Guss Vs. Nelson

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Court : US Supreme Court

Decided On : Jan-15-1906

Appeal No. : 200 U.S. 298

Appellant : Guss

Respondent : Nelson

Judgement :

Guss v. Nelson - 200 U.S. 298 (1906)
U.S. Supreme Court Guss v. Nelson, 200 U.S. 298 (1906)

Guss v. Nelson

No. 124

Argued December 12, 1905

Decided January 15, 1906

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APPEAL FROM AND IN ERROR TO THE SUPREME

COURT OF THE TERRITORY OF OKLAHOMA

SYLLABUS

Oklahoma City v. McMaster, 196 U. S. 529 , followed, to effect that the review by this Court of final judgments in civil cases of the Supreme Court of Oklahoma is by writ of error under 9 of the Act of May 2, 1890, 26 Stat. 81, and not by appeal. The act of 1874 in regard to territorial courts does not apply.

An option to purchase if the buyer likes the property is essentially different from one to return the property and cancel the contract; in the former case, title does not pass until the option is determined; in the latter it passes at once, subject to the right to rescind; and, as held in this case, if the option to rescind is not exercised and the property returned according to its terms, the sale is complete, and the promise to pay the balance of the purchase price becomes absolute.

On May 28, 1900 at Guthrie, Oklahoma Territory, the parties to this action entered into the following contract:

"Memorandum of agreement made and entered into this 28th day of May, 1900, to-wit, as follows: J. T. Nelson agrees on his part to turn over 25 percent of the capital stock of the following coal companies located in the Creek Nation, to-wit: Sapulpa, Choctaw, Catoosa, Wewoka, Red Fork, Neyaka, Concharty, Tulsa, Car Creek, and Broken Arrow Mining Companies, to the following persons: U. C. Guss, W. H. Gray, F. H. Greer, and J. W. McNeal. The consideration of the delivery under which the above-listed stock and other stock as hereinafter described is as follows: this also includes the delivery of the records belonging to each of said above-named companies, the seals and other records that in any way belong to any of said companies. A payment of $500 is to be made in cash upon delivery of the above-named property, and additional property in the way of stock hereinafter listed. The

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$500 is to be considered an option on all said property until the 4th day of March, 1901. At that date, the above-named parties are to pay to Nelson an additional sum of $4,500.00 (four thousand, five hundred dollars), or in lieu thereof to turn

back to said Nelson all the property delivered by him. In addition to the above-mentioned 25 percent of the capital stock aforesaid, which the said J. T. Nelson represents he owns in his own right, he agrees to turn over and deliver enough more stock to make the aggregate sum of stock delivered by him under this contract as follows:"

"[Here follows a list of companies and number of shares of stock each.]"

"The $500.00 above mentioned is to be earnest money, to be forfeited in case the balance of payment is not paid. Nelson also agrees to give U. C. Guss his proxy as director in each of the above-named companies until such time as it may be convenient for him to resign and Guss or someone else be elected to fill the vacancy."

On April 6, 1901, Nelson brought suit in the District Court of Logan county, Oklahoma Territory, to recover the additional sum named in the contract. After answer, the case was tried by the court without a jury, and judgment rendered in his favor on February 20, 1903, for $4,500 and interest. This was affirmed by the supreme court of the territory, 14 Okl. 296, and its judgment was brought here both by appeal and writ of error.

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MR. JUSTICE BREWER delivered the opinion of the Court.

The appeal must be dismissed. *Oklahoma City v. McMaster,* 196 U. S. 529 .

Considering the writ of error, we remark that no rulings were made in respect to the admission or rejection of testimony presenting anything worthy of consideration. No special findings of fact were made by either the district or supreme court, the former finding generally the issues in favor of the plaintiff, and rendering judgment upon such general finding, and the latter merely discussing the right of recovery upon the pleadings and such general finding.

Plaintiffs in error contend that this is a mere option contract, and that no liability could attach to them except upon an election to purchase the property, which they never made, but, on the contrary, declined to make, and notified the plaintiff thereof by letter. They call attention to the clause providing that "the $500 is to be considered an option," refer to the fact that there is nothing in the contract in terms mentioning "sale" or "purchase." There is always danger in applying a generic term to a contract, and then subjecting it to the general rules controlling contracts of that nature, irrespective of its special stipulation. While an option is given by the contract, and the price paid for the option is named, yet it contains other clauses which are equally binding, and from which liability arises. Option contracts are not all alike. As said in *Hunt v. Wyman,* 100 Mass.198, 200, quoted approvingly by this Court in *Sturm v. Boker,* 150 U. S. 312 , 150 U. S. 329 :

"An option to purchase if he liked is essentially different from an option to return a purchase if he should not like. In one case, the title will not pass until the option is determined; in the other, the property passes at once, subject to the right to rescind and return. "

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In the contract before us, while an option running until the fourth of March, 1901, is given, for which $500 is to be paid, the stipulation for such option is followed by this:

"At that date, the above-named parties are to pay to Nelson an additional sum of $4,500 (four thousand, five hundred dollars), or, in lieu thereof, to turn back to said Nelson all the property delivered by him."

Here is an absolute promise on the part of plaintiffs in error to pay an additional sum of $4,500 at a specified date, or, in lieu thereof, to turn back the property. They did not return the property. The amount to be paid and the time of payment are expressly named, and that stipulation in the contract is as significant and binding as any other. It shows that the option given is an option to return, and that, if it is not exercised at the time named, the sale is complete, and the promise to

pay the balance of the purchase price becomes absolute. The construction of the contract is reinforced by the fact that not only was the stock to be delivered to the plaintiffs in error, but also Nelson agreed to give, and did give, his proxy as director in each of the companies, so that the possession of the stock and all the rights which attached to it passed to the plaintiffs in error, to be exercised by them subject to the right at any time before the fourth of March to return the property. *Haskins v. Dern,* 19 Utah, 89, is directly in point.

We see no error in the ruling of the Supreme Court of Oklahoma, and its judgment is

Affirmed.

MR. JUSTICE Mc KENNA took no part in the decision of this case.