

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 : Appellants' Response  
To Addition of New Authority To Brief of  
Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

Clerk, Supreme Court, Utah

STANLEY MARTIN REDD,	)	
SHEILA M. REDD, his wife;	)	
STERLING HARDSON REDD,	)	
JILL D. REDD, his wife;	)	APPELLANTS' RESPONSE TO
PAUL DUTSON and DONNA	)	ADDITION OF NEW AUTHORITY
DUTSON, his wife,	)	TO BRIEF OF RESPONDENT
	)	
Plaintiffs-Respondents.)	)	
	)	
vs.	)	Case No. 17231
	)	
WESTERN SAVINGS & LOAN	)	
COMPANY,	)	
	)	
Defendant-Respondent.	)	

The purpose of this document is to respond to the Addition to New Authority to Brief of Respondent dated June 2, 1981.

The Respondent has submitted the case of Williams v. First Federal Savings and Loan Association of Arlington, No. 80-1446 (4th Cir., filed May 26, 1981), as additional support for the Respondent's position in this case. It is significant to note, however, the following:

1. To the extent that the Williams case involves issues in common with this instant case, it is important to note that the Williams court relied upon existing statutes, cases and a constitutional provision of the State of Virginia. See Williams, at n. 7, 33, n. 28, 34-38, n. 30, 39-40, n. 34, n. 36, n. 37. That case, therefore, is distinguishable from this instant case which arises in the absense of Utah cases or statutory law favoring the Respondent's position. The Appellants,

rather, contend that trial on the merits is essential in order that Utah law may be clarified as a result of well-considered factual and equitable determinations.

2. The instant case includes significant issues vigorously disputed by the parties involving the affect, if any, of regulations by federally chartered instrumentalities. The Williams court, on the other hand, did not directly face that issue. The Court stated:

We are fortunately spared the complications associated with what to do where a due-on-sale clause is valid under federal law, but in a particular case leads to a result which state law would disallow as inequitable. Williams, supra, at fn. 28 (citations omitted).

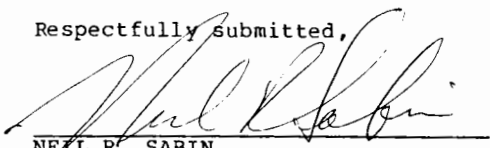
3. While dicta in the Williams case rejects the argument that the "due on sale" clause constitutes an unlawful restraint on alienation, that court did not specifically reach a holding on that issue. The court stated:

Viewed in isolation, it cannot be said to create a restraint on alienation, or if it does, it is one validated by the Virginia legislature. Williams, supra, at 34-38. (emphasis supplied)

4. The Williams case unfortunately does not specify the nature of the proceedings in the lower court from which the appeal was taken, other than to clarify that three cases were consolidated "for trial below." Williams, supra, fn. 1. However, the Williams court did not preclude that common and understood right of the courts to go behind the language to determine the equities involved, nor the consideration of facts involved on a case-by-case basis.

DATED this 11<sup>th</sup> day of June, 1981.

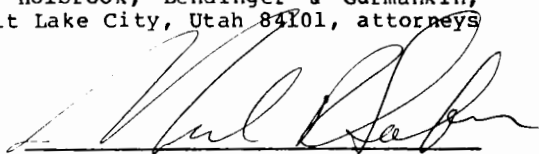
Respectfully submitted,

  
NEIL R. SABIN

Attorney for Appellants

CERTIFICATE OF HAND DELIVERY

I hereby certify that on the 11th day of June, 1981, I caused a true and correct copy of the foregoing instrument to be hand delivered to Richard W. Giaque, James R. Holbrook and Stephen T. Hard, of Giaque, Holbrook, Bendinger & Gurmankin, P.C., 500 Kearns Building, Salt Lake City, Utah 84101, attorneys for Respondent.

  
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