1-3-2017

Swafford v. Huntsman Springs, Inc. Appellant's Reply Brief Dckt. 44240

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

Supreme Court Case Number : 44240
Teton County District Court Number: CV-2015-203

RONALD L. SWAFFORD AND MARGARET SWAFFORD,

PLAINTIFFS-APPELLANTS

vs.

HUNTSMAN SPRINGS, INC., an Idaho Corporation,

DEFENDANT-RESPONDENT

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,

in and for Teton County

Hon. Gregory W. Moeller, District Judge

PLAINTIFFS'/APPELLANTS' REPLY BRIEF

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I.
ARGUMENT

The appellants submit the following as their Reply Brief in this pending appeal.

The respondent submits that access from appellants' lot to Primrose was obstructed no later than August 2008. The respondent argues that a "masterplan/final plat" was recorded August 20, 2007. It is critical to note that respondent is ignoring the fact that the contract was signed by appellants on the July 16, 2007, without notice of the existence of any plat which modified the Master Plan upon which the appellants' decision to purchase was based. The only document provided to appellants was the Master Plan attached to Appellant's Brief. If respondent was preparing to file a plan which changed their obligations under the Master Plan, it should have been provided before the contract was signed. Failure to do so was a material deception.

Respondent continually refers to the narrow strip of land running the entire length of Primrose as a "park". A view of the narrow strip would not lead one to conclude it was a park. There is a small strip grass, a sidewalk and some young trees through which a roadway for access could be constructed without difficulty. Further, it is important to note that Respondent never recorded a plat at any time describing any access route to 195 Primrose from any adjacent street.

The Respondent argues on page 4, paragraph 2, that a warranty deed and a title insurance policy showed a park separating appellant's property from Primrose Street. The Respondent failed to identify any portion of any title policy or warranty deed which "showed a park separating their property from Primrose". There is no title insurance policy nor warranty deed which contained any information providing notice to appellants that the project would not be

completed according to the Master Plan which was relied upon by appellants at the time of their purchase.

On page 5 of the Respondent's Brief, it argues that Primrose was "prepped or paved" in 2007, but does not identify the date Primrose was actually paved. Regardless, the paving of the Primrose was deemed to be an improvement benefitting the adjacent lots including appellants' lot at 195 Primrose. The appellants admit that in 2008 or 2009, small seedling trees were planted, and a sidewalk was placed along Primrose (referred to as a walking path). These were again improvements benefitting 195 Primrose, making the entry way more esthetically pleasing. The respondent had expressly represented that the five (5) commercial lots (which includes 195 Primrose) were the only commercial lots available for commercial development, and that respondent intended commercial development on the five (5) lots. Appellants did not expect ingress and egress routes to be constructed until commercial developers determined the nature of the commercial development and the necessary ingress/egress points for such commercial development. The points of access would be dictated by the commercial developer. The Appellants' Brief contains verification that respondent represented that these five commercial lots were the only commercial lots; that respondent planned a three hundred (300) unit conference center hotel and commercial center. Respondent represented to appellants, by the Master plan and marketing materials, that this would be the location of the conference center and commercial center. Appellants recognized that this would take all five (5) commercial lots, and that there were no other commercial lots available. Appellants anticipated the access routes from Primrose would be constructed to compliment the conference center building plans.

The respondents do not deny any of the following representations in the Appellants' Brief:

1. The development is not complete today (R. p. 147)
2. The development will take at least until 2020. (R. p. 147)
3. That respondent represented on June 16, 2014 that *"we are only in our third year of development and have a way to go, but I see this as a 40, 50 or even a 60 year project."* (emphasis added) (R. pp. 159-164)
4. That there was a public outcry in the fall of 2014 in Driggs by members of the public; that a citizens committee called VARD (Valley Advocates for Responsible Development); that complaints were being registered by VARD and members of the community who were outraged that respondent was "mothballing" commercial development adjacent to the courthouse (commercial lots-including 195 Primrose). In 2014, Huntsman (respondent) made it known that they were ignoring the south end of the development. Articles appeared in the Teton Valley News and Valley Citizen that the public was surprised with regard to the change of plans. (R. pp. 174-176)
5. It was not until the Fall of 2014, that it became known to the public, and appellants that the commercial lots would not be the future location of the luxury resort hotel. (R. p. 174)
6. That the news articles claimed that the citizens were unaware until 2014, and that the notices provided before were obscure and vague. (R. p. 176)
7. That this was deemed a "bait and switch" scheme, and that Driggs was being steamrolled". (R. Vol. 1 p. 176)
8. That the public outcry in 2014 resulted from a Planning and Zoning Hearing where Huntsman (respondent) representatives finally divulged that there were no

plans and no intention of doing anything with the downtown hotel site in the foreseeable future; that they sought to invest their resources in a different hotel site far removed from the city center; that this would effectively kill any other interest in investing in this area; that the barren land will persist undeveloped years if not decades. All of the Huntsman (respondent) plats and plans depicted a hotel that was to be on the commercial lots including appellant's lot. (R. p. 185)

9. None of the plats or plans identify ingress or egress to the five (5) commercial lots planned for future luxury hotel development.

10. Huntsman's (respondent's) marketing material expressly represented that "Our Huntsman Team is absolutely committed to the highest levels of quality and creating the best possible values for you and your family". (R. p. 15)

11. Huntsman's (respondent's) marketing materials referred to this as an "excellent investment"; that one of the most exciting plans was for the luxury lodge, a first of this caliber in Teton Valley. (R. pp. 215-216)

12. A "MASTER PLAN FINAL PLAT" was filed 4 days after the contract was executed, and that Swaffords (appellants) were never informed or provided a copy of any plan other than the Master Plan provided at appellants' time of purchase.

13. The "MASTER PLAN FINAL PLAT" recorded post purchase is not substantially different from the Master Plan provided to Swaffords (appellant s) pre-purchase. It does not indicate any other commercial property in the development. It is also far less detailed than the Master Plan provided to appellants at the time of purchase. The Plat has an obscure and illegible print which Huntsman claims

states "Park 3". The respondent does not deny that this is an extremely narrow strip of land adjacent to Primrose running the entire length of the street.

14. Respondent does not deny that the only separation between 195 Primrose and Primrose Street consists of some small saplings and across sidewalk to the Street. Respondent does not deny that a route for ingress and egress can be easily constructed from Primrose to appellants' commercial lot addressed as 195 Primrose.

15. From 2007 to the current date, all tax notices identify the location of appellants' commercial lot as 195 Primrose.

16. The activity center was not completed until 2012; the board walk was not completed 2013; and, the Wellness Center was not completed in 2014.

17. The respondent provides no evidence that the saplings or sidewalk were of such visual significance to constitute actual notice of breach of contract during the period of any of the applicable statutes of limitations for the various counts in the complaint.

None of the developments or landscaping provided visual notice that a road would not be constructed to 195 Primrose when the need arose, i.e. commercial development. It appeared reasonable to the appellants that there was no reason to select the location of ingress or egress until commercial developers identified the required location required to accommodate the commercial development. Respondent could not have anticipated the location for ingress from Primrose until the nature of the development was known and identified by or to them; and, appellants awaiting the same data.

It was not until news articles and public information was published in 2014, that appellants' became aware that the access ingress was never intended. The economic downturn in the valley slowed development completely for several years. Prior to 2014, the need for the creation of the access/ingress route never became necessary.

Respondent constructed the bike path and walk (sidewalk), installed on west side at some point in time. The appellants also never considered that the improvements to the west side were an indication that respondent did not intend on putting the same on the Front Street Side when the need arose. The seedlings and sidewalk on the west side seemed appropriate and beneficial to 195 Primrose, since access was from the west side, i.e. Primrose. It was presumed that respondent would construct bike paths on the east side as commercial development necessitated it.

The respondent argues that the letter of August 20, 2014 (R. p. 193-194) which claimed the respondent had neglected the development and breached the agreement with regard to ingress and egress constitutes some type of implied admission of knowledge of the breach occurring years prior. The letter claimed that respondent had effectively changed the address of appellants' commercial lot. In some manner, the court deemed that this letter constituted an implied admission that appellants conceded knowing that the alleged breach of contract had already occurred.

The Courts decision stated: "by suggesting in their letter that they would sue if they did not receive a response, appellant has essentially conceded to knowing that an alleged breach of contract had already occurred".

The appellants agree in one sense, i.e. that as of August 20, 2014 (six (6) days after respondent's announcement mothballing the commercial lots) that the appellant s were aware

that there had been a breach. Any contrary conclusion and argument entirely overlooks the circumstances surrounding the sending of the letter of August 20, 2014. The appellants clearly described those significant circumstances described above in Nos. 1 through 17. Neither the appellants nor the local community who sees the development on a frequent basis considered the trees and sidewalk as an indication that respondent was not intending on following through with their Master Plan or Final Plat Master Plan. Appellants submit that if the local community was unaware of any change in plans until 2014, appellants should not be an exception.

The lack of determination or platting of ingress and egress to the five (5) commercial lots, and 195 Primrose was never considered an issue or notice of noncompliance. The appellants continued to anticipate the construction of the luxury resort hotel on the commercial lots as originally promised. The luxury resort hotel was planned by respondent from the inception and marketed in that manner to sell the commercial lots. Until respondent began construction of the luxury hotel on the commercial lots, a determination of the location of the access route could not be determined. Neither appellants nor respondent could have anticipated where and how the entry way from Primrose would need to be developed until the nature and size of the development was planned. Appellants had no expectation of the creation of entry and exit locations prior to commercial enterprises planning the use of the commercial lots. The lots could all have been combined into one large luxury hotel or smaller commercial development for separate businesses.

There has never been any form of construction or development which would prevent the placement of ingress and egress routes to the Primrose lots. Those access routes could easily be done as it sits today.

Respectfully submitted this 27th day of December, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I caused to be served a true and correct copy of the foregoing document on the parties designated below and by the method of delivery indicated:

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Dated this 27th day of December, 2016.

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