

1992

## Mostrong v. Jackson : Unknown

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Unknown.

Unknown.

---

### Recommended Citation

Legal Brief, *Mostrong v. Jackson*, No. 920578 (Utah Court of Appeals, 1992).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/4550](https://digitalcommons.law.byu.edu/byu_ca1/4550)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

WALLER  
WADDINGHAM & PETERSON  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

THORPE WADDINGHAM  
WARREN H. PETERSON  
RICHARD WADDINGHAM

Mary Noonan  
Clerk of The Court  
Utah Court of Appeals  
230 South 500 East Ste. 400  
Salt Lake City, UT 84102

UTAH  
DOCUMENT  
KFU  
50  
A10  
March 29, 1993  
DOCKETED

BRIEF

920578  
FILED

POST OFFICE BOX 430  
362 WEST MAIN STREET  
DELTA, UTAH 84624  
(801) 864-2748  
FAX (801) 864-2740

APR 1 1993

29 W. 100 S.  
FILLMORE, UT 84631  
(801) 743-8304

## COURT OF APPEALS

RE: Mostrong v. Jackson  
Case No. 920089

920578-A

Dear Ms. Noonan:

The appellees submit the following response to appellants supplemental authority pursuant to Rule 24(j) of the Utah Rules of Appellate Procedure:

The case of Kelley v. Leucadia Financial Corporation, 203 Utah Adv. Rep. 14 (1992) is distinguishable from the current action. Kelley addresses the Buyers right to specific performance based on whether the seller was obligated to cure a title defect involving a boundary dispute.

In Kelley, the court noted:

The agreement, written on standard form, included the following general provisions: (1) The seller would furnish good and marketable title, subject to encumbrances and exceptions provided in the contract, "'evidenced by a current policy of title insurance'"; (2) If title insurance was unobtainable due to title defects, the buyer could elect to waive the defects or terminate the agreement and have the earnest money refunded;...

Id. at 14 (Citations Admitted).

In Kelley, the Court does not discuss whether a preliminary title report was even issued on the property, or that the buyers had ever requested title insurance.

Mary Noonan  
March 29, 1993  
Page 2

Arguments contained on pages 20-22 of Appellees brief support the record that Buyers requested and Security Title Company of Millard County issued title insurance covering the property in question, insuring against, among other things, lack of a right-of-access to and from the land; or unmarketability of such title, (emphases added).

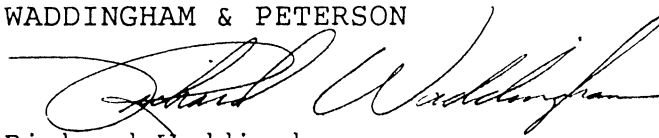
Appellees conveyed and appellants accepted only the property described in the conveying deed (see page six (6) of Trial Court Findings of Fact, Addendum A-4 of appellees brief).

Those facts set forth on pages 6-15 and page 21 of appellees brief distinguish this case from the facts set forth in Kelley and support the Trial Court's findings and conclusion that title to the property conveyed by appellees to appellants on or about September 1, 1992 was marketable.

The record further establishes that any concerns regarding recorded access to the property in question were cured by either Security Title or the Appellants themselves.

Respectfully Submitted,

WADDINGHAM & PETERSON



Richard Waddingham

RW/cn

930329/RWcn/Mostrong.920089

cc. David Lambert