

1996

Wesley Clock, Anne Clock v. John F. Green, LaRue Green : Brief of Appellee

Utah Court of Appeals

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Bryan Canon; Attorney for Respondents.

David L. Grindstaff.

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IN THE UTAH COURT OF APPEALS

APPELLEE'S BRIEF

Case No. A

Date: Nov. 15

A

No. 15.

APPEAL JUDGMENT OF THE THIRD
JUDICIAL COURT FOR SALT LAKE COUNTY,
THE HONORABLE HOMER WILKINSON PRESIDING

Bryan W. Cannon, Esq.
At
40
Salt Lake City,

40

David L. Grindst
Attorney for Defendants/Appellants
457 East 300 South
Salt Lake City, Utah 84143

IN THE UTAH COURT OF APPEALS

| | | |
|------------------------|---|-------------------------|
| WESLEY CLOCK AND |) | |
| ANNE CLOCK, |) | APPELLEE'S BRIEF |
| |) | |
| Plaintiffs/Appellees, |) | |
| |) | Case No. 960797-CA |
| vs. |) | |
| |) | Priority No. 15 |
| JOHN F. GREEN AND |) | |
| LARUE GREEN, |) | |
| |) | |
| Defendants/Appellants, |) | |
| |) | |

**APPEAL FROM A FINAL JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY,
THE HONORABLE HOMER WILKINSON PRECIDING**

Bryan W. Cannon, Esq.
Attorney for Plaintiffs/Appellees
40 East South Temple, #300
Salt Lake City, Utah 84111

David L. Grindstaff
Attorney for Defendants/Appellants
457 East 300 South
Salt Lake City, Utah 84111

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IN THE UTAH COURT OF APPEALS

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| WESLEY CLOCK AND |) | |
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| |) | Case No. 960797-CA |
| vs. |) | |
| |) | Priority No. 15 |
| JOHN F. GREEN AND |) | |
| LARUE GREEN, |) | |
| |) | |
| Defendants/Appellants, |) | |
| |) | |

STATEMENT OF JURISDICTION AND
NATURE OF PROCEEDINGS BELOW

This appeal is from a final judgment entered pursuant to appellees' motion for summary judgment. The final judgment denied appellants' counter-motion for summary judgment. Pursuant to the authority vested in the Supreme Court of the State of Utah, this case was poured-over to the Court of Appeals for disposition. This Court has jurisdiction to adjudicate the appeal pursuant to Utah Code Annotated, §§ 78-2-2(3)(j) and 78-2-2(4) and Rule 3(a) of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUE ON APPEAL

Does the subject lease agreement sufficiently describe the option to purchase without the need for extrinsic evidence?

The appellees adopt the standard of review set forth in appellants' brief.

DETERMINATIVE AUTHORITY

Rule 56(c) Utah Rules of Civil Procedure:

...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law...

U.C.A., §25-5-3:

Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.

STATEMENT OF THE CASE

This case is an appeal by John F. Green and Larue Green ("Greens") from a final judgment entered pursuant to a motion for summary judgment by Wesley Clock and Anne Clock

("Clocks"). The Greens made a counter-motion for summary judgment. The lower court, after hearing the arguments of counsel, entered an order and judgment granting the Clocks' motion for summary judgment and denying the Greens' counter-motion for summary judgment. A copy of the order and judgment is attached to appellants' brief as Appendix "B". The order and judgment determined that the Greens must convey property at 1324 East 5485 South, Salt Lake City, Utah to the Clocks upon receipt of the balance of the purchase price of \$76,500.00. It was also ordered that any payments made by the Clocks to the Greens for rent after August 4, 1996 be applied against the balance of the purchase price.

STATEMENT OF FACTS

1. The Clocks and Greens entered into a rental arrangement for property at 1324 East 5485 South, Salt Lake City, Utah. The parties understood and agreed that the property to be rented was at the said address. R. 1, 2, 12, 13, 19, & 33.

2. In connection with the rental arrangement, the Clocks insisted that the Greens provide them with an option to purchase the property. R. 19.

3. The Greens prepared a hand written agreement for rent and for an option to purchase:

I Wesley Clock and Anne Clock agree to pay \$675.00 per month plus sewer and water. There is a \$350 deposit plus a \$1,000 for lease option to buy. Starting July 29, 1991 pro-rated to Aug. 4, 1991. The selling price to be \$81,500 at 10 ½ % interest. When option is picked up, the \$350 plus the \$1,000 will be applied to the down payment of \$5,000 or more. The Seller will re-roof and make the carport into a double garage. Replace the back door. Other than the things above, the Clocks will take care of any repairs during this option period. There will be a balloon payment due on the balance of the loan Aug. 5, 1996. The rent to be prorated from July 29, 1991 to Aug. 4, 1991. Rent to begin on Aug. 5, 1991. August 2 is \$500; August 5 is \$700; balance by Aug. 20, 1991. If the Clocks do not buy they will be renters and money will not be refunded. (Attached hereto as Appendix "A") R. 5, 20, & 33.

4. The Clocks paid the \$350.00 deposit and the \$1,000.00 lease option amount to the Greens at the time of the execution of the agreement. The Greens accepted said payments. R. 2 & 20.

5. The Greens did not give a notice of the termination of the option to purchase until after the Clocks gave a notice of an intent to exercise the option on April 12, 1996. (A copy of the notice of intent to exercise the option is attached hereto as Appendix "B") R. 7, 13, 20.

6. The Greens have refused to sell the property at 1324 East 5485 South, Salt Lake City, Utah, to the Clocks for

the option price of \$81,500.00. R. 13, 20, & 21.

7. The Clocks, in connection with this action, tendered \$3,650.00 to the court as the balance of the \$5,000.00 down payment called for in the option. R. 21 & 28.

8. The appellees dispute the appellants' statement of facts in the following respects:

a. While the contract does not specify the address of the property, there has never been a dispute as to the location of the property. R. 1, 2, 12, 13, 19, & 33.

b. The agreement, by its reasonable interpretation, provides an option period to August 5, 1996. R. 5, 20 & 23.

c. While there is a factual dispute on parole statements at the time of the execution of the agreement, the agreement is silent as to the subject of said parole allegations. R. 5, 20 & 23.

SUMMARY OF ARGUMENT

1. The agreement is sufficiently clear on the terms of the option to purchase. Therefore, the parole evidence rule would exclude evidence of additional terms to those in the agreement, including contemporaneous conversations,

statements, or representations offered for the purpose of varying or adding to the terms of the contract.

2. When a lease includes an option to purchase, the term of the option is appropriately interpreted to be the termination date of the lease unless another option period is specified within the lease itself. In keeping with the purpose of the Statute of Frauds under U.C.A. §25-5-3, a court should not impose a condition on an option which is not contained within the writing so long as the option can be interpreted without parole evidence.

3. Any ambiguity in the written agreement should be resolved in favor of the Clocks, since the Greens drafted the agreement.

ARGUMENT

I.

THE AGREEMENT IS SUFFICIENTLY CLEAR TO ESTABLISH THE TERMS OF THE OPTION.

It is incumbent upon an optionor and an optionee to act fairly and in good faith to fulfill their obligation to each other in connection with an option agreement. Nielson v. Droubay, 652 P.2d 1293 (Utah 1983). The Greens are not acting fairly in this case. Our option states that "The selling price to be \$81,500.00 at 10½ % interest... There will be a

balloon payment due on the balance of the loan August 5, 1996." The Greens refuse to allow the Clocks to purchase the property for \$81,500.00 even though the agreement contains no deadline for the exercise of the option. By the language of the agreement, the option price could have been paid at any time prior to August 5, 1996. The Greens, even if they intended a shorter option period, never gave any notice of a termination of the option. Also no option exercise deadline is included within the written agreement. R. 7, 13 & 20.

The appellants, have raised the argument for the first time in this appeal that the agreement does not contain the address of the property. However, this has never been an issue before. The complaint alleged the property address and the defendants' answer admitted the same. R. 1, 2, 12, & 13. The Clocks rented this property and have been living there ever since the date of the agreement. Therefore, this omission from the agreement should not operate to avoid the parole evidence rule regarding the option. "The parole evidence rule as a principal of contract interpretation has a very narrow application. Simply stated, the rule operates in the absence of fraud to exclude contemporaneous conversations, statements, or representations offered for the purpose of varying or adding to the terms of an integrated

contract." Union Bank v. Swenson, 707 P.2d 663 (Utah 1985).

This Court stated the following in Webb v. R.O.A. General, Inc., 804 P.2d 547 (Utah Appellant 1991):

If an agreement is integrated, the parole evidence rule excludes evidence of terms in addition to those in the agreement, thus excluding "'contemporaneous conversations, statements, or representation offered for the purpose of varying or adding to the terms of an integrated contract'" Colonial Leasing Co. v. Larsen Bros. Const., 731 P.2d 483, 486 (Utah 1986) [quoting Union Bank v. Swenson, 707 P.2d 663, 665 (Utah 1985)]. A nonintegrated contract may exist where the terms are not ambiguous, but the nature of the agreement itself is unclear. Id. "Only when contract terms are complete, clear and unambiguous can they be interpreted by the judge on a motion for summary judgment." Id. at 488.

In our case, the terms regarding the option are both clear and non-ambiguous. The purchase price is set. The date when the purchase price must be finally paid is also set. Our agreement is silent as to the down payment date and the period of the option. The law does not require that those terms be included in an option in order for an agreement to be integrated. In other words, a down payment date and an option period are not necessary terms for the existence of an option. The Webb case confirms this principal by stating that "Courts are not obligated to rewrite contracts entered

into by parties dealing at arm's length, to relieve one party from a bargain later regretted, simply on supposed equitable principles. Hal Taylor Assocs. v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982)." Id. at 551." The Greens now regret the deal because they could apparently sell the property for more than they had promised to sell it to the Clocks for. This does not justify looking beyond the integrated contract terms for excuses to rewrite the agreement.

It is acknowledged that the contract bears little resemblance to one drafted by an attorney. It is not artfully or well written. However, this does not mean that extrinsic evidence should be sought to add to the agreement. The agreement is sufficiently clear to stand on its own with respect to the option.

II.

AS A LEASE OPTION ON REAL PROPERTY,
THE AGREEMENT IS ENFORCEABLE BECAUSE
IT CONTAINS A PURCHASE PRICE AND A DATE
WHEN THE FULL PURCHASE MUST BE PAID.

The agreement in questions specifies a purchase price of \$81,500.00. It also contains the date when the purchase price must be fully paid - August 5, 1996. The Utah Supreme Court has upheld options which contain just such information. In

the case of Hoffman v. Sullivan, 599 P.2d 505, (Utah 1979), the Court stated:

The trial court's finding that there was ambiguity in the option provision because there was "no provision... made as to how and when payments would be made" is unsupportable. The option price was fixed and as to that there was no dispute. In general, such a provision calls for a payment of cash at the time of the exercise of the option, hence, as a matter of law, there was no ambiguity as to how and when payments would be made.

Just recently this court sustained a contract which was more ambiguous than the pertinent provision in the instant contract (Citation omitted) [t]his court affirmed this enforceability of a contract in which the only term fixed was the purchase price.

Our agreement fixes the option price, the date when the full purchase price must be completed, the amount of the option price and the deposit to be applied to the down payment. There need be no deadline date for the making of the down payment nor a termination date on the option earlier than August 5, 1996. The Washington Appellate Court dealt with a question similar to that of this case. In the case of Beaudry v. Harman, 626 P.2d 50 (28 Wash. App. 719) (Wash. App. 1981), an option included within the lease did not have a termination date. The Court ruled that absent a termination date for an option within a lease agreement, the

option will expire upon the termination of the lease. In our case, the agreement has no termination date on the option and no down payment date for the exercise of the option. Therefore, the option should be considered to expire on August 5, 1996. A notice of intent to exercise the option was given on April 12, 1996. The exercise of the option was adequate and timely. The refusal by the Greens to sell the property either by contract or by cash payoff prior to August 5, 1996 was in breach of the agreement they drafted.

The Statute of Frauds at U.C.A. §25-5-3 requires matters involving real property to be set forth in writing. In keeping with the purpose of this statute, matters involving an option to purchase real property should be governed by the written document wherever possible, without resorting to extrinsic evidence. The trial judge appropriately reviewed the agreement and the record in accordance with Rule 56(c), U.R.C.P. It was determined that the option was sufficiently clear to order the sale. The alleged factual dispute regarding an earlier oral termination of the option did not need to be addressed because the written agreement already addressed the necessary terms of an option to purchase real property.

III.

THE LANGUAGE OF THE CONTRACT SHOULD
BE CONSTRUED IN FAVOR OF THE CLOCKS.

In 17 Am.Jur.2d Contracts §347, 348, it states:

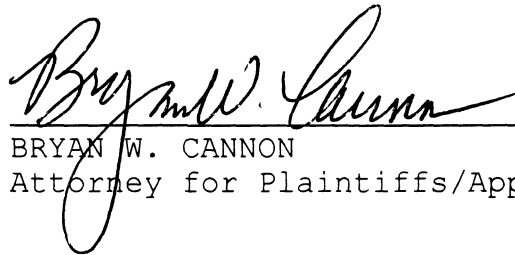
It is also said that an instrument uncertain as to its terms is to be most strongly construed against the party thereto who causes such uncertainty to exist, especially if he is the party who drew the contract or selected its language... It is fundamental that doubtful language in a contract should be interpreted most strongly against the party who has selected that language, especially where he seeks to use such language to defeat the contract or its operation, unless the use of such language in the contract is prescribed by law...As corollary to the above rule, a contract drawn by one party must be construed, if its meaning is doubtful, in favor of the non-drafting party.

The Greens are now attempting to use extrinsic evidence to defeat the operation of the option they wrote. Clocks allege that the agreement is clear on its face. Yet, even if it is considered uncertain in any respect, it should be construed against the Greens. By using reasonable construction of the contract, this Court need not go outside the express terms of the agreement to determine that the option could be exercised at any time before August 5, 1996.

CONCLUSION

The Greens drafted a rental agreement which includes all the necessary terms for an option to purchase. The option price is established by the option. The date for the final payment of the purchase price is provided in the option. Also, the amount of the down payment is set forth in the agreement. The Clocks gave a notice of intent to exercise the option and paid the down payment prior to August 5, 1996. Yet, the Greens have refused to sell under the terms of the agreement they drafted. This is simply a breach of contract. The decision of the lower court should be affirmed and the Greens should be required to sell the property as agreed.


RESPECTFULLY SUBMITTED this 9th day of April, 1997.


BRYAN W. CANNON
Attorney for Plaintiffs/Appellees

CERTIFICATE OF SERVICE

I do hereby declare that I caused to be mailed, postage prepaid, three (3) copies of Appellee's Brief to the following on the 9th day of April, 1997:

David L. Grindstaff
Attorney for Defendants/Appellants
457 East 300 South
Salt Lake City, Utah 84111

A handwritten signature in cursive script, reading "Virginia Cannon", is written over a horizontal line.

APPENDIXES

7-29-1991

Wesley Clark and Anne Clark.

agree to pay \$675.00 per month Plus Taxes
and water. There is a \$350.00 deposit plus
a \$1000.00 for a lease option to buy.
Starting July 29, 1991 Pro-rated to Aug 4, 1991.
The selling price to be \$81500.00 at
11 1/2% interest. When option is picked
up the \$350.00 plus the \$1000.00 will be
applied to the down payment of \$5000.00
or more. The seller will refert and
make the carpet into a double garage.
Replace the back door. At the time of
the things above the Clark's will take
care of any repairs during this option
period. There will be a balloon payment
due on the balance of the loan Aug. 5, 1996.
The rent to be pro-rated from July 29, 1991 to
Aug 4, 1991. Rent to begin on Aug 5, 1991.
Aug 2, \$500.00 Aug 5, \$700.00 (Balance)
Aug 20, 1991. If the Clark's do not buy they
will be refunded. Money will not be refunded.

Anne Clark
Wesley Clark

John F. Green
Laine Green

Wesley & Anne Clock
1324 E 5985 S
Salt Lake City, Utah 84121

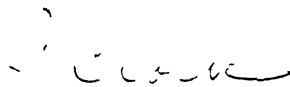
April 10, 1996

John F. Green
9769 S. Tayside Drive
South Jordan, Utah 84095-9730

Re: **Notification to Purchase**
1324 E 5985 S
Salt Lake City, Utah 84121

This letter is inform you that in accordance with the copy of the attached agreement, we have applied for a morgage loan to purchase the property referenced.

Sincerely,



Wesley & Anne Clock