

2011

# John Johnson v. Payson City Corporation : Reply Brief

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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JOHN JOHNSON,

Plaintiff/Appellant,

v.

PAYSON CITY CORPORATION,

Defendant/Appellee.

Case No. 20110284-CA

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**REPLY BRIEF OF APPELLANT**

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APPEAL FROM THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT  
IN FAVOR OF DEFENDANT, FOURTH JUDICIAL DISTRICT COURT, UTAH  
COUNTY, STATE OF UTAH, BEFORE THE HONORABLE JUDGE DAVID N.  
MORTENSEN

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**ARGUMENT**

**I. MATERIAL DISPUTED FACTS EXIST AS TO WHETHER JOHNSON PAID FOR THE INFRASTRUCTURE**

Payson City asserts that Johnson failed to provide any evidence that he paid for infrastructure, and that the trial court correctly found that “Johnson is incapable of establishing the actual costs incurred by him” (R. 212). However, Payson City ignores the fact that the issue of establishing the exact amount of out of pocket expenses was not before the trial court on summary judgment. Moreover, Johnson provided reliable evidence that he in fact paid for the infrastructure. As such, summary judgment was inappropriate.

For example, both Johnson and Hiatt testified that Johnson hired Hiatt Construction to purchase the infrastructure and install the infrastructure (R. 134-35, 145-46, 171-72, 179). At this time, Johnson had been working with Payson City Council to

approve the plat and to reimburse Johnson for the installation of the infrastructure (R. 175-76, 179). Although the arrangement with Hiatt eventually changed, Johnson testified that when the Property sold, the value of the Reimbursement Agreement was subtracted from the sale (R. 178-79).

Payson City asserts that Johnson's testimony is disputed by Hiatt. Obviously. Payson City further asserts that Johnson's testimony lacks foundation and is unsupported by the record. This is not correct. While Johnson did not provide any documents regarding the property transaction, the record contains the Reimbursement Agreement, which shows that Payson City agreed to pay Johnson up to \$59,214.00 for the installation of the infrastructure (R. 141). Johnson asserts that is the amount which was paid to Hiatt as part of the Property sale (R. 178-79). Notably, Payson City provided no documents disputing Johnson's testimony that he included Hiatt's costs and expenses for the infrastructure when the Property was sold.

Most of Payson City's brief focuses on irrelevant issues. It matters not that Lana Johnson, instead of John Johnson, was listed as title owner of the Property. Johnson testified that marital funds were used to purchase the property (R. 178-80). Moreover, it is undisputed that Johnson was the developer and the one working with Payson City Council to approve the plat and the one that entered into a reimbursement agreement with Payson City long before the formal Reimbursement Agreement was signed (R. 175-76, 179).

There are material questions of disputed fact regarding whether Johnson paid for the infrastructure through the sale of the Property. While Johnson did not necessarily

establish the exact out-of-pocket costs incurred regarding the infrastructure, sufficient evidence to defeat a motion for summary judgment was provided that Johnson did in fact pay for the infrastructure through the sale of the Property. For these reasons, summary judgment was inappropriate and the judgment should be reversed.

### **CONCLUSION AND PRECISE RELIEF SOUGHT**

For the foregoing reasons, John Johnson asks this Court to reverse the district court's grant of Payson City's Motion for Summary Judgment, and to remand this matter to the district court for further proceedings.

Dated this 13 day of October, 2011.



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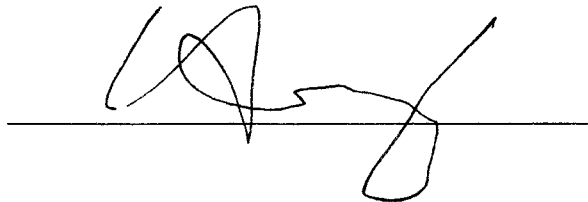
Aaron P. Dodd  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of October, 2011, I served, via U.S. First Class Mail, a true and correct copy of the foregoing upon the following:

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