

SUPREME COURT OF CALIFORNIA

Acadia, California, Ltd. v. Herbert

54 Cal. 2d 328, 353 P.2d 294, 5 Cal. Rptr. 686 (Cal. 1960) · No. L.A. 25140 · Decided June 23, 1960

SUMMARY

The Supreme Court of California affirmed a judgment awarding compensatory and punitive damages and granting declaratory and injunctive relief based on the defendant’s interruption and reduction of water service promised under agreements connected with sales of desert land. The court held that the agreements entitled the plaintiffs to a specified share of the well’s full production capacity and that the parties’ conduct modified the agreements to require household water delivery under reasonable pressure. The court also upheld tort-based damages, including damages for mental distress and loss of spousal services, and the award of mitigation expenses.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Gibson, C.J.; Traynor, J.; Schauer, J.; McComb, J.; Peters, J.; White, J.; Dooling, J.
JURISDICTION	California
DECIDED	June 23, 1960
DOCKET	L.A. 25140
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment entered after a jury verdict awarding plaintiffs compensatory and punitive damages and after the trial court entered declaratory and permanent injunctive relief concerning the parties' water-supply agreements.
STANDARD OF REVIEW	The court reviewed the trial court's construction of the written agreements and jury instructions for legal correctness and evaluated the challenged damages rulings under the governing substantive law.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; precedential.
PARTIES	Montague Herbert v. Acadia, California, Ltd., Anthony Burke

TOPICS

- contract interpretation
- contracts
- torts
- damages
- nuisance

PRACTICE AREAS

contracts

torts

real estate

remedies

QUESTIONS PRESENTED

1. Whether the agreements' reference to one-fiftieth of the water available from the well referred to the well's full production capacity or only the capacity of the pump installed when each agreement was made.
2. Whether the parties modified the agreements to require delivery of household water under reasonable pressure and whether Herbert's acceptance of the conditional check bound him to that modification.
3. Whether plaintiffs could recover in tort for conduct that also breached the water-supply agreements and whether punitive damages were available.
4. Whether Burke could recover damages for loss of his wife's services and for his own mental suffering caused by the disruption of the water supply.
5. Whether Acadia could recover expenditures made to mitigate damages, including the cost of drilling a new well.

HOLDINGS

1. The agreements entitled each plaintiff to one-fiftieth of the amount of water the existing well could produce when operated at full capacity, not one-fiftieth of the capacity of the particular pump in use when the agreement was made.
2. The agreements were modified to require delivery of household water under reasonable pressure, and Herbert's acceptance and cashing of the check tendered on that condition bound him to continue the improved service.
3. Conduct constituting a breach of contract may also be tortious, and plaintiffs may recover in tort and obtain punitive damages when the tort was committed with malice or intent to oppress, but they may not recover duplicatively under both contract and tort theories.
4. Burke could recover for loss of his wife's services and for his own mental suffering proximately caused by the wilful disruption of the water supply, even though Herbert did not know of Mrs. Burke's unstable mental condition.
5. Acadia could recover reasonable expenditures made in an attempt to mitigate damages, including the cost of drilling a new well, without relying on an anticipatory-breach theory.

KEY QUOTATIONS

"Where something to which the offeree is not unconditionally entitled is tendered to him upon stated conditions and he exercises dominion over it, he is bound by the conditions even though he informs the offeror that he rejects them." (336)

"An act that constitutes a breach of contract may also be tortious." (337)

"it is immaterial whether defendant knew of Mrs. Burke's unstable mental condition." (338)

FACTUAL BACKGROUND

The plaintiffs acquired parcels from a 40-acre desert tract that could not be inhabited without water, and their agreements entitled them to specified quantities of water for domestic use and garden watering. Herbert acquired the remainder of the tract containing the well and assumed the prior owners' obligations. After initially supplying water under pressure, Herbert reduced household water pressure and shut off gravity-fed irrigation service while developing his property. He also accepted a check tendered on the condition that delivery under the improved facilities continue.

PROCEDURAL HISTORY

Acadia and Burke sued Herbert for damages and declaratory and injunctive relief, alleging that he breached agreements requiring him to supply water to their parcels and acted maliciously. A jury awarded compensatory and punitive damages to both plaintiffs, and the trial court declared the parties' rights and permanently enjoined Herbert from interfering with water delivery. The Supreme Court of California affirmed; the court later denied Herbert's petition for rehearing on July 20, 1960.

DISPOSITION

affirmed

CASES CITED

- Edgar v. Hitch, 46 Cal. 2d 309, 311, 294 P.2d 3 (1956)
- Grayhill Drilling Co. v. Superior Oil Co., 39 Cal. 2d 751, 753, 249 P.2d 21 (1952)
- Potter v. Pacific Coast Lumber Co., 37 Cal. 2d 592, 597, 234 P.2d 16 (1951)
- Langley v. Pacific Gas & Electric Co., 41 Cal. 2d 655, 662, 262 P.2d 846 (1953)
- Jones v. Kelly, 208 Cal. 251, 255-256, 280 P. 942 (1929)
- Tooke v. Allen, 85 Cal. App. 2d 230, 236-237, 192 P.2d 804 (1948)
- Meek v. Pacific Electric Ry. Co., 175 Cal. 53, 56-57, 164 P. 1117 (1917)
- Martin v. Southern Pacific Co., 130 Cal. 285, 287, 62 P. 515 (1900)
- McKune v. Santa Clara V.M. & L. Co., 110 Cal. 480, 487, 42 P. 980 (1895)
- Tell v. Gibson, 66 Cal. 247, 248-249, 5 P. 223 (1884)
- Moody v. Southern Pacific Co., 167 Cal. 786, 789-790, 141 P. 388 (1914)
- Kornoff v. Kingsburg Cotton Oil Co., 45 Cal. 2d 265, 271 et seq., 288 P.2d 507 (1955)
- Herzog v. Grosso, 41 Cal. 2d 219, 225-226, 259 P.2d 429 (1953)
- Anderson v. Souza, 38 Cal. 2d 825, 833 et seq., 243 P.2d 497 (1952)
- Judson v. Los Angeles Suburban Gas Co., 157 Cal. 168, 170-172, 106 P. 581 (1910)
- Alonso v. Hills, 95 Cal. App. 2d 778, 787-788, 214 P.2d 50 (1950)
- Sloane v. Southern Cal. Ry. Co., 111 Cal. 668, 683, 44 P. 320 (1896)
- Guillory v. Godfrey, 134 Cal. App. 2d 628, 632, 286 P.2d 474 (1955)
- Rideau v. Los Angeles Transit Lines, 124 Cal. App. 2d 466, 471, 268 P.2d 772 (1954)

