1972

State of Utah, By And Through Its Road Commission v. Walter C. Rohan And Ella E. Rohan, His Wife, And Medallion Mortgage Company : Brief of Appellant

IN THE

SUPREME COURT

OF THE

STATE OF UTA

TATE OF UTAH, by and through its ROAD COMMISSION,

Plaintiff and Appellant,

vs.

ALTER C. ROHAN and ELLA E. ROHAN, his wife, and MEDALLION MORTGAGE COMPANY,

Defendants and Respondents.

BRIEF OF APPELLA

Appeal from Judgment and Order
District Court for Salt Lake County
The Honorable Stewart M. Ha

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IN THE

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STATE OF UTAH, by and through its ROAD COMMISSION,
Plaintiff and Appellant,

vs.

WALTER C. ROHAN and ELLA E. ROHAN, his wife, and MEDALLION MORTGAGE COMPANY,
Defendants and Respondents.

Case No. 12796

BRIEF OF APPELLANT

NATURE OF THE CASE

This is a condemnation action brought by plaintiff to acquire property for a highway facility. The sole issue presented on this appeal is whether defendant is entitled to additional interest on the condemnation deposit paid into court at the time of the hearing of plaintiff's Motion for Order of Immediate Occupancy.

DISPOSITION IN LOWER COURT

The motion was heard before the Third District Court, Judge Stewart M. Hanson, presiding. The Court granted defendants' Motion for Recomputation of Inter-

est on Judgment and allowed additional interest on the amount deposited into court when this action was initiated.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks reversal of the lower court's decision and also a direction that under Utah law interest shall not be paid on a condemnation deposit paid into court pursuant to a lawful condemnation action.

STATEMENT OF FACTS

Plaintiff, Road Commission, condemned a portion of residential property owned by defendant for the purpose of widening the right of way of Wasatch Boulevard to accommodate the new freeway. A Complaint was filed, an Answer received and an Order of Occupancy was granted and filed by November 1, 1968 (R. 24). The matter was tried before a jury which returned a verdict of just compensation for the landowner. The Judgment on the Verdict was entered on July 21, 1970 (R. 131), and was appealed on other grounds by plaintiff to this court in Case No. 12216 in which this court affirmed the lower court's decision. Plaintiff's petition for rehearing was denied.

Consequently, the Road Commission paid to defendant the amount of just compensation together with interest on the balance due and costs pursuant to the terms of the Judgment on the Verdict. Counsel for defendant

accepted the state's Warrant and signed the Satisfaction of Judgment which is dated the 28th day of September, 1971 (R. 140). A Final Order of Condemnation was signed by the District Court on October 13, 1971 (R. 139).

Subsequently, defendant made a Motion for Recomputation of Interest on Judgment and asked that the Court grant an additional $279.60 interest on the Road Commission's initial deposit of $1165.00 for the reason that "Defendants were given no notice or knowledge that plaintiff had deposited with the Clerk of Salt Lake County a check in the sum of $1165 on or about October 24, 1968 for their use and benefit nor was an Order of Immediate Occupancy issued or filed or served upon the defendants." The defendants' Motion urged that plaintiff's failure to file certain documents or to notify defendants resulted in the defendants not receiving the deposit of $1165 until after the Final Order of Condemnation and therefore interest was due on that $1165 deposit. After argument, defendants' Motion was granted and the Road Commission was ordered to pay the additional $279.60 interest by reason of its failure to notify defendants of the deposit or file the necessary documents. Plaintiff Road Commission now appeals that decision.

ARGUMENT

THE COURT ERRED IN GRANTING DEFENDANTS' MOTION FOR ADDITIONAL INTEREST ON THE INITIAL DEPOSIT AFTER FINAL ADJUDICATION OF THE CONDEMNATION ACTION.

1. GRANTING INTEREST ON A CONDEMNATION DEPOSIT MADE PURSUANT TO LAW IS CONTRARY TO THE CONTROLLING STATUTE.

Upon commencing an action in eminent domain the condemning authority is required to pay into court a deposit as a condition precedent to occupancy of the property sought, 78-34-9 Utah Code Annotated 1953, as amended (U. C. A.). To grant interest on a deposit paid into court in a condemnation action is contrary to the statute which controls the payment of interest:

> [The] judgment shall include, as a part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages . . . but interest shall not be allowed on so much thereof as shall have been paid into court. 78-34-9 U. C. A.

There is no requirement for the filing of any special document or for giving any special notice other than the notice contained in the pleadings of the action. A deposit simply precludes interest on the amount deposited. At least one recognized authority holds that "a tender of compensation or a deposit for the use of the owner stops the running of interest." Nichols on Eminent Domain, 3rd Ed. Vol. 3 §8.63(2), and in federal practice under a statute similar to Utah law, the defendant or his counsel has the burden of being aware of the deposit:

> The fact that the deposit stops the running of interest on the amount deposited frequently

> leads to such voluntary payment. Condemnee's counsel must check the possibility periodically to guard against the loss of interest that would accompany a failure to make a timely withdrawal. Nichols on Eminent Domain, 3rd Ed. Vol. 7, §3.04; *Southern Amusement Co.* v. *United States*, 265 F. 2d 34 (5th Cir. 1959); *United States* v. 211.59 *acres of land*, 179 F. Supp. 431 (N. D. Cal. 1959).

Thus, no special notice nor document other than the regular pleadings is required to inform defendant of a condemnation deposit. The effect of the deposit is clear in the statute: interest is not to be allowed on the amount deposited.

2. DEFENDANTS SHOULD HAVE RECEIVED NOTICE OF THE CONDEMNATION DEPOSIT THROUGH THE LEGAL PLEADINGS.

There are several ways in which defendant or his counsel received notice or should have known of the condemnation deposit, any one of which was at least sufficient to place a prudent person on a duty to inquire as to the deposit.

The condemnation statute clearly requires that a deposit be made at the time the order of occupancy is granted, 78-34-9, U. C. A. Otherwise the order is not effective. There is no record that defendant, at any time, questioned the validity of the order of occupancy. Moreover, counsel for defendant should be aware of the state statute governing condemnation actions, especially since he was handling that specific type of action. "All persons

are charged with knowledge of the provisions of statutes and must take notice thereof." 58 Am. Jur. 2d Notice §21.

Furthermore, the condemnation resolution and complaint give adequate notice of the deposit. The record reveals that the complaint containing the resolution was served upon defendants' counsel (R. 20) and that an answer to the complaint was served upon plaintiff by mail (R. 30) prior to the hearing of the Motion for Order of Occupancy (R. 26). Paragraph 3 of the Complaint contains a copy of the Condemnation Resolution which clearly states:

> Be it further resolved that the State Finance Director shall be instructed and requested, on behalf of this commission:
>
> To prepare State Warrant in a sum equal to 75% of the approved appraisal of each parcel of real property, or interest in real property set forth and described herein; payee to be the Clerk of the District Court of the County wherein the real property is located, for the use and benefit of the landowner and/or lien holder as described herein;
>
> That a tender to the landowner of a sum equal to at least 75% of the fair market value of the property to be acquired for rights of way herein shall be made prior to issuance of Order of Immediate Occupancy (R. 11):
>
> * * *
>
> Approved Appraisal $1,555.00
> Amount to be tendered landowner at time Order of Immediate Occupancy is granted $1,165.00 (R. 12).

The Complaint clearly shows that a deposit is to be

made at the time of the hearing of the Motion for Order of Immediate Occupancy. Presumably, the allegations of the complaint were read in detail before they were answered. Even the answer alleges as an affirmative defense that fair market value is considerably in excess of the amount offered by the plaintiff (R. 29), indicating that from the pleadings counsel was or should have been aware of the amount offered.

Thus, the circumstances indicate that the complaint was read and answered and that defendant through his counsel was actually aware of the deposit. But even if the allegations were not considered actual notice they should certainly be considered sufficient to charge a person or his counsel with a duty to inquire as to the deposit. One case has held that a recital in a deed referring to a mortgage gave notice of the mortgage. The Utah Supreme Court quoted approvingly from that case:

> Means of knowledge and knowledge itself are, in legal effect, the same thing where there is enough to put a party on inquiry. Knowledge which one has or ought to have under the circumstances is imputed to him. When a party *has information or knowledge of certain* extraneous facts which of themselves do not amount to, nor tend to show, an actual notice, but which are sufficient to put a reasonably prudent man upon an inquiry respecting a conflicting interest, claim, or right, and the circumstances are such that the inquiry, *if made and followed up with reasonable care and diligence, would lead to the discovery of the truth, to a knowledge of the interest, claim or right which really exists, then the party is absolutely charged*

> *with a constructive* notice of such interest, claim or right. In other words, whatever fairly puts a person on inquiry is sufficient notice where the means of knowledge are at hand; and if he omits to inquire, he is then chargeable with all the facts which, by a proper inquiry, he might have ascertained. A person has no right to shut his eyes or his ears to avoid information, and then say that he had no notice; he does wrong not to heed the "signs and signals" seen by him. It will not do to remain wilfully ignorant of a thing readily ascertainable, and it is no excuse for failure to make an inquiry, that if made, it might have failed to develop the truth * * *. (Emphasis ours), *Salt Lake Garfield & W. Ry. Co.* v. *Allied Materials Co.*, 4 Utah 2d 218, 291 P. 2d 883 (1955).

Certainly, the allegations of the complaint and resolution were sufficient to cause a prudent man to inquire about the deposit. The pleadings and notice of hearing were filed and received; the Order of Occupancy was signed and filed. The law requires no more. As a result of the statute and the pleadings the defendant or his counsel had sufficient notice that they knew or should have known, or at least should have inquired about the deposit.

3. THE JUDGMENT IS RES JUDICATA AS TO THE ISSUE OF INTEREST, THUS PRECLUDING THE ISSUE FROM BEING RAISED AFTER THE FINAL ADJUDICATION OF THE MATTER

Even if defendants were correct in their theory of failure to give notice, the issue was already laid to rest,

and is res judicata and cannot be raised now after a final adjudication of the matter.

The Judgment on the Verdict was signed and entered on July 21, 1970 and clearly spells out that the deposit of $1165.00 is to be deducted from the final payment and that the interest runs only on the balance due (R. 131). No objection was ever made to either the form or substance of that Judgment nor was any motion to amend or reconsider ever filed. Defendants have therefore acquiesced in the order of the court which clearly disallowed interest on the deposit. In fact, upon payment of that judgment counsel for defendant signed the Satisfaction of Judgment which expressly acknowledges that a certain amount "of $1165.00 has heretofore been paid as of October 24, 1968" (R. 140).

The judgment is therefore final, and is conclusive as to the rights of the parties and constitutes an absolute bar to another action involving the same cause of action. "The res which is Judicata is the cause of action." 46 Am. Jur. 2d Judgments §404. "When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties." *Matthews* v. *Matthews*, 102 Utah 428, 132 P. 2d 111 (1942). The bar of res judicata precludes even those issues which were not raised but could have been:

> The generally recognized rule of procedure is that where the parties have had an opportunity to present their case and judgment is rendered it becomes binding upon them, both as to the issues that were tried and those that were triable in that proceeding, and that they are precluded from further litigating the matter. *National Finance Co. of Provo* v. *Daley*, 14 Utah 2d 263, 382 P. 2d 405 (1963); *Wheadon* v. *Pearson*, 14 Utah 2d 45, 376 P. 2d 946 (1962).

The policy behind the rules of res judicata is sound:

> They exist in order to limit a person to one opportunity to settle a dispute between himself and another . . . the rules of res judicata are intended to give a person his day in court upon issues which are important to him in order that he may have an opportunity to present every thing which is proper to be raised from his point of view. Restatement of the Law, Judgment, Chapter 4, §80b.

As a result of defendants' acquiescence in the judgment and their attorney's signing of the Satisfaction of Judgment, any question of allocation of interest was finally decided. That decision must now stand as a bar to further litigation of the issue.

CONCLUSION

Defendants are bound by the terms of the judgment which are satisfied and which preclude them from raising the issue of additional interest on the initial deposit. Even on its merits the issue must be resolved in favor of plaintiff since the statute clearly prohibits payment of inter-

est on the amount deposited. Moreover, defendants, through their legal counsel and from the pleadings, had actual notice or at least sufficient notice as would cause a prudent person to make further inquiry as to the deposit. The result is that defendants knew or should have known about the deposit and therefore have no claim to additional interest after the action has been concluded.

Respectfully submitted,

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