

1977

Jack H. Pitts and Sandra J. Pitts v. Kimberly B. McLachlan and Craig McLachlan : Brief of Respondents

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Pitts v. McLachlan*, No. 15010 (Utah Supreme Court, 1977).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

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JACK H. PITTS and SANDRA J. :
PITTS, :

Plaintiffs and :
Appellants, :

Case No. 15010

- vs - :

KIMBERLY B. McLACHLAN and :
CRAIG McLACHLAN, :

Defendants and :
Respondents. :

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BRIEF OF RESPONDENTS

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APPEAL FROM THIRD DISTRICT COURT
IN AND FOR SALT LAKE COUNTY
HONORABLE MARCELLUS K. SNOW, PRESIDING

---0000000---

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FILED

MAY 18 1977

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BRIEF OF RESPONDENTS

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NATURE OF CASE

This case involves an appeal from an Order of the Honorable Marcellus K. Snow, Judge of the Third Judicial District Court in and for Salt Lake County, State of Utah, denying plaintiffs' Motion for Relief from Summary Judgment, including the entry of an Amended Summary Judgment, pursuant to Rule 60(b)(7) of the Utah Rules of Civil Procedure.

DISPOSITION OF CASE IN LOWER COURT

The Honorable Marcellus K. Snow denied plaintiff's Motion for Relief from Summary Judgment, which included a request for the entry of an Amended Summary Judgment.

NATURE OF RELIEF SOUGHT

The respondents respectfully request the Court to grant the appellants' appeal, and affirm the Order (R. 49) entered by Judge Snow on January 18, 1977.

STATEMENT OF FACTS

The respondents do not dispute the facts outlined in the brief of the appellants, except as follows, and they do believe that the portions of the Designation of Contents of Record on Appeal referred to on page 3 of the appellants' brief are material to the appeal and should be considered by the Court.

The facts outlined in the appellants' brief should reflect that several weeks prior to the Execution Sale (R. 31) on November 16, 1976, counsel for the appellants' and the respondents were repeatedly advised of the fact that there were various judgments against the respondent, Craig McLachlan, and at least one (1) judgment against the respondent, Kimberly B. McLachlan. Additionally, that at least one (1) week prior to such Execution Sale, counsel for the appellants was advised of the specific judgments and the amounts thereof, and at the morning of the Execution Sale, counsel for the respondents and the Sheriff conducting the sale further advised counsel for the appellants and the appellants of the existence of such judgments and the probability of claims of creditors of the respondents, but counsel for the appellants indicated that he did not believe such judgments would pose a problem, that the Execution Sale should be completed as scheduled and the appellants stated that they concurred with their counsel.

The appellants did not file their Motion for Relief from Summary Judgment (R. 33-34) until after a complaint was filed and served on them by a judgment creditor of one (1) of the respondents.

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion or commit error in denying appellants' Motion for Relief from Summary Judgment.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION OR COMMIT ERROR IN DENYING APPELLANTS' MOTION FOR RELIEF FROM SUMMARY JUDGMENT.

The crux of this case is whether the trial court abused its discretion in denying the relief sought by the appellants, and the respondents submit, that the trial court, after hearing the arguments of all parties present, did not commit error or abuse its discretion in denying the relief sought by the appellants. Rule 60(b) of the Utah Rules of Civil Procedure indicates that on motion and upon such terms as are just, a court may, in the furtherance of justice, relieve a party or his legal representative, from a final judgment, order or proceeding for certain reasons. Subparagraph (7) thereof indicates that such relief may be granted for "any other reason justifying relief from the operation of the judgment." The trial Court has considerable discretion in granting or denying motions brought under Rule 60(b). Mayhew vs. Standard Gilsonite Co., 14 U.2d 52, 376 P2d 951 (1962).

In Kettner vs. Snow, 13 U.2d 382, 375 P2d 28 (1962), a case involving a motion for a new trial where the motion was not timely filed, this Court stated that the trial court erred in

granting a new trial where there was a lack of a showing of facts and that the burden was on the moving party to show sufficient facts to warrant granting the motion. The Court also stated that the trial court has broad discretion, but that such discretion cannot be exercised in a capricious or arbitrary manner.

In the case before the Court, what the appellants sought by their Motion for Relief from Summary Judgment was to amend the Summary Judgment, set aside the Execution Sale and allow the respondents additional time to complete their contract with the appellants. The substance of this was to request the Court to enter an order finding that one of the respondents was not a "Buyer" under the Uniform Real Estate Contract between the appellants and the respondents without submitting evidence in support thereof. As evidence in support of the fact that both respondents were "Buyers" there was no evidence. Counsel for the respondents forwarded a letter to Judge Snow on December 16, 1976 (R. 38), when counsel for the appellants refused to tender a copy of an Agreement for Cancellation of the Execution Sale (R. 39-42) to the trial court at the time of the hearing on the question, after repeated requests by counsel for the respondents. The appellants have argued that a failure to set aside the judgment will work an injustice to them and a windfall to creditors of the respondents, but they fail to point out that the judgment has been fully satisfied, and that even though they were advised of the judgment creditors of the respondents, they were fully satisfied of the judgment by their bid at the Execution Sale. If their relief is granted, the appellants could conduct an additional Execution Sale and in light of the action filed against them by one of the respondents.

creditors of the respondent, Craig McLachlan, bid substantially less than the amount of the judgment at such Execution Sale, thereby allowing them a deficiency judgment against the respondents. This would result in a gross injustice to the respondents, all of which would follow from the negligence of counsel for the appellants and the appellants, despite the fact that they were forewarned of the judgment creditors of the appellants.

The mere fact that a judge may find one reason or another to grant the appellants the relief they seek is not determinative, as the trial court did not abuse its discretion. In Warren vs. Dixon Ranch Co., 123 U. 416, 260 P2d 741 (1953), this Court stated that it would only reverse a motion to vacate a judgment when an abuse of discretion is clearly shown. The Court also stated that it will not reverse the trial court where it appears that all elements were considered, merely because the motion could have been granted. In addition to considering the arguments of the respondents and the appellants, the respondents believe the trial court considered the arguments of counsel for the judgment creditor who had filed an action against the appellants, wherein he indicated that the proper proceeding to determine whether the respondent, Craig McLachlan, was a "Buyer" under the Uniform Real Estate Contract between the respondents and the appellants, was the proceeding he had filed, as his client was not a party to this proceeding, nor were other judgment creditors. Support for this proposition can be found in Section 78-22-1, U.C.A. (1953), concerning the lien

created by a judgment. In construing the statute, this Court said that a lien under this statute attaches to the equitable interest of the judgment debtor, and since the obtaining of the judgment by the appellants satisfied the Uniform Real Estate Contract between the respondents and the appellants, the equitable title to the property should have vested in the respondents, give rise to a lien thereon. Utah Cooperative Association vs. White Distributing & Supply Co., 120 U. 603, 237 P2d 262 (1951).

The respondents also claim that since the primary basis for the appellants' motion was under subparagraph (1) of Rule 60(b) that the Court properly denied the relief or did not abuse its discretion in doing so. Rule 60(b) (6) of the Federal Rules of Civil Procedure is substantially the same as subparagraph (7) of the Utah Rules of Civil Procedure, and the United States Supreme Court in Klapprott vs. United States, 335 U.S. 601 (1949), stated that "in simple English, the language of the 'other reason' clause for all reasons except the five particularly specified, vests discretion in the courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." At pages 604-605. The Court also stated that like Rule 60(b) generally, subparagraph (6) thereof should be liberally applied to situations not covered by the preceding five clauses so that, giving due regard to the sound interests underlying the finality of judgments, the discretion of the court, nevertheless, has the power to grant relief from a judgment whenever, under all of the surrounding circumstances, such action is appropriate in the furtherance of justice. To potentially subject the respondents to a deficiency judgment, considering

of the circumstances, including the mistake, inadvertence or negligence of the appellants, does not seem to be in the furtherance of justice. Professor Moore states that "it is important to note, however, that clause (6) contains two very important qualifications to its application: first, the motion must be based upon 'some reason other than those stated in clauses (1)-(5)'; and second, the other reason urged for relief must be such as to 'justify' relief." Moore's Federal Practice, Second Edition, Volume 7, Section 60.27(1), at page 343. He also states that "In reference to the first qualification, the very cast of the Rule and the language of clause (6) indicate that this residual clause is dealing with matter not covered in the preceding five clauses. Further, the maximum time limitation of one year that applies to clauses (1), (2) and (3) would be meaningless, if after the year had run, the movant could be granted relief under clause (6) for reasons covered by clauses (1), (2) and (3)." Ibid. at pages 343-344. He cites Costa vs. Chapkins, 316 F2d 541 (2nd Cir. 1963), in addition to other general cases, including decisions of the United States Supreme Court.

CONCLUSION

The respondents submit that the trial court did not abuse its discretion or err in denying the appellants' Motion for Relief from Summary Judgment, and in any event, the Court should not be empowered to enter the amended summary judgment proposed by the appellants, because it involves an evidentiary determination, without an evidentiary hearing thereon. Additionally, the respondents submit that to grant the appellants the relief sought would

or could work a substantial injustice upon them, by allowing appellants to obtain a deficiency judgment against them, and tentionally, would deprive the respondent, Craig McLachlan, of a right of redemption he may have under the laws of the State of Utah.

Respectfully submitted.



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CERTIFICATE OF SERVICE

The foregoing Brief of Respondents was served on the appellants this 12th day of May, 1977, by personally delivering a true and correct copy thereof to Richard L. Bird, Jr., attorney for appellants, 333 East Fourth South, Salt Lake City, Utah 84102.



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