

1960

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

Utah Supreme Court

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Ballif & Ivins; Attorneys for Defendant and Cross-Respondent;

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

FILED

APR 15 1960

**UTAH SAVINGS & LOAN ASSOCIATION,
a corporation,**

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

vs.

Clerk, Supreme Court, Utah

**CASE
NO. 9159**

**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

Defendant and Cross-Respondent's Brief

**BALLIF & IVINS,
Attorneys for Defendant and
Cross-respondent**

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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-RESPONDENT'S BRIEF

STATEMENT OF FACTS

Geneva Rock Products Company is the only cross-respondent involved in this case. The Statement of Facts contained in cross-appellant's brief is substantially correct,

except as hereinafter modified or added to. The Rowley property was acquired by the owner-contractor, Robert B. Mecham, pursuant to a Deed containing a single description of the entire tract (Plaintiff's Exhibit No. 63). Although the 12 acre tract known as LaMesa was acquired prior to the acquisition of the Rowley property, the Rowley property was developed first since the owner-contractor, Mecham, needed to keep his crews working while building permits were being acquired on the LaMesa tract (Tr. 233-34). The Rowley property was not subdivided, the only descriptions of record which divided the property in any manner were the mortgages of cross-appellant (Plaintiff's Exhibits 1-4). Cross-appellant had actual notice of the accrual and attaching of cross-respondent's lien at a time when cross-appellant had advanced only \$2750.00 on each of the four mortgages for \$14,500.00 each.

Cross-appellant states that the LaMesa and Rowley properties were two blocks apart. Neither the exhibits nor testimony he cites in this respect support this assertion. Plaintiff's Exhibit No. 21 only depicts the improved portions of the Rowley and LaMesa properties, and does so as if each had been subdivided. The perimeter descriptions of Mecham's holdings in this area would place these two properties within 330 feet of one another (Plaintiff's Exhibits No. 63 and 64).

The owner-contractor, Mecham, made his agreement with cross-respondent on the basis of supplying to all of the improvements in Rowley, LaMesa and other properties (Tr. 658-59). Mecham did not request a segregation of the materials as to the various improvements, and he negotiated a unit price (Tr. 659). The apportioning stipula-

tion entered into by cross-appellant made the segregation of values among the various properties, including the Rowley's project where ready mix concrete of the reasonable value of \$652.33 was delivered (R. 171-73).

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 ADVANCEMENTS 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.

POINT III

THE MECHANIC'S LIEN OF GENEVA ROCK PRODUCTS COMPANY IS VALID AND ENFORCEABLE ALTHOUGH IT MADE NO SEGREGATION OF THE AMOUNTS OF MATERIAL WHICH WENT INTO EACH PARTICULAR IMPROVEMENT.

THE 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 point is identical to Point I in this cross-respondent'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 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 ADVANCEMENTS 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.

This point is identical to Point II in this cross-respondent'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 II of that brief.

POINT III

THE MECHANIC'S LIEN OF GENEVA ROCK PRODUCTS COMPANY IS VALID AND ENFORCEABLE ALTHOUGH IT MADE NO SEGREGATION OF THE AMOUNTS OF MATERIAL WHICH WENT INTO EACH PARTICULAR IMPROVEMENT.

This point is identical to Point III in this cross-respondent'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 III of that brief.

CONCLUSION

The Trial Court's findings and the Judgment based thereon are clearly supported by the evidence, and the validity and priority of cross-respondent's mechanic's lien as found and determined by the Trial Court should be affirmed.

Respectfully submitted,

BALLIF & IVINS,

Attorneys for Cross-Respondent,
Geneva Rock Products Company