

2006

# Wasatch Oil & Gas LLC v. Edward A. Reott : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



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.

Lawrence E. Stevens; Gary E. Doctorman; Dianna M. Gibson; Parson, Behle & Latimer; Attorneys for Defendants-Appellees.

Eric C. Olson; Matthew K. Richards; Kirton & McConkie; Attorneys for Appellant.

---

## Recommended Citation

Reply Brief, *Wasatch Oil v. Reott*, No. 20060562 (Utah Court of Appeals, 2006).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/6612](https://digitalcommons.law.byu.edu/byu_ca2/6612)

This Reply 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.

---

IN THE UTAH COURT OF APPEALS

---

WASATCH OIL & GAS, L.L.C.,

Plaintiff-Appellant,

vs.

EDWARD A. REOTT, et al.

Defendants-Appellees.

Case No. 20060562-CA

---

GOAL, L.L.C. and REGOAL, INC.,  
Counterclaim, Third Party and  
Crossclaim Plaintiffs-Appellees,

vs.

WASATCH OIL & GAS, L.L.C. and  
BILL BARRETT CORPORATION,

Third party, Counterclaim and  
Crossclaim Defendants-Appellants.

---

CONSOLIDATED REPLY BRIEF OF APPELLANTS

---

Appeal from the Seventh Judicial District Court in and for Carbon County  
The Honorable George M. Harmond, Jr., Presiding

---

Lawrence E. Stevens (3103)  
Gary E. Doctorman (0895)  
Dianna M. Gibson (7533)  
**PARSONS BEHLE & LATIMER**  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898

*Attorneys for Defendants-Appellees*

Eric C. Olson (4108)  
Matthew K. Richards (7972)  
**KIRTON & McCONKIE**  
60 East South Temple, Suite 1800  
P.O. Box 45120  
Salt Lake City, Utah 84145-0120

*Attorneys for Appellant Wasatch Oil & Gas  
L.L.C.*

FILED  
UTAH APPELLATE COURTS

JAN 19 2007

Carolyn L. McIntosh  
**PATTON BOGGS LLP**  
1660 Lincoln Street, Suite 1900  
Denver, CO 80264

Nick Sampinos (3950)  
1990 North Carbon Avenue  
Price, Utah 84501

*Attorneys for Appellant Bill Barrett  
Corporation*

---

**ORAL ARGUMENT REQUESTED**

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
ARGUMENT .....	1
I. THE TRIAL COURT ERRED IN FINDING FRAUD AS A MATTER OF LAW WHERE FACTS WERE CLEARLY IN DISPUTE.....	1
II. REOTT CANNOT RAISE FRAUDULENT CONVEYANCE AFTER THE SHERIFF'S SALE.....	7
A. Reott Chose to Enforce His Liens at the Sheriff's Sale, Rather Than First Seek to Establish Fraudulent Conveyance as to the Section 32 Interests, Thereby Electing His Remedy and Relinquishing Standing to Challenge Wasatch's Right of Redemption .....	7
B. Reott's Real Concern Is His Own \$1.00 Credit Bid .....	9
C. Utah Law Prohibits Reott From Belatedly Asserting Fraudulent Conveyance to Control the Right Of Redemption .....	10
III. WASATCH HAD A SUFFICIENT CLAIM TO AND INTEREST IN THE SECTION 32 LEASES TO REDEEM .....	12
CONCLUSION .....	18

## TABLE OF AUTHORITIES

### Cases

<i>Anderson v. Bransford</i> , 116 P. 1023 (Utah 1911).....	3
<i>Babcock v. Dangerfield</i> , 98 Utah 10, 94 P.2d 862 (1939).....	15
<i>Brockbank v. Brockbank</i> , 2001 UT App 251, 32 P.3d 990.....	10, 11, 12, 13, 14, 18
<i>Butterfield v. Okubu</i> , 831 P.2d 97 (Utah 1992) .....	4
<i>Casserleigh v. Spar Consolidated Mining Co.</i> , 128 P. 863 (Colo. Ct. App. 1912) .....	12
<i>Charvoz v. Cottrell</i> , 361 P.2d 516 (Utah 1961) .....	3
<i>City Consumer Services, Inc. v. Peters</i> , 815 P.2d 234 (Utah 1991) .....	8
<i>Clawson v. Moesser</i> , 535 P.2d 77 (Utah 1975).....	8, 12, 13, 14, 17
<i>Coulter &amp; Smith, Ltd. v. Russell</i> , 966 P.2d 852 (Utah 1985).....	16
<i>Ellsworth Paulsen Construction Co. v. 51-SPR, LLC</i> , 2006 UT App 353, 144 P.3d 261 .....	3
<i>Francis v. White</i> , 49 So. 334 (Ala. 1909) .....	12
<i>Horton v. Horton</i> , 695 P.2d 102 (Utah 1984).....	7, 15
<i>Mercur Coalition Mining Co. v. Cannon</i> , 112 Utah 13, 184 P.2d 341 (1947).....	15
<i>Montana National Bank v. Michels</i> , 631 P.2d 1260 (Mont. 1981).....	2
<i>Olsen v. Bank of Ephraim</i> , 93 Utah 364, 68 P.2d 195 (1937) .....	7
<i>Phyfe v. Riley</i> , 15 Wend. 248 (N.Y. Sup. Ct. 1836) .....	12
<i>RHN Corp. v. Veibell</i> , 2004 UT 60, 96 P.3d 935.....	7
<i>Robertson v. Moline, Milburn &amp; Stoddard Wagon Co.</i> , 55 N.W. 495 (Iowa 1893).....	12
<i>Roseleaf Corp. v. Chierghino</i> , 59 Cal.2d 35 (1963) .....	8

<i>Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.</i> , 787 P.2d 1328 (Utah Ct. App. 1990) .....	10, 11, 12, 13, 14, 17, 18
<i>Territorial Savings &amp; Loan Association v. Baird</i> , 781 P.2d 452 (Utah Ct. App. 1989) .....	1, 2, 3
<i>Tretheway v. Miracle Mortgage, Inc.</i> , 2000 UT 12, 995 P.2d 599.....	4
<i>United States v. Loosley</i> , 551 P.2d 506 (Utah 1976) .....	10, 13, 15, 18
 <b><u>Statutes and Rules</u></b>	
Utah Code Ann. § 78-37-1 (2006) .....	8
Utah Admin. Code R850-20-2200.5(b) .....	16
Utah R. Civ. P. 56 .....	4, 5, 6
Utah R. Civ. P. 69(j).....	8
 <b><u>Other Authorities</u></b>	
David A. Thomas and James J. Backman, <i>Thomas and Backman on Utah Real Property Law</i> , 825 (LEXIS 1999) .....	8

## ARGUMENT

### **I. THE TRIAL COURT ERRED IN FINDING FRAUD AS A MATTER OF LAW WHERE FACTS WERE CLEARLY IN DISPUTE.**

As his lead argument in response to Appellants' Brief, Reott asserts that "the District Court did not make 'findings'" but rather did nothing more than apply facts to law in reaching the conclusion that there was a fraudulent transfer. Reott Br 14-17. Reott acknowledges that the Fraudulent Transfer Act requires a finding of "actual intent to defraud, hinder or delay" a creditor, but then asserts that actual intent is too "difficult to prove absent an outright admission" so the law allows intent to be proved through "badges of fraud." Reott Br 15. Proving badges of fraud (Reott contends) *substitutes* for proof of actual intent: "[I]f certain codified and common law factors [*i.e.*, the 'badges of fraud'] are established, 'actual intent' may be proven and the statutory elements are established." Reott Br 16. In Reott's view, proof of fraud is simple arithmetic — evidence of even one "badge of fraud" equates to proving a fraudulent transfer as a matter of law, with no need to hear live testimony, weigh evidence or make any further inquiry. Reott Br 39.

Reott's only authority for this remarkable assertion is *Territorial Savings & Loan Ass'n v. Baird*, 781 P.2d 452, 462 (Utah Ct. App. 1989), in which this Court made the unremarkable point that "badges of fraud" "throw suspicion on a transaction." Reott Br 15. However, even a cursory reading of *Territorial Savings* makes clear that this case does not support Reott's extravagant contention that the existence of a "badge of fraud" mandates a finding of fraudulent intent. To the contrary, within four sentences of the

phrase Reott highlights, the *Territorial Savings* court set forth the following points that govern any finding of fraud based on alleged “badges of fraud”:

- “Actual fraud is never presumed, but instead must be established by clear and convincing evidence”;
- “Fraudulent intent is ordinarily considered a question of fact . . .”;
- Badges of fraud “*do not of themselves or per se constitute fraud*”;
- “Their value as evidence is relative, not absolute”;
- “They are not usually conclusive proof; they are open to explanation”; and
- Their weight varies according to “the special circumstances attending the case.”

*Id.* (emphasis added) (quoting *Montana Nat’l Bank v. Michels*, 631 P.2d 1260, 1263 (Mont. 1981)).

In granting partial summary judgment in favor of Reott, Judge Bryner engaged in fact finding on two levels: first, he determined that certain isolated facts were “material,” *i. e.*, they were “badges of fraud,” and second, he presumed that these so-called “badges of fraud” constituted fraud. Thus, the trial court’s errors include (a) inferring actual intent, (b) viewing the “badges of fraud” as conclusive or absolute on the issue of intent rather than considering fraudulent intent as a question of fact, and (c) disregarding extensive offsetting facts, explanations and arguments refuting the notion that Wasatch’s acquisition of the Section 32 interests was a fraudulent conveyance. Even if Reott were correct in asserting that Wasatch and BBC did not adequately dispute the substantive



facts cited as “badges of fraud,”<sup>1</sup> an assertion that these appellants strongly contest, the trial court erred in embracing those “badges” as irrefutable evidence of fraudulent intent sufficient to permit the entry of partial summary judgment on the fraudulent conveyance claim. *See id.*; *Ellsworth Paulsen Construction Co. v. 51-SPR, LLC*, 2006 UT App 353 ¶ 18, 144 P.3d 261 (“[T]he fact that there are other equally plausible inferences to be drawn from the evidence manifests that summary judgment should not have been granted.”); *Charvoz v. Cottrell*, 361 P.2d 516, 518 (Utah 1961) (“[E]ven if the facts are undisputed, if fair-minded men can honestly draw different conclusions from them, the issue of negligence should be settled by a jury.”); *Anderson v. Bransford*, 116 P. 1023, 1023 (Utah 1911) (same: summary judgment is inappropriate where there are “different deductions or inferences arising from undisputed facts”).

Apart from these legal errors, the record shows that Wasatch and BBC *did* fully and sufficiently dispute the materiality of the facts labeled by Reott and the trial court as “badges of fraud.” To begin with, in the introductory statement to its reply to the “undisputed facts” as articulated by Reott below, Wasatch objected to those “facts” as being “mainly contentions regarding the legal meaning of the underlying documents — which, of course, are not [facts] at all, but legal argument. . . .” R. 4076-79.

That Wasatch and BBC did not belabor this clear disregard for the mandates of

---

<sup>1</sup> As he did below, Reott selects certain facts to include in his Appellee’s Brief while disregarding facts that point to or would support a different result than that adopted by the trial court. Reott Br. at 2 – 9. Moreover, Reott inconsistently asserts in his brief that Wasatch and BBC failed to dispute sufficiently the material facts (Reott Br. at 9) and then later that “Reott’s fraudulent transfer argument was unopposed” (Reott Br. at 39). Clearly it cannot be both; a close review of the record demonstrates that neither statement is correct.

Utah R. Civ. P. 56 by repeating the point as to each of the dozens of “undisputed facts” infected in this manner was simply a matter of economy, not concession. In fact, Wasatch did specifically restate the disputes regarding the “significance” and “materiality” of several of the most crucial facts in dispute, including Mr. Sutton’s authority to act for Mission, the new lease issued to Wasatch by SITLA after it approved the Mission-Wasatch transfers, and Wasatch’s “recording” of the lease transfers in the public records of SITLA versus the county recorder. R. 4076-78. Absent Reott’s repeated spin (entirely appropriate at trial but not at the stage of summary adjudication), the facts he assembled were innocuous and of no legal consequence. Unvarnished facts detailing the sequence of events, the identities of the players, and the types of transactions were not in dispute (but did not and could not add up to fraud as a matter of law). What Wasatch and BBC have consistently disputed are the sinister inferences Reott asked the trial court to draw from those facts and which he now asks this Court to affirm on appeal. If the trial court felt compelled to reach issues of motive and equity, all Wasatch and BBC asked for was a trial: the opportunity to call live witnesses and otherwise to present evidence of the parties’ true intent and the true course of the transactions.

No further statement of dispute was required to prevent the entry of summary judgment. Wasatch’s general objection echoed what the established standard for summary judgment already requires. Under Rule 56(e), a court may draw inferences from undisputed facts, but only in favor of the *nonmoving* parties. *See, e.g., Tretheway v. Miracle Mortgage, Inc.*, 2000 UT 12 ¶ 2, 995 P.2d 599; *Butterfield v. Okubu*, 831 P.2d 97, 107 (Utah 1992) (“doubts about whether a nonmovant has established a genuine issue

of material fact should be resolved in favor of permitting the party to go to trial”). The parties relied on this standard by invoking Rule 56. R. 2497, 3075

More significantly, Wasatch documented extensive explanatory facts that, if believed by the trier of fact, would support a far different and more benign view of the Wasatch-Mission agreement and related transfer than that advocated by Reott and embraced by Judge Bryner. Wasatch did so in the statement of facts supporting Wasatch’s cross-motion for summary judgment re: redemption (R. 2625-2633), in response to Reott’s asserted facts regarding fraudulent conveyance (R. 4084-85), in affidavits, deposition testimony and other documents submitted in support of its memoranda (R. 2509-19, 2523-24, 2567-68, 2627, 3952-63, 4035-39), and elsewhere (R. 2683-84, 3975, 5410). In addition, Wasatch and BBC argued against Reott’s attempts to give the facts consequences that the law does not compel or that, at the summary judgment stage, required the trial court improperly to draw inferences. R. 3955-56, 3966, 4088-4106.<sup>2</sup>

All of these arguments were advanced to dispute the materiality of Reott’s “facts” — to dispute their purported status as “badges of fraud.” Wasatch’s and BBC’s opening brief details several examples, and gives record citations, demonstrating that Wasatch directly disputed the “badges of fraud” or offered additional evidence below that, if

---

<sup>2</sup> In its reply memorandum, Wasatch specifically refuted Reott’s contentions regarding the recording of the leases, notice, Mission’s intent, Mr. Sutton’s authority, SITLA’s approval of the transfers, the scope of Reott’s judgment liens, the amount of consideration paid by Wasatch, Wasatch’s payments to maintain the Section 32 leases, and the purported requirements of Mission’s operating agreement vis-à-vis its course of conduct. R. 4088-4106.

believed, would show that Reott's facts were not indicia of fraud and, thus, not "material." Appellants' Br 13-17, 41-43. Moreover, the disputes of fact are made all the clearer by Reott's repeated attempts to explain them away in his brief. Reott expends pages contesting the evidence regarding Mission's intent, Mr. Sutton's authority, the sufficiency of consideration for the Letter Agreement,<sup>3</sup> and other "badges of fraud." Reott Br 29-36, 41-50.

By accepting wholesale Reott's characterization of the evidence as "badges of fraud" when the facts in the record also supported a benign view of events, or a view favorable to Wasatch and BBC, and then drawing the inference of fraud from those alleged "badges," the trial court improperly weighed disputed evidence and resolved inconsistencies in favor of Reott, the moving party. Fact finding at either of these levels was error. The Utah Rules of Civil Procedure, Rule 56(c), properly applied, afford Wasatch and BBC the benefit of an evidentiary hearing regarding any claim that (a) the conduct of Wasatch or Mission rose to the level of "badges of fraud" and (b) the evidentiary weight accorded those alleged badges sufficed to support a finding of fraudulent intent.

In summary, because the trial court both (1) found that certain facts were "material" as "badges of fraud" (when the meaning of those facts was clearly disputed in the record) and (2) drew the inference of fraud from the alleged "badges" (when the evidence would support other, benign explanations), this Court should reverse or vacate

---

<sup>3</sup> Reott *admits* at page 44 of his Brief that "The sufficiency [*i.e.*, amount] of consideration is disputed."

the entry of summary judgment on the fraudulent conveyance claim. Moreover, the Court should do so regardless of its holding on the redemption issue (discussed next) because the trial court's fraudulent conveyance findings have potentially far reaching impact in this litigation on remand. With a finding of fraudulent conveyance, Reott is poised to execute his \$238,594 deficiency judgment (what remains of his judgments after deducting his \$1.00 credit bid at the Sheriff's Sale) against other BBC leases without any opportunity for Wasatch and BBC to contest the fraud theory at a trial on the merits.

## **II. REOTT CANNOT RAISE FRAUDULENT CONVEYANCE AFTER THE SHERIFF'S SALE.**

### **A. Reott Chose to Enforce His Liens at the Sheriff's Sale, Rather Than First Seek to Establish Fraudulent Conveyance as to the Section 32 Interests, Thereby Electing His Remedy and Relinquishing Standing to Challenge Wasatch's Right of Redemption.**

Before the August 9, 2001 Sheriff's Sale, Reott as a judgment creditor had standing and full opportunity to challenge any party, including Wasatch, purporting to occupy a place in the chain of title at variance with or superior to the rights then held by Reott. The cases Reott now cites holding that a creditor can challenge another's claim of title on the basis of fraud support this proposition. *See Olsen v. Bank of Ephraim*, 93 Utah 364, 68 P.2d 195, 198 (1937); *Horton v. Horton*, 695 P.2d 102, 107 (Utah 1984), *abrogated on other grounds by RHN Corp. v. Veibell*, 2004 UT 60, 96 P.3d 935).

However, nothing in these cases (or any other Utah case) supports Reott's further contention that a judgment creditor who neglects first to assert superior title but opts instead to execute on his judgments through a sheriff's sale, thereby obtaining full legal benefit of that superior title, can thereafter challenge a redemptioner's right to redeem.

It is black letter law in Utah that a lien that is executed through judgment and sheriff's sale is "exhaust[ed]," "terminated," and "defunct," and "no further proceeding under it [is] possible." *Clawson v. Moesser*, 535 P.2d 77, 78 (Utah 1975); *see also* David A. Thomas and James J. Backman, *Thomas and Backman on Utah Real Property Law*, 825 (LEXIS 1999) (the effect of the redemption is "as though the obligation had been paid without ever resorting to foreclosure" and the foreclosed lien "is extinguished"). The purchaser at the sheriff's sale acquires an interest in the property, but does so subject to the right of redemption. Utah R. Civ. P. 69(j). Redemption does not revive a foreclosed lien. *See City Consumer Serv., Inc. v. Peters*, 815 P.2d 234, 236 (Utah 1991) ("The position of a junior lienor whose security is lost through a senior sale is different from that of a selling senior lienor. A selling senior can make certain that the security brings an amount equal to his claim against the debtor or the fair market value, whichever is less, *simply by bidding in for that amount.*" (quoting *Roseleaf Corp. v. Chierghino*, 59 Cal.2d 35, 36 (1963) (Traynor, J.) (emphasis added))); *Clawson*, 535 P.2d at 78 ("[Redemption] gave no vitality to [the foreclosing party's] defunct claim."); *cf.* Utah Code Ann. § 78-37-1 (2006) ("There can be but one action for the recovery of any debt or the enforcement of any right secured solely by mortgage upon real estate . . .").

Here, Reott elected not to challenge Wasatch's claim of title when that opportunity was legally available to him. Instead, he took the more direct route of executing on his three judgments. Having chosen his remedy and successfully asserted the superiority of his rights, Reott relinquished his judgment creditor status by accepting his own \$1.00 credit bid at the Sheriff's Sale.

**B. Reott's Real Concern Is His Own \$1.00 Credit Bid.**

Had Reott bid the face amount of his judgments or the fair market value of the encumbered leases, the present dispute would never have arisen. Either he would have recovered the full value of his judgments or he would have obtained title to the property. Instead, he took the chance that no one would redeem against his \$1.00 credit bid. Unfortunately for Reott, this gamble proved unwise, at least if the goal was to obtain the Section 32 interests, the Lavinia 1-32 Well and the BLM interests for the total sum of \$1.00 and simultaneously preserve his judgments essentially intact to enforce against other properties. His nominal credit bid set the redemption amount at a correspondingly nominal amount. Thus, the belated attack on Wasatch embodied in this litigation seeks to undo the consequences of Reott's short-sighted strategy, a salvage attempt the law does not permit.

Contrary to Reott's contentions, Mission's transfer of the Section 32 leases to Wasatch did not and was not intended to "keep the property away from Mission's creditors, such as Reott." Reott Br 11, 42-44. *Reott was a secured creditor.* Nothing Wasatch or anyone else could do would "keep the property away" from Reott. He had a protected interest in the leases, superior to that of Wasatch and fully insulated against *any* transfers, regardless of their terms. This no doubt explains why Reott elected not to challenge Wasatch's claim of title before the Sheriff's Sale. He could foreclose and extinguish Wasatch's interest.

Moreover, Reott knew or should have known at the time of the Sheriff's Sale that Wasatch was a potential redemptioner. Reott's judgment liens attached to leases in

Section 32 that were numbered and maintained in public files by SITLA, as is customary in the industry. R. 2558-65, 2569-80. Indeed, Wasatch was the only party that realistically could have redeemed. Mission had abandoned the Section 32 leases following the transfer to Wasatch. Reott admits (Reott Br 32) that Wasatch exclusively operated and maintained the Section 32 leases, and Reott's counsel acknowledged in correspondence with the State of Utah that Wasatch received "an assignment of a Utah State mineral lease ... from Mission prior to the Sheriff's Sale," so it is clear that Reott was aware of Wasatch's interest in the leases. R. 4035-39, 2610-11. Notably, Reott contacted Wasatch by telephone the very day following the Sheriff's Sale to request access to Wasatch's pipeline. R. 2762.

By credit bidding just \$1.00 at the Sheriff's Sale, Reott voluntarily surrendered his secured status, extinguished his lien, and placed himself in the predicament in which he now finds himself. This was not Wasatch's doing and, whatever motive one might now ascribe to Mission or Wasatch in the transfer of the Section 32 interests, that transfer could not impact in the least Reott's status by reason of the Sheriff's Sale.

**C. Utah Law Prohibits Reott From Belatedly Asserting Fraudulent Conveyance to Control the Right of Redemption.**

The right of redemption exists as a check on undermarket bids. It is the undisputed policy of Utah to advance that purpose by liberally construing the rules and statutes permitting redemption. *See United States v. Loosley*, 551 P.2d 506, 508 (Utah 1976); *Brockbank v. Brockbank*, 2001 UT App 251 ¶ 12, 32 P.3d 990; *Tech-Fluid Services, Inc. v. Gavilan Operating, Inc.*, 787 P.2d 1328, 1335 (Utah Ct. App. 1990).



This Court’s decisions in *Brockbank* and *Tech-Fluid* dictate the outcome in this appeal. Reott’s attempts to limit those decisions to their facts disregard the breadth and clarity of this Court’s holdings in the two cases. Both cases are unequivocal in their statement of the law of redemption. Both prevented creditors who had underbid at a sheriff’s sale from contesting the right of redemption, even when the redemption right was allegedly obtained by fraud (*Brockbank*) or the redemptioner’s status as successor-in-interest or its compliance with Rule 69 were questionable (*Tech-Fluid*). “The judgment creditor always has it in his power to make the land sold under execution of his judgment bring its real value, so that, if redemption is effected, he cannot be hurt”; thus, if the creditor underbids, he “*should not now be heard to complain*” — he is “*bound by [his] choices*.” *Brockbank*, 2001 UT 251 ¶ 12 n. 3; *Tech-Fluid*, 787 P.2d at 1335 (emphasis added).

*Brockbank* specifically held that the purchaser at a sheriff’s sale cannot assert fraud to defeat or control redemption: “[T]he transfer of the right of redemption *cannot be a fraudulent conveyance*,” “notwithstanding any actual, subjective intent of [the debtor] ‘to hinder, delay or defraud’ the creditor.” 2001 UT 251 ¶¶ 12, 15 (emphasis added). “To allow a foreclosing creditor to control the right of redemption is inconsistent with the purpose of that right” because the amount the sheriff’s sale purchaser bids “is within the creditor’s control.” *Id.* at ¶¶ 12, 14.<sup>4</sup>

---

<sup>4</sup> Reott’s attempt at page 21 of his brief to distinguish *Brockbank* by drawing a line between the transfer of the right of redemption in isolation and the transfer of that right as part of a bundle of rights in a property has neither intuitive nor case support. Certainly, this Court in *Tech-Fluid* attached no significance to the fact that the right of redemption

The only authorities Reott cites to support his contrary assertion that a sheriff's sale purchaser can challenge the right of redemption are four cases decided between the years of 1836 and 1912 by Alabama, Colorado, Iowa and New York state courts.<sup>5</sup> Not one of these cases has ever been cited by a Utah court, and three have not been cited by *any* court on *any* point since 1938. Reott fails to direct this Court to any Utah cases or any contemporary or persuasive authority from any other jurisdiction purporting to counter this Court's decisions in *Brockbank* and *Tech-Fluid*.

As a matter of Utah law, Reott has no claim or defense to Wasatch's redemption based on fraudulent conveyance. Having relinquished his judgment creditor status at the Sheriff's Sale and suffering no legal injury as a result of his own nominal credit bid (*see* Appellants' Br 24-30), he has no standing to defeat or control Wasatch's right of redemption.<sup>6</sup>

### **III. WASATCH HAD A SUFFICIENT CLAIM TO AND INTEREST IN THE SECTION 32 LEASES TO REDEEM.**

The Utah Supreme Court's decision in *Clawson*, *supra*, established that an equitable interest, even in one who may not have legal title, suffices to support a right of

---

therein asserted was conveyed as part of a transfer of title rather than as an isolated transfer.

<sup>5</sup> *Phyfe v. Riley*, 15 Wend. 248 (N.Y. Sup. Ct. 1836); *Robertson v. Moline, Milburn & Stoddard Wagon Co.*, 55 N.W. 495, 496 (Iowa 1893); *Francis v. White*, 49 Spo. 334, 335 (Ala. 1909); and *Casserleigh v. Spar Consol. Mining Co.*, 128 P. 863, 866 (Colo. Ct. App. 1912).

<sup>6</sup> Reott claims that Wasatch did not raise this standing argument below. As with his various other contentions that Wasatch failed to raise an issue below, this contention is not correct and manifests a fundamental misunderstanding of Wasatch's consistent position in this litigation. The standing argument is central to *Brockbank* and *Tech-Fluid*, which Wasatch argued at great length below. *See, e.g.*, R. 4096-97.

redemption. 535 P.2d at 78. *Clawson* involved a series of three separate executions against a property originally owned by Spaulding: First, Clawson executed on a judgment lien and bought the property at a sheriff's sale without redemption, terminating Spaulding's legal interest in the property. Next, Walker Bank foreclosed on a senior trust deed, but Spaulding redeemed. Finally, Walker Bank executed on its deficiency judgment against Spaulding, and an unrelated party purchased the property without redemption. Clawson sued to quiet title, challenging Spaulding's right to redeem at the second foreclosure sale because Spaulding had already "parted with all his interest in the land." *Id.* at 77-78. Notwithstanding, the court held it was "settled" that Spaulding had "sufficient interest in the property" because Walker Bank held a deficiency judgment against him and the amount of the sale affected that judgment. *Id.* at 78.

Clearly under *Clawson*, legal title is not required, and a party has sufficient equitable interest if it has no more than a financial stake in the proceeding. This holding is consistent with *Brockbank* and *Tech-Fluid* and the policy announced in *Loosley* of liberally construing the redemption right as a check on undermarket bids. *Brockbank*, 2001 UT 251 ¶ 12; *Tech-Fluid*, 787 P.2d at 1332; *Loosley*, 551 P.2d at 508. The holding is *not* consistent with the hyper-technical approach to title or the "balancing of equities" encouraged by *Reott*, and adopted by the trial court, as the measure of the redemption right.

In the light of *Clawson*, *Tech-Fluid* and *Brockbank*, analysis of legal or equitable title for purposes of redemption does not require (or permit) a balancing of equities vis-à-vis competing parties as argued by *Reott*. Rather, the point is merely to assess whether a

particular redemptioner has “sufficient interest in the property” to enable it to redeem. *Clawson*, 535 P.2d at 78. This is a low threshold made lower still by a sheriff sale purchaser’s lack of standing to control or defeat the right of redemption and, in this case, by Mission’s complete absence from the scene to seek redemption.<sup>7</sup> To be sure, a complete stranger cannot suddenly appear and claim a right of redemption, but Wasatch was not such a stranger. As *Tech-Fluid* held, “‘Successors in interest’ clearly include assignees” as well as parties (such as Wasatch) that assume the operation of a mineral lease when a prior party (here, Mission) manifests an intent to abandon it. 787 P.2d at 1331 n.3, 1332.

Assessing title in this context is not a beauty contest. And Reott is off base in his Appellee’s Brief to construe Wasatch’s claim of equitable title as nothing more than an attempt to cure allegations of fraud. *E.g.*, Reott Br 33-36 (addressing consideration supporting the Letter Agreement in terms of his fraud claim). As noted in Point I above, Wasatch and BBC vigorously dispute the trial court’s findings of fraud, but more than that, the law *prohibits* Reott from even asserting fraud as a claim or defense to challenge Wasatch’s right of redemption. *Brockbank*, 2001 UT 251 ¶ 12. The decisions of this Court and the Utah Supreme Court consistently teach that a redemptioner’s right of redemption must be assessed on its own merits — notwithstanding any competing claims

---

<sup>7</sup> “It is inconsistent to suggest that a [party], having abandoned property and consequently being divested of all interest therein, would still retain a right to redeem, at least absent some expressed and unambiguous intent by the [party] to retain that right.” *Tech-Fluid*, 787 P.2d at 1332. Mission abandoned the Section 32 interests after their transfer to Wasatch. Thereafter, as Reott and his counsel well knew, Wasatch exclusively operated and maintained the properties. *See infra* Part II.B.

or even allegations of fraud — with an eye to the liberal policies favoring redemption.

This approach comports with the standard maxim in quiet title cases that the parties must prevail on the strength of their own title, not the defects in the title of another. *See Mercur Coalition Mining Co. v. Cannon*, 112 Utah 13, 184 P.2d 341, 342 (1947); *Babcock v. Dangerfield*, 98 Utah 10, 94 P.2d 862 (1939).<sup>8</sup>

Wasatch asserts both legal and equitable claims to the Section 32 interests.

Substantial evidence, improperly disregarded by the trial court, confirms that Wasatch is entitled to redeem as Mission's successor in interest. This evidence includes:

- The Letter Agreement – Wasatch obtained a valid Letter Agreement from Mission promising the transfer of the Section 32 interests. Wasatch gave consideration, including a payment of \$3,696.40, the assumption of Mission's financial obligations to SITLA, and a right of first refusal for a

---

<sup>8</sup> Were it appropriate to balance the equities and were Reott able to assert a claim of fraud as a means of defeating Wasatch's right to redeem, it would still be wrong to balance the equities in the way Reott proposes because to do so would give him a windfall. Wasatch did not redeem the Lavinia 1-32 Well (an asset of some value), which Reott acquired with his \$1.00 credit bid. It is worth remembering that the practical effect of affirming the trial court's partial summary judgment would be to award Reott *all of the Section 32 interests for the price of the same \$1.00 credit bid* and, further, to permit him to seek enforcement of the remaining \$238,594 deficiency judgment against all other BBC leases in Carbon County that were originally transferred by Mission to Wasatch.

Even in *Horton*, on which Reott relies (but which did not involve a redemption), the court held, "It is not the intent of equity actions such as this to punish a transgressor or to permit any party, whether innocent or not, to reap a benefit from the fraudulent transaction . . . ." Thus, the court subordinated the defrauded party's property interest to other creditors to prevent him from reaping a windfall. 695 P.2d at 107 (emphasis added). Here, the very purpose of Utah's policy of liberally construing the right of redemption is to prevent a windfall from an undermarket bid. *See Loosely*, 551 P.2d at 508.

future drilling deal (a promise that remained in force at the time of the Sheriff's Sale and Wasatch's redemption notice).<sup>9</sup>

- Execution of the SITLA Assignment Forms – Consistent with the Letter Agreement, Mission's manager executed SITLA assignment forms transferring the Section 32 interests in the same manner other forms and documents had been executed, including documents executed for the benefit of Reott. Reott admits that Mr. Sutton "purported" to transfer the Section 32 interests on behalf of Mission (R. 2656), and Wasatch acknowledged receipt from "Mission" on the back of the forms (R. 2558, 2562).
- SITLA Transfer of Lease Interests to Wasatch – SITLA approved the assignments and executed documents transferring the Section 32 interests from Mission to Wasatch. Indeed, SITLA partitioned lease **ML 43541** and signed a *new* lease with Wasatch (**ML 43541A**) that allowed Mission to retain the Lavinia 1-32 Well, which Wasatch did not acquire and which now belongs to Reott.<sup>10</sup>

---

<sup>9</sup> Reott contends that Wasatch's promise to allow Mission to participate in a future drilling deal was illusory and, thus, did not constitute consideration. Reott Br 33-34. However, the Supreme Court in *Coulter* (discussed at length in the Appellants' Brief (38-39)) explicitly rejected the argument that a promise is not consideration simply because the promisor "was not bound to proceed." *Coulter & Smith, Ltd. v. Russell*, 966 P.2d 852, 859 (Utah 1985). "It is not necessary for the promisor to render performance in order for us to find consideration; the reciprocal promise is sufficient consideration to form a contract." *Id.*

<sup>10</sup> Under SITLA rules, "No assignment or sublease is effective until approval is

- Mission's Abandonment of Leases – Mission abandoned all of the Section 32 leases except for the lease covering the Lavinia 1-32 Well. Thus, as of the date of the Sheriff's Sale, only Wasatch stood in a position to exercise the right of redemption with respect to the Section 32 interests.
- Wasatch's Operation and Maintenance of the Leases – Wasatch exclusively maintained and operated the leases, paying rents and other amounts that, if not paid, would have resulted in termination of the leases, rendering them valueless. Wasatch paid \$4,590 to SITLA,<sup>11</sup> and undertook other geological and engineering work to preserve the leases. (See Tab H to Appellants' Brief).

In summary, the Supreme Court's ruling in *Clawson* allows one with funds tied up in a property purchased at a sheriff's sale to protect that investment, however modest, by redeeming the property. Wasatch not only invested in the Section 32 leases and paid consideration to Mission for their transfer, but Wasatch also obtained SITLA's approval and (as in *Tech-Fluid*) operated the leases after Mission abandoned them. Wasatch was not a stranger to Section 32 but rather was the sole involved party as of the date of the Sheriff's Sale. Each of the actions taken by Wasatch, standing alone, gave Wasatch an interest in Section 32 sufficient to support exercise of the right of redemption, especially

---

given. Any assignment or sublease made without approval is void." Utah Admin. Code R850-20-2200.5(b). As a result, SITLA's approval and issuance of the new lease are evidence of an assignment of the Section 32 interests to Wasatch.

<sup>11</sup> Reott's argument notwithstanding (Reott Br 32), Wasatch clearly presented this figure below. R. 4035-39.

under the established policy of liberally construing rules “dealing with redemption” to prevent the sheriff’s sale from becoming “an instrument of oppression.” *Loosley*, 551 P.2d at 508.

### CONCLUSION

In Utah, the right of redemption is a check on under-market bids. Reott’s \$1.00 credit bid was clearly below market value. That bid alone, and not any action taken by Mission, Wasatch or BBC, gave rise to Reott’s frustration and spurred his attack on Wasatch’s exercise of the right of redemption in this case. Reott declined to challenge the *bona fides* of the Mission-Wasatch transaction when that opportunity was legally available to him (he had no need to do so because he was a secured creditor), but instead proceeded to execute on his judgment liens through the means of a Sheriff’s Sale. There, he made an improvident gamble. He extinguished his liens for a bid of \$1.00, presumably hoping that no one would seek redemption and he could pocket a windfall: mineral rights to four sections and a \$238,594 deficiency judgment. Having misjudged the facts and the law, Reott demands that the courts remedy the consequences of his misjudgment, consequences for which he is solely responsible.

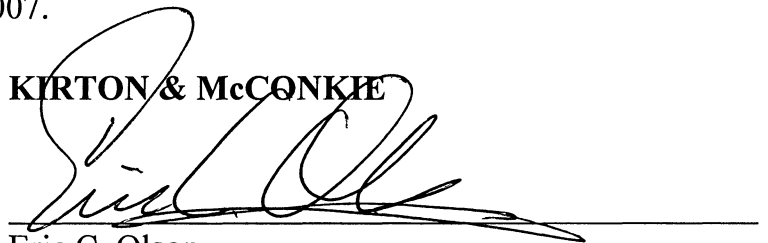
This Court’s precedents mandate a different result. *Brockbank* and *Tech-Fluid* are controlling and preclude Reott from attempting to manipulate the redemption process to avoid the consequences arising from the events he set in motion by his nominal bid at the Sheriff’s Sale. Wasatch is entitled to redeem the Section 32 interests, and the trial court’s entry of summary judgment to the contrary was error. This Court should reverse and enter judgment on the redemption issue in favor of Wasatch and BBC as a matter of law.



In addition, the Court should reverse or vacate the trial court's grant of summary judgment to Reott on his claim/defense of fraudulent conveyance because the trial court impermissibly (1) found that disputed facts were "material" as "badges of fraud" and (2) inferred fraud from those "badges of fraud" when the facts in the record also supported a contrary, benign view of events. A finding of fraud as to any aspect of Mission's dealings with Wasatch must await a trial on the merits.

DATED this 19<sup>th</sup> day of January, 2007.

**KIRTON & McCONKIE**

A handwritten signature in black ink, appearing to read "Eric C. Olson", is written over a horizontal line.

Eric C. Olson  
Matthew K. Richards

*Attorneys for Appellant Wasatch Oil & Gas,  
LLC and related parties*

Carolyn L. McIntosh  
**PATTON BOGGS LLP**  
1660 Lincoln Street, Suite 1900  
Denver, CO 80264

Nick Sampinos (3950)  
1990 North Carbon Avenue  
Price, Utah 84501

*Attorneys for Appellant Bill Barrett  
Corporation*


## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CONSOLIDATED REPLY BRIEF OF APPELLANTS** was served this 19<sup>th</sup> day of January, 2007, by mailing on said date two copies thereof by United States mail, first class postage prepaid, addressed to:

Lawrence E. Stevens  
Gary E. Doctorman  
Dianna M. Gibson  
PARSONS BEHLE & LATIMER  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
*Attorneys for Edward A. Reott, Goal, L.L.C., and Regoal Inc.,*

Carolyn McIntosh  
PATTON & BOGGS, LLP  
1600 Lincoln Street, Suite 1900  
Denver, CO 80264

Nick Sampinos  
190 North Carbon Avenue  
Price, UT 84501  
*Attorneys for Bill Barrett Corporation*

\_\_\_\_\_