

How to Ensure Litigation When Selling Real Estate

By Alicia Knight Cunningham

Siblings Joseph Bates and Rosemary Bates Harris owned—as joint tenants—a piece of property and a house on that property. The Bullocks named in the case lived in the house pursuant to a rental agreement with Joseph Bates.

In 1976, Joseph Bates and the Bullocks entered into a written agreement whereby the Bullocks would pay \$84,000 or \$200.00 a month until the year 2013 to purchase the home. The Bullocks did not know that Joseph's sister Rosemary held an interest in the property as a joint tenant.

Rosemary Harris died about seven months after the agreement was signed between the Bullocks and her brother Joseph Bates. The Bullocks stayed on the property and made their payments for over 30 years. They also contributed to the property taxes and made significant improvements to the property.

Joseph Bates died in 2010, and his personal representative, Sam Ashworth, assumed that the property and home were part of Joseph's estate. Ashworth asked a property manager to contact the Bullocks to obtain a written rental agreement. The Bullocks refused, claiming they were purchasing the house, not renting.

Ashworth argued that the agreement between Joseph Bates and the Bullocks was not valid because the other joint tenant who owned the property—Rosemary Bates Harris—had not signed the agreement to sell the house.

The trial court and appellate court ruled in favor of the Bullocks. First, the courts found that at the date the agreement was signed, the sales agreement was in fact an invalid contract under Utah law (statute of frauds), because the other joint tenant had not signed the sales agreement. Second, the courts found that when Rosemary died, her full interest in the property transferred to the other surviving joint tenant, her brother Joseph Bates. Third, the courts found that once Joseph Bates had full ownership rights in the property, the sales agreement ripened into a fully enforceable contract.

As Judge McHugh of the Appellate Court wrote:

“Nothing occurred between Bates's execution of the Writing and his acquisition of fee title in the property to prevent it from ripening into a contract. By the terms of the Writing and the parties' practices, Bates was not expected to convey title to the property until 2013, when the Bullocks would have paid in full. Before he was required to transfer title, Harris's interest passed to Bates, thereby giving him sole ownership of the Property. Although the contract was unenforceable when originally signed, Bates's acquisition of full title revived it because Harris's signature was no longer necessary to satisfy the statute of frauds and the Writing had not been repudiated,” McHugh wrote.

The Court stated that Joseph Bates formally agreed to sell the property, and the Bullocks had faithfully fulfilled the terms of the sales agreement for 30 years. Joseph Bates fully owned the

property when it counted: at the final payment made by the Bullocks. Any ruling against the Bates would perpetrate fraud, not prevent it, the Court concluded.

Ashworth v. Bullock, 304 P.3d 74 (Utah App. 2013)

See our blog analyzing this case.