*, 19 U. 421, 61 P. 999, to support their contention that Appellant Credit Union and Defendant Jenkins could not abrogate or disregard Robbins' attorney lien and that the satisfaction of the lien was not valid because Robbins is the only one who can give a valid satisfaction of the lien.

Respondents contend that those cases are not applicable to the instant case because: (1) The Jeffries case was decided in 1936, approximately 15 years before the present URCP, were adopted by the Supreme Court of Utah and that case was between the original parties i.e. the Judgment Creditor for and on behalf of his attorney against the Judgment Debtor, whereas in the instant case the case is between the Credit Union, the Judgment Creditor and Robbins, the Judgment Creditor's attorney, and the Respondents who are third parties and innocent purchasers for value of real property from the judgment debtor at the time the judgment was satisfied and ceased to be a lien, without notice, actual or constructive. (2) That the Petrie case was decided in 1966, fifteen years after the adoption of the URCP but that case was between the original party plaintiff, the judgment creditor, and the original party plaintiff's attorney who enforced his attorney's lien against real property which was proceeds acquired by the judgment creditor from the judgment debtor at Sheriff's Sale, which is not the same set of facts of the instant case. (3) That the Potter case was

decided in 1900, approximately 51 years before the present URCP were adopted by the Supreme Court of Utah and that case was between the Judgment Creditor's attorney against the Judgment Debtor who was an original party to the action which is not the same set of facts as the instant case. All of the other cases cited by the Appellants on page 15 of their Brief appear to pre-date the adoption of the URCP by the Supreme Court of Utah and do not involve a BFP of real property. By reason thereof said cases are not applicable to the instant case.

Appellants, on pages 16 and 17 of their Brief, claim that by reason of the decision rendered in the *Potter* v. *Ajax Mining* case, (supra), that URCP 58B (d) and Section 78-51-41 UCA (1953), must be construed together. That by doing so "The Plaintiff is not the owner of the judgment until the attorney's lien is paid or discharged and the attorney is the only person who can give a valid Satisfaction until his lien is paid."

Respondents dispute the Appellants' contention on this point and bring to the attention of this Court that there is no provision in URCP 58B (d) or Sec. 78-51-41, UCA 1953, that requires the two regulations to be construed together. Respondents further bring to the attention of this Court that *Potter* v. *Ajax* constitutes no authority to uphold Appellants' contention on this point for the reasons that case was decided in 1900, 51 years prior to the adoption of the URCP and the facts of that case are clearly distinguishable from the facts of the instant case. In the *Potter* v. *Ajax* case, the court permitted

plaintiff's attorney to enforce his lien against the defendant in the original case after setting aside a dismissal of the original case that was based upon a release and discharge executed by the plaintiff and the defendant for the express purpose of cheating plaintiff's attorneys out of their compensation which Respondents submit has no similarity to the instant case before this court.

Respondents offer no argument on the point that Respondents paid value for their house and lot because Appellants did not argue that point except to state the record clearly shows that Respondents paid the full purchase price of $29,500.00 (R. 293, 294, 295, Ex. TPP 6-13).

Respondents offer no argument on the point there was no estoppel because Appellant did not submit argument on that point. However, Respondents bring to the attention of the Court that the record shows Robbins filed an "Attorney's Claim for Lien" in the Salt Lake County Clerk's Office on May 14, 1970 (R. 19, Ex. TPP 4) and Respondents claim the filing of this claim constitutes an admission by Robbins that the law required him to perfect his lien against Respondents' property prior to the purchase thereof by Respondents by giving proper notice thereof. That such claim for attorney's lien was not adequate notice because it was not timely filed and it was not filed in the Salt Lake County Recorder's Office whose records are customarily checked by abstractors when abstracting titles to real property and his failure to do so constitutes an estoppel.

From the foregoing, it is abundantly clear Appellants

have failed to carry the burden to prove the claims asserted by them under Point I. of their Brief.

POINT II.

WHERE ATTORNEY CLAIMS A LIEN UPON LAND TO SECURE PAYMENT OF HIS FEE THAT IS NOT PART OF THE PROCEEDINGS, HE IS UNDER A DUTY TO PROTECT HIS LIEN AGAINST SUCH LAND BY TAKING STEPS TO MAKE THE RECORD THAT WOULD BE NOTICE TO ONE WHOSE DUTY IT IS TO INQUIRE ABOUT IT THAT SUCH LIEN EXISTED. THAT IF THE ATTORNEY FAILS TO TAKE STEPS TO MAKE SUCH RECORD AND AFTER THE TERMINATION OF THE LITIGATION, THE JUDGMENT DEBTOR WHO OWNS THE LAND CONVEYS THE LEGAL TITLE TO A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE OF THE LIEN, IT WILL NOT ATTACH TO THE LAND IN THE HANDS OF SUCH PURCHASER.

Appellants on page 17 contend that McGhie Land Title Company and Lawyers Title Insurance Corporation and their customer, the Meeks, were bound to take notice of the Appellant Robbins statutory lien under Section 78-51-41 by reason of the *Potter* v. *Ajax* case, supra. Such claim is preposterous and ludicrous for the following reasons:

1. The judgment lien, the source of Robbins lien, was satisfied and discharged and ceased to be a lien on December 31, 1969, until the satisfaction was vacated and the judgment reinstated on May 26, 1970. That the lien could not then attach because the title to the property was not owned by the judgment debtor but was then owned by the Respondents as was argued by the Respondents under Point I of this Brief.

2. The decision of the *Potter* v. *Ajax* case, is not applicable to the instant case because the facts in that case are not the same as the facts in the instant case, as pointed out in Respondents' argument under Point I. of this Brief.

3. The facts of this case show the title companies were acting as the agent for the Belnaps in that the judgment was satisfied and released on December 31, 1969 by the filing of the Satisfaction of Judgment by Appellants (R. 15); the lien of the judgment was discharged from the Respondents' property on December 31, 1969, the date the Satisfaction of Judgment was entered by the Clerk on the judgment docket, as required by Rule 58B (d) (Ex. TPP 3); Belnaps hired West Crest Realty to sell the property to Respondents (Ex. TPP 7, R. 38, 40); West Crest Realty negotiated the execution of the contract between the Belnaps and the Respondents for the sale of the property as agents of the Belnaps (Ex. TPP 6); Belnaps agreed to furnish Respondents with good and marketable title with abstract brought up-to-date or, at Belnap's option, a policy of title insurance in the name

of the Respondents (Ex. TPP 6); West Crest Realty as the agent for the Belnaps hired the title companies to provide the policy of title insurance they elected to furnish to Respondents (Ex. TPP 16, R. 283, 284, 289, 290, 291, 348, 349); Belnaps paid for the title policy (McDermaid deposition Ex. P. 10, Ex. TPP 16) and Belnaps paid West Crest Realty a real estate commission for handling the sale (McDermaid deposition Ex. P. 10). Respondents had nothing to do with the hiring of the title companies or the directing of their work. Meeks merely attended the closing and accepted a policy of title insurance insuring them as the owners of fee title to the property, subject to the exceptions listed therein (Ex. TPP 16, R. 289, 300). Therefore, any notice chargeable to the Title Companies (which Respondents claim there was none) would be chargeable to Belnaps, or their agent West Crest Realty and not the Respondents.

4. Respondents claim notwithstanding Sec. 78-51-41 UCA 1953, that the courts generally hold that where the attorney claims a lien upon land that is not the subject of the litigation, to secure payment of his fee, the attorney is under a duty to perfect his lien against such land by taking steps to make the record that would be notice to one whose duty it is to inquire about it that such a lien existed; that if the attorney fails to take steps to make such record and after the termination of the litigation, the judgment debtor who owns the land should convey the legal title to a purchaser who should acquire it in good faith and for value and without notice of the

lien, it will not attach to the land in the hands of such purchaser.

For cases holding that notice is necessary to protect the Attorney's Lien against subsequent good faith purchasers of land, see *Miller* v. *Monroe*, 50 Idaho 726, 300 P. 362 (1931); *Norton* v. *McIninch*, 50 U. 253, 166 P. 984 (1917); *Victor Gold and Silver* v. *National Bank of the Republic*, 18 U. 87, 55 P. 72 (1898); *Charles* v. *Whitt*, 218 S. W. 994 (Kentucky) and 93 A. L. R. 695; 120 A. L. R. 1244, which cite the holdings of *O'Brien* v. *Whitehead*, 75 Ga. 751 (1885); *Dreyfuss* v. *Freud*, 209 Ill. App. 345 (1918); *Gust* v. *Van Court*, 74 Okla. 81 (1918), and others which recognize this principle of law.

In the Idaho case, *Miller* v. *Monroe*, supra, the plaintiff's attorney attempted to enforce his attorney's lien under Attorney's Lien Statute like Sec. 78-51-41 UCA 1953, against property that was subject to foreclosure action and that was sold at Sheriff's sale to a third party purchaser. The Supreme Court of Idaho ruled against the attorney and stated:

> "Where an attorney's lien attaches to real property in this state to proceeds of a judgment procured by the attorney claiming the lien, it remains a lien against such real property until paid, or discharged, or the property passes into the hands of an innocent purchaser without notice . . ." p. 364

In the Utah case, *Norton* v. *McIninch*, supra, the Supreme Court of Utah held the attorney *by filing a No-*

tice of Claim of Lien in the County Recorder's Office in Millard County sufficed as notice to the judgment debtor. In the Utah case, *Victor Gold and Silver* v. *National Bank of the Republic*, supra, the Supreme Court of Utah stated that if an attorney claims compensation beyond cash costs under some agreement with his client, express or implied, his lien for such compensation can be protected against payment to the client by the judgment debtor only by notice to the judgment debtor.

On this point Respondents incorporate by reference the next to the last paragraph under Point I. of this brief.

It is the general rule in the United States that a bona fide purchaser of a real estate title, perfect on its face, takes it discharged of all liens, encumbrances and restrictions of which he had no notice, such as liens, encumbrances and restrictions, prior mortgage, trust or an attorney's lien, that a bona fide purchaser is not chargeable with the fraud of predecessors and takes title purged of any anterior fraud affecting it and from any equities existing between the original parties. See 92 C. J. S. P. 330, *Marleen* v. *Brown*, 21 C. 2d 668, 134 P. 2d 770, *American Bonding Co. of Baltimore* v. *Dowell*, 31 Wash. 2d 585, 198 P. 2d 191 and *Miller* v. *Monroe*, supra.

For cases holding that where a judgment appears on the record to have been satisfied and discharged and upon reliance of such record a bona fide purchaser goes ahead and purchases property of the judgment debtor and the judgment creditor, under the prior satisfied judgment, attempts to set aside the prior satisfaction and regain

his priority, the subsequent bona fide purchaser is not bound by the prior judgment or lien where he has no notice other than the fact that the judgment had been satisfied. See *McCormick* v. *Wheeler*, 36 Ill. 114 (1865), where the Illinois Supreme Court stated:

> "Parties cannot be held to notice of what has no legal existence, and we would be going quite too far were we to hold them to notice of informal memoranda on the docket of the Judge by which the record might possibly, at some future time be amended, and require them to act as if such amendment had been made."
>
> "In attempting to relate revival of the lien to the original lien there would not only be pulpable injustice as between these parties but the establishment of such a principle would grossly violate the public policy, by destroying faith in public records and in the security and impairing the security of titles."

See also *Van Sickle* v. *Harmeyer, alias William Allen*, 172 Ill. App. 218 (1901). The Supreme Court of Illinois held that:

> "The Decree of September 22, 1902 was a complete satisfaction and settlement of the alimony decree of July 30, 1901, and that decree so far as it provided for alimony stood released and discharged as of record. It is well settled that an entry of a satisfaction of a judgment will not be vacated to the prejudice of a bona fide purchaser of property who became such while the judgment appeared by record to be satisfied and discharged."

For similar cases holding as above, see *Persons* v. *Shaeffer*, 65 Cal. 79, 3 Pac. 94 (Calif. 1884) and *Taylor* v. *Ranney*, 4 Hill. (N. Y.) 619, 1843).

In the *Persons* v. *Shaeffer* case, the Supreme Court of the State of Calif. stated:

> "Equity might, under some circumstances, keep a lien alive, notwithstanding such discharge. But it certainly would not keep it alive to the prejudice of a party who had purchased the premises when it appeared of record that the lien had been discharged, and who did not have any knowledge of the equities on which a loan could be kept alive after being discharged."

See also *Guy* v. *Du Uprey*, 16 Cal. 196, 76 Am. Dec. 518 (1860), *Bunn v. Lindsey*, 95 Mo. 250, 7 S. W. 473 and *Richards* v. *Griffith*, 28 P. 484 (Calif. 1891), 92 Cal. 493.

POINT III.

THE TRIAL COURT DID NOT COMMIT ERROR IN GRANTING RESPONDENTS INTERVENTION AND INJUNCTION ENJOINING SALE OF RESPONDENTS' LAND AND PERMITTING RESPONDENTS TO PROVE THEIR TITLE TO THE LAND IN THE ORIGINAL CASE AND DENYING APPELLANT'S MOTION TO JOIN TITLE COMPANIES AS DEFENDANTS.

Appellants on pages 18 and 19 of their Brief claim "the Meeks, a subsequent buyer, should have not been

allowed to intervene in a suit between the plaintiff and defendant after judgment and after execution, regular on its face, has been levied upon the property which said property was owned by the debtor at the entry of judgment." and to support their claim Appellant states the following:

> P. 18
>
> "That there is no rule or statute dealing with pleadings or relief after judgment other than Rule 60 which provides for relief from judgments or orders." "Section 60 states:"
>
> "On Motion and upon such terms as are just, the court may in the furtherance of justice, relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons * * * such as excusable neglect."
>
> P. 19
>
> "The section which deals with execution and proceedings supplement thereto is Rule 69 and it provides:
>
> "ISSUANCE OF WRIT OF EXECUTION. Process to enforce a judgment shall be by a Writ of Execution unless the court otherwise directs, which may issue at any time within eight years after the entry of judgment * * *"
>
> "We submit that this section does not allow the bringing of a distinct and separate cause of action by subsequent purchase against the plaintiff in the original action."

to further support their contentions Appellant asserts:

P. 19

"We maintain that neither the new rules nor the statute has changed, but the law has been for years that a third party not a party to the action in which the execution has issued, cannot intervene in the original action."

Respondents contend the claim of Appellants is not correct and bring to the attention of this court that a careful reading of Rule 60 and 69 URCP clearly shows there is no prohibition against the trial court granting intervention and injunction to Respondents under Rule 24 URCP, which Rule Respondents contend controls this case. *In fact, Rules* 60 *and* 69, *contrary to Appellant's contentions, grant to Respondents the right to obtain relief from judgment by motion or by an independent action and Rule* 69 *provides for a "Stay of Execution" pending such proceedings,* i.e. See quotes from Rules 60, 69 and 62 as follows:

"Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(b) MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . ."

"*This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment,* order, proceeding or to

set aside a judgment for fraud upon the court. *The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.*"

"Rule 69. EXECUTION AND PROCEEDINGS SUPPLEMENTAL THERETO.

(a) ISSUANCE OF WRIT OF EXECUTION. Process to enforce a judgment shall be by a writ of execution unless the court otherwise directs . . . (*except an execution may be stayed pursuant to Rule* 62 either in the county in which such judgment was rendered, . . ."

"Rule 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

(b) STAY ON MOTION FOR NEW TRIAL OR JUDGMENT. *In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for . . . or of a motion for relief from a judgment or order made pursuant to Rule* 60. . . ."

Respondents contend the last sentence of Rule 60, supra, above has reference to Rule 24. INTERVENTION. That the following facts of record in this case are clearly sufficient to sustain the trial court's order granting intervention under Rule 24, injunction under Rule 62, supra, and the filing of a Third Party Complaint to enable Respondents to prove clear title to their house and lot, free and clear of the alleged liens of Appellants pursuant to Section 78-40-1 UCA 1953, namely.

RULE 24. INTERVENTION

"(a) INTERVENTION OF RIGHT. Upon timely application *anyone* shall be permitted to intervene in an action: . . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof."

"(b) PERMISSIVE INTERVENTION. Upon timely application *anyone* may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

"(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motions shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought."

Section 78-40-1. "ACTION TO DETERMINE ADVERSE CLAIM TO PROPERTY — AUTHORIZED — An action may be brought by any person against another who claims an estate or interest in real property . . . for the purpose of determining such adverse claim."

For instance Respondents contend:

(1) Respondents' application for intervention was timely filed in that they filed their Motion to Intervene on June 26, 1970, four days prior to June 30, 1970, date of Execution Sale and 23 days after Notice of Sale was posted on their house (R. 21-35, 47, 48, 49, 50) and Respondents were part of the class entitled to make application for intervention as required under Rule 24 (a) (b).

(2) Appellants by executing upon Respondents' home were attempting to bind Respondents by the judgment in the action against defendant Jenkins. That Jenkins' representation of Respondents' interests was inadequate because his whereabouts were unknown to Respondents and Appellents (R. 16-20, Meeks deposition, p. 13, 16, 17). That as owners of the house and lot Respondents were so situated as to be adversely affected by the sale of their property which was in custody, or subject to the control or disposition of the court or an officer thereof, which clearly falls within the requirements of Rule 24 (a) (2) (3).

(3) Respondents' claims and defenses to the alleged liens of Appellants involve a common question of law and fact, i.e. the existence of the alleged liens at the time Respondents purchased their house and lot which clearly falls within the requirements of Rule 24 (b) (2).

(4) Intervention did not prejudice the adjudication of the rights of the original parties to the action in that the purpose of the execution sale was solely to get money to satisfy Appellants' judgment which had already been entered and filed and Respondents posted bond to

make said payment in event Appellants could prove their alleged liens against Respondents' property, which does not violate the provision of the last sentence of Rule 24 (b).

Respondents complied with Rule 24 (c) by personal service of their Motion to Intervene upon both Appellants, which motion stated the grounds therefore and was accompanied by a pleading, i.e. Motion for Relief from Judgment which set forth the claim and defenses for which intervention was sought (R. 28, 29, 30, 34, 35).

Respondents cite the following cases, holding the trial court had the prerogative to grant Respondents intervention, injunction and the right to file the quiet title action in this proceeding. The Utah Supreme Court in the Utah cases *Snow* v. *West*, 35 U. 206, 99 P. 674; *Young* v. *Schroeder*, 10 U. 155, 172, 37 P. 252, affirmed 161 U. S. 334, 40 L. Ed. 721, 16 S. Ct. 512; *Post* v. *Foote*, 18 U. 235, 54 P. 975, adopted the rule followed by most states that a court has the power and jurisdiction over the execution of its own judgments and process and may set aside sales, where necessary. The Court even has the authority to set aside an execution sale after the time of redemption has expired, where such sale was attended by substantial irregularities that results in a gross sacrifice of the judgment debtors' property.

The Utah Supreme Court in the cases *Pulsipher* v. *Chinn* (*Schmutz, Intervenor*), 69 U. 401, 225 P. 439 and *White, et al.* v. *District Court of Fourth Judicial Dist. in and for Utah County, et al.*, 120 U. 173, 232 P. 2d 785,

adopted the rule followed by most of the states that if a third party has a right to restrain a judgment creditor from proceeding against his property, his remedy is a mere incidental proceeding in the case in which judgment was obtained, and not by a separate suit, especially if the property is within the jurisdiction of the court as is true in the instant case.

In *Pulsipher* v. *Chinn* (*Schmutz, Intervenor*), supra, decided by this Court in 1927, the plaintiff Pulsipher obtained confession of judgment against defendant Chinn on promissory notes. Prior to judgment plaintiff attached 275 head of sheep in possession of defendant Chinn by writ of attachment. *After judgment an order was entered permitting Intervenor Schmutz to intervene and to file a complaint in intervention which was later amended, whereby intervenor claimed ownership of the sheep and was entitled to immediate possession of said sheep.* Plaintiff answered by denying such allegations and alleged the sheep were the property of defendant Chinn, that in any event Intervenors' rights to the sheep were inferior to plaintiff under the writ of attachment. *Intervenor was permitted to prove his title to the sheep and the court awarded ownership of the sheep to Intervenor by judgment, free and clear of any claims of the plaintiff under the writ of attachment.*

In *White, et al.* v. *District Court of Fourth Judicial District in and for Utah County, et al.*, decided by this Court in 1961, the Court held that the defendants Clara A. White and Kathryn Grange White could file Counter-

claim against the plaintiff Clyde C. Lewis and Verona D. Lewis with respect to misrepresentation and fraud concerning a contract of purchase of real property in the original case filed by the plaintiffs Lewis against the defendants White for unlawful detainer. In reversing the decision of the trial court, who struck the counterclaim on grounds an action for misrepresentation and fraud could not be asserted in an action for unlawful detainer and held Whites' remedy was to bring a separate action. This Court stated:

> "Prior to the adoption of the New Rules of Civil Procedure that was the law of this state" citing Dunbar v. Hansen, 68 U. 398, 250 P. 982; Forrester v. Cook, 77 U. 137, 292 P. 206; Christy v. Guild, 101 U. 313, 121 P. 2d 401.
>
> "This would be inconsistent with the spirit and purpose of the New Rules of Civil Procedure which was to simplify and expedite procedure and to consolidate litigation wherever that could be done without confusion or prejudice to the rights of litigants."

Respondents have not attempted to analyze the numerous authorities set forth on pages 19 to 23 of Appellants' Brief for the reason the authorities cited do not appear to include one Utah case and are consequently inapplicable to the situation under consideration.

From the foregoing facts and authorities the trial court acted properly in exercising its right to grant to Respondents intervention, injunction and the right to

prove title to their property by a quiet title action in this proceeding.

Respondents have not attempted to argue the point raised by Appellants that McGhie Land Title Company and Lawyers Title Insurance Corporation should have been made parties to the action for the reason Appellants offer no arguments on that point, except in their conclusion Appellants, in substance, say the judgment of the trial court should be reversed because the Respondents have recourse against the title companies under the title insurance policy and the title companies were negligent in not checking the record and contacting Robbins to learn the status of Appellants' alleged liens. Respondents contend Appellants' claim is without merit and submit to this court that it is not unusual for a title insurer to refuse to pay spurious and invalid claims against a title they have insured and to assume the defense of an action filed to enforce such claims against the title for and on behalf of their insured as the title companies have done in this case. If title insurers did not resist such claims they would become the victim of unconscionable claimants and not remain in business for any length of time. Respondents further claim that the existence of the policy of title insurance does not change the law that is applicable to the satisfaction of the judgment and that the judgment ceased to be a lien at the time the satisfaction was entered on the judgment docket by the clerk and was not a lien until the judgment was reinstated. The judgment docket is a public record title companies and the general public rely upon to show the existence or non-existence of judg-

ment liens when searching title to land and McGhie Land Title Company and Lawyers Title Insurance Corporation were entitled to rely upon said docket to reflect the status of the Appellants' alleged liens. To hold otherwise would as is more appropriately stated in *McCormick* v. *Wheeler*, supra:

> "Parties cannot be held to notice of what has no legal existence, and we should be going quite too far were we to hold them to notice of informal memoranda on the docket of the Judge by which the record might possibly, at some future time be amended, and require them to act as if such amendment had been made.
>
> "In attempting to relate revival of the lien to the original lien there would not only be pulpable injustice as between these parties but the establishment of such a principle would grossly violate the public policy, by destroying faith in public records and in the security and impairing the security of titles."

Appellants on page 7, paragraph 6 of their Brief make special emphasis of the point that Respondents served no pleadings on defendant Kay D. Jenkins and that he was a necessary party in this case. On this point Respondents make special emphasis to the Court that Appellants made no effort to serve Jenkins personally with the Motion to Set Aside the Satisfaction of Judgment or to join Respondents as defendants at that time even though Appellants admitted knowing Jenkins did not reside at the Finair address and that Meeks were the owners of the property.

CONCLUSION

We submit to this honorable court that Appellants have failed to assert cogent and convincing authority or analysis in support of the questions at issue herein. On the basis of the authorities cited herein and the facts disclosed by the record, we respectfully submit Appellants' appeal should be dismissed and the judgment of the trial court affirmed on the grounds that:

1. The satisfaction of judgment was valid. The judgment ceased to be a lien upon the satisfaction being entered upon the docket by the clerk under URCP 58B (d).

2. Respondents became owners of the fee title to the property at a time the satisfaction of judgment was on file and before the satisfaction was vacated and the judgment reinstated; that the liens would not then attach for the reason the fee was no longer in the judgment debtor but was vested in Respondents.

3. Respondents could rely on the record as it existed at the time of purchase and were bona fide purchasers for value and without notice. actual or constructive, of the purported liens of Appellants.

4. Respondents' entitlements to intervention, injunction and to prove their title by a quiet title action were proper.

5. The law applicable to each point raised by the Appellants is against the Appellants and in favor of the Respondents.

6. Dismissal of Appellant Robbins' Counterclaim for attorney's fees against Respondents was proper.

7. The title companies were not necessary parties.

8. Registered abstracters, duly licensed under Title I, Chapter I. UCA 1953, to compile abstracts of real estate titles for the public, are entitled to rely upon the public records when compiling abstracts of title to real property within the State of Utah.

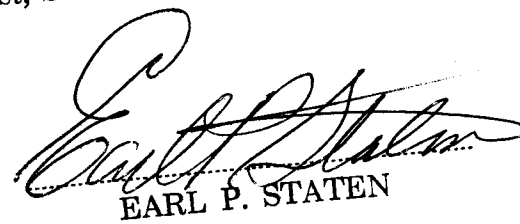
Respectfully submitted,

EARL P. STATEN
Suite 400 Chancellor Bldg.
220 South 2nd East
Salt Lake City, Utah 84111

Attorney for Intervenors - Third Party Plaintiffs and Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 1974 4 copies of the foregoing Answer Brief of Intervenors, Third Party Plaintiffs and Respondents were served upon Golden W. Robbins, attorney for plaintiff and third party defendants and appellant 705 Newhouse Building, Salt Lake City, Utah, and upon William H. Henderson, attorney for plaintiff and third party defendants and appellant, 455 South 3rd East, Salt Lake City, Utah.



EARL P. STATEN