

1986

# Advance Business Equipment v. Patricia M. Wade, Patricia M. Burke : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

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

Mark Larson; Ungricht, Randle and Deamer; Attorney for Respondent.

John T. Caine; Richards, Caine and Richards; Attorney for Appellant.

---

## Recommended Citation

Brief of Respondent, *Advance Business Equipment v. Wade*, No. 860070.00 (Utah Supreme Court, 1986).

[https://digitalcommons.law.byu.edu/byu\\_sc1/808](https://digitalcommons.law.byu.edu/byu_sc1/808)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court 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.

UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 860070

BRIEF

---

IN THE SUPREME COURT OF THE STATE OF UTAH

---

ADVANCE BUSINESS EQUIPMENT,  
a Utah corporation,

Plaintiff and  
Appellant,

vs.

Case No. 20292

*860070-CA*

PATRICIA M. WADE, f/k/a  
PATRICIA M. BURKE,

Defendant and  
Respondent.

---

RESPONDENT'S BRIEF

---

AN APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY  
THE HONORABLE JUDITH M. BILLINGS, PRESIDING

---

John T. Caine  
Richards, Caine & Richards  
Attorneys for Appellant  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

Mark A. Larsen  
Attorney for Respondent  
Suite 520 Boston Building  
9 Exchange Place  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

FILED

JUN 12 1985

---

Clerk, Supreme Court, Utah

---

IN THE SUPREME COURT OF THE STATE OF UTAH

---

ADVANCE BUSINESS EQUIPMENT,  
a Utah corporation,

Plaintiff and  
Appellant,

vs.

Case No. 20292

PATRICIA M. WADE, f/k/a  
PATRICIA M. BURKE,

Defendant and  
Respondent.

---

RESPONDENT'S BRIEF

---

AN APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY  
THE HONORABLE JUDITH M. BILLINGS, PRESIDING

---

John T. Caine  
Richards, Caine & Richards  
Attorneys for Appellant  
2568 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

Mark A. Larsen  
Attorney for Respondent  
Suite 520 Boston Building  
9 Exchange Place  
Salt Lake City, Utah 84111  
Telephone: (801) 531-0441

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES . . . . .	(ii)
STATEMENT OF ADDITIONAL MATERIAL FACTS . . . . .	.1
ARGUMENT . . . . .	5
POINT I	
THE DISTRICT COURT DID NOT ERR IN DISMISSING THE COMPLAINT FOR FAILING TO STATE A CAUSE OF ACTION . . . . .	.5
POINT II	
DUE TO THE COLLATERAL ESTOPPEL IMPACT OF THE PARTIAL SUMMARY JUDGMENT, WADE WAS ENTITLED TO SUMMARY JUDGMENT ON HER COUNTERCLAIM . . . . .	.8
CONCLUSION . . . . .	9

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Olsen v. Board of Education of Granite School District,</u> 571 P.2d 1336, 1338 (Utah 1977) . . . . .	.8
<u>Pace v. Parrish,</u> 122 Utah 141 247 P.2d (1952) . . . . .	.5

Statutes

Utah Rule of Civil Procedure 9(b) . . . . .	4
---	---



in part to Wade; the District Court split the property into two parcels: Wade was awarded a portion of the property upon which a home was located at approximately 785 East 4596 South, Murray, Utah; and Burke was awarded the adjoining, undeveloped acreage. This divorce proceeding is now on appeal before this Court (Case No. 20404).

4. Throughout the course of the divorce proceeding, Wade maintained a lis pendens upon the Murray Property.

5. On May 12, 1981, the Sheriff of Salt Lake County, Utah sold to Roytype Division of Royal Business Machines, Inc. ("Roytype"), a judgment creditor of ABE, at public action, according to law, and after due and legal notice, all right, title, claim and interest of ABE in the Murray Property.

6. On July 27, 1982, Roytype obtained from the Sheriff of Salt Lake County, Utah, a Sheriff's Deed to the Murray Property, which was recorded on February 4, 1982, in the office of the Salt Lake County Recorder as Entry No. 3645412, of Book 5337, at Page 1536; a certified copy of this Sheriff's Deed is attached as Exhibit "A" to the Affidavit of Patricia M. Burke, which is part of the record of this appeal.

7. On November 3, 1982, Roytype initiated a quiet-title action entitled "Roytype Division of Royal Business Machines, Inc. v. Advance Business Equipment, et al.," Civil No. C-82-8963,

in the Third Judicial District Court of Salt Lake County, Utah, seeking to quiet title to the property which Roytype obtained pursuant to the Sheriff's Deed; ABE and Burke were represented by the same counsel of record in the divorce proceeding (Case No. 20404) in the quiet-title action (Civil No. C-82-8963), and in this case (Case No. 20292).

8. On March 8, 1983, Roytype filed a Motion for Summary Judgment in the quiet-title action (Civil No. C-82-8963).

9. On April 15, 1983, in the quiet-title action (Civil No. C-82-8963), the District Court entered a Partial Summary Judgment against ABE and Burke, decreeing that they have no interest whatsoever in the Murray Property; a certified copy of this Partial Summary Judgment is attached as Exhibit "B" to the Affidavit of Patricia M. Burke, which also is part of the record on appeal.

10. The Partial Summary Judgment eliminated any interest which ABE or Burke had in the Murray property and permanently enjoined them from asserting any claim to the property adverse to Roytype's title.

11. In the quiet-title action (Civil No. C-81-8263), no party filed a notice of appeal; on May 15, 1983, the time to appeal expired.

12. On May 20, 1983, Wade was forced to purchase the Murray Property from Roytype; a certified copy of the Quit-Claim Deed is



attached as Exhibit "C" to the Affidavit of Patricia M. Burke, which also is part of the record on appeal.

13. Agents and employees of ABE, namely Burke, continued to trespass upon the Murray Property owned by Wade and continued to store their personal property on Wade's property.

14. On May 16, 1984, ABE filed a Summons and Complaint in this action, together with a lis pendens, alleging that Wade defrauded ABE out of the Murray Property.

15. On June 6, 1984, Wade filed an Answer and Counterclaim; on June 8, 1984, she filed a Motion for Summary Judgment, which was scheduled for hearing on June 29, 1984.

16. After the hearing held on June 29, 1984, the District Court entered an Order dated July 26, 1984, dismissing ABE's Complaint, without prejudice, for failure to state fraud with particularity as required by Utah Rule of Civil Procedure 9(b) and granting ABE until July 9, 1984, to file an Amended Complaint.

17. In response to this Order, ABE filed an Amended Complaint dated July 12, 1984.

18. On August 2, 1984, Wade filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and a Motion for Summary Judgment of Defendant's Counterclaim.

19. On September 26, 1984, the District Court granted Wade's

Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted and Motion for Summary Judgment on Defendant's Counterclaim; this Order found that Wade was the owner of the Murray Property, enjoined ABE from asserting any interest in it, enjoined ABE and its employees from trespassing on it, required ABE and its employees to remove their personal property from Wade's real property, and required ABE to release the lis pendens which it filed in the above-captioned case within ten days from the date of the Order.

#### ARGUMENT

##### POINT I

#### THE DISTRICT COURT DID NOT ERR IN DISMISSING THE COMPLAINT FOR FAILING TO STATE A CAUSE OF ACTION

The Amended Complaint fails to state a cause of action for fraud against Wade upon which relief can be granted. The elements of fraud are set forth in Pace v. Parrish, 122 Utah 141, 247 P.2d 273 (1952), where this Court stated:

[I]n an action in deceit based on fraudulent misrepresentations, the burden [is] upon plaintiffs to prove all of the essential elements thereof. These are: (1) That a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance

of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage. See *Stuck v. Delta Land & Water Co.*, 63 Utah 495, 227 P.791; *Jones v. Pingree*, 73 Utah 190, 273 P. 303; 23 Am. Jur. 773; 37 C.J.S., Fraud, s 3, p. 215.

Id. at \_\_\_\_\_, 247 P.2d at 274-75.

In its Amended Complaint, ABE alleges that Wade defrauded ABE by failing to maintain a lis pendens on the Murray Property after informing ABE that she would maintain the lis pendens. ABE further alleges that, without informing ABE, she released the lis pendens and purchased the property from Roytype. The allegation essentially assert that Wade should have, or did, agree to fraudulently collude with ABE and against Roytype and that Wade's failure to do so amounted to fraud against ABE.

Even if taken as true, these allegations fail to state a cause of action upon which relief can be granted. Assuming for the purposes of argument only that the representations were made and that they were false, these representations were neither material nor did they result in any injury or damage to ABE. The lis pendens which Wade filed would protect Wade's interest, but not ABE's interest, against Roytype. If Wade was awarded all of the Murray Property, the lis pendens would allow her to recover the property from Roytype. If, however, she was awarded no property, due to reversal of this Court's ruling in the divorce action by the Utah Supreme Court, ABE would have no interest in

the property, having lost that interest to Roytype (and its successors) at the Sheriff's Sale and having failed to redeem the property within the statutorily-prescribed six-month time period. Further judicial proceeding would not change that result for ABE.

ABE and Burke were represented by the same attorney in all three proceedings: this case (Case No. 20292), the divorce action (Case No. 20404), and the quiet-title action filed by Roytype (Civil No. C-82-8963). Accordingly, it is difficult to understand how ABE could assert that Wade, who is not a lawyer, could have misled ABE as to the legal consequences of her lis pendens.

Consequently, because Wade's lis pendens could not preserve anyone's interest other than her own, any misrepresentation concerning the maintenance of the lis pendens was neither material nor did it result in any injury to ABE. ABE was allowed to amend once and still failed to state a cause of action. Therefore, the Amended Complaint was properly dismissed with prejudice for failing to state a cause of action.

POINT II

DUE TO THE COLLATERAL ESTOPPEL IMPACT OF  
THE PARTIAL SUMMARY JUDGMENT, WADE WAS  
ENTITLED TO SUMMARY JUDGMENT ON HER COUNTERCLAIM


On April 15, 1983, in Civil No. C-82-8963, the District Court entered a Partial Summary Judgment against ABE and Burke, eliminating all interest which they have in the Murray Property. The doctrine of res judicata renders a final judgment, on the merits, by a court of competent jurisdiction, conclusive upon the parties and is a bar to subsequent litigation of the same issues. Olsen v. Board of Education of Granite School District, 571 P.2d 1336, 1338 (Utah 1977). The collateral estoppel impact of the Partial Summary Judgment, which was not appealed, prohibits ABE from asserting any interest in the Murray Property adverse to Wade. If ABE had any justifiable interest in the property, it was ABE's obligation to assert it in the prior action. Having failed to assert any such interest, and the District Court having determined that ABE had no interest, the principles of res judicata prohibit ABE from collaterally attacking Wade's interest in the Murray property. Wade, in this situation, is no different from any third party who, after the entry of the Partial Summary Judgment, purchased the property from Roytype. Wade's Motion for Summary Judgment on her Counterclaim, therefore, was properly granted.

CONCLUSION

The Amended Complaint fails to state a cause of action based upon fraud because the representations set forth in the Amended Complaint are neither material nor resulted in any injury to ABE. The collateral estoppel impact of the partial Summary Judgment entered by the District Court in the quiet-title action (Civil No. C-82-8963) entitled Wade to Summary Judgment on her Counter-claim. As a result, Patricia M. Burke was entitled to judgment against ABE. The District Court's judgment should be affirmed.

DATED this 3d day of June, 1985.

Respectfully submitted,


  
Mark A. Larsen  
Attorney for Respondent  
Patricia M. Wade

CERTIFICATE OF SERVICE

Pursuant to Utah Rule of Appellant Procedure 75(d), Mark A. Larsen, attorney of record for defendant and Respondent Patricia M. Wade, hereby certifies that two true and correct copies of the preceding Respondent's Brief was mailed, first class, to the following attorney of record:

John T. Caine, Esq.  
Richards, Caine & Richards  
2568 Washington Blvd.  
Ogden, Utah 84401

DATED this <sup>12<sup>th</sup></sup>~~3<sup>rd</sup>~~ day of June, 1985.

  
MARK A. LARSEN  
Attorney for Defendant and  
Respondent Patricia M. Wade