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Lone Star Uranium & Drilling Co. v. Leland J. Davis and Barbara N. Davis et al : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT

of the
STATE OF UTAH **FILED**

FEB 3 - 1959

Clerk, Supreme Court, Utah

LONE STAR URANIUM & DRILLING
COMPANY, a corporation,

Plaintiff and Appellant,

vs.

LELAND J. DAVIS and BARBARA N.
DAVIS, his wife, RAY DAVIS and
MARY C. DAVIS, his wife,

Defendants and Respondents.

Civil No.
8986

APPELLANT'S BRIEF

H. G. METOS

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APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is an action by the plaintiff to recover from the defendants the sum of \$2,500.00 paid to them upon a written option agreement and contract to purchase a number of lode mining claims. The defendants filed a cross-complaint against the plaintiff for specific performance and damages. The trial court entered a judgment of no cause of action on plaintiff's complaint

and defendants' cross-complaint. Both sides have appealed from the judgment.

It appears that on November 5, 1954 the defendants agreed to sell to the plaintiff, for the sum of \$48,000.00, a number of claims hereinafter set forth in the agreement between the parties, said sum payable upon the defendants furnishing evidence of clear title to the claims and delivering possession thereof. When the agreement was entered into between the parties it was understood and so agreed between them that James Mallery and Wesley Edwards were in possession of nineteen of said claims under an outstanding lease, which lease the defendants agreed to terminate within six months and if they failed to do so, plaintiff was entitled to the return of the \$2,500.00 paid to defendants.

Plaintiff's evidence is wholly documentary and not in dispute. The contract, Exhibit 2, upon which plaintiff's action was brought is of vital importance and the same is hereby set forth in full, to wit:

EXHIBIT 2

OPTION AGREEMENT AND CONTRACT TO PURCHASE

THIS AGREEMENT entered into at Moab, Utah this 5th day of November, 1954, by and between Ray Davis and Mary C. Davis, his wife, Leland Davis and Barbara N. Davis, his wife, hereinafter referred to as Sellers and Lone Star Uranium and Drilling Company, Inc., a Utah corporation, hereinafter referred to as Buyer.

WHEREAS, the Sellers are the respective owners of nineteen (19) and twenty-two (22) lode mining claims

situate on Brumley Ridge, Township 27 S, Range 23 E, Salt Lake Meridian, San Juan County, Utah, the name of which are: Black Ace No. 1 to 7 inclusive, Little Fawn, Yellow Spot, Sundown, Red Deck No. 1 to 3, Renegade, Renegade No. 2 to 4, Little Fawn No. 2, Sunrise, Zip No. 1 to 10 inclusive, plus twelve (12) claims located in the general area and the names of which shall be furnished later, and are desirous of selling said claims unto the Buyer, now therefore,

For and in consideration of Two Thousand Five Hundred (\$2,500) Dollars delivered unto Maxwell Bentley, agent for Sellers, receipt of which is hereby acknowledged by the Sellers, the Sellers do hereby agree to sell and the Buyer does hereby agree to buy the above listed property according to the following terms and conditions:

1. The Sellers hereby acknowledge that up until the present time there has been an outstanding lease on the first nineteen (19) claims named above in favor of James Mallery and Wesley Edwards which is now in the process of termination because of default by the above named Mallery and Edwards in said lease and that the Sellers are using their best efforts to retake possession of said claims and finally and absolutely terminate the above mentioned lease.

2. Now the condition of this agreement is that in the event the Sellers are able to retake possession of said claims heretofore leased and finally and absolutely terminate said lease to the satisfaction of the Buyer on or before six (6) months from date of this agreement, then at such time the Buyer shall pay over unto the Sellers the sum of Forty-five thousand, Five Hundred Dollars (\$45,500) upon delivery by the Sellers of sufficient quit-claim deeds conveying all of the Sellers' right title and interest in and to all of the above mentioned forty-one (41) claims together with an abstract

of title showing clear record title to said claims to be vested in the Sellers, said abstract to show the land status of the premises involved at time of claim location on the Federal Land Office records and the records of the State Land Office, to said claims to be vested in the Sellers. Buyer shall have the right to survey the claims at the Buyers' expense which survey shall be completed within thirty (30) days following notification by the Sellers that the heretofore mentioned lease has been terminated and the Sellers are in a position to deliver possession of said property unto the Buyer; provided, that said survey, if made, shall show the claims to be substantially as represented in this contract.

3. In the event the Sellers have not retaken possession of said claims and finally and absolutely terminated the heretofore mentioned lease to the satisfaction of the Buyer on or before six (6) months from date of this agreement, then the Two Thousand Five Hundred (\$2,500) Dollars heretofore paid unto the Sellers' agent shall be returned unto the Buyer, or at the option of the Buyer, the time within which the Sellers shall have to retake possession of the property from the above named Lessees, Mallery and Edwards, and finally and absolutely terminated said lease, may be extended for an additional period of time not to exceed one (1) year from date of this agreement. In the event of the return of the Two Thousand Five Hundred (\$2,500) Dollars at the end of the extended period of time which the Buyer may elect to give unto the Sellers as above provided due to the Sellers not having been able to retake possession of said property and terminate the heretofore mentioned lease, this agreement shall become void and the respective parties hereto shall be released completely from all obligations contained herein.

The original of this contract, and a good and sufficient executed Quit Claim Deed shall be placed in escrow with First National Bank of Moab. The afore-

mentioned Forty-five Thousand Five Hundred (\$45,500.00) Dollars shall be paid to said First National Bank of Moab for said Sellers and upon said payment being made, said Buyer is entitled and shall be delivered the Quit Claim Deed.

IN WITNESS WHEREOF, the parties hereto have executed this instrument at Moab, Utah this 5th day of November, 1954.

(Signatures of Parties)

It appears that pursuant to the foregoing agreement, Exhibit 2, defendants filed an action in the District Court of San Juan County against Mallery and Edwards and a decree, Exhibit 1, was entered by the court on May 21, 1955. The order entered by the court concerning these claims is as follows:

"2. The defendants (Mallery and Edwards) should be and are hereby awarded judgment against the plaintiff in the sum of \$5,000.00 and that said judgment should be and is hereby ordered to be a first lien on all of the mining claims covered by the lease, said sum to be recovered by an order of sale to be issued by the court in this action in the same manner as lands which are sold under foreclosure."

On July 11, 1955 an amended decree was entered by the court amending paragraph 2 to read as follows:

"That the lease agreement concerning the following described claims entered into on or about the 6th day of August, 1953, between Dwight Oliver and Frank Buss as lessors and the defendants, James H. Mallery and Wesley Edwards, as lessees was cancelled, terminated and declared forfeit by the willful and intentional action of the present lessor, plaintiff Leland Davis, and is hereby declared to be terminated and forfeited.

That the defendants should be and are hereby awarded judgment against the plaintiff in the amount of \$5,000.00 and that said judgment should be and is hereby ordered to be a first lien on all of the mining claims covered by the lease, said sum to be recovered by an order of sale to be issued by the court in this action in the same manner as lands which are sold under foreclosure." (Exhibit 1.)

The defendants failed to furnish an abstract of title to the claims. No deed was filed with the bank within the time set forth in the agreement. On August 17, 1955, the plaintiff requested in writing from the defendants the return of the \$2,500.00 paid to them. (Exhibit 11D.) Defendants refused to make such payment and thereafter this action was filed.

STATEMENT OF POINTS

POINT 1.

THE TRIAL COURT'S CONCLUSION OF LAW AND JUDGMENT ADJUDGING NO CAUSE OF ACTION ON PLAINTIFF'S COMPLAINT IS CONTRARY TO THE UNDISPUTED EVIDENCE AND FINDINGS OF THE COURT.

POINT 2.

UNDER THE UNDISPUTED FACTS PLAINTIFF IS ENTITLED TO A JUDGMENT AGAINST THE DEFENDANTS AS PRAYED FOR IN IT'S COMPLAINT.

ARGUMENT

POINTS 1. AND 2.

UNDER THE EVIDENCE AND FINDINGS OF THE COURT PLAINTIFF IS ENTITLED TO RECOVER JUDGMENT AGAINST DEFENDANTS AS PRAYED IN ITS COMPLAINT.

Under the option agreement and contract to purchase the lode mining claims it was understood and agreed between the parties that defendants would perform certain matters and if they failed to do so within six months plaintiff would be entitled to the return of the \$2,500.00 down payment.

The acts to be performed by the defendants were:

1. To absolutely terminate the lease in favor of James Mallery and Wesley Edwards which was outstanding on the claims.

2. That an abstract of title would be furnished by the defendants showing the claims to be free and clear with title vested in the defendants.

3. That the defendants would place in escrow with the First National Bank of Moab good and sufficient deeds of said claims.

The defendants failed to perform any of the foregoing requirements as stipulated in the option agreement. The decree of the court relating to these claims was not entered until May 21, 1955 and was amended on July 11, 1955, long after the period of six months had elapsed. No abstract of title was ever delivered by the defendants and the abstract of title introduced

by them (Exhibit 13-D) in the trial is an abstract of twenty-two of the claims, twelve of said claims being in the name of a third party. No deed was deposited with the Moab bank as stipulated in the agreement.

On July 15, 1955 defendants' attorney, Maxwell Bentley, wrote the plaintiff a letter and stated: (Exhibit 12-P)

"Dear Sir:

I have been requested by Mr. Davis to inform you that since July 1, 1955 there are apparently no conflicts with any of the claims on Brumley Ridge which your company has agreed to purchase. I would also like to inform you that a corrected Decree in the Davis vs. Mallery and Edwards case has been signed by the Court and entered, wherein the lease previously held by Mallery and Edwards was absolutely terminated. I believe Mr. Davis is entitled to and would appreciate an immediate reply from your company wherein your company would set forth its intention with regard to the purchase agreement entered into with Messrs. Leland and Ray Davis.

Very truly yours,

Maxwell Bentley /s

Attorney for Leland and Ray Davis."

On August 17, 1955, in reply to Bentley's letter, plaintiff demanded the refund of the \$2,500.00 upon the ground that defendants had not fulfilled their agreement and cleared the defects outstanding against the property on or before May 5, 1955.

The trial court, in reference to the matters involving the option agreement, made the following findings:

"4. The defendants failed to terminate the outstanding lease on said claims and deliver an abstract of title showing a clear record title to be vested in the defendants or possession of said claims within the period of six months as provided for in said agreement, and that during said period of time said claims were in litigation between the defendants herein and said James Mallery and Wesley Edwards, and that a decree of the court made and entered in the District Court of San Juan County, State of Utah on May 21, 1955, and amended on July 11, 1955, is attached to plaintiff's complaint and by reference is made a part hereof, showing that said claims were subject to said lease and to a lien in favor of said James Mallery and Wesley Edwards in the sum of \$5,000.00.

5. That after the expiration of said six months, plaintiff demanded from the defendants the return of said sum of \$2,500.00 but defendants have refused to pay the same.

6. That the defendants did not furnish to the plaintiff an abstract of title showing said mining claims to be free and clear of all liens and encumbrances as provided in said agreement within the period provided for therein, and that defendants were unable to perform the terms of said agreement." R. 57.

From the foregoing findings of fact and from the undisputed evidence in the case, it manifestly appears that the conclusions of law relative to plaintiff's case are contrary to the findings, and that this court is justified and should amend the conclusions and judgment so that they will conform to the findings of fact.

In Vol. 3 Am. Jur., par. 899, p. 464, relating to conclusions, it is stated:

"Findings . . . which are contrary to a conclusion of law resulting from other facts found, cannot be sustained, and a judgment based thereon will be reversed. The question of whether or not the facts found support the conclusions of law is one of law. If the finding is the result of bias or prejudice, mistake or misapprehension, or misconception of the legal effect of the evidence, or if the evidence shows that the judgment is clearly wrong on the sole issue of fact, it will be set aside."

Again in Vol. 3 Am. Jur., par. 902, p. 471:

"Where there is no conflict in the evidence or the facts as specially found, the conclusion or judgment to be deduced therefrom is purely a question of law, to be finally determined by the reviewing court."

In 5 C.J.S., Sec. 1554, page 25, it is stated:

"Conclusions of law are of course reviewable, the appellate court not being bound by the conclusions of law reached below."

In *Jensen vs. Howell* 75 Utah 64, 282, Pac. 1034, it is stated:

"In this jurisdiction the binding effect of findings of the trial court in law cases is different from that in equity cases. In the former, the findings, as a general rule, are approved if there is sufficient competent evidence to support them, and, ordinarily, are not disturbed, unless it is manifest that they are so clearly against the weight of the evidence as to indicate a misconception, or not a due consideration of it."

In *Western Union Telegraph Co. vs. Mathews* 74 Utah 495, 280 Pac. 729, it is stated:

“This is an action at law and not a suit in equity. In law actions we may review the record for the purpose of ascertaining whether or not there is evidence to support the findings of fact made by the trial court, but we may not pass upon the weight that should be given evidence except in extreme cases.”

CONCLUSION

It is our opinion that the undisputed documentary evidence and the findings by the trial court warrant but one conclusion, namely, that the conclusions of law and judgment should be amended by this court and appellant have judgment as prayed for in its complaint.

Respectfully submitted,

H. G. METOS

TOM METOS

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