

SUPREME COURT OF VERMONT

Sullivan v. Demas, 124 Vt. 397

205 A.2d 818 (1964) · No. Nos. 1946, 1947 · Decided December 1, 1964

SUMMARY

The Supreme Court of Vermont affirmed the dismissal of an ejectment action and a judgment for costs in a related deficiency action. The court held that the parties had treated a diner as personal property by including it in a chattel mortgage, so ejectment did not lie for its recovery. The court also affirmed the judgment for costs after the plaintiffs waived their claim for money damages, curing any uncertainty in the judgment.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Smith, Justice; Holden, C. J.; Shangraw, J.; Barney, J.; Smith, J.; Keyser, J.
JURISDICTION	Vermont
DECIDED	December 1, 1964
DOCKET	Nos. 1946, 1947
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Demases appealed from a single Washington County Court judgment entered in two consolidated actions: dismissal of their ejectment action and judgment for the Sullivans in the Sullivans' deficiency action.
STANDARD OF REVIEW	The court reviewed whether the issues were properly presented for appellate review and whether any challenged finding or judgment error was material to the disposition. It also applied the rule that an unwarranted finding is not grounds for reversal when it does not pertain to an essential element of the case.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	Louis Demas, Mavis M. Demas v. Robert T. Sullivan, John W. Sullivan

TOPICS

ejectment

mortgages

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civil procedure

PRACTICE AREAS

Real estate law

Contracts

Civil procedure

QUESTIONS PRESENTED

1. Whether the Demases established reversible error in the dismissal of their ejectment action concerning the diner.
2. Whether the trial court's judgment for the Sullivans for costs in the deficiency action was void for uncertainty and indefiniteness.
3. Whether the trial court's finding that the second chattel-mortgage sale was valid, despite being sloppily conducted, required reversal.

HOLDINGS

1. The dismissal of the ejectment action was affirmed because the Demases did not brief or support with authority the contention that the dismissal was erroneous, and therefore presented no reviewable question.
2. The record indicated that the diner had been treated by both parties as personal property and therefore did not support an ejectment action for its recovery.
3. Even if the finding that the second sale was valid were unwarranted, it would not justify reversal because the finding did not pertain to an essential element of the ejectment action.
4. The judgment for the Sullivans in the deficiency action was affirmed because the Sullivans waived their claim for money damages, thereby removing the uncertainty challenged by the Demases.

KEY QUOTATIONS

“Ejectment does not lie for the recovery of personal property.” (820)

“Our rule is that a finding, even if unwarranted, is not ground for reversal where it does not pertain to an essential element of the case.” (820)

FACTUAL BACKGROUND

The Sullivans owned land in Barre on which a diner was located, and leased the land and diner to the Demases. The Demases gave the Sullivans a real estate mortgage and later executed a promissory note secured by a chattel mortgage covering the diner and its contents. After the Demases defaulted, an officer's sale was conducted under the chattel mortgage and the proceeds were applied to the note; the Demases then sought to recover the diner through ejectment and challenged the Sullivans' deficiency claim.

PROCEDURAL HISTORY

The parties tried both actions together before the Washington County Court. The court dismissed the Demases' ejectment action and entered judgment for the Sullivans with costs in the deficiency action. The Demases appealed both portions of the judgment. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Sartwell v. Sowles and Ladd, 72 Vt. 270, 48 A. 11
- Doyle v. Polle, 121 Vt. 335, 339, 157 A.2d 226
- Knight v. Willey, 120 Vt. 256, 258, 138 A.2d 596
- New England Road Machinery Co. v. Calkins, 121 Vt. 118, 122, 149 A.2d 734
- Dickerman v. Town of Pittsford, 116 Vt. 563, 565, 80 A.2d 529
- Gordon v. Miller, 28 Ind. App. 612, 63 N.E. 774, 777
- Bresette v. Knapp, 121 Vt. 376, 378, 159 A.2d 329
- Blanchard v. Knights, 121 Vt. 29, 32, 146 A.2d 173