

2001

# Lincoln Financial Corp. dba Chevy Chase Apartments v. Dorothy S. Ferrier : Reply Brief

Utah Supreme Court

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Richard W. Brann, Esq.; Attorney for Respondent.

Pete N. Vlahos, Esq.; Attorney for Appellant.

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UTAH SUPREME COURT

BRIEF

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J. Reuben Clark Law School

IN THE SUPREME COURT OF THE  
STATE OF UTAH

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LINCOLN FINANCIAL CORPORATION, /  
d/b/a CHEVY CHASE APARTMENTS, /

Plaintiff and /  
Respondent, /

vs. / Case No. 14296

DOROTHY S. FERRIER, /

Defendant, /  
Cross Claimant, /  
and Appellant. /

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REPLY BRIEF OF APPELLANT

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Appeal from the Judgment of the Second  
Judicial District Court of Weber County  
Honorable Calvin Gould, Judge

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Attorney for Appellant

FILED

DEC 11 1975

Clark, Supreme Court, Utah

TABLE OF AUTHORITIES

CANONS OF PROFESSIONAL RESPONSIBILITY

Code of Professional Responsibility, Canon 3.....4

Code of Professional Responsibility, D.R. 7-102(a)(1).....5

IN THE SUPREME COURT OF THE  
STATE OF UTAH

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LINCOLN FINANCIAL CORPORATION, /  
d/b/a CHEVY CHASE APARTMENTS, /

Plaintiff and /  
Respondent, /

vs. /

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DOROTHY S. FERRIER, /

Defendant, /  
Cross Claimant, /  
and Appellant. /

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APPELLANT'S REPLY BRIEF TO BRIEF OF RESPONDENT

1. Respondent Contends: That Appellant's Statement of Facts is argumentative and recites matters not in evidence. (Resp.Br., p.2)

Appellant Responds: That the total of 38 lines set forth as the facts of the Appellant are all tied to the record before the Court by proper reference numbers and that examination of the record will reveal that all matters cited are stated in the record.

2. Respondent Contends: That Appellant formerly tendered possession of the premises in open Court on September 10, "although she may have vacated the same the prior weekend, which

would have been on September 6, 1975," (Resp.Br., p.4).

Appellant Responds: That the Court awarded the Respondent triple damages for occupancy up to and including September 10 on representation of Counsel for Respondent in open Court (R-64,R-54), whereas the representation was made by Counsel for Appellant, that the premises had been previously vacated. (R-54)

3. Respondent Contends: That Appellant's Statement of Facts assumes that the merits of her claims were before the Lower Court and are now before this Court. (Resp.Br., p.4)

Appellant Responds: That Respondent's presumption is correct and that Appellant believes the Supreme Court of the State of Utah has authority to review the record of the Lower Court.

4. Respondent Contends: That there are but three significant issues before the Court and set forth in Respondent's Brief, page 5, and numbered one, two, and three.

Appellant Responds: That Point I, (Resp.Br., p.5), stating the rights of the landlord to select and regulate his tenants does not invalidate the Bill of Rights of the Constitution of the United States nor the Constitution of the State of Utah; that the right of a landlord to rely upon his written Lease is valid until such time as the landlord relies upon the statutory

action of Unlawful Detainer, and that in such instance, a strict interpretation of the statutory rights of the person seeking to evict under an action of Unlawful Detainer is compelling.

5. Respondent Contends: That an action in Unlawful Detainer is modified by the terms of a written Lease. (Resp.Br., p.5)

Appellant Responds: That Appellant's Brief and its case citations therein adequately respond in the negative to such allegation.

6. Respondent Contends and gives the Court a historical, political, and an oppressed vs. the oppressor, or vice versa, diatribe on the relationship of landlord and tenants, and the loss of capitalistic incentive. (Resp.Br., p.5)

Appellant Responds: That none of the allegations of the Respondent are based upon any factual material before the Court, nor any authentic Law Reviews or other legal references upon which to base the personal opinions of Respondent, and that none of the allegations as are made therein to tenants generally are applicable to the Appellant in the matter before the Court.

7. Respondent Contends: (Resp.Br., p.5) Tenants are demanding rights verging on total ownership of properties rented; right to designate management; make rules and regulations;

withhold rents; demand improvements, while landlords are afraid to own or manage rental properties, etc., etc.

Appellant Responds: That the Appellant herein did not claim ownership of the property; did not claim the right to designate management, did not withhold rent, but as a matter of fact paid her rent promptly and even paid into the Court future rents and a promise to continue to pay all rents due and owing during the period of the controversy for such time as Appellant remained as tenant; that the Appellant herein did not demand improvements.

8. Respondent Contends: (Resp.Br., pp. 6 and 7) That Counsel for the Appellant has abandoned the control of his practice by the use of paralegals and suggested that the best lawyers in this Country are in the penitentiary and "the thought is intriguing as to what these paralegals could do if a Bar Association and Courts advocate their authority".

Appellant Responds: The allegation of Counsel for Respondent in affect specifically accuses Appellant's Counsel of violating Canon 3 of the American Bar Association Code of Professional Responsibility, and the allegation that Appellant's Counsel has aided, abetted, and engaged in aiding non-lawyers in the unauthorized practice of law, which allegation if contained in a pleading, the Court would order stricken on the basis that

there is no evidence in the record before this Court to substantiate such claim made by Counsel for the Respondent, and that the allegation is redundant, immaterial, impertinent, and scandalous

The Appellant makes additional response, that the reference to exhibits (Resp.Br., p.7), which have been attached to the Brief of the Respondent, are not a part of the Record of the Lower Court nor in any way material to the issues before this Court, and further, that the direct attack upon an employee of the Counsel for Appellant by name (Resp.Br., p.15) is a violation of the Code of Professional Responsibility of the American Bar Association as specifically set forth in D.R. 7-102(a)(1), which states:

In his representation of a client, a lawyer shall not: (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would merely serve to harass or maliciously injure another.

9. Respondent Contends: (Resp.Br., p.14) In an action of Unlawful Detainer, he had the right to pry into the private office affairs of Counsel for the Appellant as to which one of Counsel's six Legal Secretaries and two Legal Assistants participated in the drafting of an Answer and Counterclaim.

Appellant Responds: That it is not a matter in issue, nor the business of an adversary as to who drafted a pleading



before the Court. Appellant's Counsel further responds, that the fact that the Counsel was before the Court as a member in good standing of the Bar of the State of Utah, such representation was sufficient to assure the Court that any representation made in writing or verbally by Counsel was the work product as adopted by Counsel. The Court is further reminded, that the Answer and Counterclaim were verified and signed by the client and that Appellant's Counsel was prepared to subscribe to the pleadings if the Court deemed it essential.

10. Respondent Contends: That Appellant was a public welfare recipient. (Resp.Br., p.11)

Appellant Responds: That the citation of R-45 for this statement placed there by the Respondent was a representation made by Counsel for the Respondent and is not based upon any sworn facts or evidence before the Court and is in fact baseless.

11. Respondent Contends: That Appellant arbitrarily elected to remain on the premises after being directed in accordance with law to vacate.

Appellant Responds: That the Appellant was current with her rent of \$175.00 a month and paid into the Court two month's rent, which included advance rent, at the time of filing an Answer and Counterclaim to the claim of the Respondent,

and that as a citizen did believe in her right as set forth in the Constitution of the United States and the Constitution of the State of Utah, and Appellant was willing to make a sacrifice to prevent further abuses to other persons and to stop an arbitrary and presumptuous position, that the Appellant as a tenant had no rights to petition to seek a betterment of living conditions for herself and other tenants.

12. The Respondent Contends: That it is in a "no win" position, and further alleges that it is "a favorite game of tenants in recent times to leave a few items behind to set the landlord up". (Resp.Br., p.12)

Appellant Responds: That Appellant was in a "no win" position, in that Appellant recognized that she could be subsequently ousted from the premises, but did not believe she could be ousted for exercising her right of free speech and petition, and further, the alleged "favorite game of tenants" did not apply to the Appellant, in that the Appellant was totally out of the premises at the termination of her August monthly rental period.

13. Respondent Contends: (Resp.Br., p.15) Appellant's Counsel had an admiral and effecient legal business involving knowledgeable paralegals who free Counsel for Court appearances, and specifically makes reference to an employee of the Appellant's

Counsel. It would further appear that Counsel for the Respondent is not aware of the rules governing paralegals, and that Counsel for Respondent cannot be competitive with attorneys who employ paralegals.

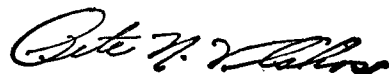
Appellant Responds: That the issue of who is or is not an employee of Appellant's Counsel is certainly not a matter for debate in the action before this Court, and that Counsel for the Appellant is well aware of legal and ethical limitations on the conduct of an attorney's employees, that any attempt to imply any conduct on the part of Appellant's Counsel is a reflection upon the ethics and integrity of Counsel, is impertinent, scandalous, and unethical, and has no place in a Brief before this Court on important legal issues.

#### CONCLUSION

It is submitted to this Honorable Court, that it is the function and duty of Counsel in a Brief to this Honorable Court to discuss the issues and not personalities, and that the repetition of statements of Counsel in the Lower Court, which were given not under oath and not as a witness, does not gain any additional stature by repetition in a Brief to the Supreme Court, and that Counsel for Appellant regrets the necessity of a Reply to Respondent's Brief, but does not believe

that this Court is a forum for a lecture or moralization, either  
as to individuals or the scope of the law.

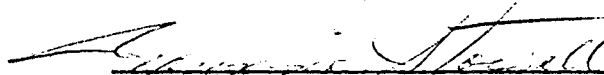
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Pete N. Vlahos", is written over a horizontal line.

PETE N. VLAHOS, ESQ.  
Attorney for Appellant

CERTIFICATE OF MAILING

A copy of the foregoing Appellant's Reply Brief to Brief of Respondent was posted in the U.S. mail postage prepaid and addressed to the Attorney for the Respondent, Richard W. Brann, Esq., 406 Kiesel Building, Ogden, Utah 84401, on this 6 day of December, 1975.

  
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Jeannine Stowell, Secretary