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Real Property - Intent of the Parties - The Focal Point of Interpreting the Installment Land Contract - McKone v. Guetzgen

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REAL PROPERTY-Intent Of The Parties-The Focal Point of Interpreting The Installment Land Contract. *McKone v. Guertzgen*, 811 P.2d 728 (Wyo. 1991).

In May of 1981, Appellant Robert O. McKone agreed to sell certain real property located in Thermopolis, Wyoming, to Melvin and Claudia Guertzgen.[1] The parties entered into an installment land contract,[2] whereby the Guertzgens agreed to pay McKone a total of $100,000 for the property. The agreement required the Guertzgens to make a down payment of $40,000, with the balance to be paid to McKone in ten annual installments of $6000 each, plus interest.[3] Under the terms of the agreement, the Guertzgens were entitled to possession of the property, while the title was to remain in escrow in the name of McKone until all payments had been made in accordance with the contract.[4]

After taking possession, the Guertzgens converted the property from a gas station to a liquor store and lounge.[5] In December of 1989, with 18 months remaining on the contract,[6] the parties received a letter from the Thermopolis Fire Marshal, ordering the removal of underground gasoline storage tanks located on the property.[7] The parties were unable to reach an agreement as to who should be responsible for the removal of the tanks.[8]

The Guertzgens failed to pay the installment which came due in June, 1989,[9] after which McKone threatened to declare a default on

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1. Brief of Appellant at 2, McKone v. Guertzgen, 811 P.2d 728 (Wyo. 1991)(No. 90-247)[hereinafter Brief of Appellant].

2. Also known as a contract for deed. *See infra* text accompanying notes 27-49.

3. Brief of Appellant, *supra* note 1, exhibit "A" para. 1.

> The purchase price for the . . . real property, together with the improvements thereon, is $100,000.00 (One Hundred Thousand Dollars), payable as follows: A. $1,000.00 was paid March 15, 1981, receipt of which is acknowledged by Seller. B. $39,000.00 payable June 15, 1981. C. $60,000.00 payable in ten annual installments, together with interest at a rate of 12% (twelve percent) Per annum on all balances owing from time to time, beginning June 15, 1982. . . .

Id.

4. *Id.*

5. Brief of Appellant, *supra* note 1, at 2.

6. By December of 1989, the Guertzgens had paid principle and interest totalling $117,280 to McKone. The balance due on the property was approximately $12,000. Brief of Appellant, *supra* note 1, exhibit G.

7. Brief of Appellant, *supra* note 1, at 2. The fuel tanks were the remnants of the property's prior use as a gasoline station. The fuel tanks were no longer in use at the time the parties entered into the contract. *See infra* text accompanying notes 88-91.

8. Brief of Appellant, *supra* note 1, at 2.

9. *Id.* at 1. The record is unclear as to why the Guertzgens failed to make the 1989 payment. In his dissent, Justice Urbigkit implied that the payment was withheld as a result of the dispute over removal of the tanks. *McKone*, 811 P.2d at 731. However, the Fire Marshal did not notify the parties about the fuel tank problem until December 1989, six months after the payment presumably should have been made. Brief of Appellant, *supra* note 1, at 2.

the contract if payment was not made.[10] In response, the Guertzgens filed a complaint in the Fifth Judicial District for the County of Hot Springs, asking the court to enjoin McKone from declaring a default on the contract pending a resolution as to responsibility for removal of the fuel tanks.[11] On January 31, 1990, the district court granted a temporary restraining order, but required the Guertzgens to deposit the delinquent 1989 payment with the court pending a resolution of the dispute.[12]

On February 28, 1990, the district court issued an order stating: "If the court finds the Defendant [McKone] is the owner of the property which is the subject of an Agreement for Warranty Deed between the Plaintiffs and Defendant . . . [t]he Defendant shall pay for the removal of the underground storage tanks . . . ."[13] The parties then submitted memoranda, exhibits, and a set of stipulated facts to the district court.[14] The Guertzgens argued that because McKone was the legal owner of the property, he should bear the cost of compliance with the Fire Marshal's order.[15] McKone contended that under the terms of the Uniform Fire Code, the Guertzgens were the "owners" of the property and thus responsible for bringing the land into compliance with the code.[16] The district court framed the issues as follows: "[W]ho are the owners of the property and who must bear the responsibility and expense of removing the underground storage tanks and restoring the property."[17] The district court ruled:

> [T]he Plaintiffs have an equitable interest in the real property which is the subject of this dispute . . . . [T]he Defendants have the legal interest in the property since they are the ones who can mortgage, convey or otherwise encumber the property. . . . [T]he legal title of the property does not pass from the Defendants until the full purchase price has been paid, which has not occurred in this case.[18]

The district court then concluded: "The Defendants are the legal owners of the subject property . . . and are the party responsible for

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10. Brief of Appellant, *supra* note 1, exhibit G.
11. Brief of Appellant, *supra* note 1, at 1.
12. *Id.*
13. *Id.* exhibit C.
14. *Id.* exhibit D. The parties stipulated, *inter alia*, as follows: "[P]rior to May 9, 1981, the underground storage tanks had been decommissioned by a prior Contract for Deed person, not the the [sic] Plaintiffs or the Defendant, and have not been used since that time. 2. That the underground storage tanks were not used after May 9, 1981." *Id.*
15. *McKone*, 811 P.2d at 729.
16. Brief of Appellant, *supra* note 1, exhibit G. *See infra* note 24 and accompanying text.
17. Brief of Appellant, *supra* note 1, exhibit G.
18. *Id.*

compliance with the removal of the underground tanks."[19]

McKone filed a motion to reconsider, upon which the district court again ruled that McKone was the legal owner of the property and was responsible for removal of the storage tanks.[20] McKone then filed an appeal with the Wyoming Supreme Court, presenting, *inter alia*,[21] the following issues:

> 1. Whether the District Court erred when it looked beyond the Contract for Deed to determine the responsibilities of the parties as to the Fire Marshal's request to remove underground fuel storage tanks? 2. Whether the District Court erred when it looked beyond the Contract for Deed and the Fire Code to determine the responsibilities of the parties as to [sic] Fire Marshal's request to remove underground fuel storage tanks?[22]

In a three-two decision, the Wyoming Supreme Court held that the agreement of the parties did not address responsibility under the circumstances, thus entitling the court to look "elsewhere".[23] The court turned to the language of the Uniform Fire Code,[24] and concluded that according to the Code, both McKone and the Guertzgens

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19. *Id.*

20. Brief of Appellant, *supra* note 1, exhibit F. In the order, the district court judge stated: "The Court, after hearing the arguments of counsel on the Motion for Reconsideration filed by the Defendant, finds: 1. The decision of the Wyoming Supreme Court in Olds v. Little Horse Creek Cattle Co., 140 P. 1004 (1914) controls in this case; and 2. That the Defendant is the owner of the property."

21. McKone presented two additional issues to the court:

> 3. Whether the District Court erred when it relied upon Olds v. Little Horse [Creek] Cattle Co.,[22 Wyo. 336, 140 P. 1004, (1914)] as authority when it determined the responsibilities of the parties as to the Fire Marshal's request to remove underground fuel storage tanks? 4. Whether Olds v. Little Horse Cattle Co. . . . should be overruled if it is determinative of the responsibilities of parties as to contracts for deed between individuals?

McKone, 811 P.2d at 729.

22. *McKone*, 811 P.2d at 729.

23. *Id.* at 729-30.

24. The relevant provision of the Code reads:

> Any order or notice issued or served as provided in this code shall be complied with by the owner, operator, occupant or other person responsible for the condition or violation to which the order or notice pertains. In cases of extreme danger to persons or property immediate compliance shall be required. If the building or other premises is owned by one person and occupied by another, under lease or otherwise, and the order or notice requires additions or changes in the building or premises such as would immediately become real estate and be the property of the owner of the building or premises, such order or notice shall be complied with by the owner unless the owner and occupant have otherwise agreed between themselves, in which event the occupant shall comply.

Uniform Fire Code Sec. 3.102 (1979).

The Code defines "owner" as follows: "OWNER includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary and a person having vested or contingent interest in the property in question." Uniform Fire Code Sec 9.117 (1979).

were "owners" of the property.[25] However, because McKone owned the property when the fuel tanks were abandoned, the court held that McKone should bear the cost of the removing the tanks.[26]

This casenote briefly examines the installment land contract and its treatment by the Wyoming Supreme Court. It then discusses basic rules of contract interpretation as established by Wyoming case law, with emphasis placed on the method and importance of establishing the intent of the contracting parties. Finally, it evaluates the court's application of the principles of contract interpretation to the installment land contract at the center of the dispute in *McKone v. Guertzgen*.

BACKGROUND

The Installment Land Contract

The installment land contract is the most commonly used substitute for a mortgage,[27] and often allows a person who does not qualify for traditional bank financing to purchase property.[28] In the typical installment land contract, the seller (as opposed to a commercial lender) finances the purchase of property by allowing the buyer to pay for the property in installments. The buyer is usually entitled to immediate possession of the property, while legal title remains in the name of the seller until the entire purchase price has been paid.[29] Aside from the seller retaining legal title, the oft cited difference between the installment land contract and the mortgage is "the ease and economy by which the purchaser's interest may be eliminated in the event of his default."[30]

When the buyer defaults on an installment land contract, traditional remedies allow the vendor to sue "(1) for the installments which are due with interest thereon; (2) for specific performance of the contract; (3) for damages for the breach; (4) to foreclose his vendee's rights; (5) to quiet title; or if he should desire, he may merely

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25. *McKone*, 811 P.2d at 730.

26. *Id.*

27. GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 3.26 (2d ed., lawyer's ed. 1985).

28. Jeffrey W. King, Comment, *Forfeiture: The Anomaly of the Land Sale Contract*, 41 ALB. L. REV. 71, 75 (1977). *See also* BAXTER DUNAWAY, THE LAW OF DISTRESSED REAL ESTATE § 10.02 (1988).

29. NELSON & WHITMAN, supra note 27, § 3.26. The Wyoming Supreme Court characterized this difference as follows: "The fundamental difference distinguishing a mortgage from an installment land contract, at least in states applying a lien theory to mortgages, is that, in a mortgage, fee has vested in the purchaser/mortgager." Metropolitan Mortgage & Sec. Co. v. Belgarde, 816 P.2d 868, 872 (Wyo. 1991)(quoting Cliff & Co., Ltd. v. Anderson, 777 P.2d 595, 601 (Wyo. 1989)).

30. King, *supra* note 28, at 74.

rescind the contract."[31] Of these options, the suit to quiet title is commonly preferred.[32] The other remedies are disfavored by the vendor for two reasons: first, they often involve time consuming litigation, a pitfall the vendor is presumably trying to avoid by using the installment land contract.[33] Second, remedies such as damages for breach and specific performance are based on the assumption that the vendee has sufficient assets available to satisfy a money judgement.[34] However, the nature of the installment land contract as a low equity method of purchase (often utilized by low-income vendees unable to qualify for conventional financing) calls this assumption into question.[35]

The action to quiet title "is usually an outgrowth of the vendor's claim to his purported rights under a forfeiture clause."[36] This forfeiture clause, contained in most installment land contracts, provides that upon failure to make timely payment, the seller has the right, with or without due process of law, to declare the contract void, take immediate possession of the property, and hold payments previously made as either liquidated damages or rent.[37] Based on such a clause, the buyer under an installment land contract, unlike a mortgagor, may have no right of redemption after default.[38] Indeed, the installment land contract is notorious for visiting harsh results upon the unfortunate buyer who falls behind on his or her payments.[39]

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31. Grant S. Nelson and Dale A. Whitman, *The Installment Land Contract-A National Viewpoint*, 1977 B.Y.U. L. REV. 541, 542 (1977) (citing Terence C. Porter, Comment, *Installment Contracts for the Sale of Land in Missouri*, 24 MO. L. REV. 240, 243 (1959)).

32. *Id.*

33. Nelson & Whitman, *supra* note 27, § 3.26.

34. Id. § 3.32.

35. See King, *supra* note 28, at 75.

36. Nelson and Whitman, *supra* note 31, at 542.

37. *Id.* For example, the forfeiture clause contained in the *McKone* contract read:

> [I]n the event Buyer fails to rectify and remedy [delinquency] within 60 days after written notice is mailed . . . Seller shall have the right to declare this contract ended and null and void and of no further force and effect and to enter upon the premises andtake [sic] immediate possession thereof, with or without due process of law, and to recover by distress or otherwise upon the premises all interest which shall have accrued upon this contract up to the date of declaring it void and declare all payments made to such date to be rent for the use and occupation of the premises and property of the Seller . . . .

Brief of Appellant, *supra* note 1, exhibit A para 15.

38. Wyoming is a "lien theory" mortgage state, providing by statute that a mortgagor has a right of redemption after foreclosure. WYO. STAT. § 1-18-103(a) (1987).

39. A commentator illustrated the problem with several examples, including the following:

> An elderly couple in Binghamton, unable to obtain a conventional mortgage, bought their home under a land sale contract. Nine years later, experiencing temporary financial problems, they fell a month behind in their payments. As a result, they lost the home and all they had invested in it.
>
> A mother of three, on welfare, could not resist the opportunity to be a homeowner and signed a land contract to purchase a run-down home in Schenectady. After four years of meeting her monthly payments and repairing the heating and plumbing at great expense, she became unable to meet her monthly installments.

The Installment Land Contract In Wyoming

Wyoming "is one of the states where a seller is most likely to be able to enforce a forfeiture clause in an installment land contract"[40] The general approach of the Wyoming Supreme Court has been to treat the installment land contract like any other contract.[41] Consequently, installment land contracts in Wyoming have traditionally been enforced according to their terms.[42] The court has stated that under certain conditions, an equitable mortgage may be found, based on the intent of the parties: "[I]n order for a court to find a mortgage, it must be shown that the parties intended a mortgage transaction rather than an installment land contract; i.e., there must have been an intent to create a security, as construed from the written agreement and the surrounding circumstances."[43]

The Wyoming Supreme Court's conclusion on the question of intent may have a profound impact on the outcome of a case.[44] If the court determines that the parties intended to create a mortgage, both buyer and seller are bound by the terms of the bilateral contract; a deficiency judgment and specific performance are thus available to the seller, and the buyer is protected from forfeiture provisions, which are unenforceable.[45] Conversely, an installment land contract is considered a unilateral contract, whereby an obligation is "unilaterally placed on the seller only upon the occurrence of certain non-mandatory acts by the buyer. . . ."[46] This analysis not only limits the seller's remedy to the enforcement of the forfeiture provision,[47] but also prevents application of the doctrine of equitable conversion, which is inapplicable to the unilateral contract.[48] Of course, the role of the

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Consequently, she forfeited not only all the installments made, but the money she had invested in improvements.

King, *supra* note 28, at 72.

40. BAXTER DUNAWAY, THE LAW OF DISTRESSED REAL ESTATE app. 10A at 10-63 (1988).

41. *See* Angus Hunt Ranch, Inc. v. Reb, Inc., 577 P.2d 645 (Wyo. 1978); Baldwin v. McDonald, 156 P. 27 (1916).

42. George Santini, Casenote, *Real Estate Finance-Installment Land Sale Contracts: Avoiding The Harshness of Forfeitures. Barker v. Johnson, 591 P.2d 886 (Wyo. 1979)*, 15 Land & Water L. Rev. 773, 776 (1980). *See also* Quinlin v. St. John, 201 P. 149 (Wyo. 1921).

43. Metropolitan Mortgage & Sec. Co. v. Belgarde, 816 P.2d 868, 872 (Wyo. 1991)(quoting Cliff & Co., Ltd. v. Anderson, 777 P.2d 595, 601 (Wyo. 1989)).

44. *Id.*

45. *Id.*

46. *Id.* at 873. *See also* Olds v. Little Horse Creek Cattle Co., 140 P. 1004 (1914).

47. *Metropolitan*, 816 P.2d at 872. This reasoning is based on the notion that remedies such as specific performance or damages for breach are the products of the mutually binding bilateral contract, and are inapplicable to the unilateral contract. *Id.*

48. *Olds*, 140 P. at 1007. The doctrine of equitable conversion

> determines in equity the rights of the parties . . . and the rule is itself but the consequence of the familiar doctrine of the courts of equity that for many purposes things to be done are treated as if they were actually done, and necessarily refers to a valid contract - one binding upon both parties, containing not only an obligation

parties' intent is not limited solely to determining whether an installment land contract is unilateral or bilateral; intent is also critical in the resolution of disputes regarding the construction and application of contracts in general.[49] Because the rules of contract interpretation play a pivotal role in the resolution of any contract dispute regarding property, including the installment land contract, we now turn to an examination of the rules of contract interpretation in Wyoming.

Contract Interpretation In Wyoming

The rules of contract interpretation in Wyoming are well established[50] and often repeated.[51] The primary rule of contract interpretation in Wyoming was concisely stated in *True Oil Co. v. Sinclair Oil Corp.*: "The determination of the parties' intent is our prime focus in construing or interpreting a contract."[52]

The Wyoming Supreme Court's method of determining intent can be summarized as follows. If the agreement between the parties is in writing, *and* if the language is clear and unambiguous,[53] the court will focus on the language of the contract.[54] Accordingly, the scope of the court's examination will generally not extend beyond the four corners of the agreement.[55]

On the other hand, if the court finds the contract to be ambiguous, the intent of the parties may be determined by extrinsic evidence.[56] This evidence may include the context in which the contract

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on the part of the vendor to convey upon payment of the purchase price, but an obligation on the part of the vendee to purchase and pay the money, *and has no reference to a mere option to purchase or to complete the purchase.*

Id. (emphasis added).

Equitable conversion, in many cases, allocates the risk of loss to realty during the executory stage of a land transaction (the period between execution of a contract and transfer of title) to the buyer. *See* Randy R. Koenders, Annotation, *Risk of Loss by Casualty Pending Contract for Conveyance of Real Property- Modern Cases*, 85 A.L.R. 4th 233, 238 (1991). For a discussion of whether the doctrine of equitable conversion should be applied to the installment land contract, *see In re* Estate of Ventling, 771 P.2d 388 (Wyo. 1989).

49. True Oil Co. v. Sinclair Oil Corp., 771 P.2d 781, 790 (1989).

50. *Id.* at 790.

51. State v. Pennzoil Co., 752 P.2d 975, 978 (Wyo. 1988).

52. 771 P.2d 781, 790 (Wyo. 1989), (citing State v. Moncrief, 720 P.2d 470 (Wyo. 1986)); Amoco Production Co. v. Stauffer Chemical Co. of Wyoming, 612 P.2d 463 (Wyo. 1980). *See also* State v. Pennzoil Co., 752 P.2d 975, 978 (Wyo. 1988)(The purpose of interpretation or construction of any contract is to ascertain the true intent of the parties.)

53. "An ambiguous contract is one 'which is obscure in its meaning because of indefiniteness of expression or because of a double meaning being present.'" True Oil Co. v. Sinclair Oil Corp., 771 P.2d at 790 (quoting Farr v. Link, 746 P.2d 431 (Wyo. 1987)).

54. Nelson v. Nelson, 740 P.2d 939, 940 (Wyo. 1987).

55. Rouse v. Munroe, 658 P.2d 74, 77 (Wyo. 1983). *See also* Holst v. Guynn, 696 P.2d 632, 634 (Wyo. 1985).

56. True Oil Co. v. Sinclair Oil Corp., 771 P.2d at 790.

was written, including the subject matter and purpose of the contract.[57] The use of context as an aid in interpretation is strictly limited, however, to ascertaining intent, and cannot be used "to contradict the clear meaning of the language used."[58]

As indicated above, these rules appear frequently in Wyoming contract case law. While space does not permit a discussion of numerous specific cases, perhaps one example will serve to illustrate the typical application of the rules discussed above. The case that follows is factually unrelated to *McKone;* however, the legal principles are analogous.

In *Rouse v. Munroe,*[59] the parties asked the Wyoming Supreme Court to construe the terms of a contract relating to an easement. The original agreement allowed Rouse, the owner of the dominant estate, to build a dam, which upon completion, would "cause water in the reservoir to be upon a portion of the land of . . . [Munroe] . . . estimated at approximately 10 acres, more or less."[60] A separate clause in the contract stated that the "high water level of said dam will be seventeen (17) feet above the creek bottom at the dam site . . . ."[61] After the dam was constructed and the reservoir was filled, Munroe discovered that instead of inundating the ten acres as estimated in the agreement, the dam actually inundated 15.2 acres. Munroe brought suit to enjoin Rouse from flooding any more than ten acres of his land, arguing that this was the amount agreed to in the contract. Predictably, Rouse responded that the clause referring to the seventeen foot water level controlled the dispute, and that the contract's reference to ten acres was simply an estimate.[62]

Both parties argued that the easement agreement was clear on its face, and that the intent of the parties could be determined within the four corners of the contract.[63] The court disagreed, stating, "[f]rom our viewpoint, the language contained in the easement agreement can be read in two ways. . . . Given this double meaning, we believe it is necessary to resort to extrinsic evidence in order to determine the actual intent of the contracting parties."[64]

The court then examined evidence presented by Rouse that at the formation of the contract, neither party cared about how much

57. State v. Pennzoil Co., 752 P.2d 975, 978 (Wyo. 1988) (citing Cheyenne Mining & Uranium Co. v. Federal Resources Corp., 694 P.2d 65 (Wyo. 1985); Dawson v. Meike, 508 P.2d 15 (Wyo. 1973)).

58. State v. Pennzoil Co., 752 P.2d 975, 978 (Wyo. 1988).

59. 658 P.2d 74 (Wyo. 1983).

60. *Id.* at 76. The original agreement was between Rouse and Munroe's predecessor in title. *Id.*

61. *Id.* at 76.

62. *Id.*

63. *Id.* at 78.

64. *Id.*

land would be inundated, but that both parties were "more than happy to have the water" as a dependable supply of water for stock.[65] The court also discussed the use of the words "more or less" as used to described the amount of flooded acreage, and held that clause was "merely an estimation."[66] The court concluded, "[r]ead together, the provisions . . . contemplate the creation of an easement for the formation of a reservoir with a high-water level of seventeen feet . . . The intent of the parties was to provide for a source of stock water rather than to grant an easement for a specified number of acres."[67]

The court's analysis in *Rouse* is typical of the analysis applied in disputes requiring contract interpretation. The *Rouse* court stated this succinctly when it observed: "[A]ll we must do in this case is determine the *intent* of the parties as embodied in the instrument, just as we are asked to do *in any other case involving the construction of a contract.*"[68] This statement sets the stage for an examination of *McKone v. Guertzgen.*[69]

PRINCIPAL CASE

In *McKone v. Guertzgen,* McKone asked the Wyoming Supreme Court to determine "[w]hether the District Court erred when it looked beyond the Contract for Deed to determine the responsibilities of the parties as to [sic] Fire Marshal's request to remove underground fuel storage tanks?"[70] In essence, McKone's appeal asked the court to examine the language of the installment land contract to determine whether its terms were sufficiently clear to assign responsibility for removal of the fuel tanks.[71]

McKone based his appeal on the threshold premise that the terms of the contract were clear and unambiguous, thereby requiring the court to apply the terms as written.[72] Accordingly, McKone argued, "[t]he responsibilities of the parties should first be determined from the four corners of their contract."[73] He then directed the court's attention to what he called a "very specific"[74] clause in the agreement

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65. *Id.*
66. *Id.*
67. *Id.* at 79.
68. *Id.* at 77 (emphasis added).
69. 811 P.2d 728 (Wyo. 1991).
70. *Id.* at 729. McKone presented other issues, which were not reached by the court and thus are irrelevant to this discussion. *See supra* note 21.
71. Brief of Appellant, *supra* note 1, at 3.
72. McKone cited Rainbow Oil Co. v. Christmann, 656 P.2d 538 (Wyo. 1982) and Arnold v. Mountain West Farm Bureau. Mut. Ins. Co., 707 P.2d 161 (Wyo. 1985) as support for his premise.
73. Brief of Appellant, *supra* note 1, at 3.
74. *Id.* McKone also alluded to "an entire paragraph which states that the seller . . . is not to be liable to anyone for anything that affects the property sold." *Id.*

that required the Guertzgens to pay all repair bills in connection with the property.[75] McKone reasoned that the removal of the fuel tanks was a "repair" consistent with the specific terms of the agreement, and that the Guertzgens should therefore pay to have the tanks removed.[76]

Citing *Fuchs v. Goe*,[77] the Guertzgens responded that "agreements to make repairs do not make a party an insurer."[78] They also argued that "the removal of underground storage tanks is more than just a repair. The removal of storage tanks is a major improvement to the property."[79]

The majority, without further explanation, found that the provisions cited by McKone did not address the "particular contingency" (the removal of the fuel tanks) and looked "elsewhere" to determine responsibility for removal of the tanks.[80] The court then examined McKone's alternative contention that the Guertzgens "best fit the Code's[81] definition of the person responsible for the abandoned tanks."[82] The majority acknowledged that the Guertzgens fit the Code's definition of owner because "their equitable interest in the property is also a contingent interest, which the code includes under the definition of owner."[83] However, they held that McKone also fit the code's definition of owner, since according to the agreement, he was to hold the title until all payments had been made.[84] The court also concluded that "[u]ntil there has been a conveyance of the warranty deed, McKone continues to hold legal title and remains the legal owner of the property."[85]

Having held that both the Guertzgens and McKone were the owners of the property according to the Uniform Fire Code, the court turned to the language "or other person responsible for the condition or violation" found in Uniform Fire Code section 3.102 to determine

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75. *Id.* The clause referred to by McKone reads:
Buyer agrees to keep and maintain said real property and the improvements thereon in a good condition, and does agree to pay all utilities as the same become due and to pay all repair bills and other bills in connection with the said real property, whereby no liens can accrue or be filed against said real property.
Id. exhibit A para. 4.
76. Brief of Appellant, *supra* note 1, at 3.
77. 163 P.2d 783 (Wyo. 1945).
78. Brief of Appellee at 5, McKone v. Guertzgen, 811 P.2d 728 (Wyo. 1991)(No. 90-247).
79. *Id.*
80. *McKone*, 811 P.2d at 730.
81. *See supra* note 24.
82. *McKone*, 811 P.2d at 730.
83. Id. *See supra* note 24.
84. *Id.*
85. *Id.*

who was "responsible for the condition or violation."[86] The court concluded that based on this language, "who owned the property when the tanks were abandoned is an important factor in fixing the liability for removal" of the tanks.[87]

The court then focused on what they called "a confusingly worded stipulation,"[88] wherein the parties agreed that "prior to May 9, 1981,[89] the underground storage tanks had been decommissioned by a prior Contract for Deed person, not the the [sic] Plaintiff or the Defendant, and have not been in use since that time."[90] The court interpreted this to mean that McKone was the vendor of the property when the tanks were abandoned under a previous installment land contract. The court conceded: "It may be that the person most responsible for the abandonment of the tanks (the previous purchaser under contract for deed) is not a party to this action. Nonetheless" the court concluded, "given the facts and the parties now before us, we hold that McKone is the party responsible for the removal of the tanks because he was the owner of the property when they were abandoned."[91]

In dissent, Justice Urbigkit argued that the Guertzgens bought the property "as is, where is", and that no warranties existed to place responsibility on McKone for the removal of the tanks.[92] Urbigkit charged that the majority assessed responsibility with an incomplete record which did not accurately advise when the filling station usage was discontinued or necessarily who owned the property at the time.[93] He also dissented in disinclination to "continue the fiction of ownership derived from the antiquated differentiation between a note and mortgage security interest and the installment sale contract as another real estate purchase price security device. [He] would just abandon the artificiality of the fiction, no matter how long matured in legal dialogue."[94] Justice Urbigkit concluded that the "owner" of the premises should be the person with the right to possess the property, as opposed to the holder of the security device for payment of purchase money.[95]

Justice Golden also dissented, arguing that the terms of the contract were unambiguous, and that while the specific provisions cited

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86. *Id.* This portion of the Uniform Fire Code reads: "Any order or notice issued or served as provided in this code shall be complied with by the owner, operator, occupant *or other person responsible for the condition or violation* to which the order or notice pertains." Uniform Fire Code Sec. 3.102 (1979)(emphasis added).

87. *McKone*, 811 P.2d at 730.

88. *Id.*

89. This was the day the installment land contract was signed by the parties. *Id.*

90. *McKone*, 811 P.2d at 730.

91. *Id.*

92. *Id.* at 731 (Urbigkit, C.J., dissenting).

93. *Id.*

94. *Id.* at 732 (footnote omitted).

95. *Id.*

by McKone did not allocate the removal costs to the Guertzgens, those provisions "evidence the intent of the parties that the Guertzgens would shoulder all responsibilities connected with the property when they assumed possession."[96] Golden also argued that the contract assigned responsibility for compliance with laws to the Guertzgens "where it states that buyer agrees to purchase and take the property SUBJECT TO easements, reservations and restriction of record and to Zoning *and other laws.*"[97]

ANALYSIS

When property is transferred from seller to buyer subject to an installment land contract, who bears responsibility for bringing the land into compliance with laws which arise after the agreement is entered into but before the final payment has been made? Unfortunately, the law in Wyoming remains confusing and unsettled regarding this issue.

In *McKone,* the majority had an ideal opportunity to clarify the law in this area. Instead, the majority avoided this critical issue with a formalistic interpretation of a phrase from the Uniform Fire Code. In so doing, the court overlooked the basic premise of contract interpretation as established by Wyoming case law: "The determination of the parties' intent is our prime focus in construing or interpreting a contract."[98] The following is an analysis of the *McKone* case in light of Wyoming case law regarding contract interpretation.

Intent Of The Parties

As noted above, when a dispute arises requiring the court to interpret a contract, the goal of the court is to ascertain the true intent of the parties.[99] When the writing is unambiguous, the intention of the parties is to be ascertained from the words of the agreement.[100] Further, when establishing the parties' intent, the writing should be examined in its entirety. This should include an analysis of the various parts of the contract, taking into account relationships and interplay between the various parts.[101] In analyzing the agreement in *McKone*, the majority made no inquiry into the intention of the parties as to who should bear responsibility for an unanticipated event such as the

96. *Id.* at 733 (Golden, J., dissenting).
97. *Id.* (emphasis in original).
98. True Oil Co. v. Sinclair Oil Corp., 771 P.2d 781, 790 (Wyo. 1989).
99. State v. Pennzoil Co., 752 P.2d 975, 979 (Wyo. 1988).
100. True Oil Co. v. Sinclair Oil Corp., 771 P.2d 781, 790 (Wyo. 1989) (citing Nelson v. Nelson, 740 P.2d 939, 940 (Wyo. 1987)).
101. *Id.*

removal of the fuel tanks.[102] An examination of the *McKone* contract illustrates the important role that such an inquiry might have played had it been properly made.

The McKone Contract

In his dissent, Justice Golden brought to light what is perhaps the most persuasive single provision indicating an intention that Guertzgens should bear the responsibility of compliance with laws affecting the property: "The agreement assigns this responsibility to the Guertzgens where it states that buyer agrees to purchase and take the property SUBJECT TO easements, reservations and restrictions of record and to zoning *and other laws.*"[103]

While the provisions cited by McKone regarding the Guertzgen's obligation to "pay all repair bills and other bills in connection with said real property"[104] are not conclusive standing alone, when considered in relationship to the various other parts of the agreement, they lend strength to Justice Golden's dissent. The existence and repetition of different individual clauses assigning responsibility to the Guertzgens for various future and unforeseeable occurrences lends strength to an argument that the parties mutually intended the Guertzgens to assume liabilty for problems such as the removal of the tanks. For example, all taxes levied against the property were to be paid by the Guertzgens.[105] In addition, a separate clause requires the Guertzgens to "purchase and maintain insurance" on the property for protection against "fire and other casualty."[106] Still another clause excuses McKone from liability for injury to the buyer and or other persons while on the property.[107] When considered along with the explicitly

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102. McKone v. Guertzgen, 811 P.2d 728, 729-30 (Wyo. 1991). The majority's entire treatment of the issue of intent reads as follows:

> McKone contends that the provisions in the parties agreement for repair and risk of loss impose the responsibility for the removal of the tanks upon the Guertzgens. Neither of these provisions, however, address this particular contingency. Thus, we look elsewhere to determine the responsibility for the removal of the tanks.

Id. at 730.

103. *Id.* at 733 (Golden, J., dissenting)(emphasis in original). The full provision reads:

> IN CONSIDERATION of the covenants and agreement of the respective parties hereto, as hereinafter set forth, Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and take from seller the following described real property, to-wit:[legal description of property] Town of Thermopolis, Hot Springs County, State of Wyoming, together with the improvements thereon and appurtenances thereunto pertaining, SUBJECT TO easements, reservations, and restrictions of record and to Zoning and other laws . . . .b

Brief of Appellant, *supra* note 1, exhibit A (emphasis in original).

104. Brief of Appellant, *supra* note 1, exhibit A para. 4-5.

105. *Id.* para. 6. It seems clear that had local laws changed requiring a substantially higher tax to be paid on the property, the Guertzgens would have been obligated under the agreement to pay the higher tax rate.

106. *Id.* para. 12.

107. *Id.* para. 13.

stated clause that the Guertzgens purchased the property subject to local law,[108] these provisions indicate the parties' intent that the Guertzgens would bear responsibility for risk of loss to the property, including the responsibility for compliance with local law.[109] Further, Guertzgen's counsel failed to point to any specific provision of the agreement that might have assigned responsibility to McKone for the removal of the tanks. Instead, their argument centered upon the language of the Uniform Fire Code, a statute completely unrelated to the agreement of the parties and thus irrelevant as an indicator of their intention. The language of the contract, when considered as a whole, lends considerable weight to the argument that the parties intended the Guertzgens to bear the financial burden of keeping the property in compliance with local law. Additionally, a separate but related analysis based on the terms of the contract might have established that the contract was an equitable mortgage, not an installment land contract. This analysis, while alluded to by Justice Urbigkit in his dissent, was never addressed by the court. The following discussion outlines that analysis.

Intention Of The Parties: Installment Land Contract or Equitable Mortgage?

As noted earlier,[110] the consideration of whether a transaction constitutes an installment land contract or an equitable mortgage is of critical importance in determining the rights and obligations of the parties under a contract for the sale of land.[111] For example, if the transaction is considered to be an equitable mortgage, the doctrine of equitable conversion might apply.[112] This could have had profound consequences on the court's decision as to who was the owner of the

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108. *See supra* note 103.

109. In addition to the above, the majority's holding in *McKone* is potentially at odds with the Uniform Vendor Purchaser Act and the law in other jurisdictions. *See* Rustic Hills Shopping Plaza, Inc. v. Columbia Sav. and Loan Ass'n., 661 P.2d 254, 256 (Colo. 1983), where the Supreme Court of Colorado commented that "the purchaser under an installment contract assumes the risk of loss and receives any appreciation in value." The Uniform Vendor-Purchaser Act states:

> If, when either the legal title or possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without the fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid.

UNIF. VENDOR AND PURCHASER RISK ACT § 1(b), 14 U.L.A. 471 (1990). While this act applies to destruction or taking by eminent domain, it is analogous to the burden of bringing land into compliance with laws pertaining to property.

110. *See supra* text accompanying notes 44-48.

111. *See* Cliff & Co. v. Anderson, 777 P.2d 595, 600-01 (Wyo. 1989). For example, assuming the court in *McKone* had examined the intent of the parties and determined that the agreement was an equitable mortgage, the doctrine of equitable conversion could have been applied. This likely would have been conclusive in establishing that Guertzgen was the "owner" of the land and thus liable for bringing the land into compliance with the Fire Code.

112. *See supra* note 48 and accompanying text.

land and thus who was responsible for bringing the land into compliance with the Fire Code. When called upon to make such a determination, a court is obligated to carefully examine the agreement to determine the intent of the parties.[113] Under this reasoning, the critical inquiry in *McKone* thus becomes: did McKone and Guertzgen intend to create a relationship whereby an obligation was unilaterally placed on McKone only upon the occurrence of certain non-mandatory acts by Guertzgen? Or, did the parties intend the contract to be a bilateral agreement equivalent to a mortgage, either in law or in equity, with the property providing a security device against a binding debt?[114]

While it is beyond the scope of this casenote to thoroughly examine the agreement of the parties in light of the installment land contract versus equitable mortgage issue, it certainly deserves mention that the analysis was never considered by the court. Posing the question serves to illustrate the complexity and depth of the task of interpreting an installment land contract. As difficult as the task may be, fairness requires that the intent of the parties be determined in assigning rights and obligations under the installment land contract. The Wyoming Supreme Court deprived McKone of whatever benefit he may have reserved for himself under the terms of the contract by failing to consider the intent of the parties.

CONCLUSION

McKone serves as an illustration of the importance of the basic rules of contract interpretation.

The installment land contract is a complex, controversial and often misunderstood method of transferring land. By failing to observe and apply the rules of contract interpretation established by Wyoming case law, the *McKone* majority ignored an opportunity to clarify the law in this area. Indeed, the decision in *McKone* may have made the issue of responsibility for compliance with laws under the installment land contract more complicated. "The determination of the parties' intent is our prime focus in construing or interpreting a contract."[115] The wisdom of this doctrine is aptly emphasized by its glaring absence in the *McKone* majority's opinion.

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113. True Oil Co. v. Sinclair Oil Corp., 771 P.2d 781, 790 (Wyo. 1989).

114. A similar inquiry was made three months later in the case of Metropolitan Mortgage & Sec. Co. v. Belgarde, 816 P.2d 868, 873 (Wyo. 1991), based on the court's opinion in Angus Hunt Ranch, Inc. v. Reb, Inc., 577 P.2d 645 (Wyo. 1978).

115. True Oil Co. v. Sinclair Oil Corp., 771 P.2d 781, 790 (Wyo. 1989).