

1992

Mostrong v. Jackson : Unknown

Utah Court of Appeals

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COURT OF APPEALS

RE: Mostrong v. Jackson
Case No. ~~920089~~ 920578-CA

Dear Ms. Noonan:

The appellees submit the following response to appellants supplemental authority pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure:

The case of Kelley v. Leucadia Financial Corporation, 203 Utah Adv. Rep. 14 (1992) is distinguishable from the current action. Kelley addresses the Buyers right to specific performance based on whether the seller was obligated to cure a title defect involving a boundary dispute.

In Kelley, the court noted:

The agreement, written on standard form, included the following general provisions: (1) The seller would furnish good and marketable title, subject to encumbrances and exceptions provided in the contract, "'evidenced by a current policy of title insurance'"; (2) If title insurance was unobtainable due to title defects, the buyer could elect to waive the defects or terminate the agreement and have the earnest money refunded;...

Id. at 14 (Citations Admitted).

In Kelley, the Court does not discuss whether a preliminary title report was even issued on the property, or that the buyers had ever requested title insurance.

Mary Noonan
March 29, 1993
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Arguments contained on pages 20-22 of Appellees brief support the record that Buyers requested and Security Title Company of Millard County issued title insurance covering the property in question, insuring against, among other things, lack of a right-of-access to and from the land; or unmarketability of such title, (emphases added).

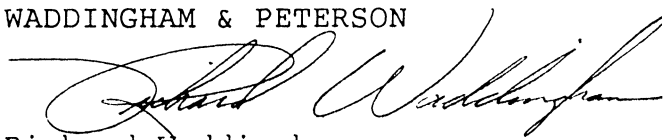
Appellees conveyed and appellants accepted only the property described in the conveying deed (see page six (6) of Trial Court Findings of Fact, Addendum A-4 of appellees brief).

Those facts set forth on pages 6-15 and page 21 of appellees brief distinguish this case from the facts set forth in Kelley and support the Trial Court's findings and conclusion that title to the property conveyed by appellees to appellants on or about September 1, 1992 was marketable.

The record further establishes that any concerns regarding recorded access to the property in question were cured by either Security Title or the Appellants themselves.

Respectfully Submitted,

WADDINGHAM & PETERSON



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