

1960

# W. H. Park et al v. Dewey Jameson and Clara Jameson : Brief of Respondents

Utah Supreme Court

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S. Rex Lewis; Howard and Lewis; Attorneys for Respondents;

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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**

SEP 1 - 1960

Clerk, Supreme Court, Utah

**CASE  
NO. 9267**

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## BRIEF OF RESPONDENTS

S. Rex Lewis, for  
HOWARD AND LEWIS  
Attorneys for Respondents

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# In the Supreme Court of the State of Utah

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W. H. PARK, et al,  
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DEWEY JAMESON and  
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**CASE  
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## BRIEF OF RESPONDENTS

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### STATEMENT OF THE CASE

Plaintiffs and respondents view the facts substantially different than those stated by the appellants, consequently, plaintiffs state the facts as follows:

On or about the 18th day of July, 1958, the plaintiffs were engaged in the lumber and building supply business

as a partnership doing business under the name of Three-Way Builders Supply. Plaintiffs entered into an oral agreement with defendants, Jameson, to provide materials to the Jameson home to be constructed and between the 18th day of July, 1958, and the 23rd day of December, 1958, furnished to the Jamesons building materials in the sum of \$6,758.52. Plaintiffs were paid on said purchases only the sum of \$3,715.00 and that there remained due and owing to the plaintiffs the sum of \$3,043.52. The plaintiffs were not paid for the balance of the material which they furnished to the defendants, Jameson, and, subsequently, the plaintiffs filed their mechanic's lien to secure said amount and then filed an action to foreclose the mechanic's lien. In addition thereto, plaintiffs filed an action to collect attorneys' fees as provided in the written contracts signed by the Jamesons. The defendants, Jameson, answered the complaint of the plaintiffs and by way of an affirmative defense alleged a written contract between themselves and the defendant, Thomas F. Spaulding, and as a further affirmative defense alleged a bond which was signed by Spaulding and the plaintiff, W. H. Park.

The testimony was undisputed at the time of the trial as to the balance owing to the plaintiffs by the defendant, Dewey Jameson, that he had read the terms of the contracts of delivery of the materials and that he signed the same knowing that they provided for the payment of attorneys' fees should he not pay the account (Tr. 118). There was further no question as to the prices charged for the materials and that the prices were reasonable.

As to the matters elicited at the time of trial, other than the facts as above stated, respondents agree substan-

tially with the Statement of Facts as set forth by the appellants, except as to the statement made that Dewey Jameson and his brothers performed the labor and work that they were to perform (Tr. 225, 226). The testimony further was to the effect that the cost of the home was increased due to extras and selection of materials made solely by Jameson (Tr. 88, 89, 90).

## **STATEMENT OF POINTS**

### **POINT I**

THE TRIAL COURT PROPERLY RULED 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 CORRECTLY RULED IN AWARDING ATTORNEYS' FEES AGAINST SAID DEFENDANTS BASED UPON THE WRITTEN AGREEMENTS SIGNED BY THE DEFENDANTS.

### **POINT III**

THE WRITTEN FINDINGS OF FACT ARE THE ACTUAL FINDINGS OF THE COURT AND THE COURT PROPERLY REFUSED APPELLANTS' MOTION TO ORDER AMENDMENTS THEREIN.

## POINT IV

THE TRIAL COURT PROPERLY REFUSED 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.

## ARGUMENT

### POINT I

THE TRIAL COURT PROPERLY RULED THAT THE WRITTEN INSTRUMENTS SIGNED BY THE PARTIES WERE OF NO EFFECT, AS BETWEEN THE PARTIES.

Appellants contend the evidence is insufficient to sustain a finding that the written instrument entered into between Jameson and Spaulding was to be of no force or effect as between the parties. The Court's attention is directed to the testimony of Jameson and to the testimony of Spaulding. Spaulding testified that he was hired as a carpenter to be paid at the rate of \$3.00 per hour (Tr. 206, 208) and that he was given a time book by Jameson (Tr. 208) that he kept track of his hours and that he billed Jameson accordingly. Spaulding further testified that Jameson laid him off because he could not afford to pay him \$24.00 a day to continue to work on the job (Tr. 244). The trial court made its findings wherein it apparently believed Spaulding and disbelieved Jameson. The law is clear that this Court may review the record of the trial court to ascertain whether or not there is evidence to support the Findings of Fact made by the trial court, but that this



Court will not disturb findings of the lower court unless the evidence clearly preponderates against the conclusion or finding. This Court has so stated in the mechanic's lien foreclosure case of *Wilcox vs. Cloward*, 88 U. 503, 56 P(2d) 1, at p. 4:

"In an equity case it has been the rule of this court not to disturb a finding of the lower court on contested or conflicting evidence unless the evidence clearly preponderates against the conclusion or finding."

The Court further states, p. 6, that:

"The familiar rule (is) that the lower court is best able to judge what the facts are under a fairly balanced conflict of evidence. \* \* \*"

See also *Langton Lime & Cement Co. vs. Perry*, 48 U.112, 159 P. 49, p. 53.

## 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 CORRECTLY RULED IN AWARDING ATTORNEYS' FEES AGAINST SAID DEFENDANTS BASED UPON THE WRITTEN AGREEMENTS SIGNED BY THE DEFENDANTS.

Appellants apparently have misinterpreted the trial court concerning attorneys' fees. The trial court granted to plaintiffs the statutory \$25.00 attorney fee as a lien against the property. In addition, the trial court granted a further sum of \$566.00 as attorneys' fees, but which

amount is not a lien against the property. There is no question raised concerning the reasonableness of the fee as awarded by the court. It is also clear by the testimony of the defendant, Jameson, that the agreement was read and understood by him at the time of the signing and that he knew he would have to pay reasonable attorneys' fees if he did not pay the account (Tr. 118)) The court in its findings found that the defendants, Jameson, had agreed to pay the account and to pay a reasonable attorneys' fee should the matter be placed in the hands of an attorney for collection and made the award of attorneys' fees based thereon. There is no evidence in the record that credit was not properly given for payments made.

### POINT III

THE WRITTEN FINDINGS OF FACT ARE THE ACTUAL FINDINGS OF THE COURT AND THE COURT PROPERLY REFUSED APPELLANTS' MOTION TO ORDER AMENDMENTS THEREIN.

It must be assumed that the Findings of Fact as ultimately reduced to writing and signed by the Court were and are the Court's Findings of Fact and any utterances made by the Court prior to the Findings being reduced to writing and signed insofar as said utterances might be inconsistent with the Findings must be considered by this Court as not being the Findings of Fact made by the trial court.

### POINT IV

THE TRIAL COURT PROPERLY REFUSED TO GRANT THE MOTIONS OF DEFENDANTS AND AP-

PELLANTS, DEWEY JAMESON AND CLARA JAMESON, TO DISMISS THE CLAIMS AGAINST THEM ON THE BASIS OF THE CLEAN HANDS DOCTRINE.

Plaintiffs filed their action against defendants to foreclose their mechanic's lien against the property of the defendants, Jameson, and in addition thereto to collect a reasonable attorneys' fee based on written agreements signed by the defendants Jameson. The defendants Jameson, as an affirmative defense, allege a written contract between themselves and the defendant, Spaulding, and a bond signed by Spaulding and by the defendant, W. H. Park. The trial court made its finding that the contract as set forth by the defendants, Jameson, in their affirmative defense was to have no effect as between the parties. This in effect is a finding that the defendants, Jameson, are trying to hide behind a situation of their own making to keep from paying bona fide obligations incurred by them.

We believe the law as cited by the appellants is correct except that appellants have incorrectly viewed the law. The law as cited by them bars them from their defense rather than bars the plaintiffs from their action.

We believe the Wyoming Court in the case of Wantulok v. Wantulok, 214 P(2d) 477 correctly analyzes the doctrine of clean hands when it states, P. 484:

“ . . . . The doctrine of clean hands is not rigid . . . . It has its limitations. It does not operate so as to repel all sinners from a court of equity nor does it apply to every unconscientious act of a party. It will not be allowed to work injustice and wrong . . . The doctrine is aimed at securing justice and equity, not to aid anyone to acquire property to which he has no right. . . .”

The Utah case of Swanson vs. Sims, 170 P. 774 cited by the appellants was an action brought by the plaintiff to enforce a contract providing for a covenant not to compete in the theatre business. The defense was that the covenant by agreement of the parties was not to be enforced. The court held the covenant was not enforceable, stating, page 778:

"It has been considered an elementary proposition that fraud vitiated all contracts when established, and that anyone induced to make a contract by false representations could be relieved from the burden thereof by a court of equity. Such in short is the holding of this court in its opinion in this case. That principal of law has been usually recognized by all courts and text-writers, and we do not feel disposed to depart from a rule founded, as it is, upon ordinary common honesty."

The evidence is clear from the record and it was clear to the trial court that the defendants, Jameson, should pay for the materials which they purchased from the plaintiffs and used in their home and that they should pay for the labor which they secured from the defendant, Spaulding. To hold otherwise would not secure justice and would permit Jamesons to acquire and hold property to which they have no right unless they so pay for it.

## CONCLUSION

In conclusion, the respondents respectfully submit that the trial court was correct in its rulings and that its judgment should be sustained.

Respectfully submitted,  
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Comes now the defendant and respondent, Thomas F. Spaulding, and joins in the brief of the plaintiffs and respondents, and adopts the same as his brief.

Respectfully submitted,  
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