

1992

Mostrong v. Jackson : Unknown

Utah Court of Appeals

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Unknown.

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HOWARD, LEWIS & PETERSEN

ATTORNEYS AND COUNSELORS AT LAW

120 East 300 North Street

Post Office Box 778

Provo, Utah 84603

Telephone: (801) 373-6345

Facsimile: (801) 377-4991

File No. 20,076

Jackson Howard
Don R. Petersen
Craig M. Snyder
John L. Valentine
D. David Lambert
Fred D. Howard
Leslie W. Slauch

Kevin J. Sutterfield
F. Richards Smith III
Linda J. Barclay

OF COUNSEL
S. Rex Lewis
Dwight Flickinger

February 11, 1993

**UTAH COURT OF APPEALS
BRIEF**

FILED

MAR 18 1993

COURT OF APPEALS

Mary Noonan
Clerk of the Court
Utah Court of Appeals
230 South 500 East, Ste 400
Salt Lake City UT 84102

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DOCKET NO.

920089

Re: Mostrong v. Jackson
Case No. 920089

Dear Ms. Noonan:

Appellants submit this letter for the purpose of citing to a pertinent authority that has come to their attention after their brief was filed, pursuant to Rule 25(j) of the Utah Rules of Appellate Procedure.

The authority to which appellants wish to call the Court's attention is the case of Kelley v. Leucadia Financial Corp., 203 Utah Adv. Rep. 14 (1992). Appellants particularly wish to call the Court's attention to the following language of the opinion:

The primary obligation of a seller under an earnest money sales agreement is to provide marketable title. Marketable title is one that may be "freely made the subject of resale" and that can be sold at a "fair price to a reasonable purchaser or mortgaged to a person of reasonable prudence as security for the loan of money." Generally, when a seller agrees to convey marketable title, the seller must undertake to cure defects if it can be done in the exercise of reasonable diligence and within a reasonable time.

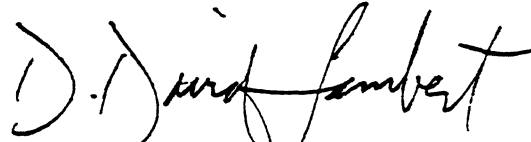
Id. at 17 (citations omitted).

This citation is directly relevant to the argument made in appellants' brief, on pp. 17-18, that the appellees had a contractual duty to convey marketable title to the appellants. It is also

directly relevant to the arguments made, on pp. 18-25, to the effect that appellees, by failing to provide legal access to the property, breached their contractual duty to convey marketable title, and that appellees had a duty to remedy this breach which they failed to perform.

Respectfully,

HOWARD, LEWIS & PETERSEN

A handwritten signature in black ink, appearing to read "D. David Lambert". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

D. David Lambert, and
Linda J. Barclay

cc. Richard Waddingham