

1960

W. H. Park et al v. Dewey Jameson and Clara Jameson : Brief of Defendants and Appellants

Utah Supreme Court

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

W. H. PARK, et al,
Plaintiffs and Respondents,

vs.

DEWEY JAMESON and
CLARA JAMESON,
Defendants and Appellants,

and

THOMAS F. SPAULDING,
Defendant and Respondent.

FILED

JUL 22 1960

Clerk, Supreme Court, Utah

**CASE
NO. 9267**

**BRIEF OF DEFENDANTS AND APPELLANTS
DEWEY JAMESON AND CLARA JAMESON**

Cullen Y. Christenson

**for CHRISTENSON, NOVAK, PAULSON &
TAYLOR AND PAUL J. MERRILL**

**Attorneys for Appellants and Defendants
Dewey Jameson and Clara Jameson**

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and

THOMAS F. SPAULDING,
Defendant and Respondent.

**CASE
NO. 9267**

BRIEF OF DEFENDANTS AND APPELLANTS DEWEY JAMESON AND CLARA JAMESON

STATEMENT OF FACTS

This action was brought by W. H. Park and C. T. Park, his wife, doing business as THREE-WAY BUILDERS SUPPLY, a partnership, against Dewey Jameson and Clara Jameson as owners of certain property in Spanish Fork, Utah, and against T. F. Spaulding, record lien holder

against said property, to foreclose a Mechanic's Lien which the plaintiffs asserted against said property. Plaintiffs also in a second cause of action claimed attorney fees against the Jamesons by reason of them having signed certain invoices for the delivery of building materials to said premises, which invoices contained printed matter respecting payment of attorney fees in the event of suit for collection (R. 4-8). T. F. Spaulding answered the complaint and also filed a Cross-Claim against the Jamesons seeking to foreclose a claimed Mechanic's Lien against said property alleged to arise out of a claim for labor performed on said property as a carpenter (R. 15-20). Defendants Jameson answered the respective claims asserting that all claimants had been paid in full under the terms of prior written and oral agreements between the parties and denied that either claimant had any valid lien against said property (R. 23-28). The case was tried before the Honorable Maurice Harding of the Fourth Judicial District Court without a jury, and upon conclusion of the trial, Judgment was awarded by the Court in favor of Parks and Spaulding granting them foreclosure of their claimed liens and also awarding Parks the attorney fees claimed in their complaint (R. 76-78). It is from this judgment and the rulings of the trial court during the proceedings that the Defendants Jameson have taken this appeal (R. 80-81).

In order to eliminate possible confusion in the designation of the parties herein, Defendants and Appellants Dewey Jameson and Clara Jameson will hereafter be referred to as Jamesons; Plaintiffs and Respondents W. H. Park and C. T. Park will be referred to as Parks or as Three-Way Builders Supply; and Defendant and Respondent T. F. Spaulding will be referred to as Spaulding.

From the evidence introduced and admitted at the trial, it would appear that the following facts are undisputed: that during the time under consideration, 1958 and 1959, Jamesons were the owners of a lot in Spanish Fork, Utah, and early in the year 1958 were pursuing even earlier efforts to realize the construction of a dwelling on said property by securing a mortgage loan from the Veterans Administration in Salt Lake City (Tr. 157-160); that in connection with these efforts to secure such a loan, plans and specifications for such dwelling were prepared and approved by the Veterans Administration (Tr. 157 and Tr. 169-170), and copies thereof were offered and received in evidence (Defs. Exhibit No. 4, Tr. 31; Defs. Exhibit No. 5, Tr. 32 and Tr. 170); that in June or July, 1958, Jamesons contacted Spaulding and Parks, and discussed with them, separately and together, the construction of said dwelling and exhibited to them and discussed with them said plans and specifications (Tr. 199-201; Tr. 16; Tr. 161-162); that Jamesons had applied for a loan from the Veterans Administration in the sum of \$10,850.00, which fact was known to all parties prior to the time any construction was begun (Tr. 26; Tr. 161-162; Tr. 230); that as a condition of making said loan, the Veterans Administration required Jamesons to secure a contractor who would contract in writing to construct said home for the sum of \$10,850.00 and further that said contractor's performance would have to be guaranteed and secured by a bond running in favor of the Veterans Administration, which facts were known to all parties prior to the time construction on said premises was begun (Tr. 19; Tr. 33; Tr. 203); that on the 17th day of July, 1958, a written instrument entitled "Construction Contract" (Defs. Exhibit No. 6; Tr. 34 and Tr. 165) was signed

by Spaulding as Contractor and by Jamesons as Owners and witnessed by W. H. Park, wherein it was generally stated that Spaulding agreed to construct a dwelling on the property of Jamesons in accordance with plans and specifications approved by the Veterans Administration for the stated price of \$10,850.00; that on the same date, July 17, 1958, an instrument entitled "Bond" (Defs. Exhibit No. 7; Tr. 37 and Tr. 166) was signed by Spaulding as Contractor and Principal and by Three-Way Builders by W. H. Park as Surety wherein Surety was bound to Jameson and the Administrator of Veterans Affairs in the sum of \$10,850.00 to guarantee the prompt and faithful performance of Spaulding and Contractor under the provisions of said Construction Contract; that said Construction Contract and Bond were transmitted to the Veterans Administration office in Salt Lake City, Utah, in connection with Jamesons' application for a mortgage loan and it was well known to all parties that such Construction Contract and Bond were required by the Veterans Administration and were relied upon by the Veterans Administration in making the \$10,850.00 mortgage loan to Jamesons (Tr. 37; Tr. 38; Tr. 44; Tr. 48; Tr. 166; Tr. 234; Tr. 237); that prior to and at the time of signing said Construction Contract and Bond, Spaulding and Parks knew of and were aware of the amount of various bids for plumbing, heating, brickwork and similar items which had been obtained by Jamesons and were to be included in the overall figure of \$10,850.00 and they knew that Dewey Jameson and his brothers were prepared to do most of the common labor in connection with construction at no charge against the stated figure of \$10,850.00 (Tr. 28; Tr. 29; Tr. 162; Tr. 163; Tr. 234), which latter fact was also known to the Veterans Adminis-

tration (Tr. 26); that construction was begun about the 20th of July, 1958 (Tr. 181), and the final inspection approval was given by the Veterans Administration in February or March, 1959 (Tr. 174), although Jamesons moved into the house just before Thanksgiving Day in November, 1958 (Tr. 173); that during the course of construction most common labor was performed by Dewey Jameson and his brothers (Tr. 170), the plumbing, heating, brickwork and plastering were performed by said sub-contractors previously arranged for (Tr. 232), Spaulding supervised construction (Tr. 222; Tr. 228 and 229), and most materials were furnished by Three-Way Builders Supply (Tr. 21, Pltfs. Exhibit No. 1; Defs. Exhibit No. 21); that periodically during the course of construction funds from the Jamesons' loan from the Veterans Administration were disbursed to the said various sub-contractors, Parks and Spaulding, upon submitted affidavits and lien waivers under oath which set forth the status of Spaulding as Contractor, Jamesons as Owners, and Parks as Surety (Tr. 40; Defs. Exhibit No. 8; Tr. 39; Tr. 237; Defs. Exhibit No. 14; Tr. 43 and 44; Defs. Exhibit No. 27; Tr. 235 and 237); that neither Jameson nor any of his brothers who worked on the project received any of the loan funds for their work (Tr. 166, 167 and 170); that during the course of construction application was made to the Veterans Administration for an increase in the Jameson loan to cover the cost of claimed extras and additions to the dwelling and an increase was approved in the amount of \$1,500.00 which amount was ultimately paid to Parks and Spaulding through the Veterans Administration (Defs. Exhibit No. 12; Tr. 41, 42 and 43); that during the course of construction as materials were picked up for the job or delivered to the site by Three-Way Builders Supply, invoices

acknowledging receipt were signed by any one of several persons who happened to be on the job at the time and at the time of delivery although the items of materials were listed on said invoices, the price thereof was not set forth thereon but was filled in at a later time by someone unknown to Jamesons (Defs. Exhibit No. 21; Tr. 175 and 239); that said invoices carried printed matter respecting the payment of attorney fees in the event of suit for collection and that Jamesons themselves signed invoices, which after having subsequently been filled in as to prices at a time and by someone unknown to Jamesons covered materials with a stated price of \$2,264.88 (Pltfs. Exhibit No. 1; R. 64) although there is no evidence or testimony in the record as to which invoices were considered paid by payments received by Three-Way Builders Supply from the proceeds of said mortgage loan; that after all of the funds from the Jamesons' loan had been disbursed by the Veterans' Administration to said sub-contractors, Parks and Spaulding, and after full releases and waivers had been given by Parks and Spaulding to the Veterans' Administration (Defs. Exhibit No. 14; Tr. 43 and 44). Parks and Spaulding filed Mechanics Liens against the property of Jamesons claiming balances due for materials furnished and labor performed for which payment had not been received (Pltfs. Exhibit No. 3 and Defs. Exhibit No. 25).

Upon the trial Jamesons took the position and introduced evidence and testimony to the effect that Spaulding was hired by them as a contractor to build said home (Tr. 166); that Parks and Spaulding knew that the only source of funds which Jameson had was from the loan from the Veterans' Administration (Tr. 169); that Spaulding agreed to build said house for the amount of the Veterans' Admin-

istration loan in the sum of \$10,850.00, upon the agreement of Three-Way Builders Supply to furnish materials within the limits of said sum, with all parties having in mind the bids for heating, plumbing, brick work and similar items, which bids had been theretofore obtained by Jameson and further having in mind that Jameson and his brothers would furnish their labor at no charge against the loan funds (Tr. 168, 169, and 170); and that the said construction contract and bond (Defs. Exhibits No. 6 and No. 7) were valid and subsisting agreements and constituted the contracts between the parties (Tr. 120, Tr. 161 through 170).

Spaulding and Parks, on the other hand at the trial, took the position that the said written instruments, to-wit, the construction contracts, the bonds, the lien waivers, and the affidavits heretofore mentioned, were never intended to raise any obligation as between parties, but were entered into, signed, and delivered to the Veterans Administration solely for the purpose of complying with the requirements of the Veterans Administration, and to induce the Veterans Administration to make said mortgage loan to Jamesons; that Spaulding was not really the contractor on the job, but was only hired as a carpenter at the rate of \$3.00 an hour, and that as a matter of fact, Jameson was to be the contractor and be responsible for payment of all bills including such materials as were furnished by Three-Way Builders Supply at the going market price (R. 57, 58, Tr. 5, 6 and 7). Park testified that said construction contract (Pltfs. Exhibit No. 6) was signed only because the Veterans Administration required a contractor to be named (Tr. 33, Tr. 37); that the bond (Defs. Exhibit No. 7) was signed only for a like purpose (Tr. 38); that the lien waivers and affidavits (Defs. Exhibits No. 8, No. 14, No. 27) were signed

only for a like purpose (Tr. 43), and that he, Park, knew that the Veterans Administration would rely upon said instruments in considering the application of Jamesons for a mortgage loan (Tr. 46, 47, 48).

Spaulding likewise testified that said written instruments were never intended to raise any legal implications or obligations between the parties; that they were signed solely for the purpose of inducing the Veterans Administration to make a loan to Jameson and that he knew the Veterans Administration would rely upon such written instruments in their consideration of making such a loan to Jamesons (Tr. 234, through 237).

At the conclusion of the evidence, Jamesons made a motion to the Court to dismiss the claims of Spaulding and Parks for the reason that such parties were not coming into Court with clean hands, by reason of their admitted participation in a fraud and subterfuge upon the Veterans Administration in the procuring of a mortgage loan for Jamesons. The motion was denied by the Court (Tr. 275), and the Court thereupon declared his judgment from the bench in favor of Parks and Spaulding and holding that the written instruments signed by the parties were of no effect, and stated "I think unjust enrichment has been conferred upon Mr. Jameson by these people, and it would be a mockery to justice to permit him to keep that benefit when they have conferred it on him. I think there was a fraud practiced on the Veterans Administration, but the Veterans Administration is not here complaining. If the Veterans were here complaining I think I would have to hold that the Three-Way Builders Supply would be bound on its bond and Spaulding on his contract, but as between the parties who are implicated in this matter I think we

must adjust the equities and the equities would require that Mr. Jameson not be permitted an unjust enrichment at the expense of these other parties.

By Mr. Christenson Counsel for Jameson: You have also concluded that it was a sham transaction as between these people.

The Court: Yes, absolutely. I think it was a sham between these people. I think the greater weight of evidence was to that effect, and the greater weight of authority, so that I think that the written contract was just a sham designed for the purpose of securing the monies from the Veterans Administration and meeting their regulations and yet permitting Mr. Jameson to do what he pleased." (Tr. 275, and 276).

The Court thereupon signed Findings of Fact and Conclusions of Law, finding that Parks and Spaulding had valid mechanic's liens upon the premises of Jamesons, and concluded that the liens should be foreclosed and the premises sold in satisfaction of the claims of Parks and Spaulding. The Court also found that Jameson had agreed to pay a reasonable attorney's fee in connection with purchase of the materials which were furnished in connection with said construction, and that such attorney's fees should be in the amount of \$591.00 (R. 40 through 45). Jamesons filed objections to the Findings of Fact and Conclusions of Law and Judgment, directed primarily to the fact that the Court had not set forth its Findings in respect of the matters in connection with the Veterans Administration and they also at the same time filed a motion for a new trial (R. 53 through 56). Further Findings of Fact and Conclusions of Law were signed by the Court on the 1st of April, 1960 (R. 62 through 69), and Jamesons filed an objection to the Find-

ings of Fact primarily on the basis that the Findings did not set forth the decision of the Court in respect of the matters pertaining to the Veterans Administration, and the Jamesons also on the 7th day of April, 1960, filed another motion for a new trial (R. 70 through 72). Upon hearing the matter, the Court made a slight amendment to the Findings of Fact by interlineation (R. 65), and entered its judgment in favor of Parks and Spaulding, ordering their lien against the premises of Jamesons foreclosed and awarding Parks additional attorney's fees not secured by said lien in the sum of \$566.00 (R. 76 through 78). The motions of Jamesons for a new trial was denied by the Court (R. 88, 89), and Jamesons thereupon took their appeal to this Court (R. 80, 81).

STATEMENT OF POINTS

POINT 1

THE TRIAL COURT ERRED IN HOLDING THAT THE WRITTEN INSTRUMENTS SIGNED BY THE PARTIES WERE OF NO EFFECT AS BETWEEN THE PARTIES.

POINT II

THE TRIAL COURT HAVING GRANTED JUDGMENT AGAINST THE DEFENDANTS, DEWEY JAMESON AND CLARA JAMESON, ALLOWING FORECLOSURE OF MECHANIC'S LIENS AGAINST THEIR PROPERTY, ERRED IN AWARDING ATTORNEY'S FEES AGAINST SAID DEFENDANTS IN EXCESS OF THOSE AUTHORIZED BY THE MECHANIC'S LIEN STATUTE.

POINT III

THE WRITTEN FINDINGS OF FACTS DO NOT CONFORM TO THE ACTUAL FINDINGS OF THE COURT AS ANNOUNCED FROM THE BENCH AT THE CLOSE OF THE TRIAL, AND THE COURT ERRED IN REFUSING APPELLANTS' MOTION TO ORDER APPROPRIATE AMENDMENTS THEREIN.

POINT IV

THE TRIAL COURT ERRED IN REFUSING TO GRANT THE MOTIONS OF DEFENDANTS AND APPELLANTS, DEWEY JAMESON AND CLARA JAMESON, TO DISMISS THE CLAIMS AGAINST THEM ON THE BASIS OF THE "CLEAN HANDS DOCTRINE" INASMUCH AS THE TRIAL COURT IN ACCEPTING THE TESTIMONY AND EVIDENCE OF RESPONDENTS PARKS AND SPAULDING AS BEING TRUE, NECESSARILY HAD TO ALSO FIND SUCH RESPONDENTS GUILTY OF SUCH ILLEGAL AND INEQUITABLE CONDUCT AS SHOULD BAR THEM FROM ANY STANDING BEFORE THE COURT.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN HOLDING THAT THE WRITTEN INSTRUMENTS SIGNED BY THE PARTIES WERE OF NO EFFECT AS BETWEEN THE PARTIES.

There is no dispute between the parties to the facts that the construction contract the bond and the various lien

waivers and affidavits (see Defs. exhibits number 6, number 7, number 8, number 14, and number 27), were signed by Spaulding as contractor, Parks as bondsmen and surety, and Jamesons as owners. Nor is there any dispute to the fact that such instruments were submitted to the Veterans Administration for the purpose of inducing the Veterans Administration to make a mortgage loan to Jamesons in the amount of \$10,850.00, and to subsequently increase that loan by the sum of \$1,500.00, nor is there any dispute as to the fact that all parties knew that the Veterans Administration required such documents in the processing of said loan and that they would be relied upon by the Veterans Administration in making such loan. The real dispute in this matter arises as to the effect of these instruments between Jamesons on the one hand, and Parks and Spaulding on the other. Jamesons contend that the instruments were entered into in good faith and were intended to mean what they purport to say, and that such instruments embodied the true agreement between the parties. Parks and Spaulding on the other hand contend that such instruments were never intended to have any effect as between Jamesons, Parks and Spaulding, but were entered into solely for the purpose of inducing the Veterans Administration to make a loan to Jamesons, the proceeds of which were to be paid to Spaulding and Parks, and others, in connection with the construction of said dwelling, and that the true agreement between the parties was to the effect that Jamesons would pay to Spaulding and Parks any additional sums as might be necessary to pay for all of materials furnished by Parks doing business as Three-Way Builders Supply, and to compensate Spaulding for his services as a carpenter at the rate of \$3.00 per hour. The

Court permitted oral testimony on the part of Parks and Spaulding, not necessarily to vary the terms of these written instruments, but to show that such instruments were a sham and were entered into for a wholly different purpose than that expressed in the instruments themselves.

The legal effect of such an attack upon these instruments will be argued at a later point in this brief, and the argument at this point will be confined to the question of whether or not the evidence is sufficient to sustain a finding that the written instruments were by way of agreement to be of no force or effect as between Jamesons, Spaulding and Parks. On the side of the validity of the written instruments, there can be no question about the apparent purport and intent of these written instruments. Attention is directed to the fact that three of them (Defs. exhibits number 8, 14, and 27) were subscribed and sworn to under oath, and were presented to the Veterans Administration over a period from approximately July of 1958, to February of 1959, and not only did these written instruments go to the original application for a loan in the amount of \$10,850.00, but to a subsequent application for an increase in the amount of \$1,500.00

The main contention of Spaulding in his attack upon said written instruments, lies in his assertion that he did not actually perform as a contractor would ordinarily do in that he did not hire or fire anybody, nor did he go out and get the sub-contracts in respect of the heating, plumbing, brick work, and plastering, but the record is abundantly clear that Spaulding knew of the amounts of the various bids prior to the time that the written contract was entered into (See Tr. 232), and he thought that such bids were fair and reasonable. By his own testimony he was

well aware that the only funds available for the construction of the house were the funds to be obtained from the Veterans Administration through the mortgage loan (Tr. 230), and that he was the one who was actually most familiar with the plans and specifications, and that he, Spaulding, was actually the one who supervised the course of construction (Tr. 222, 228, and 229).

The record is equally abundantly clear that Parks was well aware of the fact that the only money Jamesons had for the construction of the house was that to be furnished through the Veterans Administration loan (Tr. 28); that Parks was well aware of the sub-contract bids prior to the time that the written instruments between the parties were signed (Tr. 29), and that Parks knew, as well as did Spaulding and the Veterans Administration, that Jameson and his brothers were going to furnish most of the common labor at no charge against the loan funds (Tr. 26 and 27).

Great emphasis was placed by Spaulding and Parks, and by the trial court as well (Tr. 187) on the wording of the written contract which stated, "The contractor shall furnish all materials and perform all the work shown on the drawings and specifications as approved by the Veterans Administration". The argument is made that since Spaulding as contractor, did not do all of the labor himself, because some of it was to be done by Jameson and his brothers, and by certain sub-contractors, and that he himself did not personally furnish all of the materials, the contract could not possibly mean what it says. However, it is pointed out that such an argument would defeat every contract of this kind inasmuch as certainly no contractor himself personally does all of the work or furnishes all of the material. In this case everyone knew the source of the ma-

terials, the source of the labor, the source of the sub-contracts, and the source of the money prior to the time that the written instruments were entered into, and appellants respectfully submit that the evidence does not sustain a finding that Parks and Spaulding agreed to do anything other than to construct the home and furnish the materials therefor for the sum of \$10,850.00, increased by the subsequent allowance of \$1,500.00, and the trial court therefore consequently erred in finding and concluding that the written instruments were of no legal effect as between Jam-
 esons, Parks and Spaulding.

POINT II

THE TRIAL COURT HAVING GRANTED JUDGMENT AGAINST THE DEFENDANTS, DEWEY JAM-
 ESON AND CLARA JAMESON, ALLOWING FORE-
 CLOSURE OF MECHANIC'S LIENS AGAINST THEIR
 PROPERTY , ERRED IN AWARDING ATTORNEY'S
 FEES AGAINST SAID DEFENDANTS IN EXCESS OF
 THOSE AUTHORIZED BY THE MECHANIC'S LIEN
 STATUTE.

Section 38-1-18, Utah Code Annotated, 1953, provides that the Court may, in granting foreclosure on a lien, award a reasonable attorneys' fee, not to exceed \$25.00. The Court in this case, in addition to awarding Parks the statutory fee of \$25.00, also allowed a further sum as attorneys' fees in the amount of \$566.00, for collection of the price of certain of the same materials upon which the lien fore-
 closure was based. These fees were allowed in spite of the fact that the invoices allegedly giving rise to the obligation were not filled in as to prices and amounts at the time they

were signed by Jamesons (Defs. Exhibit No. 21), and that although Parks received substantial payments from the Veterans Administration, over the course of construction, which payments covered at least part of the time over which the materials were advanced in connection with which the claim for attorneys' fees was made, no allocation of such payment being made or shown by Parks. Appellants thus contend that such an award of attorneys' fees is not sanctioned and authorized by statute, nor can it be sustained as a matter of agreement between Parks and Jamesons for the reason that there is no adequate written agreement upon which to base such claim and for the further reason that no credit was given for the payments as admittedly made (Tr. 22, and Pltfs. Exhibit No. 3) (See the case of Smoot vs. Checketts, 125 P. 412).

POINT III

THE WRITTEN FINDINGS OF FACTS DO NOT CONFORM TO THE ACTUAL FINDINGS OF THE COURT AS ANNOUNCED FROM THE BENCH AT THE CLOSE OF THE TRIAL, AND THE COURT ERRED IN REFUSING APPELLANTS' MOTION TO ORDER APPROPRIATE AMENDMENTS THEREIN.

Appellants contend that they are entitled to have the written Findings of Fact conform to the oral announcements of the Court from the Bench in respect to the matter of the validity of the written instruments entered into by the parties. At the conclusion of the trial the Court announced from the Bench " I think unjust enrichment has been conferred upon Mr. Jameson by these people and that it would be a mockery to justice to permit him to keep that

benefit when they have conferred it on him. I think there was a fraud practiced on the Veterans Administration, but the Veterans Administration is not here complaining. If the Veterans Administration were here complaining, I think I would have to hold that the Three-Way Builders Supply would be bound on its bond and Spaulding on his contract, but as between the parties who are implicated in this matter I think we must adjust the equities and the equities would require that Mr. Jameson not be permitted an unjust enrichment at the expense of these other parties.

Mr. Christenson: You have also concluded that it was a sham transaction as between these people.

The Court: Yes, absolutely. I think it was a sham between these people. I think the greater weight of evidence was to that effect and the greater weight of authority, so I think that the writing, the contract, was just a sham designed for the purpose of securing the money from the Veterans Administration and meeting their regulations and yet permitting Mr. Jameson to do what he pleased." (Tr. 275 and 276).

The Court thereafter signed written Findings which after amendment by interlineation were made to read as follows:

"The Court further finds that the said Jamesons and Spaulding mutually agreed that said contract and bond dated July 17, 1958, invoked no obligation or liabilities among the parties to this action, of which facts the plaintiffs were aware. That these documents were signed solely to enable Jamesons to get a Veterans Administration loan on said property and loans were obtained and the Veterans Administration has mortgages on said property which is security for the money so loaned". (R. 65 and 66).

The appellants Jamesons filed their objections to the Findings of Fact (R. 53, 54, 71, and 72), moving the Court for an order changing the Findings to more specifically conform to the pronouncement of the Court from the Bench in respect of these matters, and it is the position of appellant that the Court erred in failing to grant the motion of appellants in this respect and that appellants are entitled to have the Findings of Fact specifically reflect the oral pronouncement of the Court in order that a full and complete determination of the matters decided by the trial Court may be presented to this Court on this appeal. (Rule 52, Utah Rules of Civil Procedure).

POINT IV

THE TRIAL COURT ERRED IN REFUSING TO GRANT THE MOTIONS OF DEFENDANTS AND APPELLANTS, DEWEY JAMESON AND CLARA JAMESON, TO DISMISS THE CLAIMS AGAINST THEM ON THE BASIS OF THE "CLEAN HANDS DOCTRINE" INASMUCH AS THE TRIAL COURT IN ACCEPTING THE TESTIMONY AND EVIDENCE OF RESPONDENTS PARKS AND SPAULDING AS BEING TRUE, NECESSARILY HAD TO ALSO FIND SUCH RESPONDENTS GUILTY OF SUCH ILLEGAL AND INEQUITABLE CONDUCT AS SHOULD BAR THEM FROM ANY STANDING BEFORE THE COURT.

Aside from the other reasons hereinbefore indicated as to why it is urged that the trial court's decision in this case has been the wrong one, it becomes very apparent that in order to sustain the holding of the trial Court below, it is necessary to adjust alleged equities between parties who

are in *pari delicto* in the commission of acts which are a violation of law, and contrary to public policy. In order for the Court to grant the claim of Parks and Spaulding in this case the Court of necessity will have to in effect say "While it is a fact by your own admission that you have been involved knowingly and directly in a fraud and a subterfuge upon the Veterans Administration in connection with the very matter now before the Court, nevertheless since matters did not work out as favorably for you as you anticipated, the Court will adjust the differences which have arisen between you and those implicated with you in this sham transaction." It does not seem to the writer that the law or public policy will permit such a proceeding to stand before the Courts of this state. Spaulding through his counsel at the outset of the trial stated: "In other words the sole purpose of this contract was to enable Mr. Jameson to get a loan from the Veterans Administration as Mr. Spaulding never was included, and in fact a contractor on the job.

The Court: That the contract that was written was a mere subterfuge.

Mr. Morgan: Well if you want to call it that. It was merely a document which was prepared by Mr. Jameson to get a loan from the government, and Mr. Spaulding never at any time was a contractor on the job.

The Court: Was it a fraudulent document then?

Mr. Morgan: Well it was never a legally binding contract on the parties in the way that it was drawn; that is, it didn't establish the relationship in truth and in fact of a contractor upon the part of Mr. Spaulding, I think, to build this house at the price, nor was he at any time authorized to hire or fire any employees or contractors, to

negotiate contracts nor to pay them, and as a matter of fact he was released from the job before the job was ever completed. That is our position, that there was only one reason why that contract and that bond was put up was to enable Mr. Jameson to get a loan from the government to build this house and in all truth and fact Mr. Spaulding never had a license as a contractor and told him he was not going to take out a license. He told that to Mr. Paul Merrill, Mr. Jameson's attorney; that is our position.

The Court: Very well, it is your contention then that this written instrument for the building was merely a device to obtain the loan.

Mr. Morgan: That is our position.

The Court: Something to palm off on the Veterans Administration.

Mr. Morgan: It was to secure Mr. Jameson a loan and only for that purpose. He had to have a contract to bring to the government and a bond". (Tr. 6 and 7).

This position was further testified to by Parks (Tr. 33); by Spaulding (Tr. 234), and found to be a fact by the trial Court (Tr. 275 and 276). Furthermore, the writer cannot see how it makes the situation any less objectionable by saying that since the party which was the subject of the fraud, subterfuge and sham is not before the Court that these matters can therefore be ignored. Appellants contend that the trial Court committed a very serious error in refusing to grant the motions of the appellants to dismiss the claims of Spaulding and of Parks (Tr. 12, Tr. 275). As stated in volume 30 Corpus Juris Secundum at page 475,

"The clean hands maxim bars relief to those guilty of improper conduct in the matter as to which they seek relief. It is invoked to protect the integrity of the Court. . . . This maxim expresses rather a principle of inaction than one of action. It means that equity refuses to lend its aid in any manner to one seeking its active interposition, who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief. Equity denies affirmative relief for such conduct even though it thereby leaves undisturbed and in ostensible full legal effect acts or proceedings which would affirmatively be set aside but for such consideration.

"The maxim is based on conscience and good faith. It is not strictly or primarily a matter of defense, but is invoked on the grounds of public policy and for the protection of the integrity of the court."

As further stated at 30 Corpus Juris Secundum 467:

"A party can have no equity arising out of disobedience of law and public policy, and so the maxim will not be applied to give relief to a party who has violated public policy in relation to the subject matter of the litigation."

As stated in the case of New York Trust Company vs. Island Oil and Transport Corporation, 34 Fed. 2d, 655:

"One party cannot recover from another under records calculated to defraud a third party. The Court refuses to raise obligations on a sham transaction. Here we are only concerned with the existence of obligations between parties equally implicated. The question then becomes whether legal obligation shall be attached to utterances which would otherwise not create them be-

cause they were part of a plan to deceive third persons”.

In the case of Southworth vs. Huffaker, Colo. case 246 P. 261, the Court stated:

“Equity so abhors fraud that the chancellor will not listen to litigants for the purpose of judicially determining controversies between the parties where they stand in *pari delicto*. The alleged fraud was part of and inseparably connected with the transaction before the Court. While a special plea of the fraud was unnecessary, it is immaterial whether the information of the fraudulent conduct of the parties in the transaction under investigation before the Court came from the plaintiff or defendant, or was disclosed by the pleading or the evidence. Whenever an illegality appears, whether the evidence comes from one side or the other the disclosure is fatal to the case.”

Further reference is made to 30 Corpus Juris Secundum 478; Haggarty vs. Willmington Trust, 194 Atlantic 134; Owens vs. Owens, 106 Southwest Second 227; Watson vs. Watson, 149 Southwest Second 953; Kings Highway Bridge Company vs. Farrell, 136 Southwest Second 335; Selinger vs. Selinger, 170 Atlantic 853; 30 Corpus Juris Secundum 484; Page - Dressler Company vs. Meader, 244 P. 308; American University vs. Wood, 216 Illinois Appeals 189. The Supreme Court of the State of Utah in the case of Swanson vs. Sims, 170 P. 774, held as follows:

“Plaintiff is seeking the aid of a Court of equity to enforce a contract which under the admissions as contained in the pleadings as well as in the Findings of the jury he procured by fraud and deceit. The court of equity is a court of conscience and anyone appeal-

ing to or asking aid of such court should come in with clean hands''

In this case the evidence of fraud, sham, deceit, and subterfuge comes from the claimants Parks and Spaulding, and in order for the Court to grant the relief which they seek in this proceeding the Court must in effect sanction and countenance such activity.

CONCLUSION

In conclusion, the appellants and defendants, Dewey Jameson and Clara Jameson, respectfully submit that the decision and judgment of the trial court should be reversed and the claims of Parks and Spaulding dismissed. The reversal is urged not only on the grounds that the evidence does not sustain the findings of the Court in respect to the invalidity of the written contracts and instruments, but for the further and even more compelling reason that if the Court finds the testimony and evidence of Parks and Jameson to be true, the law, equity and public policy require that such claims be dismissed.

Respectfully submitted,

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