

1988

Bette Wycalis v. City Federal Savings; Guardian Title Company of Utah and Warren H. Curlis, its President; U.S. Title of Utah, Trustee; City Consumer Services Inc., Beneficiary; R.M. Wall; Gary L. Meredith and Lyle G. Meredith; Ed Maass; Randy Krantz, B. Brad Christenson, Debra S. Christenson; R&C Associates; Roy L. Miller; Sharon L. Miles, and John Does I through X :
Petition for Rehearing of Respondents Guadian Title company of Utah and Warren H. Curlis

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

BETTE WYCALIS,	:	
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	Court of Appeals
	:	No. 880030-CA
	:	
CITY FEDERAL SAVINGS & LOAN	:	
ASSOCIATION; GUARDIAN TITLE	:	Priority No. 13b
COMPANY OF UTAH and WARREN H.	:	
CURLIS, its President; U.S. TITLE	:	
OF UTAH, Trustee; CITY CONSUMER	:	PETITION FOR REHEARING
SERVICES, INC., Beneficiary; R. M.	:	OF RESPONDENTS GUARDIAN
WALL; GARY L. MEREDITH and LYLE G.	:	TITLE COMPANY OF UTAH
MEREDITH; ED MAASS; RANDY KRANTZ,	:	AND WARREN H. CURLIS
B. BRAD CHRISTENSON, DEBRA S.	:	
CHRISTENSON; R & C ASSOCIATES;	:	
ROY L. MILLER; SHARON L. MILES,	:	
and JOHN DOES I through X,	:	
	:	
Defendant/Respondents.	:	

APPEAL FROM SUMMARY JUDGMENT ENTERED IN THE
SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH, BY THE HONORABLE DAVID E. ROTH

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FILED
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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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 Plaintiff/Appellant, :
 : Court of Appeals
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 MEREDITH; ED MAASS; RANDY KRANTZ, : AND WARREN H. CURLIS
 B. BRAD CHRISTENSON, DEBRA S. :
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INTRODUCTION

Respondents Guardian Title Company of Utah and Warren H. Curlis (hereafter collectively "Guardian") respectfully petition this Court, pursuant to Rule 35 of the Rules of the Utah Court of Appeals, to grant a rehearing to consider one issue Guardian submits the Court overlooked in its Opinion issued August 29, 1989. In ruling that the case must be remanded to resolve factual issues that precluded the trial court's entry of summary judgment, the Court did not address Guardian's argument that it owed no duty to plaintiff to foresee a deliberate criminal act. Under Utah law it is clear that one has no duty to foresee and act upon a deliberate criminal act perpetrated by another. Guardians submits that this rule of law dictates as a matter of law that it cannot be liable to plaintiff in this action.

ARGUMENT

This Court reversed the trial court's summary judgment on the basis that there was no evidence before the trial court as to the standard of care that must be satisfied by a trustee under a deed of trust when it is presented with a forged, albeit properly acknowledged, request for reconveyance. In so ruling, the Court raised on plaintiff's behalf arguments that plaintiff did not raise below, and then resolved those arguments in plaintiff's favor.

In this process, however, the Court appears to have overlooked one of Guardian's principal arguments to support the trial court's summary judgment--that it had no duty to foresee a deliberate criminal act. In this case, plaintiff alleges that some third party forged her name to the request for reconveyance that was presented to Guardian, and upon which Guardian relied to execute a deed of reconveyance of plaintiff's deed of trust. As Guardian argued in its initial brief, it is hornbook law that one has no duty to foresee the criminal misconduct of third parties.

In Gray v. Scott, 565 P.2d 76 (Utah 1977), the plaintiff in a wrongful death action appealed from a jury verdict in favor of defendant. In Gray, the decedent had been a guest at a New Year's Eve party at the defendant Beehive Elks Lodge. During the party, he got into a fight with another guest, Scott, at which point the lodge manager intervened and the parties departed. After both parties had left, the manager was told there had been a shooting outside in the alley. Neither the manager nor anyone else made any investigation. Later, both the decedent and Scott returned to the party, and Scott shot and killed the decedent.

Plaintiff brought suit against Scott as well as the lodge, asserting that the lodge, after it became aware of a

scuffle between the decedent and Scott and a shooting incident in the alley, owed a legal duty to the decedent to take steps to prevent the fatal shooting from occurring.

After a jury verdict was rendered in favor of the defendant lodge, plaintiff appealed, arguing that the trial court had erred in giving the following instruction:

You are instructed that a private lodge or association, as well as its officers, has no duty to anyone to anticipate that a crime will be committed by another person, and to act upon that belief.

Id. at 77 (emphasis added).

The Supreme Court rejected plaintiff's argument. Even though the lodge manager was aware of a shooting incident in the alley, and thus the imminent risk of serious injury to those at the party, the Court held that the foregoing instruction properly stated Utah law: "[I]t was not error to instruct that defendants had no duty to anticipate the commission of the subject crime." Id. at 78 (emphasis added).

The rule declared in Gray v. Scott disposes of the issue before this Court as a matter of law. In Gray, the defendant lodge manager was on notice of a specific and grave risk of harm to plaintiff and other guests. There had been a

shooting right outside his party. One might, in such a situation, reasonably foresee a shooting inside the party. Yet, the Court there held that defendant owed no duty to anticipate and protect plaintiff from the defendant's criminal act.

The record in this case, quite to the contrary, indicates that Guardian had no notice whatsoever of any risk that plaintiff might be victimized by a criminal act. Instead, in reliance on a properly acknowledged request for reconveyance, Guardian performed the duties imposed on it by the Utah Code and reconveyed the trust property. It never had any reason to believe or suspect that the request was not authentic.

The forgery was unforeseeable as a matter of law. As the record shows, Guardian has executed literally hundreds of deeds of reconveyance based on written requests for reconveyance. On no other occasion has there ever been a forged request. R. at 399-400. This criminal forgery was completely unforeseeable to Guardian; under Gray v. Scott, Guardian owed no legal duty to protect plaintiff against it. See also Respondents' Brief on Appeal, pp. 28-37.

CONCLUSION

The case at bar cannot be distinguished from Gray v. Scott. Respondents submit this Court should reconsider its prior Opinion, and affirm the trial court's summary judgment.

RESPECTFULLY SUBMITTED this 12th day of September,
1989.

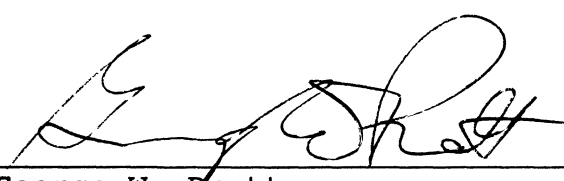
JONES, WALDO, HOLBROOK & McDONOUGH

By  

David R. Money
George W. Pratt
Attorneys for Guardian Title
Company of Utah and Warren H.
Curlis

CERTIFICATION

I HEREBY CERTIFY that the foregoing Petition is
presented in good faith and not for delay.


George W. Pratt

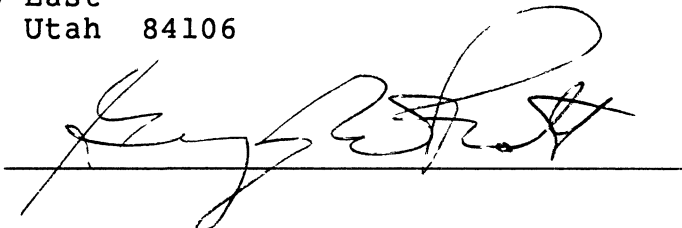
CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 1989, I caused to be mailed, postage prepaid, four (4) true and correct copies of the foregoing Petition for Rehearing of Respondents Guardian Title Company of Utah and Warren H. Curlis, to the following:

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A handwritten signature in black ink, appearing to read "Eric P. Hartman", is written over a horizontal line.

gwp 244/ja