

1976

Chrysler Credit Corporation v. Gilbert E. Burns : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CHRYSLER CREDIT CORPORATION,)

Plaintiff, and)
Respondent,)

vs.)

GILBERT E. BURNS,)

Defendant, Third-)
Party Plaintiff,)
and Appellant,)

Case No. 14640

vs.)

U. & S. MOTOR COMPANY, INC.,)
a Utah Corporation,)

Third-Party)
Defendant, and)
Respondent.)

RESPONDENTS BRIEF

Appeal from the Judgment of the Fifth Judicial District Court
for Iron County, Honorable J. Harlan Burns, Judge, Presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

CHRYSLER CREDIT CORPORATION,)
Plaintiff and Respondent,)
vs.) Case No. 14640
GILBERT E. BURNS,)
Defendant, Third-Party)
Plaintiff and Appellant,)
vs.)
U. & S. MOTOR COMPANY, INC.,)
a Utah Corporation,)
Third-Party Defendant)
and Respondent.)

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

Respondent filed suit for repossession of a trailer bought on contract by appellant. Appellant resisted and the District Judge rescinded the contract and awarded damages to appellant. That case was appealed to this Court and the District Judge was reversed and respondent was awarded a deficiency, costs, and attorney's fees. The District Judge then awarded respondent attorney's fees, but refused to award a deficiency.

DISPOSITION IN LOWER COURT AND
IN PREVIOUS PROCEEDINGS BEFORE
THE SUPREME COURT

The first case was tried before J. Harlan Burns, sitting without a jury. The contract of sale on the trailer

was rescinded and Judge Burns awarded damages against the

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respondent and in favor of the appellant. This Court reversed and remanded with instructions to award a deficiency together with attorney's fees and costs. Judge Burns refused to award a deficiency judgment but awarded attorney's fees in the sum of \$473.13.

RELIEF SOUGHT ON APPEAL

The respondent on this appeal seeks to have the award of attorney's fees in the sum of \$473.13, affirmed and further cross-appeals for the sum of \$517.00, as the deficiency set forth in the affidavit of respondent.

STATEMENT OF FACTS

On the 24th day of January, 1973, respondent filed a suit for the repossession of a certain travel trailer, for a Deficiency Judgment, attorney's fees and costs.

The contract between respondent and appellant called for repossession by respondent if payments were not made and appellant did not make payments several months prior to filing of Complaint and not at all after the filing of the Complaint. The District Judge refused to deliver possession of said travel trailer after an Order to Show Cause hearing on the 8th day of February, 1973.

On the 15th day of March, 1973, the Court ordered that possession of the trailer would remain with the defendant, Gilbert E. Burns, until the matter could be heard on its merits.

On the 26th day of April, 1973, the Court vested possession of said travel trailer in Chrysler Credit Corporation and further ordered that the trailer would remain at its present location in the possession of Gilbert E. Burns. On or about the 4th day of January, 1974, the Court entered its judgment and at that time the Court rescinded the conditional sales contract entered into between the said Gilbert E. Burns and U. & S. Motor Company and awarded damages in favor of Gilbert E. Burns.

Thereafter an Order was issued from the District Court on the 23rd day of January, 1974, requiring possession of the Road Runner Travel Trailer to be returned to U. & S. Motor Company.

The travel trailer was subsequently returned and a sale was made for the purpose of avoiding any further dissipation of the trailer. The appeal was made to the Supreme Court on the basis of the Judgment for damages entered against U. & S. Motors, and in favor of Gilbert E. Burns. This Court reversed and ordered a sale of trailer together with any deficiency, attorney's fees and costs.

The District Judge also awarded the return of a certain rifle given to the president of U. & S. Motors in exchange for certain payments. The Supreme Court reversed this Order stating that the president of U. & S. Motors was never a party to the suit.

Thereafter, a seperate suit was filed against the president of U. & S. Motors for the return of the rifle and

other damages. At that time, U. & S. Motor Company filed a Motion and Affidavit for a Deficiency Judgment, attorney's fees and costs.

ARGUMENT

POINT 1

THE TRIAL COURT DID NOT ERR IN AWARDING ATTORNEY'S FEES TO U. & S. MOTOR COMPANY.

The record is clear that U. & S. Motor Company attempted to repossess the trailer for more than two (2) years. At all times, the Appellant was represented by competent counsel and was aware of the fact that the trailer would be sold after repossession. Appellant's attempts to keep possession of the trailer, without making payments were successful until this Court ordered the sale of the trailer and a Deficiency Judgment, attorney's fees and costs of Court to respondent.

Appellant claims that respondent did not comply with the uniform commercial code by giving reasonable notice of intended disposition of the collateral.

If in fact the District Court rescinded the sale by reason of its Judgment, reasonable notice concerning sale of the trailer would not be necessary.

If the sale was not rescinded reasonable notice was given to the Appellant as follows:

1. A Complaint was filed on or about the 24th day of January, 1973, wherein the respondent requested immediate possession and sale of the trailer.

2. The Complaint which was served upon the appellant states that the plaintiff hereby elects to take immediate possession and sell said vehicle and recover a deficiency plus reasonable attorney's fee.

3. The appellant answered and made a cross-complaint through his attorney and requested the Court to restrain the plaintiff from taking possession of said trailer and/or selling said trailer.

4. Appellant retained possession of said trailer after default for approximately two (2) years and all during that time, the appellant was aware that respondent was attempting to take possession of the trailer and sell it immediately after possession was gained.

This is reasonable notification of intended disposition of the collateral.

All pleadings in this case indicated that the respondent intended to take possession and sell the trailer immediately after possession was gained. This is full compliance with Section 78-9-504 and the debtor should have exercised his right to redeem the collateral under Section 78-9-506 during the two year period that he had possession and did not make payments.

The cases relied upon by the appellant do not conform to the facts of this case. In Community Management Association of Colorado Springs vs. Tousley, 505 p. 2d 1314 (Colo. 1973), the vehicle was repossessed without filing a Complaint and the matter came to District Court when the plaintiff sued for a deficiency. In the case of Aimonetto vs. Keepes, 501 p. 2d 1017 (Wyom. 1972), the Court did not deal with actions of a seller where there was a default by the purchaser in an installment sales contract but rather with a pledge given to secure a loan from an individual.

Both of the cases cited above refused to allow

damages claimed by the aggrieved parties occasioned by failure to give notice.

POINT 2

THE TRIAL COURT ERRED IN THE FAILING TO GRANT
RESPONDENT A DEFICIENCY IN THE SUM OF \$517.00.

Actual notice was delivered by respondent to appellant concerning the fact that the trailer would be sold immediately after possession was gained.

The affidavit of the president of U. & S. Motors sets forth a deficiency in the sum of \$517.00. That amount should be available to the respondent pursuant to the decision of the Supreme Court of the State of Utah previously issued in this case.

CONCLUSION

The appellant in this case is trying to abuse the rights afforded by the law to protect those who have their chattels repossessed and sold without notice.

Respondent never attempted to sneak said trailer off and sell it without notice. Respondent proceeded, at the outset, in a Court of Law and Appellant had notice of each attempt by respondent to gain possession of the trailer. Appellant also had written notice that the trailer would be sold when possession was gained. Respondent has not tried to hide anything from Appellant. In fact, when one reads Appellants claim concerning the defects in the trailer, respondent should be thanked for keeping the deficiency at the low amount of \$517.00.

DATED, this 17th day of September, 1976.