

2001

William D. Conrad and Joan V. Conrad v. Glenn C. Anderson, Jr., Danald A. Mower, Intermountain Cedar Homes, Town and Country Building Consultants, and Lindal Cedar Homes : Petition for Rehearing

Utah Supreme Court

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Watkins and Faber; David Lloyd; Attorneys for Defendant-Respondent Anderson.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

William D. Conrad and  
Joan V. Conrad,  
Plaintiffs and Respondents,

No. 14475

v.

Glenn C. Anderson, Jr., Donald A.  
Mower, Intermountain Cedar Homes,  
Inc., a Utah corporation, Town and  
Country Building Consultants, Inc.,  
a Utah corporation, and Lindal  
Cedar Homes,  
Defendants and Appellant.

- - -

DEFENDANT GLENN C. ANDERSON, JR.'S PETITION  
FOR RE-HEARING AND SUPPORTING BRIEF

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Mower

FILED

FEB 10 1977

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PETITION FOR RE-HEARING  
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The defendant-respondent Glenn C. Anderson, Jr., by and through his attorneys, and pursuant to Rule 76(e) of the Utah Rules of Civil Procedure, respectfully petitions the Supreme Court of the State of Utah for re-hearing in the above-entitled case on the following grounds:

1. The document of settlement filed with this Court, admitting the validity of appellant's appeal, in October, 1976, was not served upon defendant Anderson. Said document purports to be in full settlement of claims against defendant-appellant Donald A. Mower by the plaintiffs-respondents, the Conrads.

Based upon said settlement document, this Court entered an order reversing the judgment against Mower.

2. However, the jury verdict and judgment in the lower court was a joint and several judgment against Mower and Anderson, except for a small amount of punitive damages awarded severally against each defendant. Anderson paid plaintiffs-respondents over \$11,000 in cash in settlement of the judgment against him, which was substantially all of the judgment awarded jointly against Mower and Anderson. After paying Conrads, Anderson moved to have his appeal in this Court dismissed and an order was entered dismissing Anderson's appeal.

3. Under Utah law, Anderson is entitled to a contribution from Mower for the payment of the joint judgment to the Conrads. The reversal of the judgment against Mower may have the effect of destroying the obligation Mower has to Anderson as a joint obligor. Had Anderson been apprised of the settlement document filed with the Court, a timely brief objecting to the reversal of the lower court judgment would have been filed by Anderson.

4. The appeal by Mower is that the lower court erred in refusing to strike the complaint on the grounds that it failed to state a cause of action against Mower. Two different judges ruled on this defense, the law and motion judge, Judge Snow, and the trial judge, Judge Taylor. Both judges denied this motion. In any event, sufficient evidence was admitted during the course of the trial which was not objected to by Mower which would have cured any possible defect in the pleadings.

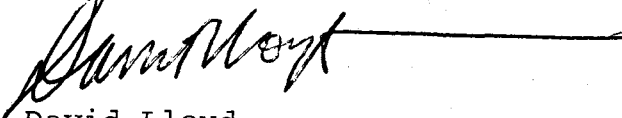
5. In the event the Court does not allow Anderson to defend the validity of the lower court's order denying the Mower motion to dismiss for failure to state a claim, then one-half of the judgment against Anderson attributable to the joint acts of Mower should be set aside, and the Conrads, who have compromised Anderson's position of rights to contribution from Mower, should return such portion of the money paid to them by Anderson, and judgment should be entered by this Court accordingly, or the lower court directed to enter such judgment.

6. Counsel for Conrads informed Anderson's counsel that he would defend the appeal by Mower. Counsel for Anderson was present on the date set for hearing this matter in this Court, but the matter was not set for oral argument and counsel had no knowledge of the Conrads' settlement with Mower. After the opinion of this Court was published, counsel for Anderson reviewed the Court's file and discovered the settlement document filed by Mower and Conrads for the first time.

DATED this 10th day of February, 1977.

Respectfully submitted,

WATKINS & FABER

A handwritten signature in cursive script, appearing to read "David Lloyd", is written over a horizontal line.

David Lloyd  
Attorneys for Defendant Anderson  
606 Newhouse Building  
Salt Lake City, Utah 84111

BRIEF IN SUPPORT OF RE-HEARING

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STATEMENT OF FACTS

The plaintiffs alleged in their complaint, in a number of separately stated causes of action, that Mr. Mower failed to perform certain contractual obligations in the construction of a home for the plaintiffs in Morgan County, Utah. Evidence was presented in a jury trial which went for over a week. Substantial evidence was presented which indicated that Mr. Mower was personally responsible for the home construction which was admitted without objection. Evidence was also presented which tended to show that Mr. Mower was acting as an agent for a corporation. The jury entered a judgment against Mr. Mower and Mr. Anderson, personally, jointly and severally, and also assessed punitive damages against each personally, but severally.

ARGUMENT

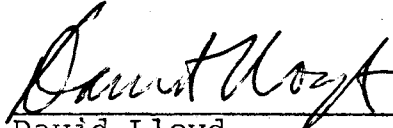
POINT I. THE PLEADINGS STATE A CAUSE OF ACTION AGAINST MR. MOWER PERSONALLY. IN ANY EVENT SUBSTANTIAL EVIDENCE WAS ADMITTED WITHOUT OBJECTION WHICH WOULD HAVE CURED ANY DEFECTS IN THE PLEADINGS.

The pleadings sufficient allege that Mr. Mower owed a personal obligation to the Conrads, and several different theories of relief are presented, and facts are alleged which indicate a claim against Mr. Mower personally.

In any event, substantial evidence was admitted without objection which would have cured any possible defects in the pleadings. No transcript of the testimony has been supplied to

this Court by appellant. Consequently, this Court cannot review the evidence presented to test the Court's judgment below. The rule of law often stated by this Court, and most recently articulated in American National Mortgage, Inc. v. Bowen, --- P.2d --- (Utah, filed January 19, 1977), is that the Supreme Court presumes the findings of the trial court and jury to be correct when no evidence is presented showing the contrary.

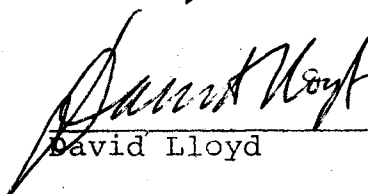
Respectfully submitted.

  
\_\_\_\_\_  
David Lloyd  
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606 Newhouse Building  
Salt Lake City, Utah 84111

Attorneys for defendant Anderson

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Petition for Re-Hearing and Supporting Brief to Robert A. Echard, attorney for Plaintiffs-Respondents, 427-27th Street, Ogden, Utah 84401, and to William H. Henderson, attorney for Defendant-Appellant, 431 South 300 East, Suite 208, Salt Lake City, Utah 84111, postage prepaid, this 10<sup>th</sup> day of February, 1977.

  
\_\_\_\_\_  
David Lloyd



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