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A. M. Bell v. Parley P. Jones : Brief of Respondent

Utah Supreme Court

Jesse P. Rich; Newel G. Daines; Attorneys for Plaintiff and Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

A. M. BELL,
Plaintiff and Respondent

vs.

PARLEY P. JONES,
Defendant and Appellant.

Respondent's Brief.

JESSE P. RICH
NEWEL G. DAINES

Attorneys for Plaintiff and Respondent.

Appeal from the District Court of the First Judicial District of the State of Utah, in and for Cache County.

CITATIONS

IN THE SUPREME COURT OF THE STATE OF UTAH

A. M. BELL,
Plaintiff and Respondent

vs.

PARLEY P. JONES,
Defendant and Appellant.

As stated in appellant's brief, plaintiff started a straight suit on a promissory installment note of $850.00 for the installments then due. It was transferred to plaintiff about June 15, 1936 (Ab. 16). Defendant had made payments on said note to Alfred J. Bell before it was transferred and to this plaintiff after transfer (Plt's. Ex. "A", Ab. 16). The only objection defendant made to the note was that he did not have the money to pay it and it was not until the answer was filed to the original complaint that the plaintiff knew that defendant claimed he had any defense to said note (Ab. 20). The case went along for some little time and when another installment became due, plaintiff filed an amended and supplemental complaint demanding payment for the full amount then due and alleged that he was a bona fide holder in due course. Defendant filed a supplemental answer and a second supplemental answer and counterclaim. We submit that the answers tendered by defendant are anything

but clear and definite but apparently he endeavored to plead failure of consideration estoppel and that the note was compromised by a scaledown agreement.

In the District Court the plaintiff contended and still contends that he is entitled to recover, (1) because he is a bona fide holder in due course and, (2) that the scale-down agreement did not cover, nor was it intended to cover, the note sued on and there was and is nothing in the proceeding in connection with the Federal Land Bank loan which would effect the note in question.

The trial court held against the plaintiff on the first proposition, to-wit: that he was not a bona fide holder in due course, but gave judgment on the theory that the note had never been compromised or settled and was not void on account of the loan with the Federal Land Bank. The plaintiff gave notice of cross-appeal and made cross assignments of error from the ruling of the court that the plaintiff was not a bona fide holder in due course.

ARGUMENT.

We maintain that the court erred in holding that the plaintiff was not a holder in due course. If the plaintiff's stand on this question is correct, then the evidence on the negotiation of the loan with the Federal Land Bank should not have been admitted, over our objections, and the court should have awarded us judgment on that theory. If this

court holds that the trial court was in error in this respect, then it should reverse that holding and give us judgment on that ground alone. We will therefor, first address ourselves to that question.

There is no dispute on the evidence on this question, it therefor becomes a question of law. Little vs. Herzinger 34 Utah 33, 97 Pac. 639. The plaintiff got the note from his father about June 15, 1936. At this time only one installment was due and that was paid, except $27.63. There is no acceleration clause in the note. At that time, Alfred J. Bell, the payee and father of plaintiff, was owing plaintiff $215.50 (Ab. 8-16) and plaintiff subsequently paid full value for the note (Ab. 17-20). After the plaintiff got the note, the defendant continued to make payments on the same and never at any time questioned its validity until action was brought for recovery of the same.

The theory of the trial court seemed to be that inasmuch as the father transferred the note to his son that, in the nature of things, the son could not be a bona fide purchaser. Our statute provides that every holder is deemed by prima facie to be a holder in due course, Sec. 61-1-60, Utah Revised Statutes of 1933.

Section 53 of the same title and chapter defines a holder in due course, as follows:

> "A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face.

(2) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact.

(3) That he took it in good faith and for value.

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

The plaintiff clearly comes within the provisions of this statute.

When a note is transferred to a person on a past due debt, that constitutes good consideration for such negotiation and the holder is a holder in due course.

Helper State Bank vs. Jackson et al. 48 Utah 430, 160 Pac. 287;

Felt vs. Bust, 21 Utah 462, 126 Pac. 88;

Dern Investment Co. vs. Carbon County Land Co. et al, ...Utah....., 75 Pac. 2nd 660.

There is no question but what this note represents the balance due on a land deal and even if Alfred J. Bell had told this plaintiff all that he knew about it, that it was the balance due on a land deal, which there is no evidence to show that he did, yet he still would have been a bona fide purchaser for value. Sec. 61-1-57 of the Utah Revised Statutes of 1933, provides as follows:

"To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or

defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith."

Certainly there was no evidence to show lack of good faith on the part of plaintiff.

The only case we have been able to find on a father and son transaction is the case of Mauat vs. Wells (Minn.) 79 N. W. 499. In that case a son sold notes fraudulently obtained to his father and the court there held that the relation of father and son made no difference and that the father was a bona fide purchaser. This seems to be the only case on the point. See 8 C. J. 520 and 10 C. J. S. 840.

There is no evidence whatever of any notice to plaintiff of any fraudulent transaction, even if the note had been included in the scaledown agreement. The defendant himself did not know about this until he got word from the Federal Land Bank, therefore the plaintiff had no way of being put on notice of any defect in title. Hence, we submit that plaintiff should be held to be a bona fide purchaser for value without notice of defect in title and defendant, after making the payments to plaintiff, should now be estopped from asserting such a defense.

If this case had been tried before the jury the court should have directed a verdict for the plaintiff on this ground alone.

National Bank of the Republic vs. Beckstead, 68 Utah 421, 250 Pac. 1033;

National Bank of the Republic vs. Price, 234 Pac. 231, 65 Utah 57;

Lister vs. Donlan (Mont.) 281 Pac. 348, 72 A. L. R. 1;

G. F. Jerke vs. Delmont State Bank (S. D.) 223 N. W. 585, 72 A. L. R. 7.

As to the other questions, the court found that at the time of signing this scaledown agreement, the defendant owed the plaintiff $1250.00 which was the balance due him on a land contract (Ab. 9). This is what Alfred J. Bell testified to (Ab. 25). There is substantial evidence to uphold this finding and it is a finding of fact which is binding upon this court and this court can no more set that finding aside than a verdict of a jury which is supported by substantial evidence.

Smoot vs. Checketts, 41 Ut. 211, 125 Pac. 412.

Counsel argues that defendant could not have been owing the plaintiff that amount. To us, such an argument seems useless, in the face of this finding so we will not spend further time on it.

The counsel argues on page 8 of his brief that the court gave us a vendor's lien on the property described in his counterclaim and in the exhibits which he introduced in evidence. We submit there is nothing in the findings or the judgment which gives us a vendor's lien. The defendant pleaded that there was no consideration for the note and the court found that the consideration was the balance due on the purchase price of the land which defendant testified he bought from the plaintiff. When the

defendant pleaded no consideration, the court by his findings merely points out what the consideration of the note was. We contend that is only answering the issue raised by the defendant. The land is described in defendant's supplemental answer and the finding of the court was a finding on the issues raised in said final supplemental answer, filed by defendant in the District Court, October 7, 1939 (Judg. Roll page 21-22), (Finding No. 5 and 6, Ab. 8 and 9). However, a judgment should not be reversed because the findings go beyond the issues unless the judgment is based thereon. Malmstrom vs. Second East Apartment Co., 74 Ut. 206, 278 Pac. 811.

We submit the only real question before this court, in case this court sustains the trial court in holding that the plaintiff is ~~the~~ a holder in due course, is the question of whether or not this note was void as against public policy. We submit that this issue is really not raised by the pleadings, but the defendant pleaded that it was intended to be included in the scaledown agreement and compromised and settled, so we will now address ourselves to that question.

Counsel argues at some length in his brief that the note is void as being against public policy, because it was taken as a side agreement on Federal Land Bank Loan after a scaledown agreement had been signed. As stated, we don't see where this issue is tendered by the pleadings but we will proceed to argue it.

The gist of the cases cited by counsel is that secret side agreements are void when a mortgage is taken out with the H. O. L. C. or the Federal Land Bank unless authorized by such company on the ground that such side agreements are against public policy. However, if approved by such loan agency, they are legal. The case of Bay City Bank vs. White (Mich.) 277 N. W. 888 discusses this point and holds that where the borrower discloses to the loan agency that he is taking other security for the balance due him and the loan agency does not object, the additional obligation is valid and enforceable. In the case of McAlister et al. v. Drapeau (Cal.) 92 P. 2d 911, cited by counsel, the Supreme Court there recognizes this law and states that the cases cited by counsel are not inconsistant with the Michigan case supra. See also Ridge Investment Corp. vs. Nicolosi, 193 Atlantic 710, Sirman et al. vs. Sloss Realty Co. Inc. (Ark.) 129 S. W. 2nd 602. In the case at bar the papers of the Federal Land Bank authorize the defendant to have other obligations besides the amount represented by the mortgage.

In the scaledown agreement, wherein Alfred J. Bell agreed to accept $150.00 for $400.00 due, and by the way the only thing which he signed, it states that the conditions of the loan are

"That applicants total obligations, both secured and unsecured, shall not exceed the amount of $4700.00 when said loan is complete." (Def's. Ex. 10, Ab. 12).

The closing instructions of the loan: (Def's. Ex. "11", Ab. 13) contains the following provision which is typewritten:

> "This loan is approved on condition that all debts both secured and unsecured are scaled down to an amount not to exceed $4700.00."

and this is followed by a list of payments to be made, which payments amount to $3100.00. This provides for a Land Bank loan of $2100.00 and a land commissioners loan of $1400.00. This provision authorized the defendant to have *both secured and unsecured debts.*

Mr. Joseph H. Watkins, Jr., who is an employee of the Cache County Farm Loan Association (Tr. 53) testified that these provisions merely meant that Mr. Jones could carry obligations in the sum of $1200.00 in excess of the loan and which they made and such obligations would still be legal. Thus it becomes apparent that in making this loan it was contemplated that defendant should have unsecured obligations, which includes the note in question.

The defendant applied for $4700.00. If he had got it, Alfred J. Bell would have been paid in full and there would have been no necessity for this note. The Land Bank refused to make a loan for that amount of money but authorized the defendant to obligate himself for it. The evidence shows that the total obligations of defendant are well within the $4700.00 limit.

It was on account of these provisions in the application for the mortgage that the trial court held the note in question a valid obligation and we submit that no other holding could reasonably have been made.

Respectfully submitted,

JESSE P. RICH
NEWEL G. DAINES

Attorneys for Plaintiff and Respondent.