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Utah Supreme Court

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BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

IN THE SUPREME COURT
OF THE STATE OF UTAH

JOHN H. MORGAN, et al,
Plaintiffs-Appellants,

vs.

Case No. 14115

BOARD OF STATE LANDS OF
THE STATE OF UTAH, et al,

Defendants-Respondents.

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN H. MORGAN, et al,)
)
 Plaintiffs-Appellants,)

VS.)

Case No. 14115

BOARD OF STATE LANDS OF)
THE STATE OF UTAH, et al,)
)
Defendants-Respondents.)

BRIEF OF APPELLANTS

NATURE OF THE CASE

Beginning in 1963, Appellants held State of Utah oil shale leases which originally had ten year terms but which Appellants believed to have been extended through 1983. Respondents declared the leases terminated as of December 31, 19~~8~~⁷3, and denied extension. This is an appeal from a summary judgment upholding Respondents in their refusal to recognize the continuing validity of the leases.

DISPOSITION BELOW

Appellants sued under the Utah Declaratory Judgment Act for a declaration that conduct of the parties had effected an extension of the leases. The parties conceded that their evidence (including affidavits covering all testimony they would adduce at trial) was before the court, and the court, on Respondents' Motion for Summary Judgment, ruled that Appellants had no cause of action as a matter of law.

ISSUES ON APPEAL

The issues here presented are:

1. Whether a jury could reasonably find that the parties extended the leases by implied contract.
2. Whether a jury could reasonably find that Respondents are estopped to deny the extension of the leases and Appellants' opportunity to correct any deficiency in their procedures for extension.

STATEMENT OF FACTS

For the purposes of this statement, the Board of State Lands will be called the "Board", and its director (as of the time of the action being described) will be called the "Director". Appellants Morgan, Justheim and Justheim Petroleum Company will be called the "Morgans", and Appellant Husky Oil Company will be called "Husky". The oil shale leases in questions will be called the "Leases".

The chronology of relevant events is as follows:

1. In 1963, the Board issued the Leases, to expire by their terms on December 31, 19~~63~~⁷³, to the Morgans (admitted in pleadings).
2. In 1964, the Morgans assigned the Leases to Husky, but remained the lessees of record to whom the Board sent notices and billings (R.113).
3. In 1965, the Board adopted a 20 year lease form, and passed a resolution that lessees under previously issued oil shale leases should have opportunity to convert to the new form

4. On September 29, 1965, the Director sent to all oil shale lessees a letter (herein called the "September Letter") in which a procedure for converting to the new 20 year lease form was explained (R. 21). That "procedure" was never included in the "Conversion" section of the Board's Rules and Regulations Governing Mineral Leases (herein called the "Regulations") even though the Regulations were revised in November of 1965 and on six occasions thereafter while the Leases were clearly in effect (R. 153) and specifically covered conversion procedures (R. 165).

5. The record does not show that either Husky or the Morgans ever followed the conversion procedure suggested by the September Letter. The only evidence, however, (R. 114) is that they believed they had done whatever was necessary to convert to the new form. Their conviction was corroborated by the facts that:

(a) the Board, at some time between 1965 and 1973, revised its accounting records for the Leases to show their expiration in 1983 rather than 1973 (R. 43 and 50, Response to Request No. 2), and

(b) in the late fall of 1973, the Board sent Appellants billings for the Leases covering the 1974 lease year, a year during which the Leases would not even have been operative unless they were extended. The billings called for rentals at a rate (\$1.00 per acre) which could not have been payable under the Leases as originally issued (R. 114).

6. Within the 1973 lease year, Appellants paid the 1974 rentals for the Leases as billed by the Board (R. 114, 128). Had they not been so billed, Appellants would have made inquiry to determine why they had not been billed and would have corrected any claimed deficiencies in conversion procedure while the Leases as originally issued were still in effect (R. 115).

7. Early in 1974, after the Board had cashed Appellants' rental payment check, the Board returned the money to Appellants with the announcement that it considered the Leases to have expired (R. 50-52).

It is noteworthy that the Board has consistently expressed its regret that it must treat the Leases as having expired. The Attorney General has issued his opinion that the Board is powerless to do otherwise. It would be a mistake to approach the matter as a problem related to the scope of administrative discretion. The Board does not purport to have had or exercised discretion.

ARGUMENT

POINT I

BY GRANTING SUMMARY JUDGMENT, THE COURT
HAS RULED THAT THE EVIDENCE COULD NOT
SUPPORT JURY FINDINGS OF IMPLIED CONTRACT
OR ESTOPPEL

We need not labor the point that a summary judgment is improper when there is any material issue of fact (see Dupler v. Yates, 10 U2d 251, 351 P.2d 624; Tanner v. Utah Poultry &

Farmers Co-op, 11 U2d 353, 359 P.2d 18. In Bullock v. Desert Dodge Truck Center, Inc., 11 U2d 1, 354 P.2d 559, this Court took a strong position, in accord with the prevailing view, that summary judgment is proper only where the prevailing party shows that his adversary could not, if given a trial, produce evidence which would support findings in his favor. At page 561 of the Pacific report, this Court said:

"A summary judgment must be supported by evidence, admissions and inferences which when viewed in the light most favorable to the loser shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; such showing must preclude all reasonable possibility that the loser could, if given a trial, produce evidence which would reasonably sustain a judgment in his favor."

In the instant case, Appellants plead an implied contract and, in the alternative, estoppel. Appellants believed the evidence (which will later herein be discussed in detail) justified findings that an implied contract had been made as a matter of law, and that all of the elements of estoppel were present. The trial court ruled that the evidence could not even justify a jury in finding for Appellants on either the implied contract issue or the estoppel issue.

While Appellants brought this action under the Utah Declaratory Judgment Act, they did not thereby waive their right to have issues of fact presented to a jury. This is the general rule in America; American Jurisprudence states it, at 22 Am. Jur. 2d 960, as follows:

"The courts, under the Uniform Declaratory Judgments Act and similar statutes, as well as under the Federal Declaratory Judgment Act, generally recognize the right to jury trial on those issues in regard to which either party could have claimed a jury in any action for which the declaratory judgment action may be regarded as a substitute."

and this Court so held in Oil Shale Corporation v. Larson, 20 U2d 369, 438 P.2d 540.

Among issues historically submitted to juries in contract cases are (1) whether conduct indicates a promise (see Peters v. Poro, 96 Vt. 95, 117 A 244, 25 ALR 615), (2) renewal of a contract (Adamson v. McKean, 208 Iowa 949, 225 NW 414), and (3) authority to contract (Ogdensburg & LCR Co. v. Pratt, 22 U.S. 123, 22 L. Ed. 827. In this connection, see 75 Am.Jur. 2d 441, Trial Sec. 396. We submit that, while reasonable minds might differ, a jury could find that the conduct of Respondents in this case implied a promise to renew or extend the Leases. Referring again to American Jurisprudence, its editors say:

"Where different conclusions may reasonably be drawn by different minds from the same evidence, the question is ordinarily one for the jury. This is true not only where the uncertainty is caused by a substantial conflict in the testimony, but also where the facts are undisputed but are such that different conclusions may reasonably be drawn from them." (75 Am.Jur.2d 394)

With regard to waiver and estoppel, American Jurisprudence has this to say:

"Whether there has been a forfeiture of a right is, when the facts are admitted or proved and lead to only one reasonable inference, a question of law for the court; but where the facts out of which the forfeiture is claimed to have arisen are in dispute or different conclusions may be drawn therefrom, the

question should be determined by the jury. Whether there has been a waiver is generally a question of fact, unless the facts and circumstances relating to the subject of waiver are admitted or are clearly established, in which case waiver becomes a question of law if only one reasonable inference may be drawn therefrom. Waiver of a forfeiture or of right to a jury trial has been held to be for the jury. Likewise, upon an issue of estoppel, where only one inference can reasonably be drawn from undisputed facts, the question of estoppel is one of law for the determination of the court, but where there is a dispute as to the facts involving an estoppel, or more than one inference may be drawn from undisputed facts, the question becomes one for the triers of fact--the jury in a case tried by a jury." (75 Am.Jur.2d 432)

POINT II

THE EVIDENCE WOULD JUSTIFY A JURY IN FINDING EXTENSION OF THE LEASES BY IMPLIED CONTRACT

It is a well established principle of law that, in the absence of a statutory provision to the contrary, the parties to a written contract may modify it by parol, and the facts of such modification may be implied by their conduct. The Corpus Juris statement on the subject is as follows:

"A modification of a contract may be effected by an explicit agreement to modify, either in writing or by parol, as discussed infra §377; but the agreement to modify a contract need not be express, and the fact of agreement may be implied from a course of conduct in accordance with its existence, as discussed infra §375."

"Unless otherwise provided by statute, it is not essential that the mutual assent of the parties to modify the contract be express, as discussed supra §374, and it may be implied from acts and circumstances. So, the fact of agreement may be implied from a course of conduct in accordance with its existence." (17A CJS 424 and 427, excerpts from Secs. 374 and 375, with emphasis added)

This appears to be the law even though the parties may have provided in their written agreement that modification must be in writing. The editors of American Jurisprudence (17 Am.Jur. 2d 937) say:

"The rule followed by the courts generally, with some authority to the contrary, is that although the parties to a contract may stipulate that it is not to be varied except by agreement in writing, they may, in the absence of statutory provision to the contrary, by a subsequent contract not in writing, modify it by mutual consent."

This Court had occasion to comment on the subject of implied contract in Kimball Elevator Company v. Elevator Supplies Company, 2 U2d 289, 272 P.2d 583. The facts in that case are not similar to ours, but this Court there confirmed that, in Utah as elsewhere, a contract may be established by conduct alone without any expression in writing or by parol. The appropriate quote from the case is as follows:

"It is of course conceded that a contract may be made out even though there are no express words formally stating it, and the promise may be inferred wholly or in part from such conduct as justified the promisee in understanding that the promisor intended to make it."

We find no Utah case where the promise inferred from conduct was specifically to extend a lease. There are, however, a number of cases from other jurisdictions where a lease extension has been held to have been effected by implied agreement. Among them are Walker v. Ferguson, 130 So. 64, 221 Ala. 549; Alhandy v. Gerchi, 202 Cal.Ap. 2d 806; Ochsner v. Langendorf, 174 Pac. 392, 115 Colo 453; McSweeney v. Dorn, 158 A 38, 104 Vt. 110; Smith v. Arthur D. Little, 276 Cal. Ap. 2d 391, Shell Oil Co. v. Marinello, 294 A 2d 598, 63 NJ 402. The particular circumstances vary, of course, from case to case, but the conduct of the parties in every case was held to effect an extension. We find no authority that a promise to extend a lease is less easily inferable than any other kind of promise. In Ochsner, the extension was declared on no other evidence than the lessor's acceptance of rental after the term. There was no evidence there, as here, that the lessor had both billed and received rental for an entire year.

In the instant case, the conduct of the parties is in no sense ambiguous. The Board indicated its understanding that the Leases were extended not only by amending its accounting records to show an additional ten year account period but also by billing and receiving 1974 rental at a rate which could only apply to a period beyond the initial term of the lease. Appellants indicated their understanding that the lease relationship was now to be governed by the "new form" lease by paying the 1974 rental at the new form rate before the 1974 lease had expired.

The revision of accounting records, the billings of 1974 rentals, and the acceptance of 1974 rentals are not the only pieces of conduct which (using the phraseology of Kimball Elevator) "justified" Appellants "in understanding that" the Board "intended to" extend the Leases. There is the further fact that the Board failed to mention any conversion procedure for oil shale leases in the Regulations even though a section of the Regulations is devoted to "conversion", and the Regulations were revised in November of 1965 and on several occasions thereafter.

The Board's failure to treat the procedure for converting old form to new form oil shale leases in the Regulations is particularly significant because it was under direct statutory obligation to do so. Section 65-1-96, UCA 1953 as amended 1967, provides:

"All mineral leases issued by the land board prior to the effective date of this act and in good standing on such date shall continue for the term specified therein and shall be subject to the conditions and provisions contained therein; provided, however, the land board may permit such lessees to convert such existing leases to the form of lease which shall be adopted by the land board pursuant to authority contained in this act, such conversion to be in accordance with rules and regulations promulgated by the land board."

After the effective date of this section, Appellants as holders of previously issued oil shale leases were entitled to rely on the Regulations as the authoritative source of information with regard to conversion procedure. Whatever may have happened to

their copy of the September Letter, Appellants were not obliged to recognize it, even if they had constructive knowledge of its content, as superior to regulation. Since the September Letter calls for an "application" to be filed for the new lease form, the Board had a second statutory obligation to cover the subject by "rules and regulations". Section 65-1-23, UCA 1953 as amended, provides:

"Except as otherwise provided by law, the state land board shall by rules and regulations prescribe the form of application, the form of lease, the annual rental, the amount of royalty and the basis upon which the royalty shall be computed, and such other details as it may deem necessary in the interest of the state."

Appellants could have perused all the Regulations and all applicable statutes without becoming aware of the content of the September Letter. In view of the quoted statute, they could feel secure that there was no conversion procedure not covered by the Regulations.

It appears to be Respondents' position that, once the September Letter was transmitted, it was no longer possible for the principles of implied contract to apply. Since a written agreement can be modified without writing even though it specifically provides to the contrary (see authorities supra) we cannot accept the proposition that the September Letter put the Leases beyond the power of the parties to modify the Leases by procedures other than those suggested in the September Letter. This is particularly true since (1) the September Letter does not purport to state an exclusive

means of conversion, and (2) the September Letter was never sanctified by any Board action reflected by the minutes (i.e. the Director was never instructed or authorized to send it).

We cannot conceive that the September Letter supercedes the Regulations, particularly on a subject which is statutorily required to be covered by regulation.

It is true that the January 20, 1965 Board minutes show that "exchange" of leases was Board approved "on the basis of 6¢ per acre". This is, in fact, the only minute entry which speaks to the exchange or conversion fee question. All applicable minute entries are attached to the complaint (R. 9-10). Nothing in the Board's minutes of any meeting suggests that a failure to pay the conversion fee within the original lease term will terminate the lease without notice. As a matter of practice, lessees frequently rely on Section 65-1-90, UCA 1953 as amended, which reads as follows:

"Upon violation by lessee of any lawful provision in a mineral lease, the state land board may, at its option, cancel the lease after thirty days' notice by registered or certified return receipt mail, unless the lessee remedies the violation or rectifies the condition within said thirty days or within such extension of time as the board may grant."

As soon as Appellants became aware that a failure on their part to pay a conversion fee was claimed, they undertook to pay the fee, but payment was refused. They were certainly given no thirty day period within which to rectify a claimed delinquency.

POINT III

A JURY COULD REASONABLY FIND THE FACTS TO
BE SUCH THAT THE BOARD IS ESTOPPED TO DENY
THE EXTENSION OF THE LEASES

The concept of estoppel is well understood, and the court which should require little citation of authority as to its nature. It applies whenever one party has reasonably acted (or failed to act) to its detriment and was induced to so act or fail to act by the conduct of the party against whom the doctrine is invoked. In Farmers and Merchants Bank v. Universal CIT Corporation, 4 U2d 155, 289 P2d 1045, this Court quoted with approval the following language from Ferguson Co. v. Furst, 287 F. 306:

"Equitable estoppel is bottomed upon the notion that, when one person makes representations to another which warrant the latter in acting in a given way, the one making such representations will not be permitted to change his position when such change would bring about unequitable consequences to the other person, who relied on the representations and acted thereon in good faith. The representations made must be in themselves sufficient to warrant the action taken."

In this case, the conduct of the Board which induced Appellants to act as they did (i.e. pay the rentals and refrain from an inquiry which would have resulted in their following whatever procedure the Board required for extension) was the publication of the Regulations which said nothing about oil shale lease conversion and the transmittal of billings for the Leases covering the 1974 lease year at a rate which was only consistent with an accomplished substitution of the August 1965 oil shale lease form

for the lease form in which the leases had been issued in 1963. That billing (coupled with the change in accounting records) was an affirmative action by the Board unequivocal in its implications. Appellants payment of 1974 rentals in 1973 was likewise unequivocal.

It is recognized that estoppel has limited applicability to government agencies. The limitation applies only to situations where the agency is acting in a governmental (as opposed to a proprietary) capacity. The editors of American Jurisprudence (28 Am.Jur.2d 784) state the legal proposition as follows:

"Thus, as a general rule, the doctrine of estoppel will not be applied against the state in its governmental, public, or sovereign capacity, unless its application is necessary to prevent fraud or manifest injustice. The state cannot, by operation of a mere estoppel in pais, be deprived of its right to legislate, nor can claims against the state be created by estoppel.

Under some circumstances, however, a state may be held estopped if an individual would have been held estopped. . . . A state may be held estopped when acting in a proprietary or contractual capacity.⁸ Also, there is authority that a state may be deemed estopped when the acts of its officials, alleged to constitute the ground of estoppel, are done in the exercise of powers expressly conferred by law, and when acting within the scope of their authority. So, a department of a state government, in a matter of procedure and within the scope of departmental powers, may be estopped."

Among the many cases cited under footnote 8 is Utah Power & Light Company v. United States, 230 Fed. 328.

Obviously, the state acts in a proprietary capacity when it enters into contracts with regard to state owned lands. A case directly in point is State ex rel Shell Oil Co. v. Register

of State Land Office, 193 La. 883, 192 So. 519. There, the State attempted to declare a lease invalid because of irregularities in the procedures by which it had been offered two years previously. The court held that the state was estopped to deny the lease validity after having accepted two years of rentals under it.

We are not aware of a Utah case where estoppel has been applied directly against the Utah State Land Board, but, in Provo City Corporation v. Cropper, 28 U2d 1, 497 P.2d 629 (1972), Provo City was held estopped to deny the dismissal of a condemnation suit after having made representations to the court, just before trial, that the city was withdrawing. The following is the lead headnote from the Utah Reporter:

"Condemnor should not be permitted to represent to court that action was to be abandoned and dismissed for purpose of avoiding trial and thereafter to contend that action was still pending for purpose of avoiding payment of expenses and attorney's fees. U.C.A. 1953, 78-34-16."

Recently (1972) the Arizona Court held that estoppel applied against a school district in its contractual relationship with a teacher. In Board of Trustees v. Wildermath, 10 Ariz. App. 171, 492 P.2d 420, the court held the district was estopped to deny that a teacher was covered by health insurance from the date of employment even though the district's contract with its group carrier provided otherwise.

We submit, in the instant case, that nothing about the history of dealings between the parties obliged Appellants to put a different connotation on the Board's conduct from the

obvious one. After (1) changing its accounting records, (2) billing for 1974, (3) accepting the 1974 rentals as billed, and (4) publishing its Regulations which were silent with regard to any conversion procedure for oil shale leases, the Board is estopped, at the very least, to deny Appellants' right to correct whatever procedural deficiencies are now perceived.

POINT IV

THE ACTS OF THE BOARD, ITS DIRECTORS, AND
ITS EMPLOYEES ON WHICH APPELLANTS RELIED
ARE NOT VITIATED BY REASON OF LACK OF
AUTHORITY

The trial court specifically found that the conduct on which Appellants relied (i.e. the amendment of accounting records, the transmittal of 1974 billings, the acceptance of 1974 rentals, and the failure to include oil shale lease conversion instructions in the Regulations) was not "authorized" by any board minute entry and that Appellants were therefore not justified in relying on that conduct.

All of the conduct is clearly within the apparent authority of the Respondents. The statutes which are pertinent in this regard are Sections 65-1-2.1 and 3.1 which read as follows:

"There is created the division of state lands, which shall be within the department of natural resources under the administration and general supervision of the executive director of natural resources and under the policy direction of the board of state lands. The division of state lands shall be the state land authority for the state of Utah, shall assume all of the functions, powers, duties, rights and responsibilities of the state

land board except those which are delegated to the board of state lands by this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law.

The director of the division of state lands shall be appointed by the board of state lands with the concurrence of the executive director of natural resources. The director shall be the executive and administrative head of the division of state lands and shall be a person experienced in administration of and a qualified executive in land management. The director shall have executive authority and control of the division and employees to the end that the policies of the board may be carried out. The director shall administer all land laws within the jurisdiction of the division of state lands and perform such other duties as may be provided for by law."

The law has never excused any corporate body for the consequences of its agents' mistakes even though it is apodictic that no employee is specifically authorized to make mistakes. The issuance of 1974 billings was clearly the act of the Director and not some unidentifiable employee. The Director's name appears at the bottom of the billing form, and recipients are justified in accepting what appears on the form at face value. It is paradoxical that the trial court placed such emphasis on the absence of a minute entry covering the revision of accounting records and the issuance of billings for 1974 rentals when the court gave supervening effect to the September Letter which was also unsanctified by any minute entry.

CONCLUSION

The record in this case would seem to compel and would certainly support jury findings of implied contract between the parties and the elements of equitable estoppel. Appellants clearly acted in good faith and have demonstrated every intention to maintain the Leases.

The action of the trial court in this matter should be reversed, and the cause remanded for trial of the fact issues.

Respectfully submitted,

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