

1978

Hidden Meadows Development Co. v. Dee Mills et al : Brief of Appellants

Utah Supreme Court

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Cullen Y. Christensen; Christensen, Taylor & Moody; Attorneys for Plaintiff;

Attorneys for Respondents;

Edward M. Garrett; Leonard Russon & James Sadler;

John G. Marshall; Attorney for Defendants;

Recommended Citation

Brief of Appellant, *Hidden Meadows Development Co. v. Mills*, No. 15027 (Utah Supreme Court, 1978).

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IN THE SUPREME COURT OF THE STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY, :

Plaintiff and Appellant, :

vs. :

DEE MILLS and EVELYN I. MILLS, his
wife, MILTON C. CHRISTENSEN, aka, :
MILTON A. CHRISTENSEN, PARADISE :
VALLEY ESTATES, INC., LAKE MILLS : NOS. 15027
COMPANY, a Limited Partnership, : 15157
CAROLE LEE CHRISTENSEN, formerly : 15188
CAROLE LEE DAVIS, ENVIRONMENTAL
RESOURCES, INC., INTERNATIONAL :
ENVIRONMENTAL SCIENCES, a Limited
Partnership, JOHN DENNIS HIGGINSON :
and SHERREL W. HIGGINSON, his wife, :
R. W. DAVIS LIVESTOCK COMPANY, :
VERL ROTHLSBERGER, EVE RHODES, :
EVELYN I. MILLS TRUST, FIRST :
SECURITY BANK OF UTAH, N. A., and :
DALE A. ALLSOP and DONNA B. ALLSOP, :
his wife, :

Defendants and Respondents.

BRIEF OF DEE MILLS and EVELYN I. MILLS, his wife,
Appellants

Appeal from Judgment of Fourth District Court of Utah
County, Honorable Ernest F. Baldwin, Jr., Judge

Cullen Y. Christensen, for
CHRISTENSEN, TAYLOR & MOODY
Attorneys for Plaintiff
55 East Center Street
Provo, Utah 84601

JOHN G. MARSHALL
Attorney for Defendants MILLS
103 Social Hall Avenue
Salt Lake City, Utah 84111

Attorneys for Respondents

EDWARD M. GARRETT
Attorney for International Environmental Sciences
520 Continental Bank Building
Salt Lake City, Utah 84101

FILED

JUN 27 1978

LEONARD RUSSON & JAMES SADLER

702 Kearns Building
Salt Lake City, Utah 84101

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IN THE SUPREME COURT OF THE STATE OF UTAH

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VALLEY ESTATES, INC., LAKE MILLS :

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CAROLE LEE CHRISTENSEN, formerly :

CAROLE LEE DAVIS, ENVIRONMENTAL :

RESOURCES, INC., INTERNATIONAL :

ENVIRONMENTAL SCIENCES, a Limited :

Partnership, JOHN DENNIS HIGGINSON :

and SHERREL W. HIGGINSON, his wife, :

R. W. DAVIS LIVESTOCK COMPANY, :

VERL ROTHLSBERGER, EVE RHODES, :

EVELYN I. MILLS TRUST, FIRST :

SECURITY BANK OF UTAH, N. A., and :

DALE A. ALLSOP and DONNA B. ALLSOP, :

his wife, :

Defendants and Respondents. :

NOS. 15027

15157

15188

STATEMENT OF THE NATURE OF THE CASE

Plaintiff sought specific performance of an option to purchase certain realty situated in Wasatch County, Utah.

DISPOSITION IN THE LOWER COURT

This case was previously tried and reversed on appeal. (See Hidden Meadows Development Co., v. Mills, 29 U.2d 469, 511 P.2d 737.)

After remand the trial court ordered specific performance upon the payment to defendants Mills of the sum of \$87,800.00 (R. 232-236), and the payment to defendant International Environmental Sciences the sum of \$35,000.00 under its counterclaim for improvements to the land as an occupying claimant (R. 243-245.)

The trial court also entered Judgment against defendant Mills on the cross complaint of the other defendants (successors-in-interest of the land in question from defendants Mills) requiring the Mills to refund their purchase price in the sum of \$110,000.00.

RELIEF SOUGHT ON APPEAL

Defendants Mills, by this appeal, seek an order modifying the decree of specific performance to require plaintiff as a condition of specific performance to compensate defendants Mills for the reasonable value of capital improvements constructed by them upon the land in question after the date of the execution of the option to purchase.

Defendants Mills also seek an order modifying the Judgment in favor of the other defendants (cross claimants below) to allow Defendant Mills credit against the Judgment in the sum of \$35,000.00.

STATEMENT OF FACTS

On December 28, 1964, Dee Mills and Evelyn Mills, his wife, executed an option in favor of the predecessor in interest of the Hidden Meadows Development Co., a joint venture comprised of two limited partnerships (Plaintiff and Respondent herein). The option gave the optionee the right to purchase the Mills' farm containing approximately 540 acres of land in Wasatch County, Utah.

The option, which specified a termination date of December 31, 1965, also contained a provision which stated as follows:

"This contract is automatically renewed from year to year unless notice of cancellation is given by either party prior to October 1 of any given year."

On August 31, 1971, Mills gave notice of cancellation to Hidden Meadows and on September 14, 1971, granted an option to Milton A. Christensen to purchase the property for \$110,000.00. On September 28, 1971, Hidden Meadows sent Mills a notice that it intended to exercise the option.

Subsequently, Hidden Meadows brought suit against Mills,

Christensen and others to enforce the option. After trial, the lower Court (Judge D. Frank Wilkins) entered Judgment for defendants and quieted title to the property in defendants and barred plaintiff from asserting title thereto.

The matter was subsequently appealed to this court and on July 5, 1973, a decision was rendered reversing the decision of the lower court. (See, Hidden Meadows Development Co. v. Mills, 29 U.2d 469, 511 P.2d 737.)

In connection with the former appeal, Hidden Meadows (as appellant) applied to the trial court for a supersedeas and an injunction preventing the defendants (Mills and Christensen) from disposing of the property during the pendency of the appeal. The court on November 29, 1972, granted the Motion for Supersedeas and Injunction, contingent upon Hidden Meadows posting bond in the amount of \$50,000.00. However, Hidden Meadows failed to post any bond, and the supersedeas and injunction never issued.

During the pendency of the appeal, and prior to the reversal, other persons obtained interests in the subject property. Specifically, Milton Christensen assigned his option rights to Carole Lee Davis who entered into a Uniform Real Estate Contract of purchase with defendants Mills on January 2, 1973, by the terms of which she agreed to purchase the Mills' property for \$110,000.00. (Ex. 19-D.) The purchase price in full was paid on or before April 5, 1973.

The remittitur on the appeal was issued on July 26, 1973, and

on August 27, 1973, the district court on motion of plaintiff and without a hearing entered a Decree of Specific Performance requiring defendants to execute a Warranty Deed conveying the property to plaintiff, and ordering plaintiff to pay \$86,200.00 in payment of the purchase price thereof.

A copy of the Decree was mailed to Gordon I. Hyde (then counsel for defendants) on August 2, 1973, which was 25 days before it was signed by the court.

However, the executed copy of the Decree of Specific Performance was not served on Mr. Hyde until October 26, 1973. Subsequently, on or about November 7, 1973, defendants, through their then counsel, Gordon I. Hyde, filed an objection to the Decree of Specific Performance, but no hearing was ever held thereon.

On or about June 17, 1974, plaintiff filed a supplemental complaint in which it sought to join additional defendants, claiming that Carole Lee Davis and her successors in interest were not bona fide purchasers. In addition to denying the allegations of plaintiff's supplemental complaint, all defendants cross-claimed against their predecessors in interest, back to defendants Mills, for a return of the purchase price paid by them.

At the trial, defendants Mills sought to show that subsequent to the execution of their option to plaintiffs, defendants Mills (with the knowledge

and approval of plaintiff) had put certain improvements on the property.

Exhibit 35-D was admitted into evidence. (Cooley transcript p. 307) This was a letter from plaintiff to defendant Mills which stated:

September 25, 1967

Dear Mr. Mills:

"We wish to officially recognize the expenditure of \$8,000.00 you have made on construction of your dairy barn, for which you will be indemnified on a ten year depreciation basis (commencing as of May 1, 1967) at the time of our purchase of your land."

Sincerely,

Robert K. Allen, General Partner
Hidden Meadows of the Wasatch

Subsequently, Mills testified that the \$8,000.00 referred to in the letter related only to the cost of materials going into the barn and did not include any amount for labor (Cooley transcript pp. 307-308.) He also testified that in his opinion the value of the barn was \$12,000.00 to \$15,000.00 at the time it was built, and that it was worth about the same amount at the date of the hearing (Cooley transcript p. 311).

Defendant Mills did not claim that he had agreed to the terms of Exhibit 35-D, but only that the exhibit amounted to a recognition on the part

of plaintiff that defendant Mills would be additionally compensated for the barn upon a purchase of the ground. (Cooley transcript p. 308.) Thereupon the trial court reversed his ruling and refused to admit Exhibit 35-D. (Cooley transcript p. 309.)

Defendant Mills also testified that subsequent to the execution of the option he made other capital improvements to the land in question. Part of this was in the form of testimony by defendant Mills (Cooley transcript pp. 312-314), and part was in the form of a proffer of proof (Cooley transcript pp. 318-323). Unfortunately, the reporter failed to copy the total proffer, and part was omitted during the portion noted by the reporter as "off the record". (Cooley transcript p. 318.)

The proffer of proof is as follows:

"PROFFER OF PROOF"

"That Dee Mills, if permitted, would testify that subsequent to December 28, 1964 (the date of the option to plaintiff) he made capital improvements to the property in dispute to the extent of at least \$16,748.17 in cash paid out, which figure does not include labor he personally expended in installing these improvements.

"That among the improvements was a barn which he constructed over a period of two years, upon which he expended \$8,000.00 for materials alone, and that the value of the barn would be approximately \$15,000.00.

That plaintiff was aware of the construction of the said barn, and through Robert K. Allen, general partner, recognized in writing the expenditure of \$8,000.00 for the barn and offered to compensate Mills for the barn, over and above the option price.

"That in addition, Mills installed other capital improvements as follows:

Fencing (materials only)	\$ 1188.82
Septic tank (materials only)	354.48
Improvements to reservoir and irrigation ditches	2333.20
Purchase of additional reservoir rights	2462.71
Improvements to house and garage (materials only	1655.66
Miscellaneous	753.30

"That Mills also levelled and brought under cultivation five acres of land, which increased its value by about \$12,000.00.

"That plaintiff (through Robert K. Allen, general partner) was aware of most, if not all of these improvements, because he and Mills discussed them and Allen represented and agreed that Mills would be additionally compensated for the improvements if and when plaintiff exercised its option.

"That subsequent to his sale and conveyance to Carole Lee Davis he re-purchased from her the house in which he is living and five acres of land in exchange for cattle and farm machinery having a reasonable and agreed value of \$35,000.00." (End of Proffer of Proof.)

Plaintiff objected to the proffer of proof which was sustained by the trial court upon the ground that the proffer was "completely immaterial under the facts of this case." (Cooley transcript p. 323.)

Thereafter, the court entered a supplemental Decree of Specific Performance requiring all defendants to convey the land in question to plaintiff upon the payment to Mills of the sum of \$87,800.00 (R. 232-236), and the payment to defendant International Environmental Sciences the sum of \$35,000.00 under its counter claim for improvements to the land as an occupying claim-out. (R. 243-245.)

The trial court also entered Judgment against defendants Mills on the cross complaint of the other defendants requiring them to refund the sum of \$110,000.00

All parties have appealed from various elements of the decision of the trial court.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FAILING TO REQUIRE

PLAINTIFF AS A CONDITION OF SPECIFIC PERFORMANCE TO COMPENSATE DEFENDANTS MILLS FOR THE REASONABLE VALUE OF THE CAPITAL IMPROVEMENTS CONSTRUCTED BY THEM UPON THE LAND IN QUESTION AFTER THE DATE OF THE EXECUTION OF THE OPTION TO PURCHASE.

At the trial defendants Mills sought to introduce evidence concerning certain capital improvements constructed by them upon the land which was the subject of the option agreement after the execution of the option. Defendants' evidence would show that defendant Mills had discussed these improvements with the general partner of plaintiff, who had agreed that the Mills would be additionally compensated for the improvements if and when the option were exercised. (Cooley transcript pp. 320-321.)

In addition, the court first admitted (Cooley transcript p. 307), then rejected (Cooley transcript p. 309) Exhibit 35-D, which is a written recognition executed by the general partner of plaintiff that it knew defendants Mills were constructing a barn on the subject property and that they were to be compensated additionally for it. Even though the court refused to receive Exhibit 35-D, the Findings of Fact refer to Exhibit 35-D and state that thereby plaintiff agreed to adjust the purchase price for the property to reflect the addition of the barn. However, the trial court allowed only the sum of \$1,600.00 based upon the amortization formula contained in that letter. (R. 227.)

It was not the position of defendants Mills that they had agreed to this formula (Cooley transcript p. 308-309), which is the reason the court reversed its prior admission of the exhibit. Rather, the position of defendants Mills was that the letter constituted a recognition on the part of plaintiff that the Mills were to receive additional compensation, but that the Mills had never agreed that the amount was to be \$8,000.00, or that the value was to be reduced over a ten (10) year period. (Cooley transcript pp. 306-311.)

The option in question was executed on December 28, 1964. By its terms, it was an option for one year. However, it contained a provision which automatically continued the option from year to year unless one side gave the other notice of cancellation. (See Exhibit 1-P.)

During the option period defendants Mills occupied the premises and operated the property as a dairy farm and for grazing of livestock (Cooley transcript p. 293.) During this period defendants made several capital improvements on the land, which they discussed with plaintiff and which plaintiff agreed to pay for upon the exercise, if any, of the option. (Cooley transcript pp. 320-321.) The dairy barn is one example of such improvements. Exhibit 35-D is clear evidence that the plaintiff was made aware of the improvement, and that additional compensation was to be paid over and above the purchase price upon any exercise of the option.

Defendants Mills proffer of proof included other capital improvements totalling \$35,748.17 (including the estimated value of the barn) which were added to the property after discussion with plaintiff.

There is substantial legal precedent for adjusting the purchase price upon which the option may be exercised under circumstances similar to the case at bar.

In Fontaine v. Brown County Motors, Co., 251 Wisc 433, 29 No W. 2d 744 (1947) it appeared that Fontaine had leased certain property to the Motor Company on March 31, 1941, for a term of five years, commencing June 15, 1941. At that time, lessee owned property adjoining the leased property on both sides. The lease contained an option whereby the lessor had the right to purchase the adjoining property of the lessee for the fixed price of \$35,000.00 at anytime during the term of the lease.

In November, 1945, the lessee began the construction of a one story warehouse on its adjoining property. While the president of the lessee corporation was aware of the option at the time the lease was executed, he had forgotten it at the time construction commenced. On April 30, 1946, Fontaine gave the lessee a notice exercising the option to purchase. At that time the lessee had expended approximately \$20,000.00 on the construction of the building, which was substantially completed. The lessee

refused to convey the property and lessor filed suit for specific performance.

The trial court refused to grant specific performance upon the ground that the lessor (optionee) upon observing the construction of the building could not sit by, permit the lessee to proceed with the improvement and then invoke the aid of a court of equity to compel performance of the agreement.

On appeal, the Supreme Court of Wisconsin stated:

"We agree with the rule applied by the trial court, but we disagree with its application to the facts. It is established in this state and in equitable jurisprudence generally that specific performance will not be granted where the result would be oppressive, harsh or unjust. [Citing cases.] While facts establishing the injustice of the remedy generally arise out of the inception of the contract sought to be enforced, it is not necessary that such be the case. Subsequent events or a change of circumstances may so alter the situation as to render specific performance inequitable. [Citing authorities.] But any inequity that would result from specific performance of the agreement under consideration would not, in our opinion, arise out of the failure of the appellant to communicate with the company upon learning of the construction

"The inequity - and we think there would be inequity - in ordering specific performance of the contract according to its terms arises out of other factors. Performance would give the appellant the benefit of a bargain which she did not make and inflict upon the company a substantial loss. The loss, to be sure, would be occasioned by lack of proper diligence on the part of the company's officials, but equity may nonetheless take the result into consideration in determining whether the contract will be enforced. [Citing cases.]

"It is a corollary of the rule to which we have referred that if the plaintiff is not guilty of inequitable conduct and

if the granting of equitable relief can be framed in such a way as to avoid injustice to the defendant, specific performance should be decreed

"We are of the opinion that specific performance should be granted upon condition that appellant pay the option price plus such appreciation in value to the appellant as the court may determine resulted from the improvement, not exceeding its cost, but reserving to the company the option of removing the improvement within a reasonable time. The decree should be so framed as to dismiss the complaint if appellant elects not to pay any increased amount."

The same principle was enunciated in the case of Willard v. Tayloe,

8 Wall. (U.S.) 557, 19 L. ed 501 (1870), where the court said:

"It must also appear that the specific performance will work no hardship or injustice, for if that result would follow, the court will leave the parties to their remedies at law, unless the granting of the specific relief can be accompanied with conditions that will obviate that result."

See also Lidikevicz v. Kopala, 315 Ill. 404, 146 N.E. 461 (1925)

where the court granted specific performance but held that the vendors were entitled to reimbursement for repairs and improvements consisting of painting, decorating and plumbing made after the execution of the contract.

And, in Mentlikowski v. Wisniewski, 173 Mich 642, 139 N.W. 874 (1913) the court decreed specific performance, but held that defendants were entitled to be additionally compensated for permanent improvements such as pavement and cement sidewalks made after the execution of the contract, upon the theory that no party is entitled to specific performance of

a contract as a matter of right, and that where specific performance is sought the party seeking it should do equity.

See also, 71 Am Jur 2d, Specific Performance, Sec. 87, page 118.

In this case the trial court refused to allow defendants the value of the improvements made after the execution of the option, although defendants proffered to prove that the improvements were made with the knowledge and the express agreement of plaintiff to pay for them in addition to the agreed purchase price. In so ruling, the trial judge expressed the belief that he was bound (as to the purchase price) by the prior decree of specific performance entered on August 27, 1973, after the prior reversal on appeal. (Cooley transcript p. 304.)

However, that decree ordered defendants Mills and the other defendants in the first stage of this action to convey the property. At that time the property had been conveyed to others who were not then parties to this action, so that it was impossible for defendants to comply with the decree.

Normally, specific performance will not be decreed against a defendant who is unable to comply, such as where they have no title to the property sought. See, 71 Am. Jur. 2d, Specific Performance, Sec. 69, p. 99. Consequently, that decree was a nullity, since it was impossible of performance.

In this regard, it should be pointed out that after the first trial, judgment was entered against plaintiff. In connection with its appeal plaintiff filed a motion with the trial court to fix a supersedeas. The court entered an order staying the enforcement of the judgment of dismissal and restraining the original defendants from disposing of the property, conditioned upon plaintiff's posting a bond in the amount of \$50,000.00. However, plaintiff failed to post the bond, leaving defendants Mills free to rely on their judgment of dismissal, pursuant to which they subsequently conveyed the property to Carole Lee Davis, which was the reason it was impossible to comply with the order.

Furthermore, in spite of his statement that he was bound by the purchase price fixed in the decree of specific performance (\$86,000².00), the trial judge did in fact modify that amount on account of the barn in paragraph 14 of the Findings of Fact. (R. 227.) However, he failed to award any amount for other improvements of like nature.

Since this is a proceeding in equity, this court can review the lower court's determination of factual questions as well as legal questions.

The lower court should have exercised some latitude and adjusted the sales price when it appeared inequitable to enforce the option according to its terms.

Defendants submit that it was error for the lower court to enforce the option without allowing defendants compensation for the capital improvements constructed upon the property after the execution of the option and prior to its exercise.

POINT II

THE TRIAL COURT ERRED IN FAILING TO AWARD DEFENDANTS MILLS CREDIT IN THE SUM OF \$35,000.00 AGAINST THE JUDGMENT AWARDED THE OTHER DEFENDANTS ON THEIR CROSS-CLAIM.

The uncontroverted evidence (admitted without objection from any one) was that after defendants Mills sold the property in question to Carole Lee Davis, they repurchased from her five acres, which included the home in which they reside. The consideration for this purchase was certain livestock and farm machinery having an agreed value of \$35,000.00. (See Cooley transcript pp. 247-249. See also, Exhibits 11-P and 26-D which are the warranty deed to the land and the bill of sale to the personalty, respectively.

In its decisions the trial court ordered the entire parcel of realty conveyed to plaintiff. This would include the five acre parcel repurchased by defendants Mills from Carole Lee Davis for \$35,000.00 worth of personal property to which plaintiff had no claim, and which Carole Lee Davis will not be required to convey to plaintiff.

The court also entered judgment against defendant Mills and in favor of Carole Lee Davis for the sum of \$110,000.00 (constituting the purchase price paid by Carole Lee Davis to the Mills for the purchase of the total acreage in question in this suit).

However, defendant Mills should receive credit to the extent that they paid Carole Lee Davis new consideration (agreed value \$35,000.00), for property which they will lose to plaintiff by the terms of the decree of specific performance.

Consequently, the judgment on the cross-claim against Mills should be reduced by \$35,000.00.

CONCLUSION

Rule 54(c), Utah Rules of Civil Procedure provides in part:

"Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves." (Emphasis added.)

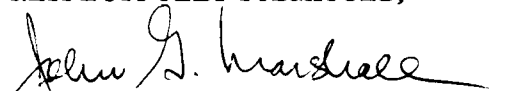
It is respectfully submitted that in this case the court did not award the parties who prevailed the relief to which they were entitled - it granted them more than they were entitled to receive.

This court should modify the Supplemental Decree of Specific

Performance by requiring plaintiff, as a condition to obtaining specific performance, to pay defendants Mills the sum of \$35,748.17 in addition to the option price of \$86,200.00.

This court should also modify the judgment awarded the other defendants on their cross-claim against defendants Mills by giving defendants Mills credit for the sum of \$35,000.00 previously paid to repurchase the house and surrounding five acres, which defendant Mills will be forced to convey to plaintiff.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "John G. Marshall", is written over a horizontal line.

JOHN G. MARSHALL
Attorney for Defendants Mills
103 Social Hall Avenue
Salt Lake City, Utah 84111

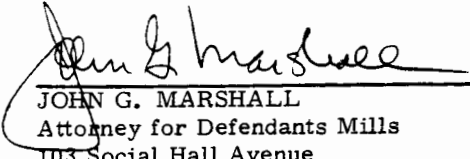
CERTIFICATE OF SERVICE

I herewith certify that I served three (3) copies of the enclosed Brief on Appeal upon the other parties mailing the same on the 27 day of June, 1978, postage prepaid as follows:

CULLEN Y. CHRISTENSEN, for
CHRISTENSEN, TAYLOR & MOODY
Attorneys for Hidden Meadows Development Company
55 East Center Street
Provo, Utah 84601

LEONARD RUSSON and JAMES SADLER
Attorneys for Milton C. Christensen, Paradise
Valley Estates, Inc., Lake Mills Co., Carole Lee
Christensen, and Environmental Resources, Inc.
702 Kearns Building
Salt Lake City, Utah 84101

EDWARD M. GARRETT
Attorney for International Environmental
Sciences
520 Continental Bank Building
Salt Lake City, Utah 84101



JOHN G. MARSHALL
Attorney for Defendants Mills
103 Social Hall Avenue
Salt Lake City, Utah 84111