

1981

Stanley Martin Redd, Sheila M. Redd, His Wife;
Sterling Hardson Redd, Jill D. Redd, His Wife; Paul
Dutson And Donna Dutson, His Wife v. Western
Savings & Loan Company : Addition of New
Authorities To Brief of Respondent

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Richard W. Giaque and James R. Holbrook; Attorneys for Respondent Neil R. Sabin; Attorney for Appellants

Recommended Citation

Supplemental Submission, *Redd v. Western Savings & Loan*, No. 17231 (Utah Supreme Court, 1981).
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IN THE SUPREME COURT OF THE STATE OF UTAH

STANLEY MARTIN REDD,)	
SHEILA M. REDD, his wife;)	
STERLING HARDSON REDD,)	
JILL D. REDD, his wife;)	
PAUL DUTSON and DONNA)	NEWLY UNCOVERED AUTHORITY
DUTSON, his wife,)	FOR BRIEF OF RESPONDENT
)	
Plaintiffs-Appellants,)	Utah Rules of Civil
)	Procedure 73(p)(3)
v.)	
)	Case No. 17231
WESTERN SAVINGS & LOAN)	
COMPANY,)	
)	
Defendant-Respondent.)	

As further support for Western Savings' argument that the due-on-sale clause is not an unreasonable restraint on alienation, the following bracketed language is to be inserted to the last paragraph of page 9 of Brief of Respondent:

. . . widely fluctuating interest rates. See, [Krause v. Columbia Savings & Loan Ass'n, Civil No. 80CA0735 (Colo. Ct. App., filed Mar. 19, 1981);] Occidental Savings & Loan Ass'n v. Venco . . .

IN THE SUPREME COURT OF THE STATE OF UTAH

STANLEY MARTIN REDD,)	
SHELLA M. REDD, his wife;)	
STERLING HARDSON REDD,)	
JILL D. REDD, his wife;)	
PAUL DUTSON and DONNA)	
DUTSON, his wife,)	
)	NEWLY UNCOVERED
Plaintiffs-Appellants,)	AUTHORITY FOR BRIEF
)	OF RESPONDENT
v.)	
)	Case No. 17231
WESTERN SAVINGS & LOAN)	
COMPANY,)	
)	
Defendant-Respondent.)	

As further support for Western Savings' argument that it has the statutory authority to enforce the due-on-sale clauses against the appellants, the following bracketed language is to be inserted just prior to the heading of Western Savings' second major argument:

. . . agreement with appellants. [Not only does Utah law allow enforcement of the due-on-sale clauses pursuant to Sections 7-7-5.1 and 7-13.74, but the 1981 General Session of the Utah Legislature enacted H.B. 203 which also authorizes enforcement of the due-on-sale clause against the appellants. Although several of the retroactive aspects of H.B. 203 are questionable as applied to residential property, that new law presently authorizes enforcement of the due-on-sale clause for property having greater than four residential units. See Section 5 of

H.B. 203 (enacting § 57-15-5, Utah Code Annotated). In the case at bar, the property which is the subject of this suit is a 24-unit apartment complex. Therefore, the Utah Legislature has determined that Western Savings may rely on the contracts which it entered into with the appellants, and may enforce the due-on-sale provisions therein.

H.B. 203 also embodies a public policy determination by the Utah Legislature endorsing Western Savings' arguments, at least with respect to the present 24-unit apartment complex, and rejecting the appellants' arguments both that the due-on-sale clause is an unreasonable restraint on alienation as applied to the subject property, and that it may not be used to bring interest rates of loans for such investment property to more current levels.]

II. SUMMARY JUDGMENT WAS PROPERLY GRANTED
BY THE LOWER COURT.