

1986

William D. Blodgett and Florence G. Blodgett, his wife v. Zions First National Bank, Stanley L. Pace and Allan D. McComb, individually and d/b/a Alco Investment, and Does 1-10 : Brief of Appellant

Utah Supreme Court

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Walter P. Faber, Jr.; Watkins & Faber; Attorney for Appellants.

Lester A. Perry; Attorney for Respondents.

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BRIEF

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DOCKET NO. 860178-CA

IN THE SUPREME COURT
FOR THE STATE OF UTAH

WILLIAM D. BLODGETT and)
FLORENCE G. BLODGETT, his wife,)

Plaintiffs-Respondents,)

vs.)

ZIONS FIRST NATIONAL BANK,)
STANLEY L. PACE and ALLAN D.)
McCOMB, individually and d/b/a)
ALCO INVESTMENT, and DOES 1-10,)

Defendants-Appellants.)

Case No. 860115

Classification 13b

BRIEF OF APPELLANTS PACE AND McCOMB

APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
THE HONORABLE JAMES S. SAWAYA, JUDGE

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FILED

JUL 2 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
FOR THE STATE OF UTAH

WILLIAM D. BLODGETT and)
FLORENCE G. BLODGETT, his wife,)

Plaintiffs-Respondents,)

vs.)

Case No. 860115

ZIONS FIRST NATIONAL BANK,)
STANLEY L. PACE and ALLAN D.)
McCOMB, individually and d/b/a)
ALCO INVESTMENT, and DOES 1-10,)

Defendants-Appellants.)

BRIEF OF APPELLANTS PACE AND McCOMB

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IN THE SUPREME COURT
FOR THE STATE OF UTAH

WILLIAM D. BLODGETT,
and FLORENCE G. BLODGETT,
his wife,

Plaintiffs-Respondents,

vs.

Case No. 860115

ZIONS FIRST NATIONAL BANK,
STANLEY L. PACE and ALLAN
D. McCOMB, individually and
d/b/a ALCO INVESTMENT, and
DOES 1-10,

Defendants-Appellants.

BRIEF OF APPELLANTS

STATEMENT OF ISSUES PRESENTED ON APPEAL

The substantive issue in this case relates generally to the ultimate legal effect of a lis pendens on subsequent real property interests if the final order dismissing the case in which the lis pendens was filed does not quiet title to the property.

ISSUE: Whether Zions' judgment liens obtained after the Blodgetts' lis pendens was filed were extinguished when the final order dismissing the Blodgetts' action did not resolve the issue of title as claimed in their lis pendens.

STATEMENT OF FACTS

The following facts are generally in chronological order and are divided into numbered paragraphs to make reference thereto easier:

1. The Blodgetts commenced an action against Betty Purcell and others in 1974 and filed a lis pendens which described the subject property and requested "an order terminating the interest of all of the defendants in the real property." (R. 98). Subsequently, the Blodgetts commenced a separate action against Water Park Corporation which was owned by Betty Purcell. (See paragraph 4 below for Judge Durham's decision in one of Zions' cases stating the ownership of Water Park). The Blodgetts' actions were consolidated. (See R. 100). No lis pendens was filed in the Blodgetts' action against Water Park.

2. On May 1, 1979 Judge Durham signed a default judgment in the consolidated cases in favor of the Blodgetts against Water Park to the effect that Water Park's interest in the subject property was conveyed to the Blodgetts. (R. 17-18). There was no ruling as to what Water Park's interest was, if any.

3. Shortly thereafter, on or about May 16, 1979 and June 2, 1979, Judge Durham entered two default judgments

in other cases in favor of Zions Bank against Betty Purcell (Pursell). (See. R. 22).

4. In the May 16, 1979 Zions' judgment, Judge Durham ruled that whatever interest Water Park may have had in the subject property was divested on September 30, 1977 as follows:

1. Water Park Corporation, a Utah corporation, was dissolved on September 30, 1977.

. . .

4. On September 30, 1977, defendant [Betty Purcell] became and is the owner of the above-described property.

4. Any judgment lien plaintiff [Zions] may have against defendant . . . constitutes a lien upon the above-described property as of the date of such docketing if subsequent to September 30, 1977. . . . (R. 15-16).

5. On December 7, 1979, the attorneys for the Blodgetts and Betty Purcell orally stipulated in a hearing before Judge Baldwin to the settlement of the consolidated actions between their clients. Mr. Bushnell and Mr. Barker, the respective attorneys for the parties, concluded their oral stipulation as follows:

MR. BUSHNELL [attorney for the Blodgetts]: We'll prepare the dismissal.

MR. BARKER [attorney for Betty Purcell]: If you want quit-claim deeds, we are going to mail them to Idaho and get them back. That is a few days mail time.

MR. BUSHNELL: Lets get all of it done plus that
-- well --

MR. BARKER: If you can do it by the Court Order
and quiet title to the matter - -

MR. BUSHNELL: Lets get the deeds too.

THE COURT: All right.

MR. BARKER: Very good.

THE COURT: You are gentlemen and scholars.

(Emphasis added). (R. 107).

6. On January 15, 1980, Betty Purcell quit-claimed both her interest and Water Park's interest in the subject property to the Blodgetts. (R. 111).

7. On March 20, 1980, a written stipulation of dismissal signed by the attorneys for the Blodgetts and Betty Purcell was filed with the court, and on May 5, 1980 Judge Baldwin issued an order prepared by the Blodgetts' attorney specifically dismissing with prejudice all claims and counterclaims of the Blodgetts and Betty Purcell against each other without mentioning the subject property or quieting title in the Blodgetts. (R. 21). The written stipulation of March 20, 1980 was not filed with the court to support the Blodgetts' motion for summary judgment in this case.

8. On August 31, 1984 Zions Bank assigned its

two judgments to Alco Investment (R. 69) whose principals are Stanley L. Pace and Allan D. McComb. (See R. 47).

9. On April 19, 1985, Stanley L. Pace and Allan D. McComb gave notice of the assignment and the intent to execute on the Zions' judgments. (R. 47-48).

10. On or about May 24, 1985, the Blodgetts commenced this action to stop the proposed execution and quiet title in them to the subject property. (R. 2).

11. On January 16, 1986, the lower court granted the Blodgetts' motion for summary judgment and denied the motion of Pace and McComb for summary judgment.

SUMMARY OF ARGUMENT

Summary judgment for the Blodgetts was improper because the facts and applicable law do not support the Blodgetts' position. A lis pendens has no legal effect but to give statutory notice to third persons who acquire a subsequent interest in the real property that such interest is subject to being extinguished or divested as requested in the lis pendens by the final judgment in the lis pendens' action. Thus, Zions' judgment liens remained effective unless they were defeated by the judgment in the Blodgetts' actions against Betty Purcell. The final judgment in the Blodgetts' actions does not mention the subject property or quiet title therein in the Blodgetts. Zions' liens

were not extinguished and execution thereon is proper. The lower court wrongly granted summary judgment to the Blodgetts because the oral stipulation by the Blodgetts' attorney required a court order quieting title and the final judgment prepared by the Blodgetts' attorney does not quiet title in the Blodgetts.

ARGUMENT

ZIONS' JUDGMENT LIENS REMAINED IN
FORCE AGAINST THE PROPERTY BECAUSE THE
BLODGETTS' FINAL JUDGMENT DID NOT QUIET
TITLE TO THE PROPERTY IN THE BLODGETTS.

Summary judgment is not appropriate unless there is no dispute as to a material fact, and the moving party is entitled to judgment as a matter of law. Snyder, et al. v. Merkley, et al., 693 P.2d 64 (Utah 1984). Doubts, uncertainties and inferences concerning issues of fact must be construed in favor of the person opposing summary judgment. Mountain States Telephone and Telegraph Company v. Atkin, Wright & Miles, Chartered, 681 P.2d 1258 (Utah 1984). An affidavit in support of summary judgment must state admissible facts about which the affiant is competent to testify. Statements made on information and belief are disregarded. Treloggan v. Treloggan, 7 Utah Adv. Rep. 45, 699 P.2d 747 (Utah 1985). Even if no motion is made to strike an affidavit made on "information and belief"

summary judgment may only be granted "if appropriate."

Frisbee v. K & K Construction Co., 676 P.2d 387 (Utah 1984).

In this case there are several factors which may superficially appear to support the Blodgetts' motion for summary judgment, but which upon examination are clearly seen not to be appropriate. First, the only affidavit filed was one by William D. Blodgett which affidavit was unopposed, and there was no motion to strike. However, the affidavit states that it is "based upon best information and belief", and contains assumptions and conclusions almost exclusively about the attorney-client and business relationship between Lorin Pace and Betty Purcell. (R. 113-14). Those assumptions and conclusions do not appear to be material or relevant to the legal issue concerning the Blodgetts' lis pendens or to the necessity to have a final order which specifically quieted title in the Blodgetts.

Second, the Blodgetts obtained a default quiet title judgment from Judge Durham against Water Park on May 1, 1979, about two weeks prior to Zions' first judgment against Betty Purcell which was also rendered by Judge Durham. If Water Park then had an interest which went to the Blodgetts there would be no real property owned by Betty Purcell to which Zions' later judgments could attach. Such a conclusion is faulty because there was

never any evidence that on May 1, 1979 Water Park had any interest in the subject property which could have been acquired by the Blodgetts. Without that evidence, it could not be concluded that the Blodgetts received any interest or that Zions' subsequent judgments against Betty Purcell were not liens on the property. In any case, when Judge Durham decided on May 16, 1979 that Betty Purcell had owned the property since September 30, 1977, it was conclusively established that Water Park had no interest in the property on May 1, 1979 when the Blodgetts obtained their default judgment against Water Park.

Third, the impact of matters incorporated into the final order should be examined to determine if the final order, even by inference, could be said to quiet title in the Blodgetts. Judge Baldwin's order of May 5, 1980 which was prepared by the Blodgetts' counsel states that it is based on the "stipulation of counsel" and grants judgment to the "extent that judgment has not heretofore been entered". It is clear that the only previous judgment entered in the consolidated Blodgett cases was the default judgment against Water Park, the effect of which has been discussed above and shown that it did not resolve the question of ownership of the property. In regard to the "stipulation of counsel" there was first an oral stipulation and then

a written one filed in the Blodgetts' cases prior to Judge Baldwin's order of dismissal. The 1980 written stipulation was not filed in this case so that the only stipulation before Judge Sawaya was the transcript of the oral one which required that there be an order quieting title in the Blodgetts. Because Judge Baldwin's order did not follow the parties' oral stipulation and did not otherwise specifically deal with the property, it cannot be said to have quieted the title.

Although a decree based on an agreement between the parties may be binding on persons who obtain an interest pendente lite, the agreement must be in conformity with the decree. It is stated in 54 C.J.S., LIS PENDENS, §39(b) p. 612 that:

. . . a lis pendens purchaser is not bound where there is an agreed judgment not based on the relief relied on in the suit, . . .

In this case, the lis pendens specifically asked the court to quiet title in the Blodgetts. Judge Baldwin's final order does not mention or describe the property or grant the relief requested but only dismisses all claims of the parties with prejudice.

Moreover, it is questionable where a lis pendens has been filed in a quiet title matter that a final order,

whether based on an agreement or not, is effective to quiet title if the order does not specifically resolve the claim stated in the lis pendens. It is clear that a lis pendens gives notice during pending litigation and is not effective after that litigation is finally concluded. See Hidden Meadows Development Company v. Mills, et al., 590 P.2d 1244 (Utah 1979); Glattli, et al v. Bradford, 62 So. 643 (Miss. 1913); J. R. Bagnall v. Suburbia Land Company, 579 P.2d 914 (Utah 1978). An early case held that liens or interests in the property obtained by others subsequent to the lis pendens are defeated only if the final judgment in the lis pendens' action specifically disposes of the property interest claimed in the action. Glattli, et al. v. Bradford, supra. It is also usually held that an oral decision by a judge is not a judgment and has no final or binding effect unless formally incorporated into the findings, conclusions and judgment. Tacoma Recycling, Inc. v. Capitol Material Handling Co., 661 P.2d 609 (Wash. App. 1983). The above rule requiring a final decision to specifically resolve the contested issue would appear to apply with even greater force against an order based upon a stipulation of the parties. It would undoubtedly apply to an order which does not fully incorporate the stipulation of the parties as occurred in the Blodgetts' cases against Betty Purcell.

CONCLUSION

The lower court improperly granted summary judgment in favor of the Blodgetts because neither the applicable facts or law support the Blodgetts' position. Zions' judgments against Betty Purcell became liens on the property because Betty Purcell was the owner of the property at that time. Zions' liens were not thereafter defeated since the final order in the Blodgetts' cases did not quiet title in the Blodgetts and did not follow the oral stipulation of the parties' counsel. The written stipulation was not before the court in this case. The lower court should be reversed and judgment granted appellants.

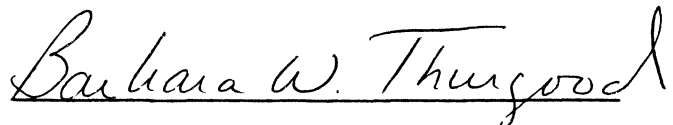
Respectfully submitted this 2nd day of July,
1986.

WATKINS & FABER


Walter P. Faber, Jr.

CERTIFICATE OF MAILING

I hereby certify that I mailed four copies of the foregoing Brief of Appellants to Lester A. Perry, 330 South 300 East, Salt Lake City, UT 84111, postage prepaid, this 2nd day of July, 1986.



ADDENDUM

- A. Blodgetts' Lis Pendens (11-1-74).
- B. Blodgetts' default judgment against Water Park (5-1-79).
- C. Zions' default judgment against Betty Purcell (5-16-79).
- D. Transcript of last page of Blodgetts' oral stipulation (12-7-79).
- E. Final order dismissing Blodgetts' cases (5-20-80).
- F. Summary Judgment in present case (1-16-86).

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KIRTON, McCONKIE, BOYER & BOYLE
JERAMIAN W. RYAN, Receiver
540 30 January 1975
J. Allen Doyle

IN THE DISTRICT COURT OF SALT LAKE COUNTY

2662336

STATE OF UTAH

2667386

WILLIAM T. BLODGETT and
FLORENCE G. BLODGETT, his
wife,

Plaintiffs,

-vs-

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,
DOYLE NEASE, RACO CAR WASH
SYSTEMS, INC. a Utah Cor-
poration, WAYNE A. ASHWORTH,
trustee, CARL W. TENNY,
VALLEY BANK & TRUST COMPANY,
a Utah banking corporation,
FIRST SECURITY BANK OF IDAHO,
N.A., STATE OF UTAH and
JOHN DOES 1 through 10,

Defendants.

LIS PENDENS

Civil No. 223407

TO WHOM IT MAY CONCERN:

Notice is hereby given that an action has been commenced
in the above-entitled court by the above-named plaintiffs against
the above-named defendants, which suit is now pending, and the
object of said suit is to recover \$100,000 punitive damages and
for an order terminating the interest of all of the defendants in
real property located in Salt Lake County, State of Utah, which
property is more particularly described as follows

PARCEL NO 1

BEGINNING at a point on the North line of Vine Street
215 3 feet West and 668 9 feet North and South 89°15'
45" West 197 03 feet from the Southeast corner of Sec-
tion 16, Township 2 South, Range 1 East, Salt Lake

KIRTON, McCONKIE
BOYER & BOYLE
ATTORNEYS AT LAW
336 S THIRD EAST
SALT LAKE CITY, UTAH

PG3714 ME 334

Meridian; and running thence South $89^{\circ}15'45''$ West 71.67 feet; thence North $0^{\circ}20'50''$ East 154 feet; thence North $89^{\circ}15'45''$ East 71.53 feet; thence South $0^{\circ}17'45''$ West 154 feet to the point of BEGINNING.

To include rights of egress and ingress to Highland Drive on both sides of existing building, and excludes area occupied by sign to the West of existing building.

PARCEL NO. 2:

BEGINNING at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South) said point being North 668.9 feet, more or less and West 215.3 feet, more or less from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North $0^{\circ}20'50''$ East along center line of Highland Drive 154.0 feet; thence South $89^{\circ}15'45''$ West 197.7 feet; thence South $0^{\circ}17'45''$ West 154.0 feet to North line of Vine Street (6100 South); thence North $89^{\circ}15'45''$ East along said North line 197.03 feet to the point of BEGINNING.

EXCLUDING from said Parcel No. 1 and No. 2 that certain property taken by Salt Lake County as a part of the Cottonwood Expressway. Project S-0160-1, and particularly described as follows:

BEGINNING at the intersection of the West line of Parcel No. 2 and centerline of survey at Engineer's Station 176+92.29 (which point is North 663.30 feet and West 484.09 feet, more or less, from the Southeast corner of said Section 16) and tangency to the curve of said Engineer's Station 176+92.29 bearing South $58^{\circ}54'40''$ East; and running thence North 116.0 feet to a point of a 2367.0 foot radius curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less to the West boundary line, the point of BEGINNING.

DATED this 1st day of November, 1974.

KIRTON, MCCONKIE, BOYER & BOYLE

By Joseph C. Rust
Joseph C. Rust
Attorneys for Plaintiffs

KIRTON, MCCONKIE
BOYER & BOYLE
ATTORNEYS AT LAW
116 S. HIGHWAY EAST
SALT LAKE CITY, UTAH

0003714 m 335

the said parcel 2 be paid over to plaintiffs together with interest thereon at the rate of 8% per annum together with said plaintiffs' costs and disbursements in the amount of \$34.00.

Judgment rendered May 1, 1979.

Christine M. Durbin
J U D G E

ATTEST my hand, and seal of said Court, this 1 day of

May, 1979.

W. STERLING EVANS

By: H. C. Evans

Filed _____, 1979.

STATE OF UTAH }
COUNTY OF SALT LAKE }

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT

THIS 1 DAY OF May, 1979

W. STERLING EVANS, CLERK

By H. C. Evans



BOOK 4854 PAGE 424

NATIE L. DIXON
RECORDED
SALT LAKE COUNTY,
UTAH

MAY 1 11 57 AM '79

850
REC'D OF Joseph C. East
C. Wayne Maloney

John H. Allen
John A. Beckstead
CALLISTER, GREENE & NEBEKER
Attorneys for Plaintiff
800 Kennecott Building
Salt Lake City, Utah 84133
Telephone: 801/531-7676

Charles L. Nebecker
Clerk of Court
County Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR
SALT LAKE COUNTY, STATE OF UTAH

ZIONS FIRST NATIONAL BANK,)
 Plaintiff,)
 vs.)
 Civil No. C79-1685

BETTY PURSELL ALEXANDER aka)
BETTY PURSELL MARTSCH,)
 Defendant.)
 Bk 153 No. 126
 5-22-79-831 Am

In this action the defendant Betty Pursell Alexander aka Betty Pursell Martsch, having been regularly served with process, and having failed to appear and answer the plaintiff's Complaint filed herein, the legal time for answering having expired, and the default of the said defendant in the premises having been duly entered according to law, now upon application of said plaintiff to the Third Judicial District Court of Salt Lake County, judgment is hereby entered against said defendant, in pursuance of the prayer of said Complaint.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Water Park Corporation, a Utah corporation, was dissolved on September 30, 1977.

2. On September 30, 1977, Water Park Corporation was the owner of the following described real property located in Salt Lake County, State of Utah:

Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 0°20'50" East along center line of Highland Drive

EXHIBIT D

154.0 feet; thence South $89^{\circ}15'45''$ West 197.17 feet; thence South $0^{\circ}17'45''$ West 154.0 feet to North line of Vine Street (6100 South); thence North $89^{\circ}15'45''$ East along said North line 197.03 feet to the point of beginning.

Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1, and particularly described as follows: Beginning at the intersection of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said Engineer's Station 176+92.29 bearing South $38^{\circ}54'40''$ East; thence North 116.0 feet to a point on a 2367.0 foot radius curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.

3. Defendant was and is the sole shareholder of Water Park Corporation.

4. On September 30, 1977, defendant became and is the owner of the above described real property.

5. Any judgment lien plaintiff may have against defendant which is properly docketed in the office of the Salt Lake County Clerk constitutes a lien upon the above described property as of the date of such docketing if subsequent to September 30, 1977. If any such judgment is docketed prior to September 30, 1977, such judgment shall constitute a lien commencing September 30, 1977.

Judgment rendered March 6, 1979.

Christine Durham
Hon. Christine Durham,
District Judge

ATTEST my hand and seal of said Court this 10 day of May, 1979.

W. STERLING EVANS, COUNTY CLERK

By Phil Anderson Clerk

County Clerk

1 MR. BUSHNELL: We'll prepare the dismissal.

2 MR. BARKER: If you want quit-claim deeds,
3 we are going to mail them to Idaho and get them back.
4 That is a few days mail time.

5 MR. BUSHNELL: Lets get all of it done plus
6 that -- well --
7

8 MR. BARKER: If you can do it by the Court
9 Order and quiet title to the matter --

10 MR. BUSHNELL: Lets get the deeds too.

11 THE COURT: All right.

12 MR. BARKER: Very good.

13 THE COURT: You are gentlemen and scholars.

14 (Whereupon these proceedings were concluded.)
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21
22
23
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25

JOSEPH C. RUST
KIRTON & McCONKIE
Attorneys for Plaintiffs
330 south Third East
Salt Lake City, Utah 84111
Telephone: (801) 521-3680

[Signature]
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,

STATE OF UTAH

* * * * *

WILLIAM D. BLODGETT and
FLORENCE G. BLODGETT, his
wife,

Plaintiffs,

vs.

JOE MARTSCH, BETTY PURCELL,
aka BETTY PURCELL MARTSCH,
et al.,

Defendants.

ORDER

Civil No. 223407 and
C-78-8017
(Consolidated)

* * *

Upon the Stipulation of counsel and for good cause appearing,
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that to the
extent judgment has not heretofore been entered, the Complaint
of plaintiffs against defendants Betty Purcell Martsch, Raco
Car Wash Systems, Inc., and Water Park Corporation is hereby
dismissed with prejudice and any and all counterclaims of said
defendants are hereby dismissed with prejudice, and each party
to bear its own costs.

IT IS FURTHER ORDERED that the sum of \$2,450 on deposit
with the court in this case be paid over to plaintiffs by the
clerk of the court.

Dated this 1 day of March, 1980.

[Signature]
ERNEST F. BALDWIN, JUDGE

ATTEST
W. STEPHENS EVANS
CLERK
[Signature]
DEPUTY CLERK

EXHIBIT T

FILMED

4195780

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

JAN 16 1986

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Robert M. Dyer - A0945
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H. Dean Hensley, Clerk of Court
[Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

WILLIAM T. BLODGETT and FLORENCE)
G. BLODGETT, his wife,)

Plaintiffs,)

vs.)

ZIONS FIRST NATIONAL BANK,)
STANLEY L. PACE and ALLEN D.)
McCOMB, individually and dba)
ALCO INVESTMENT, and DOES 1-10,)

Defendants.)

SUMMARY JUDGMENT

Civil No. C85-3348

BE IT REMEMBERED that plaintiffs' Motion for Summary Judgment and defendants' Motion for Summary Judgment came for hearing before the Honorable James S. Sawaya on December 16, 1985. Plaintiffs were present in person and by their attorney, Mr. Lester A. Perry of Kirton, McConkie & Bushnell. Defendants, Stanley L. Pace and Allen D. McComb, dba Alco Investment, were present by and through their counsel of record, Mr. S. Dee Long. Defendant, Zions First National Bank, having previously disclaimed any interest in the real property, was not present either in person or through counsel.

The court, having considered the respective motions, affidavits, exhibits, and memorandums of points and authorities, and being advised in the premises,

Hereby finds that no genuine issue as to any material fact exists and that the plaintiffs are entitled to summary judgment as a matter of law.

Therefore, the court hereby orders, adjudges and decrees that:

1. The Motion for Summary Judgment of defendants, Stanley L. Pace and Allen D. McComb dba Alco Investment, is denied.

2. The Motion of plaintiffs as against all defendants, Zions First National Bank, Stanley L. Pace and Allen D. McComb dba Alco Investment, is granted as follows:

a. The judgment liens that arise on behalf of the defendant, Zions First National Bank, within the civil actions known as Zions Bank vs. Purcell and Pace, Civil No. 232782 and Zions Bank vs. Purcell, Civil No. C79-1685, filed in the Third Judicial District Court of Salt Lake County, State of Utah, which judgment liens and their underlying judgments have been assigned to defendants, Stanley L. Pace and Allen D. McComb, dba Alco Investment, are void and of no effect as against the real property that is the subject of this action, identified as:

Beginning at a point in the center of Highland Drive on the projected North line of Vine Street (6100 South), said point being North 668.9 feet, more or less, and West 215.3 feet, more or less, from the Southeast corner of Section 16, Township 2 South, Range 1 East, Salt Lake Base and Meridian,

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and running thence North 0°20'50" East along center line of Highland Drive 154.0 feet; thence South 89°15'45" West 197.17 feet; thence South 0°17'45" West 154.0 feet to North line of Vine Street (6100 South); thence North 89°15'45" East along said North line 197.03 feet to the point of beginning.

Excluding from said above-described property that certain property taken by Salt Lake County as a part of the Cottonwood Expressway, Project S-0160-1, and more particularly described as follows: Beginning at the intersections of grantors West property line and centerline of survey at Engineer's Station 176+92.29, which point is North 668.90 feet and West 484.09 feet from the Southeast corner of said Section 16; and tangency to the curve of said Engineer's Station 176+92.29 bearing South 38°54'40" East; thence North 116.0 feet to a point on a 2367.0 foot radius curve to the right; thence Southeasterly along the arc of said curve a distance of 150.20 feet, more or less, to the North line of 6100 South Street; thence West along the North line of 6100 South Street 95.41 feet, more or less, to grantors West boundary line, the place of beginning, less Tract deeded to Salt Lake County and Street.

Recorded within Salt Lake County, State of Utah.

b. Title to the above-identified real property is quieted in the plaintiffs as against any and all right, title, or interest claimed by the defendants, Zions First National Bank and Stanley L. Pace and Allen D. McComb dba Alco Investment.

DATED this 16 day of January, 1986.

BY THE COURT,

James S. Sawaya

ATTEST
H. DIXON HINDLEY
Clerk

By [Signature]
Deputy Clerk

STATE OF UTAH)
COUNTY OF SALT LAKE) SS

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 16 DAY OF Jan 19 86

H. DIXON HINDLEY, CLERK
BY [Signature] DEPUTY