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Walter Wallis and Marleen Wallis v. H. E. Thomas et al : Appellants' Reply Brief

Utah Supreme Court

Ronald C. Barker; Attorney for Appellants-Defendants;
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IN THE SUPREME COURT OF THE STATE OF UTAH

WALTER WALLIS and MARLEEN WALLIS,

Plaintiffs - Respondents,

vs.

Case No. 17051

H. E. THOMAS, INTERNATIONAL EQUITIES, INC., NATIONAL FUND, INC. and AMERICAN SAVINGS & LOAN ASSOCIATION,

Defendants - Appellants.

WALTER WALLIS and MARLEEN WALLIS,

Plaintiffs - Respondents,

vs.

H. E. THOMAS, INTERNATIONAL EQUITIES, INC., NATIONAL FUND, INC., AMERICAN SAVINGS & LOAN ASSOCIATION, and GLEN JUSTICE MORTGAGE COMPANY, INC.,

Defendants - Appellants.

APPELLANTS' REPLY BRIEF

Appeal from a Judgment of the District Court of Salt Lake County
Honorable G. Hal Taylor, Judge

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APPELLANTS' REPLY BRIEF

NATURE OF THE CASE

Suit for alleged violation of Utah Uniform Land Sales Practices Act, 57-11-1, UCA, 1953, et seq. and for fraud.

DISPOSITION IN THE LOWER COURT

Judge Taylor dismissed fraud count without prejudice and awarded judgment for alleged violation of Land Sales Practices Act.

RELIEF SOUGHT ON APPEAL

Dismissal of plaintiffs' abortive cross-appeal; determination that 10 acres involved in suit is not "subdivided lands" within the meaning of the Act; and/or that the transaction was an "exempt" transaction; reversing plaintiff's judgment; or that failing for a new trial on plaintiffs' claims under the Utah Act; and for a determination that dismissal of the fraud claim was with prejudice and/or is res judicata.

STATEMENT OF FACTS

1. Plaintiffs admit that alleged fraud is not an issue in appeal.

Defendants incorporate by reference the statement of facts contained in their original brief herein. Plaintiffs' statement of facts consists primarily of copying the Court's entire Findings of Fact and Conclusions of Law as their statement of facts (P. 3-9) with few citations to the record, which plaintiffs attempt to justify by acknowledging that the statement in defendants' brief (P. 3, ¶ 1) to the effect that the alleged misrepresentations are unimportant (P. 7 of plaintiffs' brief) since the issue on appeal is whether or not the 10 acres involved in the transaction was "subdivided lands" or a "subdivision" within the meaning of the Act. Counsel for plaintiff then, summarily dismisses paragraphs #3 thru 7 of defendants' statement of facts (P. 4 thru 8 of appellants brief

to the effect that those paragraphs are "irrelevant," (P. 8). We agree that paragraphs #3 thru 6 of defendants' statement of facts are immaterial (see statement in P. #4, ¶ #2 of original brief) since the question of alleged fraud is immaterial to the issues involved in the appeal as are paragraphs #4, 5, 6 and 12 (pages 3 thru 6 of plaintiffs' brief [findings of fact]) and paragraph #3 of the conclusions (Page 8).

2. Issue on appeal is whether 10 acres was proposed to be subdivided or were exempt from Act.

As stated in defendants' brief (P. 4, ¶ 2) and plaintiffs' brief (P. 11), the primary controlling issue raised by defendants' appeal is whether the Iron County property conveyed to plaintiffs was an interest in "subdivided lands" or a "subdivision" as defined in the Act. This is so since defendants acknowledge that the 10 acres was not registered, that no prospectus was delivered and no receipt was obtained (P. 3, ¶ 1 of defendants' original brief); accordingly, if the 10 acres is a subdivision within the meaning of the Act, and is not exempt under the terms of the Act, plaintiff is entitled to recover. If the 10 acres is not a subdivision, or if the transaction was exempt, defendants are entitled to have the judgment vacated.

3. Insufficiency of plaintiffs' attempted cross-appeal.

Plaintiffs' attempt as a part of their brief (P. 10, 19-21) to cross-appeal from Judge Leary's order granting a new trial after a prior trial in this matter (a copy of his order is attached as exhibit "C" to plaintiffs' brief). However, plaintiffs failed to file a docketing statement (Rule 73A(e), URCP); failed to file a bond for costs (Rule 73(c), URCP) within the times required by the rules of at all, thereby failing to perfect

their appeal. See discussion on page 13, Point IV below.

For the same reasons plaintiffs' attempt to cross-appeal from Judge Taylor's dismissal of their fraud claims (Point II) and attempt to cross-appeal to seek award of attorney fees on appeal (Point III) f to comply with the minimum requirements for a cross-appeal and shou be disregarded and dismissed.

ARGUMENT

POINT I. TRANSACTION BETWEEN THE PARTIES DID NOT INVOLVE SUB-DIVIDED LANDS WITHIN MEANING OF UTAH UNIFORM LAND SALES PRACTICES ACT AND/OR TRANSACTION WAS EXEMPT UNDER THE ACT

4. Appeal assumes facts in the light most favorable to judgment.

Defendants incorporate by reference the argument found in pages 8 thru 18 of their original brief (Point I). In response to that argument counsel for defendants has quoted the Utah Act (P. 11) and has cited the general rule that the findings of the trial court will not be disturbed on appeal if they are based on "substantial, competent, admissible evidence" even though the appellate court might have arrived at a different conclusion had they been trying the case. We have no quarrel with that statement of the law. There is, however, no dispute as to relevant facts which would affect the result. All that is involved in the appeal i a determination by the Court as to whether under those undisputed facts the land in question is "subdivision" land within the meaning of the Act (which we deny), or if so, whether the transaction was exempt under the Act.

5. Summary of "facts" as claimed by plaintiffs.

Defendants admit that the 10 acres was never "subdivided", and rely on the provisions of 57-11-2(6), UCA, 1953, which defines "subdivision" and "subdivided lands" as "any land which is divided

or proposed to be divided for the purpose of disposition into ten or more units, . . . ," (P. 14 of plaintiffs' brief). If we construe the evidence in the light most favorable to plaintiffs' position (most of which evidence is disputed by plaintiffs) we find that the plaintiffs claim the evidence establishes the following (in support of their claim that the 10 acres was proposed to be divided within the meaning of the Act):

(a) That defendants allegedly delivered a subdivision map to plaintiffs (exhibit "D" to plaintiffs' brief - see P. 14 of plaintiffs' brief).

(b) That defendants allegedly pointed to certain lots on the map as the location of the 10 acres to be conveyed to plaintiffs and allegedly pointed out their proximity to other lots on the purported subdivision map. (P. 12 of plaintiffs' brief).

(c) That defendants allegedly "inferred" that the other lots shown on the map were being offered for "sale, exchange or other disposition." (P. 13 of plaintiffs' brief).

(d) That defendants allegedly represented that there were to be certain improvements on the purported subdivision. (P. 14 of plaintiffs' brief).

(e) That plaintiffs' 10 acres was conveyed by metes and bounds, and not by reference to lot numbers (Ex. 9-P - [Appendix V to defendants' original brief herein]).

(f) That international Equities, Inc. (IEI) acquired a 300 acre tract in 1973; exchanged 5 acres of the tract for office furniture (R. 673); transferred 5 acres to a related corporation without consideration (R. 673, 678-680); and transferred some oil and gas rights (against without

consideration) to another related corporation (R. 679, 681); that no other dispositions from the 300 acres except for the exchange of the 10 acres to plaintiff were made during the 7 years between the purchase of the 300 acres and the trial date. (See P. 7-8 of original brief by defendants herein).

(g) That in 1973, shortly after acquisition of the 300 acres, IEI had investigated the feasibility of subdividing the property and selling recreational lots with dirt roads and without utilities (R. 781, 782, 820), but had abandoned the project about February, 1974, (R. 686, 782, 790), cancelled its office lease, discharged its employ closed the business office, sold its furniture and deci to hold the land for investment purposes (R. 790, 686, 781-783).

(h) That the proposed subdivision map (see par. #2, P. 5 above was prepared in connection with the 1973 feasibility study (R. 683, 782, 806).

As indicated above (par. #1), there are no issues of fraud or misrepresentation involved in this appeal. Our only concern is whether or not the 10 acres conveyed to plaintiffs constitute land which was "proposed to be divided" within the meaning of 57-11-2(6), UCA, 1953, (The Utah Act).

6. Plaintiffs did not point to any evidence that the 10 acres was "proposed" to be "divided".

Plaintiffs have not pointed to any evidence in the record which purports to establish that at the time the 10 acres was conveyed to

plaintiffs there was an intent to subdivide or "proposal" to subdivide any part of the 300 acres for disposition into 10 or more units. Without such evidence the transaction is not covered by the Act. The Court erred in allowing recovery under the Act.

7. Actual "proposed" subdivision into 10 or more units required before Act applies.

Considering the arguments of plaintiffs (paragraphs #1 thru 7 above) as proven for purposes of testing the legal sufficiency of the evidence, still the facts are insufficient to establish that defendants "proposed" to divide the property into 10 or more units. Even if we were to assume that defendants misrepresented their intent to defendants with respect to subdividing the property (which we deny) the facts are still insufficient to permit recovery under the Act since the Act does not apply at all unless there is in fact an intent or "proposal" to subdivide into 10 or more units at the time of the transaction. Misrepresentation of intent might create a cause of action under some other theory, but does not create a cause of action under the Land Sales Practices Act, which requires an actual subdividing or an actual "proposed" subdivision into 10 or more units before the Act applies at all. See 57-11-2(6), UCA, 1953. (We deny that there was any misrepresentation. The Court dismissed plaintiffs' second claim which was based upon fraud - R. A7-9; R. A222, 234; R. A 254, ¶5).

8. Plaintiffs failed to prove that alleged "proposed" subdivision included 10 or more units.

In addition to proving that defendants "proposed" to subdivide the land, plaintiffs had the burden of proving that that "proposed" subdivision would result in division into 10 or more units. The only evidence pointed to by plaintiffs is the subdivision map which had been prepared in connection with the abandoned investigation

into the feasibility of subdivision (commenced in 1973 and abandon in February, 1974, - see ¶ 5 & 6, P. 5-6 above) and the fact that there had been three other transfers from the 300 acre tract, (onl one of which was for profit). See discussion on P. 14 of plaintif brief and P. 7, ¶ 7 of defendants' original brief herein. Exchang of one parcel for furniture at a remote time does not tend to prov an intent or "proposal" to subdivide, not do the other two transfe without consideration to related corporations (see ¶ 5(f), P. 5 ab

9. Transfer of 10 acres to plaintiffs was an exempt "single" or "isolated" transaction.

Plaintiffs next attempt to escape the application of the exemp tions in the Act. Sec. 57-11-4(1)(a), UCA, 1953, exempts isolated transactions dispositions by a "purchaser of subdivided lands for his own account in a single or isolated transaction." (See discussi on P. 15 of plaintiffs' brief). Plaintiffs simply assert that this exemption does not apply to a "subdivider or propoter of subdivided lands," which statement begs the question. IEI purchased the 300 acres in a single isolated transaction (finding of fact #7). Disposition of the 10 acres to plaintiffs was a single or isolated transaction which is remote in time and different in type from the furniture transaction (R. 673, Ex. 7-P). The other two transfers were not "for gain or profit" within the requirement of 57-11-2(2), UCA, 1953, [transfers to related corporations without consideration see ¶ 5, P. 5 above] and accordingly could not affect the "single o isolated transaction" nature of the transaction with plaintiffs. Tl transaction with plaintiffs is exempt. See discussion on page 18 of defendants' original brief herein.

10. Plaintiffs' acquisition of the 10 acres to construct buildings for resale was also "exempt" under Utah Act.

Plaintiffs argue (P. 16) that their acquisition of the 10 acres was not solely for purposes of constructing buildings thereon for resale, and accordingly that the exemption provided by 57-11-4(c), UCA, 1953, does not apply. That statute does not use the term "solely". Plaintiffs argument is accordingly without merit. The transaction is exempt under that statute. See P. 18, ¶ 18(d) of defendants' original brief herein.

11. Refer to Point I of defendants' original brief.

The Court is referred to defendants' original brief herein and in particular to Point I thereof.

POINT II. PLAINTIFFS' ATTEMPT TO CROSS-APPEAL FROM DISMISSAL OF THEIR FRAUD CLAIM IS UNMERITORIOUS AND IS NOT BEFORE THE COURT.

12. Judge Taylor properly dismissed plaintiffs' fraud claims.

The trial Court dismissed the fraud count (second cause of action) as discussed in Point II of plaintiffs' brief and in Point II of defendants' brief (P. 18). The Court is referred to Point II of defendants' original brief.

13. Plaintiffs improperly seek affirmative relief without a cross-appeal.

Although plaintiffs do not expressly so state under Point II, they are in essence cross-appealing from the decision of Judge Taylor dismissing their fraud claims and are asking that the Court, in the alternative, reverse Judge Taylor and find that they are entitled to recover on a fraud theory based upon a general statement (not referenced to the record as required by Rule 75 (P)(2), URCP) that "the Court's findings sufficiently support a finding in fraud." Plaintiffs' argument in Point II is insufficient to permit this Court to reverse the decision of Judge Taylor, particularly where, as here, there has been no cross-appeal from Judge Taylor's judgment by plaintiffs. The

only cross-appeal contained in the brief is from Judge Leary's orde granting a new trial (P. 10 of plaintiffs' brief). There is no statement in their brief that plaintiffs cross-appeal from Judge Taylor's judgment. Accordingly, this Court is without jurisdiction to consider the argument raised by defendants in Point II. Even if the statements in Point II were to be construed as a cross-appeal (which it is not), the Court still lacks jurisdiction to entertain the cross-appeal and/or is required to dismiss the cross-appeal for failure of the plaintiffs to comply with the rules with respect to perfecting a cross-appeal. The same deficiencies exist with respect to a purported cross-appeal from Judge Taylor's dismissal o the second cause of action as exists with respect to the abortive attempted cross-appeal from the order of Judge Leary which granted new trial (see discussion in Point IV, P. 13 below), including plaintiffs' (1) failure to file a docketing statement as required by Rule 73 A URCP [see discussion under Point IV, P. 13 below]; (2) failure to file a statement of points as required by Rule 74(b), URCP [see discussion under Point IV, P. 13 below]; (3) failure to file a bond for costs on appeal as required by Rule 73(c), URCP, [see discussion under Point IV, P. 15 below].

14. Plaintiffs cannot attack the judgment by asking to enlarge thei rights or diminish the rights of defendants without cross-appealing.

Plaintiffs could, without filing a cross-appeal, defend their judgment on any ground consistent with the record, but cannot, howe attack Judge Taylor's judgment, dismissing their fraud claim, so as either to enlarge their own rights thereunder or to lessen the right of the defendants, without filing a cross-appeal. Utah Ass'n of Cre Men v. Board of Education, 54 U. 135, 197 P. 975; Appellate Advoca Handbook for the Utah Supreme Court, P. 29, footnote #1 and cases

there cited. Since plaintiffs failed to perfect a cross-appeal from the judgment of Judge Taylor dismissing their fraud claim that matter is not before the Court and plaintiffs' arguments in Points II (fraud claim), III (attorney fees) and IV (Judge Leary's order granting a new trial) should be disregarded and denied since they are not properly before the Court.

POINT III. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEY FEES IN CONNECTION WITH THIS APPEAL.

15. Award of attorney fees for appeal is appropriate in certain instances.

Plaintiffs rely on Management Services Corp. v. Development Associates, 617 P. 2d 406, in their argument that they are entitled to recover attorney fees in connection with their appeal. Their argument would be sound if we were dealing with a contractural provision such as was involved in that case where the contract provision for payment of reasonable attorney's fees by the defaulting party included fees incurred in enforcing the agreement or in:

> "pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise."

The Court properly held that the language of the contract was broad enough to include payment of attorney fees on appeal.

16. This Court should exercise its discretion and deny attorney fees to both parties for this appeal.

The Utah Act (57-11-17(c)(2), UCA, 1953) simply provides for recovery of "reasonable attorneys' fees." Nothing is said in the statute about attorney fees on appeal. Since there are boni-fide issues in this appeal, since the plaintiffs have filed several abortive attempted cross-appeals, in their brief which have required a response by the defendants, and since the appeal did not result from a "patently erroneous order" as was the situation in Bates v.

Bates, 560 P. 2d 706, the Court should exercise its discretion to deny attorney fees to plaintiffs.

The matter of awarding attorney fees in connection with this appeal is not properly before the Court and the request should be denied for that reason, in addition to exercise of discretion as mentioned on page #11 above by reason of the cross-appeal by plaintiffs.

17. Request for award of attorney fees is abortive attempted cross appeal.

Plaintiffs' request in their Point III for an order awarding attorney fees to them in connection with the appeal is an attempted cross-appeal since the effect is to seek to enlarge the rights of plaintiffs and to diminish the rights of defendants. See paragraph #14 above and discussion, argument and citations to Utah cases unde point IV, Page 15 below. Before plaintiffs could properly seek the relief requested under Point III (award of attorney fees on appeal) it would be necessary for them to perfect a cross-appeal to clothe the Supreme Court with power to adjudicate the attorney fee issue. This they have not done. Plaintiffs have failed to file or to perfect a cross-appeal by reason of failure to (1) file a cross-appeal in the manner required by Rule 47(b), URCP: (2) failure to file a docketing statement as required by Rule 73A, URP [see discussion under Point IV, P. 13 below]; (3) failure to file a statement of points as required by Rule 74(b), URCP [see discussion under Point IV, P. 13 below]; (4) failure to file a bond for costs on appeal as required by Rule 73(c), URCP [see discussion under Point IV, P. 15 below]. See also discussion under Point II, par. #14 above.

POINT IV. PLAINTIFFS' ABORTIVE CROSS-APPEAL IS IMPROPER AND SHOULD BE DISMISSED.

18. Plaintiffs failed to follow required procedure for a cross-appeal.

Plaintiffs attempt as a part of their reply brief to file a "cross-appeal" from the order of Judge Leary granting a new trial (R A184 - Exhibit "C" to plaintiffs' brief) by a simple statement in their brief (P. 10) to the effect that they "cross-appeal from the Court's Order Granting a New Trial," followed by a short statement of reasons (in conclusionary form on P. 10) and a brief argument as a part of point IV (P. 19-21).

19. Procedural steps required for a cross-appeal.

Plaintiffs' attempt to cross-appeal is ineffective for the following reasons:

(a) Plaintiffs failed to file a docketing statement concerning the points intended to be raised by their cross-appeal within the time required by Rule 73A, URCP, or at all. Rule 73A(e), URCP, reads in part as follows:

> "Failure to comply (with rule requiring filing of docketing statement) may result in dismissal of the appeal . . ." (emphasis added)

(b) Plaintiffs failed to file a statement of points within the time required by Rule 74(b), URCP, or at all. Rule 74(b), URCP, reads in part as follows:

> "CROSS APPEALS. Where any one or more parties have filed a notice of appeal . . . other parties may . . . cross appeal . . . without filing a notice of appeal; provided, however, such party . . . shall file a statement of the points on which he intends to rely on such cross appeal within the time required and as required by subdivision (d) of Rule 75." (emphasis added)

Rule 75(d), URCP, (referred to above) reads in part as follows:

"STATEMENT OF POINTS. No assignment of errors is

necessary. If the appellant does not designate for inclusion the complete record and all the proceedir and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal."

If the respondent desires to cross-appeal, . . . the respondent shall, within 10 days after the serv ing and filing of appellant's designation, . . . , serve and file a statement of respondent's points, either by way of such cross-appeal or for the pur- pose of having considered other or additional matte than those raised by appellant." (emphasis added)

20. Attempted cross-appeal is a nullity for failure to comply with procedural rules.

Under the above-quoted rules it is mandatory that a party seeking to cross-appeal file a statement of points upon which he intends to rely in the cross-appeal, which designation must be file within 10 days after the appellant has filed his designation of record on appeal as required by Rule 74, URCP. Since the designati of record on appeal is due within 10 days after filing of the notic of appeal, the statement of points to be relied upon in the propose cross-appeal must be filed within 20 days after the filing of the appeal. See Rules 75(a) and (d), URCP. The above-quoted rule uses the word "shall" in designating the time within which that designat of points must be filed, thereby making such filing mandatory. Hav ing failed to comply with the requirements of the rules to perfect an appeal the abortive attempted cross-appeal contained in plaintif brief should be disregarded and dismissed. Under former law the service of a notice of cross-appeal and assignment of errors in sup port thereof was jurisdictional and had to be done on a timely basi to clothe the Court with jurisdiction to consider the appeal. See Christiansen v. Los Angeles & S.L.R. Co., 77 U. 85, 291 P. 926; Buttrey v. Guaranteed Securities Co., 78 U. 39, 300 P. 1040. There is no logical reason why the same rule should not apply to

attempted cross-appeals under Rule 74(b), URCP, where the litigant has failed, as in our case, to comply with the time and procedural requirements of that rule for perfecting a cross-appeal.

(c) Plaintiffs failed to file a bond for costs on appeal as required by Rule 73(c), URCP. In Buttrey v. Guaranteed Securities Co., 78 U. 39, 300 P. 1040 the Utah Supreme Court stated in part as follows (at page 1043 of P.):

> "It is claimed . . . that no undertaking is required of him because his is a cross-appeal, and the statutes do not apply to such appeals. But the statutes make no exceptions in favor of cross-appeals; by the plain import of their terms they apply to all appeals . . . . But whatever name may be given to them, they are still appeals, and nothing else so far as the statutes are concerned." (emphasis added).

The Buttrey, supra, case has not been overruled, and was cited as authority in the Appellate Advocacy Handbook for the Utah Supreme Court, P. 29. In the Buttry, supra, case the attempted cross-appeal was dismissed for failure to file an undertaking for costs. See also Johnston v. Geary, 33 P. 2d 757, 84 U. 47.

21. The Court lacks jurisdiction to consider the attempted cross-appeal.

Having failed to perfect their cross-appeal in the manner required by law the plaintiffs cannot now request the relief asserted in Point IV of their brief (P. 19-21) [asking that the order of Judge Leary granting a new trial be reversed and his original judgment be reinstated]. The Court is without jurisdiction to grant that relief since there has been no valid appeal filed from that order. (See discussion in par. #19 and 20 above). A litigant may not attack the judgment, either to enlarge his own rights thereunder or to lessen the rights of his adversary, unless he files and perfects a valid cross-appeal, which plaintiffs have failed to do. See San

Pedro L.A. & S.L.R. Co. v. Board of Education, 35 U. 13, 99 P. 26;
McCornick & Co. v. National Copper Bank, 49 U. 296, 163 P. 1097;
Big Cottonwood Tanner Ditch Co. v. Shurtliff, 49 U. 569, 164 P. 85(
Utah Ass'n of Credit Men v. Board of Education, 54 U. 135, 179 P. (
The foregoing cases were also all cited as current authority for this proposition in the Appellate Advocacy Handbook for the Utah Supreme Court, P. 29.

POINT V. THE UTAH UNIFORM LAND SALES PRACTICE ACT SHOULD NOT BE EXPANDED TO INCLUDE SALES OF RAW LAND WHICH IS NOT THEN "PROPOSED TO BE DIVIDED," TO AVOID UNNECESSARY RESTRAINT ON THE SALE OF RAW LAND IN UTAH.

The construction placed on the Utah Land Sales Practice Act by the District Court would cause an undue restraint on sale of undeveloped land in Utah since any buyer of undeveloped land could then claim that his isolated transaction was within the scope of th Act. Application of the Act should be limited to the terms and purpose should be limited to situations where there is an actual subdivision or an actual proposal to subdivide into 10 or more unit Utah land transactions should not be encumbered by the restrictive provisions of the Act until sufficient acts have been done toward subdividing so that it is clear that a subdivision is in fact "proposed" within the meaning of the act. Usual claims for breach of contract, fraud, etc. are sufficient to redress appropriate claims involving undeveloped land without injecting the specter of a suit under the Utah Act into every sale of undeveloped land. The interests of the public will be adequately protected by a more restrictive construction of the statute, without undue burden on land transactions. In Bartholomew v. Northampton Natl. Bank, et al., 584 F2d 1288 (third Cir. 1978) the Court rejected a claim that the bank was an "indirect seller" under the similar Federal Interstate

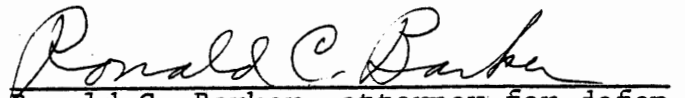
Land Sales Act, 15 USCS § 1701, et seq. The tendency has been to limit the scope of similar statutes to the sale of subdivisions, not to expend them to isolated sales of raw ground.

SUMMARY AND CONCLUSION

As demonstrated in defendants' original brief herein, the defendants did not "divide" or "propose to divide" their 300 acre tract into 10 or more units at the time of conveyance of of 10 acres to plaintiffs and accordingly the Utah Land Sales Practice Act under which the Court awarded judgment is not applicable and the judgment should be reversed. Further, the transaction was exempt as a "single or isolated transaction" and by reason of plaintiffs' acquisition of the 10 acres for purposes of constructing buildings thereon for resale, and under other exemptions discussed herein. The requests by plaintiffs for affirmative relief from the Supreme Court without perfecting cross-appeals (Points II, III and IV) must be denied since those claims are not properly before the Court and the Court is accordingly without jurisdiction to grant such relief.

The judgment under the Utah Land Sales Practices Act should be reversed.

Dated the 2nd day of February, 1981.



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I hereby certify that I caused a copy of the foregoing reply brief to be mailed to Wayne G. Petty, 600 Deseret Plaza, Salt Lake City, Utah, the 3rd day of February, 1981.