2001

Commercial Building Corporation v. Frank S. Blair and American Savings and Loan Association : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

COMMERCIAL BUILDING CORPORATION,

Plaintiff-Appellant,

vs

Case No. 14499

FRANK S. BLAIR and AMERICAN SAVINGS AND LOAN ASSOCIATION,

Defendants-Respondents.

RESPONDENT'S BRIEF ON APPEAL

Appeal from a Judgment and Decree of the Second Judicial District, in and for Weber County, the Honorable Ronald O. Hyde, Judge.

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TEXTS

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RESPONDENT'S BRIEF ON APPEAL

NATURE OF THE CASE

Action by Plaintiff-Appellant, Commercial Building Corporation, (hereinafter called Commercial) alleging among other things violation of a provision of a lease with Defendant-Respondent, Frank S. Blair, by allowing a building and sign to be located on parking area, and seeking damages and an order prohibiting the use of property for any purpose other than parking, right of way and driveway. Blair denied the violation and requested, among other things, a judgment and decree that the property not be restricted to parking, right of way and driveway uses.

DISPOSITION IN LOWER COURT

Both parties filed motions for summary judgment, which were denied.

The trial court found in favor of Blair and against Commercial, holding that the lease provision was vague and unclear and finding that the intention of the parties was that the location of the area for additional parking, right of way and driveway area was flexible and could be placed any where on the South half (approximately) of Blairs' property.

RELIEF SOUGHT ON APPEAL

Blair asks the Supreme Court to affirm the judgment and decree of the District Court.

STATEMENT OF FACTS

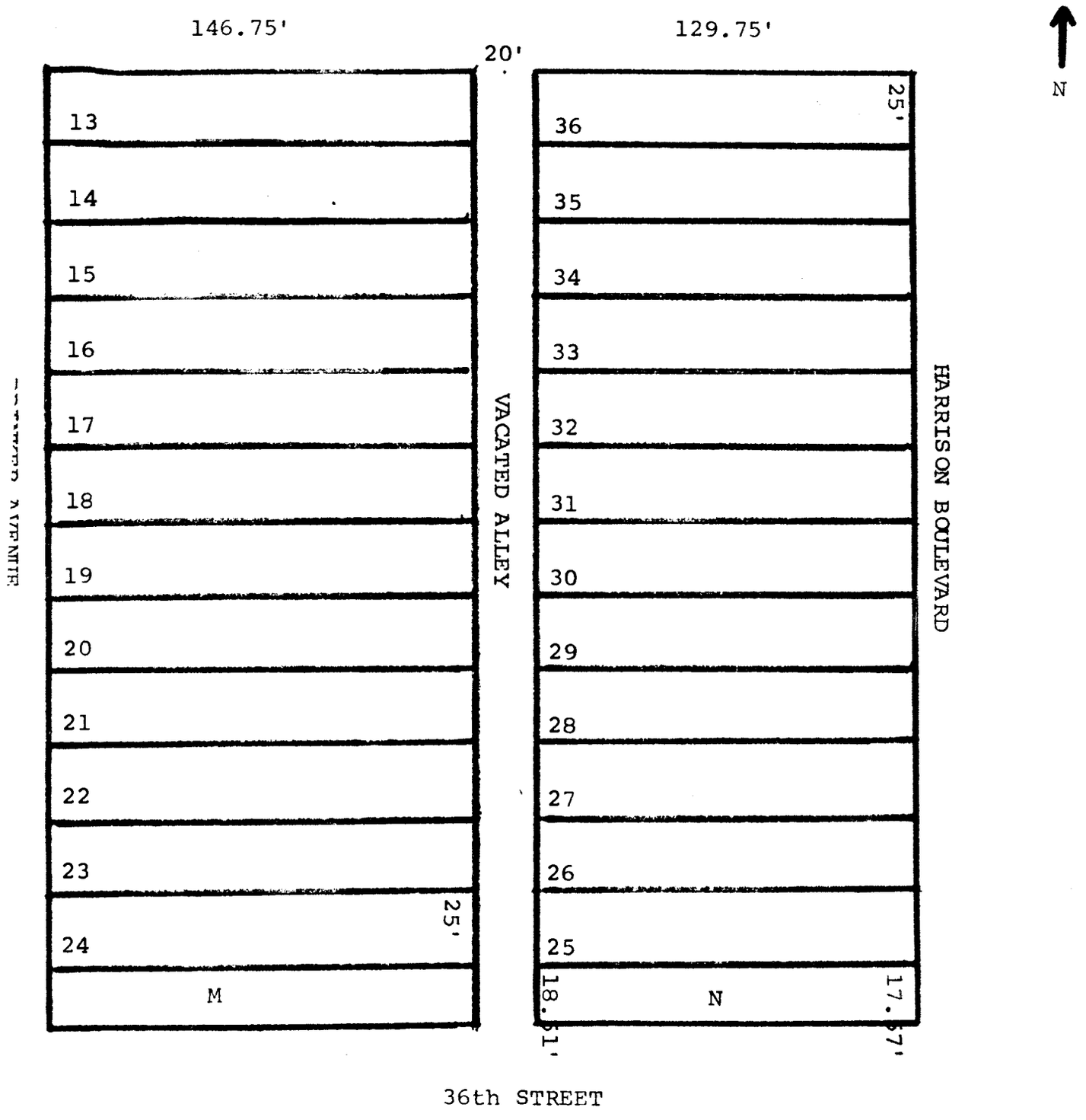
In 1963 Commercial contacted Wallace R. Woodbury (hereinafter called Woodbury) an attorney and president of Woodbury Corporation, to have him locate a site for a new drive-in bank and to cancel an existing lease Commercial had with principals of Woodbury Corporation.

Woodbury contacted Frank S. Blair and his relatives and negotiated for a lease on the Blair property. Woodbury dealt with Commercial and the Blairs as an

intermediary. He represented both parties.

The Blair property is located at the Northwest intersection of Harrison Blvd. and 36th Street in Ogden, being a parcel of land running West of Harrison West to Brinker and North from the 36th Street to the North line of Lots 13 and 36 (as extended). The property is composed of Lots 13 to 36, Nelson Park Addition, a vacated alley and lots designated as M and N. The following diagram represents the property:

PART OF BLOCK 26 NELSON PARK ADDITION



An Earnest Money Receipt and Offer to Lease Agreement was prepared by Woodbury dated July 16, 1963. The parking arrangement in the Earnest Money was not satisfactory to the Blairs and they refused to sign a lease with that provision.

Woodbury continued to negotiate with the parties and eventually prepared the lease which contains the following provisions:

> "Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described property in Weber County, State of Utah, hereinafter sometimes referred to as the 'Premises', to-wit:
>
> PARCEL 1: All of Lots 31 to 36, both inclusive, together with the East 10.5 feet of the vacated alley adjacent on the West, Block 26, Nelson Park Addition in Ogden City, being part of North half of Sections 3 and 4, Township 5 North, Range 1 West, Salt Lake Base and Meridian.
>
> Subject to joint use with other tenants of Lessor of parking area, rights of way and driveways other than drive-in window exits and approaches;
>
> PARCEL 2: Together with joint use, with other tenants of Lessor of at least 20,000 square feet of additional parking area, right of way and driveway area located on Lots 25 to 30, inclusive of said Block 26, and upon property adjacent thereto on the West."

Commercial constructed its drive-in bank on Parcel 1 and the Blairs asphalted in excess of 20,000 square feet of additional parking and driveway approaches on

36th Street. In about 1973, Blair leased a part of the Southeast corner of Parcel 2 to American Savings & Loan, whereupon Commercial commenced this action.

Blair has succeeded to the interest of his relatives and Commercial Building Corporation has succeeded to the interest of Commercial Security Bank. The structure of American Savings was temporary and has now been moved.

Blair has continued to provide Commercial with at least 20,000 square feet of additional parking area, right of way and driveway area.

POINT I
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THE LEASE IS SUSCEPTIBLE OF MORE THAN ONE MEANING AND INTERPRETIVE EVIDENCE WAS ADMISSIBLE TO SHOW THE INTENTION OF THE PARTIES

This case requires a construction of the following phrase in the lease:

> "PARCEL 2: Together with joint use with other tenants of Lessor of at least 20,000 square feet of additional parking area, right of way and driveway area located on Lots 25 to 30, inclusive of said Block 26, and upon property adjacent thereto on West."

Commercial claims that the 20,000 square feet of parking area, right of way and driveway area must utilize Lots 25 to 30, (19,500 square feet), and then to make up the balance of 20,000 square feet, land to the West thereof shall be utilized. Blair contends that the 20,000 square feet parking and easement areas may be located anywhere on the land described as Parcel 2.

On the other hand, both parties agree that it was intended that Commercial should have right of way and driveway areas to and from 36th Street and that the areas on the plat designated as N should be included in Parcel 2. The parcel of Lots 25 to 30 and N has in excess of 20,000 square feet, therefore, there would be no reason to include in Parcel 2 property adjacent on the West if the 20,000 square feet was to be located exclusively on Lots 25 to 30 and N.

Also, from a common sense point of view, this language could be construed to mean that the area of parking, right of way and driveway area may be taken from that land as described, to-wit: Lots 25 to 30, and property adjacent thereto on the West; the property to the West being the vacated alley and Lots 19 to 24; or from this land plus Lots M and N.

Being susceptible of more than one meaning, it was appropriate for the Court to receive interpretive evidence.

> Corbin on Contracts, Volume 3, Section 579:
> "No parole evidence that is offered can be said to varry or contradict a writing until by process of interpretation it is determined what the writing means. The 'parol evidence rule' is not, and does not purport to be, a rule of interpretation or a rule as to the admission of evidence for the purpose of interpretation. Even if a written document has been assented to as the complete and accurate integration of the terms of a contract, it must still be interpreted; and all those factors that are of assistance in this process may be proved by oral testimony.
>
> It is true that the language of some agreements has been believed to be so plain and clear that the court needs no assistance in interpreting. Even in these cases, however, it will be found that the court has had the aid of parol evidence of the surrounding circumstances. The meaning to be discovered and applied is that which each party had reason to know would be given to the words by the other party. Antecedent and surrounding factors that throw light upon this question may be proved by any kind of relevant evidence.
>
> The more bizarre and unusual an asserted interpretation is, the more convincing must be the testimony that supports it. Just when the court should quit listening to testimony that white is black and that a dollar is fifty cents is a matter for sound judicial discretion and common sense. Even these things may be true for some purposes. As long as the court is aware that there may be doubt and ambiguity and uncertainty in the meaning and application

of agreed language, it will welcome testimony as to antecedent agreements, communications, and other factors that may help to decide the issue. Such testimony does not vary or contradict the written words; it determines that which cannot be varied or contradicted..."

and in footnote 51:

"In Martindell v. Lake Shore Nat. Bank, 154 N.E.2d 683, 15 Ill.2d 272 (1958), a long, complex, and fully 'integrated' contract was executed after prolonged negotiation and correspondence. It granted to the plaintiff an option to purchase a majority of the shares and debentures of a corporation. It also contained one sentence which, standing alone, might be supposed to give to the defendant a power of revocation of the option. In an excellent opinion, the court held that extrinsic evidence, covering all the preliminary negotiations, was admissible to show the intention and purpose of the parties. In the light of this evidence, the court held that the single sentence should be given very limited effect, that the plaintiff's option was irrevocable, and that he was entitled to specific performance. The court said: 'In general, the intention of the parties is to be determined from the final agreement executed by them, rather than from preliminary negotiations and agreements; but previous agreements, negotiations and circumstances may be considered in determining the meaning of specific words and clauses. Similarly, under well recognized exceptions to the parol evidence rule, extrinsic evidence is admissible to show the meaning of words used in a contract where there is an ambiguity, or when the language is susceptible of more than one meaning.' The relevant meaning of all language always depends upon the entire context, the surrounding circumstances (necessarily antecedent and contemporaneous), and the habits and practices of its users."

To the same effect is Fayter v. North, et al, 30 Utah 156, 83 Pacific 742:

> "...Whenever the terms of a written instrument are susceptible of more than one interpretation, or a latent ambiguity arises, or the extent and object of the instrument cannot be ascertained from the language employed, parol evidence is admissible to show the sense which the contracting parties attached to the terms or language employed in the instrument; and for this purpose the acts and conversations of the parties, at or about and subsequent to the time of the transaction, relating to the subject matter, constitute proper evidence."...

POINT II
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THE INTENTION WAS TO ALLOW LESSOR FLEXIBILITY IN LOCATING AN AREA OF 20,000 SQUARE FEET FOR PARKING, RIGHT OF WAY AND DRIVEWAY.

Prior to being contacted by Woodbury, the Blairs had plans to develop their property into a shopping center project and had three studies made for such development. Thereafter there has been two or three more development plans made by Woodbury who has been working on layouts the last few years (R110).

The Blairs regarded the Southeast corner as the most valuable (R79, R139). Commercial wanted that corner, but the Blairs were not willing to give it up and Commercial settled for a parcel to the North (Parcel 1) (R113).

After negotiating between the parties, Woodbury prepared an Earnest Money Receipt and Offer to Lease (dated July 16, 1963), which provides for Commercial to lease from Blairs property at:

> "Approx. 3571 Harrison Blvd. (150' on Harrison to 140' depth at NE corner of Blair land)...Landlord to provide additional parking not less than 150' x 140' adjacent on South to above parcel..." (Exhibit H) (21,000 square feet)

The contingencies in the Earnest Money were not met and either party could have cancelled (R133). The parking arrangement in the Earnest Money was not satisfactory to the Blairs and they refused to sign a lease with that provision (R131,141,146).

Woodbury continued his negotiations between the parties and then prepared the lease (signed in May of 1964) (Exhibit C) (R110), which contains the following provisions:

> "Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following described property in Weber County, State of Utah, hereinafter sometimes referred to as the 'Premises', to-wit:
>
> PARCEL 1: All of Lots 31 to 36, both inclusive, together with the East 10.5 feet of the vacated alley adjacent on the West, Block 26, Nelson Park Addition in Ogden City.
>
> Subject to joint use with other tenants of Lessor of parking area, rights of way and driveways other than drive-in window exits and approaches.

PARCEL 2: Together with joint use with other tenants of Lessor of at least 20,000 square feet of additional parking area, right of way and driveway area located on Lots 25 to 30, inclusive of said Block 26, and upon property adjacent thereto on West."

This language evidences an intention of Lessor to develop the property and have other tenants with joint uses of parking, right of way and driveway.

Parcel 1 was adequate for Commercial's parking needs (R131), but it desired ingress and egress to and from 36th Street as well as Harrison (R114,131), and additional parking area reserved so that the Blairs wouldn't build on all of the remaining property. (R114,131).

Woodbury prepared the description for Parcel 2, and sought to describe it in such a manner that it went to 36th Street and included the Blair property West of Lots 25 to 30 (R130,144,145)

Since the Blairs would not sign the lease with the Earnest Money language regarding the additional parking, (150' x 140' South of Parcel 1), the compromise language was worked out after a long period of negotiations (R131). The Blairs did not intend to reserve the Southeast corner for parking and this intent was discussed with Commercial (R135).

Referring to this corner, Woodbury testified:

> "I'm sure, Mr. Campbell, there was a discussion from the beginning with the bank. First, they (wanted) their own building there. After that, they didn't want to be obstructed. But it's my recollection that when the Blairs wouldn't go along and they knew that I was going to try to develop the rest, and that I was adamant about not having buildings on the corner, it's my recollection that they decided to take their chances and go and that they expected hopefully that nothing would ever interfere, and in any case (certainly) a goodly portion of it had to be reserved for parking."

The lease at paragraph 5 provided:

> "Lessor shall install asphalt surfacing and paint parking lines over portions of the entire premises designated as parking and drive areas, and Lessee shall pay Lessor a pro-rata share of the cost such that Lessee ultimately pays the surfacing and lining costs of the Parcel 1, plus approaches thereto over public property to the East of Parcel 1.
>
> Lessor shall complete surfacing of Parcel 1 and Parcel 2 at or near the same time, such that the entire area will be available for use at substantially the same time."

The driveway approach on 36th Street presumably was located as required by the City, to the West of Harrison so as to not interfere with traffic and lined up with an extension of the vacated alley portion of Parcel 1. In excess of 20,000 square feet of additional parking area was asphalted at the time of

construction of the bank facility as required by the lease and as a matter of convenience for the Blairs at that time was located in the Southeast area of their property, extending to 36th Street, covering Lots 25 to 30, the lot marked N and half of the vacated alley on the West (R83).

At this time, the Blairs had not settled on a plan for the development of the remainder of their property and the permanent location of the additional parking area was not then, nor has it now been finally fixed.

In 1965, Blair was contacted by a gasoline company about leasing a part of the Southeast corner, resulting in Commercial contacting Blair by letter (Exhibit E) stating that the Southeast corner was reserved for parking. Blair responded verbally and stated his understanding of the lease provision (R89) and again with regard to Commercial's letter on American Savings (Exhibit F), Blair responded verbally stating he was under no obligation by law to discuss development plans with the bank (R94).

Blair has maintained from the beginning that there was continuing flexibility in the location of

the additional easement areas so as to be compatible with the expected building development on the remainder of the property. A position Commercial was well aware of prior to signing the lease and a position Commercial accepted.

POINT III
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THE COURTS FINDINGS AND JUDGMENT IS SUPPORTED BY THE EVIDENCE.

The Blairs have on going plans to develop their property and acquire tenants. Presumptively because of set back and side yard requirements, if a building were located on the southeast corner, not all of the land area would be covered by the structure. Nonetheless, Lots 25 to 30 were not committed exclusively for parking. The Blairs desired flexibility. Until they knew how their remaining land was to be developed, they were not willing to commit the southeast corner or any specific part for parking (R149,169).

Commercial knew of this prior to signing the lease and took its chances. Woodbury sought to place this intent and understanding in the lease.

CONCLUSION

It appears that there is ample evidence in the record to establish that Parcel 2 covers the south half of the Blair parcel over to 36th Street; that the Blairs desired flexibility in the location of the 20,000 square feet on Parcel 2 and until their land was developed they were not willing to finally commit any specific portion to parking and easements; that Commercial knew of these positions and was willing to take its chances; and that Woodbury sought to incorporate these concepts into the lease.

The judgment and decree of the trial Court ought to be affirmed.

Respectfully Submitted,

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Attorney for Defendant-
Respondent Blair