

2009

# Richard Pratt v. Charles Pugh : Reply Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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RICHARD PRATT,

Petitioner and Appellee,

vs.

CHARLES PUGH,

Respondent and Appellant.

Appellate Court No. 20090067

District Court No. 060403141

(Oral Argument Requested)

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**REPLY BRIEF OF APPELLANT**

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Appeal from summary judgment entered by the  
Fourth Judicial District Court  
In and For Utah County, State of Utah  
Honorable Fred D. Howard

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## ARGUMENT

### **I. A DETERMINATION OF THE VALIDITY OF AN UNDERLYING CONTRACT IS INAPPLICABLE AND BEYOND THE SCOPE OF A WRONGFUL LIEN INQUIRY UNDER THE WRONGFUL LIEN ACT.**

As briefed in Charles D. Pugh's (hereinafter "Pugh") initial brief, an inquiry of the validity of an underlying contract to a lien is not applicable when determining the validity of a lien under the Wrongful Lien Act. Utah Code Ann. § 38-9-1 et seq. Richard Pratt's (hereinafter "Pratt") contentions that the liens are wrongful because of Pugh's repudiation and an alleged no "meeting of the minds," are not only irrelevant under the Wrongful Lien Act, but fail because of Pratt's own fraud.

#### **A. The lower court inappropriately exceeded its scope of review when it made a finding concerning the validity of the parties contract while the matter was already pending in another court and because it is not determinative of a wrongful lien under the Wrongful Lien Act.**

The lower court inappropriately exceeded its scope of review when it entered findings on the validity of the parties contract despite it being litigated in a companion case, Fourth District Court case number 060101257 (hereinafter "companion case"). (R. 48). Wrongful lien actions under the Wrongful Lien act are summary proceedings, expedited in nature, and limited in scope. Utah Code Ann. § 38-9-6(4). They do not extend beyond a determination of whether a lien is wrongful at the time of its filing. Utah Code Ann. § 38-9-1(6). The ongoing companion case however, deals with the comprehensive legal issues between the parties, including, among others, the validity of the contracts. The lower court made this finding despite no contractual issues being

plead in Pratt's Petition for Lien Nullification. (R. 855).

The Lower Court found that the underlying contract, upon which the liens were based, failed at their inception, without addressing the fact that Pugh and his business partners released \$500,000 to Pratt and his business partners in reliance upon trust deeds being placed on Pratt's property for \$500,000.

Furthermore, the lower court found that because of Pugh's repudiation of one of his underlying contracts, the lien was wrongful, yet never took into account Pratt and his business partner's fraudulent actions. Pugh only repudiated his contract with Pratt's business partners after discovering that he had been coerced and manipulated, and that Pugh's business partners already had a valid executed contract. At that same time, Pugh ratified his support of his business partner's extant contract.

Later, Pugh discovered that Pratt had fraudulently changed his contract with Pugh after Pugh had signed it and faxed it to the title company. Incredulously, Pratt has used the fact that he changed the contracts after Pugh signed them to claim there was no "meeting of the minds" because the contracts are materially different do to Pratt's changes.

Even more incredulous is that Pratt and his business partners have not returned the \$500,000.00 they took from Pugh and his business partners even though Pratt claims there was no "meeting of the minds" and that the contracts failed at their inception. Pratt is attempting to keep the money released to him upon the assumption of security by his

property and then have the Trust Deeds released on his properties by claiming their was no “meeting of minds.”

**B. Pratt’s argument that there was no “meeting of the minds” in the underlying contract is unsupported, brought in bad faith, and irrelevant when determining if a lien is wrongful under the Wrongful Lien Act.**

Pratt’s contention that there was no “meeting of the minds” is not only irrelevant to a determination of wrongful lien under the Wrongful Lien Act, but disingenuous and brought in bad faith. Pratt’s entire basis for his argument that there was no “meeting of the minds” between the parties is that “Mr. Pugh has admitted there was no meeting of the minds in the agreement. . . .” (*See* Brief of Appellee, pg 11). This contention is wholly unfounded. Pratt simply fabricates a statement of Pugh and fails to even cite to the record or any testimony of Pugh stating such. To make an argument founded solely on fabricated statements is inappropriate and exhibits blatant bad faith.

**C. Pugh’s repudiation of the Sovren contract is irrelevant when determining if a lien is wrongful under the Wrongful Lien Act.**

Pratt again attempts to circumvent the Wrongful Lien Act and state that because Pugh attempted to repudiate one of the contracts between the parties, the lien must therefore be released. Pratt cites to *Estate of Flake*, 71 P.3d 589 (Utah 2003) as his controlling authority for this conclusion. However, *Flake* is not relevant to the case at hand. In *Flake*, the Utah Supreme Court was not determining the validity of the lis pendens under the Wrongful Lien Act, but was reviewing whether Mrs. Flake gave

proper notice of the lien as required by Utah Code Ann. § 38-12-102. *Id* at 600. The Court in that case determined that notice was given and that damages should not be awarded. *Id*. A *lis pendens* is treated differently under the Wrongful Lien Act, as it is “authorized pursuant to statute,” and is only allowed when there is an active case involving issues with the property. Utah Code Ann. § 38-9-1(6).

In this case, the trust deeds at issue in this appeal were recorded on Pratt’s property, by Pratt, after the execution of contracts by Pratt and Pugh, and after the release of \$500,000 by Pugh and his business partners’ to Pratt and his business partners. Pugh later discovered that Pratt fraudulently and materially altered one of the contracts after Pugh had signed it. Following these occurrences a law suit was filed, by Pugh’s business partners, addressing the fraud and contractual issues involving the parties. Pratt and his business partners have spent Pugh and his business partners \$500,000 and have not complied with the terms of the parties agreement. Despite such heinous behavior, Pratt is attempting to circumvent liability in the companion case by filing this Writ for Lien Nullification on grounds of repudiation, all the while not acknowledging: 1) his fraud that precipitated the repudiation, 2) the fact that there are other contracts between the parties, and 3) that he and his business partners have spent \$500,000 of Pugh and his business partners funds without any repayment. It would not only be inappropriate to disregard the plain language of the Wrongful Lien Act, but unjust to remove a lien, properly authorized and recorded, and allow \$500,000 spent by Pugh and his business

partners to become unsecured.

**D. The Court should only look to the Wrongful Lien Act to determine the validity of the liens recorded in this case.**

As propounded in Pugh's initial brief, the Utah Supreme Court has long held that "(w)here statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent." *Brinkerhoff v. Forsyth*, 779 P.2d 685, 686 (Utah 1989). The Court in that case continued, stating that it is "guided by the rule that a statute should generally be construed according to its plain language." *Id.* In fact, neither appellant nor appellee contend that the Wrongful Lien Statute is ambiguous. The Wrongful Lien Act is unambiguous with regard to what constitutes a wrongful lien and what a court should consider when determining if a lien is wrongful.

Pratt quickly addresses the plain language of the Wrongful Lien Act in his brief. However, Pratt simply cites the Wrongful Lien Act and then makes a conclusory statement that the lien is "wrongful" as it was not "signed by or authorized pursuant to document signed by the owner of the real property." (*See* Brief of Appellee, pg 14). Following this conclusory statement, Pratt mentions the filing of lis pendens by Pugh. *Id.* Pratt fails to mention that the lis pendens were filed in conjunction with the companion case and were not before the lower court or at issue in the present appeal. *Id.* Not only does Pratt fail to state facts to support his unfounded statement, but proceeded to confuse and misdirect the Court's inquiry by arguing a lis pendens claim not at issue in this case.

Moreover, after making a quick baseless argument for why the lien is wrongful

under the Wrongful Lien Statute, Pratt asks the court to apply general contract principles in determining whether the liens are wrongful. Pratt attempts to bolster this argument citing a footnote contained in *Jack B. Parson Cos. v. Nield*, 751 P.2d 1131 (Utah 1988) which, according to Pratt, states that “if the contract underlying the placement of the liens was invalid, then placement of the liens was similarly invalid because such placement was ‘wrongful from inception.’” (See Brief of Appellee, pg 14). However, when reviewing footnote 1 contained in *Parsons*, no such statement is made by the Court. *Jack B. Parsons Cos. v. Nield*, at n1. As the *Parsons* case began prior to the enactment of the Wrongful Lien Act, the Utah Supreme Court simply discusses the possible application of the Wrongful Lien Act in footnote 1. *Id.* The Court, however, does not make any statement as proffered by Pratt. *Id.*

Furthermore, Pratt cites *Centennial Inv. Co., LLC v. Nuttall*, 171 P.3d 458 (Utah 2007), in another attempt to support his argument that contract theory should be applied instead of the Wrongful Lien Act. However, in that case, unlike in this action, the buyer filed a “notice of interest” on the seller’s property without any signed document authorizing him to do so, or it being authorized by statute. *Id.* at 461. Thus, despite Pratt’s contention, the Court in *Centennial* never addressed the underlying contract as the basis for the lien being wrongful, but only addressed whether the “notice of interest” was “authorized by statute.” *Id.*

Clearly, the trust deeds recorded on Pratt’s property are not wrongful liens under

the Wrongful Lien Act. Pratt signed a security agreement authorizing his two properties to be encumbered, signed Settlement Statements for each property, and gave sworn testimony that he allowed the properties to be encumbered. (R. 4, 112, 511) The statute is unambiguous and the Court should not look to contract principle to determine if a lien is wrongful under the Wrongful Lien Act. Pratt should not be allowed to keep Pugh and his business partners' money, released to him upon the assumption of security by his property, and then have the Trust Deeds released on his properties by claiming there was no "meeting of minds" as a result of his fraud.

### **CONCLUSION**

For the above reasons, it is respectfully submitted that the Trial Court's granting of summary judgment in favor of the Petitioner be overturned, that judgment be entered on behalf of the Respondent holding the liens valid, and Respondent be awarded lower court and appellate costs and reasonable attorney fees.

DATED this \_\_\_\_ day of March, 2010.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of March, 2010, I caused to be served by U.S. FIRST CLASS MAIL a true and correct copy of the foregoing Appellant's Brief, as follows:

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