

2000

Mary Buzianis v. Beneficial Homes, Inc., Ron Gibb : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

MARY BUZIANIS,

Plaintiff-Respondent,

vs.

BENEFICIAL HOMES, INC., a
Utah corporation, and RON
GIBB,

Defendants-Appellants,

;

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CASE NO. 14257

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BRIEF OF APPELLANTS

Beneficial Homes, Inc. and Ronald Gibb

Appeal from the judgment of the Third Judicial
District Court of Tooele County.
Gordon G. Hall, District Judge,
Presiding

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FILED

FEB 4 1976

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MARY BUZIANIS,

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Utah Corporation, and RON
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:

CASE NO. 14257

BRIEF OF APPELLANTS

Beneficial Homes, Inc. and Ronald Gibb

STATEMENT OF THE NATURE OF THE CASE

This is an action brought to enforce a promissory note

DISPOSITION IN THE LOWER COURT

At trial the defendants furnished evidence in the form of checks in attempt to prove that certain payments had been made against the promissory note. The trial court determined that the defendant was to receive credit for some of the checks but not others. The trial court awarded judgment to the plaintiffs in the amount of \$5,500.00 plus \$1,081.35 interest plus court costs of \$37.80 and attorneys fees in the sum of \$2,227.11.

RELIEF SOUGHT ON APPEAL

The defendants-appellants seek a reversal of the judgment entered by the trial court on July 31, 1975 on the grounds that evidence was erroneously excluded at trial. That the judgment failed to give the defendants credit for a check which had been admitted at trial. That the defendants-appellants should not be bound by the terms of the Stipulation entered into at trial and that the award of attorneys fees were not supported by fact and were unreasonable under the circumstances.

STATEMENT OF FACTS

On or about January 14, 1971, parties entered into a promissory note wherein defendant, Ronald Gibb, agreed to pay plaintiff the amount of \$7,500.00. The payments were to be made at the rate of \$500.00 per lot when sold.

Plaintiff filed suit against the defendants in March of 1974 alleging that defendants owed the amount of \$6,681.35 on the above described promissory note.

At trial the parties entered into a stipulation presented to the Court which apparently provided that judgment would be granted against the defendant as prayed in the Complaint but that it would not be entered until July 14th.(Tr.2). Defendants were given until July 14th to prove they were entitled to credit for amounts already paid on the promissory note.(Tr.2). Defendant-appellant, Ron Gibb, is a layman and appeared as his own counsel at trial.

On July 14, 1975 the defendant appeared in Court and presented the evidence that certain payments had been made. The plaintiffs admitted that they had received a payment of \$500.00 on May 20, 1971, another check for \$500.00 on April 20, 1971 and an additional payment on the same date for \$500.00. Plaintiffs further admitted that on the 14th of September, 1971, they received a payment from the defendants in the amount of \$2,139.00.(Tr.2,3). Defendant-appellant presented other evidence of payment which were not received by the Court. One cashiers check for \$1,000.00 marked subdivision #3 was not admitted into evidence because subdivision #4 was the subdivision in dispute.(Tr.3,4). The defendant proffered to show that the check should have been credited to Subdivision #4. Mr. Gibb had disbursement records showing that the check which was marked Subdivision #3 was actually applied to Subdivision #4.(Tr. 4,5).

The Court stated at trial that the burden of proof was on the defendant-appellant at the July 14, 1975 hearing.(Tr.4).

ARGUMENT

POINT I.

THE TRIAL COURT ERRONEOUSLY EXCLUDED DEFENDANT'S EVIDENCE ON DAMAGES.

Defendant was advised by the Court that he was to produce evidence of any payments or partial payment made by him to the Plaintiff. (Tr.3). At a later hearing the defendant attempted to introduce evidence that checks drawn on Beneficial Homes, Inc. were paid to the plaintiff and that notwithstanding the reference on said checks to Subdivision #3 that said checks should have been credited to Subdivision #4. (Tr. 3,4).

Defendant suggested that if the payments were not made to plaintiff for Subdivision #4, what were they paid for? (Tr.4). The Court responded that "the burden is on you. You have got to show us." This again reflected the effect of the stipulation entered into by the parties that the burden of proof was very definitely placed upon the defendant.

The court did not accept defendant's reasoning. He then attempted to show that he had two disbursement books and that the checks marked Subdivision #3 were actually drawn on disbursement Subdivision #4. (Tr. 5,6,7&8).

The Court refused to examine said Subdivision books. The Court continued by stating that "the checks might have been for an automobile as far as I know." (Tr. 5).

The evidence concerning the two Subdivision disbursement books proffered by the defendant were not admitted by trial Court.

The effect of this ruling was that in spite of the fact that such payments had been made to the plaintiff, and despite the fact that plaintiff had not demonstrated the checks were indeed not to be credited to the account in dispute, defendant was placed in the unfortunate position of having to prove a negative, ie. that the checks to the plaintiff were not in payment for an automobile or whatever as suggested by the trial court. This again reflects the effect of the shift and the burden of proof from the plaintiff to the defendant. The defendant produced checks that were paid to and cashed by the plaintiff but was not allowed credit for them. The inequitable result was that the plaintiff received the checks and additionally took judgment for the same amount and was thus unjustly enriched.

It is important to note that no formal objection was ever made to the evidence concerning the two Subdivision disbursement books furnished by the defendant. Further, if the defendant could have demonstrated that the checks marked subdivision #3 were actually drawn for and in payment on subdivision #4 the evidence was certainly relevant to the material issues in the lawsuit. In view of these facts the evidence should have been admitted and the courts ruling on this evidence was erroneous.

POINT II.

THE TRIAL COURT FAILED TO GIVE DEFENDANT CREDIT FOR A CHECK FOR \$2,139.00 WHICH WAS ENTERED INTO EVIDENCE AT TRIAL.

At the trial on July 14, 1975 the plaintiff admitted receiving a check from the defendant dated September 14, 1971 in the amount of \$2,139.00. The plaintiff admitted that he had received the check and that it was the payment on subdivision #4.

Notwithstanding this admission by the plaintiff, when the courts final findings of fact and conclusions of law were filed the Court stated that check No. 1212 in the amount of \$2,139.00 was a down payment and had been previously credited to the defendants prior to the execution of the note on which they sued. This finding of fact was contrary to uncontroverted evidence that that check was a payment on Subdivision #4 and the plaintiff admitted receiving that as such payment. Further, said check was dated September 14, 1971 (Tr. 3), which was nine months after the promissory note was executed. (Exhibit A attached to Complaint).

It was error not to give defendant credit for the amount of \$2,139.00.

POINT III.

THE STIPULATION BETWEEN PLAINTIFF'S COUNSEL AND DEFENDANT ACTING AS HIS OWN COUNSEL WAS VAGUE, AMBIGUOUS, UNREASONABLE AND AGAINST PUBLIC POLICY.

At the commencement of the trial below, plaintiff's counsel and defendant, acting as his own attorney, entered into a stipulation which was presented to the Court. Defendant is a layman. In presenting the stipulation to the Court, plaintiff's counsel stated:

"Our stipulation, Your Honor, is that the plaintiff is to have judgment against the defendants Beneficial Homes and Ron Gibb in the amounts prayed for according to the prayer thereof with the stipulation that judgment be granted against the defendant for and until July the 14th, 1975, during which time if the defendants can produce documentation that they are entitled to a credit as against that amount prayed for they should be granted that credit and judgment taken for that amount, if any; otherwise judgment will be entered on July the 14th for the full amount provided that no documentation is presented by the defendants. (Tr. 2).

The stipulation was later clarified to mean that judgment would not be entered until July 14, 1975. However, even with that clarification, the terms of the agreement are virtually incomprehensible, particularly concerning credit to be granted and how much judgment would be taken.

The principal deficiency of the stipulation, however, is that it was unreasonable and against public policy. It was unreasonable in that the plaintiff gave up nothing but received great benefit from the stipulation. The stipulation relieved the plaintiff of proving her case, that the defendant owed her money. For his efforts, the defendant was given the burden of proving that he had made payments to the plaintiff. The effect of the stipulation was to shift the burden of proof from the plaintiff to the defendant. By analogy to contract law, the stipulation was without consideration on the part of the plaintiff for she gave up nothing of value.

It is elementary that a plaintiff seeking redress in the Courts has the burden of proving he is entitled to such redress. Like the defendant in a criminal case who is presumed innocent until proven guilty, the defendant in a civil case is presumed not to be indebted to the plaintiff until the plaintiff proves otherwise. The effect of the stipulation in this case was to deprive the defendant of this presumption and was contrary to the policy reasons supporting this fundamental principal of law.

Still another but equally serious defect of the stipulation is that it is extremely doubtful that the defendant, a layman, understood the terms or the effect of the stipulation. The record is void of any indication that either plaintiff's counsel or the Court explained the terms or effect of the stipulation. The stipulation

was presented in confusing and contradictory language. (Tr.2). Whereupon, the Court asked the defendant if that was his agreement. (TR.2). It was not explained that the burden of proof, which in this case did indeed turn out to be a burden, would be shifted from the plaintiff to defendant.

In the case of Deseret Sav. Bank v. Walker, 78 Utah 241, 2P. 2d 609(1931) this Court had the opportunity to examine a stipulation entered into by a layman. The Court concluded that the stipulation was effective and should be construed in the light of the allegations and admissions in the pleadings because the layman was a man of affairs with business experience and, "Nothing is made to appear that he was either ignorant or inexperienced or that any advantage was taken of him, or that he did not fully comprehend the full meaning of his stipulation and the implications necessarily arising therefrom". This language infers that if it appeared that the stipulant was ignorant or inexperienced or that he was taken advantage of or did not comprehend the stipulation or its implications, the Court would not have enforced the stipulation.

These are precisely the conditions that were present in the present case. Defendant was inexperienced in the law as evidenced by his entering into the stipulation in the first place and by his lack of understanding of procedure and rules of evidence. (Tr.2,5,6).

He was also probably taken advantage of although the discussions concerning the terms of the stipulation were off the record. But it is unlikely that he would stipulate away his rights if he had been explained the ramifications of such action.

It is respectfully submitted that defendant should not have been bound by his stipulation.

POINT IV.

THE AWARD OF ATTORNEYS FEES OF \$2,227.11 WERE NOT SUPPORTED BY FACTS AND WERE UNREASONABLE.

Plaintiff's counsel filed a Complaint and made three very brief court appearances in this case on June 9, 1975, July 14, 1975 and July 21, 1975. For these services, plaintiff was awarded \$2,227.11 for attorney's fees.

No evidence was presented as to attorney's fees such as what services were rendered or how much time was involved.

The parties did stipulate as to judgment but as suggested above, the stipulation is unenforceable. But even if it were a valid stipulation, the terms are vague and confusing. Plaintiff's counsel represented it as stating judgment would be granted as prayed and plaintiff did pray for attorney's fees of \$2,227.11. But, the stipulation itself does not mention attorney's fees. It is apparent that the judgment referred to in the stipulation was a judgment for the amount claimed by plaintiff because the amount prayed for was to be credited if defendant could present certain documentation. No documentation could have any effect on the prayer

for attorney's fees. Thus the stipulation only concerned the amount claimed owing or defendant was led to believe it did.

Since the parties did not agree on the amount of attorney's fees, the Court was obliged to take evidence on the issue of the reasonableness of the attorney's fees which it did not do. F.M.A. Financial Corporation v. Build, Inc.¹⁷ Utah 2d 80,404P.2d 670(1965); Provo City Corporation v. Cropper, 28 Utah 2d. 1,497P. 2d 629(1972); Freed Finance Company v. Stoker Motor Company, Utah 2d, , 537P. 2d. 1039(1975).

Assuming for sake of argument that the parties did stipulate as to attorney's fees, the court nonetheless had the obligation to examine reasonableness thereof.

The attorney's fees were unsupported by evidence and in any event were unreasonable.


CONCLUSION

The trial court excluded presumably relevant evidence without objection which was proffered by the defendant Ron Gibb to demonstrate that he had made payments for which he had not received credit. Defendants were not given credit for a payment of \$2,139.00 which plaintiffs admitted receiving. Defendant Gibb unknowingly entered into a stipulation that was confusing at best and unreasonable. The stipulation had the effect of shifting the burden of proof to the defendants. Finally, attorneys' fees were awarded the plaintiff which were not supported by evidence and in any event were unreasonable.

It is respectfully submitted that the judgment of
the trial court should be reversed.

RESPECTFULLY SUBMITTED this 4 day of February,
1976.


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