1976

C. Eugene Larson, Sr v. Associates Financial Service Company, Inc., A Corporation, And Northwest Acceptance Corporation, A Corporation, Hugh Gardner, Donald H. Wagstaff, Jr., Universal Diamond Reo Sales And Service, And Universal Distributing Company, Inc : Brief of Appellant

Utah Supreme Court

Leslie A. Lewis and Glen M. Hatch; Attorneys for Plaintiff-AppellantPaul W. Cotro-Manes; Attorney for Defendant-Respondents

ORIGINAL

IN THE SUPREME COURT OF THE

STATE OF UTAH

C. EUGENE LARSON, SR.,

Plaintiff-Appellant,

-vs-

ASSOCIATES FINANCIAL SERVICE COMPANY, INC., a corporation, and NORTHWEST ACCEPTANCE CORPORATION, a corporation, HUGH GARDNER, DONALD H. WAGSTAFF, JR., UNIVERSAL DIAMOND REO SALES AND SERVICE, and UNIVERSAL DISTRIBUTING COMPANY, INC.,

Defendant-Respondents.

Case No. 14815

BRIEF OF APPELLANT

AN APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, THE HONORABLE EARNEST F. BALDWIN, JUDGE, PRESIDING

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OF THE

STATE OF UTAH

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Plaintiff,	*	
-vs-	*	
ASSOCIATES FINANCIAL SERVICE COMPANY, INC., a corporation, and NORTHWEST ACCEPTANCE CORPORATION, a corporation, HUGH GARDNER, DONALD H. WAGSTAFF, JR., UNIVERSAL DIAMOND REO SALES AND SERVICE, and UNIVERSAL DISTRIBUTING COMPANY, INC.,	*	Case No. 14815
Defendants.	*	

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

This is an appeal by C. Eugene Larson, Sr., of the Judgment entered on July 19, 1976, by the Honorable Earnest F. Baldwin, Judge of the Third Judicial Court in and for Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The Court below ruled in favor of the Defendants, holding that the Execution Sale conducted in this matter, subsequent to Judgment and pursuant to a District Court Writ of Execution, was invalid because it was directed to the sheriff of the county where

the property is situated; but was carried out by a deputy constable.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant contends that the Court below erred and that the Judgment should be set aside; and a Judgment entered herein in favor of the Plaintiff-Appellant granting him the relief prayed for in his original Complaint.

STATEMENT OF THE FACTS

The Plaintiff in the above-entitled case, C. Eugene Larsen, Sr., brought suit against Universal Diamond Reo Sales and Service, in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, Civil No. 205417, and obtained a Judgment against this Defendant in that case, for the sum of $9,166.62, together with interest at the rate of eight percent (8%) per annum, on or about the 4th day of January, 1974. No payment was ever made to Plaintiff-Appellant by Universal Diamond Reo Sales and Service, pursuant to the Judgment.

The Defendant, Universal Diamond Reo Sales and Service, was in the business of selling vehicles to various customers under contracts, whereby the customers were to make installment payments on said vehicles over a period of time, in satisfaction of their contracts. Various of such contracts were sold or assigned by Universal Diamond Reo Sales and Service to the Defendants in the present action, Associates Financial Services Company, Inc., and Northwest

Acceptance Corporation. Both Northwest Acceptance Corporation and Associates Financial Service Company, Inc., hold a substantial number of such contracts, some of which are paid in full and some of which hold reserves. Plaintiff-Appellant contends that these amounts which were owed to Universal Diamond Reo Sales and Service are now due to Plaintiff-Appellant by virtue of the Judgment described above. The exact amount thereof is not known to the Plaintiff. The payment of these reserve accounts is the subject of the controversy herein.

Subsequent to the obtaining of Judgment in case No. 205417, an Execution was issued out of the Third Judicial District Court, on February 5, 1974. This Execution provided that levy and sale was to be made of all right, title, and interest of Universal Diamond Reo Sales and Service in and to reserves, contract, cash holdbacks, lease reserves, and participation interest of Universal Diamond Reo Sales and Service, held by Northwest Acceptance Corporation and Associates Financial Service Company, Inc., accumulating to the benefit of Universal Diamond Reo Sales and Service.

This Execution was directed to the Sheriff of Salt Lake County and did not contain a return date.

Plaintiff also prepared a Praecipe directed to the Sheriff of Salt Lake County, directing him to levy and sell the above described assets.

Such sale was duly conducted by William L. McIff, a

Deputy Constable of the Eleventh Precinct of Salt Lake County, Utah, on the tenth day of April, 1974. At said sale, Plaintiff and Appellant, C. Eugene Larsen, Sr., purchased all right, title, and interest of Universal Diamond Reo Sales and Service in and to the above described reserves, contracts, cash holdbacks, lease reserves and participation of Universal Diamond Reo Sales and Service, held by Northwest Acceptance Corporation and Associates Financial Services Company, Inc. The return on the sale was duly filed with the Court, and showed that two months had passed between the time the execution was presented to the Constable and the time of the Sale.

Subsequent to said Execution Sale, Universal Diamond Reo Sales and Service, the Defendant in the first action, Civil No. 205417, made an assignment of its interest in and to the above described reserves, contracts, cash holdbacks, lease reserves and participation, to Hugh Gardner and Donald H. Wagstaff, Jr., Defendants herein. Mr. Gardner and Mr. Wagstaff were officers of Universal Diamond Reo Sales and Service at the time said assignment was made. The Records of the Secretary of State, for the State of Utah, and the District Court transcript, show that, as a matter of fact, the Defendant, Universal Diamond Reo Sales and Service, was a corporation which had been suspended at the time this transfer was made. Further, Plaintiff-Appellant con-

tends that this attempted assignment is void because it was an attempt to transfer assets in fraud of creditors.

Nothing was recovered by Plaintiff-Appellant subsequent to the above described sale. So on or about the 15th day of July, 1974, Plaintiff and Appellant, by and through his counsel, filed a complaint in the Third District Court, in and for Salt Lake County, Civil #220975. In said Complaint, Plaintiff and Appellant sought the following: (1) an order form the Court ordering all of the above named Defendants to appear to Show Cause why they should not be prohibited from transfering or otherwise disposing of all the terests, described above, which were due to Universal Diamond Reo; (2) an accounting from all the Defendants on all Universal Diamond Reo Sales and Service contracts; (3) for a Judgment in Plaintiff's favor of $9,166.62, plus interest at eight percent (8%) from January 4, 1974, until paid; and (4) for a Judgment ordering the Defendants to pay Plaintiff all sums which in future accrue in favor of Universal Diamond Reo Sales and Service, as a result of any contracts, agreements or understandings between the Defendants herein and Universal Diamond Reo Sales and Services.

A trial was secheduled in this case, Civil #220975, on the 19th day of July, 1976. Prior to the time of trial, Defendant, Northwest Acceptance Corporation and Defendant, Associates Financial Services, Inc., both entered into a Stipulation with Plaintiff. These Stipulations became part ofthe Court record at

the time of trial. They were similiar and provided, in pertinent part, that; these Defendants made no claim of right to the contract reserves, the subject of the litigation, beyond their rights to satisfy all claims due them upon the contracts of Universal Diamond Reo Sales and Service, held by them; and these two Defendants agreed to be bound by the holding of the Court with respect to who owned the reserves.

The matter came on for trial before the Honorable Ernest F. Baldwin, sitting without a jury on the 19th day of July, 1976. The Defendant, Northwest Acceptance Corporation appeared at the time of trial, through its counsel, Scott H. Clark; and Associates Financial Service Company did not appear. Then Plaintiff, by and through his counsel of record, Glen M. Hatch and Leslie A. Lewis, and Defendants, Hugh Gardner and Universal Diamond Reo Sales and Service and Universal Distributing Company, by and through their counsel, Paul N. Cotro-Manes, presented testimony and put on evidence relative to the above described facts and claims; and at the Court's request, Mr. Contro-Manes and Mr. Hatch and Ms. Lewis submitted legal memorandums on behalf of their clients.

The Court concluded and held that;

1. That pursuant to Rule 69(b), Utah Rules of Civil Procedure, a Writ of Execution out of the District

Court must be issued to the Sheriff of the County where the property or some part thereof is situated and that, as a matter of law, a Writ of Execution directed to a Sheriff must be carried out by that Sheriff pursuant to the direction of such Writ.

2. That pursuant to Rule 4(m), Utah Rules of Civil Procedure, as amended by the Supreme Court of Utah in 1972, it is specifically stated that a Constable may "serve" process issued out of the District Court, however, this Rule does not amend by implication Rule 69.

3. The Court further held that the sale conducted by the Deputy Constable, William L. McIff, on the 10th day of April, 1974, was null and void in that said sale exceeded the jurisdiction of a Constable, under the Statutes of the State of Utah, or under the Utah Rules of Civil Procedure and that, therefore, as a matter of law, the Plaintiff, C. Eugene Larsen, Sr., obtained nothing by reason of said sale.

4. That Court further finds that pursuant to 16-20-101, Utah Code Annotated, 1953, as amended by the Session Laws of 1961, that after dissolution of a corporation, the corporate existence continues on for the purpose of winding up its affairs and that to effect such purpose, such corporation may sell or otherwise dispose of such property and assets, sue and be sued, contract and exercise all other incidental and necessary powers.

5. The Court concluded as a matter of law that the Defendant, Universal Diamond Reo Sales and Service had authority to

execute the assignment of its reserves being held by the Defendant Northwest Acceptance Corporation to the Defendants Gardner and Wagstaff.

Plaintiff objected to these Findings of Fact and Conclusions of Law and moved to have the same amended. The Court reviewed the Objections by Plaintiff and denied the Motion.

ARGUMENT

POINT ONE

THE EXECUTION SALE CONDUCTED IN CASE NO. 205417, WAS PROPERLY CONDUCTED AND SHOULD BE ACCORDED FULL LEGAL EFFECT SINCE UTAH LAW GIVES A DEPUTY CONSTABLE AUTHORITY TO SERVE PROCESS.

Defendants have asserted that the Execution sale which took place herein on the 10th day of April, 1974, was improperly conducted and therefore has no legal affect. They contend that the sale is invalid because it was conducted by a Deputy Constable.

Utah Statutes provide that certain county officers, including county commissioners, the county treasurer, the sheriff, etc., are to be appointed. Utah Code Annotated 17-16-2, further provides that "Such others as may be provided by law ", may be appointed to help perform the duties required of those appointed.

Utah Code Annotated, Section 17-26-7, deals with the appointment of deputies. This Section, provides, in

pertinent part, "Deputies-Appointment Liability of Principal.- Every county, precinct or district officer, except a county commissioner or a judicial officer, may, by and with the consent of the Board of County Commissioners, appoint as many deputies and assistants as may be necessary for the prompt and faithful discharge of the duties of his office; provided, that the Board shall allow the Clerk of the District Court such deputies and assistants to transact the business pertaining to the District Courts as may be deemed necessary and advisable by the Judge or Judges of the District Court. The appointment of a deputy must be made in writing and filed in the office of the County Clerk. Until such appointment is so made and filed and until such deputy shall have taken the oath of office, no one shall be or act as such deputy. Any officer appointing any deputy shall be liable for all official acts of such deputy." This Section makes it clear that the need for deputies to help conduct the county's business, was clearly contemplated. Appointment of such deputies was deemed both permissible and necessary.

There is even more direct Statutory authority for the position taken by Plaintiff-Appellant. Section 17-16-8 of the Utah Code Annotated, provides as follows; "Powers, Duties and Liabilities of Deputies.- Whenever the official name of any principal officer is used in any law conferring powers or imposing duties or liabilities it includes deputies." It is clear from

this section and the preceeding sections, which we have quoted herein, that a deputy constable has the power, and can perform the same acts which a constable is authorized to perform. In this instance, a Deputy Constable, William L. McIff, performed the functions that would ordinarily have been performed by a constable or a sheriff. That is to say, that he served the Execution on those involved and posted notice of the same, made adequate returns, etc.

POINT TWO

THE EXECUTION SALE CONDUCTED HEREIN, IN CASE NO. 205417, WAS PROPERLY CONDUCTED AND SHOULD BE ACCORDED FULL LEGAL EFFECT, SINCE UNDER UTAH LAW A CONSTABLE MAY LEVY A WRIT DIRECTED TO A SHERIFF.

Defendants have contended that the fact that the Writ of Execution in the above described case was directed to the Sheriff, precludes the possibility of a Constable making levy on the same. It is our contention that, based upon Statutory law, common practice, and the intent of the Supreme Court in drafting the rules of Civil Procedure for the State of Utah this is clearly not the case.

Rule 69(b) makes reference to the Sheriff only, it provides as follows; "(b) Contents of Writ and to Whom It May Be Directed.- The Writ of Execution must be issued in the name of the State of Utah, sealed with the seal of the Court and subscribed by the clerk. It may be issued to the Sheriff of any county in the state (and may be issued at the

same time to different counties) but where it requires the delivery or possession or sale of real or personal property, it must be issued to the Sheriff of the county where the property or some part therof is situated. It must intelligently refer to the Judgment stating the Court, the county where the same is entered or docketed, the names of the parties, the Judgment, and, if it is for money, the amount thereof, and the amount actually due thereon. It shall be directed to the Sheriff of the county in which it is to be executed and shall require the officer to proceed in accordance with the terms of the Writ; and provided that if such Writ is against the property of the Judgment debtor generally it shall direct the officer to satisfy the Judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, then out of his real property."

These Sections of Rule 69, of the Utah Rules of Civil Procedure, state unequivocally that a Writ must be directed to the Sheriff of the County where the property to be sold is situated. In accordance with this Rule, counsel for Plaintiff directed the Writ of Execution in this matter to the Sheriff of Salt Lake County.

However, Rule 69 cannot be read alone. Rule 4(m), of the Utah Rules of Civil Procedure, must be read in conjunction with Rule 69(b). Rule 4(m) provides as follows: "Service by Constable. All Writs and process, including executions upon Judgments, issued out of a District, City or Justice Court in a civil action or proceeding may be served by any constable of the

county." This Rule, when read in conjunction with Rule 69(b), seems to give two conflicting directions. On the one hand, Rule 69 makes it imperative that the Writ of Execution be directed to the Sheriff, on the other hand, Rule 4(m), establishes that service of Writs, including executions upon Judgments, may be served by any Constable of the county. The committee note concerning Rule 4(m), states that Rule 4(m) was amended by the Supreme Court on June 23, 1971, and was effective January 1, 1972. The amendment inserted "District" before the word "City." This Rule, adopted by the Supreme Court, leaves little doubt in anyone's mind about the power of constables to serve process.

In Defendants' Points and Authorities, on file herein, counsel refers to the case of Rich v. Industrial Commission, et al, 80 U. 511, 15 P. 2d 641, (Utah, 1932). This case is cited for the proposition that, "the constable has no authority, in the absence of a statute, to serve process in a civil action." Plaintiff-Appellant does not take issue with this case. There is no question about this legal statement. However, Appellant does take issue with the conclusion that Defendants draw from this case.

Defendants assert that, based upon this case, the constable had no authority to conduct the execution sale or to serve process in case No. 205417. This is inaccurate. A Rule of Law was adopted subsequent to this case, providing that a constable does

have this authority as stated hereinabove. Rule 4(m), of the Utah Rules of Civil Procedure, was adopted in its original form, in 1951, and amended, to include the word "District", in 1971. This Rule provides, in its amended form, as discussed above, that all writs, including executions, issued out of the District Court, may be served by a Constable. It follows that it was the clear intent of the Supreme Court to give Constables the authority to serve process as well as conduct execution sales in connection with the same. Therefore, Defendants' assertion that Rich v. Industrial Commission, (supra), supports their position is inaccurate.

The reason for the adoption of the Rule seems obvious. The dearth of sheriffs and the substantial and ever increasing amount of process, which must be served in the state of Utah, makes it necessary for Constables to assist Sheriffs in the service of process and in the conducting of execution sales. The Supreme Court recognizing this pragmatic necessity carefully considered this Rule and adopted the same.

Further, it is the general practice by attorneys in this state to follow the procedure used by Plaintiff-Appellant's counsel in this instance. That is to say, that the use of a Constable in this instance was not unusual, but rather, it was in keeping with the normal practice of most attorneys in this state.

To require an attorney to use only Sheriffs to serve process and levy on executions as described herein, is requiring the impossible in view of the existing numbers of Sheriffs and the num-

bers of papers requiring service. A change in the procedure of this import would have great impact and far reaching disastrous effects upon the Judicial system in this state.

Rule 69(b) literally leaves no room for the Clerk of the Third Judicial Court to issue a Writ to anyone other than a sheriff. Therefore, the Writ prepared in this matter, was directed to the sheriff. However, Rule 4(m), amended in 1972, makes it clear that the Supreme Court was trying to create a workable system by enlarging the group who could serve process and Writs. It appears that in attempting to create a workable system, the Supreme Court implied that whenever "Sheriff" is used in the Rules in connection with the service of Writs and process, including Executions upon Judgments, the word "Sheriff" should be read to mean that catagory of Sheriffs, Deputy Sheriffs, Constables, and Deputy Constables.

Thus, the Writ directed in this case to the "Sheriff" as required by Rule 69(b), must be interpreted to include a constable and deputy constable, as well.

Therefore, the Execution Sale in case No. 205417, was properly conducted and complied with both the spirit and the exact wording of the law.

POINT THREE

THE FAILURE OF THE CONSTABLE TO FILE A RETURN ON THE EXECUTION SALE DOES NOT INVALIDATE THIS SALE.

Defendants have contended that the Constable's failure to file a return on the Execution Sale conducted was fatal. This point was not raised by the pleadings, but was considered by the Court and included in the Findings of Fact and Conclusions of Law, so this point is addressed at this time. In the Certificate of Sale, which was filed shortly after April 10, 1974, the Deputy Constable, stated that the sale was conducted after due and legal notice was given. In the supplemental return on the execution sale, of August, 1976, the Constable states where and when the postings were made. It should be noted that this return set forth the pertinent details in connection with the sale, with great specificity. We contend that this is sufficient to comply with Rule 69, Subparagraphs (d) and (e).

Further, if Defendants, Universal Diamond Reo Sales and Service, Universal Distributing Company, or Hugh Gardner, desired, they could have interrogated the Constable as to further details regarding this sale, at the time of trial. There is little question about whether or not the Defendants in this law suit received actual notice. The fact that actual notice was received is clear from a review of the return discussed above and other information in the transcript furnished to this Court.

There remains an additional ancilliary question, as to the timeliness of the filing of the full return on the Execution Sale.

Although the Writ, did not include a return date, the provisions of Utah Rules of Civil Procedure, Rule 69(c), require

that it be made returnable not later than two months after its receipt by the Constable. The failure to make the entry could not extend the time to begin the service of the execution. Rule 69(d) reads as follows:

"Service of the Writ. Unless the execution otherwise directs, the officer must execute the Writ against the property of the Judgment debtor by levying on a sufficient amount of property, if there is sufficient; collecting or selling the choses in action and selling the other property, and paying to the Judgment creditor or his attorney so much of the proceeds as will satisfy the Judgment.

When an officer has begun to serve an execution issued out of any Court on or before the return date of such execution, he may complete the service and return thereof after such return date. If he shall have begun to serve an execution, and shall die or be incapable of completing the service and return thereof, the same may be completed by any other officer who might by law, execute the same if delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service."

Since the Writ was issued on February 5, 1974, and was levied on February 8, 1974, the officer had "begun to serve an execution. . . on or before the return day." Therefore, he was entitled to "complete the service and return thereof after such return date." No other limitation regarding the timeliness of the filing of the full return seems to exist. Thus, we submit that the technicalities required to vest title to the choses in action, have been complied with in this execution.

POINT FOUR

THE PURPORTED ASSIGNMENT IS INVALID SINCE IT WAS MADE BY A SUSPENDED CORPORATION AND WAS NOT SUPPORTED BY CONSIDERATION.

This lawsuit also deals with an issue concerning the validity of the alleged assignment, dated February 21, 1974, made by Universal Diamond Reo Sales and Service to Defendants, Hugh Gardner and Donald Wagstaff. The facts are uncontroverted that at the time this assignment was made, Universal Diamond Reo Sales and Service had been suspended. The District Court's Findings of Fact and Conclusions of Law make this point clear. It appears from the Court record that this suspension was based on Universal Diamond Reo Sales and Services' inability to pay state taxes due and owing. This alleged assignment occurred subsequent to the levy, of February 8, 1974, as discussed herein.

The issue of the validity of the assignment was never clearly dealt with at the time of trial, for the reason that this question is moot if the Court finds that the Execution Sale

is valid. The assignment appears to have been an effort by a corporation, unable to pay its debts, to transfer its only remaining assets to the officers of the corporation. This Court must scrutinize such actions with great care, and sanction the same only where fully justified.

It is generally held that the dissolution of a corporation or the suspension of a corporation's charter, implies the termination of its existence and its complete extinction as an entity. This general rule is set forth in 19 AM JUR 2d 1646 et seq.

Section 1653 of this volume provides that; "The extinction of contractual power which is produced by the dissolution of a corporation necessarily involves an incapacity to proceed with the execution of contracts partially performed or wholly executory as to the corporation at the time of its dissolution," (at Page 1002 of 19 AM JUR 2d). If this rule is applied to the case at hand, the assignment must be found invalid.

In addition to the question of whether this corporation could enter into an assignment agreement, when suspended, there is the additional question of whether this assignment agreement was supported by actual consideration. An examination of the purported assignment reveals that the stated consideration for the assignment is; "For and in consideration of the guarantee of all of the contracts and sales agreements of

assignor, said guarantee having heretofore been delivered to Northwest Acceptance Corporation . . . ".

Plaintiff-Appellant prepared a Subpoena Duces Tecum, issued by the Third Judicial District Court, and directed to Northwest Acceptance Corporation, requiring Northwest to furnish the following documents: "Any and all personal individual guarantees which Northwest holds, signed by either Hugh Gardner or Donald H. Wagstaff, which in any way or at any time guaranteed performance by Universal Diamond Reo Sales and Service, Utah corporation, of its obligation pursuant to its agreement of August 27, 1971, with Northwest Acceptance Corporation and the contract sold by it to Northwest Acceptance Corporation." In response to this Subpoena Duces Tecum, Defendant Northwest Acceptance Corporation, furnished certified copies of all such guarantees. Copies of the same are part of the record herein. The guarantees are dated August 21, 1971, December 16, 1971, and were obviously executed in conjunction with the orginal master agreement between Universal Diamond Reo Sales and Service and Northwest Acceptance Corporation, dated July 16, 1976.

The Restatement of Contracts, Section 76(a), provides that there is no consideration for a contract if one of the promisors promises to do an act which he is already bound to do for the promissee. There is no exchange of value in such a situation. The promisor, as in this case, would be getting nothing more than that to which he was already entitled; and the promisee parts with nothing

beyond that which he was already bound to give. Therefore, in the language of the Restatement, a benefit to the promisor and a detriment to the promisee is totally lacking, and no consideration exists. Thus, the purported assignment of February 21, 1974, must fail for want of consideration.

Wilson v. Davis, 76 P. 2d 69 , (Cal. App. 1938), is one of the classic cases on this subject of promising to do what one is already bound to do. In that case, the Court found that there was no consideration since the Promisor agreed to perform that which he was already legally and morally obligated to do.

Further, it appears clear that the recital of consideration in this assignment is a ruse designed to cover an illegal act: i.e., defrauding creditors, specifically the Plaintiff herein.

POINT FIVE

ALL OF THE PROCEEDINGS INVOLVED HEREIN ARE IN AID OF EXECUTION AND OUGHT TO BE ACCORDED FULL LEGAL EFFECT, PURSUANT TO RULE 69, OF THE UTAH RULES OF CIVIL PROCEDURE.

The District Court has a duty to use its powers to aid the collection of the debt involved herein.

The District Court has ample power under the Statutes and Rules of Civil Procedure, discussed herein, to take cognizance of the circumstances of the case and, without regard to the validity of the Execution Sale, to simply

order the Defendant, Associates Financial Service Company, and the Defendant, Northwest Acceptance Corporation, to pay the sums they held, over to the Plaintiff, pursuant to the Judgment in case No. 205417.

The District Court certainly has power to ignore an assignment of a corporation's sole asset, made by and to the officers of an insolvent corporation. Further, there is not even an assignment involved in connection with the Associates Financial Services' account, so at the very least the Court should order the sums due by them paid to the Plaintiff. If, as a result of the District Court's ruling, the Defendants, Universal Diamond Reo Sales and Service, have already received that money from Associates Financial Service Company, the Court could order the sums owed paid to Plaintiff out of the Northwest Acceptance Corporation obligation.

The Rules on executions are liberal rules designed to effect justice. These rules should be interpreted in such a way as to make that end a real possibility. The District Court herein interpreted the rules on execution in such a way as to avoid its duty in this regard.

It is clear that Plaintiff-Appellant is entitled to the award granted by the Court in case No. 205417. A Liberal interpretation of the rules would allow him to recover the amounts due him under the Judgment in case No. 205417.

CONCLUSION

It is Plaintiff-Appellant's contention that based upon the law discussed herein and based upon common practice by attorneys in the State of Utah, the Execution Ssle was properly conducted and valid. This sale vested in Plaintiff all rights in and to the contract reserves, etc., that Defendants hold as described herein.

It is also Plaintiff's contention that the assignment described herein, made subsequent to the execution sale, has no legal effect since it was made by a suspended corporation, and was lacking in consideration, and was made in fraud of creditors.

Finally, it is Plaintiff's contention that the District Court could have and should have looked at the Rules in the light most favorable to aiding the execution and found that said sale was legally effective.

Even if the sale were invalid, the Court had personal jurisdiction over all of the parties, and has ample authority to order the Defendants, who hold the reserves, to pay them to the Plaintiff when due.

RESPECTFULLY SUBMITTED,

LESLIE A. LEWIS
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CERTIFICATE OF DELIVERY

I certify that on the 29th day of December, 1976, I delivered two true and accurate copies of the foregoing BRIEF OF APPELLANT to each attorney herein: Paul N. Cotro-Manes, at 430 Judge Building, Salt Lake City, Utah, 84111; Gary R. Howe, at Suite 800 Kennecott Building, Salt Lake City, Utah, 84133; and Scott M. Clark, 800 Continental Bank Building, Salt Lake City, Utah, 84101.

DATED this 29th day of December, 1976.