2001

Verdon Woolsey and Clea Woolsey, his wife v. Ellen B. Brown : Brief of Respondent

Utah Supreme Court

Heber grant Ivans; Attorney for Defendant-Respondent.
Joseph S. Knowlton; Attorney for Plaintiffs and Appellants.

UTAH SUPREME COURT

BRIEF

COURT

OF THE STATE OF UTAH

VERDON WOOLSEY and
CLEA WOOLSEY, his wife,
Plaintiffs and Appellants,

vs.

ELLEN B. BROWN,
Defendant and Respondent.

Case No.
13884

BRIEF OF RESPONDENT

**Appeal from the Judgment of the Fourth Judicial District Court,
Utah County, State of Utah
The Honorable Allen B. Sorensen, District Judge**

HEBER GRANT IVINS
75 North Center
American Fork, Utah 84003
Attorney for Defendant and
Respondent

JOSEPH S. KNOWLTON
Suite 204 Executive Building
455 East Fourth South
Salt Lake City, Utah 84111
Attorney for Plaintiffs and
Appellants

TABLE OF CONTENTS

Page

CASES CITED

STATUTES

IN THE SUPREME COURT OF THE STATE OF UTAH

VERDON WOOLSEY and
CLEA WOOLSEY, his wife,
Plaintiffs and Appellants,

vs.

ELLEN B. BROWN,
Defendant and Respondent.

Case No. 13884

BRIEF OF RESPONDENT

NATURE OF CASE

Action by appellants for specific performance upon claimed oral agreement of sale of residence. Respondent counterclaims for unlawful detainer by virtue of a Notice to Quit having been previously served on appellants. Judgment was rendered for respondent upon her counterclaim.

STATEMENT OF FACTS

In 1960 appellants rented a home owned by respondent in American Fork, Utah, as tenants at will.

In 1961 appellants asked respondent if they could buy the home. It was agreed that if appellants would pay $1,337.00 in 30 days with $630.00 credit to be given for 9 months rent at $70.00 per month (TR. p. 49) such sale would be made. Payment of $470.00 was made April 12, 1961 (Exh. No. 2) and $180.00 paid on April 27, 1962, (Exh. No. 3) but no further payment tendered until April 20, 1966, when $49.00 was sent to respondent which she refused (Exh. No. 4) and returned through her attorney (Exh. No. 15).

In the meantime appellants lived in the home and paid $81.00 per month to the mortgage holder. In May of 1966 appellants' attorney wrote respondent and enclosed a prepared Uniform Real Estate Contract to be executed by respondent (Exh. No. 7). This prepared contract was back dated to April 12, 1961; proposed *Sellers* (respondent) pay property taxes, mortgage insurance, and fire insurance; interest was proposed at 6%. Such proposed contract was not acceptable and Mrs. Brown's attorney so advised Mr. Knowlton (Exh. No. 15).

In 1966, about the time appellants sent the proposed contract, respondent called appellant and "threatened to kick us out" (TR. p. 16). At this time appellants admit that respondent told them they were not buyers (TR. p. 21). Appellants stayed in possession of said home as tenants paying $81.00 per month until the 10th of October, 1973, when a Notice to Quit (Exh. No. 8) was served. Shortly thereafter an action was

filed by appellants for specific performance.

No agreement was reached as to interest (TR. p. 25, p. 39); no agreement was reached as to taxes and were paid by respondent (TR. p. 44); the price is disputed as evidenced by appellants so called tender of $600.00 following the trial (TR. p. 76).

Respondent testified that the average reasonable rental value during the period of appellants' possession was $125.00 per month and such testimony was not refuted.

ARGUMENT

POINT I

NO ENFORCEABLE AGREEMENT WAS CONSUMATED BETWEEN THE PARTIES BECAUSE OF UNCERTAINTY AND INDEFINITENESS AS TO TERMS.

It is fundamental that no person may be subjected by law to a contractual obligation unless the character of the obligation is definitely fixed by an express or implied agreement of the parties. See 17 Am. Jur. 2d p. 413 § 75.

This rule of law takes on added significance when attempting to enforce an oral contract for the sale of

land because such agreement is basically unenforceable by virtue of 25-5-3, Utah Code Annotated, 1953.

This Court has so held in numerous decisions, as expressed in Campbell v. Nelson, 102 Utah 78, 125 P. 2d 413:

> "An oral contract for the purchase of real property must be sufficiently definite and certain so that it can be enforced by the court. Until the parties have agreed as to the terms, there is not an enforceable contract in fact, and partial performance cannot make up for the deficiency in the understanding between the parties."
>
> See also: Price v. Lloyd, 31 Utah 86, 86P. 767; Montgomery v. Berrett, 40 Utah 385, 121 P. 569 (Must establish terms with greater degree of certainty than is required in action at law.); Adams v. Manning, 46 Utah 82, 148 P. 465 (Memo citing receipt as part payment but insufficient because of failure to prove "clearness and exactness" necessary.); Hargreaves v. Burton, 59 Utah 575, 206 P. 262; In Re. Roth's Estate, 2 Utah 2d 40, 269 P. 2d 278 ("An oral contract for purchase of land . . . must be definite, certain and fair."); Christensen v. Christensen, 9 Utah 2d 102, 339 P. 2d 101.

In the case at hand no understanding was arrived at as to payment of taxes, interest, or insurance by the admission of appellants. How can the court intervene to enforce such an incomplete agreement?

POINT II

APPELLANTS CLAIM FOR SPECIFIC PERFORMANCE IS BARRED BY THE STATUTE OF LIMITATIONS.

In 1966 the appellants were notified by respondent, and so admit (TR. p. 16-21) that they were not buying the home and they had no contract. Knowing the position taken by respondent and knowing no written document existed detailing rights of the parties the appellants waited in excess of six years to bring an action for specific performance which exceeds the time allowed under 78-12-23 (2), Utah Code Annotated, 1953, even if a written contract had existed.

At the time of notice by respondent that no contract existed, there was, under appellants' theory of this case, a breach. Thus, the statute commenced to run at this time. It is well established that equity aids the vigilant and refuses to help those who sleep on their rights.

POINT III

APPELLANT IS CHARGEABLE WITH REASONABLE RENTAL VALUE OF PROPERTY WHERE NO CONTRACT EXISTED AND FOR TREBLE DAMAGES WHILE IN UNLAWFUL DETAINER.

There being no agreement as to rent the law is that a reasonable rental will be paid by the tenant. 49 Am. Jur. 2d § 516 p. 496, Krousky v. Hensleigh, 146 Mont. 486, 409, P. 2d 537.

Appellants knew, after 1966, that they were not buying and no rent had been established. Thus, the only guide to rental value is the testimony of respondent of $125.00 per month (TR. p. 73). Appellants did not see fit to come forward with any contradictory testimony.

Appellants admit proper service of Notice to Quit (TR .p. 25) and starting on the 26th day of October, 1973, were in unlawful letainer. The judgment was entered on the 26th day of September, 1974, and the reasonable rental trebled for this period equals $2,750.00.

If the respondent's position is supported, the appellants were in unlawful detainer as a matter of law.

CONCLUSION

The trial courts findings should be supported when there is a variance as to facts. Equity has been served since appellants have been in possession of a residence for which they are being charged fair rental

value. Therefore, the judgment of the lower court should be sustained.

Respectfully submitted,

HEBER GRANT IVINS

Attorney for Respondent

75 North Center
American Fork, Utah 84003