

1978

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

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY,)

Plaintiff and
Respondent,)

vs.)

Nos. 15027

15157

15188

DEE MILLS and EVELYN I. MILLS, his)
wife, MILTON C. CHRISTENSEN, aka)
MILTON A. CHRISTENSEN, PARADISE)
VALLEY ESTATES, INC., LAKE MILLS)
COMPANY, a Limited Partnership,)
CAROLE LEE CHRISTENSEN, formerly)
CAROLE LEE DAVIS, ENVIRONMENTAL)
RESOURCES, INC., INTERNATIONAL)
ENVIRONMENTAL SCIENCES, a Limited)
Partnership and EVELYN I. MILLS)
TRUST,)

Defendants and
Appellants.)

RESPONDENT'S BRIEF ON APPEAL

APPEAL FROM JUDGMENT OF FOURTH DISTRICT
COURT OF WASATCH COUNTY
HONORABLE ERNEST F. BALDWIN, JR., JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|-------------------------------------|---|-----------------|
| HIDDEN MEADOWD DEVELOPMENT COMPANY, |) | |
| |) | |
| Plaintiff and |) | Cases No. 15027 |
| Respondent, |) | 15157 |
| |) | 15188 |
| vs. |) | |
| |) | |
| DEE MILLS, et al., |) | |
| |) | |
| Defendants and |) | |
| Appellants. |) | |
| |) | |
| ***** |) | |

RESPONDENT'S BRIEF ON APPEAL

STATEMENT OF THE KIND OF CASE

This case involves the effect of a lis pendens and knowledge of an appeal on the rights of purchasers of real property from the initial prevailing party below during the pendency of the appeal to the Supreme Court and in the absence of a supercedeas bond.

DISPOSITION IN LOWER COURT

The court below ruled that a reversal by the Supreme Court of a prior decree of the district court was binding upon the purchasers of the property in question from the prevailing parties in the district court whose position was reversed on appeal.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks affirmance of the judgment of the court below as to all matters, except the court's determination

that the defendant INTERNATIONAL ENVIRONMENTAL SCIENCES made valuable improvements to the property in question in good faith as an occupying claimant.

STATEMENT OF FACTS

Except for the argumentative aspects thereof, plaintiff essentially concurs in the Statements of Facts set forth in the Briefs of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES and defendants MILTON A. CHRISTENSEN, PARADISE VALLEY ESTATES, LAKE MILLS COMPANY, CAROLE LEE CHRISTENSEN, and ENVIRONMENTAL RESOURCES, INC. Plaintiff does, however, respectfully refer the Court to the Statement of Facts contained in plaintiff's Brief involving the Utah Occupying Claimant's Statute heretofore filed in this matter and does hereby further emphasize the following facts and dates:

(a) Summer of 1971:

Defendant MILTON A. CHRISTENSEN first became acquainted with the property in question and learned of plaintiff's option to purchase the same. (Lewis TR-38,39)

(b) September 14, 1971:

Defendant MILTON A. CHRISTENSEN, himself, obtained an option from defendants MILLS to the property in question. (EX 5-P)

(c) October 15, 1971:

Defendant MILTON A. CHRISTENSEN personally learned of plaintiff's Lis Pendens on file in the office of the Wasatch County Recorder. (EX 3-P, Lewis TR-50)

(d) October 15, 1971:

The property in question was deeded by Warranty Deed from defendants MILLS to defendants PARADISE VALLEY ESTATES, INC. and LAKE MILLS COMPANY. (EX 6-P and EX 7-P)

(e) January 2, 1973:

Defendants MILLS purported to contract to sell the property in question previously deeded to defendants PARADISE VALLEY ESTATES, INC. and LAKE MILLS COMPANY as indicated in (d) above to defendant CAROLE LEE DAVIS, also known as CAROLE LEE CHRISTENSEN. (EX 19-D)

(f) January 3, 1973 and January 29, 1973:

Defendants PARADISE VALLEY ESTATES, INC. and LAKE MILLS COMPANY deed the property in question by Warranty Deed to defendant INTERNATIONAL ENVIRONMENTAL SCIENCES. (EX 8-P, EX 9-P, Cooley TR-210)

(g) PARADISE VALLEY ESTATES, INC. is a Utah corporation whose president at all times material hereto was defendant MILTON A. CHRISTENSEN. (EX 8-P; Lewis TR-4, 48)

(h) Defendant MILTON A. CHRISTENSEN was at all times material hereto the principal of defendant LAKE MILLS COMPANY. (EX 8-P, Cooley TR-209)

(i) Defendant INTERNATIONAL ENVIRONMENTAL SCIENCES is a limited partnership of which defendant ENVIRONMENTAL RESOURCES, INC. is the general partner. The president of defendant ENVIRONMENTAL RESOURCES, INC. is defendant MILTON A. CHRISTENSEN. (EX 11-P; EX 12-P; Cooley TR-213, 214)

(j) Defendant MILTON A. CHRISTENSEN and defendant CAROLE LEE CHRISTENSEN were married on February 16, 1973, (EX 18-D), but at all times material hereto, defendant MILTON A. CHRISTENSEN was the representative and agent of defendant CAROLE LEE CHRISTENSEN. (Lewis TR-49)

With respect to the claims of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES that it worked a zone change on the property in question, the records of Wasatch County do not support such contention. The evidence does indicate that the defendant MILTON A. CHRISTENSEN was authorized by the county to divide approximately 78 acres of the property in question into nine lots for the purposes of sale. (EX's 45-P through 52-P)

ARGUMENT

POINT I

THE LOWER COURT DID NOT ERR IN RULING THAT THE TITLE ACQUIRED BY APPELLANT INTERNATIONAL ENVIRONMENTAL SCIENCES WAS SUBJECT TO THE LATER REVERSAL OF THIS COURT AND THEREFORE INVALID.

Defendants on appeal characterize themselves as "good faith" purchasers of the property in question (R-97, 135; Garrett Brief, page 26; Sadler Brief, page 3). The facts do not support such a contention. "Good faith" is defined in Blacks Law Dictionary as:

"Freedom from knowledge of circumstances which ought to put the holder upon inquiry".

This Court in the case of Pender vs. Dowse, (1 Utah 2d 283, 265 P. 2d 644) held that:

"One does not become a bona fide purchaser merely by paying valuable consideration for a conveyance, but the purchase must also have been made in good faith and thus without notice of a claim adverse to the title of the vendor.",

and in the case of Webster vs. Knop, (6 Utah 2d 273, 312 P. 2d 557) this Court further held that a purchaser could not even rely on a title opinion where other circumstances known to the purchaser indicated a duty to inquire further into the interests of others.

In this case now before the Court all of the defendants and appellants, PARADISE VALLEY ESTATES, INC., LAKE MILLS COMPANY, CAROLE LEE CHRISTENSEN, ENVIRONMENTAL RESOURCES, INC. and INTERNATIONAL ENVIRONMENTAL SCIENCES, are so involved and entwined with defendant MILTON A. CHRISTENSEN as to be fully

chargeable with the knowledge and actions of defendant MILTON A. CHRISTENSEN. Defendant MILTON A. CHRISTENSEN, himself, was an original party defendant (R-1) and a principal witness for the defendants during all of the proceedings before the court below (Cooley TR-206-225, 261-289; Lewis TR-3-52); defendant MILTON A. CHRISTENSEN was at all times material hereto to president of defendant PARADISE VALLEY ESTATES, INC., an original party defendant (EX 8-P; Lewis TR-4, 48; Cooley TR-235); defendant MILTON A. CHRISTENSEN was at all times material hereto the principal of LAKE MILLS COMPANY, an original party defendant (EX 8-P; Cooley TR-209); defendant MILTON A. CHRISTENSEN at all times material hereto was president of defendant ENVIRONMENTAL RESOURCES, INC., which corporation was at all times involved herein the general partner of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES, having full management powers and control thereof (EX 11-P; EX 12-P; Cooley TR-213, 214, 251); and defendant MILTON A. CHRISTENSEN at all times material hereto has been the agent and representative of defendant CAROLE LEE CHRISTENSEN, who is a limited partner of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES (EX 12-P; Cooley TR-253-255; Lewis TR-49). Thus, defendant MILTON A. CHRISTENSEN, being managing agent and/or officer of the other defendants, said other defendants are fully chargeable with the knowledge of defendant MILTON A. CHRISTENSEN respecting the claims of plaintiff and of plaintiff's appeal of the Wilkins' Judgment of August 10, 1972, which Judgment was later reversed by this

Court on July 5, 1973, (Hidden Meadows Development Company vs. Mills, et al., 29 Utah 2d 469, 511 P. 2d 737). Knowledge of a corporate president (defendant MILTON A. CHRISTENSEN) relating to corporate affairs and business is notice to and knowledge of the corporation (defendants PARADISE VALLEY ESTATES and ENVIRONMENTAL RESOURCES, INC.), just as knowledge of a managing agent (defendant MILTON A. CHRISTENSEN and defendant ENVIRONMENTAL RESOURCES, INC.) with respect to matters over which the agent's authority extends is notice to and knowledge of the principal (defendant LAKE MILLS COMPANY, defendant INTERNATIONAL ENVIRONMENTAL SCIENCES, INC., and defendant, CAROLE LEE CHRISTENSEN). In support of the foregoing see 3 Am. Jur. 2d, Agency, paragraph 273; Vol. 3 Fletcher Cyclopaedia of Corporations, paragraphs 809, 810, 811; and Crompton vs. Jensen, 78 Utah 55, 1 P. 2d 242).

As stated in the case of Munroe vs. Harriman (CCA2)
85 Fed. 2d 493, 111 A.L.R. 657:

"The rational explanation of the rule that charges a principal with his agent's knowledge is not the fiction of presumption of communication of the agent's knowledge to the principal, but common justice which requires that one who puts forward an agent to do his business shall not escape the consequence of notice to, or knowledge of, his agent."

Further reason for denying defendant CAROLE LEE CHRISTENSEN individually the status of a good faith purchaser of the property in question, lies with the facts that her only direct tie with the property in question arises from the Uniform Real Estate Contract from defendants DEE MILLS and

EVELYN I. MILLS dated January 2, 1973 (EX 19-D), when on that date defendants MILLS had no title to convey to anyone, since they had previously conveyed all of their interest in the property in question to defendants PARADISE VALLEY ESTATES, INC. by Warranty Deed dated October 15, 1971, and recorded October 26, 1971, as Entry No. 95882, in Book 77, at page 108 of the records of the County Recorder of Wasatch County (EX 6-P), and to defendant LAKE MILLS COMPANY by Warranty Deed dated October 15, 1971, and recorded October 26, 1971, as Entry No. 95884, in Book 77, at pages 111-12, of the records of the County Recorder of Wasatch County (EX 7-P). At the time defendant CAROLE LEE CHRISTENSEN purported to take an interest in the property as above indicated, she was fully informed of the prior conveyances and well knew that the defendants MILLS had no title to actually convey to her (Cooley TR-254, 255), and that title was actually going to go to defendant INTERNATIONAL ENVIRONMENTAL SCIENCES with which entity defendant MILTON A. CHRISTENSEN held the managing connection as above set forth (EX 8-P and EX 9-P).

None of the appealing defendants can legitimately pretend to be "good faith" purchasers of the property in question. Not only did the defendants have constructive notice by reason of the Lis Pendens on file (EX 4-P), but they also had full personal knowledge since their principal agent and officer, defendant MILTON A. CHRISTENSEN, was himself a party to the action. (Gappmayer vs. Wilkinson, 53 Utah 236, 177 P. 763; LeVine vs. Whitehouse, 37 Utah 260, 109 P. 2).

There being adequate and sufficient evidence before the Court to support a finding that the defendants were not good faith purchasers of the property in question, but were in fact fully chargeable with knowledge of the plaintiff's position and of plaintiff's appeal, the decision of the court below should be affirmed. (Del Porto vs. Nicolo, 27 Utah 2d 286, 495 P. 2d 811).

The only other basis upon which defendants can support their appeal and claim to the property in question rests upon the situation wherein defendant INTERNATIONAL ENVIRONMENTAL SCIENCES actually took title to the property in question after the Wilkins' Judgment of August 12, 1972, wherein Judge Wilkins held that plaintiff's option was invalid, and before reversal of that Judgment by this Court on July 5, 1973, no supersedeas bond having been posted by the plaintiff pending appeal of the Wilkins' Decree. It is the defendants position that since no supersedeas bond was posted, the defendants could deal with the property in question among themselves and ignore the possibility of reversal by the Supreme Court. The real crux of the defendants' argument is that by going through the charade of transferring the property in question from the defendants actually designated in the appeal of the Wilkins' Decree to another entity, defendant INTERNATIONAL ENVIRONMENTAL SCIENCES, the consequences of a reversal of the Supreme Court could be avoided because no supersedeas was filed, even though the transferee, defendant INTERNATIONAL ENVIRONMENTAL SCIENCES, was actually

managed and controlled by defendant MILTON A. CHRISTENSEN, an original party defendant. Plaintiff respectfully submits that such is not the law and that the decision of the court below holding that such is not the law is correct.

Appellants in their Briefs have discussed the purposes of supersedeas and have quoted from 4 Am. Jur. 2d, Appeal and Error, Section 371, as follows:

"Its effect is to restrain the successful party and the lower court from taking affirmative action to enforce the judgment or decree. It does not operate against the judgment itself, but only against its enforcement."

It thus appears that supersedeas of the Wilkins' Decree, although requested by the plaintiff, but not furnished, would not have been effective in any event, since the Wilkins' Decree was "self-executing" in that the Decree merely dismissed plaintiff's Complaint so that there was really nothing upon which a supersedeas bond could operate. (4 Am. Jur. 2d, Appeal and Error, paragraph 368). Surely the law does not, even in the absence of a supersedeas bond, permit the defendants in this case to render plaintiff's appeal moot as to ownership and possession of the property in question by the mere expedient of transferring the property to another entity, which entity is chargeable with full knowledge that the Wilkins' Decree was under appeal. If the preliminary victor at the trial level can thus deprive this plaintiff of the land, the appeal, itself, was rendered nugatory.

Irrespective of plaintiff's failure to file the requested supersedeas, the defendants should be bound by the

ruling of this Court on appeal because of the filing of the Notice of Lis Pendens of which all of the defendants were constructively and actually aware. The Utah statute providing for lis pendens, Section 78-40-2, Utah Code Annotated 1953, as amended, provides for "constructive notice during the pendency of the action." An action is "pending" until finally determined on appeal. As stated in the case, Secondo vs. Superior Court, 105 California Appeals 179, 286 P. 1089:

"While a judgment may be final with reference to the court which pronounced it, and as such be the subject of appeal, yet it is not necessarily final with reference to the property or rights affected so long as it is subject to appeal and liable to be reversed."

See also the case of In Re Carlisle Packing Company, District Court Washington, 12 Fed. Supplement 11, holding that at common law a suit is pending until there is disposition of an appeal. In the absence of statutory modification, the common law should be applied in the State of Utah.

While the case of Glynn vs. Dubin, (13 Utah 2d 163, 369 P. 2d 930), did not involve an appeal, it did involve a grantee having knowledge of a pending lawsuit. With respect to such knowledge, this Court ruled:

"It is our opinion that the property being within the jurisdiction of the court, having been thus committed to it for the purposes of adjudication, Dr. Dubin could not make any conveyance thereof except subject to adjudication by the court. The mischief that would follow if the parties could alienate away property which is before the court for determination is obvious. It is equally plain that under the circumstances here shown, where the attorney, Glynn, was fully conversant with the facts hereinabove stated, under the quit claim deed of Dr. Dubin's interest in the property, he

reason of alleged efforts to effect a favorable zone change with respect to part of the property in question. The record does not disclose that any such zone change was ever actually accomplished (EX 45-P through 52-P and particularly EX 50-P, Minutes dated June 19, 1973; Lewis TR-94), although defendant MILTON A. CHRISTENSEN was given permission to divide approximately 78 acres of the property in question into nine lots for the purposes of sale (EX 50-P). Such a division did not enhance the value of the property, but on the contrary restricted its use and greatly reduced the density which might otherwise have been utilized, thereby reducing the value of the land (Lewis TR-89, 91, 93, 108, 109).

In any event, the term "improvements" as used in the Utah Occupying Claimant Statute contemplates some physical addition to or change upon the land involved (Section 57-6-1, Utah Code Annotated 1953, as amended). As stated in 42 C.J.S. 422:

"'Improvements' applies only to things which have been placed upon the land under such circumstances as to make them a part of the realty. It contemplates additions to the freehold such as sidewalks, orchards, erection of a house, clearing lands, grading or draining, erection of fences and water mains. It does not include cultivating or fertilizing".

As stated in the case of Lauderdale Power Company vs. Perry, 80 Southern 476:

"The term 'improvements' does not extend to surveying, platting and advertising property for sale, such expenditures not improving the property".

Such activities as the defendants may have engaged in relative to appearances before the Wasatch County Planning Commission, the Wasatch County Commission, and any advertising of the property do not constitute improvements within the contemplation of the statute and are not the proper subject for compensation thereunder.

CONCLUSION


The defendants, and particularly the defendants INTERNATIONAL ENVIRONMENTAL SCIENCES and CAROL LEE CHRISTENSEN, did not in good faith acquire any interest in the property in question. In all of their dealings they were counseled, advised and under the management and control of defendant MILTON A. CHRISTENSEN, an original party defendant. MILTON A. CHRISTENSEN and his companies tried to obtain the property even before plaintiff exercised its option and they persisted in every way possible thereafter to thwart plaintiff's interest in the land. The court below rightly concluded from substantial evidence that all of the defendants who have now appealed were bound together with a common bond, namely, defendant MILTON A. CHRISTENSEN, and that none of them had any independent or innocent connection with the property in question. Defendants in their Brief raise the specter of dire consequences which will result to Utah real property law if the decision of the court below is affirmed. No such disruption of Utah property law can possible occur by upholding the decision of the court below, since any pretender to an interest in real property chargeable with the kind of

knowledge and information chargeable to the defendants in this case should be prevented from defeating legitimate claims to property and should be required to stand the test of good faith imposed by the ruling of the court below.

The claim of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES for compensation for allegedly improving the property by working a zone change, is likewise ill-founded. The zoning after defendant MILTON A. CHRISTENSEN became involved was actually made more restrictive than before, so that the value of the property in question for development purposes actually diminished. In any event activities directed toward changing zoning laws do not come within the meaning of "improvements" as contemplated by the Utah Occupying Claimant Statute.

The ruling of the court below should be affirmed in all particulars except as indicated in plaintiff's prior Brief filed September 8, 1977, respecting the Utah Occupying Claimant Statute and dealing with the "good faith" of defendant INTERNATIONAL ENVIRONMENTAL SCIENCES as an occupying claimant.

Respectfully submitted,


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CERTIFICATE OF MAILING

Two copies of the foregoing were mailed, postage prepaid, to each of the following this 23rd day of March, 1978, to-wit:

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