


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 : Additional Authorities For Brief of Respondents, Karl H. Tenney, and Valley Bank and Trust Company In Response To Inquiry of Justice Maughan

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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,	)	Case No. 15608
aka BETTY PURCELL MARTSCH,	)	
DOYLE NEASE, RACO CAR WASH	)	
SYSTEMS, INC., a Utah Corpor-	)	
ation, 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 through 10,	)	
	)	
Respondents.	)	

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ADDITIONAL AUTHORITIES FOR BRIEF  
OF RESPONDENTS, KARL W. TENNEY,  
AND VALLEY BANK AND TRUST COMPANY  
IN RESPONSE TO INQUIRY OF JUSTICE MAUGHAN

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COME NOW, the above mentioned Respondents and pursuant to Rule 75 (p) (3) Utah Rules of Civil Procedure submits the following additional authority in response to an inquiry from Justice Maughan for the proposition that a Trustee under a Trust Deed does not assume all obligations cast upon other Trustees by operation of law.

1. The relationship between a bank and its customer is that of debtor and creditor.

Although money on deposit in a bank is commonly considered to be the property of the depositor, the relationship in fact between him and the bank is that of debtor and creditor; the amount on deposit represents merely an indebtedness by the bank to the depositor .... The legal effect of the transaction is that of a loan to the bank...

10 Am Jur 2d, Banks §339.

2. In creating a loan secured by a trust deed, the Bank merely extends credit to the customer and takes his promissory note therefor and secures it with a trust deed. The trustee in the trust deed does not assume all of the obligations cast upon other trustees by operation of law. In affirming a judgment holding that no legal ground existed upon which to hold a Trustee's sale invalid where a successor Trustee was not given notice of a Trust Deed sale by Trustee, the California Second District Appellate Court stated:

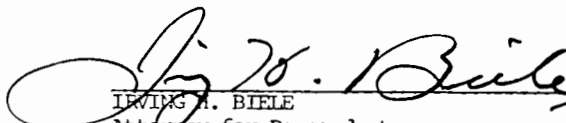
Appellant argues that the trustee was under a duty to give notice of the sale to the appellant on the basis of the trustee's relationship with appellant's predecessors in interest under general principles of trust law. The argument misconceives the legal incidents of a trust deed. An ordinary trust deed is little more than a mortgage with a power to convey.... "A trustee under a deed of trust does not assume the important obligations which are in some instances cast upon a trustee by operation of law."... The trustee of a trust deed is not a trustee in the strict sense of the word. The role of such a trustee is more nearly that of a common agent of the parties to the instrument.

Lancaster Security Investment Corporation vs. Kessler. 324 P.2d 634 at 683, 159 Cal. App. 2d 649, (2nd Dist., 1958), appeal dismissed, certiorari denied 79 S.Ct. 245, 358 U.S. 306, 3 L.Ed. 2d 347.

DATED this 20th day of November, 1978.

Respectfully submitted,

BIELE, HASLAM & HATCH

  
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Karl W. Tenney and Valley  
Bank and Trust Company

CERTIFICATE OF DELIVERY

I hereby certify that on the 20th day of November, 1978, I delivered two copies of the Additional Authorities For Brief Of Respondents, Karl W. Tenney, and Valley Bank and Trust Company In Response To Inquiry Of Justice Maughan, to the following:

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