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Columbia Sav. and Loan Ass'n v. District Court In and For County of Clear Creek

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No. _____

IN THE SUPREME COURT
OF THE
STATE OF COLORADO

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

FEB 13 1975

COLUMBIA SAVINGS AND LOAN ASSOCIATION,
a Colorado corporation,)

Petitioner,)

vs.)

THE DISTRICT COURT IN AND FOR THE COUNTY)
OF CLEAR CREEK, STATE OF COLORADO; THE)
HONORABLE VASCO SEAVEY, JUDGE OF THE)
DISTRICT COURT IN AND FOR THE COUNTY OF)
CLEAR CREEK, STATE OF COLORADO; WALLACE)
D. PALMER and H. J. BISHOP II d/b/a)
PALMER BISHOP ARCHITECTS; BECKETT HARMON)
ASSOCIATES INCORPORATED; GARLAND COX)
ASSOCIATES INCORPORATED; and RUSSELL M.)
MILLER,)

Respondents.)

Richard D. Luciani

PETITION IN ORIGINAL
PROCEEDING UNDER
COLORADO APPELLATE
RULES 21 FOR A
WRIT OF PROHIBITION

COMES NOW the Petitioner, Columbia Savings and Loan Association, by and through its attorneys, C. J. Hafertepen and Gregory F. Palcanis, and hereby submits its Petition in Original Proceeding Under Colorado Appellate Rules 21 for a Writ of Prohibition.

FACTS

The subject of this Writ of Prohibition concerns a mechanic's lien action filed on the Georgetown Hose Company, Georgetown, Colorado. The action was filed on June 21, 1972, and at that time, the Defendants named were the Argentine Corporation and William McCombs. The case did not go to trial; however, a judgment was entered by Order dated February 22, 1974. A copy of said Order is attached hereto as Petitioner's Exhibit A and incorporated herein by this reference. By the terms of the February 22 Order, the Defendant William McCombs was dismissed from the action with prejudice, the Counterclaim of the Defendant Argentine Corporation was dismissed with prejudice and the

Argentine Corporation was relieved from further participating in the action. In conjunction with the February 22 Order, an Order was entered on March 8, 1974, nunc pro tunc February 22, 1974, which entered judgment against the Argentine Corporation in the amount of \$23,572.50. A copy of said Order is attached hereto as Petitioner's Exhibit B and incorporated herein by this reference.

On November 7, 1974, some nine months after the February 22 Order, Petitioner was made a party Defendant to the within action. A copy of said Order of Joinder is attached hereto as Petitioner's Exhibit C and incorporated herein by this reference. Petitioner was mailed a copy of an Amended Complaint and answered same. On or about July 2, 1975, Petitioner filed a Motion to Dismiss for Lack of Jurisdiction. In its Motion, Petitioner contended that through the February 22 Order, a Final Judgment was entered in the within action, which Order was never properly set aside or altered in accordance with the Colorado Rules of Civil Procedure. In accordance with this Final Judgment, the case was effectively terminated and thereby the Court lost jurisdiction over the within action and had no power to grant the November 7, 1974 Order which made Petitioner a party.

On August 7, 1975, the Honorable Ronald J. Hardesty heard Petitioner's Motion to Dismiss and at Plaintiffs' request set the matter down for a future date to be set after simultaneous briefs had been filed by the Petitioner and Plaintiffs concerning whether the Court loses jurisdiction after a Final Judgment has been entered. Briefs were filed by both parties and, in addition, Plaintiffs filed with the Court a Stipulation and proposed Order, copies of which are attached hereto as Petitioner's Exhibits D and E respectively. Petitioner filed an objection to the proposed Order objecting to the fact that said Order purports to allow the Plaintiffs and the Defendant Argentine Corporation to stipulate to the jurisdiction of the Court. A hearing on Petitioner's Motion to Dismiss for Lack of Jurisdiction as well as the stipulation entered

into between Plaintiffs and the Defendant Argentine Corporation was heard on January 23, 1976. At said hearing the Honorable Vasco Seavey presided and entered an Order denying Petitioner's Motion to Dismiss for Lack of Jurisdiction and granting the Plaintiffs' Motion to set aside the judgment (Petitioner's Exhibit B) and stayed the proceedings for 30 days in order to allow Columbia Savings and Loan Association time to appeal.

Petitioner seeks relief in the nature of a Writ of Prohibition from the Order of November 7, 1974 in which it was made a party to the action and from the Order of January 23, 1976 which purported to restore jurisdiction in the Court.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under Rule 21 of the Colorado Appellate Rules. Petitioner contends that the Clear Creek County District Court is proceeding without or in excess of its jurisdiction over the subject matter of the Complaint. Where a court proceeds without jurisdiction over the subject matter of a Complaint, a remedy in the nature of prohibition is appropriate. Colorado Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

THE CLEAR CREEK COUNTY DISTRICT COURT IS PROCEEDING WITHOUT OR IN EXCESS OF ITS JURISDICTION

By its Order of February 22, 1974 (Petitioner's Exhibit A) and the subsequent Order of March 8, 1974 (Petitioner's Exhibit B), a Final Judgment was entered in the within action. As such, the Court lost jurisdiction in respect to any matters concerning the within action except those matters properly brought before it pursuant to the Colorado Rules of Civil Procedure. As such, the Court had no jurisdiction to enter the Order of November 7, 1974 which made Petitioner a party to this suit (Petitioner's Exhibit C), and it had no jurisdiction to enter the Order of January 23, 1976 concerning the Plaintiffs' and Defendant Argentine Corporation's stipulation.

1. The effect of the February 22, 1974 Order was to enter a Final Judgment in the within case.

As earlier stated, the original Defendants in the within action were the Argentine Corporation and William McCombs. These were the only Defendants involved in the action when the Court entered the February 22, 1974 Order. In that Order the Court relieved the Argentine Corporation from further participating in the action, dismissed Defendant Argentine Corporation's Counter-claim with prejudice, and dismissed all claims against the Defendant William McCombs with prejudice. The entry of the March 8, 1974 Order, nunc pro tunc February 22, 1974, entered the amount of monetary damages in accordance with the earlier Order.

A final judgment is one which terminates the proceedings between the parties to the action and leaves nothing further for the Court to do in respect to completely determining the rights of the parties involved in the proceedings. Johnson v. Johnson, 132 Colo. 236, 287 P.2d 49 (1955); Levine v. Empire, 34 Colo. App. 235, 527 P.2d 910 (1974); Stillings v. Davies, 158 Colo. 308, 406 P.2d 337 (1965).

It is clear from a reading of the February 22, 1974 Order that there were no further issues to be resolved between the Plaintiffs and the two Defendants in the action. One Defendant was dismissed with prejudice and the other Defendant had its Counter-claim dismissed with prejudice, was relieved from further participating in the action, and had a Judgment entered against it.

2. The Clear Creek County District Court lost jurisdiction over the subject matter of the Complaint by virtue of the February 22, 1974 Order.

After a Final Judgment has been entered, the Court loses jurisdiction over the subject matter of the Complaint and may only alter, amend or vacate the judgment by appropriate motion under either Rule 59 or Rule 60 of the Colorado Rules of Civil Procedure. Cortvrient v. Cortvrient, 146 Colo. 387, 361 P.2d. 767 (1961);

These rules set forth the only action which a Court may take in respect to a Final Judgment and it is clear from a reading thereof, that the Court has no jurisdiction to add an additional party to an action or to allow stipulations concerning jurisdiction after a Final Judgment has been entered.

In addition, it should be noted that after the expiration of the applicable time required by the Colorado Rules of Civil Procedure to perfect an appeal of a judgment, the judgment becomes final and the litigation in the trial court terminates and the court loses jurisdiction in respect to this aspect of the case. Joufflas v. Hampton, Colo. App., 527 P.2d 1191, (1974). There was no motion for new trial filed in this case and therefore, the Court has lost jurisdiction in respect to the litigation. Respondents' actions indicate that they are attempting to bring Petitioner into this action in order to litigate issues which were decided almost two years ago by the February 22, 1974 Order. Petitioner contends that this is improper from not only a jurisdictional standpoint but also from an equitable standpoint.

3. Parties to an action cannot attempt to confer jurisdiction upon a Court through stipulation.

Petitioner has contended that the Court lost jurisdiction when it entered a Final Judgment in the within action. There has never been a motion pursuant to Rule 59 or 60 of the Colorado Rules of Civil Procedure asking that the Judgment be set aside or a motion for a new trial. Additionally, some eight months passed from the time the Final Judgment was entered until Petitioner was made a party to the within action, and some 23 months expired from the time that the Final Judgment was entered until the Plaintiffs and the Defendant Argentine Corporation asked the Court to grant their Stipulation which vacated the March 8, 1974 Order (Petitioner's Exhibit B) and conferred jurisdiction in the Court. This latter request made upon the Court certainly was not made within a reasonable time from the entry date of the Final Judgment nor was there any

cause shown for which the Stipulation should be granted. It is apparent that the Stipulation was executed for the sole purpose of joining Petitioner in a case which for all purposes has already been litigated and decided. At this point, Petitioner should not be penalized for the ramifications of the original parties' failure to name it at the beginning of the case. Notwithstanding the above, Petitioner contends that regardless of the conditions surrounding the Stipulation and Order, it is not possible for the parties to consent to give the Court jurisdiction over a cause. The law alone can confer jurisdiction over the subject matter of a Complaint. Molandin v. Colo. Central Railroad Co., 3 Colo. 173 (1877).

CONCLUSION

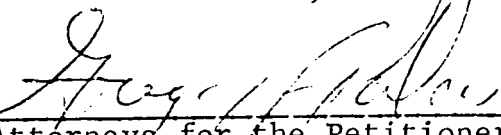
Petitioner contends that by entering a Final Judgment the within case was effectively terminated. As such, the Court lost jurisdiction over the subject matter of the Complaint and the parties. The Ex Parte Motion making the Petitioner a party to the within action was granted after the Final Judgment had been entered and prior to any action being taken to attempt to restore jurisdiction in the Court. As such, the Court had no jurisdiction to enter the November 7, 1974 Order and Petitioner was, therefore, improperly made a party to the within action. The Motion to make Petitioner a party to the within action has never been reinstated by the Plaintiffs and, therefore, even if the Court did have jurisdiction by reason of the January 23, 1976 Order by which the Plaintiffs and the Defendant Argentine Corporation stipulated to the jurisdiction of the Court, Petitioner has not properly been made a party to the within action.

Petitioner also contends that the Plaintiffs and the Defendant Argentine Corporation cannot stipulate to the jurisdiction of the Court after jurisdiction has been lost. When an action has been terminated and the Court has lost jurisdiction, it does not have the power to add new parties. If a party desires to bring suit against another based on a course of action that has already

been determined in a preceding action, a new action should be commenced in order to allow all the issues to be heard. This is not possible in the within action due to the provisions of the February 22, 1974 Order. The case has terminated, and there should be no further orders entered which are not provided for by law or the Rules of Civil Procedure.

It is, therefore, prayed by the Petitioner, Columbia Savings and Loan Association, by and through its attorneys, C. J. Hafertepen and Gregory F. Palcanis, (1) that an Order issue from this Court directing The Honorable Vasco Seavey and the District Court in and for the County of Clear Creek, State of Colorado, to show cause why they should not be ordered and directed to vacate and set aside the Orders entered in Civil Action No. 10831 on November 7, 1974 which joined Petitioner as a party Defendant to the within action, and January 23, 1976 which denied Petitioner's Motion to Dismiss for Lack of Jurisdiction and which purports to place jurisdiction in the Court over the within action; and (2) that an Order issue directing the Respondents to show cause why they should not be prohibited from further prosecution of the suit against Columbia Savings and Loan Association in Civil Action No. 10831; and (3) that all further proceedings in said action be stayed until this Court has determined whether the District Court in and for the County of Clear Creek has jurisdiction over the subject matter of the within action; and (4) that the entire record on file in the Clerk of the District Court of Clear Creek County in Civil Action No. 10831 be forthwith certified to the Court.

C. J. HAFERTEPEN, NO. 2587, and
GREGORY F. PALCANIS, NO. 1509

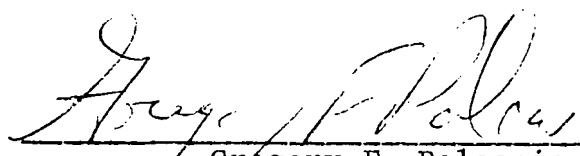
By 
Attorneys for the Petitioner
Columbia Savings and Loan Association
110 - 16th Street
Denver, Colorado 80202 292-9900

Petitioner's Address:

Petroleum Club Building
110 - 16th Street
Denver, Colorado 80202

STATE OF COLORADO)
) SS.
CITY AND COUNTY OF DENVER)

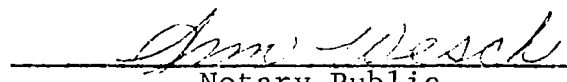
COMES NOW Gregory F. Palcanis of lawful age who being first duly sworn, upon his oath, deposes and says that he has read the above and foregoing Petition; that he is one of counsel involved in the within matter and has personal knowledge of it; and that all matters therein are true to the best of his knowledge, information and belief.



Gregory F. Palcanis

Subscribed and sworn to before me this 13th day of February, 1976.

My commission expires:



Notary Public

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF CLEAR CREEK
STATE OF COLORADO

Civil Action No. 10831

FILED IN THE DISTRICT COURT
CLEAR CREEK COUNTY

Feb 22 1974

Rosemary J. Richman
CLERK

By _____ DEPUTY

WALLACE D. PALMER, and)
H. J. BISHOP, II, d/b/a)
PALMER BISHOP ARCHITECTS,)
BECKETT HARMON ASSOCIATES, INC.,)
GARLAND COX ASSOCIATES, INC., and)
RUSSELL M. MILLER,)

Plaintiffs,)

vs.)

ARGENTINE CORPORATION and)
WILLIAM McCOMBS,)

Defendants.)

ORDER

THIS MATTER, having come before the Court on the parties Stipulation for Entry on Consent Judgment and Stipulation for Dismissal of Counterclaim and Defendant McComb's Motion for Summary Judgment, and the Court, being fully advised in the premises, finds that the Stipulations are reasonable and should be approved by the Court and that the Motion for Summary Judgment should be granted.

IT IS THEREFORE ORDERED that the judgment be entered in favor of Plaintiffs and against Defendant Argentine Corporation and that the amount of such judgment shall be determined by the amount of damages, if any, which Plaintiffs may establish in any further proceeding in this action.

IT IS FURTHER ORDERED that Argentine Corporation be relieved from participating further in this action.

IT IS FURTHER ORDERED that Defendant Argentine Corporation's counterclaim be dismissed with prejudice.

IT IS FURTHER ORDERED that all claims against Defendant William Y. McCombs be dismissed with prejudice.

Dated this 22nd day of February, 1974.

BY THE COURT:

Petitioner's Exhibit A

Donald J. Hurd
DISTRICT JUDGE

IN THE DISTRICT COURT IN AND FOR THE
COUNTY OF CLEAR CREEK
STATE OF COLORADO

Civil Action No. 10831

WALLACE D. PALMER, and)
H.J. BISHOP, II, d/b/a)
PALMER BISHOP ARCHITECTS,)
BECKETT HARMON ASSOCIATES, INC.,)
CARLAND COX ASSOCIATES, INC.,)
and RUSSELL M. MILLER,)

ORDER

Plaintiffs,)

vs.)

ARGENTINE CORPORATION,)

Defendant.)

This matter coming on to be heard pursuant to stipulation of
the parties,

IT IS HEREBY ORDERED that judgment is entered nunc pro tunc
February 22, 1974 in favor of the plaintiffs and against the defendant
Argentine Corporation in the sum of TWENTY THREE THOUSAND FOUR HUNDRED
EIGHTY NINE AND 50/100 (\$23,489.50) DOLLARS plus costs of this suit in
the amount of \$26.00 filing fees, \$10.00 service of Summons and Complaint,
\$25.00 payment of jury fee and \$22.00 to the Clerk and Recorder, Clear
Creek County, for filing of mechanics liens and lis pendens, for a total
judgment of TWENTY THREE THOUSAND FIVE HUNDRED SEVENTY TWO AND 50/100
(\$23,572.50) DOLLARS.

Done this the 8th day of March, 1974 nunc pro tunc
February 22, 1974.

BY THE COURT

Plaintiff's Exhibit B

RONALD J. HARDESTY, District Judge

IN THE DISTRICT COURT IN AND FOR THE

COUNTY OF CLEAR CREEK

STATE OF COLORADO

Civil Action No. 10831

WALLACE D. PALMER and H.A. BISHOP, JR.
d/b/a PALMER BISHOP ARCHITECTS, SECRETETT
HARRON ASSOCIATES, INC., GARLAND COX
ASSOCIATES, INC. and RUSSEL M. MILLER,

Plaintiffs,

vs.

ARGENTINE CORPORATION,

Defendant.

ORDER OF JOINDER

This matter coming on to be heard pursuant to motion of the plaintiffs to join Columbia Savings and Loan Association as an additional party defendant,

IT IS HEREBY ORDERED that the plaintiffs are allowed to amend their complaint to include Columbia Savings and Loan Association as an additional party defendant and to serve upon the defendant Columbia Savings and Loan Association a copy of the complaint herein.

Done this 14th day of October, 1974.

BY THE COURT

District Judge

Original signed by the Court

Petitioners Exhibit C

IN THE DISTRICT COURT IN AND FOR THE
COUNTY OF CLEAR CREEK
STATE OF COLORADO

Civil Action Number 10831

WALLACE D. PALMER and
H. J. BISHOP, II,
d/b/a PALMER BISHOP ARCHITECTS,
BECKETT HARMON ASSOCIATES, INC.,
GARLAND COX ASSOCIATES, INC. and
RUSSELL M. MILLER,

Plaintiffs,

vs.

ARGENTINE CORPORATION and
COLUMBIA SAVINGS AND LOAN
ASSOCIATION, a corporation,

Defendants.

STIPULATION

IT IS HEREBY STIPULATED, by and between the plaintiffs and the defendant, Argentine Corporation, that the judgment entered herein in favor of the plaintiffs and against the defendant, Argentine Corporation, signed March 8, 1974, nunc pro tunc February 22, 1974, be set aside and held for naught and that this action proceed upon plaintiffs' Amended Complaint against this defendant on all issues.

IT IS FURTHER STIPULATED that the Court has jurisdiction and may enter an Order pursuant to the terms of this stipulation.

WHITE & STEELE, P.C.

By

John E. Clancy
Attorneys for Plaintiffs
1660 Lincoln Center Building
Denver, Colorado 80203
(222-2591)

Rick G. Davis
Rick G. Davis
Attorney for Defendant,
Argentine Corporation
1430 Larimer Square
Denver, Colorado 80202
(892-9900)

Retainer's Exhibit 1

IN THE DISTRICT COURT IN AND FOR THE
COUNTY OF CLEAR CREEK
STATE OF COLORADO
Civil Action No. 10831

WALLACE D. PALMER and
H. J. BISHOP, II,
d/b/a PALMER BISHOP ARCHITECTS,
BECKETT HARMON ASSOCIATES, INC.,
GARLAND COX ASSOCIATES, INC. and
RUSSELL M. MILLER,

Plaintiffs,

vs.

ARGENTINE CORPORATION and
COLUMBIA SAVINGS AND LOAN
ASSOCIATION, a corporation,

Defendants.

ORDER

THIS MATTER coming on to be heard pursuant to stipulation
of the plaintiffs and the defendant, Argentine Corporation,

IT IS HEREBY ORDERED that the judgment entered in this
Court in favor of the plaintiffs and against the defendant,
Argentine Corporation, signed March 8, 1974, nunc pro tunc
February 22, 1974, is hereby set aside and held for naught
and it is ordered that this matter will proceed upon plaintiffs'
Amended Complaint against the defendants herein on all issues.

DONE this _____ day of September, 1975.

BY THE COURT

District Judge

Petitioner's Exhibit E

CERTIFICATE OF HAND DELIVERY

I hereby certify that a true copy of the foregoing
Stipulation and Order were hand delivered to Mr. C. J.
Hafertepen and Mr. Gregory F. Palcanis, Attorneys for
Columbia Savings and Loan, 110 Sixteenth Street, Denver,
Colorado 80202, this 19th day of September, 1975.

James M. Dietrich

Subscribed and sworn to before me this 19th day of
September, 1975.

Pat Pearson
NOTARY PUBLIC

My commission expires:

My C.