

APPELLATE COURT NO.: A06 0421

STATE OF MINNESOTA
IN COURT OF APPEALS

Elizabeth Peterson,

Plaintiff/Respondent,

District Court File: 27-CV-04-000813

vs.

Patricia Peterson, and
Holiday Recreational Industries, Inc.,

Defendants/Appellants.

RESPONDENT'S BRIEF

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STATEMENT OF FACTS

The issue of appellants being pro se at trial should be discussed first, since appellants appear to make the argument that they were pro se because of some force beyond their control. Appellants' attorney withdrew on September 6, 2005. Nearly four months before this matter went to trial. In addition to the four month notice, appellants were put on notice in open court by the Trial Judge, on November 22, 2005, that they would not be granted a continuance of the trial date if they appeared at trial without an attorney. The Trial Court, in its Order of December 12, 2005, compelling production of appellants' income tax returns, notes in said Order that appellants were pro se. It was at this hearing on November 22, 2005, that appellant Patricia Peterson ("Appellant Peterson") was advised by the Court that she would not be granted a continuance based on being pro se. Appellants were pro se at trial by their own choice. They were given notice by the Court that no continuance of the trial date would be allowed. (See trial transcript, "T." 7.)

Respondent Elizabeth Peterson, and her now ex-husband, James Peterson, started a business selling Recreational Vehicles. There were no other owners of the business. (T. 26)

In 1989, respondent and James Peterson purchased a truck stop for the intended purpose of using that location to sell RV's. After purchasing the truck stop, respondent and James Peterson learned that the site was contaminated. Litigation ensued between respondent and James Peterson, and the sellers of the property. The end result of that litigation was a large judgment being entered against respondent and James Peterson. (T. 26-29)

Respondent and James Peterson subsequently started a new company for the purpose of selling RV's. This new company is the appellant Holiday Recreational Industries, Inc. ("HRI"). On advice of counsel, respondent and James Peterson took no ownership interest in HRI, but rather put ownership in the name of Obelyn L. Peterson, James Peterson's mother. (T. 31-34)

Respondent testified that the only reason ownership of HRI was put in the name of Obelyn Peterson was because of the large judgment against respondent and James Peterson.

Respondent and James Peterson owned a lot in Arizona and transferred ownership of the lot to Tom and Margaret Blackburn, again on advice of counsel. When the lot was sold, respondent and James Peterson directed the Blackburns to pay the proceeds from the lot to HRI. (T. 37-39, and exhibit 4.)

A building was constructed to house the operations of HRI. Respondent Elizabeth Peterson was a guarantor on the loan for construction of the building. (T. 49-51)

In April 2001, the business entity HRI and real estate where HRI conducted its business was conveyed by Obelyn Peterson to appellant Peterson. An appraisal of the real estate was completed at the time of the conveyance to appellant Peterson. The real estate that was conveyed to appellant Peterson was appraised at \$960,000.00 (Exhibit 9). The appraisal did not include the value of HRI. Appellant Peterson put no money into the purchase of HRI and the real estate. (HRI and the real estate to be referred to as "The Property.") Appellant Peterson assumed existing liabilities on The Property of \$537,068. (Exhibits 6, 7, & 8) Based upon the appraisal of the real estate, Appellant

Peterson was gifted equity of \$422,000.00 from Obelyn Peterson. This does not include the value of HRI.

In addition to Appellant Peterson not paying any funds when she obtained The Property, respondent also offered exhibit 10 to show that Appellant Peterson was actually holding The Property "In Trust" for the benefit of others.

After The Property was conveyed to Appellant Peterson, respondent again personally guaranteed a loan, this time in the amount of \$600,000. (Exhibits 11 & 12)

If any doubt existed in the Trial Court's mind that Appellant Peterson was in fact holding title to The Property on behalf of respondent, that doubt vanished after exhibit 20 was received. Said exhibit is a "Release of All Claims." Exhibit 20 is dated May 23, 2002, and is signed by James Peterson. Exhibit 20 recites that in return for ownership of a campground that the family owned, James Peterson releases all interest he has in HRI. James Peterson specifically released, in exhibit 20, any claims he may have against respondent regarding HRI. This was further proof that all parties were intending that HRI was being held by Appellant Peterson on behalf of others. In fact, Appellant Peterson testified that respondent was also supposed to sign the release of claims, but did not do so. (T. p. 139-142.) James Peterson also testified that he claimed an interest in HRI, and that is why he was required to sign exhibit 20. (T. 146-147.)

ARGUMENT

1. The Trial Court Had The Authority To Conduct The Trial In Hennepin County and To Order The Transfer Of Real Estate.

Appellants argue the Trial Court had no authority to order a transfer of Anoka County real estate. Appellants' argument is premised upon Minnesota Statute Sec. 542.02

Appellants' argument can be dispensed with quickly by a simple reading of the entire statute. Sec. 542.02 states:

“Actions for the recovery of real estate . . . shall be tried in the county where such real estate . . . is situated, subject to the power of the court to change the place of trial in the cases specified in section 542.11, clauses (1), (3), and (4). (Emphasis Added)

Section 542.11 states:

“The venue of any civil action may be changed by order of the court (4) When the convenience of witnesses and the ends of justice would be promoted by the change”

Early in this litigation, a motion was brought to change venue. This motion was denied. Sec. 542.11 (4) makes clear that the Trial Court had the authority to keep this matter in Hennepin County.

Not only does the statute allow this matter to be tried in Hennepin County, but case law also supports this matter being tried in Hennepin County. Courts have stated that when an action is part “local” and part “transitory” that Sec. 542.02 does not apply. “Local” meaning the lawsuit involves just real estate. “Transitory” meaning the lawsuit involves issues other than real estate, e.g., the payment of money. When a lawsuit involves both questions of title to real estate and money issues, Sec. 542.02 does not apply. See *Yess v Ferch*, 213 Minn 593, 5 N.W.2d 641; *State ex rel D.S.B. Johnston*

Land Co. v District Court, 138 Minn. 336, 164 N.W. 1014 The subject lawsuit herein certainly involves appellants owing money to respondent as well as the status of real property. The Trial Court had the authority to hold the trial in Hennepin County. For this reviewing Court to now remand this matter back based upon a venue claim would be an injustice to respondent. It would also be contrary to Minnesota Statute Sec. 542.11 and contrary to settled case law. Appellants attempt to claim the subject lawsuit is not “transitory” in nature, goes against the clear facts in this matter. The lawsuit involved both money owed to respondent and respondent’s claim to the real estate.

2. The “Clean Hands Doctrine” Does Not Preclude Respondent’s Claims Against Appellants.

Appellants claim the Trial Court cannot do equity on behalf of respondent because respondent has “unclean hands.” Appellants omit some key issues when arguing the Court cannot “do equity.” First is that appellants are making an argument for a person that is not a party to this lawsuit. An argument could be made that as to the person who held the large judgment against respondent and James Peterson, respondent could not invoke the Court’s equitable powers. However, that person is not a party to this lawsuit. Respondent is not asking for equity as to the judgment creditor. Respondent is asking for equity as to appellants. Appellants have no interest in the large judgment that was entered against respondent and James Peterson. Appellants were not harmed by respondent’s actions. In short, respondent has no “unclean hands” vis a vis the appellants. In fact, the same argument can be made against appellants that is being made against respondent. Appellant Peterson knew why she held title to The Property. She held title because of the judgment creditor. Appellant Peterson’s hands are the same as

respondents. If respondent's hands are "unclean" then Appellant Peterson's hands are equally "unclean." But such an assertion misses the point. No one's hands are unclean, *except*, possibly, as to the judgment creditor. And respondent is asking for no relief against the judgment creditor. Respondent cannot, said judgment creditor is not a party herein.

The equity maxim of clean hands states that:

"Where a party comes into equity for relief he or she must show that his or her conduct has been fair, equitable, and honest *as to the particular controversy in issue.*" 27A Am. Jur 2d *Equity* Sec. 126, at 605 (1996). (Emphasis Added)

In the present case, *the particular controversy in issue*, is whether appellants hold title to The Property free and clear of any claims of respondent. The controversy is not whether respondent did or did not act inequitably as against the judgment creditor

Appellants cite *Johnson v Freberg*, 228 N.W. 159 (1929) as support that one with "unclean hands" cannot seek equity from the Court. However, the *Johnson* case states that when *both* parties to a contract are guilty of fraud or unconscionable conduct, equity will not grant affirmative relief. *Johnson* is not controlling. Appellants suffer no harm because the person holding the judgment against respondent and James Peterson has not been paid.

For the Court to fail to invoke its equitable powers against Appellant Peterson would result in a windfall to Appellant Peterson. This is the reason why courts have equitable powers. The testimony and exhibits at trial were clear, Appellant Peterson received an extremely valuable asset for no consideration. Also, Appellant Peterson's own witness, her dad, James Peterson, testified that he was required to sign exhibit 20, to

release his claims in HRI. This, despite Appellant Peterson's claim that neither her dad nor respondent had any claims to HRI.

3. Respondent Has Standing To Challenge The Conveyance To Appellants.

To establish standing to bring an action, a party must show: (a) a personal stake in the outcome of the controversy, and (b) an injury or threat to a legally recognized, rather than personal, injury *Cochrane v Tudor Oaks Condo Project*, 529 N.W.2d 429 (Minn. Ct. App. 1995) Respondent certainly has a "personal stake" in this controversy and the injury to respondent if appellants are allowed to ignore respondent's claim is substantial and recognized by the law.

Appellants claim they came into possession of the property "through a completely legitimate transaction." Appellants ignore the fact that Appellant Peterson put *no funds* into the transaction and received equity of at least \$420,000.00. Appellants also attempt to ignore that Appellant Peterson, and her own witness, James Peterson, both conducted themselves based upon an assumption that respondent did have an interest in The Property. Witness James Peterson acknowledged he had an interest in HRI when he testified concerning the "Release of Claims" he executed. Appellant Peterson was fully aware that respondent had put her own funds into HRI and that respondent had guaranteed loans of the business. Why would a simple employee guarantee a \$600,000.00 loan for the business at which she worked? All parties and family members herein conducted themselves with the understanding that respondent had an interest in The Property.

Appellants state the District Court was not aware of the fact that Appellant Peterson had assumed over one million in total debt when she acquired The Property. No evidence of this was offered at the trial and what appellants are referring to was the "floor plan financing" that covered the RV's. Said financing and the alleged "debt" that went along with said financing was over secured by the RV's. Appellant Peterson had no liability with the exception of a possible deficiency judgment in the event of repossession of the RV's. Said RV's had a value far in excess of the floor plan financing. If the value of the RV's is factored in, then appellant Peterson received more than \$420,000 in equity when she received The Property for no funds from her grandmother. The fact remains that Appellant Peterson received a substantial windfall when she received The Property. The windfall came at the expense of respondent's legitimate claims.

4. Respondent's Claims Are Not Barred By The Statute Of Frauds.

The Statute of Frauds may be avoided if fraud is present in a transaction or if the facts show partial performance. *Mielitz v Mielitz*, 1975, 387 F.Supp. 1163. As noted, Appellant Peterson had full knowledge of the judgment against respondent when Appellant Peterson took title from her grandmother. Appellant Peterson knew why she was receiving the property. Appellant Peterson stood by and made no objection when respondent guaranteed the loan for HRI. Appellant Peterson also consented to respondent putting her own funds into HRI. In short, respondent certainly "partially performed" her ownership claim to The Property.

The conveyance from Obelyn Peterson to Appellant Peterson was certainly a windfall to appellant Peterson. Before and after the conveyance Appellant Peterson's

actions *and* the actions of respondent showed that all parties acted in a manner that was consistent with respondent having an ownership interest in The Property. Based upon these actions, the Statute of Frauds does not bar respondent's claims.

5. The Trial Court Was Within Its Discretion In Ordering A Constructive Trust And In Ordering That The Property Be Transferred To Respondent.

A constructive trust is a judicially created equitable remedy imposed to prevent unjust enrichment of a person holding property under a duty to *convey* it or use it for a specific purpose. (Emphasis Added) *Koberg v Jones*, 279 Minn. 406, 157 N.W.2d 47 (1968).

Whenever the legal title to property is obtained ... by taking improper advantage of a confidential or fiduciary relationship, a constructive trust arises in favor of the person equitably entitled to the property. *Kramer v Kramer*, 282 Minn. 58, 162 N.W.2d 708 (1968).

The evidence at trial was overwhelming that appellants held title to The Property on behalf of and for the benefit of respondent. The evidence showed that Appellant Peterson had a duty to convey the property back to respondent. Appellant Peterson is now simply attempting to reap a windfall at the expense of respondent.

6. Appellant Peterson Has Ignored The Trial Court's Orders and Is Not Entitled To A New Trial.

The record shows that Appellant Peterson has ignored the Trial Court's Orders and she has acted unreasonably throughout this proceeding. A review of the record will show the following:

a. Appellant Peterson refused to appear for her deposition and respondent was required to obtain a Court Order to mandate her appearance for the deposition. (See Trial Court Order, dated November 2, 2005)

b. Respondent was forced to bring a motion to compel to obtain an order requiring appellants to provide their tax returns (See Trial Court Order dated December 12, 2005) Despite the Court's Order, respondent never received the Ordered tax returns

c. Appellants' prior attorney withdrew on September 6, 2005. Appellant Peterson, by her own affidavit, states that she did not seek new counsel until *November*. (See affidavit of appellant Peterson, dated January 27, 2006, in connection with her Post Trial Motions)

d. Appellant Peterson was put on notice, in open Court, on November 22, 2005, that she must get counsel, and the trial would not be postponed for lack of counsel. Despite the Court's warning, appellants did not obtain counsel, and now argue to this reviewing Court, that the lack of counsel is grounds for a new trial.

Any argument by Appellant Peterson that she lacked the funds to obtain the services of an attorney is false. Exhibit 19 entered at trial is a personal financial statement of Appellant Peterson. The financial statement shows that Appellant Peterson owns her private residence valued at \$340,000.00, with equity in the residence. She could have obtained funds for an attorney through her residence. Also, Appellant Peterson could have used the equity in The Property to obtain the services of an attorney. Appellant Peterson appeared at trial pro se by her own volition. This is made abundantly clear by the fact that immediately after trial she obtained counsel for her post judgment motions and for this appeal. Appellant Peterson appeared at trial without counsel because

she thought it gave her the best chance of postponing the trial She was shocked when
the Trial Court called her bluff.

Conclusion

This reviewing Court must affirm the Trial Court's ruling unless the Judgment is manifestly and palpably contrary to the evidence, viewed in a light most favorable to the Judgment. *Kaiser-Bauer v Mullan*, Minn. App. 2000, 609 N.W.2d 905. The Trial Court was within its discretion in Ordering the property be conveyed to respondent. The Trial Court should be affirmed.

Date: May 16, 2006



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