

1989

Wade v. Jobe : Unknown

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

unknown.

unknown.

Recommended Citation

Legal Brief, *Wade v. Jobe*, No. 890443.00 (Utah Supreme Court, 1989).
https://digitalcommons.law.byu.edu/byu_sc1/2725

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.



UTAH LEGAL SERVICES, INC.

UTAH LEGAL SERVICES, INC.
550 24th Street
Suite 300
Ogden, Utah 84401

(801) 394-9431

WATS 1-800-662-2538

July 22, 1991

FILED

JUL 25 1991

Geoffrey J. Butler
Clerk of the Utah Supreme Court
Supreme Court, State of Utah
Salt Lake City, Utah 84114

CLERK SUPREME COURT,
UTAH

RE: Wade v. Jobe; Case No. 890443 (decision pending)

Dear Mr. Butler:

I wish to call to the attention of the court, pursuant to Rule 25(j), Utah Rules of Appellate Procedure, a case that has come to my attention which has some bearing on the pending decision.

At issue in this case is whether the Utah Consumer Sales Practices Act applies to a landlord/tenant transaction or in a broader context, to real estate transactions in general. Please see Point I of Appellant's Brief.

In Workman v. Nagle Construction, Inc., 149 Utah Adv. Rep. 44, the Attorney General brought suit under the Utah Consumer Sales Practices Act on behalf of a purchaser of a condominium. Although the application of the Consumer Sales Practices Act is not at issue in this case, the existence of this action would indicate that the Attorney General is of the opinion that the Consumer Sales Practices Act applies to real estate transactions.

Very truly yours,

UTAH LEGAL SERVICES, INC.


JUDITH MAYORGA
Attorney at Law

jm/cw
Enclosure

cc: James H. Deans

Workman v. Nagle Construction

149 Utah Adv. Rep. 44

CODE • CO
Provo, Utah

welfare." Once the legislature has established the guidelines and limits to the implementation of a redevelopment plan for the acquisition and redevelopment of private properties, the RDA must then strictly comply with the requirements of the enabling legislation, including §11-19-9.

Since I agree with the foregoing conclusions of law, I would affirm the trial court's declaratory judgment interpreting the Act.

Norman H. Jackson, Judge

Cite as
149 Utah Adv. Rep. 44

IN THE UTAH COURT OF APPEALS

**Carol WORKMAN, Class Representative,
Plaintiff and Appellee,**

v.

**NAGLE CONSTRUCTION, INC., Artistic
Homes, Inc., Imperial Excavation, Inc., Gary
Nagle, Lamar Nagle, Michael Nagle, Cindy
Raleigh, Marilyn Nagle, and Francis Ford,
Defendants and Appellant.**

No. 890388-CA
FILED: November 30, 1990

Third District, Salt Lake County
Honorable David S. Young

ATTORNEYS:

Bryan W. Cannon, Salt Lake City, for
Appellant

Paul N. Cotro-Manes, Salt Lake City, for
Appellee

Before Judges Bench, Garff, and Conder.¹

OPINION

CONDER, Judge:

Defendant Marilyn Nagle appeals the district court's denial of her motion to set aside a judgment. We reverse.

The Utah Division of Consumer Protection (Division) initiated this action as plaintiff under the Utah Consumer Sales Practices Act, title 13, chapter 11 of the Utah Code, alleging misconduct by the defendants in the sale of certain condominiums. This action alleges only civil, not criminal claims, and the Division acted on behalf of what it alleged was a class consisting of the buyers of the condominiums in question. The district court granted summary judgment in favor of the Division, which later assigned the judgment to Carol Workman as representative of the alleged

class. Although the condominium buyers are said to be a class in the complaint and in the judgment, formal notice has not been given to the members of a class.

After the pleadings, some early motions, and discovery, the district court scheduled a pretrial conference, which was held on June 17, 1986. The defendants failed to appear at that conference, and the court consequently held them liable according to the complaint and scheduled an evidentiary hearing to determine the amount of the damages. The defendants did not appear at the evidentiary hearing, and judgment was entered against them. The findings and conclusions of this 1986 judgment refer to this case as a class action. However, the 1986 judgment was later set aside when the court determined that the defendants' newly substituted counsel had not been properly notified of the pretrial conference or of the ensuing evidentiary hearing.

In November of 1987, the Division moved for summary judgment, seeking essentially the same disposition as it had earlier obtained after the defendants failed to appear at the pretrial conference. The defendants failed to respond to the motion for summary judgment, and the court granted it. The State assigned the resulting summary judgment to Carol Workman "as class representative," and she was substituted as the sole plaintiff in this action.

After proceedings were begun to enforce the judgment, Marilyn Nagle, with new counsel, moved in February 1989 to set the judgment aside pursuant to Utah R. Civ. P. 60(b). The district court denied her motion, and she has appealed that denial.

Notice of Entry of Judgment

Before determining whether the judgment should be set aside, we consider whether it was validly entered in the first place.² Marilyn Nagle argues that the judgment was not validly entered because the prevailing party did not notify her of it pursuant to Utah R. Civ. P. 58A(d), which reads:

(d) *Notice of signing or entry of judgment.* The prevailing party shall promptly give notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court. However, the time for filing a notice of appeal is not affected by the notice requirement of this provision.

In addition, former Rule 4.5 of the Rules of Practice of the District and Circuit Courts, in effect when this judgment was entered,³ contained a similarly worded requirement that the prevailing party notify all other parties that the judgment had been entered.

Workman, the current plaintiff in this case,

statutes and other authorities cited, with references to the pages of the brief where they are cited.

(4) A brief statement showing the jurisdiction of the appellate court.

(5) A statement of the issues presented for review and the standard of appellate review for each issue with supporting authority for each issue.

(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and in that event, the provision shall be set forth as provided in paragraph (f) of this rule.

(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record (see paragraph (e)).

(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, with citations to the authorities, statutes, and parts of the record relied on.

(10) A short conclusion stating the precise relief sought.

(b) **Brief of the appellee.** The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(c) **Reply brief.** The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. No further briefs may be filed except with leave of the appellate court.

(d) **References in briefs to parties.** Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) **References in briefs to the record.** References shall be made to the pages of the original record as paginated pursuant to Rule 11(b), to pages of the reporter's transcript, or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to exhibits shall include exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(f) **Reproduction of opinions, statutes, rules, regulations, documents, etc.**

(1) Any opinion, memorandum of decision, findings of fact, conclusions of law, or order pertaining to the issues on appeal and any jury instructions or other part of the record of central importance to the determination of the appeal shall be reproduced in the brief or in an addendum to the brief.

(2) If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, to the extent not set forth under subparagraph (a)(6) of this rule, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) **Length of briefs.** Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (f) of this rule.

(h) **Briefs in cases involving cross-appeals.** If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rule 26, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall contain the issues and arguments involved in the cross-appeal as well as the answer to the brief of the appellant.

(i) **Briefs in cases involving multiple appellants or appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) **Citation of supplemental authorities.** When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

(k) **Requirements and sanctions.** All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

(l) **Brief covers.** The covers of all briefs shall be of heavy cover stock and shall comply with Rule 27.

Rule 25. Brief of an amicus curiae or guardian ad litem.

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except

JCR