

2002

LKL Associates, Inc. v. Janet Heidt : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

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| LKL ASSOCIATES, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | BRIEF OF APPELLEES |
| vs. |) | |
| |) | |
| JANET HEIDT, et al., |) | |
| |) | Priority No. 15 |
| Appellees/Defendants, |) | |
| |) | |
| vs. |) | |
| |) | Case No. 20020626-SC |
| CRACAR CONSTRUCTION, CO., |) | |
| |) | |
| Appellant/Third-Party Defendant. |) | |

APPEAL FROM A FINAL ORDER AND JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY, STATE OF UTAH
HONORABLE ROBERT K. HILDER

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Ann M. Farley, and Curt G. Hood

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UTAH SUPREME COURT

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STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(j) (2002). In the event the case is transferred to the Utah Court of Appeals, its jurisdiction would be pursuant to Utah Code Ann. § 78-2a-3(2)(j) (2002).

STATEMENT OF ISSUES ON APPEAL AND STANDARD OF REVIEW

The following issues are presented for review:

1. Did the trial court correctly determine that appellants, as condominium home owners, are entitled to the same protections under the Residence Lien Restriction and Lien Recovery Fund Act (the "Lien Restriction Act" or "Act") as other home owners?
2. Did the trial court correctly determine that an individual residential condominium unit qualifies as a "residence" as defined by the Lien Restriction Act, Utah Code Ann § 38-11-102(20)?

The trial court's grant of summary judgment is reviewed for "correctness." See, e.g., J.R. Simplot Co. v. Sales King Int'l, 2000 UT 92; Harline v. Barker, 912 P.2d 433, 438 (Utah 1996).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, OR RULES

1. Lien Restriction Act, Utah Code Ann. § 38-11-102(16) and (20) (2001):

(16) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence.

(20) "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.

2. Utah Condominium Ownership Act, Utah Code Ann. § 57-8-4 (2000):

Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and 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 the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

3. Utah Condominium Ownership Act, Utah Code Ann. § 57-8-35 (2000):

(1) The provisions of this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail: provided further, for purposes of Sections 10-9-805, 10-9-811, and 17-27-804 and provisions of similar import and any law or ordinance adopted pursuant thereto, a condominium project shall be construed to be a subdivision, and a record of survey map or supplement thereto prepared pursuant to this chapter shall be considered to be a subdivision map or plat, only with respect to:

(a) such real property or improvements, if any, as are intended to be dedicated to the use of the public in connection with the creation of the condominium project or portion thereof concerned; and

(b) those units, if any, included in the condominium project or portion thereof concerned which are not contained in existing or proposed buildings.

STATEMENT OF THE CASE

1. Course of Proceedings and Disposition Below.

This case arises from numerous mechanic's liens filed against the residential condominium units owned by appellees Guy G. Berryessa, Ann M. Farley, Janet Heidt, Curt G. Hood, and Jennifer C. Smith (hereinafter referred to collectively as the "Home Owners"). The Home Owners' separately owned units are located in the Calgary Condominiums within Bear Hollow Village in Park City, Summit County, Utah. The Home

Owners purchased and fully paid for their individual units from the project developer, Bear Hollow Village, L.L.C., pursuant to written real estate purchase agreements.

LKL Associates, Inc. initially filed the action to foreclose mechanic's liens. [R. 1-15.] Superior Plumbing and Heating, Inc. and Superior Insulation Company, Inc., two other subcontractors on the project who were named as defendants by LKL Associates, Inc., filed claims against the Home Owners also seeking to foreclose mechanic's liens. [R. 96-122, 185-202.]

The Home Owners filed summary judgment motions under the Lien Restriction Act utilizing the forms provided for by Utah Code Ann. § 38-1-11(4)(a). [R. 131-52 (Curt Hood); 163-84 (Jennifer Smith); 203-16 (Guy Berryessa); 227-42 (Janet Heidt); and 459-76 (Ann Farley).] The summary judgment motions were argued before the Honorable Robert K. Hilder on September 24, 2001 and February 4, 2002. [R. 671-713, 718-48.] At the conclusion of the arguments, Judge Hilder granted the motions for summary judgment, ruling that there were no disputed issues of material fact and that the Home Owners were entitled to judgment as a matter of law that the mechanic's lien claimants could not maintain liens against the Home Owners' residential condominium units under the provisions of the Lien Restriction Act. [R. 708-10, 744.]

On June 24, 2002, Judge Hilder entered Findings of Fact and Conclusions of Law on the Home Owners' motions for summary judgment and an Order of Judgment granting the summary judgment motions filed by Guy G. Berryessa, Janet Heidt, Curt G. Hood, and Jennifer C. Smith. [R. 612-624.]¹ Ann M. Farley was unintentionally omitted from the

¹Copies of the Findings of Fact and Conclusions of Law and the Orders and Judgment with respect to the Home Owners are included in the addendum to this brief.

court's written rulings and, as a result, on August 2, 2002, Judge Hilder entered Findings of Fact and Conclusions of Law and an Order and Judgment granting summary judgment in favor of Ann M. Farley. [R. 649-660.] Because the summary judgments adjudicated all claims against the Home Owners, Judge Hilder entered a certification of finality with respect to each Order and Judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure. [R. 621, 657.] This appeal was taken from the summary judgments granted in favor of the Home Owners.

2. Statement of Relevant Facts.

The undisputed material facts on which Judge Hilder based his conclusion that the Lien Restriction Act protects the Home Owners from mechanic's liens are as follows:²

1. The Home Owners each own a separate residential unit within the Calgary Condominiums located in Park City, Utah. Guy G. Berryessa owns unit number 204, Ann M. Farley owns unit number 203, Janet Heidt owns unit number 200, Curt G. Hood owns unit number 101, and Jennifer C. Smith owns unit number 103.
2. Each of the Home Owners entered into a separate written contract with the developer Bear Hollow Village, LLC to purchase their residential condominium unit and occupied the unit within 180 days after completion of construction thereof.
3. Bear Hollow Village, LLC was a real estate developer within the meaning of Utah Code Ann. §§ 38-11-102(19) and 38-11-204(3)(a)(ii).
4. Each of the Home Owners paid Bear Hollow Village, LLC in full in accordance with the terms of their written purchase contracts.

²The undisputed facts are set forth in the findings of fact entered with respect to the summary judgment rulings. [R. 613-615, 650-651.]

5. Each of the Home Owners' residences is a separate unit located within the Calgary Condominium project. The Calgary Condominium project consists of two buildings. Each building contains ten separate condominium units.

The Lien Restriction Act prohibits contractors and suppliers from maintaining mechanic's liens against an "owner-occupied residence" where the owner enters into a written contract for the purchase or construction of the residence with a licensed contractor or a real estate developer, the owner occupies the residence as a primary or secondary residence within 180 days from the completion of construction and pays the full contract price. See Utah Code Ann. § 38-11-107(1) (2001). The only challenge made to the application of the Lien Restriction Act in this case was the argument that a condominium unit cannot qualify as a "residence" under the Lien Restriction Act's definitions. Judge Hilder rejected that argument, concluding that the Lien Restriction Act's definition of "residence" includes an owner of an individual residential condominium unit.

[R. 615-617, 651-653.]

SUMMARY OF ARGUMENT

The Lien Restriction Act was adopted to protect innocent home owners, who have fully paid for their homes, from mechanic's liens. Under long-established rules of statutory construction, the Act must be construed to achieve its intended purpose. Judge Hilder correctly concluded that the Act's definition of "residence" includes both single-family homes and individually owned, single-family condominium units. That conclusion is mandated by the Condominium Ownership Act, which requires condominium units to be treated as real property entirely independent of all other units. Interpreting the Act's definition of "residence" to include both single-family homes and condominium units

avoids an unconstitutional reading under the equal protection clause of the Utah Constitution.

ARGUMENT

A. The Lien Restriction Act Must Be Interpreted to Achieve the Intended Purpose of Protecting Individual Home Owners Who Have Fully Paid for their Homes.

CraCar asks the court to construe narrowly the Lien Restriction Act's definition of "residence" to exclude an entire class of home owners from the Act's protection. CraCar argues that the Act's definition of "residence" includes single-family homes, but not single-family condominium units. CraCar's arguments are contrary to established rules of statutory construction that require the Act to be interpreted to achieve its intended purpose.

1. Applicable Rules of Statutory Interpretation.

It is well-established that "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." Reeves v. Gentile, 813 P.2d 111, 115 (Utah 1991). Further, "the plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters." Lyon v. Burton, 2000 UT 19, ¶ 17 (quoting Roberts v. Erickson, 851 P.2d 643, 644 (Utah 1993) (citations omitted)). Remedial statutes are to be given a liberal construction to achieve their obvious and intended purposes. See, e.g., P.I.E. Employees Fed. Credit Union v. Bass, 759 P.2d 1144, 1151 (Utah 1988); Heaton v. Second Injury Fund, 758 P.2d 957, 961 (Utah Ct. App. 1988). Statutes are to be interpreted reasonably and sensibly and in a way that avoids an absurd result. See e.g., Russell v. Thomson Newspapers, Inc., 842 P.2d 896, 906 (Utah 1992); 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").

2. The Utah Residence Lien and Lien Restriction Recovery Fund Act.

The Residence Lien Restriction and Lien Recovery Fund Act was adopted by the Utah Legislature to protect innocent home purchasers from mechanic's liens asserted by unpaid contractors and suppliers. Utah Code Ann. § 38-11-107(1) (2001) entitled "Restrictions Upon Maintaining a Lien Against Residence or Owner's Interest in the Residence," provides as follows:

(1) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics' Liens, who provides qualified services under an agreement effective on or after January 1, 1995, other than directly with the owner, shall be barred after January 1, 1995, from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover monies owed for qualified services provided by that person if:

(a) the conditions described in Subsections 38-11-204(3)(a) and (3)(b) are met;

Id. § 38-11-107(1) (emphasis added). The conditions described in subsections 38-11-204(3)(a) and (3)(b) require that the owner of the owner-occupied residence enter into a written contract with a licensed contractor or with a real estate developer for the purchase of an owner-occupied residence; and that the owner pay in full the licensed contractor or real estate developer. See id. § 38-11-204(3).

Under the foregoing provisions, a contractor who provides labor or material used in the construction of an "owner-occupied residence" cannot claim a mechanic's lien against the residence or recover a civil judgment against the owner if these conditions have been satisfied. Upon proof that the conditions have been satisfied and the entry of findings of

compliance by the court, the contractor or supplier is entitled to file a claim against the residence lien recovery fund funded by contractor licensing fees and administered by the Division of Occupational and Professional Licensing under the Utah Department of Commerce. See id. §§ 38-11-201 to –204.³

The Act defines an "owner-occupied residence" as a residence that will be occupied by the owner or the owner's tenant "as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence." Utah Code Ann. § 38-11-102(16). The act goes on to define a "residence" as,

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.

Id. § 38-11-102(20). Consistent with the long-standing rules of statutory and construction, this definition must be construed to give effect to the legislative intent of protecting innocent home purchasers.

B. Judge Hilder Correctly Interpreted the Lien Restriction Act's Definition of "Residence" to Include Individually Owned Residential Condominium Units.

Judge Hilder construed the Lien Restriction Act's definition of "residence" broadly to give effect to the obvious legislative intent of protecting innocent home purchasers from mechanic's liens. Judge Hilder's conclusion is both consistent with the language and

³It is interesting to note that Superior Plumbing and Heating, Inc. and Superior Insulation Company, Inc., both subcontractors of CraCar, did not appeal Judge Hilder's ruling and are free to pursue their claims against the residence lien recovery fund. This appeal was brought by CraCar, the general contractor who failed to pay its subcontractors. Obviously, 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. § 38-11-207 or face the immediate suspension of its contractor's license under that section.

purpose of the Lien Restriction Act and is mandated by Utah's Condominium Ownership Act (the "Condominium Act").

1. The Definition of "Residence" Focuses on the Character of Ownership.

Judge Hilder correctly ruled that the Lien Restriction Act's definition of "residence" "focuses on the character of the ownership of the residence" to fulfill its obvious remedial purpose. [R. 615, 651.] By so ruling, Judge Hilder observed that the definitions of the terms "residence" and "owner-occupied residence" address how the property in question is actually used by its owner, i.e., is it to be used or occupied by the owner or its tenant as a primary or secondary residence.

CraCar argues for a narrow interpretation of "residence" by misconstruing the words "detached single-family dwelling or multifamily dwelling up to two units" as excluding individually owned condominium units. The Lien Restriction Act does not define what is meant by a "single-family dwelling" or how and from what such a dwelling must be detached. The Lien Restriction Act likewise does not define what is meant by a "multifamily dwelling up to two units." CraCar's interpretation places awkward emphasis on these phrases and asks the court to look at them in isolation of any other part of the Lien Restriction Act. Doing so would require the court to render meaningless the parts of the definitions of "residence" and "owner-occupied residence" that reference the use of the property in question and would create the absurd result that condominiums with two units are protected but condominiums of greater-sized units are not (not to mention the absurdity that condominium owners are unnecessarily excluded from a remedial statutory provision, despite owning property with all other indicia and attributes as other property owners that do enjoy the protections of the Act). By recognizing that the definition focuses on the

character of ownership and not just physical detachment, Judge Hilder logically concluded that a separately owned single-family condominium unit is protected just like the owner of a single-family home. [R. 615, 651]

CraCar argues that the Act's definitions do not focus on ownership character, but are solely dependent on physical detachment. According to CraCar, Judge Hilder should have construed the words "detached single-family dwelling" to refer only to the physical relationship of the unit to surrounding units. That argument incorrectly assumes that a condominium unit is not physically detached from adjacent units and does not allow for the possibility that "detached" could refer to ownership instead of a physical relationship.⁴ More importantly, CraCar's argument violates the rules of construction that required Judge Hilder to interpret the language consistent with the intent of the statute.

2 Individually Owned Condominium Units Must Be Treated As Real Property Entirely Independent of All Other Units Under the Plain Language of the Condominium Ownership Act

Judge Hilder's ruling properly takes into consideration several provisions of the Condominium Act, thus adhering to the requirement that the Lien Restriction Act be read as a whole and in harmony with related statutes (in pari materia) which, in this case, includes the Condominium Act.

⁴Condominium owners, by nature of the ownership discussed below, own in fee simple all of the internal parts of their unit, including the interior walls only. As such, condominium ownership is more "detached" than traditional lots, which touch at the property lines. Condominium owners' exclusively owned property boundaries, as delineated by declaration, condominium and record of survey, see Utah Code Ann. §§ 57-8-10, -13 (2000), do not similarly touch each other. The Condominium Act defines each separately owned "unit" as "a separate physical part of the property intended for any type of independent use." Id. § 57-8-3(26).

As recognized by Judge Hilder, the Condominium Act requires that individually owned condominium units be treated as real property separate and distinct from all other units. The Condominium Act specifically provides that:

Each [condominium] unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and 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 the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

Utah Code Ann. § 57-8-4 (2000) (emphasis added). Each condominium unit is delineated in three dimensions by a record of survey map recorded with a declaration of condominium, id. § 57-8-13, and includes only the physical space within the walls of the unit, id. § 57-8-3(26) (defining "unit" as "a separate physical part of the property intended for any type of independent use."); see Country Oaks Condominium Management Comm. v. Jones, 851 P.2d 640, 642 (Utah 1993) (recognizing that for a condominium unit to exist, it must be in an enclosed space). Thus, it is clear that a condominium unit must be treated as a separate parcel of real property (or "detached" under the terminology of the Lien Restriction Act) independent of other units.

CraCar glosses over the provisions of the Condominium Act that would be rendered meaningless by its proposed interpretation of the Lien Restriction Act. For example, CraCar discards § 57-8-19 as a section that "simply clarifies that condominium units are susceptible to the same liens and encumbrances which arise against non-condominium properties." [See appellant's brief at p. 12.] Such argument gives little credence to the language that condominium liens are to be created "in the same manner and under the

same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership"

(emphasis added). Interpreting the Lien Restriction Act as CraCar argues of course would create a separate body of mechanic's lien law relative to condominiums in direct contravention of this language of sameness.

Judge Hilder's ruling also correctly identifies as support for his interpretation that an individually owned condominium unit is a detached single-family dwelling. Judge Hilder's ruling cites to the separate taxation of each unit, Utah Code Ann. § 57-8-27. Similarly, each condominium unit may be rented or owned jointly or in other tenancies, id., § 57-8-5; ownership is transferred via deed, just like other separately owned real property, id., § 57-8-11; and condominium ownership interests are recorded with a unique legal reference, just like traditional single-family homes, see, id., §§ 57-8-12, 57-8-14.

Judge Hilder's ruling also correctly relies upon the explicit admonition of Utah Code Ann. § 57-8-35 that,

this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

Id. § 57-8-35 (emphasis added). Because of this provision, CraCar strains to find harmony between the Condominium Act and CraCar's narrow reading of the definition of "residence" in the Lien Restriction Act. In reality, CraCar's interpretation conflicts with the express language of the Condominium Act, §§ 57-8-4 ("entirely independent of all other units"), 57-8-19 ("separate parcel of real property" and liens same in every respect as liens on other forms of lienable property). In short, the Condominium Act goes to great lengths

to make clear that ownership of such property is in all ways equivalent to ownership of any other residence. This Court should, therefore, affirm Judge Hilder's conclusion that the clear provisions of the Condominium Act mandate that individually owned residential condominiums qualify for protection against mechanic's liens the same as any other single-family residence.

C. Judge Hilder's Construction of the Lien Restriction Act to Protect All Home Owners Avoids a Constitutional Equal Protection Problem.

Judge Hilder interpreted the Lien Protection Act in a way that avoids a constitutional equal protection problem. CraCar's assertion that the "constitutional argument was not properly raised before the trial court" [see appellant's brief at p. 16] completely misses this point. The Home Owners did not argue before the trial court that the statute is unconstitutional.⁵ Consequently, there was no requirement to serve a copy of a pleading on the Attorney General under Utah Code Ann. § 78-33-11, which only applies where a statute "is alleged to be invalid." Rather, the Home Owners argued that Judge Hilder should apply the rule of construction that where two possible interpretations of a statute can be made, the constitutional construction should be adopted. [R. 688-89.] See Mountain States Telephone & Telegraph v. Payne, 782 P.2d 464 (Utah 1989). Judge Hilder correctly concluded that "if the Lien Protection Act's definition of 'residence' were to be construed as excluding condominium units, the statute may be unconstitutional under the equal protection clause of the Utah Constitution, Article 1, § 24." [R. 617, 652-653.]

⁵Procedurally, Judge Hilder decided the appellees' summary judgment motions on the basis of statutory interpretation. The doctrine of constitutional avoidance is a canon of statutory interpretation. Were the Court to grant CraCar's requested relief, the case would be remanded so that the constitutional equal protection argument could be briefed.

Article I, § 24 of the Utah Constitution states: "All laws of a general nature shall have uniform operation." The Utah Supreme Court has held that the essence of this constitutional provision is "the settled concern of the law that the legislature be restrained from the fundamentally unfair practice of classifying persons in such a manner that those who are similarly situated with respect to the purpose of the law are treated differently by the law, to the detriment of some of those so classified." Gallivan v. Walker, 2002 UT 89 ¶ 36 (quoting Blue Cross & Blue Shield of Utah v. State, 779 P.2d 634, 637 (Utah 1989)). Rather than holding the Lien Restriction Act unconstitutional for classifying and protecting only the purchasers of traditional single-family homes from mechanic's liens and excluding purchasers of single-family condominiums from this protection, Judge Hilder properly construed the definition of residence to be inclusive.

The constitutional avoidance rule of construction was, in fact, raised below and applied by the trial court as "good basic law." [R. 692.] Consequently, the doctrine can certainly be considered by the appellate court. Moreover, this Court is allowed to consider any argument that supports the ruling below. "Indeed, it is well established that an appellate court may affirm the judgment appealed from if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is not urged on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court." First Equity Fed., Inc. v. Phillips Dev., LC, 2002 UT 56, at ¶ 11, 52 P.3d 1137, 1139 (Utah 2002). This Court, like Judge Hilder, can and should consider the constitutional ramifications of the decision CraCar seeks. Such measured consideration shows the absurdity and oddity of

CraCar's proposed interpretation and gives this Court additional reason to affirm Judge Hilder's ruling.

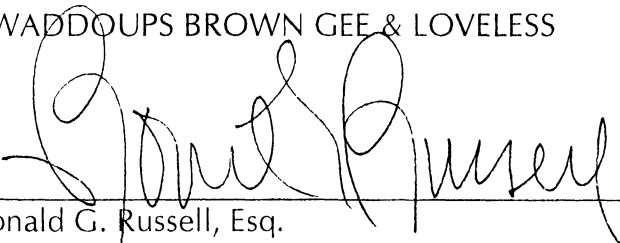
CONCLUSION

The Home Owners respectfully submit that the trial court's grant of summary judgment should be affirmed. The Lien Restriction Act must be construed to include condominium home owners within its protection consistent with the provisions and intent of the Lien Restriction Act and the mandates of the Condominium Act. Further, the trial court's inclusive interpretation avoids a reading of the statute that may render the statute unconstitutional.

DATED this 4th day of April, 2003.

PARR WADDOUPS BROWN GEE & LOVELESS

By:



Ronald G. Russell, Esq.
James L. Ahlstrom, Esq.
Attorneys for Appellees/Defendants Ann M. Farley
and Curt G. Hood

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2003 two true and correct copies of the foregoing BRIEF OF APPELLEES were mailed, postage prepaid, to:

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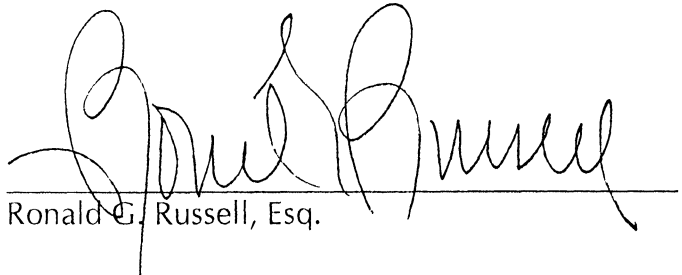
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ADDENDUM

THIRD DISTRICT COURT-SUMMIT
2007 JUN 24 AM 11:17
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IN THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY

STATE OF UTAH, PARK CITY DEPARTMENT

LKL ASSOCIATES, INC.,)
)
Plaintiff,)
)
vs.)
)
)
JANET HEIDT; JAMES E. CARUSO;)
WILLIAM JACKSON; JILLIAN)
ANDERSON; ANN M. FARLEY; GUY G.)
BERRYESSA; FLAGSTAR BANK, FSB;)
APPROVED FINANCIAL CORP.; WELLS)
FARGO HOME MORTGAGE, INC.;)
ADVANCE MORTGAGE)
CORPORATION; SUPERIOR)
INSULATION CO.; WESTERN)
WHOLESALE FLOORING; ANDERSON)
LUMBER COMPANY; SUPERIOR)
PLUMBING AND HEATING, INC.; JM)
MECHANICAL/SERVICE EXPERTS; AQUA)
BALANCE, INC.; ROB CHLARSON;)
DENNIS SKIBY; and JOHN DOES 1-20;)
)
Defendants.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
HOME OWNERS' MOTIONS
FOR SUMMARY JUDGMENT

Civil No. 010500202
Judge Robert K. Hilder

This matter came before the court on motions for summary judgment filed by defendants Janet Heidt, Guy G. Berryessa, Curt G Hood, and Jennifer C. Smith ("Home Owners"). The court heard initial arguments on the motion on September 24, 2001 and permitted additional briefing. The motions were heard again on oral argument on February 4, 2002.

The court, having reviewed the Home Owners' motions for summary judgment, affidavits, and supporting documentation as well as all opposing materials, having reviewed exhibits, having heard oral argument, having reviewed the relevant facts and law, and otherwise being fully advised in the premises, does hereby make and enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Defendant Janet Heidt is the owner of the condominium unit more particularly described as 5441 Bobsled Boulevard, No. 200, Park City, Utah.
2. Janet Heidt entered into a written contract with Bear Hollow Village, L.L.C. to purchase her condominium unit and occupied the unit within 180 days after completion of construction thereof.
3. Bear Hollow Village, L.L.C. was a real estate developer within the meaning of 38-11-102(19) and 38-11-204(3)(a)(ii) Utah Code Annotated.
4. Janet Heidt paid Bear Hollow Village, L.L.C. in full in accordance with the terms of the written contract.

5. Defendant Guy G. Berryessa is the owner of the condominium unit more particularly described as 5441 Bobsled Boulevard, No. 204, Park City, Utah.

6. Guy G. Berryessa entered into a written contract with Bear Hollow Village, L.L.C. to purchase his condominium unit and occupied the unit within 180 days after completion of construction thereof.

7. Bear Hollow Village, L.L.C. was a real estate developer within the meaning of 38-11-102(19) and 38-11-204(3)(a)(ii) Utah Code Annotated.

8. Guy G. Berryessa paid Bear Hollow Village, L.L.C. in full in accordance with the terms of the written contract.

9. Defendant Curt G. Hood is the owner of of the condominium unit more particularly described as 5441 Bobsled Boulevard, No. 101, Park City, Utah.

10. Curt G. Hood entered into a written contract with Bear Hollow Village, L.L.C. to purchase his unit and occupied the unit within 180 days after completion of construction thereof.

11. Bear Hollow Village, L.L.C. was a real estate developer within the meaning of 38-11-102(19) and 38-11-204(3)(a)(ii) Utah Code Annotated.

12. Curt G. Hood paid Bear Hollow Village, L.L.C. in full in accordance with the terms of the written contract.

13. Defendant Jennifer C. Smith is the owner of the condominium unit more particularly described as 5441 Bobsled Boulevard, No. 103, Park City, Utah.

14. Jennifer C. Smith entered into a written contract with Bear Hollow Village, L.L.C. to purchase her unit and occupied the unit within 180 days after completion thereof.

15. Bear Hollow Village, L.L.C. was a real estate developer within the meaning of 38-11-102(19) and 38-11-204(3)(a)(ii) Utah Code Annotated.

16. Jennifer C. Smith paid Bear Hollow Village, L.L.C. in full accordance with the terms of the written contract.

17. Each of the residences listed above is a separate unit located within the Calgary Condominium project. The Calgary Condominium project consists of two buildings. Each building contains ten separate condominium units.

Having entered the foregoing Findings of Fact, the court now makes and enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Under Utah Code Ann. § 38-11-102(20), "residence" is defined as "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 build housing."

2. This definition focuses on the character of the ownership of the residence. The court concludes 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. Consequently, the Court concludes that each of the residential units

described in the foregoing Findings of Fact qualifies as a "residence" under Utah Code Ann. § 38-11-102 (20).

3. The court's conclusion that the each of the condominium units described in the foregoing Findings of Fact qualifies as a "residence" is mandated by the provisions of the Condominium Ownership Act, Utah Code Ann. § 57-8-1, et. seq., which provides, among other things, that

(a) liens may be created against each separate condominium unit only in the manner applicable to "any other separate parcel of real property subject to individual ownership. . . ." Utah Code Ann. § 57-8-19(1);

(b) A condominium project is treated as a subdivision and the individual units are treated as separate tax parcels for taxation purposes. Id. §§ 57-8-27 and -35; and

(c) The Condominium Ownership Act controls over any conflict with other statutory provisions. Id. § 57-8-35.

4. The court further concludes that interpreting the definition of "residence" in Utah Code Ann. § 38-11-102(20) to include a condominium unit occupied as a single family residence as stated above is consistent with the purpose and policy of the Residence Lien Restriction and Lien Recovery Fund Act to protect innocent home owners who have paid the full purchase price for their homes from mechanic's liens. This policy applies

equally to the purchaser of a single family home in a typical subdivision as it does to the purchaser of a single family home in a condominium project.

5. The court further concludes that such construction of the statutory definition of "residence" comports with the rule of construction that where two possible interpretations of a statute can be made, the constitutional construction should be adopted. Mountain States Telephone & Telegraph v. Payne, 782 P.2d 464 (Utah 1989). If the definition of "residence" were to be construed as excluding condominium units, the statute may be unconstitutional under the equal protection provision of the Utah Constitution, Article I, § 24. The construction adopted by the court avoids this constitutional problem.

6. The Home Owner Defendants are entitled to the entry of judgment (a) ordering all parties in this action who have filed mechanic's liens against the residences of said Defendants to remove said liens within 10 days after receiving notice of the entry of judgment and awarding said defendants their costs and attorney's fees as against those parties who fail to so remove their liens consistent with Utah Code Ann. § 38-11-107(3), and (b) dismissing with prejudice all claims filed in this action as against said defendants.

DATED this 24th day of June, 2002.

BY THE COURT:



Honorable Robert K. Hilder
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2002 a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW ON HOME OWNERS' MOTIONS FOR SUMMARY JUDGMENT was mailed, postage prepaid, to:

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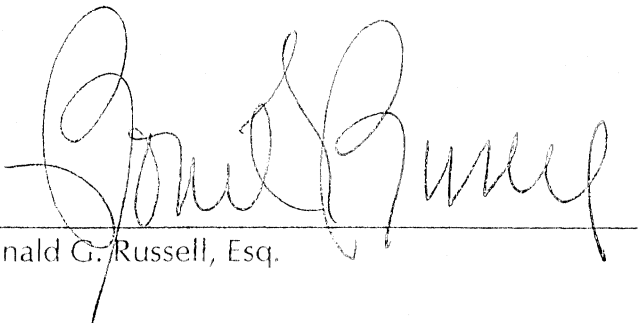
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Ronald G. Russell, Esq.

THIRD DISTRICT COURT - SUMMIT

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IN THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY

STATE OF UTAH, PARK CITY DEPARTMENT

LKL ASSOCIATES, INC.,)

Plaintiff,)

vs.)

ORDER AND JUDGMENT

JANET HEIDT; JAMES E. CARUSO;)

WILLIAM JACKSON; JILLIAN)

ANDERSON; ANN M. FARLEY; GUY G.)

BERRYESSA; FLAGSTAR BANK, FSB;)

APPROVED FINANCIAL CORP.; WELLS)

FARGO HOME MORTGAGE, INC.;)

ADVANCE MORTGAGE)

CORPORATION; SUPERIOR)

INSULATION CO.; WESTERN)

WHOLESALE FLOORING; ANDERSON)

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PLUMBING AND HEATING, INC.; JM)

MECHANICAL/SERVICE EXPERTS; AQUA)

BALANCE, INC.; ROB CHLARSON;)

DENNIS SKIBY; and JOHN DOES 1-20;)

Defendants.)

Civil No. 010500202

Judge Robert K. Hilder

0870

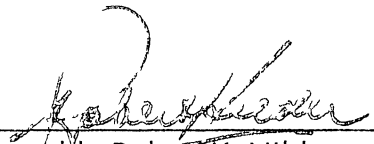
The court having entered its Findings of Fact and Conclusions of Law on Home Owners' Motions for Summary Judgment and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That the motions for summary judgment filed by defendants Janet Heidt, Guy G. Berryessa, Curt G. Hood, and Jennifer C. Smith are granted and judgment is hereby entered in favor of said defendants dismissing, with prejudice, all claims and causes of action asserted herein as against them.
2. That all parties to this action who have filed mechanic's liens against Unit 200, Unit 204, Unit 101, and/or Unit 103 of the Calgary Condominiums located in Park City, Summit County, Utah are required to remove said liens within 10 days of receiving notice of the entry of this Judgment and Order.
3. Defendants Janet Heidt, Guy G. Berryessa, Curt G. Hood, and Jennifer C. Smith shall be awarded their costs and attorney's fees as against those parties who fail to remove their liens as required by the foregoing paragraph 2, as may be established by affidavit.
4. The court hereby determines that there is no just reason for delay in that this judgment adjudicates all claims against defendants Janet Heidt, Guy G. Berryessa, Curt G. Hood, and Jennifer C. Smith and directs that this judgment be entered as a final judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

DATED this 24th day of June, 2002.

BY THE COURT:



Honorable Robert K. Hilder
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2002 a true and correct copy of the foregoing ORDER AND JUDGMENT was mailed, postage prepaid, to:

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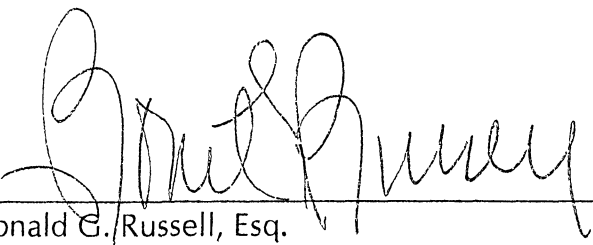
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Ronald G. Russell, Esq.

A handwritten signature, possibly reading "J. B. Smith", written in dark ink at the bottom center of the document.

STATE OF UTAH, PARK CITY DEPARTMENT

Civil No. 010500202
Judge Robert K. Hilder

This matter came before the court on the motions for summary judgment filed by certain Home Owner defendants including Ann M. Farley. The court heard initial arguments on the motions on September 24, 2001 and permitted additional briefing. The motions were heard again on oral argument on February 4, 2002.

The court, having reviewed the motions for summary judgment, affidavits, and supporting documentation as well as all opposing materials, having reviewed exhibits, having heard oral argument, having reviewed the relevant facts and law, and otherwise being fully advised in the premises, does hereby make and enter the following Findings of Fact and Conclusions of Law with respect to Home Owner Ann M. Farley:

FINDINGS OF FACT

1. Defendant Ann M. Farley is the owner of the condominium unit more particularly described as 5441 Bobsled Boulevard, No. 203, Park City, Utah.
2. Ann M. Farley entered into a written contract with Bear Hollow Village, L.L.C. to purchase her condominium unit and occupied the unit within 180 days after completion of construction thereof.
3. Bear Hollow Village, L.L.C. was a real estate developer within the meaning of 38-11-102(19) and 38-11-204(3)(a)(ii) Utah Code Annotated.
4. Ann M. Farley paid Bear Hollow Village, L.L.C. in full in accordance with the terms of the written contract.

5. The residence owned by Ann M. Farley is a separate unit located within the Calgary Condominium project. The Calgary Condominium project consists of two buildings. Each building contains ten separate condominium units.

Having entered the foregoing Findings of Fact, the court now makes and enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Under Utah Code Ann. § 38-11-102(20), "residence" is defined as "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 build housing."

2. This definition focuses on the character of the ownership of the residence. The court concludes 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. Consequently, the court concludes that the residential unit described in the foregoing Findings of Fact qualifies as a "residence" under Utah Code. Ann. § 38-11-102(20).

3. The court's conclusion that the condominium unit described in the foregoing Findings of Fact qualifies as a "residence" is mandated by the provisions of the Condominium Ownership Act, Utah Code Ann. § 57-8-1, et. seq., which provides, among other things, that

(a) Liens may be created against each separate condominium unit only in the manner applicable to "any other separate parcel of real property subject to individual ownership. . . ." Utah Code Ann. § 57-8-19(1);

(b) A condominium project is treated as a subdivision and the individual units are treated as separate tax parcels for taxation purposes. Id. §§ 57-8-27 and -35; and

(c) The Condominium Ownership Act controls over any conflict with other statutory provisions. Id. § 57-8-35.

4. The court further concludes that interpreting the definition of "residence" in Utah Code Ann. § 38-11-102(20) to include a condominium unit occupied as a single family residence as stated above is consistent with the purpose and policy of the Residence Lien Restriction and Lien Recovery Fund Act to protect innocent home owners who have paid the full purchase price for their homes from mechanic's liens. This policy applies equally to the purchaser of a single family home in a typical subdivision as it does to the purchaser of a single family home in a condominium project.


5. The court further concludes that such construction of the statutory definition of "residence" comports with the rule of construction that where two possible interpretations of a statute can be made, the constitutional construction should be adopted. Mountain States Telephone & Telegraph v. Payne, 782 P.2d 464 (Utah 1989). If the definition of

"residence" were to be construed as excluding condominium units, the statute may be unconstitutional under the equal protection provision of the Utah Constitution, Article I, § 24. The construction adopted by the court avoids this constitutional problem.

6. Defendant Ann M. Farley is entitled to the entry of judgment (a) ordering all parties in this action who have filed mechanic's liens against the residence of said defendant to remove said liens within 10 days after receiving notice of the entry of judgment and awarding said defendant her costs and attorney's fees as against those parties who fail to so remove their liens consistent with Utah Code Ann. § 38-11-107(3), and (b) dismissing with prejudice all claims filed in this action as against said defendant.

DATED this 2nd day of August, 2002.

BY THE COURT:



Honorable Robert K. Hilder
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2002 a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW ON HOME OWNERS' MOTIONS FOR SUMMARY JUDGMENT was mailed, postage prepaid, to:

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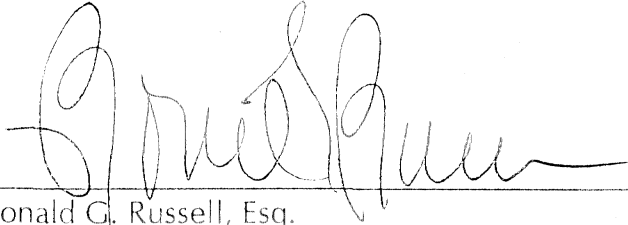
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IN THE THIRD JUDICIAL DISTRICT COURT FOR SUMMIT COUNTY

STATE OF UTAH, PARK CITY DEPARTMENT

LKL ASSOCIATES, INC.,)

Plaintiff,)

vs.)

ORDER AND JUDGMENT

JANET HEIDT; JAMES E. CARUSO;)

WILLIAM JACKSON; JILLIAN)

ANDERSON; ANN M. FARLEY; GUY G.)

BERRYESSA; FLAGSTAR BANK, FSB;)

APPROVED FINANCIAL CORP.; WELLS)

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MECHANICAL/SERVICE EXPERTS; AQUA)

BALANCE, INC.; ROB CHLARSON;)

DENNIS SKIBY; and JOHN DOES 1-20;)

Defendants.)

Civil No. 010500202
Judge Robert K. Hilder

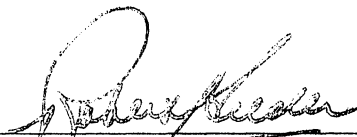
The court having entered its Findings of Fact and Conclusions of Law on Ann M. Farley's Motion for Summary Judgment and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That the motion for summary judgment filed by defendant Ann M. Farley is granted and judgment is hereby entered in favor of said defendant dismissing, with prejudice, all claims and causes of action asserted herein as against her.
2. That all parties to this action who have filed mechanic's liens against Unit 203 of the Calgary Condominiums located in Park City, Summit County, Utah are required to remove said liens within 10 days of receiving notice of the entry of this Order and Judgment.
3. Defendant Ann M. Farley shall be awarded her costs and attorney's fees as against those parties who fail to remove their liens as required by the foregoing paragraph 2, as may be established by affidavit.
4. The court hereby determines that there is no just reason for delay in that this judgment adjudicates all claims against defendant Ann M. Farley and directs that this judgment be entered as a final judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

DATED this 2nd day of August, 2002.

BY THE COURT:



Honorable Robert K. Hilder
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2002 a true and correct copy of the foregoing ORDER AND JUDGMENT was mailed, postage prepaid, to:

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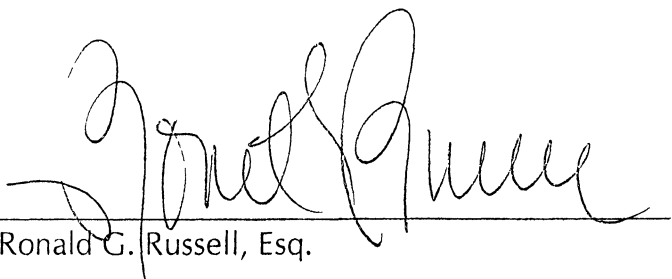
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