

Brooklyn Mining and Milling Co. Vs. Miller

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Court : US Supreme Court

Decided On : Feb-03-1913

Appeal No. : 227 U.S. 194

Appellant : Brooklyn Mining and Milling Co.

Respondent : Miller

Judgement :

Brooklyn Mining & Milling Co. v. Miller - 227 U.S. 194 (1913)

U.S. Supreme Court Brooklyn Mining & Milling Co. v. Miller, 227 U.S. 194 (1913)

Brooklyn Mining & Milling Company v. Miller

No. 144

Argued January 23, 24, 1913

Decided February 3, 1913

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APPEAL FROM THE SUPREME COURT

OF THE TERRITORY OF ARIZONA

SYLLABUS

Suit for specific performance dismissed by the courts below for failure of the vendors to comply with the terms of the agreement and judgment affirmed by this Court.

The court below properly held appellant to an agreement made in open court as consideration for a continuance that no judgment that might meanwhile be obtained in another state on the same cause of action should be pleaded.

1 Ariz. 217 affirmed.

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The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit by the appellant for the specific performance of a contract made between it and C. C. Miller, A. V. Miller, now deceased, and G. B. Lasbury, hereafter called the vendors, for the sale by the latter parties, on certain conditions and terms, of 175,000 shares of stock in the appellant, or, in the alternative, of all their interest in the West Brooklyn and certain other mining claims. The bill alleges the failure of the condition referred to, and seeks a conveyance of the interest in the mining claims and an account. It was dismissed by the court below, and the plaintiff appealed.

The facts found, abridged, are these. The vendors owned the mining claims and had given an option to purchase the West Brooklyn claim and another, not concerned here, to the United Verde Copper Company, which was extended and kept in force up to January 1, 1908. In 1906, a stockholder in the appellant had begun a suit on behalf of himself and others, afterwards amended so as to make

the appellant plaintiff, to have the Millers and Lasbury, also stockholders, declared trustees for the appellant of the mining claim now in question. Miller, on the other hand, had sued the appellants for work done upon the Brooklyn claim. By way of compromise, the present contract was made. It recited the two suits and the conditional sale of the West Brooklyn claim to the United Verde Copper Company, and provided, in consideration of the dismissal and settlement of the foregoing

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causes of action, that, if the sale to the United Verde Company was consummated by January 1, 1908, the above-mentioned transfer of stock should be made, etc., but that, if, for any reason, the sale should not be consummated, then the conveyance now sought for should take place. [*](#)

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The suit by Miller was dismissed, and a dismissal of the company's action was requested, but it was declined. Then, on January 2, 1908, the vendors, alleging consummation of the contract with the United Verde Company, tendered performance, which was declined on the ground

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that it did not comply with the terms of the present agreement, and there was a second refusal to dismiss the company's suit. On February 15, however, it did dismiss that suit, and ten minutes later began the present one. This was tried in March, 1909, and the court found that the sale to the United Verde Company had not been consummated, and that the failure was caused by the refusal of the plaintiff to dismiss its former above-mentioned suit, which, it will be remembered, impeached the title of the vendors. (The vendors were not estopped by earlier having alleged consummation.) The court, however, instead of dismissing the bill outright, made an alternative decree that it be dismissed if the plaintiff did not assent within thirty days to certain terms looking to a carrying out of the sale to the United Verde Company. The plaintiff refused its assent, and the supreme court,

accepting the finding of the court below, affirmed the dismissal of the bill. This disposes of the case except in one particular to be mentioned. *Harrison v. Perea*, [168 U. S. 311](#) , [168 U. S. 323](#) .

On January 28, 1908, the appellant brought a suit in Nebraska for specific performance of the same agreement now sued upon here, and on February 8, 1909, it was decided that the vendors must convey their interest in the West Brooklyn claim, as against Ada M. Miller, grantee of A. V. Miller, and Lasbury, the only parties served, and a master appointed by the court executed a conveyance accordingly. The appellant sought to avail itself of this decree and conveyance. But, on December 23, 1908, it was agreed in open court, in consideration of the defendants' allowing a continuance of the present Arizona cause, that no judgment that might be obtained in Nebraska should be pleaded. The court properly held the appellant to its agreement. There was a cross-complaint by the appellees in the answer to which the decree and conveyance were pleaded, but the supreme court, after referring

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to *Fall v. Eastin*, [215 U. S. 1](#) , disposed of the matter by noticing that no relief was given on the cross-complaint, and that specific performance was denied on other grounds.

Judgment affirmed.

* The contract in full is as follows:

"Whereas, an action is now pending in the District Court of Yavapai County, Arizona, entitled *Brooklyn Mining & Milling Company et al. v. Charles C. Miller, Alonzo V. Miller, and George B. Lasbury*, which action relates to the title of the West Brooklyn, East Brooklyn, and South Brooklyn mining claims located in said county and territory, and relates to an accounting for ores and minerals taken therefrom; and"

"Whereas, the said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury have made a conditional sale of the above-named West Brooklyn mining claim for the sum of \$10,000 to the United Verde Copper Company; and"

"Whereas, an action is pending in the district court of Yavapai County, Arizona, entitled *Charles C. Miller v. Brooklyn Mining & Milling Company*, for several thousand dollars claimed to be due and owing to the said Charles C. Miller for services performed by him and Alonzo V. Miller for the said Brooklyn Mining & Milling Company; and"

"Whereas, it is the desire of the parties connected with the foregoing causes of action to settle the same, and to adjust the matters of difference between the parties in connection therewith;"

"Therefore, in consideration of the dismissal and settlement of the foregoing causes of action, it is hereby stipulated and agreed by and between the Brooklyn Mining & Milling Company and Charles C. Miller, Alonzo V. Miller, and George B. Lasbury that, if the sale of the West Brooklyn mining claim to the United Verde Copper Company is consummated on or before the first day of January, 1908, the said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury are to transfer and deliver to the said Brooklyn Mining & Milling Company one hundred and seventy-five thousand shares (175,000) of stock in said Brooklyn Mining & Milling Company, free and clear of all liens and encumbrances whatsoever, it being understood that said transfer of stock is to include all of the holdings of said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury in the Brooklyn Mining & Milling Company, and the said parties are to receive therefor the sum of 3 (three) cents per share for said stock, and in addition thereto Charles C. Miller, Alonzo V. Miller, and George B. Lasbury are to pay to the Brooklyn Mining & Milling Company the sum of eight thousand, five hundred dollars (\$8,500) out of the proceeds derived from the sale of the said West Brooklyn mining claim; in addition thereto the said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury are to convey all of their right, title, and interest in and to the East Brooklyn, South Brooklyn, North Brooklyn, Empress, and Midway mining claims, and said transfer shall contain the warranty that the assessment work has been

done for the year 1907 upon the Empress, Midway, and North Brooklyn, and the said Brooklyn Mining & Milling Company shall pay the said assessment work at its reasonable value. The said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury agree to do the assessment work for the year 1907, on the East and South Brooklyn mining claims, and said assessment work so to be performed is to be paid for by the Brooklyn Mining & Milling Company at its reasonable value. It is further stipulated and agreed by and between the parties hereto that if for any reason the sale of the West Brooklyn claim to the United Verde Copper Company by the said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury shall not be consummated on or before the first day of January, 1908, then the said Charles C. Miller, Alonzo V. Miller, and George B. Lasbury are to convey to the Brooklyn Mining & Milling Company all of their right, title, and interest in and to the West Brooklyn, East Brooklyn, South Brooklyn, North Brooklyn, Empress, and Midway mining claims, and the assessment work on the North Brooklyn, Empress, and Midway claims for the year 1907 is to be paid by the said Brooklyn Mining Company at its fair and reasonable value."

"It is understood by and between the parties hereto that the foregoing does not concede or admit any of the allegations contained in the pleadings of said causes of action, but the agreement is entered into for the purpose of adjusting the matters of difference between said parties, and avoiding further costs and expenses to the parties hereto."

"In witness whereof, we have hereunto set our hands this 27th day of August, A.D.1907."

"C.C. Miller"

"A. V. Miller"

"G. B. Lasbury"

"Brooklyn Mining & Milling Company"

"By Chas. W. Pearsall, *President* "

