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Mut. Mortg. Servs. v. Stovall

Court of Appeals of Utah

March 25, 1999, Filed

Case No. 981686-CA

Reporter

1999 Utah App. LEXIS 176 *; 1999 UT App 97; 1999 UT App 99

Mutual Mortgage Services, Inc.; and Rattlin Gold, Inc.,
Plaintiffs and Appellees, v. John P. Stovall, Defendant and
Appellant.

Notice: [*1] NOT FOR OFFICIAL PUBLICATION

Prior History: Third District, Salt Lake Department. The
Honorable William M. Barrett

Disposition: Trial court judgment affirmed.

Counsel: John P. Stovall, Salt Lake City, Appellant Pro Se

Ellen Maycock and David C. Wright, Salt Lake City, for
Appellees

Judges: Pamela T. Greenwood, Associate Presiding Judge,
Judith M. Billings, Judge, Norman H. Jackson, Judge

Opinion

MEMORANDUM DECISION

Before Judges Greenwood, Billings, and Jackson.

PER CURIAM:

This appeal is before the court on cross-motions for summary disposition. We deny appellant's motion for summary reversal, and grant appellees' motion for summary affirmance.

Mutual Mortgage obtained a decree of foreclosure, which included an order of sale for the property. The judgment was affirmed by this court in a memorandum decision of May 22, 1997. *See Mutual Mortgage Services v. Rattlin Gold, Inc.*, No. 970175-CA, slip op.(Utah Ct. App. March 22, 1997)(per curiam).

Mutual purchased the property at a sheriff's sale on March 4, 1997. Stovall refused to vacate the property. Mutual filed the complaint in this action seeking (1) restitution of the property, and (2) damages under an unjust enrichment theory. The trial court granted a partial [*2] summary judgment ordering Stovall to vacate the property on the basis that he had no ownership interest and no right of redemption.

It was undisputed Stovall occupied the property from approximately September of 1995 through August 18, 1997, when Mutual took possession of the property pursuant to the eviction order. It was also undisputed Stovall had paid no rent during his occupation. Finally, it was undisputed that the property was rented for several months in 1995 at a rate of \$ 6,000 per month. On this basis, Mutual alleged the reasonable rental value of the property was \$ 5,000 per month.

In opposition to the summary judgment, Stovall claimed he was President of Rattlin Gold, the corporation was not dissolved, and the present action was not authorized by the corporation. He claimed, in sum, that he occupied the property with the consent of Rattlin and as compensation for his services. He further contended the fair rental value of the property was less than the \$ 5,000 per month claimed. Mutual addressed these claims by providing documents demonstrating Routh was the president of Rattlin and Stovall's attempts to reinstate the corporation were

unsuccessful. Mutual countered [*3] that Stovall's remaining issues were barred by collateral estoppel.

The trial court granted a second partial summary judgment on the unjust enrichment claim, ruling Stovall could not relitigate facts established in the foreclosure action and further ruling Stovall provided no foundation for disputing the rental value.

The trial court correctly determined that no genuine dispute of material facts prevented summary judgment because collateral estoppel, also referred to as "issue preclusion," barred relitigation of facts established in the foreclosure action. Issue preclusion bars relitigation of an issue if the issue in both cases was identical; the judgment was final with respect to that issue; the issue was fully, fairly and competently litigated in the first action; and the party to be precluded from litigating the issue was a party to the first action or a privy of a party. See [Madsen v. Borthick, 769 P.2d 245, 250 \(Utah 1988\)](#). Each element is satisfied. Issues of ownership and right to possession of the property and control of Rattlin Gold were identical in both cases, and the foreclosure judgment was a final judgment on the issues, satisfying the [*4] first and second elements. The third element, requiring the issue to be fully, fairly and competently litigated, is also satisfied. This element requires the parties to "receive notice reasonably calculated . . . to apprise them of the pendency of the action, and afford them an opportunity to present their objections." [Copper State Thrift and Loan v. Bruno, 735 P.2d 387, 391 \(Utah Ct. App. 1987\)](#). Where a party is given adequate notice and has an opportunity to fully and fairly litigate an issue, the third element is satisfied. *Id.* Stovall was a named defendant in the foreclosure action and received adequate notice and an opportunity to litigate issues relating to the property's ownership. The fourth element is satisfied because Stovall was a defendant in the foreclosure action.

It was established in the foreclosure proceedings that Stovall had no ownership interest and no permission to occupy the property and that he failed to pay rent to the owner during the period of his occupation. The only remaining issue was the fair rental value of the property. Stovall claims on appeal he was a tenant-at-will; however, he is precluded from arguing the issue because [*5] it was not preserved in the trial court and is contrary to the ruling in the foreclosure proceedings. Stovall received a benefit through rent-free occupation of the property without permission of the owner. He did not dispute the property was rented at \$ 6,000 per month in the months prior to his occupation. He simply made the unsupported assertion that he believed a rental value of \$ 5,000 was too high. Having failed to challenge the claimed rental value with affidavits or other evidence supporting the rental value, Stovall did not establish a material issue of disputed fact.

The trial court correctly ruled Stovall was precluded from relitigating issues determined in the foreclosure action, and he failed to challenge the facts underlying determination of fair rental value. Based upon the undisputed facts, the court correctly ruled Mutual was entitled to evict Stovall and recover the fair rental value of the property during his occupation measured at the rate of \$ 5,000 per month.

Accordingly, the judgment is affirmed.

Pamela T. Greenwood, Associate Presiding Judge

Judith M. Billings, Judge

Norman H. Jackson, Judge

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