

1960

Jesse B. Stone v. Salt Lake City et al : Brief of Respondent Zions Securities Corporation

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JESSE B. STONE,

Plaintiff and Appellant,

—vs.—

SALT LAKE CITY, a municipal corporation, J. BRACKEN LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T. I. GEURTS and J. K. PIERCY, its Commissioners, CHAMBER OF COMMERCE OF SALT LAKE CITY, and GUS P. BACKMAN, its Secretary, ZIONS SECURITIES CORPORATION, a corporation, and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation, sole,

Defendants and Respondents,

LYNN FAUSETT AND FIAMETTA FAUSETT,

Plaintiffs in Intervention and Appellants.

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Supreme Court, Utah

Case No.
9268

BRIEF OF RESPONDENT Zions Securities Corporation

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Respondent Zions Securities
Corporation*

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IN THE SUPREME COURT OF THE STATE OF UTAH

JESSE B. STONE,

Plaintiff and Appellant,

—vs.—

SALT LAKE CITY, a municipal corporation, J. BRACKEN LEE, JOE L. CHRISTENSEN, L. C. ROMNEY, T. I. GEURTS and J. K. PIERCY, its Commissioners, CHAMBER OF COMMERCE OF SALT LAKE CITY, and GUS P. BACKMAN, its Secretary, ZIONS SECURITIES CORPORATION, a corporation, and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation, sole,

Defendants and Respondents,

LYNN FAUSETT AND FIAMETTA FAUSETT,

Plaintiffs in Intervention and Appellants.

Case No.
9268

BRIEF OF RESPONDENT Zions Securities Corporation

PRELIMINARY STATEMENT

The Defendant ZIONS SECURITIES CORPORATION will hereinafter be referred to as "ZIONS SECURITIES," and the Defendant CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS

CHRIST OF LATTER-DAY SAINTS will hereinafter be referred to as "CORPORATION OF THE PRESIDENT." The Plaintiff and Appellant JESSE B. STONE will hereinafter be referred to as "PLAINTIFF" and the Plaintiffs in Intervention will hereinafter be referred to as "FAUSETT."

STATEMENT OF FACTS

This Defendant Zions Securities, desires to restate certain of the facts for clarification. It is a matter of common knowledge that there have been considered various sites in Salt Lake City for the construction of a new Federal Building. One of the sites that was considered by the Federal Government was that site known as the Lafayette School, located on North Temple between State and Main Street. Another site that has been considered has been that of the Public Safety Building and Fire Hall on the Southeast corner of First South and State Street and other sites had been considered, such as Fort Douglas and an area on Fourth South Street between Main and West Temple. This whole lawsuit has its roots in the selection of the site for a proposed Federal Building.

Originally the site considered for the Federal Building was that of the Lafayette School. Mr. Burton W. Musser, one of the attorneys for the Plaintiff and Appellant herein, brought suit against Salt Lake City and certain of the Defendants to enjoin the sale of that property. That suit is still pending. On February 4, 1960, the Chamber of Commerce by Mr. Gus C. Backman, submitted a bid to Salt Lake City for the purchase of the

property known as the Public Safety Building and Fire Station on the corner of First South and State Street in Salt Lake City. (Par. 13, Plaintiff's Complaint). By the terms of this bid, it was proposed that the property would be purchased for \$750,000.00 and possession was to be given to the United States Government on or before January 1, 1961. It was further proposed that this property may be used as the site of the construction of a new Federal Building. This bid was accepted by Salt Lake City for the sale of the property and shortly thereafter this suit was filed by Mr. Stone through his attorneys, including Mr. Musser, the attorney of the other case involving the Lafayette School.

Separate and apart from anything to do with the Federal Building is the sale of Forest Dale Golf Course. This sale was between Salt Lake City and the Corporation of the President of the Church of Jesus Christ of Latter-day Saints. The contract of sale was on January 14, 1959. More than one year before the negotiations were undertaken for the sale of the Public Safety Building and Fire Station.

In the lawsuit that was filed by the Plaintiffs herein, two causes of action were alleged. The first relating to the sale of the property hereinafter referred to as the Public Safety property, and the second cause of action relating to the sale of Forest Dale Golf Course. In Plaintiff's First Cause of Action he seeks to declare null and void the bid of the Chamber of Commerce of Salt Lake City and the acceptance by the Salt Lake City Commission, on the sale and transfer of the property known as

Public Safety Building and seeks to enjoin the transfer of this property.

In Plaintiff's Second Cause of Action he seeks to declare null and void a contract for the sale of Forest Dale Golf Course between Salt Lake City Corporation and the Corporation of the President. It is interesting to note so far as this Defendant is concerned that nowhere in Plaintiff's Second Cause of Action does the Plaintiff allege or claim anything about this Defendant. The entire allegation as to Plaintiff's Second Cause of Action relates to that contract between Salt Lake City and the Corporation of the President. Insofar as the allegations in Plaintiff's First Cause of Action about this Defendant, Plaintiff alleges as follows :

1. This corporation was a corporation duly organized and existing under the laws of the State of Utah (Paragraph 4, Page 2 of Plaintiff's Complaint);

2. All of the stock of this corporation is owned by the Corporation of the President "(except a few shares placed in the name of its directors to enable them to qualify as directors thereof)". (Paragraph 5, Page 2 of Plaintiff's Complaint);

3. This corporation is engaged in carrying out the financial business of the Corporation of the President (Paragraph 5, Page 2, Plaintiff's Complaint);

4. This corporation already has an option to purchase the Lafayette School for a Federal Building, (Paragraph 12, Page 3 of Plaintiff's Complaint);

5. The Plaintiff while he was a member of the Church of Jesus Christ of Latter-day Saints contributed tithing and has an interest in a trust fund (Paragraph 1, Page 1 of Plaintiff's Complaint);

6. This Defendant in conjunction with other Defendants will prevail upon the United States to build a Federal Building at the site selected here, (Paragraph 20, Page 6 of Plaintiff's Complaint);

7. The Trust Fund of the Corporation of the President and this Defendant can only be used for the members of the Church for the benefit of religion, works of charity, and for public worship and not for the purchase of a site for a Federal Building, (Paragraph 20 (f) Page 7 of Plaintiff's Complaint).

Based upon these allegations insofar as Zions Securities is concerned, Plaintiff claims that Zions Securities should be enjoined from purchasing the property and that the Court should declare that neither Zions Securities nor the Corporation of the President may purchase the site for the erection of the Federal Building nor use any of their assets to the payment in the purchase price thereof, (Paragraph 5 of Prayer on Page 10, Plaintiff's Complaint). To this Complaint, Zions Securities filed a motion to dismiss and a motion to sever the causes of action. A motion to intervene was filed on behalf of Lynn Fausett and Fiametta Fausett adopting the Complaint of the Plaintiff, but allegeing that these people were currently members of the Church of Jesus Christ of Latter-day Saints and have made contributions in tithing

and otherwise to said church. All of these motions were heard before the Honorable Stewart M. Hanson in open Court on the 31st day of March, 1960, and Memorandums were submitted in support of the arguments of all parties concerned. After due deliberation, Judge Hanson then entered a Decree dismissing the lawsuit insofar as the First Cause of Action was concerned against all of the Defendants and dismissing the lawsuit insofar as the Second Cause of Action against all Defendants except Salt Lake City. He held that because of this determination it was unnecessary to pass upon Fauset's motion to intervene. It is from this Order dismissing the causes of action that the Appellant has appealed.

STATEMENT OF POINTS

Zions Securities feels that the sixteen points put forth in Plaintiff's Brief boil down to two particular issues insofar as this Defendant is concerned and will answer the points of the Appellant by these two issues.

POINT I

NEITHER PLAINTIFF NOR FAUSETT HAVE ANY STANDING IN COURT TO SUE ZIONS SECURITIES.

POINT II.

THE TRIAL COURT CORRECTLY DISMISSED THE PLAINTIFF'S COMPLAINT AND DENIED THE INTERVENTION OF FAUSETT BECAUSE THE PLEADINGS ON THEIR FACE SHOW THAT NEITHER THE PLAINTIFF NOR FAUSETT STATE ANY CAUSE OF ACTION AGAINST ZIONS SECURITIES IN THE FOLLOWING PARTICULARS:

(a) THERE IS NO ALLEGATION INVOLVING ZIONS SECURITIES IN THE SECOND CAUSE OF ACTION.

(b) IN THE FIRST CAUSE OF ACTION AS A MATTER OF LAW NEITHER THE PLAINTIFF NOR FAUSETT HAS ANY CLAIM TO ANY TRUST FUND, NOR IS THERE ANY BREACH OF TRUST.

ARGUMENT

POINT I

NEITHER PLAINTIFF NOR FAUSETT HAVE ANY STANDING IN COURT TO SUE ZIONS SECURITIES.

Neither Plaintiff nor Fausett is a stockholder of Defendant Zions Securities, and therefore cannot bring an action for himself or other persons similarly situated against said Corporation. It is admitted by Plaintiff's Complaint that Plaintiff is not a stockholder of the Defendant Zions Securities, (See Paragraph 5, Page 2 of Plaintiff's Complaint); yet Plaintiff's action appears to be in the nature of a stockholder's suit against the Corporation. That a person cannot bring a suit against a corporation of which he is not a stockholder for alleged wrongful conduct of the corporation or its officers in the managing of corporate affairs is so basic a principle of law that it needs little citation of authority. Nor is Plaintiff or Fausett a stockholder of the Corporation of the President, which owns all of the stock of Zions Securities, except for qualifying shares of directors. In discussing who has the right to sue in a "Stockholder's Suit," *Fletcher Cyclopedia Corporations*, Vol. 13, Sec. 5972 states:

"Relief may be obtained, in a proper case, at the suit of a single stockholder, but the fact that no other minority stockholders come in as plaintiffs may properly be considered.

“A stockholder cannot sue unless he is a stockholder in fact at the time the suit is brought. If he has not yet become a stockholder by reason of nonperformance of his contract of subscription or contract for the purchase of shares, or by reason of the fact that his subscription is upon a condition precedent which has not yet been performed by the corporation, or if he has ceased to be a stockholder by reason of a transfer or forfeiture of his shares, he has no standing to complain. A citizen is not a stockholder who may join as plaintiff in a suit affecting a corporation in which the public owns stock. Necessarily there must have been an issue of stock and the acquisition of a right thereto. A ‘contract holder’ in a tontine diamond selling corporation cannot be regarded as a stockholder by reason of the fact that no certificates of stock other than such contracts have been issued.” (Emphasis added.)

It now appears from the Appellant’s Brief that he concedes that the Plaintiff has no standing to complain about the use of the funds by Zions Securities or the Corporation of the President.

“It will be observed that in the Complaint plaintiff does not claim that he is presently a member of the L.D.S. Church. That being so it may be doubted if he may be heard to complain of the manner in which the trust fund held by defendants corporation of the President and Zions Securities are being expended notwithstanding plaintiff while a member of such Church paid his tithing and made other contributions to the L.D.S. Church.” (Emphasis added) (Page 45 of Appellant’s Brief)

If there is any doubt in the Court’s mind about the fact that a person who has been a member of a religious

organization and withdrawn therefrom or has been expelled or excommunicated therefrom has no interest in the church property and cannot represent members of the church in an action to prevent an alleged diversion of church property from its lawful uses. The following are cited in support of this doctrine:

45 *Am. Jur.*, p. 743, "Religious Societies," Par. 18 reads:

"It has been held that an expelled member has no interest in the church property and that excommunicated members whose names have by the valid action of the church been expunged from its membership roll cannot stand for and represent members of the church in an action to prevent the diversion of church property from its lawful uses . . ."

See also *Nance v. Busby*, 91 Tenn. 303, 18 S.W. 874, 15 L.R.A. 801. The above was quoted with approval in *Stewart v. Jarriel*, 206 Ga. 855, 59 S.E. (2d) 368, and the court continued:

"Where, as in this case, the validity of the expulsion of the plaintiffs as members of the church — grow out of a controversy relating to the faith, teaching, doctrine, and discipline of the church, and judgment of the church with a congregational form of government with respect thereto is conclusive upon the civil courts, whether, in the opinion of the judges of such courts the decision appears to be right or wrong, for courts of equity will not interfere with the internal affairs of a religious organization involving questions of faith, practice, doctrine, discipline, ecclesiastical law, rule, custom, or church government."

In *Canovaro v. Brothers of Order of Hermits, etc.* (Pa.) 191 A. 140, the court said:

“If persons who claim to exercise the right of control and disposition are not members, either because of excommunication or otherwise (*Mer-man v. St. Mary’s G. C. Church*, 317 Pa. 33, 176 A. 450) or have changed their membership to a church in another parish, or a change or parish lines has caused them to become members of another church (*St. Casimir’s Polish R. C. Church’s case*, *supra*), *they do not retain any right, nor do they have any voice, in the control or disposition of the property of the church of which they were once members.* Dismemberment of the parish of our Lady of Good Counsel worked this result . . . their right and obligations as members are governed by the laws of that denomination. Since the voluntary act of joining the church subjects them to its rules and regulations. The Roman Catholic canons and the decisions of the appropriate tribunals and officials of the church are decisive of the issues here raised, unless in contravention of the law of the land. The order of dismemberment was binding on the parish members. Division, dismemberment, or suppression or parishes, and the effect thereof on membership are purely ecclesiastical matters, dependent upon the church law as administered by the appropriate authorities and tribunals. See *St. Casimir’s Polish R. C. Church’s Case*, *supra*. 273 Pa. 494 at Page 501, 117 A. 219. The effect of the dismemberment of the parish and the transfer of appellant’s membership therefrom to other parishes was to deprive them of all rights as members in the church property of the parish from which they were transferred. Church membership is an ecclesiastical matter, not temporal. *There is no property right in membership, and there could be no*

property right in membership, and there could be no property rights in lay members except through their membership in the congregation.” (Emphasis added)

See also, *Nelson v. Monitor Congregational Church, et al.*, 74 Or. 162, 145 P. 37, where the court said:

“The plaintiff is not shown to be a member of either of the church organizations mentioned and hence not in a position to question the act of any of these societies in the matter of conveying its property. We find in 34 Cyc. 1172, note 88, the following:

‘A nonmember of the church or society cannot maintain an action to regulate the use of the church property, even though he was one of the original grantors or was formerly a member of the society.’ ” (Emphasis added)

The same principle of law would apply if a group or the entire congregation withdraws.

In *Holt v. Trone*, 341 Mich. 169, 67 N.W. (2d) 125 where Plaintiffs were removed as elders of the church, the court said:

“In the case at bar plaintiffs were removed as elders of the church by vote of the membership of the church.

“The court finds that the plaintiffs were not elders of the Joseph Campau Church of Christ at the time of filing this bill of complaint and had no rights in or to the church property, either as officers of said church or in their individual capacity; that the right to the use and control of the church property is vested in the church body or congregation acting through its trustees.”

In *Presbytery of Bismarck v. Allen*, 74 N.D. 400, 22 N.W. (2d) 625 the court quotes from the leading case of *Watson v. Jones*, 13 Wall (US) 679, 20 L. Ed. 666:

“It is obvious that the case at bar falls in the third class. The First Presbyterian Church of Leith organized as a Presbyterian church. For more than twenty-five years it continued as an integral part of a larger church body; it recognized the authority and control of the so-called higher judicatory; it incorporated to promote religious worship according to the usages of the Presbyterian Church, which at the time was called the Presbyterian Church in the United States of America; its trustees were bound by the general laws, rules, and customs of said Presbyterian Church.

“In *Watson v. Jones*, supra, the court concludes its opinion in the following words: ‘But we need pursue this subject no further. Whatever may have been the case before the Kentucky court, the appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one which they belonged when the difficulty first began. *Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of its which is the subject of this suit.*’ ” (Emphasis added)

See *Trustees of Pencador Presbyterian Church v. Gibson*, 26 Del. Ch. 375, 22 A (2d) 782 wherein the court said:

“The congregation may secede, but they cannot take with them the church property even if their action is unanimous. *Trustees of Presbytery v. Trustees of Presbyterian Church of Weehawkin*, 8 N.J.L. 572, 78 A. 207. And this is for the reason, as will hereafter be shown, that the church property does not belong to the congregation.”

Even if the assumption is made for the purpose of argument only that there is a fund held by Zions Securities which is a trust fund of the Church of Jesus Christ of Latter-day Saints no relief should be granted the Plaintiff or Fausett because neither has any standing to sue.

If the alleged trust were a private trust (which it is not) there would be no doubt that the Plaintiff or Fausett, if a beneficiary could maintain a suit in his behalf to enforce the trust. In the present case, however, it is alleged by the Plaintiff and Fausett that it is a charitable trust, (Paragraph 7, Page 2 of Complaint), and in a charitable trust the beneficiary is the community itself. *Scott on Trusts*, Second Edition, 1956, p. 2614. A private individual cannot maintain a suit to enforce the charitable trust. *Dickey v. Wolker*, 321 Mo. 2335, 11 S.W. 2d 278, 62 A.L.R. 858, 1928, cert. denied 279 U.S. 839, 49 S. Ct. 252, 73 L. Ed. 986, 1929.

Scott on Trusts, Section 391, pages 2056-2058, has the following to say about the enforcement of charitable trusts, to wit:

“On the other hand, a person who has no interest in the performance of the trust, no interest other than as a member of the community, cannot maintain a suit for the enforcement of the trust. He may, if he can, induce the Attorney General to bring a suit, and the Attorney General may, if he chooses, bring the suit, only if the complaining person is willing to act as relator and assume responsibility for the payment of costs. But a third person who has no special interest cannot himself maintain the suit. If a third person were permitted to sue as a matter of right it would be possible to subject the charity to harassing litigation. Thus where a testator left his estate in trust to establish and maintain an art museum in a city, a resident and taxpayer of the city cannot maintain a suit to enforce the trust. The mere fact that a person may in the discretion of the trustee become a recipient of a benefit under the trust does not entitle him to maintain a suit for the enforcement of the trust. Thus in a case in Connecticut where an estate was left in trust to maintain a home for needy female teachers in a certain country, it was held that a suit to enforce the trust could not be maintained by a group of needy teachers. Chief Justice Wheeler however, dissented on the ground that the class of beneficiaries was small enough so that its members had a sufficient interest to permit them to maintain a suit for the enforcement of the trust. Where a trust is created to maintain a charitable institution, the managers and other agents or employees engaged in the conducting of the institution have not such an interest in the performance of the trust as to permit them to maintain a suit for its enforcement.

“The question remains whether the settlor or his heirs or personal representatives can maintain a suit for the enforcement of a charitable

trust. *As we have seen, the settlor cannot revoke or modify a charitable trust created by him unless he has reserved a power to do so. After the trust is once created, he has no beneficial interest in the trust property. Accordingly, it has been held in a number of cases that the settlor has no standing to maintain a suit for the enforcement of a charitable trust. There are, however, cases in which the opposite result has been reached. But where the settlor has a special interest in the performance of the trust he can maintain a suit to enforce it. Thus in a case in New York it was held that where an association of the alumni of an educational institution gave a fund to the institution for the establishment of a professorship, reserving power to nominate the professor, the association could maintain a suit to enforce the trust.*" (Emphasis added)

The *Restatement of Trusts*, Section 391 (d) states:

"d. Person having no special interest. A suit for the enforcement of a charitable trust cannot be maintained by persons who have no special interest in the enforcement of the trust. The mere fact that as members of the public they benefit from the enforcement of the trust is not a sufficient ground to entitle them to sue, since a suit on their behalf can be maintained by the Attorney General."

To the same effect see 10 *Am. Jur.*, "*Charities*," Sec. 116, 8670.

In the present case, neither the Plaintiff nor Fausett is the attorney general, nor is either a trustee of the trust, so neither has any standing to sue on either basis. The remaining question is whether or not the Plaintiff

or Fausett has any special interest in the trust to entitle either to sue. It has been held that a special interest is something identifiable that separates the individual from the community — something that gives the individual rights outside his rights as a community member. For example it has been held that a trust for the salary of a minister of the church can be enforced by the minister (*First Congregational Society in Raynham v. Trustees*, 23 Pick, 148, (Mass.) 1839); that a trust set up to endow a professional chair may be enforced by the professor occupying the chair (*Scott on Trusts*, Second Edition, 1956, p. 2758.); that property given in trust to a charitable corporation may be enforced by the corporation (*Harvard College v. Armory*, 9 Pick 446. (Mass.) 1830); or where it is provided that preference shall be given to certain persons in the performance of a trust these persons can maintain a suit to enforce the trust. (*Darcy v. Kelley*, 153 Mass. 433, 26 N.E. 1110, 1891). In the present case neither the Plaintiff nor Fausett possesses any quality to differentiate him from any other member of the Church of Jesus Christ of Latter-day Saints or of the community itself. He is literally one of a million, and to allow him standing would be to strain the idea of special interest to the point of ridiculousness. The Plaintiff's remedy lies in asking the Attorney General or the Corporation of the President or Zions Securities to bring suit. Any other remedy would open up all charitable institutions to a multitude of suits by malcontents, and would dissipate the funds of the charity in legal proceedings.

POINT II.

THE TRIAL COURT CORRECTLY DISMISSED THE PLAINTIFF'S COMPLAINT AND DENIED THE INTERVENTION OF FAUSETT BECAUSE THE PLEADINGS ON THEIR FACE SHOW THAT NEITHER THE PLAINTIFF NOR FAUSETT STATE ANY CAUSE OF ACTION AGAINST ZIONS SECURITIES IN THE FOLLOWING PARTICULARS:

(a) THERE IS NO ALLEGATION INVOLVING ZIONS SECURITIES IN THE SECOND CAUSE OF ACTION.

In Plaintiff's Second Cause of Action they allege that on January 14, 1959, Salt Lake City entered into a contract with the Corporation of the President whereby the city agreed to sell to the Corporation of the President the property known as Forest Dale. (Paragraph 3, Page 10-11 of Plaintiff's Complaint.) The prayer for relief in the Plaintiff's Second Cause of Action simply asks, "That the contract above mentioned be declared null and void." (Paragraph 1 of Prayer, Page 11 of Plaintiff's Complaint.)

In Plaintiff's Second Cause of Action, he does not claim that Zions Securities was in any way tied into or affected by the contract with Salt Lake City.

Rule 12 (b) (6) *U.R.C.P.* was designed particularly to cover matters of this kind. The motion of Zions Securities to dismiss upon the grounds that no claim is stated against this Defendant is well taken. This motion to dismiss performs substantially the same function as the old common law rule on demurrer. (See *Moore's Fed. Prac.*, Vol. 2, p. 2244). See also 41 *Am. Jur.*, "PLEADING," Sec. 212, p. 442, wherein it states:

“A pleading may be subject to a general demurrer either because its allegations disclose no cause of action or defense, or because of the want of definite allegations essential to a cause of action or defense. Thus, a pleading which states only legal conclusions instead of facts is demurrable.”

The Utah case of *Hunt v. Monroe*, 32 Utah 428, 435, 91 Pac. 269 stated:

“It is elementary that a complaint good in law must not only state a complete cause of action against the Defendant but it must also show a right of action in the plaintiff.”

The only issue raised by the Appellant in connection with this particular point is found in Point XI and Point XIV of Appellant's Brief, and the argument is identical on the two points, since Point XIV simply says that they adopt what is said under Point XI. In this particular instance, they argue that to allow the Defendant, Corporation of the President or Zions Securities to buy any property is to violate the Constitution of the state of Utah and in particular Section 4, Article I of said Constitution which reads as follows:

“... There shall be no union of church and state, nor shall any church dominate the state or interfere with its functions.” ...

First, there has been no dealing with the state of Utah in the case before the Court. Second, even if it were assumed that the contract was between the church and the state there has been no union of church and state.

In the present case there is a contract for sale of land to the Corporation of the President and not Zions Securities. The purchase price or terms of the contract have not been attacked as being unconsonable or unfair to either party, nor do the actions of either party point to overreaching. In fact, both parties seem well aware of what is happening, and appear to agree that the sale of land will be beneficial to the community.

Any interpretation of this section of the Utah Constitution to prevent the sale of public land to religious institutions would be beyond the meaning of the clause, and it would hinder the activity of both the state and religious groups in their dealing one with the other. The reason for the provision in the Constitution is to prevent religions from applyng pressure because of their size and influence on the state government. In the present case where the Church is acting in the same capacity as a private person there is no reason to invoke this provision. In the beginning of our country and our state when all land was the property of the state the interpretation urged by the Plaintiff would mean that the government and church could not contract for the sale of the land, and that all religious groups would have to wait to purchase land from private individuals — such interpretation was never intended nor such action contemplated.

It is to shape the word “union” beyond reason to say it means “there shall be no vendor-vendee relation between church and state.”

(b) IN THE FIRST CAUSE OF ACTION AS A MATTER OF LAW NEITHER THE PLAINTIFF NOR FAUSETT HAS ANY CLAIM TO ANY TRUST FUND, NOR IS THERE ANY BREACH OF TRUST.

Substantially the only difference between the Complaint of the Plaintiff and the Complaint in Intervention of the Fausetts is that it is alleged that the Fausetts are now, and at all times herein alleged, have been members of the Church of Jesus Christ of Latter-day Saints, and that they have made contributions in tithing and otherwise to said church; that by reason of said contribution being so made and being members of the Church, they have a vested interest in the trust fund mentioned in the complaint filed. It is admitted that the Plaintiff Stone is not a member of the church.

Since Zions Securities is a corporation organized for pecuniary profit it can do nearly anything a natural person can do. Only a stockholder could complain. Notwithstanding, we present the following cases which discuss the matter of the trustee's relationship occupied by a religious organization in respect to its members.

In *McNeilly v. First Presbyterian Church*, 243 Mass. 331, 137 N.E. 691 the court held:

“It follows that the gifts to the corporation in the case at bar whereby its was enabled to acquire land, a meeting house and manse, were gifts to a valid public charity. None of these gifts were made upon any express trust. They simply were handed over to the corporation with only the implication which arise by law from such donations.

“The facts as to the collection of money, the establishment of the church and the organization of the corporation are indistinguishable in their legal aspects from those appearing in litigation concerning the religious society before this court in *Warner v. Bowdoin Square Baptist Society*, 148 Mass. 400, 19 N.E. 403. It there was said by Mr. Justice Holmes at page 404 of 148 Mass. at page 403 of 19 N.E.:

“ ‘It is too well settled to admit of argument that the foregoing facts do not make the legal corporation a trustee for the church.’

“No such trust is shown in the case at bar because the gifts were all to the corporation without express trust or condition of any kind. These gifts being thus free from express trust or limitation, must be held to have been intended for the promotion of the purposes for which the corporation was instituted and subject to all the conditions thereby imported by the nature of the donee. The corporation is a creature of the law. It possesses those powers, is subject to the obligations and enjoys the immunities and privileges conferred upon it by the law of the land. A religious society, when it becomes a corporation, rests upon the foundation established for it by the law. The corporation defendant in the case at bar was organized as a religious society under the general laws of this commonwealth.

“The simple declaration implied from the name and from the adoption of the by-laws by the corporation that the policy of a particular denomination as to the selection of ministers would be followed, cannot be regarded as an abandonment of its constitutional powers. It does not convert free gifts into gifts upon an implied trust that such policy shall be observed. These gifts were to the corporation upon the charity

that they should be employed in general for the worship of God. There is no contention that the general charity for which the corporation was organized has been perverted in any other particular than in the selection of the minister.

“The present majority of the corporation constitute its dominating power by regular succession and in due order. *There is no such trust imposed on the property as requires inquiry into the conformity of present members, or the regularity of the corporate action brought about by them, to the views of ministerial call entertained by the great body of Presbyterians or established by the ecclesiastical policy of that denomination.* See *Watson v. Jones*, 13 Wall.” (Emphasis added)

Although there is no trust relationship between Zions Securities and Plaintiff or Fausett, it may be helpful to the Court to review the following authorities as to the standing of a donor to a fund devoted to charity in a court of equity as to its disposition and control:

See 14 *C.J.S.* “Charities,” p. 526 wherein it states:

“As a general rule, the contributors to a fund creating a trust for mere charitable purposes cannot call the trustee of that fund to an account for a misapplication of the fund or any other breach of the trust. There must be something peculiar in the transaction, beyond the mere fact of contribution, to give a contributor to a charitable fund a foothold in court to enable him to question the disposition of the fund.” (See also 10 *Am. Jur.*, “Charities,” Sec. 116, page 670 to the same effect.)

The case of *Amundson v. Kletzing — McLaughlin* *Mem. Found. College*. 247 Iowa 91, 73 N.W. 2d, 114,

was a case where the heirs sought to compel an accounting of a fund and claimed it was being misapplied. The trial court dismissed their complaint and the state Supreme Court affirmed. Headnote No. 7 clearly states the holding as follows:

“Where the donor has effectually passed out of himself all interest in the fund devoted to a charity, neither he nor those claiming under him have any standing in a court of equity as to its disposition and control.”

In the *Amundson Case*, *supra*, the court further stated at Page 117:

“Plaintiffs’ only interest in the college is a sentimental one which was not sufficient basis for enlisting aid of the court, however laudable their purpose may be in seeking such aid. No financial or other advantage which the law recognizes will accrue to plaintiffs from execution of the trust. *Nor have they suffered any financial loss from the matters of which they complain. The mere fact that as members of the public they may benefit from the enforcement of the trust does not entitle them to sue.*” (Emphasis added)

In *Society of California Pioneers, et al, v. McElroy, et al*, 63 C.A. 2d 332, 146 P. (2d) 962, 967, the court states as follows:

“The law is well settled that when property has become fully vested in trustees for a valid charitable purpose, neither the creator of the trust nor his heirs or assigns have any standing in court in a proceeding to compel the proper execution of the trust, except as relators.”

Where the testor donated to a home for wayward girls in the City of Portland, an attempt was made thereafter by his heirs to control disposition of the fund, the court held:

“Plaintiffs (the heirs) have no more interest in the property involved in the litigation than if they were absolute strangers to the blood of the benevolent testator. The generous fund provided for said home belongs to public charity and one not interested directly in the administration of that fund or the duly appointed officer of the state cannot maintain a legal proceeding for an accounting or the control of the administration of said fund.” (Citing numerous cases) *Wemme et al v. Noves et al*, 134 Or. 590, 294 P. 602, 603 (1930).

Therefore, Plaintiff has no standing to interfere in any way with the conduct and management of said fund. See, also, *Fairbanks v. City of Appleton*, 249 Wisc. 476, 24 N. W. (2d) 893.

The *Restatement of Trusts*, Section 391 (d) states:

“d. Person having no special interest. A suit for the enforcement of a charitable trust cannot be maintained by persons who have no special interest in the enforcement of the trust. The mere fact that as members of the public they benefit from the enforcement of the trust is not a sufficient ground to entitle them to sue, since a suit on their behalf can be maintained by the Attorney General.”

Even if we assume for the purpose of this argument that there is a trust fund in which Plaintiff and Fausett have an interest and if we further assume that they can

bring an action in connection with the administration of such trust fund, the court still properly dismissed the complaint because there has been no breach of the trust. Plaintiff's only allegation is that the "trust fund" is being used for the purchase of a site for the proposed Federal Building. Insofar as Zions Securities is concerned, the corporate laws of the State of Utah (*U.C.A.* 1953, 16-2-14) give it the power to contract and the power to buy and sell real estate or even the power to make donations for the public welfare or for charitable, scientific, religious or educational purposes. (See particularly the 1955 amendment to 16-2-14.)

The complaint of the Plaintiff and Fausett alleges:

"7. That the purpose or object of defendant, Corporation of The President of the Church of Jesus Christ of Latter-day Saints, as stated in its Articles of Incorporation is to acquire, hold, dispose of such real and personal property as may be conveyed to or acquired by said Corporation for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society for the benefit of religion, *for works of charity*, and for public worship." (Emphasis added) (Paragraph 7, page 2, Plaintiff's Complaint.)

In the Articles of Incorporation of the Corporation of the President it states:

"Second: The object of this corporation shall be to acquire, hold and dispose of such real and personal property as many be conveyed to or acquired by said corporation for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, for the benefit of religion, *for works of charity* and for

public worship. Such real and personal property may be situated, wither within the State of Utah, or elsewhere, and *this corporation shall have power, without any authority or authorization from the members of such Church or religious society, to grant, sell, convey, rent, mortgage, exchange, or otherwise dispose of any part or all of such property.*" (Emphasis added)

Thus it is abundantly clear that both by the allegations and by the laws of this state Zions Securities and the Corporation of the President can use their funds for "works of charity." The use of funds for gifts for governmental or municipal purposes is a use for "works of charity." This is clearly stated in 10 *Am. Jur.*, "Charities," Section 79, p. 641 as follows:

"A Gift in trust for a legal purpose that will tend to reduce taxation and lessen the burdens of government is a charitable gift. Gifts to the government for its general benefit or for the reduction of the state or national debt are valid. In this connection, gifts for varied municipal purposes, whether general or specific in terms, are usually sustained as valid charitable gifts. The American Law Institute Restatement is in accord with these principles, as it states that a trust for government or municipal purposes is charitable, although the purpose is not to supply the community with any specified facilities. Therefore, a gift of land in trust for the use of the inhabitants of a town is a gift for a valid charitable purpose.

"Likewise, it is a valid and enforceable charity to give funds for the erection of a public building to be used for governmental purposes, for general municipal improvements, for the improvement of the municipal streets, including

paving, cleaning, and lighting them, for the provision of a good and wholesome water supply for the city or community, for municipal fire equipment, or for the improvement of the municipal police force. For the same reasons, a gift of a fund to be applied in constructing a pesthouse constitutes a public charity, as do gifts for the laying out, improvement and repair of highways and bridges, or for the purchase of life boats. A gift for the establishment or support of a public park also is a charitable gift. Similarly, a gift to preserve or develop the beauties of nature is a valid charity for the purpose which might have been undertaken by a governmental agency at the public expense.” (Emphasis added)

See also *Restatement of Trusts* (Second) Section 373 which states:

“A trust for the erection or maintenance of public buildings, bridges, streets, highways, parks or other public works or for other governmental or municipal purposes is charitable.”

The mere fact that the gift or bequest may also work a benefit to the federal taxpayers does not change the charitable nature of the gift. (See *Re Tarrant*, 38 Cal. 2d 42, 237 P. 2d 505, 28 A.L.R. 2d 419.)

See also *Scott on Trusts*, Vol. 3, wherein he discusses charitable trusts and states the following on pages 1998 and 1999:

“373. Governmental or municipal purposes. *A trust for the erection or construction or maintenance of public works is charitable.* In the Statute of Charitable Uses are included trusts ‘for repair of bridges, ports, havens, causeways,

churches, sea-banks and highways.' It has been held that a trust for the purpose of supplying the community with these or other facilities, which are usually supplied at the expense of taxpayers, is charitable. *Thus the courts have upheld trusts for the erection of a town hall or similar public building; for the construction or repair of highways; for the erection or maintenance of bridges; for the establishment or maintenance of public parks; for the construction of water works; for protection against fire; and the like. A trust may be charitable, not only because it is for a governmental or municipal purpose, but because it is also for the relief of poverty, or for the advancement of education, or for the promotion of health. Thus a trust to maintain a public almshouse, or a public school, or a municipal hospital, is clearly charitable.*

“373.1. General Trusts for public purposes. *A trust for the benefit of the nation, or a state of municipality is charitable, although the particular method of applying the property is not provided for.* Thus trusts for the following purposes have been upheld; for the benefit of a town; for purposes conducing to the good of a certain county and parish; for public works of a city; for the benefit of the nation; for general town expenses; for the benefit and ornament of a town; for the improvement of a city.” (Emphasis added)

It is impossible to see how the action of the Defendant Zions Securities or the Corporation of the President could be deemed anything but charitable in light of the prevailing American authority on the subject. Nor is there any validity in the argument that the “works of charity” be confined to the members of the Church. The

clauses contained in the second article of the Articles of Incorporation each stand alone as purposes of the Corporation of the President. It is only a stilted interpretation that would make "works of charity" apply only to the Mormon Church. That the interpretation of "works of charity" must apply to all people is borne out by the history of the Mormon Church since the Church from its beginning as given to such charities as the Boy Scouts of America and the United Fund. But even if the court should adopt the interpretation that "works of charity" must apply to the benefit of the members of the Mormon Church, it would not make the act done by the Corporation of the President a breach of trust since this court held in *Staines v. Burton*, 17 Utah 331, 53 Pac. 1015, that a trust for "schools, parks, water works, planting forests, acclimatizing plants" was a charitable trust and that it was for the benefit of the members of the Church of Jesus Christ of Latter-day Saints.

Therefore, taking the interpretation most favorable to the Plaintiff or Fausett there has been no breach of trust, since the act was a "charitable work" and it benefited the members of the Church of Jesus Christ of Latter-day Saints.

CONCLUSION

This Defendant Zions Securities, respectfully submits that:

(1) Neither Plaintiff nor Fausett have any standing in court to sue this Defendant;

(2) The Second Cause of Action fails to state *any* claim against this Defendant;

(3) There is no trust fund that either Plaintiff nor Fausett can have any legal interest in; and

(4) There has been no breach of any “trust” because lawfully this Defendant and the Corporation of the President can lawfully use their funds for “works of charity” and the use of funds for a site for a Federal Building is a “work of charity” within the law.

Respectfully submitted,

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Corporation*