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NO. 23956-0-III

SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID PITTS, a single person,

Appellant,

v.

GORDON H. CRAFTS and JAYMIE V. CRAFTS

Respondents

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals decision does not conflict with Washington State law and does not significantly impact the public interest. This case concerns the specific performance of a contract for the delivery of a quitclaim deed. The Petition for Review should be denied.

David Pitts signed a Lease whereby he agreed to execute and deliver a quitclaim deed to convey any interest that he may have in an adjoining parcel of property and, if he did not exercise the option to purchase provided for in the Lease or if he defaulted in making the lease payments, the quitclaim deed would be recorded. The intended effect of this was to aggregate the adjoining parcels into a single parcel of property whether or not Mr. Pitts exercised the option to purchase found in the lease.

Mr. Pitts does not dispute these facts. Further, there is no dispute that Mr. Pitts did not exercise the option to purchase and defaulted in making the lease payments. There is no dispute that the legal right to obtain the quitclaim deed was assigned to Gordon and Jaymie Crafts.

The seeking of specific performance of Mr. Pitts' obligation to provide a quit claim deed is not a "claim" under Chapter 7 of the

Bankruptcy Code. Furthermore, a general request for equitable relief in a complaint for specific performance does not constitute a “claim” within the meaning of Chapter 7 of the Bankruptcy Code. Finally, this matter concerns the enforcement of a clear and unambiguous agreement between two parties and does not significantly impact the public interest. The Court of Appeals’ decision was correct and the Petition for Review should be denied. 1

II. STATEMENT OF THE CASE

The Respondents, Gordon H. Crafts and Jaymie V. Crafts (hereinafter referred to as the “Crafts”) are the current owners of 160 acres described as the Southwest quarter of Section 15, Township 26 North, Range 41 E.W. (hereinafter referred to as the “Crafts’ Property”) (CP 20). The property that is the subject matter of this action is a triangular piece of property comprising approximately 9 acres adjoining the Crafts’ Property to the North (hereinafter referred to as the “Subject Property”). (A map of the Crafts’ Property and the Subject Property is located at CP 20).

1 Mr. Pitts has again alleged that he signed the Lease under duress, apparently excusing his performance. (Petition for Review at 3-4.) However, Mr. Pitts has failed to provide reference to any facts in the record to support this claim to the trial court, the Court of Appeals and in his Petition for Review to this Court. As such, this allegation should be disregarded. RAP 10.3(a)(4).

Prior to 1990, the Subject Property was used in conjunction with the property shown on CP 20. An old residence is located on the Crafts' Property. (CP 59) For years, the residence was serviced by a well located on the Subject Property. A fence line was located on the North boundary of the Subject Property to separate the Crafts' Property and the Subject Property from the property to the North. The Crafts' Property and the Subject Property were used as one parcel. (CP 20, 59).

In 1990, a legal action for adverse possession was commenced by John and Ruth Kennedy (who then owned the Crafts' Property) against the owners of the Northwest Quarter of Section 15, Township 26 North, Range 41 E.W.M. (the Subject Property and the property north of the fence line). (CP 22-26). In that action, the Kennedys asked the Court to quiet the title of the Subject Property in them so that the legal ownership of the Subject Property and the Crafts' Property were aggregated in one ownership. Shortly after the commencement of the quiet title action, the Kennedys entered into a Real Estate Contract dated August 1, 1990, with Betty J. Pitts (the mother of the Appellant David Pitt) to sell to her the Crafts' Property. (CP 25). Betty Pitts was joined as a plaintiff in the adverse possession litigation on May 24, 1991. (CP 25). In 1993, the parties to the adverse possession action entered into a settlement

agreement by which it was agreed that the title to the Subject Property south of the fence line transferred to the Kennedys subject to the Real Estate Contract with Betty Pitts. (CP 22-26).

Subsequent to the resolution of the adverse possession suit, a quitclaim deed was executed by the Kennedys whereby Ms. Pitts received legal title to the Subject Property. (CP 46).

On August 10th, 1999, Betty Jane Pitts passed away. Her will was admitted to probate in the Spokane County Superior Court on November 8, 1999. (CP 50-58). The quitclaim deed received by Ms. Pitts from the Kennedys was recorded prior to her death. (CP 46). Under the terms of her Will, the Appellant, David Pitts (hereinafter referred to as “Mr. Pitts”) inherited all of Betty Pitts’ interest in the property located at 14829 N. Burnett Road. (CP 53-56).

In January of 2001, Glen A. Cloninger obtained a deed of trust (hereinafter referred to as “Deed of Trust”) on the Crafts’ Property. (CP 58, 63-67). Due to a mistake in the drafting of the Deed of Trust, the Subject Property was not included in the legal description. (CP 59). It was Mr. Cloninger’s intent that the Subject Property was to be included in the Deed of Trust. (CP 59). A default occurred in the obligations secured by the Deed of Trust and Glen A. Cloninger foreclosed on the Deed of

Trust. (CP 59). On November 30, 2001, a foreclosure sale regarding the Crafts' Property took place and title was transferred to Glen A. Cloninger pursuant to a Trustee's Deed. (CP 59, 70-73).

Mr. Cloninger then discovered that the Subject Property was mistakenly omitted from the Deed of Trust CP 59). Mr. Pitts had previously attempted to sell all or portions of the Crafts' Property and the Subject Property to one or more third parties. Mr. Pitts requested that Mr. Cloninger give him the opportunity to continue to market the properties. (CP 59). On March 14, 2002, Mr. Cloninger entered into a "Real Estate Lease With Purchase Option" ("Lease") with David Pitts. (CP 74).

The Lease specified, in part, that (1) upon execution of the Lease, Mr. Pitts was to provide a quitclaim deed for the Subject Property conveying all of his interest in the property to Mr. Cloninger, (2) the deed was to be held in trust by Mr. Cloninger's attorney, and (3) upon default by Mr. Pitts of his obligations under the Lease or his failure to exercise the purchase option as outlined in the Lease, the deed would be recorded. (CP 74-81.) The purpose of the deed was to aggregate the title of the Subject Property with the Crafts' Property because those two parcels had always been used together. In the event Mr. Pitts was successful in marketing the properties to a third property, the properties would be aggregated. In the

event the Lease terminated without the option to purchase being exercised, the title to the properties would be aggregated in Mr. Cloninger. (CP 60). The intent of the Lease was to rectify the mistake of leaving the description of the Subject Property out of the Deed of Trust since the Subject Property had always been used with the Crafts' Property. (CP 60). Under the Lease, Mr. Pitts was given continued possession of the Crafts' Property. (CP 74).

Mr. Pitts failed to provide the quitclaim deed when the lease was executed. Mr. Pitts did not exercise the purchase option under the Lease and Mr. Pitts defaulted in the payment of rent yet continued in possession of the Crafts' Property. (CP 60; 143-144). Despite repeated demands, Mr. Pitts failed to provide the quitclaim deed for the Subject Property as required under the Lease. (CP 60).

On September 6, 2002, Mr. Cloninger filed an action for unlawful detainer to have Mr. Pitts removed from the property and, in that action, sought recovery of damages sustained in connection with possession of the premises. (CP 142-144). Mr. Cloninger requested the Court to enter judgment for restitution of the premises and damages for unpaid rents, late

charges and for unlawful detention of the premises. (CP 144). Judgment was entered accordingly.²

In April, 2003, Mr. Cloninger sold the Crafts' Property to the Crafts. (CP 60). In September, 2003, Mr. Cloninger assigned to the Crafts the right to proceed against Mr. Pitts for specific performance and quiet title relating to the Subject Property so that the Subject Property could again be aggregated to the Crafts' Property. (CP 60, 86).

On September 24, 2003, the Crafts commenced litigation in Spokane County Superior Court seeking specific performance of Mr. Pitts' obligations under the Lease to require him to execute a quitclaim deed for any interest he may have in the Subject Property. (CP 1-14).

On March 18, 2004, Mr. Pitts filed a Chapter 7 bankruptcy proceeding. (CP 121). On April 12, 2004, counsel for the Crafts attended the First Meeting of Creditors relating to Mr. Pitts' bankruptcy proceeding. (CP 107-108). Mr. Pitts was placed under oath and examined concerning the Subject Property. Mr. Pitts testified that he did not own

² Appellant originally claimed that litigation of the unlawful detainer action before the Complaint for specific performance constituted "claim splitting" and, under the doctrine of collateral estoppel, precluded litigation of the specific performance claim. Appellant also refers to the unlawful detainer action and judgment entered as a result of that claim in his Petition for Review. (Petition for Review at 4). The Court of Appeals, citing Honan v. Ristorante Italia, Inc., 66 Wn.App. 262, 832 P.2d 89 (1992), correctly held that an unlawful detainer action is a summary proceeding for the recovery of possession of real property that does not allow additional claims to be joined in the suit. As Appellant has not sought review of this issue, it is not properly before this Court. RAP 13.4(c).

the Subject Property, but that he could sign a quitclaim deed even if he did not own the Subject Property. (CP 107-112). Mr. Pitts also stated that, at the time he executed the Lease, he did not believe he was giving anything away by agreeing to sign a quitclaim deed regarding the Subject Property. (CP 107-112).

On February 18, 2005, the trial court granted the Crafts' Motion for Summary Judgment and ordered Mr. Pitts to execute the quitclaim deed. On March 11, 2005, the Court denied Mr. Pitts' Motion for Reconsideration. (CP 189-191, 207-208).

Mr. Pitts appealed to Division III of the Court of Appeals. The Court correctly held that the claim for specific performance was not a "claim" within the meaning of 11 U.S.C. §101(5)(B).

Mr. Pitts does not dispute that the contract rights held by Mr. Cloninger (that required Mr. Pitts to sign the quitclaim deed) were assigned to the Crafts. Mr. Pitts does not dispute that he agreed to sign a quitclaim deed as an element of a legal and enforceable contract and that this deed was to be recorded upon the termination of the Lease. Mr. Pitts does not dispute that the intent of the provision in the Lease requiring him to provide a quitclaim deed was to aggregate the ownership of the Subject Property with the Crafts' Property regardless of who ended up owning the Crafts' Property.

Mr. Pitts does not dispute that, under the Lease, the Crafts, through the assignment from Mr. Cloninger, have the right to obtain the quitclaim deed from Mr. Pitts.

III. ARGUMENT

A. STANDARD OF REVIEW.

An appellate court reviews a lower court's ruling granting summary judgment on a "de novo" basis. The appellate court will, therefore, engage in the same inquiry as the trial court. Shannon v. State, 110 Wn.App. 366, 369, 40 P.3d 1200 (2002).

The purpose of summary judgment is to examine evidence relevant to any allegation and to grant a judgment as a matter of law where there is no genuine dispute as to any material fact. Island Air, Inc. v. LaBar, 18 Wn. App. 129, 136, 566 P.2d 972 (1977). If no genuine issue of material fact upon which reasonable persons could disagree exists, the court should grant the motion. Lundgren v. Kieren, 64 Wn.2d 672, 677, 393 P.2d 625 (1964).

In his Petition for Review, Mr. Pitts sets forth an extensive narrative of background facts relating to his ownership and involvement in the properties. Whether or not that factual narrative is accurate is irrelevant to the issues before this Court because those facts are not material to the issues raised at trial court, the Court of Appeals or this Court. The limited question

raised by Mr. Pitts is whether an order requiring specific performance of his promise to execute a quitclaim deed constitutes a “claim” under 11 U.S.C., §105(5)(B). Simply put, under Washington State law, it does not.

B. THE TRIAL COURT’S ENFORCEMENT OF THE CONTRACT DOES NOT VIOLATE CHAPTER 7 OF THE BANKRUPTCY CODE

1. Summary.

Appellant contends that the Court of Appeals’ ruling violates the discharge provisions of the Bankruptcy Code. This contention is based on an argument that the failure of Mr. Pitts to provide an executed quitclaim deed gave rise to a right to payment to the Crafts. In an attempt to provide credence to this argument, the Appellant characterizes the provision in the Lease requiring the quitclaim deed as a “forfeiture/penalty provision”. Appellant then argues that the Crafts had the right to pursue an alternative remedy for monetary damages to recover this “penalty”.

There are no facts in this case supporting the Appellant’s argument that the provision in the Lease requiring Mr. Pitts to provide the quitclaim deed was a “penalty” provision allowing an alternative recovery of monetary damages. The undisputed facts show that the provision requiring the quitclaim deed was an element of consideration to again aggregate the title of the Subject Property to the Crafts’ Property in the

event Mr. Pitts did not exercise his option to purchase the Crafts' Property. The purpose of the quitclaim deed was specific to the combining of the legal titles of the properties into one ownership. Mr. Pitts' failure to provide the quitclaim deed leads to only one possible remedy to implement the intent of the parties – an action for specific performance. Therefore, the action for the equitable relief of specific performance in this case is not a “claim” under the Bankruptcy Code and is not a matter that was discharged in Mr. Pitts' bankruptcy proceeding.

2. A “Claim” Under The Bankruptcy Code Does Not Include a Claim For Specific Performance.

Once a discharge is obtained under Chapter 7, the discharge acts as an injunction to recover against any debt owed by the debtor. 11 U.S.C.

§524(a)(2). A “debt” is defined as any liability on a “claim”. 11 U.S.C.

§101(12). A “claim” is defined in 11 U.S.C. §101(5)(B) as including a:

“(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.” (emphasis added)

The definition of a “claim” is not boundless and does not include future rights to payments that are unknown and unenforceable. In re Hexcel Corporation 239 B.R. 564, 566-567 (N.D. Cal. 1999). To constitute a

“claim”, the right to payment must be an alternative to the right for an equitable remedy or otherwise related to an equitable remedy. Matter of Udell, 18 F.3rd 403, 408 (C.A. 7 (Ind., 1994). See also, In re Indian River Estates, 293 B.R. 429, 434 (N.D. Ohio 2003). (“The key...is to ascertain whether the equitable remedy would give rise to a right of payment; that is, could a monetary award substitute for the equitable remedy.”)

Whether the non-breaching party to a contract has the right to obtain a money judgment or, in the alternative, an equitable judgment, is determined by state law. In re Aslan, 65 B.R. 826, 831 (Dist. of Cal. 1986). As the court stated in Aslan:

“Damages...become a claim dischargeable in the bankruptcy only if under state law the creditor would have the choice of more than one possible remedy, with one of the choices being a money claim.” Id. at 832 head note 8.

Therefore, under the Bankruptcy Code, the definition of “claim” is

“...intended to include as a claim a right to an equity remedy for breach of performance *if the breach gives rise to an alternative right to payment*. If the *only* remedy allowed by law is non-monetary, the equitable remedy is not transformed into a claim...” Id. at 830-831. (emphasis added)

In this case, the Crafts do not have a “claim” as defined by the Bankruptcy Code because the remedy available to the Crafts to implement the intent of Mr. Cloninger and Mr. Pitts under the Lease is the equitable remedy of specific performance to obtain the quitclaim deed. There is no

provision in the Lease stating that, should Mr. Pitts fail to provide the quitclaim deed, Mr. Cloninger was entitled to damages. There is nothing in the Lease that indicates that the requirement to provide the quitclaim deed was a “penalty” provision. Instead, the formation and execution of the Lease was to aggregate the subject property with the larger parcel of property- whether in Mr. Cloninger’s name or Mr. Pitts’ name. Since Mr. Pitts did not exercise his option to purchase the property and did not pay rent, the executed quitclaim deed should have been delivered to Mr. Cloninger. Further, the Assignment of Interest from Mr. Cloninger to the Crafts specifically provides that Mr. Cloninger is assigning “the right to obtain from David M. Pitts a quitclaim deed relating to the property” and “include the assignment of the right to proceed with an action for specific performance and quiet title relating to the property.” (CP 86). The Lease did not provide (nor is there any evidence of any intent by the parties to the Lease to have it provide) the alternative right to payment from Mr. Pitts.

3. Since The Crafts’ Cause Of Action Assigned By Mr.

**Cloninger Is Not A “Claim” This Action Does Not Violate 11
U.S.C. §524.**

Contractual rights can be assigned unless the assignment is forbidden by statute or is against public policy. International Commercial

Collectors, Inc. v. Mazel Company, Inc., 48 Wn.App. 712, 716-717, 740 P.2d 363 (1987). The assignee's rights include those identified in the contract. Federal Financial Co. v. Gerard, 90 Wn.App. 169, 177, 1998 Wash. App. Lexis 811 (1998). Once assigned, the assignee of the contract will stand in the shoes of the assignor and has the right to sue under the contract. Paullus v. Fowler, 59 Wn.2d 204, 212, 367 P.2d 130 (1961) and Estate of K.O. Jordan v. Hartford Accident and Indemnity Co., 120 Wn.2d 490, 495, 844 P.2d 403 (1993).

Specific performance is an equitable remedy available to an aggrieved party where there is no adequate remedy at law. If the evidence establishes that the breaching party has the ability to perform the duties under the contract, equity requires done that which ought to be done. Egbert v. Way, 15 Wn.App. 76, 79, 546 P.2d 1246 (1976). A court will specifically enforce a contract for the conveyance of an interest in real property if the contract is shown by clear and unequivocal proof, leaving no doubt as to the character, terms, and existence of the contract. Canterbury Shores Associates v. Lakeshore Properties, Inc., 18 Wn.App. 825, 572 P.2d 742 (1977).

Here, Mr. Cloninger assigned to the Crafts his rights to seek the quitclaim deed from Mr. Pitts. (CP 86). In their Complaint, the Crafts

requested relief of specific performance, the only remedy to which they were entitled to implement the intent of the parties to the Lease. (CP 1-14). For many years, the Subject Property had been used as part and parcel of the Crafts' Property. (CP 20, 59). A well on the Subject Property had been used to service the residence on the Crafts' Property. (CP 20, 59). The settlement in the prior adverse possession litigation was entered into to combine the parcels together. (CP 22 –26). The intent of the provisions of the Lease was to aggregate the parcels together regardless of who ended up in ownership of the parcels. (CP 60). The Subject Property is unique and the only remedy available to the Crafts to enforce the provisions and intent of the Lease was this action for specific performance. As the Court held in In re Aslan (supra):

“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.”

See also In re Renee Stewart Irizarry, (supra) at 878-879. (Since the plaintiffs sought equitable remedies including cancellation of a grant deed, recovery of property and cancellation of liens instead of money damages, a state court judgment granting these equitable remedies does not constitute a right to payment as discussed in 11 U.S.C. 101(5)).

Mr. Pitts cites In re Aslan (supra) for the proposition that specific performance is not allowed under Federal bankruptcy law for the transfer of a “unique parcel of real estate”. Mr. Pitts’ argument is simply incorrect. The Court held that the request for relief constituted a “claim” because the *creditor* in that case had the choice for more than one remedy under California law. As the court stated:

“Damages or rejection of an executory contract becomes a claim dischargeable in the bankruptcy only if under state law the creditor would have the choice of more than one possible remedy, with one of the choices being a money claim. The filing of the bankruptcy and the rejection of the contract under the bankruptcy shifts the choice of remedy from one which is solely in the hands of the creditor to a choice by the debtor, upon approval of the Court. Thus, in California, an executory contract for sale of real property can be rejected and the potential action for specific performance will be transformed into a pre-petition claim, which may be discharged in the bankruptcy.” Aslan at 831.

Here, the Lease did not involve the sale of real property and does not allow a choice of remedy. The Crafts’ (as assignees to Mr. Cloninger’s interest) did not have the choice between money damages or delivery of the quitclaim deed. The Lease does not provide for money damages. Instead, the Lease called for the execution of a quitclaim deed at its inception. Since Mr. Pitts did not exercise his option, the Crafts are simply enforcing the intent of the agreement by virtue of the assignment.

**4. Asking For General Equitable Relief In The Prayer Of
The Complaint Does Not Bring This Action Within The
Bankruptcy Code Discharge Provisions.**

Mr. Pitts argues that since the Crafts requested general equitable relief from the Court in their Complaint, this gave the Court the ability to award money damages, citing Zastrow v. W.G. Platts, Inc., 57 Wn.2d 347, 357 P.2d 162 (1960), Winckler v. Strickler, 70 Wash 635, 127 P. 206 (1912), and Bower v. Bagley, 9 Wash. 642, 38 P. 164 (1894). Mr. Pitts argues that, since the Court had the ability to award money damages, the Crafts had the ability to seek both specific performance and money damages. As a result, Mr. Pitts argues that this violates the Bankruptcy Code. Mr. Pitts further argues that the Court of Appeals' decision rejecting this argument is in conflict with Washington State law.

In the cases cited by Appellant, the issue was not the relief requested by the parties, but the Court's inherent power **after** retaining jurisdiction to dispose of all issues related to a case.

“As to the authority of an equity court to award damages, this question is well settled. The rule is this --once a court of equity has properly acquired jurisdiction over a controversy, such a court can and will grant whatever relief the facts warrant, including the granting of legal remedies.” Zastrow at 350.

In Zastrow, the Court invoked its inherent authority to award money damages instead of specific performance to convey property **only** because the property had been encumbered to a point where specific performance was not feasible. Zastrow at 350.

In Winckler, the Court refused to order specific performance of the contract for the exchange of property because the evidence demonstrated that the defendant had not taken possession of the property at issue. Winckler at 638-639.

The rulings in Zastrow and Winkler simply do not apply to this case and do not conflict with the Court of Appeals' decision. The issue in this case is whether the Complaint gave rise to a right of payment to the Crafts. A general request for equitable relief in the prayer of the Complaint and the Court's general jurisdiction in equity cannot be said to constitute a "claim" for money damages, a contingent right to payment or an enforceable obligation under the Bankruptcy Code. (CP 1-14). To hold otherwise would transform all cases (for the purpose of the definition of "claim" in the Bankruptcy Code), all actions seeking equitable remedies into actions allowing for the "right to payment" and thereby effectively writing out of the Bankruptcy Code the distinction between: (1) equitable remedies for breach of performance and (2) equitable remedies for breach

of performance if such breach gives rise to a right to payment. Obviously, the above distinction is in the Bankruptcy Code for a purpose and that purpose is that causes of action like the current action are not discharged in a bankruptcy proceeding since Mr. Pitts is not subject to a claim for monetary damages.

Mr. Pitts also argues that the Court of Appeals' decision significantly impacts the general public interest. This is simply not the case. Mr. Pitts signed a Lease whereby he agreed to execute and deliver a quitclaim deed to convey any interest that he may have in the Subject Property adjoining the Crafts' Property and, if he did not exercise the option to purchase provided for in the Lease, the quitclaim deed would be recorded. Again, the intent of the Lease was to aggregate adjoining parcels into a single parcel of property whether or not Mr. Pitts exercised the option to purchase. This matter concerns the specific performance of the Lease between Mr. Pitts and the rights assigned to the Crafts by Mr. Cloninger to carry out this intent. There is no significant impact to the public interest by enforcing the terms of the Lease.

IV. CONCLUSION

The Crafts' rights under the Lease Agreement are derived by virtue of the assignment from Mr. Cloninger. Since the only remedy of the

Crafts to implement the intent of the parties under the Lease to aggregate the ownerships of the parcels is the equitable remedy of specific performance and because this right to relief does not include a contingent right to money damages, it does not constitute a “claim” as defined under 11 U.S.C. §101(5). As a result, it is not barred by 11 U.S.C. §524(a)(2). The Petition for Review should be denied. The Court of Appeals’ decision does not conflict with Washington State law and does not significantly impact the public interest. As a result, the Petition for Review should be denied.

Respectfully Submitted,

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RECORDED

CERTIFICATE OF SERVICE

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BY G. J. HEWITT

~~CLERK~~

I hereby certify that I hand-delivered a true and correct copy of the Brief of Respondents on the 8th day of May, 2006 to the attorney of record for Appellant at the following address:

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