

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 : Response To the Additional Authorities of Respondents Tenney and Valley

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Utah Supreme Court

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Joseph C. Rust; Attorney for Appellants Irving H. Biele; Attorney for Respondents Harry D. Pugsley; Attorneys for Respondents Donald Samaya; Attorney for Respondent Ashworth

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM D. 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 corpora- :
tion, 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, :
:

Case No. 15608

Respondents. :
:

RESPONSE TO THE ADDITIONAL AUTHORITIES OF RESPONDENTS TENNEY
AND VALLEY BANK

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State of Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

-000-

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

Plaintiffs and
Appellants,

vs.

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,

Civil No. 15608

Defendants and
Respondents.

RESPONSE TO THE ADDITIONAL AUTHORITIES OF RESPONDENTS TENNEY
AND VALLEY BANK

Appellants respectfully take exception to the filing of the additional authorities made by counsel for respondents Tenney and Valley Bank. Although the additional authorities have been provided allegedly pursuant to Rule 75(p)(3) of the Utah Rules of Federal Procedure, that rule contemplates only newly discovered cases. It is also possible that under that rule if a response were either asked for by this Court or if this Court had raised a subject which had not been raised by the briefs, some reply would be proper. However, the brief of appellants clearly raised the question of the relationship between a bank and its customer and the relationship created by a trust deed. This is particularly covered in Point III, Page 12 of Appellants' Brief. Nor is there anything in a citation from American Jurisprudence or from a 1958

California appellate court case which would suggest material which wasn't available to respondents Bank and Tenney at the time they filed their brief.

If, however, this Court deems it proper for the additional authorities to be filed in this case, appellants respectfully submit the following response to those authorities.

POINT I

THE RELATIONSHIP BETWEEN APPELLANTS AND THE BANK WAS MORE THAN SIMPLY ONE OF DEBTOR AND CREDITOR.

Respondents' Bank and Tenney have cited a selection from American Jurisprudence which says that in some instances the relationship between a bank and its customer is that of debtor and creditor. It should be noted that the heading for the citation given by respondents is entitled "Relation Between General Depositor and Bank." 10 Am Jur 2d, Banks § 339. A reading of other sections of American Jurisprudence with regard to banks makes it clear that a bank may have other responsibilities to people with whom it deals. For example, in that same treatise it says: "Even in absence of such statutory authorization, a bank may, in the exercise of its incidental powers necessary to carry on its business, act as a fiduciary and occupy a trust relation in matters connected with that business, even though it may not act as a technical trustee." 10 Am Jur 2d, Banks § 304. (Emphasis added.)

As appellants' brief so clearly demonstrates and as the facts of the case as established through depositions and affidavits verify, the relationship between appellants and

respondents Bank and Tenney was more than that of a general depositor. In addition to the role which the bank assumed in order to "help" the Blodgetts in every way they could to keep them from "losing" their property, the bank was also the trustee under the earlier trust deed on the store property. In addition, until shortly before the trust deed sale conducted in September of 1973, it was the trustee under the trust deed presently in dispute. The cases cited in appellants' first brief on this point have not been answered by respondents or in any way challenged. Moreover, the subject was raised by Justice Crocket at the oral arguments as to whether the bank and Tenney had not established a fiduciary relationship with the Blodgetts by reason of their long and varied relationship. Counsel for Respondents Bank and Tenney made no answer to this query at that time nor even in their additional authorities brief.

POINT II

TRUSTEES UNDER A TRUST DEED DO HAVE OBLIGATIONS FIDUCIARY IN NATURE

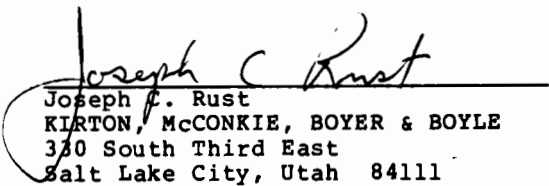
Although a trustee under a trust deed may not have every single obligation which are imposed upon a general trustee and which are established under general trustee law, nevertheless there remains with the trustee of a trust deed fiduciary relationships and obligations. The case cited by respondents in their additional authorities brief does not deny this fact. In fact, even that case refers to a trustee under a trust deed as being "a common agent of the parties to the instrument."

Lancaster Security Invest. Corp. v. Kessler, 159 Cal. App. 2d

649, 324 P.2d 634 at 638 (1958). As such agent, the trustee at the trust sale had an equal duty to the Blodgetts as well as to the Bank in seeing that no more land was sold than was necessary under the circumstances to satisfy the debt but yet to sell enough land to satisfy the obligation. Neither this duty nor other duties required by law and as spelled out in appellants' brief were met by the trustees in this case.

There has been no refutation by respondents Bank and Tenney to the authorities cited in appellants' brief as to the duties of a trustee under a trust deed. Regardless of the duties of a general trustee, the trustee under a trust deed still has many responsibilities imposed by reason of his relationship to the parties and by reason of statutory requirements. Those were not met in this case.

Respectfully submitted,


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MAILING CERTIFICATE

Mailed two copies each of the foregoing Response to the Additional Authorities of Respondents Tenney and Valley Bank, to the following, this 28th day of November, 1978.

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