

1962

Homer W. Hanson and Beth P. Hanson v. Beehive Security Co. : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

HOMER W. HANSON and
BETH P. HANSON, his wife,

Plaintiffs - Respondents,

— vs. —

BEEHIVE SECURITY COMPANY,
et al.,

Defendant - Appellant.

Case
No. 9682

BRIEF OF RESPONDENTS

Appeal From the Judgment of the Third Judicial
District Court for Salt Lake County,
HONORABLE JOSEPH G. JEPSON, JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

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et al.,

Defendant - Appellant.

Case
No. 9682

BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

This is an action to determine the validity and effect of a real estate mortgage entered into between Willard J. Stringer, Viola Stringer and Beehive Security Company.

DISPOSITION IN LOWER COURT

This case is an appeal by the Defendant, Beehive Security Company, of the judgment entered April 6, 1962, in Civil No. 132132 of the District Court of Salt

Lake County by Judge Joseph G. Jeppson wherein the court decided that the mortgage entered into between Willard J. Stringer, Viola Stringer and Beehive Security Company was cancelled, annulled, rescinded and held for naught.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek to have the judgment of the lower court in their favor sustained.

STATEMENT OF FACTS

For purposes of convenience the parties shall be referred to as they appeared below.

On July 5, 1961, the Plaintiffs entered into an Earnest Money Receipt and Offer to Purchase, wherein they appeared as Sellers, and Bonneville Securities Corporation, a Utah Corporation, appeared as Buyer. The properties to be sold under this Agreement were nine four-plexes and one home owned by the Plaintiffs, all of which property is located in Davis County, Utah. Lines 27 and 28 of the Earnest Money Receipt and Offer to Purchase provide as follows: "Contract of Sale or Instrument of conveyance to be made on the approved form of the Salt Lake Real Estate Board in the name of BONNEVILLE SECURITIES CORP. (In process of being formed.)" (TR-75 and Exhibit 7.)

On August 1, 1961, the parties to the transaction met in the office of Lothaire Rich, a Lawyer and Real Estate

Broker, to complete the transaction. The necessary deeds for the accomplishment of this transaction were prepared by Lothaire Rich and, at the time of closing, there were a total of ten deeds — five of which had the name of Bonneville Securities Corporation filled in as Grantee, and the other five deeds were blank as to the Grantee (TR-6, 7). During the course of the closing of the transaction, some of the documents connected with the transaction were still in the process of being typed and there was considerable commotion and movement of people in and out of the office during the closing (TR-8, 9). In answer to Plaintiffs' question as to why some of these deeds were left blank (as to Grantee) they were told that they would be taken care of (TR 32). At all times during this transaction, Plaintiffs dealt with Bonneville Securities Corporation and intended that Bonneville Securities Corporation's name be filled in as the Grantee in all of the deeds connected with the transaction, (TR-10) and at all times were relying on their Attorney, Mr. Lothaire Rich, to take care of this. Both Mr. and Mrs. Hansen testified that they at no time knew that any other name other than Bonneville Securities Corporation was to be filled in on any of the blank deeds (TR-12, 13 and 34), and the Plaintiffs were not told that any other name was to be filled in (TR-50). Thereafter, Mr. Rich did not fill in any of the names of the Grantees in the blank deeds (TR-48), but instead, delivered all of the deeds (both those filled in and those in blank), to Mr. Boyd Fullmer, President of Bonneville Securities Corporation (TR-48). Mr. Fullmer testified that four of the five deeds were filled in by Bonneville Securities

Corporation with the name of “Stringer”; that the typing on Exhibit 2 (the deed directly concerned with this action), appeared not to have been filled in by them, because the typing was different from the Bonneville Securities Corporation typewriter (TR-60, 61). This deed was, however, filled in with the names of Willard J. Stringer and Viola Stringer as joint tenants and not as tenants in common.

On August 2, 1961, Stringers took this deed to the Defendant, Beehive Security Company, and obtained a loan secured by a mortgage on this said property from the Defendant, Beehive Security Company. During all of this period of time, the Plaintiffs were in possession of, and collecting the rents from, the property and were working on or about the premises for an eight-hour period each day (TR-16). Prior to making the loan, the Defendant, Beehive Security Company, took only a superficial look at the property (TR-41) and failed to make any inquiry of the tenants of the four-plexes, as to who owned the premises or to whom rent was paid and did not make any independent titlesearch of the property, although Stringers brought with them a title insurance report from Black Abstract Company, at the time the load was made. This same title insurance report was used in Lothaire Rich’s office (TR-40).

On the completion of the closing, Mr. Hanson went to Idaho for business purposes. He thereafter returned to Salt Lake City and went to the office of Lothaire Rich to collect part of the payment, in the amount of \$1,000.00, which he was supposed to have received on the transac-

tion. The money was not available and Mr. Hanson became very upset (TR-13, 14). He thereupon returned to Idaho to record certain documents which he had received as consideration for the sale of the duplexes and upon returning home, stopped at Farmington, Utah, to check the records with regard to the nine four-plexes. It was discovered, at that time, that four of the deeds had been recorded in Stringer's name and one of the deeds was missing (TR-15). The deed that was missing is the one directly involved in this lawsuit (TR-15). The Plaintiffs had discovered that the consideration for the sale of the four-plexes was defective and immediately contacted Verden E. Bettilyon, an Attorney, who filed a lawsuit in the matter and a Lis Pendens was recorded on the subject property at 8:30 A.M. on August 7, 1961. Thereafter, on August 7, 1961, at 11:05 A.M., the deed and mortgage involved in this lawsuit were recorded at the request of Beehive Security Company.

Subsequently, Defendants, Bonneville Securities Corporation, Willard J. Stringer and Viola Stringer, his wife, stipulated to a rescission of the contract.

A R G U M E N T

POINT I.

A DEED EXECUTED BY THE GRANTOR, WITH THE NAME OF THE GRANTEE LEFT BLANK, IS VOID AND PASSES NO TITLE UNLESS FILLED IN BY THE GRANTOR OR BY HIS AGENT THEREUNTO AUTHORIZED IN WRITING.

This principle is clearly recognized by the Utah Supreme Court in the case of *Burnham et al., v. Eschler*, 116 Utah 61, 208 P. 2d 96 (1949). There, the Court set down the rule as follows:

“Admittedly, a paper purporting to be a deed, but which is blank as to the grantee, is no deed and is ineffective as a conveyance while the blank remains. See the cases collected in the annotation at 32 A. L. R. 737 and 175 A. L. R. 1294. Also, if the name of a grantee is inserted by a party who never legally obtained possession of the instrument nor obtained authority from the grantor to complete the instrument no deed comes into existence. *Beatty v. Shelly*, 42 Utah 592, 132 P. 1160; *Utah State Building and Loan v. Perkins*, 53 Utah 474, 173 P. 950. But if the blank is filled by the grantor or his agent in accordance with instructions given him, the deed upon delivery becomes operative as a conveyance.”

Obviously, in the case now before the Court, the deed was not filled in the grantor nor by any agent of the grantor, but rather, the deed passed from Lothaire Rich to Boyd Fullmer and from Fullmer to Stringers (still in blank) (TR-48), (TR-61). There never was any privity of contract or agreement of any kind between the Plaintiffs and Stringers. Thus, in this case, the blank was filled in by one who was neither the grantor nor an agent of grantor and who had received no instructions which authorized the filling in of the blanks.

This rule of law was recognized early by the Utah Supreme Court, in the case of *Beatty v. Shelly*, 42 Utah 592, 132 P. 1160 (1913). There, as in the case now be-

fore the Court, the person filling in the grantee's name never legally obtained possession of the deed, nor had he ever obtained authority from the grantor to insert his own name in the deed, as grantee:

“... Appellant simply assumed that he had a right to the deed and to insert his own name as grantee therein; but this assumption neither did, nor could create any legal nor equitable right to the land in question. We can see no ground whatever upon which the Appellant can succeed in this case under the evidence in the record.”

The Utah case of *Utah State Building and Loan Association v. Perkins, et al.*, 53 Utah 474, 173 P. 950 (1918) is pertinent to this matter. There, Perkins was Treasurer of the Plaintiff Savings and Loan Association. A shortage had developed in his accounts, and in order to secure such shortage, if any were found to exist, Perkins and his wife signed their name to two blank deeds and acknowledged the same before a Notary Public, who was a Stenographer in the bank. The deeds were thereafter kept in the possession of Perkins, or, at least, on his desk with other personal papers. Later on, the deeds were removed from Perkin's desk by the same Stenographer. The legal description and the names of the grantors and grantees were filled in. The deeds were then delivered, completely filled in, to an officer of the bank, who recorded them. The officer of the bank testified that at the time he first saw the deeds, which was the day they were recorded, the description and all blanks had been completely filled in. The Court cited the statute, Compiled Laws 1907, Section 1974, which is substantially

identical to Section 25-5-1 of the Utah Code Annotated, 1953, and commented as follows:

“The provisions of that statute, in order to convey title to real estate, contemplate that the instrument shall be in writing at the time it is subscribed by the party executing it, and when written shall be declared by him, or acknowledged, that it is executed for the purpose as stated in the writing.”

The Court then said:

“I find no authority holding a conveyance effective under similar facts as appear in this record. *On the contrary, there appears to be no conflict that blank deeds or blank papers executed as these were are void and do not convey any interest or title whatever.* Southern Pine Lumber Company v. Arnold, Tex. Civ. App. 139 S.W. 917; Allen v. Allen, 48 Minn. 462, 51 N.W. 473; 13 Cyc. 551; 8 RCL 956.” (Emphasis ours)

Another case directly in point is *Curlee, et al., v. Morris*, 196 Ark. 779, 120 S.W. 2d 10 (1938). There, T. E. Cockrum and his wife delivered a deed to one Mr. Curlee. The deed was blank as to the grantee and consideration. Curlee wrote into the blank space for the grantee the name of his daughter and son-in-law, Lee and Delores Poynter. The Poynters then proceeded to do what Stringers did in the case presently before the Court. They mortgaged the property — in this case, to a man by the name of Wilks. Thereafter, Wilks proceeded to foreclose his mortgage. The Court then stated, in answer to its question as to whether under these facts and conditions, the deed was valid, as follows:

“In *Adamson v. Hartman*, 40 Ark. 58, the Court said: ‘An instrument of writing, pur-

porting to be a conveyance, signed and acknowledged by the grantor, and otherwise in good form, does not become his deed until the name of the grantee and the amount of the consideration are inserted therein. And an agent cannot fill such blanks in the grantor's absence, unless his authority is in writing.

“ ‘Numerous cases are cited in support of the decision; and, whatever may be the rule elsewhere, it is settled in this state that the instrument in question could not become the deed of the grantor unless the name of the grantee was inserted, and that act could not be performed by an agent in the absence of the principal unless his authority was in writing. It is not claimed that Clarence S. Courton had any written authority to insert the name of Clyde B. Seale as grantee.’ ”

The Court stated further:

“Since it must be determined that this deed was void, then Lee Poynter and his wife certainly took no title under it, and it is not seriously insisted, though perhaps argued to some extent, that they were or could have been innocent purchasers under the said conveyance. The truth is, that there is no insistence that they paid anything for the land or that they were purchasers at all . . .”

“It is insisted that Wilks is an innocent party to this proceeding. While we do not think that he was, it apparently makes no difference under the conditions above stated. He merely took a mortgage from one who had no more title to the land than if he had held it under a forged deed, without knowledge of the forgery. If Wilks was not guilty of any bad faith in the transaction the most

he was entitled to receive was a judgment against those who had benefited by his beneficence. He certainly was not entitled to have a lien declared against land that did not belong to the Poynters who executed the mortgage . . .”

The Court then approved a rescission of the contract and restored the parties to the positions in which the Court found them, giving to the mortgagee a Judgment against the mortgagor, but refusing to allow a lien upon the property, and returned the property to the Plaintiff, free and clear of the mortgage.

The Defendant has based its appeal on the doctrine that where two innocent people suffer because of the wrongful act of a third person the law should protect the person who is not responsible for allowing the misdeed to take place and cites in support of this contention, *Tiffany On Real Property*, Third Edition, Section 969. It should be noted that in the excerpt cited by the Appellant, a portion is as follows.

“ . . . As regards an innocent grantee or purchaser on the other hand, it might frequently be valid *on the grounds of estoppel*, provided at least he pays value.” (Emphasis ours)

Thus, it is recognized that there is a necessity of Defendant showing that an estoppel should apply in the case. The statement does not advocate, as the Defendant would have us believe, that the mere delivery of a blank deed is sufficient to raise such an estoppel. This position is further emphasized by continuing on with the paragraph quoted by the Defendant, starting im-

mediately following where the Defendant leaves off, which states as follows:

“... One thus signing a deed in blank is, however, not guilty of negligence as a matter of law, a distinction being made in some of the cases in this respect between negotiable and non-negotiable instruments.”

The Trial Court specifically found and made as one of its Conclusions of Law, that there were no circumstances, based on the evidence presented to it, which supported any contention that an estoppel should apply in this case (R-30). The fact that there are no circumstances amounting to an estoppel in this case is readily seen by determining what elements are necessary to establish estoppel. The rule is stated in 19 Am. Jur. 642, Estoppel, Section 42, as follows:

“The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) Lack of knowledge and of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.”

In this case, the facts show that the deed was brought to the Defendant's office by Mr. Stringer, which is an unusual practice in itself, and that the Defendant disbursed on the loan without checking the record and first recording the deed. This is clearly evident by the fact that it recorded the deed first in Salt Lake County, before having the deed recorded in Davis, the proper County. Further, it is evident that no adequate physical inspection was made of the premises and no inquiry was made to determine the rights of the parties in possession or to whom the parties in possession were paying rent. If this had been done, it would have been evident to the Defendant that the Plaintiffs were still in possession of the premises; were collecting rent and were working on the premises for an eight-hour period during each of these days and during the time that such inspection should have been made (TR-16). Any inquiry on the part of the Defendant would have brought to its attention the knowledge that the Plaintiffs claimed to be the owners of the property. It is uncontrovertible, from the evidence, that the Defendant, in fact, was not relying upon the property for security, this being only incidental to the loan, but that it was looking to the borrower for payment, which it may still do.

A case setting forth the proper use of such a doctrine, as is argued by the Defendant, is found in the recent California case of *Green v. MacAdam*, 175 Cal. App. Rep. 2d 481, 346 P. 2d 474 (1959). There, the Plaintiff brought an action to quiet title to 320 acres of real estate in San Bernardino County. Briefly stated, the

facts were as follows: Defendant McAdam was an attorney at law who acted as an attorney for the Plaintiff's husband and after the death of the Plaintiff's husband, acted as an attorney for the Plaintiff. MacAdam advised the Plaintiff that it would be to her best interest to permit him to completely manage the miscellaneous property left by her husband at his death. The Plaintiff signed several blank deeds and delivered them to MacAdam in April of 1954. In June of 1954, MacAdam undertook to sell the property to Mr. and Mrs. Koskie. One of the blank deeds was filled out, purporting to convey the property to Carol B. Bryson, MacAdam's secretary, and was placed of record. MacAdam then had his secretary execute a deed, purporting to convey the property to Mr. and Mrs. Koskie. Mr. and Mrs. Koskie then paid over \$9,000.00 for the property and it was found by the Trial Court that the Plaintiff had no knowledge of the transaction with Mr. and Mrs. Koskie or of the recording of the deed to Bryson until November, 1956. The Court also found that the Plaintiff had left the blank deed with MacAdam in order to accomplish a specific sale which failed. The Trial Court further found that the blank deed was not left there to be filled in for any other purpose than for the completing of the first proposed transaction which, as stated above, failed to materialize, and that, at no time, did the Plaintiff authorize any transfer of title to Bryson or of Bryson's sale to Mr. and Mrs. Koskie. The Court further found that the Defendants Koskie did not know that the deed to Bryson was a blank deed and that they relied solely on the representations of MacAdam and made no independent search as to the title.

The Trial Court found, as the Trial Court did in the case presently before this Court, that neither the defense of estoppel nor the defense of laches had been established and there, as here, no attempt was made to dispute the sufficiency of the evidence to support the findings or conclusions and the Court held that the title be quieted in the Plaintiff, even though they also found that the Defendants Koskie were innocent purchasers. Koskies then appealed, contending that they should be held to be the owners of the property as innocent purchasers under the rule of common law embodied in the California Civil Code, as Section 3543:

“Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.”

It was contended that the placing of the blank deeds in the possession and control of MacAdam was the equivalent of negligence within the meaning of the section. The Court then stated as follows:

“... None of the cases so relied upon involves a blank deed signed by the owner and thereafter filled in by someone else. A material distinction is to be found in the fact that by reason of the statute of frauds an authority to fill in and complete a conveyance transferring title to real estate must be in writing. The rule is thus stated in *Trout v. Taylor*, 220 Cal. 652, 32 P. 2d 968, 969.

“According to the great weight of authority, a deed executed in blank is void and passes no title. *Wunderlin v. Cadogan*, 50 Cal. 613, and cases cited, *infra*. As was said in *Whitaker v. Miller*, 83 Ill. 381: ‘There must be in every

grant a grantor, a grantee and thing granted, and a deed wanting in either essential is absolutely void.' In the instant case, each of the instruments signed by Respondent was wanting in all three of these essentials to a valid deed. Though the decisions of other jurisdictions are not in entire harmony upon the question, it has been definitely decided in this state that under our statute of frauds the name of the grantor or grantee or a description of the property cannot be inserted by an agent for the grantor, in the absence of the latter, unless the agent's authority be in writing. If the authority of the agent be not in writing, his insertion of the name of grantor or grantee or description of the property does not pass the title."

"In that connection it was contended that because the Defendant was an innocent purchaser his right to the property under the chain of title based upon the filled in blank deed should be upheld. The Court disposed of this argument in the following language :

"Numerous authorities have established the rule that an instrument wholly void, such as an undelivered deed, a forged instrument, or a deed in blank, cannot be made the foundation of a good title, even under the equitable doctrine of bona fide purchase. *Promis v. Duke*, 208 Cal. 420, 281 P. 2d 613; *Gould v. Wise*, 97 Cal. 532, 32 P. 576, 33 P. 323; *Bar-den v. Grace* [167 Ala. 453, 52 So. 425, Ann. Cas. 1912A, 537], *supra*. Consequently, the fact that defendant Archer acted in good faith in dealing with persons who apparently held legal title, is not in itself sufficient basis for relief. An innocent purchaser taking a

void instrument can, however, find protection in the doctrine of estoppel, where circumstances are presented which establish negligence or some other misconduct by the other party, which contributed to the loss.”

“The Trial Court in its findings specifically found that the plaintiff was not estopped, which finding necessarily implies that there was no negligence on plaintiff’s part. The contention of the appellants, however, is that as a matter of law, the facts established plaintiff’s negligence. The only facts relied upon are: first, that plaintiff signed the blank deed and placed it in MacAdam’s possession; and second, that she permitted MacAdam to retain the deed and did nothing about it for a period of over two years.”

It is clear that the Defendant in this case is attempting to do exactly the same as the Appellant attempted in the Green case; that is, to say that as a matter of law, the Plaintiff was negligent and thus is estopped. However, in this case, as in the case just cited, the facts show that the Plaintiffs merely signed the blank deed and placed it in the possession of their attorney, Lothaire Rich. The case currently before the Court is even stronger than the California case for the Plaintiffs, because there the Plaintiff permitted MacAdam to retain the deed and did nothing about it for a period of two years; whereas, here a Lis Pendens was filed within six days after the blank deed was delivered and prior to the recording of Defendant’s mortgage. The California Court then continued on in its consideration of the case as follows:

“In order to determine whether the trial court was justified in its findings and conclusions, cer-

tain facts must be considered. *In the first place, Mr. MacAdam was acting as Plaintiff's attorney,* and in his capacity as attorney at law advised and requested her to sign the blank forms of quit claim deed. He continued as her attorney until she discovered his actions and the purported sale to the defendants in November, 1956, at which time she discharged him. . . . There is no evidence that plaintiff was negligent in employing him." (Emphasis ours)

"It is of course well established in California that the relationship of attorney and client is one of trust and confidence and that the attorney owes to his client all the obligations of a trustee."

"... In addition to that, there must be some active negligence and the only act relied upon is that plaintiff failed to anticipate that her attorney would make a fraudulent use of that instrument or would perpetrate a fraud upon her."

"But the conclusive answer to the contentions of appellants lies in the fact that it was found by the court that an estoppel was not established, the fact being, as found by the court, that plaintiff had no knowledge of the wrongful acts, to question which it was sought that she be estopped. It necessarily followed, under the California decisions, that there must be proof and a finding of negligence on her part. Whether or not a person is negligent in failing to anticipate fraudulent actions by an attorney who represents her certainly presents a question of fact for the determination of the trial court. This court may not substitute its conclusion for that of the trial court."

"As indicated in the Trout case, the defendants are not without adequate remedy at law but

‘must seek their recourse against the fraudulent defendants who occasioned the loss.’ ”

Defendant, in its brief, makes a point of the fact that Lothaire Rich was the Plaintiff’s attorney and was acting for them on their behalf. It would appear that in Utah, as well as in California, it is not negligence which may give use to estoppel to deliver deeds in blank into the hands of an attorney, who is in a fiduciary relationship with you and who is expected to act in your best interest. Therefore, an estoppel does not apply in this case it it did not in the California case and for the same reason.

POINT II.

THE AUTHORITY OF AN AGENT TO EXECUTE A DEED FOR HIS PRINCIPAL MUST BE IN WRITING.

Defendant cites in its brief, the case of *LeVine, et al., v. Whitehouse, et al.*, 37 Utah 260, 109 P. 2, (1910) as authority for the proposition that the authority of an agent to execute a deed need not be in writing. However, the Court, in that case, states:

“As we have observed, *at the time the agreement in question was entered into*, there was no statute of this state requiring the agent’s authority to contract for the purchaser of real estate to be in writing; therefore, this case did not fall within the exception of the general rule mentioned in the foregoing authorities.” (Emphasis ours)

The contract referred to in this case was entered into some time prior to 1905 and as noted in the annotation found at 27 A. L. R., pages 606-610:

“The Utah case of *LeVine v. Whitehouse* (Utah) supra, cited under the general rule, was decided prior to the Statute of 1907 (Comp. Laws 1907, Section 2463), which requires that a memorandum must be signed by a ‘lawful agent thereunto authorized in writing.’ ”

This same wording is found in the language of Section 25-5-1 of the Utah Code Annotated, 1953:

“No estate or interest in real property other than leases for a term not exceeding one year, nor any trust or power over or concerning real property or in any manner relating thereto, shall be created, granted, assigned, surrendered, or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same, *or by his lawful agent thereunto authorized in writing.*” (Emphasis ours)

Certainly mention is made in the statute that an agent’s authority must be in writing. The *LeVine* case does express the Utah law, insofar that at the time the case was decided, there was no statute requiring the authority to be in writing, but it is also recognized in the case, that the transaction had occurred prior to the passing of the statute requiring such written authority. This requirement is also necessary to fill in blanks in a

deed. *Tiffany On Real Property*, Third Edition, Section 969:

“These decisions do not, however, meet the difficulty presented by the statutes in force in a number of states requiring a conveyance to be signed by the grantor or by an agent ‘authorized in writing.’ In the presence of such a statute it is difficult to understand how such an essential part of the conveyance as the designation of the grantee can be the act of an agent without written authority.”

There can be no question from the foregoing, but that the Utah Statute requires that an agent’s authority to fill in the name of a grantee must be in writing and that the Utah Supreme Court has recognized this fact. It is also without question that in the case presently before the Court, the person filling in the name of the grantee was not an agent of the grantor, nor was there any authority to fill in the blank, either oral or written, and thus, the deed is a nullity and not capable of transferring title, by virtue of the legislative demands of the Statute of Frauds.

CONCLUSION

It is Plaintiffs’ position that a deed executed with the name of the grantee left blank is a nullity unless it is filled in by the grantor or by his agent “thereunto authorized in writing” and that in the case now before the Court, the deed was not filled in by the grantor nor by his agent nor by anyone authorized in writing to do so, and that, as a result, the deed is a nullity; further, that the doctrine of estoppel does not apply in this case, inasmuch

as the Trial Court found specifically that there was no estoppel and there has been no showing whatever by the Defendant that the Plaintiffs were in any way subject to the doctrine of estoppel and, thirdly, that the Defendant is precluded from claiming a lien on the property by reason of the foregoing, together with the fact that at all times Plaintiffs remained in possession of the property; claimed an interest therein; collected the rents therefrom and filed a Lis Pendens prior to the recording of any mortgage by the Defendant. Thus, Defendant is precluded from claiming any lien by virtue of the recording act of the State of Utah.

Plaintiffs respectfully submit that the mortgage on the subject property be held invalid and that the judgment of the lower court be sustained.

Respectfully submitted,

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