1978

Searle Brothers, A Partnership, Diamond Hills Motel, A Partnership, Rance W. Searle, Rhett A. Searle and Randy B. Searle : Brief of Plaintiffs and Appellants

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

SEARLE BROTHERS, a partnership, DIAMOND HILLS MOTEL, a partnership, RANCE W. SEARLE, RHETT A. SEARLE and RANDY B. SEARLE,

Plaintiffs and Appellants,

vs.

EDLEAN SEARLE,

Defendant and Respondent.

Case No.

BRIEF OF PLAINTIFFS AND APPE

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APPEAL FROM FINAL ORDERS OF THE DISTRICT COURT OF THE STATE OF UTAH AND FOR UINTAH COUNTY, HONORABLE PLAINTIFFS' AMENDED COMPLAINT PREJUDICE, HONORABLE DAVID

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IN THE SUPREME COURT OF THE STATE OF UTAH

SEARLE BROTHERS, a partnership, DIAMOND HILLS MOTEL, a partnership, RANCE W. SEARLE, RHETT A. SEARLE and RANDY B. SEARLE,	:	
Plaintiffs and Appellants,	:	Case No. 15604
vs.	:	
EDLEAN SEARLE,	:	
Defendant and Respondent.	:	

BRIEF OF PLAINTIFFS AND APPELLANTS

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APPEAL FROM FINAL ORDERS OF THE FOURTH DISTRICT COURT OF THE STATE OF UTAH IN AND FOR UINTAH COUNTY, DISMISSING PLAINTIFFS' AMENDED COMPLAINT WITH PREJUDICE, HONORABLE DAVID SAM, JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

SEARLE BROTHERS, a partnership, DIAMOND HILLS MOTEL, a partnership, RANCE W. SEARLE, RHETT A. SEARLE and RANDY B. SEARLE,	:	
Plaintiffs and Appellants,	:	Case No. 15604
vs.	:	
EDLEAN SEARLE,	:	
Defendant and Respondent.	:	

BRIEF ON APPEAL OF PLAINTIFFS AND APPELLANTS

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STATEMENT OF THE KIND OF CASE

This case involves an appeal from final orders of the lower Court, Honorable David Sam, Judge, dismissing plaintiffs' Amended Complaint with prejudice and holding that a prior judgment of the same Court, Honorable George E. Ballif, Judge, Case No. 5790 (Searle vs. Searle), is res judicata as to the claims of these plaintiffs and appellants as to an interest in real property, these plaintiffs and appellants not having been parties to said Case No. 5790.

DISPOSITION IN LOWER COURT

The matter was submitted to the Court on stipulated facts and memoranda of authority. From an order dismissing

the plaintiffs' Amended Complaint with prejudice, plaintiffs appeal.

RELIEF SOUGHT ON APPEAL

Plaintiffs and appellants seek reversal of the Lower Court's orders dismissing plaintiffs' Amended Complaint with prejudice, wherein plaintiffs sought a determination of their ownership in real property and a partition of that interest.

STATEMENT OF FACTS

This matter was submitted to the Court below on stipulated facts for a determination as to whether or not the Judgment of the Court in a prior case, to which plaintiffs were not parties, is res judicata as to the claims of plaintiffs in the matter now before the Court. (Minute Entry dated May 31, 1977, R-67) These agreed facts as shown by the pleadings and memoranda of counsel demonstrate that plaintiff SEARLE BROTHERS is a partnership consisting of plaintiffs RANCE W. SEARLE, RHETT A. SEARLE and RANDY B. SEARLE. Searle Brothers Partnership, is in turn a 50% owner of another partnership, Diamond Hills Motel. The other 50% interest of the Diamond Hills Motel Partnership is owned by WOODEY B. SEARLE. (TR 134, Case 5790; R-114). WOODEY B. SEARLE is the father of the individual plaintiffs, RANCE W. SEARLE, RHETT A. SEARLE and RANDY B. SEARLE and the defendant EDLEAN SEARLE is the mother of such plaintiffs (R-35, 68). WOODEY B. SEARLE and defendant EDLEAN SEARLE, previously husband and wife, were divorced by Decree of the

Uintah County District Court dated May 17, 1973. (R-105-113)

On January 16, 1967, the real property in question hereinafter referred to as the "Slaugh House" was purchased and paid for by check #01884, drawn on the account of the partnership, DIAMOND HILLS MOTEL, but the deed to the property was inadvertently prepared showing WOODEY B. SEARLE as the grantee. (Def's. Ex. #12, Case No. 5790; R-118; TR-243, 249, 260, Case No. 5790; R-115, 116).

The books and records of DIAMOND HILLS MOTEL partnership have, since 1967, shown the "Slaugh House" to be an asset of that partnership and all rentals therefrom up to the time of the divorce decree between WOODEY B. SEARLE and EDLEAN SEARLE were divided equally between WOODEY B. SEARLE and the plaintiff, SEARLE BROTHERS partnership. (Def's. Ex. #12, Case No. 5790; R-118).

During or about the year 1972, EDLEAN SEARLE commenced an action for divorce against WOODEY B. SEARLE in the District Court of Uintah County, State of Utah, Case No. 5790, the Honorable George E. Ballif, sitting as Judge. EDLEAN SEARLE, in the divorce action, claimed that the "Slaugh House" was an asset of the marriage between her and WOODEY B. SEARLE, which position was disputed by WOODEY B. SEARLE, who claimed the "Slaugh House" to be the property of the DIAMOND HILLS MOTEL partnership and thereby 50% thereof was actually owned by SEARLE BROTHERS partnership, the plaintiff in this action. (Def's. Ex. #12, Case No. 5790; R-118). The Court, in the

divorce action, chose to adopt the position of EDLEAN SEARLE and awarded her the "Slaugh House" as part of her distributive share of the marriage assets in the Decree of Divorce. (Paragraph 2(d) Decree of Divorce, Case No. 5790; R-107).

Neither party to the divorce action, nor the Court, moved or ordered that the SEARLE BROTHERS partnership or the other plaintiffs herein be made parties to the divorce action although the plaintiffs and appellants in this action were within the jurisdiction of the Court and service of process could have been obtained for that purpose. Plaintiffs in this action, RHETT A. SEARLE and RANDY B. SEARLE, did testify in the divorce action concerning their interest in the DIAMOND HILL MOTEL partnership, but neither was interrogated specifically about the "Slaugh House". (TR, Case No. 5790, 196-204, 261-263)

Based on this record and indicated facts, the Court below ruled that the plaintiffs' interest in the "Slaugh House" was foreclosed by the Decree of Divorce in Case No. 5790; that said Decree was res judicata as to these plaintiffs; and that in any event the claims of the plaintiffs to the "Slaugh House" were barred on the grounds of collateral estoppel. The Court below thereupon dismissed the Amended Complaint of the plaintiff with prejudice. (R-80, 81-82, 85-86).

It is from these orders that plaintiffs appeal.

ARGUMENT

POINT I

THE LOWER COURT ERRED IN RULING THAT THESE PLAINTIFFS AND APPELLANTS WERE BOUND BY THE DECREE OF DIVORCE IN CASE NO. 5790 (SEARLE VS. SEARLE), UINTAH COUNTY DISTRICT COURT, THESE PLAINTIFFS AND APPELLANTS NOT BEING PARTIES TO SAID CASE NO. 5790.

The orders of the Court below, being summary in nature and based upon stipulated facts, these facts as alleged in plaintiffs' Amended Complaint and as hereinabove set forth, must be considered as established for the the purposes of this appeal. (Frederick May & Company vs. Dunn, 13 Utah 2d 40, 368 P. 2d 266) Thus the questions on appeal are reduced to a determination of whether, as a matter of law, such facts compel a finding of res judicata and estoppel against these plaintiffs and appellants. Plaintiffs respectfully submit that they do not.

This Supreme Court in the case of Tanner vs. Bacon, (1973) 103 Utah 494, 136 P. 2d 957, held:

> "It is well settled that the doctrine of res judicata does not operate to affect strangers to a judgment. It only affects the parties and their successors in interest and those who are in privity with a party thereto. The word "privity" refers to a mutual or successive relationship to the same right or property. As applied to judgments or decrees of court, the word means one whose interest has been legally represented at the time."

The foregoing principle of law has likewise been adopted by the Utah Supreme Court in the cases of Colemen vs. Butkovich vs. Summit County, 556 P. 2d 503; Bank of Vernal vs.

Uintah County, 122 Utah 410, 250 P. 2d 581; McCarty vs. Parks vs. Royal Glove Insurance Companies, 561 P. 2d 1122; Reunion Insurance Company vs. 1st OK Corporation, 571 P. 2d 1339; and Federal Land Bank of Berkeley vs. Pace, 87 Utah 156, 48 P. 2d 480. The principle is also discussed in 46 Am. Jur. 2d, paragraphs 518-532.

Some examples of privity are: Executor with testator; heir with ancestor; assignee with assignor (but not assignor with assignee); donee with donor; and lessee with lessor.

Privity means "derivative interest". (Hodgson vs. Midwest Oil Company, C.C.A. Wyoming, 17 Federal 2d 71). The term "privity" denotes a mutual and successive relationship to the same rights or property. (Taylor vs. Barker, 70 Utah 534, 262 P. 266). Plaintiffs take the position that at the time of the hearing of the divorce case before Judge Ballif, there was no privity between these plaintiffs in this case and WOODEY B. SEARLE. Their interests in the property in question were not mutual and were not the same. Plaintiffs do not claim any part of the interest of WOODEY B. SEARLE, but assert their own independent and separate partnership interest to 50% of the property involved, the "Slaugh House".

It appears clear that partnership interests are not privy to each other. Such interests are separate and distinct, rather than successive and mutual, and, consequently, plaintiffs interests in the property in this case are not privy to the interests of WOODEY B. SEARLE. (Dillard vs. McKnight, 34 Cal. 209, 209 P. 2d 387).

To further demonstrate the point, partners are characterized as co-owners of specific partnership property under Section 48-1-22(1), Utah Code Annotated 1953, as amended. Such an interest is the exact opposite of successive or privy interests. In fact one partner may even have a lien on the partnership interest of another partner. (Martin vs. Carlisle, 46 Oklahoma 268, 148 P. 833, 6 A.L.R. 154).

The property in question, the "Slaugh House", having been purchased with partnership money, it was a partnership asset irrespective of the fact that title was taken in the name of one of the partners, WOODEY B. SEARLE, (Fullmer vs. Blood, 546 P. 2d 606), and WOODEY B. SEARLE, as a partner, had no right to enlarge his interest in partnership assets by any statement which may have been attributed to him in the divorce action, nor did the Court in that divorce action have any power or authority to litigate and rule upon the interests of these plaintiffs in the property in question without these plaintiffs having been made a party to the divorce action.

The defendant argued in her memorandum to the trial court that since WOODEY B. SEARLE was a partner of these plaintiffs, he was also their agent for the purposes of receiving notice and taking action with respect to matters involving the specific partnership interests of these plaintiffs. While a partner is the agent of the partnership for purposes of partnership business while acting within the scope of his authority, (Section 48-1-6 to 48-1-10, Utah Code Annotated 1953, as amended),

such agency does not extend beyond partnership affairs. The fact that a partner, WOODEY B. SEARLE, was sued for divorce did not make him an agent of the other partners with respect to partnership property, nor in any way make the partnership or the other partners privy to the divorce action or in any way bound by the divorce decree. (Dillard vs. McKnight, supra.)

With respect to the contention argued by defendant in her memorandum to the Court below, which position was adopted by that Court, to the effect that plaintiffs herein should now be estopped from making a claim against the property in questio because they did not assert that claim in the divorce action, it is true that plaintiffs did have knowledge of the divorce proceeding, but the law appears to be clear to the effect that actual knowledge of a proceeding which might affect one's inter est in property does not necessarily cause one to be bound by a judgment in that proceeding (Bank of Vernal vs. Uintah County, supra), nor does the fact that one may have the right to inter- vene in such an action, bind one under a judgment in that actio if in fact one does not intervene (46 Am. Jur. 2d, paragraph 55

The Bank of Vernal vs. Uintah County case cited above appears particularly in point, since in that case it was held that a witness who testified in the prior action, but was not effectively made a party thereto, was not bound by a judgment therein. (See also Coleman vs. Butkovich vs. Summit County, supra, and McCarty vs. Parks vs. Royal Globe Insurance Companie supra.)

The concept of estoppel implies that someone has at one time taken a position or failed to take a position so as to cause an innocent party to act in reliance thereupon and to thereafter seek to take a different position to the detriment of the innocent party. As stated by this Supreme Court in the case of Morgan vs. Board of State Lands, 549 P. 2d 695, to-wit:

> "Estoppel is a doctrine of equity purposed to rescue from loss a party who has, without fault, been deluded into a course of action by the wrong or neglect of another. Estoppel arises when a party by his acts, representations, or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another to believe certain facts to exist and that such other acting with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former is permitted to deny the existence of such facts."

Plaintiffs' actions or inaction with respect to the divorce case between WOODEY B. SEARLE and EDLEAN SEARLE did not mislead anyone so as to require imposition of the doctrine of estoppel. There is competent evidence in the record which shows that the Court in the divorce case was apprised of information which showed that the "Slaugh House" was really a partnership asset in which these plaintiffs were interested. (Def's. Ex. #12, Case No. 5790; R-118; TR-243, 259, 260, Case No. 5790; R-115, 116). The fact that the Court in the divorce action apparently chose not to believe such evidence, does not show any inconsistent position on the part of these plaintiffs or indicate in anyway that these plaintiffs were trying to mislead either the Court of the defendant herein, EDLEAN SEARLE.

Attention of the Court is directed to the case of Tanner vs. Provo Reservoir Company, 99 Utah 158, 103 P. 2d 134. The facts of that case show a situation wherein the doctrine of estoppel should properly apply. A recitation of the facts o that case will demonstrate the difference from the case now und consideration:

> "In suit No. 2888 Civil, defendant as owner of the Wright Waters sought an adjudication as against all claimants on the River of the amount of said Wright Waters as well as its priority. Defendant employed Tanner as an adviser and consultant all during the litigation. One of Tanner's duties was to advise and aid defendant in joining in said suit all parties which had, or might have, claims to water which might be affected by a decree in said suit. Defendant was seeking to set at rest every claim whic in anyway might inpinge on its rights as finally settled in the decree. Knowing this, plaintiff faile to notify defendant of his claim under Application 4306-A which became Certificate 1310. Therefore, while plaintiff's rights under Application 4306-A (Certificate 1310) were not considered in No. 2888 Civil, it was plaintiff himself who was at fault in not asserting them. As adviser to defendant he was bound to direct attention to all claims challenging either priority or amount of defendant's claims which might directly or indirectly injure or affect its rights. This he failed to do and thus estopped himself to assert his claims later."

The record in this case clearly shows that these plaintiffs did not do anything to mislead EDLEAN SEARLE or the Court in Case No. 5790 so as to support a claim for estoppel. The position of the plaintiffs in Case No. 5790 was indicated, but was ignored. The doctrine of equitable estoppel does not operate in favor of one who has knowledge of the essential fact or who has convenient and available means of obtaining such knowledge. (Wichita Federal Savings & Loan Association vs. Jon

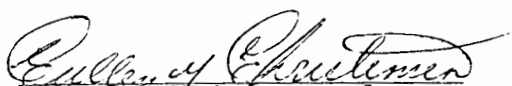
155 Kansas 821, 130 P. 2d 556, cited in Morgan vs. Board of State Lands, supra). Defendant, herself, or the Court for that matter could have made plaintiffs herein parties to the divorce action in view of defendant's Exhibit #12 in that case (R-118); however, since that was not done, these plaintiffs are not bound by that decree in Case No. 5790 (Rule 19[b], Utah Rules of Civil Procedure).

CONCLUSION

If allowed to stand, plaintiffs' ownership interest in the property in question, the "Slaugh House", will have been terminated by a Decree of Divorce to which plaintiffs were not parties and under circumstances that do not justify such a result on a theory of estoppel.

The orders of the Court below dismissing plaintiffs' Amended Complaint with prejudice should be reversed.

Respectfully submitted,



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CERTIFICATE OF MAILING

Two copies of the foregoing Brief were mailed, postage prepaid, to Ray E. Nash, attorney for defendant and respondent, 33 East Main Street, Vernal, Utah 84078, this 20th day of March, 1978.

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CULLEN Y. CHRISTENSEN, Attor