

1962

Moroni F. Bott v. A. M. Reeder dba Adolph M. Reeder and Ada M. Reeder : Brief of Appellants

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Bott v. Reeder*, No. 9539 (Utah Supreme Court, 1962).
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IN THE SUPREME COURT OF THE STATE OF UTAH

MORONI F. BOTT,
Plaintiff-Respondent,

vs.

A. M. REEDER, aka ADOLPH M.
REEDER, and wife ADA M. REEDER,
Defendants-Appellants.

CASE No. 9539

FILED

JAN 10 1962

APPELLANTS' BRIEF

Clerk, Supreme Court, Utah

Appeal from the Judgment of the First Judicial District
Court for Box Elder County

Honorable Lewis Jones, District Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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APPELLANTS' BRIEF

NATURE OF THE CASE

The nature of the present case is an action brought by the purchaser of lands for specific performance and a counter claim by the Defendant vendors for the purchase price, together with interest.

DISPOSITION OF THE CASE IN LOWER COURT

The disposition of the case made in the lower Court was that the Court granted specific performance to the vendee conditioned on his payment of the purchase price to Defendant vendors.

EXACT NATURE OF THE RELIEF SOUGHT

Defendants-Appellants seek on appeal to recover interest at the legal rate on the balance of \$2621.58 owed

them by the Plaintiff-Respondent for the purchase price of certain lands sold by Defendants-Appellants to Plaintiff-Respondent which balance was owing Defendants-Appellants for a period from September 1943, to the time a deed was delivered to Plaintiff-Respondent in August of 1961.

STATEMENT OF FACTS

In August of 1943 Defendant, A. M. Reeder, executed and delivered to Plaintiff a memorandum of an agreement to the effect that Defendant, A. M. Reeder agreed to sell to the Plaintiff a certain piece of property located in Section 34, Township 10 North, Range 3 West, SLB&M, in Box Elder County, Utah, for the purchase price of \$4000 and to furnish an additional seven and one-half acres of fully paid up water right in the Utah Idaho Sugar Company. There was no dispute as to the purchase price, nor the furnishing of the additional water right, which Mr. Reeder did.

It was further agreed by the parties at the time Mr. Reeder delivered the memorandum to the Plaintiff that interest was not to be charged, according to Plaintiff's witness, until 90 days after tender of the deed (T 34)

Very material to the case is the fact that Defendants did not have title to the land in question at the time the memorandum was delivered to Plaintiff. Plaintiff admitted he knew the Defendants did not have title to the land at the time the sale agreement was made (T 21). Plaintiff and the Defendant, Mr. Reeder, both believed it would be only a very short while until title was cleared

(T 29). Further evidence of this belief was the testimony given by Mr. Christensen (T 35-36) that Mr. Bott, Jr. had applied for a loan to pay the purchase price during the same year the memorandum was delivered.

Both parties were also aware that Geo. M. Mason, a practicing attorney, was handling the matter of clearing the title (T 30).

There was no conflict that Mr. Bott, Jr. was to take possession immediately (T 30). Mr. Bott, Jr. testified that he did take right over (T 23) and that he has been farming the property since that time, marketing the crops and enjoying the full benefits and use of the property.

After the hearing of the testimony, the Court made two findings of fact: (1) that Reeder was to give, in effect, a warranty deed when he obtained a good title from Holleys (T 41), and (2) that the parties agreed there was to be no interest until ninety days after Mr. Reeder tendered the deed (T 41).

The Defendants have no argument with either finding.

The Court then went on to state: If not withstanding the agreement, many years go by without fault of the Seller, if you can find such a line of authorities, we'll charge Bott interest by way of rental.

Briefs were accordingly submitted. The Judge stated at the hearing that he was of the frame of mind that Mr. Bott shouldn't have possession of the ground for all that period and have the use of the money for all that time as

shocking the conscience (T 47), and held that the Defendants were entitled to interest from the date of Plaintiff's possession. The Court declined to charge interest beyond the time Mr. Reeder first brought the matter of the quiet title into Court (T 44). Counsel for Defendants, in an effort to cooperate with the Judge in this decision, attempted to help fix the date of the first hearing.

At a later hearing the Court reversed himself and decided that Defendants were not entitled to any interest.

So far as Defendants can determine this change of mind on the part of the Court was brought about by a re-consideration of the record wherein Mr. Reeder testified as follows: (T 14).

Q. And what was said concerning the purchase price?

A. Well, I told him what the purchase price would be.

Q. Four thousand dollars?

A. That's right. With a forty acre water right.

Q. Forty acre water right. When was he to pay you the \$4,000?

A. Well, when we got the deed with title.

Q. And he hasn't got it yet?

A. No.

Q. So that the \$4,000 isn't due until you deliver him title?

A. That's right.

The Court in its final decision stated (T 61), "I wanted to say in the record that Mr. Reeder in his testimony stated that he wanted no more than the amount due, and the reporter couldn't find anything in the record to show me that Reeder had ever gone to Bott and talked to him about an extension of time or stated that because of Mr. Mason that he couldn't get the title quieted, and the record seems to be silent as far as Mr. Bott is concerned. There was never anything said. So I subscribe to the doctrine of law that you presented, Miss Hansen, but I can't apply it here because I can't find the facts to justify it. I'll announce that's the law but there had to be something happen then and neither Reeder nor Bott testified to anything."

This conclusion is not consistent with the facts nor with the law. The law as hereinafter quoted, confirms the reasonableness of Defendants claim as well as the right of Defendants to interest.

STATEMENT OF POINT

The lower Court erred in failing to grant Defendants the interest as prayed for in their Amended Answer and Counter Claim.

ARGUMENT

The lower Court erred in failing to grant to Defendants the interest prayed for in their Amended Answer and Counter Claim.

The pertinent facts to be considered, in relation to the law hereinafter quoted, are that there was a written

memorandum which was silent as to interest; and that there was an understanding by the parties that interest not to be charged until after tender of a deed, which understanding was based on a belief by the parties that title would be cleared and a deed tendered immediately.

It is important to note that while the parties agreed that interest was not to be charged until after tender of the deed, there was no contract, or agreement, either written or oral, which specified there would be no interest charged regardless of any contingencies that might arise.

Since the matter was already in the hands of an attorney for the purpose of clearing the title, it could not have been contemplated by the parties that a 17 year delay would ensue.

There is a long quotation in American Jurisprudence which Defendants feel is an excellent review of the law in this type of case, and which we quote for the convenience of the Court:

“A distinction has been made between the right of the vendor to interest upon the unpaid purchase money at law and in equity. Where a contract provides for payment of the price and delivery of the deed upon a certain date and the vendor without excuse does not tender the deed until after such date, in the absence of a contractual provision to the contrary, it would seem clear that there is at law no right to interest upon the unpaid purchase money for any period before the deed is tendered by the vendor, because at law the vendor’s right to the principal does not mature until the vendee is put in

default by a due tender of the deed. But when asked to enforce an agreement of this character, equity proceeds with reference not only to the rights of the parties under the agreement, but also with reference to the position the parties assume to each other after making the agreement, and the equities that grow out thereof. Where pending the execution of an agreement for the sale of land which does not provide for possession of the land, the vendee takes possession of the land, a court of equity ordinarily will charge interest upon the unpaid purchase money. This is true although there is a delay in the execution of the contract of sale by the vendor. *In equity the vendor is ordinarily entitled to interest where the purchaser is let into possession and no provision is made in the contract for a delay in the execution*, although the failure to complete the contract is due to the fault of the vendor, and in such a case in decreeing specific performance *the purchaser is as a general rule to be charged with interest on the purchase money from the time it should have been paid if the contract had been carried out as contemplated by the parties*, it being deemed inequitable that the purchaser should enjoy the benefit of the possession without liability for interest.” (Emphasis added.)

55 Am. Jur. Sec. 347, p. 774

An annotation in 25 ALR 2d, commencing at Page 951, states the general rule and digests numerous cases in support thereof:

“In the absence of an express provision in a land contract, the allowance of interest depends upon the various equities of a particular situation, the factor of possession being one of the most important. It is stated generally that neither party should be

able to enjoy both the beneficial use of the property and the use of the purchase money without being held accountable in some manner to the other party.” (This excerpt quoted in *McDermott vs. Sher*. 280 P. 2d, 660 (N.M.) (1955))

The Courts have confirmed the general rule stated in the above quotation in the following specific cases:

“Where vendee was let into possession of a tract of land under an agreement that the balance of the purchase price thereof was not to be required of him until certain defects in the title had been cured, in holding, where he had not appropriated this unpaid balance to the use of the vendor, that he was liable for interest thereon, the Court said: “The record presents the case of a vendor who has delivered possession of the premises to the purchaser, which he has continued to enjoy without molestation; of a vendor who has also faithfully complied with his engagement that a good title should be made upon the happening of a particular event, until which event he has left the purchase money in the hands of the vendee, as his security, and that vendee has thus, for more than 18 years, by himself, or his vendee received the rents and profits, and held the purchase money also. Is there any principle of law or equity which can justify us in saying he shall keep both? Shall the purchaser for so long a period receive the profits while he is enjoying the interest of the purchase money? — for it would be wilful blindness to the ordinary course of transactions to suppose that this money has lain idle. If raised at all, it has been put to interest, beyond question, if not raised, the interest has been saved to the party, which amounts to the same thing; for in either event he would have enjoyed the vendor’s estate for 18 years

for nothing. The injustice of such a proceeding has long since given rise to the rule that, as to interest and profits, the vendor is to be considered the owner of the money and entitled to the interest, while the vendee is regarded as the owner of the land and entitled to the profits. But he cannot have both."

75 A L R; 363 — (Brockenbrough vs. Blythe)
3 Leigh (va) 619 (1832).

"It seems to be the general rule that as between a vendor and purchaser interest is to be allowed to the vendor on the purchase price where the vendee is given possession of the property pending any delay in the consumation of sale due to inability to promptly perfect the title, etc. But it has also been held that where the vendor wilfully and wrongfully withholds the possession and also wrongfully fails and refuses to consummate the sale until required to do so by a decree for specific performance he will nevertheless be allowed, in an accounting for the ad interim rents, interest in such amount on the unpaid purchase price as does not exceed the amount of rents and income received by him, forfeiting the excess of interest if any."

Bands v. Rhoads, 35 So. 2d 437; Miss. (1948)

(Syllabus by the Courts:)

"The right in equity of a vendor to interest upon the unpaid purchase money is distinguished from such right of law.

"At law and in the absence of a contractual provision to the contrary, the vendor's right to the purchase price does not ordinarily mature until the vendee is placed in default by a due and proper tender of deed.

“Equity proceeds not only with a recognition of the contractual rights of the parties, but also with an observance of the position assumed toward each other by the respective parties during the period of litigation and the equities arising therefrom.

“In equity the vendor is ordinarily entitled to interest where the purchaser is let into possession and *no provision is made in the contract for a delay in its execution* although the failure to complete the contract is due to the fault of the vendor, and in such a case in decreeing specific performance the purchaser is as a general rule to be *charged with interest on the purchase money from the time it should have been paid if the contract had been carried out as contemplated by the parties*, it being deemed inequitable that the purchaser should enjoy the benefit of the possession without liability for interest.”

Volk vs. Atlantic Acceptance & Realty Co.
59 A. 2d 387; N. J. (1948)

“The trial judge held that under the contract plaintiff was entitled to interest on the installment payments after the year 1940 at the rate of 4% per annum. In so doing, he applied the rule in equity under which it is held in suits involving the enforcement of contracts for the sale and purchase of real estate that a purchaser under an executory contract is under equitable obligation to pay interest upon the unpaid purchase price where a situation not covered by an express provision of the contract and not contemplated by the parties has arisen, as where the vendor delays performance to a purchaser in possession and payment of the purchase price is due at the time stipulated for the vendor’s performance or where a purchaser takes possession before

he is entitled to it. The basis of the rule in equity is that it is inequitable in the first mentioned case that the purchaser should enjoy the use and benefit of both the land and the purchase money, where payment of the purchase money is due, without paying interest on the purchase money to compensate for the use of the land, and in the latter case that he should have possession of the land before he is entitled to it without paying interest to compensate for the possession thus taken. Hence, it is said that the purchaser should not have the benefit of the possession of the land in such cases without liability for interest on the purchase money. The equitable obligation to pay interest is imposed to adjust the equities of the parties where the contract itself contains no provision governing the situation.

Lund vs. Larsen; 24 N. W. 827; Minn. (1946)
(Also cited at 25 ALR 2d 954)

The case was not decided on this equitable principle; the court holding that a different rule would apply because of the particular fact situation).

“The decided trend of courts of law and courts of equity has been to break away from hard and fast rules and charge and allow interest in accordance with principles of equity, in order to accomplish justice, in each particular case.”

Nagle Engine vs. City of Erie, 26 Erie 76.

The New Jersey case of Kleinert vs. De Chiaro, 130 A. 2d, 637 (1957), summarizes more recent cases regarding the principal cited:

“The rule in courts of equitable jurisdiction is that in the absence of some incompatible equity a purchaser in possession will be required to pay interest on the unpaid portion of the purchase price. *Volk v. Atlantic Acceptance & Realty Co.*, 142 N. J. Eq. 67, 59 A 2d 387 (Ch. 1948), and the cases there collected; *New Jersey Highway Authority v. Renner*, 32 N.J. Super. 197, 201, 108 A. 2d 107 (App. Div. 1954), affirmed 18 N.J. 485, 114 A. 2d 555 (1955); Annotations, 75 A.L.R. 316, 325-332 (1931); 25 A.L.R. 2d 951, 956-959 (1952). It has been held that this rule will be applied even though the delay in the execution of the contract of sale arises by fault of the vendor. *Simonds v. Essex Passenger Ry. Co.*, 57 N.J. Eq. 349, 353, 41 A. 682 (Ch. 1898), quoted with approval in *Volk*, above, 142 N.J. Eq. at pages 72-73, 59 A. 2d at page 391. The theory is that a purchaser should not be able to enjoy the use and profits of the land as well as the balance on the purchase price without paying interest on the balance.”

In the Utah case of *Farnsworth vs. Jensen et al*, 217 P. 2d, 571 (1950), while the fact situation is considerably different than that of the present case, the Court makes some interesting observations. There was a specific contract in this case which required the payment of interest by the vendee and also required the vendor to clear title to the lands being sold. Vendor did not clear the title when she should have, the vendees stopped making payments under the terms of the contract and contended they did not owe interest during this period.

The Court commented:

“They admit the retention and use of the money after the due dates of payments and yet seek to avoid

the payment of interest on the amount retained because appellant was dilatory in clearing title.”

This the Court held vendees could not do.

Judge Wolfe, in his concurring opinion reiterates the general rule cited in the above cases.

“See the annotation at 75 ALR 316. It would be inequitable to allow the purchaser to enjoy the use of the land and at the same time allow him the use of the purchase money to the loss of the vendor.”

CONCLUSION

In conclusion, Appellants respectfully request that the Supreme Court reverse the decision of the Honorable Lewis Jones for the reasons and the law hereinbefore set forth insofar as said decision denies interest to the Appellants on the balance of the purchase price due for lands sold by Appellants to Respondent; and that the Court determine that Appellants are entitled to legal interest during the 17 year period of time Respondent enjoyed possession and use of both land and the balance of the purchase price while Appellants were endeavoring to clear title to the lands sold to Respondent.

Respectfully submitted,

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