

1954

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

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Gates v. Daines*, No. 8243 (Utah Supreme Court, 1954).
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In The Supreme Court of the State of Utah

L. H. GATES, E. L. HANSEN,
R. O. PORTER and C. C. RANDALL,

Plaintiffs and Appellants,

— vs —

C. J. DAINES and M. C. DAINES,
Defendants and Respondents.

BRIEF OF
RESPONDENTS

Appeal No. 8243

Appeal from the District Court of the First Judicial
District of the State of Utah, in and for
the County of Cache.

Honorable Lewis Jones, District Judge

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In The Supreme Court of the State of Utah

L. H. GATES, E. L. HANSEN,
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STATEMENT OF FACTS

Respondents feel that a further enlarged statement of facts is necessary to understand more fully the matter in issue. The agreement pleaded in the complaint and before the court for construction was entered into on December 9, 1953, with the appellants of the one part and the respondents of the other part. That prior thereto, all of the parties to this action constituted the Cache Valley Medical Group and leased the premises involved in this action from Zions Security Corporation. This lease provided: (Para. 4, Pl. Exh. 2) "Lessee may have the right of substituting occupants in the improved office space if one or more of the Lessees shall remove from the premises or other members join the group."

And in paragraph 2 of said lease: "This lease shall be subject to termination by lessee at any time upon ninety days written notice to the lessor."

Prior to August 7, 1953, the respondents decided to move from the premises, and served notice upon the appellants of their intention so to do. This notice is part of the record in this case identified as plaintiffs' Exhibit 1. A controversy arose as to the right of the respondents to move out and be relieved of paying rent under the lease, and the Agreement of December 9, 1953, which is set out in full in the complaint and in Findings of Fact No. 2, was entered into as a compromise settlement. (Tr. 57) The respondents agreed to pay the appellants the sum of \$55.00 per month during the term of the Zion's lease. The appellants then agreed to return to the respondents the sum of \$20.00 per month to cover the space which had theretofore been used by all of the parties jointly. The effect of this was to leave a net rental which the respondents were to pay to the appellants of \$35.00 per month to cover the space which had been occupied by the respondents individually. (Tr. 39 and 40, 58 and 59). The respondents paid this net rental of \$35.00 for the months of December, 1953 and January, 1954, (Tr. 75) and then discovered that appellant Dr. C. C. Randall had moved into and occupied the rooms which had been previously occupied by respondent Dr. M. C. Daines, and thereupon respondents refused to pay the full \$35.00 per month and tendered the sum of \$17.50 for the month of February, 1954. (Tr. 74). This lawsuit followed, consisting of an action by the appellants to collect the full February rental in the sum of \$35.00 from respondents.

The question before the lower court was the interpretation of the following paragraph found in the compromise agreement of December 9, 1953:

“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 lower court determined that under said Agreement, the respondents were paying said \$35.00 per month rent on specific space, i.e., that used by them prior to their moving, and that under said agreement they were entitled to sub-lease said space in order to reduce the amount they had agreed to pay, and that they would be unable to exercise this right so long as Dr. C. C. Randall occupied it without their permission. The court thereupon determined that until Dr. Randall vacated said space, the respondents were relieved from paying one-half of said net rental.

ARGUMENT

This case was tried before the District Judge sitting without a jury. He heard the testimony of the witnesses and confronted them face to face. His findings are supported by the evidence and his conclusions of law are supported by the findings. Both the findings and the conclusions of law support the judgment. We see no basis upon which appellants can rely to have this judgment reversed by this court.

It is respondents' theory of this case that under the agreement of December 9, 1953, they were paying \$35.00 per month rental on certain specific space, to-wit: Rooms

3, 4 and 5, which said rooms they had occupied exclusively while they were associated with the Group. It is their further theory that under the paragraph under interpretation, they had the right to sublease said space if desired. This sublease could be either to a member of the remaining group or to another party other than a member of the remaining group.

If the sublease was to a member of the remaining Group, or to another party when there was no increase in rental to the group, the net rental to be paid by the respondents would remain at \$35.00 per month. If the sublease was to another party other than a member of the remaining group, and rent was received from this sublessee, then the net rental to be paid by the respondents would be reduced. But in any event, it was the respondents, who were paying rent on the space, who could give the permission for a sub-tenant to move into this space. The record is clear that no such permission was given to Dr. Randall to move into the space upon which the respondents were paying rent, and the court properly found that the act of Dr. Randall in so doing constituted an eviction.

The lower court accepted this theory of the case, and rightly so. Appellants argue that the respondents were not paying rent for any specific portion of the building, and state there was no particular portion of the building allotted to any individual. The evidence of witnesses for the appellants themselves, shows otherwise. Dr. Randall admitted on cross-examination that although there were no written agreements as to which space each would occupy, there were oral agreements. And see the testimony of Dr. C. J. Daines on this point at page 72 of the Tran-

script, and of Dr. M. C. Daines at page 93. Dr. Randall further stated that each of their individual rooms was theirs, and that no one else in the Group would concern themselves with nor interfere with those individual rooms. (Tr. 41, 42, 43 and 44). Dr. Randall also testified (Tr. 58 and 59) that the \$35.00 per month rental paid by the respondents under the December 9th agreement was for the space they (respondents) had been using separately. Dr. Porter, another of the appellants, testified to the same effect, that the \$35.00 per month net rental was for the individual space of the respondents. (Tr. 39 and 40).

And there are other factors which bear out the court's interpretation of the transaction. The agreement, in the paragraph set out in full above, specifically refers to

“the *space* upon which (respondents) are paying *rent * * .*” (underlining ours).

And specific use is made in said paragraph of the legal words “subleased.” If we give the proper import to this language, it can mean only one thing, i.e., that the respondents agreed to pay rent to the appellants for certain space. This sets up a landlord and tenant relationship. The agreement then states that if this space is subleased, certain rights and liabilities will arise. This leads to the inescapable conclusion that it is the respondents, the ones who agreed to pay rent on this certain space, who have the authority to sub-lease said space. It would certainly be a new twist to the law of landlord and tenant if it were to be held that the landlord could sub-lease the demised premises out from under the tenant who was paying rent upon it and otherwise complying with the terms of the rental agreement.

We think that by reason of the paragraph in question, the respondents had the right to sub-lease the space upon which they were paying rent. If they sub-leased to a member of the remaining group free of further rent, then respondents were required to continue to pay the net rental of \$35.00 per month. However, if respondents were able to sub-lease to a tenant other than a member of the remaining group and secure rent from such a sub-lease, then they could relieve themselves of the rent they had agreed to pay.

It is undisputed that Dr. Randall moved into part of the space upon which the respondents were paying rent and that said move was made without their consent. He further stated that he would not move out to make way for a sub-lessee unless he (Dr. Randall) approved of the new tenant. Such a position, if upheld effectually blocks the respondents from securing a sub-tenant, and forces them to pay the monthly rental as long as Dr. Randall desires, and during which time, mind you, while Dr. Randall would be using the space upon which the respondents would be paying rent.

What constitutes an eviction varies under different circumstances, but all authorities agree that:

“When use or possession ceases by reason of an act of the landlord, the consideration for the payment of rent ceases or fails.” 32 Am. Jur., Landlord and Tenant, Sec. 478, p. 391.

What possible use or possession, or what right or control over the rented premises, could be exercised by the respondents so long as Dr. Randall occupies them and refuses to move except to give way to a sub-lessee of his own choosing?

In concluding there are several points raised in appellants' brief, which should be commented on.

On page 7, appellants argue the point that respondents, in the August notice of their intention to move, made no claim that the space could not be occupied by the remaining members. It is obvious from the record that when this notice was sent, the respondents were operating under the theory that under the terms of the Zion's lease, they could move and be relieved from contributing to the Groups rental. In other words, that it was contemplated under paragraph 4 of the Zion's lease that the group could change its membership. Why then, under such a theory, should there be any statement in such a notice that the rooms should be left vacant. When the appellants did not agree to this theory, a dispute arose, resulting in the December 9th Agreement. But this was long after the August notice had been sent.

Appellants' brief carries throughout its pages several assertions that no one has ever applied or been interested in sub-leasing the space. The record shows otherwise. (Tr. 87 and 88). Without doubt, there were discussions with at least one doctor, and probably others, about sub-leasing the very space involved in this lawsuit.

Finally, on pages 8 and 9 appellants take some of the testimony of Dr. M. C. Daines out of context, and attempt to make it sound as though there were only one course of action open to the parties, i.e., bringing in someone from the outset thereby increasing the revenue. A study of the other testimony of Dr. M. C. Daines will show that it was his opinion that if someone else, other than him or his

father, occupied the premises involved without permission of the Daines', that the Daines would be relieved of paying rent. (Tr. 95 and 98).

CONCLUSION

This is not an important case from the viewpoint of the substantive law of this state or insofar as the amount involved is concerned. And because of the singular nature of the particular provision before the court for construction, there is no case in point to refer to for guidance in making a decision. The District Judge had the benefit of having the parties to the agreement before him, and based on the evidence presented by them, he entered findings of fact, conclusions of law and judgment in favor of the defendants below, respondents here. These findings of fact are supported by the evidence, and the conclusions reached from these findings are fair ones and reasonable ones. They support the judgment entered by the court. It is respondents' belief that under such circumstances, the interpretation placed on the agreement by the lower court, as reflected in said findings, conclusions and judgment, should not be lightly overturned.

In our opinion, the judgment below should be affirmed.

Respectfully submitted,

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