

1988

# Maxfield v. Ruston : Brief of Respondent

Utah Court of Appeals

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Lorin N. Pace; Attorney for Plaintiff-Appellant; Henry S. Nygaard; Beaslin, Nygaard, Coke & Vincent; Attorney for Respondents.

David L. Wilkinson; Attorney General; Stephen G. Schwendiman; Bernard M. Tanner; Leonard E. McGee; Assistant Attorneys General; Attorneys for Co-Respondents.

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH COURT OF APPEALS  
BRIEF

REED MAXFIELD and UTAH GREAT  
GAME PRESERVE, a Utah corpora-  
tion,

Plaintiffs-Appellants,

vs.

OWEN A. RUSHTON and CAROL  
RUSHTON, his wife,

Defendants-Respondents.

OWEN A. RUSHTON and CAROL  
RUSHTON, his wife,

Third-party Plaintiffs and  
Respondents,

vs.

STATE OF UTAH, by and  
through UTAH STATE DEPARTMENT  
OF SOCIAL SERVICES,

Third-party Defendants  
and Co-respondents.

vs.

REED MAXFIELD,

Third-party Defendant.

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DOCKET NO. 880332-CA

Case No. 970424

88

BRIEF OF RESPONDENTS

APPEAL FROM SUMMARY JUDGMENT OF DISMISSAL  
HONORABLE DAVID S. YOUNG, JUDGE; AND  
APPEAL FROM DENIAL OF MOTION FOR SUMMARY JUDGMENT  
HONORABLE JAMES S. SAWAYA, JUDGE

OF THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY

DAVID L. WILKINSON, #3472  
Attorney General  
STEPHEN G. SCHWENDIMAN, #2891  
BERNARD M. TANNER, #3185  
LEONARD E. MCGEE, #2185  
Assistant Attorneys General  
Tax & Business General  
130 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1019  
Attorneys for Co-respondents  
State of Utah

LORIN N. PACE, #2498  
350 South 400 East #101  
Salt Lake City, Utah 84111  
Telephone: (801) 364-1300  
Attorney for Appellant Maxfield

HENRY S. NYGAARD, #2435  
NYGAARD, COKE & VINCENT  
333 North 300 West  
Salt Lake City, Utah 84103  
Telephone: (801) 328-2506  
Attorney for Respondents Rushton

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LEONARD E. MCGEE, #2185  
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130 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1019  
Attorneys for Co-respondents  
State of Utah

LORIN N. PACE, #2498  
350 South 400 East #101  
Salt Lake City, Utah 84111  
Telephone: (801) 364-1300  
Attorney for Appellant Maxfield

HENRY S. NYGAARD, #2435  
NYGAARD, COKE & VINCENT  
333 North 300 West  
Salt Lake City, Utah 84103  
Telephone: (801) 328-2506  
Attorney for Respondents Rushton

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LIST OF PARTIES

The parties to this action are:

1. Reed Maxfield, a Plaintiff and Appellant.
2. Utah's Great Game Preserve, a Plaintiff and Appellant.
3. Owen A. Rushton and Carol Rushton, his wife, Defendants and Respondents.
4. State of Utah, by and through Utah State Department of Social Services, Third-party Defendants and Co-respondents.

## TABLE OF AUTHORITIES

Bowen v. Riverton City, 656 P.2d 434

Brasher Motor & Finance Co. v. Brown, 23 Utah 2d 247, 461 P.2d 464

Christensen v. Financial Services Co., Inc., 377 P.2d 1010

Department of Social Services v. Romero, 609 P.2d 1323

Johnson v. Firebrand, Inc., 571 P.2d 1369

K.L.C., Inc. v. McLean, 656 P.2d 986

Maxfield v. Fishler, 538 P.2d 1323

Thompson Ditch Co. v. Jackson, et al., 508 P.2d 528

Utah Oil Company v. Harris, 565 P.2d 1135

Westinghouse Electric Supply Co. v. Larsen, 544 P.2d 876

Wright v. Howe, et al., 150 P. 956

### Other Authorities:

### Utah Rules of Civil Procedure:

Rule 69

Rule 56(c)

JURISDICTIONAL STATEMENT AND CASE HISTORY

Jurisdiction of the Supreme Court is pursuant to Utah Code Ann. Sec. 78-2-2(3)(1). This appeal is from an Order of the trial court dismissing the plaintiff's causes of action because of the plaintiff's failure to diligently prosecute.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether the trial court committed reversible error in dismissing the plaintiff's causes of action for failure to diligently prosecute.

2. Whether the trial court committed reversible error in denying plaintiff's Motion for Summary Judgment based upon the pleadings, affidavits, and factual circumstances surrounding this transaction.

3. Whether the trial court committed reversible error in denying plaintiff's Motion for an Order Granting plaintiff the immediate right to redeem prior to trial of the case on its merits.



STATUTORY PROVISIONS

None

### STATEMENT OF THE CASE

This action involves disputes relating to title and right of possession of two parcels of land situated in Salt lake County, Utah.

Because title is the primary issue, a brief chronology of events outlining the chain of "ownership" may be helpful to the court.

1. Lester and Maxine Romero were fee title owners prior to April 9, 1979. (R-19)

2. Prior to April 9, 1979, Lester and Maxine Romero represented that they had assigned and sold the properties to Beaver Investment who subsequently assigned and sold its interest to Golden Circle Investment. Lester Romero controlled the entities known as Beaver Investment and Golden Circle Investment.

3. On April 9, 1979, Lester and Maxine Romero conveyed the properties by quit-claim deed to Golden Circle Investment. (R-19)

4. On April 9, 1979, Golden Circle Investment conveyed the properties by corporate quit-claim deed to Reed Maxfield.

5. On June 29, 1979, the State of Utah, Division of Social Services, obtained a judgment based upon fraud against Lester Romero. (R-20)

6. Reed Maxfield recorded the quit-claim deed from

Golden Circle to Maxfield on March 25, 1980. (R-20)

7. The properties were sold by Sheriff's sale on October 1, 1980. (R-20)

8. The defendants Owen and Carol Rushton purchased the property at the Sheriff's sale for the amount of the judgment against Lester Romero together with the costs of sale. (R-35, R-41)

9. Reed Maxfield filed a Complaint on October 20, 1980, against the Rushtons alleging that he was the fee title owner of the property. Subsequently, on November 3, 1980, plaintiff filed an Amended Complaint. (R-2)

10. Defendants Rushtons filed a Motion to Dismiss upon the grounds that they were innocent third-party purchasers, that Maxfield had not joined the State of Utah as a necessary party defendant, and that the relationship between Maxfield and Romero must be established in order to determine if the purported deed of conveyance was valid. (R-8)

11. On March 11, 1981, plaintiff filed a Motion for Summary Judgment which was denied March 27, 1981. (R-13, R-52)

12. Plaintiff filed a Petition for Interlocutory Appeal to the Supreme Court in April, 1981. Said Appeal was denied.

13. On April 2, 1981, defendants Rushton did file an Answer, Counterclaim and Third-party Complaint joining the State of Utah in the action as a third-party defendant. (R-53, R-57)

14. On June 19, 1984, plaintiff filed another Motion for Summary Judgment which was denied by Judge David Dee on September 25, 1984. A trial date was set for January 10, 1985. (R-215)

15. On September 6, 1984, the defendants Rushton, pursuant to court order, filed their Amended Answer and Counterclaim. (R-183, R-231)

16. Plaintiff has never filed a reply to the Amended Counterclaim.

17. On or about December 10, 1984, plaintiff filed a Motion to File a Second Amended Complaint. The defendants objected to the filing of the Second Amended Complaint upon the grounds that it was inappropriate to add new parties to the action and different causes of action including fraud and punitive damages which sound in tort and completely change plaintiff's theory of the case upon the eve of trial. (R-244, R-255)

18. In December 1984, the plaintiff filed a Petition in Bankruptcy for a Chapter 11 proceeding. (R-260)

19. The trial date scheduled for January 10, 1985, was stayed by filing of Notice of Bankruptcy. (R-258)

20. As part of the bankruptcy proceedings, the plaintiff caused the claim against the defendants to be assigned to the Utah Great Game Preserve, a Utah corporation controlled by the plaintiff and his family. Thereafter, the Stay was lifted enabling the case to be heard in the Third Judicial District Court. (Bankruptcy

84A-03391)

21. On June 1, 1987, Judge Young, after hearing arguments from the parties, set a scheduling order which included the first place trial setting of September 15, 1987. (R-313)

22. On August 10, 1987, plaintiff's counsel filed a Motion to continue the trial date which was denied on August 17, 1987. (R-332, R-355, R-424)

23. Plaintiff filed a Motion to Dismiss all claims by any party against plaintiff on August 11, 1987. (R-359). Defendants replied to the plaintiff's Motion on August 14, 1987. (R-385)

24. Plaintiff filed a Third Amended Complaint on August 19, 1987. (R-404). Defendants objected to filing the Third Amended Complaint. (R-433).

25. On August 24, 1987, the court denied plaintiff's Motion to Dismiss claims against plaintiff, Motion to File a Third Amended Complaint and denied defendants' Motion for Summary Judgment. (R-436)

26. At the Pre-trial Hearing on August 31, 1987, with all parties present with counsel, the plaintiff presented a proposed Third Amended Complaint enlarging upon the Second Amended Complaint and including a civil rights cause of action. Thereafter, plaintiff's counsel moved to be allowed to withdraw. After the court heard arguments from all the parties including the

plaintiff individually, the court dismissed plaintiff's causes of action for failure to prosecute. (R-437, R-438)

27. Judgment was entered on September 30, 1987. (R-449)

28. Plaintiff filed an objection to judgment which was denied. (R-470, R-471)

29. Plaintiff then filed a Notice of Appeal. (R-469)

The plaintiff's cause of action has been before the Third Judicial District Court from October 1980 to September 1987. The record clearly demonstrates that the plaintiff, by his own conduct, has continually delayed this matter by change of legal counsel, amended causes of action, and bankruptcy proceedings. All of the plaintiff's actions have been to the detriment of the defendants who, as innocent purchasers, have been compelled to pay mortgage payments owing at the time of the Sheriff's sale, together with taxes, insurance and the maintenance of old houses without the benefit of the Sheriff's Deed necessary to convey title. (R-73)

Subsequent to the Sheriff's sale of the two parcels of real property on October 1, 1980, the plaintiff has had within his power, the right, and capability of an expeditious trial establishing the validity of his claim to fee title and his right to redeem.

The defendants Rushton are innocent third-party pur-

chasers of the real property at the Sheriff's sale, having no relationship with Maxfield or Romero.

The Rushtons have continuously pressed for completion of discovery and setting prompt hearing dates. Defendants have filed three Requests for Trial Settings and obtained four (4) trial settings. The plaintiff, on the other hand, has objected to the Notices of Readiness, trial date settings, and made no effort whatsoever to have the matter expeditiously tried on its merits after plaintiff's Motions for Summary Judgment were denied.

The Motions for Summary Judgment were not granted because it was clear that there were genuine issues of both law and fact.

The plaintiff, failing to successfully obtain a Summary Judgment, then proceeded to seek the right to immediate redemption without first proving that he had valid title to the property. The trial court properly denied these Motions.

Therefore, rather than seek an early trial date to resolve the issues, the plaintiff filed bankruptcy, had the cause of action assigned and transferred to a family corporation (Utah's Great Game preserve) and filed a Second and Third Amended Complaint for the purpose of adding defendants and causes of action that substantially changed plaintiff's original theory of the case.

The court on August 31, 1987, at the pretrial

conference, upon being confronted with continuing efforts by the plaintiff to delay the case again for non-meritorious reasons, dismissed the case for failure to timely prosecute. (R-437, R-438)

The delays have been very detrimental to the Rushtons who have been required to pay all of the monthly mortgage payments, taxes, insurance and borrow money to repair the houses despite the fact that they have not been able to obtain a Sheriff's Deed for seven (7) years due to the delaying tactics of the plaintiff.

I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION  
IN DISMISSING PLAINTIFF'S CAUSES OF ACTION  
FOR FAILURE TO PROSECUTE

This matter has been pending before the Third Judicial District Court in Salt Lake County since October 20, 1980, when the plaintiff filed his Complaint alleging he was the fee title owner and that the State of Utah had caused to be conducted an improper Sheriff's sale.

Since that date, the plaintiff has filed two amended complaints and on the date of the pre-trial, August 31, 1987, sought to file a Third Amended Complaint seeking relief on an entirely new theory involving the violation of civil rights and seeking punitive damages against the various defendants including the State of Utah. (R-404)



Counsel for the defendants Rushton have filed two Certificates of Readiness for Trial, to wit: February 8, 1984 (R-82), and November 24, 1986 (R-264), and a Motion for Immediate Trial Setting on April 27, 1987 (R-291). On each occasion, plaintiff objected to said requests on the grounds that more discovery was necessary.

The court has scheduled four trial date settings, namely: April 30, 1984 (R-89); September 10, 1984 (R-90); January 10, 1985 (R-215); and September 15, 1987 (R-309).

The court file is replete with pleadings on the part of the defendants seeking a court determination of this matter and plaintiff objecting to every effort to have the issues tried or in the alternative, doing nothing in a constructive effort to resolve the issues raised by the pleadings. However, it should be noted that counsel for plaintiff has taken the depositions of Owen Rushton, Carol Rushton and Stephen Schwendiman. Defendants have taken the deposition of the plaintiff Maxfield. All the depositions were completed before the end of 1984, three and one-half years ago.

All the delays have been directly caused by the plaintiff, including the filing of a petition in bankruptcy on December 10, 1984, which included the successful effort of having this cause of action, as an asset of Maxfield, to be transferred to the Maxfield "close family" corporation known as Utah's Great Game

Preserve for the payment of a "debt" thus preventing creditors from attaching any interest in this cause of action. Bankruptcy Judge John Allen lifted a Stay Against Proceeding and remanded the matter to the Third Judicial District Court where it continued to flounder despite defendants' efforts to have the matter heard.

Finally, at the pretrial conference on August 31, 1987 (R-437), the plaintiff's counsel (in the presence of Maxfield) again tried to amend the Complaint changing the entire theory of the case, moved for further continuance, and sought to withdraw as counsel upon the grounds that he had not been paid. The court then gave Mr. Maxfield an opportunity to speak. After hearing argument from all the parties and their counsel, the court correctly ruled that the plaintiff's case must be dismissed for failure to prosecute. Seven years was adequate time to frame the issues and theory of the case, complete discovery, and have the matter tried.

The record shows that between August 31, 1987, and the present time, three separate lawyers have entered appearances in addition to pro se actions on the part of the plaintiff. It is evident that there is no end in sight if the court does not take appropriate action to prevent abuse of the court system to the detriment of the Rushtons who have been making mortgage payments, insurance premiums and taxes as well as incurring maintenance expense for seven years without a Sheriff's Deed due to the delaying actions of the plaintiff.

The Utah Supreme Court has consistently held that "The ruling of the court below will not be disturbed unless the record plainly shows that the court below abused its discretion." Westinghouse Electric Supply Company v. Paul W. Larsen Contractor, Inc., 544 P2d 876 (1975).

This is true whether a party to the action moves the court for an order of dismissal for failure to prosecute or the court acts on its own. Brasher Motor and Finance Company v. Brown, 23 Utah 2d 247, 461 P2d 464 (1969).

The Supreme Court has generally followed five (5) basic factors to determine if dismissal is justified. They are:

1. The conduct of both parties.
2. The opportunity each has had to move the case forward.
3. What each of the parties have done to move the case forward.
4. What difficulty or prejudice may have been caused to the other side.
5. And, most important, whether injustice may result from the dismissal.

(See K.L.C. Inc. v. Ron McLean, 656 P.2d 986)

In applying these five standards, it is conclusively established that the court did not abuse its discretion in dismissing plaintiff's cause of action.

First, there is nothing in the record to indicate that the plaintiff did anything to encourage the setting of a trial date. When plaintiff's Motions for Summary Judgment were not

granted, the plaintiff did nothing except to file a petition in bankruptcy and seek to prevent creditors from claiming an interest in his "alleged title" to the properties which are the subject of this case.

On the other hand, defendants took the appropriate depositions, filed Interrogatories and Request for Production of Documents (which were only answered after defendants filed a Motion to Compel [R-180]), and filed two Certificates of Readiness and Motion for Immediate Trial over a three-year period. Defendants did everything possible to have this matter heard.

Second, each party had an equal opportunity to move the case forward. The plaintiff had the burden of proof, but it was the defendants who were continually seeking a resolution of the issues. There is nothing in the record to indicate that plaintiff was justified in failing to proceed expeditiously.

Third, the actions taken by the parties to move the case forward is described in paragraph first above. However, it is submitted that the plaintiff has not only taken no affirmative steps to move his case forward, he has continually filed objections and obstructed the defendants and the court from moving forward. The file includes plaintiff's objections to every Certificate of Readiness for Trial, Motion for Immediate Trial Setting, or court orders seeking to schedule an orderly procedure to conclude the case.

Fourth, the defendants have done nothing to prejudice or create difficulties for the plaintiff. Any prejudice claimed to be suffered by the plaintiff has arisen from his own acts or omissions. The plaintiff's objections to defendants' efforts seeking to go forward, his failure to respond to Request for Production of Documents and Answers to Interrogatories, and his continual Motions to amend the Complaint, have prejudiced defendants from having a hearing on the issues within a reasonable time. It is submitted that seven (7) years is not reasonable, especially when the issues are not that complex.

Fifth, no injustice will result from this court affirming the trial court's Order of Dismissal. Not only did the plaintiff take every step to avoid an expeditious trial, he cannot suffer any financial loss because through his personal bankruptcy petition, he caused any interest he had in the subject property to be conveyed to Utah's Great Game Preserve, a Utah corporation. A party cannot be heard to complain when he has been the creator of his own world of problems. It was the plaintiff who abused the court system and cannot now be heard to complain that the judicial system has taken inappropriate action.

On the other hand, the defendants Rushton will suffer great injustice if the court Order of Dismissal is not upheld. They were purchasers in good faith of the property pursuant to a Sheriff's sale October 1, 1980 (R-35, R-41). Since that date,

when they paid the amount required at the Sheriff's sale, they have been compelled to repair two houses that were in a bad state of repair, paid monthly mortgage payments on both properties, paid real property taxes for the years 1980 through 1987, paid insurance premiums and substantial attorney fees, all of which exceeded the limited rental income they were able to receive (R-73). The Rushtons are both elderly and it is important that they be allowed to secure the property Sheriff's Deed and be assured they can continue to pay for the properties knowing that they will obtain legal title.

In support of this great expense, Carol Rushton executed an Affidavit dated December 8, 1981 (R-73), which is part of the record and which outlined expenses for the first year as follows:

Repairs to property at 3020 W. 2995 S.	\$7,048.06
Repairs to property at 606 Colorado St.	694.09
Insurance	150.00
Delinquent mortgage payments	431.00
Granger-Hunter Water District	60.00
Repair furnace	30.00
December 22, 1980 (First Security mortgage payment)	97.00
Interest paid on loan taken out to improve the property	272.52
Attorneys fees to date	872.52

Since 1981, the defendants have carried the burden of similar charges.

To permit the plaintiff to return to the Third Judicial District Court and pursue this matter would constitute a substantial injustice to the Rushtons. The plaintiff, by his conduct and

his bankrupt financial condition, has clearly demonstrated that he should not be allowed to continue his irresponsible actions to the detriment of the Rushtons. To grant further hearings and to grant any right of redemption under these circumstances would be to compound the injustice that the plaintiff has already committed.

In conclusion, the Supreme Court in K.L.C. Inc. v. McLean, 656 P2d 986 at page 987 declared:

Under such circumstances, a trial could serve no useful purpose. The protraction of the case for fourteen years, and the hopelessness of any recovery by either side justified the trial court's dismissal on plaintiff's motion, as might also have occurred sua sponte and on the court's own motion.

It is submitted that the trial court in reviewing the pleadings and considering all of the circumstances not only did not abuse his discretion, but carried out the court's obligation to provide fair and expeditious hearings for litigating parties.

This view has always been the findings and ruling of the Utah Supreme Court. Wright v. Howe, et al., 150 P. 956 (Utah 1915); Thompson Ditch Co. v. Jackson, et al., 29 Utah 2nd 259, 508 P.2d 528 (1973); Maxfield v. Fishler, 538 P2d 1323 (Utah 1975); Utah Oil Company v. Harris, 565 P2d 1135 (Utah 1977); Johnson v. Firebrand, Inc., 571 P.2d 1369 (Utah 1977); Dept. of Social Services v. Romero, 609 P2d 1323 (Utah 1980).

## II

### THE TRIAL COURT DID NOT ERR IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Historically, the Utah Supreme Court has not reversed a trial's court with respect to rulings on Motions for Summary Judgment unless there is clearly an abuse of discretion or the trial court is in error as a matter of law. The burden is upon the moving party and the defending party is given the benefit of every doubt in order to insure that parties, if legally deserving, shall have their day in court.

The plaintiff argues that his first Motion for Summary Judgment filed before an answer had been filed or any discovery had taken place was error as a matter of law. The defendants were only aware that they were innocent purchasers of real property being sold by the Sheriff of Salt Lake County to enforce a judgment against a fee title owner of the property by the name of Romero.

After plaintiff filed his first Motion for Summary Judgment (R-13), he filed a Motion and Notice of Hearing to Extend Time for Redemption and Motion for Deposit of Funds into Court (R-50).

On March 27, 1981, the court heard arguments on defendants' Motions to Dismiss and plaintiff's Motion for Summary Judgment. The court denied the Motion for Summary Judgment upon



the grounds that it was premature. (R-52)

However, the court did grant plaintiff an extension of the redemption period. Furthermore, the court authorized the defendants to collect and retain the rents. (R-52)

Thereafter, on April 1, 1981, the defendants filed an Answer and Counterclaim and Third-party Complaint joining the State of Utah (R-51, R-57). The plaintiff filed an Intermediate Appeal. The Intermediate Appeal was denied. (Record does not disclose Intermediate Appeal.)

On December 4, 1981, plaintiff filed a Motion for Possession of Real Property and Assignment of Rents (R-80). The Motion was stricken December 10, 1981 (R-81). Therefore, on June 19, 1984, plaintiff filed a second Motion for Summary Judgment on the same issues (R-91). Defendants Rushton objected to the plaintiff's Motion upon the grounds that the court had previously granted the parties further discovery at pre-trial conference on June 19, 1984 (R-168); therefore, a hearing on Summary Judgment was premature.

After discovery had been "completed," the plaintiff filed a Second Amended Complaint adding new defendants and several causes of action. (R-244)

On September 25, 1984, the plaintiff's Motion for Summary Judgment was heard and denied. An early trial was set for January 10, 1985. (R-215)

On November 30, 1984, plaintiff's Motions relating to rights of redemption were argued and the court reserved ruling until date of trial. (R-230)

On December 10, 1984, the plaintiff filed a petition in bankruptcy, thereby staying further proceedings. (R-260)

Under these facts and circumstances, there is no factual or legal basis for reversing the trial court's denial of the plaintiff's first and second Motions for Summary Judgment.

It is difficult to understand the legal reasoning of the plaintiff in seeking a reversal of the court's denial of the first Motion for Summary Judgment when subsequently an Intermediate Appeal was denied, the plaintiff filed a Second Amended Complaint and thereafter filed a second Motion for Summary Judgment which was also denied. Certainly, there could be no legal rational basis that could allow the plaintiff's first Motion for Summary Judgment to survive all of the intervening actions and be heard again.

The plaintiff/appellant strenuously argues that the Affidavit filed by Rushtons' counsel does not adequately raise questions of law or fact to successfully challenge the plaintiff's first Motion for Summary Judgment. This superficial argument was denied by the trial court upon several grounds: First, there had been a Motion to Dismiss filed which on its face raised several serious issues; namely, the State of Utah had not

been joined as a necessary party, the defendants Rushton were innocent bona fide third-party purchasers under a Sheriff's sale, and that the relationship between Maxfield and Romero raised a question as to the validity of the deed from Romero to Maxfield.

Secondly, there had been inadequate time to complete discovery.

Thirdly, defendants should be given adequate time to file an answer to raise the legal issues of fraud, necessary joinder and the validity of the purported deeds of conveyance.

The court's denial of the Motion for Summary Judgment based upon the above rationale is fully supported by prior decisions of the Utah Supreme Court.

The defendants were entitled to have all the evidence and inferences construed in their favor. In Bower v. Riverton City, 656 P2d 434 (1982), the Supreme Court stated at page 436:

If there is any doubt or uncertainty concerning questions of fact, the doubt should be resolved in favor of the opposing party. Thus, the court must evaluate all of the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the opposing summary judgment.

The Supreme Court has declared that an Affidavit is not even essential to successfully contest a Motion for Summary Judgment. Under Rule 56(c) U.R.C.P.:

The adverse party prior to the day of hearing may serve opposing affidavits, but is not required to do so. He may stand upon his pleadings providing his allegations, if proved, would establish a basis for recovery. [Christensen v. Financial Service Co., Inc., 377 P.2d 1010 (1963).]

The Motion to Dismiss clearly raised substantial and genuine issues of law and fact. Furthermore, defendants' Answer, Counterclaim, and Third-party Complaint joining the State of Utah were filed immediately after the plaintiff's Motion for Summary Judgment was denied, specifically pleading the issues with particularity. Subsequent pleadings have fully established the existence of genuine issues between the plaintiff and defendants.

### III

#### THE COURT DID NOT ERR IN DENYING THE PLAINTIFF'S MOTION FOR AN ORDER ALLOWING IMMEDIATE RIGHT OF REDEMPTION

The defendants do not argue that property sold in accordance with a Sheriff's sale is not subject to rights of redemption. Rule 69 U.R.C.P. specifically provides a right of redemption to a judgment debtor or a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof.

The trial court recognized rights of redemption, under Rule 69, but concluded that he could not order redemption until such time as the plaintiff clearly proved that he qualified as one having a right to redeem. The whole purpose of the litigation was to establish whether a right of redemption rested with Romero (or his corporate successors in interest, namely: Golden Circle, Inc.) or Maxfield. Therefore, the trial court extended

the rights of redemption for the purpose of giving the plaintiff an opportunity to establish that he had a legal right to redeem.

The trial court committed no error by extending rather than granting rights of redemption.

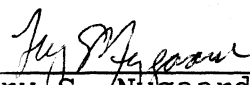
#### CONCLUSION

Based on all of the above, and on the record below, the defendants/respondents respectfully submit that the trial court did not commit any error in denying plaintiff's Motion for Summary Judgment or right to immediately redeem.

The acts and omissions of the plaintiff have been detrimental to the defendants Rushton who are now entitled to receive a Sheriff's Deed to the real property. They have maintained the property for seven (7) years at great financial risk. Continued delay will create only more hardship for the Rushtons who in their elderly age may never survive more trial dates and appeals.

RESPECTFULLY SUBMITTED this 14th day of April, 1988.

NYGAARD, COKE & VINCENT

  
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Henry S. Nygaard  
Attorney or Respondents Rushton

#### CERTIFICATE OF MAILING

I hereby certify that on the 14th day of April, 1988, I mailed, postage prepaid, four copies of the foregoing Brief of

Respondents to counsel for the State of Utah and counsel for Appellant Maxfield at the addresses shown on the cover of this Brief.

A handwritten signature in cursive script, appearing to read "Jay Byrnes", is written over a horizontal line.