

1982

Dennis Jenkins v. La Wanna Newman : Brief of Defendant-Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Jenkins v. Newman*, No. 18138 (Utah Supreme Court, 1982).

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JENKINS

v.

NEWMAN

18138

FILED

APR 22 1982

Clk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

DENNIS JENKINS,

Plaintiff-Appellant,

vs.

LA WANNA NEWMAN aka
LA WANNA OLIVER,

Defendant-Respondent,

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Case No. 18138

BRIEF OF DEFENDANT-RESPONDENT

APPEAL FROM THE JUDGMENT OF THE THIRD

JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, UTAH

THE HONORABLE BRYANT H. CROFT

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Plaintiff-Appellant,

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Case No. 18138

LA WANNA NEWMAN aka

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LA WANNA OLIVER,

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Defendant-Respondent

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BRIEF OF DEFENDANT-RESPONDENT

STATEMENT OF THE NATURE OF THE CASE.

This is an action wherein the Appellant seeks to review the decision of Judge Croft, the trial Judge in the Third Judicial District Court, who heard the above-entitled matter at the time of its trial on the merits. Judge Croft in that action failed to award the Plaintiff-Appellant damages for the fair rental value of the residence between the time established for the sale pursuant to the contract and the actual closing date on a judgment which purports to require specific performance of the contract but in fact allows the Plaintiff-Appellant significant modification as to their requirements for the payment of the purchase price for the property.

DISPOSITION IN THE LOWER COURT

The lower court entered a judgment following a hearing on the merits

which judgment required the Defendant-Respondent to sell to the Plaintiff-Appellant the real property which was the subject matter of the litigation subject to the terms and conditions contained in the earnest money receipt and offer to purchase which had been executed by the respective parties except for the specific provision contained in the earnest money receipt and offer to purchase requiring the Plaintiff-Appellant to pay the complete balance in the form of a balloon payment of the second trust deed and note which was used and referenced in the earnest money receipt and offer to purchase to secure over 3/4 of the total purchase price and more than 3/4 of the total equity of the Defendant-Respondent's interest in the property. Specifically the earnest money receipt and offer to purchase simply required the purchaser to pay approximately a \$32,000.00 balance on a \$41,000.00 total purchase price to the Seller in May of 1982. During the course of the hearing on the merits, Judge Croft received testimony pertaining to the equity of requiring and not requiring this payment in a timely form and chose in the lower court to not require strict adherence to the time constraints provided in the contract and further chose not to require the Seller, who is the Defendant-Respondent in this action, to pay to the Plaintiff-Appellant any damages for the loss of rents during the pendency of this action or until the time of the closing of the transaction.

RELIEF SOUGHT ON APPEAL

The Appellant seeks to obtain damages for the fair rental value of the property without redressing the Seller, who is the Defendant-Respondent in

this action, for the loss sustained by the Respondent as a result of not having the use and benefit of the monies that will become due her in May of 1982 according to a strict reading and interpretation of the contract terms and conditions. The Appellant further asserts an entitlement to attorney's fees and the Respondent on appeal seeks to avoid the payment of additional attorney's fees and avoid the further review of the decision and judgment of the trial court and more particularly the setting aside of the trial courts decision to prohibit damages for the fair rental value of the property, accruing from the date of the contracts anticipated closing until the date of the contracts actual closing.

STATEMENT OF FACTS

The Respondent through the use of a realtor in Salt Lake City, Utah, listed the home at 1218 Talisman Drive, Salt Lake City, Utah, for sale in early of 1980 and thereafter received an earnest money receipt and offer to purchase through another realtors office for the purchase of the subject property.

Following additional negotiations an earnest money receipt and offer to purchase was executed by the Respondent and Appellant as seller and purchaser respectively. As the Appellant asserts on page 3, paragraph 2, of their brief, the sale agreement provided for what is known as a "balloon payment", on or before May 31, 1982, or if the Appellant sold the home whichever should first occur, the balloon payment would be due at the time of the sale thereof. Pursuant to the Appellant's motion to amend the judgment, Judge Croft amended

the original judgment on November 3, 1981, again as the Appellant alleges in their brief, not requiring the payment of that balloon payment until two (2) years after the sale was completed which was and is not strictly and inherence to the existing terms and conditions of the contract between the parties. Judge Croft as the time of this determination to delay the responsibility of the balloon payment of \$32,000.00 on a \$41,000.00 sale representing almost all of the sellers equity of the property, again chose not to require of the seller, who is the Defendant-Respondent the requirement of the payment of the rental value of the premises. Judge Croft did not award the Appellant his damages for the rental value of the premises during the time the Respondent refused to complete the sale believing that it was inappropriate to extend the time for the "balloon payment" and award rental damages as is referenced on paragraph 3 of Appellant's brief and is shown on page 64 of the court record. All the while, the Appellant is contending that they are entitled to specific performance under the contract while seeking to avoid adhearing to their obligations and seeking to enforce specific performance against the Defendant-Respondent and avoid the requirements of specific performance for the Plaintiff-Appellant.

ARGUMENT

POINT 1

THE PLAINTIFF-APPELLANT IS NOT ENTITLED TO
DAMAGES EQUAL TO THE FAIR RENTAL VALUE FROM
THE DATE POSSESSION SHOULD HAVE PASSED UNTIL
THE TIME OF ACTUAL CLOSING ON THE BASIS THAT

STRICT SPECIFIC PERFORMANCE WAS NOT REQUIRED
FOR THE SALE OF THE REAL PROPERTY IN QUESTION
AND FURTHER ON THE BASIS THAT IT WAS WITHIN
THE DISCRETIONARY AUTHORITY OF THE TRIAL
COURT TO DETERMINE THE NATURE AND CONTENT OF
THE JUDGMENT AND THE APPROPRIATENESS OF
DAMAGES.

Disecting point 1 into its logic two sub parts an hereinbefore enumerated, the Respondent argues that the granting of damages for the rental value of real property awarded in specific performance cases to a purchaser is not a mandatory concept but subject to the discretion of the court which discretion was exercised and properly so and which exercise of discretion cannot be overturned by the Supreme Court, or should not be overturned by the Supreme Court without a clear and unequivocal showing of an abuse of discretion by the trial court. Reviewing this second portion of point 1 first, the Respondent further argues that the Appellant bears the burden of proof in establishing a clear and unequivocal abuse of discretion on the part of the trial court which the Appellant has failed to sustain.

The Appellant argues with regards to the first concept covered under point 1 that this is in fact not strictly a specific performance case in that the Appellant has sought and obtained from the trial court relief from strict adhearence to the terms and conditions of the contract between the parties since the Appellant has sought and obtained an extension of considerable duration for the payment of the majority of the equity the Seller-Respondent in this case was to have obtained for the sale of the real property in

question. Specific performance requires both parties to strictly adhere to the terms and conditions of the contract between the parties and in this case the Appellant has sought the strict performance by the Respondent and has sought to avoid strict performance themselves.

The case argued in the brief of the Appellant asserts an entitlement to damages and the Respondent admits that in certain circumstances damages are available and should be granted to successful litigants in specific performance cases for the fair rental value of the property during the pendency of the litigation prior to the close and taking of possessory interest of the subject real property. The Respondent however asserts that in this case the court chose to avoid the harsh effect of those damages for the benefit of the Respondent and chose to avoid the harsh effect of requiring strict performance of the payment of the majority of the money required under the terms of the contract for the benefit of the Appellant.

The argument I have made that the trial court has broad discretionary authority in determination of the propriety of judgments and the structuring of judgments is evidenced by cases covering a broad spectrum of topics and concepts each evidencing the nature of the course of discretion in the granting of judgments, the denying of judgments and the modification of judgments. In our case, the Appellant seeks to have the Supreme Court review the judgment entered by Judge Croft even after the Appellant has sought an order modifying said judgment originally and after Judge Croft has had an opportunity of hearing the evidence presented at the time of trial, the arguments presented by counsel and the secondary arguments presented by counsel in the motion to modify the judgment of the court. Judge Croft's

exercise of discretion in not granting damages for rentals on the subject property is a detriment to the Appellant admittedly but nevertheless a valid exercise of discretion and judgmental authority by the tryer of fact. Judge Croft's decision to enforce this specific terms and conditions of the contract as contained in the order of the court except for the provision pertaining to the "balloon payment" and allowing the "balloon payment" to be made two (2) years after the date of closing is again an evidence of the act of discretion and authority property within the relm and control of the tryer of fact and in this case was exercised to the detriment of the Respondent. If specific performance is mandated strictly, Judge Croft would have been charged with the responsibility of requiring payment of the balloon payment in May of 1982, giving rise to the obligation of the purchaser to come forward with the \$32,000.00 plus required of them within a few short months after the entry of the judgment and yet Judge Croft sought to modify the harshness of this requirement by interpreting his authority to grant him the leway to modify the specific performance of the contract to that extent while requiring of the Respondent-Seller in this case, the requirement of nevertheless selling the property and relinquishing title and possessory interest. Judge Croft, as the tryer of fact, obviously weighed the benefits and burdens, the equities and provisions of law governing the issue of strict performance of the contract terms and entitlement of fair rental values for the successful litigant and made the determination as to the appropriate award which the Appellant is now contesting again even though the Appellant received the substantial benefit of the delay of payments available under this use of discretion. For a series of cases evidencing the wide range of

discretionary authority available the trial judge the Respondent refers the court to the cases of Mayer v. Mayer, 492 P. 2nd 942, a 1972 Supreme Court case from the State of Kansas, and McNeill v. Allen, 534 P. 2nd 813, a 1975 Appeals court case from the State of Colorado, and Reese v. Geiermann, 574 P. 2nd 445, a Supreme court case from the State of Alaska handed down in 1978, and Hume v. Small Claims Court of Murray City, 590 P. 2nd 309, a 1979 Supreme Court, a decision from the State of Utah, all of which evidence in various means and capacities the nature of the broad spectrum of discretionary authority in the rendering of judgments and the granting of judgments and decisions available to trial courts. All of which sustain the basis proposition that the trial court has the authority to weigh the evidence and make a determination based upon law and equity as to the appropriate judgment and/or decision to be rendered.

Further it is the contention of the Appellant that there has been established a fair rental value of the property at \$265.00 per month. The Appellant has asserted in its brief that the Respondent rented the property for a period of time and testified as to the rental value. The Appellant further asserts that no factual or legal issue exists or is in dispute pertaining thereto, but it is the position of the Respondent that in deed in factual and legal questions to exist as to the fair rental value, the acts engaged in by the Respondent and the necessity of the court awarding damages as opposed to the courts discretionary authority to award damages for the fair rental value of the property pending the performance by specific decree of the court ordering the same. The Respondent asserts that the Respondent

did not in fact rent the property out but that an agent of a real estate company whos agency had been prior thereto revoked by the Respondent took it upon herself and rented the property during the pendency of this litigation and with regards to the \$265.00 figure that was the figure that the agent, after having had the agency's authority revoked, charged for the property and had nothing to do with the Respondent's charges for the property or expert testimony pertaining to or even qualified testimony pertaining to the fair rental value of the property. It is the position of the Respondent that the fair rental value of the property has not been established and that Judge Croft during the course of the proceedings, determined that all parties would be placed in the best interest by decreeing specific performance on the contract subject to the modification allowing the Appellant two (2) additional years for all intents and purposes in which to pay off the balloon payment required and not awarding the Appellant-Plaintiff in the above-entitled matter any damages for the fair rental value on the property during the pendency of the litigation. In the case decided by the Utah Supreme Court entitled Nuttall v. Holman, 173 P. 2nd 1015, the court determined that damages for the depreivation of use or the loss of use or rental values could not be sustained on the courts individual indulgence and speculation and conjuncture as to the proper values and amounts of damages, losses or analagusly, rental receipts.

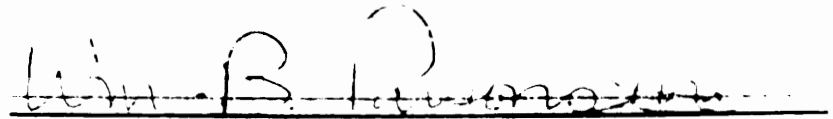
It is further the position of the Respondent that should the Supreme Court in this review process determine that the lower court has errored in the matter of granting damages for the fair rental value of the property pending the enforcement of the specific performance of the contract that the

Supreme Court should charge the trial court with the obligation of requiring a specific performance according to a strict reading of the terms and conditions of the existing contract including the requirement of, specifically, the payment of the balloon payment required thereunder in May of 1982 on that given date as opposed to the granting of a two (2) year term following the closing as is the existing order for the record appears to provide an indication that Judge Croft's determination was that there was an appropriate offset and justice would be better served by not granting rental damages and by granting a delay for Appellant-Plaintiff's strict performance as to the payment of the balloon required under the subject contract.

CONCLUSION

In conclusion, the Respondent asserts that the trial court has not abused its discretion in not granting damages for the rental value of the property pending the closing of the sale and that the trial court exercised its appropriate discretion in offsetting this potential relief available to the Plaintiff-Appellant, by granting the Plaintiff-Appellant the opportunity to avoid the payment of a balloon payment required in May of 1982 setting that balloon payment aside for two (2) years following the date of closing of the transaction. It is the position of the Respondent that a trial court has a broad and effective range of discretion which the Supreme Court should not overturn unless a clear and discernable abuse of discretion has been established which clear and discernable abuse of discretion has not been established by the Appellant.

Respectfully submitted,

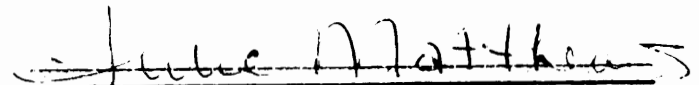


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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing
BRIEF OF DEFENDANT-RESPONDENT was mailed, postage
prepaid, this 22nd day of April, 1982, to:

Robert Felton
Attorney at Law
44 Exchange Place
Salt Lake City, Utah 84111



Secretary, Julie Matthews