

1979

T. Val Christiansen v. Utah-Idaho Sugar Company : Brief in support of Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

T. VAL CHRISTIANSEN,)
)
Plaintiff-Appellant,)
)
-vs-) Case No.)
)
UTAH-IDAHO SUGAR COMPANY,)
a corporation, and UNION)
PACIFIC RAILROAD, a)
corporation,)
)
Defendants-Respondents.)

* * * * *

BRIEF IN SUPPORT OF DEFENDANT
PETITION FOR REHEARING

Appeal from the Summary Judgment
Fourth District Court for the County of Salt Lake
Honorable J. Robert McCall

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TABLE OF CONTENTS

	<u>Page</u>
LEGAL ARGUMENT	
POINT I. The Utah case of <u>Soderberg vs. Holt</u> clearly holds that when a grantor conveys real property by warranty deed, and an encumbrance exists thereon such as an easement, not involving a money charge upon the land, the statute of limitations on grantee's cause of action for breach of the covenant against encumbrances begins to run on the date of the conveyance. The date the grantee learns of the existence of the easement is immaterial.--	1
POINT II. Even if the existence of the easement upon Plaintiff-Appellant's property prevented him from selling the property, Plaintiff-Appellant was never evicted, either actually or constructively, from the property as defined in Utah law, -----	3, 4
CONC LUSION -----	7

AUTHORITIES CITED

East Canyon Land & Stock Company v. Davis and Weber Counties Canal Company, 65 Utah 560, 238 P. 280 (1925) -----	6
Soderberg v. Holt, 86 Utah 485, 46 P. 2d 428 (1935) -----	2
Van Cott v. Jacklin, 63 Utah 412, 226 P. 460 (1924) -----	6
Wilder v. Wilhite, 190 Kan. 564, 376 P. 2d 797 (1962) -----	6

IN THE SUPREME COURT FOR THE STATE OF UTAH

* * * * *

T. VAL CHRISTIANSEN,)
 :
 Plaintiff-Appellant,)
 :
 -vs-)
 : CASE NO. 15751
 UTAH-IDAHO SUGAR COMPANY,)
 a corporation, and UNION :
 PACIFIC RAILROAD, a)
 corporation, :
 :
 Defendants-Respondents. :

* * * * *

BRIEF IN SUPPORT OF DEFENDANT -RESPONDENT'S
PETITION FOR REHEARING

POINT I

The Utah case of Soderberg v. Holt clearly holds that when a grantor conveys real property by warranty deed, and an encumbrance exists thereon such as an easement, not involving a money charge upon the land, the statute of limitations on grantee's cause of action for breach of the covenant against encumbrances begins to run on the date of the conveyance. The date the grantee learns of the existence of the easement is immaterial.

The court, in support of its reversal of the Summary Judgment granted in the above-entitled case by the District Court, stated in its opinion that the issue of when Plaintiff-Appellant received notice of the easement upon his property was a genuine issue regarding a material fact. Defendant-Respondent respectfully requests that the court

reevaluate this position on rehearing. Defendant-Respondent does not deny that there is a factual issue regarding when Plaintiff-Appellant learned of the existence of the easement. But Utah case law clearly indicates that this issue is immaterial to the resolution of this action. Even if Plaintiff-Appellant first learned of the easement in 1973, as he contends, the statute of limitations for any breach of the covenant against encumbrances resulting from the existence of the easement had already expired many years earlier.

The Utah case of Soderberg v. Holt, 86 Utah 485, 46 P. 2d 428 (1935), conclusively supports Defendant-Respondent's position on this point. This case was cited in Defendant-Respondent's Brief on Appeal and its holding was thoroughly discussed on pages 11 through 14 of the Brief. The opinion of this court on appeal cites the Soderberg case on another point, but it makes no reference to Soderberg's discussion of when a cause of action accrues with respect to a breach of the covenant against encumbrances. The court's opinion in the present case states that "the time the cause of action accrues therefore, is the time at which the grantee first receives notice, either actual or constructive, of an encumbrance against his property." No citations are given in support of this statement. Because this statement is contrary to the holding in the Soderberg case, Defendant-Respondent submits that it would be appropriate for this court to carefully review the Soderberg case, including the discussion thereof in Defendant-Respondent's Brief on Appeal, and reconsider its position on this point. If the court chooses to maintain

its present position and reverse the Soderberg case insofar as it conflicts with the present opinion, that is a matter for the discretion of this court. But if the court chooses to continue to follow the settled rules set forth in the Soderberg case, it would appear that it should change its position on this rehearing and hold in favor of Defendant-Respondent on this point.

The court in Soderberg held that in the case of encumbrances "which were permanent and which were burdens upon the title, such as an easement . . .," a covenant against them was broken at once and finally upon the date of the conveyance. In such cases, the statute of limitations for an action for breach of the covenant against encumbrances begins to run upon the date of the conveyance. In the present case, the conveyance to Plaintiff-Appellant took place in 1945. The encumbrance which existed upon the land was an easement, and according to the express language of the Soderberg case, the statute of limitations for a cause of action in the Plaintiff-Appellant for breach of the covenant against encumbrances expired in 1951. Any claim Plaintiff-Appellant may have had for breach of said covenant expired over twenty years before this action was filed. The date the Plaintiff-Appellant first learned of the existence of the easement is absolutely immaterial, and the fact that there is an issue regarding that date has no effect upon the propriety of the Summary Judgment rendered by the lower court.

POINT II

Even if the existence of the easement upon Plaintiff-Appellant's property prevented him from selling the property, Plaintiff-Appellant was never evicted,

either actually or constructively, from the property as defined in Utah law.

The opinion of this court in this action appears to indicate that there is one other material issue of fact in this case, namely, whether the Plaintiff-Appellant lost his property as a result of the existence of the easement, or as a result of his own financial problems. Defendant-Respondent submits that even if the position asserted by Plaintiff-Appellant were true, that is, that Plaintiff-Appellant was unable to sell or refinance his property as a result of the existence of the easement, and that this led to the foreclosure of the mortgage and the forced sale of the property, Plaintiff-Appellant would still have no cause of action against Defendant-Respondent for breach of either the covenant of warranty or the covenant against encumbrances. This is because the Plaintiff-Appellant was never evicted from his property.

It is important to clarify the particular manner in which the Plaintiff-Appellant lost his property. First, it is clear that the Defendant-Respondent U & I Sugar Company, Inc. never took any action to evict or otherwise remove Plaintiff-Appellant from his property. It is equally clear that the Defendant-Respondent Union Pacific Railroad never took any action to evict or otherwise remove Plaintiff-Appellant from the property. In fact, it is undisputed that the railroad never even threatened to remove Plaintiff-Appellant from the property or to enforce its easement.

The undisputed facts show that the parties that foreclosed upon

and sold Plaintiff-Appellant's property were none other than his own mortgagees, Dean and Vilate Terry. Plaintiff-Appellant had voluntarily given them a mortgage on his property in 1965. It is undisputed that the foreclosure action was taken against the property because Plaintiff-Appellant failed to make the required mortgage payments. The existence of the easement had nothing whatever to do with Plaintiff-Appellant borrowing money from the Terrys twenty years after he purchased the property, giving them a mortgage on the property, and thereafter failing to make the required payments. It was the failure to make mortgage payments as required, and not the existence of the easement, that led to the foreclosure action and subsequent loss of the property. Plaintiff-Appellant was never evicted from the property.

It was the acts of the Plaintiff-Appellant, and not any act of Defendant-Respondent, that caused Plaintiff-Appellant to lose his property. Certainly he should not be permitted to prevail against Defendant-Respondent when the loss of the property was a consequence of his own actions and not a result of the existence of any easement. When Defendant-Respondent gave Plaintiff-Appellant the warranty deed to the property, it did not warrant that Plaintiff-Appellant would never lose the property as a result of his failure to make future mortgage payments on it. It would be unjust to place such a burden on a grantor. The grantor should not be responsible for the loss of property resulting from grantee's own acts which take place long after the conveyance of the property.

In East Canyon Land & Stock Company v. Davis and Weber
Counties Canal Company, 65 Utah 560, 238 P. 280 (1925), the Utah
Supreme Court held that "where one seeks to recover for a breach of
the covenants of warranty of title, he must allege an eviction by one having
paramount or better title." This view is supported in Van Cott v. Jacklin,
63 Utah 412, 226 P. 460 (1924). The covenant of warranty of title is
usually called into play when a grantor conveys property in which a prior
grantor still claims an interest. When the prior grantor evicts the grantee
from the property as a result of his having paramount title thereto, the
grantee has a claim against his grantor for breach of the covenant of
warranty. In the present case, from Plaintiff-Appellant's contention, the
railroad had an easement of record across the property conveyed to
Plaintiff-Appellant, but the railroad never sought to enforce its easement.
Instead, the Plaintiff-Appellant later lost the property as a result of the
foreclosure of a mortgage he entered into over twenty years after the
conveyance to him, not as the result of an eviction. Defendant-Respondent
should not be responsible for the loss of the property.

"Eviction," to constitute a breach of the covenant of warranty, must
be "by one having an adverse or paramount title which existed when the
covenant was made." Wilder v. Wilhite, 190 Kan. 564, 376 P. 2d 797
(1962). The mortgage to the Terrys did not exist when the covenant was
made in this case. No eviction ever took place. The loss of property in
a foreclosure action, with a subsequent failure to redeem, is not an
eviction. The factual question of whether or not the existence of the

easement prevented Plaintiff-Appellant from selling or refinancing his property is completely immaterial, because the covenants of title do not warrant that a party will be able to sell or refinance his property. They only provide that he will never be evicted from it. The undisputed facts, viewed in light of the case law, show that Plaintiff-Appellant was never evicted from the property. The Summary Judgment of the District Court was proper.

CONCLUSION

Defendant-Respondent respectfully submits that the two issues of fact cited in the opinion of this court in support of its reversal are not material to a determination of the case. Since the statute of limitations for breach of the covenant against encumbrances in the case of easements begins to run on the date of the conveyance, the date on which the grantee learns of the existence of the easement is immaterial. Furthermore, since the Plaintiff-Appellant was never evicted from his property, but was rather foreclosed upon by one holding a mortgage he voluntarily granted over twenty years after the conveyance, the issue of whether the existence of the easement prevented Plaintiff-Appellant from selling or refinancing his property is immaterial. At most, the existence of the easement prevented such sale or refinancing of the property, but even if this did occur, it was no breach of the covenants of title. Defendant-Respondent had nothing to do with the granting or paying of the mortgage, and should not be responsible for the loss of the property upon its

foreclosure.

Plaintiff's Motion For Summary Judgment was properly granted by the District Court, and upon rehearing, this court should affirm the judgment of the District Court.

DATED this 8 day of February, 1979.

Respectfully submitted,

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