

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

SUPREME COURT NO.: 20150333

The Next Step,)
)
 Plaintiff/Appellant,)
)
 vs.)
 Jamie Redmon,)
)
 Defendant/Appellee,)

APPEAL FROM THE CIVIL JUDGMENT
NORTH CENTRAL JUDICIAL DISTRICT
WARD COUNTY CIVIL. NO. 51-2014-CV-00948
THE HONORABLE GARY LEE PRESIDING

BRIEF

BENJAMIN C. PULKRABEK

ATTORNEY AT LAW
402 - 1ST NW
MANDAN, ND 58554
701/663-1929
N.D. State Bar ID No. 02908
PULKRABEK@LAWYER.COM

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STATEMENT OF THE ISSUES

- [¶1] ISSUE :
- I. Whether an unincorporated association can hold title to real property in North Dakota?

NATURE OF THE CASE

[¶ 2] This case is a quiet title action that was brought by the Plaintiff, The Next Step by serving a Summons and Complaint on the Defendant, Jamie Redmon. That Summons and Complaint were filed on July 28, 2014.

[¶ 3] When Ms. Redmon didn't file a proper response The Next Step brought a Summary Judgment Motion that was filed on December 5, 2014 and December 8, 2014 a Motion for Default Judgment.

[¶ 4] Defendant, Redmond hired an attorney who filed an Answer for her and Counterclaim on January 16, 2015.

[¶ 5] The trial judge then sent a letter to both attorneys that was filed on May 1, 2015. That letter stated that he believed this case could possibly be determined by deciding whether an unincorporated association could hold title to real property in North Dakota. Said letter ended with a request that each of the attorneys brief the following issues:

1. Whether an unincorporated association can hold title to real property in North Dakota?
2. Is a conveyance of real property to an unincorporated association void, voidable or merely invalid?
3. If an unincorporated association in North Dakota is not able to hold title to real property are there any exceptions to the rule that might be applicable to this case?

[¶ 6] The Next Steps attorney filed his brief on the above three issues on July 7, 2015.

[¶7] Ms. Redmons attorney filed his brief on the above three issues on July 13, 2015.

[¶8] The court then ruled that an unincorporated association couldn't hold title to real property in North Dakota, dismissed Plaintiff's Complaint and entered an Order so stating.

[¶9] Judgment was entered on September 28, 2015.

[¶10] Notice of Entry of Judgment was filed on September 29, 2015.

[¶11] The Next Step appealed that Judgment on November 24, 2015.

[¶12] The Notice of Statement of Preliminary issue appealed by The Next Step was filed on November 24, 2015.

[¶13] The Notice of Appeal was filed on November 24, 2015.

[¶14] The Notice of filing the Notice of Appeal was filed on November 24, 2015.

[¶15] The Clerks Certificate of Appeal was filed on December 18, 2015.

This matter is now before the North Dakota Supreme Court.

STATEMENT OF FACTS

[¶16] The Next Step is an unincorporated association that was formed in 2005. The original founders were Walt Lidsey, Alice Yeager, Wonnie Shafer and Holly Gates. Walt Lidsey and Alice Yeager are deceased. Wonnie Shafer has moved to Illinois.

[¶17] The Next Step was formed to financially help people who had slightly too much income to qualify for governmental assistance, had too much pride to ask for government assistance, had been financially hurt by drug addicts,

needed micro loans, had problems with money management, had problems with social security and couldn't get financing to repair their homes.

[¶18] The Next Steps current members are Holly Gates, Wonnie Shafer, Leo Gleason, Dick W. Grabar, Dennis Timmons, Sharon Meunch and Elijah Scott. Its business address is 1728 E. Burdick Expressway, P.O. Box 1192, Minot, North Dakota 58702-1102. It's certified Trade Name Registration from the North Dakota Secretary of State is The Next Step and its ID #29,677,500.

[¶19] This case began with the service of the Summons and Complaint on the Defendant, Jamie Redmon. That Summons and Complaint were filed on the 28th day of July, 2014. The Complaint alleged:

a. That the Plaintiff, The Next Step had an estate in the following described real property in the city of Minot, County of Ward, State of North Dakota;

Lot 90 Belmont Addition (commonly known as 1227 7th Ave NE) in the city of Minot, County of Ward, State of North Dakota

b. That the above described real property by quit claim deed dated February 13, 2009 was conveyed to The Next Step an unincorporated non-profit registered in the State of North Dakota by Daniel Foster. Said quit claim deed was recorded with the Ward County Recorder on January 24, 2014 as document number 2960168;

c. That the Defendant, Jamie Redmon claimed an interest in the above described real property by virtue of a quit claim deed from Daniel Foster dated June 13, 2013 and recorded on June 13, 2013 with the Ward County Recorder as

document 2959407.

d. That Defendant, Redmon was not a purchaser in good faith for valuable consideration of the above described property;

e. That Defendant, Redmon had actual or constructive notice of the conveyance of the above described property from Daniel Foster to The Next Step;

f. That The Next Step was entitled to a decree from the Court quieting title in the above described real property.

[¶20] Defendant, Redmon filed a pro se Answer to Plaintiff's request for admissions on November 13, 2014.

[¶21] Plaintiff, The Next Step then brought a Motion for Summary Judgment on December 5th, 2014 and December 8th, 2014 brought a Motion for Default Judgment.

[¶22] Defendant, Redmon then filed an Answer to Summons and Complaint and pleading with Brief in Support of dated December 22, 2014 and filed on December 29, 2014.

[¶23] On January 16, 2015 Jamie Redmons attorney, Stephen P. Welle filed an Answer and Counterclaim, a Response to Plaintiff's Motion to Compel and an Affidavit of Defendant, Jamie Redmon.

[¶24] Plaintiff, The Next Step filed an Answer to Defendant's Counterclaim on March 24, 2015.

[¶25] District Judge Gary H. Lee then sent a letter to Plaintiff's attorney and Defendant's attorney informing them that resolution of this case could be determined by resolution of the issue as to whether an unincorporated association

can hold title to real estate in North Dakota. The letter then requested that both attorneys brief the following issues:

1. Whether an unincorporated association can hold title to real property in North Dakota?
2. Is a conveyance of real property to an unincorporated association void, voidable or merely invalid?
3. If an unincorporated association in North Dakota is not able to hold title to real property are there any exceptions to the rule that might be applicable to this case?

[¶26] The Plaintiff, The Next Steps brief on the above 3 issues was filed on July 7, 2015. The Defendant, Redmon's brief was then filed on July 13, 2015.

[¶27] District Judge Gary H. Lee then ruled in an Order dated August 8, 2015 that an unincorporated association couldn't hold title to real estate in North Dakota and that The Next Steps Complaint was dismissed.

[¶28] Judgment was entered on September 28, 2015. The Notice of Entry of Judgment was entered on September 29, 2015.

[¶29] Defendant then appealed the Judgment on November 24, 2015 and this matter is now before the North Dakota Supreme Court.

ISSUE

[¶30] ISSUE I. Whether an unincorporated association can hold title to real property in North Dakota?

ARGUMENT

[¶31] The judgment in this case granted Defendant/Appellee, Jamie

Redmon's Motion for Summary Judgment pursuant to NDR of Civ Pro 56(b). The Standard of Review for Summary Judgment is set out in *Anderson v. Zimbelman*, 2014 ND 34, 842 NW2d 852:

[¶7] This Court's standard of review for summary judgment is well established:

"Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record."

[¶32] North Dakota Title Standards are prepared and written by a Title Standards Committee of the section of Real Property Probate and Trust Laws. Most of these Standards are based on relevant statutes of the State of North Dakota and decisions of the North Dakota Supreme Court. When there are no North Dakota statutes or North Dakota Supreme Court decisions applicable to a North Dakota Title Standard the Title Standard Committee then looks at other authorities on that title standard and gives its written opinion as to how those authorities apply in North Dakota.

[¶33] The Title Standard involved in the case now before the Court is 2-19. It is entitled *Conveyance To Unincorporated Association* and says "A conveyance

to an unincorporated association does not vest title in such association.”

Below the above standard 2-19 is the authority:

The Authority for 2-19 is Basye, Clearing Land Titles, §- 312 ed. 1970). Patton on Titles, § 406 (2d ed. 1957).

Basye, Clearing Land Titles, § 298 (2d ed. 1970) Patton on Titles, § 405 (2d ed. 1957).

Below the above authority in 2-19 appears the words “But see”

But see: Askew v. Joachim Memorial Hospital, 234 NW2d 226 (ND 1975) re: estoppel of such association to deny its existence; and re: apparent authority in agent to contract for such association; such association may sue and be sued in its own name.

[¶34] The language in Askew says nothing about an unincorporated association holding title to real estate but it does say that an unincorporated association can't deny its existence, its agents can enter into contracts for the unincorporated corporation, and unincorporated associations can sue and be sued.

[¶35] Below the words “but see” in title standard 2-19 appears the words

“Also see:

Also see: Rock Creek Garden Tenants Association v. Ferguson, 404 A.2d 972 (D.C. Ct. App. 1979) discussing remedies created by courts to avoid a harsh result.

[¶36] The following paragraph in Ferguson gives these reasons why an unincorporated association can't hold title to real estate:

A voluntary unincorporated association may be nothing more than individuals joining together based merely on common purpose or interest. See *Hecht v. Malley*, 265 U.S. 144, 157, 44 S. Ct. 462, 68 L. Ed. 949 (1924). Thus, it is a maximum of the common law that, in the absence of statutory authority, such an association has no legal existence independent of those members who comprise the organization. *Venus Lodge No. 62 v. Acme Benevolent Ass'n*, 231 N.C. 522, 526, 58 S.E.2d 109, 112 (1950); Anno., 15 A.L.R.2d 1451 (1951). Such being the case, the association at common law cannot, in its own name, (1) entered into contracts, *Lamm v. Stoen*, 226 Iowa 622, 626, 284 N.W. 465, 467 (1939); (2) take, hold, or

transfer property, *Arnold v. Methodist Episcopal Church South*, 281 Ala. 297, 300, 202 So. 2d 83, 84-85 (1967); *North Little Rock Hunting club v. Toon*, 259 Ark. 784, 793, 536 S.W.2d 709, 713-14 (1976); *Libby v. Perry*, 311 A.2d 527, 531-32 (Me. 1973); *Johnson v. South Blue Hill Cemetery Ass'n*, 221 A.2d 280, 284 (Me. 1966); *In re Estate of Anderson*, 571 P.2d 880, 882 (Okl. App. 1977); or (3) sue or be sued, *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 385, 42 S. Ct. 570, 66 L.Ed. 975 (1922) (court recognized the common law rule, but held that a labor union such as the U.M.W. could be sued in federal court). This common law rule, though not found in the case law of this jurisdiction, has not been abrogated by statute in the District of Columbia.[4]

[¶37] In North Dakota after Askew unincorporated associations in North Dakota can enter into contracts, they can sue or be sued and can't deny their existence. Therefore the North Dakota court's decision in Askew changed the common law that prevented unincorporated associations from entering into contracts from suing or being sued, and denying their existence.

[¶38] In the case now before the court one of the reasons the district judge didn't want to rule in favor of an unincorporated association owning real property is that he believed such a ruling would be legislating and courts aren't supposed to legislate. Since Askew changed parts of the common law regarding legal status of unincorporated associations the district courts can use Askew as precedent for ruling on the legal status of unincorporated association holding title to real property in North Dakota.

[¶39] The following paragraph in Ferguson sets out how some courts have fashioned remedies to avoid the harsh consequences of strict application of the common law as it applies to unincorporated associations holding title to real estate.

In other jurisdictions, in the absence of statutory authority that grants legal status to such an organization, courts have fashioned remedies in certain circumstances that avoid the harsh consequences of the strict application of

the common law rule the voiding of contracts, deeds, gifts, etc. For example, in disputes over real property, one ameliorative approach is to construe the deed to the association as vesting ownership in the individual members. *County of Trinity v. Rourke*, 275 Cal. App. 2d 628, 79 Cal. Rptr. 902 (1969). Another such approach is to ascertain the intent of the donee and appoint a trustee to hold legal title for the use and benefit of the association. In *re Estate of Anderson*, supra (court found that the organization was an unincorporated charitable association and set up a trust in accord with the general philosophy of the *cy pres* doctrine); *Johnson v. South Blue Appellant*, although accepting the common law rule and acknowledging that the rule has not been abrogated by statute in this jurisdiction, invites this court to recognize that such a tenants organization has legal capacity to hold title to land within the meaning of § 602(b), through either the trust arrangement or through individual ownership as tenants in common. We decline appellant's invitation.

[¶40] The problem with the above paragraph in Ferguson is that it ends with the court declining to use any of the remedies to the common law that would have allow unincorporated associations to hold title to real estate. The reason for the decline in Ferguson was statute §602(b) which explicitly requires that the housing accommodations must have “an organization of tenants with the legal capacity to hold real estate”. When this statute was past there was no way the legislators who passed it could envision that these words “an organization of tenants with the legal capacity to hold real estate” would include a trust mechanism where legal capacity to hold real estate would be in a third party trustee.

[¶41] The case now before the court doesn't involve any statute that needs to be interpreted to determine if The Next Step is an organization that is the type required by the statutory definition of an organization of tenants with the legal capacity to hold real estate”. The only question involved in the case now before the court is “will a deed of real property to an unincorporated association in North Dakota vest title to that real property in that unincorporated association ?”.

[¶42] The Next Step is an unincorporated association which was founded in 2005. Its current members are: Holly gates, Wonnie Schafer, Leo Gleason, Dick W. Grabar, Dennis Timmons, Sharon Meunch and Elijah Scott. Its business address is 1728 E. Burdick Expressway, P.O. Box 1192, Minot, North Dakota 58702-1192. It has a Certified Trade Name Registration with the North Dakota Secretary of State and its registration number is #29,677,500. In North Dakota The Next Step after Askew can't deny its existence, can enter into contracts and sue and be sued. Therefore The Next Step meets some of the requirements of other states that have established law that allow unincorporated associations to hold title to real property.

[¶43] In North Dakota there is no North Dakota Statute or North Dakota case law that allows an unincorporated association to hold title to real property. Because there is no North Dakota Statute or Case Law that allows an unincorporated association to hold title to real property the issue of an unincorporated association holding title to real estate is an unsettled issue. In North Dakota the case of Estate of Conley 2008 ND 148, 753 NW2d 384 had to deal with unsettled issues and states: [13]... "until North Dakota adopts a position regarding that issue the law in North Dakota is unsettled." Therefore until the Supreme Court of North Dakota takes a position on whether or not an unincorporated association can hold title to real property the issue of whether an unincorporated association in North Dakota can hold title to real estate will be unsettled.

[¶44] In North Dakota the North Dakota Courts in the past have ruled on

other issues in cases that deal with the common law and how it is applied to unincorporated associations. These rulings establish that the North Dakota courts have decided that parts of the common law no longer apply to unincorporated associations. Since Askew the common law no longer applies to unincorporated associations and their ability to enter into contracts, to sue and be sued, to deny their existence.

[¶45] The following language in Rule 4(d)(D) NDR of Civ. Pro. allows unincorporated associations to be served: “Service must be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association by: delivering a copy of the Summons to an officer, director, superintendent or manager or general agent or partner, or associate, to an agent authorized by appointment or by law to receive service of process in its behalf or to one who acted as an agent for the defendant with respect to the matter upon which the claim of the plaintiff is based and who was an agent for the defendant at the time of service; (emphasis added)”

18. Edwards vs Burke 2004 MT 350 324 Mont 358, 102 P3d 1271 is one example of how another jurisdiction has vested title to real property of an unincorporated association in trust to the members of the unincorporated association. According to Edwards:

[*17] Under common law an unincorporated association cannot own land unless a statute empowers it to do so. Krumbine v. [***1275] Lebanon Tax Claim Bureau (Pa. 1995), 541 Pa. 384, 663 A. 2d 158, 160. Because Montana has no such statute we followed this rule in Winchell, Winchell, 262 Mont. at 335-36, 865 P.2d at 253. There, we were not directly faced with the question of who should be considered the owner in lieu of an unincorporated association, but we adopted the reasoning of a case that addressed that issue, OKC Corp., 574 S.W.2d at 812. However, the court did allow the trustees of the association to hold the property. OKC Corp., 574 S.W.2d at 812. As we recognized in Winchell, although it is often difficult to identify a “legal, identifiable party . . . responsible for liability” when an

unincorporated association purportedly owns property, the presence of “identifiable trustees” of the association makes for a group that can take responsibility for the duties of ownership, and that therefore possess the land in lieu of the association. See Winchell, 262 Mont. at 334-35, 865 P.2d at 253.

[*18] This approach to ownership comports with the rule in many other jurisdictions that do not allow unincorporated associations to own real property. See, e.g., Krumbine, 663 A.2d at 161 (“Legal title to property vests in the trustees of an unincorporated association”); Crane v. Crane (Utah 1984), 683 P.2d 1052, 1067 (“[A] conveyance to an unincorporated association made up of an ascertainable membership will be given effect as a conveyance to the members as individuals.”); Trinity County v. Rourke (Cal. 1969), 275 Cal. App. 2d 628, 79 Cal.Rprt. 902, 904 (concluding that real property deeded to an unincorporated association vested ownership in the association’s members). Generally, the association’s members own the property as tenants in common. Reher v. Rankin (Iowa 1958), 249 Iowa 1201, 91 N.W.2d 399, 403 (“Although members of such an association generally have no severable or transferable interest in its assets, they are regarded as the beneficial owners in common thereof in equal shares”). This is more likely to be the case when the membership is easily ascertainable than when the members are diffuse and no standards are available to identify them. Motta v. Samuel Weiser, Inc., (1st Cir. 1985), 768 F2d 481, 486 (“Without this limitation of an ascertainable membership, the public, or even the members of the association, would not have notice or be cognizant of who claimed ownership in a particular property.”)

20. The following language in Venus Lodge No. 62F. & A.M. et al vs Acme Benevolent Assn 231 NC 522, 58 SE 2d 950 is another example of how another jurisdiction has allowed title to real property vest in an unincorporated association. “A Conveyance to an unincorporated association is not void at common law in this jurisdiction. Since it looks at substance rather than form the common law construes such a conveyance to be a grant to the members of the association, and adjudges that it vests the title to the property embraced by the conveyance in such members as individuals. Robinson v. Daughry, 171 N.C. 200, 99 S.E. 252, Ann. Cas. 1918E, 1186; Daniels v. R.R. 158 N.C. 418, 74 S.E. 331; Walker v. Walker, 139 N.C. 448, 52 S.E. 125, I.L.R.A. (N.S.) 157, III AM. St. Rep. 805; Simmons v. Allison, 118 N.C. 763, 24 S.E. 716; Murray v. Blackledge, 71 N.C. 492, See, also, In this connection: Bryam v. Bickford, 140 Mass. 31, 2 N.E. 687; Beaman v. Whitney, 20 Me. 413. Moreover it is well settled that a conveyance may be made to trustees for the benefit of an unincorporated association, and that in such case the legal title vests in the trustees, who hold the same in trust for the persons composing the association. 7 C.J.S., Associations, [***11] section 14, after association 58 SE2d 109 (NC 1950).”

[¶46] In the case now before the court the district judge in his order ruled

that North Dakota Title Standard 2-19 (2-19) provides clear guidance to attorneys preparing title opinions that no title to real estate in North Dakota can vest in an unincorporated association. Such a ruling fails to consider that 2-19 isn't supported by any North Dakota statute or case law. It also fails to consider that even the committee who wrote North Dakota Title Standard 2-19 weren't completely satisfied with it. This dissatisfaction appears after the authority in 2-19 where it is suggested any one reading 2-19 should also consider Askew and Ferguson and that a business trust or real estate trust is a valid business organization capable of owning and conveying real property.

[¶47] The following additional problems with allowing title to real property to vest in an unincorporated association are found in the trial judges order:

1. Allowing title in real property to vest in North Dakota in unincorporated associations would involve costly and time consuming investigation.
2. It is difficult to know who can bind an unincorporated association.
3. A court ruling that an unincorporated association in North Dakota can hold title to real property would be legislating and the North Dakota Supreme Court says district judge shouldn't legislate.

[¶48] The Next Step response to the above additional problems is:

1. It doesn't cost much or take much time to call a witness who is a member of The Next Step and have him or her testify who are members of The Next Step, who are the trustees of The Next Step and who can speak for The Next Step.
2. Askew settled the problem of who can bind The Next Step.

3. Cases like Askew are precedent that District Courts in North Dakota can rule on the legal status of unincorporated associations,

CONCLUSION

[¶49] North Dakota Courts in the past have decided that unincorporated associations in North Dakota:

- 1) Can't deny their existences;
- 2) Can enter into contracts; and
- 3) Can sue and be sued.

[¶50] These decisions have made unincorporated associations legal entities that can do anything but hold title to real property. It is time for the courts to make one more decision about unincorporated associations and that is that unincorporated associations can hold title to real property in North Dakota.

[¶51] This case should be remanded to the district with an order that Defendant's summary judgment should have denied, that an order be entered and that title to real property in North Dakota can vest in an unincorporated association and this case should be tried.

Dated this 28th day of December, 2015.

/s/ Benjamin C. Pulkrabek
Benjamin C. Pulkrabek, ID# 02908
Attorney for Plaintiff/Appellant
402 First Street NW
Mandan, ND 58554
(701)663-1929
Pulkrabek@lawyer.com

