

1972

Walter Bank & Trust Company v. Wesley S. Burrows And Estella Mcarthur : Appellant's Brief

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Roger J. McDonough and J. Wendell Bayles; Attorneys for Appellant

Recommended Citation

Brief of Appellant, *Walker Bank v. Burrows*, No. 12873 (1972).
https://digitalcommons.law.byu.edu/uofu_sc2/5674

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

WALKER BANK & TRUST COM-
PANY, a Utah bank & trust company,
Plaintiff-appellant,

vs.

WESLY S. BURROWS, a-k-a
WESLEY S. BURROWS,
Defendant-respondent

and

ESTELLA McARTHUR,
Intervenor.

Case No.
12873

APPELLANT'S BRIEF

Appeal from the Judgment of the Fifth District Court In and For
Washington County, Utah, The Honorable Bryant H. Croft, Judge

ROGER J. McDONOUGH and
J. WENDELL BAYLES for
JONES, WALDO, HOLBROOK
& McDONOUGH

800 Walker Bank Building
Salt Lake City, Utah 84111

Attorneys for Walker
Bank & Trust Company
plaintiff-appellant

MICHAEL W. PARK
99 North Main Street
Cedar City, Utah 84720

Attorney for Gale C. Bailey,
et al., defendant-respondents

ARMSTRONG, RAWLINGS, WEST
& SCHAERRER

1300 Walker Bank Building
Salt Lake City, Utah 84111

Attorneys for Producers
Livestock Marketing Association,
defendants.

FILED
JUL 20 1972

Clerk, Supreme Court, Utah

INDEX

	Page
NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	3
ARGUMENT	
POINT I.	
WALKER BANK, BY FILING FINANCING STATEMENTS ON JUNE 21, 1966 AND FEBRUARY 8, 1967, AS REQUIRED BY THE UTAH UNIFORM COMMERCIAL CODE OBTAINED A FIRST LIEN AGAINST ALL CATTLE WHICH WERE DELIVERED BY THE BAILEYS TO BURROWS PURSUANT TO ALLEGED "TITLE RETENTION" OR "CONDITIONAL SALES" CONTRACTS, AND AGAINST THE INCREASE OF SUCH CATTLE AND THE PROCEEDS OF THE SALES THEREOF, BY VIRTUE OF THE BAILEYS' FAILURE TO FILE IN ACCORDANCE WITH THE U.C.C. ANY FINANCING STATEMENT UNTIL MAY 26, 1967.	5

POINT II.	Page
THE LIVESTOCK BRAND ACT WAS AIMED AT A THEFT OF LIVESTOCK WITHIN THE STATE, AND THE SALE OF STOLEN ANIMALS, AND HAS NOTHING TO DO WITH SECURED TRANSACTIONS.	8
CONCLUSION	10

CASES CITED

Pugh v. Stratton, 22 U.2d 140, 450 P.2d 463 (1969)	9
Wilson v. Burrows, Utah 2d, P.2d (1972)	8, 9, 10, 11

STATUTES CITED

Utah Code Annotated (1953)

Sections:

70A-2-102	9
70A-9-302	7
70A-9-312 (5) (a)	8
70A-9-401	7
78-9-102 (2)	6

IN THE SUPREME COURT OF THE STATE OF UTAH

WALKER BANK & TRUST COM-
PANY, a Utah bank & trust company,
Plaintiff-appellant,

vs.

WESLY S. BURROWS, a-k-a
WESLEY S. BURROWS,
Defendant-respondent

and

ESTELLA McARTHUR,
Intervenor.

Case No.
12873

APPELLANT'S BRIEF

NATURE OF THE CASE

This was an action to determine, among other things, the validity and priority of rights in cattle as between respondents, Gale C. Bailey, McKay G. Bailey, La-Faye Bailey, Gloria Bailey, Terrill W. Bailey and Colleen Bailey (hereinafter called "Baileys"), who had

sold the cattle under a conditional installment sales contract and appellant, Walker Bank, which had loaned money to the conditional buyer on the security of said cattle and thereby provided the funds which were paid to the Baileys on the conditional sales contract.

DISPOSITION IN THE LOWER COURT

The case was tried before the Honorable Bryant H. Croft sitting without a jury. The trial court entered its judgment in favor of Baileys adjudging that they had a right to rescind the conditional sales contract and that Walker Bank had no interest in the cattle covered by the conditional sales contract or the proceeds of the sale of said cattle.

RELIEF SOUGHT ON APPEAL

Appellant, Walker Bank, seeks to have the judgment of the trial court reversed and remanded with instructions to enter judgment in favor of it and against the Baileys for the amount of money received by the Baileys from the sale of calves from the said cattle, the amount of money received by the Baileys from the sale of the said cattle after repossession, and possession of cattle that have been sold on contract by the Baileys.

STATEMENT OF FACTS

The following are the facts of the case as found by the trial court and set forth in the Findings of Fact and Conclusions of Law. On or about June 28, 1966, the Baileys entered into an installment sales contract with one Wesly Burrows, whereby the Baileys agreed to sell and Wesly Burrows agreed to purchase a ranching operation (R. 29).* The ranch consisted of real property, grazing rights, the "pitchfork" livestock brand, which was registered to Gale C. Bailey, 311 cows and 12 bulls (R. 29).

On or about June 30, 1966, Gale Bailey delivered the cattle to Burrows (R. 31, 32). From that time until sometime in 1968, when the Baileys repossessed the ranch and cattle, the cattle were in possession of Wesly Burrows (R. 32).

On June 15, 1966, Walker Bank made Burrows an \$80,000 loan (R. 30). This loan was secured by Live-stock Chattel Mortgage from Wesly Burrows covering 700 head of Hereford cattle which Burrows was purchasing, including the cattle which are the subject of this action, and the increase and proceeds thereof (R. 18, 19, 30). The bank made inquiries of the county recorders of Washington, Kane and Garfield Counties (the counties where the cattle were located) and of the Utah Secretary of State to determine whether any financing statement or chattel mortgage was on file in

* References to "R" are to the official Record on Appeal.

the name of Wesly Burrows or Gale Bailey (R. 30). Walker Bank was informed that no such documents were on file (R. 30). On June 21, 1966, Walker Bank filed a financing statement with the Utah Secretary of State, as required by the Secured Transactions Chapter of the Utah Uniform Commercial Code, listing Wesly Burrows as debtor, Walker Bank as creditor and showing 700 head of Hereford cattle, together with the increase thereof, and proceeds therefrom, as security (R. 30).

On or about December 29, 1966, Wesly Burrows executed and delivered to Walker Bank a security agreement under the Utah Uniform Commercial Code covering 700 head of Hereford cattle, together with the increase thereof, located in Washington, Kane and Garfield Counties and bearing the "scissors" and "pitchfork" brands (R. 20, 21). On February 8, 1967, Walker Bank filed a financing statement with the Utah Secretary of State listing Wesly Burrows as debtor, Walker Bank as creditor, and listing the cattle bearing the "pitchfork" and "scissors" brands as security (R. 33).

On January 5, 1967, Gale Bailey filed a Real Estate Sales Agreement with the Garfield County Recorder, covering the Bailey cattle and real property (R. 32), but no filing was made by the Baileys with the Utah Secretary of State until May 26, 1967 (R. 33).

From the proceeds of the \$80,000 Walker Bank loan to Burrows, the Baileys were paid the sum of \$20,000 on the installment sale contract (R. 33). Also

for the years 1966 through 1969, the Baileys received \$34,874.00 from the sales of the calf crops from the cattle (R. 33).

Burrows defaulted in both his payments on the Bailey contract and his payments on the Walker Bank loan (R. 33). The Baileys repossessed the ranching operation in 1968, including 311 cows and 12 bulls. Cows had a minimum value of \$100 per head and the bulls a minimum value of \$200 per head (R. 33).

ARGUMENT

POINT I

WALKER BANK, BY FILING FINANCING STATEMENTS ON JUNE 21, 1966 AND FEBRUARY 8, 1967, AS REQUIRED BY THE UTAH UNIFORM COMMERCIAL CODE, OBTAINED A FIRST LIEN AGAINST ALL CATTLE WHICH WERE DELIVERED BY THE BAILEYS TO BURROWS PURSUANT TO ALLEGED "TITLE RETENTION" OR "CONDITIONAL SALES" CONTRACTS, AND AGAINST THE INCREASE OF SUCH CATTLE AND THE PROCEEDS OF THE SALES THEREOF, BY VIRTUE OF THE BAILEYS' FAILURE TO FILE IN ACCORDANCE WITH THE UCC ANY FINANCING STATEMENT UNTIL MAY 26, 1967.

The 1965 Utah Legislature adopted the Utah Uniform Commercial Code, which became effective on January 1, 1966. Chapter 9 of the Code concerns secured transactions and §78-9-102(2) of that chapter provides, as follows:

This chapter applies to security interests created by contract including pledge, assignment, *chattel mortgage*, chattel trust, trust deed, factors lien, equipment trusts, *conditional sales*, trust receipt, other lien or *title retention contract* and lease or consignment intended as security. (Emphasis added)

Since Walker Bank's rights are based on a chattel mortgage and a security agreement and the Baileys' rights are based on "conditional sales" or "title retention" contracts, it is clear that the respective rights of the parties to the cattle are governed by the provisions of the Secured Transactions Chapter of the Utah Uniform Commercial Code.

A party governed by the Secured Transactions Chapter of the Commercial Code, in order to perfect a Security interest in goods, including livestock, must either retain physical possession of the security or file a financing statement with the Utah Secretary of State. That the Baileys did not obtain a perfected security interest in the cattle by retaining physical possession of the cattle is established by the undisputed evidence at the trial, as well as by the Findings of Fact. Finding of Fact No. 6 states as follows:

6. The 311 cows and 12 bulls referred to in Exhibit "P-30" were delivered by the Baileys to Burrows on or about June 30, 1966, and were placed on 50 Mile Mountain. From that time until sometime in 1968, when the Baileys repossessed the ranch and cattle, the cattle were in the possession of Wesly Burrows, although during that period the Baileys were requested to and did take care of these cattle from time to time.

Since the Baileys did not perfect a security interest in the cattle through retaining possession, the only way they could perfect a security interest was by filing a financing statement with the Utah Secretary of State (Sec. 70A-9-302 and 70A-9-401, UCA 1953, as amended). Gale Bailey did file a Real Estate Sales Agreement covering the Gale Bailey cattle and the real property with the Garfield County Recorder on January 5, 1967, but this does not satisfy the requirement of the Utah Uniform Commercial Code. A financing statement must be filed with the Utah Secretary of State before a security interest is perfected. (Sec. 70A-9-401, UCA 1953 as amended). It was not until May 26, 1967, after both of Walker Bank's filings, that the Baileys filed a financing statement with the Utah Secretary of State. On the other hand, Walker Bank filed two financing statements with the Secretary of State. The first one was filed on June 21, 1966. The second was filed on February 8, 1967. These financing statements covered the Bailey herd, and were filed before the Bailey financing statement was filed.

Where, as here, two or more parties claim the security interest in the same collateral, the priority of conflicting security interests is determined by §70A-9-312(5) (a) of the Code. This Section provides that the priority between the conflicting security interests is determined in the order of filing of financing statements with the Secretary of State. The order of filing governs regardless of which security interest attached first and regardless of whether or not the security interest attached before or after filing.

The case of *Wilson vs. Burrows*, Utah 2d, P.2d.... (1972), Case No. 12394, was recently decided by this court. The *Wilson* case is absolutely identical in all material aspects with the case in point. The cattle herd is the identical herd and the facts regarding the priority of the banks filing are identical. The only material difference is the name of the defendant parties. The *Wilson* case and the present one are so closely identical that a reversal of the present case could be accomplished with a per curiam decision and a citation of the *Wilson* case. In the *Wilson* case, this court held for the party that filed first. Here, as there, this was Walker Bank.

POINT II

THE LIVESTOCK BRAND ACT WAS AIMED AT A THEFT OF LIVESTOCK WITH- IN THE STATE, AND THE SALE OF STOLEN

ANIMALS, AND HAS NOTHING TO DO WITH SECURED TRANSACTIONS.

The Utah Supreme Court held in *Pugh vs. Stratton*, 22 U.2d 140, 450 P.2d 463 (1969), that the Sales Chapter of the UCC is subordinated to the Utah Livestock Brand Act. The basis of this holding is the specific language in the Sales Chapter, which reads as follows:

“70A-2-102. Scope—Certain security and other transactions excluded by this chapter.—Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditioned contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

This Section specifically subordinates the Sales Chapter to the Utah Livestock Brand Act.

There is no such exclusion comparable to §70A-2-102 whatsoever in the Secured Transactions Chapter of the UCC. The Secured Transactions Chapter does not contain a provision that subordinates any of its provisions to a prior statute regulating sales to farmers and prevention of thefts.

This is precisely what this court has already decided in *Wilson vs. Burrows, supra*. The *Wilson* case concerns the same loan from Walker Bank to Wesly Burrows as is involved in the present case and has the

same issues and facts as in the present case. In talking about the Utah Livestock Brand Act in the *Wilson* case, the court stated:

The purpose of the statute was aimed at the theft of livestock within the State and to impede the sale of stolen animals. It would not appear that the Legislature intended the statute to apply to sales such as we have here between *Wilson* and *Burrows*.*

This language, in the case with almost identical facts and parties specifically states that the Secured Transactions Chapter is not subordinate in any manner to the Utah Livestock Brand Act.

CONCLUSION

When the Baileys repossessed the ranches, they ended up with \$20,000 of the money which Walker Bank had loaned to Wesley Burrows, plus their land, equipment and remaining cattle. We make no claim to the land, or equipment, but as to the cattle and the offspring and the proceeds therefrom, we claim that Walker Bank has first priority. The first priority position of Walker Bank is established by the fact that it perfected a first lien pursuant to the Secured Transactions Chapter of the Utah Uniform Commercial Code. Accordingly, we pray for reversal and remand of the

* This holding is consistent with the Utah Livestock Brand Act, which does not specify secured transactions among the situations it covers.

case as previously detailed in our brief and as was done in *Wilson vs. Burrows, supra*, which involved facts which are indistinguishable to these.

Respectfully submitted,

Roger J. McDonough and
J. Wendell Bayles

of JONES, WALDO, HOLBROOK
& McDONOUGH

Attorneys for Walker Bank &
Trust Company