

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 Respondents, State of Utah

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Recommended Citation

Brief of Respondent, *Blodgett v. Martsch*, No. 15608 (Utah Supreme Court, 1978).
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IN THE SUPREME COURT OF THE STATE OF UTAH

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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. 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. 15688

Respondents.

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BRIEF OF RESPONDENT STATE OF UTAH

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APPEAL FROM SUMMARY JUDGMENT IN FAVOR OF
RESPONDENTS IN THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----oo0oo-----

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IN THE SUPREME COURT OF THE STATE OF UTAH

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

Appellants,

vs.

Case No. 15608

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. 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,

Respondents.

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BRIEF OF RESPONDENT STATE OF UTAH

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STATEMENT OF NATURE OF THE CASE

Appellants seek a reversal of the summary judgment granted below in favor of the Respondents, and this Respondent, State of Utah, 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, 1977, 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.

STATEMENT OF FACTS

Respondent State of Utah accepts the Statement of Facts set forth by Respondent Joe Martsch in his brief in the matter.

ARGUMENT

APPELLANTS HAVE INDICATED NO BASIS FOR THEIR ALLEGATION THAT RESPONDENT STATE OF UTAH WAS NOT A BONA FIDE PURCHASER FOR VALUE, AND THE LOWER COURT ACTED PROPERLY IN GRANTING THE MOTION OF THE STATE OF UTAH FOR SUMMARY JUDGMENT.

In Point VIII of its brief in this matter, Appellants allege that the State of Utah was not a bona fide purchaser for value of the subject property. Appellants fail to put forth any factual or legal basis justifying this contention, and the State of Utah is aware of no such basis. Appellants nowhere allege, nor does any portion of the record indicate, that the State of Utah had any awareness whatsoever of dealings, fraudulent or otherwise, between Appellants and Respondent Valley Bank & Trust Company, or that the State had any knowledge of purported irregularities attending the trustee's sale.

Appellants merely note that the State required Raco Car Wash to give a quitclaim deed to Respondent Martsch and that the State had a title search performed. (Appellants' Brief, p. 23) This Respondent is aware of no case or principle of law indicating that a purchaser's requiring its grantor to produce a quitclaim deed for the subject property constitutes knowledge of a prior allegedly fraudulent conveyance; were this result to obtain, any bona fide purchaser would be required to obtain a quitclaim deed from the grantor. The State required its grantor to produce a quitclaim deed showing the

grantor's title could subsequently be held liable for any previous fraudulent conveyance of the land, no matter how remote or unknown to the purchaser. Appellants fail to mention that the State took the strip of land in question by warranty deed, and thus had further assurance of the validity of Respondent Martsch's title.

As to the title search performed by the State, Appellants have chosen simply to ignore the Affidavit of Gordon S. Wood, which was filed in conjunction with the State's Motion for Summary Judgment, and is a part of the record herein. Mr. Wood testifies that the title search indicated no flaw in Respondent Martsch's title, and therefore the State had no knowledge of circumstances indicating any possibility of fraud. Appellants entered no affidavits or other response refuting Mr. Wood's affidavit, and therefore the granting of summary judgment to the State was proper as a matter of law, under Rule 56(e), Utah Rules of Civil Procedure:

When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegation or denial of his pleading, but his response by affidavits or as otherwise provided in this Rule, must set forth the specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment if appropriate shall be entered against him.

The phrase, "as otherwise provided in this Rule," clearly has reference to Rule 56(f), which outlines the procedure to be

followed when no affidavits can be obtained. Appellants made no effort to invoke Rule 56(f), nor did they enter into evidence affidavits refuting the Wood affidavit. The lower Court therefore acted with complete propriety in granting the State's Motion for Summary Judgment.

Appellants state that "[t]he rights of the State of Utah as to the car wash property are clearly tied to those of respondent Martsch." (Appellants' brief, pp. 23-4). The State of Utah respectfully submits that Respondent Martsch was entitled to a summary judgment, on the grounds enumerated in the brief filed by Respondent Martsch in this matter. Having purchased in good faith from Martsch, the State was similarly entitled to a summary judgment in its favor.

However, even assuming arguendo that this Court finds that the granting of summary judgment as to Respondent Martsch was improper, the State of Utah would still be entitled to an affirmance of the summary judgment granted in its favor. The record in this case clearly indicates that the State was a bona fide purchaser, and Appellants have made no showing whatsoever to the contrary; therefore, even if Respondent Martsch were guilty of some fraud, the State, as a bona fide purchaser, would still hold good title. Without burdening the Court with lengthy citation of case law, it may suffice simply to cite the well-recognized principle that:

The fraudulent character of the conveyance between the original parties does not per se affect the title of a purchaser or other transferee from the fraudulent grantee; and a bona fide purchaser from a fraudulent grantee acquires a good title. 37 C.J.S., Fraudulent Conveyances 300, p. 1133.

Therefore, regardless of the Court's determination as to whether a granting of summary judgment in favor of Respondent Martsch was proper, the State of Utah is entitled to an affirmation of the summary judgment granted in its favor.

CONCLUSION

Appellants failed to put forth any affidavit or other evidence refuting the affidavit of Gordon S. Wood or demonstrating in any way that the State of Utah was not a bona fide purchaser. Moreover, even if Respondent Martsch's acquisition of the subject property was somehow fraudulent, this would not affect the validity of the State's title. The State was therefore entitled to summary judgment in its favor, and respectfully urges this Court to dismiss this appeal as to the State and to affirm the decision of the lower Court on summary judgment.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify that two copies each of the foregoing Brief of Respondent State of Utah were mailed, postage prepaid, to the following this 19th day of May, 1978:

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