

1990

Randy Krantz v. Kathy Holt : 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.

Wendell E. Bennett; Attorney for Appellee.

Ronald C. Barker, Mitchell R. Barker; Attorneys for Appellant.

Recommended Citation

Legal Brief, *Krantz v. Holt*, No. 900181.00 (Utah Supreme Court, 1990).
https://digitalcommons.law.byu.edu/byu_sc1/2969

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.

XFJ
45.9
.S9

BRIEF

DOCKET NO:

900181

Ronald C. Barker, # 0208
Mitchell R. Barker, # 4530
Attorneys for Plaintiff/Appellant
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone (801)486-9636

FILED

MAY 22 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

<p>RANDY KRANTZ, Plaintiff/Appellant, v. KATHY HOLT, Defendant/Respondent.</p>	<p>DOCKETING STATEMENT Subject to assignment to Court of Appeals Case Number 900181 District Court Number 40041</p>
--------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------

Plaintiff/Appellant hereby submits the following
Docketing Statement pursuant to Rule 9, Utah R. App. P.

RULE 9(c) INFORMATION

1. **Date of Judgment.** Judgment was entered about March 15, 1990. Notice of Appeal was filed April 16, 1990 (a Monday) with the District Court, and was received by this Court April 18, 1990. Although a motion pursuant to Rules 50, 52 and 59 was filed, it preceded the March 15 judgment date.

2. **Jurisdictional Authority.** The Court has jurisdiction over this action pursuant to § 78-2-2(3)(j), Utah Code, incorporating the jurisdictional limits of the Utah Court of

Appeals in § 78-2a-3(2)(h). See also Rules 3 and 4, Utah R. App. P.

3. **Nature of Proceeding.** This appeal is taken from a final order and judgment of the District Court, granting summary judgment in favor of defendant on all issues and dismissing the complaint.

4. **Summary of Facts.** The parties entered into an earnest money agreement, pursuant to which appellant ("Krantz") was to purchase a residence located in Bountiful from respondent ("Holt"). Pursuant to the contract Krantz present a \$500 check to Holt as earnest money. The check was never formally presented to the bank, however Holt alleges (and Krantz disputes) that she contacted the bank on various occasions and was told it would not clear. The parties dispute whether it would have been honored by the bank if properly presented.

The name of Holt's husband appeared on the public records as a joint tenant owner of the residence, however his interest had previously been terminated by a Decree of Divorce. The agreement stated that the offer would be "subject to approval of Stephen Holt by 8-4-86". Mr. Holt gave his approval orally, but the parties dispute whether the approval was timely under the agreement.

The written agreement calls for a closing date of August 20, 1986. It also provided that in the event of unavoidable delay, closing would be automatically extended seven days, but

not longer than 30 days, and that "thereafter time is of the essence."

The parties agreed orally to close on August 21, a day later than the one mentioned in the agreement. Holt selected August 21st to meet her needs. The closing date and time were reconfirmed by telephone a few hours before the scheduled closing, and Krantz deposited with the title company the full purchase price. He appeared at the closing, but Holt changed her mind and failed to appear. She now seeks to avoid any obligation to convey the property to Krantz.

5. Issues on Appeal.

I. Is Holt bound by her oral agreement to close the purchase a day later than the one provided in the earnest money agreement?

II. Did the trial court err in granting summary judgment, when the parties dispute (1) whether timely proper approval from Mr. Holt was necessary and was received, and (2) whether the earnest money check was good, and where the contract was vague as to the closing date?

III. Was it proper to base summary judgment on Holt's hearsay statement that bank employees told her by telephone that the check would not be good if deposited?

IV. Did the court err in finding a "failure of consideration" based upon the alleged inability to cash the earnest money check?

V. Was it error to base summary judgment on an alleged "violation of the Statute of Frauds", and was there such a "violation"?

No evidence was taken, and the complaint was dismissed on summary judgment as a matter of law. As a challenge to summary judgment presents for review conclusions of law only, the standard is to review the conclusions for correctness without any deference to the trial court. City Consumer Services v. Peters, 133 Utah Adv. Rep. 12, 13 (May 3, 1990). All factual questions should be resolved for present purposes in favor of Krantz. Rule 56, URCP.

6. Assignment to Court of Appeals. This appeal may be technically assignable to the Utah Court of Appeals, pursuant to § 78-2-2(4). However, this Court should retain jurisdiction.

7. Why this Court should retain the case. Rule 9(7), Utah R. App. P. This matter involves important issues related to summary judgment, the statute of frauds and interpretation and amendment of contracts for the sale of real estate. This Court is well qualified to adjudicate such matters. It would be provident for this Court to continue to exercise jurisdiction over this matter.

8. Authorities respecting issues on appeal. Bentley v. Potter, 692 P.2d 617 (Utah 1984) (failure of consideration defined); § 25-5-1, Utah Code (statute of frauds); Ted R. Brown and Associate, Inc. v. Carnes Corp., 753 P.2d 964 (Utah 1988)

(parties may modify a written contract by mutual consent); Mountain States Telephone & Telegraph Co. v. Arkin, Wright & Miles, Chartered, 681 P.2d 1258 (Utah 1984) (issues of fact preclude summary judgment); Rules 50, 54, 56 and 59, Utah Rules of Civil Procedure.

9. **Prior Appeal.** There has been no prior appeal in this action.

10. **Attachments.** Annexed hereto are the following attachments:

a. The Partial Summary Judgment, which is to be reviewed in this appeal.

b. The Notice of Appeal.

Respectfully submitted this 21st day of May, 1990.



Ronald C. Barker
Mitchell R. Barker
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on May 21st, 1990 I caused to mailed, postage prepaid, original and seven copies of the foregoing to the office of the Clerk of the Utah Supreme Court, and that I caused a true and correct copy of the foregoing to also be served by postage prepaid mail to the following at the address indicated:

Wendell E. Bennett, Esq.
448 East 400 South, Suite 304
Salt Lake City, Utah 84111



Mitchell R. Barker

WENDELL E. BENNETT (0287)
Attorney at Law
Attorney for Defendant
448 East 400 South, Suite 304
Salt Lake City, Utah 84111
Telephone: (801) 532-7846

RECEIVED

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR DAVIS COUNTY, STATE OF UTAH

---0000000---

RANDY KRANTZ,	:	ORDER GRANTING DEFENDANT'S
Plaintiff,	:	MOTION FOR SUMMARY JUDGMENT
	:	AND DENYING PLAINTIFF'S
	:	MOTION FOR SUMMARY JUDGMENT
VS.	:	
KATHY HOLT,	:	Civil No. 40041
Defendant.	:	Judge Cornaby

---0000000---

The above-entitled matter was heard by the court on the parties' opposing Motions for Summary Judgment, supported by written memorandums, on December 19, 1989. Ronald C. Barker, Esq. appeared on behalf of the plaintiff, and Wendell E. Bennett, Esq. appeared on behalf of the defendant. The court having published the depositions of the plaintiff Randy Krantz, the defendant Kathy Holt, and a witness Herbert Holzer, and having considered the undisputed evidence, and being fully advised in the premises, now

ORDERS, ADJUDGES AND DECREES that Defendant is entitled to judgment dismissing the Plaintiff's Complaint and granting the Defendant the relief sought in her Counterclaim for rescission of

the Earnest Money Sales Agreement based upon the failure of consideration tendered by the Plaintiff in the form of a personal check, which was dishonored; violation of the Statute of Frauds; and, when coupled with the failure of consideration and violation of the Statute of Frauds, on the further ground that the closing was not timely. The Defendant is also awarded her taxable costs in conformity with the Utah Rules of Civil Procedure.

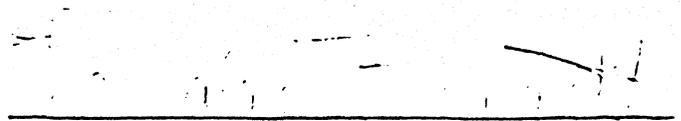
DATED this 15 day of March, 1990.

BY THE COURT:

DISTRICT JUDGE

MAILING CERTIFICATE

I do hereby certify that I mailed a true and correct copy of the foregoing "Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion for Summary Judgment" to Ronald C. Barker, attorney for plaintiff, 2870 South State, Salt Lake City, Utah 84115-3692 on this 28th day of February, 1990.



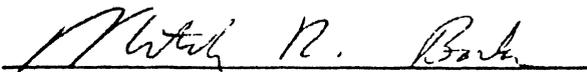
Ronald C. Barker, #0208
Mitchell R. Barker, #4530
David C. Cundick, #4817
Attorneys for Plaintiff/Appellant
2870 South State Street
Salt Lake City, Utah 84115-3692
Telephone: (801) 486-9636

SECOND JUDICIAL DISTRICT COURT, DAVIS COUNTY, STATE OF UTAH

<p>RANDY KRANTZ, Plaintiff, vs. KATHY HOLT, Defendant.</p>	<p>NOTICE OF APPEAL Civil No. 40041 Judge Cornaby</p>
------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------

Comes now the plaintiff Randy Krantz, and gives notice that he hereby appeals to the Supreme Court of Utah the ruling on the cross motions for Summary Judgment entered in defendant's favor.

Dated this 16th day of April, 1990.



Ronald C. Barker
Mitchell R. Barker
David C. Cundick

CERTIFICATE OF MAILING

I hereby certify that I caused a copy of the foregoing to be mailed, postage prepaid, or hand-delivered, to Wendell E. Bennett, 448 East 400 South, Suite 304, Salt Lake City, Utah 84111, on the 16th day of April, 1990.