

1982

Jon Michael Cady and Carolyn Cady et al v. Reta May Johnson and Jared L. Johnson : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JON MICHAEL CADY and CAROLYN
CADY, husband and wife,
TELFORD REALTY COMPANY and
RICH EDWARDS, dba ALL SEASONS
REALTY,

Plaintiffs-Appellants

vs.

RETA MAY JOHNSON and
JARED L. JOHNSON,

Defendants-Respondents

CASE NO. 18373

RESPONDENT'S BRIEF

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JON MICHAEL CADY and CAROLYN)	
CADY , husband and wife ,)	
TELFORD REALTY COMPANY and)	
RICH EDWARDS , dba ALL SEASONS)	
REALTY ,)	
)	
Plaintiffs-Appellants)	CASE NO. 18373
)	
vs .)	
)	
RETA MAY JOHNSON and)	
JARED L. JOHNSON ,)	
)	
Defendants-Respondents)	
)	

STATEMENT OF THE CASE

Appellants appeal from a judgment assessed against them arising out of a suit filed by Plaintiffs-Appellants against Defendants-Respondents. Respondents were sued on an earnest money , no tender of the deposited \$500.00 was made. Johnson defended on the grounds that (a) no tender of the earnest money was made and thus the \$500.00 became liquidated damages , and (b) the Statute of Frauds precluded a contract on which an action could be taken against Johnsons by any of the Plaintiffs-Appellants. Defendant, Reta May Johnson did not sign any contract and had not, in writing, given power to Defendant, Jared Johnson, to sign her name on any contract for the purchase of real property. Plaintiffs-Appellants were given notice that the Statute of Frauds was involved , were given notice that

Defendants claimed no authority existed to create a contract.

Plaintiffs-Appellants were made aware by a motion to dismiss at the time of the pre-trial that no return of the earnest money had occurred, and further, that the Statute of Frauds controlled the creation of the contract.

STATEMENT OF ISSUES

1. No return of funds occurred.

2. A motion for dismissal having been made and the court having given plaintiffs' counsel an opportunity to file a brief and no brief having been filed, no research done, with respect to the effect of the Statute of Frauds on the initial contract no error occurred when the court granted judgment for damages under the Statute.

STATEMENT OF FACTS

Plaintiffs Cady listed a home for sale. Plaintiff Telford Realty Co. was the broker for the listing. Plaintiff Rich Edwards dba All Season's Realty secured an earnest money agreement signed only by Defendant Jared Johnson who signed his mother's name and made the offer in his mother's name, and gave a check from his mother's bank account. Jared Johnson never made any account in his own name and never acted for himself and never was any allegation made that he was acting for himself. Defendant Reta Johnson was not a party to the earnest money agreement and never entered into any contract for the purchase of any real property. After closing dates passed, Defendants

requested a refund of their money and cited the Statute of Frauds as the grounds therefore. Counsel for the plaintiffs suggested that damages for breach of contract should lie, or in the alternative equitable relief should be available to the plaintiffs for failure of the contract. Repeated efforts were made to alert plaintiffs to the hopelessness of their claims since all agreed from the beginning that the Defendant, Jared Johnson acted solely in behalf of his mother, albeit with no written power of attorney. Plaintiffs Telford and Edwards, holding real estate licenses, should know or should have known that the Statute of Frauds requires a writing for the purchase of real property. Since no inquiry was made and Johnson was not bound to know the requirements of a written contract for the purchase of real property, plaintiffs, upon notification of the defenses alleged by Defendants, through counsel, should have known that to take action as was done was "without merit and not brought or asserted in good faith". Long before the matter was filed all of the defenses asserted in the answer, and re asserted in the motion to dismiss a pre trial were presented to counsel for the plaintiffs. All were ignored and ignored at peril. Counsel for the plaintiffs admitted at pre trial he had not read the cases and had not researched the law as to the effect of failure to tender the earnest money, or as to the impact of the Statute of Frauds on the contract, but alleged he would resolve the court's doubts by bringing appropriate facts and law to bear in a brief prior to trial date. No such brief having been submitted and no new facts having been alleged to the court on its own motion on the morning of trial suggested that the Statute applied and made inquiry as to the amount of time counsel had spent in trial preparation. Counsel offered the time

card and was told that the hours and hourly rate were sufficient, this without objection from plaintiffs' counsel.

ARGUMENT

POINT I

THE COURT DID NOT ERR IN GRANTING JOHNSON'S MOTION TO DISMISS.

No contract ever came into being. The Statute of Frauds 25-5-1 UCA, 1952, clearly states that the contract must be in writing and the cases are replete that only a written power of attorney will authorize another to bind a contract. Since no contract ever came into being no equitable principle for breach, nor third party beneficiary enforcement could occur.

Injustice there may be. Remedy there may be. Plaintiffs sought relief in a particular form despite repeated warnings of consequences. Defendants responded to the form of the law suit, specific performance or damages thereon for breach. A contract never entered cannot be made by a court of law, nor by a court of equity. No rule or equitable principle can create a contract which is clearly prohibited by the Statute of Frauds. No contract, no specific performance. Contract must be first found and approved.

Since the listing agreement required plaintiffs Cady to pay plaintiffs Telford and Edwards, no cause could exist against Johnson by reason of the listing contract. If every contract a real estate agent made required payment to the agent, as the plaintiffs Telford and Edwards seem to argue, then the realtors would

soon be out of business. Counsel argues that the court should prevent manifest injustice by declaring a contract and then permitting third party enforcement of the same. Appellants continue to ignore the operation of the law on their cause of action. If a principal cannot enforce a contract, how can an agent?

POINT II

APPELLANTS ARGUE THAT THE COURT VIOLATED ITS PREOGATIVES TO CONTROL CASES BY AWARD OF DAMAGES.

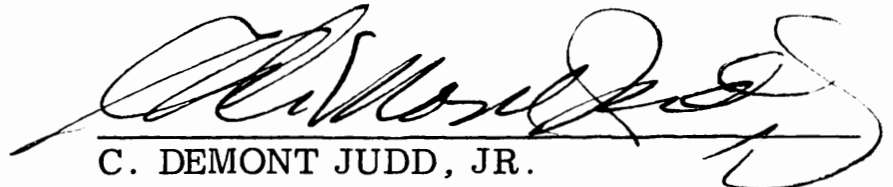
On the one hand appellants argue against manifest injustice but do the same to the defendants. As the court stated in his supplemental findings, attempts were made to have appellants discover the law by research. Since the court clearly held that the appellants could have or should have known the state of the law as it impacted their causes of action and yet insisted on going to trial, the argument of merit and good faith clearly applies. Defendants were clearly damaged by Plaintiffs-Appellants failure to review the law. A motion to dismiss, a request to amend the pleadings, an offer of settlement, all would have reduced the impact of Plaintiff-Appellants' action on the Defendants. The court justifies his control of the case and subsequent award of damage in the supplemental findings. No dispute as to the facts, as stated by the court, exists. Plaintiffs-Appellants still do not recognize the error of their ways. Indeed, further damage is inflicted upon Defendants by reason of this appeal. Again appellants are attempting to create something out of whole cloth. Defendants are entitled to additional relief.

CONCLUSION

It is respectfully submitted that:

1. The appeal should be dismissed.
2. Additional counsel fees should be awarded.

DATED this 26th day of July, 1982.



C. DEMONT JUDD, JR.
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of July, 1982, I mailed
a true and correct copy of the foregoing Respondent's Brief to Melvin C. Wilson,
Attorney for Plaintiffs-Appellants, P.O. Box 635, Farmington, Utah 84025,
postage prepaid.

Lisa Boyle
Secretary