

1986

Katzenberger v. Utah : Reply Brief

Utah Court of Appeals

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BRIEF

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DOCKET NO. 860020-CA

IN THE COURT OF APPEALS

OF THE STATE OF UTAH

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WALTER M. KATZENBERGER, and :
RUTH C. KATZENBERGER, :

Plaintiffs-Appellants, :

v. :

Case No. 860020-CA

STATE OF UTAH, SALT LAKE CITY :
CORPORATION, UTAH STATE :
DEPARTMENT OF TRANSPORTATION, :
and WESTERN UTILITY :
CONTRACTORS, INC., dba :
WESTCON, :

Defendants-Resondents. :

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REPLY BRIEF OF APPELLANTS TO
PETITION FOR REHEARING

AN APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE J. DENNIS FREDERICK PRESIDING

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Court of Appeals

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OF THE STATE OF UTAH

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REPLY BRIEF OF APPELLANTS TO
PETITION FOR REHEARING

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INTRODUCTION

Defendant-Respondent, Western Utility Contractors, Inc. ("Westcon") has petitioned the Court for a rehearing of the above-entitled matter based upon two grounds. Plaintiffs-Appellants respectfully suggest that neither of said grounds justifies, nor suggests, the necessity for a rehearing in this matter. It is the view of Plaintiffs-Appellants that this Court's decision properly rules as a matter of law that any reformation of the subject quit claim deed will relate back to the date of the deed and that, in a new trial, the trial court

can properly discern whether the conduct alleged by Plaintiffs-Appellants would constitute "inequitable conduct" as would justify the reformation of the subject quit claim deed.

In support of the position of Plaintiffs-Appellants, they present the following arguments in response to those set out by Defendant-Respondent, Westcon:

ARGUMENT

POINT I

THIS COURT PROPERLY RULED THAT ANY REFORMATION OF
THE SUBJECT QUIT CLAIM DEED WILL RELATE BACK
TO THE DATE OF EXECUTION OF THE DEED

The gravamen of Westcon's first argument in support of its Petition for Rehearing is that this Court's opinion in this matter is in error as a result of the Court's holding that any reformation of the subject quit claim deed will relate back to the date of execution of the deed. Westcon bases its position on an allegation that Westcon, in fact, stands in a position similar to a bona fide purchaser with respect to the original quit claim deed and that Westcon would, therefore, not be bound by the reformed deed in the event the trial court, after a new trial, determines that equity requires such a reformation. Westcon's position is not, however, well-founded upon the law, as cited by this Court in its opinion, and even by Westcon in its Brief in support of its Petition for Rehearing.

Westcon, in its Brief, at pages 2 through 5, spends the majority of its space emphasizing the importance of reliance in

protecting a bona fide purchaser from the effects of a reformed deed. After citing the general rule from the case of L. E. Myers Company v. Harbor Insurance Company, 384 N.E.2d 1340 (Ill. App. 1978) as properly cited by this Court in its opinion, Westcon goes on to explain the facts of that case and cites further from the Myers' opinion as to the importance of reliance in protecting a bona fide purchaser from the effects of a reformed deed.

While Appellants do not disagree with the general principles cited by Westcon in its Brief, the key element which makes this Court's opinion proper as originally entered is that Westcon did not rely on the original deed in this case in changing its position and there is simply no interpretation of the facts in this case which would suggest that Westcon should be treated as standing in any position similar to a bona fide purchaser. On the contrary, Appellants Katzenbergers specifically put Westcon (as well as Salt Lake City and the State of Utah) on notice of their claim of ownership to the property in question long prior to any work whatsoever begun by Westcon or the City. [This fact was admitted by Westcon in its Answers to Appellants' Interrogatories, paragraph 11, dated October 7, 1983.]

Westcon, in its Brief in support of its Petition for Rehearing at page 5, states that "Westcon relied on the assurance that it had the proper rights of way in bidding the project" [Emphasis added.] Westcon is very careful not to say that it, in fact, relied on the deed itself. In fact, Westcon never saw the deed, but only took the "word" of Salt Lake City and the State of

Utah in proceeding on the right of way offered, notwithstanding the prior notice given by Katzenbergers to Westcon that they owned the property. No evidence whatsoever was presented at the trial in this matter and, in fact, no evidence exists in the record or otherwise to suggest Westcon relied on the original deed as recorded. The facts in this case are, therefore, exactly the same as those in the Myers' case cited by this Court in its opinion (and by Respondent in its Brief) in that there could not have been any reliance by Westcon absolving it from its actions in proceeding upon an improper right of way. Westcon could not and did not rely in any way on the original deed and, therefore, this Court's opinion was clearly correct as entered.

It is likewise important to note that Westcon obtained indemnity rights (or could have) from Salt Lake City and the State in obtaining the right of way given. In the event that any damages are appropriate in this matter, they are rightfully recoverable by Westcon against the City of Salt Lake City or the State of Utah upon Westcon's cross-claims which were properly filed by Westcon against those parties in this matter.

POINT II

PLAINTIFFS PROPERLY ALLEGED INEQUITABLE CONDUCT
JUSTIFYING REFORMATION OF THE DEED AND NO FURTHER
INSTRUCTION OR GUIDANCE NEED BE GIVEN BY
THIS COURT ON THAT ISSUE

Plaintiffs' Amended Complaint certainly did allege inequitable conduct justifying reformation of the deed in question. Respondent Westcon sets out those allegations at pages 5 and 6 of its Brief in Support of its Petition for Rehearing.

Respondent Westcon next goes on, in its Point II of its Brief, to make two totally unjustified and materially incorrect statements.

First, Respondent Westcon alleges that the "trial court ruled as a matter of law that the facts alleged, even if proven, would not constitute inequitable conduct." [Respondent's Brief, Page 6.] Respondent attempts to "bootstrap" that argument by arguing that the trial court "because [it] would have been the sole trier of fact in this equity case . . ." could properly so conclude as a matter of law. The facts are, however, that Plaintiffs below were never given a chance to be heard on the facts supporting the allegations of the Complaint and the trial court's improper Summary Judgment on this issue was correctly reversed.

Respondent's next allegation is likewise untrue and legally ill-founded. Respondent Westcon alleges that, "Although several decisions of the Utah Supreme Court state that reformation may be granted where there is a unilateral mistake accompanied by an inequitable conduct, the Court has never considered a case where reformation was claimed on that ground." [Respondent's Brief, Page 7.] Respondent apparently overlooked the cases decided by the Utah Supreme Court which were cited in Appellants' original

and reply Briefs in this matter. Specifically, the cases of Sine v. Harper, 118 Utah 425, 222 P.2d 571 (1950), and Jensen v. Manilla Corporation of the Church of Jesus Christ of Latter-Day Saints, 565 P.2d 63 (Utah 1977), cited in Appellants' original Brief, are both markedly close on point with the present case before this Court. The facts of those cases are discussed at great length in Appellants' original Brief and will not be reiterated here. Suffice it to say, however, that each of said cases consisted of conduct almost identical to that in the case at bar and the Utah Supreme Court in those cases found no problem in reforming the deeds to include the entire parcels believed and intended to be purchased by the buyer in each of those cases. Respondent Westcon's argument that this Court must go further to set out in some great detail "what constitutes inequitable conduct," is neither necessary, nor proper, and is without merit to support a rehearing. The Sine and Jensen cases give all the guidance needed to the trial court in making this determination.

The new trial court in this matter can and should determine the equity of the State's conduct and the true intent of the parties after a complete evidentiary hearing has been held wherein all sides are allowed to present their evidence on this question.

CONCLUSION

This Court correctly reversed the improper Summary Judgment granted by the trial court on the issue of reformation. In doing

so, this Court properly ruled that, in the event reformation is found to be a proper remedy, said reformation would relate back to the original deed and, thus, the judgments rendered by the trial court in favor of Westcon and Salt Lake City would be of no effect. Such is true for, among other reasons, the fact that Westcon did not rely upon the original deed in question (as a bona fide purchaser or otherwise) and Westcon was, in fact, specifically put on notice of Plaintiffs Katzenbergers' claims to the property long before work on the project was ever begun.

The Utah Supreme Court has, on several occasions, set out the equitable basis for reformation of a deed under circumstances almost identical to those in this case. Neither a rehearing, nor any additional guidelines, need be (or ought to be) necessary to allow a new trial court to hear all relevant evidence on the questions of intent of the parties and the conduct of the State of Utah in providing a deed to Plaintiffs on the property in question. Westcon is simply asking for a proverbial "second bite at the apple."

Appellants respectfully suggest that Respondent Westcon's Petition for Rehearing should be denied.

RESPECTFULLY SUBMITTED this 1st day of June, 1987.

GUSTIN, ADAMS, KASTING & LIAPIS

By


JOHN S. ADAMS

Attorneys for Plaintiffs-Appellants

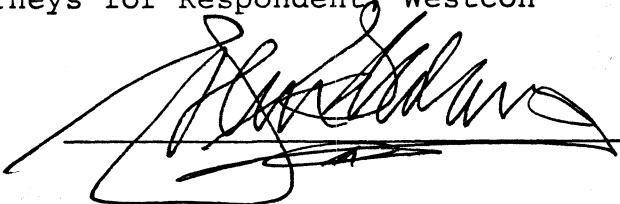
MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing Reply Brief of Appellants to Petition for Rehearing was mailed, postage prepaid, to each of the following this 1st day of June, 1987:

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A handwritten signature in black ink, appearing to read "Jackson Howard", is written over a horizontal line.