

1992

# St. George Thrift and Loan v. Raymond L. Lowe : Raymond L. Lowe v. Gregory A. Knox : Addendum

Utah Court of Appeals

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Gregory A. Knox; Pro Se. Gary W. Pendleton; Attorney for Appellee Raymond L. Lowe. Michael D. Hughes; Attorney for Appellee St. George Thrift

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## ADDENDUM

FILED  
FIFTH DISTRICT COURT  
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WASHINGTON COUNTY  
BY \_\_\_\_\_ 6

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St. George, Utah 84770  
Ph: 628-4411

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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR  
WASHINGTON COUNTY, STATE OF UTAH

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ST. GEORGE THRIFT AND LOAN, )

Plaintiff, )

vs. )

RAYMOND L. LOWE, )

Defendant. )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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RAYMOND L. LOWE, )

Third-Party Plaintiff, )

vs. )

GREGORY A. KNOX, )

Third-Party Defendant. )

Civil NO. 910500109 DC

(James L. Shumate)

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The matter came on for hearing on Third-Party Plaintiff's Motion for Summary Judgment on July 22, 1992. Third-Party Plaintiff appeared by and through its attorney, Gary W. Pendleton, and Third-Party Defendant appeared in person. Having read the memoranda

filed in support of and in opposition to the pending Motion for Summary Judgment and having reviewed the file and the deposition of Third-Party Defendant and being fully advised in the premises, the Court made the following:

#### FINDINGS OF FACT

1. On April 2, 1986, Third-Party Plaintiff as seller and Third-Party Defendant as purchaser entered into a contract for the purchase of a certain residence.

2. In connection therewith, Third-Party Defendant executed a trust deed note in favor of Third-Party Plaintiff in the principal amount of \$68,900.00, bearing interest at the rate of 12% per annum.

3. On April 4, 1986, Third-Party Defendant also executed a Guaranty Agreement in favor of Third-Party Plaintiff.

4. The subject trust deed note was thereafter assigned to St. George Thrift and Loan for the purpose of securing an obligation which Third-Party Plaintiff owed to that institution.

5. Thereafter, Third-Party Defendant defaulted in the payment of the subject obligation and St. George Thrift and Loan, through regular non-judicial proceedings, foreclosed the subject trust deed note by a sale conducted on October 8, 1991.

6. On October 8, 1991, the fair market value of the subject property did not exceed \$58,000.00.

7. A deficiency in the amount of \$25,987.00 arose in connection with the

foreclosure sale.

8. On December 30, 1991, St. George Thrift and Loan assigned Third-Party Plaintiff the right to pursue the deficiency against Third-Party Defendant.

9. Third-Party Plaintiff initiated this action for the purpose of recovering the balance of the obligations due under the terms of the subject trust deed note from Third-Party Defendant.

10. Third-Party Defendant defends on the theory that Third-Party Plaintiff misrepresented the value of the subject residence.

11. Third-Party Defendant is a graduate of J. Reuben Clark Law School.

12. Third-Party Defendant concedes that Third-Party Plaintiff in negotiating the sale of the subject residence, never made any statement about the appraised value of the property but merely advised that the Third-Party Defendant of the Third-Party Plaintiff's asking price.

13. Third-Party Defendant however contends that Third-Party Plaintiff was in possession of "special knowledge" regarding other factors which impacted upon the value of the property which included (1) the timetable for the construction of the roadway which now connects the east end of St. George Boulevard with the Panorama Park area and (2) the ownership of adjacent property.

14. Third-Party Defendant contends that Third-Party Plaintiff misrepresented the status of the funding available for the completion of the above-mentioned roadway and that

the roadway was not completed for a period of two years after third-party Plaintiff anticipated its completion.

15. Concerning the allegation that Third-Party Plaintiff misrepresented the ownership of the adjacent property, Third-Party Defendant has testified as follows:

Q. And therefore, you felt that even if it was going to take three to five thousand dollars to bring the property up to \$69,500.00 in value, that you had not been injured or hadn't entered into an unadvantageous [sic] bargain?

A. That's correct. And also I was influenced by the representation concerning the road. And there was one other representation that he made which was concerning the fact that behind the property line was BLM land. And he said that because it was BLM land that the view would not be obstructed.

Q. Was it BLM land?

A. I don't know.

Q. Do you claim anything by that representation?

A. Yes.

Q. What do you claim?

A. I claim that if, in fact, it's not BLM -- well, the inference was that the view would not be obstructed.

Q. Has the view been obstructed?

A. I understand that it has to a degree. Yes. I don't know that. I haven't been out to look at it. But I am told that it has.

Q. Do you claim that affected the value of the property?

A. I claim that at the time of the transaction that it influenced my perception of the value of the property.

Q. Did it in fact affect the value of the property?

A. I don't know.

16. Other than the foregoing, Third-Party Defendant cannot identify any item which Third-Party Defendant contends to constitute a misrepresentation of material fact.

17. Immediately upon purchasing the property, Third-Party Defendant hired an appraiser by the name of C.G. Miller who opined that the subject property would be worth \$69,500.00 upon the completion of certain improvements costing between three and five thousand dollars.

18. Mr. Miller provided his opinion regarding the subject property by a letter to Third-Party Defendant dated May 1, 1986.

19. After reviewing Miller's appraisal, Third-Party Defendant concluded that he had not entered into a bad bargain, given the low down payment and buyer financing which was available under the terms of the agreement between Third-Party Plaintiff and Third-Party Defendant.

20. Third-Party Defendant's trust deed note originally came due in a balloon payment which was to be paid in 1989.

21. In 1989, Third-Party Defendant approached Third-Party Plaintiff and raised the issues of the delay in the completion of the above-mentioned roadway and the ownership

of the adjacent property and, as the result of ensuing negotiations, obtained a two-year extension of the subject trust deed note.

22. Third-Party Defendant contends that he has not waived his claims for misrepresentation and in that connection has testified:

Q. So in connection with the extension in 1989, you raised the funding of the road and the representation regarding the view of the property or the view that was enjoyed from the property?

A. That's correct.

Q. Your position is that basically you had waived any claim arising out of any misrepresentation in that connection in exchange for the extension, is that what you're saying?

A. That was what I attempted to do when I negotiated with Mr. Lowe. However, Mr. Lowe did not concede either of these issues. He denied them both, as a matter of fact.

Q. Alright. But you raised them. And, in connection with these claims, that you asserted, you received the two-year extension?

A. That's correct.

Q. And would you consider that to be, and I'll use this term since you are law-trained, would you consider that to be an accord and satisfaction in connection with these two claims?

A. I would not because of the fact that he did not concede them.

Q. So unless somebody concedes a claim that you are making, that your assertion of that claim, in your opinion, cannot provide consideration for extension?

A. I'm not saying that at all. I just know -- there may be -- I haven't researched that, you know. I mean, I wouldn't -- you noticed I didn't

raise those issues in my defense, but I'm not saying that -- no, because I don't know for sure. But I'm not -- I didn't raise those in my defense.

33. Furthermore, Third-Party Defendant sold his interest in the subject property in 1989 for the sum of \$68,900.00.

34. Third-Party Defendant then later repurchased the property from the party to whom he had sold it. Again, the purchase price was \$68,900.00.

35. Third-Party Plaintiff has reasonably incurred attorney's fees in the amount of \$2,000.00 in the prosecution of this action and has reasonably incurred court costs totaling \$265.50.

Based upon the foregoing Findings of Fact the Court now makes the following:

#### CONCLUSIONS OF LAW

1. After having obtained possession of the subject real property and the letter of opinion from C.G. Miller, Third-Party Defendant had full opportunity to discover any alleged fraud or mistake and nevertheless failed to make further inquiry regarding the fair market value of the subject real property notwithstanding the fact that reason would have dictated such action.

2. Accordingly, any claim based upon allegation of fraud or mistake would have been barred under the provisions of U.C.A. 78-12-26(3) from and after May 10, 1989.

3. Furthermore, in the event an action for innocent misrepresentation is governed under the provisions of U.C.A. 78-12-25(3), any such cause would have been barred under that

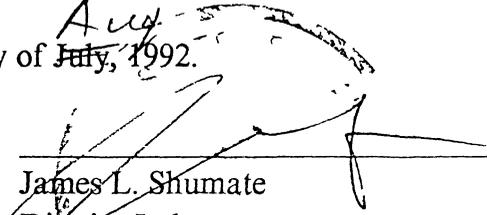
statute from and after May 10, 1990.

4. Accordingly, Third-Party Defendant's counterclaim should be dismissed on the basis that said counterclaim is barred by operation of the statute of limitations.

5. Third-Party Plaintiff is entitled to judgment against Third-Party Defendant in the amount of \$25,987.00, together with prejudgment interest at the contract rate, 12% per annum, from and after October 9, 1991, to date of judgment, costs of court in the amount of \$265.50, and attorney's fees under the provisions of the subject trust deed note in the amount of \$2,000.00.

LET JUDGMENT BE RENDERED ACCORDINGLY.

DATED this 10 day of ~~July~~ <sup>Aug</sup>, 1992.

  
\_\_\_\_\_  
James L. Shumate  
District Judge

**MAILING CERTIFICATE**

I do hereby certify that on this \_\_\_\_\_ day of July, 1992, I did personally mail a true and correct copy of the above and foregoing Notice to:

Gregory A. Knox  
1158 Judson St.  
Redlands, Calif 91274

Michael D. Hughes  
Attorney at Law  
148 East Tabernacle  
St. George, Utah 84770

\_\_\_\_\_  
Secretary

FIFTH DISTRICT COURT

'92 AUG 11 AM 8 21

WASHINGTON COUNTY

BY \_\_\_\_\_

Gary W. Pendleton (2564)  
Attorney for Raymond Lowe  
150 North 200 East, Suite 202  
St. George, Utah 84770  
Ph: 628-4411

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IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR  
WASHINGTON COUNTY, STATE OF UTAH

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ST. GEORGE THRIFT AND LOAN, )

Plaintiff, )

JUDGMENT

vs. )

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RAYMOND L. LOWE, )

Civil NO. 910500109 DC

Third-Party Plaintiff, )

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(James L. Shumate)

GREGORY A. KNOX, )

Third-Party Defendant. )

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The matter came on for hearing on Third-Party Plaintiff's Motion for Summary Judgment on July 22, 1992. Third-Party Plaintiff appeared by and through his attorney, Gary W. Pendleton, and Third-Party Defendant appeared in person. Having read the memoranda

filed in support of and in opposition to the pending Motion for Summary Judgment and having reviewed the file and the deposition of Third-Party Defendant and being fully advised in the premises, the Court made its Findings of Fact and Conclusions of Law and entered judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Third-Party Plaintiff, Raymond L. Lowe, have and recover judgment against Third-Party Defendant, Gregory A. Knox, as follows:

\$25,987.00 principal

2,468.77 prejudgment interest at 12% from 10/9/91

265.50 costs of court

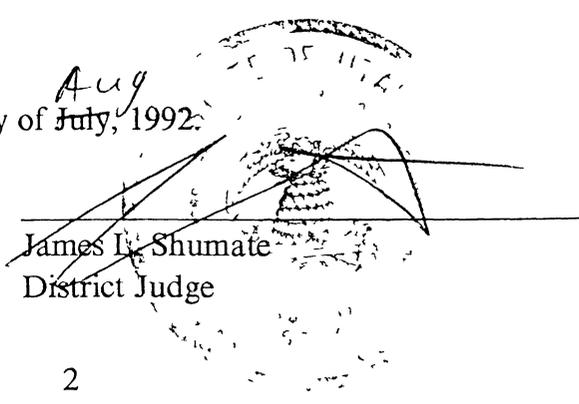
2,000.00 attorney's fees

\$30,721.27 TOTAL JUDGMENT

together with interest at the rate of 12% per annum thereafter until the judgment is paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Third-Party Defendant's Counterclaim against Third-Party Plaintiff is hereby dismissed with prejudice and upon the merits on the basis that said claim is barred by operation of the statute of limitations.

DATED this 10 day of <sup>Aug</sup> ~~July~~, 1992.

  
James L. Shumate  
District Judge

MAILING CERTIFICATE

I do hereby certify that on this \_\_\_\_-day of July, 1992, I did personally mail a true and correct copy of the above and foregoing Notice to:

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