

1986

Michael M. Sweat vs. Raymond J. Eves: Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL M. SWEAT,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 860155
RAYMOND J. EVES,	:	
Defendant/Appellant.	:	

BRIEF OF RESPONDENT

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FILED

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL M. SWEAT,	:	
Plaintiff/Respondent,	:	
vs.	:	Case No. 860155
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Defendant/Appellant.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL M. SWEAT, :
Plaintiff/Respondent, :
vs. : Case No. 860155
RAYMOND J. EVES, :
Defendant/Appellant. :

BRIEF OF RESPONDENT

I. STATEMENT OF FACTS

For purposes of this appeal, the Respondent supplements the facts of the Appellant and relies upon the facts found by the trial court as set forth in the Memorandum Decision and Findings of Fact and Conclusions of Law, both of which are attached as exhibits to this brief.

In February of 1980, Plaintiff as buyer entered a Uniform Real Estate Contract for the sale of a building lot. As part of the transaction, Plaintiff transferred a mobile home with a value of \$2,800.00 to the Defendant as a down payment on the property in question.

Memorandum Decision page 1,
Findings of Fact No.

The purported seller was Raymond J. Eves Co., Inc., but the contract was signed by Raymond J. Eves personally, as was the preliminary earnest money agreement.

Findings of Fact No. 7.

Raymond J. Eves Co., Inc. received performance by the Respondent until Raymond J. Eves Co., Inc. breached the contract.

Findings of Fact No. 4.

As a result of the contract having been breached by Raymond J. Eves Co., Inc., Plaintiff incurred a net loss of \$2,800.00, representing the difference between the value of Plaintiff's performance and the credit received by Plaintiff toward the purchase of a house.

Findings of Fact No. 6.

The building lot contracted for was never conveyed to the Plaintiff.

Findings of Fact No. 3.

II. SUMMARY OF ARGUMENT

Unjust enrichment occurs whenever a person has and retains money or benefits which in justice and equity belong to another.

The Defendant retained a mobile home with a value of \$2,800.00. That benefit should belong to the Plaintiff, because Raymond J. Eves Co., Inc. failed to convey the contracted for building lot. In addition, when the smoke cleared, Raymond J. Eves Co., Inc. was left with performance by the Respondent, the Respondent lost the mobile home valued at \$2,800.00. The Appellant wrongfully obtained a mobile home at a value of \$2,800.00 and Plaintiff was damaged in the sum of \$2,800.00.

III. ARGUMENT

POINT ONE: THE APPELLANT WAS UNJUSTLY ENRICHED.

"Unjust enrichment occurs whenever a person has and retains money or benefits which in justice and equity belong to another." L & A Drywall, Inc. v. Whitmore Construction Co., Inc., 608 P.2d 626 (Utah 1980). In order for a claim based on unjust enrichment to be successful, there must be (1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value. Barrett v. Stevens, 690 P.2d 553, 57 (Utah 1984). In the present case, a benefit was conferred upon Appellant, i.e., a mobile home with a value of \$2,800.00. The Appellant appreciated and had knowledge of the benefit, because he did not transfer the mobile home to Raymond J. Eves Co., Inc. It would be unjust for the Appellant to retain the benefit, because he paid nothing for the benefit. It would be unjust for Raymond J. Eves Co., Inc. to retain the benefit, because Raymond J. Eves, Inc. breached the contract for the building lot with the Respondent. As a result, when the smoke cleared, the Respondent incurred a net loss of \$2,800.00. Findings of Fact No. 6. Raymond J. Eves Co., Inc. received performance by the Respondent until Raymond J. Eves Co., Inc. breached the agreement. Findings of Fact No. 4. And,

the Appellant received the \$2,800.00 mobile home. The rightful owner of the \$2,800.00 mobile home is not the Appellant. The rightful owner of the \$2,800.00 mobile home is not Raymond J. Eves Co., Inc., because Raymond J. Eves Co., Inc. breached the Uniform Real Estate Contract entered into by the Respondent as buyer and Raymond J. Eves Co., Inc. as seller. Therefore, the value of the mobile home should be paid to the Respondent.


POINT TWO: THE TRIAL COURT JUDGMENT OF \$2,800.00 MAY BE UPHELD ON A BREACH OF CONTRACT THEORY.

The Court found that although the Uniform Real Estate Contract purported to be a contract between Raymond J. Eves Co., Inc. and the Respondent, the contract was personally signed by the Appellant, as was the earnest money agreement. The Court also found that the contracted for lot was not conveyed to the Respondent. The Court also found, as a result of the contract having been breached, Plaintiff incurred a net loss of \$2,800.00. The measure of damages in such a case is the amount that will put the Respondent in as good a position as he would have been had there been no breach of the contract. Alexander v. Brown, 646 P.2d 692 (Utah 1982). In the present case, to put the Plaintiff in such a position would require an award of \$2,800.00, the difference between the value of Plaintiff's performance and what Plaintiff received as a result of the contract. Findings of Fact No. 6.

IV. CONCLUSION

The trial court's judgment of \$2,800.00 to the Respondent can be upheld either on an unjust enrichment theory or on a breach of contract theory and should be upheld.


RESPECTFULLY submitted this 17th day of November, 1986.



DALE F. GARDINER
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and correct copies of the foregoing Brief of Respondent to Jack C. Helgesen, Attorney for Appellant, 2650 Washington Boulevard, #102, Ogden, Utah 84401, postage prepaid, this 18th day of November, 1986.



DALE F. GARDINER

ADDENDUM

Exhibit 1:
Memorandum Decision

Exhibit 2:
Findings of Fact

Exhibit 3:
Uniform Real Estate Contract

Plaintiff transferred a mobile home with a value of \$2,800.00 to defendant which should have been transferred to Raymond J. Eves Company, Inc. as a down payment on the property in question. The defendant, Raymond J. Eves, individually, kept possession of the mobile home and did not transfer it to the corporation. Defendant did not pay the corporation \$2,800.00 in exchange for his right to keep the mobile home.

Memorandum Decision

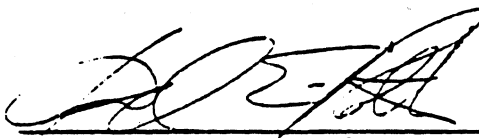
Page 2

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As a result of the above transactions, I find that the defendant was unjustly enriched in the amount of \$2,800.00 and award judgment to the plaintiff in that amount plus costs and interest as allowed by law.

Plaintiff is to prepare Findings of Fact, Conclusion of Law, and Judgment, consistent with this decision.

Dated this 3 day of January, 1986



DAVID E. ROTH, Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the Memorandum Decision to plaintiff's counsel, Dale F. Gardiner, 1325 South Main Street, Suite 201, Salt Lake City, Utah, 84115, and Jack Helgesen, 2650 Washington Blvd., Suite 102, Ogden, Utah 84401, in regard to the above-captioned matter.

Dated this the 3rd day of January, 1986.



District Court Clerk

RECEIVED FEB 18 1986

DALE F. GARDINER
Attorney for Plaintiff
1325 South Main Street
Suite 201
Salt Lake City, Utah 84115
Telephone: (801) 486-4607

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

MICHAEL M. SWEAT,)	
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs.)	
)	
RAYMOND J. EVES,)	Case No. 90299
)	
Defendant.)	

The above-entitled matter having been tried before the Court, and the Court having entered its memorandum decision and being fully advised in the premises, now makes and enters the following:

FINDINGS OF FACT

1. In February of 1980, plaintiff as buyer and Raymond J. Eves Company, Inc., as seller, entered into a Uniform Real Estate Contract for the sale of a building lot. As part of the transaction, a mobile home with a value of \$2,800.00 was to be transferred to Raymond J. Eves Company, Inc. as the down payment on the property in question.

2. The defendant Raymond J. Eves individually took possession of the mobile home and did not transfer it to the corporation, nor did defendant pay the corporation for the right to keep the mobile home.

3. Thereafter, Raymond J. Eves Company, Inc. failed to convey to plaintiff the purchased lot.

4. Raymond J. Eves Company, Inc. received performance by the plaintiff until Raymond J. Eves Inc. breached the agreement.

5. As part of the afore-described agreement, plaintiff received a partial credit toward the purchase of a house.

6. As a result of the contract having been breached by Raymond J. Eves, Inc., plaintiff incurred a net loss of \$2,800.00, representing the difference between the value of plaintiff's performance and the credit on the house.

7. As part of the real estate transaction, the uniform real estate contract, although purporting to be a contract between plaintiff and Raymond J. Eves, Inc., was signed by Raymond J. Eves personally, as was the earnest money agreement. From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Defendant was unjustly enriched in the amount of \$2,800.00.

2. Plaintiff should be awarded the sum of \$2,800.00 plus costs and interest as allowed by law.

DATED this _____ day of _____, 1986.

BY THE COURT:

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct
copy, postage prepaid, of the foregoing FINDINGS OF FACT AND
CONCLUSIONS OF LAW to:

Jack Helgesen

Attorney at Law

2650 Washington Boulevard, #102

Ogden, Utah 84401

on this 4th day of February, 1986.

Carolyn Reed

UNIFORM REAL ESTATE CONTRACT

"This is a legally binding form, if not understood, seek competent advice."

1. THIS AGREEMENT, made in duplicate this 1st day of February, A.D. 1980,
by and between Raymond J. Eves Co., Inc.
hereinafter designated as the Seller, and Michael M. & Theresa A. Swear, husband and wife,
hereinafter designated as the Buyer, of 1. VACANT LOT

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer,
and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in
the county of Weber, State of Utah, to-wit: 2150 N. 650 W. Harrisville, Utah
More particularly described as follows:

All of Lot # 84, Misty Meadows Subdivision; Harrisville, Utah

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of Fourteen Thousand and no/100 Dollars (\$14,000.00)
payable at the office of Seller, his assigns or order 2029 N. Main St.; Sunset, Utah 84015
strictly within the following times, to-wit: Four Thousand Three Hundred and no/100, 4,300.00
cash, the receipt of which is hereby acknowledged, and the balance of \$9,700.00 shall be paid as follows:
And Trade in the amount of 2800.00 From Mobile Home

The balance of \$9,700.00 shall be paid in trade to Raymond J. Eves Co., Inc.
by the sheetrocking of at least two houses per month until the total balance
and interest is paid. The amount to be applied to the payment of this
contract will be 40% of the bid price on each sheetrocking job.

Lot will be improved by 1 February 1981.

Possession of said premises shall be delivered to buyer on the 1st day of February, 1980.

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the
principal. Interest shall be charged from Closing date of home on all unpaid portions of the
purchase price at the rate of Twelve per cent (12 %) per annum. The Buyer, at his option at anytime,
may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage
or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future
installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according
to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture
hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of none
with an unpaid balance of
\$ none as of none

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said prem-
ises now in the process of being installed, or which have been completed and not paid for, outstanding against said prop-
erty, except the following:

8. The Seller is given the option to secure, execute and maintain loans secured by said property or not to exceed the
then unpaid contract balance hereunder, bearing interest at the rate of not to exceed none percent

(none %) per annum and payable in regular monthly installments; provided that the aggregate monthly installment
payments required to be made by Seller on said loans shall not be greater than each installment payment required to be
made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such
loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property
subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obli-
gations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and
pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect
to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless
said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such
amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon
the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in ob-
taining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and
interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed
and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees
that there are no assessments against said premises except the following:

none

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

12. The Buyer agrees to pay the general taxes after After Lot Is Paid In Full or as otherwise negotiated.

13. The Buyer further agrees to keep all insurable buildings and improvements on said premises insured in a company acceptable to the Seller in the amount of not less than the unpaid balance on this contract, or \$ - - - and to assign said insurance to the Seller as his interests may appear and to deliver the insurance policy to him.

14. In the event the Buyer shall default in the payment of any special or general taxes, assessments or insurance premiums as herein provided, the Seller may, at his option, pay said taxes, assessments and insurance premiums or either of them, and if Seller elects so to do, then the Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him, together with interest thereon from date of payment of said sums at the rate of $\frac{1}{2}$ of one percent per month until paid.

15. Buyer agrees that he will not commit or suffer to be committed any waste, spoil, or destruction in or upon said premises, and that he will maintain said premises in good condition.

16. In the event of a failure to comply with the terms hereof by the Buyer, or upon failure of the Buyer to make any payment or payments when the same shall become due, or within 5 days thereafter, the Seller, at his option shall have the following alternative remedies:

A. Seller shall have the right, upon failure of the Buyer to remedy the default within five days after written notice, to be released from all obligations in law and in equity to convey said property, and all payments which have been made theretofore on this contract by the Buyer, shall be forfeited to the Seller as liquidated damages for the non-performance of the contract, and the Buyer agrees that the Seller may at his option re-enter and take possession of said premises without legal processes as in its first and former estate, together with all improvements and additions made by the Buyer thereon, and the said additions and improvements shall remain with the land and become the property of the Seller, the Buyer becoming at once a tenant at will of the Seller; or

B. The Seller may bring suit and recover judgment for all delinquent installments, including costs and attorney's fees. (The use of this remedy on one or more occasions shall not prevent the Seller, at his option, from resorting to one of the other remedies hereunder in the event of a subsequent default); or

C. The Seller shall have the right, at his option, and upon written notice to the Buyer, to declare the entire unpaid balance hereunder at once due and payable, and may elect to treat this contract as a note and mortgage, and pass title to the Buyer subject thereto, and proceed immediately to foreclose the same in accordance with the laws of the State of Utah, and have the property sold and the proceeds applied to the payment of the balance owing, including costs and attorney's fees; and the Seller may have a judgment for any deficiency which may remain. In the case of foreclosure, the Seller hereunder, upon the filing of a complaint, shall be immediately entitled to the appointment of a receiver to take possession of said mortgaged property and collect the rents, issues and profits therefrom and apply the same to the payment of the obligation hereunder, or hold the same pursuant to order of the court; and the Seller, upon entry of judgment of foreclosure, shall be entitled to the possession of the said premises during the period of redemption.

17. It is agreed that time is the essence of this agreement.

18. In the event there are any liens or encumbrances against said premises other than those herein provided for or referred to, or in the event any liens or encumbrances other than herein provided for shall hereafter accrue against the same by acts or neglect of the Seller, then the Buyer may, at his option, pay and discharge the same and receive credit on the amount then remaining due hereunder in the amount of any such payment or payments and thereafter the payments herein provided to be made, may, at the option of the Buyer, be suspended until such a time as such suspended payments shall equal any sums advanced as aforesaid.

19. The Seller on receiving the payments herein reserved to be paid at the time and in the manner above mentioned agrees to execute and deliver to the Buyer or assigns, a good and sufficient warranty deed conveying the title to the above described premises free and clear of all encumbrances except as herein mentioned and except as may have accrued by or through the acts or neglect of the Buyer, and to furnish at his expense, a policy of title insurance in the amount of the purchase price or at the option of the Seller, an abstract brought to date at time of sale or at any time during the term of this agreement, or at time of delivery of deed, at the option of Buyer.

20. It is hereby expressly understood and agreed by the parties hereto that the Buyer accepts the said property in its present condition and that there are no representations, covenants, or agreements between the parties hereto with reference to said property except as herein specifically set forth or attached hereto

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah whether such remedy is pursued by filing a suit or otherwise.

22. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties to this agreement have hereunto signed their names, the day and year first above written.

Signed in the presence of

Elaine A. Quinn

[Signature]

Seller

[Signature]

Buyer

Uniform Real Estate Contract

No.

To