

2001

# Walter F. Parrish v. Layton City Corporation : Brief of Appellant

Utah Supreme Court

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James W. Gilson; Attorney for Respondent.

Walter F. Parrish, Pro Se; Appellant.

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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

IN THE SUPREME COURT  
OF THE STATE OF UTAH

Walter F. Parrish

Plaintiff and Appellant

V.

No. ~~78747~~ 14018

Layton City Corporation

Defendant and Respondent

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APPELLANTS BRIEF

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Appeal from the Judgment of the 2nd  
District Court for Davis County  
Hon. John F. Walquist

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Walter F. Parrish  
207 Dawson St.  
Layton, Utah 84041  
Appellant

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FILED

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

Walter F. Parrish  
Plaintiff and Appellant  
V.  
Layton City Corporation  
Defendant and Respondent

No. 18747 Civil

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APPELLANTS BRIEF

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STATEMENT OF THE KIND OF CASE

This is an appeal for reversal of the order and judgment by the lower court.

DISPOSITION IN LOWER COURT

The case was tried to the court with false statements of defendant council without adequate investigation resulting in dismissal of plaintiff's complaint.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of judgement of lower court in order to present full and factual evidence to a jury for a just decision.

STATEMENT OF FACTS

1. Defense council denies receiving a varified claim within timely limits, however documentary evidence shows they did receive the claim but rejected it by demanding a new appraisal for minimal home damage from underground water and sewage only. This subsequent appraisal included additional damage that occurred within the interval but was approved by Layton City Council as confirmed by Ogden Standard news article 20, Jan. 69.
2. The Liability Company did not investigate the original or succeeding claims at any time, as normally required of insurance companies. Their only actions are through replies that contain false statements rejecting claims.
3. During the initial flooding the plaintiff sustained hernia on both sides and injured lower back. Surgery followed with three hospitalization and recovery periods. Assistance from professional engineers and contractors required additional time for complicated and unusual determinations.

4. The city of Layton is being defended from non-payment and non-performance of their Land Purchase Negotiation agreement made 7 Nov. 73. This agreement was breeched at a reasonable period after the corpse of engineers moved out on 9 July 73.

5. The burden of proof has been impossible until the city sewer connection could be verified by excavation through 12 feet of overburden. Temporary easement was finally granted for one day beginning 20 July 1973 and expiring 20 August 1973.

Proof of water source required flourescein tests that could be made only under conditions of heavy rain over several days. These tests were accomplished from 1:30 PM 19 July 1973 thru 23 July 1973. A special crew trained for the job was required. These tests were not necessary until the city challenged the claim for proof of the source of underground water flow.

6. Faulty planning and negligence has been admitted by Layton City in failing to provide adequate protection for construction of the I-15 freeway and the flood channel. Their engineer has stated that they should be honest and comply with the agreements he made. The present city council has expressed a desire to abide by a court decision.

#### ARGUMENT

Point 1 Valid evidence does not support a finding that the plaintiff was late in reporting the claim. In fact the claim was reported at the happening and through all stages. The city had ample opportunity to correct the conditions and minimize damage. The home was actually sacrificed in the planning stage of I-15 on a basis of calculated risk since Layton City insisted on a sunken freeway regardless of citizen protests or cautions of engineers.

Point 2 Prompt investigation by the liability company with proper intent should have resulted in early and correct findings. This opens a possibility of conflict of interest since the person who used his influence to obtain the sunken freeway is also the liability company agent.

Point 3 Responsible engineers should have practiced within their true convictions in lieu of yielding to political pressure. They actually failed to do the job they are paid to do. The least they can do is tell it like it is. Removing protective clay stratas for a sunken freeway was an error.

The expansive channel was not needed only cleaning

- Point 4        The "Death Penalty" is cruel and unjust in view of the US Supreme Court Decision. "Forever Barred" is a similar penalty for my home, paid for from low wages with interest. Both penalties should be imposed only by a jury or perhaps attorney Gilson should take at least one step in the plaintiffs shoes before quoting Utah Code Annotated 63- 30- 13(1954) and attempting to execute without trial by jury.
- Point 5        Judge Walquist dismissed plaintiff's complaint No. 17649 for failure to file a timely notice of claim which was not true. He then dismissed plaintiff's complaint for having dismissed the first complaint although the latter complaint contained additional valid items. Both dismissals are in error proved by the fact that the city of Layton did receive a varified claim.
- Point 6        Layton City was attempting to comply with their Land Purchase Negotiated agreement when they received a letter from the defense attorney advising them to take no further action. This appears to be continuing attempts to obstruct justice.

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