

1958

Lamar H. Carlson and Betty M. Carlson v. W. L. Hamilton and Estella Hamilton : Brief of Appellants

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

FILED

OCT 22 1958

LAMAR H. CARLSON and
BETTY M. CARLSON, his wife,
Plaintiffs and Respondents,

vs.

W. L. HAMILTON and
ESTELLA HAMILTON, his wife,
Defendants and Appellants.

Clerk, Supreme Court, Utah

**CASE
NO. 8634**

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	3
ARGUMENT:	

POINT 1

THAT THE COURT ERRED IN FINDING AND CONSTRUING THE FORFEITURE CLAUSE AS BE- ING A PENALTY INSTEAD OF LIQUIDATED DAM- AGES	3
--	---

POINT 2

THAT THE COURT ERRED IN NOT GRANTING DEFENDANTS A NEW TRIAL.....	7
CONCLUSION	7

TABLE OF CASES AND AUTHORITIES CITED

American Law Reports, Annotated, 6 ALR 2d, at Page 1403	4
Perkins v. Spencer, 243 P 2d 446.....	5
Cole v. Parker, 300 P 2d 623.....	5
Restatement of the Law of Contracts, Rule 339.....	5
American Law Reports, Annotated, 6 ALR 2d at Page 1429	6
Utah Rules of Civil Procedure, Rule 59.....	8

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**CASE
NO. 8634**

BRIEF OF APPELLANTS

STATEMENT OF FACTS

In October, 1952, the plaintiffs and defendants entered into a real estate contract for the purchase of land and personal property consisting of machinery and water stock. That the plaintiffs agreed to pay the defendants for the purchase of said property \$22,000.00, with a down payment of \$5,000.00 and payments of \$1,000.00 a year commencing on January 1, 1954, and each year thereafter until the balance of the purchase price together with interest was paid

(Plaintiffs' Exhibit 1). That the plaintiffs received possession of the property in March, 1953, and immediately placed a tenant thereon. The contract also contained the provision that upon failure to make any payments when the same shall become due, the seller shall, as his option, be released from all obligations in law and equity to convey said property, and all payments which have been made theretofore on this contract by the buyer shall be forfeited to the seller as liquidated damages for the non-performance of the contract, and the buyer agrees that the seller may, as his option, re-enter and take possession of said premises without legal process (Plaintiffs' Exhibit 1). That the said plaintiffs made the payment of January 1, 1954, consisting of \$1,000.00 payment on the purchase price and \$680.00 interest (Tr. 6). That the payment due on January 1, 1955, of \$1,000.00 on the principal and \$640.00 interest was not paid (Tr. 9). On the 20th day of December, 1954, one of the plaintiffs herein, Lamar Carlson, came to the home of the defendants herein and told them that he could not make the payments. The defendant, W. L. Hamilton, told Mr. Carlson that if he would pay the back taxes, water assessment and pay the interest that Mr. Hamilton would forget the principal for the time being. Thereafter Mr. Hamilton went to Salt Lake City in January, 1955, and saw Mr. Carlson again, who informed Mr. Hamilton that he couldn't make payments and would have to let the place go back (Tr. 85). Thereafter, sometime in January or February of 1955, Mr. Hamilton sent an unsigned notice through the mail to Mr. Carlson, informing him that he had placed no trespass signs around the farm. That at that time Mr. Carlson had no tenant on the farm nor anybody else to look after it. Thereafter the plaintiffs filed suit against the

defendants for money had and received, alleging that the contract's forfeiture clause be declared a penalty clause and return the money paid to the defendants back to the plaintiffs. The defendants denied the plaintiffs' allegations and asked the court to construe the forfeiture clause as being liquidated damages and dismissing the plaintiffs' claim. The defendants counterclaimed for their damages herein. Trial was held on the 30th day of July, 1956, at which time the court awarded the plaintiffs judgment.

STATEMENT OF POINTS

POINT 1

THAT THE COURT ERRED IN FINDING AND CONSTRUING THE FORFEITURE CLAUSE AS BEING A PENALTY INSTEAD OF LIQUIDATED DAMAGES.

POINT 2

THAT THE COURT ERRED IN NOT GRANTING DEFENDANTS A NEW TRIAL.

ARGUMENT

POINT 1

THAT THE COURT ERRED IN FINDING AND CONSTRUING THE FORFEITURE CLAUSE AS BEING A PENALTY INSTEAD OF LIQUIDATED DAMAGES.

That the plaintiff to recover in this suit must show that the forfeiture in said contract was a penalty and not for liquidated damages. The plaintiff having the burden of proof.

The plaintiffs purchased from the defendants, farm

land, house, machinery and a water right. The purchase price was \$22,000.00, with \$5,000.00 as a down payment. The payments on the balance of the purchase price were to be \$1,000.00 a year, together with interest as shown on the contract. One payment of \$1,000.00, together with interest in the sum of \$680.00, was paid; that thereafter the plaintiffs defaulted in their payments, as well as becoming delinquent in taxes, water assessments and insurance, which were part of the contract. The plaintiffs received possession of the property in March, 1953, although the contract was executed in October, 1952. The plaintiffs immediately placed a tenant upon the property to look after it.

The first well recognized principle of law that we are faced with is that equity abhors a forfeiture, and the law does not favor it. Therefore, the next step in deciding whether the forfeiture clause in the contract was a penalty or liquidated damages are the cases decided in Utah, and the Court has stated on occasion that each case should be decided on its own facts. That no hard, fast rules can be laid down.

That on the problem in front of us the American Law Report, Annotated, 6 ALR 2d, at page 1403, has this to say:

"The ultimate questions dependent upon a determination of whether a particular contractual provision is to be regarded as one for liquidated damages, on the one hand, or as one for a penalty, on the other, are many and various. If the clause is one for a penalty it may, if oppressive or unconscionable, be considered unenforceable, with the result that the defaulting party is liable for the actual damages suffered by the other party, whether they are more or less than the sum

mentioned in the stipulation. On the other hand, a provision for liquidated damages is normally considered valid and enforceable, with the result that the sum mentioned may be recovered upon a breach of the agreement even if it exceeds the amount of the actual damages suffered."

With the above principal in mind, I shall now take up the two Utah cases which have been decided, as follows: Perkins v. Spencer, 243 P 2d 446, and Cole vs. Parker, 300 P 2d 623.

In the Perkins vs. Spencer case, the Court said:

"It will be observed that in all cases where the stipulation for liquidated damages was enforced it bore some reasonable relation to the actual damages which could reasonably be anticipated at the time the contract was made and was not a forfeiture which would allow an unconscionable and exorbitant recovery."

In the Cole vs. Parker case, the Court said:

"In the absence of fraud or imposition to parties to a contract are bound by the price or value that they have agreed on and such price must be paid notwithstanding it may be excessive."

Restatement of Contracts Rule 339 has this on the problem:

"An agreement made in advance of breach fixing the damages therefore is not enforceable as a contract and does not affect the damages recoverable for a breach unless:

(a) the amount so fixed is a reasonable forecast of the just compensation for the harm that is caused by the breach.

(b) The harm that is caused by the breach

is one that is incapable or very difficult of accurate estimation."

The cases state that the compensation so fixed must be reasonable at the time of the execution of the contract. That the contract in the present case was a lump sum price for real estate, house and personal property. That the parties to the contract could reasonably forecast that a breach of the contract would cause the sellers to be damages in the amount fixed as the stipulated forfeiture. That the down payment was less than 25% of the total purchase price. That if you determine that the said plaintiffs were in possession for a period in excess of two years, the total percentage would be $12\frac{1}{2}\%$. Thus we see that the amount fixed is a reasonably forecast of the just compensation for the harm that was caused by the breach.

Another rule or construction as laid down in American Law Reports, Annotated, 6 ALR 2d, at page 1429, is as follows:

"The rule of construction that if the actual damages probably resulting from a breach of a contract are uncertain in amount and difficult to ascertain or prove, a provision in the contract as to the payment of a designated sum upon a breach will prima facie be construed as one for liquidated damages."

That in our case this principle would apply inasmuch as the kinds and classes of property are different and that the actual ascertainment of damages cannot definitely be ascertained.

The plaintiffs herein being the purchasers of the property defaulted in the payment of the instalments and made no effort at all to continue on with the contract. The plain-

tiffs did not return all the personal property listed on the contract to the defendants herein. That the plaintiffs do not come into Court with clean hands to assert their rights.

POINT 2

THAT THE COURT ERRED IN NOT GRANTING DEFENDANTS A NEW TRIAL.

The defendants herein at the conclusion of the trial moved for a new trial based upon Rule 59 of the Utah Rules of Civil Procedure based upon the following grounds:

- “(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:
- (4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produce at the trial.
 - (6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against the law.”

The defendants filed an affidavit made by a person well acquainted with the price of farm ground in the vicinity of the Hamilton farm. That at the time of trial the defendant did not know or with diligence could not guard against

the possibility that said evidence would become material. That the evidence did not become material until after the Court had ruled on the case.

The defendants further contend that no evidence at all was introduced at the trial to justify the verdict. That in the evidence adduced at the trial there was nothing to justify the Court to construe the forfeiture clause as a penalty both in law and fact.

CONCLUSION

There is no justification in law or in fact for the findings and decree of the Court, and the same should be reversed or remanded for a new trial.

Respectfully submitted,

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