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Movie Films Inc., a Corporation v. First Security Bank of Utah, N.A., a Corporation : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

MOVIE FILMS, INC.,
a Corporation,

Plaintiff and Respondent

- VS -

FIRST SECURITY BANK OF UTAH,
N.A., a Corporation,

Defendant and Appellant

Case No.
11259

BRIEF OF PLAINTIFF AND RESPONDENT

Appeal from a Judgment against the Defendant
granted by the Third District Court in and for Salt
Lake County, Honorable Stewart M. Hanson,
Judge, presiding.

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BRIEF OF PLAINTIFF AND RESPONDENT

STATEMENT OF FACTS

Rex L. Jensen of Las Vegas, Nevada was engaged in the business of selling home movie units (T-7). He established the plaintiff corporation in the State of Utah for the same purpose, and agreed with Shawn D. Patterson to operate the business in Utah. Mr. Jensen owned all the stock (T-31). Mr. Jensen financed the organization of the Corporation by paying the Attorney's fees (T-3). He advanced \$1,000.00 in cash (T-15) and paid the initial office expenses (T-10). Under the arrangement Mr. Jensen was to be Vice President, Patterson, President. (T-31) (Ex. D.-30).

Mr. Jensen and Mr. Patterson, together, opened a bank account at the defendant's bank on August 1st, 1966 and the signature cards and corporate certificate of resolution both designated them as officers with those titles. (Ex. P-1).

To make certain that both signatures of Jensen and Patterson were required on checks, Mr. Jensen wrote in his own handwriting "Both 1 and 2" (T-5).

To get the corporation started, Mr. Jensen forwarded eighteen "units" from Las Vegas, to be sold by the Utah corporation (T-7). Each unit was to be sold at a cost of \$525.00. If the sales were financed, the net to the company would be about \$495.00 (T-6.)

Mr. Patterson's commission was to be \$75.00 per unit, which he was to retain in cash and the balance of the sale deposited in the bank. (T-25).

Shortly after the bank account had been opened and Mr. Jensen had returned to Las Vegas, checks were issued by Patterson with his signature only, and were dishonored by the bank (T-48).

Patterson then went to the bank and complained that that was not the intention when the bank account was opened, stating something about "How could he operate the business with Mr. Jensen in Las Vegas" (T-47).

The bank's officer, Mr. McKell advised Mr. Patterson that it would be necessary to secure a new certification of a resolution of the Board of Directors (T-50 to 52)

and that new signature cards would be required. However, he immediately accepted a check with Mr. Patterson's signature only (T-52).

The new certificate of corporate resolution was never returned to the bank. However, in the course of approximately two weeks, the bank honored checks with Patterson's signature only, totaling over \$5,450.93.

Towards the end of August Mr. Patterson disappeared, without giving prior notice to Mr. Jensen, and took all the company books, and some property, with him.

ARGUMENT

POINT ONE

THE BANK, BY ITS OWN WRITTEN CONTRACT WITH THE CORPORATION, IS ESTOPPED FROM CLAIMING IMPLIED, APPARENT OR OTHER AUTHORITY OF THE CORPORATE PRESIDENT.

The Appellant bank is attempting, in its argument (Point One), to justify a breach of its own written contract, regulations and requirements.

In 10 Am. Jur. 2nd, Banks, section 494, page 462 to 463, the text, which is liberally annotated states;

“A high standard of contractual responsibility has been imposed on banks in paying money chargeable against their depositors' accounts. The bank must, in paying out a deposit, comply with its agreement with the depositor.”

“In the absence either of prior or subsequent negligence or misleading conduct on the part of depositor, it cannot charge him with any payments except such as are made in conformity with its genuine orders. Payments otherwise made cannot be charged against the depositor regardless of the care exercised and the precautions taken by the bank.”

“In paying out a deposit account on a corporation, the bank must be satisfied that the officer withdrawing the deposit is authorized to do so. If it pays without question, it takes the risk of being held liable for the amount irregularly paid away.”

Mr. McKell, bank officer testified (T-50 to 52) that when Mr. Patterson objected to the requirement of two signatures, Mr. McKell specifically told him that the bank would require a new certification of a corporate resolution authorizing the change from the requirement of two signatures to one.

Again Mrs. Dahl, New Accounts Teller for the bank testified at T 57 to 58;

Q. “Is it also a general practice of the bank not to alter written signature cards from corporations based on the oral request of any one of the officers?”

A. “As far as I know they are never changed.”

In *Mabey vs. East Side Bank of Chicago*, 361 Fed. 2d. 393 (7th C.C.A.) the corporate authorization to the bank required two signatures. When S became sole

stockholder, he delivered a new signature card, but was told he would have to have a new corporate resolution. S said it would be "a little while" before it was returned as "he did not know who was going to be on the Board. . . ." The resolution was never returned, but the bank permitted transactions on his lone signature. The bank there, as in the instant case, claimed implied and apparent authority of S, president. At page 402:

"These purported defenses must fail for the reason that the rights of the respective parties and the authority of S as President of (the corporation) were expressly set forth in the bank resolution — a specific contract prepared by the defendant bank itself — which were never rescinded and which, by their terms, could not be orally amended." (Cases cited)

9 C.J.S. BANKS AND BANKING, Sec. 335 pg. 679;

"The deposit of a corporation can be withdrawn only on the order of the officers or agents who have been designated to the Bank as authorized to sign checks. So where the bank is informed of by laws and resolution requiring checks to be signed by the Treasurer and countersigned by the President, the bank has no right to pay checks signed by the president alone."

In accord, see,

Henderson vs. Greeley Nat. Bank, 111 Colo. 365, 14 P 2d 480. Wichita Frozen Foods vs. Union Nat. Bank of Wichita, 190 Kan. 539, 376 P.2d 933.

For the above reasons the Appellant's contentions are completely without validity.

POINT TWO

THE BANK FAILED TO SUSTAIN ITS BURDEN PROVING THAT ANY FUNDS WITHDRAWN WERE FOR CORPORATE OBLIGATIONS.

The Pre Trial Order held that the bank had the burden of proof to establish that any of the checks were issued for corporate obligations.

The check for “cash” and exchanged for a cashier’s check for \$1,820.34, was delivered to R.E.A. Express on August 23rd. Appellant concludes, without any evidence, that the merchandise was movie units. Even if we were to permit this conjecture, it is perfectly obvious that Patterson was not using the funds for plaintiff’s benefit, as Patterson immediately thereafter left the State, and not one “Unit” was left in the corporate office, and have never been accounted for.

Is it, then, a “corporate obligation” to use corporate funds to purchase merchandise for an unscrupulous officer, when the corporation never realized any benefit from the purchase, and was never intended to?

Wouldn’t it have alerted Mr. Jensen, if the bank had insisted on two signatures to that check? Mr. Jensen would then know that the supply on hand was at least depleted, and would have taken measures to have sought an accounting.

As to Patterson's Commission, Appellant's reasoning leaves us numb.

At page 27 of its Brief, it is said that "even disregarding the three cash sales of \$525.00 each," (amounting to more than Patterson's Commission), "there were *at least* eighteen units sold on contract."

The *only* evidence is that Patterson was to deduct his commission before bank deposits were made. (T - 25 and 28).

However, Appellant disregards that fact, and reasons that his commission of \$1,350.00 was taken from the account as follows:

He issued a check for "cash" for \$1,470.00. (Ex. P-7.) (Why the increased amount is not entirely clear).

He traded it for a cashier's check payable to J. Reed Tuft, Attorney.

The record is completely silent on why this strange procedure was followed, as Appellant deemed it unnecessary to call Mr. Tuft as a witness.

He secured Mr. Tuft's endorsement and cashed it. Ergo, according to Appellant, \$1,350.00 was legitimate, and the balance was embezzled from the corporation. But the nagging question left unanswered is "Why didn't he simply issue a check for \$1,350.00 to himself, and label it "Commission"?"

It was the bank's burden to "prove" by a preponderance of the evidence, that the Corporation benefitted from any of the checks issued, and that it completely failed to do.

CONCLUSION

The Plaintiff Respondent is entitled to an Affirmance of the Judgment rendered.

Respectfully Submitted,

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