

1989

Bette Wycalis v. GUARDIAN TITLE COMPANY OF UTAH, and WARREN H. CURLIS, Its President; CITY FEDERAL SAVINGS & LOAN ASSOCIATION; U.S. TITLE OF UTAH, Trustee; CITY CONSUMER SERVICES, INC., Beneficiary; R. M. WALL; GARY L. MEREDITH and LYLE G. MEREDITH; ED MAASS, RANDY KRANTZ, B. BRAD CHRISTENSON, DEBRA S. CHRISTENSON; R & C ASSOCIATES; ROY L. MILLER, SHARON L. MILES, and JOHN DOES I through X : Reply to Brief in Opposition

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UTAH SUPREME COURT

BRIEF
IN THE SUPREME COURT OF THE STATE OF UTAH

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DOCKET NO: 890431
BETTE WYCALIS,

Plaintiff/Respondent, :

vs. :

GUARDIAN TITLE COMPANY OF UTAH, :
and WARREN H. CURLIS, Its Pres- :
ident; CITY FEDERAL SAVINGS & :
LOAN ASSOCIATION; U.S. TITLE OF :
UTAH, Trustee; CITY CONSUMER :
SERVICES, INC., Beneficiary; :
R.M. WALL; GARY L. MEREDITH :
and LYLE G. MEREDITH; ED MAASS :
RANDY KRANTZ, B. BRAD CHRISTEN- :
SON, DEBRA S. CHRISTENSON; :
R & C ASSOCIATES; ROY L. MILLER :
SHARON L. MILES, and JOHN :
DOES I through X, :

Supreme Court Case No. 890431

(Utah Court of Appeals
No. (880030(A)-CA)

Defendants/Petitioners. :

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Petition for review of a decision of Utah Court of Appeals
rendered by Judges Gregory K. Orme, Richard C. Davidson, and
Russell W. Bench.

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ARGUMENT PRIORITY CLASSIFICATION: 13

FILED
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REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

Defendants/Petitioners Guardian Title Company of Utah and Warren H. Curlis (hereafter collectively referred to as "Guardian") hereby submit this Reply Memorandum in support of their Petition for a Writ of Certiorari.

ARGUMENT

- I. WYCALIS HAS COMPLETELY FAILED TO ADDRESS THE MERITS OF THE CITED GROUNDS FOR THIS PETITION.

The memorandum in opposition to the instant petition, filed by plaintiff/respondent Bette Wycalis ("Wycalis"),

misapprehends both the decision below and the nature of a petition for writ of certiorari and, as a result, offers no arguments as to why the stated grounds for the petition do not exist.

Guardian filed this petition because the lower court's decision did not address, but primarily because it also is in conflict with this Court's conclusion in Gray v. Scott, 565 P.2d 76 (Utah 1977), that there is no duty to foresee and prevent the criminal activity of third parties. Wycalis' only reply to this argument is that by remanding for trial on the issue of Guardian's duty to Wycalis, the lower court addressed and properly decided this issue.

Wycalis' claim notwithstanding, nowhere in the lower court's opinion is there any discussion or reasoning concerning the impact of the intervening criminal behavior in this case or of the Gray v. Scott precedent. Yet, even if the lower court implicitly addressed this issue by its remand, its decision still creates a proper basis for review by this Court because it conflicts with the reasoning of Gray v. Scott. Guardian has already adequately explained this conflict in its petition and will not do so again here. Wycalis, relying solely on its argument that the Court of Appeals addressed this issue, completely fails to put forth any arguments concerning whether the decision below creates a conflict with Gray v. Scott.

Guardian's other principal basis for its petition herein is that the lower court's decision improperly undermines

the reliability of acknowledged documents and carries the potential of wreaking havoc on the legal and commercial community. Wycalis' rejoinder to this point is simply that the Court of Appeals was correct in deciding that Guardian could not discharge its duty by relying on a document properly acknowledged on its face. Wycalis makes no attempt whatsoever to rebut Guardian's argument in its petition that such a decision drastically and forebodingly undercuts the future reliability of documents properly acknowledged on their face.

In essence, Wycalis' opposition to this petition is simply that she agrees with the resolution by the lower court. Wycalis has utterly failed to address the grounds for issuance of a writ provided for by Rule 43 of the Rules of the Utah Supreme Court, namely that the decision below conflicts with the legal precedents of this Court concerning the duty to foresee criminal acts and that it substantially and adversely affects the functioning of the legal and commercial community on a matter of state law (i.e., the effect of acknowledgements) on which this court should provide an authoritative statement. In the absence of any contradiction by Wycalis of the merits of Guardian's petition, Guardian once again respectfully requests that this petition be granted.

II. WYCALIS' REQUEST FOR DAMAGES IS
MERITLESS, IMPROPER AND FRIVOLOUS.

In the conclusion to her brief, Wycalis requests "damages" under Rules 33 and 40 of the Rules of the Utah

Supreme Court. This request should be denied because it is baseless and misapprehends the nature of this petition for discretionary appellate review.

Wycalis apparently bases her claim for "damages" on her assertion that the issues raised in this petition were resolved and are "nothing new." The same claim could be made, of course, about every appeal for discretionary review that has ever been filed. By its very nature, a request for discretionary review requires a petitioner to request a higher court to disagree with an already resolved decision, i.e., to determine whether a lower court has erred. A petitioner must, of course, explain in good faith why a higher court should so disagree with the ruling by the lower court.

Guardian has done this in good faith and with an honest basis in law, fact and public policy. Guardian has, in good faith, appealed to this Court to exercise its discretion and correct what are erroneous rulings that will wreak substantial havoc on the legal and business community if unchanged. As discussed above, Wycalis has completely failed to address the merits of these arguments. Therefore, this is not an appropriate case for "damages" as apparently sought by Wycalis.

Finally, and in all candor, Guardian was surprised by Wycalis' opposition to this petition, let alone its request for "damages." In a discussion between counsel for the parties on October 19, 1989, counsel for Wycalis represented to counsel

for Guardian that it felt the lower court erred and that the matter was certainly one that should be resolved by this Court as a matter of law.^{1/} It certainly strikes a discordant note for Wycalis to now seek fees for Guardian's good faith request that this court resolve this case as a matter of law. Wycalis' claim for "damages" should be denied.

CONCLUSION

Wycalis has failed to offer any reasoning in opposition to Guardian's argument that the decision below conflicts with the legal principles previously articulated by this Court and involves a substantial issue to which this Court should speak. Guardian therefore requests that its petition for a writ of certiorari be granted and that Wycalis' request for damages be denied.

DATED this 4th day of December 1989.

JONES, WALDO, HOLBROOK & McDONOUGH

By 

David R. Money

Michael Patrick O'Brien

Attorneys for Guardian Title Company
of Utah and Warren H. Curlis

^{1/} In lieu of filing an affidavit, counsel's signature herein constitutes his sworn belief that, to the best of his recollection, counsel for Wycalis made the foregoing representation.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December, 1989, I caused to be mailed, postage prepaid, four (4) true and correct copies of the foregoing REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI, to the following:

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