

1981

Melvin Church v. Meadow Springs Ranch Corporation, Inc. , Estate of Thomas Tony Castagno, Albert J. And Bernice B. Castagno, Myron T. Castagno And Mrs. Myron T. Castagno, Eugene Castagno And Mrs. Eugene Castagno Individually, And Eugene Castagno, As Administrator of The Estate of Thomas Tony Castagno, Richard Castagno, John Does And Jane Does, One Through Six, As Heirs of Thomas Tony Castagno, And Federal Land Bank of Sacramento :  
Brief of Respondents Albert J. And Bernice B. Castagno

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. Paul N. Cotro-Manes; Attorney for Meadow Springs Ranch John A. Rokich; Attorney for Defendants Douglas F. White; Attorney for Defendants Albert J. and Bernice B. Castagno E.J. Skeen; Attorney for Federal Land Bank of Sacramento

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IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

MELVIN CHURCH,

Plaintiff and Appellant,

vs

MEADOW SPRINGS RANCH CORPORATION,  
INC. ESTATE OF THOMAS TONY  
CASTAGNO, ALBERT J. and BERNICE B.  
CASTAGNO, MYRON T. CASTAGNO, EUGENE  
CASTAGNO and MRS. EUGENE CASTAGNO,  
individually, and EUGENE CASTAGNO  
AS ADMINISTRATOR OF THE ESTATE OF  
THOMAS TONY CASTAGNO, RICHARD  
CASTAGNO, JOHN DOES and JANE  
DOES, ONE through SIX, AS HEIRS  
OF THOMAS TONY CASTAGNO, and  
FEDERAL LAND BANK OF SACRAMENTO,

Defendants and Respondents.

\*\*\*\*\*

RESPONDENTS BRIEF

Albert J. Castagno

and

Bernice B. Castagno

\*\*\*\*\*

Appeal From a Judgment of the District Court of the

In and for Tooele County, State of Utah

Honorable Homer F. Williams, Judge

\*\*\*\*\*

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IN THE SUPREME COURT OF THE STATE OF UTAH

\* \* \* \* \*

MELVIN CHURCH,

Plaintiff and Appellant,

vs

Case No. 17241

MEADOW SPRINGS RANCH CORPORATION,  
INC. ESTATE OF THOMAS TONY  
CASTAGNO, ALBERT J. and BERNICE B.  
CASTAGNO, MYRON T. CASTAGNO, EUGENE  
CASTAGNO and MRS. EUGENE CASTAGNO,  
individually, and EUGENE CASTAGNO  
AS ADMINISTRATOR OF THE ESTATE OF  
THOMAS TONY CASTAGNO, RICHARD  
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OF THOMAS TONY CASTAGNO, and  
FEDERAL LAND BANK OF SACRAMENTO,

Defendants and Respondents.)

\* \* \* \* \*

RESPONDENTS BRIEF  
Albert J. Castagno  
and  
Bernice B. Castagno

\* \* \* \* \*

Appeal From a Judgment of the Third District Court  
In and for Tooele County, State of Utah  
Honorable Homer F. Wilkinson, Judge

\* \* \* \* \*

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MELVIN CHURCH,

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vs

MEADOW SPRINGS RANCH CORPORATION,  
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FEDERAL LAND BANK OF SACRAMENTO,

Case No. 17241

Defendants and Respondents. )

\*\*\*\*\*

RESPONDENTS BRIEF

Albert J. Castagno

and

Bernice B. Castagno

\*\*\*\*\*

STATEMENT OF NATURE OF THE CASE

At trial the Appellant alledged in his First Cause of Action, Count I, that as consideration for the aquisition of three (3) second feet of water through Application No. 32822 that the Respondents purchased Forty (40) acres of real property at a reduced sales price of \$700.00 per acre below market price. In the actenative, the Appellant alleged in his Second Cause of Action, Count II, that he had purchased the same three (3) second feet of water from Respondents.

### DISPOSITION OF LOWER COURT

After trial, on the 1st and 2nd day of April, 1980, the court determined that the issue of consideration for the purchase of the forty (40) acres had been determined against Appellant in Castagno vs Church 552 P 2nd 1282 (1976) and was therfor Res judicata at the Trial Court. The court also determined that the oral agreement with Respondent concerning the three (3) second feet of water was contingent in nature and the contingency had not matured into an enforcable contract.

### RELIEF SOUGHT ON APPEAL

Respondents seek an affirmance of the findings and judgments rendered in their favor by the Third District Court.

### STATEMENT OF FACTS

In the early part of the year in 1973, Albert J. Castagno and Bernice B. Castagno, Respondents, were considering buying forty (40) acres of agricultural property from Melvin Church, Appellant. This land was located in and arid area just East of Grantsville City, Utah.

On March 10, 1973 a contract was struck. This meeting of minds was evidenced by the Earnest Money Agreement dated March 10, 1973. See Exhibit 13. See Transcript on Appeal p. 277 line 16-25. A Contract was entered into for the purchase of forty (40) acres of land from Melvin Church. Albert J. Castagno and Bernice B. Castagno paid Five Hundred Dollars (\$500.00) to bind the Contract at that time. This agreement with its terms and conditions was later evidenced by a Uniform Real Estate Contract.

dated December 14, 1973, and was signed December 18, 1973. See Exhibit 12. See Transcript on Appeal p.280 line 18. This Uniform Real Estate Contract was the subject of previous litigation in Castagno vs Church, 552 P. 2d . 1282 (1976).

In Castagno vs Church the Plaintiffs, Albert J. Castagno and Bernice B. Castagno allged that Defendant, Melvin Church breached the Uniform Real Estate Contract because he had failed to provide the one (1) second foot of water to the forty (40) acres as promised. It was the Castagno's contention that this one (1) second feet of water was going to be diverted from the Louis Buzianis Application that Melvin Church attempted to transfer, but was unsuccessful. See Transcript on Appeal p. 296 line 9-25 and p.297 line 1-9. As a result of Melvin Church's failure to provide this one (1) second foot of water to the Castagno's forty (40) acres the trial court abated the purchase price of the land in the amount of Three Hundred Dollars (\$300.00) for each of the forty (40) acres. This abatement therefore totaled Twelve Thousand Dollars (\$12,000.00). Castagno vs Church 552 P. 2nd 1282 (1976).

Sometime just prior to September 10, 1973, Melvin Church inquired of Rex Larson, an Area Engineer for the Water Rights Division of the State of Utah, as to whether or not he knew of any rights or applications outstanding, approved applications which might be available to purchase in the Grantsville District. As one of those possibilities Rex Larson named the Bernard Castagno water right represented by Application No. 32822. See Transcript on Appeal p. 48; lines 23-25 and p. 49 lines 1-6; p. 293 lines 4-21.

Counsel for Defendant, Melvin Church, attempted at the trial to place into evidence the contingent oral agreement but was prohibited in doing so by the Parol Evidence Rule. The purpose of the attempt to introduce this contingent oral agreement was to allege that the sales price of the property had been reduced to Eight Hundred (\$800.00) an acres in partial consideraton for Albert J. Castagno assigning to Melvin Church the potential three (3) second feet of water out of the (5) second feet of water that was not yet perfected under the Bernard Castagno Application. Appellant's counsel is still attempting to advance this same argument in the present case before the Utah State Supreme Court not withstanding the fact that this argument was settled against him in Castagno vs Church 552 P. 2nd 1282, (1976). See Amended Complaint No. 9102, First Cause of Action, Count one, Paragraph 2 and Second Cause of Action Count, One Paragraph 3.

Albert J. Castagno and Bernice B. Castagno, admit that they entered into an oral agreement with Melvin Church just prior to September 7, 1973. That oral agreement concerned the possibility of acquiring five (5) second feet of water through Application No. 32822. Melvin Church admitted the doubt surrounding the possibility of perfecting Application No. 32822, more particularly, there were problems concerning the chain of title to Application No. 32822. See Transcript of Appeal P.124 line 21-25, p.125, p.126, p.127, p.128 and p.129 line 1-16.

That oral agreement consisted of Albert J. Castagno assigning to Melvin Church three (3) second feet of water out of a total of five (5) second feet of water that was represented by the Bernard Castagno Application No.32822. Albert J. Castagno



these potential water rights from his mother, Gertrude M. Castagno who received them in the Decree of Distribution in the Probate of the Estate of Bernard Castagno. See Probate No. 1192, Third District Court in and for Tooele County, State of Utah. In consideration for Melvin Church receiving his three (3) second feet of water, he was to do whatever was necessary, legal or otherwise, in order to perfect the total five (5) second feet of water represented by Application No. 32822. If the five (5) second feet of water represented by Application No. 32822 could not be obtained and or perfected Melvin Church was to receive nothing for his efforts.

On September 7, 1973, not long after this oral contingency agreement was reached Albert J. Castagno assigned to Melvin Church his potential (3) second feet of water in Application No. 32822. See Transcript of Appeal p. 125 line 3-25. Thereafter, Melvin Church began the process of perfecting the potential water rights in Application No. 32822.

Melvin Church attempted to divert the three (3) second feet of water to his remaining land in Granstville, Utah. This action was opposed by the Defendants, Meadow Springs Ranch who claimed that they were the rightful owners of the water through Application No. 32822.

Meadow Springs Ranch advanced the argument that they owned Application No. 32822 because it was a water right appurtenant to their land. Meadow Springs Ranch had acquired their property, located approximately one (1) mile northwest of Grantsville, Utah through several transactions subsequent to the time that Bernard Castagno originally applied for the five (5) second feet of water through Application No. 32822

on March 13, 1961.

In reference to Appellant's brief page 5 and page 6 where it is indicated the sequence of events on the sale of the Bernard Castagno Ranch and the development of Application No. 32822, there is included in Respondents Brief herein pertinent dates concerning the oral agreement between Albert J. Castagno and Bernice B. Castagno and Melvin Church and the five (5) second feet of water represented by Application No. 32822. Those dates are indicated by (\*). See below.

- March 13, 1961 - Bernard Castagno applies for right to seek and appropriate additional 5 second feet of water, Application No. 32822. (Pl. Exhibit 1, p.2).
- January 2, 1965 - Bernard Castagno died. (D. Exhibit 15)
- June 14, 1965 - Honorable Gordon R. Hall, then attorney for Gertrude M. Castagno, obtained a Decree whereby all the assets of the Estate of Bernard Castagno was distributed to Gertrude M. Castagno. (Pl. Exhibit 1, p.5)
- May 14, 1965 - Gertrude Castagno sold her property by contract to Richard C. Burke on May 14, 1965. (See page 2, Pl. Exhibit 7)
- March 15, 1967 - Burke sold property by contract to Gledhill Inc., on March 15, 1967. (Pl.Exhibit 7 p.2)
- September 8, 1969 Application No. 32822 was approved by the State Engineer's Office in the name of Bernard Castagno. (Pl.Exhibit 1, p.2,3)
- December 29, 1969 Gledhill sold the property to Terracor. (Pl. Exhibit 9)
- May 1, 1970 - Terracor sold property on Exchange Agreement to Thomas "Tony" Castagno. (Pl. Exhibit 1)
- May 10, 1971 - Thomas "Tony" Castagno died. (Pl.Exhibit 11 p.2)
- March 10, 1973 \* Earnest Money Agreement between Albert J. and Bernice B. Castagno and Melvin Church for purchase of forty (40) acres for \$32,000.00 (Defendants Exhibit 13)

- August 1973 or \*  
(Prior to  
August 20, 1973) Rex Larson tells Melvin Church about possibility of acquiring five (5) second feet of water through Bernard Castagno's Application No. 32822 (See Transcript of Appeal p.48 lines 23-25 p.49 lines 1-6 p.293 lines 4-21.)
- August 20, 1973 - Gertrude M. Castagno assigned approved Application No. 32822 to her son Albert J. Castagno (Pl. Exhibit 1, p.16).
- September 7, 1973\* Albert J. Castagno assigned to Appellant, Melvin Church three-fifths (3/5) interest to approved Application No. 32822. (Pl. Exhibit 1, p.19)
- December 14, 1973 \* Uniform Real Estate Contract was signed by Albert J. and Bernice B. Castagno and Melvin Church.

The Respondents, Albert J. Castagno and Bernice B. Castagno contend that the agreement they had with Melvin Church was oral and contingent upon Melvin Church being able to prove up or perfect the potential interest in Application No. 32822. Furthermore, that Melvin Church has failed to prove up or perfect any water rights pursuant to Application No. 32822.

The Respondent, Albert J. Castagno and Bernice B. Castagno contend that the contingent oral agreement pursuant to Application No. 32822 was separate and apart from the Uniform Real Estate Contract for the purchase of forty (40) acres in Grantsville, Utah and should in no ways be construed to be a part of it thereof.

The trial court adjourned on the 2nd day of April, 1980 made the following findings and orders pursuant thereto and in direct relation to the issues concerning Defendants Albert J. Castagno and Bernice B. Castagno and Melvin Church, Plaintiff:

## SECOND DEFENSE

"1. In reply to paragraph one of defendants counterclaim plaintiffs admit that plaintiff, Albert J. Castagno assigned three second feet of water to the defendant, Melvin Church, but deny that it was in consideration for any conveyance from defendants to plaintiffs and deny each and every other allegation of paragraph One of defendants counterclaim."

## THIRD DEFENSE

" As an affirmative defense and without derogation to any other defense stated herein plaintiffs allege that an oral agreement was never entered into which was to be incorporated into the Uniform Real Estate Contract and subsequently was never incorporated therein and therefore, plaintiffs assert that defendants assertion of oral agreement which was to have provided additional consideration for the Uniform Real Estate Contract executed by the parties, but never incorporated therein, is barred by th Parol Evidence Rule."

## FOURTH DEFENSE

" As a second alternative affirmative defense and without derogation to any other defense asserted herein, plaintiffs alleges that if the supposed oral agreement mentioned in defendants' counterclaim could in any manner be construed as a seperate and distinct agreement which in no way is related to the transaction involving the Uniform Real Estate Contract executed by the parties, it would be an agreement not supported by any consideration and therefore unenforceable.

This consideration issue was decided against Melvin Church at the trial court and on appeal the trial court decision was upheld by the Utah State Supreme Court in Castagno vs Church 552 P. 2nd 1282 (1976). The Utah State Supreme Court determined that the Defendant, Melvin Church, had contracted to sell one (1) second foot of water along with the forty (40) acres of agricultural land that he was selling to Albert J. Castagno and Bernice B. Castagno, and because he could not provide said one (1) second foot of water the land value was abated to reflect the value of the land without water.

The trial court of the present case at bar also determined that the issue concerning the abatement in the purchase price of the forty (40) acres of property purchased by Albert J. Castagno and Bernice B. Castagno was Res judicata. The trial court states as follows:

"2. That all issues concerning the Uniform Real Estate Contract were determined in Castagno vs Church 552 P. 2d 1282 (1976) and are Res judicata before any court". (See Judgment Civil No. 9102)

Therefore, the respondents, Albert J. Castagno and Bernice B. Castagno respectfully ask the Utah State Supreme Court to find that the issue concerning the reduction of the original purchase price of the forty (40) acres in Grantsville, Utah, in consideration of conveying three-fifths (3/5) interest in Application No. 32822 be decided against Appellant, Melvin Church, on the grounds of Res judicata.

#### ARGUMENT

#### Point II

THE TRIAL COURT DID NOT ERROR IN ITS RULING THAT THE APPELLANT ACQUIRED ONLY A CONTINGENT RIGHT TO APPROVED APPLICATION NO. 32822.

The Appellant contends in his Second Cause of Action, Count II, Paragraph 2, which states that:

" 2. The Defendants, Albert J. Castagno and Bernice B. Castagno sold to the plaintiff a three-fifths (3/5) interest in and to approve the Application No. 32822."

The above cause of action and claim was alleged and adjudicated against the Appellant, Melvin Church, in the trial court. The Trial Court determined that the Albert J. Castagno and Bernice B. Castagno did not "sell" to Melvin Church a three-fifths (3/5) interest in and to Application

No. 32822.

The Respondents admit that there was an oral agreement between themselves and Melvin Church concerning Application No. 32822. This agreement arose out of the information which Melvin Church conveyed to Albert J. Castagno sometime in August or September of 1973. (See Transcript of Appeal P. 303 lines 23-25 and P. 304 lines 1-8)

Melvin Church told Albert J. Castagno and Bernice B. Castagno there was a possibility of acquiring five (5) second feet of water through Application No. 32822. Infact, Melvin Church had searched the state records with his attorney attempting to determine the status of Application No. 32822. (See Trial Transcript of Appeal p. 127 lines 3-25, p. 128, p. 129, p. 130, p. 131 p. 132, p. 133, p. 134 lines 1-21.) The testimony of record indicates that it was evident there may have been at least some cloud on the chain of title to Application No. 32822. Melvin Church had discovered by way of Rex Larsen that Application No. 32822 at one time been in the name of Bernard Castagno, Albert J. Castagno's father. Therefore an agreement was entered into orally by Albert J. Castagno and Melvin Church whereby Albert J. Castagno was to receive by way of assignment from his mother, Gertrude M. Castagno, the potential interest of the five (5) second feet of water. After Albert J. Castagno received this assignment from his mother, he in turn assigned three (3) second feet of the same potential water rights to Melvin Church.

The issue before the court touches upon the contingency of this agreement and what consideration was paid by Melvin

Church for his potential three (3) second feet of water. Albert J. Castagno contends that the oral agreement is enforceable if Melvin Church could prove up or perfect the five (5) second feet of water. Futhermore, that the agreement was that if the five (5) second feet could not be so perfected that neither party receive anything. Melvin Church's consideration for his three (3) second feet of water was that he had the burden of proving up or perfecting Application No. 32822 for both him self and Albert J. Castagno's. The Transcript of Appeal states Albert J. Castagno understanding of the contingent oral agreement as follows: (See Transcript of Appeal p.296 line 17 thru p. 297 line 21)

Q Now referring to the Exhibit A of this same contract, I refer you to paragraph 3 where it state that the buyer should furnish one second foot, and that the, well, it states that including two second feet of water, one set of which the buyer will furnish, seller, or excuse me, it is to the buyer's second feet there. Could you explain where those came from?

A These, after he failed to produce the first second foot from Buzianis, he brought this application to me, or the proposition that if I could get it signed in my name that he--

Q You are speaking about what signed in your name?

A This application 32822.

Q That is the five second feet of water we are talking about?

A That is the five second feet of water.

Q This is separate from the Louis Buzianis one second foot, is that correct?

A Yes. This is a long time after our agreement, Earnest Money Agreement, was signed.

Q Would you please explain then the two second feet of water there, that are mentioned?

A Well, he was to have, the deal was that he would have three-fifths of this application and I would get two, and he would put one of his second feet of water in the well and I would put one of mine in the well.

Q One of his three and one of your---

A One of my two.

Q ---two

A And he was to do all legal work and have it perfected.

Q Now---

A In consideration for them five second feet.

The Transcript of Appeal on pages 315 - 316 also states what Melvin Church believed that oral agreement to be as follows: ( Transcript of Appeal p. 315 line 23- p. 316 line 4)

Q Yes. As to the five second foot of water agreement with Mr. Castagno, he was going to assign you certain number of second feet in exchange for some things, could you explain that agreement to us?

A I was to file a report of the segregation. How come I cant even think of the name of the things that I was to file, which I did. Paid fees.

In addition thereto, it is discovered on redirect examination of Melvin Church that he has absolutely no recollection of reducing the original purchase price of the forty (40) acres by \$700.00 per acre in consideration for being assigned three (3) second feet of water out of Application No. 32822.

The Transcript on Appeal page 318 lines 3-16 states:

Q Mr. Church, if you had determined that the price of a second foot of water was \$12,000 after the sale, how did you determine to reduce the property \$700 an acre prior, or during the time in which you were selling the property?

A I didn't determine that was the amount it would be reduced at the time I was selling the property.

Q Your complaint said that it was.

A What?



Q It says that you reduced the property \$700 per acre in exchange for three second feet of water. Is that correct?

A I just don't remember, and I am not thinking. I am tired.

The Trial Court determined after hearing all of the evidence:

"5. ...that on or about the 7th day of September, 1973, the plaintiff acquired from defendants, Albert J. and Bernice B. Castagno, husband and wife, by means of a separate and individual oral agreement apart from the Uniform Real Estate Contract, a contingency interest in three-fifths (3/5) of the five (5) second feet of water represented by an approved application for appropriation of water, No. 32822."

"6. ... that such oral agreement for three-fifths (3/5) interest of five (5) second feet water for the plaintiff, was condition upon the plaintiff securing the entire five (5) second feet of water represented by the approved water application No. 32822 for himself and the defendants, Albert J. and Bernice B. Castagno."

"7. ... That the plaintiffs' efforts, financially or otherwise, was the only consideration in which he purchased his three-fifths (3/5) contingency interest in the five (5) second feet of water from the defendants Albert J. and Bernice B. Castagno."

"8. ...that the five (5) second feet of water represented by approved water Application No. 32822 was never secured by the plaintiff."

(See Findings of Facts and Conclusions of Law Paragraphs 5, 6, 7, 8 of Civil No. 9102, Third District Court in and for Tooele County, State of Utah )

Therefore as a matter of law the trial court ruled in favor of Albert J. and Bernice B. Castagno and against Melvin Church. The trial court found an oral contract for the conveyance of three (3) second of water to Melvin Church, contingent upon Melvin Church proving up or perfecting the total of five (5) second feet of water which is represented by Applications No. 32822. Melvin Church has yet to perfect Application No. 32822.

### CONCLUSION

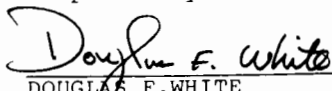
The Utah State Supreme Court in Castagno vs Church 552 p. 2nd 1282 (1976) has already settled the issue as to whether the original purchase of the forty (40) acres was reduced as and for consideration of Melvin Church receiving the assignment of three (3) second feet of water from Application No. 32822. This allegation was decided against Melvin Church and Respondents respectfully request that this matter be determined on the basis of Res judicata.

The Respondents respectfully submit to the court that the trial court correctly determined that the seperat oral agreement between themselves and Appellant was contingent upon Appellant proving up or perfecting Application No. 32822.

Furthermore, it is requested that the court find that the only consideration tendered by Appellant for three (3) second feet of water from Application No. 32822 was his best efforts in proving up or perfecting Application No. 32822. Consequently, as a result of the above findings, Respondents request that the court uphold the decision of the trial court in favor of the Respondents and against the Appellant.

Dated this 7th day of May, 1981.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and accurate  
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\_\_\_\_\_  
Carolyn Hillman  
Secretary