

2011

Johnson v. Payson City Corporation : Brief of Appellant

Utah Court of Appeals

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David C. Tuckett; Jody K. Burnett; George A. Hunt; Attorneys for Appellees.

Aaron P. Dodd; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

JOHN JOHNSON,

Plaintiff/Appellant,

v.

PAYSON CITY CORPORATION,

Defendant/Appellee.

Case No. 20110284-CA

BRIEF OF APPELLANT

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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FILED
UTAH APPELLATE COURTS
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IN THE UTAH COURT OF APPEALS

JOHN JOHNSON,

Plaintiff/Appellant,

vs.

PAYSON CITY CORPORATION,

Defendant/Appellee.

Case No. 20110284-CA

BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(j).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred in granting summary judgment in favor of Payson City Corporation? Summary judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See* U.R.C.P. Rule 56(c). A district court's grant of summary judgment is reviewed for correctness and no deference is afforded to the district court's legal conclusions. *Orvis v. Johnson*, 2008 UT 2, ¶ 6, 177 P.3d 600. This issue was preserved when Johnson opposed Payson City's motion for summary judgment by memorandum and at oral argument. (R:189, 209, 228).

CONTROLLING STATUTORY PROVISIONS

Utah R. Civ. P. 56(c)

Motion and proceedings thereon. The motion, memoranda and affidavits shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Payson City ordinance 07-05-95 is set forth in the Addenda.

STATEMENT OF THE CASE

A. Nature of the Case

John Johnson appeals from the Order Granting Summary Judgment entered on February 22, 2011, which dismissed Johnson's claims against Payson City Corporation ("Payson City") (R. 218-19).

B. Trial Court Proceedings and Disposition

John Johnson filed a Complaint against Payson City on August 11, 2008, alleging breach of contract for Payson City failing to pay a Reimbursement Agreement (R. 3-9).

Payson City filed a Motion for Summary Judgment on August 23, 2010 (R. 115-17).

Payson City asserted that the undisputed facts show Johnson was not entitled to any funds under the Reimbursement Agreement because he did not pay for the infrastructure or its installation subject to the Reimbursement Agreement (R. 162-63). Payson City asserted that Noel and Ray Hiatt paid for the infrastructure and its installation (R. 163). Payson City further asserted that the Reimbursement Agreement and Payson City ordinance required that before any reimbursement could be paid, Payson City had to collect fees from other property owners to connect to the

infrastructure (R. 163). Payson City asserted that it did not collect any fees for other property owners to connect to the infrastructure, and therefore, Johnson was not entitled to reimbursement (R. 163).

Johnson opposed the Motion, asserting that he hired Hiatt Construction to purchase and install the infrastructure with the agreement that Hiatt would be paid once the lots were sold (R. 184-85). Before the lots were completed, the property was sold to Hiatt and another party (R. 184). As part of the sale, Johnson paid Hiatt for the costs of purchasing and installing the infrastructure (R. 184). Johnson further asserted that Payson City's own records established that it had collected the subject fees, and reimbursement was proper (R. 184). Thus, Johnson maintained that disputed facts prevented summary judgment (R. 184).

The district court entertained oral arguments on the motion on January 5, 2011 (R. 209, 228). After oral arguments, the district court took the matter under advisement and entered a Ruling on Motion for Summary Judgment on February 4, 2011, granting Payson City's motion and dismissing Johnson's claim (R. 210-16). The Order Granting Summary Judgment was entered on February 22, 2011 (R. 218-19). Johnson timely filed his notice of appeal on March 24, 2011 (R. 222).

STATEMENT OF FACTS¹

On or about June 13, 1995 Lana W. Johnson and John Johnson (husband and wife at the time) purchased an undivided 50% interest in a parcel of real estate in Payson City (the "Property"), with funds from their account (R:146, 165-66, 180). Title to their interest in the Property was put in Lana Johnson's name only (R. 180). Lana Johnson's in-laws, the Waldrons, also purchased a 50% undivided interest in the Property (R. 165-

¹ These facts are taken in the light most favorable to the non-moving party. See *Wayment v. Clear Channel Broadcasting, Inc.*, 2005 UT 25, ¶ 3, 116 P.3d 271.

66).

Thereafter, Johnson began working with Payson City Council to approve the development and subdivision of the Property (R. 180). By June 19, 1996, the City Council agreed to subdivide the Property, contingent upon Johnson upsizing the pressurized irrigation and sewer lines to allow for additional property owners to connect to the infrastructure (R. 179). City Council minutes show that Payson City agreed to reimburse Johnson for the upsized lines (R. 175-76, 179). Johnson asked on numerous occasions that the reimbursement agreement be put in writing, but that did not occur until August 13, 1997, when Johnson signed the Reimbursement Agreement (R. 139-42, 179); *see also* Addenda. The terms of the Reimbursement Agreement were that Johnson would be eligible to receive up to \$59,214.00 for installing the requisite upsized infrastructure (R.141).

As the developer of the Property, Johnson hired Ray Hiatt of Hiatt Construction to purchase and install the upsized irrigation and sewer lines (“infrastructure”) (R. 134-35², 179). The initial terms of the agreement were that Ray Hiatt would be paid for the labor and material costs as the individual lots on the Property were sold (R. 134-135, 145-46³, 171-72, 179).

Subsequently, Ray Hiatt and another person, Carrie Woods, desired to purchase the Property (R. 179). Johnson and the other title owners decided to sell their interests in the Property to Ray Hiatt and Carrie Woods (R. 179). The Property was sold to Ray

² An unnumbered page exists between pages 134 and 135 of the record, which contains this testimony.

³ The same problem exists with an unnumbered page between pages 145 and 146 of the record.

Hiatt and Carrie Woods on August 4, 1997 (R. 165). As part of the sale, Ray Hiatt's costs and expenses for purchasing and installing the infrastructure subject to the Reimbursement Agreement were included in the amount of the final sale (R. 178-79).

Thereafter, Ray Hiatt claimed that he was entitled to the reimbursement value set forth in the Reimbursement Agreement, and he applied for and received the full value of the Reimbursement Agreement (R. 124-25, 164).

Johnson also applied for reimbursement under the Reimbursement Agreement but was denied (R. 178).

SUMMARY OF ARGUMENT

The issue before this Court is whether the district court's grant of summary judgment, based on a finding that no material disputed facts exist, was in error.

John Johnson filed suit against Payson City to enforce a Reimbursement Agreement which provided that if he installed upsized utility infrastructure in the subject Property, the City would reimburse him his costs for said installation. Payson City filed for summary judgment, asserting that another person, Ray Hiatt of Hiatt Construction, paid for and installed the infrastructure, and therefore, Johnson was not entitled to any reimbursement.

The district court ignored Johnson's testimony that he paid for the infrastructure and its installation through the sale of the Property to Hiatt, and granted summary judgment in favor of Payson City. In addition, the district court considered an issue not raised in Payson City's motion: whether Johnson could satisfy the provisions of the Reimbursement Agreement and Ordinance 07-05-95, which require the applicant seeking

reimbursement to establish the exact amount he is entitled to. The district court found that Johnson could not establish that he paid anything for the installation, and granted Payson City's motion for summary judgment.

The facts, taken in a light most favorable to Johnson, show that Johnson paid for the infrastructure and its installation through the sale of the Property. Accordingly, material disputed facts prevent the issuance of summary judgment.

ARGUMENT

I. MATERIAL DISPUTED FACTS EXIST AS TO WHETHER JOHNSON PAID FOR THE INFRASTRUCTURE AND ITS INSTALLATION

To prevail on summary judgment, the “movant must show both that there is no material issue of fact and that the movant is entitled to judgment as a matter of law.” *Orvis v. Johnson*, 2008 UT 2, ¶ 10, 177 P.3d 600 (citing Utah R. Civ. P. Rule 56(c)) (original emphasis). “An appellate court reviews a trial court’s legal conclusions and ultimate grant or denial of summary judgment for correctness, and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.” *Id.* at ¶ 6, (internal quotations and citation omitted).

In this case, material disputed facts prevent the grant of summary judgment. The district court held that because Johnson did not bear any out-of-pocket costs to install and pay for the infrastructure, he could not satisfy the requirements of both the Reimbursement Agreement and Payson City Ordinances, which require that Johnson show the “actual cost” expended to install the infrastructure (R. 212-13). In making this ruling, the district court found that there was “nothing in the record to substantiate” that

when Johnson sold the Property, it took into consideration the value of the Reimbursement Agreement, and that Johnson provided no testimony that demonstrates that he and his wife sold the Property for an amount that had been reduced by the value of the Reimbursement Agreement (R. 212). The district court further found that Johnson was never a title holder to the Property and that the Reimbursement Agreement was entered into after the date when Johnson and his wife sold the Property (R. 212).

In making these findings, the district court erroneously ignored the record evidence, erroneously found that there were no material facts in dispute, and erroneously granted Payson City's motion for summary judgment.

A. Johnson paid for the infrastructure and its installment when the Property was sold.

First of all, the district court's finding that Johnson did not bear any out-of-pocket expenses for the infrastructure or its installation, and that this was an undisputed fact, is erroneous. Both Johnson and Noel Hiatt (Ray Hiatt's son) testified that their initial agreement was that Johnson hired Hiatt Construction to purchase the infrastructure and install the infrastructure (R. 134-135, 145-46, 171-72, 179). While Johnson was not going to pay Hiatt Construction for this work up-front, Hiatt Construction would be paid once the lots were sold. *Id.* Instead of developing and selling each lot, Hiatt approached Johnson and informed him that Carrie Woods wanted to purchase the Property (R. 170). Once the Property was sold to Carrie Woods and Ray Hiatt, Hiatt's costs and expenses for the installation of the infrastructure were included in the sale (R. 178-79). Thus, taking the facts in a light most favorable to Johnson, the record shows that Johnson paid

for the infrastructure and the costs for installing the infrastructure when the Property was sold. Therefore, the district court erroneously found that Johnson “has not provided testimony ... or any other evidence” that he paid for the infrastructure and its installation. Accordingly, there are genuine issue of material fact as to whether or not Johnson paid for the infrastructure and its installation, and the Ruling should be reversed.

B. The district court improperly raised and ruled on an issue not before the court.

Payson City argued in its Motion for Summary Judgment and its supporting memorandum that it was entitled to summary judgment on the following grounds: (1) Johnson failed to “demonstrate that he actually constructed an paid for the infrastructure for which he seeks reimbursement; (2) the City did not collect any fees on the frontage on the infrastructure so Johnson was not entitled to reimbursement; and (3) Johnson’s application for reimbursement was untimely (R. 116, 161-63)⁴.

The district court, however, considered an issue not raised in Payson City’s motion for summary judgment, and raised for the first time at oral argument and in its Ruling the question of whether Johnson could establish the amount of actual costs and expenses he paid for the infrastructure and its installation, and as such, whether Johnson could satisfy the provisions of the Reimbursement Agreement and the Payson City ordinance that purportedly require the applicant to establish the exact amount he is entitled to reimbursement (R. 212-13; 228: 11). The district court ruled that Johnson could not establish his actual out-of-pocket expenses for the infrastructure and its installation, and

⁴ The district court did not address the second and third issues in its Ruling, and these issues are not before this Court.

therefore, Johnson could not satisfy the requirements of the Reimbursement Agreement and the Payson City ordinance (R. 212-13).

Because the issue of whether Johnson could establish the exact amount of his out-of-pocket costs was not raised in Payson City's motion, it was not properly before the district court. The district court raised this issue on its own, and Johnson was not aware it was even at issue for summary judgment. Thus, the district court's finding that Johnson "is incapable of establishing the actual costs incurred by him ... to install the infrastructure" in order to satisfy certain requirements in the Reimbursement Agreement and the Payson City ordinance was in error since it was not at issue (R. 212) (emphasis added). For this reason alone, the Ruling should be reversed.

In any event, the Reimbursement Agreement included the estimate of what Johnson's actual costs would be, and in its Memorandum in Support of Motion for Summary Judgment, Payson City attached an exhibit to the Reimbursement Agreement specifying where the costs would be incurred (R. 139, 141). Moreover, it cannot be argued that the infrastructure and the cost of installing the infrastructure was zero, so the district court erroneously ruled that Johnson was entitled to nothing. In addition, Hiatt subsequently received the full \$59,214 benefit, which is evidence of the costs Johnson paid to Hiatt to install the infrastructure (R. 124-25, 164). Accordingly, the district court erroneously found that Johnson could not establish that he incurred any costs in purchasing and installing the infrastructure.

C. Johnson had at least an equitable interest in the Property.

The district court found that Johnson was never a title holder to the property in its

Ruling holding that Johnson is unable to satisfy the requirements of the Reimbursement Agreement (R. 212). Taking Johnson's declaration and his deposition testimony in a light most favorable to him, the facts show that he was married to his wife when the Property was purchased and both of them purchased the Property from their joint account (R.146, 180). It just happened that his wife's name was put on the title (R.180). Thus, Johnson had at least an equitable interest in the property, and every right to develop the property.

In addition, the district court found that the Reimbursement Agreement was entered into after the Property was sold to Carrie Woods and Ray Hiatt (R. 212). While the Reimbursement Agreement was signed after the Property was sold, Johnson submitted uncontested proof that Payson City council agreed as early as June 19, 1996, to the conditions of the Reimbursement Agreement, and that it took Johnson a long period of time just to have the document executed (R. 175-76, 179). Accordingly, the district court's finding that the Reimbursement Agreement was entered into only after the property was sold is erroneous.

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 26 day of July, 2011.



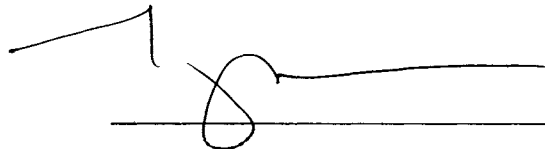
Aaron P. Dodd
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2011, I served, via U.S. First Class Mail, a true and correct copy of the foregoing upon the following:

David C. Tuckett
439 West Utah Avenue
Payson, Utah 84651

Jody K. Burnett
George A. Hunt
257 East 200 South, Suite 500
PO Box 45678
Salt Lake City, UT 84145



ADDENDA

ADDENDUM A

FILED

FEB 04 2011

min
4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

JOHN JOHNSON,

Plaintiff,

v.

PAYSON CITY, a municipal corporation,

Defendant.

**RULING ON MOTION FOR
SUMMARY JUDGMENT**

Date: February 4, 2011

Case Number: 080402550

Judge David N. Mortensen

I. INTRODUCTION

This matter comes before the court pursuant to Defendant's Motion for Summary Judgment. The defendant asks the court to decide as a matter of law that the plaintiff cannot satisfy the requirements of the Reimbursement Agreement and therefore does not have a viable claim against defendant. Plaintiff John Johnson filed an Opposition to the Motion for Summary Judgment and Defendant Payson City filed a Reply. The court, after hearing oral arguments and reviewing the motions and pleadings in the file, and finding good cause therefore, grants the defendant's Motion for Summary Judgment.

II. SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when there is no genuine issue as to any material

fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, shall be considered in deciding a motion for summary judgment. *Id.* Additionally, "the court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the party opposing summary judgment." *Conder v. A. L. Williams & Assocs., Inc.*, 739 P.2d 634, 637 (Utah App. 1987).

III. UNDISPUTED MATERIAL FACTS

1. On or around June 13, 1995 Lana W. Johnson (Plaintiff's wife at the time) purchased an undivided 50% interest in a parcel of real estate in Payson City.
2. On August 4, 1997 Lana Johnson sold her interest in the property to Carrie Woods.
3. On that same date, August 4, 1997, Ray Hiatt purchased the other undivided 50% interest in the parcel of land.
4. Shortly thereafter, on or around August 13, 1997, Defendant Payson City and Plaintiff John Johnson entered into a Reimbursement Agreement.
5. In the Reimbursement Agreement Payson City agreed to reimburse John Johnson, as the developer of the property, for some of the costs of installing utility infrastructure including manholes, sewer, and pressurized irrigation because other property owners and Payson City would benefit from the infrastructure.

6. In pertinent part, the Reimbursement Agreement provides:

WHEREAS, *the entire cost of that installation will be borne by developer* and at least a portion thereof will be reimbursable to developer pursuant to the City Ordinances from amounts that the City collects from adjacent property owners

NOW, THEREFORE, the parties mutually covenant and agree as follows:

1. That in consideration of the development and installation of the infrastructure utilities as set forth above, the City hereby grants to developer a Right of Reimbursement to be paid from such sums as are actually collected by the City from other private property owners or developers who have frontage on and connect to the *infrastructure utilities paid for by developer* hereunder, the same to be paid by the adjacent property owners as provided in Ordinance #19-70-5 of the Payson City Ordinances.

(Emphasis added)

7. Payson City Ordinance 07-05-95 amends City Ordinance 19-70-5 and prescribes, in Paragraph C, the provisions for reimbursement:

the applicant's share of the *actual cost of making such extension* shall be determined by the City Engineer. . . . the city will enter a deferred credit on its books and records in the amount of the *actual prorated cost* of the extension across the front of said benefitted property and shall reimburse the applicant, his assignees or successors, upon collection by the city of charges assessed against such benefitted property as service connections are made.

(Emphasis added)

8. Ray Hiatt and his son, Noel, developed the property and installed the infrastructure.
9. The Hiatts posted the infrastructure bond, performed the physical labor and paid for the

necessary materials to install the infrastructure.

10. The Hiatts donated the value of the Reimbursement Agreement to Payson City. The value of the Reimbursement Agreement was determined according to Payson City Ordinance.

IV. ANALYSIS

Plaintiff John Johnson claims that he entered into an agreement with Ray Hiatt wherein Hiatt agreed to provide the physical labor and bear the initial cost of the materials needed to install the infrastructure and then Hiatt would receive payment when the lots were sold. John Johnson claims that he ultimately incurred the costs of the infrastructure as contemplated in the Reimbursement Agreement because those costs were accounted for when the property was sold. In essence, John Johnson claims that Carrie Woods and / or Ray Hiatt purchased the property at a discount because John Johnson intended to be reimbursed according to the terms of the Reimbursement Agreement. Thus, plaintiff claims a diminution in purchase price entitles him to reimbursement based upon an educated guess or estimates of the "actual cost" to install the infrastructure.

The court finds Johnson's claims are untenable. Under the Reimbursement Agreement, John Johnson needs to establish that "the entire cost of that installation [was] borne by [him]" and that "the infrastructure utilities [were] paid for by [him]." Under the Payson City ordinances, he needs to establish the "actual cost" expended to install the infrastructure. John Johnson is unable to satisfy these requirements. Mr. Johnson cannot establish that the cost of the installation

was borne by him. He did not incur out-of-pocket costs to install the infrastructure. The court is satisfied that Mr. Johnson is incapable of establishing the actual costs incurred by him (if he did in fact bear any of the costs) to install the infrastructure. While he claims the property was sold for a decreased amount in consideration of the value of the Reimbursement Agreement, there is nothing in the record to substantiate this. Mr. Johnson has not provided testimony or a real-estate contract or any other evidence that demonstrates that he and his wife sold the property for an amount that had been reduced by the value of the Reimbursement Agreement. The record is undisputed that plaintiff was never the title holder to the property.¹ Finally, plaintiff acknowledges that the property was sold prior to the Reimbursement Agreement being entered into.

It is immaterial whether or not John Johnson retained the rights in the Reimbursement Agreement when he and his wife sold the property because he is unable to satisfy the requirements of the Agreement. Because John Johnson is unable to establish any actual cost expended to install the infrastructure, the court grants Payson City's Motion for Summary Judgment.

V. CONCLUSION

Plaintiff John Johnson is unable to satisfy the essential element of the Reimbursement


¹Plaintiff did claim an equitable interest at argument, based upon his marriage to the title holder.

Agreement; he cannot demonstrate actual costs borne by him to install the utility infrastructure. Because the plaintiff cannot establish that he has any rights under the Reimbursement Agreement, the court grants the defendant's Motion for Summary Judgment.

Defendant's counsel will prepare an order consistent with this ruling and submit it to the court for signature.

Dated this 4th day of February 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "D. Mortensen", written over a horizontal line.

Judge David N. Mortensen
Fourth Judicial District Court

ADDENDUM B

REIMBURSEMENT AGREEMENT

THIS AGREEMENT entered into this 13 day of August, 1997, by and between
PAYSON CITY CORPORATION, hereinafter referred to as "City," and John Johnson
, hereinafter referred to as "developer," residing at 2840 North
700 East, Provo, UT 84604;

WITNESSETH

THAT WHEREAS, developer is constructing and installing utility infrastructure which consists of manholes, sewer, pressure irrigation, located at 800 South & Turf Farm Rd, Payson, for approximately 1880 feet to serve his/her property, and which utility infrastructure will go past the property of other private owners, more fully described in Exhibit "A"; and

WHEREAS, the entire cost of that installation will be borne by developer and at least a portion thereof will be reimbursable to developer pursuant to the City Ordinances from amounts that the City collects from adjacent property owners under the ordinances applicable to assessments in lieu of main line extensions.

NOW, THEREFORE, the parties mutually covenant and agree as follows:

1. That in consideration of the development and installation of the infrastructure utilities as set forth above, the City hereby grants to developer a Right of Reimbursement to be paid from such sums as are actually collected by the City from other private property owners or developers who have frontage on and connect to the infrastructure utilities paid for by developer hereunder, the same to be paid by the adjacent property owners as provided in Ordinance #19-70-5 of the Payson City Ordinances.

2. Reimbursement shall be made upon application by developer at the time that the

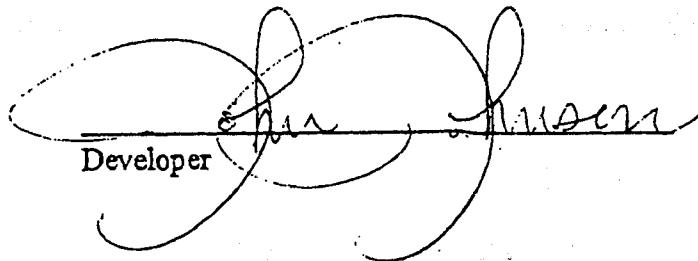
connection charges are made to the adjacent property owners, and shall be based upon the proportion of the lineal frontage assessment made to the property owners under the applicable ordinance.

3. In no event shall reimbursement be in excess of \$59,214.00, which is the maximum amount paid by developer for which reimbursement might be made.

4. This agreement is not a guarantee of collection by the City of that amount, however, or of any other amount, and in no event shall the City be liable unless monies are actually collected from the adjacent property owners.

5. This agreement shall be paid for a period of ten (10) years from the date of this agreement, and thereafter shall terminate and the City shall have no further duty of reimbursement.

WITNESS, the hands of the parties the day and year first above written.

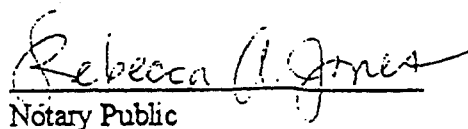

Developer

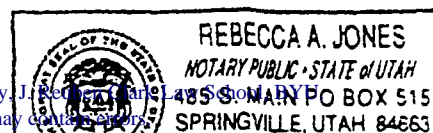
STATE OF UTAH)

ss

COUNTY OF UTAH)

On the 13 day of August, 1997, personally appeared before me, a Notary Public in and for the State of Utah, John Johnson, Developer, the signer of the above instrument, who duly acknowledged to me that he executed the same.


Notary Public



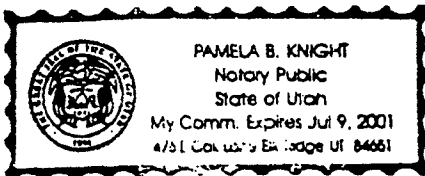
Russell L. Hillman
Mayor

STATE OF UTAH)

:SS

COUNTY OF UTAH)

On the 17th day of December, 1997, personally appeared before me, a Notary Public in and for the State of Utah, **Russell L. Hillman, Mayor of Payson City Corporation**, the signer of the above instrument, who duly acknowledged to me that he executed the same.



Pamela B. Knight
Notary Public

American Dream

REAL ESTATE &
DEVELOPMENT

1. 1880' pressure irrigation X \$7.80= \$14,664.00
2. 1880' sewer X \$10.50= \$19,740.00
3. 6 sewer manholes X \$1,440.00= \$8,400.00
4. 800 South Pressure Irrigation \$16,410.00

ADDENDUM C

ORDINANCE 07-05-95

AN ORDINANCE AMENDING SECTION 19-70-5, PAYSON CITY ORDINANCE ENTITLED "EXTENSIONS IN NON-SUBDIVIDED AREAS."

BE IT ORDAINED BY THE PAYSON CITY COUNCIL, that section 19-70-5 be amended to read as follows:

19-70-5 Extensions in Non-subdivided Areas

Cost of extending a water, sewer or power main to serve land that is not in a proposed subdivision or large scale development and the cost of installing required off-site improvements for such subdivisions and developments shall be borne by the applicant requesting such extension in conformity with the following provisions:

- A. Maps and Plans to be Prepared - City Council to Approve Extension Upon receipt of an application for water, sewer or power service which requires a water, sewer or power main extension, the Applicant shall prepare or cause to be prepared a map, approved by the city engineer, that shows: (1) the frontage to be benefited by such extension, and (2) the frontage owned by the applicant. The Applicant shall then make an estimate of the cost of installing said proposed extension including that proportion of the cost to be borne by the city, if any, and the cost which will be subject to reimbursement. The City Engineer shall approve the estimate. The design and construction of such extension shall be approved by the City Council before such extension is installed.
- B. Applicant to Construct Improvements All costs in connection therewith, including necessary pipes, pumps, tanks, manholes, poles, power lines and appurtenances, shall be borne by the applicant, except that where the city requires the construction of a water, sewer or power main that is larger than required to adequately serve the applicant, the city will pay the difference in cost. The method and timing for payment of the city's share shall be determined by special negotiations with the developer.
- C. Provisions for Reimbursement Upon completion of an extension, the applicant's share of the actual cost of making such extension shall be determined by the City Engineer. Whenever an extension of a water, sewer or power main benefits property which is adjacent to the extension or extended from the end of an existing extension, other than that which is owned by the applicant, the city will enter a deferred credit on its books and records in the amount of the actual prorated cost of the extension across the front of said benefited property and shall reimburse the applicant, his assignees or successors, upon collection by the city of charges assessed against such benefited property as service connections are made. All such reimbursement shall extend for a period of ten (10) years from the date of the completion of the extension and acceptance by the city.

A water, sewer or power main extension charge for each and every subsequent service connection to an extension installed under the provisions of this section shall be paid before such service connection is made, except for frontage owned by the applicant or for

which a water, sewer and/or power connection charge has already been paid. The water, sewer and power main extension charge is separate and is in addition to any other service connection charge required by any other ordinance of the city.

The amount of an extension charge to benefited property shall be determined by multiplying the number of linear feet of frontage in the lot or parcel for which service connection is requested by one-half ($\frac{1}{2}$) the average cost per linear foot of said extension. All necessary pumps, tanks, manholes, poles, power line and appurtenances that are provided in making the extension shall be included in determining the average cost per linear foot.

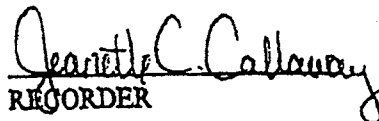
All extension charges levied for purposes of reimbursement shall be determined using the costs for installing water mains of six (6) inches in diameter, sewer mains of eight (8) inches and power mains as determined by the City Engineer. Where the City requires that the extension be made using larger lines, the difference between the cost of installing the standard size line and the size required by the City shall not be subject to reimbursement by the adjacent property owners.

This Ordinance shall take effect immediately upon its passage by Payson City Council and publication, and the same shall be published in the Payson Chronicle, a newspaper published in Payson City, and shall be recorded in the Ordinance book of Payson City, together with proof of publication thereof.

Passed by the Payson City Council this 5th day of July, 1995.


MAYOR

ATTEST


REGORDER