1978

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

Utah Supreme Court

John H. Allen; Merrill K. Davis; Craig G. Adamson; Attorneys for Appellants;
Petty; Moyle & Draper; Attorneys for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife, Plaintiffs-Appellants, vs. STEWART VAN WAGONER, Defendant.	)	Case No. 15715
RICHLAND, INC., Plaintiff in Intervention-Respondent, vs. BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife; and SALT LAKE COUNTY, Defendants in Intervention-Appellants.	)	

BRIEF OF RESPONDENT

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

John H. Allen, of
Callister, Greene & Nebeker
800 Kennecott Building
Salt Lake City, Utah 84133
Attorneys for Appellants

Wayne G. Petty, of
MOYLE & DRAPER
600 Deseret Plaza
Salt Lake City, Utah 84111
Attorneys for Respondent

Merrill K. Davis
Deputy Salt Lake County Attorney
Box 29, County Complex
151 East 2100 South
Salt Lake City, Utah 84115
Attorney for Salt Lake County

Craig G. Adamson
220 South 200 East, Suite 400
Salt Lake City, Utah 84111
Attorney for Van Wagoner

IN THE SUPREME COURT OF THE STATE OF UTAH

BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife,

Plaintiffs-Appellants,

vs.

STEWART VAN WAGONER,

Defendant.

RICHLAND, INC.,

Plaintiff in Intervention-Respondent,

vs.

BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife; and SALT LAKE COUNTY,

Defendants in Intervention-Appellants.

Case No. 15715

BRIEF OF RESPONDENT

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

John H. Allen, of
Callister, Greene & Nebeker
800 Kennecott Building
Salt Lake City, Utah 84133
Attorneys for Appellants

Wayne G. Petty, of
MOYLE & DRAPER
600 Deseret Plaza
Salt Lake City, Utah 84111
Attorneys for Respondent

Merrill K. Davis
Deputy Salt Lake County Attorney
Box 29, County Complex
151 East 2100 South
Salt Lake City, Utah 84115
Attorney for Salt Lake County

Craig G. Adamson
220 South 200 East, Suite 400
Salt Lake City, Utah 84111
Attorney for Van Wagoner

TABLE OF CONTENTS

Cases Cited

Authorities Cited

IN THE SUPREME COURT OF THE STATE OF UTAH

BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife, Plaintiffs-Appellants, vs. STEWART VAN WAGONER, Defendant. RICHLAND, INC., Plaintiff in Intervention-Respondent, vs. BRYCE C. REYNOLDS and LaDONNA REYNOLDS, his wife; and SALT LAKE COUNTY, Defendants in Intervention-Appellants.	)	Case No. 15715

BRIEF OF RESPONDENT

NATURE OF THE CASE

Plaintiff in intervention and respondent, Richland, Inc. (hereafter "Richland"), contract purchaser from defendant Bryce C. Reynolds, individually and as debtor in possession and trustee in bankruptcy of Bryce C. Reynolds, debtor, and Anna LaDonna Reynolds, his wife (hereafter "Reynolds"), of certain property under a Uniform Real Estate Contract claims that the payment of the taxes, interest and penalties by Reynolds at a tax sale constitutes an election

by Reynolds under paragraph 14 of the Uniform Real Estate Contract to pay the taxes and to receive reimbursement from Richland.

DISPOSITION IN THE LOWER COURT

The motion for summary jugment of Richland was granted, the District Court ruling that Reynolds was entitled to sums paid to Salt Lake County for the tax deed, together with interest, and Richland, having tendered payment for sums paid by Reynolds, was entitled to receive all interest acquired by Reynolds in the tax sale of the property.

RELIEF SOUGHT ON APPEAL

Respondent Richland asks that the judgment of the trial court be affirmed and that Richland be awarded its attorney's fees on appeal.

STATEMENT OF FACTS

Richland does not disagree with the Statement of Facts insofar as set forth in Appellants' Brief; however, the Statement of Facts as contained therein is incomplete and the following is submitted to supplement the Statement of Facts in Appellants' Brief.

On August 23, 1963, Bryce C. Reynolds, individually and as debtor in proceedings for an arrangement before the Bankruptcy Court in the United States District Court for the District of Utah, Central Division, entered

into a stipulation with Motor Lease, Inc., a secured creditor, regarding the real property in question in this matter and other matters in issue before the Bankruptcy Court (see Answer to Interrogatory No. 36, R.213, and R.120-154). The stipulation was subject to the approval of the Bankruptcy Court.

Thereafter, Reynolds executed and delivered an escrow agreement dated September 27, 1963 (see Answers to Interrogatories Nos. 7 and 8, R.209 and R.110-15). The documents submitted to the escrow agent to be held by it and disposed of as provided in the escrow agreement included a Quit-Claim Deed, Uniform Real Estate Contract, Assignment, and Release of Mortgages (see Answers to Interrogatories Nos. 3-6 and 9-13, R.209-10, R.106-9, R.116-19). As stated in Appellants' Brief: "All of the instruments were authorized by the Bankruptcy Court" (Appellants' Brief, p.3).

On the 12th day of January, 1965, Bryce C. Reynolds, debtor, and his attorney in the matter of Bryce C. Reynolds, dba Reynolds Sand & Gravel Company, debtor, in the United States District Court for the District of Utah, Central Division, petitioned the Referee in Bankruptcy to set aside the stipulation between Bryce C. Reynolds and Motor Lease, Inc. (see Answers to Interrogatories Nos. 37 and 38, R.213-14, and R.155-59).

On July 6, 1965, an order was entered in the matter of Bryce C. Reynolds, dba Reynolds Sand & Gravel

Company, debtor, in the United States District Court for the District of Utah, denying the petition to set aside the stipulation (see Answers to Interrogatories Nos. 39 and 40, R.214 and R.158-59).

The escrow agreement provides in part that if Richland fails to make the payments when due, or fails to perform any other term or condition of the Uniform Real Estate Contract, upon written demand to the escrow agent "said deeds, abstracts, real estate contract and assignment then held by [the escrow agent] shall be delivered to [Reynolds]" (R.111-12). If Richland made the payments when due and performed the other terms of the Uniform Real Estate Contract, the escrow agent was to deliver the documents to Richland.

The Uniform Real Estate Contract (R.106-8) provides for a purchase price of $127,966.44, payable at the rate of $800 per month. Paragraph 14 of the contract provides:

> 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 three-fourths of one percent per month until paid.

Paragraph 21 of the contract provides:

> 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.

The Assignment (R.109) assigned to Motor Lease, Inc. all sums due under the Uniform Real Estate Contract. However, it specifically provided that the contract was not assigned, but that the assignors reserved all of the rights and privileges and retained all duties and obligations they may have under the contract.

In 1963, when the stipulation was entered into, the property which is the subject of the Uniform Real Estate Contract was subject to loans or obligations against the property in favor of Prudential Federal Savings & Loan Association and The Lockhart Company (see Contract, ¶6, R.106-8). Richland paid the obligations until paid in full, which payments included the amounts for property taxes until the end of 1972. Prudential received the tax notices until the obligation was paid in full in 1972. Thereafter, Richland did not receive notice of the taxes or the amounts thereof (see Answers to Interrogatories Nos. 5 and 6, R.92).

On May 26, 1976, Reynolds paid the taxes and penalties for the years 1972 through 1975 and received a tax

deed. On September 24, 1976, Reynolds filed their complaint in unlawful detainer against Richland's lessee (R.2,3). On October 14, 1976, Richland served its Motion for Intervention on the parties (R.4,5). The motion was granted and on November 2, 1976, Richland filed its complaint in intervention (R.19-23) and deposited the amount paid by Reynolds for the taxes and penalties, together with interest (see ¶6 of Complaint in Intervention, R.21, and R.28 and 29).

Richland has made the payments due under the real estate contract and has performed the other conditions of the contract (see Answer to Interrogatory No. 2(e), R.90).

The district court's memorandum decision is quoted at length in Appellants' Brief.

ARGUMENT

POINT I. THERE IS NO EVIDENCE THAT THE CONTRACTS ENTERED INTO BETWEEN RICHLAND AND REYNOLDS WERE ABANDONED BY MUTUAL AGREEMENT.

In bankruptcy proceedings in the United States District Court for the Central District of Utah, Bryce C. Reynolds, as an individual and as debtor in possesion, and Anna LaDonna Reynolds, his wife, entered into a stipulation with Motor Lease, Inc., a secured creditor (R.120-54). The stipulation is dated August 23, 1963. The parties to the stipulation structured the transaction as a resolution of certain issues in the bankruptcy proceeding, subject to the approval of the Bankruptcy Court. Subsequently, on January 12, 1965, Reynolds attempted to set aside the stipula-

tion (R.155). The Referee in Bankruptcy denied the petition to set aside the stipulation (R.158-9).

Richland is current in its payments under the real estate contract and has otherwise performed its obligations thereunder. Richland would not continue to make payments under the contract if it had been abandoned.

Reynolds assert that the contract has been abandoned by the parties. However, there is no evidence of abandonment and, on the contrary, the evidence is that the contract has not been abandoned. The rule apparently relied upon by Reynolds is contained in 17A C.J.S., Contract, §412:

> Rights acquired under a contract may be abandoned or relinquished by agreement, conduct, or by a contract clearly indicating such purpose. To constitute an abandonment of rights an actual intent to abandon must exist. Such intent may be inferred from the conduct of the parties. An abandonment of rights does not occur unless the promissee, with a full knowledge of all the material facts, does or bears the doing of something inconsistent with the right or with an intention to rely on it . . . . (Footnotes omitted.)

The facts are undisputed that the parties entered into a stipulation in the Bankruptcy Court, that as a result of the stipulation the various contracts among the parties were entered into and placed with the escrow agent, the Bankruptcy Court refused to set aside the stipulation among the parties, and Richland is current in its payments under the real estate contract. Reynolds appear to seek some

relief on the basis that Reynolds have been abandoned as a party to the contract, not that the contract itself has been abandoned.

Although it may be said that Reynolds had no regular or frequent responsibilities under the contracts, it cannot be said that Reynolds had no rights, duties or responsibilities thereunder. Furthermore, when an escrow is established, one or more parties to the escrow may have no affirmative requirements thereafter, but may merely be entitled to await the other party's performance, at which time the escrow agent performs the responsibilities of one or more parties. In Morris v. Clark, 100 Utah 252, 112 P.2d 153 (1941), cert. den'd 314 U.S. 584, the plaintiff asserted that the death of a principal to an escrow agreement revoked the escrow agent's authority. In holding otherwise, this Court quoted the correct rule as follows:

> "Until the escrow contract has been made, the depositary has no rights or authority enforceable at law, but when it has been made and the instrument deposited, he becomes the agent of both parties; and the death of a party prior to the performance of the condition, does not affect the depositary's obligation to perform the duties imposed upon him by the escrow contract. When the condition upon which the instrument is to take effect is performed, the depositary becomes a mere agent or trustee of the grantee and his possession is equivalent to possession by the grantee."

In Doxey-Layton v. Clark, 548 P.2d 902 (Utah, 1976), this Court stated: "A deed in escrow, under a conditional sales contract, is effective as a conveyance after performance of the contract obligations, and upon delivery by the depositary." This requires the continued validity of the contract until completion of the escrow.

In the present case, the escrow agreement provides that in the event Richland does not make the payments under the contract or does not comply with other provisions of the contract, Reynolds may demand the return of the documents. Further, Reynolds retained all rights in the contract, but merely assigned to Motor Lease, Inc., Reynolds' secured creditor, the proceeds to be paid by Richland under the real estate contract.

The stipulation approved by the Bankruptcy Court and the contracts among the parties established a contractual relationship. Reynolds here seek to have this court set aside the entire purpose and effect of the contract, as well as the contract itself. Reynolds assert that since the contract relieves them of any additional responsibilities and that it could be completed without any further act on their part, that Reynolds ought to be deemed, as a matter of law, to have been abandoned as parties to the contract.

In King v. Firm, 3 U.2d 419, 285 P.2d 1114 (1955), the Court, referring to 12 Am.Jur., Contracts, §442, analyzed what is required for the abandonment of a contract. The Court stated:

> We agree that the evidence is conclusive that none of the parties to the second note and mortgage considered them to be valid and subsisting instruments. . . . King by releasing the first mortgage and writing thereon that the sum paid included interest and payment of an attorney's fee for "unused papers" acted in a manner inconsistent with the existence of any rights under the second note and mortgage and thereby showed that he had abandoned any such rights which he may have had, and certainly the other parties acquiesced in this.

King properly requires evidence of mutual agreement of abandonment or conduct clearly indicating such purpose.

The record is totally devoid of any evidence of any nature whatsoever that Richland abandoned the contract by its agreement or by its conduct. The evidence is otherwise. In absence of some evidence raising the issue of abandonment, the trial court acted properly in granting the motion for summary judgment.

The ruling of the Bankruptcy Court is res judicata of the validity of the stipulation and contracts among the parties. Reynolds attempted to have the stipulation set aside in the Bankruptcy Court. They should not be allowed to approach another forum in order to obtain a different result. As stated by this Court in Wheadon v. Pearson, 14 U.2d 45, 376 P.2d 946 (1962):

> Policy would seem to indicate that when a plaintiff has once attempted to obtain his entire relief, based upon his entire claim, then the matter should be

> laid at rest. He should be denied a second attempt at substantially the same objective under a different guise. (Footnote omitted.)

See also East Mill Creek Water Co. v. Salt Lake City, 108 Utah 315, 159 P.2d 863 (1945).

POINT II. THE ESCROW AGREEMENT AND REAL ESTATE CONTRACT REMAIN IN EFFECT EVEN IF THE INTERESTS THEREUNDER ARE CONVERTED BY THE THEORY OF EQUITABLE CONVERSION.

Reynolds assert the theory of equitable conversion affords them relief. The following is a general description of the theory of equitable conversions:

> Equitable conversion is that constructive alteration in the nature or character of property whereby, in equity, real estate is for certain purposes considered as personalty, or whereby personalty, for similar considerations, is regarded as real estate, and in either instance, it is deemed to be transmissable and descendable in its converted form. (Footnote omitted.) 27 Am.Jur.2d, Equitable Conversion, §1.

The application and the limitations of the doctrine of equitable estoppel are explained in 27 Am.Jur.2d, Equitable Conversion, §3:

> The application of the doctrine of equitable conversion depends somewhat on the circumstances under which it is invoked, since the doctrine is not a fixed rule of law, but proceeds on equitable principles which take into account the result to be accomplished. The doctrine is most frequently applied in solving questions concerning the validity and execution of trusts, the legal character of the interests of the beneficiaries, the devolution of property as between real and personal representatives, and for other similar purposes. Equitable

> conversion of property is not favored in law, however, and the doctrine does not exist as a matter of right. It is to be invoked only when required by necessity and justice. And even where required the conversion must be kept within the limits of actual necessity. The application of the doctrine is always withheld where its effect would be contrary to the intention of the testator, settlor, or contracting parties. Moreover, the doctrine will never be employed for the purpose of circumventing public policy, or to sustain a fraud or a wrongful act. Nor, it has been held, will the doctrine be extended so as to effect a conversion as to persons whose claims or rights to the property are purely incidental, and not at all connected with its devolution or transfer from the owner or through the instrument. (Emphasis added; footnotes omitted.)

The thrust of Reynolds' argument appears to be that if the theory of equitable conversion applies to the real estate contract, thus converting the interest of the vendor to personalty or the right to receive the payments from the vendee, Reynolds cease to be parties to the contract or that Reynolds have no further rights, responsibilities or obligations with respect to the contract.

Even if the theory of equitable conversion is applicable to the real estate contract, it does not follow that the effect of application of the theory of equitable conversion is as claimed by Reynolds, that of eliminating Reynolds as a party to the contract or absolving Reynolds of any rights, responsibilities or obligations thereunder. Although Allred v. Allred, 15 U.2d 396, 393 P.2d 791 (1964)

and In re Estate of Willson, 28 U.2d 197, 499 P.2d 1298 (1972), both hold, under the facts before the Court in each case, that the interest of the vendor of real property under an enforceable executory contract is converted to personalty, neither case indicates in any manner that the contractual relationships established by the contracts are altered. In Allred, the Court stated:

> It is not contended that the vendors did not have an enforceable contract upon which they could have sued for specific performance in the event the vendees should have refused to perform their part of the agreement.

Similarly, if Richland fails to make the payments required by the real estate contract or fails to perform other requirements of the contract, Reynolds remain entitled to all of the remedies provided by the real estate contract or provided by law. To accept Reynolds' argument would be to negate the terms and provisions of the real estate contract merely because the nature of the vendor's rights thereunder are converted from realty to personalty.

Stipulations and settlements are favored and are not to be set aside lightly. This Court has been reluctant to set aside stipulations of parties. See Buzianas v. Beneficial Homes, Inc., 550 P.2d 174 (Utah, 1976); Klein v. Klein, 544 P.2d 766 (Utah, 1975); United Factors v. T. C. Associates, Inc., 445 P.2d 766, 21 U.2d 351 (1968); and Johnson v. Peoples Finance & Thrift Co., 2 U.2d 246, 272 P.2d 171 (1954). In

Johnson, the parties to a quiet title action entered into a stipulation before the Court at a pretrial conference for the resolution of the dispute. The stipulation provided that the parties would exchange quit-claim deeds to clear title to the property actually within each party's fence lines and provided that a new contract would be executed to adjust the price the buyer would pay because of a reduction in the property to be acquired. The parties failed to perform the terms of the stipulation. The trial court entered judgment embodying the terms of the stipulation. In response to the plaintiff's appeal from the judgment, this Court stated:

> The plaintiffs argue that it was never contemplated or agreed by the parties that the stipulations would be the basis for any judgment except a judgment dismissing the case. They refer us to the statement made by the court at the close of the pretrial conference, to which all parties assented, viz., that he would hold the case until the parties had made their conveyances and that he would then dismiss the case upon their joining in a petition to that effect. We agree with the plaintiffs that obviously such was the intention of the parties and the court at that time. However, when the parties failed to perform in accordance with the stipulations, the court was not powerless to require them to abide by their agreement. It would indeed be a serious reflection upon our system of jurisprudence if parties could stipulate an agreement of settlement but refuse with impunity from performing. Courts are not impotent when one or more parties to a stipulation becomes recalcitrant. . . . We think the trial court took the proper course when he entered judgment embodying the terms of the stipulation. (Emphasis added.)

Reynolds have suffered no injury. Richland tendered the amount Reynolds paid for taxes and penalties, together with applicable interest. This Court should not set aside the stipulation approved by the Bankruptcy Court or take any action which would have similar effect.

POINT III. REYNOLDS' PAYMENT OF TAXES ENTITLES REYNOLDS TO REIMBURSEMENT FROM RICHLAND.

Paragraph 14 of the real estate contract provides that Reynolds, as Seller, at Seller's option, may pay the special or general taxes "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...." In Phillips Petroleum Co. v. Hart, 25 U.2d 244, 480 P.2d 131 (1971), this Court held that the seller was entitled to reimbursement for its payment of property taxes. This Court so held even though upon the buyer's request, the seller gave buyer a payoff figure, which was paid by buyer, and a special warranty deed was issued. The payoff amount given by the seller and paid by the buyer did not include the real estate taxes, which the seller had paid. The buyer asserted, under such circumstances, accord and satisfaction. The Court held that the evidence was not sufficient to establish an agreement that the parties would accept a substitute performance, but "on the contrary, both parties were rendering performance strictly in accordance with the terms of the contract."

Richland tendered the amount of taxes and penalties, together with applicable interest. The Court should affirm the trial court and award such amount to Reynolds.

POINT IV. RICHLAND SHOULD BE AWARDED ITS ATTORNEY'S FEES ON APPEAL.

The real estate contract provides:

> 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.

Reynolds have refused to accept the tender of Richland of the monies paid for taxes upon the real property. Richland submits that under all the circumstances and in view of Reynolds' action, Richland is entitled to attorney's fees as awarded at the trial court and on appeal. Attorney's fees on appeal are discretionary with the Supreme Court. Swain v. Salt Lake Real Estate and Investment Co., 3 U.2d 121, 279 P.2d 709 (1955); see also Bates v. Bates, 560 P.2d 706 (1977). Since responding to Reynolds' appeal has been necessary in enforcing the real estate contract, Richland submits that attorney's fees on appeal are proper. Attorney's fees on appeal should be granted in such amount to be determined by the trial court upon proper evidence.

CONCLUSION

There is no evidence that Richland abandoned the contract by its agreement or by its conduct; the evidence is that the contract has been honored by Richland, which has paid the amounts required by the contract. The Bankruptcy Court has previously declined to allow the contract to be set aside, and that ruling is res judicata of Reynolds' claim now.

The contract remains in effect even if certain interests thereunder are converted by the theory of equitable conversion; the contractual relationships between the parties remain unaffected.

Richland asks this Court affirm the judgment of the trial court and to award it attorney's fees on appeal.

DATED this 10th day of July, 1978.

Respectfully submitted,

MOYLE & DRAPER

By_____

Wayne G. Petty
Attorneys for Richland, Inc.
600 Deseret Plaza
Salt Lake City, Utah 84111

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of July, 1978, two true and correct copies of Brief of Respondent were mailed, postage prepaid, to the following counsel of record:

John H. Allen, Esq.
Callister, Greene & Nebeker
800 Kennecott Building
Salt Lake City, Utah 84133
Attorneys for Appellants

Merrill K. Davis, Esq.
Deputy Salt Lake County Attorney
Box 29, County Complex
151 East 2100 South
Salt Lake City, Utah 84115
Attorney for Salt Lake County

Craig G. Adamson, Esq.
220 South 200 East, Suite 400
Salt Lake City, Utah 84111
Attorney for Van Wagoner