

78564-3

APR 10 2006

No. 23956-0-III

**SUPREME COURT
OF THE STATE OF WASHINGTON**

C
AP
DAVID PITTS,

Petitioner,

v.

GORDON H. CRAFTS and JAYMIE V. CRAFTS,

Respondents.

PETITION FOR REVIEW

Robert P. Hailey, WSBA #10789
RANDALL & DANSKIN, P.S.
601 West Riverside Avenue
Suite 1500
Spokane, WA 99201
Attorneys for Petitioner

TABLE OF CONTENTS

I.	IDENTITY OF PETITIONERS	1
II.	COURT OF APPEALS DECISION	1
III.	ISSUES PRESENTED FOR REVIEW	1
IV.	STATEMENT OF THE CASE.....	2
V.	ARGUMENT.....	6
A.	The Standard of Review.....	6
B.	The Issues for Review Are of Substantial Public Interest.....	7
C.	The Decision of the Court of Appeals is in Conflict With Decisions of the Supreme Court	7
1.	A Discharge Under Chapter 7 Operates as an Injunction Which Prohibits the Continuation of an Action or an Act to Collect, Recover or Offset a Debt.....	8
2.	Crafts’ Action for Enforcement of a Forfeiture / Penalty Provision of a Prepetition Contract, Constitutes a “Claim” and Therefore a “Debt” Which was Discharged in David Pitts’ Bankruptcy	9
3.	Under Washington Law, the Mere Fact That Real Property is “Unique” Does Not Preclude a Plaintiff From Seeking Damages in Lieu of Specific Enforcement of an Obligation to Convey the Property in Question	12
4.	Neither a Finding That Real Property is Unique, Nor a Finding That a Money Judgment Cannot “Fully Compensate” a Party for the Loss of Real Property Precludes Monetary Damages as an <i>Available</i> Remedy Which is Subject to the Post-discharge Injunction.....	16

VI. CONCLUSION.....18

APPENDIX

TABLE OF AUTHORITIES

Cases

Bower v. Bagley, 9 Wash. 642, 38 Pac. 164 (1894).....7, 13

Egbert v. Way, 15 Wn.App. 76, 546 P.2d 1246 (1976)14, 15, 17

Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).....6

In Re Aslan, 65 B.R. 826 (1986).....7, 12, 16

Int’l Bhd. of Elec. Workers, Local Union No. 46 v. Trig Elec. Constr. Co.,
142 Wn.2d 431, 434-35, 13 P.3d 622 (2000), *cert denied*, 532 U.S. 1002
(2001)6

Winckler v. Strickler, 79 Wash. 635, 127 Pac. 206 (1912).....8, 13, 14

Zastrow v. W. G. Platts, Inc., 57 Wn.2d 347, P.2d 162 (1960)8, 14

Rules

CR 56 (c).....6

Other Authorities

11 U.S.C. §101(5).....9, 12

11 U.S.C. §101(12).....9, 12

11 U.S.C §524.....8, 9, 12, 17

I. IDENTITY OF PETITIONERS

David M. Pitts, defendant before the trial court, asks this Court to accept review of the Court of Appeals decision described in Part II of this petition.

II. COURT OF APPEALS DECISION

The Court of Appeals, in an unpublished opinion filed February 7, 2006, upheld the trial court's decision to grant summary judgment on the claim for specific enforcement against petitioner. The Court of Appeals denied petitioner's timely-filed motion for reconsideration on March 10, 2006.

A copy of the decision for which review is sought is contained in the Appendix at pages A-1 through A-10. A copy of the order denying petitioner's motion for reconsideration of that decision is contained in the Appendix at page A-11.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred in implicitly holding that the only remedy available to the creditors and the court was the remedy of specific performance of an agreement to transfer an interest in real property, and that monetary damages were not an available remedy?

2. Whether an assertion that real property is “unique” is sufficient, in and of itself, to justify a court’s specific enforcement of a pre-petition obligation to transfer an interest in real property which was triggered by a pre-petition default in a lease agreement, notwithstanding the discharge of the underlying obligation, and the post-discharge injunction established by federal bankruptcy law?

IV. STATEMENT OF THE CASE

In March of 2002, following a series of ill-fated transactions,¹

David M. Pitts found himself threatened with eviction from his home by

¹ Mr. Pitts had originally been deeded the 160-acre parcel of property on June 29, 1993 (CP 119, 124). He had executed a contract to sell the entire 160 acres to Mr. V. Ram Gopal, in 1999 (CP 120). However, the Statutory Warranty Deed was inadvertently delivered to Mr. Gopal before the purchaser executed a corresponding Deed of Trust to secure his obligation to pay the purchase price. *Id.* In August of 1999, after Mr. Pitts became aware of this discrepancy, he confronted Mr. Gopal, who agreed that he would pay Mr. Pitts a portion of the purchase price for 110 acres, and that he would return to Mr. Pitts the 50 acres on which defendant was then living, in settlement of the dispute. *Id.*

Mr. Pitts received the agreed-upon portion of the original purchase price, and thought that the matter was settled. However, neither the August 16, 1999 “Agreement of Understanding” with Mr. Gopal (CP 129-130), nor any Deed to Mr. Pitts for the 50 acres was ever recorded. CP 120. Instead, the title documents show that Mr. Gopal transferred the entire 160-acre parcel to Kenneth V. Lohmeyer in March of 2000 (CP 120, 132-34), and that Lohmeyer subsequently quit-claimed the property to Partners Development, L.L.C., in lieu of foreclosure, in January of 2001 (CP 120, 136-37).

On November 30, 2001, Glen Cloninger acquired title to the 160 acres from Partners Development, L.L.C. through another foreclosure action (CP 58-59). At the time of the foreclosure action, David Pitts was still living on the 50-acre portion of the 160 acres that he believed belonged to him by reason of the August 16, 1999 “Agreement of Understanding” with Mr. Gopal (CP 120). It was not until after the Cloninger foreclosure that defendant Pitts learned that Mr. Gopal had never recorded a Deed to the 50 acres as contemplated, and that Gopal had transferred the entire 160 acres to someone else. *Id.*

Mr. Glen Cloninger, who had acquired title to the property on which Mr. Pitts was then living, together with the surrounding 160 acres, through a foreclosure action (CP 58-59). On March 14, 2002, Mr. Pitts signed a document entitled “Real Estate Lease With Purchase Option” relating to the 160-acre parcel (CP 120, 74-81). By its terms, this document contemplated contemporaneous execution and delivery of a Quit Claim Deed to an adjacent 9.83-acre parcel of real property,² which was to have been held in trust by Mr. Cloninger’s attorney (CP 77-78). The Quit Claim Deed in question was apparently to be forfeited to Mr. Cloninger if – and only if – defendant defaulted under the Lease and/or failed to exercise the purchase option provided in the “Real Estate Lease With Purchase Option” document. *Id.*

The Quit Claim Deed contemplated by the “Real Estate Lease With Purchase Option” was not executed contemporaneously with the latter document (CP 120). After defaulting on the Lease, defendant David Pitts refused to execute and deliver a deed to the subject property, in part, because he believed that the property belonged to other heirs of his

² Legal title to the 9.83-acre parcel is in the name of Betty J. Pitts (the mother of David M. Pitts), now deceased, who had been given a Quit Claim Deed to the property on September 26, 1994 (CP 44), at the conclusion of a Quiet Title action. (CP 22-26). The 9.83-acre parcel is presumably subject to distribution to David Pitts and other heirs through decedent’s probate estate, under the residuary clause of decedent’s June 15, 1990 Last Will And Testament (CP 153-154).

mother's estate, and in part, because he felt that he had been forced to sign the Lease agreement under duress. *Id.*

On September 6, 2002, Glen Cloninger filed a lawsuit in Spokane County Superior Court against defendant David M. Pitts, seeking to remove Mr. Pitts from the 160 acres, and seeking damages for his breach of the "Real Estate Lease With Purchase Option." CP 121, 139-152. On September 30, 2002, Judgment was entered against Mr. Pitts, in the amount of \$3,248.41. *Id.*

On April 1, 2003, Glen A. Cloninger and Pamela M. Cloninger conveyed the 160 acres to plaintiffs Gordon H. Crafts and Jaymie V. Crafts, by Statutory Warranty Deed. The property conveyed to Crafts in April of 2003 was the same 160 acres that had been obtained by Mr. Cloninger through a foreclosure and Trustee's Deed on or about November 30, 2001. CP 72, 84. However, on September 24, 2003, Gordon and Jaymie Crafts received a separate "Assignment of Interest" from Mr. Cloninger, that related only to the 9.83-acre parcel which is the subject of this action (CP 60, 86).

That same date, Crafts initiated the lawsuit in the case at bar, seeking to force defendant David Pitts to execute and deliver to plaintiffs a Quit Claim Deed to the 9.83-acre parcel, relying upon the March 14, 2001 "Real Estate Lease With Purchase Option." The basis for the relief

requested, as described in paragraph 2.7 of the Complaint, was the assertion that “Defendant David Pitts defaulted under the Agreement by failing to make required monthly payments and also failed to exercise the option to purchase.” CP 5.

On March 18, 2004, defendant David Pitts filed for protection under Chapter 7 of the Bankruptcy Code; and in that bankruptcy filing, defendant listed both Glen Cloninger and Gordon and Jaymie Crafts among the creditors holding unsecured nonpriority claims, identifying this claim as a pending lawsuit (CP 121). Mr. Pitts did not designate the parcel of property in question as an asset of the bankruptcy estate because he believed at the time that he had already received his inheritance from his mother in the form of the 160 acres (CP 119, 124), and that other heirs would receive the smaller parcel from his mother’s probate estate (CP 121, 153).³ Mr. Pitts received his Chapter 7 Discharge on June 18, 2004 (CP 121).

On February 18, 2005, notwithstanding defendant’s interposition of the bankruptcy discharge and post-bankruptcy injunction, the trial court, in response to a motion for summary judgment filed by Mr. and Mrs. Crafts, ordered David Pitts to execute a Quit Claim Deed for the

³ Because Mr. Pitts is one of four residuary heirs to his mother’s estate (CP 153-154), his belief that he did not have an interest in the property was likely mistaken.

disputed property. CP 189-191. Mr. Pitts appealed the trial court's ruling (CP 209-216), but the ruling of the lower court was upheld by Division 3 of the Court of Appeals.

V. ARGUMENT

A. Standard of Review.

Notwithstanding defendant's prior discharge of a leasehold obligation in bankruptcy, the trial court entered an order on summary judgment granting specific performance of a penalty provision of the lease that required defendant to Quitclaim to plaintiffs his interest in a parcel of real property other than the leased property, following a default on the lease. An appellate court reviews a lower court ruling granting summary judgment on a de novo basis. *Int'l Bhd. of Elec. Workers, Local Union No. 46 v. Trig Elec. Constr. Co.*, 142 Wn.2d 431, 434-35, 13 P.3d 622 (2000), *cert denied*, 532 U.S. 1002 (2001). In doing so, the appellate court views the facts in the light most favorable to the nonmoving party. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). Summary judgment is proper only where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c).

B. The Issues for Review Are of Substantial Public Interest.

Although the Court of Appeals acknowledged that a discharge in bankruptcy operates as an injunction against the continuation of an action to collect a debt, the Court's holding below has virtually nullified that post-discharge injunction for any case which involves breach of an agreement to transfer an interest in real property. Federal bankruptcy law carves out a limited exception to the post-discharge injunction where the only available remedy to a creditor is in equity; however, the Court of Appeals – misconstruing Washington precedent – has held in the case at bar that only specific performance could “remedy the situation,” because the parcel in question was a “unique piece of real estate.” This rationale, which could be applied to virtually every parcel of real property, was expressly rejected by the same federal precedent that was cited with approval by the Court of Appeals. *See, In Re Aslan*, 65 B.R. 826, 831 (1986). It should likewise be rejected by this Court.

C. The Decision of the Court of Appeals Is In Conflict With Decisions of the Supreme Court.

As mentioned above, the essential underpinning of the Court of Appeals decision was the Court's assumption that only specific performance could “remedy the situation,” because the parcel in question was a “unique piece of real estate.” This is contrary to a long line of this Court's decisions, including *Bower v. Bagley*, 9 Wash. 642, 650, 38 Pac.

167 (1894); *Winckler v. Strickler*, 70 Wash. 635, 639, 127 P. 206 (1912); and *Zastrow v. W. G. Platts, Inc.*, 57 Wn.2d 347, 350, 357 P.2d 162 (1960), *opinion amended on denial of rehearing*, 360 P.2d 354 – decisions which clearly stand for the principal that money damages are at least a possible alternative to specific performance of a real estate contract, even though damages may not be the best alternative, and even though damages have not been expressly requested by the party seeking relief.

1. **A Discharge Under Chapter 7 Operates as an Injunction Which Prohibits the Continuation of an Action or an Act to Collect, Recover or Offset a Debt.**

As noted above, David Pitts received his Chapter 7 discharge on June 18, 2004. 11 U.S.C. §524 provides, in pertinent part:

§ 524. Effect of discharge

(a) A discharge in a case under this title [11 USCS §§ 101 seq.]-

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title [11 USCS § 727, 944, 1141, 1228, or 1328], whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived;

11 U.S.C. §101(12) defines a “debt” as any liability on a claim. 11 U.S.C.

§101(5) defines a “claim” as any:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Crafts have contended that their cause of action for specific performance is not a “claim” under 11 U.S.C. §101(5), and therefore not a “debt” under §101(12) or §524. However, as will be demonstrated, this contention is inconsistent with both the letter and purpose of the Bankruptcy Code.

2. **Crafts’ Action for Enforcement of a Forfeiture / Penalty Provision of a Prepetition Contract Constitutes a “Claim” and Therefore a “Debt” Which Was Discharged in David Pitts’ Bankruptcy.**

The March 14, 2001 “Real Estate Lease With Purchase Option” (hereinafter, “Lease”) was clearly not on its face a contract for purchase of the disputed 9.83-acre parcel of land. Instead, it was an agreement for a six-month lease of the separate 160 acres of property, together with an option to purchase that larger parcel of property.

The payments required under the Lease were \$1,000.00 per month (CP 74), and time was “of the essence in the performance of all of the provisions” of the agreement (CP 76). In the event Lessee David Pitts failed to make a monthly payment by the 15th of the month, he became obligated to pay a “late charge,” in the amount of \$500.00 (CP 74). In addition to this fairly Draconian penalty, the Lease provided that a default would authorize release of the Quit Claim Deed from Lessor’s counsel to the Lessor (CP 77-78). Finally, the Lease provides,

“In the event of a default in the payment of rent which continues for more than seven days after written notice of termination given by Lessor to Lessee, Lessor may, at his option and without prejudice to the exercise of any other remedies which may [sic] available to him, treat the lease as terminated and all rights hereunder forfeited by Lessee.”

CP 74 [emphasis supplied]. Other remedies that would have been available to the Lessor upon defendant Lessee’s failure to timely pay rent would of course have included a cause of action to recover unpaid rent, together with any late charges or other charges authorized under the Lease. In point of fact, Mr. Cloninger pursued those remedies in a separate lawsuit, and obtained a Judgment thereon in the amount of \$3,248.41

against David Pitts, on September 30, 2002 (CP 121), before assigning the claim for specific enforcement to Crafts.

As noted previously, the basis for specific enforcement of the penalty clause relating to forfeiture of Mr. Pitts' interest in the 9.83-acre parcel was the assertion in Paragraph 2.7 of Crafts' Complaint that

“Defendant David Pitts defaulted under the Agreement by failing to make required monthly payments and also failed to exercise the option to purchase.”

CP 5. Although Crafts did not specifically request monetary damages in their Complaint, their Prayer For Relief did include a request for judgment “Awarding plaintiffs any further or additional relief which the court finds equitable, appropriate or just.” *Id.*

Under federal bankruptcy law, a “claim” is not limited to a demand for payment of money damages. As noted above, it also includes a right to an equity remedy for breach of performance if the breach gives rise to an alternative right to payment of money damages. In other words,

The question to be dealt with is whether, as a matter of state law, the non-breaching party to the contract has a right to obtain a money judgment, even though he also has a right to obtain an equitable judgment. If so, the remedy becomes a contingent claim and can be discharged in the bankruptcy. [*emphasis supplied*]

In Re Aslan, 65 B.R. 826, 831 (1986).

3. **Under Washington Law, the Mere Fact That Real Property is “Unique” Does Not Preclude a Plaintiff From Seeking Damages in Lieu of Specific Enforcement of An Obligation to Convey the Property in Question.**

In its Unpublished Opinion filed on February 7, 2006, the Court of Appeals correctly observed:

"A discharge in bankruptcy operates as an injunction against the continuation of an action to collect a debt. 11 U.S.C. § 524(a)(2). A debt is any liability on a claim. 11 U.S.C. § 101(12). But the right to an equitable remedy for breach of performance is a claim under the bankruptcy code only if the breach also gives rise to a right to payment. 11 USC § 101(5)(B); *In re Aslan*, 65 B.R. 826, 829 (Bankr.C.D.Cal. 1986).

The bankruptcy court looks to state law to determine whether a claim includes the right to a money judgment as well as to an equitable remedy. *Aslan*, 65 B.R. at 831."

Up to this point in the opinion of the Court of Appeals, the petitioner is in full agreement with the Court's analysis of the bankruptcy discharge issue.

However, in the next paragraph of the opinion, the Court departs from established case law. That paragraph begins:

"Whether specific performance or damages is an available remedy for breach of a contract is within the sound discretion of the trial court. It depends on the particular circumstances of the case. *Winckler v. Strickler*, 70 Wash. 635, 639, 127 P. 206 (1912)."

In fact, neither *Winckler* nor any other Washington case stands for the proposition that the availability of damages as a possible remedy for breach of contract is a matter within the discretion of the trial court. In *Winckler*, this Court opined:

"Whether the performance of a contract will be specifically enforced by the court depends upon the circumstances of the particular case. And the granting or refusing of the remedy has been said to be a matter resting in the sound and legal discretion of the court."

70 Wash. at 639 (*quoting Bower v. Bagley*, 9 Wash. 642, 650, 38 Pac. 167 (1894)). In other words, *Winckler* stands for the proposition that it is the choice between monetary damages and specific performance that lies within the sound discretion of the trial court. This is reinforced by the following statement from that same opinion:

... in cases of this character it is for the sound and legal discretion of the court to determine whether specific performance will be decreed or damages awarded.

Winckler, supra, at 639.

Under Washington law, the decision to grant specific performance of a contract provision is neither automatic nor inevitable. More recently, this Court has held that, even where the only remedy expressly requested by a plaintiff is equitable relief, the trial court has the inherent right to award whatever relief the facts warrant, including but not limited to monetary damages. *Zastrow v. W. G. Platts, Inc.*, 57 Wn.2d 347, 350, 357 P.2d 162 (1960), *opinion amended on denial of rehearing*, 360 P.2d 354. In so holding, this Court observed that the prayer for relief had requested not only specific performance, but also, “such other and further relief as to the court seems meet and proper,” (much like the prayer for relief in the case at bar). *Id.*

Although damages are always available to the party requesting relief, the same cannot be said of specific performance, and this appears to be the source of the lower court’s confusion. In *Egbert v. Way*, 15 Wn.App. 76, 79, 546 P.2d 1246 (1976), the Court of Appeals stated:

Specific performance is an equitable remedy available to an aggrieved party for breach of contract where there is no adequate remedy at law.

Stated differently, if there is an adequate remedy at law, it follows that specific performance would not be "available" to an aggrieved party for breach of contract. Under such circumstances, the court's discretion to choose between specific performance and monetary damages would not come into play, because the threshold criterion for specific performance would not have been satisfied. *Egbert* holds that only after this threshold criterion (no adequate remedy at law) has been met is the court called upon to exercise its discretion in making the choice between specific performance and monetary damages as the appropriate remedy:

Once it is determined that there is no other adequate remedy at law and that specific performance is *possible*, it is left to the discretion of the court to enforce the remedy. [emphasis supplied]

15 Wn.App. 80. Neither *Egbert* nor any other Washington case holds that money damages are unavailable to an aggrieved party simply because money damages are inadequate to fully compensate the aggrieved party for the breach of contract. If that proposition were true, then there would be no need for the two-step process outlined in *Egbert*.

//

//

//

4. **Neither a Finding That Real Property is Unique, Nor a Finding That a Money Judgment Cannot “Fully Compensate” a Party for the Loss of Real Property Precludes Monetary Damages as an Available Remedy Which is Subject to the Post Discharge Injunction.**

The *Aslan* decision cited by the Court of Appeals anticipated that state law might very well permit a trial court to award specific performance in lieu of money damages because real property is unique, and because the money judgment cannot fully equate to the property itself. However, the court made it clear that the presence of these factors does not prevent a discharge of the claim in bankruptcy:

The question to be dealt with is whether, as a matter of state law, the non-breaching party to the contract has a right to obtain a money judgment, even though he also has a right to obtain an equitable judgment. If so, the remedy becomes a contingent claim and can be discharged in the bankruptcy.

* * *

In the case of transfer of real property, specific performance is *allowed* because courts have felt that real property is unique and that a money judgment cannot fully equate to the property itself. However, the law does allow the creditor to choose between receiving money and receiving specific performance.

In re Aslan, supra, at 831 [emphasis supplied].

As mentioned previously, neither *Egbert* nor any other Washington case holds that money damages are unavailable to an aggrieved party simply because money damages are inadequate to fully compensate the aggrieved party for the breach of contract. Even in *Egbert*, the factual recitation indicates that the plaintiffs "...filed suit for specific performance or, in the alternative, damages." 15 Wash.App. at 78. It was only because the Egberts insisted upon specific performance over monetary damages that the appellate court was required to determine whether the trial court had abused its discretion in awarding money damages in lieu of specific performance.

Clearly, had the provision in the Lease Agreement provided for only a forfeiture of a sum of money upon a default, or had the Crafts expressly requested damages in the amount of the value of the parcel in question, the post-bankruptcy collection of that forfeiture would have been directly prohibited by 11 U.S.C. §524. Because the Crafts (prior to the filing of the bankruptcy petition) had the alternative of seeking damages against David Pitts for his refusal to honor the terms of the penalty provisions of the Lease agreement, the mere fact that Crafts elected to seek specific enforcement of the penalty in lieu of monetary damages should not logically empower them to circumvent the broad prohibition of 11 U.S.C. §524 against continuation of an action to collect, recover or

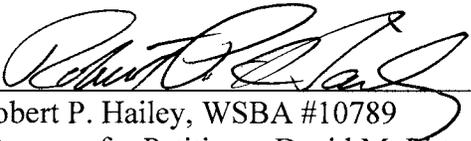
offset a debt. If that were not the case, then the exception to the general prohibition would be so broad as to render the prohibition itself a virtual nullity.

VI. CONCLUSION

To the extent that there may exist any uncertainties regarding factual issues, all such uncertainties must be resolved in favor of Mr. Pitts, the appellant herein, who was the non-moving party below. In any event, for the reasons stated above, petitioners asks this Court to reverse the decision of the Court of Appeals below, reverse the decision of the trial court granting summary judgment, and remand the case for further proceedings consistent with this Court's opinion.

RESPECTFULLY SUBMITTED, this 10th day of April, 2006.

RANDALL & DANSKIN, P.S.

By: 
Robert P. Hailey, WSBA #10789
Attorneys for Petitioner David M. Pitts

CERTIFICATE OF SERVICE

I certify that on the 10th day of April, 2006, I caused a true and correct copy of PETITION FOR REVIEW to be served on the following individuals in the manner indicated below:

Peter A. Witherspoon
Workland & Witherspoon, PLLC
601 W. Main Avenue, Ste. 714
Spokane, WA 99201

- | | |
|-------------------------------------|----------------|
| <input type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Fax |
| <input checked="" type="checkbox"/> | Hand Delivery |



Jan L. Clyde

RECEIVED

FEB 08 2005

Randall & Danskin, P.S.

FILED

FEB 07 2006

*In the Office of the Clerk of Court
WA State Court of Appeals, Division III*

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GORDON H. CRAFTS and JAYMIE)	No. 23956-0-III
V. CRAFTS, husband and wife,)	
)	
Respondents,)	
)	Division Three
v.)	
)	
DAVID PITTS, an individual,)	
)	UNPUBLISHED OPINION
Appellant.)	

SWEENEY, J.—Two legal principles control our disposition here. First, an unlawful detainer action is a limited action calculated to restore possession of leased property. Accordingly, claims and counterclaims for other relief will generally not be entertained. Second, an equitable claim to the right of specific performance, which does not give rise to the right of payment, is not dischargeable in bankruptcy, and therefore survives a discharge under chapter 7 of the U.S. Bankruptcy Code. Here, a lease required the lessee to quitclaim any interest in a small parcel of property upon termination of the lease. The lease terminated and the lessee then filed for bankruptcy protection. We conclude that this suit for specific performance to require conveyance of the deed was not foreclosed by the lessors' failure to assert the claim in their earlier suit for unlawful

detainer. Nor was the claim for specific performance discharged as a “debt” in the lessee’s chapter 7 bankruptcy. We therefore affirm the trial court’s order requiring the lessee to quitclaim his interest in the disputed parcel of land, as required by the lease.

FACTS

PITTS INTEREST

Betty Pitts lived on 160 acres of land owned by John and Ruth Kennedy. Ms. Pitts bought the property from the Kennedys in 1990. Everyone thought the acreage was square. It was not. The fence line on the north side sloped up at an angle, forming a wedge-shaped cap of 9.83 acres sliced off the neighboring property. The dispute here is over these 9.83 acres.

The Kennedys discovered the boundary discrepancy, sued for adverse possession, obtained title to the 9.83 acres, and then quitclaimed their interest to Betty Pitts.

Betty Pitts deeded what she called “the ranch” to her son, David Pitts, in 1993. Mr. Pitts is the appellant here. The deed’s legal description refers solely to the 160 acres, however. Mr. Pitts found out he did not own the 9.83 acres when he later conveyed the ranch to V. Ram Gopal.

Mr. Pitts transferred title to the 160 acres to Mr. Gopal. But Mr. Gopal did not execute the agreed-upon deed of trust. Mr. Pitts and Mr. Gopal settled their ensuing dispute by signing an “Agreement of Understanding.” Mr. Gopal paid Mr. Pitts \$70,000

and "returned" the northwest corner 50 acres that Mr. Pitts lived on. Neither the Agreement of Understanding nor a deed for the 50 acres was recorded. Mr. Gopal later conveyed the entire 160 acres to another buyer. That buyer, facing foreclosure, quitclaimed its interest to Partners Development, L.L.C., in January 2001.

CLONINGER INTEREST

Glen A. Cloninger bought the 160 acres from Partners in another foreclosure action in November 2001. Meanwhile, Mr. Pitts continued to live on the property.

Mr. Cloninger visited Mr. Pitts and explained the various conveyances and his (Cloninger's) interest in the property. Mr. Pitts and Mr. Cloninger then executed an agreement called a "Real Estate Lease with Purchase Option" on March 14, 2002. The document gave Mr. Pitts possession of the 160 acres with an option to buy for a six-month term ending August 31, 2002, at a rental rate of \$1,000 per month. The lease called for a late charge of \$500 if the rent was not paid by the 15th of the month. Mr. Pitts also agreed to quitclaim his interest in the 9.83 acres to Mr. Cloninger in the event of either default or expiration of the lease. He agreed to execute a quitclaim deed to be held in trust by Mr. Cloninger's attorney. If Mr. Pitts defaulted under the lease or elected not to exercise the purchase option, the quitclaim deed to the 9.83 acres would be released to Mr. Cloninger. The lease-option provided that a seven-day default in payment of rent entitled Mr. Cloninger to treat the lease as terminated.

Mr. Pitts did not draw up the quitclaim deed. Neither did he exercise the purchase option. And the lease expired on August 31, 2002.

A week later, on September 6, 2002, Mr. Cloninger served Mr. Pitts with a 12-day summons for unlawful detainer. The complaint sought restitution of the premises; damages of \$1,500 for the August 2002 rent plus late charge; and damages including double damages for unlawful detainer. The superior court entered judgment against Mr. Pitts for \$3,248.41.

CRAFTS INTEREST

Mr. Cloninger sold the 160 acres to Gordon H. and Jaymie V. Crafts. Mr. and Ms. Crafts are the respondents in this appeal. The legal description in the Cloninger-Crafts statutory warranty deed again included only the 160 acres. Mr. Cloninger assigned his interest in the Real Estate Lease with Purchase Option to Mr. and Ms. Crafts on September 24, 2003. Mr. and Ms. Crafts then sued Mr. Pitts for specific performance of the deed transfer clause of the lease option agreement (to compel transfer of the 9.83 acres).

Mr. Pitts filed for chapter 7 bankruptcy on March 18, 2004. He listed both Mr. Cloninger and Mr. and Ms. Crafts as creditors holding unsecured nonpriority claims, identifying the claim as a pending lawsuit. Mr. Pitts did not include the 9.83 acres as an asset of the bankruptcy estate. And he testified in bankruptcy court that he had no

interest in the 9.83 acres, and that title was in the name of Betty Pitts and would pass to his brothers under her will. Betty Pitts had died in 1999 and her will was still in probate. Mr. Pitts told the bankruptcy court he knew when he signed the lease that he had no legal interest in the 9.83 acres, but believed actual ownership was optional for a quitclaim deed. The bankruptcy court discharged Mr. Pitts' debts on June 18, 2004.

Mr. and Ms. Crafts moved for summary judgment. And the court ordered Mr. Pitts to quitclaim the 9.83 acres to them. Mr. Pitts appeals that order.

DISCUSSION

CLAIM SPLITTING

Mr. Pitts asserts that any claim Mr. Cloninger had against him under the lease agreement had to be asserted during Mr. Cloninger's unlawful detainer action or not at all: "[I]f an action is brought for part of a claim, a judgment obtained in the action precludes the plaintiff from bringing a second action for the residue of the claim." *Landry v. Luscher*, 95 Wn. App. 779, 782, 976 P.2d 1274 (1999).

He contends that even if Mr. Cloninger's action was for unlawful detainer for possession, other claims could have been and should have been included. He also contends that a claim for the deed could have been included in the unlawful detainer because the quitclaim was a penalty for default on the lease. His argument is essentially

that Mr. and Ms. Crafts are collaterally estopped from asserting a claim that could have been asserted in the earlier action—the unlawful detainer action.

The application of the doctrine of collateral estoppel is a question of law that we review de novo. *Satsop Valley Homeowners Ass'n, Inc. v. Nw. Rock, Inc.*, 126 Wn. App. 536, 542, 108 P.3d 1247 (2005). We do not apply the doctrine if to do so would result in an injustice. *Id.*

Unlawful detainer is a summary proceeding designed to facilitate recovery of possession of leased property. The primary issue is the right to possession. *MacRae v. Way*, 64 Wn.2d 544, 392 P.2d 827 (1964). The unlawful detainer statutes create a special, summary proceeding for the recovery of possession of real property. *Hous. Auth. of City of Seattle v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952 (1999). The statutes permit a landlord to commence summary eviction proceedings based on certain tenant breaches and violations. RCW 59.12.030(3)-(5), (7); *Silva*, 94 Wn. App. at 734 (citing cases). The statutory unlawful detainer scheme is in derogation of the common law and we therefore construe it strictly in favor of the tenant. *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990).

And, more importantly for our discussion here, additional claims cannot be joined in an unlawful detainer action. *Honan v. Ristorante Italia, Inc.*, 66 Wn. App. 262, 269, 832 P.2d 89 (1992); *First Union Mgmt. Co. v. Slack*, 36 Wn. App. 849, 679 P.2d 936

No. 23956-0-III
Crafts v. Pitts

(1984). The sole purpose of an action for unlawful detainer is to determine the right of possession. *Slack*, 36 Wn. App. at 854. Any issue not directly affecting the right of possession within the specific terms of chapter 59.18 RCW must be raised in an ordinary civil action. *Bar K Land Co. v. Webb*, 72 Wn. App. 380, 383, 864 P.2d 435 (1993). In most cases, defendants are not even permitted to assert offsets and counterclaims. *Young v. Riley*, 59 Wn.2d 50, 365 P.2d 769 (1961). Equitable defenses to the landlord's assertion of the right to possession are nowadays begrudgingly allowed. *Motoda v. Donohoe*, 1 Wn. App. 174, 175, 459 P.2d 654 (1969).

Mr. Cloninger filed an unlawful detainer action. Mr. Pitts does not dispute that Mr. Cloninger commenced the action on September 6, 2002. The summons demands an answer by September 17. On its face, this is a special 12-day summons of the kind used to invoke the court's limited authority conferred by the unlawful detainer statutes. General superior court jurisdiction requires a 20-day summons. *Honan*, 66 Wn. App. at 269.

Mr. Cloninger accordingly correctly limited the relief sought to possession of the 160 acres, unpaid rents, and damages associated with the unlawful detainer. The court lacked authority to grant collateral relief under the lease agreement and order conveyance of Mr. Pitts' interest in the 9.83 acres.

DISCHARGE IN BANKRUPTCY

Mr. Pitts next contends that Mr. and Ms. Crafts' claim for an equitable remedy (quitclaim of the 9.83 acres) included an optional remedy of money damages. And, because it does, that claim is contingent under the bankruptcy rules and was therefore discharged in his bankruptcy.

The trial court implicitly ruled that Mr. Pitts' bankruptcy discharge did not include this claim. We review summary judgments de novo. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). Summary judgment is appropriate when there are no disputes of material fact and the issues presented can be resolved as a matter of law. *Tri-City Constr. Council, Inc. v. Westfall*, 127 Wn. App. 669, 674, 112 P.3d 558 (2005).

A discharge in bankruptcy operates as an injunction against the continuation of an action to collect a debt. 11 U.S.C. § 524(a)(2). A debt is any liability on a claim. 11 U.S.C. § 101(12). But the right to an equitable remedy for breach of performance is a claim under the bankruptcy code only if the breach also gives rise to a right to payment. 11 U.S.C. § 101(5)(B); *In re Aslan*, 65 B.R. 826, 829 (Bankr. C.D. Cal. 1986).

The bankruptcy court looks to state law to determine whether a claim includes the right to a money judgment as well as to an equitable remedy. *Aslan*, 65 B.R. at 831.

Whether specific performance or damages is an available remedy for breach of a contract is within the sound discretion of the trial court. It depends on the particular

No. 23956-0-III
Crafts v. Pitts

circumstances of the case. *Winckler v. Strickler*, 70 Wash. 635, 639, 127 P. 206 (1912). But the language of the agreement is a key factor. *See, e.g., Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn. App. 507, 516-17, 94 P.3d 372 (2004), *review denied*, 153 Wn.2d 1027 (2005).

An award of damages is appropriate only if the aggrieved party's loss can be compensated by damages. *Winckler*, 70 Wash. at 639. But damages cannot compensate for the loss of a unique parcel of real estate—such as that adjoining one's existing property. *Egbert v. Way*, 15 Wn. App. 76, 78-79, 546 P.2d 1246 (1976). Equity requires the court to order specific performance when the breaching party has the ability to perform an obligation. *Id.* at 79.

Here, Mr. Pitts' breach of the lease agreement deprived Mr. and Ms. Crafts of a unique piece of real estate that has long been recognized as an integral part of the property. Only specific performance can remedy the situation. No amount of damages would compensate for the loss. Nothing in the lease-option agreement suggests that turning over the deed was considered a penalty or that the parties attributed a dollar value to the 9.83 acres. Indeed, it appears here that whoever wound up with the 160 acres would also wind up with the 9.83-acre triangle.

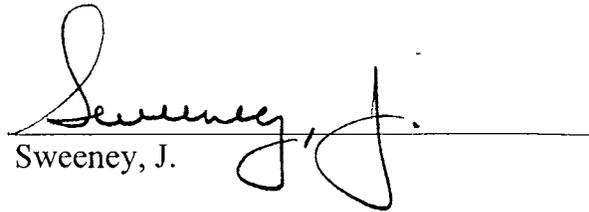
Mr. Pitts has the ability to perform his promise. The circumstances and language of the lease would not have supported a claim by Mr. and Ms. Crafts for damages.

No. 23956-0-III
Crafts v. Pitts

Specific performance was, then, the only viable remedy. Mr. and Ms. Crafts' claim therefore survived the discharge in bankruptcy. 11 U.S.C. § 101(5)(B); *Aslan*, 65 B.R. at 829. The trial court correctly ordered Mr. Pitts to produce the promised quitclaim deed.

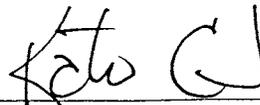
Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

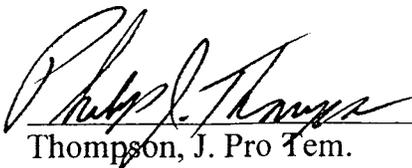


Sweeney, J.

WE CONCUR:



Kato, C.J.



Thompson, J. Pro Tem.

