

1987

Willes v. Blackmer : Brief of Appellant

Utah Court of Appeals

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Rex B. Bushman; D. Aron Stanton & Associates; attorneys for appellants.

Gene R. Willes; attorneys for respondent.

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IN THE UTAH COURT OF APPEALS

870041

GENE R. WILLES,)
Plaintiff and Respondent,)
vs.) Case No. 870041-CA
Mr. & Mrs. ALDEN BLACKMER,)
Defendants and Appellants.) 13-B

BRIEF OF DEFENDANTS-APPELLANTS

APPEAL FROM THE JUDGMENT OF THE FIFTH CIRCUIT
COURT FOR THE STATE OF UTAH, WEST VALLEY
DEPARTMENT, SMALL CLAIMS
JUDGE JOHN PARKEN

Rex B. Bushman
D. ARON STANTON & ASSOCIATES
255 E. 400 So. #101
Salt Lake City, Utah 84111
Attorneys for Defendants-
Appellants

Gene R. Willes
4890 South 3095 West
Salt Lake City, Utah 84118
Plaintiff-Respondent

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COURT OF APPEALS

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Salt Lake City, Utah 84111
Attorneys for Defendants-
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Gene R. Willes
4890 South 3095 West
Salt Lake City, Utah 84118
Plaintiff-Respondent

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED ON APPEAL	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	
<u>POINT I</u>	
THE TRIAL JUDGE COMMITTED ERROR IN FINDING A MUTUAL MISTAKE OF FACT EXISTED BETWEEN THE PARTIES	3
<u>POINT II</u>	
THE DAMAGES GRANTED BY THE COURT REQUIRE APPELLANTS TO WARRANT THE VALUE OF THE VEHICLE WHERE NO WARRANTY WAS GIVEN	6
CONCLUSION	6

CASES CITED

	<u>Page</u>
<u>Kiahtipes vs. Mills</u> , 640 P 2d 9 (Utah 1982)	6
<u>Sherwood vs. Walker</u> , 33 N.W. 919 (1887)	5
<u>Wood vs. Boynton</u> , 25 N.W. 42 (1885)	5

AUTHORITIES CITED

	<u>Page</u>
<u>Restatement, Contracts 2d</u> , American Law Institute	4
<u>Corbin on Contracts</u> , Arthur Linton Corbin	4
<u>A Treatise on the Law of Contracts, 3d</u> ,	
Samuel Williston	4

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APPELLANT'S BRIEF

STATEMENT OF ISSUES PRESENTED ON APPEAL

This appeal is regarding the sale of a car that later needed substantial repairs and for which the Plaintiff-Respondent seeks damages from the Defendants-Appellants. Defendants-Appellants appeal the decision of the Small Claims Court Judge who found a mutual mistake had occurred that being the condition of the vehicle's motor at the time of sale and rescinded the agreement between Plaintiff-Respondent and Defendants-Appellants and required Defendants-Appellants to pay the amount of the difference between what the cost of purchase was to Defendants-Appellants and the cost of purchase to Plaintiff-Respondent. Defendants-Appellants seek reversal of the decision that mutual mistake had occurred which did not conform to the facts set forth in the Lower Court and also because the measure of damages granted effectively causes Defendants-Appellants to warrant the condition of the vehicle where no warranty in fact occurred.

STATEMENT OF FACTS

The Plaintiff-Respondent hereafter "buyer" bought Defendants'-Appellants' hereafter "sellers" vehicle, a car, on November 14th, 1986 (R. 2:14-16). The purchase price was \$1,650.00 (R. 2:18). Some time thereafter, Respondent had a mechanic look at the car and it was determined it needed an overhaul (R. 2:20-22). The buyer demanded sellers pay for the overhaul and the sellers declined to pay for it (R. 2:23). At the time of the sale, sellers gave no verbal warranty regarding the vehicle (R. 23:24). Sellers were not considered merchants (R. 23:21). Further, since the time of the purchase the buyer had driven the vehicle approximately 2,500 miles (R. 18:18-21). The sellers did not defraud the buyer with false representations at the time of the sale (R. 24:12-14). When told about the amount of repairs the sellers did not challenge the amount needed (R. 25:9-10).

The car had originally been purchased by sellers from a Mr. Nathan Millett on October 20, 1986 wherein it had been agreed he was only selling the body, as the engine needed overhauling (R. 5:17-20). The seller, Mr. Blackmer, was a mechanic and after purchase rebuilt the heads on the vehicle (R. 11:2-8). The body and the interior were in excellent condition (R. 9:5-6).

The seller had bought the car for \$450.00 and sold it to buyer for \$1,650.00 because that was the approximate book value of the vehicle (R. 21:4-7).

The Court found there was a mutual mistake of fact dealing with the condition of the vehicle motor and that the sale was a

product of that mutual mistake of fact and that the transaction should be rescinded (R. 26:1-5). The Court allowed sellers to keep what they paid for the vehicle and awarded the difference between what the sellers paid for the vehicle and what buyer paid for the vehicle to the buyer (R. 26:13-19). The amount of the difference was \$1,200.00 and the Small Claims Court granted judgment against sellers for the jurisdictional \$1,000.00 (R. 26:20-22)) with the buyer keeping his vehicle.

SUMMARY OF ARGUMENT

The facts presented at the hearing of this matter indicate that sellers were aware of the condition of the motor of the vehicle. Therefore, the mistake was not mutual. The buyer bargained for and received due consideration for his purchase and the subsequent loss in value could not be attributed to the time of sale after substantial use by the buyer. Therefore, the buyer was not significantly mistaken as to the value of the vehicle at time of sale.

The damages given to the buyer by the Lower Court effectively required sellers to warrant the vehicle where no warranty was given.

ARGUMENT

I. THE TRIAL JUDGE COMMITTED ERROR IN FINDING A MUTUAL MISTAKE OF FACT EXISTED BETWEEN THE PARTIES

The doctrine of mutual mistake has been expressed ".....if at the time of contracting for the sale of specific goods unbeknownst to the parties, the goods never existed, no contract is

made." Restatement, Contracts 2d Sec.s 286, 35(1); 3 Corbin Sec. 600; 13 Williston Sec.s 1561-62. The Lower Court Judge presumed therefore that neither buyer nor sellers knew of the presumed defective condition of the subject matter of the sale at time of sale and therefore there was a mutual mistake. The finding the engine of the vehicle had no value at time of sale and also that the fact was unknown by the parties creates foundation for reversal.

Several facts cannot be ignored and prove the sellers knew the condition of the vehicle at the time of the sale at least to the degree there was no mistake on their part when the vehicle was sold. The facts set forth at the hearing and establishing the lack of mistake on the sellers' part are as follows:

1. They bought the vehicle from another party that indicated he was only selling them the body and not the engine because it needed an overhaul. Given that circumstance how could it be said the sellers did not know the condition of the motor of the vehicle.

2. The seller, Mr. Blackmer, was himself a mechanic that did repair work to the motor of the vehicle after sellers purchased it. How could it be assumed a mechanic that worked on the motor would be completely wrong in his evaluation of the mechanics of the same motor he worked on.

3. When confronted in Court with the amount of repairs needed on the vehicle the sellers did not challenge said amount. This fact implies the possibility the amount of repairs was

understandable to the sellers' knowledge.

4. The sellers gave no verbal warranty at the time of sale. Also, the implication is that sellers may have known or been aware of some need for repairs to the vehicle and not wished to become further obligated.

Two famous cases regarding rescission for mutual mistake occurred (1) where a cow thought to be sterile was sold at a time when it was pregnant Sherwood vs. Walker, 33 N.W. 919(1887) and (2) where a pretty stone was sold that turned out to be valuable, Wood vs. Boynton, 25 N.W. 42(1885). In either case the doctrine of mutual mistake was applied because of the factual matter that neither party was in fact aware of the value of what was being dealt. The facts of this matter strongly indicate and prove the seller was aware of the value or quality of what was being sold, thus eliminating the possibility of mutual mistake of fact.

In the alternative, the buyer bargained for the value he received. The condition of the interior and exterior of the vehicle was excellent. Buyer and seller were aware, however, the vehicle was not new. He received the full value of his purchase for at least twenty five hundred miles. After having the benefit of use of the vehicle for said time it would be erroneous to now apply the repairs requested arbitrarily back to the time of purchase as though the loss were simultaneous with the sale. In effect, therefore, the value of what could have been expected of purchase was received by the buyer and therefore there is no mistake of quality also upon the buyer's part either.

The doctrine espoused by the Sherwood and Wood cases sets forth mutual mistake is where a striking mistake occurs such as where purchase was made of a vehicle and when it was started up it did not run due to serious defect to the surprise of both parties. The facts herein indicate and the doctrine set forth herebefore cannot be applied to this matter where the mistake was not mutual and the mistaken party received due consideration as bargained. The fact also exists that the doctrine of mistake is seldom applied in the State of Utah as set forth in Kiahties vs. Mills, 640 P2d 9 (Utah 1982).

II. THE DAMAGES GRANTED BY THE COURT REQUIRE APPELLANTS TO WARRANT THE VALUE OF THE VEHICLE WHERE NO WARRANTY WAS GIVEN

The damages granted by the Lower Court require sellers to warrant the value of the vehicle at time of sale. Previous to giving such remedy the Lower Court found sellers did not give a warranty by implication and that because they were not merchants there was no express warranty covering the sale of the vehicle. The findings of the Court therefore created a different conclusion at law than was reached by the findings of fact of the Lower Court. Since the value of the vehicle was not warranted by sellers they should not be liable for its value.

CONCLUSION

The Small Claims Court erred in invoking the doctrine of mutual mistake in this case since the sellers were aware of the condition of the vehicle and the buyer purchased at arms length, then receiving the benefit of his bargain later requested repairs and wrongfully sought the sellers to pay the same. Sellers not

having misrepresented the value of the vehicle and not having warranted the vehicle should not be required to reimburse the buyer for the value of his purchase determined substantially after sale and use by the buyer.

Further, the damages granted by the Court were in error as it required the sellers to warrant the value of the vehicle sold where no implied or express warranty existed.

Respectfully submitted this 26 day of March, 1987.

D. ARON STANTON & ASSOCIATES

A handwritten signature in cursive script, appearing to read "Rex B. Rushman", written over a horizontal line.

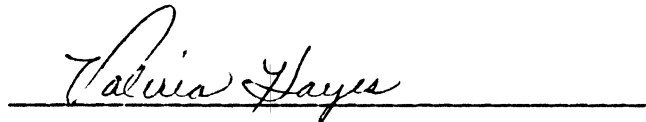
REX B. RUSHMAN

Attorneys for Defendants-
Appellants

255 E. 400 South, Suite 101
Salt Lake City, Utah 84111

MAILING CERTIFICATE

I hereby certify that I mailed four (4) true and correct copies of the foregoing BRIEF OF DEFENDANTS-APPELLANTS to Plaintiff, Gene R. Willes, at 4890 South 3096 West, Salt Lake City, Utah 84118, postage prepaid, and by U.S. Mail, this 26 day of March, 1987.

A handwritten signature in cursive script, appearing to read "Patricia Hayes", written over a horizontal line.