

2001

# Joseph R. Bagnall, and Florence Bagnall v. Suburbia Land Company : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

BRIDGE STREET  
J. HOWARD CLARK

J. R. BAGNALL, aka, JOSEPH R. :  
BAGNALL, and FLORENCE BAGNALL, :

Plaintiffs- :  
Appellants, :

vs. : Case No. 13,753

SUBURBIA LAND COMPANY, an :  
Idaho Corporation, . . . UNITED :  
PAINT AND COLORS COMPANY, et al., :

Defendant- :  
Respondent. :

RESPONSE TO DEFENDANT-RESPONDENT'S  
PETITION FOR REHEARING

Brief of Plaintiffs-Appellants

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**FILED**

**DEC 23 1975**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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J. R. BAGNALL, aka JOSEPH R. :  
BAGNALL, and FLORENCE BAGNALL, :  
Plaintiffs- : RESPONSE TO DEFENDANT-  
Appellants, : RESPONDENT'S PETITION  
FOR REHEARING

vs. :

SUBURBIA LAND COMPANY, an : Case No. 13,753  
Idaho Corporation, . . . UNITED  
PAINT AND COLORS COMPANY, et al., :

Defendant- :  
Respondent.

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COME now the plaintiffs-appellants, J. R. Bagnall, et al., by and through his attorney, Jackson Howard, and respectfully petitions that the Court deny the Petition of the defendant-respondent United Paint and Colors Company for a rehearing of the above-entitled case as it applies to the plaintiffs-appellants and the defendant-respondent.

POINT I

THERE WAS A JUSTICIABLE ISSUE OF FACT BEFORE THE TRIAL COURT.

The Court in its opinion not only properly pointed out that circumstances of "confusing corporate paternity" existed, but also that "the question of knowledge in the light of Title 57-3-3, Utah Code Annotated, 1953," represented a genuine issue of fact (Supreme Court Opinion, Case No. 1375, Paragraph 8, Filed October 31, 1975). This particular conclusion of the Court is not challenged by defendant-respondent's Petition for Rehearing.

Indeed, defendant-respondent's petition for rehearing has completely ignored the Court's finding of a genuine issue of fact

as to questions of knowledge" in light of Title 57-3-3, Utah Code Annotated, 1953, having to do with the recording act", (Ibid at Paragraph 8) which by itself, is sufficient to justify the Court's ruling that the matter should be remanded for trial.

## POINT II

THE COURT DID NOT ERR IN QUESTIONING THE VALIDITY OF THE DEED MADE TO UTAH VALLEY LAND AND DEVELOPMENT CORPORATION, EVEN THOUGH SAID CORPORATION WAS LATER INCORPORATED AS UTAH VALLEY LAND AND DEVELOPMENT COMPANY.

The argument of the defendant-respondents under Point I of their petition for rehearing is both hollow and defective. The argument advanced concerns only grantees who actually existed at the time of conveyance whether identified or not. In the case at bar, the alleged grantee never, in fact, existed at the time of the attempted conveyance--no matter what the alleged name, corporation or company. The only time that a grantor can make a conditional conveyance is to a person or entity that is acting as an escrow (Santaquin Mining Company v. High Roller Mining Company, 25 Utah 282, 71 P. 77 (1903), also see, Beggs, et al., v. Myton Canal and Irrigation Company, et al., 54 Utah 120, 179 P. 984 (1919)). The defendant does not claim this, nor is such the case here. The fact is that the conveyance of the 140.15 acre tract of land was made to a non-entity.

Even by viewing this state of affairs in a light most favorable to the defendant-respondent:

Under such circumstances of confusing corporate paternity and the question of knowledge in light of Title 57-3-3, Utah Code Annotated 1953, having to do with the recording act, hardly can we concede that

there was no genuine issue of fact to pursue and determine, forever precluding a hearing on the merits. Consequently, we are constrained to and do conclude that . . . the case between plaintiffs and United Paint, is remanded for trial. (Supreme Court Opinion, Case No. 1375, Paragraph 8, Filed October 31, 1975). (Emphasis Added).

### POINT III

THE PRINCIPLE OF JUDICIAL REVIEW DICTATES THAT THE MATTER IS TO BE REVIEWED ON THE BASIS OF THE EVIDENCE BEFORE THE LOWER COURT WHEN SAID COURT MADE ITS RULING.

Defendant-respondents argument under Point II of its petition for rehearing violates the whole principle of judicial review of Summary Judgment. Said principle dictates that the matter is to be reviewed on the basis of the evidence that was before the lower court at the time the lower court made its ruling. The defendant-respondents petition for rehearing has attempted to extract out of context other evidence from another appeal brief which the Court has already ruled to be "loaded with unreferential self-serving statements of facts and contentions". (Supreme Court decision, Case No. 13753, paragraph 3, filed October 31, 1975).

Defendant-respondent is asking the Court to consider evidence that was introduced at a point later in time, i.e., the trial, to justify the lower court's granting of summary judgment weeks before the trial. The defendant-respondent apparently relies upon an unsupported statement in a petition for rehearing when it states on page 10 of its petition for rehearing "it is here suggested that Judge Harding, at the pre-trial, recognized a fact of human nature although it was not so expressed" (emphasis added). Apparently the defendant-respondent expects this Court

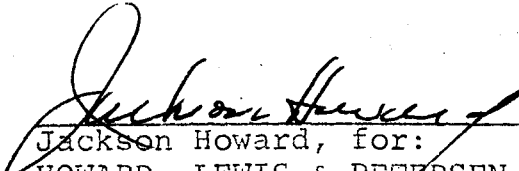
to have the same clairvoyance that it pretends to have.

Defendant-respondents petition further speculates, refers to unreported matters, and refers to unsupported facts and conclusions. (Petition for Rehearing, pages 8, 9, 10, 11). None of said speculations can reasonably provide a basis for rehearing.

#### CONCLUSION

It is respectfully submitted that defendant-respondents petition for rehearing should be denied. From the arguments outlined in this brief, and from the facts of this case, it is clear that there was a justiciable issue of fact before the trial court, which precluded the granting of Summary Judgment. It is further clear that the Court did not err in questioning the validity of the deed made to Utah Valley Land and Development Corporation. Further, it is also clear that defendant-respondent's petition for rehearing has improperly attempted to reargue the issue of summary judgment by reference to matters and evidence not before the lower court at the time of its ruling. Based on the foregoing, plaintiff-appellants respectfully submit that the Court should deny the defendant-respondent's petition for rehearing, and reaffirm its Order remanding the case between the plaintiffs and United Paint and Colors for trial.

Respectfully submitted this 28<sup>th</sup> day of December, 1975.

  
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DELIVERED a copy of the foregoing Response to Defendant-  
Respondent's Petition for Rehearing to Richard L. Maxfield,  
MAXFIELD, GAMMON, ELLIS & DALEBOUT, 28 North 100 East, P. O. Box  
1097, Provo, Utah 84601, this \_\_\_\_\_ day of December, 1975.

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