

1976

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

VERA O. GASS, Formerly
VERA O. HUNTING,

Plaintiff-Respondent,

vs.

ROBERT LILE HUNTING, also known as
LILE HUNTING,

Defendant-Respondent.

Case No. 14642

BRIEF OF APPELLANT

An Appeal From the Judgment of the District Court
of the Fourth Judicial District, the Honorable
Allen B. Sorensen, Judge.

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STATEMENT OF NATURE OF CASE

Respondent commenced this action seeking to renew three old judgments on which the eight year statute of limitations had run. Subsequent to the entry of those judgments, the Appellant moved to the State of Wyoming. Respondent contends that the statute of limitations on the judgments was tolled during Appellant's absence from the State of Utah. Appellant contends that the statute does not toll by the absence of the judgment debtor from the state on a judgment duly entered.

DISPOSITION IN LOWER COURT

The trial court found that in Civil Number 4472 in Uintah County judgments were entered on June 30, 1964; October 6, 1964, and December 22, 1964. This action was commenced on April 7, 1975. The court found the statute was tolled and granted judgment for the plaintiff on a new cause of action.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have this court reverse the judgment and findings of the trial court as a matter of law. Appellant contends that Plaintiff-Respondent did nothing to renew the judgments during the eight year period, and Defendant-Appellant's absence from the state did not toll the statute of limitations.

STATEMENT OF FACTS

Appellant, Lile Hunting, and the Respondent, Vero O. Hunting (Gass),

The rules provide for the judgment creditor to execute during the eight year period and also provides for the renewing of a judgment. Clearly, this was not done during the eight year period from the entry of the judgments in Case No. 4472.

Respondent did not at any time docket the judgments in Wyoming and try to enforce them when she could have executed upon her judgments. With due diligence she could have located the Appellant during the statutory eight year period. Further... pursuant to the Utah Rules of Civil Procedure, Respondent could have renewed the judgments by filing a complaint during the eight year period and completing service by publication or otherwise as provided by Rule 4, even though she did not have Appellant's Wyoming address for personal service.

Many courts, including the Utah Supreme Court, have held that the debtors absence from the state after the rendition of the judgment or the accrual of the cause of action thereon does not suspend or toll the period of limitations. Sweetser v. Fox, 43 U40, 134 P599 (1911); U. S. v. Willhite, 219 F 2d 843, 849, In the Matter of Neil S. MacKay, 416 P 2d 823, 849 (1966); 2 ALR 3d 1385.

Another Utah case dealing with the subject is Youngdale v. Burton 102 Ut. 169, 128 P 2d 1053 (1942). The facts of this case are that in June of 1931, a party obtained a judgment for money against plaintiff. Eight years later the period of limitations expired on the judgment and became

barred. In 1941, the judgment-creditor filed in the Salt Lake City Court praying for execution on the dormant judgment, which was granted. The decision was appeal, and in reversing the decision of the City Court, the Supreme Court of Utah unanimously held that the eight year period of limitation was final. The court stated that:

"A money judgment forms the basis for but two legal proceedings: (a) A suit thereon, brought within eight years, wherein it forms the basis or chose in action for a new judgment, or (b) Some form of proceedings in execution for collection."

Respondent admits that no attempt to renew her judgments was made during the eight year period from the date of their entry.

The most recent Utah determination on the issue of barred judgments deals with an attempt by the plaintiff to renew and revive a judgment eight years and five months after the date of its entry. In Yergensen v. Ford, 16 Ut. 2d 397, 402 P. 2d 696 (1965), it is reported that the original judgment was rendered in 1949 in an action upon three promissory notes. Thereafter the judgment-debtors agreed to satisfy the judgment, but it wasn't until 1958 that any further action occurred by the plaintiff, at which time suit was instituted in the Fourth Judicial District (Judge Tuckett presiding). The case was dismissed on the basis of U. C. A. 78-12-22, which states that:

"Within eight years: An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States."

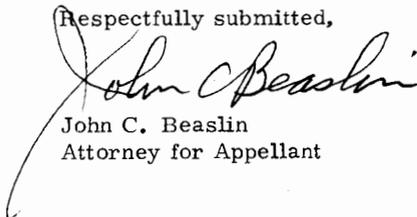
causes of action to judgment. Having reduced those causes of action to judgment, she was then bound by the eight year statute of limitations under U. C. A. 78-12-22 (1953). Her failure to take any action to renew those judgments during the eight year period now precludes her from recovery.

CONCLUSION

The lower court erred as a matter of law in granting recovery to the Respondent. Respondent had ample opportunity to renew the judgments during the eight year period of their entry whether or not she knew the address of the Appellant. She failed to do anything to preserve the judgments.

Appellant respectfully submits that the decision of the lower court should be reversed.

Respectfully submitted,

A handwritten signature in cursive script that reads "John C. Beaslin". The signature is written in black ink and is positioned above the printed name and title.

John C. Beaslin
Attorney for Appellant