

1986

Marcy G. Myers v. Darlene Stout (Copple) : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 860279

IN THE UTAH COURT OF APPEALS

MARCY G. MYERS,

Plaintiff-Appellant,

v.

DARLENE STOUT (COPPLE),

Defendant-Respondent.

No. 860279

(Category 14 b.)

APPELLANT'S BRIEF

Appeal from a final judgment of the
Third District Court, Salt Lake County, State of Utah,
Honorable Philip R. Fishler, Presiding

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

MARCY G. MYERS,
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V.
DARLENE STOUT (COPPLE),
Defendant-Appellant.

No. 860279

APPELLANT'S BRIEF

STATEMENT OF JURISDICTION

Plaintiff has appealed a judgment of the Third District Court quieting title to real property in the defendant-respondent. The judgment is dated June 10, 1986, and was appealed to the Supreme Court of Utah on November 24, 1986, and by that court transferred to the Utah Court of Appeals which has jurisdiction under §78-2a-3(2)(h), U.C.A., 1953, as amended.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the judgment is supported by the facts.

husband and wife, owned the property jointly (Tr. Vol III pp. 6-7, 14-15, 22; Exhibit 16-P). On April 26, 1976, they jointly executed a trust deed on the property to Tracy Collins Bank. The installment payments on the trust deed note were current at the time of trial (Tr. Vol. VII 10-13; Exhibits 24-D and 25-D). On July 21, 1978, Al Smith Const. Co. by Alvin R. Smith sold the property to defendant Stout under the terms of a uniform real estate contract (Tr. Vol. II pp. 3-4; Tr. Vol. VII p. 90; Tr. Vol. IX p. 5; Exhibits 1-D, 12-P). Payments of \$25000, \$500, and \$5000 were made by defendant Stout to Alvin R. Smith (Tr. Vol II pp. 59-61). The payment for August 1, 1978, and those made thereafter until April 20, 1979, were made to Alvin R. Smith (Tr. Vol. VII pp. 43-45).

The check representing the April 20, 1979, payment was payable to Alvin and Sandra Smith and contained the notation "Mortgage payment to date for 4120 Donibristle Rd." The check was endorsed by both payees (Tr. Vol. VII pp. 41-43, 45; Exhibit 4-D). At about this time, on April 18, 1979, defendant caused to be recorded a Notice of Interest (Exhibit 18-P) in which she declared her interest in the property to be "evidenced by a certain Uniform Real Estate Contract dated July 21, 1978, by and between Al Smith Construction Company as Seller, and the undersigned Darlene Stout as buyer." Defendant did not explain the tardiness of the recording of the notice of interest nor the apparent coincidence of the time of recording with the first inclusion as payee of Sandra Smith on the payment checks (Exhibit 4-D).

The check representing the May 8, 1979, payment, was

issued in the same manner as the April 20, 1979, check. Sandra Smith endorsed the names of both payees to the May 8, 1979, check (Tr. Vol VII. p. 47; Exhibit 38-D).

The check representing the June 5, 1979, payment was issued to "Sandra & Alvin Smith Const." with notation "Mortgage to Date on Above Address [4120 Donibristle Road, South Jordan, Utah 84065]," and again Sandra Smith provided the only endorsement (Tr. Vol. VII. p. 46; Exhibit 37-D).

The check representing the July 5, 1979, payment was issued to "Al and Sandra Smith," with notation "Mortgage to Date and Sandra Smith again provided the only endorsement (Tr. Vol. VI p. 47; Exhibit 39-D).

The check representing the September 5, 1979, payment was payable to "Al & Sandra Smith" with notation "Contract to Date House above [Jack or Darlene Stout 4120 Donibristle Road, South Jordan, Utah 84065]," and Sandra Smith provided the only endorsement (Tr. Vol. VII. p. 48; Exhibit 41-D).

The check representing the October 1, 1979, payment was payable to "Al & Sandra Smith," with notation "Paid to Contract to Date 4120 Donibristle," and was endorsed "Al & Sandra Smith" by Sandra Smith only (Tr. Vol. VII. pp. 47-48; Exhibit 40-D).

The check representing the November 7, 1979, payment was payable to "Al & Sandra Smith" with notation "Paid to Contract," and was endorsed by Sandra Smith "For Deposit Only Al & Sandra Smith." (Tr. Vol. VII. pp. 48-50; Exhibit 42-D).

The check representing the December 5, 1979, payment was payable to "Al & Sandra Smith," with notation "Contract to Date," and was endorsed by Sandra Smith "Al & Sandra Smith." (Tr. Vol. VII. pp. 50-51; Exhibit 43-D).

The check representing the January 1, 1980, payment payable to "Al & Sandra Smith," with notation "Contract to Date," was endorsed by Sandra Smith "Al and Sandra Smith By Sandra H. Smith." (Tr. Vol. VII. p. 49; Exhibit 44-D).

In 1980 then defendant Stout commenced making payments directly to the bank (Tr. Vol VII. pp. 55-59; Exhibit 7-D).

As to the inclusion of Sandra Smith's name on the payment checks, defendant Stout testified that she (Stout) was told by Sandra Smith to put her (Sandra's) name on the checks (Tr. Vol. VII. p. 67). The reasons given by Sandra, as testified to by defendant, were that "since [Sandra Smith] took care of the bank accounts and she [Sandra Smith] paid all the deposits to the banks, to put her name because she was part of the construction company and that she made all the deposits." (Tr. Vol. VII p. 67, Lines 6-9); "Al was certainly not a businessman and if she didn't keep him straight he couldn't keep his head on straight, something to that effect, in a very joking manner;" (Tr. Vol. VII p. 67, Lines 13-15); "'Darlene [Stout], make it [check] out to Al and Sandra Smith or Al and Sandra Smith Construction, because I'm the one that makes all the deposits.'" (Tr. Vol. VII p. 67. Lines 19-23).

"She specifically told me to make the checks out to Al and Sandra." (Tr. Vol VII p. 68, Lines 24-25). In answer to plaintiff's counsel's question, "Isn't it true that you started putting Sandra Smith's name on the check because you had been told by someone that she hadn't signed the contract and you needed to do that to involve her?", defendant Stout answered, "No, Sandra Smith told me to put her name on the checks." And to plaintiff's counsel's next question, "So that she [Sandra Smith] could deposit them?", defendant Stout answered "So that she [Sandra Smith] could take care of her business. She said she had to run them through her books." (Tr. Vol. VII p. 72, Line 25; p. 73, Lines 1-8).

On December 31, 1980, Sandra Smith conveyed her interest in the property by warranty deed to Capital Recovery Corporation. The deed was dated and was recorded that day (Exhibit 19-P; Tr. Vol. III p. 18).

At the time of the judgment (June 10, 1986) the present plaintiff was, and is, the record owner of the Sandra Smith interest (Tr. Vol. III p. 23; Tr. vol VII pp. 6-8, 10-11; Exhibit 23-P).

Before July 21, 1978 (the date of the contract), defendant Stout and Sandra Smith "talk[ed] about the purchase of the house." (Tr. Vol. II pp. 15-16). They further "discussed the house and its sale after they talked (Tr. Vol. II p. 1... These talks and discussions between defendant Stout and Sandra

relating to the sale of the house, however, did not move defendant Stout to request Sandra Smith's joinder in executing the contract (Tr. Vol. II p. 20).

As testified to by defendant Stout, on these occasions of talking and discussing, Sandra Smith statements were:

"[T]hey had lived there and it was a lovely home and it was professionally decorated. She told me a great deal about the interior, about the decor about the rooms, and that it was too large for them. And since my [defendant Stout's] husband worked for Al as an agent, that she was delighted that -- not only that, you know, we would move in there if we did, but that she would be living close by and we could run around together, which we did [Tr. Vol. II p. 16, Lines 17-25].

Again as told by defendant Stout,

"Sandra Smith showed me through the house and pointed out various details about it, such as the fact that the sprinkler system had -- had the automatic sprinklers. It had a vacuum, which she showed me how to use and she brought out the attachments, the fact that the decor was professionally decorated by her and the decorator and that there were certain pieces of furniture that if I chose to purchase them from her, that I could.

"The fact that she had the pool table and she said they were moving into a condominium and that they'd let the pool table go with the house because it would cost them too much to move it.

"The fact that it had garage door openers and various other --." [Tr. Vol. VII pp. 28-29]

"She [Sandra Smith] said that the purchase price at that time was ninety-seven five. She said that she had sold the house about six months prior but the deal fell through and she was desperate to sell it.

"And I [defendant Stout] told her that my home was -- that I was presently living in was for sale and that I liked her home and that in the event my home sold that I would be interested.

"And she [Sandra Smith] said -- well, she says 'We can work it out.' She said that she had the dinette set that was specially ordered for the home and it would not fit into her condominium." [Tr. Vol. VII p. 29]

"She [Sandra Smith] told me she wanted to sell her home and she said that -- she's the one that gave me the brochure on the home when it was in the 1976 parade of homes. [Tr. Vol. VII p. 30]

"Q. [Nemelka] You stated that there was a home sales book that she gave you?

A. [defendant Stout] Yes, she did.

Q. Show you what's been marked for identification defense Exhibit 15 and ask you to identify that exhibit.

A. Yes. This is the original book that she gave me.

Q. Did you have a conversation with Sandra Smith at the first meeting you had with her concerning Exhibit 15-D?

A. Yes, I did.

Q. Now, you testified about the purchase price at that time?

A. Yes.

Q. You discussed that with Sandra Smith?

A. Yes.

Q. What did she tell you about the purchase price?

A. She told me that she wanted to sell the house, that was the price.

Q. What was the price?

A. Ninety-seven five was the price. And she also stated that since she and her husband were in the construction business, that she moved periodically because they always moved in a home and then he sold it. She said she felt like a gypsy." [Tr. Vol. VII pp. 32-35]

"Well, I remember we were in the kitchen and we discuss the dinette set and we discussed the --." [Tr. Vol. VI p. 40]

"Yes. That's when the conversations were held [between the first one sometime in May, June 1978 and the date of this contract, on the 21st day of July 1978].

Q. [Nemelka] And did you have conversations at that time with Sandra Smith?

A. [defendant Stout] Yes. I did every time.

Q. Was it about the purchase price of the property?
A. Yes [Tr. VII pp. 40-41]

Q. [Nemelka] I want you to tell the court what she told you about this Al Smith's Construction Company.
A. [defendant Stout] She said that she was tired of being in the construction business because every time she moved in and decorated a home she knew that she was going to have to move out.

She also told me that she had recently moved out of a home before moving into this one, a duplicate of my house, which is in Riverton right now, and Al Smith had -- construction had built that home. She moved into that home thinking that she could stay there for a while but, she said, 'because our business is such we have to sell the homes because we make a nice profit on them.' And she says, 'and we have to sell the homes and move.'

And she kept telling me: 'I feel like a gypsy. Every time I move in and get settled and have the home just the way I want it, then I know that we're going to sell it.' And she said, 'I'm very glad that you are buying it because your husband works with Jack and' -- excuse -- 'you're really going to love it.' She said this was one of her favorite homes.

[Tr. Vol. VII pp.61-62]

"Sandra told me that they had bought the condominium and they were making double payments; and that she says, 'I wish Al wouldn't do this to me because I have all this bookwork to do all the time.

"And at that point I went over to her house on numerous occasions and her office was in the basement and she had files -- she had files there in her desk and usually I had to sit and wait before we went out to lunch because she had to finish up some bookwork [concerning Al Smith Construction]" [Tr. Vol. VII p. 63]

"She [Sandra Smith] said that -- that she had purchased the condominium and she wanted to move into the condominium because this house was way too large for her because her son had moved out or was not longer living at home.

And she said she and her husband and her daughter lived there and it was much too large, and she was anxious to get moved into her next place. She said that -- she used to tell me: 'The gypsy is on the run again,' that type of thing." [Tr. Vol. VII p. 72]

Sandra Smith's statements to defendant Stout, as told by Deanna Copple, defendant Stout's daughter, were,

(Q. [Nemelka] And could you tell the court what Sandra Smith said relating to the purchase or the sale of that home on Donibristle. . . . Was there any conversation about the sale of the home?)

[Deanna Copple] Yes. I remember her [Sandra Smith] saying, "I 'was' real anxious because I loved the house." . . . Okay, yeah. She was real anxious to sell the home because she had already purchased the little condominium up the street. She mentioned to us that she wanted to get out of the yard work; she was sick of pulling weeds. . . . She went through details of -- they had a lot of new gadgets, the vacuum cleaner. She told me that the sprinkler systems -- that it leaked and where the pool table was, the window wells.

(Q. [Nemelka] Did a purchase price ever come up during this conversation?)

It was almost a hundred thousand, I remember, because it was -- . . . yes, yes. I remember it was almost a hundred thousand.

(Q. [Nemelka] And who mentioned the purchase price?)

It was Sandra Smith.

[Tr. Vol. VII pp. 77-78]

Q. [Nemelka] Now, did the subject of Al Smith Construction Company come up during any of those conversations?

A. [Deanna Copple] Yes. Sandra --

Q. What did Sandra say about that company?

A. It was always 'our company.' She always said, 'ours. She -- she told us that Al built the whole house; this was a duplicate of one in Riverton.

Q. What did she say in relation to that house?

A. She decorated it, she had a lot of input in the design of the house.

Q. Are there any conversations about her decorating any other homes?

A. Yes. She -- she -- it was a hobby to her. She liked to do it. As a matter of fact, she couldn't wait to have us see her new condo and show how she redecorated that

whole place.

Q. Was there any conversations by her during this period of time as to whether she decorated all the homes involved in Al Smith Construction Company, or most of them?

A. Most of them, yea.

Q. Tell the court what Sandra Smith said regarding her decorating any of these homes that were . . . being bought and sold. Q. Tell us what Sandra Smith said about decorating all these homes for the construction company.

A. She said that she loved to do it. That was, she considered, her job. Al built homes. She decorated them. She -- everything that she does put in the house, I remember her saying, was specifically designed for the house, such as, the bar stools matched the wood -- I mean, just in detail. This woman loved to tell me or tell us how everthng was just made for the house.

Q. Did you ever see her do any bookkeeping work in your presence?

A. Yes, I did.

Q. Describe for the judge what you saw when you went into that --

A. Okay. It was when I saw -- it was after we were living in the Donibristle house. We went over. They invited us, I guess. Mom did make a payment to her, but she wanted to show me her daughter's new bedroom. So I walked in. Her daughter answered the door. We went downstairs to the office. Sandra was sitting at the desk doing bookwork. Darlene and Sandra started talking. Darlene had already had the check written out, just presented it for her, and then in turn they sent the two girls upstairs to look at the house.

Q. Now, what did you observe there in that office around?

A. Personally, it was a mess. We don't know if that has any bearing.

Q. What business was she involved in?

A. She had bookwork. She had a big book like a ledger she was writing in. I remember a huge book because I was over --

Q. In any of these conversations that you had, how many did you totally have with Sandra Smith now?

A. At least four.

Q. In any of those conversations, did you ever hear Sandra Smith tell you that she was not selling her interest in the home?

A. No. She was anxious.

Q. Did you ever hear her say that?

A. I heard her say she was anxious; this was a white elephant to her now because she had two house payments

and she couldn't make both of them.

Q. My question to you was: Did you ever hear her say that she was not going to sell her interest in the home to your mother?

A. No.

[Tr. Vol. VII pp. 77-83]

In 1980 Sandra Smith would not comply with the requests of defendant Stout to sign the contract (Tr. Vol. II pp. 17-21; Tr. Vol. VII pp. 59, 95-96).

On January 21, 1982, Alvin R. Smith d/b/a Al Smith Construction Company, conveyed a one-half undivided interest in the property to defendant Stout by warranty deed which deed defendant Stout had recorded on September 9, 1983 (Tr. Vol. II pp. 55-56; Exhibit 11-D) while this action was pending and she was represented by her present counsel.

In the lower court defendant Stout filed her answer in which she denied the material allegations of the complaint (R 17-19). The answer, in conclusory form, contained three affirmative defenses. On March 29, 1985, without first having obtained leave of court, defendant filed her amended answer in which she alleges again in conclusory form, a number of affirmative defenses (R 180-184). On December 23, 1985, the lower court directed that a non-jury trial be scheduled. (Tr. Vol. VI p. 19) Plaintiff was not afforded and was denied the opportunity to demand a jury trial on those issues raised by defendant Stout in her amended answer properly triable of right to a jury.

SUMMARY OF ARGUMENT

The judgment is not supported by the facts.

ARGUMENT

Hereafter, reference to the "property" shall mean the one-half undivided interest in the real property described in these proceedings of Sandra Smith and her successors in interest.

THE JUDGMENT IS WITHOUT ADJUDICATORY EFFECT:

The basis for the quiet title judgment as to the property does not appear. There is no indication how or when defendant Stout acquired an ownership interest in the property sufficient to warrant a decree quieting title to the property in her. State, Etc. v. Santiago, 590 P.2d 335 (Utah 1979). A judgment is a link in the chain of title only where it transfers title or renders valid a particular link in the chain of title which without the judgment would be defective or invalid. Defendant Stout's present title to the property is based wholly on the judgment of the lower court. Nowhere is any independent title exhibited, nor any right nor interest which the judgment connected to title. In Minnesota Debenture Co. v. Johnson, 94 Minn. 150, 102 NW 381 (1905), the court stated:

"It would be a departure from settled rules to hold that an ordinary judgment in an action to determine adverse claims to land, obtained by a total stranger to the title . . . operates to transfer title, or constitutes a link in the chain of title, and . . . admissible in evidence as such against the true owner . . ."

(At page 8, beginning at line 1, Vol. III, Transcript, defendant Stout's attorney is reported as saying,

"She [Sandra Smith] was actually part of the contract and orally participated in it, was a part of all of it; and that her oral contract was made as of this written agreement [referring to the uniform real estate contract, Exhibits 1-D and 12-P].";

what follows reflects plaintiff's perceptions of what appear to be defendant Stout's attorney's contentions in this matter as taken from his quoted statement.)

MERGER: Delivery and acceptance of the deed of January 21, 1982, which deed defendant Stout had recorded on September 9, 1983 (Tr. Vol II pp. 55-56; Exhibit 11-D), the provisions of the uniform contract (Exhibits 1-D and 12-P) are deemed extinguished and superseded by the deed. *Secor v. Knight*, 716 P.2d 790 (Utah 1986)

STATUTE OF LIMITATIONS: If, as it appears, defendant Stout is attempting to establish an oral contract and part performance, she must bring her action to do so within the time limited by §78-12-25, U.C.A., 1953 (four years). There is no clear indication how and when the oral contract referred to came into being but there was no attempt to assert its existence until defendant Stout's amended answer on March 29, 1985 (R 180-84). The only verbal communications relative to the sale of the property between defendant Stout and Sandra Smith took place according to defendant Stout and her daughter, Deanna Copple, before July 21, 1978 (Tr. Vol. III pp. 15-16; Tr. Vol. VII pp. 40-41). If the

claimed oral contract is separate from the uniform real estate contract then it is time barred. The limitations defense was raised by plaintiff in RESPONSE TO DEFENDANT'S MEMORANDUM (R 374-377) dated April 2, 1986, p. 4 (R 377). If the addition of Sandra Smith's name or signature to the uniform contract is the oral contract the parol evidence rule would preclude such proof, McDonald v. Barton Bros. Inv. Corp., 631 P.2d 851 (Utah 1981), as well as being time barred.

PART PERFORMANCE: Defendant Stout's claim of part performance is based upon the addition of Sandra Smith's name as payee on certain checks issued for installment payments under the uniform contract (Exhibits 4-D, 37-D through 44-D), and Sandra Smith endorsing such checks for deposit to a bank account in the joint names of Alvin R. Smith and Sandra Smith, or to Tracy Collins Bank for the "mortgage" payment.

Making the payments on the uniform real estate contract cannot be considered part performance of any claimed oral contract; McDonald, supra. The acts of part performance must be exclusively referable to the oral contract. Holmgren Brothers, Inc. v. Ballard, 534 P.2d 611 (Utah 1975). Besides, the payments were not made in pursuance of an oral contract but were made in such manner at Sandra Smith's request, according to defendant Stout's own account, (Tr. Vol. VII pp. 67-68, 72), "since [Sandra Smith] paid all the deposits to the banks, to put her name because she was part of the construction company and that she made all the deposits.",

and were not so made to involve Sandra Smith in the uniform real estate contract (Tr. Vol. VII pp. 72-73).

The record is devoid of any oral contract or agreement by Sandra Smith to sell the property to defendant Stout. The terms of such a contract must be clear, definite, mutually understood, and established by clear, unequivocal and definite testimony, or other evidence of the same quality. Holmgren, *supra*; Christensen v. Christensen, 9 Utah 2d 102, 339 P.2d 101 (1959).

STATUTE OF FRAUDS: One joint tenant without the approval of the other can transfer away his or her share of the property, leaving the remaining joint tenant a tenant in common with the grantee. Nelson v. Davis, 592 P.2d 594 (Utah 1979); Tracy Collins Trust Co. v. Goeltz, 5 Ut2d 350, 301 P.2d 1086 (1956).

Where one cotenant undertakes to convey the whole title to a specific piece of property, the conveyance is not void but only operates to transfer that individual's interest in the land. Texas American Bank/Levelland v. Morgan, 733 P.2d 864 (N.M. 1978) Handy v. Shiells, 235 Cal.Rptr. 543 (Cal.App. 1 Dist. 1987). One joint tenant or tenant in common cannot bind his cotenant by a contract which he may make relating to the common property. Carbine v. Meyer, 126 Cal.2d 386, 272 P.2d 849 (1954). There is no husband-wife exception to the statute of frauds. Williams v Singleton, 723 P.2d 421 (Utah 1986). Only a written power of

attorney will authorize one to bind another to a contract for the sale of real property. *Cady v. Johnson*, 671 P.2d 149 (Utah 1983).

"Ratification" and "acquiescence" are mentioned in these proceedings as theories of defense. If the evidence tends to show acquiescence by Sandra Smith in the uniform contract such acquiescence was terminated when she refused defendant Stout's request to sign the contract (Tr. Vol. II pp. 17-21; Tr. Vol. VII pp. 59, 95-96), and her grant of the property to Capital Recovery Corporation (Tr. Vol. III p. 18; Exhibit 19-P) "amounted to a tacit repudiation of any conflicting oral agreement on her part." *Coombs v. Ouzounian*, 24 Ut2d 39, 465 P.2d 356 (1970). And here, as in *Bradshaw v. McBride*, 649 P.2d 74 (Utah 1982), there was no ratification as a matter of law "because the Utah statute of frauds requires that any agent executing an agreement conveying an interest in land on behalf of his principal must be authorized in writing. . . . [and] [w]here the law requires the authority to be given in writing, the ratification must also generally be in writing."

The present plaintiff may defend defendant Stout's claims on the basis of the statute of frauds. "'Successors in title to one who has made a contract unenforceable as against himself by reason of the statute [of frauds] can take advantage of the statute [of frauds] in the same way that the contractor himself could have done. . . . Thus, if a vendor makes an oral contract to convey to A, and then later conveys the land to B, the conveyance to B is fully operative as against A.'" *Family Finance Fund v. Abraham*,

657 P.2d 1319 (Utah 1982).

CONCLUSION

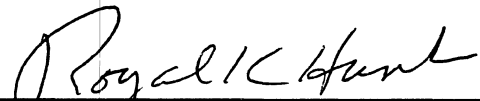
The judgment is not supported by the evidence and the facts and should be reversed and the cause remanded to the lower court with instructions to proceed to partition under the statute



ROYAL K. HUNT

PROOF OF MAILING

On August 19, 1987, I mailed four copies of the foregoing APPELLANT'S BRIEF to Carl J. Nemelka, attorney for defendant Darlene Stout (Coppie), at 75 North Center, American Fork, Utah 84003, postage for first-class mail fully prepaid thereon.



ROYAL K. HUNT

ADDENDUM

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Statute of Limitation, §78-12-25, U.C.A., 1953 -----	A
Uniform Real Estate Contract (Exhibit 1-D) -----	B
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ORDER AND JUDGMENT (R 464-466) -----	D

\$78-12-25. Within four years.

Within four years:

(1) an action upon a contract, obligation or liability
not founded upon an instrument in writing; * * *

UNIFORM REAL ESTATE CONTRACT

"This is a legally binding form, if not understood, seek competent advice."

1. THIS AGREEMENT, made in duplicate this 21st day of July, A. D., 19 78,
by and between Al Smith Const. Co.
hereinafter designated as the Seller, and Darlene Stout
hereinafter designated as the Buyer, of West Jordan, Utah

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer,
and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in
the county of Salt Lake, State of Utah, to-wit: 4120 W. Donibristle Rd.
More particularly described as follows: So. Jordan, Utah 84065

Lot 23 Glenmoor Village, according to the official plat thereof
recorded in the offices of Salt Lake County

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of _____
Ninty seven thousand five hundred & 0/100 Dollars (\$97,500.00)
payable at the office of Seller, his assigns or order As directed by seller
strictly within the following times, to-wit: Twenty five thousand five hundred (\$25,500.00)
cash, the receipt of which is hereby acknowledged, and the balance of \$ 72,000.00 shall be paid as follows:

An additional \$5,000.00 down payment to be paid within 90 days from
this date. \$507.98 or more each month principal and interest plus
1/12 of the general property taxes and 1/12 of the annual fire insurance
premium each month payable commencing on August 1, 1978 and on the
1st day of each month until the unpaid principal and interest is
paid in full. The estimated taxes and insurance costs for the remainder
of 1978 are \$200.00 per month making the payment \$788.00 per month. The
buyer will refinance the home within 5 years of this date and pay the
sellers equity in full at that time.
Possession of said premises shall be delivered to buyer on the 1st day of July, 19 78.

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the
principal. Interest shall be charged from July 1, 1978 on all unpaid portions of the
purchase price at the rate of ten per cent (10 %) per annum. The Buyer, at his option at anytime,
may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage
or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future
installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according
to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture
hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of Tracy
Mortgage Co. with an unpaid balance of
\$ 67,000.00, as of July 10, 1978.

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said premi-
ses now in the process of being installed, or which have been completed and not paid for, outstanding against said prop-
erty, except the following: No exceptions

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the
then unpaid contract balance hereunder, bearing interest at the rate of not to exceed Ten percent
(10 %) per annum and payable in regular monthly installments; provided that the aggregate monthly installment
payments required to be made by Seller on said loans shall not be greater than each installment payment required to be
made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such
loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property
subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obli-
gations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and
pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect
to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless
said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such
amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon
the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in ob-
taining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and
interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed
and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees
that there are no assessments against said premises except the following:

No exceptions

ADDENDUM B

12. The Buyer agrees to pay the general taxes after July 1, 1978

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of $\frac{1}{2}$ of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon a failure of the Buyer to make any payment or payments when the same shall become due, or within Thirty (30) days thereafter, the Seller, at his option shall have the following alternative remedies:

A. Seller shall have the right upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made therefor on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal process as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land and become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller;

B. The Seller may bring suit and recover judgement for all delinquent installments, including costs and attorneys' fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or

C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may be due. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such a time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto. None

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written.

Signed in the presence of

C. Smith & Co. S. P.
 by Chas. Smith
 Seller
 x
Frank
 Buyer

Uniform Real Estate Contract

WHEN RECORDED, MAIL TO:

Darlene Stout

3683 South 2200 West, Unit #67

West Valley City, Utah 84119

Space Above for Recording Use

505
REC'D
Darlene Stout
SEP 9 1 12 PM '83
SALT LAKE COUNTY
UTAH

3841915

WARRANTY DEED

Alvin R. Smith dba Al Smith Construction Company, grantor
of Salt Lake City, County of Salt Lake, State of Utah,
hereby CONVEYS and WARRANTS to DARLENE STOUT
4120 Doniserve
SOUTH JORDAN 84065
, grantee
of West Valley City, County of Salt Lake, State of Utah
for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, DOLLARS,

the following described tract of land in SALT LAKE County, State of Utah, to-wit:

LOT 23, GLENMOOR COUNTRY ESTATES #1, PLAT "K", CITY OF SOUTH
JORDAN, COUNTY OF SALT LAKE, STATE OF UTAH, my undivided one-half
interest therein and thereto.

WITNESS the hand of said grantor, this 21st day of June, 1982.

Signed in the presence of

Alvin R. Smith
Alvin R. Smith dba Al Smith
Construction Company

STATE OF UTAH,
County of Salt Lake }

On the 21st day of June, 1982
personally appeared before me Alvin R. Smith dba Al Smith Construction
Company
the signer of the above instrument, who only acknowledged to me that he executed the
same.

My commission expires 2-20-84 Residing in Salt Lake City.

APPROVED FORM — UTAH SECURITIES COMMISSION

FORM 101 - WARRANTY DEEDS - REVISED BY UTAH SEC. COM. 1-1-80

ADDENDUM C

State of Utah
County of Salt Lake

APR 24 1905

I, the undersigned, Recorder of Salt Lake County, Utah, do hereby certify that my book is the property of a seal and all papers, documents, and writings required or permitted by law and that the original and copy is a true and fair copy of an original document or file.

Witness my hand and seal of said Recorder this
day of _____ 19__

KATHLEEN DIXON, Recorder

By

Deputy

CARL J. NEMELKA - Utah Bar No. 2395
JUNE LUBNIEWSKI WILSON - Utah Bar No. 4367
Attorneys for Defendant
610 East South Temple, Suite 202
Salt Lake City, Utah 84102
Telephone: (801)521-5552

JUN 10 1986

H Dixon Hindley, Clerk 3rd Dist Cou
By R. G. Gelpas
Deputy Clerk

IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH "

MARCY G. MYERS,

Plaintiff,

vs.

DARLENE STOUT, et al.,

Defendants.

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ORDER AND JUDGMENT

Civil No. C 82-5014

Judge Fishler

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Defendant's Motion to Introduce Exhibit, for Additional Findings of Fact and for Judgment and plaintiff's Motion for Judgment and Motion to Re-open Proceedings to Receive Evidence were heard by the Honorable Philip Fishler on Monday, May 5, 1986. Upon agreement of counsel, and being fully apprised of the matter the court entered its Findings of Fact and Conclusions of Law and the following Order and Judgment,

IT IS HEREBY ORDERED that:

1) A certified copy of a Quitclaim Decree dated May 24, 1982, recorded June 7, 1982 at Page 1046 of Book 5380 in the Salt Lake County Records Office in which Larsen & Sons, Inc. is grantor and Jody Larsen is grantee be, and hereby is admitted into evidence;

2) A certified co of the corporate documents of

ADDENDUM D

JUDGMENT

Larsen & Sons, Inc. on file with the State of Utah Division of Corporations be and hereby is, admitted into evidence;

3) The court does hereby take judicial notice of the Pleadings and Discovery on file herein; and

4) Plaintiff's Motion for Judgment be and hereby is denied and that defendant's Motion for Judgment be and hereby is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Darlene Stout Copple is the sole and exclusive owner in fee of the real property more particularly described as:

Lot 23, Glenmoor Country Estates #1, Plat K, according to the official plat thereof on file in the office of the County Recorder of Salt Lake County, Utah.

and title to the above-described real property is hereby quieted in Darlene Stout Copple. The Salt Lake County Recorder's office is ordered that the records therein shall reflect Darlene Stout Copple's title thereto.

DATED this 10th day of June, 1986.


BY THE COURT:


PHILIP FISHLER
District Judge

ATTEST
H. DIXON HINDLEY
CLERK
By K. Grotz
Deputy Clerk

Approved as to Form:

ROYAL K. HUNT
Attorney for Plaintiff


CARL J. NEMELKA
Attorney for Defendant