10-27-2017

Baker v. KAL, LLC Appellant's Reply Brief Dckt. 44855

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ISB#2312

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARIAN B. BAKEER, TRUSTEE OF THE MARIAN B. BAKER TRUST, Dated May 12, 2013, Plaintiffs/Respondents,	SUPREME COURT NO. 44855
vs.	DC NO. CV-15-1484
KAL, LLC, an Idaho Limited Liability Company, Defendant/Counterclaimants/ Cross Claimants/Appellants, and JOHN STADLER and VICKIE STADLER, husband and wife, Defendants/Counterclaimants/ Cross Claimants/Appellants, and JOSE I. MELENDRERAS and JACQUELINE Z. MELENDRERAS, Husband and wife, Defendants/Cross Defendants/ Respondents.	APPELLANT'S REPLY BRIEF

Comes now KAL,LLC, the Defendant/Appellant in the above matter, by and through its attorney, Robert Covington, to submit its reply brief.

INTRODUCTION

The issues presented in this appeal are simple. The errors of the trial court are plain. The brief filed by the Respondent, hereinafter "Baker," reiterates the rationale offered by the trial court, avoids clear and relevant precedent and argues for an unjust result. The Appellant, hereinafter KAL, urges the Court to reverse the decision of the trial court, determine that the deed in question is unambiguous and does not grant to Baker's predecessor in interest an express easement for ingress and egress over that portion of Alexana Lane that traverses KAL's parcel, Tract 9, and remand this matter for further proceedings.

A. THE DEED IS UNAMBIGUOUS

In its initial brief in this appeal, KAL cited the Court to recent and compelling precedent on the issue of determining whether a deed is ambiguous. *Camp Easton Forever, Inc. v. Inland Northwest Council Boy Scouts of America,* 156 Idaho 893, 332 P.3d 805 (2014). The Court there held that a deed is ambiguous when it is reasonably subject to conflicting interpretations. *Id.* at p. 900. Neither the trial court nor Baker has applied this test within this proceeding. When the *Camp Easton* test is applied to the deed that is in question in this matter, the decision must be that the deed is unambiguous.

As pointed out on page 7 of Appellant's Brief, the trial court said that a literal reading of the word "reserving" created an "absurdity" in that Timberland was reserving to itself an easement through land it already owned. *T. June 29, 2016*, p. 13, l. 22. Baker makes the same argument as the trial court. Both are incorrect in that the use of the word reserving in the Timberland deed never purports to reserve an

easement over land it would own after the completion of the transaction with Melendreras.

Baker points to use of the word reserving in reference to Parcel 1 of the conveyance to Melendreras wherein Timberland reserved therefrom "that portion" of the road that is described in Exhibit B that crossed Parcel 1. Baker ignores the "that portion" of the reservation to argue that the reservation applied to the whole of the road described in Exhibit B. Baker argues that since you cannot reserve an easement across your own property, "reserving" is ambiguous in the Timberland deed. The Court can no doubt plainly understand that the "that portion" modifier of reserving literally means that the reservation did not apply to the whole of the road described in Exhibit B. It should be noted that reserving is used a second time in the Parcel 1 conveyance/description in a manner consistent with the initial use. No second reasonable interpretation of the meaning of reserving is offered by Baker or the trial court with respect to two instances in Parcel 1. For that matter, there is no "absurdity" in either reservation.

Reserving is used once in reference to Parcel 2 of the Timberland conveyance to Melendreras. In that instance Timberland reserved an easement over a strip of land sixty feet in width paralleling the north boundary of Parcel 2. Neither did the trial court reason nor Baker argue that that use of "reserving" has multiple reasonable interpretations in this instance. KAL submits that the trial court may have misread the "TOGETHER WITH" paragraph referencing Parcel 2 to conclude that Timberland was granting to itself an easement over land it continued to own after the Melendreras

transaction. That language plainly grants to Melendreras an easement over a portion of Tract 9. Baker acknowledges as much in its brief at page 15 thereof.

B. ERROR TO CREATE NEW EASEMENT NOT WITHIN MEANING OF THE LANGUAGE OF THE DEED

In the absence of multiple conflicting reasonable interpretations, the Timberland to Melendreras deed must be held to be unambiguous. Because the deed is unambiguous, it was further error for the trial court to look outside the deed to render its judgment regarding the intent of the parties and then create a new easement for Melendreras.

> **However, if the deed is unambiguous, the merger doctrine applies. The merger doctrine merges a prior contract into a deed when the deed is delivered and accepted as performance of conveyance contract. *Jolley v. Idaho Sec., Inc.,* 90 Idaho 373, 382, 414 P.2d 879,884 (1966). Even when a deed's terms vary from an earlier contract, courts must look to the deed alone to determine parties' rights. *Id.* Thus, an unambiguous deed forecloses considering another agreement, including the Minutes. Accordingly, this case comes down to one question, whether the deed is ambiguous.**

***Camp Easton* at page 899. After considering oral extrinsic evidence the trial court concluded that "Timberland intended to grant an easement to Melendreras to cross Tracts 5,6,11, 10 and 9 all the way into Tract 8 and in the same document to reserve itself—to itself an easement to cross Sections 7 and 8 that it had just sold to the Melendrerases. Therefore, this Court finds specific that Melendrerases specifically and expressly granted to plaintiff the easement rights that it had received from Timberlake—Timberland. I keep saying Timberlake; it's Timberland." *T. June 29, 2016*, p. 8, ll. 3-12. By granting to Baker an easement across Tract 9, the trial court did not select from one of multiple reasonable interpretations of the language of the**

deed as required by *Camp Easton*. Rather, the trial court inserted a new term into the 1999 Timberland to Melendreras deed. No reasonable person looking at the 1999 Timberland to Melendreras deed could find in the language any reasonable interpretation that created an easement for Melendreras along the road across Tracts 9 and 10. In essence, the trial court modified the Timberland/Melendreras 1999 deed by inserting a new term long after the statute of limitations had run on any claim by Melendreras against Timberland for breach of contract. The creation of such an easement by the trial court was erroneous and should be reversed.

C. NO ATTORNEY FEES ON APPEAL TO BAKER

Baker has asserted a claim for attorney fees on appeal on the false premises that there was no proper appeal and that KAL has no right to present argument on the ambiguity of the deed in question to the Court. The initial issue was resolved previously by the Court and the appeal reinstated. As to the second issue, the Court exercises free review of the question of law that is at the heart of this matter. Baker claims that no authority nor analysis of the ambiguity issue has been presented to this Court. That is simply false and absurd. *Camp Easton* is significant authority in support of the contentions of KAL. That Baker has ignored *Camp Easton* is incredible. No attorney fees as sought by Baker should be awarded.

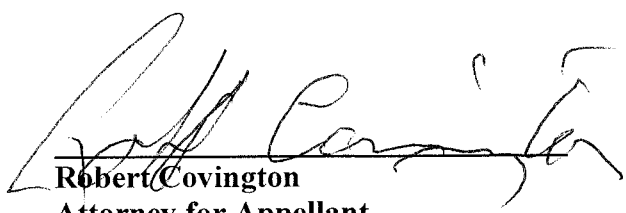
CONCLUSION

This case presents a classic example of claims that raise the public policy considerations underlying the Statute of Frauds, the prohibition of extrinsic evidence when contracts or deeds are clear and unambiguous on their face and statutes of

limitations. The principal events in this case occurred seventeen years ago. Jerry Mortensen, the person who signed the Timberland deed is dead. More than five years have elapsed since 1999 and with the passage of time, the right of Melendreras to assert against Timberland or Mortensen that Timberland failed to deliver an easement allegedly promised in 1999. The record in this case contains no writing other than the deed that was signed by Timberland. Melendreras claimed that their lender required the easement they seek in this case but there is no corroborating evidence and the deed itself plainly does not contain such a grant. KAL bought its property in 2002. The recorded Timberland deed to Melendreras contains no notice to KAL of an express easement in favor of Melendreras over the logging road as it existed in 2002.

Whether the facts and our law support an easement implied from prior use or a statutory easement in this case is not known as those issues have not been fully tried. The Timberland deed does make it clear that there should be no express easement such as created by the trial court. The trial court's decision on ambiguity should be reversed, the deed determined to be unambiguous and interpreted to say that there is no express easement in favor of Baker over those portions of the road in Tract 9 that are described in Exhibit B to the deed. The case should then be remanded to the trial court for further proceedings.

Dated this 23rd day of October, 2017.



Robert Covington
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2017, I caused to be served a true and accurate copy of the foregoing instrument by facsimile transmission to:

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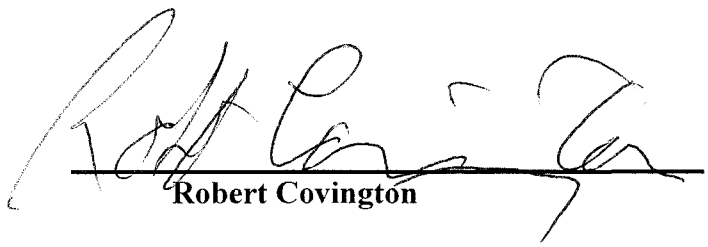

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