1958

Glen F. Nielsen and Alta R. Nielsen v. W. R. Rucker and Addie W. Rucker : Brief of Appellants

Utah Supreme Court

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In the
Supreme Court of the State of Utah

GLEN F. NIELSEN and ALTA R. NIELSEN, his wife,

Respondents,

vs.

W. R. RUCKER and ADDIE W. RUCKER, his wife,

Appellants.

Case No. 8817

BRIEF OF APPELLANTS

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STATEMENT OF FACTS

Appellants, defendants below, are the owners of a motel, a home and a small apartment, all adjoining, in the City of Tremonton, Utah. The respondents are the owners of a farm, variously described, just north of Brigham City on the highway to Collinston, Utah. Both parties had listed their respective properties for sale and fortunately, or unfortunately, the same real estate broker represented both parties in the transactions that led to the agreement asserted by the respondents and to no agreement as claimed by the appellants.

The court below found that an agreement had been consummated and decreed its specific performance. The appellants here seek review contending that there was no agreement at all, or, in the alternative, that any existing agreement was sufficiently indefinite as to terms and conditions that the parties should be left to their remedies at law for damages and similar relief.

The facts were all in dispute and, as this is an equity case, this Court is entitled to review all of the evidence and to determine its weight, its relevancy and its probativeness. We are here content to rely upon specific exhibits that will hereafter be mentioned and discussed and our references to the transcript will be few. And we are confident that a decree sounding in specific performance can be shown to be erroneous and that it must be reversed.

As has been stated, respondents were the owners of a dairy farm north of Brigham City. It was represented to consist of 110 acres with certain water rights, certain equipment and certain livestock. The farm was purportedly being purchased from LuRoy P. Deem under a contract and escrow agreement. The livestock were the subject of a chattel mortgage to the Bank of Utah at Brigham City. A certified copy of this chattel mortgage was introduced in evidence as Exhibit "U". The real estate broker, Peterson, testified that Exhibits "E", "F" and "K", among other papers, were prepared and were executed by respondents for the purpose of carrying out the details of the transaction (R. 63, 64). In order to avoid repetition these Exhibits will be more fully discussed in connection with our argument as to the points upon which we rely.

We should also note here that Exhibits "A" and "B", either together, or separately, constitute the agreement between the parties, if there is an agreement. Respondents contend that Exhibit "B" is an amendment to Exhibit "A" and that the two must be read together to ascertain the intention of the parties. Appellants, during the trial, contended that the respondents became unable to perform under Exhibit "A" and that it thereupon became a nullity; and that it was completely superseded by Exhibit "B". In our present view of this matter, these contentions become somewhat immaterial and we now urge that, whether Exhibits "A" and "B" are considered together or separately, they are sufficiently uncertain that specific performance is not the proper remedy. Again, and in order to avoid repeating their contents, we will leave specific discussion of these exhibits to the argument.

STATEMENT OF POINTS

POINT I.

THAT THE PURPORTED CONTRACT, IF ONE EXISTS AT ALL, IS SUFFICIENTLY INDEFINITE AND UNCERTAIN THAT IT IS IMPROPER TO DECREE ITS SPECIFIC PERFORMANCE.

ARGUMENT

POINT I.

THAT THE PURPORTED CONTRACT, IF ONE EXISTS AT ALL, IS SUFFICIENTLY INDEFI-

NITE AND UNCERTAIN THAT IT IS IMPROPER TO DECREE ITS SPECIFIC PERFORMANCE.

It has been said that "a contract for sale, mortgage, or conveyance of real property or interest therein, under the authorities, must be definite, must be certain, and must be unambiguous in its essential and material terms and provisions before a court of equity will decree its specific performance." 81 Corpus Juris Secundum on Specific Performance, Section 31(b) at page 486.

"Specific performance will not be decreed unless the terms of the contract are so definite and certain that the acts to be performed can be ascertained and that the court can determine whether or not the performance rendered is in accord with the contractual duty assumed." 5 Corbin on Contracts, Sec. 1174 at page 756.

Referring again to Exhibits "A" and "B", which must be held to be the contract between the parties as asserted by the respondents, the only description contained therein as to the property to be transferred by the respondents is the phrase "dairy farm owned by Glen Nielsen and wife" and again in Exhibit "A" is the phrase "their dairy farm, with all equipment." Can it be said that this is a sufficient description of the real property involved?

A further look at the other exhibits is even more revealing. Exhibit "E" is the tendered "Assignment of Contract and Escrow Agreement." The respondents' witness, Peterson, testified that this was to carry out the terms of the transfer (R. 63). This assignment has been executed

by the respondents and purports to transfer the respondents' interest in their contract and escrow agreement with LeRoy P. Deem as to three specifically described parcels of land.

Exhibit "F" was also a part of the details to effect this purported transfer of the property. It appears to have been executed by the respondents and is notarized by the same Peterson, who was a witness for the respondent during the trial, on April 6, 1957. It contains the same description of the same three parcels as is contained in Exhibit "E". Of the utmost importance is the fact that the total acreage contained in these descriptions will not exceed 52 acres.

Yet the trial court, in his findings, conclusions and decree, directs the specific performance of the supposed agreement and directs the conveyance by the respondents of *four* parcels of land having a total acreage of approximately *one hundred and eleven acres* (R. 26, 27, 31 and 32). (Italics ours.)

Respondents were apparently relying upon an agreement that only required the delivery by them of deeds to fifty odd acres. We respectfully urge that the trial court had no right to require specific performance of some different agreement and we further contend that this set of facts clearly reveals that there was no agreement at all.

May we again refer to Exhibit "F" and to the last sentence in the description which reads "subject to a reservation in the grantors of ½ of all mineral and oil rights of said property". Admittedly, this reservation was no part

of the contract as set out in Exhibits "A" and "B", or either of them; and the record was completely silent as to any discussion or agreement between the parties as to such a reservation. But the respondents tender performance wih such a reservation. It is again our contention and we urge upon this Court that the appellants' refusal to proceed further was fully justified.

81 Corpus Juris Secundum on Specific Performance, Sec. 33 at page 488, states:

> "Except where uncertainty or ambiguity has been removed or cured by the parties, a court of equity will not decree specific performance of a contract for the sale, exchange, or conveyance of land, or an interest therein, unless the contract designates or describes the land with definiteness and certainty or furnishes or refers to means or data by which it can be identified and located with certainty by the aid of admissible extrinsic evidence, such as public records, maps, or other documents, and without recourse to inadmissible extrinsic evidence as to the intention of the parties. The contract may be specifically enforced where extrinsic evidence is required to *apply*, but not where it is required to *supply*, the description of the property involved." (Italics ours.)

One other matter is of prime importance. Pervading the record and as specifically illustrated at R. 180 is the statement of the appellant, W. R. Rucker, that he was to assume the chattel mortgage on the respondents' livestock and pay this mortgage at the rate of $175.00 per month. The tendered Bill of Sale, Exhibit "K", dated April 5, 1957, specifically provided that the remaining balance of this mortgage in the sum of $8454.54 was to be payable at the

rate of not less than $175.00 per month. It is not difficult to imagine respondents' consternation when they discovered that this sum of money was all due on December 1, 1957, a matter of only months, as is shown by Exhibit "U". This clearly was a sufficient ground upon which to declare the transaction at an end and to refuse to perform. The trial court wholly and completely neglected and overlooked this phase of the transaction and made no finding thereon.

Again, 81 Corpurs Juris Secundum on Specific Performance, Section 34C(1) at page 493, contains the following specific rule:

> "In order to warrant a decree of specific performance thereof, a contract must be reasonably definite and certain with respect to the time, place and manner of payment or performance."

And further at page 494 appears the following:

> "Where payment by the terms of the contract is to be deferred, but the time of payment is not specified, the uncertainty is fatal."

We respectfully submit that the present case shows unequivocally that it was the intent of the parties that the time of payment of this assumed chattel mortgage be deferred. The further fact that it was an impossibility to defer such payment should be equally fatal.

Cases dealing with specific performance and its many phases are legion, but a case with facts similar to the one at bar has not been found. Two recent cases from neighboring states appear sufficiently in point to permit of their citation.

The Idaho case of *Crouch* v. *Bischoff*, 280 P. 2d 419, at page 422, states the rule as follows:

> "A greater degree of certainty is required to sustain a decree for specific performance than is required to sustain a judgment for damages at law, *Anderson* v. *Whipple*, 71 Idaho 112, 227 P. 2d 351, and an agreement which leaves any of the material terms or conditions for future determination cannot be enforced."

And in the Montana case of *Steen* v. *Rustad*, 313 P. 2d 1014, the Court at page 1020 said:

> "It is of course well settled that a contract to be specifically enforceable must be complete and certain in all essential matters included within its scope. Nothing must be left to conjecture or surmise, or be so vague as to make it impossible for the court to glean the intent of the parties from the instrument, or the acts sought to be enforced."

And this same Court continued:

> "It is also universally held that cases like the present one rest upon their own peculiar facts and circumstances. Rarely do we find one case identical to another, or so fashioned in fact and law, that we can say one is on all fours with another. Therefore we find equity giving relief in one situation and denying it in another where the facts seem to be, but are not, quite identical.
>
> "The Montana cases of *Long* v. *Needham*, supra, and *Reeves* v. *Littlefield*, supra, illustrate the proposition that each controversy must be bottomed on its own facts and circumstances. This court, although guided by precedent, will not be bound thereby since each case presents its own peculiar prob-

lem. Therefore, in arriving at a just result, we will not be guided by any one case, but rather will interpret the facts of this case in the light of the many cases which have already been decided."

CONCLUSION

We respectfully submit that the supposed contract, the lands to be covered thereby and the extent of the interest therein and the terms of payment and the manner thereof were vague and indefinite and uncertain. The decree of the trial court clearly proposes to specifically enforce an alleged contract that neither of the parties had agreed to prior to the trial.

Whether there was a contract at all, and the evidence is compelling that there was none, need not be here determined. Suffice it to say that there was a complete absence of that type of evidence that is clear and compelling and a prerequisite to a decree of specific performance.

We respectfully submit that the judgment of the trial court should be reversed.

Respectfully submitted,

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