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Sherman Storage, LLC v. Global Signal
Acquisitions II, LLC Appellant's Reply Brief Dckt.
41077

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SHERMAN STORAGE, LLC, an Idaho
limited liability company.,

Plaintiff/Appellant,

vs.

GLOBAL SIGNAL ACQUISITIONS II, LLC,
a Delaware limited liability company,

Defendant/Respondent.

GLOBAL SIGNAL ACQUISITIONS II, LLC,
a Delaware limited liability company,

Defendant/Third Party Plaintiff

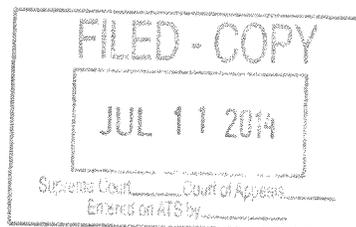
vs.

THE WALLACE FAMILY TRUST; MARY
JO WALLACE, Trustee of THE WALLACE
FAMILY TRUST,

Third Party Defendant.

) Supreme Court Docket No. 41077-2013

) Kootenai County CV 2003-7690
) (consolidated with CV 09-3915)



REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT
OF THE FIRST JUDICIAL DISTRICT FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN P. LUSTER
District Judge Presiding

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ARGUMENT

1. Sherman Purchased 24th Street in 2006 Without Actual or Record Notice of the Cloud on Title or the Encroachment and Received all Indicia of Ownership.

Global has alleged that Sherman is not a bona fide purchaser for value with regard to 24th Street in 2006 because of a cloud on title. Respondents Brief pp. 17–18. Sherman alleges that for all equitable claims it should be treated as such despite the cloud on title. While it is true that one “who purchases land expressly subject to an easement, or with notice, actual or constructive, that it is burdened with an existing easement, takes the land subject to the easement.” *Halvorson v. N. Latah Cnty. Highway Dist.*, 151 Idaho 196, 205 (2011) (quoting *Akers v. D.L. White Const., Inc.*, 142 Idaho 293, 301 (2005)). Also, to be considered a bona fide purchaser, a party must show that at the time of the purchase he paid a valuable consideration and upon the belief and the validity of the vendor's claim of title without notice, actual or constructive, of any outstanding adverse rights of another. *Weitz v. Green*, 148 Idaho 851, 859 (2010). The most important characteristic is that a bona fide purchaser for value has neither actual nor constructive notice of the cloud on title. *Trunnell v. Fergel*, 153 Idaho 68 (2012); *Jahnke v. Mesa Equipment, Inc.*, 128 Idaho 562 (Ct. App. 1996). In 2006, the record is clear that neither Sherman nor the public had any actual or constructive notice of the encroachment since all of Sprint's and Global's public filings occurred only on Lot 4 consistent with the legal description found in the PCS Site Agreement.

In 2006, Sherman satisfied all elements to be considered a bona fide purchase for value despite the trial court's later ruling that its prior Judgment was a cloud on title.

2. Sherman Received all Indicia of Title in 2006.

The law of Idaho is that when an owner of property furnishes another party with indicia of title and that party purports to convey to an innocent third party purchaser for value, the original owner is estopped from asserting title to the property as against the third party bona fide purchaser. *Nixon v. Johnson*, 90 Idaho 239 (1965); *Boesiger v. Freer*, 85 Idaho 551 (1963). *Ralls v. Fouraker*, 109 Idaho 488, 492 (Idaho 1985).

Sherman purchased the self-storage and car wash businesses in May, 2006. The evidence shows that it was intended that Sherman purchase the totality of the property owned by the predecessor in interest. Upon the resolution of the litigation regarding 24th Street (companion case CV03-7690), Sherman received the quitclaim deed for 24th Street. No additional documentation or consideration was paid. This should be treated concurrently as one purchase since that was the intent of the grantor. In 2006, Sherman received all indicia of ownership, paid taxes, and assumed all management and control over the property. When Sherman filed its initial Complaint for ejectment, it still was without notice of any cloud on title. From the beginning, Sherman's hands were clean.

3. Sherman had no Actual or Constructive Notice.

"One who purchases or encumbrances with notice of inconsistent claims does not take in good faith, and one who fails to investigate the open or obvious inconsistent claim cannot take in good faith." *Langroise v. Becker*, 96 Idaho 218, 220 (1974). *Wood v. Simonson*, 108 Idaho 699, 703 (Ct. App. 1985); *Imig v. McDonald*, 77 Idaho 314, 318 (1955); *Langroise v. Becker*, 96 Idaho at 220, 526 P.2d 180 (emphasis added). (one cannot be a good faith purchaser when a reasonable investigation of the property would have revealed the existence of the cloud on title). *Id.* at 220-21. In this case, Sherman did not purchase the property with actual or constructive notice of any encroachment or cloud on title on 24th Street. At that time any prudent investigation of the property or title search would not have shown any cloud on title. Ex. 28 and 29. This is because Sprint and Global purposefully avoided recording any documents that included 24th Street. At that time, there was no record notice or constructive notice of the PCS Site Agreement to Sherman or the public. (See Sherman's full analysis highlighting the failure of Sprint and Global to provide record notice to the owners of 24th Street by its multiple filings from 2001 to 2006 at Appellant's Brief, pp. 25-29)

4. The Shelter Rule Applies to Protect Sherman.

Even for arguments sake, if Sherman was not a bona fide purchaser in 2006, it received the property from a bona fide purchaser and would be sheltered in their protective status. The "Shelter Rule" provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter's protective status. *Siegel Mobile Home Group, Inc.*

v. Bowen, 114 Idaho 531 (Ct.App.1988) citing *Johnson v. Casper*, 75 Idaho 256 (1954). A bona fide purchaser can transfer good title to a person who has notice of a prior adverse equity or right. *Siegel* at 531.

There are two exceptions to the Shelter Rule that are inapplicable to Sherman: (1) where the interest held by a bona fide purchaser was obtained from a grantor with notice of an outstanding interest in the property, and the property is reconveyed to the grantor; and (2) when the property is reconveyed from a bona fide purchaser to a person guilty of a violation of a trust or duty with respect to the property. *Sun Valley Land and Minerals, Inc. v. Burt*, Idaho 862 (Ct. App. 1993). The exceptions clearly do not apply to Sherman in this case.

5. Sherman Filed a Correction Deed that Relates Back to 2006.

Global tried to raise the issue of quieting title to 24th Street. Neither Sherman nor The Wallace Family Trust questioned title. Only Global filed a motion to quiet title. However, before the trial court could rule on any quiet title issue, The Wallace Family Trust and Sherman filed the correction deed in 2010. Those were the only two parties with standing to object to Sherman's ownership. The trial court never issued an order to quiet title, and the issue became moot by the execution and recording of the correction deed.

The doctrine of relation back permits a party to a conveyance of real property to correct an error in the original deed by filing a subsequent or "correction" deed. The correction then becomes effective as of the date of the original deed. *Sartain v. Fidelity Financial Services, Inc.*, 116 Idaho 269, 273 (Ct. App. 1989). The general rule is summarized as follows:

Where there is no fraud and the rights of third persons have not intervened, and equity could have reformed the deed, it may be amended by a subsequent instrument so as to effectuate the intention of the parties.... As against third persons an alleged defective deed can be cured only by a bill in equity, and not by a confirmation assuming to relate back to the original deed....

Sartain at 273.

A correction deed does not bestow new title on the grantee; rather, it is the confirmation of a title already possessed. *Id.* As a predicate to operation of this doctrine, the parties executing a correction deed must do so in the absence of fraud, and where a third party has not intervened. *Id.*

In this case, the only stated purpose for filing the warranty deed from The Wallace Family Trust in 2010 was to correct the cloud on title created by the trial court in its 2006 Judgment. No consideration exchanged hands for the correction deed. The clear intent of The Wallace Family Trust was to correct any possible cloud on title caused by the trial court's 2006 Judgment. Ex. 49, p. 144. The grantor had the authority to correct the deed. Global lacked standing to object to the correction deed.

The issue whether to quiet title to 24th Street was never presented properly to the trial court because the issue was moot. The trial court neither approved nor denied Global's request to quiet title. The 2006 Judgment may have been a voidable judgment, but it has never been voided or set aside pursuant to I.R.C.P. 60(b).

6. The Encroachment Should be Treated Differently from the Cloud on Title.

The encroachment existed prior to 2006. The ejectment cause of action seeks to relocate the encroaching portion of Global's facilities back onto Lot 4 as set forth in the PCS Site Agreement. Only Sherman or its predecessor in interest (as the owner of the east half of 24th Street) has standing to bring the ejectment cause of action. The cloud on title does not limit the ejectment claims to 2010 forward. Otherwise, Sherman would have lacked standing to file its Complaint and Amended Complaint. However, in 2006, Sherman assumed all indicia of ownership of 24th Street, and no party with standing objected to its continued ownership until the trial court's decision in 2010 that stated the 2006 Judgment had "questionable value". R., p. 799.

7. The Existence of a Cloud on Title does not Change the Equities of the Parties.

Regardless of when clear title is determined, equity should not protect Global. The trial court's finding of fact number nine stated: "Since June 10, 2010, when Sherman obtain fee simple title to Lot 4, the eastern half of formerly 24th Street, and the Cell Tower Site, Sherman accepted Global's rental payments." R., p.1336. The trial court confused the purchase of Lot 4 and 24th Street.

The purchase of Lot 4 made Sherman the landlord of the cell tower lease. Sherman purchased Lot 4 in 2010 in an arms length transaction. That purchase placed Sherman in contractual privity with Global and the PCS Site Agreement. Becoming a party to that lease should not change the equities regarding the ejectment cause of action concerning 24th Street. The trial court failed to set

forth how Sherman's actual knowledge of the encroachment would change the equitable determination that ejectment was proper and that Global did not have unclean hands in its recording since 2001. After the filing of the correction deed, the trial court never actually addressed the motion to quiet title. It stated in its Decision on Summary Judgment

"Question: Who owns the real property upon which the leased equipment is situated?

Answer: That depends. When the lease was entered into in 1996 the property was owned by The Wallace Family Trust. While Sherman believes they acquired the property in 2006 by quiet title this court concludes otherwise. As of May 2010 Sherman Storage owns the property." (emphasis added) R., p. 800.

This language ("that depends.") was referred to in a footnote by the trial court in its final Decision regarding court trial. R., p. 1336. However, the effect of the statement is unclear.

The effect of the cloud on title in the trial court's analysis was never made clear. At the beginning of the trial, the trial court made a ruling on Global's Motion in Limine. Tr., Vol. I, pp. 5-11. The court orally made an Order in Limine that Sherman acquired title to the east half of 24th Street in June 2010. That order was as follows:

THE COURT: Well, it - - well, without ruling on the relevance at this point, it may or may not have any critical relevance on the issue that we have to determine. But it is pretty clear that the Court made that determination earlier. And, again, I'm not even sure it's a necessary subject for the motion in limine, but I think the Court can certainly clarify that by granting that motion. I don't think that's really in dispute. To the extent that it has any ultimate relevance, I don't know that I need to rule on that in this motion, but I think just to

factually clarify what the Court has done, I think that's fair.
Tr., Vol. I, p. 11, l. 12-23.

However, despite that ruling, many trial exhibits were admitted into evidence by stipulation before the trial commenced. Therefore, the order in limine did not significantly limit the presentation or admissibility of evidence. It would be clearly erroneous if the trial court, pursuant to its order in limine, disregarded properly admitted exhibits without advising the parties.

Sherman asserted in its Appellant's Brief filed herein that it had purchased the property in 2006 as opposed to 2010. Appellant's Brief, p. 40. That is still true with regard to the ejectment claim, and the equitable defenses to ejectment. The cloud on title should not mean the trial court ignores the actions and equities of the parties up to the year 2010 or that Sherman's knowledge blots out Global's encroachment. The trial court should have examined the relative equities of The Wallace Family Trust and Sprint/Global prior to 2010.

8. The Trial Court Erred that the Encroachment was an Immaterial Breach.

The trial court stated:

"... when Sherman took title to Lot 4, the eastern half of formerly 24th Street, and the Cell Tower Site, Sherman knew of the agreements and the location of the Cell Tower Site. Sherman took title to the property subject to the PCS Site Agreement and the subsequent agreements anyway, and began excepting rental payments. Thus, Sherman knew of the breach and the remedial measures taken by SSLP and Global since 1996. Sherman cannot now claim that the immaterial breach was not remedied at the time it took title to the property. This Court, then, finds in favor of Global and concludes that no material breach occurred, and rescission is not available as a remedy to Sherman." R., p. 1339.

The trial court's reasoning is flawed. The trial court erred in transforming the encroachment into an immaterial breach based in part on the cloud on title

which was unknown to Sherman in May of 2006. The trial court confused Sherman's purchase of Lot 4 with the acquisition of 24th Street. The owner of 24th Street cannot claim a breach of the PCS Site Agreement because the owner of 24th Street does not have contractual privity. The lease agreement only concerns Lot 4. Only the owner of Lot 4 has standing to seek rescission of the lease agreement. Therefore, whether or not there was a cloud on title on 24th Street is irrelevant to the breach of contract analysis. In 2010, Sherman purchased Lot 4, and all the rights, duties, and obligations of the PCS Site Agreement were transferred to Sherman upon the purchase.

9. Sherman was Compelled to Pay a Portion of the Judgment.

After trial and the eventual entry of the trial court's final judgment in this matter, Sherman paid only the attorneys fees and costs portion of the judgment to prevent garnishment, or other execution of the judgment on Sherman's assets.

The Amended Final Judgment in this case was entered on April 18, 2013. R., p. 1575. On May 17, 2013, Global filed a motion for bank garnishment and issuance of Writ of Execution. R., p. 23. On May 24, 2013, the Court issued the Order for Bank Garnishment and Writ of Execution in the amount of \$260,743.81. R., p. 23. Sherman and its attorney of record were not notified of the motion and resulting Order for Garnishment, it being filed *ex parte*.

Sherman filed its Notice of Appeal on May 28, 2013. R., p. 24. Only after filing the present appeal did Sherman become aware of Global's attempts to execute on the Judgment. In order to stop the imminent execution on the

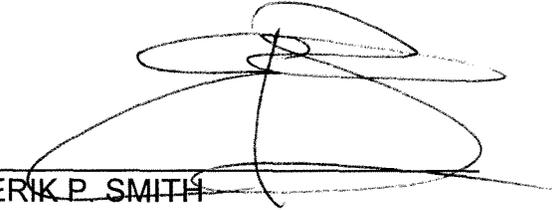
Judgment, Sherman researched obtaining a bond. When the bond was unworkable, and garnishment still pending, Sherman chose to pay the judgment amount pending the appeal. R., p. 1616.

Sherman did not withdraw or intend to withdraw its appeal on the award of the attorney's fees and the resulting Judgment. The award of attorney's fees was included as an issue for appeal in Appellant's Brief. However, Sherman was under a compulsion to pay the debt or suffer a large garnishment or other execution which would disrupt Sherman's normal business practices. Sherman's paying the judgment under these circumstances constitutes an involuntary payment to prevent the execution on its property. That element of compulsion keeps Sherman's appeal ripe. *IBM Corporation, v. Lawhorn*, 106 Idaho 194, 196-7 (Ct.App.1984) (judgment satisfied to prevent a scheduled execution on the property of judgment debtor creating element of compulsion); *Falls Creek timber Co., v. Day*, 39 Idaho 495, 497 (1924); *Power County, Idaho v. Evans Brother Land & Livestock Company*, 43 Idaho 158, 165 (1926) (inability to provide supersedes bond or election to stand upon appeal and sue for conversion keeps appeal ripe).

10. Sherman Should be Awarded it's Attorney's Fees and Costs on Appeal.

In the event Sherman prevails on any issue in this appeal or the Court remands the case, Global's award of attorneys fees and costs should be reversed, and Sherman should be awarded its attorney's fees and costs at trial and on appeal, pursuant to the parties' written contract, the PCS Site Agreement, paragraph 15(f), Idaho Code § 12-120(3), I.R.C.P. 54, and I.A.R. 41.

DATED this 9 day of July, 2014.

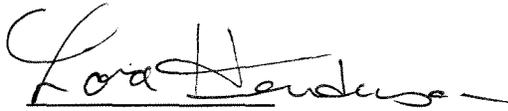

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CERTIFICATE OF MAILING

I hereby certify that on the 9 day of July, 2014, a true copy of the foregoing was:

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