

1995

James L. Szatkowski and Vernal W. Thompson,
Plaintiffs-Appellants v. Bountiful City, Defendant-
Appellee : Reply Brief of Appellee or Cross-
Appellant

Utah Court of Appeals

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Paul W. Mortensen.

Russell H. Mahan.

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UTAH SUPREME COURT

BRIEF

DOCKET NO: 950242CA

IN THE UTAH COURT OF APPEALS

JAMES L. SZATKOWSKI
and VERNAL W. THOMPSON,

Plaintiffs-Appellants,

vs.

BOUNTIFUL CITY,

Defendant-Appellee.

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Argument Priority 15

Case No. 950242-CA

REPLY BRIEF OF APPELLEE/CROSS-APPELLANT

Appeal from the Judgment of the
Second District Court of
Davis County, State of Utah
The Honorable Jon M. Memmott
District Court Judge

Paul W. Mortensen (2331)
352 South 200 West #4
P.O. Box 741
Farmington, Utah 84025
Telephone (801) 451-7000
Attorney for the Appellant

Russell L. Mahan (#2059)
Matthew C. Barneck (#5249)
790 South 100 East
Bountiful, Utah 84010
Telephone (801) 298-6143
Attorneys for the Appellee

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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Paul W. Mortensen (2331)
352 South 200 West #4
P.O. Box 741
Farmington, Utah 84025
Telephone (801) 451-7000
Attorney for the Appellant

Russell L. Mahan (#2059)
Matthew C. Barneck (#5249)
790 South 100 East
Bountiful, Utah 84010
Telephone (801) 298-6143
Attorneys for the Appellee

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Russell L. Mahan (#2059)
Matthew C. Barneck (#5249)
Attorneys for the Defendant-Appellee
790 South 100 East
Bountiful, Utah 84010
Telephone (801) 298-6143

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**REPLY BRIEF OF APPELLEE/
CROSS-APPELLANT**

Case No. 950242-CA

The Appellee/Cross-Appellant respectfully submits the following
reply brief on issues raised on Cross-Appeal:

ARGUMENTS ON CROSS-APPEAL

**1. THE TRIAL COURT ERRED IN INTERPRETING §10-2-414 TO
REQUIRE A COUNT OF OWNERS AND PETITIONERS (FOR THE
PURPOSE OF DETERMINING A MAJORITY) AT THE MID-POINT OF THE
ANNEXATION PROCESS WHEN THE POLICY DECLARATION WAS
ADOPTED.**

The argument of the Defendant City on this issue was fully set forth
in its original brief. The substantive statements made by the Plaintiffs in
their brief are effectively dealt with in the City's original brief.

The procedural argument made by the Plaintiffs is incorrect. The Plaintiffs had their day in the trial court, failed to raise Point I of their appeal brief, and are not entitled to raise it on appeal or in the event that the Court of Appeals sustains this point on Cross-Appeal.

2. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN SECTION 10-2-416 TO BE MODIFIED BY THE PHRASE "AS SHOWN IN THE LAST ASSESSMENT ROLLS."

The argument of the Defendant City on this issue was fully set forth in its original brief. The substantive statements made by the Plaintiffs in their brief are effectively dealt with in the City's original brief.

The procedural statement of Plaintiffs that the Defendant City did not preserve this issue for appeal is mistaken. As stated on page 4 of the its original brief, all of the issues on Cross-Appeal were preserved for appeal by the Defendant City's Motion for Rulings of Law (R. 30-48) and the Defendant's Objections to Rulings of Law (R. 263-264, 388).

3. THE TRIAL COURT ERRED IN INTERPRETING THE TERM "OWNERS OF REAL PROPERTY" IN §10-2-416 TO INCLUDE GOVERNMENTAL ENTITIES.

The argument of the Defendant City on this issue was fully set forth in its original brief, which is supplemented here.

Plaintiffs argue that under §59-2-305 "all" properties in the taxing entity should be listed. This provision, however, is not applicable. That

statute is simply a requirement for a list to be prepared that includes all properties. The statute that is applicable to the "assessment roll" requirement is §59-2-303:

...the county assessor shall ascertain the names of the owners of ***all property which is subject to taxation*** by the county, and shall assess the property to the owner....

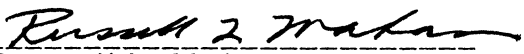
This statutory language clearly shows that governmental entities, which are not subject to taxation, are not to be included on the assessment roll. They should not be counted as "owners of real property" under §10-2-416.

The Plaintiffs cite Pike Countryside Annexation v. Vernal City, 711 P.2d 240 (Utah 1985), as though it supports the position they argue. It does not. That case stands only for the proposition that a water and sewer improvement district qualifies as an "affected entity." That case in no way deals with the issue involved here, about whether governmental entities ought to be counted as "owners of real property" under §10-2-416.

CONCLUSION

The judgment in favor of the Defendant Bountiful City should be affirmed, though modified as to the issues raised on Cross-Appeal.

Dated this 20th day of June, 1995.



Russell L. Mahan
Attorney for the Defendant City

MAILING CERTIFICATE

I certify that on June 20, 1995, I mailed ^{two}~~three~~ copies of this Reply Brief of the Appellee/Cross-Appellant, with first class postage prepaid thereon, to Paul W. Mortensen at P.O. Box 741, Farmington, Utah 84025.

Russell J. Walker