

1983

Golden Key Realty, Inc. And W. Peter Brandley v. P.J. Mantas : Brief of Appellant

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Douglas T. Hall; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Golden Key Realty v. Mantas*, No. 19083 (1983).
https://digitalcommons.law.byu.edu/uofu_sc2/4635

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

GOLDEN KEY REALTY, INC. and)
W. PETER BRANDLEY,)

Plaintiff-Respondents)

vs. ✓)

Case No. 19083)

P. J. MANTAS,)

Defendant-Appellant)

BRIEF OF APPELLANT

Appeal from Judgment in favor of the Respondents
by the Third Judicial District Court of Salt Lake County,
Utah, the Honorable Scott Daniels, Judge, presiding.

DOUGLAS T. HALL of
ZOLL & HALL
235 South Main
Fifth Floor
Salt Lake City, Utah 84111
Attorney for Appellant

DAVID E. WEST of
ARMSTRONG, RAWLINGS, WEST & BROWN
1300 Walker Building
Salt Lake City, Utah 84111
Attorney for Respondents

FILED

JUN 15 1983

Clk. Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

GOLDEN KEY REALTY, INC. and)	
W. PETER BRANDLEY,)	
)	
Plaintiff-Respondents)	
)	
vs.)	Case No. 19083
)	
P. J. MANTAS,)	
)	
Defendant-Appellant)	
)	

BRIEF OF APPELLANT

Appeal from Judgment in favor of the Respondents by the Third Judicial District Court of Salt Lake County, Utah, the Honorable Scott Daniels, Judge, presiding.

DOUGLAS T. HALL of
ZOLL & HALL
235 South Main
Fifth Floor
Salt Lake City, Utah 84111
Attorney for Appellant

DAVID E. WEST of
ARMSTRONG, RAWLINGS, WEST & BROWN
1300 Walker Building
Salt Lake City, Utah 84111
Attorney for Respondents

TABLE OF CONTENTS

CASES AND AUTHORITIES CITED	ii
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF MATERIAL FACTS	2
ARGUMENT	
POINT I	
THE PROVISIONS OF THE STATUTE OF FRAUDS THAT REQUIRE THAT ANY SUBSEQUENT AGREE- MENT WHICH ALTERS OR AMENDS AN AGREEMENT REQUIRED BY THE STATUTE OF FRAUDS TO BE IN WRITING MUST ALSO BE IN WRITING HAS NO APPLICATION TO AN ACCORD AND SATIS- FACTION	4
POINT II	
A COURT SHOULD NOT TAKE ANY ISSUES FROM THE JURY UNLESS IT IS PLAIN THAT THERE IS REALLY NO CONFLICT IN THE EVIDENCE UPON WHICH REASONABLE MINDS COULD DIFFER	7
CONCLUSION	9

CASES AND AUTHORITIES CITED

<u>American Jurisprudence 2d, Vol 1</u>	7
<u>Cannon v. Stevens School of Business, Inc.,</u> 560 P.2d 1363 (Utah 1977)	4, 5
<u>Christensen v. Abbott,</u> 595 P.2d 900 (Utah 1979).	6
<u>Cummings v. Arnold,</u> 3 Met. 486 (Mass. 1842).	7
<u>Flynn v. W.P. Harlin Construction Company,</u> 29 Utah 2d 327, 509 P.2d 356 (1973).	8
<u>Gaido v. Tysdal,</u> 235 P.2d 741 (Wyo. 1951)	6
<u>Mel Hardman Productions, Inc. v. Robinson,</u> 604 P.2d 913 (Utah 1979)	7
<u>Strevell-Paterson Co., Inc. v. Francis,</u> 646 P.2d 741 (Utah 1982)	4
<u>Sugarhouse Finance Co. v. Anderson,</u> 610 P.2d 1369 (Utah 1980)	4
<u>Words and Phrases,</u> Vol 40 (1964)	5
<u>Zions First National Bank v. Johnson,</u> 641 P.2d 158 (Utah 1982)	5

IN THE SUPREME COURT OF THE STATE OF UTAH

GOLDEN KEY REALTY, INC. and)	
W. PETER BRANDLEY,)	
)	
Plaintiff-Respondents,)	
)	
vs.)	Case No. 19083
)	
P. J. MANTAS,)	
)	
Defendant-Appellant.)	
)	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This case involves the applicability of the requirements of the Statute of Frauds to an accord and satisfaction and the application of the substantial basis test to evidence on issues taken from a jury.

DISPOSITION IN THE LOWER COURT

The matter was tried in the Third Judicial District of Salt Lake County before a jury, the Honorable Scott Daniels presiding. The jury returned a verdict based upon special interrogatories. Based upon that verdict the court entered a judgment against the appellant in the amount of \$5,625.00. Thereafter, on motion of the respondents, the court amended the judgment as against the appellant for the sum of

\$18,000.00. The court also dismissed the first, second and third causes of action of the appellant's counterclaim.

RELIEF SOUGHT ON APPEAL

The appellant respectfully requests that the original judgment of the trial court, based upon the jury's verdict, be reinstated and that the case be remanded for trial on the issues set forth in the first, second and third causes of action of appellant's counterclaim.

STATEMENT OF MATERIAL FACTS

The parties entered into a written real estate listing agreement whereby the respondents agreed to use reasonable efforts to sell appellant's property located in Magna, Utah. The listing period was for six months beginning March 4, 1981 and provided that the appellant would pay to the respondents six percent of the sales price if the property was sold during the listing period. Several days prior to the termination of the listing agreement the appellant, through his own efforts, sold the property to a party not a contact found through the efforts of the respondents.

The appellant disputed that the respondents had used reasonable efforts to secure a buyer. After the sale the parties had discussions concerning the amount of the commission, if any, that the respondents were entitled to. The respondents orally agreed to accept \$5,000.00 in full settle-

ment of their claim for a commission and the appellant orally agreed to pay that amount. The next day the appellant tendered a check to the respondent in the amount of \$2,500.00. The respondent accepted the check but indicated that he would talk to an attorney about it. Thereafter the check was returned to the appellant and the respondents initiated legal proceedings in which it was claimed that because the property sold for \$300,000.00 that a commission was due them in the sum of \$18,000.00. The appellant counterclaimed alleging that an accord and satisfaction had been effected and, additionally, that the respondent had breached his fiduciary duty to the appellant by conspiring with a third party to procure the property for himself and this third party on terms more favorable to them and disadvantageous to the appellant.

The case was submitted to a jury upon two special interrogatories. These were answered as follows:

1. Did the parties ever consummate an accord and satisfaction or settlement of their dispute?

Answer: Yes.

2. Did the plaintiff Peter Brandley fail to use reasonable efforts to try to procure a purchaser for the property?

Answer: No.

The issues presented in appellant's counterclaim alleging fraud, conspiracy and breach of fiduciary duty were not given to the jury. The court ruled, after the presentation

of the evidence that there was insufficient evidence presented on these issues to allow them to go to the jury.

ARGUMENT

POINT I

THE PROVISIONS OF THE STATUTE OF FRAUDS THAT REQUIRE THAT ANY SUBSEQUENT AGREEMENT WHICH ALTERS OR AMENDS AN AGREEMENT REQUIRED BY THE STATUTE OF FRAUDS TO BE IN WRITING MUST ALSO BE IN WRITING HAS NO APPLICATION TO AN ACCORD AND SATISFACTION.

This court defined accord and satisfaction on numerous occasions and has held that an accord and satisfaction arises where the parties to an agreement resolve that a given performance by one party, offered in substitution of the performance originally agreed upon, will discharge the obligation created under the original agreement. Sugarhouse Finance Co. v. Anderson, 610 P.2d 1369, 1372 (Utah 1980). The Sugarhouse case is in line with previous decisions and the definition of accord and satisfaction set forth in the 1977 case of Cannon v. Stevens School of Business, Inc., 560 P.2d 1363 (Utah 1977). The jury in the instant case was instructed by the court on accord and satisfaction and returned a verdict finding that an accord and satisfaction had been consummated by the parties.

The basis of respondents' motion to alter or amend the judgment was that because the listing agreement was required to be in writing by the Statute of Frauds that any alteration or amendment to that agreement must also be in writing. The case of Strevell-Paterson Co., Inc. v. Francis, 646 P.2d 741

(Utah 1982) was relied upon by the respondents as their principle authority. However, the doctrine expressed in the Strevell-Paterson case does not apply to an accord and satisfaction.

Strevell-Paterson dealt with an action by a creditor against a guarantor of the debt wherein the guarantor claimed that an oral agreement of the parties had released him of his obligation. This court held that the release or revocation of an agreement to answer for the debt of another must also be in writing. The issue of an accord and satisfaction was not addressed.

An accord and satisfaction is not an amendment or alteration of a previous agreement. It is a new agreement substituted for the original. Cannon v. Stevens School of Business, Inc., 560 P.2d 1363, 1386 (Utah 1977). Generally, it is a method of discharging a contract or settling a claim arising from a contract by substituting a new and substitute contract. Zions First National Bank v. Johnson, 641 P.2d 158, 160 (Utah 1982). The key words are "new" and "substitute." To substitute means to put into the place of another person or thing, or to exchange. Words and Phrases, Vol. 40, p. 863 (1964). Because an accord and satisfaction is a new agreement that does not alter or amend, but replaces a previous agreement, the Statute of Frauds does not apply.

Several cases have specifically held that an accord and satisfaction need not be evidenced by any formal instrument.

1 Am Jur 2d 303 (1962). This court in the case of Christensen v. Abbott, 595 P.2d 900 (Utah 1979) held that there is no requirement that an accord and satisfaction must be in writing. In the Christensen case this court upheld the trial court's finding that the parties had settled their dispute on the payment of a prommissory note with an accord and satisfaction. It was an oral agreement that canceled an \$111,000.00 note. Id. at 902.

The ruling in the Christensen case is in conformity with the Wyoming case of Gaido v. Tysdal, 235 P.2d 741 (Wyo. 1951). This case involved the sale of land and the timber thereon. The court specifically held that a written contract for the sale of land, while still executory, could be rescinded by oral agreement. Id. at 746. But in discussing the case the court said:

But the great weight of authority supports the rule that the statute of frauds has no application where there has been a full and complete performance of the contract by one of the contracting parties . . .

This is similar to the facts in the instant case where it can be said that the respondent had completed his performance under the listing agreement. The court in Gaido went on to state:

The general rule permitting written contracts to be abrogated or rescinded by an oral agreement is fully applicable to contracts required by the statute of frauds to be in writing; and such a contract may be the subject of an oral accord and satisfaction . . .

Id. at 748.

The United States Supreme Court has ruled on this issue. In the case of Cummings v. Arnold, 3 Met. 486 (Mass. 1842), dealing with the question of whether or not a subsequent parole agreement for the sale of printing cloth might be given into evidence on a written contract the Supreme Court held that oral agreements, similar to a plea of accord and satisfaction, not being with the statute of frauds, should be admitted into evidence. Id. at 492, 494.

Because an accord and satisfaction is a new agreement, not a modification of the original, a consideration of the defense of the Statute of Frauds to its being effective is not necessary. 1 Am Jur 2d 49 (1962).

POINT II

A COURT SHOULD NOT TAKE ANY ISSUES FROM THE JURY UNLESS IT IS PLAIN THAT THERE IS REALLY NO CONFLICT IN THE EVIDENCE UPON WHICH REASONABLE MINDS COULD DIFFER.

In ruling on motions which would take issues of fact away from a jury the trial court must look at the evidence and all reasonable inferences that reasonably may be drawn therefrom and grant the motion only if there is no substantial basis therein which would support a verdict in favor of the party being moved against. Mel Hardman Productions, Inc. v. Robinson, 604 P.2d 913, 917 (Utah 1979). On appeal this court looks at the evidence in the same manner. Id.

The appellant presented evidence at trial that the respondent indicated to the property's purchaser that he had a

personal interest in acquiring the appellant's property through an old friend and business associate who was also the party that the respondent attempted, on several occasions, to arrange the sale of the property to. This evidence formed the basis of appellant's counterclaim for fraud, conspiracy and breach of fiduciary duty. Sale of the property to the respondent's friend would have been, under the proposed terms, advantageous to the buyer at the expense of the appellant.

It is possible that the jury could have found that the evidence was sufficient to substantiate at least one, if not all of appellant's alleged counterclaims. It was not plain that there was really no conflict in the evidence upon which reasonable minds could differ. This is the standard as set forth in the case of Flynn v. W.P. Harlin Construction Company, 29 Utah 2d 327, 509 P.2d 356 (1973):

It has long been established in our law that a court should not take the case from the jury where there is any substantial dispute in the evidence on issues of fact, but can properly do so only when the matter is so plain that there really is no conflict in the evidence upon which reasonable minds could differ. As was said for this court long ago by the greatly respected Justice Frick:

. . . unless the question is free from doubt, the court cannot pass upon it as a matter of law . . .

Id. at 361.

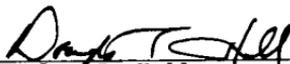
The application of the standard set forth above to the facts in the instant case would have allowed the jury to make a determination of the validity of all of appellant's counterclaims.

CONCLUSION

It is respectfully submitted that the trial court erred in amending the original judgment rendered upon the verdict on special interrogatories returned by the jury and in not allowing the jury to rule upon all of appellant's counter-claims. Appellant respectfully urges this Court to reinstate the original judgment and to remand for trial the issues of fraud, conspiracy and breach of fiduciary duty as set forth in appellant's counterclaim.

DATED this 15th day of June, 1983.

Respectfully submitted,



Douglas T. Hall
Attorney for Defendant-
Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 1983, I delivered to the office of David E. West, attorney for the plaintiff-respondents, two copies of the foregoing brief. Delivery was made to 1300 Walker Building, Salt Lake City, Utah.