2009

Michael Ward v. caroline Coats Graydon : Reply Brief

Utah Court of Appeals

Bryce D. Panzar; Blackburn and Stoll; Brad C. Smith; Stevenson and Smith.
Craig S. Cook.

IN THE UTAH COURT OF APPEALS

MICHAEL WARD,

Plaintiff, Appellant,
and Cross-Appellee,

vs.

CAROLINE COATS GRAYDON,
Defendant and Appellee,

Appellate No. 2009714-CA
District Court No. 080903379

and

PETER COATS,

Defendant, Appellee,
and Cross-Appellant.

REPLY BRIEF OF PETER COATS

Appeal from the Judgment of the
Third Judicial District Court, Salt Lake County
Honorable Denise P. Lindberg

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CASES CITED

STATUTES CITED

Peter Coats replies to the Brief filed by Michael Ward on November 22, 2010 in the same sequence as presented in Peter Coats' opening Brief.

ARGUMENT

POINT I

THE LOWER COURT ERRED IN AWARDING SUMMARY JUDGMENT AGAINST PETER ON THE SOLE BASIS THAT HE HAD "DEFAULTED" BY NOT FILING ANY RESPONSIVE MEMORANDA OR AFFIDAVITS.

Michael Ward in his Brief argues that the lower court made no error in awarding Summary Judgment in his favor. (Ward Brief, pp. 2-6). Michael contends that the case of Pitts v. McLachlan, 567 P.2d 171, 174 (Utah 1977) recognizes the concept of a default being taken in a Summary Judgment. (Ward Brief, p. 3). This conclusion is incorrect. The McLachlan case involved a dispute in which the plaintiff "obtained a summary judgment" against the defendant. There is no discussion in the opinion that this was taken *via* default. Six months later the defendants then attempted to overturn the judgment on the basis of Rule 60(b) and other procedural rules requesting relief. This decision is irrelevant for purposes of this appeal.

Michael next attempts to use the introductory language of the Court's order to argue that the Court actually considered substantive arguments in deciding to rule against Peter. (Ward Brief, pp. 3-4). This general introductory language, however, cannot trump the specific grounds stated by the Court, "on the ground that defendant Peter Coats defaulted by filing no opposition to Plaintiff's Motion

for Summary Judgment, said Motion is hereby granted as against defendant Peter Coats. (R. 322).

Next, Michael argues that the lower court's ruling in the Rule 59 proceeding validates the prior Default Judgment on the Summary Judgment. (Ward Brief, p. 4). However, the quoted section of the Court's decision in the Rule 59 Motion only applies to the Rule 59 Motion and does not specifically address the basis for the original Default Judgment. In fact, the lower court made no specific reference to its finding of "default" in the Rule 59 decision and therefore apparently affirmed the prior basis by denying Rule 59 relief.

Michael has been unable to supply any authority to the effect that a litigant's failure to respond to a summary judgment motion causes him or her to lose by "default" regardless of the deficiency in the moving party's motion. Instead, Michael argues that the decision should be affirmed even if it is based upon the wrong reason. (Ward Brief, p. 5).

Peter agrees that had Michael met his burden of proof in his Motion for Summary Judgment it would be merely an exercise in futility to reverse the "default" Summary Judgment only to have it reinstated on the basis that it should have been granted as a matter of law. However, this result cannot occur in the instant case because the Motion for Summary Judgment by Michael is fatally flawed in that the undisputed facts do not show Peter breached any legal duty to Michael. This analysis of Michael's underlying liability theory will now be made in the next section.

POINT II

THE UNDISPUTED FACTS AGREED UPON BY ALL PARTIS INCLUDING PETER DO NOT GIVE RISE TO ANY LIABILITY OF PETER FOR HIS CONDUCT IN THE HAGEN REAL ESTATE OFFER.

Michael contends that Peter's failure to agree to Caroline's conditions on the sale of the property and the establishment of a court administered escrow was not the sole basis of liability relied upon by Michael in his Motion for Summary Judgment. He asserts that "Coats' refusal to cooperate in the sale of the property violated the reciprocal obligations inherent in the community of interest shared by Graydon, Coats and Ward." (Ward Brief, p. 8). In essence, Michael is asserting the same claim he made against Caroline as to his belief that there exists a fiduciary duty between co-tenants who jointly own a parcel of real estate that can give rise to liability if one fails to complete the sale of the property.

This same argument has been made by Ward against Caroline Graydon in the lower court and in this appeal. The lower court specifically rejected this argument and held there was no fiduciary duty between Caroline and Michael concerning the sale of this property. In fact, Michael's claim against Caroline was based upon her interest in Peter as his former spouse. Since she was clearly not a co-tenant of the property, any claim against her was necessarily through her marriage to Peter.

Peter adopts and incorporates the arguments made by Caroline in her Brief to this Court that a co-tenant has no duty to sell real estate and that she was not a co-tenant in the North Parcel. (*See,* Caroline's Brief, pp. 13-19).

Peter agrees with Caroline that if Michael wanted the property sold, his sole course was to file a petition action under Utah Code Annotated §78b-6-1201 and to seek a petition by sale. (Caroline's Brief, p. 16). Clearly, Michael as an individual, could not force Peter to sell his ninety percent interest in the property to a third party unless Peter so agreed. The fact that both Peter and Michael did agree to sell the property to Hagen with the specific condition that Caroline had to release her interest in the property does not increase Michael's rights or decrease those of Peter.

As Michael correctly notes, it was in Peter's interest to sell the property to Mr. Hagen in order to obtain the highest return for his ownership interest. (Michael's Brief, p. 11). Nevertheless, Peter was under no duty to Michael to agree to the Caroline demanded escrow when Peter believed such escrow was detrimental to his divorce litigation. The fact that he chose not to agree to Caroline's demand for the divorce court administered escrow does not give Michael a claim for damages since Peter was under no obligation to anyone to establish such escrow. In other words, Peter may have shot himself in the foot by ultimately refusing to put the funds into that escrow but it was Peter's sole choice to do so and Michael has no legal basis to complain about Peter's decision since he was only a tenant in common.

Finally, Michael equates himself to a minority shareholder who was at the mercy of the majority shareholders to act in a reasonable way. (Michael's Brief, pp. 11-12). Assuming this analogy to be pertinent to this situation, many minority shareholders in deed suffer financial losses every day because of the actions of the majority shareholders who they have no ability to control and who have normally have no liability to the minority shareholders for their actions. In essence, the mere fact of being a minority shareholder or tenant in common greatly diminishes the ability to control the outcome of an event such as the sale of the property.

In summary, even when all the facts are assumed to be true as stated by Michael in his Motion for Summary Judgment, there exists no legal theory that would require Peter to pay Michael over $300,000 for the alleged damages suffered by the failed sale. While Michael wishes this Court to delve into the "reasonableness" of Peter's decision not to agree to the escrow (Michael's Brief, p. 11) there is no legal authority that such a "reasonableness" inquiry can be made. For example, it is not up to the lower court or this Court to decide whether the actions or inactions of Peter were reasonable or unreasonable since there was no legal underlying duty for Peter to agree to the establishment of the escrow. Suppose Caroline had demanded that Peter agree to give up weekends for visitation of the children, increased alimony, a new car before she would release her property liens. Clearly, the decision to agree or refuse to these demands would be entirely within Peter's discretion and would not be subject to a "reasonableness" review by any court.

Thus, the lower court's order for Summary Judgment against Peter must be reversed as a matter of law.

POINT III

THE LOWER COURT ABUSED ITS DISCRETION IN FAILING TO GRANT RULE 59(a)(6) RELIEF FROM ITS PRIOR ENTRY OF SUMMARY JUDGMENT.

Michael in his Brief argues that Rule 59(a)(6) dealing with sufficiency of evidence does not apply in this situation. (Michael's Brief, pp. 12-14). This is incorrect. Peter has acknowledged that the facts are undisputed and that he refused to establish a divorce court escrow as desired by Caroline thereby allegedly causing the Hagen sale to fail. Of course, whether the sale would have gone through had Caroline released her interest is a matter of conjecture since there is no evidence that Hagen had the funds or that other conditions in the sale would have been satisfied.

In any event, in applying Rule 59(a) to a summary judgment a "insufficiency of evidence" standard simply means that even when all the facts presented by a moving party are undisputed they are still insufficient to establish liability as a matter of law. Here, the failure of Peter to agree to the escrow is not disputed by anyone but is the sole basis for the claimed liability on his part for the failed sale. Unless Michael can show, as a matter of law, that this action or inaction of Peter establishes liability on his part to Michael, then his Motion for Summary Judgment must fail.

The lower court did not specifically address Peter's claim but instead adopted the same argument now raised by Michael in his Brief. As such, the lower court and Michael are both incorrect in claiming that Peter's desire not to comply with Caroline's demands makes him liable to his co-tenant Michael for over $300,000 in damages from an alleged failed sale.

CONCLUSION

In this case, Michael moved for summary judgment against both Caroline and Peter based upon a theory of fiduciary duty owed to him by both defendants. In Caroline's case, her counsel briefed and argued her position to the lower court and persuaded the lower court that Caroline had no liability either directly or indirectly through Peter for her failure to release her claims on the property. Peter, on the other hand, had no legal representation and "default" summary judgment was entered against him on essentially the same theories that the court had denied as to Caroline.

As a matter of law, Michael has not sustained his burden for summary judgment by showing that the undisputed facts give rise to a claim of liability on the part of Peter. The Judgment entered against him should, therefore, be reversed.

Although Peter did not file a cross motion for summary judgment in the lower court, had he done so that motion should have been granted on the same basis that Michael failed as a matter of law to establish any claim against Peter. Peter believes it would serve no useful purpose to remand this case for further

proceedings since there is clearly no legal theory upon which Michael can prevail based upon his own pleadings and arguments.

Therefore, Peter respectfully requests that this Court reverse the Judgment against him in the amount of over $300,000 and orders a dismissal of Michael's claim against him.

DATED this 20th day of January, 2011.

Craig S. Cook
Attorney for Peter Coats

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Reply Brief to Brad Smith, Attorney for Plaintiff-Appellant Michael Ward, 3986 Washington Blvd., Ogden, Utah 84401 and to Bryce Panzer, Attorney for Defendant-Appellee Carolyn Coats Graydon, 257 East 200 South, Suite 800, Salt Lake City, Utah 84111 this 20th day of January, 2011.

Craig S. Cook