

1957

## Radley v. Smith et al : Brief of Appellant

Utah Supreme Court

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Beth Roberts; Defendant-appellant for herself;

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

ASA M. RADLEY, et al  
Plaintiffs-  
Respondents

vs

B. FENN SMITH,  
Defendant

BETH. A. ROBERTS,  
Defendant-  
Respondent

CASE NUMBER

8555

&

DOUGLAS K. SIMINS,  
Plaintiff  
Respondent

vs

B. FENN SMITH,  
Defendant

BETH A. ROBERTS,  
Defendant  
Appellant

FILED  
CLERK OF COURT

an APPEAL FROM THE THIRD JUDICIAL DISTRICT  
Honorable Judge David T. Lewis

APPELLANT'S BRIEF

Beth Roberts,  
Defendant-Appellant  
for herself.

IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

ASA M. RANDLEY, ETC.

Plaintiffs  
Respondent

vs.

E. PENN SMITH, Defendant

BETH A. ROBERTS

Defendant  
Appellant

&

Douglas K. Simons

Plaintiff  
Respondent

vs.

E. Penn Smith, Defendant

Beth A. Roberts

Defendant  
Appellant

Case No. 8555

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APPELLANT'S BRIEF

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# TABLE OF CONTENTSZ

	Paging
LEADING CASES AND AUTHORITIES .....	A
Twiehaue v Rosner, 245 SW 2d 107 .....	41
Wood v. Krizan, 176 F2d 667.....	48
Wood v. Petchell, 175 F2d 202.....	48
Wood v. Berg(Minnesota, 4th Dis. 1940) ...	47
Flynn v. Daines, 205 F2d 202.....	48
U. S. Sleagall 88 F Supp 97.....	43
Mills v. Gray 506 224.....	36
Continental Bank v. Stewart 4W 2d 228.....	18
Mathis v. Madsen 1 Utah 2d 46.....	36
Gates v. Daines, 3 2d.95.....	18
Haroldsen v. Gates 140 P2d 250.....	50
Neil v. Wholesale Grocery 210 P201.....	27
28 ALR 1192.....	42
10 ALR 294 341.....	43
STATEMENT OF POINTS.....	A
SUMMARY OF THE FACTS.....	1
ARGUMENT.....	15
POINT I. COURT ERRED IN AWARDDING JUDGMENT FOR PLAINTIFF.....	15
A. DEMAND FOR MAINTENANCE NOT UPHELD.	16
B. APPELLANTS' INCOME STILL HELD ...	17
C. AWARD OF FEES AND COSTS INVALID..	20
D. ORDER TO PAY TAXES UNSUPPORTED...	20
E. COUNTERCLAIM NOT DETERMINED.....	21
POINT II. APPELLANT DID NOT ACCEPT DUTIES OF CONTRACTS UNDER ASSIGNMENT FROM SMITH AND NEVER AGREED TO PERFORM .....	24
POINT III. AWARD ON BREACH OF CONTRACT NOT VALID WHEN PLEADINGS ALLEGED UNLAWFUL CONVERSION AND NEITHER WERE SUPPORTED.	30
POINT IV. COURT ERRED IN AWARDDING JUDGMENT BASED ON ILLEGAL CONTRACT.....	37

## STATEMENT OF POINTS

### POINT I

#### COURT ERRED IN AWARDING JUDGMENT FOR PLAINTIFF

- A. DEMANDS FOR PERPETUAL MAINTENANCE OF AVALON PROPERTY NOT SUPPORTED.
- B. COURT FAILED TO ORDER RETURN OF INCOME AND PROPERTY TAKEN FOR RESPONDENTS' USE WITHOUT CLAIM OF RIGHT THERETO.
- C. NO JUSTIFICATION FOR AWARDING COSTS AND ATTORNEY FEES AGAINST APPELLANT.
- D. RESPONDENTS HAD NO RIGHT OR JUSTIFICATION FOR OBTAINING ORDER TO PAY TAXES.
- E. APPELLANT DENIED OPPORTUNITY TO BE HEARD ON COUNTERCLAIM ON QUANTUM MERUIT.

### POINT 2

COURT ERRED IN FINDING APPELLANT WAS ISSUED ASSIGNMENT OF DUTIES AND OBLIGATIONS OF CONTRACTS TO WHICH SHE WAS NOT A PARTY AND HAD NOT ASSUMED.

### POINT III

COURT ERRED IN TRYING CASE AND AWARDING JUDGMENT ON REACH OF CONTRACT WHEN SUED FOR UNLAWFUL CONVERSION AND EITHER CAUSE WAS SUPPORTED, BY RESPONDENT.

### POINT IV

THE COURT ERRED IN AWARDING JUDGMENT FOR DAMAGES and specific performance of contracts which are illegal and contrary to public policy when evidence revealed their illegality at the trial.

## **SUMMARY OF THE FACTS**

**During the years from 1946 to 1949 while Federal Rent Acts were in force in this area Respondents obtained occupancy of units in the Avalon Apartments by means of, and after entering into, separate but identical so-called "real estate contracts of sale" with E. Penn Smith. (R. 12-26**

**Respondents' contracts provided for down payments and for monthly installments on principal and interest plus an additional \$15.00 per month to be paid in advance to the "Seller" for "hot water, cold water, heat, refrigeration, taxes and fire insurance." The contracts provided further that the "Seller" was "to keep the property and improvements insured up to 3/4 of its value and pay said general taxes, said Buyers to pay their proportionate share as hereinbefore provided."**

**The contracts provided that the Seller could convey title to the building to a trust or corporation to be set up at the Seller's option on receipt of the designated payments. (R 14 line 8)**



ing or permitting buyers to obtain title or ownership or control of any shares or stock in the proposed trust or corporation, nor any rights or obligation to accept any duties for current or future management or operation of the property. No interest in land, roof, structure, heating, plumbing, electrical or refrigeration equipment nor any duty to maintain or repair such was transferred by said contracts.

Prior to 1946 all 24 units in the Avalon had been controlled housing and were occupied (until this co-opting scheme was undertaken by Smith shortly after he obtained possession of the property in September 1945) by tenants paying maximum legal rents. By the end of 1949 all units had been "sold" to individual purchasers on identical terms set forth in simultaneously-mimeographed "contracts". None of the buyers had occupied their units as legal-rent-paying tenants prior to becoming purchasers of apartments. (A 1-8) The Emergency Price Control Act of 1942 (1309. 1011, Sec 9 (A) 11 FR 12064)

provided:

**"The maximum rents and other requirements of this regulation shall not be evaded, either directly or indirectly in connection with the renting or leasing or transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money, or other forms of mortgage..."**

**This provision was continued in force by the 1947 Act (825.110, Sec 3 (a) 12 FR 4337) and by the extensions and amendments until rent control was terminated in this area in 1950.**

**The danger to the whole rent control program inherent in the manipulative potential of cooperative housing schemes was foreseen by Congress. The 1942 law required whenever a cooperative apartment project was contemplated, ownership of the fee must be sold to an association or corporation composed of or owned in large measure by tenant--occupants of the building, 80% from 1942 to August 1947, 65% from 1948 until rent control was terminated in 1950.**

**After February 1945 no purchaser could legally occupy any unit in a co-opted apartment without first obtaining a "certificate of occupancy" from**



the Rent Director. No certificate would issue unless the percentage requirement had been met. (See text laws in appendix.)

None of the Respondents could legally have obtained such a certificate because none of them were tenants before becoming purchasers. Also, no valid operating Trust or Corporation acquired ownership of the fee, and the landlord's duties and rights were not assumed by the "purchasers" of the property. (T 13 line 22)

Although superficially valid these sale contracts did not change the landlord-tenant status of the parties. Occupants took possession expecting and demanding the rights and privileges of tenancy and refused to take on any of the burdens of ownership. (R 2-3) The "Seller" remained in control of the fee and continued to perform all the normal functions of a landlord.

Appellant had no knowledge of any circumventions of the Rent Acts when, in March 1950, she became a holder in due course, for valuable consideration, of a lien on these apparently valid

sales contracts between Smith and the purchasers. At no time did she enter into any contract for or with the purchasers or agree to assume any liabilities or burdens of the "Seller". Smith assigned his interest in the fee and transferred his right to collect the remaining payments due on principal and interest to the Appellant.

Appellant understood that purchasers' \$15.00 per month payments for water, heat, refrigeration, insurance and taxes were not assigned, but were to be accepted in the name of the AVALON TRUST which had been set up to operate the property for the benefit of the purchasers, pending the formation of a corporation by the purchasers who would take over the burdens of ownership thereafter.

As a result of litigation commencing shortly after March 1950 and continuing until mid-1953 Appellant's interests in the Avalon fee and contracts came under the jurisdiction of the District Court and were administered by Tracy Collins Trust Co. By the time these were released almost half of the original purchasers had forfeited their

contracts and their surrendered units became the property of the Appellant.

After decontrol, inflation and general rent increases in this area made the rentals from these units higher than the total of the contract, utility and interest payments being made by the purchasers. Due to increased costs and to depletion of the 65-year-old structure, the \$15.00 contributions of the purchasers became grossly inadequate to provide the utilities and services required by them. No property taxes had been paid on the property since 1950 and no funds were available therefore.

Not one dollar of profit, income, or return on capital investment of over \$50,000.00 had been available, or used by or for the Appellant. (Plaintiffs Exhibits 4-5)

The full extent of her Avalon losses became apparent when appellant received Tracy Collins' annual report for 1954. The serious financial and physical condition of the property was called to the attention of the Respondents in several commu-

ications urging prompt establishment of the Trust or Corporation referred to in their contracts. Appellant offered to participate therein in ratio to her ownership of surrendered units. (Plaintiffs Exhibits 2, 3)

Respondents, apparently relying on the fact that Appellant had to maintain and operate the building in order to rent her own units, ignored these communications until June 1955 when they were notified that Appellant intended to close up her rental units and refused to accept the \$15.00 per month they were contributing for "Utilities" and would no longer supply or operate the property. (Plaintiff Exhibit 2)

Respondents thereupon commenced this suit, immediately requesting a court order to require all of Appellants rental and contract income from the property be paid into a fund for the operation of the property for their benefit. ( R 27--30, 36, 38)

At the hearing on the motion appellant objected to Respondent's unconstitutional taking of her pre-



erty. She told the court she was willing to permit their administration of whatever Respondents were willing to contribute for half of the cost of maintenance and operation of the building, and she would contribute a like amount for her half. Respondents, however refused to contribute more than \$15.00 per month each. The court granted their motion, (r 46) thereby seizing appellant's rental and contract income. All of this has been collected and dispersed since June 1955 for benefit of purchasers by Tracy Collins Trust Company as managing agents for the court. (See Monthly Reports in Record)

Nothing has been paid on Appellant's indebtedness to Smith who has brought suit against Appellant for foreclosure. Nothing has been paid or set aside to pay the \$9,000 due or accruing for taxes and the Respondents have attempted to force Appellant to assign them her interest in the property as security for the payment of these taxes which they have not paid or offered to pay despite their normal and contractual duty to pay a proportionate share



of taxes on property in which they claim rights of ownership.

Some \$15,000 of Appellant's income has thus been taken without due process and used for the benefit of Respondents despite the fact that they did not and could not claim any right or title thereto. (See Tracy Collins Reports in Record)

The case came to trial May 3, 1955. Respondents' pleadings alleged breach of contract against Defendant Smith and unlawful conversion of money paid for taxes against Appellant. (R. 94)

The pleading contained no allegation that Appellant had promised to be bound by terms of the contracts between Smith and Respondents or had contracted with them or with anyone to perform duties or accept obligations for or to the Respondents.

The record shows that there was no evidence produced at the trial and no admission made by the Appellant to support any presumption that Appellant had promised to assume any burdens or liabilities of these contracts.

Nonetheless the Court, without allegation

evidence or admission asserted that Appellant had specifically agreed to perform under the contract. (T. 9 line 9) The Court dismissed Defendant Smith on stipulation of Respondents and proceeded to try the Appellant's case as if that presumption were a fact.

Appellant objected to this presumption and offered evidence to show she was not bound to perform, having become holder of said contracts in reliance on provisions in the contracts whereby the purchasers agreed to a cooperative organization which should have assumed the duties of ownership and performed the functions assigned to the "Seller" by the contracts. (T 12-14)

The Court stated that no such cooperative or trust had been set up or actually entered into by the purchasers and the existence of such could not be implied and also that assumption of the obligations of ownership by the purchasers could not be assigned to them by implication. (A. 13)

The Court thereupon implied that these obligations could be assigned to the Appellant by implication, and proceeded to interpret the contract and

and apply its provisions against the Appellant.

The Appellant had not expected that her case would be tried on the basis of breach of contract. She had come to court prepared to defend against Respondents' allegations as set forth in the pleadings (T. 94 line 6) that she had unlawfully converted money Respondents had paid for taxes.

Exhibits of Tracy Collins' records submitted by the Respondents, show that all Respondents' money had been paid to and received by Tracy Collins for "utilities" (there is no proof whatsoever that Respondents ever designated or desired or understood that the money they paid in for "utilities" was to be used instead for taxes). Said funds were dispersed by Tracy Collins (exhibit 4) for the purpose designated and demanded by the Respondents.

Tabulations of these accounts made by Respondents' Counsel (exhibit 4) showed that the money contributed by Respondents hardly paid for the raw materials (water, gas and power) used without including the cost of providing labor, management, equipment, supply lines, and repairs and maintenance thereof, essential to convert these raw materi-

als into hot water, heat, refrigeration and transport these to the separate units of the purchasers, which costs the records showed to be more than the costs of the raw materials.

Respondents contributed nothing toward the costs of providing the other services, supplies, repairs and maintenance demanded and used by the purchasers and deemed by them to be(R. 29) essential to "decent healthful occupancy of the property."

None of these matters were considered at the trial. Respondent's exhibits were admitted, and serve to prove Appellants contentions, but the Court refused evidence offered by the Appellant on these matters (T. 48). In fact, Appellant was not permitted to bring in evidence on any matter. (T. 19) However she was permitted to testify concerning the rental value of units, to refute Respondent Owen's claim that the money he had been paying while he had occupied his unit had represented a loss to him. Inasmuch as he had occupancy for 5 years of an apartment which had a rental value of \$35.00 per month for a total payment of \$62.50 per month in--



cluding "utilities," the court did not seem impressed by his claim that he had been damaged when he thereupon sold his so-called equity for an \$800.00 equity in an automobile.

The Appellant was given no opportunity in the pleadings or at the trial to prepare or present affirmative defenses against the court's surprising conclusion that she was liable under the terms of the contract between Smith and purchasers. (T. 9. line 9)

Illegality, absence of privity or assent, lack of intent to be bound, lack of consideration, statute of frauds, statute of limitations, ambiguity, termination, waiver, conditions precedent and numerous other valid defenses were available to Appellant and could have been supported with abundant evidence and authorities.

The court recessed after only one day of trial and did not convene again in the presence of Appellant. Nothing that was said or done at the trial gave any indication that the judgment which was handed down some time later would be against



the Appellant.

The Court had stated (R. 168, line 11) that it was not possible to render a judgment for damages against the Appellant for failure to pay taxes when Respondents had not paid them or had not suffered any loss at the time. The Court also stated that it was not possible to specifically enforce an order against the Defendants to pay taxes. (R. 166, line 24)

Respondents other claims were not supported. The Court found Appellant had no duty to maintain the building or restore it or buy new refrigerators or pay damages because the old ones had worn out. (T. 16)

The Court found that the contracts had no specified duration (T. 17) and thus the duties thereunder were terminable at the will of either party. Therefore Appellant had the right to refuse to continue to operate the building for them and to stop providing them with "hot water, cold water, heat or refrigeration". (R. 118)

IT THEREFORE APPEARED TO APPELLANT THAT SHE HAD WON THE LAW SUIT.

# ARGUMENT

## POINT I

THE COURT ERRED IN AWARDED JUDGMENT INCLUDING SPECIFIC PERFORMANCE, DAMAGES AND ATTORNEY FEES AGAINST THE APPELLANT; AND IN FAILING TO HEAR AND DETERMINE HER COUNTER-CLAIM AND AWARD JUDGMENT FOR HER AGAINST RESPONDENTS FOR UNJUST ENRICHMENT; AND IN FAILING TO ORDER RESTITUTION AND RESTORATION TO APPELLANT OF HER AVALON PROPERTY AND INCOME TAKEN FROM APPELLANT ON THE DEMAND OF THE RESPONDENTS AND USED FOR THEIR BENEFIT WITHOUT RIGHT OR JUSTIFICATION IN LAW OR EQUITY.

On the basis of statements of the court appearing in the record, it appeared that the Court had upheld her position and ruled against the Respondents. The suit had been brought by them to compel her to continue forever to bear all the burdens of ownership of the property and to forever operate and maintain it for the benefit of the Respondents without remuneration or adequate contributions from them as co-owners. (R1-5, 96) and to compel her to buy the Respondents new refrigerators, and pay damages because their old ones had ceased to function.

It seems surprising that judgment was held to be against the Appellant. Plaintiffs' claims were denied on the Court's finding that the pro-

visions in the contracts relating to "utilities" actually were nundum pactum and illusory, in that they placed an obligation on the Buyers to pay, but did not state that the seller had to provide any of the specified items. (T. 15, R. 118) <sup>1</sup>

As to other duties seemingly imposed on the Seller by the contract, these provisions included no date of termination, and were therefore terminable at will by either party. (T 17, R.118) <sup>2</sup>

It seems surprising that inasmuch as Respondents failed to support their demands, that the Court failed to make any order requiring them to return to the Appellant the Avalon property and income belonging to her. These, the Respondents had unjustly, and without claim of right, taken from her by means of their motion to have all rents, principal and interest payments and other income from the Avalon paid to the Court, and used

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1. "Where a contract imposes no definite obligation on one party to perform it lacks mutuality of obligation." Lawrence v. Palston, (Cal.) 226 P2d 656.

2. "If no period of duration is specified in a contract the law infers that parties intended the agreement to be terminable at pleasure of either party." Miller v. Miller, 64 S. Ct. 46 (134 F2d 586)



to pay for "utilities" and services Appellant had refused to furnish.

Approximately \$15,000 of income belonging to the Appellant had thus been used up for Respondent's benefit, none of which has been or is available to return to the Appellant. All of this property and the current income therefrom continues under the control of the Respondents and continues to be dispersed for their benefit against the rights and wishes of the Appellant.

Inasmuch as Appellant appeared to have won the case there seems no justification for awarding costs and attorney fees against her. No prior assent to any contractual obligation to pay attorney fees was ever claimed or proven against her. It was not shown that Appellant had received or misused any money paid by the Respondents; or that any of the funds contributed by them had been designated for taxes; or intended by them to be set aside and used in full for the payment of taxes. (A 11) No breach of the Seller's obligation was conditional upon the buyers paying

their proportional share thereof, which share they failed to show they had contributed, (See Plaintiffs' exhibits 4 and 5) <sup>1</sup>

It was admitted by the Respondents that these property taxes for the years 1950 to 1954 had in fact been paid to the state tax commission by Josephine Bernstein (T. 3), who is title holder of the property, and who retains a considerable interest therein superior to the rights of any of the parties to this suit. In Respondent's contracts with Smith they did not assume Smith's prior obligation due on the property to Bernstein. Respondents are not thereby liable to her.

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1. "The court may construe a contract only so as to give effect to the entire agreement without ignoring any part thereof. Gates v. Deinas, Utah 2d 95 (279 P2d 458). (This case is squarely in point on this issue. Lower court had ignored condition and imposed obligation)

Also pertinent is ruling in Continental Bank v. Stewart (Utah 1955) 291 P2 890: "The Court will endeavor to give the contract a just and rational construction."

"Court cannot delete terms or words or ignore them in order to make a binding contract for the parties where none exists. Spooner v Reserve Life. 287 p 2d 735 (47 Wash. 29.)



The contract with Bernstein is not in evidence but it is available, and in the possession of Appellant, who did agree and assent to obligations thereunder in her original agreement with Smith. This Bernstein contract contains a provision that she can pay the taxes on the property if they should become delinquent. She has the right to demand repayment at any time or to exercise an option to consider said tax payments as increasing the balance due on the contract and collect 3/4 interest thereon until paid.

The record does not show that any demand has been made on the Respondents or upon Appellant by Bernstein for the amounts she has advanced for payment of these taxes. (T. 10-11) Perhaps Bernstein prefers to consider the amount advanced as a loan so she can draw this advantageous rate of interest (which is about 3 times as much as she could get in any bank).

It may be that if she did demand the payment, and if it were not paid on demand, that she would be entitled to sue Appellant for specific perform-

ance, as a third party beneficiary of the contract between Smith and Appellant, because said contract does include her and she becomes therefore a "creditor beneficiary" of said contract. However, Bernstein has not commenced any such suit. <sup>1</sup>

As Respondents are not liable under their contracts for any obligations due to Bernstein from Smith or from Appellant, it is not apparent what right or justification there could be for awarding judgment, costs, attorney fees and ordering specific performance of an obligation not presently demanded, and perhaps not even desired by Bernstein. The record does not show any right or reason for the Respondents to have brought a suit for this purpose, and does not actually show that they intended to do so.

Court went into recess while the hearings appeared to be still in progress. It did not convene again in Appellant's presence or with her knowledge. (T. 47--48)

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1. Utah Code, 1953, (104-3-1) "Every action shall be prosecuted in the name of the real party in interest."

The case was closed without Appellant being given any opportunity to present her counter claim for remuneration on a quasi-contract theory <sup>1</sup> to recover from the Respondents the amounts she had been forced to expend for their benefit in excess of the amounts contributed by them. <sup>2</sup>

The court reconvened a few days later with only the attorneys for both parties present. Mr. Ogara made an offer of proof of Tracy Collins' accounts and sought to show, that the expenditures made by them out of Appellant's personal Avalon funds for operation, repairs and management of

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1. "Even though contract be entire, party who breaches it may recover from other party as on a quantum meruit, value of benefits conferred on such other party by partial performance, those benefits having been accepted and retained." National Life V. Hamilton, 98 S. W. 2d 107, 170 Tenn, 612.

2. "Unjust enrichment is a necessary element in an action based on an implied promise." Jackson v. Cope. 1 Utah 2d 330, 266 P2d 500.

3. "In any case where a complainant asks the active aid of the court to coerce performance of a contract, he will be accorded relief only if he does equity toward defendant." Buchannon v. Upshaw, 1 How. (US 56) 46.

the Avalon were at least one half chargeable against plaintiffs and go to the benefit of the plaintiffs and go to the benefit of the plaintiffs apartments. O'Gara offered to prove also that she had expended out of other personal funds money paid for time and material used by a maintenance man to repair and maintain the Avalon (T. 47)

The Pretrial Order listed as one of the issues: "What is the cost and reasonable value of the services furnished plaintiffs for water, heat, and refrigeration from May 1951 to date?" (R 102 lines 17-19)

But at the trial when this proof was offered the Court stated that it is "rejected by the Court as not bearing on the issues." (T. 48 lines 5-6)

It may be that Appellant's counterclaim was not set up in proper form. (R 51) If so, the Utah Rules of Civil Procedure, 13 (e) provides that:

"When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or where justice requires, he may be leave of Court set up the counterclaim by Amendment."

In view of the ambiguity of the contracts and the inequity of plaintiffs' demands it does not seem



that the Court should have thus closed the case without consideration of what had in fact been paid in by and paid out for these so-called "purchasers".<sup>1</sup>

1. "A fair and reasonable interpretation of contract rather than one leading to harsh and unreasonable results, is always preferred." Desney v. Desney, 263 P 2d 86.

2. "A Court of equity will decree specific performance only when terms of contract are free from doubt or ambiguity.—Lyon v. Jackson 132. N. E. 2d 779

A party's refusal to perform a contract which he is at liberty to terminate does not constitute "breach of contract". Stanley v. Chris—Craft Corp. 22 N. Y. S. 2d 926

Where contract admits of two constructions, Court should adopt that which is most equitable and will not give unconscionable advantage to one party over the other... .The language of contract governs its interpretation only so far as language is clear and explicit and does not involve an absurdity—Brauner V. Wilson. 271 p2d 937.

A mere part performance of a contract which is not binding on the parties for want of mutuality does not make contract binding in so far as it remains executory. Solace v. T. J. Moss Tile Co. (142 S. W. 2d 1079.)

"A court of equity ought to do justice completely and not by halves. . . .The court will not aid the assertion of a legal right which is contrary to the equity and justice of the case. Bodley V. Taylor 5 Cranch (US) 191.

"ONE SEEKING EQUITY MUST DO EQUITY."  
(19 Am. Jur. "Equity" 463.)

## POINT II

THE COURT ERRED IN ITS FINDING OF FACT THAT APPELLANT WAS ISSUED AN ASSIGNMENT OF THE DUTIES AND OBLIGATIONS OF THE CONTRACTS BETWEEN SMITH AND RESPONDENTS.

There is nothing in the pleadings, the evidence, or the admissions of Appellant to support this finding. Such a finding assumes that Respondents were intended to be the beneficiaries of the contract between Smith and Appellant.

Said agreement between Smith and Appellant makes no mention of the contracts between Smith and Respondents. Appellant obtained the right to collect the payments made on said contracts on principal and interest by the Respondents. At no time did she enter into any agreement with the Respondents or with Smith for the benefit of Respondents to perform any duties under such contracts or was she assigned any obligations or duties thereunder. <sup>1</sup>

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1. "The promise is original only when the party sought to be charged clearly becomes, within the intention of the parties, a principal debtor primarily liable." *Richardson v. Albright*, 121 NE 362

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In Smith v. Bowman,<sup>1</sup> this court denied recovery by the supposed third party beneficiaries on the ground that the contract did not express an intention of benefiting them, thereby upholding the principle that before a third party can sue for a breach of contract to which he was not a party he must show that the contract was intended to benefit him directly. In Kelly v. Richards<sup>2</sup> (1938 Utah) this court held that plaintiff had no cause of action against a third party when there had been no allegation of the making or existence of a contract or how the third party obtained the right to benefit thereunder. It is an established principle in this jurisdiction that an incidental beneficiary cannot maintain an action on contract.

Appellant denied liability under the contracts between Smith and Respondents and sought to show at the trial that she had relied on acts and representations by the parties and on the words of the contracts which had assured her that the burdens of said contract had been

assumed by the Respondents themselves as participating members of a cooperative, set up to own and operate their jointly-owned property. (T. 12-13)

The burdens referred to were the normal obligations of ownership. It was logical for Appellant to assume that the purchasers of the property would take over these function as soon as all the sales had been made so that the cooperative group would be complete and represent all the owners. <sup>1</sup>

The contract by its terms stated that the arrangement was temporary. (R. 9 line 4) The provisions relating to the alleged burdens specified no time of termination. If notice is required to terminate a contract indefinite as to duration notice may be imported by conduct. <sup>2</sup>

1. "Where the meaning of language of contract is doubtful and susceptible of two constructions, that is preferred which makes it fair and such as a prudent man would naturally execute."  
Schuessler v N. E. Development, 264 P 2d 737.

2. "A contract for performance of services or for continuous furnishing of commodities is terminable upon reasonable notice at will of either party, in absence of specification of duration."  
Barish v. Chrysler 73 N. W. 2d 91.



Both Smith and Appellant gave ample notice of intent to terminate.<sup>1</sup>

Prior to transferring the contracts Smith set up a so-called AVALON TRUST and issued receipts to the purchasers on printed receipts in the name of Avalon Trust. Purchasers were notified that Tracy Collins had been appointed to administer the "utility" fee payments and Tracy Collins were told to keep separate the amounts paid on contract principal and interest from utility fees,<sup>2</sup> and were told to make a fractional assessment if needed.

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1. "If notice is required to terminate a contract which does not contain express provision for duration, notice may be imported by conduct, since there is no rule prescribing the form which such notice may take. Cronk v. Vogts, 15 NYS, 649.

"A contract indefinite as to duration may be terminated by either party by doing something sufficient to indicate to the other party intention to terminate." Sutton v. Bush, 136 SW 2d 938.

2. Copies of these receipts and letters were available at the trial but Appellant was not permitted to present evidence of notice. (r. 14 line 19)

Appellant is becoming holder of Respondents' contracts purchased only the of the Assignor, and had no intent or obligation to accept any burdens. According to Grismore: 1

"The assignee ought not to be held liable for the nonperformance of duties where it clearly appears that he did not assume the burdens of the contract. It is obvious that there may be merely an assignment of rights." Tolerton v. Angle.

"A mere acceptance of an assignment or rights under a bilateral contract under which a reciprocal burden has been undertaken by the assignor, does not impose any of affirmative performance upon the assignee personally." 2 Lumsden v. Roth.

"In determining whether there has been an assumption of the burdens of an assignment by the assignee, intention of the parties is determined by due consideration of their words, acts and subject matter of the contract." 2

1. G. C., "Is the Assignee of a Contract Liable for the Nonperformance of Delegated Duties?" 16 Mich.L.Rev 284.

2. Lumsden v. Roth 291 F2d 88.

...to be held in accordance with the provisions of the Act, and the provisions of the Act shall be construed accordingly.

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Tiffany concludes that in cases of personal covenants which do not run with the land the courts have held that the assignee is not liable in the absence of an express assumption of liability. <sup>1</sup>

In Hugel v. Habel <sup>2</sup> where the contract provided that the stipulations contained in it were to "apply to and bind the heirs, executors, administrators and assignees of the respective parties", and although the assignment was doubtless made and accepted with knowledge of this provision, it was held that:

"Something more than that was necessary to obligate the assignee to carry out the covenants of the vendee named in the contract. This could only be done by a specific agreement to that effect, or by the substitution of the assignee for vendee." <sup>2</sup>

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1. Tiffany, Landlord and Tenant, 978n.

2. Hugel v. Habel, 105 N. Y. Supp 581, quoted in 59 ALR 960. "In the absence of an express agreement the assignee of a personal contract is not liable on the covenants of his assignor. . . To constitute a substitution there had to be a mutual agreement among the assignor, assignee and plaintiff by which the assignee was to take the place of the assignor in the contract."



### POINT III

THE COURT ERRED IN AWARDING JUDGMENT AGAINST APPELLANT ON BASIS OF BREACH OF CONTRACT WHEN PLEADINGS ALLEGED UNLAWFUL CONVERSION AND NEITHER CAUSE WAS SUPPORTED BY EVIDENCE AT THE TRIAL.

The Respondents joined Smith and Appellant as co-defendants in their complaint. Their pleadings were lengthy and complex and listed numerous unfortunate situations. (R. 92-98) These misfortunate situations they attempted to allege were causes of action against the Defendants. The central refrigeration system had become irreparable. Respondents had to buy new refrigerators. The halls and building and equipment were maintained, but poorly, were seriously depleted, and badly in need of repairs. Appellant had notified her tenants that services might be discontinued. The property had greatly depreciated, and since the year 1951 defendant had "failed and refused to pay taxes converting unlawfully the money of plaintiffs which was paid for the purpose of paying taxes". (R 94 line 6)

Inasmuch as the pleadings had not alleged

any contract between the Appellant and the respondents, nor any contract between Appellant and Smith for benefit of respondents, the only cause of action that could be extracted from all the unfortunate circumstances listed in the complaint applicable to the Appellant was the allegation that Defendant had "unlawfully converted the money of Plaintiffs which was paid for the purposes of paying taxes."

This allegation precluded any claim that Appellant was bound by contract to pay the taxes. It was an admission that the duty to pay the taxes and the money provided to pay them with belonged to the respondents. Said money was thus claimed to have been given, not as a consideration for the payment of taxes, but as a means of having the taxes paid.

This distinction is important since the record shows that the money contributed was not designated as having been paid for taxes in the receipts given by Tracy Collins, but for "utilities".

On none of the reports made by Tracy Collins is

shown any money received from the Respondents for "taxes". Beginning in 1949 the printed receipts given by Smith in the name of the "AVALON TRUST" and received by the purchasers without protest, designated the \$15.00 per month as a "utility" fee. Not one scrap of evidence appears in the record to support the allegation that this money was paid for taxes.

Appellant went into trial prepared to prove that she had not unlawfully converted the money they had contributed. (T 46) Their total contributions had not been sufficient to pay for the "utilities", i. e. hot water, cold water, heat, refrigeration, insurance," and the labor and repairs and maintenance of the equipment necessary for the production and distribution of these vital necessities demanded and used by them..

Every cent they had contributed had been carefully noted and expended by Tracy Collins. Respondents counsel had examined and tabulated the accounts. (P. Ex. 4, 5). Nothing in the

record supports the allegation of unlawful conversion, and there is nothing to show that the money had been paid with the desire, expectation, understanding or proviso that it be held and used for taxes.

When, in May of 1955, Appellant refused to accept the \$15.00 contribution, Respondents rushed to the Court and demanded that Appellant's assets in the Avalon be seized and devoted to providing the utilities and services necessary for their "decent healthful" occupancy of their own apartments. (R 27-30) No representation was made then that Appellant should have been holding until tax time the money contributed.

Since June 1955 Respondents have had the use and benefit of all income from the property, plus control over the uses to which their own contributions should be put, they have not provided any funds for taxes nor made any payments out of their own money fortaxes.

Thus it does not appear that Respondents had any cause of action against the Appellant



At the trial that issue was not even mentioned. The Court voluntarily supplied plaintiffs with a new theory in its statement (T. 9, line 7-8) that:

"Apparently the failure of the defendant to pay taxes is admitted. She specifically agrees to do so under the contract. (emphasis added) Now do you propose, Mr. Sohn, to show damage to these plaintiffs as a result of that breach?"

The statement was made during a conversation between the Court and Respondents' Counsel. App- had no opportunity to object until later when she attempted to explain that her reliance upon the terms of the contracts, the acts of the parties, and the legal nature of the undertaking purportedly established by the contracts, led her to assume that the burdens of these contracts had been transferred to the purchasers themselves as the cooperative owners of the property.

The Court summarily rejected this theory stating: (T. 13, line 20)

"I have no question that it was the intent of the parties to go much further than this preliminary agreement. The Seller had that right, but they haven't done it and the only thing that is before me is a preliminary agreement and the acts of the parties in compliance with preliminary

Appellant admits that no cooperative has in fact been set up or participated in by Respondents. She has repeatedly urged this, but the contracts provide no means by which the Respondents may be drafted there into. Only PRETENDED sales were made through these contracts, not sales in fact. These contracts are merely disguised rental agreements entered into between Smith and the Respondents for the purpose of evading the Federal Rent Control Acts.

The Court apparently recognized the incompleteness and uncertainty of the transactions:

"I can't see anything in this contract that does anything other than reserve the right of the Seller to go ahead with an ultimate plan of transferring to a trust, and then enter into a further arrangement with these buyers, which, if it is different than the preliminary arrangement would have to be approved by them." (T. 14)

The Court should have taken judicial notice<sup>1</sup>

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1. Utah Code, 1953, 78--25--1-8, "The courts should take judicial notice of whatever is established by the legislative and executive and judicial departments of the United States."

of the Federal Rent Laws in effect in 1946-1949<sup>1</sup> and should have inquired into taken evidence as to what was the actual intent of the parties in entering into these contracts.<sup>2</sup>

It did not do so and therefore the issue of the legality of these contracts was not considered at the trial. Logical conclusions can however be drawn from the nature of the nature of the pleadings and from the testimony of the plaitiffs produced at the trial.

1. "What is judicially known may not be controverted by pleadings or made issuable by them". State v. Rolie, 71 U. 91 (262 P 987)

2. "The fact that the instrument was poorly drawn, ambiguous, uncertain, did not relieve the court of its responsibility to ascertain its meaning...the court could consider other contemporaneous writings concerning same subject, and could, if it was still uncertain consider parol evidence of the parties intention." Mathis v. Madsen (1 Utah 2d 46) (261 P2d 46)

"Where, because of vagueness or uncertainty in language used, intent of parties is in question, court may consider situation of the parties, facts and circumstances surrounding making of the contract, and the claims thereunder, to ascertain what the parties intended." Continental Bank and Trust Company v. Stewart, 4 Utah 2d 228, 291 P2d 890.



POINT IV

THE COURT ERRED IN AWARDING JUDGMENT FOR DAMAGES AND SPECIFIC PERFORMANCE OF CONTRACTS WHICH ARE ILLEGAL AND CONTRARY TO PUBLIC POLICY WHEN EVIDENCE REVEALED THEIR ILLEGALITY AT THE TRIAL.

This court has held <sup>1</sup> that it is the duty and privilege of the court to consider the history of the times and the purposes and object sought to be accomplished, as well as the language used in determining whether or not a contract is likely to be in violation of the terms of a law in force at the time the contract in question was entered into by the parties.

If it is found that said contract is detrimental to the purposes sought to be accomplished by the legislature in enacting the law said contract shall be void, even though no statement is made in the Act that contracts made in violation of its provisions shall be void.

In an action on contract the defense of illegality need not be pleaded, and if such illegality appears

1. Neil v. Wholesale Grocery Company/ (61 Utah 22)  
201 (Case held that contract was void because entered into by parties to evade sugar rationing law



in the evidence the court of its own motion will deny relief to the plaintiff.<sup>1</sup>

It is well settled that a contract based on an illegal consideration and thus in violation of law cannot be enforced either at law or in equity.<sup>2</sup>

Where a contract, express or implied is tainted with the vice of violation of law as to the consideration or the thing to be done, no alleged rights founded on it can be enforced in a court.<sup>3</sup>

A law established for public reason cannot be contravened by private agreement.<sup>4</sup> When the agreement with a court of equity is asked to enforce is not only impliedly forbidden, but is also contrary to a well-defined legislative policy, the court will refuse to give any relief thereunder.<sup>5</sup>

1. Sinner v. LeRoy, 270, P2d 600, 44 Wm 2d.
2. Hall v. Bucher, 240 Mo. App. 1239, 227 SW 2d 96.
3. 12 Am Juris 150
4. New Silver Hill v. Lewis and Clark Co. 204 P2d 1012.
5. Divide County v. Baird, 55 N.D. 45, 212 NW 236, 51 A.M. 296.

"For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present." Ulmer v. Fulton, 129 Ohio St. 323, 195 NE 557, 97 ALR 1170.

"Illegality need not be pleaded where the evidence which proves the contracts discloses the contracts illegality. Gain v. Burns, 131 CA 2d 439, 280 P2d 830.

It is obvious from the allegations in Respondents' complaint that they have expected and demanded from the so-called "Seller" much more than they could be entitled to receive under the most favorable interpretation of their contracts.

No provision in their contracts requires the "Seller" to maintain and repair the building for them, take care of garbage areas, supply lines, sewer facilities, buy new refrigerators, supply janitor service, keep yards, roof and foundation in safe, clean and aesthetically pleasing state of repair." (R. 97)

Yet these services and benefit Respondents demand as a matter of right from the Seller in perpetuity. Whereas the contracts specify the terms are "preliminary" the Respondents expect "forever". The very terms of the contracts are implicit with evasion and bear little relationship to normal sale instruments. No penalties are imposed on the defaulting buyer who does not even have to give notice to surrender, but may merely abandon. Over half of the original purchasers have done so. The Respondents

are the remainder. Lease-holders could not be more demanding. Ten years after they entered into occupancy they are still demanding and expecting to have the courts impose and give them damages for having to ask, all the rights and privileges of tenancy with none of the disadvantages, all the burdens of ownership they still expect to be carried by the "Seller" even though their contract price is almost or totally paid out in full.

Viewed in the light of normal sales contracts the documents are fantastic. But examined in their relationship to the laws they were attempting to evade, and in the light of the housing conditions of 1946 to 1949 the contracts are revealed as merely fraudulent. Not as regards the original parties, for they got what they bargained for--blackmarket apartment at black market rents. But the general public (including the Appellant who had nothing to do with the original transactions, and knew nothing of these matters until approximately 1954 when she found herself about \$50,000.00 the loser therefrom).



Most of the thousands of war--time "cooperative apartments " have silently dissolved for the best interests of all concerned. Most of the participants and promoters took off their disguises as soon as possible after decontrol of maximum rent ceilings permitted rents and inflation to catch up with each other in the free market; and resumed their natural roles of tenants and landlord.

But in a few instances where general rent in the area zoomed up quickly and soon passed the war-time blackmarket rent level the so-called purchasers forsook further benefits from their manipulations. Having set aside the law to gain possession at the expense of less affluent or more law abiding tenants during the war, they now sought to set aside their fraud and retain possession at less than market rentals during the inflation they had contributed their evasive bit to create.

They have not been supported by the courts. The leading case is Twiehause v. Rosner. The Missouri court in 1952 in a carefully analyzed and documented opinion by C. Coil setting forth the



applicable laws held a rental-purchase contract similar to the ones involved here to be illegal and in violation of the Rent Acts, and ruled that the lower court had erred in attempting to enforce its provisions:

"In attempting to give meaning to the contract, the court erred in excluding defendant's evidence of the surrounding facts and circumstances to explain what the parties intended.

. . .the contract is so ambiguous and its provisions so conflicting that there could not have been such a meeting of the minds of the parties as to justify the court in attempting to construe and enforce it.

" WHAT THE PARTIES TO THIS CONTRACT DID WAS TO AGREE TO THE LEASING AND POSSIBLE SALE OF A PROPERTY IN A MANNER SPECIFICALLY PROHIBITED BY LAW. THEY MADE THE AGREEMENT DESPITE THE LAW AND, IN EFFECT, AGREED TO SET THE LAW ASIDE. THAT ACT IS AGAINST PUBLIC POLICY AND NO CONTRACT TO SET THE LAW ASIDE WILL BE ENFORCED." 1

The ruling of this Missouri case has followed, or been followed in similar cases in the federal and other state courts. Appellant has been unable to find any holding otherwise.

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1. Trichense v. Rosner, 362 Mo. 949, 245 SW 2d 107, Annotated in ALR (28 ALR 1192) "The very purpose of the provisions of the law was circumvented, evaded and nullified by the agreement of these parties."

In Flynn v. United States<sup>1</sup> the federal court in a similar fact situation held that the purported contract of sale of an apartment property to an occupant was in fact mere subterfuge to avoid the provisions of the Housing and Rent Acts.

In United States v. Friedman<sup>2</sup> another federal jurisdiction affirmed that clearly a landlord acquires no immunity from the Rent Acts by the willingness to abide by overcharges of the contractee:

"Object of the Administrator in seeking restitution is not primarily to benefit the tenant, but to discourage violations of the Act and in the public interest to dissipate the inflationary effect of what the parties have done."

In United States v. Slegall<sup>3</sup> it was held that where a landlord and a tenant

"get off and fix a writing, so that he can charge more than the ceiling rent, he and the tenant are collaborating together to set the law aside, and that act is against public policy and no contract that they make to set the law aside will be enforced."

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1. Flynn v. United States, 205 F2d 756
  2. United States v. Friedman, 89 F. Supp. 957
  3. United States v. Slegall, 88 F. Supp. 98
- See also 10 ALR 249-341 and USCA 50 Appx 1500 to end.

The above cases represent situations where one of the parties sought the support of the parties sought the support of the courts to enforce some right growing out of such illegal contracts; or where the Rent Act Administrators learned of an evasive act or manipulative practise. These cases were held as violating that provision of the law which stated:

"The maximum rents and other requirements of this regulation shall not be evaded, either directly or indirectly in connection with the renting or leasing or transfer of a lease or housing accommodations by way of ABSOLUTE OR CONDITIONAL SALE, SALE WITH PURCHASE MONEY OR OTHER FORM OF MORTGAGE OR SALE WITH OPTION TO REPURCHASE, . . . OR BY TYING AGREEMENTS OR OTHERWISE.<sup>1</sup>"

Another line of cases grew up directly out of the "cooperative housing racket" which had grown up in an attempt to circumvent the rent laws. Purchase contracts for units in formerly landlord-owned or for stock in cooperatively purchased buildings were not at that time being challenged by either the buyer or seller who were collaborating to set the law aside.

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1. 1942 and 1947 Regulations were similar. (325.110 Sec 8 (a) 12 F.R. 4337 and 1308. 1811 Sec 9 (a) 11 FR 12064.

Despite the practically prohibitive requirement<sup>1</sup> that 100% of the dwelling units in the structure had to be purchased by persons who were then tenants before a certificate of occupancy would be issued to any outsider seeking to obtain occupancy under a sales contract or a stock ownership device the coopting schemes were flourishing surreptitiously through evictions obtained in the guise of mid-winter heating system collapses, remodeling schemes, demolition rumors, and general tenant-annoying techniques. These came to light with dramatic impact when by inadvertence the 1947 re-enactment of the Rent Laws left out the vital 6 (b) 3.<sup>2</sup> Suddenly it appeared to be legal so long as the coopting scheme was worked out to look like the building had been sold in fact to corporation or trust which would sell shares to would-be occupants. Several suits were brought

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1. Purchasers of ownership interest or stock in multi-unit buildings were required to obtain certificates of occupancy regulated by Subsection 6 (b)3 of Rent Regulation for Housing, 10 FR 1973, 11 F.R. 8106.

2. See Haynes letter from Senate Hearings (Appendix)



by the Housing Expediter to curb the practice but in one state court and a few lower federal courts the co-opters squeezed through the loop hole of the omitted 6 (b) 3. <sup>1</sup> State and local regulations were rushed through to fill the gap while Congress could restore the lost provision, (dropping the provision to 65%).

The closing of the loophole caught a great number of co-opters half way in and half way out. These schemes having been brought out into the open the federal courts became busy with cooperative cases. <sup>1</sup> The coopters adopted various organizational stratagems to cover their tracks. First they were and then they were not, cooperatives, corpor-

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1. Tador Arms v. Shaffer, 62 A. 2d 346. (This Maryland case is the only one that was not eventually overruled. Weeds v. Patchell, 175 F. 2d 202, Weeds v. Krizan, 176 F. 2d 667 and others were all held to come within the law against evasive practices and the co-opting scheme was curbed when these cases were taken to the superior courts by the Housing Expediter who realized that the whole rent control program could be circumvented if these cooperatives schemes could be considered legal.

ations, individual owners of individual apartments, associations, trusts, and etc. <sup>1</sup> Most of the courts, either originally or on appeal, saw through the facade and refused to sanction the subterfuge.

In Tuder Arms v. Shaffer the Court determined that a corporation had in fact been formed and assumed ownership and control of the building. Occupants as owners of stock in the corporation would, as soon as all stock was sold, take over management and operation of the building. Inasmuch as

1. "Apparently first attempt of the original owners was to sell the apartments on a separate apartment plan; each purchaser assumed to buy an apartment as such. Later this plan was cancelled and that type of transaction was abandoned. Separate contracts for deed were made out to some 14 purchasers assuming to sell an undivided 1/14 interest in the building to each purchaser.

Purchasers had not obtained any legal or equitable title to the building. . . It seems indubitably therefore, that when this transaction was contemplated and entered into with the purchasers, it was conceived and perpetrated in direct violation of section 8 (a) of the Controlled Regulation, and any steps that were taken by the parties thereafter did not absolve the defendants from the taint of the original scheme and plan." Woods v. Burg U.S. District Court 4th Div. Sept. 23, 1945.

the landlord had completely divested himself of ownership and management the Court felt that the sale had been bona fide and upheld the purchasers rights thereunder.

In no other case has the co-opting set-up been upheld. Regardless of the forms the chameleon-like ventures took the courts reasoned:

"Some form of co-operative organization must necessarily be formed by the tenants in the instant case, since without such an arrangement the living quarters would be without heat or water or utilities, and repairs and maintenance could not be carried on." 1

"Congress in the enactment of this section restricting evictions of tenants by cooperative association was attempting to reach out against the Cooperative Housing racket which the omission from the Housing and Rent Act of 1947, sec. 1081 et seq and its implementing regulations had left with an open field." 2

1. Woods v. Petchell, 176 F (2d) 202

2. Woods v. Krizan, 176 F (2d) 667 see also

Aundquist v. Solomeral 80 F. Supp 176; United States v. Shoreline Coop. 70 S. Ct. 246; Woods v. Palumbo, 79 F. Supp. 998; Woods v. Cammeretti 80 F Supp. 636; Woods v. Gorman, 179 F 2d 290; Woods v. Torer 79 F Supp 984 Whitmarsh v. Farnell 78 NYS 2d 762. Senate Hearings on Extension of Rent Control Part 1 and 2, Y 4.B22/3:429/1-2



ALTHOUGH THERE WERE A NUMBER OF OTHER WAR-TIME COOPERATIVE HOUSING SCHEMES IN UTAH THEY HAVE MOSTLY EVAPORATED. THE AVALON SCHEME HAS SURVIVED ONLY IN THE RESPONDENTS. THERE IS LITTLE DOUBT THAT THIS VENTURE WAS ENTERED INTO BY THE RESPONDENTS ORIGINALLY MERELY AS A MEANS OF OBTAINING OCCUPANCY OF WAR TIME HOUSING UNITS IN VIOLATION OF THE RIGHTS AND NEEDS OF LESS AFFLUENT AND MORE LAW-ABIDING WOULD-BE TENANTS WHO MAY HAVE HAD SUPERIOR RIGHTS THERETO.

It seems inconceivable that the "Real Estate Contracts of Sale" entered into by the Respondents were entered into in violation of the letter and the purpose of the Federal Rent Control Acts.

The demands of these Respondents for perpetual landlord service including payment of taxes and restoration of building and equipment indicates that they are in no sense to be considered the "purchasers" of any property interests in this property and structure. Their contracts on which they base this law suit are therefore evidence of their intent and actions in setting the law aside, and are illegal and void.

The trial court is ruling that no cooperative organization ever had been set up in regard to this property by these defendants removed any



possibility that this venture could qualify as bonafide under the ruling of the Tudor Arms v. Shaffer case . The rulings of the courts in all other available cases would support Appellant's position that this was an illegal undertaking and that contracts entered into pursuant thereto are void, ~~with~~ against public policy .

There do not seem to have been any Utah cooperative housing cases prior to this, but the ruling of this court in regard to similar federal emergency legislation violations would indicate that the Utah law would not sanction the enforcement of any claim or judgment based upon illegal contracts or growing out of illegal transactions. <sup>1</sup>

However, even if no taints of illegality were found in regard to these contracts the judgment which was awarded against the Appellant should be reversed as being unsupported by the evidence and contrary to law and equity, and Respondents should be ordered to restore and make restitution to her for their unjust and improper taking and using of her property .

# CASES CITED

	Page
Barish v. Chrysler, 73 NW 2d. 91.....	26
Bodley v. Taylor, 5 Cranch (US) 191.....	23
Brauner v. Wilson, 271 P 2d 973.....	23
Buchannon v. Upshaw I Howard (U.S. 56) 46.....	21
Cain v. Burns 131 CA 2d 439, 280 P 2d 888.....	28
Continental Bank v. Stewart, Utah 1955 291 P2d.18	
Divide County v. Baird, 55 N.D. 45.....	38
Flynn v. United States, 205 F 2d 756.....	43
Gates v. Daines, 279 P 2d 458.....	18
Hall v. Bucher, 240 Mo App 1239 227 SW 2d 96...38	
Hugal v. Habel Lo5 N. Y. Supp 581.....	29
Jackson v. Cope, 1 Utah 2d 330 266 P 2d 500....21	
Cronk v. Vogts, 15 NYS 649.....	27
Desney v. Desney, 263 P 2d 86.....	23
Haroldsen v. Gates, (Utah 1943, 140 P 2d 350)..50	
Kelly v. Richard (1938) 83 P 2d 731.....	25
Lawrence v. Palston 226 P 2d 856.....	16
Lunsden v. Roth, 291 P 2d 88.....	88
Lyon v. Jackson, 132 N. E. 2d 779.....	23
Mathis v. Madsen, 1 Utah 2d 46, 261 P 2d 46....36	
Miller v. Miller 64 S. Ct 46, 134 F 2d 586....16	
National Life v. Hamillon 98 S. W. 2d 107.....21	
Neil v. Wholesale Grocery Co, 61 Utah 22.....37	
New Silver Bell v. Lewis and Clark Co 284.....38	
Richardson v. Albright, 121 NE. 362.....	24
Rundquist v. Belamoral, 80 F Supp 176.....	48
Sawman v. Bush, 136 S W 2d 938.....	27
Spooner v. Reserve Life, 287 P 2d 735.....	18
Schuessler v. N. E. Development, 264 P2d 737...26	
Sinnar v. Le Roy, 270 P 2d 800 44 Wash 2d.....38	
Smith v. Bowman 32 Utah 33 86 P 687.....	25
Solace v. T. J. Moss Tile Co 142 S.W. 29 1079..23	
Stanley v. Chris-Craft Corp, 22 N.Y.S. 29 962..23	
State v. Rolio, 71 U 91 262 P 987.....	36
Tudor Arms v. Shaffer 62 A 2d 346.....	46
Twehause v. Rosner, 362 Mo 949 245 S.W. 2d 107.41	
Ulmer v. Frillon, 129 Ohio 323 .....	38
United States v. Friedman 89 F. Supp 957.....	43
United States v. Shoreline Cooper. 70 S. 248...48	
United State v. Sleagall 88 F. Supp 98.....	43
Whitmarsh v. Farnell, 78 N.Y.S. 782.....	48
Woods v. Burg Min. US 4th Di. 1920.....	47

	Page
Wood v. Krizan, 176 F 2d 667.....	48
Woods v. Petchell, 175 F 2d 202.....	48
Woods v. Taper, 79 F Supp 984.....	48
Woods v. Gorman, 179 F 2d 290.....	48
Woods. v. Cammenltt, 80 F Supp 636.....	48
Woods v. Palumbo, 79 F Supp 998.....	48

### OTHER AUTHORITIES

12 Am Juris 150-38.....	38
19 Am Juris 463.....	23
10 ALR 249--341.....	43
51 ALR 296.....	38
97 ALR 1170.....	38
28 ALR 1192.....	42
G. C. Grismore, 18 Mich L. Rev. 284.....	28
Senate Hearings on Rent Control.....	48
Tiffany, Landlord and Tenant 978 n.....	29
50 USCA App x 1500.....	43

## **STATEMENT OF PURPOSE OF 1942 AND 1947 WARTIME ACTS**

**Section 901. "It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act (901 et seq. of this appendix) are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values;" 50 USCA Appendix, 901--924**

### **Judicial interpretations**

**The purpose of section 901 et seq. of this Appendix, among others, was to stabilize prices and prevent speculative, unwarranted, and abnormal increases in prices and rents. 34 D. C. 2d 725, 72 Cir. App. 644.**