

SUPREME COURT OF VERMONT

Daniel J. and Jodi C. Kelly v. Edwin P. Lord, Helen Lord, IngaBritt Lillbask, Morris Teig, Robert Ziccardi, Carl Roof and Department of Corrections, 173 Vt. 21

783 A.2d 974 (2001) · No. No. 99-496 · Decided September 21, 2001

SUMMARY

The Supreme Court of Vermont affirmed orders enforcing specific performance of an installment land contract for Stonecliff Farm, as modified by a subsequent engineering and cleanup agreement. The court addressed appellate jurisdiction, the validity and effect of the trust assignment and modification, delivery of the deed to the buyers' attorney, and cancellation of the buyers' remaining installment obligations.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Johnson, J.; Dooley, J.; Morse, J.; Katz, Superior Judge; Gibson, J. (Ret.), Specially Assigned
JURISDICTION	Vermont
DECIDED	September 21, 2001
DOCKET	No. 99-496
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Seller appealed from superior court orders granting buyers specific performance, requiring delivery of a quitclaim deed to buyers' attorney, determining that the installment contract had been modified and that installment payments were cancelled, and enforcing the deed-delivery order.
STANDARD OF REVIEW	The court reviewed the V.R.C.P. 54(b) and appellate-jurisdiction issues as questions of law; reviewed the grant of specific performance for abuse of discretion, reversing only upon a clear showing of abuse; and reviewed summary judgment under the same standard as the trial court, determining whether genuine issues of material fact existed and whether the moving party was entitled to judgment as a matter of law. Contract construction and ambiguity were reviewed as questions of law.

PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Edwin P. Lord v. Daniel J. Kelly, Jodi C. Kelly

TOPICS

specific performance real estate contract interpretation assignment and delegation appellate jurisdiction
summary judgment

PRACTICE AREAS

Contracts Real estate Specific performance Appellate procedure Civil procedure

QUESTIONS PRESENTED

1. Whether the superior court's partial judgments qualified as final judgments under V.R.C.P. 54(b) and were appealable.
2. Whether the Supreme Court could exercise discretionary jurisdiction under V.R.A.P. 2 despite the interlocutory nature of the orders.
3. Whether Lord's assignment of the installment land contract, together with the parties' conduct, delegated Lord's contractual duties to the trust and authorized the trustees to modify the contract.
4. Whether specific performance requiring delivery of the deed to buyers' attorney was equitable and supported by the record.
5. Whether the deed-delivery judgment could be enforced despite not being a final judgment and whether V.R.C.P. 69 governed enforcement.
6. Whether the installment contract merged into the engineering agreement and thereby cancelled buyers' obligation to make further installment payments.
7. Whether an allegedly erroneous finding concerning ANR's cleanup requirements required reversal.

HOLDINGS

1. The partial judgments were not proper V.R.C.P. 54(b) final judgments because, after dismissal of the foreclosure claim, the action involved a single contract claim and neither judgment finally adjudicated the entirety of that claim.
2. The Supreme Court could suspend the applicable appellate procedures under V.R.A.P. 2 and exercise jurisdiction because reaching the merits would expedite the litigation, avoid repeated appeals, and prevent continued harm to the parties, property, and public.
3. The trustees assumed Lord's contractual duties by their conduct, and therefore had authority to negotiate and modify the bilateral installment contract.
4. Specific performance requiring Lord to deliver the quitclaim deed to buyers' attorney was equitable and did not constitute an abuse of discretion.

5. The installment contract merged into the engineering agreement, and the merged contract cancelled buyers' obligation to make further monthly installment payments.
6. V.R.C.P. 69 did not govern enforcement because it concerns execution on money judgments, but the Supreme Court could direct enforcement under V.R.C.P. 70 by authorizing another person to deliver the deed with the same legal effect as delivery by Lord.

KEY QUOTATIONS

“Under these circumstances, we conclude that the conduct of the parties implied a delegation of the contractual duties by seller and an assumption of these duties by the trustees of all seller's obligations under the installment contract.” (783 A.2d at 987-988)

“In this case, the installment contract merged into the engineering agreement.” (783 A.2d at 991)

“The only reasonable interpretation is the one reached by the trial court; thus, we affirm the no-pay judgment.” (783 A.2d at 992)

FACTUAL BACKGROUND

Edwin Lord entered into a 1991 installment land contract to sell Stonecliff Farm to Daniel and Jodi Kelly, while retaining obligations to pay mortgages and remove illegally dumped solid waste. Lord later assigned his interest in the installment contract to trustees of an irrevocable trust. The trustees, buyers, Lord's conservator, and counsel negotiated and executed an engineering and cleanup agreement under which buyers would assume mortgage and remediation responsibilities in exchange for delivery of the deed and cancellation of the installment payments. After environmental studies and negotiations with Vermont's Agency of Natural Resources, Lord refused to deliver the deed, leading buyers to seek specific performance.

PROCEDURAL HISTORY

Buyers initially filed a foreclosure action and later amended their complaint to seek specific performance of an installment land contract as modified by an engineering and cleanup agreement. After a bench trial, the superior court ordered specific performance and delivery of the deed and later granted summary judgment against seller's claim for continued installment payments. The superior court entered partial final judgments under V.R.C.P. 54(b), and the Vermont Supreme Court accepted the appeal under V.R.A.P. 2 despite the absence of a final judgment or permission for an interlocutory appeal. The Supreme Court affirmed the merits rulings and remanded for enforcement under V.R.C.P. 70.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court was directed to enter an order under V.R.C.P. 70 directing another person to deliver the quitclaim deed to attorney William Donahue forthwith, with the same effect as if Lord had delivered it.

CASES CITED

- Liberty Mutual Ins. Co. v. Wetzel, 424 U.S. 737, 743 n.4, 96 S. Ct. 1202, 47 L. Ed. 2d 435 (1976)
- Molleur v. Leriche, 142 Vt. 620, 622, 458 A.2d 1139, 1140 (1983)
- Hospitality Inns v. South Burlington R.I., 149 Vt. 653, 656-57, 547 A.2d 1355, 1357-58 (1988)
- Forgay v. Conrad, 47 U.S. (6 How.) 201, 12 L. Ed. 404 (1848)
- Perry v. Medical Practice Board, 169 Vt. 399, 402, 737 A.2d 900, 902 (1999)
- Cedar Point Apartments, Ltd. v. Cedar Point Investment Corp., 693 F.2d 748, 753, 755 (8th Cir. 1982)
- Auer & Twitchell v. Robertson Paper Co., 94 Vt. 473, 483, 111 A. 570, 574 (1920)
- Shepard v. Commercial Credit Corp., 123 Vt. 106, 110, 183 A.2d 525, 527-28 (1962)
- Gochey v. Bombardier, Inc., 153 Vt. 607, 613, 572 A.2d 921, 925 (1990)
- Colony Park Associates v. Gall, 154 Vt. 1, 6, 572 A.2d 891, 895 (1990)
- Johnson v. Johnson, 125 Vt. 470, 472-73, 218 A.2d 43, 45 (1966)
- O'Donnell v. Bank of Vermont, 166 Vt. 221, 224, 692 A.2d 1212, 1214 (1997)
- Dartmouth Savings Bank v. F.O.S. Associates, 145 Vt. 62, 69, 486 A.2d 623, 627 (1984)
- Morrisseau v. Fayette, 164 Vt. 358, 366-67, 670 A.2d 820, 826 (1995)
- Isbrandtsen v. North Branch Corp., 150 Vt. 575, 579, 581, 556 A.2d 81, 84-85 (1988)
- Abbiati v. Buttura & Sons, Inc., 161 Vt. 314, 320, 639 A.2d 988, 992 (1994)