

1992

Keith C. Holt and Joyce S. Holt v. Manuel Katsanevas : Reply Brief

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

KEITH C. HOLT and JOYCE S. HOLT,	:	
	:	
Plaintiffs/Appellants,	:	REPLY BRIEF OF APPELLANTS
	:	
vs.	:	
	:	
MANUEL KATSANEVAS,	:	Appellate No. 920225-CA
	:	
Defendant/Appellee.	:	Priority No. 16

Appeal from the Third District Court, Judge Brian

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JUN 30 1992

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	:	
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Plaintiffs and Appellants Keith C. Holt and Joyce S. Holt, by and through their attorney, submit the following reply to the brief of defendant Manuel Katsanevas.

Many of the Holts' disagreements with the assertions and arguments of Mr. Katsanevas are apparent in comparing the Briefs already submitted. Rather than reiterate, this Reply notes two disagreements which may not be readily apparent.

Mr. Katsanevas asserts that the following is a material uncontroverted fact:

6. On or about November 10, 1982, defendant requested and received a letter from plaintiffs, whereby the plaintiffs agreed to the exchange, and the subordination of Holts' interest in the 'new' North Temple location, and the payment of the ' . . . indebtedness in the approximate amount of \$50,000.00.': See Addendum Exhibit 7 and

Addendum Exhibit 15, R-00098 to 200103.
Katsanevas Brief at p. 5.

In the Affidavit of Keith C. Holt, Exhibit 8 to Holts' Brief, Record 138-139, Mr. Holt states that:

2. I have reviewed Manuel Katsanevas' Exhibit B, dated November 10, 1982, and I do not recall seeing it before and it has not been previously produced by Mr. Katsanevas.

The Exhibit B mentioned in Mr. Holt's Affidavit is the same document as Mr. Katsanevas' Addendum Exhibit 7. The Court should note that it is unsigned.

Mr. Katsanevas' Brief makes two inaccurate statements about the Second Affidavit of Keith C. Holt and Affidavit of Robert A. Bailey (Record pp. 209-219, 205-207):

However, the trial court properly excluded the irrelevant and inadmissible evidence of the Bailey Affidavit . . . Katsanevas Brief, p. 17.

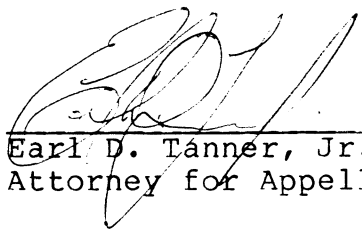
. . . the trial court properly excluded the irrelevant and inadmissible part of the Second Holt Affidavit . . . Katsanevas Brief, p. 18.

While it is true that Mr. Katsanevas' counsel filed an objection and motion to strike the affidavits, the objection and motion were never noticed up, were not argued at the hearing on plaintiff's motions, and have not been ruled upon.

The Holts' grounds for appeal have not been challenged. Summary judgment against them was improper in light of the conflicting evidence concerning an oral agreement between the parties that was taken out of the statute of frauds by part

performance. The Holts respectfully urge this Court to vacate both the Summary Judgment and Memorandum Decision entered below.

DATED this 29th day of June, 1992.

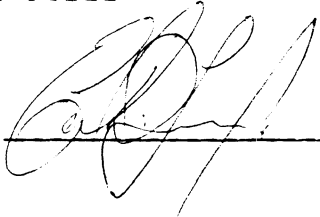


Earl D. Tanner, Jr.
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 1992,
four true and correct copies of the foregoing REPLY BRIEF OF
APPELLANTS were hand delivered to:

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