

SUPREME COURT OF UTAH

Glenn v. Reese

2009 UT 80 (Utah 2009) · No. No. 20080861 · Decided December 11, 2009

SUMMARY

The Utah Supreme Court held that a real estate purchase contract unambiguously allowed buyers to cancel based on an unfavorable appraisal obtained independently of a lender. The court further held that the buyers' first addendum was an unsuccessful offer to modify the contract, while their second addendum effectively canceled the contract under its evaluation provisions. The court remanded for entry of summary judgment and an award of attorney fees in favor of the buyers.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Chief Justice Durham; Justice Wilkins; Justice Parrish; Justice Nehring
JURISDICTION	Utah
DECIDED	December 11, 2009
DOCKET	No. 20080861
DISPOSITION	remanded
PROCEDURAL POSTURE	Sellers appealed by permission from an interlocutory order denying their motion for summary judgment in an action seeking damages and specific performance based on alleged breach of a real estate purchase contract.
STANDARD OF REVIEW	The propriety of granting or denying summary judgment is reviewed for correctness as a question of law; the facts and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Utah Supreme Court opinion; precedential.
PARTIES	Endré Glenn, Margret Glenn v. Robin Reese, Judith Reese

TOPICS

- contract interpretation
- specific performance real estate
- summary judgment
- real estate
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the real estate purchase contract was ambiguous concerning Buyers' ability to cancel based on an appraisal obtained without a lender.
2. Whether the contract's provision concerning other tests and evaluations encompassed an appraisal obtained by a self-financed buyer.
3. Whether Addendum No. 3 was a cancellation, a notice of objections, or an offer to modify the contract.
4. Whether Addendum No. 4 validly cancelled the contract under the contract's evaluation and inspection provisions.
5. Whether Buyers were entitled to summary judgment and attorney fees.

HOLDINGS

1. The real estate purchase contract was unambiguous and could be interpreted as a matter of law.
2. Section 8's provision concerning tests and evaluations was broad enough to include an appraisal obtained by a self-financed buyer, and Buyers therefore had a contractual right to cancel upon dissatisfaction with that appraisal.
3. Addendum No. 3 was an offer to modify the contract, not a cancellation or notice of objections, and it became a nullity when Sellers failed to accept it.
4. Addendum No. 4 was a clear and unequivocal notice of intent to cancel that complied with Section 8.2 and cancelled the contract and Buyers' obligations under it.

KEY QUOTATIONS

"We hold that the REPC is unambiguous and is broad enough to allow cancellation based on an unsatisfactory appraisal obtained by Buyers." (¶ 2)

"Addendum No. 4, an unequivocal notice of intent to cancel, to Sellers on December 31, 2007, complied with Section 8.2 and thus cancelled the REPC and all Buyers' obligations thereunder." (¶ 26)

FACTUAL BACKGROUND

The parties executed a real estate purchase contract for Sellers' home at a purchase price of \$540,000. The contract contained an appraisal condition tied to a lender appraisal and a broader provision conditioning Buyers' obligation to purchase on their approval of other tests and evaluations. Buyers, who did not obtain lender financing, obtained their own appraisal valuing the property at \$80,000 below the purchase price, proposed a price reduction in Addendum No. 3, and then cancelled the contract through Addendum No. 4 after Sellers did not accept the proposed modification.

PROCEDURAL HISTORY

Sellers filed an amended complaint asserting breach of contract and breach of the implied covenant of good faith and fair dealing and seeking specific performance. Both parties moved for summary judgment, and the district court denied both motions because it found the real estate purchase contract ambiguous. The Utah Supreme Court granted Sellers' petition for interlocutory appeal, held that Buyers were entitled to summary judgment, and remanded for entry of judgment and attorney fees in favor of Buyers.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the district court for entry of summary judgment and an award of attorney fees in favor of Buyers.

CASES CITED

- R&R Indus. Park, L.L.C. v. Utah Prop. & Cas. Ins. Guar. Ass'n, 2008 UT 80, ¶ 18, 199 P.3d 917
- Orvis v. Johnson, 2008 UT 2, ¶ 6, 177 P.3d 600
- Café Rio, Inc. v. Larkin-Gifford-Overton, LLC, 2009 UT 27, ¶ 25, 207 P.3d 1235
- Cent. Fla. Invs., Inc. v. Parkwest Assocs., 2002 UT 3, ¶ 12, 40 P.3d 599
- Gray v. Bicknell, 86 F.3d 1472, 1479 (8th Cir. 1996)
- Morris Silverman Mgmt. Corp. v. W. Union Fin. Servs., Inc., 284 F. Supp. 2d 964, 974 (N.D. Ill. 2003)
- In re Greater Se. Cmty. Hosp. Found., Inc., 267 B.R. 7, 18 (Bankr. D.C. 2001)
- Stovall v. Publishers Paper Co., 584 P.2d 1375, 1377-78, 1380 (Or. 1978)
- Accu-Weather, Inc. v. Prospect Commc'ns, Inc., 644 A.2d 1251, 1254 (Pa. Super. Ct. 1994)
- LA-Nevada Transit Co. v. Marathon Oil Co., 985 F.2d 797, 800 (5th Cir. 1993)
- Softsolutions, Inc. v. Brigham Young Univ., 2000 UT 46, ¶ 34, 1 P.3d 1095
- Rapp v. Mountain States Tel. & Tel. Co., 606 P.2d 1189, 1191 (Utah 1980)
- Cheney v. Rucker, 381 P.2d 86, 89 (Utah 1963)
- Scott v. Majors, 1999 UT App 139, 980 P.2d 214