1978

Ara Otteson and Nellie A. Otteson, Husband and Wife v. Richard D. Malone and Hila Sue Malone, Husband and Wife : Brief In Support of Petition In Opposition To Petition and Brief For Rehearing By Plaintiffs-Respondents

Utah Supreme Court

IN THE SUPREME COURT OF THE

STATE OF UTAH

ARA OTTESON and NELLIE A. OTTESON, husband and wife, Plaintiffs-Respondents, vs. RICHARD D. MALONE and HILA SUE MALONE, husband and wife, Defendants-Appellants.	Case No. 15478

BRIEF IN SUPPORT OF PETITION IN OPPOSITION
TO PETITION AND BRIEF FOR REHEARING
BY PLAINTIFFS-RESPONDENTS

Defendants-Appellants contend that the Utah State Supreme Court was well within its province to reverse and remand the decision of the trial court and to instruct that the defendants-appellants be permitted specific performance of the Lease and Option.

Justice Maughn, writing for the court, well summarized the circumstances of the instant case:

> "There is no evidence of fraud, misrepresentation, or over-reaching on the part of the defendants, and the plaintiffs are bound by the contract they engaged. The language of the Lease and Option was plain and unambiguou

The parties had reduced an agreement to writing after negotiations, and after careful thought had been given to its formation and drafting.

A written contract duly entered into should be regarded with some sanctity; and its commitments can only be overcome by clear and convincing evidence. In view of the situation here, where there were prior negotiations, the furnishing of the preliminary copy, as well as an amended one, with ample opportunity to read, (the defective hearing of Mr. Otteson thus becoming unpersuasive) coupled with the later signing, and other circumstances shown, I cannot see wherein a fair and reasonable conclusion could be drawn that the Ottesons proved by clear and convincing evidence that they had not understood and agreed to the contract as they signed it."

This is completely in keeping with the trial court's position. The trial court judge, on page 123 of the transcript, prohibited counsel for defendants from further probing matters of fraud, misrepresentation, and undue influence, and counseled as follows:

"Well, haven't I said that I didn't think there was any undue influence or any fraud or any misrepresentation? I thought I said that had to be shown by clear and convincing evidence, and I found no such evidence here, so I don't think we need to concern ourselves about that."

The lower court, while admitting that the proof should be clear and convincing, did not follow through with that standard in its decision.

Despite an amount of contradictory testimony at trial, there still remained a large body of uncontroverted evidence supported by statements by both sides of the controversy. The following are a few examples:

(1) Mr. Otteson testified that he had at least two conferences with the Malones regarding the Lease and Option before it was ever drafted. (Trial transcript, page 42)

(2) Mr. Otteson testified that his eyesight was good and that he could read. (Trial transcript, page 43)

(3) Mr. Otteson testified that both of the plaintiffs had, in fact, read the Lease and Option. (Trial transcript page 45 and 46)

(4) Mr. Otteson testified that he discussed the first draft of the Lease and Option with the Malones. (Trial transcript, page 72)

(5) Mr. Otteson testified that both he and his wife read the second draft of the Lease and Option. (Trial transcript, page 82)

The testimonies of both Mr. and Mrs. Malone affirm that the Ottesons had ample opportunity to understand what they were signing. Both appellants testified that the first draft of the instrument was returned specifically to clarify the provision that lease payments

were to be applied to the purchase price. There can be little question that careful thought had gone into the formation of the contract. Mr. Bunnell, the attorney who prepared both drafts of the Lease and Option, testified that Mrs. Otteson contacted him to do the work and that he charged her for the services. The logical inference is that the respondents were as well protected in their dealings, if not better protected, that were the Malones. The Ottesons had Mr. Bunnell at their disposal throughout the final preparations of the contract; if they truly had any serious misgivings about what they had read, Mr. Bunnell could have readily answered their questions.

Justice Maughn, in his opinion, speaks somewhat of the "sanctity" of unambiguous contracts. This concept is heavily buttressed by general contract law. In this regard, the authors of 49 AM JUR 2d Contracts, Section 149, pages 498 and 499, state:

> "It is the duty of every contracting party to learn and know its contents before he signs and delivers it, and if the contract is plain and unequivocal in its terms, he is ordinarily bound thereby. To permit a party, when sued on a written contract, to admit that he signed it but to deny that it expresses the agreement he made or to allow him to admit that he signed it but did not read it or know its stipulations, would absolutely destroy the value of all contracts. This rule has been carried to the extent of holding that in

the absence of fraud or circumstances savoring a fraud, one entering into a contract which refers for some of its terms to an extraneous document, outside the contract proper, is bound also thereby, notwithstanding he admits to inform himself as to the contents of that document or the nature of those terms and conditions when it is possible for him to do so."

The trial court permitted into evidence a great deal of testimony from the plaintiffs regarding what they thought the Lease and Option meant. Considering that the trial court had already barred the possibility of fraud, misrepresentation, and undue influence, and also considering that the Lease and Option was the final product of extensive negotiations between the parti the court should have given no consideration whatsoever to the par testimony of the Ottesons. It is well substantiated by other tes mony that the plaintiffs choice to sign the Lease and Option was n spur-of-the-moment decision. It came only after weeks of negotia tions and two professionally drafted documents. If the defendant- appellants cannot be protected in their contractual expectations after so forthright of an approach as that which they took in thi case, one can only wonder what a party would have to do to formul a valid contract.

Perhaps the best definition of the illusive phrase, "Clear and convincing" evidence is to be found in Greener vs. Greener, 2 P2d 194 (1949):

"But for a matter to be clear and convincing to a particular mind, it must at least have reached the point where there remains no serious or substantial doubt as to the correctness of the conclusion. A mind which was of the opinion that it was convinced and yet which entertained, not a slight, but a reasonable doubt as to the correctness of its conclusion, would seem to be in a state of confusion." 212 P2d 205.

The evidence supplied by the plaintiffs-respondents falls far below the standard required to invalidate an otherwise effective contract, particularly if one rejects that parole evidence which the trial court should have rejected. Considering the frequent conflict of testimony at trial, the Ottesons clearly failed to provide evidence which "reached the point where there remains no serious or substantial doubt".

The Utah Supreme Court was bound by well-established principles of equity to look into the facts, as well as the law, of the present case and to determine if the evidence produced by the Ottesons was clear and convincing enough to overthrow a simple, forthright contract. The Supreme Court properly decided that the evidence was not of a magnitude to reach this requisite standard. Therefore, the Supreme Court was duty bound to reverse the decision of the trial court and to order specific performance of the Lease and Option. Consequently, the decision of the Supreme Court was

well-founded and in all aspects, proper.

RESPECTFULLY submitted this 19th day of October, 1978.

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CERTIFICATE OF MAILING

On this 19th day of October, 1978, I mailed three copies of the foregoing Petition in Opposition to Respondents' Petition for Rehearing and Brief in Support of Petition in Opposition to Petition and Brief for Rehearing by Plaintiffs-Respondents, by first class mail, postage prepaid thereon, to attorneys for respondents, Donn E. Cassity and J. Steven Newton, Romney, Nelson & Cassity, 136 South Main Street, Suite 404, Kearns Building, Salt Lake City, Utah 84101.