

1979

# Ute Cal Land Development Corp. v. Robert R. Sather and Bonnie Lee Sather : Appellants' and Cross-Respondents' Reply Brief on Appeal

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Robert M. McRae; Attorneys for Plaintiff and Respondent;

Cullen Y. Christensen; Attorneys for Defendants and Appellants;

---

## Recommended Citation

Brief of Appellant, *Ute Cal Land Development Co. v. Sather*, No. 16017 (Utah Supreme Court, 1979).

[https://digitalcommons.law.byu.edu/uofu\\_sc2/1396](https://digitalcommons.law.byu.edu/uofu_sc2/1396)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF UTAH  
STATE OF UTAH

---

UTE CAL LAND DEVELOPMENT  
CORPORATION,

Plaintiff, Respondent  
and Cross-Appellant,

Case No. 1

vs.

ROBERT R. SATHER and  
BONNIE LEE SATHER,

Defendants, Appellants  
and Cross-Respondents.

---

APPELLANTS' AND CROSS-RESPONDENTS' REPLY  
BRIEF ON APPEAL

---

APPEAL FROM JUDGMENT ON THE VERDICT OF  
FOURTH DISTRICT COURT OF UTAH COUNTY  
HONORABLE DAVID SAM, JUDGE

---

CULLEN Y. CHRISTENSEN  
CHRISTENSEN, TAYLOR &  
Attorneys for Defendants,  
Appellants and Cross-  
Respondents  
55 East Center Street  
Provo, Utah 84601

ROBERT M. McRAE, for  
DELAND & McRAE  
Attorneys for Plaintiff,  
Respondent and  
Cross-Appellant  
317 West 1st South  
Vernal, Utah 84078

FILED

MAY 23 1979

## TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF NATURE OF CASE. . . . .	1
DISPOSITION IN LOWER COURT . . . . .	2
RELIEF SOUGHT ON APPEAL. . . . .	2
STATEMENT OF FACTS . . . . .	3
ARGUMENT . . . . .	3

### POINT I

THE EVIDENCE REQUIRED A FINDING BY THE JURY THAT DEFENDANTS SATHER WERE ENTITLED TO BE PAID THE SUM OF \$46,560.00, PLUS INTEREST, BY THE PLAINTIFF, RATHER THAN ONLY THE SUM OF \$21,500.00. . . . .	3
---	---

### POINT II

DEFENDANTS SATHER HAVE NOT WAIVED THE RIGHT TO HAVE THE COURT CONSIDER ADDING INTEREST . . . . .	4
---	---

### POINT III

PLAINTIFF IS NOT ENTITLED TO A NEW TRIAL ON THE ISSUE OF DAMAGES AS CLAIMED IN PLAINTIFF'S CROSS-APPEAL. . . . .	6
--	---

CONCLUSION . . . . .	9
----------------------	---

## AUTHORITIES CITED

58 Am. Jur. 2d 209 . . . . .	9
------------------------------	---

## CASES CITED

Cohn vs. J. C. Penney Company, 537 P. 2d 306 . . . . .	9
Jorgensen vs. Gonzales, 14 Utah 2d 330, 383 P. 2d 934. . . . .	4,8
Langdon vs. International Transport Inc., 26 Utah 2d 452, 491 P. 2d 1211 . . . . .	4,8
Uptown Appliance and Radio Company vs. Flint, 122 Utah 298, 249 P. 2d 826. . . . .	9

RULES CITED

Rule 47(r) Utah Rules of Civil Procedure . . . . . 4,7,9

IN THE SUPREME COURT OF THE STATE OF UTAH

---

UTE CAL LAND DEVELOPMENT :  
CORPORATION, :  
 :  
Plaintiff, Respondent :  
and Cross-Appellant, : Case No. 16017

vs. :

ROBERT R. SATHER and :  
BONNIE LEE SATHER, :  
 :  
Defendants, Appellants :  
and Cross-Respondents. :

---

APPELLANTS' AND CROSS-RESPONDENTS' REPLY  
BRIEF ON APPEAL

---

APPEAL FROM JUDGMENT ON THE VERDICT OF  
FOURTH DISTRICT COURT OF UTAH COUNTY  
HONORABLE DAVID SAM, JUDGE

---

STATEMENT OF NATURE OF THE CASE

This case involves the ownership of and the respective interests of the parties in and to real property situate in Uintah County, State of Utah. Plaintiff claims damages from defendants for taking possession of said property, and defendants SATHER claim reimbursement from the plaintiff for money with interest thereon advanced for plaintiff's benefit by defendants SATHER in connection with said land.

### DISPOSITION IN LOWER COURT

The case was tried to a jury upon special interrogatories. The jury found that plaintiff was the owner of the real property and was entitled to possession thereof upon its paying to the defendants SATHER the sum of \$21,500.00. The jury further found that defendant ROBERT R. SATHER acted "wilfully and maliciously" toward the plaintiff in taking possession of said property, but awarded no damages to the plaintiff as a consequence thereof. The trial court, upon motion of the defendants after the jury had been discharged, declined to allow defendants interest on the money found by the jury to be due from the plaintiff to the defendants, and the trial court declined to grant the plaintiff's motion for a new trial on the issue of damages.

### RELIEF SOUGHT ON APPEAL

Defendants seek reversal of the jury finding that defendant ROBERT R. SATHER was guilty of "wilful and malicious" conduct toward the plaintiff; defendants seek a determination that the plaintiff owes defendants the sum of \$46,560.00 for money advanced for plaintiff's benefit by the defendants; and defendants seek a further determination that defendants are entitled to interest on the sums owing from plaintiff to the defendants. Defendants, in the alternative, seek a new trial on such issues. Defendants further seek affirmation of the trial court's ruling denying the plaintiff's motion for a new

trial on the issue of damages as raised by plaintiff's cross-appeal in this matter.

### STATEMENT OF FACTS

Defendants refer to and adopt the Statement of Facts heretofore set forth in appellants' initial Brief on appeal.

### ARGUMENT

#### POINT I

THE EVIDENCE REQUIRED A FINDING BY THE JURY THAT DEFENDANTS SATHER WERE ENTITLED TO BE PAID THE SUM OF \$46,560.00, PLUS INTEREST, BY PLAINTIFF RATHER THAN ONLY THE SUM OF \$21,500.00.

Defendants reaffirm their position with respect to the above point as set forth in appellants' original Brief, Point II therein, and in addition thereto respectfully direct the Court's attention to additional parts of the record which are supplementary thereto, and which demonstrate that the receipt of \$25,000.00 by defendants SATHER from the proceeds of the \$50,000.00 loan from the bank to the plaintiff, was not itself a loan from the plaintiff to the defendants SATHER. As testified by defendants SATHER, the \$25,000.00 was received by the defendants SATHER as a payment to them on a pre-existing debt of Pete Buffo, president of plaintiff (TR-258), and Buffo was given credit against his debt to defendants SATHER in such amount (TR-258,269).

The defendants SATHER, as guarantors of plaintiff's past due obligation to the bank, actually paid \$46,560.00 of

their own money to discharge plaintiff's debt to the bank, and thus should be entitled to reimbursement from plaintiff in such amount, plus interest, from the date of payment in March, 1974. This is particularly so because of plaintiff's recognition of the obligation as outlined in Pete Buffo's letter to defendant SATHER dated September 25, 1974 (EX 71-D).

## POINT II

DEFENDANTS SATHER HAVE NOT WAIVED THE RIGHT TO HAVE THE COURT CONSIDER ADDING INTEREST.

Defendants SATHER concede that failure to object to an insufficient or informal verdict before the jury is dismissed constitutes a waiver of such deficiency. (Langden vs. International Transport Inc., 26 Utah 2d 452, 491 P. 2d 1211). However, the jury verdict with respect to the award made in favor of the defendants SATHER was not "insufficient" within the meaning of that word as used in Rule 47(r), Utah Rules of Civil Procedure. (See Jorgensen vs. Gonzales, 14 Utah 2d 330, 383 P.2d 934). The jury was asked if the plaintiff was obligated to pay any sum to the defendants SATHER, and if so, what amount. The jury answered in the affirmative and indicated an amount of \$21,500.00. (Special Interrogatories 14 and 15, R-601). The verdict as thus returned on this point was regular on its face and was not any indication that defendants SATHER should be deprived of interest on said amount. The only figures before the jury relative to such point showed that the defendants SATHER paid the sum of \$46,560.00 to the bank under their guarantee of



plaintiff's loan (EX 49-P), and that defendants SATHER in order to assist in raising the money, cashed in Savings Certificate No. 19479 in the amount of \$25,000.00 (TR-261), which certificate was purchased with money obtained by defendants SATHER from the plaintiff from plaintiff's \$50,000.00 bank loan. The said \$25,000.00 sum was received by SATHER as payment on account for money owed by Pete Buffo, president of plaintiff, to defendants SATHER (TR-258). This obligation to SATHER was acknowledged by Pete Buffo in his letter to defendant SATHER dated September 25, 1974. (EX 71-D). It thus appears rather obvious that the jury in arriving at the amount of their award to the defendants SATHER, deducted (mistakenly and erroneously as pointed out in defendants SATHER'S argument in Point I above and in the argument on Point II set forth in defendants' initial Brief herein to which reference is hereby made), the said sum of \$25,000.00 from the amount defendants SATHER paid to the bank to retire plaintiff's over-due note which had been guaranteed by defendants SATHER.

Since interest could be awarded to the defendants on such sum as a matter of law by the Court, there was no reason or obligation for defendants SATHER to pursue the matter further with the jury. (See Argument of Point III beginning on page 18 of defendants' original appellants' Brief on file in this matter).

The situation with respect to defendants SATHER'S claim for interest is distinguishable from plaintiff's motion

for a new trial on the issue of damages. The verdict returned by the jury with respect to plaintiff's claim for damages was at variance with their finding of fault on the part of defendants SATHER, and thus plaintiff should be held to have waived any right to a new trial on the issue of damages because of the failure to have the matter clarified by the jury before the jury was dismissed. (See defendants' Argument of Point III below to which reference is hereby made).

### POINT III

PLAINTIFF IS NOT ENTITLED TO A NEW TRIAL ON THE ISSUE OF DAMAGES AS CLAIMED IN PLAINTIFF'S CROSS-APPEAL.

The jury found that plaintiff had not been damaged by any actions of the defendants. To Special Interrogatory No. 4 which reads as follows:

"After subtracting any monies due Mr. Sather from Ute Cal Land Development Corporation, what money damages, if any, did Ute Cal Land Development Corporation sustain as a direct result of the delivery of the warranty deed to Mr. Sather",

the jury answered, "None", (R-599).

The foregoing responses were made by the jury even though they found that the agreement between defendants SATHER and the plaintiff (EX 3-P), which permitted defendants SATHER to claim the deed to the property in question in the event defendants SATHER should pay off plaintiff's \$50,000.00 loan to the bank, had been cancelled (Special Interrogatories 1 and 2, R-598), and even though the jury also found that the defendants SATHER had acted wilfully and maliciously toward

the plaintiff in obtaining the said deed from the bank (EX 32-P; Special Interrogatory No. 10, R-600).

In answer to Special Interrogatory No. 11 which reads as follows:

"If your answer to No. 10 is yes, what amount of punitive damages do you assess to the defendant only?"

the jury answered, "None" (R-600).

The plaintiff, at the time the verdict was returned and before the jury was dismissed, did not ask the Court to have the jury consider the damage issue further, although there was ample opportunity to do so and although there was considerable discussion of the matter between Court and counsel (TR 323-326). The plaintiff has thus waived any right to have the issue of damages considered on appeal.

If, as the jury found, the defendants SATHER had no right to gain possession of the deed from the bank and to take possession of the property in question as they did, then the plaintiff should have been entitled to some compensation, even though nominal. The verdict was thus insufficient on its face as to that point and the plaintiff should have requested the Court to direct the jury to consider the matter further (Rule 47(r) Utah Rules of Civil Procedure).

Plaintiff would have the Court adopt a determination that the verdict was regular on its face in this respect, but only lacking in amount. Such is not the meaning of "insufficient" as used in Rule 47(r). For the purposes of that rule, the word

"insufficient" means inadequate or lacking in some purpose or use. (Jorgensen vs. Gonzales, supra). The Jorgensen case was cited with approval by this Court in Langton vs. International Transport Inc., supra, and wherein the following language was quoted, to-wit:

"The general and well established rule is that so long as the jury is functioning as such in the course of the trial and until it is discharged, it is subject to directions and instructions from the court to the end that the issues be fully tried, deliberated upon and a correct verdict rendered. And where it is apparent that there is some patent error in connection with the verdict, the court may, of course, call the matter to their attention and direct them to deliberate."

The plaintiff in the Langton case (supra) was in the same position as the plaintiff in this case, having failed to request the Court to re-submit the matter to the jury on the issue of damages, and wherein this Court approved the following language:

"We are satisfied that when the plaintiff, after acquainting himself with the verdict, made no objections to its receipt and no motion that the cause be re-committed to the jury, he waived the objection now under analysis. Having waived them, they were unavailable as the basis for a motion for a new trial. The motion should, therefore, have been denied".

As further stated in Langton vs. International Transport Inc., supra:

"There is a basic distinction between an insufficient or informal verdict and a verdict regular on its face, which awards inadequate damages, appearing to have been given under the influence of passion or prejudice. In the latter case, a new trial must be granted to correct the error."

In the former case, counsel has an opportunity to assert an objection, and the court, under Rule 47(r) Utah Rules of Civil Procedure, may return the jury for further deliberation and with further instructions to correct the irregularity. If counsel does not avail himself of this opportunity, his objection to the irregularity of the verdict is waived".

In the case of Cohn vs. J. C. Penney Company, 537 P.2d 306, the jury found for the plaintiff on the issue of liability but failed to award any general damages. This Court held in that case that:

"In the instant matter there was not merely an inadequate award of general damages, there was no award at all. The verdict was deficient in form, and counsel had an opportunity to have the jury sent back for further deliberations. This he did not do, perhaps fearing that the jury might either award some nominal amount or even change the verdict and award nothing to the plaintiff. It would be a smart trial tactic if he could have had a new trial on damages only before a jury which would not be acquainted with the weakness of plaintiff's cause of action".


The trial court denied plaintiff's motion for a new trial on the issue of damages (R 670-671), and such a determination is within the discretion of the trial court (58 Am. Jur. 2d 209). The determination of the trial court on that matter should not be reversed where there is not an abuse of that discretion. No abuse of discretion on that point is evident in this case. (Uptown Appliance and Radio Company vs. Flint, 122 Utah 298, 249 P.2d 826).

#### CONCLUSION

Defendants SATHER refer to their initial appellants' Brief herein and adopt the Conclusions therein stated. It is

further respectfully submitted that plaintiff has waived any right to a new trial on the issue of damages by reason of the failure to raise that matter before the jury was dismissed. In any event, should a new trial be ordered in this matter, such new trial should be on all issues.

Respectfully submitted,

  
Cullen Y. Christensen, for  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for Defendants,  
Appellants and Cross-Respondents  
55 East Center Street  
Provo, Utah 84601

CERTIFICATE OF MAILING

Two copies of the foregoing were mailed, postage prepaid, to Deland & McRae, attorneys for plaintiff, respondent and cross-appellant, 317 West 1st South Street, Vernal, Utah 84078, this 2nd day of May, 1979.

  
CULLEN Y. CHRISTENSEN, Attorney