

1989

Gunda M. Galloway and Laurence Galloway v. Rowland H. Merrill, Jr. : Brief of Respondent

Utah Court of Appeals

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Jax H. Pettey; Attorney for Respondent.

Vincent C. Rampton; Watkiss & Saperstein; Attorney for Defendant.

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DOCKET NO. 89-644 CA OF THE STATE OF UTAH

GUNDA M. GALLOWAY and
LAURENCE GALLOWAY,

Plaintiffs,

vs.

ROWLAND H. MERRILL, JR.;
GUARDIAN TITLE COMPANY OF UTAH,
Trustee; BRIAN STEFFENSEN,
Attorney at Law; LAND
ACQUISITION AND DEVELOPMENT
COMPANY; JOSEPH R. BRUNETTI;
ROBERT L. LORD, Attorney at
Law; ROBERT B. BROWN, Attorney
at Law; APOSHIAN, SNIDEMAN &
ASSOCIATES, INC.; NORTH TEMPLE
LTD.; PLASTER DE'COR, INC.;
MARCIA S. MERRILL; THE STATE
TAX COMMISSION OF THE STATE OF
UTAH; ROBERT B. BROWN; AND JOHN
DOES 1-10,

Defendants and
Appellant.

Court of Appeals
No. 890644-CA

Priority Classification
14b

BRIEF OF RESPONDENT

Appeal from the Third Judicial District Court
for Salt Lake County, State of Utah
Honorable Scott Daniels, Judge

(Increase In Redemption Amount of Real Property
Pursuant to Rule 69(f), URCP)

VINCENT C. RAMPTON (2684)
WATKISS & SAPERSTEIN
310 South Main, Suite 1200
Salt Lake City, Utah 84101
Telephone: (801) 363-3300

Attorney for Defendant/
Appellant Marcia S. Merrill

JAX H. PETTEY (2594)
180 South 300 West, Suite 313
Salt Lake City, Utah 84101
Telephone: (801) 532-6721

Attorney for Respondent
Gloria Ruiz dba CVF Land
Investment

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TABLE OF CONTENTS

	PAGE
PARTIES TO THE APPEAL.....	1
JURISDICTIONAL STATEMENT.....	1
NATURE OF THE APPEAL.....	1
STATEMENT OF ISSUES.....	1
DETERMINATIVE PROVISIONS OF LAW.....	2
STATEMENT OF THE CASE.....	2
a. Nature of the Case.....	2
b. Course of Proceedings.....	3
c. Disposition at District Court.....	3
d. Statement of Facts.....	4
SUMMARY OF ARGUMENT.....	8
ARGUMENT.....	9
POINT I.....	9
THE TRIAL COURT CORRECTLY HELD THAT AMOUNTS EXPENDED BY GLORIA RUIZ dba CVF LAND INVESTMENT FOR DEMOLITION AND ASSOCIATED FILLING AND REGRADING OF THE PROPERTY DURING THE REDEMPTION PERIOD SHOULD BE INCLUDED IN THE AMOUNT TO BE PAID FOR REDEMPTION UNDER RULE 69(f)(3) UTAH RULES OF CIVIL PROCEDURE IN THAT THE WORK DONE CONSTITUTED "NECESSARY MAINTENANCE, UPKEEP OR REPAIR OF IMPROVEMENTS" AND THE AMOUNT EXPENDED FOR THE WORK WAS A "REASONABLE SUM".	
POINT II.....	15
MERRILL CANNOT RAISE NEW CLAIMS, ARGUMENTS, OR DEFENSES FOR THE FIRST TIME ON APPEAL.	
CONCLUSION.....	19

TABLE OF AUTHORITIES

PAGE

CASES CITED

<u>Sedlak v. Duda</u> , 144 Neb. 567, 13 N.W.2d 892 (1944).....	15
<u>E. G. Franklin Financial v. New Empire Developement Co.</u> , 659 P.2d 1040 (Utah 1983).....	15
<u>Bangerter v. Poulton</u> , 663 P.2d 100 (Utah 1983).....	15
<u>Wallace v. Beasley</u> , 439 So.2d 133 (Ala. 1983).....	16
<u>Ladd v. Parmer</u> , 178 So.2d 829 (Ala. 1965).....	16
<u>Baetjer v. Garzot</u> , 124 F.2d 925 (1942).....	16
<u>Hidden Meadows Dev. Co. v. Mills</u> , 590 P.2d 1244 (Utah 1979)...	18

STATUTES AND ORDINANCES

78-2a-3(2)(j), Utah Code Ann. (1953, as amended).....	1
78-34-11, Utah Code Ann. (1953, as amended).....	17
57-6-1 et seq., Utah Code Ann. (1953, as amended).....	18
18.65.059, Salt Lake City Ordinances.....	12
Rule 4A, Rules of the Utah Court of Appeals.....	1
Rule 69(f)(3).....	Passim

OTHER AUTHORITIES

41 Am. Jur. 2d, <u>Improvements</u> , §18.....	15
50 C.J.S., <u>Judicial Sales</u> , §37(e)(2).....	16
80 ALR2d 1317, <u>Mortgage Redemption-Tender</u>	16

PARTIES TO THE APPEAL

Respondent Gloria Ruiz was the purchaser at a Sheriff's sale conducted February 28, 1989, of the real property located at 145 Redwood Road, Salt Lake City, Utah ("the Galloway property"). She made the purchase under her dba CVF Land Investment. She was not a party to the original foreclosure proceeding. For the purposes of this brief, respondent shall be called "CVF Land Investment".

Defendant/Appellant Marcia S. Merrill was named as a defendant in the original foreclosure action and is seeking to redeem the Galloway property. For the purposes of this brief, appellant shall be called "Merrill".

JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction of this appeal pursuant to §78-2a-3(2)(j), Utah Code Ann. (1953, as amended), pursuant to order by the Utah Supreme Court dated October 31, 1989 in Supreme Court proceeding no. 890409, and also pursuant to Rule 4A, Rules of the Utah Court of Appeals.

NATURE OF THE APPEAL

This matter was heard before the Third Judicial District Court of Salt Lake County and an order was entered declaring that the amount required to be paid to CVF Land Investment pursuant to Rule 69(f)(3) URCP to redeem the Galloway property was \$45,186.22. CVF Land Investment seeks to have the judgment of the trial court affirmed.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the trial court correctly found that amounts expended by CVF Land Investment for demolition and associated

filling and grading of the Galloway property during the redemption period constituted a "reasonable sum" expended for "necessary maintenance, upkeep, or repairs of any improvements upon the property" under Rule 69(f)(3) URCP, and were therefore to be added to the redemption amount.

2. Whether Merrill can raise new claims, arguments or defenses for the first time on appeal.

DETERMINATIVE PROVISIONS OF LAW

1. Rule 69(f)(3) URCP is determinative of the question of whether the amount expended by purchaser CVF Land Investment for demolition and associated filling and regrading of the Galloway property during the redemption period pursuant to an order issued by Salt Lake City may be added to the amount necessary to be paid for redemption. A copy of Rule 69(f)(3) URCP is included in the Addendum as Attachment 1.

STATEMENT OF THE CASE

a. Nature of the Case.

This appeal concerns the redemption of a parcel of real property sold at a judicial sale to satisfy a judgment entered in favor of Gunda and Laurence Galloway against Rowland H. Merrill, former husband of the respondent Marcia S. Merrill. CVF Land Investment was the successful bidder at the Sheriff's sale of the Galloway property conducted February 28, 1989 and upon payment of the purchase price obtained a real estate certificate of sale from the Salt Lake County Sheriff.

At the end of the six month redemption period, Merrill filed a Notice of Intent to Redeem with the Salt Lake County Sheriff and served a copy of the same on respondent CVF Land Investment. Upon receipt of said notice, CVF Land Investment filed with the Salt Lake County Sheriff an affidavit stating that she had expended \$500.20 for delinquent 1988 general property taxes and \$12,905.00 for demolition and associated filling and grading pursuant to an order of Salt Lake City and that said sums should be included in the redemption amount. Merrill disputed the inclusion of said amounts in the redemption price.

b. Course of Proceedings.

Merrill deposited the undisputed portion of the redemption amount with the court and filed a petition pursuant to Rule 69(f), URCP, for a court order determining the proper redemption amount for the Galloway property. A hearing on Merrill's petition was held September 13, 1989.

c. Disposition at District Court.

Following the taking of evidence, the district court entered its order declaring the total amount necessary for redemption of the Galloway property pursuant to Rule 69(f)(3) URCP to be \$45,186.22, and ordering Merrill, as redemtor, to pay the said amount within the time prescribed by statute, or forfeit her redemption rights. The court's ruling was reflected in its findings of fact and conclusions of law and written order dated September 15, 1989. A copy of of the court's Findings of Fact and Conclusions of Law is included in the Addendum as Attachment 2. A

9. Upon receiving the Notice and Order from Salt Lake City, CVF Land Investment delivered said document to her real estate consultant, Jay Hansen, and turned the entire matter over to him. (Tr. at pp. 7 and 11). Mr. Hansen, a real estate broker with over 39 years of experience in both commercial and residential properties, had been involved in helping CVF Land Development with the purchase of the Galloway property. (Tr. at p. 15).

10. Mr. Hansen then went to the Department of Building and Housing Services of Salt Lake City and met with Mr. Cupit, who had signed the Notice and Order, to discuss the requirements of the same. (Tr. at pp. 16-18).

11. After meeting with Mr. Cupit and getting his point of view and attitude concerning the Galloway property, Mr. Hansen solicited bids for the demolition, cleanup and grading of the Galloway property from three contractors. (Tr. at pp. 18-19).

12. Mr. Hansen discussed the bids with CVF Land Investment and then selected the lowest bid which had been submitted by Cliff Johnson Excavating Company. (Tr. at pp. 19).

13. Mr. Hansen instructed Cliff Johnson to use fill that would comply with the Order of the City. (Tr. at pp. 20 & 39).

14. The work was completed quickly and to the satisfaction of both Mr. Hansen and CVF Land Investment. Cliff Johnson submitted his billing for the demolition, cleanup, fill and grading, which amount was consistent with his bid, and was paid for the same by check. (Tr. at pp. 8 & 20, and Exhibits 2 and 8).

15. In conjunction with the demolition, Mr. Hansen also filed an appeal with Salt Lake City requesting a waiver of the

landscaping requirement of sodding and installation of sprinkler systems normally imposed by the city for demolition work, which appeal was granted. (Tr. at pp. 20-21 and Exhibits 4). A copy of the letter granting the appeal is included in the addenda hereto as Attachment 6.

16. Except for the work done in complying with the order of Salt Lake City, CVF Land Investment performed no other work of any kind on the Galloway property during the remaining five months of the redemption period. (Tr. at pp. 9-10).

17. On August 25, 1989, Merrill filed a notice of intent to redeem and was informed by the Salt Lake County Sheriff that CVF Land Investment claimed the additional amounts paid for the 1988 taxes of \$500.00 and the demolition, cleanup, and associated filling and grading of \$12,905.00.

18. Merrill thereupon deposited with the Court the sum of \$31,127.41 and petitioned for a hearing to determine the redemption amount to be paid. (R. 206-211).

19. Hearing on Merrill's petition took place on September 13, 1989 at 2:30 p.m. (R. 269). A copy of the transcript is included in the Addendum as Attachment 7.

20. At the commencement of the hearing, the parties stipulated that the tax amount of \$500.20 paid by CVF Land Investment for the delinquent 1988 taxes should be included in the redemption amount. (Tr. at pp. 2-3).

21. After considering the evidence presented at the hearing, the court entered its findings of fact and conclusions of law, finding that the \$12,905.00 paid by CVF Land Investment for

demolition and associated filling and regrading pursuant to the order issued by Salt Lake City Department of Building and Housing Services was a reasonable sum expended for necessary improvements upon the property under Rule 69(f)(3) URCP and ordered that said amount should be included in the amount to be paid for redemption. (Findings of Fact nos. 8, 9, & 10, R. 230-234).

22. The court then entered its written order on September 15, 1989, ordering that the total amount necessary for redemption of the Galloway property was \$45,186.22. (R. 235).

SUMMARY OF ARGUMENT

1. The trial court correctly found that the \$12,905.00 expended by CVF Land Investment for demolition and associated cleanup, filling and regrading of the Galloway property during the redemption period was a reasonable sum expended for necessary maintenance, upkeep or repairs upon the property within the meaning of Rule 69(f)(3) URCP and that said sum should be included in the amount to be paid for redemption. The demolition, cleanup, filling and grading work done on the Galloway property was necessary maintenance, upkeep and repair of improvements as it was done only because of the order of Salt Lake City and met the requirements under said order, rather than having been the voluntary commencement of commercial development. The amount paid to Cliff Johnson Excavating Co. for the demolition, cleanup, filling and grading work done on the Galloway property was a reasonable sum for the work and materials furnished in that it complied with the requirements of Salt Lake City and was the

lowest of three bids submitted for said work.

2. Merrill cannot raise new claims, arguments or defenses for the first time on appeal. Merrill argues for the first time that CVF Land Investment cannot include amounts expended for "improvements" placed on the property during the redemption because CVF Land Investment had knowlege of existing redemption rights when the improvements were made. Merrill also argues that the decision of the trial court was based almost solely on a theory that the improvements made by CVF Land Investment would "benefit" Merrill if redemption occured, and that the ruling should be reversed because of the "benefit" issue does not apply. These arguments were not made at the hearing of this matter, and Merrill should not be entitled to present these arguments for the first time on appeal.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY HELD THAT AMOUNTS EXPENDED BY GLORIA RUIZ dba CVF LAND INVESTMENT FOR DEMOLITION AND ASSOCIATED FILLING AND REGRADING OF THE PROPERTY DURING THE REDEMPTION PERIOD SHOULD BE INCLUDED IN THE AMOUNT TO BE PAID FOR REDEMPTION UNDER RULE 69(f)(3) UTAH RULES OF CIVIL PROCEDURE IN THAT THE WORK DONE CONSTITUTED "NECESSARY MAINTENANCE, UPKEEP OR REPAIR OF IMPROVEMENTS" AND THE AMOUNT EXPENDED FOR THE WORK WAS A "REASONABLE SUM".

A party seeking to redeem real property from a purchaser of said property at a Sheriff's Sale may do so by following the requirements of Rule 69(f)(3) of the Utah Rules of Civil Procedure which provides in part as follows:

The property may be redeemed from the purchaser within six months after the sale on paying the

amount of his purchase with 6 percent thereon in addition, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance and necessary maintenance, upkeep or repair of any improvements upon the property which the purchaser may have paid thereon after the purchase, with interest on such amounts.

The trial court found that the expenditure made by respondent CVF Land Investment for the demolition of then existing structures and associated filling and regrading of the Galloway property pursuant to the order of Salt Lake City Department of Housing Services in the amount of \$12,905.00 was a reasonable sum expended for necessary improvements upon the property, and that under Rule 69(f)(3) URCP said amount should be included in the amount to be paid for redemption. (Findings of Fact Nos. 8, 9 and 10, R. 232). Merrill did not object to the findings of fact, but she now argues that there was not sufficient evidence to support said findings.

At the hearing, the trial court correctly determined that the question before it was whether the expenditure for demolition and associated filling and regrading of the Galloway property was a necessary expenditure and whether it was a reasonable sum under the statute. (Tr. at pp. 40-42). These are both questions of fact to be determined by the trier of fact.

Merrill has improperly characterized the demolition, filling and grading work performed by CVF Land Investment as "commercial developement" rather than "necessary maintenance". This is refuted by the testimony of Gloria Ruiz which was that although she purchased the Galloway property at the Sheriff's sale with the intent to eventually build on the premises, she did understand that it would not be hers until the expiration of the six month

redemption period, and that therefore the only work performed on the property was that required under the order served on her by Salt Lake City. (Tr. at pp. 9-10). The work was done not with the purpose and intent of CVF Land Investment to improve the property, but rather simply to comply with the order of demolition served upon her by Salt Lake City. Had the work been done as a part of an ongoing plan for commercial development, it is reasonable to expect that additional work would have been done during the following five months.

The wording "necessary maintenance, upkeep and repairs" contained in Rule 69(f)(3) URCP implies that the purchaser should keep the "improvements upon the property" in a condition that would not contribute to waste of the property and a lessening of its value during the redemption period (waste being prohibited under the same Rule). However, where a property such as the Galloway property has fallen into such a state as to have become "dangerous and a public nuisance", to the point that demolition has been ordered by the city, then the demolition of said property and its associated cleanup, filling and grading may be clearly classified as fitting into the category "necessary maintenance, upkeep and repair of the improvements as intended under the Rule.

The work done by CVF Land Investment was not a voluntary act undertaken to make improvements on the property and commence commercial development and construction, but rather the rational and reasonable reaction of a good citizen to the demolition order. CVF Land Investment had been served with a lawful order by Salt Lake City, had met with the department official who had issued the

order to determine what was required, and then in good faith complied with the order.

Merrill contends that more work was done by CVF Land Investment to comply with the order of Salt Lake City than was "necessary" under Salt Lake City Ordinance 18.65.059. Although this ordinance addresses the minimum requirements for demolition of the existing structures, it implies by its own language that more may be required than just "filling in the hole left after removing the house" wherein it states that such fill work must be done "as approved by the building official". In addition to the demolition work, the order issued by Salt Lake City also required that the all items listed on the Notice of deficiencies attached to it be corrected, some of which would not have been taken care of by simply demolishing the structures and filling in the resulting depression. Based upon the deplorable condition of the property as portrayed in the order, it is not unreasonable to assume that the city would require that as part of the demolition, the property be brought up to grade with surrounding properties to eliminate both the problem of weeds and it being a receptacle for garbage and trash.

The testimony of Jay Hansen was that upon receiving the order of demolition from Gloria Ruiz, he met with Mr. Cupit of Salt Lake City, the person who had issued the order, to determine the requirements of the city. That based upon his understanding of the requirements imposed by Salt Lake City under the order, he then obtained three bids for the demolition of the existing structures, removal of trash, and filling of the lot depression

with proper fill as specified by the City to bring it up to grade with the surrounding properties. He further testified that this was not done because of his personal desire to have the lot brought up to grade, but rather because it was his understanding that this is what the City required. (Tr. at pp. 20 & 39).

If CVF Land Investment had ignored the order of the city, it would have not only faced possible criminal action but in addition would have faced possible civil action had a child, vagrant, or other trespasser been injured on the property.

The work done by CVF Land Development was not commercial development but rather necessary maintenance, upkeep or repair. The evidence before the trial court showed that the work done by CVF Land Investment was not done voluntarily but done only after having been served with the order of Salt Lake City early on in the redemption period; that CVF Land Investment acted reasonably by then meeting with the Department of Building and Housing Services to determine what needed to be done to comply with the order; and also acted reasonably by then soliciting bids for the work from three contractors and awarding the bid for that work to the lowest of the three bidders.

The trial court also correctly found that the amount expended by CVF Land Development for the demolition and associated cleanup, fill and grading work done on the Galloway property was a reasonable sum for said work under Rule 69(f)(3) URCP.

The testimony of Jay Hansen was that after meeting with the City, he had obtained three bids to have the work done and after conferring with respondent Gloria Ruiz dba CVF selected the lowest

bid, that of Cliff Johnson Excavating Co. He further testified that the work was well done, that he, CVF Land Investment and the city were satisfied, and that the billing submitted by Cliff Johnson corresponded exactly with the bid.

The only evidence offered by Merrill in opposition to the reasonableness of the charges was the testimony of Mr. McCaughey that estimated he could have done the job for \$1,800.00 based upon his visit to the property next door which was alleged to be similar in nature but was in admittedly better condition (which figure upon further questioning by the trial court he increased to \$2,500.00). Mr. McCaughey acknowledged that he had never inspected the Galloway property prior to the work having been completed, did not know what work was actually done, and could not estimate what he would have charged to do the same job that was done. No evidence was presented by Merrill challenging the quality of the work done or fill used, nor did Merrill contend that the price charged for the amount and type of the fill used was unreasonable.

CVF Land Investment acted in a reasonable manner in soliciting three bids for the work to be done and then selecting the lowest bid. The trial court properly analyzed that the only difference between the estimate of Mr. McCaughey and amount paid to Cliff Johnson Excavating involved the amount of fill that was used. (Tr. at p. 40). The testimony of Mr. Hansen was that the quality of the fill used and the amount of fill used were based upon his understanding and were necessary requirements of the city under the order.

POINT II

MERRILL CANNOT RAISE NEW CLAIMS, ARGUMENTS OR DEFENSES FOR THE FIRST TIME ON APPEAL

The Utah Supreme Court and this court have repeatedly held that matters not presented to the trial court may not be raised for the first time on appeal. E.G. Franklin Financial v. New Empire Development Co., 659 P.2d 1040 (Utah 1983); Bangerter v. Poulton, 663 P.2d 100 (Utah 1983). In her brief, Merrill now argues that CVF Land Investment should not recover for improvements made to the Galloway property under the theory that a purchaser of real proeprty, who takes title subject to what he knows or should have known to be a potentially superior claim thereto, cannot claim compensation for improvements thereon, and cites 41 Am. Jur. 2d, Improvements, §18 in support thereof. However, even if that argument is considered, it should not defeat the right of CVF Land Investment to recover the amounts expended for the work done. The section of Am. Jr. 2d. cited by Merrill also indicates that in some jurisdictions, protection has been extended to one making improvements in good faith, in reliance upon a judicial order or decree awarding the land to him, so as to allow him to recover compensation for the improvements upon the reversal or setting aside of the order.

Defendant Marcia Merrill also cites the case of Sedlak v. Duda, 144 Neb. 567, 13 N.W.2d 892 (1944) in support of her position. However, that case can be distinguished from the instant matter. In that case, Sedlak was the owner of a residence and gave a second mortgage to Duda. Duda worked in concert with

his attorney's (who also represented Sedlak) to defraud Sedlak and foreclose the second mortgage. When Sedlak learned of the foreclosure he attempted to redeem the property and filed suit some two years later. Duda requested, among other things, an award for improvements made on the property during the two year period. The court held that where the sale to the mortgage holder (Duda) was voidable because of Duda's fraud, he took title with knowledge of the fact that Sedlak was the rightful owner, and Duda was therefore not a purchaser in good faith within the meaning of the rule, and was not entitled to a credit for the improvements.

The general rule regarding rights of the purchaser at a judicial sale is that on redemption the purchaser is entitled to have the purchase money paid refunded with interest and such expenditures as have been made for taxes and improvements reasonably and necessarily added to the property. 50 C.J.S., Judicial Sales, §37(e)(2).

The statutes of the various states dealing with foreclosure of real estate mortgages disclose extensive variations. Some contain express requirements as to the amount that must be paid and some do not. See generally 80 ALR2d 1317, Mortgage Redemption-Tender. Some jurisdictions include compensation for all improvements made on the land since the foreclosure sale. Wallace v. Beasley, 439 So.2d 133 (Ala. 1983), Ladd v. Parmer, 178 So2d 829 (Ala. 1965). Other jurisdictions allow the inclusion of compensation for improvements in the redemption amount upon a showing of good faith. Sedlak v. Duda, *Supra.*, Baetjer v. Garzot, 124 F.2d 925 (1942), the later case also holding that mere

knowledge by the possessor that it is subject to an uncertain right of redemption cannot affect his good faith in making said improvements.

CVF Land Investment acknowledges that a close analysis of Rule 69(f)(3) URCP seems to indicate that it is not framed as broadly as the statutes of the jurisdictions noted in the above referenced cases, but it does provide that reasonable amounts expended for necessary maintenance, upkeep or repair of improvements upon the property be included in the redemption amount. The key words then of Rule 69(f)(3) URCP are "reasonable" and "necessary". (See Point I above).

In her brief, Merrill attempts to draw an analogy between Rule 69(f)(3) URCP and Utah's Eminent Domain Statute (§78-34-11, Utah Code Ann. (1953, as amended) to support her claim that improvements made to the property after the commencement of the redemption period should not be a part of the redemption amount. However, a very large distinction is evident between the two. In the eminent domain proceeding the property owner knows immediately upon service of the summons that he is definitely going to lose his property to another and therefore, any improvements made by him after that date are done with full knowledge of that fact and therefore not done in good faith. A purchaser of property at a Sheriff's sale does not know if someone will redeem the property from him until either he receives notice of an intent to redeem or the redemption period expires. In the instant case, not only did CVF Land Investment not know if there would be a redemption until five months following completion of the work, but the work done to

the property by CVF Land Investment was not her voluntary act done with the intent to improve the property, but rather it was work she was compelled to do by the city.

Merrill also mistakenly now argues that the basis of the trial courts ruling was that because she as redemptioner would receive the benefit of the work done by CVF Land Investment, she should pay for it. In so saying, Merrill has misunderstood the analysis of the trial court. The "benefit issue" was not part of the trial court's holding and is nowhere found in its findings of fact or order. If anything, the trial court's comments run more to the fact that the work done may or may not be a benefit to the redemptioner, and that the key consideration was whether what was done was reasonable.

However, an analogy may be drawn between redemption under Rule 69(f)(3) and the Utah "Occupying Claimants" statute, §57-6-1 et. seq., Utah Code Annotated (1953). This statute protects one who makes improvements on the land of another if the occupying claimant can demonstrate he (1) has color of title, and (2) placed the improvements in good faith. This statute ameliorates the strict common law rule that the owner is entitled to the improvements placed by another upon his property, and is based upon the equitable doctrine of "unjust enrichment". Hidden Meadows Dev. Co. v. Mills, 590 P.2d 1244 (Utah 1979). Rule 69(f)(3) URCP and the occupying claimant statute are similar in purpose in that they protect one who is properly in possession of real property and who acts reasonably with respect to expenditures made for improvements on the property.

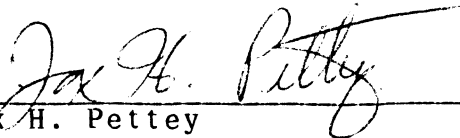
CONCLUSION

A party seeking to redeem real property from a purchaser at a Sheriff's sale may do so within 6 months following the sale by following the provisions of Rule 69(f)(3), Utah Rules of Civil Procedure. The purchaser is to be paid by the redemptioner the amount of his purchase plus six percent thereon in addition, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance and necessary maintenance, upkeep, or repair of any improvements upon the property which the purchaser may have paid thereon after the purchase, with interest on said amounts.

In her brief, defendant Marcia Merrill argues that the court "ignored" the standards of necessity and reasonableness when making its ruling, and that its ruling was not supported by evidence. This argument ignores the analysis given by the trial court prior to issuing its ruling and the record before the court. The trial court correctly identified the key issues of necessity and reasonableness inherent in Rule 69(f)(3) URCP and then found sufficient evidence to hold that the expenditure of \$12,905.00 made by CVF Land Investment for demolition, fill and grading was done pursuant to the Order of Salt Lake City Department of Building and Housing Services and was a reasonable sum expended for maintenance, upkeep or repair of improvements on the Galloway property as contemplated under the rule and should be included in the redemption amount.

The trial court's judgment should be affirmed.

Dated this 8th day of February, 1990.



Jax H. Pettey

Attorney for Respondent
Gloria Ruiz dba CVF Land Investment

CERTIFICATE OF SERVICE

I hereby certify that I personally delivered a true and correct copy of the foregoing RESPONDENT'S BRIEF to:

Vincent C. Rampton
WATKISS & SAPERSTEIN
310 South Main Street
Salt Lake City, Utah 84101

this 9th day of February, 1990.


Jax H. Pettey

A T T A C H M E N T

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successive weeks immediately preceding the sale, in some newspaper published in the county, if there is one.

(2) **Postponement.** If at the time appointed for the sale of any real or personal property on execution the officer shall deem it expedient and for the interest of all persons concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the same from time to time, until the same shall be completed; and in every such case he shall make public declaration thereof at the time and place previously appointed for the sale, and if such postponement is for a longer time than one day, notice thereof shall be given in the same manner as the original notice of such sale is required to be given.

(3) **Conduct of sale.** All sales of property under execution must be made at auction to the highest bidder, between the hours of 9 o'clock a.m. and 5 o'clock p.m. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery it must be within view of those who attend the sale, and it must be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. All sales of real property must be made at the courthouse of the county in which the property, or some part thereof, is situated. The judgment debtor, if present at the sale, may also direct the order in which the property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the officer must follow such directions.

(4) **Purchaser refusing to pay.** Every bid shall be deemed an irrevocable offer; and if the purchaser refuses to pay the amount bid by him for the property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the party refusing to pay, in addition to being liable on such bid, is guilty of a contempt of court and may be punished accordingly. When a purchaser refuses to pay, the officer may also, in his discretion, thereafter reject any other bid of such person.

(5) **Personal property.** When the purchaser of any personal property pays the purchase money, the officer making the sale shall deliver the property to the purchaser (if such property is capable of manual delivery) and shall execute and deliver to him a certificate of sale and payment. Such certificate shall state that all right, title and interest which the debtor had in and to such property on the day the execution or attachment was levied, and any right, title and interest since acquired, is transferred to the purchaser.

(6) **Real property.** Upon a sale of real property the officer shall give to the purchaser a certificate of sale, containing: (1) a particular description of the real property sold; (2) the price paid by him for each lot or parcel if sold separately; (3) the whole price paid; (4) a statement to

the effect that all right, title, interest and claim of the judgment debtor in and to the property is conveyed to the purchaser; provided that where such sale is subject to redemption that fact shall be stated also. A duplicate of such certificate shall be filed for record by the officer in the office of the recorder of the county. The real property sold shall be subject to redemption, except where the estate sold is less than a leasehold of a two-years' unexpired term, in which event said sale is absolute.

(f) **Redemption from sale.**

(1) **Who may redeem.** Property sold subject to redemption, or any part sold separately, may be redeemed by the following persons or their successors in interest: (1) the judgment debtor; (2) a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

(2) **Redemption; how made.** At the time of redemption the person seeking the same may make payment of the amount required to the person from whom the property is being redeemed, or for him to the officer who made the sale, or his successor in office. At the same time the redemptioner must produce to the officer or person from whom he seeks to redeem, and serve with his notice to the officer: (1) a certified copy of the docket of the judgment under which he claims the right to redeem, or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof certified by the recorder; (2) an assignment, properly acknowledged or proved where the same is necessary to establish his claim; (3) an affidavit by himself or his agent showing the amount then actually due on the lien.

(3) **Time for redemption; amount to be paid.** The property may be redeemed from the purchaser within six months after the sale on paying the amount of his purchase with 6 percent thereon in addition, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance and necessary maintenance, upkeep, or repair of any improvements upon the property which the purchaser may have paid thereon after the purchase, with interest on such amounts, and, if the purchaser is also a creditor having a lien prior to that of the person seeking redemption, other than the judgment under which said purchase was made, the amount of such lien, with interest.

In the event there is a disagreement as to whether any sum demanded for redemption is reasonable or proper, the person seeking redemption may pay the amount necessary for redemption, less the amount in dispute, to the court out of which execution or order authorizing the sale was issued, and at the same time file with the court a petition setting forth the item or items demanded to which he objects, together with his grounds of objection; and thereupon the court shall enter an order fixing a time for hearing of such objections. A copy of the petition and order fixing time for hearing shall be served on the purchaser not less than two days before the day of hearing. Upon the hearing of the objections the court shall enter an order determining the amount required for redemption. In the event an additional amount to that theretofore paid to the clerk is required, the person seeking redemption

A T T A C H M E N T

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Jax H. Pettey #2594
Attorney for Gloria Ruiz
180 South 300 West #313
Salt Lake City, Utah 84109
Telephone: 532-6721

SEP 15 1989

SALT LAKE COUNTY
By Karen W. Bunk
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

GUNDA M. GALLOWAY and)	
LAURENCE GALLOWAY,)	
)	
Plaintiffs,)	
)	
vs.)	
)	FINDINGS OF FACT AND
ROWLAND H. MERRILL, JR.;)	CONCLUSIONS OF LAW
GUARDIAN TITLE COMPANY OF UTAH,)	
Trustee; BRIAN STEFFENSEN,)	
Attorney at Law; LAND)	
ACQUISITION AND DEVELOPMENT)	Civil No. C88-1017
COMPANY; JOSEPH R. BRUNETTI;)	
ROBERT L. LORD, Attorney at)	
Law; ROBERT B. BROWN, Attorney)	
at Law; APOSHIAN, SNIDEMAN &)	
ASSOCIATES, INC.; AMERICAN)	Judge: Scott Daniels
HOTEL DEVELOPERS, INC.; NORTH)	
TEMPLE LTD.; PLASTER DE'COR,)	
INC.; MARCIA S. MERRILL; THE)	
STATE TAX COMMISSION OF THE)	
STATE OF UTAH; ROBERT B. BROWN;)	
AND JOHN DOES 1-10,)	
)	
Defendants.)	

The Petition for Determination of Redemption Amount under Rule 69(f)3), Utah Rules of Civil Procedure, filed by Marcia S. Merrill came on for hearing on the 13th day of October, 1989, before the Honorable Scott Daniels, Judge of the above-entitled Court. Petitioner was present and represented by her counsel, Vincent C. Rampton of Watkiss and Campbell. Respondent Gloria Ruiz dba CVF Land Investment Company was present and represented

by her counsel, Jax H. Pettey. The parties stipulated to several items in open court and thereafter testimony was given and evidence presented to the Court. The Court being fully advised in the premises hereby makes the following:

FINDINGS OF FACT

1. That on February 28, 1989, Gloria Ruiz dba CVF Land Investment Company (CVF) purchased at Sheriff's sale certain real property located at 145 North Redwood Road, Salt Lake City, Salt Lake County, Utah, (the "Property") more particularly described as follows:

The South 88 feet of Lots 17, 18, 19, 20 and 21, and 22, Block 2, CHARLES S. DESKY'S FOURTH ADDITION, according to the official plats thereof, recorded in the office of the County Recorder of Salt Lake County, Utah.

Commencing at the Southeast corner of Lot 22, Block 2, CHARLES S. DESKY'S FOURTH ADDITION; thence South 56 feet; thence West 136 feet; thence North 23 feet; thence West 14 feet; thence North 33 feet; thence East 150 feet to the point of BEGINNING.

2. That the purchase price paid for the property by CVF was \$28,000.00.

3. That CVF tendered funds to the Salt Lake County Sheriff in the amount of \$28,000.00 and received a Real Estate Certificate of Sale for the Property.

4. That it is reasonable that said sum should be included in the amount to be paid for redemption.

5. That during the 6 month period of redemption following the Sheriff's sale, CVF paid the delinquent 1988 general real estate taxes on the property in the amount of \$500.20.

6. That said expenditure was reasonable and properly made.

7. That under Rule 69(f)(3) said sum should be included in the amount to be paid for redemption.

8. That during the 6 month period of redemption following the Sheriff's sale, CVF paid for demolition of then existing structures and associated filling and regrading of the Property pursuant to an order issued by the Salt Lake City Department of Building and Housing Services in the amount of \$12,905.00.

9. That said expenditure was a reasonable sum expended for necessary improvements upon the property.

10. That under Rule 69(f)(3) said sum should be included in the amount to be paid for redemption.

11. That under Rule 69(f)(3) a surcharge of six (6%) of the purchase amount is to be included in the amount to be paid for redemption.

12. That under Rule 69(f)(3) interest is to be paid on the purchase amount and taxes paid and reasonable and necessary amounts paid for improvements upon the property during the period of redemption by the purchaser.

13. That it is reasonable that interest at the rate of ten percent (10%) per annum on these amounts be included in the amount to be paid for redemption.

Wherefore, upon the foregoing Findings of Fact, the Court now makes its

CONCLUSIONS OF LAW

1. Gloria Ruiz dba CVF Land Investment Company (CVF) is entitled to full right, title and interest in and to the property

described in paragraph 1 of the Findings of Fact herein, subject only to statutory redemption rights.

2. That CVF is entitled to reimbursement of her purchase price of \$28,000.00 as part of any redemption.

3. That CVF is entitled to reimbursement of her payment of the delinquent 1988 general property taxes owing on the property in amount of \$500.20 as a part of any redemption.

4. That CVF is entitled to reimbursement of her amounts expended for demolition and associated filling and regrading of the Property done pursuant to an order issued by the Sale Lake City Department of Building and Housing Services in the amount of \$12,905.00 as a part of any redemption.

5. That CVF is entitled to a surcharge of six percent (6%) of the purchase price in the amount of \$1,680.00.

6. That CVF is entitled to payment of interest at the rate of ten percent (10%) per annum to September 13, 1989 in the total amount of \$2,101.02, which is calculated as follows:

a. Purchase price of \$28,000.00 from February 28, 1989 to September 13, 1989 in the amount of \$1,511.23.

b. Taxes paid of \$500.20 from August 24, 1989 to September 13, 1989 in the amount of \$2.88.

c. Demolition, fill & grading paid of \$12,905.00 from March 31, 1989 to September 13, 1989 in the amount of \$586.91.

7. That the total amount necessary for redemption of the property is therefore determined to be \$45,186.22.

DATED this 15 day of September, 1989.

BY THE COURT:



Scott Daniels
District Court Judge

C 88-1017

A T T A C H M E N T

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Jax H. Pettey #2594
Attorney for Gloria Ruiz
180 South 300 West #313
Salt Lake City, Utah 84109
Telephone: 532-6721

JUDGEMENT

SEP 15 1989

SALT LAKE COUNTY
By Loren Bussell
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

GUNDA M. GALLOWAY and
LAURENCE GALLOWAY,

Plaintiffs,

vs.

ROWLAND H. MERRILL, JR.;
GUARDIAN TITLE COMPANY OF UTAH,
Trustee; BRIAN STEFFENSEN,
Attorney at Law; LAND
ACQUISITION AND DEVELOPMENT
COMPANY; JOSEPH R. BRUNETTI;
ROBERT L. LORD, Attorney at
Law; ROBERT B. BROWN, Attorney
at Law; APOSHIAN, SNIDEMAN &
ASSOCIATES, INC.; AMERICAN
HOTEL DEVELOPERS, INC.; NORTH
TEMPLE LTD.; PLASTER DE'COR,
INC.; MARCIA S. MERRILL; THE
STATE TAX COMMISSION OF THE
STATE OF UTAH; ROBERT B. BROWN;
AND JOHN DOES 1-10,

Defendants.

215853
9-22-89-8:15 am

O R D E R

Civil No. C88-1017

Judge: Scott Daniels

The Petition for Determination of Redemption Amount under Rule 69(f)3), Utah Rules of Civil Procedure, filed by Marcia S. Merrill came on for hearing on the 13th day of October, 1989, before the Honorable Scott Daniels, Judge of the above-entitled Court. Petitioner was present and represented by her counsel, Vincent C. Rampton of Watkiss and Campbell. Respondent Gloria Ruiz dba CVF Land Investment Company was present and represented

by her counsel, Jax H. Pettey. The parties stipulated to several items in open court and thereafter testimony was given and evidence presented to the Court. The Court having been fully advised in the premises and having made its Findings of Fact and Conclusions of Law,

NOW THEREFORE, IT IS HEREBY ORDERED:

1. Gloria Ruiz dba CVF Land Investment Company is hereby awarded all right, title and interest in and to that certain real property located at 145 North Redwood Road, Salt Lake City, Salt Lake County, Utah, subject only to statutory redemption rights.

The legal description of said property is:

The South 88 feet of Lots 17, 18, 19, 20 and 21, and 22, Block 2, CHARLES S. DESKY'S FOURTH ADDITION, according to the official plats thereof, recorded in the office of the County Recorder of Salt Lake County, Utah.

Commencing at the Southeast corner of Lot 22, Block 2, CHARLES S. DESKY'S FOURTH ADDITION; thence South 56 feet; thence West 136 feet; thence North 23 feet; thence West 14 feet; thence North 33 feet; thence East 150 feet to the point of BEGINNING.

2. The total amount necessary for redemption of the property pursuant to Rule 69(f)(3), Utah Rules of Civil Procedure is determined by the Court to be \$45,186.22, which is the sum of the following items:

a. Purchase Price Paid.....	28,000.00.
b. 1988 Taxes Paid.....	500.20
c. Demolition, Fill & Grading paid.....	12,905.00
d. Surcharge of 6% of purchase price.....	1,680.00
e. Interest at the rate of 10% per annum.....	<u>2,101.02</u>
TOTAL.....	45,186.22

DATED this 15 day of September, 1989.

BY THE COURT

Scott Daniels
Judge Scott Daniels
District Court Judge

688-1017

A T T A C H M E N T

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13 MARCH 89 02:25 PM
KATIE L. DIXON
RECORDER, SALT LAKE COUNTY, UTAH
SL CO SHERIFF
REC BY: D DANGERFIELD , DEPUTY

**REAL ESTATE
CERTIFICATE OF SALE-ORDER OF SALE**

**In the District Court,
In and for Salt Lake County, State of Utah**

GUNDA M. GALLOWAY and LAURENCE GALLOWAY

VS

ROWLAND H. MERRILL, JR.; GUARDIAN TITLE COMPANY OF UTAH,
Trustee; BRIAN STEFFENSEN, Attorney at Law; LAND ACQUISITION AND
DEVELOPMENT COMPANY; JOSEPH R. BRUNETTI; ROBERT L. LORD; ROBERT L.
LORD, Attorney at Law; ROBERT B. BROWN, Attorney at Law; APOSHIAN,
SHULEMAN & ASSOCIATES, INC.; AMERICAN HOTEL DEVELOPERS, INC.; NORTH
TEMPLE LTD.; PLASTER DECOR, INC.; MARCIA S. MERRILL; THE STATE TAX
COMMISSION OF THE STATE OF UTAH; ROBERT B. BROWN; and JOHN DOES 1-10

Judgment Rendered

December 19, 1988

Order of Sale Issued

January 19, 1989

Property Sold

February 28, 1989

Civil No. C88-1017

I hereby certify that under the judgment and decree and Order of Sale of the Court in and
for Salt Lake County, State of Utah, in an action pending in said Court in the above named suit,
I was commanded to sell the property described, according to law, and apply the proceeds of such
sale toward the satisfaction of the judgment in said action, amounting to the sum of \$17,202.11
with interest, costs, attorney's fees and Sheriff's fees, amounting in all to the sum of \$27,062.87 .

On the 28th day of February , 1989 , at 12 o'clock noon of said day at the County
Courthouse, Salt Lake City, Salt Lake County, State of Utah and after due and legal notice I
sold at public auction, according to law, the real property to Gloria Ruiz dba CVFLand
Investment Co.

who made the highest bid for the sum of \$28,000.00 , lawful money of the
United States, for the real estate in said Order of Sale described as follows, to-wit:

The South 88 feet of Lots 17, 18, 19, 20, and 21, and 22, Block 2, CHARLES S. DESKY'S
FOURTH ADDITION. Commencing at the Southeast corner of Lot 22, Block 2, CHARLES
DESKY'S FOURTH ADDITION; thence South 56 feet; thence West 136 feet; thence North
23 feet; thence West 14 feet; thence North 33 feet; thence East 150 feet to
BEGINNING.

I further certify that said property is subject to redemption in lawful money of the United
States pursuant to the statute in such cases made and provided.

Dated at Salt Lake City, Utah, this 7th day of March, 1989

N. D. "Pete" Hayward, Sheriff of Salt Lake County, State of Utah,

Docket No. 7906

By Keith L. Bockner Deputy Sheriff
KEITH L. BOCKNER

BOOK 6109 PAGE 2388

A T T A C H M E N T

5

SALT LAKE CITY CORPORATION

DEPARTMENT OF BUILDING AND HOUSING SERVICES
324 South State Street, Room 205
Salt Lake City, Utah 84111

Date Issued March 2,
Certified Mail
No. P 949 033 1

NOTICE AND ORDER

Gloria - Ruiz dba
C.V.F. Land Investment Company
TO: 1335 East 4130 South
Salt Lake City, Utah 84117

RE: 145 North Redwood Road, Salt Lake City, Utah /// BEG AT NW COR OF LOT 17, BLK 2,
CHAS S. DESKYS 4TH ADDN; S 88 FT; E 147 FT; N 78 FT; N 45; 2 14.14 FT; W 137 FT
TO BEG.

NOTICE: Notice is hereby given that the subject property is found to be in violation of Salt Lake City Building/Housing ordinances necessary to maintain the life, health, safety and general welfare of the inhabitants of Salt Lake City. This notice is pursuant to an inspection which was conducted on March 1, 1989 (Date).
--SEE INSPECTION REPORT.

ORDER: You are hereby ordered to correct these deficiencies. Your options are:

--DEMOLITION

--APPEAL this order

1. Commence the demolition within 10 days, and complete within 10 days from service of this Notice and Order.
2. Obtain required permits for demolition before starting the work.

Right to Appeal:

Any person having any record, title, or legal interest in this building may appeal this Notice and Order. Obtain forms from Room 205 and appeal in writing to the Housing Advisory and Appeals Board within thirty (30) days from date of service of this Notice and Order. Failure to appeal within the time specified will constitute a waiver of all rights to an administrative hearing in this matter.

If you fail to obey this Order within the time allotted, this department is empowered to take the following actions:

- File a Certificate of Non-Compliance to be recorded against the property.
- Cause the building to be demolished and grounds cleaned with the costs charged to the owner(s) and/or
- Initiate criminal action against the person(s) to whom this Order is directed.

Bill Caput

NOTICE OF DEFICIENCIES

Party Inspected 145 North Redwood Road Date of Inspection July 31, 1986
Salt Lake City, Utah

Inspection revealed that the following conditions were not in compliance with the requirements of the following codes:

UNIFORM HOUSING CODE (UHC)

UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (UCADB)

deficiencies indicate that the following permits must be taken to complete repairs:

Building ☒ Electrical ☒ Mechanical ☒ Plumbing ☐

Violation Code

UNIFORM HOUSING CODE, CHAPTER 10

Section 1001 (e) Electrical fuse box: Fuses exceed safe amperage.

Section 1001 (h) All exterior wood deteriorated.

Section 1001 (i) Rear porch fascia missing on south side.

Section 1001 (h) All exterior windows broken out.

Section 1001 (j) Chimney bricks falling off.

Section 1001 (f) All plumbing throughout home deteriorated.

Section 1001 (c) Rear porch foundation settled.

Section 1001 (g) Heating system torn up in home.

Section 1001 (h) Roof deteriorated.

Garage:

Section 1001 (c) Garage leaning sideways.

Section 1001 (h) All exterior wood deteriorated.

Section 1001 (c) No foundation under bearing walls - sitting on dirt.

Exterior:

Section 1001 (k) Garbage in rear yard.

Section 1001 (k) Lot is extremely overgrown with weeds.

UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, CHAPTER 3

Section 302 (12) Buildings have become so dilapidated as to become an attractive nuisance for children and a harbor for vagrants - must be secured

Two sheds in rear are dilapidated and open. Root cellar is

deteriorated.

202
Sec. 202 Because of the above deficiencies, the buildings are determined to be

Notice of Deficiencies (Continued)

Address 145 North Redwood Road, Salt Lake City

Violation Code

substandard and dangerous and are hereby declared to be a public
nuisance which must be abated by repair, rehabilitation, demolition
or removal.

SALT LAKE CITY DEPARTMENT OF BUILDING AND HOUSING SERVICES

Mary Pezalla, Enforcement Officer

A T T A C H M E N T

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SALT LAKE CITY CORPORATION

ROGER R. EVANS
DIRECTOR

HARVEY F. BOYD
ASSISTANT DIRECTOR

DEPARTMENT OF DEVELOPMENT SERVICES

Building and Housing Services

324 SOUTH STATE STREET, ROOM 205
SALT LAKE CITY, UTAH 84111
TELEPHONE 535-6436

March 23, 1989

Gloria Ruiz
dba CUF Land Investment Company
280 West 7200 South
Midvale, Utah 84047

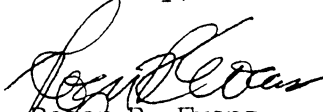
RE: 145 North Redwood Road

Dear Ms. Ruiz:

The Division of Building and Housing Services has received your appeal to 18.64.010 of the Salt Lake City Code. The property at the above address is located in the C-1, R-6 Zoning District. This property has been under our enforcement and has continued to be a problem for the neighborhood. The demolition would have little impact on the surrounding properties, therefore, I grant your appeal.

Please be aware of the conditions of the demolition covenant you have signed in regards to maintaining the property. The lot should be graded after the demolition, but the fill material cannot exceed two (2) feet in depth and must be clean fill with no aggregate to exceed two (2) inches in diameter.

Sincerely,


Roger R. Evans
Director

RRE:rm

A T T A C H M E N T

7

1 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

3 * * * * *

4 GUNDA M. GALLOWAY and,)
5 LAURENCE GALLOWAY,)
6 Plaintiff,)
7 vs.)
8 CASE NO. C88-1017
9 ROWLAND H. MERRIL, JR.,;)
10 GUARDIAN TITLE COMPANY OF UTAH,)
11 TRUSTEE; BRIAN STEFFENSEN,)
12 ATTORNEY AT LAW; LAND)
13 ACQUISITION AND DEVELOPMENT)
14 COMPANY; JOSEPH R. BURNETTI;)
15 ROBERT L. LORD; ROBERT L. LORD)
16 ATTORNEY AT LAW; ROBERT B. BROWN,)
17 ATTORNEY AT LAW; APOSHIAN,)
18 SNIDEMAN & ASSOCIATES, INC.;)
19 AMERICAN HOTEL DEVELOPERS, INC.;)
20 NORTH TEMPLE LTD.; PLASTER)
21 DE'COR, INC.; MARCIA S. MERRILL;)
22 THE STATE TAX COMMISSION OF THE)
23 STATE OF UTAH; ROBERT B. BROWN;)
24 and JOHN DOES 1-10,)
25)
 Defendant.)

17 * * * * *

18
19 BEFORE THE HONORABLE SCOTT DANIELS

20
21 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22
23 SALT LAKE CITY, UTAH

24
25 September 13, 1989

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A P P E A R A N C E S

FOR THE PLAINTIFF:

JAX H. PETTEY
ORTON & PETTEY
3098 Highland Drive, 3rd Floor
Salt Lake City, Utah 84106

FOR THE DEFENDANT:

VINCENT C. RAMPTON
WATKISS & CAMPBELL
310 South Main Street
Salt Lake City, Utah 84101-2171

1	I N D E X	
2		
3	GLORIA RUIZ	PAGE
4	Direct Examination By Mr. Pettey	4
5	Cross-examination By Mr. Rampton	10
6	J. D. HANSEN	
7	Direct Examination By Mr. Pettey	14
8	Cross-examination By Mr. Rampton	20
9	ROWLAND H. MERRILL	
10	Direct Examination by Mr. Rampton	22
11	Cross-Examination by Mr. Pettey	24
12	CRAIG C. MERRILL	
13	Direct Examination by Mr. Rampton	25
14	Cross-Examination by Mr. Pettey	27
15	JOHN HENRY McCAUGHEY	
16	Direct Examination by Mr. Rampton	28
17	Cross-Examination by Mr. Pettey	34
18	Redirect Examination by Mr. Rampton	36
19	J. D. HANSEN (recalled)	
20	Direct Examination by Mr. Rampton	38
21	Cross-Examination by Mr. Pettey	39
22		
23		
24		
25		

1	EXHIBITS	RECEIVE
2	1 Notice from Sheriff	7
3	2 Copy of check	9
4	3 Appeal re landscape requirements	14
5	4 Letter dated March 23, 1989	14
6	5 Photograph	27
7	6 Photograph	27
8	7 Photograph	27
9		
10		
11		
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1 SALT LAKE CITY, UTAH; SEPTEMBER 13, 1989; P.M. SESSION

2 THE COURT: The matter before the Court is Gunda
3 M. Galloway and Lawrence Galloway versus Rowland H. Merrill
4 and others, C88-1017, as I understand it before the Court
5 on a evidentiary hearing to determine the amount of
6 redemption; is that correct?

7 MR. RAMPTON: Correct, your Honor.

8 THE COURT: Is the plaintiff ready to proceed?

9 MR. RAMPTON: Well, it's not proceeding as
10 plaintiff. This is the redemtor versus the purchaser.

11 THE COURT: You represent the --

12 MR. RAMPTON: The proposed redemtor, Marcia
13 Merrill.

14 MR. PETTEY: Jax Pettey, and I represent the
15 purchaser Gloria Ruiz.

16 THE COURT: You can proceed.

17 MR. RAMPTON: Your Honor, just briefly, because I
18 know we are short on time, this is an evidentiary proceeding
19 to help determine the redemption amount on a parcel of
20 property located in Salt Lake County at 145 North on
21 Redwood Road.

22 The property was sold in this action in a
23 Sheriff's sale of February 28, 1989 to Gloria Ruiz
24 d/b/a CVF Land Investment. Marcia S. Merrill holds a
25 junior judgment lien against the property and wishes to

1 redeem the property, which she filed a Notice of Intention
2 to do so with the Sheriff on August 25, 1985, within the
3 time period prescribed by law.

4 The redemption amount, which she tendered at that
5 time, was the sale price, which was \$28,000, six percent,
6 which is \$1,680 interest on both of those figures at 10
7 percent through August 25th, which came to \$1,447.41. So
8 the total tender was \$31,127.41.

9 On the day of redemption, I learned for the first
10 time that an affidavit had been filed with the Salt Lake
11 County Sheriff's Office by CVF Land Investment, claiming
12 that an additional \$520 was due for taxes paid on the
13 property during the redemption period, and also 12,900 some
14 odd dollars, nearly \$13,000, for necessary expenses incident
15 to maintenance upkeep, and repair of the property. We had
16 no information at that time as to whether or not these were
17 valid charges, so we filed, or rather tendered, a deposit of
18 redemption amount to the court, sought and obtained this
19 hearing date.

20 A few matters have since come to light, but I
21 think we can enter by stipulation, first of all, that the
22 property was purchased by Gloria Ruiz. It was purchased for
23 \$28,000 at a Sheriff's sale on February 28; that the amount
24 of the \$31,127.41 has been deposited with the Court pursuant
25 to this hearing; that in fact CVF Land Investment did pay

1 property taxes during the redemption period in the amount of
2 \$500.20. We don't challenge that, so that amount should be
3 awarded in addition to what has already been tendered.

4 THE COURT: Plus six percent of that?

5 MR. RAMPTON: Plus six percent.

6 THE COURT: Plus 10 percent?

7 MR. RAMPTON: Right.

8 THE COURT: So the question is the 12,000?

9 MR. RAMPTON: So the question is the repair. Rule
10 69(f)(3) states the following:

11 "The property may be redeemed from the
12 purchaser within six months after the sale on
13 paying the amount of his purchase with six
14 percent thereon in addition, together with the
15 amount of any assessment or taxes, and any
16 reasonable sum for fire insurance and necessary
17 maintenance, upkeep, or repair of any improvement
18 upon the property which the purchaser may have
19 paid thereon after the purchase, with interest
20 on such amounts."

21 And it is our contention the evidence will not
22 establish that the additional sums which have been claimed
23 in this matter will require that -- were not necessary. To
24 the extent they may have been necessary, they are
25 unreasonably high and should not be awarded any part of the

1 redemption amount.

2 THE COURT: Thank you. Mr. Pettey?

3 MR. PETTEY: Your Honor, we stipulate to those
4 items that Mr. Rampton indicated that we would stipulate to.

5 With respect to the additional \$12,905, that was
6 an expenditure made pursuant to a notice and order issued by
7 Salt Lake City Corporation directing Gloria Ruiz to demolish
8 certain structures on the property and then to comply with
9 the proper ordinances and fill and grade and level the
10 property.

11 It is our intention to show that in fact that was
12 done; that a reasonable amount was paid for those services
13 and that she should in fact be compensated for that.

14 We are ready to proceed.

15 THE COURT: I think the sensible way is for you to
16 proceed and establish what was done and why.

17 MR. PETTEY: Okay, that's fine. We'd like to call
18 Gloria Ruiz to the stand.

19 THE COURT: Ms. Ruiz, if you will come up here and
20 be sworn, please.

21 GLORIA RUIZ,
22 called as a witness at the instance of the Plaintiff, being
23 first duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. PETTEY:

1 Q Mrs. Ruiz, would you please state your name and
2 address for the court reporter.

3 A Gloria Ruiz. 1335 East 4130 South.

4 Q And what is your relationship with CVF Land?

5 A That is my company.

6 Q Okay. You did purchase property at 145 North
7 Redwood Road at a Sheriff's sale?

8 A I did.

9 Q How much did you pay for that purpose?

10 A \$28,000.

11 Q All right. Subsequent to the purchase of that
12 property, have you paid any additional sums?

13 A Yes, I have paid the taxes for \$505 or \$504 I
14 believe it was, and the demolition services and removing the
15 house, and trees on the property, and I have got the letter
16 from the sheriff to do.

17 Q Okay. Why did you have those buildings
18 demolished?

19 A Well, I was told that it was a hazard to --

20 MR. RAMPTON: I'm sorry, I need to interpose an
21 objection. It calls for hearsay testimony from the City.

22 THE COURT: Well, it can be admitted not as to the
23 truthfulness of it; to explain why she did what she did.

24 Overruled.

25 You can proceed.

1 THE WITNESS: That's why I did it because with the
2 letter from the sheriff, I thought, well, somebody could get
3 hurt there and I'd be liable for it.

4 Q Okay. I show you a document and I'd like you to
5 tell me if you are familiar with that document and exactly
6 what it is?

7 A It is a notice from the Sheriff's office, I guess,
8 for Salt Lake to do that.

9 Q Have you seen that before; that document?

10 A I must have. I didn't bring my glasses and I
11 can't really tell what I am reading. Very embarrassing.

12 Q Would you read what it says on the notice, at
13 least the first -- what the heading is on that document.

14 MR. RAMPTON: Your Honor, I am going to object
15 before the document comes into evidence or its contents. It
16 needs to be offered. I believe this is a document that
17 hasn't been authenticated.

18 THE COURT: Well, sustained at this point. I
19 don't think you should have her read from it until it's been
20 admitted.

21 MR. PETTEY: Your Honor, I'd like to submit for --

22 THE COURT: Any objection?

23 MR. RAMPTON: This appears to be a document
24 supposedly issued by Salt Lake City Corporation. It is not
25 a certified document. There is no certification on it.

1 There is no authenticating witnesses to state that it is
2 what it purports to be, so we object to its being received.

3 MR. PETTEY: Mrs. Ruiz, I think you received it --

4 THE COURT: Right. It will be admitted; not
5 necessarily for the truthfulness of its content, but to
6 explain why she did what she did.

7 MR. PETTEY: You received it before you had the
8 demolition done?

9 THE COURT: It will be received.

10 Better have it marked as Exhibit 1.

11 (Plaintiff's Exhibit No. 1 was
12 received in evidence.)

13 Q (By Mr. Pettey) When you received this document,
14 may I ask what you then did with it, or did, pursuant to
15 receiving the document?

16 A Well, I really didn't know what to do with it, so
17 I called Jay and asked him about it.

18 Q Would you please explain -- identify to the court
19 who you mean by Jay?

20 A He is the realtor that works with me.

21 Q What is his full name?

22 A Jay Hansen.

23 Q So you delivered that document to him, then?

24 A Yes, because I had not expected to have to do
25 anything to the property until I would know if it was mine

1 or not. I thought this was strange.

2 Q Did you contact the City yourself?

3 A No, I didn't.

4 Q You did not?

5 A No.

6 Q You turned the document over to?

7 A To Jay and asked him to do it for me.

8 Q Okay. Now, were you involved, from that point

9 forward, with regard to arranging for the demolition, or did

10 you have Mr. Hansen arrange for it?

11 A I had Mr. Hansen arrange it for me because I

12 didn't know who to call. I didn't know anybody, what I

13 should do with it.

14 Q Let me ask you then, one additional question. Was

15 the demolition work -- was demolition work done on the

16 property?

17 A Yes, it was.

18 Q And who performed that work?

19 A Cliff Johnson I believe. I don't remember. It is

20 the name of the person.

21 Q Were you satisfied with the job that was done?

22 A Yes.

23 Q Did you personally inspect that yourself?

24 A Yes. I went to see it because there was some old

25 trees that had to be knocked down, and the house, and at the

1 time I think there was some people living in the house that
2 shouldn't have been there.

3 Q Okay. Did you receive a bill, then, from Mr.
4 Johnson for the services?

5 A I did.

6 Q And did you pay for those services?

7 A I did.

8 Q Would you be familiar with the billing if you saw
9 that, or was that given to Mr. Hansen?

10 A It came to me.

11 Q You did pay for it with a personal check?

12 A With a company check.

13 Q Okay. I have a copy of the check that she made
14 the payment with, your Honor.

15 MR. RAMPTON: No objection, your Honor.

16 (Plaintiff's Exhibit No. 2 was
17 received in evidence.)

18 THE COURT: It will be received.

19 You better have it marked Exhibit 2. It will be
20 received.

21 MR. PETTEY: Is that the check then that you paid
22 Mr. Johnson with?

23 A Yes, it is.

24 Q Okay. Fine. Were there other items that you had
25 anticipated doing to improve that property, besides the

1 demolition work?

2 A I had thought that I would want to build onto it.
3 That was my idea of purchasing it to begin with, because I
4 wanted to build.

5 Q You have not started construction on the premises?

6 A No, absolutely not.

7 Q Why have you not started construction?

8 A I was waiting to see what was resolved. It wasn't
9 mine until --

10 Q You understood this property would not be yours
11 until the six months redemption period was over?

12 A Yes.

13 Q Okay. Fine.

14 MR. PETTEY: I have no further questions of Mrs.
15 Ruiz at this time, your Honor.

16 THE COURT: Thank you.

17 Mr. Rampton.

18 MR. RAMPTON: Just a few, your Honor.

19 My turn, Mrs. Ruiz. Sorry.

20 CROSS-EXAMINATION

21 BY MR. RAMPTON:

22 Q Mrs. Ruiz, before the house on this property was
23 demolished, did you go inside of it?

24 A Yes.

25 Q Did you ever go down in the lower story of it?

1 A There was a basement down there, but I never went
2 down.
3 Q Do you know how deep it was?
4 A No, I don't.
5 Q Do you know how big the house was?
6 A I don't know. It was a small house. I'd say
7 probably four-room house.
8 Q What other buildings were there on the lot besides
9 the house?
10 A Just the house and then old trees, ugly old trees.
11 Q Speaking of the trees, you mentioned they needed
12 to be torn down. What gave you to believe the trees had to
13 be removed?
14 A Well, to level it and -- Okay. They said it was
15 dangerous. Okay. Living at my house, I have seen where
16 these old trees have broken and it could cause damage to
17 anybody parked there, or even people passing.
18 Q Who was it that told you the trees were dangerous?
19 A No. I said that.
20 Q No one told you they were a danger?
21 A No. I just thought they'd have to be cleaned out.
22 Q Did you -- I want to make sure I understand your
23 testimony. You say you handed this entire operation over to
24 Jay Hansen once you received the notice that's been marked
25 as Exhibit 1?

1 A Yes.

2 Q So you never obtained any bids, yourself, on this
3 demolition project?

4 A No, I didn't.

5 Q When you received the bill from the excavating
6 company that performed the job, did you show it to any other
7 company to find out if it was a reasonable bill?

8 A I didn't know.

9 Q Did you challenge him at all on it personally?

10 A No, I didn't, because I am not aware of these
11 things, how much it cost to do it or not.

12 Q Did you have any discussion with the excavator as
13 to what specifically needed to be done to comply with the
14 notice you received?

15 A No, I didn't. I thought Jay would do that.

16 Q Did you have any discussion with anyone at all,
17 before the job was done, about changing the grade of the
18 entire lot?

19 A I didn't.

20 Q Mrs. Ruiz -- if I may approach the witness, your
21 Honor,.

22 THE COURT Yes.

23 Q Let me show you what's been marked as Exhibit 3,
24 which appears to be an appeal filed with Salt Lake City with
25 respect to landscaping requirements. Do you recognize the

1 document at all?

2 A I think Jay brought this for me to see. And most
3 of this six months I have been kind of ill, so I have just
4 told him to do what he had to do.

5 Q But you do recall Mr. -- that's Hansen you are
6 referring to?

7 A Yes.

8 Q He did show it to you?

9 A Yes.

10 Q What was your understanding of the purpose of the
11 document when you received it?

12 A To go ahead and get that work done. If that's
13 what we had to do, then do it.

14 Q Let me show you now what's been marked as Exhibit
15 4, and ask you if you have ever seen that before?

16 A Yes.

17 Q When did you see it?

18 A I don't remember, but I got this.

19 Q You did receive that letter?

20 A Yes.

21 Q Do you think you received it about the dates
22 that's on it, March 23rd of '89?

23 A I must have received it around there, but I don't
24 remember.

25 MR. RAMPTON: I'd ask that Exhibit 3 and 4 be

1 received in evidence.

2 THE COURT: Any objection?

3 MR. PETTEY: No objection.

4 THE COURT: They will be received.

5 (Defendants' Exhibit Nos. 3 and 4.

6 Were received in evidence.)

7 MR. PETTEY: That is all I have, your Honor.

8 THE COURT: Any further questions, Mr. Pettey?

9 MR. PETTEY: No, your Honor.

10 THE COURT: You can step down. Thank you.

11 (Witness excused.)

12 THE COURT: Any more witnesses, Mr. Pettey?

13 MR. PETTEY: Yes, your Honor.

14 Your Honor, I'd like to call Jay Hansen.

15 THE COURT: Mr. Hansen, if you will come up here
16 and be sworn, please.

17 J. D. HANSEN,

18 Called as a witness at the instance of the Plaintiff, being
19 first duly sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PETTEY:

22 Q Mr. Hansen, would you please state your full name
23 and current address, for the record.

24 A My name is J.D. Hansen. My address -- my home
25 address is 4201 Cumberland Road, Salt Lake City.

1 Q And what is your profession, you are engaged in?

2 A I am a real estate broker.

3 Q How many years have you been engaged in that
4 business?

5 A 39 years.

6 Q Are you familiar with both residential and
7 commercial properties?

8 A Yes, I am.

9 Q Are you -- do you know Gloria Ruiz?

10 A Yes, I do.

11 Q What is your relationship with her?

12 A Gloria Ruiz is a customer or client of mine. I
13 have been working with her for several years in her real
14 estate matters.

15 Q Are you familiar with the property located at 145
16 North Redwood Road?

17 A Yes, I am.

18 Q Would you have been involved with Mrs. Ruiz in
19 that purchase -- her purchase of that property?

20 A Yes.

21 Q She has indicated that she had you carry on
22 basically the situation with regards to the excavating and
23 demolition of the property; is that correct?

24 A That's right.

25 Q Mr. Hansen, are you familiar with that document

1 that I have just handed to you?

2 A Yes, I am.

3 Q This exhibit?

4 And where did you first see that document?

5 A I received a phone call from Mrs. Ruiz that she
6 had received this document and I went to her place of
7 business and she gave it to me at that time.

8 Q What did you do, then, after you received the
9 document?

10 A I talked to the City about it. I went to the City
11 offices, talked to Mr. Cupit about what was to be expected
12 of us.

13 Q Who is Mr. Cupit?

14 A Well, I don't know his title. Isn't here, but
15 he's -- I think he is the legal officer or legal -- not an
16 attorney, but he has the responsibility with the Department
17 of Building and Housing Services of inspecting and dealing
18 with derelict properties, I guess.

19 Q All right. And did you talk to him about Mrs.
20 Ruiz's interest in that property?

21 A Well, I indicated to him that she had purchased
22 the property on the Sheriff's sale, and that she had
23 intentions to develop the property, but that we, at this
24 point, wanted -- her intent would be to comply with the City
25 requirements as far as this notice and order were concerned.

1 Q Okay. And what did he tell you with respect to
2 how soon that notice and order would need to be complied
3 with?

4 MR. RAMPTON: Objection. Hearsay, your Honor.

5 THE COURT: I think that would be hearsay.

6 MR. PETTEY: I will rephrase that, your Honor.

7 Q Could you tell us a little bit about your
8 discussion with him, what perhaps your understanding of what
9 that notice required, and what he told you it required?

10 A Well, Mr. Cupit said --

11 MR. RAMPTON: Objection, your Honor. Still
12 hearsay.

13 THE COURT: Sustained.

14 Q (By Mr. Pettey) Would you tell us what your
15 understanding is of that notice?

16 MR. RAMPTON: Objection. The notice speaks for
17 itself if it is in evidence.

18 THE COURT: Sustained.

19 MR. PETTEY: Okay.

20 Q After you received that notice from Mrs. Ruiz, and
21 had talked with the City, what did you then do.

22 A Well, I -- after meeting with the City, with Mr.
23 Cupit, they were -- had expressed the intent that that -- or
24 how do I want to stay it? The property had been a problem
25 for them for some time, and they were anxious to see that it

1 was taken down. They had some law enforcement problems.
2 They said the property was being occupied by vagrants,
3 transients, and so they were -- apparently had been a long
4 standing problem.

5 THE COURT: Sustained.

6 He just asked you what you did. He wants you to
7 say what you did. Not what he told you.

8 THE WITNESS: After meeting with Mr. Cupit and
9 getting his point of view on the property, they're attitude.
10 I contacted some contractors about the demolition.

11 Q (By Mr. Pettey) How many contractors?

12 A Three.

13 Q And what did you solicit from those contractors?

14 A I wanted a bid for demolition, cleaning up the
15 lot, and bringing it up to grade.

16 Q Explain what you mean by bringing it up to grade?

17 A Well, there is in the City, with demolition -- if
18 you get a right to demolish a property, you have to meet the
19 City standards on grading.

20 MR. RAMPTON: Objection, your Honor. The witness
21 is testifying as if he is an expert on demolition and City
22 requirements. He has not qualified himself as that.

23 THE COURT: I think he can testify if he knows the
24 answer. Overruled.

25 THE WITNESS: The demolition or that is -- there

1 is a landscaping requirement which requires that the lot
2 have lawn and sprinklers. They have -- when you demolish a
3 property, unless it is going to be put in immediate use, you
4 have to provide a landscaping plan. And I had submitted a
5 document which asked for exceptions to that landscaping
6 plan, based on the fact that the intent was to develop the
7 property in a fairly early time, and that landscaping would
8 be an impractical situation at this time. That's when we
9 were told we had to fill the property, we had to grade it.

10 MR. RAMPTON: Objection. Strike the last comment
11 as hearsay.

12 THE COURT: Sustained. It will be stricken.

13 Q (By Mr. Pettey) When you contacted these three
14 different contractors, did you obtain bids from them?

15 A Yes, I did. I obtained bids from three
16 contractors.

17 Q And did you review those bids with Mrs. Ruiz?

18 A I believe I did. I believe I discussed that with
19 her, what I was getting in the way of bids. I am sure I
20 did.

21 Q Which bid did you accept, then?

22 A I accepted the bid from Cliff Johnson. It was the
23 lowest figure.

24 Q His was in fact the lowest bid?

25 A Absolutely.

1 Q Did you give Mr. Johnson any specific instructions
2 with respect to what type of fill material he was to use?

3 A The City had specified in their order that there
4 was a requirement that the fill had to be clean, and the
5 aggregate not to exceed, that is the size of the aggregate
6 not to exceed two inches, and that's the instruction I gave
7 him.

8 Q Those are the instructions that you gave to him?

9 A That's right.

10 Q And did you have any reason to doubt that the bid
11 that he gave you was an unreasonable bid?

12 A No. No, I didn't.

13 Q And did Mr. Johnson complete that work?

14 A He did. Very quickly and very efficiently. Very
15 prompt, and it was well done.

16 MR. PETTEY: Okay. I have no further questions,
17 your Honor.

18 THE COURT: Mr. Rampton?

19 CROSS-EXAMINATION

20 BY MR. RAMPTON:

21 Q Mr. Hansen, when you received a bill from Johnson
22 Excavating, did you question the amount of it?

23 A I knew what the bid was before he started.

24 Q And it corresponded with the bid?

25 A That's right.

1 MR. RAMPTON: May I see Exhibit 4, your Honor?

2 Q Mr. Hansen, let me show you what's been received
3 into evidence as Exhibit 4. Do you recognize that letter?

4 A Yes, I do.

5 Q Does this letter refer to what you refer to in
6 your testimony as the landscaping requirement?

7 A Well, no. This is not the landscaping
8 requirement. We had made an application for a variance of
9 the landscaping requirement. There are some other documents
10 that -- maybe they are easier to deal with on that
11 situation. But I don't mean to go on here.

12 Q (By Mr. Rampton) My question was whether this
13 letter referred to the landscaping requirement you were
14 talking about or not?

15 A This is the -- this letter grants the exceptions
16 to the landscaping requirement and tells us what we must do.

17 Q So this letter then was an exception from the
18 landscaping requirement that you have testified to?

19 A Yeah. Which is sodding and all that business, and
20 sprinkling system.

21 MR. RAMPTON: I have nothing further.

22 THE COURT: Anything further of this witness?

23 MR. PETTY: No.

24 THE COURT: Anymore witnesses, Mr. Rampton?

25 MR. RAMPTON: He may step down.

1 Thank you, your Honor.

2 (Witness excused.)

3 Call Mr. Rowland H. Merrill, please.

4 THE COURT: Mr. Merrill.

5 ROWLAND H. MERRILL,

6 Called as a witness at the instance of the Defendant, being
7 first duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RAMPTON:

10 Q State your name for the record, please, sir.

11 A Pardon?

12 Q State your name for the record.

13 A Rowland H. Merrill.

14 Q Current address?

15 A 1821 South Main Street, Salt Lake City.

16 Q Mr. Merrill, were you the owner of a home at 145
17 North Redwood Road in Salt Lake City?

18 A Yes, I was.

19 Q When was that?

20 A I bought it in approximately 1978. I can't -- it
21 was the spring of the year, either '78 or '79, on a
22 contract.

23 Q And you owned it until the Sheriff's sale in
24 February; is that correct?

25 A Yes, I did.

1 Q Did you ever occupy it?

2 A No.

3 Q Did you ever go inside?

4 A Yes.

5 Q Are you familiar with the size of the home?

6 A Yes.

7 Q How big was it?

8 A I'd guess it is between 700 and 750 square feet.

9 Q Is there any way it could have been more than 800

10 square feet?

11 A I doubt it. If they did that, I think they'd have

12 to count some things that I didn't count as part of the

13 house, such as the front porch. I don't even think they'd

14 get over 800.

15 Q Was there a full basement in the home?

16 A No.

17 Q What was underneath the main floor?

18 A To my knowledge, there was a crawl space and they

19 may have dug a space out underneath the home for some sort

20 of storage underneath.

21 Q How deep would that have been?

22 A Under six feet, five, six feet.

23 Q Mr. Merrill, I want to show you three photographs

24 and ask you if you recognize the home that's depicted in

25 those photographs? Do you recognize what is on those

1 pictures?

2 A Yes. I believe it is the house we are talking
3 about. I am trying to look at some other identifying
4 things, because there are several houses around there that
5 are the same. I didn't realize this was painted that color.

6 Q Let me receive those back for now, if I may.
7 Thank you.

8 The land around the house, during the time that
9 you owned it, was it on a level with the adjacent Redwood
10 Road, or was it lower?

11 A It was a little bit lower than Redwood Road.

12 Q Was the land around the house itself level?

13 A Somewhat level. I think it sloped up a little bit
14 in the back. But it was pretty close to level.

15 Q Was it fairly flat in the immediate vicinity of
16 the house, is what I am asking?

17 A Yes.

18 MR. RAMPTON: I have no further questions, your
19 Honor.

20 THE COURT: Mr. Pettey, any questions?

21 MR. PETTEY: Just one.

22 CROSS-EXAMINATION

23 BY MR. PETTEY:

24 Q Would you clarify, when you say it is sloped, do
25 you mean it sloped up or down?

1 A It is sloped -- Redwood Road is something like
2 this, then it goes off like that. The property is down here
3 and it is sloped upward toward the back.

4 Q It is sloped up toward the back?

5 A Toward the road?

6 Q The majority of it was below the Redwood Road?

7 A Below the asphalt level, yes.

8 MR. RAMPTON: Nothing further.

9 THE COURT: Anymore questions?

10 MR. RAMPTON: Nothing further, your Honor.

11 THE COURT: You can step down.

12 (Witness excused.)

13 MR. RAMPTON: Call Craig R. Merrill to the stand,
14 please.

15 THE COURT: Mr. Merrill, if you would come up here
16 and be sworn, please.

17 CRAIG C. MERRILL;
18 Called as a witness at the instance of the Defendants,
19 being first duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. RAMPTON:

23 Q State your name for the record, please, sir.

24 A Craig C. Merrill.

25 Q And your current address?

1 A 1082 East Birchbrook Circle in Midvale.

2 Q Let me show you photographs which have been marked
3 for identification as Exhibit 5, 6 and 7 and ask you if you
4 recognize those photographs?

5 A Yes.

6 Q Did you take them?

7 A My daughter took them.

8 Q Were you present when she took them?

9 A Yes.

10 Q Do you recognize the house that is depicted in the
11 photographs?

12 A Yes.

13 Q Where is it?

14 A The house is located at immediately north of the
15 property that we have been talking about. I think it is 171
16 North Redwood Road.

17 Q Did you personally see the home located at 145
18 North Redwood Road before it was demolished?

19 A Yes.

20 Q Is there any similarity between the home that was
21 demolished and the home we are looking at in this picture?

22 A To my recollection, those homes were essentially
23 twins.

24 Q I'd ask that Exhibits 5, 6 and 7 be received in
25 evidence, your Honor.

1 THE COURT: Any objection?

2 MR. PETTEY: No, your Honor.

3 THE COURT: They will be received.

4 (Defendants' Exhibit Nos. 5, 6 and 7.
5 Were received in evidence.)

6 THE COURT: That's all I have of this witness.

7 THE COURT: Any questions, Mr. Pettey?

8 MR. PETTEY: Yes. Just one, your Honor.

9 THE COURT: He has a question for you.

10 CROSS-EXAMINATION

11 BY MR. PETTEY:

12 Q This particular property which you indicate is
13 just north of the subject property at 145 North?

14 A Yes.

15 Q Is that lot on the same or was that lot on the
16 same level as the property that was -- the home that was
17 demolished, or is it lower or higher?

18 A It is lower than Redwood Road. You do go down a
19 little bit into the property. It is also lower than Gertie
20 Street, which is the street that separates them. I couldn't
21 say for sure, but I think it is lower than the Galloway
22 property was, or about the same, or perhaps slightly higher.
23 My feeling is it is reasonably close.

24 MR. PETTEY: Okay. No further questions.

25 THE COURT: Any questions?

1 MR. RAMPTON: No, your Honor.
2 THE COURT: You can step down. Thank you.
3 (Witness excused.)
4 MR. RAMPTON: Call John Henry McCaughey to the
5 stand, please.
6 THE COURT: Mr. -- say it again.
7 MR. RAMPTON: McCaughey. If you will come up here
8 and be sworn, please.
9 JOHN HENRY McCAUGHEY,
10 Called as a witness at the instance of the Defendants,
11 being first duly sworn, was examined and testified as
12 follows:
13 DIRECT EXAMINATION
14 BY MR. RAMPTON:
15 Q If you would state your name and spell your last
16 name for the reporter.
17 A John Henry McCaghey M.C.C.A.U.G.H.E.Y.
18 Q What is your current address, sir?
19 A 588 East Vine, Number 2-B, Murray, Utah.
20 Q And your current occupation?
21 A I am a demolition contractor.
22 Q What company are you with?
23 A Northern Nevada Construction.
24 Q What is your position with the company?
25 A I am the General Manager and Vice-president.

1 Q Briefly, describe your duties.

2 A Bid all of our work. I am the dispatcher, run the
3 shop, handle all the maintenance. I am general manager. I
4 mean, I sign all the checks, hire, fire, profit and loss is
5 my responsibility.

6 Q Do you still do onsite work as well?

7 A Yes. When necessary. When I don't have enough
8 people to do go around, I do the work myself.

9 Q How long have you been a demolition excavator?

10 A About seven years.

11 Q How many projects would you say you have handled
12 in that time?

13 A 1,500.

14 Q Have you any recent projects you have done which
15 you can identify for the Court?

16 A We are just finishing doing the Centre Theater.
17 We just finished digging the hole. We tore down that
18 building there. We are doing the Gordon Place for Zions
19 Securities Finance 15 holes we are finished tearing out. We
20 just tore down part of Hillcrest Junior High School for
21 remodeling.

22 Q Thank you. I want to ask you a hypothetical
23 question based on your experience in the demolition expert
24 estimation business. I want you to assume a private
25 residence of not more than 800 square feet composed of clap

1 board, one story structure with a crawl space of not more
2 than six feet deep underneath, which you are required to
3 demolish and fill the remaining hole. Do you have an
4 opinion as to what you would bid that project at?

5 A Well, I just did two, two weeks ago that fit that
6 description exactly. I did them each for \$1,500.

7 Q Does that include the hauling, supplying of fill
8 material?

9 A Yes.

10 Q I want you, if you will, to look at the paragraphs
11 that are in front of you, which have been received as
12 Exhibits 5, 6 and 7. Before you talk about those, let me
13 ask you another question. Have you visited the site at 145
14 North on Redwood Road?

15 A Yes.

16 Q Do you recognize the house that is depicted in the
17 three photographs before you?

18 A Well, it looks a lot like the house just to the
19 north of that address.

20 Q You saw that house while you were there?

21 A Yes. It is just on the side there is a little
22 alleyway there. I took a peek over there.

23 Q Is the bid that you just described, the \$1,500
24 bid, could that hold true for demolishing this house which
25 you are looking at?

1 A Well, I could do it for that. It would help if I
2 knew who I was bidding against, then I'd know how high I
3 could go. I could do this job for 1,500 easy.

4 Q What do you base 1,500 on?

5 A Well, it is kind of a -- on bigger projects, we
6 bid our job by the cubic yard. We determine how many cubic
7 yards of debris is in the project. We have a unit price for
8 the cubic yard. And for that house, that equation wouldn't
9 work because there is so few cubic yards of house, in the
10 trash, that it wouldn't cover our mobilization cost. So we
11 basically do houses on -- we have fixed costs for houses
12 ranging from a thousand dollars to \$2,500 depending on the
13 size of the house, and the location of the house, and
14 whether it has got a full basement underneath it or whether
15 or not we are going to be required by the owner the fill the
16 basement, or -- you see what I am saying.

17 Q Yes. So it would be bid on a piece basis rather
18 than a yardage basis?

19 A Right.

20 Q How about the fill, your \$1,500 assumption, what
21 kind of fill work?

22 A Well, the City requires that if you are going to
23 change the grade, any grade change of the project over two
24 feet, you have to make up that two feet. Which, of a house
25 like this -- I mean, I checked this house out the other day

1 when I was over there looking at 145. It has got a crawl
2 space underneath it, so we would plan on filling the crawl
3 space up right to whatever the grade around the house was,
4 because that's what the City would require. A house like
5 this would take maybe 60, 70 yards of fill. We'd roll it in
6 with a Cat and that would be that.

7 Q You testified a moment ago about City
8 requirements. What is your understanding, as a cost
9 estimator, of City requirements where a house is demolished,
10 what do you have to do as far as fill and grading at that --
11 after that point?

12 A Well, like I said, what they are predominantly
13 looking for, they don't want any steep dropoffs or any
14 hazardous situation being the result of a demolition job, so
15 they have got that two-foot requirement. The two foot cut
16 off, if you can slope it off the crawl space and it doesn't
17 result in more than a two-foot grade variation, then you
18 don't have to fill it at all. But if you are going to
19 produce a grade variation where the house was, or if you are
20 going to produce a grade variation anywhere, you have to
21 make up that difference with fill.

22 Q Is there any requirement in the City that after a
23 house is demolished, the entire lot must be changed in grade
24 to that of surrounding sites?

25 A No.

1 Q So if a house sits lower than a surrounding site,
2 you don't have to fill that in as part of the demolition
3 project?

4 A No.

5 Q Is tree removal a requirement of the City in
6 conjunction with a demolition project?

7 A Well, quite the opposite. The whole landscape
8 ordinance that went into effect in 1986 was an attempt to
9 keep landscaping and trees growing in the City. So that's
10 why the City is requiring people to post landscape plans
11 prior to getting demolition permits.

12 Now, a lot of people get around that with weed
13 waivers, you know, by saying well, we will keep the weeds
14 cut down, because they can convince the City that they are
15 going to have a future project. But even the weed waivers
16 these days are hard to come by. And in most cases, if you
17 don't have a landscape bond, you have to have your new plans
18 approved for a new project before they will even let you
19 tear a place down.

20 In the case of this, where there was an order out
21 to get it demolished, they are a lot more lenient with their
22 weed waivers, because if it goes too far the City is going
23 to condemn the property. And City projects are exempt from
24 the landscape ordinance, and so they have -- you know, they
25 could -- I think they could see one step beyond this one,

1 just gave him the weed waiver and let him knock it down.

2 MR. RAMPTON: I don't have anymore questions of
3 this witness.

4 THE COURT: Any questions, Mr. Pettey?

5 MR. PETTEY: Yes, your Honor.

6 CROSS-EXAMINATION

7 BY MR. PETTEY:

8 Q Mr. McCaughey, did you ever inspect or see this
9 property prior to the time that the demolition occurred?

10 A Oh, I have seen it but I didn't inspect it.

11 Q Had you seen it when it did have buildings on it?

12 A Uh-huh.

13 Q Okay. Were you aware of how many structures were
14 on the property?

15 A Well, to the best of my knowledge, there was a
16 house up front and had a little garage, had a little shed, I
17 think. There was a little root cellar or something out
18 there. I bid on that Casablanca Motel which was right
19 around that Norwood Club from where that house was. There
20 was a house right behind that one that had to come out with
21 that project, so I was kind of traipsing all over that place
22 about a year ago.

23 Q You have been on the property since the demolition
24 has occurred, and the grading?

25 A Yes.

1 Q So you are familiar with the fill that is there
2 now?

3 A Uh-huh. (Affirmative)

4 Q If you had done the demolition work and brought in
5 the fill, the same type of fill, same quality, et cetera,
6 and done that job comparable to what was done, do you have
7 an estimate as to what you would have charged for that type
8 of service?

9 MR. RAMPTON: I am going to object to the
10 question. There is no evidence this man knows exactly what
11 was done. He said he hasn't been on the site since the
12 project was completed.

13 THE COURT: Well, I think if he was out there he
14 probably has an idea. If you can answer the question, you
15 can. If it is not possible, then, just say so.

16 THE WITNESS: Yeah, it is kind of hard to bid on a
17 job that has already happened. But, at the time -- at the
18 time that this job occurred, I could tell you what I would
19 have bid. I would have bid 1,800 bucks because that's what
20 I was bidding on houses at the time.

21 THE COURT: To do everything that was done,
22 including removing the trees?

23 THE WITNESS: No, not including removal of the
24 trees.

25 THE COURT: Including everything that was done, is

1 what he wants to know. What would have you charged for the
2 same thing?

3 THE WITNESS: \$2,500.

4 Q (By Mr. Pettey) Including bringing in the amount
5 of fill?

6 A What amount?

7 Q Well, I guess I am asking the amount of fill that
8 was brought in, your not familiar with that?

9 A Well, I would have just filled the crawl space
10 under the house.

11 THE COURT: He wants to know what you would have
12 charged, what was actually done.

13 THE WITNESS: What was done?

14 THE COURT: If you don't know, I guess --

15 THE WITNESS: I don't know.

16 MR. PETTEY: I thought perhaps he was aware of
17 that. No further questions.

18 THE COURT: Anything further, Mr. Rampton?

19 MR. RAMPTON: Just a couple of questions.

20 REDIRECT EXAMINATION

21 BY MR. RAMPTON:

22 Q You testified, regarding cross-examination, in the
23 past you observed a couple of additional buildings on the
24 property that was occupied by this house, that was torn
25 down; is that correct?

1 A Yeah. I think it had its own garage. I am pretty
2 sure it had a little garage on back.

3 Q I want you now to assume your estimate has to
4 include taking down those out buildings as well. How would
5 that alter it?

6 A Well, that's why I said \$1,800 because I figured
7 the garage and that little shed was worth about two loads,
8 and I figure \$100 a load over my base price.

9 Q So wouldn't change?

10 A No, not appreciably. The only thing that really
11 changed it was his comment about the trees.

12 Q How many tons of fill material in a cubic yard?

13 A Per K.Y.?

14 Q Uh-huh.

15 A About a ton and a half per K.Y.

16 THE COURT: Anything further, Mr. Pettey?

17 MR. PETTEY: No, your Honor.

18 THE COURT: Thank you. You can step down.

19 (Witness excused.)

20 THE COURT: Any more witnesses, Mr. Rampton?

21 MR. RAMPTON: No, your Honor. I'd like to recall
22 Mr. Jay Hansen for just a moment.

23 THE COURT: Mr. Hansen if you will come back up
24 here for a moment. You understand you are still under oath?

25 THE WITNESS: Yes.

1 THE COURT: Thank you.

2 J. D. HANSEN,

3 Recalled as a witness at the instance of the Defendant,
4 being first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. RAMPTON:

8 Q Mr. Hansen, I want to show you what's been marked
9 as Exhibit 8 and ask you if you recognize it?

10 A Yes.

11 Q What is it?

12 A It is a two-page document. It is an invoice from
13 Cliff Johnson Excavating for the fill dirt that was brought
14 into the property at 145 North Redwood Road.

15 MR. RAMPTON: I'd ask Exhibit 8 be received in
16 evidence.

17 THE COURT: Any objection?

18 MR. PETTEY: No, your Honor.

19 MR. RAMPTON: That's all I have, your Honor. No
20 further questions.

21 THE COURT: Thank you. Any further testimony, Mr.
22 Pettey.

23 MR. PETTEY: Yes I'd like to ask Mr. Hansen one
24 additional question.

25 THE COURT: Certainly.

1 CROSS-EXAMINATION

2 BY MR. PETTEY:

3 Q Now, when you spoke with Mr. Cliff Johnson, what
4 instructions did you give to him with respect to the amount
5 of fill or the proper grade or whatever that was done to
6 that property?

7 A Well, he was to bring the property up to grade
8 with the adjoining properties.

9 Q Why did you tell him that?

10 A Because the property -- the subject property was a
11 foot and a half or so -- I don't know the exact dimensions,
12 but I would say at least a foot and a half below the
13 adjoining property to the rear, to the south side and below
14 both streets. And the property was a trash collector. It
15 was part of the problem of getting the property acceptable.

16 Q Did you tell him that because you personally
17 wanted it brought up to that level?

18 A No. It was my understanding the City expected the
19 property to be cleared off and graded.

20 MR. RAMPTON: Objection to the answer. It
21 incorporates hearsay testimony from the City.

22 THE COURT: Again, it can be received as a reason
23 for doing what he did, not necessarily the truthfulness of
24 it. Overruled.

25 MR. PETTEY: That's all.

1 THE COURT: Any more questions, Mr. Rampton?

2 MR. RAMPTON: Nothing further, your Honor.

3 THE COURT: You can step down.

4 (Witness excused.)

5 THE COURT: Can I see that last exhibit?

6 Well, it appears that the big majority of this
7 \$12,900 expenditure is for the fill dirt to have the
8 property brought up to grade, and nearly \$9,700 for the dirt
9 alone. If you add that to the amount that Mr. McCaughey
10 says is the reasonable amount for the excavation, comes out
11 about right. So the question, I guess, is whether or not,
12 adding that fill is a necessary maintenance upkeep or repair
13 of the property.

14

15 MR. RAMPTON: May I be heard on that? There is
16 City law on point.

17 THE COURT: Sure.

18 MR. RAMPTON: Furnishing the Court a copy of City
19 Ordinance Number 18.64.050, which reads in pertinent part as
20 follows:

21 "A permit for demolition requires that all.

22 Material comprising part of the existing.

23 Instructions, including the foundation and.

24 Footings must be removed from the site.

25 The depression caused by the removal of such.

1 Debris must be filled back and compacted to.
2 The original grade as approved by the building.
3 Official, with fill material" of fill dirt existing.
4 "excluding detrimental amounts of organic material.
5 Or large dimension non organic material."

6 There was no requirement of filling a entire lot
7 with dirt in order to bring it up to the grade of
8 surrounding property or the surrounding roads. You simply
9 have to fill the hole in. That's the requirement based on
10 statute.

11 THE COURT: Well, you know what you have got,
12 though, is a situation where the lady buys the property at a
13 Sheriff's sale, and it is true it is probably not too
14 prudent to spend any money on it until the redemption period
15 is passed. You know, what to do with it. But the City
16 tells her she has to demolish, whether she really reads the
17 ordinance correctly or whether she doesn't, she puts the
18 money into the property. And then the people come in and
19 redeem it, and property has been improved, and they receive
20 the benefits of the property, improvement or upkeep. Maybe
21 not considerably a benefit. They might have wanted the
22 house and trees and whatever, but nevertheless, what has
23 gone into it.

24 I really can't -- you can't say that's even reasonable.
25 That seem to me to be the question, not whether it is, you

1 know, perfectly the right thing to do, but whether it was
2 reasonable. And I think it was reasonable, and so I think I
3 am going to rule that the redemption value here is the
4 amount paid for the property plus six percent plus the taxes
5 plus the 12,905 she paid for the excavation and 10 percent
6 interest thereon. And that should be the amount that's
7 required for the amount of redemption.

8 Ask you to prepare an order to that effect, Mr.
9 Pettey.

10 MR. PETTEY: Will do, your Honor.

11 THE COURT: Court will be in recess for about two
12 or three minutes, then we will begin your matter, Mr.
13 Gaither.

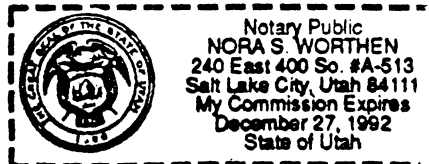
14 (Proceedings concluded.)
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1 REPORTER'S CERTIFICATE

2 STATE OF UTAH)
3 : SS.
4 SALT LAKE COUNTY)

5 I, NORA S. WORTHEN, an official court reporter for
6 the Third Judicial District Court in and for Salt Lake
7 County, State of Utah, do hereby certify that I reported
8 stenographically the proceedings in the matter of GUNDA M.
9 GALLOWAY VS. ROWLAND H. MERRILL, JR., Case No. 880901017,
10 and that the above and foregoing is a true and correct
11 transcript of said proceedings.

12
13 Dated this 13th day of November, 1989.
14
15
16



Nora S. Worthen, CSR, RPR, CP
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