1979

Alan C. Reed v. Vaughn Alvey et al : Appellant's Reply Brief

Utah Supreme Court

Harold A. Hintze; Attorneys for Respondents;
John Parsons; Thomas N. Crowther; Attorneys for Appellant;

IN THE SUPREME COURT OF THE STATE OF UTAH

- -

ALAN C. REED, :

Plaintiff-Appellant, : District Court No. 253295

vs. :

VAUGHN ALVEY, et al., :

Defendants-Respondents: Supreme Court No. 16150

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APPELLANT'S REPLY BRIEF

- -

APPEAL OF A JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY,
THE HONORABLE DEAN E. CONDER,
PRESIDING

- -

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CASES CITED

Pursuant to the provisions of the Utah Rules of Civil Procedure, Appellant replies to Respondent's Brief as follows:

ARGUMENT

INTRODUCTION

In their brief, Respondents continue in their position taken at trial that the Earnest Money Receipt and Offer to Purchase (hereinafter the "Agreement"), admittedly entered into by the parties was too vague, ambiguous and uncertain to be capable of specific performance. This Court, subsequent to submission of Appellant's Brief, has rendered an opinion reaffirming the applicable law and establishing that an Agreement of the type at issue is enforceable.

POINT I

AN AGREEMENT IS NOT FATALLY VAGUE AND UNCERTAIN IF THERE IS A METHOD OF ESTABLISHING ITS TERMS.

In Ferris v. Jennings, 595 P.2d 857 (Utah 1979), this Court on April 25, 1979, held that if the Trial Court has based its ruling upon a misapplication or misunderstanding of law and a correct one might have resulted in a different ruling, the party adversly affected is entitled to have the error corrected. Id. at 859. The Court further held and reaffirmed the proposition that parties are obligated to act in good faith to perform in accordance with an agreement's expressed intent and that an agreement is not fatally vague if there exists a formula for or method of fixing its terms.

> We have no disagreement with the general proposition that a contract will not be specifically enforced unless the obligations of the parties are 'set forth with sufficient definiteness that it can be performed.' But to be considered therewith is the further proposition that the parties to a contract are obliged to proceed in good faith to cooperate in performing the contract in accordance with its expressed intent. A contract is not fatally defective as to price if there if an agreement as to some formula or method for fixing it.

Id. at 859.

Ferris was an eviction action commenced by the Plaintiff to evict the Defendant from possession of real property. The Trial Court found that Defendant was in possession under an oral contract to purchase which was not sufficiently definite for enforcement. Plaintiff had purchased the property at Defendant's request because Defendant needed someone to finance it for her, and Plaintiff had orally agreed to subsequently sell to Defendant for a specified price "plus a fair commission." The oral agreement did not specify the time for payment of the purchase price.

This Court held that neither failure to specify the amount of commission nor the time for payment rendered the agreement fatally defective. The rationale of Ferris was that the doctrine of reasonableness is a standard by which both the amount of commission and time for payment of the purchase price could be ascertained, enabling the oral agreement to be specifically enforced.

In the instant case, the Trial Court found the terms

referring to the property description and terms for payment to have been fatally vague, notwithstanding that the Agreement clearly stated that the property was to be purchased for a specified price. Yet as in Ferris, supra, there existed methods and standards for determining the intent of the Agreement with respect to these terms which the Trial Court should have applied.

A. Property Description

Respondents offered no evidence at trial that they owned other property in the vicinity of the "corner of Hillview and Ninth East" in Salt Lake City, Utah, which was the description in the Agreement. Respondents acknowledged they owned three lots in that vicinity and that they had agreed to sell all three to different purchasers, one of which was to be sold to Appellant. Respondents were to determine which lots were to be sold to each of the three purchasers. Respondent Michael Alvey testified as follows:

> Q Well, you would agree with me, would you not, that whoever took which particular lot, C. Howard Alvey & Sons agreed to sell all three lots, did they not?
>
> A Yes
>
> Q You would have to arrive at whether or not one party was going to take Lot 1, 2 or 3, or vice versa, is that correct?
>
> A Yes

[R. 96]. Furthermore, prior to any attempted closing of Appellant's purchase, Respondents had determined that the

other two lots would go to the other two buyers and had closed the purchase of them by the other two buyers. This left only one lot applicable to Appellant's purchase, which lot he was willing to and desired to take [R. 96-97].

Thus, Respondents were to select the lot and fourplex to be purchased by Appellant from three contiguous lots they owned. They, in fact, did select which lot of the three that Appellant was to receive by having designated and conveyed two of those lots to the other two buyers. This standard of determining the property to be sold has previously been approved by this Court in quoting with approval the Kansas Supreme Court in Peckham v. Lane, 106 P. 464, 466 (Kansas 1910).

> No reason is apparrent why a person may not make a valid contract that he will sell to another one of several pieces of real estate of which he is the owner, to be selected by himself. When an agreement to that effect is written out and signed, it is a complete contract, all of the terms of which are expressed in writing. The owner agrees that he will first make the selection and then make the conveyance If he refuses to do either, a court may compel him to do both. . . But he cannot avoid the obligation to which he has committed himself in writing, merely by refusing to act at all.

Calder v. Third Judicial District Court, 273 P.2d 168, 170 (Utah 1954).

B. Terms for Payment

With respect to payment of the balance of the purchase price over and above the $500.00 earnest money paid, the Agreement provided "terms to be arranged." [PLS Exh. 1.]. The intent of such terms of the Agreement, as shown by testimony

at trial, was that Appellant would pay the balance in cash at closing. Even if that had not been the case, however, application of the reasonableness standard renders this language certain.

Appellant testified that the balance of the purchase price was to have been paid in cash at closing which amount was to have been acquired through financing [R. 57-59]. Appellant had immediately made application with Zions First National Bank for financing [R. 58, 104] and was a qualified borrower for the amount needed [R. 58, 102-103]. In fact, Respondents obtained their construction loan from Zions First National Bank to build the fourplex on Appellant's lot on the basis of Appellant being a pre-approved qualified buyer of the property [R. 101-104]. Respondent's real estate agent, who prepared the Agreement and arranged for sale, understood the meaning of such language to be that Appellant would arrange financing and pay the balance in cash at closing [R. 121, 122]. Respondents were informed by such agent and understood that Appellant was to obtain financing and pay cash at closing [R. 121-123]. Respondents did not object to such arrangement [R. 123]. Respondents presented no testimony that "terms to be arranged" meant something different from the foregoing understanding thereof, or that Respondents had at any time before trial asserted that the words "terms to be arranged" ment something other than Respondent's real estate agent understood

and explained them.

Respondents reliance in their belief on the fact that financing proceeds were never actually obtained by Appellant is immaterial. Since Respondents refused to close the transaction, there was no need to close the financing.

The Trial Court based its ruling on a misunderstanding or misapplication of the law. The Trial Court failed to apply equitable considerations which upon proper application to the testimony adduced at trial clearly and unambiguously proves the intent of the Agreement and all parties thereto with respect to identity of the property and payment therefor. In addition, the Ferris rationale requires the Respondents to have acted in good faith. Upon taking into account the testimony adduced at trial, payment of cash at closing, as Appellant desired to do, was reasonable. If Appellant (contrary to all testimony on this subject) had not been able to pay cash at closing then Respondents would have been relieved from conveying the property and would have had their own remedies under the Agreement. Therefore, to permit a seller of property to willfully abandon the terms of a contract prior to the date on which the buyer must perform is to ignore the "good faith" rationale of Ferris. The "good faith" rationale of Ferris clearly sustains the Appellant's ownership of the subject property.

CONCLUSION

When applying equitable standards approved and required

by this Court, the Agreement was not vague, ambiguous or uncertain, and it should be specifically enforced. Application of the Ferris rationale to the facts of this case clearly establishes all terms of the Agreement; namely, (1) Respondents agreed to sell a lot and fourplex to Appellant for a specific price; (2) Respondents designated which lot and fourplex was to be sold to Appellant by having conveyed to others the other two of three lots agreed to be sold under similar agreements; (3) Respondents accepted Appellants earnest money; (4) Respondents obtained a construction loan on the lot and fourplex on the basis of Appellant being a pre-approved buyer of the same; and (5) Respondents required Appellant to deposit $13,500.00 in escrow as evidence he could complete the purchase.

DATED September 11, 1979

Respectfully Submitted:

PARSONS & CROWTHER

By John Parsons
John Parsons

By Thomas N. Crowther
Thomas N. Crowther

CERTIFICATE OF SERVICE

Two copies of the foregoing Reply Brief were served upon Respondents by mailing the same, postage prepaid, to their attorney, Harold A. Hintze, at 2000 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111, this 14 day of September, 1979.

Thomas N. Crowther