

2001

Wayne H. Braithwaite v. E. Mayo Sorensen : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
 OF THE
 STATE OF UTAH

WAYNE H. BRAITHWAITE and)
 ELIZABETH F. BRAITHWAITE,)
 Plaintiffs/Appellants,)

-vs-

Case No. 14691

E. MAYO SORENSEN, VERA A.)
 SORENSEN, and FIRST STATE BANK)
 OF MANTI CITY, MANTI, UTAH,)
 Defendants/Respondents.)

BRIEF OF RESPONDENTS, SORENSENS

Appeal from Judgment against Appellants in the Sixth
 Judicial District Court in and for the County of
 Sanpete, State of Utah, the Honorable Don V. Tibbs
 presiding

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Defendants/Respondents.)

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BRIEF OF RESPONDENTS, SORENSENS

STATEMENT OF THE NATURE OF THE CASE

The appellants filed this action in the District Court of Sanpete County, State of Utah, to compel the respondents to convey title to real estate being purchased under an Agreement entered into on May 9, 1973. A copy of this Agreement has been made a part of the record on appeal.

The Agreement provided that the appellants would purchase from Respondents, Sorensens and Respondents, Sorensens would sell to appellants the described real estate for the sum of \$900.00, \$200.00 down and \$700.00 payable on May 9, 1973, the date the Agreement was signed. The Agreement further provided that the \$700.00 and the deed would be placed in Escrow with

the First State Bank, Manti Office, as Escrow Agent until a Federal Tax Lien was released. The Agreement provided that in the event the Federal Tax Lien was not released within a period of three years, by May 9, 1976, the deed would be returned to the Respondents, Sorensens and the escrow funds, \$700.00 would be returned to the Appellants.

The Federal Tax Lien which was attached to Respondents Sorensens' property was always a matter of dispute as far as Sorensens were concerned. At the time the parties entered into the Agreement appellants were aware of the dispute and therefore, agreed to allow a three year period to clear the dispute and have the lien released, the performance of the contract being subject to the release of the tax lien.

Because the Tax Lien was never released and the deed delivered, appellants commenced this action. Respondents, Sorensens filed a Motion for Summary Judgment.

DISPOSITION IN LOWER COURT

Respondents Sorensens' Motion for a Summary Judgment was granted by the lower court on June 25, 1976.

RELIEF SOUGHT ON APPEAL

That the Utah Supreme Court affirms the decision of the lower court.

STATEMENT OF FACTS

Appellants and Respondents Sorensens entered into an agreement for the purchase and sale of certain real property.

At the time the parties entered into the Agreement there was a Federal Tax Lien against the property. Because there was a Federal Tax Lien the Agreement provided in effect that performance of the contract, delivery of the deed to Appellants and delivery of \$700.00 held in Escrow to Respondents Sorensens, was subject to the Federal Tax Lien being released. A time limit for obtaining the release was set at three years, May 9, 1976. Under the terms of the contract, if by May 9, 1976 the Federal Tax Lien has not been released the deed would be returned to Respondents Sorensens, and the escrow funds of \$700.00 would be returned to the Appellants.

The Federal Tax Lien was based on employee withholding taxes which a corporation failed to withhold. Respondents Sorensens were involved in the corporation, but disputed the tax lien, claiming they had become disassociated with the Corporation before the period for which employee withholding taxes were not paid.

Because Respondents Sorensens felt they were not responsible for payment of the Federal Tax Lien, they did not pay the same. Furthermore, the corporation did not pay the said tax and when May 9, 1976 arrived the lien had not been released. Respondents Sorensens have no record of receiving a Notice from the Internal Revenue Service for an offer of \$900.00 in settlement of the tax lien claim.

ARGUMENT

Under the terms of the Agreement Respondents Sorensens'

deed and Appellant's \$700.00 was placed in Escrow to be exchanged upon the release of a Federal Tax Lien. Paragraph 2 of the Agreement reads as follows:

Should such release of Federal Tax Lien not be filed with the County Recorder within three years from the date of this Agreement, the Bank as Escrow shall return the \$700.00 to the Buyers and the other papers to the Sellers, and both parties shall be released from all obligations in connection with their agreements herein.

The general rule of interpretation of contractual documents is heavily weighed toward the intention of the parties. The general rule is stated in 17 Am. Jur. 2d, Page 333, as follows:

The primary test as to the actual character of a contract is the intention of the parties, to be gathered from the whole scope and effect of the language used.....

It would seem clear that the intention of the parties to the Agreement was that the contract was not to be performed unless the Federal Tax Lien was released. This intention is made clear from the language used in the contract referred to above from Paragraph 2 of the Contract. The Agreement specifically states that in the event the Federal Tax Lien is not released the deed signed and placed in escrow by the Respondents Sorensens would be returned to them and the \$700.00 placed in escrow by the Appellants would be returned to them.

At the time the Agreement was entered into, May 9, 1973, Appellants were made aware of the circumstances surrounding the

Federal Tax Lien. They were aware that the Lien came about through the failure of a Corporation which Respondents Sorensens had been involved with, to pay certain Federal Taxes. Appellants were aware that Respondents Sorensens disputed the claim that they were personally liable for the tax. Appellants being aware of the Federal Tax Lien had no interest in purchasing the real estate being subject to the lien. Therefore, a provision providing that a three year period would be allowed in which to obtain a release and performance was made subject to obtaining the release.

Since the Federal Tax Lien was not released under the terms of the contract both parties were excused from performance. It would further seem that had this result not been the intention of the parties they would not have been included in their agreement, the last sentence of Paragraph 2 of the Agreement providing for termination of the performance at a stated date.

The release of the Federal Tax Lien was a condition precedent to the performance of the contract. The contractual meaning of a condition precedent is as follows:

Conditions precedent call for the performance of some act or the happening of some event after a contract is entered into and upon the performance or happening of which its obligations are made to depend. Associated Inv. Co. v. Cayias et al
55 Utah 377, 185 Pac. 778 (1919), 17 Am Jur 2d Sec. 321, Page 751.

The instant case falls exactly within the situation of being a condition precedent. This case calls for the happening of some event after the contract was entered into. Clearly the event which was to happen after the contract was entered into was the release of the Federal Tax Lien. The obligations of performing the contract were dependent on the Federal Tax Lien being released. The Federal Tax Lien was, in fact, never released, therefore, never bringing about the happening of the condition precedent, thereby terminating the obligation of performance on either of the parties' part.

The Agreement did not provide that the Respondents must obtain the Lien release nor did it place on them any duty to get the Lien released, otherwise the termination of the contract after a period of three years would not have been added to the Agreement.

The release of the Federal Tax Lien, the happening of which was a condition precedent to the performance of the contract, did not occur, therefore, performance of delivering the deed and escrow funds was terminated.

CONCLUSION

In contract disputes the general rule demands that the intention of the parties be determined and interpretation given accordingly. From the very language of the contract the intention of the parties is easily determined. The parties recognizing there may be a problem of clearing the tax lien

expressly designated a date, May 9, 1976, in the contract, providing that if the Lien was not cleared by such date performance would be excused and the deed and escrow funds returned to the parties that gave them.

When May 9, 1976 came, the tax lien had not been released by the Corporation which incurred the tax nor by Respondents Sorensens because they disputed their personally being responsible for the Corporation Tax. Since the Tax Lien was not released the deed should be returned to the Respondents Sorensens and the escrow funds returned to the Appellants.

Respectfully submitted,

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