1986

Spatig v. Alvey : Brief of Respondent

Utah Court of Appeals

Robert L. Moody; Taylor, Moody & Thorne; attorney for respondents.
William L. Schultz; attorney for appellants.

IN THE SUPREME COURT OF THE STATE OF UTAH

MAX SPATIG and ILA JUNE SPATIG,

Plaintiffs/Appellants

vs.

TOM L. ALVEY, et al.,

Defendants/Respondents.

Case No. ~~860615~~ 860346-CA

BRIEF OF ~~APPELLANTS~~ Respondent

APPEAL FROM THE FINAL JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH
HONORABLE RAY M. HARDING, JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

MAX SPATIG and ILA JUNE SPATIG,	:	
Plaintiffs/Appellants	:	Case No. 860615
vs.	:	
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STATEMENT OF CASE

Plaintiffs purchased an option to buy real property owned by Defendants. Plaintiffs subsequently paid for and received a series of extensions on the option. Plaintiffs failed to ever exercise the option or any of its extensions. Defendants gave notice to Plaintiffs to pay the balance due under the terms and conditions of the option or Defendants would retain all option monies paid as consideration for the granting of said options. Defendants initiated the above entitled action asking the Court to declare the option agreement a real estate contract and the forfeiture unconscionable.

COURSE OF PROCEEDINGS AND DISPOSITION IN LOWER COURT

September 30, 1983, Plaintiffs brought suit in the Fourth Judicial District Court in and for Utah County and filed a Complaint, Lis Pendens, and served Defendants a Summons.

October 7, 1983, Defendants filed an Answer.

In January of 1985, Plaintiffs served Interrogatories on Defendants who filed timely answers.

In May of 1986, Defendants filed a Motion to Dismiss for failure to prosecute and Plaintiffs filed a timely Memorandum in Opposition to said Motion.

July 14, 1986, Plaintiff filed a Motion for Summary Judgment asking the Court to rule that the option agreement was a real estate contract and that forfeiture of the option payments was unconscionable.

July 31, 1986, Defendant responded and filed a Motion for Summary Judgment asking the Court to rule that the contract entered into by the parties was an option. Plaintiff further sought to have the Court declare that Plaintiff had no further right in either the real property or the option payments.

October 29, 1986, the lower court entered its ruling denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment holding that "it is the opinion of the Court that the agreement is an option". (R.64-5)

On November 7, 1986, the Honorable Ray Harding, Judge, signed a Summary Judgment. (R.89-90)

STATEMENT OF FACTS

1. Appellant purchased an option to buy real property from Respondent on or about October 22, 1982. (R-78) Appellant extended the option pursuant to the terms of paragraph 3 of said Option. (R-78)

2. Respondents were required to pay a real estate

commission from option monies described hereinabove in the amount of TWENTY THOUSAND ($20,000.00) DOLLARS. (R-56)

3. On the 22nd day of July, 1983, Appellants were given notice to pay the balance due under the terms and conditions of the option or Respondents would retain all option monies theretofore paid as consideration for the granting of said option.

4. Appellant failed to ever exercise the option to purchase the real property.

5. The option specifically provided that,

> "If this option is not exercised on or before dates specified herein or exercise of the same, the option shall expire of its own force and effect and the seller may retain such option monies as they have been paid to the seller as full consideration for the granting of this option." (R-78).

SUMMARY OF ARGUMENT

It is clear that the parties entered into an option agreement. The Appellants had a right to exercise their option by buying the property which they failed to do. Appellants did not have an obligation to perform and their only exposure was the option money that they paid or the monies paid for the extensions of the option. Respondents were obligated at all times under the agreement entered into to perform. Upon Appellants failure to perform, they initiated this action and have tied up Respondent's title to their property and have presented no theory upon which evidence can be heard with regard to changing the terms and conditions of the written agreement entered into by the parties.

Summary judgment as entered by the lower court is appropriate as a matter of law.

ARGUMENT

POINT I

PRESENTATION OF APPELLANT'S EVIDENCE VIOLATES PAROLE EVIDENCE

78-25-16 Utah Code Annotated 1953, as amended, precludes any evidence of the contents of a writing with some few exceptions. Appellant's position does not fall within any of the exceptions.

Appellant proceeds on the basis of what it wants the contract to be by declaring "in reality the option is a contract for the sale and purchase of real property." The option speaks for itself and Appellant failed to exercise their option and their interest in the property has been extinguished. Appellant has presented no facts or law to avoid the parole evidence rule

POINT II

PARTIES ENTERED INTO AN OPTION AGREEMENT, NOT A REAL ESTATE CONTRACT AND RESPONDENTS ARE ENTITLED TO ENFORCEMENT OF THE TERMS AND CONDITIONS OF SAID OPTION

The option entered into by the parties creates no mutual obligation. It creates only an obligation on the part of the Respondent to sell. The Appellant has no obligation to buy and unless there is a mutual obligation, the agreement cannot become a contract of sale because the Appellant wants his money back. Appellants were never obligated to purchase the property, but merely had an option to do so. Appellants extended that option on numerous occasions, but finally failed to extend the option further or to perform under the terms and conditions of the

option.

In Engle v. Perkins, 510 P2d 480 (ID. 1973). The Idaho Supreme Court holds on this distinction and allows the seller to retain the amount paid by buyer for the option when buyer did not exercise his option right. The same principle was enunciated by the California Court in Staudigl v. Harper, 173 P2d 343 (Cal.Ap. 1946), there the Court held that an option to purchase land is not a sale of property but only the right to purchase within the elected time and vests no estate. The amount paid for the option does not change the nature of the transaction.

POINT III

THE TRANSACTION ENTERED INTO BETWEEN THE PARTIES IS NOT A REAL ESTATE CONTRACT

Real estate contracts provide for forfeiture which are unfavored by the Utah Court. Appellants seek to ride that theory by having the Court transform the option into a real estate contract. Plaintiffs cite Defeyter v. Riley, 606 P2d 453, (COLO.APP. 1979), in support of their position. In that case the court quotes James on option contract to the effect that unless the potential buyer is obligated by the contract to purchase the property in question, then the agreement should be considered as an option contract and not an agreement of sale and purchase. The absence of an obligation by the buyer to buy the property is the distinguishing factor of an option contract, so if the contract only gives the buyer an option to buy and does not impose obligations that the buyer "must buy the property" it then is clearly an option contract. It is respectfully submitted that

Appellants clearly misuse this authority which strengthens Respondents position and therefore the retention of the option payments is clearly justified.

Appellants also cite Baker v. Taggert, 628 P2d 1283 (Utah 1981). This case deals with a situation questioning whether a transaction is actually a sale or merely a loan disguised as a sale and is not particularly applicable to the fact situation before the Court.

Plaintiffs cite as authority Roberts v. Braffert, 92 P 789 (Utah 1907), for their position. This case deals with a written agreement where the buyer is to buy a ranch from the seller and the seller is to sell for a certain price. Both were obligated to perform. That is not the facts in the case before this Court.

Appellants argue that their theory of contract of sale should be adopted and then next jumps to the conclusion that forfeiture is unconscionable. They fail to take into consideration that the Respondents had to pay a TWENTY THOUSAND ($20,000.00) DOLLAR real estate commission and that the extension payments, strung over the period of time that they were, only approximates the interest on the purchase price, and during that period of time, the Respondents had to make all of the payments due and owing on their obligations.

Respondent respectfully submits that to jump to such a conclusion and consider forfeiture under the terms and conditions of the agreement entered into by the parties, cannot be accomplished as a matter of law. That is the reason that the

lower court entered Summary Judgment.

CONCLUSION

It is clear that the parties entered into an option agreement. The Appellants had a right to exercise their option by buying the property which they failed to do. Appellants did not have an obligation to perform and their only exposure was the option money that they paid or the monies paid for the extensions of the option. Respondents were obligated at all times to perform. Upon Appellants failure to perform, they initiated this lawsuit and have asked the Court to rewrite the contract. Appellants have presented no theory upon which evidence can be heard with regard to changing the terms and conditions of the written agreement entered into by the parties. As such, the summary disposition made by the lower court should be affirmed.

RESPECTFULLY SUBMITTED, this 26th day of March, 1987.

Robert L. Moody

ROBERT L. MOODY
ATTORNEY FOR DEFENDANT/RESPONDENT

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 26th day of March, 1987, I mailed a true and correct copy of the foregoing BRIEF OF RESPONDENT to William L. Schultz, Attorney for Appellants, 1061 East 2100 South, Salt Lake City, Utah 84106.

Robert L. Moody

ROBERT L. MOODY