

1951

S. W. Dowse v. Fred Kammerman and Vaugh D. Kammerman dba Kammerman Company : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

S. W. DOWSE,

Respondent,

vs.

FRED D. KAMMERMAN and
VAUGHAN D. KAMMERMAN,
doing business as KAMMER-
MAN COMPANY,

Appellants.

Case No.
7719

BRIEF OF RESPONDENT

LAMAR DUNCAN,

Attorney for Respondent.

FILE
OCT 11 1951

Clerk, Supreme Court, U

ARGUMENT
Point 1

The only question before this Court is whether the Quit Claim Deed of plaintiff in 1945 carried the after acquired interest of plaintiff, which he obtained in 1950 whereby he would be estopped from setting up title which he obtained later by the decree of distribution as hereinabove set forth, in the absence of any showing of fraud or misrepresentation.. . . . 3

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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

This is an action in which plaintiff, hereinafter called respondent, commenced an action in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, against defendant, hereinafter called appellant, to quiet title to certain land located in Salt Lake County, State of Utah, and described as Lot 7, Block 1, Holland Subdivision.

Defendants and appellants herein set up title based upon a warranty deed which they had procured from the Doris Trust Company. The Doris Trust Company had in turn received the Quit Claim Deed from respondent who at the time of said conveyance held a tax deed to the land from Salt Lake County. The title to the premises was originally held by one Charles E. Pittorf, who held the property from February 26, 1907. In 1930 the taxes were not paid and on December 22, 1930 the County Treasurer of Salt Lake County executed a tax sale to Salt Lake County. The taxes for the years 1931 to 1934 inclusive were added and on March 31, 1936, an Auditor's Tax deed was issued to Salt Lake County.

On April 24, 1945, Salt Lake County conveyed the property to S. W. Dowse, who with Pearl B. Dowse, his wife, on the 13th day of June, 1945, conveyed to Doris Trust Company, Doris Trust Company thereafter deeded to appellants.

Thereafter on March 14, 1950 respondent Dowse obtained quit claim deeds from the heirs of Charles E. Pittorf who, it appears, had died July 12, 1912. Thereafter, the estate of Charles E. Pittorf was probated and the estate distributed to respondent Dowse as the assignee of the heirs of Charles E. Pittorf.

These facts were stipulated to by the parties at the time of trial, and in addition it was stipulated that

the Auditor's affidavit was missing from the tax assessment and the tax sale upon which the tax deed was predicated was void and defective as heretofore decided by this Honorable Court in the case of *Telonis vs. Staley*, 104 Utah 537, 144 P. 2nd 513, and *Equitable Life and Casualty vs. Schoewe*, 105 Utah 569, 144 P. 526.

Based upon this defective tax deed through which defendants claim title the Court found the issues in favor of plaintiff and against defendant, but ordered plaintiff to reimburse defendants in the sum of \$105.57, the amount paid by defendants and predecessors in interest, to wit, the Doris Trust Company. Plaintiff thereupon paid said amount and was granted a decree quieting title to the land mentioned in his complaint.

ARGUMENT

Respondent in answer to appellants' statement of errors relied upon, is unable to separately answer the three so-called statements of errors relied upon as set forth by appellants, inasmuch as they all resolve themselves into one.

The only question before this Court is whether the Quit Claim Deed of plaintiff in 1945 carried the after acquired interest of plaintiff, which he obtained in 1950, whereby he would be estopped from setting up title which he obtained later by the decree of distribution as hereinabove set forth, in the absence of any showing of fraud or misrepresentation.

Appellants in their brief at page 5 quote from 19 Am. Jur. at page 601 that no estoppel arises from a Quit Claim Deed and state that appellants accept the general statement of the law on the subject as quoted, but add that "special factual situation" as set forth in the case at bar should apply to change this statement.

Then appellants cite a number of cases where equitable estoppel was applied to prevent a person from recovering where he had not acted in good faith or had been guilty of some kind of improper conduct.

Contrary to appellants' inferences, nothing appears from the evidence or anywhere in the record of this case wherein it would appear that plaintiff conducted himself improperly in obtaining the decree of distribution. Further, there is no evidence that plaintiff in 1945 knew of the whereabouts of Pittorf or any of his heirs, when he obtained the defective tax title from Salt Lake County, and after two months sold it to Doris Trust Company, the grantor of Appellants herein. If the plaintiff had had any such knowledge of the whereabouts of Charles E. Pittorf or any of his heirs in 1945 and that fact appeared anywhere in the record or evidence, appellants might have a basis for their contention that plaintiff did not act in good faith; but nothing of that kind is shown.

19 American Juris, page 617, No. 19:

"Effect of Quit-Claim. As a general rule, a quit claim deed, not affirming, either expressly

or by implication, the existence of any estate or interest in the grantor, does not estop him from asserting an after acquired title or interest. Since a Quit Claim Deed as such purports to grant only the estate or interest, the addition of a warranty against the grantor or those claiming by, through or under him, will not estop the grantor to assert a title subsequently acquired, assuming that it is not derived through any act or conveyance of his own prior to the deed in question. On the other hand, if a quit claim deed contains recitals or evidences an intention to convey a particular interest, it may operate by way of estoppel."

In the recent case of *Williams vs. Barney*, 224 P. 2d 1042, decided by this Honorable Court November 29, 1950, it was held that it did not appear that defendant had relied upon any representation of plaintiff's predecessor in interest in the purchase of the tax title and therefore the doctrine of estoppel would not apply.

In *U. S. National Bank of LeGrande vs. Arthur Ben Miller*, 122 Ore. 285, 285 Pac. 205 (1927), 58 A.L.R. 339 at page 344:

"In order to estop a grantor from claiming an after acquired title, the grant must contain references or representations which he is compelled to repudiate in order to assert his after acquired title."

Defendant in the instant case is not disputing any recital or representations in his deed under which plain-

tiff claims. That deed conveyed all the interest plaintiff had in the premises described therein at the time it was made. Defendant is not claiming anything contradicting that deed.

This point is reviewed at length in 58 A.L.R. 360 (note) as follows:

“The general rule is well established that, if a deed does not purport, by express terms or by implication, to convey a particular estate, but only the grantor’s title or interest, in other words, if the conveyance is merely by quit claim deed, and there are no covenants or recitals showing any intention to convey any definite interest or estate, the grantor is not thereby estopped from asserting an after acquired title or interest.” (See cases collected in 58 A.L.R. 360, et seq.)

Further, 58 A.L.R. 362:

“Thus although an ordinary quit claim deed will not estop the grantor from asserting an after-acquired interest, yet a distinct recital in such a deed showing that the parties proceeded on the theory that a particular interest was thereby conveyed may be as effectual to create an estoppel as a warranty.”

In 16 American Jurisprudence, page 637, Sec. No. 344, it is stated as follows:

“It is well established that a mere quit claim deed, by which the grantor professes to convey only such interest as existed in him at the time

of the execution of the instrument, without affirming, either expressly or by implication the existence of any estate or interest in himself does not import that the grantor possesses any interest at all and is ineffectual either by force of an estoppel or otherwise, to pass the grantee any title or right acquired by the grantor subsequent to the execution of such quit claim deed. In other words, a quit claim does not so operate that a title acquired by the grantor subsequently thereto will inure to the grantee. Moreover, if a deed does not affirm or purport to convey any particular estate, a covenant of warranty will be regarded as referring merely to the grantor's existing interest and will not estop him from asserting an after acquired title. It has been so held even as to a quit claim in which the habendum clause would have passed a fee if the grantor had at the time possessed such an estate."

In *Rowell vs. Rowell*, Mont. (1946), 174 P. 2nd 223, the Court held:

"A grantee is estopped to assert an after acquired title only where such assertion would involve the denial that the conveyance passed the interest or estate which it purported to pass."

Again in *Woodside vs. Bertha Durham*, Mo., 295 S.W. 772 (1927), 535 A.L.R. 884:

"An equitable estoppel does not arise from any act or conduct unless it is relied upon by another who is thereby caused to change his situation or to suffer detriment or losses."

If the deed by Respondent to the Doris Trust Company expressly or impliedly indicated an intention to pass any after acquired title which he might have obtained, then and in that event the position of appellant would have merit. This does not appear from the evidence however, and we submit that the whole transaction was one in which the seller Doris Trust Company received what it bargained for. Further, there is no evidence to show that Respondent at the time of such conveyance knew or had any knowledge concerning the whereabouts of Pittorf, and that such information was withheld from the purchaser, Doris Trust Company.

There is no showing of any fraud or deceit at any time on the part of Respondent Dowse and by the simple doctrine of caveat emptor appellant knew or should have known what he was buying when he received the quit claim deed from Respondent Dowse.

CONCLUSION

We therefore submit in conclusion that appellants have wholly failed to show any evidence of fraud, misrepresentation or any reliance upon any statement or conduct of respondent which induced Doris Trust Company, the predecessor in interest of plaintiff to make such purchase from said respondent, whereby such conveyance would come within the rule of exceptions to Quit Claim Deeds. Therefore and in the absence of such showing and in view of the numerous decisions

upon the subject, some of which are hereinabove mentioned, we respectfully urge that the judgment be affirmed.

Respectfully submitted,

LAMAR DUNCAN,
Attorney for Respondent.