

2002

LKL Associates, Inc. v. Janet Heidt : Reply Brief

Utah Supreme Court

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Ronald G. Russell; Parr Waddoups Brown Gee & Loveless; attorney for appellees.

Bryan H. Booth, Clark B. Fetzer; Kirton & McConkie; attorneys for appellant.

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IN THE SUPREME COURT OF THE STATE OF UTAH

LKL ASSOCIATES, INC.,

Plaintiff,

vs.

JANET HEIDT, et al.,

Defendants.

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Case No. 20020626-SC

Civil No. 010500202

Third District Court, Summit County

APPELLANT'S REPLY BRIEF

Appeal from a Final Order and Judgment of the Third Judicial District Court,
in and for Summit County, Judge Robert K. Hilder

Ronald G. Russell (# 4134)
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
P.O. Box. 11019
Salt Lake City, UT 84147-0019

*Attorney for Defendants/Appellees Janet
Heidt, Guy G. Berryessa, Curt G. Hood,
Jennifer C. Smith, and Ann M. Farley*

Bryan H. Booth (# 7471)
Clark B. Fetzer (#1069)
KIRTON & MCCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120
Telephone: (801) 328-3600

*Attorneys for Third-Party Defendant/
Appellant CraCar Construction Company*

Oral Argument and Published Decision
Requested

PAT BART
CLERK OF COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

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| | : | |
| Plaintiff, | : | Case No. 20020626-SC |
| | : | |
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185 South State Street, Suite 1300
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*Attorney for Defendants/Appellees Janet
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Bryan H. Booth (# 7471)
Clark B. Fetzer (#1069)
KIRTON & MCCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, UT 84145-0120
Telephone: (801) 328-3600

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TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF CONTENTS | i |
| TABLE OF AUTHORITIES | iii |
| ARGUMENT | 1 |
| I. THE PLAIN LANGUAGE OF THE LIEN RESTRICTION ACT LIMITS ITS APPLICATIONS TO BUILDINGS CONTAINING NO MORE THAN TWO UNITS | 1 |
| A. The Court Must Give Effect to the Plain Language of the Lien Restriction Statute | 1 |
| B. The Lien Restriction Act’s Definition of “Residence” Is Unambiguous | 2 |
| 1. <i>In The Lien Restriction Act, the Term “Dwelling” Refers to a Building</i> | 4 |
| 2. <i>The Unit Owners’ Units Do Not Constitute Detached Single-Family Dwellings</i> | 6 |
| 3. <i>The Unit Owners’ Arguments Regarding “Character of Ownership” Are Unavailing</i> | 7 |
| 4. <i>The Unit Owners’ Units Do Not Constitute “Multifamily Dwellings Up to Two Units”</i> | 8 |
| C. The Unit Owners’ Interpretation of “Residence” Is Contrary to Recognized Rules of Statutory Construction | 9 |
| 1. <i>The Construction Proposed by the Unit Owners Would Create Absurd Results</i> | 9 |
| 2. <i>‘ The Unit Owners’ Interpretation Would Render Portions of the Lien Restriction Act Superfluous</i> | 10 |

| | | |
|------|---|----|
| II. | UTAH’S CONDOMINIUM OWNERSHIP ACT DOES NOT ALTER THE LIEN RESTRICTION ACT’S DEFINITION OF “RESIDENCE” | 11 |
| A. | UTAH CODE ANN. § 57-8-4 Does Not Transform Attached Condominium Units into Detached Single-Family Dwellings | 11 |
| B. | Although Condominium Units Are Treated as Separate Parcels of Real Property, They Do Not Constitute Detached Single-Family Dwellings | 13 |
| C. | CraCar’s Interpretation of “Residence” Ensures That Liens Against Condominium Units Are Created “In the Same Manner and Under the Same Conditions” as Liens Against Other Separate Real Property | 14 |
| III. | THE CONSTITUTIONALITY OF THE LIEN RESTRICTION ACT IS NOT BEFORE THIS COURT | 17 |
| | CONCLUSION | 19 |

TABLE OF AUTHORITIES

| | |
|---|--------|
| <i>Anderson v. Bommer</i> , 926 P.2d 959, 963 (Wyo. 1996) | 6 |
| <i>Belair v. City of Treasure Island</i> , 611 So.2d 1285, 1289 (Fla. Dist. Ct. App. 1993) ... | 13 |
| <i>Citizens Active in San Antonio v. Bd. of Equalization of San Antonio</i> , 649 S.W.2d 804, 806 (Tex. Ct. App. 1983) | 5 |
| <i>Critchlow v. Monson</i> , 131 P.2d 794 (Utah 1942) | 17, 18 |
| <i>Davis v. Houston</i> , 869 S.W.2d 493, 495-96 (Tex. Ct. App. 1994) | 5 |
| <i>Double D Manor v. Evergreen Meadows Homeowners' Assoc.</i> , 773 P.2d 1046, 1048 (Colo. 1989) | 5 |
| <i>Ervin v. Deloney Construction, Inc.</i> , 596 So.2d 593, 594 (Ala. 1992) | 5 |
| <i>Harmon City, Inc. v. Nielsen & Senior</i> , 907 P.2d 1162 (Utah 1995) | 2 |
| <i>Jones v. Smith</i> , 241 F.Supp. 913, 915 (D. V.I. [Virgin Islands] 1965) | 6 |
| <i>Manchester v. Phillips</i> , 180 N.E.2d 333, 335 (Mass. 1962) | 5 |
| <i>Mountain States Tel. & Tel. v. Payne</i> , 782 P.2d 464 (Utah 1989) | 17 |
| <i>State v. Bluff</i> , 2002 UT 66, ¶ 34, 52 P.3d 1210 | 2, 10 |
| <i>State v. GAF Corp.</i> , 760 P.2d 310, 313 (Utah 1988) | 4 |
| <i>Wallace v. St. Clair</i> , 127 S.E.2d 742, 754 (W. Va. 1962) | 5 |
| <i>Weinstein v. Hunter</i> , 96 N.Y.S.2d 1, 8 | 6 |
| BLACK'S LAW DICTIONARY 505 (6 th Ed. 1990) | 4 |
| UTAH CODE ANN. § 38-1-4 | 14 |
| UTAH CODE ANN. § 38-1-7 | 15 |

| | |
|--------------------------------------|-------------|
| UTAH CODE ANN. § 38-11-102(20) | 2, 7, 8, 10 |
| UTAH CODE ANN. § 57-8-4 | 11, 12 |
| UTAH CODE ANN. § 57-8-19(1) | 15, 16 |
| UTAH CODE ANN. § 78-33-11 | 19 |

ARGUMENT

The issue raised by the present appeal is simple: Whether a ten-plex condominium building constitutes either a “detached single-family dwelling” or a “multifamily dwelling up to two units.” The resolution of this issue is equally simple. A building containing ten attached condominium units is not a detached single-family dwelling. Attached is not detached. In addition, a building containing ten condominium units is not a multifamily dwelling up to two units. Ten is not two.

The Appellee Unit Owners (the “Unit Owners”) argue mightily that the relevant statute should be construed so that “attached” equals “detached” and “ten” equals “two.” However, the plain language and intent of the Utah Lien Restriction and Lien Recovery Fund Act (the “Lien Restriction Act”) preclude the Unit Owners’ tortured interpretations.

I. THE PLAIN LANGUAGE OF THE LIEN RESTRICTION ACT LIMITS ITS APPLICATIONS TO BUILDINGS CONTAINING NO MORE THAN TWO UNITS

A. The Court Must Give Effect to the Plain Language of the Lien Restriction Statute

The Supreme Court of Utah has emphasized the most important rule of statutory construction – giving effect to the plain language of the statute:

The primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purpose the statute was meant to achieve. To discover that intent, *we look first to the plain language of the statute.*

State v. Bluff, 2002 UT 66, ¶ 34, 52 P.3d 1210 (quoting *Harmon City, Inc. v. Nielsen & Senior*, 907 P.2d 1162 (Utah 1995)) (emphasis added). “A statute’s unambiguous language may not be interpreted to contradict its plain meaning.” *Bluff*, 2002 UT 66 at ¶ 34. The Supreme Court of Utah has also emphasized the importance of “giv[ing] each part of the provision a relevant and independent meaning so as to give effect to all of its terms.” *Id.* Interpretations which “would render portions of the statute redundant, superfluous, and inoperable [are] impermissible under the plain language rule.” *Id.* at ¶ 35.

B. The Lien Restriction Act’s Definition of “Residence” Is Unambiguous

The Lien Restriction Act defines “residence” as follows:

“Residence” means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with, a primary or secondary detached single-family dwelling or multifamily dwelling up to two units, including factory built housing.

UTAH CODE ANN. § 38-11-102(20). The only portion of this definition at issue in the present appeal is the language “detached single-family dwelling or multifamily dwelling up to two units.”

The Lien Restriction Act’s definition of “residence” applies to improvements to real property which are used as (or in conjunction with) certain types of dwellings. Only two categories of dwellings fit within the definition: “detached single-family dwelling[s]” and “multifamily dwelling[s] up to two units.” UTAH CODE ANN. § 38-11-102(20). Thus,

for the Unit Owners to be eligible for the protections of the Lien Restriction Act, their units must fall into one of these categories. Judge Hilder’s ruling fails to identify which of these categories applies to the Unit Owners’ units. (Findings of Fact and Conclusions of Law on Home Owners’ Motions for Summary Judgment [hereafter, “First Findings”], Addendum to Brief of Appellant [“First Brief Add.”] 2-4; Findings of Fact and Conclusions of Law on Ann M. Farley’s Motion for Summary Judgment [hereafter, “Second Findings”], First Brief Add. 10-12 .) The Unit Owners argue in their brief that “an individually owned condominium unit is a detached single-family dwelling.” (Brief of Appellees at 12.) However, under the plain language of the Lien Restriction Act, the Unit Owners’ units are neither “detached single-family dwellings” nor “multifamily dwellings up to two units.”¹

¹In a footnote, the Unit Owners suggest that other subcontractors in this case “are free to pursue their claims against the residence lien recovery fund” and that “CraCar would rather have its subcontractors paid by the innocent home owners, who have already paid once for their condominiums, than the residence lien recovery fund since CraCar would then be obligated to reimburse the fund under Utah Code Ann. § 3-11-207” (Brief of Appellee at 8, n. 3.) The Unit Owners do not support their footnote with any citation to the record because the record does not support these allegations. Lien recovery fund representatives have indicated that any applications relating to buildings containing more than three units will be rejected because such buildings do not constitute “residences.” (Tr. 693, 702.) In addition, because CraCar has not been paid by the developer, CraCar is entitled to recover from the lien recovery fund for work it performed on qualifying “residences” in the Bear Hollow Village Subdivision.

1. *In The Lien Restriction Act, the Term “Dwelling” Refers to a Building*

The critical terms in the Lien Restriction Act’s definition of “residence” are “dwelling,” “detached,” “single-family,” and “multifamily . . . up to two units.” An examination of the word “dwelling” provides assistance in understanding the other terms.

The term “dwelling” refers to a “house or other structure in which a person or persons live” BLACK’S LAW DICTIONARY 505 (6th Ed. 1990). The Unit Owners argue that a condominium unit in a ten-plex building is a “single-family dwelling.” (Brief of Appellees at 12.) This interpretation is not feasible unless the term “dwelling” is synonymous with the term “unit.” The legislature’s use of both “dwelling” and “unit” in the same definition undercuts the Unit Owners’ interpretation. Certainly the legislature would not have used two different terms to mean the same thing.

The Lien Restriction Act does not expressly define the terms “dwelling.” However, the language used by the legislature establishes that the term “dwelling” refers to a building and not a unit. The simple reference to a “multifamily dwelling up to two units,” clarifies the legislature’s intention that “dwelling” refer to a building and not a unit. It would be absurd and redundant to refer to a “multifamily unit up to two units.” See *State v. GAF Corp.*, 760 P.2d 310, 313 (Utah 1988) (“It is axiomatic that a statute should be given a reasonable and sensible construction and that the legislature did not intend an absurd result.”)

The interpretation of a “dwelling” as a building where people live is consistent with the holdings of other jurisdictions which have construed this term. *See, e.g., Davis v. Houston*, 869 S.W.2d 493, 495-96 (Tex. Ct. App. 1994) (defining dwelling as “building used for human habitation” or “house or other structure in which a person or persons live”); *Citizens Active in San Antonio v. Bd. of Equalization of San Antonio*, 649 S.W.2d 804, 806 (Tex. Ct. App. 1983) (noting that dwelling “refers to a building used for human habitation, without regard to the number of units in a particular building” and “is broad enough to include multifamily dwellings and apartment houses”); *Wallace v. St. Clair*, 127 S.E.2d 742, 754 (W. Va. 1962) (defining dwelling as “a building or construction used for residence”); *Ervin v. Deloney Construction, Inc.*, 596 So.2d 593, 594 (Ala. 1992) (“‘dwelling’ . . . is simply another word to mean a house in which a person or persons reside”); *Manchester v. Phillips*, 180 N.E.2d 333, 335 (Mass. 1962) (defining “detached one-family dwellings” as “structures of the type ordinarily thought of as houses”); *Double D Manor v. Evergreen Meadows Homeowners’ Assoc.*, 773 P.2d 1046, 1048 (Colo. 1989) (noting that “the phrase ‘single-family dwelling’ limits only the type of structure permitted on any site”). The only reasonable and sensible definition of the term “dwelling” in the Lien Restriction Act is a building or structure where people live which may contain more than one housing unit.

2. *The Unit Owners' Units Do Not Constitute Detached Single-Family Dwellings*

Because a “dwelling” under the Lien Restriction Act is a building containing one or more housing units, a “detached single-family dwelling” is a building which is detached from other buildings and provides housing for only one set of occupants. Once again, this construction is consistent with decisions from other jurisdictions. *See, e.g., Jones v. Smith*, 241 F.Supp. 913, 915 (D. V.I. [Virgin Islands] 1965) (“The term . . . ‘single family detached dwelling’ refers to a dwelling wherein an individual or family lives, but which precludes more than one family from residing.”); *Weinstein v. Hunter*, 96 N.Y.S.2d 1, 8 (discussing reference to “detached single family dwelling” and holding that “the word ‘detached’ . . . limits construction to single family dwellings as distinguished from multiple or duplex type of dwellings.”); *Anderson v. Bommer*, 926 P.2d 959, 963 (Wyo. 1996) (“The plain and ordinary meaning of ‘single family residence’ is a residence constructed for the purpose of serving as a dwelling place for one family in a single living unit; a residence constructed . . . for the purpose of serving as the dwelling place of . . . two separate living units is outside of this meaning.”).

In the present case, each Unit Owner owns one condominium unit in a building which contains ten separate housing units. (First Brief Add. 4, 16.) Accordingly, although the buildings at issue contain several *attached* single-family housing units, they are not “detached single-family” buildings. Attached is not detached. Thus, the Unit

Owners' units do not fall into the first category of dwellings which qualifies for protection under the Lien Restriction Act.

3. *The Unit Owners' Arguments Regarding "Character of Ownership" Are Unavailing*

The Unit Owners repeatedly refer to Judge Hilder's statement that the definition of "residence" somehow "focuses on the character of the ownership of the residence." (First Brief Add. at 4, 16; Brief of Appellees at 9, 10.) Judge Hilder used this statement to justify his conclusion that "so long as an owner of a residential unit in a condominium building does not own more than two units, that owner qualifies for the protection afforded by the statute." (First Brief Add. at 4, 16.) Apparently recognizing the lack of statutory and logical support for this conclusion, the Unit Owners have abandoned Judge Hilder's reasoning. Instead, the Unit Owners claim that the "character of ownership" relates to "how the property in question is actually used by its owner" (Brief of Appellees at 9.) The Unit Owners do not explain how "ownership" and "use" are connected. However, the Unit Owners suggest "the possibility that 'detached' could refer to ownership instead of physical relationship." (Brief of Appellees at 10.) There are several problems with this creative interpretation.

In the statutory definition of "residence," the word "detached" is used to modify the term "single-family dwelling." UTAH CODE ANN. § 38-11-102(20). There is nothing to suggest that "detached" modifies any other term in the definition. Because the words

“own,” “owner,” and “ownership” do not appear in the definition of “residence,” it is inconceivable that “detached” would be referring to ownership. Finally, even if the term “ownership” did appear in the relevant provision, the Unit Owners have not explained exactly what “detached ownership” might mean. While housing units may be either attached or detached, it is difficult to imagine an ownership interest in real property which is not distinct and detached. The suggested concept of “detached ownership” is not supported by the statutory language or by common sense and is contrary to the plain meaning of the Lien Restriction Act.

4. *The Unit Owners’ Units Do Not Constitute “Multifamily Dwellings Up to Two Units”*

The buildings inhabited by the Unit Owners are clearly “multifamily dwellings” because they each house ten single-family housing units. However, under the Lien Restriction Act, only those multifamily dwellings containing “up to two units” are considered “residences.” UTAH CODE ANN. § 38-11-102(20). The term “up to two units” is not ambiguous. It includes buildings with one or two units but not buildings with three or more units. Ten is not two. Accordingly, the ten-unit buildings at issue in the present case are not the type of multifamily dwellings protected by the Lien Restriction Act.

C. The Unit Owners' Interpretation of "Residence" Is Contrary to Recognized Rules of Statutory Construction

1. *The Construction Proposed by the Unit Owners Would Create Absurd Results*

The definition of "residence" proposed by the Unit Owners would create absurd results. Almost no property would be excluded from the definition of "residence." By restricting the term "residence" to multifamily dwellings containing "up to two units," the legislature clearly limited the types of buildings whose owners would be protected by the Lien Restriction Act. The definition of "residence" proffered by the Unit Owners would remove that limitation and extend the Lien Restriction Act's protection to the owners of condominium or apartment buildings containing any number of units. Owners of units in a 200-unit high-rise condominium building would be protected under the Unit Owners' tortured construction of the Lien Restriction Act. In addition, the owner of a 12-unit apartment building would also qualify for the protections of the Lien Restriction Act since an "owner-occupied residence" includes residences occupied by the owner's tenants. UTAH CODE ANN. § 38-11-102(16). Clearly, the legislature did not intend the protections of the Lien Restriction act to apply to such a broad category of multifamily buildings. Because ten does not equal two, the Unit Owners are not protected by the Lien Restriction Act.

2. *The Unit Owners’ Interpretation Would Render Portions of the Lien Restriction Act Superfluous*

The Unit Owners’ peculiar construction would render significant portions of the statutory definition superfluous. Had the legislature intended housing units in any building, no matter what size, to be protected by the Lien Restriction Act, it could have omitted the references to “single-family” and “multifamily dwellings” and simply designated “a primary or secondary housing unit, including factory built housing.” *Cf.* UTAH CODE ANN. § 38-11-102(20) (“a primary or secondary detached single-family dwelling or multifamily dwelling up to two units, including factory built housing.”) The Unit Owners’ construction would render the terms “single-family” and “multifamily dwellings” superfluous. Because a statute must be construed to “give effect to all of its terms,” *Bluff*, 2002 UT 66 at ¶ 34, the Unit Owners’ construction must be rejected.

Ironically, the Unit Owners argue that CraCar’s plain and reasonable construction of the language in the Lien Restriction Act “would require the court to render meaningless parts of the definitions of ‘residence’ and ‘owner-occupied residence’ that reference the use of the property in question” (Brief of Appellees at 9.) However, the Unit Owners are unable to point to any statutory language which would be “rendered meaningless” by this common-sense construction. The definition’s only reference to the “use of the property in question” is the language “to be used . . . as . . . a primary or secondary . . . dwelling” UTAH CODE ANN. § 38-11-102(20). This language was

intended to limit the Lien Restriction Act's protection to properties where people live. The construction proposed by CraCar would not have any detrimental impact on this language. To the contrary, to qualify for the protections of the Lien Restriction Act, a property would still need to be a primary or secondary place where people live. Offices, warehouses, factories and commercial buildings would continue to be excluded from the definition of "residence." CraCar's plain and reasonable interpretation of the term "residence" would not render meaningless any parts of the Lien Restriction Act.

II. UTAH'S CONDOMINIUM OWNERSHIP ACT DOES NOT ALTER THE LIEN RESTRICTION ACT'S DEFINITION OF "RESIDENCE"

A. UTAH CODE ANN. § 57-8-4 Does Not Transform Attached Condominium Units into Detached Single-Family Dwellings

The Unit Owners incorrectly argue that the provisions of the Condominium Ownership Act require that condominium buildings be treated differently from other buildings when it comes to the protections of the Lien Restriction Fund. The Unit Owners cite UTAH CODE ANN. § 57-8-4 (a provision not relied upon by the trial court in its conclusions of law) for the proposition that a condominium unit is "a separate parcel of real property (or 'detached' under the terminology of the Lien Restriction Act)"

(Brief of Appellees at 11.) Section 57-8-4 provides as follows:

Each unit, together with its undivided interest in the common areas and facilities, [1] shall, for all purposes, constitute real property and [2] may be individually conveyed, leased and encumbered and [3] may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units,

and [4] the separate units shall have the same incidents as real property, and [5] the corresponding individual titles and interests therein shall be recordable.

UTAH CODE ANN. § 57-8-4 (bracketed numbers added). This provision can be broken down into five distinct parts, each of which is separated by the conjunction “and”:

1. Each unit constitutes real property for all purposes;
2. Each unit may be individually conveyed, leased, and encumbered;
3. Each unit may be inherited, devised, and subject to judicial acts as if it were sole and entirely independent of all other units;
4. Separate units have the same incidents as real property; and
5. Individual titles and interests to condominium units are recordable.

Through its underlined emphasis, the Unit Owners seek to intermix these five parts by suggesting that each unit should be considered “for all purposes . . . as if it were sole and entirely independent of all other units . . .” (Brief of Appellees at 11.) It is important to note that the language “for all purposes” modifies only the words “constitute real property” In addition, the language “as if it were sole and entirely independent of all other units” relates only to “and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa” The statute does not indicate that a condominium unit *is* sole and entirely independent of all other units or that the unit should be considered that way for all purposes. And most importantly, the Condominium Ownership Act does not state or suggest that a condominium unit housed in a building

with several other condominium units is or should be treated as a “detached” single-family building or a multifamily building containing no more than two units.

B. Although Condominium Units Are Treated as Separate Parcels of Real Property, They Do Not Constitute Detached Single-Family Dwellings

The Unit Owners also fail to bridge the gap between a condominium unit in a ten-unit building being treated as “a separate parcel of real property” and being deemed a “detached single-family dwelling” under the Lien Restriction Act. As CraCar indicated previously, the legislature’s use of the word “dwelling” clearly denotes an entire building or structure which may contain more than one housing unit. A detached single-family dwelling must necessarily be a building which stands alone and is designed to house only one “family” or cohabiting group.

In a case involving the interpretation of a zoning statute, the District Court of Appeals of Florida reversed the trial court’s ruling that condominium units in buildings containing more than three units constitute “single family dwellings”:

Appellants argue that the trial court erred in holding that each condominium unit in Land’s End is a single family dwelling. We agree. The plain definitions in the code provide that a multiple family dwelling is a building containing three or more dwelling units. There is no question that the buildings which make up Land’s End contain more than three dwelling units. . . . *The trial court erred in holding that the condominium units were separate single family dwellings.* This holding does not comport with the plain and obvious meaning of the definitions in the Code.

Belair v. City of Treasure Island, 611 So.2d 1285, 1289 (Fla. Dist. Ct. App. 1993)

(emphasis added). Like the units at issue in *Belair*, the units owned by the Unit Owners

are not single family dwellings, and they certainly are not “detached.” Accordingly, the units in question do not constitute “residences” under the Lien Restriction Act.

The Unit Owners argue that “condominium ownership is more ‘detached’ than traditional lots [because] [c]ondominium owners’ exclusively owned property boundaries . . . do not . . . touch each other.” (Brief of Appellees at 10, n. 4.) However, the Unit Owners are considering the wrong type of detachment. It is the *dwelling* (i.e., building) which must be detached, not the boundaries of the real property upon which the dwelling sits. The boundary lines of the real property are irrelevant. For example, a single family or multifamily dwelling could straddle two or more parcels of real property. *See* UTAH CODE ANN. § 38-1-4 (contemplating mechanic’s lien against buildings which “shall occupy two or more lots or other subdivisions of land”). Conversely, one parcel of real property could contain more than one single family or multifamily dwelling. But these variations do not change the Lien Restriction Act’s requirement that the building contain no more than two housing units. The provisions of the Condominium Ownership Act do not change this outcome.

C. CraCar’s Interpretation of “Residence” Ensures That Liens Against Condominium Units Are Created “In the Same Manner and Under the Same Conditions” as Liens Against Other Separate Real Property

The Condominium Ownership Act provides that “liens . . . shall arise or be created . . . against each unit . . . in the same manner and under the same conditions in every respect as liens or encumbrances may . . . be created upon or against any other separate

parcel of real property subject to individual ownership.” UTAH CODE ANN. § 57-8-19(1). Without providing an explanation, the Unit Owners argue that CraCar’s interpretation of “residence” would “create a separate body of mechanic’s lien law relative to condominiums in direct contravention of this language of sameness.” (Brief of Appellees at 12.) To the contrary, CraCar’s interpretation of the Lien Restriction Act allows liens to be created against condominium units in the same manner that liens are created against other separate real property.

A mechanic’s lien is created when a claimant properly records a notice of lien against a parcel of real property which has been improved by the claimant’s labor, materials, or equipment. UTAH CODE ANN. § 38-1-7. If improvements are made to a condominium unit, the notice of lien is recorded against that particular unit rather than the entire building or the land upon which the building sits. If the owner of the parcel in question can establish defenses under the Lien Restriction Act, the claimant is required to remove the mechanic’s lien. In determining whether the property is a residence under the Lien Restriction Act, the court must determine whether the improvements are to be used in conjunction with a detached single-family dwelling or a multifamily dwelling up to two units. Units in buildings containing more than two housing units will not be considered “residences.”

While the Act’s definition of “residence” excludes many condominium buildings, it also excludes many non-condominium buildings. For example, apartment buildings

with three or more units are excluded from the definition of “residence.” The owner of a town house which is connected by a common wall to two or more other town houses does not qualify for the protections of the Lien Restriction Act. Similarly, if three individually owned housing units are connected by party walls, each of those units falls outside the Lien Restriction Act’s protections. Regardless of whether the entire building is owned by one person (like an apartment) or separate housing units in the building are individually owned (like town houses, units connected by party walls, or condominiums), the critical factor is the number of housing units contained within the building.

The Unit Owners argue that condominium units should be treated differently from other connected, individually owned housing units (like town houses and units connected by party walls). Under their proposal, a condominium unit in a three-unit building would be considered a residence, while three attached town houses or three units connected by party walls would not. Clearly, the Unit Owners’ construction runs contrary to the Condominium Ownership Act’s mandate that liens be created against condominium units “in the same manner and under the same conditions in every respect as liens . . . may . . . be created against any other separate parcel of real property subject to individual ownership.” UTAH CODE ANN. § 57-8-19(1). Unlike the Unit Owners’ construction, the plain-language definition proposed by CraCar satisfies this requirement.

III. THE CONSTITUTIONALITY OF THE LIEN RESTRICTION ACT IS NOT BEFORE THIS COURT

The Unit Owners argue on one hand that CraCar's interpretation of the Lien Restriction Fund is unconstitutional while admitting on the other hand that they did not properly raise this constitutional argument before the trial court. (Brief of Appellees at 13.) A constitutionality argument not properly raised before the trial court and upon which the trial court did not rule cannot impact this court's interpretation of the Lien Restriction Act.

The Unit Owners cite *Mountain States Tel. & Tel. v. Payne*, 782 P.2d 464 (Utah 1989) in support of their argument. *Payne* properly outlines the constitutional avoidance rule of construction that "[i]f there are alternative statutory constructions possible, one rendering a statute constitutional and the other unconstitutional, the former should be adopted." *Id.* at 467. However, there are two reasons why the ruling in *Payne* does not apply to the present case. First, under the other rules of statutory construction discussed above, there is no plausible construction of the term "residence" which would support the Unit Owners' position. Second, neither *Payne* nor the case it cites in support, *Critchlow v. Monson*, 131 P.2d 794 (Utah 1942), suggests that an unbriefed constitutional argument raised without prior notice to the parties or the state attorney general requires the court to construe a statute contrary to its plain meaning. In *Payne*, the party asserting the unconstitutionality of the statute properly raised and briefed that argument. *Payne*, 782

P.2d at 465 (“Appellant . . . argues that construing section 7-15-1 to impose strict liability renders the statute unconstitutional”) The court noted that “[a]lthough we do not treat appellant’s due process claims, we note they raise sufficient doubt about the constitutionality of the construction of the statute urged by plaintiff to create a policy preference for the narrower construction we have adopted.” *Id.* Thus, the *Payne* court did not actually apply the constitutional avoidance rule of construction because that would have required a determination that the proffered interpretation was constitutionally infirm. Instead, the court in *Payne* mentioned that the rule of construction, along with the party’s arguments, created a “policy preference” which constituted one of several reasons the court chose to reject a certain construction of the statute. In *Critchlow*, the constitutionality argument was raised and briefed, and the court addressed and rejected that argument. *Critchlow*, 131 P.2d at 394-95.

The Unit Owners in the present case have failed to cite any Utah cases which directly apply the constitutional avoidance rule of construction without first formally determining whether any constitutionality infirmity actually exists. Because the constitutionality issue was not properly raised before or determined by the trial court, the Unit Owners’ arguments regarding the constitutional avoidance rule of construction are unavailing.

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The Unit Owners suggest that the Court may affirm on constitutional grounds even though the constitutional issue was not briefed below and the attorney general was never given an opportunity to be heard. However, such an approach would eviscerate UTAH CODE ANN. § 78-33-11. If the appellate courts could bypass the requirement that the attorney general be given notice and an opportunity to be heard on constitutional issues, that statutory provision would be rendered meaningless and important procedural safeguards would be subverted. Clearly, the doctrine of affirming on legal theories not raised at trial cannot overpower an explicit statutory requirement prescribing the procedure to be followed when constitutional issues are raised.

CONCLUSION

In light of the foregoing, CraCar requests that this Court do the following:

(1) overturn the trial court's Conclusions of Law stating that the units owned by the Unit Owners are "residences" under the Lien Restriction Act; (2) reverse the Order and Judgment entered by the trial court requiring that mechanic's lien claimants remove their mechanic's liens from the Unit Owners' units; and (3) declare that an owner of a unit in a condominium building housing three or more units is not an owner of a "residence" as that term is defined in the Lien Restriction Act.

DATED this 4TH day of June, 2003.

KIRTON & McCONKIE

A handwritten signature in cursive script, appearing to read "Bryan H. Booth", written over a horizontal line.

Bryan H. Booth

Clark B. Fetzer

*Attorneys for Appellant CraCar Construction
Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2003, I caused two true and correct copies of the foregoing **APPELLANT'S BRIEF** to be mailed by United States mail, postage prepaid, to each of the following:

John G. Mulliner
363 North University Avenue #103
P.O. Box 1045
Provo UT 84603
Attorneys for LKL Associates

Chris D. Greenwood
Greenwood & Black
1840 North State Street, Suite 200
Provo UT 84604
Attorneys for Superior Plumbing

Darrel J. Bostwick
Bostwick & Price
139 East South Temple, Suite 320
Salt Lake City UT 84111
Attorneys for Superior Insulation

Ronald G. Russell
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
P.O. Box 11019
Salt Lake City UT 84147-0019
*Attorneys for Ann M. Farley, Janet
Heidt, Guy G. Berryessa, Curt G. Hood,
Jennifer C. Smith*

Clair J. Jaussi
Randy J. Christiansen
350 East Center, Suite 2
P.O. Box 2282
Provo UT 84603
Attorneys for Anderson Lumber


