1970

Rocket Mining Corporation, A Utah Corporation, And Pioneer Carissa Gold Mines, Inc., A Wyoming Corporation v. Rulan J. Gill, Lenore M. Gill, Ray Gill, Angelo M. Billis, Herman F. Lund And T.W. Billis : Brief of Plaintiffs-Appellants

IN THE
SUPREME COURT
OF THE
STATE OF UTAH

ROCKET MINING CORPORATION, a Utah corporation, and PIONEER CARISSA GOLD MINES, INC., a Wyoming corporation,
Plaintiffs-Appellants,

vs.

RULAN J. GILL, LENORE M. GILL, RAY GILL, ANGELO M. BILLIS, HERMAN F. LUND and T. W. BILLIS,
Defendants-Respondents.

BRIEF OF PLAINTIFFS-APPELLANTS

APPEAL FROM THE JUDGMENT OF THE THIRD DISTRICT COURT FOR SALT LAKE COUNTY
HONORABLE GORDON R. HALL, JUDGE

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Case No.

12174

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STATEMENT OF THE KIND OF CASE

The action in the lower court was brought by two merged corporations against one of the corporation's former officers, directors and shareholders for fraudulently and unlawfully disbursing corporate assets to themselves and others and then abandoning the corporation.

DISPOSITION IN THE LOWER COURT

The Third Judicial District Court, the Honorable Gordon R. Hall presiding, granted judgment against plaintiffs-appellants.

RELIEF SOUGHT ON APPEAL

Plaintiffs-appellants seek to have this Court reverse the judgment of the lower court and direct entry of judgment for plaintiffs-appellants.

STATEMENT OF FACTS

The statement of facts is divided into numbered paragraphs to facilitate referencing. Appellants will be referred to in some instances as "Rocket" and "Pioneer". Respondents will be referred to as "defendants" and by name where appropriate. When reference is made to the minutes of Rocket, citation will be made to the record, exhibit number and date of the minutes.

1. Rocket commenced business in the summer of 1955. Defendants Rulan J. (R. J.) Gill, Herman F. Lund and Ray Gill were present at the organizational meeting of the coroporation. (R-298, Ex. P-2, Min. 7-10-55). Defendant Angelo M. (A. M.) Billis was active in the affairs of the corporation from its beginning. (R-368-369, 542). Defendants Lenore Gill and T. W. Billis were directors of Rocket for some time during the period when defendants were operating Rocket. (R-298, Ex. P-2, Min. 12-26-57; see minutes generally).

2. In November, 1956, Rocket by contract arranged to purchase and took possession of the assets, including a mill for processing ore, from Pioneer for stock and cash. (R-298, Ex. P-2, Min. 11-7-56). The amount owed by Rocket to Pioneer on said contract was never fully paid and later became the subject of a lawsuit in the Federal court. (See paragraph 14 below.)

3. Shortly after incorporation Rocket became a public corporation by making a federal Regulation "A" public offering of 30 million shares, of which 3,000,000 shares were sold for one cent each through a Salt Lake broker. The offering was voluntarily terminated by defendants in January, 1956. (R-379-81).

4. After stopping the public offering in January, 1956, defendants sold some of their own stock over the counter prior to April 2, 1956, at prices in excess of the public offering. (R-375-78). On April 2, 1956, defendants were informed by the Securities and Exchange Commission that the S.E.C. did not consider the offering then terminated. (Ex. P-10). Defendants did not act on the S.E.C. letter and sell more of the corporation's stock to raise necessary capital for Rocket, but continued to sell their own stock. (R-375). During this period defendants made Rocket a debtor by loaning Rocket proceeds they received from the sale of their own stock and by loaning some of their stock back to the corporation to then be sold, ostensibly to provide operating capital. (R-377, 381; also see R-392, 388).

5. Prior to making the public offering the defendants submitted to the Securities Commission of the State of Utah a prospectus which was approved by said Commission and made a part of the registration statement filed with the Securities and Exchange Commission. Said prospectus states on page 5 that

> No salaries or other compensation shall be paid directly or indirectly to officers, directors or promoters of issuer other than Secretary-Treasurer who

> will receive $75.00 per month until issuer's mining operations are on a paying basis.

The directors of Rocket approved. (R-298, Ex. P-4, Min. 8-10-55).

6. In the summer of 1956, the stockholders of Rocket voted to establish a Board of Directors of seven. (P-298, Ex. P-2, Min. 7-17-56). The stockholders elected four persons to the Board and left three vacancies to be filled by the four directors elected. These vacancies were never filled. (On February 27, 1957, the articles of incorporation of Rocket were amended to provide for a board of seven directors.) (R-298, Ex. P-7, Min. 2-27-57). Rocket apparently never had any bylaws.

7. On December 14, 1956, the following four directors —R. J. Gill, Lenore Gill (R. J. Gill's wife), Ray Gill (father of R. J. Gill) and Walter Pesseto—were present (according to the minutes) and voted to pay A. M. Billis and R. J. Gill monthly salaries of $700 and $750 respectively commencing January 1, 1957. (R-298, Ex. P-2, Min. 12-14-56).

8. Although Walter J. Pessetto is listed in the minutes of Rocket as attending a number of directors' meetings, Mr. Pessetto denies ever attending any such meetings. (R-409-12).

9. Pursuant to the resolution passed by the directors on December 14, 1956, Rocket paid to R. J. Gill and A. M. Billis $17,400 in salaries. (In 1965 the lower court granted summary judgment against R. J. Gill and A. M. Billis for that amount for the salaries improperly paid to them be-

cause Rocket's business was never on a paying basis; said judgment was upheld on appeal by this Court. *Rocket Mining Corporation* v. *Gill and Billis,* 18 Utah 2d 104, 417 P. 2d 120 (1966).) (Since Rocket's operations were not on a paying basis, it appears that the money used for salaries paid Gill and Billis at least partially must have come from the loans mentioned in paragraph 4 above made to Rocket by defendants. Thus, defendants apparently indebted Rocket to provide themselves illegal salaries.)

10. On July 5, 1957, the accountants for Rocket submitted a "Certificate of Examination" of Rocket's balance sheet to the Board of Directors of Rocket, which showed Rocket as having an approximate net asset value above liabilities of $500,000. The assets included the mill which Pioneer had transferred to Rocket. (Ex. P-11).

11. On December 26, 1957, a special directors meeting was held pursuant to waiver of notice. This waiver of notice was signed by only three directors, R. J. Gill, Lenore Gill and T. W. Billis, the brother of A. M. Billis. (R-298, Ex. P-2, Min. 12-26-57). At the said meeting the only directors stated to be present in the minutes were R. J. Gill, Lenore Gill, Ray Gill and T. W. Billis. The vacancies existing on the board had not been filled and the board was operating with fewer directors than the seven required by the articles of incorporation. At this meeting the above directors resolved to sell the corporation's interest in the Rim Group of claims for $130,000 and to divide the proceeds principally among defendants as repayment of loans,

including the above mentioned loans of stock to Rocket. (R-298, Ex. P-2, Min. 12-26-57; R-388).

12. Pursuant to said resolution Rocket sold its interest in the said claims on January 14, 1958, for $130,000. Cashier's checks were made payable to defendants and others in the manner stated in the minutes, except that that $130,000 was never placed in Rocket's bank account. (R-298, Ex. P-9, R-390-391).

13. Defendants R. J. Gill and A. M. Billis thereafter sold their majority stock interest in Rocket to one Roy Cram, who apparently then assumed control of the operation and assets of Rocket. (R-393-394). (R. J. Gill and A. M. Billis apparently owned over 60% of the outstanding stock of Rocket at this time. (Calculation which includes 3,000,000 shares sold to public was made from figures contained in Ex. P-1, which includes Offering Circular of one cent offering and letter of Robert W. Hughes dated 10-20-55.) R. J. Gill does not know what Cram paid him for his stock, has no records and did not call a corporate meeting to authorize the transfer of control of Rocket to Cram. A. M. Billis is sure that the total amount paid both Gill and Billis together for their stock wasn't $6,000. (R-571).

14. Becaue Rocket still owed Pioneer on its contract for the assets sold to Rocket as mentioned in paragraph 2 above, and because certain of the assets had been apparently removed and disposed of, Pioneer sued Rocket in the Federal Court in Salt Lake City and all assets, plus substantially all the stock of Rocket, were adjudged in 1960 to be the property of Pioneer. (R-298, Ex. D-29, R-420).

15. After the said judgment of the Federal Court was entered, it was discovered, when the assets, books and records of Rocket were turned over to Pioneer, that some of the assets were in fact missing and the books and records were not complete (as an example see Ex. P-8), and that the individual defendants may have engaged in unauthorized, fraudulent and unlawful acts while in control of Rocket, thus causing the assets to be transferred, lost, sold or otherwise depleted. (R-420).

16. The present action was commenced in the name of Rocket in September, 1961. Pioneer was later joined and Pioneer and Rocket were merged and the action continued in the name of both corporations.

17. Before trial in the lower court, it was stipulated that the issues to be resolved were:

(a) Whether defendants wrongfully terminated the public offering of Rocket stock and are therefore liable to the plaintiffs for damages caused thereby.

(b) Whether defendants unlawfully distributed corporate assets to themselves and others and are liable for all damages proximately arising therefrom.

(c) Whether defendants unlawfully distributed to themselves and others the $130,000 received from the sale of the Rim Group of claims and are therefore liable for said sum.

ARGUMENT

POINT I.

BECAUSE THERE WERE ONLY FOUR DIRECTORS OF AN AUTHORIZED BOARD OF SEVEN AND THE DEFENDANTS AS DIRECTORS WERE PERSONALLY INTERESTED IN AND VOTED FOR DISTRIBUTION OF THE $130,000, THERE COULD NOT BE A PROPER QUORUM PRESENT, AND ANY SUCH DISTRIBUTION WAS UNLAWFUL, AND DEFENDANTS ARE THEREFORE LIABLE FOR THE AMOUNT SO DISTRIBUTED.

The Utah statute pertaining to the number of directors to constitute a quorum is Section 16-10-38, U.C.A. (Repl. Vol. 1953), which states as follows:

> A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

It is undisputed that seven directors were required to constitute a full board for Rocket. It is also undisputed that no more than four directors of Rocket were present at directors' meetings wherein action was taken, about

which action appellants complain. By the above statute, it is clear that under ordinary circumstances a minimum of four directors could have conducted the regular business of Rocket. There is no explicit statutory provision concerning circumstances where a director has an adverse interest. The articles of incorporation are likewise silent on this issue. The difficulty arises because of the nature of the action taken and the identity and interests of those four directors. At the meeting of December 26, 1957, at which the $130,000 was authorized to be disbursed, the directors present were R. J. Gill, Lenore Gill, Ray Gill and T. W. Billis. Of the $130,000 R. J. Gill was to and did receive approximately $42,000 and A. M. Billis was to and did receive approximately $35,000. Of the directors present at that meeting, R. J. Gill and Lenore Gill were husband and wife, and Ray Gill was the father of R. J. Gill. T. W. Billis was the brother of A. M. Billis.

It is well settled that a director cannot act for a corporation in a matter in which he has an adverse interest and cannot be counted in determining whether or not a quorum exists, even though he does not vote on the particular matter of business. 19 *Am. Jur.* 2d, Corporations, § 1128; *Colorado Management Corp.* v. *American Founders Life Insurance Co.*, 359 P. 2d 665 (Colo. 1961); *Adams* v. *Mid-west Chevrolet Corp.*, 179 P. 2d 147 (Okla. 1947).

In *Hotaling* v. *Hotaling*, 224 Pac. 455, 458 (Cal. 1924), the board of directors consisted of five members. Three of the board were present at the meeting and one of the members present had an interest in the transaction adverse to

the corporation. The court in holding that the transaction was void stated:

> Being personally interested in this transaction adversely to the corporation he was disqualified thereby to vote the authorization, *and his presence could not be counted to make a quorum for that purpose.* (Emphasis added.)

At pages 513 and 514, *Hornstein, Corporation Law and Practice,* Section 415, it is stated:

> At directors meetings, the percentage requirement for a quorum is ordinarily tested against the total number of directors authorized to constitute a full board, regardless of vacancies.
>
> A director with an adverse interest in a transaction to be voted upon will not be counted toward a quorum unless the statute or charter or by-laws expressly provide the contrary. This general rule conforms to and implements the principal that an interested director may not vote.

Of the four directors present at the meeting of December 26, 1957, director R. J. Gill was obviously interested in the payment of $42,000 to him. Certainly his wife, Lenore Gill, also a director, was as interested in that payment as R. J. Gill was. Even ignoring the fact that director Ray Gill was the father of R. J. Gill and that T. W. Billis was the brother of A. M. Billis and assuming that they were not influenced by their blood relationship, there could be at most two disinterested directors who could vote. Moreover, if R. J. Gill could not be counted to establish a quorum, then there was no quorum present and the remaining three directors, even if total disinterest on their part could be

absolutely proven, could not lawfully act for Rocket. Thus, the disbursement of the $130,000 appears patently unlawful.

In addition to the fact that no lawful quorum was present in this case, the action of the directors of Rocket in voting to liquidate one of the principal and vital assets of the corporation (See Ex. P-11) and to pay the alleged indebtedness to themselves is contrary to fundamental corporate law. A director or officer of a corporation is a fiduciary and owes the highest duty to the stockholders of the corporation and to the corporation whose properties and business he manages. He has no right to dispose of vital corporate assets not in the ordinary course of business for the primary purpose of paying a claim which he has against the corporation unless that right is granted by virtue of stockholder action, or, at the very least, by resolution of a disinterested quorum of directors. A director has the same duty that a trustee has to his Cestui Que Trust. The above rules have been expounded numerous times by all courts, including this Court. *Cox* v. *Berry,* 19 Utah 2d 352, 431 P. 2d 575 (1967). This Court has also stated that improper dealings of corporate management will be set apart on slight grounds. *Hansen* v. *Granite Holding Co.,* 117 Utah 530, 218 P. 2d 274 (1950).

In *Ashman* v. *Miller,* 101 F. 2d 85 (6th Cir. 1939), the Federal Court of Appeals defined this duty as follows:

> A director of a corporation occupies a fiduciary relation to it and its stockholders. This position is one of trust and he is frequently denominated a

> trustee and so held accountable in equity. The ordinary trust relationship of directors of a corporation and stockholders is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate business affairs and property and hence the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof * * *.

In *Modern Corporation Law* by Oleck, Vol. 2, §§ 959-960, the author defines the duties of a director as follows:

> Directors, as the central power of management, stand in a fiduciary capacity to the body of shareholders and their economic interests. * * * Ingrained in this fiduciary relationship are two important touchstones of conduct to which Equity holds directors in their management of corporation affairs. These criteria are: (1) the highest loyalty to the interests of the corporation; (2) at least reasonable care and business prudence . . . directors must not act for their own financial benefit, but must act solely for the benefit of the shareholders of the corporation. p. 730.

The author goes on to state:

> . . . all profits made by directors through furtive dealings involving the transaction of corporate affairs or which involve a conflict of personal interest and fidelity to the interests of the company must be accounted for by the directors to the company. p. 731.

Whenever there is undisputed evidence of the breach of duty on the part of a fiduciary in handling funds en-

trusted to him, a court of equity will order the fiduciary to account.

In *Sorin* v. *Shahmoon Industries, Inc.*, 220 N. Y. S. 2d 760 (1961), minority stockholders sued the president and directors of the corporation demanding and accounting of their acts in expending corporate funds. The defendants demurred to the complaint on the ground that they had never received any funds into their possession which could be the subject matter of a trust and that they were not trustees in the sense that would require them to account to the corporation for authorizing the expenditure of funds from the corporate treasury. (It should be noted that in the instant case the defendants did receive a major portion of the $130,000, which funds were never paid over to the corporation but which were disbursed directly by the president of Rocket, R. J. Gill, to the promoters and others without it ever reaching the corporate bank account.)

The *Sorin* court, after considering whether or not a trust existed, concluded that it did regardless of whether the defendant directors had actually received funds and held that the funds and assets of the corporation were in the hands of the directors in trust for the corporation and that the directors were obligated to account to the stockholders and the corporation for the handling of said funds. The court in its opinion on page 778 said:

> The defendants argue that the *Jersawit* case is inapplicable here because Shahmoon was not "entrusted with property" but merely repaid for ex-expenses incurred. In my view, the plaintiffs have the better of this dispute. All of the company funds

> were in effect entrusted to Shahmoon and the directors, and they were fiduciaries of the company with regard to their disbursement. It is of no consequence whether Shahmoon received the cash before he spent it or advanced it subject to repayment. He was spending corporate funds and is accountable for them, as are those directors who acquiesced in the out-go.

In underscoring the high degree of fiduciary duty owed by the directors to the corporation and its stockholders, the court brushed aside the defendant's argument that some of the items involved in the accounting were so small as to be de minimus and said on page 779:

> The defendants urge that the plaintiff's charges of wasted millions have degenerated to quibbles over paltry sums. While the amount in question here is certainly not large in comparison to the company's volume of business, the duty of a fiduciary does not extend only to major matters for substantial amounts over which he has control. It extends to the last penny with which he is entrusted, even though any recovery warranted will be relatively minimal, the maximum of de minimus non curat lex is inapplicable. This is not a matter of principal, but of principle. The principle at stake here is simple and ancient: A fiduciary must account for the funds entrusted to his care — and that means "all of such funds", not "some" or even "most" of them. (c.f. *In re Hamilton,* 24 Misc. 2d 899, 195 N. Y. S. 2d 689.) A reference will be ordered at which Shahmoon will be held to account for these sums.

The defendant directors and promoters in this case have testified to the effect that the corporation owed them bona fide debts for salaries, expense accounts, and monies

advanced to the corporation and for its benefit, and they contend that they did not breach their duty by resolving to sell corporate assets vital to the continued operation of Rocket and not in the ordinary course of business to repay their said loans and expenses. It should be noted that after the sale of the Rim Group claims the bulk of Rocket's assets were subject to its contract with Pioneer. (See Ex. P-11.) In *Sage* v. *Culver, et al.*, 41 N. E. 513, 514 (1895), an identical situation was presented to the court. Minority stockholders sued the directors for an accounting. The defendant directors owned an overwhelming majority of the corporate stock. The minority stockholders contended that the directors had done the same thing that the defendants in this case did, i.e., they resolved to pay corporate funds to themselves because of alleged loans made by them to the corporation. The defendant directors by way of answer denied that the stockholder plaintiffs were entitled to any accounting. The court ruled as a matter of law that it was the duty of the defendants to account.

It is submitted that in this case the undisputed evidence shows that the resolution which the defendants rely upon as authority for paying out $130,000 of the corporate funds is a nullity because there was not a disinterested quorum of directors in existence to authorize the sale of vital corporate assets not in the ordinary course of business and payment of the proceeds principally to themselves.

POINT II.

DEFENDANTS TERMINATED THE SALE OF ROCKET STOCK TO THE PUBLIC, SOLD

THEIR OWN STOCK TO THEIR PROFIT AND THEN WHEN THEY KNEW THERE WAS A MARKET FOR ROCKET STOCK AND THAT THE PUBLIC OFFERING WAS STILL LEGALLY OPEN, THEY WRONGFULLY FAILED TO SELL MORE OF THE CORPORATION'S STOCK AND WRONGFULLY ENCUMBERED ROCKET BY MAKING UNNECESSARY LOANS TO ROCKET AND SHOULD THEREFORE BE REQUIRED TO ACCOUNT.

Defendants allege that they terminated the public offering in January, 1956. However, it is clear from a letter to Rocket from the United States Securities & Exchange Commission dated April 2, 1956 (Ex. P-10) that the offering had not actually or officially been terminated as of that date. It is also clear that between January and April 2, 1956, defendants on at least two occasions sold their own stock for approximately $45,000 and after April 2, 1956, sold more stock for at least $15,000. (R-374-78; see Answers to Interrogatories by defendants in October, 1963, used in cross-examination.)

Defendants deprived the corporation of needed funds by stopping the public sale of stock when the stock offering period was legally still in effect. First, defendants took no positive action to determine from the S.E.C. whether the offering had officially or legally been terminated; and second, even when they had been notified by the S.E.C. and knew the offering had not been terminated prior to April 2, 1956 and that there had been a market for the stock

prior to that date, they took no action to substitute corporate stock for the personal stock they allegedly sold, although it is legally clear that the corporation could have issued free trading stock during the offering period. Defendants then claim that they loaned stock and some money to the corporation to provide capital. Thus they made Rocket a debtor to themselves when there was absolutely no legal justification for doing so. (R-377-81).

Rocket could have legally and properly issued free trading replacement stock to defendants during the offering period. Thus the defendants saddled the corporation with a debt to themselves which was not only wholly unnecessary, but which they had a positive duty to avoid and absolutely could have avoided. Moreover, it seems elementary that if defendants were able to sell their personal stock for substantially more than the offering price, they would have been able to sell much more of the corporation stock at the much lower offering price.

It is submitted that the stock transactions of defendants, at least during the offering period, should be set aside and defendants be held liable for the amounts allegedly loaned to the corporation and repaid to them.

POINT III.

BECAUSE DEFENDANTS EITHER SOLD OR ALLOWED TO BE SOLD, LOST OR STOLEN, ASSETS OF ROCKET AND THEN IMPROPERLY SOLD THEIR STOCK AND TURNED OVER CONTROL OF ROCKET TO A PERSON

FOR A NOMINAL PRICE WHEN THEY KNEW THE ASSETS OF ROCKET WERE OF MUCH GREATER VALUE, THEY IN EFFECT ABANDONED THE CORPORATION AND VIOLATED THEIR FIDUCIARY DUTY TO THE STOCKHOLDERS AND ARE THEREFORE LIABLE FOR THE AMOUNT OF LOSS AS SHOWN ON THE BALANCE SHEET OF NELSON & WATTS.

As is noted in paragraph 13 of the facts, neither R. J. Gill nor A. M. Billis knew what Roy Cram paid them for their interest in Rocket, although they were sure it wasn't even $6,000. Neither has any record of the transaction. It is interesting to note that this sale took place not more than a year and perhaps as few as six months after the Rim Group of claims was sold in 1968 and defendants had received back the money they had allegedly loaned the corporation. (R-393). They did not even have a shareholders meeting to authorize the sale to Cram. (R-394). In addition, the 1958 accounting of Nelson & Watts (Ex. P-11), an accounting firm hired by defendants when they controlled Rocket, showed the corporation to have a value far in excess of the amount defendants received for their interests (R-534-535), even though they then in fact controlled Rocket through their stock ownership. (See paragraph 13 of Facts.)

It is without doubt that in view of such circumstances the burden is upon defendants to prove their good faith, fairness and honesty. 19 *Am. Jur.* 2*d*, Corporations, § 1296;

also see § 1272. R. J. Gill's and A. M. Billis' good faith was clearly in question as a result of their paying themselves salaries in direct violation of their agreement with the Utah Securities Commission and their apparent unlawful falsification of corporate records. Corporate minutes were prepared showing Walter Pessetto present and voting at director's meetings. (R-370-372). It was clearly shown by Pessetto's testimony and by his log books that he had not been present and could not have been present at said meetings. (R-409-412; Exs. P-13, P-14). His testimony was in no way refuted.

Because of their fiduciary relationship which defendants held and their very sketchy explanation of their activities in disposing of the corporate assets, it appears they have not carried their burden of proof as required by law and should be held liable for the value of the missing assets as shown by the accounting of Nelson & Watts (Ex. P-11) and the testimony of George Colemere. (R-420-421, 507-508).

CONCLUSION

It is submitted that on each of the issues presented herein, the facts and law appear conclusive that defendants' actions were unlawful and that they flagrantly breached their fiduciary duty toR ocket and its stockholders. The disbursement of the $130,000 was patently in violation of law. The unnecessary encumbering of Rocket by defendants was in complete and knowledgeable disregard of the fact that the public offering was still open. And finally, the sale of most of the outstanding stock to Cram for what

was relatively a mere pittance in view of the apparent total value of Rocket's assets appears at best to be an intentional and callous breach of defendant's fiduciary duty. The decision of the lower court should be reversed and defendants required to account.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing brief on David K. Watkiss, Attorney for Respondents at 400 El Paso Gas Building, 315 East 2nd South, Salt Lake City, Utah, postage prepaid, this 12th day of October, 1970.