

1988

Wycalis v. City Federal Savings : Brief of Respondent

Utah Supreme Court

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88-0030
BETTE WYCALIS,

Plaintiff/Appellant,

v.

CITY FEDERAL SAVINGS & LOAN
ASSOCIATION; GUARDIAN TITLE
COMPANY OF UTAH and WARREN H.
CURLISS, its President; U.S.
TITLE OF UTAH, Trustee; CITY
CONSUMER SERVICES, INC.,
Beneficiary; R.M. WALL; GARY
L. MEREDITH and LYLE G.
MEREDITH; ED MAASS; RANDY
KRANTZ, B. BRAD CHRISTENSON,
DEBRA S. CHRISTENSON; R & C
ASSOCIATES; ROY L. MILLER;
SHARON L. MILES, and JOHN DOES
I through X,

Defendants/Respondents.

88-0030-CA

Case No. 860156

Case No. 860172

Priority No. 13b

BRIEF OF RESPONDENT RANDY KRANTZ

APPEAL FROM THE JUDGMENT OF THE SECOND
JUDICIAL DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH, HONORABLE DAVID ROTH

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FILED

SEP 19 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

BETTE WYCALIS,)	
)	
Plaintiff/Appellant,)	
)	
v.)	
)	
CITY FEDERAL SAVINGS & LOAN)	
ASSOCIATION; GUARDIAN TITLE)	Case No. 860156
COMPANY OF UTAH and WARREN H.)	
CURLISS, its President; U.S.)	
TITLE OF UTAH, Trustee; CITY)	
CONSUMER SERVICES, INC.,)	
Beneficiary; R.M. WALL; GARY)	Case No. 860172
L. MEREDITH and LYLE G.)	
MEREDITH; ED MAASS; RANDY)	
KRANTZ, B. BRAD CHRISTENSON,)	
DEBRA S. CHRISTENSON; P & C)	Priority No. 13b
ASSOCIATES; ROY L. MILLER;)	
SHARON L. MILES, and JOHN DOES)	
I through X,)	
)	
Defendants/Respondents.)	

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LIST OF PARTIES

1. SUPREME COURT NO. 860172

Appellant

Plaintiff: Bette Wycalis

Respondents

Defendants and
Cross-Plaintiffs: Guardian Title of Utah and Warren
H. Curliss

Defendants and
Cross-Defendants: Randy Krantz, B. Brad Christenson,
and Debra S. Christenson

2. SUPREME COURT NO. 860156

Appellants

Defendants: Randy Krantz, B. Brad Christenson,
and Debra S. Christenson

Respondent

Plaintiff: Bette Wycalis

3. NOT PARTIES TO EITHER APPEAL

Defendants: City Federal Savings and Loan
Association; U.S. Title of Utah; City
Consumer Services, Inc.; R.M. Wall; Gary
L. Meredith; Lyle G. Meredith; R & C
Associates; Roy L. Miller; Sharon L.
Miles; and John Does I through X

Defendant and
Cross-Defendant: Ed Maass

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RULES CITED:

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IN THE SUPREME COURT OF THE STATE OF UTAH

BETTE WYCALIS,)	
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Plaintiff/Appellant,)	
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ASSOCIATES; ROY L. MILLER;)	
SHARON L. MILES, and JOHN DOES)	
I through X,)	
)	
Defendants/Respondents.)	

BRIEF OF RESPONDENT RANDY KRANTZ

A STATEMENT OF ISSUES PRESENTED FOR REVIEW

Respondent Randy Krantz presents two (2) issues for review by this Court:

1. Has Appellant Bette Wycalis appealed from a final order as required by Rule 3(a), Utah Rules of Appellate Procedure?

2. Did Appellant Bette Wycalis present sufficient evidence, as to Guardian Title Company's breach of its duties as trustee under a trust deed, to preclude the granting of Summary Judgment?

STATEMENT OF FACTS

Respondent/Defendant Randy Krantz (hereinafter "Krantz") does not dispute the "Statement of Case", "Proceedings Below" and "Statement of Facts" as present in the Brief of Appellant Bette Wycalis, pp. 2-9. However, Krantz desires to state several additional points which may be relevant to this Court's consideration of the Appeal of Plaintiff Bette Wycalis (hereinafter "Wycalis").

On May 7, 1984, Wycalis filed a Complaint in the Second Judicial District Court for Weber County, against multiple defendants, alleging several causes of action. Two of the causes of action were a claim by Wycalis that Guardian Title Company of Utah (hereinafter "Guardian") had breached its fiduciary duty owed to Wycalis. (R. 2-4). Guardian, in responding to the Complaint, generally denied the allegations that it breached its fiduciary obligations. (R. 101-108). Guardian also filed a Cross-claim against Defendants Krantz, B. Brad Christensen and Debra S. Christenson, seeking indemnification for any liability which Guardian may incur. (R. 122-131). Krantz generally denied any legal responsibility to indemnify Guardian. (R. 138-140).

After substantial discovery was conducted, Guardian Title filed a Motion for Summary Judgment claiming that it breached no legal duty owed to Wycalis. (R. 408-409, 383-384). On October 21, 1985, the Court rendered its

Memorandum Decision concerning Guardian's Motion for Summary Judgment which read in pertinent part as follows:

The Court finds that Utah cases and Rules of Evidence, which give great weight to acknowledged documents, compel a ruling that, in a case such as this, a trustee is not negligent in relying on an acknowledged request to reconvey property unless the trustee has reason to believe the request is forged. No evidence has been presented to suggest that the trustee should have been suspicious of the document; therefore, Defendants' Motion for Summary Judgment is granted.

(R. 521-522). The Court entered a Judgment reflecting its Memorandum Decision on March 17, 1986. (R. 589-590). It is from that Judgment that Wycalis now appeals. (R. 611-612).

Because Guardian was granted Summary Judgment, its Cross-claim for indemnification against Krantz and the Defendants Christensons was rendered moot. The Court, without addressing the merits, entered an Order dismissing the Cross-claim. (R. 551-553). Thus, Krantz's interest in the Wycalis appeal (Supreme Court #860172) centers upon the fact that, should Wycalis be ultimately successful on appeal, Guardian's Cross-claim for indemnification against Defendants Krantz and Christensons may be reasserted.

SUMMARY OF ARGUMENT

Wycalis has appealed from a judgment which is not final as to all parties. Thus, her appeal may not be properly before this Court pursuant to Rule 3(a), Utah Rules of Appellate Procedure.

Wycalis may not have pointed to sufficient evidence of a breach of duty by Guardian Title to preclude the granting of Summary Judgment in favor of Guardian Title.

ARGUMENT

POINT I: THE JUDGMENT FROM WHICH WYCALIS APPEALS MAY NOT BE FINAL WITHIN THE REQUIREMENTS OF RULE 3(a), UTAH RULES OF APPELLATE PROCEDURE.

A quick review of the Record on Appeal in this matter indicates that there were almost as many post-trial documents filed by the parties with the District Court, as pre-trial pleadings and papers. Much of this post-trial "maneuvering" was the result of confusion which existed among all parties as to proper status of this case. Most of the "confusion" was resolved by District Court orders and by the filing of Amended Notices of Appeal. However, confusion as to the status of all the parties still exists. (For example, Appellant Wycalis has used a case heading for her Brief different than the heading used by the District Court and Appellants Krantz and Christensen in their Brief).

At the front of this Brief is a complete list of all the parties who have been named in the initial litigation in this matter. The Record on Appeal reveals the following disposition of the claims against the Defendants:

- a. The claims against Guardian Title of Utah and Warren H. Curliss were dismissed by Judgment entered March 17, 1986. (Supreme Court #860172 is an appeal of that Judgment).
- b. The claims against Randy Krantz, B. Brad Christensen, and Debra S. Christensen were reduced

to Judgment date February 14, 1986. (Supreme Court #860156 is an appeal of that Judgment).

- c. John Does I through X have never been identified, served, nor filed an appearance in this matter.
- d. Ed Maass and Sharon L. Miles have never been served nor filed an appearance in this matter.
- e. The claims against U.S. Title of Utah, City Consumer Services, Inc., Gary L. Meredith and Lyle G. Meredith were dismissed by Order dated October 14, 1984.
- f. The claims against City Federal Savings and Loan Association were dismissed by Order dated October 5, 1984.
- g. The claims against Roy L. Miller and R & C Associates were dismissed by Plaintiff filing a Notice of Dismissal dated May 12, 1986 pursuant to Rule 41(a)(1), Utah Rules of Civil Procedure.
- h. R.W. Wall responded to the claim against him by filing a pro se "Answer". Wycalis has characterized this answer as a "disclaimer". (Brief of Bette Wycalis, p. 3).

Respondent Krantz believes that the pro se writing filed by the Defendant R.W. Wall does not constitute a final determination of the claims against Defendant R.W. Wall.

Rule 3(a), Utah Rules of Appellate Procedure, retains the "final judgment rule" which had existed in Rule 72(a), Utah Rules of Civil Procedure. This Court has held in the past that the "final judgment rule" requires that all causes of action against all defendants be resolved by decree, order, judgment or dismissal prior to appealing the matter to the Supreme Court pursuant to Rule 4, Utah Rules of Appellate Procedure. See Salt Lake City Corporation vs. Layton, Utah, 600 P.2d 538 (1979), and Neider vs. State Dept. of Transportation, Utah, 665 P.2d 1306 (1983). In the

case at hand, Wycalis' cause of action against Defendant R. W. Wall was to quiet title in property in which Wall may have had an interest. Wycalis has obtained a dismissal of her quiet title action against all defendants except R.W. Wall.

Wycalis has argued that a dismissal against R.W. Wall is not necessary since Mr. Wall filed a "Disclaimer of Interest". However, this is not a correct assertion. First, a Disclaimer of Interest is not a final order. Assume that every defendant in a quiet title action filed a Disclaimer of Interest, it would still be necessary for the trial court to enter a decree of quieting title based upon the filed Disclaimers of Interest. It would be the court decree that is the final order, not the filed disclaimers. Second, the writing filed by Defendant R.W. Wall is not a Disclaimer of Interest. Since the writing was drafted by a non-attorney, it is difficult to tell what effect the Defendant desired by his filing. However, the language is much broader than a traditional "Disclaimer of Interest".

Krantz was sufficiently concerned with R.W. Wall's filed response that Krantz moved the District Court for an order declaring the judgment, from which he is appealing, to be final. Pursuant to Rule 54(b), Utah Rules of Civil Procedure, the District Court entered such an Order on May 16, 1986. Wycalis could make a similar motion pursuant to Rule 54(b), or she could move the Court for a dismissal of the complaint against Mr. Wall pursuant to Rule 41(a), Utah

Rules of Civil Procedure. However, absent taking such steps, Wycalis is not appealing from a final order as required by Rule 3(a), Utah Rules of Appellate Procedure.

POINT II: WYCALIS FAILED TO PRESENT SUFFICIENT
EVIDENCE AS TO GUARDIAN TITLE'S
BREACH OF DUTY.

Guardian submitted its Motion for Summary Judgment pursuant to Rule 2.8, Rules of Practice for the District Court. Accordingly, it filed a Memorandum of Points and Authorities which contained 16 "uncontested" points of fact. (R. 384-387). Wycalis filed her Memorandum in opposition to the Summary Judgment which contained 43 "uncontested" points of fact. (R. 434-439). Neither set of submitted facts contradicts the other submitted set of facts. However, there was at least one disputed issue of fact between Wycalis and Guardian. Wycalis had claimed that her signature had been forged on several important documents. Guardian denied that said signatures were forged. For purposes of the Motion for Summary Judgment only, Guardian assumed that the signatures were forged. Thus, the argument between Guardian and Wycalis on the Motion for Summary Judgment centers upon the significance of the forged signatures.

Guardian had argued that it was under no legal duty to protect Wycalis from forgeries and that, even if it had such a duty, Guardian satisfied its duty by relying upon an acknowledgment of the forgeries. (R. 381-405). Conversely,

Wycalis argued that Guardian was strictly liable for any forgeries and that, even if it is not strictly liable, Guardian was "negligent" in relying upon the forged signatures. (R. 440-441). In its Memorandum Decision, the District Court ruled that, absent a showing of negligence, Guardian was not liable to Wycalis because of Guardian's reliance on the forged signatures. (R. 521-522). Thus, the District Court implicitly rejected Wycalis' strict liability arguments.

The District Court also held in its ruling that no evidence had been presented by Wycalis to support the argument that Guardian was negligent in its reliance upon the forged signatures. In appealing that ruling, Wycalis has pointed to two (2) "facts" which she claims support the conclusion that Guardian was in fact negligent. First, Guardian failed to require the delivery of the subject Promissory Note and Trust Deed, even though such delivery was required by the forged Request for Reconveyances. (Brief of Appellant Bettie Wycalis, p. 16). Second, Guardian relied upon forged requests for reconveyance on two (2) separate occasions. (Brief of Appellant Bettie Wycalis, pp. 24-27).

It is not surprising that the District Court did not consider the "facts" which Wycalis now presents in support of her claim that Guardian was negligent. Wycalis did not argue these facts in her Memorandum in Opposition to the Motion for Summary Judgment. Wycalis is raising such

"facts" for the first time on this appeal. This Court has held on several occasions that it will not consider matters raised for the first time on appeal. Turtle Management, Inc. vs. Haggis Management, Inc., Utah, 645 P.2d 667 (1982).

[Wycalis does argue in her Brief that Guardian is strictly liable for its reliance on the forged signatures. Respondent Krantz does not take any position in this appeal as to whether such a legal conclusion of strict liability for Guardian Title is proper. Krantz is assuming in this Brief that the District Court properly held Guardian Title to a lower legal standard.]

Assuming the District Court was correct in its ruling that, absent a showing of negligence, Guardian is not liable for relying upon a forged signature, then the District Court was correct in granting Guardian's Motion for Summary Judgment. Wycalis did not direct the District Court to any evidence which would indicate that Guardian had acted negligently.

CONCLUSION

Defendant/Respondent Randy Krantz respectfully requests that this Court affirm the District Court's granting of Guardian's Motion for Summary Judgment.

DATED this _____ day of _____, 1986.

GARRETT AND STURDY

By _____
Joseph E. Hatch
Attorney for Respondent Krantz

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of September, 1986, four (4) true and correct copies of the foregoing Brief was mailed, postage prepaid, to:

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