

1978

# Bryce C. Reynolds and LaDonna Reynolds v. Stewart Van Wagoner et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

\*\*\*\*\*

BRYCE C. REYNOLDS and  
LaDONNA REYNOLDS, his wife,  
  
Plaintiffs and  
Appellants,

vs.

STEWART VAN WAGONER,  
  
Defendant.

No. 15715

RICHLAND, INC.,  
  
Plaintiff in Intervention  
and Respondent,

vs.

BRYCE C. REYNOLDS and  
LaDONNA REYNOLDS, his wife;  
and SALT LAKE COUNTY,  
  
Defendants in  
Intervention and  
Appellants.

FILED

MAY 25 1978

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APPELLANTS' BRIEF

Clark, Supreme Court, Utah

\*\*\*\*\*

Appeal from Judgment of the Third Judicial District  
Court of Salt Lake County, Honorable David K. Winder, Judge

\*\*\*\*\*

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Defendants in :  
Intervention and :  
Appellants. :  
 :

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APPELLANTS' BRIEF

\*\*\*\*\*

NATURE OF THE CASE

Plaintiffs and appellants Bryce C. Reynolds and LaDonna Reynolds, claiming title to real property under a Tax Deed from the Salt Lake County Auditor, commenced an unlawful detainer action against defendant Stewart Van

the case, claiming to be the owner of the property in question, and that the Tax Deed was taken for its benefit pursuant to the terms of the Uniform Real Estate Contract.

#### DISPOSITION IN THE LOWER COURT

On motion for summary judgment the District Court ruled that the Tax Deed was taken for the benefit of plaintiff in intervention Richland, Inc. and awarded the real property to it.

#### RELIEF SOUGHT ON APPEAL

Appellants Bryce C. Reynolds and LaDonna Reynolds ask the Supreme Court to reverse the judgment of the trial court and order the case tried on its merits.

#### STATEMENT OF FACTS

This case was commenced by the filing of an unlawful detainer action by plaintiffs Bryce C. Reynolds and LaDonna Reynolds, his wife, against defendant Stewart Van Wagoner (R.2). The Complaint alleges that plaintiffs are the fee title owners of the real property in question. Plaintiff in intervention Richland, Inc. was thereafter authorized to intervene in the case. Its Complaint (R.19) asked the Court to hold the Tax Deed received by Reynolds from Salt Lake County to be void, or alternatively for an Order requiring Reynolds to convey the property to Richland, Inc. By Counterclaim (R.24) Reynolds asked that the Court quiet title to the property in them. Answers to interrogatories (R.83, 229)

and answers to requests for admissions (R.208) establish the following facts:

On September 23, 1963, Bryce C. Reynolds, as an individual and as a debtor in possession and trustee in bankruptcy in a then pending Chapter XI proceeding in the United States District Court for the District of Utah, and Anna LaDonna Reynolds, his wife, executed (1) a Uniform Real Estate Contract wherein they were the sellers and Richland, Inc. was the buyer, (2) an Assignment to Motor Lease, Inc., (3) an Escrow Agreement, (4) a Quitclaim Deed and (5) a Trustee's Deed. All of the instruments were authorized by the Bankruptcy Court.

The Uniform Real Estate Contract (R.106) provided for a purchase price of \$127,966.44, payable at the rate of \$800.00 per month. Paragraph 14 of the Contract provided:

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 Buyer agrees to repay the Seller upon demand, all such sums so advanced and paid by him together with interest thereon from the date of payment of said sums at the rate of 3/4 of one percent per month until paid.

The Assignment assigned to Motor Lease, Inc. all sums due under the Uniform Real Estate Contract. It specifically provided that the contract was not assigned, but that the assignors reserved all other rights and privileges and retained all duties and obligations they may have had under the Contract.

The Escrow Agreement (R.110) basically provided that payments under the Uniform Real Estate Contract were to be made by Richland, Inc. to Motor Lease, Inc. through First Security Bank, the escrow agent.



The Quitclaim Deed (R.116) and the Trustee's Deed (R.118) conveyed the real property in question to Richland, Inc.

Bryce C. Reynolds was later adjudged a bankrupt in the 1963 bankruptcy proceeding, and the Reynolds thereafter vacated the property. Richland, Inc. has been in possession of the subject real property since at least 1968 (R.93).

The real property taxes to Salt Lake County were not paid for the years 1972 through 1975. Reynolds purchased the property for the delinquent taxes at the Auditor's tax sale and received an Auditor's Tax Deed on May 26, 1976 (R.217).

After hearing the motion for summary judgment, the District Court said the following in a Memorandum Decision:

Even though, as a practical matter, it appears that the Reynolds ended up in a position and as a result of the transactions of September, 1976, where they could realize nothing out of the Uniform Real Estate Contract and even if the Buyer Richland were to default thereunder, the fact remains that said contract did remain as an existing "living" document and was such at the time Reynolds took the Tax Deed from Salt Lake County. That is, the contract was still in force and the escrow agent was not to deliver the escrow documents to the grantee Richland and until the \$127,966.44 plus interest was paid in full. Although the Assignment of the contract proceeds to Motor Lease is of all amounts to be paid and is irrevocable, the last line of said Assignment makes clear that the contract is not assigned thereby, that the Reynolds have reserved to them "all other rights and privileges and retained all duties and obligations they may have under said contract." Of course, one of these is the requirement to perform as outlined in paragraph 14 of the Uniform Real Estate Contract. Since said Contract was still in force at the time the Reynolds bought the property at tax sale from Salt Lake County, the Reynolds are entitled to be fully repaid all sums they paid to Salt Lake County for the Tax Deed plus the interest provided for in said paragraph 14 (up to the date of

tender by Richland to the Clerk of Salt Lake County) and Richland is entitled to receive all interest acquired by the Reynolds in the tax sale of the property in question from Salt Lake County (R.246) .

Based upon the Memorandum Decision, the Court granted the motion for summary judgment, awarded the real property to Richland, Inc., awarded attorneys fees to Richland, Inc. and ordered that the Reynolds receive the amounts tendered into the Clerk of the Court by Richland, Inc. The appeal has been taken by the Reynolds only.

## ARGUMENT

### POINT I

RICHLAND, INC. HAD ABANDONED REYNOLDS AS A PARTY TO THE CONTRACT, AND THE DISTRICT COURT, THEREFORE, ERRED IN HOLDING THAT REYNOLDS HAD RIGHTS AND DUTIES UNDER THE UNIFORM REAL ESTATE CONTRACT

A contract is considered to remain in force until it is rescinded by mutual consent or until the opposite party acts inconsistent with the duty imposed upon him by the contract, which amounts to an abandonment. A contract will be treated as abandoned where the acts of one party, inconsistent with its existence, are acquiesced in by the other. 17 Am. Jur. 2d Contracts Section 482. See also 17A C.J.S., Contracts, Section 412. A Utah case in point is King vs. Firm, 3 Utah 2d 419, 285 P.2d 1114 (1955) where the court approved the foregoing rule.

In the instant case, after the execution by Reynolds of the Assignment, Escrow Agreement, Quitclaim Deed and Trustee's Deed, they, as a practical matter, had no further interest in, or control of, the subject real property. They were not

in possession, they were not receiving the payments (in fact they had no way of knowing whether the payments were being made) and had no connection with the property whatsoever. As far as the parties to the various instruments were concerned, it no longer mattered whether Reynolds even existed. When Richland, Inc. completed its payments to Motor Lease, Inc., it would receive title without any action of Reynolds. Richland, Inc., therefore, had abandoned Reynolds as a party to the contract, and looked only to Motor Lease, Inc. for performance. Reynolds, therefore, had no duties under the Uniform Real Estate Contract, and were not acting for the benefit of anyone other than themselves when they purchased the subject property at the tax sale.

## POINT II

### UNDER THE UTAH DOCTRINE OF EQUITABLE CONVERSION REYNOLDS ASSIGNED TO RICHLAND, INC. ALL OF THEIR RIGHTS UNDER THE UNIFORM REAL ESTATE CONTRACT

In Allred vs. Allred, 15 Utah 2d 396, 393 P.2d 791 (1964) and In Re Estate of Wilson, 28 Utah 2d 197, 499 P.2d 1298 (1972) the Utah Supreme Court has adopted the theory of "equitable conversion." This doctrine is that an executory contract for the sale of real property, has the effect of converting the interest of the vendor to personalty -- the right to receive the payments from the vendee. This being the case, upon the assignment to Motor Lease, Inc. of the right to receive the payment, Reynolds had absolutely nothing left. Both Motor Lease, Inc. and Richland, Inc. accepted the terms of that assignment, and acted accordingly. Reynolds thereafter had nothing to do with the property and

therefore, had no rights or duties under the Uniform Real Estate Contract.

CONCLUSION

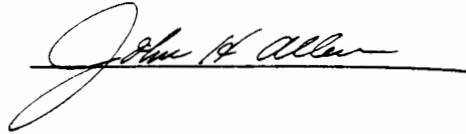
This Court should reverse the decision of the District Court and remand the case for trial on the other issues of fact and law raised in the pleadings.

Respectfully submitted,

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MAILING CERTIFICATE

I certify that two copies of the Appellants' Brief were served upon  
Wayne G. Petty of Moyle & Draper, attorney for Respondent, 600 Deseret Plaza,  
15 East 1st South, Salt Lake City, Utah 84111, this 25 day of May, 1978.

A handwritten signature in black ink, appearing to read "John H. Allen", is written over a solid horizontal line.