1979

Antonnette Battistone v. American Land and Developemtn Co. et al : Brief of Appellant

Utah Supreme Court

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CASES CITED

IN THE SUPREME COURT FOR THE

STATE OF UTAH

ANTONNETTE BATTISTONE, Plaintiff-Appellant, vs. AMERICAN LAND AND DEVELOPMENT CO., a corporation, ROYAL GARDENS, a limited partnership, and DAN A. CLARK, Defendants-Respondents.	)	Case No. 16527

BRIEF OF APPELLANT

STATEMENT OF KIND OF CASE

This is an action brought by plaintiff-appellant for a judgment against defendant-respondent seeking to have defendant-respondent reconvey to plaintiff-appellant .68 acres of land quit-claimed to defendant-respondent by a record title holder who was, in fact, a constructive mortgagee, or for the value of the land.

This appeal is based upon the record, exhibits and transcript in this matter. All references to the transcript are designated as (T) using the numerical designation found in the lower right-hand corner. All references to the parties will be as they were designated in the lower court.

DISPOSITION IN LOWER COURT

The court, sitting without a jury, entered a judgment for the defendant, finding that plaintiff had failed in her burden of proof of showing that defendant occupied or had sold any specific piece of real estate belonging to plaintiff.

STATEMENT OF FACTS

Plaintiff, Mrs. Battistone, was the owner of certain farming property in Kanesville, Weber County, Utah, having owned the same since 1923. In 1968 a warranty deed (Defendants' Exhibit 1) for said property was given to Wildon Hales and wife to secure an obligation to the Hales. (T 28) Thereafter, and on the 16th day of February, 1973, plaintiff entered into a real estate contract to sell a portion of the farm to L. J. Cummings and Steven Cummings so that the proceeds of the sale could be used to pay on the mortgage to Hales. (T 28, 29, 30) In the contract to the Cummings, (Plaintiff's Exhibit B) the only description of the property to be sold to the Cummings was "the South 20 acres of the following described property" and thereafter followed the legal description of the farm that exceeded 20 acres. Cummings, in turn, sold to the defendants 20 acres, (T 33) and defendants knew they were not purchasing more than 20 acres. (T 33) Difficulty arose between defendants and Cummings and suit was filed by defendants against Cummings for only 20 acres. (T 34, 35) Defendants knew that plaintiff was the actual owner of the property, not Wildon Hales and wife (T 36) and that Cummings who sold to Royal Garde-

was dealing with plaintiff, Mrs. Battistone, and not Wildon Hales, the record owner. (T 33) There were two separate conveyances to transfer the 20 acres from Battistone ownership to defendants. The first one involving approximately 9.88 acres (Defendants' Exhibit 2, T 50, 51) was a quit-claim deed from Wildon Hales, the record owner, but in fact the constructive mortgagee, back to plaintiff Battistone and from plaintiff Battistone to Cummings, (Defendants' Exhibit 3, T 51) and then from Cummings to defendant Royal Gardens. (Defendants' Exhibit 4, T 52) The second parcel that was to have completed the 20 acre parcel circumvented Mrs. Battistone and was a quit-claim deed from Wildon Hales directly to Royal Gardens. (T 53, Defendants' Exhibit 5)

Douglas Croft, owner of American Title Insurance Company, testified that the North-South dimensions of the two tracts would be 650 feet, (Defendants' Exhibit 6) and that if there was to be 20 acres of that dimension, the measurements would have to be lengthened from East to West. Charles Muncey, land surveyor, computed the acreage conveyed by Exhibit 2 as 9.88 acres (T 63) and after the second parcel was conveyed, that the acreage received by defendants was 20.68 acres.

ARGUMENT

POINT I

THE COURT ERRED IN CONCLUDING THAT JUDGMENT COULD NOT BE GRANTED TO PLAINTIFF BECAUSE A SPECIFIC PIECE OF REAL ESTATE BELONGING TO PLAINTIFF WAS NOT OCCUPIED OR POSSESSED

BY THE DEFENDANT AND THERE SHOULD BE A REFORMATION OF DEED.

The deed to Wildon Hales was never considered to be more than a security instrument for monies loaned plaintiff, Mrs. Battistone. This was known to be the case by the defendant. This is evidenced by the fact that when the first parcel consisting of 9.88 acres was conveyed to Royal Gardens, it took a series of deeds to accomplish the task, i.e. from Hales back to Battistone, from Battistone to Cummings and from Cummings to Royal Gardens. The second parcel, consisting of 10.80 acres, was conveyed by a quit-claim deed from Hales to Battistone.

It is elementary that a quit-claim deed conveys only the title that the grantor has. If it is an imperfect title, imperfect title is conveyed. If it is a perfect title, perfect title is conveyed.

An argument could be made that if the defendants had no knowledge that Hales was not the actual owner of the property conveyed and plaintiff had made him appear so, that Hales could convey good title to defendant. But Hales was not the owner of the property conveyed, only a mortgagee in effect, and what is more, defendant knew this because of the prior transaction and the acknowledgment of Clark, the general partner of Royal Gardens, that he knew plaintiff, Mrs. Battistone, was the actual owner of the property conveyed. Also, defendant Royal Gardens never was under the expectation or impression that it would receive more than 20 acres.

Mr. Hales' title was imperfect, it was known by

defendant to be imperfect, and the quit-claim deed conveyed an imperfect title to the .68 acre that was in excess of the amount sold by Mrs. Battistone to Cummings and sold by Cummings to Royal Gardens.

Mrs. Battistone had contracted to sell to Cummings 20 acres, not approximately, not about, not more or less, but 20 acres. Defendant Royal Gardens knew this because it had to sue Cummings on its contract with Cummings for the property and it sued for 20 acres only, not approximately, not about, not more or less. However, when the deed to the second parcel came directly from Hales, it contained 10.80 acres, making the total conveyed as a result of the Battistone-Cummings, Cummings-Royal Gardens contracts, a total of 20.68 acres. This was well known to Dan Clark, general partner of Royal Gardens and he must have felt that fortune had indeed smiled upon him. He had contracted to purchase only 20 acres and had ended up with 20.86 acres. Should he be allowed to keep it or should title to that portion be returned to Mrs. Battistone? The 20 acre parcel was appraised at $11,500 an acre or $7820 for .68 acres. It would not be equitable or just to allow Royal Gardens to retain this strip of land because it knew a mistake had been made, had received more than it was entitled to and more than plaintiff Battistone had agreed to sell Cummings. Royal Gardens' entire claim to ownership has to be based on the Cummings contract for only 20 acres.

There obviously was a mutual mistake of fact and the

deed from Hales to Royal Gardens should be reformed so as to eliminate a transfer to Royal Gardens the .68 of an acre deeded to Royal Gardens by Hales by mistake. Hales mistakenly quit-claimed more acreage than he should have, no doubt considering that the parcel he was deeding completed the 20 acres sold by Mrs. Battistone to Cummings and by Cummings to Royal Gardens. Mrs. Battistone should not be bound by Mr. Hales' mistake. Royal Gardens mistakenly thought that the deed from Hales would complete the 20 acres conveyance and did not know of the mistake until the controversy between the parties arose and the property was surveyed. See McMahon vs. Tanner (Utah) 249 P2 502; Janke vs. Beckstead (Utah) 332 P2 955.

It was established by defendants' witness that because the North-South width of the parcel of land was 650 feet, that in order for 20 acres to be involved, the measurements would have to be extended East to West. They could not be extended West because the measurements commenced in the center of the county road. (T 70, Defendants' Exhibit 6) The deed from Battistone to Royal Gardens to the first parcel commences in the center of the road (3100 West) and ends there. (Defendants' Exhibit 6, Defendants' Exhibit 3) Therefore, if there is an overage of .68 feet, it has to be on the East end of the parcel conveyed by Hales by quit-claim deed directly to Royal Gardens and could have been found with facility by the court. This .68 comprises 29,620 square feet and it must be compressed within the 650

feet from the North to South boundary, it would consist of a strip of land 650 feet by 45.5 feet.

Royal Gardens then should not have good and sufficient title to this strip of land because Royal Gardens never has or could contend it was entitled to more than 20 acres. Hales never owned this strip and what is more important, Royal Gardens knew he did not. The quit-claim deed from Hales did not convey something Hales did not have.

CONCLUSIONS

The judgment of the lower court should be reversed and the matter remanded to the District court with instructions to reform the deed from Hales to Royal Gardens and return to plaintiff the strip of land 650 feet by 45.5 feet on the extreme East end of the parcel of land described and shown in Defendants Exhibit 6.

Respectfully submitted,

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CERTIFICATE OF DELIVERY

I hereby certify that on the 30th day of August, 1979, I hand delivered 2 copies of the foregoing Brief of Appellants to LaVar E. Stark, Attorney for Defendants-Respondents, 2651 Washington Boulevard, Ogden, Utah.

Secretary