

1979

# Elva Romrell v. Zions First National Bank et al : Reply Brief of Appellant

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.

Arthur H. Nielsen; G. Richard Hill; Attorneys for Respondent;  
John H. Allen; Attorneys for Appellants;

---

## Recommended Citation

Reply Brief, *Romrell v. Zions First National Bank*, No. 16211 (Utah Supreme Court, 1979).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/1560](https://digitalcommons.law.byu.edu/uofu_sc2/1560)

This Reply Brief 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).





## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE . . . . .	1
DISPOSITION IN THE LOWER COURT . . . . .	1
RELIEF SOUGHT ON APPEAL . . . . .	2
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	2
POINT I. THE TRIAL COURT ERRED IN SUBMITTING THE QUESTION OF SPECIFIC PERFORMANCE TO THE JURY FOR A GENERAL VERDICT, FAILING TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ENTERING JUDGMENT ON THE GENERAL VERDICT . . . . .	2
CONCLUSION . . . . .	4

### TABLE OF CASES AND OTHER AUTHORITIES

#### Cases Cited

<u>Anderson vs. Whipple,</u> 227 P.2d 351 (Ida. 1951) . . . . .	3
<u>Dunphy vs. Klein Smith,</u> 11 Wall. 610, 20 L.Ed. 223 (1871) . . . . .	3
<u>Kemp vs. Zions First National Bank,</u> 470 P.2d 390 (Utah 1970) . . . . .	3
<u>Kesler vs. Rogers,</u> 542 P.2d 354 (Utah 1975) . . . . .	3
<u>Mower vs. McCarthy,</u> 245 P.2d 224 (Utah 1952) . . . . .	3

**Starns vs. Humphries,**  
**189 F.2d 359 (9th Cir. 1951)** . . . . . **3**

**Other Authorities Cited**

**Rule 52(a), Utah Rules of Civil Procedure** . . . . . **2**

IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

ELVA ROMRELL,

Plaintiff and  
Respondent,

vs.

ZIONS FIRST NATIONAL BANK,  
N.A., and ZIONS FIRST NATIONAL  
BANK OF OGDEN,

Defendants and  
Appellants.

No. 16211

\*\*\*\*\*  
REPLY BRIEF OF APPELLANT

\*\*\*\*\*

STATEMENT OF THE CASE

Plaintiff Elva Romrell sought specific performance of an oral contract to sell 160 acres of real property located in Weber County, Utah, general damages for breach of contract and damages for fraud.

DISPOSITION IN THE LOWER COURT

Plaintiff dismissed her claim for damages for breach of contract at the time of trial. The trial court submitted the case to the jury for a general verdict, and the jury returned a verdict directing specific performance. The trial court entered judgment in favor of plaintiff and against defendants, directing specific performance, and thereafter denied defendants' motion for judgment

## RELIEF SOUGHT ON APPEAL

Defendants and appellants seek to have the judgment of the lower court reversed, and judgment entered in favor of defendants and against plaintiff; or in the alternative, a new trial.

## STATEMENT OF FACTS

Defendants and appellants rely on those facts stated in their initial Brief.

## ARGUMENT

### POINT I

THE TRIAL COURT ERRED IN SUBMITTING THE QUESTION OF SPECIFIC PERFORMANCE TO THE JURY FOR A GENERAL VERDICT, FAILING TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ENTERING JUDGMENT ON THE GENERAL VERDICT

This is an action for specific performance of an agreement to convey real property, thus it is an equitable action, and the final decisions must always be reserved for the Court. Here, however, the Court had a jury for the purpose of advising him.

Rule 52(a), Utah Rules of Civil Procedure, states in part:

In all actions tried on the facts without a jury, or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; . . .

This Court has recognized in accordance with that rule that the trial court has a duty to enter findings of fact and conclusions of law when an

equitable action is tried with an advisory jury. Mower vs. McCarthy, 245 P.2d 224 (Utah 1952). See also Kesler vs. Rogers, 542 P.2d 354 (Utah 1975); Kemp vs. Zions First National Bank, 470 P.2d 390 (Utah 1970); Starns vs. Humphries, 189 F.2d 359 (9th Cir. 1951); Anderson vs. Whipple, 227 P.2d 351 (Ida. 1951).

By requesting special interrogatories to the jury (R.112) defendants asked that the jury answer those questions of fact set forth in the Pretrial Order. The answers to those questions would have given the Court a basis for making Findings of Fact and Conclusions of Law, and reaching the decision whether there was an oral contract for the conveyance of land, and whether there had been any action which would take the transaction out of the statute of frauds.

The trial court entered a judgment on the general verdict. While no Utah cases have been found holding this to be error, the weight of authority is to the effect that where the Court has simply ordered judgment on the verdict as in an action at law, the judgment cannot be supported on the theory that the Judge has thereby adopted the verdict as his own findings. 156 A.L.R. 1147, 1195. In Dunphy vs. Klein Smith, 11 Wall. 610, 20 L.Ed. 223 (1871), the Supreme Court of the United States stated the theory that defendants and appellants rely on:

Now, it is perfectly obvious that, with the exception of the verdict being rendered by nine jurors, the trial was altogether conducted as a trial at common law, and the decree was rendered on the verdict precisely as a judgment is rendered on a verdict at common law. This was clearly an error. The case being a chancery case, and being instituted as such, should have been tried as a chancery case by the modes of proceeding known to courts of equity. In those courts, the judge or chancellor is responsible for the decree. If he refers any questions of



fact to the jury, as he may do by a feigned issue, he is still to be satisfied in his own conscience that the finding is correct, and the decree must be made as the result of his own judgment, aided, it is true, by the finding of the jury. Here the judgment is pronounced as the mere conclusion of law upon the facts found by the jury. 20 L.Ed. at 226 (Emphasis added)

### CONCLUSION

The court having submitted the question of specific performance to the jury for a general verdict and refusing to submit the question for a special verdict, having failed to make findings of fact and conclusions of law, and having entered judgment on the general verdict of an advisory jury, defendants and appellants have been severely prejudiced. It is urged, therefore, that the court should reverse the judgment of the trial court, and failing that, the court should grant defendants a new trial.

Respectfully submitted,

John H. Allen  
CALLISTER, GREENE & NEBEKER  
Attorney for Appellants  
800 Kennecott Building  
Salt Lake City, Utah 84133

## MAILING CERTIFICATE

I certify that two copies of the Reply Brief of Appellants were mailed to Arthur H. Nielsen of Nielsen, Henriod, Gottfredson & Peck, attorneys for respondents, 410 Newhouse Building, Salt Lake City, Utah 84111, this 5<sup>th</sup> day of October, 1979.

---