

SUPREME COURT OF WYOMING

Simek v. Tate

231 P.3d 891 (Wyo. 2010) · No. No. S-09-0177 · Decided May 24, 2010

SUMMARY

The Supreme Court of Wyoming affirmed an order enforcing an oral settlement agreement under which Ronald Simek was required to purchase residential real property from the Estate of Carol B. Brehm. The court held that the 2003 settlement was void because required Illinois probate court approval was denied, while the 2005 oral settlement was enforceable because the Estate's partial performance and Simek's possession and use of the property took the agreement outside the statute of frauds. The court also upheld the use of a telephonic supplemental evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Voigt, Chief Justice; Voigt, C.J.; Hill, J.; Kite, J.; Burke, J.; Campbell, D.J.
JURISDICTION	Wyoming
DECIDED	May 24, 2010
DOCKET	No. S-09-0177
DISPOSITION	affirmed
PROCEDURAL POSTURE	Simek appealed the Wyoming district court's order enforcing an oral 2005 settlement agreement under which he was required to purchase real property from the Estate.
STANDARD OF REVIEW	Procedural decisions concerning the manner of conducting an evidentiary hearing are reviewed for abuse of discretion. Whether a contract was formed is a question of fact reviewed for clear error. The Supreme Court assumes evidence supporting the successful party is true, disregards conflicting evidence favorable to the unsuccessful party, and gives the successful party every favorable inference reasonably and fairly drawn from the evidence. The sufficiency of particular acts as partial performance is a question of law.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Ronald L. Simek v. Stacy Tate, Administrator of the Estate of Carol B. Brehm, Deceased

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by conducting the supplemental evidentiary hearing telephonically for Simek and his witnesses rather than requiring their personal appearance.
2. Whether the district court erred by denying Simek's motion to enforce the 2003 written settlement agreement.
3. Whether the district court erred by enforcing the oral 2005 settlement agreement despite Wyoming's statute of frauds.

HOLDINGS

1. The district court did not abuse its discretion by conducting the supplemental evidentiary hearing with Simek and his witnesses appearing by telephone because the parties had already had ample opportunities to present evidence, consented to the procedure, and Simek showed no prejudice.
2. The 2003 settlement agreement was void and could not be enforced because it was expressly conditioned on approval by the Illinois Probate Court and that approval was denied.
3. An oral settlement agreement for the sale of real property may be enforced despite the statute of frauds when the agreement is definite and complete and the seller's substantial partial performance, together with the buyer's conduct, equitably estops the buyer from asserting the statute as a defense.

KEY QUOTATIONS

"The doctrine of partial performance is a common law equitable doctrine that actually predates the original English statute of frauds." (231 P.3d at 900)

"It prevents a party to a contract from perpetrating a fraud or injustice on the other party when the latter has fully performed under the terms of the oral contract." (231 P.3d at 900-901)

"If the mere failure to perform an oral contract were sufficient to remove it from the reach of the statute of frauds, the statute would be rendered vain and nugatory." (231 P.3d at 901)

FACTUAL BACKGROUND

In 1993, Simek purchased ranch property from Carol Brehm, who reserved her residence and surrounding acreage and gave Simek a first right to purchase that property if she decided to sell it. After Brehm died, Simek litigated claims against her estate and entered a written 2003 settlement agreement that required Illinois probate-court approval; approval was denied. During 2005 settlement negotiations, the parties orally agreed to terms requiring Simek to purchase the residence, and the Estate delivered the key to him before the agreement was

reduced to writing. Simek retained the key for several months, accessed the property, obtained an appraisal, and brought contractors to assess remodeling, while neither he nor his attorney disclaimed the settlement.

PROCEDURAL HISTORY

Simek originally sued the executor of Carol Brehm's estate concerning alleged breaches of a ranch sale contract and sought specific performance and declaratory relief concerning a purchase option. The parties entered a written 2003 settlement agreement conditioned on Illinois probate-court approval, but that approval was denied. After further negotiations in 2005, the parties reached an oral settlement reflected in a draft agreement; the district court found that Simek's receipt and extended use of the property's key constituted partial performance and enforced the oral agreement despite the statute of frauds. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Meyer v. Hatto, 2008 WY 153, ¶ 11, 198 P.3d 552, 555 (Wyo. 2008)
- Three Way, Inc. v. Burton Enters., Inc., 2008 WY 18, ¶ 16, 177 P.3d 219, 225 (Wyo. 2008)
- Doenz v. Sheridan County Bd. of County Comm'rs, 949 P.2d 464, 465 (Wyo. 1997)
- Yaekle v. Andrews, 169 P.3d 196, 200 (Colo. Ct. App. 2007)
- Fowler v. Fowler, 933 P.2d 502, 504, 506 (Wyo. 1997)
- In re Estate of Maycock, 2001 WY 103, ¶¶ 10-11, 33 P.3d 1114, 1117 (Wyo. 2001)
- In re Estate of McCormick, 926 P.2d 360, 361-62 (Wyo. 1996)
- Wyoming Sawmills, Inc. v. Morris, 756 P.2d 774, 775-76 (Wyo. 1988)
- Robert W. Anderson Housew[re]cking and Excavating, Inc. v. Board of Trustees, School District No. 25, Fremont County, Wyoming, 681 P.2d 1326, 1331 (Wyo. 1984)
- Summers v. Mutual Life Ins. Co., 12 Wyo. 369, 75 P. 937, 943 (1904)
- Frost Const. Co. v. Lobo, Inc., 951 P.2d 390, 394 (Wyo. 1998)
- Hageman & Pond, Inc. v. Clark, 69 Wyo. 154, 238 P.2d 919, 923-24 (1951)
- Mississippi & Dominion Steamship Co. v. Swift, 86 Me. 248, 29 A. 1063 (1894)
- Turner v. Floyd C. Reno & Sons, Inc., 696 P.2d 76, 78 (Wyo. 1985)
- Parkhurst v. Boykin, 2004 WY 90, ¶ 16, 94 P.3d 450, 458 (Wyo. 2004)
- McClellan v. Britain, 826 P.2d 245, 249 (Wyo. 1992)
- Gaido v. Tysdal, 68 Wyo. 490, 508, 235 P.2d 741, 747 (1951)
- Hovendick v. Ruby, 10 P.3d 1119, 1124 (Wyo. 2000)
- Butler v. McGee, 373 P.2d 595, 597-98 (Wyo. 1962)
- Wyoming Realty Co. v. Cook, 872 P.2d 551, 554 (Wyo. 1994)
- Remilong v. Crolla, 576 P.2d 461, 465 (Wyo. 1978)
- Crosby v. Strahan's Estate, 78 Wyo. 302, 320, 324 P.2d 492, 499 (1958)

- Empfield v. Kimbrough, 900 P.2d 1153, 1155 (Wyo. 1995)
- Davis v. Davis, 855 P.2d 342, 346-47 (Wyo. 1993)
- In re Estate of Jackson, 892 P.2d 786, 788 (Wyo. 1995)
- Mead v. Leo Sheep Co., 32 Wyo. 313, 327, 232 P. 511, 515 (1925)

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