

1978

William T. Blodgett and Florence G. Blodgett, His Wife v. Joe Martsch, Betty Purcell, Aka Betty Purcell Martsch, Doyle Nease, Raco Car Wash Systems, Inc., A Utah Corporation, Wayne A. Ashworth, Trustee, Karl W. Tenney, Valley Bank and Trust Company, A Utah Banking Corporation, First Security Bank of Idaho, N.A., State of Utah, and John Does, 1-10 : Brief of Respondent, Joe Martsch

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

Appellants, :

-vs- :

JOE MARTSCH; BETTY PURCELL, aka Betty :
Purcell Martsch; DOYLE NEASE; RACO :
CAR WASH SYSTEMS, INC., a Utah cor- :
poration; WAYNE A. ASHWORTH, Trustee; :
KARL 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, :

CASE NO. 8

Respondents.

BRIEF OF RESPONDENT, JOE MARTSCH

APPEAL FROM SUMMARY JUDGMENT AGAINST APPEAL
JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE
STATE OF UTAH

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

:

:

Appellants,

-vs-

:

JOE MARTSCH; BETTY PURCELL, aka Betty
Purcell Martsch; DOYLE NEASE; RACO
CAR WASH SYSTEMS, INC., a Utah cor-
poration; WAYNE A. ASHWORTH, Trustee;
KARL 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,

:

:

:

:

:

Respondents.

BRIEF OF RESPONDENT, JOE MARTSCH

APPEAL FROM SUMMARY JUDGMENT AGAINST APPELLANTS IN THE THIRD
JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,
STATE OF UTAH

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57-1-28 Utah Code Annotated	4, 5, 9
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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM T. BLODGETT and	:	
FLORENCE G. BLODGETT, his wife,	:	
	:	
Plaintiffs and	:	
Appellants,	:	
-vs-	:	
	:	Civil No. 15608
JOE MARTSCH; BETTY PURCELL, aka	:	
Betty Purcell Martsch; DOYLE NEASE;	:	
RACO CAR WASH SYSTEMS, INC., a Utah	:	
corporation; WAYNE A. ASHWORTH,	:	
Trustee; KARL W. TENNEY; 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 and	:	
Respondents.	:	

BRIEF OF RESPONDENT, JOE MARTSCH

STATEMENT OF NATURE OF THE CASE

Appellants seek a reversal of the summary judgment granted below against appellants in favor of the respondents and this respondent, Joe Martsch, seeks affirmation of such judgment.

DISPOSITION IN THE LOWER COURT

On October 20, 1977, the lower court granted summary judgment in favor of respondents Joe Martsch, Wayne A. Ashworth,

Karl W. Tenney, and Valley Bank & Trust Company. On November 3, 1976, the lower court entered an order denying appellants' motion to amend or alter judgment. On October 20, 1977, the lower court granted summary judgment in favor of respondent, State of Utah. All remaining parties to the action were either dismissed without prejudice by appellants or judgment was taken against them. In the case of Doyle Nease and John Does 1 through 10, the parties were never served.

RELIEF SOUGHT ON APPEAL

This respondent, Joe Martsch, asks that the appeal be dismissed and that the judgment in his favor be affirmed.

STATEMENT OF FACTS

Prior to September 21, 1973, appellants were the owners in fee title of two contiguous parcels of ground in the South Salt Lake area near the Van Winkle Expressway. One parcel has been variously referred to as the car wash property and the other piece of property has been variously referred to as the grocery store property. In 1971 appellants entered into a lease with Raco Car Wash Systems and Betty Purcell, defendants, covering the car wash property. The lessees proposed to erect a car wash on the property. This lease, by its terms, specified that the car wash property was to be subordinated to assist the lessees in obtaining financing for the construction of the car wash.

The respondent Valley Bank proceeded to prepare

loan documents for the financing of the car wash. On November 5, 1971, appellants were called to the respondent bank for the purpose of executing various documents on the car wash loan. There and then appellants executed and delivered to Valley Bank a Trust Deed dated November 5, 1971 and recorded November 9, 1971, which specifically described both parcels of land and was given to secure a debt for \$24,000.00. This named Valley Bank as Trustee and Beneficiary. When the note became delinquent, appellants were notified and had the opportunity to pay. Thereafter, on March 23, 1971, Wayne A. Ashworth was duly substituted as Trustee and such substitution was recorded April 5, 1973, along with an appropriate Affidavit of Notification. Notice of Default was recorded and given as required by statute on April 5, 1973, and after three months Notice of Sale was duly given to appellants.

The sale was scheduled for September 20, 1973 at the Courthouse in Salt Lake City, Utah. The appellants were personally present at said sale, listened to the bids, but remained silent and refused to bid to protect their interest in the property. Mr. Lorin Pace, attorney, bid in the property for Mr. Joe Martsch for \$30,000.00, and this sum was then paid (deposition of Donald Sawaya, p. 8).

Following payment of the \$30,000.00 by Mr. Martsch, a proper Trustee's Deed covering all of the property was then

executed by Mr. Ashworth, as Trustee, and recorded in Salt Lake County. Mr. Martsch has since been the owner of the property except as to a strip later sold to the State of Utah for highway purposes. The Trustee's Deed was regular on its face, containing all required recitals, and nothing appears in the record to show any personal knowledge of Mr. Martsch as to the dealings between appellants and Valley Bank upon which allegations of fraud, etc. are made.

ARGUMENT

POINT I

JOE MARTSCH IS A BONA FIDE PURCHASER FOR VALUE AT TRUSTEE'S SALE WITHOUT PRIOR KNOWLEDGE OF APPELLANTS' DEALINGS AND RELATIONSHIPS WITH VALLEY BANK.

POINT II

THE DEED TO JOE MARTSCH FROM TRUSTEE AT SALE UNDER TRUST DEED CONTAINS ALL REQUIRED RECITALS, IS REGULAR ON ITS FACE AND IS CONCLUSIVE EVIDENCE OF COMPLIANCE BY TRUSTEE.

POINT III

APPELLANTS PERSONALLY ATTENDED TRUSTEE'S SALE, MADE NO OBJECTION AND DID NOT BID, AND ARE ESTOPPED FROM ASSERTING ANY DEFICIENCY IN NOTICE OF SALE.

The Utah statutes, Section 57-1-28, Utah Code Annotated, relating to trust deeds such as the one involved in this transaction, provides that after payment of the price bid by a purchaser at a trustee's sale, the trustee's deed may contain recitals of compliance with the requirements

of the Act relating to exercise of the power of sale and the sale of the property described therein, "and such recital shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice." This respondent, Joe Martsch, has the full benefit of such statutes, as he was a bona purchaser for value (\$30,000.00) at a higher price than that bid by Valley Bank & Trust Company at the same sale, without notice of the dealings between appellants and Valley Bank. Those dealings were well prior to the time of any involvement of Mr. Martsch and in his absence, and if such constitute a basis of a cause of action between the appellants and the bank, that is something wholly apart from the position which Mr. Martsch occupies.

His bid was made by his attorney, Mr. Lorin Pace, at the said trustee's sale conducted by the trustee, Mr. Ashworth, through his attorney, Mr. Sawaya, at the time and place designated in the notice of sale. It is of great importance to note that the appellants were personally present at the time of said sale. They made no objection to the sale and did not bid in at a higher or better price to protect the interests which they assert in the property. Well in advance of the time of said sale, they were aware of the fact that both parcels of property were involved in the transaction, and they had consulted legal counsel relative to what could

or should be done. Said legal counsel was not present at the time of the sale, but the appellants were both there.

It is to be observed that the statute provides that such recitals constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers for value and without notice. This stands as an insulation between Mr. Martsch and the appellants in their assertions of overreaching, nondisclosure, fraud, etc., by Valley Bank. They assert that as between them and Valley Bank that they had thought that the trust deed which they signed was only relating to the property upon which the car wash was to be constructed, but in truth and in fact the said document itself covers both the car wash and the grocery store area adjoining it, and said legal descriptions are clearly set forth therein and were there at the time that it was signed by both of the appellants. Apparently they became aware of this some time later on, as the note became delinquent, and the bank advised them that they were in peril of losing both the car wash property, which they had leased to Raco, and the grocery store property which they occupied.

Thus at the time of the sale they were not innocents wholly unaware of the peril in which their property stood, but had consulted legal counsel and had gone to the courthouse at the time and the place set in the notice of sale. At no time do they contend that they did not receive notice.

of the sale, but their only assertion is that in the published notice some mechanical defect in the legal description did exist. They had met with legal counsel and apparently through some misunderstanding he had gone to the wrong entrance to the courthouse, whereas the appellants themselves were at the proper place and witnessed, without objection, the offering of the property for sale, the bid by Valley Bank, and finally the bid by Mr. Lorin Pace, legal counsel for Joe Martsch in the successful purchase of the property at the trustee's sale for \$30,000.00. There was no contention that the \$30,000.00 was not paid.

Some objection is raised to the fact that the \$30,000.00 was paid the following morning instead of "forthwith". Such determination of the time of payment of the funds bid (a cashier's check being required) was discretionary with the trustee. No prejudice can be asserted or shown, nor has such appeared in the record, by reason of the payment of the \$30,000.00 for the purchase price the first thing in the morning following the sale, rather than the afternoon of the sale.

It was for the very purpose of obviating such minor hypertechnical objections that the legislature of Utah, as part of the Trust Deed Act, adopted Section 57-1-28, making the recitals and the effect of the trustee's sale as constituting prima facie evidence of the compliance of the

trustee with the required steps and "conclusive evidence thereof in favor of bona fide purchasers."

The final straw on which appellants seem to hang their contentions that the trust deed did not effectively transfer title to the property from the appellants via the trustee's sale through the deed of trustee to Joe Martsch, is that Joe Martsche and Betty Purcell were "common law husband and wife" in Idaho. Such factor has no relevancy in this proceeding, as Mr. Martsch himself borrowed the money from the bank in Idaho and paid the \$30,000.00 to the trustee in pursuance of the trustee's sale of the trust deed property, and received the conveyance therefrom in good faith and for valuable consideration. Likewise, the fact that subsequently he sold a portion of the property to the State of Utah for highway purposes, has no relevancy in this proceeding.

The court below, having had the benefit of the affidavits of parties, the depositions and the motions for summary judgment, and being fully advised, properly determined that as to Joe Martsch he was the bona fide purchaser of the property at the trustee's sale and was entitled to the benefit of the provisions of Section 57-1-28, and that the effect of the said deed was as set forth in Section 57-1-28 (2):

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest

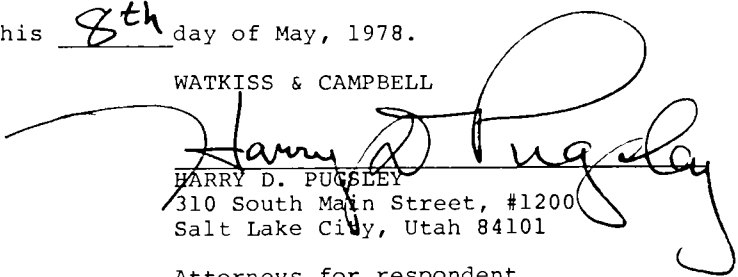
and claim of the trustor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold, including all such right, title, interest and claim in and to such property acquired by the trustor or his successors in interest subsequent to the execution of the trust deed.

Title did vest in Joe Martsch, free and clear from all claims of the appellants. They have their recourse, if any, against Valley Bank, and if any, against the trustees, but not against the purchaser at the trustee's sale, respondent Joe Martsch.

WHEREFORE, respondent Joe Martsch urges that the appeal be dismissed as to him and that the court affirm the decision of the lower court on summary judgment, that the deed to Joe Martsch did effectively transfer all right, title, interest and claims of the appellants, as trustors, in and to the property sold to Mr. Joe Martsch.

Dated this 8th day of May, 1978.

WATKISS & CAMPBELL



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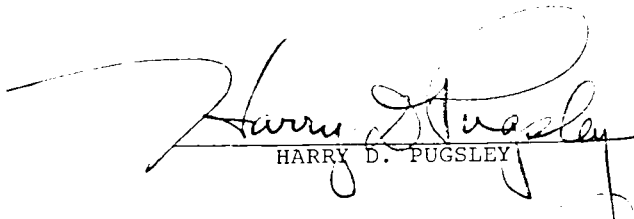
CERTIFICATE OF MAILING

I certify that on the 9th day of May, 1978,
two (2) copies each of the foregoing Brief of Respondent,
Joe Martsch, were mailed to the following:

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