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J.R. Bagnall, aka Joseph R. Bagnall, and Florence
Bagnall v. United Paint and Color Company, et al. :
Brief of Appellant

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

J. R. BAGNALL, aka JOSEPH R. BAG-
NALL, and FLORENCE BAGNALL,

Plaintiffs-Appellants,

vs.

UNITED PAINT & COLOR COM-
PANY, et al.,

Defendant-Respondent.

Case No.

13753

BRIEF OF PLAINTIFFS-APPELLANTS

Appeal from Summary Judgment of the Sixth
Judicial District Court of Sanpete County
Honorable Maurice Harding, Presiding

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FILED

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

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|-----------------------------------|---|-------------------|
| J. R. BAGNALL, aka JOSEPH R. BAG- | } | Case No. 13753 |
| NALL, and FLORENCE BAGNALL, | | |
| <i>Plaintiffs-Appellants,</i> | | |
| vs. | | |
| UNITED PAINT & COLOR COM- | | |
| PANY, et al., | | |
| <i>Defendant-Respondent.</i> | } | |

BRIEF OF PLAINTIFFS-APPELLANTS

NATURE OF THE CASE

Motion for summary judgment and decree of quiet title by defendants.

DISPOSITION OF LOWER COURT

An Order of Summary Judgment and Decree of quieting title was granted in favor of United Paint & Color Company on March 26, 1974. The Appellant's motion for Judgment Notwithstanding the Verdict or, in the alternative, for a new trial was denied by the Court on June 25, 1974. The Appellants thereupon bring this appeal.

RELIEF SOUGHT ON APPEAL

Appellant (plaintiff) seeks relief from Summary Judgment and Decree Quieting Title and they themselves seek a summary judgment and decree quieting title for plaintiffs, or in the alternative, a new trial.

STATEMENT OF FACTS

Respondents were joined as defendants by plaintiffs in a suit for judgment and decree contending that each defendant had defaulted under the terms of a real estate contract.

Plaintiffs' original complaint alleged that defendant, United Paint & Color Company, was an alter ego of another defendant, Reed R. Maxfield. In a motion to dismiss, defendant denied that it was an alter ego of Reed R. Maxfield. In an Amendment to the Amended Complaint, plaintiffs further alleged that defendant, United Paint & Color Company, claimed a fee interest in certain properties also claimed by plaintiffs and the subject of the general suit. The defendant, United Paint & Color Company, admitted the fee interest was claimed by it and counterclaimed for summary judgment and a decree of quiet title in themselves.

ARGUMENT

POINT I.

THE VALIDITY OF THE DEED FROM

JEAN B. NYBERG SHIRK TO UTAH VALLEY LAND AND DEVELOPMENT CORPORATION IS A MATERIAL QUESTION OF FACT.

At the time of the alleged conveyance by Mrs. Shirk to Utah Valley Land & Development Corporation on March 3, 1962, no such corporation existed and, therefore, no grantee was in existence and no conveyance occurred (R. 87).

It is undisputed that Utah Valley Land & Development Corporation never existed; however, it is conceded that a certain Utah corporation called Utah Valley Land & Development Company was formed subsequent to the attempted conveyance. On March 19, 1962, the Articles of Incorporation of Utah Valley Land & Development Company were purportedly signed and the corporation was incorporated March 23, 1962, which was twenty days after the attempted conveyance to Utah Valley Land & Development Corporation on March 3, 1962.

23 Am. Jur. 2d, Deeds, Section 43, page 105, states:

"In order that an instrument may be operative as a deed conveying title to, or interest or estate, in land, the grantee named in the deed must be a person, natural or artificial, in existence at the time of conveyance and capable of taking title." (Emphasis added.)

It is interesting to note that the attempted conveyance of the property occurred in California (R. 107).

The above citation also expresses the California rule. See *Burns v. Gable*, 291 P. 2d 969, 138 C. A. 2d 280, certiorari denied, 77 S. Ct. 145, 352 U. S. 913, L. Ed. 2d 120.

The rule is simply stated in *James v. Unknown Trustees*, 220 P. 2d 831, 213 Okl. 312:

“There must be a grantor and grantee in order that there may be a valid deed and grantee must have legal existence.”

In the case at bar, the corporate grantee at the time of attempted conveyance did not have corporate existence; therefore, there was no grantee. Even Mr. Virgil Redmond who represented the alleged corporation at the time of the attempted conveyance said that “Mrs. Shirk deeded it directly to the Utah Corporation called Utah Valley Land & Development . . .” (R. 118). Mr. Redmond used a name different than that used on the deed as grantee to-wit, “Company” vis a vis “Corporation”. This would indicate that at the time of the negotiations with Mrs. Shirk the name of a corporation to be formed had not yet been decided upon.

POINT II.

WHETHER PLAINTIFFS, J. R. BAGNALL AND FLORENCE BAGNALL, WERE PURCHASERS IN GOOD FAITH IS A MATERIAL QUESTION OF FACT.

There exists a certain warranty deed signed by Jean B. Nyberg Shirk purporting to convey a certain piece

of land containing 140.15 acres to Utah Valley Land & Development Corporation. This deed was signed March 3, 1962, and it it was recorded on October 20, 1971 (R. 72).

Another deed exists which also was signed by Jean B. Nyberg Shirk purporting to convey the same piece of property to Mr. & Mrs. Bagnall as joint tenants. This deed was signed May 20, 1971, and was recorded May 28, 1971, approximately five months before the above mentioned warranty deed was recorded (R. 92, 93, & 94).

A third deed exists in which Utah Valley Land & Development Corporation, as grantor, has purported to convey the same 140.15 acre piece of property to the present defendant, United Paint & Color Company. This deed was signed October 5, 1971, and it was recorded October 20, 1971, approximately five months after the deed to the Bagnalls was recorded (R. 72A).

In support of the plaintiffs' opposition to summary judgment, Jean B. Nyberg Shirk, Vern Shirk, her husband, Florence Bagnall, and Joseph R. Bagnall have signed affidavits which were attached to and made a part of plaintiffs' memorandum in opposition to summary judgment (R. 90, 95, 126 and 128).

The affidavits of Mr. & Mrs. Bagnall aver that they were not aware of the prior transaction between Mrs. Shirk and Utah Valley Land & Development Corporation and that they had no notice of any such transaction (R. 90, 95).

The affidavits of Mr. & Mrs. Shirk aver that the transaction with Utah Valley Land & Development Corporation took place on March 3, 1962, and that the property was deeded and the conveyance made directly to the corporation on March 3, 1962 (R. 126, 128).

The deed from Jean B. Nyberg Shirk to Utah Valley Land & Development Corporation was not recorded before the deed from Jean B. Nyberg Shirk to Mr. & Mrs. Bagnall had been recorded.

Utah law is specific in an instance where a deed has not been recorded and there are subsequent purchases in good faith.

“U. C. A. 57-7-3. Effect of failure to record — Every conveyance of real estate hereafter made, which shall not be recorded as provided in this title shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.” (Utah Code Annotated, 1953.)

The affidavits of Mr. & Mrs. Bagnall reflect that they were purchasers of the property in good faith for value. This is a fact question for the jury. Certainly the Bagnall deed was recorded before the deed of the defendants. “The record is prima-facie evidence of the facts therein stated . . .” *Tarpey v. Deseret Salt Company*, 5 U. 205, 14 P. 338 (1887).

POINT III.

A SUMMARY JUDGMENT SHOULD BE GRANTED ONLY IF THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THE MOVING PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Rule 56(c) of the Utah State Rules of Civil Procedure provides:

“The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Emphasis added.)

The Utah Supreme Court in *Young v. Felornia*, 244 P. 2d 862 (1952) interpreted the above rule thus:

“Under this rule, it is clear that if there is any genuine issue as to any material fact, the motion should be denied.”

As to summary judgments, the Utah Supreme Court in *Bullock v. Deseret Dodge Truck Center, Inc.*, 11 Utah 2d 1, 354 P. 2d 559 (1960), stated,

“A summary judgment must be supported by evidence, admissions, and inferences which when reviewed in the light most favorable to the loser shows ‘that there is no genuine issue as to any

material fact and that the moving party is entitled to a judgment as a matter of law.' Such showing *must preclude all reasonable possibility that the loser could, if given a trial, produce evidence which would reasonably sustain a judgment in his favor.*" (Emphasis added.)

Also in *Thompson v. Ford Motor Company*, 16 Utah 2d 30, 395 P. 2d 62 (1964), the court stated:

"On summary judgment the adversed party is entitled to have the court survey the evidence *and all reasonable inferences fairly to be drawn therefrom in the light most favorable to him.*" (Emphasis added.)

CONCLUSION

It is respectfully submitted that the facts in this case clearly demonstrate that there was a justiciable issue of fact concerning the matters upon which the Court granted summary judgment in favor of the United Paint & Color Company. Reasonable men could differ concerning the interpretation of these facts and, therefore, the plaintiffs are entitled to have the summary judgment vacated and the matter remanded for trial.

Respectfully submitted,

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