1976

Big Butte Ranch v. Marjorie R. Holm et al : Brief of Appellant

Utah Supreme Court

SUPREME COURT OF THE STATE OF UTAH

No. 14630

BIG BUTTE RANCH, INC.,

Plaintiff-Appellant,

vs.

MARJORIE R. HOLM, CARL WILLIAM HOLM and ESTHER B. HOLM, his wife,

Defendants-Respondents.

APPELLANT'S BRIEF

APPEAL FROM JUDGMENT OF NO CAUSE
DISTRICT COURT OF SALT LAKE COUNTY
HONORABLE G. HAL TAYLOR, DISTRICT JUDGE

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NATURE OF THE CASE

Uniform real estate contract provided that certain obligations of buyers (defendants) would continue notwithstanding termination of buyers' rights in the event of exercise of liquidated damages clause of contract. Buyers defaulted, the liquidated damages clause was exercised, buyers' rights under contract were terminated and seller (plaintiff) now seeks to enforce those obligations, which by their express terms survived termination of buyers' contract rights.

DISPOSITION IN LOWER COURT

The trial Court found that paragraph #3 of termination agreement was ambiguous, permitted oral testimony as to their conclusion that paragraph #3 of the termination agreement released them from all obligations under the contract, held that because of a delay in demanding performance by defendants that plaintiff was estopped, and granted judgment for defendants.

RELIEF SOUGHT ON APPEAL

An order adjudging that the contract is not ambiguous, that plaintiff is not estopped to assert its claim against defendants and for remand of the case for further proceedings to determine damages or for a new trial.

STATEMENT OF FACTS

Defendants purchased an Idaho farm from plaintiff under a Utah Uniform Real Estate Contract (R. 5-12), operated it for three years, defaulted in their payments and voluntarily permitted a forfeiture of their rights under paragraph 16A of that contract (liquidated damages clause, R. 6). The contract expressly provided that forfeiture of the contract would not relieve defendants of their contractural obligation to provide certain produce to plaintiff each year for a period of years. Paragraph #26 of that contract (R. 7) reads in part as follows:

> "26. The liquidated damage clause contained in paragraph 16A of this instrument, if exercised by Sellers, shall not

terminate or affect the obligations of Buyers to furnish the produce described in paragraph #25 above. . . "

The Uniform Real Estate Contract (R. 5-12) contained the usual paragraph 16A provision, permitting the seller to serve a five day notice to remedy the default and forfeiting what the buyer had paid as liquidated damages, should the default not be remedied within that time. Defendants acknowledged in the termination agreement (R. 34-37) that they were in default, that they were unable to remedy their default, waived service of notice of default and agreed in part as follows (R. 36):

> "3. First party (Plaintiff) hereby releases second, third and fourth parties (defendants) from further liability or obligation under the terms of said uniform real estate contract to the same extent and legal effect as if first party had caused the notices contemplated by the provisions of paragraph 16A of said contract to be served upon each of said parties and said parties had each failed and neglected to remedy their default within the time specified in said notice and/or within the time permitted by law, second, third and fourth parties hereby quitclaiming to first party all of their right, title and interest in and to said uniform real estate contract and the property and rights there specified."

The trial court held that paragraph #3 (quoted above) of the termination agreement was ambiguous and over the objections of plaintiff permitted the defendants to present oral testimony to the effect that they understood that said paragraph #3 of the termination agreement released them from the obligation to furnish the produce. The Court also held that the delay of 2 2/3 years

in demanding delivery of the produce and in bringing suit thereon estopped plaintiff from enforcing its right to that produce, although estoppel was not pleaded as a defense (R. 31-33) and defendants failed to plead or to prove that they had changed their position in reliance upon any such belief.

ARGUMENT

POINT I

THE CONTRACT OBLIGATING DEFENDANTS TO SUPPLY PRODUCE NOTWITHSTANDING TERMINATION AND THE TERMINATION AGREEMENT ARE CLEAR AND UNAMBIGUOUS AND ARE NOT SUBJECT TO CONSTRUCTION BY THE COURT.

Defendants voluntarily entered into the uniform real estate contract which obligated them to provide plaintiff with specified amounts of farm produce each year for 25 years, and agree that this obligation would continue whether or not the rights of defendants under that contract were terminated, (R. 7, Par. 25 and 26). Parties are bound by the language which they deliberately use in their contracts, irrespective of the fact that it appears to result in improvidence, beyond and perhaps in excess of what the mythical, reasonable prudent man might feel constrained to venture. Skousen v. Smith, 493 P. 1003, 27 U. 2d 169. These provisions were bargained for, in exchange for a low purchase price and low down payment, were agreed upon, and are binding upon the defendants. Parties are free to contract according to their desires

and whatever terms they can agree on, and the contract should be enforced according to its terms unless the result is so unconscionable that a court of equity will refuse to enforce it. Russell v. Park City Utah Corp., 548 P. 2d 889. How the parties fare under a contract is not the concern of courts, and in absence of some unconscionability, the contract should be enforced according to the meaning of its terms as intended by the parties insofar as that can be ascertained. Holley v. Federal-American Partners, 29 U(2d) 212, 507 P. 2d 381.

Defendants seek to escape their just obligation by claiming to have misunderstood their rights and obligations under paragraph #3 of the termination agreement (quoted above - R. 36). Defendants testified that they were aware of the obligation to furnish produce over a period of years well before they entered into the termination agreement. Defendants were represented by a person of their choice at the meeting where the termination agreement was discussed, agreed upon, drafted and signed.

Defendants defaulted and plaintiff was entitled to exercise the forfeiture and liquidated damages clause of the contract (R. 6, Par. 16A) because of that default. Had plaintiff served the notice contemplated by that paragraph and defendants failed to remedy their default (which they acknowledged in writing that they were wholly unable to do - R. 34) then clearly under the terms

of paragraph #26 of the contract (R. 7) the obligation of the defendants to continue to supply produce to plaintiff over a period of years as provided in paragraph #25 (R. 7) would have continued unaffected by the termination of the rights of defendants under that contract. Defendants elected to waive the requirement that plaintiff serve that notice (R. 35, Par #1), and agreed that said waiver contained in the termination agreement would release the defendants from their liability and obligations under that contract "to the same extent and legal effect" as if those notices had been served and the defendants had failed to remedy their default, (R. 36, Par. #3 - quoted on page #3 above). There is absolutely nothing said about releasing defendants from their obligation to continue to supply produce. The contract expressly limits the release to the same release that would have occurred had the notices been served and the default had not been remedied, under which circumstances their obligations under paragraph #26 would have continued unaffected by those notices (R. 7). The words are clear and unambiguous and the court is bound to enforce the contract as written. The primary rule in interpreting a contract is to determine what the parties intended by what was said. The Court cannot add, ignore or discard words in this process, but should attempt to render certain the meaning of provisions in dispute by objective and reasonable construction of the whole contract. Mark Steel Corp. v. Eimco Corp. 548 P. 2d 892 (Utah). Where the language of the contract is clearly and unequivocally expressed, it must be enforced according

to the terms. Conversely, if there is a basis in its language upon which the parties reasonably could have a misunderstanding with respect to its intent, then extraneous evidence can be received and considered to ascertain it. In making that determination, the Court is not bound by a single provision or expression, but should look to the whole contract and its purpose. Wingets, Inc. v. Bitters, 500 P. 2d 1007, 28 U.(2d) 231.

Applying the foregoing rules to our situation it is clear that we must look to the four corners of the contract for its meaning unless the language use is ambiguous and uncertain. Defendants only point generally to paragraph #3, and the Court in its findings relied wholly upon paragraph #3 of the termination agreement (R.7) in an effort to find an ambiguity. There is absolutely nothing in that paragraph which is uncertain or ambiguous. The termination agreement (R. 7) simply states that the termination provisions of paragraph 16A of the uniform real estate contract are exercised by plaintiff and that defendants' rights under the contract are terminated (R. 35, Part. #1). The provisions of paragraph #26 of the uniform real estate contract the obligation to supply produce continued unaffected by that termination. In order that there could be no misunderstanding, paragraph #3 was added which clearly spelled out the fact that defendants were only released from their obligations under the uniform real estate contract to the same extent and effect as if the notices of default contemplated by paragraph 16A of the uniform real estate contract had been served.

Paragraph #1 of the termination agreement effected a termination of the rights of the defendants. Paragraph #3 of that agreement clearly spells out the fact that defendants are released only to the same extent as if those notices had been served. Defendants have not pointed out any word or part of said paragraph #3 which is unclear or ambiguous.

Defendants seem to be arguing that plaintiff somehow had a duty to spell out in the termination agreement what the legal effect of that instrument was by again reciting the legal effect of the obligation of the defendants under paragraphs #25 and 26 of the uniform real estate contract (R. 7) and by reminding the defendants that their duty to supply produce was a continuing obligation which would survive the termination agreement. It would be a dangerous thing for one party to undertake to advise the other parties concerning the construction and legal effect of a legal instrument. The obligation already existed, it was not changed by the termination agreement, and should be enforced according to the clear intent of the parties as expressed in the four corners of the two instruments (uniform real estate contract and termination agreement). All persons are presumed to know the law, including the legal effect of clear and unambiguous language used in legal instruments.

POINT II

THE COURT ERRED IN FINDING THAT PLAINTIFF WAS ESTOPPED TO ASSERT ITS CLAIM.

Conclusion of Law #3, to the effect that plaintiff is estopped to claim the right to receive produce after three years (actually only 2 2/3 years) of silence, is not supported by the evidence or by the findings of fact. There is no claim in the pleadings, evidence or findings of fact that the defendants were in any way prejudiced by plaintiff having not sued them earlier. The claimed estoppel is not in connection with execution of the termination agreement, but only from the 2 2/3 years which passed between the date of the termination agreement and the time when the lawsuit was commenced. The Court did not find that the defendants had in any way changed their position or had been misled to their detriment by that delay. Accordingly, the element of damage or injury is absent, which is an essential element for an estoppel. Miglaccio v. Davis, 120 U. 1, 232 P. 2d 195; Cook v. Cook, 110 U. 406, 174 P. 2d 434. It is an indispensable element of equitable estoppel, that person relying thereon must have been induced to act or alter his position to his detriment. Easton v. Wycoff, 4 U.(2d) 386, 295 P. 2d 332. The element of change of position or damage is wholly absent in our case and accordingly the conclusion of law that plaintiff is estopped should be reversed and the case remanded for a new trial.

Further, estoppel is an affirmative defense which must be set forth affirmatively in a pleading (Rule 8(c), URCP), or it is waived (Rule 12(h),

URCP). Defendants did not plead estoppel in their answer and accordingly waived their right to assert an estoppel at the trial. See Tygesen v. Magna Water Co., 13 U.(2d) 397, 375 P. 2d 456.

CONCLUSION

Defendants clearly and unambiguously contracted to supply certain produce to plaintiff for a specified period, whether or not their contract rights as the buyer of a farm were terminated by reason of their default. That precise circumstance occurred. The defendants defaulted and lost their buyers' contract rights to that farm. Under the clear wording of the contracts between the parties defendants are obligated to supply that produce or to pay damages for failure to do so.

The conclusion of law to the effect that plaintiff was estopped because it didn't sue for 2 2/3 years after termination of defendants' rights to purchase the farm is not pleaded and is not supported by the evidence, since no change of position to defendants' detriment was pleaded, or found by the court.

The Court erred in finding that the termination agreement was ambiguous and by permitting parole evidence to vary the terms of the unambiguous contract.

The decision of the Court dismissing plaintiff's case is contrary

to the evidence. The findings of fact and conclusions of law and judgment of dismissal should be reversed, and the case should be remanded for a new trial. This Court should find that the contract is not ambiguous and that plaintiff is not estopped.

Respectfully submitted this 9th day of ~~September, 1976.~~ Feb. 1977

Ronald C. Barker

Ronald C. Barker, attorney for plaintiff-appellant

I hereby certify that I caused a copy of the foregoing to be mailed, postage prepaid, this 9th day of ~~September, 1976~~, Feb. to Lauren N. Beasley, Attorney for defendants-respondents, 430 Judge Building, Salt Lake City, Utah 84111.

Ronald C. Barker

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