

1997

# John Armijo and Andrea Armijo v. William Figueroa, Karen Figueroa, and John Does One Through Ten : Brief of Appellee

Utah Court of Appeals

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Stephen B. Watkins; Halliday, Watkins & Henrie.

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N THE UTAH COURT OF APPEALS

**JOHN ARMIJO and ANDREA  
ARMIJO,**

Plaintiffs/Appellees

v.

**WILLIAM FIGUEROA,  
KAREN FIGUEROA, and  
JOHN DOES ONE THROUGH  
TEN**

Defendants/Appellants

Priority No. 15

Case No. 970002311CV

Docket No. 970279 970492-CA

**BRIEF OF APPELLEES**

BRIEF IN SUPPORT OF THE FINAL ORDER AND JUDGMENT FOR  
EVICTION ENTERED JUNE 3, 1997 IN THE THIRD JUDICIAL DISTRICT  
COURT, THE HONORABLE JUDGE PHILLIP K. PALMER, PRESIDING.

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**COURT OF APPEALS  
BRIEF**

UMENT

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### STATEMENT OF JURISDICTION

The Utah Supreme Court poured-over this case to the Utah Court of Appeals for disposition on August 7, 1997. The Utah Supreme Court had jurisdiction pursuant to U.C.A. § 78-2-2(g). The Utah Court of Appeals has jurisdiction pursuant to U.C.A. § 78-2a-3(2)(j).

### STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. Is the evidence sufficient to support the trial court's findings that there was no verbal contract of sale between the Plaintiffs and the Defendants?
2. Was the trial court correct in finding insufficient evidence to support a finding of partial performance by substantial improvements by the defendants?

The standard of review is to give "deference to the trial court's findings of fact." Woodhaven Apts. v. Washington, 942 P.2d 918, 920 (Utah 1997). The standard is one of "clearly erroneous". The trial courts' findings are not to be disturbed unless the appellant can "marshal all the evidence supporting the findings and then demonstrate that, even if viewed in the light most favorable to the trial court, the evidence is legally insufficient to support the findings. Coalville City v. Lundgren, 930 P.2d 1206, 1209 (Utah.Ct.App.) (quoting Doelle v. Bradley, 784 P.2d 1176, 1178 (Utah 1989)), cert. denied, 939

P.2d 683 (Utah 1997).” Bailey-Allen Co., Inc. v. Kurzet, 945 P.2d 180, 186 (Utah Ct. App. 1997).

#### DETERMINATIVE LAW

The following constitutional provisions, statutes, and rules are determinative in this appeal.

##### §25-5-3, U.C.A. (1953)

“Every contract for the . . . sale, of any lands, or interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the . . . sale is to be made, or by his lawful agent thereunto authorized in writing.”

##### § 25-5-8, U.C.A. (1953)

“Nothing in this chapter contained shall be construed to abridge the powers of courts to compel the specific performance of agreements in case of part performance thereof.”

#### STATEMENT OF THE CASE

##### A. Nature of the Case

The Plaintiffs filed a complaint for unlawful detainer of real property based on Defendants’ refusal to pay an increase in rent on November 1, 1996. The Defendants filed a counter-claim asserting an interest as purchasers in the real property pursuant to an alleged verbal contract.

##### B. Procedural History

On March 11, 1997, Plaintiffs served upon the Defendants a 3-Day Notice to Pay Rent or Quit and Notice of Termination of Month-to-Month Tenancy. On March 24, 1997, the Plaintiffs served the Defendants with a 3-Day Summons and Eviction Notice. On March 26, 1997, Defendants responded to the Eviction Notice by filing their Answer and Counter-Claim. On March 31, 1997, Plaintiffs filed for a Possession Bond which the court set at \$1,500.00. On April 4, 1997, Plaintiffs replied to the Counter-Claim and mailed the Notice of Plaintiffs Possession Bond. The Bond had been filed on April 3, 1997. On April 10, 1997, Defendants demanded a hearing, which was set for April 14, 1997. The April 14 hearing was held to adjudicate the issue of possession. All parties were subject to direct, cross and redirect examination. The hearing was continued to April 22, 1997. At the conclusion of the testimony, the court requested memoranda from both parties to address the following questions:

1. Whether a verbal agreement to purchase land is enforceable under the statute of frauds;
2. What evidence of partial performance had been submitted to the trial court;
3. If an agreement to purchase the property existed, when were the Defendants required to exercise their option;
4. If there was an agreement, whether the Defendants

breached that agreement by failing to purchase the real property within one year of possession; and

5. If there was an agreement, what, if any, were Plaintiffs remedies for breach of the agreement by Defendants.

On May 20, 1997, the trial court disposed of the case as indicated below. On May 29, 1997, Defendants requested ex parte a stay of the Order and Judgment and filed their Notice of Appeal. On June 3, 1997, the trial court published its Findings of Fact and Conclusions of Law as well as its Final Order and Judgment.

#### C. Disposition of the Case

The Plaintiffs were granted judgment for possession and restitution of the property as of midnight on May 31, 1997. The Defendants were ordered to vacate the property by the same day. The trial court terminated the month-to-month lease and declared that any verbal option to purchase the real property which may have been given had expired. The trial court quieted title in the Plaintiffs and declared that the Defendants had no further rights or interest in the property. The court granted judgment against the Defendants, jointly and severally, in the amount of \$217.80 for unpaid rent and \$224.00 for Plaintiffs' court costs. The issues of waste and damages were reserved for further determination. The Plaintiffs bond was returned and the court



ordered that the Plaintiffs be entitled to recover any after-accruing costs associated with the eviction and any additional rent accruing after May 31, 1997.

#### STATEMENT OF FACTS

The testimony of the parties as to whether the Defendants were purchasing the property or merely renting was sharply contradictory. The Defendants testified that they had purchased the real property in the fall of 1987, on a verbal agreement. (Tr. 4/14/97, p. 59) The Plaintiffs testified that the Defendants were renting the property and had been given a verbal option to purchase the property within one year of possession. Plaintiffs testified that the Defendants failed to exercise that option. (Tr. 4/14/97, pp. 6-8). The Defendants attempted to obtain financing to purchase the property within the one year period but failed to obtain financing or otherwise obtain funds to purchase the property. (Tr. 4/14/97, pp. 70-71).

During July of 1987, Mr. Figueroa contacted Mr. Armijo about renting the property. Mr. Armijo told Mr. Figueroa that he would rather sell the property. (Tr. 4/14/97, p. 6). The Defendants paid \$3,000.00 as a cleaning deposit. Defendants expressed a willingness to purchase the property, but needed time to establish credit. A verbal agreement was reached to allow Defendants one year to obtain the necessary financing to purchase the property. (Tr. 4/14/97, p. 8).

Defendants testified that on September 1, 1987, Plaintiff accompanied them to a meeting with the Airport Authority to discuss the purchase arrangements. Defendants testified that because the Airport Authority was convinced they were purchasing the property, Defendants received a check for \$4,500.00. (Tr. 4/14/97, pp. 59, 76). Plaintiff testified that at this meeting, no one spoke to him or explained the purpose of the meeting. (Tr. 4/14/97, p. 19). A few days later, Defendants tendered a check to Plaintiffs. The Defendants testified the check was for \$4,000.00, while the Plaintiffs testified the check was for \$3,000.00. (Tr. 4/14/97, pp. 7, 61).

After failing to obtain financing within the agreed upon year, Mr. Figueroa left the property and Karen Figueroa, and for a period of some years, had his primary residence elsewhere. (Tr. 4/14/97, pp. 11, 49, 67, 84-85). During this time, Mrs. Figueroa continued to occupy the property and pay rent. Mrs. Figueroa also obtained Food Stamps and other welfare assistance. In the course of obtaining this assistance, Mrs. Figueroa represented to the State that she was renting the property. (Tr. 4/14/97, pp. 85-6). The Defendants, for some period of time after taking possession in 1987, purchased a renter's insurance policy.

After Mr. Figueroa returned to the property, new attempts were made to obtain financing. (Tr. 4/14/97, p. 14). Just prior

to the lawsuit being filed, new attempts were made to arrange for a purchase of the property. (Tr. 4/14/97, pp. 37-40).

On September 30, 1996, Plaintiffs gave notice to the Defendants that the rent would now be increased to \$450.00 per month effective November 1, 1996. (Tr. 4/14/97, p. 36). In October of 1996, the Defendants responded in a letter claiming an interest in the property. (Tr. 4/14/97, pp. 30-33). In November of 1996, Plaintiffs served upon the Defendants a 3-Day Notice to Pay Rent or Quit and a Termination of Month-to-Month Tenancy. (Tr. 4/14/97, p. 35). During this time, Mr. Figueroa again attempted to obtain financing and purchase the property, but was unable to do so. (Tr. 4/14/97, pp.40-1).

#### SUMMARY OF ARGUMENTS

The burden is on the Defendants to clearly establish that there was a contract for the purchase of this property. Given the sharp contradictions in the opposing testimony, it falls to the trial court to weigh credibility and decide what happened and who to believe. The Defendants claim that they were buying the property for the amount of the underlying mortgage, which the Plaintiffs were paying and liable for. The Plaintiffs both testified that they were only renting the property and had given Defendants a one year option to obtain financing and purchase the property. The trial court found insufficient evidence to support a purchase and rejected Defendants' claim. This Court should not

disturb the trial court's judgment on its findings of fact and the credibility of the witnesses and should affirm the trial court's judgment.

### ARGUMENT

I. THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDINGS THAT THERE WAS NO VERBAL CONTRACT OF SALE BETWEEN THE PLAINTIFFS AND THE DEFENDANTS.

#### A. The Trial Court's Findings

Plaintiffs do not dispute the Defendants version of the trial court's findings as found in Brief of the Appellant, p. 11. The trial court found that, at most, Plaintiffs and Defendants had a verbal month-to-month rental agreement with a one year option to purchase the property. While Defendants claim they "could not find any evidence which supports the trial court's conclusions," (Brief of Appellant, p. 11), this was exactly both Plaintiffs' clear and emphatic testimony.

#### B. Evidentiary Requirements to Show existence of Oral Contract to Purchase an Interest in Real Property.

Plaintiffs do not dispute the Defendants reading of the evidentiary requirements to establish an oral contract for the purchase of real property. Defendants specify two elements that are required to take an oral contract for the purchase of real property out of the statute of frauds: First, the terms of the contract must be "clear, definite, mutually understood and established by clear, unequivocal and definite testimony." (Id.,

p. 12); and Second, there must be some partial performance which "put[s] the purchaser or donee in a situation which is a fraud upon him unless the agreement is fully performed." 83 A.L.R.3d 1294 (1978). After renting the property at below-market rates and repeatedly failing to qualify for financing, it is difficult to see what "fraud" requires remedy. Also, it strains the English language to refer to the testimony given at the hearing as "unequivocal". The Defendants did not meet their burden in establishing the existence of a contract, and did not even attempt to meet the burden to show any partial performance at the hearing. Of the four requirements of partial performance, only one, actual and open possession, was established at the hearing. The fourth requirement, that the acts relied upon be referable to the contract itself, is effectively refuted by Defendants own brief. In discussing the terms of the alleged contract, Defendants brief lists only three terms, the "down" payment, the total purchase price, and the responsibility for the taxes. Nowhere is there room for a reference to any acts that could be called part performance. Any acts relied upon by the Defendants are, then, not referenced to the contract.

C. The meeting with the Salt Lake City Airport Authority is not Evidence as to any Agreement between Plaintiffs and Defendants

On September 1, 1987, the Defendants, together with Mr. Armijo met with representatives of the Airport Authority. Mr.

Figueroa claims he told the Airport Authority that he was purchasing the property. However, this has not been substantiated in any way and only goes, at most, to Mr. Figueiroas' state of mind. Mr. Armijo testified that he didn't even know why he was there (other than Mr. Figueroa was going to get some money) and was not involved in nor heard any discussion regarding a purchase of the property.

D. Mr. Armijo's Testimony does not support the Existence of an Oral Contract for the Sale of the Real Property.

Defendants point in their brief to testimony allegedly supporting their contention of the existence of an oral contract. When asked what would be required to move in, Mr. Armijo stated, "all I want is a cleaning charge." He also testified to saying "If you decide to buy it, that will go down on the payment." (Tr. 4/14/97, p. 7) (Italics added). The cleaning deposit was to have been converted into a down payment and be an addition to the purchase price had the Defendants been able to arrange financing and exercise their option to purchase. They did not, and the cleaning deposit remained a cleaning deposit. The Defendants testified that the deposit was always a "down" payment. For Defendants to point to this contradictory testimony and claim that the terms were "mutually understood", defies logic.

Mrs. Armijo affirmed the testimony of Mr. Armijo regarding what the parties' agreement was and further testified that she

had wanted to evict Karen Figueroa after Mr. Figueroa had left her and she was behind in her rent, but that Mr. Armijo felt sorry for her and wouldn't start eviction procedures at that time.

E. Payment of the Cleaning Deposit was Acceptance of the Offer to Lease, but could not be an Acceptance of the Offer to Sell without meeting the other Terms required by Plaintiffs.

It is not in dispute that a payment was received by the Plaintiffs prior to the Defendants taking possession. What is in dispute is the meaning to be given that payment. Plaintiffs testified that it was a cleaning deposit, and Defendants testified that it was a down payment. The trial court, as judge of credibility, decided in favor of the Plaintiffs, and without more than the Defendants contrary testimony, this Court should not disturb that finding. The testimony of Mr. Armijo alluded to by the Defendants in their brief clearly indicates that the deposit was to be converted to a down payment after the Defendants arranged financing.

F. The Purchase Price in Plaintiffs' Offer is Clear and Definite.

This is not in dispute. The offered price was always whatever was sufficient to buy out the Plaintiffs mortgage plus the cleaning deposit. The Defendants were never able to obtain financing and exercise their option to buy out the Plaintiffs.

II. THE TRIAL COURT WAS CORRECT IN FINDING INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF PARTIAL PERFORMANCE BY

## SUBSTANTIAL IMPROVEMENTS BY THE DEFENDANTS.

The purpose of the statute of frauds is to protect and preserve property rights and to avoid disputes over title to real property. To take an oral contract out of the statute of frauds, the contract must be clear, definite and mutually understood. There is virtually nothing in this case that can be said to be "mutually understood" by the parties. After proving the existence of a contract (which has not been done in this case), the party seeking to rely on the agreement, must then show acts of partial performance. There are four requirements. There must be acts of substantial or valuable improvements, the giving of valuable consideration, actual and open possession, and the acts relied upon must be referable to the contract. Holmgren Brothers, Inc. v. Ballard, 534 P. 2d 611, 614 (Utah 1975).

No evidence was submitted to the trial court on the issue of improvements completed by the Defendants. It is now too late to introduce any evidence to support this claim. The issue of these improvements was not before the court, and can not be raised for the first time on appeal. To the contrary, Plaintiffs testimony was that the property was "literally run down," and Plaintiffs "were afraid that the board of health would close it down." (Tr. 4/14/97, p. 12). Mrs. Armijo testified that the property was "run down" and "in need of painting and stuff like that." (Tr. 4/14/97, p.52). This testimony was not contradicted by the



Defendants.

The second requirement is for valuable consideration. The uncontradicted testimony at the hearing was that the payment was at below-market value and the Defendants did not keep current on paying the taxes as agreed they had agreed as part of the rental terms.

The third requirement of actual and open possession has never been in dispute.

The fourth requirement that the acts relied upon must be referable to the contract, is refuted by the Defendants. Their testimony that they made improvements was not only insufficient, not credible and disputed by Plaintiffs, but any such alleged improvements are not referable to the alleged contract and could not, in any event, be deemed as partial performance thereunder.

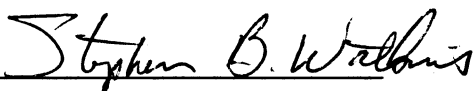
#### CONCLUSION

The Defendants did not establish the existence of an oral contract for the sale of the property. There was no meeting of the minds. The terms as understood by the Defendants are completely inconsistent with the terms as understood by the Plaintiffs. No agreement was reached, and therefore no contract was made. This case is a textbook example of the purpose of the statute of frauds. The court found at most, that there was a verbal rental agreement with a verbal one year option to purchase that was never exercised. These findings are not only supported

by substantial evidence but by the more credible evidence and by common sense. The trial court had sufficient opportunity and reason to judge the credibility of the Defendants and disbelieve their testimony. Karen Figueroas' acknowledgment that she represented to the State of Utah that she was renting and Mr. Figueroas' ultimate acknowledgment that he was involved with another woman and had left the property and not resided there for a couple of years (after initial denials by both Defendants on that issue) alone clearly points Defendants' lack of credibility. The record is replete with testimony by both Plaintiffs and other evidence supporting all the court's findings of fact and because the evidence clearly supports its findings, the trial court's judgment should not be disturbed, but affirmed.

WHEREFORE the Plaintiffs pray for an affirmation of the trial court's order and judgment and an order dismissing the Defendants' appeal with prejudice.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of November, 1997

  
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MAILING CERTIFICATE

I hereby certify that on this 24<sup>th</sup> day of November, 1997, a true and correct copy of the foregoing BRIEF OF THE APPELLEE was mailed by first-class mail to the following:

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