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Daniel P. Ream v. David L. Tizen : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

DANIEL P. REAM,)
Plaintiff and Respondent,)
vs.)
DAVID L. FITZEN,)
Defendant and Appellant,)
vs.)
DAVID L. FITZEN,)
Counterclaim Plaintiff) Case No. 15220
and Appellant,)
vs.)
PAUL REAM and BANK OF SALT LAKE,)
Counterclaim Defendants)
and Respondents,)
REAM'S BARGAIN ANNEX NO. 2,)
INCORPORATED, a Utah corporation,)
Defendant.)

FILED

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Clerk, Supreme Court Utah

BRIEF OF BANK OF SALT LAKE

Appeal from the Judgment of the District Court of Salt Lake County
The Honorable Stewart M. Hanson, Jr., Judge

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NATURE OF THE CASE

With respect to the claim of David L. Fitzen against Bank of Salt Lake, David Fitzen is alleging that Daniel P. Ream, Paul Ream and Bank of Salt Lake conspired together to unlawfully encumber a certain 1974 White Truck with a \$6,000.00 lien in favor of Paul Ream, and that such lien caused damages to David Fitzen.

DISPOSITION IN THE LOWER COURT

The case was tried to the Court sitting without a jury, commencing January 5, 1977, and continuing through January 10, 1977. After David Fitzen had put on his case in chief, and before Paul Ream and Bank of Salt Lake had on their evidence, the Court granted the Rule 41(b) Motion to Dismiss of Paul Ream and Bank of Salt Lake.

RELIEF SOUGHT ON APPEAL

Bank of Salt Lake seeks affirmances of the judgment of the lower court granting the Motion to Dismiss made by Bank of Salt Lake.

STATEMENT OF FACTS

After Dan Ream and David Fitzen verbally agreed to enter into a joint venture agreement, Dan Ream commenced looking for a truck to be used in connection with the joint venture (T.192-93). During September, 1974, Dan Ream located the White Truck subject to this action, and Dan Ream and David Fitzen then made arrangements to finance the purchase of the truck (T.193-94). In September or the first part of October, 1974, Dan Ream, David Fitzen, Paul Ream and Richard Cheney met together in the office of Richard Cheney to discuss such financing (T.102). At said meeting, it was determined that Dan Ream and David Fitzen would borrow from the Bank of Salt Lake the money necessary to purchase the truck, and that Paul Ream would guarantee the repayment of the loan (T.104). However, in addition to the amount which the Bank of Salt Lake would loan, Dan Ream and David Fitzen needed an additional \$8,000.00 to purchase the White Truck (T.104). To obtain the additional \$8,000.00, it was decided that David Fitzen would contribute \$2,000.00 and a truck bed for the White Truck, and Dan Ream would contribute \$6,000.00 in cash (T.104-05 and 128). Because Dan Ream did not have the necessary funds, Paul Ream agreed to loan Dan Ream the \$6,000.00 to purchase the truck, but on the condition that Paul Ream be granted a lien on the White

Truck to secure such \$6,000.00 loan (T.104).

Within a few days after the above noted meeting between said individuals, they again met at the Bank of Salt Lake with Keith Mendenhall, an officer of the Bank, to close the loan for the purchase of the truck (T.117 and 129). At the meeting at the Bank of Salt Lake, Mr. Mendenhall was told what had been decided at the preceding meeting (T.46 and 117). Specifically, Mr. Mendenhall was told that Paul Ream wanted a lien on the truck to secure his guaranty of the loan by the Bank and a second lien to secure his loan of \$6,000.00 to Dan Ream (T.46 and 117). The two Security Agreements evidencing said liens in favor of Paul Ream are attached to the Appellant's Abstract of the Transcript of Evidence, and are marked Exhibits 6-F and 7-F.

ARGUMENTS

- I. THERE IS SUFFICIENT EVIDENCE TO SUSTAIN THE FINDING OF THE TRIAL COURT THAT DAVID FITZEN KNEW OF AND RATIFIED THE \$6,000.00 LIEN.

In the Brief of David Fitzen ("Fitzen Brief"), it is suggested that the action against Bank of Salt Lake is not an equitable action, and therefore, the Supreme Court is not bound by the Findings of the Trial Court. Such a position is erroneous. The cause of action asserted against the Bank of Salt Lake is for conspiring with Dan Ream and Paul

Ream to unlawfully encumber the White Truck with a \$6,000.00 lien. The action is not equitable, but is an action based on a tort and therefore an action at law. 15A C.J.S. Conspiracy §21; Labor Discourt Center, Inc. v. State Bank & Trust Co., 526 S.W. 2d 407 (Mo. App. 1975); McWilliams v. Holton, 56 Cal. Rptr. 574 (Cal. App. 1967). Thus, the principles of appellate review concerning an action at law are applicable in the instant case.

The standard of review of the findings determined by the trial court in an action at law have been stated on numerous occasions, but it is noted that in the case of Gibbons & Reed v. Guthrie, 123 Utah 172, 256 P.2d 706 (1953), this Court stated:

It needs no citation of authority that this court will not redetermine facts found by the fact finder in the lower court in law cases if in the light most favorable to the respondent the evidence is sufficient to sustain such findings.

123 Utah at 174; 256 P.2d at 707. Glayer & Sons, Inc. v. Larsen, 26 Utah 2d 429, 491 P.2d 226 (1971). The same standards of review apply when this Court is reviewing findings made by a lower court in connection with a Rule 41(b) Motion to Dismiss. 9 Wright & Miller, "Federal Practice and Procedure" §2376, p.248 (1971); Lawrence v. Bamberger R.R. Co., 3 Utah 2d 247, 282 P.2d 335 (1955).

There is sufficient facts to support the findings of the lower court. During the trial, the lower court was presented substantial evidence to support the finding that David Fitzen knew of and ratified the \$6,000.00 lien. The evidence before the lower court was that in September or early October of 1974, Dan Ream, David Fitzen, Paul Ream and Richard Cheney met and discussed the \$6,000.00 lien. Both Dan Ream and Richard Cheney testified with respect to such meeting and testified to the fact that the \$6,000.00 lien was discussed and that David Fitzen agreed to the lien (T.11 and 105). A second meeting was held between said individuals at the Bank of Salt Lake with Keith Mendenhall. Both Dan Ream and Richard Cheney testified that the \$6,000.00 lien was again discussed and that David Fitzen knew of and agreed to the lien (T.45-46 and 116-18). Obviously, the finding of the lower court is supported by sufficient evidence.

However, at trial David Fitzen did deny any knowledge of the \$6,000.00 lien, but, such denial by David Fitzen is not sufficient for this Court to reverse the trial court. When there is a conflict in evidence concerning a particular point, this Court has held it will defer to the determination of the trial court in resolving the conflict. In the case of McCarren v. Merrill, 15 Utah 2d 179, 389 P.2d 732 (1974) the Court stated:

The resolution of the dispute in this case is governed by the old and oft repeated rule that where the evidence is in conflict, it is the trial court's prerogative to believe that which he finds most convincing, and that his findings will not be disturbed on appeal so long as there is some substantial evidence to support them. [Citation Omitted.]

Furthermore, it is reasonable to believe that David Fitzen did agree to the \$6,000.00 lien. As noted by Richard Cheney [T.104-105]:

The conversation was that they [David Fitzen and Dan Ream] could not get the financing without a co-signer, and so they wanted Paul to co-sign for the truck - not co-sign, guarantee the loan.

. . . .

[I] know the two boys wanted the truck and they had no way of getting financing.

Thus, a situation exists where David Fitzen wants the truck, but was unable to obtain financing. Under such circumstances it is not unrealistic to believe that David Fitzen consented to the \$6,000.00 lien in favor of Paul Ream. This is especially true when one considers the fact that Paul Ream had absolutely no connection with or concern for the White Truck, but yet he was guarantying the loan with the Bank of Salt Lake and loaning an additional \$6,000.00 in order that David Fitzen and Dan Ream would be able to obtain the White Truck.

Based upon the foregoing, this Court should sustain the determination by the lower court that David Fitzen knew of and ratified the \$6,000.00 lien in favor of Paul Ream.

II. IF THE TRIAL COURT IS REVERSED,
DAVID FITZEN IS NOT ENTITLED TO
JUDGMENT BY THIS COURT, BUT ONLY
A REMAND FOR FURTHER PROCEEDINGS
IN THE LOWER COURT.

As noted herein, the trial court granted the Motion of Dismissal of Bank of Salt Lake and Paul Ream, and accordingly, the Bank of Salt Lake did not have an opportunity to present any evidence at trial. If this Court should reverse the finding of the trial court with respect to David Fitzen agreeing to and ratifying the \$6,000.00 lien, then the case should be remanded to the lower court to give the Bank of Salt Lake an opportunity to present its defense.

Respectfully submitted,

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