

1960

Utah Savings & Loan Association v. Robert B. Mecham et al : Defendants' and Cross-Brief of Respondents

Utah Supreme Court

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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 COMPANY,
a corporation; MASONRY SPECIALTIES
AND SUPPLY, a partnership; and CEN-
TRAL UTAH BLOCK COMPANY, a corpo-
ration,

Defendants and
Cross-respondents

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Clerk Supreme Court, Utah

**CASE
NO. 9159**

**Lower
Court
Civil
No. 20,575**

Defendants' and Cross-respondents' Brief

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**CASE
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Defendants' and Cross-respondents' Brief

STATEMENT OF FACTS

The procedural notes and statement of facts as contained in cross-appellant's brief need additional comment and amplification. Cross-respondent, Geneva Rock Products Company, will submit another brief in Civil No. 20,-

592 in answer to the separate brief of cross-appellant filed in that case.

The three groups of eight notes and mortgages specified by Cross-appellant as having been placed of record on February 5th, 13th and 18th, 1957, all recite on their face that they were given for "an actual loan" of the amount there set forth (Plaintiffs' Exhibits 1-24). When the complaint of plaintiff, Utah Savings and Loan, was filed to foreclose the mortgages involved herein, the amount set forth as due plaintiff was the original amount of the notes and mortgages, \$13,500.00 in each case (R. 7-35). However, at the outset of the trial, a stipulation was entered into between plaintiff and defendant, Mecham, which reduced the amount claimed 10% as to each of the twenty-four causes of action (R. 121, 122).

The mortgages are all blank form mortgages, mortgagee's name having been typed onto the form and no officer of mortgagee signed its name to any provision of the notes or mortgages (Plaintiffs' Exhibits 1-24). Neither the notes or mortgages contain any recitals of an agreement on or direction in the manner of advancing any funds in the future, nor was there any separate written agreement between mortgagee and mortgagor concerning the advancement of funds in the future or at any time (Plaintiffs' Exhibits 1-24; Tr. 141-143). Cross-appellant did not allocate any funds to the use of Robert B. Mecham, or set up a special account in his name, to cover any future advancements made to him (Tr. 83, 92, 93). The money advanced to Mecham was drawn against cross-appellant's general account at the Walker Bank & Trust Company in Provo (Tr. 98).

The amounts claimed by the cross-respondents, Geneva Rock Products Company, Central Utah Block Co., and Masonry Specialties & Supply is as stated in cross-appellant's brief. As indicated in said brief, notices of Mechanics Liens were filed timely, and while no segregation was made of the amount furnished to any individual structure, materials in said amounts were proved to have been delivered to and used in the improvements on the property in this case (Tr. 657-678; Tr. 679-695; R. 171, 172). Regarding the lien of Geneva Rock Products Company, cross-appellant entered into a stipulation which segregated the amount claimed in said lien between the Rowley and La Mesa properties (R. 171, 172). No other materialmen or lien claimant objected to the failure on the part of these materialmen to in any way segregate the amount claimed in their liens as to particular improvements or between any given properties, and cross-appellant acquiesced in this segregation of Geneva Rock Products Company thereby admitting that it was in no way prejudiced by Geneva's failure to make any segregation.

It is to be noted that at the time the cross-respondents' Mechanic's Liens were filed, the La Mesa property had not been subdivided, the subdivision not having been completed and filed of record until January 24, 1958, nearly one year after construction had begun and over six months after mechanic's liens had been filed (Tr. 792) (Defendants' Exhibit 107).

Defendant and cross-respondent, Central Utah Block Company, filed its lien on September 3, 1957, for the sum of \$15,078.72, the unpaid balance of Mecham's account. It furnished and delivered materials for both Rowley and

LaMesa subdivisions together with several other areas and subdivisions that Mecham was building homes for the plaintiff, Utah Savings and Loan (Defendant's Exhibit 110). The description used in the lien was a metes and bounds description and the only accurate description available to materialmen and defendants at the time of the filing of the liens for the subdivision plat of LaMesa when it was finally made of record and the individual mortgage descriptions of plaintiff were in direct conflict and there were lags and gaps as between these several descriptions (Defendants' Exhibit 118).

Defendants could not segregate materials per lot for the lots were not marked at the times of delivery and the materials delivered were used interchangeably among the various houses; no materials were returned by Mecham to defendants (Defendants' Exhibit 110). Defendant, Central Utah Block, furnished materials for all the houses in La Mesa (Tr. 707).

Prior to the commencement of the law suit, Central Utah Block Company discovered that the lien description did not include the property known as Rowley and that in fact it couldn't claim a lien on the Rowley subdivision for the reason that the legal description used did not cover the Rowley property and it was too late in time to file on the Rowley property. The street addresses of Rowley and LaMesa were very similar and hence the unintentional error of including materials used in Rowley among the materials liened on the LaMesa subdivision (Defendants' Exhibit 110). Central Utah Block mistakenly thought that the metes and bounds description in the lien included the Rowley property. Upon discovery of this, defendant, Central Utah

Block Company, reduced its claim by motion before the court and previously informed plaintiffs of this fact before the motion was made (Defendants' Exhibit 110).

Central Utah Block Company's estimate of material used in LaMesa on subsequent inspection was \$13,276.55 (Tr. 710). Invoices showed materials for \$11,793.64 (Defendants' Exhibit 110). This discrepancy in the estimate and invoices is due to the interchanging in use of materials among jobs by Mecham.

The President of cross-appellant association, D. Spencer Grow, visited the La Mesa property during the first week after construction commenced, and then observed that labor and material were improving the property and that cross-respondents' liens had attached (Tr. 542-543) (Plaintiffs' Exhibit 45). At this time, approximately \$73,400.00 had been advanced by cross-appellant to Mecham (mortgagor) (Defendants' Exhibit 70). Defendants' Exhibit 70 is a summary of the loans in process, ledger cards of cross-appellant, and as such show the amounts advanced on each structure and the dates same were made. The total amount ultimately advanced was the sum of nearly \$324,000.00 (Defendants' Exhibit 70; Tr. 78).

This appeal taken by cross-appellant, Utah Savings and Loan Association, relates solely to the priority accorded to and validity of cross-respondents' mechanics' liens.

STATEMENT OF POINTS

POINT I

IN AN EQUITY PROCEEDING, THE APPELLATE COURT WILL NOT DISTURB THE FINDINGS AND

JUDGMENT OF THE TRIAL COURT UNLESS THE EVIDENCE CLEARLY PREPONDERATES AGAINST IT.

POINT II

THE RECORD IN THIS CASE CONCLUSIVELY SUPPORTS THE TRIAL COURT'S FINDINGS THAT THERE WAS NO AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE CONCERNING FUTURE ADVANCEMENT OF THE MORTGAGE PROCEEDS, AND THAT SUCH ADVANCES WHEN IN FACT MADE WERE OPTIONAL WITH AND AT THE DISCRETION OF THE MORTGAGEE, AND THEREFORE, SUBORDINATE TO INTERVENING LIENS OF WHICH MORTGAGEE HAD NOTICE.

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THE RECORD CONCLUSIVELY SUPPORTS THE COURT'S FINDING THAT CENTRAL UTAH BLOCK COMPANY UNINTENTIONALLY INCLUDED MATERIALS IN ITS LIEN THAT WERE DELIVERED BY CENTRAL UTAH BLOCK COMPANY TO THE PROPERTY OTHER THAN THAT DESCRIBED IN ITS LIEN AND THAT APPELLANTS WERE IN NO WAY PREJUDICED AS A RESULT THEREBY.

ARGUMENT

POINT I

IN AN EQUITY PROCEEDING, THE APPELLATE COURT WILL NOT DISTURB THE FINDINGS AND JUDGMENT OF THE TRIAL COURT UNLESS THE EVIDENCE CLEARLY PREPONDERATES AGAINST IT.

This is an equity proceeding, and the judgment of the trial court is not to be disturbed unless the evidence clearly preponderates against it. **Peterson v. Holloway**, 334 P2d 559; **Nokes v. Continental Mining and Milling Co.**, 308 P2d 954. Also, deference is given the advantageous position of the trial court in making determinations of fact based upon observations of witnesses and noting their demeanor and credibility. **Peterson v. Holloway**, *supra*.

POINT II

THE RECORD IN THIS CASE CONCLUSIVELY SUPPORTS THE TRIAL COURT'S FINDINGS THAT THERE WAS NO AGREEMENT BETWEEN MORTGAGOR AND MORTGAGEE CONCERNING FUTURE ADVANCEMENT OF THE MORTGAGE PROCEEDS, AND THAT SUCH ADVANCES WHEN IN FACT MADE WERE OPTIONAL WITH AND AT THE DISCRETION OF THE MORTGAGEE, AND THEREFORE, SUBORDINATE TO INTERVENING LIENS OF WHICH MORTGAGEE HAD NOTICE.

Cross-appellant in its brief cited some of the leading decisions which announce the controlling law on the issue of priorities which is before this Court. Cross-respondents sub-

mit that where mortgagee advances mortgage loan proceeds to the mortgagor, and such advances are made at mortgagee's option and discretion, and without a legal obligation so to do, then such advances as they occur are subordinate to the intervening encumbrances of materialmen of which mortgagee had actual notice. **Elmendorf-Anthony Co v. Dunn**, 116 P2d 253 (Wash), **W. P. Fuller Co. v. McClure**, 191 P 1027 (Calif), **American Law of Property** Vol. IV Sections 16.70 et seq. It is to be noted that the **Elmendorf and Fuller** cases, *Supra*, and most decisions cited there involve situations where there is an agreement pertaining to future advances and the courts are called upon to construe them to determine whether they are optional with or obligatory upon mortgagee. In the case before this Court there is no such agreement, either in the notes and mortgages, by independent written agreement or oral understanding.

The theories supporting the priority of mortgages for future advancements over subsequently attaching liens in situations where there is an agreement governing future advances, is that the original agreement providing for such future advances is construed as a promise by the mortgagor to repay any and all sums advanced both at the time the agreement and mortgage are executed as well as at any later dates when such advances are made pursuant to the agreement for future advances. In situations where there is an obligatory agreement for future advances there is no separate independent promise arising as each sum is advanced. After developing this theory the text writers of the **American Law of Property**, Vol. IV, state in conclusion to Section 16.71 at Page 135, the following:

“One consequence of the foregoing general proposition is that the original mortgage agreement must provide for the future advances. If it does not, attempts to make it cover later advances will be treated as separate and distinct transactions subject to independent tests as to their validity and will not partake of the priority of the original mortgage.”

Hence, where there is no legally binding agreement to make future advances there can be no obligation on mortgagee to advance sums in the future, and any such advances must be construed as separate and distinct transactions, **Ex parte Whitbread**, 19 Ves. 209, 34 Eng. Rep. 496.

The record in this case is clear that there is no written document to which the cross-appellant can point by which it obligated itself to make future advances of any money to mortgagor, Robert B. Mecham, the only individual who signed the notes and mortgages. There was no collateral writing covering any future advances to Mecham, and cross-respondents submit that the trial court rightly found that there was in fact no such agreement existing which in any way obliged cross-appellant to make advances to Mecham. Cross-appellant acknowledges this in their argument in Point I and II of their brief. Their position, as stated there, is “. . . that when the notes and mortgages were executed by Mecham in favor of cross-appellant . . . there immediately arose, in law, a correlative obligation to disburse the money to Mecham as construction progressed on the houses . . .” (Cross-appellant Brief, Point I, page 11). Again in cross-appellant’s brief it is stated that the “. . . agreement to disburse the loan proceeds (was) implied by law, . . .” (Cross-appellant Brief, Point II, Page 13). It is submitted that the cross-appellant could not find

in the record that any reasonable implied in fact agreement concerning the advancement of loan proceeds to Mecham could be spelled out, and now seek to found in legal theory an obligation to advance money on its part on the basis of Quasi Contract, or that which the law says must be done although parties have not agreed between themselves that such must be done, or even then just how it is to be done.

The 24 notes and mortgages recite that they are given by mortgagor for an actual loan in the sum of \$13,500.00 (Plaintiffs' Exhibit 1-24). This recital is a false statement of fact since no one disputes but that the money listed on the notes and mortgages was advanced periodically over a six-month period (Defendants' Exhibit 70). No officer of the Utah Savings and Loan Association signed any document purporting to be an agreement as to the method of making the advances to the mortgagor, Robert B. Mecham (Plaintiffs' Exhibit 1-24) (Tr. 141-143). There was, in fact, no systematic or regular procedure in making any or all advances of Mecham (Tr. 536). At no time after the execution of the notes and mortgages did cross-appellant earmark any funds for the exclusive use of the mortgagor, nor was any reserve set up out of the assets of Utah Savings and Loan to be specifically used in behalf of mortgagor, Robert B. Mecham (Tr. 83, 92, 93, 97, 98, 99). No attempt was made to advance money to Mecham on the basis of a rate of construction on any of the homes being built in the La Mesa subdivision. Although in prior dealings in Keyridge, this was in fact governed by written agreement (Defendant's Exhibits 42-1 to 58) (Tr. 314-315) (Tr. 555-557).

The Court's attention is called to the following testimony given by D. Spencer Grow, President of Utah Savings

& Loan Association, as developed on cross examination November 17, 1958, early in the trial. The following is quoted from the transcript of testimony, and is found beginning at page 141.

“Q. Now, did you have any agreement with Mecham, other than that, that is contained in these mortgages for advancement of this money on these mortgages?

A. No. We didn't have any specific agreement. The general agreement was this: That he build a house and get it finished in a reasonable time and get it sold as rapidly as he could, and the funds would be advanced to him, as near as we could, along with his needs and with the rate of construction.

Q. But there was no agreement between Utah Savings and Loan Association and Mecham governing the advancement of these mortgage proceeds, other than that which is contained in these written documents?

A. Not to my knowledge.

Q. And if there had been one you would have known of it, wouldn't you?

A. I would think so.

Q. That is true of the mortgages on La Mesa too, isn't it?

A. I think that is correct.

Q. It is a fact that the only agreement between Utah Savings and Loan Association and Robert Mecham was the agreement contained in the written mortgages?

A. Well, I don't think there is any—I don't think—the agreement was this: That we would advance the funds if the work progressed satisfactorily. (Emphasis supplied).

Q. You would advance the funds if the work progressed satisfactorily?

A. That is right. If he discontinued the building, we would, naturally, discontinue advancing funds.

Q. If the work was not satisfactory to Utah Savings and Loan Association, you would not advance the funds, is that correct? (Emphasis supplied).

A. I think that would be generally correct. (Emphasis supplied).

Q. So it would be up to Utah Savings and Loan Association to determine whether the money should or should not be advanced on the mortgages?

A. Well, we have—all financial institutions have an obligation. There are two parties to a mortgage, in my opinion, the one that borrows and the one that supplies the money.

Q. Now, my question is, Mr. Grow, did you have any understanding with Mecham for the advancement of these mortgage funds, other than is represented by these written ocuments?

A. Well, if we did, anything specific, I am not aware of it. (Emphasis supplied).

(Discussion off the record).

MR. YOUNG. Your witness.

MR. BULLOCK: That is all.

MR. YOUNG: You may step down."

This testimony shows that there was no agreement between the Utah Savings and Loan Association and Mecham concerning the future advancement of funds under these mortgages. The mortgagor, Robert B. Mecham, testified that after his method of financing his building for cross-appellant changed from a contract arrangement, to a mortgage arrangement, that he, in obtaining money to pay his bills, had weekly meetings with the president of cross-appellant, D. Spencer Grow, in his office at Provo wherein Mecham's bills and lists of creditors were shown to Mr.

Grow, and lengthy discussions ensued regarding the amount of money Mecham was to be permitted to draw for that week (Tr. 209-210) (Tr. 99). We quote from Mecham's testimony, page 209 and 210 of the transcript as follows:

"Q. As you picked up the check from Mr. Adams to pay your payroll, did you know to what mortgages the particular checks were charged?

A. I knew that at this particular time there was no money left on Keyridge; most of the money was gone from Schauerhammer; so the only logical place was from La Mesa or the Rowley houses.

Q. Will you tell us how you got the money? The procedure you went through to get the money to meet the payrolls?

A. Each week I would go to Utah Savings and sit and wait for Mr. Grow. Finally, we got together, and I would ask him for the money, and in turn he would tell Mr. Adams to give me the money if he—if Mr. Grow saw fit. However, there were some instances where Mr. Grow wasn't there and it was necessary to go directly to Mr. Adams.

Q. Now, how would your trip to Utah Savings and Loan Association to get money for your payroll differ from your trips to Utah Savings and Loan Association to get money to pay for materials?

A. As far as I can see, off-hand, there would be no difference, other than I would be asking for more money; that would mean a longer session.

Q. Do you recall any particular trip that you made to Utah Savings and Loan to get more money for either labor or materials?

A. I am sure I could recall many instances if I took the time to do so.

Q. Take a few moments and see if you can recall one.

A. Well, I guess I will never forget the time that I went in and wound up by mortgaging my own house to meet the payroll.

Q. When was that?

A. That was just about to the end of our work; about the time we quit. I think, just guessing, I would say it would be about three or four weeks before we actually stopped."

This procedure continued throughout the construction in the Rowley and La Mesa areas. According to the testimony of John Adams, the chief accountant for cross-appellant, D. Spencer Grow, advised him in most instances as to the amount of money to advance to Mecham, and in what way to charge the advancements off against the properties (Tr. 38-39) (Tr. 99). Adams' testimony shows that there was no settled arrangement or system on advances or charging the money against the property (Tr. 39, 70, 71). He also stated that at times during Mr. Grow's absence, he made advances and allocations on his own and without much regard to any state of completion in any of the projects the money was advanced for (Tr. 38). Mr. Adams also testified that on two occasions he issued payments directly to material suppliers, from the Utah Savings and Loan office (Tr. 103, 104).

The Court's attention is called to the stipulation by cross-appellant and defendant Mecham reducing the amount claimed, 10% in each of the 24 notes and mortgages (R. 121, 122). A reference to defendant's Exhibit 70 shows that on January 31st, 1957, 10% of the total amount "loaned" on the first eight tracts in La Mesa, was shown to have been "advanced" to some of D. Spencer Grow's corporations, to pay certain obligations "owed" by the mort-

gagor for planning services related to his building venture on the La Mesa tract (Tr. 324, 325). Cross-appellant would have us believe that this advancement, and similar advancements made when each of the other set of eight mortgages were executed and put of record were obligatory. Cross-appellant also argues that the statement of a definite sum in the mortgage and note limits its total obligation, and makes it obligatory upon the plaintiff to advance up to that amount. However, during the course of the trial, plaintiff was able to reach into the pocket of the corporations to which this money was advanced, retrieve it and credit it back to the mortgagor and end up claiming only \$12,150.00 principal on each note and mortgage (R. 121-122). This seems the best evidence that there was nothing obligatory about the arrangement between mortgagee and mortgagor as to the advancement of moneys. Nothing in the record pertaining to this 10% discount shows that Mecham agreed to pay it or any sum for planning services (Tr. 544-550) (Tr. 325). When an advancement can be made, not to the mortgagor, but to discharge the mortgagor's debts to a third party, and that advancement can be retrieved, surely there could be no binding obligation to make such an advance. If the plaintiff is not claiming this \$32,400.00 as due and owing under the notes and mortgages, then it seems apparently clear that the sum was not, in fact, advanced (Tr. 550). If this is the true fact, then cross-appellant by its own act of bringing this action and in now claiming less than the full amount of the notes and mortgages, has clearly shown that it was not obligatory upon it to advance the full amount of the notes and mortgages. Whichever way the matter is viewed, and I submit it is open to speculation as to just where the

\$32,400.00 is, it is clear that any arrangement between the parties for future advancements was purely optional with the mortgagee as to amount, the time made, and to whom any sums of money would be payable, if at all.

POINT III

THE MECHANICS' LIENS OF CROSS-RESPONDENTS ARE VALID AND ENFORCEABLE ALTHOUGH THEY DO NOT MAKE A SEGREGATION OF THE AMOUNTS OF MATERIAL WHICH WENT INTO EACH PARTICULAR IMPROVEMENT.

Cross-appellant claims that by virtue of Title 38-1-8, U.C.A. (1953) the liens of Geneva Rock Products Co. and Masonry Specialities & Supply are invalid because they fail to make a segregation of amounts of material going into each particular improvement. It is to be noted that the above cited statute does not make any distinction regarding contiguous or non-contiguous property. It authorizes including in one claim (lien) claims against "two or more buildings . . . owned by the same person or persons" The requirement of stating the amount due on each such building has been before this Court in the case of **Eccles Lumber Co. v. Martin**, 31 U. 241, 87 P. 713, where it was held that a lien acquired with the consent of the owner of the property should not be defeated where no rights of others are infringed. This Court in that case said that the segregation provision of the statute was for the protection of lien claimants of the same class (material or labor) so that no one will overburden a single property. The Court in the Eccles case states:

“A discrimination must be made between the things that are necessary to acquire a lien and those that are merely intended to protect the interests of the lien claimants between or among themselves. The statement in Section 1387, as we view it, clearly belonged to the latter class.”

Section 1387 is a reference to an earlier Utah Statute similar to Title 38-1-8, U.C.A., 1953. The case of **Henrichson v. Bertelson**, 35 P2d 318, (Calif.) cited by cross-appellant holds that where the materialman and the contractor make an agreement for the former to supply the entire project or projects of the contractor then a single lien covering all such improvements is proper and enforceable. The testimony in the instant case bears out this theory since as to Geneva Rock Products, the agreement with Mecham was for cement to be furnished at all Mecham's projects at a stated price (Tr. 658-59).

The case of **Garner v. Van Patten**, 20 U. 290, 58 P. 684, cited by cross-appellant holds that where to make a segregation of amounts due on each particular improvement requires doing a very difficult and near impossible thing, compliance with the statute would not require such a task. As to cross-respondent, Masonry Specialties this would have been almost impossible (Tr. 683). The contractor made no request for any segregation of materials as to each improvement (Tr. 683). It would have likewise been impossible for cross-respondent, Geneva Rock, to allocate between the various improvements, since loads were split up from house to house over the various projects (Tr. 664) (Tr. 669-71).

It is to be noted that neither the lien of cross-respondents, Geneva Rock, or Masonry Specialties claims the total

amount stated therein against each improvement, or separately described tract as was the situation in the **Garner** case (Defendants' Exhibit 105 and 99). Also the owner-contractor Mecham received title to the La Mesa property in a single description, and when these liens were filed the property had not been subdivided into the separate lots as expressed in plaintiffs' mortgages (Defendants' Exhibit 107).

It is submitted that these authorities and facts sustain the validity of the liens of cross-respondents, since it is clear that the notice required by the statute was given, and the manner of stating the claim has prejudiced no one. Any possible prejudice or objection to the lien of Geneva Rock was waived by cross-appellant when it entered into the stipulation with Geneva Rock which makes a segregation between the La Mesa and Rowley property, as well as other areas which contractor ordered material for (R. 171-173). The evidence also supports the single lien theory in that the evidence supports the conclusion that the parties treated the Rowley-La Mesa area as an entire construction unit or project (Tr. 195-97) (Tr. 658-59) (Tr. 200) (Tr. 252) (Tr. 554-57). The case of **Eccles Lumber Co. v. Martin**, *Supra*, supports this theory.

The trend of decisions by this Court regarding compliance with requisites of Mechanics' Lien statutes is substantial compliance with the statute to the end that no prejudice results from an omission. **Beuhner Block Co. v. Glezos**, 6 U. 2d 226, 310 P2d 517.

POINT IV

THE RECORD CONCLUSIVELY SUPPORTS THE COURT'S FINDING THAT CENTRAL UTAH BLOCK COMPANY UNINTENTIONALLY INCLUDED MATERIALS IN ITS LIEN THAT WERE DELIVERED BY CENTRAL UTAH BLOCK COMPANY TO THE PROPERTY OTHER THAN THAT DESCRIBED IN ITS LIEN AND THAT APPELLANTS WERE IN NO WAY PREJUDICED AS A RESULT THEREBY.

The evidence is clear that the erroneous overstatement of Central Utah Block Company's lien was unintentional, without any semblance of intent to defraud, and that the PLAINTIFF OR ANY OTHER PARTY TO THIS ACTION WAS NOT PREJUDICED IN ANY WAY, FORM OR MANNER AS A RESULT THEREOF.

The evidence is clear that a minimum of \$13,276.55 worth of materials were used in the La Mesa property and the amended lien asked for \$11,800.00. When the error was discovered at one of the several pre-trial conferences, all parties to this action were notified and Central Utah Block Company moved to amend its complaint and lien. The court rightfully granted the motion.

The unintentional error arose because of the similar street addresses of Rowley and La Mesa properties (Def. Exh. 110), and the fact that Central Utah Block Company thought that the metes and bounds description used in the lien covered the La Mesa and Rowley properties. In addition, a \$5,000.00 check of Mr. Mecham came back insufficient funds and this reversal entry wasn't picked up until after the lien was filed and reviewed at the pre-trial

conference. The lien was filed for the unpaid balance of Mr. Mecham's account with Central Utah Block Company, \$15,078.72, and was erroneously assumed to be all due on the last property delivered to, to-wit, La Mesa, as evidenced by Central Utah Block Company's invoices and exhibits (Def. Exh. 109, 110, 111).

The authorities are clear that honest, unintentional errors without intent to defraud and where no one is MIS-LED OR PREJUDICED do not invalidate a lien. 57 **Corpus Juris Secundum** 676, Section 153, Subsection b; **Drake Lumber Company v. Paget Mortgage Company**, Oregon, (1954), 247 P. 2d 804; 36 **Am. Jur.** 107, Sec 158.

It is interesting to note that Plaintiffs FAIL to show any claim or evidence that they or any other party to this action have been prejudiced or defrauded in any respect. In fact, they have been aided, for the reason that the claim was reduced and not increased.

The above authorities require that there be BOTH FRAUD AND PREJUDICE to the parties before they declare a lien invalid on this basis. It is uncontroverted that none of the parties herein were prejudiced.

CONCLUSION

The trial court's findings and the judgment based thereon are clearly supported by the evidence, and the validity and priority of the cross-respondents' mechanics' liens

as found and determined by the trial court should be affirmed.

Respectfully submitted,

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