

1960

Utah Savings & Loan Association v. Robert B. Mecham et al : Cross-Brief of Appellant

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

FILED

MAR 17 1960

UTAH SAVINGS & LOAN ASSOCIATION
a corporation,

Clerk, Supreme Court, Utah.

**Plaintiff,
Cross-appellant,
and Respondent,**

**CASE
NO. 9159**

vs.

**ROBERT B. MECHAM, et al,
Defendants,**

**LUDLOW PLUMBING SUPPLY CO.,
Defendant and
Appellant,**

**GENEVA ROCK PRODUCTS CO.,
a corporation,**

**Defendant and
Cross-respondent.**

**Lower
Court
Civil
No. 20,592**

CROSS-APPELLANT'S BRIEF

**ALDRICH, BULLOCK & NELSON,
and**

**PUGSLEY, HAYES, RAMPTON &
WATKISS,**

Attorneys for Cross-Appellant

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In the Supreme Court of the State of Utah

UTAH SAVINGS & LOAN ASSOCIATION
a corporation,

Plaintiff,
Cross-appellant,
and Respondent,

vs.

ROBERT B. MECHAM, et al,
Defendants,

LUDLOW PLUMBING SUPPLY CO.,
Defendant and
Appellant,

GENEVA ROCK PRODUCTS CO.,
a corporation,
Defendant and
Cross-respondent.

**CASE
NO. 9159**

**Lower
Court
Civil
No. 20,592**

CROSS-APPELLANT'S BRIEF

STATEMENT OF FACTS

This cross-appeal is against Geneva Rock Products Company, a corporation, one of the defendants below, herein designated as cross-respondent. It involves the Trial

Court's holding in Civil No. 20,592, which is one of the three actions tried together by the lower court.

Except for dates, amounts, and properties involved, the material facts are similar to those set forth in cross-appellant's brief, filed contemporaneously herewith, as they pertain to the priority of the alleged mechanics lien of cross-respondent over four construction mortgages in favor of cross-appellant executed by defendant, Robert B. Mecham.

The particular facts in this case are that Mecham and his wife executed and delivered to cross-appellant four promissory notes and four mortgages covering four vacant lots located among finished and occupied homes on a street some two blocks from La Mesa on January 30, 1957, on which Mecham was to construct four dwellings. (Plaintiff's Exhibits 20 and 21). This area was referred to by the litigants throughout the trial as "Rowley". (R. 96-98) The Trial Court found that these mortgages were duly recorded on January 31, 1957, and before any work commenced or materials were furnished on any of the lots covered by the mortgages. (R. 98)

Each of the notes and mortgages were in the face amount of \$14,500.00, and cross-appellant, mortgagee, disbursed to the mortgagor \$2,750.00 on each of the notes and mortgages the day before construction commenced. On February 1, 1957, the mortgagor commenced construction. (R. 98)

During the period March 12, 1957, through March 26, 1957, cross-respondent furnished ready-mix concrete to defendant, which materials were used upon one or more of the lots, of the reasonable value of \$652.33. (R. 102) There is no evidence as to which of the lots this claimant delivered its materials.

A Notice of Lien was recorded by cross-respondent on June 12, 1957, which is the same Notice of Lien recorded in connection with Civil No. 20,575, and covered both the "La Mesa" and "Rowley" properties. (R. 102; Defendants' Exhibit 48) No segregation as to amounts claimed against each of "Rowley" and "La Mesa" areas was made in the Notice.

The Trial Court found that there was due and owing to cross-appellant on each of the mortgages on account of disbursements made thereon, both prior to the commencement of construction and after, the total sum of \$13,028.50, plus interest and attorney's fees, (R. 96-98), but held that the mortgages were prior to a mechanics lien of cross-respondent only to the extent of the advancements made before construction commenced, and were inferior as to the balance. (R. 103-104) The fundamental basis for this holding was the decision of the Court that the mortgagee was not legally bound in any event to disburse the loan proceeds, and, therefore, the disbursements actually made by the mortgagee to the mortgagor were optional and not obligatory.

The properties have been sold pursuant to a Decree of Foreclosure and pursuant to a Stipulation between cross-appellant and cross-respondent that the properties might be sold as ordered by the Court, and that cross-appellant would pay to cross-respondent the amount, if any, as should ultimately be determined upon appeal to be due it prior to the mortgages. (R. 122-123) Cross-appellant bid in the properties for the exact amount found to be due it by the lower Court.

The notes and mortgages executed by Mecham upon

which foreclosure was sought in this action are identical with the notes and mortgages in Civil No. 20,575, except as to dates, amounts, and properties involved. There is no dispute as to the amounts found to be due cross-appellant and cross-respondent by the mortgagor. The matters raised upon this cross-appeal relate solely to the priority accorded to and the validity of cross-respondent's mechanics lien which it claims in the amount of \$652.33, and which was apportioned by the Trial Court equally among the four properties involved. Cross-respondent has raised no other or additional matters for consideration by the appellate Court as provided in Rule 75 (b), Utah Rules of Civil Procedure.

STATEMENT OF POINTS

POINT I

THE COURT ERRED IN NOT HOLDING AS A MATTER OF LAW THAT THE DISBURSEMENT OF THE LOAN PROCEEDS BY CROSS-APPELLANT, MORTGAGEE, TO MECHAM, MORTGAGOR, UNDER THE NOTES AND MORTGAGES INVOLVED WERE OBLIGATORY UPON, AND NOT OPTIONAL WITH THE MORTGAGEE.

POINT II

THE COURT ERRED IN HOLDING THAT THERE WAS NO AGREEMENT BETWEEN MECHAM, MORTGAGOR, AND CROSS-APPELLANT MORTGAGEE, PROVIDING FOR DISBURSEMENT OF THE LOAN PROCEEDS.

POINT III

THE COURT ERRED IN HOLDING THAT THE LIEN OF CROSS-RESPONDENT, GENEVA ROCK PRODUCTS COMPANY, AS TO EACH LOT INVOLVED IN THIS ACTION, IS PRIOR TO THE LIEN OF CROSS-APPELLANT'S MORTGAGES EXCEPT AS TO THE AMOUNTS ADVANCED THEREON BY THE MORTGAGEE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.

POINT IV

THE COURT ERRED IN HOLDING THAT THE ALLEGED MECHANICS LIEN OF CROSS-RESPONDENT, GENEVA ROCK PRODUCTS COMPANY, WAS GOOD AND VALID IN ANY AMOUNT AS AGAINST THE PROPERTIES INVOLVED HEREIN.

THE ARGUMENT

POINT I

THE COURT ERRED IN NOT HOLDING AS A MATTER OF LAW THAT THE DISBURSEMENT OF THE LOAN PROCEEDS BY CROSS-APPELLANT, MORTGAGEE, TO MECHAM, MORTGAGOR, UNDER THE NOTES AND MORTGAGES INVOLVED WERE OBLIGATORY UPON, AND NOT OPTIONAL WITH THE MORTGAGEE.

This point is identical to Point I in this cross-appellant's brief pertaining to Civil No. 20,575, filed contemporaneously herewith, and we respectfully urge upon the Court our position on this point for the same reasons as set forth under Point I of that brief.

POINT II

THE COURT ERRED IN HOLDING THAT THERE WAS NO AGREEMENT BETWEEN MECHAM, MORTGAGOR, AND CROSS-APPELLANT MORTGAGEE, PROVIDING FOR DISBURSEMENT OF THE LOAN PROCEEDS.

The arguments and authorities cited therein under Point II of cross-appellant's brief in connection with Civil No. 20,575, filed contemporaneously herewith, are applicable to this identical Point, and we respectfully urge upon the Court our view of the matter.

POINT III

THE COURT ERRED IN HOLDING THAT THE LIEN OF CROSS-RESPONDENT, GENEVA ROCK PRODUCTS COMPANY, AS TO EACH LOT INVOLVED IN THIS ACTION, IS PRIOR TO THE LIEN OF CROSS-APPELLANT'S MORTGAGES EXCEPT AS TO THE AMOUNTS ADVANCED THEREON BY THE MORTGAGEE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.

The arguments and authority cited in Point III of cross-appellant's brief in Civil No. 20,575, filed contemporaneously herewith, are applicable, and cross-appellant here adopts the same by reference in support of this contention.

POINT IV

THE COURT ERRED IN HOLDING THAT THE ALLEGED MECHANICS LIEN OF CROSS-RESPONDENT, GENEVA ROCK PRODUCTS COMPANY, WAS

GOOD AND VALID IN ANY AMOUNT AS AGAINST
THE PROPERTIES INVOLVED HEREIN.

This point is identical to Point IV in cross-appellant's brief pertaining to Civil No. 20,575 filed contemporaneously herewith, and for the same reasons and under the authorities cited under said point, cross-appellant respectfully urges upon the Court our view of this matter.

CONCLUSION

The Trial Court erred in according any priority to the mechanics lien claimed by cross-respondent over cross-appellant's mortgages.

Respectfully submitted,

ALDRICH, BULLOCK & NELSON,

and

PUGSLEY, HAYES, RAMPTON &
WATKISS,

Attorneys for Cross-Appellant