

1960

Howard W. Brandt and Leona J. Brandt v.
Springville Banking Co. et al : Answer to Petition
for Rehearing and Brief in Support Thereof

Utah Supreme Court

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Van Cott, Bagley, Cornwall & McCarthy; Attorneys for Defendants and Respondents;

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In the
Supreme Court of the State of Utah

HOWARD W. BRANDT and
LEONA J. BRANDT, his wife,
Plaintiffs and Appellants,

vs.

SPRINGVILLE BANKING
COMPANY, a Utah corporation;
F. C. PACKARD and
HOWARD C. MAYCOCK,
Defendants and Respondents.

F L L D

Suprem Court Utah

Case

No. 9128

Answer to Petition for Rehearing
and Brief in Support Thereof

VAN COTT, BAGLEY, CORNWALL
& McCARTHY

David E. Salisbury

*Attorneys for Defendants
and Respondents*

Suite 300, 65 South Main Street
Salt Lake City, Utah

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SPRINGVILLE BANKING
COMPANY, a Utah corporation;
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HOWARD C. MAYCOCK,
Defendants and Respondents.

Answer to Petition for Rehearing

COMES NOW the Defendants and Respondents above named and answering Plaintiffs' Petition for Rehearing, respectfully allege that said Petition for Rehearing presents to this Court no claims, arguments or authorities that were not before the Court on the original hearing; that the opinion of the Court dated June 29, 1960 was well reasoned, proper and based upon a sound statement of the law and that therefore said Petition for Rehearing should be denied and Defendants and Respondents awarded their costs incurred herein.

Brief

STATEMENT OF POINTS

POINT I

PLAINTIFFS' PETITION FOR REHEARING SETS FORTH NO BASIS OR ARGUMENT UPON WHICH A REHEARING SHOULD BE GRANTED AND IS A MERE REARGUMENT OF THE MATTERS CONSIDERED UPON THE ORIGINAL HEARING.

POINT II

JUSTICE HENRIOD DID NOT ERR IN HIS CONCURRING OPINION UPON THE GROUND THAT PLAINTIFFS' ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS.

ARGUMENT

POINT I

PLAINTIFFS' PETITION FOR REHEARING SETS FORTH NO BASIS OR ARGUMENT UPON WHICH A REHEARING SHOULD BE GRANTED AND IS A MERE REARGUMENT OF THE MATTERS CONSIDERED UPON THE ORIGINAL HEARING.

There is no basis whatsoever for the granting of a rehearing in this case. Plaintiffs' Petition for Rehearing is merely a restatement and reargument of the issues and authorities presented to this Court on the original hearing. The same authorities are cited and quoted and Plaintiffs have sought to reargue their case by the profuse use of capital letters and italics.

The Supreme Court early found it necessary to set forth the ground rules for rehearings in order that litigation might ultimately be brought to a conclusion. In the case of *In re McKnight*, 4 Utah 237, 9 Pac. 299 (1886) it was said:

“We have many times held that, to justify a rehearing, a strong case must be made. We must be convinced, either that the Court failed to consider some material point in the case, or that it erred in its conclusions, or that some matter has been discovered which was unknown when the case was argued.”

In the same year, in *Brown v. Pickard*, 4 Utah 292, 9 Pac. 573, 11 Pac. 512, the Court further observed:

“Where a case has been fully and fairly considered on all its bearings a rehearing will be denied.”

This case was presented upon lengthy briefs and was extensively argued. No new matters are presented by the Plaintiffs' Petition for Rehearing that have not been fully aired and considered by the Court.

POINT II

JUSTICE HENRIOD DID NOT ERR IN HIS CONCURRING OPINION UPON THE GROUND THAT PLAINTIFFS' ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS.

One point in Plaintiffs' Petition deserves comment. In Point I of said Petition, the concurring opinion is challenged as being an incorrect application of Section 78-12-26, Utah Code Annotated, 1953. It is stated that the

opinion of Justice Henriod is inconsistent with the case of *Smith v. Edwards*, 81 Utah 244, 17 P.2d 265. This is not true.

Defendants in Point II of their original brief herein pointed out Plaintiffs' misinterpretation of this case. The statute of limitations for fraud commences to run from the date of discovery *or when the plaintiff has the means of discovery*. The court in *Smith v. Edwards, supra*, said on page 269 of its opinion that recording of a conveyance gave notice to all persons of the existence of the instrument and its contents. What the court held, however, was that the recording was not notice of the facts surrounding the execution of the deed which constituted the fraud in that case. In the present case the mere existence of the chattel mortgage was the fact which Plaintiffs claimed was concealed from them.

The case of *Smith v. Edwards, supra*, fully supports the concurring opinion and the result reached by the majority opinion.

CONCLUSION

The Petition for Rehearing should be denied!

Respectfully submitted,

VAN COTT, BAGLEY, CORNWALL
& McCARTHY

David E. Salisbury

*Attorneys for Defendants
and Respondents*

Suite 300, 65 South Main Street
Salt Lake City, Utah