

2005

LPM Corporation, A Nevada corporation v. Paul C. Smith and Sandra A. Smith : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LPM CORPORATION,
A Nevada corporation,

Plaintiff and Appellant,

vs.

PAUL C. SMITH and
SANDRA A. SMITH,

Defendants and Appellees.

Appellate Case No. 20050950-CA

Priority No. 15

REPLY BRIEF OF APPELLANT

APPEAL FROM FINAL ORDER

BY THE HONORABLE GLEN R. DAWSON,

SECOND DISTRICT COURT, DAVIS COUNTY, BOUNTIFUL DEPT.

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. THE SMITHS IGNORE THE STANDARD FOR 12(b)(6) MOTIONS TO DISMISS	1
II. LPM’S COMPLAINT STATES A VALID CLAIM BECAUSE IT ALLEGES SUFFICIENT FACTS TO SUPPORT THE ELEMENTS OF BOUNDARY BY ACQUIESCENCE.	2
III. THE TRIAL COURT ERRED BY NOT CONVERTING THE SMITHS’ MOTION TO ONE FOR SUMMARY JUDGMENT WHEN THE PARTIES RAISED MATTERS OUTSIDE THE PLEADINGS AND THE TRIAL COURT DID NOT EXCLUDE THEM.	7
CONCLUSION – RELIEF SOUGHT	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES

<u>Oakwood Village LLC v. Albertsons, Inc.</u> , 2004 UT 101, 104 P.3d 1226.....	1
<u>Ramsey v. Hancock</u> , 2003 UT App 319, 79 P.3d 423.....	5
<u>RHN Corp. v. Veibell</u> , 2004 UT 60, 96 P.3d 935 (Utah 2004).....	2
<u>Sony Electronics, Inc. v. Reber</u> , 2004 UT App 420, 103 P. 3d 186.....	1, 7

ARGUMENT

I. THE SMITHS IGNORE THE STANDARD FOR 12(b)(6) MOTIONS TO DISMISS

The Smiths argue that since “all of LPM’s arguments rely upon facts which do not appear in its complaint,...these facts are not relevant on appeal.” (Aplee. Brief at 8) That conclusion is false because the argument ignores the correct standard of review.

When this Court reviews a trial court’s decision to dismiss for failure to state a claim, it “accepts the factual allegations in the complaint as true and interprets those facts and all inferences drawn from them in the light most favorable to the plaintiff as the non-moving party.” Oakwood Village LLC v. Albertsons, Inc., 2004 UT 101, ¶9, 104 P.3d 1226, 1230. “A motion to dismiss is appropriate only where it clearly appears that the plaintiff would not be entitled to relief under...any state of facts [the plaintiff] could prove to support [its] claim.” Sony Electronics, Inc. v. Reber, 2004 UT App 420, ¶10, 103 P. 3d 186 (citations and quotations omitted) (emphasis added). Thus, under the correct standard this Court considers 1) the facts in the complaint, 2) reasonable inferences drawn from those facts, and 3) any other state of facts LPM could prove to support its boundary by acquiescence claim.

The Smiths’ argument addresses only the first point of the standard, ignoring points two and three. They argue that any fact outside the complaint should be

disregarded by the Court. But under the applicable standard of review, reasonable inferences drawn from LPM's complaint and other facts LPM could prove to support its claim are just as relevant as facts alleged in the complaint. Therefore, the Court must consider them as well.

II. LPM'S COMPLAINT STATES A VALID CLAIM BECAUSE IT ALLEGES SUFFICIENT FACTS TO SUPPORT THE ELEMENTS OF BOUNDARY BY ACQUIESCENCE.

LPM alleged sufficient facts to support a valid claim of boundary by acquiescence in its complaint. (See Aplt. Brief at I.A.) The Smiths do not challenge the sufficiency of the alleged facts for any one particular element of the claim. Their primary argument is that LPM fails to state a claim because "the doctrine of boundary by acquiescence is not a doctrine by which one can obtain an entire parcel of land." (Aplee. Brief at 5) However, the only reason they offer in support of this contention is that the alternative legal theory of adverse possession is somehow "designed" to permit the taking of a neighbor's entire parcel¹, but boundary by acquiescence is not. (See Aplee. Brief at 7).

¹ The Smiths are quick to point out that LPM cannot prove adverse possession because it has not paid the taxes on the property. However, that is not relevant here because LPM did not plead adverse possession. The payment of property taxes is not a required element under the doctrine of boundary by acquiescence. See RHN Corp. v. Veibell, 2004 UT 60, ¶23, 96 P.3d 935, 941 (Utah 2004). Therefore, non payment of taxes is not a bar to quieting title in a disputed parcel by boundary by acquiescence. It is also a matter outside the pleadings and not supported by any evidence.

LPM already advanced the argument that boundary by acquiescence can operate to take a neighbor's entire parcel. (See Aplt. Brief at I.B.) But, even if it cannot, the complaint still states a claim because LPM is not claiming the Smiths' entire parcel.

The Smiths confuse LPM's claim by mislabeling the disputed parcel as the Smiths' "entire parcel." The disputed parcel is not the Smiths' entire property. The Smiths' property consists of the disputed parcel and additional contiguous land on the north side of the fence. [R 3 ¶2, ¶9; R 70] Therefore, LPM seeks only a boundary adjustment, not the smiths' entire property.

The Smiths erroneously conclude² that since the complaint did not allege the existence of the Smiths' undisputed parcel, that fact must be ignored and, thus, the Smiths' undisputed parcel does not exist. If it does not exist, they reason, then the Smiths' only property is the disputed parcel, and if LPM acquires it by boundary by acquiescence, that would leave the Smiths no property at all. (See Aplee. Brief at 6) The Smiths infer that because no reasonable landowner would acquiesce to having no property, LPM's claim fails because it could never prove the required element of acquiescence. (See Aplee. Brief at 8)

Of course, the Smiths' undisputed parcel to the north of the fence really does exist. It also existed when the Smiths' predecessors owned it, along with the

2. Their conclusion is erroneous because the Smiths rely on the wrong standard of review for a 12(b)(6) motion.

disputed parcel, and acquiesced to the fence as their southern boundary. [R 3 ¶9-10]

These facts were alleged in the complaint.

Paragraph nine of the complaint states “LPM, its predecessors in interest and Defendant’s predecessors in interest all acquiesced in the fence serving as the boundary between their respective properties.” [R 3 ¶9 (emphasis added)] That allegation unmistakably refers to the property on both sides of the fence.

Since the property directly north of the fence is owned by the Smiths, and the complaint refers to it, the complaint refers to the Smiths’ property north of the fence. In paragraphs two and three respectively, the complaint also alleges two other parcels: LPM’s property and the disputed parcel. [R 3 ¶2-3] Thus, LPM alleged the disputed parcel was only a part of the Smiths’ property, which included additional property contiguous to LPM’s property, separated by a fence between the properties of LPM and the Smiths.

But even if LPM did not plead the Smiths’ ownership of the land north of the fence, the trial court must consider that fact because it is a reasonable inference drawn from the facts alleged. Inherent in every boundary by acquiescence claim are three distinct parcels of land: 1) the plaintiff’s undisputed land, 2) the defendant’s undisputed land, which is separated from the record owner’s property by a fixed boundary, and 3) the disputed land in the middle.

The Smiths distort this basic framework and mischaracterize LPM's claim in the process. Under this framework, the defendant owns the land on the opposite side of the fence that is not in dispute. If the trial court did not draw this inference on its own, LPM expressly raised it in its opposition memorandum [R 21], and again at the hearing on the Smiths' motion to dismiss [R 70, R 95.7-8]. Therefore, because it was a reasonable inference from the facts alleged that the disputed parcel was only part of the Smiths' property, the district court was required to consider that fact in its decision to dismiss LPM's complaint.

Even if not specifically plead or reasonably inferred from the facts alleged, the trial court must consider the fact that the Smiths own the property north of the fence because LPM could prove it. "[A] motion to dismiss is only appropriate where it clearly appears that the plaintiff...would not be entitled to relief under the facts alleged or any state of facts they could prove to support their claim." Sony Electronics, 2004 UT App 420, ¶10, 103 P. 3d 186 (citations and quotations omitted) (emphasis added).

LPM can prove the Smiths' ownership of the land north of and contiguous to the disputed parcel. LPM made reference to the Smiths' deed at the hearing on the motion to dismiss. [R 95.7] LPM also demonstrated the Smiths' ownership at the hearing by presenting an exhibit of the Smiths' entire property conveyed by that deed, including the portion north of the fence. [R 70] Because LPM demonstrated

that it could prove this fact, the trial court should, therefore, have considered it in its decision to dismiss.

In conclusion, the disputed parcel is merely a portion of the Smiths' entire parcel. LPM seeks only to adjust the legal boundary between LPM and the Smiths northward to the fence line. Thus, LPM would not be taking the Smiths entire property because the Smiths would still have title to their property north of the fence. Under these circumstances, proving acquiescence is entirely possible and conceivable. Therefore, the doctrine of boundary by acquiescence applies here because LPM does not seek to use it to obtain the Smiths' "entire parcel." Rather, it is being properly employed to adjust a disputed boundary line.

If the Court were to adopt the Smiths' view of boundary by acquiescence, the doctrine would become useless because such a claim could always be defeated by the defendant land owner. If a land survey ever uncovered a boundary discrepancy, a potential defendant landowner would simply need to deed the disputed parcel to herself or a family member as a separate parcel. Then she would have a fail-proof defense against her neighbor seeking to quiet title to the "entire parcel" under boundary by acquiescence, which is exactly what the Smiths' predecessors in interest did. That is why the Utah courts did have not adopted – and should not adopt – the Smiths' view of the doctrine of boundary by acquiescence.

III. THE TRIAL COURT ERRED BY NOT CONVERTING THE SMITHS' MOTION TO ONE FOR SUMMARY JUDGMENT WHEN THE PARTIES RAISED MATTERS OUTSIDE THE PLEADINGS AND THE TRIAL COURT DID NOT EXCLUDE THEM.

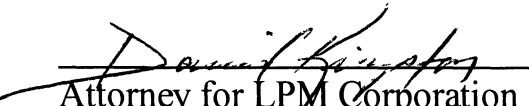
The Smiths argue that it was not error when the district court failed to convert the motion because it did not need to rely on the outside matters presented by LPM in its decision to dismiss. (See Aplee. Brief at 3) However, the Smiths fail to explain how the trial court could have dismissed without relying upon outside matters. Nevertheless, the trial court did not exclude any of the additional matters during the motion hearing, or otherwise. [R 95] Under Sony Electronics, the court was required to consider additional facts that support LPM's claim.

The Smiths failed to address the matters that the Smiths presented outside the pleadings. (See Aplt. Brief at 17) The record shows that the Smiths raised, for the first time at the motion hearing, the fact that the disputed parcel was created in 1967. [R 95.3, 95.11, 95.13, 95.15] The Smiths also argued in their reply memorandum and at the hearing, without offering any admissible evidence, that they paid all of the taxes on the parcel. [R 48, R 95.11, 95.13, 95.15] LPM was prejudiced when the court relied upon those matters in dismissing its complaint. Because Rule 12(b) required the trial court to treat the Smiths' motion as a Rule 56 motion for summary judgment, and it did not, the trial court erred.

CONCLUSION – RELIEF SOUGHT

The doctrine of boundary by acquiescence applies here because LPM seeks merely to adjust the common boundary with the Smiths northward to the fence, not take the Smiths' entire property. LPM alleged facts to support each required element of the doctrine of boundary by acquiescence. Therefore, the trial court erred when it dismissed LPM's claim for failure to state a claim, and this Court should reverse. Alternatively, this Court should reverse because LPM was denied the opportunity to present material made pertinent to the 12(b)(6) motion after the Smiths presented matters outside the pleadings.

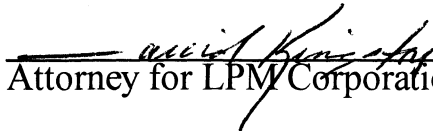
DATED March 6, 2006.


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CERTIFICATE OF SERVICE

I certify on March 6, 2006 copies of the above were served by first class mail to:

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