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L. K. Gates, E. L. Hansen, R. O. Porter & C. C.
Randall v. C. J. Daines and M. C. Daines : Brief of
Appellants

Utah Supreme Court

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In the Supreme Court of the State of Utah

L. K. GATES, E. L. HANSEN,
R. O. PORTER & C. C. RANDALL,
plaintiffs and appellants,

vs.

C. J. DAINES and M. C. DAINES,
defendants and respondents.

BRIEF OF
APPELLANTS

Civil No. 8243.

Appeal from the District Court of Cache County, Utah

Honorable Lewis Jones, District Judge

GEO. D. PRESTON

Attorney for Appellants.

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STATEMENT OF FACTS

(References are to pages numbered by the Clerk).
This case involves the misconstruction of an agreement. In January, 1952, C.J. Daines, Merrill C. Daines, L. Keith Gates, E.L. Hanson, R.O. Porter, and C.C. Randall, all medical doctors, formed what they termed "Cache Valley Medical Group", and leased a lower portion of what was formerly the Cache Valley Hospital. Each member of the group occupied separate office space, and all of them used conjointly other space, such as the waiting room, hallways, x-ray room, etc. Each doctor paid the same amount of rental into a common operating fund, regardless of the size or desirability of the particular rooms. There was no agreement, either oral or written that either of them was to occupy any particular space or rooms, or suite of rooms. All

of the parties signed the lease with the Church Organization which covered a term of 5 Years, and which does not terminate untill January 14, 1957. The two Drs. Daines decided to move from the building upon completion of their own clinic building and served notice in writing on plaintiffs and appellants of their intention to move and cancellation of the contract in question, Exhibit "A". The informality of the rental arrangement had existed ever since 1928 (P30), and Dr. C.J.Daines had been associated with the others for many years prior to the formation of the Cache Valley Medical Group. Over these years no particular space had been assigned to individuals, and they moved about from one to another of the offices. (P31&32). When defendants and respondents removed from the building into their own clinic they paid the rentals as provided in Ex. A. About two months after the removal, Dr. C.C. Randall, with the consent of those remaining in the group, moved into the quarters previously occupied by Dr. Merrill C. Daines, leaving portions of the total quarters vacant, and which are still vacant. The respondents refused to continue the payment of rentals, except the sum of \$17.50 per month for the jointly used space. There has been no renting or leasing to any party outside of the Group, nor has any offer been made by respondents to provide a tenant or tenants so that there would be increased rentals. The clause of Ex.A. in question is as follows:

"It is further agreed that if the space upon which Doctors C.J. Daines and M.C. Daines are

paying rent is sub-leased or rented to another party other than a member of the now existing group, thereby increasing the revenue received by the Cache Valley Medical Group, that Doctors C.J. Daines and M.C. Daines are no longer obligated to pay rent on said space while so rented.”

The Court below in its memorandum of decision specified that it would allow Dr. Randall 5 days in which to make an election to move out of the quarters which M.C. Daines had previously occupied P. 99; if he moved out the rent was to be \$35.00, but if he stayed in the rent was to be \$17.50. Dr. Randall did not elect to move, and the Court then entered the judgement appealed from.

ARGUMENT - POINT 1.

The Court erred by making and entering its judgement in favor of defendants and against plaintiffs.

It seemed to be the theory of the Court (finding No. 5) that the act of Dr. Randall constituted an eviction. Finding No. 11 is to the effect that respondents rented a specific portion of the building. A casual reading of this document (P.6) shows how this finding is in error, because there is no particular portion of the building allotted to any individual. It was the error of this finding which in large measure lead the Court to its final judgement. It will be helpful to analyze the contract of December 9, between the parties.

All of the members had been paying the sum of \$100.00 per month, and some of the property was jointly

owned. By the instrument those remaining in the group paid the Daines an agreed amount of \$2400.00 when the agreement was made, and the Daines proportion of the oprating fund then on hand, and their proportion $\frac{1}{3}$ of the uncollected x-ray fees. Not one word was said in the instrument about the Daines retaining a leasehold interest in the property. In fact, the only reason for the compromise of rentals from \$100.00 each, or \$200.00 monthly rent for the Daines, to the total sum of \$55.00 per month was to terminate any leasehold rights in the property which the Daines formerly had, and which right was to occupy a portion of the premises. It was after the appellants had paid the \$2400.00 and other amounts, and had taken advantage of everything tangible in the contract that they sought to take further advantage of the fact that Dr. Randall had moved into the space formerly occupied by Dr. M.C. Daines. The instrument was drawn up between the Doctors concerned and passed back and forth with suggestions incorporated. It cannot be the instrument of either party, and therefore, a construction favoring either party cannot be applied to it. Futhermore, the contract is plain and needs no construction.

The second paragraph says that appellants agree to pay to the Group "*their portion* of the incompleated leasefor the space now occupied by the Cache Valley Medical Group". (Underlining mine). "That portion" refers to the money portion which they agreed

to be compromised to \$55.00 per month, and not a specified portion of the floor space. Then the next to last paragraph states that if the space is let TO ANOTHER PARTY OTHER THAN A MEMBER OF THE NOW EXISTING GROUP (mine) thereby increasing the revenue by the Cache Valley Medical Group'', respondents are relieved from rent on said space while so rented. The contract then states that upon signing of the agreement, the Daines are no longer members of the group. Thus, respondents have no right to occupy the premises themselves, and if this is so, they cannot sub-let it to anyone else. The very plain meaning of the contract is that if the remaining group increase the rentals, the Daines should have the benefit thereof.

It would have been easy enough to provide in the agreement that if any of the remaining Group occupied that formerly occupied by the Daines, the Daines should be excused from further rentals.

Futhermore, it should be apparent that the Group took over all of the premises, for in the last paragraph they relieved the Daines "from any and all liability and damages which may be incurred by said Group after December 1, 1953, thus becoming the tenants of the entire property and liable for damages to all persons as such tenants.

The Court by its judgement has ruled that if any of the remaining Group occupy the portion of the prem-

ises in question, formerly occupied by M.C. Daines, respondents are relieved from rent. That is not construing a contract, it is making a new contract for the parties.

East Mill Creek Water Co. v. Salt Lake City, (Utah), 159 P. 2d 863. "To give this term (said water) the construction urged by plaintiff would require more than mere construction of the language used it would require us to read into the contract the term "said water". That would amount to making a contract for the parties rather than construing the one they made, which is clearly not our prerogative."

The Construction placed by the lower Court and Counsel for respondents would entirely strike out of the contract the following words: "to another party other than a member of the now existing group, thereby increasing the revenue by the Cache Valley Medical Group". The paragraph would then read:

"It is further agreed that if the space upon which Doctors C.J. Daines and M.C. Daines are paying rent is sub-leased or rented Doctors C.J. Daines and M.C. Daines are no longer obligated to pay rent on said space while so rented".

That change, we submit, is an alteration of the contract which the Court is not permitted to make. The Court must give effect to all parts of a contract. *Ryan v. Curley Irrigation & Reservoir Co.*, (Utah) 104 P. 218.

It must not be forgotten that all of the parties to this action had moved about in and out of different quarters in the premises (P. 31-34) ever since 1928, with-

out any change in rentals paid (except in one case). And it was not until after the Daines had collected the moneys from the Group under the contract that they claimed the right to use any specified portion of the premises.

The wording of this clause is clear and plain. It has two parts, both of which must occur before the Daines are relieved of rent. First, the occupancy must be by one not a member of the Group. Second, the revenues by the CACHE VALLEY MEDICAL GROUP (mine) must be increased. Neither contingency has occurred, and it must be remembered that there is still vacant space in the building subject to rental. The language being plain is not subject to construction by the Court. *Richlands Irr. Co. Westview Irr. Co. (Utah)* 80 P. 2d 458.

On August 7, 1953 the defendants served a written notice on the plaintiffs (Ex.P-1), that they intended to vacate the premises on the 1st day of the next November. The notice also served as a termination of their membership in the partnership. They made no claim, in this notice, that they intended to insist that the space be not occupied by one of the remaining members of the firm. So far as the record shows no one has ever applied to rent it (p.65). Dr. Randall testified, without dispute, (p. 66) that if the Daines could produce a renter for the space it is still available to them.

The Court, at first seemed to see the case in its true light, when it commented (p. 67) “Well, of course, the lawsuit arises, I guess, You wrote the notice and said, “We hereby vacate the premises, and this is notice that the dust will start to accumulate and we wont pay any more.”“So they Move in.”

Dr. Daines, himself (C.J.D.) testified (P.72) that movements within the building were approved by the group, and that movements were often made among different suites, but, seems now to claim that he, alone can still control a specific part of the building; a right he did not have when he was a member of the group. This position is untenable (P. 76 - testimony of C. J. Daines). The inconsistency of Dr. Daines appears on page 78 of his testimony where he claims to have the right to rent the property to a junk dealer.

M.C. Daines testified (P. 89) that they did not have any definite use for the space - that they might just “leave it empty”, and that it would not benefit them any. They have never had a firm bid for a lease of any space.

The interpretation that parties place on a lease or document is usually, and in this case, is controlling. The defendants have placed their interpretation on the document in question in the following language.

(p. 96) A. My interpretation of that if they bring in some manner on the outside to increase their revenue, I no longer have to pay rent for that space.

Q. Now, have they brought anybody in form either the inside or outside which has increased the revenue?'. A. Not to my knowledge.

We fail to see any further need for interpretation.
Trucker Sales Corporation v. Potter(Utah), 137 P.2d 370.

ARGUMENT POINT 2.

The Court erred by entering its findings of fact numbers 9, 10, 11, 12, 15 and 17.

This point brings out specific findings which it is felt are objectionable, for the same reasons that the decision and judgement should be reversed. There is no word in the record that there is not space available for rentals to outside parties-nor is there any word in the record that such space is not usable, valueable and rentable as that now occupied by Dr. Randall.

ARGUMENT POINT 3.

The Court erred by failing to make a finding to the effect that the occupancy of portion of the premises by Dr. C.C. Randall did not increase the revenue of the Cache Valley Medical Group.

The Court should have found, upon the testimony of M.C. Daines cited above that the revenues of the remainder of the Group have not been increased. Such a finding would preclude a judgement for defendants, and made mandatory a finding and judgement for plaintiffs as prayed for.

ARGUMENT POINTS 4 AND 5

The Court erred in making its conclusions of law, and in failing to render judgement in favor of plaintiffs.

The reasoning on these points is the same as Point 1, and those arguments are adopted, with authorities cited.

We submit the judgement below should be revised.

Respectfully submitted,

Geo. D. Preston,
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and Appellants.