

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Klein v. McCullough

Klein v. McCullough · No. No. 19-0888 · Decided June 4, 2021

SUMMARY

The Supreme Court of Appeals of West Virginia held that a deed clause granting a stranger to the deed a right of first refusal is neither a reservation nor an exception and therefore is not void under the stranger-to-the-deed rule. The court reversed the circuit court's dismissal of the plaintiff's complaint and remanded for further proceedings. The court declined to consider the plaintiff's request to abolish the stranger-to-the-deed rule because that issue had not been decided by the trial court.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Hutchison; Justice Armstead; Justice Wooton
JURISDICTION	West Virginia
DECIDED	June 4, 2021
DOCKET	No. 19-0888
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed a circuit court order granting the defendant's Rule 12(b)(6) motion to dismiss a complaint seeking enforcement of a deed-based right of first refusal.
STANDARD OF REVIEW	De novo review applies to a circuit court order granting a motion to dismiss a complaint.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lanna Klein v. Darlene McCullough

TOPICS

- deeds
- real estate
- contract interpretation
- motions to dismiss
- appellate procedure

PRACTICE AREAS

- real property
- contracts
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether a deed clause granting a stranger to the deed a right of first refusal is a reservation or exception subject to the stranger-to-the-deed rule.
2. Whether the circuit court properly dismissed Klein's complaint under Rule 12(b)(6) based on that rule.
3. Whether the Supreme Court should abolish the stranger-to-the-deed rule when the issue was raised for the first time on appeal.

HOLDINGS

1. A clause in a deed giving a stranger a right of first refusal is neither a reservation nor an exception to the granting clause and therefore may not be declared void under the stranger-to-the-deed rule.
2. The circuit court erred by granting the defendant's motion to dismiss because the complaint's right-of-first-refusal claim was not barred by the stranger-to-the-deed rule.
3. The court declined to consider the request to abolish the stranger-to-the-deed rule because the nonjurisdictional issue was not presented to or decided by the circuit court.

KEY QUOTATIONS

“A clause in a deed giving a stranger a right of first refusal is neither a reservation nor an exception to the granting clause of the deed. Hence, the clause may not be considered void under the “stranger to the deed” rule expressed in Syllabus Point 3 of Erwin v. Bethlehem Steel Corp., 134 W. Va. 900, 62 S.E.2d 337 (1950).” (syllabus point 4)

“Examining the differences between reservations and exceptions on the one hand, and preemptive rights such as a right of first refusal on the other, we agree with the plaintiff’s argument that rights of first refusal are exempted from the “stranger to the deed” rule.” (at 7-8)

“Accordingly, we find that the circuit court erred when it applied that rule and dismissed the plaintiff’s complaint.” (at 11)

FACTUAL BACKGROUND

In 1995, Julia McCullough conveyed Tyler County land, including oil and gas rights, to her son Benjamin by a deed containing a clause requiring Benjamin, his heirs, or assigns to offer Lanna Klein a first right of refusal upon a subsequent conveyance, sale, or devise. Benjamin later died and left the property to his wife, Darlene McCullough, who conveyed the parcel to other individuals; the parties agreed that Darlene never offered Klein the opportunity to purchase it. Klein sued to enforce the right of first refusal, while Darlene argued that Klein's status as a stranger to the deed made the clause void.

PROCEDURAL HISTORY

Lanna Klein sued Darlene McCullough and other parties to enforce a right-of-first-refusal clause in a 1995 deed. The Circuit Court of Tyler County concluded that Klein was a stranger to the deed and that the clause was void and unenforceable under the stranger-to-the-deed rule, then dismissed the complaint under Rule 12(b)(6). Klein appealed, and the Supreme Court of Appeals of West Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Circuit Court of Tyler County for further proceedings on Klein's complaint.

CASES CITED

- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Collins v. Stalnaker, 131 W. Va. 543, 48 S.E.2d 430 (1948)
- Erwin v. Bethlehem Steel Corp., 134 W. Va. 900, 62 S.E.2d 337 (1950)
- Beckley Nat'l Exch. Bank v. Lilly, 116 W. Va. 608, 182 S.E. 767 (1935)
- Smith v. VanVoorhis, 170 W. Va. 729, 296 S.E.2d 851 (1982)
- John D. Stump & Assocs., Inc. v. Cunningham Mem'l Park, Inc., 187 W. Va. 438, 419 S.E.2d 699 (1992)
- Tate v. United Fuel Gas Co., 137 W. Va. 272, 71 S.E.2d 65 (1952)
- Davis v. Hardman, 148 W. Va. 82, 133 S.E.2d 77 (1963)
- Freeport Coal Co. v. Valley Point Mining Co., 141 W. Va. 397, 90 S.E.2d 296 (1955)
- Preston v. White, 57 W. Va. 278, 50 S.E. 236 (1905)
- Sands v. Security Trust Co., 143 W. Va. 522, 102 S.E.2d 733 (1958)
- Cameron v. Cameron, 105 W. Va. 621, 143 S.E. 349 (1928)
- Whitlow v. Bd. of Educ. of Kanawha Cty., 190 W. Va. 223, 438 S.E.2d 15 (1993)
- Conway v. Miller, 232 P.3d 390 (Mont. 2010)
- Peters v. Smolian, 63 N.Y.S.3d 436 (N.Y. App. Div. 2017)
- Mercer v. Lemmens, 230 Cal. App. 2d 167, 40 Cal. Rptr. 803 (1964)
- Weller v. Carr, No. 17-1043, 2019 WL 1591875 (W. Va. Apr. 15, 2019)
- Beverlin v. Casto, 62 W. Va. 158, 57 S.E. 411 (1907)
- Willard v. First Church of Christ, Scientist, 498 P.2d 987 (Cal. 1972)
- Simpson v. Kistler Inv. Co., 713 P.2d 751 (Wyo. 1986)