

1960

# J. Lowell Platt dba Crystal Pools, Inc. v. C. L. Locke : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

George H. Searle; Attorney for Respondent;

---

## Recommended Citation

Brief of Respondent, *Platt v. Locke*, No. 9238 (Utah Supreme Court, 1960).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/3648](https://digitalcommons.law.byu.edu/uofu_sc1/3648)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

---

---

# In the Supreme Court of the State of Utah

UNIVERSITY OF UTAH

APR 29 1965

LAW LIBRARY

FILED

JUL 8 - 1960

J. LOWELL PLATT, d/b/a  
CRYSTAL POOLS, INC.,

*Plaintiff and Respondent,*

—vs.—

C. L. LOCKE,

*Defendant and Appellant.*

Clark, Supreme Court, Utah

Case No. 9238

---

## BRIEF OF RESPONDENT

---

INVESTIGATION OF UTAH

GEORGE H. SEARLE

*Attorney for Respondent*

2520 South State Street

Salt Lake City, Utah

APR 29 1965

LAW LIBRARY

# I N D E X

## CASES CITED

	<i>Page</i>
Olsen v. Reese, 114 Ut. 411, 200 P. 2d 733 .....	8
Christensen v. Johnson, 90 Ut. 273, 6 P. 2d 597 .....	9
Green v. Nelson, 120 Ut. 155, 232 P. 2d 776 .....	9
John Oakason and Thomas N. Deglas d/b/a Western States Map Company v. Lisbon Valley Uranium Company (Utah), 154 Fed. Sup. 692 .....	9
Whipple v. Fuller, 5 Ut. 2d 211, 299 P. 2d 837 .....	11

## STATUTES AND RULES

Utah Code Annotated, 1953, Sec. 58-23-3(3) .....	5
Utah Code Annotated, 1953, Sec. 58-23-9(1)(b) .....	5
Utah Code Annotated, 1953, Sec. 58-23-13(4) .....	7
Utah Attorney General Opinion, dtd. 23 Sept. 1959 .....	5, 6
Utah Attorney General Opinion, dtd. 4 Feb. 1959 .....	7

## TEXTS

38 Am. Jur. 601 .....	8
18 ALR 282 .....	8
45 ALR 198 .....	8
59 ALR 455 .....	8
42 ALR 2d 516 .....	8

# In the Supreme Court of the State of Utah

---

J. LOWELL PLATT, d/b/a  
CRYSTAL POOLS, INC.,

*Plaintiff and Respondent,*

—vs.—

C. L. LOCKE,

*Defendant and Appellant.*

Case No. 9238

---

## BRIEF OF RESPONDENT

---

### STATEMENT OF FACTS

That on or about the 1 day of April 1958 Plaintiff and Defendant entered into a written contract as shown by Exhibit "A" attached to Plaintiff's complaint whereby Plaintiff agreed to install for the Defendant a swimming pool for which payment was to be made by the Defendant in four stages and as the work proceeded i.e. 15% first stage; 60% second stage; 20% third stage and balance of 5% upon completion. (Exhibit P-1)

Plaintiff completed the first 15% stage and was paid therefore but upon completion of the second 60% stage which amounted to 75% of the work being completed and payment due the Defendant stalled the Plaintiff off until Plaintiff had for all purposes and effects completed the third 20% stage (R43) and fourth 5% stage, at which time the Defendant informed the Plaintiff that he would pay Plaintiff only if the Plaintiff would put in the water and gas lines to the pool which were specifically marked out as not an obligation of the Plaintiff to do. (R. 32, Exhibit P-1, item 8)

When Plaintiff refused to be fool enough to be pressured into doing that, which he was not obligated under the contract to do, the Defendant voluntarily and wilfully stopped the Plaintiff from working on the pool and refused to pay to the Plaintiff any further money whatsoever (R. 121, item 6 and court notice thereof R31; R39; R82)

The only justification for non payment put forth by the Defendant was that the Plaintiff did not hold a Specialty Contractors License to build swimming pools (R121 item 9 and court notice thereof R32) notwithstanding the fact, to be, that the Plaintiff had in full force and effect a General Building Contractors License (R121 item 8 and court notice thereon R32) and the further reason that the Plaintiff had filed no affidavit with the County Clerk of Salt Lake County of doing business under an assumed name. (R21 item 12 and court notice thereof R32).

## STATEMENT OF POINTS

## POINT I.

THE TRIAL COURT ERRED IN GRANTING JUDGMENT FOR RESPONDENT ON THE GROUND THAT AS A MATTER OF LAW APPELLANT WAS ENTITLED TO JUDGMENT FOR THE REASON THAT RESPONDENT WAS NOT A PROPERLY QUALIFIED AND LICENSED SPECIALTY CONTRACTOR AS REQUIRED BY LAW.

## POINT II.

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A SUMMARY JUDGMENT.

## POINT III.

THE TRIAL COURT ERRED IN DENYING MOTION OF APPELLANT TO ENTER JUDGMENT FOR DEFENDANT OR, IN THE ALTERNATIVE, TO SET ASIDE THE JUDGMENT ENTERED HEREIN AND GRANT A NEW TRIAL.

## POINT IV.

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO AMEND AND SUPPLEMENT FINDINGS OF FACT AND CONCLUSIONS OF LAW.

## POINT V.

RESPONDENT WAS DOING BUSINESS UNDER AN ASSUMED NAME AND FAILED TO COMPLY WITH THE PROVISIONS OF SECTION 42-2-1, UTAH CODE ANNOTATED, 1953 AND RESPONDENT'S ALLEGED CONTRACT IS VOID AND UNENFORCEABLE.

## POINT VI.

AS THE CASE RESTED RESPONDENT FAILED TO PROVE ANY BASIS FOR RELIEF ON THE GROUND THAT THE EVIDENCE CONCLUSIVELY SHOWED THE CONTRACT WAS MADE BY RESPONDENT AS AN AGENT FOR A NON-EXISTENT PRINCIPAL.

## ARGUMENT

Appellant has chosen to not comment on his first two points, Respondent, shall do likewise. For practical purposes Respondent makes the following argument to Appellant's remaining three points, numbered 3, 4, and 5.

Basically there is only one question to be answered in this case and it is:

Is the contract under which the Respondent did work for the Appellant good?

Appellant does not deny that the work was done, but instead sought means, by failing to pay therefore, to make the Respondent do more work and incur more expenses not contemplated or provided for in the contract. When Respondent refused to be high pressured, Appellant now seeks to evade payment as provided by the contract by contending (1) that Respondent did not have a Specialties Contractors License to build swimming pools; (2) had not filed an affidavit of doing business under an assumed name in the Salt Lake County Clerk's Office and (3) that Respondent was an agent acting without authority.

Concerning Appellant's contention (1) that Respond-

ent did not have a Specialties License to build swimming pools, Appellant prudently ignores the fact that Respondent did have in full force and effect a general contractor's license at all times material to this case.

As a licensed General Building Contractor he was within the definition of contractor set forth and defined by Sec. 58-23-3(3) Utah Code Annotated 1953 as follows:

“Any person \*\* who for a fixed sum \*\* undertakes with another for the construction, \*\* addition to or improvement of any \*\* excavation or other \*\* project, development or improvement, other than to personalty, or any part thereof.”

There is no question that prior to the effective day of May 14, 1957, when the law providing for specialty classifications being made, common in the trade, that anyone holding a general contractor's license could have contracted lawfully to undertake with another for the construction of “any structure \*\* requiring in its construction the use of more than two unrelated building trades or crafts or to do or superintend the whole or any part thereof” and could have lawfully undertaken with another for the construction of an outside garage, fireplace or swimming pool. (R22)

Appellant at page 8 of his brief cites Sec. 58-23-9 (1) (b) as authority for limiting the holder of a General Contractor's License to a specific structure and for a specific purpose.

The Utah State Attorney General in an opinion dated the 23 day of September 1959 directed to John Chase,



Administrator, Department of Contractors, in a detailed opinion which concerns itself with the entire question we are here discussing states as follows:

“Under the provisions of the old law, prior to 1957, only one license was provided for. There were no classifications and the contractor in possession of such a license could lawfully engage in any or all of the numerous contracting fields.”

“The terms of the statute the general building license is broad. Note particularly subsection 58-23-9(1)(b) of the section that the general building contractor is one \*\* requiring \*\* the use of more than two *unrelated* building trades or crafts \*\* is significant in that it does not restrict the general building contractor from engaging in certain specialty fields. Furthermore, the general building contractor may do or superintend the whole of any part of the building or structure. The erection of a home, grocery store or factory involves the use of numerous contracting field (specialties). The statute obviously allows the holder of such a license to do or superintend any or all of such specialties.”

“If a contractor is qualified to perform specialty work on one project, it would be unreasonable to say that he could not perform the same work on another project.”

“If the Department determines that an Applicant for a general builder’s license must qualify in excavation, masonry, carpentry and roofing, etc., then the general building contractor’s license entitles the holder to engage in such specialties either as a part of a building contract which the holder has, or on an individual or special contract.”

The Legislature placed in the new 1957 law which first became effective on the 14 day of May 1957 a not less than a one year "granddaddy clause", Section 58-23-13 (4), as follows:

"All licensed contractors in the state as of the effective date of this act shall be entitled to continue the business of contracting upon complying with the provisions of this act relating to the filing of renewal applications, fees, as herein provided."

The Utah State Attorney General in an opinion dated the 4 day of February 1959, directed to John Chase, Director, Department of Contractors, in a detailed opinion which concerned itself with the foregoing, states as follows:

"The provisions of the statute, quoted above, Section 58-23-13(4) allowing a contractor previously licensed to obtain a renewal license upon payment of the lesser fee, must have been intended to offer relief to contractors licensed, under the old law. The provision, however, must have reasonable limits. We do not believe it was intended to permit contractors to obtain more than one renewal license."

It is submitted that the new act became effective the 14 day of May 1957, the first renewal that could possibly occur would be for the year of 1958. Respondent renewed his General Contractors License effective for the entire year of 1958 and thereunder contracted with the Appellant on April 1, 1958, it necessarily follows that he was properly licensed at the time said contract was executed.

Concerning Appellant's contention (2) that he should not have to pay because Respondent had not filed an affidavit of doing business under an assumed name, Respondent must agree with Appellant's familiarity with the fact that the majority view entertained by the courts is that the legislature did not intend to impose a penalty on the offender of refusing him relief on contracts or transactions without compliance. Authority for the majority view and minority view, if any there be, may be found in *38 Am. Jur. 601 et. Sec. 13-16, 18 ALR 282, 45 ALR 198, 59 ALR 455 and 42 ALR 2d 516 (see III Sect. 4 @ p. 524.*

This Court in the case of *Olsen v. Reese*, 114 Ut. 411, 200 P 2d 733 in holding that a contractor's license was necessary for the recovery stated:

"Our statute is so worded as to indicate a legislative intent to protect the citizens from irresponsible contractors. The Statute while not comprehensive, provides for a small license fee. Control over the contractor is given to the Department of Registration. Upon an appropriate hearing, the department may, for unprofessional conduct, suspend or cancel the license. Good reputation and integrity are essential to obtaining a license and the entire object of the statute is protection of the public against fraudulent and illegal practice, which have always been recognized as a distinct characteristic of statutes, which are not mere revenue measures. The statute being enacted for the protection of the public, Plaintiff's written contract is void \*\*\*\*\*".

It is submitted that none of the foregoing reasons are even remotely applicable to the filing of an affidavit of doing business under an assumed name.

1. There is no license involved.
2. Control is given to no department to administer.
3. No hearings are held.
4. Professional or unprofessional may file alike.
5. Good conduct, reputation or integrity are not essential to filing.
6. The statute in no way protects the public against fraudulent or illegal practices.

This court has recognized and referred to the statute relative to doing business under an assumed name in the cases of:

Christensen v. Johnson, 90 Ut. 273, 61 P 2d 597

Green v. Nelson, 120 Ut. 155, 232 P 2d 776  
and the question has been pointedly ruled upon by the Federal Court in the case of *John Oakason and Thomas N. Deglas d/b/a Western States Map Company v. Lisbon Valley Uranium Company*, 154 Fed. Sup. 692, wherein Judge A. Sherman Christensen held:

“Non compliance with Utah assumed name statute would not preclude recovery by Plaintiff otherwise entitled to recovery for services rendered under a contract, since such Statute is primarily for the convenience of the public rather than protection of the public U.C.A. 1953, 42-2-1, 42-2-4.”

Concerning Appellant's contention (3) that Respondent was an agent acting without authority.

Appellant contends that the trial judge erred in remarking that the Respondent was bound because he was the agent for a non-existent principal, and, therefore, he was bound himself. (R98)

The trial judge also remarked that the Respondent did not need a license to make this contract. (R98)

The trial judge in making the comments that he did, was not ignoring the evidence that Appellant knew that Respondent was not incorporated (R19) or that it is necessary that Appellant must have a contractors license. (R32)

He was in effect commenting on the fact that even in the event Respondent did not have a Specialty Contractor's License and had of been the agent of an undisclosed principal that the Appellant could have held the Respondent liable under any and all such circumstances.

In view of the undisputed testimony that Appellant knew that Respondent was not incorporated (R19), that he chose to breach the contract after milking the Appellant for all he could (R39), his lack of complaints as to the performance of Respondent's workmanship and performance, and being an acknowledged businessman versed in the meanings and obligations of contracts (R84) he was well aware that he was dealing with J. Lowell Platt, d/b/a Crystal Pools Inc. and as the contractor referred to in Exhibit P-1 which Appellant contends at page 17 of his brief to be "an unambiguous, integrated contract."



Appellant further contends at page 17 of his brief “under the circumstances presented in this case the Respondent is now estopped from denying the existence of “Crystal Pools, Inc.,” which he dealt with as a corporation.” It is submitted that it is not the Respondent that comes to this court or any court with dirty hands, it is not the Respondent that breached this contract, it is not the Appellant that has been hurt and if estoppel must be invoked for giving equitable relief in view of the trial evidence, the Findings of Fact and Conclusions of Law made and entered in this case, then such estoppel, if any there be, should be against the Appellant and in favor of Respondent.

## CONCLUSION

In the case of *Whipple v. Fuller*, 5 Ut. 2d 211, 299 P 2d 837 this court states at page 213 of said Utah Reporter:

“For Appellant to escape liability on “the failure to be licensed theory” would subvert the theory of the law.” As the California Court said in *Matchett v. Gould* “\*\*recovery can be had upon the contract in the absence of a license when equity and good conscience dictate such relief as an alternative to a judgment which would convert a law intended for the safety and protection of the public into an unwarranted shield for the avoidance of a just obligation.”

Finally — It is submitted that the Legislature cannot lawfully delegate to the Administrator of the Dept. of Contractors the legislative power to determine by

his thoughts alone which workers must have specialty licenses and when. There is here, by Appellant's own admission, a "unambiguous, integrated" contract which was entered into fairly and squarely by the Respondent. If the contract is good he should be entitled to seek relief thereunder and if the contract is not a good contract he should be hurt.

Respondent submits that the trial court did not commit error in finding for the Respondent.

Respectfully submitted,

GEORGE H. SEARLE  
*Attorney for Respondent*  
2520 South State Street  
Salt Lake City, Utah