

1957

Rulon T. Jeffs and J. Marion Hammon v. Citizens Finance Co. : Brief of Plaintiffs and Respondents

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Jeffs v. Citizens Finance Co.*, No. 8637 (Utah Supreme Court, 1957).
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In the Supreme Court of the State of Utah

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RULON T. JEFFS and J. MARION
HAMMON,
Plaintiffs and Respondents

vs.

CITIZENS FINANCE COMPANY,
a corporation
Defendant and Appellant

Clerk, Supreme Court, Utah

Case
No. 8637

Brief of Plaintiffs and Respondents

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In the Supreme Court of the State of Utah

RULON T. JEFFS and J. MARION
HAMMON,

Plaintiffs and Respondents

vs.

CITIZENS FINANCE COMPANY,
a corporation

Defendant and Appellant

Case
No. 8637

Brief of Plaintiffs and Respondents

STATEMENT OF FACTS

This action was commenced on the 8th day of September, 1955, by the plaintiff-respondents, Rulon T. Jeffs and J. Marion Hammon, against the defendant-appellant, Citizens Finance Company, to quiet title to the premises referred to in the Uniform Real Estate Contract between Betsy Lee, as vendor, and Dale E. Watson and Laura Dean Watson, his wife, as purchasers.

The defendant-appellant filed an answer and counter-claim and the matter came on for pre-trial conference, at which time the trial court fixed the matter of law to be considered at the trial.

The matter was heard by the court on the 14th day of December, 1956, and the court ruled that plaintiff-respondents were entitled to an order quieting title to the premises, the defendant-appellant having failed to present any evidence.

On the 4th day of January, 1957, judgment was duly entered in favor of the plaintiff-respondents, and thereafter, the defendant-appellant served and filed notice of appeal and the cause is now before the court for review.

The action arose from certain transactions hereinafter briefly set forth.

On the 9th day of June, 1952, Betsy Lee, a widow, by a Uniform Real Estate Contract, sold certain real property located in Salt Lake County, State of Utah, to Dale E. Watson and Laura Dean Watson, his wife.

On the 20th day of December, 1952, the Watsons assigned their equity in the contract to Citizens Finance Company, the defendant-appellant, for the purpose of securing a loan evidenced by a promissory note. The assignment was recorded on the 23rd day of December, 1952.

On the 9th day of March, 1954, Betsy Lee assigned all her right, title and interest in and to the contract, and conveyed the real property by warranty deed to Rulon T. Jeffs, one of the plaintiff-respondents.

The Watsons, being delinquent in the payments due under the contract, were served with notice of forfeiture on the 28th day of May, 1954, and thereafter, on June 22, 1954, were served with notice to quit. On the 14th day of July, 1954, the plaintiff-respondent, Jeffs, filed an unlawful detainer action against the Watsons, and on the 20th day of August, 1954, judgment was entered against the Watsons, which judgment provided for the forfeiture of the Uniform Real Estate Contract entered into on the 9th day of June, 1952, for writ of restitution, and for the sum of \$550.00 accrued back payments.

Thereafter, the property was repossessed by the plaintiff-respondent, Jeffs, who subsequently, by warranty deed, conveyed the property to J. Marion Hammon, the other plaintiff-respondent herein.

STATEMENT OF POINTS

1. The defendant-appellant was afforded an opportunity by the trial court to assert its rights in and to the property, the subject matter of this litigation, and the defendant-appellant, by not offering evidence, refused to assert its rights and so waived any rights it may have had.

2. A person not in possession of property, said property being the subject matter of an unlawful detainer action, is not entitled to notice of the action.

3. The court is empowered to declare a forfeiture of a Uniform Real Estate Contract by judgment in an unlawful

detainer action if said contract is the agreement under which the property is being held by the defendant.

4. The defendant-appellant, Citizens Finance Company, as assignee of the Watsons' interest, did not give sufficient notice of the assignment so as to put the vendor of the property, Betsy Lee, or her assignee, the plaintiff-respondent Jeffs, on the duty of notice of defendant-appellant's assignment. The failure of the defendant-appellant to give notice constitutes an estoppel to assert a claim of lack of notice.

ARGUMENT

POINT ONE

THE DEFENDANT-APPELLANT WAS AFFORDED AN OPPORTUNITY BY THE TRIAL COURT TO ASSERT ITS RIGHTS IN AND TO THE PROPERTY, THE SUBJECT MATTER OF THIS LITIGATION, AND THE DEFENDANT-APPELLANT, BY NOT OFFERING EVIDENCE, REFUSED TO ASSERT ITS RIGHTS AND SO WAIVED ANY RIGHTS IT MAY HAVE HAD.

The trial court ruled that the defendant-appellant, Citizens Finance Company, was entitled to assert what claims it had as to the property in question and what issues it could have raised at the trial on the unlawful detainer action, had it been notified by the plaintiff-respondent, Jeffs, at the time of the action.

"The Court: 'So this record may state the full truth, I held as a matter of law the only issue to be tried here was what this defendant could have raised at the

former trial had he been given notice and the only thing then he could have shown was whether or not there was an equity at that time in this property.' "

Record, pp. 32, 33, Lines 29 to 2

The defendant-appellant was entitled to bring an action at any time against the plaintiff-respondents, Jeffs and Hammon, to have its equity in the property determined. *Malmberg v. Baugh*, 218 P. 975; *Perkins v. Spencer*, 243 P.2d 446. The Utah Supreme Court, in *Williams vs. Nelson*, 237 P. 217, said:

"As a matter of course, in this jurisdiction the tenant may at any time institute an action in a court of equity to determine his rights to the premises in question."

This case was cited with approval in the Utah case of *Dunbar v. Hansen*, 250 P. 982. Chief Justice Moffat, in the concurring opinion in *Christy v. Guild*, 121 P.2d 401, said:

"I concur with the understanding that the unlawful detainer action does not cut off the right of the purchaser to bring suit to have equities determined if he claims equities in his favor."

As the assignee, the defendant-appellant could have brought this action. However, the defendant-appellant did not bring an action to have its equities, if any, determined.

The plaintiff-respondents, Jeffs and Hammon, brought the action to quiet title under Section 78-40-1, Utah Code Anno, 1953, which provides:

"Action to determine adverse claim to property—Authorized.—An action may be brought by any person against another who claims an estate or interest in real property or an interest or claim to personal property

adverse to him, for the purpose of determining such adverse claim.”

By bringing this action, plaintiff-respondents gave the defendant-appellant the opportunity to assert its claims, if any, and to show any equity that the Watsons may have had to the property. However, the defendant-appellant refused to go forward and assert any equity that it might have had under the assignment of the real estate contract.

The trial court ruled:

“At this time I have accorded the defendant the right to show what that equity was and if there was an equity there, or a lien thereon, and you refuse to go on and offer proof.”

Record, p. 33, Lines 3 to 6

The defendant-appellant claims that it did not have sufficient time or information to proceed, and that its rights had been denied. The Utah Rules of Civil Procedure with regards to depositions and discovery, under Rules 26 through 37, inclusive, afforded the defendant-appellant ample procedural methods of eliciting all the information that it needed. The record discloses that the defendant-appellant never filed a motion for an extension of time within which to prepare its evidence, nor made any demands for discovery under the Rules of Civil Procedure. By defendant-appellant’s failure to go forward and offer evidence as to its equity in the property, the trial court was justified in granting to the plaintiff-respondents a judgment quieting title to the property.

POINT TWO

A PERSON NOT IN POSSESSION OF PROPERTY, SAID PROPERTY BEING THE SUBJECT MATTER OF AN UNLAWFUL DETAINER ACTION, IS NOT ENTITLED TO NOTICE OF THE ACTION.

Under the Utah law dealing with unlawful detainer actions, the statutes specifically provide that the only necessary party defendants to the action are the person or persons who are in possession of the property at the time of the commencement of the action.

“No person other than the tenant of the premises, and subtenant if there is one in the actual operation of the premises when the action is commenced, need be made a party defendant in the proceeding, . . . ”

Sec. 78-36-7, Utah Code Anno., 1953

In cases where there is a real estate contract involved in the unlawful detainer action, this Court has held that:

“In this jurisdiction, it appears to be the common practice, under such a contract” (real estate) “as is here involved, to bring an unlawful detainer action against a defaulting vendee.”

Christy v. Guild, (1942) Utah 121 P.2d 401

In *Pacific Development Co. v. Stewart*, 195 P.2d 748, the Supreme Court specifically held that an action of unlawful detainer was proper where the agreement under which the property was being conveyed was a “Uniform Real Estate Contract.”

In the unlawful detainer action, the plaintiff-respondent, Jeffs, caused to be served upon the Watsons a notice of for-

feiture and a notice to quit. (Plaintiff's Exhibit No. 3, File #42450, Salt Lake City Court). These notices were sufficient under the laws of Utah and judgment was duly entered by the City Court.

As the Utah law specifically holds that only those in possession are entitled to notice, the plaintiff-respondents contend that under no theory was the defendant-appellant entitled to notice of this unlawful detainer action, but that if the defendant-appellant were entitled to any notice, that the duty of giving such notice would have been that of the Watsons and not of the plaintiff-respondent, Jeffs.

POINT THREE

THE COURT IS EMPOWERED TO DECLARE A FORFEITURE OF A UNIFORM REAL ESTATE CONTRACT BY JUDGMENT IN AN UNLAWFUL DETAINER ACTION IF SAID CONTRACT IS THE AGREEMENT UNDER WHICH THE PROPERTY IS BEING HELD BY THE DEFENDANT.

Under the Utah law dealing with unlawful detainer actions, the statutes specifically provide that the judgment rendered by the court may declare the forfeiture of the agreement under which the person or persons in possession of the property rely for their right of possession.

" . . . and if the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the

property is held, . . . the judgment shall also declare the forfeiture of such lease or agreement.”

Sec. 78-36-10, Utah Code Anno., 1953

The plaintiff-respondents contend that as the court is specifically empowered to declare a forfeiture of an agreement under which property is held, and that, as shown by Point Two of this brief, no notice need be given to any person or persons other than those who are in actual possession of the property, the Uniform Real Estate Contract entered into by the Watsons on the 9th day of June, 1952, was duly forfeited as provided for by the Utah statutes.

The defendant-appellant, in its brief, contends that the contract was not forfeited, because of the lack of notice to it. However, as hereinabove stated, it was not entitled to notice.

POINT FOUR

THE DEFENDANT-APPELLANT, CITIZENS FINANCE COMPANY, AS ASSIGNEE OF THE WATSONS' INTEREST, DID NOT GIVE SUFFICIENT NOTICE OF THE ASSIGNMENT SO AS TO PUT THE VENDOR OF THE PROPERTY, BETSY LEE, OR HER ASSIGNEE, THE PLAINTIFF-RESPONDENT JEFFS, ON THE DUTY OF NOTICE OF DEFENDANT-APPELLANT'S ASSIGNMENT. THE FAILURE OF THE DEFENDANT-APPELLANT TO GIVE NOTICE CONSTITUTES AN ESTOPPEL TO ASSERT A CLAIM OF LACK OF NOTICE.

The defendant-respondent, Citizens Finance Company, assumed only the beneficial interest that the Watsons had in

their contract. It did not assume any of the burdens and liabilities. The purpose of the assignment was not to take over possession or to assume the payment of the monthly payments, but as security for the repayment of a loan made by it to the Watsons.

“This assignment is given for the purpose of securing prompt payment of a certain promissory note dated Dec. 20, 1952, executed by the undersigned in favor of Citizens Finance Co. in the sum of \$1032.00.”

Assignment, Def's Ex. No. 2

“We took an assignment of their equity in a real estate contract covering a home they were purchasing at 1215 East 33rd South . . . We realize that our security is applicable only to the equity the Watsons had in the property.”

Letter, Citizens Finance Co. to R. T. Jeffs, dtd March 5, 1955, Pl's Ex. No. 5

“ . . . we acted in good faith and took an assignment of beneficial interest in this contract.”

Letter, Citizens Finance to Cotro-Manes, dtd April 9, 1955, Pl's Ex. No. 4

The defendant-appellant admits that it gave no notice of the assignment between the Watsons and itself to the vendor, Betsy Lee, except by constructive notice by the recordation of the assignment.

“The Court: ‘ . . . it is agreed now that no notice was ever given by this defendant of the assignment which it had except such constructive notice as may be given by the filing and recording of the same?’

“Mr. Parkinson: ‘Yes.’ ”

Record, P. 30, lines 25 to 29

The recording of the assignment was not valid and sufficient notice to the vendor of the property. In 66 Corpus Juris 1079, Vendor and Purchaser, Sec. 868, it is said:

“Under general rules, unless notice of an assignment by the purchaser is given the vendor he is not affected by it. The notice must be sufficient.”

Under the Utah statutes dealing with the assignment of a mortgage, the statutes hold that unless actual notice is given to the mortgagor, the recording of the assignment is not sufficient notice to him.

It follows that as Betsy Lee, the vendor of the property, did not have notice of the assignment, had she commenced the action for unlawful detainer against the Watsons herself, under no theory or practice of the law would she have had to give notice to the Citizens Finance Company. The general rule is that there must be actual notice of assignment to the vendor. The Citizens Finance Company, in becoming the assignee of the Watsons, assumed the position of the Watsons, and was subject to all the defenses and equities of the vendor, Betsy Lee.

“An assignee of a non-negotiable chose in action ordinarily, however, acquires no greater right than was possessed by his assignor, but simply stands in the shoes of the latter.”

4 Am Jur 304, Assignments, Sec. 95

“ . . . It is held that an assignee of a purchaser of real estate takes subject to all the rights of the vendor under the original contract of sale, including all defenses thereto available to the vendor.”

55 Am Jur 836, Vendor and Purchaser, Sec 422

As the defendant-appellant, Citizens Finance Company, did not give actual notice to the vendor, Betsy Lee, it could not have enforced the contract against Betsy Lee.

“Ordinarily, the obligations arising out a contract are due only to those with whom it is made; a contract cannot be enforced by a person who is not a party to it or in privity with it.”

12 Am Jur 818, Contracts, Sec. 273

“It is frequently stated that in order to enable a person to enforce an obligation there must exist between him and the obligee what is known in law as privity.”

12 Am Jur 819, Contracts, Sec 273

As the defendant-appellant, Citizens Finance Company, did not give notice of the assignment to Betsy Lee, there was no privity between them, and certainly no novation of the contract. It follows that as there was no privity between Citizens Finance Company and Betsy Lee, there can be no privity between Citizens Finance Company and Betsy Lee's assignee, the plaintiff-respondent, Jeffs.

The facts in this case show without doubt that there was privity between Betsy Lee and Rulon T. Jeffs, and likewise there was privity between Citizens Finance Company and the Watsons. The failure of the defendant-appellant, Citizens Finance Company, to give notice to Betsy Lee of its assignment creates an estoppel between it and Betsy Lee, whereby the defendant-appellant is barred or estopped from asserting any rights or equities against Betsy Lee. As there is privity between Betsy Lee and the plaintiff-respondent, Jeffs, the defendant-appellant, Citizens Finance Company, is estopped

from asserting any claim against Jeffs on the same theory as it is estopped from asserting any claim against Betsy Lee.

“It is also a well recognized rule that where an estoppel is operative as between the original parties to the transaction, it is also effective as to their privies in contract . . . ”

Marion Cortgage Co. v. Grennan, 143 So 761, 87 ALR 1492

“When a contract of sale has been assigned, the vendor not being a party to the assignment, no duty devolves on the vendor to hunt up the assignee to tender performance; it is sufficient if performance is tendered to the original vendee; and it is the duty of the assignee to make a tender of the money and demand a deed at or within the time designated in the contract, if time is of the essence of the agreement, or within a reasonable period if time is not material, and, if assignee fails to do so, the vendor, who has once tendered performance to his vendee that has remained, unaccepted, may treat the contract as abandoned, so as to become entitled to have evidence of it removed from the public records as a cloud on title.” Citing 1 Warvell on Vendors (2d Ed.), Sec. 66, p. 83; Corbus vs. Teed, 69 Ill. 205.”

Pierce & Stevenson v. Jones, 147 So. 842, 88 ALR 192

CONCLUSION

The plaintiff-respondents contend that the trial court ruled properly in permitting the defendant-appellant to assert what equities it had in the property at the time of the trial of the quiet title action. This ruling of the trial court is in conformity with the holding of the Supreme Court in the case

of Christy v. Guild, and the earlier cases of Williams v. Nelson and Dunbar v. Hansen. The trial court's ruling is also in conformity with the intent of Utah Rules of Civil Procedure to eliminate needless litigation and to consolidate as many causes of action between the same parties in one trial as possible.

The plaintiff-respondents contend, however, that the defendant-appellant was not entitled to any notice of the unlawful detainer action on two theories, first, that the unlawful detainer statutes as cited above in Point Two and Point Three exclude the necessity of notice to persons not in possession; and, secondly, that the defendant-appellant's failure to provide notice to the vendor of its assignment establishes an estoppel whereby any assignee of the vendor is not charged with notice of the assignment regardless of the recordation.

The plaintiff-respondents further contend that even if the defendant-appellant had been entitled to notice, that as there was no privity of contract between it and the vendor, the defendant-appellant was not entitled to assert any of the rights under the Uniform Real Estate Contract.

Respectfully submitted,

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