

1976

Union Pacific Railroad Co. v. Intermountain Farmers Association, Inc. : Respondent's Petition for Rehearing and Supporting Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

UNION PACIFIC RAILROAD :
COMPANY, a corporation, :

Plaintiff-Respondent, :

vs. :

Case No. 14635

INTERMOUNTAIN FARMERS :
ASSOCIATION, a corpora- :
tion, :

Defendant-Appellant. :

RESPONDENT'S PETITION FOR REHEARING
AND SUPPORTING BRIEF

Appeal from a Judgment of the District Court
of Salt Lake County
Honorable James S. Sawaya, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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COMPANY, a corporation,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	Case No. 14635
	:	
INTERMOUNTAIN FARMERS	:	
ASSOCIATION, a corporation,	:	
	:	
Defendant-Appellant.	:	

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RESPONDENT'S PETITION FOR REHEARING
AND SUPPORTING BRIEF

PETITION FOR REHEARING

Union Pacific Railroad Company, plaintiff and respondent herein, petitions the court for a rehearing on the following grounds:

1. The Supreme Court erred in basing its decision exclusively on the provisions of Section 5 of the subject lease agreement while failing to consider or address the provisions of Sections 8 and 11 which were relied upon by the trial court and which were urged by respondent at trial and on appeal.

2. The Supreme Court's reasoning with respect to Section 5 of the subject lease agreement would not preclude sustaining the trial court's judgment on the theory of breach of contract under the terms of Sections 8 and 11 of the agreement.

3. The Supreme Court has a duty to affirm the decision of the trial court if sustainable upon any legal ground or theory apparent on the record.

BRIEF IN SUPPORT OF REHEARING

NATURE OF CASE

This is a case where the Utah Supreme Court, in reversing the decision of the trial court, failed to consider or address the basis upon which the trial court's decision rested. Instead, this court based its decision exclusively upon a peripheral issue advanced by the appellant while ignoring the real issue in dispute which was decided in favor of the petitioner at trial.

RELIEF SOUGHT ON PETITION FOR REHEARING

Petitioner seeks reargument and reconsideration of the merits of this case; consideration of the issue upon which the trial court's decision was based, said issue having been ignored by this court during the previous appeal; and adherence to the self-imposed mandate of this court to

affirm the decision of the trial court if sustainable upon any legal ground apparent on the record.

STATEMENT OF FACTS

This case was submitted to the trial court on stipulated facts. A copy of that stipulation, without exhibits, is attached hereto for the court's convenient reference.

A complete statement of contractual provisions upon which the trial court based its decision, and which were ignored by this court on appeal, is as follows (Tr. 7-8):

Section 8. No building, platform or other structure shall be erected or maintained and no material or obstruction of any kind or character shall be placed, piled, stored, stacked or maintained closer than eight (8) feet six (6) inches to the center line of the nearest track of the Lessor; . . .

Section 11. The Lessee shall be liable for any and all injury or damage to persons or property, of whatsoever nature or kind, arising out of or contributed to by any breach in whole or in part of any covenant of this agreement. [Emphasis added.]

ARGUMENT

POINT I

THE SUPREME COURT ERRED IN BASING ITS DECISION EXCLUSIVELY ON THE PROVISIONS OF SECTION 5

OF THE SUBJECT LEASE AGREEMENT WHILE FAILING TO CONSIDER OR ADDRESS THE PROVISIONS OF SECTIONS 8 AND 11 WHICH WERE RELIED UPON BY THE TRIAL COURT AND WHICH WERE URGED BY RESPONDENT AT TRIAL AND ON APPEAL.

At trial and on appeal petitioner actively asserted that it should recover on the basis of Sections 8 and 11 of the subject lease agreement under which appellant's liability attaches from breach of its contractual duty as distinguished from liability arising solely from negligence or tort. The trial court's conclusions of law, providing in part that "The court further concludes that the negligence of either party is not an issue nor a necessary element to the conclusion of this case" (Tr. 155), are compatible with this theory.

A complete statement of Sections 8 and 11 of the subject lease is as follows (Tr. 8):

Section 8. No building, platform or other structure shall be erected or maintained and no material or obstruction of any kind or character shall be placed, piled, stored, stacked or maintained closer than eight (8) feet six (6) inches to the center line of the nearest track of the Lessor; . . .

Section 11. The Lessee shall be liable for any and all injury or damage to persons or property, of whatsoever nature or kind, arising out of or contributed to by any breach in whole or in part of any covenant of this agreement. [Emphasis added.]

Upon appeal appellant addressed only Section 5 of the lease agreement, a general indemnity provision, upon which petitioner relied as an alternative theory for recovery and ignored Sections 8 and 11 altogether. This Court followed appellant's lead and reversed the trial court, discussing only its finding of inadequacy as to Section 5 while omitting any consideration of petitioner's primary contention.

In light of the fact that petitioner was the prevailing party at trial and that judgment was based upon Sections 8 and 11, it is submitted that the Supreme Court erred in failing to consider or address the merits of recovery on the basis of those sections.

POINT II

THE SUPREME COURT'S REASONING WITH RESPECT TO SECTION 5 OF THE SUBJECT LEASE AGREEMENT WOULD NOT PRECLUDE SUSTAINING THE TRIAL COURT'S JUDGMENT ON THE THEORY OF BREACH OF CONTRACT UNDER THE TERMS OF SECTIONS 8 AND 11 OF THE AGREEMENT.

It is significant to note that the provisions of Sections 8 and 11 of the subject agreement do not mention the concept of negligence and/or fault. Section 8 exacts a covenant from Intermountain Farmers Association not to place, pile, store, stack or maintain any materials or

obstructions of any kind or character closer than 8'6" to the center line of the nearest Union Pacific track. Section 11 provides that Intermountain Farmers Association shall be liable for any and all injuries to any person "arising out of or contributed to by any breach in whole or in part of any covenant of this agreement" (emphasis added).

It is undisputed that at the time Mr. Richins sustained his injury the spool of cable which his foot hit was located within the proscribed clearance zone (Stipulation, ¶ 26). Furthermore, it is also undisputed that Intermountain Farmers owned the spool of cable (Stipulation, ¶¶ 5, 25, and 28) which caused Mr. Richins' injuries. Consequently, it is clear that the provisions of Section 8 of the agreement were breached by the mere existence of this spool of cable in the proscribed clearance zone and that Union Pacific is entitled to full indemnity in accordance with the provisions of Section 11 of the agreement regardless of negligence or fault.

In Minneapolis-Moline Co. v. Chicago, M., ST. P. & P. R. Co., 199 F.2d 725 (8th Cir. 1952), the railroad sought contractual indemnity, under clauses similar to those in issue here, from an industry in a situation where one of the industry's employees had been injured when a train struck a metal box located within the proscribed minimum clearance requirements of the industry track contract.

The court, in holding that the railroad was entitled to recover full indemnity from the industry, ruled (1) that the railroad, in making the contract covering property located on its right of way, acted in a private capacity and not as a common carrier and, consequently, could exact its own conditions as to occupancy; (2) that the industry's obligation to keep the tracks unobstructed was absolute and unqualified; (3) that the industry's liability doesn't depend upon negligence or tort but that such liability arises from breach of contract; and (4) that the industry could have made negligence a condition of liability but since it didn't it would not be heard to complain of the choice it made. With particular application to the present case is the statement of the court at page 731:

The Railroad Company's cause of action against the Moline Company, however, is not primarily based upon tort, nor is it dependent upon negligence. The liability of the Moline Company arises from its breach of this indemnity provision of the contract. The rule as to proximate cause is not available to the Moline Company because by its contract it agreed to indemnify against loss "from and against any and all damages, remote as well as proximate, in any wise resulting from any non-performance or non-observance of the foregoing covenant concerning lateral distance or perpendicular height, for which the Railway Company shall become, in whole or in part, liable or be charged." The jury, in answer to an interrogatory proposed by appellant, found that plaintiff's injuries resulted in whole or in part

from "the presence of the trash box within six feet laterally at right angles from the nearer rail of track 4." It thus appears that the damages from which the appellant agreed to hold the Railroad Company harmless need not have been caused solely by any negligence on its part, nor was the act of the Moline Company required to be the proximate cause of the loss. A liability resulted even though such act were the remote cause.

The case of John P. Gorman Coal Co. v. Louisville & N. R. Co., 213 Ky. 551, 281 S.W. 487, is strikingly similar in its facts to the case at bar. In that case the Coal Company agreed to maintain and keep the tracks free from obstructions and to hold the Railroad harmless on account of any loss arising from a violation of the provision. In the course of the opinion it is said:

"The obligation to keep the tracks free from obstruction, and to hold the appellee harmless from any claims on account of any failure on appellant's part to so keep the tracks, is an absolute one. Appellant might have made it a condition of liability that it should be guilty of some negligence, but this it did not do. It was free to make any contract it chose so long as it was not against public policy, and, having chosen to undertake an absolute liability rather than a qualified one, it cannot now be heard to complain of the choice it made." [Emphasis added.]

In Northern P. Ry. Co. v. National Cylinder G. Div. of C.C., 2 Wash.App. 338, 467 P.2d 884 (Wash. 1970), the railroad was awarded full contractual indemnity from a rail welding contractor for injuries sustained by a railroad employee whose leg was crushed by a moving rail. The court took special note of the fact that the agreement was

silent on the question of whether the negligence of either party was relevant to the obligation of the industry to indemnify the railroad and concludes that causation rather than negligence controlled. In this regard, the court states at pages 887-88:

The trial court commented in its oral opinion it was significant the agreement at no point mentioned the word "negligent" or any concept of fault. It noted the language used concerned itself solely with the occurrence of an incident which would later give rise to a claim or lawsuit. . . .

The trial court concluded the agreement was a clear undertaking based upon causation rather than negligence or fault and had the intention of the parties been otherwise, they could clearly and simply have provided in the agreement that the obligation to indemnify would be subject to fault on the part of National in connection with some phase of the welding operation. . . .

National argues that inasmuch as the trial court did not find negligence on its part, it cannot be required to indemnify Northern Pacific. Under the terms of the indemnity provision of the contract, the trial court's finding that National's activities caused the injuries out of which the claim arose is sufficient to establish liability. [Emphasis added.]

See also Louisiana & Arkansas Ry. Co. v. Anthony, 199 F.Supp. 286 (W.D. Ark. 1961), aff'd 316 F.2d 858 (8th Cir. 1963), cert. denied 375 U.S. 830 (1963).

The public policy considerations which this court indicated would invalidate Section 5 of the subject lease agreement are not violated by the terms of Sections 8 and

11 of said agreement. The latter provisions were not contemplated to insulte Union Pacific from its own negligence, but rather were included for the purpose of requiring Inter-mountain Farmers to accept liability for any injury to persons caused in whole or in part by its breach of the contract, i.e., placing or maintaining any materials or obstructions within the proscribed clearance zone specified in the subject lease. The court has never held contractual provisions of this nature and scope to be violative of public policy.

POINT III

THE SUPREME COURT HAS A DUTY TO AFFIRM THE
DECISION OF THE TRIAL COURT IF SUSTAINABLE
UPON ANY LEGAL GROUND OR THEORY APPARENT ON
THE RECORD.

The presumption of validity attached to a trial court's judgment is a basic tenet of the American judicial system. The Utah Supreme Court articulated its view of this principle in Cheney v. Rucker, 14 Utah 2d 205, 381 P.2d 86 (1963), by stating at page 89:

In considering the soundness of the trial court's conclusion and judgment . . . certain cardinal rules must be kept in mind: That the judgment is endowed with a presumption of validity; that the party attacking it has the burden of affirmatively showing that it is in error; and that the evidence and all inferences that fairly and reasonably may be drawn there-

from must be viewed in the light most favorable to it.

Not only must the Supreme Court accord the judgment below a presumption of validity, but it has an affirmative obligation to sustain the judgment even if an alternative basis for decision must be found. This Court cited 5 C.J.S. Appeal and Error § 1464(1) favorably in Foss, Lewis & Sons Const. Co. v. General Ins. Co. of America, 30 Utah 2d 290, 517 P.2d 539 (1973), and then adopted that section as a statement of the law of Utah in Goodsel v. Dept. of Business Regulation, 523 P.2d 1230 (Utah 1974), quoting therefrom as follows:

The Appellate Court will affirm the judgment, order, or decree appealed from if it is sustainable upon any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court. Id. at 1232.

The obligation to sustain the lower court decision where possible is not merely passive or discretionary but is a duty of this court. That duty was recognized in Peterson v. Fowler, 29 Utah 2d 366, 510 P.2d 523 (1973), a case where summary judgment was sustained on an alternative theory following a determination that the trial court had granted the summary judgment on an erroneous basis.

This Court acknowledged: "It is our duty to sustain the rulings made if it can be done even though it be upon a matter not urged upon appeal." Id. at 526 (emphasis added). This case was followed in the Foss, Lewis case, supra, and Jones v. Smith, 550 P.2d 194 (Utah 1976), with similar results.

The inescapable conclusion to be drawn from these cases is that if the court has a duty to search the record for theories not raised upon appeal which would support the ruling, then it has an even greater duty to consider alternative theories which were actively advanced by an appellee at both the trial and appellate court levels.

If a judgment is to be endowed with a presumption of validity, if that judgment may have been based on either of two alternative theories presented to the trial court, and if an appellant fails to address one of those theories upon appeal, then the appellant has failed to meet its burden of affirmatively showing that the judgment is in error and it is the duty of this Court to sustain that judgment. Such is the case involved in this instance.

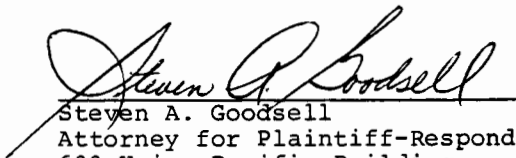
CONCLUSION

This Court failed in its acknowledged duty to sustain trial court judgment, where possible, when it reversed the trial court's decision upon a peripheral issue advanced by appellant while it ignored the real issue

advanced by the prevailing party and relied on by the court below.

This case should be set for rebriefing and reargument, and all matters raised by plaintiff and defendant in this appeal should be given thorough consideration by this court, following which the judgment of the district court should be affirmed.

Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that on this 5th day of July, 1977, I served by mailing, postage prepaid, a true and correct copy of the foregoing Respondent's Petition for Rehearing and Supporting Brief to F. Robert Bayle, Esq., and Wallace R. Lauchnor, Esq., attorneys for defendant-appellant, 1105 Continental Bank Building, Salt Lake City, Utah 84101.

