

1957

# Rulon T. Jeffs and J. Marion Hammon v. Citizens Finance Co. : Brief of Defendant and Appellant

Utah Supreme Court

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B. R. Parkinson; Attorney for Defendant and Appellant;

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

FILED

APR 3 0 1957

RULON T. JEFFS and  
J. MARION HAMMON

*Plaintiffs and  
Respondents*

Clerk, Supreme Court, Utah

vs.

CITIZENS FINANCE  
COMPANY, a corporation

*Defendant and  
Appellant*

Case No. 8637

BRIEF OF DEFENDANT AND APPELLANT

B. R. PARKINSON,

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*Defendant and Appellant*

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BRIEF OF DEFENDANT AND APPELLANT

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STATEMENT OF FACTS

One Betsy Lee entered into a contract for the sale of real property located in Salt Lake County, to Dale E. Watson and Laura Dean Watson on what is usually referred to as a Uniform Real Estate Contract, on June 9, 1952, for a total price of \$9,950.00. Dale E. Watson and Laura Dean Watson assigned the contract to Citizens Finance Company, the defendant and appellant, on December 20, 1952 and the Citizens Finance Company thereupon recorded said assignment with the re-

corder of Salt Lake County on December 23, 1952. On *March 9, 1954* Betsy Lee sold her interests to Rulon T. Jeffs. No recording of the Jeffs transaction with Betsy Lee was made at the time.

On *March 9, 1954* Rulon T. Jeffs, one of the plaintiffs and the respondent in this action, brought an unlawful detainer action in the City Court of Salt Lake City against Dale E. Watson and Laura Dean Watson, being case No. 42450, and secured a default judgment. In this default action, the court entered an order as part of the judgment declaring the Uniform Real Estate Contract between Betsy Lee and Dale E. Watson and Laura Dean Watson terminated.

The Uniform Real Estate contract introduced as plaintiffs Exhibit No. 1 called for a \$1500.00 down payment and for monthly payments of \$75.00 per month. The City Court action, the file of which was introduced as plaintiffs Exhibit No. 2, alleged the contract was delinquent \$400.00 on May 28, 1954, indicating payments in excess of \$2825.00 had been made on the contract.

No notice of this suit or any other notice constructive or actual, was given to the Citizens Finance Company. On September 8, 1955 the action now before the court was started.

## STATEMENT OF POINT

IN ORDER TO EFFECT A FORFEITURE OF A DELINQUENT UNIFORM REAL ESTATE CONTRACT THE VENDEE MUST BE NOTIFIED AND BE GIVEN A REASONABLE TIME TO PERFORM, AND WHERE AN ASSIGNMENT OF THE CONTRACT HAS BEEN MADE AND NOTICE OF SAID ASSIGNMENT GIVEN, THE ASSIGNEE MUST BE SO NOTIFIED.

## ARGUMENT

The Citizens Finance Company contend that inasmuch as the contract was assigned to it and this assignment was recorded, long before the plaintiff and respondent Jeffs entered the picture to purchase from Betsy Lee, that the contract could not be terminated in an action to which the Citizens Finance Company was not a party. This court has held on several occasions that in order to terminate a delinquent Uniform Real Estate Contract, a notice and demand to comply with the terms of the contract, must be made. The defendant and appellant here, wanted the right to perform the contract but that right was denied in this case. In an article by Bridgette M. Bodenheimer, found in the Utah Law Review Vol. 3 at page 41, she states in reference to the manner of terminating a Uniform Real Estate Contract:

“The Utah Courts have permitted unlawful detainer. The only prerequisites of such an action are notice of forfeiture — which makes vendee a tenant at will.”

In the case of *Leone vs. Zuniga*, 84 Utah 417; 34 Pac. 2d 699 in considering a real estate contract the court said:

“Where a contract contains a self executing provision for forfeiture as in the case of *Bergman vs. Lewis*, supra, the purchaser may well be said to know when his tenancy is at an end, and hence he is not entitled to notice. But when, as here, the forfeiture provision of the contract is not self executing but, on the contrary, vests in the seller a further option to either re-enter the premises or to continue to permit the purchaser to remain in possession thereof as a tenant at will, then and in such case the purchaser in default is at a loss to know what is required of him. Until advised to the contrary, he may assume that he will be permitted to perform his contract.”

Many people buy property in Utah on Uniform Real Estate Contracts. Many of those that buy on Uniform Real Estate Contracts do so because of limited finances, and are dependent on their day to day earnings to make payments on the contract. In case of unemployment or illness, it sometimes becomes necessary to raise money to meet payments on the home being purchased, and some have pledged the contract of purchase to help meet the emergency.

Substantially the question before the court is this. If a contract is assigned to a third party, and notice of the assignment is given, can the contract be terminated by a subsequent purchaser of the



original seller's interest without notice to the assignee?

In this case the plaintiffs and respondents did not record their instrument of transfer at the time it was secured. An unlawful detainer action in the city court, was commenced the day Jeffs secured the interest of Betsy Lee. There was no way the defendant and appellant could protect himself. He had no notice of the City Court Suit. No real way to find out about the condition of the contract.

See *State Bank of Sevier vs. American Cement and Plaster Company*, 10 Pac. 2d 1065, 80 Utah 250.

“Where Vendee assigns his interests in a contract with notice to a vendor, or the assignee is in possession, then a forfeiture cannot be affected without notice to such assignee.”

On some occasions the seller permits a certain amount of delinquency on the contract and the indulgence is helpful to the purchaser and of benefit to the community as a whole. The defendant in this case is desirous of knowing if when a contract has been assigned and constructive notice given by recording, if that entitles the assignee to notice of termination of the contract, and, if entitled to a notice, then does the notice also entitle the assignee to any right under the notice or just to the bare right to a notice that informs the assignee that the assignee has no rights.



Normally the notice of termination has been for the purpose of appraising the purchaser or the assignee that the contract will be terminated if payment is not made, and a reasonable period of time is given to allow for compliance with the notice.

See 107 ALR 358

“A vendor who accepts part of the amount of which vendee is in default, cannot without warning, forfeit the contract for omission to pay in full.”

55 American Jurisprudence, Page 835, Section 422.

“It is generally recognized that a purchaser of real estate, prior to a conveyance to him and prior to the full performance on his part, has by virtue of his contract an interest which he may assign or transfer or contract to transfer”.

The right to show the value of the equity of the Watsons at the time of the eviction suit in the City Court offers certain practical difficulties at this time which are readily apparent. In the instant case because plaintiff failed to give timely notice to the assignee, he is substantially able to defeat the right of defendant by denial of access to the property, even if the full financial condition between the parties could be ascertained. If this is the correct rule, then a premium is offered to the plaintiff and respondent for failing to do what should be done. He is in a better position to be able to take

the property by not giving the notice than if the required notice were given. It is easy to see how the assignee of a contract would lose any or all rights without any chance to prevent that loss.

Suppose the seller Betsy Lee marries and moves away at the time the sale is made to the plaintiff and respondent, and suppose the Watsons being out of work and in financial distress at the time of the eviction, found it necessary to leave the state and live with relatives, and as in this case no record is made showing any transfer of the property in the Recorder's office, nor in the County Clerk's office where checks are normally made to determine the rights to realty, what proper procedure could the assignee follow within the limits allowed by Judge Ellett.

At the pre-trial, the facts were substantially stipulated and the question of law submitted to the Court. See Page 27 of the record, lines 15 to 22.

“The Court: Can you agree to the statements I have made here as being facts?

N. J. Cotro-Manes: They are the facts.

The Court: Can you agree to it Mr. Parkinson?

Mr. Parkinson: Yes sir.

The Court: Alright. Then the only issue we will have would be one of law as to whether or not pre-trial Exhibit No. 2 would put Rulon T. Jeffs on inquiry so as to give notice to

the defendant here when he foreclosed the interests of the Watsons.”

And also on page 28 of the transcript, lines 12 to 22.

“By the Court: No, wait a minute. If Citizens Finance Company was not entitled to notice of the foreclosure, they are out here now. If they were entitled to notice, then I suppose all I should do is deny the claim of Jeffs and say that Citizens Finance has some interest under the contract and then you bring a second action to forfeit them out.

N. J. Cotro-Manes: That’s right. In other words, you will deny the clearance of our title, of quiet title.”

Then on page 31, lines 14 to 16

“By the Court: Let’s deny the motion and set it down for trial and give him an opportunity to establish what the equity was. The motion will be denied.”

The above occurred November 30 and the case was set for December 14.

See Transcript — page 32 lines 10 to 26

“I wish to state the defendant’s objection to the manner in which the case is coming up today. We are not in a position to offer evidence in the manner in which it has been set out that it should be done. We feel that the proceedings as you have scheduled them today, outlined them, has resulted in a complete denial of the defendant’s rights in this matter. They are in our opinion, entitled to a notice and an opportunity to exercise the

contract either by carrying it out, paying it or at least the right of refusal to do that."

In 55 American Jurisprudence 850, Section 441, we find:

"The rule which accords with reason and justice and the weight of authority is that a vendor cannot upon default of the vendee or transferee, giving the right of rescission or other cancellation of the contract, maintain a mere action for the possession of the property he had agreed to part with, founded upon such default, without first evidencing his election to terminate, and actually terminating the contract relation, as by reasonable notice or demand for possession prior to commencement of the action, the contract not having been otherwise terminated."

In 55 American Jurisprudence 1024, Section 632, we find:

"In accordance with the general rule that a party to a contract who asks for rescission thereof must himself be without fault, there is considerable authority supporting the broad view that to entitle the vendor to have a rescission, he must not himself be in default."

In 9 American Jurisprudence 395, Section 54, we find:

"When instituting a suit for the cancellation of a written instrument, plaintiff or complainant should join as parties, either plaintiff or defendant, according to the nature of their interests, all persons whose rights or privileges may be in any way affected by the granting of the relief he seeks to obtain. Thus,

all parties to an instrument must be made parties. The judgment or decree in such an action operates in personum and one who is not a party to the suit cannot be compelled to deliver up an instrument for cancellation. The successor in interest of the grantee in the instrument in question is always an indispensable party defendant."

Also we find in Vol. 3 of the Utah Law Review at page 43

"Under Utah Law, a vendor waives the right to enforce a forfeiture provision of a real estate contract if he accepts late payments or a smaller sum than the contract provides, or specifically grants time extensions. After waiver the forfeiture provision may be re-instated only by giving notice to the vendee that he will thereafter be strictly held to the terms of the contract."

In the *Pacific Development Co. vs. Stewart*, 113 Utah 403, 195 Pac. 2d 748, we find:

"There is no question that the acceptance by the seller of buyers past due payments and its other conduct toward the buyer leading the latter to believe that strict performance would not be required by the seller, imposes upon the seller the duty of giving the buyer a reasonable notice before it may insist on strict performance by the buyer."

### CONCLUSION

In conclusion the plaintiffs and respondents, who in this case stand in the position of the vendor, are required in Utah to give notice prior to the for-

feiture of a real estate contract, and to allow a reasonable time to comply with the terms of the contract. This the plaintiffs and respondents have not done up to the present time and their request that title be quieted in the plaintiff should be denied.

Respectfully submitted,

B. R. PARKINSON,  
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*Defendant and Appellant*