ORAL ARGUMENT – 05/02/03
01-0430
KING RANCH V. CHAPMAN

HATCHELL: This case is appealed by King Ranch, Inc. to reinstate a summary judgment in its favor opposed to a bill of review and trespass to try title action brought by the Chapmans. The purpose of which was to set aside an 1883 consent judgment and reclaim 7,500 acres of the King Ranch based on fraud that supposedly occurred in 1881 and 1882.

There are three broad issues before the court today. Is the bill of review barred by limitations? If not, is there evidence under the no evidence summary judgment standard to support the elements of the bill of review? Did King Ranch's summary judgment proof establish adverse possession conclusively?

Under the legal injury rule which is discussed thoroughly by this court in SV v. _____, we have no difficulty in determining when the statute of limitations accrued for a bill of review. It accrued when the judgment under attack was entered. We have established as a matter of law that this claim was filed not only 4 years beyond that time, but actually 118 years beyond the time after the original judgment was entered.

What was pleaded in defense of the statute of limitations was the discovery rule and fraudulent concealment. The CA's discussion of this aspect of the case, which is about two sentences long, I think makes three very serious errors. The first is, that the discovery rule applies to bills of review at all. The second is, that evidence of the fraud element embedded within the bill of review standard is sufficient to operate as some form of tolling. And three, that it was the King Ranch's burden to disprove conclusively the doctrines that would either defer accrual on and toll the statute of limitations. The latter holding is clearly wrong under the new summary judgment evidence standard because the plaintiffs in this case would have borne the burden both to establish the applicability of the discovery rule if it applies, and fraudulent concealment is on them at trial was their burden to raise the issue.

I would say that it's an intriguing issue for the court as to whether or not the discovery rule applies in this case. Because clearly, I think, because the bill of review is an attack upon a judgment which is of record it is clearly not inherently undiscoverable. And the fraud element, at least a fraud element embedded within the elements of the bill of review, I think is also not objectively verifiable because it often resides within the minds of the participating parties.

The question as to whether or not fraudulent concealment applies in this type of case is an intriguing one because fraudulent concealment must be itself an independent tort and generally not related to the fraud which would support the bill of review. So what you would have to have in my judgment is a fraud concealing a fraud, which has not been shown in this case.

But perhaps the court does not really need to get to that. The case can be disposed of on the bill of review aspect I think simply under the no evidence summary judgment standard on two grounds.

WAINWRIGHT: Let me direct you in a different direction. Put the statute of limitations argument to the side for now. Assume that it's not an issue. What about the arguments that there are no ad litems for the minor children after Helen died, and that the probate court did not approve the 1883 judgment. Do those present significant problems to the viability of the judgment?

HATCHELL: We think they do not because first of all the probate records themselves are not necessarily shown to be complete. And there is a venerable rule that this court has established, establishing a presumption which has not been rebutted in this case as to the regularity of the probate records. This argument goes actually to an argument which is even I think aside from the bill of review, and that is that the judgment itself is void.

There are several aspects of that. The specific question you asked is answered by the presumption of regularity of probate records. There is also a contention which may be embodied within your question as to whether or not the executor of Ms. Chapman had the authority to enter into the agreed judgment, and clearly he did under old art. 12.02. He had the authority to bring the action to recover property. The only time heirs would have to be joined clearly under the statute and under this court's holding in _____ v. _____ would be if Captain King had sought affirmative relief, which he did not do.

WAINWRIGHT: You don't consider the agreed judgment to be a settlement of the dispute? What do you mean by that?

HATCHELL: I do not consider it to be an agreed settlement because by its _____ terms it's settled title in Helen Chapman as to ½ of the interest, which she was seeking. And then it operates as a sale of the other half that was in dispute.

WAINWRIGHT: If it were a settlement then at least under recent common law in Texas the minor children if there was a potential dispute would need to have ad litem representation. Correct?

HATCHELL: You're talking about Helen's children and not the grandchildren?

WAINWRIGHT: Yes.

HATCHELL: No. They would not have to have had - there's no evidence that Helen's children were minors at the time. They died in 1902 and 1907. So guardian ad litems for Helen's two children, one of which was named as executor of the estate, so it would not be required.

We do not think that there is any evidence that the probate court did not approve the settlement. I take the position that under the statutes the executor very clearly and a

matter of fact I think you can look at the two - 1201 and 1202 passed together and looked at the legislative history of that to see that those statutes were passed precisely to avoid the problem that you raise. So that the executor had authority under the statute to do precisely what he did.

Under the no evidence standard, the plaintiffs in this case had to prove that succeeding generations did not discover or no facts sufficient to raise inquiry into the fraud that they claim justifies their bill of review.

And this case can be disposed of on simple ground that there is no such evidence. The attorneys made no attempt at all to show what the succeeding generations of Chapman heirs knew or did not know. But we can go farther than that. Because as a matter of law the evidence in this record establishes that the heirs, actually the original participants and the heirs had notice of those facts that they now claim support the fraud, which they believe that Captain King and
attorney Kleberg engaged in.

I'm not conceding that these facts are sufficient to show what they need to show. But if this is what they say raises the fraud, they had knowledge. They had suspicions about the existence of the original judgment to begin with. There are letters immediately after 1883 judgment questioning why they could not in contravention of Kleberg's letters, why they could not prove their title. The account book which the principal movant behind this present action claims made the fraud full blown has been in the possession of the Chapman family for over 100 years. There is letter evidence in the record showing that the Chapman heirs knew that Major Chapman "bid off the property for himself at the time of the sale from the Lewis interest." And under HECI, I think this court wold hold that the Chapman heirs also knew everything that they claim was defected. And that is, that the Chapman heirs were not joined in the suit or served, that there was no approval of settlement, that the Lewis deed, even though admitted was not recorded, and that Kleberg had represented King in other matters.

So I think that really puts the statute of limitations issue to rest.

When you turn to the adverse possession issue in the case, what you find are two statutes - 16.027 and 16.028 - the elements of which are quite simple. 16.027 requires simply that the claimant cultivate, use or enjoy the property. 16.028 requires that the claimant hold in good faith under a recorded deed.

The elements under 16.028 are I think particularly appropriate for this case, because this is a statute of repose. No disability of any of the heirs, such as being minors and the like, would apply. The statute applies whether the deed, or in this case the judgment is void or voidable. It applies to any type of action and no disability chosen.

In this case what we have is evidence that the judgment itself in cause number 1279 operates as a deed. Alice King has conveyed the property by a duly recorded deed in 1934.

That's established as a matter of law. And there have been no assertions of an adverse claim during the entire history of this property dating from Captain King's pleadings in cause No. 1279 dated to 1879. Insofar as the holding in good faith is concerned, that's not been a problem to this court but this is what the case _____ simply is, that one holds in good faith if he holds under a deed that's valid on its face and there is no knowledge of an adverse claim. Beginning in 1879, Captain King began pleadings and there's a title opinion in 1904 and there's an affidavit from King Ranch attorney dated - covering the time period from 1939, that there has never been an adverse claim to the King property.

We say therefore two doctrines completely dispose of this case: the statute of limitations on the bill of review and adverse possession.

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RESPONDENT

SMITH: I'm representing 21 people who have superior record title to a portion of the King Ranch. And the beginning point for this court's analysis in my opinion should be the judgment. This judgment does not divest my clients' predecessors of record title of this portion of the real property. And this is true for a number of reasons. First of all, this judgment very specifically purports to divest title out of the estate of Helen Chapman, which under art. 1202 it can't do joining the heirs. This court squarely held in _____ Duggan that this type of a judgment requires the presence of heirs to be joined as parties. The reason why this law was passed in 1870 along with art. 1934 was to prevent collusive plundering of the estates of deceased persons, which is exactly what happened in this case.

This is the statute that absolutely required going to a probate court. As a potential alternative, if not an additional requirement, they had to get probate court permission before purporting to settle this case. And that's just the second defect. It goes on. It really gets better. Because if you examine the Will of Helen Chapman, you will see she appointed co-executors.

JEFFERSON: So are you saying that the judgment is void?

SMITH: I'm saying the judgment is void, it's voidable, it's not final.

JEFFERSON: Does article 12.02 or this one does it provide that in the absence of joining the heirs, that the judgment is void, or is it just erroneous?

SMITH: In _____ v. Duggan this court squarely held that it was not binding. And the void/voidable dichotomy that Exxon has brought in to the mix is really it's a definitional issue because there are multiple definitions for the word void or voidable. For example, if you are not a party or served with the judgment does that make it void, or does it make it voidable? So there's one set of void/voidance issues with respect to constitutional issues.

There is a Texas common law definition of void/voidable that looks at the face of the judgment and also including the record in determining whether the judgment is void or voidable. And then in this particular case what we have here is evidence extrinsic to the judgment. For example, the lack of power by Rancon under the probate code to settle the case. If Rankin actually lacks power or capacity to settle the case does that make it void or voidable? That's really not clear. It depends on the definition that you've got.

If it's void we have superior record title. And they have not conclusively proven adverse possession. If it's voidable, we have the opportunity under the bill of review to go in set aside the judgment for extrinsic fraud, if we can prove it, and put the parties in the same position that they were in at the time this judgment was supposedly entered. That is the remedy that the bill of review brings.

JEFFERSON: You're saying that the statute doesn't say it's void, but you want us to hold that? And my concern is, there's all kinds of statutes that require certain things to be in judgments which does not make the judgment void, that the parties who are participants have an appellate remedy. And so they've got to take that remedy, for example in this case from the 1883 judgment, which didn't occur.

SMITH: This case is carefully designed by Kleberg and King, our contention is, to negate appellate review. In fact if you examine the fraud carefully it appears specifically intended to negate all review by all of the persons who were built in to the process to review this action. For example, let's start with the district judge in cause no. 1279. Rancon and Kleberg misrepresented Rancon's authority to that judge in cause no. 1279. They filed a motion seeking to substitute Rankin as the party and in that motion they represented that Rankin was the executor of Helen's estate, which is not accurate. Rancon a co-executor with Will and ____. And that meant two things: He could not act without the co-executor; he could not act without an order of the probate court; and he could not act and had no power to act. He lacked power to act under the statute because he did not get permission. So _____ was taken out of the loop. The judge in the DC was taken out of the loop through that misrepresentation. The probate court was taken out of the loop and the only two people who decided this were Kleberg, Rancon and King. For that reason, and since it's a consent judgment, there is supposedly going to be no appeal because there's nobody objecting to the entry of the judgment. So that is one of the key problems in this case.

The reason why I believe we have sufficient evidence of extrinsic fraud in this case, and it's concealed that it's extrinsic fraud, it's not simply because of looking at the big picture of what happened which I've described to you, but also let's look at the circumstances. What happened? Kleberg is King's lawyer. Kleberg is Helen's lawyer. Kleberg purports to settle this case. Kleberg is the one who ends up on the premises.

For example, in 1904 Kleberg is the president of the Kleberg County Improvement Co. He ends up with the property. And this is not a fee. Whenever we see a lawyer who has a client and ends up with that client's property and it's not a fee, that just sometimes we

need to take a second look. That's not enough to say that's fraud. But maybe a next step. Well the next step...

PHILLIPS: Who did Kleberg marry?

SMITH: Alice Kleberg. Richard King's daughter.

PHILLIPS: And what year was that?

SMITH: That was in 1885.

PHILLIPS: Which might have something to do with being married.

SMITH: Yes. We believe that cuts both ways and requires a jury to resolve this dispute, because it's why is Kleberg doing what he's doing? Is he doing it because he and Richard King have committed fraud and they are attempting to launder to title to the Rancon through the Kleberg County Improvement Co, or is it doing it out of love and affection for Alice? The evidence in this case shows that Kleberg and King were involved in a conspiracy to defraud the remainderman of their title. That title was conveyed to the remaindermen in trust.

ENOCH: Did the estate get paid for the interest in this land, or is your point that they didn't get paid for this interest in the land?

SMITH: That issue was not litigated in the TC.

ENOCH: As I read the judgment, there was a transfer of title by an agreement of the parties in exchange for King paying for the land. Is that an ambiguity in the judgment or is the judgment clear about that?

SMITH: No. That's what the judgment says. We dispute the legal effect of that judgment.

ENOCH: Are you arguing that the money that the estate received was insufficient at the time this money was paid for the value of the land?

SMITH: Yes. We've disputed that in the TC. And the summary judgment motions were precise on certain issues. And nobody got the economist out and argued that the value wasn't a fair exchange. We contend it was not a fair exchange. But that the summary judgment arguments did not revolve around that particular issue.

ENOCH: Is it not necessary to your argument that you have to establish that the exchange of money for the title to the land was grossly insufficient?

SMITH: No.

ENOCH: So merely the fact that there was a sale of property when the owner of the property says they didn't authorize the agent to do so, you say is sufficient to establish extrinsic fraud?

SMITH: No. We have so much more than that.

ENOCH: If Rancon negotiated with Kleberg to sell it with Rancon knowing he didn't have permission to sell the property, but the money is paid to the estate in the sale of the property and the estate takes the money, do you not have to show that didn't happen to show that there was an extrinsic fraud in the transaction?

SMITH: No. Because the estate didn't own the property; didn't have the right to sell the property. The owners of the vested remainder interest owned that property.

ENOCH: Weren't they the heirs of the estate, or they had direct ownership of the property?

SMITH: Helen's will was probated in Richland county, South Carolina and in Nueces county. When she died that title transferred _____ to her grandchildren in trust, invested remainder. And they owned the property. And under art. 1202, they have the right to sale that property or to do whatever they want to with that property. That's what this statute is all about. Because the problem in the late 1800's and it's still a good public policy today because laws are still on the books was to prevent collusive plundering of these estates. When people died their testator wills were completely disregarded and the property would be gone. And that was sound public policy back then to protect that interest, and it's still sound public policy today. And even if money did change hands, which we dispute, it wouldn't alter the fact that it did not go to the remaindermen. They are the owners. And under Helen's will they were entitled to take that property in vested remainder in trust.

Now the adequacy or the inadequacy of the consideration in my opinion masks the no evidence challenge of extrinsic fraud is defeated in this case because we have joint illegal conduct between King and Kleberg, and the purpose of this joint illegal conduct was to negate the rights of the owners of the vested remainder interest. So under a civil conspiracy analysis we've got an illegal purpose, we've got illegal means which was making misrepresentations to the judge to get the settlement, we've got violations of art. 1934, which required the probate court to approve. That was violated right there. That's an illegal act. We've got a violation of art. 1202. That's another illegal act. We've got a violation of the US Constitution in keeping people who are parties who must be parties and concealing their property rights in an illegal judgment. That's exactly what they did.

JEFFERSON: Can you answer why the discovery rule applies to a bill of review proceeding first? And then second, even assuming it does how is the harm that you're alleging here inherently

undiscoverable and objectively verifiable? And on the discoverability we're talking about public records and documents that were in the account book in the heir's possession for years.

SMITH: The discovery rule applies this court has held since the 1800's consistently. Fraud - discovery rule. Fiduciary breaching duties - discovery rule. _____v. Burnet Trust, Port Arthur Milling Co.; Willis v. _____. Negligence. Not even a fraud case when there's an attorney involved. And Kleberg is their attorney. He's our attorney. And so just looking at the prior common law as we know it, we've got that here. And there's no deviation from those lines of cases under those circumstances. So if you apply the categorical approach you answer the question 150 years ago.

If as the defendants have suggested that the court ought to make a new category for bills of review, then we have extrinsic fraud, which is fraud. And my argument is, we've already figured out that fraud has a discovery rule. So how can extrinsic fraud not. And what policy interest would be furthered by saying well extrinsic fraud - no discovery rule. The discovery rule is part and parcel an essential part of this court's jurisprudence to suppress fraud. And if you take that away you're going to increase the number of fraudulently procured judgments. And there's no policy interest in having a fraudulently procured judgment in Texas.

If you look at the restatement of judgments, section 7, the commentary talks about what the policy interests are in a fraudulently procured judgment. And it's zero. There is none. We don't want it. We can't have it. When we find it we've got to stop it. Anything else invites a lot of problems that this court doesn't need. We do not need lawyers colluding with opposing parties and confessing fraudulent judgments out against people who have property rights.

But I would say there is one exception to that rule. It's very important in this case. In the _____ case, in the US SC they noted that if there is a bonafide purchaser under the judgment that's an exception. We sued nonbonafided purchasers. A court of equity is capable of fashioning a judgment in this case that properly balances the party's rights because there are not bonafided purchasers. There are direct ____ beneficiaries of extrinsic fraud feasors. And under this unique circumstance a court of equity can fashion a decree that will not offend vested property rights in bonafided purchasers. And as this court noted in Eaton v. Huffstead this is not an issue that's _____ difficulty. As the court's opinion closed on this issue, the court said, here we are. That case involved the right to a true owner verses the rights of a person who defrauded the trust, a successor of a person who defrauded the trust.

SCHNEIDER: Mr. Hatchell alluded to the fact that there is strong presumption that judgements are proper, regular the proceedings and so forth. And you've talked about policies. Is there not a policy that as to finality so that in this day in time with the computer records of the things we're able to search by computers that this would open up a whole new door of people going through _____ judgments for the last - or whenever they first started doing judgments and finding some irregularity that couldn't be raised somewhere along the line.

SMITH: I very carefully considered that issue. And I asked myself the question. Looking at the probate records of cause No. 363 of Helen's estate, that shows three events right up to the time before this judgment. And I said, well how do we know what happened after that? And the answer is, we do know that there was not an order approving this particular sale. Because Jim Well's title opinion on Dec. 2 says he has carefully examined these documents, including the probate proceedings.

SCHNEIDER: Your answer is, this is a unique circumstance?

SMITH: Yes.

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REBUTTAL

HATCHELL: I have three specific comments in relation to questions from the court. Questions by J. Wainwright and J. Enoch. J. Wainwright the probate proceedings are not at issue in this case. It's the 1883 judgment that's at issue. Presumption of regularity of the probate proceedings, I think is secure under this court's decision in Baker v. Cobe. My able co-counsel reminds me that it's the regularity of the 1883 judgment on its face that's the real legal issue in the case. And that judgment is clearly regular on its face because the executor, Mr. Rancon, clearly had authority under art. 1202, which has been shown this morning to bring the action.

J. Enoch, under the will of Helen Chapman, executor Rancon had specific authority to sell the property. So the resuscitations of sale in the deed again show the judgments regular on its face in performity with all the laws governing _____.

J. Jefferson regarding the application of the discovery rule in this case, I think it is not a wise choice for this court to say that because there may be an embedded element within the cause of action, which could be established by a fraud, that suddenly it's fraud action to which the discovery rule applies. This court did not hold for example in _____ v. Sturgiss that because you could prove the independently tortuous conduct sufficient to justify prospective interference that suddenly tortuous interference cases are fraud cases to which now the 4 year statute applies and the discovery rule applies. So I think that counsel is off base.

The broad observation that I would make is that I don't think it is lost on this court what is really at stake in this case. In Baker v. Cole, this court quoted Louisiana SC as making an observation, which I suspect as true. And that is, that the majority of land titles which certainly was true in Louisiana in the 1800's and I suspect is true in Texas, are dependent upon probate proceedings and judgments. If judgments that have established title can be attacked 112 years later on the basis of the type of suspicion and innuendo that's involved in this case, no titles per se, here's what the - the fraud is not that Kleberg represented King in other matters. The fraud has to be that of King. King had to corrupt attorney Kleberg who in turn had to corrupt Rancon. And somehow or another fraud _____ entered into the judgment, which would not otherwise have entered into

_____.

The only basis for this fraud really is 1) documents that they knew existed and had been in the Chapman's possession for 100 years, and a newspaper article reporting a conclusion by a King ranch archivist over 100 years. That archivist not even having been born and yet is giving opinions upon what the intentions of Mr. Kleberg were which don't even establish fraud necessary.

So I think that this is a case which is too _____ in its nature and which stands against too many legal principles to be affirmed. And we request that it be reversed and the summary judgment reinstated.