

1978

Hidden Meadows Development Co. v. Dee Mills et al : Brief of Appellant on Appeal

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY,	:	
Plaintiff and Appellant,	:	NOS. 15027
		15157
vs.	:	15188
DEE MILLS, et al.,	:	
Defendants and Respondents.	:	
	:	

APPELLANT'S BRIEF ON APPEAL

STATEMENT OF THE NATURE OF THE CASE

This is an action involving the Utah Occupying Claimant Statute, Section 57-6-1, Utah Code Annotated 1953, as amended.

DISPOSITION OF THE LOWER COURT

The Court below determined that defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, a limited partnership, as an occupying claimant of land decreed to the plaintiff, had made valuable improvements in the amount of \$35,000.00 to said land and was entitled to be compensated therefor.

RELIEF SOUGHT ON APPEAL

Plaintiff and appellant seeks reversal of the Dec. 14, 1976, Judgment below with respect to the Decree of the Court requiring

plaintiff to pay \$35,000.00 to defendant, INTERNATIONAL ENVORONMENTAL SCIENCES, as an occupying claimant of land decreed to the plaintiff.

STATEMENT OF FACTS

This action originated in Wasatch County, Utah on October 15, 1971, when plaintiff filed an action and recorded a Notice of Lis Pendens seeking specific performance of a certain option agreement covering land near Heber City, Utah (R. 1-5). An Amended Complaint and Amended Lis Pendens were filed and recorded on December 10, 1971 (R. 6-13). Upon trial of the matter before the Honorable D. FRANK WILKINS, Judge, a Judgment was entered on August 12, 1972, to the effect that plaintiff's option was invalid (R. 34, 35). Plaintiff then appealed the case to the Utah Supreme Court and on July 5, 1973, this Court in Case No. 13076 reversed the Court below and directed that a decree of specific performance with respect to said option be entered. Thereupon in compliance with such mandate, the District Court of Wasatch County on August 28, 1973, entered such a decree in favor of the plaintiff (R. 48-51). However, plaintiff, upon attempting to take possession of the land, was met with the claim of INTERNATIONAL ENVIRONMENTAL SCIENCES, not a party to the original action, that it was the owner of said property having succeeded to such ownership during the pendency of the action as above described as successor in interest to DEE MILLS and EVELYN I. MILLS, two of

the original defendants. Plaintiff then, in order to effectuate said decree of specific performance, filed a Supplemental Complaint on June 17, 1974 (R. 60-65), and an Amended Supplemental Complaint on July 15, 1974 (R. 72-76), wherein defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, and others were named as additional parties defendant.

Trial of the matter on plaintiff's Amended Supplemental Complaint was then had before the Honorable ERNEST F. BALDWIN, JR., Judge, on the 2nd day of June, 1975, and on December 14, 1976, a Supplemental Decree of Specific Performance was filed which in effect subjects defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, and all other defendants to plaintiff's claim to the land under said Option Agreement (R. 232-237) on the grounds that none of said defendants was a bona fide purchaser and

"That the said Lis Pendens recorded by plaintiff on December 10, 1971, has not been released and all of said defendants had personal knowledge prior to the acquisition of any purported interest in said property, that the said Judgment of August 10, 1972, was being appealed to the Supreme Court of the State of Utah by the plaintiff." (Finding of Fact No. 12, R. 227).

After the trial on June 2, 1975, and before formal entry of the said Supplemental Decree of Specific Performance on December 14, 1976, the Court below, pursuant to stipulation of the parties, held a further trial in the case on August 23, 1976, on the issues between the defendants and on the issue

raised by defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, in its Counterclaim to the effect that it had made valuable improvements to the property as an occupying claimant. As a result of that hearing, the Court entered Findings of Fact, Conclusions of Law and a Decree respecting occupying claimant on December 14, 1976, to the effect that defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, had made valuable improvements to said property worth \$35,000.00 and directed plaintiff to pay such amount within 60 days (R. 238-245). Plaintiff has, pursuant to stipulation of the parties, made tender into court of such amount by letter of credit to abide ultimate determination of this appeal (R. 266-269).

At the hearing on August 23, 1976, MILTON A. CHRISTENSEN, one of the original defendants, called as the principal witness for defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, testified that he was president of PARADISE VALLEY ESTATES, an original defendant in the action, and predecessor in interest to defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES (Tr. 4, 48); that he was married to defendant, CAROLE LEE CHRISTENSEN, principal investor in defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, a limited partnership (Tr. 4-5); that he was the representative and agent of defendant, CAROLE LEE CHRISTENSEN, at all times material to this action (Tr. 49); that whatever work and improvements were done to the property by any of the defendants were done under his personal direction

and supervision (Tr. 5); that when he first became acquainted with the property in dispute in the summer of 1971, he was made aware of the Option Agreement acquired by plaintiff (Tr. 38, 39); and that as early as October 15, 1971, he personally knew of the Lis Pendens which had been filed by plaintiff (Tr. 50). Defendant, MILTON A. CHRISTENSEN, also holds himself out as president of defendant, ENVIRONMENTAL RESOURCES, INC., which corporation is the general partner of defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, a limited partnership (Ex. 11-P and Ex. 12-P; Tr. 4,5).

Defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, offered various checks and receipts in evidence in support of its claim of having made valuable improvements to the property (Ex. 38-D, Tr. 12, 16), a large percentage of which checks and receipts bore dates either prior to August 10, 1972, the date of the initial Judgment (later reversed) upon which defendants purported to rely (Tr. 3, 7; R. 97, 100) or after July 5, 1973, the date upon which the Supreme Court reversed said Judgment (Ex. 39-P; Tr. 23, 24).

ARGUMENT

POINT I

THE COURT BELOW ERRED IN DECREERING THAT DEFENDANT, INTERNATIONAL ENVIRONMENTAL SCIENCES, AS AN OCCUPYING CLAIMANT, WAS ENTITLED TO COMPENSATION FOR IMPROVEMENTS TO THE PROPERTY

INASMUCH AS ANY IMPROVEMENTS MADE BY SAID DEFENDANT WERE NOT MADE IN GOOD FAITH.

One of the basic elements of the Utah Occupying Claimants Statute is that improvements for which compensation is sought must have been made "in good faith" by the one seeking such compensation (57-6-1, Utah Code Annotated 1953, as amended). The occupying claimant in this case is defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, a limited partnership. The general partner of such limited partnership is ENVIRONMENTAL RESOURCES, INC., also a party defendant to this action. The president of ENVIRONMENTAL RESOURCES, INC. is defendant, MILTON A. CHRISTENSEN, an original party defendant. The principal investor in said limited partnership is defendant, CAROLE LEE DAVIS, now known as CAROLE LEE CHRISTENSEN, wife of defendant, MILTON A. CHRISTENSEN (Ex. 11-P, Ex. 12-P, Tr. 5). Defendant, MILTON A. CHRISTENSEN at all times material to this case, was the agent and representative of defendant, CAROLE LEE CHRISTENSEN (Tr. 49). All of the work and improvements for which compensation is sought by defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, was done under the direction and supervision of defendant, MILTON A. CHRISTENSEN (Tr. 5), and defendant, MILTON A. CHRISTENSEN, personally knew of the claims of plaintiff as early as the summer of 1971 (Tr. 50). In other words, whatever improvements as were made by defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, were made with full

knowledge of the claims of the plaintiff either during actual trial of the issues, to which the principal officer of defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, was always a party (R. 227), or after the ruling by the Utah Supreme Court which was adverse to such defendant. For defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, to undertake to make improvements to the property under such circumstances did not constitute doing so in good faith.

"Good faith" has been defined as:

"A reasonable and honest belief of the occupant in his right or title and freedom from a design to defraud the party having the better title".
(41 Am. Jur. 2d 492)

In the case of DAY vs. JONES, 112 Utah 286, 187 P. 2d 181, this Court held that action by an occupying claimant in ignoring letters from an owner in the military service precluded a finding of good faith. In REIMANN vs. BAUM, 115 Utah 147, 203 P. 2d 387, the contention by a would be occupying claimant that he thought an action to quiet title to the land had been abandoned was held by this Court to fall short of "good faith". A similar result was reached by this Court in ERICKSON vs. STOKES, 120 Utah 653, 237 P. 2d 1012. See also DOYLE vs. WEST TEMPLE TERRACE COMPANY, 47 Utah 238, 152 P. 1180.

The best that can be said for the defendants' position is that it purported to act in reliance upon the decision of Judge Wilkins entered on August 10, 1972 (R. 34-35), but the defendant and everyone connected with it knew that such decision

was being appealed to this Court and that such decision was ultimately reversed (R. 227). Further indication of the lack of good faith on the part of defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, in making the claimed improvements is demonstrated by examination of Exhibit 38-D and Exhibit 39-P. These Exhibits show that most of the expenditures claimed by the defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, as evidence of the work done on the property were made before the Wilkin's decision of August 12, 1972, while the matter was in actual litigation (\$5,759.92 equaling 28.8%) and after that decision was reversed by this Court on July 5, 1973, (\$10,856.71 equaling 54.3%) as compared to expenditures made during the time the appeal was actually pending (\$3,321.35 equaling 16.5%).

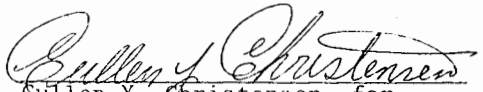
CONCLUSION

Defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, did not act in good faith in making its improvements to the property, but on the contrary it chose to ignore the realities of the lawsuit and pending appeal pertaining to plaintiff's option, and in an effort to usurp possession of the property and to alter the condition of the property to the detriment of the plaintiff, it deliberately persisted in making expenditures connected with the land knowing full well that plaintiff's claims to the property could very well prove to be paramount.

The decision of the Court below in holding that defendant, INTERNATIONAL ENVIRONMENTAL SCIENCES, as an occupying

claimant made good faith improvements to the property worth \$35,000.00 and that plaintiff, if it wants the premises, must compensate said defendant in such amount, should be reversed.

Respectfully submitted,



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CERTIFICATE OF MAILING

Copy of the foregoing was mailed, postage prepaid, to John Marshall, attorney for defendants, Dee Mills, Evelyn I. Mills, and Evelyn I. Mills Trust, American Savings Building, Suite 501, 61 South Main Street, Salt Lake City, Utah 84101; to Hanson & Garrett, attorneys for International Environmental Sciences, 520 Continental Bank Building, Salt Lake City, Utah 84100; and to Leonard Russon and James Sadler, attorneys for Milton A. Christensen, Paradise Valley Estates, Inc., Lake Mills Company, Carole Lee Christensen, and Environmental Resources, Inc., 702 Kearns Building, Salt Lake City, Utah 84101, this 8th day of September, 1977.



CULLEN Y. CHRISTENSEN, Attorney