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Recent Trial Court Decisions

Dicta Editorial Board

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RECENT TRIAL COURT DECISIONS

(EDITOR'S NOTE: It is intended in each issue of Dicta to note interesting decisions of the United States Circuit Court of Appeals for the new Tenth Circuit, although such are not trial decisions, the United States District Court, the Denver District Court, the County Court, and occasionally the Juvenile Court.)

UNITED STATES CIRCUIT COURT OF APPEALS—10th CIRCUIT— *Oregon Lumber Company vs. M. Terasaki, et al.*

Appeal from the United States District Court for the District of Colorado. Decided January 4, 1930. Opinion by Judge Phillips.

Facts.—Ben Bolt Jr. Floral Company, bankrupt, entered into a contract to purchase from Terasaki and Kaii three acres of land in Adams County, Colorado, for \$4,000. \$500.00 in cash was paid on said purchase price. Under the terms of the contract the sellers retain title to the property until paid in full. Contract also contained the usual standard provision regarding forfeiture, etc. The contract was recorded. The bankrupt immediately entered into possession of the premises and made certain improvements thereon. The Oregon Lumber Company furnished materials for a new house erected on the premises and filed their claim on the entire 3-acre tract and all improvements for \$2231.90 and requested a lien therefor. The Stearns-Roger Manufacturing Company, one of the defendants above, furnished materials for a new boiler and fittings for the greenhouse already standing on the premises, and filed their claim for \$1965.00 against the improvements as an "entire structure." When the purchaser became a bankrupt, Terasaki and Kaii abandoned their claim of forfeiture under the contract and filed claim of lien for \$3500.00 plus interest on account of the unpaid purchase price against the entire property. In the proceedings to review an order of the referee in bankruptcy, the District Court entered the following order:

1. That Terasaki and Kaii be given a prior lien on the premises for the amount of the unpaid purchase price under the contract plus interest.

2. That the Oregon Lumber Company be given a lien against the 3 acres and all improvements thereon as a unit subject to above lien.

3. That the Stearns-Roger Manufacturing Company be given a lien against the boiler and heating plant installed by them and be permitted to remove the same.

The Oregon Lumber Company appealed said order to the Circuit Court of Appeals on the theory that Terasaki and Kaii had an "interest in the land" rather than a "recorded mortgage," and failing to give five days notice after knowledge of the improvements as provided in Section 6446 C. L. Colo. 1921, had no prior claim.

Held.—1. That a Court of bankruptcy is a court of equity and is governed by the principles and rules of equity jurisprudence.

2. A contract of sale vests equitable title to the property in the purchaser from the date of execution, and that the vendor is a trustee of the legal title for the vendee, and the vendee in turn is trustee of the purchase money for vendor. The vendor therefore retains the legal title but only as security for the purchase price. The vendor may therefore assert a lien in a court of equity (in this instance a court of bankruptcy), and such lien is a *bona fide*, recorded encumbrance under the meaning of the provisions of Section 6446 C. L. Colo. 1921.

3. The heating plant installed by the Stearns-Roger Manufacturing Company is not an "entire structure" under the meaning of Section 6444 C. L. 1921, but is an integral part of the greenhouse. The order of the District Court is therefore affirmed as it pertains to the liens of Terasaki and Kaii and the Lumber Company, but modified to give the Stearns-Roger Manufacturing Company only a lien equal to that of the Lumber Company on the entire 3 acres and improvements as a unit.

UNITED STATES CIRCUIT COURT OF APPEALS—10th CIRCUIT—
Consolidated Lead & Zinc Company vs. Karl Corcaral.

Appeal from the District Court for the North District of Oklahoma. Decided January 6, 1930. Opinion by Judge Cotteral.

Facts.—Plaintiff, a minor, suing by his next friend, resided at Picher, Oklahoma. Defendant Zinc Company operated a mine and mill at said town. The premises of the Zinc Company were a block north of the high school and adjoined a public road traveled by many people and used daily by school children. On the premises was a transformer house near and in plain view of the road. There was no fence

around said house nor did the Company maintain any guard. The front and side doors were usually open. It was alleged in the complaint that this transformer house was attractive and easily accessible to children exciting their curiosity and interest, and without notice it carried a dangerous charge of electricity. Plaintiff and other boys for months had used the mine grounds as a play ground.

On the day of the accident, plaintiff with another boy had been playing on the premises. It was alleged and the evidence showed that the other boy had turned on the switch in the transformer house; that during a friendly scuffle in the transformer house, plaintiff fell on the floor and came in contact with an uninsulated live wire on the floor. As a result he was severely burned and both his arms were amputated.

A judgment for \$15,000 was entered on a verdict for the plaintiff. Defendant Zinc Company appealed to the Circuit Court of Appeals principally on the theory:

1. That demurrer should have been sustained to the complaint.
2. Improper instructions.

Held.—1. The demurrer was properly overruled. This case is not like *United Zinc Company vs. Britt* (poisonous pool) but is more like *Railroad Company vs. Stout* (turn table) and *Union Pacific Railway vs. McDonald* (burning slack).

The complaint alleged and the evidence showed an habitual use of the premises as a play ground. The Company knew or might have known of this fact and the plaintiff therefore must be treated as a licensee. Being a licensee the Company owed him a duty of protection against a danger unknown to him and to which he might be attracted. This danger was known to the Company and they could reasonably have anticipated injury.

In the petition the injury is attributed to defendant's negligence, and it would be a fact for the jury to decide if the resulting injury was the proximate and reasonable consequence of that negligence and could have reasonably been foreseen by the Company.

2. The case reversed and remanded on the instructions given because they were too broad.