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Cuevas v. Barraza Appellant's Brief Dckt. 40516

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILFRIDO CUEVAS, an individual,

Plaintiff-Counterdefendant-
Respondent,

vs.

BERNARDINO BARRAZA, an individual
and spouse (if any),

Defendant-Counterclaimant-
Appellant,

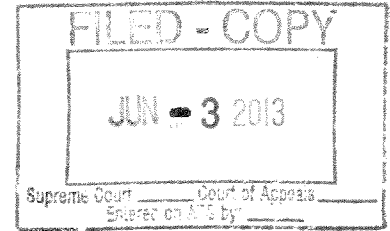
and

LIOTALDO GARZA, an individual and
spouse (if any); DOES I THROUGH X,
UNKNOWN CLAIMANTS TO THE REAL
PROPERTY DESCRIBED IN EXHIBIT "A",
COMMONLY KNOWN AS 29452 PEARL
ROAD, PARMA, IDAHO,

Defendants.

Supreme Court No. 40516

(Canyon #2009-8175)



APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE MOLLY J. HUSKEY, DISTRICT JUDGE

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I. STATEMENT OF THE CASE

A. Nature of the Case

This case is about the ownership of a certain parcel of real property. Plaintiff's predecessor in interest, Juan Cuevas, originally sold the real property to Defendant, Bernardino Barraza, and a quiet title action between Juan Cuevas and Bernardino Barraza later ensued. In that quiet title action, Defendant, Bernardino Barraza, received a quiet title judgment in his favor and against Plaintiff's predecessor in interest, Juan Cuevas. Juan Cuevas did not appeal the quiet title judgment nor did he file a motion requesting it to be set aside. Juan Cuevas quitclaim deeded the real property to his relative, Wilfrido Cuevas, who filed a new quiet title action against, Defendant, Bernardino Barraza. The district court granted Wilfrido Cuevas' Motion for Summary Judgment and held that Defendant, Bernardino Barraza's, prior quiet title judgment was void and that Bernardino Barraza did not have any interest in the real property. The Supreme Court overturned the granting of plaintiff, Wilfrido Cueva's Motion for Summary Judgment by the district judge, finding that there was sufficient evidence to support a claim by Bernardino Barraza for a vendee's lien against the real property. See *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012). The district court on remand granted summary judgment to Wilfrido Cuevas holding that Bernardino Barraza does not have a vendee's lien. Bernardino Barraza appealed the district court's decision.

B. Procedural Background

This case was on remand from the Supreme Court of Idaho who overturned the granting of the Wilfrido Cuevas' Motion for Summary Judgment by the district judge, finding that there was sufficient evidence to support a claim by Bernardino Barraza for a vendee's lien against the

real property. See *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012).

Upon remand the district court decided the entire case upon cross motions for summary judgment and held that Defendant, Bernardino Barraza does not have a vendee's lien.

C. Facts

All facts referred to in this memorandum are found in the Facts and Procedural section of *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337 (2012). Those facts are as follows:

Juan Cuevas and Yrene Baez (hereinafter collectively referred to as "Juan") jointly held title to real property commonly known as 29452 Pearl Road, Parma, Idaho, pursuant to a warranty deed recorded in Canyon County on June 15, 1993. In March 2001, Juan allegedly executed a written contract to sell the property to Bernardino Barraza and Liobaldo Garza (hereinafter collectively referred to as "Barraza") for a total purchase price of \$80,000.¹

Barraza claims he paid a total of \$22,635 toward the purchase, but then the agreement fell apart. He asserts Juan agreed to repay him \$20,000 upon resale of the property if he would vacate the premises, which he did. Barraza claims Juan never repaid any money. In response, on May 6, 2002, Barraza recorded a claim of lien against the property, purportedly securing an "unpaid refund in the amount \$20,000.00 for the payments on Real Estate Title."²

Wilfrido Cuevas claims he began purchasing the property under an oral agreement with Juan in August of 2003. At that time he moved onto the property with his family, began making improvements to it, started paying the property taxes on it, and began making payments to Juan pursuant to the oral agreement.

On April 2, 2007, Juan filed a quiet title action against Barraza, seeking to clear his title of Barraza's purported lien. Barraza failed to respond and the district court entered a default judgment against him on May 15, 2007, which was recorded May 17, 2007. On May 24, 2007, Barraza moved to set aside the default judgment, attaching his proposed Answer and Counterclaim—which included an affirmative request for the court to quiet title in his name—to his attorney's affidavit in support of that motion.

Around June 13, 2007, Wilfrido claims he paid the remaining balance of the purchase price to Juan pursuant to their oral contract, based on his understanding that Juan had successfully quieted title. Juan executed a quitclaim deed transferring his interest to Wilfrido, and Wilfrido claims he researched the

Canyon County land records to ensure title was clear before recording it on June 20, 2007.³

On June 25, 2007, the district court denied Barraza's motion to set aside the default judgment, and Barraza appealed. On June 25, 2008, the Court of Appeals issued an opinion vacating the default judgment and remanding the case. *Cuevas v. Barraza*, 146 Idaho 511, 198 P.3d 740 (Ct.App.2008). The Court of Appeals held that (1) Barraza's poor English and mistaken belief that he was being represented by counsel constituted mistake or excusable neglect sufficient to set aside the judgment, and (2) the proposed Answer and Counterclaim served with Barraza's motion presented a meritorious breach of contract defense to the quiet title action. *Id.*

Following issuance of the Court of Appeals opinion, Barraza recorded a *lis pendens* against the property on August 6, 2008. On January 6, 2009, the Court of Appeals entered the Remittitur, and on January 15, 2009, the district court granted Juan's attorney leave to withdraw. Although a copy of the order granting leave to withdraw was mailed to Juan on January 23, 2009, Juan failed to appear. The district court entered default judgment quieting title in Barraza on March 17, 2009, and Barraza recorded the quiet title judgment on March 24, 2009.

After learning that he no longer held title to the property, Wilfrido filed a new suit against Barraza to quiet title on August 7, 2009, and Barraza answered. Wilfrido moved for summary judgment, arguing that the default judgment entered against Juan was void. The district court granted that motion, ruling from the bench that (1) the judgment was void for lack of notice because the Answer and Counterclaim was never properly filed or served on Juan and, (2) alternatively, Wilfrido could collaterally attack the judgment notwithstanding the doctrine of *res judicata* because he was not in privity with Juan.

Following limited discovery, Wilfrido again moved for summary judgment, seeking to quiet title in the property and arguing that Barraza did not have a viable unjust enrichment claim against Wilfrido. The district court also granted this second motion, ruling from the bench that (1) Barraza failed to establish a valid claim against the property, and (2) Barraza did not unjustly enrich Wilfrido. The district court denied Barraza's motion to reconsider and entered judgment quieting title in Wilfrido's name. Barraza timely appealed.

Id., 152 Idaho at 892-93, 277 P.3d at 339-40 (footnotes omitted).

II. ISSUES ON APPEAL

1. Bernardino Barraza has a vendee's lien against the real property.

2. The statute of limitations does not bar Bernardino Barraza from enforcing the vendee's lien.

III. ATTORNEY FEES ON APPEAL

The appellant, Mr. Barraza, requests attorney fees pursuant to I.C. §§ 12-120 and 12-121, and I.A.R. 41.

IV. ARGUMENT

1. Bernardino Barraza has a vendee's lien on the real property and his vendee's lien is fully enforceable against the plaintiff.

In 1887, the territorial legislature created statutory vendor's and vendee's liens, which are now codified as Idaho Code sections 45-801 and 45-804. ...

Section 45-804 states,

One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

In 1887, the territorial legislature also enacted what is now codified as Idaho Code section 45-803, which states:

The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

Benz v. D.L. Evans Bank, 152 Idaho 215, 268 P.3d 1167, 1177 (2012).

Bernardino Barraza clearly has a vendee's lien. Bernardino Barraza had an agreement with Juan Cuevas to purchase the real property which is the subject of this litigation. Bernardino Barraza paid to Juan Cuevas over \$20,000.00 toward the purchase of the property and occupied the real property. Juan Cuevas later approached Bernardino Barraza and requested him to vacate the property and said that if Bernardino Barraza would vacate the property, Juan Cuevas would refund to him the \$20,000.00 down payment once the real property was sold to another

purchaser. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 339 (2012). Bernardino Barraza vacated the property and filed a lien to notify the world that he had an interest in the property “in the amount of \$20,000.00 for the payments on Real Estate Title.” *Id.* Juan Cuevas filed a Quiet Title Action on April 2, 2007, to remove the lien that Bernardino Barraza filed. *Id.* At no time prior to the Quiet Title Action did Juan Cuevas deed the real property or record any transfer of ownership to the property. *Id.* See also the affidavits of the parties on file with the court.

This clearly created a vendee’s lien in favor of Bernardino Barraza on the real property. The consideration of the agreement, the transfer of the real property to Bernardino Barraza by Juan Cuevas, failed because Juan Cuevas failed to transfer the property or refund the \$20,000.00 as promised. Bernardino Barraza could not technically collect the \$20,000.00 from Juan Cuevas until Juan Cuevas had re-sold the property as the parties agreed, but this did not lessen Bernardino Barraza’s interest or claim in the real property.

Therefore, Bernardino Barraza was acting well within in his rights to notify the world by recording his lien, but he could not enforce the lien until Juan Cuevas failed to refund the \$20,000.00 to Bernardino Barraza. Moreover, the vendee’s lien is valid against the plaintiff because he was not a purchaser in good faith, and the plaintiff was specifically held by the Supreme Court of Idaho to have actual knowledge of Bernardino Barraza’s lien/claim. See *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012).

For all of the reasons stated above, Bernardino Barraza had a vendee’s lien on the real property and the lien was valid against the plaintiff.

2. The statute of limitations has not run on the vendee’s lien because the statute of limitations on Bernardino Barraza’s underlying claim for failure of

consideration/breach of contract by Juan Cuevas has not run.

The Supreme Court of Idaho established in *Blankenship v. Myers*, the rule for determining the statute of limitations on a vendor's lien, which would apply to the vendee's lien that is established by the same statute. The Supreme Court stated:

The vendor's lien is a lien created by statute, I.C. § 45-801, to protect the unsecured seller of real property by giving him rights in the property sold, subject to the rights of a good faith purchaser for value as provided in I.C. § 45-803, when he has no other collateral to secure payment for the property. This statutory lien codified the common law rule which established a vendor's lien under similar circumstances. At common law the vendor's lien generally could be enforced against the vendee as long as the vendor could still bring an action against the buyer for the unpaid purchase price. See 77 Am.Jur.2d, Vendor & Purchaser, s 462, p. 588 (1975). An action for enforcement of a vendor's lien and an action for the unpaid purchase price are so interrelated that it is reasonable to conclude that the legislature intended that the statute of limitations for the lien claim would run only when the statute of limitations runs to bar the claim for the debt. We adopt the following language of the Supreme Court of California in the case of *Finnell v. Finnell*, 156 Cal. 589, 105 P. 740 (1909), in which the California court, which construed a vendor's lien statute substantially identical to Idaho's, stated:

'The right of a vendor to enforce his lien continues, unless waived, so long as an action can be commenced for the purchase money' 105 P. at 744.

... We conclude that as long as the claim is not barred, the lien is not barred.

Blankenship v. Myers, 97 Idaho 356, 370-71, 544 P.2d 314, 328-29 (1975). Therefore, following the logic of the Supreme Court in *Blankenship* the statute of limitations on the vendee's lien in this matter is enforceable so long as the statute of limitations on Bernardino Barraza's claim for the \$20,000.00 has not run.

The statute of limitations for a written contract in Idaho is five years. I.C. § 5-216. The statute of limitations on an oral contract in Idaho is four years. I.C. § 5-217. Bernardino Barraza's claim arises from a written contract with Juan Cuevas for the purchase of the real property at issue in this litigation. The contract was subsequently modified by the parties when

Juan Cuevas told Bernardino Barraza that if he vacated the real property, Juan Cuevas would refund \$20,000.00 to Bernardino Barraza when Juan Cuevas sold the property to another party. The underlying contract was in writing, but the modification was oral. Because Bernardino Barraza's claim was based upon a written contract, the statute of limitations should be five years, but even if a court determines that because the modification to the contract was oral, Bernardino Barraza's claims are based upon an oral contract, the statute of limitations to pursue Bernardino Barraza's claim is four years.

Regardless of whether the statute of limitations is four or five years, the statute of limitations has not expired in either event. The statute of limitations for a breach of contract does not begin to run until the time of the breach. This issue was addressed very clearly in the previous *Cuevas v. Barraza* by the Court of Appeals.

A cause of action for breach of contract accrues upon breach for limitations purposes. *See Simons v. Simons*, 134 Idaho 824, 830, 11 P.3d 20, 26 (2000); *Skaggs v. Jensen*, 94 Idaho 179, 180, 484 P.2d 728, 729 (1971). The five-year statute of limitation for Barraza to bring this breach of contract claim began to run when Barraza became aware of the breach. The breach alleged in Barraza's answer occurred when Cuevas filed the instant quiet title action—April 2, 2007.

Cuevas v. Barraza, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008). "The instant quiet title action" referred to by the Court of Appeals was the quiet title action that Juan Cuevas filed against Bernardino Barraza rather than selling the property to a third party and paying Bernardino Barraza the \$20,000.00 that Juan Cuevas owed to Bernardino Barraza.

Therefore, the statute of limitations did not begin to run until April 7, 2007. The plaintiff in this action filed his quiet title action on August 7, 2009. Bernardino Barraza timely filed his Answer and filed an Amended Answer and Counterclaim on December 18, 2009. See Register of Action. Therefore, without taking into consideration whether the time that the first *Cuevas v.*

Barraza was up on appeal, and the time that Bernardino Barraza was the owner of title of the real property, tolled the statute of limitations, Bernardino Barraza preserved his claim by timely filing his Amended Answer and Counterclaim.

The plaintiff may argue that Bernardino Barraza did not allege in his Amended Answer and Counterclaim that he had a vendee's lien. However, this is irrelevant because Bernardino Barraza did set forth in his Amended Answer and Counterclaim all of the conduct, transactions, or occurrences that comprise the claim of a vendee's lien. Indeed, it was from these very allegations that Bernardino Barraza set forth and the Supreme Court held that there was sufficient evidence of a vendee's lien to survive summary judgment. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012). Indeed, that is why this case was remanded. Because the Supreme Court of Idaho set aside Bernardino Barraza's quiet title judgment as owner of the property, and held that he has a vendee's lien instead, Bernardino Barraza may, if necessary, amend his pleadings by leave of the court to include his claim for the vendee's lien and to foreclose on the vendee's lien, and those claims would relate back to the date of Bernardino Barraza's Answer and Counterclaim for purposes of the statute of limitations. Rule 15(c) of the Idaho Rules of Civil Procedure states:

Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Therefore, the statute of limitations has not run because Bernardino Barraza filed his claim with the court well within the four or five year statute of limitations.

V. CONCLUSION

The court erred in disposing of all of Defendant's interest in the property and granting

Plaintiff summary judgment. For all of the reasons stated above, Bernardino Barraza has a vendee's lien against the real property at issue in this case. The lien is not barred by the statute of limitations, and this Court should deny the plaintiff's Motion for Summary Judgment and grant Bernardino Barraza's Motion for Summary Judgment and find as a matter of law that Bernardino Barraza has a \$20,000.00 lien against the real property and that the plaintiff should pay to Bernardino Barraza the \$20,000.00 or grant the sale of the real property by the sheriff to satisfy the lien.

DATED this 31st day of May, 2013.

HALL, FRIEDLY & WARD

By 

ROBERT WARD

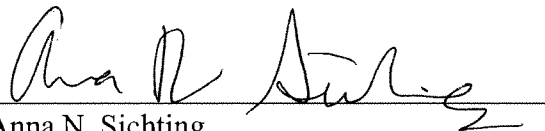
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 31st day of May, 2013, I caused to be served a true and correct copy of Appellant's Brief by the method indicated below, addressed to the following:

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