

1986

Howard F. Hatch v. R. Crawford Davis and William G. Dyer, individually and as General Partners for Real Estate Development Consultants : Brief of Respondents

Utah Supreme Court

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Michael E. Dyer; Richards, Brandt, Miller & Nelson; Attorney for Respondents;

Howard F. Hatch; Appellant Pro Se; Plaintiff and Appellant.

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1986 20960

IN THE SUPREME COURT OF THE STATE OF UTAH

HOWARD F. HATCH,)	
)	
Plaintiff/Appellant,)	
)	Appeal No. 20960
vs.)	
)	Category No. 13(b)
R. CRAWFORD DAVIS and WILLIAM)	
G. DYER, individually, and as)	
General Partners for REAL)	
ESTATE DEVELOPMENT CONSULTANTS)	
)	
Defendants/Respondents.)	

BRIEF OF RESPONDENTS

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Plaintiff and Appellant, Pro Se

FILED

FEB 11 1986

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General Partners for REAL)	
ESTATE DEVELOPMENT CONSULTANTS)	
)	
Defendants/Respondents.)	

BRIEF OF RESPONDENTS

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether venue is proper for a tort action in a county other than where the cause of action arises or in the county in which any defendant resides at the commencement of the action.

2. Whether a prayer for quiet title relief, standing alone, is sufficient to confer proper venue on an action where none of the elements of a quiet title action are otherwise alleged or claimed in the complaint.

NATURE OF THE CASE

Plaintiff, pro se, filed his eight-paragraph Complaint against defendants in the Sixth District Court of

the State of Utah. All parties, however, are residents of Utah County, State of Utah. While plaintiff's Complaint is difficult to follow, it sounds exclusively in tort. A copy of plaintiff's Complaint is attached to this Brief in the Addendum.

Defendants moved to dismiss plaintiff's Complaint based upon improper venue and lack of subject matter jurisdiction inasmuch as a similar action was pending before Judge Ballif in the Fourth District Court, Civil No. 63025.

On October 8, 1985, the lower court granted defendants' Motion. Rather than refiling his case in the Fourth District, plaintiff pursued this appeal.

STATEMENT OF THE CASE

1. Appellant is a resident of Utah County, State of Utah.

2. Respondents are residents of Utah County, State of Utah.

3. Real Estate Development Consultants ("REDC") is a Utah Limited Partnership, and is the undisputed owner of the real property in question.

4. An action is currently pending between the parties herein in the Fourth District Court, Civil No. 63025. That action has yet to be concluded pending a decision of the court regarding the proper method of distributing partnership assets. It is this identical

relief that appellant sought the Sixth District Court to provide, in effect bringing the same issue before two courts. A copy of respondents' Memorandum pending before the Fourth District is attached hereto in the Addendum as evidence of the ongoing conflict in the Fourth District Court.

5. In his Complaint, which is the subject of this Appeal, appellant alleges that respondents wrongfully removed him as general partner of REDC. All of appellant's claims sound in tort, although appellant prays for title in the land to be quieted to him, personally, despite the fact that title to the property indisputably lies in a Utah limited partnership, REDC.

6. Because there were no allegations to support a quiet title action, and because a similar case was pending before the Fourth District, the lower court dismissed plaintiff's Complaint. This Court should affirm the lower court's decision.

SUMMARY OF THE ARGUMENT

Venue on a tort action is proper only in the county where the cause of action arises, or in the county in which any defendant resides at the commencement of the action. Utah Code Ann. §78-13-7 (1977). While appellant's Complaint is difficult to follow, it clearly sounds entirely in tort. Since the cause of action, if any, arises in the Fourth District, and since all

respondents reside in the Fourth District, venue is therefore proper only in the Fourth District.

Appellant has attempted to circumvent the venue statute by asking the court, in his prayer for relief, to quiet title to him personally. However, appellant did not allege any facts in his Complaint upon which to support a claim for a quiet title action, much less make a prima facie case for a quiet title action. The simple fact is that the limited partnership, REDC, has title to the property, and that fact is not disputed. Therefore, because appellant has absolutely failed to meet a prima facie case for a quiet title action, venue is not proper in the Sixth District.

Moreover, identical issues requested by appellant for resolution are currently pending before the Fourth District Court for the State of Utah. Thus, the Sixth District Court for the State of Utah does not have subject matter jurisdiction to resolve those same issues.

Finally, respondents allege that appellant's appeal is frivolous or otherwise brought only for the purposes of delay. Pursuant to Rule 33 of the Utah Rules of Appellate Procedure, respondents pray for damages as are just, including a reasonable attorney's fee. Indeed, pursuant to Rule 10(e) of the Utah Rules of Appellate Procedure, this Court could, upon its own motion, summarily affirm the lower court's judgment since it plainly appears that the appellant has not presented a

substantial question for review by this Court. If the appellant had been genuinely concerned about the merits of his case, he could have simply, and expeditiously, refiled his case in the Fourth District Court.

ARGUMENT

POINT I:

APPELLANT'S CLAIMED VENUE IS IMPROPER SINCE VENUE FOR TORT CLAIMS LIES EXCLUSIVELY IN THE COUNTY WHERE THE CAUSE OF ACTION ARISES, OR IN THE COUNTY IN WHICH ANY DEFENDANT RESIDES AT THE COMMENCEMENT OF THE ACTION.

Venue for tort actions is controlled by Utah Code Ann. §78-13-7 (1977) as follows:

In all other cases, the action must be tried in the county in which the cause of action arises, or in the county in which any defendant resides at the commencement of the action

It is undisputed that all parties to this action are current residents of Utah County, State of Utah. Further, the acts of which appellant complains occurred, if at all, in Utah County, State of Utah. Therefore, venue for any tort action claimed by appellant must lie in Utah County, State of Utah, and not in Kane County.

POINT II:

APPELLANT'S CLAIMS ALL SOUND IN TORT.

A. Each Paragraph of Appellant's Complaint Alleges, At Best, A Tort Action.

A brief review of each paragraph of appellant's Complaint reveals that appellant's claims sound entirely in tort.

1. PARAGRAPH THREE of the Complaint alleges that defendants performed "certain illegal acts," namely "contracting with third parties for the sale of [REDC] partnership property without legal authority to do so." Plaintiff's claim is clearly, if anything, a tort action.

2. PARAGRAPH FOUR of the Complaint alleges that the defendants "have jeopardized the financial interests of the plaintiff." Just how defendants have jeopardized the plaintiff's financial interests is unclear from paragraph four, but clearly paragraph four alleges, if anything, a tort.

3. PARAGRAPH FIVE of the Complaint expressly refers to the civil action pending between the parties in the Fourth District Court, Civil No. 63025. Despite being a party himself to that action, appellant claims that respondents have allowed matters in that court "to languish." Appellant further alleges that respondents "presumed, in the meantime, the right to appoint themselves as the general partners." Again, appellant's allegations can only be construed, in a light most favorable to

appellant, as a claim for the wrongful removal of appellant as a general partner of REDC, a tort action, if anything.

4. PARAGRAPH SIX of the Complaint apparently alleges that the defendants made "certain misrepresentations," not to the appellant but to other, unnamed "limited partners." Again, even assuming appellant had standing to assert this claim, the claim obviously sounds in tort.

5. PARAGRAPH SEVEN of the Complaint claims that the respondents intend to distribute partnership assets "in a manner different than the partnership agreement provides, or that state statute dictates. . . ." Clearly appellant's allegation is, if anything, a tort claim. More importantly, however, is the fact that this particular claim is not ripe for any type of adjudication inasmuch as appellant only fears that respondents intend to take some type of action. No claim is made that any such action has actually been taken by respondents.

6. PARAGRAPH EIGHT of the Complaint alleges that the limited partnership REDC owes appellant a substantial amount of money which is past due and payable. Clearly, the allegations in paragraph eight do not support a claim for a quiet title action, but can only be construed, at best, as some type of tort or contract action.

7. PARAGRAPHS ONE AND TWO of the Complaint simply state that the parties are residents of the State of Utah, and that the real property owned by the limited partnership

REDC is located in Kane County, State of Utah. No other allegations are made in these two paragraphs.

Without any doubt, the allegations contained in appellant's Complaint sound exclusively in tort, if at all. Therefore, pursuant to Utah Code Ann., §78-13-7, venue can only be proper in Utah County.

B. Appellant's Complaint Contains No
Allegations to Support a Prima Facie for
a Quiet Title Action.

A complaint or petition to quiet title, or to remove a cloud on a title, should contain, at least, the following elements:

1. An accurate description of the property involved;
2. Plaintiff's title or interest in the property;
3. Plaintiff's possession if in possession;
4. Defendant's wrongful possession if plaintiff is not in possession and defendant is in possession;
5. The fact that the defendant is claiming an interest adverse to the plaintiff;
6. That the defendant has no right, title, or interest in the property involved;
7. Facts sufficient to justify the granting of relief; and,
8. A prayer for relief.

BYU J. of Legal Studies, "Summary of Utah Real Property Law," 13 (1978).

As seen from a review of the allegations in appellant's Complaint, appellant has not alleged any facts to support a claim for quiet title. Most importantly, there is no claim or allegation that plaintiff personally has title to the real property in question. Rather, it is undisputed that the limited partnership REDC has title to the property. This weakness alone is dispositive of appellant's claim for a quiet title action. The mere fact that appellant has prayed for the relief of quiet title, without anything else, is simply not sufficient to confer venue or jurisdiction upon the Sixth District Court.

For all of the above reasons, the judgment of the lower court should be affirmed.

POINT III:

THE LOWER COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO HEAR APPELLANT'S COMPLAINT.

In paragraph seven of appellant's Complaint, appellant alleges that the respondents "indicated they intend to distribute partnership assets in a manner different than the partnership agreement provides or that state statute dictates" That issue is clearly pending before the Fourth District Court for the State of Utah as evidenced by respondent's Memorandum in that court. A copy of respondent's Memorandum in the lower court is attached to the Addendum. Clearly, the lower court could not rule on this issue since it was currently

pending before the Fourth District Court. This same issue is also intertwined with the allegations made by the appellant in paragraph eight of his Complaint. Moreover, it is inconceivable that the Sixth District Court could rule on the allegation that respondents permitted the matter in the Fourth District Court "to languish." Clearly, these items were not properly presented to the Sixth District Court for adjudication, and the lower court's Order of Dismissal in this regard should be affirmed.

POINT IV:

RESPONDENTS SHOULD BE AWARDED DAMAGES
ON THIS APPEAL.

If the appellant had been truly concerned about the merits of his case, he could have simply, inexpensively, and expeditiously refiled his case in the Fourth District Court. To delay this matter for years through an appeal to this Court is clearly not warranted under the circumstances. Respondents urge, therefore, that pursuant to Rule 33, Utah Rules of Appellate Procedure, this Court award respondents just damages of single or double costs, including a reasonable attorney's fee.

POINT V:

THIS COURT MAY AFFIRM THE LOWER COURT'S JUDGMENT
SINCE IT PLAINLY APPEARS THAT NO SUBSTANTIAL
QUESTION IS PRESENTED ON APPEAL.

In the present case, the lower court's ruling has not impaired in any way the appellant's case as to the merits. The lower court simply ruled that the appellant must file his case in a different jurisdiction. Clearly, this is not a "substantial question" for this Court to rule on. Further, this Court's summary affirmation of the lower court would not impair appellant's case in any way. Rather, such ruling would expedite a proper resolution of the allegations made by the appellant, reducing the time and costs involved for all parties while lessening the burden on the judicial system. Respondents urge this Court, therefore, to view this appeal in light of Rule 10(e) of the Utah Rules of Appellate Procedure.

CONCLUSION

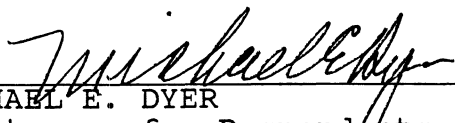
A paragraph by paragraph review of appellant's Complaint clearly shows that the claims have not been properly presented to the Sixth District Court of the State of Utah. First, and perhaps foremost, is the fact that many of appellant's claims are currently pending in a separate case in the Fourth District Court, thus robbing the Sixth District Court of subject matter jurisdiction to hear the claims. Second, however, is the fact that

appellant's claims sound exclusively in tort, and venue is therefore proper only in the Fourth District Court. The appellant's simple prayer for the relief of quiet title cannot, in and of itself, confer venue upon the Sixth District Court.

The appeal taken by appellant in this case is arguably frivolous, but clearly taken for purpose of delay. Respondents urge, therefore, this Court to impose sanctions as provided by Rule 33 of the Utah Rules of Appellate Procedure. Respondents would further request the Court to view this appeal in light of Rule 10(e) of the Utah Rules of Appellate Procedure and summarily dismiss the appeal since it plainly does not present a substantial question for this Court to review.

DATED this 11 day of February, 1986.

RICHARDS, BRANDT, MILLER
& NELSON



MICHAEL E. DYER
Attorney for Respondents

ADDENDUM

Exhibit "A" -- Plaintiff's Complaint

Exhibit "B" -- Defendants' Memorandum in case pending
between the parties in Fourth District
Court, State of Utah

HOWARD F. HATCH
P. O. BOX 190
PROVO, UT 84603
377-3400/3440

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE COUNTY OF KANE
STATE OF UTAH

HOWARD F. HATCH)	
Plaintiff,)	<u>C O M P L A I N T</u>
-VS-)	
R. CRAWFORD DAVIS, and WILLIAM)	
G. DYER, individually and as)	Civil No. <u>2046</u>
General Partners for REAL ESTATE)	
DEVELOPMENT CONSULTANTS.)	

Plaintiff complains of Defendants and alleges as follows:

1. The Plaintiff and Defendants are residents of the State of Utah.
2. The real property which is the subject of this action is located entirely within the confines of Kane County, Utah.
3. That the Defendants have attempted to perform, and in fact have performed, certain illegal acts on behalf of the Limited Partnership known as REAL ESTATE DEVELOPMENT CONSULTANTS, by and through their attorney, Michael E. Dyer, to wit: contracting with third parties for the sale of partnership property without legal authority to do so.
4. That in so doing, the Defendants have jeopardized the financial interests of the Plaintiff and other limited partners, for which the Plaintiff feels responsible as the legitimate General Partner for said partnership.

5. That the Defendants have asked for a dissolution of the subject Limited Partnership in an action filed with the Fourth Judicial Court, Civil No. 63,025, but have allowed matters in that court to languish in an effort to take over the assets of the partnership and do with them as they wish; and have presumed, in the meantime, the right to appoint themselves as the general partners.

6. That certain misrepresentations were made to limited partners in ^{an} effort to obtain support for a partnership takeover in November of 1984, whereby the Defendants claim to have become the true General Partners of the subject partnership.

7. That said Defendants have indicated they intend to distribute partnership assets in a manner different than the partnership agreement provides or that state statute dictates, all to the great detriment of the Plaintiff.

8. That the partnership owes the Plaintiff a substantial amount of money which is currently past due and payable and to which the Plaintiff is entitled.

WHEREFORE the Plaintiff prays that this Court will grant to the Plaintiff the following:

1. An accounting of moneys received by the Defendants while presuming to act for and in behalf of the subject partnership.

2. An injunction against further usurpation by the Defendants of the rights of the Plaintiff to act as the General Partner of REAL ESTATE DEVELOPMENT CONSULTANTS, or in the alternative,

3. A judgment against the Defendants both individually and as the General Partners for the subject Limited Partnership, if they are determined to be the legally authorized general partners, in an amount equal to

the debts of the partnership to the Plaintiff, believed to be approximately \$50,000, and an order requiring the Defendants to further respect the rights of the Plaintiff to receive that percentage of the profit or loss due him based on the review and determination of the court.

4. An order showing forth the proper priority of distribution of any further moneys received by the partnership.

5. An order quieting title to the subject property, the legal description of which is attached as Exhibit "A".

6. Such further relief as the Court may be disposed to grant based on the facts presented at trial, together with costs and expenses of this action.

DATED this 30th day of January, 1985.


Howard F. Hatch, Plaintiff pro se

EXHIBIT "A"

PARCEL 1:

The Southeast quarter of the Northwest quarter; the South One-half of the Northeast quarter; the North One-half of the South One-half; and the Southwest quarter of the Southwest quarter of Section 29, Township 38 South, Range 8 West, Salt Lake Base and Meridian.

PARCEL 2:

The Southeast quarter of the Southwest quarter; and the Southwest quarter of the Southeast quarter of Section 29, Township 38 South, Range 8 West, Salt Lake Base and Meridian.

PARCEL 3:

The North One-half of Section 32, Township 38 South, Range 8 West, Salt Lake Base and Meridian.

EXCEPTING THEREFROM all parcels of land conveyed by CASCADE FALLS CORPORATION and/or REAL ESTATE DEVELOPMENT CONSULTANTS to others prior to July 1, 1984, as reflected by the records of the Recorder, Kane County, Utah.

HOWARD F. HATCH
P.O. BOX 190
PROVO, UT 84603
377-3400/3440

IN THE SIXTH JUDICIAL DISTRICT COURT
IN AND FOR KANE COUNTY, STATE OF UTAH

HOWARD F. HATCH

Plaintiff,

-VS-

R. CRAWFORD DAVIS, and WILLIAM
G. DYER, individually and as
General Partners for REAL ESTATE
DEVELOPMENT CONSULTANTS, a Utah
Limited Partnership.

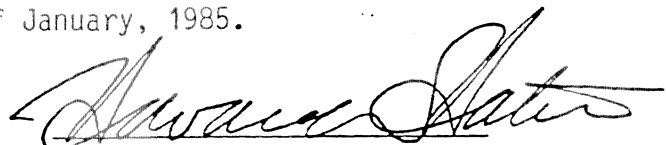
LIS PENDENS

Civil No. 2046

NOTICE IS HEREBY GIVEN that action has been commenced and is now pending in the above-entitled Court by the above-named Plaintiff against the above-named Defendants and possible other Defendants, both known and unknown, to quiet title in Plaintiff as the true General Partner for Real Estate Development Consultants in and to the real property located in Sections 29, and 32, of Township 38 South, Range 8 West, Salt Lake Base and Meridian, all of which is within the confines of Kane County, Utah.

The subject property is more precisely described on Exhibit "A" attached and made a part of this Notice by this reference.

DATED this 20th day of January, 1985.


Howard F. Hatch, Plaintiff pro se

ENTRY NO. 54417
DATE 2-9-85
RECORDED AT REQUEST OF JTW
FEE \$ 9.50
MADE ON 2-9-85

EXHIBIT "A"

PARCEL 1:

The Southeast quarter of the Northwest quarter; the South One-half of the Northeast quarter; the North One-half of the South One-half; and the Southwest quarter of the Southwest quarter of Section 29, Township 38 South, Range 8 West, Salt Lake Base and Meridian.

PARCEL 2:

The Southeast quarter of the Southwest quarter; and the Southwest quarter of the Southeast quarter of Section 29, Township 38 South, Range 8 West, Salt Lake Base and Meridian.

PARCEL 3:

The North One-half of Section 32, Township 38 South, Range 8 West Salt Lake Base and Meridian.

EXCEPTING THEREFROM all parcels of land conveyed by CASCADE FALLS CORPORATION and/or REAL ESTATE DEVELOPMENT CONSULTANTS to others prior to July 1, 1984, as reflected by the records of the Recorder, Kane County, Utah.

State of Utah)

ss.

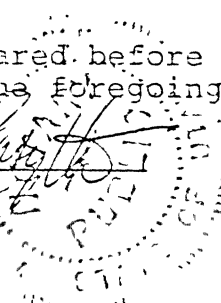
County of Utah)

On this 5th day of February, 1985, personally appeared before me Howard Hatch who duly acknowledged to me that he signed the foregoing Lis Pendens for the purposes therein expressed.

My commission expires: 11-5-89,

Notary Public
Residing at:

Springville,



CSB TOWER, SUITE 700
50 SOUTH MAIN STREET
P.O. BOX 2465
SALT LAKE CITY, UTAH 84110
TELEPHONE: (801) 531-1777

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

R. CRAWFORD DAVIS, an
individual, JANICE DAVIS
an individual, and WILLIAM
G. DYER, an individual,

v.

Plaintiffs,

HOWARD F. HATCH, an
individual, CASCADE FALLS
CORPORATION, formerly a
Utah Corporation, and REAL
ESTATE DEVELOPMENT CON-
SULTANTS, a Utah limited
partnership,

Defendants.

MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT

Civil No. 63025

INTRODUCTION

On September 13, 1983, the parties met before this
Court and presented oral arguments with respect to plaintiffs'
Motion for Partial Summary Judgment. The Court modified its

earlier Order with respect to plaintiffs' Fifth Cause of Action, reserving further decision by the Court pending briefings by the parties. This Memorandum is in support of plaintiffs' Motion for Partial Summary Judgment with respect to plaintiffs' Fifth Cause of Action.

POINT I

A PROPER DISTRIBUTION OF THE ASSETS OF REAL ESTATE DEVELOPMENT CONSULTANTS WILL BE REQUIRED UPON DISSOLUTION OF SAID LIMITED PARTNERSHIP

As a result of the improper actions on the part of Howard Hatch, the general partner of Real Estate Development Consultants, the plaintiffs, who represent three of the five limited partners of Real Estate Development Consultants, have initiated this lawsuit for damages and for a dissolution of the limited partnership Real Estate Development Consultants. Upon dissolution of the partnership, plaintiffs' desire to insure the proper distribution of the remaining assets; consequently, the Fifth Cause of Action of plaintiffs' Complaint goes to the issue of how those assets should be distributed upon dissolution.

POINT II

UTAH'S STATUTORY METHOD OF DISTRIBUTING PARTNERSHIP ASSETS UPON DISSOLUTION IS CONTROLLING

Utah Code Ann. §49-2-23 (1981) clearly enumerates the method by which partnership assets shall be distributed upon the dissolution of a limited partnership, as follows:

1. Distribution of Assets. In settling accounts after dissolution, the liabilities of the partnership shall be entitled to payment in the following order:

a. Those to creditors, in the order of priority as provided by law, except to those to limited partners on account of their contributions, and to general partners.

b. Those to limited partners, in respect to their share of the profits and other compensation by way of incomes on their contributions.

c. Those to limited partners, in respect to the capital of their contributions.

d. Those to general partners, other than for capital and profits.

e. Those to general partners, in respect to profits.

f. Those to general partners, in respect to capital.

Emphasis supplied.)

This statute unequivocally provides priority, and therefore protection, to limited partners over general partners both with respect to the limited partner's share of the profits and to the limited partner's capital contribution. Only after the limited partners receive this return, may the general partner receive his return for profits, capital, or other advances. The statute was clearly enacted in an effort to provide some protection to a limited partner inasmuch as general partners have complete control with respect to the

operation of the partnership. Limited partners, by statute, may not control the operation of the partnership. Thus, the above-referenced statute uses the mandatory term "shall" in setting forth the method of distribution to limited partners. In no way does the statute provide for any agreement to take precedence over the statutory method.

In contrast to the method of distributing assets to limited partners as outlined in Utah Code Ann. §48-2-23, the method for distributing assets upon dissolution of a general partnership permits the partners to agree to a different format than that outlined in the statutes. Utah Code Ann. §48-1-37 provides, in pertinent part, as follows:

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(Emphasis added). Pursuant to generally accepted methods of statutory construction, it is clear from the above-referenced statutes that partners of a general partnership may agree to override the statutory scheme. Limited partners, however, may not.

In the present case, the limited partnership agreement, written by defendant Hatch himself, provided priority to the general partner, that is, to himself, in direct contravention of the applicable statute. (See plaintiffs' Complaint at p. 8 for a complete review of the method of distribution outlined by the limited partnership agreement). Defendant

Hatch, aware of this particular provision in the limited partnership agreement, made numerous and substantial "advances" to the limited partnership Real Estate Development Consultants during Mr. Hatch's tenure as general partner of the partnership. According to Utah's statutory formula, the limited partners are and should be given priority over said "advances" upon dissolution of the partnership. Otherwise, a general partner could forward enough "advances" to the partnership to insure that only he would receive or have a claim to any of the assets from the partnership, precluding any recovery at all by any of the limited partners. In other words, if defendant Hatch has his way, the limited partners will lose all of their statutory protection and will come out on the very short end of the bargain as far as the partnership assets are concerned.

The State of Oklahoma has had opportunity to consider an almost identical situation to that of the present case. In Dycus v. Belco Industries, Inc., 569 P.2d 553 (Okla.App. 1977), Belco, the general partner, sold all of the limited partnership assets and, upon dissolution, attempted to retain its "advances" made to the partnership in preference to the claims of the limited partners. The Court discussed the issue as follows:

Next, defendants contend Belco's [the general partner's] loans should be repaid prior to any return of capital contributions to limited partners. Their theory is premised on provisions of the Articles of Limited Partnership which state that any "advances" by either limited or general partners are to be deemed loans to and debts of the partnership, and further

that upon dissolution, the partnership is first to repay all debts. This means, according to defendants, that since Dycus made no advances, Belco's loans must be repaid ahead of any return to plaintiff of his capital contributions.

This reasoning is unsound. The contractual terms relied upon by Belco directly conflict with the provisions of Oklahoma's Uniform Limited Partnership Act, 54 O.S. 1971 §§141-171. According to §164 of the Act, entitled "Order of Payment of Liabilities Upon Dissolution," first priority belongs to creditors other than "limited partners on account of their contributions, and . . . general partners." Next in line are the limited partners for repayment of their proportionate shares of any profits in return of their contributions. Then follows recoupment by general partners.

(Emphasis in original).

Confronted with this same type of dispute as in the instant case, the Court in Dycus, held as follows:

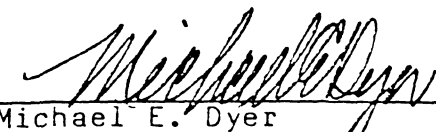
We hold, then that Belco's claim for advances must take a statutory place behind creditors and limited partners. As to money paid as capital contributions, however, one who is both a limited and general partner is subject to all restrictions of a general partner except in respect to his limited partner contribution. 54 O.S. 1971 §153. Therefore, Belco is entitled to repayment on a parity with plaintiff to the extent of the qualified portion of its limited partner contribution.

Based upon the above-referenced statutes and case law, it is unmistakable that a limited partner is to receive statutory protection from a general partner with respect to the distribution of partnership assets upon dissolution. Plaintiffs respectfully submit, therefore, that they should receive

said protection upon dissolution of Real Estate Development Consultants and the distribution of its assets. Inasmuch as the determination of the distribution of partnership assets is a matter of law, and since Utah's statutes appear clear on this issue, plaintiffs respectfully move for partial summary judgment as to their Fifth Cause of Action regarding the proper method for distributing partnership assets upon dissolution.

DATED this 12 day of October, 1983.

RICHARDS, BRANDT, MILLER
& NELSON



Michael E. Dyer
Attorney for Plaintiffs

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the fore-going instrument was mailed, first-class, postage prepaid on this 13th day of October, 1983, to:

Howard Hatch
460 North University Avenue
Provo, Utah 84601



MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copy of the foregoing BRIEF OF RESPONDENTS by first-class mail, postage prepaid, this 11 day of February, 1986, to:

Howard F. Hatch
Appellant Pro Se
P.O. Box 190
Provo, Utah 84603



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