

1981

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTE CAL LAND DEVELOPMENT :
CORPORATION, :

Plaintiff and :
Respondent, :

vs. : Case No. 17625

ROBERT R. SATHER and :
BONNIE LEE SATHER, :

Defendants and :
Appellants. :

BRIEF OF PLAINTIFF AND RESPONDENT

RESPONSE TO 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

UTE CAL LAND DEVELOPMENT
CORPORATION,

Plaintiff and
Respondent,

vs.

Case No. 17625

ROBERT R. SATHER and
BONNIE LEE SATHER,

Defendants and
Appellants.

BRIEF OF PLAINTIFF AND RESPONDENT

STATEMENT OF THE NATURE OF CASE

In this action defendants, as counterclaimants, seek to recover, pursuant to the Utah Occupying Claimants Statute, Section 57-6-1 et. seg. Utah Code Annotated, for improvements, made to real property which was the subject matter of prior proceedings between these same parties.

DISPOSITION IN LOWER COURT

Defendants' counterclaim was dismissed with prejudice by the Honorable David Sam, Judge for the Fourth District Court in Uintah County, State of Utah.

RELIEF SOUGHT ON APPEAL

Plaintiff, respondent, seeks affirmation of the Order of Dismissal.

STATEMENT OF FACTS

This action arises out of an earlier action between these same parties wherein ownership of the real property, same as is involved in the present action and known generally as the "Moss Ranch," was contested. In the earlier action, upon a trial before a jury in 1978, it was determined that defendants had acted wilfully and maliciously against plaintiff, Ute-Cal, in wrongfully obtaining a deed to said property in March, 1974. It was further determined that plaintiff was the rightful owner of this property. These findings were upheld on appeal. Ute-Cal Land Development Corp. v. Sather, 605 P. 2d 1240 (Utah 1980).

After defendants had wrongfully obtained the deed to Moss Ranch, and while in possession of same, they allegedly made certain improvements upon the property. Said improvements are now the basis of defendants' counterclaim pursuant to Utah's Occupying Claimant statute, Section 57-6-1 et. seq. Utah Code Annotated.

Defendants' counterclaim was separated from the 1978 trial on the issues of ownership and damages related thereto, and reserved for later determination. Plaintiff filed a motion to dismiss the counterclaim on the grounds that defendants' wilful and malicious misconduct against plaintiff's interest in the property precluded any claim pursuant to Utah's Occupying Claimant statute. In February, 1981, an order granted by Honorable David Sam, Judge in the fourth District Court for Uintah County, dismissed defendants' counterclaim.

Plaintiff seeks an affirmation of the lower Court's
Order of Dismissal.

ARGUMENT

POINT I

DEFENDANTS, AS COUNTERCLAIMANTS, ARE PRECLUDED FROM MAINTAINING AN ACTION UNDER THE OCCUPYING CLAIMANTS STATUTE BY THEIR PRIOR WILFUL AND MALICIOUS MISCONDUCT IN ACQUIRING TITLE TO THE REAL PROPERTY WHICH IS THE SUBJECT MATTER OF THE LAWSUIT.

(a) To maintain a claim pursuant to the Utah Occupying Claimants statute, a claimant must first establish (1) that he had color of title to the real property in question, and (2) that he, in good faith, made valuable improvements thereon. Section 57-6-1 Utah Code Annotated. A liberal definition of who is deemed to have color of title, for purposes of the Occupying Claimant Statute, is provided in Section 57-6-4; "good faith," however, is not specifically defined for purposes of the statute.

In 41 Am. Jur. 2d §17, at 492, it is suggested that for purposes of such statutes as here in question, "good faith means simply a reasonable and honest belief of the occupant in his right or title, or, in other words, his freedom from a design to defraud the party having the better title." This position is consistent with Utah case law. An instruction on good faith upheld in Doyle v. West Temple Terrace Co., 47 Utah 238, 152 P. 1180, at 1182 (1915), and cited again as a fair statement of Utah law by Justice Crockett in Erickson v. Stoker, 120 Utah 653, 237 P. 2d 1012, at 1013 (1951), stated that the question of good faith will depend on whether "at the time all the improvements were being made the defendant honestly believed it owned the property."

The affidavit presented by defendant SATHER asserts that at the time the improvements were made he believed he was the owner of the property in question. Defendants also assert, properly

that whether such subjective belief was "honest" and sufficient to establish "good faith" is a question of fact to be determined by all the facts and circumstances of the case. In the case at bar, however, the most crucial fact, determined in a prior proceeding between these parties and determinative of the issue here, was that the defendants had acquired title by wilful and malicious misconduct against plaintiff and plaintiff's interest in said property. See Ute-Cal Land Development Corp. v. Sather, 605 P. 2d 1240 (Utah 1980). While defendants might subjectively believe they could and did obtain ownership of the property by such wrongful means, that belief in these circumstances should not be construed to be an "honest belief" nor sufficient to raise the issue of good faith.

One who acts in good faith acts with honest intentions. The defendants' assertion, that despite having acquired title by wrongful means in 1974, it was with an honest belief that they were the rightful owners of said property when they made improvements in 1975, is on its face inconsistent with honest intention or good faith. Defendants, however, assert that there is yet a question of fact regarding good faith, that in effect the above inconsistency can be explained by a change in circumstances.

The affidavit presented by defendant SATHER claims that the plaintiff had knowledge of the improvements and did not object to their being made. There is no Utah case that specifically addresses this point. In Reimann v. Baum, 203 P. 2d 387 (Utah 1949) however, the Utah Supreme Court did address a situation where the defendant's explanation of good faith was based on a belief that

action on the land had been abandoned. The action had been filed but plaintiffs did not bring it to trial for four years. The Utah Supreme Court indicated that the defendant's belief that the action had been abandoned was insufficient to establish good faith. Reimann, at 391.

In the case at bar defendants' position is not based on any affirmative act or statement by the plaintiff, but merely on an alleged failure to object to defendants' activities on the land in question. Even if defendants' contention is accepted as true, that is not such a change in circumstances that would entitle a reasonable person to honestly believe he had obtained rightful ownership by wrongful means.

(b) It would be contrary to the intent and purpose of Utah's Occupying Claimant's Statute to allow a defendant who had acquired title by wilful and malicious misconduct against plaintiff, to maintain a claim for value of improvements against same plaintiff. "The doctrine underlying the Occupying Claimant Statute arose from equity's attempt to make some fair and reasonable adjustment of a mistake made in good faith." Alleman v. Miner, 10 Utah 2d 356, 353 P. 2d 463 (1960). The proposition that a mistake in good faith can follow from wilful misconduct in acquiring title, is implausible at best. He who seeks equity should do equity. A claim pursuant to an Occupying Claimant Statute "sounds in equity." Reimann v. Baum 203 P. 2d 387, 389 (Utah 1949).

In the early case of Doyle v. West Temple Terrace Co., 47 Utah 238, 152 P. 1180 (1915), the Utah Supreme Court noted that wherein the record it appeared that there was a deliberate

attempt to deprive the plaintiff of his property, an entire lack of good faith was indicated. Doyle, at 1183. Very recently the Utah Supreme Court has ruled that mere notice of an adverse claim will preclude an occupant from recovering the value of improvements made subsequent to such notice; apparently this rule applies even though the occupant might have an honest belief that the adverse claim was without merit. See Hidden Meadows Development Co. v. Mills, 590 P. 2d 1244 (Utah 1979). Even though Justice Crockett dissented from the broad rule stated in Hidden Meadows, he notes that the protection of the Occupying Claimants statute is only for one who has a "bona fide claim." Hidden Meadows, at 1251. It is difficult to conceive a claim that is less "bona fide" than one based on a wilful and wrongful acquisition of title against the interest of the very same plaintiff the claim is raised against.

(c) Defendants' contention is that there is a genuine and material question of fact on the issue of good faith, and therefore it was error for the trial court to dismiss the defendants' counterclaim without a trial. This contention is based to a large extent on (1) the defendants' proposition that the jury finding of wilful and malicious misconduct in 1974, "would not necessarily be the same or be controlling with respect to matters occurring" in 1975, and (2) the plaintiff's alleged failure to object to defendants' activities in making improvements.

The crucial fact, as noted in argument above, is that defendants acquired title by wilful and malicious misconduct against plaintiff. That issue was fully litigated and reviewed by the Utah Supreme Court. Even if plaintiff did not object to

the making of improvements by defendants, defendants are precluded by their prior misconduct from maintaining that they were acting in good faith by the doctrine of collateral estoppel.

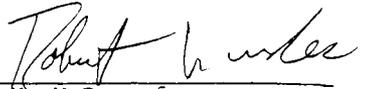
It is well-settled that the purpose of a summary judgment "is to eliminate the time, trouble and expense of trial when upon any view taken of the facts as asserted by the party ruled against, he would not be entitled to prevail." Holbrook Co. v. Adams, 542 P. 2d 191 (Utah 1975). In the case at bar the defendants should not be entitled to re-litigate the issue of how they acquired title and the prior finding of the jury on that issue is determinative of the issue of good faith. There is no genuine question of fact regarding good faith and the Order of Dismissal was proper. "[I]f the party being ruled against could not prevail when the facts are looked at most favorably for his position, then summary judgment should be granted." Grow v. Marwick Development, Inc. 621 P. 2d 1249 (Utah 1980).

CONCLUSION

In the present case defendants are precluded, by their prior misconduct against plaintiff, from maintaining that they were acting in good faith. Good faith is an essential element in a claim pursuant to the Utah Occupying Claimant Statute. As such, defendants could not prevail on their favor. An Order of Dismissal was both prudent and proper in that the court and parties involved are thereby saved the expense and trouble of a trial at which the defendants could not prevail.

Plaintiff respectfully requests that the lower court's Order of Dismissal be affirmed and its costs.

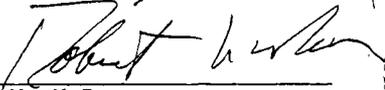
Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing
postage prepaid, to Cullen Y. Christensen of CHRISTENSEN, TAYLOR &
MOODY, attorneys for defendants, 55 East Center Street, P.O. Box 146
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Robert M. McRae