

1981

Ute Cal Land Development Corporation v. Robert R. Sather and Bonnie Lee Sather : Brief of Defendants and Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTE CAL LAND DEVELOPMENT
CORPORATION,

Plaintiff and
Respondent,

Case No. 17625

vs.

ROBERT R. SATHER and
BONNIE LEE SATHER,

Defendants and
Appellants.

BRIEF OF DEFENDANTS AND APPELLANTS

APPEAL FROM ORDER OF THE FOURTH DISTRICT
COURT IN AND FOR UTAH COUNTY, UTAH,
DISMISSING DEFENDANTS' COUNTERCLAIM AS
OCCUPYING CLAIMANTS, THE HONORABLE
DAVID SAM, JUDGE

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Case No. 17625

BRIEF OF DEFENDANTS AND APPELLANTS

STATEMENT OF THE KIND OF CASE

This is an action where defendants, as counterclaimants, seek to recover for improvements to real property made by them as occupying claimants.

DISPOSITION IN LOWER COURT

Plaintiff's Motion for Summary Dismissal of defendants' Counterclaim was granted without a trial. It is from this Order of Dismissal that defendants appeal.

RELIEF SOUGHT ON APPEAL

Defendants seek reversal of the Order of Dismissal and request the Supreme Court to remand the case to the District

Court for trial on the merits of the issues raised in defendants' Counterclaim.

STATEMENT OF FACTS

During or about the month of March, 1974, defendant ROBERT SATHER, upon payment of the sum of \$46,560.00 to the First Security Bank for application on a note of plaintiff UTE CAL LAND DEVELOPMENT CORPORATION, which note was guaranteed by SATHER, obtained a deed being held by the First Security Bank and signed by UTE CAL and took possession of the property designated as the "Moss Ranch" in Uintah County, Utah. UTE CAL did not tender any sum to SATHER as a reimbursement for the money paid by SATHER to the First Security Bank, and SATHER continued to occupy the premises and paid the property taxes thereon for the years 1973 through 1977 without repayment or tender of repayment by UTE CAL.

Beginning in 1975 SATHER made improvements to the property consisting of land clearing, land leveling, fencing and installation of irrigation ditches and reservoir facilities, thereby adding in excess of \$30,000.00 to the value of the land. (Affidavit of Sather R24-26; Sathers' Counterclaim R13-15).

Upon a Court trial in May 1978 to determine ownership of said property, the jury found that SATHER had improperly obtained said deed and in doing so in March 1974, had acted "wilfully and maliciously" toward the plaintiff. As a result of said jury verdict, SATHER was directed by the Court to surrender the property to UTE CAL upon being paid the sum of

\$21,500.00 by UTE CAL (which sum has not been paid), and SATHERS' Counterclaim for recovery of the value of said improvements was reserved by the Court for later determination. (R37, 39; Ute Cal Land Development Corporation vs. Sather, 605 P2d 1240).

In May 1980, UTE CAL filed its Motion to Dismiss Sathers' Counterclaim on the grounds that the findings of the jury to the effect that SATHER, in March of 1974, had acted improperly in obtaining the deed to the Moss Ranch, precluded SATHER from successfully claiming "good faith" in making valuable improvements to the premises in 1975 and after. (R27) SATHER, in response to the Motion to Dismiss, filed a sworn Affidavit to the effect that said improvements were made with the knowledge and at least implied consent of UTE CAL and in the belief that UTE CAL did not assert any ownership in said property. (R24-26; see Appendix A). No counteraffidavit was filed on behalf of UTE CAL.

Thereupon the Court below, on February 26, 1981, after considering arguments and written memoranda of respective counsel, entered an order dismissing SATHERS' Counterclaim with prejudice on the grounds that SATHER'S conduct in March 1974 prevented SATHER from making improvements to the property in question in "good faith" in 1975 and later within the scope of the Utah Occupying Claimant Statute. (R37-39)

It is from this Order of Dismissal With Prejudice that SATHER appeals.

ARGUMENT

POINT I

THE UNREFUTED AFFIDAVIT OF DEFENDANT SATHER RAISES MATERIAL QUESTIONS OF FACT AS TO THE "GOOD FAITH" OF DEFENDANTS IN MAKING IMPROVEMENTS TO THE PROPERTY IN QUESTION, AND THUS THE COURT BELOW ERRED IN SUMMARILY GRANTING PLAINTIFF'S MOTION TO DISMISS DEFENDANTS' COUNTERCLAIM.

An occupying claimant is required to establish two elements before he can recover for improvements placed on real property found to belong to another. These elements are: (1) that he has color of title to the premises in question; and (2) that he has in good faith made valuable improvements thereon. (See Section 57-6-1, Utah Code Annotated 1953, as amended).

There is nothing in the record to dispute SATHER'S Affidavit that he made valuable improvements to the property in question with the knowledge and with the consent of plaintiff, at least implied, and that SATHER, during his occupation of the premises, paid the ordinary taxes thereon for more than one year without any repayment by plaintiff for longer than two years, or at any time for that matter. SATHER is thus deemed to have held the property in question under color of title. (See Section 57-6-4, Utah Code Annotated 1953, as amended).

The real remaining issue then is whether such improvements as defendants claim to have made were made in good faith. Defendants contend that the facts of this case as they are now before the Court present a question for trial which cannot be disposed of summarily on a motion to dismiss.

The good faith of SATHER in making such improvements is a question of fact to be determined by all of the facts and

circumstances surrounding the case. If at the time the improvements were made, SATHER honestly believed he had a right to do so, he would have been acting in good faith. The time for determining the good faith of SATHER was at the time the improvements were made in 1975. This matter was never considered by the jury at the prior trial when it found that SATHER had acted "wilfully and maliciously" in January of 1974 when he obtained the deed from the First Security Bank. (Ute Cal vs. Sather, supra.) The jury had before it no evidence with respect to improvements to the property or the circumstances which existed during the year 1975 when the improvements were made, and defendants submit that the finding of the jury with respect to a matter allegedly occurring in January 1974 would not necessarily be the same or be controlling with respect to matters occurring almost two years later, particularly when additional facts and circumstances existed and would be relevant at the later date.

The pleadings and the Affidavit of SATHER (R24-26) raise genuine issues of fact with respect to SATHERS' claim for the value of the improvements under the Occupying Claimant Statute, particularly with reference to defendants' "good faith" in making said improvements.

As stated in 41 Am. Jur. 2d 491, "good faith" is an existing state of mind and is a question of fact to be determined in each particular case. (See Alleman vs. Miner, 10 Utah 2d 356; 353 P2d 463).

A motion to dismiss should not be granted unless it

appears to a certainty that the party would be entitled to no relief under any state of facts which could be proved in support of his claim. By the unrefuted sworn Affidavit on file in this matter, SATHER has offered a reasonable justification for his placing improvements on the land, based upon the conduct of the plaintiff itself, to-wit:

"That said improvements were made openly and with the knowledge of the plaintiff and at least with plaintiff's implied consent, in that plaintiff did not at any time object to the making of said improvements by me.

"That said improvements were made by me in the belief that plaintiff did not assert ownership in the property in question because it made no effort to repay the money paid by me to the First Security Bank as above set forth, and at the time I made said improvements I did believe that in fact I was the owner of said property." (Sather's Affidavit R24-26).

Whether such reasoning by SATHER rises to a level of "good faith" is a question of fact which should be determined upon trial. (See Rule 12(b), Utah Rules of Civil Procedure; Rule 56, Utah Rules of Civil Procedure; Liquor Control Commission vs. Athas, 121 Utah 457; 243 P2d 441).

The question of "good faith" is to be determined at the time the improvements are made and it is the contention of the defendants in this matter that the unrefuted Affidavit of defendant SATHER raises a question as to such "good faith" which should be resolved at trial. As pointed out in the case of Holbrook vs. Adams, 542 P2d 191:

"It only takes one sworn statement under oath to dispute the averments on the other side of the controversy and to create an issue of fact. This is analogous to the elemental rule that the fact

trier may believe one witness as against many, or many as against one."

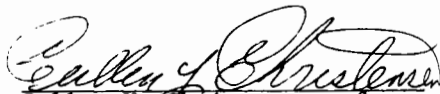
The Court below should not have, for the purposes of plaintiff's Motion to Dismiss, considered the weight of the facts and evidence before it, nor have adjudged the credibility of the position of either side. The Court below should only have considered whether defendants would be entitled to relief under any state of facts which could be proved in support of their claim. By taking all matters set forth in SATHER'S Affidavit as being true (which the Court below was obliged to do, since the averments were not refuted by any counteraffidavit), a claim for relief was stated and disputed issues of material fact being evident, plaintiff's Motion to Dismiss should have been denied and the matter of SATHERS' claims as an occupying claimant should have been reserved for trial. (See Rule 56, Utah Rules of Civil Procedure; Singleton vs. Alexander, 19 Utah 2d 292, 431 P2d 126; Grow vs. Marwick Development, Inc., 621 P2d 1249).

CONCLUSION

The unrefuted Affidavit of defendant SATHER shows a state of facts which would support a finding by the trier of fact to the effect that at the time the improvements were made to the premises, defendant SATHER honestly believed that he had a right to make such improvements and had a right to so believe, and that consequently, the improvements were made in "good faith".

Defendants submit that the issues presented to the Court below are not those which can be resolved in a summary manner, and that there are substantial questions of fact raised by the pleadings and the Affidavit on file so as to preclude summary disposition and so as to require that the same be submitted for trial. Defendants SATHER move this Court for an order reversing the Order of Dismissal of the Court below and that this case be remanded to the District Court of Uintah County for trial of the issues raised in defendants' Counterclaim respecting the Occupying Claimant Statute.

Respectfully submitted,


Cullen Y. Christensen, for
CHRISTENSEN, TAYLOR & MOODY
Attorneys for Defendants SATHER
55 East Center Street
P. O. Box 1466
Provo, Utah 84601

CERTIFICATE OF MAILING

Two copies of the foregoing were mailed, postage prepaid, to Robert McRae of McRAE & DELAND, attorneys for plaintiff, 319 West 1st South Street, Suite A, Vernal, Utah 84078, this 27th day of May, 1981.


COLLEN Y. CHRISTENSEN, Attorney

JUL 5 1974

MORRIS R. COOK, CLERK

BY _____ DEPUTY

1 CULLEN Y. CHRISTEN¹ |
CHRISTENSEN, TAYLOR & MOODY
2 Attorneys for Defendants SATHER
55 East Center Street
3 Provo, Utah 84601
Telephone: (801) 373-2721

4
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY
6 STATE OF UTAH

8 UTE-CAL LAND DEVELOPMENT :
9 CORPORATION, :

10 Plaintiff, :

Civil No. 7856

11 vs. :

AFFIDAVIT IN OPPOSITION TO
MOTION OF PLAINTIFF TO DISMISS
12 COUNTERCLAIM RESPECTING
OCCUPYING CLAIMANT

13 ROBERT R. SATHER, et al., :

14 Defendants. :

15 STATE OF UTAH,)
16 : SS.
COUNTY OF UTAH.)

17 ROBERT R. SATHER, being first duly sworn, deposes and says:

18 1. That I am one of the defendants above named; that I
19 make this affidavit in opposition to the plaintiff's motion to
20 dismiss the counterclaim heretofore filed by me with respect to a
21 claim for improvements made by me as an occupying claimant; and that
22 I have personal knowledge of the matters hereinafter set forth.

23 2. I occupy and have occupied the Moss Ranch, the property
24 involved in the above entitled action, since on or about March 25,
25 1974, pursuant to a deed from plaintiff dated October 11, 1972,
26 delivered to me on or about March 15, 1974, by First Security Bank.

27 3. That I paid to First Security Bank the sum of \$46,500.00
28 on or about March 15, 1974, on a \$50,000.00 note dated September 15
29 1973, made and owed by the plaintiff to First Security Bank and
30 guaranteed by me, and as a result of said payment the First Security

1 Bank delivered said deed to me and assigned said note and the
2 deed securing the same to me.

3 4. That plaintiff, prior to the commencement of its
4 herein, did not pay nor tender to me any sum in connection with
5 said \$50,000.00 note so paid by me.

6 5. That during my occupancy of said premises, I paid
7 ordinary and general property taxes on said premises for the years
8 1973 through 1977 to the extent indicated by tax receipt and
9 affidavit of the Uintah County Treasure attached hereto, without
10 repayment or tender of repayment by plaintiff or any other firm,
11 person or corporation.

12 6. That beginning in 1975 and until the filing of the
13 action by the plaintiff in connection herewith, I made extensive
14 valuable improvements to said premises, consisting of land clearing
15 land leveling, fencing, installation of irrigation ditches and
16 reservoir facilities and similar improvements, thereby adding to
17 value of said land in excess of the sum of \$30,000.00

18 7. That said improvements were made openly and with the
19 knowledge of plaintiff and at least with plaintiff's implied consent
20 in that plaintiff did not at any time object to the making of said
21 improvements by me.

22 8. That said improvements were made by me in the belief
23 that plaintiff did not assert ownership to the property in question
24 because it made no effort to repay the money paid by me to the First
25 Security Bank as above set forth, and at the time I made said
26 improvements, I did believe that in fact I was the owner of said
27 property.

28
29 
30 ROBERT R. SATHER

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Subscribed and sworn to before me this 29 day of June,
1978.


NOTARY PUBLIC

My Commission Expires: 6/12/78 - Residing at: Provo, Utah